



1 including both the evidence that supports and detracts from the Commissioner's conclusion, must  
2 be considered and weighed. See Howard v. Heckler, 782 F.2d 1484, 1487 (9th Cir. 1986); Jones  
3 v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not affirm the Commissioner's  
4 decision simply by isolating a specific quantum of supporting evidence. See Hammock v.  
5 Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the administrative  
6 findings, or if there is conflicting evidence supporting a particular finding, the finding of the  
7 Commissioner is conclusive. See Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987).  
8 Therefore, where the evidence is susceptible to more than one rational interpretation, one of  
9 which supports the Commissioner's decision, the decision must be affirmed, see Thomas v.  
10 Barnhart, 278 F.3d 947, 954 (9th Cir. 2002), and may be set aside only if an improper legal  
11 standard was applied in weighing the evidence, see Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th  
12 Cir. 1988).

13 For the reasons discussed below, the Commissioner's final decision is affirmed.

## 14 15 **I. THE DISABILITY EVALUATION PROCESS**

16 To achieve uniformity of decisions, the Commissioner employs a five-step  
17 sequential evaluation process to determine whether a claimant is disabled. See 20 C.F.R. §§  
18 404.1520 (a)-(f) and 416.920(a)-(f). The sequential evaluation proceeds as follows:

- |    |        |   |
|----|--------|---|
| 19 | Step 1 | Determination whether the claimant is engaged in                |
| 20 |        | substantial gainful activity; if so, the claimant is presumed   |
|    |        | not disabled and the claim is denied;                           |
| 21 | Step 2 | If the claimant is not engaged in substantial gainful activity, |
| 22 |        | determination whether the claimant has a severe                 |
| 23 |        | impairment; if not, the claimant is presumed not disabled       |
|    |        | and the claim is denied;  |
| 24 | Step 3 | If the claimant has one or more severe impairments,             |
| 25 |        | determination whether any such severe impairment meets          |
| 26 |        | or medically equals an impairment listed in the regulations;    |
|    |        | if the claimant has such an impairment, the claimant is         |
|    |        | presumed disabled and the claim is granted;                     |

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1 Step 4 If the claimant's impairment is not listed in the regulations,  
2 determination whether the impairment prevents the  
3 claimant from performing past work in light of the  
4 claimant's residual functional capacity; if not, the claimant  
5 is presumed not disabled and the claim is denied;

6 Step 5 If the impairment prevents the claimant from performing  
7 past work, determination whether, in light of the claimant's  
8 residual functional capacity, the claimant can engage in  
9 other types of substantial gainful work that exist in the  
10 national economy; if so, the claimant is not disabled and  
11 the claim is denied.

12 See 20 C.F.R. §§ 404.1520 (a)-(f) and 416.920(a)-(f).

13 To qualify for benefits, the claimant must establish the inability to engage in  
14 substantial gainful activity due to a medically determinable physical or mental impairment which  
15 has lasted, or can be expected to last, a continuous period of not less than 12 months. See 42  
16 U.S.C. § 1382c(a)(3)(A). The claimant must provide evidence of a physical or mental  
17 impairment of such severity the claimant is unable to engage in previous work and cannot,  
18 considering the claimant's age, education, and work experience, engage in any other kind of  
19 substantial gainful work which exists in the national economy. See Quang Van Han v. Bower,  
20 882 F.2d 1453, 1456 (9th Cir. 1989). The claimant has the initial burden of proving the existence  
21 of a disability. See Terry v. Sullivan, 903 F.2d 1273, 1275 (9th Cir. 1990).

22 The claimant establishes a prima facie case by showing that a physical or mental  
23 impairment prevents the claimant from engaging in previous work. See Gallant v. Heckler, 753  
24 F.2d 1450, 1452 (9th Cir. 1984); 20 C.F.R. §§ 404.1520(f) and 416.920(f). If the claimant  
25 establishes a prima facie case, the burden then shifts to the Commissioner to show the claimant  
26 can perform other work existing in the national economy. See Burkhart v. Bowen, 856 F.2d  
27 1335, 1340 (9th Cir. 1988); Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986); Hammock  
28 v. Bowen, 867 F.2d 1209, 1212-1213 (9th Cir. 1989).

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1 **II. THE COMMISSIONER’S FINDINGS**

2 Plaintiff applied for social security benefits on February 7, 2013. See CAR 21.<sup>1</sup>  
3 At the hearing, plaintiff claims that disability began on January 31, 2009. See id. In her brief,  
4 plaintiff claims she stopped working due to “depression, anxiety, migraines, heart, eye and leg  
5 problems, anxiety, migraines [sic], anger issues, paranoia, learning disability, bipolar/manic,  
6 depression symptoms, and acid reflux.” Plaintiff’s claim was initially denied. Following denial  
7 of reconsideration, plaintiff requested an administrative hearing, which was held on November  
8 24, 2014, before Administrative Law Judge (ALJ) Trevor Skarda. In a July 29, 2015, decision,  
9 the ALJ concluded that plaintiff is not disabled based on the following relevant findings:

- 10 1. The claimant has the following severe impairment(s):  
11 hypertension, obesity, asthma, osteoarthritis of the knees, bilateral  
12 lower extremity edema, adjustment disorder with depressed mood,  
13 and borderline intellectual functioning;
- 14 2. The claimant does not have an impairment or combination of  
15 impairments that meets or medically equals an impairment listed in  
16 the regulations;
- 17 3. The claimant has the following residual functional capacity: light  
18 work except the claimant may only occasionally climb ramps or  
19 stairs, never climb ropes, ladders, or scaffolds, only occasionally  
20 balance, stoop, kneel, crouch, and crawl, must avoid moderate  
21 exposure to pulmonary irritants such as fumes, odors, dusts, gases,  
22 and poor ventilated areas, must avoid moderate exposure to  
23 hazards, defined as operational control of dangerous moving  
24 machinery and unprotected heights, the claimant is limited to  
25 simple routine and repetitive tasks, work that is low stress,  
26 meaning no more than occasional decision-making or work setting  
27 changes;
- 28 4. Considering the claimant’s age, education, work experience,  
residual functional capacity, and vocational expert testimony, the  
claimant is capable of performing her past relevant work as a  
house cleaner as that work is generally performed, and there are  
jobs that exist in significant numbers in the national economy that  
the claimant can also perform.

24 See id. at 23-36.

25 After the Appeals Council declined review on December 13, 2016, this appeal followed.

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28 <sup>1</sup> Citations are the to the Certified Administrative Record (CAR) lodged on January  
17, 2018 (Doc. 10).

1 **III. DISCUSSION**

2 In her motion for summary judgment, plaintiff argues the ALJ failed to articulate  
3 sufficient reasons for rejecting her statements and testimony as not credible.

4 1. The ALJ's Analysis

5 At Step 4, the ALJ evaluated the credibility of plaintiff's statements and testimony  
6 to determine her residual functional capacity. See CAR 27-28, 33-34. Regarding plaintiff's  
7 credibility, the ALJ stated:

8 The claimant is a 47-year-old female with a high school education  
9 (Hearing Testimony). The claimant alleged an inability to work due to  
10 depression, anxiety, migraines, heart, eyes, leg problems, anger issues,  
11 paranoia, learning disability, bipolar/manic depression symptoms, and acid  
12 reflux (Exhibit 3E/2). The claimant alleges high blood pressure and  
13 morbid obesity (Exhibit 7E/1). The claimant alleges that she attended  
14 special education classes in high school, but also stated that she has  
15 completed specialized training in culinary arts (Exhibit 3E/3). The  
16 claimant alleges that her niece prepares all her meals and that the claimant  
17 does not cook due to her illness (Exhibit 6E/3). The claimant alleges that  
18 when she stands, she sometimes falls to her knees without knowing the  
19 reason (Exhibit 6E/3). The claimant alleges that the conditions affect her  
20 ability to lift, squat, bend, stand, walk, kneel, stair-climb, see, complete  
21 tasks, concentrate, understand, follow instructions, and get along with  
22 others (Exhibit 6R/6). In her most recent Disability Report, the claimant  
23 alleges possible strokes or seizures, and possible diabetes (Exhibit 13E/2).  
24 At the hearing, the claimant reported periods of "blacking out" and losing  
25 consciousness for thirty minutes at one time and using a cane to ambulate  
26 (Hearing Testimony).

18 CAR 27-28.

19 After discussing the objective medical evidence and opinion evidence, the ALJ evaluated the  
20 credibility of plaintiff's statements and testimony:

21 The claimant has described activities of daily living that are not as limited  
22 as one would expect given the claimant's complaints of disabling  
23 symptoms and limitations. The claimant has reported that she is able to  
24 watch television (Exhibit 6E/1). The claimant reported that she spends her  
25 days cleaning, washing, and doing yard work (Exhibits 11E/1/2). The  
26 claimant is able to walk children to school (Exhibit 11E/2). The claimant  
27 is able to go shopping in stores (Exhibit 4E/4). The claimant is able to  
28 spend a lot of time with family (Exhibit 4F/2). The claimant has also  
informed medical professionals that she cooks for herself (Exhibit 4F/2).  
These activities of daily living are inconsistent with the claimant's  
allegations that she does not cook and does not complete any household  
chores (Exhibit 6E/3). The claimant's inconsistent statements suggest that  
she had not been forthcoming about her functional abilities.

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1 The claimant has not generally received the type of medical treatment one  
2 would expect for a person with the claimant's alleged limitations, which  
3 include the necessity to use a cane to walk and inability to complete any  
4 household chores (Exhibit 6E/3 and Hearing Testimony). In fact, since  
5 the alleged onset date, the claimant's medical treatment has been limited.  
6 Rather, at the hearing the claimant testified that her medications alleviated  
7 pain symptoms (Hearing Testimony). In regards to the claimant's mental  
8 impairments, the record does not reflect any actual treatment, psychotropic  
9 medications, or therapy.

10 \* \* \*

11 A review of the claimant's work history shows that the claimant worked  
12 only sporadically prior to the her [sic] alleged disability onset date, which  
13 raises a question as to whether the claimant's continuing unemployment is  
14 actually due to medical impairments (Exhibit 5D/2). Instead, the record  
15 reflects that the claimant was incarcerated for two years on drug selling  
16 charges (Exhibit 2F/4).

17 Finally, the claimant's demeanor while testifying at the hearing was  
18 generally unpersuasive. It is emphasized that this observation is only one  
19 among many being relied on in assessing credibility and is not  
20 determinative. The undersigned concludes that the claimant's allegations  
21 of debilitating pain and disabling functional limitations are not fully  
22 credible. Neither the objective medical evidence nor the subjective  
23 allegations, to the extent they are reasonably credible, warrant any more  
24 restrictive functional limitations than those the undersigned has found in  
25 this case.

26 CAR 33-34.

## 27 2. Plaintiff's Contentions

28 Plaintiff argues:

Here, after reciting the relevant ruling and regulation (footnote omitted), the ALJ states woefully insufficient reasons to reject the testimony. Specifically, the ALJ states:

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 these symptoms are not entirely credible for the reasons explained in this decision.

AR 33. The standard as articulated in *Bunnell v. Sullivan*, 947 F.2d 341, 345-346 (9th Cir. 1991) is that an ALJ disclaiming a claimant's allegations of severity "must specifically make findings which support this conclusion," and that "[t]hese findings, properly supported by the record, must be sufficiently specific to allow a reviewing court to conclude the adjudicator rejected the claimant's testimony on permissible grounds." *Bunnell v. Sullivan*, 947 F.2d at 345-346. The *Bunnell* holding makes clear that "findings," "conclusion," and "record" are distinct concepts.

1 First, the ALJ simply sets forth the oft rejected boilerplate  
2 language numerous courts have rejected as boilerplate. *See Bjornson v.*  
3 *Astrue*, 671 F.3d 640, 645 (7th Cir. 2012) (boilerplate language fails to  
4 inform in a meaningful, reviewable way of the specific evidence the ALJ  
5 considered in determining that claimant's complaints were not credible  
6 where the Commissioner rejects the testimony without linking the  
7 conclusory statements contained therein to evidence in the record). The  
8 statement by an ALJ of fact that a witness's testimony is "not credible"  
9 yields no clue to what weight the trier of fact gave the testimony. *Parker v.*  
10 *Astrue*, 597 F.3d 920, 922 (7th Cir. 2010); *see also Robbins v. Social*  
11 *Security Administration*, 466 F.3d 880, 883-85 and n. 2 (9th Cir. 2006)  
12 (credibility boilerplate); *Punzio v. Astrue*, 630 F.3d 704, 709 (7th Cir.  
13 2011); *Martinez v. Astrue*, 630 F.3d 693, 696-97 (7th Cir. 2011); *Spiva v.*  
14 *Astrue*, 628 F.3d 346, 348 (7th Cir. 2010). Consequently, the conclusory  
15 statement of the ALJ in this matter is wholly insufficient.

16 Second, it appears that the ALJ's sole rationale simply rejects  
17 Evans's testimony based on a belief that the testimony is not credible  
18 because it lacks support in the objective medical evidence. AR 28-32.  
19 Such rationale is legally insufficient and the statement of the ALJ  
20 contravenes established case law and regulations. That is because a  
21 rejection of a claimant's testimony based on a lack of objective evidence is  
22 always legally insufficient. The *Bunnell* standard requires consideration of  
23 "excess pain" not simply the degree of pain limitation established by the  
24 objective medical evidence. *Bunnell v. Sullivan*, 947 F.2d at 345.

25 *Bunnell* discarded the proof of the degree of impairment by  
26 objective medical evidence articulated in *Bates v. Sullivan*, 894 F.2d 1059,  
27 1064 (9th Cir. 1990) (Wallace, C.J., and Hawthorne, J., concurring). The  
28 incantation of a lack of objective evidence is therefore always legally  
insufficient. *Bunnell*, 947 F.2d at 343 ("we reject this standard because it  
is inconsistent with the relevant statutory language, the legislative history,  
the Secretary's regulations, [and] the Secretary's interpretation of the  
regulations...."). Indeed, the regulations specifically prohibit rejecting  
subjective pain testimony solely on the basis of objective medical  
evidence. 20 C.F.R. § 404.1529(c) (2) (we will not reject your statements  
about the intensity and persistence of your pain or other symptoms or  
about the effect your symptoms have on your ability to work solely  
because the available objective medical evidence does not substantiate  
your statements). Thus, the assertion of the ALJ that Cassandra Evans's  
testimony is not credible because it is inconsistent with the objective  
medical evidence is always legally insufficient to find Evans not credible.

Once Evans produced medical evidence of an underlying medical  
impairment, the ALJ could not discredit the testimony as to the severity of  
symptoms merely because they are unsupported by objective medical  
evidence. *Reddick*, 157 F.3d at 722. Here the ALJ conceded that the  
objective evidence could reasonably be expected to cause Evans'  
symptoms. AR 33 ("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;"). In so  
finding the ALJ has determined that Evans has satisfied the first step of  
the credibility analysis in which the "ALJ must determine whether the  
claimant has presented objective medical evidence of an underlying  
impairment 'which could reasonably be expected to produce the pain or  
other symptoms alleged.'" *Lingenfelter v. Astrue*, 504 F.3d at 1035-36.

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1                   Consequently, the ALJ answers the wrong question in articulating  
2                   that the degree of limitation established by the objective medical evidence  
3                   does not support Evans’s descriptions; rather, once the presence of a  
4                   severe medical impairment likely to produce subjective limitations is  
5                   established (as in this case), the true question is whether there is any clear  
6                   and convincing reasons for rejecting Cassandra Evans’s testimony. Simply  
7                   put, the ALJ must not show he disbelieves Evans’s story; it is that the ALJ  
8                   must find Evans not credible as a witness. *See, e.g., United States ex rel.*  
9                   *Exarchou v. Murff*, 265 F.2d 504, 507 (2d Cir. 1959) (agency credibility  
10                  decision reversible where based simply on mistaken view of the story's  
11                  plausibility and not of a finding that the witness was not credible) and  
12                  *Light v. Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997) (“To find  
13                  the claimant not credible the ALJ must rely either on reasons unrelated to  
14                  the subjective testimony (e.g., reputation for dishonesty), on conflicts  
15                  between her testimony and her own conduct, or on internal contradictions  
16                  in that testimony.”). In this matter the ALJ failed to articulate any rationale  
17                  sufficient to demonstrate Cassandra Evans was anything other than  
18                  credible.

19                  The ALJ also rejects Evans’s testimony as not credible based on  
20                  Evans’s performance of sporadic daily activities. AR 33. Evans’s  
21                  descriptions of her limitations demonstrate that she is incapable of  
22                  maintaining substantial gainful work activity as a result of her severe  
23                  impairments. AR 42-62. Substantial gainful work activity is the ability to  
24                  sustain work activity “8 hours a day, for 5 days a week, or an equivalent  
25                  work schedule.” Social Security Ruling 96-8p; *see also Lewis v. Apfel*, 236  
26                  F.3d 503, 514 (9th Cir. 2001); *Reddick v. Chater*, 157 F.3d 715, 724 (9th  
27                  Cir. 1998). Substantial gainful work activity is certainly not defined as  
28                  requiring an individual’s disability and limitations render him comatose or  
                  totally disabled. *See Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir. 1987)  
                  (disability does not mean that a claimant must vegetate in a dark room  
                  excluded from all forms of human and social activity). Nothing in Evans’s  
                  testimony provides any indication that she is capable of performing  
                  anything other than a few basic daily activities and certainly not what is  
                  required of substantial gainful work activity as defined above.

                  Even the fact that Evans has some ability some of the time to  
                  perform something is not reason enough to find him not credible. *See*  
                  *Lester v. Chater*, 81 F.3d at 833 (symptom-free periods, and even the  
                  sporadic ability to work, are not inconsistent with disability because the  
                  ALJ must evaluate the claimant's ability to work on a sustained basis).  
                  Evidence that a claimant can participate in basic human function “is not  
                  determinative of disability.” *Magallanes v. Bowen*, 881 F.2d at 756. By  
                  itself the fact that an individual may perform some activities does not  
                  affect credibility; rather it is an individual's daily activities and the relation  
                  of those activities to gainful work which offer insight to an individual's  
                  credibility. *Reddick v. Chater*, 157 F.3d at 722 (“Only if the level of  
                  activity were inconsistent with Claimant's claimed limitations would these  
                  activities have any bearing on Claimant's credibility”). Evans’s  
                  descriptions of her activity level is far short of what is needed to  
                  demonstrate the capacity to perform work activity on a sustained basis.  
                  Evans has to take breaks when she does chores around the house. AR 278.  
                  Evans can only walk for 30 minutes and pay attention for 20 minutes. AR  
                  281. Despite these limitations when doing daily activities, the ALJ does  
                  not explain how Evans translates her activities into a full day of work.

                  The Ninth Circuit has “repeatedly warned that ALJs must be  
                  especially cautious in concluding that daily activities are inconsistent with



1 testimony about pain, because impairments that would unquestionably  
2 preclude work and all the pressures of a workplace environment will often  
3 be consistent with doing more than merely resting in bed all day.”  
4 *Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014). As the Ninth  
5 Circuit has further stated, “the mere fact that a plaintiff has carried on  
6 certain daily activities, such as grocery shopping, driving a car, or limited  
7 walking for exercise, does not in any way detract from her credibility as to  
8 her overall disability.” *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir.  
9 2001).

10 In this case, the ALJ did what the Ninth Circuit cautioned against:  
11 referring to Evans’s daily activities and apparently concluding that they  
12 were partially inconsistent with Evans’s claimed disability. AR 33. The  
13 ALJ’s decision identifies Plaintiff’s ability to do sporadic and limited  
14 household chores and taking care of her personal needs. AR 33. However,  
15 the ALJ did not describe how those activities are inconsistent with specific  
16 symptom claims made by Plaintiff.

17 Nor does the decision explain how Plaintiff’s activities permit her  
18 to obtain and maintain a job. Citing plaintiff’s ability to perform basic  
19 activities without explaining how these activities are inconsistent with  
20 plaintiff’s complaints is legally insufficient. *See Burrell v. Colvin*, 775  
21 F.3d 1133, 1138 (9th Cir. 2014) (“the ALJ did not elaborate on *which*  
22 daily activities conflicted with *which* part of Claimant’s testimony”);  
23 *Lester*, 81 F.3d at 834. As a result of this lack of specificity, the decision’s  
24 reference to Plaintiff’s daily activities is an inadequate basis for the ALJ’s  
25 credibility determination. *See Brown-Hunter v. Colvin*, 806  
26 F.3d 487, 493-494 (9th Cir. 2015).

27 The ALJ also cites to Evans work history as a factor in the  
28 analysis. The Commissioner does not consider an individual’s work  
history as part of the analysis. Social Security Ruling 16-3p.

The ALJ also rejects Evans’s testimony because the ALJ believes  
Evans has only had care that was conservative in nature. AR 33. The ALJ  
is wrong. The ALJ does not cite to any medical evidence that  
demonstrates that Evans has in fact undergone a conservative course of  
treatment. The ALJ does not point to the record to demonstrate that there  
was anything more the doctors wanted Evans to do. The ALJ cannot fault  
Evans for failing to pursue non-conservative treatment options if none  
exist. *See, e.g., Lapeirre-Gutt v. Astrue*, 382 Fed. Appx. 662, 664 (9th Cir.  
2010) (“A claimant cannot be discredited for failing to pursue non-  
conservative treatment options where none exist.”).

In enacting the Social Security Disability Reform Act, *Congress*  
*did not intend to render the claimant's pain testimony irrelevant.* "Instead,  
Congress clearly meant that so long as the pain is associated with a  
clinically demonstrated impairment, credible pain testimony should  
contribute to a determination of disability." *Cotton v. Bowen*, 799 F.2d  
1403, 1407 (9th Cir. 1986) citing *Howard v. Heckler*, 782 F.2d 1484, 1488  
n. 4 (9th Cir. 1986) (emphasis added). Unfortunately, the ALJ did not  
consider Evans's credible testimony. *See, e.g., United States ex rel.*  
*Exarchou v. Murff*, 265 F.2d 504, 507 (2d Cir. 1959) (agency credibility  
decision reversible where based simply on mistaken view of the story's  
plausibility and not of a finding that the witness was not credible). The  
ALJ did not identify clear and convincing reasons supporting his disbelief.  
Rather, the ALJ articulated generalities. *Moisa v. Barnhart*, 367 F.3d 882,  
885 (9th Cir. 2004) (Absent evidence of malingering, the ALJ must set  
forth adequate grounds such as reputation for dishonesty, conflicts  
between the claimant's testimony and her conduct, or internal

1 contradictions in the testimony, which the ALJ did not do.) As a result, the  
2 ALJ's decision cannot withstand scrutiny (footnote omitted).

3 3. Applicable Legal Standards

4 The Commissioner determines whether a disability applicant is credible, and the  
5 court defers to the Commissioner's discretion if the Commissioner used the proper process and  
6 provided proper reasons. See Saelee v. Chater, 94 F.3d 520, 522 (9th Cir. 1996). An explicit  
7 credibility finding must be supported by specific, cogent reasons. See Rashad v. Sullivan, 903  
8 F.2d 1229, 1231 (9th Cir. 1990). General findings are insufficient. See Lester v. Chater, 81 F.3d  
9 821, 834 (9th Cir. 1995). Rather, the Commissioner must identify what testimony is not credible  
10 and what evidence undermines the testimony. See id. Moreover, unless there is affirmative  
11 evidence in the record of malingering, the Commissioner's reasons for rejecting testimony as not  
12 credible must be "clear and convincing." See id.; see also Carmickle v. Commissioner, 533 F.3d  
13 1155, 1160 (9th Cir. 2008) (citing Lingenfelter v Astrue, 504 F.3d 1028, 1936 (9th Cir. 2007),  
14 and Gregor v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006)).

15 If there is objective medical evidence of an underlying impairment, the  
16 Commissioner may not discredit a claimant's testimony as to the severity of symptoms merely  
17 because they are unsupported by objective medical evidence. See Bunnell v. Sullivan, 947 F.2d  
18 341, 347-48 (9th Cir. 1991) (en banc). As the Ninth Circuit explained in Smolen v. Chater:

19 The claimant need not produce objective medical evidence of the  
20 [symptom] itself, or the severity thereof. Nor must the claimant produce  
21 objective medical evidence of the causal relationship between the  
22 medically determinable impairment and the symptom. By requiring that  
23 the medical impairment "could reasonably be expected to produce" pain or  
24 another symptom, the Cotton test requires only that the causal relationship  
25 be a reasonable inference, not a medically proven phenomenon.

26 80 F.3d 1273, 1282 (9th Cir. 1996) (referring to the test established in  
27 Cotton v. Bowen, 799 F.2d 1403 (9th Cir. 1986)).

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1           The Commissioner may, however, consider the nature of the symptoms alleged,  
2 including aggravating factors, medication, treatment, and functional restrictions. See Bunnell,  
3 947 F.2d at 345-47. In weighing credibility, the Commissioner may also consider: (1) the  
4 claimant’s reputation for truthfulness, prior inconsistent statements, or other inconsistent  
5 testimony; (2) unexplained or inadequately explained failure to seek treatment or to follow a  
6 prescribed course of treatment; (3) the claimant’s daily activities; (4) work records; and (5)  
7 physician and third-party testimony about the nature, severity, and effect of symptoms. See  
8 Smolen, 80 F.3d at 1284 (citations omitted). It is also appropriate to consider whether the  
9 claimant cooperated during physical examinations or provided conflicting statements concerning  
10 drug and/or alcohol use. See Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002). If the  
11 claimant testifies as to symptoms greater than would normally be produced by a given  
12 impairment, the ALJ may disbelieve that testimony provided specific findings are made. See  
13 Carmickle, 533 F.3d at 1161 (citing Swenson v. Sullivan, 876 F.2d 683, 687 (9th Cir. 1989)).

14           Regarding reliance on a claimant’s daily activities to find testimony of disabling  
15 pain not credible, the Social Security Act does not require that disability claimants be utterly  
16 incapacitated. See Fair v. Bowen, 885 F.2d 597, 602 (9th Cir. 1989). The Ninth Circuit has  
17 repeatedly held that the “. . . mere fact that a plaintiff has carried out certain daily activities . . .  
18 does not . . . [necessarily] detract from her credibility as to her overall disability.” See Orn v.  
19 Astrue, 495 F.3d 625, 639 (9th Cir. 2007) (quoting Vertigan v. Heller, 260 F.3d 1044, 1050 (9th  
20 Cir. 2001)); see also Howard v. Heckler, 782 F.2d 1484, 1488 (9th Cir. 1986) (observing that a  
21 claim of pain-induced disability is not necessarily gainsaid by a capacity to engage in periodic  
22 restricted travel); Gallant v. Heckler, 753 F.2d 1450, 1453 (9th Cir. 1984) (concluding that the  
23 claimant was entitled to benefits based on constant leg and back pain despite the claimant’s  
24 ability to cook meals and wash dishes); Fair, 885 F.2d at 603 (observing that “many home  
25 activities are not easily transferable to what may be the more grueling environment of the  
26 workplace, where it might be impossible to periodically rest or take medication”). Daily  
27 activities must be such that they show that the claimant is “. . . able to spend a substantial part of  
28 his day engaged in pursuits involving the performance of physical functions that are transferable

1 to a work setting.” Fair, 885 F.2d at 603. The ALJ must make specific findings in this regard  
2 before relying on daily activities to find a claimant’s pain testimony not credible. See Burch v.  
3 Barnhart, 400 F.3d 676, 681 (9th Cir. 2005).

4 4. Disposition

5 The ALJ in this case found plaintiff’s statements and testimony not credible  
6 primarily due to inconsistencies. While, the ALJ stated plaintiff has described activities of daily  
7 living “that are not as limited as one would expect given the claimant’s complaints of disabling  
8 symptoms and limitations,” the ALJ went on to note plaintiff made several inconsistent  
9 statements regarding her daily activities. For example, plaintiff at one point stated she does not  
10 cook or do any household chores but told medical professionals she cooks for herself and reported  
11 she spends her days cleaning, washing, and doing yard work. The ALJ does not err by citing  
12 inconsistent statements in making an adverse credibility finding. See Smolen, 80 F.3d at 1284.  
13 As the ALJ noted, plaintiff’s inconsistent statements provide a valid legal basis supported by the  
14 record to reject all of plaintiff’s statements and testimony.

15  
16 **IV. CONCLUSION**

17 Based on the foregoing, the court concludes that the Commissioner’s final decision  
18 is based on substantial evidence and proper legal analysis. Accordingly, IT IS HEREBY  
19 ORDERED that:

- 20 1. Plaintiff’s motion for summary judgment (Doc. 13) is denied;
- 21 2. Defendant’s motion for summary judgment (Doc. 14) is granted;
- 22 3. The Commissioner’s final decision is affirmed; and
- 23 4. The Clerk of the Court is directed to enter judgment and close this file.

24  
25 Dated: December 19, 2018

26   
27 DENNIS M. COTA  
28 UNITED STATES MAGISTRATE JUDGE