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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CATHY MARTINEZ,	)	NO. CV 11-6541-E
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM OPINION</b>
	)	
MICHAEL J. ASTRUE, COMMISSIONER	)	
OF SOCIAL SECURITY ADMINISTRATION,	)	
	)	
Defendant.	)	
_____	)	

PROCEEDINGS

Plaintiff filed a Complaint on August 16, 2011, seeking review of the Commissioner's denial of benefits. The parties filed a consent to proceed before a United States Magistrate Judge on August 26, 2011.

Plaintiff filed a motion for summary judgment on January 17, 2012. Defendant filed a cross-motion for summary judgment on February 16, 2012. The Court has taken both motions under submission without oral argument. See L.R. 7-15; "Order," filed August 17, 2011.

///

1 **BACKGROUND**

2  
3 Plaintiff asserts disability since March 1, 2008, based primarily  
4 on alleged psychological impairments and alleged headaches  
5 (Administrative Record ("A.R.") 150, 159). The Administrative Law  
6 Judge ("ALJ") examined the medical record and heard testimony from  
7 Plaintiff, two medical experts, and a vocational expert (A.R. 23-58).  
8 Although the ALJ found Plaintiff suffers from "severe" affective mood  
9 disorder (bipolar), anxiety disorder, post traumatic stress disorder,  
10 and substance addiction disorder, the ALJ also found Plaintiff retains  
11 the residual functional capacity to perform a full range of work at  
12 all exertion levels, albeit with some non-exertional limitations (A.R.  
13 11, 13). According to the ALJ, these limitations restricted Plaintiff  
14 to work involving simple, repetitive tasks, no public contact, non-  
15 intense contact with coworkers and supervisors, no tasks requiring  
16 hypervigilance or responsibility for the safety of others, and no fast  
17 paced work (A.R. 13, 16 (adopting psychological medical expert's  
18 testimony at A.R. 41)). The ALJ found that a person with these  
19 limitations could perform work existing in the national economy as a  
20 "store labor person," "electrician helper," and "hand packager" (A.R.  
21 18-19 (adopting vocational expert testimony at A.R. 56-57)).  
22 Accordingly, the ALJ found Plaintiff not disabled (A.R. 19). The  
23 Appeals Council denied review (A.R. 1-3).

24  
25 Plaintiff argues that the ALJ erred in finding Plaintiff's  
26 headaches not severe, in deeming Plaintiff's headache complaints not  
27 entirely credible, and in allegedly failing to consider Plaintiff's  
28 headaches in determining Plaintiff's residual functional capacity.

1 See Plaintiff's Motion, pp. 2-10. Plaintiff seeks a remand for  
2 further administrative proceedings (Id. at 10).

3  
4 **STANDARD OF REVIEW**

5  
6 Under 42 U.S.C. section 405(g), this Court reviews the  
7 Administration's decision to determine if: (1) the Administration's  
8 findings are supported by substantial evidence; and (2) the  
9 Administration used correct legal standards. See Carmickle v.  
10 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,  
11 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is "such  
12 relevant evidence as a reasonable mind might accept as adequate to  
13 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401  
14 (1971) (citation and quotations omitted); see also Widmark v.  
15 Barnhart, 454 F.3d 1063, 1067 (9th Cir. 2006).

16  
17 This Court "may not affirm [the Administration's] decision simply  
18 by isolating a specific quantum of supporting evidence, but must also  
19 consider evidence that detracts from [the Administration's]  
20 conclusion." Ray v. Bowen, 813 F.2d 914, 915 (9th Cir. 1987)  
21 (citation and quotations omitted); see Lingenfelter v. Astrue, 504  
22 F.3d 1028 (9th Cir. 2007) (same). However, the Court cannot disturb  
23 findings supported by substantial evidence, even though there may  
24 exist other evidence supporting Plaintiff's claim. See Torske v.  
25 Richardson, 484 F.2d 59, 60 (9th Cir. 1973), cert. denied, 417 U.S.  
26 933 (1974); Harvey v. Richardson, 451 F.2d 589, 590 (9th Cir. 1971).

