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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAULA TRISTAN,

 Plaintiff,

 v.

COMMISSIONER OF SOCIAL
SECURITY,

 Defendant.

No. 2:17-cv-2045-KJN

ORDER

Plaintiff Paula Tristan seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner”) denying plaintiff’s claim for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under the Social Security Act (“Act”).¹ Plaintiff filed a motion for summary judgment, which the Commissioner opposed by filing a cross-motion for summary judgment. (ECF Nos. 14, 15.) No optional reply brief was filed. For the reasons discussed below, the court AFFIRMS the Commissioner’s final decision by granting the Commissioner’s motion for summary judgment.

The court reviews the Commissioner’s decision to determine whether (1) it is based on

¹ This action was referred to the undersigned pursuant to Local Rule 302(c)(15), and both parties voluntarily consented to proceed before a United States Magistrate Judge for all purposes. (ECF Nos. 7, 8.)

1 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
2 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
3 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
4 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means “such relevant evidence as a reasonable
5 mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th
6 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is
7 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
8 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citation omitted). “The
9 court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one rational
10 interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

11 In this case, the ALJ found that plaintiff suffered from severe impairments such as
12 cataracts, diabetic maculopathy in her left eye, myopic astigmatism, obesity, and degenerative
13 joint disease of the knee, and assessed plaintiff’s residual functional capacity (“RFC”) as follows:

14 After careful consideration of the entire record, the undersigned
15 finds that the claimant has the residual functional capacity to
16 perform medium work as defined in 20 CFR 404.1567(c) and
17 416.967(c). Specifically, the claimant is limited to lifting up to 50
18 pounds occasionally and 25 pounds frequently; standing or walking
19 about six hours out of an eight-hour workday; and sitting for more
20 than six hours out of an eight-hour workday. She can never climb
21 ladders, ropes, or scaffolds. She is precluded from work in
22 environments that require good bilateral vision as the claimant is
23 limited in her ability to discriminate details of small objects.

24 (AT 31, 35.) Plaintiff’s sole contention on appeal is that the ALJ improperly discounted
25 plaintiff’s testimony concerning her symptoms and functional limitations.

26 In Lingenfelter v. Astrue, 504 F.3d 1028 (9th Cir. 2007), the Ninth Circuit Court of
27 Appeals summarized the ALJ’s task with respect to assessing a claimant’s credibility:

28 To determine whether a claimant’s testimony regarding subjective
pain or symptoms is credible, an ALJ must engage in a two-step
analysis. First, the ALJ must determine whether the claimant has
presented objective medical evidence of an underlying impairment
which could reasonably be expected to produce the pain or other
symptoms alleged. The claimant, however, need not show that her
impairment could reasonably be expected to cause the severity of the
symptom she has alleged; she need only show that it could
reasonably have caused some degree of the symptom. Thus, the ALJ

1 may not reject subjective symptom testimony . . . simply because
2 there is no showing that the impairment can reasonably produce the
degree of symptom alleged.

3 Second, if the claimant meets this first test, and there is no evidence
4 of malingering, the ALJ can reject the claimant’s testimony about
the severity of her symptoms only by offering specific, clear and
5 convincing reasons for doing so. . . .

6 Lingenfelter, 504 F.3d at 1035-36 (citations and quotation marks omitted). “At the same time, the
7 ALJ is not required to believe every allegation of disabling pain, or else disability benefits would
8 be available for the asking...” Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012).

9 “The ALJ must specifically identify what testimony is credible and what testimony
10 undermines the claimant’s complaints.” Valentine v. Comm’r of Soc. Sec. Admin., 574 F.3d 685,
11 693 (9th Cir. 2009) (quoting Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir.
12 1999)). In weighing a claimant’s credibility, an ALJ may consider, among other things, the
13 “[claimant’s] reputation for truthfulness, inconsistencies either in [claimant’s] testimony or
14 between [her] testimony and [her] conduct, [claimant’s] daily activities, [her] work record, and
15 testimony from physicians and third parties concerning the nature, severity, and effect of the
16 symptoms of which [claimant] complains.” Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir.
17 2002) (modification in original) (quoting Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir.
18 1997)). If the ALJ’s credibility finding is supported by substantial evidence in the record, the
19 court “may not engage in second-guessing.” Id. at 959.

20 Here, the ALJ provided several specific, clear, and convincing reasons for discounting
21 plaintiff’s testimony regarding a disabling degree of symptoms and functional limitations.

22 First, the ALJ reasonably concluded that plaintiff’s allegations of functional limitations
23 beyond the RFC were inconsistent with the overwhelming weight of the treatment records, as
24 well as the medical and mental health opinion evidence, which supported no greater limitations
25 than those included in the RFC. (AT 36-39.)²

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27 ² On appeal, plaintiff does not challenge the ALJ’s assessment of the medical and mental health
28 opinion evidence through any substantive briefing or argument. Thus, any such issue is waived.
See Carmickle v. Comm’r, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008).

1 Second, the ALJ legitimately referenced plaintiff’s conservative treatment, which
2 generally consisted of medication, dietary modification, and exercise. (AT 37.) See Parra v.
3 Astrue, 481 F.3d 742, 751 (9th Cir. 2007) (“We have previously indicated that evidence of
4 conservative treatment is sufficient to discount a claimant’s testimony regarding severity of an
5 impairment”).

6 Third, the ALJ properly found that plaintiff’s daily activities were inconsistent with her
7 allegations of disability. (AT 36.) “While a claimant need not vegetate in a dark room in order to
8 be eligible for benefits, the ALJ may discredit a claimant’s testimony when the claimant reports
9 participation in everyday activities indicating capacities that are transferable to a work
10 setting....Even where those activities suggest some difficulty functioning, they may be grounds
11 for discrediting the claimant’s testimony to the extent that they contradict claims of a totally
12 debilitating impairment.” Molina, 674 F.3d at 1112-13 (citations and quotation marks omitted);
13 see also Burch v. Barnhart, 400 F.3d 676, 680 (9th Cir. 2005) (ALJ properly considered
14 claimant’s ability to care for her own needs, cook, clean, shop, interact with her nephew and
15 boyfriend, and manage her finances and those of her nephew in the credibility analysis); Morgan
16 v. Comm’r of Soc. Sec., 169 F.3d 595, 600 (9th Cir. 1999) (ALJ’s determination regarding
17 claimant’s ability to “fix meals, do laundry, work in the yard, and occasionally care for his
18 friend’s child” was a specific finding sufficient to discredit the claimant’s credibility). Here,
19 plaintiff acknowledged that she could manage her personal care, cook, mop, vacuum, and take
20 public transportation if needed. (AT 34, 36, 387, 454.) Notably, plaintiff also testified that she
21 took care of her ill mother “full time, around the clock” for a portion of the relevant period. (AT
22 51-52.)

23 To be sure, the record also contains some contrary evidence, suggesting that plaintiff’s
24 activities were more limited. However, it is the function of the ALJ to resolve any ambiguities,
25 and the court finds the ALJ’s assessment to be reasonable and supported by substantial evidence.
26 See Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001) (affirming ALJ’s credibility
27 determination even where the claimant’s testimony was somewhat equivocal about how regularly
28 she was able to keep up with all of the activities and noting that the ALJ’s interpretation “may not

1 be the only reasonable one”). As the Ninth Circuit explained:

2 It may well be that a different judge, evaluating the same evidence,
3 would have found [the claimant’s] allegations of disabling pain
4 credible. But, as we reiterate in nearly every case where we are
5 called upon to review a denial of benefits, we are not triers of fact.
6 Credibility determinations are the province of the ALJ...Where, as
7 here, the ALJ has made specific findings justifying a decision to
8 disbelieve an allegation of excess pain, and those findings are
9 supported by substantial evidence in the record, our role is not to
10 second-guess that decision.

11 Fair v. Bowen, 885 F.2d 597, 604 (9th Cir. 1989).

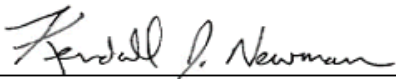
12 In sum, the court concludes that the ALJ’s credibility evaluation was supported by the
13 record and by the proper analysis.

14 Consequently, the ALJ’s decision was free from prejudicial error and supported by
15 substantial evidence in the record as a whole.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff’s motion for summary judgment (ECF No. 14) is DENIED.
- 18 2. The Commissioner’s cross-motion for summary judgment (ECF No. 15) is
19 GRANTED.
- 20 3. The final decision of the Commissioner is AFFIRMED.
- 21 4. The Clerk of Court shall close this case.

22 Dated: November 13, 2018

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE