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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

STEVIE B. RICHARDSON,	)	Case No. CV 13-02218-JEM
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND
v.	)	ORDER AFFIRMING DECISION OF
	)	THE COMMISSIONER OF SOCIAL
CAROLYN W. COLVIN,	)	SECURITY
Acting Commissioner of Social Security,	)	
	)	
Defendant.	)	

**PROCEEDINGS**

On April 9, 2013, Stevie B. Richardson (“Plaintiff” or “Claimant”) filed a complaint seeking review of the decision by the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s applications for Social Security Disability Insurance benefits and Supplemental Security Income benefits. The Commissioner filed an Answer on July 30, 2013. On November 25, 2013, the parties filed a Joint Stipulation (“JS”). The matter is now ready for decision.

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record (“AR”), the Court concludes that the Commissioner’s decision must be affirmed and this case dismissed with prejudice.

## BACKGROUND

1  
2 Plaintiff is a 53-year-old male who applied for Social Security Disability Insurance  
3 benefits on November 2, 2009 and Supplemental Security Income benefits on October  
4 31, 2009. (AR 12.) The ALJ determined that Plaintiff has not engaged in substantial  
5 gainful activity since January 2, 2007, the alleged onset date of his disability. (AR 14.)

6 Plaintiff's claims were denied initially on February 26, 2010. (AR 12.) Plaintiff filed  
7 a timely request for hearing, which was held before Administrative Law Judge ("ALJ")  
8 Robert S. Eisman on April 27, 2011, in Downey, California. (AR 12) Claimant appeared  
9 and testified at the hearing and was represented by counsel. (AR 12.) Vocational  
10 expert ("VE") Randi A. Langford-Hetrick also appeared and testified at the hearing. (AR  
11 12.)

12 The ALJ issued an unfavorable decision on May 27, 2011. (AR 12-20.) The  
13 Appeals Council denied review on October 1, 2012. (AR 2-4.)

## DISPUTED ISSUES

14  
15 As reflected in the Joint Stipulation, Plaintiff only raises the following disputed  
16 issue as ground for reversal and remand:

- 17 1. Whether the ALJ has properly considered the testimony of Stevie  
18 Richardson.

## STANDARD OF REVIEW

19  
20 Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine  
21 whether the ALJ's findings are supported by substantial evidence and free of legal error.  
22 Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); see also DeLorme v. Sullivan,  
23 924 F.2d 841, 846 (9th Cir. 1991) (ALJ's disability determination must be supported by  
24 substantial evidence and based on the proper legal standards).

25 Substantial evidence means "'more than a mere scintilla,' but less than a  
26 preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting  
27 Richardson v. Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is "such  
28 relevant evidence as a reasonable mind might accept as adequate to support a

1 conclusion.” Richardson, 402 U.S. at 401 (internal quotation marks and citation  
2 omitted).

3 This Court must review the record as a whole and consider adverse as well as  
4 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).  
5 Where evidence is susceptible to more than one rational interpretation, the ALJ’s  
6 decision must be upheld. Morgan v. Comm’r of the Soc. Sec. Admin., 169 F.3d 595, 599  
7 (9th Cir. 1999). “However, a reviewing court must consider the entire record as a whole  
8 and may not affirm simply by isolating a ‘specific quantum of supporting evidence.’”  
9 Robbins, 466 F.3d at 882 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir.  
10 1989)); see also Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007).

### 11 THE SEQUENTIAL EVALUATION

12 The Social Security Act defines disability as the “inability to engage in any  
13 substantial gainful activity by reason of any medically determinable physical or mental  
14 impairment which can be expected to result in death or . . . can be expected to last for a  
15 continuous period of not less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A),  
16 1382c(a)(3)(A). The Commissioner has established a five-step sequential process to  
17 determine whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920.

