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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

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11 MARIA ZAVALA MENDOZA,

12 Plaintiff,

13  
14 v.

15 CAROLYN W. COLVIN, Acting  
16 Commissioner of Social Security,

17 Defendant.  
18

Case No. CV 16-02435-KES

MEMORANDUM OPINION AND  
ORDER

19  
20 Plaintiff Maria Zavala Mendoza (“Plaintiff”) appeals the final decision  
21 of the Administrative Law Judge (“ALJ”) denying her application for Social  
22 Security Disability Insurance benefits (“DIB”) and Supplemental Security  
23 Income (“SSI”). For the reasons discussed below, the ALJ’s decision is  
24 AFFIRMED.

25 **I.**

26 **BACKGROUND**

27 Plaintiff applied for DIB and SSI on April 12, 2013, alleging the onset of  
28 disability on January 15, 2013, when she was 57 years old. Administrative

1 Record (“AR”) 159-65; 166-71. On August 12, 2014, an ALJ conducted a  
2 hearing, at which Plaintiff, who was represented by counsel, appeared and  
3 testified. AR 71-89. On August 19, 2014, the ALJ issued a written decision  
4 denying Plaintiff’s request for benefits. AR 30-43.

5 The ALJ found that Plaintiff had the severe impairments of obesity and  
6 degenerative disc disease of the cervical and lumbar spinal areas. AR 36.  
7 Notwithstanding these impairments, the ALJ concluded that Plaintiff had the  
8 residual functional capacity (“RFC”) to perform a “full range of medium  
9 work.” AR 36. The exertional requirements for medium work include “lifting  
10 no more than 50 pounds at a time with frequent lifting or carrying of objects  
11 weighing up to 25 pounds.” 20 C.F.R. §§ 404.1567, 416.967. In contrast,  
12 “light” work involves lifting no more than 20 pounds and “sedentary” work  
13 involves lifting no more than 10 pounds. Id.

14 Plaintiff previously worked as a home attendant for her mother, who  
15 suffers from Alzheimer’s disease. AR 80-81. A vocational expert (“VE”)  
16 testified that according to the Dictionary of Occupational Titles (“DOT”), the  
17 job of home attendant typically requires “medium” exertion. AR 87. The ALJ  
18 compared Plaintiff’s RFC to the demands of her past relevant work as a home  
19 attendant and decided that Plaintiff could still perform that kind of work. AR  
20 39. The ALJ therefore concluded that Plaintiff is not disabled. Id.

## 21 II.

### 22 ISSUES PRESENTED

23 Plaintiff raises only one issue: whether the ALJ erred in assessing the  
24 credibility of her testimony concerning the disabling effects of her pain. See  
25 Dkt. 20, Joint Stipulation (“JS”) 4. Plaintiff argues that the ALJ’s reasons for  
26 discounting Plaintiff’s testimony erroneously considered whether her  
27 testimony was inconsistent with the inability to work at any exertional level.  
28 Instead, Plaintiff argues, the ALJ should have focused on whether Plaintiff’s

1 testimony was inconsistent with the inability to do medium work, because  
2 “[f]or an individual limited to light exertion of [Plaintiff’s] age, education, and  
3 work experience, the regulations direct a finding of disabled.” JS 6.

### 4 III.

## 5 DISCUSSION

### 6 A. Applicable Law.

7 An ALJ’s assessment of symptom severity and claimant credibility is  
8 entitled to “great weight.” See Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir.  
9 1989); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1986). “[T]he ALJ is  
10 not required to believe every allegation of disabling pain, or else disability  
11 benefits would be available for the asking, a result plainly contrary to 42  
12 U.S.C. § 423(d)(5)(A).” Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012)  
13 (internal quotation marks omitted).

14 If the ALJ finds testimony as to the severity of a claimant’s pain and  
15 impairments is unreliable, “the ALJ must make a credibility determination  
16 with findings sufficiently specific to permit the court to conclude that the ALJ  
17 did not arbitrarily discredit claimant’s testimony.” Thomas v. Barnhart, 278  
18 F.3d 947, 958-59 (9th Cir. 2002). In doing so, the ALJ may consider  
19 testimony from physicians “concerning the nature, severity, and effect of the  
20 symptoms of which [the claimant] complains.” Id. If the ALJ’s credibility  
21 finding is supported by substantial evidence in the record, courts may not  
22 engage in second-guessing. Id.

