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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARY ANN RICHARDSON,  
  
Plaintiff,  
  
v.  
  
NANCY A. BERRYHILL<sup>1</sup>,  
Acting Commissioner of Social  
Security,  
  
Defendant.

Case No.: CV 16-4154 AS

**MEMORANDUM OPINION**

**PROCEEDINGS**

On June 10, 2016, Plaintiff Mary Ann Richardson filed a Complaint seeking review of the denial of her application for a period of disability, Disability Insurance Benefits ("DIB"), and Supplemental Security Income ("SSI"). (Docket Entry No. 1). The parties have consented to proceed before a United States

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<sup>1</sup> Nancy A. Berryhill is now the Acting Commissioner of the Social Security Administration and is substituted in for Acting Commissioner Carolyn W. Colvin in this case. See 42 U.S.C. § 205(g).

1 Magistrate Judge. (Docket Entry Nos. 10, 12). On October 26,  
2 2016, Defendant filed an Answer to the Complaint along with the  
3 Administrative Record ("A.R."). (Docket Entry Nos. 16, 17).  
4 The parties filed a Joint Stipulation ("Joint Stip.") on January  
5 19, 2017, setting forth their respective positions regarding  
6 Plaintiff's claim. (Docket Entry No. 18). The Court has taken  
7 this matter under submission without oral argument. See C.D.  
8 Cal. L.R. 7-15.

#### 9 10 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

11 On June 30, 2012, Plaintiff, formerly employed as an in-  
12 home care giver as well as in "managing/inventory" at Canvas Art  
13 Painting Company (A.R. 247-249), filed an application for SSI,  
14 alleging disability beginning May 1, 2005. (A.R. 49).  
15 Plaintiff alleged disability due to fibromyalgia, disc disease,  
16 possible lupus, and depression. (Id.).

17  
18 On January 6, 2015, Administrative Law Judge ("ALJ") Robert  
19 A. Evans heard testimony from Plaintiff, vocational expert  
20 ("VE") Carmen Roman, and medical expert Dr. Hugh Savage. (A.R.  
21 27-48). Dr. Savage reviewed and summarized the medical record,  
22 including the October 2012 consultative examination with state  
23 agency medical consultant Dr. Elliott Gilpeer. (Id.).

24  
25 On February 5, 2015, ALJ Evans issued a decision finding  
26 that Plaintiff was not disabled under the Social Security Act.  
27 (A.R. 11-21). The ALJ found that Plaintiff suffered from the  
28 following medically determinable severe impairments: a back

1 disorder, mild lumbar arthritis, hypertension, obesity. (A.R.  
2 13). The ALJ then determined that Plaintiff had the residual  
3 functional capacity ("RFC")<sup>2</sup> to perform light work as defined in  
4 20 CFR 416.967(b)<sup>3</sup>, with the following limitations: no climbing  
5 ladders/ropes/scaffolds; frequently climb stairs/ramps, stoop,  
6 crouch, crawl; and no concentrated exposure to unprotected  
7 heights or moving machinery. (A.R. 15).

8  
9 Based on Plaintiff's RFC, as well as her age, education,  
10 and work experience, and the finding that Plaintiff had no past  
11 relevant work, the ALJ determined that Plaintiff could perform  
12 work as a counter clerk (DOT No. 249.366-010), office helper  
13 (DOT No. 239.567.010), or merchandise marker (DOT No. 209.587-  
14 034). (A.R. 19-20). Accordingly, the ALJ found that Plaintiff  
15 was not disabled<sup>4</sup> within the meaning of The Social Security Act.  
16 (A.R. 20).

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17 <sup>2</sup> A Residual Functional Capacity is what a claimant can  
18 still do despite existing exertional and nonexertional  
19 limitations. See 20 C.F.R. § 404.1545(a)(1).

20 <sup>3</sup> "Light work involves lifting no more than 20 pounds at a  
21 time with frequent lifting or carrying of objects weighing up to  
22 10 pounds. Even though the weight lifted may be very little, a  
23 job is in this category when it requires a good deal of walking  
24 or standing, or when it involves sitting most of the time with  
25 some pushing and pulling of arm or leg controls. To be  
26 considered capable of performing a full or wide range of light  
27 work, you must have the ability to do substantially all of these  
28 activities. If someone can do light work, we determine that he  
or she can also do sedentary work, unless there are additional  
limiting factors such as loss of fine dexterity or inability to  
sit for long periods of time." 20 C.F.R. §§ 404.1567(b)  
and 416.967(b).

<sup>4</sup> Plaintiff amended her disability onset date to May 1,  
2012 at the hearing.

1 In reaching his decision, the ALJ found that while  
2 Plaintiff's medically determinable impairments could reasonably  
3 be expected to cause her alleged symptoms, Plaintiff's  
4 statements concerning the intensity, persistence, and limiting  
5 effects of these symptoms were not credible to the extent that  
6 they were inconsistent with the ALJ's RFC assessment.  
7 (A.R. 16). The ALJ's credibility determination was based on his  
8 finding that Plaintiff's alleged functional limitations were  
9 inconsistent with the objective medical evidence as well as  
10 Plaintiff's activities of daily living. (Id.).

11 The ALJ declined to give substantial weight to the opinion  
12 of Plaintiff's treating physician, Dr. Thelma T. Fernandez.  
13 (A.R. 18). While acknowledging that Dr. Fernandez had the  
14 opportunity to examine and treat Plaintiff, the ALJ found that  
15 Dr. Fernandez's opinion was "not supported with a rationale or  
16 an identification of the signs and laboratory findings  
17 warranting such an opinion" and was not consistent with the  
18 medical record as a whole. (Id.). Instead, the ALJ found that  
19 Dr. Fernandez's conclusion that Plaintiff was disabled  
20 "essentially adopt[ed]" Plaintiff's statements without  
21 "objectivity or balance". (Id.). The ALJ also noted that, to  
22 the extent that Dr. Fernandez opined on the ultimate issue of  
23 disability, she "tread[ed] on an issue reserved for the  
24 Commissioner." (Id.).

25 On March 2, 2015, Plaintiff sought review of the ALJ's  
26 decision before the Appeals Council. (A.R. 7). The request was  
27 denied on April 15, 2016. (A.R. 1-3). The ALJ's decision then  
28

1 became the final decision of the Commissioner, allowing this  
2 Court to review the decision. See 42 U.S.C. §§ 405(g), 1383(c).

3  
4 **PLAINTIFF'S CONTENTION**

5  
6 Plaintiff contends that the ALJ erred in failing to provide  
7 specific and legitimate reasons for rejecting the opinion of her  
8 treating physician, Dr. Thelma T. Fernandez. (Joint Stip. 4).

9  
10 **STANDARD OF REVIEW**

11 This court reviews the Commissioner's decision to determine  
12 if: (1) the Commissioner's findings are supported by substantial  
13 evidence; and (2) the Commissioner used proper legal standards.  
14 42 U.S.C § 405(g); see Carmickle v. Comm'r, 533 F.3d 1155, 1159  
15 (9th Cir. 2008); Hoopai v. Astrue, 499 F.3d 1071, 1074 (9th Cir.  
16 2007). "Substantial evidence is more than a scintilla, but less  
17 than a preponderance." Reddick v. Chater, 157 F.3d 715, 720  
18 (9th Cir. 1998) (citing Jamerson v. Chater, 112 F.3d 1064, 1066  
19 (9th Cir. 1997). It is relevant evidence "which a reasonable  
20 person might accept as adequate to support a conclusion."  
21 Hoopai, 499 F. 3d at 1074; Smolen v. Chater, 80 F.3d 1273, 1279  
22 (9th Cir. 1996). To determine whether substantial evidence  
23 supports a finding, "a court must 'consider the record as a  
24 whole, weighing both evidence that supports and evidence that  
25 detracts from the [Commissioner's] conclusion.'" Aukland v.  
26 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citation  
27 omitted); see Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir.

1 2006) (inferences "reasonably drawn from the record" can  
2 constitute substantial evidence).

