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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHELE L. OCHSNER,)	Case No. SACV 12-0186 JPR
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	AFFIRMING THE COMMISSIONER
v.)	AND DISMISSING ACTION
)	
MICHAEL J. ASTRUE,)	
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	
_____)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying her application for Social Security Disability Insurance Benefits ("DIB"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c). The parties filed a Joint Stipulation on September 27, 2012, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner's decision is affirmed and this action is dismissed.

II. BACKGROUND

Plaintiff was born on January 12, 1965. (Administrative Record ("AR") 124.) She earned a bachelor's degree in Health

1 Science and received certifications as a medical assistant and
2 laser technician. (AR 71.) Before the onset of her alleged
3 disability, on March 24, 2009, when she stopped working,
4 Plaintiff worked for two and a half years as a coordinator at a
5 wellness program and as a laser technician and medical assistant
6 for over 10 years before that. (AR 71-73, 124, 134.)

7 On February 11, 2010, Plaintiff applied for DIB, alleging
8 that she was unable to work because of sarcoidosis (systemic
9 organ inflammation), fibromyalgia (chronic soft-tissue and joint
10 pain), and depression. (AR 124-25; see id. at 181-82.) After
11 Plaintiff's application was denied, she requested a hearing
12 before an Administrative Law Judge ("ALJ"). (AR 99.) The ALJ
13 held the hearing on April 21, 2011, at which Plaintiff, who was
14 represented by counsel, and a vocational expert ("VE") testified.
15 (AR 66-67.) On July 5, 2011, the ALJ found that Plaintiff was
16 not disabled because she could perform her past relevant work.
17 (AR 16-35.) On December 14, 2011, the Appeals Council denied
18 Plaintiff's request for review. (AR 1-4.) This action followed.

19 **III. STANDARD OF REVIEW**

20 Under 42 U.S.C. § 405(g), a district court may review the
21 decision of the Commissioner to deny benefits. The Court may set
22 aside the Commissioner's decision when the ALJ's findings were
23 based on legal error or were not supported by substantial
24 evidence in the record as a whole. Aukland v. Massanari, 257
25 F.3d 1033, 1035 (9th Cir. 2001); Smolen v. Chater, 80 F.3d 1273,
26 1279 (9th Cir. 1996). "Substantial evidence is more than a
27 scintilla, but less than a preponderance." Reddick v. Chater,
28 157 F.3d 715, 720 (9th Cir. 1998). It is "relevant evidence

1 which a reasonable person might accept as adequate to support a
2 conclusion." Id. To determine whether substantial evidence
3 supported a finding, the court must "consider the record as a
4 whole, weighing both evidence that supports and evidence that
5 detracts from the [Commissioner's] conclusion." Aukland, 257
6 F.3d at 1035 (internal quotation marks omitted). If the evidence
7 could reasonably support either affirming or reversing that
8 conclusion, a court may not substitute its judgment for that of
9 the Commissioner, and the ALJ's decision must be upheld.

10 Reddick, 157 F.3d at 720-21.

11 **IV. DISABILITY EVALUATION**

12 Claimants are "disabled" for purposes of receiving Social
13 Security benefits if they are unable to engage in any substantial
14 gainful activity owing to a severe physical or mental impairment
15 that is expected to result in death or which has lasted, or is
16 expected to last, for a continuous period of at least 12 months.
17 42 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257
18 (9th Cir. 1992).

19 A. The Five-Step Evaluation Process

20 The Commissioner follows a five-step sequential evaluation
21 process in assessing whether a claimant is disabled. 20 C.F.R.
22 § 404.1520(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th
23 Cir. 1995) (as amended Apr. 9, 1996). In the first step, the
24 Commissioner must determine whether the claimant is currently
25 engaged in substantial gainful activity; if so, the claimant is
26 not disabled and the claim is denied. § 404.1520(a)(4)(i). If
27 the claimant is not engaged in substantial gainful activity, the
28 second step requires the Commissioner to determine whether the

1 claimant has a "severe" impairment or combination of impairments
2 significantly limiting her ability to do basic work activities;
3 if not, a finding of not disabled is made. § 404.1520(a)(4)(ii).
4 If the claimant has a "severe" impairment or combination of
5 impairments, the third step requires the Commissioner to
6 determine whether the impairment or combination of impairments
7 meets or equals an impairment in the Listing of Impairments
8 ("Listing") set forth at 20 C.F.R., Part 404, Subpart P,
9 Appendix 1; if so, disability is conclusively presumed and
10 benefits are awarded. § 404.1520(a)(4)(iii). If the claimant's
11 impairment does not meet an impairment in the Listing, the fourth
12 step requires the Commissioner to determine whether the claimant
13 has sufficient residual functional capacity ("RFC")¹ to perform
14 her past work; if so, the claimant is not disabled.
15 § 404.1520(a)(4)(iv). The claimant has the burden of proving
16 that she is unable to perform past relevant work. Drouin, 966
17 F.2d at 1257. If the claimant meets that burden, a prima facie
18 case of disability is established. Id. If that happens or if
19 the claimant has no past relevant work, the Commissioner then
20 bears the burden of establishing that the claimant is not
21 disabled because she can perform other substantial gainful work
22 available in the national economy. § 404.1520(a)(4)(v). That
23 determination comprises the fifth and final step in the
24 sequential analysis. Id.; Lester, 81 F.3d at 828 n.5; Drouin,

26
27 ¹ RFC measures what a claimant can still do despite
28 existing exertional and nonexertional limitations. 20 C.F.R.
§ 404.1545; see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th
Cir. 1989).

1 966 F.2d at 1257.

2 B. The ALJ's Application of the Five-Step Process

3 At step one, the ALJ found that Plaintiff had not engaged in
4 any substantial gainful activity from the onset of her alleged
5 disability, March 24, 2009, through the time of the ALJ's adverse
6 decision, in July 2011. (AR 21.) At step two, the ALJ found
7 that Plaintiff had severe impairments of mixed connective-tissue
8 disorder including sarcoid-like granulomas, lymphadenopathy
9 (inflammation of lymph nodes), sarcoidosis, and asthma. (AR 21-
10 23.) The ALJ concluded, however, that her alleged mental
11 impairment of depression was not severe, a finding Plaintiff does
12 not challenge. (Id.) At step three, the ALJ determined that
13 Plaintiff's impairments did not meet or equal any of the
14 impairments in the Listing. (AR 23.) At step four, the ALJ
15 found that Plaintiff retained the RFC to perform light work,²
16 limited by her (1) inability to perform above-shoulder activities
17 or work in an environment with excess airborne irritants, (2)
18 numbness in hands and feet, (3) nausea, and (4) "moderate" pain
19 in joints, muscles, head, shoulders, abdomen, and extremities.
20 (Id.) The ALJ did not include Plaintiff's additional asserted
21 limitations of dizziness, hypothyroidism, fibromyalgia, fatigue,
22 and depression because he found them "slight" in nature. (Id.)
23 The ALJ concluded that Plaintiff was capable of performing her
24 past relevant work as a medical assistant and the equivalent of

25
26 ² "Light work involves lifting no more than 20 pounds at a
27 time with frequent lifting or carrying of objects weighing up to 10
28 pounds" and a "good deal of walking or standing" or sitting, "with
some pushing and pulling of arm or leg controls." 20 C.F.R.
§ 404.1567(b).

1 an esthetician and case manager.³ (AR 31.) The ALJ determined
2 at step four that Plaintiff was not disabled and accordingly did
3 not reach step five. (Id.)

4 **V. DISCUSSION**

5 Plaintiff contends that the ALJ improperly (1) discounted
6 the opinion of her treating rheumatologist, Dr. Christine
7 Leehealey, by giving "little weight" to Dr. Leehealey's RFC
8 assessment (J. Stip. 5-12)⁴ and (2) found that Plaintiff was not
9 credible as to the severity of her conditions and limitations
10 (id. at 14-19).

11 A. Substantial Evidence Supported the ALJ's Rejection of
12 Dr. Leehealey's RFC Assessment

13 1. Applicable law

14 Three types of physicians may offer opinions in social
15 security cases: "(1) those who treat the claimant (treating
16 physicians); (2) those who examine but do not treat the claimant
17 (examining physicians); and (3) those who neither examine nor
18 treat the claimant (non-examining physicians)." Lester, 81 F.3d
19 at 830. The opinions of treating physicians are generally
20 afforded more weight than those of nontreating physicians because
21 treating physicians are employed to cure and have a greater
22 opportunity to know and observe the claimant. Smolen, 80 F.3d at

23 ³ The VE testified that no positions existed in the
24 Dictionary of Occupational Titles ("DOT") equivalent to Plaintiff's
25 past work as a "laser technician" and "wellness program
26 coordinator," and that the closest matches were an esthetician and
case manager. (AR 85-86.)

27 ⁴ In addition to discounting Dr. Leehealey's RFC
28 assessment, the ALJ gave little weight to her letters from August
2010 and March 2011 alleging that Plaintiff could not work. (AR
30-31.)

1 1285. The weight given a treating physician's opinion depends on
2 whether it was supported by sufficient medical data and was
3 consistent with other evidence in the record. 20 C.F.R.
4 § 404.1527(c)(2). If a treating physician's opinion was well
5 supported by medically acceptable clinical and laboratory
6 diagnostic techniques and was not inconsistent with other
7 substantial evidence from the record, it should be given
8 controlling weight and should be rejected only for "clear and
9 convincing" reasons. Lester, 81 F.3d at 830; § 404.1527(c)(2).
10 When a treating physician's opinion conflicts with other medical
11 evidence or was not supported by clinical or laboratory findings,
12 the ALJ must provide only "specific and legitimate reasons" for
13 discounting that doctor's opinion. Orn v. Astrue, 495 F.3d 625,
14 632 (9th Cir. 2007). Factors relevant to the evaluation of a
15 treating physician's opinion include the "[l]ength of the
16 treatment relationship and the frequency of examination" as well
17 as the "[n]ature and extent of the treatment relationship."
18 § 404.1527(c)(2)(i)-(ii).

19 2. Background

20 Plaintiff had a history of abdominal pain, nausea, and
21 vomiting since 2007. (AR 206.) She improved slightly in 2008
22 but experienced significant abdominal and lower sternal pain in
23 March 2009, which resulted in two trips to the emergency room and
24 her stopping work. (Id.) Dr. Sheryl Long, her primary care
25 physician, referred her to specialists to ascertain the cause.
26 (AR 348, 353-54, 376.) Plaintiff lost about 15 pounds between
27 March and April 2009 and was subsequently diagnosed with
28 lymphadenopathy in the thorax and abdomen by Drs. Syed Naqvi,

1 Colin Juyo, Winston Whitney, and Frederick Birnberg. (AR 194-
2 201, 206-09, 217, 222, 322, 437.) Drs. Whitney and Birnberg,
3 however, concluded in late 2009 that compared to Plaintiff's
4 earlier chest scans, her lymph nodes had decreased in size and
5 her mediastinal lymphadenopathy had normalized.⁵ (AR 217, 322.)
6 In particular, Dr. Whitney noted in September 2009 that there was
7 "[n]o evidence of inflammatory stranding, free fluid, bowel wall
8 thickening or significant lymphadenopathy elsewhere in the
9 abdomen." (AR 217.) On October 5, 2009, Dr. David Kaufman
10 conducted an esophagogastroduodenoscopy and found that
11 Plaintiff's esophagus, stomach, and duodenum were "normal." (AR
12 310.)

13 As to Plaintiff's symptoms, Dr. Jennifer Grossman noted on
14 August 26, 2009, that even though her weight loss had
15 "stabilized," she (1) felt "nauseated all the time," (2) was weak
16 and fatigued and could not get out of bed "to do more than walk
17 to her mailbox each day," and (3) had difficulty running errands,
18 shopping, doing chores, traveling by herself, and gripping and
19 opening things. (AR 221-24.)

20 Plaintiff was referred to Dr. Leehealey, who subsequently
21 diagnosed her with sarcoidosis. (AR 225-27, 376, 655.) In their
22 initial meeting, on August 31, 2009, Dr. Leehealey noted that
23 Plaintiff had severe abdominal pain and diagnosed her with
24 arthralgias in "multiple sites" and "diffuse mediastinal and
25 intraabdominal lymphadenopathy," which was "the pathology . . .

26
27 ⁵ Likewise, in August 2009, Dr. Leehealey noted that
28 Plaintiff's lymphadenopathy had "decreased" under steroid treatment
but that she still had severe abdominal pain. (AR 562.)

1 most consistent with sarcoidosis." (AR 562-64.) Dr. Leehealey
2 indicated that Plaintiff had been taking Prednisone since May but
3 that the dosage had been reduced because of side effects. (AR
4 562.)

5 On September 24, 2009, Dr. Leehealey opined that Plaintiff
6 likely had sarcoidosis and noted that she suffered from weight
7 loss, low-grade fever, and abdominal pain. (AR 566.) Dr.
8 Leehealey prescribed Methotrexate. (AR 567.)

9 On October 27, 2009, Plaintiff informed Dr. Leehealey that
10 she had not improved and that the Methotrexate nauseated her.
11 (AR 569-70.) Dr. Leehealey found that Plaintiff's "systemic
12 symptoms [we]re worsening" and prescribed Remicade because it was
13 "worth [a] try." (AR 571.)

14 On December 8, 2009, Dr. Leehealey noted mixed results:
15 Plaintiff felt "overall a little better," including decreased
16 stomach pain, but still had nausea, aching, and weakness. (AR
17 572.) Dr. Leehealey stated that some of Plaintiff's symptoms,
18 such as her joint pain and arthralgias, were "to be expected as
19 she tapered off Prednisone" and switched to Remicade. (AR 573.)
20 Dr. Leehealey noted that Plaintiff was gaining "some weight back"
21 and her gastrointestinal symptoms were "maybe slightly better."
22 (Id.)

23 On February 9, 2010, Plaintiff complained that "everything"
24 was severely painful and stiff, including her hands, wrists,
25 forearms, legs, and muscles. (AR 575.) Dr. Leehealey found,
26 however, that other than her joint and muscle pain, Plaintiff was
27 "doing better in general on Remicade." (AR 577.)

28 On April 27, 2010, Dr. Leehealey noted that Remicade caused

1 nausea and headaches but was "helping" and that each dosage would
2 remain effective for about six weeks. (AR 578.) Even though
3 Plaintiff still had pain in her hands and feet, Dr. Leehealey
4 noted that she had gained a few pounds and continued to improve
5 on "many of her [gastrointestinal] symptoms." (AR 578-80.) Dr.
6 Leehealey found, however, that Plaintiff's arthralgias and
7 myalgias had worsened and suspected fibromyalgia based on
8 Plaintiff having 14 of 18 tender points.⁶ (AR 579-80.)

9 On June 29, 2010, Dr. Leehealey observed that Plaintiff
10 continued to gain weight (eight pounds) and her stomach pain had
11 improved, although she was still "woozy and fatigued and
12 nauseated." (AR 661.) Dr. Leehealey found that Plaintiff still
13 suffered from "significant" arthralgias and fibromyalgia and had
14 18 of 18 tender points; Dr. Leehealey proscribed Plaquenil for
15 treatment. (AR 661-63.)

16 On August 24, 2010, Dr. Leehealey noted that after taking
17 Plaquenil, Plaintiff felt at least "20% better" and not as "stiff
18 and achy," though she still had pain in her left ankle and foot.
19 (AR 659.) Dr. Leehealey found Plaintiff to be "stable on
20 [Plaquenil] and [Methotrexate]" and noted "tender points 12 out
21 of 18 improved" and that her fibromyalgia was "slightly better
22 with the improved arthralgias." (AR 660.)

23 On November 16, 2010, Dr. Leehealey noted that although
24 Plaintiff still had nausea and headaches, she appeared to have
25 "more energy." (AR 656.) Further, Dr. Leehealey found Plaintiff

27 ⁶ The "rule of thumb" for diagnosing fibromyalgia is that
28 one must have at least 11 of 18 tender points. Rollins v.
Massanari, 261 F.3d 853, 855 (9th Cir. 2001).

1 to be "stable on her current med[ication]s" and her pain
2 "somewhat controlled such that she [wa]s able to do other things
3 now during the day such as taking classes." (AR 657.) Dr.
4 Leehealey also noted that Plaintiff no longer took her pain
5 medication (Darvocet) every day, even though it was supposed to
6 be taken three times a day. (AR 656.) Dr. Leehealey found
7 "tender points 12 out of 18 improved." (AR 657.) Dr. Leehealey
8 scheduled the next appointment in four months or "as needed."
9 (Id.)

10 Dr. Leehealey filled out an RFC assessment form on February
11 1, 2011. (AR 763.) She described Plaintiff as having
12 sarcoidosis and fibromyalgia with a fair-to-poor prognosis,
13 supported in part by her prior finding of 18 of 18 tender points.
14 (Id.) She noted that Plaintiff had symptoms of joint pain and
15 stiffness, muscle and soft-tissue pain, numbness, nausea,
16 vomiting, weight loss, and severe fatigue. (AR 764-65.) She
17 indicated that Plaintiff (1) had pain ranking nine of 10 in
18 severity and fatigue ranking 10 of 10; (2) could sit for only two
19 hours and stand and walk for zero to one hour during a regular
20 work day; (3) could occasionally lift and carry five to 10
21 pounds; and (4) had "significant" limitations in doing repetitive
22 reaching, handling, fingering, and lifting because of her joint
23 pain and numbness and "marked" limitations in using her upper
24 extremities. (AR 765-67.) In addition, Dr. Leehealey concluded
25 that Plaintiff's pain and fatigue constantly interfered with her
26 attention and concentration and that she was incapable of working

1 even in a low-stress environment.⁷ (AR 768.)

2 On March 15, 2011, in her final treatment note on record,
3 Dr. Leehealey found a major flare-up of symptoms, including
4 increased nausea, joint pain, and fatigue, but attributed
5 Plaintiff's worsening conditions to her temporary interruption in
6 medication to fight off a two-week-long infection. (AR 794.)
7 Dr. Leehealey noted that Plaintiff had been off Methotrexate for
8 four weeks and had resumed taking it and Plaquenil only since
9 "the past week." (Id.) Noting that Plaintiff was "worse off"
10 without those medications, Dr. Leehealey found 18 of 18 tender
11 points, "a lot of arthralgias," and "debilitating pain." (AR
12 794-96.)

13 Dr. Leehealey documented Plaintiff's weight during each
14 visit: 141 pounds on August 31, 2009 (AR 563); 136 pounds on
15 September 24, 2009 (AR 566); 135 pounds on October 27, 2009 (AR
16 569); 137 pounds on December 8, 2009 (AR 572); 137 pounds on
17 February 9, 2010 (AR 575); 140 pounds on April 27, 2010 (AR 578);
18 144 pounds on June 29, 2010 (AR 661); 140 pounds on August 24,
19 2010 (AR 659); and 142 pounds on November 16, 2010 (AR 656).⁸

20 In contrast to Dr. Leehealey's RFC assessment finding
21 Plaintiff incapable of performing even sedentary work, two
22 doctors from the Department of Social Services ("DSS") evaluated
23 Plaintiff and found that she was capable of light work. (AR 604,
24

25 ⁷ Notably, Dr. Leehealey's RFC assessment prohibited
26 Plaintiff from performing even sedentary work, which involves
27 lifting no more than 10 pounds at a time and primarily sitting with
occasional standing and walking. See 20 C.F.R. § 404.1567(a).

28 ⁸ Dr. Leehealey's March 15, 2011 report does not indicate
Plaintiff's weight. (AR 794-96.)

1 624.) On June 18, 2010, Dr. John Godes conducted a physical
2 examination of Plaintiff based on her complaints of joint pain,
3 headaches, abdominal pain, nausea, and fatigue. (AR 604.) Dr.
4 Godes diagnosed her with mixed connective-tissue disorder
5 including sarcoid-like granulomas but concluded that she could
6 lift 20 pounds occasionally and 10 pounds frequently and was able
7 to stand or walk for six hours in a workday and to sit for six
8 hours of the day as well. (AR 609.) On June 29, 2010, Dr. B.
9 Harris, a medical consultant, concurred with Dr. Godes's finding
10 that Plaintiff was capable of light work. (AR 624-27.)

11 In addition, Dr. Lorna Carlin from DSS indicated the
12 following regarding Plaintiff's daily activities based on a
13 psychiatric evaluation on June 24, 2010:

14 [Plaintiff] currently lives with a cousin and his
15 family in a house, . . . She takes care of self-
16 dressing, self-bathing and personal hygiene. For
17 transportation, [Plaintiff] drives a car. Her outside
18 activities are going to church. She visits her son and
19 goes daily to play with her dog, who is staying at her
20 ex-husband's house, which is only about two miles from
21 where she lives. She says that she sometimes goes to
22 restaurants to get take out food. Her hobby is making
23 jewelry and reading. She is able to pay bills and handle
24 cash appropriately. She is able to go out alone.
25 Relationships with family and friends are good. She is
26 able to focus attention during the interview. She
27 reports that she does not do a lot of household chores.
28 She keeps up her room and does her own laundry. She can

1 prepare food for herself and can run errands.
2 [Plaintiff] has no difficulty making decisions.

3 On a daily basis, [Plaintiff] says she gets up late
4 in the morning, she may watch television for a couple of
5 hours and take a shower and then she gets something to
6 eat. Sometimes she will go to a restaurant and get a
7 take-out salad and then she will go to her ex-husband's
8 house and play with her dog. She will then come home and
9 watch television. She does go on the computer at times.

10 (AR 614, 616-17.)

11 3. ALJ's findings

12 The ALJ noted that Dr. Leehealey began treating Plaintiff in
13 August 2009 and subsequently diagnosed her with sarcoidosis. (AR
14 28.) The ALJ gave "little weight" to Dr. Leehealey's February
15 2011 RFC assessment, however, because it was "too restrictive"
16 and "not based on objective evidence." (AR 30.) The ALJ
17 contrasted Dr. Leehealey's conclusions underlying the RFC
18 assessment, including that Plaintiff had "18 of 18 tender points"
19 and lost weight, with Dr. Leehealey's previous treatment notes
20 showing that Plaintiff had in fact improved. For instance, Dr.
21 Leehealey's August 24, 2010 note indicated that Plaintiff was
22 "doing better" with medications and her fibromyalgia was
23 "slightly better with the improved arthralgias." (AR 28-29.)
24 Further, Dr. Leehealey observed on November 16, 2010, that in
25 spite of nausea and headaches, Plaintiff had only "12 of 18"
26 tender points and "more energy," her pain was "somewhat
27 controlled," and she could "do other things . . . during the
28 day." (AR 29.) The ALJ considered Dr. Leehealey's March 2011

1 report indicating increased pain, nausea, and fatigue but
2 reasoned that Plaintiff's conditions worsened at the time only
3 because she had stopped taking her medications in order to fight
4 off an infection. (Id.) The ALJ also disagreed with Dr.
5 Leehealey's conclusion that Plaintiff continued to lose weight,
6 noting that her weight had "no significant changes and remained
7 relatively stable" in 2010 and 2011. (AR 30.) The ALJ therefore
8 rejected Dr. Leehealey's RFC assessment. (Id.) The ALJ credited
9 instead the RFC assessment from Drs. Godes and Harris, finding
10 that Plaintiff was capable of performing light work. (AR 31.)

11 4. Analysis

12 Substantial evidence supported the ALJ's specific and
13 legitimate reasons for rejecting Dr. Leehealey's February 2011
14 RFC assessment as embellishing Plaintiff's symptoms. As the ALJ
15 found, Dr. Leehealey's RFC assessment contradicted her previous
16 treatment notes and other objective medical evidence showing that
17 Plaintiff had improved with medication. In particular, when Dr.
18 Leehealey began treating Plaintiff in August 2009, she suffered
19 from autoimmune diseases such as sarcoidosis and lymphadenopathy,
20 which caused severe abdominal pain, and arthralgias, which caused
21 joint and muscle pain. (AR 562-64.) Dr. Leehealey noted in
22 October 2009 that Plaintiff's overall condition was "worsening."
23 (AR 571.) After that visit, however, Dr. Leehealey's subsequent
24 medical notes show that Plaintiff gradually began improving,
25 particularly in terms of her abdominal pain and gastrointestinal
26 problems. (See AR 571-73 (observing that Plaintiff's stomach
27 pain improved and gastrointestinal problems were "slightly
28 better"); AR 577-80 (noting that Plaintiff's gastrointestinal

1 problems continued to improve).)

2 Likewise, objective medical evidence corroborates Dr.
3 Leehealey's conclusion that Plaintiff's intestinal pain and
4 inflammation subsided in late 2009: (1) Dr. Birnberg found in
5 August 2009 that compared to Plaintiff's earlier scans, her lymph
6 nodes had decreased in size and her mediastinal lymphadenopathy
7 had normalized (AR 322); (2) Dr. Whitney found in September 2009
8 that there was no evidence of significant lymphadenopathy in the
9 abdomen (AR 217); and (3) Dr. Kaufman observed in October 2009
10 that Plaintiff's esophagus, stomach, and duodenum appeared normal
11 (AR 310).

12 Unlike her intestinal problems, Plaintiff's joint and muscle
13 pain worsened in 2010, culminating in Dr. Leehealey's diagnosis
14 of fibromyalgia in April 2010 and her finding of 18 of 18 tender
15 points in June 2010. (AR 578-80, 661-63.) After Dr. Leehealey
16 proscribed Plaquenil on August 24, 2010, however, Plaintiff's
17 joint and muscle pain improved and her overall condition appears
18 to have stabilized. (AR 659-63.) Indeed, Dr. Leehealey's
19 medical note on November 16, 2010, which was based on her last
20 examination of Plaintiff before her February 2011 RFC assessment,
21 shows that Plaintiff's pain was under control, evidenced by her
22 not having to take her pain medication every day, and that she
23 had "more energy," was taking a class, and was "stable" on her
24 current medications. (AR 656-57.) Finally, Dr. Leehealey noted
25 in all visits that Plaintiff's muscle strength was "5/5,"
26 indicating that she had no underlying physical limitations
27 outside of her autoimmune symptoms. (See, e.g., AR 660.)

28 Dr. Leehealey's documentation of Plaintiff's weight also

1 coincides with her treatment notes showing that Plaintiff
2 responded to medication and began to improve: Plaintiff dropped
3 to her lowest weight, 135 pounds, on October 27, 2009, but
4 gradually regained it in subsequent visits. (See AR 569, 572,
5 575, 578, 656, 659, 661.) In fact, Plaintiff's final documented
6 weight of 142 pounds on November 16, 2010, was higher than her
7 weight of 141 pounds when she initially saw Dr. Leehealey on
8 August 31, 2009. (AR 562, 656.)

9 Thus, substantial evidence supported the ALJ's rejection of
10 Dr. Leehealey's February 2011 RFC assessment alleging - in direct
11 contrast with her past treatment notes - that Plaintiff was
12 limited to less than sedentary work and suffered debilitating
13 symptoms from sarcoidosis and fibromyalgia, including extreme
14 pain and fatigue and ongoing weight loss. See Rollins v.
15 Massanari, 261 F.3d 853, 856 (9th Cir. 2001) (holding that ALJ
16 did not err in rejecting various statements by treating physician
17 because they were internally inconsistent and unsupported by any
18 objective medical evidence, including findings from same
19 physician). Even though Dr. Leehealey's March 2011 treatment
20 note indicates that Plaintiff suffered a major flare-up in
21 symptoms, the ALJ properly discounted it because (1) the RFC form
22 preceded Plaintiff's March 2011 visit with Dr. Leehealey and
23 therefore could not possibly have accounted for Plaintiff's
24 prospective adverse symptoms and (2) in any event, her conditions
25 worsened because she had not been taking Plaquenil and
26 Methotrexate, which had proved to be effective. Plaintiff's
27 contentions that the ALJ ignored Dr. Leehealey's March 2011 note
28 and placed undue emphasis on her previous treatment notes

1 therefore fail. (See J. Stip. 10-11.) The ALJ therefore was
2 justified in relying on the RFC assessment from Drs. Godes and
3 Harris and finding that Plaintiff was capable of performing light
4 work in spite of her conditions. (AR 604, 609, 624-27.) This
5 Court cannot reverse simply because the medical evidence of
6 record might have supported another interpretation more favorable
7 to Plaintiff. See Reddick, 157 F.3d at 720-21; Ryan v. Comm'r of
8 Soc. Sec., 528 F.3d 1194, 1198 (9th Cir. 2008) (holding that if
9 "evidence is susceptible to more than one rational
10 interpretation, the ALJ's decision should be upheld" (internal
11 quotation marks omitted)). Accordingly, reversal is not
12 warranted on this claim.

13 B. Substantial Evidence Supported the ALJ's Adverse
14 Credibility Determination

15 1. Applicable law

16 An ALJ's assessment of credibility is entitled to "great
17 weight." Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989).
18 When the ALJ finds a claimant's subjective complaints not
19 credible, the ALJ must make specific findings that support the
20 conclusion. Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir.
21 1991) (en banc); Varney v. Sec'y of Health & Human Servs., 846
22 F.2d 581, 584 (9th Cir.), modified on reh'g, 859 F.2d 1396 (9th
23 Cir. 1988). Absent affirmative evidence of malingering, the ALJ
24 must give "clear and convincing" reasons for rejecting the
25 claimant's testimony. Lester, 81 F.3d at 834. As long as the
26 ultimate credibility finding was supported by substantial
27 evidence in the record, the ALJ's decision must be upheld, even
28 if he relied on some improper reasons in support of the finding.

1 Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1162-63
2 (9th Cir. 2008). If the ALJ's credibility finding was supported
3 by substantial evidence, the reviewing court "may not engage in
4 second-guessing." Thomas v. Barnhart, 278 F.3d 947, 959 (9th
5 Cir. 2002).

6 2. Background

7 Plaintiff testified at the April 2011 hearing that despite
8 medications that "help[ed]," she had pain "everywhere,"
9 particularly in her arms, wrists, hands, legs, feet, and ankles;
10 she also had numbness in her hands and feet. (AR 74-76.) She
11 was fatigued "[a]ll the time," and her weekly intake of
12 Methotrexate nauseated her. (AR 75, 79-80.) She had headaches
13 every day, which lasted "[t]he majority of the day." (AR 80.)
14 Finally, she suffered from depression, with symptoms of
15 "[s]adness" and not feeling "worthwhile." (AR 76.)

16 As a result, Plaintiff did not "do very much" during the day
17 except watch television. (Id.) She used the computer to browse
18 the internet but could not "use it for very long." (AR 76-77.)
19 The last time she had driven before the hearing was "a couple
20 days ago." (AR 77.)

21 3. ALJ's findings

22 In denying her claim, the ALJ found that Plaintiff's
23 "statements concerning the intensity, persistence and limiting
24 effects of [her] symptoms [we]re not credible to the extent they
25 [we]re inconsistent with" the ALJ's finding that she retained the
26 RFC to perform light work. (AR 23-24.) In particular, the ALJ
27 found that Plaintiff's allegations about the extent and disabling
28 effects of nausea, abdominal pain, headaches, muscle and joint

1 pain, fatigue, weakness, fibromyalgia, and depression conflicted
2 with the objective medical evidence and her daily activities.
3 (AR 29.)

4 The ALJ cited the medical reports of Drs. Long, Whitney,
5 Kaufman, and Leehealey in rejecting Plaintiff's testimony. In
6 early 2010, Dr. Long found that (1) Plaintiff's depression
7 improved "markedly" on Cymbalta and she was "feeling better";
8 (2) most of Plaintiff's chronic problems - including her asthma,
9 reflux esophagitis, and hypothyroidism - were "stable"; (3) her
10 lower back pain was "satisfactorily self managing" with "well
11 controlled or resolved symptoms"; (4) her lymphadenopathy became
12 normalized; (5) she had no abdominal pain, weight loss, or
13 anxiety; and (6) she was "managing demands of home and work"⁹
14 [and] play." (Id.) In September 2009, Dr. Whitney found a
15 decrease in the size of Plaintiff's lymph nodes and no evidence
16 of inflammatory stranding, free fluid, bowel-wall thickening, or
17 significant lymphadenopathy elsewhere in the abdomen. (Id.) Dr.
18 Kaufman found in October 2009 that Plaintiff's esophagus,
19 stomach, and duodenum appeared normal. (AR 29-30.) Finally, Dr.
20 Leehealey's more recent reports showed that Plaintiff had
21 improved overall and become stable with medications, including
22 having more energy and gaining weight. (AR 30.)

23 The ALJ also noted that Plaintiff's subjective complaints
24 contradicted her documented activities, such as self-grooming,
25 maintaining hygiene, driving, eating out, attending church,
26

27 ⁹ Plaintiff was apparently no longer working in early 2010,
28 so the reference to "work" was likely either a mistake or simply,
in context, a colloquialism.

1 visiting her son, playing daily with her dog at her ex-husband's
2 house, paying bills, handling cash, doing laundry, preparing
3 food, and running errands. (Id.) The ALJ therefore found
4 Plaintiff's contrary testimony not credible. (Id.)

5 4. Analysis

6 Substantial evidence supported the ALJ's adverse credibility
7 determination. As explained above, objective medical evidence,
8 including reports from Drs. Long and Leehealey, showed that based
9 on treatment and medication, Plaintiff's abdominal pain and
10 inflammation improved in late 2009 and her joint and muscle pain
11 stabilized around 2010. Even though Dr. Leehealey's March 2011
12 report indicates a flare-up of adverse symptoms because Plaintiff
13 temporarily stopped taking Plaquenil and Methotrexate, those
14 symptoms presumably subsided after she resumed taking the
15 necessary medications. Further, Plaintiff's assertion that she
16 was fatigued "[a]ll the time" was contradicted by Dr. Long's
17 observation in January 2010 that her fatigue "waxe[d] and wane[d]
18 with her autoimmune condition," which had improved under Dr.
19 Leehealey's care. (AR 536.)

20 In addition, Plaintiff overstated the effect of her
21 depression. The record shows that even though Plaintiff had
22 suffered from depression since 1990, which worsened in 2009
23 because her Prozac prescription had become "less effi[ca]lcious .
24 . . over time" and she experienced increased stress with work,
25 her financial condition, and her divorce (AR 353), her depression
26 "markedly improved" after she started taking Cymbalta in December
27 2009 (AR 534, 536, 542). In fact, Dr. Long noted in February
28 2010 that as to her depression, the "therape[]utic goal" had been

1 "achieved" and Plaintiff experienced "no side effects" from
2 taking Cymbalta and Wellbutrin. (AR 542.) Further, two doctors
3 from DSS corroborated Dr. Long's conclusions: (1) Dr. Carlin
4 found in June 2010 that Plaintiff suffered from depression but
5 had "moderate" psychosocial stressors and a global assessment of
6 functioning ("GAF") score of 70, which was also moderate¹⁰ (AR
7 614, 619); and (2) Dr. R. Tashjian found in July 2010 that
8 Plaintiff suffered from depression, but the degree of limitation
9 on her daily activities and maintaining social functioning or
10 concentration was "mild" (AR 633-35, 641). Moreover, other than
11 Dr. Long and to an extent the DSS doctors, Plaintiff did not seek
12 medical help to treat her depression after March 24, 2009, her
13 alleged disability onset date (see AR 615 (Dr. Carlin noting that
14 Plaintiff had "never been hospitalized in a psychiatric
15 hospital," "never received outpatient psychiatric treatment other
16 than in 2006," and was not seeing any mental health professional
17 at the time)); the ALJ therefore properly considered that factor
18 in finding her not credible, see Bunnell, 947 F.2d at 346
19 (holding that in assessing credibility, ALJ may properly rely on
20 plaintiff's unexplained failure to request treatment consistent
21 with alleged severity of symptoms).

22 Moreover, as the ALJ noted, Plaintiff's alleged limitations
23 were inconsistent with her documented activities, which in June
24 2010 consisted of taking care of personal hygiene and bathing,
25 driving by herself to visit her son and play with her dog,

27 ¹⁰ A score between 61 to 70 on the GAF scale indicates some
28 mild symptoms or difficulty in social, occupational, or school
functioning.

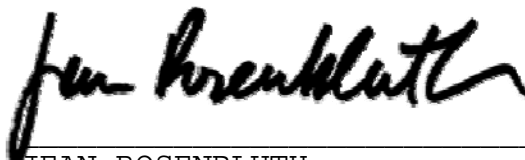
1 attending church, getting take-out from restaurants, making
2 jewelry, reading, and paying her bills. (AR 616-17.) Plaintiff
3 could also handle household chores such as maintaining her room,
4 doing laundry, preparing food, and running errands. (Id.) The
5 ALJ therefore properly considered the inconsistencies between
6 Plaintiff's testimony and her documented activities in finding
7 her not credible. See Batson v. Comm'r of Soc. Sec. Admin., 359
8 F.3d 1190, 1196-97 (9th Cir. 2004) (adverse credibility
9 determination supported in part by conflict between claimant's
10 allegation and documented activities).

11 Accordingly, the ALJ's adverse credibility determination
12 regarding the severity of Plaintiff's impairments and limitations
13 was supported by substantial evidence, and reversal is not
14 warranted on this claim.

15 **VI. CONCLUSION**

16 Consistent with the foregoing and pursuant to sentence four
17 of 42 U.S.C. § 405(g),¹¹ IT IS ORDERED that judgment be entered
18 AFFIRMING the decision of the Commissioner and dismissing this
19 action with prejudice. IT IS FURTHER ORDERED that the Clerk
20 serve copies of this Order and the Judgment on counsel for both
21 parties.

22
23 DATED: October 16, 2012



24 JEAN ROSENBLUTH
25 U.S. Magistrate Judge

26 ¹¹ This sentence provides: "The [district] court shall have
27 power to enter, upon the pleadings and transcript of the record, a
28 judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."