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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

9	KAREN LOGAN,	)	Case No. EDCV 10-1310-MLG
10		)	
11	Plaintiff,	)	MEMORANDUM OPINION AND ORDER
12	v.	)	
13	MICHAEL J. ASTRUE,	)	
14	Commissioner of the Social	)	
15	Security Administration,	)	
	Defendant.	)	

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Plaintiff Karen Logan seeks judicial review of the Social Security Commissioner's denial of her application for Social Security Disability Insurance ("SSDI") benefits. For the reasons set forth below, the decision of the Commissioner is reversed, and the matter is remanded for further proceedings consistent with this opinion.

**I. Facts and Procedural Background**

Plaintiff was born on July 2, 1957. She completed two years of college and has work experience as a phone company customer service agent and a banking operational officer. (Administrative Record ("AR") 98, 103, 108.) Plaintiff filed her application for SSDI

1 benefits on November 29, 2007, alleging disability beginning April  
2 11, 2005, due to cervical disc impairment and depression. (AR 93,  
3 98.) Her application was denied initially on April 28, 2008, and  
4 upon reconsideration on August 27, 2008. (AR 43-47, 51-55.) An  
5 administrative hearing was held on August 4, 2009, before  
6 Administrative Law Judge ("ALJ") F. Keith Varni. Plaintiff was  
7 represented by counsel and testified on her own behalf. (AR 21-38.)

8 ALJ Varni issued an unfavorable decision on October 30, 2009.  
9 (AR 9-18.) The ALJ found that Plaintiff suffered from the severe  
10 impairment of cervical degenerative disc disease status post  
11 fusion. (Id.) The ALJ determined that this severe impairment did  
12 not meet the requirements of a listed impairment found in 20 C.F.R.  
13 Part 404, Subpart P, Appendix 1. (AR 13.)

14 The ALJ further found that Plaintiff retained the residual  
15 functional capacity ("RFC") to perform light work "except she is  
16 limited in pushing and pulling with the lower extremities; can  
17 occasionally climb ramps and stairs and frequently balance, stoop,  
18 kneel, crouch or crawl, but never climb ladders, ropes or  
19 scaffolds; is limited in reaching in all directions; and she must  
20 avoid concentrated exposure to hazards (machinery, heights, etc.)."  
21 (AR 13.) The ALJ concluded that Plaintiff could return to her past  
22 relevant work as a customer service representative and banking  
23 operational officer, and was therefore not entitled to disability  
24 benefits. (AR 17.)

25 The Appeals Council denied review on June 30, 2010, and  
26 Plaintiff timely commenced this action for judicial review. On  
27 March 10, 2011, the parties filed a Joint Stipulation ("Joint  
28 Stip.") of disputed facts and issues, including the following

1 claims of error: (1) the ALJ failed to properly consider the  
2 opinions of Plaintiff's treating physicians; (2) the ALJ failed to  
3 provide a complete and proper assessment of Plaintiff's RFC; (3)  
4 the ALJ failed to properly consider the actual mental and physical  
5 demands of Plaintiff's past relevant work; and (4) the ALJ did not  
6 make proper credibility findings. (Joint Stip. 2-3.) Plaintiff asks  
7 the Court to reverse and order an award of benefits, or in the  
8 alternative, remand for further administrative proceedings. (Joint  
9 Stip. 20.) The Commissioner requests that the ALJ's decision be  
10 affirmed. (Joint Stip. 20-21.)

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

## 16 17 **II. Standard of Review**

18 Under 42 U.S.C. § 405(g), a district court may review the  
19 Commissioner's decision to deny benefits. The Commissioner's  
20 decision must be upheld unless "the ALJ's findings are based on  
21 legal error or are not supported by substantial evidence in the  
22 record as a whole." *Tackett v. Apfel*, 180 F.3d 1094 (9th Cir.  
23 1999); *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

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

1 Substantial evidence means more than a scintilla, but less than a  
2 preponderance; it is evidence that a reasonable person might accept  
3 as adequate to support a conclusion. *Lingenfelter v. Astrue*, 504  
4 F.3d 1028, 1035 (9th Cir. 2007)(citing *Robbins v. Soc. Sec. Admin.*,  
5 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether  
6 substantial evidence supports a finding, the reviewing court "must  
7 review the administrative record as a whole, weighing both the  
8 evidence that supports and the evidence that detracts from the  
9 Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715, 720  
10 (9th Cir. 1996). "If the evidence can support either affirming  
11 or reversing the ALJ's conclusion," the reviewing court "may not  
12 substitute its judgment for that of the ALJ." *Robbins*, 466 F.3d at  
13 882.

