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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

SIA VANG LEE,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security

Defendant.

1:13-cv-01264-GSA

**ORDER REGARDING PLAINTIFF'S
SOCIAL SECURITY COMPLAINT**

I. INTRODUCTION

Plaintiff Sia Vang Lee (“Plaintiff”) seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner” or “Defendant”) denying her application for supplemental security income (“SSI”) benefits pursuant to Title XVI of the Social Security Act. The matter is currently before the Court on the parties’ briefs, which were submitted without oral argument to the Honorable Gary S. Austin, United States Magistrate Judge.¹

II. BACKGROUND AND PRIOR PROCEEDINGS²

Plaintiff is currently 47 years old. AR 32. She does not read, write, or speak English. AR

¹ The parties consented to the jurisdiction of the United States Magistrate Judge. ECF Nos. 7, 8.
² References to the Administrative Record will be designated as “AR,” followed by the appropriate page number.

1 34. In 2004, 2005, and 2009, Plaintiff worked briefly for one month each year for Knapp Farms
2 picking blueberries, but she has not worked since (or before) then. AR 35, 168. Plaintiff has seven
3 children, two of whom are under the age of 18. AR 33. She lives with her children and her
4 husband. AR 33.

5 Plaintiff's alleged physical conditions include sciatica, a tailbone/spinal injury, back/chest
6 pain, arthritis, and ulcers. AR 173. She also alleges psychiatric conditions, including depression
7 and obsessive compulsive disorder. *Id.* She currently takes a number of medications to manage
8 her symptoms, including acetaminophen, fluoxetine, gabapentin, omeprazole, and trazodone. AR
9 176.

10 Plaintiff previously applied for SSI in 2005, but her application was denied after a hearing
11 in front of the Social Security Administration.³ AR 560. On August 31, 2010, Plaintiff filed a new
12 application for disability insurance benefits under Title XVI. AR 155-161. This application was
13 denied initially on March 22, 2011 and on reconsideration on August 11, 2011. AR 94-99, 103-
14 107. Plaintiff filed a request for a hearing on October 6, 2011. AR 108. The hearing was then
15 conducted before Administrative Law Judge Danny Pittman (the "ALJ") on July 10, 2012. AR
16 28. On August 23, 2012, the ALJ issued an unfavorable decision determining that Plaintiff was
17 not disabled. AR 12-22. Plaintiff filed an appeal of this decision with the Appeals Council. The
18 Appeals Council denied her appeal, rendering the order the final decision of the Commissioner.
19 AR 6-9.

20 **III. THE DISABILITY DETERMINATION PROCESS**

21 To qualify for benefits under the Social Security Act, a plaintiff must establish that he or
22 she is unable to engage in substantial gainful activity due to a medically determinable physical or
23 mental impairment that has lasted or can be expected to last for a continuous period of not less
24 than twelve months. 42 U.S.C. § 1382c(a)(3)(A). An individual shall be considered to have a
25 disability only if:

26
27 ³ Although there is some overlap between the conditions alleged in the previous and current applications, the ALJ
28 opted not to preclude Plaintiff from proceeding on her current application because he determined that there had been
material changes in Plaintiff's condition and that Plaintiff had added impairments to the current application which
had not previously been considered. AR 16, *citing Chavez v. Bowen*, 844 F.2d 691 (9th Cir. 1988).

1 . . . his physical or mental impairment or impairments are of such severity that he
2 is not only unable to do his previous work, but cannot, considering his age,
3 education, and work experience, engage in any other kind of substantial gainful
4 work which exists in the national economy, regardless of whether such work
5 exists in the immediate area in which he lives, or whether a specific job vacancy
6 exists for him, or whether he would be hired if he applied for work.

7 42 U.S.C. § 1382c(a)(3)(B).

8 To achieve uniformity in the decision-making process, the Commissioner has established
9 a sequential five-step process for evaluating a claimant's alleged disability. 20 C.F.R. §
10 416.920(a)-(f). The ALJ proceeds through the steps and stops upon reaching a dispositive finding
11 that the claimant is or is not disabled. 20 C.F.R. § 416.920(a)(4). The ALJ must consider
12 objective medical evidence and opinion testimony. 20 C.F.R. §§ 416.927, 416.929.

