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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BYRON ISRAEL BROWN,	)	Case No. CV 13-5465-JPR
	)	
Plaintiff,	)	
	)	<b>MEMORANDUM OPINION AND ORDER</b>
vs.	)	<b>AFFIRMING THE COMMISSIONER</b>
	)	
CAROLYN W. COLVIN,	)	
Acting Commissioner of	)	
Social Security,	)	
	)	
Defendant.	)	
	)	

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**I. PROCEEDINGS**

Plaintiff seeks review of the Commissioner’s final decision denying his application for Social Security disability insurance benefits (“DIB”) and Supplemental Security Income benefits (“SSI”). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). This matter is before the Court on the parties’ Joint Stipulation, filed May 7, 2014, which the Court has taken under submission without oral argument. For the reasons discussed below, the Commissioner’s decision is affirmed and judgment is entered in her favor.

1 **II. BACKGROUND**

2 Plaintiff was born on June 16, 1971. (AR 77.) He completed  
3 11th grade. (AR 43.) He worked full time from 1991 to 2005 and  
4 sporadically through about 2007 selling and repairing musical  
5 instruments and accessories in a shop owned by his parents. (AR  
6 43-48, 73.)

7 On May 27, 2011, Plaintiff filed applications for DIB and  
8 SSI. (AR 28, 150-63.) He alleged that he had been unable to  
9 work since July 1, 2006, because of right-eye problems, right-eye  
10 cataracts, right-eye glaucoma, right-eye detached retina, kidney  
11 stones, kidney infections, headaches caused by eye problems,  
12 fatigue, flu-like symptoms, nausea, kidney pain, upset stomach,  
13 difficulty with reading and concentration, "[b]ad ankles," and  
14 anxiety caused by eye problems. (AR 28, 150-63, 189.) After  
15 Plaintiff's applications were denied initially and on  
16 reconsideration, he requested a hearing before an Administrative  
17 Law Judge. (AR 115-16.)

18 A hearing was held on January 20, 2012, at which Plaintiff,  
19 who was represented by counsel, testified, as did a vocational  
20 expert ("VE"). (AR 40-76.) In a written decision issued  
21 February 21, 2012, the ALJ determined that Plaintiff was not  
22 disabled. (AR 28-35.) On February 23, 2012, Plaintiff requested  
23 Appeals Council review. (AR 23.) On June 27, 2013, the council  
24 denied the request. (AR 1-4.) This action followed.

25 **III. STANDARD OF REVIEW**

26 Under 42 U.S.C. § 405(g), a district court may review the  
27 Commissioner's decision to deny benefits. The ALJ's findings and  
28 decision should be upheld if they are free of legal error and

1 supported by substantial evidence based on the record as a whole.  
2 Id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.  
3 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence  
4 means such evidence as a reasonable person might accept as  
5 adequate to support a conclusion. Richardson, 402 U.S. at 401;  
6 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It  
7 is more than a scintilla but less than a preponderance.  
8 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.  
9 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether  
10 substantial evidence supports a finding, the reviewing court  
11 "must review the administrative record as a whole, weighing both  
12 the evidence that supports and the evidence that detracts from  
13 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,  
14 720 (9th Cir. 1996). "If the evidence can reasonably support  
15 either affirming or reversing," the reviewing court "may not  
16 substitute its judgment" for that of the Commissioner. Id. at  
17 720-21.

#### 18 **IV. THE EVALUATION OF DISABILITY**

19 People are "disabled" for purposes of receiving Social  
20 Security benefits if they are unable to engage in any substantial  
21 gainful activity owing to a physical or mental impairment that is  
22 expected to result in death or which has lasted, or is expected  
23 to last, for a continuous period of at least 12 months. 42  
24 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257  
25 (9th Cir. 1992).

##### 26 A. The Five-Step Evaluation Process

27 The ALJ follows a five-step sequential evaluation process in  
28 assessing whether a claimant is disabled. 20 C.F.R.

1 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,  
2 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first  
3 step, the Commissioner must determine whether the claimant is  
4 currently engaged in substantial gainful activity; if so, the  
5 claimant is not disabled and the claim must be denied.

6 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If the claimant is not  
7 engaged in substantial gainful activity, the second step requires  
8 the Commissioner to determine whether the claimant has a "severe"  
9 impairment or combination of impairments significantly limiting  
10 his ability to do basic work activities; if not, a finding of not  
11 disabled is made and the claim must be denied.

12 §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

13 If the claimant has a "severe" impairment or combination of  
14 impairments, the third step requires the Commissioner to  
15 determine whether the impairment or combination of impairments  
16 meets or equals an impairment in the Listing of Impairments  
17 ("Listing") set forth at 20 C.F.R., Part 404, Subpart P, Appendix  
18 1; if so, disability is conclusively presumed and benefits are  
19 awarded. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the  
20 claimant's impairment or combination of impairments does not meet  
21 or equal an impairment in the Listing, the fourth step requires  
22 the Commissioner to determine whether the claimant has sufficient  
23 residual functional capacity ("RFC")<sup>1</sup> to perform his past work;  
24 if so, the claimant is not disabled and the claim must be denied.

25 §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The claimant has the  
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27 <sup>1</sup> RFC is what a claimant can do despite existing exertional  
28 and nonexertional limitations. 20 C.F.R. §§ 404.1545, 416.945;  
see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 burden of proving he is unable to perform past relevant work.  
2 Drouin, 966 F.2d at 1257. If the claimant meets that burden, a  
3 prima facie case of disability is established. Id. If that  
4 happens or if the claimant has no past relevant work, the  
5 Commissioner then bears the burden of establishing that the  
6 claimant is not disabled because he can perform other substantial  
7 gainful work available in the national economy.  
8 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). That determination  
9 comprises the fifth and final step in the sequential analysis.  
10 §§ 404.1520, 416.920; Lester, 81 F.3d at 828 n.5; Drouin, 966  
11 F.2d at 1257.

12 B. The ALJ's Application of the Five-Step Process

13 At step one, the ALJ found that Plaintiff had not engaged in  
14 any substantial gainful activity since July 1, 2006, his alleged  
15 onset date. (AR 30.) At step two, he concluded that Plaintiff  
16 had the severe impairments of "diabetic nephrolithiasis and a  
17 visual impairment."<sup>2</sup> (Id.) At step three, he determined that  
18 Plaintiff's impairments did not meet or equal any of the  
19 impairments in the Listing. (AR 32.) At step four, the ALJ  
20 found that Plaintiff had the RFC to perform light work requiring  
21 only occasional depth perception and a limited field of vision.  
22 (Id.) Based on the VE's testimony, the ALJ concluded that  
23 Plaintiff was able to perform his past relevant work as a  
24 musical-instruments salesperson. (AR 34.) Accordingly, he  
25 determined that Plaintiff was not disabled. (AR 35.)

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28 <sup>2</sup> Nephrolithiasis means that kidney stones are present.  
See Stedman's Medical Dictionary 1191 (27th ed. 2000).

1 **V. DISCUSSION**

2 Plaintiff claims the ALJ erred in assessing (1) his  
3 credibility and (2) nonexertional limitations arising from his  
4 visual impairment. (J. Stip. at 3.)

5 A. The ALJ Properly Assessed Plaintiff's Credibility

6 1. Applicable law

7 An ALJ's assessment of symptom severity and claimant  
8 credibility is entitled to "great weight." See Weetman v.  
9 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779  
10 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to  
11 believe every allegation of disabling pain, or else disability  
12 benefits would be available for the asking, a result plainly  
13 contrary to 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674  
14 F.3d 1104, 1112 (9th Cir. 2012) (internal quotation marks  
15 omitted).

16 In evaluating a claimant's subjective symptom testimony, the  
17 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d  
18 at 1035-36. "First, the ALJ must determine whether the claimant  
19 has presented objective medical evidence of an underlying  
20 impairment [that] could reasonably be expected to produce the  
21 pain or other symptoms alleged." Id. at 1036 (internal quotation  
22 marks omitted). If such objective medical evidence exists, the  
23 ALJ may not reject a claimant's testimony "simply because there  
24 is no showing that the impairment can reasonably produce the  
25 degree of symptom alleged." Smolen v. Chater, 80 F.3d 1273, 1282  
26 (9th Cir. 1996) (emphasis in original). When the ALJ finds a  
27 claimant's subjective complaints not credible, the ALJ must make  
28 specific findings that support the conclusion. See Berry v.

1 Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent affirmative  
2 evidence of malingering, those findings must provide "clear and  
3 convincing" reasons for rejecting the claimant's testimony.  
4 Lester, 81 F.3d at 834. If the ALJ's credibility finding is  
5 supported by substantial evidence in the record, the reviewing  
6 court "may not engage in second-guessing." Thomas v. Barnhart,  
7 278 F.3d 947, 959 (9th Cir. 2002).

8           2. Relevant background

9           Plaintiff testified that his first bout of kidney-related  
10 illness led to hospitalization in July 2006, but his doctors  
11 thereafter "just seemed to be telling me to watch my diet and to  
12 always [drink] a lot of water." (AR 52.) He said, however, that  
13 he "started being sick all the time with what sort of feels like  
14 a flu, with kind of a queasiness and stomach pains," and he had  
15 recurrent kidney infections requiring brief hospitalizations.  
16 (AR 53-54.) He testified that he had learned to avoid  
17 infections, primarily by drinking large amounts of water, but  
18 still suffered kidney stones and pain. (AR 53.)

19           Plaintiff testified that he had suffered eye problems  
20 beginning in childhood but that they became more significant  
21 following a major right-eye retinal detachment in 2006. (AR 54-  
22 55.) That was repaired with surgery in August 2006, and  
23 Plaintiff had other right-eye procedures in 2007 and 2010. (AR  
24 56.) Plaintiff testified that as a result of his right-eye  
25 problems and procedures, he could "sort of see colors and shapes,  
26 but it's sort of like looking through 7up and wax paper" with his  
27 right eye. (AR 57.) His left eye "[wa]s okay." (Id.)

28           Plaintiff testified, however, that because his right eye had

1 been his dominant eye, he sometimes had trouble reading or  
2 concentrating on a computer screen, which gave him headaches and  
3 made it difficult to concentrate. (AR 57-58.) Plaintiff had a  
4 driver's license but drove only during the day. (AR 43, 47, 58.)  
5 He testified that although he had 20/30 eyesight in his left eye,  
6 "on a grey day," "[t]he messed up [right] eye kind of takes  
7 over." (AR 58; see AR 484, 492 (2009 and 2011 eye  
8 examinations).)

9 Plaintiff testified that he had not worked full time since  
10 before his 2005 cataract surgery but that he had continued to  
11 work when healthy until 2007, shortly before his parents sold  
12 their business. (AR 51, 60-63.) He had been advised by his  
13 doctors not to lift more than about 20 pounds so as to avoid  
14 putting too much pressure on his right eye. (AR 60.) He said he  
15 could "[s]ometimes" walk 30 minutes, did not require a cane,  
16 could "[u]sually" stand for an hour, and could sit for two hours.  
17 (Id.)<sup>3</sup> Plaintiff testified that his general practitioner had  
18 advised him to continue to exercise, and that he continued to try  
19 to walk and hike, "but it's kind of limited." (AR 65.)

20 On a normal day, Plaintiff drank a lot of water, went for a  
21 walk, tidied the house, played guitar for about 45 minutes, and  
22 checked email and used the computer until he got a headache,  
23 usually after about 20 minutes. (AR 66-67.) He said that he was  
24 incapacitated by his symptoms for about a week each month. (AR  
25 68.) He testified that "the really strong [kidney] pain happens  
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27 <sup>3</sup> Significantly, Plaintiff's live-in girlfriend stated that  
28 his conditions did not affect his ability to walk or stand.  
(See AR 206 (question 22).)



1 maybe every [three] or four months" but that he suffered flu-like  
2 symptoms "almost every other week." (AR 69.) When Plaintiff had  
3 kidney trouble, he slept irregularly. (Id.) He said he suffered  
4 "moderate headaches all the time" and "really extreme, kind of  
5 bone crushing headaches on the side of the right eye a few times  
6 a month." (AR 69-70.) Plaintiff treated the pain with over-the-  
7 counter Tylenol. (AR 70.) His eye issues also caused  
8 claustrophobia and psychological discomfort in certain lighting  
9 because of his right-eye perception problems. (AR 71-72.)

10 The VE testified that a person of Plaintiff's age,  
11 education, and work history who was limited to light work and  
12 "occasional field of vision" could do his past relevant work as a  
13 musical instruments and accessories salesperson. (AR 72-74.) In  
14 response to questioning by Plaintiff's attorney, the VE testified  
15 that such a person could not do Plaintiff's past work or maintain  
16 any other competitive employment if he were to miss two or three  
17 days of work a month because of health problems. (AR 75-76.)

### 18 3. Analysis

19 The ALJ discounted Plaintiff's symptom testimony because he  
20 found that neither the medical evidence nor Plaintiff's  
21 activities supported the alleged intensity, persistence, and  
22 limiting effects of Plaintiff's symptoms. (AR 33.) In  
23 particular, the ALJ rejected the suggestion that Plaintiff's  
24 impairments would cause him to miss two or three days of work a  
25 month. (Id.)

#### 26 a. *Treatment records*

27 Plaintiff contends that the ALJ erred in finding his  
28 testimony that he would miss two or three days of work a month

1 because of his symptoms "unsupported by substantial objective,  
2 medical and clinical evidence." (AR 33; J. Stip. at 7.)  
3 Plaintiff lists records confirming recurrent kidney stones and  
4 repeated eye operations, but he does not explain how these  
5 records support his claim that he would miss too much work to  
6 maintain competitive employment. (J. Stip. at 7-8; see AR 33.)

7       The ALJ noted Plaintiff's diabetes-related "chronic kidney  
8 infections and stones" and that the resulting "pain and fatigue  
9 . . . limit his ability to lift/carry and perform other basic  
10 work-related activities." (AR 30.) The ALJ further noted that  
11 Plaintiff's first instance of kidney problems, in 2006, led to  
12 serious illness but found no evidence of recent complications  
13 warranting emergency-room or hospital treatment. (Id.; see AR  
14 468, 469 (in January and May 2011, Plaintiff reporting passage of  
15 kidney stones that he apparently managed without seeking  
16 treatment).) As Plaintiff notes, he suffered kidney stones five  
17 times in five years. (See J. Stip. at 7; see AR 255, 273, 286,  
18 468, 469.) Although those incidents were undoubtedly very  
19 painful, he had not suffered kidney stones frequently enough that  
20 they would be expected to keep him out of work for two or three  
21 days a month, or even every three to four months, as he  
22 testified. (AR 69 ("the really strong pain" came every three to  
23 four months).)

24       Moreover, as was evident from Plaintiff's testimony and  
25 treatment records, he was able to manage his kidney ailments with  
26 conservative care. (See AR 33.) Plaintiff testified that he  
27 avoided kidney infections by regularly drinking large quantities  
28 of water. (AR 53.) Although he sought emergency-room treatment

1 for his kidney stones in September 2006 and November 2008, in  
2 each case he was treated with fluids and medication and was  
3 discharged the same day. (See AR 273, 288, 290.) And when he  
4 had kidney stones in January and May 2011, Plaintiff sought no  
5 treatment, only reporting the passage of the stones to his  
6 physician at later appointments. (See AR 468-69.) His doctor  
7 encouraged him to maintain oral hydration and adhere to a low-  
8 salt, low-cholesterol, low-oxalate diet. (AR 33, 468-69.)  
9 Further, Plaintiff managed even his worst pain with  
10 nonprescription pain medication. (See AR 70, 211, 289.) Such  
11 conservative treatment undermines Plaintiff's contention of  
12 disabling symptoms. (See AR 33 (ALJ noting that "[d]espite  
13 [kidney] condition, the claimant was advised to participate in  
14 regular exercise activities, and just to 'avoid heavy weight  
15 bearing'")); Parra, 481 F.3d at 751 ("[E]vidence of 'conservative  
16 treatment' is sufficient to discount a claimant's testimony  
17 regarding severity of an impairment.").

18 Although Plaintiff asserts that "[t]he objective evidence of  
19 glaucoma and additional retinal detachments is completely ignored  
20 by the ALJ in his decision" (J. Stip. at 8), the ALJ explicitly  
21 incorporated into Plaintiff's RFC his right-eye vision  
22 impairments, limiting him to "occasional depth perception" and  
23 "limited field of vision." (AR 32.) Moreover, as discussed  
24 further below, although Plaintiff suffered repeated right-eye  
25 retinal detachments, he retained 20/30 left-eye and combined  
26 visual acuity, including after his treatment for glaucoma. (AR  
27 484, 492; see infra Sections V.A.3.b, V.B.)

28 It is true, as Plaintiff notes, that an ALJ may not

1 disregard a claimant's subjective-symptom testimony solely  
2 because it is not substantiated affirmatively by objective  
3 medical evidence. (See J. Stip. at 7 (citing Bunnell v.  
4 Sullivan, 947 F.2d 341, 346-47 (9th Cir. 1991))); Robbins, 466  
5 F.3d at 883. The ALJ may, however, use the medical evidence in  
6 the record as one factor in the evaluation. See Burch v.  
7 Barnhart, 400 F.3d 676, 681 (9th Cir. 2005) ("Although lack of  
8 medical evidence cannot form the sole basis for discounting pain  
9 testimony, it is a factor that the ALJ can consider in his  
10 credibility analysis."); Carmickle v. Comm'r Soc. Sec. Admin.,  
11 533 F.3d 1155, 1161 (9th Cir. 2008) ("Contradiction with the  
12 medical record is a sufficient basis for rejecting the claimant's  
13 subjective testimony."); Lingenfelter, 504 F.3d at 1040 (in  
14 determining credibility, ALJ may consider "whether the alleged  
15 symptoms are consistent with the medical evidence"). Here, the  
16 ALJ properly noted the inconsistencies between Plaintiff's  
17 medical records and his allegations of disabling kidney and eye  
18 impairments in assessing his credibility.

19 b. *Dr. Rocelly Ella-Tamayo*

20 Plaintiff also objects to the ALJ's reliance on the findings  
21 of examining physician Rocelly Ella-Tamayo. (J. Stip. at 8; AR  
22 33.) Dr. Ella-Tamayo performed a complete internal medicine  
23 evaluation of Plaintiff on behalf of the agency on July 18, 2011.  
24 (AR 486-91.) She noted Plaintiff's repeated eye surgeries and  
25 right-eye blindness, 2006 hospitalization for kidney infection,  
26 and recurrent kidney stones and infections. (AR 486-87.) He  
27 reported that he could walk six blocks and lift 25 pounds but  
28 drove rarely. (AR 487.) Upon examination, Dr. Ella-Tamayo found

1 that glasses improved Plaintiff's decreased left-eye visual  
2 acuity but not his poor right-eye vision. (AR 488.)  
3 Specifically, Plaintiff's right-eye vision was 20/200+ even with  
4 glasses, but glasses improved his left-eye and combined visual  
5 acuity to 20/30. (See AR 492.) She noted constricted pupils and  
6 inflamed retina. (AR 488.) The results of her examination were  
7 otherwise normal. (See AR 488-90.)

8 Dr. Ella-Tamayo diagnosed poor right-eye vision and history  
9 of recurrent left-kidney stones. (AR 490.) She opined that  
10 Plaintiff should be restricted to pushing, pulling, lifting, and  
11 carrying 20 pounds occasionally and 10 pounds frequently "because  
12 of his retinal bleeding." (Id.) She found him capable of six  
13 hours of walking or standing in an eight-hour workday and  
14 unlimited sitting. (Id.) She assessed no other limitations.

15 Plaintiff does not specifically challenge any of Dr. Ella-  
16 Tamayo's findings. He contends, however, that the ALJ erred in  
17 relying on her opinion because she was a Board-eligible, not  
18 Board-certified, internist whose license was to expire on March  
19 31, 2012; she examined Plaintiff only once; and she reviewed only  
20 one medical record, documenting his 2010 eye surgery. (J. Stip.  
21 at 8.) First, although the doctor indicated in June 2011 that  
22 her license would expire in March 2012 (see AR 491), she was  
23 indisputably licensed at the time of Plaintiff's examination and  
24 has since renewed her license.<sup>4</sup> She did not need to be Board-

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25  
26 <sup>4</sup> The license to practice medicine in California must be  
27 renewed every two years. See Physicians and Surgeons License  
28 Renewal, Med. Bd. of Cal., [http://www.mbc.ca.gov/Licensees/  
License\\_Renewal/Physicians\\_and\\_Surgeons.aspx](http://www.mbc.ca.gov/Licensees/License_Renewal/Physicians_and_Surgeons.aspx) (last visited Sept.  
3, 2014). Dr. Ella-Tamayo's license to practice medicine remains

1 certified to practice medicine in California,<sup>5</sup> nor does Plaintiff  
2 allege that her training was inadequate to permit a thorough and  
3 valid examination. See Kladde v. Astrue, No. ED CV 07-01439(SH),  
4 2009 WL 838104, at \*5 (C.D. Cal. Mar. 26, 2009) (finding record  
5 supported ALJ's decision to give greater weight to examining  
6 doctor when Plaintiff did not allege that his Board-eligible  
7 status rendered him unable to conduct valid assessment).

8 Second, a physician need not have examined the claimant at  
9 all to offer an opinion in a Social Security case. See Lester,  
10 81 F.3d at 830 (noting that treating, examining, and nonexamining  
11 physicians may offer opinions). The fact that Dr. Ella-Tamayo  
12 examined Plaintiff, however, adds to the weight due her opinion.  
13 Id. (noting that treating physician's opinion is generally  
14 entitled to more weight than that of examining physician, and  
15 examining physician's opinion to more weight than that of  
16 nonexamining physician). §§ 404.1527(c)(1), 416.927(c)(1);  
17 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001)  
18 (holding examining physician's opinion "alone constitutes  
19 substantial evidence, because it rests on his own independent  
20 examination of [claimant]").

21 \_\_\_\_\_  
22 current through March 31, 2016. See License Details, Cal. Dep't  
23 of Consumer Affairs, [https://www.breeze.ca.gov/datamart/details](https://www.breeze.ca.gov/datamart/detailsCADCA.do?selector=false&selectorType=&selectorReturnUrl=&anchor=cd31f38.0.0)  
24 [CADCA.do?selector=false&selectorType=&selectorReturnUrl=&anchor=](https://www.breeze.ca.gov/datamart/detailsCADCA.do?selector=false&selectorType=&selectorReturnUrl=&anchor=cd31f38.0.0)  
[cd31f38.0.0](https://www.breeze.ca.gov/datamart/detailsCADCA.do?selector=false&selectorType=&selectorReturnUrl=&anchor=cd31f38.0.0) (last visited Sept. 3, 2014).

25 <sup>5</sup> A physician becomes Board eligible upon completion of the  
26 training necessary for Board certification in a given specialty.  
27 See General Policies & Requirements, Am. Bd. of Internal Med.,  
[http://www.abim.org/certification/policies/general-policies-](http://www.abim.org/certification/policies/general-policies-requirements.aspx)  
28 [requirements.aspx](http://www.abim.org/certification/policies/general-policies-requirements.aspx) (last visited Sept. 3, 2014). Board  
eligibility lasts seven years or until the physician passes the  
examination for certification in a given specialty. Id.

1 Third, although Dr. Ella-Tamayo did not review the entirety  
2 of Plaintiff's medical history, she reviewed records pertaining  
3 to his most recent right-eye surgery and recorded Plaintiff's  
4 reports of eye procedures, right-eye glaucoma, and chronic kidney  
5 infections and stones, including a kidney stone passed only a  
6 week before the examination. (AR 486-87.) Plaintiff proffers no  
7 basis for thinking that the records provided, his report of his  
8 symptoms and medical history, and Dr. Ella-Tamayo's physical,  
9 musculoskeletal, and neurological examinations of him provided an  
10 insufficient or inaccurate basis for her functional assessment.  
11 See Orn v. Astrue, 495 F.3d 625, 631-32 (9th Cir. 2007) (ALJ  
12 entitled to rely on opinion of examining doctor that is supported  
13 by independent clinical findings); Castaneda v. Astrue, 344 F.  
14 App'x 396, 398 (9th Cir. 2009) (holding ALJ did not err in  
15 relying on examining doctor's assessment even if doctor did not  
16 review all medical records).

17 c. *Daily activities*

18 Plaintiff contends that the ALJ erred in finding his symptom  
19 testimony inconsistent with his "extensive activities of daily  
20 living." (AR 33; J. Stip. at 5.) The ALJ noted that Plaintiff  
21 and his girlfriend reported his regular activities to include  
22 "cooking, cleaning, doing the dishes, cleaning the shower,  
23 occasionally watering the lawn, running errands, caring for a  
24 cat,<sup>6</sup> going for coffee, driving on familiar streets in the  
25 daytime, shopping for food and guitar parts, playing a guitar and  
26 performing small repairs and modifications, going to a local

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27  
28 <sup>6</sup> This apparently included regularly giving him medicine in  
addition to food and water. (AR 202, 212-13.)

1 restaurant or occasionally to the post office, networking with  
2 others, watching television, surfing the internet, going for  
3 walks, and vacuuming." (AR 33 (citing AR 201-19); see also AR 65  
4 (Plaintiff still walked and hiked), 66-67 (on average day,  
5 Plaintiff walked, tidied house, played guitar, and checked email  
6 and used computer).) Plaintiff also testified that he still  
7 played in a band, which performed in public one or two times a  
8 year. (AR 47.) He also sometimes played in friends' bands, to  
9 "help[] [them] out." (AR 48.) Further, on his function report  
10 he indicated that he rode a bicycle for transportation in  
11 addition to walking and driving. (AR 215.)

12 Although Plaintiff does not dispute that he is able to do  
13 these things, he contends that they represent no more than "some  
14 limited activities of daily living." (J. Stip. at 6.) The ALJ  
15 properly found, however, that Plaintiff's and his girlfriend's  
16 statements show that he spent "a substantial part of his day  
17 engaged in pursuits involving the performance of physical  
18 functions that are transferable to a work setting." Morgan v.  
19 Comm'r of Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir. 1999)  
20 (finding claimant's ability to fix meals, do laundry, do  
21 yardwork, and occasionally care for friend's child evidence of  
22 ability to work); see Thomas, 278 F.3d at 959 (finding claimant's  
23 ability to "perform various household chores such as cooking,  
24 laundry, washing dishes, and shopping" was specific and  
25 legitimate reason to discount credibility of her allegations);  
26 Orteza v. Shalala, 50 F.3d 748, 750 (9th Cir. 1995) (ALJ was  
27 permitted to consider that claimant "performed various household  
28 chores such as cooking, doing the dishes, going to the store,



1 visiting relatives, and driving" in assessing credibility).

2 Claimant emphasizes his statements that his activity level  
3 varied with pain and fatigue, he cooked only simple foods and did  
4 so less frequently than previously, and he did guitar repair work  
5 less often than before his vision worsened. (J. Stip. at 6.)  
6 The ALJ noted, however, that Plaintiff's activities were subject  
7 to restrictions. (See, e.g., AR 30 (noting that Plaintiff's  
8 "nephrolithiasis causes him to experience pain and fatigue which  
9 in turn limit his ability to lift/carry and perform other basic  
10 work-related activities"), 31 (noting that his "limited visual  
11 acuity on the right" would cause "difficulty performing tasks  
12 requiring depth perception"), 33 (noting that he drove only "on  
13 familiar streets in the daytime" and only "occasionally" visited  
14 post office).) To the extent these activities are inconsistent  
15 with Plaintiff's claims of disabling impairments, however, the  
16 ALJ was entitled to rely on them in discounting his credibility.  
17 See Molina, 674 F.3d at 1113 ("Even where [claimant's] activities  
18 suggest some difficulty functioning, they may be grounds for  
19 discrediting the claimant's testimony to the extent that they  
20 contradict claims of a totally debilitating impairment.").

21 On appellate review, this Court is limited to determining  
22 whether the ALJ properly identified reasons for discrediting  
23 Plaintiff's credibility. Smolen, 80 F.3d at 1284. The  
24 inconsistencies between Plaintiff's allegations and the  
25 medical evidence, his daily activities, and his conservative  
26 treatment were proper and sufficiently specific bases for  
27 discounting his claims of disabling symptoms, and the ALJ's  
28 reasoning was clear and convincing. See Tommasetti v. Astrue,

1 533 F.3d 1035, 1039-40 (9th Cir. 2008); Houghton v. Comm'r Soc.  
2 Sec. Admin., 493 F. App'x 843, 845 (9th Cir. 2012). Because the  
3 ALJ's findings were supported by substantial evidence, this Court  
4 may not engage in second-guessing. See Thomas, 278 F.3d at 959;  
5 Fair v. Bowen, 885 F.2d 597, 604 (9th Cir. 1989).

6 Plaintiff is not entitled to remand on this ground.

7 B. The ALJ Properly Considered Plaintiff's Visual  
8 Impairment in Formulating His RFC

9 Plaintiff contends that by limiting him to jobs requiring  
10 only "occasional depth perception" and "limited field of vision,"  
11 the ALJ did not adequately account for Plaintiff's nonexertional  
12 limitations, "such as pain, headaches, double vision, decreased  
13 concentration, anxiety and fatigue."<sup>7</sup> (AR 32; J. Stip. at 13.)

14 As explained above, the ALJ properly determined that  
15 Plaintiff's allegations were not wholly credible. Thus, he was  
16

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17 <sup>7</sup> Plaintiff also complains that the ALJ's depth-perception  
18 limitation was erroneous because, "[g]iven that depth perception  
19 is dependent upon the use of both eyes and Plaintiff only has  
20 vision in one eye, he would have no depth perception." (J. Stip.  
21 at 18.) He cites no authority for this proposition, which  
22 appears to be inaccurate. See, e.g., Thomas Politzer,  
23 Implications of Acquired Monocular Vision (Loss of One Eye),  
24 available at: Neuro-Optometric Rehabilitation Ass'n,  
25 [https://nora.cc/for-patients-mainmenu-34/loss-of-one-eye-mainmenu](https://nora.cc/for-patients-mainmenu-34/loss-of-one-eye-mainmenu-70.html)  
26 -70.html (last visited Sept. 12, 2014) ("Absence of stereopsis  
27 does not mean the individual will have no depth perception. . . .  
28 [T]here are monocular cues to depth that can be learned through  
experience. Problems with depth perception can be addressed by  
visual rehabilitation training for eye hand coordination,  
relative depth judgment and spatial orientation."). In any  
event, the ALJ recognized that Plaintiff was "legally blind in  
the right eye" (AR 33), and his hypothetical to the VE included  
that Plaintiff "would have occasional depth perception, limited  
field of vision; by that I mean he can only see out of one eye"  
(AR 73).

1 required to include in his RFC determination only those  
2 limitations he found credible and supported by substantial  
3 evidence. See Bayliss v. Barnhart, 427 F.3d 1211, 1217 (9th Cir.  
4 2005); Hayee v. Comm'r of Soc. Sec., 532 F. App'x 690, 691 (9th  
5 Cir. 2013).

6 Moreover, although Plaintiff contends that the ALJ failed to  
7 summarize the objective evidence of his eye impairments, the ALJ  
8 in fact noted Plaintiff's "bilateral cataract surgeries,"  
9 "recurrent retinal detachments," right-eye sclera buckle surgery,  
10 right-eye "pars plana vitrectomy, membrane peel, endolaser  
11 photocoagulation, air fluid exchange and silicone implantation,"  
12 and second vitrectomy three years later. (AR 30-31.) The ALJ  
13 further found that Plaintiff's "limited visual acuity" would  
14 cause "difficulty performing tasks requiring depth perception."  
15 (AR 31.) The ALJ also noted, however, that although Plaintiff  
16 was legally blind in his right eye, his corrected left-eye and  
17 combined visual acuity was 20/30. (AR 33; see AR 492; see also  
18 AR 33 (noting 20/25 visual acuity in 2009).) To the extent  
19 Plaintiff asserts that the ALJ should have summarized the eye-  
20 impairment evidence in greater detail, he was not required to do  
21 so. See Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1012  
22 (9th Cir. 2003) ("[I]n interpreting the evidence and developing  
23 the record, the ALJ does not need to 'discuss every piece of  
24 evidence.'").

25 Plaintiff also contends that the ALJ erred in failing to  
26 incorporate into the RFC additional limitations based upon the  
27 July 5, 2011 letter from optometrist Irene N. Sang. (J. Stip. at  
28 15; see AR 484.) Although Dr. Sang noted that Plaintiff had been

1 a patient in her office since May 1994 and she was thus familiar  
2 with his "previous history of very high myopia and multiple  
3 surgical repairs," she had seen him only once after July 2005, in  
4 November 2009. (AR 484.) Dr. Sang was therefore unable to  
5 provide very recent findings or opine as to Plaintiff's visual  
6 function as of the date of her letter. She reported that when  
7 she saw Plaintiff in November 2009, his corrected right-eye  
8 visual acuity was 20/400, corrected left-eye visual acuity was  
9 20/25-30, and intraocular pressures were normal, and he was being  
10 treated for right-eye glaucoma. (Id.) Dr. Sang was otherwise  
11 able to say only that, based upon Plaintiff's medical history, he  
12 "likely has some difficulty reading" because of his decreased  
13 right-eye acuity and that such difficulty "could . . . effect  
14 [sic] his ability to concentrate for long periods of time."

15 (Id.)

16 Although Plaintiff contends that "[t]here is no reference or  
17 summary of this report in the ALJ's decision" (J. Stip. at 15),  
18 the ALJ in fact explicitly relied upon Dr. Sang's findings that  
19 Plaintiff's "corrected visual acuity in his better eye is 20/25"  
20 in assessing whether his eye impairments met a Listing (AR 32  
21 (citing AR 484)). Notably, Dr. Sang's findings are consistent  
22 with those of Dr. Ella-Tamayo that Plaintiff had corrected left-  
23 eye and combined visual acuity of 20/30 in July 2011. (AR 33,  
24 492.) Thus, although Plaintiff continued to suffer eye issues  
25 requiring medical treatment after his 2009 visit with Dr. Sang  
26 (see AR 484 (noting 2010 oil-removal procedure and 2009 treatment  
27 for glaucoma)), his corrected eyesight remained the same. Dr.  
28 Sang's objective findings based on her November 2009 examination

1 of Plaintiff did not, therefore, warrant limitations beyond those  
2 in his RFC.

3 To the extent Dr. Sang purported to opine as to Plaintiff's  
4 eye function and limitations as of July 2011, her statements were  
5 not based on any recent findings but, rather, were little more  
6 than speculation, albeit informed by her familiarity with  
7 Plaintiff's eye-treatment history. She emphasized that her  
8 first-hand familiarity with Plaintiff's then-current medical  
9 status was limited. (See, e.g., AR 484 ("I have only seen him  
10 once after July, 2005".)) Moreover, her opinion as to  
11 Plaintiff's "likely" difficulty reading and possible difficulty  
12 concentrating was based upon his report of symptoms, which the  
13 ALJ properly discounted insofar as they were inconsistent with  
14 his medical records and daily activities.<sup>8</sup> The ALJ fairly  
15 disregarded that portion of her opinion. See Fair, 885 F.2d at  
16 605 (finding ALJ properly disregarded physician's opinion when it  
17 was premised on claimant's subjective complaints, which ALJ had  
18 already discounted).

19 The RFC thus properly included those visual limitations that  
20 the ALJ found credible and supported by record evidence.

21 See Bayliss, 427 F.3d at 1217; cf. Robbins, 466 F.3d at 886.

22 Remand is not warranted on this basis.

23  
24  
25 <sup>8</sup>Moreover, optometrists are limited to providing evidence  
26 for "purposes of establishing visual disorders."  
27 §§ 404.1513(a)(3), 416.913(a)(3). Dr. Sang's opinion concerning  
28 Plaintiff's ability to concentrate may be too far afield from  
"establishing a visual disorder" to count as coming from an  
acceptable medical source.

1 **VI. CONCLUSION**

2 Consistent with the foregoing, and pursuant to sentence four  
3 of 42 U.S.C. § 405(g),<sup>9</sup> IT IS ORDERED that judgment be entered  
4 AFFIRMING the decision of the Commissioner and dismissing this  
5 action with prejudice. IT IS FURTHER ORDERED that the Clerk  
6 serve copies of this Order and the Judgment on counsel for both  
7 parties.

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10 DATED: September 16, 2014

  
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JEAN ROSENBLUTH  
U.S. Magistrate Judge

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27 <sup>9</sup> This sentence provides: "The [district] court shall  
28 have power to enter, upon the pleadings and transcript of the  
record, a judgment affirming, modifying, or reversing the  
decision of the Commissioner of Social Security, with or without  
remanding the cause for a rehearing."