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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

JUANITA M. LUEVANO,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,¹
Respondent.

Case No. ED CV 16-0380-DFM
MEMORANDUM OPINION
AND ORDER

Juanita M. Luevano (“Plaintiff”) appeals from the Social Security Commissioner’s final decision denying her application for Supplemental Security Income (“SSI”). For the reasons discussed below, the Commissioner’s decision is affirmed and this matter is dismissed with prejudice.

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¹ On January 23, 2017, Berryhill became the Acting Social Security Commissioner. Thus, she is automatically substituted as respondent under Federal Rule of Civil Procedure 25(d).

1 I.

2 BACKGROUND

3 Plaintiff filed an application for SSI on June 1, 2010. Administrative
4 Record (“AR”) 102-03, 107, 269-77. After her application was denied, she
5 requested a hearing before an administrative law judge (“ALJ”). AR 137-39. A
6 hearing was held on December 13, 2011, at which Plaintiff, who was
7 represented by counsel, testified, as did a vocational expert (“VE”). AR 33-62.
8 In a written decision issued December 30, 2011, the ALJ denied Plaintiff’s
9 claim for benefits. AR 107-14. Plaintiff requested review of the ALJ’s decision,
10 AR 180-82, and on July 23, 2013, the Appeals Council vacated the decision
11 and remanded the case for further proceedings, AR 119-21.

12 On April 25, 2014, a different ALJ held a hearing, at which Plaintiff,
13 who was represented by counsel, testified. AR 63-77. The ALJ then continued
14 the hearing to allow Plaintiff to submit additional records. *Id.* On June 23,
15 2014, the ALJ held an additional hearing, at which Plaintiff and a VE testified.
16 AR 79-101.

17 In a written decision issued July 9, 2014, the ALJ denied Plaintiff’s claim
18 for benefits. AR 14-24. The ALJ found that Plaintiff’s back condition was not a
19 medically determinable impairment, a finding that Plaintiff does not challenge.
20 AR 16. The ALJ further found that Plaintiff had the severe impairments of
21 depression and anxiety, but she retained the residual functional capacity to
22 perform a full range of work at all exertional levels with the following
23 nonexertional limitations:

24 she can do work on a sustained basis requiring only basic, simple
25 mathematic skills such as simple adding, subtracting, multiplying,
26 and dividing. Also on a sustained basis, she can understand, carry
27 out, and remember simple instructions; respond appropriately to
28 supervision, coworkers and usual work situations; and can deal

1 with changes in routine work setting changes.

2 AR 16-18. Based on the VE's testimony, the ALJ found that Plaintiff could
3 perform jobs that existed in significant numbers in the national economy. AR
4 23-24. He therefore concluded that Plaintiff was not disabled. AR 24.

5 Plaintiff requested review of the ALJ's decision. AR 10. On December
6 14, 2015, the Appeals Council denied review. AR 6-9. This action followed.

7 II.

8 DISCUSSION

9 Plaintiff argues that the ALJ erred in discounting her credibility. Joint
10 Stipulation ("JS") at 3. For the reasons discussed below, the Court disagrees.

11 A. Applicable Law

12 To determine whether a claimant's testimony about subjective pain or
13 symptoms is credible, an ALJ must engage in a two-step analysis. Lingenfelter
14 v. Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007). "First, the ALJ must
15 determine whether the claimant has presented objective medical evidence of an
16 underlying impairment '[that] could reasonably be expected to produce the
17 alleged pain or other symptoms alleged.'" Id. at 1036 (citation omitted). Once
18 a claimant does so, the ALJ "may not reject a claimant's subjective complaints
19 based solely on a lack of objective medical evidence to fully corroborate the
20 alleged severity of pain." Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991)
21 (en banc).

