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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JESSICA M.,¹

Plaintiff

v.

ANDREW M. SAUL, Commissioner
of Social Security,

Defendant.

Case No. 5:18-cv-01993-GJS

**MEMORANDUM OPINION AND
ORDER**

I. PROCEDURAL HISTORY

Plaintiff filed a complaint seeking review of Defendant Commissioner of Social Security's ("Commissioner") denial of her applications for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI"). The parties filed consents to proceed before the undersigned United States Magistrate Judge [Dkts. 12, 13] and briefs addressing disputed issues in the case [Dkt. 21 ("Pl.'s Br.") and Dkt. 25 ("Def.'s Br.")]. The Court has taken the parties' briefing under submission without oral argument. For the reasons discussed below, the Court finds that this matter should be affirmed.

¹ Plaintiff's name has been partially redacted in compliance with Fed. R. Civ. P. 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 **II. ADMINISTRATIVE DECISION UNDER REVIEW**

2 On October 9, 2014, Plaintiff filed applications for DIB and SSI, alleging a
3 disability onset date of April 1, 2010. [Dkt. 17, Administrative Record (“AR”) 17,
4 71-72.] The Commissioner denied her claim for benefits on March 10, 2015. [AR
5 168, 175.] On January 10, 2017, a hearing was held before Administrative Law
6 Judge (“ALJ”) James D. Goodman. [AR 56-84.] On June 27, 2017, the ALJ issued
7 a decision denying Plaintiff’s request for benefits. [AR 17-31.] Plaintiff requested
8 review from the Appeals Council, which denied review on July 24, 2017. [AR 1-5.]

9 Applying the five-step sequential evaluation process, the ALJ found that
10 Plaintiff was not disabled. *See* 20 C.F.R. §§ 416.920(b)-(g)(1). At step one, the
11 ALJ found that Plaintiff had not engaged in substantial gainful activity since April 1,
12 2010, the alleged onset date. [AR 20 (citing 20 C.F.R. § 416.971).] At step two, the
13 ALJ found that Plaintiff suffered from the following severe impairments: obesity,
14 osteoarthritis, and depression. [*Id.* (citing 20 C.F.R. § 416.920(c)).] The ALJ
15 determined at step three that Plaintiff did not have an impairment or combination of
16 impairments that meets or medically equals the severity of one of the listed
17 impairments. [AR 21 (citing 20 C.F.R. Part 404, Subpart P, Appendix 1; 20 C.F.R.
18 §§ 416.920(d), 416.925, and 416.926.)]

19 Next, the ALJ found that Plaintiff had the residual functional capacity
20 (“RFC”) to perform a reduced range of light work, except she can:

21 Stand and walk up to six hours, cumulatively, and sit up to six hours,
22 cumulatively, in an eight-hour work day; lift and carry up to twenty
23 pounds occasionally, ten pounds frequently, occasionally climb,
24 balance, bend, stoop, and crawl, but never climb ropes, scaffolds, or
25 ladders; more than frequently perform complex technical work; and can
26 perform a full range of simple, repetitive work at least at level seven
27 reasoning. [AR 23.]

28 Applying this RFC at step four, the ALJ found that Plaintiff had no past
relevant work. The ALJ, however, found at step five that, considering Plaintiff’s

1 age, education, and RFC, there are jobs that exist in significant numbers in the
2 national economy that Plaintiff can perform, and thus she is not disabled. [AR 30.]

3 Plaintiff objects to the ALJ's decision of non-disability on four grounds: (1)
4 that the ALJ erred by rejecting the examining opinion given by Dr. Bernabe; (2) that
5 the ALJ failed to incorporate all of her rheumatologic manipulative limitations
6 found by Dr. Bernabe in the RFC finding; (3) that the ALJ erred in evaluating her
7 subjective symptom testimony; and (4) that he erred in evaluating the testimony of
8 her lay witness. [Pl.'s Br. at Dkt. 21.] Defendant responds that the ALJ's decision
9 should be affirmed. [Dkt. 25.]

