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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROSE MARY MIRANDA,)	Case No. CV 17-7616-JPR
)	
Plaintiff,)	
)	MEMORANDUM DECISION AND ORDER
v.)	AFFIRMING COMMISSIONER
)	
NANCY A. BERRYHILL, 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). The matter is before the Court on the parties' cross-motions for summary judgment. The Court has taken both motions under submission without oral argument. For the reasons stated below, the Commissioner's decision is affirmed.

1 **II. BACKGROUND**

2 Plaintiff was born in 1960. (Administrative Record ("AR")
3 60, 75.) She completed 10th grade (AR 69, 188) and worked as a
4 shipping and receiving clerk and restaurant shift leader (AR 52,
5 72, 188).

6 On September 6, 2013, Plaintiff applied for DIB, alleging
7 that she had been unable to work since April 7, 2009, because of
8 "bulged disk #2 [and] #5," "fractured tailbone," "back pain due
9 to back injury," and "hepatitis c." (AR 60.) After her
10 application was denied initially and on reconsideration (AR 89,
11 97), she requested a hearing before an Administrative Law Judge
12 (AR 102). A hearing was held on June 11, 2015, at which
13 Plaintiff, who was represented by counsel, testified, as did a
14 medical and a vocational expert. (See AR 44-59.) In a written
15 decision issued July 9, 2015, the ALJ found Plaintiff not
16 disabled. (AR 28-43.) Plaintiff sought Appeals Council review
17 (AR 22), which was denied on September 27, 2016 (AR 1-8). This
18 action followed.

19 **III. STANDARD OF REVIEW**

20 Under 42 U.S.C. § 405(g), a district court may review the
21 Commissioner's decision to deny benefits. The ALJ's findings and
22 decision should be upheld if they are free of legal error and
23 supported by substantial evidence based on the record as a whole.
24 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra
25 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
26 evidence means such evidence as a reasonable person might accept
27 as adequate to support a conclusion. Richardson, 402 U.S. at
28 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).

1 It is more than a scintilla but less than a preponderance.
2 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
3 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
4 substantial evidence supports a finding, the reviewing court
5 "must review the administrative record as a whole, weighing both
6 the evidence that supports and the evidence that detracts from
7 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
8 720 (9th Cir. 1998). "If the evidence can reasonably support
9 either affirming or reversing," the reviewing court "may not
10 substitute its judgment" for the Commissioner's. Id. at 720-21.

11 **IV. THE EVALUATION OF DISABILITY**

12 People are "disabled" for purposes of receiving Social
13 Security benefits if they are unable to engage in any substantial
14 gainful activity owing to a physical or mental impairment that is
15 expected to result in death or has lasted, or is expected to
16 last, for a continuous period of at least 12 months. 42 U.S.C.
17 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
18 1992).

19 A. The Five-Step Evaluation Process

20 The ALJ follows a five-step evaluation process to assess
21 whether a claimant is disabled. 20 C.F.R. § 404.1520(a)(4);
22 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995) (as
23 amended Apr. 9, 1996). In the first step, the Commissioner must
24 determine whether the claimant is currently engaged in
25 substantial gainful activity; if so, the claimant is not disabled
26 and the claim must be denied. § 404.1520(a)(4)(i).

27 If the claimant is not engaged in substantial gainful
28 activity, the second step requires the Commissioner to determine

1 whether the claimant has a "severe" impairment or combination of
2 impairments significantly limiting her ability to do basic work
3 activities; if not, the claimant is not disabled and her claim
4 must be denied. § 404.1520(a)(4)(ii).

5 If the claimant has a "severe" impairment or combination of
6 impairments, the third step requires the Commissioner to
7 determine whether the impairment or combination of impairments
8 meets or equals an impairment in the Listing of Impairments set
9 forth at 20 C.F.R. part 404, subpart P, appendix 1; if so,
10 disability is conclusively presumed. § 404.1520(a)(4)(iii).

11 If the claimant's impairment or combination of impairments
12 does not meet or equal an impairment in the Listing, the fourth
13 step requires the Commissioner to determine whether the claimant
14 has sufficient residual functional capacity ("RFC")¹ to perform
15 her past work; if so, she is not disabled and the claim must be
16 denied. § 404.1520(a)(4)(iv). The claimant has the burden of
17 proving she is unable to perform past relevant work. Drouin, 966
18 F.2d at 1257. If the claimant meets that burden, a prima facie
19 case of disability is established. Id. If that happens or if
20 the claimant has no past relevant work, the Commissioner then
21 bears the burden of establishing that the claimant is not
22 disabled because she can perform other substantial gainful work
23 available in the national economy. § 404.1520(a)(4)(v); Drouin,
24 966 F.2d at 1257. That determination comprises the fifth and

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26 ¹ RFC is what a claimant can do despite existing exertional
27 and nonexertional limitations. § 404.1545; see Cooper v.
28 Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). The
Commissioner assesses the claimant's RFC between steps three and
four. Laborin v. Berryhill, 867 F.3d 1151, 1153 (9th Cir. 2017)
(citing § 416.920(a)(4)).

1 final step in the sequential analysis. § 404.1520(a)(4)(v);
2 Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

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

4 At step one, the ALJ found that Plaintiff had not engaged in
5 substantial gainful activity between April 7, 2009, the alleged
6 onset date, and December 31, 2011, her date last insured. (AR
7 30.) At step two, he concluded that Plaintiff had severe
8 impairments of "hepatitis C, cholelithiasis,² gallstones,
9 degenerative disc disease of the lumbar spine, degenerative
10 changes of the left wrist, mild degenerative disc disease of the
11 cervical spine, personality disorder, and polysubstance abuse in
12 remission." (Id.) At step three, he determined that Plaintiff's
13 impairments did not meet or equal a listing. (AR 30-31.)

14 At step four, the ALJ found that Plaintiff had the RFC to
15 perform light work with additional limitations:

16 [She] can lift and/or carry 20 pounds occasionally and 10
17 pounds frequently; she can stand and/or walk for 6 hours
18 out of an 8-hour workday with regular breaks; she can sit
19 for 6 hours out of an 8-hour workday with regular breaks;
20 she can occasionally reach above shoulder level with the
21 bilateral upper extremity; she can occasionally finger,
22 handle, and grip with the left upper extremity; she can
23 occasionally operate foot pedals with the bilateral lower
24 extremity; she can occasionally kneel, stoop, crawl, and
25 crouch; she cannot climb ladders, ropes, or scaffolds;

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28 ² Cholelithiasis is the medical term for the presence of
stones in the gallbladder. Stedman's Medical Dictionary 339
(27th ed. 2000).

1 she cannot walk on uneven terrain; she cannot work at
2 unprotected heights; she can perform moderately complex
3 tasks with a reasoning level of four or below; she can
4 frequently interact with coworkers; and she has no
5 limitation interacting with the public.

6 (AR 32.) The ALJ determined that Plaintiff was unable to perform
7 her past relevant work. (AR 36.) At step five, he relied on the
8 VE's testimony to find that given Plaintiff's age, education,
9 work experience, and RFC for "unskilled light" work "impeded by
10 additional limitations," she could perform light, unskilled jobs
11 available in the national economy, such as "Cashier II, DOT
12 211.462-010," and "Parking lot signaler, DOT 915.667-014." (AR
13 36-37.) Accordingly, he found Plaintiff not disabled. (AR 37.)

14 **V. DISCUSSION**

15 Plaintiff argues that the ALJ erred in assessing the opinion
16 of state-agency consulting psychologist Dr. Rosa Colonna by
17 failing to incorporate "any limitations as to social functioning
18 or to problems with attention and concentration" into her RFC.
19 (See Mem. P. & A. at 6-10.) Plaintiff did not raise this issue
20 to the Appeals Council (see AR 267-69), and she never asked the
21 vocational expert any questions about such limitations (see AR
22 58). Accordingly, Plaintiff has likely waived the right to raise
23 this issue in federal court.³ See Meanel v. Apfel, 172 F.3d

25 ³ Plaintiff has actually "forfeited" the issue rather than
26 "waived" it. See United States v. Scott, 705 F.3d 410, 415 (9th
27 Cir. 2012) ("Waiver is 'the intentional relinquishment or
28 abandonment of a known right,' whereas forfeiture is 'the failure
to make the timely assertion of [that] right.'" (alteration in
original) (citation omitted)). But because most of the analogous
cases refer to a "waiver rule," the Court does too.

1 1111, 1115 (9th Cir. 1999) (as amended) (reviewing court need not
2 address issues not raised before ALJ or Appeals Council unless
3 manifest injustice would result); see also Phillips v. Colvin,
4 593 F. App'x 683, 684 (9th Cir. 2015) ("This issue was waived by
5 [claimant]'s failure to raise it at the administrative level when
6 he was represented by counsel, and [claimant] has not
7 demonstrated manifest injustice excusing the failure.");
8 Solorzano v. Astrue, No. ED CV 11-369-PJW, 2012 WL 84527, at *6
9 (C.D. Cal. Jan. 10, 2012) ("Counsel are not supposed to be potted
10 plants at administrative hearings. They have an obligation to
11 take an active role and to raise issues that may impact the ALJ's
12 decision while the hearing is proceeding so that they can be
13 addressed.").⁴

14 In any event, as discussed below, the ALJ properly evaluated
15 the medical-opinion evidence and determined Plaintiff's RFC, and
16 any error was harmless.

17 A. Applicable Law

18 A claimant's RFC is "the most [she] can still do" despite
19 impairments and related symptoms that "may cause physical and
20 mental limitations that affect what [she] can do in a work
21 setting." § 404.1545(a)(1). A district court must uphold an
22 ALJ's RFC assessment when the ALJ has applied the proper legal

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24 ⁴ Meanel was decided in 1999. In 2000, the Supreme Court
25 held that a plaintiff does not forfeit a claim simply by failing
26 to raise it before the Appeals Council. Sims v. Apfel, 530 U.S.
27 103, 108 (2000) (holding that claims need not be raised before
28 Appeals Council to be exhausted). But Sims expressly declined to
decide whether a claim would be forfeited if the claimant also
neglected to raise it before the ALJ. See id. at 107 ("Whether a
claimant must exhaust issues before the ALJ is not before us.").
Thus, Sims did not overrule Meanel, which this Court remains
bound by.

1 standard and substantial evidence in the record as a whole
2 supports the decision. Bayliss v. Barnhart, 427 F.3d 1211, 1217
3 (9th Cir. 2005). The ALJ must consider all the medical opinions
4 "together with the rest of the relevant evidence."
5 § 404.1527(b);⁵ see also § 404.1545(a)(1) ("We will assess your
6 residual functional capacity based on all the relevant evidence
7 in your case record.").

8 Three types of physicians may offer opinions in Social
9 Security cases: those who directly treated the plaintiff, those
10 who examined but did not treat the plaintiff, and those who did
11 neither. Lester, 81 F.3d at 830. A treating physician's opinion
12 is generally entitled to more weight than an examining doctor's,
13 and an examining physician's opinion is generally entitled to
14 more weight than a nonexamining physician's. Id.; see
15 § 404.1527(c)(1).

16 When a physician's opinion is not contradicted by other
17 medical-opinion evidence, it may be rejected only for "clear and
18 convincing" reasons. Magallanes v. Bowen, 881 F.2d 747, 751 (9th
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20 ⁵ Social Security regulations regarding the evaluation of
21 opinion evidence were amended effective March 27, 2017. When, as
22 here, the ALJ's decision is the final decision of the
23 Commissioner, the reviewing court generally applies the law in
24 effect at the time of the ALJ's decision. See Lowry v. Astrue,
25 474 F. App'x 801, 804 n.2 (2d Cir. 2012) (applying version of
26 regulation in effect at time of ALJ's decision despite subsequent
27 amendment); Garrett ex rel. Moore v. Barnhart, 366 F.3d 643, 647
28 (8th Cir. 2004) ("We apply the rules that were in effect at the
time the Commissioner's decision became final."); Spencer v.
Colvin, No. 3:15-CV-05925-DWC, 2016 WL 7046848, at *9 n.4 (W.D.
Wash. Dec. 1, 2016) ("42 U.S.C. § 405 does not contain any
express authorization from Congress allowing the Commissioner to
engage in retroactive rulemaking."). Accordingly, citations to
20 C.F.R. § 404.1527 are to the version in effect from August 24,
2012, to March 26, 2017.

1 Cir. 1989); see Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d
2 1155, 1164 (9th Cir. 2008) (citing Lester, 81 F.3d at 830-31).
3 When it is contradicted, the ALJ must provide only "specific and
4 legitimate reasons" for discounting it. Carmickle, 533 F.3d at
5 1164 (citing Lester, 81 F.3d at 830-31).

6 In determining an RFC, the ALJ should consider those
7 limitations for which there is support in the record and need not
8 take into account properly rejected evidence or subjective
9 complaints. See Bayliss, 427 F.3d at 1217 (upholding ALJ's RFC
10 determination because "the ALJ took into account those
11 limitations for which there was record support that did not
12 depend on [claimant]'s subjective complaints"); Batson v. Comm'r
13 of Soc. Sec. Admin., 359 F.3d 1190, 1197 (9th Cir. 2004) (ALJ not
14 required to incorporate into RFC those findings from physician
15 opinions that were "permissibly discounted"). The ALJ considers
16 findings by state-agency medical consultants and experts as
17 opinion evidence. § 404.1527(e).

18 The Court must consider the ALJ's decision in the context of
19 "the entire record as a whole," and if the "evidence is
20 susceptible to more than one rational interpretation,' the ALJ's
21 decision should be upheld." Ryan v. Comm'r of Soc. Sec., 528
22 F.3d 1194, 1198 (9th Cir. 2008) (citation omitted).

23 B. Relevant Background

24 On January 22, 2015, Dr. Colonna performed a complete
25 psychological evaluation of Plaintiff. (AR 662-70.) Plaintiff
26 reported that she had been diagnosed with bipolar disorder
27 "[five] years ago" and had a psychiatric hospitalization in 2014.
28 (AR 663.) She stated that "she also went through a

1 detoxification program [for her methamphetamine and opioid
2 addictions] at San Dimas Hospital."⁶ (Id.) Dr. Colonna's
3 mental-status examination of Plaintiff showed that she "was able
4 to respond appropriately to imaginary situations requiring social
5 judgement and knowledge of the norms." (AR 664.) Her "attention
6 and concentration span [were] moderately diminished," as was her
7 memory "for immediate, intermediate and remote recall." (Id.)
8 She "appear[ed] to be sedated [and] at times [was] tearful."
9 (Id.) Her effort was "adequate," her mood was "mildly
10 dysthymic," and her affect was "constricted." (Id.) Plaintiff
11 showed "no obvious psychotic indicators" "at the time of the
12 examination." (Id.) She was "oriented to person, time, place
13 and purpose of the examination." (Id.) Her speech was "under
14 modulated but clear," and her thoughts were "organized in a
15 linear manner." (Id.) "Psychomotor slowing [was] not evident."
16 (Id.)

17 Dr. Colonna determined that "[g]iven the test results and
18 clinical data, [Plaintiff's] overall cognitive ability [was] in
19

20 ⁶ Dr. Colonna could not confirm Plaintiff's bipolar
21 diagnosis or her hospitalizations because no medical records were
22 provided to her. (See AR 663.) The record shows that Plaintiff
23 admitted herself to Aurora Charter Oak Hospital from March 3 to
24 March 10, 2014, for treatment of "depression and withdrawal from
25 opiates." (See AR 700-07.) The discharge summary from Charter
26 Oak did not show a bipolar-disorder diagnosis (AR 700-01; see
27 also AR 690), nor does any other document in the record. The
28 only records from San Dimas Community Hospital are from
Plaintiff's various visits to the emergency room. (See AR 628-33
(Mar. 12, 2014, for "left ankle and foot pain"), 634-37 (Mar. 2,
2014, for narcotics withdrawal), 638-40 (Jan. 31, 2014, for body
aches associated with myalgias), 641-47 (Nov. 9, 2013, for
anxiety and arm and chest pain).) It does not appear that she
was admitted to the hospital after any of these emergency-room
visits. (See AR 630, 635, 637, 640, 647.)

1 the mid borderline to low average range." (AR 665.) She
2 diagnosed Plaintiff with "mood disorder, not otherwise specified"
3 and "personality disorder borderline traits." (AR 666.)

4 In her medical-source-statement report, Dr. Colonna noted
5 that "[b]ased on [her] assessment, [Plaintiff] would be able to
6 understand, remember and carry out short, simplistic instructions
7 without difficulty" and had a "mild inability to understand,
8 remember and carry out detailed instructions." (Id.) She noted
9 that Plaintiff would "be able to make simplistic work-related
10 decisions without special supervision." (Id.) Dr. Colonna
11 further stated that Plaintiff "present[ed] with a mild inability
12 to interact appropriately with supervisors, coworkers and peers"
13 because she "bec[a]me tearful at times" during the evaluation.
14 (Id.)

15 In a form attached to her report, Dr. Colonna checked boxes
16 noting that Plaintiff could understand, remember, and carry out
17 simple instructions and make judgments on simple work-related
18 decisions with no impairments. (AR 668.) Plaintiff had "mild"
19 impairments understanding, remembering, and carrying out
20 "complex" instructions and making judgments on "complex work-
21 related decisions." (Id.) Plaintiff also had "mild"
22 restrictions interacting appropriately with supervisors,
23 coworkers, and the public. (AR 669.) The check-box form defined
24 a "mild" impairment as meaning that "[t]here is a slight
25 limitation in this area, but the individual can generally
26 function well." (AR 668.)

27 The ALJ gave "great weight" to Dr. Colonna's opinion because
28 she "personally observed and examined" Plaintiff and her "opinion

1 [was] consistent" with the "positive objective physical clinical
2 and diagnostic findings" from the examination. (AR 35-36.) He
3 noted that "[s]he assessed mental limitations that are
4 essentially the same as those included in the [RFC]." (Id.)

5 C. Analysis

6 The ALJ found that Plaintiff was able to "perform moderately
7 complex tasks with a reasoning level of four or below," could
8 "frequently interact with coworkers," and had "no limitation
9 interacting with the public." (AR 32.) Plaintiff argues that
10 because the ALJ did not assess limitations on interactions with
11 the general public or in concentration, persistence, or pace, he
12 implicitly rejected Dr. Colonna's opinion in part and failed to
13 give specific and legitimate reasons for doing so. (Mem. P. & A.
14 at 8-9.)⁷ Because the ALJ properly assessed Dr. Colonna's
15 opinion and incorporated it into her RFC, remand is not
16 warranted.

17 In fact, the ALJ's RFC was generally consistent with Dr.
18 Colonna's findings, as he noted. (See AR 35-36.) Although the
19 ALJ did not mention the check-box Dr. Colonna marked stating that
20 Plaintiff had mild limitations interacting appropriately with the
21 public (see AR 669), he was not required to "discuss every piece
22 of evidence" when crafting Plaintiff's RFC. See Howard ex rel.
23 Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003) (citing
24 Black v. Apfel, 143 F.3d 383, 386 (8th Cir. 1998)). Dr.
25 Colonna's report as a whole indicated that Plaintiff could
26

27 ⁷ Because Plaintiff assumes that the specific-and-legitimate
28 standard applies (see Mem. P. & A. at 7-8), the Court does so as
well.

1 "generally function well" and was "able to respond appropriately
2 to imaginary situations requiring social judgement and knowledge
3 of the norms." (AR 664, 668.) She also noted that Plaintiff was
4 "socially appropriate" with her. (AR 666.) The ALJ gave Dr.
5 Colonna's report "great weight" and discussed key portions of it
6 in his decision. (AR 34-35); see also Ward v. Berryhill, ___ F.
7 App'x ___, No. 16-55078, 2017 WL 4512210, at *2 (9th Cir. Oct. 10,
8 2017) (holding that ALJ's failure to mention physician's
9 observation of plaintiff's moderate impairment in ability to
10 maintain regular attendance at work did not require reversal even
11 though ALJ gave opinion "great weight" because physician's
12 "report as a whole indicate[d] that [plaintiff was] capable of
13 working full-time"). That report indicated that Plaintiff was
14 capable of acting "socially appropriate" with members of the
15 general public. (See AR 662-70.)

16 "An ALJ must consider all of the evidence in the record, not
17 just a lone sentence." Ward, ___ F. App'x ___, 2017 WL 4512210, at
18 *2. Moreover, according to the Commissioner's Program Operations
19 Manual System, the ALJ did not need to specifically take into
20 account each check-box limitation in Plaintiff's RFC because
21 "[i]t is the narrative written by the psychiatrist . . . that
22 adjudicators are to use as the assessment of RFC." See Garner v.
23 Colvin, 626 F. App'x 699, 703 (9th Cir. 2015) (citing POMS DI
24 25020.010 at B.1., available at [https://secure.ssa.gov/poms.NSF/
25 lnx/0425020010](https://secure.ssa.gov/poms.NSF/lnx/0425020010)). Although that narrative specifically noted
26 Plaintiff's "mild inability to interact appropriately with
27 supervisors, coworkers and peers" – which the ALJ specifically
28 took into account by limiting her to frequent interactions with

1 coworkers (AR 32) – it made no mention of any limitation in
2 dealing with the public. (AR 666.)

3 Further, the ALJ's determination that Plaintiff could
4 "perform moderately complex tasks with a reasoning level of four
5 or below" reasonably synthesized any limitations in attention and
6 concentration assessed by Dr. Colonna. (See AR 32.)⁸ "[A]n
7 ALJ's [RFC] assessment of a claimant adequately captures
8 restrictions related to concentration, persistence, or pace where
9 the assessment is consistent with restrictions identified in the
10 medical testimony." Stubbs-Danielson v. Astrue, 539 F.3d 1169,
11 1174 (9th Cir. 2008).

12 Dr. Colonna opined that though Plaintiff's "attention and
13 concentration span [were] moderately diminished" on the day of
14 the exam, she "would be able to understand, remember and carry
15 out short, simplistic instructions without difficulty" and
16 presented with only a "mild inability to understand, remember and
17 carry out detailed instructions." (AR 664, 666.) Her "insight
18 and judgment [were] grossly age appropriate." (AR 664.)
19 Plaintiff also had only "mild" restrictions in understanding,
20 remembering, and carrying out complex instructions and making
21 judgments on complex work-related decisions. (AR 668.) "Mild"
22 restrictions represent slight limitations that do not prevent the

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24 ⁸ The Dictionary of Occupational Titles describes six levels
25 of reasoning under the "Reasoning Development" scale. See DOT,
26 app. C, 1991 WL 688702. Level-four reasoning means a claimant
27 can "[a]pply principles of rational systems to solve practical
28 problems and deal with a variety of concrete variables in
situations where only limited standardization exists." Id. The
two jobs the ALJ found Plaintiff could perform, cashier II and
parking-lot signaler, have reasoning levels of three and two,
respectively. See DOT 211.462-010, Cashier II, 1991 WL 671840;
id. 915.667-014, Parking Lot Signaler, 1991 WL 687870.

1 claimant from "generally function[ing] well." (AR 668.)
2 Moreover, to the extent Dr. Colonna's report was based on
3 Plaintiff's symptom statements, the ALJ found her subjective
4 symptom testimony not entirely credible (AR 32-33), which
5 Plaintiff does not challenge. The ALJ's RFC determination was
6 thus consistent with the level of functioning assessed by Dr.
7 Colonna and found elsewhere in the record. (See, e.g., AR 364
8 (Oct. 2011 neurological consultation, observing that "[t]hree-
9 stage commands are followed easily" and "[a]ttention span and
10 concentration are normal".))

11 Accordingly, the ALJ did not err in assessing the medical-
12 opinion evidence or determining Plaintiff's RFC. Substantial
13 evidence therefore supports the ALJ's decision.⁹ As such, remand
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15 ⁹ Furthermore, as Defendant points out (Def.'s Opp'n to
16 Pl.'s Mot. Summ. J. at 6-8), it is not clear that the limitations
17 assessed by Dr. Colonna on January 22, 2015, even existed before
18 the expiration of Plaintiff's insured status on December 31, 2011
19 (AR 30, 183). In order to receive DIB, a claimant must establish
20 that she became disabled on or before the expiration of her
21 insured status. § 404.131; see also Burch v. Barnhart, 400 F.3d
22 676, 679 (9th Cir. 2005). The record as a whole does not reveal
23 substantial evidence of a mental impairment during the required
24 period. On April 28, 2011, Plaintiff's "judgment and insight
25 appear[ed] to be normal," and "[n]o mood disorders" were
26 recorded. (AR 367.) On October 28, 2011, a mental-status
27 examination showed Plaintiff to be "alert and fully oriented,"
28 "[s]pontaneous speech [was] fluent without paraphasias,"
"[t]hree-stage commands [were] followed easily," she "repeat[ed]
a complicated sentence well," "[r]ecent and remote memory [were]
good," "[f]und of knowledge [was] good," and "[a]ttention span
and concentration [were] normal." (AR 364.) When Plaintiff
applied for DIB in 2013, she did not even allege a mental
impairment. (See AR 60.) It is true, as the ALJ notes (see AR
34), that Plaintiff was prescribed antidepressants in 2011 (see
AR 274 (listing various medications, though unclear which of
these were actually prescribed), 279, 294), but the accompanying
medical records are mostly illegible – with any legible notes
describing physical rather than mental problems – making it
difficult to determine how severe Plaintiff's mental symptoms

1 is not warranted. See Stubbs-Danielson, 539 F.3d at 1174.

2 **VI. CONCLUSION**

3 Consistent with the foregoing and under sentence four of 42
4 U.S.C. § 405(g),¹⁰ IT IS ORDERED that judgment be entered
5 AFFIRMING the Commissioner's decision, DENYING Plaintiff's motion
6 for summary judgment, GRANTING Defendant's motion for summary
7 judgment, and DISMISSING this action with prejudice.

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9 DATED: November 29, 2017



10 JEAN ROSENBLUTH
11 U.S. Magistrate Judge
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23 were at that time. (See generally AR 270-367.) Though a medical
24 examiner who reviewed her records for a claim not associated with
25 her DIB application noted in January 2011 that Plaintiff had
26 psychiatric symptoms and took bupropion and Paroxetine "for panic
27 attacks" to "calm her down" (see AR 546, 595), there are no
28 actual psychiatric or other medical records supporting that
statement.

¹⁰ That sentence provides: "The [district] court shall have
power to enter, upon the pleadings and transcript of the record,
a judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."