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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 ALFREDO DUARTE,

12 Plaintiff,

13 v.

14 CAROLYN W. COLVIN, Acting
15 Commissioner of Social Security,

16 Defendant.
17

Case No. CV 15-2240-KES

MEMORANDUM OPINION
AND ORDER

18 Plaintiff Alfredo Duarte appeals the final decision of the Administrative
19 Law Judge (“ALJ”) denying his application for Disability Insurance Benefits
20 (“DIB”). For the reasons discussed below, the Court concludes that
21 substantial evidence supports the ALJ’s conclusion that Plaintiff’s impairments
22 did not meet the requirements of Listing 1.04, and the ALJ gave clear and
23 convincing reasons for discounting Plaintiff’s credibility. The ALJ’s decision is
24 therefore AFFIRMED.

25 I.

26 **BACKGROUND**

27 On December 5, 2011, Plaintiff filed an application for DIB, initially
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1 alleging disability beginning in August 28, 2010, but then changing the onset
2 date to September 28, 2010. Administrative Record (“AR”) 133-34, 135. He
3 alleges that he is unable to work due to pain in his low back, legs, knees,
4 shoulder, and arm; headaches; sleep apnea; stress; and depression. AR 147.

5 On June 27, 2013, an ALJ conducted a hearing, at which Plaintiff, who
6 was represented by counsel, appeared and testified, as did a vocational expert
7 (“VE”). AR 69-100.

8 On July 13, 2013, the ALJ issued a written decision denying Plaintiff’s
9 request for benefits. AR 27-36. The ALJ found that Plaintiff had the severe
10 impairments of degenerative disc disease, obesity, right knee grade II posterior
11 horn of medial meniscus, and left knee grade II posterior horn of medial
12 meniscus and grade III posterior horn of the lateral meniscus. AR 29.

13 Notwithstanding his impairments, the ALJ concluded that Plaintiff had the
14 residual functional capacity (“RFC”) to perform “less than the full range of
15 light work” with the following additional exertional limitations:

16 [Plaintiff] could lift and carry ten pounds frequently and
17 twenty pounds occasionally. He could sit, stand and walk, each, for
18 six hours out of an eight-hour workday; could occasionally climb
19 ramps and stairs, balance and stoop, and could never climb ropes,
20 ladders and scaffolds, kneel, crouch or crawl. He could occasionally
21 reach overhead with the bilateral upper extremities and could
22 frequently reach to shoulder level with the bilateral upper
23 extremities, handle and finger. He is to avoid concentrated
24 exposure to hazards. He is limited to simple routine, repetitive
25 tasks, with only simple work related decisions and few workplace
26 changes.

27 AR 30.

28 Based on the VE’s testimony, the ALJ found that Plaintiff could perform

1 work as a counter rental clerk (Dictionary of Occupational Titles (“DOT”)
2 code 249-366-010), cashier II (DOT code 211-462-010), addressor (DOT code
3 209-587-010), inspector (DOT code 726-684-050), and assembler (DOT code
4 713-687-018). AR 35. The ALJ thus found Plaintiff was not disabled. *Id.*

5 II.

6 ISSUES PRESENTED

7 The parties dispute whether the ALJ erred in:

8 (1) determining that Plaintiff’s impairments did not meet Listing 1.04 at
9 step three; and

10 (2) discounting Plaintiff’s testimony concerning the severity and limiting
11 effects of his pain.

12 III.

13 DISCUSSION

14 A. **Substantial Evidence Supports the ALJ’s Conclusion That Plaintiff’s** 15 **Impairments Did Not Meet Listing 1.04.**

16 Plaintiff contends that the ALJ erred in finding that Plaintiff’s
17 degenerative disc disease did not meet Listing 1.04(A). Dkt. 21 at 5-11, 15-16.
18 The ALJ considered this listing and rejected Plaintiff’s argument, as follows:

19 The evidence does not support that the claimant has the
20 severity of symptoms required either singly or in combination to
21 meet or equal a medical listing, including those found under
22 medical listing 1.02, and 1.04. No treating or examining physician
23 has recorded credible findings equivalent in severity to the criteria
24 of any listed impairment, nor does the evidence show medical
25 findings that are the same or equivalent to those of any listed
26 impairment of the Listing of Impairments. A more detailed
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1 discussion to support this finding follows.¹

2 AR 30.

3 **1. Applicable Law**

4 At step three of the sequential evaluation process, the ALJ must evaluate
5 the claimant's impairments to see if they meet or medically equal a Listing.
6 See 20 C.F.R. § 404.1520(d); Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir.
7 1999). Listed impairments are those that are "so severe that they are
8 irrebuttably presumed disabling, without any specific finding as to the
9 claimant's ability to perform his past relevant work or any other jobs." Lester
10 v. Chater, 81 F.3d 821, 828 (9th Cir. 1995).

