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

JOY ELIZABETH W.,¹)	NO. EDCV 20-1254-KS
Plaintiff,)	
v.)	MEMORANDUM OPINION AND ORDER
ANDREW SAUL, Commissioner)	
of Social Security,)	
Defendant.)	
_____)	

INTRODUCTION

Joy Elizabeth W. (“Plaintiff”) filed a Complaint on June 22, 2020, seeking review of the denial of her application for a period of disability and disability insurance benefits (“DI”). On July 20, 2020, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. (Dkt. Nos. 11, 12, 14.) On June 17, 2020, the parties filed a Joint Stipulation (“Joint Stip.”). (Dkt. No. 23.) Plaintiff seeks an order reversing the Commissioner’s decision and awarding benefits, or, in the alternative, remanding for further proceedings. (Joint Stip. at 38.) The Commissioner requests that the ALJ’s decision

¹ Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 be affirmed. (*See id.* at 39.) The Court has taken the matter under submission without oral
2 argument.

3 4 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**

5
6 In January 2017, Plaintiff, who was born on November 23, 1972, filed applications for
7 a period of disability and DI.² (*See* Joint Stip. at 2; Administrative Record (“AR”) 15, 29,
8 169.) Plaintiff alleged disability commencing January 3, 2017 due to multiple sclerosis. (AR
9 182.) Plaintiff previously worked as a telephone sales representative (DOT 299.357-014),
10 instructor (DOT 090.227-010), and donor recruiter (DOT 293.357-010). (AR 28, 55-57, 183.)
11 The Commissioner denied Plaintiff’s applications initially (AR 99-102) and on reconsideration
12 (AR 103-07). On May 1, 2019, Administrative Law Judge Deborah Van Vleck (the “ALJ”)
13 held a hearing at which Plaintiff, who was represented by counsel, testified as did vocational
14 expert Jennifer Guediri (the “VE”). (AR 35-80.) On July 30, 2019, the ALJ issued an
15 unfavorable decision, denying Plaintiff’s application. (AR 15-30.) On April 27, 2020, the
16 Appeals Council denied Plaintiff’s request for review. (AR 1-6.)

17 18 **SUMMARY OF ADMINISTRATIVE DECISION**

19
20 The ALJ found that Plaintiff met the insured status requirements of the Social Security
21 Act through December 31, 2019. (AR 17.) The ALJ further found that Plaintiff had not
22 engaged in substantial gainful activity since the alleged onset date of January 3, 2017. (AR
23 18.) The ALJ determined that Plaintiff had the following severe impairments: “relapsing
24 remitting multiple sclerosis with cognitive disorder.” (AR 18.) The ALJ also concluded that
25 Plaintiff did not have an impairment or combination of impairments that met or medically
26 equaled the severity of any impairments listed in 20 C.F.R. part 404, subpart P, appendix 1 (20

27
28

² Plaintiff was 44 years old on the alleged onset date and was thus defined as a younger individual under agency regulations. *See* 20 C.F.R. § 404.1563(c).

1 C.F.R. §§ 404.1520(d), 404.1525, 404.1526. (AR 18-19.) In reaching that conclusion, the
2 ALJ noted that she had considered listing 12.02 regarding neurocognitive disorders, listing
3 11.09 concerning multiple sclerosis, and listings 2.02 and 2.03 concerning visual impairments.
4 (AR 18-21.) The ALJ determined that, during the relevant period, Plaintiff had the residual
5 functional capacity (“RFC”) to perform light work³ with the following additional limitations:
6

7 [Plaintiff] can occasionally climb ramps or stairs but can never climb
8 ladders, ropes, or scaffolds. [Plaintiff] can occasionally balance, stoop,
9 kneel, crouch, and crawl. [Plaintiff] is unable to read ordinary newspaper
10 or book print, but is capable of avoiding ordinary hazards in the workplace
11 such as boxes and warning signs. [Plaintiff] can never work in the presence
12 of unprotected heights or hazardous machinery, and should not be required
13 to operate a motor vehicle as part of her job duties. [Plaintiff] can never
14 work in the presence of concentrated exposure to dust, odors, fumes, or
15 pulmonary irritants, extreme cold, extreme heat, humidity, or wetness.
16 [Plaintiff] can perform simple and routine tasks, can use judgment for that
17 type of work, and can deal with changes that are consistent with simple work
18 and simple work-related decisions. [Plaintiff] can never work with the
19 public.
20

21 (AR 21.)
22

23 The ALJ found that Plaintiff was unable to perform her past relevant work as a telephone
24 sales representative (DOT 299.357-014), instructor (DOT 090.227-010), and donor recruiter
25 (DOT 293.357-010). (AR 28.) However, considering Plaintiff’s age, education, work
26

27 ³ “Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing
28 up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of
walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.”
20 C.F.R. § 404.1567

1 experience, and residual functional capacity, the ALJ determined that jobs existed in
2 significant numbers in the national economy that Plaintiff could perform, including the
3 representative occupations of “folder, textiles” (DOT 789.687-058), hand filler (DOT
4 780.687-046), and toy stuffer (DOT 731.685-014)⁴. (AR 29-30.) Therefore, the ALJ
5 concluded that Plaintiff had not been under a disability as defined in the Social Security Act
6 from the alleged onset date of January 3, 2017 through July 30, 2019, the date of the ALJ’s
7 decision. (AR 30.)

8 9 STANDARD OF REVIEW

10
11 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine
12 whether it is free from legal error and supported by substantial evidence in the record as a
13 whole. *Ahearn v. Saul*, 988 F.3d 1111, 1115, 1116 (9th Cir. 2021); *Orn v. Astrue*, 495 F.3d
14 625, 630 (9th Cir. 2007). Substantial evidence is “more than a mere scintilla,” but less than a
15 preponderance: it is “such relevant evidence as a reasonable mind might accept as adequate
16 to support a conclusion.” *Biestek v. Berryhill*, ___ U.S. ___, 139 S. Ct. 1148, 1154 (2019);
17 *Gutierrez v. Comm’r of Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir. 2014). “Even when the
18 evidence is susceptible to more than one rational interpretation, we must uphold the ALJ’s
19 findings if they are supported by inferences reasonably drawn from the record.” *Molina v.*
20 *Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012).

21
22 Although this Court cannot substitute its discretion for the Commissioner’s, the Court
23 nonetheless “must assess the entire record, weighing the evidence both supporting and
24 detracting from the agency’s conclusion.” *Ahearn*, 988 F.3d at 1115; *Lingenfelter v. Astrue*,
25 504 F.3d 1028, 1035 (9th Cir. 2007). “The ALJ is responsible for determining credibility,
26

27
28 ⁴ The ALJ cited the wrong DOT number for the toy stuffer occupation, but the VE gave the correct one in her
testimony: DOT 731.685-014. (*Compare* AR 29 *with* AR 78.)

1 resolving conflicts in medical testimony, and for resolving ambiguities.” *Ahearn*, 988 F.3d at
2 1115 (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)).

3
4 The Court will uphold the Commissioner’s decision when the evidence is susceptible to
5 more than one rational interpretation. *Ahearn*, 988 F.3d at 1115-16; *Burch v. Barnhart*, 400
6 F.3d 676, 679 (9th Cir. 2005). However, the Court may review only the reasons stated by the
7 ALJ in her decision “and may not affirm the ALJ on a ground upon which [s]he did not
8 rely.” *Orn*, 495 F.3d at 630; *see also Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir.
9 2003). The Court will not reverse the Commissioner’s decision if it is based on harmless error,
10 which exists if the error is “‘inconsequential to the ultimate nondisability determination,’ or if
11 despite the legal error, ‘the agency’s path may reasonably be discerned.’” *Brown-Hunter v.*
12 *Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (internal citations omitted).

13 14 **DISCUSSION**

15
16 According to the Joint Stipulation, there is only a single issue in dispute: whether the
17 ALJ properly considered Plaintiff’s statements about her symptoms and limitations. (Joint
18 Stip. at 4.)

19 20 **I. Plaintiff’s Statements**

21
22 Plaintiff completed her initial Disability Report on January 9, 2017 in which she stated
23 that, due to her multiple sclerosis, she experiences severe double vision and can no longer do
24 computer work or write for an extended time. (AR 203.)

25
26 In an Exertion Questionnaire completed later that month, on January 30, 2017, Plaintiff
27 wrote that she lives in a house with her husband. (AR 219.) She stated that she suffers from
28 weakness in her arms, dizziness, vertigo, severe headaches, fatigue in the afternoons, and pain

1 all day and night. (AR 219.) She stated that, in an average day, for three to four hours, she
2 can drive and work on a computer and do some writing. (AR 219.) After three to four hours
3 of these types of activities, she becomes so fatigued that she needs to rest. (AR 219.)
4

5 Plaintiff wrote that she can walk a quarter-mile with her dogs to keep her body moving.
6 (AR 219.) After that short distance, her legs become “very weak” and she needs to rest. (AR
7 219.) She wrote that she does not climb stairs. (AR 220.) She estimated that she could lift
8 20-25 lbs. but does not regularly do so. (AR 220.) She wrote that once or twice a week she
9 carries books weighing less than two pounds and carries them from the parking lot to the inside
10 of the post office and/or library. (AR 220.)
11

12 Plaintiff wrote that she does not clean her own home or do any yard work. (AR 220.)
13 She wrote that she does drive a car but only for about 30-45 minutes before she needs to stop
14 and rest her eyes and move her legs. (AR 220.) Plaintiff wrote that she can still fold laundry—
15 but she cannot lift it or take it out of the washing machine or dryer. (AR 221.)
16

17 Plaintiff wrote that she sleeps seven to nine hours at night and rests every day around
18 noon, sometimes napping up to four hours. (AR 221.) Plaintiff wrote that she takes rebiff
19 shots three times a week for her multiple sclerosis, prednisone for flare ups, ibuprofen as
20 needed for pain, and Dramamine for dizzy spells. (AR 221.) Plaintiff wrote that she uses a
21 cane or walking stick “occasionally” when she walks long distances or needs to stand in long
22 lines. (AR 221.) Plaintiff added that her multiple sclerosis inhibits her ability to do computer
23 work or reading and that she gets very agitated when she is fatigued. (AR 221.)
24

25 More than two years after completing the Exertion Questionnaire, Plaintiff testified at
26 the May 1, 2019 administrative hearing. Plaintiff testified that her multiple sclerosis had
27 always affected her vision but it had become worse in the last two to three years, and, similarly,
28 her migraines, which had also plagued her all her life, had become worse in the last four years.

1 (AR 59.) She testified that she takes Ocrevus for the multiple sclerosis and Topamax for her
2 migraines. (AR 60.)

3
4 Plaintiff testified that she had a valid driver's license but had not driven a car since
5 January or February 2017 after her optic neurologist told her not to drive because of her vision.
6 (AR 43-44.) She explained that her peripheral vision in both eyes is "not good because of
7 [her] optic nerve." (AR 44.)

8
9 Plaintiff testified that there are no stairs in, or outside of, her home and that, when alone,
10 she uses a four-pronged cane for stability. (AR 46-47.) Although she purchased the cane
11 independent of any medical recommendations, she testified that her neurologist "said it was
12 good that [she] have it." (AR 46.) She testified that she did not bring the cane to the hearing
13 because she was with her parents and could lean on her mom. (AR 47.) She testified that,
14 since falling approximately four years earlier, she had always relied on either another person
15 or her cane for stability. (AR 47.) When asked if she had problems standing and walking,
16 Plaintiff answered, "Only if there's a lot of people. I just don't want to run into people. I
17 don't want to run into things." (AR 61.) She testified, "I can walk as long as there's not a lot
18 of people around" and, in those conditions, could walk "maybe two" blocks. (AR 62.)

19
20 Plaintiff testified that that she could lift maybe five pounds but not for "very long." (AR
21 63.) She testified that, if she had "something to stand on or stand with," she could stand for
22 two to three minutes before becoming fatigued. (AR 62-63.) She testified that she needs to
23 be able stand and stretch when sitting for long periods, such as the length of the administrative
24 hearing. (AR 63.) However, she also testified that, since January 2017, she had seen some
25 movies in the theaters (AR 66) and had driven with her husband from San Bernardino,
26 California to Las Vegas, Nevada for their anniversary. (AR 66-67; *see also id.* 45 (discussing
27 living in San Bernardino).) They stayed for three days and saw "Face," a mime show, which
28 she enjoyed. (AR 67-68.)

1 Plaintiff testified that she has some problems with memory. (AR 66, 73.) Plaintiff
2 testified that she had “recently noticed” experiencing difficulty writing her signature and
3 holding a pen. (AR 64.) Plaintiff testified that she went grocery shopping with her parents
4 and did meal preparation. (AR 64.) She testified that her husband did all of the housecleaning.
5 (AR 65.) Plaintiff testified that, if she was not living with her husband, she would live with
6 her parents because she did not like to be alone and “would be afraid.” (AR 65.) When asked,
7 if she had to live alone, would she be able to handle housecleaning, laundry, and all of other
8 necessary chores from “a physical standpoint and a mental standpoint,” Plaintiff answered, “I
9 would have to, I guess.” (AR 65-66.)
10

11 Plaintiff testified that she had received six months of unemployment—from January
12 2017 through June 2017. (AR 50.) She testified that, during that time, she was “physically
13 and mentally able to perform some work and looking for work.” (AR 50.) She testified that
14 she also drove for Uber and Lyft until the end of February 2017 when she stopped because of
15 her vision. (AR 54.) The ALJ asked, “I thought you were doing Lyft until September of ‘17
16 in the medical evidence . . . So is it possible the driving went on later than February?” (AR
17 55.) Plaintiff responded, “Maybe. I don’t know the dates. Is that what it says?” (AR 55.)
18

19 Plaintiff also testified that, after her unemployment ended, in June 2017, she continued
20 to look for work. (AR 52.) She testified, “I would like to work . . . I would like teaching, but
21 I can’t work on a computer anymore.” (AR 52.) She added that she is also unable to read
22 printed material because she “can’t see it.” (AR 52.) She later testified that she could read
23 “big font,” like the big letter on the top of the eye chart. (AR 61.)
24

25 When asked what she does during an average day, Plaintiff testified that she sits with
26 her dad in the car while her mom goes to the Y to exercise and then sometimes her dad takes
27 her to apply to jobs. (AR 72.) She said that no one ever hires her and that she is sometimes
28 told that she is too educated or that she would have to stand too long. (AR 72.)

1 When asked why she filed her application in January 2017, Plaintiff answered, “Because
2 I just wasn’t able to find another job teaching.” (AR 73.) Plaintiff added that she had
3 experienced difficulty standing during her last year of teaching in addition to difficulty looking
4 at the computer. (AR 74.) She added that she did not have a problem talking on the phone as
5 a donor recruiter “[b]ut there for a while, I couldn’t even get a talking job.” (AR 74.)
6

7 **II. Applicable Law**

8

9 An ALJ must make two findings before discounting a claimant’s statements regarding
10 the severity and persistence of her symptoms. *See Treichler v. Comm’r of Soc. Sec.*, 775 F.3d
11 1090, 1102 (9th Cir. 2014). “First, the ALJ must determine whether the claimant has presented
12 objective medical evidence of an underlying impairment which could reasonably be expected
13 to produce the pain or other symptoms alleged.” *Id.* (quoting *Lingenfelter*, 504 F.3d at 1036).
14 “Second, if the claimant has produced that evidence, and the ALJ has not determined that the
15 claimant is malingering, the ALJ must provide specific, clear and convincing reasons for
16 rejecting the claimant’s testimony regarding the severity of the claimant’s symptoms” and
17 those reasons must be supported by substantial evidence in the record. *Id.*; *see also Marsh v.*
18 *Colvin*, 792 F.3d 1170, 1174 n.2 (9th Cir. 2015); *Carmickle v. Comm’r of Soc. Sec.*, 533 F.3d
19 1155, 1161 (9th Cir. 2008). The ALJ must specifically identify “what testimony is not credible
20 and what evidence undermines the claimant’s complaints.” *Parra v. Astrue*, 481 F.3d 742,
21 750 (9th Cir. 2007) (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *see also*
22 *Brown-Hunter v. Colvin*, 806 F.3d 487, 494 (9th Cir. 2015) (finding legal error where the ALJ
23 “failed to identify the testimony she found not credible”); *Smolen v. Chater*, 80 F.3d 1273,
24 1284 (9th Cir. 1996) (“The ALJ must state specifically which symptom testimony is not
25 credible and what facts in the record lead to that conclusion.”).
26

27 In March 2016, the Commissioner promulgated Social Security Ruling (“SSR”) 16-3p,
28 2017 WL 5180304, which “makes clear what [Ninth Circuit] precedent already required: that

1 assessments of an individual’s testimony by an ALJ are designed to ‘evaluate the intensity and
2 persistence of symptoms’ . . . and not to delve into wide ranging scrutiny of the claimant’s
3 character and apparent truthfulness.” *Trevizo v. Berryhill*, 871 F.3d 664, 678 n.5 (9th Cir.
4 2017). Under SSR 16-3p, the ALJ shall determine whether to credit a claimant’s statements
5 about her pain and limitations by referring to the factors set forth in 20 C.F.R. §
6 404.1529(c)(3), which include: the claimant’s daily activities; the factors that precipitate and
7 aggravate the symptoms; the type, dosage, effectiveness, and side effects of any medication
8 taken to alleviate the symptoms; the claimant’s treatment, other than medication, for the
9 symptoms; any other measure that the individual uses to relieve pain or other symptoms; and,
10 finally, “any other factors concerning an individual’s functional limitations and restrictions.”
11 SSR 16-3p. However, the lack of objective medical evidence supporting a claimant’s
12 allegations cannot provide the sole basis for rejecting his statements about the severity of his
13 symptoms and limitations. *Id.*; *see also Trevizo*, 871 F.3d at 679; 20 C.F.R. §§ 404.1529(c)(2),
14 416.929(c)(2) (“we will not reject your statements about the intensity and persistence of your
15 pain or other symptoms or about the effect your symptoms have on your ability to work solely
16 because the available objective medical evidence does not substantiate your statements”).

17 18 **III. ALJ’s Decision**

19
20 The ALJ determined that Plaintiff’s medically determinable impairments could
21 reasonably be expected to cause the alleged symptoms but found that Plaintiff’s statements
22 concerning the intensity, persistence, and limiting effects of those symptoms were not entirely
23 consistent with the medical evidence and other evidence in the record. (AR 22.) The ALJ
24 cited two reasons for discounting many of Plaintiff’s subjective complaints: (1) the complaints
25 were not supported by the objective medical evidence; and (2) Plaintiff’s activities
26 contradicted many of her complaints.

1 With regards to the first reason, the ALJ observed that the medical evidence showed that
2 Plaintiff's multiple sclerosis developed into a relapsing/remitting symptom pattern, with a
3 2011 relapse (involving weakness and numbness of the right hand), and a 2012 relapse
4 (involving diplopia—also known as double vision). (AR 23.) However, the ALJ found that
5 the medical evidence did not show that Plaintiff suffered a debilitating relapse in or around
6 the alleged onset date and remained in a debilitated condition throughout the alleged period of
7 disability. Specifically, the ALJ pointed to treatment notes from January 2017, the month of
8 Plaintiff's alleged onset date, that indicated that Plaintiff's multiple sclerosis had remained
9 "fairly stable"—without any recent relapse—and Plaintiff described her symptoms as
10 "tolerable." (AR 23) (citing Ex. 1F/2). The ALJ added that notes from a December 2018
11 checkup one year later showed that Plaintiff reported feeling "great" and that her migraines
12 were no longer a problem. (AR 23) (citing Ex. 7F/1). At the same visit, Plaintiff's mother
13 stated that Plaintiff was "doing much better than 1 year ago." (AR 23) (citing Ex. 7F/1).

14
15 The ALJ noted a similar dearth of objective medical evidence supporting Plaintiff's
16 allegations of a significant and sudden exacerbation of her vision problems in or around
17 January 2017. The ALJ explained that an eye examination conducted in January 2017
18 determined that Plaintiff retained 20/20 corrected vision bilaterally (AR 23) (citing Ex. 3F/3)
19 and an evaluation conducted six months later in July 2017 showed no sign of double vision
20 and no need for eye treatment (AR 23) (citing Ex. 5F/1, 3). Further, in May 2018, Plaintiff's
21 vision testing resulted in a diagnosis of optic nerve atrophy but with no prescribed treatment
22 beyond reading glasses. (AR 23) (citing Ex. 8F/43). The ALJ added that, in a July 2018 visit
23 with Parkside Medical Group, Plaintiff reported seeing "pretty well" with glasses and having
24 regained the ability to read and operate a computer. (AR 23) (citing Ex. 7F/3).

25
26 The ALJ also noted that there were was no objective medical evidence that supported
27 Plaintiff's allegations that she experienced a significant decrease in her lifting capacity
28 between January 2017, when she said she could lift 20-25 pounds, and the administrative

1 hearing nearly two and a half years later when she alleged that she could lift no more than five
2 pounds. (AR 25.) For all of the foregoing reasons, the ALJ concluded that the objective
3 medical evidence did not support Plaintiff's allegations that she endured significant symptom
4 exacerbation lasting longer than twelve months during the relevant period. (AR 24.)
5

6 The ALJ's second reason for declining to credit Plaintiff's allegations about the intensity
7 and limiting effects of her condition was that Plaintiff's activities suggested a lesser degree of
8 limitation than what she alleged. (*See* AR 25.) Specifically, the ALJ noted that Plaintiff
9 testified that she had certified herself as capable of working in connection with her receipt of
10 unemployment benefits for the six months after her alleged onset date. (AR 25.) Additionally,
11 the ALJ observed contradictions between Plaintiff's testimony about when she stopped
12 working and driving due to her visual impairment and Plaintiff's statements to her medical
13 providers about her work as a Lyft driver. (AR 25) (citing Ex. 7F/12). Finally, the ALJ noted
14 that, in her December 2018 visit to Parkside Medical Group, Plaintiff reported actively looking
15 for a part-time job. (AR 25) (citing Ex. 7F/1).
16

17 **IV. Discussion**

18

19 Plaintiff contends that the ALJ failed to offer a "legally sufficient rationale" for
20 declining to credit Plaintiff's allegations and based her decision solely on the inconsistency
21 between the objective evidence of record and Plaintiff's allegations. (Joint Stip. at 9-10.)
22 Plaintiff further asserts that the ALJ failed to specifically identify the testimony that she found
23 inconsistent with the objective medical evidence. (*See* Joint Stip. at 10 ("ALJ nowhere
24 connects any of Wheaton's testimony to the ALJ's analysis").) Finally, Plaintiff contends that
25 the ALJ improperly relied on Plaintiff's activities to discount her statements about her
26 symptoms because Plaintiff's activities neither contradict her testimony or demonstrate an
27 ability to spend a substantial part of the day doing activities transferable to a work setting.
28

1 (Joint Stip. at 13) (citing *Orn*, 495 F.3d at 639). The Court considers each of Plaintiff's
2 contentions in turn.

3
4 First, Plaintiff mischaracterizes the ALJ's discussion of the inconsistencies between
5 Plaintiff's allegations about the intensity, persistence, and limiting effects of her symptoms,
6 the objective medical evidence, and her own activities. Rather than relying on boilerplate
7 language, the ALJ dived into the medical records and identified particular treatment notes that
8 contradicted specific allegations Plaintiff made about the sudden onset of a debilitating vision
9 impairment—and an equally sudden exacerbation of her multiple sclerosis symptoms—in
10 January 2017 as well as the lack of any specific treatment notes documenting Plaintiff's
11 alleged significant decrease in strength during the relevant period. (*See, e.g.*, AR 23-24.)
12 Additionally, the ALJ's characterization of these records is accurate and, therefore, her
13 conclusion—that many of Plaintiff's allegations were not supported by objective medical
14 evidence—is supported by substantial evidence.

15
16 Second, contrary to Plaintiff's position, the ALJ did not rely solely on the medical
17 evidence in discounting Plaintiff's subjective symptom testimony. Instead, the ALJ pointed
18 to specific inconsistencies between Plaintiff's testimony about the intensity and limiting
19 effects of her impairment and her activities. For example, Plaintiff testified that she stopped
20 working because she could not read, use computers, or stand for long periods (AR 52) and,
21 around the same time, was told she could not drive (AR 43-44). However, Plaintiff's
22 allegations of symptoms that prevented her from driving are contradicted by her statements to
23 medical providers throughout the relevant period that she was driving for Lyft. (*See, e.g.* AR
24 293, 318 (May 2017 – Plaintiff reports driving for Lyft or Uber), 314 (Plaintiff reported driving
25 for Lyft from time to time).) Additionally, at a July 2018 appointment, Plaintiff stated that
26 she was going to have a driving test the following month. (AR 305.)

1 Plaintiff also testified that she had difficulty sitting for long periods, such as the length
2 of the administrative hearing (AR 63), but she continued to drive for Lyft—an activity that is
3 performed while sitting, sometimes for long periods—but also performed multiple activities
4 during the relevant period that required her to sit for periods significantly longer than the
5 length of the administrative hearing. In particular, Plaintiff reported doing all of the following:
6 watching movies in the theater, which typically last for more than an hour and a half each;
7 making the approximately four hour drive between San Bernardino and Las Vegas for an
8 anniversary trip with her husband; and “enjoy[ing]” a live show in Las Vegas. (AR 66-68.)
9 Plaintiff also testified that, in an average day, she sat with her father in the car for the time it
10 took for her mother to work out at the YMCA. (AR 72.)
11

12 Finally, despite Plaintiff’s insistence that her symptoms were so debilitating as to render
13 her unable to work, she certified herself as physically capable of working for six months
14 following her alleged onset date. (AR 50); *see also Ghanim v. Colvin*, 763 F.3d 1154, 1165
15 (9th Cir. 2014) (“Continued receipt of unemployment benefits does cast doubt on a claim of
16 disability, as it shows that an applicant holds himself out as capable of working.”); *Carmickle*
17 *v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161-62 (9th Cir. 2008) (receipt of
18 unemployment benefits undermines a claimant’s alleged inability to work fulltime where the
19 claimant held herself out as available for full-time work). She also continued to look and
20 apply for jobs following her alleged onset date and right up to the date of the administrative
21 hearing. (AR 52, 72.)
22

23 As Plaintiff points out, an ALJ may use a plaintiff’s activities as a basis for rejecting the
24 plaintiff’s statements about the intensity, persistence, and/or limiting effects of her symptoms
25 if they “contradict [her] other testimony” or “meet the threshold for transferable work skills.”
26 (Joint Stip. at 13); *see also Orn*, 495 F.3d at 639. Here, however, as described above, Plaintiff
27 reported engaging in several activities that contradicted her testimony about her limitations.
28 These activities included driving for Lyft, engaging in recreational activities that required her

1 to sit for periods longer than the administrative hearing, and both certifying herself as able to
2 work and continuing to apply for jobs during the relevant period. Therefore, the ALJ did not
3 err in citing these activities as a basis for discounting significant portions of Plaintiff's
4 testimony, *cf. Orn*, 495 F.3d at 639, and the Court finds no error with the ALJ's assessment of
5 Plaintiff's statements about the severity, persistence, and limiting effects of her symptoms and
6 conditions. The ALJ's decision must be AFFIRMED.

7
8 **CONCLUSION**

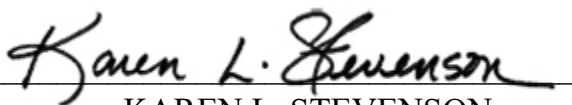
9
10 For the reasons stated above, the Court finds that the Commissioner's decision is
11 supported by substantial evidence and free from material legal error. Neither reversal of the
12 ALJ's decision nor remand is warranted.

13
14 Accordingly, IT IS ORDERED that Judgment shall be entered affirming the decision of
15 the Commissioner of the Social Security Administration.

16
17 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of this
18 Memorandum Opinion and Order and the Judgment on counsel for plaintiff and for defendant.

19
20 LET JUDGMENT BE ENTERED ACCORDINGLY.

21
22 DATE: June 28, 2021

23
24 
25 KAREN L. STEVENSON
26 UNITED STATES MAGISTRATE JUDGE
27
28