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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

ALICIA CASACHAQUA FRANCO,)	Case No. EDCV 16-01868-AS
)	
Plaintiff,)	MEMORANDUM OPINION AND
v.)	ORDER OF REMAND
)	
NANCY A. BERRYHILL, ¹)	
Acting Commissioner of Social)	
Security,)	
)	
Defendant.)	
)	

Pursuant to Sentence 4 of 42 U.S.C. § 405(g), IT IS HEREBY ORDERED that this matter is remanded for further administrative action consistent with this Opinion.

PROCEEDINGS

On August 31, 2016, Alicia Casachaqua Franco ("Plaintiff") filed a Complaint pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3)

¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security and is substituted for Acting Commissioner Carolyn W. Colvin as the defendant in this suit. See 42 U.S.C. § 205(g).

1 seeking review of the Commissioner's denial of Plaintiff's
2 applications for Disability Insurance Benefits and Supplemental
3 Security Income. (Docket Entry No. 1). On January 26, 2017,
4 Defendant filed an Answer to the Complaint and the Certified
5 Administrative Record ("AR"). (Docket Entry Nos. 16-17). The
6 parties have consented to proceed before a United States Magistrate
7 Judge. (Docket Entry Nos. 11-12). On April 27, 2017, the parties
8 filed a Joint Stipulation ("Joint Stip."), setting forth their
9 respective positions on Plaintiff's sole claim. (Docket Entry No.
10 18).

11
12 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
13

14 On June 5, 2012, Plaintiff, formerly employed as a small
15 products assembler, cashier checker, management trainee, usher, and
16 motion picture projectionist (see AR 263-67, 314), filed
17 applications for Disability Insurance Benefits and Supplemental
18 Security Income Benefits, alleging disability beginning on February
19 16, 2012. (AR 219-28). On December 3, 2014, the Administrative Law
20 Judge ("ALJ"), Paul Coulter, heard testimony from Plaintiff,
21 Plaintiff's mother, medical expert Arnold Ostrow, and vocational
22 expert Sandra Fioretti. (See AR 30-59). On January 30, 2015, the
23 ALJ denied Plaintiff's applications in a written decision. (See AR
24 8-18).

25
26 The ALJ applied the five-step process in evaluating Plaintiff's
27 case. At step one, the ALJ determined that Plaintiff had not
28 engaged in substantial gainful activity between the alleged onset

1 date of February 16, 2012, and the date last insured of December 31,
2 2015. (AR 10). At step two, the ALJ found that, through the date
3 last insured, Plaintiff had the following severe impairments:
4 systemic lupus erythematosus ("SLE"), lupus nephritis, obesity,
5 paroxysmal atrial fibrillation, hypertension, and acute immune
6 hepatitis. (AR 10-12).² At step three, the ALJ determined that
7 Plaintiff's impairments or combination of impairments did not meet
8 or equal a Listing found in 20 C.F.R. Part 404, Subpart P, Appendix
9 1. (AR 12).

10

11 Before proceeding to step four, the ALJ found that Plaintiff
12 had the residual functional capacity ("RFC")³ to perform sedentary
13 work⁴, with the following exceptions: postural activities such as
14 climbing, balancing, stooping, kneeling, crouching, and crawling can
15 be performed on an occasional basis; and Plaintiff cannot work on
16 ladders, ropes, or scaffolds or at unprotected heights. (AR 12-16).

17

18

19 ² The ALJ found that Plaintiff's mental impairments, including
20 an anxiety disorder, depressive disorder, psychotic disorder,
21 adjustment disorder, and polysubstance abuse, as well as Plaintiff's
bilateral cataracts, were nonsevere. (AR 11).

22 ³ A Residual Functional Capacity is what a claimant can still
23 do despite existing exertional and nonexertional limitations. See
20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

24 ⁴ "Sedentary work involves lifting no more than 10 pounds at a
25 time and occasionally lifting or carrying articles like docket
26 files, ledgers, and small tools. Although a sedentary job is
27 defined as one which involves sitting, a certain amount of walking
and standing is often necessary in carrying out job duties. Jobs are
28 sedentary if walking and standing are required occasionally and
other sedentary criteria are met." 20 C.F.R. §§ 404.1567(a),
416.967(a).

1 At step four, the ALJ determined that Plaintiff was not able to
2 perform any past relevant work. (AR 16). At step five, the ALJ
3 found that, considering Plaintiff's age, education, work experience,
4 and RFC, there were jobs existing in significant numbers in the
5 national economy that Plaintiff could perform. (AR 17-18).
6 Consequently, the ALJ concluded that Plaintiff was not disabled
7 within the meaning of the Social Security Act. (AR 18).

8
9 Plaintiff requested that the Appeals Council review the ALJ's
10 decision, which was denied on May 11, 2016. (AR 1-4). The ALJ's
11 decision then became the final decision of the Commissioner,
12 allowing this Court to review the decision. See 42 U.S.C. §§
13 405(g), 1383(c).

14 15 STANDARD OF REVIEW

16
17 The Court reviews the ALJ's decision to determine if it is free
18 of legal error and supported by substantial evidence. See Brewes v.
19 Comm'r of Soc. Sec. Admin., 682 F.3d 1157, 1161 (9th Cir. 2012).
20 "Substantial evidence" is more than a mere scintilla, but less than
21 a preponderance. Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir.
22 2014). To determine whether substantial evidence supports a
23 finding, "a court must consider the record as a whole, weighing both
24 evidence that supports and evidence that detracts from the
25 [Commissioner's] conclusion." Aukland v. Massanari, 257 F.3d 1033,
26 1035 (9th Cir. 2001). As a result, "[i]f the evidence can
27 reasonably support either affirming or reversing the ALJ's
28 conclusion, [a court] may not substitute [its] judgment for that of

1 the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir.
2 2006).

3
4 **PLAINTIFF'S CONTENTION**

5
6 Plaintiff contends that the ALJ failed to articulate clear and
7 convincing reasons for discounting Plaintiff's pain and symptom
8 testimony. (See Joint. Stip. at 4-11, 17-18).

9
10 **DISCUSSION**

11
12 After reviewing the record, the Court finds that the ALJ did
13 not articulate clear and convincing reasons to find Plaintiff less
14 than fully credible. The Court therefore remands for further
15 consideration.

16
17 **A. The ALJ Did Not Properly Assess Plaintiff's Credibility**

18
19 Plaintiff contends that her repeated hospitalizations support
20 her pain and symptom testimony, and that the ALJ erred in
21 discrediting this testimony without support from substantial
22 evidence in the record. (Joint Stip. at 4-11, 17-18).

23
24 Defendant asserts that the ALJ gave multiple permissible
25 reasons for finding Plaintiff's testimony not fully credible, each
26 of which is supported by substantial evidence in the record. (Joint
27 Stip. at 12-17).

1 Plaintiff completed an Adult Function Report, dated August 7,
2 2012 (see AR 279-86), in which she reported needing assistance with
3 dressing, bathing, caring for hair, shaving, feeding herself, and
4 using the toilet due to inflamed joints. (AR 280). She stated that
5 her illnesses, injuries, or conditions have affected her ability to
6 look for employment and complete normal day to day activities, and
7 affected her sleep because she feels "discomfort internally
8 throughout my organs." (AR 280). Plaintiff stated that she needs
9 help or reminders to take her medicine. (AR 281). Furthermore,
10 while she can prepare simple meals such as fruits, vegetables, and
11 cereal, she stated that she cannot do house and yard work due to
12 doctors' orders. (AR 281). She goes outside "as little as
13 possible" and does not do any shopping, but does have the ability to
14 go out alone. (AR 282). When she leaves home Plaintiff travels by
15 car, but does not own a car of her own. (AR 282). Plaintiff
16 reported that her illnesses, injuries, or conditions have not
17 affected her ability to handle money. (AR 283).

18
19 Plaintiff listed her hobbies as reading, watching television,
20 going on the internet, working out, and playing guitar, and
21 described doing these activities well. (AR 283). However,
22 Plaintiff reported that, since her illnesses, injuries, or
23 conditions began, she has experienced changes in that she can no
24 longer work out or play the guitar. (AR 283). She participates in
25 social activities a few times a month, which she described as
26 talking and watching television with others. (AR 283). Plaintiff
27 stated that she needs someone to accompany her when participating in
28 social activities. (AR 283). She reported changes in these social

1 activities since her illnesses, injuries, or conditions began,
2 asserting: "[e]verything changed due to photosensitivity and severe
3 inflammation of joints." (AR 284). She stated that her illnesses,
4 injuries, or conditions affect: lifting, squatting, bending,
5 standing, reaching, walking, sitting, kneeling, talking, hearing,
6 stair-climbing, seeing, memory, completing tasks, concentration,
7 understanding, following instructions, and using hands. (AR 284).
8 She reported that she can walk thirty minutes before needing to
9 rest, and would need twenty minutes to rest before resuming walking.
10 (AR 284). Additionally, Plaintiff reported being able to pay
11 attention for a normal period of time, and that she can follow
12 written and spoken instructions well. (AR 284). Plaintiff noted
13 that the medications she has been prescribed have "severely affected
14 vision, hearing, talking and has caused lethargy." (AR 284). She
15 stated that she does not handle stress or changes in routine well.
16 (AR 285). She was prescribed glasses and contacts at age five, and
17 reported needing to use these aids daily. (AR 285).

18
19 At the December 3, 2014 administrative hearing, Plaintiff
20 testified that when she was diagnosed with SLE, a type of lupus, in
21 May of 2012, her symptoms were as follows: inflammation of the
22 joints that would cause parts of the body, such as her hands, to
23 expand up to three times in size; inability to walk; incontinence;
24 memory loss; and delusions and incoherence due to fevers of up to
25 103 degrees. (AR 48). Plaintiff has been prescribed a variety of
26 medications in relation to her severe impairments, and testified:
27 "I've had adverse effects to medications they've tried, prior, due
28 to my lupus. For example, Plaquenil, which is used for malaria

1 cases, made me hallucinate, and be disoriented and incoherent. And
2 I've had three brain inflammations, to the point where . . . I have
3 no memory of a few days." (AR 44). Plaintiff also testified that,
4 as of the date of the hearing, she could not sit up for long periods
5 of time, had to remain lying down, and could not lift anything over
6 ten pounds. (AR 47). Additionally, Plaintiff noted that she was
7 compelled to live with her mother, who cares for her, since
8 Plaintiff is sometimes unable to walk and is extremely lethargic.
9 (AR 48). Plaintiff concluded her testimony by stating: "My disease
10 is very inconsistent. The flare-ups are unpredictable . . . I try
11 to stay focused; but due to all this medication and you know,
12 holistically speaking, . . . I do get disoriented at times." (AR
13 58).

14
15 After review of the medical evidence, the ALJ found that
16 Plaintiff's medically determinable impairments could reasonably be
17 expected to cause her alleged symptoms. (AR 14). However, the ALJ
18 found that Plaintiff's statements concerning the intensity,
19 persistence, and limiting effects of these symptoms were not
20 entirely credible. (See AR 14-16). The ALJ determined that
21 Plaintiff's subjective complaints were only partially credible,
22 providing two reasons: (1) "the record reflects that since her
23 diagnosis and placement on proper medications, these medications
24 have been relatively effective in controlling the claimant's
25 symptoms" (AR 15); and (2) "the objective medical evidence does not
26 support the alleged severity of her symptoms." (AR 16).⁵

27
28 ⁵ While Plaintiff contends that the ALJ appeared to discredit
Plaintiff because she stopped working due to a bad economy (see

1 A claimant initially must produce objective medical evidence
2 establishing a medical impairment reasonably likely to be the cause
3 of her subjective symptoms. Smolen v. Chater, 80 F.3d 1273, 1281
4 (9th Cir. 1996); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir.
5 1991). Once a claimant produces objective medical evidence of an
6 underlying impairment that could reasonably be expected to produce
7 pain or other symptoms alleged, and there is no evidence of
8 malingering, the ALJ may reject the claimant's testimony regarding
9 the severity of his pain and symptoms only by articulating specific,
10 clear and convincing reasons for doing so. Brown-Hunter v. Colvin,
11 806 F.3d 487, 492-93 (9th Cir. 2015) (citing Lingenfelter v. Astrue,
12 504 F.3d 1028, 1036 (9th Cir. 2007)). Because the ALJ does not cite
13 to any evidence in the record of malingering, the "clear and
14 convincing reasons" standard applies.

15
16 As set forth below, the ALJ failed to provide clear and
17 convincing reasons for finding that Plaintiff's testimony about the
18 intensity, persistence, and limiting effects of her symptoms was not
19 fully credible.⁶

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23 Joint Stip. at 10), the ALJ's statements on this subject are merely
24 descriptive of her work history. (See AR 15). Therefore, this
contention will not be further discussed.

25 ⁶ The Court will not consider reasons for finding Plaintiff not
26 fully credible (see Joint Stip. at 16) that were not given by the
27 ALJ in the Decision. See Trevizo v. Berryhill, No. 15-16277, 2017
28 WL 2925434, at *6 (9th Cir. July 10, 2017) (quoting Garrison, 759
F.3d at 1010); see also SEC v. Chenery Corp., 332 U.S. 194, 196
(1947).

1 First, the ALJ failed to "specifically identify 'what testimony
2 is not credible and what evidence undermines [Plaintiff's]
3 complaints.'" Parra v. Astrue, 481 F.3d 742, 750 (9th Cir. 2007)
4 (quoting Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995) (as
5 amended)); see also Smolen, 80 F.3d at 1284 ("The ALJ must state
6 specifically what symptom testimony is not credible and what facts
7 in the record lead to that conclusion").

8
9 Second, the ALJ partially discredited Plaintiff's testimony on
10 the basis that "the record reflects that since her diagnosis and
11 placement on proper medications, these medications have been
12 relatively effective in controlling the claimant's symptoms." (AR
13 15).⁷ See Warre v. Comm'r of Soc. Sec. Admin., 439 F.3d 1001, 1006
14 (9th Cir. 2006) ("Impairments that can be controlled effectively
15 with medication are not disabling for the purpose of determining
16 eligibility for SSI benefits."). In support of this statement, the
17 ALJ cited to hospital records and treatment notes reflecting periods
18 of time where Plaintiff was doing well and had no complaints. (See
19 AR 15, citing AR 470 [April 25, 2013 renal specialist note], 480
20 [January 24, 2013 clinical note], 696 [July 24, 2013 post-discharge
21 note], 896 [June 13, 2014 clinical note], 900 [September 18, 2014
22 treatment note]). However, the ALJ pointed to no specific
23 medications or treatments that were able to effectively control

24
25 ⁷ In his Decision, the ALJ noted that Plaintiff was diagnosed
26 with SLE after a hospital stay from May 29, 2012 to June 1, 2012.
27 (AR 15, citing AR 416). Although the ALJ did not specify the
28 date(s) on which Plaintiff's medications were prescribed, it appears
that Plaintiff was prescribed medications related to her SLE
beginning in May 2012. (See AR 318 [Plaquenil and Prednisone,
Discharge Summary, dated May 17, 2012], AR 489 [CellCept, Discharge
Summary, dated December 31, 2012]).

1 Plaintiff's symptoms on a consistent basis. See Lester, 81 F.3d at
2 833 ("Occasional symptom-free periods—and even the sporadic ability
3 to work—are not inconsistent with disability"); see also Trevizo v.
4 Berryhill, No. 15-16277, 2017 WL 2925434, at *11 (9th Cir. July 10,
5 2017).

6
7 Contrary to the ALJ's finding, Plaintiff's medications did not
8 appear to effectively control her symptoms, since the medical record
9 reveals repeated, prolonged periods of hospitalization even after
10 the medications were prescribed. (See AR 317 [Discharge Summary
11 dated May 17, 2012], 416 [Discharge Summary dated June 1, 2012], 438
12 [Discharge Summary dated January 7, 2013], 489 [Discharge Summary
13 dated December 31, 2012], 704 [Discharge Summary dated July 20,
14 2013]).⁸ Furthermore, Plaintiff began a series of chemotherapy
15 treatments for her lupus on June 20, 2014. (See AR 891-94; see also
16 AR 13 [the ALJ acknowledged Plaintiff was "taking a form of
17 chemotherapy to help control her lupus symptoms"]). Consequently,
18 citing to Plaintiff's prior medications and treatments as being
19 "relatively effective in controlling the claimant's symptoms" (AR
20 15) was not a clear and convincing reason for partially discrediting
21 Plaintiff's testimony.

22
23 Third, the ALJ's determination that "the objective medical
24 evidence does not support the alleged severity of [Plaintiff's]

25
26 ⁸ The ALJ's statement, based on the absence of treatment
27 records between July 24, 2013 and June 13, 2014 (AR 15), that
28 Plaintiff appeared to be "doing well with no complaints" for almost
a year is contradicted by the fact that Plaintiff was hospitalized
during that time period. (See AR 756-59 [discharge instructions
dated October 4, 2013]).

1 symptoms" (AR 16) was an insufficient reason for finding Plaintiff
2 less than fully credible. Once a claimant demonstrates medical
3 evidence of an underlying impairment, "an ALJ 'may not disregard [a
4 claimant's testimony] solely because it is not substantiated
5 affirmatively by objective medical evidence.'" Trevizo, 2017 WL
6 2925434, at *11 (quoting Robbins, 466 F.3d at 883); see also Reddick
7 v. Chater, 157 F.3d 715, 722 (9th Cir. 1998). Moreover, the ALJ did
8 not specify what objective medical evidence he drew upon to support
9 his adverse credibility finding. Since the only other reason given
10 by the ALJ for discounting Plaintiff's testimony was improper, the
11 ALJ was not permitted to find Plaintiff partially not credible based
12 on a lack of supporting objective medical evidence.

13
14 **B. Remand Is Warranted**

15
16 The decision whether to remand for further proceedings or order
17 an immediate award of benefits is within the district court's
18 discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir.
19 2000). Where no useful purpose would be served by remand, or where
20 the record is fully developed, it is appropriate to direct an
21 immediate award of benefits. Id. at 1179 ("[T]he decision of
22 whether to remand for further proceedings turns upon the likely
23 utility of such proceedings."). However, where the circumstances of
24 the case suggest that further administrative review could remedy the
25 Commissioner's errors, remand is appropriate. McLeod v. Astrue, 640
26 F.3d 881, 888 (9th Cir. 2011); Harman, 211 F.3d at 1179-81.

1 Here, because the ALJ failed to properly assess Plaintiff's
2 credibility, remand is appropriate. Because outstanding issues must
3 be resolved before a determination of disability can be made, and
4 "when the record as a whole creates serious doubt as to whether the
5 [Plaintiff] is, in fact, disabled within the meaning of the Social
6 Security Act," further administrative proceedings would serve a
7 useful purpose and remedy defects. Burrell v. Colvin, 775 F.3d
8 1133, 1141 (9th Cir. 2014) (citations omitted).

9
10 **ORDER**

11
12 For the foregoing reasons, the decision of the Administrative
13 Law Judge is VACATED, and the matter is REMANDED, without benefits,
14 for further proceedings pursuant to Sentence 4 of 42 U.S.C. §
15 405(g).

16
17 LET JUDGMENT BE ENTERED ACCORDINGLY.

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19 Dated: July 28, 2017

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22 _____/s/_____
23 ALKA SAGAR
24 UNITED STATES MAGISTRATE JUDGE
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