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

ROBYN L. F.,¹

Plaintiff,

v.

ANDREW M. SAUL,²
Commissioner of Social Security,

Defendant.

Case No. EDCV 19-00656-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Robyn L. F. (“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 the matter is REMANDED.

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¹ Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

² Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Andrew M. Saul, the current Commissioner of Social Security, is hereby substituted as the defendant herein.

1 **II. PROCEEDINGS BELOW**

2 On July 17, 2015, Plaintiff filed a Title II application for a period of disability
3 and DIB alleging disability beginning on August 17, 2014. (Administrative Record
4 (“AR”) 101, 189.) Her application for a period of disability and DIB was denied on
5 December 4, 2015, and upon reconsideration on February 25, 2016. (AR 117, 126.)
6 Plaintiff filed a written request for hearing, and a hearing was held on February 14,
7 2018. (AR 35-86, 132.) Represented by counsel, Plaintiff appeared and testified,
8 along with an impartial vocational expert. (AR 35-86.) On April 17, 2018, the
9 Administrative Law Judge (“ALJ”) found that Plaintiff had not been under a
10 disability, pursuant to the Social Security Act, from August 17, 2014, through the date
11 of decision. (AR 28-29.) The ALJ’s decision became the Commissioner’s final
12 decision when the Appeals Council denied Plaintiff’s request for review. (*See* AR 1.)

13 The ALJ followed a five-step sequential evaluation process to assess whether
14 Plaintiff was disabled under the Social Security Act. *See Lester v. Chater*, 81 F.3d
15 821, 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged
16 in substantial gainful activity since August 17, 2014, the alleged onset date (“AOD”).
17 (AR 18.) At **step two**, the ALJ found that Plaintiff had the following severe
18 impairments: chronic pain syndrome; status post hip replacement; osteoarthritis of the
19 lumbar spine and knees; degenerative joint disease of the left shoulder; degenerative
20 disc disease of the lumbar spine and cervical spine with spinal canal and neural
21 foraminal stenosis; and cervical radiculopathy. (AR 19.) At **step three**, the ALJ
22 found that Plaintiff “d[id] not have an impairment or combination of impairments that
23 me[t] or medically equals the severity of one of the listed impairments in 20 CFR Part
24 404, Subpart P, Appendix 1.” (AR 22.)

25 Before proceeding to step four, the ALJ found that through September 30, 2013,
26 Plaintiff had the residual functional capacity (“RFC”) to:

27 [P]erform light work . . . except she will require the option to change
28 positions from sitting to standing once per hour for 10 minutes while

1 remaining on task, in addition to normal breaks and lunch; can
2 frequently push or pull with the left upper extremity; can never reach
3 overhead with the left upper extremity; can occasionally climb ramps
4 and stairs; can never climb ladders, ropes or scaffolds; can occasionally
5 balance or stoop; can occasionally kneel, crouch or crawl; can have
6 occasional concentrated exposure to extreme cold; and can have no
7 concentrated exposure to hazards such as moving machinery and
8 unprotected heights.

9 (AR 22.)

10 At **step four**, the ALJ found that Plaintiff has been unable to perform her past
11 work through the date last insured. (AR 26.) At **step five**, the ALJ found that “there
12 are jobs that exist in significant numbers in the national economy that [Plaintiff] can
13 perform.” (AR 27.) Accordingly, the ALJ determined that, as to Plaintiff’s claim for
14 period of disability and DIB, Plaintiff had not been under a disability from the AOD
15 through April 17, 2018. (AR 28-29.)

16 **III. STANDARD OF REVIEW**

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

28 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a
specific quantum of supporting evidence. Rather, a court must consider the record
as a whole, weighing both evidence that supports and evidence that detracts from the

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

11 **IV. DISCUSSION**

12 Plaintiff raises the following issues for review: (1) whether the ALJ properly
13 evaluated the medical evidence of record; and (2) whether the ALJ properly evaluated
14 Plaintiff’s credibility and subjective complaints. (Joint Submission (“JS”) 2.) For the
15 reasons discussed below, the Court agrees with Plaintiff regarding the assessment of
16 her testimony and remands on that ground.

17 **A. The ALJ Improperly Evaluated Plaintiff’s Subjective Complaints**³

18 Plaintiff argues that the ALJ failed to properly evaluate Plaintiff’s credibility
19 and subjective complaints. (*See JS 18-22, 26-27.*) The Commissioner contends that
20 the ALJ provided well-supported reasons for discounting Plaintiff’s subjective
21 allegations and thus the ALJ’s decision should be upheld. (JS 23-26.)

22 **1. Plaintiff’s February 14, 2018 Testimony**

23 Plaintiff lives with her husband and daughter. (AR 53.) On a typical day,
24 Plaintiff spends the day sitting on her couch. (*Id.*) Plaintiff does not do housework.
25 (AR 54.) Plaintiff’s husband cooks and does laundry. (*Id.*) Plaintiff does not take

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27 ³ Because subjective symptom testimony is one factor that the ALJ must consider
28 when assessing a claimant’s RFC, the Court addresses the issue of credibility first
before discussing the overall RFC determination.

1 care of anyone else and is not primarily responsible for her pets. (*Id.*) She does not
2 do yardwork. (*Id.*) She does not exercise because it is not comfortable. (*Id.*)
3 However, she does walk to the mailbox. (*Id.*)

4 Plaintiff testified that she used to clean the pool, do laundry, and cook, but
5 stopped two years ago because cooking required her to stand for too long and the
6 laundry basket was too heavy. (AR 55.) She would have to separate her tasks into
7 different days. (AR 56-57.) For example, one day she would wash the darks and
8 another day she would wash the lights. (*Id.*) It would take her two or three hours to
9 complete her task. (AR 57.) During that time, she would sit down and rest because
10 her lower back, hip, and hands would hurt. (*Id.*)

11 Plaintiff testified that she does not go out, but did go out the day of the Super
12 Bowl to a friend's house. (AR 54.) She does not see friends unless they go to her
13 house. (*Id.*) She has a driver's license and drives two or three times per week
14 primarily for doctors' appointments. (AR 44-45.) Plaintiff also drives once a week
15 to check on her parents. (AR 45, 64-65.) The drive to her parents' home is
16 approximately 15 to 20 miles roundtrip. (AR 45, 65.) Plaintiff spends time with her
17 parents, but does not do things for them. (AR 65.) Plaintiff's friend drove her to the
18 hearing. (AR 44, 64.) Plaintiff uses a cane to help her walk. (AR 52.)

19 Plaintiff explained that she is unable to work because she cannot lift things.
20 (AR 47.) She is also unable to sit or stand for long periods of time. (*Id.*) She feels
21 uncomfortable all the time. (*Id.*) Her hands hurt when she grabs things. (*Id.*)
22 Plaintiff is left-handed and testified that her left hand is "sore all the time." (*Id.*)

23 Plaintiff worked for Stater Brothers for 25 years. (AR 47-49.) During her time
24 at Stater Brothers, Plaintiff worked as a receiver and worked the night crew. (AR
25 47-48.) As a receiver, she "broke down pallets" and "built pallets." (AR 47.)
26 Plaintiff would also "check," "stock shelves," and "throw frozen food." (AR 47-48.)
27 When Plaintiff worked on the night crew, Plaintiff stocked shelves. (AR 48.) This
28 work involved heavy lifting, in that Plaintiff had to break down pallets, wheel the

1 items to the aisle, and stock the items on the shelves, including items as heavy as dog
2 food bags. (*Id.*) When the store opened, Plaintiff would work the cash register. (AR
3 49.)

4 Plaintiff left her job in September 2014 because she had a hysterectomy,
5 followed by a hip replacement. (AR 49.) Due to the procedures, Plaintiff stopped
6 working for six months. (*Id.*) Plaintiff testified that she was required to return to
7 work in February 2015, because failure to return to work would have resulted in her
8 termination. (*Id.*) She explained that she was unable to continue with the job because
9 it was “too physical” and “too hard.” (AR 50.) In May 2015, Plaintiff heard a “pop”
10 in her hip that had just been replaced. (*Id.*) Plaintiff is still not aware if any damage
11 resulted. (*Id.*)

12 As to her lumbar spine, Plaintiff testified that issues with her lower back
13 prevent her from working because she cannot lift anything, and she cannot sit or stand
14 for long periods of time. (AR 50.) Plaintiff explained that even sitting at the hearing
15 was “uncomfortable” because of the pressure on her back. (AR 51.)

16 Plaintiff also testified that due to a shoulder injury she is unable to lift over her
17 head. (AR 51.) Her left shoulder will “snap” and “pop.” (*Id.*) Plaintiff has been
18 told that she will need a knee replacement. (*Id.*) Plaintiff takes Cymbalta for
19 depression, but does not see a therapist. (AR 52.) She also explained that she has
20 root degeneration and root compression on her upper back causing “shooting pains.”
21 (AR 53.) The pain happens when she is “just sitting.” (*Id.*) As a result, Plaintiff has
22 trouble sleeping. (*Id.*) Plaintiff tosses and turns, when one side starts to get sore, she
23 has to turn a different way. (*Id.*) Plaintiff also has trouble hearing. (AR 39-40.)

24 Plaintiff has consulted with a neurosurgeon regarding her lumbar spine. (AR
25 57-58.) The neurosurgeon has suggested that Plaintiff have a spinal cord simulator
26 inserted in her back to help her upper and lower back, and possibly her hip. (AR 58.)
27 The simulator would also be expected to help with issues related to her cervical spine.
28 (AR 58-59.)

1 Plaintiff testified that she experiences pain in her lower back “[c]onstantly,
2 every day.” (AR 58.) She has experienced more pain since her hip replacement, and
3 even more pain after the recent hip replacement redo. (*Id.*) She also experiences
4 pain in her neck. (AR 59.) Plaintiff has also had constant pain in her left knee. (*Id.*)
5 Plaintiff had carpal tunnel surgery to her left hand, but continues to experience pain.
6 (AR 59-60.) After a fall in September, Plaintiff feels “pain all the way up the left
7 arm” and both of her “hands fall asleep.” (AR 60.)

8 Plaintiff sees a pain management doctor and an orthopedic doctor. (AR 60.)
9 Plaintiff manages her pain with Norco and meloxicam. (AR 61.) Additionally,
10 Plaintiff controls her pain by getting in her pool, taking a warm bath, and using a
11 TENS machine⁴ every day on her lower back. (*Id.*) Plaintiff finds that she is most
12 comfortable in the pool because there is “no weight.” (AR 62.) If she were not in
13 the pool, Plaintiff would sit or lay down. (*Id.*) However, she would not be sitting up
14 right. (*Id.*) Out of a 16-hour day, Plaintiff lays down one or two hours. (AR 63.)
15 Plaintiff would then need to get up, then sit to try to get comfortable again. (*Id.*) She
16 thinks that she could sit up for an hour before having to get up and walk around. (*Id.*)
17 Plaintiff has to shift from sitting to walking because she “get[s] stiff.” (*Id.*) Plaintiff
18 testified that she would be working if not for her conditions. (AR 67.)

19 **2. Plaintiff’s Function Report**

20 On September 25, 2015, Plaintiff prepared a function report. (*See* AR 230-
21 238.) Plaintiff lives in a house with family. (AR 230.) Plaintiff’s conditions limit
22 her ability to work because her former job required that Plaintiff carry and stack 40-
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25 ⁴ A TENS unit is a device that reduces pain by “send[ing] electrical pulses through
26 the skin to start your body’s own pain killers. The electrical pulses can release
27 endorphins and other substances to stop pain signals in the brain.” University of Iowa
28 Hospitals and Clinics, Transcutaneous electrical nerve stimulator (TENS),
<https://uihc.org/health-topics/transcutaneous-electrical-nerve-stimulator-tens> (last
accessed January 28, 2020).

1 pound pallets, break down pallets, bend down to check pallets in, stand for six to
2 eight hours, and walk back and forth to the check stand. (*Id.*)

3 Plaintiff spends her time reading the paper, watching television, in the pool,
4 “walking around to avoid stiffness,” picking up around the house, and trying to make
5 dinner. (AR 231.) She takes care of her husband and tries to make dinner and do
6 laundry. (*Id.*) Plaintiff is also responsible for feeding and letting out her pets. (*Id.*)
7 However, Plaintiff’s husband helps by cleaning the cat boxes and cleaning up after
8 the dogs. (*Id.*)

9 Before her condition, Plaintiff was able to work, do sports, hike, sleep, and
10 enjoy life. (AR 231.) Now, Plaintiff swims because she feels weightless and
11 experiences no discomfort in the pool. (*Id.*) Plaintiff explains that she is unable to
12 sleep on her left side because her arm falls asleep, but when she sleeps on her back it
13 hurts, and she cannot sleep on her right side or her hip will hurt. (*Id.*)

14 As to personal care, Plaintiff’s inability to lift her left arm makes it difficult
15 for her to shampoo her hair, put her hair up, and shave. (AR 231.) Plaintiff also has
16 difficulty extending her left arm back, making it difficult to put on a bra and shirt.
17 (*Id.*) When using the toilet, Plaintiff cannot “get [her] left arm around back.” (*Id.*)
18 She also has difficulty putting on her shorts or pants because bending down hurts her
19 back and hip. (*Id.*) However, Plaintiff does not need reminders to take care of her
20 personal needs or to take her medicine. (AR 232.)

21 Plaintiff prepares meals a couple of times per week. (AR 232.) Because she
22 is unable to stand for too long to cook, she spends five to ten minutes preparing frozen
23 dinners or salads. (*Id.*) Plaintiff does not cook every day and she does not cook big
24 meals. (*Id.*) At most once a week, Plaintiff can do some light dusting, can put dishes
25 in the dishwasher, and can wash small loads of laundry. (*Id.*) It takes Plaintiff 10 to
26 15 minutes to complete each item. (*Id.*) Plaintiff explains that she needs help lifting
27 laundry, taking items out of the dryer, carrying the basket down the stairs, and
28 unloading the dishwasher. (*Id.*) As to her ability to do yardwork, Plaintiff is “in too

1 much discomfort and cannot push or pull anything,” and cannot bend down. (AR
2 233.)

3 Plaintiff goes outside daily. (AR 233.) When going out she usually drives or
4 rides in a car. (*Id.*) She is able to go out alone. (*Id.*) Plaintiff shops in stores for
5 groceries, with assistance, once every two weeks. (*Id.*) It takes her about one hour
6 and a half. (*Id.*) Plaintiff is able to pay bills, count change, handle a savings account,
7 and use a checkbook or money orders. (*Id.*)

8 Plaintiff’s hobbies include, reading, watching television, hiking, playing
9 soccer and softball, bike riding, and riding her motorcycle. (AR 234.) Plaintiff reads
10 and watches television every day, but is “not physically able to do the rest anymore.”
11 (*Id.*) She cannot play soccer or softball, hike, or ride her motorcycle. (*Id.*) Once a
12 week, Plaintiff will swim or have lunch with friends. (*Id.*) Plaintiff visits local
13 restaurants. (*Id.*) Plaintiff explains that she has problems with her husband due to
14 her physical limitations which have “added stress to him” because he has to work and
15 do housework, and she is unable to go on hikes with him. (AR 235.) Since her
16 condition began, Plaintiff can no longer play in the soccer and softball leagues that
17 she used to play in and can no longer hike with friends. (*Id.*)

18 Plaintiff’s condition affects her ability to lift, squat, bend, stand, reach, walk,
19 sit, kneel, and climb stairs. (AR 235.) Plaintiff explains that she cannot stoop down,
20 bend, lift more than five pounds, lift over her head, or stand longer than 30 minutes.
21 (*Id.*) As to her ability to walk, Plaintiff explains that she is always in discomfort.
22 (*Id.*) However, Plaintiff resumes walking “right away [because] it hurts to sit.” (*Id.*)
23 Plaintiff does not have an issue paying attention, she can finish what she starts, and
24 can follow written and spoken instructions very well. (*Id.*) She gets along
25 “wonderfully” with authority figures and has never been fired or laid off due to
26 problems getting along with others. (AR 236.) However, she does not handle stress
27 well and considers herself a “stressmonger.” (*Id.*) In particular, she stresses because
28 she is not working and has to pay bills. (*Id.*) She handles changes to her routine fine.

1 (*Id.*) Plaintiff takes medication for her illnesses, but none have side effects. (AR
2 237.)

3 Finally, Plaintiff remarks that she is unable to continue working because she
4 had hip surgery, suffers from severe arthritis, and her doctors have instructed her not
5 to stoop, bend, lift more than five pounds, or stand for more than thirty minutes. (AR
6 237.)

7 **3. Applicable Legal Standards**

8 “In assessing the credibility of a claimant’s testimony regarding subjective
9 pain or the intensity of symptoms, the ALJ engages in a two-step analysis.” *Molina*
10 *v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing *Vasquez v. Astrue*, 572 F.3d
11 586, 591 (9th Cir. 2009)). “First, the ALJ must determine whether the claimant has
12 presented objective medical evidence of an underlying impairment which could
13 reasonably be expected to produce the pain or other symptoms alleged.” *Treichler v.*
14 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting
15 *Lingenfelter*, 504 F.3d at 1036) (internal quotation marks omitted). If so, and if the
16 ALJ does not find evidence of malingering, the ALJ must provide specific, clear and
17 convincing reasons for rejecting a claimant’s testimony regarding the severity of his
18 symptoms. *Id.* The ALJ must identify what testimony was found not credible and
19 explain what evidence undermines that testimony. *Holohan v. Massanari*, 246 F.3d
20 1195, 1208 (9th Cir. 2001). “General findings are insufficient.” *Lester*, 81 F.3d at
21 834.

22 **4. Discussion**

23 “After careful consideration of the evidence,” the ALJ found that Plaintiff’s
24 “statements concerning the intensity, persistence and limiting effects of [her]
25 symptoms are not entirely consistent with the medical evidence and other evidence
26 in the record.” (AR 23.) The ALJ found that Plaintiff’s statements were inconsistent
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1 with (1) Plaintiff’s activities of daily living and (2) the objective medical evidence.⁵
2 (AR 23.) No malingering allegation was made, and therefore, the ALJ’s reasons must
3 be “clear and convincing.”

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

5 The ALJ found that Plaintiff’s “activities of daily living [were] inconsistent
6 with [Plaintiff’s] statements regarding the alleged intensity, persistence and limiting
7 effects” of her symptoms. (AR 23.) Specifically, the ALJ points to Plaintiff’s ability
8 “to perform some of the personal care tasks, prepare simple meals, do light dusting,
9 put dishes into the dishwasher, do the laundry, drive, ride in a car, shop in stores, go
10 out alone, and spend time with friends and others.” (AR 23, citing 231-34.)
11 Additionally, the ALJ cites to Plaintiff’s ability “to perform personal care tasks,
12 drive, go shopping, pay bills, handle money, and cook.” (AR 23, citing AR 457-58.)
13 The ALJ notes that “[s]ome of the physical and mental abilities and social
14 interactions required in order to perform these activities are the same as those
15 necessary for obtaining and maintaining employment.” (AR 23.)

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

24
25 ⁵ The ALJ also found that Plaintiff’s statements regarding “intensity, persistence, and
26 limiting effects” of her condition were also inconsistent with “other information in
27 the case record.” (AR 23.) However, in support, the ALJ cites to Plaintiff’s activities
28 of daily living and the objective medical evidence. (*See id.*) This is duplicative of
the reasons provided by the ALJ and does not form a separate, independent reason
for discounting Plaintiff’s subjective symptom testimony.

1 *Admin.*, 169 F.3d 595, 600 (9th Cir. 1999); *accord Vertigan v. Halter*, 260 F.3d 1044,
2 1050 (9th Cir. 2001).

3 First, Plaintiff argues that the ALJ mischaracterized Plaintiff’s activities of
4 daily living by “cherry-picking from the record.” (JS 21.) In support, Plaintiff, points
5 to her function report, where she explained that she “tried” to do laundry and make
6 dinner. (JS 21, citing AR 231.) Plaintiff was unable to “stand long enough to prepare
7 everyday meals, but instead only had the ability to prepare a frozen meal.” (JS 21,
8 citing AR 231-32.) Plaintiff also cites to the difficulty she experienced when caring
9 for her personal needs. (JS 21, citing AR 231.) Additionally, as to the ALJ’s reliance
10 on Plaintiff’s ability to do laundry, Plaintiff contends that she was only able to do
11 laundry once a week for no more 10 to 15 minutes and “needed to rely on others to
12 help her.” (JS 21, citing AR 233.) Plaintiff also points to two treatment notes where
13 Plaintiff self-reported “[c]onstant LBP pain that limits [activities of daily living]” and
14 “[d]ecreased strength and endurance that makes [activities of daily living] difficult
15 to perform.” (JS 21, citing AR 963, 968.)

16 The Commissioner does not respond to Plaintiff’s argument that the ALJ
17 engaged in “cherry-picking,” but does argue that Plaintiff’s contentions that she
18 performed “tasks slowly, or with breaks . . . does not undermine the ALJ’s findings.”
19 (JS 25.) In support the Commissioner cites to *Rollins v. Massanari*. (JS 26-27, citing
20 261 F.3d 853, 857 (9th Cir. 2001).) In *Rollins*, the Ninth Circuit found that where
21 the claimant’s testimony was “somewhat equivocal about how regularly” claimant
22 was able to perform certain activities and the “ALJ’s interpretation of her testimony
23 may not be the only reasonable one,” the Court should not “second-guess” the ALJ’s
24 interpretation so long as the ALJ’s interpretation is reasonable and supported by
25 substantial evidence. 261 F.3d at 857. The claimant’s daily activities in *Rollins*,
26 included, caring for her two young children, cooking, doing laundry, shopping, and
27 leaving the house daily for doctor’s appointments, taekwondo lessons and soccer
28 games. *Id.*

1 “An ALJ errs when he or she mischaracterizes a claimant’s testimony by
2 ignoring reports that daily activities are conducted with assistance, with great pain,
3 or with limitation-related disruptions.” *Furtado v. Colvin*, No. 13-CV-04063-HRL,
4 2017 WL 1365208, at *3 (N.D. Cal. Apr. 14, 2017) (citing *Garrison v. Colvin*, 759
5 F.3d 995, 1016 (9th Cir. 2014); *Benecke v. Barnhart*, 379 F.3d 587, 594 (9th Cir.
6 2004)). Here, the ALJ mischaracterizes Plaintiff’s function report statements. While
7 Plaintiff notes that she is able to do laundry, engage in light dusting, put dishes in the
8 dishwasher, shop in stores for groceries, Plaintiff also notes that she requires
9 assistance when shopping for groceries, doing laundry, and unloading the
10 dishwasher. (AR 232-33.) Furthermore, the ALJ noted Plaintiff’s ability to cook
11 simple meals (AR 23), but failed to acknowledge that those meals were either frozen
12 meals or salads (*see* AR 232). Similarly, the ALJ referred to Plaintiff’s ability to
13 “perform some of the personal care tasks” (AR 23), yet did not acknowledge
14 Plaintiff’s statement that she had difficulty putting on a bra and shirt, shampooing
15 her hair, putting her hair up, and shaving (*see* AR 231). Plaintiff also had trouble
16 using the toilet because she could not “get [her] left arm around back.” (AR 231.)
17 She also expressed difficulty putting on shorts and pants because “bending hurts [her]
18 back and hip.” (*Id.*)

19 Additionally, it appears that the ALJ has ignored some evidence without
20 providing any explanation. *See Leonard v. Berryhill*, No. 16-CV-03988-BLF, 2017
21 WL 3130031, at *4 (N.D. Cal. July 24, 2017) (noting that an ALJ may not “cherry-
22 pick” the evidence, without providing an adequate explanation). In reviewing
23 Plaintiff’s subjective symptom testimony, the ALJ notes that Plaintiff’s “statements
24 in the written submissions mirror the subjective complaints from [Plaintiff’s]
25 testimony.” (AR 22.) However, the Court’s review of the record shows that while
26 Plaintiff’s statements in her September 25, 2015 function report and her February 14,
27 2018 testimony contain some of the same underlying complaints, Plaintiff’s
28 testimony indicates a significant change in her daily activities.

1 The ALJ appears to have relied exclusively on Plaintiff’s September 25, 2015
2 function report and an examination by a consultative examiner. (AR 23.) However,
3 Plaintiff also testified at the February 14, 2018 hearing as to how her conditions had
4 impacted her ability to engage in certain activities. (See AR 37-67.) The ALJ failed
5 to discuss any of Plaintiff’s hearing testimony. At the February 14, 2018 hearing,
6 Plaintiff explained that while she used to do laundry, cook, and clean the pool, she
7 stopped engaging in those activities two years ago because she could not stand for
8 long periods of time and could not carry the laundry basket. (AR 55.) Plaintiff
9 testified that it is now her husband who cooks and does the laundry. (AR 54.)
10 Relying on a three-year-old function report, the ALJ found that Plaintiff could
11 prepare simple meals and do laundry. (AR 23.) Similarly, where Plaintiff had noted
12 in her function report that she could do light dusting and put the dishes in the
13 dishwasher (AR 232), Plaintiff later testified that she could not do any housework
14 (AR 54). The ALJ also notes that Plaintiff is able to “shop in stores, go out alone,
15 and spends time with friends, and others,” but Plaintiff testified that she only visits
16 with friends when they visit her at home (AR 23, 54).

17 The ALJ’s omission of Plaintiff’s hearing testimony and mischaracterization
18 of Plaintiff’s written statements cannot support the ALJ’s finding that Plaintiff’s
19 activities of daily living were inconsistent with Plaintiff’s subjective symptom
20 testimony. *See Rawa v. Colvin*, 672 F. App’x 664, 666 (9th Cir. 2016) (finding that
21 where “the ALJ omitted a number of salient and dispositive facts and details when
22 recounting [claimant’s] activity level,” including the fact that claimant drove only a
23 couple of times per week and the fact that she experienced pain while engaged in
24 certain activities, “[s]uch an inaccurate representation of the record cannot constitute
25 a specific, clear, and convincing reason for rejecting” claimant’s subjective symptom
26 testimony); *Corless v. Comm’r of Soc. Sec. Admin.*, 260 F. Supp. 3d 1172, 1178 (D.
27 Ariz. 2017) (finding that the ALJ committed error where the “ALJ conspicuously
28

1 omitted the pain and difficulties [p]laintiff experiences performing even the simplest
2 daily activity”).

3 Second, Plaintiff argues that the ALJ erred in rejecting Plaintiff’s subjective
4 symptom testimony because Plaintiff’s daily activities are not readily transferable to
5 a work environment. (JS 22.) However, the Commissioner contends that
6 transferability “is not dispositive, as ‘even where those activities suggest some
7 difficulty functioning, they may be grounds for discrediting the claimant’s testimony
8 to the extent that they contradict claims of a totally debilitating impairment.’” (JS
9 26, quoting *Molina*, 674 F.3d at 1113.) Plaintiff counters that she is not contending
10 that she suffers from a “‘totally’ disabling impairment.” (JS 27.)

11 The fact that Plaintiff performs some daily activities does not detract from her
12 overall credibility, as the record does not show that her daily activities consume a
13 substantial part of Plaintiff’s day. Further, the mere ability to perform some tasks is
14 not necessarily indicative of an ability to perform work activities because “many
15 home activities are not easily transferable to what may be the more grueling
16 environment of the workplace, where it might be impossible to periodically rest or
17 take medication.” *Fair*, 885 F.2d at 603; *see also Molina*, 674 F.3d at 1112-13 (the
18 ALJ may discredit a claimant who “participat[es] in everyday activities indicating
19 capacities that are transferable to a work setting”). The critical difference between
20 such activities “and activities in a full-time job are that a person has more flexibility
21 in scheduling the former . . . , can get help from other persons . . . , and is not held to
22 a minimum standard of performance, as she would be by an employer.” *Bjornson v.*
23 *Astrue*, 671 F.3d 640, 647 (7th Cir. 2012) (cited with approval in *Garrison*, 759 F.3d
24 at 1016). Additionally, as noted by Plaintiff, the Ninth Circuit has found that a
25 claimant’s ability to do house chores, cook simple meals, bathe, pay bills, write
26 checks, and occasionally go shopping “are not similar to typical work
27 responsibilities.” *Diedrich v. Berryhill*, 874 F.3d 634, 643 (9th Cir. 2017); *see*
28 *Enriquez v. Berryhill*, No. EDCV 17-1651 SS, 2018 WL 3339673, at *5 (C.D. Cal.

1 July 6, 2018) (finding that the ALJ erred in relying on Plaintiff’s ability to drive, run
2 errands, prepare simple meals, do some household chores, and engage in personal
3 grooming).

4 In sum, the Court finds that this reason is not a clear and convincing reason,
5 supported by substantial evidence, to discount Plaintiff’s subjective symptom
6 testimony.

7 **b. Reason No. 2: Objective Medical Evidence**

8 The remaining reason for discounting Plaintiff’s subjective testimony—lack
9 of supporting objective evidence—cannot form the sole basis for discounting
10 symptom testimony. *See Burch*, 400 F.3d at 681 (“Although lack of medical
11 evidence cannot form the sole basis for discounting pain testimony, it is a factor that
12 the ALJ can consider in his credibility analysis.”); *Light v. Soc. Sec. Admin.*, 119 F.3d
13 789, 792 (9th Cir. 1997) (“[A] finding that the claimant lacks credibility cannot be
14 premised wholly on a lack of medical support for the severity of his pain.”).

15 **5. Conclusion**

16 In sum, the ALJ did not give clear and convincing reasons, supported by
17 substantial evidence, for discounting Plaintiff’s subjective symptom testimony.
18 Accordingly, remand is warranted on this issue.

19 **B. The Court Declines to Address Plaintiff’s Remaining Argument**

20 Having found that remand is warranted, the Court declines to address
21 Plaintiff’s remaining arguments. *See Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir.
22 2012) (“Because we remand the case to the ALJ for the reasons stated, we decline to
23 reach [plaintiff’s] alternative ground for remand.”); *see also Augustine ex rel.*
24 *Ramirez v. Astrue*, 536 F. Supp. 2d 1147, 1153 n.7 (C.D. Cal. 2008) (“[The] Court
25 need not address the other claims plaintiff raises, none of which would provide
26 plaintiff with any further relief than granted, and all of which can be addressed on
27 remand.”).

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1 **C. Remand for Further Administrative Proceedings**

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

16 Here, remand for further administrative proceedings is appropriate. The Court
17 finds that the ALJ failed to provide clear and convincing reasons supported by
18 substantial evidence to discount Plaintiff’s subjective testimony. On remand, the
19 ALJ shall reassess Plaintiff’s subjective allegations. The ALJ shall then reassess
20 Plaintiff’s RFC and proceed through step four and step five, if necessary, to
21 determine what work, if any, Plaintiff is capable of performing.

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1 **V. CONCLUSION**

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

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

7
8 DATED: January 31, 2020

/s/

9 ROZELLA A. OLIVER

10 UNITED STATES MAGISTRATE JUDGE

11
12 **NOTICE**

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

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