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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Annessa Y. Morrison,

10 Plaintiff,

11 v.

12 Commissioner of Social Security,

13 Defendant.
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No. CV-14-08211-PCT-DGC

AMENDED ORDER

15 Plaintiff Annessa Morrison, appearing on her own behalf, seeks review under 42
16 U.S.C. § 405(g) of the final decision of the Commissioner of Social Security (“the
17 Commissioner”), which denied her disability insurance benefits and supplemental
18 security income under sections 216(i), 223(d), and 1614(a)(3)(A) of the Social Security
19 Act. Because the decision of the Administrative Law Judge (“ALJ”) is supported by
20 substantial evidence and is not based on legal error, the Commissioner’s decision will be
21 affirmed.

22 **I. Background.**

23 Plaintiff was born on November 9, 1968. She has an associate degree in graphic
24 design. She has worked as a professional singer, a waitress, a sales manager, and a
25 videogame tester. Plaintiff suffers from various impairments, including fibromyalgia.
26 A.R. 55. As described by the Ninth Circuit,

27 [F]ibromyalgia, previously called fibrositis, [is] a rheumatic disease that
28 causes inflammation of the fibrous connective tissue components of
muscles, tendons, ligaments, and other tissue. . . . Common symptoms . . .

1 include chronic pain throughout the body, multiple tender points, fatigue,
2 stiffness, and a pattern of sleep disturbance that can exacerbate the cycle of
3 pain and fatigue associated with this disease. Fibromyalgia's cause is
4 unknown, there is no cure, and it is poorly-understood within much of the
5 medical community. The disease is diagnosed entirely on the basis of
6 patients' reports of pain and other symptoms.

7 *Benecke v. Barnhart*, 379 F.3d 587, 589 (9th Cir. 2004) (citations omitted); *see also*
8 *Rollins v. Massanari*, 261 F.3d 853, 855 (9th Cir. 2001); SSR 12-2P (July 25, 2012).

9 On January 25, 2011, Plaintiff applied for disability insurance benefits and
10 supplemental security income, alleging disability beginning September 17, 2007. On
11 November 9, 2012, Plaintiff appeared with her attorney and testified at a hearing before
12 the ALJ. A vocational expert also testified. On December 14, 2012, the ALJ decided
13 that Plaintiff was not disabled within the meaning of the Social Security Act. The
14 Appeals Council denied Plaintiff's request for review of the hearing decision, making the
15 ALJ's decision the Commissioner's final decision.

16 **II. Legal Standard.**

17 The district court reviews only those issues raised by the party challenging the
18 ALJ's decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court
19 may set aside the Commissioner's disability determination only if the determination is
20 not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d
21 625, 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, but less than a
22 preponderance. *Id.* It is relevant evidence that a reasonable person might accept as
23 adequate to support a conclusion. *Id.* In determining whether substantial evidence
24 supports a decision, the court must consider the record as a whole and may not affirm
25 simply by isolating a "specific quantum of supporting evidence." *Id.* As a general rule,
26 "[w]here the evidence is susceptible to more than one rational interpretation, one of
27 which supports the ALJ's decision, the ALJ's conclusion must be upheld." *Thomas v.*
28 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

1 **III. The ALJ's Five-Step Evaluation Process.**

2 To determine whether a claimant is disabled for purposes of the Social Security
3 Act, the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears
4 the burden of proof on the first four steps, but at step five, the burden shifts to the
5 Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

6 At the first step, the ALJ determines whether the claimant is engaging in
7 substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not
8 disabled and the inquiry ends. *Id.* At step two, the ALJ determines whether the claimant
9 has a “severe” medically determinable physical or mental impairment.
10 § 404.1520(a)(4)(ii). If not, the claimant is not disabled and the inquiry ends. *Id.* At step
11 three, the ALJ considers whether the claimant’s impairment or combination of
12 impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P
13 of 20 C.F.R. Pt. 404. § 404.1520(a)(4)(iii). If so, the claimant is automatically found to
14 be disabled. *Id.* If not, the ALJ proceeds to step four. At step four, the ALJ assesses the
15 claimant’s residual functional capacity (“RFC”) and determines whether the claimant is
16 still capable of performing past relevant work. § 404.1520(a)(4)(iv). If so, the claimant
17 is not disabled and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final
18 step, where he determines whether the claimant can perform any other work based on the
19 claimant’s RFC, age, education, and work experience. § 404.1520(a)(4)(v). If so, the
20 claimant is not disabled. *Id.* If not, the claimant is disabled. *Id.*

21 At step one, the ALJ found that Plaintiff meets the insured status requirements of
22 the Social Security Act through December 31, 2012, and that she has not engaged in
23 substantial gainful activity since September 17, 2007. At step two, the ALJ found that
24 Plaintiff has the following severe impairments: fibromyalgia and depression. At step
25 three, the ALJ determined that Plaintiff does not have an impairment or combination of
26 impairments that meets or medically equals an impairment listed in Appendix 1 to
27 Subpart P of 20 C.F.R. Pt. 404. At step four, the ALJ found that Plaintiff has the RFC to
28 perform:

1 [S]edentary work as defined in 20 C.F.R. 404.1567(a) except that the
2 claimant requires an opportunity to sit/stand for a few minutes each hour.
3 The claimant can occasionally engage in postural activities. The claimant
4 can frequently do hand work. The claimant must have limited public
5 contact.

6 A.R. 16. The ALJ further found that Plaintiff is unable to perform any of her past
7 relevant work. At step five, the ALJ concluded that, considering Plaintiff's age,
8 education, work experience, and residual functional capacity, there are jobs that exist in
9 significant numbers in the national economy that Plaintiff could perform.

10 **IV. Analysis.**

11 **A. The ALJ Did Not Err in Evaluating Plaintiff's Credibility.**

12 Plaintiff argues: (1) The ALJ failed to apply SSR 12-2p in evaluating her
13 fibromyalgia; (2) The ALJ failed to apply SSR 96-4p in evaluating the limitations caused
14 by fibromyalgia and depression; (3) The ALJ failed to apply SSR 96-7p in assessing her
15 credibility; and (4) The ALJ did not accurately present her testimony. The Court finds
16 that two of the cited social security rulings, SSR 12-2p and 96-4p, are not directly
17 relevant to Plaintiff's argument, which focuses on whether the ALJ properly discredited
18 Plaintiff's testimony.¹ SSR 96-7p, which discusses how an adjudicator is to assess a
19 claimant's allegations of pain, is relevant to this argument. The Court will therefore
20 address whether the ALJ properly presented and discredited Plaintiff's "statements
21 concerning the intensity, persistence and limiting effects" of her symptoms.
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24 ¹ SSR 12-2p (July 25, 2012) addresses how an adjudicator is to decide if
25 fibromyalgia is a medically determinable impairment, and how fibromyalgia is evaluated
26 in assessing a claimant's disability. SSR 96-4p (July 2, 1996) clarifies that a symptom is
27 not a medically determinable impairment, that a medically determinable impairment must
28 exist for a finding of disability, and that symptoms can cause exertional or nonexertional
limitations. Plaintiff does not explain how the ALJ violated the two rulings, and the
Court finds that the ALJ's decision to be consistent with them. The ALJ appropriately
found that Plaintiff's fibromyalgia is a medically determinable impairment and evaluated
it in assessing Plaintiff's disability. The ALJ also did not confuse symptoms with
impairments and appropriately considered the kinds of limitations that Plaintiff's
symptoms might impose.

1 **1. Legal Standard.**

2 An ALJ engages in a two-step analysis to determine whether a claimant’s
3 testimony regarding subjective pain or symptoms is credible. *Vasquez v. Astrue*, 572
4 F.3d 586, 591 (9th Cir. 2009). First, the ALJ must determine whether the claimant has
5 presented objective medical evidence of an underlying impairment that could reasonably
6 be expected to produce the pain or other symptoms alleged. *Garrison v. Colvin*, 759 F.3d
7 995, 1014 (9th Cir. 2014) (citations omitted). “In this analysis, the claimant is *not*
8 required to show ‘that her impairment could reasonably be expected to cause the severity
9 of the symptom she has alleged; she need only show that it could reasonably have caused
10 some degree of the symptom.’” *Id.* (quoting *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th
11 Cir. 1996)). Second, if there is no evidence of malingering, the ALJ may reject the
12 claimant’s testimony about the testimony of her symptoms only by offering specific,
13 clear, and convincing reasons for doing so. *Id.* at 1014-15; *Burrell v. Colvin*, 775 F.3d
14 1133, 1136-37 (9th Cir. 2014).

15 To support a lack of credibility finding, the ALJ must “‘point to specific facts in
16 the record which demonstrate that [the claimant] is in less pain than she claims.’”
17 *Vasquez*, 572 F.3d at 592 (quoting *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993)).
18 Specific facts that are relevant to this determination include: (1) the claimant’s reputation
19 for truthfulness; (2) the inconsistencies in her testimony; (3) the extent to which
20 claimant’s daily activities show that she is capable of working; (4) the extent to which the
21 claimant seeks treatment for her symptoms; (5) the claimant’s failure to follow a
22 prescribed course of treatment; and (6) the opinions of physicians and third parties
23 concerning the nature and severity of the claimant’s symptoms. *Lingenfelter v. Astrue*,
24 504 F.3d 1028, 1040 (9th Cir. 2007); *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th
25 Cir. 1997); *Smolen*, 80 F.3d at 1284.

26 **2. Claimant’s Testimony.**

27 At the hearing (A.R. 27-53), Plaintiff testified that she lived in a house with her
28 husband and eighteen-year-old daughter. She has previously worked as a professional

1 singer, a customer service representative for a financial company, a waitress, a sales
2 manager for an auto-sales magazine, and a videogame tester. She had to leave her job as
3 a customer service representative because she took too many sick days. She left her most
4 recent job as a videogame tester because she was “in pain . . . [and] couldn’t sit in a chair
5 and do the video game anymore.” A.R. 33. Plaintiff’s “big issue” is fibromyalgia.
6 Starting eight years ago, “[t]he fatigue was enormous and I could count on a crash every
7 day where you’re so exhausted you could barely move but you can’t sleep. The pain had
8 started spreading through my muscles and I had very severe migraine headaches at the
9 time.” A.R. 35. In the spring and fall, she experiences as many as fifteen severe
10 migraines that incapacitate her for a day. In the summer and winter, she has about five.
11 Plaintiff stated that she was not able to function during her migraines. A.R. 39.

12 Plaintiff also testified about her daily activities. On “a good day I get up, spend a
13 couple of hours watching T.V. in bed, taking my pills. I can make it down to get a
14 muffin or frozen waffle for breakfast. I might be able to spend 20, 30 minutes cooking in
15 the early evening, maybe an hour on the computer doing some research on my condition
16 and the rest of the time I’m pretty much lying or leaning back in some way.” A.R. 46.
17 On a bad day, she will come downstairs for food but will otherwise stay in bed. She has
18 about ten bad days a month. Plaintiff can usually do thirty to sixty minutes of household
19 chores a day, but has difficulty carrying laundry and vacuuming. She is unable to do
20 grocery shopping on her own, although she sometimes accompanies her husband to the
21 store. For hobbies, Plaintiff sculpts and paints on small canvases. For exercise, she does
22 leg lifts and arm circles in the hot tub, and she can walk one or two blocks on “a good
23 day.” A.R. 46.

24 **3. ALJ’s Decision.**

25 In discrediting Plaintiff’s testimony, the ALJ relied on numerous pieces of
26 evidence and testimony. A.R. 16-20. The evidence that the ALJ cited reveals two
27 reasons for rejecting Plaintiff’s testimony: (1) Medical opinions are not consistent with
28 Plaintiff’s testimony, and (2) Plaintiff’s daily activities show that her symptoms are not as

1 severe as she claims. Based on these reasons and the evidence supporting them, the
2 Court finds that the ALJ properly discredited Plaintiff's testimony regarding her pain and
3 symptoms.

4 The Ninth Circuit's decision in *Rollins v. Massanari*, 261 F.3d 853 (9th Cir. 2001)
5 is instructive. Kathryn Rollins suffered from fibromyalgia. She claimed that she
6 experienced severe pain throughout her body and this pain prevented her from working.
7 The ALJ found her testimony to be not credible. In affirming, the Ninth Circuit
8 highlighted two findings that supported the ALJ's decision. First, doctors who had
9 examined Rollins had found that she was not restricted in her activity. And second,
10 "Rollins' claim to have totally disabling pain was undermined by her own testimony
11 about her daily activities, such as attending to the needs of her two young children,
12 cooking, housekeeping, laundry . . . and so forth." *Id.* at 857. These findings, similar to
13 the ALJ's findings in this case, were a sufficient basis for discrediting Rollins' testimony.

14 As in *Rollins*, the medical opinions in this case are not consistent with Plaintiff's
15 claims of disabling pain. The ALJ gave great weight to two opinions. The first was a
16 psychological evaluation by Donald Degroot, Ph.D, who concluded that Plaintiff's "daily
17 and social activities and abilities do not appear to be impaired" by depression and that her
18 cognitive abilities were above average. A.R. 403. The second opinion was a medical
19 evaluation by Sidney Eisenbaum, M.D., who physically examined Plaintiff and found:
20 "She had a diagnosis of fibromyalgia made in the past, but today her clinical exam is
21 normal. I do believe that she is capable of most activities." A.R. 411. These opinions
22 strongly support the ALJ's decision. And "[w]hile subjective pain testimony cannot be
23 rejected on the sole ground that it is not fully corroborated by objective medical evidence,
24 the medical evidence is still a relevant factor in determining the severity of the claimant's
25 pain and its disabling effects." *Rollins*, 261 F.3d at 857 (citing 20 C.F.R. §
26 404.1529(c)(2)).

27 The testimony and record regarding Plaintiff's daily activities are also not
28 consistent with Plaintiff's claim of disabling pain. The ALJ highlighted the following

1 facts: Plaintiff engaged in container gardening, cooked basic meals, performed “all self-
2 care activities” such as bathing and washing, possessed a driver’s license and was able to
3 drive, exercised “in her hot tub” and by going for walks, performed household chores
4 such as washing dishes and doing laundry, cared for her teenage daughter, enjoyed
5 hobbies such as painting and sculpting, played an online videogame frequently, wrote
6 songs, auditioned for a rock band, and engaged in “fun activities” such as going to the
7 movies and playing games with her family. A.R. 18-19.²

8 Plaintiff’s daily activities are similar to those of the claimant in *Rollins*, and they
9 undermine Plaintiff’s pain testimony. A woman who can take care of her child, enjoy
10 various hobbies, and audition for a rock band is not likely to be one who must spend most
11 of her day in bed, as Plaintiff claims. The Court is aware that “the mere fact that a
12 plaintiff has carried on certain daily activities, such as grocery shopping, driving a car, or
13 limited walking for exercise, does not in any way detract from her credibility as to her
14 overall disability.” *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001). But daily
15 activities “may be grounds for an adverse credibility finding ‘if a claimant is able to
16 spend a substantial part of his day engaged in pursuits involving the performance of
17 physical functions that are transferable to a work setting.’” *Orn*, 495 F.3d at 639 (quoting
18 *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)). Here, Plaintiff has been engaged in
19 extensive daily activities, and medical opinions have cast doubt on her claims of
20 disabling pain. The ALJ, therefore, did not err in relying on Plaintiff’s daily activities as
21 a reason for rejecting her testimony.

22 In discrediting Plaintiff’s testimony, the ALJ also relied on other types of
23 evidence. For example, the ALJ highlighted a medical evaluation giving Plaintiff a
24 “probable” fibromyalgia diagnosis but stating that all of Plaintiff’s symptoms could not

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26 ² The Court notes that the ALJ mischaracterized some of the record. While the
27 ALJ stated that Plaintiff enjoys going to the movies, the cited report states that “[h]er fun
28 activities include movies and games with the family. . . . She reports she is not able to
continue her hobbies or fun activities[.]” A.R. 400. Plaintiff also argues that the ALJ
misstated that her daughter helps her prepare dinner once a week. Doc. 25 (citing A.R.
17). The Court finds this mistake to be immaterial.

1 be explained on the basis of fibromyalgia alone. *See* A.R. 251. The ALJ also noted that
2 “[i]n February 2010, the claimant reported that she was not sure whether she had actually
3 been diagnosed with fibromyalgia and had been advised by various specialists to find a
4 ‘life coach.’” A.R. 19. Finally, the ALJ noted that Plaintiff had been to multiple doctors,
5 that Plaintiff had found them unhelpful, and that doctors had not taken her complaints
6 seriously.

