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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

LOLITA LAHORI,  
Plaintiff,  
v.  
MICHAEL J. ASTRUE,  
Commissioner of Social Security  
Administration,  
Defendant.

) Case No. ED CV 11-1482-SP

) **MEMORANDUM OPINION AND  
ORDER**

**I.**

**INTRODUCTION**

On September 20, 2011, plaintiff Lolita Lahori filed a complaint against defendant Michael J. Astrue, seeking a review of a denial of Supplemental Security Income (“SSI”) benefits. Both plaintiff and defendant have consented to proceed for all purposes before the assigned Magistrate Judge pursuant to 28 U.S.C. § 636(c). The parties’ briefing is now complete, and the court deems the matter suitable for adjudication without oral argument.

Two issues are presented for decision here: (1) whether the Administrative Law Judge (“ALJ”) properly evaluated the relevant medical evidence of record; and

1 (2) whether the ALJ properly evaluated plaintiff's credibility and subjective  
2 symptoms. Pl.'s Mem. at 2-7, 8-11; Def.'s Mem. at 2-6, 6-8.

3 Having carefully studied, inter alia, the parties' written submissions and the  
4 Administrative Record ("AR"), the court finds that the ALJ did not err in evaluating  
5 the relevant medical evidence. The court also finds, however, that the ALJ  
6 inappropriately discounted plaintiff's credibility and her subjective complaints.  
7 Therefore, the court remands this matter to the Commissioner in accordance with  
8 the principles and instructions enunciated in this Memorandum Opinion and Order.

## 9 II.

### 10 FACTUAL AND PROCEDURAL BACKGROUND

11 Plaintiff, who was forty-two years old on the date of her November 23, 2010  
12 administrative hearing, has a tenth-grade education. *See* AR at 31, 118. Her past  
13 relevant work includes employment as a stores laborer, an industrial and  
14 commercial grounds keeper, and a security guard. *Id.* at 38.

15 On March 6, 2009, plaintiff applied for SSI, alleging that she has been  
16 disabled since June 6, 2007 due to diabetes, asthma, and high blood pressure. *See*  
17 AR at 118-21, 131. Plaintiff's application was denied initially and upon  
18 reconsideration, after which she filed a request for a hearing. *Id.* at 44, 45, 46-50,  
19 51, 52-56, 57.

20 On November 23, 2010, plaintiff, represented by counsel, appeared and  
21 testified at a hearing before the ALJ. AR at 23-35, 37-38, 41-43. The ALJ also  
22 heard testimony from Sandra Fioretti, a vocational expert ("VE"). *Id.* at 36-41. On  
23 December 22, 2010, the ALJ denied plaintiff's request for benefits. *Id.* at 11-17.

24 Applying the well-known five-step sequential evaluation process, the ALJ  
25 found, at step one, that plaintiff has not engaged in substantial gainful activity since  
26 March 6, 2009, the date of plaintiff's SSI application. AR at 13.

27 At step two, the ALJ found that plaintiff suffers from severe medically  
28 determinable impairments consisting of diabetes mellitus and hypertension. AR at

1 13. The ALJ further found that plaintiff’s obesity, asthma, and incontinence are  
2 non-severe impairments because they are not documented by the medical evidence  
3 of record as causing work-related limitations. *Id.*

4 At step three, the ALJ determined that the evidence does not demonstrate that  
5 plaintiff’s impairments, either individually or in combination, meet or medically  
6 equal the severity of any listing set forth in 20 C.F.R. Part 404, Subpart P, Appendix  
7 1. AR at 13-14.

8 The ALJ then assessed plaintiff’s residual functional capacity (“RFC”)<sup>1/</sup> and  
9 determined that she can perform light work with the following limitations:

10 “[plaintiff] can lift and/or carry 20 pounds occasionally and 10 pounds frequently;  
11 stand and/or walk 6 hours in an 8-hour workday with normal breaks; sit 6 hours in  
12 an 8-hour workday with normal breaks; and perform postural activities of climbing  
13 stairs, stooping, crouching, crawling, and kneeling occasionally.” AR at 14  
14 (emphasis omitted).

15 The ALJ found, at step four, that plaintiff lacks the ability to perform her past  
16 relevant work. AR at 15.

17 At step five, based upon plaintiff’s vocational factors and RFC, the ALJ  
18 found that “there are jobs that exist in significant numbers in the national economy  
19 that [plaintiff] can perform.” AR at 15 (emphasis omitted). The ALJ therefore  
20 concluded that plaintiff was not suffering from a disability as defined by the Social  
21 Security Act. *Id.* at 11, 17.

22 Plaintiff filed a timely request for review of the ALJ’s decision, which was  
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24 <sup>1/</sup> Residual functional capacity is what a claimant can still do despite existing  
25 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152, 1155  
26 n.5 (9th Cir. 1989). “Between steps three and four of the five-step evaluation, the  
27 ALJ must proceed to an intermediate step in which the ALJ assesses the claimant’s  
28 residual functional capacity.” *Massachi v. Astrue*, 486 F.3d 1149, 1151 n.2 (9th Cir.  
2007).

1 denied by the Appeals Council. AR at 1-3, 5. The ALJ’s decision stands as the  
2 final decision of the Commissioner.

3 **III.**

4 **STANDARD OF REVIEW**

5 This court is empowered to review decisions by the Commissioner to deny  
6 benefits. 42 U.S.C. § 405(g) (2010). The findings and decision of the Social  
7 Security Administration must be upheld if they are free of legal error and supported  
8 by substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001).  
9 But if the court determines that the ALJ’s findings are based on legal error or are  
10 not supported by substantial evidence in the record, the court may reject the findings  
11 and set aside the decision to deny benefits. *Aukland v. Massanari*, 257 F.3d 1033,  
12 1035 (9th Cir. 2001); *Tonapetyan v. Halter*, 242 F.3d 1144, 1147 (9th Cir. 2001).

13 “Substantial evidence is more than a mere scintilla, but less than a  
14 preponderance.” *Aukland*, 257 F.3d at 1035. Substantial evidence is such “relevant  
15 evidence which a reasonable person might accept as adequate to support a  
16 conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276  
17 F.3d at 459. To determine whether substantial evidence supports the ALJ’s finding,  
18 the reviewing court must review the administrative record as a whole, “weighing  
19 both the evidence that supports and the evidence that detracts from the ALJ’s  
20 conclusion.” *Mayes*, 276 F.3d at 459. The ALJ’s decision “cannot be affirmed  
21 simply by isolating a specific quantum of supporting evidence.” *Aukland*, 257 F.3d  
22 at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th Cir. 1998)). If the  
23 evidence can reasonably support either affirming or reversing the ALJ’s decision,  
24 the reviewing court “may not substitute its judgment for that of the ALJ.” *Id.*  
25 (quoting *Matney ex rel. Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992)).

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1 IV.

2 DISCUSSION

3 A. The ALJ Did Not Err in Evaluating the Medical Evidence

4 Plaintiff contends the ALJ “fail[ed] to include Plaintiff’s gastrointestinal  
5 problem and chronic diarrhea as a severe impairment.” Pl.’s Mem. at 3. And  
6 plaintiff argues that “the ALJ has completely disregarded all of the Plaintiff’s  
7 complaints and the medical evidence supporting the impairments, symptoms and  
8 limitations in her upper and lower extremities.” *Id.* at 6. Plaintiff further asserts the  
9 ALJ failed to include any limitations “regarding the Plaintiff’s need to frequently  
10 use the bathroom” or “any limitations involving the Plaintiff’s upper extremities in  
11 his assessment of Plaintiff’s residual functional capacity.” *Id.* at 3, 6.

12 In determining a claimant’s RFC, an ALJ must consider all relevant evidence  
13 in the record, including medical records, lay evidence, and the effects of symptoms  
14 (including pain) that are reasonably attributed to a medically determinable  
15 impairment. *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006); *see*  
16 Social Security Ruling (“SSR”) 96-5p,<sup>2/</sup> 1996 WL 374183, at \*5 (July 2, 1996); 20  
17 C.F.R. § 416.945(a)(3) (2012) (a claimant’s assessed RFC is based upon all the  
18 relevant evidence in the case record). As discussed above, the ALJ determined that  
19 plaintiff has the RFC to perform light work with the following limitations: lift and  
20 carry twenty pounds occasionally and ten pounds frequently; stand and walk six  
21 hours in an eight-hour workday with normal breaks; sit six hours in an eight-hour  
22 workday with normal breaks; and perform postural activities of climbing stairs,

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24 <sup>2/</sup> “The Commissioner issues Social Security Rulings to clarify the Act’s  
25 implementing regulations and the agency’s policies. SSRs are binding on all  
26 components of the [Social Security Administration]. SSRs do not have the force of  
27 law. However, because they represent the Commissioner’s interpretation of the  
28 agency’s regulations, we give them some deference. We will not defer to SSRs if  
they are inconsistent with the statute or regulations.” *Holohan v. Massanari*, 246  
F.3d 1195, 1203 n.1 (9th Cir. 2001) (internal citations omitted).

1 stooping, crouching, crawling, and kneeling occasionally.<sup>3/</sup> AR at 14.

2        Having carefully reviewed the record and the parties’ written submissions, the  
3 court finds that the ALJ’s RFC finding is supported by substantial evidence. In  
4 arriving at the RFC, the ALJ gave significant weight to the medical opinions of state  
5 agency medical consultants Dr. G. Lockie and Dr. J. Hartman. *See* AR at 15; *see*  
6 *also* AR at 200-01, 262-63. Plaintiff argues that “neither of these state agency  
7 opinions should be given any substantial weight given the fact that they reviewed  
8 only a small portion of the available medical evidence of record in this case which  
9 clearly reflects that this Plaintiff is more limited than as suggested by those state  
10 agency reviewing physicians.” Pl.’s Mem. at 4. While it is true that the consulting  
11 physicians did not incorporate each and every medical exhibit in their opinions,  
12 both physicians’ opinions are supported by and consistent with the record as a  
13 whole. *Andrews v. Shalala*, 53 F.3d 1035, 1041-42 (9th Cir. 1995) (non-examining  
14 physician’s opinion may constitute substantial evidence if it is “supported by other  
15 evidence in the record and [is] consistent with it”).

16        Plaintiff argues that “the relevant medical evidence of record reflects Plaintiff  
17 complaining of weakness in her hands and legs which was confirmed on  
18 examination by the treating physician on October 24, 2008.” Pl.’s Mem. at 4 (citing  
19 AR at 187). But a May 8, 2009 examination of plaintiff’s bilateral hands  
20 “reveal[ed] normal alignment at the phalanges, metacarpals, and carpal bones  
21 without fracture, osseous destruction, erosion, soft tissue calcification, or  
22 radiopaque foreign body.” AR at 297-98. Plaintiff also points to records containing  
23 complaints of chronic diarrhea and asserts she “was diagnosed with clostridium  
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25        <sup>3/</sup> Light work “involves lifting no more than 20 pounds at a time with frequent  
26 lifting or carrying of objects weighing up to 10 pounds. Even though the weight  
27 lifted may be very little, a job is in this category when it requires a good deal of  
28 walking or standing, or when it involves sitting most of the time with some pushing  
and pulling of arm or leg controls.” 20 C.F.R. § 416.967(b) (2012).

1 difficile with colitis, which was confirmed by blood test on June 1, 2009.”<sup>4/</sup> Pl.’s  
2 Mem. at 4 (citing AR at 236, 244). Although plaintiff was hospitalized twice – May  
3 31 to June 3, 2009 (*see* AR at 228-61) and December 2 to 6, 2009 (*see* AR at 265-  
4 89) – for chronic diarrhea and diagnosed with *Clostridium difficile*, there is no  
5 objective medical evidence of any limitations due to diarrhea or *Clostridium*  
6 *difficile*. The June 3, 2009 Discharge Summary indicated that plaintiff’s condition  
7 improved with intravenous antibiotics and fluids, and that upon discharge plaintiff’s  
8 “*Clostridium difficile* with colitis . . . [was] improving.” *Id.* at 236. Similarly, the  
9 December 6, 2009 Discharge Summary indicated that plaintiff was “clinically  
10 stable” upon discharge. *Id.* at 288. In addition, plaintiff was advised that she could  
11 be seen as an outpatient, and that she should continue taking Imodium “as needed  
12 for diarrhea.” *Id.*

13 Further, although “Plaintiff has consistently complained of having  
14 neurological symptoms and limitations [a]ffecting her upper and lower extremities”  
15 (Pl.’s Mem. at 5), the objective findings in the record do not support her claims. As  
16 the ALJ found, “[plaintiff] presents with a variety of complaints of musculoskeletal  
17 aches and pains but radiographic evidence is generally negative aside from mild  
18 findings of scoliosis and slight anterior wedging of cervical vertebrae.” AR at 14.  
19 For instance, an examination of plaintiff’s lumbar spine revealed “Mild  
20 levoscoliosis, otherwise negative” results, notwithstanding plaintiff’s allegations of  
21 back strain and sprain. *Id.* at 301. And despite complaining of pain in her feet, an  
22 x-ray of plaintiff’s right and left feet failed to demonstrate any fractures or  
23 dislocation, and revealed no significant radiographically identifiable abnormality.

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25 <sup>4/</sup> *Clostridium difficile* is “a species that is part of the normal colon flora in  
26 infants and some adults; it produces a toxin that can cause pseudomembranous  
27 enterocolitis in patients receiving antibiotic therapy.” *Dorland’s Illustrated*  
28 *Medical Dictionary* 374 (32nd ed. 2012). Colitis is “inflammation of the colon.”  
*Id.* at 384.

1 *Id.* at 318-19.

2 In support of plaintiff's upper and lower extremity impairments, plaintiff  
3 seeks to submit "a nerve conduction study performed on Plaintiff's extremities by  
4 Dr. Raj Karnani, M.D., a neurologist who performed testing on Plaintiff's  
5 extremities on November 17, 2010." Pl.'s Mem. at 6. Plaintiff argues that "this  
6 nerve conduction study is both new and material and should be considered in the  
7 decision making process in this case." *Id.* at 7. Although a district court may  
8 remand a case to the Commissioner for consideration of new evidence, it may do so  
9 "only upon a showing that the[] . . . new evidence . . . is material and that there is  
10 good cause for the failure to incorporate such evidence into the record in a prior  
11 proceeding." 42 U.S.C. § 405(g) (2010); *see Mayes*, 276 F.3d at 462. Also, the  
12 evidence must "relate[] to the period on or before the date of the [ALJ's] hearing  
13 decision." 20 C.F.R. § 416.1476(b)(1) (2012). Evidence is material "where there is  
14 a reasonable possibility that the new evidence would have changed the outcome of  
15 the [Commissioner's] determination had it been before him." *Booz v. Sec'y of*  
16 *Health & Human Servs.*, 734 F.2d 1378, 1380 (9th Cir. 1984) (internal quotation  
17 marks, emphasis, and citation omitted).

18 In this case, even assuming, without deciding, that the nerve conduction study  
19 is material, plaintiff has failed to demonstrate "good cause for the failure to  
20 incorporate such evidence into the record in a prior proceeding." *See* 42 U.S.C.  
21 § 405(g) (2010); *Booz*, 734 F.2d at 1380. "A claimant does not meet the good cause  
22 requirement by merely obtaining a more favorable report once his . . . claim has  
23 been denied." *Mayes*, 276 F.3d at 463. Plaintiff here merely asserts that "this report  
24 was unfortunately not available to Plaintiff for submission to the Defendant  
25 Administration prior the ALJ's decision." Pl.'s Mem. at 7. As defendant points out,  
26 "Plaintiff makes no showing that the report, which predates the administrative  
27 hearing, the ALJ's decision, and the Appeals Council's denial of review, was  
28 unavailable in the sense that it could not have been obtained earlier." Def.'s Mem.



1 at 4; *see Key v. Heckler*, 754 F.2d 1545, 1551 (9th Cir. 1985) (finding no “good  
2 cause” where the claimant submitted medical report prepared after the hearing, but  
3 gave no reason for not soliciting the information sooner). Thus, a remand to  
4 consider this evidence is not warranted here.

5 **B. The ALJ Improperly Discounted Plaintiff’s Credibility and Subjective**  
6 **Complaints**

7 Plaintiff argues that the ALJ failed to properly assess her credibility. *See* Pl.’s  
8 Mem. at 8-11. Specifically, plaintiff contends that the ALJ improperly discounted  
9 her credibility based on lack of supporting objective medical evidence and “failed to  
10 specify which statements by Plaintiff concerning pain, functional limitations, and  
11 other symptoms were not ‘sufficiently credible.’” *Id.* at 10. The court disagrees  
12 with plaintiff that the ALJ failed to specify which statements by plaintiff were  
13 incredible; but the court finds the ALJ improperly discounted plaintiff’s credibility  
14 based solely on lack of supporting objective medical evidence.

15 A claimant carries the burden of producing objective medical evidence of his  
16 or her impairments and showing that the impairments could reasonably be expected  
17 to produce some degree of the alleged symptoms. *Benton ex rel. Benton v.*  
18 *Barnhart*, 331 F.3d 1030, 1040 (9th Cir. 2003). But once the claimant meets that  
19 burden, medical findings are not required to support the alleged severity of pain.  
20 *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc); *see also Light v.*  
21 *Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997) (“claimant need not present  
22 clinical or diagnostic evidence to support the severity of his pain” (citation  
23 omitted)).

24 Instead, once a claimant has met the burden of producing objective medical  
25 evidence, an ALJ can reject the claimant’s subjective complaint “only upon (1)  
26 finding evidence of malingering, or (2) expressing clear and convincing reasons for  
27 doing so.” *Benton*, 331 F.3d at 1040. The ALJ may consider the following factors  
28 in weighing the claimant’s credibility: (1) his or her reputation for truthfulness; (2)

1 inconsistencies either in the claimant’s testimony or between the claimant’s  
2 testimony and his or her conduct; (3) his or her daily activities; (4) his or her work  
3 record; and (5) testimony from physicians and third parties concerning the nature,  
4 severity, and effect of the symptoms of which she complains. *Thomas v. Barnhart*,  
5 278 F.3d 947, 958-59 (9th Cir. 2002).

6 Here, the ALJ did not find evidence of malingering. *See generally* AR at 11-  
7 17. Thus, in rejecting plaintiff’s credibility the ALJ was required to articulate clear  
8 and convincing reasons. *See Benton*, 331 F.3d at 1040. Although these reasons  
9 may include findings from the objective medical evidence, these reasons may not be  
10 based solely on the medical evidence. Rather, where, as here, the plaintiff produced  
11 sufficient medical evidence of underlying impairments that are likely to cause some  
12 degree of her alleged symptoms, the ALJ errs to the extent he rejects the plaintiff’s  
13 credibility based solely upon a lack of objective findings to support her allegations.<sup>5/</sup>  
14 *See Bunnell*, 947 F.2d at 345 (“once [a] claimant produces objective medical  
15 evidence of an underlying impairment, an [ALJ] may not reject [the] claimant’s  
16 subjective complaints based solely on a lack of objective medical evidence to fully  
17 corroborate the alleged severity of pain” (citation omitted)); SSR 96-7p, 1996 WL  
18 374186, at \*1 (July 2, 1996) (claimant’s “statements about the intensity and  
19 persistence of pain or other symptoms or about the effect the symptoms have on his  
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22 <sup>5/</sup> Plaintiff provided sufficient medical evidence of her underlying impairments  
23 – diabetes mellitus, hypertension, and chronic diarrhea – that were likely to produce  
24 the symptoms she described. *See, e.g.*, AR at 174 (plaintiff was diagnosed with,  
25 inter alia, hypertension in a May 15, 2007 treatment note), 228-61 (plaintiff was  
26 hospitalized for chronic diarrhea from May 31 to June 3, 2009), 265-89 (plaintiff  
27 was hospitalized for chronic diarrhea from December 2 to 6, 2009), 299 (in a June  
28 12, 2009 treatment note, plaintiff was assessed with diarrhea and hypertension), 312  
(plaintiff was assessed with diarrhea on July 10, 2009), 315 (plaintiff was assessed  
with diarrhea on July 24, 2009), 321 (in a November 10, 2009 treatment note,  
plaintiff was assessed with hypertension and diabetes mellitus type 2).

1 or her ability to work may not be disregarded solely because they are not  
2 substantiated by objective medical evidence”).

3 The ALJ here concluded plaintiff’s “statements concerning the intensity,  
4 persistence and limiting effects of her symptoms are credible only to the extent that  
5 they are consistent with [her assessed] residual functional capacity.” AR at 15. In  
6 rejecting plaintiff’s credibility, the ALJ found that:

7 [Plaintiff] was quite dramatic in her testimony of bowel incontinence  
8 which is not documented in the objective evidence. Likewise, the  
9 evidence does not come close to corroborating the subjective  
10 complaints of 15-20 urgent and emergency trips to the bathroom on bad  
11 days which assertedly number 15-20 days per month. According to  
12 [plaintiff’s] testimony, some days she is afraid to leave the bathroom  
13 and she has recently began wearing adult diapers. The medical  
14 evidence of record is filled with subjective complaints that are  
15 routinely refuted by objective testing.

16 *Id.* Plaintiff argues that “[t]he ALJ is simply misstating the facts in this case in an  
17 attempt to discredit Plaintiff’s testimony” and directs the court to “Plaintiff’s  
18 consistent complaints of chronic diarrhea, the two hospital admissions for diarrhea,  
19 positive blood tests for clostridium difficile, and the notes at the time of discharge  
20 regarding the frequency of bowel movements.” Pl.’s Mem. at 9 (citing AR at 288).

21 Having duly reviewed the record, the court agrees with plaintiff that the  
22 ALJ’s credibility finding is not supported by substantial evidence in the record.  
23 Specifically, contrary to the ALJ’s finding that “the evidence does not come close to  
24 corroborating the subjective complaints of 15-20 urgent and emergency trips to the  
25 bathroom” (AR at 15), the December 6, 2009 Discharge Summary report indicated  
26 that plaintiff was “usually having diarrhea 18 times a day and [on the day of  
27 discharge], the diarrhea episodes went down to six times.” *Id.* at 288. In addition to  
28 plaintiff’s hospital admissions in May/June 2009 and December 2009, the record

1 reflects that plaintiff made repeated complaints of diarrhea to her treating physician  
2 between May 2009 and July 2010. *See id.* at 297, 299, 303, 312, 313, 315, 321,  
3 327, 331, 332, 337, 338, 339, 344. Although much of this medical evidence of  
4 diarrhea is based on plaintiff’s own reporting, this is not surprising given the nature  
5 of the ailment. In any event, there is sufficient objective medical evidence for the  
6 court to determine that the ALJ’s credibility finding – that plaintiff’s subjective  
7 complaints were not corroborated by medical evidence – was not supported by  
8 substantial evidence.

9       Moreover, even if the ALJ’s credibility finding had been supported by  
10 substantial evidence, the one reason he gave, lack of corroborating medical  
11 evidence, was insufficient by itself. An ALJ “may not reject a claimant’s subjective  
12 complaints based solely on a lack of objective medical evidence to fully corroborate  
13 the alleged severity of pain.” *Bunnell*, 947 F.2d at 345 (citation omitted). Here, the  
14 ALJ failed to state any other legally valid reason for discounting plaintiff’s  
15 credibility. *See* AR at 15.

16       Defendant maintains the ALJ also rejected plaintiff’s credibility based upon  
17 “Plaintiff’s symptom exaggeration.” Def.’s Mem. at 7. Although the ALJ  
18 suggested plaintiff’s symptoms were exaggerated, he did not rely on this reason to  
19 reject plaintiff’s credibility. *See* AR at 15. Instead, the ALJ stated that “[t]he  
20 medical evidence of record is filled with subjective complaints that are routinely  
21 refuted by *objective testing*.” *Id.* (emphasis added). Thus, the ALJ’s two purported  
22 reasons for discounting plaintiff’s credibility are, in essence, equivalent and  
23 insufficient.

24       Accordingly, the court finds that the ALJ failed to provide clear and  
25 convincing reasons for discounting plaintiff’s subjective complaints of pain and  
26 limitation.

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V.

**REMAND IS APPROPRIATE**

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3 The decision whether to remand for further proceedings or reverse and award  
4 benefits is within the discretion of the district court. *McAllister v. Sullivan*, 888  
5 F.2d 599, 603 (9th Cir. 1989). Where no useful purpose would be served by further  
6 proceedings, or where the record has been fully developed, it is appropriate to  
7 exercise this discretion to direct an immediate award of benefits. *See Benecke v.*  
8 *Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004); *Harman v. Apfel*, 211 F.3d 1172,  
9 1179-80 (9th Cir. 2000) (decision whether to remand for further proceedings turns  
10 upon their likely utility). But where there are outstanding issues that must be  
11 resolved before a determination can be made, and it is not clear from the record that  
12 the ALJ would be required to find plaintiff disabled if all the evidence were  
13 properly evaluated, remand is appropriate. *See Benecke*, 379 F.3d at 595-96;  
14 *Harman*, 211 F.3d at 1179-80.

15 Here, as set out above, remand is required because the ALJ erred in failing to  
16 properly evaluate plaintiff's credibility. On remand, the ALJ shall reconsider  
17 plaintiff's subjective complaints with respect to her physical impairments and the  
18 resulting limitations, and either credit plaintiff's testimony or provide clear and  
19 convincing reasons supported by substantial evidence for rejecting them. And, if  
20 necessary, the ALJ shall obtain additional information and clarification regarding  
21 plaintiff's functional limitations. The ALJ shall then proceed through steps four and  
22 five to determine what work, if any, plaintiff is capable of performing.

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**VI.**  
**CONCLUSION**

IT IS THEREFORE ORDERED that Judgment shall be entered REVERSING the decision of the Commissioner denying benefits, and REMANDING the matter to the Commissioner for further administrative action consistent with this decision.

Dated: May 31, 2012



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SHERI PYM  
UNITED STATES MAGISTRATE JUDGE