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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LAUREN C. CAMPBELL,  
Plaintiff

v.

NANCY A. BERRYHILL<sup>1</sup>, Acting  
Commissioner of Social Security,  
Defendant.

Case No. 5:16-CV-01051-GJS

**MEMORANDUM OPINION AND  
ORDER**

**INTRODUCTION**

Plaintiff Lauren C. Campbell appeals from the Commissioner's denial of Supplemental Security Income ("SSI"). Plaintiff alleges disability since February 12, 2011, based on symptoms stemming from arthritis in her neck, shoulder, and hip; a herniated disc in her neck; Irritable Bowl Syndrome ("IBS"); depression and anxiety. [Dkt. 24 ("Pltf.'s Mem.")] Her application for benefits was denied initially and on reconsideration. An Administrative Law Judge ("ALJ") held a

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<sup>1</sup> The Court notes that Nancy A. Berryhill became the Acting Commissioner of the Social Security Administration on January 23, 2017. Accordingly, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, the Court orders that the caption be amended to substitute Nancy A. Berryhill for Carolyn W. Colvin as the defendant in this action.

1 hearing on July 9, 2014 [Dkt. 15, Administrative Record (“AR”) 20.], and  
2 subsequently denied benefits. [AR 25.] Plaintiff appealed to the District Court, and  
3 both parties consented to proceed before the undersigned Magistrate Judge. [Dkts.  
4 11, 12.]

5 Plaintiff presents three issues for review:

- 6 1. Whether the ALJ erred in her analysis of the medical evidence. Here,  
7 Plaintiff primarily challenges whether substantial evidence supports the ALJ’s  
8 failure at step two of the five-step inquiry to find that certain of Plaintiff’s  
9 alleged ailments amount to legally severe impairments, and, relatedly,  
10 whether the ALJ’s error, if any, is harmless;
- 11 2. Whether the ALJ had specific, legitimate reasons to reject the assessment of  
12 treating physician Dr. Adrienne Beck regarding Plaintiff’s diagnosed Ehlers  
13 Danlos syndrome, in assessing Plaintiff’s Residual Functional Capacity  
14 (“RFC”); and
- 15 3. Whether the ALJ had a clear and convincing reason supported by substantial  
16 evidence for finding Plaintiff’s subjective complaints to be less than fully  
17 credible.

18 [Pltf.’s Mem., *passim*.]

19 In order to avoid repetition and for additional reasons, the Court addresses  
20 these issues in a different order than did the parties. For the reasons discussed  
21 below, the Court finds that this matter should be remanded for further proceedings.

### 22 **GOVERNING STANDARD**

23 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to  
24 determine if: (1) the Commissioner’s findings are supported by substantial  
25 evidence; and (2) the Commissioner used correct legal standards. *See Carmickle v.*  
26 *Commissioner*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d  
27 1071, 1074 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a  
28 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*

1 *Perales*, 402 U.S. 389, 401 (1971) (internal citation and quotations omitted); *see*  
2 *also Hoopai*, 499 F.3d at 1074.

3 Even if Plaintiff shows that the ALJ committed legal error, “[r]eversal on  
4 account of error is not automatic, but requires a determination of prejudice.”  
5 *Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012). “[T]he burden of showing  
6 that an error is harmful normally falls upon the party attacking the agency’s  
7 determination.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (internal  
8 citation omitted). “ALJ errors in social security cases are harmless if they are  
9 ‘inconsequential to the ultimate nondisability determination[.]’” *Marsh v. Colvin*,  
10 792 F.3d 1170, 1173 (9th Cir. 2015) (internal citation omitted).

11 In this case, the Court finds that any error by the ALJ in not considering  
12 certain of Plaintiff’s medical conditions to be legally severe, and the related issue of  
13 whether Plaintiff’s impairments met or equaled the requirements of a listing, is  
14 harmless. However, the ALJ did not provide clear and convincing reasons for  
15 rejecting Plaintiff’s subjective complaints of debilitating pain, thus requiring  
16 remand. The Court declines to address the remaining issue raised by Plaintiff –  
17 whether the ALJ properly discounted the functional assessment of Plaintiff’s  
18 treating physician – but notes that, given that the record is now complete (certain  
19 pages of the physician’s assessment were missing from the record in the  
20 administrative proceedings), the ALJ may wish to address this issue as well on  
21 remand.<sup>2</sup>

22  
23  
24 <sup>2</sup> Although the Court suggests that the ALJ address this issue in further proceedings,  
25 the Court notes that it was Plaintiff’s fault, not that of the ALJ, that these pages were  
26 missing. It was not immediately apparent from the form itself that pages were  
27 missing, and it was not pointed out by Plaintiff’s counsel at any stage of the  
28 proceedings below, including on appeal. The record in this case is enormous –  
amounting to three huge volumes of medical records. In the Court’s view, the ALJ  
made an admirable attempt to evaluate the large amount of information presented,  
particularly given the enormous caseload carried by Social Security judges.

## DISCUSSION

### **I. Even Assuming The ALJ Erred In Making Her Step Two Determination by Failing to Identify All of Plaintiff’s Severe Impairments, Any Such Error Was Harmless.**

Plaintiff contends that the ALJ made two related errors in her evaluation of the medical evidence. [Pltf.’s Mem. at 2.] First, Plaintiff contends that the ALJ failed to identify all of Plaintiff’s severe impairments. Second, Plaintiff contends that because of the first failure, the ALJ then failed to fully consider whether Plaintiff’s impairments meet or equal any listing for physical disorders. [*Id.*]

The ALJ determined at step two of the 5-step analysis that Plaintiff has the following severe impairments: “cervical herniated disc; irritable bowel syndrome (IBS); right shoulder degenerative joint disease; panic disorder; major depression; and obsessive compulsive disorder (OCD).” [AR 22.] The Court need not address whether the ALJ erred in making these findings, because the Court finds that any error was harmless.

At step two of the sequential evaluation process, a plaintiff has the burden to present evidence of medical signs, symptoms, and laboratory findings that establish a medically determinable physical or mental impairment that is severe and can be expected to result in death or last for a continuous period of at least 12 months. *Ukolov v. Barnhart*, 420 F.3d 1002, 1004-05 (9th Cir. 2005) (citing 42 U.S.C. §§ 423(d)(3), 1382c(a)(3)(D)); *see* 20 C.F.R. §§ 404.1520, 404.1509). Substantial evidence supports an ALJ’s determination that a claimant is not disabled at step two when “there are no medical signs or laboratory findings to substantiate the existence of a medically determinable physical or mental impairment.” *Ukolov*, 420 F.3d at 1004-05 (citing Social Security Ruling (“SSR”) 96-4p). An impairment may never be found on the basis of the claimant’s subjective symptoms alone. *Id.* at 1005.

Step two is “a de minimis screening device [used] to dispose of groundless claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). Applying the

1 applicable standard of review to the requirements of step two, a court must  
2 determine whether an ALJ had substantial evidence to find that the medical  
3 evidence clearly established that the claimant did not have a medically severe  
4 impairment or combination of impairments. *Webb v. Barnhart*, 433 F.3d 683, 687  
5 (9th Cir. 2005); *see also Yuckert v. Bowen*, 841 F.2d 303, 306 (9th Cir. 1988)  
6 (“Despite the deference usually accorded to the Secretary’s application of  
7 regulations, numerous appellate courts have imposed a narrow construction upon the  
8 severity regulation applied here.”). An impairment or combination of impairments  
9 is “not severe” if the evidence established only a slight abnormality that had “no  
10 more than a minimal effect on an individual’s ability to work.” *Webb*, 433 F.3d at  
11 686 (internal citation omitted).

12 Even if an ALJ errs by finding one or more of a plaintiff’s alleged  
13 impairments nonsevere, such error is harmless if he nevertheless considers the  
14 impairments when determining the plaintiff’s RFC at step four. *See Lewis v. Astrue*,  
15 498 F.3d 909, 911 (9th Cir. 2007) (failure to address particular impairment at step  
16 two harmless if ALJ fully evaluated claimant’s medical condition in later steps of  
17 sequential evaluation process); *see also Stout*, 454 F.3d at 1055 (ALJ’s error  
18 harmless when “inconsequential to the ultimate nondisability determination”).

19 In this case, Plaintiff contends the ALJ erred by not finding that Plaintiff’s  
20 diagnosed Ehlers Danlos syndrome (a disease that can cause loose joints, chronic  
21 pain, and bruising), scoliosis (side to side curvature of the spine), and kyphosis  
22 (upper back spinal curvature) were severe impairments. [Pltf.’s Mem. at 3.]  
23 However, it is not necessary for the ALJ to specifically identify each ailment at step  
24 two as severe so long as the ALJ does not find non-disability at that step (*i.e.*, the  
25 analysis proceeds beyond the gate-keeping function of step two) and the evidence of  
26 a claimant’s medical issues that would support any limitations is considered in  
27 crafting her RFC. As the Commissioner correctly notes [Def.’s Mem. at 3-4], the  
28 ALJ’s analysis of Plaintiff’s symptoms, including complaints of pain, looseness of

1 her hip joints, and difficulty concentrating due to these symptoms, was considered  
2 and is consistent with the medical record as a whole. [*Id.*, discussing medical  
3 evidence consistent with generally normal physical exams, normal strength and  
4 range of motion, conservative or no treatment for a specific disorder, and failure to  
5 exercise despite medical advice to do so) (internal record citations omitted).] In  
6 addition, Plaintiff’s RFC limits her to light work, sitting/standing/walking for 6  
7 hours out of an 8 hour day, occasional postural limitations, and only occasional  
8 overhead reaching with her right arm. [AR 24.] She also is not to have  
9 concentrated exposure to unprotected heights, and was limited to simple repetitive  
10 work with only occasional interactions with coworkers and the general public. The  
11 Court thus finds that any error the ALJ may have committed at step two was  
12 harmless. Remand is not warranted for this reason.

13 **II. The ALJ Did Not Provide a Clear and Convincing Reason to Reject**  
14 **Plaintiff’s Credibility.**

15 **A. Standard for Assessing Credibility**

16 Plaintiff also challenges the ALJ’s determination that Plaintiff’s complaints of  
17 pain and testimony stating that she spends the majority of her time in her room to be  
18 less than credible. [Pltf.’s Mem. at 9-10.] This is a close issue, but, ultimately, the  
19 Court finds that remand is warranted.

20 “Where, as here, an ALJ concludes that a claimant is not malingering, and  
21 that she has provided objective medical evidence of an underlying impairment  
22 which might reasonably produce the pain or other symptoms alleged, the ALJ may  
23 ‘reject the claimant’s testimony about the severity of her symptoms only by offering  
24 specific, clear and convincing reasons for doing so.’” *Brown-Hunter v. Colvin*, 806  
25 F.3d 487, 492-93 (9th Cir. 2015) (internal quotation omitted). “General findings are  
26 insufficient; rather, the ALJ must identify what testimony is not credible and what  
27 evidence undermines the claimant’s complaints.” *Id.* at 493 (internal quotation  
28 omitted).

1 “The ALJ may consider many factors in weighing a claimant’s credibility,  
2 including (1) ordinary techniques of credibility evaluation, such as the claimant’s  
3 reputation for lying, prior inconsistent statements concerning the symptoms, and  
4 other testimony by the claimant that appears less than candid; (2) unexplained or  
5 inadequately explained failure to seek treatment or to follow a prescribed course of  
6 treatment; and (3) the claimant’s daily activities.” *Tomasetti v. Astrue*, 533 F.3d  
7 1035, 1039 (9th Cir. 2008); *see also Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th  
8 Cir. 2002) (explaining that acceptable bases for credibility determination include (1)  
9 the claimant’s reputation for truthfulness; (2) inconsistencies in the claimant’s  
10 testimony or between her testimony and conduct; (3) claimant’s daily living  
11 activities; (4) claimant’s work record; and (5) testimony from physicians or third  
12 parties concerning the nature, severity, and effect of claimant’s condition). Even if  
13 “the ALJ provided one or more invalid reasons for disbelieving a claimant’s  
14 testimony,” if he “also provided valid reasons that were supported by the record,”  
15 the ALJ’s error “is harmless so long as there remains substantial evidence  
16 supporting the ALJ’s decision and the error ‘does not negate the validity of the  
17 ALJ’s ultimate conclusion.’” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)  
18 (internal quotation omitted).

19 An ALJ may rely on “testimony about the claimant’s daily activities” to  
20 “discredit an allegation of pain.” *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).  
21 The underlying theory is that if “a claimant is able to perform household chores and  
22 other activities that involve many of the same physical tasks as a particular type of  
23 job, it would not be farfetched for an ALJ to conclude that the claimant’s pain does  
24 not prevent the claimant from working.” *Id.*

25 That said, the Ninth Circuit has “repeatedly warned that ALJs must be  
26 especially cautious in concluding that daily activities are inconsistent with testimony  
27 about pain, because impairments that would unquestionably preclude work and all  
28 the pressures of a workplace environment will often be consistent with doing more

1 than merely resting in bed all day[.]” *Garrison v. Colvin*, 759 F.3d 995, 1015-16  
2 (9th Cir. 2014). This is because “[t]he Social Security Act does not require that  
3 claimants be utterly incapacitated to be eligible for benefits,” *Fair*, 885 F.2d at 603,  
4 and “the mere fact that a plaintiff has carried on certain daily activities, such as  
5 grocery shopping, driving a car, or limited walking for exercise, does not in any way  
6 detract from her credibility as to her overall disability,” *Vertigan v. Halter*, 260  
7 F.3d 1044, 1049-50 (9th Cir. 2001). But “[i]f a claimant is able to spend a  
8 substantial part of his day engaged in pursuits involving the performance of physical  
9 functions that are transferable to a work setting, a specific finding as to this fact may  
10 be sufficient to discredit a claimant’s allegations.” *Morgan v. Comm’r of Soc. Sec.*  
11 *Admin.*, 169 F.3d 595, 600 (9th Cir. 1999).

### 12 **B. Plaintiff’s Credibility**

13 In this case, the ALJ relied primarily on a lack of medical evidence of the  
14 severity of Plaintiff’s physical symptoms to find her less than credible, despite three  
15 volumes of medical records that evidence repeated complaints of pain and of  
16 symptoms that would reasonably be expected to cause plain and chronic discomfort.  
17 As the Ninth Circuit has often held, an ALJ may not find a claimant not to be  
18 credible “solely because” the claimant’s symptom testimony “is not substantiated  
19 affirmatively by objective medical evidence.” *Robbins v. Comm’r of Soc. Sec.*  
20 *Admin.*, 466 F.3d 880, 883 (9th Cir. 2006); *e.g.*, *Bunnell v. Sullivan*, 947 F.2d 341,  
21 343 (9th Cir. 1991) (“the adjudicator may not discredit the claimant’s allegations of  
22 the severity of pain solely on the ground that the allegations are unsupported by  
23 objective medical evidence.”) Of course, “[a]lthough lack of medical evidence  
24 cannot form the sole basis for discounting [subjective] testimony, it is a factor that  
25 the ALJ can consider in his credibility analysis.” *Burch v. Barnhart*, 400 F.3d 676,  
26 681 (9th Cir. 2005). Because, as set forth herein, the Court does not find the other  
27 reasons set forth by the ALJ to be clear and convincing, the alleged lack of medical  
28 evidence supporting the severity of Plaintiff’s complaints of pain and mental



1 limitations is not alone sufficient.

2 The ALJ also points out an alleged inconsistency between Plaintiff's  
3 contention that she spends much of her time isolated at home and her social  
4 activities, but makes only the general statement that "progress notes indicate that she  
5 is actually more socially active than she reports," without specific citations to the  
6 record. [AR 27.] It is unclear what the ALJ was considering in making this  
7 statement, although this is a deficiency that may well be fixed on remand.

8 Finally, the ALJ relies on the fact that Plaintiff obtained a GED and a  
9 certification in phlebotomy to find that Plaintiff's allegations of inability to work are  
10 less than credible. These purported inconsistencies between Plaintiff's complaints  
11 and her activities of daily living might ultimately be sufficient to support the ALJ's  
12 credibility determination, but at this point, there is insufficient evidence in the  
13 record to make such a finding. At the hearing, the ALJ asked Plaintiff where she got  
14 her GED. [AR 35.] Plaintiff answered only that she "took the test at the Chaffey  
15 High School." [Id.] There were no follow up questions from the ALJ. Thus, there  
16 is no indication that she did anything *other* than take the test, so this is not indicative  
17 of an ability to hold full time employment. Likewise, the fact that Plaintiff obtained  
18 a certification (one which she never used) and attended college "on and off for about  
19 two years" [AR 35-36], is insufficient, without more detail about class requirements,  
20 *etc.*, to show some equivalency between the requirements for Plaintiff to obtain her  
21 phlebotomy credential and those of full time work.

22 As noted above, the Court finds this to be a close call, but ultimately holds  
23 that the ALJ did not provide at least one clear and convincing reason supported by  
24 substantial evidence for rejecting Plaintiff's subjective complaints. For this reason,  
25 remand is warranted.

## 26 CONCLUSION

27 The decision of whether to remand for further proceedings or order an  
28 immediate award of benefits is within the district court's discretion. *Harman v.*

1 *Apfel*, 211 F.3d 1172, 1175-78 (9th Cir. 2000). When no useful purpose would be  
2 served by further administrative proceedings, or where the record has been fully  
3 developed, it is appropriate to exercise this discretion to direct an immediate award  
4 of benefits. *Id.* at 1179 (“the decision of whether to remand for further proceedings  
5 turns upon the likely utility of such proceedings”). But when there are outstanding  
6 issues that must be resolved before a determination of disability can be made, and it  
7 is not clear from the record the ALJ would be required to find the claimant disabled  
8 if all the evidence were properly evaluated, remand is appropriate. *Id.*

9 The Court finds that remand is appropriate because the circumstances of this  
10 case suggest that further administrative review could remedy the ALJ’s errors. *See*  
11 *INS v. Ventura*, 537 U.S. 12, 16 (2002) (upon reversal of an administrative  
12 determination, the proper course is remand for additional agency investigation or  
13 explanation, “except in rare circumstances”); *Treichler v. Comm’r of Soc. Sec.*  
14 *Admin.*, 775 F.3d 1090, 1101 (9th Cir. 2014) (remand for award of benefits is  
15 inappropriate where “there is conflicting evidence, and not all essential factual  
16 issues have been resolved”); *Harman*, 211 F.3d at 1180-81.

17 For all of the foregoing reasons, **IT IS ORDERED** that:

- 18 (1) the decision of the Commissioner is REVERSED and this matter  
19 REMANDED pursuant to sentence four of 42 U.S.C. § 405(g) for further  
20 administrative proceedings consistent with this Memorandum Opinion and  
21 Order; and  
22 (2) Judgment be entered in favor of Plaintiff.

23 **IT IS SO ORDERED.**

24 DATED: May 24, 2017



25  
26  
27 GAIL J. STANDISH  
28 UNITED STATES MAGISTRATE JUDGE