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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SOCORRO AIDE R., an Individual,

Plaintiff,

v.

ANDREW M. SAUL, Commissioner of
Social Security,

Defendant.

Case No.: 5:19-02069 ADS

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

Plaintiff Socorro Aide R.¹ (“Plaintiff”) challenges Defendant Andrew M. Saul, Commissioner of Social Security’s (hereinafter “Commissioner” or “Defendant”) denial of her application for supplemental security income (“SSI”). Plaintiff contends that the Administrative Law Judge (“ALJ”) improperly rejected her testimony regarding her

¹ Plaintiff’s name has been partially redacted in compliance 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.

1 subjective limitations due to her fibromyalgia. For the reasons stated below, the
2 decision of the Commissioner is affirmed, and this matter is dismissed with prejudice.

3 **II. FACTS RELEVANT TO THE APPEAL**

4 Plaintiff filed an application for SSI on July 12, 2016, alleging a disability onset
5 date of February 1, 2016. (Administrative Record “AR” 138-43). Plaintiff stated on her
6 application that she filed for disability due to fibromyalgia. (AR 71). When asked at the
7 Administrative hearing what prevents her from working, Plaintiff testified of the
8 following conditions: complications from fibromyalgia, problems with sleeping and
9 issues with her left hand for which she recently had surgery. (AR 46-48).

10 Plaintiff’s attorney at the hearing stated that she is seeking disability primarily for
11 fibromyalgia, but that she also has polyarthralgia related to post traumatic arthritis,
12 obstructive sleep apnea, and a hemangioma on her left hand. (AR 37). The attorney
13 stated that it is a combination of these conditions that keeps Plaintiff from being able to
14 work. Id. The attorney also stated that Plaintiff was currently being worked up for in-
15 home support services, which establishment was likely imminent. Id.

16 Plaintiff testified that she lives with her boyfriend of 17 years and her son. (AR
17 34). Plaintiff stated that her adult daughter helps her to get out of bed, get dressed,
18 washes her hair and cleans and cooks for her. (AR 40). Plaintiff also testified that her
19 daughter had recently quit her job and was preparing to be her in-home caretaker. Id.
20 Plaintiff stated she does no housework and that her typical day consists of sitting in a
21 recliner or lying in bed and watching television.

22 Plaintiff’s rather negligible documented work history, evidences that Plaintiff last
23 worked in 2003, earning \$8340 that year. (AR 144, 148). Plaintiff testified that her last
24 employment was at In-N-Out Burger where she worked from approximately 2000 thru

1 2003. (AR 44). Plaintiff stated that stopped working at In-N-Out burger when she got
2 pneumonia and could no longer perform her job duties. (AR 44-45). Plaintiff also
3 testified that, shortly after stopping work, she began having her current symptoms and
4 that for a long period of time she was told she might have lupus and only in 2016 was
5 she diagnosed with fibromyalgia. (AR 50-54).

6 **III. PROCEEDINGS BELOW**

7 **A. Procedural History**

8 Plaintiff filed an application for SSI on July 12, 2016, alleging disability beginning
9 February 1, 2016. (AR 138-43). Plaintiff's claims were denied initially on September 30,
10 2016 (AR 71-82), and upon reconsideration on December 28, 2016 (AR 84-93). A video
11 hearing was held before ALJ Louis M. Catanese on October 31, 2018. (AR 33-70).

12 Plaintiff, represented by counsel, appeared and testified at the hearing. Appearing and
13 testifying by phone was vocational expert Daniel Kennan. (Id.)

14 On November 19, 2018, the ALJ found that Plaintiff was “not disabled” within the
15 meaning of the Social Security Act.² (AR 18-29). The ALJ's decision became the
16 Commissioner's final decision when the Appeals Council denied Plaintiff's request for
17 review on September 23, 2019. (AR 1-6). Plaintiff then filed this action in District Court
18 on October 29, 2019, challenging the ALJ's decision. [Docket “Dkt.” No. 1].

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23 ² Persons are “disabled” for purposes of receiving Social Security benefits if they are
24 unable to engage in any substantial gainful activity owing to a physical or mental
impairment expected to result in death, or which has lasted or is expected to last for a
continuous period of at least 12 months. 42 U.S.C. §423(d)(1)(A).

