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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MICHELLE ALICIA S., <sup>1</sup>	)	Case No. EDCV 17-2114-JPR
	)	
Plaintiff,	)	
	)	<b>MEMORANDUM DECISION AND ORDER</b>
v.	)	<b>AFFIRMING COMMISSIONER</b>
	)	
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 application for supplemental security income benefits (“SSI”). The parties consented to the jurisdiction of the undersigned under 28 U.S.C. § 636(c). The matter is before the Court on the parties’ Joint Stipulation, filed October 5, 2018, which the Court has taken under submission without oral argument.

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<sup>1</sup> Plaintiff’s name is partially redacted in compliance 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 For the reasons stated below, the Commissioner's decision is  
2 affirmed.

3 **II. BACKGROUND**

4 Plaintiff was born in 1962. (Administrative Record ("AR")  
5 38, 174.) She completed 12th grade (AR 38, 202) and some college  
6 (AR 202, 325). She last worked as a "caregiver or caretaker,"  
7 from 2007 to 2009. (AR 38; see also AR 239.)<sup>2</sup>

8 On May 16, 2014, Plaintiff applied for SSI, alleging that  
9 she had been unable to work since May 9, 2009,<sup>3</sup> because of "bad  
10 knees," "left shoulder . . . lump," "scarred lungs, can't breath  
11 [sic] good," "depression," "anxiety," "paranoia," and "PTSD."  
12 (AR 70; see also AR 174-82.) After her application was denied  
13 initially (AR 70-85) and on reconsideration (AR 86-103), she  
14 requested a hearing before an Administrative Law Judge (AR 122).  
15 A hearing was held on July 12, 2016, at which she was represented  
16 by counsel and testified. (AR 36-69.) A vocational expert also  
17 testified. (AR 62-67.)

18 In a written decision issued September 21, 2016, the ALJ  
19 found Plaintiff not disabled since May 16, 2014. (See AR 25; see  
20 also generally AR 16-26.) Plaintiff requested review from the  
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22 <sup>2</sup> The ALJ found that Plaintiff had worked briefly in 2014  
23 and 2015 but that that work did not qualify as substantial  
24 gainful activity. (AR 18.)

25 <sup>3</sup> At the hearing, Plaintiff's attorney amended the onset  
26 date to the date on "which she applied." (AR 36; see also AR 35-  
27 36.) The attorney referred to that date as June 9, 2014 (AR 36),  
28 which is the date listed on the SSI application summary (AR 174).  
But the ALJ used the May 16 date during the hearing without  
objection (AR 35) and reiterated in his decision that the onset  
date was "amended . . . to May 16, 2014" (AR 16; see also, e.g.,  
AR 70, 85). The Court uses the earlier date.

1 Appeals Council (171-73), which denied it on September 25, 2017  
2 (AR 1-4). This action followed.

### 3 **III. STANDARD OF REVIEW**

4 Under 42 U.S.C. § 405(g), a district court may review the  
5 Commissioner's decision to deny benefits. The ALJ's findings and  
6 decision should be upheld if they are free of legal error and  
7 supported by substantial evidence based on the record as a whole.  
8 See Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.  
9 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence  
10 means such evidence as a reasonable person might accept as  
11 adequate to support a conclusion. Richardson, 402 U.S. at 401;  
12 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It  
13 is more than a scintilla but less than a preponderance.  
14 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.  
15 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether  
16 substantial evidence supports a finding, the reviewing court  
17 "must review the administrative record as a whole, weighing both  
18 the evidence that supports and the evidence that detracts from  
19 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,  
20 720 (9th Cir. 1998). "If the evidence can reasonably support  
21 either affirming or reversing," the reviewing court "may not  
22 substitute its judgment" for the Commissioner's. Id. at 720-21.

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

24 People are "disabled" for purposes of receiving Social  
25 Security benefits if they are unable to engage in any substantial  
26 gainful activity owing to a physical or mental impairment that is  
27 expected to result in death or has lasted, or is expected to  
28 last, for a continuous period of at least 12 months. 42 U.S.C.

1 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.  
2 1992).

3 A. The Five-Step Evaluation Process

4 The ALJ follows a five-step sequential evaluation process to  
5 assess whether a claimant is disabled. 20 C.F.R.

6 § 416.920(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir.  
7 1995) (as amended Apr. 9, 1996). In the first step, the  
8 Commissioner must determine whether the claimant is currently  
9 engaged in substantial gainful activity; if so, the claimant is  
10 not disabled and the claim must be denied. § 416.920(a)(4)(i).

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

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

23 If the claimant's impairment or combination of impairments  
24 does not meet or equal an impairment in the Listing, the fourth  
25 step requires the Commissioner to determine whether the claimant  
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1 has sufficient residual functional capacity ("RFC")<sup>4</sup> to perform  
2 her past work; if so, she is not disabled and the claim must be  
3 denied. § 416.920(a)(4)(iv). The claimant has the burden of  
4 proving she is unable to perform past relevant work. Drouin, 966  
5 F.2d at 1257. If the claimant meets that burden, a prima facie  
6 case of disability is established. Id.

7 If that happens or if the claimant has no past relevant  
8 work, the Commissioner then bears the burden of establishing that  
9 the claimant is not disabled because she can perform other  
10 substantial gainful work available in the national economy.  
11 § 416.920(a)(4)(v); Drouin, 966 F.2d at 1257. That determination  
12 comprises the fifth and final step in the sequential analysis.  
13 § 416.920(a)(4)(v); Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d  
14 at 1257.

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

16 At step one, the ALJ found that Plaintiff had not engaged in  
17 substantial gainful activity since the application date, May 16,  
18 2014. (AR 18.) At step two, he determined that she had severe  
19 impairments of "arthralgias;<sup>5</sup> chronic obstructive pulmonary  
20 disease (COPD); and bipolar affective disorder." (Id.) He found

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22 <sup>4</sup> RFC is what a claimant can do despite existing exertional  
23 and nonexertional limitations. § 416.945; see also Cooper v.  
24 Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). The  
25 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)).

26 <sup>5</sup> Arthralgia refers to any type of joint pain. See  
27 Arthritis vs. Arthralgia, healthline, [https://www.healthline.com/  
28 health/rheumatoid-arthritis/arthralgia#distinctions](https://www.healthline.com/health/rheumatoid-arthritis/arthralgia#distinctions) (last updated  
Dec. 1, 2016). It is not necessarily linked to arthritis, though  
it can be. (Id.)

1 other ailments mentioned in the record "nonsevere," including  
2 "obesity," "benign . . . lipoma," and "history of polysubstance  
3 dependence." (AR 19.)

4 At step three, he determined that Plaintiff's impairments  
5 did not meet or equal a listing. (AR 19-21.) At step four, he  
6 found that she had the RFC to perform "light work"

7 except: can lift and carry 20 pounds occasionally and 10  
8 pounds frequently; can stand and walk for 6 hours in an  
9 8-hour workday; can sit for 6 hours in an 8-hour workday;  
10 can perform occasional kneeling, jumping, and walking on  
11 uneven terrain; should avoid even moderate exposure to  
12 fumes, odors, dusts, gases, and poor ventilation; is  
13 limited to work involving simple repetitive tasks; and no  
14 more than occasional contact with co-workers, and no  
15 contact with the general public.

16 (AR 21.) She had no past relevant work. (AR 24.) At step five,  
17 he concluded that given her age, education, work experience, and  
18 RFC, and "[b]ased on the testimony of the vocational expert" (AR  
19 25), she could perform at least one representative job in the  
20 national economy: "Assembler of small products," DOT 706.684-022,  
21 1991 WL 679050 (Jan. 1, 2016), "an unskilled position . . .  
22 performed at a light exertional level" (AR 25). Accordingly, he  
23 found Plaintiff not disabled. (AR 25-26.)

1 **V. DISCUSSION<sup>6</sup>**

2 Plaintiff argues that the ALJ (1) "failed to properly  
3 evaluate [her] mental illness" (J. Stip. at 9), (2) "failed to  
4 give great weight to treating [p]sychiatrist Dr. Kurera" (id. at  
5 12),<sup>7</sup> (3) improperly assessed her RFC (see id. at 11, 19-21), (4)  
6 "did not address the [c]ombination of her impairments" (id. at  
7 21), and (5) "did not meet [the Commissioner's] burden of [p]roof  
8 at [s]tep [five]" (id. at 23).<sup>8</sup> As discussed below, remand is

9 \_\_\_\_\_  
10 <sup>6</sup> In Lucia v. SEC, 138 S. Ct. 2044, 2055 (2018), the Supreme  
11 Court recently held that ALJs of the Securities and Exchange  
12 Commission are "Officers of the United States" and thus subject  
13 to the Appointments Clause. To the extent Lucia applies to  
14 Social Security ALJs, Plaintiff has forfeited the issue by  
15 failing to raise it during her administrative proceedings. (See  
16 AR 36-69, 171-72); Meanel v. Apfel, 172 F.3d 1111, 1115 (9th Cir.  
17 1999) (as amended) (plaintiff forfeits issues not raised before  
18 ALJ or Appeals Council); see also generally Kabani & Co. v. SEC,  
19 733 F. App'x 918, 919 (9th Cir. 2018) (rejecting Lucia challenge  
20 because plaintiff did not raise it during administrative  
21 proceedings); Davidson v. Comm'r of Soc. Sec., No. 2:16-cv-00102,  
22 2018 WL 4680327 (M.D. Tenn. Sept. 28, 2018) (same).

