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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAMIE STALLSMITH,

Plaintiff,

v.

CAROLYN W. COLVIN,  
Commissioner of Social Security,

Defendant.

No. 4:15-CV-5117-JTR

ORDER GRANTING  
DEFENDANT’S MOTION FOR  
SUMMARY JUDGMENT

**BEFORE THE COURT** are cross-Motions for Summary Judgment. ECF No. 16, 18. Attorney D. James Tree represents Jamie Max Stallsmith (Plaintiff); Special Assistant United States Attorney Tina R. Saladino represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 4. After reviewing the administrative record and briefs filed by the parties, the Court **GRANTS** Defendant’s Motion for Summary Judgment and **DENIES** Plaintiff’s Motion for Summary Judgment.

**JURISDICTION**

Plaintiff filed applications for a period of disability, Disability Insurance Benefits (DIB), and Supplemental Security Income (SSI) in February 2012, alleging disability since July 8, 2008, due to sternum/chest pain, left knee

1 problems/chronic pain, right knee injuries, hand numbness, and lower back  
2 problems/pain. Tr. 199-207, 236-237. Plaintiff's applications were denied initially  
3 and upon reconsideration.

4 Administrative Law Judge (ALJ) Moira Ausems held a hearing on January  
5 28, 2014, Tr. 46-92, and issued an unfavorable decision on May 5, 2014, Tr. 22-35.  
6 The Appeals Council denied review on September 28, 2015. Tr. 1-6. The ALJ's  
7 May 2014 decision thus became the final decision of the Commissioner, which is  
8 appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this  
9 action for judicial review on November 24, 2015. ECF No. 1, 7.

#### 10 **STATEMENT OF FACTS**

11 The facts of the case are set forth in the administrative hearing transcript, the  
12 ALJ's decision, and the briefs of the parties. They are only briefly summarized  
13 here.

14 Plaintiff was born on December 5, 1974, and was 33 years old on the alleged  
15 onset date, July 8, 2008. Tr. 33. He completed high school and one year of  
16 college. Tr. 237. Plaintiff testified at the administrative hearing he last worked as  
17 a stock clerk at a WinCo grocery store, Tr. 59, but also had past work as a tractor-  
18 trailer truck driver and merchandise deliverer, Tr. 81, 238. Plaintiff's "Disability  
19 Report" indicates he stopped working on July 8, 2008, because of his condition.  
20 Tr. 237.

21 Plaintiff injured his right knee on the job in July 2008. Tr. 332. He was  
22 diagnosed with right knee ACL tear and medial meniscal tear. Tr. 317. On  
23 January 19, 2009, Christopher Kontogianis, M.D., performed a right knee  
24 arthroscopy, partial medial and lateral meniscectomy and abrasion arthroplasty to  
25 address the issue. Tr. 317. Plaintiff testified he initially felt better after the  
26 surgery, but later, after attempting normal activity, he experienced increased pain  
27 and numbness in his right leg. Tr. 60-61. Plaintiff testified he now has issues with  
28 his left knee from favoring that leg, Tr. 61, and also experiences numbness in his

1 hands from the increased use of his forearm crutch, Tr. 74. Plaintiff stated his  
2 knees keep him from walking without aid (a right forearm crutch), he cannot stand  
3 for long periods, and he is unable to lift heavy items. Tr. 221.

#### 4 **STANDARD OF REVIEW**

5 The ALJ is responsible for determining credibility, resolving conflicts in  
6 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
7 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with  
8 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
9 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
10 only if it is not supported by substantial evidence or if it is based on legal error.  
11 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
12 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
13 1098. Put another way, substantial evidence is such relevant evidence as a  
14 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*  
15 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one  
16 rational interpretation, the Court may not substitute its judgment for that of the  
17 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,  
18 169 F.3d 595, 599 (9th Cir. 1999). Nevertheless, a decision supported by  
19 substantial evidence will be set aside if the proper legal standards were not applied  
20 in weighing the evidence and making the decision. *Brawner v. Secretary of Health*  
21 *and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence  
22 supports the administrative findings, or if conflicting evidence supports a finding  
23 of either disability or non-disability, the ALJ's determination is conclusive.  
24 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

#### 25 **SEQUENTIAL EVALUATION PROCESS**

26 The Commissioner has established a five-step sequential evaluation process  
27 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),  
28 416.920(a); *see Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one

1 through four, the claimant has the burden of establishing a prima facie case of  
2 disability. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant  
3 establishes that a physical or mental impairment prevents him from engaging in his  
4 previous occupation. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant  
5 cannot do his past relevant work, the ALJ proceeds to step five, and the burden  
6 shifts to the Commissioner to show that (1) the claimant can make an adjustment to  
7 other work; and (2) specific jobs exist in the national economy which claimant can  
8 perform. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-  
9 1194 (2004). If a claimant cannot make an adjustment to other work in the  
10 national economy, a finding of “disabled” is made. 20 C.F.R. §§  
11 404.1520(a)(4)(v), 416.920(a)(4)(v).

#### 12 **ADMINISTRATIVE DECISION**

13 On May 5, 2014, the ALJ issued a decision finding Plaintiff was not disabled  
14 as defined in the Social Security Act.

15 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
16 activity since the alleged onset date. Tr. 25. At step two, the ALJ determined  
17 Plaintiff had the following severe impairments: mild right knee degenerative joint  
18 disease status-post arthroscopy in January 2009 and personality disorder, NOS,  
19 with antisocial and borderline features. Tr. 25. At step three, the ALJ found  
20 Plaintiff did not have an impairment or combination of impairments that meets or  
21 medically equals the severity of one of the listed impairments. Tr. 27.

22 The ALJ assessed Plaintiff’s Residual Functional Capacity (RFC) and  
23 determined he could perform a range of light exertion level work. Tr. 28. The  
24 ALJ found Plaintiff could lift/carry up to 20 pounds occasionally and 10 pounds  
25 frequently; could stand/walk up to four hours in an eight-hour workday; could sit  
26 up to six hours in an eight-hour workday; was limited to occasional  
27 pushing/pulling with the right lower extremity; could occasionally climb ramps  
28 and stairs, crouch, crawl, kneel and stoop; could frequently balance; could not

1 climb ladders, ropes or scaffolds or be exposed to unprotected heights; should  
2 avoid concentrated exposure to vibration; and could perform no more than lower  
3 semi-skilled tasks that would involve no more than superficial contact with the  
4 general public. *Id.*

5 At step four, the ALJ found Plaintiff was unable to perform his past relevant  
6 work as a tractor-trailer truck driver and deliverer of merchandise. Tr. 32.  
7 However, at step five, the ALJ determined that, considering Plaintiff's age,  
8 education, work experience and RFC, and the testimony of the vocational expert,  
9 Plaintiff could perform other jobs present in significant numbers in the national  
10 economy, including occupations such as ticket seller, parking lot attendant and  
11 production assembler. Tr. 33-34. The ALJ thus concluded Plaintiff was not under  
12 a disability within the meaning of the Social Security Act at any time from July 8,  
13 2008, the alleged onset date, through the date of the ALJ's decision, May 5, 2014.  
14 Tr. 34-35.

## 15 ISSUES

16 The question presented is whether substantial evidence supports the ALJ's  
17 decision denying benefits and, if so, whether that decision is based on proper legal  
18 standards.

19 Plaintiff contends the ALJ erred in assessing Plaintiff's physical condition  
20 by (1) giving "substantial weight" to the opinions of Wing C. Chau, M.D., and  
21 David Deutsch, M.D., but not including all the limitations assessed by these  
22 medical professionals in the RFC determination; and (2) improperly rejecting the  
23 opinion of Hayden Hamilton, M.D. ECF No. 16 at 8-16.

## 24 DISCUSSION

### 25 A. Plaintiff's Credibility

26 While Plaintiff has not challenged the ALJ's finding that Plaintiff was not  
27 entirely credible, Tr. 29-30, the Court finds the ALJ's credibility determination  
28 significant in this case.

1           The ALJ indicated the documentary evidence of record and Plaintiff's own  
2 statements and testimony simply did not support his basic claims of disabling  
3 physical and mental impairments. Tr. 29. A lack of supporting objective medical  
4 evidence is a factor which may be considered in evaluating a claimant's credibility,  
5 provided it is not the sole factor. *Bunnell v. Sullivan*, 347 F.2d 341, 345 (9th Cir.  
6 1991). With respect to Plaintiff's right knee allegations, the ALJ indicated the  
7 diagnostic test results of record were generally unremarkable and contain little  
8 evidence to support his alleged symptoms. Tr. 29. The ALJ noted March 13,  
9 2014, right knee x-rays revealed only mild osteoarthritic changes involving the  
10 right patellofemoral joint. Tr. 29, 346. The ALJ further indicated musculoskeletal  
11 examinations of Plaintiff's right knee have consistently been unremarkable, other  
12 than subjective complaints of pain and decreased range of motion. Tr. 29. For  
13 example, October 2010 treatment records from Dr. Kontogianis note Plaintiff  
14 reported continued right knee pain, but the examination revealed little in the way  
15 of objective worsening signs or symptoms. Tr. 29, 318. Although Plaintiff  
16 initially could barely extend his knee fully and flex past 90 degrees, with a minimal  
17 amount of coaxing he had full extension and flexion to 125 degrees. Tr. 29, 318.  
18 Moreover, Dr. Chau's March 13, 2014, orthopedic examination noted Plaintiff had  
19 fairly good strength and was without focal neurological deficit. Tr. 29, 345.

20           In addition to the lack of corroborating medical evidence, the ALJ noted  
21 Plaintiff's failure to seek medical treatment since 2012, despite allegations of  
22 chronic pain and disabling limitations, as a reason to discount the reliability of  
23 Plaintiff's allegations. Tr. 30. Unexplained or inadequately explained reasons for  
24 failing to seek medical treatment cast doubt on a claimant's subjective complaints.  
25 20 C.F.R. §§ 404.1530, 426.930; *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).  
26 While the ALJ indicated Plaintiff asserted at the administrative hearing, by and  
27 through his counsel, Tr. 53, 63, that his failure to seek treatment was attributed to  
28 his "general distrust of the medical system," Tr. 30, Plaintiff's testimony regarding

1 his lack of follow-up treatment for his right knee injury primarily concerned his not  
2 knowing which providers would accept his medical insurance, Tr. 63-64. The ALJ  
3 found Plaintiff's statement that he did not understand how to seek treatment  
4 inconsistent with the fact that Plaintiff understood how to apply for public  
5 disability assistance from both the state of Washington and the Social Security  
6 Administration. Tr. 30.

7 The ALJ further noted Plaintiff's poor history of work and earnings did not  
8 enhance the credibility of his allegation of an inability to work. Tr. 30. The Ninth  
9 Circuit has held that "poor work history" or a showing of "little propensity to  
10 work" during one's lifetime may be considered as a factor which negatively affects  
11 a claimant's credibility. *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002).

12 The rationale provided by the ALJ is fully supported by the record, and the  
13 ALJ's determination that Plaintiff's statements were not entirely credible is  
14 uncontested by Plaintiff. *See Paladin Assocs., Inc. v. Mont. Power Co.*, 328 F.3d  
15 1145, 1164 (9th Cir. 2003) (issues not specifically and distinctly contested in a  
16 party's opening brief are considered waived). Since Plaintiff was properly found  
17 by the ALJ to be not entirely credible, the ALJ appropriately accorded little weight  
18 to medical reports based primarily on Plaintiff's subjective complaints.<sup>1</sup> *See*  
19 *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (a physician's opinion  
20 premised primarily on a claimant's subjective complaints may be discounted where  
21 the record supports the ALJ's discounting of the claimant's credibility); *Morgan v.*  
22 *Comm'r. of Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999) (the opinion of a  
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24 <sup>1</sup>The ALJ determined the opinions of DSHS physical examiners Christy  
25 Chanthanath, ARNP, and Jared Shelton, PA-C, that Plaintiff was limited to  
26 sedentary work and could only lift/carry a maximum of two pounds were entitled  
27 to no weight in part because they appeared to be based almost entirely on  
28 Plaintiff's non-credible subjective complaints. Tr. 31-32.

1 physician premised to a large extent on a claimant’s own account of symptoms and  
2 limitations may be disregarded where they have been properly discounted).

3 **B. Medical Source Opinions**

4 Plaintiff contends the ALJ erred by failing to accord proper weight to the  
5 opinions of certain medical sources regarding his physical limitations. Plaintiff  
6 specifically argues the ALJ erred by giving significant weight to the opinions of  
7 Drs. Chau and Deutsch, but not including all the limitations they assessed in the  
8 ALJ’s ultimate RFC determination and by according “little weight” to the opinions  
9 of Dr. Hamilton. ECF No. 16 at 8-16.

10 In disability proceedings, a treating physician’s opinion carries more weight  
11 than an examining physician’s opinion, and an examining physician’s opinion is  
12 given more weight than that of a non-examining physician. *Benecke v. Barnhart*,  
13 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
14 1995). If the treating or examining physician’s opinions are not contradicted, they  
15 can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If  
16 contradicted, the opinion can only be rejected for “specific” and “legitimate”  
17 reasons that are supported by substantial evidence in the record. *Andrews*, 53 F.3d  
18 at 1043. Historically, the courts have recognized conflicting medical evidence, the  
19 absence of regular medical treatment during the alleged period of disability, and  
20 the lack of medical support for doctors’ reports based substantially on a claimant’s  
21 subjective complaints of pain as specific, legitimate reasons for disregarding a  
22 treating or examining physician’s opinion. *Flaten v. Secretary of Health and*  
23 *Human Servs.*, 44 F.3d 1453, 1463-1464 (9th Cir. 1995); *Fair*, 885 F.2d at 604.

24 Here, the ALJ found that although Plaintiff’s right knee condition qualified  
25 as a severe impairment, the objective medical evidence did not support the degree  
26 of limitation alleged by Plaintiff. Instead, the ALJ determined Plaintiff retained  
27 the RFC to perform a range of light exertion level work, which included the ability  
28 to stand/walk up to four hours in an eight-hour workday and sit up to six hours in



1 an eight-hour workday. Tr. 28. The Court finds the ALJ’s interpretation of the  
2 medical record is supported by substantial evidence. *See infra*.

3 **1. Wing C. Chau, M.D.**

4 Plaintiff contends the ALJ erred by not including all limitations expressed in  
5 Dr. Chau’s report in her ultimate RFC determination. ECF No. 16 at 8-13.

6 Dr. Chau examined Plaintiff on March 13, 2014. Tr. 343-350. Dr. Chau  
7 noted a bilateral knee x-ray showed only mild osteoarthritic changes of the right  
8 patellofemoral joint and stated Plaintiff had fairly good strength and, from a  
9 musculoskeletal point of view, was “adequate for full time work 8 hr/day.” Tr.  
10 344-345. However, Dr. Chau also noted Plaintiff would be restricted to limited  
11 ambulation and standing, would need his crutch “as I do not see him trying to go  
12 anywhere without it,” and could lift only up to ten pounds on a frequent basis. Tr.  
13 345. On a “Medical Source Statement of Ability to Do Work-Related Activities  
14 (Physical)” form, Dr. Chau marked boxes<sup>2</sup> indicating Plaintiff could sit for six  
15 hours total, stand for one hour total and walk for one hour total in an eight-hour  
16 workday. Tr. 348. He also marked boxes opining a cane was medically necessary  
17 and that Plaintiff would require the use of a cane to ambulate, Tr. 348, despite  
18 noting in his narrative report that he could not see Plaintiff continuing to use the  
19 crutch for ambulation, Tr. 345. Dr. Chau checked boxes indicating Plaintiff could  
20 never climb ladders or scaffolds, stoop, kneel, crouch or crawl. Tr. 349.

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25 <sup>2</sup>A check-box form is entitled to little weight. *Crane v. Shalala*, 76 F.3d  
26 251, 253 (9th Cir. 1996) (stating that the ALJ’s rejection of a check-off report that  
27 did not contain an explanation of the bases for the conclusions made was  
28 permissible).

1 The ALJ accorded “substantial” weight to Dr. Chau’s opinion “regarding the  
2 claimant’s right knee condition” because it was supported by x-ray findings<sup>3</sup> and  
3 was consistent with the assessment of Norman Staley, M.D.<sup>4</sup> Tr. 30.

4 The record indicates Plaintiff recovered well following arthroscopic surgery  
5 of his right knee, and Plaintiff’s treating physician, Dr. Kontogianis, opined on  
6 March 5, 2009, that Plaintiff was capable of returning to light level work. Tr. 25,  
7 334. On April 2, 2009, Dr. Kontogianis found Plaintiff’s right knee was fixed and  
8 stable, Tr. 25, 319, and, on October 14, 2010, stated Plaintiff “does not have a lot  
9 in the way of objective worsening signs or symptoms on exam.” Tr. 25, 318. He  
10 determined Plaintiff’s right knee instability was not worse at that time. Tr. 318.

11 The ALJ also accorded weight to the January 20, 2012, opinion of reviewing  
12 DSHS medical consultant Dr. Deutsch. Tr. 31. Dr. Deutsch concluded that  
13 Plaintiff’s condition did not meet the requirements necessary to be considered  
14 disabling by the state. Tr. 31, 336-337.

15 Although the ALJ accorded “little weight” to the January 22, 2012, opinions  
16 of examiner Hayden Hamilton, M.D., as more fully discussed below, *see infra*, it is  
17 significant to note Dr. Hamilton’s musculoskeletal examination was generally  
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19 <sup>3</sup>As indicated by the ALJ, x-ray scans of Plaintiff’s bilateral knees on March  
20 13, 2014, revealed only a mild osteoarthritic change involving the right  
21 patellofemoral joint and otherwise normal knees. Tr. 25, 346.

22 <sup>4</sup>As noted by the ALJ, Dr. Staley opined on June 11, 2012, that Plaintiff  
23 could frequently lift and/or carry 10 pounds, occasionally lift and/or carry 20  
24 pounds, stand and/or walk about four hours in an eight-hour workday, and sit about  
25 six hours in an eight hour workday. Tr. 30-31, 142-143. Dr. Staley limited  
26 Plaintiff to frequent climbing of ramps and stairs, balancing and stooping; no  
27 climbing of ladders, ropes or scaffolds; occasional kneeling, crouching and  
28 crawling; and should avoid concentrated exposure to vibration and hazards. *Id.*

1 within normal limits, with normal range of motion in the cervical region, lumbar  
2 region, hip joints, left knee joint, ankle joints, shoulder joints, elbow joints, wrist  
3 joints, and finger joints. Tr. 32, 338-342. Dr. Hamilton indicated Plaintiff had 5/5  
4 motor strength in the bilateral upper and lower extremities, with the exception of  
5 4/5 right hip extension strength; muscle bulk and tone were normal; sensory exam  
6 was normal; and deep tendon reflexes were normal. *Id.* Dr. Hamilton opined  
7 Plaintiff could stand/walk three hours in an eight-hour workday and his ability to  
8 sit was unrestricted. Tr. 342.

9         The ALJ was not required to adopt in full the opinion of any particular  
10 medical source, and the ALJ is obligated to consider the record as a whole. *See*  
11 *Magallanes v. Bowen*, 881 F.2d 747, 753 (9th Cir. 1989) (“It is not necessary to  
12 agree with everything an expert witness says in order to hold that his testimony  
13 contains ‘substantial evidence.’” (quoting *Russell v. Bowen*, 856 F.2d 81, 83 (9th  
14 Cir. 1988))). An ALJ may properly rely upon only selected portions of a medical  
15 opinion while ignoring other parts, but such reliance must be consistent with the  
16 medical record as a whole. *Edlund v. Massanari*, 253 F.3d 1152, 1159 (9th Cir.  
17 2001).

18         Here, the ALJ properly analyzed the various medical opinions and treatment  
19 records. The ALJ evaluated the opinions of Dr. Chau, interpreted and resolved  
20 ambiguities from the entirety of the medical evidence, and adopted the limitations  
21 she found credible and supported by the overall record. *See Bayliss v. Barnhart*,  
22 427 F.3d 1211, 1217 (9th Cir. 2005) (“Preparing a function-by-function analysis  
23 for medical conditions or impairments that the ALJ found neither credible nor  
24 supported by the record is unnecessary.”). The ALJ did not improperly substitute  
25 her own lay opinion for a medical opinion, but instead carefully analyzed the  
26 various medical opinions and treatment records in formulating her RFC  
27 determination. The ALJ deviated from Dr. Chau’s opinions only where the  
28 opinions lacked substantial support in the medical record; e.g., the check-box

1 report indicating Plaintiff could stand for one hour total and walk for one hour total  
2 in an eight-hour workday, as well as the assessed postural restrictions. Tr. 348-  
3 349. The ALJ did not err by giving “substantial weight” to the opinion of Dr.  
4 Chau, while apparently also disregarding portions of the opinion.

5 **2. David Deutsch, M.D.**

6 Plaintiff further contends the ALJ erred by according substantial weight to  
7 the opinion of reviewing physician Deutsch, but failing to address his comment  
8 that Plaintiff’s work capability was listed as “less than sedentary.”

9 On January 20, 2012, reviewing DSHS medical consultant Dr. Deutsch  
10 concluded that Plaintiff’s condition did not meet the requirements necessary to be  
11 considered disabling by the state. Tr. 31, 336-337. The ALJ accorded substantial  
12 weight to the reviewing physician’s statement that Plaintiff was not entitled to  
13 disability benefits, Tr. 31, but disregarded the unsupported notation on the report  
14 that “[w]ork capability list[e]d as Less Than SED,” Tr. 336. Again, the ALJ’s  
15 RFC determination need not exactly match the opinion or findings of any  
16 particular medical source. *See Magallanes*, 881 F.2d at 753.

17 The check-box form of Dr. Deutsch fails to provide any specific information  
18 regarding Plaintiff’s overall medical condition, other than in the “Comments”  
19 section where it is noted “Normal Emg and testing for acute pulmonary pathology  
20 are negative.” Tr. 336. Dr. Deutsch’s report does not explain the indication that  
21 Plaintiff’s work capability had been listed as less than sedentary. In any event, as  
22 discussed above, the credible medical evidence of record does not support a  
23 finding that Plaintiff is limited to less than a restricted range of light exertion level  
24 work: treating physician Kontogianis opined on March 5, 2009, that Plaintiff was  
25 capable of returning to light level work, Tr. 334, and found on April 2, 2009, that  
26 Plaintiff’s right knee was fixed and stable, Tr. 319; Dr. Staley opined on June 11,  
27 2012, that Plaintiff could frequently lift and/or carry 10 pounds, occasionally lift  
28 and/or carry 20 pounds, stand and/or walk about four hours in an eight-hour

1 workday, and sit about six hours in an eight hour workday, Tr. 142-143; and, on  
2 March 13, 2014, Dr. Chau noted a bilateral knee x-ray showed only mild  
3 osteoarthritic changes of the right patellofemoral joint and stated Plaintiff had  
4 fairly good strength and was “adequate for full time work 8 hr/day,” Tr. 344-345.

5 The ALJ did not err by giving “substantial weight” to Dr. Deutsch’s opinion  
6 that Plaintiff was not eligible for state disability assistance, while also failing to  
7 specifically address the portion of Dr. Deutsch’s report which stated Plaintiff’s  
8 work capability had been listed as less than sedentary.

9 **3. Hayden Hamilton, M.D.**

10 Plaintiff lastly argues the ALJ erred by rejecting the January 2012 examining  
11 opinion of Dr. Hamilton. ECF No. 16 at 14-16; Tr. 338-342.

12 As discussed above, Dr. Hamilton’s musculoskeletal examination was  
13 generally within normal limits, with normal range of motion in the cervical region,  
14 lumbar region, hip joints, left knee joint, ankle joints, shoulder joints, elbow joints,  
15 wrist joints, and finger joints. Tr. 32, 338-342. Dr. Hamilton indicated Plaintiff  
16 had 5/5 motor strength in the bilateral upper and lower extremities, with the  
17 exception of 4/5 right hip extension strength; muscle bulk and tone were normal;  
18 sensory exam was normal; and deep tendon reflexes were normal. *Id.* Dr.  
19 Hamilton opined Plaintiff could stand/walk three hours in an eight-hour workday  
20 and his ability to sit was unrestricted. Tr. 342. He further opined Plaintiff could  
21 lift less than 10 pounds both occasionally and frequently and should avoid  
22 climbing, balancing, kneeling, crouching or crawling. *Id.*

23 The ALJ assigned little weight to Dr. Hamilton’s report. Tr. 32. The ALJ  
24 specifically indicated no significant weight was accorded to Dr. Hamilton’s  
25 diagnostic impression of upper extremity neuropathy because the conclusion was  
26 contrary to the normal findings obtained upon electromyography and nerve  
27 conduction study testing of the upper extremities on January 7, 2011, Tr. 281-283,  
28 as well as the normal upper extremity findings observed by other medical sources

1 of record. Tr. 32. The ALJ also held no weight was accorded to Dr. Hamilton's  
2 opinion that Plaintiff's capacity for lifting and carrying was for less than 10 pounds  
3 occasionally because this conclusion was contradicted by the normal  
4 electromyography and nerve conduction study findings and the record as a whole  
5 and was based upon Dr. Hamilton's unsupported diagnostic impression of upper  
6 extremity neuropathy. Tr. 32. Finally, the ALJ stated the record as a whole failed  
7 to document appropriate objective medical findings to establish the existence of an  
8 impairment affecting Plaintiff's upper extremities and Dr. Hamilton's restriction of  
9 Plaintiff's capacities for lifting and carrying was contradicted by other medical  
10 evidence of record. Tr. 32. As discussed above, the credible medical evidence of  
11 record, including the opinions of Drs. Kontogianis, Staley and Chau, does not  
12 support a finding that Plaintiff is limited to less than a restricted range of light  
13 exertion level work. *See supra*.

14 It is the responsibility of the ALJ to determine credibility, resolve conflicts  
15 in medical testimony and resolve ambiguities, *Saelee v. Chater*, 94 F.3d 520, 522  
16 (9th Cir. 1996), and this Court may not substitute its own judgment for that of the  
17 ALJ, 42 U.S.C. § 405(g). Where, as here, the ALJ has made specific findings  
18 justifying a decision, and those findings are supported by substantial evidence in  
19 the record, this Court's role is not to second-guess that decision. *Fair*, 885 F.2d at  
20 604. Based on the foregoing, the Court finds the ALJ provided specific and  
21 legitimate reasons for giving little weight to Dr. Hamilton's examining opinion,  
22 and those reasons are supported by substantial record evidence.

### 23 CONCLUSION

24 The ALJ properly weighed the evidence in this case and concluded Plaintiff  
25 retained the ability to perform a range of light exertion level work, which included  
26 the ability to stand/walk up to four hours in an eight-hour workday and sit up to six  
27 hours in an eight-hour workday. Tr. 28. The ALJ's interpretation of the medical  
28 record is supported by the weight of the evidence of record. Having reviewed the

1 record and the ALJ's findings, the Court finds the ALJ's decision is supported by  
2 substantial evidence and free of legal error. Accordingly, **IT IS ORDERED:**

3 1. Defendant's Motion for Summary Judgment, **ECF No. 18**, is  
4 **GRANTED.**

5 2. Plaintiff's Motion for Summary Judgment, **ECF No. 16**, is **DENIED.**

6 The District Court Executive is directed to file this Order and provide a copy  
7 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant  
8 and the file shall be **CLOSED.**

9 DATED December 5, 2016.



A handwritten signature in black ink, appearing to be "M" or "Rodgers", written over a horizontal line.

12 JOHN T. RODGERS  
13 UNITED STATES MAGISTRATE JUDGE  
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