

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 18, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CAREY L.,

Plaintiff,

v.

KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:20-CV-00129-ACE

ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT

ECF Nos. 28, 30

BEFORE THE COURT are cross-motions for summary judgment.

ECF No. 28, 30. Carey L. (Plaintiff) is appearing *pro se*; Special Assistant United States Attorney Sarah Moum represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 7. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant’s Motion for Summary Judgment and **DENIES** Plaintiff’s Motion for Summary Judgment.

JURISDICTION

On September 23, 2016, Plaintiff filed an application for Disability Insurance Benefits alleging disability since August 1, 2012,¹ due to issues with his

¹Plaintiff amended his alleged onset date to October 16, 2015, at the time of the administrative hearing. Tr. 26, 95-96.

1 hips; disc bulging and stenosis at C2-3, C3-4, C4-5, C5-6 and C6-7; and slight
2 levoscoliosis (type of scoliosis in which the spine curves to the left). Tr. 260, 287.
3 The application was denied initially and upon reconsideration. Administrative
4 Law Judge (ALJ) Stewart Stallings held a hearing on August 30, 2018, Tr. 87-140,
5 and issued an unfavorable decision on December 17, 2018, Tr. 26-39. The
6 Appeals Council denied Plaintiff's request for review on January 29, 2020.² Tr. 1-
7 6. The ALJ's December 2018 decision thus became the final decision of the
8 Commissioner, which is appealable to the district court pursuant to 42 U.S.C. §
9 405(g). Plaintiff filed this action for judicial review on March 30, 2020. ECF No.
10 1.

11 **STATEMENT OF FACTS**

12 Plaintiff was 36 years old on the amended disability onset date, October 16,
13 2015. Tr. 283. He completed school through the 12th grade and completed
14 additional vocational training (an online license to appraise real estate) in June
15 2008. Tr. 94, 288. Plaintiff's disability report indicates he stopped working on
16 July 1, 2012, because of his conditions. Tr. 94, 287. He stated that, at that time,
17 his physical condition deteriorated and his migraines increased in severity to the
18 point where he was unable to continue to work his job at the Stevens County
19 Assessor's Office. Tr. 98-99.

20 Plaintiff testified at the administrative hearing that his condition had not
21 improved since he stopped working. Tr. 100 ("My arthritis has gotten worse, my
22 back has gotten worse. My [right] hip has gotten worse."). A recent MRI revealed
23 a new tear in his right hip area, Tr. 101-102, 719-720, and he believed he may have
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25 ²The Appeals Council specifically wrote, "You submitted five pages from
26 Cathy Lembcke dated March 27, 2019, and one page from Richard K. Lembcke,
27 not dated. We find this evidence does not show a reasonable probability that it
28 would change the outcome of the decision." Tr. 2.

1 a tear in his left hip as well, Tr. 101-102. He indicated he also had neck and back
2 problems as a result of a prior motorcycle wreck, Tr. 108-109, and stated he
3 recently had injections for the chronic pain in his spine, Tr. 104. He also described
4 debilitating migraine headaches that occurred two to four times per month, lasting
5 one to three days at a time, Tr. 104-108, and stated he had arthritis in both hands
6 which affected his grip strength and dexterity, Tr. 123-124. Plaintiff testified he
7 also experienced depression; however, he indicated anti-depressant medications
8 were helping. Tr. 118-119.

9 STANDARD OF REVIEW

10 The ALJ is tasked with “determining credibility, resolving conflicts in
11 medical testimony, and resolving ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035,
12 1039 (9th Cir. 1995). The ALJ’s determinations of law are reviewed *de novo*, with
13 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
14 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
15 only if it is not supported by substantial evidence or if it is based on legal error.
16 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
17 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
18 1098. Put another way, substantial evidence “is such relevant evidence as a
19 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
20 *Perales*, 402 U.S. 389, 401 (1971), quoting *Consolidated Edison Co. v. NLRB*, 305
21 U.S. 197, 229 (1938). If the evidence is susceptible to more than one rational
22 interpretation, the Court may not substitute its judgment for that of the ALJ.
23 *Tackett*, 180 F.3d at 1098; *Morgan v. Commissioner of Social Sec. Admin.*, 169
24 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative
25 findings, or if conflicting evidence supports a finding of either disability or non-
26 disability, the ALJ’s determination is conclusive. *Sprague v. Bowen*, 812 F.2d
27 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by
28 substantial evidence will be set aside if the proper legal standards were not applied

1 in weighing the evidence and making the decision. *Browner v. Secretary of Health*
2 *and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

3 SEQUENTIAL EVALUATION PROCESS

4 The Commissioner has established a five-step sequential evaluation process
5 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*
6 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant
7 bears the burden of establishing a prima facie case of disability benefits. *Tackett*,
8 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a
9 physical or mental impairment prevents the claimant from engaging in past
10 relevant work. 20 C.F.R. § 416.920(a)(4). If a claimant cannot perform past
11 relevant work, the ALJ proceeds to step five, and the burden shifts to the
12 Commissioner to show (1) that Plaintiff can perform other substantial gainful
13 activity and (2) that a significant number of jobs exist in the national economy
14 which Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1497-1498 (9th Cir.
15 1984). If a claimant cannot make an adjustment to other work in the national
16 economy, the claimant will be found disabled. 20 C.F.R. § 416.920(a)(4)(v).

17 ADMINISTRATIVE DECISION

18 On December 17, 2018, the ALJ issued a decision finding Plaintiff was not
19 disabled as defined in the Social Security Act.

20 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
21 activity during the period from his amended onset date, October 16, 2015, through
22 his date last insured, December 31, 2017. Tr. 29.

23 At step two, the ALJ determined Plaintiff had the following severe
24 impairments through the date last insured: degenerative joint disease of the right
25 hip – post surgery; obesity; degenerative disc disease, cervical and lumbar;
26 migraines; depressive disorder; cannabis use; and left carpal tunnel. Tr. 29.

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1 At step three, the ALJ found Plaintiff did not have an impairment or
2 combination of impairments that meets or medically equals the severity of one of
3 the listed impairments. Tr. 29.

4 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found
5 Plaintiff could perform sedentary exertion level work with the following
6 limitations: he must be able to change from a standing position to a sitting
7 position, or vice versa, every 30 minutes, for up to five minutes while remaining at
8 the work station, at the worker's discretion; never climb ladders, ropes, and
9 scaffolds; occasionally climb ramps and stairs; occasionally balance and stoop;
10 rarely (which is defined as no more than 15% of the time) crouch; never kneel or
11 crawl; occasionally reach overhead; frequently handle and finger with the left
12 upper extremity; avoid all use of moving or dangerous machinery, all exposure to
13 unprotected heights, and all exposure to bright sunshine and/or flashing lights, but
14 computer monitors are okay; and work where concentration (which is defined as
15 careful exact evaluation and judgment) is not critical. Tr. 32.

16 At step four, the ALJ found Plaintiff was not able to perform any past
17 relevant work. Tr. 37-38.

18 At step five, the ALJ determined that, based on the testimony of the
19 vocational expert, and considering Plaintiff's age, education, work experience, and
20 RFC, Plaintiff was capable of making a successful adjustment to other work that
21 exists in significant numbers in the national economy, including the jobs of
22 telephone sales clerk, document sorter, and final assembler. Tr. 38-39.

23 The ALJ thus concluded Plaintiff was not under a disability within the
24 meaning of the Social Security Act at any time from October 16, 2015, the
25 amended alleged disability onset date, through December 31, 2017, the date last
26 insured. Tr. 39.

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1 **ISSUES**

2 The question presented is whether substantial evidence supports the ALJ’s
3 decision denying benefits and, if so, whether that decision is based on proper legal
4 standards.

5 It appears Plaintiff asserts the Commissioner erred: (1) in the consideration
6 of Plaintiff’s subjective symptom allegations; (2) in the weight accorded to the
7 medical opinion of his treating physician, Angelica Macias, M.D.; and (3) in
8 assessing the post-decision lay witness statements submitted to the Appeals
9 Council ECF No. 28.

10 **DISCUSSION**

11 **A. Plaintiff’s Subjective Complaints**

12 Based on Plaintiff’s recitation of his own symptom complaints to the agency
13 and his medical providers, ECF No. 28 at 2, 5-10, it appears Plaintiff challenges
14 the ALJ’s rejection of his subjective allegations. Defendant responds that Plaintiff
15 did not argue with specificity with respect to this issue and, in any event, the ALJ
16 reasonably evaluated Plaintiff’s subjective complaints. ECF No. 30 at 2-5.

17 It is the province of the ALJ to make credibility determinations. *Andrews*,
18 53 F.3d at 1039. However, the ALJ’s findings must be supported by specific
19 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent
20 affirmative evidence of malingering, the ALJ’s reasons for rejecting the claimant’s
21 testimony must be “clear and convincing.” *Lester v. Chater*, 81 F.3d 821, 834 (9th
22 Cir. 1996). “General findings are insufficient: rather the ALJ must identify what
23 testimony is not credible and what evidence undermines the claimant’s
24 complaints.” *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.
25 1993).

26 In this case, the ALJ found Plaintiff’s medically determinable impairments
27 could reasonably be expected to cause the alleged symptoms; however, Plaintiff’s
28 statements concerning the intensity, persistence and limiting effects of those

1 symptoms were not entirely consistent with the medical and other evidence of
2 record. Tr. 33.

3 The ALJ first determined Plaintiff's allegations of disabling impairments
4 were not consistent with the objective medical evidence of record. Tr. 35.

5 A lack of supporting objective medical evidence is a factor which may be
6 considered in evaluating an individual's credibility, provided it is not the sole
7 factor. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991); *Robbins v. Soc. Sec.*
8 *Admin.*, 466 F.3d 880, 883 (9th Cir. 2006).

9 The ALJ noted Plaintiff's physical limitation allegations were inconsistent
10 with his generally unremarkable physical examinations. Tr. 35 *citing* Tr. 464 &
11 467 ("He walks with a normal, non-antalgic gait, requiring no assistive devices.
12 He is accompanied by no one."); 511, 690, & 704 (noting Plaintiff had full
13 strength). The ALJ also indicated Plaintiff's mental health allegations were
14 inconsistent with his generally unremarkable mental examinations. Tr. 35 *citing*
15 Tr. 464 & 467 (noting Plaintiff was alert and oriented and in no apparent distress);
16 511 (noting he was alert and oriented to time and place with appropriate mood and
17 affect); 639 (noting Plaintiff arrived for the evaluation appropriately dressed and
18 groomed). The ALJ additionally observed Plaintiff's memory, attention, and
19 concentration were at times good, Tr. 652-653, and that he denied being suicidal
20 and depressed, Tr. 462, 466, 649. Tr. 35.

21 As asserted by Defendant, ECF No. 30 at 2-3, Plaintiff has not specifically
22 contested these findings by the ALJ. The Court ordinarily will not consider
23 matters on appeal that are not specifically challenged in an opening brief,
24 *Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008),
25 and will not "manufacture arguments for an appellant," *Greenwood v. Fed.*
26 *Aviation Admin.*, 28 F.3d 971, 977 (9th Cir. 1994). Nevertheless, based on the
27 Court's review of the record, and specifically the ALJ's citations noted above, the
28 Court finds substantial evidence supports the ALJ's finding that Plaintiff's physical

1 and mental limitation allegations were not consistent with the objective medical
2 evidence of record.

3 The ALJ also found Plaintiff's reports that medications were working well,
4 with improved ability to function, undermined his assertions of disabling physical
5 and mental limitations. Tr. 35.

6 An ALJ may rely on the effectiveness of treatment to find a plaintiff's
7 testimony unpersuasive. *See Morgan*, 169 F.3d at 599-600 (an ALJ may properly
8 rely on a report that a plaintiff's symptoms improved with the use of medication);
9 *Odle v. Heckler*, 707 F.2d 439, 440 (9th Cir. 1983) (noting impairments that are
10 controlled by treatment cannot be considered disabling).

11 As indicated by the ALJ, Plaintiff reported his medication was working well,
12 with improved ability to function overall, including improved walking ability,
13 ability to work or perform household chores, improved mood, improved ability to
14 interact socially with other people, improved ability to sleep, and improved
15 enjoyment of life. Tr. 35 *citing* Tr. 462, 466.³ Plaintiff, again, has not specifically
16 contested these findings by the ALJ. *See Carmickle*, 533 F.3d at 1161 (the Court
17 will not ordinarily consider matters on appeal that were not specifically and
18 distinctly argued in a party's opening brief). In any event, records of Plaintiff's
19 improved physical and mental health following his use of medication was an
20 additional valid reason, supported by substantial evidence, for discounting
21 Plaintiff's subjective complaints.

22 The ALJ also found Plaintiff's allegations were inconsistent with his
23 activities of daily living. Tr. 35.

24 It is well-established that the nature of daily activities may be considered
25 when evaluating credibility. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).

27 ³Plaintiff also testified at the administrative hearing that anti-depressant
28 medications were helping. Tr. 119.

1 For daily activities to discount subjective symptom testimony, the activities do not
2 need to be equivalent to full-time work; it is sufficient that a claimant's activities
3 "contradict claims of a totally debilitating impairment." *See Molina v. Astrue*,
4 674 F.3d 1104, 1112-1113 (9th Cir. 2012). A claimant, however, need not be
5 utterly incapacitated to receive disability benefits, and completion of certain
6 routine activities is insufficient to discount subjective symptom testimony. *Id.* at
7 1112-1113 (noting that a "claimant need not vegetate in a dark room in order to be
8 eligible for benefits" (quotation marks omitted)); *Vertigan v. Halter*, 260 F.3d
9 1044, 1050 (9th Cir. 2001) ("This court has repeatedly asserted that the mere fact
10 that a plaintiff has carried on certain daily activities, such as grocery shopping,
11 driving a car, or limited walking for exercise, does not in any way detract from her
12 credibility as to her overall disability.").

13 Here, the ALJ specifically identified Plaintiff's ability to care for his
14 girlfriend's then-four-year-old daughter, Tr. 640; to do some light chores like
15 preparing simple meals for his girlfriend's daughter, tidying the house, loading the
16 dishwasher, vacuuming, and picking up dishes, Tr. 640; and to count change,
17 handle a savings account, and use a checkbook, Tr. 311, as contrary to his claims
18 of disabling limitations. Tr. 35. The Court finds that it was reasonable for the ALJ
19 to conclude that Plaintiff's documented activities of daily living were inconsistent
20 with his allegations of totally disabling symptoms and thus detracted from his
21 overall credibility.

22 The ALJ is responsible for reviewing the evidence and resolving conflicts or
23 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.
24 1989). It is the role of the trier of fact, not this Court, to resolve conflicts in
25 evidence. *Richardson*, 402 U.S. at 400. The Court has a limited role in
26 determining whether the ALJ's decision is supported by substantial evidence and
27 may not substitute its own judgment for that of the ALJ even if it might justifiably
28 have reached a different result upon *de novo* review. 42 U.S.C. § 405(g). After

1 reviewing the record, and based on the foregoing, the Court finds that the ALJ
2 provided clear and convincing reasons, which are fully supported by the record, for
3 finding Plaintiff's symptom allegations were not entirely credible in this case.

4 **B. Angelica Macias, M.D.**

5 It appears Plaintiff also contends the ALJ erred by failing to give legally
6 sufficient reasons for rejecting the medical opinions of Angelica Macias, M.D.,
7 regarding Plaintiff's impairments and limitations. ECF No. 28 at 14. Defendant
8 responds that the ALJ reasonably evaluated the medical evidence of record and
9 provided valid reasons to discount Dr. Macias' opinions. ECF No. 30 at 7-9.

10 For disability applications filed prior to March 27, 2017, the courts
11 distinguish among the opinions of three types of acceptable medical sources:
12 treating physicians, physicians who examine but do not treat the claimant
13 (examining physicians) and those who neither examine nor treat the claimant
14 (nonexamining physicians). *Lester*, 81 F.3d at 830. A treating physician's opinion
15 carries more weight than an examining physician's opinion, and an examining
16 physician's opinion is given more weight than that of a nonexamining physician.
17 *Benecke v. Barnhart*, 379 F.3d 587, 592 (9th Cir. 2004); *Lester*, 81 F.3d at 830.
18 The Ninth Circuit has held that "[t]he opinion of a nonexamining physician cannot
19 by itself constitute substantial evidence that justifies the rejection of the opinion of
20 either an examining physician or a treating physician." *Lester*, 81 F.3d at 830;
21 *Pitzer v. Sullivan*, 908 F.2d 502, 506 n.4 (9th Cir. 1990) (finding a nonexamining
22 doctor's opinion "with nothing more" does not constitute substantial evidence).

23 In weighing the medical opinion evidence of record, the ALJ must make
24 findings setting forth specific, legitimate reasons for doing so that are based on
25 substantial evidence in the record. *Magallanes*, 881 F.2d at 751. The ALJ must
26 also set forth the reasoning behind his or her decisions in a way that allows for
27 meaningful review. *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015)
28 (finding a clear statement of the agency's reasoning is necessary because the Court

1 can affirm the ALJ’s decision to deny benefits only on the grounds invoked by the
2 ALJ). “Although the ALJ’s analysis need not be extensive, the ALJ must provide
3 some reasoning in order for us to meaningfully determine whether the ALJ’s
4 conclusions were supported by substantial evidence.” *Treichler v. Comm’r of Soc.*
5 *Sec. Admin.*, 775 F.3d 1090, 1103 (9th Cir. 2014).

6 On October 31, 2016, Dr. Macias, Plaintiff’s treating physician, completed a
7 physical residual functional capacity assessment form. Tr. 544-546. Dr. Macias
8 opined on the check-box form that Plaintiff could perform sedentary exertion level
9 work but must sit less than two hours and stand/walk less than six hours in an
10 eight-hour day, with no postural activities except climbing ramps and stairs as
11 needed for moving around the house, and limited fingering. *Id.*

12 The ALJ accorded the opinion “partial weight.” Tr. 36. The ALJ agreed
13 that given Plaintiff’s possible new right hip tear, reduced range of motion in his
14 spine, and the need to change positions frequently, along with left carpal tunnel,
15 migraines and obesity, Plaintiff was limited to sedentary work with a sit/stand
16 option and manipulative limitations. Tr. 36. However, due to Plaintiff’s full
17 strength and at times normal gait, *see* Tr. 464 & 467 (“He walks with a normal,
18 non-antalgic gait, requiring no assistive devices.”); 511, 690, & 704 (noting
19 Plaintiff had full strength), the ALJ found that, inconsistent with Dr. Macias’
20 October 2016 opinion, Plaintiff could occasionally perform all postural activities
21 except never climb ladders, ropes, and scaffolds, rarely crouch, and never kneel or
22 crawl. Tr. 36. These findings by the ALJ are further supported by the medical
23 consultant opinions of Norman Staley, M.D., Tr. 170-172 (December 19, 2016),
24 and Debra Baylor, M.D., Tr. 187-189 (July 21, 2017). Tr. 35-36.

25 Based on the foregoing, the Court finds the ALJ provided sufficient rationale
26 for according the October 2016 check-box form opinion of Dr. Macias only partial
27 weight.

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1 On August 10, 2017, Dr. Macias wrote a letter stating that Plaintiff’s lumbar
2 stenosis, radiculopathy, and cervical stenosis “limit his physical abilities and do
3 may [sic] him disabled.” Tr. 671.

4 The Court notes at the outset that whether a claimant is disabled within the
5 meaning of the Social Security Act is a legal conclusion, based on both medical
6 and vocational components, that is reserved for the ALJ. *See Edlund v. Massanari*,
7 253 F.3d 1152, 1156 (9th Cir. 2001); *Harman v. Apfel*, 211 F.3d 1172, 1180 (9th
8 Cir. 2000). Furthermore, Dr. Macias’ one-paragraph opinion is not supported by
9 objective medical evidence. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th
10 Cir. 2001) (an ALJ may discredit a treating physician’s opinion that is unsupported
11 by rationale or treatment notes and offers no objective medical findings to support
12 the opinion). Regardless, the Court finds the ALJ appropriately discounted the
13 conclusory opinion of Dr. Macias as inconsistent with evidence of Plaintiff’s “full
14 strength, normal, non-antalgic gait, and at times no assistive device,” which
15 allowed him to perform sedentary work with the limitations noted in the ALJ’s
16 RFC determination. Tr. 37. The ALJ did not err by according Dr. Macias’ August
17 10, 2017 letter little weight.

18 C. New Evidence

19 Plaintiff’s motion requests that the Court also take into consideration the
20 following lay witness evidence submitted after the conclusion of the administrative
21 proceedings and while the matter was pending review at the Appeals Council: five
22 pages from Cathy Lembcke (Plaintiff’s mother), dated March 27, 2019, Tr. 7-11;
23 one page from Richard K. Lembcke (Plaintiff’s father), not dated, Tr. 22; and a
24 letter from Lynn Whitaker (Plaintiff’s sister), dated March 22, 2019, Tr. 378-380.
25 ECF No. 28 at 3-4.

26 The Appeals Council considered the new evidence and made it a part of the
27 administrative record. *See Harman*, 211 F.3d at 1179-1180 (stating that where
28 claimant submitted additional materials to the Appeals Council in requesting

1 review of the ALJ’s decision, “[w]e may properly consider the additional materials
2 because the Appeals Council addressed them in the context of denying Appellant’s
3 request for review”); *Ramirez v. Shalala*, 8 F.3d 1449, 1451-1452 (9th Cir. 1993)
4 (noting that where the Appeals Council declined to review the decision of the ALJ
5 after examining the entire record, including new material, we considered both the
6 ALJ’s decision and the additional materials submitted to the Appeals Council).
7 The Court may affirm the ALJ’s decision in spite of the new evidence if substantial
8 evidence still supports the ALJ’s nondisability determination. *Sullivan v. Colvin*,
9 588 F. App’x 725, 726-727 (9th Cir. 2014) (“While the new evidence supported
10 Sullivan’s disability allegations, substantial evidence still supported the ALJ’s
11 nondisability determination.”); compare *Joann D. v. Commissioner of Social*
12 *Security*, 2019 WL 7184550 at *2 (W.D. Wash. 2019) (finding new evidence
13 undermined the administrative decision where the ALJ had concluded the claimant
14 had “great pain relief” following surgery, but new evidence showed that the
15 claimant required a subsequent surgery and treatment during the alleged disability
16 period).

17 Here, the lay witness statements, Tr. 7-11, 22, 378-380, essentially reiterate
18 Plaintiff’s hearing testimony, Tr. 93-131, and, as discussed above, the ALJ
19 provided clear and convincing reasons, supported by substantial evidence, for
20 rejecting Plaintiff’s testimony in this case, *see supra*. Under Ninth Circuit
21 precedent, the ALJ’s rationale for discounting Plaintiff’s subjective complaints
22 applies with equal force to discount the lay witness statements from Plaintiff’s
23 mother, father, and sister. *See Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d
24 685, 694 (9th Cir. 2009) (indicating that third-party testimony can be rejected for
25 the same reasons provided for rejecting the claimant’s testimony). Accordingly,
26 Plaintiff’s newly submitted lay witness statements do not sufficiently undermine
27 the ALJ’s decision so as to require a remand in this case. The Court finds
28 substantial evidence continues to support the ALJ’s nondisability determination.

1 **CONCLUSION**

2 Having reviewed the record and the ALJ’s findings, the Court finds the
3 ALJ’s decision is supported by substantial evidence and free of error.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. Defendant’s Motion for Summary Judgment, **ECF No. 30**, is
6 **GRANTED.**

7 2. Plaintiff’s Motion for Summary Judgment, **ECF No. 28**, is **DENIED.**
8 **IT IS SO ORDERED.** The District Court Executive is directed to file this
9 Order and provide a copy to counsel for Plaintiff and Defendant. **Judgment shall**
10 **be entered for DEFENDANT and the file shall be CLOSED.**

11 DATED January 18, 2023.



Alexander C. Ekstrom

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ALEXANDER C. EKSTROM

UNITED STATES MAGISTRATE JUDGE