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

ERICA L. D.,¹
Plaintiff,
v.
MARTIN J. O'MALLEY,²
Commissioner of Social Security,
Defendant.

No. 2:23-cv-07502-AJR
**MEMORANDUM DECISION
AND ORDER**

**I.
INTRODUCTION**

Erica L. D. ("Plaintiff") brings this action seeking to overturn the decision of the Commissioner of Social Security (the "Commissioner" or "Agency") denying her applications for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI"). The parties consented, pursuant to 28 U.S.C. § 636(c), to

¹ Plaintiff's name is partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

² Commissioner Martin J. O'Malley is substituted in as the Defendant in this action pursuant to Federal Rule of Civil Procedure 25(d).

1 the jurisdiction of the undersigned United States Magistrate Judge. (Dkt. Nos. 6, 7,
2 8.) For the reasons stated below, the decision of the Commissioner is AFFIRMED.

3 4 II.

5 PROCEDURAL HISTORY

6 Plaintiff filed an application for SSI on November 2, 2018, and an application
7 for DIB on November 5, 2018, alleging an inability to work since February 20,
8 2014. (Dkt. 9-5 at 9; Dkt. 9-6 at 2.) Plaintiff's applications were initially denied on
9 October 24, 2019. (Dkt. 9-4 at 2-9). Plaintiff's applications for DIB and SSI were
10 denied upon reconsideration on July 27, 2020, and July 28, 2020, respectively.
11 (Dkt. 9-4 at 10-45; Dkt. 9-5 at 15.)

12 Thereafter, Plaintiff filed a written request for hearing on August 14, 2020.
13 (Dkt. 9-5 at 20-26.) On May 27, 2021, Administrative Law Judge Michael
14 Radensky (the "ALJ") conducted a telephonic hearing.³ (Dkt. 9-3 at 71-96.) The
15 ALJ subsequently published an unfavorable decision on July 14, 2021. (Dkt. 9-4 at
16 46-60.) Plaintiff requested review of the ALJ's decision by the Appeals Council on
17 September 10, 2021. (Dkt. 9-5 at 101-103.) The Appeals Council granted the
18 request for review on August 31, 2022 and remanded the case back to the ALJ for a
19 new hearing. (Id. at 113-115.)

20 On February 13, 2023, on remand from the Appeals Council, the ALJ
21 conducted another telephonic hearing.⁴ (Dkt. 9-3 at 44-70.) The ALJ published an
22 unfavorable decision on March 15, 2023. (Id. at 18-31.) Plaintiff again requested a
23 review of the ALJ's decision by the Appeals Council on March 29, 2023. (Dkt. 9-5
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25 ³ Plaintiff was represented by counsel at the hearing and agreed to conduct the
26 hearing telephonically because of the COVID-19 pandemic. (Dkt. 9-3 at 73-74.)

27 ⁴ Plaintiff was once again represented by counsel at the hearing and agreed to
28 conduct the hearing telephonically because of the COVID-19 pandemic. (Dkt. 9-3
at 46-47.)

1 at 167-171.) On July 31, 2023, the Appeals Council denied the request for review.
2 (Dkt. 9-3 at 2-7.) On this date, the ALJ's decision became the final decision of the
3 Commissioner. See 42 U.S.C. § 405(h). Plaintiff now seeks review of the ALJ's
4 final decision.

6 III.

7 THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

8 To qualify for disability benefits, a claimant must demonstrate a medically
9 determinable physical or mental impairment that prevents the claimant from
10 engaging in substantial gainful activity and that is expected to result in death or to
11 last for a continuous period of at least twelve months. Reddick v. Chater, 157 F.3d
12 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The impairment must
13 render the claimant incapable of performing work previously performed or any other
14 substantial gainful employment that exists in the national economy. Tackett v.
15 Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

16 To decide if a claimant is entitled to benefits, an ALJ conducts a five-step
17 inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are:

- 18 (1) Is the claimant presently engaged in substantial gainful activity? If so,
19 the claimant is found not disabled. If not, proceed to step two.
- 20 (2) Is the claimant's impairment severe? If not, the claimant is found not
21 disabled. If so, proceed to step three.
- 22 (3) Does the claimant's impairment meet or equal one of the specific
23 impairments described in 20 C.F.R. Part 404, Subpart P, Appendix 1? If
24 so, the claimant is found disabled. If not, proceed to step four.
- 25 (4) Is the claimant capable of performing his past work? If so, the claimant
26 is found not disabled. If not, proceed to step five.

1 (5) Is the claimant able to do any other work? If not, the claimant is found
2 disabled. If so, the claimant is found not disabled.

3 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d 949, 953-
4 54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b)-(g)(1), 416.920(b)-(g)(1).

5 The claimant has the burden of proof at steps one through four and the
6 Commissioner has the burden of proof at step five. Bustamante, 262 F.3d at 953-54.
7 Additionally, the ALJ has an affirmative duty to assist the claimant in developing
8 the record at every step of the inquiry. Id. at 954. If, at step four, the claimant
9 meets their burden of establishing an inability to perform past work, the
10 Commissioner must show that the claimant can perform some other work that exists
11 in “significant numbers” in the national economy, taking into account the claimant’s
12 residual functional capacity (“RFC”), age, education, and work experience. Tackett,
13 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20 C.F.R. §§ 404.1520(g)(1),
14 416.920(g)(1). The Commissioner may do so by the testimony of a vocational
15 expert (“VE”) or by reference to the Medical-Vocational Guidelines appearing in 20
16 C.F.R. Part 404, Subpart P, Appendix 2 (commonly known as “the Grids”).
17 Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has
18 both exertional (strength-related) and non-exertional limitations, the Grids are
19 inapplicable and the ALJ must take the testimony of a VE. Moore v. Apfel, 216
20 F.3d 864, 869 (9th Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th
21 Cir. 1988)).

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IV.

THE ALJ’S DECISION

The ALJ employed the five-step sequential evaluation process and concluded that Plaintiff was not disabled within the meaning of the Social Security Act. (Dkt. 9-3 at 20-31.) At step one, the ALJ found that Plaintiff had not engaged in substantial

1 gainful activity since February 20, 2014, the alleged onset date. (Id. at 20.) At step
2 two, the ALJ found that Plaintiff had the following severe impairments:
3 “fibromyalgia, chronic fatigue syndrome, diabetes, mellitus, obesity, rheumatoid
4 arthritis factor, sleep apnea, and headaches.” (Id. (bold omitted).) At step three, the
5 ALJ determined that Plaintiff did not have an impairment or combination of
6 impairments that meets or medically equals the severity of any of the listings in the
7 regulations. (Id. at 23-24.)

8 The ALJ assessed Plaintiff’s residual functioning capacity (“RFC”) and
9 concluded that she could perform light work as defined in 20 C.F.R. § 404.1567(a),
10 “except with the following limitations: stand and walk for four hours out of eight;
11 perform occasional postural activities; no climbing ladders, scaffolds, or ropes; avoid
12 concentrated exposure to extremes of temperature; no work around unprotected
13 heights or dangerous, moving machinery.” (Id. at 24 (bold omitted).) The ALJ found
14 that Plaintiff’s “medically determinable impairments could reasonably be expected to
15 cause the alleged symptoms; however, [Plaintiff’s] statements concerning the
16 intensity, persistence and limiting effects of these symptoms are not entirely
17 consistent with the medical evidence and other evidence in the record” (Id. at
18 26.)

19 At step four, the ALJ found that Plaintiff was capable of performing her past
20 relevant work as a claims assistant. (Id. at 29.) The ALJ found that this work did not
21 require the performance of work-related activities precluded by Plaintiff’s RFC. (Id.)
22 Accordingly, the ALJ found that Plaintiff had not been under a disability as defined
23 by the Act from February 20, 2014, through the date of the decision. (Id. at 30.)

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25 **V.**

26 **STANDARD OF REVIEW**

27 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s
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1 decision to deny benefits. The court may set aside the Commissioner’s decision
2 when the ALJ’s findings are based on legal error or are not supported by substantial
3 evidence in the record as a whole. Garrison v. Colvin, 759 F.3d 995 (9th Cir. 2014)
4 (citing Stout v. Comm’r, Soc. Sec. Admin., 454 F.3d 1050, 1052 (9th Cir. 2006));
5 Auckland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citing Tackett, 180
6 F.3d at 1097); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v.
7 Bowen, 885 F.2d 597, 601 (9th Cir. 1989)).

8 “Substantial evidence is more than a scintilla, but less than a preponderance.”
9 Reddick, 157 F.3d at 720 (citing Jamerson v. Chater, 112 F.3d 1064, 1066 (9th Cir.
10 1997)). It is “relevant evidence which a reasonable person might accept as adequate
11 to support a conclusion.” Id. (citing Jamerson, 112 F.3d at 1066; Smolen, 80 F.3d at
12 1279). To determine whether substantial evidence supports a finding, the court must
13 “consider the record as a whole, weighing both evidence that supports and evidence
14 that detracts from the [Commissioner’s] conclusion.” Auckland, 257 F.3d at 1035
15 (citing Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can
16 reasonably support either affirming or reversing that conclusion, the court may not
17 substitute its judgment for that of the Commissioner. Reddick, 157 F.3d at 720-21
18 (citing Flaten v. Sec’y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

VI.

DISCUSSION

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22 Plaintiff raises two grounds for relief, both focused on the ALJ’s alleged
23 improper assessment of evidence. First, Plaintiff contends that the ALJ failed to
24 properly assess the opinion of Dr. Shelia Lezcano. (Dkt. 11 at 5-12.) Second,
25 Plaintiff contends that the ALJ failed to properly address Plaintiff’s subjective
26 symptom testimony by failing to provide “clear and convincing reasons” to reject
27 the testimony. (Id. at 12-16.) For the reasons set for the below, the Court affirms
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1 the decision of the Commissioner.

2 **A. The ALJ Properly Considered the Opinions of Treating Specialist Dr.**
3 **Shelia Lezcano.**

4 In her first ground for relief, Plaintiff contends that the ALJ failed to properly
5 assess the opinion of Dr. Lezcano who provided “long term treatment” for Plaintiff.
6 (Dkt. 11 at 5.) Specifically, Plaintiff contends that the ALJ improperly disqualified
7 Dr. Lezcano’s assessment due to a lack of expertise in mental health regarding
8 Plaintiff’s “limitations in the ability to concentrate.” (Id. at 8-9.) Plaintiff further
9 contends that Dr. Lezcano’s opinion about Plaintiff’s inability to concentrate is
10 consistent with the opinion of Dr. Richard Ciasca, Plaintiff’s psychiatrist. (Id. at 9.)
11 Plaintiff argues that the ALJ wrongly rejected Dr. Lezcano’s opinion due to a lack
12 of objective findings “that are not expected” in a case involving fibromyalgia and
13 chronic fatigue syndrome. (Id. at 10.) Finally, Plaintiff argues that the ALJ erred in
14 rejecting Dr. Lezcano’s opinion because as a rheumatologist, she was in the best
15 position to evaluate Plaintiff’s “complex condition.” (Id. at 11-12.)

16 In response, Defendant contends that the ALJ properly resolved conflicts in
17 the medical opinion evidence and found the State agency physicians to be more
18 persuasive than Dr. Lezcano. (Dkt. 14 at 13.) Defendant argues that the
19 inconsistency of Dr. Lezcano’s opinion with the overall record and reliance on
20 “Plaintiff’s subjective symptoms” justified the ALJ’s discounting of Dr. Lezcano’s
21 opinion. (Id. at 13.) Defendant also contends that the ALJ reasonably resolved
22 conflicts in the opinion evidence about Plaintiff’s ability to concentrate because Dr.
23 Ciasca’s findings lacked objective support. (Id. at 14.)

24 **1. Legal Standard.**

25 An ALJ must consider and evaluate the persuasiveness of all medical
26 opinions or prior administrative medical findings. See 20 C.F.R. § 416.920c(b).
27 The factors for evaluating the persuasiveness of medical opinions and prior
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1 administrative medical findings include: supportability, consistency, relationship
2 with claimant (including length of the treatment, frequency of the examinations,
3 purpose of the treatment, extent of the treatment relationship, and examining
4 relationship), specialization, and “other factors that tend to support or contradict a
5 medical opinion or prior administrative medical finding” (including, but not limited
6 to, “evidence showing a medical source has familiarity with the other evidence in
7 the claim or an understanding of [the Agency’s] disability program’s policies and
8 evidentiary requirements”). 20 C.F.R. § 416.920c(c)(1)-(5).

9 Supportability and consistency are the most important factors; therefore, the
10 ALJ is required to explain how both factors were considered. 20 C.F.R. §
11 416.920(c)(2). Supportability and consistency are explained as follows:

12 (1) Supportability. The more relevant the objective medical evidence and
13 supporting explanations presented by a medical source are to support his or
14 her medical opinion(s) or prior administrative medical finding(s), the more
15 persuasive the medical opinions or prior administrative medical finding(s)
16 will be.

17 (2) Consistency. The more consistent a medical opinion(s) or prior
18 administrative medical finding(s) is with the evidence from other medical
19 sources and nonmedical sources in the claim, the more persuasive the medical
20 opinion(s) or prior administrative finding(s) will be.

21 20 C.F.R. § 416.920c(c)(1)-(2). The ALJ is allowed to, but is not required to,
22 explain how “the factors in paragraphs (c)(3) through (c)(5),” *i.e.*, “[r]elationship
23 with the claimant,” “[s]pecialization,” and “other factors that tend to support or
24 contradict a medical opinion or prior administrative medical finding,” were
25 considered. 20 C.F.R. § 416.920c(b)(2). However, when two or more medical
26 opinions or prior administrative findings “about the same issue are both equally
27 well-supported . . . and consistent with the record . . . but are not exactly the same,”
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1 the ALJ must explain how “the other most persuasive factors” were considered. 20
2 C.F.R. § 416.920c(b)(3).

3 Finally, in formulating an RFC, the ALJ weighs medical opinions, non-
4 medical source opinions, and the claimant’s credibility. See Bray v. Comm’r of
5 Soc. Sec. Admin., 554 F.3d 1219, 1226 (9th Cir. 2009); see also Robbins, 466 F.3d
6 at 883 (“In determining a claimant’s RFC, an ALJ must consider all relevant
7 evidence in the record, including, inter alia, medical records, lay evidence, and the
8 effects of symptoms, including pain, that are reasonably attributable to a medically
9 determinable impairment.” (internal quotation marks omitted)); Andrews v. Shalala,
10 53 F.3d 1035, 1039 (9th Cir. 1995) (“The ALJ is responsible for determining
11 credibility, resolving conflicts in medical testimony, and for resolving
12 ambiguities.”); 20 C.F.R. § 416.945(a)(3) (“We will assess your [RFC] based on all
13 of the relevant medical and other evidence. . . . We will consider any statements
14 about what you can still do that have been provided by medical sources, whether or
15 not they are based on formal medical examinations.”).

16 An ALJ must discuss significant and probative evidence and explain why it
17 has been rejected. See Vincent v. Heckler, 739 F.2d 1393, 1395 (9th Cir. 1984). An
18 ALJ may not make proprietary determinations regarding the claimant’s medical
19 evidence. See, e.g., Day v. Weinberger, 522 F.2d 1154, 1156 (9th Cir. 1975) (an
20 ALJ is forbidden from making his or her own medical assessment beyond that
21 demonstrated by the record); Rohan v. Chater, 98 F.3d 966, 970 (7th Cir. 1996)
22 (“ALJs must not succumb to the temptation to play doctor and make their own
23 independent medical findings.”); Javier A. G. v. Saul, 2020 WL 6940042, at *9
24 (C.D. Cal. Nov. 25, 2020) (“[A]n ALJ may not substitute his or her lay
25 interpretation of raw medical data in making an RFC assessment in lieu of a
26 qualified expert’s medical opinion.”).

1 **2. Dr. Lezcano’s Opinion.**

2 Dr. Lezcano is a rheumatologist at Adventist Health White Memorial Hospital
3 who treated Plaintiff for over two years as of February, 21, 2022. (Dkt. 9-14 at 203-
4 06; Dkt. 9-10 at 155, 198, 210.) Dr. Lezcano completed a Fibromyalgia Residual
5 Functional Capacity Assessment on November 30, 2020 and a Physical Medical
6 Source Statement on February 21, 2022. (See Dkt. 9-10 at 100-03; Dkt. 9-14 at
7 203-05.)

8 The assessment completed on November 30, 2020 was a mostly check-the-
9 box form with some additional space for written comments. (Dkt. 9-10 at 100-03.)
10 At the top of the form, Dr. Lezcano checked a box indicating that Plaintiff met the
11 criteria for a fibromyalgia diagnosis and described Plaintiff’s prognosis as “guarded,
12 chronic.” (Id.)

13 Dr. Lezcano checked boxes indicating that Plaintiff suffered from the
14 following symptoms: multiple tender points, nonrestorative sleep, chronic fatigue,
15 morning stiffness, muscle weakness, subjective swelling, frequent, severe
16 headaches, temporomandibular joint dysfunction (“TMJ”), numbness and tingling,
17 sicca symptoms, anxiety, depression, and chronic fatigue syndrome. (Id.) Dr.
18 Lezcano also checked boxes indicating that Plaintiff was not a malingerer and that
19 emotional factors contributed to the severity of Plaintiff’s pain. (Id.) Dr. Lezcano
20 opined that Plaintiff suffered from “constant, burning pain that [could] vary in
21 intensity.” (Id. at 101.)

22 With regard to Plaintiff’s ability to work, Dr. Lezcano checked a box
23 indicating that Plaintiff would frequently experience pain or other symptoms that
24 interfered with Plaintiff’s attention and concentration to perform even simple work
25 tasks. (Id.) Dr. Lezcano also checked a box indicating that Plaintiff was incapable
26 of even low stress jobs. (Id.) With regard to Plaintiff’s functional limitations, Dr.
27 Lezcano estimated that Plaintiff could walk two city blocks without rest or severe
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1 pain, sit for thirty minutes at a time before needing to get up, and stand for five
2 minutes at a time before needing to sit down. (Id. at 101-02.) Dr. Lezcano also
3 estimated that Plaintiff could sit for two hours and stand/walk for less than two
4 hours during an eight-hour workday. (Id. at 102.) Dr. Lezcano further estimated
5 that Plaintiff would need to walk around for five minutes, every thirty minutes,
6 during the course of an eight-hour workday. (Id.) Dr. Lezcano concluded the
7 assessment by checking a box indicating that Plaintiff was likely to be absent from
8 work more than four days per month due to impairments or treatments. (Id. at 103.)

9 In the form completed on February 2, 2022, Dr. Lezcano diagnosed Plaintiff
10 with “seropositive rheumatoid arthritis [and] fibromyalgia.” (Dkt. 9-14 at 203.) Dr.
11 Lezcano opined that Plaintiff exhibited “chronic diffuse body pain, generalized
12 joint, excessive fatigue” and identified “diffuse tender[ness]” as an objective sign of
13 Plaintiff’s condition. (Id.) With regard to Plaintiff’s functional limitations, Dr.
14 Lezcano estimated that Plaintiff could not walk a city block without rest or severe
15 pain and could sit for 20 minutes before needing to get up. (Id.) Dr. Lezcano
16 checked boxes indicating that Plaintiff could sit and stand/walk for less than two
17 hours total in an eight-hour workday. (Id.) Dr. Lezcano also estimated that Plaintiff
18 required ten-to-fifteen-minute unscheduled breaks every hour during an eight-hour
19 workday. (Id. at 204.)

20 Dr. Lezcano checked boxes indicating that Plaintiff should rarely lift items
21 less than ten pounds and never lift anything more than ten pounds in a competitive
22 work environment. (Id.) Dr. Lezcano concluded the form by checking a box
23 estimating that Plaintiff was likely to miss more than four days per month due to her
24 impairments and opined that “excessive fatigue, poor concentration, [and] severe
25 chronic pain” would affect Plaintiff’s ability to work. (Id. at 205.)

26 **3. Analysis.**

27 The ALJ addressed Dr. Lezcano’s opinions and ultimately found them to be
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1 “unpersuasive.” (Dkt. 9-3 at 28.) The ALJ articulated the two most important
2 factors of supportability and consistency to consider the persuasiveness of Dr.
3 Lezcano’s opinions. See 20 C.F.R. § 416.920c(c)(1)-(2). With regard to
4 supportability, the ALJ found that Dr. Lezcano’s opinions were “not well
5 supported” because they contained “subjective complaints of symptoms as well as
6 indications of tender points but limited other objective evidence that would limit
7 [Plaintiff] so much that she could not lift more than 10 pounds on the rare occasion
8 among other limitations.” (Dkt. 9-3 at 28.) The ALJ explained that Dr. Lezcano’s
9 opinions contained “few objective clinical findings such as muscle weakness,
10 atrophy, imbalance, loss of range of motion, or other such findings.” (Id.) The ALJ
11 also noted that Dr. Lezcano’s opinions contained “limitations concerning
12 [Plaintiff’s] mental health, which appear[ed] to be beyond the scope of [Dr.
13 Lezcano’s] area of expertise.” (Id.)

14 With regard to consistency, the ALJ found that Dr. Lezcano’s opinions were
15 “not consistent with other evidence in the record.” (Id.) Specifically, the ALJ
16 explained that “[m]ost physical examinations indicate[d] no acute distress; no joint
17 deformity, erythema, or tenderness; full range of motion in all joints; and normal
18 sensation and motor functioning.” (Id. (citing Dkt. 9-10 at 26, 32-33, 38, 110, 116,
19 156, 192, 201, 206).) The ALJ noted that Plaintiff “also has a normal gait.” (Id.
20 (citing Dkt. 9-10 at 192, 201).) The ALJ further noted that “[t]here is not consistent
21 evidence of swelling in the hands or other joints” and “no evidence of muscle
22 weakness or inability to perform fine or gross movements.” (Id.) The ALJ
23 explained that “[t]he most recent treatment notes [we]re not specifically for chronic
24 fatigue syndrome, which [Plaintiff] allege[d] [wa]s her primary condition, but rather
25 fibromyalgia and rheumatoid arthritis.” (Id. (citing Dkt. 9-4 at 66, 67; Dkt. 9-13 at
26 2-198; Dkt. 9-14 at 2-200).) Additionally, the ALJ noted that Dr. Lezcano’s
27 limitations concerning Plaintiff’s mental health were “not consistent with the
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1 objective clinical findings made during mental status examinations.” (Id. (citing
2 Dkt. 9-10 at 92; 9-11 at 7, 10, 13, 23, 46, 48).)

3 The ALJ explained that he “limited [Plaintiff] to less than light exertional
4 work with only four hours of standing and walking in considering [Plaintiff’s]
5 subjective complaints, despite the objective clinical evidence showing no significant
6 motor weakness, muscle atrophy, shortness of breath, or swelling on a consistent
7 basis.” (Id. at 28-29.) The ALJ further explained that Plaintiff “also does not
8 appear to have consistent findings of ataxia, extreme pallor, pronounced weight
9 change, or swollen lymph nodes typically associated with chronic fatigue
10 syndrome.” (Id. at 29.) “Nevertheless, given the consistent complaints of fatigue
11 and pain, [the ALJ] . . . limited [Plaintiff] to light work with reduced walking and
12 occasional postural activities.” (Id.)

13 The Court concludes that the ALJ’s findings related to supportability are
14 supported by substantial evidence in the record, with one exception which was
15 harmless error. Specifically, the ALJ is correct that the two assessments provided
16 by Dr. Lezcano are largely check-the-box forms with very little explanation or
17 objective clinical findings. (See Dkt. 9-10 at 100-03; Dkt. 9-14 at 203-05.)
18 Moreover, the two assessments appear to largely summarize and be based upon
19 Plaintiff’s subjective complaints, which were properly discounted by the ALJ, as
20 discussed in the context of Plaintiff’s second ground for relief below. (See Dkt. 9-
21 10 at 100; Dkt. 9-14 at 205); Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir.
22 2008) (“An ALJ may reject a treating physician’s opinion if it is based to a large
23 extent on a claimant’s self-reports that have been properly discounted as incredible.”
24 (internal quotation marks omitted)); Ghanim v. Colvin, 763 F.3d 1154, 1162 (9th
25 Cir. 2014) (“If a treating provider’s opinions are based to a large extent on an
26 applicant’s self-reports and not on clinical evidence, and the ALJ finds the applicant
27 not credible, the ALJ may discount the treating provider’s opinion.” (internal
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1 quotation marks omitted).).

2 Finally, the ALJ noted that Dr. Lezcano included limitations concerning
3 Plaintiff's mental health in her opinions and these limitations appeared to be beyond
4 the scope of Dr. Lezcano's expertise. (Dkt. 9-3 at 28). This was improper because
5 the Ninth Circuit has held that a treating physician can opine on a claimant's mental
6 limitations regardless of whether they have any certification in mental health. See,
7 e.g., Sprague v. Bowen, 812 F.2d 1226, 1232 (9th Cir. 1987) ("Under general
8 principles of evidence law Dr. Gehlen is qualified to give a medical opinion as to
9 Mrs. Sprague's mental state as it relates to her physical disability even though Dr.
10 Gehlen is not a psychiatrist."). However, the ALJ's erroneous rejection of Dr.
11 Lezcano's mental limitations as beyond the scope of her expertise was harmless.
12 See Tommasetti, 533 F.3d at 1038 ("[T]he court will not reverse an ALJ's decision
13 for harmless error, which exists when it is clear from the record that the ALJ's error
14 was inconsequential to the ultimate nondisability determination." (internal quotation
15 marks omitted)). The error was harmless because Dr. Lezcano did not make any
16 significant finding related to Plaintiff's mental capacity and therefore the mental
17 limitations did not impact the RFC determination. Indeed, Plaintiff admits that "[i]t
18 is not clear what the ALJ is referring to in regards to the mental health opinion of
19 Dr. Lezcano, however, Dr. Lezcano did note that [Plaintiff] had poor concentration
20 and was incapable of even low stress jobs." (Dkt. 11 at 8-9.) The error was also
21 harmless because the ALJ rejected these mental health limitations as inconsistent
22 with the objective clinical findings made during mental status examinations, as
23 discussed below. (Dkt. 9-3 at 28 (citing Dkt. 9-10 at 92; Dkt. 9-11 at 7, 10, 13, 23,
24 36, 48).)

25 The Court similarly also concludes that the ALJ's findings related to
26 consistency are supported by substantial evidence in the record. Specifically, the
27 ALJ is correct that the mental limitations assessed by Dr. Lezcano are inconsistent
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1 with the objective clinical findings made during mental status examinations. (Dkt.
2 9-3 at 28 (citing Dkt. 9-10 at 92; Dkt. 9-11 at 7, 10, 13, 23, 36, 48).) For example,
3 Dr. Ciasca found no abnormalities during mental status examinations on February
4 27, 2020, May 28, 2020, July 13, 2020, August 28, 2020, and November 21, 2020.
5 (Dkt. 9-10 at 92-93; Dkt. 9-11 at 7-8, 10-11, 13-14, 23-24, 36-37, 48-49.)
6 Moreover, the ALJ noted that Plaintiff’s treatment records “indicate calm demeanor;
7 good mood; euthymic affect; linear thought process; no psychosis; intact cognition;
8 and good insight and judgment.” (Dkt. 9-3 at 23 (citing Dkt. 9-10 at 86, 92; Dkt. 9-
9 11 at 7, 10, 13, 23, 36, 48).) The ALJ also noted that Plaintiff’s “treatment history is
10 not consistent with marked to extreme findings” because Plaintiff “receives
11 medication, which she reports is beneficial, but is not receiving any therapy.” (Dkt.
12 9-3 at 23 (citing Dkt. 9-15 at 4)); see Warre v. Comm’r of the Soc. Sec. Admin., 439
13 F.3d 1001, 1006 (9th Cir. 2006) (“Impairments that can be controlled effectively
14 with medication are not disabling for the purpose of determining eligibility for SSI
15 benefits.”).⁵

16 Plaintiff contends that the ALJ demonstrated a misunderstanding of
17 fibromyalgia and chronic fatigue syndrome by requiring objective findings that are
18 not expected with these diagnoses. (Dkt. 11 at 10.) However, the ALJ did not
19 require objective findings to support all the limitations included in Dr. Lezcano’s
20 opinions. To the contrary, the ALJ incorporated many of Dr. Lezcano’s limitations
21 related to Plaintiff’s “complaints of fatigue and pain” into the RFC determination by
22 limiting Plaintiff “to light work with reduced walking and occasional postural
23 activities.” (Dkt. 9-3 at 29.) Thus, the ALJ properly relied on objective medical
24 evidence as “a useful indicator to help make reasonable conclusions about the

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26 ⁵ Plaintiff notes that Dr. Lezcano’s opinion regarding Plaintiff’s ability to
27 concentrate is consistent with Dr. Ciasca’s opinion. (Dkt. 11 at 9.) However, the
28 ALJ thoroughly discussed the inconsistency of Dr. Ciasca’s findings by explaining
that Dr. Ciasca’s opinion is not supported by objective clinical findings and conflicts
with other neurological reports in the record. (Dkt. 9-3 at 23.)

1 intensity and persistence of symptoms.” Social Security Ruling (“SSR”) 16-3p,
2 2017 WL 5180304, at *5.

3 Finally, Plaintiff contends that the ALJ erred in rejecting Dr. Lezcano’s
4 opinions because as a rheumatologist, she was in the best position to evaluate
5 Plaintiff’s condition. (Dkt. 11 at 11-12.) However, the ALJ’s rejection of the more
6 extreme limitations included in Dr. Lezcano’s opinions is supported by substantial
7 evidence in the record, including the key factor of consistency. Indeed, the ALJ is
8 correct that Dr. Lezcano’s opinions are not consistent with most of the physical
9 examinations in the record indicating “no acute distress; no joint deformity,
10 erythema, or tenderness; full range of motion in all joints; and normal sensation and
11 motor functioning.” (Dkt. 9-3 at 28 (citing Dkt. 9-10 at 23, 26, 32-33, 38, 110, 116,
12 156, 192, 201, 206).) For example, Dr. Susan Dasta documented in multiple
13 examination notes that Plaintiff had “[n]o joint deformity” and possessed “full
14 [range of motion in] all joints.” (Dkt. 9-10 at 23, 32, 38, 110.) Similarly, Dr.
15 Amaiak Chilingaryan documented in multiple examination notes that Plaintiff’s
16 “strength [was] 5/5 in all major muscle groups” and “rapid alternating movements
17 [were] intact.” (Dkt. 9-10 at 192, 201, 206.) Dr. Chilingaryan also documented in
18 physical examination notes that Plaintiff had a normal gait. (Dkt. 9-10 at 192, 201.)

19 Thus, the Court concludes that the ALJ properly considered the opinions of
20 Dr. Lezcano by focusing on the two most important factors of supportability and
21 consistency. See 20 C.F.R. § 404.1520c(b)(2) (“The factors of supportability . . .
22 and consistency . . . are the most important factors we consider when we determine
23 how persuasive we find a medical source’s medical opinions or prior administrative
24 medical findings to be.”). Given both the lack of support for Dr. Lezcano’s opinions
25 as well as the substantial number of opinions in the record contradicting Dr.
26 Lezcano, the Court concludes that the ALJ properly rejected Dr. Lezcano’s
27 opinions.

1 **B. The ALJ Properly Considered Plaintiff’s Subjective Symptom Testimony.**

2 In her second ground for relief, Plaintiff contends that the ALJ failed to
3 provide clear and convincing reasons to reject her subjective complaints. (Dkt. 11 at
4 12.) Plaintiff argues that the ALJ misunderstood the treatment for chronic fatigue
5 syndrome and emphasizes that the treatment is “rest, pacing, and minimizing
6 activities.” (Id. at 14.) Plaintiff also asserts two reasons why the ALJ did not
7 provide clear and convincing reasons to reject the frequency of Plaintiff’s
8 headaches. (Id. at 15.) First, Plaintiff contends that the ALJ failed to cite to the
9 record to support a conclusion that Plaintiff’s testimony about migraines was
10 inconsistent with treatment notes. (Id.) Second, Plaintiff contends that the
11 treatment notes accurately reflect her testimony that she suffers from migraines once
12 a week. (Id.) Finally, Plaintiff argues that the record supports a finding that she
13 cannot work on a sustained basis due to limitations from migraines, chronic fatigue
14 syndrome, fibromyalgia, and rheumatoid arthritis. (Id.)

15 **1. Legal Standard.**

16 When assessing a claimant’s credibility regarding subjective pain or intensity
17 of symptoms, the ALJ must engage in a two-step analysis. See Trevizo v. Berryhill,
18 871 F.3d 664, 678 (9th Cir. 2017). First, the ALJ must determine if there is medical
19 evidence of an impairment that could reasonably produce the symptoms alleged.
20 See Garrison, 759 F.3d at 1014. “In this analysis, the claimant is not required to
21 show that her impairment could reasonably be expected to cause the severity of the
22 symptom she has alleged; she need only show that it could reasonably have caused
23 some degree of the symptom.” Id. (emphasis in original) (citation omitted). “Nor
24 must a claimant produce objective medical evidence of the pain or fatigue itself, or
25 the severity thereof.” Id. (internal quotation marks omitted).

26 If the claimant satisfies this first step, and there is no evidence of malingering,
27 the ALJ must provide specific, clear and convincing reasons for rejecting the
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1 claimant's testimony about the symptom severity. See Trevizo, 871 F.3d at 678; see
2 also Smolen, 80 F.3d at 1284 (“[T]he ALJ may reject the claimant’s testimony
3 regarding the severity of her symptoms only if he makes specific findings stating
4 clear and convincing reasons for doing so.”); Robbins v. Soc. Sec. Admin., 466 F.3d
5 880, 883 (9th Cir. 2006) (“[U]nless an ALJ makes a finding of malingering based on
6 affirmative evidence thereof, he or she may only find an applicant not credible by
7 making specific findings as to credibility and stating clear and convincing reasons
8 for each.”).

9 In discrediting the claimant’s subjective symptom testimony, the ALJ may
10 consider the following:

- 11 (1) ordinary techniques of credibility evaluation, such as
12 the claimant’s reputation for lying, prior inconsistent
13 statements concerning the symptoms, and other
14 testimony by the claimant that appears less than candid;
- 15 (2) unexplained or inadequately explained failure to seek
16 treatment or to follow a prescribed course of treatment;
- 17 and (3) the claimant’s daily activities.

18 Ghanim, 763 F.3d at 1163 (internal quotation marks omitted). Inconsistencies
19 between a claimant’s testimony and conduct, or internal contradictions in the
20 claimant’s testimony, also may be relevant. See Burrell v. Colvin, 775 F.3d 1133,
21 1137 (9th Cir. 2014); Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir. 1997).
22 In addition, the ALJ may consider the observations of treating and examining
23 physicians regarding, among other matters, the functional restrictions caused by the
24 claimant’s symptoms. See Smolen, 80 F.3d at 1284; accord Burrell, 775 F.3d at
25 1137. However, it is improper for an ALJ to reject subjective testimony based
26 “solely” on its inconsistencies with the objective medical evidence presented. Bray,
27 554 F.3d at 1227 (internal quotation marks omitted).

28 Further, the ALJ must make a credibility determination with findings that are
“sufficiently specific to permit the court to conclude that the ALJ did not arbitrarily
discredit claimant’s testimony.” Tommasetti, 533 F.3d at 1039 (internal quotation

1 marks omitted); see Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir. 2015) (“A
2 finding that a claimant’s testimony is not credible must be sufficiently specific to
3 allow a reviewing court to conclude the adjudicator rejected the claimant’s
4 testimony on permissible grounds and did not arbitrarily discredit a claimant’s
5 testimony regarding pain.” (internal quotation marks omitted)). Although an ALJ’s
6 interpretation of a claimant’s testimony may not be the only reasonable one, if it is
7 supported by substantial evidence, “it is not [the court’s] role to second-guess it.”
8 Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001).

9 **2. Plaintiff’s Subjective Symptom Testimony.**

10 At the hearing, Plaintiff testified that she is not currently working and last
11 worked in 2014 as a clerical assistant for an insurance company. (Dkt. 9-3 at 48.)
12 Plaintiff testified that she worked for “about seven months” before being laid off.
13 (Id. at 49.) Plaintiff explained that after being laid off, she tried working as a notary,
14 but “didn’t have the energy” to stay in the job. (Id.) Plaintiff also confirmed that
15 she does not use alcohol or drugs and has no difficulty reading or writing. (Id. at
16 50.)

17 When examined by her attorney, Plaintiff testified that she worked part time
18 in her clerical assistant role because she “didn’t have the energy to work full time.”
19 (Id.) Before working as a clerical assistant, Plaintiff attended school and supported
20 herself through “couch surfing, [general relief], and food stamps.” (Id. at 51.)
21 Plaintiff testified that she did not work while going to school because she “didn’t
22 have the energy.” (Id.) Plaintiff testified that she experienced a period of feeling
23 better when she worked as a clerical assistant but “pay[s] for it even longer” when
24 she pushes herself to work. (Id.) Plaintiff clarified that “pay[ing] for it” means she
25 ends up in bed “constantly” and only gets up to use the bathroom and eat. (Id.)

26 Plaintiff testified further that she struggles to walk a “full block,” but attempts
27 to “do basic stuff” to get exercise. (Id. at 52.) Plaintiff explained that she does “go
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1 to the market,” but does not have the energy to clean her house. (Id.) Plaintiff
2 experiences knee pain, but does not wear a brace and “occasionally” elevates her leg
3 to alleviate swelling. (Id. at 53.) Plaintiff cannot stand for long without holding
4 something for support. (Id.) Plaintiff explained that standing for “too long” causes
5 swelling, she can “maybe [walk] two blocks” before stopping to rest, and her ability
6 to walk after resting depends on whether she is having a “good day.” (Id.) Plaintiff
7 estimated that she experiences one or two “good days” a month. (Id. at 54.)
8 Plaintiff experiences “one or two” migraines per week and is prescribed medication
9 to address her migraines. (Id.)

10 Plaintiff testified that she can drive and resides with a roommate, but lives in
11 her own room. (Id.) Plaintiff does her own laundry and cooks for herself but must
12 wait until it is a “good day” to do laundry and eats mostly cold food, sandwiches,
13 and microwavable meals. (Id. at 60.) Plaintiff testified that she tries to attend
14 church weekly, but does not “hang out” before or after services. (Id.) Plaintiff is
15 diagnosed with sleep apnea and uses a continuous positive airway pressure
16 (“CPAP”) machine to deal with the condition. (Id. at 55.) As far as medications,
17 Plaintiff takes Pravadoline (painkiller), Cyclobenzaprine (muscle relaxer), Sertaline
18 (mental health), Sumatriptan (migraine medication), Topiramate (migraine
19 medication), and Humira (rheumatoid arthritis medication). (Id. 55-56, 59, 61.)
20 Plaintiff testified that her “biggest problem” is fatigue, but she also experiences pain
21 from her rheumatoid arthritis. (Id. at 57, 59.) Specifically, Plaintiff testified that
22 due to her rheumatoid arthritis, she sometimes struggles to bend her fingers, but her
23 condition has improved over time. (Id. at 60.)

24 **3. Analysis.**

25 The ALJ engaged in the two-step analysis required by Trevizo and found at
26 the first step that Plaintiff’s “medically determinable impairments could reasonably
27 be expected to cause the alleged symptoms.” (Dkt. 9-3 at 26.) However, the ALJ
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1 concluded at the second step that Plaintiff’s “statements concerning the intensity,
2 persistence and limiting effects of these symptoms are not entirely consistent with
3 the medical evidence and other evidence in the record.” (Id.) Additionally, the ALJ
4 did not make a finding of malingering, but noted that Plaintiff’s “primary care
5 physician has ‘doubted [the] diagnosis of chronic fatigue syndrome.’” (Id. (quoting
6 Dkt. 9-9 at 436).) The ALJ rejected portions of Plaintiff’s subjective symptom
7 testimony by relying on inconsistencies between Plaintiff’s testimony and her
8 behavior, inconsistencies with the medical evidence in the record, and
9 inconsistencies between Plaintiff’s testimony and her activities of daily living. (Id.
10 at 26-29.)

11 First, the ALJ noted Plaintiff’s contradictory behavior towards her prescribed
12 medications from 2018 to 2023. (Id. at 26-27.) Specifically, the ALJ highlighted
13 that in 2018, Plaintiff reported being prescribed medication to treat her fibromyalgia
14 pain, but “had not consistently been on any medication for more than a few weeks.”
15 (Id. at 26 (citing Dkt. 9-9 at 469)); Dkt. 9-9 at 469 (“She has not taken anything to
16 help with the pain. She was previously prescribed medication, the name of which
17 she doesn’t remember, to treat fibromyalgia pain. She never took medication for
18 more than a few weeks.”.) The ALJ also noted that in 2019, Plaintiff was
19 prescribed Lyrica and Humira, but “delayed starting her medication despite her
20 treatment provider encouraging her to start this treatment.” (Dkt. 9-3 at 26 (citing
21 Dkt. 9-10 at 56; Dkt. 9-13 at 195; Dkt. 9-14 at 197).) The treatment records from
22 December of 2019 indicate a concern by Plaintiff about side effects because of a
23 foot surgery she is going to have “soon” and concern that the medication will
24 depress her immune system. (Dkt. 9-10 at 56.) However, the treatment records in
25 August of 2021 continue to show that Plaintiff has not started Humira and that
26 Plaintiff “prefers to hold off on use of Humira at this time,” despite the urging of Dr.
27 Lezcano. (Dkt. 9-13 at 195; Dkt. 9-14 at 197.) Moreover, the ALJ noted that
28

1 Plaintiff only recently started Humira and “reported in January 2023 that it seemed
2 to be working” without “adverse side effects reported on a consistent basis.” (Dkt.
3 9-3 at 26-27 (citing Dkt. 9-15 at 34).)

4 The Court concludes that the ALJ properly discounted Plaintiff’s subjective
5 symptom testimony of disabling pain based on evidence that she did not consistently
6 take her prescribed medication and delayed taking medication which was ultimately
7 effective. See Orn v. Astrue, 495 F.3d 625, 638 (“[I]f a claimant complains about
8 disabling pain but fails to seek treatment, or fails to follow prescribed treatment, for
9 the pain, an ALJ may use such a failure as a basis for finding the complaint
10 unjustified or exaggerated.”); see also Burch v. Barnhart, 400 F.3d 676, 681 (9th
11 Cir. 2005) (“The ALJ is permitted to consider lack of treatment in his credibility
12 determination.”). The fact that Plaintiff expressed concern in December of 2019
13 about side effects interfering with a foot surgery she was going to have “soon” does
14 not justify delays in taking Humira through August of 2021. See Ghanim, 763 F.3d
15 at 1163 (“An ALJ may consider a range of factors in assessing credibility, including
16 . . . unexplained or inadequately explained failure to seek treatment or to follow a
17 prescribed course of treatment” (internal quotation marks omitted)).

18 Second, the ALJ noted the lack of consistency between Plaintiff’s subjective
19 symptom testimony and objective clinical evidence in the record. (Dkt. 9-3 at 28-
20 29.) Particularly, the ALJ highlighted that State consultants found that Plaintiff
21 showed some tender points, but did not exhibit joint deformity, erythema, or
22 tenderness, possessed full range of motion in all joints, and had normal sensation
23 and motor functioning. (Id. at 28 (citing 9-10 at 23, 26, 32-33, 110, 116, 156, 192,
24 201, 206).) The record lacks objective clinical findings reflecting that Plaintiff
25 exhibited “muscle weakness, atrophy, imbalance, [and] loss of range of motion.”
26 (Id.) The ALJ also noted inconsistent medical evidence pertaining to Plaintiff’s
27 mental status due to no clinical evidence “showing problems with concentration,
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1 speech, or memory.” (Id. at 29.) Despite Plaintiff claiming chronic fatigue
2 syndrome as her primary obstacle to employment, the ALJ highlighted the lack of
3 “consistent findings [in the record] of ataxia, extreme pallor, pronounced weight
4 change, or swollen lymph nodes typically associated with chronic fatigue
5 syndrome.” (Id.)

6 The Court concludes that the ALJ properly discounted Plaintiff’s subjective
7 symptom testimony due to a lack of consistent clinical findings in the record. See
8 Rollins, 261 F.3d at 857 (“While subjective pain testimony cannot be rejected on the
9 sole ground that it is not fully corroborated by objective medical evidence, the
10 medical evidence is still a relevant factor in determining the severity of the
11 claimant’s pain and its disabling effects.”); 20 C.F.R. § 404.1529(c)(2) (“Objective
12 medical evidence of this type is a useful indicator to assist us in making reasonable
13 conclusions about the intensity and persistence of your symptoms and the effect
14 those symptoms, such as pain, may have on your ability to work.”). The ALJ
15 “acknowledge[d] that each individual has different thresholds with respect to pain
16 symptoms and reactions to mood symptoms,” and then properly considered the
17 consistency of Plaintiff’s subjective complaints with the objective medical evidence.
18 (Dkt. 9-3 at 29); see Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985) (“[A]
19 claimant’s self-serving statements may be disregarded to the extent they are
20 unsupported by objective findings.”).⁶

21
22 ⁶ Plaintiff contends that “[t]he ALJ did not provide clear and convincing reasons
23 to reject the frequency of [Plaintiff’s] migraines.” (Dkt. 11 at 15.) However, as
24 Plaintiff concedes, (id. at 15), the ALJ did address this issue and explained that
25 “[Plaintiff’s] reports about her migraine headaches are also not consistent with the
26 treatment records.” (Dkt. 9-3 at 29.) The ALJ further explained that “[s]he may be
27 receiving more treatment now, but the records do not show how this treatment has
28 progressed or the outcome.” (Id.) The ALJ is correct that earlier treatment notes
reflect that Plaintiff often denied headaches until approximately August 2020. (Dkt.
9-8 at 52, 317; Dkt. 9-9 at 400, 469, 472, 475, 478; Dkt. 9-10 at 160-61). Plaintiff
was eventually prescribed medication, receiving a few occipital blocks, and reported
(cont’d . . .)

1 Third, the ALJ emphasized the inconsistency between Plaintiff's testimony
2 and her activities of daily living. (Dkt. 9-3 at 29.) The ALJ specifically noted that
3 despite Plaintiff claiming she cannot get out of bed many days of the week, Plaintiff
4 lives independently, without a caretaker. (Id.) Plaintiff previously testified that she
5 attends church and goes to the market. (Id. at 25.) In her Function Report, Plaintiff
6 stated that she goes out to lunch and can perform errands on "good days." (Id.)
7 Thus, the ALJ determined that Plaintiff's daily activities "indicate a higher level of
8 functioning than alleged." (Id. at 29.)

9 The Court concludes that the ALJ properly discounted Plaintiff's subjective
10 symptom testimony due inconsistencies with Plaintiff's activities of daily living.
11 See Burch, 400 F.3d at 681 ("The ALJ was permitted to consider daily living
12 activities in his credibility analysis."); Curry v. Sullivan, 925 F.2d 1127, 1130 (9th
13 Cir. 1990) (A claimant's ability to "take care of her personal needs, prepare easy
14 meals, do light housework, and shop for some groceries . . . may be seen as
15 inconsistent with the presence of a condition which would preclude all work
16 activity.").

17 In sum, as set forth above, the Court concludes that the ALJ provided
18 multiple, specific, clear and convincing reasons supported by evidence in the record
19 to find Plaintiff's subjective symptom testimony only partially credible. See
20 Rollins, 261 F.3d at 857 ("The ALJ gave clear and convincing reasons for
21 discounting portions of [plaintiff's] excess pain testimony, and those reasons were
22 supported by substantial evidence.").

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28 improvement in her pain and headaches, with headaches occurring only 1-2 times a
week. (Dkt. 9-10 at 190, 195, 198).

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VII.
CONCLUSION

Consistent with the foregoing, IT IS ORDERED that Judgment be entered AFFIRMING the decision of the Commissioner. The Clerk of the Court shall serve copies of this Order and the Judgment on counsel for both parties.

DATED: April 18, 2024



HON. A. JOEL RICHLIN
UNITED STATES MAGISTRATE JUDGE