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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JANNI RUTH G.,¹)	NO. CV 17-6850-KS
Plaintiff,)	
v.)	MEMORANDUM OPINION AND ORDER
NANCY A. BERRYHILL, Acting)	
Commissioner of Social Security,)	
Defendant.)	
_____)	

INTRODUCTION

Janni Ruth G. (“Plaintiff”) filed a Complaint on September 18, 2017, seeking review of the denial of her application for a period of disability and disability insurance benefits (“DIB”). On September 14, 2018, the parties filed a Joint Stipulation (“Joint Stip.”). (Dkt. No. 21.) On September 17, 2018, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. (Dkt. Nos. 11, 22, 23.) Plaintiff seeks an order reversing the Commissioner’s decision and ordering the payment of benefits or, in the alternative, remanding for further proceedings. (Joint Stip. at

¹ Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 25.) The Commissioner requests that the ALJ's decision be affirmed or, in the alternative,
2 remanded for further proceedings. (*See id.*) The Court has taken the matter under
3 submission without oral argument.
4

5 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**

6

7 On February 26, 2014, Plaintiff, who was born on June 24, 1958, filed an application
8 for a period of disability and DIB.² (*See* Administrative Record (“AR”) 173.) Plaintiff
9 alleged disability commencing November 14, 2012 due to: hypothyroidism; high blood
10 pressure; depression; fibromyalgia; back pain; arthritis; and rheumatoid arthritis. (AR 173,
11 195.) Plaintiff previously worked as an admissions clerk (DOT 205.362-018) and as a
12 benefits clerk (DOT 205.567-010)³. (AR 68-69, 197.) After the Commissioner denied
13 Plaintiff's applications initially (AR 89) and on reconsideration (AR 102), Plaintiff requested
14 a hearing (AR 112-17). Administrative Law Judge Lesley Troope (“ALJ”) held a hearing on
15 January 21, 2016. (AR 34.) Plaintiff, who was represented by counsel, testified before the
16 ALJ as did vocational expert (“VE”) John Komar. (AR 34-76.) On March 9, 2016, the ALJ
17 issued an unfavorable decision, denying Plaintiff's application. (AR 19-28.) On August 8,
18 2017, the Appeals Council denied Plaintiff's request for review. (AR 1-6.)
19

20 **SUMMARY OF ADMINISTRATIVE DECISION**

21

22 The ALJ found that Plaintiff met the insured status requirements of the Social Security
23 Act through June 30, 2017. (AR 21.) The ALJ further found that Plaintiff had not engaged
24 in substantial gainful activity since her alleged onset date of November 14, 2012. (AR 21.)
25

26 ² Plaintiff was 54 years old on the alleged onset date and thus met the agency's definition of a person closely
27 approaching advanced age. *See* 20 C.F.R. § 404.1563(d). Plaintiff has since changed age categories twice and is now a
28 person of advanced age. *See id.* § 404.1563(e).

³ The ALJ cited DOT 205.567-019 but the DOT code for benefits clerk II is 505.567-010.

1 The ALJ determined that Plaintiff had the following severe impairments: “degenerative joint
2 and degenerative disc disease of the cervical lumbosacral and thoracic spine, lupus, and skin
3 cancer.” (AR 21.) In reaching that determination, the ALJ found that Plaintiff’s diagnosis of
4 fibromyalgia was not a medically determinable impairment and Plaintiff’s depression was
5 non-severe. (AR 22.) The ALJ concluded that Plaintiff did not have an impairment or
6 combination of impairments that met or medically equaled the severity of any impairments
7 listed in 20 C.F.R. part 404, subpart P, appendix 1 (20 C.F.R. §§ 404.1520(d), 404.1525,
8 404.1526). (AR 24.) The ALJ determined that Plaintiff had the following residual
9 functional capacity (“RFC”):

10
11 [L]ift and carry 20 pounds occasionally, 10 pounds frequently, standing and
12 walking for 6 hours in an 8-hour workday, sitting for 8 hours. [Plaintiff] is
13 precluded from climbing ropes, ladders, and scaffolds, but can perform all other
14 postural activity frequently. [Plaintiff] is precluded from outdoor work,
15 including concentrated exposure to extreme cold and vibration. [Plaintiff] is
16 also precluded from utilizing a motorized vehicle in the work setting and from
17 exposure to workplace hazards. Finally, [Plaintiff] is limited to frequent
18 handling and fingering with the right upper extremity, but has no other
19 significant limitations.

20
21 (AR 24.)
22

23 The ALJ found that Plaintiff was able to perform her past relevant work as an
24 admissions clerk (DOT 205.362-018) and a benefits clerk (DOT 205.567-010). (AR 27-28.)
25 Accordingly, the ALJ determined that Plaintiff had not been under a disability, as defined in
26 the Social Security Act, from the alleged onset date through the date of the ALJ’s
27 decision. (AR 28.)
28

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's decision to determine whether it is free from legal error and supported by substantial evidence in the record as a whole. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). "Substantial evidence is 'more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Gutierrez v. Comm'r of Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir. 2014) (internal citations omitted). "Even when the evidence is susceptible to more than one rational interpretation, we must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012).

Although this Court cannot substitute its discretion for the Commissioner's, the Court nonetheless must review the record as a whole, "weighing both the evidence that supports and the evidence that detracts from the [Commissioner's] conclusion." *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (internal quotation marks and citation omitted); *Desrosiers v. Sec'y of Health and Hum. Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). "The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and for resolving ambiguities." *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

The Court will uphold the Commissioner's decision when the evidence is susceptible to more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). However, the Court may review only the reasons stated by the ALJ in her decision "and may not affirm the ALJ on a ground upon which he did not rely." *Orn*, 495 F.3d at 630; *see also Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). The Court will not reverse the Commissioner's decision if it is based on harmless error, which exists if the error is "inconsequential to the ultimate nondisability determination," or if despite the legal error,

1 ‘the agency’s path may reasonably be discerned.’” *Brown-Hunter v. Colvin*, 806 F.3d 487,
2 492 (9th Cir. 2015) (internal citations omitted).

3 4 **DISCUSSION**

5
6 Three issues are in dispute: (1) whether the ALJ properly evaluated the credibility of
7 Plaintiff’s statements about her symptoms; (2) whether the ALJ properly assessed the
8 medical evidence; and (3) whether the ALJ’s determination the Plaintiff’s fibromyalgia is not
9 a medically determinable impairment was “free of harmful legal error.” (Joint Stip. at 2-3.)
10 The Court exercises its discretion to begin the analysis with the third issue before
11 considering Plaintiff’s claims concerning the ALJ’s evaluation of her credibility and the
12 medical evidence.

13 14 **I. Plaintiff’s Fibromyalgia**

15 16 **A. Medical Evidence**

17
18 Plaintiff contends that the ALJ erred by failing to find that Plaintiff has a medically
19 determinable impairment of fibromyalgia. In reaching this conclusion, the ALJ
20 acknowledged two records that listed fibromyalgia as one of Plaintiff’s diagnoses (*see* AR
21 22) (citing Ex. 21F at 10, 19F at 90): an October 6, 2014 note and a December 5, 2014 note
22 from Plaintiff’s gastroenterologist, Kumaravel S. Perumalsamy M.D., which indicated that
23 Dr. Perumalsamy’s “Impression” was that Plaintiff had multiple medical conditions,
24 including fibromyalgia, fatty liver disease, depression, lupus, arthritis, hypothyroidism, and
25 hypertension (AR 614-15, 736-37). Plaintiff identifies no other records reflecting a
26 diagnosis of fibromyalgia. (*See generally* Joint Stip. at 24-25; AR 400-02.)

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1 **B. Applicable Law**

2
3 The claimant bears the burden of proving at step two of the sequential analysis that she
4 has a medically determinable impairment and that medically determinable impairment, or
5 combination of medically determinable impairments, is severe. *See Bowen v. Yuckert*, 482
6 U.S. 137, 146 (1987); *Sutherland v. Comm’r Soc. Sec. Admin.*, 234 F. Supp. 1063, 1068 (D.
7 Or. 2017). In turn, “[t]he RFC assessment considers only functional limitations and
8 restrictions that result from an individual’s medically determinable impairment or
9 combination of impairments.” S.S.R. 96-8p. Accordingly, an ALJ’s assessment of whether
10 an alleged impairment is “medically determinable” can have a significant impact on the
11 ALJ’s ultimate disability determination.

12
13 To be “medically determinable,” “a physical or mental impairment must be established
14 by objective medical evidence from an acceptable medical source.” 20 C.F.R. § 404.1521
15 (governing claims filed after March 27, 2017); *see also* 20 C.F.R. § 404.1513(a) (governing
16 claims filed before March 27, 2017) (“we need evidence from acceptable medical sources to
17 establish whether you have a medically determinable impairment”). Further, pursuant to
18 Social Security Ruling (“SSR”) 12-2p, in determining whether a plaintiff’s alleged
19 fibromyalgia constitutes a medically determinable impairment, the Commissioner cannot
20 rely on a physician’s diagnosis alone. “The evidence must document that the physician
21 reviewed the person’s medical history and conducted a physical exam. S.S.R. 12-2p.
22 Additionally, under the SSR, a person has a medically determinable impairment of
23 fibromyalgia only if: (1) the physician diagnosed fibromyalgia; (2) the diagnosis is not
24 inconsistent with other evidence in the person’s case record; and (3) the diagnosing
25 physician provides one of the following two sets of evidence:

- 26
27 (A) (i) a history of pain in all quadrants of the body that has persisted for at
28 least three months; (ii) at least 11 positive tender points on physical

1 examination; and (iii) other disorders that could cause the symptoms or signs
2 were excluded; or

3
4 (B) (i) a history of pain in all quadrants of the body that has persisted for at
5 least three months; (ii) repeated manifestations of six or more symptoms or
6 signs of fibromyalgia, “especially manifestations of fatigue, cognitive or
7 memory problems (‘fibro fog), waking unrefreshed, depression, anxiety
8 disorder, or irritable bowel syndrome,” and (iii) other disorders that could
9 cause these repeated manifestations of symptoms or signs were excluded.

10
11 S.S.R. 12-2p.

12
13 However, “Social Security Rulings do not have the force of law.” *Quang Van Han v.*
14 *Bowen*, 882 F.2d 1453, 1457 (9th Cir. 1989). Accordingly, in *Contreras v. Astrue*, 378 Fed.
15 Appx. 656, 657 (9th Cir. 2010), the Ninth Circuit determined that the ALJ erred in finding
16 that the plaintiff’s fibromyalgia was not a medically determinable impairment where the
17 diagnosing physician had supported his diagnosis with clinical findings but had not
18 documented the specific number and location of the plaintiff’s tender points. *Contreras*, 378
19 Fed. Appx. at 657. In support of the reversal, the Ninth Circuit pointed out that a
20 rheumatologist – a doctor with expertise in musculoskeletal disease and systemic
21 autoimmune conditions, including fibromyalgia – had examined the plaintiff, “diagnosed the
22 disease[,] and documented sufficient clinical findings to support his diagnosis.” *Contreras*,
23 378 Fed. Appx. at 657. The Ninth Circuit also noted that the rheumatologist had indicated
24 that the plaintiff struggled “daily . . . with severe fatigue, depression, increase in migraines,
25 and multiple tender points throughout the body;” observed that Plaintiff had tender points in
26 widespread distribution; and opined that the plaintiff was disabled by her fibromyalgia.
27 *Contreras*, 378 Fed. Appx. at 657.

1 **C. ALJ’s Decision**

2
3 The ALJ acknowledged that Plaintiff “ha[d] been diagnosed with fibromyalgia” and
4 cited the two notes written by Plaintiff’s gastroenterologist. (AR 22.) “However,” wrote the
5 ALJ, “this diagnosis was rendered by a gastroenterologist, not a rheumatologist or internist,
6 or other medical professional with particular expertise;” “there is no indication that
7 [Plaintiff’s] complaints [were] evaluated using any acceptable methodology to diagnose
8 fibromyalgia” but, rather, the gastroenterologist merely relied on Plaintiff’s claim of a
9 history of fibromyalgia; and “there is a lack of support for this diagnosis elsewhere in the
10 medical treatment record.” (AR 22.) Accordingly, the ALJ found that Plaintiff did not have
11 a medically determinable impairment of fibromyalgia. (AR 22.)

12
13 **D. Analysis**

14
15 Plaintiff contends that the ALJ erred in finding that Dr. Perumalsamy’s diagnosis of
16 fibromyalgia was not a “medically determinable” impairment at step two because Plaintiff
17 “has a history of widespread pain in her cervical spine, thoracic spine, lower back, knees,
18 right arm, and right hand” and she “reported fatigue, feeling tired, depression, and anxiety.”
19 (Joint Stip at 22.) Plaintiff’s description of her symptoms, however, falls short of what is
20 required to satisfy the agency’s definition of a medically determinable impairment of
21 fibromyalgia. *Compare* S.S.R. 12-2p (requiring, *inter alia*, either “manifestations of *six* or
22 more” signs or symptoms of fibromyalgia or at least 11 positive tender points on physical
23 examination) (emphasis added) *with* Joint Stip. at 22 (listing only three manifestations of
24 signs of symptoms of fibromyalgia and identifying no positive tender points). Furthermore,
25 the agency’s definition of a medically determinable impairment of fibromyalgia requires
26 evidence that other disorders that could cause the plaintiff’s repeated manifestations of
27 symptoms or signs were excluded. Plaintiff asserts that the report of neurosurgeon Sean X.
28 Xie, M.D. satisfies this requirement (Joint Stip. at 24-25) (citing AR 402), but the record

1 refutes Plaintiff's assertion. Dr. Xie stated that Plaintiff's "back pain was most likely from
2 her degenerative diseases" – not fibromyalgia – and he stated that his clinical impression
3 was that Plaintiff had "right cervical radiculopathy, right brachial plexopathy" – not
4 fibromyalgia. (AR 402.) Dr. Xie also pointed out that Plaintiff had no bowel dysfunction,
5 one of the signs or symptoms associated with fibromyalgia. (AR 401); *see also* S.S.R. 12-
6 2p.

7
8 Furthermore, there is no evidence in the relevant treatment notes that Dr. Perumalsamy
9 reviewed Plaintiff's medical history before including fibromyalgia on his list of clinical
10 impressions. (*See generally* AR 614-15, 736-37.) Similarly, there is no evidence that Dr.
11 Perumalsamy conducted an examination of Plaintiff's musculoskeletal wellbeing. (*See*
12 *generally* AR 736-37 (October 2014 exam covered Plaintiff's general appearance, eyes,
13 ears, nose, throat, neck, respiratory and cardiovascular systems, gastrointestinal wellness,
14 lymphatic system, neurologic wellbeing, and mental status), 614-15 (December 2014 exam
15 limited to Plaintiff's gastrointestinal wellness).) Finally, during Dr. Perumalsamy's
16 conversations with Plaintiff, Plaintiff denied experiencing several of the signs or symptoms
17 of fibromyalgia that she now claims she experiences. For example, Plaintiff denied
18 "fatigue/weakness," "being tired all the time," and nervousness. (AR 614, 736.) Plaintiff
19 complained solely of depression and back pain, although Dr. Perumalsamy found no
20 evidence of depression, anxiety, or agitation during his October 2014 examination. (AR
21 736.) Plaintiff also stated on her Adult Function report that her conditions did not affect her
22 memory, ruling out another classic sign or symptom associated with fibromyalgia. (AR
23 228); *see also* S.S.R. 12-2p.

