

1 forth their respective positions regarding Plaintiff's claim. (Docket
2 Entry No. 19).

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4 The Court has taken this matter under submission without oral
5 argument. See C.D. Cal. L.R. 7-15; "Order Re: Procedures In Social
6 Security Case," filed April 1, 2014 (Docket Entry No. 7).

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

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10 Plaintiff, formerly employed as a teacher aide, office helper and
11 carpenter apprentice (see AR 31-32, 44-49, 76-77), asserts disability
12 beginning January 1, 2010, based on the alleged physical impairments of
13 diabetes, asthma, high blood pressure, arthritis, and gout. (See AR 164-
14 71, 185). On September 27, 2012, Administrative Law Judge Jesse J.
15 Pease ("ALJ"), examined the records and heard testimony from Plaintiff,
16 who was represented by counsel and assisted by an interpreter, and
17 vocational expert ("VE") David Rinehart (AR 38-83).

18
19 On December 10, 2012, the ALJ issued a decision denying Plaintiff's
20 application. (See AR 24-34). The ALJ found that Plaintiff had the
21 severe impairments of "pseudophakia in both eyes; status post repair of
22 retinal detachment in the right eye; macular degeneration in the right
23 eye; high blood pressure; asthma; gout; obesity; and diabetes mellitus"
24 (AR 26), and that Plaintiff's arthritis was a nonsevere impairment. (AR
25 26-27). The ALJ determined that Plaintiff had the residual functional
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1 capacity ("RFC")¹ to perform medium work² with the following
2 restrictions: "she can stand and/or walk for about six hours out of an
3 eight-hour workday; she can sit for about six hours out of an eight-hour
4 workday; she can perform postural activities on a[] frequent basis,
5 except she cannot climb ladders, ropes or scaffolds; she must avoid
6 excessive exposure to fumes, odors, dusts, smoke, gases or poor
7 ventilation, etc.; she must avoid hazardous machinery and unprotected
8 heights; and she cannot perform work where monocular vision would be a
9 safety issue or prevent the performance of the work." (AR 27).

10
11 Relying on the testimony of the VE, the ALJ found that Plaintiff
12 was able to perform her past relevant work as a teacher aide II and as
13 an office helper. (AR 31). Alternatively, the ALJ found that, in
14 addition to her past relevant work, Plaintiff was also able to perform
15 other jobs existing in significant numbers in the national economy based
16 on the VE's testimony that "in the event office helper w[as] determined
17 not to be past relevant work since it was only performed half the time
18 while on the job (with the other half of the time spent on that job
19 performing the tasks of teacher aide II), the unskilled occupation of
20 office helper could be performed as other work" such as a office helper,
21 mail clerk or library page. (AR 33). Accordingly, the ALJ found that
22 Plaintiff was not disabled within the meaning of the Social Security
23 Act. (Id.).

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26 ¹ A Residual Functional Capacity is what a claimant can still do
27 despite existing exertional and nonexertional limitations. See 20
28 C.F.R. § 404.1545(a)(1).

² "Medium work involves lifting no more than 50 pounds at a time
with frequent lifting or carrying of objects weighing up to 25 pounds."
20 C.F.R. §§ 404.1567(c) and 416.967(c).

1 Plaintiff requested that the Appeals Council review the ALJ's
2 decision. (AR 16). The request was denied on January 29, 2014. (AR 1-
3 3). The ALJ's decision then became the final decision of the
4 Commissioner, allowing this Court to review the decision. See 42 U.S.C.
5 §§ 405(g), 1383(c).

6
7 **PLAINTIFF'S CONTENTION**

8
9 Plaintiff alleges that the ALJ erred in discounting the
10 credibility of her subjective complaints in support of her disability
11 claim. (See Joint Stip. at 4-18).

12
13 **STANDARD OF REVIEW**

14
15 This Court reviews the Commissioner's decision to determine if:
16 (1) the Commissioner's findings are supported by substantial evidence;
17 and (2) the Commissioner used proper legal standards. 42 U.S.C. §
18 405(g); see Carmickle v. Comm'r, 533 F.3d 1155, 1159 (9th Cir. 2008);
19 Hoopai v. Astrue, 499 F.3d 1071, 1074 (9th Cir. 2007). "Substantial
20 evidence is more than a scintilla, but less than a preponderance."
21 Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998) (citing Jamerson v.
22 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is relevant evidence
23 "which a reasonable person might accept as adequate to support a
24 conclusion." Hoopai, 499 F.3d at 1074; Smolen v. Chater, 80 F.3d 1273,
25 1279 (9th Cir. 1996)). To determine whether substantial evidence
26 supports a finding, "a court must 'consider the record as a whole,
27 weighing both evidence that supports and evidence that detracts from the
28 [Commissioner's] conclusion.'" Aukland v. Massanari, 257 F.3d 1033,

1 1035 (9th Cir. 1997) (citation omitted); see Widmark v. Barnhart, 454
2 F.3d 1063, 1066 (9th Cir. 2006) (inferences "reasonably drawn from the
3 record" can constitute substantial evidence).

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5 This Court "may not affirm [the Commissioner's] decision simply by
6 isolating a specific quantum of supporting evidence, but must also
7 consider evidence that detracts from [the Commissioner's] conclusion."
8 Ray v. Bowen, 813 F.2d 914, 915 (9th Cir. 1987) (citation and internal
9 quotation marks omitted); Lingenfelter v. Astrue, 504 F.3d 1028, 1035
10 (9th Cir. 2007) (same). However, the Court cannot disturb findings
11 supported by substantial evidence, even though there may exist other
12 evidence supporting Plaintiff's claim. See Torske v. Richardson, 484
13 F.2d 59, 60 (9th Cir. 1973). "If the evidence can reasonably support
14 either affirming or reversing the [Commissioner's] conclusion, [a] court
15 may not substitute its judgment for that of the [Commissioner]."
16 Reddick, 157 F.3d 715, 720-21 (9th Cir. 1998) (citation omitted).

17
18 **DISCUSSION**

19
20 After consideration of the record as a whole, the Court finds that
21 the Commissioner's findings are supported by substantial evidence and
22 are free from material³ legal error.

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27 ³ 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 **A. The ALJ Did Not Err in Evaluating Plaintiff's Credibility**

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3 Where, as here, the ALJ finds that a claimant suffers from a
4 medically determinable impairment that could reasonably be expected to
5 produce his or her alleged symptoms, the ALJ must evaluate "the
6 intensity, persistence, and functionally limiting effects of the
7 individual's symptoms . . . to determine the extent to which the
8 symptoms affect the individual's ability to do basic work activities.
9 This requires the [ALJ] to make a finding about the credibility of the
10 individual's statements about the symptom(s) and its functional effect."
11 Soc. Sec. Ruling ("SSR") 96-7p.

12
13 An ALJ's assessment of a claimant's credibility is entitled to
14 "great weight." See Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.
15 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). "[T]he ALJ
16 is not required to believe every allegation of disabling pain, or else
17 disability benefits would be available for the asking, a result plainly
18 contrary to 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674 F.3d 1104,
19 1112 (9th Cir. 2012). In order to determine whether a claimant's
20 testimony is credible, the ALJ engages in a two-step analysis. Garrison
21 v. Colvin, 759 F.3d 995, 1014 (9th Cir. 2014).

22
23 First, the claimant "must produce objective medical evidence of an
24 underlying impairment 'which could reasonably be expected to produce the
25 pain or other symptoms alleged.'" Bunnell v. Sullivan, 947 F.2d 341,
26 344 (9th Cir. 1991) (quoting 42 U.S.C. § 423(d)(5)(A)(1988)). In
27 producing evidence of the underlying impairment, "the claimant need not
28 produce objective medical evidence of the pain or fatigue itself, or the

1 severity thereof." Smolen v. Chater, 80 F.3d 1273, 1282 (9th Cir.
2 1996). Instead, the claimant "need only show that [the impairment]
3 could reasonably have caused some degree of the symptom." Id.
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5 Second, once the claimant has produced the requisite objective
6 medical evidence, the "ALJ may reject the claimant's testimony regarding
7 the severity of her symptoms." Smolen, 80 F.3d at 1284. Absent
8 affirmative evidence of malingering, however, the ALJ may only reject a
9 plaintiff's testimony "by offering specific, clear and convincing
10 reasons for doing so." Id. In assessing a claimant's alleged symptoms,
11 an ALJ may consider: "(1) ordinary techniques of credibility evaluation,
12 such as claimant's reputation for lying, prior inconsistent statements
13 concerning the symptoms, and other testimony by the claimant that
14 appears to be less than candid; (2) unexplained or inadequately
15 explained failure to seek treatment or to follow a prescribed course of
16 treatment; and (3) the claimant's daily activities." Id. An ALJ may
17 also consider "the claimant's work record and observations of treating
18 and examining physicians and other third parties." Id.
19

20 The ALJ set forth the following summary of Plaintiff's testimony at
21 the hearing:
22

23 The claimant alleged she was unable to work due to pain
24 throughout her whole body from arthritis and gout flare ups
25 that occurred half the days out of the month. She testified
26 she could do chores for about an hour changing positions among
27 sitting, standing, and walking but would then have to lay down
28 to rest for an hour or two. She alleged she could hardly lift

1 anything, she could sit for at most one hour at a time, and
2 she could be on her feet at most for 30 minutes at a time. She
3 asserted she would have to lay down and rest for more than
4 half of an eight-hour workday. With respect to her vision,
5 the claimant indicted she only saw white and spots in the
6 right eye and the left eye was better. She acknowledged she
7 could read notices from the Social Security Administration
8 using over-the-counter glasses. She reported her asthma,
9 hypertension, and diabetes were controlled with treatment.

10
11 (AR 28 (citations omitted)).
12

13 After examining the administrative record and the testimony
14 presented at the hearing, the ALJ found that Plaintiff's medically
15 determinable impairments could be expected to cause some of the alleged
16 symptoms but Plaintiff's statements⁴ concerning the intensity,
17 persistence and limiting effects of her symptoms were not credible to
18 the extent those statements were inconsistent with the RFC assessment.
19 (AR 28).
20
21

22 ⁴ At the hearing, Plaintiff testified that she is unable to work
23 due to pain in "pretty much [her] whole body," but more specifically in
24 her lower back, neck and both hands. (See AR 50-51). She has pain
25 because of her arthritis and gout flare ups. (See AR 51-52). Plaintiff
26 also has breathing problems because of her asthma. (See AR 52).
27 Although she has high blood pressure and diabetes, Plaintiff testified
28 that they are controlled with treatment. (See AR 53, 56). Plaintiff
can read with her left eye as long as she has her glasses on and if what
she is reading is not too close to her face. (See AR 53-54). She also
stated that she can sit in a chair for no more than an hour, stand for
up to thirty minutes and do chores for up to one hour before needing to
lay down. (See AR 69-71). Plaintiff also testified that she can "hardly
lift anything that weighs anything." (See AR 73).

1 The ALJ discounted Plaintiff's credibility for the following
2 reasons: (1) Plaintiff's treatment has been minimal and conservative in
3 nature which is inconsistent with alleged functional limitations and
4 suggests that the alleged symptoms and limitations are not as severe as
5 alleged; and (2) the objective medical evidence does not support the
6 extent of Plaintiff's symptoms. (AR 28-29).

7
8 As set forth below, the Court finds that the ALJ stated legally
9 sufficient reasons for his adverse credibility finding.⁵

10
11 **1. Plaintiff's Minimal And Conservative Treatment**

12
13 The ALJ relied on the fact that, apart from Plaintiff's cataract
14 surgery, she had received only "routine, conservative treatment for her
15 impairments" which the ALJ found to be inconsistent with Plaintiff's
16 alleged functional limitations. (AR 29). "[T]he relatively benign
17 positive clinical and diagnostic findings from consultative examinations
18 detailed below, do not support more restrictive functional limitations

19
20 ⁵ The ALJ also "discounted the seriousness of [Plaintiff's] asthma
21 to some extent give[n] her continuing 20-year history of smoking despite
22 having asthma for 18 years." (AR 28). However, to the extent this
23 finding was a basis for discounting Plaintiff's credibility, it was not
24 a legally sufficient reason because the record does not indicate that
25 Plaintiff was medically advised to quit smoking to alleviate symptoms of
26 her asthma. See e.g., Bybee v. Astrue, No. 10-3264, 2011 WL 6703568, *8
27 (E.D. Cal. Dec. 21, 2011) ("Smoking despite medical advice to quit is
28 relevant to the credibility analysis, as is evidence of successfully
quitting smoking for significant periods") (citation omitted); see also
Day v. Weinberger, 522 F.2d 1154, 1156 (9th Cir. 1975) (an ALJ is
forbidden from making his own medical assessment beyond that
demonstrated by the record). Nevertheless, the Court finds the ALJ's
remaining reasons for rejecting Plaintiff's subjective testimony to be
clear and convincing. See Carmickle v. Comm'r, 533 F.3d 1155, 1162-63
(9th Cir. 2008) (The harmless error rule applies because "remaining
reasoning and ultimate credibility determination[s] were adequately
supported by substantial evidence in the record.").

1 that those assessed herein." Id. This finding was supported by the
2 record which reveals that, except for treatment notes related to
3 Plaintiff's cataract surgery during the period May 2010 to May 2011 (see
4 AR 240-65), Plaintiff saw her treating physician, Arthur E. Jimenez,
5 only two times: on March 8 and March 27, 2012.⁶ (See AR 28; see also AR
6 233-34). Significantly, on the first office visit, Plaintiff's "present
7 complaints" were only a request for blood work, referral to a
8 dermatologist and prescription refills, while her second visit was for
9 the purpose of getting the results of the blood work. (See AR 233-34).
10 As the ALJ observed, these two office visits indicate that Plaintiff was
11 being "prescribed medications for high blood pressure, asthma, gout, and
12 diabetes" and although Plaintiff's blood sugar level was high, her blood
13 pressure was not elevated at either visit.⁷ (See AR 28). Thus, the ALJ
14 properly relied on Plaintiff's minimal, conservative and routine
15 treatment to partially discredit her testimony about her functional
16 limitations. See Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999)
17 (in assessing credibility, ALJ properly considered doctor's failure to
18 prescribe, and claimant's failure to request, any serious medical
19 treatment for supposedly excruciating pain); Tidwell v. Apfel, 161 F.3d
20 599, 602 (9th Cir. 1999) (ALJ's reliance on medical evidence, lack of

22 ⁶ The record also reveals that as of August 24, 2011,
23 Plaintiff's other reported treating physician, Carlos Montes, M.D. (see
24 AR 196), twice confirmed that Plaintiff was not his patient. (See AR
25 210, 231-232).

26 ⁷ Even when the evidence is susceptible to more than one
27 rational interpretation, we must uphold the ALJ's findings if they are
28 supported by inferences reasonably drawn from the record. Tommasetti v.
Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008); see also Burch v. Barnhart,
400 F.3d 676, 683 (9th Cir. 2005) ("claimant carries the initial burden
of proving a disability"); Meanel v. Apfel, 172 F.3d 1111, 1113 (9th
Cir. 1999) ("The claimant bears the burden of proving that she is
disabled.").

1 treatment, and use of nonprescription pain medication for
2 "abnormalities" were "clear and convincing reasons for partially
3 rejecting [claimant's] pain testimony"); Johnson v. Shalala, 60 F.3d
4 1428, 1432 (9th Cir. 1995) (ALJ may properly rely on the fact that only
5 conservative treatment has been prescribed); Fair v. Bowen, 885 F.2d
6 597, 604 (9th Cir. 1989) (ALJ permissibly considered discrepancies
7 between the claimant's allegations of "persistent and increasingly
8 severe pain" and the minimal conservative treatment obtained).

9
10 Thus, the ALJ's reliance on Plaintiff's minimal and conservative
11 treatment was a clear and convincing reason to discount Plaintiff's
12 credibility.

13 14 **2. Objective Medical Evidence**

15
16 Although a claimant's credibility "cannot be rejected on the sole
17 ground that it is not fully corroborated by objective medical evidence,
18 the medical evidence is still a relevant factor . . ." Rollins v.
19 Massanari, 261 F.3d 853, 857 (9th Cir. 2001). Lack of supporting
20 objective medical evidence is a key consideration for the ALJ in
21 evaluating credibility. See 20 C.F.R. §§ 404.1529(c)(4), 416.929(c)(4)
22 (in determining disability, an ALJ must evaluate a claimant's statements
23 about the intensity, persistence and limiting effects of her symptoms
24 "in relation to the objective medical evidence and other evidence").

25
26 Here, after reviewing the medical record, the ALJ found that the
27 objective medical evidence did not fully support Plaintiff's complaints
28

1 of total disability. (A.R. 28-31). The Court's review of the record
2 supports this finding.

3
4 An internal medicine consultative examination by Dr. Concepcion A.
5 Enriquez on March 18, 2011, revealed that Plaintiff's physical and
6 neurological examinations were generally within normal limits. (See AR
7 212-14). Dr. Enriquez noted that while Plaintiff's blood sugar was not
8 well controlled, her blood pressure was controlled and there were "no
9 signs of congestive heart failure or stroke." (AR 214). He also found
10 that Plaintiff had undergone surgery in her left eye for cataracts and
11 was awaiting surgery in her right eye. (Id.). Although Plaintiff had a
12 history of asthma, her "lungs were clear to auscultation with no
13 crackles or rhonchi noted" and "no chest retraction." (Id.). Although
14 Plaintiff had a history of gout, there was "no tophaceous growths noted
15 on any joints . . . [and] no deformities or signs of inflammation."
16 (Id.). Plaintiff was also able to do "fine and gross manipulation using
17 the fingers of both hands." (Id.) Based on his examination, Dr.
18 Enriquez determined that Plaintiff could occasionally lift and/or carry
19 100 pounds and frequently lift and/or carry 50 pounds; stand and/or walk
20 with normal breaks for six hours in an 8-hour workday; sit with normal
21 breaks for six hours in an 8-hour workday; and should avoid work with
22 exposure to extreme temperatures, dust, chemicals, and fumes. (Id.)

23
24 The ALJ did not give "significant weight" to Dr. Enriquez's less
25 restrictive assessment of Plaintiff's physical limitations because it
26 was based on a "one-time examination" and did not "adequately consider
27 the combined effects of [Plaintiff's] impairments." (AR 31).

1 An ophthalmological/optometric consultative examination by Dr.
2 Juancho Remulla on April 30, 2011, diagnosed Plaintiff with pseudophakia
3 in both eyes, status post repair of retinal detachment in the right eye,
4 and macular degeneration in the right eye. (See AR 218-20).
5 Significantly, Dr. Remulla opined that no significant visual field
6 deficit was expected. (Id.)

7
8 An internal medicine consultative examination by Dr. Seung Ha Lim
9 on October 30, 2012, revealed that Plaintiff's physical and neurological
10 examinations were generally within normal limits. (See AR 268-71). Dr.
11 Lim noted that although Plaintiff complained of symptoms of poorly
12 controlled diabetes, she did not present any signs of diabetic
13 neuropathy. (See AR 271). Plaintiff complained of a history of asthma,
14 but denied "any emergency room visits or hospitalizations due to asthma
15 exacerbations in the last twelve months" and Plaintiff presented with
16 "clear lung fields without any wheeze, rales or ronchii on
17 auscultation." (Id.). Although Plaintiff complained of a history of
18 generalized joint pain, the examination revealed a normal range of
19 motion of the upper and lower extremities and she did not require the
20 use of assistance devices for ambulation despite her slow gait while
21 complaining of joint pain. (Id.). Dr. Lim concluded that Plaintiff
22 could stand and/or walk six hours in an 8-hour workday with appropriate
23 breaks; sit six hours in an 8-hour workday with appropriate breaks; lift
24 and/or carry fifty pounds occasionally and twenty-five pounds
25 frequently; and could not frequently use her upper and lower extremities
26 or climb, crouch, crawl and kneel. (Id.)

1 The ALJ gave significant weight to the functional assessment given
2 by Dr. Lim, finding that it was well supported by the objective medical
3 evidence and "consistent with the record as a whole including the
4 conservative treatment, apart from the cataract surgery, and the
5 relatively benign findings from the two internal medicine consultative
6 examinations." (AR 30).

7
8 Finally, the ALJ gave little weight to the opinion of Plaintiff's
9 treating physician, Dr. Jimenez, that Plaintiff's polyarthrititis
10 precluded her from, *inter alia*, sitting, standing or walking more than
11 two hours during an eight-hour work day and that she could only rarely
12 lift and carry up to 10 pounds and only rarely use her hands for
13 handling, pushing and pulling, and fine manipulation. See AR 266-67.
14 The ALJ properly reasoned that Dr. Jimenez' opinion was conclusory and
15 not supported by objective medical evidence, noting that Dr. Jimenez did
16 not cite to any objective clinical or diagnostic findings to support his
17 opinion and that his own treatment notes failed to indicate that
18 Plaintiff was suffering from functionally limiting polyarthrititis. (AR
19 30-31). See Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002) (An
20 ALJ "need not accept the opinion of any physician, including a treating
21 physician, if that opinion is brief, conclusory and inadequately
22 supported by clinical findings."); Rollins v. Massanari, 261 F.3d 853,
23 856 (9th Cir. 2001) (The ALJ properly discounted treating physician's
24 opinion for being "so extreme as to be implausible" and "not supported
25 by any findings" where there was "no indication in the record what the
26 basis for these restrictions might be"); see also Valentine v.
27 Commissioner Social Sec. Admin., 574 F.3d 685, 693 (9th Cir. 2009) (The
28 ALJ's decision to reject the treating physician's opinion, in part,

1 since it was inconsistent with the treating physician's own treatment
2 notes was a specific and legitimate reason supported by substantial
3 evidence).

4
5 Thus, the Court finds that substantial evidence supports the ALJ's
6 credibility analysis with respect to his assessment that the objective
7 medical evidence did not support Plaintiff's allegations regarding the
8 intensity, persistence and limiting effects of her symptoms.
9 Accordingly, this was a clear and convincing reason for discounting
10 Plaintiff's credibility.⁸ The Court therefore defers to the ALJ's
11 credibility determination. See Thomas v. Barnhart, 278 F.3d 947, 958-59
12 (9th Cir. 2002) ("If the ALJ's credibility finding is supported by
13 substantial evidence in the record, we may not engage in second
14 guessing.").

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26 ⁸ As discussed above, the objective medical evidence was not the
27 sole legally sufficient reason for discounting Plaintiff's credibility.
28 See Robbins v. Social Security Administration, 466 F.3d 880, 883 (9th
Cir. 2006)(ALJ may cite the medical record in concert with other factors
in assessing a claimant's credibility).

ORDER

For the foregoing reasons, the decision of the Commissioner is affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: November 12, 2015

/s/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE