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

MANUEL PONCE VALDEZ,  
Plaintiff,

v.

NANCY A. BERRYHILL<sup>1</sup>, *Acting  
Commissioner of Social Security,*  
Defendant.

Case No. SA CV 16-0980 JCG

**MEMORANDUM OPINION AND  
ORDER**

Manuel Ponce Valdez (“Plaintiff”) challenges the Social Security Commissioner’s decision denying his application for disability benefits. Plaintiff contends that the Administrative Law Judge (“ALJ”) had a duty to further develop the record. Specifically, Plaintiff contends that evidence after the State agency doctors completed their review triggered a duty to obtain an updated, or another, medical opinion reviewing that evidence. (*See* Joint Stip. at 4-7, 10.) The Court addresses Plaintiff’s contention below, and finds that reversal is not warranted.

<sup>1</sup> The Court **DIRECTS** the Clerk of Court to update the case caption to reflect Nancy A. Berryhill as the proper Defendant. *See* Fed. R. Civ. P. 25(d).

1           A.     Challenge Not Properly Preserved

2           Preliminarily, as a rule, “when claimants are represented by counsel, they must  
3 raise all issues and evidence at their administrative hearings in order to preserve them  
4 on appeal.” *Meanel v. Apfel*, 172 F.3d 1111, 1115 (9th Cir. 1999). Similarly, as a  
5 general rule, issues not properly raised before the district court may be deemed waived.  
6 *See Greger v. Barnhart*, 464 F.3d 968, 973 (9th Cir. 2006).

7           Plaintiff’s issue has not been properly preserved for two reasons.

8           First, Plaintiff was represented by counsel at the administrative hearing and  
9 specifically stated he had “no objection” to the record when asked by the ALJ.<sup>2</sup> (AR at  
10 32); *see also Meanel*, 172 F.3d at 1115; *Howard v. Astrue*, 330 F. App’x 128, 130 (9th  
11 Cir. 2009) (issue waived because attorney had opportunity to raise it at administrative  
12 hearing but did not do so); *Marovich v. Colvin*, 2014 WL 900917, at \*9 n.17 (N.D.  
13 Cal. Mar. 4, 2014) (argument that ALJ had duty to develop record severely  
14 undermined given claimant’s opportunities to supplement record during administrative  
15 proceedings), *aff’d*, 645 F. App’x 591 (9th Cir. 2016).

16           Second, much of the evidence Plaintiff points to relates to his subjective  
17 complaints of pain that the ALJ found not fully credible, a determination Plaintiff does  
18 not challenge here. (*See* Joint Stip. at 6 (“The fact that [Plaintiff] complaints [sic] of  
19 leg pain and hand pain after the date of the state agency’s last review should have  
20 alerted the ALJ that maybe something more was needed.”); AR at 23, 266, 296 (noting  
21 Plaintiff’s chief “subjective” complaint was leg pain), 298-99 (same)); *Greger*, 464  
22 F.3d at 973; *Owens v. Colvin*, 2014 WL 5602884, at \*4 (C.D. Cal. Nov. 4, 2014)  
23 (claimant’s failure to discuss, or even acknowledge, ALJ’s reasons for adverse  
24 credibility finding waived any challenge to that finding).

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26           <sup>2</sup>     The State agency determinations were made in 2013 and early 2014. (Administrative Record  
27 (“AR”) at 218-24, 248-65.) The evidence Plaintiff contends triggered a duty to further develop the  
28 record ranged from February to July 2014. (Joint Stip. at 5-6.) All of this was before the ALJ and  
admitted into the record that counsel said he reviewed and accepted at the October 10, 2014 hearing.  
(AR at 32.)

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

2 B. Any Error is Harmless

3 As a rule, claimants bear the burden of showing they are was disabled. *Meanel*,  
4 172 F.3d at 1113. Claimants also have the burden of establishing that any error  
5 resulted in actual harm. *See Ludwig v. Astrue*, 681 F.3d 1047, 1054-55 (9th Cir. 2012).  
6 An “ALJ’s error is harmless where it is inconsequential to the ultimate nondisability  
7 determination.” *See Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (quotation  
8 marks and citations omitted)); *Garcia v. Comm’r of Soc. Sec.*, 768 F.3d 925, 932 &  
9 n.10 (9th Cir. 2014) (harmless error analysis applies where ALJ errs by not discharging  
10 duty to develop record).


11 Here, even assuming the ALJ erred by failing to further develop the record as to  
12 certain objective findings made after the State agency review, Plaintiff fails to show  
13 prejudice.<sup>3</sup> *See Meanel*, 172 F.3d at 1113; *Molina*, 674 F.3d at 1115. Specifically,  
14 Plaintiff fails to explain how any of the unremarkable objective evidence he directs the  
15 Court to review shows that he is disabled, including: (1) a treatment note indicating  
16 “[m]ildly decreased bending, slow and difficult to get up and sit down, walks slow,  
17 decreased sensation on both legs”; (2) an examination note that states “probable”  
18 diabetic distal polyneuropathy; (3) an EMG/NCS study that notes mostly normal and  
19 mild findings, and one moderate finding; (4) an MRI with predominately mild  
20 findings; and (5) lab results showing elevated sedimentation. (Joint Stip. at 5-6, 10;  
21 AR at 266, 269-70, 272-73, 298-300).

22 Thus, any error does not warrant reversal.

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25 <sup>3</sup> The Court assumes without deciding that there was error. An updated opinion is not required  
26 simply because additional medical evidence is received after the State agency physicians had already  
27 reviewed Plaintiff’s records. *See de Hoog v. Comm’r of Soc. Sec.*, 2014 WL 3687499, at \*7 (E.D.  
28 Cal. July 23, 2014). Such an occurrence is quite common. *See id.* (explaining that “[i]n virtually  
every case further evidence is received after the [S]tate agency physicians render their assessments—  
sometimes additional evidence and records are even received after the ALJ hearing”).

1 Based on the foregoing, **IT IS ORDERED THAT** judgment shall be entered  
2 **AFFIRMING** the decision of the Commissioner denying benefits.  
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5 DATED: *1.5.2018*

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7 \_\_\_\_\_  
8 Hon. Jay C. Gandhi  
9 United States Magistrate Judge

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

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