

1 Occupational Outlook Handbook (“OOH”)³ because that source suggested a smaller
2 amount of available jobs than those identified by the VE in response to the ALJ’s
3 hypothetical questions. The Court finds that reversal is not warranted.

4 A. Challenge to VE’s Testimony Not Properly Preserved for Appeal

5 Preliminarily, as a rule, “when claimants are represented by counsel, they must
6 raise all issues and evidence at their administrative hearings in order to preserve them
7 on appeal.” *Meanel v. Apfel*, 172 F.3d 1111, 1115 (9th Cir. 1999). This is particularly
8 true in the case of statistical evidence, as “[t]he ALJ, rather than this Court, [is] in the
9 optimal position to resolve the conflict between [a claimant’s] new evidence and the
10 statistical evidence provided by the VE.” *Id.*

11 In the instant case, Plaintiff was represented by counsel at the administrative
12 hearing and was allowed to pose questions to the VE, but she failed to challenge the
13 VE’s methodology for calculating the number of estimated jobs or offer any evidence
14 supporting a different figure.⁴ (AR at 82-83); *see Howard v. Astrue*, 330 F. App’x
15 128, 130 (9th Cir. 2009) (claimant waived argument that ALJ’s hypotheticals were
16 inadequate where claimant’s attorney had opportunity to pose hypotheticals but never
17 mentioned allegedly erroneously omitted limitation); *Meanel*, 172 F.3d at 1115
18 (claimant’s argument — that there was insufficient jobs in local area for a particular
19 position — not properly preserved for appeal); *Marchbanks v. Colvin*, 2014 WL
20 5756932, at *1 (C.D. Cal. Nov. 4, 2014) (claimant’s argument that OOH statistics
21 conflicted with DOT and VE’s testimony was waived because claimant was
22 represented by counsel and failed to raise issue before ALJ or Appeals Council).

23 ³ Plaintiff requests that this Court take judicial notice of portions of the OOH and other online
24 sources. [Dkt. No. 20.] The Court grants the request, but only as to the information contained in
25 those sources. *See Walker v. Berryhill*, 2017 WL 1097171, at *3 (C.D. Cal. Mar. 23, 2017) (taking
26 judicial notice of job information contained in OOH, but not that such information was more reliable
27 than the DOT, which is a matter “subject to reasonable dispute” and therefore inappropriate for
28 judicial notice).

⁴ The ALJ even held the record open after the administrative hearing for additional evidence,
but Plaintiff submitted nothing regarding job numbers. (Administrative Record (“AR”) at 17, 52, 83-
84, 1276-1598.)

1 Accordingly, the issue was not properly preserved for appeal.

2 B. No Legal Error Identified

3 Plaintiff has failed to identify any legal error for three reasons.

4 First, Plaintiff's repeated argument that "no reasonable person would ever
5 believe" there are 230,000 bench assembler jobs in the national economy is not the
6 standard by which this Court must review the Agency's decision. (Joint Stip. at 7, 9,
7 15-16); *see Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989) (the court must
8 affirm the Commissioner's decision if it is based on proper legal standards and the
9 findings of fact are supported by substantial evidence in the "record as a whole");
10 *Batson v. Comm'r Soc. Sec. Admin.*, 359 F.3d 1190, 1198 (9th Cir. 2004) ("When the
11 evidence before the ALJ is subject to more than one rational interpretation, [the court]
12 must defer to the ALJ's conclusion.").

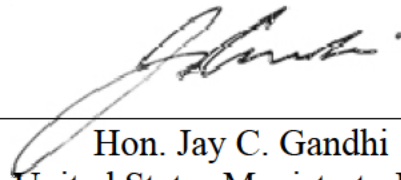
13 Second, even assuming the OOH established a smaller pool of estimated
14 available jobs, Plaintiff has failed to identify any authority that the VE or the ALJ were
15 bound by that source, or that the ALJ was required to ask about any alleged conflict.
16 *See Meza v. Berryhill*, 2017 WL 3298461, at *8 (C.D. Cal. Aug. 2, 2017) (claimant's
17 argument that DOT and OOH should be on "equal footing" has been rejected by a
18 number of district courts in Ninth Circuit); *Walker*, 2017 WL 1097171, at *3 (C.D.
19 Cal. Mar. 23, 2017) (rejecting argument that OOH precludes claimant from performing
20 jobs VE testified he could do because claimant "cites no authority for the proposition
21 that an ALJ must address conflicts between the testimony of the VE and the OOH");
22 *Simpson v. Colvin*, 2016 WL 3091487, at *5 (C.D. Cal. May 31, 2016) (finding no
23 error where VE's job numbers were inconsistent with information from Bureau of
24 Labor statistics in OOH because a VE may rely on any number of sources).

25 Third, and finally, Plaintiff has failed to show that the VE's testimony itself is
26 not substantial evidence. (AR at 27-28, 78-83); *see Bayliss v. Barnhart*, 427 F.3d
27 1211, 1218 (9th Cir. 2005) (ALJ may rely on a VE's testimony as a reliable source of
28 information about job numbers because a VE's "recognized expertise provides the

1 necessary foundation for his or her testimony” and “no additional foundation is
2 required”); *Howard*, 330 F. App’x at 130-31(argument challenging foundation of VE’s
3 testimony regarding number of jobs available in national and regional economies
4 foreclosed by *Bayliss*); *Moore v. Apfel*, 216 F.3d 864, 869-70 (9th Cir. 2000) (VE’s
5 testimony alone was substantial evidence supporting ALJ’s finding that claimant was
6 not disabled because substantial gainful work existed in national economy).

7 Based on the foregoing, **IT IS ORDERED THAT** judgment shall be entered
8 **AFFIRMING** the decision of the Commissioner denying benefits.⁵

9
10 DATED: August 24, 2017

11 

12 Hon. Jay C. Gandhi
13 United States Magistrate Judge

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15 **This Memorandum Opinion and Order is not intended for publication. Nor is it**
16 **intended to be included or submitted to any online service such as**
17 **Westlaw or Lexis.**

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28 ⁵ In light of this Memorandum Opinion and Order, and the concurrently filed Judgment, the request for a decision is granted. [Dkt. No. 24.]