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

SHERRY THERESA SALCIDO,  
Plaintiff,  
  
v.  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
Defendant.

Case No. EDCV 16-02493-RAO

**MEMORANDUM OPINION AND  
ORDER**

**I. INTRODUCTION**

Plaintiff Sherry Theresa Salcido (“Plaintiff”) challenges the Commissioner’s denial of her application for a period of disability and disability insurance benefits (“DIB”). For the reasons stated below, the decision of the Commissioner is REVERSED and REMANDED.

**II. PROCEEDINGS BELOW**

On July 23, 2013, Plaintiff filed a Title II application for DIB alleging disability beginning December 31, 2008. (Administrative Record (“AR”) 79; see AR 68.) Her application was denied initially on December 13, 2013, and upon reconsideration on March 13, 2014. (AR 93-96, 102-05.) On March 24, 2014,

1 Plaintiff filed a written request for hearing, and a hearing was held on April 29,  
2 2015. (AR 28, 107.) Represented by counsel, Plaintiff appeared and testified,  
3 along with a medical expert and an impartial vocational expert. (AR 30-67.) On  
4 May 14, 2015, the Administrative Law Judge (“ALJ”) found that Plaintiff had not  
5 been under a disability, pursuant to the Social Security Act,<sup>1</sup> from December 31,  
6 2008 through December 31, 2013, the date last insured. (AR 23.) The ALJ’s  
7 decision became the Commissioner’s final decision when the Appeals Council  
8 denied Plaintiff’s request for review. (AR 1-3.) Plaintiff filed this action on  
9 December 2, 2016. (Dkt. No. 1.)

10 The ALJ followed a five-step sequential evaluation process to assess whether  
11 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,  
12 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff did not engage in  
13 substantial gainful activity from December 31, 2008, her alleged onset date (AOD),  
14 through December 31, 2013, her date last insured. (AR 12.) At **step two**, the ALJ  
15 found that Plaintiff has the following severe impairments: obesity; bilateral wrist  
16 pain status-post carpal tunnel release; headaches without pathology; left knee pain  
17 status-post open reduction internal fixation left tibial plateau fracture; left foot  
18 plantar fasciitis; arthritis of the left ankle; right foot problems; lumbago with  
19 chronic low back pain; and degenerative disc disease of the cervical spine. (*Id.*) At  
20 **step three**, the ALJ found that Plaintiff “did not have an impairment or  
21 combination of impairments that met or medically equaled the severity of one of the  
22 listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.” (AR 14.)

23 Before proceeding to step four, the ALJ found that Plaintiff has the residual  
24 functional capacity (“RFC”) to:

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26 <sup>1</sup> Persons are “disabled” for purposes of receiving Social Security benefits if they  
27 are unable to engage in any substantial gainful activity owing to a physical or  
28 mental impairment expected to result in death, or which has lasted or is expected to  
last for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

1 [P]erform less than the full range of light work . . . . Specifically, the  
2 claimant can lift, carry, push, or pull 20 pounds occasionally and 10  
3 pounds frequently; the claimant can stand and/or walk six hours in an  
4 eight-hour workday; the claimant can sit six hours in an eight-hour  
5 workday; the claimant can frequently push and/or pull with the right  
6 lower extremity, but can only occasionally push and/or pull with the  
7 left power extremity; the claimant can perform postural activities,  
8 such as climbing, balancing, stooping, kneeling, crouching, and  
9 crawling, on an occasional basis, but she cannot climb ladders, ropes,  
10 or scaffolds; the claimant is limited to frequent bilateral upper  
11 extremity handling and fingering; the claimant cannot work around  
12 unprotected heights; and the claimant must avoid concentrated  
13 exposure to extreme cold, vibration, and hazards, such as machinery  
14 and heights.

15 (AR 14-15.)

