

1
2
3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA

5
6 **DIANE M. CHRISTIAN,**
7 Plaintiff,

8 v.

9 **CAROLYN W. COLVIN,**
10 Defendant.

Case No. 15-cv-05787-YGR

**ORDER ON CROSS-MOTIONS FOR SUMMARY
JUDGMENT**

Re: Dkt. Nos. 15, 19

11 Plaintiff Diane M. Christian filed this action seeking judicial review of Administrative Law
12 Judge (“ALJ”) Teresa L. Hoskin’s determination that she is not disabled under the Social Security
13 Act (the “Act”). Specifically, plaintiff contends that the ALJ lacked substantial evidence to reject
14 the opinions of (i) examining psychologist Dr. Barncord regarding plaintiff’s memory and
15 attention and (ii) treating physician Dr. Cervenka regarding plaintiff’s mental limitations.
16 Additionally, plaintiff argues that the ALJ did not provide clear and convincing reasons for finding
17 her statements regarding the intensity of her pain not credible.

18 Now before the Court are cross-motions for summary judgment. (Dkt. Nos. 15, 19.)
19 Having carefully considered the papers submitted and the administrative record, and for the
20 reasons set forth below, plaintiff’s motion for summary judgment is **DENIED** and defendant’s
21 cross-motion is **GRANTED**.

22 **I. PROCEDURAL BACKGROUND**

23 On February 15, 2012, plaintiff filed an application for a period of disability and disability
24 insurance benefits with the Social Security Administration (the “SSA”), claiming that she had
25 been disabled since October 20, 2009. (Dkt. No. 14, “Administrative Record” or “AR” at 12.)
26 The SSA denied plaintiff’s claim initially on July 3, 2012, and upon reconsideration on February
27 13, 2013. (*Id.*) Plaintiff filed a timely appeal and requested a hearing with an ALJ on April 1,
28 2013. (*Id.*) Plaintiff appeared and testified at a hearing on February 19, 2014. (*Id.*) In a decision

1 dated May 14, 2014, the ALJ found that plaintiff was not disabled under the Act. (*Id.* at 29.)

2 On July 11, 2014, plaintiff requested review of the ALJ’s decision by the Appeals Council
3 (“AC”) (*id.* at 8), and on October 19, 2015, the AC denied plaintiff’s request, finding “no reason
4 under our rules to review the [ALJ’s] decision” (*id.* at 1–6).¹ Accordingly, the ALJ’s decision
5 became the final decision of the Commissioner of the SSA. (*Id.* at 1.) Thereafter, plaintiff
6 initiated the instant action, seeking judicial review. (Dkt. No. 1.)

7 **II. LEGAL STANDARD**

8 This Court has jurisdiction under 42 U.S.C. § 405(g). The Court may reverse the ALJ’s
9 decision only if it “contains legal error or is not supported by substantial evidence.” *Orn v.*
10 *Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (internal citations omitted). Substantial evidence is
11 “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
12 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005) (citation omitted). It is “more than a mere
13 scintilla but less than a preponderance.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir.
14 2005) (citation omitted). Where the evidence is susceptible to more than one rational conclusion,
15 the Court must uphold the ALJ’s decision. *See Burch*, 400 F.3d at 679.

16 The SSA employs a five-step sequential framework to determine whether a particular
17 claimant is disabled. At step one, the ALJ must determine whether the claimant is engaged in
18 substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). A person is involved in substantial
19 work activity if she engages in work that involves significant physical or mental activities. 20
20 C.F.R. § 404.1572(a). Gainful work activity is defined as “work usually done for pay or profit,”
21 regardless of whether the claimant receives a profit. 20 C.F.R. § 404.1572(b). If the claimant is
22 engaged in substantial gainful activity, she is not disabled under the regulation. Otherwise, the
23 ALJ proceeds to step two.

24 At step two, the ALJ must determine whether the claimant has an impairment (or
25 combination of impairments) that is severe. 20 C.F.R. § 404.1520(a)(4)(ii). A “severe”

26
27 _____
28 ¹ Such decision included an implicit finding that the ALJ did not abuse her discretion,
make a legal error, or render a decision unsupported by substantial evidence. (*Id.* at 1.)

1 impairment must significantly limit an individual’s ability to perform basic work activities. *Id.* §
2 404.1521(a). If the claimant does not have a severe impairment (or combination of impairments)
3 that meets the duration requirement of 20 C.F.R. § 404.1509,² she is not disabled pursuant to the
4 regulation. Otherwise, the ALJ proceeds to step three.

5 At step three of the sequential evaluation, the ALJ must determine whether the impairment
6 or combination of impairments “meets or equals” the criteria of an impairment listed in 20 C.F.R.
7 Part 404, Subpart P, Appendix 1. 20 C.F.R §§ 404.1520(a)(4)(iii), 404.1520(d), 404.1526
8 (providing the applicable standard for medical equivalence of impairments). If the claimant’s
9 impairment or combination of impairments meets the criteria of a listing and the duration
10 requirement, the claimant is disabled. 20 C.F.R. § 404.1520(d). If the impairment or combination
11 of impairments does not meet the criteria of a listing or does not meet the duration requirement,
12 the ALJ proceeds to step four.

13 Before addressing step four, the ALJ must determine the claimant’s Residual Functioning
14 Capacity (the “RFC”). 20 C.F.R. § 404.1520(f). A claimant’s RFC consists of her ability to
15 engage in physical and mental work activity on an ongoing basis, in spite of any limitations from
16 impairments. 20 C.F.R. § 404.1545. The ALJ should consider both severe and non-severe
17 impairments in determining the claimant’s RFC. 20 C.F.R. §§ 404.1520(e), 404.1545.

18 At step four, the ALJ must determine if the claimant has the RFC to perform past relevant
19 work. 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant has the RFC to perform past relevant work,
20 she is not disabled under the regulation. If the claimant is unable to do past relevant work or has
21 no past relevant work, the ALJ proceeds to the final step in the sequential evaluation.

22 At step five, the ALJ considers the claimant’s RFC, age, education, and work
23 experience in determining whether the claimant can perform any other work besides past relevant
24 work. 20 C.F.R. §§ 404.1520(a)(4)(v), 404.1520(g). If the claimant can “make an adjustment to
25 other work,” she is not disabled under the regulation. Otherwise, she is found to be disabled.

26 _____
27 ² The duration requirement specifies that the impairment “must have lasted or must be
28 expected to last for a continuous period of at least 12 months” unless it “is expected to result in
death.” 20 C.F.R. § 404.1509.

1 **III. THE ALJ’S DECISION**

2 The ALJ applied the five-step sequential analysis to determine whether plaintiff was
3 disabled and eligible for disability insurance benefits. (AR 12.)

4 **A. Step One**

5 At step one, the ALJ credited plaintiff’s testimony and found that she had not “engaged in
6 substantial gainful activity since October 20, 2009, the alleged onset date.” (*Id.* at 14.)³

7 **B. Step Two**

8 At step two, the ALJ determined that plaintiff suffered from the following severe
9 impairments: “(i) degenerative changes of the lumbar spine; (ii) obesity; (iii) status post
10 myocardian infarction in May 2011 due to acute coronary disease, resolved with subsequent
11 angioplasty with stent insertion; (iv) uncomplicated diabetes mellitus; and (v) depressive disorder,
12 not otherwise specified.” (*Id.* at 14) The ALJ found that these impairments “cause more than a
13 minimal limitation of the claimant’s ability to perform basic work activities.” (*Id.* at 15.)

14 **C. Step Three**

15 At step three, the ALJ found that plaintiff did not have an “impairment or combination of
16 impairments that meets or medically equals the severity of one of the listed impairments in 20
17 C.F.R. Part 404, Subpart P, Appendix 1.” (*Id.*) Specifically, the ALJ found that her mental
18 impairments presented no restriction in her daily living activities (she was able to perform
19 significant daily activities performing all of her own self-care without limitation); only moderate
20 difficulties in her social functioning (she was able to interact socially with family, friends,
21 neighbors, and others); no difficulties with regard to concentration, persistence, or pace;⁴ and that
22 she has no documented episodes of decompensation or mental deterioration for an extended
23 duration. (*Id.* at 16–17.)

24 _____
25 ³ In her application, plaintiff alleged that she became disabled on October 20, 2008. (AR
26 at 176.) However, plaintiff reported that she worked until October 2009, earning almost \$36,000
27 in 2008 and about \$28,700 in 2009. (*Id.* at 184, 203.) Thus, the ALJ used the October 20, 2009
28 onset date, and plaintiff does not contend that such was improper.

⁴ The ALJ did, however, note that due to the presence of chronic pain and side effects
from prescribed medications, plaintiff should be limited to “performing no more than the simple
and repetitive tasks characteristic of unskilled work.” (*Id.* at 16 n.1.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

D. RFC

The ALJ determined plaintiff had an RFC to perform “light work” with the following modifications: plaintiff can “stand no more than 4 hours total in an 8-hour workday, and can walk no more than 20 minutes without interruption and no more than 2 hours total in an 8-hour workday. Also, the claimant cannot perform more than occasional climbing but can never crouch, crawl, or kneel. The claimant must avoid more than occasional exposure to vibration and any exposure to extreme heat, cold, or humidity. Further, the claimant is limited to performing work [sic] simple repetitive tasks characteristic of unskilled work that involves no more than occasional and routine interaction with coworkers or the public.” (*Id.* at 18.)

In so finding, the ALJ rejected plaintiff’s testimony that she is unable to work in any capacity as a result of her inability to sit for more than ten to fifteen minutes at a time and that she is unable to perform other jobs because of her carpal tunnel syndrome. (*Id.* at 19.) While the ALJ acknowledged that plaintiff’s medically determinable impairments “could reasonably be expected to cause the alleged symptoms,” the ALJ discredited plaintiff’s statements “concerning the intensity, persistence[,] and limiting effects of these symptoms.” (*Id.*) In discrediting plaintiff’s testimony, the ALJ considered the following: her failure to complain consistently as to the disabling symptoms to her physicians and during the hearing; the presence of acknowledged daily activities at a level strongly contradicting her subjective complaints; plaintiff’s acknowledgment that she frequently walks as a means of transportation; the absence of abnormal clinical signs and laboratory findings sufficient to support plaintiff’s claims; the presence of several normal clinical findings; the claimant’s receipt of only routine and conservative treatments; and the medical opinions of medical experts, her examining physicians, and the state agency medical consultants. (*Id.* at 19–20.)

Relevant to this motion, the ALJ also addressed plaintiff’s claims that her depression and poor memory would restrict her ability to perform work more than the ALJ’s RFC calculation. With regards to this, the ALJ found that plaintiff’s condition did not warrant any further limitations. Specifically, the ALJ considered that plaintiff frequently “denied experiencing any psychiatric complaints and was repeatedly noted to present with a normal psychological and

1 neurological examination.” (*Id.* at 21.)

2 In so finding, the ALJ discussed plaintiff’s consultative examination with psychologists
3 Chandler and Martin in June 2012. In such examination, the doctors evaluated plaintiff’s
4 examination as “only minimally abnormal and notable only for a reportedly depressed mood and
5 blunted tearful affect.” (*Id.* at 22.) Dr. Chandler then assigned plaintiff a Global Assessment of
6 Functioning (“GAF”) score of 55, which is indicative of moderate symptoms, and opined that
7 plaintiff “would experience only moderate restriction of her ability to interact with others in the
8 workplace as a result of her adjustment disorder with depressed mood and pain disorder.” (*Id.*)

9 The ALJ also discussed plaintiff’s neuropsychological consultative examination with Dr.
10 Barncord in July 2013.⁵ Dr. Barncord noted that petitioner’s memory deficits were “multifactorial
11 and caused by a combination of her affective disorder, situational stress, poor sleep, and side
12 effects from prescribed medications.” (*Id.*) Additionally, Dr. Barncord assigned plaintiff a GAF
13 score of 60, which indicates the presence of “only marginally moderate symptoms and
14 limitations.” (*Id.*) The ALJ then found that the “delineated limitation [in the RFC] to simple
15 repetitive tasks of unskilled work would avoid stress that might be encountered with more
16 demanding work tasks,” which would be consistent with the psychological medical findings. (*Id.*)

17 The ALJ also discredited the medical opinions of plaintiff’s treating physician, Dr.
18 Cervenka, as purely conclusory with “little or nothing in the way of explanation, rationale, or
19 objective support for the extreme limitations it imposes.” (*Id.* at 25.) Specifically, the ALJ found
20 that Dr. Cervenka’s opinions were based on a “full acceptance of the claimant’s subjective
21 complaints,” and that such opinions were “strongly contradicted by the claimant’s own statements
22 concerning her functional level and activities of daily living.” (*Id.*)

23 **E. Step Four**

24 At step four, the ALJ determined that plaintiff could not perform her past relevant work as
25 a hospital cleaner and as a patient escort. (*Id.* at 26.) Specifically, the ALJ acknowledged that the
26

27 ⁵ The ALJ’s decision does not reference Dr. Barncord by name, but discusses Dr.
28 Barncord’s findings in some detail, with citations to his notes in the record. (*See id.* at 22.)

1 impartial vocational expert testified that such past work required performance at the “medium
2 exertional level or above.” (*Id.*)

3 **F. Step Five**

4 At step five, the ALJ asked the impartial vocational expert to determine whether jobs exist
5 in the “national economy for an individual with the [plaintiff’s] age, education, work experience,
6 and residual functioning capacity.” (*Id.* at 27.) The vocational expert testified that, in light of all
7 of those factors, several jobs existed that were available to plaintiff. The ALJ found that, although
8 portions of the expert’s testimony were inconsistent with the information contained in the
9 dictionary of occupational titles, that the expert “provided a reasonable, credible, and persuasive
10 explanation for the discrepancy,” and, therefore, accepted the expert’s testimony on the
11 availability of jobs for plaintiff. On such bases, the ALJ found that plaintiff was not disabled as
12 defined in the Act.

13 **IV. DISCUSSION**

14 Plaintiff argues the ALJ committed the following errors: (a) the ALJ lacked substantial
15 evidence to reject the opinions of plaintiff’s physicians, namely (1) Dr. Barncord and (2) Dr.
16 Cervenka; and (b) the ALJ failed to provide clear and convincing reasons for discrediting part of
17 plaintiff’s testimony. The Court addresses below each of the purported errors raised by plaintiff.

18 **A. Physician Opinions**

19 In determining whether a claimant is disabled within the meaning of the Act, the ALJ must
20 consider all medical opinion evidence. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008)
21 (citing 20 C.F.R. § 404.1527(b)). Medical opinions are arranged in a hierarchy of three groups,
22 namely opinions from (i) treating physicians, (ii) examining physicians, and (iii) non-examining
23 physicians, with the opinions of treating physicians generally accorded the most weight. *See*
24 *Valentine v. Comm’r of Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th Cir. 2009) (noting that there are
25 three types of medical opinions in social security cases); *Turner v. Comm’r of Soc. Sec. Admin.*,
26 613 F.3d 1217, 1222 (9th Cir. 2010) (explaining that opinions of treating physicians are entitled to
27 more weight than opinions of examining physicians). The rationale for giving greater weight to a
28 treating physician’s opinion is that he or she is employed to cure and has a greater opportunity to

1 know and observe the patient as an individual. *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9th Cir.
2 1987) (citations omitted).

3 The applicable regulation ordinarily requires the agency to give a treating physician’s
4 opinion “controlling weight” so long as it “is well-supported by medically acceptable clinical and
5 laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the]
6 case record.” 20 C.F.R. § 404.1527(c)(2). The ALJ may reject the uncontroverted (as opposed to
7 contradicted) opinion of a treating physician by providing “clear and convincing” reasons
8 supported by substantial evidence in the record. *Ryan v. Comm’r of Soc. Sec. Admin.*, 528 F.3d
9 1194, 1198 (9th Cir. 2008). “The ALJ can meet [the clear and convincing reasons] burden by
10 setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating
11 his interpretation thereof, and making findings.” *Embrey v. Bowen*, 849 F.2d 418, 421 (9th Cir.
12 1988) (quoting *Cotton v. Bowen*, 799 F.2d 1403, 1408 (9th Cir. 1986)).

13 **1. Dr. Barncord**

14 Plaintiff argues that Dr. Barncord’s opinions regarding her mental impairments were more
15 restrictive than were the ALJ’s findings as reflected in her RFC determination. Specifically,
16 plaintiff takes issue with the ALJ’s finding that the claimant may perform work so long as she is
17 limited to “simple repetitive tasks characteristic of unskilled work that involves no more than
18 occasional and routine interaction with coworkers or the public.” (AR at 12.) According to
19 plaintiff, such finding conflicts with Dr. Barncord’s assessments regarding plaintiff’s memory and
20 ability to maintain attention and concentration. Thus, plaintiff argues, the ALJ implicitly rejected
21 Dr. Barncord’s opinions without explanation, and on this basis, the Court should find that the
22 ALJ’s conclusions were unsupported by substantial evidence. Defendant, on the other hand,
23 counters that the ALJ did not reject Dr. Barncord’s opinions, but rather adopted them. Therefore,
24 there was no need for the ALJ to explain her rejection of such because no rejection occurred.

25 Plaintiff’s arguments do not persuade. The Court finds instructive the Ninth Circuit’s
26 decision in *Stubbs-Danielson v. Astrue*, 539 F.3d 1169 (9th Cir. 2008). There, the plaintiff also
27 argued that the ALJ rejected, without explanation, the medical opinion of one of her doctors. *Id.*
28 at 1173. The doctor at issue opined that plaintiff had a “slow pace, both with thinking and her

1 actions,” that she was “moderately limited” in her ability to “perform at a consistent pace without
2 an unreasonable number and length of rest periods,” and “mildly limited” in several other mental
3 functioning areas. *Id.* Such doctor did not assess whether plaintiff “could perform unskilled work
4 on a sustained basis.” *Id.* The ALJ, in turn, translated such assessment into a concrete restriction
5 to “simple tasks” in his RFC determination. *Id.* The Ninth Circuit held that this did not constitute
6 a rejection of the doctor’s opinion, but rather, was “consistent with restrictions identified in the
7 medical testimony.” *Id.* at 1174.

8 Here, with regards to attention, concentration, and processing speeds, Dr. Barncord found
9 that plaintiff scored in the low average range, and noted that her “[p]rocessing speed was notably
10 slow.” (AR at 451.) With regards to memory, Dr. Barncord noted that plaintiff “scored in the
11 extremely low to borderline range on all memory tasks.” (*Id.*) In summing up his conclusions,
12 Dr. Barncord opined that plaintiff “was largely able to follow brief, concrete instructions when
13 presented without a delay prior to responding. However, when instructions required multiple steps
14 or a delayed response she was largely unable to comply with the task.” (*Id.* at 452.)⁶ Such
15 appears to be consistent with the ALJ’s RFC determination that plaintiff can perform work so long
16 as she is limited to simple, repetitive tasks as explained above.⁷

17 Thus, the Court finds that the ALJ’s RFC determination is consistent with Dr. Barncord’s
18 findings and that the ALJ did not reject Dr. Barncord’s opinions. As such, the ALJ had no need to
19 explain her rejection of the same. *See Stubbs-Danielson*, 539 F.3d at 1174. Accordingly, the
20 Court finds plaintiff is not entitled to summary judgment on this basis.

21
22

23 ⁶ Plaintiff also appears to take issue with the ALJ’s reliance on the GAF score assigned by
24 Dr. Barncord, claiming that the doctor’s specific findings should bear more weight. However,
25 here, the ALJ appears to have used the GAF score to confirm, rather than replace, Dr. Barncord’s
specific findings, explaining that a GAF score of 60 indicates “marginally moderate symptoms
and limitations.” (*Id.* at 22.)

26 ⁷ Plaintiff also appears to argue that any such error with regards to Dr. Barncord was
27 harmful, as evidenced by the vocational expert’s conclusions regarding the type of work available
28 to plaintiff. However, because the Court finds that the ALJ did not commit any error with regard
to Dr. Barncord, and plaintiff does not allege that the ALJ erred with respect to her treatment of
the vocational expert’s testimony, the Court need not address the same.

1 [petitioner’s] level of activity”). Here, the ALJ provided specific, legitimate reasons for
2 discounting the opinions of Dr. Cervenka: First, the ALJ explained that Dr. Cervenka prepared
3 responses to a “check-mark-the-box” form supplied by plaintiff’s representative, the answers to
4 which were supported only by evidence from an MRI performed in 2009 and a “listing of the
5 claimant’s subjective complaints.” (AR at 24.) Although the use of such forms is not per se
6 unpersuasive, the lack of articulated support for Dr. Cervenka’s opinions here is marked.⁸ Second,
7 the ALJ found that Dr. Cervenka’s opinions were directly contradicted by plaintiff’s own
8 statements concerning her “functional level and activities of daily living.” (*Id.* at 25.) Third, the
9 ALJ discussed the opinions of other medical experts and doctors including Drs. Gaeta, Wood,
10 Chandler, and Martin, and found that such opinions were more supported “by the objective
11 medical evidence present in the record.” (*Id.* at 24–25). Such a discussion satisfies the ALJ’s
12 burden to provide legitimate reasons for discounting Dr. Cervenka’s opinions here, and therefore,
13 the ALJ’s decision in this regard does not warrant reversal.

14 **B. Credibility of Plaintiff’s Testimony**

15 Plaintiff further contends the ALJ erred in finding plaintiff’s testimony to be not entirely
16 credible. To assess a claimant’s subjective testimony, an ALJ must engage in a two-step inquiry.
17 *Tommasetti*, 533 F.3d at 1039 (citing *Smolen v. Chater*, 80 F.3d 1273, 1281–82 (9th Cir. 1996)).
18 First, “the claimant ‘must produce objective medical evidence of an underlying impairment’ or
19 impairments that could reasonably be expected to produce some degree of symptom.” *Id.* Second,
20 if the claimant provides the evidence required by step one, and there is no affirmative evidence of
21 malingering, then the ALJ can reject the claimant’s testimony as to the severity of the symptoms

22
23 ⁸ Plaintiff relies on *Garrison v. Colvin*, 759 F.3d 995 (9th Cir. 2014) for the proposition
24 that check-box forms are acceptable forms of medical opinions entitled to weight and deference.
25 There, the Ninth Circuit found that the ALJ “failed to recognize that the opinions expressed in
26 check-box form . . . were based on significant experience with [claimant] and supported by
27 numerous records, and were therefore entitled to weight that an otherwise unsupported and
28 unexplained check-box form would not merit.” *Id.* at 1013. Here, the check-box form submitted
by Dr. Cervenka appears to fall in the latter category. Dr. Cervenka’s findings on the check-box
form were largely conclusory, and, as the ALJ found, were based primarily on Dr. Cervenka’s
acceptance of plaintiff’s subjective complaints. The Court further notes that plaintiff admitted she
had limited interactions with Dr. Cervenka: At the time of her hearing before the ALJ, she had
seen Dr. Cervenka only four or five times within a period of about one year. (AR at 70.)

1 “only by offering specific, clear and convincing reasons for doing so.” *Id.* (citing *Smolen*, 80 F.3d
2 at 1283–84). “The clear and convincing standard is the most demanding required in Social
3 Security cases.” *Garrison*, 759 F.3d at 1014 (citation omitted). An ALJ “may find the claimant’s
4 allegations of severity to be not credible,” but the ALJ “must specifically make findings which
5 support this conclusion.” *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991). In other words,
6 “[t]he ALJ must state specifically which symptom testimony is not credible and what facts in the
7 record lead to that conclusion.” *Smolen*, 80 F.3d at 1284.

8 “These findings, properly supported by the record, must be sufficiently specific to allow a
9 reviewing court to conclude the adjudicator rejected the claimant’s testimony on permissible
10 grounds and did not arbitrarily discredit a claimant’s testimony regarding pain.” *Bunnell*, 947 F.2d
11 at 345 (internal quotation marks and citation omitted). The ALJ may consider, among others,
12 inconsistencies between a claimant’s testimony and conduct, daily activities, work record, and
13 testimony from physicians and third parties concerning the nature, severity, and effect of the
14 symptoms of which a claimant complains. *Thomas v. Barnhart*, 278 F.3d 947, 958–59 (9th Cir.
15 2002). But “[i]f the ALJ’s credibility finding is supported by substantial evidence in the record,”
16 the reviewing court “may not engage in second-guessing.” *Id.* at 959.

17 Plaintiff complains that the ALJ improperly used evidence of plaintiff’s “intermittent
18 activities of daily living as evidence of an ability to perform a range of unskilled ‘light’ work on a
19 full-time basis.” (Dkt. No. 15 at 29 (citing *Garrison*, 759 F.3d at 1016)). However, consideration
20 of such testimony is explicitly permitted. *See Thomas*, 278 F.3d at 958–59. Additionally, the ALJ
21 provided numerous other bases for her credibility determination, including plaintiff’s failure to
22 complain consistently to her physicians regarding the intensity of her symptoms, petitioner’s
23 statements to her physicians regarding her activities, the absence of abnormal clinical and
24 laboratory findings sufficient to support plaintiff’s testimony, the presence of essentially normal
25 clinical findings, and several other indicia contradicting plaintiff’s subjective complaints discussed
26 above. (AR at 19–20.) As the record contains sufficient inconsistencies with plaintiff’s
27
28

1 testimony, the Court may not engage in “second-guessing” and therefore does not disturb the
2 ALJ’s finding on this issue. *Id.*⁹

3 **V. CONCLUSION**

4 For the foregoing reasons, the Court **DENIES** plaintiff’s motion and **GRANTS** defendant’s
5 cross motion for summary judgment. Defendant must file a proposed form of judgment, approved
6 as to form by plaintiff, by no later than **January 20, 2017**. The Court **SETS** a compliance hearing
7 for the filing of the same for **Friday, January 27, 2017 at 9:00 a.m.** in the Federal Building, 1301
8 Clay Street, Oakland, California, Courtroom 1. If compliance is complete, the Court may vacate
9 the hearing and the parties need not appear.

10 This Order terminates Docket Numbers 15 and 19.

11 **IT IS SO ORDERED.**

12 Dated: January 6, 2017



YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

13
14
15
16
17
18
19
20
21
22
23 ⁹ Plaintiff also takes issue with the following statement from the ALJ: “For the reasons
24 outlined above, the undersigned finds that the claimant’s statements concerning the intensity,
25 duration, and limiting effect of her symptoms not entirely credible to the extent alleged. They will
26 therefore only be credited to the degree they are corroborated by the objective medical evidence.”
27 (AR at 20.) According to plaintiff, the ALJ was explicitly precluded from applying the above
28 standards by the regulations, which state that the SSA “will not reject your statements about the
intensity and persistence of your pain or other symptoms or about the effect your symptoms have
on your ability to work *solely* because the available objective medical evidence does not
substantiate your statements.” 20 C.F.R. § 404.1529(c)(2) (emphasis supplied). However, as the
ALJ made clear, her rationale was not based solely on the lack of corroboration. She identified
several reasons not to credit plaintiff’s testimony in such regard.