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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Shirley Lorraine Foos,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin,

13 Defendant.

No. CV-15-00154-PHX-JZB

ORDER

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15 Plaintiff Shirley Lorraine Foos seeks review of the Social Security Administration
16 Commissioner's decision denying her application for supplemental security income
17 benefits under the Social Security Act. (Doc. 1; Doc. 14.) For the reasons below, the
18 Court will affirm the Commissioner's decision.

19 **I. Background**

20 On June 17, 2011, Plaintiff filed applications for disability insurance and
21 supplemental security income benefits. (AR 187-91.)¹ Plaintiff alleged that she became
22 unable to work on May 1, 2011. (AR 192-201.) Plaintiff's applications were initially
23 denied on October 18, 2011, and denied upon reconsideration on April 24, 2012. (AR
24 100-03, 104-07, 113-15, 116-19.) In a decision dated June 7, 2013, the ALJ found that

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¹ Citations to "AR" are to the administrative record.

1 Plaintiff was not entitled to disability insurance or supplemental social security benefits.²
2 (AR 12-21.) Plaintiff requested the Appeals Council review the decision, but by notice
3 dated December 2, 2014, the Appeals Council declined to set aside the ALJ's decision.
4 (AR 1-7.)

5 Having exhausted the administrative review process, on January 29, 2015,
6 Plaintiff sought judicial review of the ALJ's decision by filing a Complaint in this Court
7 pursuant to 42 U.S.C. § 405(g). (Doc. 1.) On June 8, 2015, Plaintiff filed an Opening
8 Brief, seeking remand of this case to the Social Security Administration for an award of
9 benefits, or, alternatively, seeking remand for a new hearing. (Doc. 14.) Plaintiff
10 presented two issues in her Opening Brief: (1) "Whether the ALJ committed harmful
11 legal error in granting little or no weight to the physical function assessments of Dr.
12 [Keith] Shillito"; and (2) "Whether the ALJ provided clear and convincing reasons for
13 discounting the credibility of [Plaintiff's] subjective complaints." (Doc. 14 at 2.) On
14 July 8, 2015, Defendant filed a Response Brief in support of the Commissioner's
15 decision. (Doc. 18.) Plaintiff did not submit a reply brief, and time to do so has expired.
16 LRCiv 16.1(c).

17 **II. Relevant Record Evidence**

18 **a. Summary of Relevant Medical Record Evidence**

19 **i. Treating Physician, Dr. Shillito**

20 Plaintiff sought treatment for migraines, fibromyalgia, arthritis, and actinic
21 keratosis from Dr. Shillito. (AR 343.) On April 15, 2010, Dr. Shillito performed blood
22 tests that revealed a negative rheumatoid factor and negative ANA. (AR 408.) Dr.
23 Shillito then diagnosed Plaintiff with fibromyalgia and left knee pain and renewed her
24 prescription for a narcotic pain reliever. (*Id.*) On July 27, 2010, because of Plaintiff's
25 migraines, fibromyalgia, and actinic keratosis, Dr. Shillito placed Plaintiff on an eight-

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27 ² The ALJ found that Plaintiff suffered from the following severe impairments:
28 fibromyalgia; migraine headaches; and actinic keratosis. (AR 14.) However, the ALJ
found Plaintiff has a residual functional capacity to perform light work. (AR 15.) The
ALJ further found that Plaintiff was capable of performing past relevant work as a
secretary and payroll clerk. (AR 20.)

1 week trial of Savella and renewed her Imitrex and Topiramate. (AR 403.) On November
2 5, 2010, Plaintiff reported continued migraines and fibromyalgia, but that she was unable
3 to handle the higher dosage of Topiramate. (AR 396.) Dr. Shillito discussed being “in full
4 support” of her application for disability because they “have had difficulty controlling her
5 migraines and pain.” (AR 397.) Dr. Shillito prescribed Plaintiff monthly B-12 injections
6 for fatigue and follow up treatments with Dr. Shillito every three months. (AR 375, 397.)
7 In May 2011, Plaintiff traveled to Oregon for two weeks. (AR 361.)
8 On April 5, 2011, Plaintiff reported to Dr. Shillito that she was able to walk her dog every
9 day and to ride a bicycle. (AR 389, 407.) On May 24, 2011, Plaintiff reported
10 improvement since quitting her job. (AR 385.)