3  
4 This Court "may not affirm [the Commissioner's] decision  
5 simply by isolating a specific quantum of support evidence, but  
6 must also consider evidence that detracts from [the  
7 Commissioner's] conclusion." Ray v. Bowen, 813 F.2d 914, 915  
8 (9th Cir. 1987) (citation and internal quotation marks omitted).  
9 However, the Court cannot disturb findings supported by  
10 substantial evidence, even though there may exist other evidence  
11 supporting Plaintiff's claim. See Torske v. Richardson, 484  
12 F.2d 59, 60 (9th Cir. 1973). "If the evidence can reasonably  
13 support either affirming or reversing the [Commissioner's]  
14 conclusion, [a] court may not substitute its judgment for that  
15 of the [Commissioner]." Reddick, 157 F.3d 715, 720-21 (9th Cir.  
16 1998) (citation omitted).

## 17 DISCUSSION

18  
19 After consideration of the record as a whole, the Court  
20 finds that the ALJ's decision is supported by substantial  
21 evidence and is free from material<sup>5</sup> legal error.

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26 <sup>5</sup> The harmless error rule applies to the review of  
27 administrative decisions regarding disability. See McLeod v.  
28 Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart,  
400 F.3d 676, 679 (9th Cir. 2005) (an ALJ's decision will not be  
reversed for errors that are harmless).

1 **A. The ALJ Provided Specific And Legitimate Reasons For**  
2 **Rejecting The Opinion Of Plaintiff's Treating Physician**

3  
4 Plaintiff complains that the ALJ failed to provide any  
5 specific and legitimate reasons for rejecting treating physician  
6 Dr. Fernandez's medical opinion. (Joint Stip. at 4). Plaintiff  
7 asserts that Dr. Fernandez's opinion must be accepted as a matter  
8 of law, resulting in a finding of disability. (Joint Stip. at  
9 6). The Court disagrees.

10  
11 On May 21 and 22, 2012, Dr. Fernandez completed a medical  
12 form in which she noted that Plaintiff suffers from  
13 fibromyalgia, neuropathy in extremities, degenerative back  
14 disease, and was being tested for lupus. (A.R. 370-372). Dr.  
15 Fernandez also noted that, in an eight-hour workday, Plaintiff  
16 can only sit or stand for fifteen minutes at a time. (Id.).  
17 Dr. Fernandez also checked off boxes on the form indicating that  
18 Plaintiff can occasionally lift ten, but never more than  
19 fifteen, pounds and can never climb, balance, stoop, kneel,  
20 crouch, crawl, or reach. (A.R. 372). Dr. Fernandez commented  
21 that Plaintiff is disabled in all factors and needs "in home  
22 care." (A.R. 371).

23 With respect to Dr. Fernandez's opinion, the ALJ stated the  
24 following:

25  
26 The undersigned gives minimal weight to the claimant's  
27 treating source opinion. Although this source did have  
28 the opportunity to examine and treat the claimant, the

1 opinions offered are not supported with a rationale or  
2 an identification of the signs and laboratory findings  
3 warranting such an opinion. Moreover, the opinion is  
4 not consistent with the other medical records as a  
5 whole. Instead, it essentially adopts the claimant's  
6 statements without objectivity or balance. Finally, to  
7 the extent the source opines on the ultimate issue of  
8 disability, she treads on an issue reserved for the  
9 Commissioner. Hence, the opinion is not entitled to  
10 controlling weight under 20 CFR Sections 404.1527  
11 and/or 416.927.

12 (A.R. 18).

13  
14 In general, "[t]he opinion of a treating physician is given  
15 deference because 'he is employed to cure and has a greater  
16 opportunity to know and observe the patient as an individual.'" Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595, 600 (9th  
17 Cir. 1999) (quoting Sprague v. Bowen, 812 F.2d 1226, 1230 (9th  
18 Cir. 1987)). But a treating physician's opinion "is not  
19 necessarily conclusive as to either the physical condition or  
20 the ultimate issue of disability." Id. "The ALJ need not  
21 accept the opinion of any physician including the treating  
22 physician, if that opinion is brief, conclusory, and  
23 inadequately supported by clinical findings." Thomas v.  
24 Barnhart, 278 F.3d 947, 957 (9th Cir. 2002).