23 <sup>7</sup> The Court extrapolates this argument into a separate  
24 issue, although Plaintiff does not present it that way.

25 <sup>8</sup> Because the ALJ's decision is affirmed, the Court does not  
26 address Plaintiff's additional argument that it should apply the  
27 credit-as-true doctrine and award her benefits. (See J. Stip. at  
28 26, 29.) And as the Commissioner notes, though Plaintiff might  
have "intend[ed] to argue that the ALJ erred somehow in his  
credibility analysis," she does not "present any actual argument  
concerning" his analysis, "identify any errors," or "include even  
one citation to the record." (Id. at 27.) Thus, no such  
argument has been properly presented. See Carmickle v. Comm'r,  
Soc. Sec. Admin., 533 F.3d 1155, 1161 n.2 (9th Cir. 2008)  
(declining to address challenge to ALJ's finding when claimant  
"failed to argue th[e] issue with any specificity"); see also  
Nazarian v. Berryhill, No. CV 17-1114 JC, 2018 WL 2938581, at \*3  
(C.D. Cal. June 7, 2018) (collecting cases). Further, most of  
Plaintiff's claims were not presented during her administrative

(continued...)

1 not warranted on any of these grounds.

2 A. The ALJ Properly Evaluated Plaintiff's Mental Illness

3 Plaintiff claims that the ALJ failed to (1) "properly  
4 evaluate [her] mental illness" in accordance with the "special  
5 techniques" outlined in § 416.920a, (2) develop the record as to  
6 her psychiatric treatment in prison and after her release, and  
7 (3) consider the effect of her mental impairment on her RFC.  
8 (See J. Stip. at 9-12.) As set forth below, the ALJ did not err.

9 1. Applicable law

10 An ALJ must apply a five-step evaluation process to  
11 determine whether a claimant qualifies as disabled. See Garrison  
12 v. Colvin, 759 F.3d 995, 1010-11 (9th Cir. 2014). When  
13 evaluating an alleged mental impairment, an ALJ must follow a  
14 "special psychiatric review technique" during steps two and  
15 three. Keyser v. Comm'r of Soc. Sec. Admin., 648 F.3d 721, 725  
16 (9th Cir. 2011) (citing § 404.1520a). The special technique for  
17 evaluating alleged mental impairments in SSI claims is codified  
18 in

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22 <sup>8</sup> (...continued)  
23 proceedings. (See generally AR 32-69 (hearing transcript), 171-  
24 72 (request for Appeals Council review, making vague claims about  
25 "more test[is]," upcoming shoulder surgery, and ongoing issues  
26 related to COPD).) Normally, such claims would be forfeited.  
27 See Meanel v. Apfel, 172 F.3d 1111, 1115 (9th Cir. 1999) (as  
28 amended). But because Defendant largely has not challenged her  
claims on that basis (see generally J. Stip. at 13-17, 20, 22,  
24-25 (challenging as forfeited only argument that ALJ failed to  
fully develop record)), the Court proceeds to consider them. See  
Dexter v. Colvin, 731 F.3d 977, 979 n.3 (9th Cir. 2013); Saari v.  
Berryhill, 745 F. App'x 775, 776 (9th Cir. 2018).



1 § 416.920a.<sup>9</sup> First, an ALJ must determine whether the claimant  
2 has a medically determinable mental impairment. § 416.920a(b).  
3 Next, he must "rate the degree of functional limitation resulting  
4 from the impairment(s)" in "four broad functional areas":  
5 "[a]ctivities of daily living; social functioning; concentration,  
6 persistence, or pace; and episodes of decompensation."  
7 § 416.920a(b)(2), (c)(3)-(4). If the degree of impairment in  
8 these areas is "none" or "mild," the impairment is "generally  
9 . . . not severe." § 416.920a(d)(1). If it is "moderate,  
10 marked, [or] extreme," it is severe, and the ALJ "must then  
11 determine if [the impairment] meets or is equivalent" to a  
12 "listed mental disorder." § 416.920a(c)(4), (d)(2). If it does  
13 not meet or equal a listing, then the ALJ will continue with the  
14 five-step evaluation process and assess the claimant's RFC.  
15 § 416.920a(d)(3). The ALJ's written decision "must incorporate  
16 the pertinent findings and conclusions based on the technique  
17 . . . [and] include a specific finding as to the degree of  
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20 <sup>9</sup> Social Security regulations regarding the evaluation of  
21 mental impairments were last amended effective March 27, 2017.  
22 When, as 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. § 416.920a are to the version in effect from June 13,  
2011, to January 16, 2017.

1 limitation in each of the functional areas." § 416.920a(e)(4).

2 In assessing a disability claim, an ALJ has a "duty to fully  
3 and fairly develop the record" and "assure that [a] claimant's  
4 interests are considered." Garcia v. Comm'r of Soc. Sec., 768  
5 F.3d 925, 930 (9th Cir. 2014) (citation omitted); see also Howard  
6 ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003)  
7 ("In making a determination of disability, the ALJ must develop  
8 the record and interpret the medical evidence."). But it  
9 nonetheless remains the claimant's burden to produce evidence in  
10 support of her disability claim. See Mayes v. Massanari, 276  
11 F.3d 453, 459 (9th Cir. 2001) (as amended). Moreover, the "ALJ's  
12 duty to develop the record further is triggered only when there  
13 is ambiguous evidence or when the record is inadequate to allow  
14 for proper evaluation of the evidence." McLeod v. Astrue, 640  
15 F.3d 881, 885 (9th Cir. 2010) (as amended May 19, 2011) (citation  
16 omitted); accord Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th  
17 Cir. 2001).

18 A claimant's RFC is "the most [she] can still do" despite  
19 impairments and related symptoms that "may cause physical and  
20 mental limitations" affecting "what [she] can do in a work  
21 setting." § 416.945(a)(1). A district court must uphold an  
22 ALJ's RFC assessment when the ALJ has applied the proper legal  
23 standard and substantial evidence in the record as a whole  
24 supports the decision. Bayliss v. Barnhart, 427 F.3d 1211, 1217  
25 (9th Cir. 2005). The ALJ should consider all the medical  
26 evidence in the record and "explain in [his] decision the weight  
27 given to . . . [the] opinions from treating sources, nontreating  
28 sources, and other nonexamining sources." § 416.945(e)(2)(ii).

1 "[T]he findings of a nontreating, nonexamining physician can  
2 amount to substantial evidence, so long as other evidence in the  
3 record supports those findings." Saelee v. Chater, 94 F.3d 520,  
4 522 (9th Cir. 1996) (per curiam) (as amended). When a claimant  
5 alleges mental-health limitations, the ALJ should "first assess  
6 the nature and extent of [her] mental limitations and  
7 restrictions and then determine [her] residual functional  
8 capacity for work activity on a regular and continuing basis."  
9 § 416.945(c); see also § 416.945(a)(1) ("We will assess your  
10 residual functional capacity based on all the relevant evidence  
11 in your case record."); SSR 96-8p, 1996 WL 374184, at \*2 (July 2,  
12 1996) (RFC must be "based on all of the relevant evidence in the  
13 case record").

14 In making an RFC determination, the ALJ may consider the  
15 limitations supported in the record and need not consider  
16 properly rejected evidence or subjective complaints. See  
17 Bayliss, 427 F.3d at 1217 (upholding ALJ's RFC determination  
18 because "the ALJ took into account those limitations for which  
19 there was record support that did not depend on [plaintiff's]  
20 subjective complaints"); Batson v. Comm'r of Soc. Sec. Admin.,  
21 359 F.3d 1190, 1197 (9th Cir. 2004) (ALJ not required to  
22 incorporate into RFC any findings from treating-physician  
23 opinions that were "permissibly discounted").

1           2.    Relevant background

2                   a.    *Mental-health treatment records*

3           The sole mental-health-related record from Plaintiff's time  
4 in prison<sup>10</sup> is a 2013 annual treatment report, which indicates  
5 that she had not received mental-health services for any serious  
6 conditions (see AR 317) and did not require an "[a]cute level of  
7 care" (id.). After her release in 2014, she was referred for  
8 mental-health services "as a condition of her . . . probation  
9 requirements." (AR 323.)