18 The first step is to determine whether the claimant is presently engaging in  
19 substantial gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the  
20 claimant is engaging in substantial gainful activity, disability benefits will be denied.  
21 Bowen v. Yuckert, 482 U.S. 137, 140 (1987). Second, the ALJ must determine whether  
22 the claimant has a severe impairment or combination of impairments. Parra, 481 F.3d at  
23 746. An impairment is not severe if it does not significantly limit the claimant’s ability to  
24 work. Smolen, 80 F.3d at 1290. Third, the ALJ must determine whether the impairment  
25 is listed, or equivalent to an impairment listed, in 20 C.F.R. Pt. 404, Subpt. P, Appendix I  
26 of the regulations. Parra, 481 F.3d at 746. If the impairment meets or equals one of the  
27 listed impairments, the claimant is presumptively disabled. Bowen v. Yuckert, 482 U.S.  
28 at 141. Fourth, the ALJ must determine whether the impairment prevents the claimant

1 from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir. 2001).

2 Before making the step four determination, the ALJ first must determine the  
3 claimant's residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). Residual  
4 functional capacity ("RFC") is "the most [one] can still do despite [his or her] limitations"  
5 and represents an assessment "based on all the relevant evidence." 20 C.F.R. §§  
6 404.1545(a)(1), 416.945(a)(1). The RFC must consider all of the claimant's  
7 impairments, including those that are not severe. 20 C.F.R. §§ 416.920(e),  
8 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

9 If the claimant cannot perform his or her past relevant work or has no past  
10 relevant work, the ALJ proceeds to the fifth step and must determine whether the  
11 impairment prevents the claimant from performing any other substantial gainful activity.  
12 Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000). The claimant bears the burden of  
13 proving steps one through four, consistent with the general rule that at all times the  
14 burden is on the claimant to establish his or her entitlement to benefits. Parra, 481 F.3d  
15 at 746. Once this prima facie case is established by the claimant, the burden shifts to  
16 the Commissioner to show that the claimant may perform other gainful activity.  
17 Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support a finding that a  
18 claimant is not disabled at step five, the Commissioner must provide evidence  
19 demonstrating that other work exists in significant numbers in the national economy that  
20 the claimant can do, given his or her RFC, age, education, and work experience. 20  
21 C.F.R. § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is  
22 disabled and entitled to benefits. Id.

### 23 THE ALJ DECISION

24 In this case, the ALJ determined at step one of the sequential process that Plaintiff  
25 has not engaged in substantial gainful activity since January 2, 2007, the alleged onset  
26 date. (AR 14.)  
27  
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1 At step two, the ALJ determined that Plaintiff has the following severe  
2 impairments: back pain/degenerative disc disease (20 C.F.R. §§ 404.1520(c) and  
3 416.920(c)). (AR 14-15.)

4 At step three, the ALJ determined that Plaintiff does not have an impairment or  
5 combination of impairments that meets or medically equals one of the listed  
6 impairments. (AR 15.)

7 The ALJ then found that Plaintiff has the RFC to perform light work as defined in  
8 20 C.F.R. §§ 404.1567(b) and 416.967(b), except for the following limitations:

9 . . . can exert up to 20 pounds of force occasionally and/or up to 10  
10 pounds of force frequently and/or a negligible amount of force  
11 constantly to move objects. The Claimant can stand and walk up to 6  
12 hours and sit up to 6 hours in an 8-hour workday with normal breaks.  
13 He can perform work that does not require climbing ladders, ropes or  
14 scaffolds, balancing or crawling, and no more than occasional climbing  
15 of ramps or stairs, balancing, stooping, kneeling, or crouching. The  
16 Claimant can perform work that does not require concentrated  
17 exposure to extreme cold and hazardous machinery, unprotected  
18 heights, or other high risk, hazardous or unsafe conditions.

19 (AR 15-18.) In determining this RFC, the ALJ made an adverse credibility determination.  
20 (AR 16.)

21 At step four, the ALJ found that Plaintiff is unable to perform any past relevant  
22 work as an in-home attendant. (AR 18.) At step five, the ALJ found that considering his  
23 age, education, work experience, and RFC, Claimant has acquired work skills from past  
24 relevant work that are transferable to other occupations with jobs existing in significant  
25 numbers in the national economy that Claimant can perform, including cashier and office  
26 helper. (AR 18-20.)

27 Consequently, the ALJ found Claimant not disabled within the meaning of the  
28 Social Security Act. (AR 20.)

## DISCUSSION

1  
2 The ALJ properly discounted Plaintiff's credibility. The ALJ's RFC is supported by  
3 substantial evidence. The ALJ's nondisability determination is supported by substantial  
4 evidence and free of legal error.

### A. Relevant Federal Law

5  
6 The test for deciding whether to accept a claimant's subjective symptom testimony  
7 turns on whether the claimant produces medical evidence of an impairment that  
8 reasonably could be expected to produce the pain or other symptoms alleged. Bunnell  
9 v. Sullivan, 947 F.2d 341, 346 (9th Cir. 1991); see also Reddick v. Chater, 157 F.3d 715,  
10 722 (9th Cir. 1998); Smolen, 80 F.3d at 1281-82 esp. n.2. The Commissioner may not  
11 discredit a claimant's testimony on the severity of symptoms merely because they are  
12 unsupported by objective medical evidence. Reddick, 157 F.3d at 722; Bunnell, 947  
13 F.2d at 343, 345. If the ALJ finds the claimant's pain testimony not credible, the ALJ  
14 "must specifically make findings which support this conclusion." Bunnell, 947 F.2d at  
15 345. The ALJ must set forth "findings sufficiently specific to permit the court to conclude  
16 that the ALJ did not arbitrarily discredit claimant's testimony." Thomas v. Barnhart, 278  
17 F.3d 947, 958 (9th Cir. 2002); see also Rollins v. Massanari, 261 F.3d 853, 856-57 (9th  
18 Cir. 2001); Bunnell, 947 F.2d at 345-46. Unless there is evidence of malingering, the  
19 ALJ can reject the claimant's testimony about the severity of a claimant's symptoms only  
20 by offering "specific, clear and convincing reasons for doing so." Smolen, 80 F.3d at  
21 1283-84; see also Reddick, 157 F.3d at 722. The ALJ must identify what testimony is  
22 not credible and what evidence discredits the testimony. Reddick, 157 F.3d at 722;  
23 Smolen, 80 F.3d at 1284.

### B. Analysis

24  
25 In determining Plaintiff's RFC, the ALJ concluded the Plaintiff's medically  
26 determinable impairments could be expected to cause his alleged symptoms. (AR 16.)  
27 The ALJ, however, found that Plaintiff's statements regarding the intensity, persistence  
28 and limiting effects of these symptoms were not credible to the extent inconsistent with

1 his assessed RFC. (AR 16.) Because the ALJ did not make a finding of malingering, he  
2 was required to provide clear and convincing reasons supported by substantial evidence  
3 to discount Plaintiff's credibility. Smolen, 80 F.3d at 1283-84. The ALJ did so.

4 The ALJ found that the medical evidence of record does not support or  
5 corroborate the extent of pain or limitations alleged by Plaintiff or a disabling condition.  
6 (AR 16.) An ALJ is entitled to consider whether there is a lack of medical evidence to  
7 corroborate a claimant's alleged pain symptoms so long as it is not the only reason for  
8 discounting a claimant's credibility. Burch v. Barnhart, 400 F.3d 676, 680-81 (9th Cir.  
9 2005); Thomas, 278 F.3d at 989. Here, a radiograph of Plaintiff's lumbosacral spine  
10 revealed no muscle spasms and an August 28, 2008 MRI of the lumbar spine revealed  
11 only moderate degenerative changes with no stenosis. (AR 16.) Despite complaints of  
12 bilateral knee pain, a physician on examination noted no tenderness and no pain  
13 elicited. (AR 16.)

14 The ALJ gave significant weight to the opinion of Dr. Kristof Siciarz, an internist  
15 who evaluated Plaintiff on February 8, 2010. (AR 17, 220-226.) Dr. Siciarz found spinal  
16 tenderness or spasm and minimal discogenic disease. (AR 17.) He assessed a light  
17 work RFC with limitations. (AR 17.) No treating physician opinion refutes Dr. Siciarz'  
18 findings. (AR 17.) A previous consulting internist, Dr. Rocely Ella-Tamayo, offered a  
19 similar RFC assessment on February 8, 2009. (AR 17, 257-261.) Her examination of  
20 the Claimant's back revealed normal range of motion and no tenderness, and a  
21 radiograph taken at the time of the evaluation indicated minimal spondylosis and mild  
22 disc degeneration. (AR 17.) A State agency reviewing physician, Dr. M. Bayar, also  
23 assessed a light work RFC with limitations on February 19, 2010. (AR 17, 228-233.)  
24 The ALJ found that the RFC is supported by the opinions of Dr. Siciarz, Dr. Tamayo and  
25 Dr. Bayar. Plaintiff does not address or dispute the medical evidence cited by the ALJ.

26 The ALJ also discounted Plaintiff's subjective symptoms because his treatment  
27 was conservative in nature. (AR 16.) Conservative treatment is a valid basis for  
28 discounting a claimant's testimony. Parra, 481 F.3d at 750-751. Here, there was no

1 surgery or aggressive treatment, only pain injections and medications. Impairments  
2 controlled effectively with conservative treatment such as medications are not disabling.  
3 Tommasetti v. Astrue, 533 F.3d 1035, 1040 (9th Cir. 2008); Warre v. Comm'r of Soc.  
4 Sec. Adm., 439 F.3d 1001, 1006 (9th Cir. 2006).

5 The record also indicates non-compliance by Plaintiff with his recommended  
6 treatment (AR 16) which demonstrates a possible unwillingness to do what is necessary  
7 to improve his condition or an indication that his symptoms are not as severe as alleged.  
8 A claimant's failure to follow a prescribed course of treatment is a valid basis for  
9 discounting credibility. Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989). Here, the ALJ  
10 found Plaintiff repeatedly missed doctor's appointments and that the record is replete  
11 with notes of cancelled or "no-show" appointments. (AR 16.)

12 The ALJ also noted inconsistencies in Plaintiff's statements and conduct which is  
13 a valid basis for discounting credibility. Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir.  
14 2012); Light v. Soc. Sec. Adm., 119 F.3d 789, 792 (9th Cir. 1997). Here, Plaintiff stated  
15 that he had been using a cane for five years based on a physician's prescription but  
16 there is no reference to a prescription for a cane in the medical records. (AR 16.) The  
17 ALJ also noted that Dr. Tamayo found Claimant did not need the use of an assistive  
18 device for near or prolonged ambulation. (AR 17.)

19 The ALJ provided clear and convincing reasons supported by substantial evidence  
20 for discounting the severity of Plaintiff's subjective symptoms. Plaintiff obviously  
21 disagrees with the ALJ's interpretation of the evidence but the ALJ is the one  
22 responsible for resolving ambiguities in the record. Andrews, 53 F.3d at 1039. Where  
23 the ALJ's interpretation of the evidence is reasonable as it is here, it should not be  
24 second-guessed. Rollins, 261 F.3d at 857.

25 The ALJ's RFC is supported by substantial evidence. The ALJ's nondisability  
26 determination is supported by substantial evidence and free of legal error.

27  
28



**ORDER**

IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the Commissioner of Social Security and dismissing this case with prejudice.

DATED: December 10, 2013

/s/ John E. McDermott  
JOHN E. MCDERMOTT  
UNITED STATES MAGISTRATE JUDGE

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