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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LIZETH PALACIOS BALLARDO,)	Case No. CV 17-08212-JEM
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION AND ORDER
)	AFFIRMING DECISION OF THE
)	COMMISSIONER OF SOCIAL SECURITY
NANCY A. BERRYHILL,)	
Acting Commissioner of Social Security,)	
)	
Defendant.)	

PROCEEDINGS

On November 10, 2017, Lizeth Palacios Ballardo (“Plaintiff” or “Claimant”) filed a complaint seeking review of the decision by the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s application for Social Security Disability Insurance benefits. The Commissioner filed an Answer on March 15, 2018. On September 4, 2018, the parties filed a Joint Stipulation (“JS”). The matter is now ready for decision.

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record (“AR”), the Court concludes that the Commissioner’s decision must be affirmed and this case dismissed with prejudice.

BACKGROUND

1
2 Plaintiff is a 36 year-old female who applied for Social Security Disability Insurance
3 benefits on July 12, 2013, alleging disability beginning June 11, 2013. (AR 13.) The ALJ
4 determined that Plaintiff has not engaged in substantial gainful activity since June 11, 2013, the
5 alleged onset date. (AR 16.)

6 Plaintiff's claim was denied initially on September 19, 2013, and on reconsideration on
7 December 3, 2013. (AR 13.) Plaintiff filed a timely request for hearing, which was held before
8 Administrative Law Judge ("ALJ") James D. Goodman on June 25, 2015, in Pasadena,
9 California. (AR 13.) Plaintiff appeared and testified at the hearing and was represented by
10 counsel.¹ (AR 13.) Subsequently, Plaintiff appeared and testified at a supplemental hearing
11 held on January 28, 2016, in Pasadena, California, and was represented by counsel. (AR 13.)
12 Afterward, Plaintiff appeared and testified at a third hearing held on July 15, 2016, in
13 Pasadena, California, and was represented by counsel. (AR 14.) Vocational expert ("VE")
14 Martin G. Brodwin also appeared and testified at the third hearing. (AR 14.)

15 The ALJ issued an unfavorable decision on August 2, 2016. (AR 13-28.) The Appeals
16 Council denied review on September 11, 2017. (AR 1-3.)

DISPUTED ISSUES

17
18 As reflected in the Joint Stipulation, Plaintiff only raises the following disputed issue as
19 ground for reversal and remand:

- 20 1. Whether the ALJ properly considered the presence of fatigue and its impact on
21 the ability to engage in substantial gainful activity.

STANDARD OF REVIEW

22
23 Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether
24 the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v.
25 Chater, 80 F.3d 1273 , 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846

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27
28 ¹ The ALJ continued the hearing in order for Plaintiff to undergo consultive examinations. (AR 13.)

1 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and
2 based on the proper legal standards).

3 Substantial evidence means “more than a mere scintilla,’ but less than a
4 preponderance.” Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v.
5 Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is “such relevant evidence as a
6 reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at
7 401 (internal quotation marks and citation omitted).

8 This Court must review the record as a whole and consider adverse as well as
9 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where
10 evidence is susceptible to more than one rational interpretation, the ALJ's decision must be
11 upheld. Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).
12 “However, a reviewing court must consider the entire record as a whole and may not affirm
13 simply by isolating a ‘specific quantum of supporting evidence.’” Robbins, 466 F.3d at 882
14 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495
15 F.3d 625, 630 (9th Cir. 2007).

16 THE SEQUENTIAL EVALUATION

17 The Social Security Act defines disability as the “inability to engage in any substantial
18 gainful activity by reason of any medically determinable physical or mental impairment which
19 can be expected to result in death or . . . can be expected to last for a continuous period of not
20 less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has
21 established a five-step sequential process to determine whether a claimant is disabled. 20
22 C.F.R. §§ 404.1520, 416.920.

23 The first step is to determine whether the claimant is presently engaging in substantial
24 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging
25 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,
26 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or
27 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not
28 significantly limit the claimant's ability to work. Smolen, 80 F.3d at 1290. Third, the ALJ must

1 determine whether the impairment is listed, or equivalent to an impairment listed, in 20 C.F.R.
2 Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d at 746. If the impairment
3 meets or equals one of the listed impairments, the claimant is presumptively disabled. Bowen,
4 482 U.S. at 141. Fourth, the ALJ must determine whether the impairment prevents the
5 claimant from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir.
6 2001). Before making the step four determination, the ALJ first must determine the claimant's
7 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). The RFC is "the most [one] can
8 still do despite [his or her] limitations" and represents an assessment "based on all the relevant
9 evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The RFC must consider all of the
10 claimant's impairments, including those that are not severe. 20 C.F.R. §§ 416.920(e),
11 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

12 If the claimant cannot perform his or her past relevant work or has no past relevant work,
13 the ALJ proceeds to the fifth step and must determine whether the impairment prevents the
14 claimant from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864,
15 869 (9th Cir. 2000). The claimant bears the burden of proving steps one through four,
16 consistent with the general rule that at all times the burden is on the claimant to establish his or
17 her entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established
18 by the claimant, the burden shifts to the Commissioner to show that the claimant may perform
19 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support
20 a finding that a claimant is not disabled at step five, the Commissioner must provide evidence
21 demonstrating that other work exists in significant numbers in the national economy that the
22 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.
23 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled and
24 entitled to benefits. Id.

25 THE ALJ DECISION

26 In this case, the ALJ determined at step one of the sequential process that Plaintiff has
27 not engaged in substantial gainful activity since June 11, 2013, the alleged onset date. (AR
28 16.)

1 At step two, the ALJ determined that Plaintiff has the following medically determinable
2 severe impairments: systematic lupus erythematosus and fibromyalgia. (AR 16-20.)

3 At step three, the ALJ determined that Plaintiff does not have an impairment or
4 combination of impairments that meets or medically equals the severity of one of the listed
5 impairments. (AR 20.)

6 The ALJ then found that Plaintiff has the RFC to perform sedentary work as defined in
7 20 CFR § 404.1567(a) with the following limitations:

8 Claimant can stand up to four (4) hours and walk up to two (2) hours,
9 cumulatively, and sit up to eight (8) hours, cumulatively, in an eight-hour work
10 day. She can lift and carry up to 15 pounds occasionally, 10 pounds frequently.
11 She can occasionally climb, stoop, kneel, crouch, and crawl. She can frequently
12 balance, reach above shoulder level, handle, and finger. She can have
13 occasional exposure to sunlight or sun meaning direct sunlight and cold
14 environment. She can occasionally be exposed to fumes, noxious odors, dusts,
15 poor ventilation, and contact with liquids. She can never be exposed to possible
16 electric shock, dangerous heights, and toxic or caustic materials.

17 (AR 20-25.) In determining the above RFC, the ALJ made a determination that Plaintiff's
18 subjective symptom allegations were "not entirely consistent" with the medical evidence and
19 other evidence in the record. (AR 21.)

20 At step four, the ALJ found that Plaintiff is able to perform her past relevant work as a
21 payroll clerk and an office manager. (AR 25-28.) The ALJ, however, also found that,
22 considering Claimant's age, education, work experience and RFC, there are jobs that exist in
23 significant numbers in the national economy that Claimant can perform, including the jobs of
24 identification clerk, clerical sorter and referral clerk. (AR 27-28.)

25 Consequently, the ALJ found that Claimant is not disabled within the meaning of the
26 Social Security Act. (AR 28.)

DISCUSSION

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2 The ALJ decision must be affirmed. The ALJ's sedentary work RFC is supported by the
3 medical evidence. The ALJ also properly discounted Plaintiff's subjective symptom allegations
4 for clear and convincing reasons supported by substantial evidence. The ALJ's RFC is
5 supported by substantial evidence.

6 I. THE ALJ'S RFC IS SUPPORTED BY SUBSTANTIAL EVIDENCE

7 A. The ALJ Properly Considered The Medical Evidence

8 Plaintiff contends that the medical evidence does not support the ALJ's RFC and that
9 the ALJ improperly rejected the opinion of treating rheumatologist Dr. Parke King Chan. The
10 Court disagrees.

11 1. Relevant Federal Law

12 The ALJ's RFC is not a medical determination but an administrative finding or legal
13 decision reserved to the Commissioner based on consideration of all the relevant evidence,
14 including medical evidence, lay witnesses, and subjective symptoms. See SSR 96-5p; 20
15 C.F.R. § 1527(e). In determining a claimant's RFC, an ALJ must consider all relevant evidence
16 in the record, including medical records, lay evidence, and the effects of symptoms, including
17 pain reasonably attributable to the medical condition. Robbins, 446 F.3d at 883.

18 In evaluating medical opinions, the case law and regulations distinguish among the
19 opinions of three types of physicians: (1) those who treat the claimant (treating physicians); (2)
20 those who examine but do not treat the claimant (examining physicians); and (3) those who
21 neither examine nor treat the claimant (non-examining, or consulting, physicians). See 20
22 C.F.R. §§ 404.1527, 416.927; see also Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). In
23 general, an ALJ must accord special weight to a treating physician's opinion because a treating
24 physician "is employed to cure and has a greater opportunity to know and observe the patient
25 as an individual." Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989) (citation omitted). If
26 a treating source's opinion on the issues of the nature and severity of a claimant's impairments
27 is well-supported by medically acceptable clinical and laboratory diagnostic techniques, and is
28

1 not inconsistent with other substantial evidence in the case record, the ALJ must give it
2 “controlling weight.” 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

3 Where a treating doctor’s opinion is not contradicted by another doctor, it may be
4 rejected only for “clear and convincing” reasons. Lester, 81 F.3d at 830. However, if the
5 treating physician’s opinion is contradicted by another doctor, such as an examining physician,
6 the ALJ may reject the treating physician’s opinion by providing specific, legitimate reasons,
7 supported by substantial evidence in the record. Lester, 81 F.3d at 830-31; see also Orn, 495
8 F.3d at 632; Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). Where a treating
9 physician's opinion is contradicted by an examining professional’s opinion, the Commissioner
10 may resolve the conflict by relying on the examining physician’s opinion if the examining
11 physician’s opinion is supported by different, independent clinical findings. See Andrews v.
12 Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995); Orn, 495 F.3d at 632. Similarly, to reject an
13 uncontradicted opinion of an examining physician, an ALJ must provide clear and convincing
14 reasons. Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005). If an examining physician’s
15 opinion is contradicted by another physician’s opinion, an ALJ must provide specific and
16 legitimate reasons to reject it. Id. However, “[t]he opinion of a non-examining physician cannot
17 by itself constitute substantial evidence that justifies the rejection of the opinion of either an
18 examining physician or a treating physician”; such an opinion may serve as substantial
19 evidence only when it is consistent with and supported by other independent evidence in the
20 record. Lester, 81 F.3d at 830-31; Morgan, 169 F.3d at 600.

21 2. Analysis

22 Plaintiff asserts that she suffers from stiffness, joint pain, and swelling. (AR 21.) She
23 experiences chronic pain in her legs, knees, and hands. (JS 5.) She also noted that her
24 fatigue and chronic pain limits her ability to work. (AR 21.) The ALJ did find that Plaintiff has
25 the medically determinable severe impairments of systematic lupus erythematosus and
26 fibromyalgia. (AR 16-17, 21.) The ALJ, however, found that Claimant’s impairments were
27 adequately managed with conservative treatment and regular medication management. (AR
28 21.) The ALJ also found that, although Claimant complained of fatigue and generalized pain,

1 objective medical findings were generally unremarkable. (AR 21.) More specifically, physical
2 examinations showed Plaintiff had normal range of motion, including full range of motion of the
3 shoulders and hips, and her neurological examinations were consistently normal as well. (AR
4 21-22.) Although later examinations showed fibromyalgia tender points, the examinations were
5 still normal otherwise. (AR 22.) Accordingly, the ALJ found that Plaintiff could perform
6 sedentary level work with restrictions. (AR 20.) With the assessed RFC, the ALJ found Plaintiff
7 could perform her past relevant work as a payroll clerk and an office manager. (AR 25.)

8 The ALJ's RFC is based on the above medical evidence and the opinions of two
9 experts. On September 9, 2015, consulting Board certified rheumatologist Dr. Babak Zamiri
10 conducted a physical examination of Plaintiff. (AR 22, 901-909.) He found that Plaintiff had 16
11 out of 18 fibromyalgia tender points, but physical examination findings were otherwise
12 unremarkable. (AR 22.) Plaintiff's musculoskeletal examination showed full painless range of
13 motion of all major muscle groups and joints. A neurological examination showed normal
14 motor strength, sensation, and reflexes. (AR 22.) Dr. Zamiri diagnosed systematic lupus
15 erythematosus and fibromyalgia. (AR 22.) He opined that Claimant could perform sedentary
16 work: she could sit 8 hours, stand 5 hours, walk 2 hours, and carry 10 pounds frequently. (AR
17 22.) Despite her history of lupus and fibromyalgia, Dr. Zamiri reported Plaintiff was stable at
18 the moment but needed better control of her fibromyalgia. (AR 22, 23.) The ALJ gave partial
19 weight to Dr. Zamiri's opinion. (AR 23.)

20 The ALJ gave great weight to the opinion of impartial medical expert Dr. Anne Winkler,
21 Board certified in internal medicine and rheumatology,² who testified by sworn interrogatory
22 responses. (AR 3-14, 24, 921-929.) Dr. Winkler also diagnosed lupus and fibromyalgia and
23 noted Plaintiff's fatigue, joint pain, and muscle pain could be reasonable symptoms connected
24 to her impairments (AR 24) and therefore accounted for her fatigue and pain. The ALJ also
25 incorporated Plaintiff's fatigue and pain in his decision, but noted that despite these symptoms

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27 ² Plaintiff notes that the Commissioner states that the ALJ described Dr. Winkler as an
28 orthopedic specialist. (JS 15:17-18.) The Commissioner was in error. The ALJ described
Dr. Winkler as Board certified in internal medicine and rheumatology. (AR 24.)

1 her objective findings were normal. (AR 21.) Dr. Winkler opined that Claimant could sit 8
2 hours, stand 4 hours, walk 2 hours, and lift and carry 15 pounds occasionally and 10 pounds
3 frequently. (AR 24.) The ALJ found that Dr. Winkler's opinion was supported by the objective
4 medical evidence such as the mild clinical findings. (AR 25.)

5 Plaintiff relies on the opinion of her treating rheumatologist Dr. Chang who reported on
6 April 16, 2015, that Plaintiff had marked limitation in activities of daily living and in
7 concentration, persistence and pace, and was limited to performing substantially less than the
8 sedentary range of work. (AR 23, 887-889.) The ALJ gave little weight to Dr. Chang's opinion.
9 (AR 23.) The ALJ discounted Dr. Chang's opinion because his assessments are unsupported
10 by the Claimant's objective findings such as generally unremarkable physical examinations.
11 (AR 23.) An ALJ may reject a treating physician's opinion that does not have supportive
12 evidence, is contradicted by other evidence, is not supported by the record as a whole, and is
13 unsupported by or inconsistent with his or her treatment notes. Batson v. Commissioner, 359
14 F.3d 1190, 1195 & n.3 (9th Cir. 2004). In addition to the generally unremarkable physical
15 examinations in the medical evidence of record, Dr. Chang's opinion is contradicted by the
16 opinions of Dr. Zamiri and Dr. Winkler. The contradictory opinions of other physicians provide
17 specific, legitimate reasons for rejecting a physician's opinion. Tonapetyan v. Halter, 242 F.3d
18 1144, 1149 (9th Cir. 2001). The ALJ also found Dr. Chang's opinion was inconsistent with his
19 treatment notes. (AR 23.) Batson, 359 F.3d at 1195 & n.3. The ALJ found that Dr. Chang did
20 not cite any objective findings and in fact frequently reported Plaintiff's lupus as stable. (AR 23,
21 22.) The ALJ also found that Dr. Chang's opinions were inconsistent with his treatment, as
22 Plaintiff's complaints were treated conservatively with medications and recommendations of
23 exercise, aqua exercise and yoga. (AR 22, 23.) Impairments that can be controlled effectively
24 with medication are not disabling. Warre v. Comm'r of Soc. Sec., 439 F.3d 1001, 1008 (9th
25 Cir. 2006).

26 The ALJ inferred from these inconsistencies that Dr. Chang relied uncritically on
27 Plaintiff's subject symptom allegations. (AR 23.) An ALJ may make reasonable inferences
28 from the evidence of record. Macri v. Chater, 93 F.3d 540, 544 (9th Cir. 1996). A treating

1 physician's opinion based on subjective complaints of a claimant whose credibility has been
2 discounted can be properly disregarded. Tonapetyan, 242 F.3d at 1150. The ALJ properly
3 discounted Plaintiff's subjective symptom allegations (AR 21), as discussed in the next section.

4 It is the ALJ's responsibility to resolve conflicts in the medical evidence. Andrews, 53
5 F.3d at 1039. Where the ALJ's interpretation of the record is reasonable as it is here, it should
6 not be discounted. Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001).

7 The ALJ rejected the opinion of Dr. Chang for specific, legitimate reasons supported by
8 substantial evidence. The ALJ properly considered the medical evidence.

9 **B. The ALJ Properly Discounted Plaintiff's Subjective**
10 **Symptom Allegations**

11 Plaintiff contends that the ALJ erred in discounting her subjective symptom allegations.
12 The Court disagrees.

13 1. Relevant Federal Law

14 The test for deciding whether to accept a claimant's subjective symptom testimony turns
15 on whether the claimant produces medical evidence of an impairment that reasonably could be
16 expected to produce the pain or other symptoms alleged. Bunnell v. Sullivan, 947 F.2d 341,
17 346 (9th Cir. 1991); see also Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998); Smolen, 80
18 F.3d at 1281-82 esp. n.2. The Commissioner may not discredit a claimant's testimony on the
19 severity of symptoms merely because they are unsupported by objective medical evidence.
20 Reddick, 157 F.3d at 722; Bunnell, 947 F.2d at 343, 345. If the ALJ finds the claimant's pain
21 testimony not credible, the ALJ "must specifically make findings which support this conclusion."
22 Bunnell, 947 F.2d at 345. The ALJ must set forth "findings sufficiently specific to permit the
23 court to conclude that the ALJ did not arbitrarily discredit claimant's testimony." Thomas, 278
24 F.3d at 958; see also Rollins, 261 F.3d at 857; Bunnell, 947 F.2d at 345-46. Unless there is
25 evidence of malingering, the ALJ can reject the claimant's testimony about the severity of a
26 claimant's symptoms only by offering "specific, clear and convincing reasons for doing so."
27 Smolen, 80 F.3d at 1283-84; see also Reddick, 157 F.3d at 722. The ALJ must identify what
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1 testimony is not credible and what evidence discredits the testimony. Reddick, 157 F.3d at
2 722; Smolen, 80 F.3d at 1284.

3 2. Analysis

4 In determining Plaintiff's RFC, the ALJ concluded that Plaintiff's medically determinable
5 impairments reasonably could be expected to cause the alleged symptoms. (AR 21.) The ALJ,
6 however, also found that Plaintiff's statements regarding the intensity, persistence and limiting
7 effects of these symptoms were "not entirely consistent" with the medical evidence and other
8 evidence of record. (AR 21.) Because the ALJ did not make any finding of malingering, he
9 was required to provide clear and convincing reasons supported by substantial evidence for
10 discounting Plaintiff's subjective symptom allegations. Smolen, 80 F.3d at 1283-84;
11 Tommasetti v. Astrue, 533 F.3d at 1035, 1039-40 (9th Cir. 2008). The ALJ did so.

12 First, the ALJ found that Plaintiff's subjective symptom allegations were inconsistent with
13 the medical evidence. (AR 21.) An ALJ is permitted to consider whether there is a lack of
14 medical evidence to corroborate a claimant's alleged symptoms so long as it is not the only
15 reason for discounting a claimant's allegations. Burch v. Barnhart, 400 F.3d 676, 680-81 (9th
16 Cir. 2005). Here, the objective medical evidence showed Claimant had normal range of
17 motion, including full range of motion of the shoulders and hips. (AR 21, 22.) Neurological
18 examinations were consistently normal. (AR 21-22.) Dr. Zamiri and Dr. Winkler opined that
19 Plaintiff could perform sedentary work. (AR 22, 23-24.)

20 Second, the ALJ found that Plaintiff received only conservative treatment. (AR 21-22,
21 23.) An ALJ may consider conservative treatment in evaluating subjective symptom
22 allegations. Tommasetti, 533 F.3d at 1039. Here, Dr. Chang prescribed conservative care and
23 advised Plaintiff to stay out of the sun. (AR 21.) He also recommended aqua exercises and
24 yoga. (AR 22.) The ALJ found that Claimant received regular medication management, which
25 was relatively effective in controlling her symptoms. (AR 21, 22.) Dr. Chang noted several
26 times that Plaintiff's lupus was stable. (AR 22.) Impairments that can be controlled with
27 medication are not disabling. Warre, 439 F.3d at 1006.

28

1 Plaintiff disputes the ALJ's finding that Plaintiff's symptoms are not consistent with the
2 evidence, but again it is the ALJ's responsibility to resolve conflicts in the medical evidence and
3 ambiguities in the record. Andrews, 53 F.3d at 1039. Where the ALJ's interpretation of the
4 record is reasonable as it is here, it should not be second-guessed. Rollins, 261 F.3d at 857.

5 The ALJ discounted Plaintiff's subjective symptom allegations for clear and convincing
6 reasons supported by substantial evidence.

7 * * *

8 The ALJ's RFC is supported by substantial evidence. The ALJ's nondisability
9 determination is supported by substantial evidence.

10 **ORDER**

11 IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the
12 Commissioner of Social Security and dismissing this action with prejudice.

13
14 DATED: February 6, 2019

/s/ John E. McDermott
JOHN E. MCDERMOTT
UNITED STATES MAGISTRATE JUDGE