

1 Joint Submission under submission without oral argument.
2

3 **II.**

4 **BACKGROUND**

5 Plaintiff was born on June 24, 1958.² [Administrative Record (“AR”) at 137.] She has past
6 relevant work experience as a charge nurse, and as a Social Service Worker. [AR at 27, 62.]

7 On July 2, 2014, plaintiff filed an application for a period of disability and DIB, alleging that
8 she has been unable to work since May 19, 2013. [AR at 20, 137.] After her application was
9 denied initially, plaintiff timely filed a request for a hearing before an Administrative Law Judge
10 (“ALJ”). [AR at 20, 82-83.] A hearing was held on December 21, 2015, at which time plaintiff
11 appeared represented by an attorney, and testified on her own behalf. [AR at 34-66.] A
12 vocational expert (“VE”) also testified. [AR at 60-66.] On January 22, 2016, the ALJ issued a
13 decision concluding that plaintiff was not under a disability from May 19, 2013, the alleged onset
14 date, through January 22, 2016, the date of the decision. [AR at 20-29.] Plaintiff requested review
15 of the ALJ’s decision by the Appeals Council. [AR at 15-16.] When the Appeals Council denied
16 plaintiff’s request for review on April 1, 2016 [AR at 1-6], the ALJ’s decision became the final
17 decision of the Commissioner. See Sam v. Astrue, 550 F.3d 808, 810 (9th Cir. 2008) (per curiam)
18 (citations omitted). This action followed.

19
20 **III.**

21 **STANDARD OF REVIEW**

22 Pursuant to 42 U.S.C. § 405(g), this Court has authority to review the Commissioner’s
23 decision to deny benefits. The decision will be disturbed only if it is not supported by substantial
24 evidence or if it is based upon the application of improper legal standards. Berry v. Astrue, 622
25 F.3d 1228, 1231 (9th Cir. 2010) (citation omitted).

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27 ² On the alleged onset date, plaintiff was defined as “an individual closely approaching
28 advanced age”; by the time of the hearing she had changed age category to “advanced age.” [AR
at 28 (citing 20 C.F.R. § 404.1563).]

1 “Substantial evidence means more than a mere scintilla but less than a preponderance; it
2 is such relevant evidence as a reasonable mind might accept as adequate to support a
3 conclusion.” Carmickle v. Comm’r, Soc. Sec. Admin., 533 F.3d 1155, 1159 (9th Cir. 2008) (citation
4 and internal quotation marks omitted); Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998)
5 (same). When determining whether substantial evidence exists to support the Commissioner’s
6 decision, the Court examines the administrative record as a whole, considering adverse as well
7 as supporting evidence. Mayes v. Massanari, 276 F.3d 453, 459 (9th Cir. 2001) (citation omitted);
8 see Ryan v. Comm’r of Soc. Sec., 528 F.3d 1194, 1198 (9th Cir. 2008) (“[A] reviewing court must
9 consider the entire record as a whole and may not affirm simply by isolating a specific quantum
10 of supporting evidence.”) (citation and internal quotation marks omitted). “Where evidence is
11 susceptible to more than one rational interpretation, the ALJ’s decision should be upheld.” Ryan,
12 528 F.3d at 1198 (citation and internal quotation marks omitted); see Robbins v. Soc. Sec. Admin.,
13 466 F.3d 880, 882 (9th Cir. 2006) (“If the evidence can support either affirming or reversing the
14 ALJ’s conclusion, [the reviewing court] may not substitute [its] judgment for that of the ALJ.”)
15 (citation omitted).

16 17 **IV.**

18 **THE EVALUATION OF DISABILITY**

19 Persons are “disabled” for purposes of receiving Social Security benefits if they are unable
20 to engage in any substantial gainful activity owing to a physical or mental impairment that is
21 expected to result in death or which has lasted or is expected to last for a continuous period of at
22 least twelve months. 42 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
23 1992).

24 25 **A. THE FIVE-STEP EVALUATION PROCESS**

26 The Commissioner (or ALJ) follows a five-step sequential evaluation process in assessing
27 whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920; Lester v. Chater, 81 F.3d 821,
28 828 n.5 (9th Cir. 1995), as amended April 9, 1996. In the first step, the Commissioner must

1 determine whether the claimant is currently engaged in substantial gainful activity; if so, the
2 claimant is not disabled and the claim is denied. Id. If the claimant is not currently engaged in
3 substantial gainful activity, the second step requires the Commissioner to determine whether the
4 claimant has a “severe” impairment or combination of impairments significantly limiting her ability
5 to do basic work activities; if not, a finding of nondisability is made and the claim is denied. Id.
6 If the claimant has a “severe” impairment or combination of impairments, the third step requires
7 the Commissioner to determine whether the impairment or combination of impairments meets or
8 equals an impairment in the Listing of Impairments (“Listing”) set forth at 20 C.F.R. part 404,
9 subpart P, appendix 1; if so, disability is conclusively presumed and benefits are awarded. Id. If
10 the claimant’s impairment or combination of impairments does not meet or equal an impairment
11 in the Listing, the fourth step requires the Commissioner to determine whether the claimant has
12 sufficient “residual functional capacity” to perform her past work; if so, the claimant is not disabled
13 and the claim is denied. Id. The claimant has the burden of proving that she is unable to
14 perform past relevant work. Drouin, 966 F.2d at 1257. If the claimant meets this burden, a
15 prima facie case of disability is established. Id. The Commissioner then bears the burden of
16 establishing that the claimant is not disabled, because she can perform other substantial gainful
17 work available in the national economy. Id. The determination of this issue comprises the fifth
18 and final step in the sequential analysis. 20 C.F.R. §§ 404.1520, 416.920; Lester, 81 F.3d at
19 828 n.5; Drouin, 966 F.2d at 1257.

21 **B. THE ALJ’S APPLICATION OF THE FIVE-STEP PROCESS**

22 At step one, the ALJ found that plaintiff had not engaged in substantial gainful activity since
23 May 19, 2013, the alleged onset date.³ [AR at 22.] At step two, the ALJ concluded that plaintiff
24 has the severe impairments of lumbar spine degenerative disc disease; osteopenia; osteoarthritis
25 of the left knee and bilateral hips; right knee disorder; and obesity. [Id.] He determined plaintiff’s
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27 ³ The ALJ concluded that plaintiff meets the insured status requirements of the Social
28 Security Act through December 31, 2018. [AR at 22.]

1 hypertension and bilateral cataracts with floaters to be non-severe. [AR at 22-23.] At step three,
2 the ALJ determined that plaintiff does not have an impairment or a combination of impairments
3 that meets or medically equals any of the impairments in the Listing. [AR at 23.] The ALJ further
4 found that plaintiff retained the residual functional capacity (“RFC”)⁴ to perform light work as
5 defined in 20 C.F.R. § 404.1567(b),⁵ “except she can occasionally perform postural activities and
6 she needs a cane for prolonged ambulation.” [Id.] At step four, based on plaintiff’s RFC and the
7 testimony of the VE, the ALJ concluded that plaintiff is able to perform her past relevant work as
8 a social service worker. [AR at 27, 63.] The ALJ made an alternative finding at step five that there
9 are other jobs existing in the national economy that plaintiff is also able to perform, including work
10 as a “doctor’s receptionist” (Dictionary of Occupational Titles (“DOT”) No. 237.367-038) and
11 “medical case manager” (DOT No. 075.117-910). [AR at 28-29, 63-64.] Accordingly, the ALJ
12 determined that plaintiff was not disabled at any time from the alleged onset date of May 19, 2013,
13 through January 22, 2016, the date of the decision. [AR at 29.]

14 15 V.

16 THE ALJ’S DECISION

17 Plaintiff contends that the ALJ erred when he: (1) failed to consider material evidence
18 demonstrating that plaintiff suffers from rheumatoid arthritis (alternatively “RA”); and (2) rejected
19 plaintiff’s subjective symptom testimony. [JS at 4.] As set forth below, the Court agrees with

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21 ⁴ RFC is what a claimant can still do despite existing exertional and nonexertional
22 limitations. See Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). “Between steps
23 three and four of the five-step evaluation, the ALJ must proceed to an intermediate step in which
the ALJ assesses the claimant’s residual functional capacity.” Massachi v. Astrue, 486 F.3d 1149,
1151 n.2 (9th Cir. 2007) (citation omitted).