11 On December 13, 2011, Dr. Shillito completed a Multiple Impairment
12 Questionnaire. (AR 364-71.) Dr. Shillito opined that in a regular eight-hour workday:
13 (1) Plaintiff could sit for up to two hours a day; (2) she could stand and walk up to two
14 hours a day; (3) she had the need to get up and move around every hour for 15 to 30
15 minutes; (4) she could lift and carry up to five pounds frequently and 10 pounds
16 occasionally; and (5) “due to her migraines, fibromyalgia, and skin condition she would
17 not be able [to] hold a competitive job without risking being let go.” (AR 366-70.) In
18 letters dated July 3, 2012 and April 26, 2013, Dr. Shillito affirmed the same diagnoses
19 and functional limitations as set forth in his December 13, 2011 Questionnaire responses.
20 (AR 420, 532.)

21 On April 15, 2013, Plaintiff, on referral from Dr. Shillito, was seen by neurologist
22 Joshua Tobin for an evaluation of her migraines. (AR 507.) Examination revealed 18 of
23 18 tender points to palpation. (AR 508.) Dr. Tobin found that factors contributing to
24 Plaintiff’s migraines were pain medication overuse and the uncontrollable nature of her
25 fibromyalgia. (AR 508-09.)

26 **ii. Examining Physician, Dr. Glenn Kunsman**

27 On September 20, 2011, Plaintiff underwent examination and evaluation by
28 agency physician, Dr. Kunsman. (AR 338-42.) Dr. Kunsman found numerous 5 to 10-

1 millimeter circular lesions, some with ulceration in various stages of healing; and radial
2 and pedal pulse strength at 2 out of 4 bilaterally. (*Id.*) Dr. Kunsman endorsed the
3 diagnoses of stable osteoarthritis of the hands, stable fibromyalgia with 18 tender points,
4 an unspecified skin condition, and stable migraines. (AR 342.) However, Dr. Kunsman
5 opined that none of the conditions has or will impose any limitations for 12 consecutive
6 months. (*Id.*)

7 **iii. Non-Examining Physicians, Dr. Jean Goerss and Dr. Nadine**
8 **Keer**

9 On October 17, 2011, after conducting a review of the record, agency non-
10 examining physician, Dr. Goerss, assessed Plaintiff's functional limitations. (AR 56-65,
11 66-75.) Dr. Goerss opined that each of Plaintiff's impairments are non-severe. (AR 71-
12 73, 75.)

13 On April 20, 2012, Dr. Keer, an osteopathic doctor with the state agency, affirmed
14 Dr. Goerss' conclusion that Plaintiff's conditions are non-severe. (AR 96.)

15 **b. Summary of Plaintiff's Hearing Testimony**

16 On May 16, 2013, the ALJ held a hearing on Plaintiff's applications for benefits,
17 during which Plaintiff testified regarding her symptoms and limitations. Plaintiff testified
18 that previously she worked in payroll but she was currently not working and had stopped
19 on May 30, 2011. (AR 27, 31.) The migraines caused her to quit because they "were
20 getting so bad that [she] was missing so much work and in that position you cannot miss
21 a lot of work." (AR 32.) Plaintiff testified that she was still experiencing the migraines
22 at the time of the testimony and the migraines can be "very, very severe." (AR 34.)
23 Plaintiff claimed that when the migraines occur, she throws up for the first three days,
24 and they last five to seven days. (*Id.*) During this time, she cannot take care of herself
25 and needs to go into a bedroom and laydown to get away from light and noise. (*Id.*)
26 Plaintiff testified these migraines occur once to twice a month. (*Id.*) She has additional
27 migraines that last approximately one to three days, occurring four times per month. (*Id.*)
28 Plaintiff testified she takes injections of Imitrex for her migraine pain, which "do help"
the pain. (AR 35.)

1 Plaintiff testified that she continues to suffer from fibromyalgia that causes deep
2 muscle pain throughout her body, starts her migraines, and prevents her from sitting for
3 more than 15 minutes or standing for more than five to 10 minutes. (AR 35-36.)

4 Plaintiff testified that she experiences arthritis in her left knee and has a torn
5 meniscus, which is painful all the time. (*Id.* at 36.) She described activities that make the
6 pain worse, such as walking, sitting, and standing. (*Id.*) She claimed she cannot walk
7 further than from her front door to her car. (AR 37.) She asserted she lies down
8 throughout the day because of pain, for approximately two hours. (*Id.*) She has arthritis
9 in her hands, which are swollen and ache all the time. (*Id.*) The arthritis causes her to
10 choose to pick up a half-a-gallon of milk instead of a full gallon, and she cannot lift
11 anything greater than five pounds. (AR 38.)

12 Additionally, Plaintiff claimed she suffers from actinic keratosis, which causes
13 open sores on her hands once per month. (*Id.*) She takes Aldara twice per month, which
14 “helps a lot.” (*Id.* at 38-39.)

15 She has two dogs, but her boyfriend takes care of them. She testified she “can’t do
16 household chores” and her boyfriend brings in a housekeeper because she is “unable to
17 do it.” (AR 40-41.) Plaintiff testified that she does not have difficulty when she drives
18 locally and goes to the grocery store “[a]s long as [she’s] not there for a long time,” but
19 anytime longer than 15 minutes “[her] body starts hurting” and she needs to sit down.
20 (AR 41-42.)

21 Plaintiff testified that she has not tried “going off of [her] pain medicines,” even
22 though her neurologist has warned to “try” to reduce her pain medication. Plaintiff
23 testified that she didn’t agree with him. (*Id.* at 42-43.)

24 She testified that even without migraines, she does not “think [she] could work all
25 day.” (AR 46.) In the morning, she “hurt[s] the worst” and will therefore take her
26 medicine. (AR 48.) Then, after she takes the pain medication, she will “get a cup of
27 coffee, watch TV a little bit[,] . . . get on the computer[,] . . . [and] just hang out around
28 the house.” (*Id.*)

1 **III. Legal Standard**

2 **a. Standard of Review**

3 The Social Security Act, 42 U.S.C. § 405(g), provides for judicial review of the
4 Commissioner’s disability benefits determinations. The Court may set aside the
5 Commissioner’s disability determination only if the determination is not supported by
6 substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir.
7 2007); *Marcia v. Sullivan*, 900 F.2d 172, 174 (9th Cir. 1990). “‘Substantial evidence’
8 means more than a mere scintilla, but less than a preponderance; it is such relevant
9 evidence as a reasonable person might accept as adequate to support a conclusion.”
10 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007); *see also Reddick v. Chater*,
11 157 F.3d 715, 720 (9th Cir. 1998).

12 In determining whether substantial evidence supports the ALJ’s decision, the
13 Court considers the record as a whole, weighing both the evidence that supports and that
14 which detracts from the ALJ’s conclusions. *Reddick v. Chater*, 157 F.3d 715, 720 (9th
15 Cir. 1998); *Tylitzki v. Shalala*, 999 F.2d 1411, 1413 (9th Cir. 1993). The ALJ is
16 responsible for resolving conflicts, ambiguity, and determining credibility. *Andrews v.*
17 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995); *Magallanes v. Bowen*, 881 F.2d 747, 750
18 (9th Cir. 1989). The Court “must uphold the ALJ’s decision where the evidence is
19 susceptible to more than one rational interpretation.” *Andrews*, 53 F.3d at 1039.
20 “However, a reviewing court must consider the entire record as a whole and may not
21 affirm simply by isolating a ‘specific quantum of supporting evidence.’” *Orn*, 495 F.3d
22 at 630 (quoting *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). The
23 Court reviews only those issues raised by the party challenging the ALJ’s decision. *See*
24 *Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). Similarly, the Court reviews
25 “only the reasons provided by the ALJ in the disability determination and may not affirm
26 the ALJ on a ground upon which he did not rely.” *Garrison v. Colvin*, 759 F.3d 995,
27 1010 (9th Cir. 2014). “Finally, the court will not reverse an ALJ’s decision for harmless
28 error, which exists when it is clear from the record that the ALJ’s error was

1 inconsequential to the ultimate nondisability determination.” *Tommasetti v. Astrue*, 533
2 F.3d 1035, 1038 (9th Cir. 2008) (citation omitted); *see Molina v. Astrue*, 674 F.3d 1104,
3 1115 (9th Cir. 2012) (where some reasons supporting an ALJ’s credibility analysis are
4 found invalid, the error is harmless if the remaining valid reasons provide substantial
5 evidence to support the ALJ’s credibility determination and “the error does not negate the
6 validity of the ALJ’s ultimate conclusion.”).

7 **b. The ALJ’s Five-Step Evaluation Process**

8 To be eligible for Social Security benefits, a claimant must show an “inability to
9 engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment which can be expected to result in death or which has
11 lasted or can be expected to last for a continuous period of not less than 12 months.” 42
12 U.S.C. § 423(d)(1)(A); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). A
13 person is under a disability only:

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

17 42 U.S.C. § 423(d)(2)(A).

18 The ALJ follows a five-step evaluation process to determine whether an applicant
19 is disabled under the Social Security Act:

20 The five-step process for disability determinations begins, at
21 the first and second steps, by asking whether a claimant is
22 engaged in “substantial gainful activity” and considering the
23 severity of the claimant’s impairments. *See* 20 C.F.R. §
24 416.920(a)(4)(i)-(ii). If the inquiry continues beyond the
25 second step, the third step asks whether the claimant’s
26 impairment or combination of impairments meets or equals a
27 listing under 20 C.F.R. pt. 404, subpt. P, app. 1 and meets the
28 duration requirement. *See id.* § 416.920(a)(4)(iii). If so, the
claimant is considered disabled and benefits are awarded,
ending the inquiry. *See id.* If the process continues beyond
the third step, the fourth and fifth steps consider the
claimant’s “residual functional capacity” in determining
whether the claimant can still do past relevant work or make
an adjustment to other work. *See id.* § 416.920(a)(4)(iv)-(v).

1 *Kennedy v. Colvin*, 738 F.3d 1172, 1175 (9th Cir. 2013). “The burden of proof is on the
2 claimant at steps one through four, but shifts to the Commissioner at step five.” *Bray v.*
3 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009).

4 Applying the five-step evaluation process, the ALJ found that Plaintiff has the
5 residual functional capacity to perform light work and is not entitled to benefits. (AR 14-
6 20.) At step one, the ALJ found that Plaintiff has not engaged in substantial gainful
7 activity since the alleged onset date. (AR 14.) At step two, the ALJ found that Plaintiff
8 has the following severe impairments: fibromyalgia; migraine headaches; and actinic
9 keratosis. (*Id.*) At step three, the ALJ determined that Plaintiff does not have an
10 impairment or combination of impairments that meets or medically equals an impairment
11 listed in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404. (AR 15.) At step four, the ALJ
12 found that “[Plaintiff] has the residual functional capacity to perform light work.” (*Id.*)
13 The ALJ further found that “[Plaintiff] is capable of performing past relevant work as a
14 secretary and payroll clerk” because “[t]his work does not require the performance of
15 work-related activities precluded by the claimant’s residual functional capacity.” (AR
16 20.) The ALJ concluded that Plaintiff “has not been under a disability, as defined in the
17 Social Security Act, from May 1, 2011, through the date of this decision.” (AR 21.)

18 **IV. Analysis**

19 Plaintiff argues that the ALJ’s decision is defective for two reasons: (1) the ALJ
20 committed harmful legal error in giving little weight to the physical function assessments
21 of Dr. Shillito; and (2) the ALJ did not provide clear and convincing reasons supported
22 by substantial evidence for discounting the credibility of Plaintiff’s subjective
23 complaints. (Doc. 14 at 2.) The Court addresses each argument below.

24 **a. Weighing of Medical Source Evidence**

25 Plaintiff argues that the ALJ failed to provide specific and legitimate reasons
26 supported by substantial evidence for rejecting the opinions of treating physician, Dr.
27 Shillito. As detailed below, the Court disagrees.

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1 determined that those impairments did not rise to the level of being severe at step two.
2 (AR 71-73, 75, 96, 342.) “If a treating or examining doctor’s opinion is contradicted by
3 another doctor’s opinion, an ALJ may only reject it by providing specific and legitimate
4 reasons that are supported by substantial evidence.” *Garrison*, 759 F.3d at 1012 (quoting
5 *Ryan*, 528 F.3d at 1198). Therefore, the ALJ must provide specific and legitimate
6 reasons supported by substantial evidence for rejecting Dr. Shillito’s opinions.

7 The ALJ gave Dr. Shillito’s opinion little weight because: (1) Dr. Shillito gave an
8 “opinion on an issue reserved to the Commissioner”; (2) “[t]he course of treatment
9 pursued by [Dr. Shillito] has not been consistent with what one would expect if the
10 claimant were truly disabled, as the doctor reported”; and (3) Dr. Shillito’s opinion “is
11 not supported by the objective medical evidence and it is inconsistent with the record as a
12 whole.” (AR 19.)

