

1 Administrative Law Judge (“ALJ”) properly considered the opinion of a treating
2 physician; and (2) whether the ALJ properly considered plaintiff’s credibility.
3 Memorandum in Support of Plaintiff’s Complaint (“P. Mem.”) at 2-9;
4 Memorandum in Support of Defendant’s Answer (“D. Mem.”) at 2-11.

5 Having carefully studied the parties’ memoranda on the issues in dispute, the
6 Administrative Record (“AR”), and the decision of the ALJ, the court concludes
7 that, as detailed herein, the ALJ failed to properly consider the opinion of the
8 treating physician and plaintiff’s credibility. The court therefore remands this
9 matter to the Commissioner in accordance with the principles and instructions
10 enunciated in this Memorandum Opinion and Order.

11 II.

12 FACTUAL AND PROCEDURAL BACKGROUND

13 Plaintiff was thirty-one years old on her alleged disability onset date, and is
14 a high school graduate with a medical assistant certification. AR at 44-45, 100.
15 Plaintiff has past relevant work as a clerk and medical assistant. *Id.* at 51.

16 On June 18, 2010, plaintiff filed applications for a period of disability, DIB,
17 and SSI. *Id.* at 101. The applications were denied initially on October 6, 2010. *Id.*
18 Plaintiff filed a second set of applications on June 22, 2011, which were denied
19 after a hearing on January 28, 2013. *Id.*

20 On August 30, 2013 and September 25, 2013, plaintiff filed a third set of
21 applications for a period of disability, DIB, and SSI, alleging an onset date of
22 August 15, 2009 due to rheumatoid arthritis, lupus, hypertension, depression, and
23 bone pain. *Id.* at 100, 115. The Commissioner denied plaintiff’s applications
24 initially and upon reconsideration, after which she filed a request for a hearing. *Id.*
25 at 162-76.

26 On December 9, 2014, plaintiff appeared and testified at a hearing before the
27 ALJ. *Id.* at 38-56. The ALJ also heard testimony from Cheryl Chandler, a
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1 vocational expert. *Id.* at 51-53. On January 28, 2015, the ALJ denied plaintiff's
2 claims for benefits. *Id.* at 19-33.

3 In an earlier decision dated January 28, 2013, an ALJ determined plaintiff
4 was not disabled. AR at 19. Here, the ALJ first determined that plaintiff made a
5 showing a changed circumstance and therefore rebutted the presumption of
6 continuing nondisability. *Id.*

7 The ALJ then applied the well-known five-step sequential evaluation
8 process. The ALJ found, at step one, that plaintiff had not engaged in substantial
9 gainful activity since August 15, 2009, the alleged disability onset date. *Id.* at 22.

10 At step two, the ALJ found plaintiff suffered from the following severe
11 impairments: systemic lupus erythematosus; rheumatoid arthritis; and affective
12 disorder. *Id.*

13 At step three, the ALJ found plaintiff's impairments, whether individually or
14 in combination, did not meet or medically equal one of the listed impairments set
15 forth in 20 C.F.R. part 404, Subpart P, Appendix 1 (the "Listings"). *Id.*

16 The ALJ then assessed plaintiff's residual functional capacity,¹ and
17 determined she had the RFC to perform light work, with the limitations that she
18 could: lift and/or carry twenty pounds occasionally and ten pounds frequently; sit,
19 stand, or walk for six hours; and occasionally perform postural activities. *Id.* at 24.
20 The ALJ precluded plaintiff from: jobs requiring exposure to temperature
21 extremes; concentrated exposure to vibration, hazards such as hazardous
22 machinery, and heights; and highly stressful jobs such as jobs in customer service

24 ¹ Residual functional capacity is what a claimant can do despite existing
25 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152, 1155-
26 56 n.5-7 (9th Cir. 1989). "Between steps three and four of the five-step evaluation,
27 the ALJ must proceed to an intermediate step in which the ALJ assesses the
28 claimant's residual functional capacity." *Massachi v. Astrue*, 486 F.3d 1149, 1151
n.2 (9th Cir. 2007).

1 or those requiring high production quotas such as rapid assembly. *Id.*

2 The ALJ found, at step four, that plaintiff was capable of performing her
3 past relevant work as a general clerk and medical assistant. *Id.* at 32.

4 Consequently, the ALJ concluded plaintiff did not suffer from a disability as
5 defined by the Social Security Act (“SSA”). *Id.* at 32-33.

6 Plaintiff filed a timely request for review of the ALJ’s decision, which was
7 denied by the Appeals Council. *Id.* at 1-3. The ALJ’s decision stands as the final
8 decision of the Commissioner.

9 III.

10 STANDARD OF REVIEW

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

20 “Substantial evidence is more than a mere scintilla, but less than a
21 preponderance.” *Aukland*, 257 F.3d at 1035. Substantial evidence is such
22 “relevant evidence which a reasonable person might accept as adequate to support
23 a conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276
24 F.3d at 459. To determine whether substantial evidence supports the ALJ’s
25 finding, the reviewing court must review the administrative record as a whole,
26 “weighing both the evidence that supports and the evidence that detracts from the
27 ALJ’s conclusion.” *Mayes*, 276 F.3d at 459. The ALJ’s decision “cannot be
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1 affirmed simply by isolating a specific quantum of supporting evidence.”
2 *Aukland*, 257 F.3d at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th
3 Cir. 1998)). If the evidence can reasonably support either affirming or reversing
4 the ALJ’s decision, the reviewing court ““may not substitute its judgment for that
5 of the ALJ.”” *Id.* (quoting *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir.
6 1992)).

7 IV.

8 DISCUSSION

9 A. The ALJ Failed to Properly Consider the Treating Physician’s Opinion

10 Plaintiff argues the ALJ failed to properly consider the opinion of her
11 treating physician, Dr. Thang Le. P. Mem. at 2-5. Specifically, plaintiff contends
12 the ALJ failed to provide legally sufficient reasons for rejecting Dr. Le’s opinion.
13 *Id.*

14 In determining whether a claimant has a medically determinable impairment,
15 among the evidence the ALJ considers is medical evidence. 20 C.F.R. §§
16 404.1527(b), 416.927(b).² In evaluating medical opinions, the regulations
17 distinguish among three types of physicians: (1) treating physicians; (2) examining
18 physicians; and (3) non-examining physicians. 20 C.F.R.
19 §§ 404.1527(c), (e), 416.927(c), (e); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
20 1996) (as amended). “Generally, a treating physician’s opinion carries more
21 weight than an examining physician’s, and an examining physician’s opinion
22 carries more weight than a reviewing physician’s.” *Holohan v. Massanari*, 246
23 F.3d 1195, 1202 (9th Cir. 2001); 20 C.F.R. §§ 404.1527(c)(1)-(2), 416.027(c)(1)-
24 (2). The opinion of the treating physician is generally given the greatest weight

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27 ² The Social Security Administration issued new regulations effective March
28 March 27, 2017. All regulations cited in this decision are effective for cases filed prior to
March 27, 2017.

1 because the treating physician is employed to cure and has a greater opportunity to
2 understand and observe a claimant. *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th Cir.
3 1996); *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).

4 Nevertheless, the ALJ is not bound by the opinion of the treating physician.
5 *Smolen*, 80 F.3d at 1285. If a treating physician’s opinion is uncontradicted, the
6 ALJ must provide clear and convincing reasons for giving it less weight. *Lester*,
7 81 F.3d at 830. If the treating physician’s opinion is contradicted by other
8 opinions, the ALJ must provide specific and legitimate reasons supported by
9 substantial evidence for rejecting it. *Id.* Likewise, the ALJ must provide specific
10 and legitimate reasons supported by substantial evidence in rejecting the
11 contradicted opinions of examining physicians. *Id.* at 830-31. The opinion of a
12 non-examining physician, standing alone, cannot constitute substantial evidence.
13 *Widmark v. Barnhart*, 454 F.3d 1063, 1066 n.2 (9th Cir. 2006); *Morgan v.*
14 *Comm’r*, 169 F.3d 595, 602 (9th Cir. 1999); *see also Erickson v. Shalala*, 9 F.3d
15 813, 818 n.7 (9th Cir. 1993).

16 **1. Dr. Thang Le**

17 Dr. Thang Le, a rheumatologist, treated plaintiff from June 17, 2010 through
18 the date of the opinion. *See* AR at 533-36, 1077-79. Plaintiff was referred to Dr.
19 Le after complaining of fatigue and pain, and a positive antinuclear antibody
20 (“ANA”) test.³ *See id.* at 484, 533-36. At the initial consultation, plaintiff reported
21 fatigue the past three years, and constant moderate to severe pain and stiffness of
22 the hands, wrists, elbows, shoulders, neck, lower back, hips, knees, and feet the
23 past year. *Id.* at 533. Dr. Le observed plaintiff had tenderness to palpation in the
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25 ³ An ANA test is used to determine whether someone has an autoimmune
26 disorder such as lupus or rheumatoid arthritis. A positive ANA test does not
27 automatically mean the person tested has lupus. *See*
28 <http://www.mayoclinic.org/tests-procedures/ana-test/basics/definition/prc-2001456>
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1 hand joints, wrists, elbows, knees, and ankles, and 12/18 tender points. *Id.* at 535.
2 Based on the initial examination and ANA test, Dr. Le's impression was that
3 plaintiff had polyarthralgia and fatigue, and plaintiff should be evaluated for
4 systemic lupus erythematosus. *Id.*

5 Dr. Le continued to treat plaintiff for at least four years. During that time,
6 plaintiff consistently reported to Dr. Le that she had constant moderate to severe
7 pain and stiffness in the morning. *See, e.g., id.* at 619, 667, 1165. Plaintiff
8 reported periods of improvement, which appeared to correspond with changes in
9 medication. *See, e.g., id.* at 649, 912, 1071. Upon physical examination, Dr. Le
10 initially observed plaintiff had tenderness to palpation at her fingers, ankle joints,
11 and elbows, but later only documented tenderness to palpation in her elbow,
12 fingers, and ankle joints. *See, e.g., id.* at 602, 647, 668, 677, 1060. Dr. Le also
13 observed a decrease in tender points, starting with 14/18 in July 2010 and
14 decreasing to 3/18 by October 2013. *See id.* at 677, 919. The 2014 treatment notes
15 do not indicate any trigger points, but Dr. Le noted plaintiff developed a painful
16 arc of the shoulders. *See id.* at 1060, 1069. Throughout the treatment period, Dr.
17 Le also observed plaintiff had Raynaud's phenomenon, muscle weakness, and
18 paresthesia. *See, e.g., id.* at 602, 608, 647, 1060.

19 Dr. Le ordered multiple blood tests during the course of treatment. After
20 reviewing the initial positive ANA test, Dr. Le ordered a lupus panel, which was
21 negative. *Id.* at 751. After a subsequent December 2010 ANA test was positive,
22 Dr. Le ordered another lupus panel, which again was negative. *See id.* at 662, 741,
23 744. A June 2013 ANA test was negative. *Id.* at 598. Plaintiff's blood tests,
24 however, showed an elevated C-reactive protein. *See, e.g., id.* at 929, 931, 933.
25 Based on the tests, plaintiff's complaints, and clinical findings, Dr. Le diagnosed
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1 plaintiff with seronegative rheumatoid arthritis.⁴ *See id.* at 603.

2 Dr. Le treated plaintiff with various medications. In 2010, Dr. Le treated
3 plaintiff with prednisone and hydroxychloroquine. *See id.* at 669, 673. When
4 those medications did not appear to have a significant effect on plaintiff's
5 symptoms, Dr. Le switched to Lyrica, which helped ease the symptoms, but her
6 health plan declined to authorize it. *See id.* at 658, 661, 664, 669. Dr. Le then
7 switched plaintiff to Gabapentin, which did not provide relief. *See id.* at 655. In
8 May 2011, Dr. Le initiated a trial of methotrexate and Percocet, which caused a
9 significant reduction in pain and stiffness. *See id.* at 652, 657. Due to side effects,
10 however, plaintiff was taken off of methotrexate in May 2012. *See id.* at 634, 639,
11 642. By April 2013, plaintiff reported the Percocet was no longer effective so Dr.
12 Le added Humira to the treatment regimen. *See id.* at 619, 621. Dr. Le
13 discontinued the Humira four months later due to the lack of improvement and side
14 effect of skin lesions. *See id.* at 606. Dr. Le then treated plaintiff with Enbrel for
15 six months before switching to Remicade. *See id.* at 918, 1061.

16 On December 8, 2014, Dr. Le completed a Medical Source Statement of
17 Ability to Do Work Related Activities ("2014 Opinion"). *Id.* at 1077-79. Dr. Lee
18 diagnosed plaintiff with rheumatoid arthritis based on plaintiff's reported
19 symptoms and the clinical findings, including the positive ANA tests and elevated
20 C-reactive protein. *Id.* at 1077. Dr. Le opined plaintiff: could sit for only twenty
21 minutes a time for a total of four hours; could stand for ten minutes at a time; could
22 stand or walk for less than a total of two hours in a normal workday; and required
23 the option to shift positions at will from sitting, standing, and walking. *Id.* at 1077-
24 78. Dr. Le also opined plaintiff required a job that allowed her to take an

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27 ⁴ Seronegative rheumatoid arthritis is the diagnosis of rheumatoid arthritis
28 without the presence of certain antibodies in the patient's blood. *See*
<https://www.rheumatoidarthritis.org/ra/types/seronegative/>.

1 unscheduled break every thirty minutes; could occasionally lift less than ten
2 pounds; had various postural, manipulative, and environmental limitations; and
3 would be off task for at least twenty-five percent of the time. *Id.* at 1078-79.

4 **2. The Stage Agency Physicians**

5 Dr. F. Kalmar and Dr. J. Hartman, state agency physicians, reviewed
6 plaintiff's medical records as of November 2013 and February 2014 respectively.
7 *See id.* at 116-24, 134-43. Based on a review of the records, both state agency
8 physicians diagnosed plaintiff with inflammatory arthritis. *See id.* at 109, 124,
9 139, 151. The state agency physicians opined plaintiff had the RFC to: lift and/or
10 carry twenty pounds occasionally and ten pounds frequently; stand and/or walk
11 about six hours in an eight-hour workday; sit for about six hours in an eight-hour
12 workday; and occasionally climb ramps/stairs, balance, stoop, kneel, crouch, and
13 crawl. *See id.* at 110-11, 125-26, 140-41, 152-53. The state agency physicians
14 also opined plaintiff had certain environmental limitations. *See id.* at 111, 126,
15 141, 153.

16 **3. The ALJ's Findings⁵**

17 In reaching his RFC determination, the ALJ gave great weight to the
18 opinions of the state agency physicians, finding that the opinions were consistent
19 with the objective medical evidence. *Id.* at 30-31. Without expressly stating so,
20 the ALJ gave no weight to the opinion of Dr. Le. *Id.* at 31. The ALJ stated Dr. Le
21 failed to provide clinical or diagnostic findings to support his functional
22 assessment, and Dr. Le's opinion was inconsistent with the objective medical
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24 ⁵ At step two, the ALJ found plaintiff suffered from the severe impairment of
25 systemic lupus erythematosus. AR at 22. It is unclear to this court how the ALJ
26 reached this determination. Although lupus was suspected, the treating and state
27 agency physicians all concluded that plaintiff did not suffer from lupus. *See id.* at
28 109, 124, 139, 151, 1077. Nevertheless, despite the apparent lack of substantial
evidence supporting the ALJ's step two finding, it does not affect this decision.

1 evidence. *Id.*

2 The ALJ’s first reason for discounting Dr. Le’s opinion – failure to provide
3 medically acceptable clinical or diagnostic findings – was not supported by
4 substantial evidence. *Id.* In the 2014 Opinion, Dr. Le diagnosed plaintiff with
5 rheumatoid arthritis and listed several clinical findings to support his opinion –
6 plaintiff’s joint tenderness and swelling, positive ANA test, and elevated C-
7 reactive protein. *Id.* at 1077. The treatment records documenting these findings
8 were a part of the administrative record. *See, e.g., id.* at 602, 647, 677, 744, 929,
9 931, 1060. Accordingly, a failure to provide clinical or diagnostic findings was not
10 a legally sufficient reason to give Dr. Le’s opinion no weight.

11 The ALJ’s second reason for giving Dr. Le’s opinion no weight was that it
12 was inconsistent with the objective medical evidence. *See id.* at 31; *Batson v.*
13 *Comm’r*, 359 F.3d 1190,1195 (9th Cir. 2004) (holding that an ALJ may discredit
14 physicians’ opinions that are “unsupported by the record as a whole . . . or by
15 objective medical findings”). The ALJ determined the evidence only showed mild
16 to moderate tenderness to palpation at the fingers, wrist, and ankle joints. *See AR*
17 *at 31.* Although the ALJ correctly found that Dr. Le only reported mild to
18 moderate tenderness in some of the treatment notes, a large percentage of the
19 treatment notes indicated findings of tenderness in the fingers, wrists, elbows, and
20 ankles without reference to severity, as well as tender points. *See, e.g., id.* at 535,
21 620, 647, 653, 671, 677. In addition to tenderness, there were other physical
22 findings and clinical tests to support Dr. Le’s opinion. Dr. Le observed plaintiff
23 had Raynaud’s phenomenon, muscle weakness, and parathesia. *See, e.g., id.* at
24 602, 608, 635, 647, 1060. And the laboratory findings indicated plaintiff had
25 positive ANA tests and an elevated C-reactive protein. *See, e.g., id.* at 744, 929,
26 931, 933, 935. As such, the ALJ’s second reason for discounting Dr. Le’s opinion
27 – inconsistency with the objective medical evidence – was similarly not supported
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1 by substantial evidence.

2 Accordingly, the ALJ failed to cite specific and legitimate reasons supported
3 by substantial evidence for giving Dr. Le’s opinion no weight.

4 **B. The ALJ Failed to Properly Consider Plaintiff’s Credibility**

5 Plaintiff argues the ALJ failed to properly consider her credibility. P. Mem.
6 at 6-9. Specifically, plaintiff contends the reasons offered for finding her less
7 credible were not clear and convincing and supported by substantial evidence.

8 The ALJ must make specific credibility findings, supported by the record.

9 Social Security Ruling (“SSR”) 96-7p.⁶ To determine whether testimony
10 concerning symptoms is credible, the ALJ engages in a two-step analysis.

11 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007). First, the ALJ

12 must determine whether a claimant produced objective medical evidence of an

13 underlying impairment ““which could reasonably be expected to produce the pain

14 or other symptoms alleged.”” *Id.* at 1036 (quoting *Bunnell v. Sullivan*, 947 F.2d

15 341, 344 (9th Cir. 1991) (en banc)). Second, if there is no evidence of

16 malingering, an “ALJ can reject the claimant’s testimony about the severity of her

17 symptoms only by offering specific, clear and convincing reasons for doing so.”

18 *Smolen*, 80 F.3d at 1281; accord *Benton v. Barnhart*, 331 F.3d 1030, 1040 (9th Cir.

19 2003). The ALJ may consider several factors in weighing a claimant’s credibility,

20 including: (1) ordinary techniques of credibility evaluation such as a claimant’s

21 reputation for lying; (2) the failure to seek treatment or follow a prescribed course

22 of treatment; and (3) a claimant’s daily activities. *Tommasetti v. Astrue*, 533 F.3d

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24 ⁶ “The Commissioner issues Social Security Rulings to clarify the Act’s
25 implementing regulations and the agency’s policies. SSRs are binding on all
26 components of the SSA. SSRs do not have the force of law. However, because
27 they represent the Commissioner’s interpretation of the agency’s regulations, we
28 give them some deference. We will not defer to SSRs if they are inconsistent with
the statute or regulations.” *Holohan*, 246 F.3d at 1203 n.1 (internal citations
omitted).

1 1035, 1039 (9th Cir. 2008); *Bunnell*, 947 F.2d at 346-47.

2 At the first step, the ALJ found plaintiff's medically determinable
3 impairments could reasonably be expected to cause the symptoms alleged. AR at
4 27. At the second step, because the ALJ did not find any evidence of malingering,
5 the ALJ was required to provide clear and convincing reasons for discounting
6 plaintiff's credibility. Here, the ALJ discounted plaintiff's credibility because: (1)
7 her alleged symptoms were inconsistent with the objective evidence; (2) her
8 activities of daily living were inconsistent with her alleged symptoms; and (3)
9 plaintiff received conservative treatment. *Id.* at 26.

10 In a Function Report dated October 11, 2013 plaintiff stated she was very
11 fatigued, had lots of pain, would lose sensation in her hands and legs, could only
12 walk about half a block without needing to rest, and used a cane to walk. *See id.* at
13 299, 304-05. Plaintiff reported she needed help with personal hygiene, seldom
14 cooked because the heat from the stove caused pain and swelling in her hands, and
15 it took her four and a half hours to do laundry and clean. *See id.* at 299, 301.

16 At the December 9, 2014 hearing, plaintiff testified that she was very
17 fatigued, her medicine made her drowsy, and she had constant pain in her joints.
18 *See id.* at 45, 48-49. Plaintiff testified that, in a typical day, she laid down for an
19 hour and a half after taking her medications for a total of about four to six hours in
20 a day, saw her children leave for school, and helped her children with their
21 homework for thirty minutes. *Id.* at 48. Plaintiff sometimes helped with chores
22 such as washing dishes and cleaning the counters, but could only do it for about
23 forty-five minutes before needing a break and only for a total of two hours in a
24 day. *See id.* at 49-50. Plaintiff explained she could not cook because her finger
25 joints locked when she got near heat. *See id.* at 50. Plaintiff further testified that,
26 about two days a week, she was able to take her children to school, which was 0.8
27 miles away. *See id.*

1 The first reason the ALJ provided for finding plaintiff less credible was that
2 the severity of her alleged symptoms was inconsistent with the objective evidence.
3 *Id.* at 26; *see Bunnell*, 947 F.2d at 346-47 (the lack of objective medical evidence
4 to support a claimant’s pain allegations may be a factor to consider in the
5 credibility assessment but may not be the sole reason to discredit a claimant). But
6 as discussed above, there was objective medical evidence to support plaintiff’s
7 symptoms. Dr. Le observed tenderness in plaintiff’s joints, in particular in her
8 fingers and ankle, and that plaintiff had a painful arc of the shoulders, Raynaud’s
9 phenomenon, muscle weakness, and parasthesia. *See, e.g.*, AR at 535, 602, 620,
10 647, 653, 677, 1072. Moreover, the blood tests indicated plaintiff had positive
11 ANA tests on occasions and an elevated C-reactive protein. *See, e.g., id.* at 744,
12 929, 935.

13 Second, the ALJ discounted plaintiff’s credibility because her daily activities
14 were inconsistent with a debilitating condition and some of the physical and mental
15 abilities required to perform her daily activities were transferable to an
16 employment setting. *Id.* at 26. Inconsistency between a claimant’s alleged
17 symptoms and her daily activities may be a clear and convincing reason to find a
18 claimant less credible. *Tommasetti*, 533 F.3d at 1039. But “the mere fact a
19 [claimant] has carried on certain daily activities, such as grocery shopping, driving
20 a car, or limited walking for exercise, does not in any way detract from her
21 credibility as to her overall disability.” *Vertigan v. Halter*, 260 F.3d 1044, 1050
22 (9th Cir. 2001). A claimant does not need to be “utterly incapacitated.” *Fair v.*
23 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). The activities cited by the ALJ were
24 not inconsistent with plaintiff’s alleged symptoms. Notwithstanding the fact that
25 plaintiff somewhat inconsistently testified she could not cook and reported she
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1 could not take care of her children,⁷ plaintiff’s ability to perform chores in forty-
2 five-minute intervals for a total of two hours, help her children with homework in
3 thirty-minute intervals, drive 0.8 miles to her children’s school twice a week, and
4 perform personal grooming activities was not inconsistent with her testimony
5 concerning her pain, fatigue, and need to rest.

6 Moreover, although a claimant’s ability “to spend a substantial part of [her]
7 day engaged in pursuits involving the performance of physical functions that are
8 transferable to a work setting” may be sufficient to discredit her, this was not the
9 case here. *See Morgan*, 169 F.3d at 600. While plaintiff’s ability to do chores and
10 help her children with homework may be transferrable to a work setting, the record
11 does not indicate that plaintiff spent a substantial part of her day engaging in such
12 activities. As such, the evidence does not support the ALJ’s finding that plaintiff’s
13 daily activities were inconsistent with her alleged symptoms.

14 The ALJ’s final reason for finding plaintiff less credible – conservative
15 treatment – was similarly not clear and convincing and supported by substantial
16 evidence. *See AR at 26; Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007)
17 (“[E]vidence of conservative treatment is sufficient to discount a claimant’s
18 testimony regarding severity of an impairment.”) (internal quotation marks and
19 citation omitted). The ALJ found plaintiff did not “generally receive[] the type of
20 medical treatment one would expect for a totally disabled individual.” AR at 26.
21 To the contrary, the treatment records indicate Dr. Le treated plaintiff’s rheumatoid
22 arthritis aggressively. As discussed above, Dr. Le prescribed an aggressive
23 regimen of drugs, including prednisone, hydroxychloroquine, methotrexate,
24 Humira, and Remicade. *See id.* at 621, 652, 669, 673, 1061. Plaintiff often

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26 ⁷ The ALJ stated plaintiff testified she prepared simple meals, but then also
27 stated that plaintiff testified she could not cook due to her joints locking. *See AR*
28 *at 25*. Plaintiff testified and reported that she did not cook; however, she reported
to a consultative psychiatrist that she cooked. *See id.* at 903.

1 issues that must be resolved before a determination can be made, or it is not clear
2 from the record that the ALJ would be required to find a plaintiff disabled if all the
3 evidence were properly evaluated, remand for further proceedings is appropriate.
4 *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004); *Harman v. Apfel*,
5 211 F.3d 1172, 1179-80 (9th Cir. 2000). In addition, the court must “remand for
6 further proceedings when, even though all conditions of the credit-as-true rule are
7 satisfied, an evaluation of the record as a whole creates serious doubt that a
8 claimant is, in fact, disabled.” *Garrison*, 759 F.3d at 1021.

9 Here, remand is required because the ALJ failed to properly consider Dr.
10 Le’s opinion and plaintiff’s credibility. On remand, the ALJ shall consider the
11 physical limitations opined by Dr. Le and either credit his opinion or provide
12 specific and legitimate reasons supported by substantial evidence for rejecting it.
13 The ALJ shall also reconsider plaintiff’s credibility, and either credit her subjective
14 complaints or provide clear and convincing reasons for rejecting them. The ALJ
15 shall then again determine plaintiff’s severe impairments at step two, reassess
16 plaintiff’s RFC, and proceed through steps four and five to determine what work, if
17 any, plaintiff is capable of performing.

18 **VI.**

19 **CONCLUSION**

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

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25 DATED: January 31, 2018



26 SHERI PYM
27 United States Magistrate Judge
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