7 This evidence supports a finding that Plaintiff’s fibromyalgia is not as severe as
8 she claims. If doctors have doubted that fibromyalgia could cause all of her claimed
9 symptoms, doctors have not taken her complaints seriously, and Plaintiff herself has not
10 been sure of her diagnosis, then the ALJ could reasonably conclude that Plaintiff’s
11 fibromyalgia is unlikely to cause the alleged symptoms. The Court recognizes that
12 Plaintiff is not required to provide “objective medical evidence to corroborate the severity
13 of the pain alleged,” *Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991) (en banc), and
14 that “the ALJ may not reject subjective symptom testimony . . . simply because there is
15 no showing that the impairment can reasonably produce the *degree* of symptom alleged.”
16 *Smolen*, 80 F.3d at 1282 (emphasis in original). But when combined with the other
17 reasons the ALJ gave for discrediting Plaintiff, this evidence bolsters the ALJ’s final
18 conclusion. In sum, the ALJ gave specific, clear, and convincing reasons for rejecting
19 Plaintiff’s testimony regarding the severity of her pain and symptoms.

20 **B. Additional Arguments.**

21 **1. The ALJ Did Not Err in Discounting Treatment Records.**

22 Plaintiff argues that the ALJ erred in giving little weight to records from various
23 treatment providers. In her decision, the ALJ stated: “As for the other records, the
24 undersigned has considered records from the claimant’s treatment providers and also
25 accords them little weight as they do not give any opinion as to the claimant’s work-
26 related abilities and only contain notes documenting the course of treatment.” A.R. 20.
27 Plaintiff does not explain how this statement was erroneous or point to specific records
28 that the ALJ improperly discounted. Rather, Plaintiff cites one exhibit (A.R. 231-38) that

1 lists numerous records that document Plaintiff's possible impairments. To the extent that
2 Plaintiff asks the Court to review every treatment record and decide whether the ALJ
3 properly discounted it, the Court declines to do so. "Plaintiff bears the burden of
4 establishing that the ALJ's decision was not based on substantial evidence or that the
5 ALJ's decision was based on legal error." *Santiago v. Barnhart*, 278 F. Supp. 2d 1049,
6 1056 (N.D. Cal. 2003). By merely claiming error and citing an exhibit that lists
7 numerous records, Plaintiff has not carried that burden.

8 **2. The ALJ Did Not Err in Assessing Plaintiff's RFC.**

9 Citing SSR 96-8P (July 2, 1996), Plaintiff argues that the ALJ erred in assessing
10 Plaintiff's residual functional capacity.³ The ALJ found that Plaintiff is capable of
11 sedentary work and occasional "postural activities." A.R. 16. This finding is supported
12 by substantial evidence, including the opinions of Doctors Degroot and Eisenbaum. A.R.
13 403, 411. Plaintiff also recounts portions of her testimony that are inconsistent with the
14 ALJ's finding. The Court has already found that the ALJ did not err in rejecting
15 Plaintiff's testimony. The ALJ's RFC assessment was not erroneous.

16 **3. A Significant Number of Jobs Exist in the National Economy.**

17 Plaintiff argues that the ALJ improperly found that there are a significant number
18 of jobs in the national economy that she is capable of performing. Under the Social
19 Security Act, a claimant is considered disabled if:

20 [H]e is not only unable to do his previous work but cannot . . . engage in
21 any other kind of substantial gainful work which exists in the national
22 economy, regardless of whether such work exists in the immediate area in
23 which he lives '[W]ork which exists in the national economy' means
24 work which exists in significant numbers either in the region where such
25 individual lives or in several regions of the country.

26 ³ SSR 96-8p discusses how to appropriately assess a claimant's RFC. The ruling
27 defines the RFC as "an assessment of an individual's ability to do sustained work-related
28 physical and mental activities in a work setting on a regular and continuing basis." The
ruling then lists the evidence and factors that an adjudicator may consider in assessing a
claimant's RFC. The ALJ's assessment of Plaintiff's RFC was consistent with this
ruling.