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1 DISCUSSION

2  
3 After consideration of the record as a whole, Defendant's motion  
4 is granted and Plaintiff's motion is denied. The Administration's  
5 findings are supported by substantial evidence and are free from  
6 material<sup>1</sup> legal error. Plaintiff's contrary contentions are  
7 unavailing.

8  
9 I. Substantial Evidence Supports the Conclusion Plaintiff Can Work.

10  
11 Substantial evidence supports the ALJ's determination that  
12 Plaintiff is not disabled. In fact, the consultative examiners found  
13 Plaintiff to be essentially unimpaired.

14  
15 Dr. Sandra Eriks, an examining internist, completed an Internal  
16 Medicine Evaluation of Plaintiff dated December 29, 2008 (A.R. 270-  
17 74).<sup>2</sup> Plaintiff complained of, inter alia, hyperprolactinemia which  
18 allegedly causes Plaintiff to feel pregnant, allegedly constant  
19 headaches, and an alleged eating disorder (A.R. 270). Dr. Erik's  
20 physical examination found no abnormalities (A.R. 271-73). Dr. Eriks  
21 observed that Plaintiff's medical records indicated Plaintiff has  
22 normal MRI studies of her brain (A.R. 270). Dr. Eriks opined that  
23 Plaintiff would have no exertional limitations (A.R. 273).

24  
25 \_\_\_\_\_  
26 <sup>1</sup> The harmless error rule applies to the review of  
27 administrative decisions regarding disability. See Burch v.  
Barnhart, 400 F.3d 676, 679 (9th Cir. 2005).

28 <sup>2</sup> Dr. Eriks observed that Plaintiff was "quite hostile"  
during the evaluation (A.R. 273).

1 The examining psychiatrist also found no limitations. Dr.  
2 Romauldo Rodriguez provided a Complete Psychiatric Evaluation for  
3 Plaintiff dated April 3, 2008 (A.R. 242-48). Plaintiff complained of,  
4 inter alia, depression, anger, irritability, and rage for no reason  
5 (A.R. 242-43). Plaintiff admitted to having smoked marijuana since  
6 she was 14 years old, to having smoked marijuana the day before her  
7 evaluation, and to having used methamphetamines and cocaine up until  
8 approximately five years before the evaluation (A.R. 244). Dr.  
9 Rodriguez diagnosed Plaintiff with depressive disorder, not otherwise  
10 specified, and post traumatic stress disorder (A.R. 246). He assigned  
11 Plaintiff a GAF score of 70 (A.R. 247).<sup>3</sup> Dr. Rodriguez deemed  
12 Plaintiff stable on her antidepressants and found no functional  
13 limitations (A.R. 247).

14  
15 The consultative examiners' findings constitute substantial  
16 evidence supporting the ALJ's decision. See Tonapetyan v. Halter, 242  
17 F.3d 1144, 1149 (9th Cir. 2001) (consulting examiner's opinion is  
18 substantial evidence that can support an ALJ's finding of  
19 nondisability); see also Orn v. Astrue, 495 F.3d 625, 632 (9th Cir.  
20 2007) (examining physician's independent clinical findings are  
21 substantial evidence).

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22  
23 <sup>3</sup> Clinicians use the GAF scale to report an individual's  
24 overall level of functioning. "A GAF of 61-70 indicates 'some  
25 mild symptoms (e.g., depressed mood and mild insomnia) or some  
26 difficulty in social, occupational, or school functioning (e.g.,  
occasional truancy, or theft within the household), but generally  
functioning pretty well, has some meaningful interpersonal  
relationships.'" Siegel v. Astrue, 2009 WL 2365693, at \*6 n.6  
27 (E.D. Cal. July 31, 2009) (quoting from American Psychiatric  
28 Association, Diagnostic and Statistical Manual of Mental  
Disorders 32 (4th Ed. 1994)).

