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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION

APRIL J. M ¹)	Case No. EDCV 19-00943-AS
)	
Plaintiff,)	MEMORANDUM OPINION
)	
v.)	
)	
ANDREW M. SAUL, Commissioner)	
of the Social Security)	
Administration, ²)	
)	
Defendant.)	
_____)	

For the reasons discussed below, IT IS HEREBY ORDERED that, pursuant to Sentence Four of 42 U.S.C. § 405(g), the Commissioner's decision is affirmed.

¹ Plaintiff's name is partially redacted in accordance with Federal Rule of Civil Procedure 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.

² Andrew M. Saul, the Commissioner of the Social Security Administration, is substituted for his predecessor. See 42 U.S.C. § 405(g); Fed.R.Civ.P. 25(d).

1 Stevenson ("ALJ Stevenson"). (See AR 81-99). ALJ Stevenson also heard
2 testimony from medical expert Samuel Nafisi and vocational expert Alan
3 Boroskin. On December 3, 2010, ALJ Stevenson issued a decision denying
4 Plaintiff's request for benefits. (See AR 105-17).

5
6 Applying the five-step sequential process, ALJ Stevenson found at
7 step one that Plaintiff had not engaged in substantial gainful activity
8 from August 16, 2004, the alleged onset disability onset date, though
9 March 31, 2010, her date last insured. (AR 107). At step two, ALJ
10 Stevenson determined that Plaintiff had the following severe
11 impairments: "disorder of the cervical spine by disc bulge; disorder of
12 the lumbar spine by disc bulging; status post hysterectomy; irritable
13 bowel syndrome, stable; anxiety; and depression." (AR 107-08).³ At step
14 three, ALJ Stevenson determined that Plaintiff did not have an
15 impairment or combination of impairments that met or medically equaled
16 the severity of any of the listed impairments in the regulations. (AR
17 108-09). ALJ Stevenson then found that Plaintiff had the residual
18 functional capacity ("RFC")⁴ to perform light work⁵ with certain
19 limitations. (AR 110-16). At step four, ALJ Stevenson found that
20 Plaintiff was able to perform past relevant work as a fingerprinting
21 clerk and as an administrative clerk, both as actually and generally
22

23
24 ³ ALJ Stevenson found that Plaintiff's other impairments --
25 carpal tunnel syndrome in the right hand, and "tennis elbow" in the left
26 hand -- were not medically determinable. (AR 108).

27 ⁴ A Residual Functional Capacity is what a claimant can still do
28 despite existing exertional and nonexertional limitations. See 20
C.F.R. § 404.1545(a)(1).

⁵ "Light work involves lifting no more than 20 pounds at a time
with frequent lifting or carrying of objects weighing up to 10 pounds."
20 C.F.R. § 404.1567(b).

1 performed. (AR 116). Accordingly, ALJ Stevenson found that Plaintiff
2 had not been under a disability as defined in the Social Security Act
3 from August 16, 2004 through March 31, 2010. (AR 116-17).
4

5 The Appeals Council granted Plaintiff's request for review of ALJ
6 Stevenson's decision and remanded the matter for further consideration
7 of Plaintiff's maximum RFC and further evaluation of Plaintiff's ability
8 to perform past relevant work. (AR 123-24).
9

10 *November 2, 2012 Decision*
11

12 On September 6, 2012, Plaintiff, represented by counsel, testified
13 at a hearing before ALJ Tamara Turner-Jones ("ALJ Turner-Jones"). (See
14 AR 35-78). ALJ Turner-Jones also heard testimony from vocational expert
15 Gloria Lasoff ("VE Lasoff"). On November 2, 2012, ALJ Turner-Jones
16 issued a decision denying Plaintiff's request for benefits. (See AR 11-
17 21). After making essentially the same findings as ALJ Stevenson's
18 decision at steps one two, and three (see AR 13-15), and finding that
19 Plaintiff had the RFC to perform light work with certain limitations
20 (see AR 15-19), ALJ Turner-Jones found that Plaintiff was not able to
21 perform any past relevant work. (AR 19). At step five, ALJ Turner-
22 Jones determined, based on Plaintiff's age, education, work experience,
23 RFC, and VE Lasoff's testimony, that there were jobs that existed in
24 significant numbers in the national economy that Plaintiff could have
25 performed. (AR 19-21). Accordingly, ALJ Turner-Jones found that
26 Plaintiff had not been under a disability as defined in the Social
27 Security Act from August 16, 2004 though March 31, 2010. (AR 21).
28

1 The Appeals Council denied Plaintiff's request for review of ALJ
2 Turner-Jones's decision (see AR 5). (AR 1-3). Plaintiff sought
3 judicial review of ALJ Turner-Jones's decision. On September 2, 2015,
4 the Court vacated ALJ Turner-Jones's decision and remanded the matter
5 for further proceedings based on ALJ Turner-Jones's failure to properly
6 assess Plaintiff's credibility and Plaintiff's husband's credibility.
7 (See AR 942-52).

8
9 *July 27, 2016 Decision*

10
11 On May 27, 2016, Plaintiff, represented by counsel, testified at
12 a hearing before ALJ Kenneth E. Ball ("ALJ Ball"). (See AR 879-907).
13 ALJ Ball also heard testimony from vocational expert David Rinehart ("VE
14 Rinehart") On July 27, 2016, ALJ Ball issued a decision denying
15 Plaintiff's request for benefits. (See AR 854-70). At step one, ALJ
16 Ball found that Plaintiff had not engaged in substantial gainful
17 activity from August 16, 2004 through March 31, 2010. (AR 856). At step
18 two, ALJ Ball determined that Plaintiff had the following severe
19 impairments: "degenerative disc disease of the cervical spine;
20 degenerative disc disease of the lumbar spine; irritable bowel syndrome;
21 anxiety; and depression." (AR 856).⁶ At step three, ALJ Ball determined
22 that Plaintiff did not have an impairment or combination of impairments
23 that met or medically equaled the severity of any of the listed
24 impairments in the regulations. (AR 857-58). ALJ Ball then found that
25 Plaintiff had the RFC to perform light work with certain limitations.
26 (AR 858-68). At step four, ALJ Ball found that Plaintiff was not able

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⁶ ALJ Ball found that Plaintiff's other impairment -- history of
menorrhagia, status post hysterectomy -- was nonsevere. (AR 856-57).

1 to perform any past relevant work. (AR 868-69). At step five, ALJ Ball
2 determined, based on Plaintiff's age, education, work experience, RFC,
3 and VE Rinehart's testimony, that there were jobs that existed in
4 significant numbers in the national economy that Plaintiff could have
5 performed. (AR 869-70). Accordingly, ALJ Ball found that Plaintiff had
6 not been under a disability as defined in the Social Security Act from
7 August 16, 2004 though March 31, 2010. (AR 870).

8
9 Plaintiff sought judicial review of ALJ Ball's decision. On
10 September 19, 2017, the Court vacated ALJ Ball's decision and remanded
11 the matter for further proceedings based on ALJ Ball's failure to
12 properly analyze Plaintiff's subjective complaints and Plaintiff's
13 husband's statements. (See AR 1372-90).

14
15 *March 13, 2019 Decision*

16
17 On January 16, 2019, Plaintiff, represented by counsel, testified
18 at a hearing before ALJ Josephine Arno ("ALJ Arno"), who also heard
19 testimony from vocational expert Stephen Schmidt ("VE Schmidt"). (See AR
20 1349-66). On March 13, 2019, ALJ Arno issued a decision denying
21 Plaintiff's request for benefits. (See AR 1322-39). At step one, ALJ
22 Arno found that Plaintiff had not engaged in substantial gainful
23 activity from August 16, 2004 though March 31, 2010. (AR 1324). At
24 step two, ALJ Arno determined that Plaintiff had the following severe
25 impairments: "degenerative disc disease of the cervical spine;
26 degenerative disc disease of the lumbar spine; irritable bowel syndrome;

1 anxiety; and depression." (AR 1324-25).⁷ At step three, ALJ Arno
2 determined that Plaintiff did not have an impairment or combination of
3 impairments that met or medically equaled the severity of any of the
4 listed impairments in the regulations. (AR 1325-27).

5 ALJ Arno then found that Plaintiff had the RFC to perform light
6 work with the following limitations:

7 Specifically, lift and carry 20 pounds occasionally and 10
8 pounds frequently; stand and walk for six hours out of an
9 eight-hour workday with regular breaks with the requirement to
10 change positions briefly for one to three minutes each hour;
11 sit without limitation during an eight-hour workday with
12 regular breaks; push and pull within the weight limits
13 indicated for lifting and carrying; reach overhead
14 occasionally bilaterally; perform all postural activities
15 occasionally; must work within 100-yards distance from a
bathroom; no work requiring a high-quota production rate pace,
such as rapid assembly line work; must avoid exposure to
unprotected heights and moving mechanical parts of equipment,
tools, or machinery; understand, remember, and carry out
instructions to perform tasks that are simple and routine, and
require only simple work-related decision; [and] have only
occasional contact with the public and occasional interaction
with coworkers.

16 (AR 1327-37).