13 The Court finds that the ALJ gave specific and legitimate reasons supported by
14 substantial evidence for rejecting Dr. Shillito’s opinions. First, the ALJ properly rejected
15 Dr. Shillito’s statement that Plaintiff is disabled. In a letter dated July 3, 2012, Dr.
16 Shillito indicated that Plaintiff would not be able to hold a competitive job. (AR 420.)
17 Dr. Shillito made the same comments in his December 13, 2011 Multiple Impairment
18 Questionnaire, and his April 26, 2013 letter. (AR 370, 532.) “A statement by a medical
19 source that [a claimant is] ‘disabled’ or ‘unable to work’ does not mean that we will
20 determine that [the claimant is] disabled.” 20 C.F.R. § 404.1527(d)(1). This opinion is
21 “reserved to the Commissioner because they are administrative findings that . . . would
22 direct the determination or decision of disability.” (*Id.*) Therefore, the ALJ properly
23 rejected Dr. Shillito’s conclusory statements that Plaintiff cannot hold a full-time,
24 competitive job. (AR 19.)

25 Second, the ALJ asserted that Dr. Shillito’s recommended course of treatment was
26 conservative and inconsistent with Dr. Shillito’s opinions regarding Plaintiff’s functional
27 limitations. (AR 17, 19.) The ALJ cited to Dr. Shillito’s medical examination
28 assessments and the medication report showing a continued non-aggressive treatment of

1 narcotic pain medication, B12 injections, routine office visits, and chiropractic visits with
2 no additional, more aggressive treatment recommendations. (AR 17, 345-60, 380-85,
3 423-25, 437-64, 468-69.) *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008)
4 (incongruity between treating doctor’s questionnaire responses and her medical records
5 provided a specific and legitimate reason for rejecting the doctor’s opinion of claimant’s
6 limitations); *Connett v. Barnhart*, 340 F.3d 871, 875 (9th Cir. 2003) (“We hold that the
7 ALJ properly found that [the physician’s] extensive conclusions regarding [the
8 claimant’s] limitations are not supported by his own treatment notes.). Notably, Plaintiff
9 receives follow-up appointments every three months to manage her pain through
10 medication. (AR 358, 388-89.) Further, with regard to her skin condition, the ALJ cited
11 to medical records that show Plaintiff only had liquid nitrogen treatments approximately
12 every six months. (AR 18, 430, 432.)

13 Plaintiff cites to *De Herrera v. Astrue*, 372 Fed. Appx. 771, 776 (9th Cir. 2010)
14 (unpublished), to argue that “the Ninth Circuit has expressly found that such treatment,
15 consisting of ‘powerful narcotics like Vicodin,’ does not violate the ‘conservative
16 treatment rule.’” (Doc. 14 at 17.) However, Plaintiff quotes Judge Reinhardt’s
17 dissenting opinion. *De Herrera*, 372 Fed. Appx. at 776. In *De Herrera*, the Ninth
18 Circuit affirmed the ALJ’s decision, even though the plaintiff had been prescribed
19 Vicodin. *Id.* at 774; *see also Morris v. Colvin*, No. 13–6236, 2014 WL 2547599, at *4
20 (C.D. Cal. June 3, 2014) (ALJ properly discounted credibility where treatment consisted
21 of physical therapy, chiropractic treatment, and Vicodin).

22 Third, the ALJ found that Dr. Shillito’s “opinion is not supported by any objective
23 medical evidence in the record.” (AR 19.) The ALJ cited other medical evidence in the
24 record regarding Plaintiff’s physical limitations that is inconsistent with Dr. Shillito’s
25 assessment of Plaintiff’s limitations. (AR 19-20, 343-408.) *See also Batson v. Comm’r*
26 *of the SSA*, 359 F.3d 1190, 1195 (9th Cir. 2004) (an ALJ may discredit treating
27 physicians’ opinions that are unsupported by the record as a whole or by objective
28 medical findings); *Meanel v. Apfel*, 172 F.3d 1111, 1113–14 (9th Cir. 1999).