25  
26 When rejecting the uncontroverted opinion of a treating  
27 physician, the ALJ must present "clear and convincing reasons."  
28



1 Id. at 957. However, where there are conflicting medical  
2 opinions, as is the case here, "the ALJ may reject the opinion  
3 of a treating physician in favor of a conflicting opinion of an  
4 examining physician if the ALJ makes 'findings setting forth  
5 specific, legitimate reasons for doing so that are based on  
6 substantial evidence in the record.'" Id. (quoting Magallanes  
7 v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)).

8  
9 The ALJ's decision thoroughly summarized the medical  
10 evidence in the record (A.R. 15-19), found Dr. Fernandez's  
11 opinion that Plaintiff was disabled to be inconsistent with the  
12 medical record as a whole and unsupported by an identification  
13 of signs or lab findings and, as set forth below, specified the  
14 inconsistencies and lack of support for Dr. Fernandez's opinion.  
15 The ALJ's decision was supported by the record.

16 As a threshold matter, the fact that Dr. Fernandez's  
17 opinion was expressed through a standardized, check-the-box form  
18 that provided no supporting reasoning or clinical findings  
19 provides support for affording it minimal weight. See Molina v.  
20 Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012) (ALJ properly  
21 discounted physician's assistant's opinion when it "consisted  
22 primarily of a standardized, check-the-box form in which she  
23 failed to provide supporting reasoning or clinical findings,  
24 despite being instructed to do so"). Ultimately, it would be  
25 "error to give an opinion controlling weight simply because it  
26 is the opinion of a treating source if it is not well-supported  
27 . . . or if it is inconsistent with the other substantial  
28 evidence." Social Security Ruling 96-2p.

1           The ALJ noted that on the May 2012 medical form, Dr.  
2 Fernandez stated that Plaintiff suffers from "fibromyalgia," but  
3 "fibromyalgia" is only once mentioned at a May 26, 2010 exam  
4 with no follow up and Dr. Fernandez did not cite to any  
5 laboratory findings or objective evidence in the record to  
6 support such a diagnosis. (A.R. 17, 371-372). The ALJ  
7 summarized and discussed the testimony of medical expert Dr.  
8 Hugh Savage, who stated that he "looked very carefully" through  
9 Plaintiff's medical records for anything alarming regarding  
10 fibromyalgia and stated that he "saw no indication of actual  
11 examination which would reveal in any consistent matter, but  
12 especially so, the consultative exam... showed no specifically  
13 stated, no indication of any type of characteristic pain seen  
14 with FM." (A.R. 32). Dr. Savage also testified that  
15 Plaintiff's medical records showed a normal sedimentation rate,  
16 meaning that there was no inflammation in her body. (A.R. 17,  
17 32, 477-498).

18           Additionally, while Dr. Fernandez indicated that Plaintiff  
19 was being tested for lupus (A.R. 371), Dr. Savage testified that  
20 Plaintiff's 2012 anti-DNA, anti-smooth muscle, and ANA test  
21 results, which are "important for assessing lupus", were  
22 negative. (A.R. 17, 32, 488).

23           Moreover, while Dr. Fernandez stated on the medical form  
24 that Plaintiff suffers from neuropathy in extremities,  
25 degenerative back disease, and is disabled in all factors (A.R.  
26 371), the results from Plaintiff's October 2012 consultative  
27 examination with state agency medical consultant Dr. Elliott  
28

1 Gilpeer indicate that she had "five out of five" muscle strength  
2 and a negative straight-leg raising test. (A.R. 19, 34, 68, 70-  
3 72).

4  
5 The ALJ also considered an October 24, 2012 CT scan of the  
6 abdomen and pelvis which revealed mild degenerative changes of  
7 the lower lumbar spine as well as an August 21, 2010 lumbar  
8 spine MRI showing only mild discogenic disease with no central  
9 spinal stenosis. (A.R. 18, 401-402, 420-421).

10 Thus, the Court finds that the ALJ provided specific and  
11 legitimate reasons for affording minimal weight to Dr.  
12 Fernandez's opinion.

