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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CATALINA L.,)	NO. ED CV 18-1620-E
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
NANCY A. BERRYHILL, DEPUTY)	
COMMISSIONER FOR OPERATIONS,)	
SOCIAL SECURITY,)	
)	
Defendant.)	
)	

PROCEEDINGS

Plaintiff filed a complaint on August 2, 2018, seeking review of the Commissioner's denial of benefits. The parties consented to proceed before a United States Magistrate Judge on August 28, 2018. Plaintiff filed a motion for summary judgment on March 8, 2019. Defendant filed a motion for summary judgment on April 1, 2019. The Court has taken the motions under submission without oral argument. See L.R. 7-15; "Order," filed August 7, 2018.

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1 **BACKGROUND**

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3 Plaintiff alleges disability since January 1, 2014, based
4 primarily on alleged orthopedic problems (Administration Record
5 ("A.R.") 54, 66, 197, 204). An Administrative Law Judge ("ALJ")
6 examined the record and heard testimony from Plaintiff and a
7 vocational expert (A.R. 17-734).

8
9 The ALJ found Plaintiff has certain severe impairments, including
10 "torn meniscus of the left knee, degenerative disc disease of the
11 lumbar spine [and] degenerative joint disease of the shoulders" (A.R.
12 22). However, the ALJ also found Plaintiff retains the residual
13 functional capacity ("RFC") to perform a narrowed range of light work,
14 including the capacity to stand or walk for six hours out of an eight
15 hour workday, provided she has the option of sitting for five minutes
16 after standing for one hour (A.R. 25).¹ Relying on the testimony of
17 the vocational expert, the ALJ determined that a person having this
18 RFC could perform certain jobs existing in significant numbers in the
19 national economy (A.R. 31-32, 57-59). The Appeals Council denied
20 review (A.R. 1-4).

21
22 Plaintiff now argues: (1) substantial evidence fails to support
23 the ALJ's findings with respect to Plaintiff's capacity for standing
24 and walking; and (2) the ALJ discounted Plaintiff's statements
25 concerning her subjective symptomatology without stating legally

26
27 ¹ A full range of light work requires six hours of
28 standing or walking in an eight hour day. Social Security Ruling
("SSR") 83-10.

1 sufficient reasons for doing so.

2
3 **STANDARD OF REVIEW**
4

5 Under 42 U.S.C. section 405(g), this Court reviews the
6 Administration's decision to determine if: (1) the Administration's
7 findings are supported by substantial evidence; and (2) the
8 Administration used correct legal standards. See Carmickle v.
9 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
10 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner,
11 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such
12 relevant evidence as a reasonable mind might accept as adequate to
13 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401
14 (1971) (citation and quotations omitted); see also Widmark v.
15 Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).
16

17 If the evidence can support either outcome, the court may
18 not substitute its judgment for that of the ALJ. But the
19 Commissioner's decision cannot be affirmed simply by
20 isolating a specific quantum of supporting evidence.
21 Rather, a court must consider the record as a whole,
22 weighing both evidence that supports and evidence that
23 detracts from the [administrative] conclusion.
24

25 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and
26 quotations omitted).

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1 **DISCUSSION**

2
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 material² legal error. Plaintiff’s contrary arguments are unavailing.
7

8 **I. Substantial Evidence Supports the ALJ’s Challenged RFC**
9 **Assessment.**
10

11 Substantial evidence supports the ALJ’s findings regarding
12 Plaintiff’s capacity to stand and walk. Consultative examiner Vicente
13 R. Bernabe, D.O., reported Plaintiff exhibited a normal gait without
14 the use of an assistive device, full range of motion in the shoulders
15 and knees and normal motor strength in the upper and lower extremities
16 (A.R. 353-56). The same examiner opined, based on his examination of
17 Plaintiff, that Plaintiff could stand and walk for six hours out of an
18 eight hour workday (A.R. 356). This opinion constitutes substantial
19 evidence to support the ALJ’s challenged RFC findings. See Orn v.
20 Astrue, 495 F.3d 625, 631-32 (9th Cir. 2007) (examining physician’s
21 opinion based on independent clinical findings constitutes substantial
22 evidence to support a non-disability determination); Tonapetyan v.
23 Halter, 242 F.3d 1144, 1149 (9th Cir. 2001) (same).

24 ///

26 ² The harmless error rule applies to the review of
27 administrative decisions regarding disability. See Garcia v.
28 Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v.
Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011).

1 Non-examining state agency physicians also opined that Plaintiff
2 retains a standing and walking capacity equal to or greater than the
3 capacity the ALJ found to exist (A.R. 75, 88, 103, 118). Where, as
4 here, the opinions of non-examining physicians do not contradict "all
5 other evidence in the record," the opinions may furnish substantial
6 evidence to support the administrative decision. See Andrews v.
7 Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citation omitted); see
8 also Tonapetyan v. Halter, 242 F.3d at 1149 (opinion of non-examining
9 medical expert "may constitute substantial evidence when it is
10 consistent with other independent evidence in the record") (citation
11 omitted).

12
13 To the extent the evidence of record is conflicting, the ALJ
14 properly resolved the conflicts. See Treichler v. Commissioner, 775
15 F.3d 1090, 1098 (9th Cir. 2014) (court "leaves it to the ALJ" to
16 resolve conflicts and ambiguities in the record); Andrews v. Shalala,
17 53 F.3d at 1039-40 (court must uphold the administrative decision when
18 the evidence "is susceptible to more than one rational
19 interpretation").

20
21 The vocational expert testified that a person having the stated
22 RFC could perform light jobs existing in significant numbers (A.R. 57-
23 59). The ALJ properly relied on this testimony in denying disability
24 benefits. See Barker v. Secretary, 882 F.2d 1474, 1478-80 (9th Cir.
25 1989); Martinez v. Heckler, 807 F.2d 771, 774-75 (9th Cir. 1986).

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1 **II. The ALJ Stated Legally Sufficient Reasons for Discounting**
2 **Plaintiff's Subjective Symptomatology.**

3
4 An ALJ's assessment of a claimant's statements regarding
5 subjective symptomatology is entitled to "great weight." Anderson v.
6 Sullivan, 914 F.2d 1121, 1124 (9th Cir. 1990); Nyman v. Heckler, 779
7 F.2d 528, 531 (9th Cir. 1985). Where the ALJ finds that the
8 claimant's medically determinable impairments reasonably could be
9 expected to cause some degree of the alleged symptoms of which the
10 claimant subjectively complains, any discounting of the claimant's
11 complaints must be supported by specific, cogent findings. See Berry
12 v. Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010); Lester v. Chater, 81
13 F.3d 821, 834 (9th Cir. 1995); but see Smolen v. Chater, 80 F.3d 1273,
14 1282-84 (9th Cir. 1996) (indicating that ALJ must offer "specific,
15 clear and convincing" reasons to reject a claimant's testimony where
16 there is no evidence of malingering).³ An ALJ's findings regarding a
17 claimant's testimony "must be sufficiently specific to allow a
18 reviewing court to conclude the ALJ rejected the claimant's testimony
19 on permissible grounds and did not arbitrarily discredit the

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

1 claimant's testimony." Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir.
2 2004) (internal citations and quotations omitted); see SSR 96-7p
3 (explaining how to assess a claimant's credibility), superseded, SSR
4 16-3p (eff. March 28, 2016).⁴ As discussed below, the ALJ stated
5 sufficient reasons for deeming Plaintiff's subjective complaints less
6 than fully credible.

7
8 As the ALJ pointed out, there exists evidence Plaintiff was still
9 working as of June of 2014, more than five months after she now claims
10 she became disabled (A.R. 27, 29, 340). And yet, Plaintiff denied
11 under oath having done any work after 2013 (A.R. 48-49). This
12 inconsistency, and the evidence Plaintiff worked long after her
13 alleged disability onset date, properly impugn Plaintiff's assertion
14 that her symptoms have been of disabling severity. See Bray v.
15 Commissioner, 554 F.3d 1219, 1227 (9th Cir. 2009) (upholding ALJ's
16 credibility determination where the claimant had worked as a personal
17 caregiver and also had sought out other employment); Thomas v.
18 Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002) (inconsistencies
19 between claimant's testimony and conduct among the "clear and
20 convincing reasons" for discounting claimant's testimony); Verduzco v.
21 Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999) (inconsistencies between
22 claimant's testimony and conduct cited as a "clear and convincing"
23 reason for rejecting the claimant's testimony).

24
25 ⁴ The appropriate analysis under the superseding SSR is
26 substantially the same as the analysis under the superseded SSR.
27 See R.P. v. Colvin, 2016 WL 7042259, at *9 n.7 (E.D. Cal. Dec. 5,
28 2016) (stating that SSR 16-3p "implemented a change in diction
rather than substance") (citations omitted); see also Trevizo v.
Berryhill, 871 F.3d 664, 678 n.5 (9th Cir. 2017) (suggesting that
SSR 16-3p "makes clear what our precedent already required").

1 The ALJ also observed that Plaintiff declined surgery for her
2 torn meniscus and received only relatively conservative treatment for
3 her various alleged impairments (A.R. 26-27, 539, 721, 726).
4 Observations regarding the relatively conservative nature of a
5 claimant's treatment properly may factor into the evaluation of a
6 claimant's subjective complaints. See Tommasetti v. Astrue, 533 F.3d
7 1035, 1039-40 (9th Cir. 2008); Parra v. Astrue, 481 F.3d 742, 751 (9th
8 Cir. 2007), cert. denied, 552 U.S. 1141 (2008); Osenbrock v. Apfel,
9 240 F.3d 1157, 1166 (9th Cir. 2001); see also Coelho v. Astrue, 2011
10 WL 3501734, at *5 (N.D. Cal. Aug. 10, 2011), aff'd, 525 Fed. App'x 637
11 (9th Cir. 2013) (claimant's inadequately explained declination of
12 recommended surgical treatment may, under some circumstances,
13 undermine the claimant's subjective complaints of allegedly disabling
14 pain).

15
16 The ALJ also referenced evidence that Plaintiff has engaged in
17 significant daily activities, including washing dishes, cooking, doing
18 laundry, grocery shopping, light housework, using public
19 transportation, going to church and caring for a baby (A.R. 29-30,
20 251-55, 273, 276). Such activities properly may suggest that
21 Plaintiff's functional limitations are not as profound as Plaintiff
22 alleges. See Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012)
23 (inconsistency between claimed incapacity and admitted activities
24 properly can impugn a claimant's credibility); Burch v. Barnhart, 400
25 F.3d 676, 680-812 (9th Cir. 2005) (daily activities can constitute
26 "clear and convincing reasons" for discounting a claimant's
27 testimony); Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001)
28 (claimant's testimony regarding daily domestic activities undermined

1 the credibility of her pain-related testimony); Morgan v.
2 Commissioner, 169 F.3d 595, 600 (9th Cir. 1999) (evidence of
3 claimant's ability to "fix meals, do laundry, work in the yard and
4 occasionally care for his friend's child serve as evidence of [the
5 claimant's] ability to work").

6
7 The ALJ also stressed that the objective medical evidence
8 supported a discounting of Plaintiff's claims of disabling
9 symptomatology (A.R. 26-30). While a lack of objective medical
10 evidence to corroborate the claimed severity of alleged symptomatology
11 cannot form the "sole" basis for discounting a claimant's subjective
12 complaints, the objective medical evidence is still a relevant factor.
13 See Burch v. Barnhart, 400 F.3d at 680; Rollins v. Massanari, 261 F.3d
14 at 857; see also Carmickle v. Commissioner, 533 F.3d 1155, 1161 (9th
15 Cir. 2008) ("Contradiction with the medical record is a sufficient
16 basis for rejecting the claimant's subjective testimony"); SSR 16-3p
17 ("[O]bjective medical evidence is a useful indicator to help make
18 reasonable conclusions about the intensity and persistence of
19 symptoms, including the effects those symptoms may have on the ability
20 to perform work-related activities . . .").

21
22 To the extent one or more of the ALJ's stated reasons for
23 discounting Plaintiff's subjective statements may have been invalid,
24 the Court nevertheless would uphold the ALJ's determination under the
25 circumstances presented. See Carmickle v. Commissioner, 533 F.3d at
26 1162-63 (despite the invalidity of one or more of an ALJ's stated
27 reasons, a court properly may uphold the ALJ's determination where
28 sufficient valid reasons have been stated). In the present case, the

1 ALJ stated sufficient valid reasons to allow this Court to conclude
2 that the ALJ discounted Plaintiff's subjective statements on
3 permissible grounds. See Moisa v. Barnhart, 367 F.3d at 885. The
4 Court therefore defers to the ALJ's determination. See Lasich v.
5 Astrue, 252 Fed. App'x 823, 825 (9th Cir. 2007) (court will defer to
6 Administration's credibility determination when the proper process is
7 used and proper reasons for the decision are provided); accord Flaten
8 v. Secretary of Health & Human Services, 44 F.3d 1453, 1464 (9th Cir.
9 1995).⁵

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25 ⁵ The Court need not and does not determine herein
26 whether Plaintiff's subjective complaints are credible. Some
27 evidence suggests that those complaints may be credible.
28 However, it is for the Administration, and not this Court, to
evaluate the credibility of witnesses. See Magallanes v. Bowen,
881 F.2d 747, 750, 755-56 (9th Cir. 1989).

1 **CONCLUSION**

2

3 For all of the foregoing reasons,⁶ Plaintiff's motion for summary
4 judgment is denied and Defendant's motion for summary judgment is
5 granted.

6

7 LET JUDGMENT BE ENTERED ACCORDINGLY.

8

9 DATED: April 12, 2019.

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11 _____ /s/
12 CHARLES F. EICK
13 UNITED STATES MAGISTRATE JUDGE

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25 ⁶ The Court has considered and rejected each of
26 Plaintiff's arguments. Neither Plaintiff's arguments nor the
27 circumstances of this case show any "substantial likelihood of
28 prejudice" resulting from any error allegedly committed by the
Administration. See generally McLeod v. Astrue, 640 F.3d 881,
887-88 (9th Cir. 2011) (discussing the standards applicable to
evaluating prejudice).