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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

YULIYA VLADIMIROVNA K., <sup>1</sup>	)	Case No. CV 19-2376-JPR
	)	
Plaintiff,	)	
	)	<b>MEMORANDUM DECISION AND ORDER</b>
v.	)	
	)	
ANDREW SAUL, 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 matter is before the Court on the parties’ Joint Stipulation, filed March 25, 2020, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner’s decision is affirmed.

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<sup>1</sup> Plaintiff’s name is partially redacted in line with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 **II. BACKGROUND**

2 Plaintiff was born in 1977. (Administrative Record ("AR")  
3 201.) She has a college degree and has worked as an  
4 "[e]ligibility clerk," office assistant, "[o]ffice [t]echnician,"  
5 and "[p]rogram [t]echnician." (AR 217.) She applied for DIB on  
6 September 23, 2015, alleging that she had been unable to work  
7 since September 30, 2012, because of chronic fatigue syndrome,  
8 "[s]evere PMS (with anovulation)," anxiety, "[s]ensitivity to  
9 [m]edication/chemicals," "[b]ody aches and pains," "[h]eadaches  
10 and [m]igranes," and being "[p]rone to acne." (AR 184, 216.)  
11 After her application was denied initially and on  
12 reconsideration, she requested a hearing before an Administrative  
13 Law Judge. (AR 131.) A hearing was held on September 20, 2017,  
14 at which Plaintiff, represented by counsel, testified, as did a  
15 vocational expert. (AR 33.) In a written decision dated January  
16 16, 2018, the ALJ found her not disabled. (AR 12-30.) Plaintiff  
17 requested review from the Appeals Council (AR 183), but it denied  
18 her request (AR 1). This 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 Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.  
25 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence  
26 means such evidence as a reasonable person might accept as  
27 adequate to support a conclusion. Richardson, 402 U.S. at 401;  
28 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It

1 is "more than a mere 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)). "[W]hatever the  
4 meaning of 'substantial' in other contexts, the threshold for  
5 such evidentiary sufficiency is not high." Biestek v. Berryhill,  
6 139 S. Ct. 1148, 1154 (2019).<sup>2</sup> To determine whether substantial  
7 evidence supports a finding, the reviewing court "must review the  
8 administrative record as a whole, weighing both the evidence that  
9 supports and the evidence that detracts from the Commissioner's  
10 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.  
11 1998). "If the evidence can reasonably support either affirming  
12 or reversing," the reviewing court "may not substitute its  
13 judgment" for the Commissioner's. Id. at 720-21.

#### 14 **IV. THE EVALUATION OF DISABILITY**

15 People are "disabled" for purposes of Social Security if  
16 they are unable to engage in any substantial gainful activity  
17 owing to a physical or mental impairment that is expected to  
18 result in death or has lasted, or is expected to last, for a  
19 continuous period of at least 12 months. 42 U.S.C.  
20 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.  
21 1992).

##### 22 A. The Five-Step Evaluation Process

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

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25  
26 <sup>2</sup> Plaintiff objects to Defendant's citation to Biestek for  
27 the "standard of review," complaining that the case "addressed  
28 vocational experts, not the meaning of 'substantial evidence.'" (J. Stip. at 19.) But one does not lightly ignore the Supreme Court's observations on a key term governing an area of law.

1 § 404.1520(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th  
2 Cir. 1995) (as amended Apr. 9, 1996). In the first step, the  
3 Commissioner must determine whether the claimant is currently  
4 engaged in substantial gainful activity; if so, the claimant is  
5 not disabled and the claim must be denied. § 404.1520(a)(4)(i).

6 If the claimant is not engaged in substantial gainful  
7 activity, the second step requires the Commissioner to determine  
8 whether the claimant has a "severe" impairment or combination of  
9 impairments significantly limiting her ability to do basic work  
10 activities; if not, a finding of not disabled is made and the  
11 claim must be denied. § 404.1520(a)(4)(ii) & (c).

12 If the claimant has a "severe" impairment or combination of  
13 impairments, the third step requires the Commissioner to  
14 determine whether the impairment or combination of impairments  
15 meets or equals an impairment in the Listing of Impairments  
16 ("Listing") set forth at 20 C.F.R. part 404, subpart P, appendix  
17 1; if so, disability is conclusively presumed and benefits are  
18 awarded. § 404.1520(a)(4)(iii) & (d).

19 If the claimant's impairment or combination of impairments  
20 does not meet or equal an impairment in the Listing, the fourth  
21 step requires the Commissioner to determine whether the claimant  
22 has sufficient residual functional capacity ("RFC")<sup>3</sup> to perform  
23 her past work; if so, the claimant is not disabled and the claim  
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25 <sup>3</sup> RFC is what a claimant can do despite existing exertional  
26 and nonexertional limitations. § 404.1545(a)(1); see Cooper v.  
27 Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). The  
28 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 must be denied. § 404.1520(a)(4)(iv). The claimant has the  
2 burden of proving she is unable to perform past relevant work.  
3 Drouin, 966 F.2d at 1257. If the claimant meets that burden, a  
4 prima facie case of disability is established. Id.

5 If that happens or if the claimant has no past relevant  
6 work, the Commissioner then bears the burden of establishing that  
7 the claimant is not disabled because she can perform other  
8 substantial gainful work available in the national economy, the  
9 fifth and final step of the sequential analysis.

10 §§ 404.1520(a)(4)(v), 404.1560(b).

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

12 At step one, the ALJ found that Plaintiff had not engaged in  
13 substantial gainful activity since September 30, 2012, the  
14 alleged onset date. (AR 17.) Her date last insured was  
15 September 30, 2018. (Id.) At step two, he determined that she  
16 had the severe impairments of chronic fatigue syndrome,  
17 depression, and anxiety. (Id.) At step three he concluded that  
18 her impairments did not meet or equal a Listing. (Id.) At step  
19 four, he found that she had the RFC to perform "light work" with  
20 some additional limitations: she could "stand/walk 4 hours in an  
21 8-hour workday," "perform simple repetitive tasks," "adapt to  
22 occasional workplace changes," and was precluded from work  
23 involving hazards, "such as heights and heavy machinery." (AR  
24 19.) She could not perform her past relevant work. (AR 24.) At  
25 step five, he determined that she could perform jobs existing in  
26 significant numbers in the national economy. (Id.) Accordingly,  
27 he found her not disabled. (AR 26.)

28

1 **V. DISCUSSION<sup>4</sup>**

2 A. Applicable Background

3 1. Medical opinions and evidence

4 Plaintiff saw Dennis Godby, a naturopathic doctor, on  
5 November 10, 2012 (AR 322, 324), shortly after her alleged  
6 disability onset (AR 131). She complained of acne and digestive  
7 issues, including difficulty "eat[ing] enough fruit [and]  
8 veg[g]lies." (AR 322.) Her PMS was "really bad," albeit for  
9 "just 2 days," and "used to" cause anemia. (Id.) Godby ran labs  
10 (AR 325) and prescribed four nutritional supplements (AR 324).

11 Plaintiff did not return to Godby or otherwise seek medical  
12 care again until June 19, 2013, nearly a year after her alleged  
13 onset date, when she underwent a physical exam at a clinic to  
14 "establish care."<sup>5</sup> (AR 624.) Her "primary complaint" was  
15 "fatigue." (Id.) She reported that "[b]esides the fatigue and  
16 anemia, she [had] been generally healthy most of [her] life."  
17 (Id.) Examination showed no abnormalities. (See AR 625.) Her  
18 memory was "intact," and she was "oriented to time, place,  
19 person, and situation." (Id.) She had "normal insight,"

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20  
21 <sup>4</sup> In Lucia v. SEC, 138 S. Ct. 2044, 2055 (2018), the Supreme  
22 Court held that ALJs of the Securities and Exchange Commission  
23 are "Officers of the United States" and thus subject to the  
24 Appointments Clause. To the extent Lucia applies to Social  
25 Security ALJs, Plaintiff has forfeited the issue by failing to  
26 raise it during her administrative proceedings. (See AR 33-78,  
27 303-06, 309-16); Meanel v. Apfel, 172 F.3d 1111, 1115 (9th Cir.  
1999) (as amended) (plaintiff forfeits issues not raised before  
ALJ or Appeals Council); see also Kabani & Co. v. SEC, 733 F.  
App'x 918, 919 (9th Cir. 2018) (rejecting Lucia challenge because  
plaintiff did not raise it during administrative proceedings),  
cert. denied, 139 S. Ct. 2013 (2019).

28 <sup>5</sup> Many of these records are unsigned.

1 "exhibit[ed] normal judgment," and "demonstrat[ed] . . .  
2 appropriate mood and affect." (Id.)

3 Plaintiff returned to the clinic on July 20, 2013, for a pap  
4 smear and breast exam. (AR 623.) She attributed her "fatigue  
5 over the past year" to "stress," noting that "[h]er job was quite  
6 stressful" but that now that she was "on leave" from it, she was  
7 "feeling much better." (Id.) She preferred to treat her  
8 symptoms with "homeopathic remedies" and "nutrition." (Id.)

9 At another clinic appointment, on July 30, 2013, Plaintiff  
10 reported "fatigue" and "decreas[ed] appetite" but "denie[d]  
11 depression." (AR 366.) She said that in the afternoons she was  
12 "able to do her tasks." (Id.) She had been "on leave from her  
13 job" for the past 10 months. (Id.) Her job had been  
14 "stressful," and she had "drag[ged] herself to . . . work every  
15 single day." (Id.) She was taking online classes "to change the  
16 direction of her career." (Id.)

17 Plaintiff first visited James Chang, a licensed  
18 acupuncturist,<sup>6</sup> on November 5, 2013, complaining of "skin acne."  
19 (AR 531.) She "often [felt] weak and fatigued." (Id.) Under  
20 "objective" he wrote,

21 Pulse: deep, thin, weak Tongue: teethmarks, pale, thin,  
22 coating is medium white. Bad breath. Q: Quality of  
23 sleep? A: poor. [C]an hardly get out of bed in the  
24 mornings.

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25  
26 <sup>6</sup> (See AR 531 ("L.Ac." in signature)); see also Cal. Dep't  
27 Consumer Aff. License Search, <https://search.dca.ca.gov> (search  
28 for "James" and "Chang" under acupuncturists' licenses, narrowing  
results by address (see AR 528)) (last visited Apr. 23, 2020).

1 (Id.) Chang noted that her "[w]eak pulse and pale thin tongue  
2 indicate[d] deficient chi and blood" and predicted that it would  
3 take "more than a year" to "recover her spleen." (Id.)

4 She returned to Chang two or three times a month through  
5 March 2014. (See AR 528-30.) On November 12, 2013, Plaintiff  
6 reported that she did not feel "much difference" but did feel  
7 "calmer." (AR 530.) On November 26, she was "still" tired, "but  
8 her rest [was] better" and she had "[s]lightly more energy."

9 (Id.) On December 10, she reported that "the last batch of herbs  
10 gave her more energy"; she was "sleeping better" and "in a better  
11 mood." (Id.) By December 20, she was "notic[ing] a difference  
12 in her daily life": she was "in a better mood" and no longer  
13 "nap[ped] immediately after breakfast" or "spen[t] most of her  
14 day in her own room." (AR 529.) Although she reported worsening  
15 symptoms on January 21, 2014, by February 4 her "energy and mood  
16 and sleep [were] all better." (Id.) On February 25, she was  
17 "feeling okay": she could "last until 2:30 pm before needing a  
18 nap," was "not as moody" (her mood was "okay"), had periods that  
19 did not "set[] her back as much," and was "willing to go out and  
20 socialize with her friends like before." (AR 528.) Chang  
21 thought she was "making good progress." (Id.)

22 Plaintiff returned to her primary-care clinic on June 1,  
23 2015, complaining of "increasing" fatigue. (AR 341.) A physical  
24 exam was normal, and her memory was "intact." (AR 342-43.)

25 Plaintiff began "individual" therapy at the clinic on July  
26 15, 2014, and at her initial consultation complained of "low  
27 energy" and "fatigue." (AR 448.) She had "left her job with the  
28 state, moved back home, and [was] attending on-line college



1 classes." (Id.) She had a "history of anemia related to  
2 vegetarian diet," but that was "now treated." (Id.) A mental-  
3 status examination was normal. (See id.) At a follow-up  
4 appointment on July 30, 2015, Plaintiff reported "trouble  
5 concentrating on her online classes"; the doctor suspected  
6 depression. (AR 445.) Plaintiff stated that when she was  
7 previously "diagnosed with depression," she had taken  
8 "medications 'for a few days'" but "didn't like how she felt" on  
9 them, so she would rather "try 'amino acids' before using  
10 prescriptions." (Id.) Her mental-status examination was normal  
11 except for reported sleeping problems. (Id.) At her August 15,  
12 2015 therapy appointment, Plaintiff reported that "[her] body  
13 [was] missing something." (AR 443.) She was "interested in  
14 'natural healing'" and "afraid of having medications pushed on to  
15 her." (Id.)

16 Plaintiff visited Deepika Goshike,<sup>7</sup> a doctor at her clinic,  
17 on October 2, 2015, for a pap smear. (AR 406, 409.) When she  
18 saw her again a few weeks later on November 10, she "want[ed]  
19 paperwork . . . filled out to file for social security  
20 di[s]ability due to her chronic fatigue syndrome." (AR 403.)  
21 The doctor noted that she was not taking any of her prescribed  
22 medications. (Id.)

23 Dr. Goshike completed a "chronic fatigue syndrome medical  
24 source statement" that day, as Plaintiff requested. (AR 454.)  
25

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26 <sup>7</sup> Dr. Goshike appears to be a family-medicine practitioner.  
27 See Cal. Dep't Consumer Aff. License Search, [https://](https://search.dca.ca.gov)  
28 [search.dca.ca.gov](https://search.dca.ca.gov) (search for "Deepika" with "Goshike" under  
doctors' licenses) (last visited May 8, 2020).

1 Although she had seen Plaintiff only "for [the] last month," she  
2 had been "with [the] Clinic since" June 2013. (Id.) She  
3 diagnosed her with PMS, acne, polycystic ovary syndrome,  
4 hyperlipidemia, and "unexplained" and "persistent" chronic  
5 fatigue. (AR 454.) She excluded HIV-AIDS, Lyme disease,  
6 psychiatric disease, rheumatoid arthritis, and alcoholism as  
7 causes. (Id.) Among other symptoms, Plaintiff had self-reported  
8 impairment in short-term memory and concentration that could  
9 "cause substantial reduction" in work abilities. (AR 455.) She  
10 was not on any medications because she was "sensitive to  
11 medication" and had "side effects." (Id.) Dr. Goshike opined  
12 that Plaintiff could walk two blocks without rest or severe pain,  
13 sit for 30 minutes at a time and less than two hours in an eight-  
14 hour workday, stand for 10 minutes at a time and stand or walk  
15 less than two hours in a workday, and required a sit/stand  
16 option. (Id.) She needed to take unscheduled 30-minute to hour-  
17 long breaks "every hour." (AR 456.) She could lift 10 pounds  
18 "occasionally" and less than 10 pounds "frequently," and she  
19 could only "rarely" crouch or squat or climb ladders or stairs.  
20 (Id.) She was also "sensitive to humidity, noise, strong odors,  
21 chemicals, and if it is too cold or hot." (AR 457.)  
22 "[A]ccording to patient," her "symptoms and limitations" started  
23 "3 years ago." (Id.)

24 Edward Fuchs, a general practitioner, performed a  
25 comprehensive evaluation of Plaintiff at Defendant's request on  
26 November 14, 2015. (AR 458, 461.) Dr. Fuchs observed that she  
27 "was able to walk to the examination room without difficulty,"  
28 "sit comfortably," and "get on and off the exam table." (AR

1 459.) He noted no abnormalities on examination. (See AR 459-  
2 61.) He diagnosed her with “[c]hronic fatigue.” (AR 461.) He  
3 opined that she could stand and walk “[u]p to four hours in an  
4 eight-hour workday” because she gave a “good history for fatigue  
5 even though she [had] no physical limitations.” (Id.) “[O]wing  
6 to her size,”<sup>8</sup> she could lift, carry, push, and pull only “20  
7 pounds occasionally and 10 pounds frequently.” (Id.) She had no  
8 other limitations. (See id.)

9 Plaintiff saw Alysia Liddell, a psychologist (see AR 467),  
10 on November 17, 2015, for a “comprehensive psychiatric  
11 evaluation,” also at Defendant’s request. (AR 463.) Dr. Liddell  
12 noted that Plaintiff’s only “previous mental health treatment”  
13 was “secondary to medical concerns,” and she was “not currently  
14 under the care of a mental health professional.” (AR 464.) She  
15 denied any “history of psychiatric hospitalizations” or self-  
16 harm. (Id.) On examination, her “stream of mental activity was  
17 within normal limits,” her “thought processes were tight,  
18 logical, and goal oriented,” and her speech was “logical,  
19 coherent, and concise.” (AR 465.) She appeared depressed. (AR  
20 466.) She had no problems with short-term memory or  
21 concentration. (Id.) Dr. Liddell diagnosed her with anxiety  
22 disorder (id.) and opined that

23 [her] ability to understand and remember, and carry out  
24 very short and simple instructions is unimpaired.  
25 [¶][Her] ability to understand and remember detailed  
26

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27 <sup>8</sup> Plaintiff was five feet six inches tall and weighed 122  
28 pounds. (AR 459.)

1 instructions is unimpaired. [¶][Her] ability to accept  
2 instructions from a supervisor and respond appropriately  
3 is unimpaired. [¶][Her] ability to interact with  
4 coworkers is unimpaired. [¶][Her] ability to deal with  
5 various changes in the work setting is moderately  
6 impaired given her current level of anxiety and  
7 depression.

8 (AR 467.)

9 On November 30, 2015, Chang completed a "chronic fatigue  
10 syndrome medical source statement" almost identically to Dr.  
11 Goshike. (AR 471.) He had treated Plaintiff "weekly for 6  
12 months starting" in November 2013 but had not seen her for more  
13 than a year.<sup>9</sup> (Id.) She had been "incapacitated by Chronic  
14 Fatigue since 2012 to the point of spending most of her day in  
15 bed." (Id.) He diagnosed her with "spleen [and] liver  
16 deficiency" and "extre[ ]me PMS." (Id.) He noted that she was  
17 "25% better now after 6 months of [traditional Chinese medicine]  
18 treatment that ended" in April 2014; she could expect "100%  
19 recovery if . . . treated for 2 years." (Id.) She had taken  
20 "Chinese herbal formulas with positive results in energy, skin,  
21 digestion," and pain reduction. (AR 472.) He opined that she  
22 could walk one or two blocks without rest or severe pain, sit for  
23 20 to 30 minutes at a time and less than two hours in an eight-  
24 hour workday, stand for 10 to 15 minutes at a time and less than  
25 two hours in an eight-hour workday, and needed a sit/stand

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26  
27 <sup>9</sup> Chang actually saw Plaintiff for less than five months and  
28 usually only two or three times a month, not weekly. (See AR  
528-31.)

1 option. (Id.) She would need to take unscheduled 30-minute to  
2 hour-long breaks every hour. (AR 473.) She could lift 10 pounds  
3 "occasionally" and less than 10 pounds "frequently"; she could  
4 not climb ladders or stairs. (Id.) She could be expected to be  
5 "off task" more than 25 percent of a typical workday. (Id.) She  
6 could tolerate "moderate" stress "on a really good day" and was  
7 "capable of low stress jobs." (AR 474.) She had limitations  
8 related to "noise, stress, smells, weather, lighting, [and]  
9 chemicals." (Id.) She had "[s]elf-reported" memory and  
10 concentration impairment. (AR 472.)

11 On January 4, 2016, state-agency doctor S. Amon<sup>10</sup> reviewed  
12 Plaintiff's medical records and opined that she could lift and  
13 carry 20 pounds occasionally and 10 pounds frequently and could  
14 stand or walk and sit "[a]bout 6 hours" each in an eight-hour  
15 workday. (AR 90.) She had no other limitations. (Id.) Dr.  
16 Amon apparently consulted with Allan Harris, a psychologist,<sup>11</sup>  
17 concerning Plaintiff's mental limitations, although Dr. Amon  
18 alone signed the disability determination. (Compare AR 88 (Dr.  
19 Harris), with AR 93 & 94 (Dr. Amon).) On April 19, 2016, B.  
20 Sheehy<sup>12</sup> agreed on reconsideration, assessing identical

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21  
22 <sup>10</sup> Dr. Amon's electronic signature includes a medical-  
23 specialty code of 12 (AR 94), indicating family or general  
24 practice. See Soc. Sec. Admin., Program Operations Manual System  
(POMS) DI 24501.004 (May 5, 2015), <https://secure.ssa.gov/apps10/poms.nsf/lnx/0424501004>.

25 <sup>11</sup> Dr. Harris's electronic signature includes a medical-  
26 specialty code of 38 (AR 88), indicating psychology. See POMS DI  
27 24501.004, supra note 10.

28 <sup>12</sup> Dr. Sheehy's electronic signature includes a medical-  
(continued...)

1 limitations. (AR 107, 110.) Dr. Sheehy was similarly assisted  
2 by Pamela Hawkins,<sup>13</sup> a psychologist. (See AR 105.)

3 Plaintiff sought counseling on April 15, 2016, for her  
4 "anxiety and low level depression secondary to chronic fatigue  
5 syndrome." (AR 568.) She reported "decreased" strength and  
6 concentration but had "tried to return to work." (Id.) She had  
7 no "history of psychiatric symptoms prior to getting what she  
8 believe[d] [was] chronic fatigue syndrome." (AR 570.) She had  
9 taken a "leave of absence" from her job in 2012: "she pushed  
10 herself outside of her comfort zone but unfortunately she  
11 ultimately quit because . . . she wasn't able to fulfill the  
12 responsibilities of her job." (Id.) She was noted to be  
13 applying for SSDI. (Id.) She was diagnosed with "moderate"  
14 anxiety and "depressive episodes." (AR 574.) She returned for  
15 three more counseling sessions. (See AR 533 (Aug. 5, 2016  
16 appointment), 538 (July 1, 2016), 541 (May 5, 2016).)

17 Plaintiff underwent a behavioral-health consultation on  
18 April 2, 2017, following the birth of her daughter. (AR 674.)  
19 She was noted to have a "history of undiagnosed anxiety and  
20 depression." (Id.) The consultation arose because she had  
21 exhibited "symptoms of anxiety at the hospital over her inability  
22 to breast feed" her baby and concerns about her ability to care  
23 for her upon discharge. (Id.) She "did not think . . . her

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24  
25 <sup>12</sup> (...continued)  
26 specialty code of 20 (AR 112), indicating neurology. See POMS DI  
24501.004, supra note 10.

27 <sup>13</sup> Dr. Hawkins's electronic signature includes a medical-  
28 specialty code of 38 (AR 88), indicating psychology. See POMS DI  
24501.004, supra note 10.

1 situation [was] dire enough to require psychiatric help,"  
2 stating, "'I did not say I was suicidal and do not need to be  
3 assessed.'" (Id.) She "just fe[lt] overwhelmed with the coming  
4 of the new baby." (Id.) She had "tried to call around for a  
5 psychiatrist but was unable to get any appointments." (Id.) She  
6 was "willing to accept a low dose antidepressant, but want[ed] to  
7 be watchful to what she takes since her body does not tolerate a  
8 lot of medication" and because anxiolytics<sup>14</sup> made her "jittery."  
9 (Id.) She was "calm and rational[]" during the assessment. (AR  
10 678.) The doctors concluded that she would "benefit from a low  
11 dose anti-depressant" and outpatient care with a psychiatrist or  
12 therapist. (Id.)