10           At her initial assessment, in May 2014, Plaintiff reported  
11 experiencing "extensive trauma" from "torture[]" and being "held  
12 captive" in 1982, resulting in "PTSD" and "depressive symptoms"  
13 that were "further exacerbat[ed]" by "domestic violence  
14 relationships." (Id.) She reported that lack of treatment  
15 "resulted in increased symptoms and detrimental impact on  
16 functioning." (Id.) She was apparently taking Zoloft<sup>11</sup> (the  
17 record doesn't indicate when it was first prescribed), and it was  
18 "[e]ffective." (AR 324.) The assessor, whose name and  
19 speciality are not legible, found her to be "[w]ell [g]roomed"  
20 and "[c]alm," with "[u]nimpair[ed]" speech, intellectual  
21 functioning, memory, and thought processes and "[i]ntact"  
22 concentration and judgment. (AR 326.) But Plaintiff had a  
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24           <sup>10</sup> Plaintiff reported that her "[a]rrest history began in  
25 1993" and that she had had "[five] incidences of incarceration."  
26 (AR 325.)

27           <sup>11</sup> Zoloft treats depression, panic attacks, and social  
28 anxiety disorder. See Zoloft, WebMD, <https://www.webmd.com/drugs/2/drug-35-8095/zoloft-oral/sertraline-oral/details> (last visited Feb. 14, 2019).

1 "[c]onstricted," "[b]lunted," and "[f]lat" affect, and she  
2 appeared "[a]nxious." (Id.) She was diagnosed with  
3 "[p]osttraumatic [s]tress [d]isorder" and "[d]epressive  
4 [d]isorder." (AR 327.)

5 On June 10, 2014, Plaintiff met with psychiatrist Heather  
6 Kurera for "initial medication support service" and "[s]upportive  
7 therapy." (AR 435-37.) She "denie[d] current feelings of  
8 depression" and anxiety but reported experiencing "[p]anic" a few  
9 times a month and often feeling like "she [was] being followed,  
10 watched." (AR 435.) She told the doctor that she had been  
11 "assigned to [a mental health] ward" in prison "because she was  
12 on meds."<sup>12</sup> (Id.) She "report[ed] no interest in working at  
13 this time - worrie[d] she would steal and [said] 'I can't work  
14 with the public.'" (AR 437.) Dr. Kurera observed that she had a  
15 "depressed, anxious" mood but demonstrated "linear, logical and  
16 goal directed" thought processes and "fair" insight, "with intact  
17 judgment." (AR 436.) Plaintiff's reported "paranoia" was "more  
18 of a generalized sense of not being safe and not being able to  
19 trust others . . . no other evidence of a thought [disorder.]"  
20 (AR 437.) She increased Plaintiff's Zoloft dosage "to target  
21 PTSD and depression" and prescribed trazodone<sup>13</sup> "for sleep."  
22 (Id.)

23 That same day, Dr. Kurera filled out a report to assist in  
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25 <sup>12</sup> The record does not show where Plaintiff was housed in  
26 prison.

27 <sup>13</sup> Trazodone treats depression and may decrease related  
28 insomnia. See Trazodone HCL, WebMD, <https://www.webmd.com/drugs/2/drug-11188-89/trazodone-oral/trazodone-oral/details> (last visited Feb. 14, 2019).

1 Plaintiff's transition to services in San Bernardino County,  
2 where she had evidently moved. (AR 328.) She marked that  
3 Plaintiff had a "[t]emporary disability" that would last one  
4 year, until June 10, 2015. (Id.) An "adequate trial of  
5 treatment" was needed "before determining permanence." (Id.)  
6 She could not perform any type of work in the interim. (Id.)

7 Plaintiff was "discharged" from her probation-mandated  
8 treatment program in June 2014 after moving to a different  
9 county. (AR 439; see also generally AR 438-41.) The discharge  
10 summary states that she "received weekly mental health services<sup>14</sup>  
11 [and] was very engaged and cooperative throughout her time in  
12 treatment." (AR 439.) In just over a month, she had "made  
13 moderate progress towards decreasing PTSD symptoms," and she "was  
14 stable at discharge." (AR 438, 440.)

15 In November 2014, Plaintiff was assessed for treatment in  
16 San Bernardino County. (AR 473-76.) After the initial intake  
17 appointment (see id.), psychiatrist Sushma Sachdev-Wali provided  
18 medication management (see AR 478-80, 482-500). Dr. Sachdev-  
19 Wali's notes, which span November 2014 to April 2015, are brief  
20 and largely illegible, but they clearly refer to several  
21 medications, including Zoloft, Abilify,<sup>15</sup> and Xanax.<sup>16</sup> (See,  
22

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23 <sup>14</sup> The record does not include notes from these  
24 appointments. (See AR 442 (letter indicating that only initial  
25 medication support service and discharge summary were provided).)

26 <sup>15</sup> Abilify is an antipsychotic that treats mood disorders.  
27 See Abilify, WebMD, [https://www.webmd.com/drugs/2/drug-64439/  
28 abilify-oral/details](https://www.webmd.com/drugs/2/drug-64439/abilify-oral/details) (last visited Feb. 14, 2019).

<sup>16</sup> Xanax treats anxiety and panic disorders. See Xanax,  
(continued...)

1 e.g., AR 482.)<sup>17</sup> In January 2015, the doctor “[re]ferred  
2 [Plaintiff] for [c]ounseling” (AR 479), but the record doesn’t  
3 indicate that Plaintiff received such counseling. At the July  
4 2016 hearing, she testified that she was on a wait list for  
5 counseling. (AR 48.)

6 b. *State-agency reviewing-physician records*

7 Psychiatrist Dan Funkenstein reviewed Plaintiff’s mental-  
8 health records in July 2014 and opined that she had the ability  
9 to do nonpublic, simple, repetitive tasks (abbreviated in the  
10 record as “NP/SRT”). (AR 76, 78, 81-82.) He found that she was  
11 “[n]ot significantly limited” in her “ability to remember  
12 locations and work-like procedures,” “understand and remember  
13 very short and simple instructions,” “carry out very short and  
14 simple instructions,” “work in coordination with or in proximity  
15 to others without being distracted,” “make simple work-related  
16 decisions,” “ask simple questions,” “maintain socially  
17 appropriate behavior,” “take appropriate precautions,” “use  
18 public transportation,” or “set realistic goals or make plans  
19 independently of others.” (AR 81-82.) But she was “moderately  
20 limited” in her “ability to understand and remember detailed  
21 instructions,” “carry out detailed instructions,” “maintain  
22 attention and concentration for extended periods,” “perform

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24 <sup>16</sup> (...continued)  
25 WebMD, <https://www.webmd.com/drugs/2/drug-9824/xanax-oral/details>  
26 (last visited Feb. 14, 2019).

27 <sup>17</sup> Dr. Sachdev-Wali’s notes indicate that Plaintiff  
28 reported she had received inpatient psychiatric treatment in 1997  
for an unspecified reason. (AR 478.) The AR does not contain  
any record of that hospitalization, however.

1 activities within a schedule," "sustain an ordinary routine  
2 without special supervision," "complete a normal workday,"  
3 "interact appropriately with the general public," "get along with  
4 coworkers," and "respond appropriately to changes in the work  
5 setting." (Id.) In support of his findings, he cited  
6 Plaintiff's medical records and a "prior [consulting evaluation]"  
7 that was "not severe." (See AR 76, 78, 82.) On reconsideration,  
8 psychiatrist H. Amado affirmed his findings. (See AR 93, 95, 98-  
9 100.)

### 10 3. Analysis

#### 11 a. *Mental-impairment evaluation*

12 Plaintiff argues that the ALJ did not apply the "special  
13 techniques," citing the evaluation process codified in  
14 § 416.920a. (J. Stip. at 9.) She does not develop that  
15 argument, however, and in fact the ALJ went through each of the  
16 required steps to evaluate her mental impairment. (See generally  
17 AR 18-21.) Considering all the relevant evidence, the ALJ found  
18 that Plaintiff had "severe" bipolar affective disorder. (AR 18.)  
19 He noted that she had "mild restriction" in activities of daily  
20 living and "moderate difficulties" in "social functioning" and  
21 "concentration, persistence[, and] pace." (AR 20.) She had had  
22 "no episodes of decompensation . . . [or] psychiatric  
23 hospitalizations." (Id.) By rating and assessing Plaintiff's  
24 limitations in each of the four functional areas, the ALJ met the  
25 requirements set forth in § 416.920a. See Hoopai v. Astrue, 499  
26 F.3d 1071, 1078 (finding that "[t]he ALJ clearly met [the  
27 regulatory] requirement by rating and assessing [the claimant's]  
28 limitations in each of the[] functional areas" and "was not



1 required to make any more specific findings of the claimant's  
2 functional limitations"). After concluding that her "mental  
3 impairments, considered singly and in combination," did not meet  
4 a listing (AR 19-21), he went on to assess her RFC (AR 21). As  
5 Defendant notes, "[t]he ALJ clearly applied the 'special  
6 technique' as required by the regulations," and "Plaintiff does  
7 not bring any challenge to these specific findings." (J. Stip.  
8 at 14.)<sup>18</sup>

9 Without a more specific allegation of what the ALJ allegedly  
10 did wrong, Plaintiff's claim concerning the special technique  
11 fails. See Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155,  
12 1161 n.2 (9th Cir. 2008).

13 b. *Duty to develop the record*

14 Plaintiff argues that certain records are missing, including  
15 psychiatric records from the California Department of Corrections  
16 and Rehabilitation, weekly therapy records, and other unspecified  
17 treatment records. (See J. Stip. at 10, 12.) She implies that  
18 the record was thus insufficient, triggering the ALJ's duty to  
19 develop it. (See id. at 10-11.) She also contends that her  
20 "long history of mental illness" "heightened" the ALJ's duty to  
21 develop the record, citing Higbee v. Sullivan, 975 F.2d 558, 562  
22 (9th Cir. 1992) (per curiam), even though she was represented by  
23 counsel throughout the proceedings. (See J. Stip. at 10.)

24 As an initial matter and as argued by Defendant (see id. at  
25 \_\_\_\_\_

26 <sup>18</sup> In her reply, Plaintiff seems to suggest that the ALJ  
27 "base[d] his opinion on factually incorrect evidence." (J. Stip.  
28 at 19.) She does not specify which evidence was factually  
incorrect, and no such factual inaccuracies are apparent to the  
Court.

1 14-16), not only did Plaintiff fail to raise this issue during  
2 the administrative proceedings (see generally AR 32-69 (hearing  
3 transcript), 171-72 (request for review of ALJ decision)), but  
4 her attorney affirmatively represented that the record was  
5 complete (see AR 34). Accordingly, she likely waived the right  
6 to make this claim in federal court. See Meanel v. Apfel, 172  
7 F.3d 1111, 1115 (9th Cir. 1999) (as amended) (reviewing court  
8 need not address issues not raised before ALJ or Appeals Council  
9 unless manifest injustice would result); Shaibi v. Berryhill, 883  
10 F.3d 1102, 1109 (9th Cir. 2017) (as amended Feb. 28, 2018)  
11 (upholding and applying Meanel after Sims v. Apfel, 530 U.S. 103  
12 (2000)); see also Phillips v. Colvin, 593 F. App'x 683, 684 (9th  
13 Cir. 2015) ("This issue was waived by [claimant]'s failure to  
14 raise it at the administrative level when he was represented by  
15 counsel, and [claimant] has not demonstrated manifest injustice  
16 excusing the failure.").

17 Even if Plaintiff could properly raise an argument about  
18 missing records, it would likely fail. She, not the ALJ, was  
19 required to produce evidence to support her disability claim.  
20 See Mayes, 276 F.3d at 459; Meanel, 172 F.3d at 1115. The record  
21 here included opinions from state-agency reviewing psychological  
22 consultants and notes from Plaintiff's treating psychiatrists and  
23 mental-health providers. (See generally AR 78-82, 95-100, 323-  
24 28, 435-38, 473-500.) Counter to her claim, all medical records  
25 from May 2013 to "[p]resent" were requested from the California  
26 Department of Corrections and Rehabilitation. (See AR 320.) And  
27 the only mental-health record provided by the CDCR indicated that  
28

1 Plaintiff did not require mental-health services.<sup>19</sup> (See AR 317-  
2 18.) Furthermore, the ALJ asked her attorney at the hearing  
3 whether any records were missing, and the attorney confirmed that  
4 the record was "pretty complete" and that "we have everything  
5 . . . that's out there." (AR 34, 67.)

6 Higbee recognizes that an ALJ's duty to develop the record  
7 is heightened when a claimant is unrepresented or when she  
8 previously was eligible for benefits based on mental illness; it  
9 does not help Plaintiff's case. See 975 F.2d at 561-62  
10 (collecting cases). Plaintiff was represented by counsel  
11 throughout her administrative hearings and continues to be  
12 represented. She also has never been found eligible for benefits  
13 based on mental illness. (Cf. AR 35 (ALJ noting that in 2012,  
14 another ALJ dismissed disability claim), 74-75 (stating that in  
15 2011, consulting internist determined that she could do medium  
16 work, consulting psychiatrist found "[n]o limitations," and claim  
17 "was dismissed" after ALJ hearing), 194 ("Chavez . . . screening  
18 guide" indicating previous claim was not "final" decision).)  
19 Therefore, Higbee is not instructive.

20 Plaintiff is correct that the record does not include  
21 evidence of the weekly unspecified "therapy" sessions she  
22

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23 <sup>19</sup> The prison records were not actually needed, in any case.  
24 The ALJ found and Plaintiff does not contest that the alleged  
25 onset date was May 16, 2014, which was apparently after her  
26 release from prison. Plaintiff asserts that she was housed in a  
27 mental-health ward at some point while in prison (see J. Stip. at  
28 10), but given that her incarcerations apparently spanned 20  
years (see AR 325) and that her most recent prison record said  
she didn't need mental-health services (see AR 317-18), that  
information by itself is not helpful.

1 apparently attended. (See J. Stip. at 10; see also AR 212, 225.)  
2 But, as Defendant points out, she had the burden of producing  
3 those records in the first place or raising the issue earlier.  
4 See Mayes, 276 F.3d at 459; (see also J. Stip. at 14-15). And  
5 she still has not pointed to any additional records that the ALJ  
6 should have considered or provided the name of the therapist she  
7 allegedly saw every week (see generally id. at 10-11).

8 In any event, the ALJ properly discounted the severity of  
9 Plaintiff's alleged mental-health limitations in part because she  
10 did not "require extensive counseling." (AR 23.) Even if  
11 Plaintiff was attending weekly sessions, that was not  
12 inconsistent with the ALJ's reasoning. Those sessions apparently  
13 lasted for only a month (see AR 212, 225 (function reports dated  
14 June 2014, during month she attended Prototypes clinic,  
15 describing weekly therapy sessions), 438-40 (discharge summary  
16 from Prototypes clinic dated June 2014, describing one month of  
17 treatment)), after which she was on a wait list for counseling  
18 from her new provider (see AR 48, 479). Moreover, as explained  
19 in Section V.B.2, Plaintiff testified that her depression,  
20 anxiety, and mood swings were controlled just with medication.

21 Thus, the ALJ did not err in not developing the record  
22 further, but even if he did, Plaintiff waived her right to make  
23 the claim by agreeing that the record was complete. See Meanel,  
24 172 F.3d at 1115.

25 c. *Plaintiff's RFC*

26 Accounting for Plaintiff's mental limitations, the ALJ  
27 limited her "to work involving simple repetitive tasks[,] no more  
28 than occasional contact with co-workers, and no contact with the

1 general public." (AR 21.) He considered Plaintiff's statements  
2 (AR 21-22), treatment history (AR 23), and daily activities (id.)  
3 as well as opinions from medical sources (AR 23-24). Plaintiff  
4 argues that his analysis did not address her "ability to  
5 understand, to carry out and remember instructions, to respond  
6 appropriately to supervision, coworkers, and customary work  
7 pressures in a work setting" (J. Stip. at 11), but the ALJ  
8 explicitly referred to each of these concerns in his decision  
9 (see AR 20-24 (limiting her to simple, repetitive work,  
10 occasional contact with coworkers, and no contact with public)).

11 Plaintiff claims that "[c]onsultative [e]xaminer Amado, MD"  
12 found that she had "difficulty carrying out short and simple  
13 instructions, detailed instructions" and was unable "to maintain  
14 attention and concentration for an extended period of time or to  
15 sustain ordinary routine without special supervision." (J. Stip.  
16 at 11.) But as Defendant notes, that "mischaracterizes" the  
17 record. (Id. at 16.) Dr. Amado (who reviewed some of  
18 Plaintiff's files but did not examine her) actually found that  
19 Plaintiff was "[n]ot significantly limited" in her ability to  
20 "understand," "remember," or "carry out very short and simple  
21 instructions" and only "moderately limited" in her ability to do  
22 the same for "detailed instructions." (AR 98-99.) And Dr. Amado  
23 determined that she was "[m]oderately limited" in her "ability to  
24 maintain attention and concentration for extended periods" and  
25 "sustain an ordinary routine without special supervision" but not  
26 unable to do so. (AR 98.) In any event, the ALJ addressed  
27 Plaintiff's mental impairments by limiting her to simple,  
28 repetitive work, occasional contact with coworkers, and no

1 contact with the public. (AR 21.) See Stubbs-Danielson v.  
2 Astrue, 539 F.3d 1169, 1174 (9th Cir. 2008).

3 Plaintiff also suggests that the ALJ failed to address  
4 limitations noted by her son (J. Stip. at 11), but again, that  
5 misstates the record. The ALJ considered the function reports  
6 filled out by Plaintiff and her son (see AR 208-29) and  
7 determined that although they "show deficits in some activities,"  
8 they also "show [that she] is still able to handle her personal  
9 hygiene, . . . get out of her home, [and] . . . interact with  
10 others without difficulties or problems" (AR 23). Therefore, the  
11 ALJ properly accounted for her son's statements. See Bruce v.  
12 Astrue, 557 F.3d 1113, 1115 (9th Cir. 2009); see also Robbins,  
13 466 F.3d at 885 ("[T]he ALJ is required to account for all lay  
14 witness testimony in the discussion of his or her findings."  
15 (citation omitted)).

16 B. The ALJ Properly Assessed Dr. Kurera's Opinion

17 Plaintiff argues that the ALJ should have given "great  
18 weight" to Dr. Kurera's "evaluation" and claims that the "record  
19 contradicts the ALJ's finding." (J. Stip. at 12.) As explained  
20 below, the ALJ properly found that Dr. Kurera's opinion merited  
21 "little weight" (AR 24), and remand is not necessary.

22 1. Applicable law

23 Three types of physicians may offer opinions in Social  
24 Security cases: those who directly treated the plaintiff, those  
25 who examined but did not treat the plaintiff, and those who did  
26 neither. See Lester, 81 F.3d at 830. A treating physician's  
27 opinion is generally entitled to more weight than an examining  
28 physician's, and an examining physician's opinion is generally

1 entitled to more weight than a nonexamining physician's. Id.;  
2 see § 416.927.<sup>20</sup>

3 The ALJ may disregard a physician's opinion regardless of  
4 whether it is contradicted. Magallanes v. Bowen, 881 F.2d 747,  
5 751 (9th Cir. 1989); see also Carmickle, 533 F.3d at 1164. When  
6 a doctor's opinion is not contradicted by other medical-opinion  
7 evidence, however, it may be rejected only for a "clear and  
8 convincing" reason. Magallanes, 881 F.2d at 751; Carmickle, 533  
9 F.3d at 1164 (citing Lester, 81 F.3d at 830-31). When it is  
10 contradicted, the ALJ need provide only a "specific and  
11 legitimate" reason for discounting it. Carmickle, 533 F.3d at  
12 1164 (citing Lester, 81 F.3d at 830-31). The weight given a  
13 doctor's opinion, moreover, depends on whether it is consistent  
14 with the record and accompanied by adequate explanation, among  
15 other things. See § 416.927(c), (e); see also Orn v. Astrue, 495  
16 F.3d 625, 631 (9th Cir. 2007) (factors in assessing physician's  
17 opinion include length of treatment relationship, frequency of  
18 examination, and nature and extent of treatment relationship).

19 Furthermore, "[t]he ALJ need not accept the opinion of any  
20 physician . . . if that opinion is brief, conclusory, and  
21 inadequately supported by clinical findings." Thomas v.  
22 Barnhart, 278 F.3d 947, 957 (9th Cir. 2002) (citation omitted);  
23 accord Batson, 359 F.3d at 1195; see also McLeod, 640 F.3d at  
24 884-85 (finding that treating physician's opinion "is not binding

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25  
26 <sup>20</sup> Social Security regulations regarding the evaluation of  
27 opinion evidence were amended effective March 27, 2017. See  
28 § 416.927. For the reasons stated supra in note 9, citations to  
§ 416.927 are to the version in effect from August 24, 2012, to  
March 26, 2017.

1 on an ALJ with respect to the existence of an impairment or the  
2 ultimate determination of disability" (citation omitted)). An  
3 ALJ need not recite "magic words" to reject a physician's opinion  
4 or a portion of it; the court may draw "specific and legitimate  
5 inferences" from the ALJ's opinion. Magallanes, 881 F.2d at 755.

## 6 2. Analysis

7 The ALJ gave Dr. Kurera's opinion "little weight" because it  
8 was based on only two visits with Plaintiff,<sup>21</sup> did not accord  
9 with her "conservative treatment," and was not supported by the  
10 medical records. (AR 24.)

11 Inconsistency with the medical evidence, including a  
12 doctor's own treatment notes, is a specific and legitimate reason  
13 to discount a treating physician's opinion. See Tommasetti v.  
14 Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008); Connett v. Barnhart,  
15 340 F.3d 871, 875 (9th Cir. 2003) (physician's opinion properly  
16 rejected when his own treatment notes "provide[d] no basis for  
17 functional restrictions he opined should be imposed on  
18 [plaintiff]"); Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir.  
19 2001) (ALJ permissibly rejected physician's opinion when it was  
20 "implausible" and "not supported by any findings by any doctor,"  
21 including herself). Dr. Kurera's treatment notes did not explain  
22 why a year-long trial period was necessary to determine permanent  
23 disability, nor did they include evidence for temporary

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24  
25 <sup>21</sup> In fact, Plaintiff apparently met with Dr. Kurera only  
26 once, in June 2014. The May 2014 initial assessment cited by the  
27 ALJ (AR 24) was performed by someone else at the clinic (see AR  
28 327 (initial assessment bearing signatures other than Dr.  
Kurera's)). Further, Dr. Kurera's one session with Plaintiff was  
conducted "telementally," apparently by computer or phone. (See  
AR 437.)



1 disability. (See AR 328, 435-37.) At their sole appointment,  
2 she recorded Plaintiff's self-reported history and found that she  
3 had "linear, logical and goal-directed" thought processes; "fair"  
4 insight; and "intact judgment." (AR 435-37.) Though she  
5 observed that Plaintiff had a "depressed, anxious" mood (AR 436),  
6 Plaintiff denied feeling depressed or anxious (AR 435).  
7 Moreover, the initial assessment at the clinic cited by the ALJ  
8 (AR 24), performed a few weeks before by someone other than Dr.  
9 Kurera, found her "[n]ormal," "[u]nimpaird," or "[i]ntact" in  
10 every way except that she had "[c]urrent lack of  
11 pleasure/hopelessness," was "[i]solated" and "[w]ithdrawn," and  
12 had a "[c]onstricted," "[b]lunted," and "[f]lat" affect. (AR  
13 326.) She had no "thought process disturbances," and her memory  
14 and intellectual functioning were "[u]nimpaird." (Id.)

15 Furthermore, Dr. Kurera evaluated Plaintiff only once before  
16 opining that she would be "temporarily disabled from June 10,  
17 2014 through June 10, 2015." (AR 24 (citing AR 328).) The  
18 limited nature of her treating relationship with Plaintiff  
19 entitled the ALJ to give her opinion less weight. See  
20 § 416.927(c); see also Orn, 495 F.3d at 631.

21 Shortly after Dr. Kurera provided her opinion, Plaintiff  
22 moved and switched treatment providers. As the ALJ noted,  
23 "records from the new provider show the claimant only required  
24 medication visits and minimal, if any, counseling." (AR 24; see  
25 also generally AR 473-500.) Plaintiff testified that she was on  
26 a wait list for counseling (AR 48), but she apparently was stable  
27 on her medication regimen. She testified that her medications  
28 "balance[d] out" her depression, rendering it "okay . . . to

1 where I don't have . . . anxiety and depression." (AR 48.)  
2 Similarly, she testified that she experienced "mood swings" only  
3 "[i]f I miss my medicine." (AR 56.)

4 Plaintiff argues that her treatment was "not limited to  
5 medication" (J. Stip. at 13), but the record shows that it was  
6 (see generally AR 473-500 (no evidence of counseling from Nov.  
7 2014 on)). Plaintiff also argues that "Dr. Sachdev-Wali's  
8 evaluation is consistent with Dr. Kurera's assessment," citing  
9 notes from the former's "initial evaluation," but that evaluation  
10 was not done by Dr. Sachdev-Wali,<sup>22</sup> and it consisted primarily of  
11 Plaintiff's self-reported symptoms, which the ALJ discounted (a  
12 finding Plaintiff has not appealed). (See J. Stip. at 12-13; see  
13 also AR 473-74.) Thus, the ALJ properly found that Dr. Kurera's  
14 opinion was undermined by the medical records. (AR 24.)

15 Given the limited number of meetings, lack of supporting  
16 medical evidence, and Plaintiff's subsequent and apparently  
17 successful medication-only treatment, the ALJ appropriately gave  
18 Dr. Kurera's opinion "little weight." (AR 24.) See Orn, 495  
19 F.3d at 631; Thomas, 278 F.3d at 957.

20 C. The ALJ Properly Determined Plaintiff's RFC

21 Plaintiff argues that the ALJ improperly found that she  
22 could perform light work despite arthralgia and COPD. (J. Stip.  
23 at 19-21.) For the reasons discussed below, the ALJ did not err  
24 and remand is not warranted on this basis.

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25  
26  
27 <sup>22</sup> The form was completed by "Jessica Villareal," who added  
28 the letters MAMFTI to her signature, suggesting she was not a  
medical doctor. (AR 476.)

1           1.    Relevant background

2                   a.    *Arthralgia treatment records*

3           Routine exams showed that Plaintiff had mostly normal range  
4 of motion and muscle strength.  (See, e.g., AR 352 (July 2014  
5 examination: "alignment of the major joints and spine is  
6 symmetrical"; no "signs of muscle atrophy"; "no swelling,  
7 effusions, temperature changes, tenderness or crepitus" on  
8 palpation; "no restriction or instability related to ligamentous  
9 laxity"; "[m]uscle strength testing is 5/5 in all major muscle  
10 groups"), 506 (May 2016 examination yielding similar results).)  
11 Despite her complaints of knee and back pain, x-rays done in 2014  
12 revealed no or minimal issues.  (See AR 357 ("knees are  
13 symmetric[,] . . . osseous structures and joint spaces are  
14 intact[,] . . . no fractures or significant arthritic changes"),  
15 358 ("[m]inimal scoliosis and degenerative changes are noted in  
16 the spine"), 471 ("hips are symmetric[,] [n]o fractures or  
17 arthritic changes are observed").)  An MRI done of her left knee,  
18 however, apparently revealed a torn meniscus.  (See AR 412  
19 (orthopedist notes).)<sup>23</sup> X-rays done in 2016 showed no changes to  
20 her right knee<sup>24</sup> (see AR 540) or spine (see AR 541-42).

21           In October 2014, Plaintiff saw orthopedist Jay Shah for  
22 concerns about her left knee.  (AR 410-13.)  She told him that  
23 her symptoms were "relieved by medication" like ibuprofen and  
24

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25           <sup>23</sup> The MRI does not appear to be in the record.

26           <sup>24</sup> The 2014 knee x-rays were bilateral.  (See AR 357.)  
27 Plaintiff's complaints center on her left knee (see, e.g. AR 43),  
28 but the record doesn't include diagnostic imaging for that knee  
after 2014.

1 "exacerbated by prolonged standing and bending." (AR 410.) He  
2 found no "effusion," "excessive varus or valgus alignment," or  
3 "patellofemoral crepitus or patellar instability." (AR 411.)  
4 She had "full extension against resistance without difficulty";  
5 the patella "track[ed] well clinically"; and the patellofemoral  
6 joint was not tender. (Id.) All clinical testing was negative  
7 except for the "McMurray's test when loading the medial  
8 compartments."<sup>25</sup> (Id.) "The compression/rotation test [was]  
9 positive for a meniscal tear." (Id.) Dr. Shah "[d]iscussed  
10 conservative and surgical options," and Plaintiff opted to try  
11 conservative measures first. (AR 412.) He gave her injections  
12 of lidocaine<sup>26</sup> and Depo Medrol,<sup>27</sup> which led to "improvement in  
13 symptoms," and he referred her to physical therapy. (Id.)

14 In May 2015, Plaintiff saw a physician's assistant and  
15 reported "lower back pain ongoing for years." (AR 511.) She  
16 said that she was going to have a "torn left meniscus . . .  
17 repaired" but that an orthopedist told her to do physical therapy  
18 first. (Id.) She was not doing physical therapy, though,  
19 because the provider she was referred to was too far away. (Id.)

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20  
21 <sup>25</sup> A McMurray test detects internal tears in the knee joint.  
22 See Diagnosing Knee Injury with a McMurray Test, verywellhealth,  
23 <https://www.verywellhealth.com/mcmurray-test-2549599> (last  
24 updated June 9, 2017).

25 <sup>26</sup> Lidocaine is an anesthetic. See lidocaine injection,  
26 WebMD, [https://www.medicinenet.com/lidocaine-injection/  
27 article.htm#why\\_is\\_lidocaine\\_injection\\_prescribed\\_to\\_patients?](https://www.medicinenet.com/lidocaine-injection/article.htm#why_is_lidocaine_injection_prescribed_to_patients?)  
28 (last visited Feb. 14, 2019).

<sup>27</sup> Depo Medrol is an injectable form of methylprednisolone,  
which treats inflammation. Methylprednisolone Injection,  
MedlinePlus, <https://medlineplus.gov/druginfo/meds/a601157.html>  
(last updated May 15, 2016).

1 The physician's assistant observed that Plaintiff's gait was  
2 "normal" and her balance was "easy." (AR 512.) He also found  
3 that the range of motion in her back was "normal" but "with pain  
4 on full rotation and flexion." (Id.) She had a positive  
5 straight-leg-raise test at 30 degrees.<sup>28</sup> (Id.) He prescribed  
6 diclofenac.<sup>29</sup> (AR 513.)

7 In June 2015, Plaintiff apparently had a "left knee  
8 arthroscopy with partial medial menisectomy"<sup>30</sup> scheduled. (AR  
9 508; see also AR 510.) Preoperative records are in the record,  
10 but the actual procedure is not documented.<sup>31</sup> (See AR 508-11.)  
11 At the July 2016 hearing, Plaintiff testified that she still had  
12 knee pain (AR 43) but did not use an assistive device for walking  
13

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14  
15 <sup>28</sup> A straight-leg-raise test checks the mechanical movement  
16 of neurological tissues and their sensitivity to stress and  
17 compression when disc herniation is suspected. See Straight Leg  
18 Raise Test, Physiopedia, [https://www.physio-pedia.com/](https://www.physio-pedia.com/Straight_Leg_Raise_Test)  
19 Straight\_Leg\_Raise\_Test (last visited Feb. 14, 2019). Pain when  
20 the leg is raised to between 30 and 70 degrees "is suggestive of  
21 lumbar disc herniation." Id.

22 <sup>29</sup> Diclofenac is an anti-inflammatory used to relieve pain  
23 and swelling caused by arthritis. See Diclofenac Sodium, WebMD,  
24 [https://www.webmd.com/drugs/2/drug-4284-4049/diclofenac-oral/](https://www.webmd.com/drugs/2/drug-4284-4049/diclofenac-oral/diclofenac-sodium-enteric-coated-tablet-oral/details)  
25 diclofenac-sodium-enteric-coated-tablet-oral/details (last  
26 visited Feb. 14, 2019).

27 <sup>30</sup> Arthroscopy is a minor surgical procedure used to  
28 diagnose and treat knee problems. See Knee Arthroscopy,  
OrthoInfo, [https://orthoinfo.aaos.org/en/treatment/](https://orthoinfo.aaos.org/en/treatment/knee-arthroscopy/)  
knee-arthroscopy/ (last updated Sept. 2016).

29 <sup>31</sup> The ALJ and Plaintiff's attorney noticed that the surgery  
30 report appeared to be missing, but the attorney confirmed that  
31 "[w]e have everything," and the ALJ remarked, without objection,  
32 that "even if we don't have the left knee surgery, I don't think  
33 I'm going to necessarily go out and necessarily say that we need  
34 to get it." (AR 67-68.)

1 (AR 57).

2 b. *COPD treatment records*

3 Plaintiff often complained about breathing troubles (see,  
4 e.g., AR 44, 203), and diagnostic imaging revealed some  
5 "scarring" and "[m]ild interstitial lung disease but no acute  
6 infiltrates" (AR 358; see also AR 335). Her examinations often  
7 yielded normal or mild results. (See, e.g., AR 332 ("[B]reath  
8 sounds are symmetric. There are no wheezes or rales. The  
9 expiratory phase is within normal limits."), 333 ("no use of  
10 accessory muscles for respiration"), 347 (respiration test  
11 showing "[n]ormal" quality and rhythm), 348 ("lungs are clear to  
12 percussion"), 452 ("mildly diminished breath sounds[,] . . .  
13 wheeze on forced expiration[,] no rales"), 505 ("patient is  
14 relaxed and breathes without effort"), 512 ("breathes without  
15 effort . . . does not use the accessory muscles of respiration"),  
16 528 (same).)

17 Plaintiff began seeing pulmonologist Ahsan Qazi in September  
18 2014. (AR 452-63.) At each of their appointments, she denied  
19 chest pain and reported that her cough was "minimal occasional."  
20 (AR 452, 454, 457, 462.) Dr. Qazi observed "mildly diminished  
21 breath sounds" but no other issues. (Id.) To manage her  
22 symptoms, he prescribed combinations of inhaler medications,  
23  
24  
25  
26  
27  
28

1 including Tudorza,<sup>32</sup> Flovent,<sup>33</sup> Xopenex,<sup>34</sup> and Ventolin.<sup>35</sup> (See AR  
2 453, 455, 458, 462-63.)

3 c. *State-agency physicians' opinions*

4 Plaintiff complained to examining internist Aida Cruz on  
5 August 19, 2014, that she "had multiple joint pains mainly from  
6 the left knee." (AR 329.) The pain was "worse with walking,  
7 standing and sitting." (*Id.*) She also had "left hip pain,"  
8 "left shoulder pain," and "low back pain." (AR 329-30.)

9 Dr. Cruz found that Plaintiff's back had "normal" range of  
10 motion and "no tenderness to palpation in the midline or  
11 paraspinal areas." (AR 332.) The straight-leg-raise test was  
12 negative. (*Id.*) She got on and off the examining table without  
13 difficulty. (AR 331.) Range of motion in her neck, shoulders,  
14 elbows, wrists, hips, and ankles was all "normal," and her gait  
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16 <sup>32</sup> Tudorza is an inhaler medication that controls and  
17 prevents COPD symptoms. See Tudorza Pressair, WebMD, [https://  
18 www.webmd.com/drugs/2/drug-162180/tudorza-pressair-inhalation/  
19 details](https://www.webmd.com/drugs/2/drug-162180/tudorza-pressair-inhalation/details) (last visited Feb. 14, 2019). It must be used regularly  
and does not provide immediate relief. See *id.*

20 <sup>33</sup> Flovent is another inhaler medication that controls and  
21 prevents COPD symptoms. See Flovent Aerosol, WebMD, [https://  
22 www.webmd.com/drugs/2/drug-13522/flovent-inhalation/details](https://www.webmd.com/drugs/2/drug-13522/flovent-inhalation/details) (last  
visited Feb. 14, 2019). It must be used regularly and does not  
provide immediate relief. See *id.*

23 <sup>34</sup> Xopenex is an inhaler medication that provides quick  
24 relief from wheezing and shortness of breath. See Xopenex Vial  
25 for Nebulizer, WebMD, [https://www.webmd.com/drugs/2/drug-17125/  
xopenex-inhalation/details](https://www.webmd.com/drugs/2/drug-17125/xopenex-inhalation/details) (last visited Feb. 14, 2019).

26 <sup>35</sup> Ventolin is an inhaler medication that provides quick  
27 relief from wheezing and shortness of breath. See Ventolin  
28 Solution for Nebulization, WebMD, [https://www.webmd.com/drugs/2/  
drug-7082-3008/ventolin-inhalation/albuterol-salbutamol-solution-  
inhalation/details](https://www.webmd.com/drugs/2/drug-7082-3008/ventolin-inhalation/albuterol-salbutamol-solution-inhalation/details) (last visited Feb. 14, 2019).

1 was also "normal." (AR 331-33.) Her left knee had "limited  
2 range of motion" but no "effusion" or "mediolateral or  
3 anteroposterior instability." (AR 333.) Plaintiff's strength  
4 was "5/5 in all extremities," and she had "[g]ood tone  
5 bilaterally, with good active motion." (Id.) The doctor  
6 determined that Plaintiff could do medium work but should "avoid  
7 frequent kneeling, jumping and walking on uneven terrain due to  
8 the knee condition." (AR 334.) She did not assess any  
9 restrictions based on Plaintiff's back, hip, or shoulder  
10 complaints. (See generally id.)

11 As to Plaintiff's COPD, Dr. Cruz observed that she had  
12 "symmetric" breath sounds, "no wheezes or rales," and a "normal"  
13 expiratory phase. (AR 332.) But because of her complaints and  
14 other medical records (see AR 330), she recommended that  
15 Plaintiff "avoid exposure to extreme temperatures, chemical  
16 pollutants or any pulmonary irritants" (AR 334).

17 State reviewing-physician Joel Ross<sup>36</sup> reviewed Plaintiff's  
18 records in September 2014 – before her surgery – and noted that  
19 her left knee "exhibit[ed] limited [range of motion]" but her  
20 "[g]ait and sensory and motor function were n[orma]l." (AR 76.)  
21 Despite complaints of breathing troubles, her treating records  
22 and consulting examination showed "clear breath sounds with no  
23 rales or wheezing" and "no use of accessory muscles for  
24 respiration." (Id.) He concluded that the medical evidence  
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26 <sup>36</sup> Dr. Ross's signature has a specialty code of 20,  
27 indicating a neurology practice. (AR 85); Program Operations  
28 Manual System (POMS) DI 24501.004, U.S. Soc. Sec. Admin. (May 15,  
2015), <https://secure.ssa.gov/apps10/poms.nsf/lrx/0424501004>.



1 affirmed the consulting examiner's finding that Plaintiff could  
2 do medium work. (See AR 84; see also AR 76, 83.) On  
3 reconsideration in January 2015, state reviewing-physician G.  
4 Taylor-Holmes<sup>37</sup> confirmed that Plaintiff was not disabled and  
5 could do medium, unskilled work. (AR 101.)

6           2.    Analysis

7           The ALJ found that Plaintiff had severe impairments of  
8 arthralgia and COPD (AR 18) but that neither met or equaled a  
9 listing (AR 19). He noted that the COPD caused "moderate  
10 obstruction" and the arthralgia limited "her capacity to lift,  
11 carry, sit, stand and walk." (AR 22.) But her medical records  
12 showed that "her motor strength [was mostly] normal," and so he  
13 determined that she was "capable of light work." (Id.)

14           Though Plaintiff frequently complained about trouble  
15 breathing (see, e.g., AR 42, 47, 203), the ALJ found that her  
16 "statements concerning the intensity, persistence and limiting  
17 effects of [her] symptoms [were] not entirely consistent with the  
18 medical evidence and other evidence in the record (AR 22), a  
19 finding Plaintiff does not contest (see generally J. Stip.).  
20 Indeed, the medical records show that Plaintiff's respiration was  
21 mostly normal. (See, e.g., AR 332, 333, 348.) Her treatment was  
22 limited to prescriptions for inhalers, and as the ALJ noted (AR  
23 23), she apparently never needed emergency treatment (see AR 330  
24 (Plaintiff denying "episodes of respiratory failure"), 354

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25  
26           <sup>37</sup> Dr. Taylor-Holmes's signature has a specialty code of 19,  
27 indicating an internal-medicine practice. (AR 103); Program  
28 Operations Manual System (POMS) DI 24501.004, U.S. Soc. Sec.  
Admin. (May 15, 2015), [https://secure.ssa.gov/apps10/poms.nsf/  
lnx/0424501004](https://secure.ssa.gov/apps10/poms.nsf/lnx/0424501004).

1 (noting in July 2014 that Plaintiff had been using inhalers for  
2 two years and had not seen pulmonologist in that time)). The  
3 pulmonologist whom she began seeing in September 2014 observed  
4 only "mild[]" symptoms. (See, e.g. AR 452.) Considering all the  
5 evidence in the record, the ALJ limited Plaintiff's RFC to  
6 protect her from moderate or concentrated exposure to certain  
7 environmental conditions that could "cause a flare-up of her  
8 [COPD] symptoms." (AR 22.)

9 Contrary to Plaintiff's assertion that the ALJ failed to  
10 "address[]" her "physical limitations in isolation" (J. Stip. at  
11 20), he also limited her RFC to allow for only occasional  
12 kneeling, jumping, or walking on uneven terrain, citing her  
13 reported knee and back pain (AR 22). He assessed those limits  
14 even though the record, as he noted, did not support the alleged  
15 severity of her symptoms. (AR 23.) Treatment records and x-rays  
16 revealed "no joint degeneration" in her right knee and "only mild  
17 findings" concerning her lower back. (Id. (citing AR 540-42);  
18 see also AR 357-58.)<sup>38</sup>

19 Plaintiff complains that Defendant's discussion of Dr.  
20 Cruz's findings that support the RFC is a "post hoc argument[]"  
21 "which the ALJ did not make." (J. Stip. at 20-21.) But the ALJ  
22 extensively discussed Dr. Cruz's findings. (See, e.g., AR 22-  
23 \_\_\_\_\_

24 <sup>38</sup> Plaintiff also complains that the ALJ did not take into  
25 account Dr. Cruz's finding of limited grip strength in her left  
26 hand. (J. Stip. at 20.) But the doctor noted that those  
27 findings were "with poor effort." (AR 331.) The ALJ was not  
28 required to incorporate any hand limitation into the RFC. See  
Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir.  
2003) (ALJ need not discuss "every piece of evidence" (citation  
omitted)).

1 24.) This argument is without merit.

2 Because sufficient evidence supported the ALJ's finding that  
3 Plaintiff could do modified light work, remand is not warranted.

4 See Reddick, 157 F.3d at 720-21.

5 D. The ALJ Properly Evaluated the Combined Effects of  
6 Plaintiff's Impairments

7 Plaintiff argues that the ALJ failed to address her  
8 impairments in combination. (J. Stip. at 21-22, 23.) But as  
9 Defendant points out (see id. at 22), she does not specify how he  
10 failed to do so, and her argument that "it might appear that  
11 [she] could struggle with her lack of . . . breath[] and somehow  
12 pull through[,] [b]ut in combination with her paranoia she does  
13 not have the mental strength to prevail" (id. at 21-22) is not  
14 supported by any medical evidence in the record.

15 The ALJ "considered all symptoms" when assessing Plaintiff's  
16 RFC (AR 21), noting that her "arthralgias" and "COPD" limited her  
17 to light work with reduced exposure to certain environmental  
18 conditions (AR 22). He determined that her "alleged mood  
19 disorder" and "alleged pain symptoms and breathing problems"  
20 together caused "no more than a mild restriction in activities of  
21 daily living" and "no more than moderate difficulties with regard  
22 to concentration, persistence or pace" (AR 20), and he factored  
23 these limitations into her RFC by restricting her to "simple  
24 repetitive tasks" (AR 21; see also AR 22-23). And as Defendant  
25 suggests, the ALJ "arguably . . . consider[ed] the combined  
26 effect of her impairments in limiting her to light work, when  
27 three physicians opined that she could perform medium work." (J.  
28 Stip. at 22.) Plaintiff claims that is post hoc rationalization

1 (id. at 23), but the ALJ himself stated that he was giving the  
2 medium-work opinions "partial weight" because they were  
3 "inconsistent with the record" (AR 24) and was limiting her RFC  
4 because of the "combined effects" of her impairments (AR 22).  
5 Indeed, when he listed her severe impairments, which included  
6 physical and mental ones, he specifically noted that they  
7 "combine[d] to cause more than a minimal limitation on the  
8 claimant's ability to perform the basic work activities on a  
9 regular and continuous basis." (AR 18.)

10 Because the record shows that the ALJ properly considered  
11 Plaintiff's impairments in combination, remand is not warranted.

12 E. The ALJ Properly Found at Step Five that Plaintiff  
13 Could Do Alternative Work

14 Plaintiff argues that the Commissioner did not meet her  
15 burden at step five of demonstrating that she could do the work  
16 specified by the VE. (J. Stip. at 23-25.) But as discussed  
17 below, the ALJ properly found that she could do the small-  
18 products-assembler work, and remand is not necessary.

19 1. Applicable law

20 At step five, the Commissioner has the burden of showing the  
21 existence of work in the national economy that the claimant can  
22 perform, taking into account her age, education, and vocational  
23 background. See Pinto v. Massanari, 249 F.3d 840, 844 (9th Cir.  
24 2001). To meet this burden, the ALJ must "identify specific jobs  
25 existing in substantial numbers in the national economy that  
26 claimant can perform despite her identified limitations."  
27 Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995).

28 When a VE provides evidence at step five about the

1 requirements of a job, the ALJ has an affirmative responsibility  
2 to ask about "any possible conflict" between that evidence and  
3 the DOT. See SSR 00-4p, 2000 WL 1898704, at \*4 (Dec. 4, 2000);  
4 Massachi v. Astrue, 486 F.3d 1149, 1152-54 (9th Cir. 2007)  
5 (holding that application of SSR 00-4p is mandatory). When such  
6 a conflict exists, the ALJ may accept VE testimony only if the  
7 record contains "persuasive evidence to support the deviation."  
8 Pinto, 249 F.3d at 846 (citing Johnson, 60 F.3d at 1435); see  
9 also Tommasetti, 533 F.3d at 1042 (finding error when "ALJ did  
10 not identify what aspect of the VE's experience warranted  
11 deviation from the DOT").

12 An ALJ also has a responsibility to resolve "obvious or  
13 apparent" conflicts between a VE's testimony and the DOT.  
14 Gutierrez v. Colvin, 844 F.3d 804, 808 (9th Cir. 2016). A  
15 conflict is "obvious or apparent" when it is at odds with DOT job  
16 requirements related to tasks that are "essential, integral, or  
17 expected parts of a job." Id. "[W]here the frequency or  
18 necessity of a task is unlikely and unforeseeable," the ALJ need  
19 not "follow up with more specific questions." Id.

## 20 2. Relevant background

21 At the start of the VE's testimony, the ALJ asked her to  
22 "let us know the difference" if she "g[a]ve an opinion which is  
23 different from the DOT," and she said she would. (AR 62.) The  
24 ALJ then asked her to assume an individual of Plaintiff's age,  
25 education, and work background who was limited to "light" work;  
26 "occasional kneeling, jumping and walking on uneven terrain";  
27 "simple repetitive tasks"; "no more than occasional contact with  
28 coworkers and no contact with the general public." (AR 63-64.)

1 The individual also had to avoid "even moderate exposure to fume,  
2 odors, dust, gases and poor ventilation" and "concentrated  
3 exposure to extreme cold, extreme heat, wetness and humidity."

4 (AR 63.)<sup>39</sup>

5 The VE testified that such a person could be an assembler of  
6 small products, DOT 706.684-022, 1991 WL 679050 (Jan. 1, 2016).  
7 (AR 63; see also AR 64.) Plaintiff's attorney questioned whether  
8 "the interaction with coworkers and the public[] would . . .  
9 eliminate a lot of the jobs," and the VE confirmed that it would  
10 but that work as a "table worker [or] bench hand assembler" would  
11 still be doable. (AR 66.)

### 12 3. Analysis

13 Plaintiff argues that the ALJ erred at step five because the  
14 "assembler of small parts" job "is generally performed on an  
15 assembly line" and her RFC requires "limited contact with her co-  
16 workers and no contact with the public." (J. Stip. at 23-24.)  
17 She claims that the job lacks "a logical bridge" with her RFC.  
18 (Id. at 24.) Plaintiff also implies that the work does not meet  
19 the limitations necessitated by her COPD. (Id. at 23-24.)

20 The DOT listing for assembler of small products makes clear  
21 that the environmental conditions Plaintiff complains would  
22 affect her COPD "do[] not exist." DOT 706.684-022, 1991 WL  
23 679050 (Jan. 1, 2016) (listing extreme cold or heat, "wet and/or  
24 humid," "toxic caustic chemicals," and other environmental  
25 conditions as "[n]ot [p]resent").

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26  
27 <sup>39</sup> The ALJ presented the VE with a few different  
28 hypotheticals, but the RFC he determined included the limitations  
in hypotheticals two and three, which are the ones noted.

1           And the listing rates working with people (including  
2 "[t]aking [i]nstructions" and "[h]elping") as "[n]ot  
3 [s]ignificant" and "[t]alking" as "[n]ot [p]resent." Id. The  
4 description states that such a worker "[f]requently works at  
5 bench as member of assembly group assembling one or two specific  
6 parts and passing unit to another worker." Id. Plaintiff argues  
7 that this type of interaction with coworkers goes beyond her RFC  
8 (J. Stip. at 24, 25-26), but as Defendant points out, she "does  
9 not provide evidence that working on an assembly line involves  
10 more than occasional interaction with co-workers," only  
11 "layperson conjecture" (id. at 25). Moreover, Dr. Funkenstein,  
12 whose opinion the ALJ gave "good" weight (AR 24), specifically  
13 found that although Plaintiff was "[m]oderately limited" in her  
14 ability to "get along with coworkers" (AR 82), she was "[n]ot  
15 significantly limited" in "work[ing] in coordination with or in  
16 proximity to others without being distracted by them" (AR 81).  
17 Indeed, Plaintiff's attorney asked the VE about the compatibility  
18 of assembly work and limited contact with coworkers, and the VE  
19 appears to have confirmed that the jobs she identified were  
20 appropriate. (AR 66.)

21           No "obvious or apparent" conflict therefore existed between  
22 the DOT and the VE's testimony. Gutierrez, 844 F.3d at 808; cf.  
23 Bayliss, 427 F.3d at 1218 ("A VE's recognized expertise provides  
24 the necessary foundation for his or her testimony.");  
25 § 416.960(b)(2) ("vocational expert . . . may offer expert  
26 opinion testimony in response to a hypothetical question"); SSR  
27 00-4p, 2000 WL 1898704, at \*2 (Dec. 4, 2000) (SSA relies  
28 "primarily on the DOT" at step five and may use VE "to resolve

1 complex vocational issues").

2 Thus, the ALJ properly found that Plaintiff could do  
3 alternative work and was not disabled. (AR 25-26.)

4 **VI. CONCLUSION**

5 Consistent with the foregoing and under sentence four of 42  
6 U.S.C. § 405(g),<sup>40</sup> IT IS ORDERED that judgment be entered  
7 AFFIRMING the Commissioner's decision, DENYING Plaintiff's  
8 request for payment of benefits or remand, and DISMISSING this  
9 action with prejudice.

10

11 DATED: February 14, 2019

  
\_\_\_\_\_  
JEAN ROSENBLUTH  
U.S. MAGISTRATE JUDGE

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26 <sup>40</sup> That sentence provides: "The [district] court shall have  
27 power to enter, upon the pleadings and transcript of the record,  
28 a judgment affirming, modifying, or reversing the decision of the  
Commissioner of Social Security, with or without remanding the  
cause for a rehearing."