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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Patrick D. Bailey,

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CIV-13-1119-PHX-MHB

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Plaintiff,

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**ORDER**

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vs.

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Carolyn W. Colvin, Commissioner of the  
Social Security Administration,

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Defendant.

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Pending before the Court is Plaintiff Patrick D. Bailey’s appeal from the Social Security Administration’s final decision to deny his claim for disability insurance benefits. After reviewing the administrative record and the arguments of the parties, the Court now issues the following ruling.

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**I. PROCEDURAL HISTORY**

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Plaintiff filed an application for disability insurance benefits on November 6, 2009, under protective filing date of August 25, 2009, alleging disability beginning October 24, 2006.<sup>1</sup> (Transcript of Administrative Record (“Tr.”) at 24, 157-63.) His application was denied initially and on reconsideration. (Tr. at 98-112, 117-19.) Thereafter, Plaintiff requested a hearing before an administrative law judge. (Tr. at 120-21.) A hearing was held on November 16, 2011, (Tr. at 54-97), and the ALJ issued a decision finding that Plaintiff was not disabled (Tr. at 21-37). The Appeals Council denied Plaintiff’s request for review

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<sup>1</sup> Plaintiff later amended his alleged onset date to December 24, 2006. (Tr. at 24.)

1 (Tr. at 1-7), making the ALJ's decision the final decision of the Commissioner. Plaintiff then  
2 sought judicial review of the ALJ's decision pursuant to 42 U.S.C. § 405(g).

## 3 **II. STANDARD OF REVIEW**

4 The Court must affirm the ALJ's findings if the findings are supported by substantial  
5 evidence and are free from reversible legal error. See Reddick v. Chater, 157 F.3d 715, 720  
6 (9<sup>th</sup> Cir. 1998); Marcia v. Sullivan, 900 F.2d 172, 174 (9<sup>th</sup> Cir. 1990). Substantial evidence  
7 means "more than a mere scintilla" and "such relevant evidence as a reasonable mind might  
8 accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401  
9 (1971); see Reddick, 157 F.3d at 720.

10 In determining whether substantial evidence supports a decision, the Court considers  
11 the administrative record as a whole, weighing both the evidence that supports and the  
12 evidence that detracts from the ALJ's conclusion. See Reddick, 157 F.3d at 720. "The ALJ  
13 is responsible for determining credibility, resolving conflicts in medical testimony, and for  
14 resolving ambiguities." Andrews v. Shalala, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir. 1995); see  
15 Magallanes v. Bowen, 881 F.2d 747, 750 (9<sup>th</sup> Cir. 1989). "If the evidence can reasonably  
16 support either affirming or reversing the [Commissioner's] conclusion, the court may not  
17 substitute its judgment for that of the [Commissioner]." Reddick, 157 F.3d at 720-21.

## 18 **III. THE ALJ'S FINDINGS**

19 In order to be eligible for disability or social security benefits, a claimant must  
20 demonstrate an "inability to engage in any substantial gainful activity by reason of any  
21 medically determinable physical or mental impairment which can be expected to result in  
22 death or which has lasted or can be expected to last for a continuous period of not less than  
23 12 months." 42 U.S.C. § 423(d)(1)(A). An ALJ determines a claimant's eligibility for  
24 benefits by following a five-step sequential evaluation:

- 25 (1) determine whether the applicant is engaged in "substantial gainful activity";
- 26 (2) determine whether the applicant has a medically severe impairment or  
27 combination of impairments;

1 (3) determine whether the applicant’s impairment equals one of a number of listed  
2 impairments that the Commissioner acknowledges as so severe as to preclude the  
applicant from engaging in substantial gainful activity;

3 (4) if the applicant’s impairment does not equal one of the listed impairments,  
4 determine whether the applicant is capable of performing his or her past relevant  
work;

5 (5) if the applicant is not capable of performing his or her past relevant work,  
6 determine whether the applicant is able to perform other work in the national  
economy in view of his age, education, and work experience.

7 See Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987) (citing 20 C.F.R. §§ 404.1520,  
8 416.920). At the fifth stage, the burden of proof shifts to the Commissioner to show that the  
9 claimant can perform other substantial gainful work. See Penny v. Sullivan, 2 F.3d 953, 956  
10 (9<sup>th</sup> Cir. 1993).

11 At step one, the ALJ determined that Plaintiff had not engaged in substantial gainful  
12 activity since December 24, 2006 – the alleged onset date. (Tr. at 26.) At step two, he found  
13 that Plaintiff had the following severe impairments: obesity, asthma, low back pain, sleep  
14 apnea, and post-gastric bypass surgery. (Tr. at 26.) At step three, the ALJ stated that  
15 Plaintiff did not have an impairment or combination of impairments that met or medically  
16 equaled an impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1 of the  
17 Commissioner’s regulations. (Tr. at 26.) After consideration of the entire record, the ALJ  
18 found that Plaintiff retained “the residual functional capacity to perform sedentary work as  
19 defined in 20 CFR 404.1567(a) except that the claimant cannot climb ladders, ropes and  
20 scaffolds. The claimant can occasionally climb ramps or stairs and occasionally balance,  
21 stoop, crouch, kneel and crawl. The claimant can frequently handle and frequently finger  
22 with the right upper extremity. The claimant should avoid concentrated exposure to extreme  
23 heat, irritants such as fumes, odors, dusts and gases and moving machinery and unprotected  
24 heights.”<sup>2</sup> (Tr. at 26-31.) The ALJ determined that Plaintiff is unable to perform any past  
25 relevant work, but that considering Plaintiff’s age, education, work experience, and residual

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27 <sup>2</sup> “Residual functional capacity” is defined as the most a claimant can do after  
28 considering the effects of physical and/or mental limitations that affect the ability to perform  
work-related tasks.

1 functional capacity, there are jobs that exist in significant numbers in the national economy  
2 that Plaintiff can perform. (Tr. at 31-32.)

3 Therefore, the ALJ concluded that Plaintiff “has not been under a disability ... from  
4 October 24, 2006, through the date of [his] decision.” (Tr. at 32-33.)

#### 5 IV. DISCUSSION

6 In his brief, Plaintiff contends that the ALJ erred by: (1) failing to properly weigh  
7 medical source opinion evidence; (2) failing to properly consider his subjective complaints;  
8 and (3) failing to accurately pose all of Plaintiff’s limitations in the hypothetical to the  
9 vocational expert. Plaintiff requests that the Court remand for determination of benefits.

##### 10 A. Medical Source Opinion Evidence

11 Plaintiff contends that the ALJ erred by failing to properly weigh medical source  
12 opinion evidence. Specifically, Plaintiff argues that the ALJ improperly rejected the opinion  
13 of treating physician Ted Faro, D.O., “in the absence of clear and convincing reasons for  
14 doing so.”

15 “The ALJ is responsible for resolving conflicts in the medical record.” Carmickle v.  
16 Comm’r, Soc. Sec. Admin., 533 F.3d at 1164. Such conflicts may arise between a treating  
17 physician’s medical opinion and other evidence in the claimant’s record. In weighing  
18 medical source opinions in Social Security cases, the Ninth Circuit distinguishes among three  
19 types of physicians: (1) treating physicians, who actually treat the claimant; (2) examining  
20 physicians, who examine but do not treat the claimant; and (3) non-examining physicians,  
21 who neither treat nor examine the claimant. See Lester v. Chater, 81 F.3d 821, 830 (9<sup>th</sup> Cir.  
22 1995). The Ninth Circuit has held that a treating physician’s opinion is entitled to  
23 “substantial weight.” Bray v. Comm’r, Soc. Sec. Admin., 554 F.3d 1219, 1228 (9<sup>th</sup> Cir.  
24 2009) (quoting Embrey v. Bowen, 849 F.2d 418, 422 (9<sup>th</sup> Cir. 1988)). A treating physician’s  
25 opinion is given controlling weight when it is “well-supported by medically accepted clinical  
26 and laboratory diagnostic techniques and is not inconsistent with the other substantial  
27 evidence in [the claimant’s] case record.” 20 C.F.R. § 404.1527(d)(2). On the other hand,  
28 if a treating physician’s opinion “is not well-supported” or “is inconsistent with other

1 substantial evidence in the record,” then it should not be given controlling weight. Orn v.  
2 Astrue, 495 F.3d 624, 631 (9<sup>th</sup> Cir. 2007).

3 If a treating physician’s opinion is not contradicted by the opinion of another  
4 physician, then the ALJ may discount the treating physician’s opinion only for “clear and  
5 convincing” reasons. See Carmickle, 533 F.3d at 1164 (quoting Lester, 81 F.3d at 830). If  
6 a treating physician’s opinion is contradicted by another physician’s opinion, then the ALJ  
7 may reject the treating physician’s opinion if there are “specific and legitimate reasons that  
8 are supported by substantial evidence in the record.” Id. (quoting Lester, 81 F.3d at 830).

9 Since the opinion of Dr. Faro was contradicted by both treating and examining  
10 doctors’ opinions, as well as, other objective medical evidence, the specific and legitimate  
11 standard applies.

12 Historically, the courts have recognized the following as specific, legitimate reasons  
13 for disregarding a treating or examining physician’s opinion: conflicting medical evidence;  
14 the absence of regular medical treatment during the alleged period of disability; the lack of  
15 medical support for doctors’ reports based substantially on a claimant’s subjective complaints  
16 of pain; and medical opinions that are brief, conclusory, and inadequately supported by  
17 medical evidence. See, e.g., Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9<sup>th</sup> Cir. 2005); Flaten  
18 v. Secretary of Health and Human Servs., 44 F.3d 1453, 1463-64 (9<sup>th</sup> Cir. 1995); Fair v.  
19 Bowen, 885 F.2d 597, 604 (9<sup>th</sup> Cir. 1989).

20 The ALJ considered the following objective medical evidence in his determination  
21 of Plaintiff’s residual functional capacity assessment. Plaintiff was evaluated in January  
22 2007 for complaints of back pain. (Tr. at 418-38.) Examinations revealed lumbar spine  
23 tenderness, but also clear lungs; normal cardiac functioning; an obese but soft, non-tender  
24 abdomen with normal bowel sounds and without masses; mild limitation in lumbar spine  
25 ranges of motion; normal straight leg raise testing; normal deep tendon reflexes bilaterally;  
26 and normal heel/toe walking bilaterally. (Tr. at 418-38.)

27 Findings on follow-up examinations between February and April 2007 were similar.  
28 (Tr. at 418-38.) It was noted that Plaintiff was also being treated for obstructive sleep apnea

1 with a continuous positive airway pressure (CPAP) device and that the treatment provider  
2 also recommended a lumbar spine MRI, which was performed shortly thereafter, revealing,  
3 among other findings, disc protrusion at L5-S1 contacting a nerve root, but normal spinal  
4 alignment. (Tr. at 418-38.)

5 Plaintiff was examined again in March 2007. (Tr. at 416-17.) He reported that  
6 physical therapy and medication were helpful for back pain. Examination revealed an  
7 unremarkable gait and the ability to walk on heels and toes. (Tr. at 416-17.)

8 Navtej Tung, M.D., examined Plaintiff in May 2007 for complaints of back pain. (Tr.  
9 at 325-26.) Examination revealed decreased lumbar spine ranges of motion, but also clear  
10 lungs; normal cardiac functioning; normal hips; normal knees; negative straight leg raise  
11 testing; normal deep tendon reflexes; normal motor functioning; normal sensory functioning;  
12 and a normal gait. Dr. Tung diagnosed lumbar spine degenerative disc disease with  
13 radiculopathy and recommended lumbar spine medication injections, which he performed  
14 in May and June 2007. (Tr. at 231-50.)

15 Plaintiff was examined on two occasions in October 2007 for various complaints  
16 including sleep apnea and shortness of breath. (Tr. at 418-28.) Plaintiff reported that his  
17 back pain was significantly improved with recent spinal medication injections, and that his  
18 breathing was fairly well controlled. Examinations revealed clear lungs, but mild respiratory  
19 distress due to obesity with decreased breath sounds and wheezing, and normal cardiac  
20 functioning. Plaintiff was diagnosed with obesity, asthma, obstructive sleep apnea with well  
21 tolerated use of a CPAP device, and back pain with relief from spinal medication injections.  
22 (Tr. at 418-38.)

23 Dr. Faro examined Plaintiff in December 2007. (Tr. at 352-94.) Plaintiff denied chest  
24 pain, dyspnea, and abdominal pain. Examination revealed that Plaintiff was alert and  
25 demonstrated clear lungs and the absence of respiratory distress; normal cardiac functioning;  
26 and an obese but soft, non-tender abdomen with present and equal bowel sounds and without  
27 masses. Plaintiff reported smoking cigarettes, which Dr. Faro advised him to discontinue.  
28 (Tr. at 352-94.)

1 Dr. Faro continued treating Plaintiff through August 1, 2010, with similar examination  
2 findings and treatments. (Tr. 251-78, 347-49, 352-94.) During this period, Plaintiff reported  
3 that medication was helpful for pain. He also reported undergoing gastric bypass surgery in  
4 November 2008, losing weight, and improvement in back pain with weight loss. He further  
5 reported “using a lot of equipment at home,” going on vacation, and driving out of state. Dr.  
6 Faro noted that Plaintiff lost significant weight. Lumbar spine x-rays were normal, and a  
7 lumbar spine MRI revealed a moderate disc herniation without impingement, spinal canal  
8 stenosis or foraminal narrowing at L5-S1, and minimal changes at other levels. (Tr. 251-78,  
9 347-49, 352-94.) Notably, in February 2010, August 2010, and October 2011, Dr. Faro  
10 indicated that Plaintiff had significant physical limitations. (Tr. at 286-87, 350-51, 400-01.)

11 In August 2008, Plaintiff was examined for respiratory complaints. (Tr. at 352-94,  
12 226-50.) Examinations revealed that Plaintiff was alert and ambulatory, and demonstrated  
13 shallow but clear, non-labored respiration; the ability to speak full sentences; normal cardiac  
14 functioning; normal extremity ranges of motion throughout; a soft, non-distended, non-tender  
15 abdomen; normal sensory functioning; normal muscles; and a normal gait. An  
16 electroencephalogram (ECG) was essentially normal, and chest x-rays revealed no evidence  
17 of acute cardiopulmonary disease. (Tr. at 352-94, 226-50.)

18 Plaintiff was examined again in December 2008. (Tr. at 251-78.) Plaintiff reported  
19 doing well; eating well; having good bowel movements; losing approximately 100 pounds;  
20 taking no medication; and he denied chest pain, dyspnea, and abdominal pain. Examination  
21 revealed that Plaintiff was alert and demonstrated clear lungs and the absence of respiratory  
22 distress; normal cardiac functioning; a soft, non-tender abdomen without masses; and full  
23 joint ranges of motion throughout. (Tr. at 251-78.)

24 In April 2010, Plaintiff underwent a cardiac stress test, which revealed a normal  
25 ejection fraction and was negative for ischemia. Cardiac enzymes were negative, and  
26 Plaintiff also reported that his chronic back pain was relieved with medication. Medical  
27 providers encouraged Plaintiff to discontinue smoking, and released him in stable condition.  
28 (Tr. at 341-46.)

1 Quirino Valeros, M.D., a consultative physician, examined Plaintiff later in April  
2 2010. (Tr. at 288-94.) Plaintiff reported a history of low back pain for which he took  
3 medication; a history of gastric bypass surgery and losing approximately 160 pounds; and  
4 a history of asthma for which to took medication. He reported that he could drive an  
5 automobile, and examination revealed that Plaintiff was alert; demonstrated clear lungs and  
6 the absence of respiratory difficulty; normal cardiac functioning; an obese but soft abdomen  
7 without hernia; normal lumbar spine flexion; normal hip ranges of motion; normal ankle  
8 ranges of motion; normal straight leg raise testing; and a normal gait and ability to ambulate.  
9 Dr. Valeros concluded that Plaintiff had mild functional limitations, and that he retained the  
10 physical residual functional capacity to perform light work. (Tr. at 288-94.)

11 Michael Brown, D.O., examined Plaintiff in November 2010, for a foster parent  
12 physical and paperwork for adoption of his niece. (Tr. at 352-94.) Plaintiff denied chest  
13 pain, dyspnea, and abdominal pain. Examination revealed that Plaintiff was alert and  
14 demonstrated clear lungs and the absence of respiratory distress; normal cardiac functioning;  
15 a soft, non-tender abdomen with normal bowel sounds and without masses; and a normal  
16 gait. Dr. Brown concluded that Plaintiff's medical condition was stable, advised Plaintiff to  
17 discontinue smoking, and completed forms (presumably approving adoption ability).

18 Dr. Brown examined Plaintiff again in February 2011. (Tr. at 352-94.) Plaintiff  
19 reported that his chronic back pain was stable with medication. Examination revealed clear  
20 lungs, equal breath sounds, and the absence of respiratory distress; normal cardiac  
21 functioning; and a soft, non-tender, non-distended abdomen with normal bowel sounds and  
22 without masses. (Tr. at 352-94.)

23 Plaintiff was examined in August 2011 reporting that he had lost approximately 180  
24 pounds and no shortness of breath. (Tr. at 402-13.) Examination revealed that Plaintiff was  
25 alert and demonstrated clear lungs; normal cardiac functioning; a soft, non-tender abdomen  
26 with positive bowel sounds; normal joint ranges of motion throughout; and normal motor  
27 strength bilaterally. On follow-up examination in October 2011, Plaintiff denied shortness  
28 of breath and chest pain. Examination revealed that Plaintiff was alert and demonstrated

1 clear lungs; normal cardiac functioning; a soft, non-tender abdomen with positive bowel  
2 sounds; and normal deep tendon reflexes. (Tr. at 402-13.)

3 In his evaluation of the objective medical evidence, the ALJ first addressed Dr. Faro's  
4 opinion, noting the multiple assessments concluding that Plaintiff cannot work. (Tr. at 30.)  
5 After documenting Dr. Faro's findings, the ALJ determined that his treatment records do not  
6 support the assessed limitations "as most of the physical examinations Dr. Faro conducted  
7 on the claimant were normal." (Tr. at 30.) Specifically, the ALJ stated:

8 For example, during a November 2008 office visit with Dr. Faro, the claimant  
9 exhibited no joint pain, stiffness, swelling, deformity, or redness. Neurologically, he exhibited no weakness, numbness, tingling, tremor, gait  
10 disturbance, dizziness, or syncope. (19F/33) He also exhibited no joint pain,  
11 muscle tenderness, edema, erythema, or laxity. He had full range of motion  
12 of all joints with normal tone and mass. He had some continuing low back  
pain and pain down his legs. (19F/33) Also, in December 2008, the  
claimant's physician released him to return to work as a truck driver with no  
heavy lifting. (5F)

13 (Tr. at 30-31.) The ALJ continued his discussion finding that the "objective medical  
14 evidence, test results and treatment records" do not support Dr. Faro's opinions. In his  
15 analysis of Dr. Faro's October 25, 2011 Assessment of Ability to do Physical Activities, the  
16 ALJ stated that according to Plaintiff, Dr. Faro spent "approximately one hour asking  
17 questions and did a physical examination." However, the ALJ notes that there are no  
18 treatment records associated with any physical examination. The ALJ further found that  
19 although Plaintiff testified that he cannot grip with his right hand, Dr. Faro's assessment  
20 indicates that Plaintiff can use his right hand frequently. (Tr. at 30-31.) Lastly, the ALJ  
21 compares Dr. Faro's opinion with Dr. Brown's opinion finding inconsistencies. Specifically,  
22 the ALJ states:

23 This opinion is also inconsistent with the treatment notes of Dr. Brown, the  
24 claimant's other treating physician. Dr. Brown noted that the claimant was in  
25 good health. Upon physical examination by Dr. Brown, the claimant exhibited  
26 no joint pain, stiffness, swelling or redness. Neurologically, he exhibited no  
numbness, tingling or tremor. Gait was normal. (19F/11-12) Accordingly, I  
am unable to assign any of Dr. Faro's medical source assessments great  
weight.

27 (Tr. at 31.)

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1 Next, the ALJ discussed Dr. Valeros' opinion, which found that Plaintiff could  
2 perform a reduced range of light work. (Tr. at 31.) The ALJ assigned "some weight" to said  
3 opinion, yet giving Plaintiff every benefit of the doubt, found that a sedentary residual  
4 functional capacity is more appropriate. (Tr. at 31.)

5 The Court finds that the ALJ properly weighed the medical source opinion evidence,  
6 and gave specific and legitimate reasons, based on substantial evidence in the record, for  
7 discounting Dr. Faro's assessments. The ALJ discredited the medical opinion due to  
8 inconsistencies with Plaintiff's treatment record and the medical evidence as a whole, as well  
9 as lack of supporting clinical findings. See, e.g., Tommasetti v. Astrue, 533 F.3d 1035, 1041  
10 (9<sup>th</sup> Cir. 2008) (finding the incongruity between doctor's questionnaire responses and her  
11 medical records provides a specific and legitimate reason for rejecting the opinion); Connett  
12 v. Barnhart, 340 F.3d 871, 875 (9<sup>th</sup> Cir. 2003) ("We hold that the ALJ properly found that  
13 [the physician's] extensive conclusions regarding [the claimant's] limitations are not  
14 supported by his own treatment notes. Nowhere do his notes indicate reasons why [the  
15 physician would limit the claimant to a particular level of exertion]."); Tonapetyan v. Halter,  
16 242 F.3d 1144, 1149 (9<sup>th</sup> Cir. 2001) (holding that the ALJ properly rejected a physician's  
17 testimony because "it was unsupported by rationale or treatment notes, and offered no  
18 objective medical findings to support the existence of [the claimant's] alleged conditions").  
19 Therefore, the Court finds no error.

## 20 **B. Plaintiff's Subjective Complaints**

21 Plaintiff argues that the ALJ erred in rejecting his subjective complaints in the absence  
22 of clear and convincing reasons for doing so.

23 To determine whether a claimant's testimony regarding subjective pain or symptoms  
24 is credible, the ALJ must engage in a two-step analysis. "First, the ALJ must determine  
25 whether the claimant has presented objective medical evidence of an underlying impairment  
26 'which could reasonably be expected to produce the pain or other symptoms alleged.' The  
27 claimant, however, 'need not show that her impairment could reasonably be expected to  
28 cause the severity of the symptom she has alleged; she need only show that it could

1 reasonably have caused some degree of the symptom.” Lingenfelter v. Astrue, 504 F.3d  
2 1028, 1036-37 (9<sup>th</sup> Cir. 2007) (citations omitted). “Second, if the claimant meets this first  
3 test, and there is no evidence of malingering, ‘the ALJ can reject the claimant’s testimony  
4 about the severity of her symptoms only by offering specific, clear and convincing reasons  
5 for doing so.” Id. at 1037 (citations omitted). General assertions that the claimant’s  
6 testimony is not credible are insufficient. See Parra v. Astrue, 481 F.3d 742, 750 (9<sup>th</sup> Cir.  
7 2007). The ALJ must identify “what testimony is not credible and what evidence undermines  
8 the claimant’s complaints.” Id. (quoting Lester, 81 F.3d at 834).

9 In weighing a claimant’s credibility, the ALJ may consider many factors, including,  
10 “(1) ordinary techniques of credibility evaluation, such as the claimant’s reputation for lying,  
11 prior inconsistent statements concerning the symptoms, and other testimony by the claimant  
12 that appears less than candid; (2) unexplained or inadequately explained failure to seek  
13 treatment or to follow a prescribed course of treatment; and (3) the claimant’s daily  
14 activities.” Smolen v. Chater, 80 F.3d 1273, 1284 (9<sup>th</sup> Cir. 1996); see Orn, 495 F.3d at 637-  
15 39.<sup>3</sup> The ALJ also considers “the claimant’s work record and observations of treating and  
16 examining physicians and other third parties regarding, among other matters, the nature,  
17 onset, duration, and frequency of the claimant’s symptom; precipitating and aggravating  
18 factors; [and] functional restrictions caused by the symptoms ... .” Smolen, 80 F.3d at 1284  
19 (citation omitted).

20 At the November 16, 2011 hearing, Plaintiff testified that he had a back disorder  
21 causing pain for which spinal medication injections, oral medication, and physical therapy  
22 were effective. (Tr. at 65-70, 73, 76-78.) He also testified that he weighed at one time  
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25 <sup>3</sup> With respect to the claimant’s daily activities, the ALJ may reject a claimant’s  
26 symptom testimony if the claimant is able to spend a substantial part of her day performing  
27 household chores or other activities that are transferable to a work setting. See Fair, 885 F.2d  
28 at 603. The Social Security Act, however, does not require that claimants be utterly  
incapacitated to be eligible for benefits, and many home activities may not be easily  
transferable to a work environment where it might be impossible to rest periodically or take  
medication. See id.

1 during the period at issue 450 pounds, underwent gastric bypass surgery with weight loss and  
2 increased activity, and currently weighed 269 pounds at 70 inches in height. (Tr. at 62,  
3 66-68.) He further testified that he had sleep apnea for which he used a CPAP device at  
4 night consistently, that had improved with gastric bypass surgery. (Tr. at 72.) He  
5 additionally testified that during the period at issue, he had adopted a three-year old relative,  
6 and had traveled out of state. (Tr. at 79.)

7 Having reviewed the record along with the ALJ's credibility analysis, the Court finds  
8 that the ALJ made sufficient credibility findings and identified several clear and convincing  
9 reasons supported by the record for discounting Plaintiff's statements regarding his pain and  
10 limitations. Although the ALJ recognized that Plaintiff's medically determinable  
11 impairments could reasonably be expected to cause the alleged symptoms, he also found that  
12 Plaintiff's statements concerning the intensity, persistence, and limiting effects of the  
13 symptoms were not fully credible. (Tr. at 27-31.)

14 In his evaluation of Plaintiff's credibility, the ALJ first referenced the objective  
15 medical evidence and Plaintiff's treatment record, finding that the medical records and  
16 various treatment notes do not confirm the limitations alleged by Plaintiff. (Tr. at 27-31); see  
17 Carmickle, 533 F.3d at 1161 ("Contradiction with the medical record is a sufficient basis for  
18 rejecting the claimant's subjective testimony.") (citation omitted); Batson v. Comm'r of  
19 Social Security, 359 F.3d 1190, 1197 (9<sup>th</sup> Cir. 2004) (lack of objective medical evidence  
20 supporting claimant's allegations supported ALJ's finding that claimant was not credible);  
21 Johnson v. Shalala, 60 F.3d 1428, 1434 (9<sup>th</sup> Cir. 1995) (evidence of "conservative treatment"  
22 is sufficient to discount a claimant's testimony regarding severity of an impairment); Meanal  
23 v. Apfel, 172 F.3d 1111, 1114 (9<sup>th</sup> Cir. 1999) (ALJ may consider Social Security disability  
24 claimant's failure to follow treatment advice as a factor in assessing Social Security disability  
25 claimant's credibility). Specifically, as noted above, the objective medical evidence as to  
26 Plaintiff's musculoskeletal and cardiovascular/cardiopulmonary functioning failed to support  
27 Plaintiff's alleged symptoms and limitations; demonstrated that Plaintiff's back pain, asthma,  
28 and sleep apnea were effectively controlled with medication/treatment; and, at one time,

1 indicated that Plaintiff was not on any medication at all. Further, as set forth in the medical  
2 records, the ALJ noted that Plaintiff was not compliant with prescribed physical therapy, and  
3 was discharged from physical therapy after failing to return for follow-up visits. (Tr. at 27-  
4 31.)

5 Next, the ALJ discussed Plaintiff's daily activities. (Tr. at 27-31.) "[I]f the claimant  
6 engages in numerous daily activities involving skills that could be transferred to the  
7 workplace, an adjudicator may discredit the claimant's allegations upon making specific  
8 findings relating to the claimant's daily activities." Bunnell v. Sullivan, 947 F.2d 341, 346  
9 (9<sup>th</sup> Cir. 1991) (citing Fair, 885 F.2d at 603); see Berry v. Astrue, 622 F.3d 1228, 1234-35  
10 (9<sup>th</sup> Cir. 2010) (claimant's activities suggested a greater functional capacity than alleged).  
11 Specifically, the evidence demonstrated that although Plaintiff complains of disabling  
12 symptoms and limitations, he has described daily activities which reflect inconsistencies with  
13 the other evidence of record, and are not limited to the extent one would expect. As the ALJ  
14 noted, Plaintiff reported that he cleans the house and does dishes including loading and  
15 unloading the dishwasher, goes grocery shopping, feeds chickens and collects eggs, picks up  
16 after his teenager and wife, exercises in the pool, drives, and can carry a sack of potatoes  
17 about 50 feet. (Tr. at 30.) While not alone conclusive on the issue of disability, an ALJ can  
18 reasonably consider a claimant's daily activities in evaluating the credibility of his subjective  
19 complaints. See, e.g., Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1175 (9<sup>th</sup> Cir. 2008)  
20 (upholding ALJ's credibility determination based in part of the claimant's abilities to cook,  
21 clean, do laundry, and help her husband with the finances); Burch v. Barnhart, 400 F.3d 676,  
22 680-81 (9<sup>th</sup> Cir. 2005) (upholding ALJ's credibility determination based in part on the  
23 claimant's abilities to cook, clean, shop, and handle finances).

24 In summary, the Court finds that the ALJ provided a sufficient basis to find Plaintiff's  
25 allegations not entirely credible. While perhaps the individual factors, viewed in isolation,  
26 are not sufficient to uphold the ALJ's decision to discredit Plaintiff's allegations, each factor  
27 is relevant to the ALJ's overall analysis, and it was the cumulative effect of all the factors  
28 that led to the ALJ's decision. The Court concludes that the ALJ has supported his decision

1 to discredit Plaintiff's allegations with specific, clear and convincing reasons and, therefore,  
2 the Court finds no error.

3 **C. The ALJ's Step Five Determination**

4 Plaintiff contends that the ALJ erred at Step Five by failing to accurately pose all of  
5 Plaintiff's limitations in the hypothetical to the vocational expert.

6 If a claimant cannot perform his or her past relevant work, at step five of the disability  
7 evaluation process the ALJ must show there are a significant number of jobs in the national  
8 economy the claimant is able to do. See Tackett v. Apfel, 180 F.3d 1094, 1098-99 (9<sup>th</sup> Cir.  
9 1999). The ALJ can do this through the testimony of a vocational expert or by reference to  
10 the Commissioner's Medical-Vocational Guidelines (the "grids"). See id. at 1100-01;  
11 Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9<sup>th</sup> Cir. 2000).

12 An ALJ's findings will be upheld if the weight of the medical evidence supports the  
13 hypothetical posed by the ALJ. See Martinez v. Heckler, 807 F.2d 771, 774 (9<sup>th</sup> Cir. 1987);  
14 Gallant v. Heckler, 753 F.2d 1450, 1456 (9<sup>th</sup> Cir. 1984). The vocational expert's testimony  
15 therefore must be reliable in light of the medical evidence to qualify as substantial evidence.  
16 See Embrey, 849 F.2d at 422. Accordingly, the ALJ's description of the claimant's disability  
17 "must be accurate, detailed, and supported by the medical record." Id. (citations omitted).  
18 The ALJ, however, may omit from that description those limitations he or she finds do not  
19 exist. See Rollins v. Massanari, 261 F.3d 853, 857 (9<sup>th</sup> Cir. 2001).

20 In the instant matter, because Plaintiff could not perform his past relevant work, the  
21 burden shifted to the Commissioner to determine if there was a significant number of jobs  
22 that existed in the national economy that Plaintiff could perform, considering his age,  
23 education, work experience, and residual functional capacity. See Valentine v.  
24 Commissioner of Social Security Administration, 574 F.3d 685, 689 (9<sup>th</sup> Cir. 2009). As  
25 stated previously, the ALJ found that Plaintiff retained the residual functional capacity to  
26 perform sedentary work with limitations. Vocational expert testimony was then obtained as  
27 to jobs Plaintiff could perform with his limitations. The vocational expert testified that  
28 considering an individual of Plaintiff's age, education, and work experience, with the

1 residual functional capacity noted above, a significant number of jobs existed in the national  
2 economy that Plaintiff could perform. (Tr. at 32, 86-88.) The vocational expert listed callout  
3 operator, telephone quotation clerk, and document preparer as examples. The Court finds  
4 that the ALJ's hypothetical to the vocational expert captured the essentials of the ALJ's  
5 residual functional capacity assessment – which this Court has found to be supported by  
6 substantial evidence. Therefore, the expert's response to the question constituted substantial  
7 evidence in support of the ALJ's finding that Plaintiff's could perform other work existing  
8 in the national economy. See Robbins v. Social Security Administration, 466 F.3d 880, 886  
9 (9<sup>th</sup> Cir. 2006) (hypothetical question need only include limitations supported by substantial  
10 evidence). Accordingly, the Court finds no error.

11 **V. CONCLUSION**

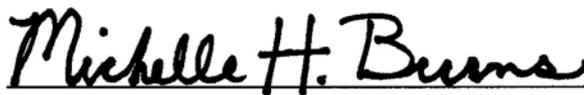
12 Substantial evidence supports the ALJ's decision to deny Plaintiff's claim for  
13 disability insurance benefits in this case. Consequently, the ALJ's decision is affirmed.

14 Based upon the foregoing discussion,

15 **IT IS ORDERED** that the decision of the ALJ and the Commissioner of Social  
16 Security be affirmed;

17 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment  
18 accordingly. The judgment will serve as the mandate of this Court.

19 DATED this 18th day of September, 2014.

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21 \_\_\_\_\_  
22 Michelle H. Burns  
23 United States Magistrate Judge  
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