17
18 At step four, ALJ Arno found that Plaintiff was unable to perform
19 any past relevant work. (AR 1337). At step five, ALJ Arno determined,
20 based on Plaintiff's age, education, work experience, RFC, and VE
21 Schmidt's testimony, that there were jobs that existed in significant
22 numbers in the national economy that Plaintiff could have performed.
23 (AR 1337-39). Accordingly, ALJ Arno found that Plaintiff had not been
24 under a disability as defined in the Social Security Act from August 16,
25 2004 through March 31, 2010. (AR 1339).

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28 ⁷ ALJ Arno found that Plaintiff's other impairment -- history of
menorrhagia, status post hysterectomy -- was nonsevere. (AR 1324-25).

1 Plaintiff did not request that the Appeals Council review ALJ
2 Arno's decision, and now seeks judicial review of ALJ Arno's decision,
3 which stands as the final decision of the Commissioner. See 42 U.S.C.
4 §§ 405(g), 1383(c).

5
6 **STANDARD OF REVIEW**
7

8 This Court reviews the Commissioner's decision to determine if it
9 is free of legal error and supported by substantial evidence. See
10 Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial
11 evidence" is more than a mere scintilla, but less than a preponderance.
12 Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). "It means such
13 relevant evidence as a reasonable mind might accept as adequate to
14 support a conclusion." Revels v. Berryhill, 874 F.3d 648, 654 (9th Cir.
15 2017). To determine whether substantial evidence supports a finding,
16 "a court must consider the record as a whole, weighing both evidence
17 that supports and evidence that detracts from the [Commissioner's]
18 conclusion." Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir.
19 2001) (internal quotation omitted). As a result, "[i]f the evidence can
20 support either affirming or reversing the ALJ's conclusion, [a court]
21 may not substitute [its] judgment for that of the ALJ." Robbins v. Soc.
22 Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).⁸
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26 ⁸ The harmless error rule applies to the review of
27 administrative decisions regarding disability. See McLeod v. Astrue,
28 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart, 400 F.3d 676,
679 (9th Cir. 2005) (An ALJ's decision will not be reversed for errors
that are harmless).

1 **PLAINTIFF'S CONTENTIONS**

2
3 Plaintiff contends that ALJ Arno erred in failing to properly
4 assess Plaintiff's RFC by failing to consider (1) the opinions of
5 Plaintiff's treating physicians (Drs. Amin, Lineback and Flores); and
6 (2) Plaintiff's subjective symptom testimony and the statements of
7 Plaintiff's husband. (See Joint Stip. at 8-14, 22-25).
8

9 **DISCUSSION**

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11 After consideration of the record as a whole, the Court finds that
12 the Commissioner's findings are supported by substantial evidence and
13 are free from legal error.
14

15 **A. ALJ Arno Provided Clear and Convincing Reasons for Rejecting**
16 **Plaintiff's Subjective Symptom Testimony⁹**

17
18 When assessing a claimant's credibility regarding subjective pain
19 or intensity of symptoms, the ALJ must engage in a two-step analysis.
20 Trevizo v. Berryhill, 871 F.3d 664, 678 (9th Cir. 2017). First, the ALJ
21 must determine if there is medical evidence of an impairment that could
22 reasonably produce the symptoms alleged. Id. (citing Garrison v.
23 Colvin, 759 F.3d 995, 1014-15 (9th Cir. 2014)). "In this analysis, the
24 claimant is not required to show that her impairment could reasonably
25 be expected to cause the severity of the symptom she has alleged; she
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28 ⁹ The Court addresses Plaintiff's claims of error non-
sequentially in order to address the arguments coherently.

1 need only show that it could reasonably have caused some degree of the
2 symptom." Id. (emphasis in original) (citation omitted). "Nor must a
3 claimant produce objective medical evidence of the pain or fatigue
4 itself, or the severity thereof." Id. (citation omitted).

5
6 If the claimant satisfies this first step, and there is no evidence
7 of malingering, the ALJ must provide specific, clear and convincing
8 reasons for rejecting the claimant's testimony about the symptom
9 severity. Id. (citation omitted); see also Robbins v. Soc. Sec. Admin.,
10 466 F.3d 880, 883 (9th Cir. 2006) ("[U]nless an ALJ makes a finding of
11 malingering based on affirmative evidence thereof, he or she may only
12 find an applicant not credible by making specific findings as to
13 credibility and stating clear and convincing reasons for each."); Smolen
14 v. Chater, 80 F.3d 1273, 1284 (9th Cir. 1996) ("[T]he ALJ may reject the
15 claimant's testimony regarding the severity of her symptoms only if he
16 makes specific findings stating clear and convincing reasons for doing
17 so."). "This is not an easy requirement to meet: The clear and
18 convincing standard is the most demanding required in Social Security
19 cases." Garrison, 759 F.3d at 1015 (citation omitted).

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22 Where, as here, the ALJ finds that a claimant suffers from a
23 medically determinable physical or mental impairment that could
24 reasonably be expected to produce his alleged symptoms, the ALJ must
25 evaluate "the intensity and persistence of those symptoms to determine
26 the extent to which the symptoms limit an individual's ability to
27 perform work-related activities for an adult." Soc. Sec. Ruling ("SSR")
28

1 16-3p, 2017 WL 5180304, at *3.¹⁰ SSR 16-3p eliminated the term
2 "credibility" from the Agency's sub-regulatory policy. However, the
3 Ninth Circuit Court of Appeals has noted that SSR 16-3p:

4 makes clear what [the Ninth Circuit's] precedent already
5 required: that assessments of an individual's testimony by an
6 ALJ are designed to "evaluate the intensity and persistence of
7 symptoms after the ALJ finds that the individual has a
8 medically determinable impairment(s) that could reasonably be
9 expected to produce those symptoms," and not to delve into
10 wide-ranging scrutiny of the claimant's character and apparent
11 truthfulness.

9 Trevizo, 871 F.3d at 678 n.5 (quoting SSR 16-3p) (alterations omitted).

10
11 In discrediting the claimant's subjective symptom testimony, the
12 ALJ may consider: "ordinary techniques of credibility evaluation, such
13 as . . . prior inconsistent statements concerning the symptoms, and
14 other testimony by the claimant that appears less than candid;
15 unexplained or inadequately explained failure to seek treatment or to
16 follow a prescribed course of treatment; and the claimant's daily
17 activities." Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014)
18 (citation omitted). Inconsistencies between a claimant's testimony and
19 conduct, or internal contradictions in the claimant's testimony, also
20 may be relevant. Burrell v. Colvin, 775 F.3d 1133, 1137 (9th Cir.
21 2014). In addition, the ALJ may consider the observations of treating
22 and examining physicians regarding, among other matters, the functional
23 restrictions caused by the claimant's symptoms. Smolen, 80 F.3d at
24

25 ¹⁰ SSR 16-3p, (which became effective on March 28, 2016), is
26 applicable to this case, because it was in effect on the date ALJ Arno's
27 decision became the final decision of the Commissioner, see 20 C.F.R. §
28 404.968(a)(1) (prescribing sixty-day period to request Appeals Council
review). 20 C.F.R. § 404.1529, the regulation on evaluating a
claimant's symptoms, including pain, has not changed.

1 1284; accord Burrell, supra. However, it is improper for an ALJ to
2 reject subjective testimony based "solely" on its inconsistencies with
3 the objective medical evidence presented. Bray v. Comm'r of Soc. Sec.
4 Admin., 554 F.3d 1219, 1227 (9th Cir. 2009) (citation omitted).
5

6 The ALJ must make a credibility determination with findings that
7 are "sufficiently specific to permit the court to conclude that the ALJ
8 did not arbitrarily discredit claimant's testimony." Tommasetti v.
9 Astrue, 533 F.3d 1035, 1039 (9th Cir. 2008) (citation omitted); see
10 Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir. 2015) ("A finding
11 that a claimant's testimony is not credible must be sufficiently
12 specific to allow a reviewing court to conclude the adjudicator rejected
13 the claimant's testimony on permissible grounds and did not arbitrarily
14 discredit a claimant's testimony regarding pain;" citation omitted).
15 Although an ALJ's interpretation of a claimant's testimony may not be
16 the only reasonable one, if it is supported by substantial evidence, "it
17 is not [the court's] role to second-guess it." Rollins v. Massanari,
18 261 F.3d 853, 857 (9th Cir. 2001).
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1 1. Plaintiff's Subjective Statements and Testimony¹

2
3 Plaintiff completed a Pain Questionnaire, dated September 4, 2008,
4 (see AR 267-69), in which she described a constant pain in her neck,
5 upper back, lower back, right wrist, upper shoulder, and stomach
6 (irritable bowel syndrome, acid reflux) that spreads down to her legs,
7 and is brought on by any movement, i.e., standing, bending, sleeping,
8 walking, getting dressed, going to the restroom, driving a car,
9 swallowing food, and by sitting for short periods. (AR 267). Her pain
10 causes her to stop an activity every ten to fifteen minutes. (AR 269).
11 She is able to walk to her home mailbox and to sit (usually lying down
12 on her side) and/or stand for five to ten minutes at a time. (AR 269).
13 Her usual daily activities include trying to stand up, taking a hot
14 bath, "eat[ing] something," lying down on the couch for three hours,
15 doing dishes, lying down again for thirty minutes, putting in a load of
16 laundry, lying down again, dressing, making the bed, finishing the
17 dishes, and lying down again. (AR 268). Although she can go to the
18 post office or grocery store without assistance, it takes her a couple
19 of days to recover; she tries to have her husband, son or sister drive
20 her for errands and her sister takes her to Bible study. (AR 268-69).
21 She is not able to keep up with her chores, and needs assistance with
22 mopping, doing laundry, making dinner, and vacuuming. (AR 268-69). She
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25
26 ¹ Plaintiff submitted two Pain Questionnaires and two Adult
27 Function Reports, and testified at four administrative hearings. The
28 Court assumes, unless it is clear that Plaintiff was referring to a
prior time frame, that Plaintiff's statements and testimony about her
subjective symptoms referred to the symptoms she was experiencing at the
time the statements were made.

1 is not able to maintain her composure when asked questions. (Id.). A
2 doctor told her she was not a good candidate for surgery because her
3 degenerative disc will not improve. (AR 268). Whether she has stomach
4 surgery is still in question. (Id.). The medicine she takes for her
5 pain -- Lexapro 10 mg,² Motrin 800 mg, Zantac 300 mg, Pepto Bismol, and
6 heat patches -- takes some of the edge off. (AR 267).
7

8 Plaintiff completed an Adult Function Report, dated September 4,
9 2008, with the assistance of another person, (see AR 270-77), reporting
10 daily activities that are generally consistent with those alleged in the
11 Pain Questionnaire. She has difficulty sleeping at night because of
12 stomach aches and pain in the back, arm and wrist. (AR 270-71). Her
13 conditions affect her ability to dress, bathe, care for her hair, feed
14 herself, and use the toilet. (AR 271). She needs reminders to brush her
15 teeth, take medicine, and go places. (AR 272-74). She prepares her own
16 meals (sandwiches, frozen dinners) once a week; her pain prevents her
17 from preparing food most days and when she cooks dinner once a week, it
18 takes her 2.5 hours during which she has to lie down and rest. (Id.).
19 She needs help from her husband and sons to do household chores
20 (laundry, grocery shopping, picking up medication, weeding, watering
21 flowers). (AR 272, 275). She is able to go out alone, but is afraid
22 that she will not be able to drive herself home, or that she will have
23 a panic attack or her throat will close up. She shops in stores for
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26 ² "Lexapro is name-brand escitalopram oxalate, which is used to
27 treat depression and anxiety by helping to restore the balance of
28 serotonin in the brain." Alfred G. v. Berryhill, 2019 WL 134551, *3 n.8
(C.D. Cal. Jan. 8, 2019).

1 small grocery items once a week or once every other week. (Id.). She
2 is able to pay bills (with her husband's help), but cannot count change,
3 handle a savings account, or use a checkbook/money orders (due to issues
4 with adding and subtracting and with her thought process). (AR 273-74).
5 She no longer has any hobbies and interests because of her pain. (Id.).
6 She sometimes talks on the phone with others, and she goes to Bible
7 study once a week (her sister takes her) and to church twice a month.
8 Her conditions affect her ability to lift, squat, bend, reach, walk,
9 sit, kneel, talk, hear, stair-climb, see, memory, complete task (she
10 does not finish what she starts), concentrate (she can pay attention for
11 three minutes), understand, follow written and spoken instructions, use
12 her hands and get along with others. (AR 275). She does not handle
13 stress well; stress causes her irritable bowel syndrome and acid reflux.
14 (AR 276). She uses a cane "off & on", and has been prescribed a back
15 brace, a wrist brace, an elbow brace, and glasses/contacts. (AR 276).
16
17

18 Plaintiff completed a second Pain Questionnaire, dated March 8,
19 2009, reporting information that is generally consistent with the
20 statements in the first Pain Questionnaire. (See AR 297-300).
21 Plaintiff needs to lie on her side with her knees bent, take medication,
22 use a hot heating pad, and take three baths a day for her pain, which is
23 caused by any movement, including sitting and standing for more than
24 three to five minutes. (AR 297-98). Rest does not relieve her pain
25 because she is not able to lie down or sit for more than ten to fifteen
26 minutes. (AR 297). She is able to stand for ten to fifteen minutes
27 and sit for five minutes at a time before needing to lie down. (AR
28

1 299). (Id.). As a result of her pain, she is no longer able to sleep
2 through the night, get dressed without help, do chores, garden, grocery
3 shop alone, drive without an assistant, have a conversation, see
4 friends, finish a sentence, or understand questions asked by others.
5 (AR 298). She drives her own car to the home of her sister or friend
6 down the street and they then drive her to places. (Id.) She is
7 waiting for a breast reduction surgery to help with her back pain, and
8 she is still waiting for a stomach (acid reflux) surgery. (AR 298).
9

10
11 Plaintiff completed a second Adult Function Report, dated March 8,
12 2009, with the assistance of her husband, in which she reported
13 information that is generally consistent with the statements in the
14 first Adult Function Report and the second Pain Questionnaire. (See AR
15 301-08). As a result of her conditions, she can no longer eat, bend to
16 go to the bathroom, walk, go to the grocery store, or communicate
17 without crying. (AR 302). She prepares her own meals (sandwiches,
18 muffins, frozen dinners) twice a week, which takes her three hours. (AR
19 303). She prepares dinner once or twice a week, but needs help
20 finishing. (Id.). She goes outside to try to get mail twice or three
21 times a week, to church once a week, and to the grocery store once a
22 week or once every other week (with her husband, which takes fifteen to
23 twenty minutes). (AR 304). She is able to pay bills and use a
24 checkbook/money orders, but she is not able to count change or handle a
25 savings account. (Id.). She no longer has any hobbies and interests
26 because of her pain, but prior to her conditions she was able to read,
27 paint, ski and sew. (AR 305). Her conditions affect the same abilities
28

1 identified in the first Adult Function Report, except for hearing and
2 getting along with others. (AR 306). She can lift five pounds, stand
3 for 10 to 15 minutes, sit for 15 minutes, walk to the mailbox or washer
4 and pay attention for five minutes, but she cannot bend, squat,
5 understand (needs to be told five times), or follow written instructions
6 (cannot focus) or spoken instructions (needs to be told two to three
7 times). (Id.).
8

9
10 At the October 14, 2010 administrative hearing, Plaintiff testified
11 that she has pain in her shoulders, neck and back, right wrist, and
12 stomach. She has received injections for her shoulders and stomach, and
13 has tried acupuncture, Lexapro patches, Lidoderm³ patches, medication
14 (strong) such as Robaxin (but no longer Vicodin or Talwin), heat packs
15 and hot baths for her neck and back. (AR 83-86, 89-91). She has
16 difficulty standing, sitting, turning and sitting on the toilet, (AR 91-
17 92), and difficulty going to sleep because of the pain and staying
18 asleep because of nightmares. (AR 86). On a typical day, she gets up
19 in the morning, tries to make something to eat, sits down for a little
20 (due to fatigue), tries to rinse dishes while sitting on a stool
21 (somebody else loads them), sits down for a little while and starts a
22 load of laundry (her husband carries the basket to the room). (AR 86-
23 87, 90). She dresses herself "most of the time," but needs assistance
24 with shoes (except for sandals) because she cannot bend over. (AR 90).
25

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28 ³ Lidoderm is a topical analgesic. Fonseca v. Astrue, 2011 WL
2412627, *4 (C.D. June 10, 2011).

1 At the administrative hearing on September 6, 2012, Plaintiff
2 testified that her typical activities include driving to the grocery
3 store once a week where she spends fifteen to twenty minutes to shop,
4 going to the hairdresser once a month, and to doctors' appointments.
5 For about four months, she has volunteered, with two other teachers,
6 monitoring crafts projects for twelve children in a classroom at church
7 twice a month for about an hour. She goes to church services twice a
8 month and attends women's Bible study at the church once a month. She is
9 able to shower but cannot take a bath without help, and she is able to
10 sweep, lift maybe four pounds at a time, and sit for fifteen to twenty
11 minutes before needing to change positions. (AR 37-38, 44-49, 54). She
12 spends two to three "bad days" a week lying down, but most of the time
13 she alternates between sitting and standing. (AR 62-63). Any kind of
14 work, even simple work, would have caused her stress, because she
15 worried about where the bathroom was and about "being able to get up and
16 move." (AR 58). Although she experiences stress around other people,
17 she attends church and Bible study because they are "like a safe haven
18 [] because [she] know[s] they're not out there to hurt [her]." (AR 59-
19 60). She was not able to balance a checkbook and pay bills due to
20 difficulty concentrating and stress from worrying about lack of money.
21 (AR 61). Her irritable bowel syndrome causes her to have bowel movement
22 accidents. The medication she takes for irritable bowel syndrome does
23 not work. (AR 52). She takes Xanax and Lexapro for psychological
24 issues, and uses Lidoderm patches for back pain. (AR 50-51).
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1 At the May 27, 2016 administrative hearing, Plaintiff testified
2 that she still has pain in her neck, middle and lower back, right
3 shoulder, right knee, right wrist, and migraine headaches (once a week),
4 and her pain is at the same level she experienced during the earlier
5 hearings. (AR 890-91, 896-97). To relieve the pain, she sits down and
6 reclines with pillows behind her and her feet on a chair; she gets up
7 more and lies down less because lying down is "more painful." (AR 892-
8 93). She tried physical therapy to treat the pain and she now treats
9 her pain by seeing a chiropractor two times a week, taking a two-hour
10 bath every day, and taking prescription medications. (AR 891, 893).
11 She is "on the list" for breast reduction surgery to ease her back pain.
12 (AR 891). She can sit or stand for fifteen to twenty minutes. (AR 893-
13 94). She tries to do chores such as loading the washer and dryer once
14 a week (her husband finishes the job). (AR 894). She still has issues
15 with depression in "certain situations," but her depression is not as
16 bad as when she was seeing a psychologist (Dr. Flores). (AR 895-96).
17 Although she has a cane, she tries not to use it because she wants to be
18 "independent." (AR 899). While she still has issues with irritable
19 bowel syndrome, she has not had any accidents in the car. (AR 896-97).
20

