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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 KIM D. COSTA,

8 Plaintiff,

9 vs.
10

11 CAROLYN W. COLVIN, Commissioner of
12 the Social Security Administration,

13 Defendant.
14

Case No.: 13-cv-1724-YGR

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

15 On April 16, 2013, Plaintiff Kim D. Costa filed this action seeking judicial review of
16 Administrative Law Judge ("ALJ") Brenton L. Rogozen's decision finding she was not disabled
17 under sections 216(i) and 223(d) of the Social Security Act. Pending before the Court are the
18 parties' cross-motions for summary judgment. (Dkt. Nos. 18, 19, 22.) Costa argues that the ALJ
19 erred by: (i) giving improper weight to the medical opinions of non-treating and treating physicians;
20 (ii) finding that Plaintiff had no reaching limitations that preclude her from performing past relevant
21 work; and (iii) determining that Costa was only partially credible. Defendant Commissioner Carolyn
22 W. Colvin disagrees, contending that the ALJ made no reversible errors of law and that substantial
23 evidence supported the ALJ's decision.

24 Having carefully considered the papers submitted and the pleadings in this action, and for the
25 reasons set forth below, the Court hereby **GRANTS IN PART** Plaintiff's Motion for Summary
26 Judgment and **DENIES IN PART** Defendant's Cross-Motion for Summary Judgment.

27 **I. PROCEDURAL BACKGROUND**

28 Plaintiff filed an application for disability insurance benefits in September 2009, claiming
that she had been disabled since November 17, 2008. (Record at 122-30.) On October 28, 2009, the

1 Social Security Administration (“SSA”) denied Costa’s application for disability insurance benefits.
2 (*Id.* at 79–82.) Costa requested reconsideration and the SSA affirmed its previous denial on May 21,
3 2010 (*Id.* at 83–89). Costa subsequently requested a hearing before an ALJ. (*Id.* at 93.)

4 ALJ Brenton L. Rogozen held a hearing on June 6, 2011, at which Plaintiff appeared and
5 testified. (*Id.* at 48–71.) In a decision dated December 1, 2011, the ALJ found that Costa was not
6 disabled. (*Id.* at 11–20.) The Appeals Council declined to review the ALJ’s decision, thereby
7 rendering the ALJ’s decision the final decision of the Commissioner. (*Id.* at 1.) Costa now appeals
8 from that decision. (Dkt. No. 1.)

9 **II. APPLICABLE LEGAL STANDARDS**

10 This Court has jurisdiction under 42 U.S.C. section 405(g). The Court may reverse the ALJ’s
11 decision only if it “contains legal error or is not supported by substantial evidence.” *Orn v. Astrue*,
12 495 F.3d 625, 630 (9th Cir. 2007) (internal citations omitted). Substantial evidence is “such relevant
13 evidence as a reasonable mind might accept as adequate to support a conclusion.” *Burch v.*
14 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). It is “more than a mere scintilla but less than a
15 preponderance.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005). Where the evidence
16 is susceptible to more than one rational conclusion, the Court must uphold the ALJ. *Burch*, 400 F.3d
17 at 679.

18 The SSA uses a five-step sequential framework to determine whether a claimant is disabled.
19 At Step One, the ALJ must determine whether the claimant is engaged in substantial gainful activity.
20 20 C.F.R. § 404.1520(b). A person is involved in substantial work activity if she engages in work
21 that involves significant physical or mental activities. 20 C.F.R. § 404.1572(a). Gainful work
22 activity is defined as “work usually done for pay or profit,” regardless of whether the claimant
23 receives a profit. 20 C.F.R. § 404.1572(b). If the claimant is engaged in substantial gainful activity,
24 she is not disabled. If the claimant does not engage in substantial gainful activity, then the ALJ
25 proceeds to Step Two of the evaluation.

26 At Step Two, the ALJ must determine whether the claimant has an impairment or
27 combination of impairments that is severe. 20 C.F.R. § 404.1520(c). A “severe” impairment is
28 defined in the regulations as one that significantly limits an individual’s ability to perform basic

1 work activities. If the claimant does not have a severe impairment or combination of impairments,
2 she is not disabled. If the claimant does have a severe impairment or combination of impairments,
3 then the ALJ proceeds to Step Three.

4 At Step Three of the sequential evaluation, the ALJ must determine whether a claimant's
5 impairment or combination of impairments "meets or equals" the criteria of an impairment listed in
6 20 C.F.R. Part 404, Subpart P, App. 1. 20 C.F.R. §§ 404.1520(d), 404.1525 and 404.1526. If the
7 claimant's impairment or combination of impairments meets the criteria of a listing and the duration
8 requirement, the claimant is disabled. 20 C.F.R. § 404.1509. If the impairment or combination of
9 impairments does not meet the criteria of a listing or does not meet the duration requirement, the ALJ
10 proceeds to the next step.

11 Before reaching Step Four in the sequential evaluation, the ALJ must determine the
12 claimant's residual functional capacity ("RF Capacity"). 20 C.F.R. § 404.1520(e). A claimant's RF
13 Capacity consists of his ability to engage in physical and mental work activity on an ongoing basis,
14 in spite of any limitations from impairments. The ALJ considers both severe and non-severe
15 impairments in determining the claimant's RF Capacity. 20 C.F.R. §§ 404.1520(e), 404.1545.

16 At Step Four, the ALJ must determine whether the claimant has the RF Capacity to perform
17 past relevant work. 20 C.F.R. § 404.1520(f). If the claimant has the RF Capacity to perform past
18 relevant work, she is not disabled. If the claimant is unable to do past relevant work or has no past
19 relevant work, the ALJ proceeds to the final step in the sequential evaluation.

