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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JANET LYNN ELDER,  
Plaintiff,  
v.  
CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,  
Respondent.

Case No. EDCV 15-1374-KES  
MEMORANDUM OPINION  
AND ORDER

Plaintiff Janet Lynn Elder appeals the final decision of the Administrative Law Judge (“ALJ”) denying her application for Disability Insurance Benefits (“DIB”). For the reasons discussed below, the Court concludes that the ALJ gave clear and convincing reasons for discounting Plaintiff’s credibility, and the ALJ gave at least one specific, germane reason for rejecting lay witness testimony, rendering any error harmless. The ALJ’s decision is therefore AFFIRMED.

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1 **I.**

2 **BACKGROUND**

3 On June 12, 2012, Plaintiff filed an application for DIB, alleging  
4 disability beginning on July 28, 2011. Administrative Record (“AR”) 142-49.  
5 Plaintiff alleges that she is unable to work due to two fractures in her back,  
6 high blood pressure, and a protruding disc. AR 145.

7 On November 7, 2013, an ALJ conducted a hearing, at which Plaintiff,  
8 who was represented by counsel, appeared and testified, as did a vocational  
9 expert (“VE”) and a medical expert. AR 33-56.

10 On January 17, 2014, the ALJ issued a written decision denying  
11 Plaintiff’s request for benefits. AR 12-22. The ALJ found that Plaintiff had  
12 the severe impairments of obesity, lumbar strain, high blood pressure and  
13 depression. AR 14. Notwithstanding her impairments, the ALJ concluded  
14 that Plaintiff had the residual functional capacity (“RFC”) to perform “the full  
15 range of light work” as defined in 20 C.F.R. § 404.1567(b). AR 16.

16 Based on Plaintiff’s documented vocational background, her testimony,  
17 and the VE’s testimony, the ALJ found that Plaintiff could perform her past  
18 relevant work as a cashier II (Dictionary of Occupational Titles (“DOT”) code  
19 211-462-010). AR 21. The ALJ thus found Plaintiff was not disabled. AR 22.

20 **II.**

21 **ISSUES PRESENTED**

22 The parties dispute whether the ALJ erred in:

23 (1) discounting Plaintiff’s testimony concerning the severity and limiting  
24 effects of her pain; and

25 (2) evaluating lay witness testimony from Plaintiff’s daughter.

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1 III.

2 DISCUSSION

3 A. **The ALJ Gave Clear and Convincing Reasons for Discounting**  
4 **Plaintiff's Credibility.**

5 Plaintiff claims that she suffers from back pain, was diagnosed with a  
6 mild partial compression fracture of the vertebrae, and suffers from  
7 fibromyalgia. Dkt. 16 at 8.<sup>1</sup> Because of the pain, she can only walk for 10  
8 minutes before needing a rest, and she is affected by bending, kneeling,  
9 reaching, lifting, and twisting. AR 183-86. She alleges that walking too long  
10 causes her back to swell and “feel[] on fire.” AR 186. Plaintiff contends that  
11 the ALJ erred in assessing her credibility concerning the limiting effects of her  
12 pain. Dkt. 16 at 3-11.

13 1. **Applicable Law**

14 An ALJ's assessment of symptom severity and claimant credibility is  
15 entitled to “great weight.” See Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir.  
16 1989); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1986). “[T]he ALJ is  
17 not required to believe every allegation of disabling pain, or else disability  
18 benefits would be available for the asking, a result plainly contrary to  
19 42 U.S.C. § 423(d)(5)(A).” Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir.  
20 2012) (internal quotation marks omitted).

21 In evaluating a claimant's subjective symptom testimony, the ALJ  
22 engages in a two-step analysis. See Vasquez v. Astrue, 572 F.3d 586, 591  
23 (9th Cir. 2009); Lingenfelter v. Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007).  
24 “First, the ALJ must determine whether the claimant has presented objective  
25 medical evidence of an underlying impairment [that] could reasonably be  
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27 <sup>1</sup> All page citations are to the electronic CM/ECF pagination.  
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1 expected to produce the pain or other symptoms alleged.” Lingenfelter,  
2 504 F.3d at 1036. If so, the ALJ may not reject a claimant’s testimony “simply  
3 because there is no showing that the impairment can reasonably produce the  
4 degree of symptom alleged.” Smolen v. Chater, 80 F.3d 1273, 1282  
5 (9th Cir. 1996).