24
25 In sum, Dr. Perumalsamy provided no clinical findings in support of his "impression"
26 of fibromyalgia and his impression is not supported by the medical record as a whole. As
27 such, to the extent that Dr. Perumalsamy diagnosed Plaintiff with fibromyalgia, that
28 diagnosis is wholly conclusory. An ALJ may properly reject a treating physician's

1 conclusions that, like Dr. Perumalsamy's, are "brief, conclusory and inadequately supported
2 by clinical findings." *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); *Bayliss v.*
3 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) ("discrepancy" between treating physician's
4 assessment and clinical notes is a clear and convincing reason for not relying on the
5 doctor's opinion). Further, the conclusory nature of Dr. Perumalsamy's "diagnosis"
6 distinguishes this case from the Ninth Circuit's decision in *Contreras*, where the plaintiff
7 had a diagnosis of fibromyalgia from a specialist who had examined her and documented
8 multiple clinical findings consistent with the diagnosis. For these reasons, the Court finds
9 that the ALJ did not err in declining to adopt Dr. Perumalsamy's "diagnosis" at step two.

10 11 **II. ALJ's Evaluation of Plaintiff's Credibility**

12 13 **A. Plaintiff's Statements**

14 15 *1. April 15, 2014 Adult Function Report*

16
17 The second issue in dispute is whether the ALJ properly evaluated the credibility of
18 Plaintiff's statements about her symptoms and limitations. In an Adult Function Report
19 completed on April 15, 2014 Plaintiff made the following statements about her symptoms
20 and limitations. When asked how her conditions limited her ability to work, Plaintiff stated,
21 "Unable to sleep Cannot type and/or write for long periods of time. Cannot bend and
22 lift anything. Can't sit for prolonged periods of time." (AR 223.) She stated that during the
23 day she showers, dresses, goes to the store if needed, does a load of laundry, watches TV,
24 and makes dinner. (AR 224.) She also stated that she feeds her cat. (AR 224.) She stated
25 that, because of her conditions, she is no longer able to clean the floors and garden. (AR
26 224.) She stated that it is too hard for her to get in and out of a bathtub independently, so she
27 only takes showers. (AR 224.) Plaintiff stated that she prepares dinner each day: "2 course
28 max." (AR 225.) Plaintiff stated that she typically prepares "frozen burritos, or baked

1 chicken, or one pan hamburger meals.” (AR 225.) Meal preparation takes 30 minutes to an
2 hour. (AR 225.) Plaintiff stated that before her conditions began she used to love cooking
3 and would make “just about anything.” (AR 225.) Plaintiff stated that her current hobbies
4 are watching TV, which she does most of the day, but, before her conditions began, she used
5 to do a lot of gardening, made stained glass, swam, and cooked. (AR 227.) She also stated
6 that she does not shop or visit with her friends like she did before her conditions began. (AR
7 228.)

8
9 Plaintiff stated that she is able to do the following household chores: laundry; cleaning
10 the counters; dusting; and outside watering. (AR 225.) She stated that she does laundry and
11 dusts once or twice a week and waters the plants and cleans the counters daily. (AR 225.)

12
13 Plaintiff stated that she goes outside daily and is able to get herself around both by
14 walking and driving. (AR 226.) Plaintiff stated that she does grocery shopping twice a
15 week, is able to pay the bills, count change, handle a savings account, and use the checkbook
16 (AR 226), and her ability to handle money has not changed since her conditions began (AR
17 227). She stated that she does need some help unloading the groceries. (AR 227.) She
18 stated that she does not need special reminders to take care of her personal needs or to take
19 her medications. (AR 225.) Plaintiff stated that she has no difficulties following written
20 instructions and has no difficulties following spoken instructions if they are in a subject with
21 which she is familiar. (AR 228.)

22
23 Plaintiff indicated that her conditions caused functional limitations in the following
24 areas: lifting; bending; sitting; kneeling; concentration; and using hands. (AR 228.) She
25 explained that she “cannot kneel to clean flowers + lower cabinets” and her “ability to
26 concentrate is limited.” (AR 230.) With regards to her hands, Plaintiff stated that she cannot
27 open jars of food and food packages, has trouble using a can opener, and finds it difficult to
28 remove plastic seals from jars of food or bottles of medicine. (AR 230.)

1 one-pan meal for dinner. (AR 53.) With regards to cooking, Plaintiff testified that she takes
2 breaks every five to ten minutes to relax her back. (AR 53-54.) With regards to cleaning,
3 Plaintiff testified that she washes the sinks and counters and tidies but does not sweep, mop,
4 or vacuum. (AR 54-55.) Plaintiff estimated that, in an eight-hour workday, she would need
5 to lie down for half an hour once or twice. (AR 59.) Plaintiff testified that her impairments
6 have also interfered with her ability to do some personal grooming – namely, her difficulty
7 bending her neck makes it hard for her to dye her hair in the sink and curl her hair. (AR 55.)
8 She testified that she goes to the grocery store maybe three times a week (AR 55), and, while
9 shopping, she leans on the shopping cart (AR 56). She testified that she can lift a gallon of
10 milk with two hands and might be able to lift it with just her left hand. (AR 58.)
11

12 Plaintiff testified that, with the donut shaped pillow recommended by her physical
13 therapist, she could sit at home for 60-90 minutes. (AR 56-57.) She testified that she can
14 stand for 10 minutes before needing to sit down and, similarly, can walk for eight to ten
15 minutes. (AR 57.) She similarly testified that she can type for approximately 10 minutes
16 before needing a break. (AR 59.) Plaintiff testified that she has suffered from insomnia for
17 “years” but, because of her physical impairments, is now limited to sleeping on her left side.
18 (AR 60.) She testified that sometimes she only sleeps for “a couple of hours in a night.”
19 (AR 60.) Plaintiff testified that on a “bad” day, she cannot get around without experiencing
20 pain, cannot straighten her back, and has to walk with her legs apart. (AR 61-62.) She
21 estimated that has two or three bad days a week. (AR 62.) She testified that even if she was
22 able to work, she did not think she could retain full time employment because of the
23 frequency of her doctor’s appointments. (AR 62.) On an average day she testified her pain
24 level is a six on a scale of one to ten and on a bad day her pain level is a nine. (AR 65.)
25
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1 **B. Applicable Law**

2
3 An ALJ must make two findings before determining that a claimant’s pain or symptom
4 testimony is not credible. *Treichler v. Comm’r of Soc. Sec.*, 775 F.3d 1090, 1102 (9th Cir.
5 2014). “First, the ALJ must determine whether the claimant has presented objective medical
6 evidence of an underlying impairment which could reasonably be expected to produce the
7 pain or other symptoms alleged.” *Id.* (quoting *Lingenfelter*, 504 F.3d at 1036). “Second, if
8 the claimant has produced that evidence, and the ALJ has not determined that the claimant is
9 malingering, the ALJ must provide specific, clear and convincing reasons for rejecting the
10 claimant’s testimony regarding the severity of the claimant’s symptoms” and those reasons
11 must be supported by substantial evidence in the record. *Id.*; *see also Marsh v. Colvin*, 792
12 F.3d 1170, 1174 n.2 (9th Cir. 2015); *Carmickle v. Comm’r of Soc. Sec.*, 533 F.3d 1155, 1161
13 (9th Cir. 2008) (court must determine “whether the ALJ’s adverse credibility finding . . . is
14 supported by substantial evidence under the clear and convincing standard”).

15
16 With respect to the first step, a plaintiff “need not show that [his] impairment could
17 reasonably be expected to cause the severity of the symptom [he] has alleged; [he] need only
18 show that it could reasonably have caused *some* degree of the symptom.” *Lingenfelter v.*
19 *Astrue*, 504 F.3d 1028, 1035–36 (9th Cir. 2007) (quoting *Smolen v. Chater*, 80 F.3d 1273,
20 1282 (9th Cir. 1996)) (emphasis added). “Thus, the ALJ may not reject subjective symptom
21 testimony . . . simply because there is no showing that the impairment can reasonably
22 produce the *degree* of symptom alleged.” *Id.* (quoting *Smolen*, 80 F.3d at 1282); *see also*
23 *Reddick v. Chater*, 157 F.3d 715, 722 (1998) (“[T]he Commissioner may not discredit the
24 claimant’s testimony as to the severity of symptoms merely because they are unsupported by
25 objective medical evidence.”).

26
27 With respect to the second step, in weighing a plaintiff’s credibility, the ALJ may
28 consider many factors, including: “(1) ordinary techniques of credibility evaluation, such as

1 the claimant's reputation for lying, prior inconsistent statements concerning the symptoms,
2 and other testimony . . . that appears less than candid; (2) unexplained or inadequately
3 explained failure to seek treatment or to follow a prescribed course of treatment; and (3) the
4 claimant's daily activities." *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008).
5 However, "subjective pain testimony cannot be rejected on the *sole* ground that it is not fully
6 corroborated by objective medical evidence." *Rollins v. Massanari*, 261 F.3d 853, 857 (9th
7 Cir. 2001) (emphasis added) (citation omitted).

8 9 **C. ALJ's Decision and Analysis**

10
11 The ALJ stated that she considered Plaintiff's allegations but "due to the lack of
12 consistent medical evidence and the inconsistencies in [Plaintiff's] statements and actions"
13 was unable to afford her allegations "full weight." (AR 26.) The ALJ explained that there is
14 a lack of medical evidence indicating that Plaintiff's impairments are as disabling as she
15 claims and, further, "a fundamental disconnect" between Plaintiff's allegations of chronic
16 pain and limitations and her statements and presentation to various medical providers. (AR
17 26-27.) In particular, the ALJ noted that Plaintiff had denied back pain, had unremarkable
18 clinical presentations, or reported only localized tenderness and reduced range of motion on
19 multiple occasions. (AR 25.) "Considering that [Plaintiff] alleges that her back pain and
20 related symptoms are chronic, and does not allege that these symptoms significantly wax or
21 wane," the ALJ wrote, "these clinical inconsistencies are difficult to reconcile." (AR 25.)

22
23 The ALJ further explained that, although Plaintiff testified that she experienced
24 chronic right hand symptoms, the treatment record reflected only limited and isolated
25 mentions of hand symptoms. (AR 27.) Similarly, Plaintiff testified that she suffers from
26 chronic abdominal pain due to her medications, but she did not report this side effect to her
27 medical providers and, instead, denied abdominal pain on several occasions. (AR 27.)

1 “There is ample reason,” the ALJ concluded, “to be cautious accepting [Plaintiff’s]
2 allegations in the absence of substantial objective medical support.” (AR 27.)
3

4 The ALJ’s reasons for finding Plaintiff less than fully credible are clear, convincing,
5 and supported by substantial evidence in the record. As stated above, the Commissioner may
6 use a plaintiff’s “prior inconsistent statements concerning the symptoms, and other testimony
7 . . . that appears less than candid” to evaluate the plaintiff’s credibility. *Tommasetti*, 533
8 F.3d at 1039.
9

10 The Court reviewed approximately 450 pages of medical records. As the ALJ noted,
11 Plaintiff sometimes denied experiencing back pain (*see, e.g.*, AR 648 (9/10/15), 614
12 (10/5/14)), despite describing her back pain to the Commissioner as chronic and unrelenting.
13 Accordingly, the ALJ did not err in citing Plaintiff’s inconsistent statements about back pain
14 as a reason for finding Plaintiff less than fully credible.
15

16 Plaintiff did mention or receive treatment related to her right hand/arm impairments on
17 several dates: December 30, 2014 (AR 608); February 2, 2015 (AR 439); July 7, 2015 (AR
18 398); April 24, 2015 (AR 401); and November 14, 2015 (AR 427). However, there are no
19 records reflecting any complaints about her ability to use her hands prior to December 30,
20 2014, and she did not report those difficulties to the examining physiatrist, Fariba Vesali,
21 M.D., on May 20, 2014. (AR 322.) Nevertheless, Plaintiff stated in in her April 2014
22 function report that she had difficulty using her fingers and opening cans. When, as here, the
23 evidence is susceptible to more than one rational interpretation, the Court must uphold the
24 ALJ’s findings if they are supported by inferences reasonably drawn from the
25 record. *Molina*, 674 F.3d at 1110. Accordingly, the Court finds that the record adequately
26 supports the ALJ’s conclusion that Plaintiff’s complaints about her hand and arm
27 impairments were not as consistent as would be expected given her allegations that her right
28 arm and hand were effectively unusable and caused chronic pain. *Cf. Gutierrez*, 740 F.3d at

1 522-23 (“Substantial evidence is ‘more than a mere scintilla but less than a preponderance; it
2 is such relevant evidence as a reasonable mind might accept as adequate to support a
3 conclusion.’”) (internal citations omitted).
4

5 The record also supports the ALJ’s determination that Plaintiff’s statements were less
6 than fully credible because Plaintiff complained to the ALJ that she experienced abdominal
7 pain as a result of her medications but had never reported this side effect to her care
8 providers. (AR 27.) Indeed, as the ALJ noted, Plaintiff repeatedly *denied* experiencing
9 abdominal pain. (*See, e.g.*, AR 734 (10/6/14), 703 (6/2/15), 614 (12/5/14), 559 (3/17/15).)
10 Given Plaintiff’s inconsistent statements about many of her symptoms, the ALJ did not err in
11 finding that Plaintiff’s statements about symptoms and limitations were not fully credible.
12

13 **III. ALJ’s Evaluation of the Medical Record**

14

15 The final issue in dispute concerns the ALJ’s evaluation of the medical evidence.
16 Plaintiff advances the following arguments in support of her position: (1) the ALJ
17 improperly weighed the opinions of Drs. Nguyen and Rubinoff, who both endorsed brief
18 absences from work (Joint Stip. at 14); (2) the ALJ erred by failing to “reference Dr. Xie, a
19 neurosurgeon,” who did not recommend surgery (Joint Stip. at 15); (3) the ALJ did not
20 adequately weigh evidence from the physician assistants and nurse practitioners at Antelope
21 Valley Health Center (Joint Stip. at 15); (4) the ALJ improperly weighed the opinion of
22 Margaret Bryden, a marriage and family therapist (Joint Stip. at 14); and (5) the ALJ erred at
23 step two of the sequential analysis when she found that the medical evidence did not support
24 a finding that Plaintiff had a severe mental impairment (Joint Stip. at 16). Although Plaintiff
25 does not identify any medical evidence assessing Plaintiff with functional limitations more
26 restrictive than those assessed by the ALJ, the Court considers each of Plaintiff’s arguments
27 in turn.
28