22 If the claimant meets the first step and there is no affirmative evidence of
23 malingering, the ALJ must provide specific, clear and convincing reasons for
24 discrediting a claimant's complaints. Robbins v. Soc. Sec. Admin., 466 F.3d
25 880, 883 (9th Cir. 2006) (citing Smolen v. Chater, 80 F.3d 1273, 1283-84 (9th
26 Cir. 1996)). "General findings are insufficient; rather, the ALJ must identify
27 what testimony is not credible and what evidence undermines the claimant's
28 complaints." Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir. 2015) (as

1 amended) (citation omitted). The ALJ may consider, among other factors, a
2 claimant’s reputation for truthfulness, inconsistencies either in her testimony or
3 between her testimony and her conduct, unexplained or inadequately
4 explained failure to seek treatment or follow a prescribed course of treatment,
5 her work record, and her daily activities. Light v. Soc. Sec. Admin., 119 F.3d
6 789, 792 (9th Cir. 1997) (as amended); Smolen, 80 F.3d at 1283-84 & n.8. If
7 the ALJ’s credibility finding is supported by substantial evidence in the record,
8 the reviewing court “may not engage in second-guessing.” Thomas v.
9 Barnhart, 278 F.3d 947, 959 (9th Cir. 2002).

10 **B. Relevant Facts**

11 **1. Plaintiff’s Medical Records**

12 In September and December 2009, a provider noted that Plaintiff’s
13 depression was “stable.” AR 377-78. In October 2010, a provider noted that
14 Plaintiff had been “stable on Prozac for some time” and “feels well.”² AR 414.
15 He refilled her medication. Id.

16 In December 2010, psychologist Aparna Dixit examined Plaintiff at the
17 Social Security Administration’s request. AR 401-05. Plaintiff reported that she
18 suffered from “a lot of anxiety,” did not like to be around people because of
19 her depression, and suffered from spinal stenosis and could not lift heavy
20 things. AR 401-02. Dr. Dixit observed that Plaintiff was alert and oriented, her
21 speech was clear and coherent, her thought process was linear, her thought
22 content was logical, and her insight and judgment was intact. AR 402.
23 Plaintiff’s affect was appropriate and congruent with her mood, which was
24 “mildly depressed.” Id. Throughout the examination, Plaintiff worked with a

25 ² Prozac, or fluoxetine, is a selective serotonin reuptake inhibitor that is
26 used to treat depression and panic attacks. Fluoxetine, MedlinePlus,
27 <https://medlineplus.gov/druginfo/meds/a689006.html> (last updated Nov. 15,
28 2014).

1 normal pace and demonstrated adequate persistence. Id.

2 Based on Plaintiff's clinical presentation, her reported history, and the
3 results of psychological testing, Dr. Dixit diagnosed major depressive disorder
4 and found that Plaintiff's psychiatric symptoms were partially controlled by
5 medication. AR 404. Dr. Dixit opined that Plaintiff had no impairment in her
6 ability to follow and remember simple instructions, maintain pace or
7 persistence for one- or two-step simple repetitive tasks, and communicate
8 effectively with others verbally and through writing. AR 404-05. Dr. Dixit
9 opined that Plaintiff was mildly impaired in her ability to follow and remember
10 complex or detailed instructions, maintain adequate pace and persistence for
11 complex tasks, maintain adequate attention and concentration, adapt to
12 changes in routine, withstand the stress of a normal workday, maintain
13 emotional stability, and interact appropriately with coworkers, supervisors,
14 and the public. Id. Dr. Dixit opined that Plaintiff had mild to moderate
15 difficulty performing tasks requiring mathematics skills. AR 405.

16 Also in December 2010, Dr. Frank Chen examined Plaintiff at the Social
17 Security Administration's request. AR 406-07. Dr. Chen noted that Plaintiff
18 "stated that she does not have any specific physical complaints or medical
19 conditions" but she reported a history of anxiety and depression. AR 406. A
20 complete physical examination rendered only normal results. AR 407.

