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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 SALLY GENIER,

10 Plaintiff(s),

11 v.

12 NANCY A. BERRYHILL,

13 Defendant(s).

Case No.: 2:18-cv-00628-JAD-NJK

ORDER

[Docket Nos. 21, 22]

14 This case involves judicial review of administrative action by the Commissioner of Social
15 Security (“Commissioner”) denying Plaintiff’s application for disability insurance benefits
16 pursuant to Titles II and XVI of the Social Security Act. Currently before the Court is Plaintiff’s
17 motion to reverse and remand. Docket No. 21. The Commissioner filed a response in opposition
18 and a cross-motion to affirm. Docket No. 22. No reply was filed. For the reasons discussed
19 below, both motions are hereby **DENIED** without prejudice.

20 A Social Security claimant may seek judicial review “in the district court of the United
21 States for the judicial district in which the plaintiff resides.” 28 U.S.C. § 405(g). Plaintiff resided
22 in this District at the time she sought judicial review, Docket No. 1-2 at ¶ 4, so she properly initiated
23 this action in this District. Nonetheless, Plaintiff resided in Utah when she applied for benefits,
24 see A.R. 151-163, and the ALJ’s proceedings that are currently being reviewed occurred in Utah,
25 see A.R. 17, 33. Neither party discusses whether the review of the ALJ’s decision is governed by
26 the law of the Ninth Circuit (covering this Court in Nevada) or by the law of the Tenth Circuit
27 (covering the ALJ in Utah). Instead, the parties both simply rely on Ninth Circuit case law without
28 explanation.

1 The Court has not identified controlling precedent explaining which circuit’s law applies
2 in this situation, but at least two courts within the Ninth Circuit have held that an ALJ’s decision
3 in a social security appeal must be reviewed according to the law of the circuit in which the ALJ
4 sits. *Mannella v. Astrue*, 2008 WL 2428868, at *14-15 (D. Ariz. Feb. 20, 2008), adopted in
5 relevant part, 2008 WL 2428869, at *1 (D. Ariz. June 12, 2008); *Capehart v. Astrue*, 2009 U.S.
6 Dist. Lexis 134070, at *2-3 & n.1 (D. Mont. Mar. 5, 2009), adopted, 2009 U.S. Dist. Lexis 25302
7 (D. Mont. Mar. 27, 2009). “Such a rule would allow an ALJ to look to a single circuit’s caselaw
8 for controlling guidance and would, additionally, discourage forum shopping.” *Mannella*, 2008
9 WL 2428868, at *15.¹ That is a sensible approach and the undersigned declines the parties’
10 implicit request to review an out-of-circuit ALJ’s decision through the lens of Ninth Circuit law.

11 Accordingly, the motion to reverse and remand and the cross-motion to affirm are hereby
12 **DENIED** without prejudice. Any renewed motion to reverse and remand shall be filed no later
13 than April 4, 2019, and that motion shall be briefed according to the schedule established in Docket
14 No. 17.

15 IT IS SO ORDERED.

16 Dated: March 4, 2019

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20 Nancy J. Koppe
21 United States Magistrate Judge
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26 ¹ Other courts are in agreement. *Aimetti v. Berryhill*, 2018 WL 1525858, at *1 (E.D. Tenn.
27 Mar. 28, 2018); *Unice v. Berryhill*, 2017 WL 2972172, at *3 (M.D. Tenn. July 12, 2017); *Shaw v.*
28 *Colvin*, 2014 WL 6680412, at *1 (W.D.N.C. Nov. 25, 2014); *Pierce v. Colvin*, 2013 WL 3326716,
at *4 (E.D.N.C. July 1, 2013); *Givens v. Chater*, 1997 U.S. Dist. Lexis 3847, at *8-10 (E.D.N.C.
Feb. 28, 1997); see also *Powell v. Colvin*, 2014 WL 689721, at *1, *2-7 (W.D. Ky. Feb. 20, 2014).