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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RACHEL Y. SELF,

No. 2:12-cv-1416-CMK

Plaintiff,

vs.

MEMORANDUM OPINION AND ORDER

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

_____/

Plaintiff, who is proceeding with retained counsel, brings this action for judicial review of a final decision of the Commissioner of Social Security under 42 U.S.C. § 405(g). Pursuant to the written consent of all parties, this case is before the undersigned as the presiding judge for all purposes, including entry of final judgment. See 28 U.S.C. § 636(c). Pending before the court are plaintiff’s motion for summary judgment (Doc. 17) and defendant’s cross-motion for summary judgment (Doc. 20). For the reasons discussed below, the court will deny plaintiff’s motion for summary judgment or remand and grant the Commissioner’s cross-motion for summary judgment.

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1 **I. PROCEDURAL HISTORY¹**

2 Plaintiff applied for social security benefits on April 3, 2007, alleging an onset of
3 disability on July 1, 2003, due to disabilities including carpal tunnel, plantar fasciitis in right
4 foot, and bulging discs (Certified administrative record (“CAR”) 92, 169-70, 212-13). Plaintiff’s
5 claim was denied initially and upon reconsideration. Plaintiff requested an administrative
6 hearing, which was held on June 11, 2009 with a supplemental hearing on March 24, 2010,
7 before Administrative Law Judge (“ALJ”) Peter F. Belli. In a May 12, 2010, decision, the ALJ
8 concluded that plaintiff is not disabled² based on the following findings:

9 _____
10 ¹ Because the parties are familiar with the factual background of this case, including
11 plaintiff’s medical history, the undersigned does not exhaustively relate those facts here. The
12 facts related to plaintiff’s impairments and medical history will be addressed insofar as they are
13 relevant to the issues presented by the parties’ respective motions.

14 ² Disability Insurance Benefits are paid to disabled persons who have contributed to
15 the Social Security program, 42 U.S.C. § 401 *et seq.* Supplemental Security Income (“SSI”) is
16 paid to disabled persons with low income. 42 U.S.C. § 1382 *et seq.* Under both provisions,
17 disability is defined, in part, as an “inability to engage in any substantial gainful activity” due to
18 “a medically determinable physical or mental impairment.” 42 U.S.C. §§ 423(d)(1)(a) &
19 1382c(a)(3)(A). A five-step sequential evaluation governs eligibility for benefits. See 20 C.F.R.
20 §§ 423(d)(1)(a), 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987). The
21 following summarizes the sequential evaluation:

22 Step one: Is the claimant engaging in substantial gainful
23 activity? If so, the claimant is found not disabled. If not, proceed
24 to step two.

25 Step two: Does the claimant have a “severe” impairment?
26 If so, proceed to step three. If not, then a finding of not disabled is
appropriate.

Step three: Does the claimant’s impairment or combination
of impairments meet or equal an impairment listed in 20 C.F.R., Pt.
404, Subpt. P, App.1? If so, the claimant is automatically
determined disabled. If not, proceed to step four.

Step four: Is the claimant capable of performing his past
work? If so, the claimant is not disabled. If not, proceed to step
five.

Step five: Does the claimant have the residual functional
capacity to perform any other work? If so, the claimant is not
disabled. If not, the claimant is disabled.

Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

- 1 1. The claimant last met the insured status requirements of the Social
2 Security Act on March 31, 2007.
- 3 2. The claimant did not engage in substantial gainful activity during
4 the period from her alleged onset date of July 1, 2003 through her
5 date last insured of March 31, 2007 (20 CFR 404.1571 *et seq.*).
- 6 3. Through the date last insured, the claimant had the following
7 severe impairments: right plantar fasciitis, right tarsal tunnel
8 syndrome, degenerative disc disease of the lumbosacral spine,
9 lumbar strain, mild obesity, and depression (20 CFR 404.1520(c)).
- 10 4. Through the date last insured, the claimant did not have an
11 impairment or combination of impairments that met or medically
12 equaled one of the listed impairments in 20 CFR Part 404, Subpart
13 P, Appendix 1 (20 CFR 404.1520(d), 404.1525 and 404.1526).
- 14 5. After careful consideration of the entire record, the undersigned
15 finds that, through the date last insured, the claimant had the
16 residual functional capacity to perform sedentary work as defined
17 in 20 CFR 404.1567(a) except the claimant is precluded from
18 prolonged standing/walking. She is unable to use her right lower
19 extremity to manipulate foot controls. She is precluded from
20 climbing ladders, ropes, or scaffolds. She may occasionally climb
21 ramps and stair, and occasionally stoop, kneel, crouch, and crawl.
22 She is unlimited in her ability to understand, remember, and carry
23 out short, simple instructions; but she is moderately limited [FN1]
24 in her ability to understand, remember, and carry out detailed
25 instructions. The claimant is unlimited in her ability to make
26 judgments on simple decisions, but slightly limited [FN2] in the
27 ability to make judgments on detailed decisions. The claimant is
28 slightly limited in her ability to interact appropriately with
29 supervisors, co-workers, and the public. She is moderately limited
30 in her ability to respond appropriately to changes in a routine work
31 setting, and in her ability to respond appropriately to work
32 pressures in a usual work setting.
33 [FN1: Moderately limited is defined as greater than
34 mildly limited and less than markedly limited, but
35 still able to function satisfactorily in this area.]
36 [FN2: Slightly limited is defined as mild limitations
37 in this area, but generally functions well.]
- 38 6. Through the date last insured, the claimant was unable to perform
39 any past relevant work (20 CFR 404.1565).

25 The claimant bears the burden of proof in the first four steps of the sequential evaluation
26 process. Bowen, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential
27 evaluation process proceeds to step five. Id.

- 1 7. The claimant was born on May 13, 1975 and was 31 years old,
2 which is defined as a younger individual age 18-44, on the date last
3 insured (20 CFR 404.1563).
- 4 8. The claimant has at least a high school education and is able to
5 communicate in English (20 CFR 404.1564).
- 6 9. Transferability of job skills is not material to the determination of
7 disability because using the Medical-Vocational Rules as a
8 framework supports a finding that the claimant is “not disabled,”
9 whether or not the claimant has transferable job skills (See SSR
10 82-41 and 20 CFR Part 404, Subpart P, Appendix 2).
- 11 10. Through the date last insured, considering the claimant’s age,
12 education, work experience, and residual functional capacity,
13 there were jobs that existed in significant numbers in the national
14 economy that the claimant could have performed (20 CFR
15 404.1569 and 404.1569(a)).
- 16 11. The claimant was not under a disability, as defined in the Social
17 Security Act, at any time from July 1, 2003, the alleged onset date,
18 through March 31, 2007, the date last insured (20 CFR
19 404.1520(g)).

20 (CAR 11-25). After the Appeals Council declined review on March 30, 2012, this appeal
21 followed.

22 II. STANDARD OF REVIEW

23 The court reviews the Commissioner’s final decision to determine whether it is:
24 (1) based on proper legal standards; and (2) supported by substantial evidence in the record as a
25 whole. See Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). “Substantial evidence” is
26 more than a mere scintilla, but less than a preponderance. See Saelee v. Chater, 94 F.3d 520, 521
(9th Cir. 1996). It is “such evidence as a reasonable mind might accept as adequate to support a
conclusion.” Richardson v. Perales, 402 U.S. 389, 402 (1971). The record as a whole, including
both the evidence that supports and detracts from the Commissioner’s conclusion, must be
considered and weighed. See Howard v. Heckler, 782 F.2d 1484, 1487 (9th Cir. 1986); Jones v.
Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not affirm the Commissioner’s
decision simply by isolating a specific quantum of supporting evidence. See Hammock v.
Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the administrative

1 findings, or if there is conflicting evidence supporting a particular finding, the finding of the
2 Commissioner is conclusive. See Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987).
3 Therefore, where the evidence is susceptible to more than one rational interpretation, one of
4 which supports the Commissioner's decision, the decision must be affirmed, see Thomas v.
5 Barnhart, 278 F.3d 947, 954 (9th Cir. 2002), and may be set aside only if an improper legal
6 standard was applied in weighing the evidence, see Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th
7 Cir. 1988).

8 **III. DISCUSSION**

9 Plaintiff argues the ALJ erred in two ways: (1) the ALJ improperly determined her
10 severe impairments at step two; and (2) the ALJ failed to properly credit plaintiff's testimony as
11 well as third party statements.

12 **A. SEVERE IMPAIRMENTS**

13 In order to be entitled to benefits, the plaintiff must have an impairment severe
14 enough to significantly limit the physical or mental ability to do basic work activities. See 20
15 C.F.R. §§ 404.1520(c), 416.920(c).³ In determining whether a claimant's alleged impairment is
16 sufficiently severe to limit the ability to work, the Commissioner must consider the combined
17 effect of all impairments on the ability to function, without regard to whether each impairment
18 alone would be sufficiently severe. See Smolen v. Chater, 80 F.3d 1273, 1289-90 (9th Cir.
19 1996); see also 42 U.S.C. § 423(d)(2)(B); 20 C.F.R. §§ 404.1523 and 416.923. An impairment,
20 or combination of impairments, can only be found to be non-severe if the evidence establishes a
21 slight abnormality that has no more than a minimal effect on an individual's ability to work. See
22 Social Security Ruling ("SSR") 85-28; see also Yuckert v. Bowen, 841 F.2d 303, 306 (9th Cir.

23
24 ³ Basic work activities include: (1) walking, standing, sitting, lifting, pushing,
25 pulling, reaching, carrying, or handling; (2) seeing, hearing, and speaking; (3) understanding,
26 carrying out, and remembering simple instructions; (4) use of judgment; (5) responding
appropriately to supervision, co-workers, and usual work situations; and (6) dealing with changes
in a routine work setting. See 20 C.F.R. §§ 404.1521, 416.921.

1 1988) (adopting SSR 85-28). The plaintiff has the burden of establishing the severity of the
2 impairment by providing medical evidence consisting of signs, symptoms, and laboratory
3 findings. See 20 C.F.R. §§ 404.1508, 416.908. The plaintiff’s own statement of symptoms alone
4 is insufficient. See id.

5 Here, the ALJ found plaintiff’s severe impairments consisted of right plantar
6 fasciitis, right tarsal tunnel syndrome, degenerative disc disease of the lumbosacral spine, lumbar
7 strain, mild obesity and depression. He found plaintiff had other impairments, including carpal
8 tunnel and migraine headaches, but that these impairments were non-severe. Specifically, the
9 ALJ found plaintiff’s “headaches are not experienced at such a frequency or degree as to limit
10 her ability to perform work-related activities.” (CAR 13). The ALJ noted that plaintiff briefly
11 underwent treatment in 2006 and was prescribed migraine medication, but “no source assessed
12 any work-related functional limitations related to this disorder, and no limitations are warranted
13 by the record.” (CAR 14). Similarly, the ALJ noted plaintiff’s alleged limitations in the use of
14 her hands due to carpal tunnel syndrome. The ALJ found plaintiff underwent treatment in 1998-
15 99 with significant improvement, that plaintiff did not seek any additional treatment for carpal
16 tunnel syndrome after 1999, there were “no objective findings of positive Tinel’s or Phalen’s
17 related to the Carpal tunnel syndrom during the period at issue[,]” including during the
18 examinations and assessments by her treating physician, “no source documented significant
19 findings in connection with carpal tunnel syndrom and no one assessed work-related functional
20 limitations,” and plaintiff’s daily activities suggest “normal functioning of the upper extremities.”
21 (CAR 14).

22 Plaintiff argues that her treating physician, Dr. Adishian, precluded her from
23 repetitive work in 1999, and the more recent medical records were from her workers’
24 compensation doctors who would not have treated her carpal tunnel issues as that was not her
25 workers’ compensation injury. She also argues that she testified to continuing symptoms related
26 to her carpal tunnel syndrom. In addition, she contends that the ALJ acknowledged that she

1 received treatment for her migraine headaches, and that both she and her witnesses testified to
2 the severity of her headaches. Further, she argues the lack of objective medical evidence to
3 support her headaches does not indicate the absence of them. Thus, she contends the ALJ should
4 not have found these ailments non-severe and should have included the combined effect of these
5 impairments in addition to the other impairments the ALJ found severe.

6 As stated above, the burden is on the plaintiff to establish the severity of her
7 impairment by providing appropriate medical evidence. Her own testimony of symptoms alone
8 is insufficient. Yet, here, plaintiff contends that based on her testimony, the ALJ should have
9 found her carpal tunnel and migraine headaches severe impairments. As the defense points out,
10 and the ALJ stated, there have been no objective findings on examination to support such a
11 finding, and no treating or examining physician has found any limitations with her upper
12 extremities. A diagnosis in 1999 of carpal tunnel, which was successfully treated prior to
13 plaintiff's alleged onset of disability in 2003, is simply insufficient to support a finding that the
14 ALJ erred in determining this as a non-severe impairment. Plaintiff fails to support her
15 contention that she continues to have symptoms with any medical evidence during the relevant
16 time period.

17 Similarly, plaintiff fails to support her contention that her migraine headaches
18 cause more than minimal limitations without any medical evidence. As the ALJ set forth, the
19 medical records indicate that she sought treatment in 2002 for chronic headaches and migraines,
20 and then again in 2006. However, she was prescribed medication and had no further complaints.
21 In her motion, plaintiff fails to point to anything but her own testimony to support her contention
22 that her migraine headaches are severe, with the exception of 2002 MRI which showed no
23 abnormality and the 2006 treatment note where she was prescribed medication, which the ALJ
24 noted.

25 The undersigned finds that plaintiff failed to meet her burden in demonstrating
26 that her carpal tunnel syndrome and migraine headaches are sufficiently severe to limit her ability

1 to do basic work activities. The undersigned cannot find the ALJ erred in his determination of
2 the severity of plaintiff's impairments; that determination is supported by the evidence and will
3 not be disturbed.

4 **B. PLAINTIFF'S CREDIBILITY**

5 The Commissioner determines whether a disability applicant is credible, and the
6 court defers to the Commissioner's discretion if the Commissioner used the proper process and
7 provided proper reasons. See Saelee v. Chater, 94 F.3d 520, 522 (9th Cir. 1996). An explicit
8 credibility finding must be supported by specific, cogent reasons. See Rashad v. Sullivan, 903
9 F.2d 1229, 1231 (9th Cir. 1990). General findings are insufficient. See Lester v. Chater, 81 F.3d
10 821, 834 (9th Cir. 1995). Rather, the Commissioner must identify what testimony is not credible
11 and what evidence undermines the testimony. See id. Moreover, unless there is affirmative
12 evidence in the record of malingering, the Commissioner's reasons for rejecting testimony as not
13 credible must be "clear and convincing." See id.; see also Carmickle v. Commissioner, 533 F.3d
14 1155, 1160 (9th Cir. 2008) (citing Lingenfelter v Astrue, 504 F.3d 1028, 1936 (9th Cir. 2007),
15 and Gregor v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006)).

16 If there is objective medical evidence of an underlying impairment, the
17 Commissioner may not discredit a claimant's testimony as to the severity of symptoms merely
18 because they are unsupported by objective medical evidence. See Bunnell v. Sullivan, 947 F.2d
19 341, 347-48 (9th Cir. 1991) (en banc). As the Ninth Circuit explained in Smolen v. Chater:

20 The claimant need not produce objective medical evidence of the
21 [symptom] itself, or the severity thereof. Nor must the claimant produce
22 objective medical evidence of the causal relationship between the
23 medically determinable impairment and the symptom. By requiring that
the medical impairment "could reasonably be expected to produce" pain or
another symptom, the Cotton test requires only that the causal relationship
be a reasonable inference, not a medically proven phenomenon.

24 80 F.3d 1273, 1282 (9th Cir. 1996) (referring to the test established in Cotton v. Bowen, 799
25 F.2d 1403 (9th Cir. 1986)).

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1 The Commissioner may, however, consider the nature of the symptoms alleged,
2 including aggravating factors, medication, treatment, and functional restrictions. See Bunnell,
3 947 F.2d at 345-47. In weighing credibility, the Commissioner may also consider: (1) the
4 claimant’s reputation for truthfulness, prior inconsistent statements, or other inconsistent
5 testimony; (2) unexplained or inadequately explained failure to seek treatment or to follow a
6 prescribed course of treatment; (3) the claimant’s daily activities; (4) work records; and (5)
7 physician and third-party testimony about the nature, severity, and effect of symptoms. See
8 Smolen, 80 F.3d at 1284 (citations omitted). It is also appropriate to consider whether the
9 claimant cooperated during physical examinations or provided conflicting statements concerning
10 drug and/or alcohol use. See Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002). If the
11 claimant testifies as to symptoms greater than would normally be produced by a given
12 impairment, the ALJ may disbelieve that testimony provided specific findings are made. See
13 Carmickle, 533 F.3d at 1161 (citing Swenson v. Sullivan, 876 F.2d 683, 687 (9th Cir. 1989)).

14 Here, the ALJ determined that plaintiff’s “subjective pain complaints and her
15 allegations regarding limitations in standing, walking, and lifting are generally credible.” (CAR
16 20). However, he found that plaintiff’s

17 allegations regarding limitations related to carpal tunnel syndrome
18 and migraine headaches are not credible for the reasons noted
19 earlier in the decision. Specifically, the claimant alleged
20 manipulative limitations related to carpal tunnel syndrome, and
21 frequent absences and the need to lie down due to migraines, but
22 these limitations are not supported by the objective evidence, the
23 treatment records, the claimant’s generally good functioning, or
24 any opinion evidence of record. Thus, these limitations are
25 rejected.

26 (CAR 21).

 In discussing plaintiff’s impairments, the ALJ stated:

 In addition to the lack of carpal tunnel syndrome complaints,
 findings or limitations during the period at issue, the claimant’s
 activities of daily living also suggest that the claimant has normal
 functioning of the upper extremities. Despite the claimant’s
 allegations of pain with repetitive action of the hands, the record

1 shows that her hobbies and activities included crocheting, painting,
2 frequently working on crafts, and playing board games. These
3 activities often require prolonged or repetitive use of the upper
4 extremities. In addition, the claimant also did many normal
5 household chores, and was limited in this area primarily due to her
6 lower extremity impairments (Exhibits 4E, 6F, 32F). For all of the
7 reasons, the claimant's allegations regarding limitations related to
8 carpal tunnel syndrome are not credible.
9 (CAR 14).

10 Plaintiff argues the ALJ erred in his credibility determination because he failed to
11 accurately characterize her statements regarding her activities of daily living as well as her
12 testimony. She claims she consistently reported that her hands hurt when doing those activities,
13 and she was more limited in what she could do. In addition, she argues the record supports her
14 allegations regarding her migraine headaches including her need to lie down and miss work.
15 Plaintiff contends the ALJ failed to provide legitimate reasons for discounting her testimony,
16 much less clear and convincing reasons for doing so.

17 Contrary to plaintiff's argument, the ALJ set forth several clear and convincing
18 reasons for discrediting her testimony. The ALJ specifically found not only a lack of objective
19 medical evidence supported her claims, but also found her daily activities inconsistent with her
20 allegations of limitations. He appropriately considered plaintiff's alleged symptoms, the
21 treatment she sought and received, as well as her daily activities. His findings are supported by
22 the record. For example, plaintiff reported in 2007 that while it took her a bit longer, she was
23 able to cook, clean the house, take care of her personal needs, and do her crafts. (CAR 204-11).
24 In addition, plaintiff testified that she did not generally seek medical treatment for her migraine
25 headaches, but used over the counter medication. (CAR 45).

26 The court finds the reasons the ALJ set forth for discrediting plaintiff's testimony
as to her carpal tunnel syndrome and migraine headaches are clear and convincing, and are
supported the record as a whole. Giving the ALJ's opinion the proper deference it is entitled, the
undersigned cannot find the determination was erroneous. See Fair, 885 F.2d at 604.

1 **D. THIRD PARTY STATEMENTS**

2 Similarly, plaintiff contends the ALJ improperly discredited the statements of her
3 husband and friend regarding her limitations. “[L]ay witness testimony as to a claimant’s
4 symptoms or how an impairment affects ability to work is competent evidence, and therefore
5 cannot be disregarded without comment.” Nguyen v. Chater, 100 F.3d 1462, 1467 (9th Cir.
6 1996); see also Dodrill v. Shalala, 12 F.3d 915, 918-19 (9th Cir. 1993) (friends and family
7 members in a position to observe a plaintiff’s symptoms and daily activities are competent to
8 testify to condition). “If the ALJ wishes to discount the testimony of the lay witnesses, he must
9 give reasons that are germane to each witness.” Dodrill, 12 F.3d at 919; see also Stout v.
10 Commissioner SSA, 454 F.3d 1050, 1056 ((9th Cir. 2006) (where ALJ fails to properly discuss
11 competent lay testimony favorable to plaintiff, court cannot consider error to be harmless unless
12 it can confidently conclude no reasonable ALJ, when fully crediting testimony, could have
13 reached different disability determination).

14 The ALJ, however, need not discuss all evidence presented. See Vincent on
15 Behalf of Vincent v. Heckler, 739 F.2d 1393, 1394-95 (9th Cir. 1984). Rather, he must explain
16 why “significant probative evidence has been rejected.” Id. (citing Cotter v. Harris, 642 F.2d 700,
17 706 (3d Cir.1981). Applying this standard, the court held that the ALJ properly ignored evidence
18 which was neither significant nor probative. See id. at 1395. As to a letter from a treating
19 psychiatrist, the court reasoned that, because the ALJ must explain why he rejected
20 uncontroverted medical evidence, the ALJ did not err in ignoring the doctor’s letter which was
21 controverted by other medical evidence considered in the decision. See id. As to lay witness
22 testimony concerning the plaintiff’s mental functioning as a result of a second stroke, the court
23 concluded that the evidence was properly ignored because it “conflicted with the available
24 medical evidence” assessing the plaintiff’s mental capacity. Id.

25 In Stout v. Commissioner, the Ninth Circuit recently considered an ALJ’s silent
26 disregard of lay witness testimony. See 454 F.3d 1050, 1053-54 (9th Cir. 2006). The lay witness

1 had testified about the plaintiff's "inability to deal with the demands of work" due to alleged
2 back pain and mental impairments. Id. The witnesses, who were former co-workers testified
3 about the plaintiff's frustration with simple tasks and uncommon need for supervision. See id.
4 Noting that the lay witness testimony in question was "consistent with medical evidence," the
5 court in Stout concluded that the "ALJ was required to consider and comment upon the
6 uncontradicted lay testimony, as it concerned how Stout's impairments impact his ability to
7 work." Id. at 1053. The Commissioner conceded that the ALJ's silent disregard of the lay
8 testimony contravened Ninth Circuit case law and the controlling regulations, and the Ninth
9 Circuit rejected the Commissioner's request that the error be disregarded as harmless. See id. at
10 1054-55. The court concluded:

11 Because the ALJ failed to provide any reasons for rejecting competent lay
12 testimony, and because we conclude that error was not harmless,
 substantial evidence does not support the Commissioner's decision . . .

13 Id. at 1056-67.

14 From this case law, the court concludes that the rule for lay witness testimony
15 depends on whether the testimony in question is controverted or consistent with the medical
16 evidence. If it is controverted, then the ALJ does not err by ignoring it. See Vincent, 739 F.2d at
17 1395. If lay witness testimony is consistent with the medical evidence, then the ALJ must
18 consider and comment upon it. See Stout, 454 F.3d at 1053.

19 Here, plaintiff contends her husband's statements regarding her manipulative
20 limitations and her friend's statements regarding her migraine headaches support her contention
21 that these are severe limitations and the ALJ erred in rejecting the statements without germane
22 reasons. Plaintiff's husband noted in his statement that she has to rest her foot and hands during
23 cleaning, her feet and hands fall asleep at night, she could not write or type, and she must rest at
24 crafts. (CAR 196-203). Plaintiff's friend stated that plaintiff suffers migraine headaches which
25 stop her from doing anything, and put her to bed for days at a time. (CAR 231).

26 In regards to the lay witness statements, the ALJ found that:

1 the third party statements from the claimant's husband and the
2 claimant's friend, Marian Glenn, are also generally credible and
3 consistent with the finding that the claimant is limited to no more
4 than sedentary work. Thus, these assessments are given significant
5 weight. The statement by the claimant's sister, Paula Klem, is also
6 generally credible except that she indicated that the claimant could
7 not sit for prolonged periods. This limitation was not alleged by
8 the claimant and not supported by any objective evidence or
9 opinion evidence of record. Thus, the allegation is not credible. It
10 is noted that Ms. Klem provided her statement in June 2009, well
11 after the date last insured, and thus, may have been referring to the
12 claimant's current functioning rather than her functioning during
13 the period at issue. (CAR 21).

8 By this statement, the ALJ basically found the statements by the witnesses
9 credible to the extent they are supported by the medical evidence, and silently rejected those
10 statements which were controverted by the medical evidence. As discussed above, the medical
11 evidence in the record controverts her contention that her carpal tunnel syndrome and migraine
12 headaches are severe impairments. As such, the statements by these lay witnesses are similarly
13 contradicted by the medical evidence, and the ALJ's failure to specially address those statements
14 is not reversible error. See Vincent, 739 F.2d at 1395.

15 IV. CONCLUSION

16 Based on the foregoing, the court concludes that the Commissioner's final
17 decision is based on substantial evidence and proper legal analysis. Accordingly, IT IS HEREBY
18 ORDERED that:

- 19 1. Plaintiff's motion for summary judgment (Doc. 17) is denied;
- 20 2. Defendant's cross-motion for summary judgment (Doc. 20) is granted; and
- 21 3. The Clerk of the Court is directed to enter judgment and close this file.

22
23 DATED: March 21, 2014

24 
25 **CRAIG M. KELLISON**
26 UNITED STATES MAGISTRATE JUDGE