21 In January 2011, a provider noted that Plaintiff had depression and was
22 "on Prozac." AR 413. In February 2011, a provider noted that Plaintiff had
23 had a panic attack over the weekend and had been "more depressed on
24 Sunday." AR 449. He increased her Prozac and prescribed Ativan for panic
25 attacks.³ Id. Later that month, Plaintiff's provider wrote a letter "[t]o whom it

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27 ³ Ativan, or lorazepam, is a benzodiazepine that slows activity in the
28 brain to allow for relaxation. See Lorazepam, MedlinePlus, <https://>

1 may concern,” noting that he had been treating Plaintiff for depression and
2 that she was taking Prozac daily and had been given Ativan to use “sparingly
3 for panic attacks.” AR 442.

4 In April 2011, Plaintiff’s provider noted that Plaintiff reported increased
5 panic attacks in the last week and he prescribed an additional medication,
6 BuSpar.⁴ AR 463. In May 2011, a provider noted that BuSpar “helps [Plaintiff]
7 sleep” and that Plaintiff was “trying to get on disability.” AR 462. In August
8 2011, a provider noted that Plaintiff was “doing better” with her anxiety and
9 that her depression and anxiety were “stable on BuSpar/Prozac.” AR 461.

10 No medical records were available from 2012. See AR 80 (Plaintiff’s
11 counsel stating during June 2014 hearing that no other records were available).
12 In February 2013, Plaintiff saw a new provider. AR 482. Among other things,
13 the provider noted that Plaintiff had “depression/ anxiety” and advised her to
14 continue taking Prozac and BuSpar. AR 482.

15 In April 2013, a provider noted that Plaintiff had a history of depression
16 and anxious mood, took Prozac and BuSpar, “and says she feels medication is
17 working well.” AR 480. The provider noted that Plaintiff’s depression and
18 anxiety were “stable.” Id. In August 2013, Plaintiff visited the doctor to get a
19 medical excusal from jury duty. AR 479, 481. At that time, Plaintiff stated that
20 her symptoms had not been controlled by her BuSpar and Prozac and she
21 reported having four to five panic or anxiety attacks a day. AR 481. In October
22 2013, Plaintiff’s provider noted that Plaintiff had generalized anxiety disorder
23 and depression but said she was “doing well” with “no complaints” and “no
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25 medlineplus.gov/druginfo/meds/a682053.html (last updated Apr. 15, 2017).

26 ⁴ BuSpar, or buspirone, is used to treat anxiety disorders. See Buspirone,
27 MedlinePlus, <https://medlineplus.gov/druginfo/meds/a688005.html> (last
28 updated Apr. 15, 2011).

1 depressed mood at this time.” AR 477. The provider noted that Plaintiff’s
2 depression and anxiety were “stable.” Id.

3 **2. Plaintiff’s Subjective Complaints**

4 In an undated disability report, Plaintiff alleged that she had been
5 disabled since December 30, 1991,⁵ because of “[g]eneral [a]nxiety [d]isorder,”
6 depression, “[e]motional problems,” and “mental.” AR 298. Plaintiff stated
7 that she had received SSI before she married in 1999, but that her benefits were
8 discontinued after her marriage because her husband had been working.⁶ AR
9 304. She stated that her husband had retired in May 2009 and she was
10 therefore asking that her SSI be reinstated. Id.

11 In an August 2010 function report, Plaintiff wrote that her daily activities
12 included showering, getting dressed, combing her hair, and, if she was going
13 out, putting on makeup. AR 322. She slept late because she did not sleep well
14 at night, had lunch, sometimes ran errands or went shopping with her
15 husband, watched television, made dinner with her husband’s help, talked to
16 her grown children on the phone, cleaned up, and got ready for bed. AR 322,
17 326. Some days Plaintiff also washed her hair. AR 322.

18 Plaintiff had trouble sleeping because she “worried about stuff all the
19 time.” AR 323. She had no problems with her personal care. Id. With her
20 husband’s help, Plaintiff prepared frozen dinners and ready-made food. AR
21 324. She was able to perform some household chores, including loading and
22 unloading the dishwasher, making the bed, dusting, and “straighten[ing] up.”
23 Id. Her housework would sometimes take a “few hours.” Id. Plaintiff did not
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25 ⁵ In her application, Plaintiff stated that her disability began on February
26 1, 1993. AR 269.

27 ⁶ Plaintiff apparently received SSI from November 1994 to August 1999.
28 See AR 294.

1 do any yard work because she “tired easily.” AR 325.

2 Plaintiff went outside a few times a week and she was able to drive. Id.
3 She could go out alone, but her husband was usually with her. Id. Plaintiff
4 shopped in stores for personal items or clothing when necessary, which would
5 take about an hour. Id. She was able to manage her own money. Id. Plaintiff
6 watched television or movies a few times a week, talked to her grown children
7 on the phone, and regularly went to stores and ran errands. AR 326. Plaintiff
8 stated that she felt very anxious around family, friends, neighbors, and others.
9 AR 327.

10 Plaintiff stated that her condition affected her ability to lift, remember,
11 complete tasks, concentrate, understand, follow instructions, and get along
12 with others. Id. Plaintiff said she “can’t lift because [she has] back problems,”
13 and when she is “stressed or under pressure [she has] trouble concentrating
14 and forget[s] things.” Id. She wrote that it is “hard to understand directions
15 and follow instructions” and that she gets “overwhelmed and can’t finish what
16 [she] starts.” Id. She wrote that she “get[s] confused, can’t think straight” and
17 “become[s] emotional.” Id. Plaintiff could walk “maybe one block” before
18 needing a rest and could pay attention “maybe an hour or less.” Id. She did
19 not finish what she started and could not follow written or spoken instructions
20 well because she got “confused every time.” Id. Plaintiff could not handle
21 stress or changes in routine well. AR 328. She wrote that she was a “very
22 depressed person” and had “always been anxious and worried about
23 everything.” AR 329.

24 On December 10, 2010, Plaintiff reported to Dr. Dixit that she was able
25 to take a bus by herself, drive a car, perform simple household chores, dress
26 and groom herself, and prepare simple meals and grocery shop with some
27 assistance. AR 402. Plaintiff said her medication was “partially helpful in
28 reducing her symptoms.” Id. Plaintiff reported to Dr. Chen that she could

1 cook, do housework, wash dishes, do laundry, buy groceries, watch television,
2 use a computer, listen to music, read, walk, run errands, and go to the movies.
3 AR 406.

4 Plaintiff's claim was denied initially on February 9, 2011, and upon
5 reconsideration on May 3, 2011. AR 102-03, 107, 123-26, 130-34. In a March
6 3, 2011 "Disability Report - Appeal," Plaintiff wrote that her symptoms had
7 "become increasingly worse in the last few months." AR 348. She stated that
8 she had been experiencing severe panic attacks that left her feeling "drained
9 and exhausted" and that she had to take a nap "right after having an attack."
10 Id. Plaintiff stated that she was "so scared of these attacks that now [she had]
11 to make [her] husband drive" and she would have attacks at night that woke
12 her up. Id. Plaintiff's depression had "become worse due to [her] feelings of
13 increased anxiety" and she "constantly [broke] down crying and [felt]
14 emotional about everything." Id. Plaintiff wrote that her husband "now does
15 everything for [her] around the house" including "shopping and taking care of
16 [their] finances." Id. Plaintiff wrote that she could "no longer . . . think straight
17 enough to do even the basic things" and that her "body has become weak from
18 no activity." AR 348-49.

19 Plaintiff wrote that her condition had "really affected [her] ability to do
20 many things that [she] used to do for [herself]." AR 352. She "now need[ed]
21 help getting in and out of the shower" and washing her hair; "[s]ometimes
22 when [she was] really weak or extremely tired" she needed help getting "to and
23 from the bathroom." Id. Plaintiff said her husband now helped her get dressed,
24 prepared all of her meals, and did all the housework and shopping. Id.

25 On June 5, 2011, Plaintiff completed another "Disability Report –
26 Appeal." AR 358-64. She wrote that since her last report, she had started
27 suffering from "additional panic attacks" and had "more trouble concentrating
28 on things." AR 358. She wrote that she "tired easily so it's hard to do things

1 for [herself]" and her husband helped out "a lot." AR 361.

2 At the December 13, 2011 hearing, Plaintiff testified that she tired easily
3 but her main problem was her "severe anxiety," which caused her to get "very
4 nervous" and "stressed out." AR 39-40. She testified that she watched about 4
5 hours of television a day and used a computer to send email, look at shopping
6 websites, and use Facebook. AR 44-46. Plaintiff drove about twice a week, ate
7 at a restaurant about once a week, and attended church every few months. AR
8 46-48. Plaintiff testified that in the previous two years, she and her husband
9 had taken a 9-day cruise to Mexico and a 3-day trip to Las Vegas. AR 49-53.
10 She testified that while on the cruise, she had a "very bad time" and felt
11 "anxious" and "very stressed out," and that on the drive home from Las
12 Vegas, she had had panic attacks. AR 51-53.

13 Plaintiff testified that her anxiety was worse when she was "out in
14 public" and there was nothing she could do to make it better. AR 55. Plaintiff
15 said she took medication to help with her panic attacks but it did not work. AR
16 55-56. Her panic attacks lasted 5 or 10 minutes at a time and she never knew
17 when they were coming. AR 56. Plaintiff testified that she had trouble
18 sustaining concentration and remembering and she got confused easily. AR 56-
19 57. The highest level of education she had completed was a two-year
20 associate's degree in travel, AR 38, and she had not worked at a full-time job
21 during the previous 15 years, AR 39.

22 At the April 25, 2014 hearing, Plaintiff testified that she had never been
23 hospitalized for psychiatric complaints, but she once went to the emergency
24 room because she did not have any medication or a doctor who would write
25 her a prescription. AR 70-71. She was unable to work because she would get
26 "very stressed out" and "very nervous," her mind would "go blank," and she
27 would get "very upset." AR 73. Plaintiff stated that her medications helped
28 "some" but she did not think they helped "the way they should." AR 74.

1 At the June 23, 2014 hearing, Plaintiff testified that she could “do math,
2 but nothing . . . extensive” and she could not follow directions. AR 83-84. She
3 had panic attacks that each lasted about 5 minutes at least 10 times a week. AR
4 86-87. She had to lie down after a panic attack at least 5 times a week. AR 88.
5 She had nightmares a few times a week and was able to sleep about 6 hours a
6 night. Id. Plaintiff testified that her medication did not help her. AR 91-92. Her
7 husband paid the bills and did the cooking. AR 90-91. Plaintiff would go to the
8 grocery store with her husband about once a week. AR 92.

9 **C. Discussion**

10 In the July 9, 2014 decision, the ALJ determined that Plaintiff’s alleged
11 psychological symptoms were “partially credible,” AR 19, and he
12 accommodated some of her subjective complaints by limiting her to
13 performing “only basic, simple mathematic skills” and understanding, carrying
14 out, and remembering only “simple instructions.” AR 17-18. To the extent the
15 ALJ partially discredited Plaintiff’s testimony and allegations, see AR 19, he
16 gave clear and convincing reasons for doing so.

17 The ALJ was entitled to rely on Plaintiff’s infrequent treatment and
18 positive response to medication in discounting her subjective complaints. See
19 AR 19 (noting that Plaintiff “infrequently sought treatment and was merely
20 prescribed psychotropic medications of Prozac, Buspirone, and occasional
21 Ativan” and did not “generally receive[] the type of medical treatment one
22 would expect from a completely disabled individual”); Tommasetti v. Astrue,
23 533 F.3d 1035, 1040 (9th Cir. 2008) (holding that ALJ may infer that
24 claimant’s “response to conservative treatment undermines [claimant’s] reports
25 regarding the disabling nature of his pain”); Parra v. Astrue, 481 F.3d 742, 751
26 (9th Cir. 2007) (“[E]vidence of ‘conservative treatment’ is sufficient to discount
27 a claimant’s testimony regarding severity of an impairment.” (citation
28 omitted)); cf. Warre v. Comm’r Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th

