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

Case No. 2:15-cv-07222 (VEB)

GAYLE Y DRAPER,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

DECISION AND ORDER

**I. INTRODUCTION**

In May of 2012, Plaintiff Gayle Y. Draper applied for Supplemental Security Income (“SSI”) benefits and Disability Insurance Benefits under the Social Security Act. The Commissioner of Social Security denied the applications.

Plaintiff, by and through her attorneys, Law Offices of Martin Taller, APC, Troy D. Monge, Esq., of counsel, commenced this action seeking judicial review of

1 the Commissioner’s denial of benefits pursuant to 42 U.S.C. §§ 405 (g) and 1383  
2 (c)(3).

3 The parties consented to the jurisdiction of a United States Magistrate Judge.  
4 (Docket No. 7, 11, 21, 22). On May 31, 2016, this case was referred to the  
5 undersigned pursuant to General Order 05-07. (Docket No. 20).

## 6 7 **II. BACKGROUND**

8 Plaintiff applied for SSI benefits and Disability Insurance Benefits on May 14,  
9 2012, alleging disability beginning September 17, 2008, due to various impairments.  
10 (T at 138-44, 145-53, 154-57).<sup>1</sup> The applications were denied initially and on  
11 reconsideration. Plaintiff requested a hearing before an Administrative Law Judge  
12 (“ALJ”).

13 On February 13, 2014, a hearing was held before ALJ Sharilyn Hopson. (T at  
14 34). Plaintiff appeared with her attorney and testified. (T at 37-48). The ALJ also  
15 received testimony from Alan Boroskin, a vocational expert (T at 49-54).

16 On March 3, 2014, the ALJ issued a written decision denying the applications  
17 for benefits. (T at 16-31). The ALJ’s decision became the Commissioner’s final  
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19 <sup>1</sup> Citations to (“T”) refer to the administrative record at Docket No. 16.

1 decision on August 17, 2015, when the Appeals Council denied Plaintiff's request  
2 for review. (T at 1-7).

3 On September 14, 2015, Plaintiff, acting by and through her counsel, filed this  
4 action seeking judicial review of the Commissioner's denial of benefits. (Docket No.  
5 1). The Commissioner interposed an Answer on March 17, 2016. (Docket No. 15).  
6 The parties filed a Joint Stipulation on May 23, 2016. (Docket No. 19).

7 After reviewing the pleadings, Joint Stipulation, and administrative record,  
8 this Court finds that the Commissioner's decision must be reversed and this case be  
9 remanded for further proceedings.

### 11 III. DISCUSSION

#### 12 A. Sequential Evaluation Process

13 The Social Security Act ("the Act") defines disability as the "inability to  
14 engage in any substantial gainful activity by reason of any medically determinable  
15 physical or mental impairment which can be expected to result in death or which has  
16 lasted or can be expected to last for a continuous period of not less than twelve  
17 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a  
18 claimant shall be determined to be under a disability only if any impairments are of  
19 such severity that he or she is not only unable to do previous work but cannot,

1 considering his or her age, education and work experiences, engage in any other  
2 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),  
3 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and  
4 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001).

5 The Commissioner has established a five-step sequential evaluation process  
6 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step  
7 one determines if the person is engaged in substantial gainful activities. If so,  
8 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the  
9 decision maker proceeds to step two, which determines whether the claimant has a  
10 medically severe impairment or combination of impairments. 20 C.F.R. §§  
11 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

12 If the claimant does not have a severe impairment or combination of  
13 impairments, the disability claim is denied. If the impairment is severe, the  
14 evaluation proceeds to the third step, which compares the claimant's impairment(s)  
15 with a number of listed impairments acknowledged by the Commissioner to be so  
16 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),  
17 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or  
18 equals one of the listed impairments, the claimant is conclusively presumed to be  
19 disabled. If the impairment is not one conclusively presumed to be disabling, the

1 evaluation proceeds to the fourth step, which determines whether the impairment  
2 prevents the claimant from performing work which was performed in the past. If the  
3 claimant is able to perform previous work, he or she is deemed not disabled. 20  
4 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant’s residual  
5 functional capacity (RFC) is considered. If the claimant cannot perform past relevant  
6 work, the fifth and final step in the process determines whether he or she is able to  
7 perform other work in the national economy in view of his or her residual functional  
8 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
9 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

10         The initial burden of proof rests upon the claimant to establish a *prima facie*  
11 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup>  
12 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden  
13 is met once the claimant establishes that a mental or physical impairment prevents  
14 the performance of previous work. The burden then shifts, at step five, to the  
15 Commissioner to show that (1) plaintiff can perform other substantial gainful  
16 activity and (2) a “significant number of jobs exist in the national economy” that the  
17 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup> Cir. 1984).

1 **B. Standard of Review**

2 Congress has provided a limited scope of judicial review of a Commissioner’s  
3 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,  
4 made through an ALJ, when the determination is not based on legal error and is  
5 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup> Cir.  
6 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999).

7 “The [Commissioner’s] determination that a plaintiff is not disabled will be  
8 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*  
9 *Heckler*, 722 F.2d 570, 572 (9<sup>th</sup> Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial  
10 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119  
11 n 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d  
12 599, 601-02 (9<sup>th</sup> Cir. 1989). Substantial evidence “means such evidence as a  
13 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*  
14 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and  
15 conclusions as the [Commissioner] may reasonably draw from the evidence” will  
16 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On review,  
17 the Court considers the record as a whole, not just the evidence supporting the  
18 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir.  
19 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

1 It is the role of the Commissioner, not this Court, to resolve conflicts in  
2 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational  
3 interpretation, the Court may not substitute its judgment for that of the  
4 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup>  
5 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be  
6 set aside if the proper legal standards were not applied in weighing the evidence and  
7 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d  
8 432, 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to support the  
9 administrative findings, or if there is conflicting evidence that will support a finding  
10 of either disability or non-disability, the finding of the Commissioner is conclusive.  
11 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9<sup>th</sup> Cir. 1987).

### 12 C. Commissioner's Decision

13 The ALJ determined that Plaintiff had not engaged in substantial gainful  
14 activity since September 17, 2008, the alleged onset date, and met the insured status  
15 requirements of the Social Security Act through December 31, 2012. (T at 21). The  
16 ALJ found that Plaintiff's degenerative disc disease with disk bulges and  
17 spondylosis, status/post coccygectomy,<sup>2</sup> left carpal tunnel syndrome, and status/post  
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19 <sup>2</sup> A coccygectomy is a surgical procedure in which the tailbone is removed.

1 bladder lift with transdermal mesh were “severe” impairments under the Act. (Tr.  
2 21).

3         However, the ALJ concluded that Plaintiff did not have an impairment or  
4 combination of impairments that met or medically equaled one of the impairments  
5 set forth in the Listings. (T at 23).

6         The ALJ determined that Plaintiff retained the residual functional capacity  
7 (“RFC”) to perform light work as defined in 20 CFR § 416.967 (b), with the  
8 following limitations: lift/carry 10 pounds frequently and 20 pounds occasionally;  
9 stand/walk/sit for six hours out of an 8-hour workday; climb stairs; frequently climb  
10 ladders, ropes, and scaffolds; frequently perform bending, stooping, kneeling,  
11 crouching, and crawling; frequently perform fine and gross manipulation with the  
12 left hand. (T at 23).

13         The ALJ found that Plaintiff could perform her past relevant work as a  
14 hostess/waitress and housekeeper. (T at 26).

15         Accordingly, the ALJ determined that Plaintiff was not disabled within the  
16 meaning of the Social Security Act between September 17, 2008 (the alleged onset  
17 date) and March 3, 2014 (the date of the decision) and was therefore not entitled to  
18 benefits. (T at 27). As noted above, the ALJ’s decision became the Commissioner’s  
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1 final decision when the Appeals Council denied Plaintiff’s request for review. (T at  
2 1-7).

3 **D. Disputed Issues**

4 Plaintiff offers three (3) main arguments in support of her claim that the  
5 Commissioner’s decision should be reversed. First, she argues that the ALJ did not  
6 properly assess the medical opinion evidence. Second, she challenges the ALJ’s  
7 credibility determination. Third, she argues that the ALJ did not properly consider  
8 lay witness evidence. This Court will address each argument in turn.

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10 **IV. ANALYSIS**

11 **A. Medical Opinion Evidence**

12 In disability proceedings, a treating physician’s opinion carries more weight  
13 than an examining physician’s opinion, and an examining physician’s opinion is  
14 given more weight than that of a non-examining physician. *Benecke v. Barnhart*,  
15 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
16 1995). If the treating or examining physician’s opinions are not contradicted, they  
17 can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If  
18 contradicted, the opinion can only be rejected for “specific” and “legitimate” reasons

1 that are supported by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d  
2 1035, 1043 (9th Cir. 1995).

3 The courts have recognized several types of evidence that may constitute a  
4 specific, legitimate reason for discounting a treating or examining physician’s  
5 medical opinion. For example, an opinion may be discounted if it is contradicted by  
6 the medical evidence, inconsistent with a conservative treatment history, and/or is  
7 based primarily upon the claimant’s subjective complaints, as opposed to clinical  
8 findings and objective observations. *See Flaten v. Secretary of Health and Human*  
9 *Servs.*, 44 F.3d 1453, 1463-64 (9th Cir. 1995).

10 An ALJ satisfies the “substantial evidence” requirement by “setting out a  
11 detailed and thorough summary of the facts and conflicting clinical evidence, stating  
12 his interpretation thereof, and making findings.” *Garrison v. Colvin*, 759 F.3d 995,  
13 1012 (9<sup>th</sup> Cir. 2014)(quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9<sup>th</sup> Cir. 1998)).  
14 “The ALJ must do more than state conclusions. He must set forth his own  
15 interpretations and explain why they, rather than the doctors’, are correct.” *Id.*

16 In December of 2013, Dr. Zuniga<sup>3</sup> completed a medical assessment of ability  
17 to do work-related activities. Dr. Zuniga opined that Plaintiff was limited to  
18 lifting/carrying 10 pounds, citing an MRI of Plaintiff’s lumbar spine as the basis for

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19 <sup>3</sup> Dr. Zuniga’s first name is not legible.

1 this conclusion. Dr. Zuniga assessed that Plaintiff could sit for 4 hours in an 8-hour  
2 workday and stand/walk for 4 hours in an 8-hour workday. (T at 481). Dr. Zuniga  
3 reported that Plaintiff was limited to frequent simple grasping, fine manipulation,  
4 and reaching with her right hand and occasional simple grasping, fine manipulation,  
5 and reaching with her left hand. (T at 481).

6 The MRI referenced by Dr. Zuniga was performed in November of 2013. The  
7 MRI showed L4-L5 with severe facet hypertrophy and central disc protrusion and  
8 impingement on the dural sac centrally with displacement of nerve roots, but with no  
9 compression or impingement. The neural canals, while mildly narrowed, did not  
10 have nerve root impingement. L5-S1 showed degenerative disc disease, but without  
11 nerve root impingement. (T at 471-72).

12 The ALJ addressed Dr. Zuniga's opinion very briefly, deciding not to "give  
13 significant weight" to the opinion because it was "not consistent with the record as a  
14 whole, including [Plaintiff's] minimal, conservative treatment history and ... self-  
15 reported activities." (T at 25).

16 This Court finds the ALJ's analysis conclusory and insufficient. Critically,  
17 Dr. Zuniga was the only physician to consider the November 2013 MRI. The ALJ  
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1 gave “some weight” to the opinion of Dr. Haleh Safavi, a consultative examiner,<sup>4</sup>  
2 but that opinion was rendered in October 2012 (T at 429-433), and thus did not  
3 incorporate the MRI findings.

4 The ALJ found that Dr. Zuniga’s opinion was inconsistent with Plaintiff’s  
5 “minimal, conservative treatment history.” (T at 25). However, it is not clear what  
6 more aggressive treatment the ALJ would have expected. *See Perez v. Colvin*, No  
7 EDCV 14-2626, 2016 U.S. Dist. LEXIS 44230, at \*17 (C.D. Cal. Mar. 31,  
8 2016)(“The ALJ cannot fault Plaintiff for failing to pursue nonconservative  
9 treatment options if none existed.”)(citing *Lapeirre-Gutt v. Astrue*, 382 F. App’x  
10 662, 664 (9th Cir. 2010)).

11 Moreover, the record indicated that Plaintiff was homeless for a significant  
12 period of time. (T at 41). Before citing “minimal” medical treatment as a rationale  
13 for discounting Dr. Zuniga’s assessment, the ALJ should have considered the  
14 potential impact of Plaintiff’s living conditions on her ability to consistently access  
15 medical care. In addition, Plaintiff testified that she was reluctant to undergo  
16 surgery because of complications from past surgical procedures (T at 47-48), which  
17 provides another alternative explanation for the lack of more aggressive treatment.

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18 <sup>4</sup> Dr. Safavi opined that Plaintiff could lift/carry 50 pounds occasionally and 25 pounds frequently;  
19 walk/stand for 6 hours in an 8-hour day, sit without restrictions, and had no fine or gross  
manipulation limitations with regard to her hands. (T at 433).

1 A remand is required because it is not clear whether the ALJ considered these  
2 possible explanations.

3 The Commissioner defends the ALJ's decision by, *inter alia*, arguing that Dr.  
4 Zuniga was not a treating source. The Commissioner notes that (1) the treating  
5 relationship between Plaintiff and Dr. Zuniga is unclear (and may, in fact, have been  
6 limited to the completion of the assessment form in December 2013), (2) we do not  
7 even know Dr. Zuniga's name, and (3) it is not clear whether Dr. Zuniga even  
8 performed an examination before rendering the opinion.

9 However, to the extent there was (or is) any ambiguity about the nature of Dr.  
10 Zuniga's relationship with Plaintiff, that ambiguity should have been addressed  
11 through further development of the record. *See* 20 C.F.R. § 404.1512(e)(1); *Brown*  
12 *v. Heckler*, 713 F.2d 441, 443 (9th Cir. 1983) ("In Social Security cases the ALJ has  
13 a special duty to fully and fairly develop the record and to assure that the claimant's  
14 interests are considered.").

15 Moreover, the ALJ cited the treating source opinion standard when discussing  
16 Dr. Zuniga's opinion and there is no indication, explicit or implicit, that the ALJ  
17 discounted the opinion based upon the alleged lack of a treating relationship. (T at  
18 25). The Commissioner cannot now advance this *post-hoc* rationale. *Bray v.*  
19 *Comm'r*, 554 F.3d 1219, 1226 (9th Cir. 2009)("Long-standing principles of

1 administrative law require us to review the ALJ's decision based on the reasoning  
2 and factual findings offered by the ALJ — not post hoc rationalizations that attempt  
3 to intuit what the adjudicator may have been thinking.”).

4 The ALJ also cited apparent inconsistencies between Plaintiff’s self-reported  
5 activities of daily living and Dr. Zuniga’s opinion as a reason for discounting the  
6 opinion. (T at 25). In particular, the ALJ noted Plaintiff’s self-reported efforts to  
7 seek employment. (T at 24). However, Plaintiff testified that she was homeless and  
8 sleeping on couches of various acquaintances. (T at 41, 170, 371). Moreover, she  
9 explained that she had difficulty finding employment because of her limitations with  
10 lifting. (T at 40).

11 In light of the foregoing, the ALJ was obliged to consider whether Plaintiff’s  
12 (unsuccessful) efforts to seek employment were more probative of the desperate  
13 nature of her finances and less probative relative to the nature and extent of her  
14 physical limitations. *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1039 (9<sup>th</sup> Cir.  
15 2007)(“Under these circumstances, it is at least as likely that the claimant tried to  
16 work in spite of his symptoms, not because they were less severe than alleged.”).  
17 Moreover, it is not clear what sort of employment Plaintiff sought (*i.e.* sedentary vs.  
18 light work; part-time vs. full-time). To the extent Plaintiff sought sedentary, part-  
19 time work, such activity would not necessarily be inconsistent with the limitations

1 she alleged or the limitations assessed by Dr. Zuniga. There is no indication that the  
2 ALJ accounted for this possibility.

3 In sum, the ALJ clearly recognized the significance of the most recent MRI  
4 scan and, indeed, relied on the results to explain why she was not accepting fully the  
5 relatively mild limitations assessed by Dr. Safavi (the consultative examiner). (T at  
6 25). However, this recognition should have led to more careful consideration of Dr.  
7 Zuniga's opinion, as he was the only physician to account for the MRI results in  
8 assessing Plaintiff's work-related limitations. In addition, the ALJ's decision to  
9 discount Dr. Zuniga's assessment based on Plaintiff's self-reported activities,  
10 including her efforts to seek employment, was flawed for the reasons outlined above.  
11 As such, the ALJ's decision to discount Dr. Zuniga's opinion cannot be sustained  
12 and a remand is required.

### 13 **B. Credibility**

14 A claimant's subjective complaints concerning his or her limitations are an  
15 important part of a disability claim. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d  
16 1190, 1195 (9<sup>th</sup> Cir. 2004)(citation omitted). The ALJ's findings with regard to the  
17 claimant's credibility must be supported by specific cogent reasons. *Rashad v.*  
18 *Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir. 1990). Absent affirmative evidence of  
19 malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear

1 and convincing.” *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995). “General  
2 findings are insufficient: rather the ALJ must identify what testimony is not credible  
3 and what evidence undermines the claimant’s complaints.” *Lester*, 81 F.3d at 834;  
4 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

5 However, subjective symptomatology by itself cannot be the basis for a  
6 finding of disability. A claimant must present medical evidence or findings that the  
7 existence of an underlying condition could reasonably be expected to produce the  
8 symptomatology alleged. See 42 U.S.C. §§423(d)(5)(A), 1382c (a)(3)(A); 20 C.F.R.  
9 § 404.1529(b), 416.929; SSR 96-7p.

10 In this case, Plaintiff testified as follows:

11 She stopped working in 2007, except for a one-day work attempt in 2011. (T  
12 at 37). Her primary occupation when she worked was in housekeeping. (T at 38).  
13 She also worked as a waitress. (T at 38-40). She cannot work as a waitress anymore  
14 because of problems with repetitive bending, lifting heavy objects, and  
15 sitting/standing for prolonged periods. (T at 40). She cannot work as a housekeeper  
16 because she cannot lift more than 10 pounds, which prevents her from lifting or  
17 moving a vacuum. (T at 40).

18 She has applied for jobs in the past two years. (T at 40). She applied at  
19 convenience stores, but stated that those jobs require lifting up to 50 pounds. (T at



1 40). She does not have a permanent residence. She “couch surf[s]” by staying with  
2 friends. (T at 41). She has a driver’s license, but has not owned a car since 1994 and  
3 “walk[s] everywhere.” (T at 41). She used public transportation to get to the  
4 hearing. (T at 42). She used cocaine in the past, but has not used since 2006. (T at  
5 42-43). She smokes marijuana once every few weeks. (T at 43).

6 She is a high school graduate. (T at 44). She does not believe she can  
7 consistently perform work because of pain in her neck, back, abdomen, tailbone, and  
8 legs. (T at 44-45). Her back pain varies from dull to burning and radiates down her  
9 legs. (T at 45). She has muscle spasms and leg cramps. (T at 45). She cannot sit for  
10 extended periods. (T at 45). She sometimes has “good” days. (T at 45). Standing is  
11 better than sitting and believes she could stand/walk for about 3 hours in an 8-hour  
12 day. (T at 46).

13 She has difficulty grasping with her left hand. (T at 46). Surgery has been  
14 recommended for carpal tunnel, but she is reluctant to pursue that because of  
15 complications with prior surgeries. (T at 47).

16 The ALJ concluded that Plaintiff’s medically determinable impairments could  
17 reasonably be expected to cause the alleged symptoms, but that her statements  
18 regarding the intensity, persistence, and limiting effects of the symptoms were not  
19 fully credible. (T at 24).

1 For the following reasons, this Court finds the ALJ’s credibility assessment  
2 flawed. First, the ALJ noted that Plaintiff had attempted to seek employment.  
3 While noting that this was not “dispositive,” the ALJ nevertheless found that it was  
4 “inconsistent with [Plaintiff’s] allegations of disabling symptoms and functional  
5 limitations.” (T at 24). However, as discussed above, it is not clear that the ALJ  
6 gave sufficient consideration to the fact that Plaintiff’s employment seeking  
7 appeared to be rather sporadic and more likely motivated by extreme financial  
8 distress (including homelessness), rather than indicative of a genuine belief on  
9 Plaintiff’s part that she could work (let alone perform full-time “light work”  
10 consistent with the ALJ’s RFC determination) despite her impairments.

11 Second, the ALJ found Plaintiff’s testimony unsupported by the objective  
12 medical evidence. (T at 24). However, Plaintiff’s testimony was consistent with the  
13 opinion of Dr. Zuniga, which the ALJ did not adequately address for the reasons  
14 outlined above.

15 Third, although not explicitly cited in the credibility portion of the decision,  
16 the ALJ also referenced the fact that Plaintiff made an inconsistent statement  
17 regarding her work abilities. In particular, although she testified at the hearing that  
18 she could not lift more than 10 pounds, she completed a disability report indicating  
19 that she could lift 25 pounds. (T at 24). The ALJ did note, however, that Plaintiff’s

1 “remaining statements of record [were] essentially consistent with her testimony.”  
2 (T at 24). With regard to the 25-10 pound lifting limitation inconsistency, Plaintiff  
3 notes that the former statement was made in 2012 and the latter in 2014 (at the  
4 administrative hearing). She contends that it represented a decline in her condition.  
5 The ALJ did not ask Plaintiff to address the inconsistency during her hearing  
6 testimony and there is no indication that she considered this possibility when  
7 evaluating Plaintiff’s credibility. Moreover, the 10-pound lifting limitation is  
8 consistent with Dr. Zuniga’s assessment, which supports Plaintiff’s credibility on  
9 this point.

10 For the foregoing reasons, this Court finds the ALJ’s credibility analysis  
11 flawed and this issue should be revisited on remand.

### 12 **C. Lay Testimony**

13 Evidence from a lay witness “provides an important source of information  
14 about a claimant’s impairments, and an ALJ can reject it only by giving specific  
15 reasons germane to each witness.” *Regennitter v. Comm’r*, 166 F.3d 1294, 1298 (9<sup>th</sup>  
16 Cir. 1999).

17 In July of 2012, a friend of Plaintiff, identified as “Lawrence,” completed a  
18 third party function report. He explained that he had known Plaintiff for 2 years. (T  
19 at 187). He reported that Plaintiff has difficulty sleeping, but no problems with

1 personal care. (T at 188). Plaintiff needs reminders to change her clothes and take  
2 her medication. (T at 189). Plaintiff prepares her own meals and does light  
3 housework, but these activities take a long time and she cannot bend or lift. (T at  
4 189). She cannot walk distances without needing to rest. (T at 191). Plaintiff has a  
5 short temper and appears withdrawn. (T at 192). She has a short attention span and  
6 difficulty with following instructions. (T at 192).

7 In January of 2014, Dean Hayward, another friend, wrote a letter in support of  
8 Plaintiff's applications for benefits. Mr. Haywood explained that he had observed  
9 Plaintiff with back pain and said that she was unable to stand or sit for any length of  
10 time. Mr. Haywood stated that Plaintiff was not able to work because of lifting  
11 limitations, tailbone pain, and worry about urinary incontinence (related to an  
12 unsuccessful transdermal mesh surgery). (T at 483).

13 The ALJ found that these statements "essentially mirror" Plaintiff's subjective  
14 allegations and, as such, were discounted for the same reason. (T at 26). This Court  
15 finds the ALJ's credibility analysis flawed for the reasons stated above. Because the  
16 ALJ used the same analysis to evaluate the lay evidence, that evidence should  
17 likewise be revisited on remand.

1 **D. Remand**

2 In a case where the ALJ's determination is not supported by substantial  
3 evidence or is tainted by legal error, the court may remand the matter for additional  
4 proceedings or an immediate award of benefits. Remand for additional proceedings  
5 is proper where (1) outstanding issues must be resolved, and (2) it is not clear from  
6 the record before the court that a claimant is disabled. *See Benecke v. Barnhart*, 379  
7 F.3d 587, 593 (9th Cir. 2004).

8 Here, this Court finds that remand for further proceedings is warranted.  
9 Although the ALJ did not provide legally sufficient reasons for discounting Dr.  
10 Zuniga's opinion, there is ambiguity about the nature of the doctor's treating  
11 relationship and the basis of the doctor's opinion (i.e. whether it was based solely  
12 upon the MRI results or also upon a clinical examination). These gaps are  
13 significant because Dr. Zuniga was the only physician to consider the most recent  
14 MRI results. It is also not clear from the record that Plaintiff is disabled. Although  
15 Dr. Safavri did not consider the most recent MRI results, the consultative examiner's  
16 opinion was generally supportive of the ALJ's RFC determination. The  
17 Commissioner should have the opportunity to address these ambiguities and develop  
18 the record on remand.

1 **V. ORDERS**

2 IT IS THEREFORE ORDERED that:

3 Judgment be entered REVERSING the Commissioner’s decision and  
4 REMANDING this matter for further proceedings consistent with this Decision and  
5 Order, and it is further ORDERED that

6 The Clerk of the Court entered file this Decision and Order, serve copies upon  
7 counsel for the parties, enter Judgment in favor of Plaintiff, and CLOSE this case  
8 without prejudice to a timely application for attorneys’ fees and costs.

9  
10 Dated this 25th day of July, 2016,

11  
12 /s/Victor E. Bianchini  
13 VICTOR E. BIANCHINI  
14 UNITED STATES MAGISTRATE JUDGE  
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