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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Audra H.,

10 Plaintiff,

11 v.

12 Nancy A. Berryhill, Acting Commissioner  
13 of Social Security Administration,

14 Defendant.  
15

No. CV18-8129-PCT-DGC

**ORDER**

16 Plaintiff Audra H. seeks review under 42 U.S.C. § 405(g) of the final decision of  
17 the Commissioner of Social Security which denied her disability insurance benefits under  
18 sections 216(i), 223(d), and 1614(a)(3)(A) of the Social Security Act. For the following  
19 reasons, the Court will reverse the decision of the Administrative Law Judge (“ALJ”), and  
20 remand for additional proceedings.

21 **I. Background.**

22 Plaintiff is a 61-year-old woman with a high-school education, and she previously  
23 worked as a front-desk clerk, phone operator, and caregiver. A.R. 44, 46-48. Plaintiff  
24 applied for disability benefits on December 6, 2013, alleging disability beginning  
25 October 23, 2013. A.R. 11. Plaintiff and a vocational expert appeared and testified at a  
26 hearing before the ALJ. A.R. 40-84. On March 15, 2017, the ALJ issued an unfavorable  
27 decision, finding Plaintiff was not disabled. A.R. 11-21. The ALJ’s decision became the  
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1 Commissioner’s final decision when the Appeals Council denied Plaintiff’s request for  
2 review on April 19, 2018. A.R. 1-4.

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 Commissioner’s disability determination only if the determination is not  
7 supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625,  
8 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, less than a  
9 preponderance, and relevant evidence that a reasonable person might accept as adequate to  
10 support a conclusion considering the record as a whole. *Id.* In determining whether  
11 substantial evidence supports a decision, the Court must consider the record as a whole and  
12 may not affirm simply by isolating a “specific quantum of supporting evidence.” *Id.*  
13 (internal citations and quotation marks omitted). As a general rule, “[w]here the evidence  
14 is susceptible to more than one rational interpretation, one of which supports the ALJ’s  
15 decision, the ALJ’s conclusion must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954  
16 (9th Cir. 2002) (citations omitted). The ALJ is responsible for resolving conflicts in  
17 medical testimony, determining credibility, and resolving ambiguities. *Andrews v.*  
18 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). In reviewing the ALJ’s reasoning, the Court  
19 is “not deprived of [its] faculties for drawing specific and legitimate inferences from the  
20 ALJ’s opinion.” *Magallanes v. Bowen*, 881 F.2d 747, 755 (9th Cir. 1989).

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

22 To determine whether a claimant is disabled for purposes of the Social Security Act,  
23 the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the  
24 burden of proof on the first four steps, and the burden shifts to the Commissioner at step  
25 five. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ  
26 determines whether the claimant is engaging in substantial gainful activity. 20 C.F.R.  
27 § 404.1520(a)(4)(i). If so, the claimant is not disabled and the inquiry ends. *Id.* At step  
28 two, the ALJ determines whether the claimant has a “severe” medically determinable

1 physical or mental impairment. § 404.1520(a)(4)(ii). If not, the claimant is not disabled  
2 and the inquiry ends. *Id.* At step three, the ALJ considers whether the claimant’s  
3 impairment or combination of impairments meets or medically equals an impairment listed  
4 in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404. § 404.1520(a)(4)(iii). If so, the claimant  
5 is automatically found to be disabled. *Id.* If not, the ALJ proceeds to step four. At step  
6 four, the ALJ assesses the claimant’s residual functional capacity (“RFC”) and determines  
7 whether the claimant is still capable of performing past relevant work.  
8 § 404.1520(a)(4)(iv). If so, the claimant is not disabled and the inquiry ends. *Id.* If not,  
9 the ALJ proceeds to the fifth and final step to determine whether the claimant can perform  
10 any other work based on the claimant’s RFC, age, education, and work experience.  
11 § 404.1520(a)(4)(v). If so, the claimant is not disabled. If not, the claimant is disabled. *Id.*

12 At step one, the ALJ found that Plaintiff met the insured status requirements of the  
13 Social Security Act through September 30, 2016, and that she had not engaged in  
14 substantial gainful activity since October 23, 2013. A.R. 13. At step two, the ALJ found  
15 that Plaintiff had the following severe impairments: vision loss in the right eye; peripheral  
16 neuropathy; osteoarthritis of the right foot and bilateral wrists; bilateral carpal tunnel  
17 syndrome, status post release on the left; bilateral cubital tunnel syndrome; left ring finger  
18 trigger finger, status post release; and lumbar degenerative disc disease. A.R. 13. At step  
19 three, the ALJ determined that Plaintiff did not have an impairment or combination of  
20 impairments that meets or medically equals a listed impairment. A.R. 16.<sup>1</sup> At step four,  
21 the ALJ found that Plaintiff had the RFC to perform light work, and was capable of  
22 performing past relevant work as a personal attendant, front desk clerk, and casino  
23 reservation clerk. A.R. 16, 21.

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25 <sup>1</sup> The ALJ found that Plaintiff’s depressive disorder and polysubstance dependence,  
26 alone and in combination, did not cause more than a minimal limitation on her ability to  
27 perform basic mental work and were therefore not severe. A.R. 13-14. The ALJ also noted  
28 that Plaintiff had been diagnosed with obesity, migraines, urinary incontinence,  
hypertension, and hepatic steatosis throughout the record, but these impairments also were  
not severe. A.R. 15-16. Plaintiff does not appeal those findings. *See* Doc. 12 at 18-22.  
Nor does Plaintiff appeal findings regarding her mental work capacities. *Id.* at 7 n.7.

1 **IV. Analysis.**

2 Plaintiff argues the ALJ's decision is defective for two reasons: (1) the ALJ erred  
3 in rejecting the opinion of Plaintiff's treating physician; and (2) the ALJ rejected Plaintiff's  
4 symptom testimony without specific, clear, and convincing reasons, supported by  
5 substantial evidence. Doc. 12 at 1-2.

6 **A. Medical Opinion Evidence.**

7 **1. Legal Standard.**

8 A physician's opinion may be a treating source, examining source, or non-  
9 examining source. *See* 20 C.F.R. § 404.1527 (evaluating opinion evidence for claims filed  
10 before March 2017); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). A treating  
11 physician is one who provides or has provided the claimant with medical treatment or  
12 evaluation, or who has an ongoing treatment relationship with the claimant. *Id.* at  
13 § 404.1527(a)(2). Generally, an ALJ should give greatest weight to a treating physician's  
14 opinion and more weight to the opinion of an examining physician than a non-examining  
15 physician. *See Andrews*, 53 F.3d at 1040-41; *see also* 20 C.F.R. § 404.1527(c)(2)-(6).  
16 "The ALJ must do more than offer his conclusions. He must set forth his own  
17 interpretations and explain why they, rather than the doctors', are correct." *Embrey v.*  
18 *Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988). The Commissioner is responsible for  
19 determining whether a claimant meets the statutory definition of disability and does not  
20 give significance to a statement by a medical source that the claimant is "disabled" or  
21 "unable to work." 20 C.F.R. § 416.927(d).

22 **2. Dr. Janikowski.**

23 The ALJ gave limited weight to the assessment by treating physician, Dr. Mary  
24 Janikowski. A.R. 20. Because Dr. Janikowski is a treating source whose opinion was  
25 contradicted by consultative examining physician Dr. Tromp, the ALJ could discount her  
26 opinion only for specific and legitimate reasons supported by substantial evidence in the  
27 record. *Lester*, 81 F.3d at 830-31.

1           On July 19, 2016, Dr. Janikowski opined that Plaintiff could continuously sit for  
2 thirty minutes to an hour, and sit for three hours per day; stand and walk for thirty minutes  
3 to an hour at a time, and for two hours or less per day; frequently lift and carry five pounds,  
4 occasionally lift and carry ten pounds, and rarely lift and carry more than ten pounds;  
5 occasionally reach, and rarely stoop, squat, crawl, or climb; frequently handle, grip, or  
6 grasp; rarely push or pull controls; frequently do fingering or fine manipulation; use either  
7 foot for repetitive movements, but not both; has a moderate restriction for occupational  
8 driving, but no restrictions for unprotected heights, moving machinery, exposure to dust,  
9 fumes, gases, or marked changes in temperature and humidity; and has moderately severe  
10 limitations from pain and fatigue. Dr. Janikowski based her opinion on Plaintiff's medical  
11 records, clinical observations, lab and other diagnostics, and her knowledge of Plaintiff's  
12 presenting diseases and disorders. A.R. 1324-1326.<sup>2</sup>

13           Discrediting Dr. Janikowski's opinion, the ALJ stated:

14           While I accepted the assessment that the claimant's impairments resulted in  
15 more than minimal limitations with her ability to perform work related  
16 activities[,] the limitations assessed by Dr. Janikowski appeared to rely  
17 heavily on the claimant's subjective allegations and were inconsistent with  
18 available physical examination results and review of systems, which, as  
discussed in this decision, routinely showed only mild to moderate findings  
consistent with the residual functional capacity listed in this decision.

19 A.R. 20. The ALJ also discredited Dr. Janikowski's assessment that Plaintiff's limitations  
20 would prevent her from sustaining long-term employment because the disability  
21 determination is reserved for the Commissioner. *Id.*

22           The Commissioner concedes that the ALJ's first and third reasons were error. Doc.  
23 16 at 8. As to the ALJ's second reason, the Commissioner addresses none of Plaintiff's  
24 arguments (Doc. 12 at 11-18), and does not argue that the medical evidence was  
25 inconsistent with Dr. Janikowski's opinion as the ALJ found, nor that affirming would be

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27           <sup>2</sup> Some of Dr. Janikowski's handwritten comments or specific recommendations are  
28 illegible. The Court also notes that the ALJ cited Exhibits 29F and 30F. Both exhibits  
contain the same July 19, 2016 opinion by Dr. Janikowski. A.R. 1324-30.

1 proper. Rather, the Commissioner states that the ALJ provided “some good reasons for  
2 discounting the opinion, but asks the Court to remand for the ALJ to reweigh Dr.  
3 Janikowski’s opinion. Doc. 16 at 1, 8-9. Later in its credit-as-true rule analysis, the  
4 Commissioner concedes under the first step that the ALJ failed to provide legally sufficient  
5 reasons for rejecting Dr. Janikowski’s opinion. *Id.* at 9. The Court interprets the  
6 Commissioner’s position as conceding that the ALJ erred in all reasons for discrediting Dr.  
7 Janikowski, and therefore need not address Plaintiff’s arguments.

8 **B. Evaluation of Plaintiff’s Symptom Testimony.**

9 In evaluating a claimant’s symptom testimony, the ALJ must engage in a two-step  
10 analysis. First, the ALJ must determine whether the claimant presented objective medical  
11 evidence of an impairment that could reasonably be expected to produce the symptoms  
12 alleged. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014). The claimant is not  
13 required to show that her impairment could reasonably be expected to cause the severity of  
14 the symptoms she has alleged, only that it could reasonably have caused some degree of  
15 the symptoms. *Id.* Second, if there is no evidence of malingering, the ALJ may reject the  
16 claimant’s symptom testimony only by giving specific, clear, and convincing reasons. *Id.*  
17 at 1015. “This is not an easy requirement to meet: ‘The clear and convincing standard is  
18 the most demanding required in Social Security cases.’” *Id.* (quoting *Moore v. Comm’r of*  
19 *Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

20 At the hearing before the ALJ, Plaintiff testified to the following. *See* A.R. 50-74.  
21 On a typical day, she rates her pain at about a seven on a one-to-ten scale. A.R. 53. Plaintiff  
22 experiences constant neck pain that travels into her shoulders, back, knee, and foot, and  
23 causes numbness and tingling in her arms and hands. A.R. 50-51. She has broken both  
24 feet more than once and experiences constant pain from those injuries. A.R. 51. She also  
25 experiences back pain and fatigue which cause her to hunch over when she sits and walks.  
26 A.R. 52-53. Even hunched, Plaintiff can sit for only thirty minutes without needing to  
27 stand or change positions. A.R. 68. An injection in Plaintiff’s lower back only helped her  
28 pain for a few days. A.R. 57.

1 Plaintiff is blind in her right eye, and she uses an unprescribed cane to help her walk.  
2 A.R. 56-58. Walking is difficult. She can stand for only ten to fifteen minutes at a time  
3 and walk less than a block without stopping. A.R. 66-67. She has difficulty with twisting,  
4 bending, squatting, and other truncal movements. A.R. 69. Plaintiff has problems using  
5 her hands, grasping objects, buttoning her shirts, and working zippers. A.R. 61. Lifting a  
6 gallon of milk, or more than eight pounds, is difficult. A.R. 67. Carpal tunnel surgery  
7 helped “quite a bit,” but did not alleviate her arm and hand pain completely. A.R. 51.

8 Plaintiff’s anxiety and depression affect her daily life, often causing her to become  
9 upset over minor issues and interactions with others. A.R. 62. She has difficulty with her  
10 memory, including remembering words, concentrating, and focusing on her thoughts and  
11 tasks. A.R. 63. She takes medications for pain, depression, and anxiety. A.R. 53-54.

12 Plaintiff wakes three to seven times during the night to use the restroom, and  
13 sometimes cannot make it to the bathroom because of her pain. A.R. 64. Due to pain and  
14 depression, Plaintiff struggles to get dressed and do her hair, and usually does not leave her  
15 home. A.R. 64. Plaintiff does dishes and laundry, dusts, sometimes vacuums, and grocery  
16 shops, but she must use a wheelchair or lean on a grocery cart because she cannot walk far  
17 without support. A.R. 64. She does not participate in any social groups or activities. *Id.*  
18 She does not believe that her pain and ailments would allow her to work fulltime. A.R. 71.

19 The ALJ first found that Plaintiff’s medically determinable impairments could  
20 reasonably be expected to cause the alleged symptoms. A.R. 19. Second, the ALJ found  
21 Plaintiff’s statements regarding the intensity, persistence, and limiting effects of the  
22 symptoms were not entirely consistent with the medical evidence and other evidence in the  
23 record. A.R. 19. The ALJ gave three reasons for discrediting her symptom testimony:  
24 (1) objective medical and clinical findings did not support disabling limitations, and  
25 treating and examining source reports were inconsistent with the frequency and severity of  
26 Plaintiff’s alleged pain; (2) Plaintiff’s reported daily activities were consistent with the  
27 ALJ’s assessment that Plaintiff could function at a higher level than alleged; and  
28

1 (3) Plaintiff’s alleged symptoms were inconsistent with the consultative examination report  
2 by Dr. Efren Cano. A.R. 18-19.<sup>3</sup>

3 **1. Symptom Testimony Not Supported by the Record.**

4 **a. Standard.**

5 “Pain of sufficient severity caused by a medically diagnosed ‘anatomical,  
6 physiological, or psychological abnormality’ may provide the basis for determining that a  
7 claimant is disabled.” *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997) (citing  
8 42 U.S.C. § 423(d)(5)(A); *Bunnell v. Sullivan*, 947 F.2d 341, 344-45 (9th Cir. 1991)).  
9 “Once a claimant produces objective medical evidence of an underlying impairment, an  
10 ALJ may not reject a claimant’s subjective complaints based solely on lack of objective  
11 medical evidence to fully corroborate the alleged severity of pain.” *Moisa v. Barnhart*,  
12 367 F.3d 882, 885 (9th Cir. 2004) (citation and alterations omitted); *see Smolen*, 80 F.3d  
13 at 1282 (“The claimant need not produce objective medical evidence of the pain . . . itself,  
14 or the severity thereof. Nor must the claimant produce objective medical evidence of the  
15 causal relationship between the medically determinable impairment and the symptom.”)  
16 (citing *Bunnell*, 947 F.2d at 345-48); 20 C.F.R. § 404.1529(c)(2) (“[W]e will not reject  
17 your statements about the intensity and persistence of your pain or other symptoms or about  
18 the effect your symptoms have on your ability to work solely because the objective medical  
19 evidence does not substantiate your statements.”); *see also* SSR 95-5p, 1995 WL 670415,  
20 at \*1 (Oct. 31, 1995) (“Because symptoms sometimes suggest a greater severity of  
21 impairment than can be shown by objective medical evidence alone, careful consideration  
22 must be given to any available information about symptoms.”).

23 Unless the ALJ “makes a finding of malingering based on affirmative evidence  
24 thereof, [she] may only find [the claimant] not credible by making specific findings as to  
25 credibility and stating clear and convincing reasons for each.” *Robbins v. Soc. Sec. Admin.*,  
26 466 F.3d 880, 883 (9th Cir. 2006) (citing *Smolen*, 80 F.3d at 1283-84). “General findings

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28 <sup>3</sup> The ALJ found Plaintiff’s polysubstance dependence was not material to her  
disability determination and did not use it discredit her symptom testimony. A.R. 15.



1 are insufficient; rather, the ALJ must identify what testimony is not credible and what  
2 evidence undermines the claimant's complaints.” *Reddick*, 157 F.3d at 722 (quoting  
3 *Lester*, 81 F.3d at 834); *see Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993) (same).

4 **b. Discussion.**

5 The ALJ discussed several objective findings that supported minimal limitations  
6 and Plaintiff's “subjective allegations of [the] progression of her symptoms during the  
7 period at issue,” but which supported the ALJ's determined RFC when “considered in  
8 context with examination results.” A.R. 17-18. The ALJ referred to cervical spine x-rays  
9 from May 19, 2014, showing some evidence of anterior fusion and moderate disc space  
10 narrowing. A.R. 17 (citing Exhibit 26F/10). The ALJ noted:

11 However, the impression was that there was no fracture, the anterior fusion  
12 instrumentation had intact hardware, and there was expected alignment.  
13 Imaging of the claimant's lumbar spine showed advanced degenerative  
14 changes with grade 1 anterior spondylothesis, mild canal stenosis, moderate  
15 to marked central canal stenosis, and moderate to marked foraminal stenosis.  
16 (Exhibit 26F/1). Lumbar spine x-ray showed mild compression fracture of  
17 the L4 with marked generalized disc space narrowing. (Exhibit 26F/2).  
18 While these spinal impairments undoubtedly affect the claimant's ability to  
19 perform work activities, her limitations are accounted for in the above  
20 residual functional capacity assessment, namely the light exertional level and  
21 restricted range of postural activities.

22 A.R. 17.

23 The ALJ's cited exhibit, Exhibit 26F, includes lumbar spine and full body bone MRI  
24 examinations and radiology reports on Plaintiff's knees, wrists, and right shoulder from the  
25 same medical center where Dr. Janikowski worked, spanning from May 19, 2014 to June  
26 22, 2016. *See* A.R. 1077-1100. Results concerning Plaintiff's back and spine revealed  
27 advanced degenerative changes of lumbar discs, mild central canal stenosis at L2-L3,  
28 moderate to marked central stenosis at L3-L4, and mild to moderate compression deformity  
of L4 with approximate 50% loss of vertebral height (A.R. 1077); slight curve of the lumbar  
spine, marked disc space narrowing, some sclerosis at the superior endplate suggesting a  
remote fracture, generalized degenerative changes of facet joints, some osteoarthritis at the  
inferior aspects of both SI joints, and generalized osteopenia but no instability during

1 flexion-extension maneuvers (A.R. 1078). The ALJ recited these findings without  
2 specifying how the evidence discredited Plaintiff's testimony. A.R. 17-18.

3 The Court does not find the ALJ's discussion of the evidence pertaining to  
4 Plaintiff's back and spine to be clear and convincing reasons for rejecting Plaintiff's  
5 symptom testimony. The ALJ acknowledged three times that medical findings supported  
6 more than minimal limitations, that Plaintiff's spinal impairments undoubtedly affected her  
7 ability to perform work activities, and that the evidence supported the alleged progression  
8 of Plaintiff's symptoms. A.R. 18-19. Plaintiff testified to constant neck and back pain that  
9 causes her to sit and walk hunched and to change positions every thirty minutes.  
10 A.R. 52-68. Indeed, at the hearing the ALJ observed Plaintiff "look[ing] really fatigued"  
11 and "bending over so much" that she often lost sight of most of Plaintiff's face. A.R. 52.

12 The ALJ also cited entire Exhibits 1F, 2F, 3F, 4F, 7F, 14F, 22F, and 31F, stating  
13 that Plaintiff's "muscle strength and tone assessments showed that [her] paraspinal muscle  
14 strength was within normal limits and paraspinal muscle tone was within normal limits."  
15 A.R. 18. And cited entire exhibits 1F, 2F, 3F, 4F, 10F, 14F, 20F, 21F, 22F, 26F, 28F, and  
16 32F, stating that "review of reports made by treating and examining sources showed that .  
17 . . the claimant was routinely without acute distress or not in any distress," even though she  
18 testified to constant neck pain. A.R. 19. These exhibits total over 500 pages, and the ALJ  
19 cited no specific pages supporting her assertions. The Court is "constrained to review the  
20 reasons the ALJ asserts," *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003), and "may  
21 not take a general finding . . . and comb the administrative record to find specific conflicts"  
22 *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014). The ALJ's general findings, citing  
23 entire lengthy exhibits with no specificity, are not clear and convincing reasons to reject  
24 Plaintiff's symptom testimony. *See id.*; *Lester*, 81 F.3d at 834.

25 The ALJ's cited results pertaining to Plaintiff's upper extremities revealed  
26 narrowing at the radiocarpal joint space and osteoporotic bony structures in Plaintiff's left  
27 wrist (A.R. 1090); mild narrowing at the first metacarpocarpal joint and the radiocarpal  
28 joint space consistent with degenerative osteoarthritis, and osteoporotic bony structures in

1 Plaintiff's right wrist (A.R. 1091); and osteopenia of visualized bony structures in  
2 Plaintiff's right shoulder, with degenerative cyst-like change noted in greater tuberosity,  
3 but no fracture line, bony abnormality, or tissue calcification (A.R. 1092). The ALJ also  
4 cited Exhibit 23F and its "mildly abnormal findings" in concluding that a light exertional  
5 level for lifting and carrying requirements accounted for any of Plaintiff's limitations in  
6 her upper extremities. A.R. 18. That exhibit includes complaints of pain, carpal tunnel  
7 syndrome, acquired trigger finger, hand pain, paresthesia, numbness, and difficulty  
8 grasping (A.R. 1018, 1021, 1024); diagnoses for left carpal tunnel syndrome and left ring  
9 finger trigger digit (A.R. 1008); and findings of mild osteoarthritic changes, no acute  
10 fracture, or dislocation in the left hand (A.R. 1011); evidence of mild left and moderate  
11 right carpal tunnel syndrome affecting sensory and motor components; myofascial pain  
12 involving paracervical, upper trapezius, and levator scapulae muscles; reduced amplitude  
13 in left median motor, left ulnar sensory, and right ulnar sensory nerves; prolonged distal  
14 onset latency in right median motor nerve and decreased conduction velocity; prolonged  
15 distal peak latency, reduced amplitude, and decreased conduction velocity in the right  
16 median sensory nerve (A.R. 1012); and positive Tinel's sign at the median nerve, carpal  
17 compression, and Phalen's test in the right hand (A.R. 1025).

18 Plaintiff had left carpal tunnel surgery in May 2016. A.R. 1008. She testified that  
19 it helped "quite a bit" but did not alleviate all hand and arm pain (A.R. 51), and that she  
20 continued to have problems using her hands, grasping objects, buttoning her shirts, working  
21 zippers, or lifting a gallon of milk (A.R. 61, 67). The ALJ cited only findings predating  
22 Plaintiff's surgery – yet those same findings were sufficient for doctors to recommend that  
23 Plaintiff undergo surgery on her left hand. The ALJ cited no other specific findings  
24 contradicting Plaintiff's testimony that she continues to have pain in her left hand. Rather,  
25 the ALJ found that Plaintiff's residual functional capacity includes full grip, contrary to  
26 Plaintiff's testimony and findings in the cited exhibit. Given the ALJ's selective record  
27 citations, general conclusions, and failure to discuss these other findings supporting  
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1 Plaintiff's testimony, the Court cannot conclude that the ALJ provided clear and  
2 convincing reasons to discredit Plaintiff's testimony.

3 As to Plaintiff's lower extremities, the ALJ's cited findings showed normal  
4 alignment, bone mineral density, and soft tissues in Plaintiff's right foot, with post-  
5 traumatic or degenerative changes at the medial malleolus, mild degenerative changes at  
6 the DIP and PIP joints and great toe MTP joint, but no fracture, destructive lesion, or  
7 subluxation (A.R. 1083); no fracture or dislocation in the knees, with notably well-  
8 preserved joint spaces in Plaintiff's right knee (A.R. 1088-89). The ALJ also cited "EMG  
9 and NCV findings [that] showed peripheral neuropathy" in Plaintiff's right leg, and an  
10 x-ray of Plaintiff's right foot that "only showed mild degenerative changes." A.R. 18  
11 (citing A.R. 878). But the cited exhibit, 20F, also showed complaints of arthritis in the left  
12 knee and ongoing pain (A.R. 859, 865); trigger points posterior to the great trochanteric  
13 prominence on left hip, with trigger points at the medial fat pad proximal to the joint line,  
14 mild diffuse tenderness, and painful range of motion at the left knee (A.R. 862); trigger  
15 points at the right knee, moderate painful range of motion at the right hip, moderate  
16 swelling, tenderness, and painful range of motion at the right knee, and diffuse tenderness,  
17 mild diffuse swelling, and moderate to severe painful range of motion at the right ankle  
18 and foot (*id.*). The ALJ addressed none of these findings.

19 Plaintiff testified that she has broken both feet several times and experiences  
20 constant pain from those injuries. A.R. 51. Walking, bending, and squatting are all  
21 difficult, and Plaintiff uses a cane to walk. A.R. 56-58, 69. She testified that she can stand  
22 for only ten to fifteen minutes at a time and walk less than a block without stopping. A.R.  
23 66-67. Acknowledging some limitations in Plaintiff's lower extremities, the ALJ provided  
24 for restricted range of postural activities and avoidance of uneven terrain. A.R. 18. But  
25 the ALJ cited only the normal and mild findings in Exhibit 20F, failing to address evidence  
26 that supported the extent of Plaintiff's alleged symptoms. Given the ALJ's lack of specific  
27 findings as to the whole record on Plaintiff's lower extremities – even within the ALJ's  
28 cited exhibit – the Court cannot find these cursory statements to be clear and convincing

1 reasons for discrediting Plaintiff's testimony. *See Rollins v. Massanari*, 261 F.3d 853,  
2 856-57 (9th Cir. 2001).

3 **2. Inconsistency with Plaintiff's Statements.**

4 "In evaluating the claimant's testimony . . . the ALJ may consider inconsistencies  
5 either in the claimant's testimony or between the testimony and the claimant's conduct."  
6 *Molina v. Astrue*, 674 F.3d 1104, 1112-13 (9th Cir. 2012). "[T]he ALJ may discredit a  
7 claimant's testimony when the claimant reports participation in everyday activities  
8 indicating capacities that are transferable to a work setting. Even where those activities  
9 suggest some difficulty functioning, they may be grounds for discrediting the claimant's  
10 testimony to the extent that they contradict claims of a totally debilitating impairment." *Id.*  
11 at 1113 (citations omitted).

12 Finding that Plaintiff is capable of doing past relevant work as a personal attendant,  
13 front desk clerk, and casino reservation clerk, the ALJ stated that Plaintiff's residual  
14 functional capacity "was supported by the claimant's reported activities of daily living,  
15 including performing personal care, preparing meals, and performing household chores."  
16 A.R. 19 (citing Exhibit 17E); *see* A.R. 21. The ALJ concluded that Plaintiff's "reported  
17 activities were consistent with the assessment that [she] could function at a higher level  
18 than alleged." A.R. 19.

19 Exhibit 17E is Plaintiff's Function Report, in which she reported the following. *See*  
20 A.R. 315-22. Plaintiff cares for outdoor-cats, which does not involve cleaning a litter box.  
21 A.R. 65, 316. She takes only showers because she cannot easily get in and out of her tub.  
22 A.R. 316. She cannot sleep without her medication and uses a pillbox to remember to take  
23 her medications because she forgets sometimes. A.R. 316-17. She prepares easy meals,  
24 like frozen dinners, hamburger helper, or sandwiches, and cannot cook big dinners because  
25 it is too painful to stand in the kitchen for a long time. A.R. 317. Around the house Plaintiff  
26 dusts, vacuums, does laundry, and waters the yard. But these tasks take her "much longer  
27 than [they] should" or she will just not "do as good of a job." Her family reminds her to do  
28 these chores if "it gets too bad." *Id.* She cannot bend down to do yard work. A.R. 318.

1 Plaintiff does not drive because of difficulty seeing and travels by riding with others. She  
2 shops only for food and pet food about once a week. *Id.* She is not able to count change,  
3 pay bills, or handle a savings account. *Id.* She watches television as a hobby, and has  
4 difficulty crafting because of her carpal tunnel and poor eyesight. She participates in no  
5 activities other than attending doctor visits up to three times a week or talking on the phone.  
6 A.R. 319. She reports not handling stress well and being “scared to death” about her vision  
7 or falling down. A.R. 21.

8 Plaintiff’s reported daily activities of watching television, talking on the phone,  
9 preparing easy meals, struggling to complete housework, and attending doctor  
10 appointments hardly demonstrate that Plaintiff “is able to spend a substantial part of [her]  
11 day engaged in pursuits involving the performance of physical functions that are  
12 transferable to a work setting.” *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007).  
13 Plaintiff remains in her house unless attending an appointment. She does household chores  
14 slowly or incompletely, or will let the tasks build up until reminded by her family. She  
15 described no other personal care routine than showering. “[T]he mere fact [that Plaintiff]  
16 has carried on certain daily activities . . . does not in any way detract from her credibility  
17 as to her overall disability,” especially given the minimal level of reported activities and  
18 the manner in which Plaintiff completes them – with difficulty or in such a way to avoid  
19 pain. *Id.* (quoting *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001)). This was not  
20 a clear and convincing reason to discredit Plaintiff’s testimony.

### 21 **3. Inconsistent with Examining Physician’s Report.**

22 “[I]n evaluating a claimant’s subjective complaints of pain [or other symptoms], the  
23 adjudicator must give full consideration to all of the available evidence, medical and other,  
24 that reflects on the impairment and any attendant limitations of function.” *Smolen v.*  
25 *Chater*, 80 F.3d 1273, 1285 (9th Cir. 1996). “Such other evidence includes the claimant’s  
26 prior work record, her daily activities, and observations by treating and examining  
27 physicians and third parties about the claimant’s symptoms and their effects.” *Id.*

28

1 The ALJ found her assessment to be supported by the consultative examination  
2 report of Dr. Efren Cano. A.R. 19. Dr. Cano diagnosed Plaintiff with unspecified  
3 decreased vision, carpal tunnel syndrome, unspecified memory problems, and neck pain.  
4 A.R. 555. The ALJ noted that:

5 Dr. Cano opined that there were no conditions that had or would impose any  
6 limitations for 12 continuous months. Dr. Cano's assessment was consistent  
7 with examination results, which were remarkably normal or within normal  
8 range. However, a more restrictive residual functional capacity was adopted  
9 based on updated treatment records and the combined effects of the  
claimant's impairments. Accordingly, partial weight was assigned to the  
opinion provided by Dr. Cano.

10 A.R. 19.

11 The ALJ found Dr. Cano's report discrediting because it confirmed her  
12 interpretation of the medical evidence. But as discussed, the ALJ cited no clear and  
13 convincing reasons in the medical record that discredit Plaintiff's symptom testimony. And  
14 Plaintiff's hearing testimony and function report support her limitations. The ALJ  
15 recognized, at least in part, that Plaintiff experiences more restrictions than Dr. Cano's  
16 report reflected. Yet the ALJ failed to explain why Dr. Cano's report was credible as to its  
17 other findings. The ALJ's partial adoption of Dr. Cano's report and general summary of  
18 his conclusions fails to identify specific ways in which Plaintiff was malingering or which  
19 specific portions of her testimony Dr. Cano's report discredits. *See Robbins*, 466 F.3d at  
20 883 (“[U]nless an ALJ makes a finding of malingering based on affirmative evidence  
21 thereof, he or she may only find an applicant not credible by making specific findings as  
22 to credibility and stating clear and convincing reasons for each.”). Given the other evidence  
23 corroborating Plaintiff's testimony, and the ALJ's lack of specific credibility findings, the  
24 Court finds this is not a clear and convincing reason to discredit Plaintiff's testimony. *Cf.*  
25 *Smolen*, 80 F.3d at 1285.

26 **V. Remand.**

27 The ALJ erred in discrediting Plaintiff's symptom testimony and the opinion of Dr.  
28 Janikowski. Plaintiff contends that, crediting this evidence as true, the Court must remand

1 for an award of benefits. Doc. 12 at 22. The Commissioner counters that the appropriate  
2 remedy is a remand for further proceedings. Doc. 16 at 9.

3 “When the ALJ denies benefits and the court finds error, the court ordinarily must  
4 remand to the agency for further proceedings before directing an award of benefits.” *Leon*  
5 *v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017). Under a “rare exception” to this rule,  
6 the Court may remand for an immediate award of benefits after conducting a three-part  
7 inquiry:

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

15 *Id.* (internal quotation marks and citations omitted).

16 The first step is satisfied. The ALJ failed to provide legally sufficient reasons for  
17 discounting the opinion of Dr. Janikowski and Plaintiff’s testimony.

18 Applying step two, the Court concludes that outstanding issues must be resolved  
19 before a disability determination can be made. Although the ALJ erred in discounting  
20 Plaintiff’s testimony and the medical opinion of Dr. Janikowski, the record contains  
21 conflicting medical opinions by Dr. Janikowski and Dr. Cano and mixed findings about  
22 the extent of Plaintiff’s limitations. The mixed and inconsistent nature of the medical  
23 evidence in the record creates doubt as to Plaintiff’s disability, and further administrative  
24 proceedings to weigh these conflicting opinions and findings would be useful. This case  
25 therefore does not present the rare circumstance in which an immediate award of benefits  
26 might be appropriate.



