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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ESPERANZA MENDEZ C.,<sup>1</sup> ) Case No. CV 19-4015-JPR  
 )  
Plaintiff, )  
 ) **MEMORANDUM DECISION AND ORDER**  
v. )  
 )  
ANDREW SAUL, Commissioner )  
of Social Security, )  
 )  
Defendant. )

**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 February 4, 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 1956.<sup>2</sup> (Administrative Record ("AR")  
3 59.) She attended school in Mexico through age 16 (AR 482) and  
4 has worked as an "electronic assembler," "electronic inspector,"  
5 and "electronic tester" (AR 68-69). She applied for DIB on May  
6 5, 2011, alleging that she had been unable to work since May 15,  
7 2009, because of carpal tunnel syndrome, "anxiety disorder,"  
8 "high blood pressure," and "panic attacks." (AR 143, 160, 164.)  
9 After her application was denied initially and on  
10 reconsideration, she requested a hearing before an Administrative  
11 Law Judge. (AR 100.) A hearing was held on May 13, 2013, at  
12 which Plaintiff, represented by counsel, testified, as did a  
13 vocational expert. (AR 56.) In a written decision dated May 24,  
14 2013, the ALJ found her not disabled. (AR 29-38.) Plaintiff  
15 requested review from the Appeals Council (AR 20), but it denied  
16 her request (AR 1).

17 Plaintiff appealed (AR 523-25), and on April 26, 2016, the  
18 Court reversed and remanded for further administrative  
19 proceedings (AR 532-41). On December 4, 2017, the ALJ conducted  
20 another hearing, at which Plaintiff, who was again represented by  
21 counsel, and a VE again testified. (AR 475.) At that hearing,  
22 Plaintiff's attorney amended the alleged onset date "to coincide  
23 with the date of the application filing of May 2011."<sup>3</sup> (AR 479.)

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24  
25 <sup>2</sup> Plaintiff's DIB application states that she was born in  
26 1955 (AR 143), but she testified at a hearing that she was born  
in 1956 (AR 59).

27 <sup>3</sup> Counsel most likely did so because, as the ALJ noted in  
28 her first decision, Plaintiff stopped working in 2009 because she  
(continued...)

1 In a written decision dated February 21, 2018, the ALJ again  
2 found Plaintiff not disabled. (AR 468; see AR 457-68.) The  
3 Appeals Council considered Plaintiff's written objections to the  
4 ALJ's decision and found no reason to assume jurisdiction. (AR  
5 435.) This action followed.

### 6 **III. STANDARD OF REVIEW**

7 Under 42 U.S.C. § 405(g), a district court may review the  
8 Commissioner's decision to deny benefits. The ALJ's findings and  
9 decision should be upheld if they are free of legal error and  
10 supported by substantial evidence based on the record as a whole.  
11 See Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.  
12 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence  
13 means such evidence as a reasonable person might accept as  
14 adequate to support a conclusion. Richardson, 402 U.S. at 401;  
15 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It  
16 is "more than a mere scintilla but less than a preponderance."  
17 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.  
18 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). "[W]hatever the  
19 meaning of 'substantial' in other contexts, the threshold for  
20 such evidentiary sufficiency is not high." Biestek v. Berryhill,  
21 139 S. Ct. 1148, 1154 (2019). To determine whether substantial  
22 evidence supports a finding, the reviewing court "must review the  
23 administrative record as a whole, weighing both the evidence that  
24 supports and the evidence that detracts from the Commissioner's

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25  
26 <sup>3</sup> (...continued)  
27 was laid off and thereafter collected two years of unemployment  
28 insurance, "represent[ing] that she was capable[] of performing  
work had it become available." (AR 36.)

1 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.  
2 1998). "If the evidence can reasonably support either affirming  
3 or reversing," the reviewing court "may not substitute its  
4 judgment" for the Commissioner's. Id. at 720-21.

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

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

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

13 The ALJ follows a five-step sequential evaluation process in  
14 assessing whether a claimant is disabled. 20 C.F.R.  
15 § 404.1520(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th  
16 Cir. 1995) (as amended Apr. 9, 1996). In the first step, the  
17 Commissioner must determine whether the claimant is currently  
18 engaged in substantial gainful activity; if so, the claimant is  
19 not disabled and the claim must be denied. § 404.1520(a)(4)(i).

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

26 If the claimant has a "severe" impairment or combination of  
27 impairments, the third step requires the Commissioner to  
28 determine whether the impairment or combination of impairments

1 meets or equals an impairment in the Listing of Impairments  
2 ("Listing") set forth at 20 C.F.R. part 404, subpart P, appendix  
3 1; if so, disability is conclusively presumed and benefits are  
4 awarded. § 404.1520(a)(4)(iii) & (d).

5 If the claimant's impairment or combination of impairments  
6 does not meet or equal an impairment in the Listing, the fourth  
7 step requires the Commissioner to determine whether the claimant  
8 has sufficient residual functional capacity ("RFC")<sup>4</sup> to perform  
9 her past work; if so, the claimant is not disabled and the claim  
10 must be denied. § 404.1520(a)(4)(iv). The claimant has the  
11 burden of proving she is unable to perform past relevant work.  
12 Drouin, 966 F.2d at 1257. If the claimant meets that burden, a  
13 prima facie case of disability is established. Id.

