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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Denise Fultz,  
  
Plaintiff,  
  
v.  
  
Commissioner of Social Security  
Administration,  
  
Defendant.

No. CV-17-03122-PHX-DGC  
**ORDER**

Plaintiff Denise Fultz seeks review under 42 U.S.C. § 405(g) of the final decision of the Commissioner of Social Security, which denied her disability insurance benefits under §§ 216(i) and 223(d) of the Social Security Act. The Court finds that the administrative law judge’s (“ALJ”) decision is based on legal error, and will remand for further proceedings.

**I. Background.**

Plaintiff is a 66 year old female who previously worked as a vice president, manager of human resources, and human resources administrator. A.R. 30, 42. Plaintiff applied for disability insurance benefits on October 10, 2013, alleging disability beginning on August 16, 2011. A.R. 18. On June 24, 2015, Plaintiff testified at a hearing before an ALJ. *Id.* A vocational expert also testified. *Id.* On November 24, 2015, the ALJ issued a decision that Plaintiff was not disabled within the meaning of the Social

1 Security Act. A.R. 18-31. This became the Commissioner’s final decision when the  
2 Appeals Council denied Plaintiff’s request for review on July 14, 2017. A.R. 1-6.

3 **II. Legal Standard.**

4 The Court reviews only those issues raised by the party challenging the ALJ’s  
5 decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The Court may set  
6 aside the determination only if it is not supported by substantial evidence or is based on  
7 legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is  
8 more than a scintilla, less than a preponderance, and relevant evidence that a reasonable  
9 person might accept as adequate to support a conclusion. *Id.* In determining whether  
10 substantial evidence supports a decision, the Court must consider the record as a whole  
11 and may not affirm simply by isolating a “specific quantum of supporting evidence.” *Id.*  
12 (citation omitted). As a general rule, “[w]here the evidence is susceptible to more than  
13 one rational interpretation, one of which supports the ALJ’s decision, the ALJ’s  
14 conclusion must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

15 Harmless error principles apply in the Social Security context. *Molina v.*  
16 *Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless if there remains  
17 substantial evidence supporting the ALJ’s decision and the error does not affect the  
18 ultimate nondisability determination. *Id.* “The burden is on the party claiming error to  
19 demonstrate not only the error, but also that it affected [her] substantial rights.” *Ludwig*  
20 *v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012).

21 **III. The ALJ’s Five-Step Evaluation Process.**

22 To determine whether a claimant is disabled for purposes of the Social Security  
23 Act, the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears  
24 the burden of proof on the first four steps, and the burden shifts to the Commissioner at  
25 step five. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). To establish disability,  
26 the claimant must show that (1) she is not currently working, (2) she has a severe  
27 impairment, and (3) this impairment meets or equals a listed impairment or (4) her  
28 residual functional capacity (“RFC”) prevents her performance of any past relevant work.

1 If the claimant meets her burden through step three, the Commissioner must find her  
2 disabled. If the inquiry proceeds to step four and the claimant shows that she is incapable  
3 of performing past relevant work, the Commissioner must show at step five that the  
4 claimant is capable of other work suitable for her RFC, age, education, and work  
5 experience. 20 C.F.R. § 404.1520(a)(4).

6 At step one, the ALJ found that Plaintiff met the insured status requirements of the  
7 Social Security Act through December 31, 2016, and has not engaged in substantial  
8 gainful activity since August 16, 2011. A.R. 20. At step two, the ALJ found that  
9 Plaintiff had the following severe impairments: cervical and lumbar degenerative disc  
10 disease with lumbar spinal stenosis, status post right shoulder clavicle excision and  
11 decompression in 2013, status post repair of a left shoulder rotator cuff tear in 2011, and  
12 obesity. A.R. 20. The ALJ acknowledged that the record contained evidence of  
13 cystocele, urinary incontinence, fecal incontinence, and anxiety, but found that these  
14 were not severe impairments. A.R. 21-25. At step three, the ALJ determined that  
15 Plaintiff did not have an impairment or combination of impairments that meets or  
16 medically equals a listed impairment. A.R. 25. At step four, the ALJ found that Plaintiff  
17 had the RFC to perform sedentary work with some additional limitations, and was able to  
18 perform her past relevant work as a vice president, manager of human resources, and  
19 human resources administrator. A.R. 25, 30.

#### 20 **IV. Analysis.**

21 Plaintiff makes three arguments: (1) the ALJ erred by rejecting her treating  
22 physician's opinions, (2) the ALJ improperly credited opinions of the state agency  
23 reviewing physicians, and (3) the ALJ erroneously discredited Plaintiff's symptom  
24 testimony. Doc. 14 at 9-22. Defendant summarizes the ALJ's decision, but offers few  
25 specific counterarguments. *See* Doc. 15.

##### 26 **A. Dr. Abrams.**

27 The Commissioner is responsible for determining whether a claimant meets the  
28 statutory definition of disability, and need not credit a physician's conclusion that the

1 claimant is “disabled” or “unable to work.” 20 C.F.R. § 404.1527(d)(1). But the  
2 Commissioner generally must defer to a physician’s medical opinion, such as statements  
3 concerning the nature or severity of the claimant’s impairments, what the claimant can  
4 do, and the claimant’s physical or mental restrictions. § 404.1527(a)(1), (c).

5 In determining how much deference to give a physician’s medical opinion, the  
6 Ninth Circuit distinguishes between the opinions of treating physicians, examining  
7 physicians, and non-examining physicians. *See Lester v. Chater*, 81 F.3d 821, 830 (9th  
8 Cir. 1995). Generally, an ALJ should give the greatest weight to a treating physician’s  
9 opinion and more weight to the opinion of an examining physician than a non-examining  
10 physician. *See Andrews v. Shalala*, 53 F.3d 1035, 1040-41 (9th Cir. 1995); *see also* 20  
11 C.F.R. § 404.1527(c)(1)-(6) (listing factors to be considered when evaluating opinion  
12 evidence, including length of examining or treating relationship, frequency of  
13 examination, consistency with the record, and support from objective evidence).

14 If a treating or examining physician’s medical opinion is not contradicted by  
15 another doctor, the opinion can be rejected only for clear and convincing reasons.  
16 *Lester*, 81 F.3d at 830. Under this standard, the ALJ may reject a treating or examining  
17 physician’s opinion if it is “conclusory, brief, and unsupported by the record as a whole  
18 or by objective medical findings,” *Batson v. Comm’r Soc. Sec. Admin.*, 359  
19 F.3d 1190, 1195 (9th Cir. 2004) (citation omitted), or if there are significant  
20 discrepancies between the physician’s opinion and her clinical records, *Bayliss v.*  
21 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).

22 When a treating or examining physician’s opinion is contradicted by another  
23 doctor, it can be rejected for “specific and legitimate reasons that are supported by  
24 substantial evidence in the record.” *Lester*, 81 F.3d at 830-31. To satisfy this  
25 requirement, the ALJ must set out “a detailed and thorough summary of the facts and  
26 conflicting clinical evidence, stating his interpretation thereof, and making findings.”  
27 *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017) (quotation marks and citation  
28 omitted). Under either standard, “[t]he ALJ must do more than offer [her] conclusions.

1 He must set forth his own interpretations and explain why they, rather than the doctors',  
2 are correct." *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014) (quotation marks  
3 and citation omitted).

4 Dr. Abrams is a treating physician who issued two opinions that Plaintiff was  
5 unable to work. A.R. 613-14, 826-27. Because these opinions are inconsistent with  
6 those of the state agency non-examining physicians, they can be rejected for "specific and  
7 legitimate reasons supported by substantial evidence in the record." *Lester*, 81 F.3d  
8 at 830-31.

9 **1. November 2013 Opinion.**

10 Dr. Abrams opined in November 2013 that Plaintiff's physical limitations  
11 prevented her from doing any work. A.R. 613-14. The ALJ discredited this opinion  
12 because it "was provided within one month of the claimant's lumbar procedure and the  
13 claimant had not yet recovered." A.R. 29. Plaintiff contends that this reason is  
14 insufficient because Dr. Abrams did not limit his opinion to any period of time, and there  
15 is no evidence that subsequent improvement rendered this opinion invalid. Doc. 14 at 11.  
16 The Court agrees. The problem is a lack of explanation. The ALJ's analysis falls well  
17 short of the "detailed and thorough" analysis the Ninth Circuit requires. *Revels*, 874 F.3d  
18 at 654.

19 Defendant's citation to *Carmickle v. Commissioner of the Social Security*  
20 *Administration*, 533 F.3d 1155 (9th Cir. 2008), is unavailing. Doc. 15 at 12. *Carmickle*  
21 upheld an ALJ's decision to discredit the long-term significance of a doctor's "two-week  
22 excuse from work," especially in light of the doctor's subsequent opinion that the  
23 claimant could return to full-time work. 533 F.3d at 1165. Although Plaintiff may have  
24 been in recovery from surgery at the time, Dr. Abrams' November 2013 opinion had no  
25 time limit and the ALJ's decision does not indicate that Dr. Abrams subsequently cleared  
26 Plaintiff to work. A.R. 29. Nor does the ALJ explain why a treating physician would be  
27 unable to render an opinion about a patient's long-term work prospects within a month of  
28 lumbar surgery. A.R. 29. If the ALJ had reasons for this view, she did not include them

1 in her decision. A.R. 29. The Court concludes that the ALJ's single, unexplained reason  
2 to reject the November 2013 opinion is not specific, legitimate, and supported by  
3 substantial evidence in the record. *Lester*, 81 F.3d at 830-31.

## 4 **2. May 2015 Opinion.**

5 Dr. Abrams opined in May 2015 that Plaintiff's physical limitations prevented her  
6 from doing any work. A.R. 826-27. The ALJ discredited this opinion for three reasons.  
7 The ALJ first asserted that the opinion portrays a "virtually bedridden" patient. A.R. 29.  
8 Plaintiff argues that this mischaracterizes Dr. Abrams' findings, which indicate that  
9 Plaintiff could sit, stand, and walk for two hours of a work day. Doc. 14 at 11-12. The  
10 Court agrees. The ALJ neither described how Dr. Abrams' opinion portrayed a  
11 bedridden patient nor explained why this would make the opinion unbelievable.

12 The ALJ next emphasized that the May 2015 opinion is inconsistent with Dr.  
13 Abrams' notes reflecting normal neurological findings and a negative straight leg raise.  
14 A.R. 29. Plaintiff argues that the ALJ failed to explain why these isolated findings are  
15 significant, especially in light of other severe symptoms and treatment. Doc. 14 at 12.  
16 The Court agrees. The ALJ cited 23 pages of treatment notes to support this reason, but  
17 without a word of explanation as to how specific clinical findings were inconsistent with  
18 Dr. Abrams' limitations.

19 The ALJ finally noted that the May 2015 opinion is inconsistent with Plaintiff's  
20 decision not to take pain medications. A.R. 29. Plaintiff contends that the ALJ cited a  
21 single treatment note from November 2013, which was approximately 17 months before  
22 Dr. Abrams' May 2015 opinion. Doc. 14 at 12-13. The Court agrees. The ALJ did not  
23 explain how one treatment note regarding pain medication undermines a medical opinion  
24 rendered 17 months later.

25 The ALJ's three reasons to discredit the May 2015 opinion also fall well short of  
26 the "detailed and thorough" analysis the Ninth Circuit requires. *Revels*, 874 F.3d at 654.  
27 The Court concludes that the ALJ failed to provide any specific and legitimate reason to  
28 reject the May 2015 opinion.

1                                   **3.     Whether Error was Harmless.**

2           Even if the ALJ committed error in improperly weighing a medical opinion, that  
3 error will be harmless if the Court can “conclude from the record that the ALJ would  
4 have reached the same result absent the error.” *Molina*, 674 F.3d at 1115; *see also Marsh*  
5 *v. Colvin*, 792 F.3d 1170, 1172 (9th Cir. 2015). The ALJ gave little weight to the  
6 opinions of a treating physician who determined that Plaintiff had substantial limitations  
7 that prevented her from working, and the ALJ acknowledged at the hearing that Dr.  
8 Abrams’ opinions describe someone who was incapable of full-time work. A.R. 72. The  
9 Court cannot conclude that the ALJ would have reached the same conclusions had she  
10 properly evaluated Dr. Abrams’ opinions. The ALJ’s error was not harmless.

11                                   **B.     State Agency Reviewing Physicians.**

12           The ALJ accorded significant weight to the opinions of state agency reviewing  
13 physicians that Plaintiff was capable of performing some range of light work and was  
14 therefore not disabled. A.R. 29, 89-93, 109-113. Plaintiff contends that Dr. Abrams’  
15 opinions are more reliable and accurate. Doc. 14 at 13-15.

16           Generally, an ALJ should give the greatest weight to a treating physician’s opinion  
17 and more weight to the opinion of an examining physician than a non-examining  
18 physician. *See Andrews*, 53 F.3d at 1040-41. But Plaintiff cites no authority for the  
19 proposition that an ALJ commits error merely by crediting a non-examining physician’s  
20 opinion. *See Doc. 14* at 13-15 (citing 20 C.F.R. § 404.1527(c) (describing relevant  
21 factors); *Diedrich v. Berryhill*, 874 F.3d 634, 639 (9th Cir. 2017) (error not to call a  
22 medical advisor when the onset of disability must be inferred from the record); *Trevizo v.*  
23 *Berryhill*, 871 F.3d 664, 676 (9th Cir. 2017) (ALJ committed error by *rejecting* an  
24 opinion without sufficient reasons); *Garrison*, 759 F.3d at 1013 (9th Cir. 2014) (error to  
25 rely on a non-examining physician’s opinion to *discredit* a treating physician’s opinion);  
26 *Orn*, 495 F.3d at 631 (describing comparative weight of different medical opinions);  
27 *Reed v. Massanari*, 270 F.3d 838, 842-45 (9th Cir. 2001) (error to refuse to order a  
28 consultative examination because “both available examiners with the appropriate

1 specialization conclude that ‘everybody’ is disabled’’)). And Plaintiff does not contend  
2 that the non-examining physician opinions are totally unsupported by the record.<sup>1</sup>  
3 Plaintiff appears to ask the Court to reweigh the medical evidence, but the Court declines  
4 to do so. *See Molina*, 674 F.3d at 1111 (“Even when the evidence is susceptible to more  
5 than one rational interpretation, we must uphold the ALJ’s findings if they are supported  
6 by inferences reasonably drawn from the record.”).

7 **C. Plaintiff’s Symptom Testimony.**

8 In evaluating a claimant’s symptom testimony, the ALJ must engage in a two-step  
9 analysis. First, the ALJ must determine whether the claimant presented objective medical  
10 evidence of an impairment that could reasonably be expected to produce the symptoms  
11 alleged. *Revels*, 874 F.3d at 655 (citing *Garrison*, 759 F.3d at 1014). The claimant is not  
12 required to show that her impairment could reasonably be expected to cause the severity  
13 of her alleged symptoms, only that it could reasonably have caused some degree of the  
14 symptoms. *Id.* Second, if there is no evidence of malingering, the ALJ may reject the  
15 claimant’s symptom testimony only by giving specific, clear, and convincing reasons. *Id.*

16 The ALJ described Plaintiff’s symptom testimony:

17 At the hearing, the claimant testified she was unable to work due to her  
18 reported incontinence, back pain, difficulties with gait and balance, and side  
19 effects. The claimant experienced dry mouth and nausea from her  
20 prescribed medications. The claimant alleged she only slept for four hours  
21 total and was tired all the time. The claimant reported she could not lift  
22 more than a gallon of milk and stated she experienced ongoing pain, some  
23 days worse than others.

24 A.R. 26.

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25 <sup>1</sup> Plaintiff argues: “Instead of assigning proper weight to Dr. Abrams’s  
26 assessments, the ALJ assigned ‘significant weight’ to the opinions of the state agency  
27 nonexamining doctors. The ALJ stated their opinions were ‘consistent with the overall  
28 record and supported by objective medical evidence, examination results, and the  
claimant’s reported activities.’ The ALJ did not provide citation to the record to support  
this conclusion.” Doc. 14 at 13 (citations omitted). But Plaintiff cites no authority to  
suggest that an ALJ may credit the opinion of a non-examining doctor only if she cites  
portions of the record that support the opinion.



1 The ALJ found that Plaintiff's medically determinable impairments could  
2 reasonably be expected to cause the alleged symptoms, but that Plaintiff's statements  
3 concerning the intensity, persistence, and limiting effects of these symptoms were not  
4 entirely consistent and credible. A.R. 26. As an initial matter, Plaintiff contends that the  
5 ALJ's determination is error because she supported it with a recitation of the medical  
6 evidence. Doc. 14 at 16-17. This mischaracterizes the ALJ's decision. The ALJ  
7 provided eight reasons to support her finding, and Plaintiff disputes seven of them.

8 **1. First Reason.**

9 The ALJ noted that Plaintiff's claim of disability starting in August 2011 is  
10 inconsistent with medical records showing that she could ambulate without an assistive  
11 device or prescription pain medication as late as November 2013. A.R. 26. Plaintiff  
12 counters that she "was not prescribed a cane until March 2014, so not using a cane in  
13 November 2013 is irrelevant." Doc. 14 at 17. Plaintiff's argument misses the mark. The  
14 ALJ reasoned that Plaintiff's claim of total disability starting in August 2011 is  
15 inconsistent with her ability to ambulate without assistance until at least November 2013.  
16 Plaintiff provides no argument to undermine this reasoning, and the Court finds that it is a  
17 clear and convincing reason to reject Plaintiff's testimony.

18 **2. Second Reason.**

19 The ALJ asserted that Plaintiff's alleged physical limitations are inconsistent with  
20 physical therapy treatment notes that reflect positive progress and non-severe symptoms.  
21 A.R. 27. Plaintiff contends that her gradual and limited progress in physical therapy  
22 "does not mean that [her] entire symptom testimony about her impairments was invalid."  
23 Doc. 14 at 18. But the ALJ acknowledged that Plaintiff's progress was gradual  
24 (A.R. 27), and Plaintiff does not attempt to rebut the ALJ's reasonable conclusion that it  
25 is inconsistent with her alleged limitations.<sup>2</sup>

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26  
27 <sup>2</sup> Plaintiff contends that the ALJ erred by citing a "large swath[] of the medical  
28 record" to support this reason. Doc. 14 at 18. Although the ALJ cited 81 pages of  
physical therapy records in an introductory sentence, the subsequent analysis identified  
specific portions of that record. A.R. 27-28. Plaintiff also contends that the ALJ cited a  
record that does not support her conclusion. Doc. 14 at 18 (citing A.R. 590). But the

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**3. Third Reason.**

The ALJ noted that Plaintiff’s “subjective allegations of pain and limitations were only partially supported by objective examination findings, which were minimal.” A.R. 28. Plaintiff does not directly address this reason.

**4. Fourth Reason.**

The ALJ asserted that Plaintiff’s continued receipt of unemployment benefits is inconsistent with her claim of disability. A.R. 28. Specifically, Plaintiff certified that “she was able, willing, and looking for work” when she received unemployment benefits during the period of alleged disability. A.R. 28. The Ninth Circuit has found that “[c]ontinued receipt of unemployment benefits does cast doubt on a claim of disability, as it shows that an applicant holds [herself] out as capable of working.” *Ghanim v. Colvin*, 763 F.3d 1154, 1165 (9th Cir. 2014). But the Ninth Circuit has not found that continued receipt of unemployment benefits is a clear and convincing reason, sufficient on its own, to reject a claimant’s testimony. The Ninth Circuit has held that receipt of unemployment benefits will undermine a claimant’s alleged inability to work full-time only when the record shows that the claimant held herself out as available for full-time work. *Carmickle*, 533 F.3d at 1161-62 (“First, while receipt of unemployment benefits can undermine a claimant’s alleged inability to work fulltime, the record here does not establish whether Carmickle held himself out as available for full-time or part-time work. Only the former is inconsistent with his disability allegations. Thus, such basis for the ALJ’s credibility finding is not supported by substantial evidence.” (citations omitted)).

The record here does not establish whether Plaintiff held herself out as available for full-time or part-time work. Therefore, the ALJ’s reliance on this potential inconsistency in discounting Plaintiff’s credibility was error.<sup>3</sup>

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ALJ did not rely on that record to support this reason. A.R. 28 (citing the record to support a separate finding that Plaintiff’s physical examinations were “unremarkable”).

<sup>3</sup> The ALJ suggested at the hearing that Plaintiff received unemployment benefits from 2011 until the first quarter of 2013. A.R. 44-45. The record does not support this assertion. A.R. 193-94 (relevant records cover only the fourth quarter of 2012 to the first quarter of 2015). The record shows that Plaintiff continued to seek work for an

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**5. Fifth Reason.**

The ALJ noted that Plaintiff’s claims of disabling side effects from her prescribed medications are not supported by the record. A.R. 28. Although her treating physicians opined to the existence of such symptoms, the ALJ reasoned that the record is devoid of any evidence of associated limitations. A.R. 28. Plaintiff contends that the absence of documentation is immaterial. Doc. 14 at 20. The Court agrees. The ALJ concluded that Plaintiff’s “medically determinable impairments could reasonably be expected to cause the alleged symptoms,” including medication side effects. A.R. 26. But Plaintiff is not required to present objective medical evidence of the severity of her side effects. *See Revels*, 874 F.3d at 655. The Court therefore cannot conclude that this is a clear and convincing reason to reject Plaintiff’s symptom testimony.

**6. Sixth Reason.**

The ALJ noted that Plaintiff’s claims of shoulder limitations are inconsistent with her decision not to take any medications for her shoulder pain prior to surgery. A.R. 28. But the ALJ’s record citation only supports the conclusion that Plaintiff was not taking pain medication after her shoulder surgery. A.R. 342. Because the ALJ apparently misread the treatment record, the Court finds that this reason is not supported by substantial evidence in the record.

**7. Seventh Reason.**

The ALJ noted that Plaintiff’s claimed disability is inconsistent with her representation at a May 2013 physical therapy appointment that she had recovered well from her 1996 cervical spine fusion and 2011 shoulder surgery. A.R. 29. Plaintiff does not address this reason. The Court has reviewed the record the ALJ cited (A.R. 343) and finds that it supports the ALJ’s reasoning.

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unspecified period of time after being laid off in 2011. A.R. 44-45. She testified that her efforts failed due to age discrimination and her health problems. A.R. 47.

1                                   **8. Eighth Reason.**

2           The ALJ finally noted that Plaintiff’s “testimony regarding the intensity,  
3 persistence, and limiting effects of her impairments’ symptoms were inconsistent with  
4 her reports to a treating source.” A.R. 29. Specifically, the ALJ emphasized that Plaintiff  
5 told a gynecological nurse practitioner in April 2015 that she was in a “great place and  
6 felt her life was very fulfilled[,] . . . her health had been good overall this year[,] . . . [and]  
7 the only issue she had was urinary incontinence and frequency as well as bowel issues.”  
8 A.R. 29. Plaintiff made “no mention of pain or weakness.” A.R. 29. Plaintiff contends  
9 that this isolated record is insufficient to undermine her credibility, but she makes no  
10 argument that the ALJ ignored other evidence in the record. Doc. 14 at 20-21. The Court  
11 has reviewed the record the ALJ cited (A.R. 822) and finds that it supports the ALJ’s  
12 reasoning.

13                                   **9. Conclusion.**

14           Four of the ALJ’s eight reasons to discredit Plaintiff’s symptom testimony are  
15 clear and convincing and supported by substantial evidence in the record, and a fifth is  
16 not directly addressed by Plaintiff. Three reasons are inadequate, but the Court cannot  
17 conclude that these inadequacies are so significant as to undermine the ultimate  
18 credibility determination. There remains substantial evidence supporting the ALJ’s  
19 credibility determination, and the errors do not affect the ultimate nondisability  
20 determination. *See Molina*, 674 F.3d at 1115. The ALJ’s errors were harmless.

21                                   **V. Scope of Remand.**

22           The ALJ erred in her consideration of Dr. Abrams’ medical opinions. Plaintiff  
23 contends that, crediting Dr. Abrams’ opinions as true, the Court must remand for an  
24 award of benefits. Doc. 14 at 15, 22. Defendant counters that the appropriate remedy is  
25 a remand for further proceedings. Doc. 15 at 14.

26           “When the ALJ denies benefits and the court finds error, the court ordinarily must  
27 remand to the agency for further proceedings before directing an award of benefits.”  
28 *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017). Under a “rare exception” to this

1 rule, the Court may remand for an immediate award of benefits after conducting a three-  
2 part inquiry:

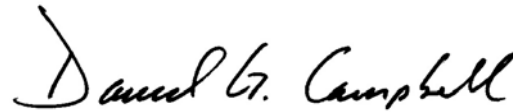
3 The three-part analysis . . . is known as the “credit-as-true” rule. First, we  
4 ask whether the ALJ failed to provide legally sufficient reasons for  
5 rejecting evidence, whether claimant testimony or medical opinion. Next,  
6 we determine whether there are outstanding issues that must be resolved  
7 before a disability determination can be made, and whether further  
8 administrative proceedings would be useful. When these first two  
9 conditions are satisfied, we then credit the discredited testimony as true for  
the purpose of determining whether, on the record taken as a whole, there is  
no doubt as to disability.

10 *Id.* (internal quotation marks and citations omitted). *Leon* emphasized that the Court has  
11 discretion to remand for further proceedings even if it reaches the third step in the  
12 process. *Id.* “Where an ALJ makes a legal error, but the record is uncertain and  
13 ambiguous, the proper approach is to remand the case to the agency.” *Id.* (quotation  
14 marks omitted).

15 Applying step two of the Ninth Circuit’s test, the Court concludes that outstanding  
16 issues must be resolved before a disability determination can be made. The ALJ properly  
17 discredited Plaintiff’s testimony regarding her own limitations, and Plaintiff has not  
18 provided a basis for finding error in the ALJ’s reliance on the opinions of non-examining  
19 physicians. But the ALJ did err in discrediting Dr. Abrams’ opinions, which creates an  
20 unresolved outstanding issue: how should that opinion be weighed against the lack of  
21 credibility in Plaintiff’s disability testimony and the opinions of the other physicians?  
22 The Court concludes that further proceedings on these issues would be useful, and will  
23 remand for such proceedings.

1           **IT IS ORDERED** that the final decision of the Commissioner of Social Security  
2 is **vacated** and this case is **remanded** for further proceedings consistent with this  
3 opinion. The Clerk shall enter judgment accordingly and **terminate** this action.

4           Dated this 17th day of July, 2018.

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10           David G. Campbell  
11           United States District Judge  
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