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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CYNTHIA ROSALES,	)	NO. ED CV 17-1845-E
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM OPINION</b>
	)	
NANCY A. BERRYHILL, Acting	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	
	)	

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PROCEEDINGS

Plaintiff filed a complaint on September 11, 2017, seeking review of the Commissioner's denial of benefits. The parties consented to proceed before a United States Magistrate Judge on November 6, 2017. Plaintiff filed a motion for summary judgment on January 25, 2018. Defendant filed a motion for summary judgment on February 26, 2018. The Court has taken the motions under submission without oral argument. See L.R. 7-15; "Order," filed September 13, 2017.

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1 **BACKGROUND**

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3 Plaintiff asserted disability since May 1, 2012, based on several  
4 alleged impairments (Administrative Record ("A.R.") 182-83,202). The  
5 Administrative Law Judge ("ALJ") examined the record and heard  
6 testimony from Plaintiff and a vocational expert (A.R. 20-177, 182-  
7 305, 315-569).

8  
9 The ALJ found Plaintiff "has the following severe impairments:  
10 systemic lupus erythematosus, seizure disorder, obesity, and  
11 headaches" (A.R. 25). However, the ALJ also found Plaintiff retains  
12 the residual functional capacity to perform a reduced range of light  
13 work (A.R. 29). In reliance on the testimony of the vocational  
14 expert, the ALJ determined that a person having this capacity can  
15 perform Plaintiff's past relevant work (A.R. 32-33, 57). The Appeals  
16 Council denied review (A.R. 1-2).

17  
18 **SUMMARY OF PARTIES' CONTENTIONS**

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20 Plaintiff contends, and Defendant denies, that the ALJ failed to  
21 state legally sufficient reasons for discounting Plaintiff's testimony  
22 and statements regarding the intensity and persistence of Plaintiff's  
23 subjective symptomatology.

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1 DISCUSSION

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3 After consideration of the record as a whole, Defendant's motion  
4 is granted and Plaintiff's motion is denied. The Administration's  
5 findings are supported by substantial evidence and are free from  
6 material<sup>1</sup> legal error.

7  
8 Contrary to Plaintiff's arguments, the ALJ stated legally  
9 sufficient reasons for discounting Plaintiff's testimony and  
10 statements. An ALJ's assessment of the accuracy of a claimant's  
11 testimony and statements regarding symptomatology is entitled to  
12 "great weight." See Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th  
13 Cir. 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985).  
14 Where, as here, the ALJ finds that the claimant's medically  
15 determinable impairments reasonably could be expected to cause some  
16 degree of the alleged symptoms of which the claimant subjectively  
17 complains, any discounting of the claimant's complaints must be  
18 supported by specific, cogent findings. See Berry v. Astrue, 622 F.3d  
19 1228, 1234 (9th Cir. 2010); Lester v. Chater, 81 F.3d 821, 834 (9th  
20 Cir. 1995); but see Smolen v. Chater, 80 F.3d 1273, 1282-84 (9th Cir.  
21 1996) (indicating that ALJ must offer "specific, clear and convincing"  
22 reasons to reject a claimant's testimony where there is no evidence of

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27 <sup>1</sup> The harmless error rule applies to the review of  
28 administrative decisions regarding disability. See Garcia v. Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v. Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011).

1 malingering).<sup>2</sup> An ALJ's findings "must be sufficiently specific to  
2 allow a reviewing court to conclude the ALJ rejected the claimant's  
3 testimony on permissible grounds and did not arbitrarily discredit the  
4 claimant's testimony." See Moisa v. Barnhart, 367 F.3d 882, 885 (9th  
5 Cir. 2004) (internal citations and quotations omitted); see also  
6 Social Security Ruling 16-3p.<sup>3</sup> As discussed below, the ALJ stated  
7 legally sufficient reasons for deeming Plaintiff's subjective  
8 complaints less than fully accurate.

9  
10 As the ALJ pointed out, Plaintiff's testimony and written  
11 statements regarding the severity of her symptomatology were  
12 inconsistent with reports Plaintiff made to third party medical  
13 examiners (A.R. 30-31). For example, Plaintiff testified to daily  
14 pain of disabling severity (A.R. 50-51). Yet, Plaintiff reported to a  
15 medical examiner only "minimal" pain that "goes away with massage"

16  
17 <sup>2</sup> In the absence of an ALJ's reliance on evidence of  
18 "malingering," most recent Ninth Circuit cases have applied the  
19 "clear and convincing" standard. See, e.g., Brown-Hunter v.  
20 Colvin, 806 F.3d 487, 488-89 (9th Cir. 2015); Burrell v. Colvin,  
21 775 F.3d 1133, 1136-37 (9th Cir. 2014); Treichler v.  
22 Commissioner, 775 F.3d 1090, 1102 (9th Cir. 2014); Ghanim v.  
23 Colvin, 763 F.3d 1154, 1163 n.9 (9th Cir. 2014); Garrison v.  
24 Colvin, 759 F.3d 995, 1014-15 & n.18 (9th Cir. 2014); see also  
25 Ballard v. Apfel, 2000 WL 1899797, at \*2 n.1 (C.D. Cal. Dec. 19,  
26 2000) (collecting earlier cases). In the present case, the ALJ's  
27 findings are sufficient under either standard, so the distinction  
28 between the two standards (if any) is academic.

29  
30 <sup>3</sup> Social Security Rulings ("SSRs") are binding on the  
31 Administration. See Terry v. Sullivan, 903 F.2d 1273, 1275 n.1  
32 (9th Cir. 1990). SSR 16-3p superseded SSR 96-7p, but may have  
33 "implemented a change in diction rather than substance." R.P. v.  
34 Colvin, 2016 WL 7042259, at \*9 n.7 (E.D. Cal. Dec. 5, 2016); see  
35 also Treviso v. Berryhill, 871 F.3d 664, 678 n.5 (9th Cir. 2017)  
36 (suggesting that SSR 16-3p "makes clear what our precedent  
37 already required").

1 (A.R. 501). For further example, Plaintiff asserted that seizures  
2 prevent her from working (A.R. 48, 55, 202, 256, 259-61). Yet,  
3 Plaintiff reported to a medical examiner during the period of alleged  
4 disability that she had not had any seizures for more than seven  
5 months (A.R. 486). Additionally, in January of 2015, Plaintiff  
6 reported to a medical examiner that her seizures, headaches and  
7 "memory loss" had improved with medication (A.R. 482, 519). An ALJ  
8 properly may discount the accuracy of a claimant's testimony based on  
9 inconsistencies in the claimant's own reports of her symptoms. See,  
10 e.g., Khanishian v. Astrue, 238 Fed. App'x 250, 252 (9th Cir. 2007);  
11 Gregor v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006). Moreover,  
12 "[i]mpairments that can be controlled effectively with medication are  
13 not disabling. . . ." Warre v. Commissioner, 439 F.3d 1001, 1006 (9th  
14 Cir. 2006). Record evidence permits the conclusion that, with  
15 medication, Plaintiff's seizure disorder and headaches are not  
16 disabling (see, e.g., A.R. 469, 478, 494, 519; see also A.R. 385 (even  
17 when not on medication, Plaintiff reported having had only two  
18 seizures in six months)).

19  
20 The ALJ also pointed out that Plaintiff has been noncompliant  
21 with prescribed or recommended medication (A.R. 30). Although  
22 Plaintiff claims to suffer disabling pain from lupus, Plaintiff told  
23 medical examiners she would not take medication for lupus because she  
24 "tried not to take medications if not needed" (A.R. 481-82, 485-86,  
25 494, 501; see also A.R. 490 (In July of 2015, Plaintiff reportedly

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1 refused medication for lupus because her lupus was "under control").<sup>4</sup>  
2 Noncompliance with prescribed or recommended treatment can properly  
3 suggest that a claimant's symptoms have not been as severe as the  
4 claimant has asserted. See Fair v. Bowen, 885 F.2d 597, 603 (9th Cir.  
5 1989) (unexplained or inadequately explained failure to follow  
6 prescribed course of treatment can cast doubt on claimant's  
7 credibility); see also Molina v. Astrue, 674 F.3d 1104, 1113 (9th Cir.  
8 2012) ("We have long held that, in assessing a claimant's credibility  
9 the ALJ may properly rely on unexplained or inadequately explained  
10 failure . . . to follow a prescribed course of treatment") (citations  
11 and quotations omitted); SSR 16-3p ("if the individual fails to follow  
12 prescribed treatment that might improve symptoms, we may find that the  
13 alleged intensity and persistence of an individual's symptoms are  
14 inconsistent with the overall evidence of record").

15  
16 The ALJ also relied on the objective medical evidence to discount  
17 Plaintiff's testimony and statements (A.R. 30-31). While a lack of  
18 objective medical evidence to corroborate the claimed severity of  
19 alleged symptomatology cannot form the "sole" basis for discounting  
20 the accuracy of a claimant's testimony and statements, the objective  
21 medical evidence is still a relevant factor. See Burch v. Barnhart,  
22 400 F.3d 676, 680 (9th Cir. 2005); Rollins v. Massanari, 261 F.3d 853,  
23 857 (9th Cir. 2001). Here, the medical evidence suggests Plaintiff's

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25 <sup>4</sup> Plaintiff has offered a number of inconsistent excuses  
26 for refusing lupus medication. The ALJ was not required to  
27 accept any of these excuses, including the excuse relating to  
28 claimed side effects from a particular lupus medication (see,  
e.g., A.R. 339). There is no evidence Plaintiff sought out from  
her doctors other medications or treatments that might not  
produce the assertedly undesired side effects.

1 problems have not been, and are not now, as profound as she has  
2 claimed. Notably, no physician of record opined that Plaintiff's  
3 impairments completely disable her from employment. See Matthews v.  
4 Shalala, 10 F.3d 678, 680 (9th Cir. 1993) (in upholding the  
5 Administration's decision, the Court emphasized: "None of the doctors  
6 who examined [claimant] expressed the opinion that he was totally  
7 disabled"); accord Curry v. Sullivan, 925 F.2d 1127, 1130 n.1 (9th  
8 Cir. 1990).

9  
10 The ALJ also mentioned several of Plaintiff's admitted daily  
11 activities (A.R. 30). Inconsistencies between admitted activities and  
12 claimed incapacity properly may impugn the accuracy of a claimant's  
13 testimony and statements under certain circumstances. See, e.g.,  
14 Thune v. Astrue, 499 Fed. App'x 701, 703 (9th Cir. 2012) (ALJ properly  
15 discredited pain allegations as contradicting claimant's testimony  
16 that she gardened, cleaned, cooked, and ran errands); Stubbs-Danielson  
17 v. Astrue, 539 F.3d 1169, 1175 (9th Cir. 2008) (claimant's "normal  
18 activities of daily living, including cooking, house cleaning, doing  
19 laundry, and helping her husband in managing finances" was sufficient  
20 explanation for discounting claimant's testimony). However, it is  
21 difficult to reconcile certain Ninth Circuit opinions discussing when  
22 a claimant's daily activities properly may justify a discounting of  
23 the claimant's testimony and statements. Compare Stubbs-Danielson v.  
24 Astrue with Vertigan v. Halter, 260 F.3d 1044, 1049-50 (9th Cir. 2001)  
25 ("the mere fact that a plaintiff has carried on certain daily  
26 activities, such as grocery shopping, driving a car, or limited  
27 walking for exercise, does not in any way detract from her credibility  
28 as to her overall disability"); see also Diedrich v. Berryhill, 874



1 F.3d 634, 642-43 (9th Cir. 2017) (daily activities of cooking,  
2 household chores, shopping and caring for a cat insufficient to  
3 discount the claimant's subjective complaints). Because of the  
4 difficulty in reconciling such cases, the Court in the present case  
5 elects not to rely on the ALJ's findings regarding Plaintiff's  
6 admitted activities. Assuming arguendo that the ALJ's arguable  
7 partial reliance on Plaintiff's admitted activities was improper, the  
8 Court nevertheless upholds the ALJ's determination. Under Carmickle  
9 v. Commissioner, 533 F.3d at 1163, the infirmity of one or two  
10 supporting reasons for an ALJ's determination regarding subjective  
11 symptoms does not require overturning the determination if  
12 independently valid supporting reasons remain. As discussed above,  
13 independently valid supporting reasons remain in the present case.

14  
15 In sum, the ALJ stated sufficient reasons to allow the Court to  
16 conclude that the ALJ discounted Plaintiff's testimony and statements  
17 on permissible grounds. See Moisa v. Barnhart, 367 F.3d at 885. The  
18 Court therefore defers to the ALJ's determination. See Lasich v.  
19 Astrue, 252 Fed. App'x 823, 825 (9th Cir. 2007) (court will defer to  
20 ALJ's determination when the proper process is used and proper reasons  
21 for the decision are provided); accord Flaten v. Secretary of Health &  
22 Human Services, 44 F.3d 1453, 1464 (9th Cir. 1995).<sup>5</sup>

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23  
24 <sup>5</sup> The Court should not and does not determine de novo the  
25 accuracy of Plaintiff's testimony and statements concerning her  
26 subjective symptomatology. Some evidence suggests that her  
27 testimony and statements may be accurate. However, it is for the  
28 Administration, and not this Court, to evaluate the accuracy of  
29 Plaintiff's testimony and statements regarding the intensity and  
30 persistence of Plaintiff's subjective symptomatology. See  
31 Magallanes v. Bowen, 881 F.2d 747, 750, 755-56 (9th Cir. 1989).

