

1
2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 KELLY SUTHERLAND,

7 Plaintiff,

8 v.

9 NANCY A BERRYHILL,

10 Defendant.

C17-5166 TSZ

ORDER

11 THIS MATTER comes before the Court on the Report and Recommendation of
12 James P. Donohue, United States Magistrate Judge, docket no. 30. Having reviewed
13 plaintiff's objections to the Report and Recommendation and supporting materials,
14 docket no. 24 (the "Objections"), the response thereto, docket no. 25, and plaintiff's
15 supplemental argument and authority, docket no. 26, the Court hereby ORDERS:

16 (1) The Court ADOPTS the Report and Recommendation.

17 (2) The final decision of the Commissioner is AFFIRMED and this case is
18 DISMISSED with prejudice.

19 In her objections to the Report and Recommendation, plaintiff asserts that the
20 Report and Recommendation failed to consider certain "objective findings" required
21 under Social Security Ruling 12-2p ("SSR 12-2p"). See 2012 WL 3104869, at *2. She
22 states that, under SSR 12-2p, "[w]idespread, fluctuating pain and tender points in the
23

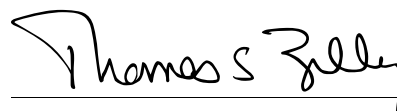
1 absence of another condition that could cause them *are* the objective findings required to
2 establish FMS.” Objections at 2. Plaintiff’s position misstates SSR 12-2p. The relevant
3 portion of SSR 12-2p provides that “[w]e will find a person has an MDI of FM if the
4 physician diagnosed FM and provides the evidence we describe in section II.A. or section
5 II.B., and the physician’s diagnosis is not inconsistent with the other evidence in the
6 person’s case record.” 2012 WL 3104869, at *2. Here, the Administrative Law Judge
7 (“ALJ”) correctly explained the inconsistencies between the medical diagnoses and
8 corresponding evidence that plaintiff relies on and the remaining evidence in the record.
9 The Report and Recommendation properly concludes that plaintiff has “not shown that
10 the ALJ failed to follow SSR 12-2p in assessing her fibromyalgia or opinions describing
11 limitations caused by her fibromyalgia.” R&R at 7.

12 Plaintiff’s reliance on the recently published decision in *Revels v. Berryhill*, 874
13 F.3d 648 (9th Cir. 2017), in support of her supplemental argument and authority, is
14 misplaced. The Court has reviewed *Revels* and is satisfied that the ALJ here has
15 provided reasons supporting the weight given to each medical examiner and that those
16 reasons are supported by substantial evidence.

17 The Clerk is directed to send a copy of this Order to all counsel of record.

18 IT IS SO ORDERED.

19 Dated this 21st day of December, 2017.

20
21 

22 Thomas S. Zilly
23 United States District Judge