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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

M.H.,

Plaintiff,

v.

NANCY A. BERRYHILL<sup>1</sup>, Deputy  
Commissioner for Operations,  
performing the duties and functions not  
reserved to the Commissioner of Social  
Security.

Defendant

No. CV 16-2615 (FFM)

**MEMORANDUM DECISION AND  
ORDER**

Plaintiff brings this action seeking to overturn the decision of the Commissioner of the Social Security Administration (“SSA”), which denied her August 6, 2012 application for a period of disability and Disability Insurance benefits (the “Application”) pursuant to Title II of the Social Security Act (the “Act”). (Administrative Record (“AR”) 128-34.) The parties consented, pursuant

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<sup>1</sup> The Court notes the parties’ footnote in the Joint Stipulation regarding defendant and substitutes Nancy A. Berryhill for Acting Commissioner Carolyn W. Colvin.

1 to 28 U.S.C. § 636(c), to the jurisdiction of the United States Magistrate Judge.  
2 Pursuant to the Case Management Order filed on December 28, 2016, the parties  
3 filed a Joint Stipulation (“JS”) detailing their respective arguments and  
4 authorities. (Dkt. 27.)

5 The Court has reviewed the parties’ Joint Stipulation and the record in this  
6 matter. For the reasons discussed below, the decision of the Commissioner  
7 challenged in this action is reversed and the case is remanded for further  
8 proceedings.

### 9 I. PROCEDURAL HISTORY

10 Plaintiff, a 57 year-old woman with an eleventh grade education,  
11 protectively filed her Application on August 6, 2012, which the Administration  
12 denied initially and on reconsideration. (AR 29, 75-9, 81-6.) The matter was  
13 heard before an Administrative Law Judge (“ALJ”) on March 30, 2015. (AR 25-  
14 53.) The ALJ issued a decision denying Plaintiff’s claim on June 19, 2015. (AR  
15 8-24.) In its decision, the ALJ determined Plaintiff had not engaged in substantial  
16 gainful activity since her disability onset date, January 1, 2011. (AR 13.) The  
17 ALJ further found that Plaintiff suffered the following impairments:

- 18 1. Severe degenerative joint disease of the bilateral hips;
- 19 2. Degenerative disc disease;
- 20 3. Degenerative joint disease of the cervical spine;
- 21 4. Degenerative disc disease of the lumbar spine;
- 22 5. Obesity;
- 23 6. Chronic Pain Syndrome;
- 24 7. Lumbar Radiculopathy; and,
- 25 8. Cervical spine bone spurs.
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1 (AR 13.) However, the ALJ ultimately determined Plaintiff's impairments do  
2 not meet one or more conditions in the Listing of Impairments in 20 C.F.R. Part  
3 404, Subpart P, Appendix 1. (AR 15.)

4 The ALJ determined that Plaintiff still had the residual functional capacity  
5 ("RFC") to perform light exertion work as defined in 20 C.F.R. 404.1567(b), and  
6 in so determining, articulated several exceptions. (AR 15-16.) In the decision,  
7 dated July 19, 2015, the ALJ found that although Plaintiff is not capable of  
8 performing past relevant work, she could perform the requirements of Cashier II,  
9 Information Clerk, and Ticket Seller and therefore is not disabled under the Act.  
10 (AR 21.)

11 The Appeals Council denied Plaintiff's request to review the ALJ's  
12 decision. Thus, it stands as the Commissioner's final decision.

## 13 **II. STANDARD OF REVIEW**

14 This Court is empowered to review decisions by the Commissioner to deny  
15 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security  
16 Administration must be upheld if they are free from legal error and supported by  
17 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001)  
18 (as amended). But if the court determines the ALJ's findings are based on legal  
19 error or are not supported by substantial evidence in the record, the court may  
20 reject the findings and set aside the decision to deny benefits. *Aukland v.*  
21 *Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*, 242 F.3d  
22 1144, 1147 (9th Cir. 2001).

24 "Substantial evidence is more than a mere scintilla, but less than a  
25 preponderance." *Aukland*, 257 F.3d at 1035. Substantial evidence is such  
26 "relevant evidence which a reasonable person might accept as adequate to support  
27 a conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276  
28 F.3d at 459. To determine whether substantial evidence supports the ALJ's

1 finding, the reviewing court must review the administrative record as a whole,  
2 “weighing both the evidence that supports and the evidence that detracts from the  
3 ALJ’s conclusion.” *Mayes*, 276 F.3d at 459. The ALJ’s decision “cannot be  
4 affirmed simply by isolating a specific quantum of supporting evidence.”  
5 *Aukland*, 257 F.3d at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th  
6 Cir. 1998)). If the evidence can reasonably support either affirming or reversing  
7 the ALJ’s decision, the reviewing court “may not substitute its judgment for that  
8 of the ALJ.” *Id.* (quoting *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir.  
9 1992)).

10 In determining a claimant’s credibility, the Court must engage a two-step  
11 process. *Lingenfelter v. Astrue*, 504 F.3d 1028 (9th Cir. 2007). “First, the ALJ  
12 must determine whether the claimant has presented objective medical evidence of  
13 an underlying impairment ‘which could reasonably be expected to produce the  
14 pain or other symptoms alleged.’” *Id.* at 1036 quoting *Bunnell v. Sullivan*, 947  
15 F.2d 344 (9th Cir. 1991) (en banc). “Second, if the claimant meets this first test,  
16 and there is no evidence of malingering, ‘the ALJ can reject the claimant’s  
17 testimony about the severity of [her] symptoms only by offering specific, clear  
18 and convincing reasons for doing so.’” *Id.* “In making a credibility  
19 determination, the ALJ ‘must specifically identify what testimony is credible and  
20 what testimony undermines the claimant’s complaints.’” *Greger v. Barnhart*, 464  
21 F.3d 968, 972 (9th Cir. 2006) (citation omitted). “General findings are  
22 insufficient.” *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (citations  
23 omitted); see also *Orn v. Astrue*, 495 F.3d 625, 635 (9th Cir. 2007) (“The ALJ  
24 must cite the reasons why the claimant’s testimony is unpersuasive.”) (citation  
25 and quotation marks omitted).

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1 (AR 224-5, 231.) In 2012, Plaintiff was noted to have such low oxygen saturation  
2 that she was admitted to the hospital by her doctor, Dr. Phillip Patel, during a  
3 follow-up visit. (AR 231-2.) During the same visit, Plaintiff was noted to be “ill-  
4 appearing.” (AR 232.)

5 After examining Plaintiff in 2012, Dr. Rafal Sosnowski, D.O. and Dr.  
6 Rajendra Vazirani, M.D. concluded Plaintiff suffered from mild to borderline  
7 moderate central canal stenosis due to broad-based disc and osteophyte complex,  
8 mild right neural foraminal narrowing, potentially significant lateral recess  
9 stenosis in her lumbar spine, biforaminal narrowing in her lumbar spine, and mild  
10 left foraminal narrowing and lateral recess stenosis at L5-S1. (AR 250-3.) Dr.  
11 Donna Fletman, M.D., found that Plaintiff had mild dextroscoliosis centered on  
12 L4 and a 5mm anterolisthesis spondylolisthesis of L4 on L5. (AR 256.)  
13 Ultimately, Dr. Fletman diagnosed Plaintiff with cervical degenerative disc  
14 disease. (AR 257.) Dr. Robert MacArthur, M.D., also assessed that Plaintiff  
15 suffered degenerative disc disease C2 on C3, C3 on C4, C4 on C5 with  
16 osteophyte and degenerative disc disease of C5-6 and C6-7 with loss of lordosis  
17 throughout, as well as lumbar spine with left L4-5 stenosis and L5 radiculopathy.  
18 (AR 266.)

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20 In 2013, Plaintiff was assessed to have low back pain from multifactorial  
21 chronic etiologies with features of radiculopathy affecting the L4-5 nerve roots as  
22 well as facet-mediated pain, cervicalgia, and increased BMI. (AR 279.)

23 In 2014, Dr. Brett Wolff, M.D. assessed that Plaintiff had depression and  
24 anxiety, disorder of muscle, ligament, and chronic pain, myalgia/myositis, muscle  
25 spasms, impaired sleep, chronic fatigue, and limitations in range of motion of as  
26 much as 80%. (AR 330-4.) Dr. Wolff opined that Plaintiff could sit or  
27 stand/walk “less than 2 hours,” that she could carry less than 10 pounds  
28 frequently, 10 and 20 pounds occasionally, and could never carry 50 pounds.

1 (AR 332-3.) He also concluded that, in addition to suffering psychological  
2 limitations that would “affect [her] ability to work at a regular job on a sustained  
3 basis[,]” Plaintiff could never twist, stoop (bend), crouch/squat, climb ladders,  
4 and/or climb stairs. (AR 333-4).

5 Plaintiff need not demonstrate that her impairment “could reasonably be  
6 expected to cause the severity of the symptom alleged. . . .” *Smolen v. Chater*, 80  
7 F.3d 1273 (9th Cir. 1996). Rather, Plaintiff carries the lesser burden of proving  
8 only “that [her impairment(s)] could reasonably have caused some degree of the  
9 symptoms.” *Id.* Here, Plaintiff meets this standard because the record contains  
10 adequate objective medical evidence demonstrating an impairment that could  
11 reasonably produce some degree of neck, lower back, and hip pain, as alleged by  
12 Plaintiff. (AR 16.) Indeed, the ALJ determined that Plaintiff’s impairments were  
13 severe, even though the decision did not include the array of diagnoses gleaned  
14 from the record and set forth, *supra*. (AR 13.) Curiously, the balance of the  
15 ALJ’s decision focuses on the impairments caused by Plaintiff’s psychological  
16 diagnoses, not those regarding impairments originating in the spine<sup>2</sup>. (AR 14-5.)  
17 Nonetheless, the ALJ made a Residual Functional Capacity (“RFC”) finding in  
18 light of Plaintiff’s impairments. (AR 15-16.)

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20 Thus, the Court next looks to the second step, and whether the ALJ’s  
21 reasons for rejecting Plaintiff’s testimony about the severity of her symptoms  
22 were specific, clear, and convincing. *See Lingenfelter*, 504 F.3d at 1036. For this  
23 analysis, the Court does not look to Plaintiff’s testimony itself, but rather, at the  
24 ALJ’s decision and the reasons articulated therein, to see if they meet the standard

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27 <sup>2</sup> The ALJ only discusses Plaintiff’s spinal diagnoses at page 7 of the  
28 decision, and only in the context of discounting Plaintiff’s testimony. *See*  
discussion, *infra*. *See also* AR 16-17.

1 set forth in *Lingenfelter*, and by *Bunnell* before it. *See Bunnell*, 947 F.2d at 344.  
2 Here, the ALJ concluded Plaintiff’s allegations “concerning the intensity,  
3 persistence, and limiting effects of his [sic] symptoms are less than fully  
4 credible.” (AR 17.) The ALJ set forth two reasons why she discounted  
5 Plaintiff’s testimony: (1) “The objective medical evidence does not corroborate  
6 the claimant’s subjective allegations,” and (2) the “claimant went on vacation  
7 since the alleged onset date.” (*Id.*)

8 As to the ALJ’s first point, that the objective medical evidence does not  
9 corroborate Plaintiff’s allegations, the record appears to contain ample evidence  
10 which discusses diagnoses consistent with Plaintiff’s allegations. Notably, the  
11 ALJ’s decision does not even discuss Dr. Wolff’s conclusions, which appear to be  
12 favorable to Plaintiff’s position. *See* AR 330-4.

13 As to the ALJ’s second point, that the claimant went on vacation, the Court  
14 is in agreement with Plaintiff’s position that, in isolation, this reason constitutes  
15 improper grounds for discounting a claimant’s testimony. JS 11. First, isolating  
16 the specific fact that Plaintiff went on one vacation does not independently  
17 qualify as substantial evidence adequate to support the ALJ’s determination. *See*  
18 *Aukland*, 257 F.3d at 1035. Second, our Circuit has held that “disability  
19 claimants should not be penalized for attempting to lead normal lives in the face  
20 of their limitations.” *Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014).  
21 The text of the decision makes clear that the ALJ did not view the record as a

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1 whole, as should have been done<sup>3</sup>. *See Reddick v. Chater*, 157 F.3d 715, 720 (9th  
2 Cir. 1998).

3 Accordingly, the ALJ's reasons for rejecting Plaintiff's testimony are not  
4 specific, clear, and convincing.

5 **V. CONCLUSION**

6 For the foregoing reasons, the decision of the Commissioner is reversed  
7 and the matter is remanded for further proceedings consistent with this decision.

8 **IT IS SO ORDERED.**

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10 Dated: July 24, 2018

/S/ Frederick F. Mumm  
11 Frederick F. Mumm  
12 United States Magistrate Judge  
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26 <sup>3</sup> Defendant attempts to distinguish the facts in this case from the holdings in  
27 *Garrison* and *Reddick*, *supra*, and instead to analogize it to the facts in *Tommasetti*  
28 *v. Astrue*, 533 F.3d 1035 (9th Cir. 2008). The Court does not agree with this  
assessment.