23 In evaluating a claimant’s subjective symptom testimony, the ALJ  
24 engages in a two-step analysis. Lingenfelter v. Astrue, 504 F.3d 1028, 1035-36  
25 (9th Cir. 2007). “First, the ALJ must determine whether the claimant has  
26 presented objective medical evidence of an underlying impairment [that] could  
27 reasonably be expected to produce the pain or other symptoms alleged.” Id. at  
28 1036. If so, the ALJ may not reject a claimant’s testimony “simply because

1 there is no showing that the impairment can reasonably produce the degree of  
2 symptom alleged.” Smolen v. Chater, 80 F.3d 1273, 1282 (9th Cir. 1996).

3 Second, if the claimant meets the first test, the ALJ may discredit the  
4 claimant’s subjective symptom testimony only if he makes specific findings  
5 that support the conclusion. Berry v. Astrue, 622 F.3d 1228, 1234 (9th Cir.  
6 2010). Absent a finding or affirmative evidence of malingering, the ALJ must  
7 provide “clear and convincing” reasons for rejecting the claimant’s testimony.  
8 Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995); Ghanim v. Colvin, 763 F.3d  
9 1154, 1163 & n.9 (9th Cir. 2014). The ALJ must consider a claimant’s work  
10 record, observations of medical providers and third parties with knowledge of  
11 claimant’s limitations, aggravating factors, functional restrictions caused by  
12 symptoms, effects of medication, and the claimant’s daily activities. Smolen,  
13 80 F.3d at 1283-84 & n.8. “Although lack of medical evidence cannot form  
14 the sole basis for discounting pain testimony, it is a factor that the ALJ can  
15 consider in his credibility analysis.” Burch v. Barnhart, 400 F.3d 676, 681 (9th  
16 Cir. 2005).

17 The ALJ may also use ordinary techniques of credibility evaluation,  
18 such as considering the claimant’s reputation for lying and inconsistencies in  
19 his statements or between his statements and his conduct. Smolen, 80 F.3d at  
20 1284; Thomas, 278 F.3d at 958-59.<sup>1</sup>

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21  
22 <sup>1</sup> The Social Security Administration (“SSA”) recently published SSR 16-  
23 3p, 2016 SSR LEXIS 4, Policy Interpretation Ruling Titles II and XVI:  
24 Evaluation of Symptoms in Disability Claims. SSR 16-3p eliminates use of the  
25 term “credibility” from SSA policy, as the SSA’s regulations do not use this  
26 term, and clarifies that subjective symptom evaluation is not an examination of  
27 a claimant’s character. Murphy v. Comm’r of Soc. Sec., 2016 U.S. Dist.  
28 LEXIS 65189, at \*25-26 n.6 (E.D. Tenn. May 18, 2016). SSR 16-3p took  
effect on March 16, 2016, and therefore is not applicable to the ALJ’s decision  
in this case. Id.

1 **B. Summary of Plaintiff's Testimony.**

2 Plaintiff provided testimony concerning the disabling effects of her pain  
3 at the hearing. She testified that she stopped providing in-home care for to her  
4 mother, who suffers from Alzheimer's disease, in 2013 after her mother fell  
5 and broke her hip, rendering her unable to walk on her own. AR 80-81. At  
6 that point, Plaintiff felt that she could no longer help her mother or apply for  
7 another fulltime caregiver job because she is "in pain all the time." AR 81-82.  
8 She testified that her lower back and neck are "always hurting" and have been  
9 "for years, like since 19-something," even though she was working as a home  
10 attendant during those years and as recently as 2013. AR 82. She testified that  
11 after her mother's fall, she tried to lift her, which caused Plaintiff's pain to  
12 worsen and prompted her to visit Roybal Health Center in February 2013. AR  
13 82-83, AR 226-42 (medical records). In June and July of 2013, she was treated  
14 for pain at the Montes Medical Group. AR 84, AR 243-47 (medical records).  
15 At the time, she was "just screaming of pain." AR 84.

16 She testified that she can bend over, but she cannot lift patients in  
17 wheelchairs anymore. AR 85. She estimated that she could lift 10 or 15  
18 pounds. AR 86. She attributed her lifting limitations to back and shoulder  
19 pain. AR 85. She testified that her right shoulder was diagnosed at Montes  
20 Medical Group as "frozen." AR 84. She testified that the Clinica Medica San  
21 Felipe suggested that she receive a shot for pain, but she never obtained that  
22 treatment. AR 85.

23 **C. Analysis.**

24 The ALJ discussed at least four different reasons for discounting  
25 Plaintiff's testimony that pain disables her from performing medium work:  
26 (1) conservative course of treatment (AR 38-39), (2) lack of supporting medical  
27 evidence (AR 38), (3) her treating doctors' failure to prescribe any exertional  
28 restrictions (AR 39), and (4) her continuing part-time work as a home caregiver

1 for Sandra Ackerman<sup>2</sup> (AR 35-36). As discussed below, each of these is stated  
2 with sufficient specificity and is supported by substantial evidence in the  
3 record.

4 **1. Conservative Course of Treatment.**

5 The ALJ explained her reasoning as follows:

6 The claimant's course of treatment also does not support her  
7 allegations. Dr. Montes and the claimant's treatment providers at  
8 CSF and Roybal prescribed medications for the claimant's pain,  
9 including Ibuprofen, Robaxin, Ultracet, and Vicodin. In March  
10 2013, the claimant told her treatment provider at Roybal that her  
11 pain medications were somewhat helpful in relieving her back pain  
12 and neck pain. (Ex. 1F/1-2 [AR 211-12]; Ex. 3F/3 [AR 245]; Ex.  
13 4F/3 [AR 250].) In contrast to the claimant's testimony, it does not  
14 appear the claimant's treating and/or evaluating physicians referred  
15 the claimant to a specialist (e.g., an orthopedic surgeon) or  
16 recommended alternative treatment modalities (e.g., physical  
17 therapy, steroid injections, surgery). This evidence of limited,  
18 conservative treatment suggests the claimant's symptoms were not  
19 as serious as she alleged.

20 AR 38-39.

21 An ALJ may consider evidence of conservative treatment in discounting  
22 testimony regarding the severity of an impairment. Parra v. Astrue, 481 F.3d  
23 742, 751 (9th Cir. 2007). "Infrequent, conservative treatment is not indicative  
24 of a disabling impairment." Jimenez v. Colvin, 2013 U.S. Dist. LEXIS 88614,

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25 <sup>2</sup> Plaintiff's request to proceed in forma pauperis in this action states that  
26 she has "a side job" that pays "\$90-95 a week." (Dkt. 3 at 1.) It is unclear if  
27 this "side job" is her work for Ms. Ackerman or some other form of  
28 employment.

1 at \*14 (C.D. Cal. June 24, 2013) (upholding ALJ’s determination that treating  
2 “consisting of Tramadol and over-the-counter Motrin” was conservative); see  
3 also Johnson v. Shalala, 60 F.3d 1428, 1434 (9th Cir. 1995) (conservative  
4 treatment suggests a lower level of both pain and functional limitation).

5 Plaintiff argues that the use of narcotic pain medicine, such as Vicodin,  
6 is not necessarily conservative treatment. JS 6. Case law does not support this  
7 argument. See Harris v. Colvin, 2016 U.S. Dist. LEXIS 66927, at \*13 (E.D.  
8 Wash. May 20, 2016) (“The ALJ’s statement that Plaintiff had been  
9 recommended only conservative treatment [i.e., physical therapy and cortisone  
10 injections] provides another clear and convincing reason for discounting  
11 Plaintiff’s testimony in this case.”); Medel v. Colvin, 2014 U.S. Dist. LEXIS  
12 159933, at \*27 (C.D. Cal. Nov. 13, 2014) (affirming ALJ’s characterization of  
13 claimant’s treatment as conservative where his medical records showed that he  
14 had been “prescribed only Vicodin and Tylenol for his allegedly debilitating  
15 low-back pain.”); Morris v. Colvin, 2014 U.S. Dist. LEXIS 77782, at \*12  
16 (C.D. Cal. June 3, 2014) (finding that ALJ permissibly discounted plaintiff’s  
17 credibility in part because plaintiff received conservative treatment consisting  
18 of use of TENS unit and Vicodin); Walter v. Astrue, 2011 U.S. Dist. LEXIS  
19 38179, at \*9 (C.D. Cal. Apr. 6, 2011) (finding that ALJ permissibly discounted  
20 plaintiff’s credibility based on conservative treatment, which included Vicodin,  
21 physical therapy, and a single injection).

22 Plaintiff also argues that while conservative treatment may be  
23 inconsistent with total disability, it is not inconsistent with the ability to do  
24 light work. JS 6. Since Plaintiff concedes she can do light work, counsel  
25 argues there is no inconsistency to support a finding of reduced credibility. Id.  
26 Plaintiff, however, testified that she is in constant pain that is so severe, it  
27 prevents her from lifting more than 10 or 15 pounds. The ALJ did not err in  
28 finding that Plaintiff’s history of conservative treatment is inconsistent with

1 such testimony.

