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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

KIMBERLY A. DADY,)	Case No. CV 18-03432-AS
)	
Plaintiff,)	MEMORANDUM OPINION
)	
v.)	
)	
NANCY A. BERRYHILL,)	
Acting Commissioner of the)	
Social Security Administration,)	
)	
Defendant.)	
_____)	

PROCEEDINGS

On April 24, 2018, Plaintiff filed a Complaint seeking review of the denial of her application for Disability Insurance Benefits. (Docket Entry No. 1). The parties have consented to proceed before the undersigned United States Magistrate Judge. (Docket Entry Nos. 15-16). On September 5, 2018, Defendant filed an Answer along with the Administrative Record ("AR"). (Docket Entry Nos. 19-20). On November 26, 2018, the parties filed a Joint Stipulation ("Joint Stip.") setting

1 forth their respective positions regarding Plaintiff's claim. (Docket
2 Entry No. 22).

3
4 The Court has taken this matter under submission without oral
5 argument. See C.D. Cal. L.R. 7-15.

6
7 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

8
9 On August 5, 2015, Plaintiff, formerly employed as a regional
10 facilities manager for a property management company (see AR 31-33, 156-
11 57), filed an application for Disability Insurance Benefits, claiming
12 an inability to work since November 14, 2014 based on alleged physical
13 and mental impairments. (See AR 16, 140-43). On October 11, 2017, the
14 Administrative Law Judge ("ALJ"), Lawrence D. Wheeler, heard testimony
15 from Plaintiff (who was represented by counsel) and vocational expert
16 June Hagen. (See AR 29-46). On December 4, 2017, the ALJ issued a
17 decision denying Plaintiff's application. (See AR 16-22). The ALJ
18 found, at step two of the five-step sequential evaluation process, that
19 Plaintiff's medically determinable impairments -- "history of trigeminal
20 neuralgia; migraine; irritable bowel syndrome; pancreatitis due to
21 alcoholism; and mild depression" (AR 18)¹ -- did not significantly limit
22 Plaintiff's "ability to perform basic work-related activities for 12
23 consecutive months[.]" (AR 18-22). Accordingly, the ALJ found that
24 Plaintiff did not have a severe impairment or combination of impairments
25 that was severe, and thus was not disabled at any time from the alleged
26
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¹ The ALJ found Plaintiff's medically determinable mental
impairment to be non-severe because it caused no more than "mild"
limitations in any of the functional areas. (AR 22).

1 disability onset date through the date of the ALJ's decision. (AR 22).

2
3 On February 28, 2018, the Appeals Council denied review. (See AR
4 1-6). Plaintiff now seeks judicial review of the ALJ's decision which
5 stands as the final decision of the Commissioner. See 42 U.S.C. §§
6 405(g), 1383(c).

7
8 **STANDARD OF REVIEW**

9
10 This Court reviews the Commissioner's decision to determine if it
11 is free of legal error and supported by substantial evidence. See
12 Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial
13 evidence" is more than a mere scintilla, but less than a preponderance.
14 Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). To determine
15 whether substantial evidence supports a finding, "a court must consider
16 the record as a whole, weighing both evidence that supports and evidence
17 that detracts from the [Commissioner's] conclusion." Aukland v.
18 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (internal quotation
19 omitted). As a result, "[i]f the evidence can support either affirming
20 or reversing the ALJ's conclusion, [a court] may not substitute [its]
21 judgment for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d
22 880, 882 (9th Cir. 2006).

23
24 **PLAINTIFF'S CONTENTIONS**

25
26 Plaintiff contends that the ALJ erred in (1) failing to properly
27 reject the opinion of Plaintiff's treating physician who diagnosed
28 Plaintiff with Chronic Pain Syndrome and failing to find that

1 Plaintiff's Reflex Sympathetic Dystrophy Syndrome/Complex Regional Pain
2 Syndrome ("RSDS/CRPS"), another form of chronic pain syndrome, was a
3 severe impairment; (2) failing to properly evaluate Plaintiff's
4 subjective complaints and credibility; and (3) "finding that Plaintiff
5 retain[ed] the residual functional capacity to perform sedentary work
6 and could perform her past relevant work as an office manager." (See
7 Joint Stip. at 2-5, 11-14, 23-24, 26).

8
9 **DISCUSSION**

10
11 After consideration of the record as a whole, the Court finds that
12 the ALJ's step two determination is supported by substantial evidence
13 in the record, in accord with the Commissioner's regulations, and free
14 from legal error.² Accordingly, it is not necessary to address
15 Plaintiff's second and third claims of error. See 20 C.F.R. §
16 404.1520(c) ("If you do not have any impairment or combination of
17 impairments which significantly limits your physical or mental ability
18 to do basic work activities, we will find that you do not have a severe
19 impairment and are, therefore, not disabled.").

20
21 **DISCUSSION**

22
23 Plaintiff contends that the ALJ failed to properly reject
24 Plaintiff's treating physician's opinion that Plaintiff has Chronic Pain
25

26
27 ² The harmless error rule applies to the review of administrative
28 decisions regarding disability. See McLeod v. 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 Syndrome, and that the ALJ failed to find that Plaintiff's RSDS/CRPS was
2 a severe impairment. (See Joint Stip. at 4-8, 12). Defendant contends
3 that the ALJ properly found that Plaintiff did not suffer from a severe
4 impairment or combination of impairments. (See Joint Stip. at 8-11).³
5

6 A. Applicable Law
7

8 "The Social Security Act defines disability as the inability to
9 engage in any substantial gainful activity by reason of any medically
10 determinable physical or mental impairment which can be expected to
11 result in death or which has lasted or can be expected to last for a
12 continuous period of not less than 12 months." Webb v. Barnhart, 433
13 F.3d 683, 686 (9th Cir. 2005)(citing 42 U.S.C. § 423 (d)(1)(A)). The
14 ALJ follows a five-step, sequential analysis to determine whether a
15 claimant has established disability. 20 C.F.R. § 404.1520.
16

17 At step one, the ALJ determines whether the claimant is engaged in
18 substantial gainful employment activity. Id. at § 404.1520(a)(4)(i).
19 "Substantial gainful activity" is defined as "work that . . . [i]nvolves
20 doing significant and productive physical or mental duties[] and . . .
21 [i]s done (or intended) for pay or profit." 20 C.F.R. §§ 404.1510,
22 404.1572. If the ALJ determines that the claimant is not engaged in
23

24
25 ³ Contrary to Defendant's assertion (see Joint Stip. at 4), a
26 treating physician's diagnosis is a medical opinion. See 20 C.F.R. §
27 404.1527(a)(1) ("Medical opinions are statements from acceptable medical
28 sources that reflect judgments about the nature and severity of your
impairment(s), including your symptoms, diagnosis and prognosis, what
you can still do despite impairment(s), and your physical or mental
restrictions.").

1 substantial gainful activity, the ALJ proceeds to step two which
2 requires the ALJ to determine whether the claimant has a medically
3 severe impairment or combination of impairments that significantly
4 limits his or her ability to do basic work activities. See 20 C.F.R.
5 § 404.1520(a)(4)(ii); see also Webb, supra.

6
7 The "ability to do basic work activities" is defined as "the
8 abilities and aptitudes necessary to do most jobs." 20 C.F.R. §
9 404.1522(b); Webb v. Barnhart, supra. A severe impairment is one that
10 significantly limits the physical or mental ability to perform basic
11 work activities. 20 C.F.R. § 404.1520(c). Basic work activities
12 include the abilities to perform physical functions, to see, hear and
13 speak, to understand, carry out, and remember simple instructions, to
14 use judgement, to respond appropriately to supervision, co-workers and
15 usual work situations, and to deal with changes in a routine work
16 setting. 20 C.F.R. § 404.1522(b). An impairment is not severe if it
17 is merely "a slight abnormality (or combination of slight abnormalities)
18 that has no more than a minimal effect on the ability to do basic work
19 activities." Webb, supra; see also Social Security Ruling ("SSR") 85-
20 28; Bowen v. Yuckert, 482 U.S. 137, 153-54 (1987). "An ALJ may find
21 that a claimant lacks a medically severe impairment or combination of
22 impairments only when his conclusion is 'clearly established by medical
23 evidence.'" Webb, 433 F.3d at 687 (quoting SSR 85-28). Plaintiff is
24 not required to establish total disability at this level of the
25 evaluation. Rather, the severe impairment requirement is a threshold
26 element that Plaintiff must prove in order to establish disability
27 within the meaning of the Social Security Act. Bowen, 482 U.S. at 146.
28 "[T]he step-two inquiry is a de minimis screening device to dispose of

1 groundless claims." Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir.
2 1996).

3
4 If the ALJ concludes that a claimant lacks a "severe medically
5 determinable physical or mental impairment that meets the duration
6 requirement . . . or a combination of impairments that is severe and
7 meets the duration requirement," the ALJ must find the claimant not to
8 be disabled. 20 C.F.R. § 404.1520(a)(4)(ii); Ukolov v. Barnhart, 420
9 F.3d 1002, 1003 (9th Cir. 2005)(ALJ need not consider subsequent steps
10 if there is a finding of "disabled" or "not disabled" at any step).

11
12 If the ALJ finds that a claimant's impairment is severe, then step
13 three requires the ALJ to evaluate whether the claimant's impairment
14 satisfies certain statutory requirements entitling [her] to a disability
15 finding. Webb, 433 F.3d at 686. If the impairment does not satisfy the
16 statutory requirements entitling the claimant to a disability finding,
17 the ALJ must then determine the claimant's residual functional capacity
18 ("RFC"), that is, the ability to do physical and mental work activities
19 on a sustained basis despite limitations from all her impairments. 20
20 C.F.R. § 404.1520(e). Once the RFC is determined, the ALJ proceeds to
21 step four to assess whether the claimant is able to do any work that he
22 or she has done in the past, defined as work performed in the last
23 fifteen years prior to the disability onset date. If the ALJ finds that
24 the claimant is not able to do the type of work that he or she has done
25 in the past or does not have any past relevant work, the ALJ proceeds
26 to step five to determine whether - taking into account the claimant's
27 age, education, work experience and RFC - there is any other work that
28 the claimant can do and if so, whether there are a significant number

1 of such jobs in the national economy. Tackett v. Apfel, 180 F.3d 1094,
2 1098 (9th Cir. 1999); 20 C.F.R. § 404.1520(a)(4)(iii)-(v). The claimant
3 has the burden of proof at steps one through four, and the Commissioner
4 has the burden of proof at step five. Tackett, supra.

5
6 An ALJ must take into account all medical opinions of record. 20
7 C.F.R. § 404.1527(b). "Generally, a treating physician's opinion
8 carries more weight than an examining physician's, and an examining
9 physician's opinion carries more weight than a reviewing physician's."
10 Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir. 2001); see also
11 Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir. 1995).

12
13 If a treating or examining doctor's opinion is not contradicted by
14 another doctor, the ALJ can reject the opinion only for "clear and
15 convincing reasons." Carmickle v. Commissioner, 533 F.3d 1155, 1164
16 (9th Cir. 2008); Lester, 81 F.3d at 830. If the treating or examining
17 doctor's opinion is contradicted by another doctor, the ALJ must provide
18 "specific and legitimate reasons" for rejecting the opinion. Orn v.
19 Astrue, 495 F.3d 625, 632 (9th Cir. 2007); Reddick v. Chater, 157 F.3d
20 715, 725 (9th Cir. 1998); Lester, supra.

21
22 B. Plaintiff's Testimony

23
24 Plaintiff testified that she last worked as a regional facilities
25 manager for an asset management company, primarily doing office work,
26 conference calls and staff meetings, and spent 40 to 50 percent of her
27 time traveling to visit properties and train new staff. (AR 31). She
28 stopped working in 2014 due to pain in her left fascia trigeminal nerve.

