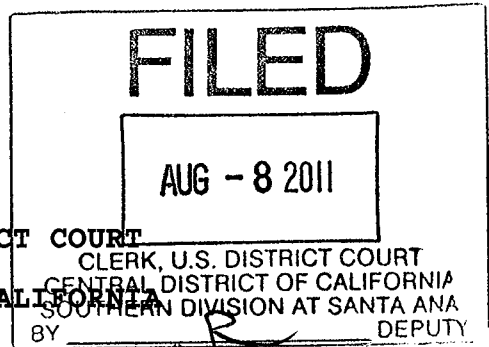


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6 UNITED STATES DISTRICT COURT  
7 CENTRAL DISTRICT OF CALIFORNIA  
8 WESTERN DIVISION

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10 LAURA HARO, )  
11 )  
12 ) Plaintiff, )  
13 )  
14 ) v. )  
15 )  
16 ) MICHAEL J. ASTRUE, )  
 ) Commissioner of the )  
 ) Social Security )  
 ) Administration, )  
 )  
 ) Defendant. )

Case No. CV 10-9429-MLG  
MEMORANDUM OPINION AND ORDER

17  
18 Plaintiff Laura Haro seeks judicial review of the Commissioner's  
19 final decision denying her application for Social Security Disability  
20 Insurance ("DIB") benefits. For the reasons set forth below, the  
21 decision of the Social Security Commissioner is reversed, and the matter  
22 is remanded for further proceedings consistent with this opinion.  
23

24 **I. Background**

25 Plaintiff was born on November 3, 1955. (Administrative Record  
26 ("AR") at 44, 123.) She completed high school and has no other  
27 educational or vocational training. (AR at 132.) She has worked as a  
28 customer services representative and as the director of a daycare

1 center. (AR at 128.)

2 Plaintiff filed an application for benefits on October 2, 2007,  
3 alleging that she had been disabled since October 1, 2006 due to  
4 disorders of the back, muscle, ligament and fascia. (AR at 44.)  
5 Plaintiff's application was denied initially on January 31, 2008, and  
6 upon reconsideration on May 14, 2008. (AR at 46-49, 51-55.) An  
7 administrative hearing was held on August 26, 2009, before  
8 Administrative Law Judge ("ALJ") Joseph D. Schloss at which Plaintiff  
9 was represented by an attorney. Plaintiff testified at the hearing, as  
10 did a vocational expert. (AR 27-43.)

11 On November 19, 2009, ALJ Schloss denied Plaintiff's application  
12 for benefits. (AR at 17-24.) The ALJ found that Plaintiff had not  
13 engaged in substantial gainful activity during the period at issue. (AR  
14 at 19.) The ALJ further found that the medical evidence established that  
15 Plaintiff suffered from the severe impairments of piriformis syndrome  
16 and back and muscle discomfort. (Id.) However, the ALJ concluded that  
17 Plaintiff's impairments did not meet, or were not medically equal to,  
18 one of the listed impairments in 20 C.F.R., Part 404, Subpart P,  
19 Appendix 1. (AR at 20.) The ALJ next found that Plaintiff retained the  
20 residual functional capacity ("RFC") to perform light work as defined in  
21 20 C.F.R. 404.1567(b) with the following exceptions:

22 she is limited to walking no more than two hours in an eight-  
23 hour workday and occasional climbing of ramps or stairs and  
24 occasional bending, stooping, kneeling, crawling, squatting or  
25 balancing. Additionally, she would be limited to no climbing  
26 of ladders, ropes or scaffolds and no work around moving  
27 machinery or unprotected heights.

28 (Id.)

1 The ALJ determined that Plaintiff was able to perform her past  
2 relevant work as a customer service representative or as a daycare  
3 director. (AR at 23.) The ALJ concluded that Plaintiff was not  
4 disabled within the meaning of the Social Security Act. See 20 C.F.R.  
5 § 416.920(f).

6 On August 27, 2010, the Appeals Council denied review (AR at 3-5)  
7 and Plaintiff timely commenced this action for judicial review. On  
8 August 1, 2011, the parties filed a Joint Stipulation ("Joint Stip.")  
9 of disputed facts and issues. Plaintiff contends that (1) the ALJ's  
10 residual functional capacity assessment is not supported by  
11 substantial evidence, and (2) the ALJ failed to make a proper  
12 credibility determination. (Joint Stip. at 2.) Plaintiff seeks a  
13 reversal of the Commissioner's denial of her application and payment  
14 of benefits or, in the alternative, remand for a new administrative  
15 hearing. (Joint Stip. at 23.) The Commissioner requests that the ALJ's  
16 decision be affirmed. (Joint Stip. at 24.)

17 After reviewing the parties' respective contentions and the  
18 record as a whole, the Court finds Plaintiff's contention regarding  
19 the ALJ's failure to make a proper credibility determination to be  
20 meritorious and remands this matter for further proceedings consistent  
21 with this opinion.<sup>1</sup>

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26 <sup>1</sup> Because the ALJ erred by failing to provide clear and specific  
27 reasons for determining that Plaintiff was not fully credible, the Court  
28 does not reach the remaining issue and will not decide whether this  
issue would independently warrant relief. Upon remand, the ALJ may wish  
to consider the other issue raised by Plaintiff.

1 **II. Standard of Review**

2 Under 42 U.S.C. § 405(g), a district court may review the  
3 Commissioner's decision to deny benefits. The Commissioner's or ALJ's  
4 decision must be upheld unless "the ALJ's findings are based on legal  
5 error or are not supported by substantial evidence in the record as a  
6 whole." *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1990); *Parra*  
7 *v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence  
8 means such evidence as a reasonable person might accept as adequate to  
9 support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971);  
10 *Widmark v. Barnhart*, 454 F.3d 1063, 1066 (9th Cir. 2006). It is more  
11 than a scintilla, but less than a preponderance. *Robbins v. Soc. Sec.*  
12 *Admin.*, 466 F.3d 880, 882 (9th Cir. 2006). To determine whether  
13 substantial evidence supports a finding, the reviewing court "must  
14 review the administrative record as a whole, weighing both the  
15 evidence that supports and the evidence that detracts from the  
16 Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th  
17 Cir. 1996). "If the evidence can support either affirming or reversing  
18 the ALJ's conclusion," the reviewing court "may not substitute its  
19 judgment for that of the ALJ." *Robbins*, 466 F.3d at 882.

20  
21 **III. Discussion**

22 Plaintiff contends that the ALJ improperly discredited her  
23 subjective symptom testimony. (Joint Stip. at 12.) To determine  
24 whether a claimant's testimony about subjective pain or symptoms is  
25 credible, an ALJ must engage in a two-step analysis. *Vasquez v.*  
26 *Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (citing *Lingenfelter v.*  
27 *Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007)). First, the ALJ must  
28 determine whether the claimant has presented objective medical

1 evidence of an underlying impairment which could reasonably be  
2 expected to produce the alleged pain or other symptoms. *Lingenfelter*,  
3 504 F.3d at 1036. "[O]nce the claimant produces objective medical  
4 evidence of an underlying impairment, an adjudicator may not reject a  
5 claimant's subjective complaints based solely on a lack of objective  
6 medical evidence to fully corroborate the alleged severity of pain."  
7 *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc). To  
8 the extent that an individual's claims of functional limitations and  
9 restrictions due to alleged pain is reasonably consistent with the  
10 objective medical evidence and other evidence in the case, the  
11 claimant's allegations will be credited. SSR 96-7p, 1996 WL 374186 at  
12 \*2 (explaining 20 C.F.R. §§ 404.1529(c)(4), 416.929(c)(4)).<sup>2</sup>

13 Unless there is affirmative evidence showing that the claimant is  
14 malingering, the ALJ must provide specific, clear and convincing  
15 reasons for discrediting a claimant's complaints. *Robbins*, 466 F.3d at  
16 883. "General findings are insufficient; rather, the ALJ must identify  
17 what testimony is not credible and what evidence undermines the  
18 claimant's complaints." *Reddick*, 157 F.3d at 722 (quoting *Lester v.*  
19 *Chater*, 81 F.3d 821, 834 (9th Cir. 1996)). The ALJ must consider a  
20 claimant's work record, observations of medical providers and third  
21 parties with knowledge of claimant's limitations, aggravating factors,  
22 functional restrictions caused by symptoms, effects of medication, and  
23 the claimant's daily activities. *Smolen v. Chater*, 80 F.3d 1273, 1283-  
24 84 & n.8 (9th Cir. 1996). The ALJ may also consider an unexplained

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26 <sup>2</sup> "The Secretary issues Social Security Rulings to clarify the  
27 Secretary's regulations and policy .... Although SSRs are not published  
28 in the federal register and do not have the force of law, [the Ninth  
Circuit] nevertheless give[s] deference to the Secretary's  
interpretation of its regulations." *Bunnell*, 947 F.2d at 346 n.3.

1 failure to seek treatment or follow a prescribed course of treatment  
2 and employ other ordinary techniques of credibility evaluation. *Id.*  
3 (citations omitted).

4 Plaintiff testified that she has difficulty in standing, sitting  
5 and walking due to muscle spasms and pain in her right leg and  
6 buttock. (AR at 28-30.) She also testified that she has taken pain  
7 medication and had steroid injections but that it only helps  
8 temporarily and that then the pain returns. (AR at 31-32.) Here, the  
9 ALJ found that Plaintiff's medical impairments could reasonably be  
10 expected to produce the alleged symptoms. (AR at 23.) He was therefore  
11 required to provide specific, clear and convincing reasons for  
12 rejecting Plaintiff's subjective allegations of pain and functional  
13 limitations.

14 The ALJ provided ten reasons for rejecting Plaintiff's subjective  
15 testimony to the extent it indicated limitations greater than those  
16 articulated in the RFC assessment. (AR at 22-23.) Seven out of ten of  
17 these reasons were that the objective medical evidence did not  
18 corroborate the alleged pain severity. (*Id.*) Although "the medical  
19 evidence is a relevant factor in determining the severity of the  
20 claimant's pain and its disabling effects," once a claimant produces  
21 objective medical evidence of an underlying impairment, an ALJ "may  
22 not reject a claimant's subjective complaints based solely on lack of  
23 objective medical evidence to fully corroborate the alleged severity  
24 of pain." *Rollins v. Massanari*, 261 F.3d 853, 856-57 (9th Cir. 2001).  
25 Thus, only if the other reasons upon which the ALJ based his  
26 credibility finding are supported by substantial evidence in the  
27 record, is the lack of corroborating medical evidence a valid reason  
28 for rejecting Plaintiff's subjective symptom and pain testimony.

1           However, the three other reasons posited by the ALJ for rejecting  
2 Plaintiff's testimony are not specific, clear and convincing. First,  
3 the ALJ stated that Plaintiff was not fully credible based upon the  
4 fact that "when discussing the claimant's impairments, no physician,  
5 neither any of the claimant's treating physicians or a State Agency  
6 physician, ever opined that listing level limitations were ever met or  
7 equaled." (AR at 23.) This is not a legally sufficient reason for  
8 rejecting Plaintiff's subjective testimony. Whether or not an  
9 impairment meets or medically equals a listed impairment has no  
10 reasonable bearing upon a claimant's credibility.

11           Second, the ALJ stated that Plaintiff was not fully credible  
12 because "on multiple occasions [she] was directed to discontinue  
13 smoking; however she had continued to smoke despite medical advice."  
14 (AR at 23.) An "unexplained or inadequately explained failure to seek  
15 treatment or to follow a prescribed course of treatment" may be  
16 considered by the ALJ in weighing a claimant's credibility. *Smolen v.*  
17 *Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). However, here, it is  
18 entirely unclear how the fact that Plaintiff did not follow medical  
19 advice to quit smoking has any bearing upon whether she credibly  
20 experienced pain in her leg and buttocks from piriformis syndrome.

21           Finally, the ALJ found that Plaintiff's ability to perform  
22 various activities of daily living discredited her claims of  
23 debilitating pain. The ALJ noted that Plaintiff can perform tasks such  
24 as "independently caring for her own personal hygiene; performing  
25 light household chores; grocery shopping; driving a vehicle; and  
26 ambulating without any assistive device." (AR at 22.) If a claimant  
27 "is able to perform household chores and other activities that involve  
28 many of the same physical tasks as a particular type of job," an ALJ

1 may consider this as a reason to discredit the claimant's pain  
2 testimony. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). On the  
3 other hand, "[t]he Social Security Act does not require that claimants  
4 be utterly incapacitated to be eligible for benefits," *Howard v.*  
5 *Heckler*, 782 F.2d 1484, 1488 (9th Cir. 1986), and "many home  
6 activities are not easily transferable to what may be the more  
7 grueling environment of the workplace, where it might be impossible to  
8 periodically rest or take medication." *Fair*, 885 F.2d at 603. It is  
9 not clear from the record here whether Plaintiff's activities of daily  
10 living involve the performance of any physical tasks that are  
11 transferable to the work setting such that they would discredit or  
12 undermine Plaintiff's subjective complaints. The ALJ must make a more  
13 specific finding regarding Plaintiff's activities of daily living in  
14 order to reject Plaintiff's testimony on that basis.

15 In sum, the reasons given by the ALJ were not supported by  
16 substantial evidence in the record and were therefore insufficient to  
17 reject Plaintiff's testimony regarding her symptoms and related  
18 limitations.

19  
20 **IV. Conclusion**

21 The decision whether to remand for further proceedings is within  
22 this Court's discretion. *Harman v. Apfel*, 211 F.3d 1172, 1175-78 (9th  
23 Cir. 2000). Where no useful purpose would be served by further  
24 administrative proceedings, or where the record has been fully  
25 developed, it is appropriate to exercise this discretion to direct an  
26 immediate award of benefits. *Id.* at 1179 ("[T]he decision of whether  
27 to remand for further proceedings turns upon the likely utility of  
28 such proceedings."); *Benecke v. Barnhart*, 379 F.3d 587, 593 (9th Cir.



1 2004). However, where there are outstanding issues that must be  
2 resolved before a determination of disability can be made, and it is  
3 not clear from the record that the ALJ would be required to find the  
4 claimant disabled if all the evidence were properly evaluated, remand  
5 is appropriate. *Bunnell v. Barnhart*, 336 F.3d 1112, 1115-16 (9th Cir.  
6 2003); *see also Connett v. Barnhart*, 340 F.3d 871, 876 (9th Cir. 2003)  
7 (remanding case for reconsideration of credibility determination).

8 Here, the ALJ failed to explain with sufficient specificity the  
9 basis for his determination that Plaintiff was not fully credible  
10 regarding the intensity, persistence, and limiting effects of her  
11 symptoms. Accordingly, the case is remanded for further proceedings  
12 consistent with this opinion and order.

13  
14 DATED: August 8, 2011

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17 **MARC L. GOLDMAN**

18 Marc L. Goldman  
19 United States Magistrate Judge  
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