

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

SARA R. HAYDEN,  
Plaintiff,  
v.  
NANCY BERRYHILL,  
Defendant.

Case No. 18-cv-01198-LB

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
DEFENDANT'S CROSS-MOTION FOR  
SUMMARY JUDGMENT**

Re: ECF Nos. 15, 18

**INTRODUCTION**

Plaintiff Sara Hayden seeks judicial review of a final decision by the Commissioner of the Social Security Administration denying her claim for disability-insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 416 and 423.<sup>1</sup> She moved for summary judgment, and the Commissioner opposed the motion and filed a cross-motion for summary judgment.<sup>2</sup> All parties consented to magistrate-judge jurisdiction.<sup>3</sup> Under Civil Local Rule 16–5, the matter is submitted

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<sup>1</sup> Compl. – ECF No. 1 at 9; Cross-Mot. – ECF No. 18 at 5. Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.  
<sup>2</sup> Mot. – ECF No. 15; Cross-Mot. – ECF No. 18.  
<sup>3</sup> Consent Forms – ECF Nos. 7, 8.

1 for decision by this court without oral argument. The court grants the plaintiff’s motion for  
2 summary judgment.

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4 **STATEMENT**

5 **1. Procedural History**

6 On July 14, 2011, the plaintiff, then 48 years old, filed an application for disability-insurance  
7 benefits under Title II of the Social Security Act.<sup>4</sup> The plaintiff alleged the following conditions:  
8 major depressive disorder, inability to concentrate, difficulty retaining new information,  
9 rheumatoid arthritis, neck pain, and Sjoren’s syndrome.<sup>5</sup> She had been unable to work since  
10 January 20, 2010.<sup>6</sup> The agency denied the plaintiff’s application in March 2012 and upon  
11 reconsideration in August 2012.<sup>7</sup> The plaintiff requested a hearing, which was held on February  
12 28, 2013.<sup>8</sup> The ALJ in Arizona denied the plaintiff’s application.<sup>9</sup> The plaintiff appealed the  
13 decision to the District of Arizona, which remanded the case for further proceedings on March 25,  
14 2016.<sup>10</sup> The Appeals Council vacated the earlier decision and remanded the case to an ALJ in  
15 California.<sup>11</sup> The new ALJ held a hearing on April 26, 2017 and issued a decision finding the  
16 plaintiff not disabled on October 24, 2017.<sup>12</sup>

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22 <sup>4</sup> Compl. – ECF No. 1 at 9; Cross-Mot. – ECF No. 18 at 5.

23 <sup>5</sup> Administrative Record (“AR”) 80; The plaintiff initially alleged an onset date of September 24, 2009,  
24 but later amended the onset date to January 20, 2010. See AR 10, 164.

25 <sup>6</sup> AR 80.

26 <sup>7</sup> AR 116–19, 121–23.

27 <sup>8</sup> AR 25.

28 <sup>9</sup> AR 10–19.

<sup>10</sup> AR 974.

<sup>11</sup> AR 977.

<sup>12</sup> AR 852–61.

1 The plaintiff timely filed this action for judicial review and filed a motion for summary  
2 judgment.<sup>13</sup> The Commissioner filed a cross-motion for summary judgment.<sup>14</sup>

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4 **2. Summary of Administrative Record**

5 **2.1 Medical Records**

6 **2.1.1 Catalina Pointe Arthritis & Rheumatology Specialists — Treating**

7 On January 3, 2013, Physician’s Assistant Carol Tran noted that the plaintiff was “doing fairly  
8 well in terms of her RA [meaning rheumatoid arthritis]” and that “stiffness” lasted “anywhere  
9 from 2 minutes to 1 hour.”<sup>15</sup> The plaintiff reported that Orenca was “helping significantly.”<sup>16</sup> On  
10 February 27, 2013 Michael Maricic, M.D., examined the plaintiff.<sup>17</sup> Her chief complaint was  
11 “right wrist pain and swelling.”<sup>18</sup> Dr. Maricic administered injections of corticosteroids and  
12 Xylocains.<sup>19</sup>

13 **2.1.2 Santsaran Patel, M.D. — Treating**

14 The plaintiff visited the Patel Medical Clinic on February 21, 2013, complaining of pain in her  
15 forearms and hands.<sup>20</sup> Nurse Practitioner Ellen Lintner observed that the plaintiff was “well  
16 developed, well nourished, well groomed, [in] no apparent distress, [and] seem[ed] to be in mild  
17 pain.”<sup>21</sup> On May 28, 2013 the plaintiff was positive for “fatigue” and “excruciating calf pain.”<sup>22</sup>  
18 Nurse Lintner noted a decreased range of motion and pain in her left knee.<sup>23</sup> On June 18, 2013, the

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20 <sup>13</sup> Compl. – ECF No. 1; Mot. – ECF No. 15.

21 <sup>14</sup> Cross-Mot.– ECF No. 18.

22 <sup>15</sup> AR 1089.

23 <sup>16</sup> Id.

24 <sup>17</sup> AR 1093.

25 <sup>18</sup> Id.

26 <sup>19</sup> AR 1094.

27 <sup>20</sup> AR 1104.

28 <sup>21</sup> AR 1106.

<sup>22</sup> AR 1109.

<sup>23</sup> AR 1112.

1 plaintiff “present[ed] with numbness” of “moderate intensity” and “lumbar back pain.”<sup>24</sup> Nurse  
2 Lintner noted that the plaintiff had “a long history of back problems” and had been lifting boxes in  
3 preparation for her move to California.<sup>25</sup>

4 Dr. Patel and Nurse Lintner sent the plaintiff to Sierra Vista Regional Health Center for tests  
5 and imaging.<sup>26</sup> An ultrasound on May 30, 2013 showed a “large popliteal cyst” that extended  
6 “down to the calf region.”<sup>27</sup> An MRI on June 25, 2013 showed a “moderate degree of spinal  
7 stenosis.”<sup>28</sup>

8 **2.1.3 Melissa Lim, M.D. — Treating**

9 The plaintiff saw Dr. Lim on January 25, 2015.<sup>29</sup> The plaintiff complained of “fatigue,  
10 shortness of breath, asthma, and obstructive sleep apnea.”<sup>30</sup> After examination, Dr. Lim diagnosed  
11 the plaintiff with mild obstructive-pulmonary disease.<sup>31</sup>

12 **2.1.4 Cynthia Furze, Ph.D. — Treating**

13 Dr. Furze has been the plaintiff’s treating psychologist since 2008.<sup>32</sup> In February 2013, Dr.  
14 Furze submitted a medical-source statement.<sup>33</sup> The form required Dr. Furze to rate the plaintiff’s  
15 ability to perform a number of work-related tasks on a scale of “not significantly limited” to  
16 “markedly limited.”<sup>34</sup>

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<sup>24</sup> AR 1115.

19 <sup>25</sup> AR 1118.

20 <sup>26</sup> AR 1120–32.

21 <sup>27</sup> AR 1120.

22 <sup>28</sup> AR 1121–22.

23 <sup>29</sup> AR 1198.

24 <sup>30</sup> Id.

25 <sup>31</sup> Id.

26 <sup>32</sup> AR 1550.

27 <sup>33</sup> AR 781–83.

28 <sup>34</sup> Id. The definitions provided for the rating scale were as follows: “not significantly limited” means that the claimant has the ability to perform the activity in a normal work setting; “mildly limited” means the claimant is occasionally unable to adequately perform the activity; “moderately limited” means the claimant is frequently unable to adequately perform the activity, but could perform it 50% of the time; and “markedly limited” means the claimant is unable to perform the activity at all or is

1 Dr. Furze rated the plaintiff as “not significantly limited” in the ability to get along with co-  
2 workers or peers without distracting them or exhibiting behavioral extremes.<sup>35</sup>

3 She rated the plaintiff as “mildly limited” in the ability to maintain attention and concentration  
4 for brief periods, the ability to ask simple questions or request assistance, the ability to be aware of  
5 normal hazards and take appropriate precautions, and the ability to travel in unfamiliar places or  
6 use public transportation.<sup>36</sup>

7 She rated the plaintiff as “moderately limited” in the ability to remember locations and work-  
8 like procedures, the ability to carry out short and simple instructions, the ability to accept  
9 instructions and respond appropriately to criticism from supervisors, the ability to maintain  
10 socially appropriate behavior and to adhere to basic standards of neatness and cleanliness, and the  
11 ability to respond appropriately to changes in the work setting.<sup>37</sup>

12 She rated the plaintiff as “markedly limited” in the ability to understand and remember short,  
13 simple instructions, the ability to understand and remember detailed instructions, the ability to  
14 carry out detailed instructions, the ability to maintain attention and concentration for extended  
15 periods, the ability to perform activities within a schedule, the ability to sustain an ordinary routine  
16 without special supervision, the ability to make simple work-related decisions, the ability to  
17 complete a workday and a workweek without interruptions from psychologically based symptoms  
18 and to perform at a consistent pace without more than the normal rest periods, and the ability to set  
19 realistic goals or make plans independently of others.<sup>38</sup>

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unable to perform it more than 50% of the time. There was also an option to mark “not ratable on  
available information”.

25 <sup>35</sup> AR 782.

26 <sup>36</sup> AR 781–83.

27 <sup>37</sup> Id.

28 <sup>38</sup> Id.

1 Dr. Furze reported that the plaintiff could work zero hours per day.<sup>39</sup> The limitations indicated  
2 in the report were effective in 2009 and were “ongoing.”<sup>40</sup> Dr. Furze opined:

3 [The plaintiff’s] relative strength with respect to social interactions does not mitigate  
4 her impairments in memory, concentration, and planning which render her unable to  
5 work in any capacity at the present time. The impact of her depression and resulting  
6 cognitive impairments is worsened by her chronic and multiple medical problems.<sup>41</sup>

6 In May 2013, Dr. Furze submitted a letter in response to the ALJ’s unfavorable decision.<sup>42</sup> Dr.  
7 Furze wrote that since January 2010, the plaintiff was “unable to perform sustained attentional and  
8 cognitively-focused work of any kind. She has also become socially withdrawn, unable to  
9 maintain her physical fitness and significantly impaired in her basic self-care and personal  
10 grooming.”<sup>43</sup> Dr. Furze opined, “The nature of [the plaintiff’s] impairment is chronic and ongoing  
11 since January of 2010, despite aggressive and ongoing psychological and psychiatric  
12 intervention.”<sup>44</sup> Dr. Furze rejected the notion that the plaintiff’s depression was reactive to  
13 situational issues in her life, writing, “[w]hile [the plaintiff] ha[d] additionally experienced some  
14 significant life stressors . . .[,] the depression preexisted these events and has continued  
15 throughout this period up to the present time.”<sup>45</sup> She clarified that “[a]s a routine matter,” she did  
16 not use her clinical notes as “an ongoing documentation of symptoms for the patient” and so the  
17 “absence of observations regarding functioning in [her] office notes [did] not mean that they were  
18 absent in the patient.”<sup>46</sup>

19 In an undated letter “addressing two issues” related to the plaintiff’s case, Dr. Furze wrote:

20 Regarding the issue of [the plaintiff’s] being assessed as “well groomed” in some of  
21 the other doctors’ records. It is a standard part of a medical exam. . . to note the

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22 <sup>39</sup> AR 783.

23 <sup>40</sup> Id.

24 <sup>41</sup> Id.

25 <sup>42</sup> AR 847–48.

26 <sup>43</sup> AR 847.

27 <sup>44</sup> Id.

28 <sup>45</sup> Id.

<sup>46</sup> AR 848.

1 patient's appearance. This can reflect a general observation that the person appears  
2 normal. It is not an in-depth comment on the person's appearance. What would  
3 usually qualify for further note-taking would be obvious signs of inability to  
4 function: tattered clothing, smears of dirt on the face or body, matted hair, untied  
5 shoelaces, glasses held together by tape, etc.. [The plaintiff] presents herself as a  
6 normal-appearing woman. Her hair is straight and she has a pleasant smile and  
manner. She rarely sweats and has little body odor. Her hair is dry and disinclined to  
appear dirty, even if she doesn't shampoo it for several weeks. . . . These other  
physicians' notes reflect a quick and general standard note for the record that was  
not accompanied by asking questions.<sup>47</sup>

7 Dr. Furze noted that when the plaintiff was flying back and forth from California and Arizona,  
8 she was "struck by [the plaintiff's] inability to check other airlines or prices" and the plaintiff "had  
9 relatives, her father specifically, who would make travel arrangements for her."<sup>48</sup>

10 On December 27, 2016, Dr. Furze submitted an additional letter, reporting that the plaintiff  
11 had suffered from depression since 2008.<sup>49</sup> Dr. Furze "treated the plaintiff for psychological issues  
12 related to her rheumatoid arthritis prior to the depression" and so was "in a unique clinical position  
13 to observe her loss of functioning since 2009."<sup>50</sup> It was "apparent" to Dr. Furze that the plaintiff  
14 was "unable to work and [was] among the most severely impaired by mental illness patients  
15 (outside of psychotic disorders) that [she had] seen in thirty years of practicing psychology."<sup>51</sup>

### 16 **2.1.5 David L. Smith, M.D. — Treating**

17 Dr. Smith is the plaintiff's treating psychiatrist.<sup>52</sup> Dr. Smith submitted a letter on February 12,  
18 2013 indicating that he "reviewed the diagnostic criteria for depression listed on Social Security  
19 regulation 12.04 and the plaintiff meets or exceeds the listed criteria."<sup>53</sup>

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23 <sup>47</sup> AR 1683.

