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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Salvatore Scianna,

10 Plaintiff,

11 v.

12 Commissioner of Social Security  
13 Administration,

14 Defendant.

No. CV-18-00830-PHX-SMB

**ORDER**

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16 Plaintiff Salvatore Scianna challenges the Social Security Administration’s (SSA)  
17 finding that he is no longer entitled to Disability Insurance Benefits under the Social  
18 Security Act (the Act). Plaintiff filed a Complaint (Doc. 1) with this Court seeking judicial  
19 review of that decision, and the Court now addresses Plaintiff’s Opening Brief (Doc. 13,  
20 Pl. Br.), Defendant Social Security Administration Commissioner’s Response Brief (Doc.  
21 16, Def. Br.), and Plaintiff’s Reply (Doc. 19, Reply). The Court has reviewed the briefs  
22 and Administrative Record (Doc. 12, R.) and now affirms the Administrative Law Judge’s  
23 (ALJ) decision (R. at 15–35).

24 **I. BACKGROUND**

25 SSA previously determined Plaintiff to be disabled beginning on September 14,  
26 2010. (R. at 18.) The most recent medical determination that Plaintiff was disabled is from  
27 October 11, 2011. (R. at 19.) However, in a subsequent decision, SSA determined Plaintiff  
28 was no longer be disabled as of November 30, 2014. (R. at 18.) This determination was

1 upheld upon reconsideration, and Plaintiff subsequently challenged it at a hearing before  
2 an ALJ. (R. at 18.) On January 20, 2017, the ALJ confirmed that Plaintiff’s disability ended  
3 on November 30, 2014. (R. at 18.) The ALJ made that determination by comparing  
4 Plaintiff’s October 11, 2011 Residual Functional Capacity (RFC) with his RFC since  
5 November 30, 2014. (R. at 19–20.)

6 The Court has reviewed the medical evidence in its entirety. The pertinent medical  
7 evidence will be discussed in addressing the issues raised by the parties. Upon considering  
8 the medical records and opinions, the ALJ evaluated Plaintiff’s disability after November  
9 30, 2014 based on the following severe impairments: (1) status post femur fracture,  
10 (2) tibial plateau fracture, (3) tibial shaft fracture, (4) comminuted fracture of the  
11 calcaneus and avulsion of the gastrocnemius, (5) degenerative disc disease, (6)  
12 hypertension, and (7) chronic pain syndrome. (R. at 22.)

13 Ultimately, the ALJ concluded that Plaintiff was not disabled as of November 30,  
14 2014. (R. at 30.) Specifically, the ALJ found that by November 30, 2014, Plaintiff  
15 experienced medical improvement in the severity of his symptoms and his impairments no  
16 longer met any of the per se disability medical listings that he previously met. (R. at 21.)  
17 Additionally, the ALJ found that Plaintiff has the RFC “to perform light work . . . except  
18 [he] can lift or carry ten (10) pounds frequently and twenty (20) pounds occasionally, he  
19 can stand and walk for two (2) hours and sit for about six (6) hours in a normal 8-hour  
20 workday. He can frequently balance and stoop, but occasionally climb ramps and stairs,  
21 occasionally kneel, crouch, but never climb ladders, ropes, and scaffolds and never crawl.  
22 In addition, he can have no exposure to hazards such as moving machinery and unprotected  
23 heights.” (R. at 22.) Although Plaintiff cannot perform his past relevant work, the ALJ  
24 found he can perform a significant number of jobs that exist in the national economy. (R.  
25 at 29.)

## 26 **II. LEGAL STANDARD**

27 In determining whether to reverse an ALJ’s decision, the district court reviews only  
28 those issues raised by the party challenging the decision. *See Lewis v. Apfel*, 236 F.3d 503,

1 517 n.13 (9th Cir. 2001). The Court may set aside the Commissioner’s disability  
2 determination only if the determination is not supported by substantial evidence or is based  
3 on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is  
4 relevant evidence that a reasonable person might accept as adequate to support a conclusion  
5 considering the record as a whole. *Id.* To determine whether substantial evidence supports  
6 a decision, the Court must consider the record as a whole. *Id.* Generally, “[w]here the  
7 evidence is susceptible to more than one rational interpretation, one of which supports the  
8 ALJ’s decision, the ALJ’s conclusion must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947,  
9 954 (9th Cir. 2002) (citations omitted).

10 To determine whether a claimant is disabled for purposes of the Act, the ALJ  
11 follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the burden of  
12 proof on the first four steps, but the burden shifts to the Commissioner at step five. *Tackett*  
13 *v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ determines whether  
14 the claimant is presently engaging in substantial gainful activity. 20 C.F.R.  
15 § 404.1520(a)(4)(i). At step two, the ALJ determines whether the claimant has a “severe”  
16 medically determinable physical or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). At  
17 step three, the ALJ considers whether the claimant’s impairment or combination of  
18 impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P  
19 of 20 C.F.R. Part 404. 20 C.F.R. § 404.1520(a)(4)(iii). If so, the claimant is automatically  
20 found to be disabled. *Id.* At step four, the ALJ assesses the claimant’s RFC and determines  
21 whether the claimant is still capable of performing past relevant work. 20 C.F.R.  
22 § 404.1520(a)(4)(iv). At the fifth and final step, the ALJ determines whether the claimant  
23 can perform any other work in the national economy based on the claimant’s RFC, age,  
24 education, and work experience. 20 C.F.R. § 404.1520(a)(4)(v). If not, the claimant is  
25 disabled. *Id.*

26 If a person is disabled, his disability benefits can end if substantial evidence  
27 demonstrates that his impairments have medically improved such that he can engage in  
28 substantial gainful activity. *See* 42 U.S.C. § 423(f). To determine whether there is medical

1 improvement an ALJ must compare the claimant's RFC when he was last disabled to his  
2 current RFC. 20 C.F.R. § 404.1594(b)(7).

### 3 **III. ANALYSIS**

4 Plaintiff raises two arguments for the Court's consideration. First, he argues that the  
5 ALJ erred by rejecting the opinions of examining physician Dr. Ralph Purcell and  
6 erroneously crediting the opinions of Dr. Angel Gomez and Dr. Martha Goodrich. (Pl. Br.  
7 at 1.) Second, he argues that the ALJ erred by rejecting his testimony regarding the severity  
8 of his symptoms. (Pl. Br. at 1.) The Court disagrees with both arguments.

#### 9 **A. The ALJ gave specific and legitimate reasons supported by substantial** 10 **evidence for rejecting Dr. Purcell's opinions.**

11 Dr. Purcell twice examined Plaintiff, first on September 1, 2015, and next on July  
12 6, 2016. (R. at 25.) Dr. Purcell also completed an RFC evaluation form on Plaintiff's behalf  
13 on August 15, 2015. (R. at 445.) In each of these assessments, Dr. Purcell opined to various  
14 functional limitations stemming from Plaintiff's physical impairments. Specifically, he  
15 noted numerous issues with Plaintiff's right leg, including pain, loss of sensitivity, reduced  
16 range of motion, antalgic limp, leg-length discrepancy, and loss of the right heel. (R. at  
17 296–97.) He also noted Plaintiff's back issues, including disc protrusion along the  
18 vertebrae and stenosis. (R. at 297.) Because of Plaintiff's symptoms Dr. Purcell found that  
19 Plaintiff is totally and permanently disabled and precluded from work that requires sitting  
20 or standing. (R. at 297, 487.)

21 The ALJ rejected Dr. Purcell's opinions for two reasons.<sup>1</sup> First the ALJ pointed to  
22 the lack of a treatment relationship between Plaintiff and Dr. Purcell. (R. at 26.) Second,  
23 the ALJ analyzed the available medical evidence and concluded, though with unideal  
24 clarity, that Dr. Purcell's opinions were inconsistent with that evidence. (R. at 25–26.)  
25 Though the ALJ did not explicitly state the second reason, the Court can infer this rationale  
26 from the ALJ's opinion based on the proximity and relatedness of the discussions of the

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28 <sup>1</sup> The ALJ also correctly rejected Dr. Purcell's conclusion that Plaintiff is totally disabled because that determination is reserved to the ALJ. 20 C.F.R. § 404.1527(d).

1 medical evidence and Dr. Purcell’s opinions. *See Brown-Hunter v. Colvin*, 806 F.3d 487,  
2 492 (9th Cir. 2015).

3 Plaintiff offers several reasons that the ALJ’s rejection of Dr. Purcell’s opinion, and  
4 the crediting of the opinions of Dr. Martha Goodrich and Dr. Angel Gomez, was error.  
5 First, he argues that the opinions of Dr. Goodrich and Dr. Gomez did not rely on enough  
6 background medical information in reaching their conclusions. (Pl. Br. at 14.) Similarly,  
7 he argues that their opinions were made at a time when the record was incomplete. Thus,  
8 he argues their opinions are based on incomplete information and are therefore inadequate.  
9 (Pl. Br. at 15.) He also argues that the ALJ failed to take into consideration Dr. Purcell’s  
10 specialty as an orthopedic surgeon. (Pl. Br. at 16.) Finally, he challenges the ALJ’s  
11 rationale that Dr. Purcell did not have a treating relationship with Plaintiff. (Pl. Br. at 17.)

12 While “[t]he ALJ must consider all medical opinion evidence,” there is a hierarchy  
13 among the sources of medical opinions. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir.  
14 2008). Those who have treated a claimant are treating physicians, those who examined but  
15 did not treat the claimant are examining physicians, and those who neither examined nor  
16 treated the claimant are nonexamining physicians. *Lester v. Chater*, 81 F.3d 821, 830 (9th  
17 Cir. 1995). An examining physician’s opinion is generally entitled to greater weight than the  
18 opinion of a nonexamining physician. *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990).  
19 An ALJ must provide clear and convincing reasons for rejecting the uncontradicted opinion  
20 of an examining physician. *Id.* Even if the opinion of an examining physician is contradicted  
21 by the opinion of another doctor, the examining physician’s opinion can only be rejected for  
22 specific and legitimate reasons supported by substantial evidence. *Andrews v. Shalala*, 53  
23 F.3d 1035, 1043 (9th Cir. 1995).

24 The ALJ offered specific and legitimate reasons supported by substantial evidence to  
25 reject Dr. Purcell’s opinions. The ALJ could consider the lack of treatment history between  
26 Dr. Purcell and Plaintiff in discounting Dr. Purcell’s opinions since length of treatment is a  
27 relevant consideration for weighing medical opinions. 20 C.F.R. §§ 404.1527(c)(2)–  
28 404.1527(c)(6). The ALJ could also appropriately consider whether the medical evidence

1 supports Dr. Purcell's opinions since consistency with the record is a relevant  
2 consideration. *Id.* Furthermore, the ALJ's reasons are supported by substantial evidence  
3 because they find significant support in the record.

4 Plaintiff's challenges primarily advocate a reweighing of the ALJ's consideration  
5 of the evidence, which this Court cannot do. *See Carmickle v. Comm'r of Soc. Sec.*, 533  
6 F.3d 1155, 1164 (9th Cir. 2008). Plaintiff's contentions that Dr. Gomez and Dr. Goodrich  
7 did not consider enough medical evidence are unpersuasive. The ALJ is responsible for  
8 holistically considering each medical opinion and determining the weight to give to each.  
9 20 C.F.R. §§ 404.1527(c)(2)–404.1527(c)(6). Here, the ALJ reviewed all the evidence and  
10 appropriately concluded that the opinions of Dr. Gomez and Dr. Goodrich were adequately  
11 founded on reliable medical evidence.

12 The ALJ also appropriately concluded that the opinions of Dr. Gomez and Dr.  
13 Goodrich were more consistent with the medical evidence than Dr. Purcell's opinions. For  
14 example, during a consultative examination, Dr. Gomez found that Plaintiff reported issues  
15 only in his lower right leg and reported no issues with sitting. (R. at 24, 264, 267.) Despite  
16 these issues, Plaintiff had normal exam findings in the other areas of his body. (R. at 24.)  
17 Dr. Purcell found no spinal issues in September 2015 and no instability in either knee or  
18 ankle, though there was mild pain with downward pressure on Plaintiff's right knee. (R. at  
19 25.) Ultimately, there is limited treatment or diagnostic evidence, and substantial evidence  
20 supports the ALJ's conclusion that Dr. Purcell's opinions are inconsistent with the medical  
21 evidence. (R. at 25.)

22 Finally, it was not error for the ALJ to consider the lack of a treatment relationship  
23 between Plaintiff and Dr. Purcell. Even Dr. Purcell remarked that Plaintiff presented for a  
24 follow-up only "after a long hiatus." (R. at 485.) The ALJ could consider the length of the  
25 treatment relationship and Dr. Purcell's specialty in orthopedics in evaluating Dr. Purcell's  
26 opinion, and still give that opinion little weight without committing error. Notably, Plaintiff  
27 does not challenge the ALJ's treatment of his actual treating physician's opinion.

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1 In sum, the ALJ gave specific and legitimate reasons for rejecting Dr. Purcell's  
2 opinion and those reasons are supported by substantial evidence. Consequently, the ALJ  
3 did not err in rejecting his opinions.

4 **B. The ALJ gave specific, clear, and convincing reasons supported by**  
5 **substantial evidence for rejecting Plaintiff's symptom testimony.**

6 Plaintiff testified to various walking and sitting limitations because of his right leg  
7 impairments. (R. at 53.) According to his testimony, his days consist largely of rest,  
8 occasional helping with chores, and some exercise and walking. (R. at 54.)

9 The ALJ gave several reasons for rejecting Plaintiff's testimony, but only two are  
10 valid. They are: (1) Plaintiff's daily activities are inconsistent with his alleged limitations,  
11 and (2) the objective medical evidence does not fully substantiate his limitations. The  
12 plainly invalid reasons the ALJ gave are: (1) Plaintiff's daily activities cannot be  
13 objectively verified, and (2) his alleged limitations may not be completely caused by his  
14 physical impairments. The Court rejects these reasons because the ALJ has a duty to  
15 provide specific reasons for rejecting testimony rather than speculate without proof that a  
16 claimant's activities are not limited or are not limited because of his impairments.

17 An ALJ performs a two-step analysis to evaluate a claimant's testimony regarding  
18 pain and symptoms. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014). First, the ALJ  
19 evaluates whether the claimant has presented objective medical evidence of an impairment  
20 "which could reasonably be expected to produce the pain or symptoms alleged."  
21 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035–36 (9th Cir. 2007) (quoting *Bunnell v.*  
22 *Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991) (*en banc*) (internal quotation marks omitted)).  
23 If the claimant presents such evidence then "the ALJ can reject the claimant's testimony  
24 about the severity of her symptoms only by offering specific, clear and convincing reasons  
25 for doing so." *Garrison*, 759 F.3d at 1014–15 (citing *Smolen v. Chater*, 80 F.3d 1273, 1281  
26 (9th Cir. 1996)). This is the most demanding standard in Social Security cases. *Id.* at 1015.

27 An ALJ may consider a variety of factors in evaluating symptom testimony  
28 including, "[the claimant's] reputation for truthfulness, inconsistencies either in his

1 testimony or between his testimony and his conduct, his daily activities, his work record,  
2 and testimony from physicians and third parties concerning the nature, severity, and effect  
3 of the symptoms of which he complains.” *Light v. Soc. Sec. Admin., Comm’r*, 119 F.3d  
4 789, 792 (9th Cir. 1997). The ALJ may also consider that the medical record lacks evidence  
5 to support certain symptom testimony but cannot reject a claimant’s testimony for that  
6 reason alone. *Burch v. Barnhart*, 400 F.3d 676, 680–81 (9th Cir. 2005). Additionally, if the  
7 ALJ rejects a Plaintiff’s symptom testimony for a single permissible purpose, then the  
8 ALJ’s errant rejection of the testimony for other additional reasons is harmless. *See*  
9 *Carmickle*, 533 F.3d at 1162.

10 The ALJ’s reasons for rejecting Plaintiff’s testimony—that it was contradicted by  
11 his daily activities and the medical evidence—comprise a specific, clear, and convincing  
12 reason supported by substantial evidence. The ALJ noted that Plaintiff has maintained the  
13 ability to perform many daily activities that are inconsistent with total disability. These  
14 activities include driving, walking three days per week for exercise, and daily swimming.  
15 (R. at 26, 54, 284.) The ALJ correctly determined that these activities are inconsistent with  
16 Plaintiff’s alleged total disability. Furthermore, the ALJ correctly determined that  
17 Plaintiff’s alleged total disability was inconsistent with the medical evidence. Despite his  
18 persistent issues with his right leg, the medical evidence does not indicate that his  
19 limitations are totally disabling. (R. at 25.) Furthermore, Plaintiff testified that, despite his  
20 limitations, he could still sit 30 to 40 minutes at a time and stand for one hour before he  
21 needs to sit down, which is in line with the ALJ’s RFC calculation. (R. at 53.) Though the  
22 ALJ could not reject Plaintiff’s testimony solely because of the medical evidence, the  
23 testimony’s inconsistency with the medical evidence reinforces the ALJ’s other reason.  
24 Accordingly, the ALJ’s analysis of Plaintiff’s testimony, his daily activities, and the  
25 medical evidence is backed by substantial evidence and, consequently, the ALJ did not  
26 err.<sup>2</sup>

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28 <sup>2</sup> The ALJ’s other offered reasons were insufficient to reject Plaintiff’s testimony. Nevertheless, those errors were harmless because the ALJ also gave sufficient reasons for rejecting Plaintiff’s testimony. *See Carmickle*, 533 F.3d at 1162.



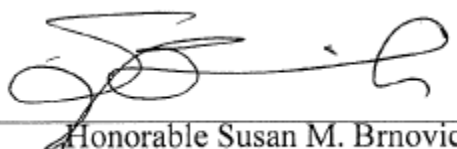
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Because the ALJ’s evaluation of the medical opinions and symptom testimony in Plaintiff’s case is backed by substantial evidence, the ALJ did not commit reversible error.

**IT IS THEREFORE ORDERED** affirming the January 20, 2017 decision of the Administrative Law Judge (R. at 15–35), as upheld by the Appeals Council on January 17, 2018 (R. at 1–6).

**IT IS FURTHER ORDERED** directing the Clerk to enter final judgment consistent with this Order and close this case.

Dated this 13th day of March, 2020.

  
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Honorable Susan M. Brnovich  
United States District Judge