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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BRIDGETTE Y. WALKER,	)	Case No. EDCV 14-02647-JEM
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
v.	)	AFFIRMING DECISION OF THE
	)	COMMISSIONER OF SOCIAL SECURITY
CAROLYN W. COLVIN,	)	
Acting Commissioner of Social Security,	)	
	)	
Defendant.	)	

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**PROCEEDINGS**

On December 31, 2014, Bridgette Y. Walker (“Plaintiff” or “Claimant”) filed a complaint seeking review of the decision by the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s application for Social Security Disability Insurance benefits. The Commissioner filed an Answer on May 11, 2015. On September 2, 2015, the parties filed a Joint Stipulation (“JS”). The matter is now ready for decision.

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

## BACKGROUND

1  
2 Plaintiff is a 49-year-old female who applied for Social Security Disability Insurance  
3 benefits on September 13, 2011, alleging disability beginning July 12, 2009. (AR 10.) The ALJ  
4 determined that Plaintiff did not engage in substantial gainful activity during the period from her  
5 alleged onset date of July 12, 2009, through her date last insured of December 31, 2012. (AR  
6 12.)

7 Plaintiff's claim was denied initially on March 30, 2012, and on reconsideration on  
8 January 14, 2013. (AR 10.) Plaintiff filed a timely request for hearing, which was held before  
9 Administrative Law Judge ("ALJ") Jay E. Levine on June 12, 2013, in San Bernardino,  
10 California. (AR 10.) Plaintiff appeared and testified at the hearing and was represented by  
11 counsel. (AR 10.) Vocational expert ("VE") Sandra M. Fioretti also appeared and testified at  
12 the hearing. (AR 10.)

13 The ALJ issued an unfavorable decision on July 2, 2013. (AR 10-21.) The Appeals  
14 Council denied review on November 5, 2014. (AR 1-3.)

## DISPUTED ISSUES

15  
16 As reflected in the Joint Stipulation, Plaintiff raises only the following disputed issue as a  
17 ground for reversal and remand:

- 18 1. Whether the ALJ properly assessed Plaintiff's credibility.

## STANDARD OF REVIEW

19  
20 Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether  
21 the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v.  
22 Chater, 80 F.3d 1273 , 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846  
23 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and  
24 based on the proper legal standards).

25 Substantial evidence means "more than a mere scintilla,' but less than a  
26 preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v.  
27 Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is "such relevant evidence as a  
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1 reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at  
2 401 (internal quotation marks and citation omitted).

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

### 11 THE SEQUENTIAL EVALUATION

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

18 The first step is to determine whether the claimant is presently engaging in substantial  
19 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging  
20 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,  
21 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or  
22 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not  
23 significantly limit the claimant’s ability to work. Smolen, 80 F.3d at 1290. Third, the ALJ must  
24 determine whether the impairment is listed, or equivalent to an impairment listed, in 20 C.F.R.  
25 Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d at 746. If the impairment  
26 meets or equals one of the listed impairments, the claimant is presumptively disabled. Bowen,  
27 482 U.S. at 141. Fourth, the ALJ must determine whether the impairment prevents the  
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1 claimant from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir.  
2 2001).

3 Before making the step four determination, the ALJ first must determine the claimant's  
4 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). The RFC is "the most [one] can  
5 still do despite [his or her] limitations" and represents an assessment "based on all the relevant  
6 evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The RFC must consider all of the  
7 claimant's impairments, including those that are not severe. 20 C.F.R. §§ 416.920(e),  
8 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

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

## 22 THE ALJ DECISION

23 In this case, the ALJ determined at step one of the sequential process that Plaintiff has  
24 not engaged in substantial gainful activity during the period from her alleged onset date of July  
25 12, 2009, through her date last insured of December 31, 2012. (AR 12.)

26 At step two, the ALJ determined that Plaintiff has the following medically determinable  
27 severe impairments: morbid obesity, type 2 diabetes, osteoarthritis in back and joints;  
28 polysubstance abuse in remission. (AR 12.)

1 At step three, the ALJ determined that Plaintiff does not have an impairment or  
2 combination of impairments that meets or medically equals the severity of one of the listed  
3 impairments. (AR 12-15.)