1 Cir. 2006) (holding that “[i]mpairments that can be controlled effectively with
2 medication are not disabling for the purpose of determining eligibility for SSI
3 benefits”); Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989) (holding ALJ may
4 rely on “unexplained, or inadequately explained, failure to seek treatment” in
5 rejecting claimant’s credibility). Plaintiff complained of debilitating psychiatric
6 symptoms, but her medical records show that she visited her primary-care
7 providers for mental-health treatment only twice in 2009, once in 2010, five
8 times in 2011, never in 2012, and four times in 2013. At most of those
9 appointments, moreover, the provider noted that Plaintiff’s condition was
10 “stable,” that her condition had improved, or that she was doing well. See, e.g.
11 AR 377-78, 414, 461-62, 477, 480. Plaintiff was prescribed Prozac and BuSpar,
12 which were noted to work well, as well as Ativan, which she was to take
13 “sparingly” for panic attacks. AR 414, 442, 449, 461-62, 477, 480. And as the
14 ALJ noted, AR 20, Plaintiff was never referred to a psychiatrist or for
15 psychotherapy and was never hospitalized for her psychiatric complaints. The
16 ALJ therefore did not err in relying on these factors to discount Plaintiff’s
17 credibility. See Young v. Comm’r of Soc. Sec., 594 F. App’x 914, 917 (9th Cir.
18 2014) (finding that in discounting subjective complaints, ALJ “properly took
19 into account that [plaintiff] received only conservative treatment” for mental
20 problems); Kellerman v. Astrue, No. 11-4727, 2012 WL 3070781, at *8 (N.D.
21 Cal. July 27, 2012) (finding that ALJ permissibly discounted plaintiff’s
22 credibility when “[m]edical evidence [showed] that [plaintiff’s] depression was
23 ‘controlled’ using antidepressants”).

24 The ALJ also permissibly discounted Plaintiff’s credibility based on the
25 “minimal clinical and diagnostic findings with respect to [her] mental
26 impairment.” AR 19. See Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005)
27 (“Although lack of medical evidence cannot form the sole basis for discounting
28 pain testimony, it is a factor that the ALJ can consider in his credibility

1 analysis.”); Carmickle v. Comm’r, Soc. Sec. Admin., 533 F.3d 1155, 1161 (9th
2 Cir. 2008) (“Contradiction with the medical record is a sufficient basis for
3 rejecting the claimant’s subjective testimony.”); SSR 16-3p, 2016 WL 1119029,
4 at *4 (Mar. 16, 2016) (“[O]bjective medical evidence is a useful indicator to
5 help make reasonable conclusions about the intensity and persistence of
6 symptoms, including the effects those symptoms may have on the ability to
7 perform work-related activities.”). As the ALJ noted, AR 20, Plaintiff claimed
8 to suffer from frequent panic attacks, see AR 86-87, 348, 358, but her medical
9 records showed that she seldom reported this to her treating doctors, see, e.g.
10 AR 449, 463, 481 (treatment records mentioning panic attacks). Nor did
11 Plaintiff report her panic attacks to Dr. Dixit, the examining psychologist. See
12 AR 401-05 (Dr. Dixit’s report not mentioning panic attacks). And when
13 Plaintiff reported some increased psychological symptoms in April 2011, her
14 doctor effectively managed them by prescribing an additional medication. See
15 AR 463 (Apr. 2011, noting Plaintiff’s complaints of increased panic attacks
16 and prescribing additional medication, BuSpar), 462 (May 2011, noting that
17 BuSpar helped Plaintiff sleep), 461 (Aug. 2011, noting that Plaintiff was “doing
18 better” with anxiety and was stable on Prozac and BuSpar). Plaintiff also
19 complained of increased symptoms in August 2013, when she sought a
20 medical excuse from jury duty, AR 479, 481, but by October 2013, Plaintiff
21 said she was “doing well,” had “no complaints,” and had “no depressed
22 mood,” AR 477. And other than a mild to moderate difficulty performing
23 mathematical skills, Dr. Dixit concluded that Plaintiff’s psychological
24 condition resulted in only mild limitations. AR 401-05. Such minimal findings
25 fail to support Plaintiff’s claims of totally disabling anxiety and depression that
26 worsened over time.

27 The ALJ also permissibly discounted Plaintiff’s credibility because her
28 activities were inconsistent with her alleged limitations. AR 19-20; see Molina

1 v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012) (holding that ALJ may discredit
2 claimant’s testimony when “claimant engages in daily activities inconsistent
3 with the alleged symptoms” (citing Lingenfelter, 504 F.3d at 1040)); id. at 1113
4 (“Even where those [daily] activities suggest some difficulty functioning, they
5 may be grounds for discrediting the claimant’s testimony to the extent that
6 they contradict claims of a totally debilitating impairment.”); see also Bray v.
7 Comm’r of Soc. Sec. Admin., 554 F.3d 1219, 1227 (9th Cir. 2009) (holding
8 that ALJ properly discounted claimant’s testimony because “she leads an
9 active lifestyle, including cleaning, cooking, walking her dogs, and driving to
10 appointments”). For example, in August 2010, Plaintiff claimed that she was
11 totally disabled by her depression and anxiety, which affected her ability to
12 remember, understand, complete tasks, concentrate, follow directions, finish
13 what she started, and get along with other people, AR 327, but in December
14 2010, she reported to Drs. Dixit and Chen that she was able to take a bus by
15 herself, drive a car, shop for groceries, complete household chores, run
16 errands, read, walk, and go to the movies, AR 402, 406, and in December
17 2011, she testified that she used a computer, drove, and ate at restaurants once
18 a week, AR 44-48.⁷

19 Plaintiff also claimed that her anxiety was worse when she was “out in
20 public,” AR 55, but she still took a 9-day cruise to Mexico and a 3-day trip to
21 Las Vegas, AR 49-53. Plaintiff alleges that the ALJ “conveniently omitted

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23 ⁷ After her initial claim for benefits was denied, Plaintiff claimed that her
24 condition had worsened and that her daily activities were much more limited;
25 for example, she claimed that she need help getting in and out of the shower,
26 washing her hair, and sometimes, getting to and from the bathroom. AR 352.
27 But as previously discussed, Plaintiff’s medical records do not show any
28 sustained worsening of her condition. Moreover, given that Plaintiff suffered
only from psychiatric conditions, it is not clear why she would be so physically
limited as to be unable to even walk to the bathroom or wash her hair.

1 [Plaintiff's] testimony regarding the difficulty she had on those two trips." JS at
2 5. However, the ALJ acknowledged that a "vacation and a disability are not
3 necessarily mutually exclusive" but that Plaintiff's ability to take those trips
4 contradicted her alleged difficulties around strangers and following
5 instructions. AR 19. Moreover, this was just one example of a contradiction
6 between Plaintiff's activities and her allegations of totally disabling anxiety and
7 depression. The ALJ therefore did not err in relying on this factor. See Wilson
8 v. Comm'r, Soc. Sec. Admin., No. 14-01326, 2015 WL 5919881, at *4 (D. Or.
9 Oct. 8, 2015) (holding that ALJ properly found claimant "less than credible"
10 when her "allegations of crippling anxiety were contradicted by her
11 involvement at church, multiple casino trips, and her ability to shop with
12 friends and manage her finances").⁸

13 The ALJ also noted that Plaintiff worked "on a very limited basis" even
14 before her alleged onset date of February 1, 1993. AR 20. Indeed, Plaintiff
15 reported that her last job was working for one month as a cashier in 1991, and
16 that the longest job she held lasted six months. AR 401; see also AR 283
17 (showing earnings of \$122.55 in 1991, \$0 in 1990, \$432 in 1989, \$332.57 in
18 1988, \$0 in 1987, and \$240.28 in 1986). In discounting Plaintiff's credibility,
19 the ALJ was entitled to rely on Plaintiff's poor work history even before she
20 allegedly became disabled. See Thomas, 278 F.3d at 959 (finding that ALJ
21 permissibly discounted claimant's credibility when claimant "had an

22
23 ⁸ Plaintiff acknowledges that she is capable of performing "some of what
24 might be considered normal activities of daily living with the assistance of her
25 husband," but she argues that she was unable to perform these activities "over
26 an 8 hour period, 5 days per week as would be required by any full time
27 competitive employment." JS at 4. But "[e]ven where [daily] activities suggest
28 some difficulty functioning, they may be grounds for discrediting the
claimant's testimony to the extent that they contradict claims of a totally
debilitating impairment." Molina, 674 F.3d at 1113. That is the case here.

1 'extremely poor work history' and 'has shown little propensity to work in her
2 lifetime'"); Aarestad v. Comm'r of Soc. Sec. Admin., 450 F. App'x 603, 604
3 (9th Cir. 2011) (finding that ALJ permissibly discounted plaintiff's testimony
4 when "[t]he evidence showed that [plaintiff] worked only sporadically before
5 the alleged onset of disability (which suggests that her decision not to work
6 was not based on disability)").

7 One of the ALJ's cited reasons for discounting Plaintiff's credibility
8 might not be clear and convincing: that Plaintiff "only applied for [SSI] in this
9 instance because her husband retired from his job." AR 20. But as Plaintiff
10 argues, JS at 8, it appears that Plaintiff may have been ineligible for SSI while
11 her husband was working if his income exceeded the SSI earnings limitation.
12 see AR 71-73, 86, 294, 304. As a result, Plaintiff's applying for benefits after
13 her husband retired does not necessarily show that she was simply disinclined
14 to work. But even if the ALJ erred in relying on this factor, it was harmless
15 because his other reasons fully support his credibility determination. See
16 Carmickle, 533 F.3d at 1162 ("So long as there remains 'substantial evidence
17 supporting the ALJ's conclusions on . . . credibility' and the error 'does not
18 negate the validity of the ALJ's ultimate [credibility] conclusion,' such is
19 deemed harmless and does not warrant reversal" (alterations in original,
20 citations omitted)).

21 Finally, Plaintiff argues that the ALJ should not have discounted her
22 subjective complaints because they were supported by her daughter's third-
23 party function statement. JS at 8. But the ALJ explained that the daughter's
24 statement, which reported the "same general activities and limitations" that
25 Plaintiff reported, was only partially credible because it was not supported by
26 the evidence as a whole, among other reasons. AR 19. That was a germane
27 reason for rejecting Plaintiff's daughter's statement. See Molina, 674 F.3d at
28 1111 (holding that ALJ may discount testimony from nonmedical source by

1 giving “reasons germane to each witness for doing so” (citation omitted));
2 Bayliss v. Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2005) (holding that
3 inconsistency with medical record is germane reason for discrediting testimony
4 of lay witness). As such, the ALJ did not err in discounting the third-party
5 statement and he was not required to credit Plaintiff’s subjective complaints
6 based on it.

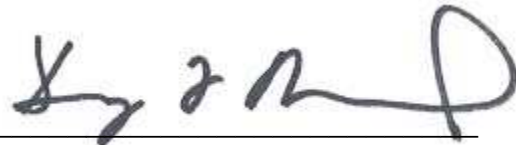
7 Remand is not warranted.

8 **III.**

9 **CONCLUSION**

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

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13 Dated: June 2, 2017



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15 DOUGLAS F. McCORMICK
16 United States Magistrate Judge
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