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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LORI BURT,)	Case No. EDCV 17-0714-JPR
)	
Plaintiff,)	
)	MEMORANDUM DECISION AND ORDER
v.)	AFFIRMING COMMISSIONER
)	
NANCY A. BERRYHILL, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
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I. PROCEEDINGS

Plaintiff seeks review of the Commissioner’s final decision denying her applications for Social Security disability insurance benefits (“DIB”) and supplemental security income benefits (“SSI”). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). The matter is before the Court on the parties’ Joint Stipulation, filed December 5, 2017, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner’s decision is affirmed.

1 **II. BACKGROUND**

2 Plaintiff was born in 1960. (Administrative Record ("AR")
3 44, 54, 199.) She completed high school (AR 204) and worked as a
4 sales manager in a consignment store and an in-home caretaker (AR
5 27-30, 37, 204, 228, 248).

6 On November 20, 2013, Plaintiff applied for DIB and SSI,
7 alleging that she had been unable to work since October 15, 2013,
8 because of fibromyalgia, nerve damage, sciatica, "spinal issues,"
9 degenerative joint disease, vascular veins, shoulder pain, lower-
10 back and leg pain and swelling, and "[f]oot problems." (AR 44-
11 45, 54-55, 159-61, 165-74, 203.) After her applications were
12 denied initially and on reconsideration (see AR 64-65, 74-81),
13 she requested a hearing before an Administrative Law Judge (AR
14 82-83). A hearing was held on August 7, 2015, at which
15 Plaintiff, who was represented by counsel, testified, as did a
16 vocational expert. (See AR 23-43, 157.) In a written decision
17 issued September 1, 2015, the ALJ found Plaintiff not disabled.
18 (AR 10-22.) Plaintiff sought Appeals Council review (AR 5),
19 which was denied on March 6, 2017 (AR 1-4). This action
20 followed.

21 **III. STANDARD OF REVIEW**

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

1 as adequate to support a conclusion. Richardson, 402 U.S. at
2 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).
3 It is more than a scintilla but less than a preponderance.
4 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
5 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
6 substantial evidence supports a finding, the reviewing court
7 "must review the administrative record as a whole, weighing both
8 the evidence that supports and the evidence that detracts from
9 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
10 720 (9th Cir. 1998). "If the evidence can reasonably support
11 either affirming or reversing," the reviewing court "may not
12 substitute its judgment" for the Commissioner's. Id. at 720-21.

13 **IV. THE EVALUATION OF DISABILITY**

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

21 **A. The Five-Step Evaluation Process**

22 The ALJ follows a five-step evaluation process to assess
23 whether a claimant is disabled. 20 C.F.R. §§ 404.1520(a)(4),
24 416.920(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir.
25 1995) (as amended Apr. 9, 1996). In the first step, the
26 Commissioner must determine whether the claimant is currently
27 engaged in substantial gainful activity; if so, the claimant is
28 not disabled and the claim must be denied. §§ 404.1520(a)(4)(i),

1 416.920(a)(4)(i).

2 If the claimant is not engaged in substantial gainful
3 activity, the second step requires the Commissioner to determine
4 whether the claimant has a "severe" impairment or combination of
5 impairments significantly limiting her ability to do basic work
6 activities; if not, the claimant is not disabled and her claim
7 must be denied. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

8 If the claimant has a "severe" impairment or combination of
9 impairments, the third step requires the Commissioner to
10 determine whether the impairment or combination of impairments
11 meets or equals an impairment in the Listing of Impairments set
12 forth at 20 C.F.R. part 404, subpart P, appendix 1; if so,
13 disability is conclusively presumed. §§ 404.1520(a)(4)(iii),
14 416.920(a)(4)(iii).

15 If the claimant's impairment or combination of impairments
16 does not meet or equal an impairment in the Listing, the fourth
17 step requires the Commissioner to determine whether the claimant
18 has sufficient residual functional capacity ("RFC")¹ to perform
19 her past work; if so, she is not disabled and the claim must be
20 denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The claimant
21 has the burden of proving she is unable to perform past relevant
22 work. Drouin, 966 F.2d at 1257. If the claimant meets that
23 burden, a prima facie case of disability is established. Id. If
24 that happens or if the claimant has no past relevant work, the

25
26 ¹ RFC is what a claimant can do despite existing exertional
27 and nonexertional limitations. §§ 404.1545, 416.945; see Cooper
28 v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). The
Commissioner assesses the claimant's RFC between steps three and
four. Laborin v. Berryhill, 867 F.3d 1151, 1153 (9th Cir. 2017)
(citing § 416.920(a)(4)).

1 Commissioner then bears the burden of establishing that the
2 claimant is not disabled because she can perform other
3 substantial gainful work available in the national economy.
4 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); Drouin, 966 F.2d at 1257.
5 That determination comprises the fifth and final step in the
6 sequential analysis. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v);
7 Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

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

9 At step one, the ALJ found that Plaintiff had not engaged in
10 substantial gainful activity since October 15, 2013, the alleged
11 onset date. (AR 12.) At step two, he concluded that Plaintiff
12 had severe impairments of "lumbar degenerative disc disease,
13 spondylosis and varicose veins." (AR 12-13.) At step three, he
14 determined that Plaintiff's impairments did not meet or equal a
15 listing. (AR 13.) At step four, the ALJ found that Plaintiff
16 had the RFC to perform a limited range of light work:

17 [She] can lift and/or carry no more than 20 pounds
18 occasionally and 10 pounds frequently and sit, stand
19 and/or walk no more than six hours out of eight[,] [but]
20 [p]ushing and/or pulling with either the upper or lower
21 extremities is unlimited other than for the weight
22 limitations described[;] [s]he can no more than
23 occasionally climb ramps or stairs but never ladders,
24 ropes or scaffolds[;] and she can no more than
25 occasionally bend, stoop or kneel but is precluded from
26 work requiring crawling.

27 (AR 13-17.) Based on the VE's testimony, the ALJ concluded that
28 Plaintiff could perform her past relevant work as an

1 "owner/manager of a thrift store." (AR 17.) Thus, he found
2 Plaintiff not disabled. (AR 17-18.)

3 **V. DISCUSSION**

4 Plaintiff argues that the ALJ improperly rejected the
5 opinion of internist David L. Blinn, a treating physician. (J.
6 Stip. at 3-7.) As discussed below, the ALJ properly evaluated
7 the medical-opinion evidence. Accordingly, remand is not
8 warranted.

9 A. Applicable Law

10 Three types of physicians may offer opinions in Social
11 Security cases: those who directly treated the plaintiff, those
12 who examined but did not treat the plaintiff, and those who did
13 neither. Lester, 81 F.3d at 830. A treating physician's opinion
14 is generally entitled to more weight than an examining
15 physician's, and an examining physician's opinion is generally
16 entitled to more weight than a nonexamining physician's. Id.;
17 see §§ 404.1527, 416.927.² But "the findings of a nontreating,
18 nonexamining physician can amount to substantial evidence, so
19

20 ² Social Security regulations regarding the evaluation of
21 opinion evidence were amended effective March 27, 2017. When, as
22 here, the ALJ's decision is the final decision of the
23 Commissioner, the reviewing court generally applies the law in
24 effect at the time of the ALJ's decision. See Lowry v. Astrue,
25 474 F. App'x 801, 804 n.2 (2d Cir. 2012) (applying version of
26 regulation in effect at time of ALJ's decision despite subsequent
27 amendment); Garrett ex rel. Moore v. Barnhart, 366 F.3d 643, 647
28 (8th Cir. 2004) ("We apply the rules that were in effect at the
time the Commissioner's decision became final."); Spencer v.
Colvin, No. 3:15-CV-05925-DWC, 2016 WL 7046848, at *9 n.4 (W.D.
Wash. Dec. 1, 2016) ("42 U.S.C. § 405 does not contain any
express authorization from Congress allowing the Commissioner to
engage in retroactive rulemaking"). Accordingly, citations to 20
C.F.R. §§ 404.1527 and 416.927 are to the versions in effect from
August 24, 2012, to March 26, 2017.

1 long as other evidence in the record supports those findings.”
2 Saelee v. Chater, 94 F.3d 520, 522 (9th Cir. 1996) (per curiam)
3 (as amended).

4 The ALJ may disregard a physician’s opinion regardless of
5 whether it is contradicted. Magallanes v. Bowen, 881 F.2d 747,
6 751 (9th Cir. 1989); see Carmickle v. Comm’r, Soc. Sec. Admin.,
7 533 F.3d 1155, 1164 (9th Cir. 2008). When a physician’s opinion
8 is not contradicted by other medical-opinion evidence, however,
9 it may be rejected only for “clear and convincing” reasons.

10 Magallanes, 881 F.2d at 751; Carmickle, 533 F.3d at 1164 (citing
11 Lester, 81 F.3d at 830-31). When it is contradicted, the ALJ
12 must provide only “specific and legitimate reasons” for
13 discounting it. Carmickle, 533 F.3d at 1164 (citing Lester, 81
14 F.3d at 830-31). The weight given a treating or examining
15 physician’s opinion, moreover, depends on whether it is
16 consistent with the record and accompanied by adequate
17 explanation, among other things. §§ 404.1527(c)(3)-(6),
18 416.927(c)(3)-(6). Those factors also determine the weight
19 afforded the opinions of nonexamining physicians.

20 §§ 404.1527(e), 416.927(e). The ALJ considers findings by state-
21 agency medical consultants and experts as opinion evidence. Id.

22 Furthermore, “[t]he ALJ need not accept the opinion of any
23 physician . . . if that opinion is brief, conclusory, and
24 inadequately supported by clinical findings.” Thomas v.
25 Barnhart, 278 F.3d 947, 957 (9th Cir. 2002); accord Batson v.
26 Comm’r of Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004).
27 An ALJ need not recite “magic words” to reject a physician’s
28 opinion or a portion of it; the court may draw “specific and

1 legitimate inferences" from the ALJ's opinion. Magallanes, 881
2 F.2d at 755. The Court must consider the ALJ's decision in the
3 context of "the entire record as a whole," and if the "evidence
4 is susceptible to more than one rational interpretation," the
5 ALJ's decision should be upheld." Ryan v. Comm'r of Soc. Sec.,
6 528 F.3d 1194, 1198 (9th Cir. 2008) (citation omitted).

7 B. Relevant Background

8 1. Medical records

9 Plaintiff alleges that the onset date of her disability was
10 October 15, 2013. (See AR 45, 55.) In October 2013, she sought
11 treatment at Little River Medical Clinic. (AR 342-45, 350-51.)
12 She had a history of hypertension, hypothyroidism,
13 osteoarthritis, degenerative disc disease of the lumbar spine,
14 bilateral vein-stripping surgeries, and epidural injections. (AR
15 342, 350.) She was "[a]lert"; "[o]riented to time, place, and
16 person"; "[w]ell developed"; and "[i]n no acute distress." (AR
17 344, 350-51.) Her "[n]eck demonstrated no decrease in
18 suppleness." (AR 344.) Though she experienced "[n]o tenderness
19 on palpation" to her back, "[l]umbosacral spine pain was elicited
20 by motion, especially with flexion," and "[b]lack extension [was]
21 markedly restricted and painful." (AR 344, 351.) She had
22 "normal shoulder range of motion to forward flexion and
23 abduction." (AR 351.) Her "[b]iceps, triceps, and hand
24 intrinsic strengths [were] 5/5," and her "[q]uadriceps, plantar,
25 and dorsiflexors strengths [were] 5/5." (Id.) Sensation "in all
26 four extremities and all dermatomes" was "intact to light touch."
27 (Id.) She was assessed with "[b]enign essential hypertension,"
28 hypothyroidism, "[l]umbar degenerative dis[c] disease with

1 chronic back pain," "[p]robable fibromyalgia syndrome," and
2 "[l]ong-term opioid use." (AR 344, 351.) She reported that she
3 "hope[d] to find a job as a Home Care Aid." (AR 343.)³

4 On February 5, 2014, Plaintiff saw interventional pain
5 specialist and anesthesiologist Kevin Hibbard at Advanced Pain
6 Medicine. (AR 361-63.) She "exhibit[ed]" "no overt pain
7 behavior" and was "able to comfortably endure the history and
8 physical examination." (AR 362.) Dr. Hibbard observed that she
9 was "well-developed," "well-nourished," and "in no acute
10 distress." (Id.) Her extremities showed "[n]o cyanosis,
11 clubbing, [or] edema" and "exhibit[ed] normal tone and muscle
12 bulk." (Id.) Her "[m]uscle strength [was] 5 out of 5 proximally
13 and distally in all 4 extremities except +4/5 [in her] left
14 quadricep flexion." (Id.) Her "[m]uscle stretch reflexes were
15 preserved in all 4 extremities symmetrically," but she had
16 "[d]ecreased sensation to light touch diffusely in [her] left
17 lower leg." (Id.) Plaintiff's "[s]traight leg raise [was]
18 positive on the left and negative on the right." (Id.) Her
19 lumbar flexion was "[m]oderate[ly] decreased" "due to pain," and
20 though her lumbar extension was "[i]ntact," she "report[ed] pain"
21 in that area. (Id.) Dr. Hibbard noted "[t]ender[ness] to
22 palpation through [Plaintiff's] entire thoracic midline and

23
24 ³ Plaintiff had been performing that service for pay for six
25 years for her ex-husband before stopping in October 2013. (AR
26 27-29, 37.) Although she told the ALJ she stopped because she
27 "[c]ould no longer do it" (AR 28), that same month she told a
28 nurse practitioner that she hoped to find an in-home care
position (AR 343). In December 2013, she reported that she lived
with her "ex-husband 'friend'" (AR 212), and that same month her
father stated that she was still taking care of him (AR 221). In
February 2014, she wrote in a function report that she took care
of him "when [she] c[ould]." (AR 237.)

1 paraspinal muscles[,] lumbar midline[,] and right lumbar
2 paraspinal muscles." (Id.) He assessed her with "[l]umbar and
3 thoracic spinal pain secondary to discogenic syndrome versus
4 facet arthropathy," "[l]eft lower extremity radicular syndrome,"
5 "[p]ossible lateral carpal tunnel syndrome," and "[m]ultiple
6 muscle pain with possible fibromyalgia." (Id.)

7 Plaintiff first saw Dr. Blinn on February 18, 2014. (AR
8 356-58.) Her "appetite [was] good" and "weight [was] stable."
9 (AR 356.) She also was "tolerating [her] medications well."
10 (Id.) Dr. Blinn observed that she was "oriented to person,
11 place, [and] time"; "well developed and well-nourished"; and in
12 "[n]o acute distress." (AR 357.) Her extremities had "[f]ull
13 range of motion" without any clubbing, cyanosis, or edema. (Id.)
14 Her spine was "nontender" with "normal contour and mobility."
15 (Id.) Her "[c]ranial nerves 2-12 [were] intact," her "motor and
16 sensory exams [were] normal," and she had "no [neurologic]
17 localizing deficits." (Id.) Dr. Blinn diagnosed Plaintiff with
18 fibromyalgia, hypothyroidism, hypertension, osteoporosis,
19 arthritis, chronic venous insufficiency, and vitamin D deficiency
20 and told her to return in "about 2 months." (AR 357-58.)

21 On February 28, 2014, Plaintiff reported to Dr. Hibbard that
22 she "continue[d] to have ongoing lumbar spinal pain, mid spinal
23 pain, and left posterior thigh and lateral thigh pain." (AR
24 535.) Her "[p]ain [was] made worse with activity including
25 standing[,] bending[,] twisting[,] and extension of the lumbar
26 spine." (Id.) Dr. Hibbard observed "[t]enderness to palpation
27 in [her] lumbar spine" and "5/5 strength" in her "bilateral hip
28 flexion, knee extension, knee flexion, knee abduction, . . . EHL

1 extension, and toe flexion." (Id.) She was "[a]ble to
2 transition from a seated to standing position without any
3 hesitation, pushoff, or use of [her] upper extremities," and she
4 was "[a]ble to stand and ambulate without assistance." (Id.)
5 Her cranial nerves were "grossly intact," but she showed
6 "[p]ositive paresthesias in the left lower extremity." (Id.)

7 In March 2014, Plaintiff filled out an "Employability
8 Assessment Form," stating that she "ache[d] all the time" because
9 of "joint disease, upper compression fractures in [her] back,
10 peripheral vascular disease, [a] torn sciatic nerve, . . . nerve
11 damage all down [her] left side, [and] fibromyalgia." (AR 513-
12 14.) Dr. Blinn checked a box on that form indicating that she
13 was "permanently disabled" and diagnosed her with peripheral
14 neuropathy, a chronic sciatic nerve injury, and chronic
15 fibromyalgia. (AR 513.) That same month, Dr. Hibbard noted that
16 Plaintiff had "[m]ildly decreased strength with left lower
17 extremity knee extension and knee flexion." (AR 531.) Plaintiff
18 had "[t]enderness to palpation of [her] lumbar spine" and
19 "[s]ignificant pain with extension over the lumbar spine at the
20 waist." (Id.) Another interventional pain specialist and
21 anesthesiologist at Advanced Pain Medicine, Matthew JP LoDico,
22 noted that Plaintiff had "[n]o clubbing, cyanosis or edema" in
23 her extremities, and she possessed "5/5 strength in [her] right
24 lower extremity" and "4-5 strength in [her] left lower
25 extremity." (AR 529-30.) She was "exquisitely tender to
26 palpation in the lumbosacral region over spinous process at L4
27 and 5 and [in the] left SI joint." (AR 529.) She had a
28 "[p]ositive straight leg raise on the left," "[p]ositive Faber

1 test⁴ on the left," and "[p]ositive pain with internal rotation
2 of [her] femur at [the] hip on the left." (Id.)

3 On April 2, 2014, an EMG was conducted. (See AR 520-25.)
4 The results were "within normal limits," with "no clear
5 conclusive electrophysiologic evidence of peripheral neuropathy
6 and/or lumbar radiculopathy." (AR 520.) Plaintiff apparently
7 received an epidural injection on April 10, 2014, administered by
8 Dr. Hibbard (AR 528), and on April 22, 2014, Dr. Blinn's notes
9 show a primary diagnosis of "[w]eight gain" (AR 517). In May
10 2014, a bilateral ultrasound of the veins in Plaintiff's right
11 and left lower extremities was conducted. (AR 526.) It
12 demonstrated "good venous flow with no intraluminal thrombus."
13 (Id.) The "veins were compressible throughout," and there was
14 "normal respiratory variation and augmentation of flow." (Id.)
15 Overall, there was "[n]o sonographic evidence of [deep vein
16 thrombosis] in the regions examined." (Id.) A physician's
17 assistant, with Dr. Blinn "[c]ollaborating," diagnosed her with
18 "[c]hronic venous insufficiency" and "[v]aricose veins of both
19 legs with edema," however (AR 518-19), and referred her to
20 vascular surgery (AR 518).

21 On May 20, 2014, Dr. Blinn completed a medical-source
22 statement regarding Plaintiff's Social Security claim. (AR 365-
23 68.) He wrote that Plaintiff's symptoms were "[d]iffuse pain
24 throughout [her] body, headaches, paresthesias, memory
25 difficulties, [and] sleep disturbance." (AR 365.) He stated
26

27 ⁴ A Faber test identifies pain in the hip, lumbar spine, and
28 sacroiliac region. See FABER Test, Physiopedia, https://www.physio-pedia.com/FABER_Test (last visited May 8, 2018).

1 that "[d]ue to [these symptoms], [Plaintiff was] totally [and]
2 perman[en]tly disabled." (Id.) He noted that Plaintiff was
3 suffering from fibromyalgia, a "chronic pain syndrome" that
4 caused her "[s]evere" pain. (AR 368; see also AR 365.) Her pain
5 caused "[l]oss of interest in almost all activities," "[a]ppetite
6 disturbance with change in weight," "[s]leep disturbance,"
7 "[c]rying spells," and "[d]ecreased energy." (AR 368.) He noted
8 "present" next to limitations associated with her pain as
9 follows: "[m]arked restriction of activities of daily living";
10 "[m]arked difficulty in maintaining social functioning"; and
11 "[d]eficiencies of concentration, persistence or pace resulting
12 in frequent failure to complete tasks in a timely manner (in work
13 settings or elsewhere)." (Id.)

14 Dr. Blinn also assessed "[o]ccasional" physical restrictions
15 for "2-3 [c]umulative [h]ours" during an "8 [h]our [w]orkday" and
16 "[f]requent" restrictions for "3-5" cumulative hours. (AR 366.)
17 He checked boxes indicating that Plaintiff could
18 "[o]ccasional[ly]" lift and carry zero to 20 pounds and "[n]ever"
19 carry "25 pounds" "or [m]ore." (Id.) She could stand and walk
20 "[l]ess [t]han 2 [h]ours" and needed to "periodically alternate
21 sitting and standing at [an] interval not to exceed . . . 30
22 min[utes]." (Id.) She experienced "fatigue," "require[d] rest
23 periods during the day," and needed to "[f]requently" "[e]levate
24 [her] legs" and "[l]ie down during an 8 hour work day." (Id.)
25 Pushing and pulling was "[l]imited" in her upper and lower
26 extremities "due to pain [and] weakness." (AR 367.) She could
27 "[o]ccasionally" climb and balance but "[n]ever" stoop, kneel,
28 crouch, or crawl. (Id.) Dr. Blinn opined that Plaintiff was

1 "[u]nlimited" in reaching, handling, and dexterity, and she
2 should "avoid exposure to" moving machinery, vibration, and
3 noise. (Id.)

4 On June 27, 2014, an MRI of Plaintiff's lumbar spine
5 revealed a "[m]ild old compression fracture at L1," "[g]rade 1
6 anterior spondylolisthesis of L4 on L5 and L5 on S1," and
7 "[d]egenerative changes with mild spinal stenosis and mild recess
8 narrowing at L4-L5." (AR 527.) The next available records, from
9 November 26, 2014, show that Plaintiff sought treatment at the
10 Arrowhead Regional Medical Center, complaining of "facet [joint]
11 pain" and "pain [in the] flexion/extension [of her] back." (AR
12 418-19.) She was assessed with hypothyroidism, hypertension,
13 lumbar degenerative disc disease, facet joint dysfunction,
14 radiculopathy, and morbid obesity (AR 418) and referred to a
15 pain-management clinic (AR 511; see also AR 418-19).

16 On April 3, 2015, Plaintiff complained to a pain-management
17 specialist of "constant," "sharp, dull, throbbing, burning and
18 aching" pain that was "increased by bending and standing" but
19 "decreased by medication and epidurals." (AR 1118.) She had "no
20 cyanosis, no clubbing and no edema" in her extremities. (AR
21 1119.) She had "decreased [range of motion on] all plane[s]" in
22 her back, left lumbar radicular pain, and pain with facet-loading
23 maneuvers. (Id.) She was advised to "stretch and exercise."
24 (Id.) On April 28, 2015, Plaintiff reported that her "right knee
25 pain [was] quite bothersome," though her medications still
26 "help[ed]." (AR 1121.)

27 In May 2015 at a pain-management appointment, Plaintiff
28 still complained of low-back, hip, and knee pain that was

1 "decreased by medication and rest and shots." (AR 1104.) The
2 physician's assistant observed that she had "normal strength" in
3 her upper and lower extremities, "normal" walking gait, and an
4 "equal and strong" grip. (Id.) There was "no cyanosis,"
5 "clubbing," or "edema" in her lower extremities. (Id.) "All
6 [range of motion was] within normal limits." (Id.) She was
7 assessed with spinal stenosis, herniated nucleus pulposus,
8 thoracic and lumbar neuritis radiculitis, and lumbosacral
9 spondylosis. (Id.) In June 2015, Plaintiff was "doing much
10 better" after receiving an epidural, which was "quite effective."
11 (AR 1099.) She reported being "quite pleased with [her] outcome"
12 from pain management. (Id.) Her extremities showed "no edema."
13 (AR 1100.) She had "start[ed] to lose weight" and was "quite
14 motivated to . . . start walking once her knee [felt] better."
15 (Id.)

16 2. Function reports

17 On December 12, 2013, Plaintiff filled out a function
18 report. (AR 212-19). She wrote that she "d[id]n't sleep normal
19 hours" and that it took her "about 2 hours" to get dressed in the
20 morning. (AR 212.) She "walk[ed] [her] dog 2 or 3 times a day
21 to the mailbox [and] back for exercise," "play[ed] with [her]
22 animals," and did "a little housekeeping," which consisted of
23 "light dusting," doing "some dishes," and "rak[ing] the leaves
24 around [her] trailer." (AR 212, 214-16.) "[O]nce or twice a
25 week [she also did] laundry at [the] laundr[o]mat" with her
26 stepmother. (AR 213.) She stated that she "love[d] people [and]
27 visit[ed] with neighbors daily." (Id.) She took care of and fed
28 her pets with some help from her father and stepmother. (Id.)

1 She also apparently went to garage sales once a week. (AR 216.)
2 Her impairments affected her personal care in that it took her
3 longer to dress, and she showered and shaved less frequently than
4 she used to. (Id.) She "prepare[d] [her] own meals" of soup,
5 sandwiches, and "T.V. dinners," but she cooked less than she used
6 to because she "c[ouldn't] stand [for] long." (AR 214.) She
7 shopped "at least once a week for [her] animals or groceries."
8 (AR 216. But see AR 215 (stating that she shopped "in stores"
9 "once a month").) She stated that she could "only walk [a
10 quarter] mile" before needing to "rest or sit or elevate" her
11 legs for "5 . . . to 10" minutes before resuming walking. (AR
12 217.)

13 On December 14, 2013, Plaintiff's father filled out a third-
14 party function report. (AR 220-27.) He stated that Plaintiff
15 took care of her ex-husband by cooking for him and doing his
16 laundry. (AR 221.) She also fed her pets, walked her dog, and
17 cleaned the cat litter. (Id.) He wrote that "to the best of
18 [his] knowledge[,] [Plaintiff] d[id] not have any personal
19 hygiene problems," and she "tells us she prepares complete meals"
20 "daily." (AR 221-22.) Plaintiff's stepmother took her to local
21 food banks, the grocery store, and the laundromat "about once a
22 week," where Plaintiff was able to "put her clothes in [and] take
23 them out of the machine." (AR 222-23.) She "visit[ed] with
24 people in the R.V. Park," including when they "stop[ped] by her
25 trailer." (AR 224, 227.) He stated that "it appear[ed] to be
26 painful for [Plaintiff] to lift anything heavy," including a bag
27 of groceries, and that "it hurt[] when she squat[ted] or ben[t]
28 over or kne[lt] down." (AR 225.) She could walk "about 1/4 mile

1 to a small local store" and presumably back again. (Id.) She
2 "limp[ed] when she walk[ed]." (AR 227.)

3 On February 20, 2014, Plaintiff filled out a second function
4 report and a supplemental function questionnaire. (AR 236-46.)
5 She wrote that she "c[ouldn't] stand [or] sit[] in any position
6 [for] very long because of nerve damage, numbness [and] vein
7 circulation problems." (AR 236.) "[O]n some days [she couldn't]
8 function due to [her] fibromyalgia" unless she had "bed rest
9 [and] heat." (Id.) She stated that she took care of her ex-
10 husband "when I can," cooked for him, and "help[ed] him walk
11 [the] dog." (AR 237.) She prepared her own meals "once or twice
12 a day." (AR 238.) She shopped "once a week" for about half an
13 hour. (AR 239.) She "ache[d] all the time," and her "leg
14 burn[ed] like [it was] on fire since [her] last surgery." (AR
15 240.) She had "sharp[,] stabbing pain[] in [her] back [and] down
16 [her] leg," and "[a]ny lifting made it worse." (AR 245; see also
17 AR 246.) She could lift only "10" pounds, her legs "[would] go
18 numb," she had "shoulder problem[s] with reaching," it "burn[ed]
19 when [she] walk[e]d," and her "knees hurt bad[ly] when [she went]
20 up steps." (AR 241.) She also "c[ouldn't] concentrate" and had
21 problems with "memory [and] understanding." (Id.) She could
22 walk half a block before her legs burned and ached, and she
23 needed to rest for "5 minutes or longer" before continuing on.

24 (Id.)

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1 3. Plaintiff's testimony

2 At her August 7, 2015 hearing, Plaintiff testified that she
3 could "hardly walk on [her] right knee."⁵ (AR 31.) She stated
4 that her fibromyalgia caused pain "[a]ll over" and that "[a]t
5 least once a week" she "c[ouldn't] . . . get out of bed" because
6 of the pain. (AR 33-34.) She couldn't "sit" or "lie too long"
7 or her legs would become "numb." (AR 34.) She was able to take
8 care of, wash, and dress herself but "not as often as [she] used
9 to." (AR 35-36.) She testified that she couldn't "walk a block
10 . . . without stopping." (AR 36.) She could lift and carry
11 "maybe 10 pounds." (Id.)

12 C. Analysis

13 The ALJ gave "no weight" to Dr. Blinn's May 20, 2014
14 opinion. (AR 16.) Plaintiff argues that the ALJ improperly
15 rejected it.⁶ (J. Stip. at 3-7.) The ALJ discounted Dr. Blinn's
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17 ⁵ At the hearing, Plaintiff's counsel acknowledged that no
18 "diagnostic studies" demonstrated any problems with Plaintiff's
19 knee and said they were "still waiting" for them. (AR 32.)

20 ⁶ Plaintiff also contends that the ALJ "failed to address
21 and evaluate [a] medical opinion dated March 6, 2014." (J. Stip.
22 at 3, 7 (citing AR 513-14).) That one-page check-box form, also
23 completed by Dr. Blinn, contained no "judgments about the nature
24 and severity of [Plaintiff's] impairments," statements about her
25 "physical or mental restrictions," or descriptions of what she
26 could "still do despite [her] impairment(s)." §§ 404.1527(a)(2),
27 416.927(a)(2). Thus, it likely did not constitute opinion
28 evidence that the ALJ needed to weigh. See Howard ex rel. Wolff
v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003) (ALJ not
required to discuss evidence that is "neither significant nor
probative"). As noted by Defendant, however (J. Stip. at 11-12),
even if the form was opinion evidence, its significance would
have been minimal for one of the same reasons the ALJ gave for
rejecting Dr. Blinn's May 20, 2014 opinion: it was a "pre-printed
form" "appear[ing] through a series of checked boxes" without
"specific clinical or objective support" (AR 16). Thus, any
error by the ALJ in failing to address it in his decision was

1 opinion because "it appear[ed] on a pre-printed form" "of checked
2 boxes" "solicited by [Plaintiff's] representative," "without much
3 in the way of specific clinical or objective support"; the
4 "extreme functional limitations" assessed conflicted with the
5 record and with "Dr. Blinn's own objective findings"; and
6 Plaintiff's "own self report of her activities of daily living
7 [was] seemingly greater than [the] assessed limitations." (AR
8 16.) Because Dr. Blinn's opinion was contradicted by a state-
9 agency medical consultant's opinion (see generally AR 44-63), the
10 ALJ was required to provide a "specific and legitimate" reason
11 for rejecting it. See Carmickle, 533 F.3d at 1164. He did so.

12 1. Preprinted form

13 "An examining doctor's findings are entitled to no less
14 weight when the examination is procured by the claimant than when
15 it is obtained by the Commissioner." Lester, 81 F.3d at 832. In
16 the absence of evidence of impropriety, "[t]he purpose for which
17 medical reports are obtained does not provide a legitimate basis
18 for rejecting them." Id.; Reddick, 157 F.3d at 726. Thus, to
19 the extent the ALJ rejected Dr. Blinn's opinion because it was
20 "solicited by [Plaintiff's] representative" (AR 16), he likely
21 erred. See Reddick, 157 F.3d at 726; Hurter v. Berryhill, 712 F.
22 App'x 691, 692 (9th Cir. 2018). Though the ALJ may have erred in
23 this regard, any error was harmless because he identified and
24 explained other specific and legitimate reasons for rejecting Dr.
25 Blinn's opinion, as discussed below. See DeBerry v. Comm'r of

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27 harmless. See Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir.
28 2012) ("[W]e may not reverse an ALJ's decision on account of an
error that is harmless.").

1 Soc. Sec. Admin., 352 F. App'x 173, 176 (9th Cir. 2009); Bartels
2 v. Colvin, No. CV 15-5144 AFM, 2016 WL 768851, at *4 (C.D. Cal.
3 Jan. 29, 2016).

4 The ALJ was entitled to discount Dr. Blinn's opinion based
5 on the little explanation he gave for his findings. The opinion
6 Dr. Blinn provided was on a preprinted "check-box"-type form.
7 (See AR 365-68.) He wrote that her symptoms were "[d]iffuse pain
8 throughout [her] body, headaches, paresthesias, memory
9 difficulties, [and] sleep disturbance." (AR 365.) He diagnosed
10 her with "[c]hronic pain syndrome" and "[f]ibromyalgia" (AR 365,
11 368) and stated that she was treated through "[p]lain management
12 [and] possibly [a] rheumatology referral" (AR 365). He then
13 opined that Plaintiff was "totally [and] perman[en]tly disabled."
14 (Id.) Plaintiff argues that the "handwritten portions" of this
15 "detailed form" "clarified the basis for [Dr. Blinn's] opinion."
16 (J. Stip. at 4-5.) But though he filled in a few blanks, Dr.
17 Blinn did not provide any explanation for how he determined that
18 Plaintiff was "totally" disabled or what objective tests he did
19 to support such restrictive findings. (AR 365); De Guzman v.
20 Astrue, 343 F. App'x 201, 208-09 (9th Cir. 2009) (ALJ was "free
21 to reject" doctor's check-off report that did not "indicate any
22 measuring of effort or give[] a description" of how patient was
23 evaluated (alteration in original)). Moreover, the form in seven
24 places invited him to add "[s]upportive medical findings" for his
25 assessment, but he completed only one of those blanks – by
26 writing that the pushing and pulling limitations he assessed were
27 "due to pain [and] weakness" – and left the rest empty. (See AR
28 366-67.)

1 Thus, the ALJ's finding that Dr. Blinn's opinion "appear[ed]
2 on a pre-printed form" "without much in the way of specific
3 clinical or objective support" was a sufficient reason to
4 discount its weight. (AR 16); see Thomas, 278 F.3d at 957 (ALJ
5 may discredit opinion that is "inadequately supported by clinical
6 findings"); Crane v. Shalala, 76 F.3d 251, 253 (9th Cir. 1996)
7 (ALJ permissibly rejected psychological evaluations "because they
8 were check-off reports that did not contain any explanation of
9 the bases of their conclusions"); see also Batson, 359 F.3d at
10 1195 ("[A]n ALJ may discredit treating physicians' opinions that
11 are conclusory, brief, and unsupported by the record as a whole
12 . . . or by objective medical findings[.]").

13 2. Medical evidence of record

14 Plaintiff contends that the ALJ erred in holding "that [Dr.
15 Blinn's] opinion [was] inconsistent with the medical record as a
16 whole [and with] Dr. Blinn's own clinical findings." (J. Stip.
17 at 5-6.) On the contrary, the ALJ did not err in this regard.

18 Inconsistency with the objective medical evidence can be a
19 specific and legitimate reason for rejecting a medical-source
20 opinion. See Batson, 359 F.3d at 1195 (lack of "supportive
21 objective evidence" and "contradict[ion] by other statements and
22 assessments of [plaintiff's] medical condition" were "specific
23 and legitimate reasons" to discount physicians's opinions);
24 Kohansby v. Berryhill, 697 F. App'x 516, 517 (9th Cir. 2017)
25 (upholding inconsistency with medical-opinion evidence as
26 specific and legitimate reason for rejecting medical opinion
27 (citing Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir.
28 2008))); Bailey v. Colvin, 659 F. App'x 413, 415 (9th Cir. 2016)

1 (inconsistency with "own treatment records" and objective medical
2 evidence constitutes "specific and legitimate" reason for
3 rejecting treating physician's opinion). Dr. Blinn checked boxes
4 indicating that Plaintiff could stand and walk for less than two
5 hours, could lift and carry up to 20 pounds occasionally but
6 never more, needed to alternate sitting and standing at 30-minute
7 intervals, and was limited in pushing and pulling in all
8 extremities. (AR 366-67.) He also opined that Plaintiff was
9 "totally" disabled. (AR 365.) As noted by the ALJ, however,
10 "[t]here [was] no demonstrated medical pathology . . . in [the]
11 record [that] would account for such extreme functional
12 limitations," and "[e]ven Dr. Blinn's own objective findings"
13 were mostly "normal." (AR 16.)

14 First, that Dr. Blinn's treatment notes failed to support
15 his opinion that Plaintiff was "totally [and] perman[en]tly
16 disabled" (AR 365) was a legitimate reason to discount his
17 opinion. Bailey, 659 F. App'x at 415. He saw Plaintiff on only
18 three occasions before completing his May 20, 2014 opinion. (See
19 AR 356-58, 517, 519.) His physical examination of Plaintiff
20 revealed "[f]ull range of motion" and "no" clubbing, cyanosis, or
21 edema in her extremities (AR 357), conflicting with his finding
22 that she was "[l]imited" in both upper and lower extremities for
23 pushing and pulling (AR 367). Though he opined that Plaintiff
24 exhibited "[d]iffuse tenderness" (AR 365), the only mention of
25 tenderness in his treatment notes was to record its absence (AR
26 357 (spine "nontender," "no rebound tenderness" in abdomen, and
27 "nontender" bowel sounds)). His notes also state that she had
28 "normal contour and mobility" in her spine, "normal" motor and

1 sensory exams, "no localizing deficits," and "intact" cranial
2 nerves. (Id.) Thus, that Dr. Blinn's opinion was unsupported by
3 his own treatment records was a specific and legitimate basis for
4 the ALJ to discount it. See Thomas, 278 F.3d at 957; Houghton v.
5 Comm'r Soc. Sec. Admin., 493 F. App'x 843, 845 (9th Cir. 2012);
6 Phelps v. Berryhill, 714 F. App'x 628, 630 (9th Cir. 2017)
7 (affirming ALJ's discounting of physicians' opinions because
8 "they were not consistent with their own objective findings").
9 Moreover, opinions such as Dr. Blinn's that Plaintiff was
10 "totally . . . disabled" (AR 365) are reserved to the
11 Commissioner and "can never be entitled to controlling weight or
12 given special significance." SSR 96-5p, 1996 WL 374183, at *5
13 (July 2, 1996); see §§ 404.1527(d)(1), 416.927(d)(1) ("A
14 statement by a medical source that you are 'disabled' or 'unable
15 to work' does not mean that we will determine that you are
16 disabled.").

17 Second, the ALJ found that the "extreme functional
18 limitations" assessed by Dr. Blinn were unsupported by any
19 "demonstrated medical pathology" in the record. (AR 16.) This
20 was a proper reason to discount his opinion. Williams v.
21 Berryhill, 710 F. App'x 320, 321 (9th Cir. 2018) (affirming ALJ's
22 discounting of treating physician's opinion because "medical
23 record as a whole was inconsistent with the degree of
24 limitations" assessed and physician's "opinion was inadequately
25 supported by clinical findings"). Indeed, Plaintiff's imaging
26 during the relevant time period had "normal" or "mild" results:
27 an April 2, 2014 EMG "was essentially within normal limits" (AR
28 520-25); a May 6, 2014 bilateral ultrasound of her veins found

1 "[n]o sonographic evidence of [deep vein thrombosis]" (AR 526);
2 and a June 27, 2014 MRI of her lumbar spine showed a "[m]ild old
3 compression fracture," "[g]rade 1 anterior spondylolisthesis,"
4 and "[d]egenerative changes with mild spinal stenosis and mild
5 recess narrowing" (AR 527). Moreover, she often showed "normal"
6 or "full" range of motion (AR 351 (Oct. 2013), 357 (Feb. 2014),
7 1104 (May 2015)). But see AR 1119 (Apr. 2015: "decreased" range
8 of motion)); "5/5," "4/5," or "normal" strength (AR 351 (Oct.
9 2013), 362 (Feb. 2014), 529 (Mar. 2014), 535 (Feb. 2014), 1104
10 (May 2015)); and "[n]o" cyanosis, clubbing, or edema (AR 357
11 (Feb. 2014), 362 (same), 1100 (June 2015), 1104 (May 2015), 1119
12 (Apr. 2015)). She also at times had "normal tone and muscle
13 bulk" in her extremities (AR 362 (Feb. 2014)) and "normal walking
14 gait, station and posture" (AR 1104 (May 2015)).

15 As pointed out by Plaintiff, however, she had "at least
16 three" positive straight-leg-raise tests on the left side (J.
17 Stip. at 5 (citing AR 362, 529, 1119)) and one observation of
18 "18/18 myofascial tender points as described by the American
19 College of Rheumatology" (id. (citing AR 351)) and "was found to
20 have tenderness to palpation" in her back (id. (citing AR 529,
21 1119); see also AR 362, 531. But see AR 344 (Oct. 2013: "[n]o
22 tenderness on palpation" in back)). She also regularly
23 complained of pain. (See, e.g., AR 33 (fibromyalgia caused pain
24 "[a]ll over"), 245 ("sharp," "stabbing pain" in back and down
25 leg), 344 ("[l]umbosacral spine pain"), 351 ("[b]lack extension"
26 "painful"), 362 (lumbar pain), 535 ("ongoing lumbar spinal pain,
27 mid spinal pain, and left posterior thigh and lateral thigh
28 pain"), 1118 ("sharp, dull, throbbing, burning and aching"

1 pain.) But the ALJ found Plaintiff's subjective symptom
2 statements "not entirely credible" (AR 17), which she has not
3 challenged on appeal. Also, treatment seemed to decrease her
4 pain. (See, e.g., AR 1099 (epidural was "quite effective" and
5 she was "quite pleased" with pain-management treatment), 1104
6 (pain "decreased by medication and rest and shots"), 1118 (pain
7 "decreased by medication and epidurals"), 1121 (medications
8 "help[ed]" her knee pain).) Thus, despite the positive findings
9 pointed out by Plaintiff, the ALJ's conclusion that the objective
10 medical record did not support Dr. Blinn's opinion that she was
11 "totally" disabled was rational and supported by substantial
12 evidence. See Ryan, 528 F.3d at 1198 ("Where evidence is
13 susceptible to more than one rational interpretation,' the ALJ's
14 decision should be upheld." (citation omitted)).

15 Accordingly, that Dr. Blinn's opinion was inconsistent with
16 the objective medical evidence and his own treatment notes was a
17 specific and legitimate reason for rejecting it. See Batson, 359
18 F.3d at 1195; Kohansby, 697 F. App'x at 517; Bailey, 659 F. App'x
19 at 415.

20 3. Activities of daily living

21 Plaintiff argues that the "fact that [she] retains the
22 ability to engage in some limited [activities of daily living] in
23 no way diminishes the persuasiveness of Dr. Blinn's opinion
24 regarding her work-related functional limitations." (J. Stip. at
25 6.) As the ALJ noted, however, Plaintiff's "own self report of
26 her activities of daily living [was] seemingly greater than Dr.
27 Blinn's assessed limitations." (AR 16.)

28 Plaintiff walked her dog multiple times a day (AR 213, 215,

1 221), shopped for groceries with her father and stepmother "at
2 least once a week" (AR 216, 223), and prepared her own meals
3 daily (AR 214, 222). She was able to walk a quarter-mile to a
4 store and back and rake leaves. (AR 215, 225.) She went to the
5 laundromat "once or twice a week" to do her laundry and was able
6 to put her clothes in the machine and take them out herself. (AR
7 213-14, 222.) She did light dusting at home. (AR 214.) Despite
8 her testimony at the hearing that she stopped caring for her ex-
9 husband in October 2013, she later admitted that she continued to
10 care and cook for him to some degree, which her father confirmed.
11 (AR 221, 237.) Similarly, although she told the ALJ that she
12 stopped taking care of her husband in October 2013 because she no
13 longer could do so, that same month she reported to a nurse
14 practitioner that she "hope[d] to find a job as a Home Care Aid,"
15 indicating that she believed herself capable of work activity.
16 (AR 343.) Another treating doctor advised her to "stretch and
17 exercise" as treatment. (AR 1119.) She "visit[ed] with people
18 in the R.V. Park" "daily," including when they "stop[ped] by her
19 trailer." (AR 213, 224, 227.) These activities contradict Dr.
20 Blinn's finding that Plaintiff had "[m]arked" restrictions in
21 activities of daily living as well as "[m]arked" difficulty in
22 maintaining social functioning. (AR 368.) See Rollins v.
23 Massanari, 261 F.3d 853, 856 (9th Cir. 2001) (holding that
24 inconsistency with Plaintiff's "level of activity" was "adequate
25 reason[]" to discount physician's opinion); Lunn v. Astrue, 300
26 F. App'x 524, 525 (9th Cir. 2008) (affirming ALJ's rejection of
27 treating physician's medical opinion that was "contrary to
28 [plaintiff's] reports of her daily activities").

1 Accordingly, the ALJ did not err in assessing the medical-
2 opinion evidence. Substantial evidence supports the ALJ's
3 decision. As such, remand is not warranted. See Stubbs-
4 Danielson v. Astrue, 539 F.3d 1169, 1174 (9th Cir. 2008).

5 **VI. CONCLUSION**

6 Consistent with the foregoing and under sentence four of 42
7 U.S.C. § 405(g),⁷ IT IS ORDERED that judgment be entered
8 AFFIRMING the Commissioner's decision, DENYING Plaintiff's
9 request for remand, and DISMISSING this action with prejudice.

10
11 DATED: May 9, 2018



JEAN ROSENBLUTH
U.S. Magistrate Judge

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26 _____
27 ⁷ 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."