

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA

Latasha Nicole Morgan v. Commissioner of Social Security

Morgan · No. 2:24-cv-00340-CSK · Decided March 17, 2025

SUMMARY

The United States District Court for the Eastern District of California reviewed the Commissioner of Social Security’s denial of Latasha Nicole Morgan’s application for supplemental security income. The court held that the evidence concerning available jobs was sufficient to support the step-five determination and that the ALJ provided adequate reasons for discounting Morgan’s symptom testimony. Plaintiff’s motion for summary judgment was denied, the Commissioner’s cross-motion was granted, and the decision was affirmed.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                               |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Eastern District of California                                                                                                                                                                                                                                                                           |
| WRITING FOR THE COURT | Chi Soo Kim                                                                                                                                                                                                                                                                                                                                   |
| JURISDICTION          | United States District Court for the Eastern District of California                                                                                                                                                                                                                                                                           |
| DECIDED               | March 17, 2025                                                                                                                                                                                                                                                                                                                                |
| DOCKET                | 2:24-cv-00340-CSK                                                                                                                                                                                                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Plaintiff sought judicial review under 42 U.S.C. § 405(g) of the Commissioner's final decision denying supplemental security income. The parties filed cross-motions for summary judgment.                                                                                                                                                    |
| STANDARD OF REVIEW    | The district court may reverse the Commissioner's decision only for legal error or lack of substantial evidence. Substantial evidence is more than a mere scintilla but less than a preponderance, and the court must uphold the decision when the evidence is susceptible to more than one rational interpretation or any error is harmless. |
| PRECEDENTIAL VALUE    | unpublished district court opinion; precedential status unknown                                                                                                                                                                                                                                                                               |
| PARTIES               | Latasha Nicole Morgan v. Commissioner of Social Security                                                                                                                                                                                                                                                                                      |

TOPICS

- judicial review of agency action
- administrative law
- agency adjudication

## PRACTICE AREAS

Social Security disability

administrative law

federal judicial review

## QUESTIONS PRESENTED

1. Whether the evidence submitted to the Appeals Council concerning the number of jobs available in the national economy undermined the ALJ's step-five finding.
2. Whether the ALJ gave legally sufficient specific, clear, and convincing reasons for discounting the more severe aspects of Morgan's subjective symptom testimony.

## HOLDINGS

1. The evidence estimating 21,215 jobs in the national economy did not require remand because that number constitutes a significant number of jobs, and any discrepancy between the vocational expert's estimate and the later evidence was harmless.
2. The ALJ provided specific, clear, and convincing reasons supported by substantial evidence for discounting the more severe aspects of Morgan's subjective symptom testimony.

## KEY QUOTATIONS

*“A qualified vocational expert’s testimony about the number of jobs existing in the national economy that a claimant can perform is ordinarily sufficient by itself to support the ALJ’s step-five finding, and can count as substantial evidence even when not accompanied by supporting data.”* (Discussion, Part IV.A.2)

*“If the claimant satisfies the first step of this analysis, and there is no evidence of malingering, the ALJ can reject the claimant’s testimony about the severity of her symptoms only by offering specific, clear and convincing reasons for doing so.”* (Discussion, Part IV.B.1)

## FACTUAL BACKGROUND

Morgan alleged disability based principally on irritable bowel syndrome with constipation, abdominal pain, bloating, and related limitations, along with depression and obesity. The ALJ found severe IBS with constipation, obesity, and depression, but determined that Morgan retained the residual functional capacity for light work with specified environmental, postural, and social restrictions. Although Morgan could not perform past relevant work, the vocational expert identified three jobs totaling approximately 365,000 national jobs. Morgan later submitted evidence to the Appeals Council estimating only 21,215 available jobs, and the district court concluded that number was nevertheless significant.

## PROCEDURAL HISTORY

Morgan applied for supplemental security income under Title XVI in September 2021. The application was denied initially and on reconsideration; an ALJ held a hearing on February 16, 2023, and found Morgan not disabled on March 20, 2023. The Appeals Council denied review on December 11, 2023, making the ALJ's decision the Commissioner's final decision. The district court denied Morgan's motion for summary judgment, granted the Commissioner's cross-motion, affirmed the final agency decision, and closed the case.

## DISPOSITION

affirmed

## CASES CITED

- Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995)
- Ford v. Saul, 950 F.3d 1141, 1148, 1154 (9th Cir. 2020)
- Brewes v. Comm'r, 682 F.3d 1157, 1161-63 (9th Cir. 2012)
- Mata v. Colvin, 2014 WL 5472784, at \*4 (E.D. Cal. Oct. 28, 2014)
- Independent Towers of Wash. v. Washington, 350 F.3d 925, 929 (9th Cir. 2003)
- Luther v. Berryhill, 891 F.3d 872, 875 (9th Cir. 2018)
- Tackett v. Apfel, 180 F.3d 1094, 1101 (9th Cir. 1999)
- Kilpatrick v. Kijakazi, 35 F.4th 1187, 1192-94 (9th Cir. 2022)
- Buck v. Berryhill, 869 F.3d 1040, 1051-52 (9th Cir. 2017)
- Beltran v. Astrue, 700 F.3d 386, 389-90 (9th Cir. 2012)
- Gutierrez v. Comm'r of Soc. Sec., 740 F.3d 519, 529 (9th Cir. 2014)
- Elizabeth M. v. Saul, 2021 WL 1060232, at \*2 (C.D. Cal. Mar. 19, 2021)
- Anna F. v. Saul, 2020 WL 7024924, at \*6 (C.D. Cal. Nov. 30, 2020)
- Shaw v. Saul, 2020 WL 13582509, at \*6 (D. Ariz. Oct. 16, 2020)
- Molina v. Astrue, 674 F.3d 1104, 1111-13 (9th Cir. 2012)
- Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008)
- Treichler v. Comm'r, 775 F.3d 1090, 1099, 1106 (9th Cir. 2014)
- Parra v. Astrue, 481 F.3d 742, 750-51 (9th Cir. 2007)
- Burch v. Barnhart, 400 F.3d 676, 680-81 (9th Cir. 2005)
- Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001)
- Bunnell v. Sullivan, 947 F.2d 341, 346 (9th Cir. 1991)
- Fair v. Bowen, 885 F.2d 597, 604 n.5 (9th Cir. 1989)
- Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir. 2015)
- Smartt v. Kijakazi, 53 F.4th 489, 498 (9th Cir. 2022)
- Marshall v. Saul, 830 F. App'x 179, 181 (9th Cir. 2020)

## OPINION

(SS) Morgan v. Commissioner of Social Security

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 LATASHA NICOLE MORGAN, Case No. 2:24-cv-00340-CSK 12 Plaintiff, ORDER ON

PARTIES' CROSS MOTIONS  
FOR SUMMARY JUDGMENT

13 v. (ECF Nos. 17, 21)

14 COMMISSIONER OF SOCIAL  
SECURITY,

15 Defendant. 16

17 Plaintiff Latasha Nicole Morgan seeks judicial review of a final decision by 18 Defendant  
Commissioner of Social Security denying an application for supplemental 19 security income.<sup>1</sup> In  
the summary judgment motion, Plaintiff contends the final decision 20 of the Commissioner  
contains legal error and is not supported by substantial evidence. 21 Plaintiff seeks a remand for  
further proceedings. The Commissioner opposes Plaintiff's 22 motion, filed a cross-motion for  
summary judgment, and seeks affirmance. 23 For the reasons below, Plaintiff's motion is  
DENIED, the Commissioner's cross- 24 motion is GRANTED, and the final decision of the  
Commissioner is AFFIRMED.

25 I. SOCIAL SECURITY CASES: FRAMEWORK & FIVE-STEP ANALYSIS

26 The Social Security Act provides benefits for qualifying individuals unable to 27 1 This action  
was referred to the magistrate judge under Local Rule 302(c)(15) and 28 proceeds on the consent  
of all parties. (ECF Nos. 6, 8, 9.) 1 "engage in any substantial gainful activity by reason of any  
medically determinable 2 physical or mental impairment[.]" 42 U.S.C. § 423(d)(1)(a). When an  
individual (the 3 "claimant") seeks Social Security disability benefits, the process for  
administratively 4 reviewing the request can consist of several stages, including: (1) an initial  
determination 5 by the Social Security Administration; (2) reconsideration; (3) a hearing before an  
6 Administrative Law Judge ("ALJ"); and (4) review of the ALJ's determination by the 7 Social  
Security Appeals Council. 20 C.F.R. § 416.1400(a). 8 At the hearing stage, the ALJ is to hear  
testimony from the claimant and other 9 witnesses, accept into evidence relevant documents, and  
issue a written decision based 10 on a preponderance of the evidence in the record. 20 C.F.R. §  
416.1429. In evaluating a 11 claimant's eligibility, the ALJ is to apply the following five-step  
analysis: 12 Step One: Is the claimant engaged in substantial gainful activity? If yes, the claimant  
is not disabled. If no, proceed to step two. 13 Step Two: Does the claimant have a "severe"  
impairment? If no, the claimant is not disabled. If yes, proceed to step three. 14 Step Three: Does  
the claimant's combination of impairments meet or 15 equal those listed in 20 C.F.R., Pt. 404,  
Subpt. P, App. 1 (the "Listings")? If yes, the claimant is disabled. If no, proceed to step four. 16  
Step Four: Is the claimant capable of performing past relevant work? If 17 yes, the claimant is not  
disabled. If no, proceed to step five. 18 Step Five: Does the claimant have the residual functional  
capacity to perform any other work? If yes, the claimant is not disabled. If no, the 19 claimant is  
disabled. 20 *Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995); 20 C.F.R. § 416.920(a)(4). The  
21 burden of proof rests with the claimant through step four, and with the Commissioner at 22 step  
five. *Ford v. Saul*, 950 F.3d 1141, 1148 (9th Cir. 2020). If the ALJ finds a claimant 23 not disabled,

and the Social Security Appeals Council declines review, the ALJ's 24 decision becomes the final decision of the Commissioner. *Brewes v. Comm'r.*, 682 F.3d 25 1157, 1161-62 (9th Cir. 2012) (noting the Appeals Council's denial of review is a non- 26 final agency action). At that point, the claimant may seek judicial review of the 27 Commissioner's final decision by a federal district court. 42 U.S.C. § 405(g). 28 The district court may enter a judgment affirming, modifying, or reversing the final 1 decision of the Commissioner. *Id.* ("Sentence Four" of § 405(g)). In seeking judicial 2 review, the plaintiff is responsible for raising points of error, and the Ninth Circuit has 3 repeatedly admonished that the court cannot manufacture arguments for the plaintiff. 4 See *Mata v. Colvin*, 2014 WL 5472784, at \*4 (E.D. Cal, Oct. 28, 2014) (citing *Indep. 5 Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (stating that the court 6 should "review only issues which are argued specifically and distinctly," and noting a 7 party who fails to raise and explain a claim of error waives it). 8 A district court may reverse the Commissioner's denial of benefits only if the ALJ's 9 decision contains legal error or is unsupported by substantial evidence. *Ford*, 950 F.3d. 10 at 1154. Substantial evidence is "more than a mere scintilla" but "less than a 11 preponderance," i.e., "such relevant evidence as a reasonable mind might accept as 12 adequate to support a conclusion." *Id.* (citations omitted). The court reviews evidence in 13 the record that both supports and detracts from the ALJ's conclusion, but may not affirm 14 on a ground upon which the ALJ did not rely. *Luther v. Berryhill*, 891 F.3d 872, 875 (9th 15 Cir. 2018). The ALJ is responsible for resolving issues of credibility, conflicts in 16 testimony, and ambiguities in the record. *Ford*, 950 F.3d at 1154. The ALJ's decision 17 must be upheld where the evidence is susceptible to more than one rational 18 interpretation, or where any error is harmless. *Id.*

## 19 II. FACTUAL BACKGROUND AND ALJ'S FIVE-STEP ANALYSIS

20 On September 27, 2021, Plaintiff applied for supplemental security income under 21 Title XVI of the Social Security Act, alleging she has been disabled since May 30, 2021. 22 Administrative Transcript ("AT") 26, 170, 151, 321 (available at ECF No. 10). Plaintiff 23 claimed disability due to "problem with nerves in stomach" and "chronic irritable bowel 24 syndrome." AT 151. Plaintiff's application was denied initially and upon reconsideration, 25 and she sought review before an ALJ. AT 150-69, 171-91, 215-17. Plaintiff appeared 26 with a representative at a February 16, 2023 hearing, where Plaintiff testified about her 27 impairments and a vocational expert testified about hypothetical available jobs in the 28 national economy. AT 43-66. 1 On March 20, 2023, the ALJ issued a decision finding Plaintiff was not disabled. 2 AT 23-42. The ALJ considered that there is a March 2018 prior decision by an ALJ 3 finding Plaintiff "not disabled," which applies a presumption of ongoing non-disability. AT 4 26; see AT 133-49. The ALJ found that Plaintiff rebutted this presumption due to a 5 "changed circumstance" as Plaintiff now has a "severe psychological impairment and 6 limitations." AT 26. At step one, the ALJ found Plaintiff had not engaged in substantial 7 gainful activity since September 27, 2021. AT 28. At step two, the ALJ determined 8 Plaintiff had the following severe impairments: irritable bowel syndrome (IBS)

with 9 constipation, obesity, and depression. AT 29. At step three, the ALJ found Plaintiff's 10 impairments or combination of impairments did not meet or medically equal any Listing. 11 Id. (citing 20 C.F.R Part 404, Subpart P, Appendix 1). Relevant here, the ALJ considered 12 Listing 5.06 (inflammatory bowel disease) for Plaintiff's physical impairments, and 13 Listings 12.04 (depression) and 12.06 (anxiety) for Plaintiff's mental impairments, 14 examining the "Paragraph B" criteria for the mental impairments.<sup>2</sup> AT 29-30. The ALJ 15 found that while there is no listing for obesity, the ALJ considered Plaintiff's obesity when 16 evaluating the medical evidence as required. AT 29. The ALJ found Plaintiff mildly 17 limited in understanding, remembering, or applying information and in adapting or 18 managing oneself; she also found Plaintiff moderately limited in interacting with others 19 and in concentrating, persisting or maintaining pace. AT 30. The ALJ also examined the 20 "Paragraph C" criteria and found no evidence of this. AT 31. 21 The ALJ then found Plaintiff had the residual functional capacity to perform light 22 23 2 "Paragraph B" lists four categories for evaluating how a claimant's mental disorders limit their functioning: understanding, remembering, or applying information; interacting 24 with others; concentrating, persisting, or maintaining pace; and adapting or managing oneself. To be found disabled under the Paragraph B categories, the mental disorder 25 must result in an "extreme" limitation of one, or "marked" limitation of two, of the four 26 areas of mental functioning. See 20 C.F.R. § Pt. 404, Subpt. P, App. 1, 12.00 Mental Disorders, sub. A.2.b. "Paragraph C" of listings including 12.04 and 12.06, provides 27 criteria used to evaluate "serious and persistent mental disorders." To be "serious and persistent" there must be a medically documented history of the existence of the mental 28 disorder over a period of at least 2 years. Id., sub. A.2.c. 1 work (20 C.F.R. § 416.967(b)). 2 The [Plaintiff] must avoid moderate exposure to moving machinery and unprotected heights. The [Plaintiff] can 3 frequently stoop, crouch, crawl, kneel, balance, and climb ramps and stairs. The [Plaintiff] can perform simple, routine, 4 repetitive task [sic] with only occasional interaction with the public. 5 6 AT 31. In crafting this residual functional capacity, the ALJ stated she considered all 7 symptoms and the extent to which these symptoms can reasonably be accepted as 8 consistent with the objective medical evidence and other evidence, medical opinions and 9 prior administrative medical findings. AT 31. The ALJ found that Plaintiff's allegations of 10 physical and mental disability were not entirely consistent with the medical and other 11 evidence. AT 33. 12 Based on the residual functional capacity, the ALJ determined at step four that 13 Plaintiff was incapable of performing past relevant work. AT 35. However, at step five, 14 the ALJ found Plaintiff capable of performing other jobs in the national economy, 15 including: (i) assembler, production, light, DOT number 706.687-010, with 200,000 jobs 16 nationally; (ii) inspector, hand packager, light, DOT number 559.687-074, with 109,000 17 jobs nationally; and (iii) garment folder, light, DOT number 789.687-066, with 56,000 jobs 18 nationally.<sup>3</sup> AT 36. The ALJ found that there were jobs that exist in significant numbers in 19 the national economy that the Plaintiff can perform. Id. Thus, the ALJ found Plaintiff not 20 disabled during the relevant period. AT 37. 21 On May 9, 2023,

Plaintiff requested that the Appeals Council review the ALJ's 22 decision (AT 318-20), and on July 15, 2023, Plaintiff submitted additional briefing 23 providing reasons that she disagreed with the ALJ decision (AT 482-92). The Appeals 24 Council considered this request and the additional briefing. AT 1. The Appeals Council 25 made Plaintiff's request and reasons supporting the request part of the Administrative 26 Transcript. AT 1-6; see AT 318-20, 482-92. On December 11, 2023, the Appeals Council 27 3 "Light" in the ALJ's step-five determination references light work, as defined by 28 20 C.F.R. §§ 404.1567(b) and 416.967(b). 1 rejected Plaintiff's appeal. AT 1-6. Plaintiff filed this action in district court requesting 2 judicial review of the Commissioner's final decision, and the parties filed cross-motions 3 for summary judgment. (ECF Nos. 1, 17, 21.) In lieu of a reply brief, Plaintiff filed a notice 4 of submission on her brief. (ECF No. 22.)

### 5 III. ISSUES PRESENTED FOR REVIEW

6 Plaintiff contends the ALJ erred by failing to (1) sustain her burden under step five 7 by not resolving the conflict created by new evidence about the number of jobs available 8 in the national economy, provided after the ALJ decision; and (2) properly evaluate 9 Plaintiff's symptom testimony. Plaintiff seeks either remand for direct payment of benefits 10 or remand for further proceedings. (ECF No. 17.) 11 The Commissioner argues the ALJ: (1) reasonably discounted Plaintiff's 12 subjective statements; and (2) that the ALJ's decision is supported by substantial 13 evidence even considering the evidence Plaintiff submitted to the Appeals Council about 14 the number of jobs in the national economy. (ECF No. 21.) Thus, the Commissioner 15 contends the decision as a whole is supported by substantial evidence and should be 16 affirmed. (Id.)

### 17 IV. DISCUSSION

18 A. Step Five Analysis 19 Plaintiff argues that the ALJ's decision at step five was not supported by 20 substantial evidence considering the new evidence Plaintiff submitted to the Appeals 21 Council. See Pl. MSJ at 6-10 (ECF No. 17). 22 1. Plaintiff's New Evidence 23 In her request for review of the ALJ's decision by the Appeals Council, Plaintiff 24 presented evidence about the number of jobs available in the national economy that 25 conflicted with the testimony of the vocational expert. AT 482-492. Plaintiff used the 26 program "Job Brower Pro," and presented evidence that there are 15,050 jobs in the 27 national economy for assembler, production (AT 488-89); 6,143 jobs in the national 28 economy for inspector and hand packager (AT 491-92); and 22 jobs in the national 1 economy for garment folder (AT 486). AT 483-84. This totals 21,215 jobs in the national 2 economy. AT 484. 3 2. Legal Standards 4 When the Appeals Council considers new evidence in deciding whether to review 5 a decision of the ALJ, that evidence becomes part of the administrative record. *Brewes*, 6 682 F.3d at 1163. The court must consider this evidence when determining whether the 7 Commissioner's final decision is supported by substantial evidence. *Id.* 8 At step five, the Commissioner bears the burden to show that Plaintiff can perform 9 some other work that exists in "significant numbers" in the national economy, considering 10 Plaintiff's "residual functional capacity, age, education, and work experience." *Tackett v. Apfel*, 11 180 F.3d 1094, 1101 (9th Cir. 1999). The Commissioner can rely on testimony of 12 a vocational expert to

meet this burden. *Id.* A qualified vocational expert's testimony about the number of jobs existing in the national economy that a claimant can perform is ordinarily sufficient by itself to support the ALJ's step-five finding, and can count as substantial evidence even when not accompanied by supporting data. *Kilpatrick v. Kijakazi*, 35 F.4th 1187, 1192 (9th Cir. 2022). However, while a VE's testimony is "inherently reliable" it is "not incontestable." *Id.* at 1193 (citing *Buck v. Berryhill*, 869 F.3d 18 1040, 1051 (9th Cir. 2017)). The Ninth Circuit has held that when there is a "vast discrepancy between the vocational expert's job numbers and those tendered by [Plaintiff], presumably from the same source," the ALJ is obligated to resolve this dispute. *Buck*, 869 F.3d at 1152; *Kilpatrick*, 35 F.4th at 1093. An ALJ may not ignore "significant probative evidence," but need not address evidence that is "meritless or immaterial." *Kilpatrick*, 35 F.4th at 1193-94; *White v. Kijakazi*, 44 F.4th 828, 836-37 (9th Cir. 2022).

3. Analysis The Appeals Council considered new evidence submitted by Plaintiff about the number of available jobs in the national economy, and this new evidence is part of the Administrative Transcript. AT 1-6, 482-92. The Appeals Council "found that the reasons 1 do not provide a basis for changing" the ALJ's decision. AT 1. Therefore, the Court will 2 consider this evidence when reviewing the ALJ's decision for substantial evidence. See 3 *Brewes*, 682 F.3d at 1163; *White*, 44 F.4th at 836-37. 4 Plaintiff argues that the new evidence about the number of jobs available in the 5 national economy is significant and probative, warranting remand to address 6 inconsistencies in the record evidence. Pl. MSJ at 8-10. Based on Plaintiff's estimate, 7 there are 21,215 jobs available that she could perform, compared to the 365,000 jobs 8 available that the vocational expert estimated. *Id.* at 10. Though the Ninth Circuit has not 9 set a "bright-line rule" to determine what constitutes a "significant number" of jobs, its 10 analysis of the issue is instructive. *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012). 11 In *Gutierrez v. Commissioner of Social Security*, 740 F.3d 519, 529 (9th Cir. 2014), the 12 Ninth Circuit held that the ALJ did not err in concluding that 25,000 national jobs 13 constituted a significant number, but it was a "close call." The court must uphold the 14 ALJ's decision if the number of national jobs is found to be significant. 42 U.S.C. 15 § 423(d)(2)(A); *Beltran*, 700 F.3d at 389-90. Multiple courts in this Circuit have found 16 numbers near 21,000 jobs in the national economy to be significant. See, e.g., *Elizabeth M. Saul*, 2021 WL 1060232, at \*2 (C.D. Cal. Mar. 19, 2021) (finding 21,000 jobs in the 18 national economy sufficient); *Anna F. v. Saul*, 2020 WL 7024924, at \*6 (C.D. Cal. Nov. 19 30, 2020) ("Whether 21,100 jobs in the national economy is 'significant' is not entirely 20 settled, yet the relevant caselaw indicates it is."); *Shaw v. Saul*, 2020 WL 13582509, at 21 \*6 (D. Ariz. Oct. 16, 2020) (collecting and comparing cases, and finding 20,797 jobs 22 significant). Therefore, the Court finds that 21,215 jobs in the national economy is 23 significant, and any potential error made by the vocational expert is harmless. See 24 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012); *Tommasetti v. Astrue*, 533 F.3d 25 1035, 1038 (9th Cir. 2008). Therefore, ALJ's decision at step five is supported by 26 substantial evidence and should be affirmed. 27 B.



Subjective Symptom Testimony 28 Plaintiff also argues that the ALJ failed to properly evaluate Plaintiff's symptom 1 testimony. Pl. MSJ at 10-15. Plaintiff argues that the ALJ did not provide specific, clear, 2 and convincing reasons for rejecting Plaintiff's testimony by merely reciting the medical 3 evidence. Id. at 12. 4 1. Legal Standards 5 A claimant's statements of subjective symptoms alone are insufficient grounds to 6 establish disability. 20 C.F.R § 416.929(a). If an ALJ was required to believe every 7 allegation of pain or impairment, disability benefits would run afoul of the Social Security 8 Act and its purpose. *Treichler v. Comm'r*, 775 F.3d 1090, 1106 (9th Cir. 2014). In 9 evaluating the extent to which an ALJ must credit the claimant's report of their 10 symptoms, the Ninth Circuit has stated: 11 First, the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment which could 12 reasonably be expected to produce the pain or other symptoms alleged. In this analysis, the claimant is not required to show that her 13 impairment could reasonably be expected to cause the severity of the symptom she has alleged; she need only show that it could 14 reasonably have caused some degree of the symptom. Nor must a claimant produce objective medical evidence of the pain or fatigue 15 itself, or the severity thereof. 16 If the claimant satisfies the first step of this analysis, and there is no evidence of malingering, the ALJ can reject the claimant's testimony 17 about the severity of her symptoms only by offering specific, clear and convincing reasons for doing so. This is not an easy requirement to 18 meet: The clear and convincing standard is the most demanding required in Social Security cases. 19 *Revels v. Berryhill*, 874 F.3d 648, 655 (9th Cir. 2017) (quotations omitted). The ALJ's 20 reasons for discounting or rejecting a claimant's subjective symptom testimony must be 21 sufficiently specific to allow a reviewing court to conclude the adjudicator did not 22 arbitrarily discredit a claimant's testimony. *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 23 (9th Cir. 2015) (quotations omitted). Examples of "specific, clear and convincing 24 reasons" for discounting or rejecting a claimant's subjective symptom testimony include: 25 prescription of conservative treatment, *Parra v. Astrue*, 481 F.3d 742, 750-51 (9th Cir. 26 2007); inconsistencies between the plaintiff's testimony and conduct, including daily 27 activities, *Burch v. Barnhart*, 400 F.3d 676, 680-81 (9th Cir. 2005); whether the alleged 28 1 symptoms are consistent with the medical evidence of record, *Rollins v. Massanari*, 261 2 F.3d 853, 857 (9th Cir. 2001); an unexplained or inadequately explained failure to follow 3 a prescribed course of treatment, *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991); 4 or prior inconsistent statements by the plaintiff, *Fair v. Bowen*, 885 F.2d 597, 604 n.5 5 (9th Cir. 1989). A lack of corroborating, objective medical evidence alone is insufficient 6 grounds for an ALJ to discount subjective symptoms; however, it is a factor the ALJ may 7 consider. *Rollins*, 261 F.3d at 857 (citing 20 C.F.R § 404.1529(c)(2)). 8 2. Symptom Testimony re: Physical Impairments4 9 Regarding Plaintiff's statements that she is disabled due to IBS with constipation, 10 the ALJ began by summarizing Plaintiff's statements from her disability and function 11 reports and at the 2023 hearing. AT 31-32. In Plaintiff's 2021 function report, Plaintiff 12 indicated that her conditions affect her ability to do the following: lifting, squatting, 13 bending, standing, walking,

sitting, kneeling, and stair-climbing. AT 403. Plaintiff also 14 stated she could walk half a block to a block and had to rest 5-10 minutes between 15 walks. Id. Plaintiff stated that she takes care of her son, she can dress herself, take 16 showers, and feed herself. AT 398. She does housework and goes outside everyday 17 with her son. AT 400-01. Plaintiff drives and does shopping for food, soccer shoes, and 18 clothes for her son. AT 401. She likes to sing and watch her son play soccer on the 19 weekends. AT 402. She goes to the soccer field and church regularly, and previously 20 worked for Door Dash. Id.; see AT 56-57. Plaintiff indicated that she does not go to 21 gatherings because she is embarrassed of her restroom usage and how she looks. Id. 22 At the 2023 hearing, Plaintiff stated that her stomach is too heavy to stand for 23 work in customer service and cashiering, and the medication she takes is a laxative and 24 she is constantly going back and forth to the restroom. AT 48. Plaintiff states she takes 25 gabapentin, which makes her drowsy, but that she cannot take pain medication because 26 27 4 While the ALJ discusses Plaintiff's mental impairments, Plaintiff does not argue that the ALJ erred in addressing Plaintiff's mental impairments. Therefore, the Court will not 28 address this issue. 1 it makes her constipated. Id. She testified that she could be in the restroom for 30 2 minutes to an hour trying to use the restroom. Id. She testified that she takes her son to 3 soccer practice on Tuesdays and Wednesdays, but using the restroom there is 4 embarrassing. AT 50. Plaintiff goes to the store a couple times a month, cooks meals for 5 her son once a week, and does laundry and cleaning with her son. AT 51. Plaintiff 6 testified that she is not engaged in any social activities. Id. Plaintiff also stated that she 7 experiences pain from bloating that makes it difficult for her to get dressed, that she does 8 not eat a lot and her weight fluctuates. AT 54. Plaintiff stated in the hearing that she is 9 not asking for supplemental security income "for the rest of [her] life," but that she is 10 asking for "a chance to change [her] career, to change [her] life to go a different way 11 besides being a cashier." AT 55. 12 The ALJ concluded the symptoms Plaintiff alleged could be caused by her 13 medically determinable impairments, but "the intensity, persistence and limiting effects of 14 these symptoms are not entirely consistent with the medical evidence and other 15 evidence in the record for the reasons explained in this decision." AT 34. Specifically, the 16 ALJ found Plaintiff's "allegations of physical and mental disability" "not entirely consistent 17 with the medical and other evidence." Id. at 33. 18 The ALJ properly noted the conflicts between Plaintiff's testimony and the medical 19 and other evidence. AT 33. First, the ALJ noted that Plaintiff testified that medications 20 helped with constipation, but she alleges abdominal pain, bloating, and frequent 21 bathroom usage. Plaintiff's medical examinations revealed her abdomen as obese but 22 otherwise soft, nontender, and with normal bowel sounds. Id.; AT 573, 751, 755, 781. 23 The ALJ also noted that even when there were abnormalities, Plaintiff did not appear to 24 be in any distress. AT 33, 558-59 (noting "hypoactive bowel sounds" but appearing "in 25 no acute distress"), 781 (noting abdomen "appears distended" but appearing "in no 26 acute distress"). The ALJ also considered that Plaintiff's gastroenterologist indicated 27 medications were effective in the past. AT 33, 35. The ALJ cites to medical records by 28 1 Michael Ringer, MD and Jana Mooster, MD, who are

discussed in the ALJ opinion.<sup>5</sup> See 2 AT 32. The ALJ discussed that Dr. Ringer reported that Plaintiff complained of 3 abdominal pain, constipation, and diarrhea. Plaintiff's abdomen was non-distended and 4 her gait was normal. Plaintiff's medication had worked well in the past. AT 32, 701-02. 5 The ALJ discussed that Dr. Mooster reported that Plaintiff complained of abdominal pain 6 following surgeries and an examination revealed that Plaintiff was "well appearing and in 7 no acute distress." AT 32. Dr. Mooster found that although Plaintiff's abdomen was 8 obese, it was soft, nontender, and with normal bowel sounds. There were no 9 musculoskeletal or extremity abnormalities. AT 751. An ALJ may weigh objective 10 medical evidence in the record as undercutting the claimant's testimony when the 11 objective medical evidence is inconsistent with Plaintiff's subjective testimony. *Smartt v. 12 Kijakazi*, 53 F.4th 489, 498 (9th Cir. 2022). 13 Second, the ALJ further noted that Plaintiff testified to having frequent bowel 14 movements, but reported having only two bowel movements a day to her medical 15 provider and she has not been back to her gastroenterologist who indicated medications 16 were helpful in the past. AT 33, 554, 559, 702. Plaintiff reported that she is "constantly 17 using the restroom because the medication I take give[s] me diar[rhea]." AT 397. Plaintiff 18 argues that her testimony is not inconsistent with the medical findings because "[d]espite 19 being constipated, using the restroom frequently still occurs." Pl. MSJ at 14. The Court 20 disagrees. The ALJ properly discounted Plaintiff's testimony here because it conflicted 21 with the medical evidence. See *Rollins*, 261 F.3d at 857. The medical evidence showed 22 that Plaintiff reported having only two bowel movements a day, which conflicted with 23 Plaintiff's other testimony. 24 Third, Plaintiff argues that the ALJ "did not rely on evidence of activities that 25 contradicted [Plaintiff's] testimony" or inconsistencies between Plaintiff's testimony and 26 her conduct. Pl. MSJ at 14. The Court disagrees. The ALJ stated that Plaintiff "can 27 5 The ALJ also cites to medical records by two other doctors who are not discussed in 28 the ALJ opinion. 1 perform activities of daily living, care for her child full-time, drive a motor vehicle, take her 2 son to soccer, and attend church," and found that "overall," Plaintiff's "statements 3 regarding severity generally inconsistent with the evidence." AT 33. An ALJ may 4 discount a Plaintiff's statements when they conflict with her activities. *Molina v. Astrue*, 5 674 F.3d 1104, 1112-13 (9th Cir. 2012); *Burch*, 400 F.3d at 680-81. Plaintiff testified that 6 she does not "like to go to people's houses or be around people because [she] ha[s] this 7 issue with going to the bathroom" and she "[does not] like going out a lot." AT 49. She 8 stated that she does not go out "because of the restroom issue, because of how [she] 9 look[s]," and because her "stomach is really big." *Id.* However, Plaintiff did go out to go 10 shopping, attend church, take her son to soccer practice twice a week and to soccer 11 games on the weekend, and work as a Door Dash driver. AT 28, 30, 32-33, 50, 402. The 12 ALJ reasonably discounted Plaintiff's statements because they contradicted her 13 activities. 14 Fourth, the ALJ also considered Plaintiff's diary of symptoms but did not find them 15 persuasive. AT 34. She found that Plaintiff's reported symptoms contradicted 16 corresponding treatment notes for those dates. For example, the ALJ found that despite 17 reporting leg pain, head pain, stomach pain, depression, and

shoulder pain in her 18 calendar, the corresponding treatment notes for those dates indicate she was doing 19 “okay” overall. AT 466, 816. The ALJ also found that Plaintiff’s motor activity was 20 unremarkable despite reporting significant physical pain on her calendar. AT 457, 795. 21 The ALJ reasonably discounted this testimony because it conflicted with the medical 22 evidence. See Rollins, 261 F.3d at 857. 23 The ALJ could consider the objective medical evidence in resolving conflicts in 24 Plaintiff’s testimony, and did not err in finding Plaintiff’s own stated extreme limitations 25 contradicted by the medical findings in the record. See Rollins, 261 F.3d at 857; see also 26 *Marshall v. Saul*, 830 F. App’x 179, 181 (9th Cir. 2020) (finding clear and convincing 27 reasons to reject the plaintiff’s symptom testimony where there was a “disjunction 28 between his statements that [he] could not walk and medical evidence showing that his 1 gait was normal”). 2 Plaintiff argues that the ALJ does not provide specific, clear, and convincing 3 reasons for rejecting Plaintiff’s testimony “by simply reciting the medical evidence in 4 support of her residual functional capacity determination.” Pl. MSJ at 12. Plaintiff’s 5 argument fails because the ALJ connected this evidence to her conclusions “for the 6 reasons explained in this decision” (AT 34), and was not required to re-summarize this 7 evidence in the paragraph where she stated her conclusions on Plaintiff’s symptom 8 testimony. See Treichler, 775 F.3d at 1099 (reminding that courts should not reverse if 9 “the agency’s path may reasonably be discerned,” even if explained with “less than ideal 10 clarity” (citations omitted)). 11 Plaintiff also argues that the ALJ did not rely on Plaintiff’s work record, and thus 12 did not consider all relevant or probative evidence in the record. Pl. MSJ at 14. This is 13 incorrect. The ALJ did discuss Plaintiff’s work record. The ALJ noted that Plaintiff worked 14 for Door Dash for two months, but found these earnings did not reach the level of 15 substantial gainful activity, and acknowledged that Plaintiff stopped working due to her 16 impairments. AT 28. The ALJ also found that Plaintiff was unable to perform past 17 relevant work. AT 35. The ALJ did consider Plaintiff’s work record, and as Defendant 18 notes, Plaintiff has not explained how this helps her case. See Def. MSJ at 4 (ECF No. 19 21). 20 Finally, the ALJ did not wholly discount Plaintiff’s symptom statements, such that 21 she was deemed able to perform any job in the national economy. Plaintiff was found to 22 be limited to light work, and “could perform simple, routine, repetitive task[s] with only 23 occasional interaction with the public.” AT 31 Under the regulations, Plaintiff’s 24 statements of subjective symptoms alone are insufficient grounds to establish disability. 25 20 C.F.R. § 416.929(a). The Court finds the ALJ provided clear and convincing reasons 26 for discounting the more severe aspects of Plaintiff’s symptom testimony regarding her 27 physical impairments, and the ALJ’s opinion is supported by substantial evidence and is 28 not legally erroneous. See *Brown-Hunter*, 806 F.3d at 493.

## 1 || V. CONCLUSION

2 Having addressed all of the points of error raised by Plaintiff, the Court finds the 3 || ALJ’s decision otherwise supported by substantial evidence in the record and free from 4 | legal error. See *Ford*, 950 F.3d at 1148 (noting that a district court may reverse only if 5 || the ALJ’s decision

“contains legal error or is not supported by substantial evidence”).

6 ORDER

7 Accordingly, the Court ORDERS: 8 1. Plaintiffs motion for summary judgment (ECF No. 17) is  
DENIED; 9 2. The Commissioner’s cross-motion (ECF No. 21) is GRANTED; 10 3. The final  
decision of the Commissioner is AFFIRMED; and 11 4. The Clerk of the Court is directed to  
CLOSE this case. 12 13 | Dated: March 17, 2025 C iy S \U

14 CHI SOO KIM

45 UNITED STATES MAGISTRATE JUDGE

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