6 Second, if the claimant meets the first test, the ALJ may discredit the  
7 claimant’s subjective symptom testimony only if he makes specific findings  
8 that support the conclusion. Berry v. Astrue, 622 F.3d 1228, 1234  
9 (9th Cir. 2010). Absent a finding or affirmative evidence of malingering, the  
10 ALJ must provide “clear and convincing” reasons for rejecting the claimant’s  
11 testimony. Lester, 81 F.3d at 834; Ghanim v. Colvin, 763 F.3d 1154, 1163 &  
12 n.9 (9th Cir. 2014). The ALJ must consider a claimant’s work record,  
13 observations of medical providers and third parties with knowledge of  
14 claimant’s limitations, aggravating factors, functional restrictions caused by  
15 symptoms, effects of medication, and the claimant’s daily activities. Smolen,  
16 80 F.3d at 1283-84 & n.8. “Although lack of medical evidence cannot form  
17 the sole basis for discounting pain testimony, it is a factor that the ALJ can  
18 consider in his credibility analysis.” Burch v. Barnhart, 400 F.3d 676, 681  
19 (9th Cir. 2005).

20 The ALJ may also use ordinary techniques of credibility evaluation,  
21 such as considering the claimant’s reputation for lying and inconsistencies in  
22 his statements or between his statements and his conduct. See Thomas v.  
23 Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002).

## 24 **2. Analysis**

25 Following the two-step process outlined above, the ALJ found as  
26 follows:

27 The credibility of the claimant’s allegations regarding the  
28 severity of her symptoms and limitations is diminished because

1 those allegations are greater than expected in light of the objective  
2 evidence of record. Even if the claimant’s daily activities are truly  
3 as limited as alleged, it is difficult to attribute that degree of  
4 limitation to the claimant’s medical condition, in view of the  
5 relatively benign medical evidence, discussed below.

6 AR 17.

7 The ALJ gave three clear and convincing reasons for discounting  
8 Plaintiff’s credibility: (1) the “relatively benign” medical evidence that did not  
9 support Plaintiff’s allegations concerning the severity of her pain; (2) despite  
10 her alleged symptoms, Plaintiff engaged in a “somewhat normal level of daily  
11 activity and interaction;” and (3) Plaintiff received routine, conservative, and  
12 non-emergency treatment since the alleged onset date. AR 17-18.

13 a. The “relatively benign” medical evidence of record did not  
14 support Plaintiff’s allegations of disabling pain.

15 The Court finds that the ALJ’s factual determination – that Plaintiff’s  
16 alleged loss of function due to debilitating pain was not supported by objective  
17 medical evidence in the record – is supported by substantial evidence. AR 18.

18 Over the course of five pages, the ALJ expressly discussed in detail how  
19 the “relatively benign” objective clinical findings did not support the degree of  
20 limitation Plaintiff had alleged. See AR 17-21; see also Reddick v. Chater,  
21 157 F.3d 715, 725 (9th Cir. 1998) (an ALJ may resolve questions of credibility  
22 “by setting out a detailed and thorough summary of the facts and conflicting  
23 clinical evidence, stating his interpretation thereof, and making findings”);  
24 Rodriguez v. Colvin, No. 13-0549, 2013 WL 6797896, at \*3 (C.D. Cal. Dec.  
25 20, 2013) (finding that ALJ properly discounted claimant’s credibility in part  
26 because record contained relatively benign evidence). The ALJ referenced  
27 several pieces of medical evidence revealing mild or minimal findings  
28 including, e.g., (1) a July 29, 2011 thoracolumbar spine x-ray that showed mild

1 partial compression fracture of the vertebrae and minimal degenerative joint  
2 disease (AR 18 (citing AR 542)); (2) a January 20, 2011 abdominal ultrasound  
3 that revealed a normal liver and spleen, with the additional finding of  
4 gallstones (AR 18 (citing AR 1122-23)); (3) a September 20, 2012 x-ray of the  
5 thoracic spine that was negative except for dextroscoliosis<sup>2</sup> (AR 19 (citing  
6 AR 1113)); (4) a diagnostic test of the lumbar spine that showed mild  
7 impressions on the thecal sac, mild arthrosis and mild bilateral neural  
8 foraminal narrowing<sup>3</sup> (AR 19 (citing AR 1141-43, 1150-51)); and (5) a  
9 November 14, 2011 physical exam where Plaintiff demonstrated normal motor  
10 skills, normal range of motion, and normal gait (AR 18 (citing AR 1133-39)).

11 Moreover, the ALJ did not rely solely on the lack of supporting medical  
12 evidence. As discussed below, the ALJ gave two other clear and convincing  
13 reasons to discount Plaintiff's credibility concerning the severity and limiting  
14 effects of her pain. The ALJ was permitted to consider the lack of supporting  
15 medical evidence as a factor confirming his other two reasons. See Burch,  
16 400 F.3d at 681; Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001)  
17 (“While subjective pain testimony cannot be rejected on the sole ground that it  
18 is not fully corroborated by objective medical evidence, the medical evidence is  
19 still a relevant factor in determining the severity of the claimant’s pain and its  
20 disabling effects.”); Social Security Ruling 96–7p (same).

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22 <sup>2</sup> According to the National Institutes of Health, scoliosis causes a  
23 sideways curve of the spine with symptoms that include leaning to one side  
24 and having uneven shoulders and hips. See <https://www.nlm.nih.gov/medlineplus/scoliosis.html>.

25 <sup>3</sup> The National Institutes of Health describes foraminal narrowing  
26 (spinal stenosis) as putting pressure on nerves and the spinal cord causing pain,  
27 numbness, or weakness in the neck, back, or legs. See <https://www.nlm.nih.gov/medlineplus/spinalstenosis.html>.

1           b.     Plaintiff's daily activities were inconsistent with her claims  
2                   of disabling pain.

3           The ALJ found that despite Plaintiff's alleged disabling pain, she  
4 "engaged in a somewhat normal level of daily activity and interaction."  
5 AR 17. The ALJ referenced Plaintiff's function report where she admitted that  
6 she runs errands, goes grocery shopping, watches television, goes to the library,  
7 prepares meals, folds clothes, goes out daily, shops in stores, and on the  
8 computer and by phone, handles her own finances, spends time talking with  
9 others, watches movies, plays card games, goes to church, and takes her  
10 daughter to school. AR 17 (citing AR 181-88). At the administrative hearing,  
11 Plaintiff responded to the ALJ's question regarding her activities of daily  
12 living, stating that she reads throughout the day. AR 44.

13           That Plaintiff maintained a reasonably normal level of daily activities  
14 was a clear and convincing reason to discount her credibility, even if her  
15 impairments made those activities somewhat more challenging. See Burch,  
16 400 F.3d at 681 (noting that ALJ may discredit allegations of disability on  
17 basis that claimant engages in daily activities involving skills that could be  
18 transferred to the workplace); Curry v. Sullivan, 925 F.2d 1127, 1130  
19 (9th Cir. 1990) (as amended) (finding that the claimant's ability to "take care of  
20 her personal needs, prepare easy meals, do light housework and shop for some  
21 groceries . . . may be seen as inconsistent with the presence of a condition  
22 which would preclude all work activity") (citing Fair v. Bowen, 885 F.2d 597,  
23 604 (9th Cir. 1989)); Molina, 674 F.3d at 1113 ("Even where [claimant's]  
24 activities suggest some difficulty functioning, they may be grounds for  
25 discrediting the claimant's testimony to the extent that they contradict claims  
26 of a totally debilitating impairment.").

1           c.       Plaintiff received routine, conservative, and non-emergency  
2                    treatment since the alleged onset date.