1 Additional support for the ALJ's decision exists in the opinions  
2 of the non-examining State agency physicians and the testifying  
3 medical experts. Tonapetyan v. Halter, 242 F.3d at 1149 (non-  
4 examining physician's opinion may constitute substantial evidence when  
5 opinion is consistent with independent evidence of record); Lester v.  
6 Chater, 81 F.3d 821, 831 (9th Cir. 1995) (same). State agency  
7 physician S. Kahn completed a Psychiatric Review Technique form dated  
8 December 8, 2008 (A.R. 256-66). Dr. Kahn found only mild limitations,  
9 and opined that Plaintiff's psychiatric symptoms do not significantly  
10 decrease Plaintiff's ability to function (A.R. 264, 266; see also A.R.  
11 268). With respect to Plaintiff's headaches, State agency physician  
12 Leonard Naiman stated:

13  
14 Headaches expected to respond to prescribed treatment,  
15 frequent presentations for such are not suggested by  
16 evidence in file, and triptans were not noted under  
17 Medications . . . . [Plaintiff was] [n]ot described as  
18 appearing visibly in discomfort or visibly fatigued at [the  
19 consultative exam which] reveal[ed] no major deficits of  
20 neuro, motor, or joint function.

21  
22 (A.R. 278-79).  
23

24 The two medical experts who testified at Plaintiff's  
25 administrative hearing rendered opinions consistent with the  
26 consultative evaluations. See A.R. 33-48 (testimony). Dr. Samuel  
27 Landau reviewed the medical record and testified that he could find no  
28 objective evidence of any severe non-psychological impairment (A.R.

1 34). Dr. Landau observed that a brain MRI from April 2007 showed no  
2 pituitary adenoma, though acknowledging the possibility that Plaintiff  
3 could have a microscopic adenoma not visible on the MRI (A.R. 34, 36).  
4 Dr. Landau also acknowledged that the record showed some treatment for  
5 headaches, but asserted that there was no objective basis for those  
6 symptoms (A.R. 34, 36). Dr. Landau assessed no limitations.

7  
8 Psychological medical expert, Dr. David Glassmire, reviewed the  
9 medical record and testified that Plaintiff suffers from bipolar  
10 disorder, post traumatic stress disorder based on childhood abuse,  
11 marijuana abuse, and a history of cocaine use (A.R. 38, 40-41). Dr.  
12 Glassmire suggested limiting Plaintiff to work involving simple,  
13 repetitive tasks, no interaction with the public, only non-intense  
14 interactions with co-workers and supervisors, no tasks requiring  
15 hyper-vigilance, and no fast paced work (A.R. 41). These are the same  
16 limitations the ALJ adopted as part of Plaintiff's residual functional  
17 capacity (A.R. 17).

18  
19 The only other physician to offer an opinion regarding  
20 Plaintiff's limitations was Plaintiff's treating physician, Dr.  
21 Oluwafemi Adeyemo, who treated Plaintiff with antidepressants from  
22 March 2008 through at least April 2009. See A.R. 251-55, 283-86  
23 (treatment records). Dr. Adeyemo completed a check-box Work Capacity  
24 Evaluation (Mental) form for Plaintiff dated February 24, 2010 (A.R.  
25 290-91). Dr. Adeyemo checked that Plaintiff would have specified

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1 limitations of varying alleged severity.<sup>4</sup> To the extent Dr. Adeyemo's  
2 opinion may have conflicted with the opinions of the other physicians,  
3 the ALJ provided specific, legitimate reasons for rejecting Dr.  
4 Adeyemo's opinion. See A.R. 16 (ALJ explaining her reasons for  
5 rejecting Dr. Adeyemo's opinion); see also Valentine v. Commissioner,  
6 574 F.3d 685, 692 (9th Cir. 2009) (an ALJ must provide "specific,  
7 legitimate reasons" based on substantial evidence in the record for  
8 rejecting a treating physician's contradicted opinion). Plaintiff has  
9 not challenged the propriety of the ALJ's rejection of Dr. Adeyemo's  
10 opinion in favor of the opinions of the other physicians.

11  
12 The record contains some conflicting evidence regarding  
13 Plaintiff's capacity to work. It was the prerogative of the ALJ,  
14 however, to resolve the conflicts in the evidence. See Lewis v.  
15 Apfel, 236 F.3d 503, 509 (9th Cir. 2001). Where, as here, the

16  
17 <sup>4</sup> Specifically, Dr. Adeyemo indicated that Plaintiff  
18 would have "moderate" limitations in her ability to make simple  
19 work-related decisions, in her ability to maintain socially  
20 appropriate behavior and in her ability to adhere to basic  
21 standards of neatness and cleanliness (A.R. 290-91). Dr. Adeyemo  
22 indicated that Plaintiff would have "marked" limitations in  
23 maintaining attention and concentration for extended periods of  
24 time, performing activities within a schedule, maintaining  
25 regular attendance, being punctual with customary tolerances,  
26 sustaining an ordinary routine without special supervision,  
27 interacting appropriately with the general public, accepting  
28 instruction and responding appropriately to criticism from  
supervisors, and in responding appropriately to changes in the  
work setting (A.R. 290-91). Dr. Adeyemo indicated that Plaintiff  
would have "extreme" limitations in her ability to work in  
coordination with or in proximity to others without being  
distracted by them, and in her ability to get along with co-  
workers or peers without distracting them or exhibiting  
behavioral extremes (A.R. 290-91). Dr. Adeyemo also indicated  
that he anticipated Plaintiff would be absent from work three or  
more days per month (A.R. 291).

1 evidence "is susceptible to more than one rational interpretation,"  
2 the Court must uphold the administrative decision. See Andrews v.  
3 Shalala, 53 F.3d 1035, 1039-40 (9th Cir. 1995); accord Thomas v.  
4 Barnhart, 278 F.3d 947, 954 (9th Cir. 2002); Sandgathe v. Chater, 108  
5 F.3d 978, 980 (9th Cir. 1997).

6  
7 **II. The ALJ Did Not Commit Material Error With Respect to the**  
8 **Evaluation of Plaintiff's Headaches.**

9  
10 Plaintiff argues that the ALJ erred at Step Two of the disability  
11 analysis by failing to find that Plaintiff's alleged headaches are  
12 "severe." See Plaintiff's Motion, pp. 2-6. Plaintiff further argues  
13 that the ALJ erred at Step Four of the disability analysis by  
14 assertedly failing to consider Plaintiff's headaches while assessing  
15 Plaintiff's residual functional capacity. Id., pp. 9-10. These  
16 arguments must be rejected.

17  
18 In headache questionnaires, Plaintiff reported that she first  
19 began experiencing severe headaches in 1987 and that she allegedly has  
20 headaches all day, all the time (A.R. 174, 196; see also A.R. 176).  
21 Plaintiff claimed she has an empty space in her brain where a  
22 pituitary tumor used to be (A.R. 174). Plaintiff took aspirin (or  
23 Motrin) for her headaches, and had never gone to an emergency room due  
24 to headache pain (A.R. 175, 197; but see A.R. 232-33 (emergency room  
25 treatment record from December 2007 for plaintiff for medication  
26 refill, where Plaintiff complained of depression, memory loss,  
27 confusion, and headaches)). Plaintiff asserted that she has no money  
28 for treatment (A.R. 175, 197).

1 The ALJ found Plaintiff's headaches non-severe, explaining: "The  
2 record reveals that the claimant's allegedly disabling headaches was  
3 [sic] present at approximately the same level of severity prior to the  
4 alleged onset date. The fact that the headaches did not prevent the  
5 claimant from working since 1987 through 2007 strongly suggests that  
6 it [sic] would not currently prevent work" (A.R. 12).<sup>5</sup>

7  
8 Assuming, arguendo, error in failing to find Plaintiff's  
9 headaches "severe," any such error was harmless. In evaluating  
10 Plaintiff's residual functional capacity, the ALJ reportedly  
11 considered all of Plaintiff's symptoms. See A.R. 14 ("the undersigned  
12 has considered all symptoms and the extent to which these symptoms can  
13 reasonably be accepted as consistent with the objective medical  
14 evidence"); see Social Security Ruling 96-8p ("In assessing RFC, the  
15 adjudicator must consider limitations and restrictions imposed by all  
16 of an individual's impairments, even those that are not 'severe'");  
17 Burch v. Barnhart, 400 F.3d 676, 682-83 (9th Cir. 2005) (error in  
18 failing to find an impairment severe did not prejudice the claimant  
19 where the Administration found other impairments severe and considered  
20 the effects of the non-severe impairment when analyzing residual  
21 functional capacity); see also Lewis v. Astrue, 498 F.3d 909, 911 (9th  
22 Cir. 2007) (same); see generally McLeod v. Astrue, 640 F.3d 881, 886-  
23 89 (9th Cir. 2011) (claimant bears the burden of showing a substantial  
24 likelihood of prejudice from the Administration's errors). The ALJ  
25 correctly observed that treatment records (including those for

