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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PATRICIA V.

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security

Defendant.

Case No.: 22-cv-01617-KSC

**ORDER DENYING PLAINTIFF’S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT’S CROSS-MOTION
FOR SUMMARY JUDGMENT**

[DOC. NOS. 22, 24]

I. INTRODUCTION

Plaintiff Patricia V. seeks review of defendant Kilolo Kijakazi, the Acting Commissioner of Social Security’s, denial of disability benefits. Doc. No. 1. The parties filed Cross-Motions for Summary Judgment. Doc. Nos. 22, 24. Plaintiff elected not to file a Reply. For the reasons discussed below, the Court DENIES plaintiff’s Motion for Summary Judgment and GRANTS defendant’s Cross-Motion for Summary Judgment.

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1 **II. PROCEDURAL BACKGROUND**

2 Plaintiff applied for disability benefits and supplemental security income, claiming
3 disability beginning June 11, 2020. AR 204-16.¹ The Social Security Administration
4 (“SSA”) denied plaintiff’s claim and denied reconsideration. AR 141-46, 148-54. Plaintiff
5 requested and obtained an Administrative Law Judge (“ALJ”) hearing. AR 155-56, 176-
6 94. Following the hearing, the ALJ issued a decision finding plaintiff not disabled. AR 7-
7 26. The Appeals Counsel denied plaintiff’s request for review and this case followed. AR
8 1-6; Doc. No. 1.

9 **III. SUMMARY OF ALJ’S DECISION**

10 The ALJ followed the five-step sequential evaluation process. *See* 20 C.F.R.
11 § 404.1520. At step one, the ALJ found plaintiff had not engaged in substantial gainful
12 activity since June 11, 2020. AR 12.

13 At step two, the ALJ found the following severe medically determinable
14 impairments: fibromyalgia; degenerative joint disease of lumbar and cervical spine; morbid
15 obesity; residuals of abdominal surgery; anxiety and depression. AR 13.

16 At step three, the ALJ found plaintiff did not have an impairment or combination of
17 impairments that met or medically equaled those in the SSA’s Listing of Impairments. *Id.*

18 Before proceeding to step four, the ALJ determined plaintiff had the residual
19 functional capacity (“RFC”) to perform “light work”² except:
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21
22 ¹ “AR” refers to the Administrative Record lodged on February 21, 2023. Doc. No. 17. The
23 Court’s citations to the AR use the pagination on the original document rather than the page
24 numbers designated by the case management/electronic case filing system (“CM/ECF”).
For all other documents, page citations refer the CM/ECF assigned page numbers.

25 ² Light work involves lifting no more than 20 pounds at a time with frequent lifting or
26 carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very
27 little, a job is in this category when it requires a good deal of walking or standing, or when
28 it involves sitting most of the time with some pushing and pulling of arm or leg controls.
To be considered capable of performing a full or wide range of light work, you must have
the ability to do substantially all of these activities. If someone can do light work, we

1 she should never climb ropes, ladders, or scaffolds; could frequently balance;
2 could occasionally climb ramps and stairs; stoop, kneel, crouch, and crawl;
3 should avoid concentrated exposure to extreme cold, vibration, unprotected
4 heights, and moving dangerous machinery; is able to understand, remember
5 and carry out simple to complex instructions and tasks; can respond
6 appropriately to supervisors and co-workers in a task-oriented setting where
7 contact with others is no more than occasional; and should not work in a
8 setting which included constant/regular public contact or more than
9 occasional handling of customer complaints.

10 AR 14-15.

11 At step four, the ALJ concluded plaintiff could not perform past relevant work. AR
12 20.

13 At step five, the ALJ accepted Vocational Expert opinion testimony and concluded
14 “jobs . . . existed in significant numbers in the national economy that [plaintiff] could
15 perform,” including Small Parts Assembler; Electronics Worker; and Routing Clerk. AR
16 20-21.

17 **IV. STANDARD OF REVIEW**

18 The Court reviews the ALJ’s decision to determine whether the ALJ applied the
19 proper legal standards and whether the decision is supported by substantial evidence. 42
20 U.S.C. § 405(g); *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005). Substantial
21 evidence is “such relevant evidence as a reasonable mind might accept as adequate to
22 support a conclusion.” *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012) (quotations
23 omitted), superseded by regulation on other grounds as stated in *Thomas v. Saul*, 830 F.
24 App’x 196, 198 (9th Cir. 2020). It is “more than a mere scintilla, but less than a
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26 determine that he or she can also do sedentary work, unless there are additional limiting
27 factors such as loss of fine dexterity or inability to sit for long periods of time. 20 C.F.R. §
28 404.1567.

1 preponderance” *Garrison v. Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014) (quoting
2 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007)).

3 The Court “must consider the entire record as a whole and may not affirm simply by
4 isolating a specific quantum of supporting evidence.” *Ghanim v. Colvin*, 763 F.3d 1154,
5 1160 (9th Cir. 2014) (internal quotation omitted). The Court may not impose its own
6 reasoning to affirm the ALJ’s decision. *Garrison*, 759 F.3d at 1010. “[I]f evidence exists
7 to support more than one rational interpretation, [then the Court] must defer to the [SSA]’s
8 decision.” *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004)
9 (citing *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999)). The
10 Court will not reverse if any error is harmless. *Marsh v. Colvin*, 792 F.3d 1170, 1173 (9th
11 Cir. 2015) (“ALJ errors in social security cases are harmless if they are inconsequential to
12 the ultimate nondisability determination and that a reviewing court cannot consider [an]
13 error harmless unless it can confidently conclude that no reasonable ALJ . . . could have
14 reached a different disability determination.”) (internal citations and quotations omitted).

15 V. DISCUSSION

16 Plaintiff contends “[t]he ALJ failed to provide clear and convincing reasons in
17 rejecting [plaintiff’s statements about her] fibromyalgia pain.” Doc. No. 22 at 4. The Court
18 finds the ALJ’s opinion meets the applicable standards.

19 Evaluating a claimant’s subjective symptom testimony requires a two-step analysis.
20 *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009). “First, the ALJ must determine
21 whether the claimant has presented objective medical evidence of an underlying
22 impairment which could reasonably be expected to produce the pain or other symptoms
23 alleged.” *Id.* (internal quotation omitted). Second, “[i]f the claimant meets the first test and
24 there is no evidence of malingering, the ALJ can only reject the claimant’s testimony about
25 the severity of the symptoms if she gives specific, clear and convincing reasons for the
26 rejection.” *Id.* (internal quotation omitted); *see also Robbins v. Soc. Sec. Admin.*, 466 F.3d
27 880, 883 (9th Cir. 2006) (“[U]nless an ALJ makes a finding of malingering based on
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1 affirmative evidence thereof, he or she may only find an applicant not credible by making
2 specific findings as to credibility and stating clear and convincing reasons for each.”).

3 **A. Plaintiff’s Statements**

4 Plaintiff is 53 years old, 5’3” tall, and 195 pounds. AR 36. She stopped working as
5 a Spanish teacher in June 2020 when she “was laid off.” AR 37. In her July 14, 2020,
6 Function Report plaintiff reported that since becoming ill:

- 7 • She can no longer work or do chores (AR 251);
- 8 • Her ability to dress, bathe, and care for hair are limited (*Id.*);
- 9 • Her “family prepares meals [and] . . . does chores” (AR 252-53);
- 10 • She goes outside “when needed, [i.e.] doctors’ [appointments]” (AR 253);
- 11 • She can go out alone but sometimes needs someone to accompany her and
- 12 remind her to go places (AR 253-54);
- 13 • She can drive “when needed” (AR 253); and
- 14 • Her illness affects her ability to lift, squat, bend, stand, reach, walk, sit,
- 15 kneel, stair-climb, remember, complete tasks, concentrate, understand,
- 16 follow instructions, and use hands (AR 255).
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19 At the ALJ hearing plaintiff offered the following testimony regarding how
20 fibromyalgia pain limits her:

- 21 • “I can’t stand for long periods of time . . . can’t sit for long periods of time
22 . . . my legs hurt a lot. Holding objects [like a coffee cup] becomes a
23 challenge . . . [and] I have severe head pain” (AR 38);
- 24 • “Sometimes I can’t even walk to and from the kitchen because I am in so
25 much pain” (*Id.*);
- 26 • “I have a very stiff neck. Sometimes I can’t turn out to the side. I have to
27 put on a heating pad to ease up the pain a little bit or ice depending on what
28 feels better . . . even . . . holding my head up sometimes is a challenge.”
AR 38-39.

- 1
- 2 • “I have problems with my lower back. I just had nerve injections in my
- 3 lower back because I couldn’t even walk . . . [T]he pain specialist . . . said
- 4 it would last maybe one or two months” (AR 39);
- 5
- 6 • “[M]y feet also hurt a lot. I have plantar fasciitis and . . . standing on my
- 7 tippy toes . . . can’t happen . . . the strength of my toes is weak. I can’t
- 8 reach up for objects on my tippy toes . . . that hurts a lot.” *Id.*
- 9
- 10 • “I can’t drive for long periods of time because I start to feel anxiety . . .
- 11 [and] because sometimes my neck hurts [when I] need to turn . . . to see”
- 12 (*Id.*);
- 13
- 14 • “[I can be on my feet] maybe an hour [before I have to sit down] (AR 40);
- 15
- 16 • “[I can sit for] about 45 minutes [to] an hour [before I have to get up or lay
- 17 down]” (*Id.*);
- 18
- 19 • “[T]he most [I can lift or carry is] ten pounds.” (*Id.*);
- 20
- 21 • “Sometimes I need . . . a break from the pain [so I] try . . . relaxation or . . .
- 22 laying down for about two, three hours” (AR 40-41);
- 23
- 24 • “No, [I do not sleep well at night]” (AR 41);
- 25
- 26 • “[I feel fatigued, tired, and lethargic] [a]ll the time” (*Id.*);
- 27
- 28 • “[B]rain fog is really bad . . . Sometimes I lose my train of thought or I
- change words that I don’t even know . . . sometimes people ask me
- questions and I forget what I’m even talking about” (AR 41-42);
- “[My boyfriend does the grocery shopping] [b]ecause I can’t carry stuff
- . . . my vertigo also acts up with looking up [and] looking down (AR 42);
- “I have to rest before [bathing and dressing] because it’s taxing on [the]
- body . . . I come out [of the shower] tired like if I would’ve ran or
- something” (*Id.*); and

- 1 • “I use my mother-in-law’s cane sometimes” (*Id.*).³

2
3 The ALJ found plaintiff’s “medically determinable impairments could reasonably
4 be expected to cause some of the alleged symptoms.” AR 15; *accord Vasquez*, 572 F.3d at
5 591 (finding ALJ “satisfied the first prong of the ALJ’s inquiry regarding the credibility of
6 [plaintiff’s] complaints” where the “ALJ acknowledged that [plaintiff’s] injuries could
7 reasonably be expected to produce *some* of the pain and other symptoms alleged”) (internal
8 quotation omitted).

9 The ALJ found plaintiff’s statements not fully credible because her “statements
10 about the intensity, persistence and limiting effects of these symptoms were not entirely
11 consistent with the medical evidence and other evidence in the record.” AR 16.
12 Specifically, the ALJ found plaintiff’s “allegations of disabling limitations” caused by her
13 physical pain were inconsistent with: (1) internal medicine consultative examiner Amy
14 Kanner, M.D.’s clinical findings, and (2) treating medical sources’ clinical findings. AR
15 16-17. The ALJ’s reasoning is clear and convincing and supported by substantial evidence.

16 **B. Contradiction with Consultant Examiner’s Findings**

17 The ALJ concluded “[i]n terms of [plaintiff’s] physical impairments, the clinical
18 findings of . . . examining medical source [Dr. Kanner] failed to support [plaintiff’s]
19 allegations of disabling limitations.” AR 16.

20 Plaintiff testified she sometimes used a cane (AR 42); cannot stand on her toes (AR
21 39); and had difficulty: walking short distances like “to the kitchen” (AR 38); standing or

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23
24 ³ Plaintiff also testified about her depression, anxiety, abdominal surgery, and diabetes, but
25 she does not allege the ALJ erred when considering this testimony. The Court, therefore,
26 reviews only the ALJ’s assessment of plaintiff’s testimony regarding pain not associated
27 with . . . specificity in his briefing, it is forfeited.”) (citation and internal quotations
28 omitted).

1 sitting for an hour (AR 40); lifting ten pounds (*Id.*); holding small objects (AR 38); and
2 turning her head (AR 39). As the ALJ noted, however, Dr. Kanner observed plaintiff “get
3 in and out of a chair without difficulty,” (AR 445); have normal gait, “stand on heels and
4 toes and perform tandem gait, . . . [and walk without requiring] an assistive device” (AR
5 449); have normal range of motion in the neck and back (AR 446-47), full strength, intact
6 range of motion, sensation, and function in all upper and lower extremities (AR 447-48);
7 and negative straight leg raising test at 90 degrees while seated and standing (AR 447).

8 Dr. Kanner’s findings contradict plaintiff’s testimony and support the ALJ’s
9 decision to discount plaintiff’s credibility. *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533
10 F.3d 1155, 1161 (9th Cir. 2008) (“Contradiction with the medical record is a sufficient
11 basis for rejecting the claimant’s subjective testimony.”); *see also DeBerry v. Comm’r of*
12 *Soc. Sec. Admin.*, 352 F. App’x 173, 177 (9th Cir. 2009) (holding the ALJ properly
13 discounted plaintiff’s fibromyalgia-related testimony where plaintiff’s “allegations of
14 disability were disproportionate to the objective findings in the medical record”).

15 **C. Inconsistency with Treating Medical Providers’ Findings**

16 The ALJ also concluded “[t]he clinical findings of the treating physical medical
17 sources failed to support the claimant’s allegations of disabling limitations.” AR 16.

18 As the ALJ observed, the record contains little evidence of plaintiff seeking
19 treatment for physical pain other than that associated with her abdominal surgery. AR 17.

20 This evidence is:

- 21 • In March 2019 plaintiff’s cervical spine MRI was “unremarkable” except
22 for mild disc protrusion and mild spondylosis in C5-6 and C6-7 (AR 16,
23 491);
- 24 • On March 31, 2020, she saw Puja Chitkara, M.D. complaining of increased
25 fibromyalgia flares due to stress. AR 335. At the time she had stopped
26 taking Gabapentin but had not started Lyrica. *Id.* The ALJ noted that Dr.
27 Chitkara found plaintiff’s constitution and level of distress to be normal
28 (AR 16, 335);

- 1 • On April 9, 2021, plaintiff was treated at the Navarro Pain Control Group
2 for lower back and bilateral hip pain caused by physical activity. AR 503.
3 She was observed to be in “acute distress,” and referred for digital imaging
4 of the lumbar and follow-up office visit in one month (AR 505, 507);
- 5 • On June 8, 2021, an MRI of plaintiff’s lumbar spine revealed lower lumbar
6 facet hypertrophy; transitional anatomy with a partially lumbarized S1
7 vertical body; and “otherwise normal exam” (AR 490);
- 8 • On August 24, 2021, plaintiff returned to Navarro Pain Control Group. AR
9 508. Based on the MRI she was advised to undergo lumbar medial branch
10 blocks (AR 512); and
- 11 • On September 2 and 16, 2021, plaintiff received lumbar medial branch
12 blocks (AR 514-17).

12 There is no evidence of physical pain following these procedures.

13 This limited medical evidence of fibromyalgia related pain is an additional
14 appropriate basis to discount plaintiff’s subjective symptom testimony. *Burch v. Barnhart*,
15 400 F.3d 676, 681 (9th Cir. 2005) (“Although lack of medical evidence cannot form the
16 sole basis for discounting pain testimony, it is a factor that the ALJ can consider in his
17 credibility analysis.”)

18 **D. Medical Opinions Support the Credibility Finding and Disability** 19 **Determination**

20 Medical opinions support the ALJ’s credibility determination. For example, state
21 agency consultant T. Dupont M.D., also determined plaintiff could perform “light work”
22 with postural and environmental limitations, including a limitation for only occasional
23 balancing. AR 99-102. The ALJ concluded that Dr. Dupont’s findings were “persuasive,”
24 except the ALJ concluded that Plaintiff could frequently balance. AR 18-19.

25 Dr. Kanner opined that Plaintiff could “lift and carry 20 pounds occasionally and 10
26 pounds frequently”; stand or walk for 6 hours of an 8 hour workday; sit for 6 hours of an 8
27 hour workday; occasionally bend or stoop; never crouch, crawl, or climb ropes, ladders, or
28 scaffolding; should not work at heights or around dangerous machinery, and had no

1 manipulative, visual, or communicative limitations. AR 449-50. The ALJ largely adopted
2 Dr. Kanner’s findings except he concluded that plaintiff could crouch or crawl
3 occasionally. AR 18.

4 These medical opinions are consistent with other medical evidence in the record.
5 Plaintiff did not challenge the ALJ’s assessment of them and, thus, has forfeited any
6 argument they do not support the disability determination. *See Ryan Patrick A.*, 2019 WL
7 1383800, at *8 n. 10. These opinions, therefore, bolster the ALJ’s credibility finding.
8 *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) (medical opinions may “serve as
9 substantial evidence when the opinions are consistent with independent clinical findings or
10 other evidence in the record”).

11 **E. The Alleged Error is Harmless**

12 Even if the ALJ erred in discounting plaintiff’s credibility, any such error is harmless
13 because Dr. Dupont and Dr. Kanner’s medical opinions are substantial evidence supporting
14 the ALJ’s credibility finding and disability determination. *See Carmickle*, 533 F.3d 1155,
15 1162. (“So long as there remains substantial evidence supporting the ALJ’s conclusion on
16 credibility and the error does not negate the validity of the ALJ’s ultimate credibility
17 conclusion, [the error] is harmless and does not warrant reversal.”). Given that the medical
18 opinions are largely consistent with the ALJ’s RFC finding, and plaintiff has made no
19 argument the ALJ improperly weighed these opinions, the Court can “confidently conclude
20 that no reasonable ALJ . . . could have reached a different disability determination” and,
21 thus, any error is harmless. *Marsh*, 792 F.3d at 1173.

22 **VI. CONCLUSION**

23 The ALJ found clear and specific inconsistencies and contradictions between
24 plaintiff’s testimony and the medical record and linked this evidence to plaintiff’s
25 testimony. The Court, therefore, DENIES Plaintiff’s Motion for Summary Judgment (Doc.

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1 No. 22), and GRANTS Defendant’s Cross-Motion for Summary Judgment (Doc. No. 25).

2 The Clerk of the Court shall enter judgment accordingly.

3 **IT IS SO ORDERED.**

4 Dated: November 20, 2023



Hon. Karen S. Crawford
United States Magistrate Judge

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