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

KERRI L. WILSON,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

Case No. CV 16-09330-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Kerri L. Wilson (“Plaintiff”) challenges the Commissioner’s denial of her application for a period of disability, disability insurance benefits (“DIB”), and supplemental security income (“SSI”). For the reasons stated below, the decision of the Commissioner is REVERSED and REMANDED.

II. PROCEEDINGS BELOW

On October 9, 2012, Plaintiff protectively filed a Title II claim for DIB. (Administrative Record (“AR”) 112.) On October 16, 2012, Plaintiff also filed a Title XVI application for SSI. (AR 113.) Plaintiff alleged disability beginning November 27, 2011. (AR 114, 126.) Her applications were denied initially on

1 February 25, 2013, and upon reconsideration on October 31, 2013. (AR 180, 183,
2 188.) On December 24, 2013, Plaintiff filed a written request for hearing, and a
3 hearing was held on April 7, 2015. (AR 53.) Represented by counsel, Plaintiff
4 appeared and testified, along with an impartial vocational expert. (AR 55-89.) On
5 May 14, 2015, the Administrative Law Judge (“ALJ”) found that Plaintiff had not
6 been under a disability, pursuant to the Social Security Act,¹ since November 27,
7 2011. (AR 42-43.) The ALJ’s decision became the Commissioner’s final decision
8 when the Appeals Council denied Plaintiff’s request for review. (AR 1.) Plaintiff
9 filed this action on December 17, 2016. (Dkt. No. 1.)

10 The ALJ followed a five-step sequential evaluation process to assess whether
11 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,
12 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged
13 in substantial gainful activity since November 27, 2011, the alleged onset date
14 (“AOD”). (AR 31.) At **step two**, the ALJ found that Plaintiff’s Crohn’s disease is
15 a severe impairment. (*Id.*) At **step three**, the ALJ found that Plaintiff “does not
16 have an impairment or combination of impairments that meets or medically equals
17 the severity of one of the listed impairments in 20 CFR Part 404, Subpart P,
18 Appendix 1.” (AR 33.)

19 Before proceeding to step four, the ALJ found that Plaintiff has the residual
20 functional capacity (“RFC”) to “perform the full range of light work as defined in
21 20 CFR 404.1567(b) and 416.967(b).” (AR 34.) At **step four**, based on Plaintiff’s
22 RFC and the vocational expert’s testimony, the ALJ found that Plaintiff was
23 capable of performing past relevant work as a sandwich maker. (AR 40.) The ALJ
24 also made an alternative **step five** finding that there are other jobs that exist in
25 significant numbers in the national economy that Plaintiff can perform. (AR 41-

26 ¹ Persons are “disabled” for purposes of receiving Social Security benefits if they
27 are unable to engage in any substantial gainful activity owing to a physical or
28 mental impairment expected to result in death, or which has lasted or is expected to
last for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

1 42.) Accordingly, the ALJ determined that Plaintiff has not been under a disability
2 from the AOD through the date of the decision. (AR 42.)

3 **III. STANDARD OF REVIEW**

4 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s
5 decision to deny benefits. A court must affirm an ALJ’s findings of fact if they are
6 supported by substantial evidence and if the proper legal standards were applied.
7 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “‘Substantial evidence’
8 means more than a mere scintilla, but less than a preponderance; it is such relevant
9 evidence as a reasonable person might accept as adequate to support a conclusion.”
10 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*
11 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial
12 evidence requirement “by setting out a detailed and thorough summary of the facts
13 and conflicting clinical evidence, stating his interpretation thereof, and making
14 findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

15 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a
16 specific quantum of supporting evidence. Rather, a court must consider the record
17 as a whole, weighing both evidence that supports and evidence that detracts from
18 the Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.
19 2001) (citations and internal quotation marks omitted). “‘Where evidence is
20 susceptible to more than one rational interpretation,’ the ALJ’s decision should be
21 upheld.” *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing
22 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see Robbins*, 466 F.3d at
23 882 (“If the evidence can support either affirming or reversing the ALJ’s
24 conclusion, we may not substitute our judgment for that of the ALJ.”). The Court
25 may review only “the reasons provided by the ALJ in the disability determination
26 and may not affirm the ALJ on a ground upon which he did not rely.” *Orn v.*
27 *Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d
28 871, 874 (9th Cir. 2003)).

