



1 application was initially denied on November 17, 2010, and upon reconsideration on  
2 April 6, 2011. (*Id.* at 79-81, 87-89.) Subsequently, Plaintiff’s application was set for a  
3 hearing, which was held on September 20, 2012. (*Id.* at 33, 112.) In a decision dated  
4 November 30, 2012, Administrative Law Judge (ALJ) Philip E. Moulaison denied  
5 Plaintiff’s application for benefits. (*Id.* at 22-29.) On February 6, 2014, the Appeals  
6 Council denied Plaintiff’s request for review of the ALJ’s decision, making the ALJ’s  
7 decision the final decision of the Commissioner of the Social Security Administration.  
8 (*Id.* at 1-6.)

9 Having exhausted the administrative review process, on March 27, 2014, Plaintiff  
10 sought judicial review of the ALJ’s decision by filing a Complaint with this Court  
11 pursuant to 42 U.S.C. § 405(g). (Doc. 1.) On November 25, 2014, Plaintiff filed an  
12 Opening Brief, seeking remand of this case to the Social Security Administration for an  
13 award of benefits. (Doc. 20.) On January 23, 2015, Defendant filed a Response Brief in  
14 support of the Commissioner’s decision. (Doc. 25.) On February 18, 2015, Plaintiff filed  
15 a Reply Brief. (Doc. 28.)

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

17 The Social Security Act, 42 U.S.C. § 405(g), provides for judicial review of the  
18 Commissioner’s disability benefits determinations. The Court may set aside the  
19 Commissioner’s disability determination only if the determination is not supported by  
20 substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir.  
21 2007); *Marcia v. Sullivan*, 900 F.2d 172, 174 (9th Cir. 1990). “‘Substantial evidence’  
22 means more than a mere scintilla, but less than a preponderance; it is such relevant  
23 evidence as a reasonable person might accept as adequate to support a conclusion.”  
24 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007); *see also Reddick v. Chater*,  
25 157 F.3d 715, 720 (9th Cir. 1998).

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28 <sup>3</sup> Plaintiff amended her onset date during the administrative hearing on September 20,  
2012. (*Id.* at 36-37.)

1 In determining whether substantial evidence supports the ALJ's decision, the  
2 Court considers the record as a whole, weighing both the evidence that supports and that  
3 which detracts from the ALJ's conclusions. *Reddick*, 157 F.3d at 720; *Tylitzki v. Shalala*,  
4 999 F.2d 1411, 1413 (9th Cir. 1993). The ALJ is responsible for resolving conflicts,  
5 ambiguity, and determining credibility. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.  
6 1995); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The Court "must  
7 uphold the ALJ's decision where the evidence is susceptible to more than one rational  
8 interpretation." *Andrews*, 53 F.3d at 1039. "However, a reviewing court must consider  
9 the entire record as a whole and may not affirm simply by isolating a 'specific quantum  
10 of supporting evidence.'" *Orn*, 495 F.3d at 630 (quoting *Robbins v. Soc. Sec. Admin.*, 466  
11 F.3d 880, 882 (9th Cir. 2006)). The Court reviews only those issues raised by the party  
12 challenging the ALJ's decision. See *Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir.  
13 2001). Similarly, the Court reviews "only the reasons provided by the ALJ in the  
14 disability determination and may not affirm the ALJ on a ground upon which he did not  
15 rely." *Garrison v. Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014).

### 16 **III. Step-Two Severity Analysis**

17 To be eligible for Social Security benefits, a claimant must show an "inability to  
18 engage in any substantial gainful activity by reason of any medically determinable  
19 physical or mental impairment which can be expected to result in death or which has  
20 lasted or can be expected to last for a continuous period of not less than 12 months." 42  
21 U.S.C. § 423(d)(1)(A); see also *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). A  
22 person is under a disability only:

23 if his physical or mental impairment or impairments are of  
24 such severity that he is not only unable to do his previous  
25 work but cannot, considering his age, education, and work  
experience, engage in any other kind of substantial gainful  
work which exists in the national economy.

26 42 U.S.C. § 423(d)(2)(A).

27 The ALJ follows a five-step evaluation process to determine whether an applicant  
28 is disabled under the Social Security Act:

1 The five-step process for disability determinations begins, at  
2 the first and second steps, by asking whether a claimant is  
3 engaged in “substantial gainful activity” and considering the  
4 severity of the claimant’s impairments. *See* 20 C.F.R. §  
5 416.920(a)(4)(i)-(ii). If the inquiry continues beyond the  
6 second step, the third step asks whether the claimant’s  
7 impairment or combination of impairments meets or equals a  
8 listing under 20 C.F.R. pt. 404, subpt. P, app. 1 and meets the  
9 duration requirement. *See id.* § 416.920(a)(4)(iii). If so, the  
10 claimant is considered disabled and benefits are awarded,  
11 ending the inquiry. *See id.* If the process continues beyond  
12 the third step, the fourth and fifth steps consider the  
13 claimant’s “residual functional capacity” in determining  
14 whether the claimant can still do past relevant work or make  
15 an adjustment to other work. *See id.* § 416.920(a)(4)(iv)-(v).

16 *Kennedy v. Colvin*, 738 F.3d 1172, 1175 (9th Cir. 2013). “The burden of proof is on the  
17 claimant at steps one through four, but shifts to the Commissioner at step five.” *Bray v.*  
18 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009). Here, the ALJ found  
19 Plaintiff was not disabled under the Act at step two of the evaluation process.

20 “[A]t the second step of [the] sequential evaluation it must be determined whether  
21 medical evidence establishes an impairment or combination of impairments ‘of such  
22 severity’ as to be the basis of a finding of inability to engage in any [substantial gainful  
23 employment].” SSR 85-28. A “severe” impairment is “any impairment or combination  
24 of impairments which significantly limits [a claimant’s] physical or mental ability to do  
25 basic work activities.” 20 C.F.R. § 404.1520(c). Basic work activities include: “(1)  
26 Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching,  
27 carrying, or handling; (2) Capacities for seeing, hearing, and speaking; (3)  
28 Understanding, carrying out, and remembering simple instructions; (4) Use of judgment;  
(5) Responding appropriately to supervision, co-workers and usual work situations; and  
(6) Dealing with changes in a routine work setting.” 20 C.F.R. § 404.1521(b). “An  
impairment is not severe if it is merely ‘a slight abnormality (or combination of slight  
abnormalities) that has no more than a minimal effect on the ability to do basic work  
activities.’” *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005) (quoting SSR 96-3p).

“[T]he step-two inquiry is a de minimis screening device to dispose of groundless  
claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (citing *Bowen v.*

1 *Yuckert*, 482 U.S. 137, 153–54 (1987)). The inquiry “is to do no more than allow the  
2 [Social Security Administration] to deny benefits summarily to those applicants with  
3 impairments of a minimal nature which could never prevent a person from working.”  
4 SSR 85-28 (internal quotations omitted). Therefore, “an ALJ may find that a claimant  
5 lacks a medically severe impairment or combination of impairments only when his  
6 conclusion is ‘clearly established by medical evidence.’” *Webb*, 433 F.3d at 687 (quoting  
7 SSR 85-28). “[I]f an adjudicator is unable to determine clearly the effect of an  
8 impairment or combination of impairments on the individual’s ability to do basic work  
9 activities, the sequential evaluation should not end with the not severe evaluation  
10 step.” *Id.* (quoting SSR 85–28). Further, the ALJ “is required to consider the claimant’s  
11 subjective symptoms, such as pain or fatigue, in determining severity.” *Smolen*, 80 F.3d  
12 at 1290 (citing SSR 88-13). Thus, the Court’s task in reviewing a denial of benefits at  
13 step two is to “determine whether the ALJ had substantial evidence to find that the  
14 medical evidence clearly established that [Plaintiff] did not have a medically severe  
15 impairment or combination of impairments.” *Webb*, 433 F.3d at 687.

#### 16 **IV. The ALJ’s Determination**

17 The ALJ concluded that Plaintiff was not “disabled,” as the term is defined in 42  
18 U.S.C. §§ 416, 423. (AR 22.) In following the five-step sequential evaluation process  
19 used for determining whether an individual is disabled, *see* 20 C.F.R. § 404.1520(a)(4),  
20 the ALJ concluded at step one that Plaintiff “did not engage in substantial gainful activity  
21 during the period from her alleged onset date of June 6, 2007, through her date last  
22 insured of June 30, 2011.” (*Id.* at 24.) At step two, the ALJ found that “[t]hrough the last  
23 date insured, [Plaintiff] had the following medically determinable impairments: irritable  
24 bowel syndrome (IBS) and an anxiety disorder.” (*Id.*) However, the ALJ concluded that  
25 Plaintiff, “[t]hrough the date last insured, did not have an impairment or combination of  
26 impairments that significantly limited the ability to perform basic work-related activities  
27 for 12 consecutive months,” and that Plaintiff’s impairments were therefore not “severe”  
28 during the relevant period. (*Id.* at 25.) The ALJ did not continue his analysis beyond

1 step two of the evaluation process.

2 Plaintiff seeks review of the ALJ's determination that Plaintiff's IBS and anxiety  
3 disorder are not, alone, or in combination, severe impairments.<sup>4</sup> (Doc. 20 at 1-2.) More  
4 specifically, Plaintiff argues that the ALJ erred in rejecting her symptom testimony  
5 without providing clear and convincing reasons supported by substantial evidence. (*Id.*)  
6 Defendant argues that (1) the ALJ properly discounted Plaintiff's symptom testimony,  
7 and (2) regardless, the Court should affirm the ALJ's step-two determination because it is  
8 supported by substantial evidence. (Doc. 25 at 10-18.) For the reasons detailed below,  
9 the Court finds that the ALJ erred in rejecting Plaintiff's symptom testimony at step two,  
10 and that error is not harmless.

11 **a. Legal Standard Regarding Symptom Testimony**

12 An ALJ engages in a two-step analysis to determine whether a claimant's  
13 testimony regarding subjective pain or symptoms is credible. *Garrison*, 759 F.3d at  
14 1014-15 (citing *Lingenfelter*, 504 F.3d at 1035-36). "First, the ALJ must determine  
15 whether the claimant has presented objective medical evidence of an underlying  
16 impairment 'which could reasonably be expected to produce the pain or other symptoms  
17 alleged.'" *Lingenfelter*, 504 F.3d at 1036 (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344  
18 (9th Cir. 1991) (en banc)). The claimant is not required to show objective medical  
19 evidence of the pain itself or of a causal relationship between the impairment and the  
20 symptom. *Smolen*, 80 F.3d at 1282. Instead, the claimant must only show that an  
21 objectively verifiable impairment "could reasonably be expected to produce his pain."  
22 *Lingenfelter*, 504 F.3d at 1036 (quoting *Smolen*, 80 F.3d at 1282); *see also Carmickle v.*  
23 *Comm'r, SSA*, 533 F.3d 1155, 1160-61 (9th Cir. 2008) ("requiring that the medical  
24 impairment 'could reasonably be expected to produce' pain or another symptom . . .  
25 requires only that the causal relationship be a reasonable inference, not a medically  
26 proven phenomenon").

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28 <sup>4</sup> The ALJ did not find any medically determinable impairment related to Plaintiff's  
reported back and upper extremity pain. (*Id.* at 24.) Plaintiff does not challenge that  
finding. (*See* Doc. 20.)

1           Second, if a claimant shows that she suffers from an underlying medical  
2 impairment that could reasonably be expected to produce her pain or other symptoms, the  
3 ALJ must “evaluate the intensity and persistence of [the] symptoms” to determine how  
4 the symptoms, including pain, limit the claimant’s ability to work. *See* 20 C.F.R. §  
5 404.1529(c)(1). In making credibility determinations, general assertions that the  
6 claimant’s testimony is not credible are insufficient. *See Parra v. Astrue*, 481 F.3d 742,  
7 750 (9th Cir. 2007). The ALJ must identify “what testimony is not credible and what  
8 evidence undermines the claimant’s complaints.” *Id.* (quoting *Lester*, 81 F.3d at 834); *see*  
9 *also Brown-Hunter v. Colvin*, \_\_\_ F.3d \_\_\_, 2015 WL 4620123 at \*6 (9th Cir 2015)  
10 (finding error where the ALJ stated only that “she found, based on unspecified claimant  
11 testimony and a summary of medical evidence,” that ““the functional limitations from the  
12 claimant’s impairments were less serious than she has alleged”).

13           In weighing a claimant’s credibility, the ALJ may consider many factors,  
14 including: “(1) ordinary techniques of credibility evaluation, such as the claimant’s  
15 reputation for lying, prior inconsistent statements concerning the symptoms, and other  
16 testimony by the claimant that appears less than candid; (2) unexplained or inadequately  
17 explained failure to seek treatment or to follow a prescribed course of treatment; and (3)  
18 the claimant’s daily activities.” *Smolen*, 80 F.3d at 1284; *see Orn*, 495 F.3d at 637-39.  
19 The ALJ also considers “the claimant’s work record and observations of treating and  
20 examining physicians and other third parties regarding, among other matters, the nature,  
21 onset, duration, and frequency of the claimant’s symptom; precipitating and aggravating  
22 factors; [and] functional restrictions caused by the symptoms . . . .” *Smolen*, 80 F.3d at  
23 1284 (citing SSR 88-13).

24           At this second step, the ALJ may reject a claimant’s testimony regarding the  
25 severity of his or her symptoms only if the ALJ “makes a finding of malingering based on  
26 affirmative evidence,” *Lingenfelter*, 504 F.3d at 1036 (quoting *Robbins*, 466 F.3d at 883),  
27 or if the ALJ offers “clear and convincing reasons” for finding the claimant not credible.  
28 *Carmickle*, 533 F.3d at 1160 (quoting *Lingenfelter*, 504 F.3d at 1036). ““The clear and

1 convincing standard is the most demanding required in Social Security Cases.”  
2 *Garrison*, 793 F.3d at 1015 (quoting *Moore v. Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th  
3 Cir. 2002)).

4 Here, because there was no affirmative finding of malingering, the ALJ was  
5 required to provide clear and convincing reasons supported by substantial evidence for  
6 concluding that Plaintiff’s subjective complaints were not wholly credible.

7 **b. The ALJ failed to provide clear and convincing reasons supported by**  
8 **substantial evidence for rejecting Plaintiff’s symptom testimony at step**  
9 **two.**

10 With regard to Plaintiff’s testimony, the ALJ first found that Plaintiff’s medically  
11 determinable impairments could reasonably be expected to cause the alleged symptoms.  
12 (AR 26.) The ALJ then found Plaintiff’s “statements regarding the intensity, persistence,  
13 and limiting effects of [her] symptoms not credible to the extent they are inconsistent  
14 with finding that [Plaintiff] has no severe impairment or combination of impairments.”  
(*Id.*)

15 At the hearing, Plaintiff testified that she can only climb a half a flight of stairs,  
16 walk for 50 yards, stand for 10 minutes, and lift no more than five pounds. (AR 40-41.)  
17 She also testified that she experiences an average of six bowel movements a day. (*Id.* at  
18 44.) Her bowel movements last 15-20 minutes, and if she doesn’t make it to the  
19 bathroom in time—which she says happens frequently—she has to take a shower  
20 afterward. (*Id.*) Plaintiff claimed that she has to take a shower four to six times a day.  
21 (*Id.* at 45.) Plaintiff further testified that, even when she is not having a bowel  
22 movement, she suffers from near-constant abdominal pain, fatigue, and lack of sleep  
23 related to IBS. (*Id.* at 44-45.) Plaintiff also testified to having a fistula. She claims she  
24 was told that if she does not receive surgery, she will die due to related complications, but  
25 that she does not have the money to pay for the surgery. (*Id.* at 45.) She also gets many  
26 yeast infections due to the fistula, and it causes her to have a bowel movement when she  
27 coughs or sneezes. (*Id.*)

28 Additionally, Plaintiff testified that she suffers from panic attacks caused by fear



1 of leaving her house. (*Id.* at 43, 48.) These attacks can last two to three hours, though  
2 they last on average an hour to an hour-and-a-half, and are triggered by Plaintiff’s fear  
3 that she will have a bowel movement or urinate in public. (*Id.*) She explained that, while  
4 the medications she takes for her panic attacks help for a very short time, they do not ease  
5 her anxiety completely. (*Id.* at 43.) She claimed that her husband has to perform most  
6 work for her. (*Id.* at 47.) She also suffers from depression caused by her anxiety and  
7 IBS. (*Id.* at 48.)

8 The ALJ rejected Plaintiff’s testimony regarding the severity of her impairments  
9 for the following reasons: (1) there was generally a lack of corroborating medical  
10 evidence, (2) Plaintiff alleged she suffered from constant diarrhea, but she did not have a  
11 “significant change in diet or evidence of significant weight loss that might be expected,”  
12 (3) there was no evidence that her anxiety was not well controlled on her medication, or  
13 that she experienced any side effects from her medication, (4) she “described a range of  
14 daily activity to Dr. Shepard that is not as limited as one would expect for a disabled  
15 individual,” (5) when seen by Dr. Katigbak on September 6, 2012, she denied diarrhea,  
16 nausea, and vomiting, (6) the existence of a fistula was not proven by medical evidence,  
17 and (7) none of her treating or examining physicians found any functional limitations.  
18 (*Id.* at 27-28.) The Court finds these are not clear and convincing reasons supported by  
19 substantial evidence for rejecting Plaintiff’s symptom testimony.

20 First, although many of the medical records that the ALJ discussed indicate mild  
21 symptoms, the absence of fully corroborative medical evidence cannot form the sole  
22 basis for rejecting the credibility of a claimant’s subjective complaints. *See Cotton v.*  
23 *Bowen*, 799 F.2d 1403, 1407 (9th Cir. 1986) (it is legal error for “an ALJ to discredit  
24 excess pain testimony solely on the ground that it is not fully corroborated by objective  
25 medical findings”), superseded by statute on other grounds as stated in *Bunnell v.*  
26 *Sullivan*, 912 F.2d 1149 (9th Cir. 1990); *see also Burch v. Barnhart*, 400 F.3d 676, 681  
27 (9th Cir. 2005) (explaining that the “lack of medical evidence” can be “a factor” in  
28 rejecting credibility, but cannot “form the sole basis”).

1 Further, with regard to Plaintiff's weight and diet, the ALJ failed explain how he  
2 would expect Plaintiff's weight or diet to change due to her IBS, and how this impacts  
3 her credibility. There is evidence that Plaintiff's providers recommended in 2009 a diet  
4 high in fiber and to include Activia yogurt. (AR 224.) However, the ALJ does not cite to  
5 evidence that Plaintiff failed to adhere to a prescribed diet. The ALJ failed to explain  
6 how a lack of change in Plaintiff's weight or diet undermines her credibility and,  
7 therefore, Plaintiff's weight and diet are not clear and convincing reasons supported by  
8 substantial evidence for rejecting Plaintiff's symptom testimony. *See Lester*, 81 F.3d at  
9 834.

10 Additionally, with respect to Plaintiff's allegations of anxiety, the ALJ found  
11 Plaintiff's testimony not credible because there is no evidence that Plaintiff's anxiety was  
12 not well-controlled with her Atarax prescription, and there is no evidence that Plaintiff  
13 suffered side effects from her medications. (AR 27-28.) In assessing a claimant's  
14 credibility about her symptoms, the ALJ may consider "the type, dosage, effectiveness,  
15 and side effects of any medication" and treatment, other than medication, that the  
16 claimant has received for relief of pain or other symptoms. 20 C.F.R. §  
17 404.1529(c)(3)(iv) and (v). Further, evidence that treatment can control a claimant's  
18 symptoms may be a clear and convincing reason to find a claimant less credible. *See*  
19 *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (stating that  
20 "[i]mpairments that can be controlled effectively with medication are not disabling for  
21 purposes of determining eligibility for SSI benefits.") However, here, although the ALJ  
22 cited to Dr. Javine's findings, he does not cite to any other medical records that  
23 specifically address the impact of Plaintiff's medication. Further, even if there were no  
24 side effects from her medication, Plaintiff was continuously prescribed medication for  
25 anxiety and there is some evidence in the record that she continued to have symptoms,  
26 but could not obtain mental health treatment due to not having insurance. (*See* AR 214-  
27 38, 243-44, 278-312.) Additionally, this reason does address Plaintiff's testimony  
28 regarding the severity of her IBS symptoms. Therefore, the Court does not find that this

1 is a sufficient basis on which to reject Plaintiff’s symptom testimony at step two.

2 The ALJ also relied on Plaintiff’s daily activities in rejecting her symptom  
3 testimony. (*Id.* at 28.) However, rather than relying on those daily activities to discredit  
4 specific testimony, the ALJ concluded simply that Plaintiff “described a range of daily  
5 activity to Dr. Shepherd that is not as limited as one would expect for a disabled  
6 individual.” (*Id.*) The ALJ cites to Dr. Shepherd’s report stating that “[Plaintiff] is able  
7 to care for her personal needs, . . . perform house work and yard work. She can vacuum.  
8 She is able to drive. She enjoys reading and swimming. She enjoys working on the  
9 computer.” (*Id.* at 247-48.)

10 While an ALJ may discredit a claimant’s allegations if a claimant has “engaged in  
11 numerous daily activities involving skills that could be transferred to the workplace,”  
12 *Burch*, 400 F.3d at 681, “the mere fact that a plaintiff has carried on certain daily  
13 activities, such as grocery shopping, driving a car, or limited walking for exercise, does  
14 not in any way detract from her credibility as to her overall disability. One does not need  
15 to be utterly incapacitated in order to be disabled.” *Vertigan v. Halter*, 260 F.3d 1044,  
16 1049-50 (9th Cir. 2001) (citing *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989))  
17 (finding “only a scintilla of evidence in the record to support the ALJ’s finding that [the  
18 claimant] lacked credibility about her pain” where the claimant was able “to go grocery  
19 shopping with assistance, walk approximately an hour in the malls, get together with her  
20 friends, play cards, swim, watch television, . . . read. . . . and exercise at home.”).

21 Here, although Plaintiff engaged in some daily activities, the evidence in the  
22 record suggests those activities were limited. Dr. Javine, to whose opinion, along with  
23 Dr. Shepherd’s, the ALJ assigned “the most weight” in his decision (AR 27), stated that  
24 Plaintiff swims “a couple times a week,” and that she “does not vacuum, wash tubs,  
25 toilets, . . . or do laundry.” (*Id.* at 240.) According to Dr. Javine’s report, the extent of  
26 Plaintiff’s housework is that she does the dishes and dusts. (*Id.*) Plaintiff also testified  
27 that she only drives about once a week. (*Id.* at 38.) The ALJ’s single-sentence finding,  
28 that “[Plaintiff] described a range of daily activity . . . that is not as limited as one would

1 expect for a disabled individual,” does not constitute a specific, clear and convincing  
2 reason supported by substantial evidence for discrediting Plaintiff’s symptom testimony.

3 The Court also finds that the inconsistencies with the medical record the ALJ  
4 identified are not clear and convincing reasons supported by substantial evidence for  
5 rejecting Plaintiff’s testimony at step two. The ALJ specifically noted that although  
6 Plaintiff testified she has constant diarrhea, she denied experiencing diarrhea to Dr.  
7 Katigbak in 2012. “Contradiction with the medical record is a sufficient basis for  
8 rejecting the claimant’s subjective testimony.” *Carmickle*, 533 F.3d at 1161 (citing  
9 *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995)). However, in light of the other  
10 medical evidence in the record regarding Plaintiff’s IBS symptoms, including diarrhea  
11 and abdominal pain (*see, e.g.*, AR 214-38), the Court finds that the ALJ’s citation to one  
12 progress report where she denied experiencing diarrhea is an insufficient basis on which  
13 to reject her testimony regarding the severity of her condition.

14 The ALJ also rejected Plaintiff’s testimony because although there was suspicion  
15 of a rectovaginal fistula, it “was not proven by medical evidence.” (*Id.* at 28.) As  
16 Plaintiff notes, there are medical records that indicate a fistula exists. Records from  
17 Plaintiff’s gastroenterologist, Dr. Josh Zara, state that “the frequent passage of stool via  
18 the vagina [is] suggestive of a fistula between the rectum and the vagina,” (*id.* at 198),  
19 and, although he could not find the fistula during the 2009 colonoscopy, he did state “but  
20 based on [Plaintiff’s] history it has to be present.” (*Id.* at 196.) Further, Dr. Katigbak  
21 noted that Plaintiff’s gynecologist suspected Plaintiff has a fistula. (*Id.* at 219.)  
22 Additionally, the ALJ fails to explain how the lack of proof of a fistula undermines  
23 Plaintiff’s credibility regarding her symptoms related to her IBS. Lack of proof of a  
24 fistula is therefore not a sufficient basis on which to reject Plaintiff’s testimony. *See*  
25 *Cotton*, 799 F.2d at 1407.

26 Finally, the ALJ’s general assertion that Plaintiff’s treating and examining  
27 physicians did not find functional limitations is insufficient. (*Id.* at 28.) As the Ninth  
28 Circuit recently reiterated, “[o]ur decisions make clear that we may not take a general

1 finding—an unspecified conflict between Claimant’s testimony . . . and her reports to  
2 doctors—and comb through the record to find specific conflicts.” *Brown-Hunter*, 2015  
3 WL 4620123 at \*6 (quoting *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014)).  
4 Defendant cites to *Carmickle*, 533 F.3d at 1160, to argue that “contradiction with the  
5 medical record is a sufficient basis for rejecting the claimant’s subjective complaints.”  
6 (Doc. 25 at 10.) However, the ALJ in *Carmickle* cited to specific testimony the plaintiff  
7 gave regarding the amount of weight he can lift and the length of time he can sit, and the  
8 ALJ explained how inconsistencies between specific medical records and the plaintiff’s  
9 testimony undermined the plaintiff’s credibility. *See Carmickle*, 533 F.3d at 1161. Here,  
10 although the ALJ notes that Dr. Shepard and Dr. Javine found no functional limitations,  
11 he fails to identify with specificity inconsistencies between Plaintiff’s testimony and their  
12 findings regarding her functional limitations, and to explain how the findings specifically  
13 undermine Plaintiff’s credibility.<sup>5</sup>

14 For these reasons, when balanced against the other medical evidence in the record  
15 regarding Plaintiff’s conditions, the Court cannot find that the ALJ’s reasons for rejecting  
16 Plaintiff’s testimony were sufficient at step two. *See Webb*, 433 F.3d at 687 (finding “the  
17 ALJ’s reasons for rejecting Webb’s complaints at step two are not substantial enough to  
18 meet the ‘clear and convincing’ standard when balanced against Webb’s doctors’  
19 contemporaneous observations, some objective tests and Webb’s subjective complaints”).

20 **c. The ALJ’s error is not harmless.**

21 Although Plaintiff does not specifically challenge the ALJ’s decision as not  
22 supported by substantial evidence, Defendant appears to argue that regardless of the

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24 <sup>5</sup> Defendant asserts that the ALJ also relied on an inconsistency between Plaintiff’s  
25 testimony that she could not walk more than 50 yards, stand more than 10 minutes, sit  
26 more than half of an hour, and lift more than five pounds, on one the hand, and mild  
27 imagining and normal examination results on the other. (Doc. 25 at 15.) Although the  
28 ALJ discussed this evidence in his decision, he did not specifically make this comparison  
or reject Plaintiff’s testimony based on this inconsistency. *See Brown-Hunter*, 2015 WL  
4620123 at \*6 (“ . . . inconsistencies identified independently by the district court cannot  
provide the basis upon which we can affirm the ALJ’s decision”). Further, Plaintiff  
testified that she experienced pain and fatigue related to her IBS and stomach pain, which  
may not necessarily be detected by imaging or physical examinations. (AR 38, 44-45.)

1 ALJ's treatment of Plaintiff's symptom testimony, the Court should affirm the ALJ's  
2 step-two determination because it is supported by substantial evidence. (Doc. 25 at 8-  
3 11.) The Court disagrees.

4 "A decision of the ALJ will not be reversed for errors that are harmless." *Burch*,  
5 400 F.3d at 679. "So long as there remains 'substantial evidence supporting the ALJ's  
6 conclusions on . . . credibility' and the error 'does not negate the validity of the ALJ's  
7 ultimate credibility conclusion,' [the ALJ's error] is deemed harmless and does not  
8 warrant reversal." *Carmickle*, 533 F.3d at 1162 (quoting *Batson v. Comm'r of Soc. Sec.*  
9 *Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004)). An ALJ's error is harmless if it is  
10 "inconsequential to the ultimate nondisability determination." *Stout v. Comm'r, Soc. Sec.*  
11 *Admin.*, 454 F.3d 1050, 1054-55 (9th Cir. 2006). Here, the ALJ explicitly evaluated and  
12 relied on both medical evidence and symptom testimony in making his step-two  
13 determination, and he did not continue on to the remaining steps in the five-step  
14 evaluation process. Therefore, the ALJ's error in rejecting Plaintiff's symptom testimony  
15 was consequential to the ultimate nondisability determination, and his error is not  
16 harmless.<sup>6</sup>

17 **V. Remand for further proceedings is appropriate here.**

18 Having determined that the ALJ erred, the Court must vacate the Commissioner's  
19 decision. The remaining issue for the Court is whether to remand this matter for an  
20 award of benefits or for further proceedings. Such a determination is within the Court's  
21 discretion. *Smolen*, 80 F.3d at 1292.

22 "When an ALJ's denial of benefits is not supported by the record, the proper  
23 course, except in rare circumstances, is to remand to the agency for additional  
24 investigation or explanation." *Hill v. Astrue*, 698 F.3d 1153, 1162 (9th Cir. 2012)

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25  
26 <sup>6</sup> By finding harmful legal error, the Court does not suggest a finding regarding whether  
27 Plaintiff is disabled under the Act. However, the ALJ must provide clear and convincing  
28 reasons supported by substantial evidence for rejecting Plaintiff's symptom testimony.  
*Ghanim v. Colvin*, 763 F.3d 1154, 1159 (9th Cir. 2014) (the ALJ's decision must be  
reversed only if it "was not supported by substantial evidence in the record as a whole or  
if the ALJ applied the wrong legal standard.").

1 (quotation omitted); *see also Treichler*, 775 F.3d at 1101 (noting that a remand for further  
2 administrative proceedings is generally useful where the record has not been fully  
3 developed, there are outstanding conflicts and ambiguities to be resolved, or the  
4 presentation of further evidence may “prove enlightening.”). The Court applies the  
5 credit-as-true rule to determine that a claimant is disabled and entitled to an award of  
6 benefits only if there are no “outstanding issues [in the record] that must be resolved” and  
7 “it is clear from the record that the ALJ would be required to find the claimant disabled  
8 were [the improperly rejected] evidence credited.” *Harman v. Apfel*, 211 F.3d 1172,  
9 1178 (9th Cir. 2000). However, a “claimant is not entitled to benefits under the statute  
10 unless the claimant is, in fact, disabled, no matter how egregious the ALJ’s errors may  
11 be.” *Strauss v. Comm’r, Soc. Sec. Admin.*, 635 F.3d 1135, 1138 (9th Cir. 2011).

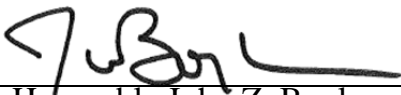
12 Here, although the Court finds that the ALJ erred in rejecting Plaintiff’s symptom  
13 testimony, there is insufficient evidence or analysis beyond step-two of the evaluation  
14 process to award benefits, and there are many outstanding issues that must be resolved  
15 before a disability determination can be made. Thus, remand for further proceedings is  
16 appropriate.

17 Accordingly,

18 **IT IS ORDERED** that the Commissioner’s decision is vacated and this matter is  
19 remanded to the Commissioner for further administrative proceedings consistent with this  
20 Order.

21 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment  
22 accordingly and terminate this case.

23 Dated this 29th day of September, 2015.

24  
25   
26 Honorable John Z. Boyle  
27 United States Magistrate Judge  
28