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

DIANA ARLENE DEL PRADO	)	NO. SA CV 16-1873-E
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM OPINION</b>
	)	
NANCY A. BERRYHILL, Acting	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	
	)	

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**PROCEEDINGS**

Plaintiff filed a complaint on October 11, 2016, seeking review of the Commissioner's denial of benefits. The parties consented to proceed before a United States Magistrate Judge on December 23, 2016. Plaintiff filed a motion for summary judgment on April 4, 2017. Defendant filed a cross-motion for summary judgment on May 4, 2017. The Court has taken the motions under submission without oral argument. See L.R. 7-15; "Order," filed November 22, 2016.

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1 **BACKGROUND**

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3 Plaintiff, a former collections representative, asserted  
4 disability based primarily on systemic lupus erythematosus ("lupus")  
5 ("Administrative Record ("A.R.") 77, 136, 146, 151). An  
6 Administrative Law Judge ("ALJ") reviewed the medical record and heard  
7 testimony from Plaintiff and a vocational expert (A.R. 22-177, 183-  
8 305). The ALJ found Plaintiff's lupus to be severe, but also found  
9 Plaintiff retains the residual functional capacity to perform  
10 sedentary work, including her past relevant work (A.R. 24-28). The  
11 ALJ deemed Plaintiff's contrary testimony "less than fully credible"  
12 (A.R. 28). The Appeals Council denied review (A.R. 3-5).

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14 **STANDARD OF REVIEW**

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16 Under 42 U.S.C. section 405(g), this Court reviews the  
17 Administration's decision to determine if: (1) the Administration's  
18 findings are supported by substantial evidence; and (2) the  
19 Administration used correct legal standards. See Carmickle v.  
20 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,  
21 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner  
22 of Social Sec. Admin., 682 F.3d 1157, 1161 (9th Cir. 2012).  
23 Substantial evidence is "such relevant evidence as a reasonable mind  
24 might accept as adequate to support a conclusion." Richardson v.  
25 Perales, 402 U.S. 389, 401 (1971) (citation and quotations omitted);  
26 see Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

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1 If the evidence can support either outcome, the court may  
2 not substitute its judgment for that of the ALJ. But the  
3 Commissioner's decision cannot be affirmed simply by  
4 isolating a specific quantum of supporting evidence.  
5 Rather, a court must consider the record as a whole,  
6 weighing both evidence that supports and evidence that  
7 detracts from the [administrative] conclusion.

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9 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and  
10 quotations omitted).

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12 **DISCUSSION**

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14 After consideration of the record as a whole, Defendant's motion  
15 is granted and Plaintiff's motion is denied. The Administration's  
16 findings are supported by substantial evidence and are free from  
17 material<sup>1</sup> legal error.

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19 Contrary to Plaintiff's arguments, the ALJ stated legally  
20 sufficient reasons for finding Plaintiff's testimony not fully  
21 credible. An ALJ's assessment of a claimant's credibility is entitled  
22 to "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th  
23 Cir. 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985).  
24 Where, as here, the ALJ finds that the claimant's medically

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27 <sup>1</sup> The harmless error rule applies to the review of  
28 administrative decisions regarding disability. See Garcia v. Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v. Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011).

1 determinable impairments reasonably could be expected to cause some  
2 degree of the alleged symptoms of which the claimant subjectively  
3 complains, any discounting of the claimant's complaints must be  
4 supported by specific, cogent findings. See Berry v. Astrue, 622 F.3d  
5 1228, 1234 (9th Cir. 2010); Lester v. Chater, 81 F.3d 821, 834 (9th  
6 Cir. 1995); but see Smolen v. Chater, 80 F.3d 1273, 1282-84 (9th Cir.  
7 1996) (indicating that ALJ must offer "specific, clear and convincing"  
8 reasons to reject a claimant's testimony where there is no evidence of  
9 malingering).<sup>2</sup> An ALJ's credibility findings "must be sufficiently  
10 specific to allow a reviewing court to conclude the ALJ rejected the  
11 claimant's testimony on permissible grounds and did not arbitrarily  
12 discredit the claimant's testimony." See Moisa v. Barnhart, 367 F.3d  
13 882, 885 (9th Cir. 2004) (internal citations and quotations omitted);  
14 see also Social Security Ruling 96-7p (explaining how to assess a  
15 claimant's credibility), superseded, Social Security Ruling 16-3p  
16 (eff. March 28, 2016). As discussed below, the ALJ stated legally  
17 sufficient reasons for deeming Plaintiff's subjective complaints less  
18 than fully credible.

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22 <sup>2</sup> In the absence of an ALJ's reliance on evidence of  
23 "malingering," most recent Ninth Circuit cases have applied the  
24 "clear and convincing" standard. See, e.g., Brown-Hunter v.  
25 Colvin, 806 F.3d 487, 488-89 (9th Cir. 2015); Burrell v. Colvin,  
26 775 F.3d 1133, 1136-37 (9th Cir. 2014); Treichler v.  
27 Commissioner, 775 F.3d 1090, 1102 (9th Cir. 2014); Ghanim v.  
28 Colvin, 763 F.3d 1154, 1163 n.9 (9th Cir. 2014); Garrison v.  
Colvin, 759 F.3d 995, 1014-15 & n.18 (9th Cir. 2014); see also  
Ballard v. Apfel, 2000 WL 1899797, at \*2 n.1 (C.D. Cal. Dec. 19,  
2000) (collecting earlier cases). In the present case, the ALJ's  
findings are sufficient under either standard, so the distinction  
between the two standards (if any) is academic.

1           The ALJ pointed out inconsistencies between Plaintiff's claimed  
2   symptomatology and observations made by third parties (A.R. 26-27).  
3   Plaintiff testified to regular swelling in various joints (A.R. 44).  
4   Yet, reports of multiple medical examinations of Plaintiff reflect an  
5   absence of swelling (A.R. 243-51, 254-64). An ALJ properly may  
6   discount a claimant's credibility where the claimant makes allegations  
7   inconsistent with the observations of third parties. See Verduzco v.  
8   Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999); Copeland v. Bowen, 861  
9   F.2d 536, 541 (9th Cir. 1988).

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11           The ALJ also pointed out that Plaintiff has not been consistent  
12   in reporting her own alleged symptoms (A.R. 26). For example,  
13   Plaintiff emphasized the claimed severity of pain in joints, including  
14   her knee, purportedly arising from even sedentary activity (A.R. 39,  
15   44-47). Yet, despite having numerous medical appointments over the  
16   years, Plaintiff complained of knee pain on only one occasion after  
17   her alleged disability onset date (A.R. 294). An ALJ properly may  
18   discount a claimant's credibility based on inconsistencies in the  
19   claimant's own reports of her symptoms. See Khanishian v. Astrue, 238  
20   Fed. App'x 250, 252 (9th Cir. 2007); Gregor v. Barnhart, 464 F.3d 968,  
21   972 (9th Cir. 2006).

22  
23           As the ALJ further pointed out, some of Plaintiff's admitted  
24   activities appear inconsistent with some of Plaintiff's claimed  
25   limitations. For example, despite testifying to pain of allegedly  
26   disabling severity and a supposed inability to sit more than 30  
27   minutes at a time, Plaintiff reportedly cleaned and cooked, did half  
28   of the household shopping, gardened, traveled to New York and traveled

1 to Northern California, all during the period of claimed disability  
2 (A.R. 45-47, 49, 51, 147, 272-75). Inconsistencies between claimed  
3 incapacity and admitted activities properly can impugn a claimant's  
4 credibility. See, e.g., Molina v. Astrue, 674 F.3d 1104, 1112 (9th  
5 Cir. 2012) ("the ALJ may consider inconsistencies in the claimant's  
6 testimony or between the testimony and the claimant's conduct"); Thune  
7 v. Astrue, 499 Fed. App'x 701, 703 (9th Cir. 2012) (ALJ properly  
8 discredited pain allegations as contradicting claimant's testimony  
9 that she gardened, cleaned, cooked, and ran errands); Stubbs-Danielson  
10 v. Astrue, 539 F.3d 1169, 1175 (9th Cir. 2008) (claimant's "normal  
11 activities of daily living, including cooking, house cleaning, doing  
12 laundry, and helping her husband in managing finances" was sufficient  
13 explanation for rejecting claimant's credibility); Thomas v. Barnhart,  
14 278 F.3d 947, 958-59 (9th Cir. 2002) (inconsistency between claimant's  
15 testimony and claimant's actions supported rejection of claimant's  
16 credibility); Verduzco v. Apfel, 188 F.3d at 1090 (inconsistency  
17 between claimant's testimony and claimant's actions cited as a clear  
18 and convincing reason for rejecting claimant's testimony).

19  
20 The ALJ also emphasized that objective medical evidence  
21 undermines Plaintiff's claims of disabling symptomatology (A.R. 26-  
22 28). Although a claimant's credibility "cannot be rejected on the  
23 sole ground that it is not fully corroborated by objective medical  
24 evidence, the medical evidence is still a relevant factor. . . ."  
25 Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001). Here, the  
26 medical evidence suggests Plaintiff's problems have not been, and are  
27 not now, as profound as she has claimed.

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1           The ALJ also mentioned the ALJ's personal observations of  
2 Plaintiff at the hearing as assertedly casting doubt on Plaintiff's  
3 veracity (A.R. 26). An ALJ's use of such observations sometimes has  
4 been condemned as "sit and squirm" jurisprudence. See Perminster v.  
5 Heckler, 765 F.2d 870, 872 (9th Cir. 1985); but see Verduzco v. Apfel,  
6 188 F.3d at 1090 ("Although this Court has disapproved of so-called  
7 'sit and squirm' jurisprudence, the inclusion of the ALJ's personal  
8 observations does not render the decision improper.") (citations and  
9 internal quotations omitted). Cases condemning "sit and squirm"  
10 jurisprudence express a concern that the ALJ, who is not a medical  
11 expert, may substitute his or her own lay judgment in the place of a  
12 medical diagnosis. See, e.g., Graham v. Bowen, 786 F.2d 1113, 1115  
13 (11th Cir. 1986) (ALJ improperly substituted his own opinion based on  
14 observations at the hearing for the medical evidence presented); Van  
15 Horn v. Schweiker, 717 F.2d 871, 874 (3d Cir. 1983) (addressing the  
16 "roundly condemned 'sit and squirm' method of deciding disability,"  
17 and stating that "an ALJ is not free to set his own expertise against  
18 that of physicians who present competent medical evidence") (citations  
19 omitted); but see Matney v. Sullivan, 981 F.2d 1016, 1020 (1992)  
20 (referring to claimant's "demeanor and appearance at the hearing" as  
21 among the specific findings supporting the ALJ's rejection of  
22 Plaintiff's credibility); Nyman v. Heckler, 779 F.2d 528, 531 & n.1  
23 (9th Cir. 1985) (finding no error where the ALJ's "observation of [the  
24 claimant's] demeanor was relevant to his credibility and was not  
25 offered or taken as a substitute for medical diagnosis").

26  
27           Notwithstanding the questionable validity of one or more of an  
28 ALJ's stated reasons for discounting a claimant's credibility, a court

1 properly may uphold the credibility determination where sufficient  
2 valid reasons have been stated. See Carmickle v. Commissioner, 533  
3 F.3d 1155, 1162-63 (9th Cir. 2008); see also Drouin v. Sullivan, 966  
4 F.2d 1255, 1259 (9th Cir. 1992) (upholding credibility rejection where  
5 ALJ's observation of claimant at the hearing was only one of several  
6 reasons stated). In the present case, the ALJ stated sufficient  
7 reasons to allow this Court to conclude that the ALJ discounted  
8 Plaintiff's credibility on permissible grounds. See Moisa v.  
9 Barnhart, 367 F.3d at 885. The Court therefore defers to the ALJ's  
10 credibility determination. See Lasich v. Astrue, 252 Fed. App'x 823,  
11 825 (9th Cir. 2007) (court will defer to Administration's credibility  
12 determination when the proper process is used and proper reasons for  
13 the decision are provided); accord Flaten v. Secretary of Health &  
14 Human Services, 44 F.3d 1453, 1464 (9th Cir. 1995).<sup>3</sup>

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26 <sup>3</sup> The Court does not determine herein whether Plaintiff's  
27 assertions regarding her subjective symptoms and limitations are  
28 credible. It is for the Administration, and not this Court, to  
evaluate the credibility of witnesses. See Magallanes v. Bowen,  
881 F.2d 747, 750, 755-56 (9th Cir. 1989).



