

1 United States Magistrate Judge.² After reviewing the administrative record and the pleadings, the
2 Court finds the ALJ's decision is supported by substantial evidence. Accordingly, Plaintiff's
3 appeal is denied and the Commissioner's Cross-Motion for Summary Judgment is granted. (Doc.
4 18).

5 **II. BACKGROUND AND PRIOR PROCEEDINGS³**

6 Plaintiff filed application for SSI on September 20, 2013, alleging a disability beginning May
7 30, 2013. AR 28; 180. Her application was denied initially on January 28, 2014 and on
8 reconsideration on April 18, 2014. AR 28; 114-119; 123-127. Plaintiff requested a hearing before
9 an administrative law judge ("ALJ"). AR 130-132. ALJ Katherine Loo conducted a hearing on
10 April 22, 2015 (AR47-88), and published an unfavorable decision on June 30, 2015. AR 28-39.
11 Plaintiff filed an appeal and the Appeals Council denied the request for review, rendering the
12 order the final decision of the Commissioner. AR 1-3.

13 **III. ISSUES FOR JUDICIAL REVIEW**

14 Plaintiff challenges the ALJ's credibility determination on the basis that the ALJ failed to
15 provide clear and convincing reasons to reject her testimony. (Doc. 14, pgs. 2-9; Doc. 19, pgs. 2-
16 5). She argues that the case should be remanded for a calculation of benefits, or in the alternative,
17 that the case be remanded for further proceedings. (Doc. 14, pg. 9; Doc. 19, pg. 5). The
18 Commissioner contends that the ALJ gave sufficient reasons to find Plaintiff's testimony less than
19 fully credible and that the decision is supported by substantial evidence. (Doc. 18, pgs. 7-12).

20 **IV. PLAINTIFF'S TESTIMONY**

21 Plaintiff completed a function report dated October 16, 2013. AR 212. She indicated that
22 she is in constant pain and takes pain medication which makes her sleepy and constipated. AR
23 212; 219. She spends each day doing exercises to stretch her back, watching television, feeding
24 her dogs, and sleeping. AR 213. She cares for her dogs by feeding them, giving them water, and
25 opening the back door for them. AR 213. She also prepares her own meals which are usually cold
26 cereal or sandwiches. AR 214. She vacuums for three minutes weekly and cleans the toilet and

27 ² The parties have consented to magistrate judge jurisdiction. (Docs. 9 and 21).

28 ³ References to the Administrative Record will be designated as "AR," followed by the appropriate page number.

1 sinks for two minutes weekly. AR 214. Plaintiff reported that she does not do yard work because
2 they had a gardener. AR 215. However, she goes grocery shopping once a week, loves reading,
3 sews as a hobby, and goes out about twice a week. AR 215-217. Plaintiff reported that she
4 spends time with others on the phone and that her sister visits occasionally, but she only goes out
5 about twice a week. AR 215-216. She follows written and spoken instructions well and gets along
6 well with authority figures. AR 217-218. She can deal with stress and is able to handle changes
7 in routine. AR 218. She is only able to stand for a short period of time and can walk around the
8 block. AR 219. She has difficulty completing tasks because she gets tired and things are too
9 heavy. AR 219.

10 Plaintiff also testified before the ALJ at a hearing on April 22, 2015. AR 45-88. She noted
11 she has an associate's degree in health care. AR 51. She last worked in 2004 as an underwriting
12 service assistant but left that position because she was not able to sit for long periods of time. AR
13 53. She currently is unable to work because of her back pain and because her medication makes
14 her lethargic. AR 54. In the past, Plaintiff received six or eight epidural shots to relieve the pain
15 but they were only effective for about a day or so, so she has not gotten one recently. AR 55. On
16 an average day Plaintiff's pain is an eight on a ten point scale. The pain starts in her back and
17 radiates down her right leg. When the pain moves into her leg (which occurs about once a month),
18 her right foot goes numb. AR 70-71. She also suffers from migraine headaches about once a
19 month which she treats with medication. AR 72.

20 Plaintiff has been seeing Dr. Gordon, her primary care doctor, every two weeks for a couple
21 of years and receives shots in her hip to relieve her back pain. AR 56-57. Surgery has been
22 recommended for her back but she has not received the necessary authorization from her
23 insurance company so she has not had the surgery. AR 56. She is currently taking M.S. Contin
24 and Norco four times a day and Motrin as needed. She also has suffered from depression for
25 about three years and has difficulty sleeping at night. She takes Cymbalta, Seroquel, and Resterol
26 (occasionally) to treat the depression and insomnia. AR 59-60. She also takes thyroid medication
27 because her thyroid was removed in 2005. AR 57-58.

28 In addition to her primary care physician, Plaintiff also sees Dr. Fisher, a pain management

1 specialist every two months. AR 60. She participated in physical therapy about a year and a half
2 ago but it did not help. AR 60. She does stretching exercises in the morning if her daughter is
3 home to help her off the floor. AR 61. She has a TENS unit that she wears for about six hours a
4 day once a week. She also occasionally wears a back brace, but it is too constricting so she does
5 not wear it often. AR 61-62.

6 Plaintiff's days are spent watching television and playing computer games on her Kindle.
7 AR 63. She tries to go to church on Sundays but it is difficult because the pews are really hard to
8 sit in. AR 64. Plaintiff occasionally goes shopping at the mall or grocery store with her daughter
9 but she usually "poops out" and sits on a bench. AR 64. She pushes the cart and her daughter
10 places the items to be purchased in the cart. AR 65. Plaintiff can go to the store by herself to get
11 an item, but she generally does not go alone - her medications make her drowsy and she chooses
12 not to drive because the vibrations hurt her back. AR 77. She only drives her car short distances
13 about once every two weeks to Dr. Gordon's office which is approximately four minutes from her
14 house. AR 78.

15 By way of daily activities, Plaintiff can vacuum, although it is "tough," and she hand
16 washes dishes at the sink for short periods of time. AR 65. She is able to put clothes in the
17 washing machine and fold them once they are out of the dryer, however, her daughter has to pull
18 the clothes out of the washer and the dryer because Plaintiff is unable to bend down. AR 65-66.
19 Plaintiff further testified that she took care of a family friend full-time in November 2013 which
20 entailed sitting and watching TV all day. AR 67-68. She left the position in May 2013 because
21 the friend fell down and she needed to be lifted which was more care than Plaintiff was able to
22 provide. AR 68.

23 Plaintiff stated that she is able to sit for ten minutes for a total of an hour each day. AR 73-
24 74. She can also stand for about fifteen minutes at a time for a total of an hour each day. AR 74.
25 Sitting is easier than standing. AR 74. She can walk a block and can walk up a flight of stairs if
26 she has help. AR 75. She is able to lift and carry about ten pounds but her doctors have not given
27 her any restrictions. AR 75. She is able to lift her ten pound dog off of a counter but not off the
28 floor. AR 75-76.

1 **V. THE MEDICAL RECORD**

2 In May 2012, the medical records note that Ms. Scott was experiencing chronic low back pain.
3 An MRI of the lumbar spine showed left paracentral disc protrusion at L4-L5 measuring 3mm at
4 L3-4, a disc measuring 3mm, and at L5-S1 a 4mm disc protrusion. AR 302. Increased pain and
5 numbness on the right lower extremity was also noted. Plaintiff's pain was a six to seven on a ten
6 point scale and she described the pain as a sharp dull aching, coupled with a pins and needles
7 sensation. AR 302.

8 In June 2012, an MRI showed lumbar spondylosis, but no significant central canal stenosis.
9 Partial disc dessication L3-L4 through L5-S1 was noted with mild to moderate narrowing disc
10 space, right L4-L5 and posterior bulging disc/osteophyte, with the greatest at L4-L5. Endplate
11 changes most likely degenerative and greatest at this level, with mild right and mild to moderate
12 left foraminal stenosis in combination with facet hypertrophy. A small amount of facet fluid was
13 noted suggesting mild L4-L5 facet capsulitis. AR 323.

14 Plaintiff was treated at the Pain Institute of Central California during 2012 for a pain
15 consultation. She was diagnosed with lumbar radiculopathy, lower back pain, lumbar
16 degenerative disc disease, myofascial pain syndrome, depression, and headaches. AR 300.
17 During this time Plaintiff was prescribed pain medication which were 10-40% effective. 300;
18 301; 350. She also reported there were no side effects from the medication. *Id.*

19 Dr. Carmen Fisher, M.D., saw Plaintiff from September 2013 to November 2014,
20 approximately once every two months. AR 305-307 [repeated at AR 336-38, 353-55]; AR 356-
21 363; 378-379; 382-383. During this time period, Dr. Fisher reported that Plaintiff's gait and
22 station were normal. AR 306; 357; 360; 363; 378-379; 382. Plaintiff also showed full (5/5)
23 muscle strength and her sacroiliac joint was normal to palpation. *Id.* She was able to walk on her
24 toes and her heels. *Id.* Her lower extremities were normal to inspection and palpation and she
25 displayed normal range of motion, muscle strength and tone, and stability. *Id.* However, she also
26 had positive straight leg tests and tenderness over her paraspinal muscles during this period. AR
27 319; 325-326; 337; 353; 382.

28 In 2012, she was experiencing pain and complained that her medications were not

1 working. AR 303. Her pain continued to increase in 2013 when doing an activity or when it was
2 cold. Her pain ranged from six to seven on a ten point scale. AR 325; 328; 331; 333; 336; 356;
3 380. In February 2013, Plaintiff received an epidural that helped the pain, and she was happy
4 with the results. AR 298; 328; 346. She had another epidural in August 2013 with little or no
5 decrease in pain. AR 336; 348-349. Plaintiff waited a few months before receiving another
6 epidural injection, and instead received a pain shot in Dr. Fisher's office in September. AR 337.
7 She received another epidural in December 2013. AR 369. After the shot, it was noted that
8 Plaintiff was still experiencing the same pain in January and February 2014. AR 359; 400. In
9 March 2014, she received a referral for a neurosurgeon to address her back situation. AR 362.
10 Authorization for surgery was obtained, although Plaintiff did not make her appointment due to
11 bible study in March 2014 and February 19, 2015. AR 362; 378. She also previously did not
12 want to have surgery in July, September and November 2013. AR 295; 305; 333; 356.

13 On January 6, 2014, state agency doctor R. Betcher, M.D., reviewed the record. AR 89-
14 98. He opined that Plaintiff could occasionally lift and carry twenty pounds and frequently lift
15 and carry ten pounds. AR 95. Dr. Betcher further opined that Plaintiff could sit, stand, or walk
16 about six hours in an eight-hour day and was unlimited in her ability to push, pull, and balance.
17 AR 95-96. Dr. Betcher also opined that Plaintiff could frequently climb ramps and stairs and
18 occasionally climb ladders, ropes, and scaffolds, stoop, kneel, crouch, and crawl. AR 95-96. The
19 ALJ gave this decision the greatest weight. AR 36.

20 On April 15, 2014, state agency doctor J. Bonner, M.D., also reviewed the record and
21 opined that Plaintiff could occasionally lift and carry fifty pounds and frequently lift and carry
22 twenty-five pounds; stand, walk, or sit for about six-hours in an eight-hour workday; frequently
23 climb ramps and stairs and crouch; and was unlimited in her ability to push, pull, balance, and
24 kneel. AR 106-107. Dr. Bonner also opined that Plaintiff could occasionally climb ladders, ropes,
25 and scaffolds and could frequently crouch. AR 36; 107. The ALJ gave this opinion some weight.
26 AR 36.

27 Dr. Uwe Jacobs, Ph.D. reviewed the record on April 17, 2014 and opined that Plaintiff's
28 alleged psychiatric impairments were "overall non-severe." AR 105. The ALJ gave Plaintiff the

1 benefit of the doubt and considered some complaints of concentration and problems socializing in
2 the RFC. AR 37.

3 From July 28, 2014 through February 26, 2015, Eural Gordon, nurse practitioner treated
4 Plaintiff seven times. AR 465-66, 470, 472-473, 476-477. Each time, Plaintiff's back showed
5 normal curvature and no tenderness in her spine. *Id.* She exhibited full range of motion and no
6 deformities, edema, or erythema in her extremities. *Id.* Her extremities were also warm and well-
7 perfused. *Id.* Her neurological examination was normal. *Id.*

8 Dr. Dale H. Van Kirk, M.D. completed an orthopedic evaluation on April 23, 2015. AR
9 445-449. He noted that Plaintiff had conservative treatment, including chiropractic treatment and
10 physical therapy, and epidural injections. AR 445. Plaintiff stated that she could cook minimally,
11 shower, and watch television. AR 446. She read for about six to eight hours a day. AR 446. Upon
12 examination, Dr. Van Kirk noted that Plaintiff sat comfortably in the examination chair and could
13 get up and out of the chair, walk around the examination room, and get on and off the table
14 without difficulty. AR 446-447. Dr. Van Kirk did not detect any limp. AR 447. A Romberg test
15 (for neurological function) was normal and tandem walking with one foot in front of the other
16 was satisfactory. AR 447. Plaintiff could get up on her toes and heels but could only squat about
17 halfway down. AR 447. She had no assistive device. AR 447. Plaintiff's straight leg raising test
18 was negative. AR 448. Plaintiff's muscle strength was full (5/5) and her bulk and tone were
19 normal. AR 448. Plaintiff's sensation was intact to light touch and pinprick. AR 448. Based on
20 his examination, Dr. Van Kirk opined that Plaintiff should be able to stand and/or walk
21 cumulatively for six hours out of an eight-hour day, and had no limitations in sitting. AR 448. Dr.
22 Van Kirk also opined that Plaintiff could lift and carry twenty pounds frequently and fifty pounds
23 occasionally. AR 449. Plaintiff was limited to only occasional postural activities and to no
24 extremely cold or damp environments, but there were no manipulative limitations. AR 448-49.
25 The ALJ gave this opinion less weight. AR 35.

26 On March 4, 2015, Ms. Gordon, a physician's assistant, completed a medical source
27 statement. She opined that Plaintiff could only sit for fifteen minutes at a time and stand/walk for
28 five minutes at time. She is unable to sit or stand/walk for an hour in an eight hour day and would

1 require unscheduled breaks in an eight hour day. She could occasionally lift up to ten pounds and
2 would be absent from work more than four times a month. AR 430-431. The ALJ gave this
3 opinion little weight. AR 36.

4 On March 9, 2015, Dr. Fischer, Ms. Scott's pain management doctor, wrote a letter stating
5 that Ms. Scott had been under her care since May 25, 2012 for the treatment of chronic pain. She
6 further stated that Ms. Scott was diagnosed with lumbar degenerative disc disease, lumbar
7 radiculopathy, sciatica and chronic low back pain. Her condition was being treated with chronic
8 narcotic medication and occasionally lumbar epidural steroid injections. AR 433. The ALJ gave
9 this opinion little weight. AR 35.

10 **VI. THE DISABILITY DETERMINATION PROCESS**

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

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

22 42 U.S.C. § 1382c(a)(3)(B). To achieve uniformity in the decision-making process, the
23 Commissioner has established a sequential five-step process for evaluating a claimant's alleged
24 disability. 20 C.F.R. § 416.920(a). The ALJ proceeds through the steps and stops upon reaching
25 a dispositive finding that the claimant is or is not disabled. 20 C.F.R. § 416.920 (a)(4). The ALJ
26 must consider objective medical evidence and opinion testimony. 20 C.F.R. § 416.913.

27 Specifically, the ALJ is required to determine: (1) whether a claimant engaged in substantial
28 gainful activity during the period of alleged disability; (2) whether the claimant had medically-

1 determinable “severe” impairments; (3) whether these impairments meet or are medically
2 equivalent to one of the listed impairments set forth in 20 C.F.R. § 404, Subpart P, Appendix 1;
3 (4) whether the claimant retained the residual functional capacity (“RFC”) to perform his past
4 relevant work; and (5) whether the claimant had the ability to perform other jobs existing in
5 significant numbers at the regional and national level. 20 C.F.R. § 416.920(a)(4).

6
7 **VII. SUMMARY OF THE ALJ’S FINDINGS**

8 Using the Social Security Administration’s five-step sequential evaluation process, the
9 ALJ determined that Plaintiff did not meet the disability standard. AR 28-39. At step one, she
10 found that Plaintiff had not engaged in substantial gainful activity since August 29, 2013, the
11 application date. AR 30. At step two, the ALJ identified hypothyroidism, obesity, lumbar disc
12 protrusions at L3-4, L4-5, and L5-S1, and depression as severe impairments. AR30. At step
13 three, the ALJ determined that the severity of Plaintiff’s impairments did not meet or exceed any
14 of the listed impairments. AR 31-32.

15 Based on a review of the entire record, the ALJ determined that Plaintiff had the RFC to
16 perform sedentary work as defined in 20 CFR § 404.967 (b). Specifically, the ALJ found that
17 Plaintiff could lift and carry twenty pounds occasionally and ten pounds frequently; stand and
18 walk for six hours, and sit for six hours. She could also frequently climb ramps and stairs and
19 occasionally crawl, stoop, and crouch; however, she should avoid exposure to working at heights,
20 around hazardous machinery and cannot climb ladders, ropes, or scaffolds. She could maintain
21 simple, routine, tasks, and maintain attention and concentration for two-hour increments with
22 normal breaks. AR 28-37. Given these limitations, the ALJ determined that Plaintiff could not
23 perform her past work as an industrial painter and park manager. AR 37. However, the ALJ
24 determined that Plaintiff could perform other jobs that existed in significant numbers in the
25 national economy including an office helper, a sales attendant, and a storage facility rental clerk.
26 AR 37-38.

27 **VII. STANDARD OF REVIEW**

28 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's decision to determine

1 whether: (1) it is supported by substantial evidence; and (2) it applies the correct legal standards.
2 *See Carmickle v. Commissioner*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d
3 1071, 1074 (9th Cir. 2007).

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

9 **VIII. DISCUSSION**

10 **A. The ALJ Properly Discredited Plaintiff’s Subjective Complaints**

11 Plaintiff argues that the ALJ’s credibility determination was improper because the ALJ
12 did not provide clear and convincing reasons to reject her testimony. (Doc. 14, pgs. 7-9. Doc. 19,
13 pgs. 2-5). The Commissioner contends that the ALJ’s credibility determination was proper and
14 the decision is supported by substantial evidence.

15 A two-step analysis applies at the administrative level when considering a claimant’s
16 credibility. *Treichler v. Comm. of Soc. Sec.*, 775 F. 3d 1090, 1098 (9th Cir. 2014). First, the
17 claimant must produce objective medical evidence of his or her impairment that could reasonably
18 be expected to produce some degree of the symptom or pain alleged. *Id.* If the claimant satisfies
19 the first step and there is no evidence of malingering, the ALJ may reject the claimant’s testimony
20 regarding the severity of his or her symptoms only if he or she makes specific findings and
21 provides clear and convincing reasons for doing so. *Id.*; *Brown-Hunter v. Colvin*, 806 F.3d 487,
22 493 (9th Cir. 2015); SSR 96-7p (ALJ’s decision “must be sufficiently specific to make clear to
23 the individual and to any subsequent reviewers the weight the adjudicator gave to the individual’s
24 statements and reasons for that weight.”)⁴ Factors an ALJ may consider include: 1) the

25 ⁴ Social Security Ruling 96-7p was superseded by Ruling 16-3p, effective March 28, 2016. *See* 2016 WL 1020935
26 (March 16, 2016) and 2016 WL 1131509 (March 24, 2016). In Ruling 16-3p, the SSA stated it would no longer use
27 the term credibility when evaluating the intensity, persistence and limiting effects of a claimant’s symptoms. 2016
28 WL 1020935, at *14167. It is unclear whether this new rule applies to cases completed prior to the March 28, 2016
effective date. Currently, only the Seventh Circuit has issued a published opinion, applying Ruling 16-3p
retroactively. *See Cole v. Colvin*, 831 F.3d 411 (7th Cir. 2016). But even if the Court were to apply Ruling 16-3p
retroactively, the ALJ’s symptom evaluation remains unchanged. Ruling 16-3p changes are not substantive as it

1 applicant's reputation for truthfulness, prior inconsistent statements or other inconsistent
2 testimony; (2) inconsistencies either in the claimant's testimony or between the claimant's
3 testimony and her conduct; (3) the claimant's daily activities; (4) the claimant's work record; and
4 (5) testimony from physicians and third parties concerning the nature, severity, and effect of the
5 symptoms of which the claimant complains. *See Thomas v. Barnhart*, 278 F. 3d at 958-959; *Light*
6 *v. Social Security Administration*, 119 F. 3d 789, 792 (9th Cir. 1997), *see also* 20 C.F.R. §
7 404.1529(c).

8 In this case, the ALJ noted that Plaintiff produced objective medical evidence of her
9 condition but the Plaintiff's allegations concerning the intensity, persistence and limiting effects
10 of her symptoms were less than fully credible. AR 33-34. This finding satisfied step one of the
11 credibility analysis. *Smolen v. Chater*, 80 F.3d 1281-82 (9th Cir. 1996).

12 As noted above, because the ALJ did not find that Plaintiff was malingering, she was
13 required to provide clear and convincing reasons for rejecting Plaintiff's testimony. *Brown –*
14 *Hunter*, 806 F. 3d at 493; *Smolen*, 80 F.3d at 1283-84; *Lester v. Chater*, 81 F.3d 821, 834 (9th
15 Cir. 1995). When there is evidence of an underlying medical impairment, the ALJ may not
16 discredit the claimant's testimony regarding the severity of his or her symptoms solely because
17 they are unsupported by medical evidence. *Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th Cir.
18 1991); SSR 96-7. Moreover, general findings are insufficient; rather, the ALJ must identify what
19 testimony is not credible and what evidence undermines the claimant's complaints. *Brown-*
20 *Hunter*, 806 F. 3d at 493.

21 When discrediting Plaintiff's credibility, the ALJ found that Plaintiff's allegations
22 regarding the severity of the symptoms were greater than expected given the objective medical
23 evidence. AR 34. In doing so, the ALJ gave an extensive review of the medical evidence and
24 properly weighed the medical opinions.⁵ AR 34-37. She also noted that Plaintiff's treatment was
25 conservative in nature. AR 34. For example, the ALJ indicated that although Plaintiff received

26 relates to this case. *See Mendenhall v. Colvin*, 2016 WL 4250214, at *3 (C.D. Ill. Aug. 10, 2016) (No. 3:14-CV-
27 3389) ("SSR 96-7p and SSR 16-3p are substantially similar. Rule 16-3p affects only the second step of the method by
which symptoms are evaluated.)

28 ⁵ Plaintiff has not challenged the reasons the ALJ gave for accepting or rejecting the various medical opinions.

1 physical therapy and epidural injections, she declined surgery for her back pain several times. AR
2 34-35. This finding is supported by the record. Plaintiff received some relief from epidural shots
3 in the beginning and less relief as time went on. AR 298; 328; 246; 336; 348-349. However,
4 despite allegations of increased pain, Plaintiff did not want surgery and missed several
5 appointments to see a doctor after the surgery was authorized. AR 295; 305; 333; 356; 362; 378.
6 Moreover, the ALJ correctly noted that although Plaintiff received medications, she never sought
7 out any type of psychological treatment despite complaining of depression for at least three years.
8 AR 34. *Chaudhry v. Astrue*, 885 F.3d 661, 672 (9th Cir. 2012) (The ALJ may consider an
9 “unexplained or inadequately explained failure to seek treatment or to follow a prescribed course
10 of treatment” in discrediting a claimant’s credibility); *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir.
11 2007) (citation omitted) (“[I]f a claimant complains about disabling pain but fails to seek
12 treatment, or fails to follow prescribed treatment, for the pain, an ALJ may use such failure as a
13 basis for finding the complaint unjustified or exaggerated....”).

14 Moreover, the ALJ also noted that Plaintiff’s function report, as well as her hearing
15 testimony indicated she experienced side effects from her medications. However, the medical
16 records do not support this contention. AR 300; 301; 350 (Plaintiff reporting no side effects
17 because of her medication). Finally, the ALJ found that Plaintiff’s daily activities which included
18 vacuuming, preparing simple meals, washing sinks, and attending church (AR 64-68; 213-215)
19 suggested she was involved in a somewhat normal level of daily activity and interaction which
20 are consistent with obtaining and maintaining employment. AR 33-36. These are clear and
21 convincing reasons to reject Plaintiff’s testimony. *See Thomas v. Barnhart*, 278 at 958-959; *see*
22 *also* 20 C.F.R. § 416.1529(c) (An ALJ can consider inconsistencies either in the claimant's
23 testimony or between the claimant's testimony and her conduct; the claimant's daily activities; and
24 the claimant's work record when assessing credibility); *Burch v. Barnhart*, 400 F.3d 676, 680 (9th
25 Cir. 2005); *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).

26 The Court notes however that the ALJ erred in concluding that Plaintiff had good
27 response to epidural injections. Although Plaintiff experienced some relief from those injections
28 initially, later epidurals were not effective. AR 298; 328; 246; 336; 348-349. However, this error

1 was harmless because as outlined above, the ALJ found other clear and convincing reasons to
2 reject Plaintiff's testimony. *Carmickle v. CSS*, 533 F.3d 1155, 1162 (9th Cir. 2006); *Tommasetti*
3 *v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008); *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 885
4 (9th Cir.2006); *Stout v. CSS*, 454 F.3d 1050, 1055 (An ALJ's error is harmless where it is
5 "inconsequential to the ultimate nondisability determination.").

6 Given the above, the ALJ provided clear and convincing reasons that are supported by
7 substantial evidence to conclude Plaintiff's subjective symptom testimony was not credible.
8 Here, the ALJ clearly identified what testimony she found not credible and what evidence
9 undermined Plaintiff's complaints. *Brown-Hunter*, 806 F. 3d at 493; *Lester*, 81 F.3d at 834. It is
10 not the role of the Court to re-determine Plaintiff's credibility de novo. If the ALJ's finding is
11 supported by substantial evidence, the Court "may not engage in second-guessing." *Thomas*, 278
12 F.3d at 959. Although evidence supporting an ALJ's conclusions might also permit an
13 interpretation more favorable to the claimant, if the ALJ's interpretation of evidence was rational,
14 as it was here, the Court must uphold the ALJ's decision where the evidence is susceptible to
15 more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d 676, 680-81 (9th Cir. 2005).
16 Accordingly, the ALJ's credibility determination was proper.

17 **X. CONCLUSION**

18 Based on the foregoing, the Court finds that the ALJ's decision is supported by substantial
19 evidence and is based on proper legal standards. Accordingly, this Court DENIES Plaintiff's
20 appeal and grants the Commissioner's Cross Motion for Summary Judgment. (Doc. 18). The
21 Clerk of this Court shall enter judgment in favor of Nancy A. Berryhill, Commissioner of Social
22 Security, and against Plaintiff Petra Scott. The Clerk of the Court is directed to close this action.

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25 IT IS SO ORDERED.

26 Dated: April 28, 2017

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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