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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEPHANIE E. DALTON,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

No. 2:17-cv-00443 CKD

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying an application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“Act”). For the reasons discussed below, the court will deny plaintiff’s motion for summary judgment and grant the Commissioner’s cross-motion for summary judgment. The parties have consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1). ECF Nos. 6 and 7.

BACKGROUND

Plaintiff, born February 24, 1974, applied on July 24, 2013 for SSI, alleging disability beginning August 18, 2011. Administrative Transcript (“AT”) 210. Plaintiff alleged she was unable to work due to fibromyalgia, anxiety, morphea, irritable bowel syndrome, carpal tunnel, leukocytosis, chondromalacia patella, and migraines. AT 105. In a decision dated September 10,

1 2015, the ALJ determined that plaintiff was not disabled.¹ AT 21-34. The ALJ made the
2 following findings (citations to 20 C.F.R. omitted):

3 1. The claimant meets the insured status requirements of the Social
4 Security Act through December 31, 2015.

5 2. The claimant has not engaged in substantial gainful activity since
6 August 18, 2011, the alleged onset date.

7 3. The claimant has the following severe impairments:
8 fibromyalgia, migraines/headaches, irritable bowel syndrome,
9 obesity, chondromalacia of the bilateral patella, anxiety disorder, and
10 depressive disorder.

11 4. The claimant does not have an impairment or combination of
12 impairments that meets or medically equals one of the listed
13 impairments in 20 CFR Part 404, Subpart P, Appendix 1.

14 ¹ Disability Insurance Benefits are paid to disabled persons who have contributed to the
15 Social Security program, 42 U.S.C. § 401 et seq. Supplemental Security Income is paid to
16 disabled persons with low income. 42 U.S.C. § 1382 et seq. Both provisions define disability, in
17 part, as an “inability to engage in any substantial gainful activity” due to “a medically
18 determinable physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A).
19 A parallel five-step sequential evaluation governs eligibility for benefits under both programs.
20 See 20 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S.
21 137, 140-142, 107 S. Ct. 2287 (1987). The 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 to
24 step two.

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

28 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).

The claimant bears the burden of proof in the first four steps of the sequential evaluation
process. Bowen, 482 U.S. at 146 n.5, 107 S. Ct. at 2294 n.5. The Commissioner bears the
burden if the sequential evaluation process proceeds to step five. Id.

1 5. After careful consideration of the entire record, the undersigned
2 finds that the claimant has the residual functional capacity to perform
3 sedentary work except frequent handling, fingering, and feeling;
4 occasional stooping, squatting, crouching, crawling, and kneeling;
5 occasional climbing of stairs and ramps, but never ropes, ladders, or
6 scaffolds; and the workplace should be free of chemicals, dust,
7 smoke, and fumes. Regarding mental functionality, the claimant is
8 capable of unskilled, repetitive, routine work and will be absent from
9 work one time per month. She will be off task up to 10% of the time
10 at work, but still able to meet minimum production requirements of
11 the job.

12 6. The claimant cannot perform any of her past relevant work.

13 7. The claimant was born on February 24, 1974 and was 37 years
14 old, which is defined as a younger individual age 18-44, on the
15 alleged disability onset date.

16 8. The claimant has at least a high-school education and is able to
17 communicate in English.

18 9. Transferability of job skills is not an issue in this case because the
19 claimant does not have past relevant work.

20 10. Considering the claimant's age, education, work experience, and
21 residual functional capacity, there are jobs that exist in significant
22 numbers in the national economy that the claimant can perform.

23 AT 23-32.

24 ISSUES PRESENTED

25 Plaintiff argues that the ALJ committed the following errors in finding plaintiff not
26 disabled: (1) the ALJ did not give proper weight to the opinion of plaintiff's treating physician
27 Dr. Scheidt; (2) the ALJ did not provide clear and convincing reasons to discredit plaintiff's
28 subjective complaints; (3) the ALJ did not properly evaluate the cumulative effects of plaintiff's
impairments; and (4) the Commissioner did not meet her burdens at Step Five of the sequential
evaluation.

LEGAL STANDARDS

The court reviews the Commissioner's decision to determine whether (1) it is based on
proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340

1 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means “such relevant evidence as a reasonable
2 mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th
3 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is
4 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
5 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citations omitted).
6 “The court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one
7 rational interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

8 The record as a whole must be considered, Howard v. Heckler, 782 F.2d 1484, 1487 (9th
9 Cir. 1986), and both the evidence that supports and the evidence that detracts from the ALJ’s
10 conclusion weighed. See Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not
11 affirm the ALJ’s decision simply by isolating a specific quantum of supporting evidence. Id.; see
12 also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the
13 administrative findings, or if there is conflicting evidence supporting a finding of either disability
14 or nondisability, the finding of the ALJ is conclusive, see Sprague v. Bowen, 812 F.2d 1226,
15 1229-30 (9th Cir. 1987), and may be set aside only if an improper legal standard was applied in
16 weighing the evidence. See Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

17 ANALYSIS

18 A. Medical Evidence

19 Plaintiff asserts that the ALJ failed to properly credit the opinion of her treating physician,
20 Dr. Scheidt, and did not provide specific and legitimate reasons, based on substantial evidence,
21 for discounting Dr. Scheidt’s September 2014 assessment of plaintiff’s ability to do work-related
22 activities. Dr. Scheidt found plaintiff significantly limited due to fibromyalgia and migraines.

23 The weight given to medical opinions depends in part on whether they are proffered by
24 treating, examining, or non-examining professionals. Lester v. Chater, 81 F.3d 821, 830 (9th Cir.
25 1995). Ordinarily, more weight is given to the opinion of a treating professional, who has a
26 greater opportunity to know and observe the patient as an individual. Id.; Smolen v. Chater, 80
27 F.3d 1273, 1285 (9th Cir. 1996).

28 ///

1 To evaluate whether an ALJ properly rejected a medical opinion, in addition to
2 considering its source, the court considers whether (1) contradictory opinions are in the record,
3 and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted opinion of a
4 treating or examining medical professional only for “clear and convincing” reasons. Lester, 81
5 F.3d at 831. In contrast, a contradicted opinion of a treating or examining professional may be
6 rejected for “specific and legitimate” reasons, that are supported by substantial evidence. Id. at
7 830. While a treating professional’s opinion generally is accorded superior weight, if it is
8 contradicted by a supported examining professional’s opinion (e.g., supported by different
9 independent clinical findings), the ALJ may resolve the conflict. Andrews v. Shalala , 53 F.3d
10 1035, 1041 (9th Cir. 1995) (citing Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). In
11 any event, the ALJ need not give weight to conclusory opinions supported by minimal clinical
12 findings. Meanel v. Apfel, 172 F.3d 1111, 1113 (9th Cir. 1999) (treating physician’s conclusory,
13 minimally supported opinion rejected); see also Magallanes, 881 F.2d at 751. The opinion of a
14 non-examining professional, without other evidence, is insufficient to reject the opinion of a
15 treating or examining professional. Lester, 81 F.3d at 831.

16 Dr. Judy Scheidt, a Doctor of Osteopathic Medicine (D.O.), began treating plaintiff in
17 January 2012 for bilateral knee pain and migraines. AT 397-400. At a March 2012 follow-up
18 visit, plaintiff reported migraines, knee pain, and numbness in her hands to Dr. Scheidt. AT 391.
19 In October 2012, Dr. Scheidt treated plaintiff for anxiety and depression, with follow-up visits in
20 November and December of 2012. AT 358-359, 361-362, 364-366. Dr. Scheidt continued to
21 evaluate and treat plaintiff in 2013 and 2014, and medical records identified her as plaintiff’s
22 primary care physician (PCP) as of October 2013. AT 716.

23 On September 16, 2014, Dr. Scheidt filled out a functional capacity questionnaire for
24 plaintiff, whom she was treating for “fibromyalgia, migraine headache, IBS, morphea, [and]
25 depression/anxiety.” AT 634. Dr. Scheidt opined that plaintiff could lift less than 10 pounds, sit
26 for less than 2 hours, and stand for less than 2 hours, all due to fibromyalgia. AT 635. She
27 indicated that plaintiff would have to lie down at unpredictable intervals during a shift four days a
28 week, due to migraines. AT 636. Dr. Scheidt further opined that plaintiff could only

1 occasionally perform postural or manipulative activities and must avoid all pushing and pulling,
2 citing “fibromyalgia pain with certain movements.” AT 637-637. She stated that plaintiff would
3 miss more than three days of work per month and would otherwise be in moderate or severe pain
4 100% of the time. AT 638, 640. Dr. Scheidt further opined that, due mental impairments,
5 plaintiff would have limitations in the ability to remain at work for a full day, complete tasks, and
6 stay at work for an entire shift. AT 639. Finally, she stated that plaintiff had been “functioning at
7 the level described in this form” for more than three years. AT 640.

8 The ALJ “found the opinions expressed in [Dr. Scheidt’s September 2014 report]
9 unpersuasive.” AT 31. After listing some of the above limitations, the ALJ wrote:

10 Dr. Scheidt attributes these limitations primarily to diagnoses of
11 fibromyalgia and migraines without any citation to objective medical
12 findings that would support such drastic limitations. Additionally,
13 she concluded that the claimant would be unable to work for a full
14 day, complete tasks, or complete an entire scheduled work shift
15 without identifying any cause at all. (Ex. 11F/7.)

14 AT 31.²

15 The ALJ continued: “Concurrent notes . . . are similarly void of any explanation. (Ex.
16 15F/5.) In fact, there is no examination of the claimant’s back, neck, extremities, etc., at all. (Ex.
17 15F/6-7.)” AT 31. The ALJ cited Dr. Scheidt’s September 16, 2014 notes which state:

18 Plaintiff was diagnosed last year with fibromyalgia by Dr. Welk in
19 Mt. Vernon, rheumatologist. She also has a lengthy history of
20 migraine HA. . . . She says that if she does any housework for very
21 long, she gets very stiff and achy. She has a hard time even lifting a
22 gallon of milk or a basket of laundry at home. She has lost jobs due
23 to missing too much work from her migraines. She will get a
24 migraine for no week, then will have 3-4 a week. She has tried
25 several medications without relief, she often just needs to rest. I will
26 have her see neurology for consideration of botox.

23 AT 675. Dr. Scheidt conducted a physical exam, which was unremarkable, and the above notes

25 ² This section of the form asked the physician to “indicate whether your patient experiences
26 limitations in ability to tolerate normal stressors of a competitive environment as listed below,
27 and state the cause of the limitations.” AT 639. Dr. Scheidt checked boxes for “remaining at
28 work for a full day,” “completing tasks,” and “staying at work for the entire scheduled work
shift.” No space was provided to list the causes of these limitations, and Dr. Scheidt did not write
in any.

1 appear to be based on plaintiff's subjective complaints. See AT 676 ("Complains of stiffness,
2 muscle weakness and muscle aches"; "complains of headaches"). In her exam, Dr. Scheidt found
3 plaintiff "alert and cooperative" with "normal mood and affect" and "normal attention span and
4 concentration." AT 677.

5 The ALJ's stated that Dr. Scheidt's treatment of plaintiff's fibromyalgia and migraines
6 was limited because she referred plaintiff to a rheumatologist for fibromyalgia and to a
7 neurologist for migraines. AT 31; see AT 572-573, 643.³ "Dr. Scheidt primarily treated the
8 claimant for acute transient conditions, such as bronchitis and medication management," the ALJ
9 wrote. AT 31. "Thus, while Dr. Scheidt was the claimant's primary physician, she did not exam
10 or treat most of the conditions that she opined caused the limitations. Consistent with that role,
11 her clinical notes provided no explanation for the drastic limitations posited in the [September
12 2014] form." AT 31. The ALJ further found that the "overall medical record was not indicative
13 of such limitations." AT 31.

14 Plaintiff argues that medical evidence supports Dr. Scheidt's survey findings, including
15 specialist notes that Dr. Scheidt reviewed. See AT 666 (rheumatologist's August 2014 notes cc'd
16 to Dr. Scheidt). After the rheumatologist diagnosed plaintiff with fibromyalgia in July 2013⁴, Dr.
17 Scheidt's progress notes referred to this diagnosis and related symptoms. See AT 684 (September
18 2014 note that "she can barely lift coffee pots and other items . . . her arms hurt so bad with just
19 light housework that she cannot do anything for several days later"). However, the purpose of
20 plaintiff's visit with Dr. Scheidt on that occasion was to treat cold symptoms. AT 684. Similarly,
21 on July 3, 2014, Dr. Scheidt noted plaintiff's "severe" fibromyalgia, but the visit was prompted
22 by plaintiff's hitting her elbow on the car door. AT 694.

23 The court has reviewed both Dr. Scheidt's progress notes concerning plaintiff's
24 fibromyalgia and migraines and neurologist Dr. Welk's progress notes as of July 2013. AT 391,

25 _____
26 ³ Plaintiff was referred to neurologist Dr. Kara Warden in November 2014, two months after Dr.
27 Scheidt filled out the disability form, so Dr. Scheidt could not have been aware of Dr. Warden's
28 findings when filling out the form. AT 653.

⁴ See AT 572.

1 397-399, 666, 684, 686, 695, 707. While Dr. Scheidt regularly noted plaintiff's fibromyalgia,
2 there is little evidence of the numerous significant limitations marked on the disability form.
3 There is evidence that plaintiff had frequent migraines (e.g., AT 391 (1-2/week in March 2012),
4 646 (migraines 15 days or more per month in November 2014)), but the ALJ discussed the
5 evidence of plaintiff's migraines at length, concluding they were somewhat responsive to
6 medication and not as frequent or debilitating as claimed. AT 28.

7 Based on this record, the undersigned concludes that the ALJ's reasons for discounting
8 Dr. Scheidt's September 2014 disability form – i.e., a lack of medical evidence for the claimed
9 limitations and Dr. Scheidt's treatment of mainly acute and transient conditions – constitute
10 specific and legitimate reasons supported by substantial evidence.

11 **B. Credibility**

12 Plaintiff next asserts that the ALJ erred in discrediting plaintiff's testimony and subjective
13 complaints of pain.

14 The ALJ determines whether a disability applicant is credible, and the court defers to the
15 ALJ's discretion if the ALJ used the proper process and provided proper reasons. See, e.g.,
16 Saelee v. Chater, 94 F.3d 520, 522 (9th Cir. 1995). If credibility is critical, the ALJ must make an
17 explicit credibility finding. Albalos v. Sullivan, 907 F.2d 871, 873-74 (9th Cir. 1990); Rashad v.
18 Sullivan, 903 F.2d 1229, 1231 (9th Cir. 1990) (requiring explicit credibility finding to be
19 supported by "a specific, cogent reason for the disbelief").

20 In evaluating whether subjective complaints are credible, the ALJ should first consider
21 objective medical evidence and then consider other factors. Bunnell v. Sullivan, 947 F.2d 341,
22 344 (9th Cir. 1991) (en banc). If there is objective medical evidence of an impairment, the ALJ
23 then may consider the nature of the symptoms alleged, including aggravating factors, medication,
24 treatment and functional restrictions. See id. at 345-47. The ALJ also may consider: (1) the
25 applicant's reputation for truthfulness, prior inconsistent statements or other inconsistent
26 testimony, (2) unexplained or inadequately explained failure to seek treatment or to follow a
27 prescribed course of treatment, and (3) the applicant's daily activities. Smolen v. Chater, 80 F.3d
28 1273, 1284 (9th Cir. 1996); see generally SSR 96-7P, 61 FR 34483-01; SSR 95-5P, 60 FR 55406-

1 01; SSR 88-13. Work records, physician and third party testimony about nature, severity and
2 effect of symptoms, and inconsistencies between testimony and conduct also may be relevant.
3 Light v. Social Security Administration, 119 F.3d 789, 792 (9th Cir. 1997). A failure to seek
4 treatment for an allegedly debilitating medical problem may be a valid consideration by the ALJ
5 in determining whether the alleged associated pain is not a significant nonexertional impairment.
6 See Flaten v. Secretary of HHS, 44 F.3d 1453, 1464 (9th Cir. 1995). The ALJ may rely, in part,
7 on his or her own observations, see Quang Van Han v. Bowen, 882 F.2d 1453, 1458 (9th Cir.
8 1989), which cannot substitute for medical diagnosis. Marcia v. Sullivan, 900 F.2d 172, 177 n.6
9 (9th Cir. 1990). “Without affirmative evidence showing that the claimant is malingering, the
10 Commissioner’s reasons for rejecting the claimant’s testimony must be clear and convincing.”
11 Morgan v. Commissioner of Social Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).

12 The ALJ found that, while plaintiff’s medically determinable impairments could
13 reasonably be expected to cause the alleged symptoms, “some of the claimant’s statements
14 concerning the intensity, persistence and limiting effects of these symptoms are not entirely
15 credible for the reasons explained in this decision.” AT 28. First, the ALJ noted that plaintiff
16 was not diagnosed with fibromyalgia until July 2013 (nearly two years after the alleged disability
17 onset date), and that plaintiff apparently did not pursue rheumatologist Dr. Welk’s advice to see a
18 counselor for stress management “as a way to improve fibromyalgia pain.” AT 28; see AT 660.

19 Next, the ALJ found that “the evidence does not corroborate the extent of her alleged
20 migraines and frequently [sic] of dysfunction from such migraines.” AT 28. The ALJ cited
21 evidence that plaintiff’s treatment for migraines was sporadic (with a gap between March 2012
22 and August 2014) and that she reported improvement on certain medications. AT 28-29; see,
23 e.g., AT 643 (“started on Topamax 100 mg with marked improvement, resolution of daily
24 headaches and migraines decreased to 1-2 per week”); AT 648 (“Imitrex successful 2/3 of the
25 time in eliminating migraines.”). At other times, as plaintiff points out, her migraine medication
26 provided only temporary relief.

27 The ALJ noted plaintiff’s statements to Dr. Scheidt in 2012 that, having been laid off from
28 her job in 2011, plaintiff feared finding a new job due to “low self esteem” and was seeing Dr.

1 Scheidt for anxiety and depression. AT 30; see AT 364. However, the ALJ observed that “the
2 medical record includes minimal mental health treatment and successful engagement in gainful
3 activity for many years.” AT 30. The ALJ also noted plaintiff’s testimony that her job at a call
4 center was terminated in August 2011 due to an error in her medical paperwork after a leave –
5 i.e., not due to a disabling condition that made her unable to perform the work. AT 30; see AT
6 52-53. Plaintiff testified that she periodically applied for work over the next year and turned
7 down one job offer because it was a 45-minute commute from her house. AT 53-55.

8 Finally, the ALJ found that plaintiff’s

9 specific allegations of dysfunction are also inconsistent with her
10 activities. For example, the claimant alleged that she was unable to
11 sit, stand, or walk for long enough to complete a full workday.
12 However, the claimant was able to negotiate long plane rides to
Texas on a yearly basis. The claimant took a long road trip to
California in 2014, which indicates she is capable of prolonged
sitting, as found above.

13 AT 30; see AT 45-48. See Tomasetti v. Astrue, 533 F.3d 1035, 1040 (9th Cir. 2008) (finding that
14 ALJ properly inferred from plaintiff’s travel to Venezuela that he was not as physically limited as
15 he claimed).

16 Here, the ALJ provided specific reasons for discounting plaintiff’s credibility, supported
17 by substantial evidence including plaintiff’s failure to seek counseling in relation to her
18 fibromyalgia, her sporadic treatment for migraines and the at least partial effectiveness of such
19 treatment, her claims that mental health issues prevented her from looking for work absent a
20 significant record of mental health treatment, and her multiple long-distance trips with few
21 problems from her alleged disabilities. The undersigned concludes that the ALJ supplied legally
22 sufficient reasons to make an adverse credibility finding.

23 C. Presumptive Disability

24 Plaintiff next claims that, due to the cumulative effect of her impairments, the ALJ should
25 have found her presumptively disabled under Listing 1.02 (Major Dysfunction of Joints) and 1.04
26 (Disorder of the Spine). See AT 24.

27 The Social Security Regulations “Listing of Impairments” is comprised of impairments to
28 certain categories of bodily systems and/or diseases severe enough to preclude a person from

1 performing gainful activity. Young v. Sullivan, 911 F.2d 180, 183 (9th Cir. 1990); 20 C.F.R. §
2 404.1520(d). Conditions described in the listings are considered so severe as to be irrebuttably
3 presumed disabling. 20 C.F.R. § 404.1520(d). In meeting or equaling a listing, all the
4 requirements of that listing must be met. Key v. Heckler, 754 F.2d 1545, 1550 (9th Cir. 1985). If
5 a claimant's impairment or combination of impairments meets or exceeds a "listing," no specific
6 finding is necessary as to the claimant's ability to perform his or her past relevant work or any
7 other jobs. 20 C.F.R. § 404.1520(d).

8 To meet Listing 1.02, the claimant must show major dysfunction of a joint characterized
9 by gross anatomical deformity and chronic joint pain and stiffness with signs of limitation of
10 motion or other abnormal motion of the affected joint(s), and findings on appropriate medically
11 acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected
12 joint(s). 20 C.F.R. § Pt. 404, Subpt. P, App. 1. The claimant must also meet either parts (A)
13 involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in
14 inability to ambulate effectively, or (B) involvement of one major peripheral joint in each upper
15 extremity. Id. Here, plaintiff has made no medical showing of "gross anatomical deformity" or
16 the inability to "ambulate effectively" per the regulation. See 20 C.F.R. Part 404, Subpart P,
17 Appendix 1, Listing 100B2b(2) (examples of inability to ambulate effectively include the
18 inability to walk without the use of a walker, two crutches, or two canes).

19 Listing 1.04A requires:

20 Evidence of nerve root compression characterized by neuro-
21 anatomic distribution of pain, limitation of motion of the spine,
22 motor loss (atrophy with associated muscles weakness or muscle
23 weakness) accompanied by sensory or reflex loss and, if there is
involvement of the lower back, positive straight-leg raising test
(sitting and supine).

24 See 20 C.F.R. Part 404, Subpart P, Appendix 1. As above, plaintiff has not shown that she meets
25 the requirements of this listing. Plaintiff argues that her documented fibromyalgia symptoms
26 medically equal the listing for presumptive disability due to Disorder of the Spine. However,
27 merely alleging the overall functional impact of plaintiff's impairments is insufficient to meet or
28 equal a listing. See Lewis v. Apfel, 236 F.3d 503, 514 (9th Cir. 2001). The undersigned

1 concludes that the ALJ did not err in declining to find plaintiff presumptively disabled.⁵

2 D. Vocational Expert

3 Lastly, plaintiff asserts that the ALJ erred in finding that there were jobs that existed in
4 significant numbers in the national economy that plaintiff could perform. At this step, the ALJ
5 wrote:

6 [T]he claimant's ability to perform all or substantially all of the
7 requirements of [the full range of sedentary work] has been impeded
8 by additional limitations. To determine the extent to which these
9 limitations erode the unskilled sedentary occupational base, I asked
10 the [VE] whether jobs exist in the national economy for an individual
11 with the claimant's age, education, work experience, and residual
12 functional capacity. The [VE] testified that given all of these factors
13 the individual would be able to perform the requirements of
14 representative occupations such as an Addresser, which is sedentary
15 unskilled (SVP 2) work with 12,600 jobs in the nation; table worker,
16 which is sedentary unskilled (SVP 2) work with 8,000 jobs in the
17 nation, hand bander, [also SVP 2], with 11,300 jobs in the nation;
18 callout operator, [also SVP2], with 1,300 jobs in the nation; and a
19 telephone quotation clerk, [also SVP2], with 69,000 jobs in the
20 nation.

21 Pursuant to SSR 00-4p, I have determined that the [VE's] testimony
22 is consistent with the information contained in the Dictionary of
23 Occupational Titles.

24 AT 33 (DOT #s omitted); see AT 64-67. The ALJ noted that the table worker and hand bander
25 jobs had been reduced by 50% to accommodate for environmental restrictions in plaintiff's RFC.
26 AT 33. See 20 C.F.R. § 404.1566(b) (providing that "[w]ork exists in the national economy when
27 there is a significant number of jobs (in one or more occupations) having requirements which you
28 are able to meet") (emphasis added). Because more than 25,000 jobs in total were available,
29 plaintiff's argument that four listed jobs had fewer than 25,000 positions available is unavailing.

30 CONCLUSION

31 For the reasons stated herein, IT IS HEREBY ORDERED that:

- 32 1. Plaintiff's motion for summary judgment (ECF No. 16) is denied;

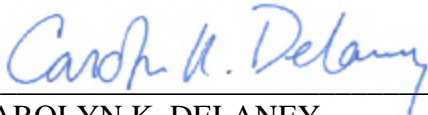
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34 _____
35 ⁵ Plaintiff's remaining argument that the ALJ erred in determining her residual functional
36 capacity relies largely on plaintiff's subjective complaints and Dr. Scheidt's findings, both
37 discussed above.

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- 2. The Commissioner's cross-motion for summary judgment (ECF No. 21) is granted;
- and
- 3. Judgment is entered for the Commissioner.

Dated: June 7, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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