16 At **step four**, based on the Plaintiff’s RFC and the vocational expert’s  
17 testimony, the ALJ found that through the date last insured, Plaintiff was capable of  
18 performing past relevant work as a security guard. (AR 23.) Accordingly, the ALJ  
19 found that Plaintiff had not been under a disability from the AOD through the date  
20 last insured, and thus the ALJ did not proceed to **step five**. (*Id.*)

21 **III. STANDARD OF REVIEW**

22 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s  
23 decision to deny benefits. A court must affirm an ALJ’s findings of fact if they are  
24 supported by substantial evidence and if the proper legal standards were applied.  
25 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “‘Substantial evidence’  
26 means more than a mere scintilla, but less than a preponderance; it is such relevant  
27 evidence as a reasonable person might accept as adequate to support a conclusion.”  
28 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial evidence requirement “by setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

1            “[T]he Commissioner’s decision cannot be affirmed simply by isolating a  
2 specific quantum of supporting evidence. Rather, a court must consider the record  
3 as a whole, weighing both evidence that supports and evidence that detracts from  
4 the Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.  
5 2001) (citations and internal quotation marks omitted). “‘Where evidence is  
6 susceptible to more than one rational interpretation,’ the ALJ’s decision should be  
7 upheld.” *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing  
8 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see Robbins*, 466 F.3d at  
9 882 (“If the evidence can support either affirming or reversing the ALJ’s  
10 conclusion, we may not substitute our judgment for that of the ALJ.”). The Court  
11 may review only “the reasons provided by the ALJ in the disability determination  
12 and may not affirm the ALJ on a ground upon which he did not rely.” *Orn v.*  
13 *Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d  
14 871, 874 (9th Cir. 2003)).

#### 15    **IV. DISCUSSION**

16            Plaintiff raises two issues for review: (1) whether the ALJ’s RFC assessment  
17 is supported by relevant medical evidence in the record; and (2) whether the ALJ  
18 failed to properly consider her subjective complaints and erred in finding them not  
19 credible. (Joint Stipulation (“JS”) 3, Dkt. No. 20.) The Commissioner contends  
20 that the RFC is supported by substantial evidence and that the ALJ properly  
21 evaluated Plaintiff’s credibility. (JS 14, 32.) For the reasons below, the Court  
22 agrees with Plaintiff on the issue of credibility and remands on that ground.

#### 23            **A. The ALJ’s Credibility Determination Is Not Supported By** 24            **Substantial Evidence**

25            Plaintiff argues that the ALJ’s finding that her subjective complaints are not  
26 fully credible is unsupported by or inconsistent with the medical evidence in the  
27 record. (JS 16.) The Commissioner argues that the ALJ’s reasons for finding  
28 Plaintiff not fully credible are clear and convincing, supported by substantial

1 evidence. (JS 23.)

2 **1. Plaintiff's Testimony**

3 At the administrative hearing, Plaintiff testified that she had been disabled  
4 since 2008. (AR 46.) Her symptoms worsened, and by 2011, she had "constant"  
5 instability, pain, and swelling of her left ankle. (AR 46-47.) Plaintiff testified that  
6 her ankle swells and hurts after about 20 minutes of standing, and then she needs to  
7 lie down and elevate it. (AR 47.) She later testified that she could stand for only  
8 about 10 or 15 minutes before needing to sit or lie down. (AR 51.) Plaintiff's  
9 ankle also swells when she sits in a chair with her foot on the floor. (AR 47.) She  
10 can sit for about a half hour, but needs to "sometimes get up" or position her right  
11 leg under her left leg. (AR 51-52.) Plaintiff testified that in order to get up, she  
12 needs to lift her left leg because her knee "pops out of place." (AR 52.) She thinks  
13 her knee is getting worse. (*Id.*)

14 Plaintiff testified that she was given crutches in October 2011, and eight days  
15 later, she was given a CAM walker boot, which she wore for "a few months." (AR  
16 48.) Plaintiff testified that she tried going for walks, but she "couldn't make it"  
17 because her feet would start to hurt when walking to her mailbox and back. (*Id.*)  
18 She saw her doctor again because when she walked, her ankle would twist and she  
19 would fall down. (*Id.*) Plaintiff testified that she was then sent to have a special  
20 brace made, which she currently wears. (AR 49.) Plaintiff "tr[ies] to walk" and  
21 uses a cart or "lean[s] on the basket" when grocery shopping, but "it still hurts [her]  
22 and gets swollen." (*Id.*) Plaintiff testified that she has been using a cane for about  
23 three years. (*Id.*) She does not remember who gave her the cane, but thinks her  
24 doctor and physical therapy each gave her one. (*Id.*)

25 Plaintiff testified that she has been receiving several injections for pain:  
26 "three or four" on each side of her head for her headaches and migraines, some in  
27 her knee for pain and swelling, and some in her left foot. (AR 50.) She received  
28 the injections "about every three months," but only when her headaches last for two

1 or three days. (AR 50-51.) Plaintiff testified that she last received injections for  
2 her knee and foot at the end of the previous year. (AR 51.)

3 Plaintiff testified that most days, she does “normal routine,” washes her face,  
4 and tries to make food for her husband, but she needs to take breaks. (AR 52.) She  
5 will “do a little bit” before taking a break, and her husband will help her when she  
6 cannot do something. (AR 52-53.) Plaintiff testified that “constantly throughout  
7 the day,” she will sit at the table until she feels better or until the pain or swelling  
8 goes down, then will “get up and start again.” (AR 53.) For the previous few  
9 years, Plaintiff needed to lie down at some point during each day. (AR 54.)  
10 Plaintiff testified that it had been over six years since she had a day without needing  
11 to lie down. (AR 53-54.)

12 Plaintiff testified that she had surgery on both hands six years earlier. (AR  
13 54.) She continued to have symptoms in her left hand, but her right hand was  
14 worse and was getting to be as bad as it was before surgery. (*Id.*) Plaintiff testified  
15 that she now gets “shooting pains that go all the way up to [her] shoulder.” (*Id.*)  
16 She testified that she could do tasks such as picking up items and placing them in  
17 little boxes for about 10 or 15 minutes before her hands would swell and hurt. (AR  
18 55.) When that happens, Plaintiff takes pain medication and massages her arm with  
19 an electrical machine that her doctor gave her. (*Id.*) Plaintiff testified that her  
20 doctor has talked about doing another surgery, but said it was her decision. (AR  
21 56.) Plaintiff is “thinking about it” because “it’s getting worse.” (*Id.*)

22 Plaintiff testified that her headaches “are staying about the same” and would  
23 interfere with her ability to work because she gets dizzy and starts vomiting. (AR  
24 56-57.) Plaintiff testified that she would need to take her medicine, lie down, and  
25 usually sleep for about two hours before feeling better. (AR 57.) Plaintiff stated  
26 that she had a migraine headache “right now” at the hearing, which was hurting her  
27 eyes and her forehead “all the way down to [her] temples.” (*Id.*) Plaintiff testified  
28 that she gets headaches almost every other day, about three or four times a week.

1 (AR 58.) Some headaches last more than two days. (*Id.*)

2 Plaintiff testified that she also has depression and anxiety, which are “getting  
3 worse.” (AR 58.) She currently takes medication for her depression. (*Id.*)  
4 Plaintiff testified that she saw her previous doctor, Dr. Don, for therapy for about  
5 six months. (AR 58-59.) Plaintiff testified that her depression interferes with her  
6 ability to concentrate. (AR 59.) She sometimes breaks down, starts crying, and  
7 can’t control herself. (*Id.*) Plaintiff testified that about three or four times a month,  
8 her depression is so bad that she does not leave her house or bedroom. (AR 59-60.)  
9 Nothing triggers her depression; “it just happens,” and within minutes, she can go  
10 from “happy and laughing” to crying. (AR 60.)

## 11 **2. Applicable Legal Standards**

12 “In assessing the credibility of a claimant’s testimony regarding subjective  
13 pain or the intensity of symptoms, the ALJ engages in a two-step analysis.” *Molina*  
14 *v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing *Vasquez v. Astrue*, 572 F.3d  
15 586, 591 (9th Cir. 2009)). “First, the ALJ must determine whether the claimant has  
16 presented objective medical evidence of an underlying impairment which could  
17 reasonably be expected to produce the pain or other symptoms alleged.” *Treichler*  
18 *v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting  
19 *Lingenfelter*, 504 F.3d at 1036) (internal quotation marks omitted). If so, and if the  
20 ALJ does not find evidence of malingering, the ALJ must provide specific, clear  
21 and convincing reasons for rejecting a claimant’s testimony regarding the severity  
22 of his symptoms. *Id.* The ALJ must identify what testimony was found not  
23 credible and explain what evidence undermines that testimony. *Holohan v.*  
24 *Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001). “General findings are  
25 insufficient.” *Lester*, 81 F.3d at 834.

## 26 **3. Discussion**

27 “After careful consideration of the evidence,” the ALJ found that Plaintiff’s  
28 “medically determinable impairments could reasonably be expected to cause the

1 alleged symptoms,” but found that Plaintiff’s “statements concerning the intensity,  
2 persistence and limiting effects of these symptoms are not entirely credible.” (AR  
3 16.) The ALJ relied on the following reasons: (1) activities of daily living; and (2)  
4 lack of objective medical evidence to support the alleged severity of symptoms.  
5 (AR 16-17.) No malingering allegation was made, and therefore, the ALJ’s reasons  
6 must be “clear and convincing.”

7 **a. Reason No. 1: Activities of Daily Living**

8 The ALJ found that the record reflected “inconsistencies regarding the  
9 claimant’s functional abilities,” noting that treatment records “suggest somewhat  
10 normal daily activities,” including caring for Plaintiff’s infant grandson and  
11 engaging in regular exercise. (AR 16.)

12 Inconsistencies between symptom allegations and daily activities may act as  
13 a clear and convincing reason to discount a claimant’s credibility, *see Tommasetti v.*  
14 *Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008); *Bunnell v. Sullivan*, 947 F.2d 341, 346  
15 (9th Cir. 1991), but a claimant need not be utterly incapacitated to obtain benefits.  
16 *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). “If a claimant is able to spend a  
17 substantial part of his day engaged in pursuits involving the performance of  
18 physical functions that are transferable to a work setting, a specific finding as to this  
19 fact may be sufficient to discredit a claimant’s allegations.” *Morgan v. Comm’r of*  
20 *Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999); *accord Vertigan v. Halter*, 260  
21 F.3d 1044, 1050 (9th Cir. 2001).

22 The fact that Plaintiff cared for her infant grandson does not detract from her  
23 overall credibility, as the record does not show that this consumed a substantial part  
24 of Plaintiff’s day. In fact, the record is devoid of any details about the extent of her  
25 childcare duties. Only two medical progress notes from April 2013 and July 2013  
26 report, “Patient states she takes care of her infant grandson.” (AR 369, 411-12.)  
27 Further, the mere ability to perform some tasks is not necessarily indicative of an  
28 ability to perform work activities because “many home activities are not easily



1 transferable to what may be the more grueling environment of the workplace, where  
2 it might be impossible to periodically rest or take medication.” *Fair*, 885 F.2d at  
3 603; *see also Molina*, 674 F.3d at 1112-13 (the ALJ may discredit a claimant who  
4 “participat[es] in everyday activities indicating capacities that are transferable to a  
5 work setting”). The critical difference between such activities “and activities in a  
6 full-time job are that a person has more flexibility in scheduling the former . . . , can  
7 get help from other persons . . . , and is not held to a minimum standard of  
8 performance, as she would be by an employer.” *Bjornson v. Astrue*, 671 F.3d 640,  
9 647 (7th Cir. 2012) (cited with approval in *Garrison v. Colvin*, 759 F.3d 995, 1016  
10 (9th Cir. 2014)). Indeed, Plaintiff stated that she needs rest periods every day, and  
11 when she cannot do something, her husband helps her. (AR 53-54.) Without  
12 additional information about the nature of Plaintiff’s childcare activities, this cannot  
13 be the basis for an adverse credibility finding. *See Trevizo v. Berryhill*, 871 F.3d  
14 664, 682 (9th Cir. 2017) (finding that, with almost no information in the record  
15 about the claimant’s childcare activities, “the mere fact that [the claimant] cares for  
16 small children does not constitute an adequately specific conflict with her reported  
17 limitations”).

18 The ALJ also noted that during multiple treatment visits, Plaintiff reported  
19 regularly exercising “at a moderate to strenuous level.” (AR 16.) Specifically, on  
20 three visits, Plaintiff reported exercising 100 or 120 minutes total per week; on two  
21 visits, she reported exercising 40 minutes three or four times a week; and on one  
22 visit, she reported exercising 50 minutes three times a week. (AR 264, 363, 410,  
23 417, 466, 488.) This amount of time does not constitute a substantial part of  
24 Plaintiff’s day. Additionally, the record does not contain information about the  
25 nature of Plaintiff’s exercise activities. Although the ALJ noted that Plaintiff  
26 reported “moderate to strenuous” exercise to her treating physicians, an apparently  
27 standardized form from Plaintiff’s medical provider identifies “a brisk walk” as an  
28 example of what qualifies as “moderate to strenuous exercise.” (AR 494.)

1 Plaintiff’s treating physicians also regularly advised her to engage in some physical  
2 exercises related to her treatment. (*See, e.g.*, AR 368 (“get regular aerobics  
3 exercise – non-impact”), 370 (“recommend ice, calf stretching, cross training  
4 exercises”), 374 (“Begin a strengthening and conditioning program,” with  
5 instructions for performing leg lifts).) Because the record merely states that  
6 Plaintiff reported exercising—without evidence of what, exactly, her exercise  
7 activities entailed or how they were performed—it is unclear whether this activity is  
8 transferrable to a work setting. *See Vertigan*, 260 F.3d at 1050 (some activities “are  
9 not necessarily transferable to the work setting with regard to the impact of pain”  
10 because “[a] patient may do these activities *despite* pain for therapeutic reasons, but  
11 that does not mean she could concentrate on work despite the pain or could engage  
12 in similar activity for a longer period given the pain involved”).

13 The Court finds that this reason is not a clear and convincing reason,  
14 supported by substantial evidence, to discount Plaintiff’s credibility.

15 **b. Reason No. 2: Lack of Supporting Objective Medical**  
16 **Evidence**

17 The remaining reason for discounting Plaintiff’s subjective testimony—lack  
18 of supporting objective evidence—cannot form the sole basis for discounting pain  
19 testimony. *See Burch*, 400 F.3d at 681 (“Although lack of medical evidence cannot  
20 form the sole basis for discounting pain testimony, it is a factor that the ALJ can  
21 consider in his credibility analysis.”).

22 The ALJ did not give clear and convincing reasons, supported by substantial  
23 evidence, for discounting Plaintiff’s credibility. Accordingly, remand is warranted  
24 on this issue.

25 **B. The Court Declines to Address Plaintiff’s RFC Argument**

26 Having found that remand is warranted, the Court declines to address  
27 Plaintiff’s remaining argument that the ALJ erred in the RFC assessment. *See Hiler*  
28 *v. Astrue*, 687 F.3d 1208, 1212 (9th Cir. 2012) (“Because we remand the case to the

1 ALJ for the reasons stated, we decline to reach [plaintiff's] alternative ground for  
2 remand.”); *see also Augustine ex rel. Ramirez v. Astrue*, 536 F. Supp. 2d 1147,  
3 1153 n.7 (C.D. Cal. 2008) (“[The] Court need not address the other claims plaintiff  
4 raises, none of which would provide plaintiff with any further relief than granted,  
5 and all of which can be addressed on remand.”).

6 **C. Remand For Further Administrative Proceedings**

7 Because further administrative review could remedy the ALJ's errors,  
8 remand for further administrative proceedings, rather than an award of benefits, is  
9 warranted here. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015)  
10 (remanding for an award of benefits is appropriate in rare circumstances). Before  
11 ordering remand for an award of benefits, three requirements must be met: (1) the  
12 Court must conclude that the ALJ failed to provide legally sufficient reasons for  
13 rejecting evidence; (2) the Court must conclude that the record has been fully  
14 developed and further administrative proceedings would serve no useful purpose;  
15 and (3) the Court must conclude that if the improperly discredited evidence were  
16 credited as true, the ALJ would be required to find the claimant disabled on  
17 remand. *Id.* (citations omitted). Even if all three requirements are met, the Court  
18 retains flexibility to remand for further proceedings “when the record as a whole  
19 creates serious doubt as to whether the claimant is, in fact, disabled within the  
20 meaning of the Social Security Act.” *Id.* (citation omitted).

21 Here, remand for further administrative proceedings is appropriate. The  
22 Court finds that the ALJ failed to provide clear and convincing reasons supported  
23 by substantial evidence to discount the credibility of Plaintiff's subjective  
24 testimony.

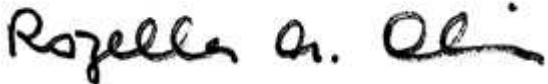
25 On remand, the ALJ shall reassess Plaintiff's subjective allegations. The  
26 ALJ shall then reassess Plaintiff's RFC in light of the credibility reassessment and  
27 proceed through steps four and five to determine what work, if any, Plaintiff is  
28 capable of performing.

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**V. CONCLUSION**

IT IS ORDERED that Judgment shall be entered REVERSING the decision of the Commissioner denying benefits, and REMANDING the matter for further proceedings consistent with this Order.

IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment on counsel for both parties.



DATED: October 27, 2017

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ROZELLA A. OLIVER  
UNITED STATES MAGISTRATE JUDGE

**NOTICE**

**THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW, LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**