13  
14 The ALJ also rejected Dr. Fernandez's opinion based on his  
15 finding that Dr. Fernandez relied on Plaintiff's statements of  
16 her symptoms and limitations "without objectivity or balance."  
17 (A.R. 18). Plaintiff argues that the ALJ did not elaborate on  
18 this conclusory statement by "identifying any evidence  
19 whatsoever that would cast doubt on the treating physician's  
20 professionalism or objectivity." (Joint Stip. 5). However, the  
21 ALJ made this finding after a thorough discussion of the fact  
22 that Dr. Fernandez did not cite to any objective evidence to  
23 support her opinion and, therefore, reasonably concluded that  
24 Plaintiff's statements were the source of Dr. Fernandez's  
25 opinion.

26  
27 "An ALJ may reject a treating physician's opinion if it is  
28 based to a large extent on a claimant's self-reports that have

1 been properly discounted as incredible." Tommasetti v. Astrue,  
2 533 F.3d 1035, 1041 (9th Cir. 2008); see also Andrews v.  
3 Shalala, 53 F.3d 1035, 1043 (9th Cir. 1995) ("[A]n opinion of  
4 disability premised to a large extent upon the claimant's own  
5 accounts of his symptoms and limitations may be disregarded,  
6 once those complaints have been properly discounted.")

7  
8 Moreover, the ALJ also found Plaintiff's credibility to be  
9 at issue because her pain allegations were not supported by  
10 objective evidence and were inconsistent with her activities of  
11 daily living. (A.R. 15-19).

12 Although a claimant's subjective complaint "cannot be  
13 rejected on the sole ground that it is not fully corroborated by  
14 objective medical evidence, the medical evidence is still a  
15 relevant factor . . ." Rollins v. Massanari, 261 F.3d 853, 857  
16 (9th Cir. 2001). Lack of supporting objective medical evidence  
17 is a consideration for the ALJ in evaluating credibility. See  
18 20 C.F.R. §§ 404.1529(c)(4), 416.929(c)(4) (in determining  
19 disability, an ALJ will evaluate a claimant's statements about  
20 the intensity, persistence and limiting effects of her symptoms  
21 "in relation to the objective medical evidence and other  
22 evidence"). Here, after reviewing the medical record, the ALJ  
23 found that the objective medical evidence did not fully support  
24 Plaintiff's complaints of total disability.

25  
26 Plaintiff's pain allegations were also inconsistent with  
27 statements regarding her daily living. For instance, while  
28 Plaintiff testified that she uses her walker "90 percent of the

1 time" as well as from "room to room" in her home (A.R. 18, 33,  
2 43), Dr. Savage testified that there is no mention of a walker  
3 from her October 2012 consultative exam with the state agency  
4 consultant. (A.R. 18, 34, 70-72). The ALJ also found that  
5 Plaintiff's claims of total disability conflicted with her  
6 activities of daily living including dressing, preparing simple  
7 meals, paying bills, counting change, handling a savings  
8 account, using a checkbook/money order, shopping, swimming (to  
9 relieve pain), talking with her daughter, making phone calls,  
10 reading the bible, and attending bible study. (A.R. 16, 252-  
11 267). The ALJ further found that Plaintiff's testimony that she  
12 "can't do laundry" but that she has a neighbor that helps her  
13 lift her laundry into his truck, drives her across the street,  
14 and unloads it for her so that she can do a "couple loads at a  
15 time," lacked credibility. (A.R. 16, 42).

16 Similarly, while Plaintiff testified that she suffers side  
17 effects from her medications, including vertigo and extreme  
18 dizziness (A.R. 38), the ALJ noted that "the treatment notes  
19 reflect that the medication was adjusted or changed" in response  
20 to side effects. (A.R. 16).

21  
22 Accordingly, the ALJ's finding that Dr. Fernandez's opinion  
23 was unpersuasive to the extent that it relied on Plaintiff's  
24 subjective symptoms was also a specific and legitimate reason  
25 for rejecting Dr. Fernandez's opinion about the limiting effects  
26 of Plaintiff's symptoms.  
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**ORDER**

For all of the foregoing reasons, the decision of the Commissioner is affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 30, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
ALKA SAGAR  
UNITED STATES MAGISTRATE JUDGE