1 **IV. DISCUSSION**

2 Plaintiff raises the following issues for review: (1) whether the ALJ properly
3 evaluated the severity of Plaintiff’s Crohn’s disease; and (2) whether the ALJ
4 properly assessed Plaintiff’s testimony. (Joint Stipulation (“JS”) 3-4, 16.) Plaintiff
5 contends that the ALJ erred in failing to consider whether Plaintiff’s condition
6 medically equaled a listed impairment and erred in assessing Plaintiff’s credibility.
7 (*See* JS 4-11, 16-28.) The Commissioner disagrees. (*See* JS 11-15, 28-34.) For the
8 reasons below, the Court agrees with Plaintiff on the issue of her credibility and
9 remands on that ground.

10 **A. The ALJ’s Credibility Determination Is Not Supported By**
11 **Substantial Evidence**

12 Plaintiff argues that the ALJ failed to provide legally sufficient reasons to
13 reject her testimony. (*See* JS 28.) The Commissioner argues that the ALJ’s
14 credibility findings are supported by substantial evidence. (*See* JS 33.)

15 **1. Plaintiff’s Testimony**

16 Plaintiff lives in an apartment with her boyfriend. (AR 56.) She finished the
17 eleventh grade and received college certificates in business communications,
18 mathematics, and computer application. (AR 57.) Plaintiff last worked as a
19 sandwich maker at Subway in 2010. (AR 58.)

20 Plaintiff testified that her worst medical issue is her extreme abdominal pain
21 due to Crohn’s disease. (AR 59.) Plaintiff explained that it is a constant pain that
22 varies “like a contraction,” from a “minor” level of 3 or 4 “all the way up to ten-
23 plus.” (AR 59-60.) Plaintiff stated that her pain was currently a 3 or 4 during the
24 hearing. (AR 60.) Plaintiff underwent a bowel resection and a partial right
25 colectomy, but she did not remember the dates of her procedures. (*Id.*)

26 Plaintiff testified that she is currently taking Norco 5-325 for pain, tramadol
27 for breakthrough pain, omeprazole for heartburn, and nortriptyline. (AR 60-61.)
28 Plaintiff stated that she is also treated with Remicade, an anti-immune drug that is

1 administered intravenously. (AR 61, 83.) Plaintiff explained that she has scars
2 from the IVs, and her doctors sometimes have a hard time getting the IVs started.
3 (AR 83.) She also stated that she was going to get an IV access port inserted in her
4 chest a few days after the hearing. (*Id.*) Plaintiff explained that her medications
5 help stabilize her “to a degree,” but she suffers from side effects such as anxiety
6 and trouble sleeping. (AR 61-62.) Plaintiff sleeps an average of six hours per
7 night. (AR 63.) Plaintiff also “go[es] from one extreme to the other,” suffering
8 from both constipation and diarrhea, as a result of her medications. (AR 84.)

9 Plaintiff stated that she goes to an average of three doctor appointments per
10 month. (AR 62, 83-84.) Two of the appointments last for at least two hours each,
11 and the Remicade appointment is “an all-day thing,” taking about six hours
12 including transportation. (AR 62, 84.)

13 Plaintiff testified that she also suffers from depression daily. (AR 60.)
14 Plaintiff takes Prozac, which has kept her stable. (*Id.*) Plaintiff denied having
15 hallucinations and suicide attempts, but she has crying spells “a couple times” each
16 week. (AR 62-63.)

17 Plaintiff explained that, as a result of her pain and depression, she has
18 difficulty focusing for about two hours out of an eight-hour period. (AR 63-64; *see*
19 AR 81.) About five days per month, she is unable to do anything. (AR 64.)
20 Plaintiff explained that she can walk “a block or two” on a good day and about one
21 block on a typical day. (AR 64-65.) Plaintiff walks “a couple of thousand feet” to
22 the grocery store that is around the corner from her house. (AR 69.) Plaintiff can
23 stand or walk for about 10 or 15 minutes at a time, but if she stands longer than
24 that, she feels dizzy. (AR 65, 67.) During a typical eight-hour period, Plaintiff
25 needs to lie down “really flat” for about a half hour. (AR 65-66.) Plaintiff testified
26 that she does not have a problem with sitting, and “[t]hat could be all day.” (AR
27 65.) Plaintiff also testified that she can push and pull “[a] little bit” with her arms,
28 reach in any direction, use her hands to hold and grasp, use her fingers to pick and

1 pinch, feel temperature with her fingertips, use her wrists repetitively, push and pull
2 with her legs, use foot pedal controls, and climb stairs. (AR 66-67.)

