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

ROSALINDA H.,¹) Case No. SACV 19-1622-JPR
)
Plaintiff,)
) **MEMORANDUM DECISION AND ORDER**
v.) **REVERSING COMMISSIONER**
)
ANDREW SAUL, Commissioner)
of Social Security,)
)
Defendant.)
)
)

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner’s final decision denying her applications for Social Security disability income benefits (“DIB”) and Supplemental Security Income (“SSI”). The parties consented to the jurisdiction of the undersigned under 28 U.S.C. § 636(c). The matter is before the Court on the parties’ Joint Stipulation, filed May 12, 2020, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner’s decision is reversed and this action is

¹ Plaintiff’s name is partially redacted in line 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.

1 remanded for further proceedings.

2 **II. BACKGROUND**

3 Plaintiff was born in 1972. (Administrative Record ("AR")
4 344.) She completed high school (AR 386) and last worked as a
5 billing clerk (AR 116-17, 386, 393-94).

6 Plaintiff applied for DIB and SSI on October 19 and 30,
7 2015, respectively, alleging a disability onset date of August
8 18, 2015, based on fibromyalgia, migraines, restless-leg
9 syndrome, and sleep apnea. (AR 344-50, 385-86.) After her
10 applications and requests for reconsideration were denied (AR
11 225-40, 243-60, 265-69, 271-75), she requested a hearing before
12 an Administrative Law Judge (AR 276-77). One was held on
13 February 13, 2018, at which Plaintiff, who was represented by
14 counsel, testified, as did a vocational expert. (AR 112-34.) In
15 a written decision issued May 31, 2018, the ALJ found her not
16 disabled. (AR 97-110.) She sought Appeals Council review
17 (see AR 340-43, 475-76), which was denied on July 10, 2019 (AR 1-
18 7). This action followed.

19 **III. STANDARD OF REVIEW**

20 Under 42 U.S.C. § 405(g), a district court may review the
21 Commissioner's decision to deny benefits. The ALJ's findings and
22 decision should be upheld if they are free of legal error and
23 supported by substantial evidence based on the record as a whole.
24 See Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.
25 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence
26 means such evidence as a reasonable person might accept as
27 adequate to support a conclusion. Richardson, 402 U.S. at 401;
28 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It

1 is more than a scintilla but less than a preponderance.
2 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
3 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). “[W]hatever the
4 meaning of ‘substantial’ in other contexts, the threshold for
5 such evidentiary sufficiency is not high.” Biestek v. Berryhill,
6 139 S. Ct. 1148, 1154 (2019). To determine whether substantial
7 evidence supports a finding, the court “must review the
8 administrative record as a whole, weighing both the evidence that
9 supports and the evidence that detracts from the Commissioner’s
10 conclusion.” Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
11 1998). “If the evidence can reasonably support either affirming
12 or reversing,” the court “may not substitute its judgment” for
13 the Commissioner’s. Id. at 720-21.

14 **IV. THE EVALUATION OF DISABILITY**

15 People are “disabled” for purposes of receiving Social
16 Security benefits if they are unable to engage in any substantial
17 gainful activity owing to a physical or mental impairment that is
18 expected to result in death or has lasted, or is expected to
19 last, for a continuous period of at least 12 months. 42 U.S.C.
20 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
21 1992).

22 A. The Five-Step Evaluation Process

23 The ALJ follows a five-step evaluation process to assess
24 whether a claimant is disabled. 20 C.F.R. §§ 404.1520(a)(4),
25 416.920(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir.
26 1995) (as amended Apr. 9, 1996). In the first step, the
27 Commissioner must determine whether the claimant is currently
28 engaged in substantial gainful activity; if so, the claimant is

1 not disabled and the claim must be denied. §§ 404.1520(a)(4)(i),
2 416.920(a)(4)(i).

3 If the claimant is not engaged in substantial gainful
4 activity, the second step requires the Commissioner to determine
5 whether the claimant has a "severe" impairment or combination of
6 impairments significantly limiting her ability to do basic work
7 activities; if not, the claimant is not disabled and her claim
8 must be denied. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii) & (c).

9 If the claimant has a "severe" impairment or combination of
10 impairments, the third step requires the Commissioner to
11 determine whether the impairment or combination of impairments
12 meets or equals an impairment in the Listing of Impairments set
13 forth at 20 C.F.R. part 404, subpart P, appendix 1; if so,
14 disability is conclusively presumed. §§ 404.1520(a)(4)(iii),
15 416.920(a)(4)(iii) & (d).

16 If the claimant's impairment or combination of impairments
17 does not meet or equal an impairment in the Listing, the fourth
18 step requires the Commissioner to determine whether the claimant
19 has sufficient residual functional capacity ("RFC")² to perform
20 her past work; if so, she is not disabled and the claim must be
21 denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The claimant
22 has the burden of proving she is unable to perform past relevant
23 work. Drouin, 966 F.2d at 1257. If the claimant meets that
24 burden, a prima facie case of disability is established. Id.

25
26 ² RFC is what a claimant can do despite existing exertional
27 and nonexertional limitations. §§ 404.1545(a)(1), 416.945(a)(1);
28 see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).
The Commissioner assesses the claimant's RFC between steps three
and four. Laborin v. Berryhill, 867 F.3d 1151, 1153 (9th Cir.
2017) (citing § 416.920(a)(4)).

1 If that happens or if the claimant has no past relevant
2 work, the Commissioner bears the burden of establishing that the
3 claimant is not disabled because she can perform other
4 substantial gainful work available in the national economy, the
5 fifth and final step of the sequential analysis.

6 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v), 416.960(b).

7 B. The ALJ's Application of the Five-Step Process

8 At step one, the ALJ found that Plaintiff had not engaged in
9 substantial gainful activity since August 18, 2015, the alleged
10 onset date; her date last insured was December 31, 2020. (AR
11 99.) At step two, he concluded that she had the severe
12 impairment of fibromyalgia. (AR 100.) At step three, he
13 determined that her impairment did not meet or equal a Listing.
14 (AR 102.) At step four, he found an RFC allowing her to perform
15 a range of light work:

16 the claimant can lift and/or carry 20 pounds occasionally
17 and 10 pounds frequently; can stand and/or walk for six
18 hours out of an eight-hour workday; can sit for six hours
19 out of an eight-hour workday; cannot climb ladders, rope
20 or scaffolds; can occasionally climb ramps and stairs;
21 can occasionally stoop, kneel, crouch, and crawl; and can
22 frequently balance.

23 (Id.) The ALJ concluded that Plaintiff could do her past
24 relevant work as a billing clerk as generally performed in the
25 national economy. (AR 104-05.) Thus, he found her not disabled.
26 (AR 105.)

1 **V. DISCUSSION**

2 A. The ALJ Did Not Properly Evaluate Plaintiff's
3 Subjective Symptom Testimony

4 Plaintiff claims that the ALJ "failed to provide clear and
5 convincing reasons to reject [her] subjective limitations." (J.
6 Stip. at 4.) As explained below, the ALJ erred, and remand is
7 warranted.

8 1. Applicable law

9 An ALJ's assessment of a claimant's allegations concerning
10 the severity of her symptoms is entitled to "great weight."
11 Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989) (as amended)
12 (citation omitted); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir.
13 1985) (as amended Feb. 24, 1986). "[T]he ALJ is not required to
14 believe every allegation of disabling pain, or else disability
15 benefits would be available for the asking, a result plainly
16 contrary to 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674
17 F.3d 1104, 1112 (9th Cir. 2012) (citing Fair v. Bowen, 885 F.2d
18 597, 603 (9th Cir. 1989)).

19 In evaluating a claimant's subjective symptom testimony, the
20 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d
21 at 1035-36; see also SSR 16-3p, 2016 WL 1119029, at *3 (Mar. 16,
22 2016). "First, the ALJ must determine whether the claimant has
23 presented objective medical evidence of an underlying impairment
24 [that] could reasonably be expected to produce the pain or other
25 symptoms alleged." Lingenfelter, 504 F.3d at 1036. If such
26 objective medical evidence exists, the ALJ may not reject a
27 claimant's testimony "simply because there is no showing that the
28 impairment can reasonably produce the degree of symptom alleged."

1 Smolen v. Chater, 80 F.3d 1273, 1282 (9th Cir. 1996) (emphasis in
2 original).

3 If the claimant meets the first test, the ALJ may discount
4 the claimant's subjective symptom testimony only if he makes
5 specific findings that support the conclusion. See Berry v.
6 Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent a finding or
7 affirmative evidence of malingering, the ALJ must provide a
8 "clear and convincing" reason for rejecting the claimant's
9 testimony. Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir.
10 2015) (as amended) (citing Lingenfelter, 504 F.3d at 1036);
11 Treichler v. Comm'r of Soc. Sec. Admin., 775 F.3d 1090, 1102 (9th
12 Cir. 2014). If the ALJ's evaluation of a plaintiff's alleged
13 symptoms is supported by substantial evidence in the record, the
14 reviewing court "may not engage in second-guessing." Thomas v.
15 Barnhart, 278 F.3d 947, 959 (9th Cir. 2002).

16 2. Relevant background

17 a. *Plaintiff's relevant medical history*

18 Plaintiff saw family-medicine practitioner Luis Villa for
19 fibromyalgia on March 31, 2015. (AR 482-84.) Her "[a]ggravating
20 factors include[d] muscular aches and pains and arthralgias,"³
21 and her symptoms were "chronic and . . . poorly controlled." (AR
22 482.) Dr. Villa assessed her with myalgia and myositis,⁴

23
24 ³ Arthralgias are aching pains in the joints without
25 swelling. Arthritis vs. Arthralgia: What's the Difference?,
26 Healthline, [https://www.healthline.com/health/
27 rheumatoid-arthritis/arthralgia](https://www.healthline.com/health/rheumatoid-arthritis/arthralgia) (last visited Mar. 24, 2021).

28 ⁴ Myalgia are muscle aches. What You Need To Know About
Muscle Aches and Pains, Healthline, [https://www.healthline.com/
health/muscle-aches](https://www.healthline.com/health/muscle-aches) (last visited Mar. 24, 2021). Myositis is
chronic, progressive muscle inflammation thought to be an
autoimmune condition that causes the body to attack the muscles;

1 "addressed her [fibromyalgia] and its effects on her pain and
2 emphasized [a] heart healthy diet . . . [and] her weight," and
3 noted "[e]levated ferritin,"⁵ chronic nonalcohol-related liver
4 disease, and "prediabetes." (AR 483.) He referred her to a
5 rheumatologist, describing her as a "patient with severe
6 fibromyalgia in need of further treatment." (Id.; see also AR
7 488.)

8 Rheumatologist Andrew Concoff examined Plaintiff on June 10,
9 2015. (AR 590-93.) She reported the "gradual onset of body
10 aches [with] bone popping [and] pain in 2007" and "head to toe"
11 pain that "fe[lt] like [a] big bruise." (AR 590.) Her
12 "shoulders, el[bo]ws, wrists, knees, and low back" were affected.
13 (Id.) She also complained of lower-back pain that "radiate[d] to
14 [her] bilateral lateral hips" and "[p]ain with sitting and
15 standing" and "light palpation of [the] skin." (Id.) Her pain
16 had become "10 [times] worse, and cause[d] her to miss work."
17 (Id.) She reported "difficulty falling and staying asleep,"
18 "disrupted" sleep from pain with movement, "[d]aytime fatigue,"
19 "hair thinning," recurring stress-induced skin rash to her chin,
20 and "[r]ecurrent" urinary tract infections. (Id.) Her symptoms
21 were "constant," and her pain level was nine of 10, radiating to
22 her back, hips, and shoulders. (AR 591.) She had been taking

23
24 researchers believe it may be caused by rheumatoid arthritis,
25 lupus, viruses, or drug toxicity. What Is Myositis and How Can
It Be Treated?, Healthline, [https://www.healthline.com/health/
myositis#causes](https://www.healthline.com/health/myositis#causes) (last visited Mar. 24, 2021).

26 ⁵ Ferritin is a blood protein containing iron; an elevated
27 level may signify liver disease, rheumatoid arthritis, other
28 inflammatory conditions, or hyperthyroidism. Ferritin Test, Mayo
Clinic, [https://www.mayoclinic.org/tests-procedures/ferritin-
test/about/pac-20384928](https://www.mayoclinic.org/tests-procedures/ferritin-test/about/pac-20384928) (last visited Mar. 24, 2021).

1 Cymbalta⁶ daily since 2007. (AR 590.)

2 Dr. Concoff's systems review revealed fatigue,
3 "headache[s]," "night sweats," and "recent weight gain [of] 40
4 [pounds]"; "[w]orsening central vision, foreign body sensation in
5 eye, dryness of the eyes, eye pain, [and] bloodshot eyes"; "chest
6 pain or discomfort and palpitations," "[d]yspnea,"⁷ and
7 "[h]eartburn and nausea"; "nocturia and dysuria"⁸; "muscle
8 weakness, sexual complaints, . . . loss of hair from the head or
9 body," "easy bruising," "[m]uscle aches, arthralgias, muscle
10 spasms, swelling localized to one or more joints
11 wrist/shoulders/back/hips/knees/ankles, [and] "localized joint
12 stiffness . . . worse in the morning 2 hours"; "[d]izziness and
13 hyperesthesia"⁹; "[a]nxiety with persistent worry, depression and
14 initial insomnia"; and "[p]hotosensitivity." (AR 592.)

15 Examination found cervical spine "abnormalities," 18 of 18

17
18 ⁶ Cymbalta, or duloxetine, treats depression and anxiety.
19 See Cymbalta, WebMD, [https://www.webmd.com/drugs/2/drug-91491/](https://www.webmd.com/drugs/2/drug-91491/cymbalta-oral/details)
20 [cymbalta-oral/details](https://www.webmd.com/drugs/2/drug-91491/cymbalta-oral/details) (last visited Mar. 24, 2021). It is also
approved for use to help relieve nerve and back pain associated
with fibromyalgia. See id.

21 ⁷ Dyspnea is shortness of breath. Dyspnea, Healthline,
22 <https://www.healthline.com/health/dyspnea> (last visited Mar. 24,
2021).

23 ⁸ Nocturia is having to urinate often during the night.
24 Nocturia, Cleveland Clinic, [https://my.clevelandclinic.org/](https://my.clevelandclinic.org/health/diseases/14510-nocturia)
25 [health/diseases/14510-nocturia](https://my.clevelandclinic.org/health/diseases/14510-nocturia) (last visited Mar. 24, 2021).
26 Dysuria is painful urination. Dysuria, Cleveland Clinic,
[https://my.clevelandclinic.org/health/diseases/](https://my.clevelandclinic.org/health/diseases/15176-dysuria-painful-urination)
15176-dysuria-painful-urination (last visited Mar. 24, 2021).

27 ⁹ Hyperesthesia is an increased sensitivity to sight, touch,
28 sound, or smell. Hyperesthesia, Healthline, [https://](https://www.healthline.com/health/hyperesthesia)
www.healthline.com/health/hyperesthesia (last visited Mar. 24,
2021).

1 fibromyalgia tender points,¹⁰ and "abnormal posture," with
2 "rounded shoulders" but normal otherwise. (AR 592-93.)

3 On July 1, 2015, Dr. Concoff evaluated Plaintiff for
4 fibromyalgia and lupus and reviewed her lab results. (AR 689.)
5 She reported that her pain had worsened, causing her to miss work
6 the two days prior, and she had stumbled and fallen from lower-
7 back and knee pain. (Id.) Among other things, her active
8 problems were "[a]bnormal antinuclear antibody,"¹¹ "[a]rthropathy
9 of multiple sites," "[f]atigue," "[m]igraine headache," and
10 "[m]orning stiffness of joints." (Id.) Examination results
11 showed cervical-spine abnormalities and 18 of 18 fibromyalgia
12 tender points. (AR 690.) He administered "Depo Medrol 80 mg
13 into [her] left deltoid"¹² and recommended further testing for
14 "systemic autoimmunity" and that she continue to take Cymbalta,
15

16 ¹⁰ Tender points are 18 specific areas of the body tested
17 under the pre-2010 diagnostic approach for fibromyalgia; if 11 of
18 them were tender when firm pressure was applied, a positive
19 diagnosis was supported. Fibromyalgia: Understand How It's
20 Diagnosed, Mayo Clinic, [https://www.mayoclinic.org/](https://www.mayoclinic.org/diseases-conditions/fibromyalgia/in-depth/fibromyalgia-symptoms/art-20045401)
21 [diseases-conditions/fibromyalgia/in-depth/fibromyalgia-symptoms/](https://www.mayoclinic.org/diseases-conditions/fibromyalgia/in-depth/fibromyalgia-symptoms/art-20045401)
22 [art-20045401](https://www.mayoclinic.org/diseases-conditions/fibromyalgia/in-depth/fibromyalgia-symptoms/art-20045401) (last visited Mar. 24, 2021). Because fibromyalgia
23 symptoms can come and go and be associated with other conditions
24 that must be excluded, diagnostic guidelines now require finding
25 "widespread pain throughout [the] body for at least three
26 months," with "widespread" meaning "pain on both sides of [the]
27 body, as well as above and below [the] waist." Id.

28 ¹¹ Antinuclear antibody, or ANA, tests measure the amount of
antibodies made by the immune system, too many of which can
signify an autoimmune disease. Antinuclear Antibody Panel (ANA
Test), Healthline, [https://www.healthline.com/health/](https://www.healthline.com/health/antinuclear-antibody-panel)
antinuclear-antibody-panel (last visited Mar. 24, 2021).

¹² Depo-Medrol, or methylprednisolone, is a corticosteroid
hormone injected to treat pain and swelling occurring with
arthritis and other joint disorders. Depo-Medrol Vial, WebMD,
[https://www.webmd.com/drugs/2/drug-6160/depo-medrol-injection/](https://www.webmd.com/drugs/2/drug-6160/depo-medrol-injection/details)
details (last visited Mar. 24, 2021).

1 obtain a sleep study, and consider "pool therapy,"¹³
2 "acupuncture," "biofeedback/mindfulness meditation," and vitamin
3 D. (AR 690, 693.)

4 On August 20, 2015, Dr. Concoff reviewed test results and
5 ordered "further labs for systemic autoimmunity," recommending
6 that Plaintiff remain "off work until follow-up" and "consider
7 [a] pain management program." (AR 686-87.) She had reported
8 worsening pain, with "pins and needles" in her "right deltoid
9 area and right thigh," "near accidents in car from driving,"
10 "[l]osing stren[g]th from sharp pains to knees," and continued
11 severe lower-back pain and worsened sleep because of pain. (AR
12 684.)

13 Pain specialist Arthur Zepeda examined Plaintiff on
14 September 24, 2015. (AR 679-83.) She reported constant pain,
15 describing it as "heavy, tender, splitting[] sensation, stabbing,
16 punishing-cruel sensation, and a throbbing, cramping, hot-
17 burning, aching, tiring-exhausting, sickening[] sensation" that
18 was worse with "bending, lifting, coughing, sneezing, sexual
19 intercourse, standing a long time, sitting a long time, [and]
20 walking." (AR 679.) She also felt "blue all the time." (Id.)
21 His examination yielded mostly normal results, with a normal
22 range of motion, except "[p]alpation of the thoracic and lumbar
23 facets and lumbar intervertebral spaces reveal[ed] pain," as did
24 "palpation of the cervical facets," and she had pain with
25 cervical-spine movement and "palpable trigger points in the
26 muscles of the head and neck." (AR 681.) He recommended a

27
28 ¹³ Plaintiff apparently later "[d]ecline[d] Aqua-therapy."
(AR 211, 780.)

1 "chronic pain program"; prescribed an anti-inflammatory, a cream
2 for her knees and shoulders, and a restless-leg medication; and
3 suggested a possible increase in Cymbalta dosage. (AR 683.)

4 On October 22 and December 18, 2015, Plaintiff answered
5 pain-management questionnaires, indicating "constant" pain
6 averaging from five to nine of 10, made worse by bending,
7 prolonged sitting, coughing, sneezing, lifting, prolonged
8 standing, sexual intercourse, and walking. (AR 651-52.)

9 At her next appointment with Dr. Concoff, in October 2015,
10 he found that the further laboratory tests were "without
11 conclusive evidence of systemic autoimmunity" and continued her
12 prescriptions and his recommendations for alternative therapies
13 and a pain-management program. (AR 678; see AR 674-77.) Several
14 appointments with her primary-care provider for chronic pain and
15 other complaints at the end of 2015 indicate that she was
16 awaiting referral to such a program. (See AR 659, 673.)

17 Plaintiff had check-ups and fibromyalgia follow-ups with
18 family-medicine specialist Jose L. Valdez from March 3, 2016, to
19 February 20, 2017. (See AR 622-36.) Dr. Valdez referred her to
20 an "in-network rheumatologist," assessing her with fibromyalgia,
21 "chronic pain," "restless leg syndrome," "menopause syndrome,"
22 "migraine syndrome," and "BRCA 2 [positive]." ¹⁴ (AR 623-24.) On
23 July 19, 2016, he noted that "fibromyalgia - improve[d with]
24

25
26 ¹⁴ BRCA2, or breast cancer gene two, means the patient
27 possesses a harmful variant of the gene that elevates the risk of
28 developing breast or ovarian cancer. BRCA Gene Mutations: Cancer
Risk & Genetic Mutations, Nat'l Cancer Inst., [https://
www.cancer.gov/about-cancer/causes-prevention/genetics/
brca-fact-sheet](https://www.cancer.gov/about-cancer/causes-prevention/genetics/brca-fact-sheet) (last visited Mar. 24, 2021).

1 gabapentin,"¹⁵ and on February 2, 2017, he noted her request for
2 referral to a rheumatologist for "worsening joint pain,"
3 including "both hands [with] inflammation" and "tenderness." (AR
4 627, 633.) At the February appointment, he further remarked that
5 "pain [wa]s at its worst" during the "past 2 months." (AR 634.)

6 Treatment records from Arthritis and Osteoporosis Medical
7 Center from March 26, 2017, to February 9, 2018, show exam
8 findings of neck, shoulder, and knee pain and "abnormal" and
9 limited range of motion in the shoulders, knees, and cervical
10 spine at every appointment. (See AR 208-21, 752-62, 765-67, 773-
11 74, 777-78, 782-83.) She had 12 of 18 positive trigger points at
12 appointments in April, May, June, October, and December 2017 and
13 February 2018. (AR 210, 762, 767, 774, 778, 783.) Her treatment
14 plan included myofascial trigger-point injections¹⁶ and various
15 medications. (AR 763-64, 770-71, 775.) An MRI of her lumbar
16 spine on November 17, 2017, was largely unremarkable except for a
17 "central disc bulge measuring approximately 2.5 [millimeters]" at
18 L5-S1, with "no significant spinal canal compromise." (AR 759.)

19 Treatment records from MD Health Clinics reveal appointments
20 weekly in December 2017 and January 2018 for fibromyalgia,
21

22 ¹⁵ Gabapentin, brand-named Neurontin, is an anticonvulsant
23 that "works in the brain to prevent seizures and relieve pain for
24 certain conditions in the nervous system." Gabapentin, Mayo
25 Clinic, [https://www.mayoclinic.org/drugs-supplements/
gabapentin-oral-route/description/drg-20064011](https://www.mayoclinic.org/drugs-supplements/gabapentin-oral-route/description/drg-20064011) (last visited Mar.
24, 2021).

26 ¹⁶ Myofascial trigger-point injections involve injecting
27 small amounts of anesthetic and steroid into trigger points to
28 relieve pain associated with fibromyalgia. Trigger Point
Injections, Cleveland Clinic, [https://my.clevelandclinic.org/
health/treatments/17582-trigger-point-injection](https://my.clevelandclinic.org/health/treatments/17582-trigger-point-injection) (last visited
Mar. 24, 2021).

1 anxiety, migraines, bilateral knee pain, rheumatoid arthritis,
2 insomnia, and shoulder and back pain. (See AR 747-51.) An
3 undated medication list reflects that Plaintiff had taken various
4 opioid-based medications, among others. (AR 466.)

5 b. *Plaintiff's statements*

6 On November 28, 2015, Plaintiff stated in a function report
7 that her ability to work was limited by "severe fibromyalgia for
8 over 7 y[ea]rs[,] migraines," and insomnia "due to pain [and]
9 restless leg syndrome." (AR 397; see AR 398-405.) Her daily
10 activities included a "little bit of walking, sitting from time
11 to time," and lying down "due to severe body pains." (AR 398.)
12 She was "unable to help" take care of her husband and 13-year-old
13 son,¹⁷ and her sleep was disrupted by "sleep apnea" and "severe"
14 fibromyalgia, with "pain from head to toe." (Id.) Her husband
15 helped her dress, bathe, and take care of her hair because her
16 arm and shoulder pain limited her movement. (Id.) He helped her
17 out of bed because her "arms, shoulder, knees, [and] legs, [we]re
18 very painful." (Id.) He also prepared meals because she
19 couldn't move her wrist, and her "wrists, arms, [and] hands" were
20 "to[o] painful." (AR 399.) Pain prevented her from doing daily
21 chores. (Id.) She didn't go out alone because her pain would
22 cause her to "lose strength in [her] body," and she often stayed
23 in the car while her husband bought groceries because of "too
24 much pain." (AR 400.)

26 ¹⁷ In July 2018, however, Plaintiff told a psychiatrist that
27 she was "stressed" from "being sole care taker of h[us]band and
28 both elderly and sickly mother and father in law." (AR 60; see
also AR 60, 65-66 (noting that Plaintiff was "primary caretaker
of husband who has brain tumor and is disabled").)

1 Her interests included "spending family time," but she
2 hadn't done that "at all in the past y[ea]r since her pain" had
3 become "severe." (AR 401.) She hadn't participated in social
4 activities in over a year because she couldn't walk much and
5 would need to lie down. (AR 402.) Her ability to lift, squat,
6 bend, stand, reach, walk, sit, kneel, climb stairs, and use her
7 hands was affected, and she could not lift at all because of the
8 pain in her shoulders and entire body. (Id.) She could pay
9 attention for only about five minutes before needing to rest,
10 move, or lie down; had trouble finishing tasks; and felt
11 depressed and didn't handle stress well because her pain made her
12 "very emotional." (AR 402-03.) She feared insomnia and her
13 progressing pain and depression. (AR 403.) She couldn't take
14 medicine for her migraines because it interacted with her
15 fibromyalgia medicine, so she slept "very little due to severe
16 body pains from head to toe [and] restless leg syndrome." (AR
17 404.)

18 At her hearing, Plaintiff described having fibromyalgia for
19 10 years and feeling widespread "[h]ead to toe" pain that felt
20 like "a big bruise, a walking bruise – so severe that it's very
21 hard to even type, hold my arms, my back, my lower back, my
22 knees." (AR 120.) She reported "daily" migraine – not "regular"
23 – headaches that lasted for "weeks." (Id.; see AR 128.) When
24 she had a migraine, she would need to "[l]ay down for hours and
25 hours," and that happened "almost on a daily basis." (AR 128.)
26 Her sleep medication had stopped working, so she was "going
27 through pain management with different types of medication." (AR
28 120.) She typically slept an hour a night, "if that." (AR 121.)

1 The ALJ went through her list of medications, and Plaintiff
2 described having "fog moments," including "getting lost when
3 [she] dr[o]ve," being "very forgetful," and lacking
4 "concentration," which she had been told could be side effects of
5 her medicine. (AR 123.)

6 Plaintiff tried to cook and clean but had "many pauses in-
7 between from [her] back and [her] pains" and was "so forgetful";
8 sometimes she had to "stop and think where [she was] going when
9 [she was] driving," which was "[s]cary." (AR 127.)

10 c. *The ALJ's decision*

11 The ALJ found that Plaintiff's "medically determinable
12 impairments could reasonably be expected to cause the alleged
13 symptoms; however, [her] statements and allegations concerning
14 the intensity, persistence and limiting effects of these symptoms
15 [we]re not entirely consistent with the medical evidence and
16 other evidence in the record." (AR 103.) He gave three reasons
17 for discounting her symptom statements and testimony: (1)
18 "diagnostic findings . . . show[ed] no significant neurological
19 deficits or gait abnormalities to justify greater functional
20 restrictions"; (2) she had had "rather conservative" treatment;
21 and (3) there was "little documentation" of the side effects she
22 complained of at the hearing. (AR 104.) He further noted that
23 she "had complaints of muscular aches and pains for which she was
24 prescribed Cymbalta," but there was "no known history of
25 rheumatoid arthritis." (AR 103.) "Her examination revealed
26 numerous trigger point tenderness [sic] in the shoulder, knees,
27 and back; however, her gait, motor and balance were normal."
28 (Id.) Subsequent treatment notes in 2015 "conveyed normal

1 physical examination findings except for diffuse tenderness to
2 palpation"; she was referred for pain management, pool therapy,
3 acupuncture, and biofeedback therapy; and medication was titrated
4 upward for "better symptom control." (Id.)

5 The ALJ recognized that treatment notes from 2016 and 2017
6 reflected that Plaintiff complained of "worsened fibromyalgia
7 pain, but her physical examination findings remained largely
8 unremarkable except for tenderness to palpation of trigger points
9 and neck and back pain with limited range of motion in the
10 spine." (AR 104.) Further, a lumbar-spine MRI "showed minimal
11 degenerative changes," and "there [wa]s no indication that she
12 underwent further treatment outside of oral pain medications."
13 (Id.)

14 Explaining that "there [wa]s little doubt that [Plaintiff]
15 experience[d] pain and discomfort due to fibromyalgia," the ALJ
16 concluded that "the objective medical evidence d[id] not support
17 the alleged severity of symptoms." (Id.) He found that she had
18 not been "deprived of the ability to perform work" consistent
19 with the RFC "for any 12-month period since the alleged onset
20 date." (Id.)

21 3. Analysis

22 The ALJ failed to properly analyze Plaintiff's subjective
23 symptoms, discounting her testimony and statements based on "an
24 apparent fundamental misunderstanding of fibromyalgia." Revels
25 v. Berryhill, 874 F.3d 648, 662 (9th Cir. 2017) (collecting cases
26 showing "recurrent problem" of ALJs failing "to properly analyze
27 . . . fibromyalgia-related symptoms"). The ALJ discounted
28 Plaintiff's testimony because she "complained of worsened

1 fibromyalgia pain [in 2016 and 2017], but her physical
2 examination findings remained largely unremarkable except for
3 tenderness to palpation of trigger points and neck and back pain
4 with limited range of motion of the spine." (AR 104.) But there
5 are no laboratory tests to confirm the presence or severity of
6 fibromyalgia, which is "diagnosed entirely on the basis of
7 patients' reports of pain and other symptoms." Benecke v.
8 Barnhart, 379 F.3d 587, 590 (9th Cir. 2004). Indeed, "[o]ne of
9 the most striking aspects of this disease is the absence of
10 symptoms that a lay person may ordinarily associate with joint
11 and muscle pain." Rollins v. Massanari, 261 F.3d 853, 863 (9th
12 Cir. 2001) (Ferguson, J., dissenting); see also Cota v. Comm'r of
13 Soc. Sec., No. 1:08-CV-00842-SMS, 2009 WL 900315, at *9 (E.D.
14 Cal. Mar. 31, 2009) ("Joints in fibromyalgia patients appear
15 normal; musculoskeletal examinations generally indicate no
16 objective joint swelling or abnormality in muscle strength,
17 sensory functions, or reflexes."), judgment vacated on other
18 grounds by 2010 WL 289294 (E.D. Cal. Jan. 15, 2010).

19 The medical records show Plaintiff's consistent complaints
20 of generalized muscle pain, tender points, fatigue, and sleep
21 problems, all of which are indicative of fibromyalgia. (See AR
22 201-03, 209-10, 216-17, 516-20, 521, 574-76, 590-93, 599, 651-52,
23 671-73, 674-78, 762, 767, 774, 778, 783); Benecke, 379 F.3d at
24 590 (noting common symptoms of fibromyalgia as "chronic pain
25 throughout the body, multiple tender points, fatigue, stiffness,
26 and a pattern of sleep disturbance that can exacerbate the cycle
27 of pain and fatigue associated with this disease"). Thus, the
28 lack of abnormal objective findings on examination was not a

1 sufficient basis for rejecting Plaintiff's subjective symptom
2 statements in the face of her undisputed fibromyalgia diagnosis.
3 See generally Day v. Weinberger, 522 F.2d 1154, 1156 (9th Cir.
4 1975) (ALJ erred by relying upon "his own exploration and
5 assessment" of plaintiff's medical condition rather than medical
6 evidence in record). The ALJ did not place in context the
7 evidence of Plaintiff's multiple tender-trigger-point findings,
8 sleep disturbance, anxiety, depression, brain fog, fatigue, and
9 chronic, widespread pain lasting over three months. See SSR 12-
10 2p, 2012 WL 3104869 (July 25, 2012) (governing SSA's
11 consideration of fibromyalgia);¹⁸ Revels, 874 F.3d at 656
12 (recognizing fibromyalgia "as a valid basis for a finding of
13 disability" when analyzed using SSR 12-2p criteria).

14 The ALJ also erred in rejecting Plaintiff's testimony based
15 on her not having "under[gone] further treatment outside of oral
16 pain medications as previously advised," amounting to "rather
17 conservative medical management" of her fibromyalgia. (AR 104.)
18 In fact, Plaintiff also received steroid injections. (See AR
19 684, 780); see, e.g., Revels, 874 F.3d at 667 (finding opioid
20 medications and steroid injections not conservative treatment for
21 fibromyalgia). Thus, her allegedly conservative treatment could
22 not support discounting her statements and testimony.

23 Because the ALJ analyzed the medical evidence using improper
24 criteria, his assessment of Plaintiff's subjective symptom

25
26 ¹⁸ One of the preconditions for a diagnosis of fibromyalgia
27 is that there be no other cause of the patient's symptoms. See
28 SSR 12-2p, 2012 WL 3104869, at *3. Here, the ALJ found that
Plaintiff had no other severe impairments besides fibromyalgia
(AR 100); thus, it had to have been the cause of her pain and
other symptoms.

1 testimony was necessarily flawed. Remand is required.¹⁹

2 B. Remand for Further Proceedings Is Appropriate

3 When an ALJ errs, the Court “ordinarily must remand for
4 further proceedings.” Leon v. Berryhill, 880 F.3d 1041, 1045
5 (9th Cir. 2017) (as amended Jan. 25, 2018); see also Harman v.
6 Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000) (as amended). The
7 Court has discretion to do so or to award benefits under the
8 “credit as true” rule. Leon, 880 F.3d at 1044 (citation
9 omitted). “[A] direct award of benefits was intended as a rare
10 and prophylactic exception to the ordinary remand rule[.]” Id.
11 at 1045. The “decision of whether to remand for further
12 proceedings turns upon the likely utility of such proceedings,”
13 Harman, 211 F.3d at 1179, and when an “ALJ makes a legal error,
14 but the record is uncertain and ambiguous, the proper approach is
15 to remand the case to the agency,” Leon, 880 F.3d at 1045 (citing
16 Treichler, 775 F.3d at 1105).

17 Here, further administrative proceedings would serve the
18 useful purpose of allowing the ALJ to give proper consideration
19 to Plaintiff’s fibromyalgia diagnosis and subjective symptom
20 testimony. But although the ALJ did not expressly say so, some
21 specific portions of Plaintiff’s testimony did seem exaggerated:
22 it’s hard to imagine that she could function at all, much less
23 occasionally grocery shop, cook, clean, and do other household
24 chores, if she truly got at most an hour of sleep a night and was

25
26 ¹⁹ Even assuming the ALJ did not err in finding that the
27 side effects Plaintiff complained of at the hearing were not
28 documented in the records, that alone would not justify
discounting her statements and testimony, particularly in light
of the flaws in the other two proffered reasons. After all, the
side effects could simply have increased with time.

1 almost never without a genuine migraine headache.²⁰ (AR 120-21.)
2 Moreover, inconsistencies exist in the record concerning whether
3 she took care of her husband or he of her. (Compare AR 65-66,
4 with AR 398.) It's hard to reconcile her statements about
5 needing to lie down for "hours and hours" every day and being
6 essentially nonfunctional (AR 128, 397-405) with caring for a
7 disabled husband and his parents (AR 65-66). When a court has
8 "serious doubt" about whether a plaintiff is disabled, remand for
9 further proceedings is appropriate. See Treichler, 775 F.3d at
10 1107. If the ALJ chooses to again discount Plaintiff's
11 subjective symptoms on remand, he can then provide an adequate
12 discussion of the reasons why. See Payan v. Colvin, 672 F. App'x
13 732, 733 (9th Cir. 2016).

14 **VI. CONCLUSION**

15 Consistent with the foregoing and under sentence four of 42
16 U.S.C. § 405(g),²¹ IT IS ORDERED that judgment be entered
17 REVERSING the Commissioner's decision, GRANTING Plaintiff's
18 request for remand, and REMANDING this action for further
19 proceedings consistent with this memorandum decision.

20
21 DATED: March 26, 2021



JEAN ROSENBLUTH
U.S. MAGISTRATE JUDGE

22
23
24 ²⁰ Plaintiff had a sleep study in June 2015 and was found to
25 have "mild" sleep apnea caused at least in part by her obesity.
(AR 598-99.)

26 ²¹ That sentence provides: "The [district] court shall have
27 power to enter, upon the pleadings and transcript of the record,
28 a judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."