21
22 At the administrative hearing on January 16, 2019, Plaintiff
23 testified she still experienced the same problems she had at the time of
24 the earlier hearings. (AR 1352-53).
25

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1 2. The ALJ's Credibility Findings

2
3 After summarizing Plaintiff's testimony (see AR 1327-28), ALJ Arno
4 found Plaintiff's testimony about the intensity, persistence and
5 limiting effects of her pain and symptoms to be inconsistent with her
6 activities of daily living, the objective medical evidence, and the
7 frequency or extent of treatment. (See AR 1328-29).
8

9
10 ALJ Arno observed that the physical and mental abilities and the
11 social interactions required for Plaintiff to perform normal activities
12 of daily living, such as preparing meals, rinsing dishes, loading
13 laundry, sometimes sweeping, driving a car, attending church and Bible
14 study, and volunteering at church, are the same as those necessary for
15 obtaining and maintaining employment. ALJ Arno further observed that
16 such daily activities were inconsistent with Plaintiff's complaints
17 about her difficulties sitting, standing, walking, lifting, squatting,
18 kneeling, understanding, concentrating, getting along with others, and
19 completing tasks because they suggest a higher level of functioning than
20 Plaintiff alleged. Therefore, ALJ Arno found Plaintiff's ability to
21 participate in such activities to be inconsistent with her statements
22 concerning the alleged intensity, persistence, and limiting effects of
23 her symptoms. (AR 1328-29).
24

25 ALJ Arno also found Plaintiff's statements regarding the alleged
26 intensity, persistence, and limiting effects of her symptoms to be
27 inconsistent with the objective medical evidence regarding the duration
28 and frequency of her symptoms. (AR 1329). For example, ALJ Arno pointed

1 out that while Plaintiff claimed to be suffering from debilitating pain
2 from her disability onset date to the date last insured, reports of
3 physical examinations in November 2004 and May 2009 revealed that
4 Plaintiff was "in no acute distress," exhibited full muscle strength in
5 her upper and lower extremities and greater range of motion, and was
6 able to squat without difficulty and walk with stability. (AR 579, 758).
7

8 In addition, ALJ Arno observed that the degree of Plaintiff's
9 subjective complaints was not comparable to the limited and conservative
10 nature of the treatment Plaintiff received and the lack of any
11 explanation for not seeking more extensive or aggressive treatment
12 options. Therefore, ALJ Arno found Plaintiff's statements concerning
13 the alleged intensity, persistence and limiting effects of symptoms to
14 be inconsistent with the treatment she received. (AR 1329).
15

16 After addressing the medical evidence and the opinions of the
17 medical expert (Sami A. Nafosi, M.D.), Plaintiff's treating physicians
18 (James F. Lineback, M.D., Chirag N. Amin, M.D., and Matthey Huey, M.D.),
19 the medical and psychiatric consultative examiners (Kristof Siciarz,
20 M.D. and Hiruy Gessesse, M.D.) the State Agency medical and
21 psychological consultants (P.N. Ligot, M.D., L.O. Mallare, M.D., G.
22 Johnson, M.D., and M. Abundes-Tienda), Plaintiff's treating psychologist
23 (Nelson J. Flores, Ph.D), and the testimony by Plaintiff's husband (see
24 AR 1329-37), ALJ Arno concluded that:
25
26

27 In sum, the evidence as a whole supports the residual
28 functional capacity assessed by this decision. The claimant's
statements regarding the alleged intensity, persistence, and

1 limiting effects of symptoms are inconsistent with the overall
2 evidence of record and the objective medical evidence does not
3 support the alleged severity of symptoms. I find the claimant
4 has not been deprived of the ability to perform substantial
5 gainful activity subject to the residual functional capacity
6 assessed by this decision for any 12-month period during the
7 relevant period.

8 (AR 1337).

9 3. Analysis

10 As set forth below, ALJ Arno gave clear and convincing reasons,
11 supported by substantial evidence, for finding Plaintiff's testimony
12 about the intensity, persistence and limiting effects of her pain and
13 symptoms not credible.⁴

14 ALJ Arno properly determined that Plaintiff's alleged functional
15 limitations were inconsistent with her ability to perform her activities
16 of daily living, including preparing meals (see AR 45, 86-87, 270, 272,
17 299, 303, 308), rinsing dishes (see AR 45, 87, 90, 269-70, 301), loading
18 laundry (see AR 45, 87, 269-70, 299, 301, 303, 894), sometimes sweeping
19

20 ⁴ To the extent that Defendant contends that the Court should
21 not apply a "clear and convincing" standard based on evidence in the
22 record that Plaintiff was malingering (see Joint Stip. at 26-27), the
23 Court declines to do so. ALJ Arno did not make a specific finding that
24 Plaintiff was malingering. See Robbins, 466 F.3d at 883; see also
25 Garrison, 759 F.3d at 1010 ("We review only the reasons provided by the
26 ALJ in the disability determination and may not affirm the ALJ on a
27 ground upon which he did not rely."); Connett v. Barnhart, 340 F.3d 871,
28 874 (9th Cir. 2003) ("We are constrained to review the reasons the ALJ
asserts."; citing SEC v. Chenery Corp., 332 U.S. 194, 196 (1947) and
Pinto v. Massanari, 249 F.3d 840, 847-48 (9th Cir. 2001)).

Likewise, the Court will not consider Defendant's arguments
that ALJ Arno properly discredited Plaintiff's testimony based on
Plaintiff's failure to follow up with treatment and the improvement of
Plaintiff's impairments with treatment (see Joint Stip. at 31), since
ALJ Arno did not provide those reasons in the decision.

1 (see AR 46), driving a car (see AR 37-38, 269, 273, 299), attending
2 church and Bible study (see AR 46-47, 60, 274, 305), volunteering at
3 church (see AR 44-45), and grocery shopping (see AR 38, 273, 299, 303-
4 04). See 20 C.F.R. § 404.1529(c)(3)(1) (a claimant's daily activities
5 are one factor to be considered in evaluating a claimant's symptoms,
6 such as pain). Plaintiff's ability to engage in such activities, even
7 if she sometimes needed assistance and/or breaks (see AR 38, 45, 87,
8 268-70, 272, 274, 299, 301, 303-05, 308, 894), rendered Plaintiff's
9 testimony that she spent most of the day lying down and essentially
10 unable to do anything (see AR 48-50, 63, 66-67, 86-93, 268-77, 297-99,
11 301-08, 892-94) not credible. See Ghanim, 763 F.3d at 1165 ("Engaging
12 in daily activities that are incompatible with the severity of symptoms
13 alleged can support an adverse credibility determination."); Molina v.
14 Astrue, 674 F.3d 1104, 1113 (9th Cir. 2012) ("[T]he ALJ may discredit a
15 claimant's testimony when the claimant reports participation in everyday
16 activities indicating capacities that are transferable to a work
17 setting;" "Even where those activities suggest some difficulty
18 functioning, they may be grounds for discrediting the claimant's
19 testimony to the extent that they contradict claims of a totally
20 debilitating impairment."); and Morgan v. Comm'r of Soc. Sec. Admin.,
21 169 F.3d 595, 600 (9th Cir. 1999) ("If a claimant is able to spend a
22 substantial part of his day engaged in pursuits involving the
23 performance of physical functions that are transferable to a work
24 setting, a specific finding as to this fact may be sufficient to
25 discredit a claimant's allegations."); see also Burch v. Barnhart, 400
26 F.3d 676, 680-81 (9th Cir. 2005) (claimant's allegations of disability
27 properly discredited where claimant was able to care for her own
28

1 personal needs, cook, clean, shop, interact with her nephew and
2 boyfriend, and manage finances).

3
4 ALJ Arno properly discounted Plaintiff's testimony about the
5 alleged intensity, persistence and limiting effects of her symptoms
6 based on inconsistencies between Plaintiff's reported ability to perform
7 such daily activities, even if assistance and/or breaks were sometimes
8 needed, and her testimony about her severe difficulties with sitting,
9 standing, walking, lifting, squatting, kneeling, understanding,
10 concentrating, getting along with others, and completing tasks (see AR
11 48-50, 54, 267-72, 275, 297-99, 301, 303, 305-06, 896). See Burrell v.
12 Colvin, 775 F.3d 1133, 1138-39 (9th Cir. 2014) ("Inconsistencies between
13 a claimant's testimony and the claimant's reported activities provides
14 a valid reason for an adverse credibility determination."; citing Light
15 v. Social Security Admin., 119 F.3d 789, 792 (9th Cir. 1997).
16

17
18 ALJ Arno properly found that Plaintiff's testimony about the
19 intensity, persistence and limiting effects of her pain and symptoms was
20 not supported by the objective medical evidence (see AR 1329). See
21 Burch, 400 F.3d at 681 ("Although lack of medical evidence cannot form
22 the sole basis for discounting pain testimony, it is a factor that the
23 ALJ can consider in his credibility analysis."); Rollins, 261 F.3d at
24 857 ("While subjective pain testimony cannot be rejected on the sole
25 ground that it is not fully corroborated by objective medical evidence,
26 the medical evidence is still a relevant factor in determining the
27 severity of the claimant's pain and its disabling effects."); SSR 16-3p,
28 *5 ("objective medical evidence is a useful indicator to help make

1 reasonable conclusions about the intensity and persistence of symptoms,
2 including the effects those symptoms may have on the ability to perform
3 work-related activities”).
4

5 As the ALJ noted, the objective evidence in the record conflicted
6 with Plaintiff's testimony about her symptoms and functional
7 limitations. See 20 C.F.R. § 404.1529(c)(2) (“Objective medical
8 evidence . . . is a useful indicator to assist us in making reasonable
9 conclusions about the intensity and persistence of your symptoms and the
10 effect those symptoms, such as pain, may have on your ability to
11 work.”). Such evidence included (1) a physical examination on November
12 2, 2004, reporting that Plaintiff was alert and in no acute distress,
13 walked with a normal gait, had full muscle strength in her lower
14 extremities, could perform tip-toe and heel walking without weakness,
15 and could squat without difficulty (see AR 577-81); (2) a physical
16 examination on November 15, 2008, reporting that Plaintiff had normal
17 movements, did not use an assistive device for ambulation, was able to
18 sit comfortably without shifting, stand from a sitting position and sit
19 up from the supine position without difficulty, showed ranges of motion
20 in the upper and lower extremities within normal limits, did not have
21 pain upon palpation along the paravertebral area, had a negative
22 bilateral straight-leg raising test, and had normal motor strength,
23 muscle tone, coordination, gait and station (see AR 518-20); (3) a
24 physical examination on June 23, 2009, noting that, although Plaintiff
25 had limited range of motion in the neck and right upper extremity,
26 Plaintiff had a stable gait, stable heel and toe walking, normal
27 station, “walk[ed] with greater flexion that she exhibited on specific
28

1 lumbar [range of motion] testing," and had a negative straight-leg
2 raising test (see AR 756-59); (4) an x-ray of the right shoulder August
3 20, 2009, revealed no fracture or joint subluxation, normal alignment,
4 and no degenerative changes (see AR 763-64); (5) a physical examination
5 on September 4, 2009, noted that, although Plaintiff had limited range
6 of motion in the neck and upper extremities, Plaintiff had stable gait
7 and heel and toe walking (see AR 771-73); (6) an MRI of the cervical
8 spine on September 18, 2009, showed mild reversal of normal lordosis and
9 mild degenerative changes (see AR 774); (7) a physical examination on
10 October 1, 2009, revealed, inter alia, that Plaintiff's neck was supple
11 and showed a full range of motion without pain and that Plaintiff was
12 alert and oriented and used normal speech (see AR 777-80); and (8) a
13 physical examination on March 10, 2010, revealed, inter alia, that
14 Plaintiff had "[m]ild apparent stress" and was alert, and that, although
15 Plaintiff had limited range of motion in the neck and upper extremities,
16 Plaintiff had stable, slow gait, stable heel and toe walking, normal
17 station, and a negative straight leg-raising (see AR 792-95). While
18 Plaintiff may interpret the medical record differently, the Court cannot
19 conclude that ALJ Arno's interpretation of the medical record was
20 irrational. Burch, 400 F.3d at 679 ("Where evidence is susceptible to
21 more than one rational interpretation, it is the ALJ's conclusion that
22 must be upheld.").

23
24
25 ALJ Arno also properly found that Plaintiff's testimony about the
26 limiting effects of her symptoms was not supported by the conservative
27 nature of her treatment. As ALJ Arno noted, Plaintiff testified her
28 treatment consisted of only physical therapy, acupuncture, injections,

1 Lexapro patches, prescription medications (none of which were heavy-duty
2 narcotics), heat packs, and hot baths (see AR 50-51, 84-86, 267, 891-
3 93). See Parra v. Astrue, 481 F.3d 742, 750-51 (9th Cir. 2007) ("The ALJ
4 also noted that [the claimant's] physical ailments were treated with
5 over-the-counter pain medication. We have previously indicated that
6 evidence of 'conservative treatment' is sufficient to discount a
7 claimant's testimony regarding severity of an impairment."; citation
8 omitted); Johnson v. Shalala, 60 F.3d 1428, 1434 (9th Cir. 1995) (an ALJ
9 may properly rely on the fact that prescribed conservative treatment
10 suggests a lower level of both pain and functional limitation); see also
11 Meanel v. Apfel, 172 F.3d 1111, 1113 (9th Cir. 1999) ("[The claimant's]
12 claim that she experienced pain approaching the highest level imaginable
13 was inconsistent with the 'minimal, conservative treatment' that she
14 received."]).
15

16
17 The ALJ's reasons for discounting Plaintiff's testimony about the
18 limiting effects of her pain and symptoms -- inconsistency with
19 activities of daily living, the lack of support in the medical record,
20 and a conservative course of treatment -- were specific, clear and
21 convincing.
22

23 **B. ALJ Arno Provided Germane Reasons for Rejecting Plaintiff's**
24 **Husband's Testimony**
25

26 The ALJ is required to give germane reasons for rejecting or
27 partially rejecting lay witness testimony. See Carmickle v. Comm'r v.
28 Soc. Sec. Admin., 533 F.3d 1155, 1162-63 (9th Cir. 2008); Greger v.

1 Barnhart, 464 F.3d 968, 972 (9th Cir. 2006); Lewis v. Apfel, 236 F.3d
2 503, 511 (9th Cir. 2001); Smolen, 80 F.3d at 1288-89.

3
4 Plaintiff's husband completed Adult Third Party Function Reports
5 dated September 4, 2008 and March 8, 2009, which essentially mirror,
6 with less detail, the allegations Plaintiff made in her Pain
7 Questionnaires and Function Reports. (See AR 259-66, 289-96).
8

9
10 After briefly summarizing the statements by Plaintiff's husband,
11 (see AR 1336 ["In these third party function reports, he indicated that
12 the claimant required assistance to perform chores. Further, these
13 opinions alleged the claimant was only able to walk for short distances
14 and drive when she felt well[.]"]), ALJ Arno made the following
15 assessment of his testimony:

16
17 These opinions, however, reflect the limitations
18 expressed in the claimant's testimony, which the undersigned
19 has found to be inconsistent with the overall evidence of
20 record. Moreover, the undersigned discounts these opinions
21 because they inconsistently noted that the claimant was able
22 to perform several activities of daily living, such as driving
23 herself to run various errands and perform household tasks
24 like cooking meals and washing dishes, albeit with breaks or
25 while seated. In addition, while a layperson can offer an
26 opinion on a diagnosis, the severity of the claimant's
27 symptoms, or the side effects of medications in relationship
28 to the claimant's ability to work, the opinion of a layperson
is far less persuasive on those same issues than are the
opinions of medical professionals as relied on herein. Most
important, these opinions are not supported by the clinical or
diagnostic medical evidence that is discussed elsewhere in
this decision. For example, these opinions are inconsistent
with evidence suggesting that on examination the claimant has
been observed as "alert" and "in no acute distress." Further,
she has exhibited full muscle strength in her upper and lower
extremities ([AR 579]). Additionally, she has been observed
to squat without difficulty and walk stably with "greater
flexion tha[n] she exhibited on specific lumbar [range of
motion] testing" ([AR 758]). Accordingly, based on the above

1 specific reasons, the undersigned assigns partial weight to
2 this opinion.

3 (AR 1336-37).

4
5 Since ALJ Arno provided clear and convincing reasons for finding
6 Plaintiff's statements about her functional limitations not credible,
7 her determination that the similar statements made by Plaintiff's
8 husband were only entitled to partial weight was a germane reason for
9 discounting Plaintiff's husband's testimony. See Valentine v.
10 Commissioner, 574 F.3d 685, 694 (9th Cir. 2009) ("In light of our
11 conclusion that the ALJ provided clear and convincing reasons for
12 rejecting [the claimant's] own subjective complaints, and because [the
13 claimant's wife's] testimony was similar to such complaints, it follows
14 that the ALJ also gave germane reasons for rejecting [the claimant's
15 wife's] testimony.").

16
17 Moreover, ALJ Arno's determination that Plaintiff's husband's
18 testimony was not supported by the objective medical evidence (discussed
19 above) was a germane reason for finding that his testimony lacked
20 credibility. See Bayliss v. Barnhart, 427 F.3d 1211, 1218 (9th Cir.
21 2015) (inconsistency with the medical evidence is a germane reason for
22 discrediting the testimony of a lay witness); Lewis, 236 F.3d at 511
23 ("One reason for which an ALJ may discount lay testimony is that it
24 conflicts with medical evidence."); Vincent v. Heckler, 739 F.2d 1393,
25 1395 (9th Cir. 1984) ("The ALJ properly discounted lay witness testimony
26 that conflicted with the available medical evidence.").

1 Accordingly, ALJ Arno provided germane reasons for partially
2 rejecting Plaintiff's husband's testimony.

3
4 **C. ALJ Arno Properly Assessed the Opinions of Plaintiff's Treating**
5 **Physicians and Psychologist**

6
7 Plaintiff asserts that ALJ Arno failed to properly assess the
8 opinions of her treating physicians, Drs. Amin and Lineback, and her
9 treating psychologist, Dr. Flores. (See Joint Stip. at 8-14).⁵
10 Defendant asserts that ALJ Arno properly evaluated Dr. Amin's, Dr.
11 Lineback's and Dr. Flores's opinions. (See Joint Stip. at 15-22).

12
13 An ALJ must take into account all medical opinions of record. 20
14 C.F.R. § 404.1527(b).⁶ "Generally, a treating physician's opinion
15 carries more weight than an examining physician's, and an examining
16 physician's opinion carries more weight than a reviewing physician's."
17 Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir. 2001); see also

18
19 ⁵ Since Plaintiff's claim solely challenges ALJ Arno's
20 evaluation of the opinions of Drs. Amin, Lineback and Flores, the Court
21 will not discuss ALJ Arno's evaluation of the opinions of the medical
22 expert (Dr. Nafsoosi), Plaintiff's other treating physician (Dr. Huey),
23 the consultative medical examiner (Dr. Siciarz), the State Agency
24 medical consultants (Drs. Ligot and Mallare), the psychiatric
25 consultative examiner (Dr. Gessessee) and the State Agency psychological
26 consultants (Dr. Johnson and Ms. Abundes-Tienda)

27 ⁶ Since Plaintiff filed her application before March 27, 2017,
28 20 C.F.R. § 404.1527 applies. For an application filed on or after
29 March 27, 2017, 20 C.F.R. § 404.1520c would apply. 20 C.F.R. §
30 404.1520c changed how the Social Security Administration considers
31 medical opinions and prior administrative medical findings, eliminated
32 the use of the term "treating source," and eliminated deference to
33 treating source medical opinions. See 20 C.F.R. § 404.1520c(a); L.R. v.
34 Saul, 2020 WL 264583, at *3 n. 5 (C.D. Cal. Jan. 17, 2020); see also 81
35 Fed. Reg. 62560, at 62573-74 (Sept. 9, 2016).

1 Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir. 1995). The medical
2 opinion of a treating physician is given "controlling weight" so long as
3 it "is well-supported by medically acceptable clinical and laboratory
4 diagnostic techniques and is not inconsistent with the other substantial
5 evidence in [the claimant's] case record." 20 C.F.R. § 404.1527(c)(2).
6 "When a treating doctor's opinion is not controlling, it is weighted
7 according to factors such as the length of the treatment relationship
8 and the frequency of examination, the nature and extent of the treatment
9 relationship, supportability, and consistency of the record." Revels
10 v. Berryhill, 874 F.3d at 654; see also 20 C.F.R. § 404.1527(c)(2)-(6).
11

12
13 If a treating or examining doctor's opinion is not contradicted by
14 another doctor, the ALJ can reject the opinion only for "clear and
15 convincing reasons." Carmickle v. Commissioner, 533 F.3d 1155, 1164
16 (9th Cir 2008); Lester, 81 F.3d at 830. If the treating or examining
17 doctor's opinion is contradicted by another doctor, the ALJ must provide
18 "specific and legitimate reasons" that are supported by substantial
19 evidence in the record for rejecting the opinion. Orn v. Astrue, 495
20 F.3d 625, 632 (9th Cir. 2007); Reddick v. Chater, 157 F.3d 715, 725 (9th
21 Cir. 1998); Lester, supra. "The ALJ can meet this burden by setting out
22 a detailed and thorough summary of the facts and conflicting clinical
23 evidence, stating his interpretation thereof, and making findings."
24 Trevizo v. Berryhill, 871 F.3d 664, 675 (9th Cir. 2017) (citation
25 omitted). Finally, an ALJ may reject an opinion of any physician that
26 is conclusory, brief, and unsupported by clinical findings. Bayliss v.
27 Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2015); Thomas v. Barnhart, 278
28

1 F.3d 947, 957 (9th Cir. 2002); Tonapetyan v. Halter, 242 F.3d 1144, 1149
2 (9th Cir. 2001).

3
4 1. Dr. Amin

5
6 Dr. Amin, an orthopedic surgeon and Plaintiff's treating physician
7 in connection with her California Workers' Compensation case, completed
8 an Initial Comprehensive Orthopedic Report following an examination of
9 Plaintiff on November 2, 2004. (See AR 574-86). Plaintiff complained
10 of neck, middle and lower back pain, right hand and wrist pain, numbness
11 and tingling in her right hand and fingers, and "[s]ymptoms of
12 depression, anxiety and insomnia, secondary to her alleged hostile work
13 environment[.]" (AR 576). Dr. Amin diagnosed Plaintiff with
14 "[c]ervical and lumbrosacral sprain/strain with myofascitis,"
15 "[t]horacic myofascitis," "[d]epression [secondary to alleged hostile
16 work environment]," and "[s]prain/strain, right wrist," (AR 581), and
17 opined that Plaintiff was "temporarily totally disabled" ("TTD") for 6
18 weeks. (AR 582).
19
20

21 From January 11, 2005 to August 23, 2005, Dr. Amin completed four
22 Progress Reports. Based on Plaintiff's complaints, physical
23 examinations, the results of electrodiagnostic studies of the bilateral
24 upper and lower extremities, x-rays of the right hand, lumbar spine,
25 thoracic spine and cervical spine, and the same diagnoses as those in
26 the Initial Comprehensive Orthopedic Report, Dr. Amin opined that
27
28

1 Plaintiff was TTD from January 11, 2005 through October 1, 2005. (AR
2 627-30).

3
4 ALJ Arno gave "little weight" to Dr. Amin's opinion that Plaintiff
5 was TTD for approximately an 11-month period, finding that: (a) TTD was
6 a Workers' Compensation law term of art (indicating that for a certain
7 period a person is unable to return to the job being performed at the
8 time of the injury) that was not "directly relevant" under Social
9 Security law because there is a different criteria for a finding of
10 disability, (b) Dr. Amin's opinion was not inconsistent with ALJ Arno's
11 RFC determination which precludes Plaintiff from performing the work she
12 was performing at the time of her Workers' Compensation injury, and (c)
13 Dr. Amin did not identify any specific functional work limitations.
14 (See AR 1333-34).
15

16
17 ALJ Arno properly noted that Dr. Amin's opinion that Plaintiff was
18 TTD was specific to Plaintiff's Workers' Compensation claim and not
19 binding on a determination about whether Plaintiff was disabled in this
20 case. See 20 C.F.R. §§ 404.1504 ("Other governmental agencies and
21 nongovernmental entities . . . make disability, blindness,
22 employability, Medicaid, workers' compensation, and other benefits
23 decisions for their own programs using their own rules. [Such decisions
24 are]. . . not binding on us and is not our decision about whether you
25 are disabled or blind under our rules."); Alvarez v. Colvin, 562
26 Fed.Appx. 553, 553 (9th Cir. 2014) ("Because the ALJ is obliged to make
27 a disability determination based on social security law, the ALJ was not
28

1 bound by Dr. Larsen's finding that [the claimant] was temporarily
2 totally disabled for purposes of California workers' compensation"); see
3 also 20 C.F.R. §§ 404.1527(c)(6) ("[T]he amount of understanding of our
4 disability programs and their evidentiary requirements that an
5 acceptable medical source has . . . are relevant factors that we will
6 consider in deciding the weight to give to a medical opinion."),
7 404.1527(d)(1) ("A statement by a medical source that you are 'disabled'
8 or 'unable to work' does not mean that we will determine that you are
9 disabled."); Baroni v. Astrue, 2011 WL 2939405, *5 (C.D. Cal. July 18,
10 2011) ("The Court concurs with the ALJ that conclusory statements like
11 those made by Dr. Haq in his February 26, 2003 Workers' Compensation
12 report are not probative of whether a claimant is disabled from engaging
13 in any substantial gainful activity or probative of a claimant's
14 functional limitations.").

