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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHEILA A. STRAINER,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No. 5:17-cv-01802-SHK

OPINION AND ORDER

Plaintiff Sheila A. Strainer (“Plaintiff”) seeks judicial review of the final decision of the Commissioner of the Social Security Administration (“Commissioner” or the “Agency”) denying her application for supplemental security income (“SSI”), under Title XVI of the Social Security Act (the “Act”). This Court has jurisdiction, under 42 U.S.C. § 1383(c)(3), and, pursuant to 28 U.S.C. § 636(c), the parties have consented to the jurisdiction of the undersigned United States Magistrate Judge. For the reasons stated below, the Commissioner’s decision is REVERSED and this action is REMANDED for further proceedings consistent with this Order.

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1 **I. BACKGROUND**

2 Plaintiff filed an application for SSI on October 28, 2014, alleging disability
3 beginning on January 1, 2004. Transcript (“Tr.”) 130-36.¹ Following a denial of
4 benefits, Plaintiff requested a hearing before an administrative law judge (“ALJ”)
5 and, on April 11, 2017, ALJ James Carberry determined that Plaintiff was not
6 disabled. Tr. 23-31. Plaintiff sought review of the ALJ’s decision with the Appeals
7 Council, however, review was denied on July 26, 2017. Tr. 1-7. This appeal
8 followed.

9 **II. STANDARD OF REVIEW**

10 The reviewing court shall affirm the Commissioner’s decision if the decision
11 is based on correct legal standards and the legal findings are supported by
12 substantial evidence in the record. 42 U.S.C. § 405(g); Batson v. Comm’r Soc.
13 Sec. Admin., 359 F.3d 1190, 1193 (9th Cir. 2004). Substantial evidence is “more
14 than a mere scintilla. It means such relevant evidence as a reasonable mind might
15 accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389,
16 401 (1971) (citation and internal quotation marks omitted). In reviewing the
17 Commissioner’s alleged errors, this Court must weigh “both the evidence that
18 supports and detracts from the [Commissioner’s] conclusions.” Martinez v.
19 Heckler, 807 F.2d 771, 772 (9th Cir. 1986).

20 ““When evidence reasonably supports either confirming or reversing the
21 ALJ’s decision, [the Court] may not substitute [its] judgment for that of the ALJ.””
22 Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting Batson, 359 F.3d at
23 1196)); see also Thomas v. Barnhart, 278 F.3d 947, 959 (9th Cir. 2002) (“If the
24 ALJ’s credibility finding is supported by substantial evidence in the record, [the
25 Court] may not engage in second-guessing.” (citation omitted)). A reviewing
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27 ¹ A certified copy of the Administrative Record was filed on February 23, 2018. Electronic Case
28 Filing Number (“ECF No.”) 20. Citations will be made to the Administrative Record or
Transcript page number rather than the ECF page number.

1 court, however, “cannot affirm the decision of an agency on a ground that the
2 agency did not invoke in making its decision.” Stout v. Comm’r Soc. Sec. Admin.,
3 454 F.3d 1050, 1054 (9th Cir. 2006) (citation omitted). Finally, a court may not
4 reverse an ALJ’s decision if the error is harmless. Burch v. Barnhart, 400 F.3d 676,
5 679 (9th Cir. 2005) (citation omitted). “[T]he burden of showing that an error is
6 harmful normally falls upon the party attacking the agency’s determination.”
7 Shinseki v. Sanders, 556 U.S. 396, 409 (2009).

8 III. DISCUSSION

9 A. Establishing Disability Under The Act

10 To establish whether a claimant is disabled under the Act, it must be shown
11 that:

12 (a) the claimant suffers from a medically determinable physical or
13 mental impairment that can be expected to result in death or that has
14 lasted or can be expected to last for a continuous period of not less than
15 twelve months; and

16 (b) the impairment renders the claimant incapable of performing the
17 work that the claimant previously performed and incapable of
18 performing any other substantial gainful employment that exists in the
19 national economy.

20 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.

21 § 423(d)(2)(A)). “If a claimant meets both requirements, he or she is ‘disabled.’”

