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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

<p>CARRIE L. BISSMEYER,</p> <p style="padding-left: 100px;">Plaintiff,</p> <p style="padding-left: 100px;">v.</p> <p>CAROLYN W. COLVIN, Acting Commissioner of Social Security,</p> <p style="padding-left: 100px;">Defendant.</p>	<p>} Case No. CV 15-02510-KES</p> <p>} MEMORANDUM OPINION AND</p> <p>} ORDER</p>
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Plaintiff Carrie L. Bissmeyer (“Plaintiff”) appeals the final decision of the Administrative Law Judge (“ALJ”) denying her application for Social Security Disability Insurance benefits (“DIB”) and Supplemental Security Income (“SSI”). For the reasons discussed below, the ALJ’s decision is **AFFIRMED.**

**I.**  
**BACKGROUND**

Plaintiff applied for DIB and SSI on December 30, 2011, alleging the onset of disability on July 15, 2009. Administrative Record (“AR”) 204-205,

1 206-215. On February 28, 2014, an ALJ conducted a hearing, at which  
2 Plaintiff, who was represented by counsel, appeared and testified. AR 34-75.  
3 On June 10, 2014, the ALJ issued a written decision denying Plaintiff's request  
4 for benefits. AR 7-25.

5 At Step Two of the sequential evaluation process, the ALJ found that  
6 Plaintiff had severe impairments consisting of "osteoarthritis of [both] knees,  
7 bilateral carpal tunnel syndrome, sleep apnea, mild degenerative disc disease of  
8 the cervical spine and obesity." AR 13. Notwithstanding her impairments, the  
9 ALJ concluded that Plaintiff had the residual functional capacity ("RFC") to  
10 perform medium work with the following exertional limitations:

11 [T]he claimant can lift and carry fifty pounds occasionally and  
12 twenty-five pounds frequently, and can sit, stand and walk for six  
13 hours in an eight-hour day. The claimant can occasionally climb,  
14 but never climb ladders, ropes or scaffolds. The claimant can  
15 frequently balance, kneel, stoop, crouch and can occasionally crawl.  
16 The claimant can frequently handle and finger with the right upper  
17 extremity.

18 AR 15.

19 Based on this RFC and the testimony of a vocational expert ("VE"), the  
20 ALJ found that Plaintiff could perform her past relevant work as a licensed  
21 vocational nurse ("LVN"). AR 19. The ALJ therefore concluded that Plaintiff  
22 is not disabled. Id.

## 23 II.

### 24 ISSUES PRESENTED

25 Issue No. 1: Whether the ALJ adequately assessed the opinion of  
26 consultative examiner Dean Chiang, M.D.

27 Issue No. 2: Whether the ALJ adequately assessed the opinion of  
28 treating chiropractor Guadalupe Trelles.

1 See Dkt. 19, Joint Stipulation (“JS”) 4.

2 **III.**

3 **DISCUSSION**

4 **A. ISSUE ONE: The ALJ gave specific and legitimate reasons for giving**  
5 **Dr. Chiang’s opinions little weight.**

6 **1. Applicable Law.**

7 Three types of physicians may offer opinions in Social Security cases:  
8 (1) those who directly treated the plaintiff, (2) those who examined but did not  
9 treat the plaintiff, and (3) those who did neither, but reviewed the plaintiff’s  
10 medical records. Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). A treating  
11 physician’s opinion is generally entitled to more weight than that of an  
12 examining physician, and an examining physician’s opinion is generally  
13 entitled to more weight than that of a non-examining physician. Id.

14 When a treating or examining physician’s opinion is not contradicted by  
15 another doctor, it may be rejected only for “clear and convincing” reasons.  
16 See Carmickle v. Comm’r, Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir.  
17 2008) (citing Lester, 81 F.3d at 830-31). When it is contradicted, the ALJ must  
18 provide “specific and legitimate reasons” for discounting it that are supported  
19 by substantial evidence. Id. (citation omitted).

20 The weight given a physician’s opinion depends on whether it is  
21 consistent with the record and accompanied by adequate explanation, the  
22 nature and extent of the treatment relationship, and the doctor’s specialty,  
23 among other things. 20 C.F.R. § 416.927(c)(3)-(6). Medical opinions that are  
24 inadequately explained or lack supporting clinical or laboratory findings are  
25 entitled to less weight. See Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir.  
26 1995) (holding that ALJ properly rejected physician’s determination where it  
27 was “conclusory and unsubstantiated by relevant medical documentation”);  
28 Crane v. Shalala, 76 F.3d 251, 253 (9th Cir. 1996) (ALJ permissibly rejected

1 “check-off reports that did not contain any explanation of the bases of their  
2 conclusions”).

3 The ALJ is responsible for resolving conflicts in the medical evidence.  
4 Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989). In doing so, the ALJ  
5 is always permitted to employ “ordinary techniques” for evaluating credibility,  
6 including inconsistencies in a witness’s testimony. Thomas v. Barnhart, 278  
7 F.3d 947, 958-59 (9th Cir. 2002). Thus, internal inconsistencies are a valid  
8 reason to accord less weight to a medical opinion. See Connett v. Barnhart,  
9 340 F.3d 871, 875 (9th Cir. 2003) (upholding inconsistency between a treating  
10 physician’s opinions and his own treatment notes as a reason to discount his  
11 opinions); Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir. 2001) (upholding  
12 ALJ’s rejection of a medical opinion that was internally inconsistent); Gabor v.  
13 Barnhart, 221 F. App’x 548, 550 (9th Cir. 2007) (“The ALJ noted internal  
14 inconsistencies in Dr. Moran’s report, which provide a further basis for  
15 excluding that medical opinion.”); Gonzales v. Colvin, 2015 U.S. Dist. LEXIS  
16 148471, at \*12 (C.D. Cal. Oct. 30, 2015) (upholding ALJ’s rejection of medical  
17 opinion assessing inconsistent social functioning and GAF scores); Khan v.  
18 Colvin, 2014 U.S. Dist. LEXIS 86558, at \*22 (C.D. Cal. June 24, 2014) (“The  
19 ALJ’s first reason for rejecting Dr. Multani’s opinion – to wit, that his opinion  
20 was internally inconsistent – is specific and legitimate.”).

## 21 **2. Summary of Dr. Chiang’s opinions.**

22 Plaintiff attended a consultative examination on May 2, 2012. AR 479-  
23 481. Dr. Dean Chiang gathered information from Plaintiff including the  
24 history of her impairments, her activities of daily living, her medications, and  
25 her medical and family history. AR 479. He also reviewed Plaintiff’s  
26 treatment records from the Veteran’s Administration and conducted a physical  
27 examination. Id.

28 Plaintiff explained that her knee pain began in 2010 after she fell off a

1 ladder. Id. She had x-rays at the time, but no MRI and no physical therapy.  
2 Id. She received injections to her right knee about six weeks prior to Dr.  
3 Chiang’s examination, but she reported that “her symptoms are starting to  
4 come back” and “the pain makes her wake up at night.” Id. Nevertheless, she  
5 remained “capable of driving and performs activities of daily living by herself.”  
6 Id. She reported taking several medications, but none for pain management.  
7 Id.

8 Concerning Plaintiff’s carpal tunnel syndrome, Dr. Chiang assessed a  
9 positive Tinel’s test<sup>1</sup> on the right and negative on the left and a negative  
10 Phalen’s test.<sup>2</sup> AR 479-80. Concerning Plaintiff’s knee pain, he observed that  
11 Plaintiff “ambulated at ease and was fully weightbearing. She sat comfortably  
12 and answered questions appropriately. She was able to get up from a sitting  
13 position without any noticeable expression of pain.” AR 479.

14 His examination revealed a normal appearance for Plaintiff’s knees and  
15 normal findings for Plaintiff’s coordination/station/gait; atonement;  
16 cardiovascular functioning; neck/nodes; ears/nose/throat; eyes; and pulses.  
17 AR 480. He observed that Plaintiff’s range of motion for her hip, lumbar,  
18 knee, ankle, shoulder, elbow, wrist, and finger/thumb varied bilaterally. AR  
19 480. Dr. Chiang assessed no joint deformities and strength of five out of five  
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21 <sup>1</sup> A Tinel’s test is a way to detect irritated nerves. It is performed by  
22 lightly tapping over the nerve to elicit a sensation of tingling or “pins and  
23 needles” in the distribution of the nerve. See [https://en.wikipedia.  
24 org/wiki/Tinel%27s sign](https://en.wikipedia.org/wiki/Tinel%27s_sign).

25 <sup>2</sup> For this test, the patient holds their wrist in complete and forced flexion  
26 (pushing the dorsal surfaces of both hands together) for 30–60 seconds. By  
27 compressing the median nerve, characteristic symptoms (such as burning,  
28 tingling or numb sensation over the fingers) conveys a positive test result. See  
[https://en.wikipedia.org/wiki/Phalen\\_maneuver](https://en.wikipedia.org/wiki/Phalen_maneuver).

1 for both Plaintiff's upper and lower extremities. AR 481. A Romberg test<sup>3</sup>  
2 was normal. AR 480. A straight leg raising test<sup>4</sup> was negative to 90 degrees.  
3 AR 481.

4 Based on all of this, Dr. Chiang opined that Plaintiff had the following  
5 functional limitations:

6 The claimant will be expected to stand and walk for up to four  
7 hours during an eight-hour day. This limitation is due to her knee  
8 pain. The claimant can sit without limitations. The claimant does  
9 not need [an] assistive device. The claimant can lift and carry  
10 without limitations. The claimant is capable of climbing never,  
11 balancing never, stooping occasionally, kneeling occasionally,  
12 crouching occasionally, and crawling occasionally. The claimant  
13 is capable of reaching occasionally, handling occasionally,  
14 fingering occasionally, and feeling occasionally. The claimant has  
15 no limitations with working at heights. The claimant has no  
16 limitations with working around heavy machinery. The claimant  
17 has no limitations with working around extremes of temperature.  
18 The claimant has no limitations with working around chemicals.  
19 The claimant has no limitations with working around dust, fumes  
20 and gasses. The claimant has no limitations with working around  
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22 <sup>3</sup> This tests neurological function. The standing patient is asked to close  
23 his or her eyes. A loss of balance is interpreted as a positive Romberg's test.  
24 See [https://en.wikipedia.org/wiki/Romberg%27s\\_test](https://en.wikipedia.org/wiki/Romberg%27s_test).

25 <sup>4</sup> To perform a supine straight-leg raising test, the patient lies down on  
26 his/her back and the examiner lifts the patient's leg while the knee is straight.  
27 If the patient experiences pain when the straight leg is at an angle of between  
28 30 and 70 degrees, then the test is positive and a herniated disc is likely to be  
the cause of the pain. See [https://en.wikipedia.org/wiki/Straight\\_leg\\_raise](https://en.wikipedia.org/wiki/Straight_leg_raise).

1 excessive noise.

2 AR 481.

3 **3. The ALJ's treatment of Dr. Chiang's opinions.**

4 The ALJ discussed Dr. Chiang's opinion concerning Plaintiff's  
5 functional limitations. AR 17-18. He then explained, "Dr. Chiang's opinion is  
6 unpersuasive because it is based upon only one examination and appears to  
7 rely primarily on the claimant's subjective complaints of knee pain. Thus, Dr.  
8 Chiang's opinion is given little weight." AR 18.

9 The ALJ ultimately assessed Plaintiff as having an RFC with fewer  
10 exertional limitations than those opined by Dr. Chiang. For example, the ALJ  
11 found that Plaintiff could walk or stand for up to six hours in an eight-hour  
12 workday (as compared to Dr. Chiang's opinion that she could only walk or  
13 stand for four hours due to knee pain). Cf. AR 15 and 481.

14 In formulating Plaintiff's RFC, the ALJ gave "considerable weight" to  
15 the opinions of reviewing physicians L. DeSouza and T. Nguyen. AR 18.  
16 Both found that Plaintiff could walk or stand for six hours in an eight-hour  
17 workday. AR 86, 100 [Dr. Nguyen], AR 118 [Dr. DeSouza]. The ALJ  
18 explained that these two medical opinions were more persuasive, because they  
19 were "consistent with the medical records as a whole." AR 18.

20 The ALJ summarized those medical records earlier in his decision. AR  
21 15-18. The ALJ concluded that Plaintiff's medical records "revealed generally  
22 benign findings." AR 16. As examples of physical examinations resulting in  
23 benign findings, the ALJ cited (at AR 16-18) all of the following:

24 (1) A 2009 treatment progress note discussing a physical examination  
25 and noting "intact ROM [range of motion]." AR 390.

26 (2) A March 19, 2012 treatment record showing that while Plaintiff  
27 reported "both knees hurt," the doctor found, "R knee: no effusion, full ROM,  
28 stable joint." AR 460.

1 (3) A March 22, 2012 treatment record showing that while Plaintiff was  
2 seeking treatment “primarily for her right knee,” the doctor observed, “she has  
3 full extension and flexion to about 115-120 degrees. No gross instability. No  
4 significant effusion.” AR 508.

5 (4) Dr. Chiang’s observations that Plaintiff walked with ease, sat  
6 comfortably during the examination and had “normal looking knees” with no  
7 joint laxity. AR 479-80.

8 (5) An October 2012 physical exam finding as to both knees that they  
9 had a “normal range of motion” and were “non-tender.” AR 603.

10 (6) A May 2013 treatment record reporting that a doctor reviewed  
11 “imaging results” with Plaintiff concerning her diagnosis of arthritis of the  
12 right knee and “discussed possible knee injections” and “other options for  
13 treatment” including “weight management and regular exercise.” AR 620.

14 (7) A June 2013 x-ray showing only “mild” cervical degenerative disc  
15 disease. AR 630.

16 (8) A March 2014 treatment record noting Plaintiff’s “normal gait.” AR  
17 644.

18 (8) Records showing routine, conservative treatment, such as  
19 recommendations to do home exercises and avoid “heavy exertion.” AR 649.

#### 20 **4. Analysis.**

21 Plaintiff argues that the only two reasons the ALJ offered for discounting  
22 Dr. Chiang’s opinion were (1) it was based solely on one examination, and  
23 (2) it relied primarily on Plaintiff’s subjective complaints. JS 7.

24 This is not a fair reading of the ALJ’s decision. By saying that (1) he  
25 gave other doctors’ opinions greater weight because those opinions were  
26 “consistent with the medical records as a whole” (AR 18) and (2) contrasting  
27 Dr. Chiang’s normal clinical findings concerning Plaintiff’s knees with his  
28 restrictive opinion expressly attributed to her knee pain (AR 17-18), the ALJ

1 sufficiently indicated that he discounted Dr. Chiang’s opinions, at least in part,  
2 due to their inconsistency with the overall medical evidence and Dr. Chiang’s  
3 own clinical findings. Indeed, the apparent reason the ALJ concluded that the  
4 standing/walking limitations Dr. Chiang ascribed to Plaintiff’s knee pain were  
5 based primarily on Plaintiff’s subjective complaints is because they are not  
6 supported by his findings.

7 Inconsistency with the medical records as a whole or a doctor’s own  
8 clinical findings is a specific and legitimate reason to discount an examining  
9 physician’s opinions. 20 C.F.R. § 404.1527(c)(4) (“Generally, the more  
10 consistent an opinion is with the record as a whole, the more weight we will  
11 give to that opinion.”); Chaudhry v. Astrue, 688 F.3d 661, 671 (9th Cir. 2012)  
12 (“The ALJ need not accept the opinion of any physician ... inadequately  
13 supported by clinical findings.”)

14 The ALJ’s finding of inconsistency is supported by substantial evidence  
15 in the record. As summarized above, the record is replete with medical tests  
16 and treatment notes that found Plaintiff’s use of her knees to be “normal”  
17 despite the diagnosis of arthritis. Thus, the ALJ did not err in giving little  
18 weight to the more restrictive opinions of Dr. Chiang.

19 **B. ISSUE TWO: The ALJ gave a germane reason for giving Dr.**  
20 **Trelles’s opinions little weight.**

21 **1. Applicable law.**

22 Only licensed physicians and certain other qualified specialists are  
23 considered “[a]cceptable medical sources.” 20 C.F.R. § 404.1513(a). A  
24 chiropractor is considered an “other” source. 20 C.F.R. § 404.1513(a), (d)(1).  
25 An ALJ may discount testimony from “other” sources if the ALJ provides a  
26 “germane” reason for doing so. Molina v. Astrue, 674 F.3d 1104, 1111 (9th  
27 Cir. 2012).

1           **2. Summary of Dr. Trelles’s opinions.**

2           In March 2012, Dr. Trelles provided a report with her opinions. AR  
3 306-10. She began her report by listing 18 complaints reported by Plaintiff in  
4 2009 when Plaintiff first sought chiropractic treatment. AR 306-07. She  
5 observed that Plaintiff had “general swelling” and “swelling of joints” such  
6 that “all movement caused pain.” AR 307. She examined Plaintiff’s back and  
7 shoulders, but the report does not specifically discuss an examination of  
8 Plaintiff’s knees. AR 308-09. Plaintiff stopped seeing Dr. Trelles in 2010. AR  
9 309.

10           From this, Dr. Trelles opined that Plaintiff suffers from “chronic  
11 generalized edema due to one kidney’s diminished capacity.” AR 310. “This  
12 causes her to have permanent ongoing stiffness and swelling of the affected  
13 areas with some period of remission between flare ups.” Id. Dr. Trelles  
14 opined that Plaintiff “is unable to stand or sit for too long. Walking and  
15 standing is difficult and painful.” Id. As a result, Dr. Trelles found that  
16 Plaintiff was “permanently disabled” and required “chiropractic adjustments  
17 ... to help control the swellings and consequent pains and incapacitation.” Id.

18           **3. The ALJ’s treatment of Dr. Trelles’s opinions.**

19           The ALJ discounted Dr. Trelles’s opinions, as follows:

20           Chiropractor Guadalupe Trelles, D.C., opined that the claimant is  
21 permanently disabled .... Ms. Trelles’s opinion is unpersuasive  
22 because it appears to rely quite heavily on the claimant’s subjective  
23 complaints. Moreover, Ms. Trelles is not a physician and thus not  
24 an acceptable medical source pursuant to 06-03. Thus, this  
25 opinion is given little weight.

26 AR 19.

27           **4. Analysis.**

28           First, pointing out that Dr. Trelles is “not a physician” is a germane

1 reason to discount her opinion concerning the incapacitating effects of  
2 Plaintiff's symptoms, because her opinion relies on the allegedly "diminished  
3 capacity" one of Plaintiff's kidneys. Medical opinions about functional  
4 limitations likely to be caused or exacerbated by kidney malfunction must  
5 come from a medical source, not a chiropractor. See 20 C.F.R.  
6 § 404.1513(d)(1); SSR 06-03p, 2006 SSR LEXIS 5 ("The fact that a medical  
7 opinion is from an 'acceptable medical source' is a factor that may justify  
8 giving that opinion greater weight than an opinion from a medical source who  
9 is not an 'acceptable medical source' because ... 'acceptable medical sources'  
10 are the 'most qualified health care professionals.'").

11 Second, an ALJ may reject even a treating physician's opinion if it is  
12 based to a large extent on a claimant's self-reports that have been properly  
13 discounted as incredible. Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir.  
14 2008). Here, by saying that Dr. Trelles's opinion "appears to rely quite heavily  
15 on the claimant's subjective complaints," the ALJ essentially said that it does  
16 not appear to rely on medical evidence. Lack of support from medical  
17 evidence is a germane reason to reject the opinion of an "other" source.  
18 Bayliss v. Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2005).

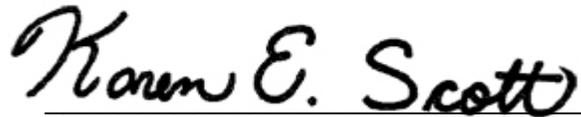
19 The ALJ's finding that Dr. Trelles's opinion lacked supporting medical  
20 evidence is supported by substantial evidence in the record. As summarized by  
21 the ALJ and above, many of Plaintiff's medical records showed that she did  
22 not have difficulty walking and that her knees appeared normal, not swollen.  
23 Dr. Chiang opined that Plaintiff can sit "without limitation" (AR 481),  
24 whereas Dr. Trelles opined that Plaintiff is unable to sit for "too long." (AR  
25 310.) See Paulson v. Astrue, 368 F. App'x 758, 760 (9th Cir. 2010) ("ALJ did  
26 not commit reversible error in failing to consider the opinion of [claimant's]  
27 chiropractor" where that opinion "contradicts acceptable medical sources,  
28 which are generally given greater weight.").

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IV.  
CONCLUSION

Based on the foregoing, IT IS ORDERED THAT judgment shall be entered AFFIRMING the decision of the Commissioner denying benefits.

Dated: November 09, 2016



KAREN E. SCOTT  
United States Magistrate Judge