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15 **III. The ALJ Improperly Discredited Plaintiff's Subjective Symptom**  
16 **Testimony**

17 Plaintiff contends that the ALJ failed to provide clear and  
18 convincing reasons for discrediting her subjective symptom  
19 testimony. (Joint Stip. 14.) Plaintiff testified to the following  
20 at the administrative hearing: She stopped working because she was  
21 having pain in her neck, head, back, arms, shoulders and hands due  
22 to cervical disc fusion surgery she had in 2003. (AR 24.) She  
23 decided not to have additional surgery. (Id.) She receives epidural  
24 injections once a month at a pain management clinic, which help  
25 relieve her pain for approximately two weeks, and she also takes  
26 pain medication. (AR 24-26, 32-33.) She cannot return to her past  
27 job, which primarily involved working at a computer station,  
28 because she would not be able to "get up and leave and rest and

1 walk or stand when [she] needs to do it." (AR 27-28.) While  
2 working, her pain would increase in intensity during the course of  
3 a work week. (AR 28.) Her daily pain level ranges from a six or  
4 seven on a scale of one to ten. (AR 31.) In addition, she is  
5 generally able to sit or stand for approximately one hour before  
6 she must change positions. (AR 31-32.)

7 To determine whether a claimant's testimony about subjective  
8 pain or symptoms is credible, an ALJ must engage in a two-step  
9 analysis. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)  
10 (citing *Lingenfelter* 504 F.3d at 1035-36). First, the ALJ must  
11 determine whether the claimant has presented objective medical  
12 evidence of an underlying impairment which could reasonably be  
13 expected to produce the alleged pain or other symptoms.  
14 *Lingenfelter*, 504 F.3d at 1036. "[O]nce the claimant produces  
15 objective medical evidence of an underlying impairment, an  
16 adjudicator may not reject a claimant's subjective complaints based  
17 solely on a lack of objective medical evidence to fully corroborate  
18 the alleged severity of pain." *Bunnell v. Sullivan*, 947 F.2d 341,  
19 345 (9th Cir. 1991) (en banc). To the extent that an individual's  
20 claims of functional limitations and restrictions due to alleged  
21 pain is reasonably consistent with the objective medical evidence  
22 and other evidence in the case, the claimant's allegations will be  
23 credited. SSR 96-7p, 1996 WL 374186 at \*2 (explaining 20 C.F.R. §§  
24 404.1529(c)(4), 416.929(c)(4)).<sup>2</sup>

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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  
28 published 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

1 Unless there is affirmative evidence showing that the claimant  
2 is malingering, the ALJ must provide specific, clear and convincing  
3 reasons for discrediting a claimant's complaints. *Robbins*, 466 F.3d  
4 at 883. "General findings are insufficient; rather, the ALJ must  
5 identify what testimony is not credible and what evidence  
6 undermines the claimant's complaints." *Reddick*, 157 F.3d at 722  
7 (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996)). The  
8 ALJ must consider a claimant's work record, observations of medical  
9 providers and third parties with knowledge of claimant's  
10 limitations, aggravating factors, functional restrictions caused  
11 by symptoms, effects of medication, and the claimant's daily  
12 activities. *Smolen v. Chater*, 80 F.3d 1273, 1283-84 & n.8 (9th Cir.  
13 1996). The ALJ may also consider an unexplained failure to seek  
14 treatment or follow a prescribed course of treatment and employ  
15 other ordinary techniques of credibility evaluation. *Id.* (citations  
16 omitted).

17 Here, the ALJ concluded that Plaintiff's medically  
18 determinable impairments "could reasonably be expected to cause the  
19 alleged symptoms." (AR 14.) However, the ALJ rejected Plaintiff's  
20 description of her symptoms "to the extent they are inconsistent"  
21 with the ALJ's assessment that Plaintiff retained the RFC to  
22 perform her past relevant work. (*Id.*) Because there was no evidence  
23 of malingering, the ALJ was required to provide specific, clear and  
24 convincing reasons for rejecting Plaintiff's subjective allegations  
25 of pain and functional limitations.

26 The ALJ provided two reasons for rejecting Plaintiff's  
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28 at 346 n.3.

1 testimony. First, the ALJ found that the objective medical evidence  
2 did not support Plaintiff's subjective pain and symptom testimony,  
3 relying upon two medical reports: a June 23, 2006 report from Dr.  
4 Richard Ostrup, M.D. and an April 8, 2008 report by Dr. Thomas  
5 Sabourin, M.D. (AR 14.) "While subjective pain testimony cannot be  
6 rejected on the sole ground that it is not fully corroborated by  
7 objective medical evidence, the medical evidence is still a  
8 relevant factor in determining the severity of the claimant's pain  
9 and its disabling effects." *Rollins v. Massanari*, 261 F.3d 853, 857  
10 (9th Cir. 2001) (citing 20 C.F.R. § 404.1529(c)(2)).

11 In citing Dr. Ostrup's medical report, the ALJ merely stated  
12 that Dr. Ostrup "reported that claimant was neurologically intact."  
13 (AR 14.) However, the ALJ omitted various other portions of Dr.  
14 Ostrup's report, which were more supportive of Plaintiff's  
15 subjective symptom and pain testimony. For example, Dr. Ostrup  
16 diagnosed Plaintiff with "[l]eft C7 radiculopathy associated with  
17 persistent and symptomatic foraminal stenosis at C6-7." (AR 473.)  
18 He also stated that Plaintiff should have a second surgery as she  
19 "would benefit from re-exploration of the C6-7 disc with fusion"  
20 because it appeared that "a significant component of [Plaintiff's]  
21 discomfort is related to further compression of the left C7 nerve  
22 root." (AR 472.) Thus, the ALJ appears not to have considered Dr.  
23 Ostrup's report as a whole, but instead emphasized only selective  
24 evidence which was unfavorable to Plaintiff.

25 The ALJ also cited the report of the examining physician, Dr.  
26 Sabourin, who determined that the results of Plaintiff's various  
27 tests were largely normal. (AR 518-522.) Dr. Sabourin also noted  
28 that Plaintiff "enters today with pain syndrome above and beyond

1 the objective findings and the severity and duration of her  
2 symptoms disproportionate to the determinable condition." (AR 522.)  
3 However, as Plaintiff notes, Dr. Sabourin never stated that  
4 Plaintiff was exaggerating her pain or symptoms nor that she was  
5 malingering. Further, as discussed above, subjective pain testimony  
6 cannot be rejected based upon a lack of medical evidence alone. See  
7 *Rollins*, 261 F.3d at 857.

8 In fact, aside from Dr. Sabourin's report, the medical record  
9 as a whole largely supports Plaintiff's claims of severe and  
10 persistent pain. Plaintiff's history of complaints and attempts to  
11 obtain relief for her pain allegations are well documented. For  
12 example, Plaintiff has extensive medical records related to her  
13 treatment at the Temecula Pain Management Center for the period  
14 from July 22, 2005 to May 9, 2008, records which the ALJ completely  
15 failed to discuss. (AR 238-371, 532-537.) See Social Security  
16 Regulation ("SSR") 96-7P, 1996 WL 374186 at \*7 ("In general, a  
17 longitudinal medical record demonstrating an individual's attempts  
18 to seek medical treatment for pain or other symptoms and to follow  
19 that treatment once it is prescribed lends support to an  
20 individual's allegations of intense or persistent pain or other  
21 symptoms for the purposes of judging the credibility of the  
22 individual's statements.").

23 In support of his argument that the ALJ properly addressed  
24 Plaintiff's subjective complaints, the Commissioner points to other  
25 evidence in the record which allegedly discredits Plaintiff's  
26 subjective statements. (Joint Stip. 18-19.) For example, the  
27 Commissioner notes that the results of assorted medical tests  
28 performed by various physicians were largely unremarkable. (Joint



1 Stip. 18-19, citing AR 151-152, 157-159, 167, 463, 520-521.)  
2 However, even assuming that this medical evidence in the record  
3 provides sufficient reason for the ALJ to reject Plaintiff's  
4 subjective complaints, the ALJ did not cite this evidence in  
5 support of his adverse credibility determination. (AR 14-15.) It  
6 would be error for this Court to affirm the ALJ's decision based  
7 upon reasons that the ALJ did not discuss. *Connett v. Barnhart*, 340  
8 F.3d 871, 874 (9th Cir. 2003).

9 Second, the ALJ found Plaintiff not fully credible because her  
10 ability to perform certain activities of daily living was at odds  
11 with the alleged severity of her impairment. (AR 15.) Although a  
12 claimant "does not need to be 'utterly incapacitated' in order to  
13 be disabled," *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir.  
14 2001), the ability to perform certain activities of daily life can  
15 support a finding that the claimant's reports of his or her  
16 impairment are not fully credible. See *Bray v. Comm'r of Soc. Sec.*  
17 *Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009); *Curry v. Sullivan*, 925  
18 F.2d 1127, 1130 (9th Cir. 1990) (finding that the claimant's  
19 ability to "take care of her personal needs, prepare easy meals, do  
20 light housework and shop for some groceries ... may be seen as  
21 inconsistent with the presence of a condition which would preclude  
22 all work activity") (citing *Fair*, 885 F.2d at 604). The problem in  
23 this case, however, is that the ALJ failed to identify any  
24 particular activities that Plaintiff is capable of performing which  
25 would be at odds with her claimed inability to work. Rather, the  
26 ALJ merely stated that Plaintiff "reported in her adult function  
27 reports that she is able to perform a wide range of activities of  
28 daily living." (AR 25.) General findings like these are

1 insufficient. The ALJ must specify what evidence in the record  
2 undermines Plaintiff's credibility.

3 In sum, each of the ALJ's reasons for rejecting Plaintiff's  
4 testimony was either legally improper or unsupported by substantial  
5 evidence in the record.

#### 6 7 **IV. Conclusion**

8 The decision whether to remand for further proceedings is  
9 within this Court's discretion. *Harman v. Apfel*, 211 F.3d 1172,  
10 1175-78 (9th Cir. 2000). Where no useful purpose would be served by  
11 further administrative proceedings, or where the record has been  
12 fully developed, it is appropriate to exercise this discretion to  
13 direct an immediate award of benefits. *Id.* at 1179 ("[T]he decision  
14 of whether to remand for further proceedings turns upon the likely  
15 utility of such proceedings."); *Benecke v. Barnhart*, 379 F.3d 587,  
16 593 (9th Cir. 2004). However, where there are outstanding issues  
17 that must be resolved before a determination of disability can be  
18 made, and it is not clear from the record that the ALJ would be  
19 required to find the claimant disabled if all the evidence were  
20 properly evaluated, remand is appropriate. *Bunnell v. Barnhart*, 336  
21 F.3d 1112, 1115-16 (9th Cir. 2003); *see also Connett*, 340 F.3d at  
22 876 (remanding case for reconsideration of credibility  
23 determination).

24 Here, the ALJ failed to explain with sufficient specificity  
25 the basis for his determination that Plaintiff was not fully  
26 credible regarding the intensity, persistence, and limiting effects  
27 of her symptoms.

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1           Accordingly, the case is remanded for further proceedings  
2 consistent with this opinion and order.<sup>3</sup>

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4 Dated: March 17, 2011



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6           Marc L. Goldman  
7           United States Magistrate Judge

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26           <sup>3</sup> Because a remand is warranted based upon the deficient  
27 credibility finding, the Court has no reason to address the other  
28 claims of error raised. However, without expressing an opinion on  
the merits of those claims, the ALJ should take them into account  
in issuing a new decision.