22 Id.

23 The ALJ employs a five-step sequential evaluation process to determine
24 whether a claimant is disabled within the meaning of the Act. Bowen v. Yuckert,
25 482 U.S. 137, 140 (1987); 20 C.F.R. § 416.920(a). Each step is potentially
26 dispositive and “if a claimant is found to be ‘disabled’ or ‘not-disabled’ at any step
27 in the sequence, there is no need to consider subsequent steps.” Tackett, 180 F.3d
28 at 1098; 20 C.F.R. § 416.920. The claimant carries the burden of proof at steps one

1 through four, and the Commissioner carries the burden of proof at step five.
2 Tackett, 180 F.3d at 1098.

3 The five steps are:

4 Step 1. Is the claimant presently working in a substantially gainful
5 activity [(“SGA”)]? If so, then the claimant is “not disabled” within
6 the meaning of the [] Act and is not entitled to [SSI]. If the claimant is
7 not working in a [SGA], then the claimant’s case cannot be resolved at
8 step one and the evaluation proceeds to step two. See 20 C.F.R. §
9 404.1520(b).[²]

10 Step 2. Is the claimant’s impairment severe? If not, then the
11 claimant is “not disabled” and is not entitled to [SSI]. If the claimant’s
12 impairment is severe, then the claimant’s case cannot be resolved at
13 step two and the evaluation proceeds to step three. See 20 C.F.R. §
14 404.1520(c).

15 Step 3. Does the impairment “meet or equal” one of a list of
16 specific impairments described in the regulations? If so, the claimant is
17 “disabled” and therefore entitled to [SSI]. If the claimant’s
18 impairment neither meets nor equals one of the impairments listed in
19 the regulations, then the claimant’s case cannot be resolved at step
20 three and the evaluation proceeds to step four. See 20 C.F.R.
21 § 404.1520(d).

22 Step 4. Is the claimant able to do any work that he or she has
23 done in the past? If so, then the claimant is “not disabled” and is not
24 entitled to [SSI]. If the claimant cannot do any work he or she did in
25 the past, then the claimant’s case cannot be resolved at step four and
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28 ² The Court has also considered the parallel regulations set forth in 20 C.F.R. § 416.920 et seq.,
when analyzing the ALJ’s denial of Plaintiff’s SSI application.

1 the evaluation proceeds to the fifth and final step. See 20 C.F.R.
2 § 404.1520(e).

3 Step 5. Is the claimant able to do any other work? If not, then
4 the claimant is “disabled” and therefore entitled to [SSI]. See 20
5 C.F.R. § 404.1520(f)(1). If the claimant is able to do other work, then
6 the Commissioner must establish that there are a significant number of
7 jobs in the national economy that claimant can do. There are two ways
8 for the Commissioner to meet the burden of showing that there is other
9 work in “significant numbers” in the national economy that claimant
10 can do: (1) by the testimony of a vocational expert [(“VE”)], or (2) by
11 reference to the Medical-Vocational Guidelines at 20 C.F.R. pt. 404,
12 subpt. P, app. 2 [(“the Listings”)]. If the Commissioner meets this
13 burden, the claimant is “not disabled” and therefore not entitled to
14 [SSI]. See 20 C.F.R. §§ 404.1520(f), 404.1562. If the Commissioner
15 cannot meet this burden, then the claimant is “disabled” and therefore
16 entitled to [SSI]. See id.

17 Id. at 1098-99.

18 **B. Summary Of ALJ’s Findings**

19 The ALJ found at step one, that “[Plaintiff] has not engaged in [SGA] since
20 October 28, 2014, the application date (20 CFR 416.971 et seq.)” Tr. 25. At step
21 two, the ALJ found that “[Plaintiff] has the following severe impairments:
22 headaches and depressive disorder (20 CFR 416.920(c)).” Id. At step three, the
23 ALJ found that “[Plaintiff] does not have an impairment or combination of
24 impairments that meets or medically equals the severity of one of the listed
25 impairments in [the Listings].” Tr. 26.

26 In preparation for step four, the ALJ found that Plaintiff has the residual
27 functional capacity (“RFC”) to:
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1 perform less than the full range of medium work as defined in 20 CFR
2 416.967(c). [Plaintiff] can lift/carry and push/pull 50 pounds
3 occasionally and 25 pounds frequently. [Plaintiff] can stand/walk 6
4 hours in an 8 hour workday, with normal breaks. Sitting is unrestricted.
5 There are no postural restrictions or functional impairments of the
6 hand. [Plaintiff] is limited to simple, routine and repetitive tasks.

7 Id. At step four, the ALJ found that “[Plaintiff] has no past relevant work. Tr. 29.

8 In preparation for step five, the ALJ noted that “[Plaintiff] was born on
9 November 25, 1957 and was 56 years old, which is defined as an individual of
10 advanced age, on the date the application was filed (20 CFR 416.963).” Tr. 30.
11 The ALJ observed that “[Plaintiff] had at least a high school education and is able
12 to communicate in English (20 CFR 416.968).” Id. The ALJ then added that
13 “[t]ransferability of job skills is not an issue because [Plaintiff] does not have
14 [PRW] (20 CFR 416.968).” Id.

15 At step five, the ALJ found that “[c]onsidering [Plaintiff’s] age, education,
16 work experience, and [RFC], there are jobs that exist in significant numbers in the
17 national economy that [Plaintiff] can perform (20 CFR 416.969 and 416.969(a)).”
18 Id. Specifically, the ALJ found that Plaintiff could perform the “medium,
19 unskilled” occupations of “hand packager,” as defined in the dictionary of
20 occupational titles (“DOT”) at DOT 920.587-018, “harvest worker, DOT
21 403.687-018,” and “laundry worker, DOT 361.685-018.” Id.

22 After finding that “[Plaintiff] is capable of making a successful adjustment to
23 other work that exists in significant numbers in the national economy,” the ALJ
24 concluded that “[a] finding of not disabled is . . . appropriate under the framework
25 of the above-cited rule.” Id. (internal quotation marks omitted). The ALJ,
26 therefore, found that “[Plaintiff] has not been under a disability, as defined in the
27 . . . Act, since October 28, 2014, the date the application was filed (20 CFR
28 416.920(g)).” Tr. 31.

1 **C. Issue Presented**

2 In this appeal, Plaintiff raises only one issue: whether the ALJ properly
3 considered Plaintiff’s symptom testimony. ECF No. 23, Joint Stipulation at 4.

4 **1. ALJ’s Consideration Of Plaintiff’s Symptom Statements**

5 The ALJ found that Plaintiff’s “medically determinable impairments could
6 reasonably be expected to cause the alleged symptoms; however, [Plaintiff’s]
7 statements concerning the intensity, persistence, and limiting effects of these
8 symptoms are not entirely consistent with the medical evidence and other evidence
9 in the record for the reasons explained in this decision.” Tr. 27. The ALJ made
10 the following specific finding with respect to Plaintiff’s statements:

11 [Plaintiff’s] statements are not consistent with the medical evidence.
12 As indicated above, the objective evidence does not support [Plaintiff’s]
13 allegations of severity. Moreover, as discussed above, [Plaintiff] has a
14 wide range of activities of daily living [(“ADLs”)]. Some of the
15 physical and mental abilities and social interactions required in order to
16 perform these activities are the same as those necessary for obtaining
17 and maintaining employment. The undersigned finds [Plaintiff’s]
18 ability to participate in such activities discredits [Plaintiff’s] allegations
19 of functional limitations.

20 Tr. 29.

21 With respect to the inconsistencies between the medical evidence and
22 Plaintiff’s testimony, the ALJ noted that “[i]n 2015, [Plaintiff] reported anxiety,
23 depression, paranoia and auditory hallucinations, but notations indicated that
24 [Plaintiff] had been off her medication and had missed appointments.” Id.
25 (citations omitted). The ALJ added that records from 2016 “indicated
26 improvement” and that in August and December 2016, Plaintiff “reported doing
27 better and had a stable mood; she denied nightmares and voices . . . [and] was calm,
28 cooperative, and interacted well.” Id. (citations omitted). The also ALJ added that

1 Plaintiff’s medical records during this time period indicated the Plaintiff had “good
2 memory, intellectual functioning[,] and abstract thinking” because Plaintiff
3 “was able to perform serial sevens.” Id. (citing Tr. 241).

4 With respect to the “wide range of [ADLs]” Plaintiff could perform, the
5 ALJ noted earlier in his decision that Plaintiff “does the cooking, shopping, and
6 housekeeping[,]” she “studies the bible and goes to appointments[,]” and “does
7 bible ministry with the homeless people in the park[,]” she “is able to manage
8 funds and pay bills[,]” and “she walks her dog and plans to join a gym.” Id.

9 **2. Plaintiff’s Argument**

10 Plaintiff argues that the ALJ erred by failing to provide clear and convincing
11 reasons for rejecting her testimony. ECF No. 23, Joint Stipulation at 11.
12 Specifically, Plaintiff argues that the ALJ erred by: (1) “simply set[ting] forth the
13 oft rejected boilerplate language that numerous courts have rejected as
14 boilerplate”; (2) rejecting her testimony because it lacks support in the objective
15 medical evidence, “because a rejection of a claimant’s testimony based on a lack of
16 objective evidence is always legally insufficient”; and (3) rejecting her testimony
17 based on her ADLs because “the ALJ did not describe how [her ADLs] are
18 inconsistent with [her] specific symptom claims.” Id. at 6-12.

19 **3. Defendant’s Response**

20 Defendant responds by arguing that the ALJ provided “multiple valid
21 reasons” for rejecting Plaintiff’s symptom statements. Id. at 13. Defendant argues
22 that the ALJ found that Plaintiff’s symptom statements were inconsistent with the
23 objective medical evidence and Plaintiff’s “admitted level of activity” and also
24 found that Plaintiff’s symptoms improved when she adhered to her treatment
25 regimen. Id. at 13-14.

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1 **4. Standard To Review ALJ’s Analysis Of Plaintiff’s**
2 **Testimony**

3 When a claimant has medically documented impairments that “might
4 reasonably produce the symptoms or pain alleged and there is no evidence of
5 malingering, the ALJ must give ‘specific, clear, and convincing reasons for
6 rejecting’ the testimony by identifying ‘which testimony [the ALJ] found not
7 credible” and explaining ‘which evidence contradicted that testimony.’” Laborin
8 v. Berryhill, 867 F.3d 1151, 1155 (9th Cir. 2017) (emphasis in original) (quoting
9 Brown-Hunter v. Colvin, 806 F.3d 487, 489, 494 (9th Cir. 2015). “This is not an
10 easy requirement to meet: ‘the clear and convincing standard is the most
11 demanding required in Social Security cases.’” Garrison v. Colvin, 759 F.3d 995,
12 1015 (9th Cir. 2014) (quoting Moore v. Comm’r Soc. Sec. Admin., 278 F.3d 920,
13 924 (9th Cir. 2002)).

14 “The ALJ may consider inconsistencies either in the claimant’s testimony or
15 between the testimony and the claimant’s conduct.” Molina v. Astrue, 674 F.3d
16 1104, 1112 (9th Cir. 2012). Also, while an ALJ cannot reject the severity of
17 subjective complaints solely on the lack of objective evidence, the ALJ may
18 nonetheless look to the medical record for inconsistencies. See Morgan v. Comm’r
19 Soc. Sec. Admin., 169 F.3d 595, 599-600 (9th Cir. 1999) (finding that “[t]he ALJ
20 provided clear and convincing reasons for rejecting [Plaintiff’s] testimony” by
21 “point[ing] to specific evidence in the record—including reports by [Plaintiff’s
22 doctors]—in identifying what testimony was not credible and what evidence
23 undermined [Plaintiff’s] complaints.”).

24 **5. ALJ’s Decision Is Not Supported By Substantial Evidence**

25 Here, the Court agrees with Plaintiff’s argument that the ALJ’s boilerplate
26 language at the outset of his adverse credibility finding does nothing to assist this
27 Court with its analysis of the ALJ’s finding. See Treichler v. Comm’r Soc. Sec.
28 Admin., 775 F.3d 1090, 1103 (9th Cir. 2014) (finding that “[a]n ALJ’s ‘vague

1 allegation' that a claimant's testimony is 'not consistent with the objective medical
2 evidence,' without any 'specific findings in support' of that conclusion is
3 insufficient for our review" and that this "language . . . in ALJ decisions adds
4 nothing" to the Court's analysis of the ALJ's finding (internal citations omitted)).
5 The Court finds, however, that the mere inclusion of this boilerplate language was
6 harmless and does not constitute reversible error. See Laborin, 867 F.3d at 1154-55
7 (internal citation omitted) (finding "that inclusion of [similar] flawed boilerplate
8 language is not, by itself, reversible error and can be harmless. It does not,
9 however, add anything to the ALJ's determination of either the RFC or the
10 claimant's credibility.").

11 The Court next turns to the ALJ's finding that Plaintiff's statements are not
12 consistent with the medical evidence, and finds that the Agency needs to
13 reexamine this issue. The ALJ cited treatment notes indicating that Plaintiff had
14 missed medical appointments and had not taken her medications at times as a
15 reason for finding Plaintiff's statements not credible. However, a close inspection
16 of the record reveals that Plaintiff provided good reasons for missing some
17 appointments and for not taking all of her prescribed medication at times.

18 With respect to Plaintiff missing some of her medical appointments, Plaintiff
19 explained at the hearing that she had forgotten about the appointments and stated
20 that if she does not write her appointments down, if is not given an appointment
21 reminder card, or if the doctor does not call her to remind her of her appointment,
22 she forgets about them. Tr. 49, 50. Because Plaintiff claims that she cannot work
23 primarily due to mental impairments, including difficulty with memory and focus,
24 and because Plaintiff missed some appointments because she had forgotten about
25 them, the Court finds that Plaintiff provided a valid reason for missing some of her
26 medical appointments. See Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d
27 1155, 1162 (9th Cir. 2008) (internal citation omitted) ("[A]lthough a conservative
28 course of treatment can undermine allegations of debilitating pain, such fact is not a

1 proper basis for rejecting the claimant’s credibility where the claimant has a good
2 reason for not seeking more aggressive treatment.”).

3 Moreover, Plaintiff’s medical records also suggest that she might have had
4 problems attending her medical appointments due to potential restrictions her
5 husband placed on her leaving her home. Tr. 259, 265, 267. For example, in April
6 2016, Plaintiff’s mental health treatment provider, Dr. Jun Yang, noted that
7 Plaintiff “has been missing her appointment for two months. She says her husband
8 caused a lot of stress on her.” Tr. 267. In May 2016, Dr. Yang noted, again, that
9 Plaintiff “still complains her husband increase stress on her.” Tr. 265. In
10 December 2016, Dr. Yang elaborated on Plaintiff’s problems at home by noting
11 that Plaintiff “complains her husband is very controlling[,]” “she is being mentally
12 abused by her husband[,]” and “[s]he needs getting approval before she can leave
13 out[,]” and “wants to move out as soon as possible.” Tr. 259. Accordingly,
14 because Plaintiff’s attendance issues might have been caused by her inability to
15 leave the house without her husband’s permission, in addition to her inability to
16 remember appointments without assistance, the Court finds that Plaintiff’s
17 inability to attend all of her medical appointments is not a clear and convincing
18 reason supported by substantial evidence for finding her statements not credible

19 With respect to the ALJ’s reasoning that Plaintiff’s statements were not
20 credible because Plaintiff failed to take her medication at times, the record reveals
21 that Plaintiff provided a good reason for this as well. Specifically, Plaintiff reported
22 adverse side effects to several of her medications at multiple points throughout the
23 record. See e.g., Tr. 245 (Zoloft makes Plaintiff nauseous); Tr. 255 (Plaintiff
24 “stopped medication after 2 wks. [because] of [side effects including] vomiting”);
25 Tr. 263 (“Terazosin makes [Plaintiff’s] headache [sic]. She doesn’t want to
26 continue this medication[.]”). Accordingly, because Plaintiff provided a valid
27 reason for not taking all of her medications at times—some of them reportedly
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1 caused nausea, vomiting, and headaches—this was not a clear and convincing
2 reason for finding Plaintiff’s statements not credible. Carmickle, 533 F.3d at 1162.

3 Finally, the ALJ’s finding—that Plaintiff’s symptom statements were not
4 supported by the medical evidence due to medical improvement in 2016 and
5 Plaintiff’s ability to perform serial sevens—is not supported by substantial
6 evidence. With respect to Plaintiff’s purported medical improvement in 2016, the
7 ALJ’s discussion of the record erroneously ignores findings that demonstrate
8 Plaintiff’s condition may not have improved during that time period. See e.g., Tr.
9 267 (in April 2016, Plaintiff “endorse[d] high level of anxiety[,]” she “still s[aw]
10 shadows and spots frequently” and “fe[lt] paranoid and suspicious sometimes[,]”
11 and was “isolated and socially withdraw[n].”); Tr. 265 (in May 2016, Plaintiff had
12 three nightmares over the past three months, still felt paranoid and suspicious “on
13 and off” and was “slightly isolated and socially withdrawa[n].”); Tr. 261 (in
14 October 2016, Plaintiff “endorses worsening anxiety. She has had several panic
15 attacks. She still has nightmares on and off . . . [and] her sleeping has not
16 improved. She lacks energy and her concentration is low.”); Tr. 259 (in December
17 2016, Plaintiff “endorse[d] worsening anxiety, low mood, panic attacks. She has
18 nightmares two to three times a month. She hears voices again and feels paranoid.
19 She sleeps a[bout] four hours at night.”). Accordingly, because the ALJ
20 improperly relied on select portions of Plaintiff’s medical records, while ignoring
21 others, the Court finds that Plaintiff’s purported medical improvement was not a
22 valid reason for finding Plaintiff’s statements not credible. See Holohan v.
23 Massanari, 246 F.3d 1195, 1207-08 (9th Cir. 2001) (holding an ALJ cannot
24 selectively rely on some entries in plaintiff’s records while ignoring others).

25 Moreover, with respect to the ALJ’s finding that Plaintiff’s ability to
26 perform serial sevens somehow deters from Plaintiff’s credibility by indicating that
27 she has greater memory, intellectual functioning, and abstract thinking than she
28 alleged, the record also does not support this conclusion. Rather, a close inspection

1 of the portion of record relied upon by the ALJ for the proposition that Plaintiff can
2 perform serial sevens, reveals that no such finding was made in that portion of the
3 record. See Tr. 241. Further, the Court cannot find anywhere in the record where
4 Plaintiff was found to be able to perform serial sevens. The Court, however, was
5 able to find two instances in the record where Plaintiff was found to be unable to
6 perform serial sevens. See Tr. 253 (the mental status examiner noting that
7 Plaintiff’s attempt to perform serial sevens yielded the following “poor” results:
8 “100 – 7 = ‘96’ – 7 = ‘90’”); Tr. 236 (Plaintiff “could not perform either serial
9 seven subtractions from 100 or serial three subtractions from 100.”).

10 Accordingly, the ALJ’s finding that Plaintiff’s symptom statements were not
11 supported by the medical evidence, is not a clear and convincing reason for finding
12 Plaintiff’s statements not credible.

13 Finally, the Court turns to the ALJ’s finding that Plaintiff’s activities
14 undermine Plaintiff’s credibility, and finds that the Agency needs to reexamine this
15 for two reasons. First, the ALJ did not elaborate on which daily activities conflicted
16 with which part of Plaintiff’s testimony. See Burrell v. Colvin, 775 F.3d 1133, 1138
17 (9th Cir. 2014) (citation an internal quotation marks omitted) (“[g]eneral findings
18 are insufficient; rather, the ALJ must identify what testimony is not credible and
19 what evidence undermines the claimant’s complaints.”). Here, as discussed
20 above, the ALJ found that some of the abilities required to perform Plaintiff’s
21 “wide range of [ADLs] . . . are the same as those necessary for obtaining and
22 maintaining employment.” Tr. 29. This finding is insufficient to meet the
23 “requirements of specificity” contemplated in Burrell. Burrell, 775 F.3d at 1138.

24 Second, the ALJ overstated Plaintiff’s capabilities to perform certain ADLs.
25 For example, contrary to the ALJ’s finding that Plaintiff “does the cooking,
26 shopping, and housekeeping[,]” Plaintiff’s testimony from the hearing reveals that
27 she was much more limited in her abilities to perform these tasks without any
28 assistance. Tr. 29. Plaintiff testified that she cooks only “once in a while[,]” that

1 she shares the responsibilities of cleaning, shopping, and laundry with her husband,
2 and that her ability to focus prevents her from doing these tasks independently. Tr.
3 46-47. Specifically, Plaintiff testified that she “can’t focus for long enough” to do
4 most tasks, and stated that if, for example, she is “doing dishes and somebody says,
5 hey, can you help me do this and I go help them do it, I can’t remember I was doing
6 dishes so I don’t do them.” Tr. 46. Plaintiff also testified that in addition to
7 distractions from external stimuli that limit her ability to focus and complete tasks,
8 she also has difficulty focusing due to visual and auditory hallucinations, some of
9 which, occur daily. Tr. 48-49. Plaintiff stated that as a result of her inability to
10 focus, she is only able to complete household tasks with the help of her husband,
11 and that when she has attempted to do these tasks on her own in the past, she
12 “messed [them] up.” Tr. 49. Plaintiff added that “[i]f [her] husband wasn’t
13 there, [she]’d be really having problems.” Tr. 50.

14 Accordingly, the Court finds that Plaintiff’s ability to perform these tasks in
15 the limited way they were actually performed—only with the assistance of
16 Plaintiff’s husband—is not a clear and convincing reason to reject Plaintiff’s
17 statements, because there is no indication in the record of how these tasks, when
18 viewed as they were actually performed, translate to a work setting. See Reddick v.
19 Chater, 157 F.3d 715, 722 (9th Cir. 1998) (“Only if the level of activity were
20 inconsistent with Claimant’s claimed limitations would these activities have any
21 bearing on Claimant’s credibility” and “disability claimants should not be
22 penalized for attempting to lead normal lives in the face of their limitations.”);
23 Orn, 495 F.3d at 639 (quoting Vertigan v. Halter, 260 F.3d 1044, 1050 (9th Cir.
24 2001)) (The Ninth Circuit “‘has repeatedly asserted that the mere fact that a
25 plaintiff has carried on certain daily activities . . . does not in any way detract from
26 her credibility as to her overall disability.’”); Fair v. Bowen, 885 F.2d 597, 603 (9th
27 Cir. 1989) (It is only when a “claimant is able to spend a substantial part of h[er]
28 day engaged in pursuits involving the performance of physical functions that are

1 transferable to a work setting, [that] a specific finding as to this fact may be
2 sufficient to discredit an allegation of disabling excess pain.”).

3 **IV. CONCLUSION**

4 Because the Commissioner’s decision is not supported by substantial
5 evidence, IT IS HEREBY ORDERED that the Commissioner’s decision is
6 **REVERSED** and this case is **REMANDED** for further administrative proceedings
7 under sentence four of 42 U.S.C. § 405(g). See Garrison, 759 F.3d at 1009
8 (holding that under sentence four of 42 U.S.C. § 405(g), “[t]he court shall have
9 power to enter . . . a judgment affirming, modifying, or reversing the decision of the
10 Commissioner . . . , with or without remanding the cause for a rehearing.” (citation
11 and internal quotation marks omitted)).

12 IT IS SO ORDERED.

13
14 DATED: 7/30/2018



15 HONORABLE SHASHI H. KEWALRAMANI
16 United States Magistrate Judge