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26  
27 <sup>5</sup> Plaintiff testified that she was laid off from her last  
28 job as a receptionist in September 2007, due to the declining  
housing market (A.R. 28-29). Plaintiff thereafter applied for  
similar work, but without success (A.R. 29).

1 Plaintiff's headaches) reveal that Plaintiff received routine,  
2 conservative, and non-emergency treatment after her alleged onset date  
3 (A.R. 15).<sup>6</sup> As discussed more fully below, the ALJ correctly  
4 discounted the credibility of Plaintiff's subjective complaints of  
5 pain, relying on Plaintiff's inconsistent statements, a lack of  
6 objective medical evidence to support the complaints, and the fact  
7 that Plaintiff had demonstrated an ability to perform her past  
8 relevant work at least until she was laid off (A.R. 15). Thus, the  
9 ALJ did consider evidence of Plaintiff's headaches in determining  
10 Plaintiff's residual functional capacity; the ALJ simply did not  
11 believe the headaches caused any material limitations. Any error in  
12 failing to consider evidence of Plaintiff's headaches more expressly  
13 or more fully was harmless.

14  
15 Given the ALJ's analysis at Step Four and the lack of any medical  
16 source statements or medical records suggesting that Plaintiff has any  
17 headache-related impairments or limitations, the ALJ's failure to deem  
18 Plaintiff's headaches "severe," if error, was also harmless. Cf.  
19 Hurter v. Astrue, 2012 WL 32138, at \*4 (9th Cir. Jan. 6, 2012)  
20 (deeming harmless any error of the ALJ to consider explicitly certain  
21 alleged impairments in determining claimant's residual functional

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22  
23 <sup>6</sup> Plaintiff was treated at Riverside County Regional  
24 Medical Center from December 2007 through at least March 2010  
25 (A.R. 225-41, 293-329). Plaintiff, who was 50 years old at the  
26 outset of treatment, reportedly had a pituitary adenoma since age  
27 30 (A.R. 225). Plaintiff complained of headaches and admitted to  
28 smoking marijuana daily for her symptoms (A.R. 225-26, 228-29,  
232, 305, 312, 317-18). Plaintiff reportedly had stopped smoking  
marijuana by June 2009 (A.R. 302). Plaintiff was diagnosed with  
pituitary adenoma, addiction to marijuana, depression and anger,  
hyperlipidemia, headaches and insomnia (A.R. 227). Plaintiff  
received hormone therapy (A.R. 295-302, 310, 315, 319).

1 capacity, where the ALJ discussed the alleged impairments at Step Two  
2 and found them non-severe, and the medical evidence provided meager  
3 support for alleged impairments). As discussed above, substantial  
4 evidence supports the ALJ's conclusion that Plaintiff can work  
5 notwithstanding the combined effects of her physical and mental  
6 impairments.

7  
8 **III. The ALJ Did Not Commit Material Error By Deeming Plaintiff's**  
9 **Headache-Related Complaints Less Than Fully Credible.**

10  
11 Plaintiff also argues that the ALJ did not properly assess  
12 Plaintiff's subjective complaints regarding her alleged headaches.  
13 See Plaintiff's Motion, pp. 5-8. Plaintiff has failed to demonstrate  
14 any material error.

15  
16 The subjective complaints expressed in Plaintiff's testimony had  
17 little or nothing to do with Plaintiff's alleged headaches. Indeed,  
18 when asked "[I]n your own words, what keeps you from working now?",  
19 Plaintiff gave a response that did not even mention headaches.  
20 Plaintiff claimed she could not work because she allegedly has a lot  
21 of pregnancy symptoms, including lactation (even though she was not  
22 then pregnant), is bipolar, "can rage in just a second," and does not  
23 have the patience to deal with another colleague (A.R. 29-30; see  
24 also A.R. 243 (Plaintiff asserting that her pituitary tumor secretes  
25 prolactin which causes pregnancy symptoms)). Plaintiff testified that  
26 if she felt depressed or experienced pregnancy symptoms, she would  
27 sleep all day (A.R. 49). Plaintiff said she tried to have good days  
28 on Thursdays so she could spend time with her grandchild (A.R. 49).

1 Plaintiff said she can manage her own hygiene, but claimed she does  
2 not cook for herself and rarely shops for groceries (A.R. 50-51).

3  
4 Plaintiff's only mention of headaches during her testimony was an  
5 admission that she had smoked marijuana "to help with my headaches,"  
6 coupled with a denial that she had ever taken any other drugs (A.R.  
7 32).<sup>7</sup> When examined by the medical expert, however, Plaintiff  
8 admitted that she had used cocaine a "few times" when she was 19 or 20  
9 (A.R. 40).

10  
11 The ALJ found Plaintiff's allegations concerning her alleged  
12 limitations less than credible, explaining that the allegations were  
13 not supported by the "relatively benign medical evidence" and "lack of  
14 more aggressive treatment" (A.R. 14-15). As discussed above in  
15 connection with the severity issue, the ALJ also reasoned that  
16 Plaintiff's working for 20 years despite the alleged headaches  
17 strongly suggests that the headaches were not and are not disabling  
18 (A.R. 12). According to the ALJ, the fact that Plaintiff had stopped  
19 working for reasons unrelated to her own medical condition similarly

20  
21 <sup>7</sup> By contrast, in a Function Report - Adult form dated  
22 October 9, 2008, Plaintiff reported that she spends her days  
23 trying to deal with her headaches (A.R. 176). Plaintiff  
24 reportedly stayed in bed which supposedly makes her depressed  
25 (A.R. 176). Plaintiff needed no help with personal care,  
26 prepared frozen dinners daily, and cleaned her house one room at  
27 a time (A.R. 177-78). Plaintiff reportedly went outside once a  
28 week with her friend who drives her (A.R. 179). Plaintiff could  
shop for food and household supplies (A.R. 179). Plaintiff  
supposedly had problems getting along with others if they look at  
her "the wrong way" (A.R. 181). Plaintiff reportedly could get  
along with authority figures until they make her mad, and then  
she allegedly loses control (A.R. 182). Plaintiff supposedly was  
afraid to go outside (although she does go outside) (A.R. 182).

1 suggests that Plaintiff is not as limited as she asserts and could  
2 perform her past relevant work (A.R. 15). Finally, the ALJ stressed  
3 that the credibility of Plaintiff's subjective complaints was  
4 diminished by Plaintiff's inconsistent statements (e.g., reporting  
5 that she did not drive (A.R. 179), but testifying that she drives  
6 occasionally (A.R. 31); admitting to a consultative examiner that  
7 Plaintiff used methamphetamine and cocaine in the past (A.R. 244), but  
8 testifying that she used no drugs other than marijuana in the past  
9 (A.R. 32)).

10  
11 An ALJ's assessment of a claimant's credibility is entitled to  
12 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.  
13 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). The  
14 discounting of a claimant's testimony regarding subjective symptoms  
15 must be supported by specific, cogent findings. See Lester v. Chater,  
16 81 F.3d at 834; see also Berry v. Astrue, 622 F.3d 1228, 1234 (9th  
17 Cir. 2010) (reaffirming same); Varney v. Secretary of Health and Human  
18 Serv., 846 F.2d 581, 584 (9th Cir. 1988) (generally discussing  
19 specificity requirement); but see Smolen v. Chater, 80 F.3d 1273,  
20 1282-84 (9th Cir. 1996) (finding that ALJ must offer "specific, clear  
21 and convincing" reasons to reject a claimant's testimony where there

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1 is no evidence of malingering).<sup>8</sup> The ALJ stated sufficient reasons  
2 for deeming Plaintiff's subjective complaints less than fully  
3 credible.

