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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9 Anthony D'Acquisto,

No. CV 10-01938-PHX-EHC

10 Plaintiff,

**ORDER**

11 vs.

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13 Michael J. Astrue, Commissioner of Social Security,

14 Defendant.

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17 This is an action for judicial review of a denial of disability insurance benefits under  
18 the Social Security Act, 42 U.S.C. § 405(g). The matter is fully briefed (Doc. 12 & 16).

19 Plaintiff applied for disability benefits on April 11, 2008 at approximately 52 years of  
20 age (Administrative Record [Tr.] 75-77, 191). Plaintiff alleged a disability onset date of  
21 August 25, 2006 (Tr. 75). Plaintiff is insured for benefits through December 31, 2006 (Tr. 9).

22 Plaintiff's claim was denied initially (Tr. 47-50) and upon reconsideration (Tr. 55-57).  
23 Plaintiff requested a hearing (Tr. 58-59). After a hearing on December 22, 2009 (Tr. 15-44),  
24 the Administrative Law Judge ("ALJ") issued a decision on April 23, 2010 finding that  
25 Plaintiff was not disabled (Tr. 9-14). The ALJ listed Plaintiff's severe impairments as lumbar  
26 musculoligamentous strain, degenerative disc disease and reflex sympathetic dystrophy

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1 ("RSD")<sup>1</sup> (Tr. 11). The Appeals Council denied Plaintiff's request for review (Tr. 1-4) which  
2 was a final decision.

3 **I.**

4 Standard of Review

5 A person is "disabled" for purposes of receiving social security benefits if he or she  
6 is unable to engage in any substantial gainful activity due to a medically determinable  
7 physical or mental impairment which can be expected to result in death or which has lasted  
8 or can be expected to last for a continuous period of at least twelve months. Drouin v.  
9 Sullivan, 966 F.2d 1255, 1257 (9th Cir. 1992). Social Security disability cases are evaluated  
10 using a five-step sequential evaluation process to determine whether the claimant is disabled.  
11 The claimant has the burden of demonstrating the first four steps. Tackett v. Apfel, 180 F.3d  
12 1094, 1098 (9th Cir. 1999).

13 In the first step, the ALJ must determine whether the claimant currently is engaged in  
14 substantial gainful activity; if so, the claimant is not disabled and the claim is denied. The  
15 second step requires the ALJ to determine whether the claimant has a "severe" impairment  
16 or combination of impairments which significantly limits the claimant's ability to do basic  
17 work activities; if not, a finding of "not disabled" is made and the claim is denied. At the  
18 third step, the ALJ determines whether the impairment or combination of impairments meets  
19 or equals an impairment listed in the regulations; if so, disability is conclusively presumed and  
20 benefits are awarded. If the impairment or impairments do not meet or equal a listed  
21 impairment, the ALJ will make a finding regarding the claimant's "residual functional  
22 capacity" based on all the relevant medical and other evidence in the record. A claimant's  
23 residual functional capacity ("RFC") is what he or she can still do despite existing physical,  
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25 <sup>1</sup>"Reflex Sympathetic Dystrophy ("RSD"), also known as Complex Regional Pain  
26 Syndrome (CRPS), is a chronic pain condition characterized as continuous intense pain out  
27 of proportion to the severity of the injury that gets worse rather than better over the passage  
28 of time." Liggett v. Astrue, 2011 WL 2940347 \*1 n.3 (C.D. Cal. 2011).

1 mental, nonexertional and other limitations. Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th  
2 Cir. 1989). At step four, the ALJ determines whether, despite the impairments, the claimant  
3 can still perform “past relevant work”; if so, the claimant is not disabled and the claim is  
4 denied. The Commissioner bears the burden as to the fifth and final step of establishing that  
5 the claimant can perform other substantial gainful work. Tackett, 180 F.3d at 1099.

6 The Court has the “power to enter, upon the pleadings and transcript of record, a  
7 judgment affirming, modifying, or reversing the decision of the Commissioner of Social  
8 Security, with or without remanding the cause for rehearing.” 42 U.S.C. § 405(g). The  
9 decision to deny benefits should be upheld unless it is based on legal error or is not supported  
10 by substantial evidence. Ryan v. Commissioner of Social Security, 528 F.3d 1194, 1198 (9th  
11 Cir. 2008). Substantial evidence means “such relevant evidence as a reasonable mind might  
12 accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389, 401, 91  
13 S.Ct. 1420, 1427 (1971). The Court must consider the record in its entirety and weigh both  
14 the evidence that supports and the evidence that detracts from the Commissioner’s  
15 conclusion. Jones v. Heckler, 760 F.2d 993, 995 (9th Cir.1985).

## 16 II.

### 17 Background Facts

18 Plaintiff claimed disability based on disc problems, reflex sympathetic dystrophy  
19 ("RSD"), and lumbar issues (Tr. 103). Plaintiff has a ninth grade education and his past  
20 relevant work included a position in customer service for a home builder, a fisherman, and a  
21 heavy equipment mechanic (Tr. 19, 110). Plaintiff claims he was injured in his lower back in  
22 August 2006 and has not worked since that time. Plaintiff received disability for one year  
23 under the California worker’s compensation program, has received food stamps, and has  
24 received coverage under Arizona’s Medicaid program (Tr. 22, 24).

25 Plaintiff injured his right hand while working in 1997 (Tr. 323). Between 2002 and  
26 2006, Plaintiff was treated by John Qian, M.D., for pain stemming from that hand injury (Tr.  
27 270-358). Dr. Qian diagnosed Plaintiff with RSD in his right arm. In July 2003, Dr. Qian  
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1 opined in a California worker's compensation report that Plaintiff should avoid using his right  
2 hand and arm for heavy lifting, pushing, pulling, holding, and power gripping, and he should  
3 not lift more than 5 pounds frequently (Tr. 322-328).

4 Plaintiff sustained injury in August 2006 when he turned while working and heard a  
5 "pop" in his lower back (Tr. 21-22). On August 30, 2006, Dr. Qian treated Plaintiff for hand  
6 pain and the work-related back injury (Tr. 269). Thereafter, until April 2009, Plaintiff was  
7 treated by Dr. Qian for complaints of hand and arm pain associated with RSD and occasional  
8 back pain (Tr. 241-244, 245-268). Dr. Qian prescribed Methadone, Xanax and Norco which  
9 seemed to be effective in managing Plaintiff's pain (Tr. 241-268).

10 Plaintiff's Treatment for Back Strain by Dr. Ellis - 2006-2007

11 In late October 2006, Plaintiff was seen by John Ellis, M.D., for treatment to his back  
12 following the August 2006 injury (Tr. 206-210). Dr. Ellis's examination of Plaintiff's lumbar  
13 spine revealed no swelling, ecchymosis, contusion, or sign of recent trauma. Plaintiff had  
14 moderately limited range of motion, his lower extremity strength was full (5/5) and his  
15 straight leg raise tests were normal (Tr. 208-209). Dr. Ellis diagnosed Plaintiff with back  
16 strain and recommended non-surgical treatment, including nonsteroidal anti-inflammatory  
17 medications and a physiotherapy program to increase his strength (Tr. 209-210). He reported  
18 that Plaintiff could work at modified duties as long as they did not involve lifting over 10  
19 pounds or repeated bending or stooping and did not anticipate that Plaintiff's back injury  
20 would require surgery or result in permanent disability (Tr. 210).

21 In December 2006, Dr. Ellis treated Plaintiff for his complaint of low back pain. Dr.  
22 Ellis noted that Plaintiff had poor lumbar range of motion, intact deep tendon reflexes, and  
23 negative straight leg raise tests (Tr. 204-205). He recommended nonsteroidal anti-  
24 inflammatory medication and an MRI of Plaintiff's lumbar spine (Tr. 205). A January 2007  
25 MRI of Plaintiff's lumbar spine showed minimal disc bulging, mild degenerative changes, and  
26 some spinal arthritis (spondylosis) (Tr. 201-201, 203). Following the MRI, Dr. Ellis reported  
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1 that Plaintiff's work status still required no lifting over 10 pounds and no repeated bending  
2 or stooping (Tr. 202, 200).

3 In March 2007, Dr. Ellis examined Plaintiff and opined that Plaintiff had permanent  
4 work restrictions that included no lifting over 25 pounds, no repetitive bending or stooping,  
5 no ladder or scaffold work, but that Plaintiff was "capable of working in his preinjured  
6 capacity and competing in the open job market without restrictions" (Tr. 194-195). Dr. Ellis's  
7 May 2007 examination revealed similar results except there was negative straight leg raise  
8 tests bilaterally (Tr. 189-190). In June 2007, Dr. Ellis noted minimally positive left straight  
9 leg raise and slight loss of range of motion of the lumbar spine but that Plaintiff's permanent  
10 work conditions remained unchanged (Tr. 187-188).

11 Non-Examining Reviewing Reports - 2008

12 In June 2008, Heather Barrons, Psy.D., a state agency psychologist, completed a  
13 Psychiatric Review Technique Form and reported there was insufficient medical evidence that  
14 Plaintiff had any mental impairment (Tr. 218-231).

15 In June 2008, James Hopkins, M.D., a state agency physician, reviewed Plaintiff's  
16 medical records and opined that Plaintiff could occasionally lift 20 pounds; frequently lift 10  
17 pounds; sit, stand and/or walk 6 hours in an 8-hour day; push/pull with no restrictions; and  
18 frequently climb, balance, stoop, kneel and crouch (Tr. 232-239).

19 In October 2008, Ernest Griffith, M.D., a state agency physician, reviewed Plaintiff's  
20 medical records and reported agreement with Dr. Hopkins's assessment (Tr. 240).

21 Dr. Qian's Work-Related Assessments

22 In December 2008, Dr. Qian completed an Arizona General Assistance Form and  
23 opined that Plaintiff had a "physical or mental incapacity" that prevented him from  
24 performing any substantial gainful employment which was expected to last 12 or more  
25 months. Dr. Qian did not specify the nature of the "physical or mental incapacity" (Tr. 243).

26 In January 2010, Dr. Qian completed a medical assessment of Plaintiff's ability to do  
27 work related activities based on Plaintiff's condition as of 2006 (Tr. 380-382). Dr. Qian

1 reported that Plaintiff suffered from low back pain and RSD in his right hand that had  
2 worsened with his back injury (Tr. 382). Dr. Qian opined that Plaintiff could sit for one hour  
3 at a time; stand and/or walk for 30 minutes at a time and 3 hours in an 8-hour work day; sit  
4 for 6 hours in an 8-hour work day; frequently lift up to 5 pounds; occasionally lift and carry  
5 up to 20 pounds; grasp, push and pull with his right hand but no fine manipulation or  
6 continuous combination; grasp, push, pull and do fine manipulation with his left hand; use  
7 both feet for repetitive movements; occasionally bend, squat, crawl, climb and reach; no  
8 restrictions on unprotected heights; mild restrictions on machinery, driving, exposure to  
9 environmental hazards; and moderate restrictions on exposure to marked changes in  
10 temperature or humidity (Tr. 380-382).

11 Medical Records - 2009

12 Between May and September 2009, Plaintiff was seen by Jack Hawks, D.O., three  
13 times (Tr. 359-362, 363-367, 368-376). Dr. Hawks diagnosed Plaintiff with RSD, cervical and  
14 lumbar spine degenerative joint disease, and osteoarthritis in multiple areas (Tr. 361, 366,  
15 370). Dr. Hawks instructed Plaintiff to continue taking his usual medications and to do home  
16 range of motion and strengthening exercises (Tr. 370).

17 Work-Related Assessment - 2009

18 In November 2009, Lewis Wright, M.D., completed a “Medical Assessment of Ability  
19 To Do Work Related Activities” (Tr. 377). Dr. Wright reported that Plaintiff could sit, stand  
20 and walk 15 minutes at a time for a total of 3 hours in an 8-hour work day; occasionally carry  
21 up to 5 pounds and lift up to 10 pounds; occasionally bend, crawl and reach; use his left hand  
22 but not his right hand for continuous actions; use his feet for repetitive motions on his right  
23 side only; should avoid unprotected heights and machinery; had mild restrictions to exposure  
24 to marked changes in temperature and humidity; and had no restrictions on driving or  
25 exposure to dust, fumes and gases (Tr. 377-379). Dr. Wright opined that Plaintiff was  
26 additionally limited by pain that had a “severe” effect on his ability to function (Tr. 379).

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1 Medical Records - 2010

2 A February 2010 MRI of Plaintiff's lumbar spine showed some degenerative joint  
3 disease but otherwise was "essentially negative MRI of the lumbar spine." There was "[n]o  
4 significant central spinal stenosis" (Tr. 383-384).

5 Function Reports - 2008

6 Plaintiff completed a Function Report in May 2008 (Tr. 120-125). Plaintiff said he  
7 took care of his dog, prepared microwave meals, did light laundry about 2 hours at a time  
8 once a month, walked around the backyard 15 times a day, grocery shopped, and fished (Tr.  
9 121-124). Plaintiff estimated he could lift 20 pounds and walk around the block (Tr. 125).  
10 Plaintiff is left-handed (Tr. 125). Plaintiff's friend and roommate also completed a Function  
11 Report dated May 2008 (Tr. 128-135).

12 **III.**

13 The Hearing Before the ALJ - December 22, 2009

14 Plaintiff, represented by counsel, and Mark Kelman, a Vocational Expert (VE),  
15 testified at the hearing (Tr. 15-44).

16 Plaintiff testified that he has RSD in his right arm and hand as of well before 2006 (Tr.  
17 21, 33-34). Plaintiff said that the "only thing" he does with his left hand is write his name and  
18 that he works with his right hand (Tr. 21). Plaintiff said he could do "very little" with his right  
19 hand, including that he could only grip or grasp "a little bit once in a while," could not lift any  
20 appreciable weight, and frequently dropped things (Tr. 34-35). He testified he "do[es]  
21 everything with my left hand as much as I can." (Tr. 34). Plaintiff said he injured his lower  
22 back while working in August 2006 and this injury caused his RSD to worsen and his body  
23 "fell apart" (Tr. 21, 34). Since his back injury, Plaintiff has experienced "[c]onstant" and  
24 "[m]oderate severe to severe" pain in his lower back and in his right arm (Tr. 28-29). Plaintiff  
25 said that since 2006 his medications have included Xanax, Norco, Neurontin, and Methadone  
26 which give him relief to a certain point (Tr. 25, 28). He also uses a TENS unit, ice, and cold  
27 compresses to help with his pain (Tr. 29).

1 Plaintiff testified that he lives with a roommate (Tr. 20-21). Plaintiff said he drives  
2 occasionally and can ride in a car for hours at a time if he can lower the seat and lie back (Tr.  
3 26-27). Plaintiff testified that he has trouble dressing and bathing and can sleep for “fifteen  
4 or twenty minutes” at a time (Tr. 27-28). Activities such as cooking make his pain worse (Tr.  
5 29). Plaintiff said he lies down most of the day and needs to change positions frequently to  
6 stay comfortable (Tr. 30). Plaintiff said he can sit for about 15 minutes at a time and cannot  
7 sit or stand for more than 3 hours in an 8-hour period (Tr. 30-32).

8 Plaintiff described his customer service job as concerning repairing “minuscule things”  
9 such as fixing an electrical socket or arranging for contractors to fix something (Tr. 37-38).  
10 Plaintiff said he was able to perform this job for many years despite his RSD (Tr. 33-34).

11 The VE testified that Plaintiff’s past work as a customer services representative for a  
12 home builder was light, semiskilled (Tr. 38-39). The ALJ first questioned the VE regarding  
13 a person of Plaintiff’s age and education who can not lift more than 25 pounds; no repetitive  
14 bending or stooping; and no ladders or scaffold work. The VE testified that such a person  
15 could perform Plaintiff’s past customer service job (Tr. 39). The ALJ added the limitation of  
16 not lifting more than 10 pounds (Tr. 43). The VE testified that such a person could not  
17 perform Plaintiff’s past relevant work, but could work in the national economy as a parking  
18 lot cashier, a gate guard, an usher, or as a lobby attendant (Tr. 43).

19 The ALJ next questioned the VE regarding a person of Plaintiff’s age and education  
20 who can frequently lift 10 pounds; occasionally lift 20 pounds; stand, walk and sit for 6 hours  
21 each in an 8-hour work day; perform unlimited pulling or pushing; and with limitations in  
22 climbing and crawling. The VE testified that such a person could perform Plaintiff’s past  
23 customer service job (Tr. 39-40).

24 Plaintiff’s counsel questioned the VE about a person who could not use his right arm  
25 except to aid his left arm, or who could not use his right arm to do any simple grasping,  
26 pushing, pulling, fine manipulation or a continuous combination of these. The VE testified  
27 that such a person could not perform any of Plaintiff’s past relevant work (Tr. 40-41).

1 Plaintiff's counsel questioned the VE regarding a person who could only sit and stand  
2 for 3 hours total in an 8-hour day. The VE testified that the person would not be able to  
3 maintain full-time employment (Tr. 42).

#### 4 IV.

##### 5 The ALJ's Findings

6 In a written decision dated April 23, 2010 (Tr. 9-14), the ALJ found that Plaintiff had  
7 not engaged in substantial gainful activity from his onset date of August 25, 2006 through  
8 December 31, 2006, his date of last insured (Tr. 11). The ALJ found that Plaintiff's conditions  
9 of lumbar musculoligamentous strain, degenerative disc disease and reflex sympathetic  
10 dystrophy (RSD) were severe impairments which have caused more than minimal work-  
11 related functional limitations but that Plaintiff did not have an impairment or combination of  
12 impairments that met or medically equaled a listing in the regulations (Tr. 11-12). Plaintiff's  
13 medically determinable impairment of headaches was found not to cause more than minimal  
14 limitations in Plaintiff's ability to work (Tr. 11). Plaintiff's alleged anxiety was determined  
15 not to be a medically determinable impairment (Tr. 11).

16 The ALJ found that Plaintiff has the residual functional capacity to perform a full range  
17 of light work in that he can lift and carry 20 pounds occasionally and 10 pounds frequently  
18 and can sit, stand and walk 6 hours in an 8-hour workday, with some limitations with  
19 climbing and crawling (Tr. 12). In making this decision, the ALJ found that Plaintiff's  
20 medically determinable impairments could reasonably be expected to cause the alleged  
21 symptoms but that Plaintiff's statements concerning the intensity, persistence and limiting  
22 effects of those symptoms were not credible to the extent they were inconsistent with the RFC  
23 finding and based on the overall evidence (Tr. 12).

24 The ALJ noted that Plaintiff testified that he is unable to work due to his injuries and  
25 is unable to sit or stand for more than 3 hours in an 8-hour work day (Tr. 12). The ALJ found  
26 that Plaintiff's impairments are not as severe as alleged based on the examination findings of  
27 Dr. Ellis, Plaintiff's treating physician (Tr. 13). Plaintiff's RSD was not as severe as alleged

1 based on examination notes in 2007 showing that Plaintiff had not had any problems with his  
2 upper extremities (Tr. 13). The ALJ gave substantial weight to the opinion of Dr. Hopkins,  
3 a State Agency consultant, regarding Plaintiff's residual functional capacity, finding it was  
4 consistent with Dr. Ellis's opinion (Tr. 13). The ALJ gave little weight to the opinions of Drs.  
5 Wright and Qian as inconsistent with the medical evidence, Plaintiff's activities of daily  
6 living, and the opinions of Drs. Hopkins and Ellis (Tr. 13). Plaintiff's description of his daily  
7 activities further showed he is not limited to the extent one would expect given the complaints  
8 of disabling symptoms and limitations (Tr. 13). The ALJ also gave little probative weight to  
9 the statements of Plaintiff's friend (Tr. 14).

10 The ALJ found that Plaintiff is capable of performing his past relevant work in  
11 customer service (Tr. 14). The ALJ noted that the VE had testified that, given Plaintiff's  
12 limitations, Plaintiff could perform this job (Tr. 14). The ALJ determined that Plaintiff is not  
13 under disability (Tr. 14).

## 14 V.

### 15 Discussion

16 Plaintiff argues that the ALJ improperly weighed medical source evidence, erred by  
17 misinterpreting the evidence to Plaintiff's detriment and erred in implicitly rejecting  
18 Plaintiff's credibility. Defendant argues that substantial evidence supports the ALJ's decision  
19 that Plaintiff is not disabled.

20 Plaintiff's first two claims of error appear related. Plaintiff contends that he has had  
21 RSD in his upper right extremity for many years and that the ALJ erred in giving substantial  
22 weight to the opinion of Dr. Ellis who treated Plaintiff for a low back problem only. Plaintiff  
23 similarly argues that the ALJ erred in giving substantial weight to the opinion of the State  
24 Agency medical consultant, inferentially Dr. Hopkins, who only evaluated Plaintiff regarding  
25 his lumbar spine and had no medical records concerning Plaintiff's RSD at the time because  
26 the records were not submitted until December 2009. Plaintiff contends that the ALJ should  
27 have afforded more weight to the opinions of Dr. Qian and Dr. Wright. Dr. Qian treated

1 Plaintiff for RSD and completed a form setting forth Plaintiff's limitations indicating that  
2 Plaintiff was unable to work. Dr. Wright completed a work-related form that reported  
3 substantial restrictions on Plaintiff's use of his right upper extremity. After noting that the  
4 ALJ's decision appears to have focused exclusively on Plaintiff's lower back injury, Plaintiff  
5 states that he does not dispute the decision of no disability as it relates to the lower back  
6 residual functional capacity (Doc. 12 at 8).

7       Generally, a treating physician's opinion is afforded more weight than the opinion of  
8 an examining physician, and an examining physician's opinion is afforded more weight than  
9 a non-examining reviewing or consulting physician's opinion. Holohan v. Massanari, 246  
10 F.3d 1195, 1202 (9th Cir. 2001). Where a treating doctor's opinion is uncontradicted, an ALJ  
11 may reject it only for "clear and convincing" reasons; however, a contradicted opinion of a  
12 treating or examining physician may be rejected for "specific and legitimate" reasons. See  
13 Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir. 1995).

14       The ALJ did not err in giving substantial weight to the opinion of Dr. Ellis over the  
15 opinions of Drs. Qian and Wright. Dr. Ellis treated Plaintiff for back injury from October  
16 2006 through June 2007 (Tr. 187-210). Plaintiff appears to contend that he had worsening  
17 right hand RSD with that back injury (Doc. 12 at 2 & 4). Dr. Ellis's examination and office  
18 visit notes do not show that Plaintiff complained about severe pain in his right arm. In March  
19 2007, Dr. Ellis opined that Plaintiff was "capable of working in his preinjured capacity" with  
20 some limited physical restrictions (Tr. 195). Dr. Qian's assessment in 2003 that Plaintiff could  
21 lift only 5 pounds with his right hand predated Plaintiff's August 2006 onset date and was of  
22 limited relevance (Tr. 327). Carmickle v. Commissioner of Social Security, 533 F.3d 1155,  
23 1165 (9th Cir. 2008) (medical opinion that predated alleged onset date is of limited  
24 relevance). Dr. Qian's opinion set forth in a form completed in December 2008 did not  
25 specify the nature of the "physical or mental incapacity" that prevented Plaintiff from  
26 performing work activity (Tr. 243). The work-related assessment Dr. Qian completed in  
27 *January 2010* regarding Plaintiff's ability to work in *2006* indicating Plaintiff was capable of  
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1 some work activity, such as sitting for 6 hours in an eight-hour workday and standing or  
2 walking for 3 hours in an eight-hour workday (Tr. 380-382), conflicted with Dr. Qian's  
3 December 2008 assessment that Plaintiff was unable to work. Dr. Qian's treatment notes  
4 between November 2006 and October 2007 include notations that Plaintiff's pain was  
5 managed with medication and that he was functioning well (Tr. 253, 255, 257-258, 261, 263-  
6 266).

7         With respect to the opinion of Dr. Wright, while Plaintiff appears to characterize Dr.  
8 Wright as a "treating physician" (see Doc. 12 (Plaintiff's Brief) at 3, 4-6 & 8), the record  
9 contains only the work-related assessment form Dr. Wright completed regarding Plaintiff (Tr.  
10 377-379). The record does not contain medical records that substantiate Dr. Wright's  
11 assessment or that indicate that Dr. Wright was Plaintiff's treating physician. The ALJ need  
12 not accept the opinion of any physician if that opinion is not supported by clinical findings.  
13 Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002).

14         Dr. Ellis's treatment records regarding Plaintiff and Dr. Ellis's March 2007 opinion  
15 that Plaintiff was "capable of working in his preinjured capacity"(Tr. 191-197), are consistent  
16 with Dr. Hopkins's June 2008 report opining that Plaintiff had the residual functional capacity  
17 for work related activity (Tr. 232-239). Even if Dr. Hopkins's June 2008 opinion did not take  
18 into account Dr. Qian's treatment records submitted in December 2009 regarding Plaintiff's  
19 RSD, the error is harmless. The ALJ included RSD among Plaintiff's severe impairments (Tr.  
20 11). The ALJ considered Dr. Qian's opinion and Plaintiff's RSD condition in conjunction  
21 with the overall medical evidence in reaching the residual functional capacity determination  
22 regarding Plaintiff's ability for work-related activity (Tr. 13).

23         With respect to the ALJ's findings regarding the credibility of Plaintiff's statements  
24 about his pain and symptoms, unless there is affirmative evidence of malingering, the ALJ's  
25 reasons for rejecting the claimant's testimony must be "clear and convincing." Reddick v.  
26 Chater, 157 F.3d 715, 722 (9th Cir. 1998)(citation omitted). The ALJ determined that  
27 Plaintiff's pain and symptom evidence was not supported by the medical records or Plaintiff's  
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1 account of his daily activities. The ALJ made no finding of malingering. The ALJ's reliance  
2 on Plaintiff's description of his daily activities, which include riding in a car, shopping, taking  
3 care of his dog, doing laundry, etc., appears somewhat questionable. The mere fact that a  
4 claimant engages in normal daily activities does not in any way detract from his credibility  
5 as to his overall disability. "One does not need to be 'utterly incapacitated' in order to be  
6 disabled." Vertigan v. Halter, 260 F.3d 1044, 1050 (9th Cir. 2001). Nonetheless, the ALJ's  
7 reliance on the overall objective medical evidence, including the medical records that have  
8 been discussed, supports the ALJ's assessment of Plaintiff's pain and symptom complaints.  
9 Moreover, Plaintiff testified at the hearing that he was able to perform the customer service  
10 job for many years despite his RSD (Tr. 33-34).

11 The ALJ did not improperly weigh the medical source evidence or misinterpret the  
12 medical evidence related to Plaintiff's RSD condition. The ALJ did not err in assessing  
13 Plaintiff's pain and symptom complaints. The Commissioner's final decision is based on  
14 substantial evidence and free of legal error.

15 Accordingly,

16 **IT IS ORDERED** that the decision of the Commissioner denying Plaintiff's claim for  
17 benefits is affirmed.

18 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter Judgment  
19 accordingly.

20 DATED this 29th day of September, 2011.

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Earl H. Carroll  
United States District Judge