24 <sup>48</sup> AR 1684.

25 <sup>49</sup> AR 1550.

26 <sup>50</sup> Id.

27 <sup>51</sup> Id.

28 <sup>52</sup> AR 1592.

<sup>53</sup> AR 652.

1 Dr. Smith submitted a medical-source statement on April 3, 2017.<sup>54</sup> He reported that the  
2 plaintiff had “a long history of chronic major depression.”<sup>55</sup> Her symptoms “wax[ed] and  
3 wane[d]” but she had “a chronic underlying component of neurovegetative symptoms” including  
4 “poor energy, poor concentration, lower interest level in typically enjoyable activities (anhedonia),  
5 and problems with poor sleep quality.”<sup>56</sup> Medication improved these symptoms but “even with  
6 medication treatment she still ha[d] residual dysthymic-level symptoms (lower level but chronic  
7 depression) that contribute[d] to her disability and difficulty with cognitive and emotional  
8 functioning well enough to work.”<sup>57</sup>

9 The plaintiff’s symptoms caused “clinically significant restriction in maintaining  
10 concentration, persistence or pace and social functioning as evidenced by difficulty following  
11 directions, following a conversation, or following a television show because she does not  
12 comprehend or retain the information.”<sup>58</sup> She often did not leave the house and tended to isolate.<sup>59</sup>

13 **2.1.6 Sports, Orthopedics and Rehabilitation Medicine Associates — Treating**

14 The plaintiff received treatment for rheumatoid arthritis at Sports, Orthopedics and  
15 Rehabilitation Medicine Associates (“SOAR”) beginning in 2002.<sup>60</sup>

16 **2.1.6.1 Nichole Barry, M.D.**

17 On March 16, 2010 and May 15, 2012, Dr. Barry aspirated fluid from the plaintiff’s knee.<sup>61</sup> On  
18 June 28, 2012, Dr. Barry reported that the plaintiff’s knees were swelling, one knee was very  
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22 <sup>54</sup> AR 1592.

23 <sup>55</sup> Id.

24 <sup>56</sup> Id.

25 <sup>57</sup> Id.

26 <sup>58</sup> Id.

27 <sup>59</sup> Id.

28 <sup>60</sup> AR 785.

<sup>61</sup> AR 817.



1 painful, and she had a “mild flare.”<sup>62</sup> On July 24, 2012, Dr. Barry examined the plaintiff and  
2 aspirated a recurring cyst in her knee.<sup>63</sup>

3 On July 9, 2013, Dr. Barry aspirated fluid from a cyst in the plaintiff’s knee and injected  
4 Kenalog and lidocaine.<sup>64</sup> Dr. Barry’s impression was “[r]heumatoid arthritis with ongoing activity  
5 also manifested by synovitis in the right knee leading to the development of a popliteal cyst.”<sup>65</sup> On  
6 August 6, 2013, Dr. Barry reported “deep” pain in the plaintiff’s shoulder.<sup>66</sup> On August 28, 2013,  
7 Dr. Barry reported wrist pain.<sup>67</sup> On September 13, 2013, Dr. Barry performed an ultrasound and  
8 injection in the plaintiff’s left wrist.<sup>68</sup> The plaintiff had been experiencing a significant flare.<sup>69</sup> Dr.  
9 Barry noted that the plaintiff had “failed all TNF inhibitors including Remicade and Humira.”<sup>70</sup>

10 On September 13, 2013, Dr. Barry noted “moderate swelling” in the plaintiff’s left wrist.<sup>71</sup> Her  
11 impression was that she had “active polysynovitis related to her rheumatoid arthritis, now  
12 complicated by secondary carpal tunnel syndrome as well.”<sup>72</sup> Dr. Barry administered a lidocaine  
13 injection.<sup>73</sup> Dr. Barry ordered repeated medication infusions to treat the plaintiff’s rheumatoid  
14 arthritis.<sup>74</sup>

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17 <sup>62</sup> AR 816.

18 <sup>63</sup> AR 815.

19 <sup>64</sup> AR 1250.

20 <sup>65</sup> AR 1251. “Synovitis is ‘[i]nflammation of the synovial membrane, the lining of the joint.’” Spencer  
21 v. Barnhart, No. 04-876 RHS, 2005 WL 8163728 at \*3 n.3 (D. New Mexico, July 18, 2005) (citations  
omitted).

22 <sup>66</sup> AR 1248.

23 <sup>67</sup> AR 1245.

24 <sup>68</sup> AR 1240.

25 <sup>69</sup> Id.

26 <sup>70</sup> AR 1241.

27 <sup>71</sup> AR 1133.

28 <sup>72</sup> Id.

<sup>73</sup> Id.

<sup>74</sup> See, e.g., AR 1224–47.

1                   **2.1.6.2 Robert S. Gamburd, M.D.**

2           On March 9, 2012, Dr. Gamburd reported that the plaintiff “had a flare of radicular pain in the  
3 right leg.”<sup>75</sup> He reported that she had “no pain with straight left raising or femoral stretch testing”  
4 but did have “pain with lumbar extension and with right-sided bending.”<sup>76</sup> He ordered an epidural  
5 because she had “excellent relief previously” from that treatment.<sup>77</sup>

6           The plaintiff saw Dr. Gamburd on December 14, 2012 for a recheck of her neck pain.<sup>78</sup> The  
7 plaintiff experienced “increased clicking and instability sensation in the low neck,” and her  
8 “rheumatoid arthritis [had] been aggravated in her wrist and swollen.”<sup>79</sup> She had numbness and  
9 tingling in her forearm.<sup>80</sup> Dr. Gamburd’s examination revealed “painful” cervical spine rotation.<sup>81</sup>

10                   **2.1.7 Serena Hu, M.D. — Treating**

11           Dr. Barry referred the plaintiff to Dr. Hu at the University of California, San Francisco  
12 (“UCSF”) Department of Orthopedic Surgery for issues related to pain in her neck.<sup>82</sup>

13           On September 16, 2008, Dr. Hu noted that the plaintiff had “some upper thoracic pain that  
14 occasionally radiate[d] into the arms, back and elbow, worse on the left than the right. Her hands  
15 go numb and give her pain, and result in decreased activity.”<sup>83</sup> She reported swelling in the  
16 plaintiff’s neck and low back pain.<sup>84</sup> Dr. Hu wrote that “given the current medical management  
17 of” the plaintiff’s rheumatoid arthritis, “it would be very reasonable for her not to need any more  
18 aggressive treatment.”<sup>85</sup>

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20 <sup>75</sup> AR 819.

21 <sup>76</sup> Id.

22 <sup>77</sup> Id.

23 <sup>78</sup> AR 813.

24 <sup>79</sup> Id.

25 <sup>80</sup> Id.

26 <sup>81</sup> AR 814.

27 <sup>82</sup> AR 821.

28 <sup>83</sup> AR 829.

<sup>84</sup> Id.

<sup>85</sup> AR 830.

1 On July 6, 2009, Dr. Hu reported “catching” in the plaintiff’s neck but said that otherwise, her  
2 rheumatoid arthritis was “under control with conservative treatment.”<sup>86</sup>

3 On July 12, 2010, Dr. Hu noted that the plaintiff “had been in remission for about five years”  
4 but had a recent significant flare-up.<sup>87</sup> Dr. Hu’s clinical examination was “unremarkable,” and the  
5 plaintiff’s “range of motion [was] essentially full and not painful.”<sup>88</sup> Dr. Hu planned to follow up  
6 in one year.<sup>89</sup>

7 **2.1.8 Sequoia Hospital — Treating**

8 The plaintiff made multiple trips to the emergency room (“ER”) at Sequoia Hospital in  
9 Redwood City, California. On April 3, 2010, she visited the ER complaining of an “[e]pisode of  
10 shakiness, diaphoresis, [and] vomiting.”<sup>90</sup> Gary D. MacGregor, M.D., noted his impression as  
11 “possible drug reaction in the tramadol and Cymbalta combination.”<sup>91</sup> The plaintiff’s symptoms  
12 resolved with rehydration and she was discharged.<sup>92</sup>

13 On October 31, 2013, the plaintiff presented at the ER with “low back pain mainly on the right  
14 side.”<sup>93</sup> She reported taking four tablets of hydrocodone and Aleve and applying ice “without  
15 much relief.”<sup>94</sup> Physician’s Assistant Putnam administered Diluadid, Phenegan, and Valium,  
16 which made her feel better.<sup>95</sup> Physician’s Assistant Putnam’s clinical impression was “acute-on-  
17 chronic back pain” and she sent the plaintiff home with a prescription for Valium.<sup>96</sup>

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<sup>86</sup> AR 827.

21 <sup>87</sup> AR 821.

22 <sup>88</sup> Id.

23 <sup>89</sup> Id.

24 <sup>90</sup> AR 823.

25 <sup>91</sup> AR 824.

26 <sup>92</sup> Id.

27 <sup>93</sup> AR 1141.

28 <sup>94</sup> Id.

<sup>95</sup> AR 1142.

<sup>96</sup> Id.

1           **2.1.9 Gregory Engel, M.D. — Treating**

2           On September 12, 2013, the plaintiff had an appointment with Dr. Engel.<sup>97</sup> She complained of  
3 “stomach and epigastric pain which” radiated up.<sup>98</sup> Dr. Engel noted that the plaintiff’s “blood  
4 pressure” was “clearly inadequately controlled” and that he would “follow closely.”<sup>99</sup> He  
5 determined that her pain did not “appear to be cardiac.”<sup>100</sup>

6           On December 11, 2014, Dr. Engel reported that the plaintiff was “still having dyspnea which  
7 has been getting worse since her last visit.”<sup>101</sup> She was “well appearing” and in “no acute  
8 distress.”<sup>102</sup> The plaintiff saw Dr. Engel again on March 27, 2014.<sup>103</sup> She was “well appearing”  
9 and “in no acute distress.”<sup>104</sup> He increased the dosage of her blood-pressure medication.<sup>105</sup>

10           On February 27, 2015, Dr. Engel noted the plaintiff’s blood pressure was “within a normal  
11 range with a couple [of] borderline readings.”<sup>106</sup> She reported “exertional dyspnea with walking or  
12 folding laundry.”<sup>107</sup> On October 8, 2015, Dr. Engel reported that the plaintiff’s “breathing  
13 problems [had] improved but [had] not resolved completely” and observed that she was “well  
14 appearing” and in “no acute distress.”<sup>108</sup>

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18 <sup>97</sup> AR 1160–63.

19 <sup>98</sup> AR 1160.

20 <sup>99</sup> AR 1163.

21 <sup>100</sup> AR 1162.

22 <sup>101</sup> AR 1213. “Dyspnea refers to the sensation of difficult or uncomfortable breathing.” Neal v. Colvin,  
No. 1:14-01503-SKP, 2015 WL 5232328, at \*1 n.3 (E.D. Cal. Sept. 8, 2015) (citing *Dorland’s*  
Illustrated Medical Dictionary 589, 1359 (31st ed. 2007)).

23 <sup>102</sup> AR 1215.

24 <sup>103</sup> AR 1155.

25 <sup>104</sup> AR 1157.

26 <sup>105</sup> AR 1158.

27 <sup>106</sup> AR 1206.

28 <sup>107</sup> Id.

<sup>108</sup> AR 1201, 1203.

1                   **2.1.10 Bryan Gesuk, M.D. — Treating**

2                   Dr. Gesuk has treated the plaintiff for her rheumatoid arthritis at the San Mateo Medical  
3 Center since February 2015.<sup>109</sup> Dr. Gesuk submitted a “Medical Work Tolerance  
4 Recommendations” form.<sup>110</sup> Dr. Gesuk indicated that the plaintiff could do two hours of sedentary  
5 work per day, one hour of light work per day, and no hours of medium or heavy work per day.<sup>111</sup>  
6 The plaintiff could stand for five minutes at one time and could sit for ten minutes at one time.<sup>112</sup>  
7 The plaintiff would have to change positions frequently during the day (at least once per hour).<sup>113</sup>  
8 She could climb one flight of stairs per day.<sup>114</sup> The plaintiff needed to avoid bending, crouching,  
9 and squatting, and she could occasionally kneel, sit in a clerical position, reach above shoulder  
10 level, and work with arms extended in front.<sup>115</sup> She needed to avoid power gripping, pushing and  
11 pulling, but could occasionally pinch with her thumb and index finger, perform fine movements,  
12 and feel/touch where sensation was required.<sup>116</sup> Dr. Gesuk concluded that the plaintiff could  
13 work three hours per day and two days per week.<sup>117</sup>

14                   **2.2 Non-Medical Evidence**

15                   **2.2.1 Norman Bell**

16                   Mr. Bell was the plaintiff’s supervisor at the San Jose Business Journal from 2007 to 2010.<sup>118</sup>  
17 Mr. Bell described the accommodations he made for the plaintiff, including a handicapped-parking  
18 spot, ergonomic restructuring of her workspace, and providing her with a flexible schedule.<sup>119</sup> It  
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20 <sup>109</sup> AR 1287–1547.

21 <sup>110</sup> AR 1712.

22 <sup>111</sup> Id.

23 <sup>112</sup> Id.

24 <sup>113</sup> Id.

25 <sup>114</sup> Id.

26 <sup>115</sup> AR 1713.

27 <sup>116</sup> Id.

28 <sup>117</sup> Id.

<sup>118</sup> AR 227.

<sup>119</sup> Id.

1 was “not uncommon to find [the plaintiff] stretched out on the floor, straightening her back.”<sup>120</sup>  
2 Her lack of mobility limited her typing, and it was “clear she was frequently in pain from the  
3 simple act of walking.”<sup>121</sup> When in pain, the plaintiff “could be a challenge to those around her,”  
4 but she “recognized that and made efforts to avoid conflict.”<sup>122</sup>

5 **2.2.2 Maria Pazos**

6 Ms. Pazos worked with the plaintiff at the San Jose Business Journal from 2004 to 2008.<sup>123</sup>  
7 Ms. Pazos detailed the difficulties that the plaintiff had at work due to her rheumatoid arthritis.<sup>124</sup>  
8 The plaintiff had difficulty “maintaining a regular schedule due to a huge number of doctor visits  
9 and medicine adjustments” but “was a real trooper” and made up the time “at all sorts of hours.”<sup>125</sup>  
10 The plaintiff had swelling in her hands, and sustained typing was painful.<sup>126</sup> “Towards the end” of  
11 her time there, the plaintiff “was in extreme discomfort pretty much all day.”<sup>127</sup>

12 **2.2.3 Karen Bell-Zinn**

13 Ms. Bell-Zinn worked with the plaintiff at the Phoenix Business Journal in the 1990s, and they  
14 remained friends after that.<sup>128</sup> The plaintiff “had physical stamina, and as a member of the editorial  
15 department. . . was one of [the] best copy editors.”<sup>129</sup> Ms. Bell-Zinn documented changes she saw  
16 in the plaintiff beginning in the early 2000s.<sup>130</sup> The plaintiff “was slower to get around, and by  
17 2005, her stamina was extremely low.”<sup>131</sup> She also “became somewhat forgetful and  
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19 <sup>120</sup> Id.

20 <sup>121</sup> Id.

21 <sup>122</sup> Id.

22 <sup>123</sup> AR 1079.

23 <sup>124</sup> Id.

24 <sup>125</sup> Id.

25 <sup>126</sup> Id.

26 <sup>127</sup> Id.

27 <sup>128</sup> AR 1081.

28 <sup>129</sup> Id.

<sup>130</sup> Id.

<sup>131</sup> Id.

1 withdrawn.”<sup>132</sup> In the “past decade,” the plaintiff seemed “more and more forgetful and even  
2 somewhat disoriented.”<sup>133</sup> Ms. Bell-Zinn believed that the plaintiff was “unable to have the vibrant  
3 life and career that she began before her illness took away her future.”<sup>134</sup>

#### 4 **2.2.4 Timothy Roberts**

5 Mr. Roberts worked with the plaintiff at the San Jose Business Journal.<sup>135</sup> They both “worked  
6 long hours and did hard work during a very challenging period for the newspaper.”<sup>136</sup> He  
7 described the plaintiff’s work as “a lot of computer work, phone calls, faxing and note taking.”<sup>137</sup>  
8 She also “present[ed] her plans for each edition of the paper at staff meetings, coordinate[d] with  
9 reporters and editors, guide[d] reporters on their own research and proofread the final edit of the  
10 main news pages.”<sup>138</sup> The plaintiff worked “energetically the first two years, but in 2002 she  
11 “began to experience pain and tiredness.”<sup>139</sup> The plaintiff “did whatever she could to stay up with  
12 work,” including working late and on the weekends.<sup>140</sup> The plaintiff’s “hands were swollen and it  
13 was clear that she walked with pain.”<sup>141</sup> It was painful for Mr. Roberts to “watch her stiff walking  
14 and painful typing.”<sup>142</sup> Once, the plaintiff came into work the day after being treated at the hospital  
15 for anaphylactic shock.<sup>143</sup> It took the plaintiff “longer and longer to get her work done.”<sup>144</sup> By  
16 2008, the “new publisher was not interested in working with Sara” and fired her in 2008.<sup>145</sup>

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18 <sup>132</sup> Id.

19 <sup>133</sup> Id.

20 <sup>134</sup> Id.

21 <sup>135</sup> AR 1083.

22 <sup>136</sup> Id.

23 <sup>137</sup> Id.

24 <sup>138</sup> Id.

25 <sup>139</sup> Id.

26 <sup>140</sup> Id.

27 <sup>141</sup> Id.

28 <sup>142</sup> Id.

<sup>143</sup> Id.

<sup>144</sup> Id.

<sup>145</sup> Id.

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**2.2.5 Function Report**

The plaintiff completed a Function Report in conjunction with her application for disability benefits on December 2, 2011.<sup>146</sup>

Before her conditions, the plaintiff was able to read complex texts, problem solve, complete tasks, supervise the work of others, follow directions, and converse intelligently.<sup>147</sup> As a result of her conditions, she “easily [lost] track of things” and experienced a “loss of vocabulary and comprehension [and had] difficulty concentrating” and “difficulty finishing tasks.”<sup>148</sup> Emailing took “an unreasonable amount of time.”<sup>149</sup> For most of the day, she stayed “in bed watching TV.”<sup>150</sup> “Sometimes she move[d] to the sofa to watch TV.”<sup>151</sup>

Her meals were “sporadic,” and she occasionally went to the store or the doctor, and sometimes “visit[ed] her father.”<sup>152</sup> She bathed about two times a month and had not changed her bed sheets in months.<sup>153</sup> She needed to be told to bathe but did not “have anyone to do that.”<sup>154</sup> She had to set reminders on her phone to remember to take medication.<sup>155</sup> She was “partially able” to do household chores, but she either forgot or was “not motivated.”<sup>156</sup> She went outside “maybe once a day.”<sup>157</sup>

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<sup>146</sup> AR 192–200.

<sup>147</sup> AR 193.

<sup>148</sup> AR 192.

<sup>149</sup> AR 193.

<sup>150</sup> Id.

<sup>151</sup> Id.

<sup>152</sup> Id.

<sup>153</sup> AR 194.

<sup>154</sup> Id.

<sup>155</sup> Id.

<sup>156</sup> AR 195.

<sup>157</sup> Id.



1 Her conditions negatively affected her ability to handle money.<sup>158</sup> Her hobbies and interests  
2 were “reading” and “writing fiction” but she “almost stopped because [she got] frustrated when  
3 [she did not] understand text and [her] creativity was gone.”<sup>159</sup> The plaintiff used “Skype to talk to  
4 friends” and visited in person “once in a while.”<sup>160</sup> She did not “enjoy leaving home” and “stopped  
5 going to book club, lectures, classes, bookstores, the library, [and] window shopping.”<sup>161</sup>

6 The plaintiff’s conditions affected talking, memory, completing tasks, concentrating,  
7 understanding, and following instructions.<sup>162</sup> She felt like her brain was “injured.”<sup>163</sup> She could  
8 walk for 45 minutes without having to stop and rest, and she needed to rest for “a day” before  
9 walking again.<sup>164</sup> She could follow written instructions “with great difficulty” and could not  
10 follow spoken instructions.<sup>165</sup> She did not handle stress well and did not have any routines.<sup>166</sup> She  
11 was “afraid of dealing with money and legal issues.”<sup>167</sup>

12 The plaintiff noted that she “had rheumatoid arthritis for 9 years” and that it exacerbated her  
13 depression and sometimes gave her “suicidal ideation.”<sup>168</sup> She said she used to be  
14 a great self-starter with lots of ambition and motivation” but now she was “none of that.”<sup>169</sup>  
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19 <sup>158</sup> AR 196.

20 <sup>159</sup> Id.

21 <sup>160</sup> Id.

22 <sup>161</sup> AR 196–97.

23 <sup>162</sup> AR 197.

24 <sup>163</sup> Id.

25 <sup>164</sup> Id.

26 <sup>165</sup> Id.

27 <sup>166</sup> AR 198.

28 <sup>167</sup> Id.

<sup>168</sup> AR 199.

<sup>169</sup> AR 199–200.

1 **3. Administrative Hearing Held February 28, 2013**

2 **3.1 Plaintiff’s Hearing Testimony**

3 The plaintiff appeared and testified at a hearing on February 28, 2013, represented by an  
4 attorney.<sup>170</sup> The plaintiff clarified that her disability onset date was January 20, 2010 (not  
5 September 24, 2009, as she originally claimed).<sup>171</sup>

6 The ALJ questioned the plaintiff. She testified that she had not worked at all since January 20,  
7 2010.<sup>172</sup> She felt like she had “brain damage” and her brain did not “connect the dots the way it  
8 did” before.<sup>173</sup> The ALJ asked whether any health provider used that term (brain damage), and the  
9 plaintiff said “no, that’s what it feels like to me . . . inside my head.”<sup>174</sup> She found it “very difficult  
10 to concentrate and to focus” and had “extreme difficulty reading and writing.”<sup>175</sup> Her psychiatrist  
11 told her that this was a “neurodegenerative aspect of depression.”<sup>176</sup> The plaintiff was not sure  
12 why she was depressed, but she had “a rough year the year before 2008 or two years before 2008,”  
13 and her psychiatrist said that “eventually [they would] find the right cocktail of drugs that [would]  
14 get [her] back on track and [she could] go back to being productive someday.”<sup>177</sup> She testified that  
15 she has been seeing her psychiatrist, Dr. Smith, since September 2009 and saw him “every three to  
16 five months or so.”<sup>178</sup> She also saw her psychologist, Dr. Cynthia Furze, twice per week for  
17 “seven or eight years.”<sup>179</sup>

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<sup>170</sup> AR 25.

22 <sup>171</sup> AR 29–30.

23 <sup>172</sup> AR 30.

24 <sup>173</sup> AR 30–31.

25 <sup>174</sup> AR 33.

26 <sup>175</sup> AR 30–31.

27 <sup>176</sup> AR 31.

28 <sup>177</sup> Id.

<sup>178</sup> Id.

<sup>179</sup> AR 32.

1 The plaintiff testified that her rheumatoid arthritis and stomach problems kept her from  
2 working.<sup>180</sup> She was diagnosed with gastroparesis.<sup>181</sup> Her doctor in Tucson thought she had  
3 internal bleeding and was running tests to see where the bleeding was coming from.<sup>182</sup>

4 The ALJ asked whether the plaintiff's health improved or got worse between January 20, 2010  
5 and the date of the hearing.<sup>183</sup> She responded that her stomach was "definitely worse."<sup>184</sup> Her  
6 joints were "flaring more often," and she had "numbness in [her] hands from [the] wrist down.  
7 Both of [her] hands [went] completely numb during the day."<sup>185</sup> She experienced "very intense  
8 bone depth dull pain" in her forearms several times a day, usually lasting 10 or 15 minutes.<sup>186</sup> Her  
9 neck pain was worse.<sup>187</sup> Her "overall mood" had improved since her onset date, and she did not  
10 "have as much crying as [she] did when" she initially "got depression."<sup>188</sup> She used to weigh over  
11 200 pounds, but now she weighed "about 190."<sup>189</sup>

12 The ALJ asked the plaintiff about litigation she was involved in with her deceased mother's  
13 widower over her mother's estate.<sup>190</sup> She won that litigation.<sup>191</sup> She also filed a lawsuit against her  
14 last employer because they did not give her appropriate accommodations for her rheumatoid  
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18 <sup>180</sup> AR 33.

19 <sup>181</sup> Id. "Gastroparesis is a digestive disorder wherein the gastric system does not empty food properly."  
20 Proof v. Intel Corp. Long Term Disability Plan, No. 2:12-cv-01716-TLK-CKD, 2014 WL 4960927, at  
n.5 (E.D. Cal. Sept. 30, 2014) (citing Gastroparesis Overview: Causes & Symptoms,  
[http://www.webmd.com/digestive\\_disorders/digestive-disorders-gastroparesis](http://www.webmd.com/digestive_disorders/digestive-disorders-gastroparesis)).

21 <sup>182</sup> AR 33–34.

22 <sup>183</sup> AR 35–36.

23 <sup>184</sup> AR 36.

24 <sup>185</sup> Id.

25 <sup>186</sup> Id.

26 <sup>187</sup> AR 37.

27 <sup>188</sup> Id.

28 <sup>189</sup> AR 39.

<sup>190</sup> AR 37–38.

<sup>191</sup> AR 38.

1 arthritis.<sup>192</sup> The suit was settled out of court.<sup>193</sup> The plaintiff testified that, at the time, if she had  
2 been given her accommodations, she could have still done that job.<sup>194</sup>

3 The ALJ asked the plaintiff whether she exercised, and she testified that she tried to “walk 20  
4 to 30 minutes a few times a week.”<sup>195</sup> Her occupation was listed as “writer,” and so he asked  
5 whether she was currently working on anything.<sup>196</sup> She stated that she had not written anything of  
6 significance since 2009.<sup>197</sup> The ALJ asked whether the plaintiff experienced any side effects from  
7 her medications, and she said that one gave her “esophagitis” and the others made her nauseous,  
8 drowsy, sleepy, and sometimes dizzy.<sup>198</sup> The ALJ noted that in a report from one of her doctors,  
9 the plaintiff reported no side effects and asked her to explain the discrepancy.<sup>199</sup> She said that at  
10 the time, she did not have any “new side effects to report to him but he would have been aware of  
11 my previous side effects.”<sup>200</sup>

12 The ALJ asked the plaintiff about her living situation and her travel. The plaintiff testified that  
13 she lived in Northern California in 2012 and moved to Sierra Vista Arizona in June 2011.<sup>201</sup> She  
14 traveled between Arizona and Northern California five times between June 2011 and the end of  
15 2011 and four times in 2012.<sup>202</sup> She traveled to Redwood City, California “right before Christmas”  
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20 <sup>192</sup> Id.

21 <sup>193</sup> AR 39.

22 <sup>194</sup> Id.

23 <sup>195</sup> AR 43.

24 <sup>196</sup> Id.

25 <sup>197</sup> Id.

26 <sup>198</sup> AR 44.

27 <sup>199</sup> AR 45.

28 <sup>200</sup> Id.

<sup>201</sup> AR 35, 41.

<sup>202</sup> AR 41.

1 in 2012 to visit family and see her psychiatrist.<sup>203</sup> She eventually wanted to move back to  
2 California.<sup>204</sup>

3 The ALJ asked the plaintiff how her rheumatoid arthritis was doing.<sup>205</sup> She testified that “right  
4 now it’s in a period of flaring. It goes up and down. . . . But in the past few months it’s been flaring  
5 fairly well, which among other things, has resulted in having all the swelling in my wrist and  
6 having to get injections there.”<sup>206</sup> The ALJ pointed out a treatment note from January 3, 2013 that  
7 said the plaintiff was “doing fairly well in terms of her [rheumatoid arthritis] and stiffness can last  
8 anywhere from two minutes to one hour . . . . She is able to do her activities of daily living.”<sup>207</sup> He  
9 asked whether she remembered saying that.<sup>208</sup> She did not recall “saying that directly” but she  
10 spoke to a physician’s assistant who “took some notes.”<sup>209</sup>

11 The plaintiff’s attorney then asked her questions. The plaintiff testified that she got an infusion  
12 once a month at the hospital for her rheumatoid arthritis.<sup>210</sup> The infusion took approximately two  
13 hours.<sup>211</sup> She also had to give herself injections.<sup>212</sup> Counsel asked the plaintiff what she meant  
14 when she told a doctor she was “doing okay” with her rheumatoid arthritis, and the plaintiff said  
15 she probably meant that “there’s nothing new and wild coming at [her] and that it’s just pretty  
16 much status quo.”<sup>213</sup> If she had a flare, she would not necessarily tell her doctor because she has  
17 “had so many of them in the past and [she knew] what they would say. . . .”<sup>214</sup> Specifically,  
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19 <sup>203</sup> AR 47.

20 <sup>204</sup> AR 46.

21 <sup>205</sup> AR 47.

22 <sup>206</sup> Id.

23 <sup>207</sup> AR 47–48.

24 <sup>208</sup> AR 48.

25 <sup>209</sup> Id.

26 <sup>210</sup> AR 49.

27 <sup>211</sup> Id.

28 <sup>212</sup> Id.

<sup>213</sup> AR 50.

<sup>214</sup> Id.

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counsel confirmed that at the January 3, 2013 appointment (raised by the ALJ), the plaintiff’s doctor found that she had “synovitis, swelling in [her] left wrist and [her] fingers as well.”<sup>215</sup>

The plaintiff tried to avoid getting steroid injections because they caused her mood to change and sometimes made her suicidal and made her “heart race.”<sup>216</sup> The other medicines that she took, Orencia and methotrexate, suppressed her immune system.<sup>217</sup> To avoid infections, she had to “stay home, stay away from people, use Purell constantly and mostly just avoid contact with other people.”<sup>218</sup>

Counsel asked the plaintiff why she maintained her team of doctors in California, and she said it was because she “had them for so long” and they knew “how [her] body work[ed].”<sup>219</sup> She moved to Arizona to be with her father (who died), and her intention was to move back to California but it was not financially possible at the time of the hearing.<sup>220</sup>

The plaintiff described accommodations that she was given at her former job.<sup>221</sup> She had a handicapped parking spot and was allowed to have a “sporadic” schedule.<sup>222</sup> She was allowed to stretch out on the floor when her back hurt.<sup>223</sup> She could use a keyboard for ten minutes (or for fifteen to twenty if her wrist was not hurting as badly).<sup>224</sup> Her fingers, hands, and wrists would get a “dull ache pain” and would get “a little more inflamed” if she overdid it on a keyboard.<sup>225</sup> When

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<sup>215</sup> Id.  
<sup>216</sup> AR 51.  
<sup>217</sup> Id.  
<sup>218</sup> AR 52.  
<sup>219</sup> Id.  
<sup>220</sup> AR 53.  
<sup>221</sup> AR 54.  
<sup>222</sup> AR 55–56.  
<sup>223</sup> AR 56.  
<sup>224</sup> AR 57.  
<sup>225</sup> AR 57–58.

1 a new publisher joined the journal, he no longer allowed the plaintiff to have these  
2 accommodations.<sup>226</sup>

3 Finally, the plaintiff’s attorney asked her to give the ALJ some examples from her daily life  
4 about how her “brain damage” impacted her.<sup>227</sup> She said she left things in the oven to cook and  
5 forgot about them and they burned.<sup>228</sup> She sometimes could not follow television shows, and it felt  
6 like “there [was] no root for” the information to “get to [her] brain.”<sup>229</sup> She forgot to pay her bills  
7 and had her electricity and water and gas shut off.<sup>230</sup> She testified that she was working to get back  
8 to work and definitely did not want to “be like this forever.”<sup>231</sup>

9 **3.2 Vocational Expert**

10 Ruth Van Vleet, vocational expert (“VE”) testified at the hearing.<sup>232</sup> She classified the  
11 plaintiff’s past relevant work based on listings in the Dictionary of Occupational Titles  
12 (“DOT”).<sup>233</sup> The VE said the plaintiff’s work aligned with the DOT listings for “editor of a  
13 magazine” (listing 132.037-022) with a Special Vocational Preparation (“SVP”) SVP of 8 and  
14 “Journalist” (listing 131.262.018) with an SVP of 7.<sup>234</sup> She characterized the plaintiff’s position as  
15 an exhibitor-services manager as a combination of “exhibitor” (listing 239.357-101) with an SVP  
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20 <sup>226</sup> AR 56.

21 <sup>227</sup> AR 58.

22 <sup>228</sup> Id.

23 <sup>229</sup> Id.

24 <sup>230</sup> Id.

25 <sup>231</sup> AR 59.

26 <sup>232</sup> AR 25.

27 <sup>233</sup> AR 60.

28 <sup>234</sup> AR 60–61. Special Vocational Preparation (“SVP”) is defined as “the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.” DOT, App. C. 1991 WL 688702 (4th ed. 1991).

1 of 3 and “sales manager” (listing 163.167-018) with an SVP of 8.<sup>235</sup> She noted that in her job as an  
2 editor, the plaintiff sat for “eight plus hours a day and lifted at times up to 20 pounds.”<sup>236</sup>

3 The ALJ presented the VE with the following hypothetical:

4 The individual in question can occasionally lift up to 20 pounds, frequently 10. Stand  
5 and walk six out of every eight hours. Sit six out of every eight hours. Her pushing  
6 is commensurate with her lifting and carrying limitations, however her pulling  
7 limitations of 20 occasionally, 10 frequently is limited to frequently. The  
8 hypothetical claimant’s handling and fingering are also limited to frequently. The  
9 hypothetical claimant is to avoid concentrated exposure to extreme cold, extreme  
10 heat, vibrations, extreme vibrations, fumes, odors, dust, gasses, poor ventilation or  
11 the like. The individual is to avoid even moderate exposure to hazards, hazards being  
commonly defined as dangerous machinery or unprotected heights. The individual  
in question cannot perform or work in a fast-paced production environment. . . The  
individual in question can attend and concentrate at two-hour blocks of time  
throughout an eight-hour workday provided the individual received the two  
customary 10 to 15-minute breaks and the 30 to 50-minute lunch period.<sup>237</sup>

12 The ALJ asked the VE whether this hypothetical individual could do any of the plaintiff’s past  
13 relevant work.<sup>238</sup> She responded that the work the plaintiff did previously would be “methodical  
14 and would fit within the limitations.”<sup>239</sup> The ALJ asked, “if an individual for any reason is unable  
15 to attend and concentrate in two hour blocks of time throughout an eight hour workday,” what  
16 effect would that have on the individual’s ability to maintain employment.<sup>240</sup> The VE said that  
17 person would need “a specially accommodated job and [] would not be considered competitively  
18 employable.”<sup>241</sup> The VE testified that the allowable range of absences would be “one day per  
19 month up to 12 per year. Anything in excess [would mean that] an individual would need either a  
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23 <sup>235</sup> AR 60–61.

24 <sup>236</sup> AR 60.

25 <sup>237</sup> AR 63–64.

26 <sup>238</sup> AR 64.

27 <sup>239</sup> Id.

28 <sup>240</sup> AR 65.

<sup>241</sup> Id.



1 special accommodation but typically would be terminated if they couldn't adhere to the  
2 standards."<sup>242</sup>

3 The plaintiff's attorney asked the VE how an individual's telecommuting "one to two days per  
4 week" would affect the hypothetical raised by the ALJ.<sup>243</sup> She said that "would need to be an  
5 accommodation by an employer."<sup>244</sup>

6 The plaintiff's attorney stated that the plaintiff's "treating psychologist. . . indicated that her  
7 ability to understand and remember short and simple instructions [was] markedly limited," and  
8 asked, "what effect that would have on the positions that the [VE] indicated under the first  
9 hypothetical."<sup>245</sup> The ALJ, the VE and the plaintiff's attorney then had the following exchange:

10 ALJ: Wait, wait. Counsel, madam VE, does the term marked have any meaning  
11 within the definition of the DOT?

12 VE: No.

13 ALJ: Counsel, I think you're asking for —

14 ATTY: Well let me expand then, because —

15 ALJ: I think I've already done that for you though with the two-hour limitation.  
16 See, if she can't attend and concentrate within two-hour blocks of time, we  
17 already know she can't work.

18 ATTY: Well why don't we just cut to the chase then, judge, and if I could just get  
19 an agreement that under the limitations set forth by her treating psychologist  
20 —

21 ALJ: Yes, that, yes.

22 ATTY: — she would be unemployable.

23 ALJ: And you've already got that as well through Dr. Barry who says she meets a  
24 listing so.

25 ATTY: Dr. Smith.

26 ALJ: I'm sorry, Dr. Smith.

27 ATTY: Okay.

28 ALJ: So, yes.

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<sup>242</sup> AR 66.

<sup>243</sup> AR 67.

<sup>244</sup> AR 68.

<sup>245</sup> AR 69.

1 ATTY: All right, so we can —

2 ALJ: I —

3 ATTY: — move on.

4 ALJ: — agree. If she's as limited as these folks say she is, yes.<sup>246</sup>

5 **3.3 April 2013 ALJ Decision and Reversal on Appeal**

6 The first ALJ issued an unfavorable ruling on April 1, 2013.<sup>247</sup> Initially, the ALJ determined  
7 that the plaintiff met the “insured status requirements of the Social Security Act through December  
8 31, 2013.”<sup>248</sup> The ALJ then followed the five-step sequential-evaluation process to determine  
9 whether the plaintiff was disabled and concluded that she was not.<sup>249</sup>

10 At step one, the ALJ concluded that the plaintiff had “not engaged in substantial gainful  
11 activity since January 20, 2010, the alleged onset date.”<sup>250</sup> At step two, the ALJ determined that  
12 the plaintiff had “the following severe impairments: rheumatoid arthritis; Sjogren’s syndrome;  
13 cervical spine degenerative disc disease; gastritis; and obesity.”<sup>251</sup> He held that the plaintiff had  
14 the “medically determinable mental impairment of depression” that did not “cause more than  
15 minimal limitation in [her] ability to perform basic mental work activities and [was] therefore  
16 nonsevere.”<sup>252</sup> The ALJ opined, “Clinical signs and findings reported in the case record and  
17 consultative examiners Drs. Salk and Marks’ opinions support[ed] this determination.”<sup>253</sup> He said  
18 that the plaintiff’s physical-health treatment records did “not document any significant and  
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22 <sup>246</sup> AR 69–70.

23 <sup>247</sup> AR 10–19.

24 <sup>248</sup> AR 12.

25 <sup>249</sup> AR 12–19.

26 <sup>250</sup> AR 12.

27 <sup>251</sup> Id.

28 <sup>252</sup> Id.

<sup>253</sup> AR 13.

1 persistent depressive symptoms,” and he discussed examples of the plaintiff’s behaving normally  
2 and appropriately at medical appointments.<sup>254</sup>

3 The ALJ assigned “substantial weight” to the state agency consultants’ and assigned “little  
4 weight” to Dr. Smith’s opinion that the plaintiff’s depression met the criteria of listing 12.04 and  
5 Dr. Furze’s opinion that the plaintiff has “disabling depression.”<sup>255</sup> He held that the treating  
6 doctors’ opinions were “inconsistent with the mental status examination findings showing [the  
7 plaintiff] had appropriate affect, logical thoughts and was cooperative, and her relatively good  
8 activities of daily living . . . including her frequent travel between Arizona and California.”<sup>256</sup>

9 At step three, the ALJ found that the plaintiff did not have “an impairment or combination of  
10 impairments that [met] or medically equal[ed] the severity of” a listed impairment because “[n]o  
11 physician [] credibly opined that the claimant’s conditions [met] or equal[ed] any listing, and the  
12 state agency program physicians opined that they [did] not.”<sup>257</sup>

13 Finally, the ALJ determined that the plaintiff had the residual-functional capacity (“RFC”) to  
14 perform the following work:

15 The claimant retains the capacity to lift and carry 20 pounds occasionally, and 10  
16 pounds frequently; stand and walk for 6 hours in an 8 hour workday; sit for 6 hours  
17 in an 8 hour workday; pushing is commensurate with the aforementioned lifting and  
18 carry limitations; the claimant may frequently pull a weight commensurate with the  
19 aforementioned lifting and carrying limitations: 20 pounds occasionally, and 10  
20 pounds frequently; perform frequent handling and fingering; must avoid  
21 concentrated exposure to extreme cold and heat, extreme vibration, fumes, odors,  
22 dusts, gases and poor ventilation, or the like; avoid even moderate exposure to  
workplace hazards, such as unprotected heights or dangerous machinery; must not  
work in a fast-paced production environment; and is able to attend and concentrate  
for 2 hour blocks of rime throughout an 8 hour workday with the two customary 10  
to 15 minute breaks, and the customary 30 to 60 minute lunch period.<sup>258</sup>

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25 <sup>254</sup> Id.

26 <sup>255</sup> AR 14.

27 <sup>256</sup> Id.

28 <sup>257</sup> Id.

<sup>258</sup> Id.

1           Considering the entire record and applying this process, the ALJ found that “[the plaintiff’s]  
2 medically-determinable impairments could reasonably be expected to cause the alleged  
3 symptoms,” but held that her “statements concerning their intensity, persistence, and limiting  
4 effects” were “not entirely credible. . . .”<sup>259</sup>

5           The plaintiff appealed the ALJ’s decision to the District of Arizona.<sup>260</sup> The district court  
6 reversed the Commissioner’s decision and remanded the plaintiff’s case to the ALJ for further  
7 proceedings.<sup>261</sup>

8           First, the court held that “the reasons cited by the ALJ for discounting Plaintiff’s credibility  
9 either [were] not supported by substantial evidence of record or otherwise [did] not provide a basis  
10 to disbelieve Plaintiff.”<sup>262</sup> Second, the court held that the ALJ did not state sufficient reasons for  
11 rejecting the opinions of the plaintiff’s treating providers (Dr. Barry, Dr. Smith, and Dr. Furze).<sup>263</sup>  
12 Third, the court held that the ALJ did not provide germane reasons for rejecting Norman Bell’s  
13 third-party statement about the plaintiff’s disability.<sup>264</sup> Finally, the court held that “the substantial  
14 evidence of record at this point, for the reasons stated above, does not support the ALJ’s RFC  
15 assessment.”<sup>265</sup>

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17 **4. Administrative Hearing Held April 26, 2017**

18 **4.1 Pre-Hearing Memorandum**

19           The plaintiff submitted a pre-hearing memorandum on April 21, 2017.<sup>266</sup> In it, she said, “The  
20 plaintiff has been diagnosed with Rheumatoid Arthritis and treated extensively for it. She also has  
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22 <sup>259</sup> AR 15.

23 <sup>260</sup> AR 936.

24 <sup>261</sup> AR 974.

25 <sup>262</sup> AR 948.

26 <sup>263</sup> AR 956–67.

27 <sup>264</sup> AR 968.

28 <sup>265</sup> AR 969.

<sup>266</sup> AR 1084.

1 cervical degeneration and lumbar stenosis with radiculopathy. She has the mental impairment of  
2 major depressive disorder with cognitive difficulties.”<sup>267</sup> She summarized the plaintiff’s medical  
3 record as follows:<sup>268</sup>

4 The record is replete with objective findings such as limited range of motion,  
5 synovitis, effusion, thrush, swelling, edema and multiple instances of fluid on her  
6 knee requiring aspirations. Laboratory results repeatedly display elevated  
7 inflammatory levels and diagnostics confirm synovitis in her fingers, stenosis in her  
8 spine and swelling in her foot. Moreover, the underlying diagnosis of Rheumatoid  
9 Arthritis is complicated by other conditions and causes complications. For example,  
10 [the plaintiff] has recurrent chronic bronchitis and sinusitis. During periods of active  
infections, she must stop the pain saving infusion treatment while she treats the  
infections. This results in marked increases in her pain levels. Additionally, the  
medication she takes to help with the pain has caused lupus and agitation, insomnia  
and fatigue.<sup>269</sup>

11 The plaintiff asserted that her claim “was mishandled from the beginning,” and the “disability  
12 examiner was under the wrong impression that the plaintiff’s date last insured was 12/31/11 when  
13 it was actually two years later. . . .”<sup>270</sup> “[T]hey looked at this from a skewed legal perspective right  
14 from the start. Their position was that she had insufficient evidence to prove disability before  
15 12/31/11. This prevented them from looking at any evidence past that date.”<sup>271</sup>

16 **4.2 Administrative Hearing**

17 An ALJ in California held a hearing on April 26, 2017 to reconsider the plaintiff’s application  
18 for disability benefits.<sup>272</sup> The plaintiff was represented by an attorney.<sup>273</sup> The plaintiff’s attorney  
19 explained that there were “four major components” to the plaintiff’s conditions: rheumatoid  
20 arthritis; complications from rheumatoid arthritis including lupus and infections from suppression  
21 of her immune system; a lower-back pain issue that ultimately resulted in surgery (after the initial  
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23 <sup>267</sup> Id.

24 <sup>268</sup> AR 1084–85.

25 <sup>269</sup> AR 1085 (emphasis in original).

26 <sup>270</sup> AR 1086.

27 <sup>271</sup> Id.

28 <sup>272</sup> AR 871.

<sup>273</sup> AR 873.

1 hearing in 2013); and major depression.<sup>274</sup> Counsel explained that based on the previous ALJ’s  
2 specific concerns about the plaintiff’s continued travel and Dr. Smith’s explanation about why the  
3 plaintiff meets the listings, they submitted additional evidence on those topics.<sup>275</sup> Specifically,

4 The magistrate [in the District of Arizona] [said] [‘]I still have some problems with  
5 [Dr. Furze’s] comments about her grooming and I also have some concerns about the  
6 fact that she kept traveling.[’] So I had [Dr. Furze] specifically address those in letters  
7 and so those have been submitted into evidence, and then he had some issues about  
8 what Dr. Smith, his listings comment. But Dr. Smith, her treating psychiatrist said,  
9 yes she meets the listings. Magistrate judge says you know, he probably didn’t do a  
very good job about explaining why she meets the listings. So I went back to Dr.  
Smith and I asked him, can you please just elaborate why do you think that she meets  
the listing, which he did and again, I provided that explanation into the record,  
Judge.<sup>276</sup>

10 **4.3 Plaintiff’s Hearing Testimony**

11 The plaintiff was 53 years old at the time of the second hearing.<sup>277</sup> She last worked in June of  
12 2008, and after that, she supported herself with a 401(k), and help from her father and cousin.<sup>278</sup>  
13 What kept her from being able to work was “[t]he inability to concentrate, to read, to follow  
14 instructions, and to be consistent in a daily schedule.”<sup>279</sup>

15 The plaintiff’s attorney asked her about telling Dr. Furze that she wanted to kill herself and  
16 that she did not “really have a reason to live.”<sup>280</sup> The plaintiff said she could “get that way from  
17 time to time.”<sup>281</sup> When asked to give examples about difficulty concentrating, the plaintiff said:

18 Trying to read things, I will have to read them seven, eight, nine times and then I still  
19 come away with not understanding what it said and I know that I know these words,  
20 but I can’t put them together. I have done the same thing with trying to watch a  
television show, having to rewind things four, five, six times to figure out what

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<sup>274</sup> AR 874–77.

23 <sup>275</sup> AR 877.

24 <sup>276</sup> Id.

25 <sup>277</sup> Id.

26 <sup>278</sup> AR 878.

27 <sup>279</sup> Id.

28 <sup>280</sup> Id.

<sup>281</sup> Id.

1 they're saying and I can't keep my mind — my mind gets distracted while I'm trying  
2 to focus and I can't keep it on track.<sup>282</sup>

3 She almost lost her house in Arizona “several times,” and her utilities were shut off because she  
4 forgot to pay bills.<sup>283</sup> Since 2009, she fumbled with “simple words” and “struggle[d] to find the  
5 right word.”<sup>284</sup>

6 She used to be the research director for the Silicon Valley Business Journal.<sup>285</sup> She “interacted  
7 with people from other companies” to “get information from them.”<sup>286</sup> It was a “sedentary, sit  
8 down type of job.”<sup>287</sup> The most she had to lift was “maybe five pounds of files.”<sup>288</sup> She also  
9 worked as an exhibitor services manager for a convention registration company.<sup>289</sup> She “helped  
10 people who registered as exhibitors to set up booths in the exhibit hall” and coordinated and  
11 managed getting the equipment they needed.<sup>290</sup> She was on her feet 90 to 100% of the day.<sup>291</sup> The  
12 most she lifted at that job was 40 pounds.<sup>292</sup>

13 Her rheumatoid arthritis started spreading in 2002.<sup>293</sup> She received monthly injections for  
14 rheumatoid arthritis beginning in the summer of 2003.<sup>294</sup> During the period from 2000 to 2013 the  
15 plaintiff was receiving monthly Orencia infusions.<sup>295</sup> She needed to go to the hospital “at some  
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18 <sup>282</sup> AR 879.

19 <sup>283</sup> Id.

20 <sup>284</sup> AR 879–80.

21 <sup>285</sup> AR 880.

22 <sup>286</sup> AR 880–81.

23 <sup>287</sup> AR 881.

24 <sup>288</sup> Id.

25 <sup>289</sup> Id.

26 <sup>290</sup> Id.

27 <sup>291</sup> AR 882.

28 <sup>292</sup> Id.

<sup>293</sup> Id.

<sup>294</sup> AR 883.

<sup>295</sup> Id.

1 point Monday through Friday” and could be there for “three to four hours.”<sup>296</sup> Her company  
2 provided accommodations for her, including a flexible schedule and an ergonomic specialist to  
3 give her “a good desk.”<sup>297</sup> She was allowed to work late at nights, on the weekends, and from  
4 home.<sup>298</sup> She had difficulty typing and could type from five to 20 minutes before needing to stop  
5 because of “a very intense ache” in her hands and her wrists.<sup>299</sup> She needed to “get up and move  
6 around for a few minutes” before typing again.<sup>300</sup> She could work like that for two or three hours a  
7 day.<sup>301</sup> She had to stop after two to three hours because she experienced “numbness and tingling”  
8 down her arms and in her hands which caused her to “lose sleep.”<sup>302</sup> She had “back problems and  
9 neck problems” diagnosed as stenosis in her back.<sup>303</sup> She could sit for 20 minutes at a time with a  
10 lot of shifting and could walk for 15 to 20 minutes at a time before needing a rest.”<sup>304</sup>

11 In 2013, the plaintiff had surgery, which provided her relief for “a couple of months” until she  
12 “took a fall.”<sup>305</sup> She was told that “disc material could come out again after that surgery[,] and that  
13 is what happened after [she] fell.”<sup>306</sup> She said that her “rheumatoid arthritis[,] . . . cognitive  
14 problems from depression[,]” and gout were the “biggest things” for her.<sup>307</sup>

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19 <sup>296</sup> AR 883–84.

20 <sup>297</sup> AR 882–83.

21 <sup>298</sup> AR 884.

22 <sup>299</sup> AR 884–85.

23 <sup>300</sup> AR 885.

24 <sup>301</sup> Id.

25 <sup>302</sup> Id.

26 <sup>303</sup> AR 885–86.

27 <sup>304</sup> Id.

28 <sup>305</sup> AR 886–87.

<sup>306</sup> AR 887.

<sup>307</sup> Id.



1           **4.4 Vocational Expert**

2           Ms. Wenz, a Vocational Expert (“VE”), testified at the hearing.<sup>308</sup> She characterized the  
3 plaintiff’s past work as follows:

4           [T]here were two areas of previous employment within the last 15 years that are  
5 reflected in the file and were discussed in today’s hearing. One would be that of  
6 exhibit services manager. This would be best defined by DOT code 297.367-010,  
7 and the DOT defines that as light work with an SVP of 5. [The plaintiff] also  
worked as a research director. This is DOT code 189.177-010, and it is light work  
with an SVP of 8.<sup>309</sup>

8           The ALJ provided two hypotheticals for the VE to consider.<sup>310</sup> The first was:

9           [F]or an individual with the same age, education, work background [as the  
10 plaintiff]. This person will be limited to light work, but all postural including  
11 climbing, balancing, kneeling, crouching, and crawling would be occasional.  
12 Handling and fingering would be frequent. This person must avoid exposure to  
13 temperature extremes as well as vibration, fumes, odors, dusts, gases, and poor  
ventilation. This person should also not be exposed to hazards or unprotected  
heights. Work should not be in [a] fast paced production environment.<sup>311</sup>

14           The VE testified that hypothetical person could not perform the plaintiff’s past work because  
15 both positions required “the ability to work at a fast pace and maintain focus [and]  
16 concentration.”<sup>312</sup> The VE provided three alternative occupations for such a hypothetical person: a  
17 furniture-rental clerk<sup>313</sup> (light work with an SVP of 2 and 50,000 jobs nationally); a photocopy  
18 machine operator (light work with an SVP of 2 and over 18,000 jobs nationally); or an order  
19 caller<sup>314</sup> (light work with an SVP of 2 and over 10,000 jobs nationally).<sup>315</sup> The ALJ’s second  
20 hypothetical was “[f]or a person with the same age, education, and work background limited to  
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<sup>308</sup> Id.

23           <sup>309</sup> AR 888.

24           <sup>310</sup> Id.

25           <sup>311</sup> Id.

26           <sup>312</sup> Id.

27           <sup>313</sup> The transcript reflects that the ALJ reported this as a “film-rental clerk.” AR 860.

28           <sup>314</sup> The ALJ reported this as a “mail handler.” AR 861.

<sup>315</sup> AR 888–89.

1 essentially sedentary work, but they can only work for three hours a day and two days per  
2 week.”<sup>316</sup> The VE said there would not be any work for such a hypothetical person.<sup>317</sup>

3 The plaintiff’s attorney then questioned the VE.<sup>318</sup> First, she asked whether a person  
4 “markedly limited in the ability to perform activities within a schedule, maintain regular  
5 independence, and be punctual. . . would [be] render[ed] [] unemployable?”<sup>319</sup> The VE said yes.<sup>320</sup>  
6 The plaintiff’s attorney asked whether a person “markedly unable to sustain ordinary, routine  
7 [work] without special supervision” and “markedly limited” in “the ability to make simple work-  
8 related decisions” would be unemployable, and the VE answered yes.<sup>321</sup> Finally, the plaintiff’s  
9 attorney asked whether a person “markedly limited in the ability to complete a work day and work  
10 week without interruptions from psychologically based symptoms and to perform at a consistent  
11 pace without more than normal rest periods” would be unemployable, and the VE answered that  
12 she would.<sup>322</sup> The VE said that missing more than one day of work a month would “definitely”  
13 make a person unemployable and agreed that “adding restrictions of working from home or  
14 flexible schedule would require an accommodated position.”<sup>323</sup>

15 **4.5 Administrative Findings Issued October 27, 2017**

16 The ALJ issued an unfavorable decision on October 27, 2017.<sup>324</sup> Initially, the ALJ determined  
17 that the plaintiff met the “insured status requirements of the Social Security Act through December  
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19  
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21 \_\_\_\_\_  
22 <sup>316</sup> AR 889.

23 <sup>317</sup> Id.

24 <sup>318</sup> Id.

25 <sup>319</sup> Id.

26 <sup>320</sup> Id.

27 <sup>321</sup> AR 889–90.

28 <sup>322</sup> AR 890.

<sup>323</sup> Id.

<sup>324</sup> AR 849.

1 31, 2013.”<sup>325</sup> The ALJ then followed the five-step sequential-evaluation process to determine  
2 whether the plaintiff was disabled and concluded that she was not.<sup>326</sup>

3 At step one, the ALJ determined that the plaintiff “did not engage in substantial gainful  
4 activity during the period from her alleged onset date. . . through her date last insured.”<sup>327</sup>

5 At step two, the ALJ determined that the plaintiff had “the following severe impairments:  
6 rheumatoid arthritis, sinusitis, psoriasis, status-post back surgery, carpal tunnel syndrome,  
7 pacemaker, obesity, lupus, and depression.”<sup>328</sup> The ALJ found that those impairments  
8 “significantly limit[ed] the ability to perform basic work activities.”<sup>329</sup> The ALJ found that the  
9 plaintiff’s additional medically determinable impairments — status-post laparoscopic  
10 cholecystectomy, sleep apnea, hypertension, hyperthyroidism, left-ankle edema, and pulmonary  
11 nodules — were nonsevere.<sup>330</sup>

12 At step three, the ALJ found that the plaintiff “did not have an impairment or combination of  
13 impairments that met or medically equaled the severity of one of the listed impairments in 20 CFR  
14 Part 404, Subpart P, Appendix 1.”<sup>331</sup> The ALJ opined, “There is no medical evidence that  
15 documents listing-level severity for any physical impairment. No acceptable medical-source has  
16 mentioned findings equivalent in severity to the criteria of any listed impairment, individually or  
17 in combination.”<sup>332</sup> As for the plaintiff’s mental impairment (depression), the ALJ held that it did  
18 not meet or equal the criteria of listing 12.04 (depressive, bipolar, and related disorders).<sup>333</sup> The

19 \_\_\_\_\_  
20 <sup>325</sup> AR 854.

21 <sup>326</sup> AR 854–61.

22 <sup>327</sup> AR 854.

23 <sup>328</sup> AR 855.

24 <sup>329</sup> Id.

25 <sup>330</sup> Id.

26 <sup>331</sup> Id.

27 <sup>332</sup> Id.

28 <sup>333</sup> Id. Listing 12.04 includes disorders that “are characterized by an irritable, depressed, elevated, or expansive mood, or by a loss of interest or pleasure in all or almost all activities, causing a clinically significant decline in function. Symptoms and signs may include, but are not limited to, feelings of hopelessness or guilt, suicidal ideation, a clinically significant change in body weight or appetite, sleep disturbances, an increase or decrease in energy, psychomotor abnormalities, disturbed concentration,

1 ALJ considered whether the plaintiff’s mental impairment met the “paragraph B criteria” for  
2 listing 12.04.<sup>334</sup> The ALJ summarized the criteria as follows:

3 To satisfy the ‘paragraph B’ criteria, the mental impairment must result in at least  
4 one extreme or two marked limitations in a broad area of functioning which are:  
5 understanding, remembering, or applying information; interacting with others;  
6 concentrating, persisting, or maintaining pace; or adapting or managing themselves.  
7 A marked limitation means functioning in this area independently, appropriately,  
effectively, and on a sustained basis is seriously limited. An extreme limitation is the  
inability to function independently, appropriately or effectively, and on a sustained  
basis.<sup>335</sup>

8 The ALJ held that the plaintiff had a “moderate limitation” in understanding, remembering or  
9 applying information because she “exhibited a linear thought process during an examination.”<sup>336</sup>  
10 She had a “mild limitation” in interacting with others because” during an examination, the  
11 claimant was cooperative and exhibited good eye contact.”<sup>337</sup> She had a “moderate limitation” in  
12 concentrating, persisting, or maintaining pace because, again, “she exhibited a linear thought  
13 process.”<sup>338</sup> Finally, she had a “mild limitation” in adapting or managing herself because she  
14 “seemed to have relatively full activities of daily living.”<sup>339</sup>

15 The ALJ considered whether the plaintiff’s mental impairment met the “paragraph C” criteria  
16 of listing 12.04 and determined that it did not.<sup>340</sup>

17 [T]he record does not show a medically documented history of a chronic affective  
18 disorder of at least two years’ duration that has caused more than a minimal limitation

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20 pressured speech, grandiosity, reduced impulse control, sadness, euphoria, and social withdrawal.”  
Major depression and depressive disorder are both evaluated under this listing. 20 C.F.R., Pt. 404,  
Subpt. P, appx. 1 § 12.00(3)(a).

21 <sup>334</sup> AR 855.

22 <sup>335</sup> Id.

23 <sup>336</sup> Id.

24 <sup>337</sup> Id.

25 <sup>338</sup> Id.

26 <sup>339</sup> AR 856.

27 <sup>340</sup> Id. Fulfilling the “paragraph C” criteria of listing 12.04 requires “evidence of both: (1) medical  
28 treatment, mental health therapy, psychosocial support, or a highly structured setting(s) that is ongoing  
and that diminishes the symptoms and signs of your mental disorder; and (2) marginal adjustment, that  
is, you have minimal capacity to adapt to changes in your environment or to demands that are not  
already part of your daily life.” 20 C.F.R., Pt. 404, Subpt. P, appx. A §12.04(C).

1 of ability to od basic work activities, with symptoms or signs currently attenuated by  
2 medication or psychosocial support, and one of the following: repeated episodes of  
3 decompensation, each of extended duration; a residual disease process that has  
4 resulted in such marginal adjustment that even a minimal increase in mental demands  
5 or change in the environment would be predicted to cause the individual to  
decompensate; or current history of one or more years' inability to function outside  
a highly supportive living arrangement, with an indication of continued need for such  
arrangement.<sup>341</sup>

6 At step four, the ALJ found that the plaintiff had the RFC to “perform light work as defined in  
7 20 CFR 404.1567(b) except the claimant is limited to occasional postural activities, frequent  
8 handling and fingering, cannot work around hazards or unprotected heights, is limited to simple  
9 work, and cannot perform fast-paced production work.”<sup>342</sup> The ALJ opined that the plaintiff’s  
10 “medically determinable impairments could reasonably be expected to cause the alleged  
11 symptoms; however, the claimant’s statements concerning the intensity, persistence and limiting  
12 effects of these symptoms are not entirely consistent with the medical evidence and other evidence  
13 in the record. . . .”<sup>343</sup> The ALJ wrote that “medical records from January 2013 indicate[d] that [the  
14 plaintiff] ‘is doing fairly in terms of her [rheumatoid arthritis].’”<sup>344</sup> She noted that the plaintiff had  
15 back surgery in November 2013 and “was doing well postoperatively.”<sup>345</sup> In April 2010, the  
16 plaintiff “reported that she has been doing well” with her drug-induced lupus.<sup>346</sup> The ALJ noted  
17 that she took into account the plaintiff’s wandering atrial pacemaker and chronic sinusitis when  
18 formulating the RFC.<sup>347</sup> The ALJ “considered and accounted for” the plaintiff’s obesity and found

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23 <sup>341</sup> AR 856.

24 <sup>342</sup> Id.

25 <sup>343</sup> AR 857.

26 <sup>344</sup> Id.

27 <sup>345</sup> AR 857–58.

28 <sup>346</sup> AR 858.

<sup>347</sup> Id.

1 that it did “not affect the claimant’s ability to ambulate effectively.”<sup>348</sup> She determined that the  
2 plaintiff’s “respiratory and cardiovascular systems [were] not unduly impaired.”<sup>349</sup>

3 The ALJ gave “some weight” to the plaintiff’s allegation of depression, but she held that “the  
4 medical record indicates that the claimant’s depression does not preclude the performance of all  
5 work.”<sup>350</sup> The plaintiff reported that she was “doing well on Wellbutrin,” and in July 2013, the  
6 plaintiff was reported to have “good eye contact, appropriate behavior, and her thought process  
7 was linear and logical. It was noted that the claimant still had psychosocial stress, but her  
8 depression was stable.”<sup>351</sup> The ALJ noted that the plaintiff “described daily activities which [were]  
9 not limited to the extent one would expect, given the complaints of disabling symptoms and  
10 limitations,” including frequent travel between the Bay Area and Arizona, writing fiction, and  
11 taking walks.<sup>352</sup> The ALJ discussed Dr. Furze’s opinion that the plaintiff’s depression rendered her  
12 “unable to work,” but gave it little weight, stating that “the record [did] not support such extreme  
13 limitations” and “the medical record show[ed] that many of the claimant’s symptoms [were] well-  
14 controlled with medication.”<sup>353</sup> The ALJ considered Dr. Smith’s opinion that the plaintiff’s  
15 symptoms met listing 12.04 but granted it little weight as it was “not supported by the medical  
16 record.”<sup>354</sup> “Specifically,” the ALJ opined, “the claimant’s activities of daily living and  
17 unremarkable objective findings all suggest that the claimant does not meet listing 12.04.”<sup>355</sup>

18 The ALJ considered reports from the plaintiff’s former coworkers Karen Zinn and Timothy  
19 Roberts.<sup>356</sup> The ALJ found that their reports regarding the plaintiff’s limitations at work  
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21 <sup>348</sup> Id.

22 <sup>349</sup> Id.

23 <sup>350</sup> Id.

24 <sup>351</sup> Id.

25 <sup>352</sup> Id.

26 <sup>353</sup> AR 859.

27 <sup>354</sup> Id.

28 <sup>355</sup> Id.

<sup>356</sup> Id.

1 “reveal[ed] that the claimant ha[d] a strong work history and [was] hardworking” and that while  
2 they supported a finding that the plaintiff could not do her former work, they did “not suggest that  
3 the claimant cannot perform any work.”<sup>357</sup>

4 Finally, at step five, the ALJ determined that there were “jobs that existed in significant  
5 numbers in the national economy” that the plaintiff could do.<sup>358</sup>

### 7 STANDARD OF REVIEW

8 Under 42 U.S.C. § 405(g), district courts have jurisdiction to review any final decision of the  
9 Commissioner if the claimant initiates a suit within sixty days of the decision. A court may set  
10 aside the Commissioner’s denial of benefits only if the ALJ’s “findings are based on legal error or  
11 are not supported by substantial evidence in the record as a whole.” *Vasquez v. Astrue*, 572 F.3d  
12 586, 591 (9th Cir. 2009) (internal citation and quotation marks omitted); 42 U.S.C. § 405(g).  
13 “Substantial evidence means more than a mere scintilla but less than a preponderance; it is such  
14 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”  
15 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The reviewing court should uphold “such  
16 inferences and conclusions as the [Commissioner] may reasonably draw from the evidence.” *Mark*  
17 *v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). If the evidence in the administrative record  
18 supports the ALJ’s decision and a different outcome, the court must defer to the ALJ’s decision  
19 and may not substitute its own decision. *Tackett v. Apfel*, 180 F.3d 1094, 1097–98 (9th Cir. 1999).  
20 “Finally, [a court] may not reverse an ALJ’s decision on account of an error that is harmless.”  
21 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

### 23 GOVERNING LAW

24 A claimant is considered disabled if (1) he or she suffers from a “medically determinable  
25 physical or mental impairment which can be expected to result in death or which has lasted or can  
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27 <sup>357</sup> *Id.*

28 <sup>358</sup> AR 860.

1 be expected to last for a continuous period of not less than twelve months,” and (2) the  
2 “impairment or impairments are of such severity that. . . she is not only unable to do [her] previous  
3 work but cannot, considering [her] age, education, and work experience, engage in any other kind  
4 of substantial gainful work which exists in the national economy. . . .” 42 U.S.C. § 1382c(a)(3)(A)  
5 & (B). The five-step analysis for determining whether a claimant is disabled within the meaning of  
6 the Social Security Act is as follows. Tackett, 180 F.3d at 1099 (citing 20 C.F.R. § 404.1520).

7 **Step One.** Is the claimant presently working in a substantially gainful activity? If  
8 so, then the claimant is “not disabled” and is not entitled to benefits. If the claimant  
9 is not working in a substantially gainful activity, then the claimant’s case cannot be  
10 resolved at step one, and the evaluation proceeds to step two. See 20 C.F.R.  
11 § 404.1520(a)(4)(i).

12 **Step Two.** Is the claimant’s impairment (or combination of impairments) severe? If  
13 not, the claimant is not disabled. If so, the evaluation proceeds to step three. See 20  
14 C.F.R. § 404.1520(a)(4)(ii).

15 **Step Three.** Does the impairment “meet or equal” one of a list of specified  
16 impairments described in the regulations? If so, the claimant is disabled and is  
17 entitled to benefits. If the claimant’s impairment does not meet or equal one of the  
18 impairments listed in the regulations, then the case cannot be resolved at step three,  
19 and the evaluation proceeds to step four. See 20 C.F.R. § 404.1520(a)(4)(iii).

20 **Step Four.** Considering the claimant’s RFC, is the claimant able to do any work  
21 that he or she has done in the past? If so, then the claimant is not disabled and is not  
22 entitled to benefits. If the claimant cannot do any work he or she did in the past,  
23 then the case cannot be resolved at step four, and the case proceeds to the fifth and  
24 final step. See 20 C.F.R. § 404.1520(a)(4)(iv).

25 **Step Five.** Considering the claimant’s RFC, age, education, and work experience,  
26 is the claimant able to “make an adjustment to other work?” If not, then the  
27 claimant is disabled and entitled to benefits. See 20 C.F.R. § 404.1520(a)(4)(v). If  
28 the claimant is able to do other work, the Commissioner must establish that there  
are a significant number of jobs in the national economy that the claimant can do.  
There are two ways for the Commissioner to show other jobs in significant  
numbers in the national economy: (1) by the testimony of a vocational expert or  
(2) by reference to the Medical-Vocational Guidelines at 20 C.F.R., part 404,  
subpart P, app. 2.

For steps one through four, the burden of proof is on the claimant. At step five, the burden  
shifts to the Commissioner. *Gonzales v. Sec’y of Health & Human Servs.*, 784 F.2d 1417, 1419  
(9th Cir. 1986).



1 **ANALYSIS**

2 The plaintiff filed a motion for summary judgment and contends that the ALJ erred by:

- 3 (1) giving little weight to the opinions of her treating psychiatrist and psychologist;  
4 (2) ignoring the opinions of her treating rheumatologists;  
5 (3) failing to include limitations from third-party statements;  
6 (4) discounting her testimony; and  
7 (5) basing her decision on VE testimony where two of the proposed jobs were  
inappropriate and the remaining job was not available in significant numbers.<sup>359</sup>

8 For the reasons set forth below, the court grants the plaintiff’s motion and remands the case for  
9 reconsideration.

10  
11 **1. Whether the ALJ Erred by Assigning Little Weight to the Opinions of the Plaintiff’s  
12 Treating Psychologist and Psychiatrist<sup>360</sup>**

13 The plaintiff alleges that the ALJ did not provide specific and legitimate reasons for  
14 discounting her treating psychiatrist’s and psychologist’s opinions.<sup>361</sup> She also argues that the ALJ  
15 “paraphrase[d]” comments from her medical records in a way that made them appear that she was  
16 more active than she really was.<sup>362</sup> The court holds that the ALJ did not give specific and  
17 legitimate reasons supported by substantial evidence for discounting the opinions.

18 The ALJ is responsible for ““resolving conflicts in medical testimony, and for resolving  
19 ambiguities.”” Garrison v. Colvin, 759 F.3d 995, 1010 (9th Cir. 2014) (quoting Andrews v.  
20 Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995)).<sup>363</sup> In weighing and evaluating the evidence, the ALJ

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22 <sup>359</sup> Mot. – ECF No. 15 at 5.

23 <sup>360</sup> In its opposition to the plaintiff’s motion for summary judgment, the government argues that the  
24 ALJ properly discounted these opinions because “[b]oth Dr. Smith and Dr. Furze provided their  
25 opinions in 2013, well after Plaintiff’s date last insured of December 31, 2011.” Opp. – ECF No. 18 at  
26 28–29, 853, 861.

27 <sup>361</sup> Mot. – ECF No. 15 at 6.

28 <sup>362</sup> Id. at 8.

<sup>363</sup> The Social Security Administration promulgated new regulations, including a new § 404.1521,  
effective March 27, 2017. The previous version, effective to March 26, 2017, applies based on the date  
of the ALJ’s hearing, November 16, 2016.

1 must consider the entire case record, including each medical opinion in the record, together with  
2 the rest of the relevant evidence. 20 C.F.R. § 416.927(b); see *Orn v. Astrue*, 495 F.3d 625, 630  
3 (9th Cir. 2007) (“[A] reviewing court must consider the entire record as a whole and may not  
4 affirm simply by isolating a specific quantum of supporting evidence.”) (internal punctuation and  
5 citation omitted).

6 “In conjunction with the relevant regulations, [the Ninth Circuit has] developed standards that  
7 guide [the] analysis of an ALJ’s weighing of medical evidence.” *Ryan v. Comm’r of Soc. Sec.*, 528  
8 F.3d 1194, 1198 (9th Cir. 2008) (citing 20 C.F.R. §404.1527). Social Security regulations  
9 distinguish between three types of accepted medical-sources: (1) treating physicians; (2)  
10 examining physicians; and (3) non-examining physicians. 20 C.F.R. § 416.927(c), (e); *Lester v.*  
11 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995). “Generally, a treating physician’s opinion carries more  
12 weight than an examining physician’s, and an examining physician’s opinion carries more weight  
13 than a reviewing [non-examining] physician’s.” *Holohan v. Massanari*, 246 F.3d 1195, 1202 (9th  
14 Cir. 2001) (citing *Lester*, 81 F.3d at 830); accord *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th Cir.  
15 1996).

16 “To reject [the] uncontradicted opinion of a treating or examining doctor, an ALJ must state  
17 clear and convincing reasons that are supported by substantial evidence.” *Ryan*, 528 F.3d at 1198  
18 (alteration in original) (internal quotation marks and citation omitted). By contrast, if the ALJ  
19 finds that the opinion of a treating physician is contradicted, a reviewing court will require only  
20 that the ALJ provide “specific and legitimate reasons supported by substantial evidence in the  
21 record.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (internal quotation marks and  
22 citation omitted); see also *Garrison*, 759 F.3d at 1012 (“If a treating or examining doctor’s  
23 opinion is contradicted by another doctor’s opinion, an ALJ may only reject it by providing  
24 specific and legitimate reasons that are supported by substantial evidence.”) (internal quotation  
25 marks and citation omitted).

26 Dr. Furze’s and Dr. Smith’s medical opinions are not contradicted by another doctor’s opinion.  
27 Thus, the ALJ was required to give clear and convincing reasons supported by substantial  
28 evidence before discounting the opinions. *Ryan*, 528 F.3d at 1198.

1 Dr. Smith’s notes and opinions documented objective observations related to the plaintiff’s  
2 depression including restricted affect and low mood.<sup>364</sup> Dr. Furze reported extensively about the  
3 plaintiff’s severe depression symptoms including “anhedonia, neurovegetative cognitive  
4 impairment, social withdrawal and suicidal ideation.”<sup>365</sup> Dr. Furze’s most recent assessment was  
5 that it was “apparent” that the plaintiff was “unable to work and [was] among the most severely  
6 impaired by mental illness patients (outside of psychotic disorders) that [she had] seen in thirty  
7 years of practicing psychology.”<sup>366</sup>

8 The ALJ gave Dr. Furze’s medical opinion little weight because “the record [did] not support”  
9 the recommended restrictions in the opinion, and “many of [the plaintiff’s] symptoms are well-  
10 controlled with medication.”<sup>367</sup> The ALJ gave little weight to Dr. Smith’s medical opinion because  
11 it was “not supported by the medical record” and the plaintiff’s “activities of daily living and  
12 unremarkable objective findings all suggest that [she] does not meet listing 12.04.”<sup>368</sup> The three  
13 reasons proffered by the ALJ do not constitute clear and convincing reasons supported by  
14 substantial evidence.

15 First, “[m]erely stating that a treating physician’s opinions are not supported by objective  
16 findings is insufficient.” *Morganti v. Colvin*, No. C 12–03511 CRB, 2013 WL 1758784 at \*6  
17 (N.D. Cal. Apr. 24, 2013) (citing *Embrey v. Bowen*, 849 F.2d 418, 421 (9th Cir. 1988) (“To say  
18 that medical opinions are not supported by sufficient objective findings. . . does not achieve the  
19 level of specificity our prior cases have required.”). To disregard a treating physician’s opinion,  
20 the ALJ must provide “a thorough summary of the facts, his interpretations thereof, and his  
21 findings.” *Id.* (emphasis in original). The ALJ did not provide the requisite specificity here.

22 Second, that the plaintiff’s symptoms improved with medication is not a clear and convincing  
23 reason to discount Dr. Furze’s testimony. See *Garrison*, 759 F.3d at 1017. The Ninth Circuit has  
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25 <sup>364</sup> AR 241–44, 640.  
26 <sup>365</sup> AR 847.  
27 <sup>366</sup> AR 1550.  
28 <sup>367</sup> AR 859.  
<sup>368</sup> *Id.*

1 emphasized that “while discussing mental health issues, it is error to reject a claimant’s testimony  
2 merely because symptoms wax and wane in the course of treatment.” *Id.* Incidents of improvement  
3 must be “interpreted with an awareness that improved functioning while being treated and while  
4 limiting environmental stressors does not always mean that a claimant can function effectively in a  
5 workplace.” *Id.* (citation omitted). “Caution in making such an inference is especially appropriate  
6 when no doctor or other medical expert has opined. . . that a mental health patient is capable of  
7 working or is prepared to return to work.” *Id.* at 1017–18. Here, Dr. Furze said that Ms. Hayden’s  
8 mental disability prevented her from working altogether.

9 Finally, the ALJ’s reference to the plaintiff’s activities of daily living is not a clear and  
10 convincing reason to discount Dr. Smith’s medical opinion. “The Social Security Act does not  
11 require that claimants be utterly incapacitated to be eligible for benefits, and many home activities  
12 may not be easily transferable to a work environment where it might be impossible to rest  
13 periodically or take medication.” *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (citation  
14 omitted). The Ninth Circuit has held that “disability claimants should not be penalized for  
15 attempting to lead normal lives in the face of their limitations.” *Reddick*, 157 F.3d at 722. Thus,  
16 the daily activities cited by the ALJ — traveling to Arizona, writing fiction, and walking — do not  
17 constitute clear and convincing reasons to reject Dr. Smith’s opinion that the plaintiff meets listing  
18 12.04 and is unable to work.

19  
20 **2. Whether the ALJ Erred by Ignoring the Opinions of the Plaintiff’s Rheumatologist**

21 The plaintiff contends that the ALJ erred by ignoring the opinion of her treating  
22 rheumatologists, Dr. Barry.<sup>369</sup> She argues that the ALJ was “required to explain the reasons for  
23 rejecting” the physicians’ assessments and did not do so.<sup>370</sup> The court agrees.

24 As discussed above, in weighing and evaluating the evidence, the ALJ must consider the entire  
25 case record, including each medical opinion in the record, together with the rest of the relevant  
26

27 <sup>369</sup> Mot. – ECF No. 15 at 9–10.

28 <sup>370</sup> *Id.* at 10.

1 evidence. 20 C.F.R. § 416.927(b). An ALJ may not “reject[] a medical opinion or assign[] it little  
2 weight” without explanation or without explaining why “another medical opinion is more  
3 persuasive, or criticize it with boilerplate language that fails to offer a substantive basis for [her]  
4 conclusion.” Garrison, 759 F.3d at 1012–13.

5 At step three, the ALJ said that there was “no medical evidence that documents listing-level  
6 severity for any physical impairment” and that “[n]o acceptable medical-source. . . mentioned  
7 findings equivalent in severity to the criteria of any listed impairment, individually or in  
8 combination.”<sup>371</sup> The ALJ did not mention Dr. Barry, who diagnosed the plaintiff’s rheumatoid  
9 arthritis. Dr. Barry’s 2005 letter “is clear that when Plaintiff is in pain caused by RA and pleurisy,  
10 she should be permitted to telecommute. . . Dr. Barry’s letter was written for the direct purpose of  
11 indicating an accommodation of functional limitations related to Plaintiff’s employment.”<sup>372</sup> The  
12 ALJ erred by ignoring Dr. Barry’s opinion.

13  
14 **3. Whether the ALJ Erred by Not Including Limitations from Third-Party Statements**

15 The plaintiff argues that the erred by not giving germane reasons for discounting the opinions  
16 of her former coworkers.<sup>373</sup>

17 The ALJ must consider “other source” testimony and evidence from a layperson. Ghanim, 763  
18 F.3d 1154, 1161 (9th Cir. 2014); Molina, 674 F.3d at 1111; Bruce v. Astrue, 557 F.3d 1113, 1115  
19 (9th Cir. 2009) (“In determining whether a claimant is disabled, an ALJ must consider lay witness  
20 testimony concerning a claimant’s ability to work”) (internal quotation marks and citation  
21 omitted). “Descriptions by friends and family members in a position to observe a claimant’s  
22 symptoms and daily activities have routinely been treated as competent evidence.” Sprague v.  
23 Bowen, 812 F.2d 1226, 1232 (9th Cir. 1987). It is competent evidence and “cannot be disregarded  
24 without comment.” Nguyen v. Chater, 100 F.3d 1462, 1467 (9th Cir. 1996). The Ninth Circuit has  
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27 <sup>371</sup> AR 855.

28 <sup>372</sup> AR 956–57.

<sup>373</sup> Mot. – ECF No. 15 at 11–12.

1 not “required the ALJ to discuss every witness’s testimony on an individualized, witness-by-  
2 witness basis.” *Molina*, 674 F.3d at 1114. An ALJ may “point to” reasons already stated with  
3 respect to the testimony of one witness to reject similar testimony by a second witness. *Id.*

4 The former coworkers testified about the plaintiff’s debilitating symptoms and need for  
5 accommodations at work. The ALJ did not discount the opinions and instead said:

6 All of these opinions are given some weight. They reveal that the claimant has a  
7 strong work history and is hardworking. They also suggest that the claimant became  
8 unable to perform her past work, although she tried to perform it with  
9 accommodations for a long time. This is consistent with the finding below that the  
10 claimant is unable to perform her past relevant work. Ms. Zinn’s opinion supports  
the finding that the claimant should be limited to simple work. However, these  
opinions do not suggest that the claimant cannot perform any work.<sup>374</sup>

11 The ALJ did not reference the limitations in the RFC portion of her analysis but wrote, “[i]n  
12 sum, the above residual functional capacity assessment is supported by the medical evidence, the  
13 claimant’s activities of daily living, and the record as a whole.”<sup>375</sup> Given the court’s remand for  
14 reconsideration of the medical-opinion evidence, the court remands on this issue as well.

15  
16 **4. Whether the ALJ Erred by Discounting the Plaintiff’s Testimony**

17 The plaintiff argues that the ALJ found her testimony not credible without providing clear and  
18 convincing reasons for doing so.<sup>376</sup> She claims that the ALJ used “boilerplate language found  
19 repeatedly in Social Security decisions” and did not identify specific statements by the plaintiff as  
20 being “inconsistent” with the medical evidence.<sup>377</sup> The court agrees.

21 In assessing a claimant’s credibility, an ALJ must make two determinations. *Garrison*, 759  
22 F.3d at 1014. “First, the ALJ must determine whether the claimant has presented objective medical  
23 evidence of an underlying impairment which could reasonably be expected to produce the pain or  
24 other symptoms alleged.” *Id.* (quoting *Lingerfelter v. Astrue*, 504 F.3d 1028, 1035–36 (9th Cir.

25 \_\_\_\_\_  
26 <sup>374</sup> AR 859.

27 <sup>375</sup> *Id.*

28 <sup>376</sup> Mot. – ECF No. 15 at 12.

<sup>377</sup> *Id.* at 12–13.

1 2007) (internal quotations omitted)). Second, if the claimant has produced that evidence, and  
2 “there is no evidence of malingering,” the ALJ must provide “specific, clear and convincing  
3 reasons for” rejecting the claimant’s testimony regarding the severity of the claimant’s symptoms.  
4 *Id.* at 1014–15 (quoting *Smolen*, 80 F.3d at 1281).

5 In order to have meaningful appellate review, the ALJ must explain its reasoning and  
6 “specifically identify the testimony [from a claimant] she or he finds not to be credible and . . .  
7 explain what evidence undermines the testimony.” *Treichler v. Comm’r of Soc. Sec.*, 775 F.3d  
8 1090, 1102–03 (9th Cir. 2014) (“Credibility findings must have support in the record, and  
9 hackneyed language seen universally in ALJ decisions adds nothing.”) (emphasis in original,  
10 internal quotations omitted). “That means ‘[g]eneral findings are insufficient.’” *Id.* at 1102  
11 (quoting *Lester*, 81 F.3d at 834); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“the ALJ  
12 must make a credibility determination with findings sufficiently specific to permit the court to  
13 conclude that the ALJ did not arbitrarily discredit the claimant’s testimony” (citing *Bunnell v.*  
14 *Sullivan*, 947 F.2d 341, 345–46 (9th Cir. 1991) (en banc)). Moreover, the court will “review only  
15 the reasons provided by the ALJ in the disability determination and may not affirm the ALJ on a  
16 ground upon which he did not rely.” *Garrison*, 759 F.3d at 1010.

17 The ALJ discounted the plaintiff’s testimony because her “statements concerning the intensity,  
18 persistence and limiting effects of [her] symptoms are not entirely consistent with the medical  
19 evidence and other evidence in the record for the reasons explained in this decision.”<sup>378</sup>

20 The ALJ did not identify specifically what portions of the plaintiff’s testimony were not  
21 credible or specifically identify what medical evidence and other evidence in the record  
22 undermined her testimony. This was not a specific, clear and convincing reason for rejecting her  
23 testimony. *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014).

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28 <sup>378</sup> AR 857.

1 **5. Whether the ALJ Erred by Relying on VE Testimony**

2 The plaintiff argues that the VE testimony is not substantial evidence because there are  
3 inconsistencies between the VE’s testimony as reflected in the transcript and the ALJ’s description  
4 of the testimony in her written opinion.<sup>379</sup>

5 A VE’s testimony may lose its evidentiary value if the hypothetical posed by the ALJ fails to  
6 include a claimant’s limitations. See *Ross v. Berryhill*, 711 Fed. Appx. 384, 387 (9th Cir. 2017).  
7 Here, the VE’s recommendations were based on hypotheticals posed by the ALJ. Those  
8 hypotheticals included a few of the physical limitations discussed by Dr. Gesuk and none of the  
9 mental limitations discussed by Dr. Furze.<sup>380</sup>

10 As discussed above, the ALJ committed reversible error in failing to discuss the plaintiff’s  
11 treating rheumatologist and failed to provide legally sufficient reasons for discounting the  
12 plaintiff’s testimony and the medical-opinion evidence provided by Drs. Furze and Smith. Thus,  
13 “it follows that the hypothetical the ALJ posed to the vocational expert is potentially flawed due to  
14 a failure to include the limitations” contained in that testimony. *Id.* (citing *Bray v. Comm’r of Soc.*  
15 *Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (“If an ALJ’s hypothetical does not reflect all of  
16 the claimant’s limitations, then the expert’s testimony has no evidentiary value to support a  
17 finding that the claimant can perform jobs in the national economy.”)) The court holds that the  
18 ALJ erred in relying on this flawed VE testimony.

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27 <sup>379</sup> Mot. – ECF No. 15 at 15.

28 <sup>380</sup> See AR 888–89.



1 **CONCLUSION**

2 The plaintiff’s motion for summary judgment is granted, and the Commissioner’s cross-  
3 motion for summary judgment is denied. The court remands the case for reconsideration  
4 consistent with this order.

5  
6 **IT IS SO ORDERED.**

7 Dated: March 25, 2019

8 

9 \_\_\_\_\_  
10 LAUREL BEELER  
11 United States Magistrate Judge