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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAMELA NICOLE McCARTHY,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

) 1:09-cv-1967 LJO SKO

) **FINDINGS AND RECOMMENDATIONS**
) **REGARDING PLAINTIFF’S SOCIAL**
) **SECURITY COMPLAINT**

) (Doc. 2)

) **OBJECTIONS DUE 14 DAYS**

INTRODUCTION

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (the “Commissioner” or “Defendant”) denying her application for Supplemental Security Income (“SSI”) pursuant to Title XVI of the Social Security Act. 42 U.S.C. §§ 405(g), 1383(c)(3). The matter is currently before the Court on the parties’ briefs, which were submitted, without oral argument, to the Honorable Sheila K. Oberto, United States Magistrate Judge.

FACTUAL BACKGROUND

Plaintiff was born in 1960 and has a high-school education but no past relevant work. (Administrative Record (“AR”) 18.) On February 23, 2007, Plaintiff filed an application for SSI, alleging disability beginning on November 15, 2006, due to back problems. (AR 86-93, 100, 105.)

1 **A. Medical Evidence**

2 **1. University Medical Center**

3 On February 1, 2003, magnetic resonance imaging (“MRI”) of Plaintiff’s lumbar spine
4 revealed desiccation of the L4-5 disc “associated with a broad base bulge resulting in mild to
5 moderate canal stenosis.” (AR 270.) On March 18, 2003, Plaintiff underwent back surgery to treat
6 a herniated disc at L5-S1. (AR 264.) MRI of Plaintiff’s lumbar spine on that date revealed
7 unremarkable alignment and no fracture. (AR 266.)

8 On February 2, 2004, MRI of Plaintiff’s lumbar spine revealed “[i]nterval resection of L5-S1
9 disc herniation. No evidence of residual/recurrent disc herniation. Mild bulging discs at L4-L5 and
10 L5-S1 without frank central spinal stenosis.” (AR 244.)

11 **2. Dr. Tran**

12 On June 17, 2007, Juliane Tran, M.D., performed a consultative orthopedic examination of
13 Plaintiff. (AR 139-42.) Dr. Tran noted Plaintiff’s complaints of neck pain with radicular symptoms
14 of the left upper extremities and Plaintiff’s subjective complaints of back pain with a history of
15 lumbar discectomy. (AR 142.) Dr. Tran further noted that the “examination has multiple
16 abnormalities, out of proportion to the physical findings.” (AR 142.) Dr. Tran could not “evaluate
17 many aspects of [Plaintiff’s] range of motion or even strength testing” because “[Plaintiff’s] effort
18 on examination [was] minimal.” (AR 142.) Therefore, Dr. Tran could not assess Plaintiff’s
19 functional restrictions and opined that Plaintiff “probably should have a psychiatric evaluation.”
20 (AR 142.)

21 **3. Dr. Brubaker**

22 On December 13, 2004, Daniel Brubaker, D.O., noted that Plaintiff complained of headaches
23 on her left side with numbness. (AR 160.) Dr. Brubaker further noted that Plaintiff was “having a
24 lot of pain resulting from her significant other dying. She is having a lot of back pain. She is dealing
25 with things OK. She is doing OK.” (AR 160.)

1 On February 13, 2008, Dr. Brubaker completed a medical source statement regarding
2 Plaintiff's ability to perform work-related physical activities. (AR 128-33.) Dr. Brubaker opined
3 that Plaintiff could (1) occasionally lift and carry less than five pounds and (2) sit and stand for 30
4 to 60 minutes and walk for one hour total in an eight-hour work day. (AR 128.) Although Plaintiff
5 did not require the use of a cane to ambulate, Dr. Brubaker opined that she "should use one." (AR
6 129.) Dr. Brubaker stated that "lumbar disc causes severe back pain" and that "cervical discs cause
7 weakness." (AR 130.) Dr. Brubaker further stated that Plaintiff's limitations were first present in
8 September 2006. (AR 133.)

9 **4. Dr. Abejie**

10 On December 31, 2008, an MRI of Plaintiff's lumbar spine ordered by Dr. Abejie revealed
11 no disc herniation or spinal canal stenosis and only some degenerative changes. (AR 183.)
12 Plaintiff's cervical spine showed mild spinal canal stenosis at C6-C7. (AR 185.)

13 **5. Dr. O'Laughlin**

14 On March 5, 2009, Thomas O'Laughlin, M.D., completed an initial physical medicine
15 consultation with and evaluation of Plaintiff. (AR 276-78.) Dr. O'Laughlin reported as follows:

16 [Plaintiff] has neck and lower back pain. She had recent MRIs of her neck and back
17 down [sic] in December 2008. We were able to look at the disc. . . . She also gets
18 some left shoulder pain. This MRI did not reveal a lot of arthritis or other symptoms
to suggest the etiologies within the shoulder itself[;] although this is possible, it may
well be coming from the neck.

19 (AR 276.) Dr. O'Laughlin noted that Plaintiff "would like to be on SSI. Currently the patient [had]
20 a lawyer that [was] working along with her." (AR 276.) The doctor further observed that Plaintiff's
21 left hand appeared "to be more less [sic] swollen than the right." (AR 277.) Dr. O'Laughlin found
22 that Plaintiff had "good dorsiflexion and plantar flexion at the ankles bilaterally." (AR 278.) "Dr.
23 O'Laughlin assessed Plaintiff with, *inter alia*, "depression." (AR 278.)

24 On April 7, 2009, Scott Catone, a physician's assistant, completed a medical source statement
25 regarding Plaintiff's ability to do work-related physical activities. (AR 279-85.) Plaintiff could
26 occasionally lift up to 10 pounds. (AR 279.) Plaintiff could sit, stand, and walk for one hour each
27

1 without interruption. (AR 280.) Regarding Plaintiff's activities that she could perform in an eight-
2 hour day, Mr. Patone indicated, "Bed, alternates reclines [sic], walking, sitting, and standing." (AR
3 280.) Plaintiff could not walk a block at a reasonable pace on rough or uneven surfaces. (AR 284.)

4 **B. Administrative Hearing**

5 The Commissioner denied Plaintiff's application initially and again on reconsideration;
6 consequently, Plaintiff requested a hearing before an Administrative Law Judge ("ALJ"). (AR 42-
7 66.) On April 17, 2009, ALJ Christopher Larsen held a hearing where Plaintiff and a vocational
8 expert testified. (AR 20-41.)

9 **1. Plaintiff's Testimony**

10 The ALJ summarized Plaintiff's testimony in his decision as follows:

11 [Plaintiff] testified she has extreme pain in the back and neck, and a swollen left
12 hand. She underwent lower lumbar surgery in March, 2003, which she stated was not
13 successful. Pain in her low back reportedly travels to her legs, arms, and hand. Her
14 neck pain is constant, burning, and sharp. Her left arm is constantly swollen and the
15 more she does, the more pain she feels. She takes Norco and morphine, which make
16 her sleepy and impair[s] her concentration. She sees Dr. O'Laughlin and physician
17 assistant Mr. Catone once every two months. [Plaintiff] testified she is private pay
18 because she does not have any insurance. She testified Dr. Brubaker recommended
19 a surgery that does not exist yet. She lies down 50% of the time and can only lie on
20 her sides, but not on her back. She also uses a heating pad a couple of times a day.
21 Allegedly, she can only lift a gallon of milk, using both hands, and struggles to do it.
22 She can only stand and sit 10 to 15 minutes each for a total of 16 times a day and
23 walk 1/4 mile. [Plaintiff] did not know if she could reach with her left arm. She
24 lives with her mother in a mobile home and does not do any household chores. She
25 can prepare simple meals. During the day she paces, sits, visits people when they
26 come over, goes outside, goes grocery shopping once a week, and can drive to
27 doctors' appointments. Her income is general relief and food stamps.

28 (AR 15.)

2. Vocational Expert Testimony

29 A hypothetical person of Plaintiff's age, education, and work experience could not perform
30 work in the national economy if such a person could perform work at the light exertional level but
31 could reach only occasionally with the left dominant arm. (AR 39.) Further, a hypothetical person
32 of Plaintiff's age, education, and work experience could not perform any work if such a person could
33 only occasionally lift up to 10 pounds and in an eight-hour day, stand and walk for a total of two

1 hours and sit for a total of two hours. (AR 39.) The vocational expert’s testimony was consistent
2 with the Dictionary of Occupational Titles.¹ (AR 40.)

3 **C. ALJ’s Decision**

4 On June 29, 2009, the ALJ issued a decision finding Plaintiff not disabled since the
5 application date of February 23, 2007. (AR 9-19.) Specifically, the ALJ found that Plaintiff (1) had
6 not engaged in substantial gainful activity since February 23, 2007; (2) had an impairment or a
7 combination of impairments that is considered “severe” based on the requirements in the Code of
8 Federal Regulations; (3) did not have an impairment or combination of impairments that meets or
9 equals one of the impairments set forth in 20 C.F.R. Part 404, Subpart P, Appendix 1; and (4) could
10 perform jobs that existed in significant numbers in the national economy. (AR 14-18.) The ALJ
11 found that Plaintiff had the residual functional capacity (“RFC”) to perform the full range of light
12 work.² (AR 18.)

13 Regarding Plaintiff’s credibility, the ALJ found that, “[a]fter carefully considering the
14 evidence, . . . [Plaintiff’s] medically-determinable impairments can reasonably be expected to
15 produce her alleged symptoms, but her statements about the intensity, persistence, and limiting
16 effects of those symptoms are not credible to the extent they are inconsistent with [the ALJ’s]
17 evaluation of [Plaintiff’s] residual functional capacity.” (AR 15.) The ALJ found that “[t]he
18 objective medical evidence does not support [Plaintiff’s] subjective complaints.” (AR 16.) The ALJ
19 further found that, “[t]o the extent [Plaintiff’s] symptoms vary from examination to examination,
20 they are less reliable in determining her residual functional capacity.” (AR 17.)

21 The ALJ discounted Dr. Brubaker’s opinion as follows:

22 Dr. Brubaker’s opinion is troubling to me for three reasons. First, the objective
23 medical evidence supporting it is at least equivocal. . . . Dr. Brubaker does not

24
25 ¹ The Social Security Administration has taken administrative notice of the Dictionary of Occupational Titles,
26 which is published by the Department of Labor and gives detailed physical requirements for a variety of jobs. *Massachi*
27 *v. Astrue*, 486 F.3d 1149, 1152 n.8 (9th Cir. 2007); *see also* 20 C.F.R. § 416.966(d)(1).

28 ² “Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects
weighing up to 10 pounds.” 20 C.F.R. § 416.967(b).

1 specify any particular medical or clinical findings on the form, other than what is
2 essentially a recitation of [Plaintiff's] subjective complaints. . . . Second, in a
3 December 13, 2004, note, Dr. Brubaker observes [Plaintiff] is "having a lot of pain
4 resulting from her significant other dying." This suggests to me Dr. Brubaker is
5 using a fairly broad definition of "pain." Third, I cannot tell from Dr. Brubaker's
6 records whether [Plaintiff] whether gave more effort in his exam than she did during
7 consultative evaluator Dr. Tran's examination. One detail I find troubling is that Dr.
8 O'Laughlin, on March 5, 2009, reports [Plaintiff] has "good dorsiflexion and plantar
9 flexion at the ankles bilaterally." When she saw Dr. Tran, [Plaintiff] refused to move
10 her left ankle at all, saying she could not.

11 (AR 17.)

12 Plaintiff sought review of this decision before the Appeals Council, which denied review on
13 September 11, 2009. (AR 1-4.) Therefore, the ALJ's decision became the final decision of the
14 Commissioner. 20 C.F.R. § 416.1481.

15 **D. Plaintiff's Appeal**

16 On November 16, 2009, Plaintiff filed a complaint before this Court seeking review of the
17 ALJ's decision. Plaintiff contends that the ALJ failed to evaluate properly the opinion evidence and
18 failed to assess properly Plaintiff's credibility.

19 SCOPE OF REVIEW

20 The ALJ's decision denying benefits "will be disturbed only if that decision is not supported
21 by substantial evidence or it is based upon legal error." *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.
22 1999). In reviewing the Commissioner's decision, the Court may not substitute its judgment for that
23 of the Commissioner. *Macri v. Chater*, 93 F.3d 540, 543 (9th Cir. 1996). Instead, the Court must
24 determine whether the Commissioner applied the proper legal standards and whether substantial
25 evidence exists in the record to support the Commissioner's findings. *See Lewis v. Astrue*, 498 F.3d
26 909, 911 (9th Cir. 2007).

27 "Substantial evidence is more than a mere scintilla but less than a preponderance." *Ryan v.*
28 *Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008). "Substantial evidence" means "such
relevant evidence as a reasonable mind might accept as adequate to support a conclusion."
Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305

1 U.S. 197, 229 (1938)). The Court “must consider the entire record as a whole, weighing both the
2 evidence that supports and the evidence that detracts from the Commissioner’s conclusion, and may
3 not affirm simply by isolating a specific quantum of supporting evidence.” *Lingenfelter v. Astrue*,
4 504 F.3d 1028, 1035 (9th Cir. 2007) (citation and internal quotation marks omitted).

5 **APPLICABLE LAW**

6 An individual is considered disabled for purposes of disability benefits if he is unable to
7 engage in any substantial, gainful activity by reason of any medically determinable physical or
8 mental impairment that can be expected to result in death or that has lasted, or can be expected to
9 last, for a continuous period of not less than twelve months. 42 U.S.C. §§ 423(d)(1)(A),
10 1382c(a)(3)(A); *see also Barnhart v. Thomas*, 540 U.S. 20, 23 (2003). The impairment or
11 impairments must result from anatomical, physiological, or psychological abnormalities that are
12 demonstrable by medically accepted clinical and laboratory diagnostic techniques and must be of
13 such severity that the claimant is not only unable to do his previous work, but cannot, considering
14 his age, education, and work experience, engage in any other kind of substantial, gainful work that
15 exists in the national economy. 42 U.S.C. §§ 423(d)(2)-(3), 1382c(a)(3)(B), (D).

16 The regulations provide that the ALJ must undertake a specific five-step sequential analysis
17 in the process of evaluating a disability. In the First Step, the ALJ must determine whether the
18 claimant is currently engaged in substantial gainful activity. 20 C.F.R. §§ 404.1520(b), 416.920(b).
19 If not, in the Second Step, the ALJ must determine whether the claimant has a severe impairment
20 or a combination of impairments significantly limiting him from performing basic work activities.
21 *Id.* §§ 404.1520(c), 416.920(c). If so, in the Third Step, the ALJ must determine whether the
22 claimant has a severe impairment or combination of impairments that meets or equals the
23 requirements of the Listing of Impairments (“Listing”), 20 C.F.R. 404, Subpart P, App. 1. *Id.*
24 §§ 404.1520(d), 416.920(d). If not, in the Fourth Step, the ALJ must determine whether the claimant

1 has sufficient RFC³ despite the impairment or various limitations to perform his past work. *Id.*
2 §§ 404.1520(f), 416.920(f). If not, in Step Five, the burden shifts to the Commissioner to show that
3 the claimant can perform other work that exists in significant numbers in the national economy. *Id.*
4 §§ 404.1520(g), 416.920(g). If a claimant is found to be disabled or not disabled at any step in the
5 sequence, there is no need to consider subsequent steps. *Tackett v. Apfel*, 180 F.3d 1094, 1098-99
6 (9th Cir. 1999); 20 C.F.R. §§ 404.1520, 416.920.

7 DISCUSSION

8 **A. Plaintiff's Credibility**

9 The ALJ found that Plaintiff's "medically-determinable impairments can reasonably be
10 expected to produce her alleged symptoms, but her statements about the intensity, persistence, and
11 limiting effects of those symptoms are not credible to the extent they are inconsistent with [the
12 ALJ's] evaluation of [Plaintiff's] residual functional capacity." (AR 15.) First, the ALJ found that
13 Plaintiff "gave such poor effort before consultative examiner Dr. Tran that neither Dr. Tran nor the
14 state-agency doctors would hazard a guess as to her actual residual functional capacity. Dr. Tran
15 noted 'multiple abnormalities, out of proportion to the physical findings.'" (AR 16 (internal citations
16 omitted).) Second, the ALJ found that the objective medical evidence did not support Plaintiff's
17 subjective complaints. (AR 16.) Third, the ALJ found that the variation in Plaintiff's statement
18 regarding the need for surgery, "like the variation in her symptoms at different examinations,
19 highlights the problems with [Plaintiff's] credibility." (AR 18.)

20 Plaintiff contends that these foregoing reasons are not legally sufficient to reject her
21 testimony. According to the Commissioner, however, the ALJ gave valid reasons for finding
22 Plaintiff not entirely credible.

23
24 ³ RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in
25 a work setting on a regular and continuing basis of 8 hours a day, for 5 days a week, or an equivalent work schedule.
26 Social Security Ruling 96-8p. The RFC assessment considers only functional limitations and restrictions that result from
27 an individual's medically determinable impairment or combination of impairments. *Id.* "In determining a claimant's
RFC, an ALJ must consider all relevant evidence in the record including, *inter alia*, medical records, lay evidence, and
'the effects of symptoms, including pain, that are reasonably attributed to a medically determinable impairment.'"
Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006).

1 First, the ALJ found that the objective medical evidence in the record did not fully support
2 Plaintiff's subjective complaints. Although the inconsistency of objective findings with subjective
3 claims may not be the sole reason for rejecting subjective complaints of pain, *Light*, 119 F.3d at 792,
4 it is one factor which may be considered with others. *Moisa v. Barnhart*, 367 F.3d 882, 885 (9th Cir.
5 2004); *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999). Here, for
6 example, the ALJ found that the MRI of Plaintiff's lumbar spine showed only degenerative changes
7 and that the MRI of Plaintiff's cervical spine showed only mild spinal canal stenosis. (AR 16.)

8 Further, the ALJ noted Plaintiff's "variations in her symptoms at various examination" that
9 highlighted problems with her credibility, noting Plaintiff's lack of effort at Dr. Tran's examination.
10 (AR 17, 18.) An ALJ's consideration of a claimant's tendency to exaggerate and "poor effort"
11 during a consultative examination has been found to support discrediting the claimant's testimony.
12 *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). Given the evidence in the record, the
13 ALJ could reasonably infer that Plaintiff's complaints were not as severe as she presented.
14 *Tommasetti*, 533 F.3d at 1041 (ALJ may draw reasonable inferences from the record).

15 In sum, questions of credibility and resolutions of conflicts in the testimony are functions
16 solely of the Commissioner. *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006). If, as here, the
17 ALJ's interpretation of the claimant's testimony is reasonable and is supported by substantial
18 evidence, it is not the Court's role to "second-guess" it. *Rollins v. Massanari*, 261 F.3d 853, 857
19 (9th Cir. 2001). The ALJ cited clear and convincing reasons for rejecting Plaintiff's subjective
20 complaints regarding the intensity, duration, and limiting effects of his symptoms. *See Batson v.*
21 *Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1196-97 (9th Cir. 2004) (claimant's contradictory
22 testimony unsupported by objective medical evidence constituted substantial evidence in support of
23 ALJ's negative credibility determination). Moreover, the ALJ's reasons were properly supported
24 by the record and sufficiently specific to allow this Court to conclude that the ALJ rejected Plaintiff's
25 testimony on permissible grounds and did not arbitrarily discredit Plaintiff's testimony.

1 **B. The ALJ’s Consideration of Dr. Brubaker’s Opinion**

2 The ALJ discounted Dr. Brubaker’s opinion on a medical source statement regarding
3 Plaintiff’s physical ability to perform work-related activities. Plaintiff contends that the ALJ failed
4 to evaluate properly Dr. Brubaker’s opinion.

5 **1. Legal Standard**

6 The medical opinions of three types of medical sources are recognized in Social Security
7 cases: “(1) those who treat the claimant (treating physicians); (2) those who examine but do not treat
8 the claimant (examining physicians); and (3) those who neither examine nor treat the claimant (non-
9 examining physicians).” *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Generally, a treating
10 physician’s opinion should be accorded more weight than opinions of doctors who did not treat the
11 claimant, and an examining physician’s opinion is entitled to greater weight than a non-examining
12 physician’s opinion. *Id.* Where a treating or examining physician’s opinion is uncontradicted by
13 another doctor, the Commissioner must provide “clear and convincing” reasons for rejecting the
14 treating physician’s ultimate conclusions. *Id.* If the treating or examining doctor’s medical opinion
15 is contradicted by another doctor, the Commissioner must provide “specific and legitimate” reasons
16 for rejecting that medical opinion, and those reasons must be supported by substantial evidence in
17 the record. *Id.* at 830-31; *accord Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th Cir.
18 2009). The ALJ can meet this burden by setting out a detailed and thorough summary of the facts
19 and conflicting clinical evidence, stating his interpretation thereof, and making findings.
20 *Tommasetti*, 533 F.3d at 1041.

21 **2. Analysis**

22 The ALJ discounted Dr. Brubaker’s opinion because it did “not specify any particular
23 medical or clinical findings on the form, other than what is essentially a recitation of [Plaintiff’s]
24 subjective complaints.” (AR 17.) The lack of findings in Dr. Brubaker’s opinion other than that
25 “lumbar disc causes severe back pain” and “cervical discs cause weakness” (AR 130) was a specific
26 and legitimate reason to discredit his opinion, as an ALJ may discount a treating physician’s opinion
27

1 on the grounds that the opinion was based on a claimant's subjective complaints and was
2 unsupported by objective medical findings. *Batson*, 359 F.3d at 1195. In any event, contrary to Dr.
3 Brubaker's opinion, an MRI of Plaintiff's lumbar spine in December 2008 revealed no disc
4 herniation or spinal canal stenosis and only some degenerative changes; an MRI of Plaintiff's
5 cervical spine showed mild spinal canal stenosis at C6-C7 (AR 183). *See Burch v. Barnhart*, 400
6 F.3d 676, 681 (9th Cir. 2005) (determining that, in discounting claimant's pain testimony, ALJ
7 appropriately considered objective medical findings, including MRI and X-rays showing only mild
8 degenerative disease and no disc herniation or nerve root impingement); *Crawford v. Comm'r of Soc.*
9 *Sec.*, 363 F.3d 1155, 1159 (11th Cir. 2004) (per curiam) (MRI revealing very minimal degenerative
10 disc disease, no bulge or protrusion, and no canal stenosis or nerve root impingement is inconsistent
11 with finding total and permanent disability); *cf. Singh v. Apfel*, 222 F.3d 448, 452 (8th Cir. 2000)
12 (claimant's "pain can be directly attributed to an objective finding—a diagnosis of persistent nerve
13 root irritation and more recently, to a recurrent herniated disc").

14 Moreover, because of Plaintiff's inconsistent results on examination, the ALJ could not tell
15 whether Plaintiff gave more effort during Dr. Brubaker's examination than she did for Dr. Tran,
16 which, as noted above, was a clear and convincing reason to discount Plaintiff's credibility. *See Fair*
17 *v. Bowen*, 885 F.2d 597, 605 (9th Cir. 1989) (disregarding treating physician's opinion because it
18 was premised on plaintiff's subjective complaints, which the ALJ had already discounted). In short,
19 the ALJ gave specific and legitimate reasons, supported by substantial evidence in the record, to
20 discount Dr. Brubaker's opinion. The Court should, therefore, affirm the Commissioner's decision
21 and deny Plaintiff's appeal.

22 **RECOMMENDATION**

23 Based on the foregoing, the Court finds that the ALJ's decision is supported by substantial
24 evidence and is based on proper legal standards. Accordingly, the Court RECOMMENDS that
25 Plaintiff's appeal from the administrative decision of the Commissioner of Social Security be
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1 DENIED and that JUDGMENT be entered for Defendant Michael J. Astrue and against Plaintiff
2 Pamela Nicole McCarthy.

3 This Findings and Recommendation will be submitted to the Honorable Lawrence J. O’Neill
4 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being
5 served with this Findings and Recommendation, the parties may file written objections with the
6 court. The document should be captioned “Objections to Magistrate Judge's Findings and
7 Recommendation.” The parties are advised that failure to file objections within the specified time
8 may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th
9 Cir.1991).

10
11 IT IS SO ORDERED.

12 **Dated: February 16, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE