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

MARIA RINCON DE GONZALEZ,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No. ED CV 16-01364 AFM

**MEMORANDUM OPINION AND
ORDER REVERSING AND
REMANDING DECISION OF
COMMISSIONER FOR
FURTHER ADMINISTRATIVE
PROCEEDINGS**

I.

BACKGROUND

Plaintiff Maria Rincon De Gonzalez filed her application for disability insurance benefits under Title II of the Social Security Act on March 20, 2013, alleging disability beginning January 5, 2013. After denial on initial review and on reconsideration, a hearing took place before an Administrative Law Judge (ALJ) on December 3, 2013, at which Plaintiff testified on her own behalf with the assistance of a Spanish interpreter. In a written decision dated December 10, 2014, the ALJ found that Plaintiff was not disabled within the meaning of the Social Security Act for the period from January 5, 2013, through the date of the decision. The Appeals

1 Council declined to set aside the ALJ’s unfavorable decision in a notice dated
2 April 26, 2016. Plaintiff filed a Complaint herein on June 24, 2016, seeking review
3 of the Commissioner’s denial of her application for benefits.

4 In accordance with the Court’s Order Re: Procedures in Social Security
5 Appeal, the Plaintiff filed a memorandum in support of the complaint on March 27,
6 2017 (“Pl. Mem.”); the Commissioner filed a memorandum in support of her
7 answer on May 1, 2017 (“Def. Mem.”); Plaintiff did not file a reply. As requested
8 by the Court’s Order Re: Further Briefing, the Commissioner filed a supplemental
9 brief on June 30, 2017 (“Def. Supp.”); Plaintiff filed a supplemental brief on
10 July 17, 2017 (“Pl. Supp.”). This matter now is ready for decision.¹

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12 **II.**
13 **DISPUTED ISSUE**

14 Whether the ALJ erred in his step-four analysis regarding Plaintiff’s ability
15 to perform her past relevant work.

16
17 **III.**
18 **STANDARD OF REVIEW**

19 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to
20 determine whether the Commissioner’s findings are supported by substantial
21 evidence and whether the proper legal standards were applied. *See Treichler v.*
22 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). Substantial
23 evidence means “more than a mere scintilla” but less than a preponderance. *See*
24 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter v. Astrue*, 504 F.3d
25 1028, 1035 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a

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27 ¹ The decision in this case is being made based on the pleadings, the
28 administrative record (“AR”), the parties’ memoranda in support of their pleadings
and plaintiff’s reply.

1 reasonable mind might accept as adequate to support a conclusion.” *Richardson*,
2 402 U.S. at 401. This Court must review the record as a whole, weighing both the
3 evidence that supports and the evidence that detracts from the Commissioner’s
4 conclusion. *Lingenfelter*, 504 F.3d at 1035. Where evidence is susceptible of more
5 than one rational interpretation, the Commissioner’s decision must be upheld. *See*
6 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

7 A reviewing federal court must review the record as a whole, weighing both
8 the evidence that supports the ALJ’s decision and the evidence that may detract
9 from it. *See Lingenfelter*, 504 F.3d at 1035. The ALJ is responsible for
10 determining credibility, resolving conflicts in medical testimony, and resolving
11 ambiguities. *See Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The
12 court will uphold the Commissioner’s decision when the evidence is susceptible to
13 more than one rational interpretation. *See Garrison v. Colvin*, 759 F.3d 995, 1009-
14 10 (9th Cir. 2014); *Orn*, 495 F.3d at 630. However, the court may only review the
15 reasons stated by an ALJ in a decision, “and may not affirm the ALJ on a ground
16 upon which he did not rely.” *Orn*, 495 F.3d at 630; *see also Connett v. Barnhart*,
17 340 F.3d 871, 874 (9th Cir. 2003). The court may also not affirm an ALJ’s
18 decision “simply by isolating a specific quantum of supporting evidence.” *Jones v.*
19 *Heckler*, 760 F.2d 993, 995 (9th Cir. 1985); *see also Hammock v. Bowen*, 879 F.2d
20 498, 501 (9th Cir. 1989) (citing *Jones*).

21 22 IV.

23 FIVE-STEP EVALUATION PROCESS

24 The Commissioner (or ALJ) follows a five-step sequential evaluation process
25 in assessing whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920;
26 *Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995), *as amended* April 9, 1996.
27 In the first step, the Commissioner must determine whether the claimant is
28 currently engaged in substantial gainful activity; if so, the claimant is not disabled

1 and the claim is denied. *Id.* If the claimant is not currently engaged in substantial
2 gainful activity, the second step requires the Commissioner to determine whether
3 the claimant has a “severe” impairment or combination of impairments significantly
4 limiting his ability to do basic work activities; if not, a finding of nondisability is
5 made and the claim is denied. *Id.* If the claimant has a “severe” impairment or
6 combination of impairments, the third step requires the Commissioner to determine
7 whether the impairment or combination of impairments meets or equals an
8 impairment in the Listing of Impairments (“Listing”) set forth at 20 C.F.R. part
9 404, subpart P, appendix 1; if so, disability is conclusively presumed and benefits
10 are awarded. *Id.* If the claimant’s impairment or combination of impairments does
11 not meet or equal an impairment in the Listing, the fourth step requires the
12 Commissioner to determine whether the claimant has sufficient “residual functional
13 capacity” to perform his past work; if so, the claimant is not disabled and the claim
14 is denied. *Id.* The claimant has the burden of proving that he is unable to perform
15 past relevant work. *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992). If the
16 claimant meets this burden, a *prima facie* case of disability is established. *Id.* The
17 Commissioner then bears the burden of establishing that the claimant is not
18 disabled, because he can perform other substantial gainful work available in the
19 national economy. *Id.* The determination of this issue comprises the fifth and final
20 step in the sequential analysis. 20 C.F.R. §§ 404.1520, 416.920; *Lester*, 81 F.3d at
21 828 n.5; *Drouin*, 966 F.2d at 1257.

22 23 V.

24 THE ALJ’S APPLICATION OF THE FIVE-STEP PROCESS

25 At step one, the ALJ found that Plaintiff had not engaged in substantial
26 gainful activity since January 5, 2013, her alleged onset date. (AR 23.) At step
27 two, the ALJ found that Plaintiff had the severe impairment of recurrent major
28 depressive disorder with psychotic features. (*Id.*) At step three, the ALJ found that

1 Plaintiff did not have an impairment or combination of impairments that meets or
2 medically equals the severity of one of the listed impairments. (AR 23-25.) At step
3 four, the ALJ found that Plaintiff had the following residual functional capacity
4 (RFC) to perform a full range of work at all exertional levels but with the following
5 nonexertional limitations: Plaintiff may not have any contact with the public but is
6 able to engage in non-intense, superficial interaction with others. (AR 25-27.) The
7 ALJ determined that Plaintiff is capable of performing her past relevant work as a
8 housekeeping cleaner. (AR 27.) Accordingly, the ALJ concluded that Plaintiff was
9 not disabled as defined under the Social Security Act from January 5, 2013, through
10 the date of the decision. (AR 28.)

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12 **VI.**
13 **DISCUSSION**

14 Plaintiff has challenged the ALJ's finding at step-four of the sequential
15 evaluation process that Plaintiff is able to return to her past relevant work. (Pl.
16 Mem. at 2.) In the process of reviewing the case, the Court noted a significant
17 discrepancy in the ALJ's decision. In the bolded heading for paragraph 6 (AR 27),
18 the decision states: "The claimant is capable of performing past relevant work as a
19 housekeeping cleaner. *This work does not require the performance of work-related*
20 *activities precluded by the claimant's residual functional capacity.*" (emphasis
21 added). In the same section on the next page (AR 28), the decision lists Plaintiff's
22 prior occupations, including housekeeping cleaner, and states: "Because she is
23 limited to a range of work as described in the residual functional capacity above,
24 *the demands of her past relevant work exceed the claimant's residual functional*
25 *capacity.*" (emphasis added). The Court requested further briefing from the parties
26 addressing the impact of these inconsistent statements on the ALJ's decision.

27 The Commissioner contends that the ALJ's overall determination is clear
28 from the bolded finding and surrounding passages in the ALJ's decision. (Def.

1 Supp. at 1.) The Commissioner further claims that the ALJ simply made a
2 “scrivener’s error” and that the error was harmless because it is clear that the
3 demands of Plaintiff’s past job as a housekeeper did not exceed her RFC. (*Id.*) By
4 contrast, Plaintiff contends that the ALJ’s inconsistent statements prevent an
5 adequate explanation of the basis for the decision and therefore constitute legal
6 error requiring remand. (Pl. Supp. at 2.)

7 The Court concludes that these inconsistent findings in the ALJ’s decision —
8 both that Plaintiff *is*, and *is not*, capable of performing past relevant work — amount
9 to legal error requiring reversal. These findings are not merely harmless
10 “scrivener’s error;” instead, they are a material discrepancy on a key issue where
11 the ALJ states two opposing conclusions in the same section of the decision. As a
12 result, the decision fails to clearly express the ALJ’s conclusion about whether
13 Plaintiff is capable of performing past work. *See Farris v. Barnhart*, 147 Fed.
14 Appx. 638, 640 (9th Cir. 2005) (finding error where the ALJ’s decision was unclear
15 as to whether Plaintiff could perform his past work); *Gonzalez v. Sullivan*, 914 F.2d
16 1197, 1201 (9th Cir. 1990) (court should not speculate regarding basis of ALJ’s
17 conclusion); *Barbato v. Commissioner of Social Sec. Admin.*, 923 F. Supp. 1273,
18 1276 n.2 (C.D. Cal. 1996) (remand required where ALJ did not adequately explain
19 how a conclusion was reached).

20 The Court also declines the Commissioner’s suggestion to rewrite the ALJ’s
21 opinion so that it would consistently state Plaintiff could perform her prior relevant
22 work. The ALJ failed to elaborate any basis for finding that Plaintiff can, or
23 cannot, perform past work as a housekeeping cleaner. (AR 27-28.) The ALJ also
24 did not explain how a finding that Plaintiff is capable of performing past work as a
25 housekeeping cleaner is consistent with findings that Plaintiff may not have contact
26 with the public. *See Farris*, 147 Fed. Appx. at 640. Further, the ALJ did not make
27 necessary findings of fact as to the physical and mental demands of Plaintiff’s past
28 job as a housekeeping cleaner. *Id.* (citing SSR 82-62, requiring the ALJ’s decision

1 to contain specific findings of fact before finding an individual capable of
2 performing a past relevant job). The record merely reflects that Plaintiff's past
3 work as a housekeeping cleaner was performed as a "janitor" and does not describe
4 whether or not she engaged with the public. (AR 45, 47, 171, 194.) Nor did the
5 ALJ ask Plaintiff whether she engaged with the public in her past job. To rewrite
6 the decision as the Commissioner urges would require the Court to insert factual
7 findings and evidence that were not included in the ALJ's decision or in the
8 hearing. That would go beyond the proper role of the Court in this proceeding. *See*
9 *Connett*, 340 F.3d at 874 (finding error where district court affirmed ALJ based on
10 evidence the ALJ did not discuss).

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12 * * * *

13 The law is well established that the decision whether to remand for further
14 proceedings or simply to award benefits is within the discretion of the Court. *See,*
15 *e.g., Salvador v. Sullivan*, 917 F.2d 13, 15 (9th Cir. 1990); *McAllister v. Sullivan*,
16 888 F.2d 599, 603 (9th Cir. 1989); *Lewin v. Schweiker*, 654 F.2d 631, 635 (9th Cir.
17 1981). Before a case may be remanded for an immediate award of benefits, three
18 requirements must be met: "(1) the record has been fully developed and further
19 administrative proceedings would serve no useful purpose; (2) the ALJ has failed to
20 provide legally sufficient reasons for rejecting evidence, whether claimant
21 testimony or medical opinion; and (3) if the improperly discredited evidence were
22 credited as true, the ALJ would be required to find the claimant disabled on
23 remand." *Garrison*, 759 F.3d at 1020; *see also Brown-Hunter v. Colvin*, 806 F.3d
24 487, 495 (9th Cir. 2015). If the record is "uncertain and ambiguous, the proper
25 approach is to remand the case to the agency" for further proceedings. *See*
26 *Treichler*, 775 F.3d at 1105. Here, further proceedings would be useful to resolve
27 the conflicts and ambiguities in the record. *Id.* at 1103-04 (in evaluating whether
28 further administrative proceedings would be useful, the reviewing court should

1 consider “whether the record as a whole is free from conflicts, ambiguities, or gaps,
2 whether all factual issues have been resolved, and whether the claimant’s
3 entitlement to benefits is clear under the applicable legal rules”); *Burrell v. Colvin*,
4 775 F.3d 1133, 1141-42 (9th Cir. 2014).²

5 IT THEREFORE IS ORDERED that Judgment be entered reversing the
6 decision of the Commissioner and remanding the matter for further administrative
7 proceedings consistent with this Order.

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9 DATED: July 28, 2017

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13 ALEXANDER F. MacKINNON
14 UNITED STATES MAGISTRATE JUDGE
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28 ² It is not the Court’s intention to limit the scope of the remand.