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

GINA C.,¹)	NO. EDCV 19-1233-KS
Plaintiff,)	
v.)	MEMORANDUM OPINION AND ORDER
ANDREW M. SAUL, Commissioner)	
of Social Security,)	
Defendant.)	
_____)	

INTRODUCTION

Gina C. (“Plaintiff”) filed a Complaint on July 3, 2019, seeking review of the denial of her application for a period of disability and disability insurance (“DI”) and supplemental security income (“SSI”). On August 7, 2019, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. (Dkt. Nos. 11, 12, 13.) On April 9, 2020, the parties filed a Joint Stipulation (“Joint Stip.”). (Dkt. No. 19.) Plaintiff seeks an order reversing the Commissioner’s decision and awarding benefits, or, in the alternative, remanding for further proceedings. (Joint Stip. at 21.) The Commissioner

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

1 requests that the ALJ’s decision be affirmed or, in the alternative, remanded for further
2 proceedings. (*See id.* at 22.) The Court has taken the matter under submission without oral
3 argument.

4 5 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**

6
7 In January and February 2015, Plaintiff, who was born on September 14, 1965,
8 protectively filed applications for DI and SSI respectively.² (*See* Administrative Record
9 (“AR”) 15, 196, 202; Joint Stip. at 2.) Plaintiff alleged disability commencing December 27,
10 2014 due to: arthritis; nausea; vomiting; headaches; depression; lupus; fibromyalgia;
11 scleroderma; connective tissue disorder; and “heart issues.” (AR 239.) Plaintiff previously
12 worked as an office assistant (DOT 239.567-010). (AR 23, 51, 231.) The Commissioner
13 denied Plaintiff’s applications initially (AR 78-79) and on reconsideration (AR 106-07).
14 Plaintiff then requested an administrative hearing. (*See* AR 139.) On July 24, 2018,
15 Administrative Law Judge Paul Isherwood (the “ALJ”) held a hearing at which Plaintiff, who
16 was represented by counsel, testified as did vocational expert Luis O. Mas (the “VE”). (AR
17 31-55; *see also* AR 15 (clarifying VE’s name).) On August 16, 2018, the ALJ issued an
18 unfavorable decision, denying Plaintiff’s applications. (AR 12-24.) On May 17, 2019, the
19 Appeals Council denied Plaintiff’s request for review. (AR 1-6.)

20 21 **SUMMARY OF ADMINISTRATIVE DECISION**

22
23 The ALJ found that Plaintiff met the insured status requirements of the Social Security
24 Act through December 31, 2019. (AR 17.) The ALJ further found that Plaintiff had not
25 engaged in substantial gainful activity since the alleged onset date of December 27, 2014. (AR
26 17.) The ALJ determined that Plaintiff had the following severe impairments: “lupus; and

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² Plaintiff was 50 years old on the alleged onset date and was thus defined as a person closely approaching advanced age under agency regulations. *See* 20 C.F.R. §§ 404.1563(d), 416.963(d).

1 thyroid cancer/Hashimoto's." (AR 17.) In reaching that conclusion, the ALJ found that
2 Plaintiff had other medically determinable impairments—migraines, GERD, scoliosis, and
3 mood disorder—but he determined that these impairments were non-severe for the purposes
4 of step two of the sequential analysis. (AR 18-19.) The ALJ also concluded that Plaintiff did
5 not have an impairment or combination of impairments that met or medically equaled the
6 severity of any impairments listed in 20 C.F.R. part 404, subpart P, appendix 1 (20 C.F.R. §§
7 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, 416.926). (AR 19.) The ALJ
8 determined that, during the relevant period, Plaintiff had the residual functional capacity
9 (“RFC”) to perform a full range of medium work.³ (AR 19.)
10

11 The ALJ found that Plaintiff was able to perform her past relevant work as an office
12 assistant (DOT 239.567-010). (AR 23.) Accordingly, the ALJ determined that Plaintiff had
13 not been under a disability, as defined in the Social Security Act, from the alleged onset date
14 through the date of his decision, August 16, 2018. (AR 23-24.)
15

16 STANDARD OF REVIEW

17

18 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine
19 whether it is free from legal error and supported by substantial evidence in the record as a
20 whole. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). “Substantial evidence is ‘more than
21 a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind
22 might accept as adequate to support a conclusion.’” *Gutierrez v. Comm’r of Soc. Sec.*, 740
23 F.3d 519, 522-23 (9th Cir. 2014) (internal citations omitted). “Even when the evidence is
24 susceptible to more than one rational interpretation, we must uphold the ALJ’s findings if they
25

26 ³ Medium work involves lifting up to 50 pounds at a time with frequent lifting or carrying of objects weighing up
27 to 25 pounds. SOCIAL SECURITY ADMINISTRATION, PROGRAM OPERATIONS MANUAL SYSTEM (“POMS”) DI 25001.001.
28 Medium work also usually requires the following: walking or standing for approximately six hours in an eight hour
workday; frequent stooping and crouching, the ability to grasp, hold, and turn objects; the ability to frequently lift or carry
objects weighing 25 pounds, which is often more critical than being able to lift up to 50 pounds at a time; and the capacity
to perform sedentary and light work. *Id.*

1 are supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d
2 1104, 1110 (9th Cir. 2012).

3
4 Although this Court cannot substitute its discretion for the Commissioner’s, the Court
5 nonetheless must review the record as a whole, “weighing both the evidence that supports and
6 the evidence that detracts from the [Commissioner’s] conclusion.” *Lingenfelter v. Astrue*, 504
7 F.3d 1028, 1035 (9th Cir. 2007) (internal quotation marks and citation omitted); *Desrosiers v.*
8 *Sec’y of Health and Hum. Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). “The ALJ is responsible
9 for determining credibility, resolving conflicts in medical testimony, and for resolving
10 ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

11
12 The Court will uphold the Commissioner’s decision when the evidence is susceptible to
13 more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir.
14 2005). However, the Court may review only the reasons stated by the ALJ in her decision
15 “and may not affirm the ALJ on a ground upon which [s]he did not rely.” *Orn*, 495 F.3d at
16 630; *see also Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). The Court will not
17 reverse the Commissioner’s decision if it is based on harmless error, which exists if the error
18 is “‘inconsequential to the ultimate nondisability determination,’ or if despite the legal error,
19 ‘the agency’s path may reasonably be discerned.’” *Brown-Hunter v. Colvin*, 806 F.3d 487,
20 492 (9th Cir. 2015) (internal citations omitted).

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1 **DISCUSSION**

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3 There is one issue in dispute: whether the ALJ properly considered Plaintiff’s
4 statements about her symptoms and limitations. (Joint Stip. at 4.)
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6 **I. Plaintiff’s Statements**
7

8 There are two sources of Plaintiff’s statements about her symptoms and limitations: one,
9 Plaintiff’s written statements in an April 1, 2015 Adult Function Report; and, two, Plaintiff’s
10 oral statements during the July 24, 2018 administrative hearing.
11

12 **A. April 1, 2015 Adult Function Report**
13

14 Plaintiff alleges a disability onset date of December 27, 2014. On April 1, 2015, Plaintiff
15 completed an Adult Function Report, in which she reported that every day she wakes up in
16 “extreme pain,” and, most days, she “can barely walk or get out of bed.” (AR 265.) She
17 reported that as soon as she opens her eyes, she starts dry heaving and/or throwing up and
18 often has a headache. (AR 265.) She spends most of her days in her bed, sleeping, watching
19 TV, or playing on an iPad. (AR 266.) She reported that she also goes outside at least once a
20 day and can both walk and drive a car. (AR 268.) Once a week she takes her grandson to
21 school, and she also helps him with his homework. (AR 266.) She shops by computer once
22 or twice a week and “often drives kids to store to shop for [her].” (AR 268.) However, when
23 asked to list the places she goes on a regular basis, Plaintiff wrote “none.” (AR 268.)
24

25 Plaintiff reported that “Reanna” feeds the animals, prepares meals, and does house
26 chores. (AR 266.) She wrote that her impairments make dressing “painful,” bathing “take[]
27 longer,” and getting on and off the toilet “painful.” (AR 266.) She wrote that she can prepare
28 simple meals “once in a while” but finds it hard to stand for long periods of time. (AR 267.)

1 She similarly reported that she can “sometimes” wash dishes, clean the kitchen, and do a little
2 laundry, but she needs someone else to finish if she starts vomiting unexpectedly or her bones
3 “stiffen up” (AR 267.)
4

5 Plaintiff reported that she can lift approximately 10 pounds, cannot get back up if she
6 squats, needs help sitting up if she bends, and cannot stand for very long. (AR 269.) Plaintiff
7 stated that her illness is unpredictable and, although she does have good days, most days are
8 very bad and painful. (AR 271.) Similarly, she wrote that “sometimes” she can do normal
9 things but she then has to rest often. (AR 271.)
10

11 **B. July 24, 2018 Hearing Testimony**

12

13 Three years later, on July 24, 2018, Plaintiff testified at the administrative hearing. She
14 testified that she lives with her 17-year old grandson. (AR 36.) Plaintiff testified that, at 17,
15 almost 18, years old, her grandson mostly takes care of himself and helps Plaintiff, but she has
16 to make sure to get him to school “and stuff.” (AR 45.) She stated that when she feels okay,
17 her other grandkids come over and hang out at her house so that she can spend some time with
18 them. (AR 46.)
19

20 Plaintiff testified that she was seeing 10 or 11 different doctors for lupus, arthritis,
21 Hashimoto’s, and connective tissue disease. (AR 36.) She testified that her medication causes
22 nausea and fatigue. (AR 37.) She testified that she naps during the day, sometimes for just
23 half an hour and sometimes for a couple of hours. (AR 37.) She testified that getting up from
24 bed in the morning—“getting up from laying down position”—was painful. (AR 37.) She
25 testified that she was able to shower as long as she sat down. (AR 38.) She testified that she
26 is able to dress herself but it takes a little bit of time because “stretching certain positions” is
27 painful. (AR 38.) The ALJ observed that Plaintiff “seem[ed] to fidget a lot when . . . sitting”
28 (AR 38), and Plaintiff confirmed that sitting was “painful” (AR 39). Plaintiff stated that when

1 she stands, her back feels better but she starts to get lightheaded and dizzy and feels like she
2 is going to pass out. (AR 39.) When asked what the most comfortable position is for her,
3 Plaintiff answered “laying [sic] down in bed.” (AR 39.) The ALJ asked Plaintiff how long
4 she could sit before she became uncomfortable, and she indicated that the 45-minute drive to
5 the hearing had been “too long” (AR 39), and she had needed to pull over mid-way to stretch
6 (AR 47).

7
8 Plaintiff testified that she goes to the grocery store once or twice a week and usually
9 tries to get in and out quickly, although she can stay longer if she can ride an electric mobility
10 cart. (AR 40.) She testified that her grandson usually carries groceries from the cart to the car
11 or brings them in the house, but “sometimes” Plaintiff is able to do it. (AR 41.) Plaintiff
12 testified that she also tried to do other chores around the house and has set stools up around
13 the house so that she can sit while she does things, like making something to eat. (AR 41.)
14 Plaintiff can do these sorts of activities around the house for 30 minutes before needing to lie
15 down and rest. (AR 41.)

16
17 Plaintiff testified that she sees her primary physician once a month and has, in total,
18 approximately five medical appointments a month. (AR 42.) She testified that she usually
19 drives to her appointments but sometimes has one of her kids take her, depending on how she
20 is feeling. (AR 47.)

21
22 When asked why she thinks she cannot work, Plaintiff testified, “I’m sick constantly. I
23 mean constantly like pain. I could throw up at any given second. I’ve just - - I can’t even sit
24 still for very long because it hurts. It just - - I’m not me anymore.” (AR 48.)

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1 **C. ALJ’s Decision**

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3 The ALJ found that Plaintiff’s medically determinable impairments could reasonably be
4 expected to cause the alleged symptoms, her statements concerning the intensity, persistence,
5 and limiting effects of her symptoms were not entirely consistent with the evidence in the
6 record. (AR 21.) First, the ALJ observed that her statements were inconsistent with the
7 objective medical evidence, which showed “mild and limited” examination findings, including
8 a normal gait, normal muscle strength, and normal sensation. (AR 20.) Second, the ALJ
9 observed that Plaintiff performed activities—namely, driving, doing household chores, going
10 to the grocery store, using the computer, and fixing simple meals—that were inconsistent with
11 her allegations of debilitating symptoms. (AR 20.)

12
13 **D. Applicable Law**

14
15 An ALJ must make two findings before discounting a claimant’s statements regarding
16 the severity and persistence of her symptoms. *See Treichler v. Comm’r of Soc. Sec.*, 775 F.3d
17 1090, 1102 (9th Cir. 2014). “First, the ALJ must determine whether the claimant has presented
18 objective medical evidence of an underlying impairment which could reasonably be expected
19 to produce the pain or other symptoms alleged.” *Id.* (quoting *Lingenfelter*, 504 F.3d at 1036).
20 “Second, if the claimant has produced that evidence, and the ALJ has not determined that the
21 claimant is malingering, the ALJ must provide specific, clear and convincing reasons for
22 rejecting the claimant’s testimony regarding the severity of the claimant’s symptoms” and
23 those reasons must be supported by substantial evidence in the record. *Id.*; *see also Marsh v.*
24 *Colvin*, 792 F.3d 1170, 1174 n.2 (9th Cir. 2015); *Carmickle v. Comm’r of Soc. Sec.*, 533 F.3d
25 1155, 1161 (9th Cir. 2008). The ALJ must specifically identify “what testimony is not credible
26 and what evidence undermines the claimant’s complaints.” *Parra v. Astrue*, 481 F.3d 742,
27 750 (9th Cir. 2007). (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *see also*
28 *Brown-Hunter v. Colvin*, 806 F.3d 487, 494 (9th Cir. 2015) (finding legal error where the ALJ

1 “failed to identify the testimony she found not credible”); *Smolen v. Chater*, 80 F.3d 1273,
2 1284 (9th Cir. 1996) (“The ALJ must state specifically which symptom testimony is not
3 credible and what facts in the record lead to that conclusion.”).
4

5 In March 2016, the Commissioner promulgated Social Security Ruling (“SSR”) 16-3p,
6 2017 WL 5180304, which “makes clear what [Ninth Circuit] precedent already required: that
7 assessments of an individual’s testimony by an ALJ are designed to ‘evaluate the intensity and
8 persistence of symptoms’ . . . and not to delve into wide ranging scrutiny of the claimant’s
9 character and apparent truthfulness.” *Trevizo v. Berryhill*, 871 F.3d 664, 678 n.5 (9th Cir.
10 2017). Under SSR 16-3p, the ALJ shall determine whether to credit a claimant’s statements
11 about his pain and limitations by referring to the factors set forth in 20 C.F.R. §§
12 404.1529(c)(3) and 416.929(c)(3), which include: the claimant’s daily activities; the factors
13 that precipitate and aggravate the symptoms; the type, dosage, effectiveness, and side effects
14 of any medication taken to alleviate the symptoms; the claimant’s treatment, other than
15 medication, for the symptoms; any other measure that the individual uses to relieve pain or
16 other symptoms; and, finally, “any other factors concerning an individual’s functional
17 limitations and restrictions.” SSR 16-3p. However, the lack of objective medical evidence
18 supporting a claimant’s allegations cannot provide the sole basis for rejecting her statements
19 about the severity of her symptoms and limitations. *Id.*; *see also Trevizo*, 871 F.3d at 679; 20
20 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2) (“we will not reject your statements about the
21 intensity and persistence of your pain or other symptoms or about the effect your symptoms
22 have on your ability to work solely because the available objective medical evidence does not
23 substantiate your statements”).
24

25 E. Analysis

26

27 Because the purported inconsistency between Plaintiff’s subjective complaints and
28 the objective evidence is not, by itself, a legally sufficient reason for declining to credit

1 Plaintiff's subjective symptom allegations, the validity of the ALJ's decision not to credit
2 Plaintiff's statements in full depends on his second finding—that Plaintiff participated in
3 activities that were inconsistent with her allegedly debilitating symptoms. Specifically, the
4 ALJ found that Plaintiff's ability to drive, do some household chores, go to the grocery store,
5 use the computer, and fix simple meals were inconsistent with her allegations. (AR 20.)
6

7 An ALJ may rely on a plaintiff's activities to discount the plaintiff's statements about
8 her symptoms and limitations only when those activities either: (1) "contradict" the plaintiff's
9 testimony; or (2) "meet the threshold for transferable work skills"—that is, where the plaintiff
10 "is able to spend a substantial part of his or her day performing household chores or other
11 activities that are transferable to a work setting." *Orn*, 495 F.3d at 639. The ALJ's rationale
12 for discounting Plaintiff's statements falls under the former category. According to the ALJ,
13 Plaintiff's driving, performance of some household chores, grocery shopping, computer usage,
14 and simple meal preparation were inconsistent with her allegations of debilitating pain and
15 unpredictable but recurring nausea and vomiting.
16

17 The courts have frequently stated that "[d]isability does not mean that a claimant must
18 vegetate in a dark room excluded from all forms of human and social activity." *Cooper v.*
19 *Bowen*, 815 F.2d 557, 561 (9th Cir. 1987) (internal quotation marks and citation omitted); *see*
20 *also Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001) ("mere fact that a plaintiff has
21 carried on certain daily activities, such as grocery shopping, driving a car, or limited walking
22 for exercise, does not in any way detract from her credibility as to her overall disability.").
23 More recently, in *Garrison v. Colvin*, 759 F.3d 995 (9th Cir. 2014), the Ninth Circuit quoted
24 with approval the Seventh Circuit's admonition that:
25

26 [t]he critical differences between activities of daily living and activities in a
27 full-time job are that a person has more flexibility in scheduling the former
28 than the latter, can get help from other persons . . . , and is not held to a

1 minimum standard of performance, as she would be by an employer. The
2 failure to recognize these differences is a recurrent and deplorable feature of
3 opinions by administrative law judges in social security disability cases.
4

5 *Garrison*, 759 F.3d at 1016 (quoting *Bjornson v. Astrue*, 671 F.3d 640, 647 (7th Cir.
6 2012)).
7

8 The ALJ's characterization of Plaintiff's extraordinarily limited activities as
9 inconsistent with her allegations of constant pain and nausea with frequent but unexpected
10 vomiting is not supported by substantial evidence in the record. Plaintiff, who is responsible
11 for caring for her teenage grandson, testified that she goes grocery shopping once or twice a
12 week but typically relies on her grandson to carry groceries from the cart to the car and/or
13 bring them in the house. (AR 41.) Plaintiff had previously reported that she shops by
14 computer once or twice a week and "often drives kids to store to shop for [her]." (AR 268.)
15

16 Plaintiff reported that her illness is unpredictable and, although she does have good days,
17 most days are very bad and painful. (AR 271.) She wrote that she "sometimes" can do normal
18 things but then has to rest often. (AR 271.) To that end, Plaintiff testified that she tries to do
19 chores around the house and has set up stools around her home so that she can sit while she
20 does things, like making something to eat. (AR 41.) Plaintiff testified that she can do these
21 sorts of activities for 30 minutes before needing to lie down and rest. (AR 41.) Plaintiff had
22 previously reported she relies on others to prepare meals and do house chores (AR 266) but
23 can prepare a simple meal "once in a while," so long as she does not need to stand for a long
24 period of time (AR 267). Plaintiff had also reported that she can "sometimes" wash dishes,
25 clean the kitchen, and do a little laundry. (AR 267.) Plaintiff reported that she is sometimes
26 unable to finish these tasks because of a sudden bout of nausea or vomiting. (AR 267.)
27 Plaintiff reported that even using the toilet was difficult because it was "painful to get on and
28

1 off.” (AR 266.) Plaintiff similarly reported that she cannot get back up if she squats. (AR
2 269.)

3
4 Plaintiff testified that her caregiving responsibilities for her grandson were quite limited
5 because he generally took care of himself and even helped her out, but she did have to make
6 sure that she got him to school. (AR 45.) On her prior Adult Function Report, Plaintiff had
7 stated that she took her then 14-year old grandson to school once a week and also helped him
8 with his homework. (AR 266.)

9
10 Plaintiff testified that she napped, sometimes for hours, during the day and found it
11 painful to get out of bed in the morning. (AR 37.) Plaintiff testified that sitting was “painful”
12 but she felt lightheaded and dizzy when standing (AR 39), and, therefore, had to sit while
13 showering (AR 38). She testified that she was most comfortable when “laying down in bed.”
14 (AR 39.) Accordingly, Plaintiff reported that she spends most of her days in her bed, sleeping,
15 watching TV, or playing on an iPad. (AR 266.)

16
17 When asked how long she could sit before she became uncomfortable, Plaintiff
18 answered that sitting for the 45-minute drive to the hearing was “too long” (AR 39) and she
19 had needed to pull over to stretch at one point during the trip (AR 47). The ALJ also observed
20 that Plaintiff was fidgeting “a lot” while sitting during the hearing. (AR 38.)

21
22 Suffice to say, Plaintiff’s reports of her intermittent activities, seemingly none of which
23 she could perform for much more than 30 minutes without requiring rest, and all of which had
24 to be performed through pain while sitting, are not inconsistent with her allegations of
25 debilitating symptoms. Plaintiff reported that she was unable to complete even a 45-minute
26 drive without stopping to rest, generally relied on others to carry her groceries, needed to sit
27 down in the kitchen to prepare even simple meals, could not get on and off the toilet without
28 pain, and was only comfortable lying down—which is how she ultimately spends most of her

1 days. These reports are consistent, rather than at odds, with her allegations. The mere fact
2 that Plaintiff, as a grandmother who wishes to maintain a relationship with her grandchildren
3 and the primary caregiver for her teenage grandson, tries to perform normal activities around
4 her home does not indicate that she in fact retains a greater functional capacity than she
5 alleged. *Cf. Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (“disability claimants should
6 not be penalized for attempting to lead normal lives in the face of their limitations”).
7

8 In sum, there is not substantial evidence in the record to support the ALJ’s conclusion
9 that Plaintiff performed activities that are inconsistent with her allegations about her symptoms
10 and limitations. Further, because the ALJ’s sole other rationale for discounting Plaintiff’s
11 excess pain testimony is its purported inconsistency with the medical evidence, his assessment
12 of Plaintiff’s statements about her symptoms and limitations as a whole must fall. *See Trevizo*,
13 871 F.3d at 679; 20 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2). Therefore, a remand is
14 warranted, and the sole question that remains is whether an award of benefits is warranted.
15

16 **II. Remand for the Immediate Award of Benefits is Warranted**

17

18 The decision whether to remand for further proceedings or order an immediate award of
19 benefits is within the district court’s discretion. *Harman v. Apfel*, 211 F.3d 1172, 1175-78
20 (9th Cir. 2000). A district court may remand for an award of benefits when the following three
21 conditions are satisfied: “(1) the record has been fully developed and further administrative
22 proceedings would serve no useful purpose; (2) the ALJ has failed to provide legally sufficient
23 reasons for rejecting evidence, whether claimant testimony or medical opinion; and (3) if the
24 improperly discredited evidence were credited as true, the ALJ would be required to find the
25 claimant disabled on remand.” *Garrison*, 759 F.3d at 1020. The third of these conditions
26 “incorporates . . . a distinct requirement of the credit-as-true rule, namely that there are no
27 outstanding issues that must be resolved before a determination of disability can be made.”
28 *Id.* at 1020, n.26. However, even if those three requirements are met, the Court retains

1 “flexibility” in determining the appropriate remedy and may remand for further proceedings
2 “when the record as a whole creates serious doubt as to whether the claimant is, in fact,
3 disabled within the meaning of the Social Security Act.” *Burrell v. Colvin*, 775 F.3d 1133,
4 1141 (9th Cir. 2014) (quoting *Garrison*, 759 F.3d at 1021).

5
6 Plaintiff’s attorney asked the vocational expert at the hearing whether an individual who
7 is capable of working at any exertional level but requires a 30-minute break after
8 approximately 30 minutes of work activity could maintain gainful employment. (AR 52.) The
9 VE answered in the negative: “No, that person is not—is not employable.” (AR 52.) The VE
10 also opined in response to a question posed by the ALJ that a person who was otherwise
11 capable of performing her past relevant work but could only work for a total of four hours a
12 day “is not employable.” (AR 51.)

13
14 Accordingly, the VE was given the opportunity to opine on whether an individual who
15 had the limitations reported by Plaintiff and improperly discredited by the ALJ would be able
16 to maintain gainful employment—and he opined that she could not. In light of the foregoing,
17 the Court finds that further administrative proceedings would serve no useful purpose and, if
18 the improperly discredited evidence were credited as true, the ALJ would indeed be required
19 to find Plaintiff disabled on remand. *See Garrison*, 759 F.3d at 1020. This case, then, is the
20 “rare exception” in which the credit as true rule should be applied and the matter remanded
21 for the calculation and award of benefits. *See Leon v. Berryhill*, 874 F.3d 1130, 1133 (9th Cir.
22 2017).

23 24 **CONCLUSION**

25
26 For the reasons stated above, IT IS ORDERED that the decision of the Commissioner
27 is REVERSED, and this case is REMANDED to the Commissioner an award of benefits
28 consistent with this memorandum of decision.

1 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of this
2 Memorandum Opinion and Order and the Judgment on counsel for plaintiff and for defendant.

3
4 LET JUDGMENT BE ENTERED ACCORDINGLY.

5
6 DATE: May 1, 2020

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8 A stylized signature of Karen L. Evenson, consisting of white dots forming the letters, set against a black rectangular background.
9 KAREN L. EVENSON
10 UNITED STATES MAGISTRATE JUDGE
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