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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRISTINA F.,  
  
Plaintiff,  
  
v.  
  
KILOLO KIJAKAZI, Acting  
Commissioner of Social Security  
Administration,  
  
Defendant.

Case No. 2:20-cv-00477-SP  
  
MEMORANDUM OPINION AND  
ORDER

I.

INTRODUCTION

On January 16, 2020, plaintiff Cristina F. filed a Complaint against defendant, the Commissioner of the Social Security Administration (“Commissioner”), seeking review of a denial of a period of disability, disability insurance benefits (“DIB”), and supplemental security income (“SSI”). The parties have fully briefed the issue in dispute, and the court deems the matter suitable for adjudication without oral argument.

Plaintiff presents one disputed issue for decision, namely whether the Administrative Law Judge (“ALJ”) improperly discounted plaintiff’s subjective

1 symptom testimony. Plaintiff’s Memorandum in Support of Complaint (“P.  
2 Mem.”) at 5-11; *see* Defendant’s Memorandum in Support of Answer (“D. Mem.”)  
3 at 2-6.

4 Having carefully studied the parties’ memoranda, the Administrative Record  
5 (“AR”), and the decision of the ALJ, the court concludes that, as detailed herein,  
6 the ALJ did not provide clear and convincing reasons to discount plaintiff’s  
7 testimony. The court therefore remands this matter to the Commissioner in  
8 accordance with the principles and instructions enunciated in this Memorandum  
9 Opinion and Order.

## 10 II.

### 11 FACTUAL AND PROCEDURAL BACKGROUND

12 Plaintiff, who was 50 years old on the alleged disability onset date, attended  
13 some high school. AR at 36 n.1, 253. Plaintiff has past relevant work as a cashier,  
14 and allegedly possesses limited English-speaking proficiency. AR at 233-34, 243.

15 On October 31, 2016, plaintiff filed an application for a period of disability  
16 and DIB, followed by an application for SSI on November 1, 2016. AR at 254,  
17 270. Plaintiff alleges a disability onset date of September 1, 2015 due to  
18 depression, anxiety, anemia, arthritis, and tinnitus. AR at 253-54, 269-70.  
19 Plaintiff’s applications were initially denied on February 2, 2017. AR at 286.

20 Plaintiff requested a hearing, which the assigned ALJ held on July 30, 2018.  
21 AR at 226. Plaintiff, represented by counsel and assisted by a Spanish language  
22 interpreter, appeared and testified at the hearing. AR at 228-43. The ALJ also  
23 heard testimony from Ronald Hatakeyama, a vocational expert. R at 241-50. The  
24 ALJ denied plaintiff’s claims on November 30, 2018. AR at 36-52.

25 Applying the well-established five-step sequential evaluation process, the  
26 ALJ found, at step one, that plaintiff has not engaged in substantial gainful activity  
27 since September 1, 2015, the alleged onset date. AR at 39.

1 At step two, the ALJ found plaintiff suffers from several severe  
2 impairments: depression, anemia, mild right knee joint space narrowing, plantar  
3 fasciitis, and chiari malformation. *Id.*

4 At step three, the ALJ found plaintiff’s impairments, whether individually or  
5 in combination, did not meet or medically equal one of the listed impairments set  
6 forth in 20 C.F.R. Part 404, Subpart P, Appendix 1. AR at 41.

7 The ALJ then assessed plaintiff’s residual functional capacity (“RFC”),<sup>1</sup> and  
8 determined she had the RFC to perform light work, with the following limitations:

9 The claimant is able to lift 20 pounds occasionally and 10 pounds  
10 frequently; stand 6 hours in an 8-hour workday and sit 6 hours in an  
11 8-hour workday; occasionally climb ramps and stairs; never climb  
12 ladders, ropes, and scaffolds; occasionally balance, stoop, kneel,  
13 crouch, and crawl; frequent fingering bilaterally; be able to sit for 2-3  
14 minutes after standing for 30 to 60 minutes, and stand for 2-3 minutes  
15 after sitting for 30 to 60 minutes; use a walker to and from the  
16 workstation, but not at the workstation for balancing; avoid working  
17 outside in bright sunlight; no work with bright lights, and avoid  
18 excessive noise. The individual can understand and follow simple  
19 instructions and directions; perform simple tasks with or without  
20 supervision; can maintain attention and concentration for simple tasks;  
21 regularly attend to a routine and maintain a schedule; can relate to and  
22 interact appropriately with co-workers and supervisors but should

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25 <sup>1</sup> Residual functional capacity is what a claimant can do despite existing  
26 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152, 1155-  
27 56 n.5-7 (9th Cir. 1989). “Between steps three and four of the five-step evaluation,  
28 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).

1 have only occasional interaction with the public. Work should be  
2 limited to simple tasks, involving only simple, work-related decisions  
3 with few, if any, work place changes. The individual can only speak  
4 and understand simple English.

5 AR at 45-46.

6 The ALJ found, at step four, that plaintiff was unable to perform her past  
7 relevant work as a cashier. AR at 50.

8 At step five, the ALJ considered plaintiff's age, education, work experience,  
9 and RFC, and found plaintiff could perform jobs that exist in significant numbers  
10 in the national economy, including small products assembler, general inspector,  
11 and office helper. AR at 51-52. Accordingly, the ALJ concluded plaintiff was not  
12 under a disability, as defined in the Social Security Act.

13 Plaintiff filed a timely request for review, but the Appeals Council denied  
14 the request on November 21, 2019. AR at 1-4. Accordingly, the ALJ's decision is  
15 the final decision of the Commissioner.

### 16 III.

#### 17 STANDARD OF REVIEW

18 This court is empowered to review decisions by the Commissioner to deny  
19 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security  
20 Administration must be upheld if they are free of legal error and supported by  
21 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001)  
22 (as amended). But if the court determines the ALJ's findings are based on legal  
23 error or are not supported by substantial evidence in the record, the court may  
24 reject the findings and set aside the decision to deny benefits. *Aukland v.*  
25 *Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*, 242 F.3d  
26 1144, 1147 (9th Cir. 2001).

27 "Substantial evidence is more than a mere scintilla, but less than a  
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1 preponderance.” *Aukland*, 257 F.3d at 1035 (citation omitted). Substantial  
2 evidence is such “relevant evidence which a reasonable person might accept as  
3 adequate to support a conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir.  
4 1998) (citations omitted); *Mayes*, 276 F.3d at 459. To determine whether  
5 substantial evidence supports the ALJ’s finding, the reviewing court must review  
6 the administrative record as a whole, “weighing both the evidence that supports  
7 and the evidence that detracts from the ALJ’s conclusion.” *Mayes*, 276 F.3d at  
8 459. The ALJ’s decision “cannot be affirmed simply by isolating a specific  
9 quantum of supporting evidence.” *Aukland*, 257 F.3d at 1035 (internal quotation  
10 marks omitted). If the evidence can reasonably support either affirming or  
11 reversing the ALJ’s decision, the reviewing court “may not substitute its judgment  
12 for that of the ALJ.” *Id.* (internal quotation marks omitted).

#### 13 IV.

#### 14 DISCUSSION

15 Plaintiff argues the ALJ failed to provide specific, clear, and convincing  
16 reasons for rejecting her subjective symptom testimony. P. Mem. at 5. Plaintiff  
17 contends the ALJ’s only reason – that her testimony was inconsistent with the  
18 objective medical evidence – is insufficient under the law. *Id.* at 10-11. Defendant  
19 maintains the ALJ listed several reasons for discounting plaintiff’s testimony,  
20 including her inconsistent statements and a lack of supporting objective medical  
21 evidence. *See* D. Mem. at 2-4.

22 As an initial matter, the court looks to Social Security Ruling (“SSR”) 16-3p  
23 for guidance on evaluating plaintiff’s alleged symptoms. SSR 16-3p rescinded and  
24 superseded SSR 96-7p and applies to decisions made on or after March 28, 2016.  
25 SSR 16-3p, 2017 WL 5180304, at \*1 (Oct. 25, 2017). “Although SSRs do not  
26 have the same force and effect as statutes or regulations, they are binding on all  
27 components of the Social Security Administration.” *Id.* (citing 20 C.F.R.  
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1 § 402.35(b)(1)).

2 In adopting SSR 16-3p, the Social Security Administration sought to “clarify  
3 that subjective symptom evaluation is not an examination of an individual’s  
4 character.” *Id.* at \*2.

5 [SSR 16-3p] makes clear what our precedent already required: that  
6 assessments of an individual’s testimony by an ALJ are designed to  
7 evaluate the intensity and persistence of symptoms after the ALJ finds  
8 that the individual has a medically determinable impairment(s) that  
9 could reasonably be expected to produce those symptoms, and not to  
10 delve into wide-ranging scrutiny of the claimant’s character and  
11 apparent truthfulness.

12 *Trevizo v. Berryhill*, 871 F.3d 664, 678 n.5 (9th Cir. 2017) (internal quotation  
13 marks and alterations omitted).

14 To evaluate a claimant’s symptom testimony, the ALJ engages in a two-step  
15 analysis. *Christine G. v. Saul*, 402 F. Supp. 3d 913, 921 (C.D. Cal. 2019) (quoting  
16 *Trevizo*, 871 F.3d at 678). First, the ALJ must determine whether the claimant  
17 produced objective medical evidence of an underlying impairment that could  
18 reasonably be expected to produce the symptoms alleged. *Id.* Second, if the  
19 claimant satisfies the first step, and there is no evidence of malingering, the ALJ  
20 must evaluate the intensity and persistence of the claimant’s symptoms and  
21 determine the extent to which they limit her ability to perform work-related  
22 activities. *Id.* In assessing intensity and persistence, the ALJ may consider: a  
23 claimant’s daily activities; the location, duration, frequency, and intensity of the  
24 symptoms; precipitating and aggravating factors; the type, dosage, effectiveness,  
25 and side effects of medication taken to alleviate the symptoms; other treatment  
26 received; other measures used to relieve the symptoms; and other factors  
27 concerning the claimant’s functional limitations and restrictions due to the  
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1 symptoms. *Id.* (citing 20 C.F.R. § 416.929; SSR 16-3p, 2017 WL 5180304, at \*4;  
2 *Smolen v. Chater*, 80 F.3d 1273, 1283-84 & n.8 (9th Cir. 1996)). If the ALJ rejects  
3 the claimant’s subjective symptom statements at step two, the ALJ must provide  
4 “specific, clear, and convincing” reasons, supported by substantial evidence in the  
5 record, for doing so. *Id.* at 921, 929.

6 Here, at the first step, the ALJ found plaintiff’s medically determinable  
7 impairments could reasonably be expected to cause the symptoms alleged. AR at  
8 50. At the second step, the ALJ discounted plaintiff’s testimony. *Id.* Because  
9 plaintiff cleared step one and the ALJ found no evidence of malingering, the ALJ’s  
10 reasons for discounting plaintiff’s testimony had to be specific, clear, convincing,  
11 and supported by substantial evidence.

12 In discounting plaintiff’s testimony, the ALJ set forth the standard to be  
13 followed in considering a claimant’s symptoms, recounted plaintiff’s pertinent  
14 testimony regarding her symptoms, and provided a thorough discussion of the  
15 medical evidence in the record, including plaintiff’s treatment history and the  
16 medical opinions. AR at 46-50. The ALJ then concluded that while plaintiff’s  
17 impairments could cause her alleged symptoms, her “statements concerning the  
18 intensity, persistence, and limiting effects of these symptoms are not entirely  
19 consistent with the medical evidence and other evidence in the record for the  
20 reasons explained in this decision.” AR at 50. The ALJ gave no clear indication  
21 what “other evidence” in the record the ALJ found to be inconsistent with  
22 plaintiff’s testimony.

23 Where an ALJ rejects a claimant’s testimony, the ALJ must “specifically  
24 identify the testimony [from the claimant] that she or he finds not to be credible  
25 and . . . explain what evidence undermines the testimony.” *Treichler v. Comm’r of*  
26 *Soc. Sec.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting *Holohan*, 246 F.3d at  
27 1208). The ALJ here explicitly found the medical evidence to be inconsistent with  
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1 plaintiff’s symptom testimony, but plaintiff argues there was no “logical bridge”  
2 between the testimony the ALJ found unsupported and the evidence that  
3 undermines it. P. Mem. at 9 (citing *Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir.  
4 2003)); see *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015) (ALJ must  
5 identify which of claimant’s statement are found not credible and why). While the  
6 lines between plaintiff’s testimony and the inconsistent medical evidence here  
7 might have been more explicitly drawn, on balance the court finds the ALJ’s  
8 juxtaposition of plaintiff’s testimony and the inconsistent medical evidence to have  
9 been sufficiently clear for the court to evaluate. See AR at 46-49. But this is not  
10 enough.

11 The lack of objective medical evidence to support allegations of limitations  
12 is a factor that may be considered when evaluating the testimony, but it is  
13 insufficient by itself. See *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001)  
14 (lack of corroborative objective medicine may be one factor in evaluating  
15 subjective symptom testimony); *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir.  
16 1991) (an ALJ “may not reject a claimant’s subjective complaints based solely on a  
17 lack of objective medical evidence to fully corroborate the alleged severity of  
18 pain”); accord *Christine G.*, 402 F. Supp. 3d at 923. Here, the ALJ only clearly  
19 cited lack of supporting medical evidence as a reason to discount plaintiff’s  
20 testimony.

21 Defendant points to inconsistent statements by plaintiff that the ALJ noted  
22 elsewhere in the decision and might have been a basis used by the ALJ to discount  
23 plaintiff’s testimony. See D. Mem. at 3. But it is not at all clear that the ALJ in  
24 fact relied on any of these in discounting plaintiff’s testimony. For example,  
25 defendant points to a footnote in the ALJ’s decision that notes inconsistencies in  
26 the record regarding plaintiff’s English language abilities (see AR at 36 n.1);  
27 however, it is unclear whether the ALJ relied on this inconsistency in discounting  
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1 plaintiff testimony and, if so, what aspect of plaintiff’s testimony this would  
2 undercut. To the extent this might go to plaintiff’s credibility generally, it would  
3 seem to go against the new SSR, which urges SSA judges “not to delve into wide-  
4 ranging scrutiny of the claimant’s character and apparent truthfulness.” *Trevizo*,  
5 871 F.3d at 678 n.5. The ALJ also pointed to plaintiff’s testimony that she no  
6 longer had a desire to work after her mother died as inconsistent with her testimony  
7 she was unable to return to work due to a knee problem. AR at 42. But even if the  
8 ALJ relied on this in discounting plaintiff’s testimony – and again, this is not  
9 apparent – there is not necessarily anything inconsistent in being unable to work  
10 due to a knee problem and also having no desire to work due to mental health  
11 issues.

12 In short, the only reason the ALJ articulated for discounting plaintiff’s  
13 testimony was that her subjective symptoms were not supported by the objective  
14 medical evidence. By itself, this was not a clear and convincing reason. The ALJ  
15 therefore erred in discounting plaintiff’s testimony.

16 **V.**

17 **REMAND IS APPROPRIATE**

18 The decision whether to remand for further proceedings or reverse and  
19 award benefits is within the discretion of the district court. *McAllister v. Sullivan*,  
20 888 F.2d 599, 603 (9th Cir. 1989). It is appropriate for the court to exercise this  
21 discretion to direct an immediate award of benefits where: “(1) the record has been  
22 fully developed and further administrative proceedings would serve no useful  
23 purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting  
24 evidence, whether claimant testimony or medical opinions; and (3) if the  
25 improperly discredited evidence were credited as true, the ALJ would be required  
26 to find the claimant disabled on remand.” *Garrison v. Colvin*, 759 F.3d 995, 1020  
27 (9th Cir. 2014) (setting forth three-part credit-as-true standard for remanding with  
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1 instructions to calculate and award benefits). But where there are outstanding  
2 issues that must be resolved before a determination can be made, or it is not clear  
3 from the record that the ALJ would be required to find a plaintiff disabled if all the  
4 evidence were properly evaluated, remand for further proceedings is appropriate.  
5 *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004); *Harman v. Apfel*,  
6 211 F.3d 1172, 1179-80 (9th Cir. 2000). In addition, the court must “remand for  
7 further proceedings when, even though all conditions of the credit-as-true rule are  
8 satisfied, an evaluation of the record as a whole creates serious doubt that a  
9 claimant is, in fact, disabled. *Garrison*, 759 F.3d at 1021.

10 Here, as set forth above, remand is appropriate because there are outstanding  
11 issues that must be resolved before it can be determined whether plaintiff is  
12 disabled. The ALJ must reconsider plaintiff’s testimony and either credit her  
13 testimony or provide clear and convincing reasons to reject it. The ALJ must then  
14 reassess plaintiff’s RFC, and proceed through steps four and five to determine what  
15 work, if any, plaintiff is capable of performing.

16 **VI.**

17 **CONCLUSION**

18 IT IS THEREFORE ORDERED that Judgment shall be entered  
19 REVERSING the decision of the Commissioner denying benefits, and  
20 REMANDING the matter to the Commissioner for further administrative action  
21 consistent with this decision.

22  
23 DATED: September 30, 2021



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25 SHERI PYM  
United States Magistrate Judge