4  
5 First, as discussed in the ALJ's opinion and herein, the medical  
6 evidence does not support Plaintiff's allegations of disabling  
7 headaches. Although a claimant's credibility "cannot be rejected on  
8 the sole ground that it is not fully corroborated by objective medical  
9 evidence, the medical evidence is still a relevant factor. . . ."  
10 Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001).

11  
12 As previously indicated, the ALJ pointed out inconsistencies  
13 between Plaintiff's testimony and her reports, as well as the  
14 incongruity of Plaintiff's documented ability to work during a time  
15 when she claimed to have suffered daily headaches (A.R. 15). Such  
16 inconsistencies can justify the rejection of a claimant's credibility.  
17 See Burch v. Barnhart, 400 F.3d at 680 ("In determining credibility,  
18 an ALJ may engage in ordinary techniques of credibility evaluation,  
19 such as considering claimant's reputation for truthfulness and  
20 inconsistencies in claimant's testimony."); Thomas v. Barnhart, 278

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21  
22 <sup>8</sup> In the absence of evidence of "malingering," most  
23 recent Ninth Circuit cases have applied the arguably more  
24 rigorous "clear and convincing" standard. See, e.g., Taylor v.  
25 Commissioner, 659 F.3d 1228, 1234 (9th Cir. 2011); Brown v.  
26 Astrue, 405 Fed. App'x 230 (9th Cir. 2010); Valentine v.  
27 Commissioner, 574 F.3d 685, 693 (9th Cir. 2009); Carmickle v.  
28 Commissioner, 533 F.3d 1155, 1160 (9th Cir. 2008); Lingenfelter  
v. Astrue, 504 F.3d 1028, 1036 (9th Cir. 2007); Ballard v. Apfel,  
2000 WL 1899797, at \*2 n.1 (C.D. Cal. Dec. 19, 2000) (collecting  
cases). In the present case, the ALJ's findings are sufficient  
under either standard, so the distinction between the two  
standards (if any) is academic.

1 F.3d 947, 958-59 (9th Cir. 2002) (inconsistency between the claimant's  
2 testimony and the claimant's conduct supported rejection of the  
3 claimant's credibility); Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th  
4 Cir. 1999) (inconsistencies between the claimant's testimony and  
5 actions cited as a clear and convincing reason for rejecting the  
6 claimant's testimony).

7  
8 Finally, the ALJ properly emphasized the "routine, conservative"  
9 nature of Plaintiff's medical treatment (A.R. 15). A conservative  
10 course of treatment may discredit a claimant's allegations of  
11 disabling symptoms. See Parra v. Astrue, 481 F.3d 742, 750-51 (9th  
12 Cir. 2007), cert. denied, 552 U.S. 1141 (2008) (treatment of ailments  
13 with over-the-counter pain medication is "conservative treatment"  
14 sufficient to discount a testimony); Meanel v. Apfel, 172 F.3d 1111,  
15 1114 (9th Cir. 1999); see also Bunnell v. Sullivan, 947 F.2d 341, 346  
16 (9th Cir. 1991) (failure to seek medical treatment can justify an  
17 adverse credibility determination); Fair v. Bowen, 885 F.2d 597, 603-  
18 04 (9th Cir. 1989) (same).

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1 **CONCLUSION**

2  
3 For all of the reasons discussed herein, Plaintiff's motion for  
4 summary judgment is denied and Defendant's motion for summary judgment  
5 is granted.<sup>9</sup>

6  
7 LET JUDGMENT BE ENTERED ACCORDINGLY.

8  
9 DATED: March 26, 2012.

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11 \_\_\_\_\_/S/\_\_\_\_\_  
12 CHARLES F. EICK  
13 UNITED STATES MAGISTRATE JUDGE  
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24 \_\_\_\_\_  
25 <sup>9</sup> The Court has considered and rejected each of  
26 Plaintiff's arguments. Neither Plaintiff's arguments nor the  
27 circumstances of this case show any "substantial likelihood of  
28 prejudice" resulting from any error allegedly committed by the  
Administration. See generally McLeod v. Astrue, 640 F.3d 881,  
888 (9th Cir. 2011) (discussing the standards applicable to  
evaluating prejudice).