1 (AR 34). She has taken various medications for the pain and she is
2 unable to work due to the side effects of those medications. (AR 34-
3 35). Plaintiff stated that she was unable to work due to nausea and
4 vomiting which "had been a problem for three or four years, perhaps even
5 five, and slowly increased over time," reaching the point where it was
6 interfering with her work. (AR 39). She still experiences episodes of
7 vomiting ranging from no weekly episodes to once or twice a week, and
8 up to five or six times a week. Id. Her typical day starts at 6:30
9 a.m.; she makes breakfast for her 17-year-old daughter, returns to bed
10 and gets up to retrieve the mail which she puts on the sofa table before
11 returning to bed. (AR 36-37). She spends about seven hours a day --
12 between the hours of 9:00 a.m. and 5:00 p.m. -- in bed. (AR 40). She
13 is able to text on her phone. (AR 37). Her daughter does most of the
14 grocery shopping and her own laundry and a cleaning lady comes in twice
15 a month to clean the house. Id. Two years ago, she traveled by car to
16 Las Vegas to watch her daughter compete in a softball tournament. (AR
17 37-38). Her daughter drove the car to Las Vegas, and while there,
18 Plaintiff remained in her motel room when she was not attending the
19 softball games. (AR 38-39).

20
21 Plaintiff testified that her friend, Daniel Araya, who had
22 completed a third party form indicating that he was actively helping
23 her, no longer lives close by to assist her. (AR 38).

24
25 C. Dr. Diehl

26
27 Paul Diehl, M.D., a physician at West Hills Hospital and Medical
28 Center, treated Plaintiff from September 20, 2011 to September 12, 2017.

1 (See AR 246-360, 434-502, 507-85, 617-44, 836-951, 953-68). Dr. Diehl's
2 progress notes reflect treatment for abdominal pain from alcoholic-
3 related acute pancreatitis, trigeminal neuralgia, tachycardia,
4 hyperlipidemia, irritable bowel syndrome and various mild and/or
5 transitory ailments. As the ALJ noted, Plaintiff's office visits
6 reflected normal physical examinations, and many office visits were for
7 medication and refill purposes only. (AR 19).

8
9 D. Consultative Examination

10
11 In November 2015, Plaintiff was examined by Michael Wallack, M.D.,
12 for a consultative internal medicine evaluation. (See AR 371-80).
13 Plaintiff complained of left facial pain and tachycardia. (AR 371).
14 Based on his physical examination, testing and observations, Dr. Wallack
15 found that Plaintiff's left facial pain, presumably trigeminal
16 neuralgia, was a chronic condition that "seems to be controlled with her
17 current medical regimen" and that Plaintiff's intermittent tachycardia
18 was adequately treated with medication. (AR 375). Finding no fixed
19 neurological deficits and no sign of cardiac insufficiency, Dr. Wallack
20 assessed no functional limitations on Plaintiff's abilities to stand,
21 walk, sit, lift and carry, and no postural, environmental, visual or
22 communicative limitations. (AR 375-76).

23
24 E. Analysis

25
26 As set forth below, the ALJ's determination that Plaintiff does not
27 suffer from a severe impairment or combination of impairments that is
28 severe is supported by substantial evidence in the record. After

1 summarizing the records of Plaintiff's treatment at West Hills Hospital
2 and Medical Center during the period September 2011 to September 2017
3 (see AR 19-20), the ALJ addressed Dr. Diehl's specific statements about
4 Chronic Pain Syndrome, as follows: "In April and May 2016, Dr. Diehl
5 indicated the claimant was again experiencing nausea and vomiting with
6 weight loss, chronic pain syndrome, and trigeminal neuralgia (Exhibit
7 14F, pp. 114-16). However, there was again no clear diagnosis or
8 etiology." (AR 20).

9
10 "A chronic pain syndrome is the combination of chronic pain [pain
11 of an injury or illness lasting longer than six months] and the
12 secondary complications that are making the original pain worse." See
13 www.instituteforchronicpain.org/understanding-chronic-pain/what-is-chronic-pain/chronic-pain-syndrome; see also Lester, 81 F.3d at 829 (for
14 Chronic Pain Syndrome, "[p]ain merges into and becomes a part of the
15 mental and psychological responses that produce the functional
16 impairments"). Here, the ALJ properly found that Dr. Diehl *did not*
17 *clearly diagnose* Plaintiff with Chronic Pain Syndrome and that the
18 medical record did not support such a diagnosis. See Thomas v.
19 Barnhart, 278 F.3d 947, 957 (9th Cir. 2002) ("The ALJ need not accept the
20 opinion of any physician including the treating physician, if that
21 opinion is brief, conclusory, and inadequately supported by clinical
22 findings."); see also 20 C.F.R. § 404.1527(d)(3) ("The more a medical
23 source presents relevant evidence to support a medical opinion,
24 particularly medical signs and laboratory findings, the more weight we
25 will give that medical opinion. The better an explanation a source
26 provides for a medical opinion, the more weight we will give that
27 medical opinion."); 20 C.F.R. § 404.1527(d)(4) ("Generally, the more
28

1 consistent a medical opinion is with the record as a whole, the more
2 weight we will give to that medical opinion.").

3
4 As the ALJ noted, Dr. Diehl's Progress Notes dated April 12, 2016
5 and May 29, 2016 referenced Plaintiff's nausea and vomiting with, inter
6 alia, chronic pain syndrome (see AR 838-39 [on April 11, 2016, Plaintiff
7 complained of intractable nausea, vomiting and pain, and the admitting
8 diagnoses were "[i]ntractable nausea and vomiting with chronic pain
9 syndrome"], 836-37 [on May 28, 2016, Plaintiff complained of nausea and
10 vomiting, and the admitting diagnoses were "[i]ntractable nausea and
11 vomiting, associated weight loss, chronic pain syndrome with associated
12 trigeminal neuralgia with recent falls, weight loss"]). These
13 notations, along with the other notations in the record about Chronic
14 Pain Syndrome, both prior to and after the alleged November 14, 2014
15 disability onset date (see AR 333-34 [on January 8, 2014, notation that
16 Plaintiff had a history of chronic pain syndrome], 306-07 [on September
17 25, 2014, the admitting diagnoses included "history of chronic pain
18 syndrome secondary to trigeminal neuralgia"] 255-56 [on August 1, 2015,
19 the admitting diagnoses included chronic pain syndrome]), reflect
20 Plaintiff's complaints, rather than an actual diagnosis. In fact, the
21 majority of medical records prior to and after Dr. Diehl's April 12,
22 2016 and May 29, 2016 Progress Notes do not mention chronic pain
23 syndrome. Since, contrary to Plaintiff's assertion, Dr. Diehl did not
24 diagnose Plaintiff with Chronic Pain Syndrome, the ALJ did not err in
25 rejecting Dr. Diehl's opinion.

26
27 The ALJ noted that neither Dr. Diehl, nor any other medical
28 providers, opined that Chronic Pain Syndrome limited Plaintiff's

1 abilities to perform basic work activities (AR 21), and Plaintiff has
2 failed to cite to any evidence in the record to support otherwise.⁴
3 Plaintiff has not demonstrated that her Chronic Pain Syndrome limited
4 her abilities to perform light work, which the ALJ alternatively found
5 Plaintiff capable of doing (see AR 22). See Tacket, supra ("The burden
6 of proof is on the claimant as to steps one to four.").

7
8 Plaintiff's contention that her RSDS/CRPS was a severe impairment
9 (see Joint Stip. at 4-5, 12) is also without merit. "RSDS/CRPS is a
10 chronic pain syndrome most often resulting from trauma to a single
11 extremity. It also can result from diseases, surgery, or injury
12 affecting other parts of the body. . . . The most common acute clinical
13 manifestations include complaints of intense pain and findings
14 indicative of autonomic dysfunction at the site of precipitating trauma.
15 Later, spontaneously occurring pain may be associated with abnormalities
16 in the affected region involving the skin, subcutaneous tissue, and
17 bone. It is characteristic of this syndrome that the degree of pain
18 reported is out of proportion to the severity of the injury sustained
19 by the individual." SSR 03-2p; see also
20 [http://www.ninds.nih.gov/Disorders/All-Disorders/Complex-Regional-Pain-](http://www.ninds.nih.gov/Disorders/All-Disorders/Complex-Regional-Pain-Syndrome-Information-Page)
21 [Syndrome-Information-Page](http://www.ninds.nih.gov/Disorders/All-Disorders/Complex-Regional-Pain-Syndrome-Information-Page) (CRPS "is a condition marked by severe,
22 prolonged chronic pain (lasting more than six months) that may be
23 constant. . . . Common symptoms include dramatic changes in the color
24 and temperature of the skin over the affected limb or body part,
25

26 ⁴ The results of physical examinations beginning approximately
27 six months prior to the alleged November 14, 2014 disability onset date
28 do not reflect the levels of pain that Plaintiff claims to have
experienced, and also do not support a diagnosis of Chronic Pain
Syndrome. (See AR 234-37, 255-56, 306-09, 515-85, 836-39, 841-73, 836-
951, 953-68).

1 accompanied by intense burning pain, increased sensitivity in the
2 affected area, skin sensitivity, abnormal sweating, and abnormal
3 movement in the affected limb. In most instances the condition is
4 triggered by a clear history of trauma or injury.");
5 <http://www.webmd.com/brain/what-is-reflex-sympathetic-dystrophy-syndrome>
6 (RSDS, "an older term used to describe one form of CRPS," "is caused by
7 injury to tissue with no related nerve damage."). A diagnosis of
8 RSDS/CRPS is warranted if there are "complaints of persistent, intense
9 pain" resulting in impaired mobility in the affected region which are
10 associated with "[s]welling; [a]utonomic instability--seen as changes
11 in skin color or texture, changes in sweating (decreased or excessive
12 sweating), skin temperature changes, or abnormal pilomotor erection
13 (gooseflesh); [a]bnormal hair or nail growth (growth can be either too
14 slow or too fast)"; [o]steoporosis; or [i]nvoluntary movements of the
15 affected region of the initial injury." SSR 03-2p.

16
17 Plaintiff has failed to meet her burden of establishing that the
18 ALJ erred in failing to find that RSDS/CRPS was a severe impairment.
19 Indeed, Plaintiff's attempt to support her claim by relying on
20 additional evidence in the record (see Joint Stip. at 5, citing AR 960
21 [on August 14, 2017, Dr. Diehl made an assessment of Chronic Fatigue
22 Syndrome], 234 [in a July 21, 2015 report following a neurological
23 examination, George Chow, M.D. at San Fernando Valley Neurological
24 Medical Group stated that the examination was to review Plaintiff's
25 problems with "[c]ervico-occipital neuralgia, [s]kin-sensation
26 disturbance, [and] [c]hronic pain in face" and assessed that Plaintiff
27 had a "[l]ong-standing history of severe trigeminal deafferentation pain
28 syndrome") is unpersuasive. Contrary to Plaintiff's assertion, these

1 notations do not support a diagnosis of Chronic Pain Syndrome or
2 RSDS/CRPS.

3
4 The ALJ properly concluded that, despite Plaintiff's assertions of
5 functional limitations caused by Chronic Pain Syndrome or RSDS/SRPS, the
6 objective medical evidence did not support such a finding.

7
8 **ORDER**

9
10 For the foregoing reasons, the decision of the Commissioner is
11 AFFIRMED.

12
13 LET JUDGMENT BE ENTERED ACCORDINGLY.

14
15 DATED: March 13, 2019

16
17
18 _____ /s/
19 ALKA SAGAR
20 UNITED STATES MAGISTRATE JUDGE
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