3 Plaintiff stated that she has two adult children and two friends. (AR 56, 68.)
4 She and her daughter visit each other occasionally. (AR 68.) Plaintiff also stated
5 that her boyfriend plays softball and she usually goes to watch him at every game.
6 (AR 69.) Plaintiff explained that she used to play softball, but she “had to stop
7 doing that” and has not played since 2012. (AR 69-70.) About three years ago,
8 Plaintiff traveled about 350 miles to see her family, but she has done no other
9 traveling since her AOD. (AR 71-72.) Plaintiff stated that she does not go to
10 restaurants very often. (AR 72-73.) Plaintiff also denied doing any crafts, playing
11 board games, or having any other hobbies. (AR 74-75.) Plaintiff went bowling
12 with friends on Christmas Eve 2013 and last went to the beach in 2014. (AR 74.)
13 Plaintiff also last rode horses in November 2014. (AR 80.)

14 Plaintiff stated that she can bathe and get dressed by herself. (AR 75.) She
15 goes to the grocery store, gets her medicines, and gets food for her cats. (AR 76.)
16 Plaintiff does laundry, dishes, and other cleaning. (AR 71, 76.) She can make a
17 bed, vacuum, sweep, organize the coffee table, clean the cat box, pick up clothes
18 and towels, and take out the garbage. (AR 76-78.) Plaintiff stated that she also
19 takes care of small plants and her bird feeders. (AR 77.) Plaintiff explained that
20 she cannot go from task to task right away, and she needs to sit down for at least 15
21 or 20 minutes in between regular chores. (AR 82.) She does the floor cleaning last,
22 then sits for about an hour. (*Id.*)

23 Plaintiff testified that on a normal day, she takes her medication, makes lunch
24 for her boyfriend and helps him get ready to go to work, eats breakfast, watches
25 television, and talks to her mother. (AR 77-78.) Plaintiff stated that she has “minor
26 flare-ups” of her Crohn’s disease about once a month, but it happened about three
27 times in the month prior to the hearing. (AR 79.) Plaintiff’s flare-ups cause
28 nausea, severe diarrhea, abdominal pain, and loss of appetite. (*Id.*) Some days

1 during a flare-up, she cannot get out of bed, and her boyfriend will “take[] over”
2 and cook meals when he comes home from work. (*Id.*) Plaintiff has daily diarrhea
3 and pain with bowel movements even without a flare-up. (AR 84.)

4 **2. Applicable Legal Standards**

5 “In assessing the credibility of a claimant’s testimony regarding subjective
6 pain or the intensity of symptoms, the ALJ engages in a two-step analysis.” *Molina*
7 *v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing *Vasquez v. Astrue*, 572 F.3d
8 586, 591 (9th Cir. 2009)). “First, the ALJ must determine whether the claimant has
9 presented objective medical evidence of an underlying impairment which could
10 reasonably be expected to produce the pain or other symptoms alleged.” *Treichler*
11 *v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting
12 *Lingenfelter*, 504 F.3d at 1036) (internal quotation marks omitted). If so, and if the
13 ALJ does not find evidence of malingering, the ALJ must provide specific, clear
14 and convincing reasons for rejecting a claimant’s testimony regarding the severity
15 of his symptoms. *Id.* The ALJ must identify what testimony was found not
16 credible and explain what evidence undermines that testimony. *Holohan v.*
17 *Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001). “General findings are
18 insufficient.” *Lester*, 81 F.3d at 834.

19 **3. Discussion**

20 “After careful consideration of the evidence,” the ALJ found that Plaintiff’s
21 “medically determinable impairments could reasonably be expected to cause the
22 alleged symptoms,” but found that Plaintiff’s “statements concerning the intensity,
23 persistence and limiting effects of these symptoms are not entirely credible.” (AR
24 37.) The ALJ relied on the following reasons: (1) activities of daily living;
25 (2) inconsistent statements and conduct; (3) symptoms controlled with medication;
26 and (4) lack of objective medical evidence to support the alleged severity of
27 symptoms. (AR 36-38, 40.) No malingering allegation was made, and therefore,
28 the ALJ’s reasons must be “clear and convincing.”

1 she stopped riding horses only in November 2014, less than six months before the
2 hearing. (AR 80.) She stated that she played softball as a catcher until she “had to
3 stop” playing in 2012—after her AOD of November 27, 2011. (AR 70.) Plaintiff
4 also testified to bowling on one occasion on Christmas Eve 2013. (AR 74.) The
5 ALJ found that, collectively, Plaintiff’s daily activities and infrequent “highly
6 strenuous sports activities” indicated that she could perform work “at least at a light
7 exertional level.” (AR 36.) The ALJ was permitted to consider these activities and
8 their transferability to the workplace. *See Burch*, 400 F.3d at 680 (finding that an
9 ALJ’s adverse credibility determination that relied on a claimant’s ability to care
10 for her personal needs, cook, and clean was a rational interpretation of the evidence,
11 even though the evidence may also suggest an interpretation more favorable to the
12 claimant) (citing *Magallanes*, 881 F.2d at 750); *Rollins v. Massanari*, 261 F.3d 853,
13 857 (9th Cir. 2001) (affirming an ALJ’s adverse credibility determination, despite
14 “equivocal” testimony about how regularly the claimant engaged in her activities,
15 because the ALJ’s interpretation was reasonable).

16 The Court finds that this reason is a clear and convincing reason, supported
17 by substantial evidence, to discount Plaintiff’s credibility.

18 **b. Reason No. 2: Inconsistent Statements and Conduct**

19 The ALJ found that Plaintiff’s testimony that she could walk up to one block
20 at a time was inconsistent with her testimony that she regularly walks several
21 thousand feet to her grocery store. (AR 36.) An ALJ may consider inconsistent
22 statements by a claimant in assessing her credibility. *Tonapetyan v. Halter*, 242
23 F.3d 1144, 1148 (9th Cir. 2001); *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th
24 Cir. 2002) (citing *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997)). At
25 the hearing, Plaintiff testified that she can typically walk one block, or “a block or
26 two” on a good day. (AR 64-65.) Plaintiff explained that she can walk to the
27 grocery store “that’s right around the corner from [her] house,” which is “maybe a
28 couple of thousand feet.” (AR 69.) In context, Plaintiff’s statements about “one

1 block” and her estimate of “a couple thousand feet” being “right around the corner”
2 are not clearly inconsistent. Moreover, a single discrepancy fails to justify “the
3 wholesale dismissal of a claimant’s testimony.” *Popa v. Berryhill*, 872 F.3d 901,
4 906-07 (9th Cir. 2017) (citing *Robbins*, 466 F.3d at 883-84).

5 The ALJ also found that Plaintiff’s conduct at the hearing—carrying a large
6 purse, laughing, smiling, and “show[ing] no obvious signs of discomfort”—was
7 inconsistent with her testimony that she was experiencing pain with a severity of 4
8 out of 10. (*Id.*) This purported inconsistency noted by the ALJ is potentially
9 problematic, as a claimant’s failure to exhibit pain at a hearing “provides little, if
10 any, support for the ALJ’s ultimate conclusion that the claimant is not disabled or
11 that [her] allegations of constant pain are not credible.” *Gallant v. Heckler*, 753
12 F.2d 1450, 1455 (9th Cir. 1984) (citing *Day v. Weinberger*, 522 F.2d 1154, 1156-57
13 (9th Cir. 1975)).

14 The Court finds that this reason is not a clear and convincing reason,
15 supported by substantial evidence, to discount Plaintiff’s credibility.

16 **c. Reason No. 3: Symptoms Controlled With Medication**

17 The ALJ found that, although Plaintiff suffered “occasional” symptom flare-
18 ups, Plaintiff’s Crohn’s disease symptoms were “generally well controlled” with
19 narcotics and Remicade. (AR 38; *see* AR 37.) Impairments that can be effectively
20 controlled with medication are not disabling for the purpose of determining
21 eligibility for social security benefits. *See Warre v. Comm’r Soc. Sec.*, 439 F.3d
22 1001, 1006 (9th Cir. 2006).

23 Plaintiff contends that her physicians regularly noted that her condition was
24 uncontrolled. (JS 24-25; *see* AR 499 (May 2011); AR 473 (June 2012); AR 461
25 (December 2012); AR 617 (June 2013).) But the ALJ noted that in November
26 2014, Plaintiff reported that her condition had improved and was stable on
27 Remicade. (AR 37; *see* AR 1461.) In January 2015, Plaintiff reported “feeling
28 better” but continued to have mild flares of abdominal pain, unrelated to the timing

1 of her Remicade infusions. (AR 37; *see* AR 1583.) In February 2015, Plaintiff
2 stated that she thought her flares and symptoms had improved by around 50% with
3 the Remicade, and she was tapering off her use of narcotics. (AR 37; *see* AR
4 1467.) The ALJ did not err in discounting Plaintiff’s testimony based on Plaintiff’s
5 documented improvement. *See Tidwell v. Apfel*, 161 F.3d 599, 602 (9th Cir. 1999)
6 (holding that in assessing claimant’s credibility, ALJ did not err in considering that
7 medication “aided” claimant’s symptoms).

8 However, after the ALJ’s decision, Plaintiff submitted additional records—
9 dated before the ALJ’s decision date of May 14, 2015—to the Appeals Council.
10 (*See* AR 2, 5.) The Appeals Council accepted and considered this new evidence,
11 but it concluded that the additional evidence did not provide a basis for changing
12 the ALJ’s decision. (AR 2.) When the Appeals Council considers new evidence in
13 denying review of the ALJ’s decision, this Court considers on appeal both the
14 ALJ’s decision and the additional material submitted to the Appeals Council.
15 *Ramirez v. Shalala*, 8 F.3d 1449, 1452 (9th Cir. 1993); *see Brewes v. Comm’r of*
16 *Soc. Sec. Admin.*, 682 F.3d 1157, 1163 (9th Cir. 2012) (“[W]e have routinely
17 considered evidence submitted for the first time to the Appeals Council to
18 determine whether, in light of the record as a whole, the ALJ’s decision was
19 supported by substantial evidence.”).

20 In March 2015, Plaintiff reported vomiting due to “severe abdominal pain,”
21 “above and beyond what she has experience previously.” (AR 1868.) In April
22 2015, Plaintiff was documented to be “still in pain” with nausea and vomiting. (AR
23 1807, 1810.) A treating physician also noted that she had “progressively
24 symptomatic” ileal Crohn’s, and he suggested that “at this point[, Plaintiff]
25 probably would benefit from [an] operation.” (AR 1808.) On May 4, 2015, two
26 doctors agreed that “she likely warrants surgery at this point.” (AR 1805.)

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1 Considering the new evidence, the ALJ’s finding that Plaintiff’s symptoms
2 were “generally well controlled” is not a clear and convincing reason, supported by
3 substantial evidence, to discount Plaintiff’s credibility.

4 **d. Reason No. 4: Lack of Supporting Objective Medical**
5 **Evidence**

6 The lack of supporting objective medical evidence cannot form the sole basis
7 for discounting testimony, but it is a factor that the ALJ may consider in making a
8 credibility determination. *Burch*, 400 F.3d at 681; *Rollins*, 261 F.3d at 857 (citing
9 20 C.F.R. § 404.1529(c)(2)).

10 The ALJ accurately summarized Plaintiff’s medical records, noting her
11 complaints of abdominal pain and the test results showing evidence of active
12 Crohn’s disease. (*See* AR 37-38.) The ALJ also observed that Plaintiff’s condition
13 and symptoms appeared to be controlled with treatment. (*Id.*) Acknowledging
14 Plaintiff’s frequent abdominal pain from Crohn’s disease, the ALJ determined that
15 the evidence nevertheless did not indicate that Plaintiff’s symptoms were severe
16 enough to prevent her from performing light work. (AR 38.) Although Plaintiff’s
17 treatment records may be interpreted in more than one way, the evidence can
18 rationally support the ALJ’s determination. Accordingly, the Court should uphold
19 his interpretation of the evidence. *See Ryan*, 528 F.3d at 1198; *Robbins*, 466 F.3d
20 at 882.

21 However, in light of the additional records discussed above, the Court is not
22 convinced that the objective medical evidence continues to undermine Plaintiff’s
23 allegations and testimony. The new evidence appears to indicate that Plaintiff
24 suffered a decline in her condition around the time of the April 2015 administrative
25 hearing, to the point where surgery was recommended. (*See* AR 1868 (March
26 2015); AR 1807, 1810 (April 2015); AR 1805 (May 2015).)

27 Considering the new evidence, the Court finds that the lack of objective
28 medical evidence is not a clear and convincing reason, supported by substantial

1 evidence, to discount Plaintiff’s credibility. *See Burrell v. Colvin*, 775 F.3d 1133,
2 1139 & n.4 (9th Cir. 2014) (finding that the full record, including treatment records
3 that were not before the ALJ but were considered by the Appeals Council, did not
4 support an adverse credibility determination based on a lack of medical records);
5 *see also Brewes*, 682 F.3d at 1163.

6 **4. Conclusion**

7 Because the Court found that three of the ALJ’s reasons for discounting
8 Plaintiff’s credibility are not clear and convincing, the Court must decide whether
9 the ALJ’s reliance on those reasons was harmless error. *Carmickle v. Comm’r of*
10 *Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008). The relevant inquiry “is not
11 whether the ALJ would have made a different decision absent any error,” but
12 whether the ALJ’s decision is still “legally valid, despite such error.” *Id.* The
13 “remaining reasoning *and ultimate credibility determination* [must be] . . .
14 supported by substantial evidence in the record.” *Id.* (emphasis in original) (citing
15 *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004)). Here,
16 given the discussion above concerning Plaintiff’s conduct at the hearing, her
17 symptoms’ response to treatment, and the objective medical evidence, the Court
18 concludes the ALJ’s credibility finding is not legally valid and supported by
19 substantial evidence. Remand is therefore warranted on this issue.

20 **B. The Court Declines To Address Plaintiff’s Remaining Argument**

21 Having found that remand is warranted, the Court declines to address
22 Plaintiff’s remaining argument that the ALJ improperly evaluated the severity of
23 her Crohn’s impairment. *See Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir. 2012)
24 (“Because we remand the case to the ALJ for the reasons stated, we decline to reach
25 [plaintiff’s] alternative ground for remand.”); *see also Augustine ex rel. Ramirez v.*
26 *Astrue*, 536 F. Supp. 2d 1147, 1153 n.7 (C.D. Cal. 2008) (“[The] Court need not
27 address the other claims plaintiff raises, none of which would provide plaintiff with
28 any further relief than granted, and all of which can be addressed on remand.”).

1 **C. Remand For Further Administrative Proceedings**

2 Because further administrative review could remedy the ALJ’s errors,
3 remand for further administrative proceedings, rather than an award of benefits, is
4 warranted here. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015)
5 (remanding for an award of benefits is appropriate in rare circumstances). Before
6 ordering remand for an award of benefits, three requirements must be met: (1) the
7 Court must conclude that the ALJ failed to provide legally sufficient reasons for
8 rejecting evidence; (2) the Court must conclude that the record has been fully
9 developed and further administrative proceedings would serve no useful purpose;
10 and (3) the Court must conclude that if the improperly discredited evidence were
11 credited as true, the ALJ would be required to find the claimant disabled on
12 remand. *Id.* (citations omitted). Even if all three requirements are met, the Court
13 retains flexibility to remand for further proceedings “when the record as a whole
14 creates serious doubt as to whether the claimant is, in fact, disabled within the
15 meaning of the Social Security Act.” *Id.* (citation omitted).

16 Here, remand for further administrative proceedings is appropriate. The
17 Court finds that the ALJ failed to provide clear and convincing reasons supported
18 by substantial evidence to discount Plaintiff’s subjective testimony. Additionally,
19 the ALJ found that Plaintiff was “only credible to the extent that [s]he can do the
20 work described herein.” (AR 36.) This language “inverts the responsibility of an
21 ALJ, which is first to determine the medical impairments of a claimant based on the
22 record and the claimant’s credible symptom testimony and only then to determine
23 the claimant’s RFC.” *Trevizo v. Berryhill*, 871 F.3d 664, 679 n.6 (9th Cir. 2017).
24 Because symptom testimony must be taken into account when determining a
25 claimant’s RFC, “it cannot be discredited because it is inconsistent with that RFC.”
26 *Laborin v. Berryhill*, 867 F.3d 1151, 1154 (9th Cir. 2017); *see Garrison*, 759 F.3d
27 at 1011 (citing 20 CFR 416.920(e)).

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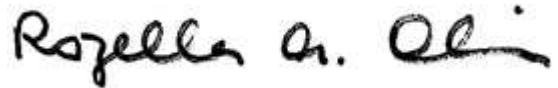
1 On remand, the ALJ shall reassess Plaintiff's subjective allegations in light of
2 the new evidence of record and SSR 16-3p – Evaluation of Symptoms in Disability
3 Claims, 2016 WL 1119029 (Mar. 16, 2016), which would apply upon remand. The
4 ALJ shall then reassess Plaintiff's RFC in light of the reassessment of Plaintiff's
5 subjective allegations and proceed through step four and step five, if necessary, to
6 determine what work, if any, Plaintiff is capable of performing.

7 **V. CONCLUSION**

8 IT IS ORDERED that Judgment shall be entered REVERSING the decision
9 of the Commissioner denying benefits, and REMANDING the matter for further
10 proceedings consistent with this Order.

11 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
12 Order and the Judgment on counsel for both parties.

13
14 DATED: March 26, 2018



15 ROZELLA A. OLIVER
16 UNITED STATES MAGISTRATE JUDGE

17 **NOTICE**

18 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,**
19 **LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**