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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JULIE T.,	)	NO. SA CV 18-1401-E
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM OPINION</b>
	)	
NANCY A. BERRYHILL, DEPUTY	)	
COMMISSIONER FOR OPERATIONS,	)	
SOCIAL SECURITY,	)	
	)	
Defendant.	)	
	)	

PROCEEDINGS

Plaintiff filed a complaint on August 9, 2018, seeking review of the Commissioner's denial of disability insurance benefits. The parties filed a consent to proceed before a United States Magistrate Judge on August 31, 2018. Plaintiff filed a motion for summary judgment on March 6, 2019. Defendant filed a motion for summary judgment on April 4, 2019. The Court has taken the motions under submission without oral argument. See L.R. 7-15; "Order," filed August 24, 2018.

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1 **BACKGROUND**

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3 Plaintiff, a former social worker, sought disability insurance  
4 benefits beginning January 1, 2012, based on "a multiplicity of my  
5 symptoms" from several alleged impairments (Administrative Record  
6 ("A.R.") 43-49, 55, 152-69). Plaintiff's insured status expired on  
7 March 31, 2015 (A.R. 23). Thus, the issue in the administrative  
8 proceedings was whether Plaintiff was disabled from all employment  
9 between January 1, 2012 and March 31, 2015 ("the relevant time  
10 period"). See 20 C.F.R. § 404.131; Flaten v. Secretary, 44 F.3d 1453,  
11 1458-60 (9th Cir. 1995).

12  
13 An Administrative Law Judge ("ALJ") reviewed the extensive record  
14 and heard testimony from Plaintiff and a vocational expert (A.R. 19-  
15 1051). The ALJ found that Plaintiff had several severe impairments  
16 during the relevant time period: "ulcerative colitis; inflammatory  
17 arthritis; shoulder capsulitis; headaches; and neuropathy" (A.R. 25).  
18 The ALJ also found, however, that during the relevant time period  
19 Plaintiff retained the residual functional capacity for a narrowed  
20 range of light work (A.R. 26). The work-related limitations defined  
21 by the ALJ included the need for "ready access to a restroom" and the  
22 "freedom to alternate sitting with standing and walking at the  
23 workstation" (id.). The vocational expert testified that a person  
24 with this residual functional capacity could perform jobs existing in  
25 significant numbers in the national economy (A.R. 50-51). In reliance  
26 on this testimony, the ALJ found Plaintiff not disabled during the  
27 relevant time period (A.R. 31-32). The Appeals Council denied review  
28 (A.R. 1-3).



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

3  
4 **DISCUSSION**

5  
6 After consideration of the record as a whole, Defendant's motion  
7 is granted and Plaintiff's motion is denied. The Administration's  
8 findings are supported by substantial evidence and are free from  
9 material<sup>1</sup> legal error. Plaintiff's contrary arguments are unavailing.

10  
11 **I. Substantial Evidence Supports the Conclusion Plaintiff Could Work**  
12 **During the Relevant Time Period.**

13  
14 The record contains substantial evidence that Plaintiff's  
15 impairments were not of disabling severity during the relevant time  
16 period. Some of this evidence came from Plaintiff's own reports to  
17 medical examiners. For example, Plaintiff sometimes reported to  
18 examiners during the relevant time period that her ulcerative colitis  
19 produced only two or three bowel movements per day (A.R. 410-11,  
20 620,702). By contrast, Plaintiff represented to the Administration  
21 that her ulcerative colitis produced six to eight bowel movements per

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23 ///

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26 \_\_\_\_\_  
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 day (A.R. 176).<sup>2</sup> Relatedly, medical notes during and immediately  
2 after the relevant time period sometimes described Plaintiff's  
3 ulcerative colitis as "mild," "asymptomatic," "fairly controlled,"  
4 "stable" and/or "improved" (A.R. 410-11, 612, 716). A colonoscopy in  
5 April of 2015 confirmed chronic colitis but with only "mild to  
6 moderate activity" in the sigmoid colon and no other abnormalities  
7 (A.R. 725-28).

8  
9 With regard to her joint symptoms, Plaintiff sometimes reported  
10 to medical examiners during the relevant time period that she was  
11 making "good improvement" with her pain and range of motion, that she  
12 was "doing well," and that she had "great strength" in her rotator  
13 cuff, only "mild" limitation in the rotation of her left shoulder and  
14 "tolerable" pain or "virtually no pain" (A.R. 268, 271, 276-78).  
15 Relatedly, range of motion and strength testing during the relevant  
16 time period also suggested Plaintiff's joint related difficulties were  
17 not of disabling severity (A.R. 268, 271-72, 274, 277-78, 999). X-  
18 rays of Plaintiff's shoulder taken on July 10, 2013 were essentially  
19 normal (A.R. 272). A nerve conduction study in February of 2016  
20 showed only mild right carpal tunnel syndrome (A.R. 783).

21  
22 None of Plaintiff's many treating physicians (other than Dr.  
23 Stanton, discussed infra) opined that Plaintiff's impairments disabled  
24 her from all employment. Two non-examining state agency physicians  
25

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26  
27 <sup>2</sup> Plaintiff appears to have made the "six to eight" per  
28 day representation to the Administration only two days after she  
made a "two to three" per day representation to a medical  
examiner (A.R. 176, 178, 702).

1 who analyzed Plaintiff's medical records in 2015 concluded that  
2 Plaintiff retained a residual functional capacity even greater than  
3 that defined by the ALJ (A.R. 59-63, 71-73). Under the circumstances  
4 presented, such opinions support the ALJ's conclusion Plaintiff could  
5 work during the relevant time period. See Tonapetyan v. Halter, 242  
6 F.3d 1144, 1149 (9th Cir. 2001) (opinion of non-examining physician  
7 "may constitute substantial evidence when it is consistent with other  
8 independent evidence in the record"); see also Andrews v. Shalala, 53  
9 F.3d 1035, 1041 (9th Cir. 1995) (where the opinions of non-examining  
10 physicians do not contradict "all other evidence in the record" an ALJ  
11 properly may rely on these opinions); Curry v. Sullivan, 925 F.2d  
12 1127, 1130 n.2 (9th Cir. 1990) (same).

13  
14 The vocational expert testified that a person having the residual  
15 functional capacity the ALJ described could perform jobs existing in  
16 significant numbers in the national economy (A.R. 50-51). Such  
17 testimony furnishes substantial evidence of Plaintiff's non-disability  
18 during the relevant time period. See Barker v. Secretary, 882 F.2d  
19 1474, 1478-80 (9th Cir. 1989); Martinez v. Heckler, 807 F.2d 771, 775  
20 (9th Cir. 1986); see generally Johnson v. Shalala, 60 F.3d 1428,  
21 1435-36 (9th Cir. 1995) (ALJ properly may rely on vocational expert to  
22 identify jobs claimant can perform); 42 U.S.C. § 423(d)(2)(A); 20  
23 C.F.R. §§ 404.1520, 416.920.

24  
25 To the extent the evidence of record is conflicting, the ALJ  
26 properly resolved the conflicts. See Treichler v. Commissioner, 775  
27 F.3d 1090, 1098 (9th Cir. 2014) (court "leaves it to the ALJ" to  
28 resolve conflicts and ambiguities in the record). The Court must

1 uphold the administrative decision when the evidence "is susceptible  
2 to more than one rational interpretation." Andrews v. Shalala, 53  
3 F.3d at 1039-40. The Court will uphold the ALJ's rational  
4 interpretation of the evidence in the present case notwithstanding any  
5 conflicts in the record.

6  
7 **II. Plaintiff's Arguments are Unavailing.**

8  
9 **A. The ALJ Did Not Err in Discounting Dr. Stanton's Opinions.**

10  
11 On May 8, 2017, Dr. Stanton opined that Plaintiff's impairments  
12 (primarily her ulcerative colitis) had disabled her from all  
13 employment since 2007 or earlier (A.R. 958-62). According to Dr.  
14 Stanton, during at least the previous decade, Plaintiff could sit no  
15 more than 45 minutes at a time and could sit no more than two hours  
16 total in an eight hour day (id.). According to Dr. Stanton, Plaintiff  
17 would need to lie down once or twice for one or two hours during the  
18 work day and could not frequently lift even ten pounds (id.).

19  
20 Generally, a treating physician's conclusions "must be given  
21 substantial weight." Embrey v. Bowen, 849 F.2d 418, 422 (9th Cir.  
22 1988); see Rodriguez v. Bowen, 876 F.2d 759, 762 (9th Cir. 1989) ("the  
23 ALJ must give sufficient weight to the subjective aspects of a  
24 doctor's opinion. . . . This is especially true when the opinion is  
25 that of a treating physician") (citation omitted); see also Orn v.  
26 Astrue, 495 F.3d 625, 631-33 (9th Cir. 2007) (discussing deference  
27 owed to treating physician opinions). Even where the treating

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1 physician's opinions are contradicted,<sup>3</sup> "if the ALJ wishes to  
2 disregard the opinion[s] of the treating physician he . . . must make  
3 findings setting forth specific, legitimate reasons for doing so that  
4 are based on substantial evidence in the record." Winans v. Bowen,  
5 853 F.2d 643, 647 (9th Cir. 1987) (citation, quotations and brackets  
6 omitted); see Rodriguez v. Bowen, 876 F.2d at 762 ("The ALJ may  
7 disregard the treating physician's opinion, but only by setting forth  
8 specific, legitimate reasons for doing so, and this decision must  
9 itself be based on substantial evidence") (citation and quotations  
10 omitted). Contrary to Plaintiff's arguments, the ALJ stated  
11 sufficient reasons for discounting Dr. Stanton's extreme opinions.  
12

13 The ALJ aptly stated that Dr. Stanton's opinions were  
14 inconsistent with Plaintiff's known activities (A.R. 29). Indeed, Dr.  
15 Stanton opined Plaintiff was disabled from all employment during years  
16 when Plaintiff was in fact employed (A.R. 41-43) (Plaintiff testifying  
17 to her employment in 2007, 2008, 2009 and 2010). Additionally, Dr.  
18 Stanton's opinions regarding Plaintiff's supposed sitting intolerance  
19 and supposed need to lie down appear inconsistent with Plaintiff's  
20 demonstrated ability to endure long car trips to Northern California  
21 and long air travel to Ireland (A.R. 45-46, 274). Such  
22 inconsistencies between a treating physician's opinions and a  
23 claimant's activities can furnish a sufficient reason for rejecting  
24 the treating physician's opinions. See, e.g., Rollins v. Massanari,

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26  
27 <sup>3</sup> Rejection of an uncontradicted opinion of a treating  
28 physician requires a statement of "clear and convincing" reasons.  
Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996); Gallant v.  
Heckler, 753 F.2d 1450, 1454 (9th Cir. 1984).



1 261 F.3d 853, 856 (9th Cir. 2001).

2  
3 The ALJ also stated that Dr. Stanton's opinions were inconsistent  
4 with the medical evidence of record (A.R. 29-30). Indeed, Dr.  
5 Stanton's own medical treatment notes of examinations and testing (and  
6 the treatment notes of other providers in "Dr. Stanton & Associates a  
7 Medical Group, Inc.") suggest Plaintiff was not as limited as Dr.  
8 Stanton opined (A.R. 410-11, 594-99, 603, 620-21, 702-04). An ALJ may  
9 properly reject a treating physician's opinion where, as here, the  
10 opinion is not adequately supported by treatment notes or objective  
11 clinical findings. See Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th  
12 Cir. 2008) (ALJ may reject a treating physician's opinion that is  
13 inconsistent with other medical evidence, including the physician's  
14 treatment notes); Connett v. Barnhart, 340 F.3d 871, 875 (9th Cir.  
15 2003) (treating physician's opinion properly rejected where  
16 physician's treatment notes "provide no basis for the functional  
17 restrictions he opined should be imposed on [the claimant]").

18  
19 The ALJ also pointed out that Dr. Stanton's opinions were  
20 inconsistent with the opinions of the state agency physicians (A.R.  
21 29). A conflicting opinion by a non-examining physician, in and of  
22 itself, does not provide sufficient justification for discounting the  
23 opinion of a treating physician. See Lester v. Chater, 81 F.3d 821,  
24 831 (9th Cir. 1995). In the present case, however, the ALJ did not  
25 place sole reliance on this conflict. The ALJ stated sufficient  
26 reasons, in whole, supported by evidence in the record, to justify  
27 discounting Dr. Stanton's extreme opinions.

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1           **B. The ALJ Did Not Err in Discounting Plaintiff's Testimony and**  
2           **Statements Regarding the Severity of Her Subjective**  
3           **Symptomatology.**  
4

5           Plaintiff challenges the legal sufficiency of the ALJ's stated  
6 reasons for discounting Plaintiff's subjective complaints. An ALJ's  
7 assessment of a claimant's credibility is entitled to "great weight."  
8 Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir. 1990); Nyman v.  
9 Heckler, 779 F.2d 528, 531 (9th Cir. 1985). Where, as here, an ALJ  
10 finds that the claimant's medically determinable impairments  
11 reasonably could be expected to cause some degree of the alleged  
12 symptoms of which the claimant subjectively complains, any discounting  
13 of the claimant's complaints must be supported by specific, cogent  
14 findings. See Berry v. Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010);  
15 Lester v. Chater, 81 F.3d at 834; but see Smolen v. Chater, 80 F.3d at  
16 1282-84 (indicating that ALJ must offer "specific, clear and  
17 convincing" reasons to reject a claimant's testimony where there is no  
18 evidence of "malingering").<sup>4</sup> An ALJ's credibility finding "must be  
19 sufficiently specific to allow a reviewing court to conclude the ALJ  
20

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21           <sup>4</sup> In the absence of an ALJ's reliance on evidence of  
22 "malingering," most recent Ninth Circuit cases have applied the  
23 "clear and convincing" standard. See, e.g., Leon v. Berryhill,  
24 880 F.3d 1041, 1046 (9th Cir. 2017); Brown-Hunter v. Colvin, 806  
25 F.3d 487, 488-89 (9th Cir. 2015); Burrell v. Colvin, 775 F.3d  
26 1133, 1136-37 (9th Cir. 2014); Treichler v. Commissioner, 775  
27 F.3d at 1102; Ghanim v. Colvin, 763 F.3d 1154, 1163 n.9 (9th Cir.  
28 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 rejected the claimant's testimony on permissible grounds and did not  
2 arbitrarily discredit the claimant's testimony." See Moisa v.  
3 Barnhart, 367 F.3d 882, 885 (9th Cir. 2004) (internal citations and  
4 quotations omitted); see also Social Security Ruling ("SSR") 96-7p  
5 (explaining how to assess a claimant's credibility), superseded, SSR  
6 16-3p (eff. Mar. 28, 2016).<sup>5</sup> As discussed below, the ALJ stated  
7 sufficient reasons for finding Plaintiff's subjective complaints less  
8 than fully credible.

9  
10 The ALJ stressed that Plaintiff's allegations were inconsistent  
11 with the medical record, including records reflecting Plaintiff's own  
12 statements to medical providers (A.R. 27-30). The Court already has  
13 discussed the notable extent to which Plaintiff's statements to the  
14 Administration contradicted Plaintiff's statements to medical  
15 providers. "Contradiction with the medical record is a sufficient  
16 basis for rejecting the claimant's subjective testimony." Carmickle  
17 v. Commissioner, 533 F.3d 1155, 1161 (9th Cir. 2008); see Molina v.  
18 Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012) (claimant's  
19 inconsistencies can adversely impact claimant's credibility); Verduzco  
20 v. Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999) (inconsistencies in a  
21 claimant's statements were among the "clear and convincing reasons"  
22 for discounting claimant's credibility).

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24  
25 <sup>5</sup> The appropriate analysis under the superseding SSR is  
26 substantially the same as the analysis under the superseded SSR.  
27 See R.P. v. Colvin, 2016 WL 7042259, at \*9 n.7 (E.D. Cal. Dec. 5,  
28 2016) (stating that SSR 16-3p "implemented a change in diction  
rather than substance") (citations omitted); see also Trevizo v.  
Berryhill, 871 F.3d 664, 678 n.5 (9th Cir. 2017) (suggesting that  
SSR 16-3p "makes clear what our precedent already required").

1 The ALJ also reasonably stated that Plaintiff's admitted  
2 activities suggested that her functional limits during the relevant  
3 time period were not as profound as Plaintiff claimed. For example,  
4 Plaintiff traveled long distances by car and by air, grocery shopped,  
5 performed household cleaning, including vacuuming and the cleaning of  
6 sinks and toilets, and watered her lawn (A.R. 45-46, 194, 202, 274).  
7 Inconsistencies between claimed incapacity and admitted activities  
8 properly can impugn a claimant's credibility. See Molina v. Astrue,  
9 674 F.3d at 1112; Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir.  
10 2002); see also Tommasetti v. Astrue, 533 F.3d at 1040 ("The ALJ  
11 properly could infer from [claimant's ability to travel to Venezuela]  
12 that [claimant] was not as physically limited as he purported to be");  
13 Burch v. Barnhart, 400 F.3d 676, 680-812 (9th Cir. 2005) (daily  
14 activities can constitute "clear and convincing reasons" for  
15 discounting a claimant's testimony); Rollins v. Massanari, 261 F.3d at  
16 857 (claimant's testimony regarding daily domestic activities  
17 undermined the credibility of her pain-related testimony).

18  
19 The objective medical evidence cannot properly constitute the  
20 sole basis for discounting a claimant's complaints. See Burch v.  
21 Barnhart, 400 F.3d at 681. However, the objective medical evidence  
22 was not the only stated basis for discounting Plaintiff's complaints  
23 in the present case.

24  
25 In sum, the ALJ stated sufficient valid reasons to allow this  
26 Court to conclude that the ALJ discounted Plaintiff's credibility on  
27 permissible grounds. See Moisa v. Barnhart, 367 F.3d at 885. The  
28 Court therefore defers to the ALJ's credibility determination. See

