

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 KHENE KEOVONGSA,
12 Plaintiff,
13 v.
14 CAROLYN W. COLVIN, Acting
15 Commissioner of Social Security,
16 Defendant.
17

Case No.: 3:16-CV-00842-BTM-NLS

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING DEFENDANT'S
CROSS-MOTION FOR
SUMMARY JUDGMENT,
VACATING ALJ'S DECISION,
AND REMANDING FOR
FURTHER PROCEEDINGS.**

18
19 Plaintiff Khene Keovongsa ("Plaintiff") seeks judicial review of Acting
20 Commissioner of Social Security, Carolyn Colvin's ("Defendant") denial of her
21 application for Supplemental Security Income ("SSI"). (ECF No. 1, Compl.)
22 Plaintiff and Defendant have filed motions for summary judgment. (ECF Nos.
23 14,16.) For the reasons discussed below, the Court **GRANTS** Plaintiff's motion
24 for summary judgment, **DENIES** Defendant's cross-motion for summary
25 judgment, **VACATES** the Commissioner's decision, and **REMANDS** for further
26 proceedings.

27 **I. PROCEDURAL BACKGROUND**

28 On April 16, 2012, Plaintiff filed for SSI benefits pursuant to Title XVI of the

1 Social Security Act, 42 U.S.C. § 1381. (Administrative Record (“AR”) 157–65.)
2 The Social Security Administration denied the claims both on initial review and
3 later upon reconsideration. (AR 57–79.) On March 21, 2014, Plaintiff’s claim
4 was heard by Administrative Law Judge (“ALJ”) Mason Harrell. (AR 15–22.) On
5 April 11, 2014, the ALJ issued a decision denying benefits and finding that
6 Plaintiff was not under a disability on the date the application was filed. (Id.)
7 Plaintiff filed a request for review with the Appeals Council, which subsequently
8 denied her request on February 25, 2016. (AR 1–4.) The ALJ’s decision then
9 became the final decision of the Commissioner of Social Security. Plaintiff seeks
10 judicial review of the Commissioner’s decision pursuant to 42 U.S.C. § 405(g).

11 **II. ALJ’S FINDINGS AND CONCLUSIONS**

12 The ALJ conducted the five-step sequential analysis set forth in 20 C.F.R. §
13 404.1520.¹

14 At step one the ALJ found that Plaintiff had not engaged in substantial
15 gainful activity since April 16, 2012—the application date. (AR 17.)

16 Next, the ALJ found that Plaintiff had the following medically determinable
17 impairments: postural back pain and depression (20 C.F.R. § 416.921 *et seq.*).
18 (Id.)

19 However, at step two, the ALJ determined that Plaintiff did not have an
20 impairment or combination of impairments that significantly limited her ability to
21 perform basic work related activities for 12 consecutive months, and therefore,
22

23
24 ¹ Under the Social Security Regulations, the determination of whether a claimant is disabled within the meaning of
25 the Social Security Act is a five step process set forth at 20 C.F.R. § 404.1520. Under the test, “a claimant must
26 be found disabled if she proves: (1) that she is not presently engaged in any substantially gainful activity, (2) that
27 her disability is severe, and (3) that her impairment meets or equals one of the specific impairments described in
28 the regulations. If the impairment does not meet or equal one of the specific impairments described in the
regulations, the claimant can still establish a prima facie case of disability by proving at step four that in addition to
the first two requirements, she is not able to perform any work that she has done in the past. Once the claimant
established a prima facie case, the burden of proof shifts to the agency at step five to demonstrate that the
claimant can perform a significant number of other jobs in the national economy. This step-five determination is
made on the basis of four factors: the claimant’s residual functional capacity, age, work experience and
education.” Treichler v. Comm’r of SSA, 775 F.3d 1090, 1096 n.1 (9th Cir. 2014).

1 did not have a severe impairment or combination of impairments. (AR 17.)
2 Having reached this determination, the ALJ did not proceed to the next step and
3 instead found that she was not disabled. (AR 22.)

4 **III. STANDARD**

5 The Commissioner's denial of benefits may be set aside if it is based on
6 legal error or is not supported by substantial evidence. *Jamerson v. Chater*, 112
7 F.3d 1064, 1066 (9th Cir. 1997). Substantial evidence is more than a mere
8 scintilla but less than a preponderance. *Id.* Substantial evidence is "relevant
9 evidence which, considering the record as a whole, a reasonable person might
10 accept as adequate to support a conclusion." *Flaten v. Secretary of Health &*
11 *Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995). A denial of benefits must be
12 upheld if the evidence could reasonably support either affirming or reversing the
13 ALJ's decision. *Robbins v. Social Sec. Admin.*, 466 F.3d 880, 882 (9th Cir.
14 2006). When the evidence is susceptible to more than one rational
15 interpretation, it is the Commissioner's conclusion that must be upheld. *Thomas*
16 *v. Barnhart*, 278 F.3d 947, 954 (9th Cir.2002). The ALJ is responsible for
17 determining credibility, resolving conflicts in medical testimony, and resolving
18 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

19 **IV. MEDICAL EVIDENCE**

20 **A. Evidence of Physical Impairments**

21 **1. Dr. Keith Cunningham**

22 On March 27, 2008, examining physician Dr. Keith Cunningham examined
23 Plaintiff and determined that she was suffering from back pain, but had no
24 physical limitations. (AR 267–272.) Dr. Cunningham found that Plaintiff could
25 stand and lift her arms normally. (AR 268.) When examining her back, Dr.
26 Cunningham stated that she reported some mild pain from the midthoracic to the
27 lower lumbar spine. (*Id.*) However, there was no muscle spasm and the straight
28

1 leg raise test was negative. (Id.) Based on these observations, he determined
2 her condition did not impose any limitations. (AR 269.)

3 **2. Dr. Paul Jain**

4 On June 9, 2010, examining physician Dr. Paul Jain performed a physical
5 examination of Plaintiff. (AR 273–280.) Plaintiff complained of mild to moderate
6 low back pain and neck pain for approximately ten years. (AR 273.) Plaintiff
7 denied any type of functional limitations. (AR 274.) Dr. Jain reported that the
8 range of motion of her neck was within normal range. (AR 275.) As to Plaintiff’s
9 back, Dr. Jain reported no tenderness in response to palpation in the midline or
10 paraspinal areas. (AR 276.) Additionally, the straight leg raising test was
11 negative at 90 degrees. (Id.) Despite Plaintiff’s subjective complaints, Dr. Jain
12 found no objective findings regarding her neck and low back pain. (AR 278.)

13 **3. Dr. Frederick Close**

14 On August 3, 2012, Dr. Close examined Plaintiff. (AR 281–284.) An
15 examination of her cervical spine revealed some minimal tenderness and spasm
16 on the right side of Plaintiff’s cervical spine. (AR 282.) However, the tests were
17 negative and the range of motion was normal. (Id.) As to her dorsolumbar spine,
18 Dr. Close found no palpable spasm but found a mild dorsal kyphosis, mild
19 increase lumbar lordosis, and mild tenderness. (Id.) Dr. Close diagnosed
20 Plaintiff with postural back pain and limited her to performing medium work. (AR
21 283–84.)

22 **4. State Agency Physical Medical Consultants**

23 On initial review, Dr. D. Haaland reviewed the medical evidence, including
24 Dr. Cunningham’s, Dr. Jain’s, and Dr. Close’s opinions and determined that
25 there was no support for a finding that Plaintiff had any functional limitations
26 associated with a severe physical impairment. (AR 63.) In reaching his
27 conclusion, Dr. Haaland gave less weight to Dr. Close’s findings and concluded
28 that he relied heavily on Plaintiff’s subjective complaints and that the totality of

1 the evidence did not support his findings. (AR 66.) On reconsideration, Dr. G.
2 Spinka similarly found no severe impairments and rejected Dr. Close's findings
3 for lack of objective support. (AR 68–78.)

4 **5. Dr. James S. Grisolia**

5 On August 17, 2012, Dr. James Grisolia diagnosed Plaintiff with chronic
6 lumbosacral pain syndrome. (AR 291.) Dr. Grisolia found that Plaintiff's memory
7 and cognitive functions were severely affected. (Id.) Dr. Grisoli also determined
8 that Plaintiff was "certainly severely disabled and should be rated on her
9 psychiatric disability." (Id.) Additionally, he stated that Plaintiff "will be unable to
10 stand or walk on more than infrequent basis due to chronic back injury." (Id.)

11 **6. Dr. Nadine Sidrick**

12 From 2013 to 2014, Dr. Nadine Sidrick treated Plaintiff for moderate lumbar
13 scoliosis and severe mental illness. (AR 315.) Dr. Sidrick, relying in part on x-
14 rays, diagnosed Plaintiff with lumbar scoliosis, which she found affected Plaintiff's
15 ability to walk and stand. (AR 317.) Dr. Sidrick determined that Plaintiff could
16 not stand or walk for more than one hour at a time without taking a break of
17 fifteen minutes. (AR 317–18.) Dr. Sidrick also found that Plaintiff could only
18 stand or walk for a maximum of three hours a day. (Id.) She limited Plaintiff to
19 sedentary type activity. (Id.)

20 **B. Evidence of Mental Impairment**

21 **1. Dr. Harry C. Henderson**

22 Dr. Henderson served as Plaintiff's psychiatrist since 2012. (AR 358.) In a
23 December 19, 2013 report, Dr. Henderson provided a psychiatric evaluation for
24 Plaintiff. (AR 335–36.) Based on his own treatment notes and medical
25 documents, Dr. Henderson diagnosed her with major depression and chronic
26 post-traumatic stress disorder. (AR 336.) He stated that Plaintiff had marked
27 restriction of activities of daily living, difficulties in maintaining social functioning
28 and often could not concentrate which results in an inability to complete tasks in

1 a timely manner in work settings or elsewhere. (Id.) He found that as a result of
2 strong medication, Plaintiff suffered from chronic fatigues and sedation. (Id.)
3 Finally, Dr. Henderson concluded that her physical impairments coupled with her
4 depression and post-traumatic stress syndrome would prevent her from gainful
5 employment. (Id.)

6 **2. Dr. H. Douglas Engelhorn**

7 On August 7, 2012, Dr. Engelhorn performed a psychiatric evaluation of
8 Plaintiff. (AR 285–87.) Plaintiff stated that she suffered from chronic low-grade
9 depression for the past four to five years, and experienced some sadness and
10 depression on almost a daily basis. (AR 286.) However, Dr. Engelhorn did not
11 find Plaintiff to come across as being a particularly depressed or sad person.
12 (Id.) Dr. Engelhorn found no evidence of active depression or excessive levels of
13 anxiety, but did include possible major depression as part of his diagnostic
14 impression. (AR 287.)

15 **3. Dr. Milton Lessner**

16 On December 2, 2013, Dr. Lessner wrote a report summarizing his
17 psychological assessments performed upon Dr. Henderson’s request. (AR 303–
18 14.) Dr. Lessner performed several tests including the Mooney Problem
19 checklist, the Bender Gestalt, the Minnesota Multiphasic Personality Inventory-2
20 (“MMPI-2”), and the Beck Depression Inventory. (AR 309.) The MMPI-2 test
21 provided evidence of profoundly serious psychopathology, though Dr. Lessner
22 noted that part of the reason for such a high infrequency scale score may be
23 exaggerated symptoms as a plea for help. (AR 309.) As to the Bender Gestalt
24 Test, Dr. Lessner believed her reproductions suggested psychotic conditions
25 along with paranoia. (AR 312.) He gave Plaintiff a GAF score of 30. (AR 314.)

26 **4. State Agency Mental Medical Consultants**

27 On initial review, H. Hurwitz, M.D. opined that acculturation problems are
28 the primary limitation and that there was no evidence of a severe impairment.

1 (AR 64.) On reconsideration, Harvey Bilik, Psy. D. reviewed Plaintiff's record and
2 affirmed the finding of no severe mental impairment. (AR 75.)

3 **V. DISCUSSION**

4 The Social Security Act defines "disability" as the "inability to engage in any
5 substantial gainful activity by reason of any medically determinable physical or
6 mental impairment which can be expected to result in death or which has lasted
7 or can be expected to last for a continuous period of not less than 12 months."
8 42 U.S.C. § 423(d)(1)(A). While the regulations provide that the existence of a
9 medically determinable physical or mental impairment must be established by
10 medical evidence consisting of signs, symptoms, and laboratory findings,
11 symptoms alone are not enough. *Ukolov v. Barnhart*, 420 F.3d 1003, 1005 (9th
12 Cir. 2005).

13 **A. Whether there is Substantial Evidence to Support the ALJ's Decision**

14 Step two "is 'a de minimis screening device [used] to dispose of groundless
15 claims.'" *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005) (quoting *Smolen v.*
16 *Chater*, 80 F.3d 1273, 1290 (9th Cir. Cir. 1996)). In the Ninth Circuit, "[a]n
17 impairment or combination of impairments may be found not severe only if the
18 evidence established a slight abnormality that has no more than a minimal effect
19 on an individual's ability to work." (*Id.* at 686) (internal citations omitted). "[A]n ALJ
20 may find that a claimant does not have a severe impairment or combination of
21 impairments only when his conclusion is 'clearly established by medical evidence.'" (*Id.*
22 at 687 (quoting Social Security Ruling ("SSR") 85-28, 1985 SSR LEXIS 19)).
23 Here, the ALJ determined at step two that Plaintiff did not have a severe
24 impairment or combination of impairments. Having made this finding, the ALJ
25 ended his inquiry and concluded she was not disabled. The Court, therefore,
26 reviews the record to determine "whether the ALJ had substantial evidence to find
27 that the medical evidence clearly established that [Plaintiff] did not have a
28 medically severe impairment or combination of impairments." See *Webb*, 433 F.3d

1 at 687.

2 **1. ALJ's Decision Regarding Plaintiff's Physical Impairment**

3 Plaintiff argues that the ALJ's determination that her physical impairment is
4 not severe is not supported by substantial evidence. Specifically she contends
5 that he erred in disregarding the opinions of examining physician, Dr. Close, and
6 of her treating physician, Dr. Sidrick.

7 Courts distinguish among the opinions of treating physicians, physicians who
8 examine but do not treat the claimant, and those who neither examine nor treat the
9 claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). "Generally, the
10 opinions of examining physicians are afforded more weight than those of non-
11 examining physicians, and the opinions of examining non-treating physicians are
12 afforded less weight than those of treating physicians." *Orn v. Astrue*, 495 F.3d
13 625, 631 (9th Cir. 2007). When a treating physician's opinion or an examining
14 physician's opinion is not contradicted by another doctor, an ALJ may only reject
15 it for "clear and convincing reasons" supported by substantial evidence in the
16 record. *Lester*, 81 F.3d at 830. Even when a treating physician's opinion or an
17 examining physician's opinion is contradicted, the ALJ still may not reject their
18 opinion without providing "specific and legitimate reasons" supported by
19 substantial evidence in the record. *Id.* This can be done "by setting out a detailed
20 and thorough summary of the facts and conflicting clinical evidence, stating his
21 interpretation thereof, and making findings." *Magallanes v. Bowen*, 881 F.2d 747,
22 753 (9th Cir. 1989).

23 In concluding that Plaintiff suffered from no severe physical impairments,
24 the ALJ gave significant weight to the opinions of Dr. Cunningham and Dr. Jain,
25 as well as Dr. Haaland and Dr. Spinka. (AR 19–20.) In justifying his reliance on
26 these opinions, the ALJ explained that "these physicians are generally consistent
27 in that they all assess the claimant does not have a severe physical impairment
28 and thus no corresponding limitations." (*Id.*) The ALJ stated that the "opinions

1 are all generally supported by the record as a whole” (Id.)

2 The ALJ gave little weight to Dr. Close’s opinion because he diagnosed
3 Plaintiff with only postural back pain, but opined she would be limited to medium
4 work. (AR 20.) The ALJ found that given the negative physical examinations,
5 Plaintiff’s postural back pain was not a severe impairment. (Id.) As to Dr.
6 Sidrick, the ALJ gave no weight to her opinion because it was “without
7 substantial support from any objective clinical or diagnostic findings.” (AR 20.)
8 Despite having a treating relationship with Plaintiff, the ALJ noted that the history
9 was brief and the course of treatment pursued by Dr. Sidrick was not consistent
10 with Plaintiff’s alleged disability. (Id.)

11 Dr. Cunningham and Dr. Jain rendered their opinions two and four years
12 before the date of application. The state agency physical medical consultants
13 primarily relied on the outdated opinions in concluding that Plaintiff had no severe
14 impairments. They did not benefit from Dr. Sidrick’s opinion, as it was provided
15 after their reviews. Nevertheless, the ALJ relied on these opinions to reject those
16 rendered more recently by Dr. Close and Dr. Sidrick and conclude that Plaintiff
17 did not suffer from a severe physical impairment. While the ALJ provided
18 reasons for rejecting the opinions of Dr. Sidrick and Dr. Close, the Court finds
19 that the ALJ’s decision was not supported by substantial evidence in the record.

20 In the Ninth Circuit, “[m]edical opinions that predate the alleged onset of
21 disability are of limited relevance.” *Carmickle v. Comm’r*, 533 F.3d 1155, 1165
22 (9th Cir. 2008). Thus, the outdated opinions of Dr. Cunningham and Dr. Jain do
23 not constitute substantial evidence to justify the ALJ’s rejection of Dr. Close’s or
24 Dr. Sidrick’s opinions. Additionally, the ALJ rejected Dr. Sidrick’s opinion in part
25 because it was “without substantial support from any objective clinical or
26 diagnostic findings” (AR 20.) However, Dr. Sidrick diagnosed Plaintiff with
27 moderate lumbar scoliosis based on x-rays. (AR 315). While those were not
28 provided in the record, the ALJ was under a duty to supplement the record. See

1 *Webb*, 433 F.3d at 687 (“The ALJ’s duty to supplement a claimant’s record is
2 triggered by ambiguous evidence, the ALJ’s own finding that the record is
3 inadequate or the ALJ’s reliance on an expert’s conclusion that the evidence is
4 ambiguous.”). The evidence was sufficiently ambiguous given that the outdated
5 opinions contrasted with the more recent opinions of Dr. Close and Dr. Sidrick.

6 **2. ALJ’s Decision Regarding Plaintiff’s Mental Impairments**

7 Plaintiff also challenges whether the ALJ had substantial evidence to
8 determine that her mental impairment was not severe. She argues that he erred
9 in rejecting Dr. Henderson’s and Dr. Lessner’s opinions.

10 The ALJ primarily relied on the opinions of Drs. Engelhorn, Hurwitz, and
11 Bilik in concluding that Plaintiff suffered from no severe mental impairments. The
12 ALJ gave no weight to Dr. Lessner’s diagnostic impression and GAF score
13 because it contrasted with the other evidence in the record. (AR 21.) However,
14 Dr. Lessner’s opinion did not entirely contradict with that of Dr. Engelhorn, as Dr.
15 Engelhorn’s diagnostic impression included possible major depression. (AR
16 287.) Additionally, the ALJ rejected Dr. Lessner’s opinion, in part, because he
17 only saw Plaintiff in a one-time setting, yet gave primary weight to that of Dr.
18 Engelhorn’s who also only examined Plaintiff once. (AR 303-314.) As to Dr.
19 Henderson’s opinion, the ALJ gave it little weight because he found that it was
20 inadequately supported by clinical findings. Dr. Henderson, however, did
21 perform a series of concentration and memory exercises to support his finding
22 that her impairments affect her daily activities. The evidence in the record
23 supporting the existence of a mental impairment was enough to clear the low bar
24 at step two.

25 **C. Credibility Determination**

26 Lastly, Plaintiff argues that the ALJ erred in making an adverse credibility
27 finding.

28 An ALJ is not required to accept as true every allegation of disabling pain by

1 the claimant. See *Orn*, 495 F.3d at 635. In evaluating the claimant’s testimony,
2 the ALJ may consider inconsistencies between the claimant’s testimony and
3 conduct, an unexplained or inadequately explained failure to seek or follow medical
4 treatment, and whether the claimant engages in daily activities inconsistent with
5 the alleged symptoms. *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012). The
6 ALJ’s rationale must contain a “thorough discussion and analysis of the objective
7 medical evidence and other evidence, including the individual’s complaints of pain
8 and other symptoms and the adjudicator’s personal observations.” SSR 95-5P,
9 1995 WL 670415, at *3 (Oct. 31, 1995).

10 An ALJ engages in a two-step analysis when assessing the credibility of a
11 claimant’s symptom testimony. *Molina*, 674 F.3d at 1112. First, the ALJ “must
12 determine whether there is ‘objective medical evidence of an underlying
13 impairment which could reasonably be expected to produce the pain or other
14 symptoms alleged.’” *Id.* (citing *Vazquez v. Astrue*, 572 F.3d 586, 591 (9th Cir.
15 2009)). When the claimant has presented such evidence, and the case lacks
16 evidence of malingering on behalf of the claimant, the ALJ may reject a claimant’s
17 testimony regarding the severity of her symptoms only if the ALJ “makes specific
18 findings stating clear and convincing reasons for doing so.” *Smolen*, 80 F.3d at
19 1283-84.

20 Plaintiff testified that she suffers from a constant pain in her neck and back,
21 as well as from depression. (AR 38.) The medication that she takes makes her
22 very sleepy which causes her to sleep throughout the day. (AR 39.) Her
23 activities are limited to laying down and watching television. (*Id.*) The pain she
24 suffers also prevents her from lifting any weight. (*Id.*) Plaintiff stated that her
25 daughter takes care of the household chores, including cooking for her. (*Id.*) In
26 addition to the physical pain, Plaintiff also stated that she experiences crying
27 episodes and often hears voices. (AR 40.)

28 The ALJ determined that the “claimant’s medically determinable

1 impairments could reasonably be expected to produce the alleged symptoms”
2 but that her “statements concerning their intensity, persistence and limiting
3 effects of these symptoms are not entirely credible.” (AR 18.) In making an
4 adverse credibility determination, the ALJ stated that the medical objective
5 evidence and the opinions of the examining and reviewing physicians
6 undermined Plaintiff’s claims of disabling symptoms. (AR 18–19.) As discussed
7 above, the objective and opinion evidence rendered by Dr. Cunningham and Dr.
8 Jain are of limited relevance, as they are from 2008 and 2010. *See Carmickle*,
9 533 F.3d at 1165. While Dr. Close’s tests were negative, he did find minimal
10 tenderness and spasm on the right side of Plaintiff’s cervical spine, and as it
11 related to her dorsolumbar spine, diagnosed her with mild dorsal kyphosis, mild
12 increase lumbar lordosis, and mild tenderness. (Id.) Therefore, the ALJ’s first
13 two reasons do not constitute “clear and convincing” reasons for rejecting
14 Plaintiff’s subjective testimony.

15 The ALJ also noted that Plaintiff’s inconsistent statements undermined her
16 credibility. (AR 19.) Specifically, the ALJ stated that her statements were
17 inconsistent because she reported only low-grade symptoms whereas the
18 narrative statements made by her medical sources reported disabling pain and
19 deviant psychotic mental impairments. The ALJ placed importance on the fact
20 that Plaintiff reported only “chronic low-grade depression” to Dr. Engelhorn,
21 described her back pain as an “ache” to Dr. Cunningham, and told Dr. Jain that
22 she experienced mild to moderate back pain. As discussed above, because she
23 met with Dr. Cunningham and Dr. Jain two and four years before the date of her
24 application, their reports, including her alleged complaints, are of limited
25 relevance. Her symptoms could have worsened, which is consistent with the
26 opinions of the more recent physicians, including Dr. Close’s. As to her
27 description of her mental impairment to Dr. Engelhorn, this sole discrepancy is
28 not sufficient enough to deem her symptoms groundless and reject her testimony

1 under step two of the sequential analysis. See *Webb*, 433 F.3d at 688.

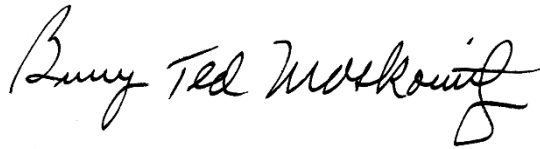
2 The Court concludes that the ALJ lacked substantial evidence to find that
3 the medical evidence *clearly established* Plaintiff's lack of medically severe
4 impairment or combination of impairments at step two. On remand, the ALJ
5 should proceed with the sequential analysis and consider the cumulative effect of
6 Plaintiff's impairments. The Court, however, expresses no opinion as to
7 Plaintiff's ability to meet her burden at step 3, 4, and 5. See *Id.*

8
9 **III. CONCLUSION**

10 For the reasons discussed above, Plaintiff's motion for summary judgment
11 [ECF No. 14] is **GRANTED** and Defendant's cross-motion for summary judgment
12 [ECF No. 16] is **DENIED**. The Commissioner's decision is **VACATED** and this
13 matter is **REMANDED** for further proceedings.

14 **IT IS SO ORDERED.**

15 Dated: September 29, 2017

16 

17 _____
18 Barry Ted Moskowitz, Chief Judge
19 United States District Court
20
21
22
23
24
25
26
27
28