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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 GINA MARIE ALTO,

7 Plaintiff,

8 v.

9 CAROLYN W. COLVIN, Acting  
10 Commissioner of Social Security,

11 Defendant.

Case No. 3:16-cv-05746-KLS

ORDER REVERSING AND  
REMANDING DEFENDANT'S  
DECISION TO DENY BENEFITS

12 Plaintiff has brought this matter for judicial review of defendant's denial of her  
13 application for disability insurance and supplemental security income ("SSI") benefits. Pursuant  
14 to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties  
15 have consented to have this matter heard by the undersigned Magistrate Judge. After reviewing  
16 the parties' briefs and the remaining record, the Court hereby finds that defendant's decision to  
17 deny benefits should be reversed and that this matter should be remanded for further  
18 administrative proceedings.  
19

20 FACTUAL AND PROCEDURAL HISTORY

21 On April 12, 2013 plaintiff filed an application for supplemental security income,  
22 alleging disability as of November 7, 1994. *See* Dkt. 9, Administrative Record ("AR") 10. Her  
23 application was denied upon initial administrative review on August 16, 2013 and on  
24 reconsideration on February 26, 2014. *See id.* A hearing was held before an administrative law  
25  
26

ORDER - 1

1 judge (“ALJ”) on October 29, 2014 at which plaintiff, represented by counsel, appeared and  
2 testified, as did Trevor Duncan, an impartial vocational expert. *See* AR 30-81.

3 In a decision dated April 9, 2015, the ALJ determined plaintiff to be not disabled. *See* AR  
4 10-22. Plaintiff’s request for review of the ALJ’s decision was denied by the Appeals Council on  
5 June 24, 2016, making that decision the final decision of the Commissioner of Social Security  
6 (the “Commissioner”). *See* AR 3-4; 20 C.F.R. § 404.981, § 416.1481. On September 2, 2016  
7 plaintiff filed a complaint in this Court seeking judicial review of the Commissioner’s final  
8 decision. *See* Dkt. 3. The administrative record was filed with the Court on November 7, 2016.  
9 *See* Dkt. 9. The parties have completed their briefing, and thus this matter is now ripe for the  
10 Court’s review.  
11

12 Plaintiff argues defendant’s decision to deny benefits should be reversed and remanded  
13 for an award of benefits, because the ALJ erred:

- 14 (1) in discounting plaintiff’s credibility; and  
15  
16 (2) in evaluating the medical evidence from Monica Pilarc, Ph.D., Gene McConnachie,  
17 Ph.D., and John Haroian, Ph.D.

18 For the reasons set forth below, the Court agrees the ALJ erred in discounting plaintiff’s  
19 credibility and assigning minimal weight to Dr. Pilarc and Dr. McConnachie’s medical opinions,  
20 and therefore in determining plaintiff to be not disabled. However, the Court finds reversal and  
21 remand for further administrative proceedings, rather than an award for benefits, on this basis is  
22 warranted.  
23

#### 24 DISCUSSION

25 The Commissioner’s determination that a claimant is not disabled must be upheld by the  
26 Court, if the “proper legal standards” have been applied by the Commissioner, and the

1 “substantial evidence in the record as a whole supports” that determination. *Hoffman v. Heckler*,  
2 785 F.2d 1423, 1425 (9th Cir. 1986); *see also Batson v. Commissioner of Social Security Admin.*,  
3 359 F.3d 1190, 1193 (9th Cir. 2004); *Carr v. Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991)  
4 (“A decision supported by substantial evidence will, nevertheless, be set aside if the proper legal  
5 standards were not applied in weighing the evidence and making the decision.”) (citing *Browner*  
6 *v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1987)).  
7

8         Substantial evidence is “such relevant evidence as a reasonable mind might accept as  
9 adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation  
10 omitted); *see also Batson*, 359 F.3d at 1193 (“[T]he Commissioner’s findings are upheld if  
11 supported by inferences reasonably drawn from the record.”). “The substantial evidence test  
12 requires that the reviewing court determine” whether the Commissioner’s decision is “supported  
13 by more than a scintilla of evidence, although less than a preponderance of the evidence is  
14 required.” *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence  
15 admits of more than one rational interpretation,” the Commissioner’s decision must be upheld.  
16 *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984) (“Where there is conflicting evidence  
17 sufficient to support either outcome, we must affirm the decision actually made.”) (quoting  
18 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).  
19

#### 20         **I. The ALJ’s Evaluation of the Medical Evidence in the Record**

21         The ALJ is responsible for determining credibility and resolving ambiguities and  
22 conflicts in the medical evidence. *See Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). In  
23 resolving questions of credibility and conflicts in the evidence, an ALJ’s findings “must be  
24 supported by specific, cogent reasons.” *Reddick*, 157 F.3d at 725. The ALJ can do this “by  
25 setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating  
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1 his interpretation thereof, and making findings.” *Id.* The ALJ also may draw inferences  
2 “logically flowing from the evidence.” *Sample*, 694 F.2d at 642. Further, the Court itself may  
3 draw “specific and legitimate inferences from the ALJ’s opinion.” *Magallanes v. Bowen*, 881  
4 F.2d 747, 755, (9th Cir. 1989).

5 The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted  
6 opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
7 1996). Even when a treating or examining physician’s opinion is contradicted, that opinion “can  
8 only be rejected for specific and legitimate reasons that are supported by substantial evidence in  
9 the record.” *Id.* at 830-31. However, the ALJ “need not discuss *all* evidence presented” to him or  
10 her. *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation  
11 omitted) (emphasis in original). The ALJ must only explain why “significant probative evidence  
12 has been rejected.” *Id.*; *see also Cotter v. Harris*, 642 F.2d 700, 706-07 (3rd Cir. 1981); *Garfield*  
13 *v. Schweiker*, 732 F.2d 605, 610 (7th Cir. 1984).

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16 “[A]n ALJ errs when he rejects a medical opinion or assigns it little weight while doing  
17 nothing more than ignoring it, asserting without explanation that another medical opinion is more  
18 persuasive, or criticizing it with boilerplate language that fails to offer a substantive basis for his  
19 conclusion.” *Garrison v. Colvin*, 759 F.3d 995, 1012-13 (9th Cir. 2014) (citing *Nguyen v.*  
20 *Chater*, 100 F.3d 1462, 1464 (9th Cir.1996)). It is insufficient for an ALJ to reject the opinion of  
21 a treating or examining physician by merely stating, without more, that there is a lack of  
22 objective medical findings in the record to support that opinion. *See Embrey v. Bowen*, 849 F.2d  
23 418, 421 (9th Cir. 1988).

24  
25 **A. Dr. Pilarc**

26 In August 2012, Dr. Pilarc opined summarily that plaintiff,

1 may experience considerable challenges with autonomy and remaining  
2 goal-oriented in the face of difficulties...Her testing results and easy  
3 crying as noted during this evaluation suggest that she may face  
4 considerable challenges when faced with stressors (emotional or  
5 otherwise) in the workplace at this time.

6 AR. 301. Dr. Pilarc also noted that plaintiff “may be unable to function autonomously.” AR.  
7 299-300.

8 The ALJ makes no mention of any of the foregoing conclusions. AR. 19. Rather, the ALJ  
9 only briefly mentions Dr. Pilarc’s opinion regarding plaintiff’s social shortcomings. *Id.* The ALJ  
10 fails to reference, let alone provide a specific, cogent reason for rejecting Dr. Pilarc’s opinions.  
11 For this reason, the Court agrees with plaintiff that the ALJ’s rejection of Dr. Pilarc’s opinions  
12 was insufficient.

13 The Court also notes that the ALJ’s treatment of the record suggests improper “cherry-  
14 picking” of aspects of the record that support the ALJ’s decision, while failing to develop the  
15 record on aspects of the record that support a finding of disabling limitations. *See Ghanim v.*  
16 *Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014) (“the ALJ improperly cherry-picked some of [the  
17 doctor’s] characterizations of [the claimant’s] rapport and demeanor instead of considering these  
18 factors in the context of [the doctor’s] diagnoses and observations of impairment”)(citations  
19 omitted). Here, the ALJ noted only Dr. Pilarc’s recommendation that plaintiff’s interactions with  
20 others be kept brief and focused (*see* AR. 19 (citing AR. 301)) and failed to appreciate or discuss  
21 fully Dr. Pilarc’s opinions and objective findings contained throughout the rest of his  
22 psychological assessment. For example, the ALJ failed to note Dr. Pilarc’s assessment that  
23 plaintiff “is likely to be plagued by worry to the degree that her ability to concentrate and attend  
24 is significantly comprised... [and her tendency] to be quite emotionally labile, manifesting  
25 fairly rapid and extreme mood swings and poorly controlled anger.” AR. 299-300. The ALJ’s  
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1 discussion is further devoid of Dr. Pilarc's conclusions that plaintiff's "phobic behaviors are  
2 likely to interfere in some significant way in her life" or "may be unable to function  
3 autonomously." AR. 300. Therefore, the ALJ erred discounting Dr. Pilarc's opinion. On remand  
4 the ALJ should fully explore Dr. Pilarc's assessment and develop the record more thoroughly.

#### 5 **B. Dr. McConnachie**

6 Based on a psychological evaluation performed in July 2013, Dr. McConnachie opined  
7 that plaintiff appeared to be functioning quite effectively between her depressive and manic  
8 phases, but not during the periods of major depression or mania. AR. 335. During extremes, it is  
9 Dr. McConnachie's opinion that "maintaining [effective functioning] will be near impossible and  
10 lead to job problems." *Id.* Dr. McConnachie also concluded that plaintiff's attention deficit  
11 disorder and fibromyalgia symptoms further increased her difficulties with holding full time  
12 employment. *Id.* The ALJ gave little weight to Dr. McConnachie's opinions finding they were  
13 supported only by historical diagnosis and plaintiff's subjective reports, not by Dr.  
14 McConnachie's physical examination of plaintiff or review of clinical notes. AR. 19. The Court  
15 finds the ALJ erred in his finding.

16 "When an opinion is not more heavily based on a patient's self-reports than on clinical  
17 observations, there is no evidentiary basis for rejecting the opinion." *Ghanim v. Colvin*, 763 F.3d  
18 1154, 1162 (9th Cir. 2014) (citing *Ryan v. Comm'r of Soc. Sec. Admin.*, 528 F.3d 1194, 1199-  
19 1200 (9th Cir. 2008) ("an ALJ does not provide clear and convincing reasons for rejecting an  
20 examining physician's opinion by questioning the credibility of the patient's complaints where  
21 the doctor does not discredit those complaints and supports his ultimate opinion with his own  
22 observations")). Here, the ALJ erred in finding that Dr. McConnachie relied on plaintiff's  
23 historical diagnosis and subjective allegations rather than his own objective assessment. Review  
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1 of Dr. McConnachie's records demonstrates that during his mental disability evaluation of  
2 plaintiff, he conducted a clinical interview of plaintiff (330-335), reviewed plaintiff's records and  
3 history (AR. 331-33), and made his own observations of plaintiff in reaching conclusions about  
4 her mental status (AR. 330-331, 333-335). Dr. McConnachie's comprehensive assessment  
5 therefore does not appear to be solely based on plaintiff's self-reports and contains objective  
6 findings which could support his opinions. As such, the Court concludes the ALJ erred in  
7 discounting Dr. McConnachie's opinion without substantial support.  
8

## 9 **II. The ALJ's Assessment of Plaintiff's Credibility**

10 To reject a claimant's subjective complaints, the ALJ must provide "specific, cogent  
11 reasons for the disbelief." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996) (citation omitted).  
12 The ALJ must provide specific, clear and convincing reasons for finding the claimant's  
13 testimony to be not credible supported by substantial evidence in the record as a whole. 42  
14 U.S.C. § 405(g); *see also Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991); *Bayliss*, 427  
15 F.3d at 1214 n.1 (*citing Tidwell*, 161 F.3d at 601). "General findings are insufficient; rather, the  
16 ALJ must identify what testimony is not credible and what evidence undermines the claimant's  
17 complaints." *Lester*, 81 F.3d at 834; *see also Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.  
18 1993). In addition, the ALJ's "findings, properly supported by the record, must be sufficiently  
19 specific to allow" the Court to conclude the ALJ "rejected the claimant's testimony on  
20 permissible grounds and did not 'arbitrarily discredit a claimant's testimony.'" *Id.* at 345-46  
21 (citation omitted).  
22  
23

24 Here, the ALJ found plaintiff was not fully credible based upon plaintiff's activities of  
25 daily living and situational stressors, her receipt of unemployment benefits and engagement with  
26 the Division of Vocational Rehabilitation ("DVR"), and inconsistency with the objective medical

1 evidence. *Id.* Plaintiff argues these are not specific, clear, and convincing reasons for finding her  
2 not fully credible. The Court agrees.

### 3 **A. Activities of Daily Living/Situational Stressors**

4 The Ninth Circuit has repeatedly “asserted that the mere fact that a plaintiff has carried  
5 on certain daily activities. . . . does not in any way detract from her credibility as to her overall  
6 disability.” *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (quoting *Vertigan v. Halter*, 260  
7 F.3d 1044, 1050 (9th Cir. 2001)). The Ninth Circuit has further specified “two grounds for using  
8 daily activities to form the basis of an adverse credibility determination: (1) whether or not they  
9 contradict the claimant’s other testimony and (2) whether or not the activities of daily living  
10 meet ‘the threshold for transferable work skills.’” *Orn, supra*, 495 F.3d at 639 (citing *Fair*,  
11 *supra*, 885 F.2d at 603). The ALJ “must make ‘specific findings relating to the daily activities’  
12 and their transferability to conclude that a claimant’s daily activities warrant an adverse  
13 determination regarding if a claimant’s statements should be credited.” *Id.*, 495 F.3d at 639  
14 (quoting *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005)). The Ninth Circuit has  
15 recognized that “many home activities are not easily transferable to what may be the more  
16 grueling environment of the workplace, where it might be impossible to periodically rest or take  
17 medication.” *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). Daily activities may be grounds  
18 for an adverse credibility finding “if a claimant is able to spend a substantial part of his day  
19 engaged in pursuits involving the performance of physical functions that are transferable to a  
20 work setting.” *Fair*, 885 F.2d at 603.

21 The ALJ points to several of plaintiff’s daily activities such as raising children and  
22 attending school as accomplishments which demonstrate her ability to “carry what essentially  
23 was more than one full time job.” AR. 16. The ALJ specifically found plaintiff “endured  
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1 enormous situational stressors through which she demonstrated fortitude and functional capacity  
2 that is not indicative of disability.” *Id.* Plaintiff contends that the ALJ did not provide an entirely  
3 accurate characterization of the record and in doing so, portrayed plaintiff as more functional  
4 than she actually is. Dkt. 12, pp.3-6. The evidence from the record supports plaintiff’s claim that  
5 she was not as successful in handling her home life and school as it appears in the ALJ’s  
6 characterization thereof. Specifically, the Court finds that neither of the two grounds for using  
7 daily activities to form the basis of an adverse credibility determination is present in plaintiff’s  
8 case.  
9

10 First, as she described them, plaintiff’s efforts as a mother and student do not contradict  
11 her other testimony regarding her impairments and symptoms. *See Fair*, 885 F.2d at 603. In fact,  
12 plaintiff’s strained attempts to be successful in both of these areas may demonstrate the severity  
13 of her impairment. For example, while its true plaintiff makes efforts to parent, she does not do  
14 so alone. Rather, the record shows plaintiff receives “a lot of help from relatives.” AR. 50.  
15 Plaintiff testified her mother-in-law cared for the children “all the time” including weekends,  
16 assisted in making parenting decisions, and cooked for plaintiff and the children. AR. 50, 52. The  
17 record further shows that despite receiving considerable domestic help from family members,  
18 plaintiff struggled to care for her children. AR. 311, 330-31, 400, 452.  
19

20 Additionally, while plaintiff has been able to attend school, the record is not substantially  
21 supportive of the ALJ’s conclusion that plaintiff “perform[ed] well” in “complicated” college  
22 courses. *See* AR 18. Rather, the record demonstrates plaintiff typically took 2 to 3 classes per  
23 quarter for a total of 8.5 hours per week of classroom instruction. AR. 526-27. The record further  
24 shows that while plaintiff did well in attendance-based classes such as Zumba and Choir, she  
25 either struggled significantly or was completely unable to perform in and ended up dropping,  
26

1 academic classes such as Survey of Computing, Read/Write Academic Success, Lifespan  
2 Psychology, English Composition I, Transition to Work, Explore Your Strengths, and The  
3 Family. AR. 526-27. Plaintiff had difficulty managing even a part-time school schedule. AR.  
4 351, 452. For these reasons, the Court concludes the ALJ's finding that plaintiff's parenting and  
5 school commitments demonstrated her ability to carry out more than a fulltime job is not a clear  
6 and convincing reason for discrediting plaintiff.  
7

8         Second, the ALJ has not demonstrated how plaintiff's activities meet the threshold for  
9 transferable work skills, the second ground for using daily activities in credibility determinations.  
10 *Id.* Here, the ALJ has not provided sufficient analysis or support showing that plaintiff's  
11 activities were "transferable" to a work setting or that plaintiff spent a "substantial" part of her  
12 day engaged in transferable skills. *Id.* Rather, the record shows plaintiff required consistent  
13 parenting assistance from family members, as she was unable to complete simultaneously tasks  
14 such as homework for her one quarterly academic class and cooking dinner for her children. AR.  
15 50, 52. The record further shows that plaintiff at most attended 8.5 hours of class per week. AR.  
16 526-527. This does not support the ALJ's finding that plaintiff's parenting skills and efforts in  
17 school are equitable and transferable to a fulltime work schedule. *See Fair*, 885 F.2d at 603.  
18 Therefore, this Court finds the ALJ erred in this regard.  
19

## 20         **B. Unemployment Benefits**

21         Where the record "does not establish whether [the claimant] held herself out as available  
22 for full-time or part-time work," such a "basis for the ALJ's credibility finding is not supported  
23 by substantial evidence," as "[o]nly the former is inconsistent with his disability allegations."  
24 *Carmickle v. Commissioner, Social Sec. Admin.*, 533 F.3d 1155, 1161-62 (9th Cir. 2008).  
25  
26

1 In 2013, plaintiff reportedly received unemployment benefits. *See* AR. 17, 45-48, 184.  
2 Based on this, the ALJ found that plaintiff held herself out as being able to perform full-time  
3 work. AR.17. The ALJ discredited plaintiff on the basis that these findings were inconsistent  
4 with her statements regarding her inabilities and limitations in the workplace. *Id.* However, the  
5 record fails to support the ALJ’s conclusion that plaintiff was not fully credible based upon these  
6 findings.

7  
8 While the ALJ stated that “as a matter of law, in order to receive [unemployment]  
9 benefits, [plaintiff] was required to make certifications that she was ready, willing and able to  
10 accept suitable work,” the ALJ failed to cite to any affirmative evidence in the record showing  
11 plaintiff certified, or otherwise indicated that she was able to work full-time while in pursuit of  
12 unemployment benefits. *See* AR 17. In fact, Plaintiff testified she believed that she filled out  
13 unemployment benefits paperwork but could not recall if she was applying for jobs at the time or  
14 attending school. AR 45-48. The record is devoid of any evidence of plaintiff’s application or  
15 other supporting statements from plaintiff which would indicate she in fact held herself out as  
16 being able to work full-time. Without such evidence, the ALJ’s credibility finding is not  
17 supported by substantial evidence.

18  
19 **C. Engagement with DVR**

20 The claimant was engaged with DVR during most of 2013. *See* AR. 448-506. Ultimately  
21 in December 2013, plaintiff chose to postpone vocational rehabilitation services with DVR. AR.  
22 451. The ALJ found that plaintiff’s engagement with and discharge from DVR was inconsistent  
23 with plaintiff’s statements regarding her inability to work due to her alleged mental disabilities.  
24 AR. 17. The ALJ reasoned that plaintiff disengaged with DVR not because of her mental  
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26

1 impairments, but rather due to distractions by domestic responsibilities. *Id.* This conclusion is not  
2 clearly supported by the record.

3 While it is true that plaintiff was reportedly distracted by domestic responsibilities during  
4 her engagement with DVR, the record does not show plaintiff failed to complete DVR  
5 counseling, training and employment services solely due to these distractions rather than to her  
6 alleged mental impairments. Again, it appears the ALJ failed to explore and appreciate how  
7 plaintiff's mental impairments may or may not have been a contributing factor in plaintiff's  
8 inability to manage responsibilities and commitments such as engagement with DVR. For  
9 example, the record shows that throughout her time with DVR, plaintiff repeatedly struggled  
10 with her commitments including engagement with DVR, parenting, and schooling (AR. 449-62),  
11 experienced symptoms of anxiety and PTSD (AR. 452), and was noted by her DVR counselor to  
12 be unable to handle multiple responsibilities. *See* AR. 460 (noting it was "unlikely that [plaintiff]  
13 could add full time college to her life and be successful"); AR. 462 (noting working and going to  
14 school seems "unlikely"). In discrediting plaintiff regarding her complaints, the ALJ failed to  
15 identify how specifically plaintiff's difficulty in managing her domestic responsibilities  
16 undermines plaintiff's credibility with regard to her impairments. Therefore, the ALJ erred when  
17 she failed to fully and fairly consider the totality of the evidence and provide specific, cogent  
18 reasons that plaintiff's domestic responsibilities for discounting plaintiff's testimony regarding  
19 her impairments.  
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#### 23 **D. Inconsistent with Objective Medical Evidence**

24 The Ninth Circuit has held that determining a claimant's complaints are inconsistent with  
25 the objective medical evidence in the record can satisfy the clear and convincing requirement.  
26 *See Regennitter v. Commissioner of SSA*, 166 F.3d 1294, 1297 (9th Cir 1999). The only

1 limitation on the ALJ's use of this as a reason for discounting a claimant's credibility is that the  
2 claimant's testimony may not be rejected *solely* because the degree of symptoms alleged is not  
3 supported by objective medical evidence. *See Rollins v. Massanari*, 261 F.3d 853, 856 (9th  
4 Cir.2001); *Byrnes v. Shalala*, 60 F.3d 639, 641-42 (9th Cir. 1995); *Orteza v. Shalala*, 50 F.3d  
5 748, 749-50 (9th Cir. 1995); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.1991) (*emphasis*  
6 *added*).

7  
8 As discussed above, the Court finds the ALJ failed to sufficiently support her conclusion  
9 that plaintiff's complaints were inconsistent with plaintiff's activities, receipt of unemployment,  
10 and engagement with DVR. *See Supra*, Subsections A-C. The ALJ's sole remaining reason for  
11 concluding plaintiff was not credible is that her contentions are inconsistent with objective  
12 medical evidence. Specifically, the ALJ found that plaintiff's assertion that she has memory  
13 difficulties is inconsistent with neuropsychological testing results regarding memory. AR. 17  
14 (citing AR. 512). Assuming this reason is not the sole reason for discrediting plaintiff, it is  
15 sufficiently supported by multiple medical providers' objective findings following administration  
16 of psychological tests upon plaintiff. *See AR. 333* (plaintiff's memory "is intact"); *see also AR.*  
17 *512* (her "visual recognition memory was intact"). However, the ALJ cannot reject plaintiff's  
18 testimony based solely on this claim. As such, without additional properly supported reasons for  
19 discrediting plaintiff, the ALJ erred in discounting claimant's credibility based upon inconsistent  
20 objective medical evidence.  
21

### 22 23 **III. This Matter Should Be Remanded for Further Administrative Proceedings**

24 The Court may remand this case "either for additional evidence and findings or to award  
25 benefits." *Smolen*, 80 F.3d at 1292. Generally, when the Court reverses an ALJ's decision, "the  
26 proper course, except in rare circumstances, is to remand to the agency for additional

1 investigation or explanation.” *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (citations  
2 omitted). Thus, it is “the unusual case in which it is clear from the record that the claimant is  
3 unable to perform gainful employment in the national economy,” that “remand for an immediate  
4 award of benefits is appropriate.” *Id.*

5 Benefits may be awarded where “the record has been fully developed” and “further  
6 administrative proceedings would serve no useful purpose.” *Smolen*, 80 F.3d at 1292; *Holohan v.*  
7 *Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001). Specifically, they should be awarded where:

8  
9 (1) the ALJ has failed to provide legally sufficient reasons for rejecting  
10 [the claimant’s] evidence, (2) there are no outstanding issues that must  
11 be resolved before a determination of disability can be made, and (3) it  
12 is clear from the record that the ALJ would be required to find the  
13 claimant disabled were such evidence credited.

14 *Smolen*, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002).

15 Because issues remain with regard to the medical evidence in the record concerning plaintiff’s  
16 impairments, as well as plaintiff’s credibility, remand for further consideration on those issues is  
17 warranted.

### 18 CONCLUSION

19 Based on the foregoing discussion, the Court hereby finds the ALJ improperly concluded  
20 plaintiff was not disabled. Accordingly, defendant’s decision to deny benefits is REVERSED  
21 and this matter is REMANDED for further administrative proceedings in accordance with the  
22 findings contained herein.

23 DATED this 31st day of March, 2017.

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25   
26 Karen L. Strombom  
United States Magistrate Judge