1 Specifically, the ALJ noted that during the physical exam with Dr. Kunsman,
2 Plaintiff “denied any significant impact on her activities of daily living, she indicated she
3 is able to complete self-care activities, and she indicated she is able to ambulate without
4 significant limitations throughout the day.” (AR 18, 339-40.) Additionally, Dr.
5 Kunsman observed that Plaintiff “is able to stand, walk to the examination table, get on to
6 and sit on the examination table without assistance and without difficulty.” Dr. Kunsman
7 also found that the Plaintiff “was able to lift each foot off the ground and stand without
8 assistance and demonstrated appropriate balance.” (AR 340.) The ALJ also cited to
9 treatment records from Dr. Shillito, in which Plaintiff’s physical exam showed she was
10 well appearing and in no distress, and when receiving her B12 shots, she reported no
11 other problems. (AR 18, 387-89.) “[I]f evidence exists to support more than one rational
12 interpretation, [the court] must defer to the Commissioner’s decision.” *Batson*, 359 F.3d
13 at 1193.

14 Therefore, the Court finds the ALJ’s treatment of Dr. Shillito’s opinions is free of
15 harmful legal error and is supported by substantial evidence.³

16 **b. Plaintiff’s Symptom Testimony**

17 Plaintiff alleges that the ALJ erred in his treatment of Plaintiff’s testimony. (Doc.
18 14 at 14-17.) However, as detailed below, the Court finds the ALJ provided sufficient
19 clear and convincing reasons supported by substantial evidence for rejecting Plaintiff’s
20 symptom testimony.

21 **i. Legal Standard**

22 In order to evaluate the credibility of the subjective testimony of a claimant the
23 ALJ engages in a two-step analysis. *Garrison*, 759 F.3d at 1014-15 (citing *Lingenfelter*,
24 504 F.3d at 1035-36). “First, the ALJ must determine whether the claimant has presented

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26 ³ The ALJ also found in his decision that “a doctor may express an opinion in an
27 effort to assist a patient with whom he or she sympathizes for one reason or another.”
28 (AR 19.) Although the Court does not find this reason, alone, is sufficient to reject Dr.
Shillito’s opinions, in light of the other specific and legitimate reasons supported by
substantial evidence the ALJ provided and that are discussed above, the Court does not
find that the ALJ erred in giving Dr. Shillito’s opinions little weight.

1 objective medical evidence of an underlying impairment ‘which could reasonably be
2 expected to produce the pain or other symptoms alleged.’” *Lingenfelter*, 504 F.3d at
3 1036 (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991) (en banc)). The
4 Plaintiff is not required to show objective medical evidence of the pain itself or of a
5 causal relationship between the impairment and the symptom. *Smolen v. Chater*, 80 F.3d
6 1273, 1282 (9th Cir. 1996). Instead, the Plaintiff must only show that an objectively
7 verifiable impairment “could reasonably be expected to produce his pain.” *Lingenfelter*,
8 504 F.3d at 1036 (quoting *Smolen*, 80 F.3d at 1282); *see also Carmickle v. Comm’r, Soc.*
9 *Sec. Admin.*, 533 F.3d 1155, 1160-61 (“requiring that the medical impairment ‘could
10 reasonably be expected to produce’ pain or another symptom . . . requires only that the
11 causal relationship be a reasonable inference, not a medically proven phenomenon.”).
12 “The ALJ may consider many factors in weighing a claimant’s credibility, including ‘(1)
13 ordinary techniques of credibility evaluation, such as the claimant’s reputation for lying,
14 prior inconsistent statements concerning the symptoms, and other testimony by the
15 claimant that appears less than candid; (2) unexplained or inadequately explained failure
16 to seek treatment or to follow a prescribed course of treatment; and (3) the claimant’s
17 daily activities.’” *Tommasetti*, 533 F.3d at 1039 (citing *Smolen*, 80 F.3d at 1284); *Orn*,
18 495 F.3d at 637–39. If the ALJ’s finding is supported by substantial evidence, the court
19 “may not engage in second-guessing.” *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir.
20 2002).

21 Second, if a claimant shows that she suffers from an underlying medical
22 impairment that could reasonably be expected to produce her pain or other symptoms, the
23 ALJ must “evaluate the intensity and persistence of [the] symptoms” to determine how
24 the symptoms, including pain, limit the claimant’s ability to work. *See* 20 C.F.R. §
25 404.1529(c)(1). In making this evaluation, the ALJ may consider the objective medical
26 evidence, the claimant’s daily activities, location, duration, frequency, and intensity of
27 the claimant’s pain or other symptoms, precipitating and aggravating factors, medication
28 taken, and treatments for relief of pain or other symptoms. *See* 20 C.F.R. § 404.1529(c);

1 *Bunnell*, 947 F.2d at 346.

2 At this second step, the ALJ may reject a claimant’s testimony regarding the
3 severity of his or her symptoms only if the ALJ “makes a finding of malingering based on
4 affirmative evidence,” *Lingenfelter*, 504 F.3d at 1036 (quoting *Robbins*, 466 F.3d at
5 883), or if the ALJ offers “clear and convincing reasons” for finding the claimant not
6 credible. *Carmickle*, 533 F.3d at 1160 (quoting *Lingenfelter*, 504 F.3d at 1036). ““The
7 clear and convincing standard is the most demanding required in Social Security Cases.”
8 *Garrison*, 793 F.3d at 1015 (quoting *Moore v. Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th
9 Cir. 2002)).

10 Here, because there was no affirmative finding of malingering, the ALJ was
11 required to provide clear and convincing reasons for concluding that Plaintiff’s subjective
12 complaints were not wholly credible.

13 **ii. The ALJ did not err in discounting Plaintiff’s testimony.**

14 The ALJ discounted Plaintiff’s testimony for the following reasons: (1) Plaintiff’s
15 daily activities “cannot be objectively verified” and “it is difficult to attribute [Plaintiff’s]
16 [alleged] degree of limitation to [Plaintiff’s] medical condition, as opposed to other
17 reasons”; (2) “the record suggests [Plaintiff] was not completely forthcoming regarding
18 her daily activities”; (3) “[Plaintiff] failed to follow treatment recommendations”; and (4)
19 “[the] treatment has been essentially routine and/or conservative in nature.” (AR 16-17.)

20 The Court finds that the ALJ provided clear and convincing reasons supported by
21 substantial evidence for rejecting Plaintiff’s symptom testimony. With regard to daily
22 activities, while an ALJ may discredit a claimant’s allegations if a claimant has “engaged
23 in numerous daily activities involving skills that could be transferred to the workplace,”
24 *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005), “the mere fact that a plaintiff has
25 carried on certain daily activities, such as grocery shopping, driving a car, or limited
26 walking for exercise, does not in any way detract from her credibility as to her overall
27 disability. One does not need to be utterly incapacitated in order to be disabled.” *Vertigan*
28 *v. Halter*, 260 F.3d 1044, 1049-50 (9th Cir. 2001) (citing *Fair v. Bowen*, 885 F.2d 597,

1 603 (9th Cir. 1989)) (finding “only a scintilla of evidence in the record to support the
2 ALJ’s finding that [the claimant] lacked credibility about her pain” where the claimant
3 was able “to go grocery shopping with assistance, walk approximately an hour in the
4 malls, get together with her friends, play cards, swim, watch television, . . . read . . . and
5 exercise at home.”)

6 Here, the ALJ’s finding that Plaintiff’s limited daily activities could not be
7 objectively verified is not supported by substantial evidence. (AR 16.) The ALJ failed to
8 cite to any meaningful evidence regarding Plaintiff’s specific daily activities in his
9 analysis.

10 Similarly, the ALJ found that it is difficult to attribute the “degree of limitation to
11 the claimant’s medical condition, as opposed to other reasons.” (AR 16.) However, the
12 ALJ failed to specify the “other reasons” that account for Plaintiff’s degree of limitations.
13 “Attributing the degree of limitation . . . to ‘other reasons,’ when those ‘other reasons’ are
14 not specified, provides no support for the ALJ’s adverse credibility finding.” *McKim v.*
15 *Astrue*, No. 11cv5815–RBL–JRC, 2012 WL 5250096 *5 (W.D. Wash. Sept. 4, 2012).
16 The ALJ cannot rely on general findings, but must specifically identify what testimony is
17 credible and what evidence undermines the claimant’s complaints. *Burrell v. Colvin*,
18 775 F.3d 1133, 1137 (9th Cir. 2014). The Court therefore finds these reasons are not
19 clear and convincing reasons supported by substantial evidence for discounting Plaintiff’s
20 testimony.

21 However, the ALJ also set forth specific inconsistencies between Plaintiff’s
22 testimony and her statements in the record regarding her daily activities. For example,
23 the ALJ noted that although Plaintiff testified she generally spends the day around the
24 house, in April 2011, she stated that she walks her dog every day. (AR 16, 389.)
25 Likewise, Plaintiff reported to Dr. Shillito that she was going to Oregon for two weeks.
26 (AR 16, 386.) Finally, the ALJ noted that during her exam with Dr. Kunsman, Plaintiff
27 denied significant impact on her daily activities and is able to ambulate “without
28 significant limitations throughout the day.” (AR 18, 339.) The Court finds that the ALJ

1 properly discredited Plaintiff’s testimony based on her inconsistent statements regarding
2 her daily activities. *See Batson*, 359 F.3d at 1196 (ALJ properly discredited a claimant’s
3 allegations based on “contradictions in the claimant’s own testimony about [her]
4 activities of daily living”).

5 The ALJ also discounted Plaintiff’s testimony because she failed to follow
6 treatment recommendations. (AR 18.) Specifically, Dr. Tobin found that the overuse of
7 multiple pain medications was a contributing factor towards her headaches. (AR 508-
8 09.) Likewise, Dr. Shillito advised Plaintiff should reduce her use of narcotic pain
9 medication. (AR 535.) Plaintiff testified she believed the medication reduced her
10 migraines, she didn’t agree with the Doctor’s recommendations to reduce her medication,
11 and she has not gone off her pain medication. (AR 42-46.) The ALJ found that “[t]his
12 demonstrates a possible unwillingness to do that which is necessary to improve her
13 condition.” (*Id.*) When a plaintiff fails “to seek treatment or follow a prescribed course
14 of treatment” an ALJ may discredit the alleged symptoms. *Fair v. Bowen*, 885 F.2d 597,
15 603-04 (9th Cir. 1989); *Gallant v. Heckler*, 753 F.2d 1450, 1455 (9th Cir. 1984)
16 (claimant’s failure to assert an adequate reason for not complying with doctor’s advice
17 can cast doubt on the sincerity of pain testimony). Therefore, the Court finds that
18 Plaintiff’s failure to follow treatment recommendations is a clear and convincing reason
19 supported by substantial evidence for discounting Plaintiff’s testimony.

20 The ALJ also found that Plaintiff’s treatment “has been essentially routine and/or
21 conservative in nature.” (AR 17.) *See Tommasetti*, 533 F.3d at 1039–40 (an ALJ may
22 infer that pain is not disabling if a claimant seeks only minimal conservative treatment);
23 *Parra v. Astrue*, 481 F.3d 742, 750–51 (9th Cir. 2007) (stating that “evidence of
24 ‘conservative treatment’ is sufficient to discount a claimant’s testimony regarding
25 severity of an impairment”); *see also Meanel v. Apfel*, 172 F.3d 1111, 1114 (9th
26 Cir.1999) (rejecting subjective pain complaints where [Plaintiff] “claim[ed] that she
27 experienced pain approaching the highest level imaginable was inconsistent with the
28 ‘minimal, conservative treatment’ that she received”). As detailed above, Plaintiff’s

1 course of treatment consisted of pain medication, B12 shots, physical therapy, and liquid
2 nitrogen treatments. The Court finds this is a clear and convincing reason supported by
3 substantial evidence for discrediting Plaintiff's testimony.

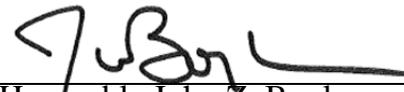
4 When an ALJ relies on multiple factors for discounting a claimant's credibility,
5 the decision can be sustained even if some credibility factors are eliminated, as long as
6 the credibility factors that remain are valid and based on substantial evidence.
7 *Carmickle*, 533 F.3d at 1162-63, 1163 n.4. Here, although the Court finds that not all of
8 reasons the ALJ provided are supported by substantial evidence, the ALJ provided
9 several reasons that meet the standard. Therefore, the Court will affirm the ALJ's
10 decision.

11 Accordingly,

12 **IT IS ORDERED** that the Commissioner's decision is affirmed.

13 **IT IS FURTHER ORDERED** that Clerk of the Court shall enter judgment
14 accordingly and terminate this action.

15 Dated this 31st day of March, 2016.

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18 _____
19 Honorable John Z. Boyle
20 United States Magistrate Judge
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