2 Finally, Plaintiff argues that the ALJ misconstrued the record when she  
3 found that Plaintiff's doctor never recommended injections, and that this was  
4 contrary to Plaintiff's hearing testimony. JS 7. Plaintiff cites to a 1-page  
5 record from Clinica Medica San Felipe dated January 16, 2014, which Plaintiff  
6 characterizes as recommending "trigger point injections." *Id.* citing AR 249.  
7 While the writing is difficult to read, the document does appear to say "trigger  
8 pnt injtc" in the middle "a/p" [action potential] section. AR 249. At the  
9 bottom, there are notations under "labs ordered," but no notations under  
10 "injections." *Id.* Ultimately, the document does support Plaintiff's testimony  
11 at the hearing that Clinica Medica San Felipe had recommended a shot for  
12 pain. The document, however, does not undermine the ALJ's ultimate  
13 credibility finding, since it shows that Plaintiff failed to pursue even the  
14 conservative, recommended treatment of trigger point injections.

15 **2. Lack of Supporting Medical Evidence.**

16 The ALJ found that "the objective medical evidence does not support  
17 claimant's allegations." AR 38. The ALJ cited to (1) 2013 imaging studies of  
18 Plaintiff's spine which showed only "mild" degenerative changes and no  
19 "other significant abnormalities" (AR 38, citing AR 219); (2) the lack of any  
20 imaging studies of claimant's knees or shoulders (AR 38); (3) "unremarkable"  
21 findings by Dr. Montes, including "negative Spurling's, Bakody, and straight  
22 leg raise tests<sup>3</sup>" (AR 38, citing AR 244-46); and (4) a 2013 negative straight leg  
23 raising test (AR 38, citing AR 215).

24 Plaintiff argues that some of her medical records support her allegations,  
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26 <sup>3</sup> All three of these tests are used to assess pain caused by nerve root  
27 compression, also called radiculopathy.  
28



1 such as x-rays showing she suffers from degenerative disc disease (AR 239-40)  
2 and physical examinations finding a decreased range of back motion (AR 233)  
3 and positive Hawkins and Neers signs<sup>4</sup> (AR 244). JS 6.

4 The evidence cited by Plaintiff is certainly objective medical evidence of  
5 an underlying impairment that could reasonably be expected to produce some  
6 back and shoulder pain. The ALJ, however, is entitled to consider whether the  
7 objective medical evidence is consistent with the degree of pain alleged, as long  
8 as the lack of supporting medical evidence is not the “sole basis for discounting  
9 pain testimony.” Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005). In  
10 Burch, for example, x-rays showed “only mild degenerative disc disease” and  
11 “no apparent ... nerve root impingement.” Id. The Ninth Circuit found that  
12 the ALJ properly considered this in discrediting the plaintiff’s claim of  
13 disabling back pain. Id.

14 There is similar objective medical evidence in this case showing only mild  
15 degenerative disc disease and lack of nerve root impingement. AR 215, 219,  
16 244-46. The ALJ properly considered that the lack of such medical evidence  
17 was inconsistent with Plaintiff’s claim of constant back pain so disabling that  
18 she cannot lift more than 10 to 15 pounds.

### 19 **3. Lack of Exertional Work Restrictions.**

20 The ALJ noted that “the record does not contain evidence of work  
21 restrictions placed on the claimant” by her treating providers. AR 39. “Such  
22 restrictions reasonably would be expected, given the claimant’s allegations of  
23 totally disabling symptoms and functional limitations.” Id.

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25 <sup>4</sup> The Hawkins test is used to evaluate shoulder injuries. “A positive  
26 Hawkins test is indicative of an impingement of all structures that are located  
27 between the ... humerus and the coracohumeral ligament.” See [https://en.  
28 wikipedia.org/wiki/Hawkins%E2%80%93Kennedy\\_test](https://en.wikipedia.org/wiki/Hawkins%E2%80%93Kennedy_test). A Neer test  
identifies impingement of the rotator cuff tendons.

1 Plaintiff argues that, because Plaintiff's treating physicians were not  
2 tasked with assessing her ability to work, their failure to express any opinions  
3 on the subject cannot be interpreted as meaningful. JS 7.

4 The earliest treatment notes in the record are from Roybal Health Center  
5 on February 27, 2013. Plaintiff was initially diagnosed with "cervical strain,"  
6 having told the doctor that she injured her back working as a home caregiver,  
7 i.e., trying to lift her mother. AR 215-26. She reported her pain as 4 out of 10.  
8 AR 233. It was recommended that she exercise, lose weight, and return in two  
9 weeks to review the results of spinal x-rays. AR 216. When Plaintiff returned  
10 on March 13, 2013, the treatment note says that Plaintiff "currently is not  
11 working because she is in too much pain." AR 211, 228. Plaintiff scored her  
12 pain 6 out of 10. Id. She was instructed to take Ibuprofen. Id.

13 The next treatment record is from the Montes Medical Group and is  
14 dated May 29, 2013. AR 246. It reports that Plaintiff made the appointment  
15 "for medication refill" and "feels very stressed ... because she is taking care of  
16 her ill mother and has no help." Id. Plaintiff next visited the Montes Medical  
17 Group on July 22, 2013. AR 244. The treatment note says "pt is trying to get  
18 disability. Pt is unable to work due to pain." Id. It also says that Plaintiff  
19 appears "in no acute distress." Id. Dr. Montes prescribed Ibuprofen and  
20 Vicodin. Id.

21 This Court's "sole inquiry is whether the record, read as a whole, yields  
22 such evidence as would allow a reasonable mind to accept the conclusions  
23 reached by the [ALJ]. Where evidence is susceptible of more than one rational  
24 interpretation, it is the ALJ's conclusion which must be upheld. In reaching  
25 his findings, the [ALJ] is entitled to draw inferences logically flowing from the  
26 evidence." Sample v. Schweiker, 694 F.2d 639, 642 (9th Cir. 1982) (citations  
27 omitted).

28 Given that the Roybal Health Center must have considered Plaintiff's

1 functional limitations when it recommended exercise as treatment, and that  
2 the Montes Medical Group commented on Plaintiff's reported inability to  
3 work even though she was still caring for her mother, the ALJ could rationally  
4 have inferred that these treating sources would have included some restrictions  
5 on Plaintiff's exertional activities if they believed that any were medically  
6 indicated. Thus, the ALJ did not err in considering the lack of any such  
7 restrictions as a reason to discount Plaintiff's credibility.

#### 8 **4. Plaintiff's Continuing Work.**

9 The ALJ noted that Plaintiff had received income for working as a home  
10 caregiver during the first and second quarters of 2013 (i.e., after the alleged  
11 onset of disability on January 15, 2013) and that she continued to work part-  
12 time for Sandra Ackerman one day a week for approximately three to four  
13 hours. AR 35. The ALJ then noted that she "considered this and any other  
14 inconsistent statements made by claimant in evaluating her credibility  
15 regarding her alleged symptoms and limitations." AR 35-36.

16 With regard to her work for Ms. Ackerman, Plaintiff argues that there is  
17 no evidence in the record concerning the exertional demands of that work,  
18 such that there cannot be a conflict between her testimony about the disabling  
19 nature of her pain and her ability to perform that work. JS 15. In fact, there is  
20 some evidence in the record. The VE testified that working as a home  
21 attendant typically requires medium exertion. AR 87. Plaintiff had an  
22 opportunity to testify concerning the exertional demands of that work as she  
23 performs it, but she did not.<sup>5</sup>

24 The ALJ may consider part-time work as inconsistent with a claim of  
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26 <sup>5</sup> Plaintiff testified that her work for Ms. Ackerman was "light" (AR 77),  
27 but counsel argues that Plaintiff did not use the word "light" as defined by  
28 social security law. JS 14-15.

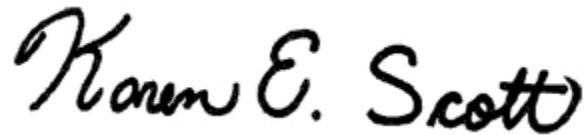
1 disability. See 20 C.F.R. § 404.1571 (“Even if the work you have done was not  
2 substantial gainful activity, it may show that you are able to do more work  
3 than you actually did.”). Plaintiff’s ongoing work activity diminished  
4 Plaintiff’s credibility, because it showed that she was able to do some work as a  
5 home attendant, despite her impairments. Moreover, at step four in the  
6 sequential analysis, the claimant retains the burden of proving he or she is  
7 unable to perform past relevant work. Drouin v. Sullivan, 966 F.2d 1255, 1257  
8 (9th Cir. 1992). Plaintiff ultimately failed to provide the ALJ with any medical  
9 opinion that she cannot do fulltime, medium work, which is the exertional  
10 level typically required to work as a home attendant per the DOT and the VE’s  
11 testimony.

12 **IV.**

13 **CONCLUSION**

14 Based on the foregoing, IT IS ORDERED THAT judgment shall be  
15 entered AFFIRMING the decision of the Commissioner denying benefits.

16  
17 Dated: December 6, 2016

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19 KAREN E. SCOTT  
20 United States Magistrate Judge  
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