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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Erica L. Smith,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin,

13 Defendant.
14

No. CV-14-00520-PHX-JAT

ORDER

15 Pending before the Court is Plaintiff Erica L. Smith's appeal from the Social
16 Security Commissioner's denial of her application for disability insurance benefits and
17 supplemental security income under the Social Security Act. Plaintiff argues that the
18 administrative law judge ("ALJ") erred by finding Plaintiff and her husband's testimony
19 to be non-credible and by improperly weighing the opinions of treating physicians Ramin
20 Sabahi, M.D., and Nirmala Aryal, M.D. The Court now rules on Plaintiff's appeal.

21 **I. Background**

22 **A. Procedural Background**

23 On November 9, 2010, Plaintiff filed an application for disability and disability
24 insurance benefits, alleging a disability onset date of March 29, 2009. (Tr. 24).¹ On April
25 1, 2011, Plaintiff filed an application for supplemental security income, alleging the same
26 onset date. (*Id.*) Plaintiff's claims were denied initially on February 28, 2011, and upon
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28 ¹ Citations to "Tr." are to the certified administrative transcript of record.
(Doc. 19).

1 reconsideration on July 7, 2011. (*Id.*) Plaintiff timely requested a hearing which was
2 conducted before ALJ Philip E. Moulaison on February 28, 2012 in Phoenix, Arizona.
3 (*Id.*) On March 27, 2012, the ALJ issued an unfavorable decision. (Tr. 35). After
4 Plaintiff’s request for review by the Social Security Administration Appeals Council was
5 denied, she commenced this action in federal court on March 3, 2014. (Doc. 1).

6 **B. Plaintiff’s Background**

7 Plaintiff was born in 1981 and lives with her husband and their three children in
8 Avondale, Arizona. (Tr. 45). Plaintiff earned her GED certification before working for
9 several years as a photographer/manager, cashier, housekeeper, meat cutter, customer
10 service representative, cook, fast food worker, telemarketer, snack bar attendant, and
11 waitress. (Tr. 47, 205). Plaintiff’s final day of employment was on October 9, 2008, when
12 she was terminated from her position as a photographer/manager for violating company
13 policy. (Tr. 46, 181). According to Plaintiff, she became disabled on March 22, 2009,²
14 after she “ha[d not] been able to find employment since” she was terminated in October
15 2008. (Tr. 181).

16 Plaintiff’s daily activities consist of waking up and assisting her children prepare
17 for school. (Tr. 193). After Plaintiff drives her children to school, she goes back home to
18 “sit on the couch.” (*Id.*) After several hours, Plaintiff will stand up and get food from the
19 kitchen. (*Id.*) Plaintiff will then sit on the couch until she drives to pick up her children
20 from school. (*Id.*) Upon her return, Plaintiff will then “flip flop” on the couch until she
21 goes to bed “around 1am – 3am.” (*Id.*) Plaintiff states that she can care for her personal
22 hygiene and dress, in addition to “regularly” exercising four to five days per week.
23 (Tr. 556, 585, 746). Plaintiff smokes tobacco and denies alcohol use. (Tr. 557).

24 **C. Medical Background**

25 Plaintiff claims that she suffers from an extensive list of impairments, including
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27 ² Plaintiff’s alleged onset date coincides with a knee injury she suffered while
28 jumping on a trampoline in March 2009. *See* (Tr. 26–27). The ALJ found this injury to be
non-severe, which Plaintiff does not dispute. (*Id.*)

1 fibromyalgia, migraine and tension headaches, obesity, knee pain, anxiety disorder NOS,
2 and depressive disorder NOS. (Doc. 25 at 2). Plaintiff also claims that she suffers from
3 myalgia myositis, depression with anxiety, fatigue, and possible thyroid disorder.
4 (Tr. 156, 158, 181). Plaintiff takes an equally extensive number of medications,
5 including Tramadol, Trazodone, Effexor XR, Soma, Ibuprofen, Omeprazole, Ranitidine,
6 Meclizine, Frova, Nortriptyline, Clindamycin topical, Retin-A gel topical. (Tr. 556–57).
7 Plaintiff has sought treatment from a variety of sources for a range of ailments, dating
8 back to 2008 when Plaintiff was treated for knee pain and depression. (Doc. 25 at 3).
9 Physicians have prescribed Plaintiff the above-listed medications, in addition to
10 recommending water therapy for physical pain. (*Id.* at 5). One physician determined that
11 Plaintiff has no work-related mental limitations, (*id.* at 6), while another has deemed
12 Plaintiff to be “intelligent [and] articulate,” (Tr. 677).

13 **II. Legal Standard**

14 The ALJ’s decision to deny benefits will be overturned “only if it is not supported
15 by substantial evidence or is based on legal error.” *Magallanes v. Bowen*, 881 F.2d 747,
16 750 (9th Cir. 1989) (quotation omitted). “Substantial evidence” means more than a mere
17 scintilla, but less than a preponderance. *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir.
18 1998).

19 “The inquiry here is whether the record, read as a whole, yields such evidence as
20 would allow a reasonable mind to accept the conclusions reached by the ALJ.” *Gallant v.*
21 *Heckler*, 753 F.2d 1450, 1453 (9th Cir. 1984) (citation omitted). In determining whether
22 there is substantial evidence to support a decision, the Court considers the record as a
23 whole, weighing both the evidence that supports the ALJ’s conclusions and the evidence
24 that detracts from the ALJ’s conclusions. *Reddick*, 157 F.3d at 720. “Where evidence is
25 susceptible of more than one rational interpretation, it is the ALJ’s conclusion which
26 must be upheld; and in reaching his findings, the ALJ is entitled to draw inferences
27 logically flowing from the evidence.” *Gallant*, 753 F.2d at 1453 (citations omitted); *see*
28 *Batson v. Comm’r of the Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). This is

1 because “[t]he trier of fact and not the reviewing court must resolve conflicts in the
2 evidence, and if the evidence can support either outcome, the court may not substitute its
3 judgment for that of the ALJ.” *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992);
4 *see Young v. Sullivan*, 911 F.2d 180, 184 (9th Cir. 1990).

5 The ALJ is responsible for resolving conflicts in medical testimony, determining
6 credibility, and resolving ambiguities. *See Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
7 Cir. 1995). Thus, if on the whole record before the Court, substantial evidence supports
8 the Commissioner’s decision, the Court must affirm it. *See Hammock v. Bowen*, 879 F.2d
9 498, 501 (9th Cir. 1989); *see also* 42 U.S.C. § 405(g). On the other hand, the Court “may
10 not affirm simply by isolating a specific quantum of supporting evidence.” *Orn v. Astrue*,
11 495 F.3d 625, 630 (9th Cir. 2007) (quotation omitted).

12 Notably, the Court is not charged with reviewing the evidence and making its own
13 judgment as to whether Plaintiff is or is not disabled. Rather, the Court’s inquiry is
14 constrained to the reasons asserted by the ALJ and the evidence relied upon in support of
15 those reasons. *See Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003).

16 **A. Definition of Disability**

17 To qualify for disability benefits under the Social Security Act, a claimant must
18 show that, among other things, she is “under a disability.” 42 U.S.C. § 423(a)(1)(E). The
19 Social Security Act defines “disability” as the “inability to engage in any substantial
20 gainful activity by reason of any medically determinable physical or mental impairment
21 which can be expected to result in death or which has lasted or can be expected to last for
22 a continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). A person is:

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24 under a disability only if his physical or mental impairment or impairments
25 are of such severity that he is not only unable to do his previous work but
26 cannot, considering his age, education, and work experience, engage in any
other kind of substantial gainful work which exists in the national economy.

27 42 U.S.C. § 423(d)(2)(A).
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1 **B. Five-Step Evaluation Process**

2 The Social Security regulations set forth a five-step sequential process for
3 evaluating disability claims. 20 C.F.R. § 404.1520(a)(4); *see also Reddick*, 157 F.3d at
4 721. A finding of “not disabled” at any step in the sequential process will end the inquiry.
5 20 C.F.R. § 404.1520(a)(4). The claimant bears the burden of proof at the first four steps,
6 but the burden shifts to the Commissioner at the final step. *Reddick*, 157 F.3d at 721. The
7 five steps are as follows:

8 1. First, the ALJ determines whether the claimant is “doing substantial gainful
9 activity.” 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not disabled.

10 2. If the claimant is not gainfully employed, the ALJ next determines whether the
11 claimant has a “severe medically determinable physical or mental impairment.” 20 C.F.R.
12 § 404.1520(a)(4)(ii). To be considered severe, the impairment must “significantly limit[]
13 [the claimant’s] physical or mental ability to do basic work activities.” 20 C.F.R.
14 § 404.1520(c). Basic work activities are the “abilities and aptitudes to do most jobs,”
15 such as lifting, carrying, reaching, understanding, carrying out and remembering simple
16 instructions, responding appropriately to co-workers, and dealing with changes in routine.
17 20 C.F.R. § 404.1521(b). Further, the impairment must either have lasted for “a
18 continuous period of at least twelve months,” be expected to last for such a period, or be
19 expected “to result in death.” 20 C.F.R. § 404.1509 (incorporated by reference in 20
20 C.F.R. § 404.1520(a)(4)(ii)). The “step-two inquiry is a *de minimis* screening device to
21 dispose of groundless claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). If
22 the claimant does not have a severe impairment, then the claimant is not disabled.

23 3. Having found a severe impairment, the ALJ next determines whether the
24 impairment “meets or equals” one of the impairments listed in the regulations. 20 C.F.R.
25 § 404.1520(a)(4)(iii). If so, the claimant is found disabled without further inquiry. If not,
26 before proceeding to the next step, the ALJ will make a finding regarding the claimant’s
27 “residual functional capacity based on all the relevant medical and other evidence in [the]
28 case record.” 20 C.F.R. § 404.1520(e). A claimant’s “residual functional capacity” is the

1 most he can still do despite all his impairments, including those that are not severe, and
2 any related symptoms. 20 C.F.R. § 404.1545(a)(1).

3 4. At step four, the ALJ determines whether, despite the impairments, the claimant
4 can still perform “past relevant work.” 20 C.F.R. § 404.1520(a)(4)(iv). To make this
5 determination, the ALJ compares its “residual functional capacity assessment . . . with the
6 physical and mental demands of [the claimant’s] past relevant work.” 20 C.F.R.
7 § 404.1520(f). If the claimant can still perform the kind of work he previously did, the
8 claimant is not disabled. Otherwise, the ALJ proceeds to the final step.

9 5. At the final step, the ALJ determines whether the claimant “can make an
10 adjustment to other work” that exists in the national economy. 20 C.F.R.
11 § 404.1520(a)(4)(v). In making this determination, the ALJ considers the claimant’s
12 “residual functional capacity” and his “age, education, and work experience.” 20 C.F.R.
13 § 404.1520(g)(1). If the claimant can perform other work, he is not disabled. If the
14 claimant cannot perform other work, he will be found disabled.

15 In evaluating the claimant’s disability under this five-step process, the ALJ must
16 consider all evidence in the case record. *See* 20 C.F.R. § 404.1520(a)(3); 20 C.F.R.
17 § 404.1520b. This includes medical opinions, records, self-reported symptoms, and third-
18 party reporting. *See* 20 C.F.R. § 404.1527; 20 C.F.R. § 404.1529; SSR 06–3p, 71 Fed.
19 Reg. 45593-03.

20 **C. The ALJ’s Evaluation under the Five-Step Process**

21 At step one of the sequential evaluation process the ALJ found that Plaintiff did
22 not engage in substantial gainful activity since her alleged onset date. (Tr. 26). At step
23 two, the ALJ concluded that Plaintiff had the following severe impairments:
24 “fibromyalgia; migraine and tension headache; and obesity.” (*Id.*) Under step three, the
25 ALJ determined that Plaintiff’s mental impairments did not meet or equal any of the
26 listed impairments in the Social Security regulations. (Tr. 29).

27 Before moving on to step four, the ALJ conducted a residual functional capacity
28 (“RFC”) determination in light of Plaintiff’s testimony and the objective medical

1 evidence. (Tr. 30). The ALJ found that Plaintiff has the RFC “to perform light work as
2 defined in 20 CFR 404.1567(b) and 416.967(b) except she can sit, stand, and walk for
3 eight hours in an eight-hour day. She can only occasionally reach with her right upper
4 extremity.” (*Id.*) At step four, the ALJ found that Plaintiff could perform her past relevant
5 work as a cashier, telephone solicitor, sales clerk, and fast food worker. (Tr. 34).
6 Accordingly, the ALJ concluded that Plaintiff was not disabled under the Social Security
7 Act. (Tr. 34).

8 **III. Analysis**

9 Plaintiff makes three arguments for why the Court should set aside the ALJ’s
10 decision. Specifically, Plaintiff asserts that the ALJ committed the following errors:
11 (1) failing to give the opinions of Plaintiff’s treating physicians “controlling weight,”
12 (2) rejecting Plaintiff’s symptom testimony without providing clear and convincing
13 reasons for doing so, and (3) rejecting Plaintiff’s husband’s testimony without sufficient
14 explanation. (Doc. 25 at 11–14). The Court will address each argument in turn.

15 **A. Whether the ALJ Properly Considered and Weighed the Opinions 16 of Plaintiff’s Treating Physicians**

17 The Court first turns to Plaintiff’s argument that the ALJ erred when he did not
18 give “controlling weight” to the opinions of Drs. Sabahi and Aryal, Plaintiff’s treating
19 physicians. The Court will also consider Plaintiff’s argument that the ALJ improperly
20 evaluated her treating physicians’ opinions, regardless of the weight attached.

21 **1. Legal Standard**

22 The Ninth Circuit distinguishes between the opinions of three types of physicians:
23 (1) those who treat the claimant (“treating physicians”); (2) those who examine but do not
24 treat the claimant (“examining physicians”); and (3) those who neither examine nor treat
25 the claimant (“non-examining physicians”). *Lester v. Chater*, 81 F.3d 821, 830–31 (9th
26 Cir. 1995). As a general rule, the opinion of an examining physician is entitled to greater
27 weight than the opinion of a non-examining physician, but less than a treating physician.
28 *Gallant*, 753 F.2d at 1454.

The opinion of a treating physician is generally entitled to controlling weight when

1 it is “well supported by medically accepted clinical and laboratory diagnostic techniques
2 and is not inconsistent with other substantial evidence in [the claimant’s] case record.” 20
3 C.F.R. § 404.1527 (d)(2); *see also Orn*, 495 F.3d at 631. However, if a treating
4 physician’s opinion “is not well-supported” or “is inconsistent with other substantial
5 evidence in the record,” it should not be given controlling weight. *Orn*, 495 F.3d at 631.

6 Substantial evidence that contradicts a treating physician’s opinion may consist of
7 either (1) an examining physician’s opinion or (2) a non-examining physician’s opinion
8 combined with other evidence. *Lester*, 81 F.3d at 830–31. In the case of an examining
9 physician, “[w]hen an examining physician relies on the same clinical findings as a
10 treating physician, but differs only in his or her conclusions, the conclusions of the
11 examining physician are not substantial evidence.” *Orn*, 495 F.3d at 632 (citing *Murray*
12 *v. Heckler*, 722 F.2d 499, 501–02 (9th Cir. 1984)). To constitute substantial evidence, the
13 examining physician must provide “independent clinical findings that differ from the
14 findings of the treating physician.” *Id.* (citing *Miller v. Heckler*, 770 F.2d 845, 849 (9th
15 Cir. 1985)). Independent clinical findings can be either “diagnoses that differ from those
16 offered by another physician and that are supported by substantial evidence . . . or
17 findings based on objective medical tests that the treating physician has not herself
18 considered.” *Id.* (citing *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984)).

19 The opinion of a non-examining physician cannot by itself constitute substantial
20 evidence that justifies the rejection of the opinion of either an examining physician or a
21 treating physician.” *Lester*, 81 F.3d at 831. Such an opinion is only substantial evidence if
22 supported by “substantial record evidence.” *Id.*

23 If a treating physician’s opinion is not contradicted by the opinion of another
24 physician, then the ALJ may discount the treating physician’s opinion only for “clear and
25 convincing” reasons. *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th
26 Cir. 2008) (quoting *Lester*, 81 F.3d at 830); *see Batson v. Comm’r of Soc. Sec. Admin.*,
27 359 F.3d 1190, 1195 (9th Cir. 2004) (“The ALJ may disregard the treating physician’s
28 opinion whether or not that opinion is contradicted.” (quoting *Magallanes v. Bowen*, 881

1 F.2d 747, 751 (9th Cir. 1989))). If the ALJ determines that a treating physician’s opinion
2 is inconsistent with substantial evidence and is not to be given controlling weight, the
3 opinion remains entitled to deference and should be weighed according to the factors
4 provided in 20 C.F.R. § 404.1527(c). *Orn*, 495 F.3d at 631. These factors include (1) the
5 length of the treatment relationship and the frequency of examination; (2) the nature and
6 extent of the treatment relationship; (3) the extent to which the opinion is supported by
7 relevant medical evidence; (4) the opinion’s consistency with the record as a whole; and
8 (5) whether the physician is a specialist giving an opinion within his specialty. 20 C.F.R.
9 § 404.1527(c). But the ALJ may still reject a contradicted treating physician’s opinion for
10 “specific and legitimate reasons that are supported by substantial evidence in the record.”
11 *Carmickle*, 533 F.3d at 1164 (quoting *Lester*, 81 F.3d at 830); *Ghanim v. Colvin*, 763
12 F.3d 1154, 1161 (9th Cir. 2014) (quoting *Ryan v. Comm’r of Soc. Sec. Admin.*, 528 F.3d
13 1194, 1198 (9th Cir. 2008)).

14 Finally, “[a]lthough a treating physician’s opinion is generally afforded the
15 greatest weight in disability cases, it is not binding on an ALJ with respect to the
16 existence of an impairment or the ultimate determination of disability.” *Tonapetyan v.*
17 *Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). This is because the determination as to
18 whether a claimant is disabled is an issue reserved exclusively to the Commissioner. *See*
19 20 C.F.R. § 404.1527(d)(1). Thus, even if a treating physician’s opinion of disability is
20 controlling, it does not necessarily lead to a finding of disability. *See Magallanes*, 881
21 F.2d at 753 (rejecting a treating physician’s opinion of disability).

22 **2. Analysis**

23 **a. Dr. Sabahi**

24 Dr. Sabahi is Plaintiff’s treating rheumatologist. (Tr. 33). After examining Plaintiff
25 on multiple occasions, Dr. Sabahi opined that Plaintiff could not perform work-related
26 activities on a regular or consistent basis and concluded that Plaintiff’s tender point
27 findings were consistent with fibromyalgia. (*Id.*) Dr. Sabahi opined that Plaintiff could
28 only stand for two hours in an eight-hour day and sit for less than four hours. (*Id.*) The

1 ALJ gave Dr. Sabahi’s opinion “little weight” because it was “not consistent with the
2 medical evidence of record, including his own treatment notes.” (*Id.*) The ALJ found that
3 Dr. Sabahi’s opinion was unsupported by the objective medical evidence and appeared to
4 be “based largely on [Plaintiff]’s subjective statements regarding her abilities[.]” (*Id.*)
5 The ALJ also remarked that Dr. Sabahi “provide[d] no findings to explain or support the
6 limitations he impose[d].” (*Id.*)

7 Plaintiff argues that the ALJ erred by assigning Dr. Sabahi’s opinions “little
8 weight” while allotting “great weight” to the opinion of Plaintiff’s examining physician,
9 Melissa Linner, M.D. (Doc. 25 at 16). Plaintiff asserts that Dr. Sabahi’s opinion was
10 entitled to “controlling weight” as the ALJ failed to “cite evidence of a conflict sufficient
11 to warrant an assignment of less than controlling weight.” (*Id.*) Plaintiff insists that
12 although Dr. Linner offered a differing opinion with respect to Plaintiff’s physical
13 limitations, she relied on the same findings as Dr. Sabahi, and thus, her opinion did not
14 rest on independent clinical findings. (*Id.* at 19).

15 To begin, the ALJ did not give “little weight” to Dr. Sabahi’s opinion as the result
16 of Dr. Linner’s differing opinions. Rather, the ALJ determined that the objective medical
17 evidence did not support Dr. Sabahi’s opinion and that Dr. Sabahi did not make any
18 clinical findings that would support the severity of his imposed limitations. (Tr. 33). An
19 ALJ need not give “controlling weight” to a physician’s opinion if that opinion is “not
20 well-supported” by the medical evidence. *Orn*, 495 F.3d at 631. Thus, the ALJ provided a
21 permissible reason for rejecting Dr. Sabahi’s opinion, and, if that reason is reasonably
22 supported by substantial evidence, it must be upheld.

23 In this regard, Plaintiff argues that the ALJ erred in his review of Dr. Sabahi’s
24 opinion. (Doc. 25 at 19–24). Specifically, Plaintiff claims that the ALJ erred by
25 considering the lack of other objective evidence beyond the tender point findings as a
26 reason to give “little weight” to Dr. Sabahi’s opinion. (*Id.* at 20–22). Plaintiff further
27 contends that the ALJ erred by giving less weight to Dr. Sabahi’s opinion because he
28 relied on Plaintiff’s reported symptoms “at face value” in the absence of “any indication

1 that the claimant was malingering or deceptive.” (*Id.* at 23) (citations omitted).

2 The ALJ did not err by considering the lack of objective evidence beyond
3 Plaintiff’s tender points. The ALJ found that Plaintiff’s fibromyalgia was a “severe
4 impairment.” (Tr. 26). However, the ALJ noted that beyond the tender point findings,
5 there was no objective medical evidence that supported the severity of Dr. Sabahi’s
6 imposed limitations. (Tr. 33). This was not error. In the Ninth Circuit, “medical evidence
7 is . . . a relevant factor in determining the severity of the claimant’s pain and its disabling
8 effects.” *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (citing 20 C.F.R.
9 § 404.1529(c)(2)). To the extent Plaintiff argues that the ALJ erred by considering the
10 lack of objective medical evidence because fibromyalgia does not lend itself to objective
11 evidence, the Court disagrees. The ALJ did not reject the *existence* of Plaintiff’s
12 fibromyalgia or discredit Dr. Sabahi’s opinion that Plaintiff suffered from fibromyalgia;
13 rather, the ALJ reviewed the lack of objective evidence to explore the *severity* of
14 Plaintiff’s limitations as opined by Dr. Sabahi. In doing so, the ALJ acted pursuant to
15 Ninth Circuit precedent, and Plaintiff identified no evidence to rebut the ALJ’s finding.

16 As to the ALJ’s notation that “[t]he limitations Dr. Sabahi identifies appear to be
17 based largely on the claimant’s subjective statements regarding her abilities and
18 limitations[,]” (Tr. 33), the Court does not find error. An ALJ may reject a medical
19 opinion that is based on a claimant’s subjective reports in lieu of objective medical data.
20 *See, e.g., Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005); *Thomas v. Barnhart*,
21 278 F.3d 947, 957 (9th Cir. 2002). As set forth above, the ALJ properly found that the
22 objective medical evidence did not support Dr. Sabahi’s stringent limitations. Plaintiff
23 does not point to any objective evidence establishing that Dr. Sabahi did not unduly rely
24 on Plaintiff’s subjective complaints. Thus, the Court will not “second guess” the ALJs’
25 decision in this regard.³

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27 ³ Even if the ALJ erred by stating that it “appeared” Dr. Sabahi relied too heavily
28 on Plaintiff’s subjective statements, the error would be harmless. The ALJ provided
several other reasons to give “little weight” to Dr. Sabahi’s opinion, such as the lack of
findings to support his limitations and his inconsistent treatment notes. *See* (Tr. 33). As a

1 For these reasons, the Court concludes that the ALJ did not err when reviewing
2 and weighing Dr. Sabahi's opinions.

3 **b. Dr. Aryal**

4 Dr. Aryal is Plaintiff's treating neurologist. (Tr. 34). On February 17, 2012, Dr.
5 Aryal opined that Plaintiff was unable to perform work activities on a regular and
6 continuing basis. (*Id.*) Dr. Aryal opined that Plaintiff could stand for only two hours in an
7 eight-hour day and sit for less than three hours. (*Id.*) The ALJ gave Dr. Aryal's opinions
8 "little weight" for three reasons. (*Id.*) First, the ALJ noted that Dr. Aryal's opinions were
9 inconsistent with the medical evidence of record for the same reasons as Dr. Sabahi. (*Id.*)
10 Second, the ALJ found that the only abnormality Dr. Aryal ever noted in her treatment
11 notes was a mild reduction in temperature sensation on a portion of Plaintiff's face. (*Id.*)
12 Thus, according to the ALJ, the stringent limitations levied by Dr. Aryal were
13 unsupported by her clinical findings. (*Id.*) Finally, the ALJ noted that Dr. Aryal
14 appeared to base her opinion on Plaintiff's subjective statements rather than her own
15 findings. (*Id.*)

16 For the reasons expressed for Dr. Sabahi, the Court does not find that the ALJ
17 committed reversible error by affording Dr. Aryal's opinion "little weight." The ALJ
18 properly noted that the objective medical evidence did not support the severity of Dr.
19 Aryal's limitations and appropriately concluded that Dr. Aryal did not make any findings
20 that supported such stringent work-related limitations. Plaintiff fails to identify any
21 document in the record establishing that Dr. Aryal made a finding that would support her
22 imposed limitations or that Dr. Aryal did not unduly rely on Plaintiff's subjective
23 complaints. Accordingly, the ALJ did not err by giving Dr. Aryal's opinion "little
24 weight."

25
26 result, the error would be harmless because the ALJ set forth other valid reasons for
27 assigning "little weight" to Dr. Sabani's opinion. *See Molina v. Astrue*, 674 F.3d 1104,
28 1115 (9th Cir. 2012) (stating that reversal of an ALJ's decision is prohibited based on an
error that is "harmless," i.e., "inconsequential to the ultimate nondisability determination"
(quotations omitted)).

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3. Conclusion

For the foregoing reasons, the Court concludes that the ALJ did not err in considering and weighing the opinions of Drs. Sabahi and Aryal.

B. Whether the ALJ Properly Discredited Plaintiff’s Testimony

The Court next addresses Plaintiff’s argument that the ALJ erred by finding Plaintiff’s symptom testimony to be non-credible. (Doc. 25 at 26–31).

1. Legal Standard

An ALJ must engage in a two-step analysis to determine whether a claimant’s testimony regarding subjective symptoms is credible. *Molina*, 674 F.3d at 1112. First, as a threshold matter, “the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment ‘which could reasonably be expected to produce the pain or other symptoms alleged.’” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)). Second, if the claimant meets the first test, then “the ALJ ‘may not discredit a claimant’s testimony of pain and deny disability benefits solely because the degree of pain alleged by the claimant is not supported by objective medical evidence.’” *Orteza v. Shalala*, 50 F.3d 748, 749–50 (9th Cir. 1995) (quoting *Bunnell*, 947 F.2d at 346–47). Rather, “unless an ALJ makes a finding of malingering based on affirmative evidence thereof,” the ALJ may only find the claimant not credible by making specific findings supported by the record that provide clear and convincing reasons to explain her credibility evaluation. *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006) (citing *Smolen*, 80 F.3d at 1283–84); *Lingenfelter*, 504 F.3d at 1036.⁴

⁴ To the extent the Government argues that the clear and convincing standard does not apply because Congress intended for courts to review an ALJ’s decision in a highly deferential manner, *see* (Doc. 26 at 4–5), the Court disagrees. In *Burrell v. Colvin*, the Ninth Circuit expressly rejected the same argument the Government now presents. 775 F.3d 1133, 1136–37 (9th Cir. 2014). Moreover, to the extent the Government argues that the clear and convincing standard does not apply because Plaintiff did not present any “objective medical evidence” that could reasonably produce her pain, the Court need not resolve this dispute here because the ALJ set forth sufficiently specific, clear, and

1 In rendering a credibility determination the ALJ may consider several factors,
2 including “(1) ordinary techniques of credibility evaluation, such as the claimant’s
3 reputation for lying, prior inconsistent statements concerning the symptoms, and other
4 testimony by the claimant that appears less than candid; (2) unexplained or inadequately
5 explained failure to seek treatment or to follow a prescribed course of treatment; and
6 (3) the claimant’s daily activities.” *Tommasetti v. Astrue*. 533 F.3d 1035, 1039 (9th Cir.
7 2008) (quoting *Smolen*, 80 F.3d at 1284). If the ALJ relies on these factors and her
8 reliance is supported by substantial evidence, the Court ““may not engage in second-
9 guessing.”” *Id.* (quoting *Thomas*, 278 F.3d at 958).

10 2. Analysis

11 In this case, the ALJ discredited Plaintiff’s subjective complaints because: (1) the
12 objective medical evidence did not support Plaintiff’s testimony, (2) Plaintiff’s
13 statements to her physicians were inconsistent with her testimony, and (3) Plaintiff’s
14 daily activities and treatment programs undermined the alleged severity of her
15 complaints. (Tr. 32). Particularly, the ALJ noted that Plaintiff’s physical examinations
16 generally revealed a normal range of motion with full strength in all muscle groups which
17 contradicted Plaintiff’s allegations of disabling pain. (*Id.*)⁵ The ALJ also observed that

18
19 convincing reasons for discrediting Plaintiff’s testimony.

20 ⁵ When determining a claimant’s credibility, an ALJ may properly consider the
21 results of physical examinations. 20 C.F.R. §§ 404.1529(c)(1)–(2), 416.929(c)(1)–(2). To
22 the extent Plaintiff contends that the ALJ improperly looked for objective medical
23 evidence for an impairment that does not lend itself to objective findings, the Court
24 disagrees. *See Rollins*, 261 F.3d at 857 (“While subjective pain testimony cannot be
25 rejected on the sole ground that it is not fully corroborated by objective medical evidence,
26 the medical evidence is still a relevant factor in determining the severity of the claimant’s
27 pain and its disabling effects.” (citing 20 C.F.R. § 404.1529(c)(2))). Here, the ALJ did
28 not reject Plaintiff’s pain testimony solely based on the lack of objective evidence; rather,
the ALJ also considered Plaintiff’s daily activities and the inconsistencies between
Plaintiff’s testimony and statements to her physicians.

Similarly, an ALJ may favor the opinion of a physician over a claimant’s
testimony. *See Carmickle*, 533 F.3d at 1161. Here, the ALJ gave “great weight” to Dr.
Linner, who opined that Plaintiff could sit for eight hours in an eight-hour work day,
stand/walk for eight hours, and lift twenty pounds occasionally and ten pounds

1 Plaintiff walks without a limp, can perform postural tasks, and has full grip strength,
2 despite her allegations of constant pain and numbness in her extremities. (Tr. 32). The
3 ALJ further found that Plaintiff's regular exercise programs contradicted her testimony
4 that she could not sit, stand, or walk for extended periods. (*Id.*) Additionally, the ALJ
5 properly considered Plaintiff's statements that she stopped working at her most recent
6 employment for non-impairment related reasons. (Tr. 30); *see Bruton v. Massanari*, 268
7 F.3d 824, 828 (9th Cir. 2001), *as amended* (Nov. 9, 2001) (finding that an ALJ properly
8 discredited a claimant's testimony because he "stated at the administrative hearing and to
9 at least one of his doctors that he left his job because he was laid off, rather than because
10 he was injured").⁶ Finally, the ALJ noted the inconsistencies between Plaintiff's
11 testimony that she did not cook or perform household chores and her statements to
12 physicians that she prepares meals and does chores. (*Id.*) These reasons constitute
13 specific, clear and convincing reasons for rejecting Plaintiff's subjective pain testimony.⁷
14

15 frequently. (Tr. 32–33). These findings are supported by substantial evidence and directly
16 contradict Plaintiff's testimony that she could only walk twenty to thirty yards, stand
17 fifteen minutes, sit for one hour, and lift eight to ten pounds. (Tr. 30–31).

18 ⁶ Such evidence may, in fact, be "affirmative evidence" of "malingering." *See*
19 *Berry v. Astrue*, 622 F.3d 1228, 1235 (9th Cir. 2010) (holding that ALJ properly found
20 "affirmative evidence of malingering" because the claimant "reported that he wanted to
21 do volunteer work but refrained for fear of impacting his disability benefits, and claimed
22 disability dating from his last day of employment even though he admitted at the hearing
23 that he left his job because his employer went out of business and probably would have
24 worked longer had his employer continued to operate").

25 ⁷ Although an ALJ may not discredit a claimant's testimony solely because the
26 degree of pain alleged by the claimant is not supported by objective medical evidence,
27 *Orteza*, 50 F.3d at 749–50, here, the ALJ provided additional reasons beyond the dearth
28 of objective medical evidence that would support the alleged severity of Plaintiff's pain.
For example, the consideration of Plaintiff's daily activities supports the ALJ's credibility
determination. *See Curry v. Sullivan*, 925 F.2d 1127, 1130 (9th Cir. 1990) *as amended*
(9th Cir. 1991) (noting that a claimant's ability "to take care of her personal needs,
prepare easy meals, do light housework, and shop for some groceries . . . may be seen as
inconsistent with the presence of a condition which would preclude all work activity"
(citation omitted)).

1 Accordingly, the Court finds that substantial evidence supports the ALJ's decision to
2 discredit Plaintiff's subjective pain testimony and therefore will not "second guess" it.
3 *Tommasetti*, 533 F.3d at 1039.

4 **C. Whether the ALJ Properly Rejected Third Party Testimony**

5 Plaintiff's final contention of error is that the ALJ erred in rejecting the testimony
6 of Bobby Smith, Plaintiff's husband. (Doc. 25 at 31-32). Plaintiff argues that the ALJ did
7 not provide sufficient reasons to discredit his lay testimony. (*Id.*)

8 In order to reject the testimony of a lay witness, an ALJ must provide "reasons that
9 are germane to each witness." *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993). Here,
10 the ALJ found that Mr. Smith's testimony "echoed those of the claimant" and rejected
11 them "for the same reasons." (Tr. 32). As set forth above, the ALJ properly rejected
12 Plaintiff's subjective complaints. Accordingly, the ALJ appropriately rejected Mr.
13 Smith's testimony by pointing to those same reasons. *See, e.g., Molina*, 674 F.3d at 1115
14 (observing that an ALJ may properly reject lay witness testimony by referring to the
15 reasons for rejecting a claimant's testimony); *id.* at 1121 (noting that "[e]ven when an
16 agency 'explains its decision with less than ideal clarity,' we must uphold it 'if the
17 agency's path may reasonably be discerned'" (quoting *Alaska Dep't of Env'tl.*
18 *Conservation v. EPA*, 540 U.S. 461, 497 (2004))).

19 **IV. Conclusion**

20 For the foregoing reasons,

21 **IT IS ORDERED** that the final decision of the Commissioner of Social Security
22 is affirmed. The Clerk of Court shall enter judgment accordingly and terminate this case.

23 Dated this 12th day of September, 2016.

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28

A rectangular area containing a handwritten signature in dark ink on a light background. The signature is cursive and appears to be the name of the court clerk or a representative.