1 On April 6, 2020, Defendant filed an Answer, as well as a copy of the Certified
2 Administrative Record. [Dkt. Nos. 16, 17]. The parties filed a Joint Stipulation on
3 August 5, 2020. [Dkt. No. 20]. The case is ready for decision.³

4 **B. Summary of ALJ Decision After Hearing**

5 In the decision (AR 18-29), the ALJ followed the required five-step sequential
6 evaluation process to assess whether Plaintiff was disabled under the Social Security
7 Act.⁴ 20 C.F.R. § 416.920(a). At **step one**, the ALJ found that Plaintiff had not been
8 engaged in substantial gainful activity since May 11, 2016, the application date. (AR 21).
9 At **step two**, the ALJ found that Plaintiff had the following severe impairments:
10 (a) fibromyalgia/polyarthralgia; (b) asthma; (c) sleep apnea; and (d) morbid obesity.
11 (AR 21). At **step three**, the ALJ found that Plaintiff “does not have an impairment or
12 combination of impairments that meets or medically equals the severity of one of the
13 listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.920(d),
14 416.925 and 416.926).” (AR 22).

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18 ³ The parties filed consents to proceed before the undersigned United States Magistrate
19 Judge, pursuant to 28 U.S.C. § 636(c), including for entry of final Judgment. [Dkt. Nos.
20 11, 12].

21 ⁴ The ALJ follows a five-step sequential evaluation process to assess whether a claimant
22 is disabled: Step one: Is the claimant engaging in substantial gainful activity? If so, the
23 claimant is found not disabled. If not, proceed to step two. Step two: Does the claimant
24 have a “severe” impairment? If so, proceed to step three. If not, then a finding of not
disabled is appropriate. Step three: Does the claimant’s impairment or combination of
impairments meet or equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1?
If so, the claimant is automatically determined disabled. If not, proceed to step four.
Step four: Is the claimant capable of performing his past work? If so, the claimant is not
disabled. If not, proceed to step five. Step five: Does the claimant have the residual
functional capacity to perform any other work? If so, the claimant is not disabled. If
not, the claimant is disabled. Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

1 The ALJ then found that Plaintiff had the Residual Functional Capacity (“RFC”)⁵
2 to perform no greater than light work as defined in 20 C.F.R. § 416.967(b)⁶, restricted by
3 the following limitations:

4 could not climb ladders, ropes, or scaffolds and could perform all
5 other postural activities on an occasional basis (climbing ramps and
6 stairs, balancing, stooping, kneeling, crouching, and crawling);
7 would also need to avoid concentrated exposure to hazards and also
8 pulmonary irritants in the workplace; and could also frequently
9 handle with the left upper extremity.

10 (AR 23).

11 At **step four**, the ALJ found that Plaintiff has no past relevant work. (AR 28).

12 At **step five**, considering Plaintiff’s age, education, work experience and RFC, the ALJ
13 found that “there are jobs that exist in significant numbers in the national economy that
14 the [Plaintiff] can perform.” (AR 28). The ALJ accepted the vocational expert’s
15 testimony that Plaintiff would be able to perform the representative occupations of:
16 cashier II (DOT 211.462-010); ticket taker (DOT 233.677-010); and router (DOT
17 222.587-038). (AR 29). Accordingly, the ALJ determined that Plaintiff had not been

18 ⁵ An RFC is what a claimant can still do despite existing exertional and nonexertional
19 limitations. See 20 C.F.R. § 416.945(a)(1).

20 ⁶ “Light work” is defined as
21 lifting no more than 20 pounds at a time with frequent lifting or carrying
22 of objects weighing up to 10 pounds. Even though the weight lifted may be
23 very little, a job is in this category when it requires a good deal of walking
24 or standing, or when it involves sitting most of the time with some pushing
and pulling of arm or leg controls. To be considered capable of performing
a full or wide range of light work, you must have the ability to do
substantially all of these activities.

20 C.F.R. § 416.967(b); see also Rendon G. v. Berryhill, 2019 WL 2006688, at *3 n.6
(C.D. Cal. May 7, 2019).

1 under a disability, as defined in the Social Security Act, since May 11, 2016, the date the
2 application was filed. (AR 29).

3 **IV. ANALYSIS**

4 **A. Issue on Appeal**

5 Plaintiff raises one issue for review: whether the ALJ failed to provide clear and
6 convincing reasons to reject her subjective limitations due to her fibromyalgia? [Dkt.
7 No. 20 (Joint Stipulation), 4].

8 **B. Standard of Review**

9 A United States District Court may review the Commissioner’s decision to deny
10 benefits pursuant to 42 U.S.C. § 405(g). The District Court is not a trier of the facts but
11 is confined to ascertaining by the record before it if the Commissioner’s decision is
12 based upon substantial evidence. Garrison v. Colvin, 759 F.3d 995, 1010 (9th Cir. 2014)
13 (District Court’s review is limited to only grounds relied upon by ALJ) (citing Connett v.
14 Barnhart, 340 F.3d 871, 874 (9th Cir. 2003)). A court must affirm an ALJ’s findings of
15 fact if they are supported by substantial evidence and if the proper legal standards were
16 applied. Mayes v. Massanari, 276 F.3d 453, 458-59 (9th Cir. 2001). An ALJ can satisfy
17 the substantial evidence requirement “by setting out a detailed and thorough summary
18 of the facts and conflicting clinical evidence, stating his interpretation thereof, and
19 making findings.” Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998) (citation
20 omitted).

21 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a specific
22 quantum of supporting evidence. Rather, a court must consider the record as a whole,
23 weighing both evidence that supports and evidence that detracts from the Secretary’s
24 conclusion.” Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citations and

1 internal quotation marks omitted). “Where evidence is susceptible to more than one
2 rational interpretation,’ the ALJ’s decision should be upheld.” Ryan v. Comm’r of Soc.
3 Sec., 528 F.3d 1194, 1198 (9th Cir. 2008) (citing Burch v. Barnhart, 400 F.3d 676, 679
4 (9th Cir. 2005)); see Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006) (“If
5 the evidence can support either affirming or reversing the ALJ’s conclusion, we may not
6 substitute our judgment for that of the ALJ.”). However, the Court may review only “the
7 reasons provided by the ALJ in the disability determination and may not affirm the ALJ
8 on a ground upon which he did not rely.” Orn v. Astrue, 495 F.3d 625, 630 (9th Cir.
9 2007) (citation omitted).

10 Lastly, even if an ALJ errs, the decision will be affirmed where such error is
11 harmless, that is, if it is “inconsequential to the ultimate nondisability determination,”
12 or if “the agency’s path may reasonably be discerned, even if the agency explains its
13 decision with less than ideal clarity.” Brown-Hunter v. Colvin, 806 F.3d 487, 492 (9th
14 Cir. 2015) (citation omitted); Molina v. Astrue, 674 F.3d 1104, 1115 (9th Cir. 2012).

15 **C. Whether the ALJ Properly Evaluated Plaintiff’s Testimony**

16 Plaintiff asserts that the ALJ did not properly evaluate her testimony regarding
17 her limitations due to fibromyalgia. Defendant, on the other hand, contends the ALJ
18 properly evaluated Plaintiff’s subjective statements, finding them inconsistent with and
19 unsupported by the record.

20 1. Legal Standard for Evaluating Claimant’s Testimony

21 A claimant carries the burden of producing objective medical evidence of his or
22 her impairments and showing that the impairments could reasonably be expected to
23 produce some degree of the alleged symptoms. Benton ex rel. Benton v. Barnhart, 331
24 F.3d 1030, 1040 (9th Cir. 2003). Once the claimant meets that burden, medical

1 findings are not required to support the alleged severity of pain. Bunnell v. Sullivan,
2 947 F.2d 341, 345 (9th Cir. 1991) (en banc); see also Light v. Soc. Sec. Admin., 119 F.3d
3 789, 792 (9th Cir. 1997) (“claimant need not present clinical or diagnostic evidence to
4 support the severity of his pain”) (citation omitted)). Defendants does not contest that
5 Plaintiff carried her burden of producing objective medical evidence of her impairments
6 and showing that the impairments could reasonably be expected to produce some
7 degree of the alleged symptoms.

8 Once a claimant has met the burden of producing objective medical evidence, an
9 ALJ can reject the claimant’s subjective complaint “only upon (1) finding evidence of
10 malingering, or (2) expressing clear and convincing reasons for doing so.” Benton, 331
11 F.3d at 1040. To discredit a claimant's symptom testimony when the claimant has
12 provided objective medical evidence of the impairments which might reasonably
13 produce the symptoms or pain alleged and there is no evidence of malingering, the ALJ
14 “may reject the claimant’s testimony about the severity of those symptoms only by
15 providing specific, clear and convincing reasons for doing so.” Brown-Hunter, 806 F.3d
16 at 489 (“we require the ALJ to specify which testimony she finds not credible, and then
17 provide clear and convincing reasons, supported by evidence in the record, to support
18 that credibility determination”); Laborin v. Berryhill, 867 F.3d 1151, 1155 (9th Cir. 2017).

19 The ALJ may consider at least the following factors when weighing the claimant’s
20 credibility: (1) his or her reputation for truthfulness; (2) inconsistencies either in the
21 claimant’s testimony or between the claimant’s testimony and his or her conduct; (3) his
22 or her daily activities; (4) his or her work record; and (5) testimony from physicians and
23 third parties concerning the nature, severity, and effect of the symptoms of which she
24 complains. Thomas v. Barnhart, 278 F.3d 948, 958-59 (9th Cir. 2002) (citing Light, 119

1 F.3d at 792). “If the ALJ’s credibility finding is supported by substantial evidence in the
2 record, [the court] may not engage in second-guessing.” Id. at 959 (citing Morgan v.
3 Apfel, 169 F.3d 595, 600 (9th Cir. 1999)).

4 (a) SSR 12-2p Evaluation of Fibromyalgia

5 Due to the complexity and numerous cases dealing with fibromyalgia (“FM”), the
6 SSA has issued Soc. Sec. Rul. 12-2p to provide clearer guidance and policy interpretation
7 of this impairment. Social Security Claims and Procedures, Vol. 1, 6th Edition, 2020
8 Supplement, § 8:151 (citing 77 Fed. Reg. 43640 (July 25, 2012)). FM is a medically
9 determinable impairment (MDI) when the appropriate medical evidence is established
10 from an acceptable medical source (a licensed physician or osteopathic doctor). A
11 person will be found to have an MDI of FM if he or she is diagnosed with FM and his or
12 her physician provides evidence in accordance with the 1990 American College of
13 Rheumatology Criteria for the Classification of Fibromyalgia or the 2010 American
14 Colleges of Rheumatology Preliminary Diagnostic Criteria.⁷

15 The 1990 American College of Rheumatology Criteria for the Classification of
16 Fibromyalgia includes a finding of wide-spread history of pain in all quadrants of the
17 body and axial skeletal pain that has persisted for at least three months. There also
18 must be at least eleven positive tender points on a physical examination found
19 bilaterally on the body above and below the waist. (The 18 tender point sites are located
20 on each side of the body at the occiput (base of skull); low cervical spine (back and side
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22 ⁷ The ALJ found here that “[i]t does not appear that the claimant has been diagnosed
23 with fibromyalgia as described in Social Security Ruling 12-2p, I accept the diagnosis
24 based on the report of claimant supported by diagnoses in the record, including from
the consultative examiner, who diagnosed a history of fibromyalgia with polyarthralgia.”
(AR 25, n. 3).

1 of the neck); trapezius muscle (shoulder); supraspinatus muscle (near the shoulder
2 blade); second rib (top of the rib cage near the sternum or breast bone); lateral
3 epicondyle (outer aspects of the elbow); gluteal (top of the buttock); greater trochanter
4 (below the hip); and inner aspect of the knee). Additionally, there must be evidence that
5 other disorders that would cause the symptoms or signs were excluded.

6 The 2010 American College of Rheumatology Preliminary Diagnostic Criteria
7 includes finding of widespread history of pain. There also must be repeated
8 manifestation of six or more FM symptoms, signs, or co-occurring conditions such as
9 fatigue, memory problems, waking unrefreshed, depression, anxiety, or irritable bowel
10 syndrome. Additionally, there must be evidence that other disorders that would cause
11 the symptoms or signs were excluded.

12 The documentation needed to establish the presence of MDI and FM includes
13 objective medical evaluation from treating sources and treatment notes from these same
14 sources. Other evidence is also acceptable and includes evidence from medical sources,
15 such as psychologists and non-medical sources such as neighbors, friends, relatives, and
16 clergy; past employers, rehabilitation counselors, and teachers; and statements from
17 SSA personnel who interviewed the person.

18 As with any adult claim for disability benefits, the SSA will use the five-step
19 sequential evaluation process to determine whether an adult with an MDI of FM is
20 disabled.

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1 2. The ALJ provided Clear and Convincing Reasons Supported by
2 Substantial Evidence

3 Having carefully reviewed the record, the Court finds that the ALJ provided
4 specific, clear and convincing reasons for discounting Plaintiff's subjective limitations of
5 fibromyalgia.⁸ The ALJ found that Plaintiff's subjective complaints were not entirely
6 consistent with the medical evidence of record or the medical opinions of record, and
7 found inconsistencies in Plaintiff's statements and conduct, including her own
8 statements of daily activities in the medical records. (AR 23-28). Plaintiff, however,
9 contends that the ALJ did not give clear and convincing reasons to dismiss her
10 testimony.

11 Important to note, the ALJ did not "dismiss" Plaintiff's testimony concerning her
12 pain, symptoms, and level of limitation. Rather, the ALJ stated that he had considered
13 Plaintiff's testimony in limiting her work at the less than light exertional level, which
14 was less than had been assessed by the State agency medical examiners. (AR 23-27).
15 Accordingly, the ALJ reduced Plaintiff's RFC of light work to "could not climb ladders,
16 ropes, or scaffolds and could not perform all other postural activities on an occasional
17 basis (climbing ramps and stairs, balancing, stooping, kneeling, crouching, and
18 crawling); would also need to avoid concentrated exposure to hazards and also
19 pulmonary irritants in the workplace; and could frequently handle with the left upper
20 extremity." (AR 23).

21 The ALJ performed a thorough review of Plaintiff's medical record and found
22 that it did not fully support Plaintiff's allegations of disabling conditions. The ALJ
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24 ⁸ The ALJ did not make a finding of malingering in her opinion. (AR 18-29).

1 reviewed and cited to Plaintiff's medical records and finding they "are unremarkable
2 and include clear lungs; intact sensation; normal gait, station, and posture; and full
3 lumbar spine range of motion with no tenderness." (AR 24). The ALJ found that the
4 records did not demonstrate that Plaintiff would be unable to perform a range of light
5 exertion, with the express limitations. See Chaudhry v. Astrue, 688 F.3d 661, 672 (9th
6 Cir 2012) (the ALJ's determination should not be second-guessed where reasonable and
7 supported by substantial evidence).

8 The ALJ properly considered how consistent Plaintiff's subjective symptom
9 statements were with this objective medical evidence. 20 C.F.R. § 404.1529(c)(2). This
10 could not be the ALJ's sole reason for rejecting Plaintiff's statements about her
11 symptoms, but it was a factor that the ALJ was permitted to consider. Id.; see also
12 Burch, 400 F.3d at 681 ("Although lack of medical evidence cannot form the sole basis
13 for discounting pain testimony, it is a factor that the ALJ can consider in his credibility
14 analysis."); Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001) (while a claimant's
15 subjective statements about symptomology "cannot be rejected on the sole ground that
16 it is not fully corroborated by objective medical evidence, the medical evidence is still a
17 relevant factor"). Thus, the lack of consistency between Plaintiff's medical records and
18 her testimony was a proper basis for the ALJ's discounting Plaintiff's testimony.

19 The ALJ also properly considered that the medical opinion evidence, all of which
20 found Plaintiff capable of performing medium work, contradicted Plaintiff's symptom
21 testimony. (AR 25-30). See 20 C.F.R. § 416.929(c)(4) (conflicts between a claimant's
22 statements and statements by medical sources are considered in evaluating subjective
23 complaints); see also Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1175 (9th Cir. 2008)
24 (finding that the medical evidence, including the opinions of two physicians that a

1 claimant could work, supported the ALJ’s credibility determination); Moncada v.
2 Chater, 60 F.3d 521, 524 (9th Cir. 1995) (an ALJ may consider physician opinions that
3 claimant could work, which contradict claimant’s assertion to the contrary). As
4 Defendant points out, it is notable that Plaintiff fails to point to any medical opinion
5 indicating that she had any greater limitations than the medical doctors opined. The
6 ALJ, however, did take Plaintiff’s subjective complaints and testimony into
7 consideration, and assessed her with an RFC for light work, with limitations – less than
8 the medium level of work the medical opinions assessed for Plaintiff.

9 Plaintiff contends that the ALJ improperly pointed to her level of daily activity as
10 a basis for dismissing her testimony. This is not correct. The ALJ merely cited to
11 Plaintiff’s statements in the record of her daily activities to show the inconsistency with
12 her testimony at the Administrative hearing. (AR 24). An ALJ is permitted to consider
13 daily living activities in his credibility analysis. See 20 C.F.R. § 404.1529(c)(3) (daily
14 activities are a relevant factor which will be considered in evaluating symptoms); see
15 also Bray v. Comm’r of Soc. Sec. Admin., 554 F.3d 1219, 1227 (9th Cir. 2009) (“In
16 reaching a credibility determination, an ALJ may weigh inconsistencies between the
17 claimant’s testimony and his or her conduct, daily activities, and work record, among
18 other factors”). Daily activities may be considered to show that Plaintiff exaggerated her
19 symptoms. See Valentine v. Astrue, 574 F.3d 685, 694 (9th Cir. 2009) (ALJ properly
20 recognized that daily activities “did not suggest [claimant] could return to his old job”
21 but “did suggest that [claimant’s] later claims about the severity of his limitations were
22 exaggerated.”). Although Plaintiff takes issue with this, it was proper for the ALJ to
23 have considered daily living activities in his credibility analysis. See Burch, 400 F.3d at
24 681.

