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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 Patrick BERNARDINO,
12
13 v. Plaintiff,
14 Nancy A. BERRYHILL, Acting
15 Commissioner of Social Security,
16 Defendant.

Case No.: 16-cv-2941-AGS

**STATEMENT OF LEGAL
PRINCIPLES FOR SUMMARY
JUDGMENT HEARING**

17 The Court has considered the following legal principles for today's summary
18 judgment hearing and will apply these principles to the Court's ultimate ruling:
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20 **A. Credibility**

21 In evaluating the credibility of subjective symptom testimony, "the ALJ must
22 determine whether the claimant has presented objective medical evidence of an underlying
23 impairment which could reasonably be expected to produce the pain or other symptoms
24 alleged." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citation omitted). If so,
25 and absent evidence of malingering, "the ALJ can only reject the claimant's testimony
26 about the severity of the symptoms if she gives 'specific, clear and convincing reasons' for
27 the rejection." *Id.* (citations omitted). "General findings are insufficient; rather, the ALJ
28 must identify what testimony is not credible and what evidence undermines the claimant's

1 complaints.” *Id.* (citation omitted). These adverse credibility findings must be “sufficiently
2 specific to permit the court to conclude that the ALJ did not arbitrarily discredit claimant’s
3 testimony.” *Turner v. Comm’r of Soc. Sec.*, 613 F.3d 1217, 1224 n.3 (9th Cir. 2010)
4 (citation omitted). In weighing a claimant’s testimony, the ALJ may consider all the typical
5 credibility factors, such as prior inconsistent statements, falsehoods, and discrepancies
6 between the claimant’s statements and conduct. *Ghanim*, 763 F.3d at 1163; *Light v. Soc.*
7 *Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997). Even where the ALJ makes an error, or
8 more than one, in his analysis, “[s]o long as there remains substantial evidence supporting
9 the ALJ’s conclusions on credibility and the error does not negate the validity of the ALJ’s
10 ultimate credibility conclusion, such is deemed harmless and does not warrant reversal.”
11 *Carmickle v. Comm’r of Sec. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008) (alterations
12 and citations omitted).

13 **B. Treating Physician**

14 If a treating physician’s opinion is well-supported and consistent with the rest of the
15 record, it must be given “controlling weight.” 20 C.F.R. § 404.1527(c)(2). When the
16 treating physician’s opinion is contradicted by another doctor, “an ALJ may only reject it
17 by providing specific and legitimate reasons that are supported by substantial evidence.”
18 *Trevizo v. Berryhill*, ___ F.3d ___, No. 15-16277, 2017 WL 4053751, at *7 (9th Cir. Sept.
19 14, 2017) (citation omitted). “The ALJ can meet this burden by setting out a detailed and
20 thorough summary of the facts and conflicting clinical evidence, stating his interpretation
21 thereof, and making findings.” *Id.* (citations omitted). The harmless error analysis also
22 applies in the treating physician context. *See Marsh v. Colvin*, 792 F.3d 1170, 1173 (9th
23 Cir. 2015) (holding that “harmless error analysis applies in the social security context,”
24 including in the area of a “treating source’s medical opinion”); *see also Baily v. Colvin*,
25 659 F. App’x 413, 415 (9th Cir. 2016) (“Any error in the ALJ’s additional reasons for
26 rejecting [the treating physician’s] opinions was harmless.”).

1 **C. Lay Witness Testimony**

2 Lay witness testimony is considered an “other source” by the social security
3 regulations and are not afforded the same deference as accepted medical sources, so the
4 ALJ need only give “reasons germane to each witness” to reject such testimony. *Molina v.*
5 *Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (citation omitted). Harmless error applies to
6 lay witness testimony in the same way it applies to credibility determinations. *See Oh v.*
7 *Astrue*, No. EDCV 10-1076-MLG, 2011 WL 486592, at *3 (C.D. Cal. Feb. 3, 2011).

8 **D. Severity**

9 An impairment is “not severe” if it does not “significantly limit” the ability to do
10 basic work activities. 20 C.F.R. §§ 404.1521(a), 416.921(a). But “[a]mple authority
11 cautions against a determination of nondisability at step two.” *Ortiz v. Comm’r of Soc. Sec.*,
12 425 F. App’x 653, 655 (9th Cir. 2011). “[T]he step-two inquiry is a de minimis screening
13 device to dispose of groundless claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.
14 1996). “An impairment or combination of impairments can be found ‘not severe’ only if
15 the evidence establishes a slight abnormality that has no more than a minimal effect on an
16 individual[']s ability to work.” *Id.* (citation omitted). But even if the ALJ fails to conclude
17 an impairment is severe, if he goes on to “extensively discuss[']” the impairment “at Step 4
18 of the analysis,” any error in “neglecting to list [those impairments as severe] at Step 2 . . .
19 was harmless.” *Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007) (citation omitted).

20 Dated: September 26, 2017

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23 Hon. Andrew G. Schopler
24 United States Magistrate Judge
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