15
16
17 Moreover, ALJ Arno did not simply disregard Dr. Amin's opinion
18 solely because it was generated in a Workers' Compensation matter, which
19 would be improper. See Booth v. Barnhart, 181 F.Supp.2d 1099, 1105-06
20 (C.D. Cal. 2002) ("The ALJ may not disregard a physician's medical
21 opinion simply because it was initially elicited in a state workers'
22 compensation proceeding, or because it is couched in the terminology
23 used in such proceedings."; "[T]he ALJ must evaluate medical opinions
24 couched in state workers' compensation terminology just as he or she
25 would evaluate any other medical opinion."; "The ALJ must 'translate'
26 terms of art contained in such medical opinions into the corresponding
27 Social Security terminology in order to accurately assess the
28

1 implications of those opinions for the Social Security disability
2 determination.”; and “While the ALJ’s decision need not contain an
3 explicit ‘translation,’ it should at least indicate that the ALJ
4 recognized the differences between the relevant state workers’
5 compensation terminology, on the one hand, and the relevant Social
6 Security disability terminology, on the other hand, and took those
7 differences into account in evaluating the medical evidence.”; citations
8 omitted); see also Lester v. Chater, 81 F.3d 821, 832 (9th Cir. 1995) (as
9 amended) (“The purpose for which medical reports are obtained does not
10 provide a legitimate basis for rejecting them.”). Rather, ALJ Arno
11 found that Dr. Amin’s opinion was not necessarily inconsistent with ALJ
12 Arno’s Step Four finding that Plaintiff was unable to perform any past
13 relevant work (AR 1337).
14

15
16 Finally, ALJ Arno properly found that Dr. Amin’s opinion was
17 entitled to less weight because Dr. Amin did not provide or identify any
18 specific functional work limitations that would assist in the RFC
19 determination. See Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir.
20 1999) (noting that a treating physician must make “specific findings that
21 [are] useful in the disability determination”); 20 C.F.R. §
22 404.1527(a)(1) (“Medical opinions are statements from acceptable medical
23 sources that reflect judgments about the nature and severity of your
24 impairment(s), including your symptoms, diagnosis and prognosis, what
25 you can still do despite impairment(s), and your physical or mental
26 restrictions.”; emphasis added); see also 20 C.F.R. § 404.1545(a)(1)
27 (“Your impairment(s), and any related symptoms, such as pain, may cause
28

1 physical and mental limitations that affect what you can do in a work
2 setting. Your residual functional capacity is the most you can still do
3 despite your limitations.").

4
5 Thus, the ALJ provided clear and convincing and/or specific and
6 legitimate reasons for rejecting Dr. Amin's opinion.

7
8 2. Dr. Lineback

9
10 Dr. Lineback, who is Board Certified in Internal Medicine and
11 Pulmonary Medicine, examined Plaintiff in connection with her Workers'
12 Compensation claim on February 15, 2005. On February 18, 2005, Dr.
13 Lineback completed a Report in which he opined, inter alia, that
14 Plaintiff "will require a preclusion from emotional distress to avoid
15 any further aggravation of her gastrointestinal complaints due to
16 gastric hyperacidity and irritable bowel syndrome." (See AR 617-25).

17
18
19 ALJ Arno gave "partial weight" to Dr. Lineback's opinion. (AR
20 1333). While acknowledging that Dr. Lineback reasonably found a
21 connection between emotional stress and [Plaintiff's] gastrointestinal
22 complaints, ALJ Arno found that Dr. Lineback's opinion was not entitled
23 to more weight to because "what might cause emotional distress could
24 differ on a case by case basis" and "Dr. Lineback did not specify what
25 should be precluded or the most [Plaintiff] was capable of despite the
26 impairments." (Id.). ALJ Arno stated that the RFC determination
27 limiting Plaintiff to simple and routine tasks that require only simple
28

1 decisions and precluding Plaintiff from work requiring a high-quota
2 production-rate pace, (see AR 1327), sufficiently addressed stress
3 caused by workload in the workplace. (Id.).
4

5 ALJ Arno properly assessed partial weight to Dr. Lineback's opinion
6 because of his failure to specify what Plaintiff should be precluded
7 from doing in the workplace or what Plaintiff was capable of doing in
8 the workplace despite her impairments. See Meanel, 172 F.3d at 1114;
9 20 C.F.R. § 404.1527(a)(1). As Defendant asserts (see Joint Stip. at
10 19), Plaintiff has failed to allege how ALJ Arno's RFC determination,
11 which also limited Plaintiff to only occasional contact with the public
12 and occasional interaction with coworkers (AR 1327), did not
13 sufficiently accommodate Plaintiff's need to avoid workplace stress.
14 See Sherman v. Colvin, 582 Fed.Appx. 745, 748 (9th Cir. 2014) (affirming
15 ALJ's rejection of treating physicians' opinions based on claimant's
16 failure to show how RFC was inconsistent with treating physicians'
17 opinions).
18

19
20 Therefore, ALJ Arno's reasons for rejecting Dr. Lineback's opinion
21 were clear and convincing and/or specific and legitimate.
22

23 3. Dr. Flores
24

25 Nelson J. Flores, Ph.D., a psychologist, treated Plaintiff in
26 connection with her Worker's Compensation claim from December 9, 2004,
27 to January 11, 2008, (See AR 589-93 [Psychological Testing Report dated
28

1 December 16, 2004], 596-697 [Psychological Medical-Legal Consultation
2 Report dated January 13, 2005], 398-413 [Progress Reports dated March 9,
3 21, 2005, May 22, 2005, July 13, 2005, October 4, 19, 2005, November 15,
4 23, 2005, January 23, 2006, an undecipherable date in February 2006,
5 March 7, 2006, April 9, 2006 (erroneously written as 2008), and May 31,
6 2006], 414-40 [Comprehensive Psychological Medical-Legal Permanent and
7 Stationary Evaluation Report dated September 5, 2006], 441-56 [Progress
8 Reports dated November 17, 2006, January 19, 2007, March 2, 2007, May 4,
9 2007, May 28, 2007, October 4, 2007, November 16, 2007, and January 18,
10 2008]).

11
12
13 On January 13, 2005, Dr. Flores completed a Psychological Medical-
14 Legal Consultation Report following his examination of Plaintiff and
15 review of the Psychological Testing Report dated December 16, 2004 (see
16 AR 589-93). (See AR 596-607). Plaintiff complained of difficulty
17 sleeping, nervousness, restlessness, headaches, chest discomfort, muscle
18 tension, weakness throughout her body and in her legs, hot sensations
19 over her body, trembling hands, body shakiness, unsteadiness, feeling
20 fearful, heart pounding, nausea, indigestion, acid reflux, irritable
21 bowel syndrome, constipation, diarrhea, low energy, sadness,
22 irritability, difficulty controlling emotions and impulses, crying,
23 difficulty concentrating and remembering, inability to relax, fears of
24 the worst happening and of losing control, difficulty making decisions,
25 socially withdrawn, inability to feel joy, and decreased sexual desire.
26 (AR 601-02). Mental status examination revealed, inter alia, that
27 Plaintiff was alert and oriented to time, place and person, Plaintiff's
28

1 affect was appropriate to thought content, thought processes were
2 appropriate, logical and coherent, Plaintiff used normal speech and
3 language, Plaintiff's "concentration was deficient during the
4 evaluation," Plaintiff had "difficulty remembering recent dates, events
5 and order of events," and Plaintiff had good insight and judgment. (AR
6 602-03).⁷ Dr. Flores diagnosed Plaintiff with, inter alia, "major
7 depressive disorder, single episode, mild; generalized anxiety disorder;
8 and psychological factors affecting medical condition, irritable bowel
9 syndrome." (AR 603). Dr. Flores opined that more than 51% of
10 Plaintiff's anxiety and depressive disorders and her current
11 psychological disability were directly related to her exposure to stress
12 and sexual harassment commencing on or about 2001, her work overload
13 commencing on or about February 2004, and the orthopedic injuries she
14 sustained at work on July 15, 2004. (AR 605). While Dr. Flores
15 provided treatment recommendations, Dr. Flores did not provide or
16 specify any functional work limitations. (See AR 605-06).
17
18

19 Dr. Flores opined, in Progress Notes prepared in February, March,
20 April, and May, 2006, that Plaintiff should "[r]emain off-work until
21 next appt." (AR 408-13). Following his examination of Plaintiff, (see
22 AR 414-40), Dr. Flores completed a Comprehensive Psychological Medical-
23 Legal Permanent and Stationary Evaluation Report dated September 5,
24

25 ⁷ In the "Summary and Discussion" section of the December 16,
26 2004 Psychological Report, Dr. Flores wrote: "The patient's attention,
27 auditory memory and concentration appeared to be intact. The patient
28 was alert and there was no indication of brain disorder nor
neuropsychological impairment." (AR 592). The ALJ noted that this
portion of the summary appeared to be inconsistent with the results of
the mental status evaluation. (AR 1330).