4 The ALJ then found that Plaintiff, through the date last insured, had the RFC to perform  
5 less than a full range of sedentary work as defined in 20 C.F.R. § 404.1567(a) with the  
6 following limitations:

7 Claimant can lift and/or carry 10 pounds occasionally and less than 10  
8 pounds frequently; she can stand and/or walk for six hours out of an eight-  
9 hour workday with regular breaks; she can sit for six hours out of an eight-  
10 hour workday with regular breaks; she is unlimited with respect to pushing  
11 and/or pulling, other than as indicated for lifting and/or carrying; she is  
12 precluded from working at unprotected heights, in temperature extremes,  
13 with vibration; Claimant cannot climb ladders or balance; Claimant can  
14 occasionally stoop and bend; Claimant cannot engage in forceful gripping or  
15 grasping with both hands.

16 (AR 15-19.) In determining the above RFC, the ALJ made an adverse credibility determination.

17 (AR 17.)

18 At step four, the ALJ found that Plaintiff, through the date last insured, was unable to  
19 perform her past relevant work as a security guard, a child monitor, and a cafeteria counter  
20 attendant. (AR 19.) The ALJ, however, also found that, considering Claimant's age, education,  
21 work experience, and RFC, there are jobs that existed in significant numbers in the national  
22 economy that Claimant, through the date last insured, could have performed, including the jobs  
23 of assembler, order clerk, and optical assembler. (AR 19-20.)

24 Consequently, the ALJ found that, within the meaning of the Social Security Act,  
25 Claimant was not disabled at any time from July 12, 2009, the alleged onset date, through  
26 December 31, 2012, the date last insured. (AR 20.)

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## DISCUSSION

1  
2 Plaintiff contends that the ALJ erred in discounting her subjective pain symptoms. The  
3 Court disagrees.

### 4 **A. Relevant Federal Law**

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

11 The test for deciding whether to accept a claimant's subjective symptom testimony turns  
12 on whether the claimant produces medical evidence of an impairment that reasonably could be  
13 expected to produce the pain or other symptoms alleged. *Bunnell v. Sullivan*, 947 F.2d 341,  
14 346 (9th Cir. 1991); see also *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998); *Smolen*, 80  
15 F.3d at 1281-82 esp. n.2. The Commissioner may not discredit a claimant's testimony on the  
16 severity of symptoms merely because they are unsupported by objective medical evidence.  
17 *Reddick*, 157 F.3d at 722; *Bunnell*, 947 F.2d at 343, 345. If the ALJ finds the claimant's pain  
18 testimony not credible, the ALJ "must specifically make findings which support this conclusion."  
19 *Bunnell*, 947 F.2d at 345. The ALJ must set forth "findings sufficiently specific to permit the  
20 court to conclude that the ALJ did not arbitrarily discredit claimant's testimony." *Thomas*, 278  
21 F.3d at 958; see also *Rollins*, 261 F.3d at 856-57; *Bunnell*, 947 F.2d at 345-46. Unless there is  
22 evidence of malingering, the ALJ can reject the claimant's testimony about the severity of a  
23 claimant's symptoms only by offering "specific, clear and convincing reasons for doing so."  
24 *Smolen*, 80 F.3d at 1283-84; see also *Reddick*, 157 F.3d at 722. The ALJ must identify what  
25 testimony is not credible and what evidence discredits the testimony. *Reddick*, 157 F.3d at  
26 722; *Smolen*, 80 F.3d at 1284.

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1           **B.     Analysis**

2           In determining Plaintiff's RFC, the ALJ concluded that Plaintiff's medically determinable  
3 impairments reasonably could be expected to cause some of the alleged symptoms. (AR 17.)  
4 The ALJ, however, also found that Plaintiff's statements regarding the intensity, persistence,  
5 and limiting effects of these symptoms were "not entirely credible." (AR 17.) Because the ALJ  
6 did not make any finding of malingering, he was required to provide clear and convincing  
7 reasons supported by substantial evidence for discounting Plaintiff's credibility. Smolen, 80  
8 F.3d at 1283-84; Tommasetti v. Astrue, 533 F.3d 1635, 1639-40 (9th Cir. 2008). The ALJ did  
9 so.

