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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARIA F.N.,	)	NO. CV 18-4384-E
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM OPINION</b>
	)	
NANCY A. BERRYHILL, DEPUTY	)	
COMMISSIONER FOR OPERATIONS,	)	
SOCIAL SECURITY,	)	
	)	
Defendant.	)	
	)	

PROCEEDINGS

Plaintiff filed a complaint on May 23, 2018, seeking review of the Commissioner's denial of benefits. The parties consented to proceed before a United States Magistrate Judge on June 17, 2018. Plaintiff filed a motion for summary judgment on November 29, 2018. Defendant filed a motion for summary judgment on February 8, 2019. The Court has taken the motions under submission without oral argument. See L.R. 7-15; "Order," filed May 29, 2018.

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1 **BACKGROUND**

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3 Following a previous remand,<sup>1</sup> an Administrative Law Judge ("ALJ")  
4 examined the record and conducted a second hearing at which Plaintiff  
5 and a vocational expert testified (Administrative Record ("A.R.") 458-  
6 89). The ALJ found that Plaintiff suffers from severe "lumbar spine  
7 degeneration and left knee joint arthritis," but retains the residual  
8 functional capacity for a reduced range of light work (A.R. 461-62).  
9 According to the ALJ, Plaintiff's capacity includes an ability to  
10 "stand and/or walk for four hours and sit for six hours during an  
11 eight-hour workday . . . [and Plaintiff] does not require an assistive  
12 device for walking" (A.R. 462). The ALJ discounted Plaintiff's  
13 testimony that her subjective symptomatology further reduces her  
14 functional capacity (A.R. 463-66).  
15

16 A vocational expert testified that a person having the residual  
17 functional capacity the ALJ found to exist could perform Plaintiff's  
18 past relevant work as a sewing machine operator (A.R. 486-87). The  
19 ALJ relied on this testimony in finding Plaintiff not disabled (A.R.  
20 467).  
21

22 **STANDARD OF REVIEW**

23  
24 Under 42 U.S.C. section 405(g), this Court reviews the  
25 Administration's decision to determine if: (1) the Administration's  
26

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27 <sup>1</sup> In Najera v. Colvin, CV 16-2442-E, this Court reversed  
28 in part a previous denial of benefits and remanded the matter for  
further administrative proceedings.

1 findings are supported by substantial evidence; and (2) the  
2 Administration used correct legal standards. See Carmickle v.  
3 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,  
4 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner,  
5 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such  
6 relevant evidence as a reasonable mind might accept as adequate to  
7 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401  
8 (1971) (citation and quotations omitted); see also Widmark v.  
9 Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

10  
11 If the evidence can support either outcome, the court may  
12 not substitute its judgment for that of the ALJ. But the  
13 Commissioner's decision cannot be affirmed simply by  
14 isolating a specific quantum of supporting evidence.  
15 Rather, a court must consider the record as a whole,  
16 weighing both evidence that supports and evidence that  
17 detracts from the [administrative] conclusion.

18  
19 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and  
20 quotations omitted).

21  
22 **DISCUSSION**

23  
24 After consideration of the record as a whole, Defendant's motion  
25 is granted and Plaintiff's motion is denied. The Administration's  
26 findings are supported by substantial evidence and are free from

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1 material<sup>2</sup> legal error. Plaintiff's contrary arguments are unavailing.

2  
3 **I. Substantial Evidence Supports the Conclusion Plaintiff Can Work.**

4  
5 A social security claimant bears the burden of "showing that a  
6 physical or mental impairment prevents [her] from engaging in any of  
7 [her] previous occupations." Sanchez v. Secretary, 812 F.2d 509, 511  
8 (9th Cir. 1987); accord Bowen v. Yuckert, 482 U.S. 137, 146 n.5  
9 (1987). Plaintiff must prove her impairments prevented her from  
10 working for twelve continuous months. See Krumpelman v. Heckler, 767  
11 F.2d 586, 589 (9th Cir. 1985), cert. denied, 475 U.S. 1025 (1986).  
12 Substantial evidence supports the conclusion that Plaintiff failed to  
13 carry her burden in this case. The Administrative Record contains  
14 relevant evidence that "a reasonable mind might accept as adequate to  
15 support [the] conclusion" that Plaintiff was not disabled from all  
16 employment through the date of the ALJ's decision. See Richardson v.  
17 Perales, 402 U.S. at 401 (9th Cir. 2006).

18  
19 Dr. Payam Moazzaz, a consultative examining orthopedic surgeon,  
20 opined Plaintiff has a residual functional capacity even greater than  
21 the capacity the ALJ found to exist (A.R. 263). Dr. Moazzaz' opinion  
22 furnishes substantial evidence supporting the conclusion Plaintiff can  
23 work. See Orn v. Astrue, 495 F.3d 625, 631-32 (9th Cir. 2007)  
24 (examining physician's opinion based on independent clinical findings

25  
26  
27 <sup>2</sup> The harmless error rule applies to the review of  
28 administrative decisions regarding disability. See Garcia v.  
Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v.  
Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011).

1 constitutes substantial evidence to support a disability  
2 determination); Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir.  
3 2001) (same).

4  
5 Non-examining state agency physicians also opined Plaintiff has a  
6 residual functional capacity greater than the capacity the ALJ found  
7 to exist (A.R. 65, 73, 84, 94). These non-examining physicians'  
8 opinions lend additional support to the ALJ's findings. See Andrews  
9 v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (where the opinions of  
10 non-examining physicians do not contradict "all other evidence in the  
11 record" an ALJ properly may rely on these opinions); Curry v.  
12 Sullivan, 925 F.2d 1127, 1130 n.2 (9th Cir. 1990).

13  
14 Medical testing, including x-rays and MRIs, suggest no more than  
15 mild problems with Plaintiff's back and left knee (A.R. 262, 286-87,  
16 294, 297, 307, 322-25, 399-401, 406-08, 416-17, 739-40, 750).  
17 Furthermore, examination reports reflect Plaintiff's ability to walk  
18 without an assistive device and with a "normal gait" (A.R. 260, 263,  
19 852).

20  
21 The vocational expert testified that a person with the residual  
22 functional capacity the ALJ found to exist could perform Plaintiff's  
23 past relevant work as a sewing machine operator (A.R. 486-87). This  
24 testimony furnishes substantial evidence that there exist significant  
25 numbers of jobs Plaintiff can perform. See Barker v. Secretary, 882  
26 F.2d 1474, 1478-80 (9th Cir. 1989); Martinez v. Heckler, 807 F.2d 771,  
27 775 (9th Cir. 1986); see generally Johnson v. Shalala, 60 F.3d 1428,  
28 1435-36 (9th Cir. 1995) (ALJ properly may rely on vocational expert to

1 identify jobs claimant can perform); 42 U.S.C. § 423(d)(2)(A); 20  
2 C.F.R. §§ 404.1520, 416.920.

3  
4 To the extent the evidence of record is conflicting, the ALJ  
5 properly resolved the conflicts. See Treichler v. Commissioner, 775  
6 F.3d 1090, 1098 (9th Cir. 2014) (court "leaves it to the ALJ" to  
7 resolve conflicts and ambiguities in the record). The Court must  
8 uphold the administrative decision when the evidence "is susceptible  
9 to more than one rational interpretation." Andrews v. Shalala, 53  
10 F.3d at 1039-40. The Court will uphold the ALJ's rational  
11 interpretation of the evidence in the present case notwithstanding any  
12 conflicts in the record.

13  
14 **II. The ALJ did not Materially Err in Discounting Plaintiff's**  
15 **Subjective Complaints.**

16  
17 Plaintiff challenges the legal sufficiency of the ALJ's stated  
18 reasons for discounting Plaintiff's testimony concerning her  
19 subjective symptomatology. The Court discerns no material error.

20  
21 An ALJ's assessment of a claimant's credibility is entitled to  
22 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.  
23 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). Where, as  
24 here, an ALJ finds that the claimant's medically determinable  
25 impairments reasonably could be expected to cause some degree of the  
26 alleged symptoms of which the claimant subjectively complains, any  
27 discounting of the claimant's complaints must be supported by  
28 specific, cogent findings. See Berry v. Astrue, 622 F.3d 1228, 1234

1 (9th Cir. 2010); Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995);  
2 but see Smolen v. Chater, 80 F.3d 1273, 1282-84 (9th Cir. 1996)  
3 (indicating that ALJ must offer "specific, clear and convincing"  
4 reasons to reject a claimant's testimony where there is no evidence of  
5 "malingering").<sup>3</sup> An ALJ's credibility finding "must be sufficiently  
6 specific to allow a reviewing court to conclude the ALJ rejected the  
7 claimant's testimony on permissible grounds and did not arbitrarily  
8 discredit the claimant's testimony." See Moisa v. Barnhart, 367 F.3d  
9 882, 885 (9th Cir. 2004) (internal citations and quotations omitted);  
10 see also Social Security Ruling ("SSR") 96-7p (explaining how to  
11 assess a claimant's credibility), superseded, SSR 16-3p (eff. Mar. 28,  
12 2016).<sup>4</sup> As discussed below, the ALJ stated sufficient reasons for  
13 deeming Plaintiff's subjective complaints less than fully credible.

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17 <sup>3</sup> In the absence of an ALJ's reliance on evidence of  
18 "malingering," most recent Ninth Circuit cases have applied the  
19 "clear and convincing" standard. See, e.g., Leon v. Berryhill,  
20 880 F.3d 1041, 1046 (9th Cir. 2017); Brown-Hunter v. Colvin, 806  
21 F.3d 487, 488-89 (9th Cir. 2015); Burrell v. Colvin, 775 F.3d  
22 1133, 1136-37 (9th Cir. 2014); Treichler v. Commissioner, 775  
23 F.3d at 1102; Ghanim v. Colvin, 763 F.3d 1154, 1163 n.9 (9th Cir.  
24 2014); Garrison v. Colvin, 759 F.3d 995, 1014-15 & n.18 (9th Cir.  
25 2014); see also Ballard v. Apfel, 2000 WL 1899797, at \*2 n.1  
26 (C.D. Cal. Dec. 19, 2000) (collecting earlier cases). In the  
27 present case, the ALJ's findings are sufficient under either  
28 standard, so the distinction between the two standards (if any)  
is academic.

25 <sup>4</sup> The appropriate analysis under the superseding SSR is  
26 substantially the same as the analysis under the superseded SSR.  
27 See R.P. v. Colvin, 2016 WL 7042259, at \*9 n.7 (E.D. Cal. Dec. 5,  
28 2016) (stating that SSR 16-3p "implemented a change in diction  
rather than substance") (citations omitted); see also Trevizo v.  
Berryhill, 871 F.3d 664, 678 n.5 (9th Cir. 2017) (suggesting that  
SSR 16-3p "makes clear what our precedent already required").

1           The ALJ stressed that, in numerous respects, the objective  
2 medical evidence fails to support the claimed severity of Plaintiff's  
3 subjective symptoms (A.R. 463-66). An ALJ permissibly may rely in  
4 part on a lack of supporting objective medical evidence in discounting  
5 a claimant's allegations of disabling symptomology. See Burch v.  
6 Barnhart, 400 F.3d 676, 681 (2005) ("Although lack of medical evidence  
7 cannot form the sole basis for discounting pain testimony, it is a  
8 factor the ALJ can consider in his [or her] credibility analysis.");  
9 Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001) (same); see  
10 also Carmickle v. Commissioner, 533 F.3d at 1161 ("Contradiction with  
11 the medical record is a sufficient basis for rejecting the claimant's  
12 subjective testimony"); Parra v. Astrue, 481 F.3d 742, 750 (9th Cir.  
13 2007), cert. denied, 552 U.S. 1141 (2008) (subjective knee pain  
14 properly discounted where laboratory tests showed knee function within  
15 normal limits); SSR 16-3p ("[O]bjective medical evidence is a useful  
16 indicator to help make reasonable conclusions about the intensity and  
17 persistence of symptoms, including the effects those symptoms may have  
18 on the ability to perform work-related activities . . ."). Although  
19 inconsistencies between subjective symptom complaints and objective  
20 medical evidence cannot be the sole basis for discounting a claimant's  
21 complaints, Burch v. Barnhart, 400 F.3d at 681, the ALJ did not  
22 discount Plaintiff's complaints solely on the basis that the  
23 complaints were inconsistent with the objective medical evidence.

24  
25           As the ALJ also indicated, Plaintiff's testimony was inconsistent  
26 with the observations of third party examiners (A.R. 464, 466).  
27 Plaintiff testified she must use a cane whenever she walks (A.R. 54,  
28 554). Yet, as previously indicated, third party examiners reported

1 Plaintiff had a "normal gait" and walked without the need for an  
2 assistive device (A.R. 260, 263, 852). An ALJ properly may discount a  
3 claimant's assertions which are inconsistent with the observations of  
4 third parties. See Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th Cir.  
5 1999); Copeland v. Bowen, 861 F.2d 536, 541 (9th Cir. 1988); see also  
6 SSR 16-3p at \*7.

7  
8 As the ALJ also indicated, the treatment received by Plaintiff  
9 has been relatively conservative and there evidently was a lengthy (3  
10 year) gap in her treatment (A.R. 463-66). At times, Plaintiff took  
11 only relatively mild medications for her allegedly disabling back and  
12 knee pain (A.R. 259, 335, 356).<sup>5</sup> Observations regarding the  
13 relatively conservative nature of a claimant's treatment properly may  
14 factor into the evaluation of a claimant's credibility. See  
15 Tommasetti v. Astrue, 533 F.3d at 1039-40; Parra v. Astrue, 481 F.3d  
16 at 751; Osenbrock v. Apfel, 240 F.3d 1157, 1166 (9th Cir. 2001); see  
17 also Burch v. Barnhart, 400 F.3d at 681 (unexplained failure to seek  
18 medical treatment may discredit a claimant's allegations of disabling  
19 symptoms); Chavez v. Department of Health and Human Services, 103 F.3d  
20 849, 853 (9th Cir. 1996) (failure to seek "further treatment" for back

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22  
23 <sup>5</sup> One doctor did recommend surgery on Plaintiff's left  
24 knee (A.R. 398). However, the ALJ properly rejected the validity  
25 of this recommendation, stating legally sufficient reasons for  
26 doing so (A.R. 465). See Smolen v. Chater, 80 F.3d at 1285 (ALJ  
27 may reject uncontradicted opinion of a treating physician by  
28 stating "clear and convincing" reasons that are based on  
substantial evidence in the record); Winans v. Bowen, 853 F.2d  
643, 647 (9th Cir. 1987) (ALJ may reject the contradicted opinion  
of a treating physician by stating "specific, legitimate" reasons  
for doing so that are based on substantial evidence in the  
record).

1 problem among specific findings justifying rejection of claimant's  
2 excess pain testimony).

3  
4 The ALJ also pointed out evidence that Plaintiff's pain may be  
5 adequately controlled with medication (A.R. 464; see also A.R. 845).  
6 See Warre v. Commissioner, 439 F.3d 1001, 1006 (9th Cir. 2006)  
7 ("Impairments that can be controlled effectively with medication are  
8 not disabling for the purpose of determining eligibility for SSI  
9 benefits.") (citations omitted); see also 20 C.F.R. §§  
10 404.1529(c)(3), 416.929(c)(3) (effectiveness of medication and  
11 treatment is a relevant factor in determining the severity of a  
12 claimant's symptoms); Tommasetti v. Astrue, 533 F.3d at 1040 (a  
13 favorable response to treatment can undermine a claimant's complaints  
14 of debilitating pain or other severe symptoms); Morgan v.  
15 Commissioner, 169 F.3d 595, 599 (9th Cir. 1999) (ALJ properly  
16 discredited claimant's subjective complaints by citing physician's  
17 report that symptoms improved with medication); Tidwell v. Apfel, 161  
18 F.3d 599, 602 (9th Cir. 1999) (ALJ did not err in considering that  
19 medication "aided" claimant's symptoms in assessing claimant's  
20 credibility).

21  
22 To the extent one or more of the ALJ's stated reasons for  
23 discounting Plaintiff's credibility may have been invalid, the Court  
24 nevertheless would uphold the ALJ's credibility determination under  
25 the circumstances presented. See Carmickle v. Commissioner, 533 F.3d  
26 at 1162-63 (despite the invalidity of one or more of an ALJ's stated  
27 reasons, a court properly may uphold the ALJ's credibility  
28 determination where sufficient valid reasons have been stated). In

1 the present case, the ALJ stated sufficient valid reasons to allow  
2 this Court to conclude that the ALJ discounted Plaintiff's credibility  
3 on permissible grounds. See Moisa v. Barnhart, 367 F.3d at 885. The  
4 Court therefore defers to the ALJ's credibility determination. See  
5 Lasich v. Astrue, 252 Fed. App'x 823, 825 (9th Cir. 2007) (court will  
6 defer to Administration's credibility determination when the proper  
7 process is used and proper reasons for the decision are provided);  
8 accord Flaten v. Secretary of Health & Human Services, 44 F.3d 1453,  
9 1464 (9th Cir. 1995).<sup>6</sup>

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25 <sup>6</sup> The Court need not and does not determine whether  
26 Plaintiff's subjective complaints are credible. Some evidence  
27 suggests that those complaints may be credible. However, it is  
28 for the Administration, and not this Court, to evaluate the  
credibility of witnesses. See Magallanes v. Bowen, 881 F.2d 747,  
750, 755-56 (9th Cir. 1989).

