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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FELICA A. C.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

Case No. 2:21-cv-002132-JC

MEMORANDUM OPINION AND
ORDER OF REMAND

I. SUMMARY

On March 9, 2021, plaintiff Felica A. C. filed a Complaint seeking review of the Commissioner of Social Security’s denial of plaintiff’s application for benefits. The parties have consented to proceed before the undersigned United States Magistrate Judge.

This matter is before the Court on the parties’ cross motions for summary judgment, respectively (“Plaintiff’s Motion”) and (“Defendant’s Motion”) (collectively “Motions”). The Court has taken the Motions under submission

¹Plaintiff’s name is partially redacted to protect her privacy in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; Case Management Order
2 filed on May 10, 2021, at ¶ 5.

3 Based on the record as a whole and the applicable law, the decision of the
4 Commissioner is REVERSED AND REMANDED for further proceedings
5 consistent with this Memorandum Opinion and Order of Remand. In this case, the
6 Administrative Law Judge (“ALJ”) materially erred by rejecting plaintiff’s
7 subjective symptom testimony without providing adequate reasons.

8 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**
9 **DECISION**

10 On or about August 9, 2017, plaintiff filed an application for Disability
11 Insurance Benefits, alleging disability beginning on October 1, 2013, due to
12 bilateral knee and shoulder injuries, arthritis, back pain with right side sciatica, left
13 hand numbness, hypertension, gastroesophageal reflux disease, asthma, morbid
14 obesity, and adjustment disorder with depressed mood. (Administrative Record
15 (“AR”) 230-33, 251). Plaintiff reportedly also filed an application for
16 Supplemental Security Income on December 30, 2017. (AR 29). The ALJ
17 subsequently examined the medical record and heard testimony from plaintiff (who
18 was represented by counsel) and a vocational expert. (AR 52-80).

19 On January 29, 2020, the ALJ determined that plaintiff had not been
20 disabled through the date of the decision. (AR 29-43). Specifically, the ALJ
21 found: (1) plaintiff suffered from the following severe impairments: arthritis,
22 asthma, disorders of the back, bilateral knees, hips, and left shoulder, status post
23 left cubital tunnel release, sciatica, and obesity (AR 32-34); (2) plaintiff’s
24 impairments, considered individually or in combination, did not meet or medically
25 equal a listed impairment (AR 34-35); (3) plaintiff retained the residual functional
26 capacity to perform sedentary work (20 C.F.R. §§ 404.1567(a), 416.967(a)), with

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1 additional limitations² (AR 35-41 (adopting capacity consistent with state agency
2 physician’s opinion at AR 91-93)); (4) plaintiff could perform her past relevant
3 work as a customer-complaint clerk and therefore was not disabled (AR 41-42
4 (adopting vocational expert testimony at AR 75-77, 79)); and (5) plaintiff’s
5 statements regarding the intensity, persistence, and limiting effects of subjective
6 symptoms were not entirely consistent with the medical evidence and other
7 evidence in the record (AR 36-40).

8 On September 21, 2020, the Appeals Council denied plaintiff’s application
9 for review. (AR 15-17).

10 **III. APPLICABLE LEGAL STANDARDS**

11 **A. Administrative Evaluation of Disability Claims**

12 To qualify for disability benefits, a claimant must show that she is unable “to
13 engage in any substantial gainful activity by reason of any medically determinable
14 physical or mental impairment which can be expected to result in death or which
15 has lasted or can be expected to last for a continuous period of not less than 12
16 months.” Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012) (quoting 42
17 U.S.C. § 423(d)(1)(A)) (internal quotation marks omitted), superseded by
18 regulation on other grounds as stated in Sisk v. Saul, 820 Fed. App’x 604, 606 (9th
19 Cir. 2020); 20 C.F.R. §§ 404.1505(a), 416.905(a). To be considered disabled, a
20 claimant must have an impairment of such severity that she is incapable of
21 performing work the claimant previously performed (“past relevant work”) as well
22

23 ²The ALJ determined that plaintiff would be limited to: (1) lifting and carrying 20
24 pounds occasionally and 10 pounds frequently; (2) standing and/or walking for four hours in an
25 eight-hour workday; (3) sitting for six hours in an eight-hour workday; (4) occasionally pushing
26 and pulling, climbing ramps and stairs, ladders, ropes, and scaffolds, balancing, stooping,
27 kneeling, crouching, and crawling, and reaching overhead with the left upper extremity;
28 (5) frequently reaching with the left upper extremity, performing fine manipulation (*e.g.*,
fingering) and handling with the left upper extremity, and gripping up to 10 pounds with the left
upper extremity; and (6) avoiding concentrated exposure to fumes, odors, dusts, gases, and poor
ventilation. (AR 35).

1 as any other “work which exists in the national economy.” Tackett v. Apfel, 180
2 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)).

3 To assess whether a claimant is disabled, an ALJ is required to use the five-
4 step sequential evaluation process set forth in Social Security regulations. See
5 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th
6 Cir. 2006) (describing five-step sequential evaluation process) (citing 20 C.F.R.
7 §§ 404.1520, 416.920). The claimant has the burden of proof at steps one through
8 four – *i.e.*, determination of whether the claimant was engaging in substantial
9 gainful activity (step 1), has a sufficiently severe impairment (step 2), has an
10 impairment or combination of impairments that meets or medically equals one of
11 the conditions listed in 20 C.F.R. Part 404, Subpart P, Appendix 1 (“Listings”)
12 (step 3), and retains the residual functional capacity to perform past relevant work
13 (step 4). Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citation omitted).
14 The Commissioner has the burden of proof at step five – *i.e.*, establishing that the
15 claimant could perform other work in the national economy. Id.

16 **B. Federal Court Review of Social Security Disability Decisions**

17 A federal court may set aside a denial of benefits only when the
18 Commissioner’s “final decision” was “based on legal error or not supported by
19 substantial evidence in the record.” 42 U.S.C. § 405(g); Trevizo v. Berryhill, 871
20 F.3d 664, 674 (9th Cir. 2017) (citation and quotation marks omitted). The standard
21 of review in disability cases is “highly deferential.” Rounds v. Commissioner of
22 Social Security Administration, 807 F.3d 996, 1002 (9th Cir. 2015) (citation and
23 quotation marks omitted). Thus, an ALJ’s decision must be upheld if the evidence
24 could reasonably support either affirming or reversing the decision. Trevizo, 871
25 F.3d at 674-75 (citations omitted). Even when an ALJ’s decision contains error, it
26 must be affirmed if the error was harmless. See Treichler v. Commissioner of
27 Social Security Administration, 775 F.3d 1090, 1099 (9th Cir. 2014) (ALJ error
28 harmless if (1) inconsequential to the ultimate nondisability determination; or (2)

1 ALJ's path may reasonably be discerned despite the error) (citation and quotation
2 marks omitted).

3 Substantial evidence is "such relevant evidence as a reasonable mind might
4 accept as adequate to support a conclusion." Trevizo, 871 F.3d at 674 (defining
5 "substantial evidence" as "more than a mere scintilla, but less than a
6 preponderance") (citation and quotation marks omitted). When determining
7 whether substantial evidence supports an ALJ's finding, a court "must consider the
8 entire record as a whole, weighing both the evidence that supports and the evidence
9 that detracts from the Commissioner's conclusion[.]" Garrison v. Colvin, 759 F.3d
10 995, 1009 (9th Cir. 2014) (citation and quotation marks omitted).

11 Federal courts review only the reasoning the ALJ provided, and may not
12 affirm the ALJ's decision "on a ground upon which [the ALJ] did not rely."
13 Trevizo, 871 F.3d at 675 (citations omitted). Hence, while an ALJ's decision need
14 not be drafted with "ideal clarity," it must, at a minimum, set forth the ALJ's
15 reasoning "in a way that allows for meaningful review." Brown-Hunter v. Colvin,
16 806 F.3d 487, 492 (9th Cir. 2015) (citing Treichler, 775 F.3d at 1099).

17 A reviewing court may not conclude that an error was harmless based on
18 independent findings gleaned from the administrative record. Brown-Hunter, 806
19 F.3d at 492 (citations omitted). When a reviewing court cannot confidently
20 conclude that an error was harmless, a remand for additional investigation or
21 explanation is generally appropriate. See Marsh v. Colvin, 792 F.3d 1170, 1173
22 (9th Cir. 2015) (citations omitted).

23 **IV. DISCUSSION**

24 Plaintiff contends, *inter alia*, that the ALJ erred by improperly rejecting her
25 subjective symptom testimony. (Plaintiff's Motion at 2-11). For the reasons stated
26 below, the Court agrees. Since the Court cannot find that the error was harmless, a
27 remand is warranted.

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1 **A. Pertinent Law**

2 When determining disability, an ALJ is required to consider a claimant’s
3 impairment-related pain and other subjective symptoms at each step of the
4 sequential evaluation process. 20 C.F.R. §§ 404.1529(a), (d), 416.929(a), (d).
5 Accordingly, when a claimant presents “objective medical evidence of an
6 underlying impairment which might reasonably produce the pain or other
7 symptoms [the claimant] alleged,” the ALJ is required to determine the extent to
8 which the claimant’s statements regarding the intensity, persistence, and limiting
9 effects of his subjective symptoms (“subjective statements” or “subjective
10 complaints”) are consistent with the record evidence as a whole and, consequently,
11 whether any of the individual’s symptom-related functional limitations and
12 restrictions are likely to reduce the claimant’s capacity to perform work-related
13 activities. 20 C.F.R. §§ 404.1529(a), (c)(4), 416.929(a), (c)(4); SSR 16-3p, 2017
14 WL 5180304, at *4-*10.³

15 When an individual’s subjective statements are inconsistent with other
16 evidence in the record, an ALJ may give less weight to such statements and, in
17 turn, find that the individual’s symptoms are less likely to reduce the claimant’s
18 capacity to perform work-related activities. See SSR 16-3p, 2017 WL 5180304, at
19 *8. In such cases, when there is no affirmative finding of malingering, an ALJ
20 may “reject” or give less weight to the individual’s subjective statements “only by
21 providing specific, clear, and convincing reasons for doing so.” Brown-Hunter,
22 806 F.3d at 488-89. This requirement is very difficult to satisfy. See Trevizo, 871
23 F.3d at 678 (“The clear and convincing standard is the most demanding required in
24 Social Security cases.”) (citation and quotation marks omitted).

25
26 ³Social Security Ruling 16-3p superseded SSR 96-7p and, in part, eliminated use of the
27 term “credibility” from SSA “sub-regulatory policy[.]” in order to “clarify that subjective
28 . . . [and] more closely follow [SSA] regulatory language regarding symptom evaluation.” See
SSR 16-3p, 2017 WL 5180304, at *1-*2, *10-*11.

1 An ALJ's decision "must contain specific reasons" supported by substantial
2 evidence in the record for giving less weight to a claimant's statements. SSR 16-
3 3p, 2017 WL 5180304, at *10. An ALJ must clearly identify each subjective
4 statement being rejected and the particular evidence in the record which
5 purportedly undermines the statement. Treichler, 775 F.3d at 1103 (citation
6 omitted). "General findings are insufficient[.]" Reddick v. Chater, 157 F.3d 715,
7 722 (9th Cir. 1998) (citations omitted).

8 If an ALJ's evaluation of a claimant's statements is reasonable and is
9 supported by substantial evidence, it is not the court's role to second-guess it. See
10 Thomas v. Barnhart, 278 F.3d 947, 959 (9th Cir. 2002) (citation omitted). When
11 an ALJ fails properly to discuss a claimant's subjective complaints, however, the
12 error may not be considered harmless "unless [the Court] can confidently conclude
13 that no reasonable ALJ, when fully crediting the testimony, could have reached a
14 different disability determination." Stout, 454 F.3d at 1056; see also Brown-
15 Hunter, 806 F.3d at 492 (ALJ's erroneous failure to specify reasons for rejecting
16 claimant testimony "will usually not be harmless").

17 **B. Summary of Plaintiff's Testimony and Statements**

18 Plaintiff testified that she cannot sit too long or her legs and hips get numb
19 and cause her to buckle and fall when she gets up, she also has bilateral sciatica
20 that causes sharp pain from sitting too long, her left arm and shoulder are numb to
21 the fingertips, she has ulnar point neuropathy, and she has back pain. (AR 58-59).
22 She also has anxiety attacks two or three times a week which last up to 40 minutes.
23 (AR 67).

24 Plaintiff was using a walker at the hearing and said she had been using it for
25 about two years, alternating with using a cane at home, as prescribed by her pain
26 doctor because her legs give out and she falls. (AR 59-60). Plaintiff had
27 undergone knee and shoulder surgeries, a gastric bypass surgery followed by 120
28 pounds weight loss, and had tried knee injections, physical therapy, acupuncture,

1 and water aerobics. (AR 61-62). Plaintiff thought her bypass surgery had made
2 things worse because she now suffered from low blood sugar that causes her to
3 faint, and she had more hip and leg pain after the bypass. (AR 62). She was taking
4 anxiety medications, a muscle relaxer, Norco, and Gabapentin, which she admitted
5 helped with her pain and anxiety, not 100 percent – reducing her pain to a level of
6 4/5 out of 10, but said they also make her “woozy and sleepy” for an hour or two
7 such that she does not leave the house. (AR 62-65, 68). She said physical therapy
8 for her arm had only made her numbness worse. (AR 63).

9 Plaintiff said she could stand for 10 to 15 minutes before needing to sit
10 down, she could walk for less than half a block slowly, and she could sit for 20
11 minutes before having pain and numbness. (AR 65). She said she tries to alternate
12 between sitting and standing during the day but everything hurts. (AR 66). She
13 thought she could lift five pounds or less given her left hand numbness. (AR 66).
14 She could climb two or three steps and could not bend or kneel. (AR 66-67). She
15 uses a chair to shower because she fell in the shower. (AR 72).

16 Plaintiff spent her days trying to get her 17-year-old son out of the house on
17 time for school, eating, taking her medication, lying down/sleeping one or two
18 more hours with a heating pad, going on group mental health outings for craft-type
19 30-minute classes a couple times a week, and lying down/sleeping the majority of
20 the day. (AR 69-70, 72-73). She said her son helps with household chores
21 because she cannot bend to do things like vacuum and dust and it is hard to sweep
22 or work overhead because of her shoulder. (AR 70-71). She tries to do the best
23 things she can do given her limitations. (AR 70). She could make her bed and
24 cook while seated at her own pace. (AR 70). She could drive but tried not to
25 because of the influence of her medication, and she could shop but normally
26 someone takes her and she uses a cart to get around. (AR 71).

27 In a Function Report - Adult form dated August 18, 2017, plaintiff reported
28 that she could not sit or stand long due to knee pain and sciatica, and she has an

1 unstable gait, back pain, and left hand tingling/numbness. (AR 264-72). Plaintiff
2 admitted that on a typical day she takes her son to school, takes her medications,
3 feeds herself, watches television, tries to clean if she has energy, picks up her son
4 from school, helps with housework, feeds her son, takes her medications then goes
5 to bed. (AR 265). She was able to prepare frozen meals, sandwiches, and
6 spaghetti that will last for days, taking two or three hours to do so due to pain, and
7 she could do light cleaning and laundry but it takes her all day to do so with breaks
8 for pain. (AR 266). She admitted she could use public transportation and drive,
9 shop for food and household items in stores once or twice per month. (AR 267).
10 Plaintiff reported problems with lifting, squatting, bending, standing more than 30
11 minutes, walking more than 10 minutes, sitting more than 40 minutes, kneeling,
12 stair climbing, and using her hands. (AR 269). She reported that she uses a cane
13 and a knee brace prescribed by a doctor in 2013. (AR 270). Plaintiff did not
14 mention lying down during the day. (AR 264-72).⁴

15 C. Analysis

16 The ALJ summarized plaintiff's allegations and testimony. (AR 36). The
17 ALJ determined that plaintiff's "medically determinable impairments could
18 reasonably be expected to cause the alleged symptoms," but plaintiff's "statements
19 concerning the intensity, persistence and limiting effects of these symptoms are not
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21 ⁴In discussing the hypothetical questions with the vocational expert, the ALJ said she
22 found plaintiff's testimony credible and supported by the medical record, and took some factors
23 into consideration in questioning the vocational expert. (AR 77). However, the ALJ then asked
24 the vocational expert whether a person who would be changing positions between sitting,
25 standing, and lying down, due to pain after standing up to 15 minutes, or sitting for 20 minutes –
26 as plaintiff had testified – would be able to perform her past relevant work, and the vocational
27 expert said it would eliminate all jobs. (AR 77-78). The ALJ clearly did not credit all of
28 plaintiff's testimony or she would have found plaintiff disabled. Rather, the ALJ adopted the
state agency physician's residual functional capacity assessment which had found plaintiff's
statements only partially credible as not supported by the medical record and plaintiff's activities
of daily living. Compare AR 35 (ALJ's residual functional capacity determination) with AR 90-
93 (state agency physician's opinion).

1 entirely consistent with the medical evidence and other evidence in the record for
2 the reasons explained in th[e] decision.” (AR 36). However, the ALJ failed to
3 provide specific, clear, and convincing reasons to support this determination.

4 The ALJ reasoned, “the evidence does not support the severity of symptoms
5 and dysfunction that would be expected if the claimant were as limited as she
6 alleges.” (AR 37). The ALJ went on to discuss the medical evidence showing
7 knee, wrist, and shoulder injuries after plaintiff fell at work, as well as the evidence
8 suggesting that plaintiff has degenerative changes/osteoarthritis in her knees,
9 multilevel degenerative disc disease with radiating pain in the lumbar spine,
10 bilateral hip bursitis, recurrent left cubital tunnel syndrome, and obesity, as well as
11 the knee, shoulder, and gastric bypass surgeries plaintiff underwent, and other
12 significant treatment including steroid injections and pain management. (AR 37-
13 39). The ALJ observed that assertedly there was “no objective medical evidence to
14 support the claimant’s allegations she requires a cane or walker to ambulate
15 currently.” (AR 38). The ALJ also observed that at times plaintiff reported
16 sufficient analgesia from her current treatment regimen, which included Norco,
17 Robaxin, and Gabapentin, and denied side effects. (AR 38-39 (citing AR 813,
18 816). The ALJ concluded:

19 The undersigned has accounted for the claimant’s arthritis; asthma;
20 disorders of the back, bilateral knees, hips, and left shoulder; post left
21 cubital tunnel release; sciatica; and obesity by limited [sic] her to a
22 reduced range of sedentary work with the postural, manipulative, and
23 environmental limitations stated above.

24 (AR 39).

25 The ALJ also cited to purported inconsistencies between plaintiff’s
26 testimony and her various reports (*e.g.*, plaintiff testified that she was not able to
27 do household chores, but she reported in a Function Report that she cares for her
28 son, including taking him to and from school, cooks, cleans, does laundry, and

1 goes shopping, and she reported to the psychological examiner that she does
2 perform household chores). See AR 40 (citing AR 264-72 (Function Report -
3 Adult form reporting plaintiff could do light cleaning and laundry once a week
4 which takes her all day with breaks), and AR 552-53 (psychological examiner
5 noting that plaintiff reported she “can participate in household chores,” and is able
6 to drive or take public transportation). The ALJ noted that plaintiff admitted she
7 could dress and bathe herself, she has no problems performing personal care tasks,
8 and she can drive, take public transportation, and go on outings with her mental
9 health group which includes attending classes. See AR 40 (citing AR 264-72, 552-
10 53). The ALJ concluded that these admissions were inconsistent with plaintiff’s
11 allegations of totally disabling impairments. (AR 40).

12 Turning first to the asserted inconsistencies between plaintiff’s complaints
13 and her self reports, an ALJ may rely on such inconsistencies to discount a
14 claimant’s allegations. See Light v. Social Security Administration, 119 F.3d 789,
15 792 (9th Cir.), as amended (1997) (in weighing plaintiff’s credibility, ALJ may
16 consider “inconsistencies either in [plaintiff’s] testimony or between [her]
17 testimony and [her] conduct”); see also Fair v. Bowen, 885 F.2d 597, 604 n.5 (9th
18 Cir. 1989) (ALJ can reject pain testimony based on plaintiff’s prior inconsistent
19 statements). However, substantial evidence does not support the ALJ’s reasoning
20 in this instance. As summarized above, plaintiff did not testify that she was unable
21 to do household chores; she testified about taking care of her 17-year-old son and
22 the limited chores that she did with help and with her own accommodations, like
23 cooking while seated at her own pace. See AR 69-73. Plaintiff testified that she
24 could drive but she tried not to because of the influence of her medication, and she
25 could shop but normally someone takes her and she uses a cart to get around. (AR

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1 71).⁵ Plaintiff’s testimony is not necessarily inconsistent with plaintiff’s
2 admissions in her Function Report and elsewhere that she could dress and bathe
3 herself, she has no problems performing personal care tasks, and she can drive,
4 take public transportation, and go on outings with her mental health group which
5 includes attending classes. Compare AR 65-72 with AR 264-72, 552-53. Nor are
6 plaintiff’s admissions of her limited activities inconsistent with her allegations of
7 disabling impairments given that she reportedly accommodates her symptoms by
8 resting or lying down for most of the day. Id. On this record, the ALJ’s reasoning
9 does not support the ALJ’s rejection of plaintiff’s testimony and statements
10 suggesting greater limits than the ALJ found.

11 Turning to the medical evidence, a purported lack of supporting objective
12 medical evidence is not – in and of itself – a sufficient basis to discount a
13 claimant’s testimony, but may be a relevant factor. See, e.g., Burch, 400 F.3d at
14 681 (“Although lack of medical evidence cannot form the sole basis for
15 discounting pain testimony, it is a factor that the ALJ can consider in his credibility
16 analysis.”). Having found that substantial evidence does not support the purported
17 inconsistencies on which the ALJ relied in discounting plaintiff’s statements and
18 testimony, the ALJ’s only remaining reason for discounting plaintiff’s statements
19 and testimony (*i.e.*, the available medical evidence) cannot stand.

20 Even if the ALJ’s evaluation of the available medical evidence could support
21 the ALJ’s determination, the ALJ did not explain adequately how the medical
22 evidence undermined or contradicted plaintiff’s statements beyond the ALJ’s
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24 ⁵In discussing the hypothetical questions with the vocational expert, the ALJ said she
25 found plaintiff’s testimony credible and supported by the medical records, and took some factors
26 into consideration in questioning the vocational expert. (AR 77). However, the ALJ then asked
27 the vocational expert whether a person that would be changing positions between sitting,
28 standing, and lying down, due to pain after standing up to 15 minutes, or sitting for 20 minutes –
as plaintiff had testified – would be able to perform her past relevant work, and the vocational
expert said it would eliminate all jobs. (AR 77-78). The ALJ clearly did not credit all of
plaintiff’s testimony or she would have found plaintiff disabled.

1 observations that: (1) the record did not support plaintiff's allegations that she
2 requires a cane or walker to ambulate "currently"; and (2) at times plaintiff
3 reported sufficient analgesia from her treatment regimen with no side effects. (AR
4 38-39). Substantial evidence does not support this limited reasoning.

5 The record reflects that plaintiff was prescribed a cane after her fall at work
6 in September 2013. See AR 981 (treatment note from September 24, 2013,
7 following plaintiff's fall at work, wherein her treatment included a cane and
8 bilateral knee sleeves); see also AR 478 (October, 2013 treatment note from three
9 weeks after plaintiff's fall, where her provider noted that plaintiff was "subjected
10 to utilize a cane to assist in ambulation," after she had presented with an antalgic
11 gait using a cane for support, with the provider recommending arthroscopic
12 surgery).⁶ With few exceptions, subsequent treatment notes from 2013 through
13 2019, indicate that plaintiff either required a cane, was using a cane for support, or
14 had an antalgic gait with or without the use of a cane. See AR 976 (requiring
15 plaintiff to use a cane); AR 431, 434, 438 (noting use of cane for support for pain
16 causing left knee to give away); AR 471-73 (noting use a cane for assistance with
17 antalgic gait after surgery); AR 551, 553, 931, 970 (noting use of cane); AR 433,
18 436, 438, 440, 442-43, 475, 477-78, 663, 669, 675, 681, 687, 692, 697, 936, 955,
19 957, 1144 (noting antalgic gait using a cane); AR 411, 413, 416, 445, 447, 464,
20 466, 879, 883 (noting antalgic gait); but see AR 558, 561 (internal medicine
21 consultative examiner reporting in October 2017, that plaintiff presented with a
22 cane but did not appear to need it for short distances, noting normal gait and
23 balance, and finding no need for an assistive device); AR 657 (July 2019 note
24 reporting normal gait); AR 815 (October 2019 note reporting normal gait).

25
26 ⁶Defendant argues that the record did not show that any provider found plaintiff needed
27 an assistive device to ambulate, and suggests that plaintiff "nowhere points to evidence that a
28 provider prescribed an assistive device." (Defendant's Motion at 14-15). While plaintiff was
not required to point to such evidence, such evidence appears in the doctor's first report of
occupational injury or illness after her 2013 fall. See AR 981.

1 The record also reflects that at the time the plaintiff reported sufficient
2 analgesia from her treatment regimen and no side effects, plaintiff also reported
3 that she had: (1) neck pain that was better with medication but worse with moving
4 her head down; (2) radiating back pain that is 10/10 without medication, worsened
5 by walking and driving and made better by lying down, heat and medication;
6 (3) bilateral hip pain that was 8/10 that day; and (4) bilateral knee pain that was
7 8/10 without medication, worsened by walking and alleviated with rest (AR 813).
8 The detail in the record the ALJ cited suggests that, in addition to her pain
9 medications (and consistent with her allegations), plaintiff relied on rest/lying
10 down to help alleviate her pain. Certainly, the ALJ’s brief mention of purported
11 analgesia does not undermine plaintiff’s testimony that she cannot sit for more than
12 20 minutes, stand for more than 15 minutes, or must alternate between sitting,
13 standing, and lying down throughout the day.

14 The ALJ otherwise referenced plaintiff’s examination findings and found
15 that the residual functional capacity assessment reasonably accounted for
16 plaintiff’s impairments. (AR 39). The ALJ failed to demonstrate how these
17 findings support the rejection of plaintiff’s statements. See Lambert v. Saul, 980
18 F.3d 1266, 1278 (9th Cir. 2020) (“Although the ALJ did provide a relatively
19 detailed overview of [plaintiff’s] medical history, ‘providing a summary of medical
20 evidence . . . is not the same as providing clear and convincing *reasons* for finding
21 the claimant’s symptom testimony not credible.”) (quoting Brown-Hunter, 806
22 F.3d at 494); see also id. at 1268 (“[T]he ALJ must identify the specific testimony
23 that he discredited and explain the evidence undermining it.”).

24 Defendant suggests that the ALJ adequately addressed plaintiff’s testimony
25 and statements by citing to specific medical records as contrasted to plaintiff’s
26 specific statements and testimony, including some notes reflecting improvement
27 with the assertedly conservative treatment that plaintiff received. See Defendant’s

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1 Motion at 11-14. The ALJ did not make these parallel arguments, and the Court is
2 constrained to those reasons the ALJ provided. Trevizo, 871 F.3d at 675.

3 Because the ALJ failed to provide specific, clear, and convincing reasons to
4 discount plaintiff's subjective statements, remand is warranted for reconsideration
5 of these statements. See Treichler, 775 F.3d at 1103 ("Because 'the agency's path'
6 cannot 'reasonably be discerned,' we must reverse the district court's decision to
7 the extent it affirmed the ALJ's credibility determination.") (quoting Alaska Dep't
8 of Env't Conserv. v. E.P.A., 540 U.S. 461, 497 (2004)).

9 **V. CONCLUSION**

10 For the foregoing reasons,⁷ the decision of the Commissioner of Social
11 Security is REVERSED in part, and this matter is REMANDED for further
12 administrative action consistent with this Opinion.

13 LET JUDGMENT BE ENTERED ACCORDINGLY.

14 DATED: June 30, 2022

15 _____
/s/

16 Honorable Jacqueline Chooljian
17 UNITED STATES MAGISTRATE JUDGE
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24 ⁷The Court need not, and has not adjudicated plaintiff's other challenges to the ALJ's
25 decision, except insofar as to determine that a reversal and remand for immediate payment of
26 benefits would not be appropriate based thereon. When a court reverses an administrative
27 determination, "the proper course, except in rare circumstances, is to remand to the agency for
28 additional investigation or explanation." Immigration & Naturalization Service v. Ventura, 537
U.S. 12, 16 (2002) (citations and quotations omitted); Treichler, 775 F.3d at 1099 (noting such
"ordinary remand rule" applies in Social Security cases) (citations omitted).