13           2.   Plaintiff's testimony and statements

14           Plaintiff completed a "pain questionnaire" on October 8,  
15 2015. (AR 227, 229.) She reported pain "throughout [her] body –  
16 muscle, joints" – that began "[a]bout 2 years ago." (AR 227.)  
17 The pain was "dull" and "mild to sometimes moderate" and would  
18 spread to her back, legs, arms, shoulders, and neck or manifest  
19 as a headache. (Id.; see also id. (stating that she had  
20 migraines that began about three years prior).) It was  
21 exacerbated by "weather change," "walking," "overexertion,"  
22 "certain noises," "heat," and "hormonal situations (PMS)." (Id.)  
23 She would lie down to relieve her pain. (Id.) "[Her] body  
24 [couldn't] handle medications." (Id.) Even "[h]alf a pill" of  
25

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26           <sup>14</sup> Anxiolytics are medications used to prevent or treat  
27 anxiety and related disorders. About Anxiolytics, Healthline,  
28 <https://www.healthline.com/health/anxiolytics> (last visited May  
8, 2020).

1 Tylenol or Excedrin would cause "side effects," including  
2 "digestive problems," "pain in the liver area (right side),"  
3 "dizziness," "nausea," and "stomach ache." (AR 227-28.) An  
4 "[e]psom salt bath" provided "[t]emporary [r]elief." (AR 228.)  
5 Sitting "in front of a computer for more than 20-30" minutes  
6 "hurt[] [her] back." (Id.) She could stand for five to 10  
7 minutes and sit for 20 to 30 minutes at a time. (AR 229.) She  
8 could do "light housekeeping (i.e., dusting, cooking, etc.)  
9 without assistance." (Id.)

10 Plaintiff completed a function report on October 8, 2015.  
11 (AR 233-41.) She had been "chronically tired for the past 3  
12 years," and it was "extremely difficult" for her "to do any type  
13 of work or activities" or to "commit to and maintain a job." (AR  
14 233.) She would "wake up very fatigued" "most days," and her  
15 fatigue would "continue throughout [the] day." (Id.) She had to  
16 "[l]ay down" and "often" took naps, making her daytime schedule  
17 "unpredictable." (Id.) Some days she "just spen[t] mostly  
18 [l]aying down." (Id.) Her "constant" fatigue affected her  
19 "physical and mental performance": she had "problems with short  
20 t[er]m memory, concentrating on a given work task," and "keeping  
21 up with productivity requir[e]ments." (Id.) Her symptoms caused  
22 her "stress" and difficulty "sustain[ing] work/job routines,"  
23 resulting in her "regular[ly] calling in sick" to work. (Id.)

24 During the day she "might read" or "make a few calls for  
25 herself or [her] parents." (AR 234.) If she "need[ed] to go  
26 somewhere," she would "nap prior to see if it g[ave] her a little  
27 more energy." (Id.) She would "visit her parents who live[d] 5  
28 min[utes] away" and "nap there"; otherwise she would "stay home



1 all day" and rest "until bed time." (Id.) On some days she did  
2 not have enough energy to dress herself or "take a shower in the  
3 morning," so she would "stay in [her] pajamas." (Id.) She did  
4 not need reminders to tend to her personal needs or take  
5 medicine. (AR 235.)

6 She prepared her own meals once or twice a week –  
7 "[s]omething simple" that she could "[j]ust put . . . in the  
8 oven." (Id.) She could make her bed and do dishes about once a  
9 week. (Id.) She went outside alone a "[c]ouple of days a week,"  
10 although she felt "more comfortable" when "someone [was] with  
11 [her]." (AR 236.) She drove "only when [she felt] ok enough to  
12 drive and concentrate on the road." (Id.) She shopped in stores  
13 and online for groceries and clothing. (Id.) She could pay  
14 bills, count change, and use a checkbook, although sometimes she  
15 would "postpone" financial tasks until she "[felt] ok enough to  
16 concentrate" on them. (AR 236-37.) She enjoyed reading and  
17 watching TV (AR 237); she did yoga "about once a month" (id.; cf.  
18 id. (claiming she did not "have energy" for yoga "anymore")). On  
19 days that she felt "ok" she would "watch a movie" with her  
20 "parents or a friend" or "have a short phone conversation with  
21 them." (Id.) She would go to church on holidays, depending on  
22 how she felt. (Id.) She did not "go out" or "socialize anymore"  
23 "on a regular basis." (AR 238.)

24 She could "only lift [about] 5 pounds (occasionally)" and  
25 could walk no more than 10 to 15 minutes before she needed to  
26 rest for between 20 minutes and "1-2 hours." (Id.) She had  
27 "difficulty" finishing tasks "on time" and "concentrating"; when  
28 she was "extremely tired" her "speech" was "affected." (Id.)

1 She was "sensitive to stress," which she didn't "handle . . .  
2 well," especially during her PMS, which lasted "2 weeks every  
3 month." (AR 239 (emphasis in original).) She became "anxious"  
4 in "crowded stores" or when she heard "certain music." (Id.)  
5 She was "very sensitive" to any type of medication and could only  
6 "occasionally" take an over-the-counter painkiller, although  
7 "even that affect[ed her] digestion." (AR 240.) Nothing had  
8 helped her fatigue. (Id.)

9 At the September 20, 2017 hearing, Plaintiff testified that  
10 she had recently given birth and had "temporarily" moved to Los  
11 Angeles. (AR 35.) She was living with her parents, who "help[ed  
12 her] with the baby" and would "probably be there for as long as  
13 [she needed] help with [her] baby." (AR 35-36.) Giving birth  
14 "put a little more strain on [her] body," so she felt "more  
15 tired" and "definitely need[ed] more rest." (AR 43.) Her  
16 parents "help[ed]" her "feed [the baby] at night" and "help[ed]"  
17 bathe her. (AR 44.) She and her parents "[took] turns" walking  
18 with the baby. (AR 45.) She fed the baby and read to her by  
19 herself. (AR 53.)

20 She had a valid driver's license and drove "[o]n good days."  
21 (AR 36.) She tried "not to drive too far" because after half an  
22 hour she would "start losing concentration on the road" and feel  
23 "exhaust[ed]" and "[j]ust very tired." (AR 36-37.) She had  
24 taken a Greyhound bus from Los Angeles to Sacramento for her  
25 hearing. (AR 36.)

26 On bad days she would "not be[] able to take a shower for  
27 the first part of the day" and would have to take "two naps  
28 during the day." (AR 48.) She had bad days "[t]wo to three days

1 a week." (Id.) She could lift "maybe" five pounds "on a good  
2 day" given her "back pain," which had "got[ten] worse" since her  
3 pregnancy. (AR 52-53.) When questioned about the discrepancy,  
4 she acknowledged that she could lift her 15-pound baby "for sure"  
5 but "wouldn't carry her around for too long" and would "have to  
6 sit with her" and "fix [her] back" to "feel comfortable enough."  
7 (AR 53.)

8 Being around "a lot of people" triggered her anxiety.  
9 (AR 58.) For instance, "the last time [she] was in LA," she  
10 "went to . . . an In and Out" and got a "rotisserie chicken to  
11 eat," but she didn't have time to "cook" it before she "left"  
12 because of anxiety. (AR 58-59.) When someone who she  
13 anticipated would want to talk "for at least 15 minutes" would  
14 call her, she wouldn't pick up. (AR 60.)

15 She was no longer on any medications. (See AR 45-46.) She  
16 had "tried different approaches" in recent years but had found  
17 that the antidepressants didn't help with her fatigue; to the  
18 contrary, they gave her "side effects" and "actually [made] her  
19 depressed." (AR 45.) When she had a migraine she took Excedrin  
20 Migraine, which was "the only thing that" worked. (AR 50-51.)  
21 Apart from half a dose of Tylenol, she did not take anything for  
22 pain; she had a "sensitivity" to "all medications" that  
23 manifested as adverse "side effects," including digestive issues  
24 and nausea. (AR 51.) Tylenol made her feel "a little dizzy" and  
25 nauseated and gave her a rash. (Id.) She took her prescribed  
26 antianxiety medication "a few times" but it made her feel "very  
27 shaky" and "nervous." (AR 52.) She had no more issues with  
28 anemia. (Id.) Her CFS treatment was "[m]ostly herbal"; her

1 doctors had told her that "there is no medication for Chronic  
2 Fatigue." (AR 46.) Her acupuncture had had "almost . . . no  
3 effect on [her] chronic fatigue." (AR 55.) When she felt  
4 depressed or anxious, she talked to her sister, who "just  
5 graduated with a psychology diploma." (AR 46.) She had been  
6 given phone numbers for "professionals" but hadn't contacted  
7 them. (Id.)

8 She had a bachelor's degree, with a major in government and  
9 an international-relations concentration. (AR 37.) She had  
10 taken a six-month online nutritional course but had asked for and  
11 been granted an "extension" "because of [her] condition" to  
12 complete it in two years (AR 37-38), which she did (AR 38). (See  
13 AR 39 (Plaintiff testifying that she got extension because she  
14 "needed more time for each session than [she] would if [she]  
15 didn't have the condition").) Before she became pregnant, she  
16 did "Yin Yoga" in 30-minute weekly sessions. (AR 47-48.) As she  
17 explained, that type of yoga involves "stretch[ing] and  
18 [relaxing]" in a "calm and peaceful environment," without  
19 "straining." (AR 47.)

### 20 3. Third-party statement

21 Plaintiff's friend and roommate Alexandre Frolov completed a  
22 third-party function report on October 10, 2015. (AR 245.) He  
23 had known Plaintiff for 12 years and saw her "on evenings after  
24 work" and "most weekends," when the two of them would cook,  
25 clean, take short walks, and watch TV. (Id.) Her condition had  
26 worsened "dramatically" over the "past 3 years": she woke up  
27 "very tired in the morning," was often unable to cook or clean  
28 "without help," and looked "sick and exhausted" "[m]ost of the

1 time." (Id.) She "often need[ed] help to complete house  
2 chores." (AR 247.) Often when he returned from work, "she [was]  
3 dressed the same way she was" when he left in the morning. (AR  
4 246.) He did "most of the household work," although Plaintiff  
5 would "help[] a little" when she felt "ok." (AR 247.) She went  
6 outside a "[f]ew times a week" and could drive. (AR 248.) She  
7 went to a park once a week and took "short walks" around their  
8 apartment complex "2-3 times a week." (AR 249.) The rest of the  
9 time she read, watched TV, or napped. (Id.) "Sometimes she  
10 need[ed]" to be "remind[ed] about her" medical appointments or  
11 "to make a phone call." (Id.) Over the "past few years" she had  
12 been "minimally social" and avoided "social gatherings." (AR  
13 250-51.) It took her a "long time" to recover from "stressful  
14 situations." (AR 251.) She was "extremely sensitive to noise,  
15 loud music or speech, [and] violence on TV." (Id.) She was  
16 "very sensitive to chemical products/smells." (AR 252.)

17 B. Analysis<sup>15</sup>

18 1. The ALJ permissibly discounted Plaintiff's  
19 subjective symptom statements and testimony

20 a. *Applicable Law*

21 An ALJ's assessment of a claimant's allegations concerning  
22 the severity of her symptoms is entitled to "great weight."  
23 Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989) (as amended)  
24 (citation omitted); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir.  
25 1985) (as amended Feb. 24, 1986). "[T]he ALJ is not 'required to  
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27 <sup>15</sup> The Court addresses the issues in an order different from  
28 that briefed by the parties, for clarity and other reasons.

1 believe every allegation of disabling pain, or else disability  
2 benefits would be available for the asking, a result plainly  
3 contrary to 42 U.S.C. § 423(d)(5)(A).’” Molina v. Astrue, 674  
4 F.3d 1104, 1112 (9th Cir. 2012) (quoting Fair v. Bowen, 885 F.2d  
5 597, 603 (9th Cir. 1989)).

6 In evaluating a claimant’s subjective symptom testimony, the  
7 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d  
8 at 1035-36; see also SSR 16-3p, 2016 WL 1119029, at \*3 (Mar. 16,  
9 2016). First, the ALJ must determine whether the claimant has  
10 presented “objective medical evidence of an underlying impairment  
11 [that] could reasonably be expected to produce the pain or other  
12 symptoms alleged.” Lingenfelter, 504 F.3d at 1036 (citation  
13 omitted). If such objective medical evidence exists, the ALJ may  
14 not reject a claimant’s testimony “simply because there is no  
15 showing that the impairment can reasonably produce the degree of  
16 symptom alleged.” Id. (citation omitted & emphasis in original).

17 If the claimant meets the first test, the ALJ may discount  
18 the claimant’s subjective symptom testimony only if he makes  
19 specific findings that support the conclusion. See Berry v.  
20 Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent a finding or  
21 affirmative evidence of malingering, the ALJ must provide a  
22 “clear and convincing” reason for rejecting the claimant’s  
23 testimony. Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir.  
24 2015) (as amended) (citing Lingenfelter, 504 F.3d at 1036);  
25 Treichler v. Comm’r of Soc. Sec. Admin., 775 F.3d 1090, 1102 (9th  
26 Cir. 2014). The ALJ may consider, among other factors, the  
27 claimant’s (1) reputation for truthfulness, prior inconsistent  
28 statements, and other testimony that appears less than candid;

1 (2) unexplained or inadequately explained failure to seek  
2 treatment or to follow a prescribed course of treatment; (3)  
3 daily activities; (4) work record; and (5) physicians' and third  
4 parties' statements. See Rounds v. Comm'r Soc. Sec. Admin., 807  
5 F.3d 996, 1006 (9th Cir. 2015) (as amended); Thomas v. Barnhart,  
6 278 F.3d 947, 958-59 (9th Cir. 2002). If the ALJ's evaluation of  
7 a claimant's alleged symptoms is supported by substantial  
8 evidence in the record, the reviewing court "may not engage in  
9 second-guessing." Thomas, 278 F.3d at 959 (citation omitted).

10 b. *The ALJ's Decision*

11 The ALJ found Plaintiff's "statements concerning the  
12 intensity, persistence and limiting effects" of her symptoms "not  
13 entirely consistent with the medical evidence and other evidence  
14 in the record." (AR 20.) He found them unsubstantiated by  
15 objective medical evidence, noting a "lack of objective  
16 diagnostic studies" and "few significant findings" on physical  
17 examination. (Id.) Moreover, they were "inconsistent with  
18 treatment records" showing that her physical and mental  
19 conditions were "well controlled." (Id.; see AR 21 (noting that  
20 mental-status examinations had "often revealed few significant  
21 findings").) He noted as well that her treatment had been  
22 "conservative in nature," consisting entirely of "office visits  
23 for routine complaints and check-ups," with "no surgeries,  
24 hospitalizations, or extended or specialized care." (AR 20; see  
25 AR 21 (noting that she was "not on any psychotropic medications"  
26 and had "refused to take medications" for her chronic fatigue,  
27 primary insomnia, and recurrent depression).) He also found her  
28 allegations inconsistent with medical-opinion evidence showing

1 that she had "considerable work-related abilities despite her  
2 impairment" (AR 21) and, specifically, with the opinions of the  
3 two consulting examiners, Drs. Fuchs and Liddell (see AR 22  
4 (giving those opinions "great weight")).

5 The ALJ also found Plaintiff's allegations "inconsistent  
6 with" her activities of daily living because they showed she was  
7 "functional." (AR 22.) For instance, she had "no problems with  
8 personal care," took "care of her baby," "perform[ed] household  
9 chores," shopped "in store" and "online," ran "errands . . .  
10 without assistance," attended online classes, and could handle  
11 her finances. (AR 22-23.) She went "to the park once a week,"  
12 took walks around her apartment complex, and did yoga. (AR 23.)  
13 She took a Greyhound bus from Los Angeles to Sacramento for her  
14 hearing. (Id.) She had a "valid drivers license" and drove.  
15 (Id.) Overall, he found her "wide range" of activities was not  
16 as limited as would be expected "given [her] complaints." (Id.)  
17 Finally, the ALJ concluded that Plaintiff had "provided  
18 inconsistent information" about "how much she can lift," namely,  
19 she "stated that she cannot lift 10 pounds"<sup>16</sup> but "testified that  
20 she lifts her 15-pound baby." (Id.)

21 Ultimately, the ALJ found Plaintiff's allegations "partially  
22 consistent" with and "supported by her diligence in seeking care  
23 for her mental disability and fatigue syndrome." (Id.) But he  
24 concluded that although she continued to experience some  
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26 <sup>16</sup> Plaintiff actually stated in her function report that she  
27 could "only lift [about] 5 pounds (occasionally)" (AR 238) and  
28 later testified that she could lift "maybe" five pounds "[o]n a  
good day" (AR 52).



1 symptoms, they were "so well controlled" that she could still  
2 "perform a wide range of light work with simple repetitive  
3 tasks." (Id.)

4 c. *Analysis*

5 Plaintiff challenges the ALJ's partial discounting of her  
6 subjective symptom statements. (See J. Stip. at 12-16.)<sup>17</sup> For  
7 the reasons discussed below, the ALJ did not err.

8 i. *Medical and other evidence*

9 The ALJ properly concluded that Plaintiff's subjective  
10 symptom statements were inconsistent with the medical evidence.  
11 (See AR 20); Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595,  
12 600 (9th Cir. 1999) (finding "conflict" with "objective medical  
13 evidence in the record" to be "specific and substantial reason"  
14 undermining plaintiff's allegations); § 404.1529(c)(2).

15 Plaintiff alleged that her "constant[] fatigue" caused  
16 symptoms that made it difficult for her to "sustain work/job  
17 related routines." (AR 233.) More specifically, she had  
18 fatigue-related "problems with short t[er]m memory" that affected  
19 her ability to "concentrate on a given work task" or "keep[] up  
20 with productivity requir[ements]." (Id.; see also AR 223 ("My  
21 constant feeling of being fatigued for quite a long time already  
22 gets [i]n the way of my productivity and ability to do basic  
23 tasks.")) But repeatedly on examination she was noted to have

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26  
27 <sup>17</sup> For nonconsecutively paginated documents, the Court uses  
28 the pagination generated by its Case Management/Electronic Case  
Filing system.

1 no memory problems<sup>18</sup> (see, e.g., AR 343 (memory "intact" on June  
2 1, 2015), 346 (same on Mar. 17, 2015), 348 (same on Jan. 22,  
3 2015), 361 (same on July 15, 2014), 369 ("negative" for "memory  
4 impairment" on June 18, 2013), 491 ("negative" for "memory loss"  
5 on Aug. 3, 2017), 547 (memory "normal" on Apr. 9, 2017), 555  
6 (same on Aug. 23, 2016)), as the ALJ noted (AR 20, 23). (But see  
7 AR 351 ("positive" for "[m]emory impairment" on Dec. 1, 2014).)  
8 Her mental-health providers did not note any memory problems  
9 either. (See, e.g., AR 443 (memory "intact" at Aug. 15, 2014  
10 therapy session), 445 (same on July 30, 2014), 448 (same on July  
11 15, 2014).) And Dr. Liddell's November 17, 2015 comprehensive  
12 psychiatric evaluation revealed no problems with her "immediate,"  
13 "recent," or "long-term" recall. (See AR 466.) Although fatigue  
14 symptoms of CFS are often of necessity "self-reported," see  
15 Reddick, 157 F.3d at 726, the ALJ did not err in discounting  
16 Plaintiff's statements when doctors' treatment notes routinely  
17 directly contradicted the existence of alleged memory issues, see  
18 id. (distinguishing other common symptoms of CFS, including  
19 "memory problems," which can be objectively assessed).<sup>19</sup>

20 Similarly, Plaintiff testified that her speech often became  
21 "affected" as a result of her fatigue (AR 238), but doctors noted  
22 no such affectation (see, e.g., AR 445 (speech "appropriate" on  
23

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24 <sup>18</sup> Observable abnormalities of thought, memory, mood, and  
25 perception are objective medical evidence. See § 404.1502(f) &  
(g).

26 <sup>19</sup> Notably, Plaintiff's roommate, in filling out a third-  
27 party function report, did not check the box for "memory" when  
28 asked to indicate things the "disabled person's illnesses,  
injuries, or conditions affect." (AR 250.)

1 July 30, 2014), 448 (same on July 15, 2014), 459 (Dr. Fuchs  
2 finding her speech "audible, understandable, and sustainable" on  
3 Nov. 14, 2015), 574 (speech "clear" on Apr. 15, 2016), 678  
4 (speech "appropriate in rate, rhythm, volume and tone" on March  
5 27, 2017)). To the contrary, Dr. Liddell noted that her "stream  
6 of mental activity" was "normal," "thought processes were tight,  
7 logical, and goal oriented," speech was "logical, coherent, and  
8 concise," "[a]rticulation was clear," and "[v]elocity and volume  
9 were normal." (AR 465 (Nov. 17, 2015 comprehensive  
10 psychological-evaluation report).)

11 The ALJ also properly concluded, based on his thorough  
12 review of the treatment records, that Plaintiff's symptoms could  
13 be adequately managed with medication and other treatments. (See  
14 AR 20-21 (ALJ finding that Plaintiff's mental and physical  
15 conditions were "well controlled")); SSR 16-3p, 2016 WL 1119029,  
16 at \*6 (ALJ may consider information in medical records about  
17 onset of symptoms, their change over time, and plaintiff's self-  
18 reported activities in evaluating subjective symptoms);  
19 § 404.1527(c)(3). As he detailed at length, Plaintiff repeatedly  
20 reported to her acupuncturist that her fatigue was improving.  
21 (See AR 21; see also AR 23 (ALJ noting that Plaintiff "reported  
22 . . . that the [acupuncture] treatment has been generally  
23 successful in controlling [her] symptoms").) Specifically, she  
24 reported "[s]lightly more energy" on November 26, 2013, just a  
25 few weeks after she began acupuncture treatment. (AR 530.) By  
26 December 10, 2013, she had "more energy" still and was "sleeping  
27 better." (Id.) And by December 20, 2013, her symptoms had  
28 improved to the extent she "notice[d] a difference in her daily

1 life": she was no longer napping in the mornings or spending most  
2 of her day in the bedroom. (AR 529.) On February 4, 2014, she  
3 reported that her "energy and mood and sleep [were] all better,"  
4 and she was going "out for walks." (Id.; see also id. (reporting  
5 on Feb. 18, 2014, that she was going on 30-minute walks "every  
6 day").) By February 25, 2014, she could "last until 2:30 pm  
7 before needing a nap." (AR 528.)

8 And as the ALJ noted, none of Plaintiff's conditions  
9 required specialized or extended medical care or  
10 hospitalization.<sup>20</sup> (See AR 20.) Notably, she sought mental-  
11 health care only intermittently, first for three appointments in  
12 2015 (see AR 443-48) and then for three more in 2016 (see AR 559-  
13 74). (See also AR 23 (ALJ noting that Plaintiff's "mental health  
14 care was brief").) The only other record of mental-health care  
15 was an in-hospital consultation following the birth of her  
16 daughter, apparently related to concerns about possible  
17 postpartum depression. (See AR 674 (Mar. 29, 2017 behavioral-  
18 health-consultation record).) During that consultation,  
19 Plaintiff reported symptoms of depression and anxiety but "did  
20 not think that her situation [was] dire enough to require  
21 psychiatric help" (id.; see id. (Plaintiff stating, "I did not  
22 say I was suicidal and do not need to be assessed.")), and the  
23 doctors recommended only a "low dose" antidepressant and  
24 "outpatient" therapy (AR 674, 678). Otherwise, the treatment  
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26 <sup>20</sup> The ALJ stated that there were no hospitalizations in the  
27 record. (AR 20.) That is not strictly true, however, given that  
28 Plaintiff was hospitalized for the birth of her daughter. (See  
AR 674.)

1 records contain only isolated appointments for discrete issues.  
2 (See, e.g., AR 322 (Nov. 10, 2012 naturopathic appointment for  
3 acne, digestion, and PMS), 337 (Oct. 2, 2015 "well woman" visit  
4 with Dr. Goshike), 494-526 (prenatal-care records dated Sept. 27,  
5 2016 through Apr. 21, 2017), 575 (Mar. 7, 2016 appointment for  
6 "left foot pain"); see also AR 20 (ALJ noting that "treatment  
7 [Plaintiff] has received for all of her impairments have been  
8 office visits for routine complaints and check-ups").)

9 Moreover, Plaintiff repeatedly refused medicinal treatment  
10 and often failed to take medication she had been prescribed, as  
11 the ALJ noted. (See, e.g., AR 21 (ALJ noting that she had  
12 "refused to take medications" for her chronic fatigue, primary  
13 insomnia, and recurrent depression), 23 (ALJ noting that  
14 "[d]espite the complaints of allegedly disabling symptoms,  
15 [Plaintiff] has not taken any medications for those symptoms").)  
16 Indeed, Plaintiff's doctors prescribed at least four medications  
17 for her fatigue during 2015. (See AR 341, 344, & 346 (discussing  
18 "quadruple therapy" for lethargy).) But when she asked Dr.  
19 Goshike to fill out her disability form in November "due to her  
20 chronic fatigue," the doctor noted that she was "not taking" any  
21 of them. (AR 403; see also AR 22 (ALJ noting same).) She at  
22 times indicated that she did not take her medications because  
23 they caused adverse side effects. (See, e.g., AR 240 (Plaintiff  
24 stating on Oct. 8, 2015, that she "can't take [medicine] for  
25 body/muscle pain" because she is "very sensitive" to "any types  
26 of medications"), 459 (stating to Dr. Fuchs on Nov. 14, 2015,  
27 that "every medicine she has tried has had side effects"); see  
28 also AR 455 (Dr. Goshike noting that Plaintiff was "sensitive to

1 medication and has side effects, so she is not on any  
2 medication").) At other times, however, she expressed an  
3 ideological preference for alternative medicine. For instance,  
4 on August 15, 2015, she terminated her individual-therapy  
5 treatment, stating that she was "interested in 'natural healing'"  
6 and "afraid of having medications pushed on" her. (See AR 443;  
7 see also AR 623 (Plaintiff stating on July 30, 2013, that she  
8 preferred to treat her symptoms with "homeopathic remedies" and  
9 "nutrition").) And she told a doctor in March 2017 that she  
10 didn't want to take antidepressants because a friend took them  
11 and killed herself. (AR 674.) The ALJ properly considered  
12 Plaintiff's failure to follow medically advised treatment in  
13 evaluating her subjective symptom testimony. See Tommasetti v.  
14 Astrue, 533 F.3d 1035, 1039 (9th Cir. 2008); Sights v. Colvin,  
15 No. 6:15-cv-00717-AA, 2016 WL 5402746, at \*3 (D. Or. Sept. 26,  
16 2016) (that plaintiff "chose not to take prescribed medications"  
17 and elected "homeopathic remedies" over "suggested treatments  
18 . . . permit[ted] an inference that [her] symptoms [were] not as  
19 severe as alleged").<sup>21</sup>

20 The ALJ also properly discounted Plaintiff's allegations as  
21 inconsistent with the medical-opinion evidence (AR 21), which is  
22 a valid basis to discount a claimant's subjective symptom  
23 testimony. See Molina, 674 F.3d at 1113 (examining doctor's  
24 opinion that condition "was not severe" and could be  
25 "control[led]" was "specific, clear, and convincing reason[]" to  
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27 <sup>21</sup> Because Plaintiff was prescribed treatments she didn't  
28 follow, her argument that CFS has an "absence of treatment . . .  
modalities" (J. Stip. at 14) is off the mark.

1 reject subjective symptom testimony). Although Plaintiff claimed  
2 that her symptoms rendered her unable to "do any type of work or  
3 activities" (AR 233), two examining doctors and the state-agency  
4 reviewing doctors disagreed. Notably, Dr. Fuchs partially  
5 credited her subjective symptoms in his assessment, limiting her  
6 standing and walking to four hours in an eight-hour workday to  
7 accommodate her chronic fatigue. (See AR 461 (Fuchs noting that  
8 she gave "a good history for fatigue even though she [had] no  
9 physical limitations".)) Nonetheless, he opined that she was  
10 capable of light work with some additional limitations (see id.),  
11 far less limited than she claimed to be (see, e.g., AR 238  
12 (claiming she could lift only "about" five pounds and walk 10 to  
13 15 minutes at a time)). Moreover, Dr. Liddell opined, based on  
14 her comprehensive psychiatric evaluation, that Plaintiff had no  
15 mental or cognitive limitations apart from moderate impairment in  
16 her ability to deal with workplace changes because of her  
17 "anxiety and depression" (AR 467), which was inconsistent with  
18 Plaintiff's claims of fatigue-related "problems" with her short-  
19 term memory and concentration (AR 233). The state-agency  
20 reviewing doctors agreed that Plaintiff's impairments were not  
21 severe enough to prevent her from working. (AR 90, 110.)  
22 Discounting her allegations because they were inconsistent with  
23 the medical and other evidence was proper.

24 *ii. Daily activities*

25 The ALJ also properly discounted Plaintiff's allegations as  
26 inconsistent with her daily activities. (AR 22.) An ALJ may  
27 discredit a claimant's subjective symptom testimony "when [she]  
28 reports participation in everyday activities indicating

1 capacities that are transferable to a work setting." Molina, 674  
2 F.3d at 1113 (citation omitted). "Even where those activities  
3 suggest some difficulty functioning, they may be grounds for  
4 discrediting the claimant's testimony to the extent that they  
5 contradict claims of a totally debilitating impairment," id.  
6 (citations omitted), or "suggest" that her "claims about the  
7 severity of [her] limitations were exaggerated," Valentine v.  
8 Comm'r Soc. Sec. Admin., 574 F.3d 685, 693 (9th Cir. 2009).

9 As the ALJ noted, Plaintiff's activities demonstrated that  
10 she was "functional." (AR 22.) She was able to prepare her own  
11 meals, make her bed, do dishes, shop online and in-store, and  
12 manage her finances. (AR 235-36; see also AR 245 (roommate  
13 noting that he and Plaintiff cooked, cleaned, took short walks,  
14 and watched TV together).) She had a driver's license and drove,  
15 and she went to church on holidays. (AR 36, 236.) She did yoga.  
16 (AR 237; see AR 47-48.) She took online courses in nutrition  
17 and, with an extension, completed the program.<sup>22</sup> (See AR 37-39.)  
18 She had recently had a baby and cared for her with her family's  
19 "help." (AR 35-36; see AR 44 (Plaintiff testifying that her  
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21 <sup>22</sup> Plaintiff told the agency she enrolled in the nutrition  
22 course "to help [herself] eat a more balanced diet" (AR 217), but  
23 she told her doctor she was taking classes online "to change the  
24 direction of her career" (AR 366). Indeed, Plaintiff appears to  
25 have taken online courses – apparently including but not limited  
26 to the nutrition class – for at least three years during the  
27 alleged disability period. (See, e.g., AR 366 (telling doctor in  
28 July 2013 that she was taking online classes), 448 (reporting  
taking online "college classes" in July 2014), 38 (Plaintiff  
testifying that she finished two-year online nutrition class  
about a year before baby was born, which was March 2017).)  
Plaintiff told the ALJ that the only class she had taken after  
graduating college was the nutrition course. (AR 37.)



1 parents helped her feed baby "at night," bathe her, and walk with  
2 her), 53-54 (testifying that she sometimes fed and read to baby  
3 by herself).) The ALJ properly concluded that these activities  
4 suggested some ability to work and were inconsistent with  
5 Plaintiff's claims of extreme fatigue. See Burch v. Barnhart,  
6 400 F.3d 676, 680 (9th Cir. 2005) (ALJ properly discounted  
7 plaintiff's credibility when her activities "suggest[ed] that she  
8 is quite functional" because she was "able to care for her own  
9 personal needs, cook, clean and shop," "interact[] with her  
10 nephew and her boyfriend," and "manage her own finances");  
11 Fleming v. Astrue, 274 F. App'x 571, 572 (9th Cir. 2008) (ALJ  
12 properly discounted plaintiff's claims concerning effects of her  
13 CFS given her daily activities, which included gardening and  
14 bicycling).

15 Plaintiff complains that the ALJ "omit[ted] important  
16 qualifiers and information" about her ability to complete these  
17 tasks on a regular basis. (J. Stip. at 16; see also id. at 3-4  
18 (challenging ALJ's characterization of her testimony).) She  
19 alleged that her "[b]ody aches and pains" limited her ability to  
20 work (AR 216), and she completed a pain questionnaire alleging  
21 specific pain-related limitations (see AR 227).<sup>23</sup> For instance,  
22 she stated that she couldn't sit for 20 to 30 minutes without  
23 back pain. (AR 228.) But she was able to take a Greyhound bus

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25 <sup>23</sup> Plaintiff suggests that her primary or even sole  
26 "disabling allegation [was] fatigue and fatigability." (J. Stip.  
27 at 16.) But as discussed, in addition to her fatigue and  
28 fatigue-derived symptoms, she also alleged, for example,  
"[s]evere PMS," anxiety, "[s]ensitivity to medication/chemicals,"  
acne, and "[h]eadaches and [m]igraines." (AR 216.)

1 from Los Angeles to Sacramento for her hearing (AR 36), as the  
2 ALJ specifically noted (AR 23). Similarly, the ALJ properly  
3 relied on the inconsistency of her stating that she could lift  
4 "maybe" five pounds because of her "back pain" (AR 51-53; see  
5 also AR 237) but when questioned admitting that she could lift  
6 her 15-pound baby (AR 52-53 ("I can lift the baby weight for  
7 sure"; "I want to say she's 15 [pounds]")). See DeBerry v.  
8 Comm'r of Soc. Sec., 352 F. App'x 173, 177 (9th Cir. 2009)  
9 (holding that ALJ did not err in discounting plaintiff's  
10 testimony concerning her CFS based on inconsistencies between her  
11 claimed functional limitations and what she told nurse about  
12 them); Fleming, 274 F. App'x at 572 (ALJ properly discounted  
13 plaintiff's claims about fatigue based in part on  
14 "inconsistenc[i]es regarding complaints of discomfort when  
15 undergoing an abdominal exam").

16 Although Plaintiff disputes the ALJ's characterization of  
17 her testimony, her qualifier that she "wouldn't carry her [baby]  
18 around for too long" (J. Stip. at 16 (citing AR 53)) doesn't  
19 undermine his observation that she "provided inconsistent  
20 information regarding how much she can lift" (AR 23). The ALJ  
21 properly concluded that the inconsistencies not only undermined  
22 her allegations about her exertional limitations (see id.) but  
23 suggested that she was exaggerating her symptoms, including her  
24 fatigue (see AR 22 (finding Plaintiff's "general allegations of  
25 disability" "inconsistent with" her daily activities)). He was  
26 entitled to so infer. See Valentine, 574 F.3d at 693 (ALJ  
27 properly discounted plaintiff's testimony when inconsistency  
28 "suggest[ed] that [his] later claims about the severity of his

1 limitations were exaggerated"); Rounds, 807 F.3d at 1006 (in  
2 assessing whether to credit plaintiff's subjective symptom  
3 testimony, court can consider other inconsistent statements).

4 Similarly, Plaintiff asserts that the ALJ did not "expressly  
5 or visibly account for fatigue, never mention[ed] SSR 14-1p," and  
6 showed "no signs of comprehending CFS." (J. Stip. at 15 n.6.)  
7 But the ALJ mentioned Plaintiff's fatigue more than 20 times  
8 during his RFC discussion (see AR 19-23), and during the hearing  
9 he repeatedly asked her about it (see, e.g., AR 43 ("I know you  
10 were having Chronic Fatigue and other related symptoms prior to  
11 your pregnancy and childbirth.")) and any treatments she had  
12 tried or medications she was taking for it (see, e.g., AR 45  
13 ("What do you still do to try to address [chronic fatigue]  
14 symptoms?"), 46 ("[I]s there any medication that you currently  
15 take for [chronic fatigue]?")). Not only did he fully consider  
16 her allegations of fatigue, he partially credited them (see AR 23  
17 (finding her allegations "partially consistent and supported by  
18 her diligence in seeking care for her . . . fatigue syndrome")),  
19 assessing limitations in excess of those found by any credited  
20 doctor. Thus, Plaintiff's assertion is without merit. See also  
21 DeBerry, 352 F. App'x at 176 (declining to consider argument that  
22 ALJ "failed to properly apply" SSR concerning CFS because  
23 plaintiff did "not argue the contention with any specificity").

24 Substantial evidence supported each of the reasons the ALJ  
25 gave to discount Plaintiff's subjective symptom testimony.  
26 Remand is not warranted on this basis.

1           2.    Any error in discounting the third-party statement  
2                    was harmless

3                    a.    *Applicable Law*

4            "In determining whether a claimant is disabled, an ALJ must  
5 consider lay witness testimony concerning a claimant's ability to  
6 work." Bruce v. Astrue, 557 F.3d 1113, 1115 (9th Cir. 2009)  
7 (citing Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050, 1053  
8 (9th Cir. 2006)). Such testimony is competent evidence and  
9 "cannot be disregarded without comment." Bruce, 557 F.3d at 1115  
10 (emphasis in original) (citing Nguyen v. Chater, 100 F.3d 1462,  
11 1467 (9th Cir. 1996)); Robbins, 466 F.3d at 885 ("[T]he ALJ is  
12 required to account for all lay witness testimony in the  
13 discussion of his or her findings." (citation omitted)). When  
14 rejecting the statements of a lay witness, an ALJ must give  
15 specific reasons germane to that witness. Diedrich v. Berryhill,  
16 874 F.3d 634, 640 (9th Cir. 2017); Bruce, 557 F.3d at 1115.

17            If an ALJ errs by providing reasons that are not germane,  
18 the error may be harmless. See Valentine, 574 F.3d at 694. An  
19 error is harmless if it is "'inconsequential to the ultimate  
20 nondisability determination' in the context of the record as a  
21 whole," Molina, 674 F.3d at 1122 (citations omitted); see also  
22 Tommasetti, 533 F.3d at 1038, such as when "the same evidence  
23 that the ALJ referred to in discrediting [the claimant's] claims  
24 also discredits [the lay witness's] claims," Molina, 674 F.3d at  
25 1122 (alterations in original) (citing Buckner v. Astrue, 646  
26 F.3d 549, 560 (8th Cir. 2011)).

1                   b.    *Analysis*

2           As noted, Plaintiff's friend Frolov completed a third-party  
3 function report in which he stated that Plaintiff had severe  
4 limitations as a result of her fatigue. (See AR 245-52.)  
5 Although the ALJ did not assign weight to Frolov's statement, he  
6 implicitly rejected it by noting that "the medical evidence [did]  
7 not support" it. (AR 24); see also Magallanes v. Bowen, 881 F.2d  
8 747, 755 (9th Cir. 1989) (court may draw "specific and legitimate  
9 inferences from the ALJ's opinion").

10           The Ninth Circuit has held that lack of support from medical  
11 evidence is not a germane reason for discounting lay  
12 observations, at least in some cases. See Diedrich, 874 F.3d at  
13 640 (noting that lay observations "may offer a different  
14 perspective than medical records alone," which "is precisely why  
15 such evidence is valuable at a hearing"). But see Bayliss v.  
16 Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2005) (inconsistency with  
17 medical evidence can be germane reason for reecting testimony of  
18 "friends and family"). Thus, as a matter of law, the ALJ may  
19 have erred by rejecting Frolov's observations on this ground.  
20 Any error was harmless, however.<sup>24</sup>

21           As discussed, the ALJ provided clear and convincing reasons  
22 for partially discounting Plaintiff's own testimony, thereby  
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24           <sup>24</sup> Plaintiff includes a number of undeveloped arguments  
25 about the sufficiency of the ALJ's analysis of Frolov's  
26 statement. (See, e.g., J. Stip. at 17 (complaining that ALJ's  
27 stated reason was "casual" and "unexplained"); id. (suggesting  
28 that ALJ's analysis was inconsistent with SSR 14-1p).) Because  
the Court finds that the ALJ likely failed to provide a valid  
reason for discounting Frolov's statement but that any error was  
harmless, it does not address those arguments.

1 establishing a sufficient basis for rejecting the friend's  
2 similar statements. See Valentine, 574 F.3d at 694 (finding that  
3 although ALJ improperly discounted claimant's wife's testimony in  
4 part because she was "an interested party," any error was  
5 harmless because ALJ gave clear and convincing reasons for  
6 rejecting claimant's "similar" subjective complaints); Molina,  
7 674 F.3d at 1122 (holding that ALJ's error in rejecting lay  
8 witnesses' testimony was "harmless" because "ALJ had validly  
9 rejected all the limitations described by the lay witnesses in  
10 discussing [claimant's] testimony").

11       Indeed, Frolov's function report was quite consistent with  
12 Plaintiff's. For example, he indicated that Plaintiff had  
13 difficulty lifting, walking, stair climbing, standing, talking,  
14 "[c]ompleting [t]asks," and concentrating. (AR 250.) Plaintiff  
15 reported the same, plus problems sitting and with "memory." (AR  
16 238.) Similarly, both said she had difficulty getting up in the  
17 morning (see AR 246, (Frolov), 234 (Plaintiff)) and that stress  
18 was a problem for her (AR 251 (Frolov), 239 (Plaintiff)).  
19 Notably, both Plaintiff and Frolov agreed that her condition had  
20 existed for the "past 3 years." (Compare AR 245 (Frolov), with  
21 AR 233 (Plaintiff).) And one of Frolov's responses simply  
22 parrots Plaintiff. (See AR 246 ("She always complains she  
23 doesn't get enough rest at night time.").)

24       Thus, because the ALJ provided sufficient reasons to  
25 discount Plaintiff's similar testimony, any error by him in  
26 rejecting Frolov's statements was harmless and remand is not  
27 warranted on this ground. See Molina, 674 F.3d at 1122.

1           3.   The ALJ permissibly discounted the treating-source  
2                   opinions

3           Plaintiff contends that the ALJ's weighing of the opinion  
4 evidence "requires reversal." (J. Stip. at 8.) Specifically,  
5 she argues that the ALJ improperly rejected the opinions of Dr.  
6 Goshike and Chang, her acupuncturist (*id.*), both of whom  
7 completed CFS-specific forms indicating that Plaintiff had  
8 extreme limitations (*see* AR 454-57, 471-74).<sup>25</sup> For the reasons  
9 discussed below, remand is not warranted.

10                   a.   *Applicable Law*

11           Three types of physicians may offer opinions in Social  
12 Security cases: those who directly treated the plaintiff, those  
13 who examined but did not treat the plaintiff, and those who did  
14 neither. *See Lester*, 81 F.3d at 830. A treating physician's  
15 opinion is generally entitled to more weight than an examining  
16 physician's, and an examining physician's opinion is generally  
17 entitled to more weight than a nonexamining physician's. *Id.*;  
18 *see* § 404.1527(c)(1)-(2).<sup>26</sup> This is so because treating

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19  
20           <sup>25</sup> The two forms were filled out essentially identically,  
21 with even the same portions of the form left blank. (*See* AR 456  
22 & 473 (leaving blank questions pertaining to manipulative  
restrictions).)

23           <sup>26</sup> For claims filed on or after March 27, 2017, the rules in  
24 § 404.1520c (not § 404.1527) apply. *See* § 404.1520c (evaluating  
25 opinion evidence for claims filed on or after Mar. 27, 2017).  
26 The new regulations provide that the Social Security  
27 Administration "will not defer or give any specific evidentiary  
28 weight, including controlling weight, to any medical opinion(s)  
or prior administrative medical finding(s), including those from  
your medical sources." § 404.1520c(a). Thus, the new  
regulations eliminate the term "treating source" as well as what  
(continued...)

1 physicians are employed to cure and have a greater opportunity to  
2 know and observe the claimant. Smolen v. Chater, 80 F.3d 1273,  
3 1285 (9th Cir. 1996). But even "the findings of a nontreating,  
4 nonexamining physician can amount to substantial evidence, so  
5 long as other evidence in the record supports those findings."  
6 Saelee v. Chater, 94 F.3d 520, 522 (9th Cir. 1996) (per curiam)  
7 (as amended).

8 The ALJ may discount a physician's opinion regardless of  
9 whether it is contradicted. Magallanes, 881 F.2d at 751; see  
10 also Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1164  
11 (9th Cir. 2008). When a doctor's opinion is not contradicted by  
12 other medical-opinion evidence, however, it may be rejected only  
13 for a "clear and convincing" reason. Magallanes, 881 F.2d at 751  
14 (citations omitted); Carmickle, 533 F.3d at 1164 (citing Lester,  
15 81 F.3d at 830-31). When it is contradicted, the ALJ need  
16 provide only a "specific and legitimate" reason for discounting  
17 it. Carmickle, 533 F.3d at 1164 (citing Lester, 81 F.3d at 830-  
18 31). The weight given a doctor's opinion, moreover, depends on  
19 whether it is consistent with the record and accompanied by  
20 adequate explanation, among other things. See § 404.1527(c); see  
21 also Orn v. Astrue, 495 F.3d 625, 631 (9th Cir. 2007) (factors in  
22 assessing physician's opinion include length of treatment  
23 relationship, frequency of examination, and nature and extent of  
24 treatment relationship).

25 \_\_\_\_\_  
26 <sup>26</sup> (...continued)  
27 is customarily known as the treating-source or treating-physician  
28 rule. See § 404.1520c. Plaintiff's claim was filed before March  
27, 2017, and the Court therefore analyzes it under the treating-  
source rule in § 404.1527.



1 "Medical opinions" are statements from "acceptable medical  
2 sources," § 404.1527(a)(1), and "[o]nly physicians and certain  
3 other qualified specialists are considered '[a]cceptable medical  
4 sources,'" Ghanim v. Colvin, 763 F.3d 1154, 1161 (9th Cir. 2014)  
5 (quoting Molina, 674 F.3d at 1111); § 404.1502(a); see also  
6 § 404.1513(a). An acupuncturist is not an acceptable medical  
7 source, see Wernet v. Saul, 777 F. App'x 875, 878 (9th Cir. 2019)  
8 (citing § 404.1502(a)), and whether an acupuncturist is a  
9 "medical source" at all turns on whether he is a licensed health-  
10 care worker, see §§ 404.1502(a) & (d), 404.1527(a).

11 b. *The ALJ's Decision*

12 The ALJ gave "great weight" to the opinions of consulting  
13 doctors Fuchs and Liddell and initial reviewing doctors Amon and  
14 Harris because their opinions were consistent with each other and  
15 with "the medical record as a whole." (AR 24.)

16 The ALJ gave Dr. Goshike's opinion "little weight" because  
17 it was, when it was rendered, the product of a "short treatment  
18 relationship." (AR 24.) Moreover, it was "not descriptive at  
19 all on symptoms or severity." (Id.)

20 The ALJ gave Chang's opinion "[l]ittle weight," in part  
21 because the acupuncturist was "not an acceptable medical source."  
22 (AR 22; see AR 24.) He also found the opinion – which cited  
23 "[n]o objective evidence" (AR 22) – inconsistent "with the record  
24 as a whole and not supported with relevant evidence." (AR 24.)  
25 Moreover, it "appear[ed] to be a reflection of the claimant's own  
26 self reported subjective complaints." (AR 22; see AR 24 (noting  
27 that Chang "relied heavily" on Plaintiff's "subjective report of  
28 symptoms and limitations").)

1                   c.    *Analysis*

2                    i.    *Dr. Goshike*

3            Because Dr. Goshike's opinion was inconsistent with the  
4 opinions of the consulting examiners and state-agency reviewing  
5 doctors, the ALJ needed to provide only a "specific and  
6 legitimate reason" for discounting it, Carmickle, 533 F.3d at  
7 1164 (citation omitted), and he did so.

8            To start, the ALJ properly discounted Dr. Goshike's opinion  
9 based on her "short treatment relationship" with Plaintiff. (AR  
10 24.) She is correct that a treating doctor's opinion should be  
11 given "more weight" as a "general rule." (J. Stip. at 8 (quoting  
12 Lester, 81 F.3d at 830).) But that's because treating doctors  
13 "are likely to be the medical professionals most able to provide  
14 a detailed, longitudinal picture of [a claimant's] medical  
15 impairment(s)" and therefore "bring a unique perspective to the  
16 medical evidence that cannot be obtained from the objective  
17 medical findings alone or from . . . consultative examinations."  
18 § 404.1527(c)(2). Consequently, the "general rule" applies only  
19 when the doctor has seen the claimant "long enough to have  
20 obtained a longitudinal picture of [her] impairment."  
21 § 404.1527(c)(2)(i). Although Dr. Goshike was nominally a  
22 "treating" source, she had seen Plaintiff only "for the last  
23 month" (AR 454). Indeed, she filled out her disability form  
24 during their third appointment, on November 10, 2015. (See AR  
25 403, 454-57.) Only one of the previous appointments concerned  
26 fatigue (see AR 338 (Sept. 18, 2015 treatment notes for "chronic  
27 fatigue")); the other was for a "well woman" exam (AR 337 (Oct.  
28 2, 2015 treatment notes)). Nonetheless, Dr. Goshike opined that

1 Plaintiff's fatigue had been "persistent" for three years and  
2 that she had symptoms that "persisted or recurred during six or  
3 more consecutive months." (AR 454.) Although Plaintiff contends  
4 that this opinion was based on Dr. Goshike's review of  
5 Plaintiff's records (J. Stip. at 8-9), nothing in the record so  
6 indicates. It is just as likely that the doctor simply wrote  
7 what Plaintiff told her. Indeed, at one point she wrote that the  
8 "symptoms and limitations" described had lasted for three years  
9 "according to patient." (AR 457.) The ALJ was not required to  
10 give Dr. Goshike's opinion more weight just because she had seen  
11 Plaintiff twice before completing her disability forms. See,  
12 e.g., Quezada v. Berryhill, No. EDCV 16-1013-KS, 2017 WL 2312353,  
13 at \*5 (C.D. Cal. May 26, 2017) ("short treatment relationship"  
14 with plaintiff was "specific and legitimate" reason to discount  
15 treating-source opinion).<sup>27</sup>

16 The ALJ's conclusion that Dr. Goshike's CFS-specific form  
17 opinion was "not descriptive at all on symptoms or severity" was  
18 also sound. (AR 24.) An ALJ "need not accept the opinion of any  
19

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20 <sup>27</sup> Even if Dr. Goshike's notation that Plaintiff had been  
21 "with the Clinic since 6/2013" indicated that the doctor had  
22 reviewed her records, as she claims (J. Stip. at 8-9), it does  
23 not undermine the ALJ's observation that their relationship was a  
24 "short" one (AR 24). Indeed, reviewing the records would not  
25 have put Dr. Goshike in a better position to opine about  
26 Plaintiff's limitations than, for instance, the consulting and  
27 reviewing doctors who reviewed the same records. (AR 90, 110,  
28 461, 467); see DeBerry, 352 F. App'x at 176-77 (upholding ALJ's  
discounting of treating doctor's opinion concerning history of  
plaintiff's CFS because "she ha[d] no personal knowledge of  
[plaintiff's] condition" before treatment began and her  
perspective based on "retrospective review of the medical  
records" "was . . . no different" from nontreating doctors);  
§ 404.1527(c)(2)(i).

1 physician, including a treating physician, if that opinion is  
2 brief, conclusory, and inadequately supported by clinical  
3 findings." Thomas, 278 F.3d at 957 (citation omitted); see  
4 Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th  
5 Cir. 2004); see also Ford v. Saul, 950 F.3d 1141, 1155 (9th Cir.  
6 2020) ("An ALJ is not required to take medical opinions at face  
7 value, but may take into account the quality of the explanation  
8 when determining how much weight to give a medical opinion.").

9 Although Dr. Goshike checked off "symptoms" from a form, she  
10 did not indicate the duration, frequency, or severity of any of  
11 them. (AR 455.) For instance, she noted that Plaintiff "ha[d]  
12 side effects" from medication but nowhere indicated what they  
13 were or whether they were severe enough to justify her aversion  
14 to them. (Id.) Similarly, she checked that "emotional factors  
15 contribute[d] to" her symptoms but did not identify what those  
16 factors were or how they contributed to her fatigue. (Id.) And  
17 she listed that she was "sensitive to humidity, noise, strong  
18 odors, chemicals, and if it is too hot or cold" but did not opine  
19 as to the cause or severity of those sensitivities. (AR 457.)  
20 And contrary to Plaintiff's contention (J. Stip. at 9-10), Dr.  
21 Goshike's treatment notes are equally vague. (See, e.g., AR 403  
22 (Plaintiff presents with "muscle pain"), 405 (diagnosing  
23 Plaintiff with "Other fatigue (R53.83)")). Notably, they don't  
24 mention Plaintiff's purported sensitivities to, for example,  
25 noise and odors at all. (See AR 334-40, 403-05).<sup>28</sup> The ALJ  
26

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27 <sup>28</sup> Nor do any other treatment records, from Plaintiff's  
28 primary-care clinic or elsewhere.

1 properly noted the conclusory and unsupported nature of Dr.  
2 Goshike's opinion and appropriately discounted it accordingly.  
3 See Crane v. Shalala, 76 F.3d 251, 253 (9th Cir. 1996) (ALJ  
4 properly rejected doctor's opinion because check-off reports did  
5 not contain any explanation of bases for their conclusions).

6 The ALJ properly discounted Dr. Goshike's form opinion.

7 ii. *James Chang*

8 Initially, Chang is not an "acceptable medical source," as  
9 the ALJ noted (AR 22, 24) and as Plaintiff apparently concedes  
10 (see J. Stip. at 10 (contending that Chang was "medical source"  
11 but not "acceptable medical source")). See Wennet, 777 F. App'x  
12 at 878 (acupuncturist not "[a]cceptable medical source" (citing  
13 § 404.1502(a))).<sup>29</sup> Although that may not itself have been a  
14 valid reason to discount his opinion, see Haagenson v. Colvin,  
15 656 F. App'x 800, 802 (9th Cir. 2016), because Chang's was not a  
16 "medical opinion" under §§ 404.1527(a)(1) and 404.1513(a)(2), the  
17 ALJ needed to give only a "germane" reason to discount it,  
18 Ghanim, 763 F.3d at 1161; see also Greger v. Barnhart, 464 F.3d  
19 968, 972 (9th Cir. 2006) (ALJ must take into account lay  
20 testimony but may discount that testimony by providing reasons  
21

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22 <sup>29</sup> Defendant states that whether Chang is "licensed as a  
23 healthcare worker by the state," and therefore whether he is a  
24 "medical source" under § 404.1502(d), is "unclear." (J. Stip. at  
25 39 n.3.) Chang is licensed, however. (See AR 531 ("L.Ac." in  
26 Chang's signature)); see also Cal. Dep't Consumer Aff. License  
27 Search, <https://search.dca.ca.gov> (search for license number 5606  
28 under acupuncturists' licenses) (last visited May 7, 2020). But  
the distinction is of little significance given that "[o]pinions  
from medical sources who are not acceptable medical sources and  
from nonmedical sources" are evaluated identically.  
§ 404.1527(f).

1 germane to that witness), and he did so. See Hayes v. Berryhill,  
2 721 F. App'x 648, 651 (9th Cir. 2018) (ALJ "erred by discounting  
3 vocational counselor['s] . . . lay opinion because he [was] not  
4 an 'acceptable medical source,'" but any error was harmless  
5 because "ALJ properly discounted [his] opinion for two other  
6 germane reasons").

7 The ALJ properly discounted Chang's opinion as premised  
8 primarily on Plaintiff's self-reported complaints. (See AR 22,  
9 24.) Indeed, some of Chang's opinions explicitly incorporated  
10 Plaintiff's subjective complaints. (See, e.g., AR 472 (Plaintiff  
11 suffered from "self-reported impairment in short-term memory").)  
12 Others can only be explained as regurgitations of them. (See,  
13 e.g., AR 471 (Plaintiff "spent most of her day in bed"), 472  
14 (Plaintiff experienced "[u]nrefreshing sleep" and "[p]ost-  
15 exertional malaise lasting more than 24 hours").) Moreover, he  
16 stated that she had been "incapacitated since 2012" even though  
17 he had treated her only for five months beginning in November  
18 2013. (AR 471.) Because the ALJ had already properly discounted  
19 Plaintiff's subjective symptoms, as discussed, he was entitled to  
20 discount Chang's opinion stemming from them. See Vanessa P. v.  
21 Saul, Comm'r of Soc. Sec., No. 2:19-cv-00253-MKD, 2020 WL  
22 1433580, at \*12 (E.D. Wash. Mar. 23, 2020) (that mental-health  
23 counselor's opinion "relied on [p]laintiff's discredited symptom  
24 complaints in assessing serious limitations" was "germane reason  
25 for discounting" it); see also Tommasetti, 533 F.3d at 1041 (ALJ  
26 may reject treating physician's opinion "based 'to a large  
27 extent' on a claimant's self-reports that have been properly  
28 discounted as incredible" (citation omitted)).

1           Moreover, the opinion cited no objective evidence, as the  
2 ALJ noted. (AR 22.) Plaintiff does not dispute that but instead  
3 points to certain notations in Chang's treatment notes – which,  
4 she concedes, "rarely included an '[o]bjective' entry" (J. Stip.  
5 at 11) – that she contends constituted "objective" evidence to  
6 support Chang's CFS form opinion (*id.*), including the following,  
7 from his November 5, 2013 intake notes:

8           Pulse: deep, thin, weak Tongue: teethmarks, pale, thin,  
9           coating is medium white. Bad breath.

10 (AR 531.) The regulations define "[o]bjective medical evidence"  
11 to mean "laboratory findings" and observable "anatomical,  
12 physiological, or psychological abnormalities" shown by  
13 "medically acceptable clinical diagnostic techniques."

14 § 404.1502(f) & (g). Although Chang's notations arguably  
15 described observable conditions, nothing indicates that they were  
16 obtained through medically acceptable clinical diagnostic  
17 techniques.<sup>30</sup> The ALJ thus reasonably concluded that no  
18 objective evidence supported Chang's opinion, and he properly  
19 discounted it accordingly. See Haberman v. Colvin, No.  
20 13-cv-05844 JRC., 2014 WL 3511124, at \*6 (W.D. Wash. July 14,  
21 2014) (that lay opinion "contain[ed] few objective findings in  
22

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23           <sup>30</sup> Plaintiff suggests that the ALJ discounted Chang's  
24 opinion because it was based on "traditional-Chinese" medicine  
25 but concedes that the "regulations don't address [the] issue."  
26 (J. Stip. at 12; see id. ("[C]ould the decision mean that Chang's  
27 citations to Chinese medical principles are inconsistent with the  
28 allopathic orientation of the record's remainder?").) The ALJ  
did not discount the opinion on that basis, however; he  
discounted it because it did not contain objective findings.  
That, as noted, is squarely addressed by the regulations. See  
§ 404.1527(c)(3).

1 support of the degree of limitation opined" was "germane" reason  
2 to reject it); § 404.1527(c)(3) (ALJ may consider extent to which  
3 medical source "presents relevant evidence to support" opinion,  
4 "particularly medical signs and laboratory findings"); see also  
5 Orn, 495 F.3d at 634 (greater weight given opinion containing  
6 "results from medical tests and laboratory findings").

7 The ALJ also properly concluded that Chang's opinion was  
8 inconsistent with the medical record (see AR 24 (ALJ finding  
9 Chang's opinion inconsistent "with the record as a whole and not  
10 supported with relevant evidence")), which is a valid reason to  
11 discount a medical source's opinion. See Roberts v. Berryhill,  
12 734 F. App'x 489, 490 (9th Cir. 2018) (holding that ALJ did not  
13 err in rejecting physical therapist's opinion concerning  
14 plaintiff's CFS because it conflicted with opinions of  
15 "acceptable medical sources" and record as a whole); Vanessa P.,  
16 2020 WL 1433580, at \*13 (inconsistency with "record as a whole"  
17 was "germane" reason to discount counselor's opinion); see also  
18 Orn, 495 F.3d at 631 ("consistency of . . . opinion with the  
19 record as a whole" is relevant factor in evaluating medical  
20 opinion). As noted, the opinion was directly contradicted by the  
21 opinions of the consulting and reviewing doctors, all of whom  
22 opined that Plaintiff had less than marked limitation (see AR 90,  
23 110, 461, 467). Because the ALJ properly gave those opinions  
24 "great weight" (AR 24), he was entitled to discount Chang's  
25 inconsistent opinion accordingly.

26 The ALJ gave valid reasons for discounting the opinions of  
27 Plaintiff's treating sources. Remand is not warranted on this  
28 basis.



1           4.    The ALJ's RFC explanation was adequate

2           Plaintiff asserts that the ALJ's "RFC explanation is  
3 legally" inadequate. (J. Stip. at 4.) Her primary argument,  
4 that "the decision simply gives no explanation" for its  
5 conclusions, appears to rest on Social Security Ruling 96-8p,  
6 1996 WL 374184 (July 2, 1996). (J. Stip. at 5; see id. at 4-7.)  
7 That argument is without merit.

8           "Although the ALJ's analysis need not be extensive, the ALJ  
9 must provide some reasoning in order for [a reviewing court] to  
10 meaningfully determine whether the ALJ's conclusions were  
11 supported by substantial evidence." Treichler, 775 F.3d at 1103  
12 (citation omitted); see also Alaska Dep't of Envtl. Conservation  
13 v. E.P.A., 540 U.S. 461, 497 (2004) ("Even when an agency  
14 explains its decision with 'less than ideal clarity,' a reviewing  
15 court will not upset the decision on that account 'if the  
16 agency's path may reasonably be discerned.'" (quoting Bowman  
17 Transp., Inc. v. Arkansas-Best Freight Sys., Inc., 419 U.S. 281,  
18 286 (1974))).

19           Social Security Ruling 96-8p provides that the ALJ's RFC  
20 assessment must include a "narrative discussion" describing how  
21 the evidence supports his conclusions, with citation to  
22 "specific" medical facts and nonmedical evidence. SSR 96-8p,  
23 1996 WL 374184, at \*7. The ALJ must identify any "material  
24 inconsistencies or ambiguities in the evidence" and explain how  
25 he "considered and resolved" them. Id. Any discussion of a  
26 claimant's subjective symptoms, moreover, must "[c]ontain a  
27 thorough discussion and analysis of the objective medical and  
28 other evidence, including the individual's complaints of pain and

1 other symptoms," "[i]nclude a resolution of any inconsistencies  
2 in the evidence as a whole," and "[s]et forth a logical  
3 explanation of the effects of the symptoms, including pain, on  
4 the individual's ability to work." Id.

5 Initially, the ALJ's decision includes more than five pages  
6 of discussion concerning his RFC determination that complies, on  
7 its face, with SSR 96-8p's requirements. (See AR 19-24.) Its  
8 holistic discussion of the medical and nonmedical evidence has  
9 citations to specific facts, including conflicting ones. (See  
10 generally id.) And it includes a complete summary of Plaintiff's  
11 subjective allegations, with a detailed analysis explaining why  
12 they should be partially discounted. (See AR 20-23.) Indeed,  
13 the Court found the decision more than sufficient to facilitate  
14 review. See Treichler, 775 F.3d at 1103 (indicating that purpose  
15 of explication requirement is to enable judicial review of  
16 administrative decisions).

17 Plaintiff argues that the ALJ's ultimate RFC determination  
18 was not entirely consistent with any particular doctor's opinion,  
19 especially given that he gave all the consulting and reviewing  
20 doctors' opinions "great weight" even though they were not  
21 completely consistent with each other. (See J. Stip. at 6  
22 (complaining that "equally credited [medical] sources differ from  
23 each other and from the decision").) But RFC is an  
24 administrative determination, not a medical one, and the ALJ was  
25 not required to adopt any specific medical source's RFC opinion  
26 as his own. See Vertigan v. Halter, 260 F.3d 1044, 1049 (9th  
27 Cir. 2001) ("It is clear that it is the responsibility of the  
28 ALJ, not the claimant's physician, to determine residual

1 functional capacity."); § 404.1546(c) ("[T]he administrative law  
2 judge . . . is responsible for assessing your residual functional  
3 capacity."). Moreover, the ALJ found Plaintiff's limitations to  
4 be somewhat more severe than did the examining and reviewing  
5 doctors – the "equally credited sources" (J. Stip. at 6). So  
6 even if the ALJ failed to explain any inconsistencies among those  
7 sources' opinions, any error was harmless. See Stout, 454 F.3d  
8 at 1055 (nonprejudicial or irrelevant mistakes are harmless).  
9 Plaintiff's suggestion that she was prejudiced because "there  
10 were more limiting RFC opinions" (J. Stip. at 7) is a red  
11 herring. Initially, she cannot rely on Dr. Goshike's or Chang's  
12 opinions because they were, as discussed, properly discounted.  
13 Moreover, the purported error at issue here concerns the ALJ's  
14 handling only of the consulting and reviewing doctors' opinions,  
15 and none of those opinions support her allegations of disability.

16 Plaintiff also complains that the ALJ did not assign weight  
17 to the state-agency reconsideration doctors. (Id. at 6.) The  
18 ALJ indeed failed to assign weight to those opinions, and he  
19 erred in so doing. See SSR 96-8p, 1996 WL 374184, at \*7 (ALJ  
20 "must always consider and address medical source opinions"; if  
21 his assessment conflicts with an opinion, he must "explain" the  
22 departure); § 404.1527(c). But the reconsideration doctors'  
23 opinions were based on the same evidence as the initial doctors'  
24 opinions and were identical to them. As noted, the ALJ gave the  
25 initial opinions great weight. (See AR 24.) The error, thus,  
26 was plainly harmless. See Ushakova v. Astrue, No. 2:11-cv-01920  
27 KJN., 2012 WL 4364278, at \*10 (E.D. Cal. Sept. 21, 2012) (finding  
28 ALJ's failure to assign weight to reviewing reconsideration

1 doctor harmless because doctor rendered same functional  
2 assessment as initial doctor, and his assessment was based on  
3 review of same clinical findings).

4 Plaintiff argues that the ALJ's reasons for discounting her  
5 subjective symptom testimony "do not serve as reviewable  
6 explanations of the RFC elements of light capacity (the  
7 individual components of which SSR 96-8p says must first be  
8 explained before deploying this umbrella-term)." (J. Stip. at 5  
9 (emphasis in original).) Although her exact argument is  
10 difficult to discern, to the extent she argues that the ALJ erred  
11 by not describing her RFC on a function-by-function basis, the  
12 argument fails. Social Security Ruling 96-8p provides that

13 [t]he [ALJ's] RFC assessment must first identify the  
14 [claimant's] functional limitations or restrictions and  
15 assess his or her work-related abilities on a  
16 function-by-function basis . . . . Only after that may  
17 RFC be expressed in terms of the exertional levels of  
18 work, sedentary, light, medium, heavy, and very heavy.

19 SSR 96-8p, 1996 WL 374184, at \*1. As noted, the ALJ found that  
20 Plaintiff could "perform light work as defined in 20 CFR  
21 404.1567(b)" with some additional limitations, which he  
22 specifically outlined. (AR 19.) Because the regulations define  
23 "light work" on a function-by-function basis, see § 404.1567(b),  
24 and because the ALJ incorporated that definition into his RFC  
25 (see AR 19), he necessarily complied with SSR 96-8p's function-  
26 by-function requirement. See Buckner-Larkin v. Astrue, 450 F.  
27 App'x 626, 627 (9th Cir. 2011) ("[I]n accordance with Social  
28 Security Ruling 96-8p, the ALJ defined [plaintiff's] RFC as

1 'sedentary,' . . . which includes well-defined function-by-  
2 function parameters." (citation omitted)).<sup>31</sup>

3 Finally, Plaintiff speculates that the ALJ based his finding  
4 that she could "adapt to occasional workplace changes" (AR 19) on  
5 Dr. Liddell's opinion that she was "moderately impaired" in her  
6 ability to deal with workplace changes (AR 467). (See J. Stip.  
7 at 7.) She argues that "moderate" and "occasional" are "not the  
8 same thing" and that the ALJ's purported translation of one into  
9 the other was therefore error. (Id.) But Plaintiff concedes  
10 that "moderate" is not defined by the regulations. (Id.)  
11 Moreover, the two findings were made in different contexts:  
12 "moderate" as used by Dr. Liddell described the severity of one  
13 of Plaintiff's impairments (see AR 467), whereas "occasional"  
14 quantified her workplace abilities (see AR 20). Thus, there is  
15 no basis to conclude that the ALJ's RFC and Dr. Liddell's opinion  
16 were inconsistent, as Plaintiff claims, let alone that the ALJ's  
17 consideration of Dr. Liddell's finding was unreasonable. To the  
18 contrary, the Ninth Circuit has repeatedly held that a "moderate"  
19 limitation in an area like ability to deal with workplace changes  
20 translates into the type of RFC the ALJ assessed here. See,  
21 e.g., Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1173 (9th Cir.  
22 2008) (ALJ reasonably translated finding that plaintiff was  
23 "moderately limited" in several mental-functioning areas into RFC  
24 to perform "simple, routine, repetitive" work); Rogers v. Comm'r

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25  
26 <sup>31</sup> Plaintiff's attorney has raised this argument before, and  
27 at least one court has called it "frivolous." See Rodriguez v.  
28 Colvin, No. 2:15-cv-0231-CKD, 2016 WL 258341, at \*2 (E.D. Cal.  
Jan. 21, 2016), aff'd sub nom., Rodriguez v. Berryhill, 709 F.  
App'x 859 (9th Cir. 2017).

1 of Soc. Sec. Admin., 490 F. App'x 15, 17 (9th Cir. 2012) (finding  
2 that plaintiff who was "moderately limited" in ability to, among  
3 other things, "respond appropriately to changes in the work  
4 setting" was properly evaluated in RFC to perform "simple routine  
5 tasks" "in unskilled work").

6 Plaintiff argues in her reply that her "interpretation" of  
7 the facts underlying the ALJ's reasoning – and purported error –  
8 is "equally plausible." (J. Stip. at 21.) Even if that were  
9 true, however, a tie goes to the Commissioner. See Reddick, 157  
10 F.3d at 720-21.

11 The ALJ's RFC explanation was legally adequate, and any  
12 error was harmless. Remand is not warranted on this basis.

13 **VI. CONCLUSION**

14 Consistent with the foregoing and under sentence four of 42  
15 U.S.C. § 405(g),<sup>32</sup> IT IS ORDERED that judgment be entered  
16 AFFIRMING the Commissioner's decision, DENYING Plaintiff's  
17 request for remand, and DISMISSING this action with prejudice.

18  
19 DATED: May 13, 2020

  
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JEAN ROSENBLUTH  
U.S. MAGISTRATE JUDGE

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25  
26 <sup>32</sup> That sentence provides: "The [district] court shall have  
27 power to enter, upon the pleadings and transcript of the record,  
28 a judgment affirming, modifying, or reversing the decision of the  
Commissioner of Social Security, with or without remanding the  
cause for a rehearing."