10           First, the ALJ found that Plaintiff's allegations of disabling pain are not supported by the  
11 objective medical evidence. (AR 17, 19.) An ALJ is permitted to consider whether there is a  
12 lack of medical evidence to corroborate a claimant's alleged pain symptoms so long as it is not  
13 the only reason for discounting a claimant's credibility. Burch v. Barnhart, 400 F.3d 676, 680-  
14 81 (9th Cir. 2005). Here, four consulting examiners all provided RFCs for light work. (AR 13,  
15 17-19.) In March 2012, Dr. Sean To, an internist, diagnosed diabetes, degenerative joint  
16 disease, joint pain and knee pain, hypertension, and morbid obesity. (AR 18.) Nonetheless, he  
17 found only mild tenderness in the cervical spine, no evidence of swelling, effusion, erythema,  
18 warmth or deformity, and only moderate to mild tenderness in the knees. (AR 18.) He  
19 assessed a light work RFC with limitations. (AR 18.) In October 2012, Dr. Robin Alleyne, an  
20 internist, diagnosed pain, diabetes, and manic depression. (AR 18.) She also assessed a light  
21 work RFC with limitations. (AR 18.) State agency medical consultants also opined Plaintiff  
22 physically could perform a reduced range of light or sedentary work. (AR 18.) Two consulting  
23 psychiatrists found no significant mental limitations, as did a State agency consultant. (AR 14-  
24 15.) There is no medical source statement from any physician that suggests functional  
25 restrictions more restrictive than those in the ALJ's RFC. (AR 13, 17-18.)

26           Although Plaintiff does not challenge the medical source statements summarized above,  
27 she does contend that the ALJ ignored her obesity and the limitations that result from her  
28 obesity. Ms. Walker's statements about her subjective symptoms mostly relate to her obesity.

1 Plaintiff , however, is incorrect that the ALJ ignored her obesity. The ALJ found that Plaintiff's  
2 obesity is a severe impairment. (AR 12.) The ALJ specifically stated, "The claimant's weight,  
3 including the impact of her ability to ambulate as well as her other body systems, has been  
4 considered within the functional limitations determined herein." (AR 12.) The ALJ noted Dr. To  
5 diagnosed morbid obesity but nonetheless assessed a light work RFC. (AR 18.) The ALJ also  
6 noted that in August 2012 Plaintiff lost 60 pounds following bariatric surgery but continued to  
7 experience persistent knee pain. (AR 17.) Nonetheless, Dr. Alleyne in October 2012 assessed  
8 Plaintiff with a light work RFC. (AR 18.) The ALJ plainly considered Plaintiff's obesity and its  
9 impact on her functioning, and accounted for it in his RFC, reducing her RFC from light to  
10 sedentary.

11 The second reason the ALJ gave for discounting Plaintiff's subjective symptoms is that  
12 Plaintiff's treatment has been conservative. (AR 16.) An ALJ may consider conservative  
13 treatment in evaluating credibility. Tommasetti, 533 F.3d at 1039. Here, the ALJ concluded  
14 that the Claimant has not generally received the type of medical treatment one would expect for  
15 a totally disabled individual. (AR 16.) With respect to her alleged mental impairments, the ALJ  
16 found that Claimant was taking no medications and admitted she has not had psychiatric  
17 symptoms since she stopped taking drugs. (AR 14.) The ALJ also documented that Plaintiff  
18 testified she did not require psychological counseling or psychiatric medications. (AR 16.) An  
19 ALJ may consider a failure to seek treatment or a failure to follow prescribed treatment as a  
20 basis for discounting credibility. Orn, 495 F.3d at 638. With respect to her physical  
21 impairments, the ALJ noted that Claimant underwent bariatric surgery which was generally  
22 successful in relieving symptoms. (AR 16.)

23 Plaintiff disputes the ALJ's assessment of the medical evidence and the adverse  
24 credibility finding, but it is the ALJ who has the responsibility to resolve disputes about the  
25 medical evidence and other ambiguities in the record. Andrews, 53 F.3d at 1039. Where the  
26 ALJ's interpretation of the record evidence is reasonable as it is here, it should not be second-  
27 guessed. Rollins, 261 F.3d at 857.

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1 The ALJ rejected Plaintiff's subjective symptom testimony for clear and convincing  
2 reasons supported by substantial evidence.

3 \* \* \*

4 The ALJ's RFC is supported by substantial evidence. The ALJ's nondisability  
5 determination is supported by substantial evidence and free of legal error.

6 **ORDER**

7 IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the  
8 Commissioner of Social Security and dismissing this case with prejudice.

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10  
11 DATED: October 13, 2015

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