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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jane M. Curry,

Plaintiff,

vs.

Michael J. Astrue, Commissioner of Social Security,

Defendant.

No. 09-CV-2580-PHX-GMS

ORDER

Pending before the Court is Plaintiff Jane Curry’s (“Curry” or “Plaintiff”) appeal of the Social Security Administration’s decision to deny benefits. (Doc. 1). For the following reasons, the Court affirms the decision.

Curry, who was sixty-two years old at the time of the decision by the Administrative Law Judge (“ALJ”), has a college education and past relevant work experience as a teacher and school principal. (R. at 24, 56, 540). Curry stopped working on June 1, 2005, the alleged disability onset date. (*Id.* at 18, 56). On June 6, 2005, she sought disability insurance benefits, based on alleged severe chronic obstructive pulmonary disease, side effects from medication, and depression. (*Id.* at 20). Her claim was denied initially and upon reconsideration. (*Id.* at 18, 39, 41–46, 48–50). After a hearing, ALJ Ronald Robins determined that Plaintiff was not disabled. (*Id.* at 18–25, 54–55, 535–50). The Appeals Council denied Plaintiff’s request for review, making the ALJ’s decision the Commissioner’s

1 final decision for purposes of judicial review under 42 U.S.C. § 405(g). (*Id.* at 3–6, 13); *see*
2 20 C.F.R. § 404.981 (explaining the effect of a disposition by the Appeals Council).¹

3 DISCUSSION

4 I. Standard of Review

5 The Court has the “power to enter, upon the pleadings and transcript of record, a
6 judgment affirming, modifying, or reversing the decision of the Commissioner of Social
7 Security, with or without remanding the cause for a rehearing.” 42 U.S.C. § 405(g). A
8 reviewing federal court addresses only the issues raised by the claimant in the appeal from
9 the ALJ’s decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n. 13 (9th Cir. 2001). A federal
10 court may “set aside a denial of benefits only if it is not supported by substantial evidence
11 or is based on legal error.” *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006).
12 “‘Substantial evidence’ means more than a mere scintilla, but less than a preponderance, i.e.,
13 such relevant evidence as a reasonable mind might accept as adequate to support a
14 conclusion.” *Id.* (citing *Young v. Sullivan*, 911 F.2d 180, 183 (9th Cir. 1990)).

15 The Court may not “substitute [its] own judgment for that of the ALJ.” *Id.* The ALJ
16 is responsible for resolving conflicts in testimony, determining credibility, and resolving
17 ambiguities. *See Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). “When the
18 evidence before the ALJ is subject to more than one rational interpretation, [the Court] must
19 defer to the ALJ’s conclusion.” *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1198
20 (9th Cir. 2004). At the same time, the Court “must consider the entire record as a whole and
21 may not affirm simply by isolating a ‘specific quantum of supporting evidence.’” *Id.* (citing
22 *Hammock v. Bowen*, 879 F.2d 498, 501 (9th Cir. 1989)). The Court also may not “affirm the
23 ALJ’s . . . decision based on evidence that the ALJ did not discuss.” *Connett v. Barnhart*,
24 340 F.3d 871, 874 (9th Cir. 2003); *see also SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)
25 (emphasizing the fundamental rule of administrative law that a reviewing court “must judge
26 the propriety of [administrative] action solely by the grounds invoked by the agency” and
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28 ¹ All citations to the Code of Federal Regulations (“C.F.R.”) are to the 2009 edition.

1 stating that if “those grounds are inadequate or improper, the court is powerless to affirm the
2 administrative action”). Even if the ALJ erred, however, “[a] decision of the ALJ will not
3 be reversed for errors that are harmless.” *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir.
4 2005).

5 **II. Analysis**

6 Whether a claimant is disabled is determined using a five-step evaluation process.
7 Any claimant seeking disability benefits must initially demonstrate (1) that she is not
8 presently engaged in a substantial gainful activity and (2) that her disability is severe. 20
9 C.F.R. § 404.1520(a)–(c). After meeting steps one and two, a claimant then may be found
10 disabled in two ways. She may prove (3) that her impairment meets or equals one of the
11 specific impairments provided in the Listing of Impairments found at 20 C.F.R. pt. 404,
12 subpt. P, app’x 1. *Id.* § 404.1520(a)–(d). Alternatively, even if the claimant’s impairment
13 does not meet or equal a listed impairment, a claimant can still establish a prima facie case
14 of disability by proceeding to steps four and five. A claimant must first prove (4) that her
15 residual functional capacity (“RFC”) precludes her from performing her past work. Once the
16 claimant has established this prima facie case, the burden shifts to the government to present
17 evidence (5) that the claimant can perform a significant number of other jobs in the national
18 economy, considering the claimant’s RFC, age, work experience, and education. If the
19 government does not meet this step-five burden, then the claimant qualifies for benefits.

20 At step one, the ALJ found that Curry has not engaged in substantial gainful activity
21 since June 1, 2005, the alleged disability onset date. (R. at 20). At step two, the ALJ
22 concluded that Curry has the following severe combination of impairments: asthma, sinusitis,
23 and rhinitis. (*Id.*) The ALJ also determined, however, that Curry’s alleged depression was
24 not a severe impairment. (*Id.*) At step three, the ALJ found that Plaintiff does not have an
25 impairment or combination of impairments that meets or equals one of the listed impairments
26 in 20 C.F.R. pt. 404, subpt. P, app’x. 1. (*Id.* at 21). Because Curry’s impairments did not
27 meet or equal any listed impairments, the ALJ assessed the RFC as follows:

28 After careful consideration of the entire record, the undersigned finds

1 that the claimant has the residual functional capacity to perform a restricted
2 range of light work, in that she can lift or carry 10 pounds (lbs.) frequently and
3 20 lbs. occasionally, and can sit, stand and walk 6 hours in an 8-hour workday,
4 is unlimited in her ability to push and pull with hand and foot controls, and can
5 occasionally climb ramps and stairs, but would be unable to climb ladders,
6 ropes, and scaffolds. She can occasionally balance, stoop, kneel, crouch and
7 crawl, but needs to avoid concentrated exposure to fumes, odors, dust, gases,
8 and poor ventilation.

9 (*Id.* at 22). The ALJ then explained his reasons for arriving at this RFC, which included
10 consideration of Plaintiff’s testimony and multiple physicians’ records and opinions. The
11 ALJ then held at step four that, based on the opinion of a vocational expert, Curry was
12 capable of performing her past relevant work as a teacher or a principal. Finally, although
13 the ALJ did not explicitly proceed to step five, the ALJ explained that Plaintiff was also
14 capable of working as an educational consultant and a curriculum specialist.

15 Plaintiff makes several arguments relating to the ALJ’s RFC finding: (1) that the ALJ
16 insufficiently described the RFC by allegedly excluding several key factors; (2) that the ALJ
17 gave insufficient weight to two treating physicians, Dr. Rundbaken and Dr. Van Osdol, each
18 of whom reported RFCs that were more restrictive than that found by the ALJ; and (3) that
19 the ALJ improperly considered Plaintiff’s subjective complaint testimony. Plaintiff next
20 contends that, by questioning the vocational expert based on this allegedly faulty RFC, the
21 ALJ incorrectly concluded that Plaintiff was able to return to her past relevant work.² These
22 bases for appeal lack merit.

23 **A. Function-by-Function RFC Assessment**

24 The RFC is a “function-by-function assessment” of an “individual’s ability to do
25 sustained work-related physical and mental activities in a work setting on a regular and
26 continuing basis.” Social Security Ruling (“S.S.R.”) 96-8p (July 2, 1996). The ALJ must
27 base the RFC “upon all of the relevant evidence of an individual’s ability to do work-related
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26 ² Plaintiff also points out that the ALJ improperly listed her date last insured as
27 December 31, 2007, rather than December 31, 2009. Plaintiff offers no argument why this
28 error is relevant to whether she is disabled, meaning reversal is inappropriate. *See Burch*, 400
F.3d at 679 (holding that harmless errors are not a basis for reversal).

1 activities.” *Id.* This includes “consider[ing] separately” the seven strength demands of a
2 claimant’s exertional capacity: “[s]itting, standing, walking, lifting, carrying, pushing, and
3 pulling.” *Id.* When relevant, the function-by-function assessment also considers a claimant’s
4 nonexertional capacity, such as a claimant’s postural, manipulative, visual, communicative,
5 mental, and environmental-tolerance abilities. *Id.*

6 The ALJ gave a complete “function-by-function assessment” of the RFC. While
7 Plaintiff contends the ALJ ignored certain exertional and nonexertional factors, such as the
8 ability to stand, walk, sit, reach, stoop, and climb, the RFC finding explicitly listed Curry’s
9 ability to perform these and all other relevant activities. And even to the extent the RFC did
10 not include limitations as severe as Plaintiff contends, the ALJ was not required to consider
11 limitations unsupported by substantial evidence. *See Bayliss v. Barnhart*, 427 F.3d 1211,
12 1217 (9th Cir. 2005).

13 Moreover, contrary to Curry’s assertion, the ALJ considered Curry’s ability to
14 perform on a “regular and continuing basis.” “A ‘regular and continuing basis’ means 8
15 hours a day, for 5 days a week, or an equivalent work schedule.” S.S.R. 96-8p. The ALJ
16 specifically evaluated Plaintiff’s ability to perform “in an 8-hour workday.” (R. at 22).
17 Plaintiff offers no explanation why the ALJ’s finding was legally or factually insufficient.
18 Even if the ALJ had not extensively linked Plaintiff’s impairments to performance in a
19 standard workday, this alone is not error because the ALJ’s decision complied with the
20 essential requirements of the relevant regulations. *See Montalvo v. Astrue*, 237 F. App’x 259,
21 262 (9th Cir. 2007) (“[S.S.R. 96-8p] essentially announces an *understanding* of the term
22 ‘regular and continuing basis’ consistent with the ALJ’s findings-namely, that the term
23 ‘means 8 hours a day, for 5 days a week, or an equivalent work schedule.’”) (emphasis
24 added).

25 **B. Treating Physician Testimony**

26 “The medical opinion of a claimant’s treating physician is entitled to ‘special
27 weight.’” *Rodriguez v. Bowen*, 876 F.2d 759, 761 (9th Cir. 1989) (quoting *Embrey v. Bowen*,
28 849 F.2d 418, 421 (9th Cir. 1988)). If the treating physician’s opinion is not contradicted by

1 the opinion of another doctor, it may be rejected only for clear and convincing reasons
2 supported by substantial evidence in the record. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
3 1995). Likewise, the treating physician’s ultimate conclusions may only be rejected for clear
4 and convincing reasons supported by substantial evidence. *Id.* If, however, the treating
5 physician’s opinion is contradicted by the opinion of another physician, it may be rejected
6 upon specific and legitimate reasons supported by substantial evidence in the record. *Id.* at
7 830–31. “The ALJ can meet this burden by setting out a detailed and thorough summary of
8 the facts and conflicting clinical evidence, stating his interpretation thereof, and making
9 findings.” *Embrey*, 849 F.2d at 421 (quotation omitted). A treating physician’s opinion is
10 entitled to controlling weight if it is “well-supported by medically acceptable clinical and
11 laboratory diagnostic techniques and is not inconsistent with the other substantial evidence
12 in [the] case record.” 20 C.F.R. § 404.1527(d)(2). If the opinion is not well-supported by
13 such techniques, or is inconsistent with other substantial evidence in the record, then the
14 opinion will be weighed in light of several factors: (1) the length of the treatment relationship
15 and the frequency of examination, (2) the nature and extent of the treatment relationship, (3)
16 supportability by explanation and reference to relevant evidence, (4) consistency with the
17 record as a whole, (5) specialization, and (6) any other factors tending to support or
18 contradict the opinion. 20 C.F.R. § 404.1527(d).

19 Plaintiff contends that the ALJ gave insufficient weight to the opinions of two treating
20 physicians, Dr. Rundbaken and Dr. Van Osdol. Because the opinions of Dr. Rundbaken and
21 Dr. Van Osdol are controverted by the opinions of other physicians, the ALJ may reject these
22 treating physicians’ opinions by offering specific and legitimate reasons supported by
23 substantial evidence in the record.³ *See Lester*, 81 F.3d at 830–31. Although the ALJ did not
24 explicitly cite the factors listed in 20 C.F.R. § 404.1527(d), the ALJ explained his specific
25 and legitimate reasons by citing inconsistencies between the treating physicians’ opinions

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27 ³ To the extent certain opinions are not controverted by other physicians, the Court
28 would nonetheless affirm because the ALJ offered clear and convincing reasons to reject the
treating physicians’ testimony.

1 and other evidence in the record, including Dr. Van Osdol’s own treatment notes.

2 The ALJ cited Dr. Sourehissani, who performed a consultative medical examination,
3 and Dr. Resnick, a reviewing physician at the state agency, both of whom concluded that
4 Plaintiff was capable of performing light work. (R. at 24). After examining Curry and
5 reviewing various self-reports and treatment notes, Dr. Sourehissani noted complaints about
6 shortness of breath and fatigue, but also explained that Curry appeared to be in “no acute
7 distress.” (R. at 260). Dr. Sourehissani further found that Curry’s lungs showed “bilateral
8 equal air entry” and “no evidence of wheezing, rhonchi or crackles.” (*Id.* at 261, 263).
9 Plaintiff also demonstrated a normal gait, alertness, and full strength in all extremities.
10 Based on the examination, Dr. Sourehissani concluded that Plaintiff could lift and carry
11 twenty pounds occasionally and ten pounds frequently, and could sit, stand, and walk up to
12 six hours in an eight-hour workday. (*Id.* at 263). Dr. Resnick made similar findings and
13 concluded that Plaintiff maintained the same physical abilities as Dr. Sourehissani found,
14 along with an unlimited ability to push and pull and no evidence of any postural or visual
15 limitations. (R. at 247–56). A nonexamining physician’s opinion is relevant to weighing a
16 treating physician’s opinion as long as the ALJ also relied on other types of evidence. *See*
17 *Lester*, 81 F.3d at 831 (acknowledging that an ALJ may properly rely on nonexamining
18 physician opinions when considered along with other evidence, such as laboratory reports,
19 contrary reports from examining physicians, and on the claimant’s own statements) (citing
20 *Magallanes v. Bowen*, 881 F.2d 747, 751–52 (9th Cir. 1989)). In this case, the ALJ
21 addressed a variety of evidence in rejecting the opinions of Dr. Rundbaken and Dr. Van
22 Osdol.

23 Aside from citing the findings of Dr. Sourehissani and the state medical consultation,
24 the ALJ explained that Dr. Van Osdol’s conclusions were unsupported by his own treatment
25 notes. (R. at 24). An inconsistency in treatment notes is a legitimate basis for rejecting a
26 treating physician’s testimony. *See Connett*, 340 F.3d at 875 (“We hold that the ALJ properly
27 found that [the physician’s] extensive conclusions regarding [the claimant’s] limitations are
28 not supported by his own treatment notes. Nowhere do his notes indicate reasons why [the

1 physician would limit the claimant to a particular level of exertion].”); *Tonapetyan v. Halter*,
2 242 F.3d 1144, 1149 (9th Cir. 2001) (holding that the ALJ properly rejected a physician’s
3 testimony because “it was unsupported by rationale or treatment notes, and offered no
4 objective medical findings to support the existence of [the claimant’s] alleged conditions”).
5 Dr. Van Osdol noted in his Pulmonary Residual Functional Capacity Questionnaire that
6 Curry had shortness of breath, chest tightness, wheezing, and coughing, ultimately
7 concluding that Curry would be unable to work consistently. (R. at 411–12). This
8 questionnaire, however, is inconsistent with the majority of his treatment records. Over
9 several years of treatment, Dr. Van Osdol’s records repeatedly indicated that Curry reported
10 being in no distress and being “very happy” with the treatment plan. (R. at 206–07, 212–13,
11 230–31). The records further show minimal, if any, chest pain, discomfort, abnormal heart
12 rate, or weight gain, and testing displayed only “mild” airflow obstruction. (*Id.*) Not only
13 could the ALJ legitimately have concluded that Dr. Van Osdol’s questionnaire was
14 inconsistent with his prior medical records, the questionnaire also noted that Plaintiff had a
15 “good” prognosis given “proper medical management,” such as the treatment regimen that
16 Plaintiff had repeatedly praised. (R. at 412).

17 Furthermore, the treating physicians’ opinions are inconsistent with Curry’s daily
18 activities. A claimant’s daily activities provide a relevant basis for rejecting a treating
19 physician’s testimony. *See Coley v. Astrue*, 2010 WL 3220300, at *14, 20 (D. Or. Aug. 12,
20 2010) (holding that the claimant’s daily activities were inconsistent with the treating
21 physician’s marked limitations) (citing *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir.
22 2001); *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 601–02 (9th Cir. 1999)). As
23 explained in more detail below, the ALJ noted that Plaintiff could perform a variety of
24 activities, including frequent leisure activities, without reporting any serious symptoms. (R.
25 at 21, 23). For example, Plaintiff could drive, cook, clean, make coffee, wash dishes, dress
26 and groom herself, play with her dog, feed her fish, watch television, read the newspaper,
27 attend church and social events, eat dinner at restaurants regularly, and take out-of-state trips.
28 (*Id.*) Curry’s ability to perform these numerous activities undercuts the treating physicians’

1 opinions regarding her capabilities.

2 **C. Subjective Complaint Testimony**

3 When determining the severity of symptoms from alleged impairments, the ALJ must
4 determine whether the impairment or combination of impairments “could reasonably be
5 expected to produce pain or other symptoms.” *Batson*, 359 F.3d at 1196 (quotation omitted).
6 If the ALJ determines that the claimant’s alleged impairments reasonably could be expected
7 to produce the alleged symptoms, and if the “claimant’s testimony shows no malingering,
8 then the ALJ may reject the claimant’s testimony about severity of symptoms with ‘specific
9 findings stating clear and convincing reasons for doing so.’” *Id.* (quoting *Smolen v. Chater*,
10 80 F.3d 1273, 1284 (9th Cir. 1996)). The ALJ may consider “at least” the following factors
11 when weighing the claimant’s credibility:

12 claimant’s reputation for truthfulness, inconsistencies either in
13 claimant’s testimony or between her testimony and her conduct,
14 claimant’s daily activities, her work record, and testimony from
physicians and third parties concerning the nature, severity, and
effect of the symptoms of which claimant complains.

15 *Thomas v. Barnhart*, 278 F.3d 947, 958–59 (9th Cir. 2002) (internal quotations and
16 alterations omitted). In weighing these factors, an “ALJ cannot be required to believe every
17 allegation of disabling pain . . . even where the claimant introduces medical evidence
18 showing that he [or she] has an ailment reasonably expected to produce *some* pain[]
19 [because] many medical conditions produce pain not severe enough to preclude gainful
20 employment.” *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). At the same time, “[o]nce
21 a claimant produces objective medical evidence of an underlying impairment, an [ALJ] may
22 not reject a claimant’s subjective complaints based solely on [the] lack of objective medical
23 evidence to fully corroborate the alleged severity of [those symptoms].” *Moisa v. Barnhart*,
24 367 F.3d 882, 885 (9th Cir. 2004) (quoting *Rollins*, 261 F.3d at 856–57 (9th Cir. 2001)).

25 At the hearing, Curry testified that she is unable to work due to breathing problems
26 and a lack of energy. For instance, she testified that she requires as many as twelve days to
27 recover from an asthma attack. She further testified that her medication makes her very
28 fatigued, hampers her vision, and affects her memory, making it difficult to teach and to

1 remember things. She likewise asserted that she had a foggy mind and feels depressed,
2 isolated, guilty, and worthless. The ALJ found that Curry had a medically-determinable
3 combination of impairments based on asthma, sinusitis, and rhinitis, and the ALJ further
4 found that these impairments reasonably could be expected to produce the symptoms that
5 Curry alleged. (R. at 20, 23). The ALJ concluded, however, that Curry’s “statements
6 concerning the intensity, persistence and limiting effects of these symptoms are not entirely
7 credible and are exaggerated.” (*Id.* at 23).

8 Contrary to Plaintiff’s contention, the ALJ offered more than “a single, conclusory
9 statement” regarding a claimant’s credibility, S.S.R. 96-7p, instead explaining his decision
10 with clear and convincing reasons. As stated above, the ALJ properly weighed the opinions
11 of several physicians and concluded that Curry maintained the ability to perform a range of
12 light work. (R. at 23–24). The ALJ explained that, because the record indicates that
13 Plaintiff’s symptoms were only “mild” and were “reversible” with treatment—treatment that
14 Plaintiff repeatedly endorsed—Plaintiff’s testimony regarding the extent of her impairment
15 was not credible. (R. at 23); *see also Thomas*, 278 F.3d at 958–59 (holding that an ALJ may
16 reject a claimant’s testimony to the extent it is inconsistent with other medical records).

17 The ALJ also found Curry’s subjective complaint testimony inconsistent with her
18 daily activities. Although a claimant need not be “utterly incapacitated” in order to be
19 disabled, *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001), the ALJ may consider
20 daily activities to reject subjective complaint testimony, *see Thomas*, 278 F.3d at 959
21 (holding that an ALJ may consider a claimant’s daily activities when weighing credibility);
22 *Rollins*, 261 F.3d at 857 (rejecting the claimant’s testimony regarding disabling pain because
23 the claimant could perform numerous normal daily activities, such as regularly caring for
24 children, cooking, housekeeping, shopping, and performing errands outside the home);
25 *Morgan*, 169 F.3d at 600 (affirming an ALJ’s rejection of claimant’s testimony based on
26 findings that the claimant could fix meals, do laundry, work in the yard, and occasionally
27 care for his friend’s child); *Orteza v. Shalala*, 50 F.3d 748, 750 (9th Cir. 1995) (rejecting
28 claimant’s subjective complaint testimony where the claimant could cook, do the dishes, go

1 to the store, visit relatives, and drive). The ALJ explained that Plaintiff could drive, cook,
2 clean, make coffee, wash dishes, dress and groom herself, play with her dog, feed her fish,
3 watch television, read the newspaper, attend church and social events, eat dinner at
4 restaurants regularly, and even take out-of-state trips without experiencing breathing
5 problems. (R. at 21, 23). While not all of these activities indicate an ability to perform work,
6 these activities, taken together, tend to negate Plaintiff's subjective complaint testimony. For
7 example, although Curry testified that she had breathing problems and a severe lack of
8 energy, the record indicates that she has at least enough energy to engage in a variety of
9 activities, including regularly going out to restaurants and attending other social events.⁴
10 Likewise, regarding Plaintiff's allegations that her medication makes her fatigued and causes
11 memory and eyesight loss, the ALJ pointed to several daily activities that contradict
12 Plaintiff's statements. Although Plaintiff contends that medication affects her eyesight, she
13 regularly drives and watches television. Plaintiff's willingness to perform numerous
14 activities further suggests that her fatigue and memory problems do not prevent normal
15 functioning. The ALJ thus properly considered Plaintiff's daily activities in finding
16 Plaintiff's testimony incredible.⁵

17 Furthermore, Plaintiff specifically challenges the ALJ's rejection of her statements
18 regarding medication side effects. The ALJ explained, however, that Plaintiff repeatedly told
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21 ⁴ Because Plaintiff does not challenge the ALJ's step two finding that her alleged
22 depression was not severe, Plaintiff's assertions regarding the symptoms of her alleged
23 depression are inapposite. And even if Plaintiff had challenged the ALJ's finding regarding
24 depression, Plaintiff's many daily activities, both leisurely and otherwise, are arguably
25 inconsistent with severe depression.

26 ⁵ To the extent Plaintiff asserts that the ALJ failed to consider the possible side effects
27 of medication entirely, this argument is without merit. The ALJ acknowledged that
28 Plaintiff's medication has caused weight gain and fatigue, and the ALJ noted Plaintiff's
allegations of a foggy mind, cloudy vision, and depression. (R. at 23). The ALJ thus
considered possible side effects, but ultimately found Plaintiff's allegations to be exaggerated
based on her other daily activities and her prior inconsistent statements praising her treatment
regiment.

1 her physicians that she was doing well and that she was very happy with her treatment plan.
2 (R. at 23). These statements are inconsistent with Plaintiff’s complaints about alleged side
3 effects and provide a clear and convincing reason for rejecting Curry’s testimony. *See*
4 *Thomas*, 278 F.3d at 958 (explaining that inconsistencies in a claimant’s testimony is a basis
5 for rejecting the testimony); *see also Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007)
6 (implying that a claimant’s refusal to seek medical assistance suggests the alleged
7 impairments are not extensive). Had Plaintiff’s side effects truly been disabling, it is unlikely
8 that Plaintiff would have repeatedly praised her treatment plan. Finally, to the extent the ALJ
9 could have provided a more detailed explanation, this alone does not warrant reversal. The
10 ALJ was not required to give the most “extensive” findings, as long as it is clear that he “did
11 not arbitrarily reject [Plaintiff’s] testimony.” *Crane v. Shalala*, 76 F.3d 251, 254 (9th Cir.
12 1996).

13 **D. Vocational Expert Hypothetical**

14 While an ALJ’s hypothetical questions generally “must consider all of the claimant’s
15 limitations,” *Andrews v. Shalala*, 53 F.3d 1035, 1044 (9th Cir. 1995), the “ALJ is not bound
16 to accept as true the restrictions [offered by Plaintiff’s counsel],” but rather is “free to accept
17 or reject these restrictions . . . as long as they are supported by substantial evidence.”
18 *Magallanes*, 881 F.2d at 756–57 (quoting *Martinez v. Heckler*, 807 F.2d 771, 773–74 (9th
19 Cir. 1986)). Because the Court has already concluded that the ALJ’s assessment of
20 Plaintiff’s limitations was supported by substantial evidence and free of legal error, the ALJ
21 asked appropriate hypothetical questions to the vocational expert. *See id.* at 757 (holding that
22 the ALJ did not err by posing only specific hypothetical questions to the vocational expert
23 because the questions were based on limitations for which substantial evidence existed).

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IT IS THEREFORE ORDERED that the ALJ's decision is **AFFIRMED**.

IT IS FURTHER ORDERED directing the Clerk of the Court to terminate this action.

DATED this 22nd day of September, 2010.



G. Murray Snow
United States District Judge