3           In assessing the claimant’s credibility, an ALJ may also consider  
4 evidence of conservative treatment in discounting testimony regarding the  
5 severity of an impairment. See Parra v. Astrue, 481 F.3d 742, 751  
6 (9th Cir. 2007). Here, the ALJ determined that Plaintiff had not “generally  
7 received the type of medical treatment one would expect for a totally disabled  
8 individual[.]” AR 18. Plaintiff states that she received treatment including  
9 physical therapy, TENS units, muscle relaxants and medication including  
10 ibuprofen. Dkt. 16 at 8; see AR 1116, 1134, 1151; see also Warre v. Comm’r  
11 of Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir. 2006) (“Impairments that  
12 can be controlled effectively with medication are not disabling.”). In a January  
13 9, 2012 progress report, Plaintiff admitted that physical therapy sessions  
14 improved her back pain, AR 19 (citing AR 627), and according to June 24,  
15 2011 progress notes, Plaintiff felt that “[physical] therapy ha[d] been very  
16 helpful[.]” AR 830. Thus, the ALJ’s finding that Plaintiff’s conservative  
17 treatment was inconsistent with the claimed severity of her pain is supported  
18 by substantial evidence, and it provides another clear and convincing reason  
19 for discounting Plaintiff’s testimony. See Tommasetti v. Astrue, 533 F.3d  
20 1035, 1040 (9th Cir. 2008) (ALJ properly rejected claimant’s subjective  
21 complaints because she responded favorably to conservative treatment of  
22 physical therapy, TENS unit, and medication); see also Burch, 400 F.3d at  
23 681.

24           On appellate review, this Court is limited to determining whether the  
25 ALJ properly identified reasons for discrediting Plaintiff’s credibility. Smolen,  
26 80 F.3d at 1284. The lack of evidence to support the severity of Plaintiff’s pain  
27 allegations in the medical evidence, her daily activities, and her conservative  
28 treatment were proper and sufficiently specific bases for discounting her claims



1 of disabling symptoms, and the ALJ's reasoning was clear and convincing.  
2 See Tommasetti, 533 F.3d at 1039-40; Houghton v. Comm'r of Soc. Sec.  
3 Admin., 493 F. App'x 843, 845 (9th Cir. 2012). Because the ALJ's findings  
4 were supported by substantial evidence, this Court may not engage in second-  
5 guessing. See Thomas, 278 F.3d at 959; Fair, 885 F.2d at 604. Remand is not  
6 warranted.

7 **The ALJ Provided At Least One Specific, Germane Reason For**  
8 **Rejecting Lay Witness Testimony**

9 Plaintiff next contends that the ALJ improperly evaluated the testimony  
10 of her daughter, Avelena Camacho, as detailed in a third-party function report.  
11 See Dkt. 16 at 13-15. The ALJ found as follows:

12 The undersigned has read and considered the statements  
13 from the claimant's daughter in a third party function report, and  
14 finds these statements are only credible to the extent that her  
15 statements are consistent with the conclusion the claimant can do  
16 the work described herein (Exhibit 3E).

17 The statements made by the claimant's daughter have not  
18 been given under oath. She is not a medical professional and as a  
19 lay witness, the claimant's daughter is not competent to make a  
20 diagnosis or argue the severity of the claimant's symptoms in  
21 relationship to her ability to work. The claimant's daughter  
22 supports the claimant emotionally and physically and therefore she  
23 has a familial interest in seeing the claimant receive benefits.  
24 Therefore, her opinion is not an unbiased one. Most importantly,  
25 the clinical or diagnostic medical evidence that is discussed more  
26 throughout below does not support her statements.

27 AR 18.

1 An ALJ may discount the testimony of lay witnesses only if he provides  
2 specific “reasons that are germane to each witness.” Dodrill v. Shalala,  
3 12 F.3d 915, 919 (9th Cir. 1993); Lewis v. Apfel, 236 F.3d 503, 511  
4 (9th Cir. 2001) (“Lay testimony as to a claimant’s symptoms is competent  
5 evidence that an ALJ must take into account, unless he or she expressly  
6 determines to disregard such testimony and gives reasons germane to each  
7 witness for doing so.”).

8 Here, the ALJ appears to have improperly assigned limited credibility to  
9 Ms. Camacho’s testimony because she was not a “medical professional” nor  
10 “competent to make a diagnosis” of Plaintiff’s medical symptoms. AR at 18;  
11 see Cline v. Colvin, 2013 WL 3733486, at \*8 (E.D. Wash. July 15, 2013) (ALJ  
12 erred in rejecting function report on basis of witness’s lack of medical training,  
13 where it was not apparent that the declarant “attempted to make exacting  
14 observations as to the dates, frequencies, types[,] and degrees of medical signs  
15 and symptoms”). Further, “[t]he fact that a lay witness is a family member  
16 cannot be a ground for rejecting his or her testimony.” Smolen, 80 F.3d at  
17 1289 (rejecting the ALJ’s dismissal of testimony from family witnesses who  
18 were “understandably advocates, and biased,” as not a valid reason);  
19 20 C.F.R. §§ 404.1513(d)(4), 416.913(d)(4) (explaining that commissioner will  
20 consider evidence from “non-medical sources,” including “relatives,” to  
21 determine how a claimant’s impairments affect her ability to work).

22 Nonetheless, the ALJ provided at least one specific reason for rejecting  
23 Plaintiff’s daughter’s testimony that was germane to her, thus rendering any  
24 error harmless. See Carmickle v. Comm’r of Soc. Sec. Admin., 533 F.3d 1155,  
25 1162-63 (9th Cir. 2008) (finding error by the ALJ on one or more factors in a  
26 credibility determination harmless if there “remains substantial evidence  
27 supporting the ALJ’s conclusions”). The ALJ noted that Ms. Camacho’s  
28 statements were inconsistent with the clinical or diagnostic medical evidence

1 before the ALJ. AR at 18; see Bayliss v. Barnhart, 427 F.3d at 1211, 1218  
2 (9th Cir. 2005) (inconsistency with medical evidence is a germane reason for  
3 discrediting the testimony of a lay witness); Plaza v. Astrue, No. CV 12-1029,  
4 2013 WL 210247, at \*7-8 (C.D. Cal. Jan. 18, 2013) (finding harmless error in  
5 ALJ rejecting mother’s third-party function report on improper grounds,  
6 because germane reason for discounting report – that witness’s testimony  
7 contradicted by medical records – existed). For example, contrary to Ms.  
8 Camacho’s testimony that Plaintiff was limited in walking, sitting, standing,  
9 and remembering instructions (AR 175-70), the ALJ noted that medical  
10 evidence showed that Plaintiff displayed normal motor skills, normal gait, easy  
11 balance, and demonstrated normal mental status evaluations between January  
12 6, 2011 and June 20, 2013. See AR 18-19 (citing AR 598, 1030, 1035, 1039,  
13 1045, 1056, 1076, 1080, 1084, 1086, 1099).

14 Moreover, Ms. Camacho’s observations about Plaintiff’s ability to read,  
15 watch TV, fix lunch, handle money, enjoy hobbies, and shop for groceries,  
16 books, and toiletries once a week support the ALJ’s RFC finding. AR at 170-  
17 74; see Fair, 885 F.2d at 604 (in discounting credibility, ALJ may properly rely  
18 on daily activities inconsistent with disability claim, including claimant’s  
19 ability to care for personal needs, shop, and perform routine household  
20 chores); see also Pinegar v. Comm’r of Soc. Sec. Admin., 499 F. App’x 666,  
21 667 (9th Cir. 2012) (finding failure to provide valid reasons for rejecting third  
22 party testimony harmless where testimony consistent with ALJ’s decision).

23 Accordingly, the ALJ’s assessment of Ms. Camacho’s testimony does  
24 not warrant reversal.

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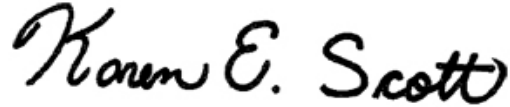
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IV.  
CONCLUSION

For the reasons stated above, the decision of the Social Security  
Commissioner is AFFIRMED and the action is DISMISSED with prejudice.

Dated: April 13, 2016



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KAREN E. SCOTT  
United States Magistrate Judge