10 III. GOVERNING STANDARD

11 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner's decision to
12 determine if: (1) the Commissioner's findings are supported by substantial evidence;
13 and (2) the Commissioner used correct legal standards. *See Carmickle v. Comm'r*
14 *Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d
15 1071, 1074 (9th Cir. 2007). Substantial evidence is "such relevant evidence as a
16 reasonable mind might accept as adequate to support a conclusion." *Richardson v.*
17 *Perales*, 402 U.S. 389, 401 (1971) (internal citation and quotations omitted); *see*
18 *also Hoopai*, 499 F.3d at 1074. The Court will uphold the Commissioner's decision
19 when the evidence is susceptible to more than one rational interpretation. *Burch v.*
20 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). However, the Court may review only
21 the reasons stated by the ALJ in his decision "and may not affirm the ALJ on a
22 ground upon which he did not rely." *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir.
23 2007).

24 IV. DISCUSSION

25 A. The ALJ Did Not Err in Rejecting Dr. Bernabe's Examining Opinion

26 First, Plaintiff argues that the ALJ erred in rejecting a portion of Dr.
27 Bernabe's examining opinion limiting Plaintiff's manipulative activities such as
28 handling, fingering, feeling and reaching to an occasional basis. In response,

1 Defendant argues that ALJ properly weighed conflicting medical opinion evidence
2 and formulated an RFC best supported by the weight of the record as a whole.
3 Defendant further argues that the ALJ provided specific and legitimate reasons
4 explaining why he discounted Dr. Bernabe’s opinion—reasons that are supported by
5 substantial evidence in the record.

6 **1. Federal Law**

7 “There are three types of medical opinions in social security cases: those
8 from treating physicians, examining physicians, and non-examining physicians.”
9 *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th Cir. 2009); *see also*
10 20 C.F.R. § 404.1527. In general, a treating physician’s opinion is entitled to more
11 weight than an examining physician’s opinion and an examining physician’s opinion
12 is entitled to more weight than a nonexamining physician’s opinion. *See Lester v.*
13 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995). “The medical opinion of a claimant’s
14 treating physician is given ‘controlling weight’ so long as it ‘is well-supported by
15 medically acceptable clinical and laboratory diagnostic techniques and is not
16 inconsistent with the other substantial evidence in [the] case record.’” *Trevizo v.*
17 *Berryhill*, 871 F.3d 664, 675 (9th Cir. 2017) (quoting 20 C.F.R. § 404.1527(c)(2)).²

18 An ALJ must provide clear and convincing reasons supported by substantial
19 evidence to reject the uncontradicted opinion of a treating or examining physician.
20 *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) (citing *Lester*, 81 F.3d at
21 830-31). Where such an opinion is contradicted, however, an ALJ may reject it only

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23 ² For claims filed on or after March 27, 2017, the opinions of treating
24 physicians are not given deference over the opinions of non-treating physicians. *See*
25 20 C.F.R. § 404.1520c (providing that the Social Security Administration “will not
26 defer or give any specific evidentiary weight, including controlling weight, to any
27 medical opinion(s) or prior administrative medical finding(s), including those from
28 your medical sources”); 81 Fed. Reg. 62560, at 62573-74 (Sept. 9, 2016). Because
Plaintiff’s claim for DIB was filed before March 27, 2017, the medical evidence is
evaluated pursuant to the treating physician rule discussed above. *See* 20 C.F.R. §
404.1527.

1 by stating specific and legitimate reasons supported by substantial evidence.
2 *Bayliss*, 427 F.3d at 1216; *Trevizo*, 871 F.3d at 675. The ALJ can satisfy this
3 standard by “setting out a detailed and thorough summary of the facts and
4 conflicting clinical evidence, stating [her] interpretation thereof, and making
5 findings.” *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014) (quoting *Reddick*
6 *v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)); *see also* 20 C.F.R. § 404.1527(c)(2)-
7 (6) (when a treating physician’s opinion is not given controlling weight, factors such
8 as the nature, extent, and length of the treatment relationship, the frequency of
9 examinations, the specialization of the physician, and whether the physician’s
10 opinion is supported by and consistent with the record should be considered in
11 determining the weight to give the opinion).

12 **2. Orthopedic Examining Opinions**

13 i. Examining Orthopedist – Dr. Schoene

14 On February 12, 2015, Herman Schoene, M.D. performed a complete
15 orthopedic evaluation of Plaintiff. [AR 421-425.] At the appointment, Dr. Schoene
16 noted that Plaintiff was a “very morbidly obese, well-developed, well-nourished
17 female in no acute distress.” [AR 422.] Upon examination, Dr. Schoene noted that
18 Plaintiff had mild tenderness to palpation in both wrists with no swelling. [AR 423.]
19 The range of motion in her hands was within normal limits with no evidence of
20 deformity, swelling, inflammation or tenderness. [AR 423.] When testing her left
21 hand grip strength, Dr. Schoene noted that Plaintiff put forth “poor effort.” [AR
22 423.] Based upon his overall examination findings, Dr. Schoene opined that
23 Plaintiff could lift/carry 20 pounds occasionally and 10 pounds frequently. Her
24 pushing and pulling is limited due to her wrist impairments and she had no postural
25 or manipulative limitations. [AR 425.]

26 ii. Examining Orthopedist – Dr. Bernabe

27 Four months later, on July 2, 2015, Vicente Bernabe, D.O. performed a
28 second orthopedic examination of Plaintiff. [AR 467-471.] During the July 2, 2015

1 examination, Dr. Bernabe found Plaintiff to have tenderness to palpation in her
2 hands and wrists, swelling in the wrists at the proximal and distal interphalangeal
3 joints of the hands, and a lack of approximately 20 degrees of full flexion when she
4 attempted to make a fist. [AR 469.] Plaintiff was, however, able to extend all
5 digits. [AR 469.] Based upon his overall examination findings, Dr. Bernabe, like
6 Dr. Schoene, opined that Plaintiff could lift/carry 20 pounds occasionally and 10
7 pounds frequently. Plaintiff is able to push and pull on an occasional basis.
8 Plaintiff can walk on uneven terrain and climb ladders, occasionally. Plaintiff can
9 also perform manipulative activities such as fingering, handling, feeling, and
10 reaching on an occasional basis. [AR 471.]

11 iii. The ALJ's Findings

12 In giving some weight to Dr. Bernabe's opinions, the ALJ stated that:

13 The claimant attended an orthopedic consultative examination with
14 Vincente Bernabe, D.O. at which she had complaints of bilateral hand
15 and wrist pain as well as bilateral leg, knee, and ankle pain. She told
16 Dr. Bernabe that she was being treated with rheumatoid medications,
17 despite admitting to not taking those medications at her rheumatology
18 appointment just one day prior. It was also noted that she had not
19 received any surgical intervention, did not wear a brace for support, and
20 did not use a cane to ambulate. Dr. Bernabe's examination found the
21 claimant was obese at 262 pounds; in no acute or chronic distress; she
22 could move in and out of the office and around the examination room
23 without the use of any assistive device, her gait was normal without
24 ataxia or antalgia; she had full and painless range of motion in her
25 shoulders and spine; and straight leg raising test were negative in the
26 supine and seated positions bilaterally to 90 degrees. Further, the
27 claimant had swelling, tenderness and decreased range of motion in her
28 wrists and hands, however her basic hand functions were well
preserved for fine and gross manipulations, she had some swelling in
her knees and ankles; her extremities displayed no cyanosis, clubbing,
varicosities, dermatitis or ulcerations; and she had normal strength and
sensation throughout. She was diagnosed with rheumatoid arthritis of
the hands, wrists, knees, and ankles with decreased range of motion.

Some weight is given to this opinion, as a finding that the claimant was

1 limited to work at the light exertional level and only occasional
2 posturals is consistent with the evidence of record as a whole and
3 consistent with Dr. Schoene's prior examination findings that the
4 claimant has some back and wrist limited range of motion and
5 tenderness. However, the undersigned finds that the claimant's
6 rheumatoid arthritis would likely prevent the claimant from safely
7 climbing ladders, and Dr. Bernabe's findings that the claimant's basic
8 hand functions were well preserved for fine and gross manipulation is
9 inconsistent with a limitation of her ability to finger, handle, and feel.
10 [AR 26-27.]

11 **3. Analysis**

12 Having reviewed the ALJ's findings and the record as a whole, the Court does
13 not agree with Plaintiff's contention that the ALJ failed to adequately weigh the
14 medical evidence when rejecting portions of Dr. Bernabe's opinion. Contrary to
15 Plaintiff's assertions, the ALJ did not simply disregard Dr. Bernabe's manipulative
16 findings without proper explanation. Instead, the ALJ appropriately rejected the
17 portion of Dr. Bernabe's opinion that was internally inconsistent and outweighed by
18 the weight of the medical evidence. The Court's conclusion in this regard is
19 grounded on three reasons.

20 First, the ALJ correctly found that Dr. Bernabe's opinion appears to
21 contradict itself. On one hand, Dr. Bernabe explicitly states that Plaintiff's basic
22 hand functions are well preserved in fine and gross manipulations. [AR 469.] On
23 the other hand, despite his affirmative finding that Plaintiff's hands were well
24 preserved for fine and gross manipulations, Dr. Bernabe limited Plaintiff to only
25 occasional fingering, handling, and feeling. [AR 471.] The ALJ found that this
26 inconsistency undermined Dr. Bernabe's findings with respect to Plaintiff's
27 manipulative limitations. This was not error. Contradictory findings by a treating
28 or examining physician are a specific and legitimate reason for rejecting a limitation
based on these contradictory findings. *See Hennessey v. Berryhill*, No. 16-15828,
713 Fed. Appx. 557, 2017 U.S. App. LEXIS 20567, 2017 WL 4708356, at *1 (9th
Cir. Oct. 19, 2017) (holding that an examining physician's internally inconsistent

1 opinion was a specific and legitimate reason for rejecting his opinion); *Bayliss v.*
2 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) (contradictory notes and recorded
3 observations were “a clear and convincing reason for not relying on the doctor’s
4 opinion regarding [plaintiff’s] limited ability to stand and walk.”).

5 Second, when assessing Plaintiff’s manipulative limitations, the ALJ gave
6 greater weight to the other medical opinions provided by examining orthopedist Dr.
7 Schoene and the supporting reviewing opinions from Drs. Taylor-Holmes and
8 Kalmar. In weighing the evidence, the ALJ indicated that Dr. Bernabe’s examining
9 opinion was generally consistent with Dr. Schoene’s examining opinion with the
10 exception that Dr. Bernabe made a contradictory finding with respect to Plaintiff’s
11 manipulative limitations. Instead of relying on Dr. Bernabe’s questionable
12 manipulative limitation finding, the ALJ relied on the more consistent finding by Dr.
13 Schoene who opined that Plaintiff had no manipulative limitations. [AR 25-26.]
14 The ALJ also summarized the opinions by the two State agency physicians who
15 reviewed the medical record. *See* 20 C.F.R. §§ 404.1527(e)(1), (2), 416.927(e)(1),
16 (2) (describing State agency expertise). Reviewing physician, G. Taylor-Holmes,
17 M.D., reviewed the record in March 2015. [AR 111-16.] Dr. Taylor-Holmes
18 indicated that Plaintiff had “clinically stable exams with [her] current medical
19 regimen,” and opined that she had no manipulative limitations. [AR 115-16.] Later,
20 in July 2015, F. Kalmar, M.D., again reviewed the record, including both of the
21 examining physician reports. [AR 142-47.] Dr. Kalmar opined that Plaintiff had
22 greater functional limitation than Dr. Taylor-Holmes but concurred that Plaintiff did
23 not have any significant limitation in the ability to manipulate objects. [AR 146-
24 47.]

25 The ALJ was entitled to reject Dr. Bernabe’s opinion regarding Plaintiff’s
26 manipulative limitations as an outlier in favor of the greater weight of the evidence
27 opined by Drs. Schoene, Taylor-Holmes, and Kalmar, all of whom opined that
28 Plaintiff had no manipulative limitations. *Thomas v. Barnhart*, 278 F.3d 948, 957

1 (9th Cir. 2002) (“The opinions of non-treating or non-examining physicians may
2 also serve as substantial evidence when the opinions are consistent with independent
3 clinical findings or other evidence in the record”). Based on this evidence, the ALJ
4 legitimately concluded that Dr. Bernabe’s manipulative limitation finding was
5 unsupported by the other evidence in the record and thus entitled to no weight.

6 Finally, the ALJ properly found that Plaintiff’s inconsistency regarding her
7 compliance with her medication cast doubt on Dr. Bernabe’s opinion. The ALJ
8 noted that in the period prior to her examination with Dr. Bernabe, Plaintiff reported
9 that she had a flare up of her symptoms because she had not taken her arthritis
10 medication because “she has been out of town.” [AR 26, 485.] Plaintiff, however,
11 indicated to Dr. Bernabe that she was taking multiple medications. [AR 468.] As
12 the ALJ further discussed, there is evidence in the record that, when Plaintiff did
13 take her medication, that her symptoms were under control. [e.g., AR 25, 476.] *See*
14 *Warre v. Comm’r*, 439 F.3d 1001, 1006 (9th Cir. 2006) (“[i]mpairments that can be
15 controlled effectively with medication are not disabling for the purpose of
16 determining eligibility for [disability]”). The ALJ was therefore not obligated to
17 fully accept Dr. Bernabe’s opinion given that objective medical evidence indicated
18 that Plaintiff was non-compliant with treatment that relieved her symptoms. The
19 Court fails to see how the ALJ could fully rely on Dr. Bernabe’s opinion (over other
20 persuasive evidence in the record) when faced with testimony from Plaintiff that she
21 had just recently been without her medication for three and a half weeks.

22 Overall, the ALJ was tasked with resolving the conflict between the two
23 examining physicians’ opinions, which he did by providing specific and legitimate
24 reasons supported by substantial evidence. In doing so, the ALJ weighed Dr.
25 Bernabe’s findings against the opinion of the other examining orthopedist and the
26 reviewing physicians and found that Dr. Schoene’s manipulative limitation finding
27 was better supported by the record. Ultimately, it is the ALJ’s province to
28 synthesize the medical evidence. *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1042

1 (9th Cir. 2007) (“When evaluating the medical opinions of treating and examining
2 physicians, the ALJ has discretion to weigh the value of each of the various reports,
3 to resolve conflicts in the reports, and to determine which reports to credit and
4 which to reject.”). Remand is therefore not warranted on this issue.

5 **B. Substantial Evidence Supports the RFC**

6 Plaintiff next argues that the RFC assessed by the ALJ is erroneous because
7 the ALJ failed to account for her manipulative limitations in his assessment. (Pl.’s
8 Br. at 5.] According to Plaintiff, she has been consistently diagnosed with
9 rheumatoid arthritis and its related symptoms including tenderness and swelling in
10 her hands and wrists. Based on this evidence, Plaintiff concludes that the ALJ
11 should have limited her ability to handle and finger.

12 The ALJ must consider all of the relevant medical opinions as well as the
13 combined effects of all of the plaintiff’s impairments, even those that are not
14 “severe.” 20 C.F.R. §§ 404.1545(a); 416.945(a); *Celaya v. Halter*, 332 F.3d 1177,
15 1182 (9th Cir. 2003). “[A]n RFC that fails to take into account a claimant’s
16 limitations is defective.” *Valentine v. Commissioner Social Sec. Admin.*, 574 F.3d
17 685, 690 (9th Cir. 2009). The ALJ must determine a claimant’s limitations on the
18 basis of “all relevant evidence in the record.” *Robbins v. Soc. Sec. Admin.*, 466 F.3d
19 880, 883 (9th Cir. 2006).

20 As previously noted, Plaintiff’s alleged additional manipulative limitations
21 were contradicted by numerous medical opinions in the record. Specifically, the
22 ALJ declined to include handling and fingering limitations in Plaintiff’s RFC based
23 on the majority of physician opinion evidence that concluded that Plaintiff had no
24 manipulative limitations. This was not error. While Dr. Bernabe opined that
25 Plaintiff could handle, finger, and feel on only an occasional basis, he also explicitly
26 stated that Plaintiff’s hands were well preserved in fine and gross manipulations.
27 [AR 469.] Given this evidence, the ALJ reasoned that Plaintiff’s hand and wrist
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1 impairments precluded her from ever climbing ropes, scaffolds, or ladders but she
2 possessed no other limitations in her ability to handle, finger and feel.

3 Here, the ALJ assessed an RFC with all of the limitations the ALJ found
4 credible and supported by substantial evidence. There was no requirement that the
5 RFC assessment include limitations unsubstantiated by objective medical evidence
6 or based on subjective symptom allegations that were properly discounted.
7 *Osenbrock v. Apfel*, 240 F.3d 1157, 1164-65 (9th Cir. 2001). Consequently, the
8 Court finds Plaintiff fails to show that the ALJ erred in considering her manipulative
9 limitations in the RFC.

10 **C. Plaintiff's Subjective Symptom Testimony**

11 Plaintiff next argues that the ALJ did not provide clear and convincing
12 reasons for rejecting her subjective symptom testimony. (Pl.'s Br. at 7-8.) In
13 particular, Plaintiff argues that the ALJ's conclusion regarding her inconsistent
14 statement—that she cannot lift a gallon of milk despite earlier testifying that she
15 could lift between 10-15 pounds—is not sufficient.

16 Where, as here, an ALJ concludes that a claimant is not malingering, and that
17 she has provided objective medical evidence of an underlying impairment which
18 might reasonably produce the pain or other symptoms alleged, the ALJ may 'reject
19 the claimant's testimony about the severity of her symptoms only by offering
20 specific, clear and convincing reasons for doing so.'" *Brown-Hunter v. Colvin*, 806
21 F.3d 487, 492-93 (9th Cir. 2015) (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028,
22 1036 (9th Cir. 2007)). The ALJ may consider many factors in weighing a
23 claimant's credibility, including (1) ordinary techniques of credibility evaluation,
24 such as the claimant's reputation for lying, prior inconsistent statements concerning
25 the symptoms, and other testimony by the claimant that appears less than candid; (2)
26 unexplained or inadequately explained failure to seek treatment or to follow a
27 prescribed course of treatment; and (3) the claimant's daily activities." *Tommasetti*
28 *v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008).

1 The ALJ found that Plaintiff gave at least two prior inconsistent statements
2 concerning her symptoms. First, the ALJ found that Plaintiff’s allegations about
3 how much she can lift was inconsistent with the record. The ALJ explained that
4 while Plaintiff testified that she could not even lift a gallon of milk, in an earlier
5 Function Report Plaintiff stated that she could lift 10 to 15 pounds. [AR 29.]
6 Plaintiff argues that this inconsistency is easily explained away because, as she
7 testified at the hearing, her “lifting capacity decreased in the more than two years
8 that had elapsed between the Function Report and the hearing.” (Pl.’s Br. at 8).
9 Despite Plaintiff’s argument here, “when the evidence before the ALJ is subject to
10 more than one rational interpretation, [the Court] must defer to the ALJ’s
11 conclusion.” *Batson v. Comm’r Soc. Sec. Admin.*, 359 F.3d 1190, 1198 (9th Cir.
12 2004). The ALJ could reasonably consider that these inconsistent statements were
13 an attempt to exaggerate her symptoms, therefore undermining her credibility.
14 Given this discrepancy, the ALJ could reasonably conclude that Plaintiff’s
15 statements were not entirely reliable. *Alonzo v. Colvin*, 2015 U.S. Dist. LEXIS
16 122298, 2015 WL 5358151 at *17 (E.D. Cal. Sept. 11, 2015) (one inconsistent
17 statement “comprised a clear and convincing reason to discount Plaintiff’s
18 credibility”).

19 Moreover, while Plaintiff challenges the ALJ’s conclusions about her
20 statements regarding her lifting limitations, Plaintiff fails to address the other
21 inconsistent statement identified by the ALJ. In further finding that Plaintiff’s
22 subjective complaints were less than fully credible, the ALJ noted that Plaintiff
23 provided inconsistent reports about her compliance with her medication. [AR 26.]
24 The ALJ noted that on July 1, 2015, Plaintiff reported to her rheumatology office
25 that she had not taken Humira, her rheumatoid medication, for the past three and a
26 half weeks because she was out of town and did not get a refill. [AR 26, 485.]
27 However, the next day on July 2, 2015, Plaintiff reported to examining physician,
28 Dr. Bernabe, that she was currently taking Humira for her rheumatoid symptoms.

1 [AR 26, 468.] This is an important consideration as a failure to follow treatment
2 recommendations is a valid reason for discounting a claimant’s credibility.
3 *Tommasetti*, 533 F.3d at 1039 (ALJ may consider “unexplained failure to seek
4 treatment or to follow a prescribed course of treatment”). These inconsistent
5 statements along with their inconsistency with the objective medical evidence were
6 appropriate reasons to reject Plaintiff’s credibility.

7 ///

8 **D. Lay Witness Testimony**

9 Plaintiff’s final argument is that the ALJ improperly disregarded the
10 testimony of her fiancé Adan Rodriguez. (Pl’s Br. at 8-11.) The ALJ may consider
11 testimony from lay witnesses such as Mr. Rodriguez because “friends and family
12 members in a position to observe a claimant’s symptoms and daily activities are
13 competent to testify as to her condition.” *Dodrill v. Shalala*, 12 F.3d 915, 918–19
14 (9th Cir. 1993) (citation omitted). To reject the testimony of a lay witness, the ALJ
15 must provide “reasons that are germane to each witness.” *Lewis v. Apfel*, 236 F.3d
16 503, 511 (9th Cir. 2001).

17 Here, the ALJ considered Mr. Rodriguez’s third-party function report, but
18 rejected it. The ALJ provided three reasons for doing so: (1) Mr. Rodriguez is
19 unlikely to be medically trained to make exacting observations about Plaintiff’s
20 medical signs and symptoms; (2) by virtue of his relationship to Plaintiff, Mr.
21 Rodriguez likely has a natural tendency to agree with the symptoms Plaintiff
22 alleges; and (3) his statements reflect the subjective complaints reported by Plaintiff
23 in the Adult Function Report she completed the prior month. [AR 28.]

24 The ALJ’s first two reasons are likely inadequate bases for dismissing third-
25 party testimony. *See Regennitter v. Commissioner of Social Sec. Admin.*, 166 F.3d
26 1294, 1298 (9th Cir. 1999) (the mere fact that a lay witness is a relative of the
27 claimant cannot be a ground for rejecting the witness’s testimony.); *Bruce v. Astrue*,
28 557 F.3d 1113, 1116 (9th Cir. 2009) (“A lay person, . . . though not a vocational or

