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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ANGELA MARIE BROWN,
12 Plaintiff,
13 v.
14 KILOLO KIJAKAZI, Acting
15 Commissioner of Social Security
16 Defendant.

Case No.: 22-CV-853-WVG

**ORDER ON PLAINTIFF’S MOTION
FOR SUMMARY JUDGMENT [DOC.
NO. 14] AND DEFENDANT’S
CROSS-MOTION FOR SUMMARY
JUDGMENT [DOC. NO. 16]**

17
18 **I. INTRODUCTION**

19 This action arises from the Commissioner of Social Security Administration Kilolo
20 Kijakazi’s (“Commissioner” or “Defendant”) denial of Angela Marie Brown’s (“Plaintiff”)
21 application for Social Security disability income benefits under Title II of the Social
22 Security Act (“Act”). Plaintiff filed a Motion for Summary Judgment on October 26, 2022.
23 (Doc. No. 22.) The matter became fully briefed on November 30, 2022, when Defendant
24 filed its Cross-Motion for Summary Judgment. (Doc. Nos. 14, 16.) The Parties dispute
25 whether the administrative law judge (“ALJ”) failed to properly (1) assess Plaintiff’s
26 residual functional capacity (“RFC”) and (2) consider Plaintiff’s subjective testimony.
27 Having reviewed and considered the Parties’ submission in their entirety, the Court
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1 DENIES Plaintiff’s Motion for Summary Judgment, GRANTS Defendant’s Motion for
2 Summary Judgment, and elaborates below.

3 **II. PROCEDURAL HISTORY**

4 On October 10, 2019, Plaintiff protectively filed a Title II application (“the
5 application”) for a period of disability and disability insurance benefits, alleging disability
6 commencing on October 5, 2019. (AR 156-157.) The Commissioner denied the claim
7 initially on August 6, 2020, and upon reconsideration on October 13, 2020. (AR 93-104.)
8 Plaintiff then requested a *de novo* hearing before an ALJ on October 19, 2020. (AR 105-
9 06.) ALJ Benham was assigned to Plaintiff’s matter, and he convened a telephonic hearing
10 on May 13, 2021. (AR 20-40.) Plaintiff appeared at the hearing as well as her attorney and
11 a vocational expert. (AR 41; *see generally* AR 41-57.) Subsequently, on June 25, 2021,
12 ALJ Benham issued an unfavorable decision resolving Plaintiff’s application (“Decision”).
13 (AR 20-37.) In his Decision, ALJ Benham found Plaintiff was not disabled because she
14 could work as a food and beverage order clerk, charge account clerk, and addresser. (*Id.*)
15 On June 30, 2021, Plaintiff requested that the Appeals Council review ALJ Benham’s
16 Decision. (AR 153-55.) The Appeals Council denied Plaintiff’s request on April 22, 2022,
17 at which point ALJ Benham’s Decision became the final decision of the Commissioner.
18 (AR 9-11.) On June 9, 2022, Plaintiff filed the instant Action pursuant to 42 U.S.C section
19 405 (g), seeking judicial review of the Commissioner’s Decision.

20 **III. FACTUAL BACKGROUND**

21 **a. Relevant Background**

22 Plaintiff is 44 years old. (AR 156.) She has a 12th-grade level of education. (AR 44.)
23 From 2006 until October 2019, Plaintiff worked as a shipping and receiving clerk. (AR
24 156; 196.) On October 11, 2019, Plaintiff applied for disability insurance benefits pursuant
25 to Title II of the Act. (AR 156-57.) She alleged disability based on both physical and mental
26 health conditions. Specifically, Plaintiff identified Crohn’s disease, ulcerative colitis with
27 ileostomy, rheumatoid arthritis, and ankylosing spondylosis as her disabling physical
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1 conditions and depression as her disabling mental condition. (AR 195-96.) To that end,
2 Plaintiff alleged October 5, 2019, as the onset date of her disabling conditions. (*Id.*)

3 **b. Dr. Kanner’s Consultative Examination**

4 On March 12, 2020, Dr. Amy Kanner (“Dr. Kanner”) conducted a consultative
5 examination of Plaintiff, after which Dr. Kanner made several key findings regarding
6 Plaintiff’s work restrictions. (AR 35.) Most broadly, Dr. Kanner found Plaintiff was “well
7 developed,” “well-nourished,” “morbidly obese,” and “in no acute distress.” (AR 302.) Dr.
8 Kanner added Plaintiff “gets in and out of a chair without difficulty,” “is able to stand fully
9 erect,” and “there is no apparent ataxia or dyspnea noted.” (*Id.*) Further, Dr. Kanner’s
10 examination of Plaintiff’s ear, nose, and throat yielded unremarkable findings. (AR 303.)
11 Dr. Kanner also indicated Plaintiff’s chest, lungs, and cardiovascular system presented
12 normally, with “no evidence of tenderness to palpitation..., wheezing, rhonchi, or rales...,
13 heaves, thrills, murmurs, rubs, or gallops.” (AR 304.) However, Dr. Kanner opined
14 Plaintiff required convenient, frequent access to a restroom given her self-reported history
15 of ulcerative colitis and Plaintiff’s claim that her ostomy bag occasionally leaked. (AR 308;
16 Exhibit (“Ex.”) 5F 10/13.)

17 As to Plaintiff’s functional restrictions, Dr. Kanner opined Plaintiff could
18 occasionally bend while also noting she should not stoop, crouch, crawl, or climb to
19 minimize leaking from her ostomy bag. (AR 308.) According to Dr. Kanner, Plaintiff’s
20 ostomy bag also limited Plaintiff to “stand[ing] or walk[ing] for 2 hours of an 8-hour
21 workday” but, concurrently, did not prevent Plaintiff from “sit[ting] for 6 hours of an 8-
22 hour workday.” (AR 307.) Additionally, Dr. Kanner recommended that Plaintiff “not work
23 at heights or dangerous machinery,” “avoid exposure to hot/humid environments,” and
24 “avoid exposure to potentially irritating fumes” to ensure her ostomy bag stayed intact.
25 (*Id.*) Finally, Dr. Kanner stated Plaintiff “c[ould] lift and carry 20 pounds occasionally and
26 10 pounds frequently.” (AR 307.) In support of her conclusions, Dr. Kanner cited to (1)
27 Plaintiff’s own statements regarding her health conditions, her family history, and her
28 social history; (2) Plaintiff’s medical records, which included imaging of Plaintiff’s spine

1 and prescription records; and (3) the results of Dr. Kanner's own physical examination of
2 Plaintiff. (AR 300-309.)

3 **c. ALJ Benham's Findings of Fact and Conclusions of Law**

4 In his Decision, ALJ Benham the following 11 findings of fact and conclusions of
5 law:

- 6 **(1) Plaintiff met the insured status requirements of the Social Security Act**
7 **through March 31, 2025;**
- 8 **(2) Plaintiff had not engaged in substantial gainful activity since October 5,**
9 **2019, the alleged onset date of her disabling condition** (citing 20 C.F.R.
10 404.1571, *et seq.*);
- 11 **(3) Plaintiff had the following severe impairments: (1) ulcerative colitis status**
12 **post-total colectomy and ileostomy in 2011; (2) obesity; (3) lower lumbar**
13 **spondylosis; (4) spinal stenosis; (5) neuro foraminal narrowing; (6) left knee**
14 **pain; and (6) asthma** (citing 20 C.F.R. 404.1520(c));
- 15 **(4) Plaintiff did not have an impairment or combination thereof that met or**
16 **medical equaled the severity of one of the listed impairments in 20 C.F.R.**
17 **Part 404, Subpart P, Appendix 1;**
- 18 **(5) Plaintiff had a residual functional capacity to perform sedentary work as**
19 **defined in 20 C.F.R. 404.1567(a)**, where she could (1) frequently lift and carry
20 10 pounds; (2) occasionally lift and carry 20 pounds; (3) sit for six hours in an
21 eight-hour day; (4) stand and/or walk for two hours in an eight-hour day; (5)
22 occasionally use foot controls and push/pull with her bilateral lower extremities;
23 (6) occasionally stoop, crouch, kneel, crawl, or climb stairs; and (7) never climb
24 ladders or scaffolds. ALJ Benham added Plaintiff must (1) avoid environment[s]
25 that would expose her to concentrated cold, vibration, pulmonary irritants, or
26 hazards; (2) work in close proximity of 20 yards of a bathroom; and (3) take two
27 additional, unscheduled bathroom breaks up to five to ten minutes each day in
28 addition to normal breaks;

- 1 (6) **Plaintiff was unable to perform any past relevant work** (citing 20 C.F.R.
2 404.1565);
- 3 (7) **At the time of ALJ Benham’s Decision, Plaintiff was 40 years old, which**
4 **qualified Plaintiff as a younger individual aged 18-44 years, as of the alleged**
5 **disability onset date** (citing 20 C.F.R. 404.1563);
- 6 (8) **Plaintiff had at least a high school education** (citing 20 C.F.R. 404.1564);
- 7 (9) **The transferability of Plaintiff’s job skills was not material to ALJ Benham’s**
8 **determination of disability because ALJ Benham found Plaintiff was not**
9 **disabled pursuant to the Medical-Vocational Rules** (citing SSR 82-41 and 20
10 C.F.R. Part 404, Subpart P, Appendix 2);
- 11 (10) **Given Plaintiff’s age, education, work experience, and RFC, there were**
12 **jobs that existed in significant numbers in the national economy that**
13 **Plaintiff was capable of performing** (citing 20 C.F.R. 404.1569 and
14 404.1569(a)); and
- 15 (11) **Plaintiff had not been under a disability, as defined in the Social Security**
16 **Act, from October 5, 2019, through the date of ALJ Benham’s Decision**
17 (citing 20 C.F.R. 404.1520(g)). (AR 25-36.)

18 **IV. LEGAL STANDARD**

19 Claimants may seek judicial review if they disagree with an agency’s resolution of
20 their application for administrative benefits. The Administrative Procedures Act (“APA”)
21 requires a reviewing court to uphold agency action unless it is “arbitrary, capricious, an
22 abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §
23 706(2)(A). Specific to Social Security actions on appeal, the Court’s review is limited to
24 two inquiries: (1) whether substantial evidence in the record supports the decision; and (2)
25 whether the decision comports with proper legal standards. *Gonzalez v. Sullivan*, 914 F.2d
26 1197, 1200 (9th Cir. 1990); *see also Brewes v. Comm’r of Soc. Sec. Admin.*, 682 F.3d 1157,
27 1161 (9th Cir. 2012). The Court considers the agency’s decision holistically, reviewing the
28 entirety of the ALJ’s decision. *Kaufmann v. Kijakazi*, 32 F.4th 843, 851 (9th Cir. 2020).

1 Substantial evidence is “more than a mere scintilla” and “means . . . such relevant evidence
2 as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v.*
3 *Berryhill*, 139 S. Ct. 1148, 1153 (2019). An ALJ’s decision will not be reversed for
4 harmless errors. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). Errors are harmless
5 if they are immaterial to the ultimate determination of non-disability. *Marsh v. Colvin*, 792
6 F.3d 1170, 1173 (9th Cir. 2015).

7 **V. DISCUSSION**

8 **a. ALJ Benham’s RFC Assessment**

9 Plaintiff argues ALJ Benham failed to adequately explain his evaluation of Dr.
10 Kanner’s medical opinion and, in turn, erroneously relied upon Dr. Kanner’s opinion to
11 determine Plaintiff’s RFC. In relevant part, ALJ Benham adopted Dr. Kanner’s
12 recommendation that Plaintiff be provided convenient access to a restroom consisting of at
13 least 20 yards as well as two unscheduled breaks up to five to ten minutes each day in
14 addition to normal breaks (“restroom and break accommodations”). On summary
15 judgment, Plaintiff contends ALJ Benham erred in his Decision by failing to explain his
16 conclusion about Plaintiff’s purported need for restroom and break accommodations.
17 Defendant wholly disputes Plaintiff’s position. Defendant maintains ALJ Benham
18 adequately explained his evaluation of Plaintiff’s work restrictions in formulating
19 Plaintiff’s RFC, inclusive of Dr. Kanner’s opinion. The Court addresses the Parties’
20 positions on the matter below.

21 As a foundational matter, it is the ALJ’s prerogative to determine a claimant’s RFC.
22 20 C.F.R. § 404.1546(c); *see also Rounds v. Comm’r of SSA*, 807 F.3d 996, 1006 (9th Cir.
23 2015); *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001). As such, an ALJ’s
24 conclusions are given substantial deference and must be upheld as long as they are rational
25 and supported by substantial evidence. *Hanbey v. Astrue*, 506 Fed. Appx. 615, 616 (9th
26 Cir. 2013) (citing *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001) [emphasis
27 added]). At the same time, an ALJ’s generalized findings are insufficient; “the ALJ must
28 identify what testimony is not credible and what evidence undermines the claimant’s

1 complaints.” *Benjamin H. v. Saul*, 2020 WL 6131725, at *9 (S.D. Cal. Oct. 19, 2020),
2 report and recommendation adopted, 2021 WL 6113742 (S.D. Cal. Feb. 17, 2021) (citing
3 *Reddick v. Charter*, 157 F.3d 715, 722 (9th Cir. 1998) and *Lester v. Chater*, 81 F.3d 821,
4 830 (9th Cir. 1996).). Consistent with this understanding, an ALJ's findings must be
5 “sufficiently specific” to permit the court to conclude that the ALJ did not arbitrarily
6 discount evidence. *Id.* (citing *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002).).

7 Here, the Court finds substantial evidence underlies ALJ’s Benham’s Decision,
8 inclusive of his RFC assessment, which partly relied upon Dr. Kanner’s medical opinion.
9 Specific to Dr. Kanner’s opinion, the Court finds that substantial evidence supports ALJ
10 Benham’s assessment of Dr. Kanner’s opinion and, at most, his acceptance of Dr. Kanner’s
11 finding as to Plaintiff’s purported need for restroom and break accommodations amounts
12 to nothing more than harmless error. As noted, ALJ Benham cited Dr. Kanner’s
13 recommendation that Plaintiff “should have convenient and frequent access to a restroom”
14 in determining that Plaintiff needed to be within 20 yards of a restroom and required two
15 additional, unscheduled breaks of five to ten minutes each. (AR 30; 308.) Notably, Dr.
16 Kanner was the only doctor to opine about Plaintiff’s purported need to frequently and
17 conveniently access a restroom throughout the day. In doing so, Dr. Kanner did not provide
18 a comprehensive explanation for her recommendation that Plaintiff be specifically granted
19 restroom and break accommodations. Despite the deficiency, ALJ Benham exercised his
20 discretion in incorporating Dr. Kanner’s opinion into Plaintiff’s RFC evaluation and
21 treating the opinion as “mostly,” rather than wholly, persuasive. (AR 34.)

22 ALJ Benham explained he considered Dr. Kanner’s opinion “mostly persuasive”
23 because the totality of Dr. Kanner’s assessment as to Plaintiff’s ability to work and related
24 restrictions aligned with the weight of the objective medical evidence. (AR 34.) ALJ
25 Benham cited to specific evidence to anchor his findings and reasoned that Dr. Kanner’s
26 medical opinion was supported by the results of her consultative examination of Plaintiff,
27 Plaintiff’s lumbar MRI, and Plaintiff’s treatment records. (*Id.* (citing *e.g.*, Ex. 2F/6-7, 25;
28 Ex. 3F/5-6; Ex. 5F/7-8; Ex. 7F/14, 18; Ex. 9F/7-9.)) ALJ Benham elaborated Dr. Kanner’s

1 consultative examination reinforced that Plaintiff had full range of motion of the lumbar
2 spine, limited knee flexion, and bilaterally symmetric breathing with no evidence of
3 wheezing, ronchi, or rales. (AR 32-32; *see also* Ex. 5F/2-10.) As to Plaintiff’s lumbar MRI,
4 ALJ Benham reviewed those records and noted they “reflected lower lumbar spondylosis,
5 most noted at L3-L4 and L4-L5, spinal stenosis at right L3-L4, and bilateral L4-L5 neuro
6 foraminal narrowing.” (AR 32; *see also* 2F/25.) Further, since 2019, Plaintiff’s treatment
7 records from various doctors’ offices consistently demonstrated Plaintiff was not disabled
8 despite her limited mobility. (AR 34.) Consequently, ALJ Benham found Dr. Kanner’s
9 conclusion that Plaintiff could work to the extent she was provided the restroom and break
10 accommodations aligned with the objective medical evidence. (AR 307-08.) For such
11 reason, and after considering the entirety of the evidence before him, ALJ Benham
12 ultimately found Dr. Kanner’s opinion was consistent with the objective record and
13 accordingly assigned mostly persuasive value to her opinion. (AR 23; 34.)

14 Central to her Motion for Summary Judgment, Plaintiff argues ALJ Benham erred
15 in his RFC assessment by failing to sufficiently explain his evaluation of Dr. Kanner’s
16 opinion. Not so. In its independent review of the administrative record here, the Court
17 opines the objective record reasonably convinced ALJ Benham that Plaintiff had the
18 residual functional capacity to perform sedentary work and, in turn, reasonably relied upon
19 Dr. Kanner’s opinion to so determine. (AR 30.) As discussed, ALJ Benham cited to specific
20 medical records in evaluating the credibility of Dr. Kanner’s opinion, which precludes the
21 conclusion that ALJ Benham arbitrarily discounted Dr. Kanner’s consultative evaluation.
22 *See Thomas*, 278 F.3d at 958. The only possible source of error here arises from ALJ
23 Benham’s acceptance of Dr. Kanner’s opinion as to Plaintiff’s purported need for restroom
24 and break accommodations, given Dr. Kanner was the only doctor to opine about such
25 accommodations and her evidentiary basis for it was sparse.

26 As noted, ALJ Benham cited Dr. Kanner’s recommendation that Plaintiff “have
27 convenient and frequent access to a restroom” in determining that Plaintiff needed to be
28 within 20 yards of a restroom and required two additional, unscheduled breaks of five to

1 ten minutes each. (AR 30; 308.) Even in characterizing ALJ Benham’s position on the
2 matter as error, the Court finds the error is nothing more than harmless. The Court takes
3 this view because the error inures to Plaintiff’s benefit as to her RFC determination.
4 Further, because ALJ Benham reasonably evaluated Dr. Kanner’s opinion, and the opinion
5 was susceptible to more than one rational interpretation, the Court is bound to give
6 deference to ALJ Benham’s Decision. *James S. v. Kijakazi*, 2023 WL 2536717 (S.D. Cal.
7 2023) (citing 42 U.S.C. § 405 (g) and *Buck v. Berryhill*, 869 F.3d 1030, 1048 (9th Cir.
8 2017) (observing the scope of judicial review is limited and the denial of benefits will not
9 be disturbed if it is supported by substantial evidence); *see also Thomas v. Astrue*, 533 F.3d
10 1035, 1038 (9th Cir. 2008) (affirming that the ALJ’s decision *must* be upheld even if the
11 evidence is susceptible to more than one rational interpretation [emphasis added].).

12 Finally, the Court finds Plaintiff’s legal authority submitted in support of her Motion
13 for Summary Judgment unavailing. Plaintiff cites to *Motor Vehicle Manufacturers Ass’n*
14 *v. State Farm* for the general proposition that “administrative agencies must always explain
15 their decisions.” *Motor Vehicle Manufacturers Ass’n of the United States, Inc. v. State*
16 *Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983) (“*Motor Vehicle*”). (Doc. No.
17 14, 7:21.) *Motor Vehicle*’s general proposition is consistent with the legal authority upon
18 which this Court relies, namely Ninth Circuit precedent requiring that substantial evidence
19 underlie an ALJ’s Decision, as here. Similarly, Plaintiff’s citation to *Tackett v. Apfel* does
20 not vindicate Plaintiff’s appeal of ALJ Benham’s Decision. The ALJ in *Tackett* formulated
21 an RFC that directly contradicted medical evidence, which is factually dissimilar from the
22 instant Action. Here, the weight of the medical evidence comports with ALJ Benham’s
23 RFC assessment, despite that Dr. Kanner’s opinion did not fully substantiate Plaintiff’s
24 purported need for restroom and break accommodations. *See Tackett v. Apfel*, 180 F.3d
25 1094 (9th Cir. 1999). Ultimately, while ALJ Benham’s translation of Dr. Kanner’s opinion
26 as to Plaintiff’s purported need for restroom and break accommodations is less than clear,
27 the Court finds the error harmless. Accordingly, because ALJ Benham’s RFC assessment
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1 conforms to the objective medical record, ALJ Benham’s Decision and finding of non-
2 disability are supported by substantial evidence and must be upheld.

3 **b. ALJ Benham’s Assessment of Plaintiff’s Testimony**

4 Next and finally, Plaintiff contends ALJ Benham improperly evaluated her
5 credibility specific to her subjective symptom testimony. In evaluating symptom
6 allegations, an ALJ must determine whether the claimant has presented objective medical
7 evidence of an underlying impairment “which could reasonably be expected to produce the
8 pain or other symptoms alleged.” *Lingfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007).
9 Once established, a claimant’s subjective limitation testimony may be discounted only by
10 offering clear and convincing reasons. *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir.
11 1996); *see also Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991) (stating an ALJ’s
12 reasons for rejecting subjective pain testimony must be sufficiently specific to allow a
13 reviewing court to conclude that it was not arbitrarily discredited). When determining the
14 credibility of a claimant’s allegations of pain, the following factors are considered: (1) the
15 nature, location, onset, duration, frequency, radiation, and intensity of any pain; (2)
16 precipitating and aggravating factors (*e.g.*, movement, activity, environmental conditions);
17 (3) type, dosage, effectiveness, and adverse side-effects of any pain medication; (4)
18 treatment, other than medication, for relief of pain; and (5) the claimant’s daily activities.
19 *Bunnell*, 947 F.2d at 346 (citing Social Security Ruling 88-13). Inconsistent testimony or
20 medical evidence are appropriate grounds for discounting limitation testimony. *Id.* at 345.

21 Having studied the entirety of the administrative record, the Court finds ALJ
22 Benham cited clear and convincing reasons for discounting Plaintiff’s subjective pain
23 testimony as to her ulcerative colitis. In particular, ALJ Benham noted that, in October
24 2019, Plaintiff’s treatment records revealed her ulcerative colitis had not been problematic.
25 (AR 31; Ex. 3F/6). ALJ Benham also observed that, in August 2020, Plaintiff’s medical
26 records characterized Plaintiff’s condition as stable, and Plaintiff was not prescribed any
27 medication to treat any medical condition, inclusive of ulcerative colitis. (*Id.*; Ex. 7F/14).
28 ALJ Benham added that Plaintiff’s medical record did not reflect any emergency room

1 visits, hospitalizations, reports of increased symptoms, or changes to treatment that would
2 otherwise corroborate Plaintiff’s testimony about her condition worsening over time. (*Id.*)

3 Given the above, the Court finds the noted factors, when taken together, do not give
4 credence to Plaintiff’s symptom testimony pertaining to her ulcerative colitis. Instead, the
5 factors establish that ALJ Benham appropriately rejected Plaintiff’s subjective pain
6 testimony and reflected the same in his RFC determination. As such, “[in] weighing [a]
7 claimant’s testimony, an ALJ may consider reputation for truthfulness, inconsistencies in
8 testimony, or between testimony and conduct, daily activities, and unexplained, or
9 inadequately explained failure to seek treatment...” *Orn v. Astrue*, 495 F.3d 625, 636 (9th
10 Cir. 2007) (internal quotation marks and citation omitted). Further, “an ALJ also may
11 consider the claimant’s work record and testimony from doctors and third parties regarding
12 the “nature, severity, and effect of the symptoms of which the claimant complains.” *Parker*
13 *v. Saul*, 2022 WL 4798162, at *4 (S.D. Cal. Sept. 30, 2022) (citing C.F.R. § 404.1529(c).
14 If the ALJ’s finding is supported by substantial evidence, the court may not second-guess
15 his or her decision. *Id.*; *see also Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155,
16 1162-63 (9th Cir. 2008) (where the ALJ’s credibility assessment is supported by substantial
17 evidence, it will not be disturbed even where some of the reasons for discrediting a
18 claimant’s testimony were improper). Here, the reasons cited by ALJ Benham are specific
19 enough to conclude that he did not arbitrarily discard Plaintiff’s subjective testimony. ALJ
20 Benham’s express citation to these numerous, specific factors constitute clear and
21 convincing reasons substantiating his Decision. Thus, the Court finds clear and convincing
22 evidence supports ALJ Benham’s treatment of Plaintiff’s subjective pain testimony and,
23 for such reason, ALJ Benham’s determination must be upheld.

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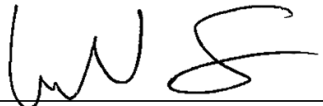
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1 **VI. CONCLUSION**

2 For the foregoing reasons, the Court DENIES Plaintiff's Motion for Summary
3 Judgment and GRANTS Defendant's Cross-Motion for Summary Judgment. (Doc. Nos.
4 14, 16, and 22.) In turn, the Court DIRECTS the Clerk of this Court to enter judgment in
5 favor of DEFENDANT and to close this case accordingly.

6 **IT IS SO ORDERED.**

7 Dated: August 31, 2023

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10 Hon. William V. Gallo
11 United States Magistrate Judge
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