13 Specifically, the ALJ is required to determine: (1) whether a claimant engaged in
14 substantial gainful activity during the period of alleged disability, (2) whether the claimant had
15 medically-determinable "severe" impairments,⁴ (3) whether these impairments meet or are
16 medically equivalent to one of the listed impairments set forth in 20 C.F.R. § 404, Subpart P,
17 Appendix 1, (4) whether the claimant retained the residual functional capacity ("RFC") to
18 perform his past relevant work,⁵ and (5) whether the claimant had the ability to perform other jobs
19 existing in significant numbers at the regional and national level. 20 C.F.R. § 416.920(a)-(f).

20 Using the Social Security Administration's five-step sequential evaluation process, the
21 ALJ determined that Plaintiff did not meet the disability standard. AR 12-22. In particular, the
22 ALJ found that Plaintiff had not engaged in substantial gainful activity since August 31, 2010, the
23 date specified in her application. AR 17. Further, the ALJ identified depressive disorder,
24 fibromyalgia, headaches, gastritis, sciatica, obsessive compulsive disorder, ulcers, osteoarthritis
25 posttraumatic stress disorder, gastroesophageal reflux disease as medically determinable
26 impairments. AR 18. Nonetheless, the ALJ determined at step two of the five-step process that

27 ⁴ "Severe" simply means that the impairment significantly limits the claimant's physical or mental ability to do basic
28 work activities. *See* 20 C.F.R. § 416.920(c).

⁵ Residual functional capacity captures what a claimant "can still do despite [his or her] limitations." 20 C.F.R. §
416.945. "Between steps three and four of the five-step evaluation, the ALJ must proceed to an intermediate step in
which the ALJ assesses the claimant's residual functional capacity." *Massachi v. Astrue*, 486 F.3d 1149, 1151 n. 2
(9th Cir. 2007).

1 Plaintiff did not have an impairment or combination of impairments that significantly limited her
2 ability to perform basic work-related activities for twelve consecutive months. AR 18. Based on a
3 review of the entire record, the ALJ thus determined that Plaintiff did not have a severe
4 impairment or combination of impairments. The analysis thus terminated and the ALJ did not
5 proceed to any further steps.

6 **IV. STANDARD OF REVIEW**

7 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's decision to determine
8 whether: (1) it is supported by substantial evidence; and (2) it applies the correct legal standards.
9 *See Carmickle v. Commissioner*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d
10 1071, 1074 (9th Cir. 2007).

11 “Substantial evidence means more than a scintilla but less than a preponderance.”
12 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). It is “relevant evidence which,
13 considering the record as a whole, a reasonable person might accept as adequate to support a
14 conclusion.” *Id.* “Where the evidence is susceptible to more than one rational interpretation, one
15 of which supports the ALJ's decision, the ALJ's conclusion must be upheld.” *Id.*

16 **V. DISCUSSION**

17 **A. The Relevant Medical Evidence**

18 Plaintiff argues that the ALJ improperly considered the medical evidence, as well as
19 Plaintiff's own testimony, and thus erroneously determined that Plaintiff was not disabled.
20 Specifically at issue is the ALJ's consideration of: (1) the opinion of Gerardine Gauch, Psy.D., a
21 consulting examiner; and (2) Plaintiff's testimony to the ALJ. The parties do not contest the
22 ALJ's assessment of the physicians who treated or provided examinations with respect to
23 Plaintiff's physical condition (as opposed to her psychiatric conditions). Similarly, they do not
24 contest the ALJ's treatment of Chue F. Vang, the claimant's brother, who submitted a third party
25 function report about the Plaintiff. AR 21. The following review of the record is therefore limited
26 the issues of the ALJ's evaluation of Dr. Gauch's opinion and Plaintiff's credibility.

27 *i. James A. Nowlan, Jr., M.D.*

28 Dr. Nowlan was a consulting examiner who examined Plaintiff as part of her first

1 application for SSI. AR 67. Plaintiff complained to Dr. Nowlan of pain in her back, legs, and
2 right wrist. Although she claimed she could not bend her back more than 50 degrees, she easily
3 bent over and straightened up when asked to remove her sandals. Dr. Nowlan reported that he
4 “found no evidence of any pain in her legs that I could elicit other than what she said. Touching
5 her legs and moving them produced no painful responses. Her back seemed perfectly fine when
6 she was putting her shoes on and taking them off, but she said that she could not bend because of
7 the pain.” AR 222. He concluded that Plaintiff could stand and walk for six hours in an eight hour
8 day and would be able to lift 10 pounds frequently and 25 pounds occasionally. AR 222.

9 ***ii. Roger Fife, M.D.***

10 Dr. Fife treated Plaintiff from 2008 to 2012. On October 12, 2010, Plaintiff was examined
11 by Dr. Fife as part of a routine checkup. Despite reporting abdominal and back pain, as well as
12 receiving treatment for a bacterial infection, Dr. Fife reported that Plaintiff “does not seem to be
13 concerned about her disease—she just wants to get on disability because of her abdominal pain.”
14 AR 271. On April 4, 2011, she again came to Dr. Fife for a routine checkup and to refill
15 medications. She complained to Dr. Fife that she had “been trying to get disability and has been
16 turned down because she has no objective evidence of a disability.” AR 260. Dr. Fife also
17 reported that her “husband is upset that she has been turned down” and that he wanted a “placard
18 for handicapped parking.” *Id.* On May 12, 2011, Dr. Fife filled out a Physical Capacities
19 Evaluation which determined that Plaintiff could sit for 4 hours in a workday; stand for 1 hour in
20 a workday; walk for 1 hour in a workday; would need to alternate between sitting and standing
21 every 30 minutes; and could frequently lift up to 5 pounds and occasionally lift up to 10 pounds.
22 AR 251.

23 The ALJ gave Dr. Fife very little weight. AR 19. Plaintiff does not challenge this
24 determination.

25 ***iii. Kamalullah Yusufzie, M.D.***

26 Dr. Yusufzie conducted a consultative examination of Plaintiff on January 27, 2011. AR
27 224. Plaintiff informed Dr. Yusufzie that she had never worked in this country and complained of
28 pain in her lower back. AR 224. Dr. Yusufzie observed that Plaintiff did not require any assistive

1 devices and that she “got on the exam table and got off of the exam table with no problems.”
2 Moreover, she “took her shoes off and put them back on with no problems.” AR 225. Dr.
3 Yusufzie concluded that Plaintiff could stand, walk, and sit without limits. AR 227. Dr. Yusufzie
4 also found that Plaintiff had no lifting and carrying, postural, manipulative, visual,
5 communicative, or workplace environmental limits. AR 227. The ALJ gave Dr. Yusufzie great
6 weight. AR 19. Plaintiff does not challenge this determination.

7 ***iv. Keith M. Quint, M.D. and A. Khong, M.D.***

8 Drs. Quint and Khong are non-examining physicians who reviewed Plaintiff’s medical
9 records on February 22, 2011 and July 26, 2011, respectively. AR 20, 246, 289. Both determined
10 that Plaintiff did not have any severe medical impairments. AR 246, 290. In fact, Dr. Khong
11 noted that there “has been improvement” in Plaintiff’s condition since the first hearing decision
12 was issued. AR 290. After a review of the record, both also concluded that Plaintiff’s credibility
13 was suspect based on her apparent exaggeration of symptoms with other physicians and
14 inconsistencies in her ability to spell her name in English.⁶ AR 244, 290. Both Drs. Quint and
15 Khong were afforded great weight by the ALJ, an assessment that Plaintiff does not challenge.
16 AR 20.

17 ***v. Phaedra Caruso-Radin, Psy.D. and Norman Zukowsky, Ph.D.***

18 Drs. Caruso-Radin and Zukowsky are, like Drs. Quint and Khong, non-examining
19 sources. Dr. Caruso-Radin filled out a Psychiatric Review Technique form in which she reviewed
20 Plaintiff’s medical records and concluded that the “[o]bjective findings do not support [the]
21 severity of [the] allegations.” AR 244. She goes on to explain that there are “many
22 inconsistencies” in Plaintiff’s story and that the Plaintiff is simply “not credible.” Dr. Zukowsky
23 later reviewed Plaintiff’s medical records on August 11, 2011 and came to the same conclusion.
24 AR 291. The ALJ gave great weight to Drs. Caruso-Rain and Zukowsky. As with the prior
25 doctors, Plaintiff does not challenge this determination.

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27 ⁶ In a consultative examination with Gerardine Gauch, Psy.D., Plaintiff claimed that she was unable to spell her own
28 name. AR 231. However, in a phone call with the Department of Disability Services, Plaintiff, when asked to spell
her name, retrieved her social security card and, with the assistance of the card, spelled “her name in Hmong and she
read it off her SS card and spelled it in English.” AR 195.

1 *vi. Gerardine Gauch, Psy.D.*

2 Dr. Gauch is a consultative examiner who conducted an evaluation of Plaintiff on
3 February 5, 2011. AR 228. As part of the evaluation, Dr. Gauch interviewed Plaintiff, who
4 informed her that her “parents died at the hands of the communists.” AR 229. She also reported
5 no history of employment. AR 230. Dr. Gauch determined that her “[s]tream of mental activity
6 was within normal limits” and her speech was “logical, coherent, and concise.” AR 230. She also
7 found that the Plaintiff’s “[t]hought content was appropriate” and that there “were no indications
8 of hallucinations or delusions.” AR 230. Plaintiff’s “concentration ability was within normal
9 limits.” AR 231. Dr. Gauch concluded that Plaintiff had a poor ability to: understand and
10 remember very short and simple instructions; to understand and remember detailed instructions;
11 complete a normal workday or workweek without interruption; or, deal with various changes in
12 the work setting. AR 232-233. In addition, Plaintiff had a fair ability to: maintain concentration
13 and attention; accept instructions from a supervisor; sustain an ordinary routine without special
14 supervision; or, interact with coworkers. AR 232-233.

15 The ALJ gave very little weight to Dr. Gauch’s opinion. Plaintiff challenges this
16 assessment, claiming that: (1) the ALJ’s determination that Plaintiff had a history of exaggeration
17 is unjustified because it arises out of a misunderstanding of the distinction between reading and
18 spelling⁷; (2) Dr. Gauch was not relying merely on self-reports when she formulated her opinion;
19 and (3) it was inappropriate for the ALJ to give weight to non-examining sources while rejecting
20 an examining source. Plaintiff’s Opening Brief 8:13-19, 9:1-18, 10:14-21, ECF No. 11.

21 Defendant counters that: (1) the ALJ properly rejected Dr. Gauch’s opinion because it was
22 internally inconsistent; and (2) there was evidence that Plaintiff exaggerated her symptoms
23 because they were inconsistent with other evidence in the record. Defendant’s Opposition Brief
24 6:11-7:9, ECF No. 16.

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27 ⁷ Plaintiff argues that she was not lying to Dr. Gauch when she said she could not spell her name; prior instances in
28 which she had spelled her name had, in fact, only involved reading her name off of her Social Security card, which is
functionally simpler than spelling her name without assistance.

1 **B. Legal Standards**

2 At step two of the Social Security Administration’s five-step process, Plaintiff has the
3 burden to demonstrate that she has a medically determinable impairment or combination of
4 impairments. *Bowen v. Yuckert*, 482 U.S. 137, 146-47 (1987); *see also* 20 C.F.R. § 416.920(c).
5 She must also show that the impairment (or combination of impairments) at issue is severe. *Id.* To
6 demonstrate that an impairment is severe, Plaintiff may reference symptoms such as pain,
7 provided that they are supported by medical evidence. 20 C.F.R. § 416.908. Subjective symptoms
8 referenced by the Plaintiff must arise from a medically determinable impairment. 20 C.F.R. §
9 416.929 (“[s]ymptoms, such as pain [...] will not be found to affect [a claimant’s] ability to do
10 basic work activities unless medical signs or laboratory findings show that a medically
11 determinable impairment(s) is present”); *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001)
12 (ALJ may reject “claimant’s subjective complaints based solely on a lack of objective medical
13 evidence to fully corroborate the alleged severity of pain” where claimant fails to produce
14 “objective medical evidence of an underlying impairment”). The Court must thus determine
15 “whether the ALJ had substantial evidence to find that the medical evidence clearly established
16 that [Plaintiff] did not have a medically severe impairment or combination of impairments.”
17 *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005).

18 With respect to medical evidence, cases in this circuit distinguish among the opinions of
19 three types of physicians: (1) those who treat the claimant (treating physicians); (2) those who
20 examine but do not treat the claimant (examining physicians); and (3) those who neither examine
21 nor treat the claimant (non-examining physicians). As a general rule, more weight should be
22 given to the opinion of a treating source than to the opinion of doctors who do not treat the
23 claimant. *Winans v. Bowen*, 853 F.2d 643, 647 (9th Cir. 1987). And, in turn, examining sources
24 generally receive more weight than those of non-examining sources.

25 Because the opinion of an examining physician is generally entitled to greater deference
26 than a non-examining physician, “the opinion of an examining doctor, even if contradicted by
27 another doctor, can only be rejected for specific and legitimate reasons that are supported by
28 substantial evidence in the record.” *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995). The

1 opinion of a non-examining physician cannot, by itself, constitute substantial evidence that
2 justifies the rejection of the opinion of either an examining physician or a treating physician.
3 *Pitzer v. Sullivan*, 908 F.2d 502, 506 n. 4 (9th Cir. 1990); *Gallant v. Heckler*, 753 F.2d 1456 (9th
4 Cir. 1984). It can, however, *support* the rejection of the opinion of a treating or examining
5 physician where combined with other evidence. *See, e.g., Magallanes*, 881 F.2d at 751-55
6 (rejecting the opinion of a treating physician where a non-examining physician’s findings were
7 corroborated by “laboratory test results. . . contrary reports from examining physicians, and on
8 testimony from the claimant that conflicted with her treating physician’s opinion”); *Andrews v.*
9 *Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995) (rejecting an examining psychologist’s opinion
10 where it conflicted with those of non-examining mental health professionals, “testimony from the
11 claimant himself and with medical reports contained in the record”); *Roberts v. Shalala*, 66 F.3d
12 179 (9th Cir. 1995).

13 Thus, the opinions of non-treating or non-examining physicians may serve as substantial
14 evidence when the opinions are consistent with independent clinical findings or other evidence in
15 the record. *Thomas v. Barnhart*, 278 F. 3d 947, 957 (9th Cir. 2002) (“The opinions of non-
16 treating or non-examining physicians may also serve as substantial evidence when the opinions
17 are consistent with independent clinical findings or other evidence in the record”). Where medical
18 reports are inconclusive, “questions of credibility and resolution of conflicts in the testimony are
19 functions solely of the Secretary.” *Sample v. Schweiker*, 694 F.2d at 639, 642 (9th Cir. 1982)
20 *quoting Waters v. Gardner*, 452 F.2d 855, 858 n. 7 (9th Cir.1971).

21 **C. The ALJ’s Rejection of Dr. Gauch’s Opinion was Appropriate**

22 Dr. Gauch’s ultimate findings that Plaintiff had limitations are contradicted by the
23 findings of Drs. Caruso-Radin, Zukowsky, Quint, Khong, and Yusufzie. Consequently, the ALJ
24 need only provide specific and legitimate reasons supported by substantial evidence to reject Dr.
25 Gauch’s findings. *Lester*, 81 F.3d at 830-31.

26 The ALJ gave little weight to Dr. Gauch’s findings, explaining that:

27 I give very little weight to this opinion because it is not supported by the
28 appropriate thought content, normal stream of mental activity and average level of
intellectual functioning (Exhibit B3F, p. 3). The opinion and findings of Dr.

1 Gauch are further discounted because there is evidence of exaggerated [sic]
2 during her evaluation as well. For example, Dr. Gauch reported that the claimant
3 was disoriented and unable to spell her name (see Exhibit B3F, pp. 3-4), but that
4 is inconsistent with treatment notes showing that she was oriented times 3 with a
5 normal thought process (see Exhibit B10F, p. 3). In addition, records show that
6 during an interview, she not only spelled her name, but she read it off her Social
7 Security Card and translated it into English (Exhibits B4F, p. 11; B5F, p. 2). Thus,
8 it appears as if she was exaggerating during this evaluation, and as a result, little
9 weight is given to this opinion.

10 AR 20-1.

11 It appears that the ALJ thus gave Dr. Gauch's opinion little weight because: (1) her own
12 records are inconsistent with the ultimate conclusions she reached (*i.e.*, the opinion "is not
13 supported" by the findings of "appropriate though content, normal stream of mental activity and
14 average level of intellectual functioning"); and (2) the opinion was based on subjective self-
15 reports by the Plaintiff which appear to have been exaggerated. Both reasons constitute specific
16 and legitimate reasons to reject Dr. Gauch's opinion. *Turner v. Comm'r of Soc. Sec.*, 613 F.3d
17 1217, 1223 (9th Cir. 2010) (ALJ "reasonably rejected" physician's opinion where it was "based
18 almost entirely on the claimant's self-reporting"); *Tomasetti v. Astrue*, 533 F.3d 1035, 1041 (9th
19 Cir. 2008) (upholding rejection of physician's opinion where "ultimate conclusions . . . did not
20 mesh with her objective data or history").

21 The ALJ could have reasonably determined that either rationale was supported by
22 substantial evidence. As explained by the ALJ, Plaintiff appears to have given false, or, at the
23 very least, misleading information when she informed Dr. Gauch that she could not spell her
24 name.⁸ AR 231. In addition, large portions of Dr. Gauch's opinion appear to be based on reports
25 by Plaintiff, including a description of her daily routine and reports of her medical and
26 psychological history.⁹ Given the ALJ's finding that Plaintiff lacked credibility, it was reasonable

27 ⁸ Plaintiff argues in her Opening Brief that the mere fact that she could read her name off of her Social Security card
28 does not establish that she could actually spell her name without it. But the issue is not whether Plaintiff has the
ability to read or speak in English without a visual aid; the issue is that Plaintiff appears to have given different
responses to the same question in different contexts. When asked to spell her name in a phone call with the
Department of Disability Services, Plaintiff retrieved her Social Security card and then proceeded to spell her name
in English, even though an interpreter offered to translate her spelling from Hmong. AR 244. When asked to spell her
name by Dr. Gauch, she simply stated that she could not spell her name and left the matter at that. Put simply, it was
reasonable for the ALJ to infer that Plaintiff was being deliberately unhelpful (or "exaggerating" her symptoms) only
when the circumstances called for it—*e.g.*, when her mental state was under evaluation. *Molina v. Astrue*, 674 F.3d
1104, 1111 (9th Cir. 2012).

⁹ Plaintiff also appears to have provided slightly different stories to different physicians. Dr. Gauch, for example,

1 for the ALJ to reject a medical opinion based, in part, on her statements. *Molina v. Astrue*, 674
2 F.3d 1104, 1111 (9th Cir. 2012) (“Even when the evidence is susceptible to more than one
3 rational interpretation, we must uphold the ALJ’s findings if they are supported by inferences
4 reasonably drawn from the record”).

5 Similarly, substantial evidence indicates that Dr. Gauch’s report is inconsistent with her
6 ultimate conclusions. As explained above, Dr. Gauch found that Plaintiff had appropriate thought
7 content, a normal stream of mental activity, and an average level of intellectual functioning. She
8 also found that Plaintiff’s “concentration ability was within normal limits.” AR 231. Finally, she
9 acknowledged that some of the tests she was providing to Plaintiff may have been inaccurate
10 because of “cultural factors.” AR 231. Despite this, she determined that Plaintiff would not be
11 able to complete a normal workday or workweek and that Plaintiff had a poor ability to
12 understand and remember very short and simple, as well as detailed, instructions. AR 232. In
13 addition, some of Dr. Gauch’s preliminary findings are not entirely consistent. She argues, for
14 instance, that Plaintiff’s “attitude toward seeking employment is fair,” but acknowledges that
15 plaintiff has no work history. AR 232. In short, there appears to be substantial evidence from
16 which the ALJ could determine that Dr. Gauch’s report is internally inconsistent and thus should
17 be given little weight.

18 **D. The ALJ’s Evaluation of Plaintiff’s Credibility was Appropriate¹⁰**

19 To evaluate the credibility of a claimant’s testimony regarding subjective complaints of
20 pain and other symptoms, an ALJ must engage in a two-step analysis. *Vasquez v. Astrue*, 572
21 F.3d 586, 591 (9th Cir. 2009). First, the ALJ must determine whether the claimant has presented
22 objective medical evidence of an underlying impairment that could reasonably be expected to
23 produce the pain or other symptoms alleged. *Id.* The claimant is not required to show that the

24
25 reports that Plaintiff’s parents were both killed by communists. AR 229. In other reports, however, she states that her
26 father was killed by communists and her mother died in childbirth. AR 306. Similarly, Plaintiff told Dr. Gauch that
27 the only source of social support she had was her cousin. AR 232. She reported to a different doctor, however, that
28 she had three siblings with whom she spoke on a weekly basis to “help her emotionally.” AR 306.

¹⁰ Plaintiff’s brother, Chue F. Vang, also completed a third party function report to which the ALJ assigned little
weight. Plaintiff’s function report and testimony are substantially similar to this report (in fact, it appears that Vang
completed both function reports (AR 186, 194)). Plaintiff does not challenge the ALJ’s finding that Vang’s report is
unsupported by and inconsistent with the record.

1 impairment “could reasonably be expected to cause the *severity* of the symptom she has alleged;
2 she need only show that it could reasonably have caused some degree of the symptom.” *Id.*
3 (emphasis added). If the claimant meets the first test and there is no evidence of malingering, the
4 ALJ can only reject the claimant's testimony regarding the severity of the symptoms for “specific,
5 clear and convincing reasons” that are supported by substantial evidence. *Id.*

6 An ALJ can consider a variety of factors in assessing a claimant’s credibility, including:

7 (1) ordinary techniques of credibility evaluation, such as the claimant’s reputation
8 for lying, prior inconsistent statements concerning the symptoms, and other
9 testimony by the claimant that appears less than candid; (2) unexplained or
10 inadequately explained failure to seek treatment or to follow a prescribed course
11 of treatment; and (3) the claimant’s daily activities. If the ALJ’s finding is
12 supported by substantial evidence, the court may not engage in second-guessing.

13 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008) (citations and internal quotation marks
14 omitted). Other factors can include a claimant’s work record and testimony from physicians and
15 third parties concerning the nature, severity, and effect of the symptoms of which the claimant
16 complains. *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997). An ALJ can only rely on
17 an inconsistency between a claimant’s testimony and the objective medical evidence to reject that
18 testimony where the ALJ specifies which “complaints are contradicted by what clinical
19 observations.” *Regennitter v. Comm’r of Soc. Sec. Admin.*, 166 F.3d 1294, 1297. An ALJ properly
20 discounts credibility if she makes specific credibility findings that are properly supported by the
21 record and sufficiently specific to ensure a reviewing court that she did not “arbitrarily discredit”
22 the testimony. *Bunnell v. Sullivan*, 947 F.2d 341, 345-46 (9th Cir. 1991).

23 Here, the ALJ concluded that “claimant’s medically determinable impairments could
24 reasonably be expected to produce the alleged symptoms.” AR 21. He questioned, however, “her
25 statements concerning the intensity, persistence and limiting effects of [her] symptoms.” AR 21.
26 The ALJ is thus required to provide “specific, clear and convincing reasons” for finding Plaintiff
27 not credible. *Vasquez*, 572 F.3d at 591.

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1 With respect to Plaintiff's credibility, the ALJ explains that:

2 In this case, the claimant is less than fully credible because of inconsistent
3 statements and unsupported allegations coupled with exaggeration of symptoms.
4 For example, the claimant testified that she is unable to lift or carry more than 5
5 pounds and she can only sit for 30 minutes at a time and stand or walk for 15
6 minutes at a time. However, these severe limitations are not supported by the
7 evidence, which shows an unremarkable gait with a normal range of motion and
8 full motor strength in the upper and lower extremities bilaterally (Exhibit B2F, pp.
9 1-3). The claimant further testified that she is unable to bend over to pick
10 something up off the ground, but as discussed above, that is inconsistent with her
11 demonstrated ability at consultative examinations where she bent over to take off
12 and put on her shoes without difficulty (Exhibits B1F; B2F). Furthermore, as
13 discussed above, there was evidence of exaggeration during Dr. Nowlan and Dr.
14 Gauch's evaluations and treatment notes show that she has been trying to get
15 disability, but was turned down because of a lack of objective evidence (Exhibit
16 B7F, pp. 8, 19). These inconsistent and unsupported statements coupled with
17 symptom exaggeration significantly diminishes credibility, namely with regard to
18 the alleged severity of her impairments.

11 AR 21.

12 The reasons that the ALJ cites for finding Plaintiff not credible appear to be specific,
13 clear, and convincing. **First**, he argues that Plaintiff's statements are inconsistent with the
14 objective evidence in the record. He does this with specificity, identifying precisely which
15 statements Plaintiff made (*e.g.*, Plaintiff said she was "unable to lift or carry more than 5
16 pounds") and matching those statements up with evidence in the record that contradicts those
17 statements (*e.g.*, records show "full motor strength in the upper and lower extremities
18 bilaterally"). **Second**, he points to instances in which Plaintiff's statements were inconsistent with
19 her own statements or actions. This rationale appears to fall squarely within the realm of
20 "ordinary techniques of credibility evaluation" which the ALJ was well within his bounds to use.
21 *Davis v. Alaska*, 415 U.S. 308, 317 (1974) ("biases, prejudices, or ulterior motives" of a witness
22 are "always relevant as discrediting the witness and affecting the weight of his testimony").

23 Each of the reasons the ALJ has offered appears to be supported by substantial evidence,
24 as well. That the ALJ cites as inconsistent do, in fact, appear in the record. And there is ample
25 evidence showing that each of those statements is contradicted. For instance, the ALJ points out
26 that Plaintiff stated that if she dropped something, she would not be able to bend over and pick it
27 up. AR 41 ("Q. If you dropped something, could you bend over and pick it up? A. No, I
28 cannot."). But her statement is contradicted by at least two physicians. AR 222, 225. Similarly,

1 and as detailed above, there is substantial evidence to suggest that Plaintiff has exaggerated or
2 made inconsistent statements about: (1) her symptoms (*e.g.*, her ability to bend at the waist and
3 take off her shoes); (2) her limitations (*e.g.*, her ability to spell/read her name); and even (3) her
4 psychosocial history (*e.g.*, her sources of social support and her family history). Moreover,
5 Plaintiff explicitly told Dr. Fife, her treating physician, how upset she and her husband had been
6 when she failed to qualify for disability benefits the first time she applied because she had no
7 objective evidence of a disability. AR 260. Given the weight of these facts, it was entirely
8 reasonable for the ALJ to conclude that Plaintiff lacked credibility when discussing the severity
9 of her symptoms.

10 **VI. CONCLUSION**

11 Based on the foregoing, the Court finds that the ALJ's decision that the Plaintiff is not
12 significantly limited in her ability to perform basic work activities is supported by substantial
13 evidence in the record as a whole and is based on proper legal standards. Accordingly, this Court
14 DENIES Plaintiff's appeal from the administrative decision of the Commissioner of Social
15 Security. The Clerk of this Court is DIRECTED to enter judgment in favor of Defendant, Carolyn
16 W. Colvin, and Commissioner of Social Security and against Plaintiff, Sia Vang Lee.

17 IT IS SO ORDERED.

18
19 Dated: March 6, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE