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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARTHA PATRICIA ARANDA,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security
Administration,

Defendant.

Case No. CV 14-2147-SP

MEMORANDUM OPINION AND
ORDER

I.

INTRODUCTION

On March 25, 2014, plaintiff Martha Patricia Aranda filed a complaint against the Commissioner of the Social Security Administration (“Commissioner”), seeking a review of a denial of a period of disability, disability insurance benefits (“DIB”), and supplemental security income (“SSI”). Both plaintiff and defendant have consented to proceed for all purposes before the assigned Magistrate Judge pursuant to 28 U.S.C. § 636(c). The court deems the matter suitable for adjudication without oral argument.

Plaintiff presents one issue for decision: whether the administrative law

1 judge (“ALJ”) properly considered the opinions of three of plaintiff’s treating
2 physicians. Memorandum in Support of Plaintiff’s Complaint (“P. Mem.”) at 2-6;
3 Memorandum in Support of Defendant’s Answer (“D. Mem.”) at 2-9.

4 Having carefully studied, inter alia, the parties’ moving papers, the
5 Administrative Record (“AR”), and the decision of the ALJ, the court concludes
6 that, as detailed herein, the ALJ properly considered the opinions of plaintiff’s
7 treating physicians. Consequently, the court affirms the decision of the
8 Commissioner denying benefits.

9 II.

10 FACTUAL AND PROCEDURAL BACKGROUND

11 Plaintiff, who was forty-three years old on her alleged disability onset date,
12 is a high school graduate who completed two years of college. AR at 46, 73, 155,
13 181. She has past relevant work as an instructor, specifically as a community
14 services teacher. *Id.* at 25, 65, 182, 188.

15 On May 23, 2011, plaintiff filed applications for a period of disability, DIB,
16 and SSI due to lung disease. *Id.* at 155, 161, 177, 181. The Commissioner denied
17 plaintiff’s applications, after which she filed a request for a hearing.¹ *Id.* at 75-82.

18 On July 18, 2012, plaintiff, represented by counsel, appeared and testified at
19 a hearing before the ALJ. *Id.* at 43-64, 70-71. The ALJ also heard testimony from
20 Jeanine Metilidi, a vocational expert. *Id.* at 64-70. On October 23, 2012, the ALJ
21 denied plaintiff’s claims for benefits. *Id.* at 15-30.

22 Applying the well-known five-step sequential evaluation process, the ALJ
23 found, at step one, that plaintiff had not engaged in substantial gainful activity
24 since April 15, 2011, the alleged onset date. *Id.* at 26.

25 At step two, the ALJ found that plaintiff suffered from the following severe
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27 ¹ Plaintiff’s case was not eligible for reconsideration by the Commissioner
28 because it was designated as a prototype case. *See* AR at 73-74.

1 impairments: interstitial lung disease/pulmonary fibrosis and hypothyroidism. *Id.*

2 At step three, the ALJ found that plaintiff's impairments, individually or in
3 combination, did not meet or medically equal one of the listed impairments set
4 forth in 20 C.F.R. Part 404, Subpart P, Appendix 1. *Id.*

5 The ALJ then assessed plaintiff's residual functional capacity ("RFC"),² and
6 determined that plaintiff had the RFC to perform sedentary work with the
7 limitations that plaintiff can: lift, carry, push, and pull up to ten pounds
8 occasionally and frequently; stand/walk at least two hours in an eight-hour
9 workday; sit about six hours in an eight-hour workday; frequently balance and
10 climb ramps and stairs; occasionally climb ladders, ropes, and scaffolds; and
11 occasionally stoop, kneel, crouch, and crawl. *Id.* at 26-27. Plaintiff also must
12 avoid concentrated exposure to fumes, odors, dusts, gases, and poor ventilation.
13 *Id.* at 27.

14 The ALJ found, at step four, that plaintiff was incapable of performing her
15 past relevant work. *Id.* at 28.

16 At step five, the ALJ found that there were jobs that exist in significant
17 numbers in the national economy that plaintiff could perform, including
18 receptionist and customer service clerk. *Id.* at 29. Consequently, the ALJ
19 concluded that plaintiff did not suffer from a disability as defined by the Social
20 Security Act. *Id.* at 29-30.

21 Plaintiff filed a timely request for review of the ALJ's decision, which was
22 denied by the Appeals Council. *Id.* at 1-4. The ALJ's decision stands as the final
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24 ² Residual functional capacity is what a claimant can do despite existing
25 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152,
26 1155-56 n.5-7 (9th Cir. 1989). "Between steps three and four of the five-step
27 evaluation, the ALJ must proceed to an intermediate step in which the ALJ
28 assesses the claimant's residual functional capacity." *Massachi v. Astrue*, 486
F.3d 1149, 1151 n.2 (9th Cir. 2007).

1 decision of the Commissioner.

2 **III.**

3 **STANDARD OF REVIEW**

4 This court is empowered to review decisions by the Commissioner to deny
5 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security
6 Administration must be upheld if they are free of legal error and supported by
7 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001).
8 But if the court determines that the ALJ’s findings are based on legal error or are
9 not supported by substantial evidence in the record, the court may reject the
10 findings and set aside the decision to deny benefits. *Aukland v. Massanari*, 257
11 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*, 242 F.3d 1144, 1147
12 (9th Cir. 2001).

13 “Substantial evidence is more than a mere scintilla, but less than a
14 preponderance.” *Aukland*, 257 F.3d at 1035. Substantial evidence is such
15 “relevant evidence which a reasonable person might accept as adequate to support
16 a conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276
17 F.3d at 459. To determine whether substantial evidence supports the ALJ’s
18 finding, the reviewing court must review the administrative record as a whole,
19 “weighing both the evidence that supports and the evidence that detracts from the
20 ALJ’s conclusion.” *Mayes*, 276 F.3d at 459. The ALJ’s decision “cannot be
21 affirmed simply by isolating a specific quantum of supporting evidence.”
22 *Aukland*, 257 F.3d at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243
23 (9th Cir. 1998)). If the evidence can reasonably support either affirming or
24 reversing the ALJ’s decision, the reviewing court “may not substitute its
25 judgment for that of the ALJ.” *Id.* (quoting *Matney v. Sullivan*, 981 F.2d 1016,
26 1018 (9th Cir. 1992)).

1 IV.

2 DISCUSSION

3 Plaintiff argues that the ALJ failed to properly consider the opinion of three
4 of her treating physicians: Dr. Jyoti S. Datta, Dr. Rick F. Pospisil, and Dr. Zain
5 Vally. P. Mem. at 2-6. Specifically, plaintiff contends that the ALJ did not cite
6 specific and legitimate reasons supported by substantial evidence for rejecting the
7 doctors' consistent opinions that plaintiff was "at least temporarily disabled." *Id.*
8 at 2, 5.

9 In determining whether a claimant has a medically determinable
10 impairment, among the evidence the ALJ considers is medical evidence.
11 20 C.F.R. §§ 404.1527(b), 416.927(b). In evaluating medical opinions, the
12 regulations distinguish among three types of physicians: (1) treating physicians;
13 (2) examining physicians; and (3) non-examining physicians. 20 C.F.R.
14 §§ 404.1527(c), (e), 416.927(c), (e); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
15 1996) (as amended). "Generally, a treating physician's opinion carries more
16 weight than an examining physician's, and an examining physician's opinion
17 carries more weight than a reviewing physician's." *Holohan v. Massanari*, 246
18 F.3d 1195, 1202 (9th Cir. 2001); 20 C.F.R. §§ 404.1527(c)(1)-(2); 416.927(c)(1)-
19 (2). The opinion of the treating physician is generally given the greatest weight
20 because the treating physician is employed to cure and has a greater opportunity to
21 understand and observe a claimant. *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th
22 Cir. 1996); *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).

23 Nevertheless, the ALJ is not bound by the opinion of the treating physician.
24 *Smolen*, 80 F.3d at 1285. If a treating physician's opinion is uncontradicted, the
25 ALJ must provide clear and convincing reasons for giving it less weight. *Lester*,
26 81 F.3d at 830. If the treating physician's opinion is contradicted by other
27 opinions, the ALJ must provide specific and legitimate reasons supported by
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1 substantial evidence for rejecting it. *Id.* at 830. Likewise, the ALJ must provide
2 specific and legitimate reasons supported by substantial evidence in rejecting the
3 contradicted opinions of examining physicians. *Id.* at 830-31. The opinion of a
4 non-examining physician, standing alone, cannot constitute substantial evidence.
5 *Widmark v. Barnhart*, 454 F.3d 1063, 1067 n.2 (9th Cir. 2006); *Morgan v.*
6 *Comm'r*, 169 F.3d 595, 602 (9th Cir. 1999); *see also Erickson v. Shalala*, 9 F.3d
7 813, 818 n.7 (9th Cir. 1993).

8 **A. Medical History**

9 Prior to her alleged onset date of April 15, 2011, plaintiff was treated in the
10 San Pedro Peninsula Hospital emergency room on four occasions. AR at 18, 232-
11 88. Plaintiff was not diagnosed with or treated for lung disease on any of these
12 occasions. *Id.* at 18, 240, 250, 259, 277, 287, 288. On multiple occasions,
13 plaintiff was treated with antibiotics for infections and with an inhaler for
14 shortness of breath. *Id.* On the three occasions when plaintiff's blood oxygen
15 level was tested, it was found to be within normal limits while breathing room air.
16 *Id.* at 240, 259, 276.

17 On April 18, 2011 emergency room physicians diagnosed plaintiff with
18 interstitial lung disease, hypothyroidism, and mild anemia. *Id.* at 18, 294, 296,
19 312-14. Plaintiff was admitted to the hospital, and provided steroids, a nebulizer,
20 and oxygen. *Id.* at 18-19, 294. Plaintiff was released from the hospital on April
21 20, 2011 with steroids and supplemental oxygen to use at home because her
22 walking oxygen levels fell below normal levels during testing. *Id.* at 19, 315.
23 During an April 25, 2011 follow-up appointment, Dr. John Russo noted plaintiff's
24 diminished breath sounds and regular heartbeat. *Id.* at 19, 533. The doctor
25 recommended plaintiff seek an appointment with a pulmonary specialist and
26 prescribed portable oxygen. *Id.* at 19, 533.

27 Between April 26, 2011 and April 27, 2012 plaintiff was seen by several
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1 treating physicians including several emergency room physicians,³ primary care
2 physician Dr. John Russo, pulmonary specialist Dr. Jyoti S. Datta, and two
3 Workers' Compensation physicians: Dr. Rick F. Pospisil and Dr. Zain Vally. *Id.*
4 at 19-21, 226-31, 289-338, 346-538. In July 2011, Dr. Mehran Sourehnissani, a
5 Social Services doctor of internal medicine, examined plaintiff to evaluate her
6 Social Security disability claims. *Id.* at 339-45. In August 2011, plaintiff's
7 medical files were further analyzed by Dr. L.C. Chiang, who conducted a non-
8 examination Social Security case analysis. *Id.* at 346-52.

9 1. Dr. Jyoti S. Datta and the June 1, 2011 Handwritten Note

10 In May 2011, pulmonary specialist Dr. Datta ordered and analyzed several
11 medical tests. AR at 19, 223-24, 229-31. Dr. Datta diagnosed plaintiff with
12 moderate restrictive lung disease and severe diffusion impairment. *Id.* at 19, 223-
13 24, 229-31. Dr. Datta initially determined plaintiff could return to work on June 6,
14 2011. *Id.* at 19, 228. However, on June 1, 2011 Dr. Datta provided plaintiff with
15 a handwritten note indicating she was under the doctor's care, being treated with
16 oxygen, and was not to return to work for an additional three-month period. *Id.* at
17 19, 225-26.

18 During the months of June, July, and August 2011, plaintiff was examined
19 by two Workers' Compensation physicians and one Social Security physician. *Id.*
20 at 19, 339-91. Beginning in September 2011 and continuing through January
21 2012, plaintiff was examined approximately monthly by Dr. Datta and treated for
22 varying degrees of pulmonary disease or disorder. *Id.* at 20, 225-31, 393-401.

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25 ³ Two of plaintiff's emergency room visits during this period were not related
26 to pulmonary issues. AR at 19-21, 521-22, 467-71. Although her third visit, on
27 March 21, 2012, resulted in a continued diagnosis of pulmonary fibrosis and other
28 ailments, her tests showed no signs of acute distress, a blood oxygen level of 98-
Id. at 21, 409, 415, 417.

1 Although plaintiff was suffering from restrictive lung disease, by the end of
2 October 2011 her blood oxygen level was normal at 96% and her CT scan was
3 normal. *Id.* at 20, 400. In December 2011, plaintiff reported using oxygen only as
4 needed. *Id.*

5 2. Dr. Rick F. Pospisil and the June 20, 2011 Treating Physician’s Initial
6 Evaluation Report

7 Dr. Pospisil conducted an initial evaluation of plaintiff’s condition in
8 response to her separate Workers’ Compensation claim stemming from an
9 allegation that her health problems are a result of exposure to chemicals and dust
10 at her job. AR at 19, 384-91. The doctor’s initial evaluation placed plaintiff on
11 “temporary total disability” for thirty to forty-five days beginning on June 20,
12 2011. *Id.* at 19, 390-91. Dr. Pospisil transferred plaintiff to Dr. Zain Vally, a
13 Workers’ Compensation internist, “to aid in the diagnosis, prognosis, therapeutic
14 management, determination of medical stability, and permanent residual loss
15 and/or the examinee’s fitness to return to work.” *Id.* at 19, 389. Dr. Vally’s
16 findings are discussed further below.

17 3. Dr. Mehran Sourehnissani’s and Dr. L.C. Chiang’s July and August
18 2011 Social Security Evaluations

19 Dr. Mehran Sourehnissani’s July 2011 examination of plaintiff resulted in a
20 diagnosis of pulmonary fibrosis and hypothyroidism. AR at 339-45. The doctor
21 defined plaintiff’s RFC as

22 limited to lifting and carrying 20 pounds occasionally and
23 10 frequently. Standing and walking are limited to six hours
24 and sitting to six hours cumulatively. The claimant should
25 avoid exposure to dust, poorly ventilated areas, extreme
26 temperature changes and humidity.

27 *Id.* at 343; *see also id.* at 20.

1 Dr. L.C. Chiang's August 2011 Social Security case analysis of plaintiff's
2 medical history, which did not involve an examination, resulted in a slightly
3 different RFC. *Id.* at 346-50. Dr. Chiang determined that plaintiff could:

4 Occasionally lift and/or carry 10 pounds

5 Frequently lift and/or carry 10 pounds

6 Stand and/or walk (with normal breaks) for a total of

7 at least 2 hours in an 8-hour work day

8 Sit (with normal breaks) for a total of

9 about 6-hours in an 8-hour workday

10 Push and/or pull unlimited, other than shown for lift and/or carry

11 Frequently climb ramp/stairs and balancing

12 Occasionally climb ladder/rope/scaffolds

13 Occasionally stoop, kneel, crouch, and crawl

14 Act with no manipulative, visual, or communication limitations

15 Avoid concentrated exposure to fumes, order, dust, gasses,

16 poor ventilation, etc.

17 *Id.*; *see also id.* at 20. Dr. Chiang's report acknowledged that his conclusions are
18 "significantly different" from the conclusions drawn by some of plaintiff's treating
19 physicians. *Id.* at 350. Dr. Chiang found the conclusion of some of plaintiff's
20 treating physicians unsupported by evidence. *Id.* Dr. Chiang's final conclusion
21 that "[b]y 4/2012, the claimant at least should be able to do a sedentary work" was
22 based on the medical record's reflection of the improvement plaintiff's condition
23 was showing in response to medication. *Id.* at 347.

24 4. Dr. Zain Vally and the January 22, 2012 Primary Treating Physician's
25 Progress Report

26 Plaintiff was first referred to Dr. Vally by Dr. Pospisil in August 2011. AR
27 at 19, 389. Dr. Vally's initial evaluation resulted in a diagnosis of plaintiff's
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1 cushingoid appearance, fibrosis of the lungs, hypothyroidism, and unspecified
2 abdominal pain. *Id.* at 378. The status of plaintiff’s disability and work
3 restrictions was deferred. *Id.* at 19, 378-79. In January 2012, Dr. Vally
4 reexamined plaintiff for his primary treating physician’s progress report. *Id.* at
5 362. Plaintiff complained about “stress and anxiety,” abdominal pain, and
6 shortness of breadth. *Id.* at 362-63. Plaintiff experienced a weight gain of twenty-
7 three pounds since her initial exam. *Id.* at 365. The doctor’s diagnosis, however,
8 was unchanged from his initial report. *Id.* at 365. Plaintiff was placed on
9 Workers’ Compensation temporary total disability status. *Id.* Dr. Vally
10 recommended that plaintiff continue on steroids and oxygen. *Id.* at 366. In later
11 visits with other doctors, plaintiff’s heart and lungs tested with normal function
12 and appearance. *Id.* at 21, 409, 415, 417, 529; *see supra* n.3 (discussing plaintiff’s
13 March 12, 2012 emergency room visit).

14 **B. The ALJ’s Findings**

15 The ALJ’s summary and analysis of the medical evidence is not in dispute
16 with the exception of the judge’s rejection of plaintiff’s treating physicians’
17 classification of her disability. P. Mem. 2. The ALJ concluded that plaintiff
18 suffered from severe impairments of interstitial lung disease/pulmonary fibrosis
19 and hypothyroidism which prevented plaintiff from performing her past relevant
20 work as a community services teacher. AR at 26, 28. In defining plaintiff’s RFC,
21 the ALJ “g[a]ve weight to the residual functional capacity assessment from the
22 Disability Determination Services medical consultant,” Dr. Chiang, while
23 discounting the “*status designations* that the claimant was given for her Workers’
24 Compensation claim.” *Id.* at 22, 24 (emphasis added). Plaintiff contends the ALJ
25 improperly rejected her treating physician’s medical opinions by failing to
26 “carefully weigh[] and evaluate[] the substance” of the three opinions. The court
27 disagrees.

1 An “ALJ may not disregard a physician's medical opinion simply because it
2 was initially elicited in a state workers’ compensation proceeding, or because it is
3 couched in the terminology used in such proceedings.” *Booth v. Barnhart*, 181 F.
4 Supp. 2d 1099, 1105 (C.D. Cal. 2002) (citation omitted). But an ALJ is not bound
5 to accept or apply a Workers’ Compensation physician’s status designation, such
6 as temporary total disability, because such terms of art are “not equivalent to
7 Social Security disability terminology.” *Dawson v. Colvin*, 2014 WL 5420178, at
8 *5 (C.D. Cal. Oct. 23, 2014) (citing *Desrosiers v. Secretary of Health & Human*
9 *Services*, 846 F.2d 573, 576 (9th Cir. 1988); *Macri v. Chater*, 93 F.3d 530, 544
10 (9th Cir. 1996); *Booth*, 181 F. Supp. 2d at 1104); *see also* 20 C.F.R. § 404.1504.
11 An ALJ is required to “translate” such terms “into the corresponding Social
12 Security terminology in order to accurately assess the implications of those
13 opinions for the Social Security disability determination.” *Booth*, 181 F. Supp. 2d
14 at 1106 (citation omitted).

15 The ALJ may give less weight to a disability rating designated under an
16 alternative rating system, such as Workers’ Compensation, if the ALJ’s
17 determination is based on “persuasive, specific, valid reason[s]” supported by the
18 record. *See Berry v. Astrue*, 622 F.3d 1228, 1236 (9th Cir. 2010) (citations
19 omitted) (affirming an ALJ’s discounting of a VA disability rating in a Social
20 Security context). Contrary to plaintiff’s contention (P. Mem. 5.), an ALJ is not
21 required to “contact [p]laintiff’s treating physicians for further clarification” when
22 the treating physician’s opinion is clearly understood. *Mayes*, 276 F.3d at 459-60
23 (citation omitted). Nor does provision of a legally sufficient reason for
24 discounting or rejecting a medical opinion require the ALJ to recite the magic
25 words, “I reject this doctor’s opinion because.” *Magllanes v. Bowen*, 881 F.2d
26 747, 755 (9th Cir. 1989).

27 In the instant case, the ALJ noted the definition of disability under the
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1 Social Security Act differs substantially from the definition under Workers'
2 Compensation, and carefully weighed and evaluated the treating physician's
3 opinions in light of this definition. AR at 15, 22-24.

4 Disability [under the Social Security Act] is defined as the
5 inability to engage in any substantial activity by reason of any
6 medically determinable physical or mental impairment or
7 combination of impairments that can be expected to result in
8 death or that has lasted or can be expected to last for a
9 continuous period of not less than 12 months.

10 *Id.* at 15. The ALJ properly and accurately noted that the treating physicians'
11 designations of plaintiff as temporarily totally disabled or off work for purposes of
12 her Workers' Compensation claim do "not provide the necessary information or
13 evaluation required in connection with benefits under Social Security." *Id.* at 24;
14 *see Lilly v. Astrue*, 2012 WL 4364267, at *3 (C.D. Cal. Sept. 24, 2012) (reasoning
15 Workers' Compensation physician's determination of temporary total disability
16 indicated plaintiff could not return to her immediately preceding job, "not that
17 [plaintiff] was precluded from all substantial gainful activity"). Contrary to
18 plaintiff's contention, it was not error for the ALJ to give no weight to the
19 Workers' Compensation status designations on this basis.

20 Of course, as stated above, the ALJ was not permitted to disregard entirely
21 the Workers' Compensation treating physicians' opinions for this reason. But it is
22 clear from the record that the ALJ did not disregard their opinions. Instead, she
23 carefully considered them among the other medical evidence in the record in
24 determining whether plaintiff was disabled within the meaning of the Social
25 Security Act. *See* AR at 19-23. After a lengthy "consideration of the totality of
26 the evidence," and in light of the continuous twelve-month requirement, the ALJ
27 determined plaintiff had no ailment or treatment that causes "greater functional
28 limitations for any continuous period of 12 months" than the limitations presented

1 in Dr. Chiang's RFC. AR at 22.

2 Dr. Chiang's findings controvert plaintiff's treating physicians' reports. *Id.*
3 at 350. Therefore, in rejecting these opinions, the ALJ must provide specific and
4 legitimate reasons supported by substantial evidence. *Lester*, 81 F.3d at 830. The
5 ALJ's analysis reveals she rejected plaintiff's treating physicians' disability
6 findings within the Social Security context as not supported by objective medical
7 evidence, and instead accepted Dr. Chiang's non-examining assessment as
8 objectively supported by the record. *See* AR at 22-24, 27-28.

9 1. The Objective Record Does Not Support a Finding of Total Disability
10 Under the Social Security Act

11 An ALJ may discount the opinion of a treating physician when it lacks
12 support in the form of objective evidence and the physician's treatment notes fail
13 to provide medical evidence supporting the alleged limitation. *Batson v. Comm'r*
14 *Soc. Sec.*, 359 F.3d 1190, 1195 (9th Cir. 2004); *see Tommasetti v. Astrue*, 533 F.3d
15 1035, 1041 (9th Cir. 2008) (the incongruity between a physician's opinion and
16 treatment records is a specific and legitimate reason for rejecting the opinion).

17 The ALJ states plaintiff "did not present to any doctor, treating or
18 consulting, with the extreme physical and mental symptoms and functional
19 limitations she alleged for any continuous period of 12 months." AR at 27.
20 Specifically, the medical records do not support a finding of end organ damage;
21 frequent or prolonged episodes or chronic symptoms of rhinitis or sinusitis; heart
22 disease; chronic or incapacitating chest pain or rib aches; extreme diarrhea;
23 abdominal disease, defect, condition or syndrome; long-term symptoms of anemia;
24 primary sleep disorder such as obstructive sleep apnea or insomnia; a primary
25 fatigue or chronic fatigue syndrom; objective spinal, joint, soft tissue, or cartilage
26 abnormalities; obesity; limitations on daily living, social functioning, or
27 concentration, persistence, and pace; or any medically determined mental
28 impairment. *Id.* at 22-24.

1 Dr. Vally's August 2011 review of plaintiff's body systems revealed
2 pulmonary problems, but found plaintiff "does not experience chest pain, syncope,
3 palpitations, nausea, vomiting, diarrhea, constipation, blood in stool/urine, cough,
4 paroxysmal nocturnal dyspnea, vision changes, temperature intolerance, frequent
5 urination, fever, or night sweats." *Id.* at 363. In support of his disability
6 designation, Dr. Vally made no finding of mental illness, acute distress, severe
7 fatigue, or inability to ambulate with oxygen. *Id.* at 21, 364-66.

8 Neither Dr. Datta's nor Dr. Pospisil's temporary total disability diagnoses,
9 alone or in combination, spanned a twelve-month period. *Id.* at 19. Dr. Datta's
10 designation was limited to four months and Dr. Pospisil's was limited to a
11 maximum of 45 days. *Id.* Dr. Vally's January 22, 2012 progress report modifies
12 plaintiff's disability status from deferred to total temporary disability. AR at 21,
13 365. But as the ALJ notes, the report indicates that plaintiff's shortness of breath
14 is "improving with oxygen and steroid." *Id.* at 19, 363. Dr. Chiang's final
15 conclusion that "[b]y 4/2012, the claimant at least should be able to do a sedentary
16 work" was based on the medical record's reflection of the improvement plaintiff's
17 condition was showing in response to medication. *Id.* at 22, 347. "Impairments
18 that can be controlled effectively with medication are not disabling for the purpose
19 of determining eligibility for SSI benefits." *Warre v. Comm'r of Soc. Sec. Admin.*,
20 439 F.3d 1001, 1006 (9th Cir. 2006).

21 When plaintiff was examined in the emergency room on March 21, 2012,
22 her tests showed no signs of acute distress, a blood oxygen level of 98-99% on
23 room air, clear lungs, a clean chest x-ray, and a normal CT of the lungs. *Id.* at 21,
24 409, 415, 417. Although plaintiff requested a prescription for oxygen from Dr.
25 Russo on April 27, 2012, there are no notes or updated tests indicating oxygen was
26 medically necessary. *Id.* at 21-22, 50, 531. The medical records do not support a
27 finding that plaintiff was totally disabled under the Social Security Act, and
28 plaintiff's treating physicians' notes fail to provide medical evidence supporting a

1 diagnosis of extreme fatigue, muscle aches, and supplemental oxygen dependance
2 due to lung disease for any continuous twelve months period.

3 2. Dr. Chiang's Findings Are Supported in the Record by Substantial
4 Evidence

5 An ALJ may give weight to a non-examining physician's opinion when the
6 doctor's findings "are supported by other evidence and consistent with [the
7 record]." *Andrews v. Shalala*, 53 F.3d 1035, 1042 (9th Cir. 1995). "The opinions
8 of non-treating or non-examining physicians may also serve as substantial
9 evidence when the opinions are consistent with independent clinical findings or
10 other evidence in the record." *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir.
11 2002). But the opinion of a non-examining physician, standing alone, cannot
12 constitute substantial evidence. *Widmark*, 454 F.3d at 1067 n.2; *Morgan*, 169
13 F.3d at 602; *see also Erickson*, 9 F.3d at 818 n.7. Dr. Chiang's findings do not
14 stand alone; his conclusions are supported by the record and the internal medicine
15 examination conducted by Dr. Sourehnissani's. AR at 22-26, 28, 343.

16 Plaintiff showed no signs of distress during Dr. Sourehnissani's
17 examination. *Id.* at 19, 340. Her eyes, ears, nose, throat, and heart beat and
18 breathing all appeared normal. *Id.* at 19, 340-41. Her lungs were clear with
19 normal blood oxygen levels. *Id.* She walked normally and was able to mount and
20 dismount the examining table without difficulty. *Id.* at 19, 342. She had mild
21 cushingoid features as a result of her treatment with steroids and was diagnosed
22 with pulmonary fibrosis and hypothyroidism. *Id.* at 19, 342-43. After a complete
23 examination, Dr. Sourehnissani determined plaintiff could carry and lift twenty
24 pounds occasionally and stand or walk up to six hours in an eight-hour workday.
25 *Id.* 19, 25, 342-43.

26 After a review of plaintiff's medical history, Dr. Chiang's RFC was
27 somewhat more restrictive than Dr. Sourehnissani's. *Id.* at 20, 25, 346-52. Dr.
28 Chiang recommended limiting lifting and carrying to ten pounds and limiting

1 standing or walking to two hours in an eight-hour workday. *Id.* Dr. Chiang noted
2 tests in the record indicated plaintiff was responding to treatment and her
3 symptoms were improving. *Id.*

4 In sum, the ALJ translated the treating physician’s disability status
5 designations into corresponding Social Security terminology in order to accurately
6 assess the implications of the opinions in the context of plaintiff’s Social Security
7 claims. The ALJ provided specific and legitimate reasons supported by substantial
8 evidence for giving little weight to plaintiff’s treating physicians’ opinions, and
9 instead giving greater weight to Dr. Chiang’s opinion. Accordingly, the ALJ did
10 not err in rejecting the opinions of Dr. Datta, Dr. Pospisil, and Dr. Vally that
11 plaintiff was “at least temporarily disabled.”

12 V.

13 **CONCLUSION**

14 IT IS THEREFORE ORDERED that Judgment shall be entered
15 AFFIRMING the decision of the Commissioner denying benefits, and dismissing
16 this action with prejudice.

17
18 DATED: May 20, 2015



19
20 _____
SHERI PYM
United States Magistrate Judge