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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ELSA D., an Individual,  
  
Plaintiff,  
  
v.  
  
ANDREW M. SAUL<sup>1</sup>, Commissioner of  
Social Security,  
  
Defendant.

Case No.: 8:17-02183 ADS

MEMORANDUM OPINION AND ORDER

**I. INTRODUCTION**

Plaintiff Elsa D.<sup>2</sup> (“Plaintiff”) challenges the Defendant, Andrew M. Saul

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<sup>1</sup> Andrew Saul is now the Commissioner of Social Security and is automatically substituted as a party pursuant to Fed. R. Civ. P. 25(d). See also section 205(g) of the Social Security Act, 42 U.S.C. § 405(g) (action survives regardless of any change in the person occupying the office of Commissioner of Social Security).

<sup>2</sup> Plaintiff’s name has been partially redacted in compliance with Fed. R. Civ. P. 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.

1 , Commissioner of Social Security’s (hereinafter “Commissioner” or “Defendant”) denial  
2 of her application for a period of disability and disability insurance benefits (“DIB”) and  
3 supplemental security income (“SSI”). The parties filed consents to proceed before the  
4 undersigned United States Magistrate Judge [Docket “Dkt.” Nos. 7, 13] and briefs  
5 addressing disputed issues in the case [Dkt. No. 18 (“Pltf.’s Br.”), Dkt. No. 20 (“Def.’s  
6 Br.”), and Dkt. No. 21 (“Pltf.’s Reply”)]. The Court has taken the parties’ briefing under  
7 submission without oral argument. For the reasons stated below, the decision of the  
8 Commissioner is reversed and the case is remanded.

## 9 **II. PROCEEDINGS BELOW**

10 Plaintiff filed applications for DIB under Title II and SSI under Title XVI on April  
11 29, 2014, alleging disability beginning January 6, 2011. (Administrative Record (“AR”)  
12 16; 398-408). Plaintiff’s applications were denied initially on July 23, 2014 (AR 261-  
13 69), and upon reconsideration on October 29, 2014 (AR 271-82). A hearing was held  
14 before Administrative Law Judge (“ALJ”) Alan J. Markiewicz on November 8, 2016.  
15 (AR 333-58).

16 On March 15, 2017, the ALJ found that Plaintiff had not been under a disability,  
17 pursuant to the Social Security Act<sup>3</sup>, since January 6, 2011.<sup>4</sup> (AR 13-37). The ALJ’s

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19 <sup>3</sup> Persons are “disabled” for purposes of receiving Social Security benefits if they are  
20 unable to engage in any substantial gainful activity owing to a physical or mental  
impairment expected to result in death, or which has lasted or is expected to last for a  
continuous period of at least 12 months. 42 U.S.C. §423(d)(1)(A).

21 <sup>4</sup> The ALJ dismissed Plaintiff’s DIB claim because there was a prior determination that  
22 she was not disabled as of March 21, 2013, that involved the same parties, law, facts and  
23 issues as under her current applications. (AR 16). The ALJ found that the prior  
determination was final and therefore because the date of Plaintiff’s previous  
24 determination was after the date last insured, Plaintiff’s claim for DIB under Title II was  
dismissed. (*Id.*) Plaintiff does not raise any claim of error as to this finding. Thus, the  
relevant period for the ALJ to adjudicate was from April 29, 2014, the application date,  
through March 15, 2017, the date of the ALJ’s decision. (AR 16, 19).

1 decision became the Commissioner’s final decision when the Appeals Council denied  
2 Plaintiff’s request for review on October 20, 2017. (AR 1-7). Plaintiff then filed this  
3 action in District Court on December 14, 2017, challenging the ALJ’s decision. [Dkt. No.  
4 1].

5 In the ALJ’s decision of March 15, 2017 (AR 13-37), the ALJ followed the required  
6 five-step sequential evaluation process to assess whether Plaintiff was disabled under  
7 the Social Security Act.<sup>5</sup> 20 C.F.R. § 404.1520(a)(4). At **step one**, the ALJ found that  
8 Plaintiff did not engage in substantial gainful activity since April 29, 2014, the  
9 application date. (AR 19). At **step two**, the ALJ found that Plaintiff had the following  
10 severe impairments: disc disease of the cervical, thoracic spine, and lumbar spine;  
11 diabetes; and major depressive disorder. (AR 19). At **step three**, the ALJ found that  
12 Plaintiff “does not have an impairment or combination of impairments that meets or  
13 medically equals the severity of one of the listed impairments in 20 CFR Part 404,  
14 Subpart P, Appendix 1.” (AR 20).

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19 <sup>5</sup> The ALJ follows a five-step sequential evaluation process to assess whether a claimant  
20 is disabled: Step one: Is the claimant engaging in substantial gainful activity? If so, the  
21 claimant is found not disabled. If not, proceed to step two. Step two: Does the claimant  
22 have a “severe” impairment? If so, proceed to step three. If not, then a finding of not  
23 disabled is appropriate. Step three: Does the claimant’s impairment or combination of  
24 impairments meet or equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1?  
If so, the claimant is automatically determined disabled. If not, proceed to step four.  
Step four: Is the claimant capable of performing his past work? If so, the claimant is not  
disabled. If not, proceed to step five. Step five: Does the claimant have the residual  
functional capacity to perform any other work? If so, claimant is not disabled. If not,  
the claimant is disabled. Lester v. Chater, 81 F.3d 821, 828 n. 5 (9th Cir. 1995) (citing  
20 C.F.R. §404.1520).

1 The ALJ then found that Plaintiff had the following Residual Functional  
2 Capacity<sup>6</sup> (“RFC”):

3 [P]erform light work as defined in 20 CFR 416.967(b) except: the claimant  
4 can lift and/or carry twenty pounds occasionally, ten pounds frequently; the  
5 claimant can stand and walk for six hours out of an eight-hour workday; the  
6 claimant can sit for six hours out of an eight-hour workday; the claimant  
7 cannot climb ladders, ropes or scaffolds; the claimant can occasionally  
8 climb ramps and stairs, balance, stoop, kneel, crouch or crawl; the claimant  
9 is limited to work involving simple repetitive tasks; and the claimant can  
10 have no more than occasional contact with coworkers and the public.

11 (AR 21).

12 At **step four**, based on Plaintiff’s RFC and the vocational expert’s testimony, the  
13 ALJ found that Plaintiff was unable to perform any past relevant work. (AR 27).

14 At **step five**, the ALJ found that, “[c]onsidering the claimant’s age, education,  
15 work experience and residual functional capacity, there are jobs that exist in significant  
16 numbers in the national economy that the claimant can perform.” (AR 28). The ALJ  
17 accepted the vocational expert’s testimony that claimant, given her age, education, work  
18 experience, and residual functional capacity, would be able to perform the requirements  
19 of representative occupations such as: Small parts assembler (DOT 706.684-022); Shoe  
20 packager (DOT 920.687-166); and Laundry sorter (DOT 361.687-014). (AR 28). As  
21 such, the ALJ found that Plaintiff was “not disabled”, as defined in the Social Security  
22 Act, at any time from April 29, 2014, through the date of the ALJ’s decision. (AR 29).

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23 <sup>6</sup> A Residual Functional Capacity is what a claimant can still do despite existing  
24 exertional and nonexertional limitations. See 20 C.F.R. §§ 404.1545(a)(1),  
416.945(1)(1).

1 **III. STANDARD OF REVIEW**

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

13 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a specific  
14 quantum of supporting evidence. Rather, a court must consider the record as a whole,  
15 weighing both evidence that supports and evidence that detracts from the Secretary’s  
16 conclusion.” Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citations and  
17 internal quotation marks omitted). “Where evidence is susceptible to more than one  
18 rational interpretation,’ the ALJ’s decision should be upheld.” Ryan v. Comm’r of Soc.  
19 Sec., 528 F.3d 1194, 1198 (9th Cir. 2008) (citing Burch v. Barnhart, 400 F.3d 676, 679  
20 (9th Cir. 2005)); see Robbins, 466 F.3d at 882 (“If the evidence can support either  
21 affirming or reversing the ALJ’s conclusion, we may not substitute our judgment for that  
22 of the ALJ.”). The Court may review only “the reasons provided by the ALJ in the  
23 disability determination and may not affirm the ALJ on a ground upon which he did not  
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1 rely.” Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007) (citing Connett v. Barnhart, 340  
2 F.3d 871, 874 (9th Cir. 2003)).

#### 3 **IV. DISCUSSION**

4 Plaintiff raises two issues for review: whether the ALJ committed legal error in  
5 not adequately assessing Plaintiff’s testimony regarding her pain and limitations (i.e.,  
6 Plaintiff complains the ALJ did not find her testimony to be credible); and whether the  
7 ALJ failed to properly consider the reporting of the treating physician, Dr. Shah. [Dkt.  
8 18, Pltf.’s Br. 1 and 8].

##### 9 **A. The ALJ Failed to Properly Assess Plaintiff’s Testimony**

10 Plaintiff first contends that the ALJ committed legal error in not adequately  
11 assessing her testimony regarding her pain and limitations.

12 A claimant carries the burden of producing objective medical evidence of his or  
13 her impairments and showing that the impairments could reasonably be expected to  
14 produce some degree of the alleged symptoms. Benton ex rel. Benton v. Barnhart, 331  
15 F.3d 1030, 1040 (9th Cir. 2003). But once the claimant meets that burden, medical  
16 findings are not required to support the alleged severity of pain. Bunnell v. Sullivan,  
17 947 F.2d 341, 345 (9th Cir. 1991) (en banc); see also Light v. Soc. Sec. Admin., 119 F.3d  
18 789, 792 (9th Cir. 1997) (“claimant need not present clinical or diagnostic evidence to  
19 support the severity of his pain”) (citation omitted)).

20 Instead, once a claimant has met the burden of producing objective medical  
21 evidence, an ALJ can reject the claimant’s subjective complaint “only upon (1) finding  
22 evidence of malingering, or (2) expressing clear and convincing reasons for doing so.”  
23 Benton, 331 F.3d at 1040. The ALJ may consider at least the following factors when  
24 weighing the claimant’s credibility: (1) his or her reputation for truthfulness;

1 (2) inconsistencies either in the claimant's testimony or between the claimant's  
2 testimony and his or her conduct; (3) his or her daily activities; (4) his or her work  
3 record; and (5) testimony from physicians and third parties concerning the nature,  
4 severity, and effect of the symptoms of which she complains. Thomas v. Barnhart, 278  
5 F.3d 15 947, 958-59 (9th Cir. 2002) (citing Light, 119 F.3d at 792). "If the ALJ's  
6 credibility finding is supported by substantial evidence in the record, [the court] may  
7 not engage in second-guessing." Id. at 959 (citing Morgan v. Apfel, 169 F.3d 595, 600  
8 (9th Cir. 1999)).

9 Here, nowhere in his opinion does the ALJ address evidence of malingering.  
10 Thus, in rejecting Plaintiff's credibility, the ALJ was required to articulate clear and  
11 convincing reasons. See Benton, 331 F.3d at 1040. The ALJ clearly identifies two bases  
12 for discounting Plaintiff's testimony: Plaintiff's reported daily activities and that Plaintiff  
13 was not receiving the medical treatment one would expect a disabled person to receive.  
14 The ALJ's decision describes the reasons for discrediting Plaintiff's testimony regarding  
15 her pain as follows:

16 Although the claimant's activities of daily living were somewhat  
17 limited, some of ... these activities are the same as those necessary for  
18 obtaining and maintaining employment and are inconsistent with the  
19 presence of an incapacitating or debilitating condition. The claimant  
20 indicated she performed personal grooming activities, performed some  
21 household chores, prepared simple meals, drove a vehicle and went places  
22 alone (Testimony and Ex. 16F). Her ability to participate in such activities  
23 undermines her allegations of disabling functional limitations.

24 The claimant has not generally received the type of medical  
treatment one would expect for a totally disabled individual. ... These  
findings are inconsistent with the alleged severity of her symptoms and  
functional limitations.

After careful consideration of the evidence, the undersigned finds  
that the claimant's medically determinable impairments could reasonably  
be expected to cause the alleged symptoms; however, the claimant's  
statements concerning the intensity, persistence and limiting effects of

1 these symptoms are not entirely consistent with the medical evidence and  
2 other evidence in the record for the reasons explained in this decision.

3 (AR 22-23). Having carefully reviewed the record, the Court finds that the ALJ failed  
4 to provide sufficient clear and convincing reasons for discounting Plaintiff's subjective  
5 complaints.

6 1. Conservative Treatment

7 The ALJ stated that Plaintiff "has not generally received the type of medical  
8 treatment one would expect from a totally disabled individual" (AR 23) and, upon  
9 further detailed review of the medical evidence, the ALJ noted that the Plaintiff's  
10 treatment records reveal "grossly conservative medical treatment since the application  
11 date." (AR 26). The ALJ, however, only provided these conclusory statements as to the  
12 treatment Plaintiff received and failed to explain how the treatment received is "grossly  
13 conservative" or what type of medical treatment one would expect to receive from a  
14 totally disabled individual. The ALJ failed to meet his requirement of expressing clear  
15 and convincing reasons for discounting Plaintiff's testimony on this basis.

16 2. Daily Activities

17 The ALJ also found that Plaintiff's activities undermine her testimony. The ALJ,  
18 however, once again only made a conclusory statement that the minimal activities listed  
19 undermine Plaintiff's allegations of disabling functional limitations. (AR 22-23). The  
20 Ninth Circuit has noted, "[a]s this Court previously has explained, if a claimant engages  
21 in numerous daily activities involving skills that could be transferred to the workplace,  
22 the ALJ may discredit the claimant's allegations *upon making specific findings relating*  
23 *to those activities.*" Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005) (emphasis  
24 added). Here, the ALJ made no such specific findings. Moreover, daily activities



1 specifically identified by the ALJ, “personal grooming activities, performed some  
2 household chores, prepared simple meals, drove a vehicle and went places alone”, do  
3 not provide a clear and convincing reason for discrediting Plaintiff’s testimony.

4           3.     Lack of Objective Medical Evidence

5           Although not clearly or specifically stated, the ALJ may have also relied on the  
6 objective medical evidence as a third basis for discrediting Plaintiff’s testimony. The  
7 ALJ summarizes records that may conflict with Plaintiff’s testimony but fails to explain  
8 the contradictions. In addition, Plaintiff contends there is objective evidence in the  
9 record that supports at least some of Plaintiff’s alleged symptoms. Again, the ALJ fails  
10 to provide a reason why those records should not be credited to supporting Plaintiff’s  
11 testimony.

12           As the ALJ failed to articulate clear, convincing and specific reasons for  
13 discounting Plaintiff’s pain and limitations testimony, the Court concludes that this  
14 finding by the ALJ shall be reversed. The case is remanded for a reassessment of  
15 Plaintiff’s testimony.

16           **B.     The ALJ Failed to Properly Consider the Reporting of the**  
17           **Treating Physician, Dr. Shah**

18           Plaintiff’s second contention is that the ALJ failed to properly consider the  
19 reporting of her treating physician, Dr. Nimish Shah. This Court agrees. Just as with  
20 discounting of Plaintiff’s testimony, the ALJ fails to provide “specific and legitimate”  
21 reasons that are supported by substantial evidence in the record for discounting the  
22 opinion of Dr. Shah, a treating physician. Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir.  
23 1995).

1           After summarizing Dr. Shah’s reports, the ALJ merely asserts the conclusion,  
2 “[t]he severity of functional limitations assessed by Dr. Shara [sic] are disproportionate  
3 to the medical evidence in the [Plaintiff’s] file. The majority of the [Plaintiff’s] medical  
4 records document the [Plaintiff’s] impairments as mild, including no loss of motor  
5 strength and only moderately decreased range of motions of the spine (citing AR 1171-  
6 96, 1284-1354).” (AR 26). The ALJ did not meet his burden of “setting out a detailed  
7 and thorough summary of the facts and conflicting clinical evidence stating his  
8 interpretation thereof, and making findings.” Magallanes v. Bowen, 881 F.2d 747, 751  
9 (9<sup>th</sup> Cir. 1989) (citation omitted); see also Tommasetti v. Astrue, 533 F.3d at 1041  
10 (finding ALJ had properly disregarded a treating physician’s opinion by setting forth  
11 specific and legitimate reasons for rejecting the physician’s opinion that were supported  
12 by the entire record).

13           Summarizing medical records is not the same as making findings and stating  
14 interpretations. A conclusion must come after the analysis, not replace it. Nowhere in  
15 his decision does the ALJ succinctly provide specific and legitimate reasons based on  
16 substantial evidence for giving little weight to the treating physician’s opinion. The  
17 conclusion, without more, is insufficient. As such, the Court reverses the ALJ’s finding  
18 that Dr. Shah’s report is entitled to little weight and remands for reassessment of the  
19 appropriate weight consistent with this decision.

1 **V. ORDER**

2 For the reasons stated above, the decision of the Social Security Commissioner is  
3 REVERSED and the action is REMANDED.

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5 DATE: October 17, 2019

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/s/ Autumn D. Spaeth  
THE HONORABLE AUTUMN D. SPAETH  
United States Magistrate Judge

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