24 ⁵ “Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying
25 of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in
26 this category when it requires a good deal of walking or standing, or when it involves sitting most
27 of the time with some pushing and pulling of arm or leg controls. To be considered capable of
28 performing a full or wide range of light work, you must have the ability to do substantially all of
these activities. If someone can do light work, we determine that he or she can also do sedentary
work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for
long periods of time.” 20 C.F.R. § 404.1567(b).

1 plaintiff, in part, and remands for further proceedings.

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3 **A. FAILURE TO CONSIDER EVIDENCE OF RHEUMATOID ARTHRITIS**

4 Plaintiff notes that in July 2013, her June 2013 rheumatology labs were described by her
5 treating orthopedist, Shane S. Pak, M.D., as positive for elevated antinuclear antibodies (“ANA”),
6 and increased erythrocyte sedimentation rate (“ESR”).⁶ [JS at 5 (citing AR at 238, 240).] In
7 August 2013, plaintiff consulted with rheumatologist Gerald Y. Ho, M.D., who, among other things,
8 noted that plaintiff’s straight-leg raising was positive bilaterally, and her gait and stance were
9 “Abnormal.” [AR at 331.] Dr. Ho ordered a rheumatoid factor test, and noted that an injection for
10 plaintiff’s lower back was “pending.” [AR at 332.] In September 2013, Dr. Pak noted that plaintiff’s
11 gait was antalgic, and that all tests for stability were “normal.” [AR at 327-28.] Dr. Pak assessed
12 plaintiff with degeneration of the lumbosacral intervertebral disc, lumbar spondylosis, lumbago,
13 and difficulty in walking. [AR at 328.] He recommended a rheumatology consultation due to
14 elevated ANA and increased ESR, an MRI of the lumbar spine without contrast, and facet blocks
15 for her pain. [AR at 328-29.] In May 2014, Dr. Ho noted that test results showed that plaintiff’s
16 “Rheumatoid factor was positive,” but he also stated that there was “no evidence of autoimmune
17 disorder SLE [systemic lupus erythematosus], RA.” [AR at 335-36.] On January 27, 2015,
18 plaintiff’s treating provider, Francisco G. Rodriguez, D.O., included rheumatoid arthritis on
19 plaintiff’s list of “Problems,” and also included it within plaintiff’s Assessment/Plan. [See, e.g., AR
20 at 446, 450.] From that date forward, rheumatoid arthritis was always included on plaintiff’s
21 treatment visit “Problems” list. [See, e.g., AR at 446, 455, 461, 467, 473, 479, 485, 491.]

22 Plaintiff observes that “the ALJ’s decision is completely void of any discussion regarding
23 [plaintiff’s] rheumatoid arthritis.” [JS at 5.] She submits that the record as a whole indicates
24 plaintiff suffers from rheumatoid arthritis and the error is not harmless “because rheumatoid
25 arthritis is often associated with severe pain, not inconsistent to the pain alleged” by plaintiff. [JS

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27 ⁶ The ANA test measures antibodies to help assess whether an individual suffers from an
28 autoimmune disease, such as rheumatoid arthritis, and the ESR test is a blood test that can reveal
inflammatory activity in the body. [JS at 5 nn. 1-2 (citations omitted).]

1 at 6 (citation omitted).] Consequently, the decision “lacks the support of substantial evidence as
2 material evidence appears to have been ignored.” [Id.] She further contends that the ALJ
3 improperly focused on evidence tending to suggest non-disability. [JS at 7 (citation omitted).]

4 Defendant responds that although plaintiff “points to evidence supporting a diagnosis of
5 rheumatoid arthritis, she does not point to any additional limitations warranted by that diagnosis
6 that the ALJ failed to include in the residual functional capacity . . . finding.”⁷ [JS at 6 (citation
7 omitted).] Thus, defendant contends, the ALJ did not cherry-pick the evidence in formulating
8 plaintiff’s RFC. [JS at 7.]

9 While an ALJ is not required to address all evidence presented to him, he must explain why
10 significant and probative evidence has been rejected. Vincent v. Heckler, 739 F.2d 1393, 1395
11 (9th Cir. 1984) (citation omitted). “[A]n explanation from the ALJ of the reason why probative
12 evidence has been rejected is required so that . . . [the] [C]ourt can determine whether the reasons
13 for rejection were improper.” Cotter v. Harris, 642 F.2d 700, 706-07 (3d Cir. 1981) (citation
14 omitted). Moreover, an ALJ must consider all of the relevant evidence in the record and may not
15 point to only those portions of the record that bolster his findings. See, e.g., Holohan v.
16 Massanari, 246 F.3d 1195, 1207-08 (9th Cir. 2001) (holding that an ALJ cannot selectively rely
17 on some entries in plaintiff’s records while ignoring others); Aukland v. Massanari, 257 F.3d 1033,
18 1035 (9th Cir. 2001) (“[T]he [ALJ]’s decision ‘cannot be affirmed simply by isolating a specific
19 quantum of supporting evidence.’”) (citing Sousa v. Callahan, 143 F.3d 1240, 1243 (9th Cir.
20 1998)); see also Reddick, 157 F.3d at 722-23 (it is impermissible for the ALJ to develop an
21 evidentiary basis by “not fully accounting for the context of materials or all parts of the testimony
22 and reports”); Robinson v. Barnhart, 366 F.3d 1078, 1083 (10th Cir. 2004) (“The ALJ is not entitled
23 to pick and choose from a medical opinion, using only those parts that are favorable to a finding
24 of nondisability.”); Day v. Weinberger, 522 F.2d 1154, 1156 (9th Cir. 1975) (an ALJ is not
25 permitted to reach a conclusion “simply by isolating a specific quantum of supporting evidence.”);
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27 ⁷ Of course, plaintiff’s subjective symptom testimony might provide evidence of “additional
28 limitations.” [See Discussion infra § V.B.]

1 Whitney v. Schweiker, 695 F.2d 784, 788 (7th Cir. 1982) (“[A]n ALJ must weigh all the evidence
2 and may not ignore evidence that suggests an opposite conclusion.”) (citation omitted); Switzer
3 v. Heckler, 742 F.2d 382, 385-86 (7th Cir. 1984) (“The ALJ is not entitled to pick and choose from
4 a medical opinion, using only those parts that are favorable to a finding of nondisability.”).

5 In this case, it is undisputed that the ALJ did not discuss plaintiff’s diagnosis of rheumatoid
6 arthritis or provide any rationale for rejecting what would appear to be significant and probative
7 evidence of that condition. Although the ALJ provided some reasons for giving “little weight” to
8 Dr. Ho’s and Dr. Pak’s opinions of disability [AR at 26], he failed to explain why he did not consider
9 what appears to be significant and probative evidence concerning plaintiff’s diagnosis of
10 rheumatoid arthritis as reflected in Dr. Ho’s, Dr. Pak’s, and Dr. Rodriguez’ records.

11 In fact, a review of the ALJ’s decision reflects that although the ALJ included a few of Dr.
12 Rodriguez’ treatment notes in his summary of the medical evidence [see, e.g., AR at 25], he never
13 mentioned the weight he gave to the treating records of Dr. Rodriguez, who treated plaintiff from
14 November 19, 2013, to November 3, 2015. Neither did he mention Dr. Rodriguez’ diagnosis of
15 rheumatoid arthritis, or other records supporting that diagnosis.

16 Generally, even the ALJ’s summary of Dr. Rodriguez’ treatment records does not withstand
17 scrutiny. For instance, the ALJ cited to some of Dr. Rodriguez’ records (as well as the records of
18 other providers) to support his statement that the record as a whole reflected some tenderness
19 of plaintiff’s knees on examination, but also that there was generally an absence of swelling, “full
20 range of motion, intact stability, and normal strength.” [AR at 24-25 (citations omitted).] A review
21 of Dr. Rodriguez’ treatment notes, however, including those cited to by the ALJ, reflect not only
22 knee tenderness, but *limited* range of motion of the knees [AR at 379, 393, 403, 450, 459, 489];
23 *irregular* gait [AR at 393, 403, 450, 459, 464, 489]; bilateral knee pain [AR at 458]; and *abnormal*
24 motor strength.⁸ [AR at 489.]

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26 ⁸ The ALJ also incorrectly stated that plaintiff’s “straight-leg-raising-tests were *always*
27 negative . . . ,” and that “her hip examinations showed full range of motion, intact stability, and full
28 strength.” [AR at 24 (emphasis added).] However, on August 26, 2013, Dr. Ho’s examination
reflected a positive straight-leg-raising test result [AR at 331], and Dr. Rodriguez’ records clearly
(continued...)

1 With respect to plaintiff's back pain, the ALJ -- citing *only* to one of Dr. Rodriguez' treatment
2 notes -- stated that "[o]n January 27, 2015, [plaintiff] had tenderness and limited range of motion
3 of the back but she had normal tone and motor strength." [AR at 25 (citing AR at 450).] Citing the
4 same note, he observed that plaintiff "had an irregular gait but her cranial nerves, sensation,
5 reflexes, and coordination were intact." [Id. (citing AR at 450).] The ALJ failed to mention Dr.
6 Rodriguez' *many* other treatment notes reflecting decreased range of motion in the thoracolumbar
7 area, often with guarding on forward flexion and extension. [See, e.g., AR at 380, 385, 393, 403,
8 408, 413, 423, 450, 459 ("*marked* decrease ROM and guarding during forward flexion and
9 extension") (emphasis added), 483 ("*marked* decrease ROM on *all* planes. . .") (emphasis added),
10 489 (same).] In fact, it appears that the only visits where Dr. Rodriguez did not assess and/or
11 report on plaintiff's range of motion in the lumbar spine were visits where plaintiff was complaining
12 of and being seen for problems or symptoms unrelated to her back (or other) pain. [See, e.g., AR
13 at 395-99 (visit to "go over . . . lab results"); 415-19 (mammogram results); 425-29 (blood in stool);
14 430-34 (mammography ultrasound results); 435-39 (medication refill); 440-45 (right ear pain and
15 medication refill); 461-66 (x-ray results); 467-72 (medication refill); 473-78 (sore throat and ear
16 pain); 491-97 (cough, fever, congestion, sore throat, and ear pain).]

17 Additionally, in finding that Dr. Rodriguez' treatment notes "do not support [plaintiff's]
18 allegations of disabling symptoms," the ALJ failed to explain or provide support for his implied
19 findings that Dr. Rodriguez' note reflecting "tenderness and limited range of motion" of the back
20 is somehow inconsistent with "normal tone and motor strength," or that his note reflecting an
21 irregular gait is somehow inconsistent with intact cranial nerves, sensation, reflexes, and
22 coordination. [AR at 24-25.] Neither is there any evidence that Dr. Rodriguez found these
23 diagnostic test results to be inconsistent. [AR at 449-52.] Thus, in addition to the ALJ's
24 statements not providing a clear and convincing reason to discount plaintiff's subjective symptom
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27 ⁸(...continued)
28 reflect *limited* range of hip motion at many of plaintiff's treatment visits. [See, e.g., AR at 379, 393,
403, 450, 458, 489.]

1 testimony,⁹ they also would not provide a specific and legitimate reason to reject Dr. Rodriguez'
2 findings. See Carmickle, 533 F.3d at 1164 (where the opinion of a treating provider is
3 contradicted, it may be rejected for specific and legitimate reasons that are supported by
4 substantial evidence in the record). The ALJ may not substitute his lay opinion (here, in implicitly
5 discounting Dr. Rodriguez' findings based on the ALJ's unsupported finding that limited range of
6 motion is inconsistent with normal tone and strength, and that an irregular gait is inconsistent with
7 intact cranial nerves, sensation, reflexes, and coordination), for that of a professional. See Tackett
8 v. Apfel, 180 F.3d 1094, 1102-03 (9th Cir. 1999) (ALJ erred in rejecting physicians' opinions and
9 finding greater RFC based on claimant's testimony that he took a road trip; there was no medical
10 evidence to support the ALJ's determination); Banks v. Barnhart, 434 F. Supp. 2d 800, 805 (C.D.
11 Cal. 2006) (noting that an ALJ "must not succumb to the temptation to play doctor and make [his]
12 own independent medical findings") (quoting Rohan v. Chater, 98 F.3d 966, 970 (7th Cir. 1996));
13 Day, 522 F.2d at 1156 (an ALJ is forbidden from making his or her own medical assessment
14 beyond that demonstrated by the record). This is exactly what the ALJ did here.

15 Finally, the ALJ noted that "throughout late 2014 and 2015, [plaintiff] was using a cane
16 *sporadically*" [AR at 25 (citing nine of Dr. Rodriguez' treatment records reflecting that plaintiff was
17 using a cane to ambulate) (emphasis added)], but then stated that "on August 5, 2015, there was
18 no mention of cane usage, and her musculoskeletal examination was normal." [AR at 25 (citing
19 AR at 473-77).] Not only is this a clear attempt to "cherry pick" a record to support the ALJ's
20 nondisability finding, the statements are not even accurate -- at plaintiff's August 5, 2015,
21 treatment visit for complaints of a sore throat, cough, and ear pain, Dr. Rodriguez clearly stated
22 that plaintiff was ambulating with a cane. [AR at 477 ("Ambulation: ambulation with cane").]
23 Additionally, Dr. Rodriguez did *not* state that plaintiff's musculoskeletal examination was "normal."
24 [AR at 477.] He merely reported that there was "no cyanosis, edema, varicosities, or palpable
25 cord" with respect to plaintiff's extremities. [Id.] As discussed above, it does not appear that Dr.

27 ⁹ The ALJ's treatment of plaintiff's subjective symptom testimony is discussed in section V.B,
28 infra.

1 Rodriguez performed a full musculoskeletal examination when plaintiff sought treatment for non-
2 pain related symptoms -- as she did on August 5, 2015. [See AR at 476-77.]

3 Because the ALJ failed to even mention plaintiff's diagnosis of rheumatoid arthritis, and to
4 discuss the weight given to Dr. Rodriguez' findings and opinion, and because many of the ALJ's
5 findings are not supported by substantial evidence, remand is warranted on this issue. See Marsh
6 v. Colvin, 792 F.3d 1170, 1172 (9th Cir. 2015) (ALJ's failure to "even mention" the treating doctor
7 and his notes and opinions was not harmless error).

9 **B. SUBJECTIVE SYMPTOM TESTIMONY**

10 Plaintiff contends the ALJ failed to articulate legally sufficient reasons for rejecting plaintiff's
11 subjective symptom testimony. [JS at 7.] She argues that her work history "cannot be ignored"
12 when assessing her testimony as she earned "over \$40,000 every year from 1992 until she
13 stopped working in 2013." [JS at 13.] Since becoming unable to work, she has been evicted from
14 the home she rented for more than 19 years and now lives in a homeless shelter. [JS at 13; AR
15 at 39.] She also notes that her testimony is consistent with her rheumatoid arthritis diagnosis as
16 discussed above. [JS at 11.]

17 On March 28, 2016, after the ALJ's assessment in this case, Social Security Ruling
18 ("SSR")¹⁰ 16-3p went into effect. See SSR 16-3p, 2016 WL 1119029 (Mar. 16, 2016). SSR 16-3p
19 supersedes SSR 96-7p, the previous policy governing the evaluation of subjective symptoms. Id.
20 at *1. In SSR 16-3p the Commissioner indicates that "we are eliminating the use of the term
21 'credibility' from our sub-regulatory policy, as our regulations do not use this term." Id. Moreover,
22 "[i]n doing so, we clarify that subjective symptom evaluation is not an examination of an
23 individual's character[;] [i]nstead, we will more closely follow our regulatory language regarding
24 symptom evaluation." Id. Thus, the adjudicator "will not assess an individual's overall character

26 ¹⁰ "SSRs do not have the force of law. However, because they represent the Commissioner's
27 interpretation of the agency's regulations, we give them some deference. We will not defer to SSRs
28 if they are inconsistent with the statute or regulations." Holohan, 246 F.3d at 1202 n.1 (citations
omitted).

1 or truthfulness in the manner typically used during an adversarial court litigation. The focus of the
2 evaluation of an individual's symptoms should not be to determine whether he or she is a truthful
3 person." Id. at *10. Factors to be considered in evaluating the intensity, persistence, and limiting
4 effects of an individual's symptoms include: (1) daily activities; (2) the location, duration,
5 frequency, and intensity of pain or other symptoms; (3) factors that precipitate and aggravate the
6 symptoms; (4) the type, dosage, effectiveness, and side effects of any medication an individual
7 takes or has taken to alleviate pain or other symptoms; (5) treatment, other than medication, an
8 individual receives or has received for relief of pain or other symptoms; (6) any measures other
9 than treatment an individual uses or has used to relieve pain or other symptoms; and (7) any other
10 factors concerning an individual's functional limitations and restrictions due to pain or other
11 symptoms. SSR 16-3p, 2016 WL 1119029, at *7. The ALJ is instructed to "consider all of the
12 evidence in an individual's record," "to determine how symptoms limit ability to perform work-
13 related activities." Id. at *2.

14 Here, the ALJ found that plaintiff's statements about her symptoms were "not entirely
15 credible." [AR at 24.] Specifically, he appears to have discounted her "credibility" for the following
16 reasons: (1) the record reveals routine and conservative treatment; (2) the positive objective
17 clinical and diagnostic findings do not reveal any acute findings and do not support more functional
18 limitations; (3) treatment has been "generally successful in controlling" her symptoms; and (4) her
19 activities of daily living "are not limited to the extent one would expect." [AR at 25-26.]

20 In light of the ALJ's review on remand of the medical evidence, plaintiff's subjective
21 symptom testimony will also need to be reconsidered. SSR 16-3p shall apply on remand.

22 VI.

23 **REMAND FOR FURTHER PROCEEDINGS**

24 The Court has discretion to remand or reverse and award benefits. McAllister v. Sullivan,
25 888 F.2d 599, 603 (9th Cir. 1989). Where no useful purpose would be served by further
26 proceedings, or where the record has been fully developed, it is appropriate to exercise this
27 discretion to direct an immediate award of benefits. See Lingenfelter v. Astrue, 504 F.3d 1028,
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1 1041 (9th Cir. 2007); Benecke v. Barnhart, 379 F.3d 587, 595-96 (9th Cir. 2004). Where there are
2 outstanding issues that must be resolved before a determination can be made, and it is not clear
3 from the record that the ALJ would be required to find plaintiff disabled if all the evidence were
4 properly evaluated, remand is appropriate. See Benecke, 379 F.3d at 593-96.

5 In this case, there are outstanding issues that must be resolved before a final determination
6 can be made. In an effort to expedite these proceedings and to avoid any confusion or
7 misunderstanding as to what the Court intends, the Court will set forth the scope of the remand
8 proceedings. First, because the ALJ failed to properly consider the record relating to plaintiff's
9 rheumatoid arthritis, the ALJ on remand shall reassess the medical evidence of record. In
10 assessing the medical opinion evidence of all of the providers, the ALJ must explain the weight
11 afforded to each opinion and provide legally adequate reasons for any portion of the opinion that
12 the ALJ discounts or rejects, including a legally sufficient explanation for crediting one doctor's
13 opinion over any of the others. Second, the ALJ on remand, in accordance with SSR 16-3p, shall
14 reassess plaintiff's subjective allegations and either credit her testimony as true, or provide
15 specific, clear and convincing reasons, supported by substantial evidence in the case record, for
16 discounting or rejecting any testimony. Finally, if warranted, the ALJ shall reassess plaintiff's RFC
17 and determine at step four, with the assistance of a VE if necessary, whether plaintiff is capable
18 of performing her past relevant work as a social services worker.¹¹ If plaintiff is not so capable,
19 or if the ALJ determines to make an alternative finding at step five, then the ALJ shall proceed to
20 step five and determine, with the assistance of a VE if necessary, whether there are jobs existing
21 in significant numbers in the regional and national economy that plaintiff can still perform.

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28 ¹¹ Nothing herein is intended to disrupt the ALJ's step four finding that plaintiff is unable to perform her past relevant work as a charge nurse.

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VII.

CONCLUSION

IT IS HEREBY ORDERED that: (1) plaintiff's request for remand is **granted**; (2) the decision of the Commissioner is **reversed**; and (3) this action is **remanded** to defendant for further proceedings consistent with this Memorandum Opinion.

IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment herein on all parties or their counsel.

This Memorandum Opinion and Order is not intended for publication, nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

DATED: January 30, 2017



PAUL L. ABRAMS
UNITED STATES MAGISTRATE JUDGE