1 2006, in which he diagnosed Plaintiff with: "Generalized Anxiety
2 Disorder; Major Depressive Disorder, Single Episode, Mild, stable with
3 medical treatment; Psychological Factors Affecting Medical Condition,
4 Irritable Bowel Syndrome and acid reflux; Sleep Disorder Due to Chronic
5 Pain, Insomnia Type; and Female Hypoactive Sexual Desire Disorder, Due
6 to Chronic Pain, which developed from her exposure to stress and sexual
7 harassment, her continuous orthopedic trauma injury commencing in or
8 about August 2003, and her subsequent industrial accident of July 15,
9 2004, at her place of employment." (AR 416-17, 429-30). Dr. Flores
10 opined, inter alia, that Plaintiff's current psychological condition was
11 permanent and stationary, her current level of psychiatric disability
12 was moderate (noting a Global Assessment of Function ("GAF") score of
13 46⁸), and she is a Qualified Injured Worker in need of vocational
14 rehabilitation, but unable to successfully complete a vocational
15 rehabilitation due to her current emotional and cognitive functions and
16

17
18 ⁸ "A GAF score is a rough estimate of an individual's
19 psychological, social, and occupational functioning used to reflect the
20 individual's need for treatment." Vargas v. Lambert, 159 F.3d 1161,
21 1164 n.2 (9th Cir. 1998). The GAF includes a scale ranging from 0-100,
22 and indicates a "clinician's judgment of the individual's overall level
23 of functioning." American Psychiatric Association, Diagnostic and
24 Statistical Manual of Mental Disorders 32 (4th ed. text rev. 2000)
25 (hereinafter DSM-IV). According to DSM-IV, a GAF score between 41 and
26 50 describes "serious symptoms" or "any serious impairment in social,
27 occupational, or school functioning." Id. at 34 "Although GAF scores,
28 standing alone, do not control determinations of whether a person's
mental impairments rise to the level of a disability (or interact with
physical impairments to create a disability), they may be a useful
measurement." Garrison, 759 F.3d at 1003 n.4.

The Court notes that the DSM-V eliminated the GAF scale. See
26 Olsen v. Comm'r Soc. Sec. Admin, 2016 WL 4770038, at *4 (D. Or. Sept.
27 12, 2016) ("The DSM-V no longer recommends using GAF scores to measure
28 mental health disorders because of their 'conceptual lack of clarity .
. . . and questionable psychometrics in routine practice.'"; quoting
DSM-V, 16 (5th ed. 2013)).

1 her symptoms at this time. (AR 416-18, 430-34). Dr. Flores found
2 Plaintiff's prognosis to be guarded because he did not believe her
3 mental condition would significantly improve unless her physical
4 condition significantly improved. (AR 418-34). Dr. Flores recommended,
5 inter alia, that if Plaintiff returns to work "in any capacity" and her
6 symptoms persist, (a) she "should not be placed to work in any position
7 where she might be at a risk of being involved in an industrial accident
8 if she becomes anxious and/or distracted (due to her nervousness,
9 restlessness, difficulty concentrating, memory problems, persisting pain
10 and headaches, difficulty controlling her emotions and impulses and
11 difficulty making decisions), (b) she should not work at high altitudes,
12 and (c) she "should not work in any position where she may be required
13 to handle stress and/or conflicts on a regular basis while interacting
14 with the public and/or coworkers." (AR 434).
15

16
17 ALJ Arno gave "little weight" to Dr. Flores's various opinions
18 because they were not helpful to, or not inconsistent with, the RFC
19 determination. (AR 1334-35).
20

21 ALJ Arno properly determined that Dr. Flores's opinion about
22 Plaintiff's ability to successfully complete a vocational rehabilitation
23 program - "the process of rebuilding work skills as part of recovering
24 from an injury or illness," - was not relevant to the RFC determination.
25 (AR 1334). See Meanel, 172 F.3d at 1114; 20 C.F.R. § 404.1527(a)(1).
26 Indeed, Plaintiff has failed to show how Dr. Flores's opinion about
27 Plaintiff's inability to successfully complete a vocational
28

1 rehabilitation program was inconsistent with ALJ Arno's RFC
2 determination. See Sherman, 582 Fed.Appx. at 748.

3
4 Dr. Flores's opinions about Plaintiff's permanent and stationary
5 mental condition and moderate level of psychiatric disability were based
6 on his assessments of Plaintiff's abilities including a Description of
7 Work Functions/Vocational Manifestation ("Work Functions document"), and
8 a Permanent and Stationary Psychological Disability ("Psychological
9 Disability document"), in which numerical scores were assigned to
10 Plaintiff's ability to perform specific work functions, (such as ability
11 to comprehend and follow instructions, perform simple and repetitive
12 tasks, maintain work pace appropriate to given work load, perform
13 complex or varied tasks, relate to other people beyond giving and
14 receiving instructions, effectively influence people on a consistent
15 basis, making generalizations, evaluations or decisions without
16 immediate supervision, and accept and carry out responsibility for
17 direction, control and planning), (see AR 436-37), and her levels of
18 impairment relating to these functions were listed as "slight to
19 moderate to moderate," "moderate," "moderate to moderate to severe," and
20 "moderate to severe," (see AR 438-40).

21
22
23 As ALJ Arno noted (see AR 1334-35), Dr. Flores's assessments of
24 Plaintiff's abilities were problematic and/or confusing: (a) the scale
25 provided in the Work Functions document contained a "4" for "moderate
26 (marked impairment)," (AR 436), whereas the terms "moderate" and
27 "marked" have specific definitions in the context of evaluating mental
28

1 impairments in Social Security disability cases (see 20 C.F.R. § 404,
2 Subpart P, Appendix 1, Listing of Impairments 12.00F2, 12.04, 12.06);
3 (b) in the Work Functions document, Plaintiff received a "5" (meaning,
4 "severe [unable to perform work function]") for the sub-area of "React
5 appropriately to criticism from a supervisor," the only "5" she
6 received, but there was no explanation regarding why she received that
7 score (see AR 437); and (c) in the Psychological Disability document,
8 the terms "slight," "moderate" and "severe" were not defined, and the
9 highest level of impairment assigned to a work function, namely,
10 "moderate to severe," which was assigned to Plaintiff's ability to
11 relate to other people beyond giving and receiving instructions (AR 43),
12 was not clearly defined.
13

14
15 ALJ Arno properly found that the lack of clear definitions for such
16 terms rendered Dr. Flores's opinions about Plaintiff's abilities
17 unhelpful to the RFC determination. See Ford v. Saul, 950 F.3d 1141,
18 1156 (9th Cir. 2020) ("[T]he ALJ determined that Dr. Zipperman did not
19 provide useful statements regarding the degree of [the claimant's]
20 limitations. Here, the ALJ found that Dr. Zipperman's descriptions of
21 [the claimant's] ability to perform in the workplace as "limited" or
22 "fair" were not useful because they failed to specify ["the claimant's]
23 functional limits. Therefore, the ALJ could reasonably conclude these
24 characterizations were inadequate for determining RFC."). ALJ Arno also
25 properly found that the numerical scores given to specific abilities on
26 the Work Functions Report were not adequately explained or supported.
27 See Ford, 950 F.3d at 1155 ("An ALJ is not required to take medical
28

1 opinions at face value, but may take into account the quality of the
2 explanation when determining how much weight to give a medical
3 opinion."); Thomas, 278 F.3d at 957 ("The ALJ need not accept the
4 opinion of any physician including the treating physician, if that
5 opinion is brief, conclusory and inadequately supported by clinical
6 findings."); see also 20 C.F.R. § 404.1527(d) (3) ("The more a medical
7 source presents relevant evidence to support a medical opinion,
8 particularly medical signs and laboratory findings, the more weight we
9 will give that medical opinion. The better an explanation a source
10 provides for a medical opinion, the more weight we will give that
11 medical opinion.").⁹

12
13
14 In addition, ALJ Arno properly discounted Dr. Flores's opinions
15 about Plaintiff's limitations if she were to return to work, (AR 1335),
16 noting that Dr. Flores's opinion about Plaintiff not having a job in
17 which she handles stress was vague, (id. ["what is stressful is
18 subjective and could differ on a case-by-case basis."]), and Dr. Flores
19 did not specify what Plaintiff should be precluded from doing in the
20 workplace (other than not working at heights) or what Plaintiff was
21 capable of doing in the workplace despite her impairments. Id. See
22 Meanel, 172 F.3d at 1114; 20 C.F.R. § 404.1527(a) (1). Moreover, ALJ
23

24
25 ⁹ Although Dr. Flores stated that he considered the detailed
26 post-treatment test results/data contained in a Psychological Test
27 Report when rendering his opinions about, inter alia, Plaintiff's work
28 restrictions and Plaintiff's work function abilities, and that the post-
treatment Psychological Test Report would be sent as an addendum to the
September 5, 2006 Comprehensive Psychological Medical-Legal Permanent
and Stationary Evaluation Report (see AR 428-29), the Court has been
unable to locate that Psychological Test Report in the record.

1 Arno also properly found that the RFC determination, which precluded
2 Plaintiff from work requiring a high-quota production-rate pace, and
3 limited Plaintiff to simple and routine tasks and only occasional
4 contact with the public and occasional interaction with coworkers (AR
5 1327) sufficiently addressed Dr. Flores's workplace limitations. (AR
6 1335).

7
8 Finally, ALJ Arno's Step Four finding that Plaintiff could not
9 perform her past relevant work was not inconsistent with Dr. Flores's
10 opinions that Plaintiff should not return to the job she was performing
11 at the time of her Workers' Compensation claim, a finding which
12 Plaintiff does not appear to contest.
13

14
15 Therefore, the ALJ provided clear and convincing and/or specific
16 and legitimate reasons for rejecting Dr. Flores's opinions.
17

18 **ORDER**

19
20 For the foregoing reasons, the decision of the Commissioner is
21 AFFIRMED.
22

23 LET JUDGMENT BE ENTERED ACCORDINGLY.
24

25 DATED: February 16, 2021.
26

27 _____
28 /s/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE