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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JACQUELINE WOMACK,	)	Case No. CV 13-7094-JPR
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
vs.	)	AFFIRMING THE COMMISSIONER
	)	
CAROLYN W. COLVIN,	)	
Acting Commissioner of	)	
Social Security,	)	
	)	
Defendant.	)	
	)	

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**I. PROCEEDINGS**

Plaintiff seeks review of the Commissioner’s final decision denying her application for Social Security disability insurance benefits (“DIB”). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). This matter is before the Court on the parties’ Joint Stipulation, filed June 11, 2014, which the Court has taken under submission without oral argument. For the reasons discussed below, the Commissioner’s decision is affirmed and judgment is entered in her favor.

**II. BACKGROUND**

Plaintiff was born on March 14, 1949. (Administrative

1 Record ("AR") 38.) She has 13 years of education. (AR 54.) She  
2 previously worked as an appointment clerk and an auto-loan  
3 representative.<sup>1</sup> (AR 136.)

4 On July 9, 2010, Plaintiff filed an application for DIB,  
5 alleging a disability onset date of June 13, 2009.<sup>2</sup> (AR 117.)  
6 Plaintiff claimed to be disabled because of osteoarthritis,  
7 history of carpal tunnel syndrome, diabetes mellitus, and  
8 obesity. (AR 20.) Her application was denied on December 15,  
9 2010. (AR 57.) Plaintiff requested reconsideration (AR 63), and  
10 on April 11, 2011, her application was denied again (AR 64-68).

11 She then requested a hearing before an Administrative Law  
12 Judge. (AR 70-71.) A hearing was held on November 21, 2011, at  
13 which Plaintiff, who was represented by counsel, testified. (AR  
14 38-51.) A vocational expert also testified. (AR 46-49.) On  
15 December 15, 2011, the ALJ issued a written decision finding  
16 Plaintiff not disabled. (AR 15-25.) On February 8, 2012,  
17 Plaintiff requested review of the ALJ's decision (AR 14); on  
18 August 1, she submitted additional medical evidence for the  
19 Appeals Council to review (AR 261-63). On August 7, 2013, the  
20 Appeals Council considered the additional evidence, a two-page  
21 Residual Functional Capacity questionnaire filled out by  
22 Plaintiff's treating doctor in June 2012, but denied Plaintiff's

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24 <sup>1</sup>Although Plaintiff listed three previous jobs, including  
25 "[s]alesperson," on her disability report (AR 136), at the hearing  
26 she testified that she was never a salesperson (AR 48) and that  
"the only type of work" she had performed was "data entry" (AR 42).

27 <sup>2</sup>In her disability report, Plaintiff wrote that she stopped  
28 working on June 13, 2009, "because of [her] conditions" (AR 135)  
but testified at the hearing that she stopped because she was "laid  
off" (AR 40).

1 request for review. (AR 1-3.) This action followed.

2 **III. STANDARD OF REVIEW**

3 Under 42 U.S.C. § 405(g), a district court may review the  
4 Commissioner's decision to deny benefits. The ALJ's findings and  
5 decision should be upheld if they are free of legal error and  
6 supported by substantial evidence based on the record as a whole.  
7 § 405(g); Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra  
8 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial  
9 evidence means such evidence as a reasonable person might accept  
10 as adequate to support a conclusion. Richardson, 402 U.S. at  
11 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).  
12 It is more than a scintilla but less than a preponderance.  
13 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.  
14 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether  
15 substantial evidence supports a finding, the reviewing court  
16 "must review the administrative record as a whole, weighing both  
17 the evidence that supports and the evidence that detracts from  
18 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,  
19 720 (9th Cir. 1996). "If the evidence can reasonably support  
20 either affirming or reversing," the reviewing court "may not  
21 substitute its judgment" for that of the Commissioner. Id. at  
22 720-21.

23 **IV. THE EVALUATION OF DISABILITY**

24 People are "disabled" for purposes of receiving Social  
25 Security benefits if they are unable to engage in any substantial  
26 gainful activity owing to a physical or mental impairment that is  
27 expected to result in death or which has lasted, or is expected  
28 to last, for a continuous period of at least 12 months. 42

1 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257  
2 (9th Cir. 1992).

3 A. The Five-Step Evaluation Process

4 The ALJ follows a five-step sequential evaluation process in  
5 assessing whether a claimant is disabled. 20 C.F.R.

6 § 404.1520(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th  
7 Cir. 1995) (as amended Apr. 9, 1996). In the first step, the  
8 Commissioner must determine whether the claimant is currently  
9 engaged in substantial gainful activity; if so, the claimant is  
10 not disabled and the claim must be denied. § 404.1520(a)(4)(i).

11 If the claimant is not engaged in substantial gainful activity,  
12 the second step requires the Commissioner to determine whether  
13 the claimant has a "severe" impairment or combination of

14 impairments significantly limiting her ability to do basic work  
15 activities; if not, a finding of not disabled is made and the  
16 claim must be denied. § 404.1520(a)(4)(ii). If the claimant has

17 a "severe" impairment or combination of impairments, the third  
18 step requires the Commissioner to determine whether the

19 impairment or combination of impairments meets or equals an  
20 impairment in the Listing of Impairments ("Listing") set forth at  
21 20 C.F.R., Part 404, Subpart P, Appendix 1; if so, disability is  
22 conclusively presumed and benefits are awarded.

23 § 404.1520(a)(4)(iii). If the claimant's impairment or  
24 combination of impairments does not meet or equal an impairment  
25 in the Listing, the fourth step requires the Commissioner to  
26 determine whether the claimant has sufficient residual functional  
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1 capacity ("RFC")<sup>3</sup> to perform her past work; if so, the claimant  
2 is not disabled and the claim must be denied.  
3 § 404.1520(a)(4)(iv). The claimant has the burden of proving she  
4 is unable to perform past relevant work. Drouin, 966 F.2d at  
5 1257. If the claimant meets that burden, a prima facie case of  
6 disability is established. Id. If that happens or if the  
7 claimant has no past relevant work, the Commissioner then bears  
8 the burden of establishing that the claimant is not disabled  
9 because she can perform other substantial gainful work available  
10 in the national economy. § 404.1520(a)(4)(v). That  
11 determination comprises the fifth and final step in the  
12 sequential analysis. § 404.1520; Lester, 81 F.3d at 828 n.5;  
13 Drouin, 966 F.2d at 1257.

14 B. The ALJ's Application of the Five-Step Process

15 At step one, the ALJ found that Plaintiff had not engaged in  
16 any substantial gainful activity since June 13, 2009, the alleged  
17 onset date. (AR 20.) At step two, he concluded that Plaintiff  
18 had the severe impairments of "osteoarthritis, history of carpal  
19 tunnel syndrome, diabetes mellitus, and obesity." (Id.) At step  
20 three, he determined that Plaintiff's impairments did not meet or  
21 medically equal any of the impairments in the Listing. (Id.) At  
22 step four, he found that Plaintiff was able to perform a full  
23 range of light work at all exertional levels. (AR 21.) The ALJ  
24 specifically rejected Plaintiff's complaints of pain because she  
25 had received only "conservative treatment for joint pain and  
26 \_\_\_\_\_

27 <sup>3</sup>RFC is what a claimant can do despite existing exertional and  
28 nonexertional limitations. 20 C.F.R. § 404.1545; see Cooper v.  
Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 diabetes" (id.) and because she was "not consistent in her  
2 reports to her medical providers and her allegations" (id.).  
3 Plaintiff has not challenged that ruling. (J. Stip. at 3.)  
4 Based on the VE's testimony, the ALJ concluded that Plaintiff  
5 could perform her past relevant work as an appointment clerk and  
6 a data-entry clerk. (AR 22.) Accordingly, he determined that  
7 Plaintiff was not disabled. (AR 18.)

8 **v. DISCUSSION**

9 The New Evidence Submitted to the Appeals Council Does Not  
10 Warrant Reversal

11 Plaintiff alleges that the additional evidence she submitted  
12 to the Appeals Council renders the ALJ's RFC assessment  
13 unsupported by substantial evidence for the period from July 7,  
14 2011, through December 15, 2011, the date of the ALJ's decision.  
15 (J. Stip. at 4-6.) Reversal is not warranted.

16 A. Applicable law

17 A district court must uphold an ALJ's RFC assessment when  
18 the ALJ has applied the proper legal standard and substantial  
19 evidence in the record as a whole supports the decision. Bayliss  
20 v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005). The ALJ must  
21 consider all the medical evidence in the record and "explain in  
22 [his] decision the weight given to . . . [the] opinions from  
23 treating sources, nontreating sources, and other nonexamining  
24 sources." 20 C.F.R. § 404.1527(e)(2)(ii); see also  
25 § 404.1545(a)(1) ("We will assess your residual functional  
26 capacity based on all the relevant evidence in your case  
27 record."); SSR 96-8p, 1996 WL 374184, at \*2 (July 2, 1996) (RFC  
28 must be "based on all of the relevant evidence in the case

1 record"). In making an RFC determination, the ALJ may consider  
2 those limitations for which there is support in the record and  
3 need not consider properly rejected evidence or subjective  
4 complaints. See Bayliss, 427 F.3d at 1217 (upholding ALJ's RFC  
5 determination because "the ALJ took into account those  
6 limitations for which there was record support that did not  
7 depend on [claimant's] subjective complaints"); Batson v. Comm'r  
8 of Soc. Sec. Admin., 359 F.3d 1190, 1197 (9th Cir. 2004) (ALJ not  
9 required to incorporate into RFC findings from treating-physician  
10 opinions that were "permissibly discounted").

11 Moreover, Social Security Administration regulations "permit  
12 claimants to submit new and material evidence to the Appeals  
13 Council and require the Council to consider that evidence in  
14 determining whether to review the ALJ's decision, so long as the  
15 evidence relates to the period on or before the ALJ's decision."  
16 Brewes v. Comm'r of Soc. Sec. Admin., 682 F.3d 1157, 1162 (9th  
17 Cir. 2012); see also 20 C.F.R. § 404.970(b). "[W]hen the Appeals  
18 Council considers new evidence in deciding whether to review a  
19 decision of the ALJ, that evidence becomes part of the  
20 administrative record, which the district court must consider  
21 when reviewing the Commissioner's final decision for substantial  
22 evidence." Brewes, 682 F.3d at 1163; accord Taylor v. Comm'r of  
23 Soc. Sec. Admin., 659 F.3d 1228, 1232 (9th Cir. 2011); see also  
24 Borrelli v. Comm'r of Soc. Sec., \_\_ F. App'x \_\_, 2014 WL 1492736,  
25 at \*1 (Apr. 17, 2014) (remand necessary when "reasonable  
26 possibility" exists that "the new evidence might change the  
27 outcome of the administrative hearing").

1           B.    Relevant facts<sup>4</sup>

2           The medical evidence of record from February 8, 2007, to May  
3 13, 2010, demonstrates that Plaintiff visited Genesis Medical  
4 Clinic for routine medical check-ups. (AR 209-33.) Plaintiff's  
5 treatment plan consisted of prescribed medication, primarily for  
6 diabetes, hypertension, heart disease, and obesity. (Id.)

7           On December 13, 2010, medical consultant Dr. Walter W. Bell,  
8 who specialized in internal medicine,<sup>5</sup> reviewed Plaintiff's  
9 medical records and completed a Physical Residual Functional  
10 Capacity Assessment. (AR 234-41.) Dr. Bell noted Plaintiff's  
11 diagnoses as carpal tunnel syndrome, diabetes, and obesity. (AR  
12 234.) He determined that she could lift and carry 50 pounds  
13 occasionally and 25 pounds frequently; stand and walk for about  
14 six hours and sit for about six hours in an eight-hour workday;  
15 and push and pull unlimitedly. (AR 235.) Dr. Bell also noted  
16 that Plaintiff's medical records showed that she "denied joint  
17 pain, muscle pain, or back pain" and had "no joint restriction";  
18 her "extremities revealed no edema or foot ulcers"; and her  
19 respiratory rate and rhythm were normal. (AR 235-36.) Dr. Bell  
20 found that Plaintiff had no postural, manipulative, visual,  
21 communicative, or environmental limitations. (AR 234-41.) The  
22 ALJ gave "significant weight" to Dr. Bell's opinion because it

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24           <sup>4</sup>Because the parties are familiar with the facts, they are  
summarized here only to the extent relevant to the contested issue.

25           <sup>5</sup>Dr. Bell's electronic signature includes a medical specialty  
26 code of 19, indicating internal medicine. (AR 241); see Program  
27 Operations Manual System (POMS) DI 26510.089, U.S. Soc. Sec. Admin.  
(Oct. 25, 2011), <http://policy.ssa.gov/poms.nsf/lnx/0426510089>;  
28 POMS DI 26510.090, U.S. Soc. Sec. Admin. (Aug. 29, 2012),  
<http://policy.ssa.gov/poms.nsf/lnx/0426510090>.



1 was "consistent with the medical evidence of record." (AR 22.)

2 Dr. Donald Hemphill treated Plaintiff from May 11 to August  
3 4, 2011.<sup>6</sup> (AR 243-58.) On May 11, 2011, Dr. Hemphill noted that  
4 Plaintiff's hypertension was in "poor control" and prescribed  
5 medication. (AR 249.) On May 27, 2011, he reviewed Plaintiff's  
6 lab results; listed her diagnoses as diabetes, hypertension, and  
7 high cholesterol; and refilled her medications. (AR 247.) On  
8 July 7, 2011, he performed an annual physical exam, reviewed  
9 Plaintiff's previous lab reports, and listed Plaintiff's  
10 conditions as decreased thyroid functions, arthritis of the knees  
11 and right hip, hypertension, diabetes, and high cholesterol. (AR  
12 246.) He listed her medications as Carvedilol,<sup>7</sup> Levothyroxine,<sup>8</sup>

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22 <sup>6</sup>Parts of Dr. Hemphill's treatment notes are illegible.

23 <sup>7</sup>Carvedilol is a beta-blocker used to treat heart failure and  
24 high blood pressure. Carvedilol, MedlinePlus, <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a697042.html> (last revised Aug. 15,  
25 2013).

26 <sup>8</sup>Levothyroxine, a thyroid hormone, is used to treat  
27 hypothyroidism, a condition in which the thyroid gland does not  
28 produce enough thyroid hormone. Levothyroxine, MedlinePlus,  
<http://www.nlm.nih.gov/medlineplus/druginfo/meds/a682461.html> (last revised Aug. 15, 2013).

1 Metformin,<sup>9</sup> Lisinopril,<sup>10</sup> and Pravastatin.<sup>11</sup> (AR 246; see also AR  
2 243-44, 247 (listing Plaintiff's medications).) On July 11,  
3 2011, Dr. Hemphill reviewed lab results and prescribed  
4 medication. (AR 244.) On August 4, 2011, he discussed results  
5 of previously ordered tests, prescribed medication, requested a  
6 colonoscopy and eye examination, and recommended a return  
7 appointment in two months. (AR 243.)

8 On December 15, 2011, the ALJ found Plaintiff not disabled.  
9 (AR 18-22.) In doing so, he noted that Plaintiff received only  
10 "sparse" and "conservative" treatment from Genesis Medical Clinic  
11 and Dr. Hemphill for her allegedly disabling conditions, in the  
12 form of medication for joint pain and diabetes. (AR 21.) The  
13 ALJ gave "significant weight" to Dr. Bell's assessment that  
14 Plaintiff could perform work at the medium exertional level  
15 "because it [was] consistent with the medical evidence of  
16 record." (AR 22.) Nevertheless, the ALJ ultimately concluded

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21 <sup>9</sup>Metformin is used alone or with other medications, including  
22 insulin, to treat type 2 diabetes. Metformin, MedlinePlus,  
23 <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a696005.html> (last  
revised Feb. 15, 2014).

24 <sup>10</sup>Lisinopril is used alone or in combination with other  
25 medications to treat high blood pressure. Lisinopril, MedlinePlus,  
26 <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a692051.html> (last  
updated Sept. 15, 2012).

27 <sup>11</sup>Pravastatin is a statin used to reduce the amount of  
28 cholesterol and other fatty substances in the blood. Pravastatin,  
MedlinePlus, <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a692025.html> (last revised May 15, 2013).

1 that Plaintiff was limited to light work,<sup>12</sup> in consideration of  
2 her allegations of various limitations. (Id.)

3 Plaintiff requested review of the ALJ's decision and  
4 submitted an additional medical record to the Appeals Council, a  
5 two-page check-off RFC questionnaire completed on June 20, 2012,  
6 by treating physician Dr. Hemphill. (AR 262-63.) The Council  
7 reviewed the new evidence and ordered that it be made part of the  
8 administrative record (AR 5) but "found that this information  
9 does not provide a basis for changing the [ALJ's] decision" (AR  
10 2).

11 In the questionnaire, Dr. Hemphill concluded, in contrast to  
12 Dr. Bell's RFC assessment (AR 234-41), that Plaintiff could sit  
13 less than 30 minutes and stand or walk less than 30 minutes at a  
14 time and could sit less than two hours and stand or walk less  
15 than two hours in an eight-hour day (AR 262). He found that  
16 Plaintiff could rarely lift up to 10 pounds and never more than  
17 that. (Id.) Plaintiff could rarely use her hands for handling,  
18 pushing, pulling, or fine manipulation and had poor manual and  
19 finger dexterity. (Id.) Dr. Hemphill found that Plaintiff could  
20 never bend, stoop, squat, crawl, crouch, or kneel and could  
21 rarely reach up or forward. (Id.) As to all of these  
22 limitations, Dr. Hemphill left blank the spaces in which to write

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24 <sup>12</sup>"Light work" involves "lifting no more than 20 pounds at a  
25 time with frequent lifting or carrying of objects weighing up to 10  
26 pounds." § 404.1567(b). "Even though the weight lifted may be  
27 very little, a job is in this category when it requires a good deal  
28 of walking or standing, or when it involves sitting most of the  
time with some pushing and pulling of arm or leg controls." Id.  
"To be considered capable of performing a full or wide range of  
light work, [a claimant] must have the ability to do substantially  
all of these activities." Id.

1 what the "[l]imitations [were] due to." (Id.)

2 He also noted in the RFC questionnaire that Plaintiff could  
3 not use either foot for operating foot controls because of foot  
4 and ankle pain. (AR 263.) Dr. Hemphill found that because of  
5 joint pain, Plaintiff could never drive or tolerate exposure to  
6 unprotected heights, moving machinery, marked temperature  
7 changes, or irritants and could rarely tolerate noise. (Id.) As  
8 objective signs of pain, Dr. Hemphill listed "joint deformity,"  
9 "x-ray," and "muscle spasm." (Id.) He stated that Plaintiff had  
10 "major pain [and] limitation of motion of RT hip, RT arm  
11 (entire)- RT thumb (no grip)." (Id.) He estimated Plaintiff's  
12 pain to be "marked," meaning that it caused "serious limitations  
13 in activities." (Id.) Lastly, Dr. Hemphill concluded that July  
14 7, 2011, was the earliest date that such limitations could have  
15 existed. (Id.)

16 C. Discussion

17 Plaintiff concedes that the ALJ's characterization of the  
18 medical record as "containing sparse treatment" was an "accurate  
19 summation of the record as a whole" and thus agrees with the  
20 ALJ's determination that Plaintiff was not disabled at any time  
21 up to July 7, 2011. (J. Stip. at 5.) Plaintiff argues, however,  
22 that the introduction of additional evidence, namely, Dr.  
23 Hemphill's questionnaire, effectively created "two discrete  
24 periods" in her medical history. (Id. at 5-6.) Plaintiff argues  
25 that the second period, running from July 7, 2011, until the  
26 ALJ's determination on December 15, 2011, requires a new inquiry  
27 from the ALJ and warrants remand. (Id.) For the reasons stated  
28 below, it does not.

1 Remand is not necessary because Dr. Hemphill's two-page  
2 questionnaire (AR 262-63) did nothing to undermine either of the  
3 ALJ's two stated reasons for rejecting Plaintiff's allegations  
4 and finding her not disabled: she had received only conservative  
5 treatment and had made inconsistent statements (AR 21-22). See  
6 Boyd v. Colvin, 524 F. App'x 334, 336 (9th Cir. 2013) (remand not  
7 warranted when new evidence did not "sufficiently undermine[]"  
8 ALJ's ruling).

9 After reviewing the evidence, the ALJ accurately found that  
10 Plaintiff's treatment was "conservative in nature" because Dr.  
11 Hemphill's treatment notes showed that Plaintiff had only  
12 "received medication" to treat her allegedly disabling  
13 conditions, and he found "no evidence" that Plaintiff's  
14 conditions "caused significant . . . complications." (AR 21.)  
15 Dr. Hemphill's questionnaire did not indicate or discuss any new  
16 or additional treatment of any kind, conservative or not. (AR  
17 262-63); compare Lapeirre-Gutt v. Astrue, 382 F. App'x 662, 664  
18 (9th Cir. 2010) (treatment with narcotic pain medication,  
19 occipital nerve blocks, trigger-point injections, and cervical-  
20 fusion surgery not conservative).

21 Similarly, Dr. Hemphill's questionnaire did not provide any  
22 additional evidence to undermine the ALJ's finding that Plaintiff  
23 "[was] not consistent in her reports . . . and her allegations"  
24 because she had sometimes denied "joint or muscle pain and any  
25 joint restriction." (AR 21 (citing AR 211).) The check-off  
26 questionnaire simply stated Dr. Hemphill's conclusions regarding  
27 Plaintiff's conditions, with virtually no explanation. (AR 262-  
28 63.)

1           Thus, Dr. Hemphill's questionnaire did not render the ALJ's  
2 RFC assessment unsupported by substantial evidence. See Brewes,  
3 682 F.3d at 1163. Indeed, Dr. Hemphill's opinion of Plaintiff's  
4 condition was unsupported by his own treatment notes, which  
5 contained minimal, largely unrelated findings and showed  
6 conservative treatment. (Compare AR 262-63 (Dr. Hemphill's  
7 questionnaire) with AR 243-46 (Dr. Hemphill's treatment notes));  
8 see 20 C.F.R. § 404.1527(c)(2)(ii) (in assessing treating  
9 doctor's opinion, ALJ may consider "the treatment the source has  
10 provided"); Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir.  
11 2001) (ALJ permissibly rejected treating doctor's conclusion that  
12 claimant was disabled when it conflicted with, among other  
13 things, the doctor's prescribed "conservative course of  
14 treatment"). Moreover, medical evidence relevant to the period  
15 in dispute consisted of only three treatment notes, dated July 7,  
16 July 11, and August 4, 2011, and they contained minimal findings.  
17 (See AR 243-46); see also Orn v. Astrue, 495 F.3d 625, 631 (9th  
18 Cir. 2007) (factors in assessing treating physician's opinion  
19 include length of treatment relationship, frequency of  
20 examination, and nature and extent of treatment relationship);  
21 accord 20 C.F.R. § 404.1527(c)(2).

22           Additionally, although Dr. Hemphill's two-page check-off  
23 questionnaire contained conclusions contradicting the medical  
24 evidence of record and Dr. Bell's RFC assessment, it did not  
25 provide any explanation to support those conclusions. (AR 262-  
26 63); see Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002)  
27 (ALJ "need not accept the opinion of any physician, including a  
28 treating physician, if that opinion is brief, conclusory, and

1 inadequately supported by clinical findings"); accord Batson, 359  
2 F.3d at 1195; see also De Guzman v. Astrue, 343 F. App'x 201, 209  
3 (9th Cir. 2009) (ALJ was "free to reject" doctor's check-off  
4 report that did not explain basis for conclusion); Murray v.  
5 Heckler, 722 F.2d 499, 501 (9th Cir. 1983) (expressing preference  
6 for individualized medical opinions over check-off reports); Bray  
7 v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1227-28 (9th Cir.  
8 2009) (upholding RFC determination when ALJ relied on  
9 state-agency physician's opinion over that of treating  
10 physician). Indeed, Dr. Hemphill either left blank the questions  
11 in the questionnaire where he could explain his conclusions or,  
12 as to some limitations, stated that they were based on  
13 Plaintiff's alleged joint pain and limitation of motion. (AR  
14 243-58, 262-63.) But the ALJ specifically rejected Plaintiff's  
15 claims of disabling pain, a finding Plaintiff has not challenged.  
16 (J. Stip. at 3); see Tonapetyan v. Halter, 242 F.3d 1144, 1149  
17 (9th Cir. 2001) (when ALJ properly discounted claimant's  
18 credibility, he was "free to disregard" doctor's opinion that was  
19 premised on claimant's subjective complaints). And although Dr.  
20 Hemphill cited x-ray, joint deformity, and muscle spasm as  
21 "objective" signs of Plaintiff's pain (AR 263), the record  
22 contains no x-ray results or notations of joint deformity or  
23 muscle spasm (AR 243-58). See Valentine v. Comm'r, Soc. Sec.  
24 Admin., 574 F.3d 685, 692-93 (9th Cir. 2009) (contradiction  
25 between treating physician's opinion and his treatment notes  
26 constitutes specific and legitimate reason for rejecting treating  
27 physician's opinion).

28 Plaintiff nevertheless argues that Dr. Hemphill's

1 determination that July 7, 2011, was the effective date of her  
2 limitations "correlat[es]" with laboratory abnormalities in the  
3 record. (J. Stip. at 5.) Dr. Hemphill, however, did not cite  
4 any laboratory abnormalities in support of his assessment. (AR  
5 262-63.) Indeed, whereas Dr. Hemphill listed joint pain and  
6 limitation of motion as the reason for Plaintiff's restricted  
7 functioning (AR 263), the "abnormalities" noted in the lab  
8 results arose from, for example, low HDL cholesterol (AR 254);  
9 low white and red blood-cell, hemoglobin, hematocrit, and  
10 neutrophils levels (AR 253); and elevated Alc, which was  
11 "consistent with diabetes" (*id.*).

12 Because Dr. Hemphill's opinion does not render the ALJ's RFC  
13 assessment unsupported by substantial evidence, remand is not  
14 warranted. See Bayliss, 427 F.3d at 1217; Marin v. Astrue, No.  
15 CV 11-09331 AJW, 2012 WL 5381374, at \*6 (C.D. Cal. Oct. 31, 2012)  
16 (declining to reverse when new evidence submitted to Appeals  
17 Council "does not alter the conclusion that the ALJ's decision  
18 was supported by substantial evidence in the record as a  
19 whole").<sup>13</sup>

## 20 VI. CONCLUSION

21 Consistent with the foregoing, and pursuant to sentence four  
22


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23  
24 <sup>13</sup>Dr. Hemphill's questionnaire was dated June 20, 2012, and  
25 stated that Plaintiff's limitations began at the earliest on July  
26 7, 2011. (AR 263.) Nothing in it, however, stated that those  
27 limitations "[could] be expected to result in death or [] [have]  
28 lasted or [could] be expected to last for a continuous period of  
not less than 12 months," which Plaintiff must show to be  
considered "disabled" for purposes of receiving Social Security  
benefits. See 42 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966  
F.2d 1255, 1257 (9th Cir. 1992).



1 of 42 U.S.C. § 405(g),<sup>14</sup> IT IS ORDERED that judgment be entered  
2 AFFIRMING the decision of the Commissioner and dismissing this  
3 action with prejudice. IT IS FURTHER ORDERED that the Clerk  
4 serve copies of this Order and the Judgment on counsel for both  
5 parties.

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10 DATED: July 24, 2014

  
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12 JEAN ROSENBLUTH  
13 U.S. Magistrate Judge  
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26 <sup>14</sup>This sentence provides: "The [district] court shall have  
27 power to enter, upon the pleadings and transcript of the record, a  
28 judgment affirming, modifying, or reversing the decision of the  
Commissioner of Social Security, with or without remanding the  
cause for a rehearing."