1 **A. Notes of Drs. Nguyen and Rubinoff**

2
3 Plaintiff contends that the ALJ erred by assigning little weight to the notes of Drs.
4 Nguyen and Rubinoff. Specifically, on February 28, 2011, Dr. Lawrence Rubinoff, M.D.,
5 wrote a note stating that Plaintiff would be unable to work for two days. (AR 299.) Almost
6 two years later, on November 13, 2012, Dr. Hong Phuc Nguyen, D.O., stated that Plaintiff
7 would be unable to work for two weeks in 2012 and, upon returning to work, might be
8 limited to working the day shift for a month. (AR 292.) The ALJ did not err in her
9 assessment of these notes. Significantly, Dr. Rubinoff’s note concerns Plaintiff’s conditions
10 prior to the alleged onset date, and Dr. Nguyen’s note expressly indicates that Plaintiff
11 retained the ability to work after taking two weeks off. Furthermore, neither Dr. Rubinoff
12 nor Dr. Nguyen opined that Plaintiff experienced functional limitations greater than those
13 assessed by the ALJ. Accordingly, it is unclear what evidentiary value these notes have for
14 Plaintiff’s case, and the ALJ did not err in assigning them little weight on the grounds that
15 “they encompass very brief periods of time, and are insufficient for the purpose of
16 establishing the 12-month durational requirements for disability.” (AR 26.)

17
18 **B. Findings of Dr. Xie**

19
20 Plaintiff misstates the ALJ’s opinion when she contends that the ALJ failed to discuss
21 Dr. Xie’s opinion that Plaintiff was not a candidate for surgery. In fact, the ALJ quoted Dr.
22 Xie’s opinion that Plaintiff’s “symptoms did not quite correlate with any of her diagnostic
23 findings. For that reason, any surgical intervention would not likely help her pain.” (AR 27)
24 (quoting AR 399). Plaintiff may wish that the ALJ had drawn a different conclusion from
25 Dr. Xie’s decision not to recommend surgery (*see* Joint Stip. at 15) (“this neurosurgeon’s
26 reluctance to operate on [Plaintiff] likely had to do with the fact that she was ultimately
27 suffering from chronic pain associated with fibromyalgia”), but “the ALJ is responsible for
28 determining credibility, resolving conflicts in medical testimony, and for resolving

1 ambiguities.” *Andrews*, 53 F.3d at 1039. Further, Plaintiff’s interpretation of Dr. Xie’s
2 opinion – that Plaintiff’s fibromyalgia made surgery inappropriate – is not supported by the
3 record because Dr. Xie made no mention of fibromyalgia as either a diagnosis or a
4 possibility. Accordingly, the Court finds no error with the ALJ’s interpretation and analysis
5 of the records from Dr. Xie.

6
7 **C. Physician Assistants and Nurse Practitioners at Antelope Valley Health**
8 **Center**

9
10 Plaintiff also contends that the ALJ erred in her analysis of the “evidence from the
11 physician assistants and nurse practitioners at Antelope Valley Health Center,” but Plaintiff
12 does not point to any specific opinion or medical source statement that the ALJ improperly
13 weighed or overlooked. (*See generally* Joint Stip. at 15.) Instead, Plaintiff asserts that the
14 ALJ committed an unspecified error and cites for support almost 250 pages of medical
15 records. (*See* Joint Stip. at 15) (citing AR 526-774). Despite the vagueness of Plaintiff’s
16 briefing, the Court reviewed these 250 pages of records, which reflect, *inter alia*, melanoma
17 lesion removal surgery, MRIs, blood test results, and EMG and nerve conduction studies.
18 The Court found that the ALJ adequately discussed and analyzed the relevant portions of this
19 part of the medical record. (*See, e.g.*, AR 25 (discussing, *inter alia*, parts of Exhibits 19F,
20 20F, and 21F).)

21
22 **D. Statement of Margaret Bryden**

23
24 With respect to Plaintiff’s mental impairment, Plaintiff alleges that the ALJ erred by
25 assigning little weight to the December 2015 statement of Margaret Bryden, a marriage and
26 family therapist. The ALJ assigned little weight to Bryden’s statement because she was not
27 an acceptable medical source, as defined by the agency, and her statement concerned
28 Plaintiff’s physical impairments. (AR 23.) Indeed, Bryden’s statement primarily concerned

1 Plaintiff's physical conditions and ultimately concluded that Plaintiff's physical limitations
2 contributed to Plaintiff's depression. (AR 442.) Bryden did not assess any functional
3 limitations arising from Plaintiff's "issues with depression or anxiety." (AR 442.)
4 Accordingly, to the extent that the ALJ erred in assigning it little weight, the error is
5 harmless because it is inconsequential to the ALJ's ultimate nondisability determination.

6 7 **E. Finding At Step Two of the Sequential Analysis**

8
9 Finally, Plaintiff contends that the ALJ erred in failing to find that her mental
10 impairments were severe at step two of the sequential analysis. The Commissioner defines a
11 severe impairment as "[a]n impairment or combination of impairments . . . [that]
12 significantly limit[s] your physical or mental ability to do basic work activities," including,
13 *inter alia*: "understanding, carrying out, and remembering simple instructions; use of
14 judgment; responding appropriately to supervision, co-workers and usual work situations;
15 and dealing with changes in a routine work setting." 20 C.F.R. § 404.1522. "An impairment
16 or combination of impairments may be found not severe *only if* the evidence establishes a
17 *slight* abnormality that has no more than a *minimal* effect on an individual's ability to work."
18 *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005) (emphasis added) (citations and
19 internal quotation marks omitted). Step two "is a *de minimis* screening device [used] to
20 dispose of groundless claims, and an ALJ may find that a claimant lacks a medically severe
21 impairment or combination of impairments only when [her] conclusion is clearly established
22 by medical evidence." *Id.* (emphasis added) (citations and internal quotation marks
23 omitted). The claimant bears the burden of proof at step two. *See Bowen*, 482 U.S. at 146;
24 *Sutherland*, 234 F. Supp. at 1068.

25
26 Plaintiff points to no medical evidence in the record establishing that she has a mental
27 impairment that significantly limits her ability to do any basic work activity. Significantly,
28 the record reflects only cursory psychiatric treatment. In early 2015, Plaintiff had two

1 appointments with psychiatrist John C. Beck, M.D., who diagnosed Plaintiff initially with
2 “depression generated somatization” (AR 440 (February 2, 2015)) and subsequently revised
3 the diagnosis to “situational stress” (AR 437 (March 5, 2015 appointment)). Plaintiff also
4 had two appointments with Dr. Del Rosario, a second psychiatrist, in late 2015. (AR 443-
5 44.) Dr. Del Rosario diagnosed Plaintiff with major depressive disorder but did not assess
6 any functional limitations arising from this diagnosis or identify any functional deficits in the
7 treatment notes. (AR 443-44.) Additionally, as discussed above, Plaintiff saw Bryden for
8 talk therapy, but Bryden did not assess any functional limitations arising from Plaintiff’s
9 alleged mental impairments, the record does not contain any records of her treatment of
10 Plaintiff, and Bryden did not disclose how many times she saw Plaintiff between the date of
11 Plaintiff’s initial evaluation (September 10, 2015) and the date of her source statement
12 (December 9, 2015). (AR 442.) Finally, in May 2014, Sherri Love, Psy.D., performed a
13 comprehensive psychiatric examination of Plaintiff at the Commissioner’s request and
14 diagnosed Plaintiff with depression based on historical records only, assessed a GAF score
15 of 65⁴, indicating “some mild symptoms” but nothing more, and identified no functional
16 limitations arising from Plaintiff’s alleged mental impairments. (AR 317-20.) In sum,
17 despite carrying the burden of proof at step two, Plaintiff failed to present a single medical
18 source statement or psychiatric treatment record indicating that she had a mental impairment
19 that significantly limited her ability to perform a basic work activity. Accordingly, although
20 step two is a *de minimis* screening device, the ALJ did not err in finding that Plaintiff had
21 failed to establish at step two that she had a severe mental impairment.

22 \\
23 \\
24 \\
25 _____

26 ⁴ A GAF score of 61-70 indicates “some mild symptoms (e.g., depressed mood and mild insomnia) or some
27 difficulty in social, occupational, or school functioning . . . but generally functioning pretty well.” *See* Diagnostic and
28 Statistical Manual of Mental Disorders (“DSM-IV”) 34 (revised 4th ed. 2000). The Commissioner has stated that the
GAF scale “does not have a direct correlation to the severity requirements in [the] mental disorders listings,” 65 Fed. Reg.
50764, 50764-65 (Aug. 21, 2000), and the most recent edition of the DSM “dropped” the GAF scale. Diagnostic And
Statistical Manual Of Mental Disorders 16 (5th ed. 2012).

1 **CONCLUSION**

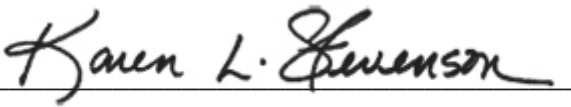
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3 The Court finds that the Commissioner’s decision is supported by substantial evidence
4 and free from material legal error. Neither reversal of the ALJ’s decision nor remand is
5 warranted.

6
7 Accordingly, IT IS ORDERED that Judgment shall be entered affirming the decision
8 of the Commissioner of the Social Security Administration.

9
10 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of this
11 Memorandum Opinion and Order and the Judgment on counsel for plaintiff and for
12 defendant.

13
14 LET JUDGMENT BE ENTERED ACCORDINGLY

15
16 DATE: January 8, 2019

17
18 
19 _____
20 KAREN L. STEVENSON
21 UNITED STATES MAGISTRATE JUDGE
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25
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27
28