20 At Step Five, the ALJ considers the claimant's RF Capacity, age, education, and work
21 experience in determining whether the claimant can perform any other work besides past relevant
22 work. 20 C.F.R. § 404.1520(g). If the claimant can perform other work, she is not disabled. If the
23 claimant cannot perform other work and fulfills the duration requirement, she is disabled.

24 **III. ADMINISTRATIVE RECORD AND FRAMEWORK**

25 **A. The ALJ's Five-Step Decision**

26 The ALJ applied the five-step sequential analysis to determine whether Plaintiff was disabled
27 and eligible for disability insurance benefits. (Record at 11–20.)

28 At Step One, the ALJ determined that Plaintiff was "not engaged in substantial gainful

1 activity since November 17, 2008, the alleged onset date.” (Record at 13.) Specifically, the ALJ
2 determined that Plaintiff “worked after the alleged disability onset date but this work activity did not
3 rise to the level of substantial gainful activity.” (*Id.*) The ALJ did note, however, that Plaintiff’s
4 “ability to continually work after her alleged onset date diminishes her overall credibility.” (*Id.*)

5 At Step Two, the ALJ determined that Plaintiff “has the following severe impairments:
6 lumbar strain with residual pain and cervical pain of unspecified etiology.” (*Id.*) The ALJ further
7 determined that Plaintiff suffered from these impairments “more than minimally; thus, they are
8 considered to be severe.” (*Id.*) Although the ALJ noted that Plaintiff has a history of obesity, the
9 ALJ determined that this is not a severe impairment for Plaintiff. (*Id.* at 13–14.)

10 At Step Three, the ALJ found that Plaintiff did not have “an impairment or combination of
11 impairments that meets or medically equals one of the listed impairments” under the regulations.
12 (Record at 14.) As a result, before proceeding to Step Four, the ALJ made a determination regarding
13 Plaintiff’s RF Capacity, considering “all symptoms and the extent to which these symptoms can
14 reasonably be accepted as consistent with the objective medical evidence and other evidence” as
15 required by 20 C.F.R. sections 404.1529 and 404.1527. (*Id.*) The ALJ specifically noted that when
16 considering Plaintiff’s symptoms, he “must follow a two-step process.” (*Id.*) First, the ALJ must
17 determine “whether there is an underlying medically determinable physical or mental impairment . . .
18 that could reasonably be expected to produce the claimant’s pain or other symptoms.” (*Id.*)
19 “Second, once an underlying physical . . . impairment that could reasonably be expected to produce
20 the claimant’s pain or other symptoms has been shown, the undersigned must evaluate the intensity,
21 persistence, and limiting effects of the claimant’s symptoms to determine the extent to which they
22 limit the claimant’s functioning.” (*Id.*) If the claimant’s stated intensity, persistence, or functionally
23 limiting effects of pain are not substantiated by objective medical evidence, the ALJ must make a
24 finding on the credibility of the statements based on a consideration of the entire case record. (*Id.* at
25 14–15.)

26 Ultimately, the ALJ determined that Plaintiff had the RF Capacity to perform the full range of
27 light work as defined in 20 C.F.R. section 404.1567(b). In making his RF Capacity determination,
28 the ALJ considered “the opinions of the State agency review physicians, the opinions of the

1 consultative examiner, the findings and opinions of the claimant’s treating physicians, the claimant’s
2 testimony, her behavior at the hearing, her past medical history, and the diagnostic and clinical
3 findings of record.” (Record at 17.) Although Plaintiff “testified she suffered from neck and back
4 pain that prevented her from being able to work,” that “she was in constant pain and felt her pain
5 worsened after she stopped working and began receiving treatment,” and that “she never had a day
6 when she was pain free,” among other things, the ALJ found that Plaintiff lacked credibility. (*Id.* at
7 15.)

8 In reaching this conclusion, the ALJ considered Plaintiff’s stated activities, noting that she
9 admitted that she was “capable of babysitting her five-year-old grandson after her alleged onset
10 date,” and that “she lived alone and did not report any particular help in maintaining the residence
11 other than testifying her daughter helped her with the grocery shopping.” (*Id.*) The ALJ also found
12 that Plaintiff “admitted she was capable of cooking and cleaning her house,” and that “she was able
13 to drive but explained she did not do it regularly.” (*Id.*) After considering “all the medical evidence
14 in the record,” the ALJ concluded that although Plaintiff’s medically determinable impairments
15 could reasonably be expected to cause some of her alleged symptoms (*id.* at 15), Plaintiff’s
16 “subjective complaints are less than fully credible and the objective medical evidence does not
17 support the alleged severity of symptoms” (*id.* at 18).

18 In making his RF Capacity determination, the ALJ gave “little weight” to the opinion of
19 Plaintiff’s treating physician, Dr. Mrdjen. The ALJ explained that Dr. Mrdjen’s various work place
20 restrictions and temporary restrictions from working “are inadequately supported by clinical
21 findings.” (*Id.* at 17.) The ALJ further explained that he decided to give “little weight” to Dr.
22 Mrdjen’s opinions because those opinions “appear to place more weight on the claimant’s subjective
23 complaints that have been found only partially credible,” “are not supported by the objective
24 evidence of record and are inconsistent with the claimant’s admitted activities of daily living.” (*Id.*
25 at 17–18.)

26 In contrast, the ALJ considered and accorded “great weight” to the opinions of orthopedic
27 consultative examiner Dr. Garren, who assessed the Plaintiff with an “essentially normal physical
28 examination except for finding slightly reduced range of motion in the neck and back and mild

1 cervical and lumbar paraspinous spasms.” (Record at 17.) Dr. Garren diagnosed Plaintiff with
2 chronic neck and back pain. (*Id.*) The ALJ found that Dr. Garren’s findings were “reasonable in
3 light of the medical evidence of record [and were] generally consistent with the objective findings of
4 record.” (*Id.*)

5 The ALJ also gave “significant weight” to State agency review physician Dr. Morgan, who
6 opined that Plaintiff “could perform a range of light work.” (Record at 17.) The ALJ explained that
7 Dr. Morgan’s opinion was “generally consistent with the evidence of record.” (*Id.*)

8 Having made the RF Capacity determination, the ALJ proceeded to Step Four and evaluated
9 the Plaintiff’s documented vocational background, her testimony, and the testimony of a vocational
10 expert, and determined that Plaintiff was able to perform the past relevant work of sales clerk as
11 actually and generally performed and as an auditor as actually performed.

12 At Step Five, the ALJ held that, Plaintiff was not under a disability, as defined in the Social
13 Security Act, from November 17, 2008 to the date of the ALJ’s decision.

14 **B. ALJ’s Three Purported Errors**

15 In her motion for summary judgment, Plaintiff argues that the ALJ committed three errors.
16 First, Plaintiff contends that the ALJ improperly discredited the opinion of treating physician Dr.
17 Mrdjen. Second, Plaintiff argues that the ALJ improperly rejected Dr. Morgan’s opinion that
18 Plaintiff had a limitation on “reaching.” (Mot. at 20.) Plaintiff’s third and final purported error is
19 that the ALJ’s credibility findings were not supported by substantial evidence.¹ (*Id.* at 20–21.)

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22 ¹ Although Plaintiff nominally argues that the ALJ committed error by “giving greater weight to the
23 opinion of non-examining or non-treating physicians,” Plaintiff’s brief contains only minimal
24 discussion of this topic. Plaintiff appears to take issue with the opinion of examining physician Dr.
25 Garren, to whom the ALJ accorded “great weight,” by arguing that Dr. Garren failed to consider an
26 MRI of Plaintiff’s lower back. (Mot. at 13.) The Court notes that there is no such MRI in the record,
27 nor does Plaintiff cite any such MRI report. Moreover, the record citations Plaintiff does provide do
28 not establish that any physicians personally reviewed an MRI of Plaintiff’s lower back. (*See Reply*
at 2.) Regardless, Plaintiff’s fundamental argument is that the ALJ erred by according “little weight”
to her treating physician’s opinions. Indeed, in her Reply, Plaintiff notes that she advances only
three issues: that the ALJ improperly accorded “little weight” to Dr. Mrdjen’s opinions; that the ALJ
erred by rejecting Dr. Morgan’s opinion that Plaintiff was precluded from reaching; that the ALJ’s
credibility determination was erroneous. (Reply at 1.) Accordingly, the Court addresses these three
arguments.

1 **IV. DISCUSSION**

2 The Court begins with Plaintiff’s first purported error: that the ALJ erroneously discredited
3 the opinions of treating physician Dr. Mrdjen.

4 **A. Dr. Mrdjen**

5 Plaintiff argues that the ALJ erred by assigning “little weight” to the opinion of Plaintiff’s
6 treating physician Dr. Mrdjen. (Mot. at 14–20.) Upon review of the record and the ALJ’s decision,
7 this Court agrees.

8 “The medical opinion of a claimant’s treating physician is entitled to ‘special weight.’”
9 *Rodriguez v. Bowen*, 876 F.2d 759, 761 (9th Cir. 1989) (quoting *Embrey v. Bowen*, 849 F.2d 418,
10 421 (9th Cir. 1988)). The rationale for giving greater weight to a treating physician’s opinion is that
11 he is employed to cure and has a greater opportunity to know and observe the patient as an
12 individual. *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987)(citations omitted). The Ninth
13 Circuit requires that an ALJ defer to a treating doctor’s opinion, even if controverted by another
14 doctor, unless the ALJ makes findings setting forth specific, legitimate reasons for rejecting it that
15 are based on substantial evidence in the record. *See Valentine v. Comm’r of Soc. Sec. Admin.*, 574
16 F.3d 685, 92 (9th Cir. 2009); *Ryan v. Comm’r of Soc. Sec. Admin.*, 528 F.3d 1194, 1198 (9th Cir.
17 2008); *Orn v. Astrue*, 495 F.3d 625, 632 (9th Cir. 2007). The ALJ can “meet this burden by setting
18 out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his
19 interpretation thereof, and making findings.” *See Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir.
20 2002)(citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.1989)). Importantly, “the ALJ just do
21 more than offer his conclusions. He must set forth his own interpretations and explain why they,
22 rather than the doctors’, are correct.” *Embrey*, 849 F.2d at 421–22.

23 Here, Plaintiff’s treating physician Dr. Mrdjen provided a medical source statement in which
24 she opined that due to Plaintiff’s cervical disc disease, cervical radiculopathy, lumbar disc disease,
25 and lumbar radiculopathy, Plaintiff was “incapable of even low stress jobs.” (Record at 435–36.)
26 Dr. Mrdjen further opined that the opiates Plaintiff needed for pain relief made Plaintiff “sluggish
27 [sic], slow with poor memory and concentration” and that it was also “unsafe [for Plaintiff] to drive.”
28 (*Id.* at 435.) Dr. Mrdjen further specified that Plaintiff’s pain would “constantly” interfere with her

1 attention and concentration. (*Id.* at 436.) According to Dr. Mrdjen, Plaintiff’s impairments would
2 result in marked difficulty in a workplace setting. Specifically, Dr. Mrdjen provided that Plaintiff
3 could walk only half a block without rest or severe pain, sit for only 20 minutes before needing to get
4 up, and stand for only 45 minutes before needing to sit down or walk around. (*Id.* at 436.)
5 Additionally, Plaintiff could never look down, and only rarely turn her head, look up, or hold her
6 head in a static position. (*Id.* at 437.) Plaintiff’s condition also required frequent, unscheduled
7 breaks during an 8-hour work day, and would likely result in more than four absences per month.
8 (*Id.* at 438.) Based on the foregoing, Dr. Mrdjen opined that Plaintiff had been disabled since
9 November 17, 2008. (*Id.* at 438.)

10 The ALJ rejected Dr. Mrdjen’s opinion, stating that:

11
12 The undersigned has given little weight to these opinions because they are
13 inadequately supported by clinical findings. These opinions appear to
14 place more weight on the claimant’s subjective complaints that have been
15 found only partially credible. These overly restrictive limitations and
16 statements of disability are not supported by the objective evidence of
17 record and are inconsistent with the claimant’s admitted activities of daily
18 living. For these reasons, these opinions are given little weight.

19 (Record at 17–18.) The ALJ provided no further explanation. The Court addresses the ALJ’s
20 various reasons for discrediting Dr. Mrdjen’s opinion in turn.

21
22 **1. “Not supported by the objective evidence of record” and “inadequately
23 supported by clinical findings”**

24 The ALJ’s statement that Dr. Mrdjen’s opinions were “not supported by the objective
25 evidence of record” and was “inadequately supported by clinical findings,” without more, is not a
26 “specific or legitimate” reason to reject those opinions. *Embrey*, 849 F.2d at 422 (“To say that
27 medical opinions are not supported by sufficient objective findings or are contrary to the
28 preponderant conclusions mandated by the objective findings does not achieve the level of
specificity our prior cases have required, even when the objective factors are listed seriatum.”). Bare
conclusions are insufficient. The ALJ “must set forth his own interpretations and explain why they,
rather than the doctors’, are correct.” *Embrey*, 849, F.2d at 421–22. To do so, it was incumbent on

1 the ALJ to provide a “detailed and thorough summary of the facts and conflicting clinical evidence,
2 stat[e] his interpretation thereof, and mak[e] findings.” *See Thomas v. Barnhart*, 278 F.3d 947, 957
3 (9th Cir. 2002)(citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.1989)).

4 Here, although the ALJ did summarize medical evidence of record elsewhere in his decision,
5 the ALJ did not identify or explain how that evidence contradicted Dr. Mrdjen’s opinions, nor did he
6 explain why his interpretations of that evidence lead him to conclude that Dr. Mrdjen’s opinions
7 warranted only “little weight.” In so doing, the ALJ erred.

8 Moreover, the Court notes that much of the ALJ’s summary of the medical evidence did not
9 include any analysis — rather, the ALJ provided only a recitation of the record facts. For example,
10 in his RF Capacity determination, the ALJ summarized the evidence of record, including the results
11 from an X-Ray examination, an MRI Report, and a physical examination. (Record at 16.) In each
12 instance, the ALJ restated conclusions contained in the relevant report without providing any
13 interpretation as to how the results of these reports related to Plaintiff’s allegations or on her treating
14 physician’s opinions.

15 First, the ALJ stated that “[t]he findings from and x-ray examination performed in June 2009
16 showed degenerative changes in the cervical spine.” (Record at 16.) The ALJ provided no analysis
17 as to how these “degenerative changes” related to Plaintiff’s alleged level of impairment or whether
18 the x-ray examination results contradicted any medical opinion in the record.

19 Second, when discussing Plaintiff’s cervical spine MRI, the ALJ wrote:

20
21 The findings from a magnetic resonance imaging of the claimant’s
22 cervical spine performed on September 28, 2009 suggested borderline
23 congenital narrowing of the central canal at C5 through C7 levels
24 exacerbated by degenerative disc disease at C5-6 and C6-7; mild reversal
25 of the cervical lordosis; a small central disc protrusion at C3-4 measuring
26 approximately two millimeters with increased signal along the disc
27 periphery; and a minimal posterior annular disc bulging/diffuse endplate
28 spurring at C4-5 with increase central and right paracentral prominence of
the disc bulging versus broad based protrusion measuring two to three
millimeters in thickness with increased signal along the disc periphery
(Exhibit 4F, p.3). There was minimal encroachment upon the right lateral
recess with no significant central stenosis, left lateral recess encroachment
or foraminal narrowing (id.). There was also mild to moderate posterior
annular disc bulging/diffuse endplate spurring at C5-6 and C6-7; mild to

1 moderate left sided foraminal narrowing, mild encroachment upon the left
2 lateral recess and mild central stenosis with narrowing of the central canal
3 ac C5-6; mild central stenosis with narrowing of the central canal at C6-7;
4 and some leftward lateralization of the disc bulging/endplate spurring
5 (id.).

6 (Record at 16.) As an initial matter, the Court notes that this summary of facts is pulled practically
7 verbatim from the MRI Report in the record. (Record at 305–308.) More to the point, however, the
8 ALJ did not “state his interpretation thereof [or] mak[e] findings” as to how Plaintiff’s cervical MRI
9 results impacted Plaintiff’s physical condition. *See Thomas*, 278 F.3d at 957. Though the report,
10 and hence, the ALJ’s decision, contained terms such as “mild,” “minimal,” and “moderate,” the ALJ
11 did not explain how these results conflicted with Plaintiff’s ability level or Dr. Mrdjen’s opinions.
12 The ALJ’s discussion evinces no interpretation, no explanation, and no analysis of how these results
13 either supported or conflicted with Plaintiff’s allegations or disabling pain, or with Dr. Mrdjen’s
14 opinions that Plaintiff was unable to work.

15 Third, the ALJ summarized the findings from a physical examination of Plaintiff performed
16 in March of 2010. Again, the ALJ’s summary of the facts lacked any interpretation or analysis. The
17 ALJ noted that the examination “showed the claimant had tenderness in the neck and paraspinal
18 muscles, greater in the left than the right, exhibited tenderness over her wrists, had slightly decreased
19 range of motion, and was positive for Phalen’s Test.” (Record at 16, citing *id.* at 420–30.) The ALJ
20 further noted that Plaintiff “was diagnosed with spinal strain or aggravation of pre-existing
21 degenerative disc disease with signs of radiculopathy,” but “[d]espite these diagnoses the claimant
22 was reported to have normal posture and gait, normal joint stability, did not have tenderness over the
23 thoracic spine or sciatic nerve, was negative for Adson, Tinel’s and Wright tests, and was negative
24 for straight leg raising, Brgard’s [sic], Babinski’s sign, and cross straight leg raising tests.” (*Id.*)
25 Listing the findings from tests referred to by name and not substance, without providing any
26 interpretation as to what these results mean, does not meet the required level of specificity for
27 discrediting the opinion of a treating physician.

28 The ALJ did discuss Plaintiff’s treatment records more substantively, noting that she received
“conservative treatment” and “reported improved conditions and reduced symptoms.” (Record at
16.) However, even here, the ALJ did not indicate whether these findings conflicted with Dr.

1 Mrdjen’s opinion that Plaintiff was permanently disabled, nor did the ALJ elaborate on whether
2 Plaintiff’s “improved conditions” rendered her non-disabled. Nor did the ALJ reference this finding
3 when he discussed his reasons for discrediting Dr. Mrdjen’s opinions. Thus, the Court cannot
4 conclude that the ALJ relied upon this finding to discredit Dr. Mrdjen’s opinions.

5 Defendant attempts to rehabilitate the ALJ’s decision by identifying specific record evidence
6 that supports the ALJ’s conclusion that Dr. Mrdjen’s opinions were “not supported by the objective
7 evidence of record” and were “inadequately supported by clinical findings.” (Def. Cross-Mot. at 13–
8 16.) For example, Defendant argues that Dr. Mrdjen’s treatment notes contradicted her May 2011
9 assessment. (*Id.* at 14.) Defendant also argues that the cervical MRI report “does not suggest a
10 disabling impairment—as noted above, neck imaging showed only mild to moderate changes.” (*Id.*
11 at 13, citing *id.* at 305–309.) Defendant further argues that record evidence suggested that Plaintiff’s
12 condition improved over time. (*Id.* at 13–14.) However, this Court cannot affirm the ALJ on a
13 ground upon which he did not rely. *See Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing
14 *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir.2003)). The ALJ did not refer to this evidence as a
15 basis for his decision to discredit Dr. Mrdjen’s opinion and thus, the Defendant’s arguments cannot
16 supply a basis for this Court’s decision.²

17 2. “Appear to place more weight on subjective complaints”

18 The ALJ also determined that Dr. Mrdjen’s findings lacked credibility because they “appear
19 to place more weight on the claimant’s subjective complaints that have been found only partially
20 credible.” (Record at 17.) However, the ALJ’s decision fails to explain how the evidence indicated
21 that Dr. Mrdjen’s opinion was predicated on Plaintiff’s subjective complaints. It was incumbent on
22 the ALJ to provide more than just his conclusions; he must provide his interpretation of the evidence
23 of record and make findings.

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25
26 ² The Court notes that it is “not deprived of [its] faculties for drawing specific and legitimate
27 inferences from the ALJ’s opinion . . . if those inferences are there to be drawn.” *Magallanes v.*
28 *Bowen*, 881 F.2d 747, 755 (9th Cir. 1989). However, here the ALJ provided no interpretation of how
the medical evidence conflicted with Dr. Mrdjen’s opinions. It is entirely unclear what medical
evidence the ALJ found to be inconsistent with Dr. Mrdjen’s opinion. Any attempt to draw
inferences would instead be an exercise in speculation.

1 Indeed, the Court notes that evidence of record contradicts the ALJ’s conclusion. Record
2 evidence suggests that Dr. Mrdjen’s opinions were based on personal observations as well as
3 objective evidence. For example, Dr. Mrdjen’s treatment notes indicate that she conducted multiple
4 physical examinations of Plaintiff and recorded findings concerning Plaintiff’s range of motion, and
5 that she reviewed and analyzed Plaintiff’s x-ray results. (*See* Record at 285, 289, 321.) Because the
6 ALJ did not provide any explanation what facts in the record led him to conclude that Dr. Mrdjen’s
7 opinions rested primarily on Plaintiff’s subjective complaints, this bare statement cannot support the
8 ALJ’s decision to discredit Dr. Mrdjen’s opinions. *See also Ryan v. Comm’r of Soc. Sec.*, 528 F.3d
9 1194, 1199–1200 (9th Cir. 2008) (“[A]n ALJ does not provide clear and convincing reasons for
10 rejecting an examining physician’s opinions by questioning the credibility of the patient’s complaints
11 where the doctor does not discredit those complaints and supports his ultimate opinion with his own
12 observations.”) (citations omitted).

13 Defendant again attempts to substantiate the ALJ’s conclusions by analyzing Plaintiff’s MRI
14 Report and comparing Dr. Mrdjen’s opinions to other evidence of record. (Def. Cross-Mot. at 15.)
15 However, the ALJ did not refer to this evidence as forming a basis for his decision to discredit Dr.
16 Mrdjen’s opinions. Again, this Court cannot affirm the ALJ on a ground upon which he did not rely.
17 *See Orn*, 495 F.3d at 630 (citing *Connett*, 340 F.3d at 874).

18 **3. “Inconsistent with admitted activities of daily living”**

19 Finally, the ALJ stated that Dr. Mrdjen’s opinions were “inconsistent with the claimant’s
20 admitted activities of daily living.” (Record at 17.) Again, the ALJ did not specify which of
21 Plaintiff’s daily activities contradict Dr. Mrdjen’s opinions, or which of Dr. Mrdjen’s opinions were
22 contradicted by certain of Plaintiff’s admitted activities. Thus, the ALJ’s statement falls short of the
23 “detailed and thorough summary of the facts” that the ALJ was obligated to provide in order to
24 discredit the opinion of a treating physician. *See Embrey*, 849 F.2d at 421.

25 Ostensibly, the ALJ was referring to a prior section of his decision in which he described the
26 Plaintiff’s “limited range of daily activities” as “a lifestyle choice and not due to any established
27 impairment.” (*Id.* at 15.) To support that statement, the ALJ noted that Plaintiff “lived alone and did
28 not report any particular help in maintaining the residence other than testifying her daughter helped

1 her with the grocery shopping,” “admitted she was capable of cooking and cleaning her house,” and
2 “admitted she was capable of babysitting her five-year-old grandson after her alleged onset date.”
3 (*Id.*)

4 A claimant’s activities are relevant to the ALJ’s credibility analysis, 20 C.F.R. §
5 404.1529(c)(3)(i), and that if a claimant engages in numerous daily activities involving skills that
6 could be transferred to the workplace, the ALJ may discredit the claimant’s allegations upon making
7 specific findings relating to those activities. *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005)
8 (citing *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.1989); *Morgan v. Apfel*, 169 F.3d 595, 600 (9th
9 Cir. 1999) (claimant’s ability to fix meals, do laundry, work in the yard, and occasionally care for his
10 friend’s child was evidence of claimant’s ability to work)). However, here the ALJ did not draw any
11 conclusions or make specific findings as to the transferability of Plaintiff’s admitted activities to her
12 ability to do the full range of light work, or the extent to which these activities undermine Dr.
13 Mrdjen’s opinions. Again, this falls short of the “detailed and thorough summary of the facts” that
14 the ALJ was obligated to provide. *See Embrey*, 849 F.2d at 421.

15 In analyzing Plaintiff’s daily activities, the ALJ focused primarily on Plaintiff’s ability to
16 babysit her grandson after her alleged onset date. Specifically, the ALJ noted that Plaintiff testified
17 that she was compensated for babysitting her grandson in 2009 and 2010. (*See Record at 13, 15.*)
18 Defendant argues that in light of this finding, Dr. Mrdjen’s opinions concerning Plaintiff’s physical
19 limitations are overly restrictive because “[i]t is reasonable to expect that someone who attends to the
20 needs of a young child requires at least some ability to twist and bend, and the ability to occasionally
21 look down and side-to-side.” (Def. Cross-Mot. at 16.) Although this evidence, and the inferences
22 advanced by Defendant, might have formed a basis for the ALJ’s decision to discredit Dr. Mrdjen’s
23 opinions, the ALJ did not mention this evidence in the context of discrediting Dr. Mrdjen’s opinion.
24 (*See Record at 17.*) The ALJ’s vague reference to Plaintiff’s “admitted activities of daily living,”
25 which as explained above ostensibly refers to more than simply Plaintiff’s babysitting, does not
26 achieve the level of specificity required in order to discredit a treating physician’s opinion. Again,
27 the ALJ “must set forth his own interpretations and explain why they, rather than the doctors’, are
28

1 correct.” *Embrey*, 849, F.2d at 421–22. Accordingly, the Court cannot affirm the ALJ’s decision to
2 discredit Dr. Mrdjen’s decision on this basis.

3 For the reasons stated above, the ALJ’s decision to accord only “little weight” to Dr.
4 Mrdjen’s opinions was error. On remand, the ALJ must reevaluate Dr. Mrdjen’s opinions. If the
5 ALJ determines that Dr. Mrdjen’s opinions still warrant only “little weight,” he should provide a
6 “detailed and thorough summary of the facts and conflicting clinical evidence, stat[e] his
7 interpretation thereof, and mak[e] findings.” *See Thomas*, 278 F.3d at 957 (citation omitted).

8 **B. No Reaching Limitations**

9 Plaintiff argues that the ALJ erred by discrediting Dr. Morgan’s opinion that Plaintiff was
10 limited to only occasional reaching. The Court finds that the ALJ was within his authority to
11 discredit this aspect of Dr. Morgan’s conclusions.

12 Where a record presents conflicting medical evidence, it is “solely the province of the ALJ to
13 resolve the conflict” and to decide which medical opinions to credit. *Andrews*, 53 F.3d at 1041
14 (citation omitted); *see also Sample v. Schweiker*, 694 F.2d 639, 643 (9th Cir. 1982) (Where “medical
15 reports are inconclusive, questions of credibility and resolution of conflicts in the testimony are
16 functions solely of the Secretary.”) (citation omitted).

17 Here, the ALJ noted that Dr. Morgan’s opinions concerning Plaintiff’s ability level was not
18 completely consistent with the evidence of record. (*See Record at 17.*) Indeed, other record
19 evidence supported the ALJ’s determination that Plaintiff was not limited to occasional reaching.
20 (*See e.g., id.* at 389 (Report of Dr. Garren, finding that Plaintiff could continuously reach overhead);
21 *id.* at 17 (ALJ noted that Dr. Post found that claimant had full range of motion in the shoulder,
22 elbow, fingers, forearm, and wrists).) Thus, to the extent that Dr. Morgan’s opinions were
23 contradicted by other substantial evidence in the record, the ALJ was empowered to resolve the
24 conflict and decide which medical opinions to credit. Accordingly, the Court finds that the ALJ
25 appropriately concluded that Plaintiff had no reaching limitations precluding her ability to perform
26 the full range of light work.

27 However, because on remand the ALJ must reconsider the weight accorded to Dr. Mrdjen’s
28 opinions, his decision concerning Plaintiff’s reaching capabilities must also be reconsidered. Certain

1 of Dr. Mrdjen’s opinions also precluded Plaintiff from reaching. (*See* Record at 235, 265, 281.) If
2 the ALJ determines that Dr. Mrdjen’s opinions warrant further weight, the ALJ should also
3 reconsider his assessment of Plaintiff’s physical capabilities, including whether Plaintiff was
4 precluded from reaching.

5 **C. Credibility Finding**

6 At the hearing with the ALJ, Plaintiff testified that she was “in constant pain” that “prevented
7 her from being able to work.” (Record at 15.) The ALJ found Plaintiff’s testimony only partially
8 credible. (*Id.*) Plaintiff argues that the ALJ’s decision to discredit her subjective statements of pain
9 was not based on clear and convincing reasons and therefore constitutes reversible error. (Mot. at
10 22.) The Court agrees.

11 The ALJ cannot discredit Plaintiff’s excess pain testimony without making “specific findings
12 justifying that decision.” *Johnson v. Shalala*, 60 F.3d 1428, 1433 (9th Cir. 1995) (citation omitted).
13 Where, as here, the ALJ finds that Plaintiff has produced evidence of an underlying impairment or
14 impairments that could reasonably be expected to produce some degree of symptoms, the ALJ’s
15 adverse credibility findings must be supported by clear and convincing reasons why the claimant’s
16 testimony of excess pain was not credible, and must be supported by substantial evidence in the
17 record as a whole. *Id.* (citing *Swenson v. Sullivan*, 876 F.2d 683, 687 (9th Cir. 1989)). In deciding
18 credibility, the ALJ may consider many factors, including “(1) ordinary techniques of credibility
19 evaluation, such as the claimant’s reputation for lying, prior inconsistent statements concerning the
20 symptoms, and other testimony by the claimant that appears less than candid; (2) unexplained or
21 inadequately explained failure to seek treatment or to follow a prescribed course of treatment; and
22 (3) the claimant’s daily activities.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008)
23 (citations omitted). A claimant’s “daily activities may be grounds for an adverse credibility finding
24 ‘if a claimant is able to spend a substantial part of his day engaged in pursuits involving the
25 performance of physical functions that are transferable to a work setting.’” *Orn*, 495 F.3d at 639,
26 (citing *Fair*, 885 F.2d at 603; *Burch*, 400 F.3d at 681 (stating that adverse credibility finding based
27 on activities may be proper “if a claimant engages in numerous daily activities involving skills that
28 could be transferred to the workplace”)).

1 The ALJ’s adverse credibility determination turned primarily on the ALJ’s finding that
2 Plaintiff’s admitted activities of daily living conflicted with her alleged level of impairment. The
3 ALJ noted that “the claimant lived alone and did not report any particular help in maintaining the
4 residence other than testifying her daughter helped her [sic] with the grocery shopping.” (Record at
5 15.) The ALJ further noted that Plaintiff admitted she was capable of babysitting her five-year-old
6 grandson after her alleged onset date. (*Id.*) The ALJ also found that Plaintiff “admitted she was
7 capable of cooking and cleaning her house,” and that “she was able to drive but explained she did not
8 do it regularly.” (*Id.*)

9 It was proper for the ALJ to consider facts surrounding Plaintiff’s admitted activities. 20
10 C.F.R. § 404.1529(c)(3)(i). However, the facts as stated by the ALJ do not provide a sufficient basis
11 for the ALJ’s adverse credibility determination. Importantly, the ALJ made no finding that these
12 activities of daily living were transferrable to a work setting. The ALJ also made no finding that
13 Plaintiff spent a substantial part of the day engaged in these activities. Thus, the ALJ did not
14 properly evaluate whether Plaintiff’s admitted activities of daily living supported his adverse
15 credibility determination. Indeed, evidence of record suggests that Plaintiff’s admitted activities did
16 not rise to the level required in order to discredit her subjective pain testimony. At the hearing
17 before the ALJ, Plaintiff testified that cleaning her house was “an all-day project” because she
18 needed to alternate between sitting and standing. (Record at 64.) Plaintiff also testified that her
19 daughter always had to accompany her to the grocery store and that her daughter had to carry all the
20 groceries because Plaintiff was unable to do so. (*Id.*)

21 The ALJ relied considerably on Plaintiff’s admission that she was capable of babysitting her
22 five-year-old grandson after her alleged onset date. However, the ALJ conceded that this work did
23 not rise to the level of “substantial gainful activity.” (Record at 13.) And again, the ALJ did not
24 determine that Plaintiff’s babysitting duties, which terminated in 2010, consumed a substantial part
25 of Plaintiff’s day. Indeed, the hearing transcript suggests that Plaintiff did not babysit full-time.
26 Specifically, Plaintiff testified that her babysitting activities were “on and off” and the ALJ
27 acknowledged that Plaintiff was paid only “a couple hundred dollars” for babysitting in 2009.
28 (Record at 54–55.) Moreover, the ALJ must make “specific findings relating to [the daily]

1 activities” and their transferability to conclude that a claimant's daily activities warrant an adverse
2 credibility determination. *See Orn*, 495 F.3d at 639 (citing *Burch*, 400 F.3d at 681). Here, the ALJ
3 did not conclude that the nature of Plaintiff’s babysitting was transferable to a work setting.
4 Accordingly, the ALJ’s findings concerning Plaintiff’s admitted activities of daily living did not
5 sufficiently support his decision to discredit her subjective testimony.

6 In determining that Plaintiff’s subjective testimony was only partially credible, the ALJ also
7 stated that Plaintiff’s conditions improved with conservative treatment and adherence to her
8 treatment regimen. (Record at 16.) Although conservative treatment may be sufficient to discount a
9 claimant’s testimony regarding severity of an impairment, *see Parra v. Astrue*, 481 F.3d 742, 751
10 (9th Cir. 2007) (citing *Johnson*, 60 F.3d at 1434), here the ALJ’s explanation does not amount to a
11 clear and convincing reason for discounting Plaintiff’s subjective testimony. Importantly, although
12 the ALJ noted that Plaintiff reported improved conditions and reduced symptoms, the ALJ did not
13 find that Plaintiff’s degree of improvement conflicted with her stated level of pain. It is entirely
14 possible that Plaintiff could both improve yet continue to suffer debilitating pain. The ALJ’s
15 statement that Plaintiff reported improvement upon following conservative treatment, without more,
16 cannot by itself be a “clear and convincing” reason for discounting her subjective pain testimony.

17 The only other stated reason for the ALJ’s adverse credibility determination was that
18 Plaintiff’s statements concerning the intensity, persistence and limiting effects of her symptoms was
19 “greater than expected in light of the objective evidence of record,” which he found “relatively
20 benign.” (Record at 15.) However, the ALJ “may not discredit the claimant’s testimony as to the
21 severity of symptoms merely because they are unsupported by objective medical evidence.” *Reddick*
22 *v. Chater*, 157 F.3d 715, 722 (9th Cir. 1988). Therefore, this reason alone cannot constitute
23 sufficient evidence for an adverse credibility determination.

24 Thus, on remand, the ALJ must reevaluate the credibility of Plaintiff’s subjective pain
25 testimony.

26 **V. REMEDY**

27 Having found that the ALJ did not sufficiently explain his reasons for discrediting the treating
28 physician’s opinions and that the ALJ did not adequately support his adverse credibility finding, the

1 Court now addresses the question of whether to remand for further administrative proceedings or
2 payment of benefits.

3 This Court may remand for an award of benefits only if three conditions are met: (1) the ALJ
4 failed to provide legally sufficient reasons for rejecting the evidence; (2) there are no outstanding
5 issues that must be resolved before a determination of disability can be made; and (3) it is clear from
6 the record that the ALJ would be required to find the claimant disabled were such evidence credited.
7 *Benecke v. Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004) (citing *Harman v. Apfel*, 211 F.3d 1172,
8 1178 (9th Cir. 2004)). It is the “unusual case” that meets this standard. *Benecke*, 379 F.3d at 595.
9 Generally, “the proper course, except in rare circumstances, is to remand to the agency for additional
10 investigation or explanation.” *Id.* (citing *INS v. Ventura*, 537 U.S. 12, 16 (2002), *Mosia v. Barnhart*,
11 367 F.3d 882, 886–87 (9th Cir. 2004)). The Court finds that in this case, remand for further
12 administrative proceedings is proper.

13 Here, even if the Court credits as true the opinions of Plaintiff’s treating physician and
14 Plaintiff’s subjective pain testimony, there remains substantial evidence in the record contradicting
15 Dr. Mrdjen’s opinions and Plaintiff’s allegations that she suffers from disabling neck and back pain.
16 For example, Dr. Garren performed an independent physical and musculoskeletal evaluation and
17 concluded that Plaintiff had an essentially normal physical examination with the exception of slightly
18 reduced range of motion in her neck and back and mild back spasms. (Record at 17, 385–386.) The
19 ALJ noted that in spite of Plaintiff’s diagnoses, Dr. Garren found that the Plaintiff presented with
20 normal physical capacity: “normal cervical and lumbar lordosis, full range of motion in her
21 shoulders, elbows, wrists, knees, ankles, and hands, normal motor strength, intact sensation, was
22 negative for straight leg raising [test], was able to heel and toe walk, and had a normal gait.” (*Id.* at
23 17.) Thus, Dr. Garren concluded that Plaintiff was able to perform a wide range of light work. (*Id.*)
24 When an examining physician provides independent clinical findings that differ from the findings of
25 the treating physician, as Dr. Garren did here, such findings are themselves “substantial evidence.”
26 *Orn*, 495 F.3d 625, 632; *Thomas*, 278 F.3d at 957; *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir.
27 1995).

1 In addition, Dr. Morgan, a state agency review physician opined that Plaintiff could perform
2 a range of light work. (Record at 17.) To the extent that Dr. Morgan’s opinions are consistent with
3 other evidence in the record, they could constitute substantial evidence for discrediting the opinions
4 of Dr. Mrdjen. *See Magallanes v. Bowen*, 881 F.2d 747, 752 (9th Cir. 1989).

5 Accordingly, the Court finds that even upon crediting as true Dr. Mrdjen’s opinions and
6 Plaintiff’s subjective testimony, there remain issues that require resolution by the ALJ. Where, as
7 here, a record presents conflicting independent clinical findings, it is “solely the province of the ALJ
8 to resolve the conflict” and to decide which medical opinions to credit and which to reject. *Andrews*,
9 53 F.3d at 1041; *see also Magallanes*, 881 F.2d at 751 (“Where medical reports are inconclusive,
10 questions of credibility and resolution of conflicts in the testimony are functions solely of the
11 Secretary.”) Thus, remand is appropriate so that the ALJ can determine credibility and resolve
12 conflicts among the medical opinions of record.

13 **VI. CONCLUSION**

14 For the foregoing reasons, the Court **GRANTS IN PART** Plaintiff’s Motion for Summary
15 Judgment and **DENIES IN PART** Defendant’s Cross-Motion for Summary Judgment. The Court
16 hereby **REMANDS** this case for further administrative proceedings in conformity with this Order.

17
18 **IT IS SO ORDERED.**

19 Date: March 7, 2014

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21 **YVONNE GONZALEZ ROGERS**
22 **UNITED STATES DISTRICT COURT JUDGE**

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