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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARCIA EXIE HICKS,)	NO. EDCV 16-1469-KS
Plaintiff,)	
v.)	MEMORANDUM OPINION AND ORDER
NANCY A. BERRYHILL,¹ Acting)	
Commissioner of Social Security,)	
Defendant.)	

INTRODUCTION

Marcia Exie Hicks (“Plaintiff”) filed a Complaint on July 6, 2016, seeking review of the denial of her application for a period of disability and disability insurance benefits (“DIB”). (Dkt. No. 1.) On August 23, 2016, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. (Dkt. Nos. 9, 10, 11.) On May 24, 2017, the parties filed a Joint Stipulation (“Joint Stip.”). (Dkt. No 21.) Plaintiff seeks an order reversing the Commissioner’s decision and remanding for further

¹ The Court notes that Nancy A. Berryhill is now the Acting Commissioner of the Social Security Administration. Accordingly, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, the Court orders that the caption be amended to substitute Nancy A. Berryhill for Carolyn Colvin as the defendant in this action.

1 proceedings or an immediate award of benefits. (Joint Stip. at 36.) The Commissioner
2 requests that the ALJ's decision be affirmed or, in the alternative, remanded for further
3 proceedings. (*See id.* at 37.) The Court has taken the matter under submission without oral
4 argument.

6 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**

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8 On August 30, 2012, Plaintiff, who was born on May 27, 1960, filed an application for
9 DIB.² (*See* Administrative Record (“AR”) 139.) Plaintiff alleged disability commencing
10 August 15, 2012 due to carpal tunnel in both wrists and unspecified pain or discomfort in her
11 neck, shoulders, and upper back. (AR 139, 159.) Plaintiff previously worked as a collection
12 clerk (DOT 241.357-010), skip tracer (DOT 241.367-026), and administrative general office
13 clerk (DOT 219.362-010). (AR 23, 160.) After the Commissioner denied Plaintiff's
14 application initially (AR 67) and on reconsideration (*id.* 79), Plaintiff requested a hearing
15 (*see id.* 94). Administrative Law Judge Nancy M. Stewart (“ALJ”) held a hearing on
16 November 18, 2014. (*Id.* 30.) Plaintiff, who was represented by counsel, testified before the
17 ALJ as did vocational expert (“VE”) Corinne Porter. (*See* AR 32-57.) On December 23,
18 2015, the ALJ issued an unfavorable decision, denying Plaintiff's application for a period of
19 disability and DIB. (*Id.* 14-25.) On May 9, 2016, the Appeals Council denied Plaintiff's
20 request for review. (*Id.* 1-6.)

21 **SUMMARY OF ADMINISTRATIVE DECISION**

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23
24 The ALJ found that Plaintiff meets the insured status requirements of the Social
25 Security Act through December 31, 2017. (AR 19.) The ALJ found that Plaintiff had not
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27 ² Plaintiff was 52 years old on the alleged onset date and thus met the agency's definition of a person closely
28 approaching advanced age. *See* 20 C.F.R. § 404.1563(d). On May 27, 2015, Plaintiff turned 55 years old and thus
became a person of advanced age under the regulations. *See id.* § 404.1563(e).

1 engaged in substantial gainful activity since her August 15, 2012 alleged onset date. (AR
2 19.) The ALJ further found that Plaintiff had the following severe impairments: “carpal
3 tunnel syndrome of the bilateral extremities; deQuervain’s tendinitis of the bilateral wrists;
4 degenerative disc disease of the spine with radiculitis.” (AR 19.) The ALJ concluded that
5 Plaintiff did not have an impairment or combination of impairments that met or medically
6 equaled the severity of any impairments listed in 20 C.F.R. part 404, subpart P, appendix 1
7 (20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526). (AR 19-20.) The ALJ determined that
8 Plaintiff had the residual functional capacity (“RFC”) to perform light work with the
9 following limitations:

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11 [Plaintiff] can lift and/or carry 10 pounds frequently and 20 pounds
12 occasionally. She is limited to pushing and pulling within these weight limits.
13 [Plaintiff] can stand, walk, sit, and stand for 6 hours out of an 8-hour period.
14 No work on ladders, ropes, scaffolds, or near work hazards. [Plaintiff] cannot
15 forcefully grip or grasp and is limited to only frequent handling and fingering,
16 but no repetitive use of the hands, including no keyboarding. She is also limited
17 to non-complex tasks due to her use of pain medications.

18
19 (AR 20.)

20
21 The ALJ found that Plaintiff was unable to perform her past relevant work as a
22 collection clerk, skip tracer, or administrative general office clerk. (AR 23.) However, the
23 ALJ found that Plaintiff can perform jobs that exist in significant numbers in the national
24 economy, including the representative occupations of bagger (DOT 920.687-018), cleaner
25 (DOT 323.687-014), and cafeteria attendant (DOT 311.677-010). (AR 24.) Accordingly,
26 the ALJ determined that Plaintiff had not been under a disability, as defined in the Social
27 Security Act, from the alleged onset date through the date of the ALJ’s decision. (AR 25.)
28

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine whether it is free from legal error and supported by substantial evidence in the record as a whole. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). “Substantial evidence is ‘more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Gutierrez v. Comm’r of Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir. 2014) (internal citations omitted). “Even when the evidence is susceptible to more than one rational interpretation, we must uphold the ALJ’s findings if they are supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012).

Although this Court cannot substitute its discretion for the Commissioner’s, the Court nonetheless must review the record as a whole, “weighing both the evidence that supports and the evidence that detracts from the [Commissioner’s] conclusion.” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (internal quotation marks and citation omitted); *Desrosiers v. Sec’y of Health and Hum. Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). “The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and for resolving ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

The Court will uphold the Commissioner’s decision when the evidence is susceptible to more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). However, the Court may review only the reasons stated by the ALJ in his decision “and may not affirm the ALJ on a ground upon which he did not rely.” *Orn*, 495 F.3d at 630; *see also Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). The Court will not reverse the Commissioner’s decision if it is based on harmless error, which exists if the error is “‘inconsequential to the ultimate nondisability determination,’ or if despite the legal error,

1 ‘the agency’s path may reasonably be discerned.’” *Brown-Hunter v. Colvin*, 806 F.3d 487,
2 492 (9th Cir. 2015) (internal citations omitted).

3
4 **DISCUSSION**

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6 There are three issues in dispute: (1) whether the ALJ satisfied the Commissioner’s
7 burden at step five of the sequential analysis (Joint Stip. at 5-10); (2) whether the ALJ
8 properly evaluated Plaintiff’s statements about her symptoms (Joint Stip. at 15-21); and (3)
9 whether the ALJ properly evaluated the opinions of the state agency physicians (Joint Stip. at
10 30-33). (*See also* Joint Stip. at 4-5.) For ease of discussion, the Court considers these issues
11 in reverse order.

12
13 **I. The ALJ’s Evaluation Of The Opinions Of The State Agency Physicians.**

14
15 **A. State Agency Physician Opinions**

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17 On January 16, 2013, G. Spinka, M.D., neurologist, reviewed Plaintiff’s medical
18 records and opined that Plaintiff, *inter alia*: could lift and/or carry 20 pounds occasionally
19 and 10 pounds frequently; could stand and/or walk for a total of six hours out of an eight-
20 hour day; had a “limited” ability to push and/or pull with her upper extremities; and was
21 limited to occasional handling and frequent fingering. (AR 64.)

22
23 On October 3, 2013, M. Acinas, M.D., a family or general practice physician,
24 reviewed Plaintiff’s medical records and provided an identical assessment of Plaintiff’s
25 physical limitations. (AR 74-75.)

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1 **B. ALJ’s Decision**

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3 The ALJ stated that he assigned “significant weight, but not full weight” to the
4 opinions of the two state agency physicians, as well as to the similar opinion of the physician
5 who treated Plaintiff in connection with her claim for workers’ compensation.³ (AR 22.)
6 She wrote:

7
8 These opinions are all generally supported by the record as a whole. However,
9 no single assessment has been completely adopted as the residual functional
10 capacity determined herein. Instead, the undersigned has adopted those specific
11 restrictions on a function-by-function basis that are best supported by the
12 objective evidence as a whole, including the side effects of pain medications.

13
14 (AR 22.)

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16 The ALJ ultimately found that Plaintiff, *inter alia*, “cannot forcefully grip or grasp and
17 is limited to only frequent handling and fingering, but not repetitive use of the hands,
18 including no keyboarding.” (AR 20.)

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20 **C. Applicable Law**

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22 “The ALJ is responsible for translating and incorporating clinical findings into a
23 succinct RFC.” *Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015). In
24 doing so, the ALJ must articulate a “substantive basis” for rejecting a medical opinion or
25 crediting one medical opinion over another. *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th
26

27 ³ Dr. David Wood, an orthopedic surgeon and the Agreed Medical Examiner in connection with Plaintiff’s
28 workers’ compensation claim, opined on April 19, 2012 that Plaintiff’s limitations included a preclusion “from repetitive
gripping and grasping and from repetitive fine manipulation.” (AR 269.)

1 Cir. 2014); *see also Marsh v. Colvin*, 792 F.3d 1170, 1172-73 (9th Cir. 2015) (“an ALJ
2 cannot in its decision totally ignore a treating doctor and his or her notes, without even
3 mentioning them”). Accordingly, although the opinion of a reviewing physician who has
4 never examined the claimant is not usually entitled to great weight, the ALJ must consider
5 the findings and opinions of State agency physicians and psychologists and, “[u]nless a
6 treating source’s opinion is given controlling weight, the [ALJ] must explain in the decision
7 the weight given to the opinions of a State agency medical or psychological consultant.” 20
8 C.F.R. § 404.1527(e)(2)(i)-(ii). An ALJ may not render his or her own medical opinion or
9 substitute her own diagnosis for that of a physician. *See Tackett v. Apfel*, 180 F.3d 1094,
10 1102-03 (9th Cir. 1999) (ALJ erred in rejecting physicians’ opinions and finding greater
11 residual functional capacity based on claimant’s testimony that he took a road trip); *Day v.*
12 *Weinberger*, 522 F.2d 1154, 1156 (9th Cir. 1975) (an ALJ is forbidden from making his or
13 her own medical assessment beyond that demonstrated by the record); *see also Balsamo v.*
14 *Chater*, 142 F.3d 75, 81 (2d Cir. 1998) (an “ALJ cannot arbitrarily substitute his own
15 judgment for competent medical opinion”) (internal quotation marks and citation omitted);
16 *Rohan v. Chater*, 98 F.3d 966, 970 (7th Cir. 1996) (“ALJs must not succumb to the
17 temptation to play doctor and make their own independent medical findings”).

18 19 **D. Discussion**

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21 The ALJ discounted the state agency physicians’ determinations that Plaintiff could
22 engage in handling only occasionally, finding instead that Plaintiff could perform “frequent
23 handling and fingering, but not repetitive use of the hands.” (AR 20.) However, no medical
24 source opined that Plaintiff could perform frequent handling. At most, Dr. Wood, the
25 Agreed Medical Examiner for Plaintiff’s workers’ compensation claim, opined that Plaintiff
26 was precluded from “repetitive gripping and grasping and from repetitive fine
27 manipulation.” (AR 269.) Dr. Wood made no explicit findings regarding Plaintiff’s ability
28 to engage in “handling” and it is unclear from the record whether the activity of “handling”

1 is included in Dr. Wood’s definition of “fine manipulation.” Accordingly, the record
2 indicates that the ALJ rendered her own medical opinion, rather than relying on the opinions
3 and findings of the medical sources. *See Tackett*, 180 F.3d at 1102-03; *Day*, 522 F.2d at
4 1156 (an ALJ is forbidden from making his or her own medical assessment beyond that
5 demonstrated by the record). Therefore, the ALJ erred, and the matter must be remanded for
6 re-evaluation of the medical source opinions. To the extent Dr. Wood’s opinion, or any
7 other medical opinion, is ambiguous, the ALJ has a duty to re-contact that physician to
8 obtain clarification and/or additional information. *See Tonapetyan v. Halter*, 242 F.3d 1144,
9 1150 (9th Cir. 2001).

10
11 Finally, because this matter must be remanded to the ALJ for reconsideration of the
12 state agency physicians’ opinions, the Court declines to reach the merits of Plaintiff’s
13 remaining arguments. Nevertheless, on remand, the ALJ should ensure that her analysis of
14 Plaintiff’s statements about her symptoms and her determination at step five of the
15 sequential analysis comply with the applicable regulations and legal standards.

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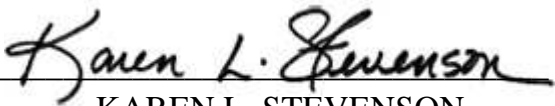
1 **CONCLUSION**

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3 Accordingly, for the reasons stated above, IT IS ORDERED that the decision of the
4 Commissioner is REVERSED, and this case is REMANDED for further proceedings
5 consistent with this Memorandum Opinion and Order.
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7 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of this
8 Memorandum Opinion and Order and the Judgment on counsel for plaintiff and for
9 defendant.
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11 LET JUDGMENT BE ENTERED ACCORDINGLY.
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13 DATE: June 19, 2017

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16 KAREN L. STEVENSON
17 UNITED STATES MAGISTRATE JUDGE
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