14 If that happens or if the claimant has no past relevant  
15 work, the Commissioner then bears the burden of establishing that  
16 the claimant is not disabled because she can perform other  
17 substantial gainful work available in the national economy, the  
18 fifth and final step of the sequential analysis.  
19 §§ 404.1520(a)(4)(v), 404.1560(b).

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

21 At step one, the ALJ found that Plaintiff had not engaged in  
22 substantial gainful activity since May 5, 2011, the alleged onset  
23 date. (AR 459.) Her date last insured ("DLI") was December 31,  
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25 <sup>4</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 2014. (Id.) At step two, she determined that Plaintiff had the  
2 severe impairments of "overuse syndrome[, ] bilateral upper  
3 extremities"; anemia; and "degenerative changes [of the] lumbar,  
4 thoracic, and cervical spine." (Id.) At step three she  
5 concluded that her impairments did not meet or equal a Listing.  
6 (AR 464.) At step four, she found that she had the RFC to  
7 perform "light work" with some additional limitations: she could  
8 perform "frequent (not constant) gross and fine manipulation" and  
9 could have "no concentrated exposure to extreme heat and cold" or  
10 "vibrating tools." (Id.) She could perform her past relevant  
11 work as generally performed. (AR 467.) Accordingly, she found  
12 her not disabled. (Id.)

## 13 V. DISCUSSION<sup>5</sup>

### 14 A. Relevant Background

#### 15 1. Medical opinions and evidence

16 Plaintiff saw Dr. Donald F. Chen<sup>6</sup> on April 12, 2010,  
17 complaining of "[p]ain in [her] hands [and] joints" and "things  
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20 <sup>5</sup> In Lucia v. SEC, 138 S. Ct. 2044, 2055 (2018), the Supreme  
21 Court held that ALJs of the Securities and Exchange Commission  
22 are "Officers of the United States" and thus subject to the  
23 Appointments Clause. To the extent Lucia applies to Social  
24 Security ALJs, Plaintiff has forfeited the issue by failing to  
25 raise it during her administrative proceedings. (See AR 445-50,  
26 479-89); 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).

27 <sup>6</sup> Dr. Chen primarily practices family medicine. See Cal.  
28 Dep't Consumer Aff. License Search, <https://search.dca.ca.gov>  
(search for "Donald" and "Chen") (last visited Aug. 5, 2020).

1 fall[ing] off of [her] hands easily." (AR 227.) Dr. Chen  
2 diagnosed "carpal tunnel syndrome" and "depression" and  
3 prescribed Tylenol, Paxil,<sup>7</sup> and an assistive brace. (Id.)  
4 During a May 13, 2010 office visit, she complained of "[p]lain in  
5 [her] hands [and] feet, more [at] night"; depression; and an  
6 "anxiety attack while driving." (AR 221.) Dr. Chen made a note  
7 to rule out osteoporosis, diagnosed "depression/anxiety," noted  
8 her medications as atenolol<sup>8</sup> and Paxil, prescribed Xanax<sup>9</sup> and  
9 Tylenol, and ordered a bone-density test. (Id.) She saw Dr.  
10 Chen again on June 25, 2010, complaining of "[p]lain in bones all  
11 over body" and "[a]nxiety." (AR 226.) He diagnosed  
12 "osteoporosis" and "carpal tunnel syndrome" and prescribed Xanax,  
13 Os-Cal,<sup>10</sup> and Fosamax.<sup>11</sup> (Id.) On August 27, 2010, she saw Dr.

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15 <sup>7</sup> Paxil is name-brand paroxetine, which is used to treat  
16 depression and generalized anxiety disorder, among other mental  
17 issues. See Paroxetine, MedlinePlus, <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a698032.html> (last updated Sept. 15, 2018).

18 <sup>8</sup> Atenolol is used to treat high blood pressure. See  
19 Atenolol, WebMD, <https://www.webmd.com/drugs/2/drug-11035/atenolol-oral/details> (last visited Aug. 5, 2020).

21 <sup>9</sup> Xanax is name-brand alprazolam, a benzodiazepine used to  
22 treat anxiety and panic disorders. See Xanax, WebMD, <https://www.webmd.com/drugs/2/drug-9824/xanax-oral/details> (last visited Aug. 5, 2020).

24 <sup>10</sup> Os-Cal is name-brand calcium carbonate, which is used to  
25 prevent or treat low blood calcium levels. See Os-Cal Tablet,  
26 WebMD, <https://www.webmd.com/drugs/2/drug-9388/os-cal-oral/details> (last visited Aug. 5, 2020).

27 <sup>11</sup> Fosamax is name-brand alendronate, which is used to  
28 prevent and treat certain types of bone loss and osteoporosis.  
See Fosamax Tablet, WebMD, <https://www.webmd.com/drugs/2/>

(continued...)

1 Chen for back pain that ran "to her [right] leg," "pressure on  
2 her [right] eye," depression, and "pain on [sic] her hands." (AR  
3 220.) He diagnosed "depression/anxiety" and osteoporosis and  
4 prescribed Paxil, Xanax, Motrin, Os-Cal, and Fosamax. (Id.)

5 On May 3, 2011, two days before the alleged onset date (AR  
6 459, 479), Plaintiff complained of "pain in forearms,"  
7 "depression," and "anxiety when travel[ing] farther than 10 miles  
8 away from home" (AR 219). Dr. Chen again noted "carpal tunnel  
9 syndrome" and "depression" and prescribed ibuprofen, Paxil, and  
10 Xanax. (Id.)

11 Plaintiff saw Richard D. Scheinberg, an orthopedic surgeon,  
12 for a comprehensive orthopedic evaluation on June 7, 2011. (AR  
13 295-97.) The examination revealed a "positive Tinel sign<sup>12</sup> in  
14 the right and left wrists over the median nerve." (AR 296.)  
15 Jamar dynamometer grip-strength test results were 25, 30, and 30  
16 in the right (dominant) hand and 15, 15, and 15 in the left  
17 hand.<sup>13</sup> (Id.) Dr. Scheinberg diagnosed Plaintiff with

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18  
19 <sup>11</sup> (...continued)  
20 drug-1273-7174/fosamax-oral/alendronate-oral/details (last  
21 visited Aug. 5, 2020).

22 <sup>12</sup> Tinel's sign is positive when tapping the front of the  
23 wrist produces tingling of the hand. See Carpal Tunnel Syndrome,  
24 Medicine Net, [https://www.medicinenet.com/carpal\\_tunnel\\_syndrome/  
25 article.htm](https://www.medicinenet.com/carpal_tunnel_syndrome/article.htm) (last visited Aug. 5, 2020).

26 <sup>13</sup> The record does not indicate whether the measurements  
27 were in pounds or kilograms. A "normal" grip strength for a  
28 woman between 55 and 59 years old is between 17.7 and 31.5  
kilograms, or between 39.02 and 69.45 pounds. See Grip Strength  
Ratings for Females, Topendsports, [https://www.topendsports.com/  
testing/norms/handgrip.htm](https://www.topendsports.com/testing/norms/handgrip.htm) (last visited Aug. 5, 2020); Convert  
Kilograms to Pounds, Calculateme, <https://www.calculateme.com/>

(continued...)



1 "[o]veruse, both upper extremities, rule out carpal tunnel  
2 syndrome." (Id.) He noted that he had agreed to take over as  
3 her primary treating physician. (AR 297.) He opined that she  
4 was "TTD," or temporarily totally disabled, "from her usual and  
5 customary occupation and should avoid any gripping, grasping, or  
6 prolonged fine manipulative work such as data entry or technical  
7 work with her hands." (Id.) He noted that he would provide her  
8 with bilateral wrist splints and medications for inflammation.  
9 (Id.)

10 Internist Ursula Taylor performed an internal-medicine  
11 evaluation of Plaintiff on July 14, 2011, at Defendant's request.  
12 (AR 284-88.) Plaintiff drove herself to the evaluation and  
13 reported hypertension, back pain, and joint pain. (AR 284.) On  
14 examination, she had "excellent range of motion of the lumbar  
15 spine," a negative straight-leg-raising test, "no obvious joint  
16 findings," no "obvious wrist, hand, or elbow findings," "[n]o  
17 obvious significant muscle atrophy," and "good motor strength and  
18 good grip strength." (AR 287.) Specifically, her grip strength  
19 was 40 pounds in the right hand and 35 pounds in the left hand.  
20 (AR 285.) Dr. Taylor opined that she "should avoid extremes in  
21 temperature" but assessed "no restrictions" on lifting and  
22 carrying, hand use, or fine fingering manipulation, among other  
23 things. (AR 288.)

24 Plaintiff saw Dr. Scheinberg again on July 21, 2011, for  
25 "9/10 bilateral wrist/hand pain, left, greater than right,  
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27 <sup>13</sup> (...continued)  
28 weight/kilograms/to-pounds/ (last visited Aug. 5, 2020).

1 involving [an] increased area of the arms . . . with more  
2 weakness." (AR 293.) She inquired about getting "medications"  
3 because "the pain is very severe." (Id.) He noted a positive  
4 Tinel's sign at her elbow, slightly reduced grip strength in her  
5 right hand, and "[o]therwise unchanged" findings. (Id.) Dr.  
6 Scheinberg noted that his findings were "disproportionate" and  
7 "must be objectified." (AR 294.) He prescribed Anaprox<sup>14</sup> and  
8 Ultram<sup>15</sup> and found her TTD for four weeks. (Id.) On September  
9 1, 2011, Plaintiff complained of bilateral wrist and hand pain  
10 but stated that her medications helped. (AR 353.) Dr.  
11 Scheinberg diagnosed "[u]pper extremity neurologic findings,  
12 objectify" and "[o]veruse bilateral upper extremities" and noted  
13 that he would proceed with an EMG, or electromyography, and an  
14 NCV, or nerve conduction velocity test, "of the bilateral upper  
15 extremities." (Id.) He found her TTD for six weeks. (Id.)  
16 Both the EMG and the NCV were normal. (AR 355, 358.)

17 Plaintiff reported to Dr. Scheinberg on October 13, 2011,  
18 that she continued to have "9/10 bilateral wrist/hand pain, 'now  
19 involving much more area of the arms.'" (AR 350.) She asked for  
20 a "stronger medication for when the pain is very severe." (Id.)  
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24 <sup>14</sup> Anaprox is name-brand naproxen sodium, a nonsteroidal  
25 anti-inflammatory drug used to treat pain and swelling. See  
26 Anaprox, WebMD, [https://www.webmd.com/drugs/2/drug-10989/  
anaprox-oral/details](https://www.webmd.com/drugs/2/drug-10989/anaprox-oral/details) (last visited Aug. 5, 2020).

27 <sup>15</sup> Ultram is name-brand tramadol, an opioid pain reliever.  
28 See Ultram, WebMD, [https://www.webmd.com/drugs/2/drug-11276/  
ultram-oral/details](https://www.webmd.com/drugs/2/drug-11276/ultram-oral/details) (last visited Aug. 5, 2020).

1 She exhibited "[p]ositive Tinel's/Phalen's<sup>16</sup>  
2 bilaterally" and had "[d]iminished sensation [in] median nerve  
3 distribution." (Id.) Dr. Scheinberg noted the "unremarkable"  
4 EMG and NCV results and recommended that Plaintiff undergo  
5 physical therapy of the "bilateral upper extremities" "[three]  
6 times per week for [four] weeks" for "strengthening and work  
7 hardening." (AR 351.) He noted that her "[m]edication regime  
8 facilitates [a] heightened level of function with [an] increase  
9 in tolerance to exercises" and daily activities. (Id.) He  
10 counseled her on "addiction" and "opiate induced hyperalga."  
11 (Id.) He prescribed hydrocodone<sup>17</sup> to use "sparingly" and  
12 Ultracet.<sup>18</sup> (Id.) He found her TTD for four weeks. (AR 352.)

13 On November 10, 2011, Dr. Scheinberg noted that Plaintiff's  
14 "[t]opical analgesic decrease[d] neuropathic pain [in the] upper  
15 extremities [by five] points on a scale of 10." (AR 347.) He  
16 found "Tinel's/Phalen's positive bilaterally" and "[d]iminished  
17 sensation in median nerve distribution"; Plaintiff "remain[ed]  
18 deconditioned." (Id.) He again recommended physical therapy for  
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20 <sup>16</sup> Phalen's sign is positive when bending the wrist downward  
21 produces tingling of the hand. See Carpal Tunnel Syndrome,  
22 Medicine Net, [https://www.medicinenet.com/carpal\\_tunnel\\_syndrome/  
23 article.htm](https://www.medicinenet.com/carpal_tunnel_syndrome/article.htm) (last visited Aug. 5, 2020). Positive Tinel's and  
Phalen's signs are markers of carpal tunnel syndrome. See id.

24 <sup>17</sup> Hydrocodone is an opioid used to relieve moderate to  
25 severe pain. See Hydrocodone-Acetaminophen, WebMD, [https://  
26 www.webmd.com/drugs/2/drug-251/hydrocodone-acetaminophen-oral/  
27 details](https://www.webmd.com/drugs/2/drug-251/hydrocodone-acetaminophen-oral/details) (last visited Aug. 5, 2020).

28 <sup>18</sup> Ultracet is an opioid used to treat moderate to  
moderately severe pain and contains tramadol and acetaminophen.  
See Ultracet, WebMD, [https://www.webmd.com/drugs/2/drug-21825/  
ultracet-oral/details](https://www.webmd.com/drugs/2/drug-21825/ultracet-oral/details) (last visited Aug. 5, 2020).

1 the "bilateral wrists/hands" "[two] times per week for [four]  
2 weeks." (Id.) He also encouraged an "[e]mphasis on active  
3 therapy . . . including stretching, strengthening, [and] work  
4 hardening." (Id.) He found her TTD for four more weeks. (AR  
5 349.) He noted on December 8, 2011, that Plaintiff exhibited  
6 "[p]ositive Tinel's/Phalen's" and that a Jamar test of her grip  
7 strength was "markedly limited" in the "bilateral wrists/hands,"  
8 with "no greater than 10 pounds on [three] attempts." (AR 374.)  
9 But Plaintiff's "[c]urrent medication . . . decrease[d] pain and  
10 facilitate[d] increased activity." (Id.) Plaintiff reported  
11 that a "[t]opical analgesic decrease[d] localized pain [in her]  
12 bilateral wrists/hands as well as neuropathic pain." (Id.) She  
13 had "increased tolerance to a variety of activity." (Id.) He  
14 extended his finding that she was TTD by four weeks. (AR 376.)  
15 This was the last such extension in the record.

16 On May 2, 2012, Plaintiff reported to Dr. Chen that she  
17 "continue[d] to have . . . pain in hands." (AR 380.) He  
18 prescribed Vicodin.<sup>19</sup> (Id.) She apparently did not complain of  
19 or receive treatment for her hands for the next year.

20 On June 4, 2013, Plaintiff saw Dr. Peter Kamal Soliman<sup>20</sup> for  
21 "arm pain," "depression/anxiety," and "neck pain." (AR 642.) He  
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24 <sup>19</sup> Vicodin is an opioid pain reliever used to relieve  
25 moderate to severe pain. See Vicodin, WebMD, <https://www.webmd.com/drugs/2/drug-3459/vicodin-oral/details> (last  
26 visited Aug. 5, 2020).

27 <sup>20</sup> Dr. Soliman primarily practices family medicine. See  
28 Cal. Dep't Consumer Aff. License Search, <https://search.dca.ca.gov> (search for "Peter" and "Soliman") (last  
visited Aug. 5, 2020).

1 opined that her pain was "[l]ikely fibromyaglia [sic] due to  
2 depression" and adjusted her medication. (AR 644-45.) Plaintiff  
3 again complained of "musculoskeletal pain" on July 3, 2013. (AR  
4 651.) Dr. Soliman found "tenderness . . . on the left side and  
5 left neck" and advised her to take ibuprofen. (AR 652.) On July  
6 23, 2013, she saw Dr. Soliman for "musculoskeletal pain" and to  
7 "follow up on depression and . . . anxiety." (AR 654.) He noted  
8 "tenderness on [the] back of [the] neck and arms" and otherwise  
9 normal physical-examination findings. (AR 655.) He increased  
10 her Zoloft<sup>21</sup> prescription and prescribed tramadol. (Id.)

11 On August 27, 2013, Plaintiff saw Dr. Soliman for a follow-  
12 up visit for her anxiety and was "doing better." (AR 664.) On  
13 November 13, 2013, she reported to Dr. Soliman that her pain was  
14 "0/10." (AR 1003.)

15 Plaintiff saw Shamsuddin Hooda, a certified physician's  
16 assistant, on February 3, 2014, for "anxiety, hypertension,  
17 hyperlipidemia (follow up) and anemia." (AR 996.) She reported  
18 that her anxiety and depression were "well controlled"<sup>22</sup> and that  
19 she was "doing well." (Id.) She denied joint pain. (Id.) The  
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21 <sup>21</sup> Zoloft treats depression, panic attacks, and anxiety  
22 disorder. See Zoloft, WebMD, [https://www.webmd.com/drugs/2/  
23 drug-35-8095/zoloft-oral/sertraline-oral/details](https://www.webmd.com/drugs/2/drug-35-8095/zoloft-oral/sertraline-oral/details) (last visited  
Aug. 5, 2020).

24 <sup>22</sup> By contrast, she had "severe" mental-health scores during  
25 a June 17, 2011 psychological evaluation by William W. Kaiser, a  
26 psychologist and qualified medical examiner. (See AR 255-78.)  
27 Dr. Kaiser noted, however, that those scores "indicated a  
28 technically invalid [personality] profile" and "could reflect  
. . . a lack of cooperation[] and/or an exaggeration of symptoms  
as a cry for help and/or as a purposeful manipulation for  
secondary gain (malingering)." (AR 263.)

1 physical examination was normal, and Hooda adjusted her  
2 medication and ordered blood work. (AR 998.) On March 10, 2014,  
3 she denied "[b]lack pain, joint pain, joint swelling, muscle  
4 weakness and neck pain." (AR 976.) She had "no complaints" at  
5 an office visit on March 24, 2014. (AR 970.) On May 6, 2014,  
6 she complained to Dr. Soliman of "musculoskeletal pain" and  
7 "nocturnal awakening and weakness." (AR 966.) She described her  
8 pain level as "6/10." (AR 967.) He referred her to physical  
9 therapy, instructed her to continue taking ibuprofen, and  
10 prescribed Flexeril.<sup>23</sup> (AR 967-68.) She complained of dizziness  
11 on August 11, 2014. (AR 957.) But she denied neck stiffness or  
12 weakness (AR 959), and the musculoskeletal examination was normal  
13 (AR 960).

14 On September 17, 2014, she saw Dr. Soliman for "[b]ilateral  
15 [h]and [p]ain" and reported that she was going "to Mexico to a  
16 chiropractor" because it was "cheap there." (AR 952.) She  
17 requested tramadol. (Id.) Dr. Soliman noted "bilateral hand  
18 tenderness" and referred her to a chiropractor. (AR 955.)

19 On June 4, 2015, over five months after the date last  
20 insured (AR 459), electrodiagnostic studies revealed left "mild"  
21 carpal tunnel syndrome and right "moderate" carpal tunnel  
22 syndrome, with no evidence of cubital tunnel syndrome (AR 1224).  
23 She had normal muscle strength and full range of motion in both  
24 hands. (Id.) Plaintiff initially declined surgery, indicating  
25 that she was "doing better with respect to the carpal tunnel  
26

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27 <sup>23</sup> Flexeril is a muscle relaxant used to treat muscle  
28 spasms. Flexeril Tablet, WebMD, <https://www.webmd.com/drugs/2/drug-11372/flexeril-oral/details> (last visited Aug. 5, 2020).

1 symptoms." (Id.) Ultimately, however, she underwent right  
2 carpal-tunnel-release surgery nearly two years after the DLI, on  
3 August 18, 2016. (AR 1642-43.)

4 2. The ALJ's decision

5 The ALJ credited the opinions of consultative examiner Dr.  
6 Taylor and state-agency reviewing physicians H.M. Estrin<sup>24</sup> and  
7 George N. Lockie<sup>25</sup> because of "the supportability of the medical  
8 signs and laboratory findings," "the consistency with the record  
9 showing only conservative treatment," and evidence that Plaintiff  
10 "reported that her medications were effective in alleviating her  
11 pain." (AR 466.)

12 The ALJ discounted Dr. Scheinberg's opinions because the TTD  
13 assessment was not determinative of whether Plaintiff was  
14 disabled for Social Security purposes; his finding of TTD was  
15 premised on her not being able to perform her actual job, whereas  
16 disability under Social Security requires being unable to engage  
17 in any substantial gainful activity at all; his opinions  
18 reflected only temporary limitations and did not indicate whether  
19 the restrictions were expected to last at least 12 months, as  
20 required for Social Security disability; most of his opinions  
21 were rendered before the electrodiagnostic studies; and his  
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23 <sup>24</sup> Dr. Estrin primarily practices internal medicine. See  
24 Cal. Dep't Consumer Aff. License Search, [https://](https://search.dca.ca.gov)  
25 [search.dca.ca.gov](https://search.dca.ca.gov) (search for "H" and "Estrin") (last visited  
Aug. 5, 2020).

26 <sup>25</sup> Dr. Lockie primarily practices pediatrics. (See AR 302-  
27 03 (showing specialty code of 32)); Soc. Sec. Admin., Program  
28 Operations Manual System (POMS) DI 24501.004 (May 5, 2015),  
<https://secure.ssa.gov/apps10/poms.nsf/lrx/0424501004> (specialty  
code 32 indicates pediatrics).

1 recommendation that Plaintiff maximize exercise of her hands was  
2 inconsistent with the inability to perform any type of activity  
3 with them. (AR 466-67.)

4 B. Analysis

5 Plaintiff contends that this Court "should reverse" the  
6 Commissioner's decision because the ALJ improperly weighed the  
7 opinion evidence. (J. Stip. at 11.) Specifically, she argues  
8 that the ALJ improperly rejected the opinions of Dr. Scheinberg,  
9 her treating physician for six months (id. at 10), who opined  
10 that Plaintiff was temporarily totally disabled "from her usual  
11 and customary occupation and should avoid any gripping, grasping,  
12 or prolonged fine manipulative work such as data entry or  
13 technical work with her hands" (AR 297). For the reasons  
14 discussed below, remand is not warranted.

15 1. Applicable law

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

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25 <sup>26</sup> For claims filed on or after March 27, 2017, the rules in  
26 § 404.1520c (not § 404.1527) apply. See § 404.1520c (evaluating  
27 opinion evidence for claims filed on or after Mar. 27, 2017).  
28 The new regulations provide that the Social Security  
Administration "will not defer or give any specific evidentiary  
(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 v. Bowen, 881 F.2d 747,  
10 751 (9th Cir. 1989); see also Carmickle v. Comm'r, Soc. Sec.  
11 Admin., 533 F.3d 1155, 1164 (9th Cir. 2008). When a doctor's  
12 opinion is not contradicted by other medical-opinion evidence,  
13 however, it may be rejected only for a "clear and convincing"  
14 reason. Magallanes, 881 F.2d at 751 (citations omitted);  
15 Carmickle, 533 F.3d at 1164 (citing Lester, 81 F.3d at 830-31).  
16 When it is contradicted, the ALJ need provide only a "specific  
17 and legitimate" reason for discounting it. Carmickle, 533 F.3d  
18 at 1164 (citing Lester, 81 F.3d at 830-31). The weight given a  
19 doctor's opinion, moreover, depends on whether it is consistent  
20 with the record and accompanied by adequate explanation, among  
21 other things. See § 404.1527(c); see also Orn v. Astrue, 495  
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23 <sup>26</sup> (...continued)  
24 weight, including controlling weight, to any medical opinion(s)  
25 or prior administrative medical finding(s), including those from  
26 your medical sources." § 404.1520c(a). Thus, the new  
27 regulations eliminate the term "treating source" as well as what  
28 is customarily known as the treating-source or treating-physician  
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 F.3d 625, 631 (9th Cir. 2007) (factors in assessing physician's  
2 opinion include length of treatment relationship, frequency of  
3 examination, and nature and extent of treatment relationship).

4 2. The ALJ permissibly discounted Dr. Scheinberg's  
5 opinions

6 Because Dr. Scheinberg's opinions were inconsistent with the  
7 opinions of the consulting examiner and state-agency reviewing  
8 doctors, the ALJ needed to provide only a "specific and  
9 legitimate reason" for discounting them, Carmickle, 533 F.3d at  
10 1164 (citation omitted), and she did so.

11 To start, the ALJ accurately noted that a finding of  
12 disability for purposes of workers' compensation is not  
13 determinative of whether Plaintiff was disabled for Social  
14 Security purposes. (AR 466); see Allen v. Comm'r of Soc. Sec.,  
15 498 F. App'x 696, 698 (9th Cir. 2012) (finding that ALJ did not  
16 err in failing to consider California workers'-compensation  
17 ratings assessed by doctor because "[t]he California Guidelines  
18 for Work Capacity are not conclusive in a Social Security case"  
19 and "[t]he ALJ considered [the doctor's] entire report, not just  
20 the portion containing the workers' compensation ratings").  
21 Although discounting medical opinions solely because they were  
22 given in the context of a workers'-compensation claim is error,  
23 see Sinohui v. Astrue, No. EDCV 10-908 RNB., 2011 WL 1042333, at  
24 \*2 (C.D. Cal. Mar. 18, 2011); Booth v. Barnhart, 181 F. Supp 2d  
25 1099, 1105 (C.D. Cal. 2002), this was not the sole reason the ALJ

1 gave for discounting Dr. Scheinberg's opinions.<sup>27</sup>

2 The ALJ properly discounted them because they did not meet  
3 the Social Security disability duration requirement. "Unless  
4 [the] impairment is expected to result in death, it must have  
5 lasted or must be expected to last for a continuous period of at  
6 least 12 months." § 404.1509. Here, Dr. Scheinberg first opined  
7 on June 7, 2011, that Plaintiff was TTD. (AR 297.) He extended  
8 that finding several times by four or six weeks (AR 349, 352,  
9 353), with the final extension of four weeks on December 8, 2011  
10 (AR 376). Even combining all of Dr. Scheinberg's TTD findings,  
11 they do not meet the duration requirement. And no other doctor  
12 opined that Plaintiff was ever TTD. This is a specific,  
13 legitimate reason to discount the opinions. See Bales v. Astrue,  
14 No. 1:09-cv-2243 SKO., 2011 WL 923571, at \*13 (E.D. Cal. Mar. 14,  
15 2011) (finding that ALJ did not err in discounting medical  
16 opinion for failure to meet duration requirement because there  
17 were "gaps during the many extensions of time which Plaintiff was  
18 expected to be disabled").

19 Plaintiff argues that the ALJ should have evaluated whether  
20 she was entitled to a closed period of disability. (J. Stip. at  
21 8.) As Defendant points out (id. at 16 n.2), she has forfeited  
22 this issue by not raising it during her administrative

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24 <sup>27</sup> Plaintiff complains that the ALJ erroneously rejected Dr.  
25 Scheinberg's opinions for the related reason that TTD "is an  
26 opinion regarding total incapacity or inability to earn any  
27 current job, as the ALJ seemed to believe. (J. Stip. at 19; see  
28 AR 466-67.) But Dr. Scheinberg himself limited his TTD finding  
only to work in Plaintiff's "usual and customary occupation."  
(AR 297.) The ALJ did not err.

1 proceedings. See Meanel v. Apfel, 172 F.3d 1111, 1115 (9th Cir.  
2 1999) (as amended) (holding that claimants who are represented by  
3 counsel must raise all issues and evidence during their  
4 administrative proceedings to preserve them for appeal).  
5 Moreover, Plaintiff bears the burden of showing entitlement to  
6 any period of disability, and she never argued for a closed  
7 period. See Armstrong v. Comm'r Soc. Sec. Admin., 160 F.3d 587,  
8 590 (9th Cir. 1998) (holding that ALJ's duty to assist in  
9 determining disability onset date when record is ambiguous does  
10 not relieve claimants of ultimate burden to prove disability  
11 before DLI). Like the plaintiff in Meanel, Plaintiff was  
12 represented by counsel at the hearing and before the Appeals  
13 Council. (AR 435, 475.) Presumably her attorney was aware that  
14 Dr. Scheinberg's opinions regarding TTD were of limited total  
15 duration.<sup>28</sup> The issue is forfeited.

16 Furthermore, the ALJ properly discounted Dr. Scheinberg's  
17 opinions because most of them were rendered before and were  
18 inconsistent with the September 13, 2011 electrodiagnostic  
19 studies. (AR 354-59.) An ALJ "need not accept the opinion of  
20 any physician, including a treating physician, if that opinion is  
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22 <sup>28</sup> Sims v. Apfel, 530 U.S. 103, 107 (2000), cited by  
23 Plaintiff (J. Stip. at 21), does not help her because it held  
24 only that an issue is not forfeited if it wasn't presented to the  
25 Appeals Council, noting that "[w]hether a claimant must exhaust  
26 issues before the ALJ is not before us." Here Plaintiff did  
27 neither. See Shaibi v. Berryhill, 883 F.3d 1102, 1109 (9th Cir.  
28 2017) (as amended Feb. 28, 2018) (upholding and applying Meanel  
after Sims); see also Phillips v. Colvin, 593 F. App'x 683, 684  
(9th Cir. 2015) ("This issue was waived by [claimant]'s failure  
to raise it at the administrative level when he was represented  
by counsel, and [he] has not demonstrated manifest injustice  
excusing the failure.").

1 brief, conclusory, and inadequately supported by clinical  
2 findings." Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002)  
3 (citation omitted); see Batson v. Comm'r of Soc. Sec. Admin., 359  
4 F.3d 1190, 1195 (9th Cir. 2004); see also Ford v. Saul, 950 F.3d  
5 1141, 1155 (9th Cir. 2020) ("An ALJ is not required to take  
6 medical opinions at face value, but may take into account the  
7 quality of the explanation when determining how much weight to  
8 give a medical opinion.").

9 Dr. Scheinberg's initial opinions that Plaintiff "should  
10 avoid any gripping, grasping, or prolonged fine manipulative  
11 work" (AR 297) were rendered without the benefit of the September  
12 13, 2011 EMG and NCV, which were normal (AR 354-59).  
13 Specifically, the EMG report stated that there were "no findings  
14 to suggest the presence of an active or chronic denervation of  
15 the bilateral cervical myotomes" or "a motor radiculopathy in any  
16 of the nerve roots." (AR 355.) The NCV report noted that there  
17 were "no electrodiagnostic findings to suggest the presence of a  
18 mononeuropathy, peripheral neuropathy, or brachial plexopathy."  
19 (AR 358.)

20 As the ALJ noted (AR 467), following those normal clinical  
21 findings, Dr. Scheinberg recommended that Plaintiff "maximize  
22 activity/exercise with [the] goal of hastened improvement [of  
23 the] hand[s]." (AR 348.) Although he continued to find her TTD,  
24 the ALJ properly found that "[t]he direction to maximize activity  
25 [was] inconsistent with an opinion that the [Plaintiff was]  
26 unable to perform any type of activity with her hands." (AR  
27 467.) Plaintiff argues that Dr. Scheinberg never stated that she  
28 was unable to perform "any" activity with her hands and that the

1 direction to maximize activity was not inconsistent with his  
2 prior opinions because he restricted only "prolonged"  
3 manipulative work and did not "necessarily forbid" gripping and  
4 grasping. (J. Stip. at 9-10.) Although Plaintiff is correct  
5 that Dr. Scheinberg's opinions restricted only "prolonged" fine  
6 manipulative work, the recommendation to avoid gripping and  
7 grasping was not so limited. (AR 297.) Indeed, Plaintiff's  
8 counsel interpreted it at the first hearing as "no gripping or  
9 grasping." (AR 70.) The ALJ properly found, therefore, that the  
10 direction to maximize activity was inconsistent with that  
11 restriction and rejected it.

12 The ALJ also properly credited the contrary opinions of Drs.  
13 Estrin, Lockie, and Taylor. Dr. Taylor performed an independent  
14 evaluation of Plaintiff on July 14, 2011. (AR 284-88.) She  
15 examined her and found "no obvious joint findings," no "obvious  
16 wrist, hand, or elbow findings," "[n]o obvious significant muscle  
17 atrophy," and "good motor strength and good grip strength." (AR  
18 287.) Specifically, the grip-strength results, "measured by  
19 Jamar dynamometer," were 40 pounds in the right hand and 35  
20 pounds in the left, essentially normal.<sup>29</sup> (AR 285.) "The range  
21 of motion of all extremities appear[ed] normal" (AR 286), and the  
22 "upper and lower extremity movements were noted to be normal  
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24 <sup>29</sup> As noted, a "normal" grip strength for a woman between 55  
25 and 59 years old is between 17.7 and 31.5 kilograms, or between  
26 39.02 and 69.45 pounds. See Grip Strength Ratings for Females,  
27 Topendsports, [https://www.topendsports.com/testing/norms/  
handgrip.htm](https://www.topendsports.com/testing/norms/handgrip.htm) (last visited Aug. 5, 2020); Convert Kilograms to  
Pounds, Calculateme, [https://www.calculateme.com/weight/  
kilograms/to-pounds/](https://www.calculateme.com/weight/kilograms/to-pounds/) (last visited Aug. 5, 2020).

1 . . . [with] no evidence of incoordination" (AR 287). Dr. Taylor  
2 assessed "no restrictions" on lifting and carrying, hand use, or  
3 fine fingering manipulation. (AR 288.)

4 Drs. Estrin and Lockie reviewed Plaintiff's medical records,  
5 including Dr. Taylor's records. (AR 79, 302, 305.) Dr. Estrin  
6 found her not disabled and opined that she was capable of  
7 performing her past relevant work as generally performed in the  
8 national economy. (AR 82, 84.) Dr. Lockie generally agreed with  
9 Dr. Taylor's assessment but also opined that "handling" and  
10 "fingering" should be "limited to frequent." (AR 300.)

11 Plaintiff, citing Orn, 495 F.3d at 625, argues that the  
12 opinions of these nontreating physicians do not rise to the level  
13 of substantial evidence because they are not based on  
14 "independent clinical findings." (J. Stip. at 17.) Plaintiff  
15 correctly notes that "independent clinical findings" are either  
16 "diagnoses that differ from those offered by another physician  
17 and that are supported by substantial evidence . . . or findings  
18 based on objective medical tests that the treating physician has  
19 not herself considered." Orn, 495 F.3d at 632. Although none of  
20 the nontreating physicians here relied on diagnoses that differed  
21 from Dr. Scheinberg's, Dr. Taylor relied on her own objective  
22 medical tests, including the grip-strength test. (AR 285.) Drs.  
23 Estrin (AR 79) and Lockie (AR 302, 305) also relied on Dr.  
24 Taylor's objective medical tests. Those opinions, therefore,  
25 constituted substantial evidence contradicting the opinions of  
26 Dr. Scheinberg. See Orn, 495 F.3d at 632.


27 Because the ALJ properly credited those opinions (AR 466),  
28 she was entitled to discount Dr. Scheinberg's inconsistent ones

1 accordingly. Remand is not warranted.

2 **VI. CONCLUSION**

3 Consistent with the foregoing and under sentence four of 42  
4 U.S.C. § 405(g),<sup>30</sup> IT IS ORDERED that judgment be entered  
5 AFFIRMING the Commissioner's decision, DENYING Plaintiff's  
6 request for remand, and DISMISSING this action with prejudice.

7  
8 DATED: August 6, 2020

  
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JEAN ROSENBLUTH  
U.S. MAGISTRATE JUDGE

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27 <sup>30</sup> That sentence provides: "The [district] court shall have  
28 power to enter, upon the pleadings and transcript of the record,  
a judgment affirming, modifying, or reversing the decision of the  
Commissioner of Social Security, with or without remanding the  
cause for a rehearing."