11 The claimant has the initial burden of proving that an impairment meets
12 or equals a Listing. See Sullivan v. Zebley, 493 U.S. 521, 530-31 (1990). "To
13 meet a listed impairment, a claimant must establish that he or she meets each
14 characteristic of a listed impairment relevant to his or her claim." Tackett,
15 180 F.3d at 1099. "To equal a listed impairment, a claimant must establish
16 symptoms, signs and laboratory findings 'at least equal in severity and
17 duration' to the characteristics of a relevant listed impairment, or, if a
18 claimant's impairment is not listed, then to the listed impairment 'most like'
19 the claimant's impairment." Id. (quoting 20 C.F.R. § 404.1526). Medical
20 equivalence, moreover, "must be based on medical findings;" "[a] generalized
21 assertion of functional problems is not enough to establish disability at step
22 three." Id. at 1100.

23 An ALJ "must evaluate the relevant evidence before concluding that a
24 claimant's impairments do not meet or equal a listed impairment." Lewis v.
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26 ¹ The ALJ's "more detailed discussion" is at AR 30-34. The Court has
27 not quoted that discussion in full here, but discusses it in relevant part in the
28 Court's analysis, below.

1 Apfel, 236 F.3d 503, 512 (9th Cir. 2001). The ALJ need not, however, “state
2 why a claimant failed to satisfy every different section of the listing of
3 impairments.” Gonzalez v. Sullivan, 914 F.2d 1197, 1201 (9th Cir. 1990)
4 (finding that ALJ did not err in failing to state what evidence supported
5 conclusion that, or discuss why, claimant’s impairments did not satisfy
6 Listing). Moreover, the ALJ “is not required to discuss the combined effects of
7 a claimant’s impairments or compare them to any listing in an equivalency
8 determination, unless the claimant presents evidence in an effort to establish
9 equivalence.” Burch v. Barnhart, 400 F.3d 676, 683 (9th Cir. 2005) (citing
10 Lewis, 236 F.3d at 514).

11 For some impairments, the evidence must show that the impairment has
12 lasted for a specific time period. 20 C.F.R. §§ 404.1525(c)(4), 416.925(c)(4).
13 “For all others, the evidence must show that [the] impairment(s) has lasted or
14 can be expected to last for a continuous period of at least 12 months.” Id. If a
15 claimant’s impairment meets or equals a listed impairment, he or she will be
16 found disabled at step three without further inquiry. 20 C.F.R. §§ 404.1520(d),
17 416.920(d).

18 An ALJ’s decision that a plaintiff did not meet a Listing must be upheld
19 if it was supported by “substantial evidence.” See Warre v. Comm’r Soc. Sec.
20 Admin., 439 F.3d 1001, 1006 (9th Cir. 2006). Substantial evidence is “more
21 than a mere scintilla but less than a preponderance; it is such relevant evidence
22 as a reasonable mind might accept as adequate to support a conclusion.”
23 Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997) (internal quotation
24 marks omitted). When evidence is susceptible to more than one rational
25 interpretation, the Court must uphold the ALJ’s conclusion as long as
26 substantial evidence supported it. Id.

27 **2. Analysis**

28 In order to meet Listing 1.04(A), Plaintiff must present evidence of a

1 disorder of the spine resulting in compromise of a nerve root or the spinal cord
2 with “evidence of nerve root compression characterized by neuro-anatomic
3 distribution of pain, limitation of motion of the spine, motor loss (atrophy with
4 associated muscle weakness or muscle weakness) accompanied by sensory or
5 reflex loss and, if there is involvement of the lower back, positive straight-leg
6 raising test (sitting and supine).” 20 C.F.R. pt. 404, subpt. P, app. 1, § 1.04(A).

7 Here, the ALJ found that Plaintiff had the severe impairment of
8 degenerative disc disease but that he had not submitted credible evidence
9 satisfying each of the requirements in Listing 1.04(A). AR 29-30.

10 Plaintiff argues that the ALJ should have found that his degenerative
11 disc disease met or equaled Listing 1.04(A) based primarily on four pieces of
12 evidence: (1) multiple MRIs of the neck and lower back from 2009 and 2013
13 showing degenerative spine changes, Dkt. 21 at 6-7 (citing AR 299, 548, 677);
14 (2) a February 22, 2011 consultative examination by neurologist Dr. Moossa
15 Heikali reporting results of an electrodiagnostic study that found a decreased
16 range of motion in the lumbar spine, decreased pinprick sensation over both
17 lower extremities, and revealed “possible left S1 radiculopathy,²” *id.* (citing
18 AR 217-219); (3) Plaintiff’s allegations of pain, *id.* at 8 (citing AR 216-17, 232,
19 235); and (4) examination notes from chiropractor Dr. Bryan Aun on January
20 13, 2009, showing Plaintiff had a limited range of motion in the cervical and
21 lumbar spines and a positive bilateral straight-leg raise test, *id.* at 9 (citing AR
22 222).³

23
24 ² According to Plaintiff’s briefing, “[r]adiculopathy is a condition
25 due to a compressed nerve in the spin[e] that can cause pain, numbness,
tingling, or weakness along the nerve.” Dkt. 21 at 7.

26 ³ According to webmd.com, “To do this test, you lie on your back
27 with both legs straight. Your health professional raises one of your legs
28 upward, keeping the knee straight. ... If you have pain down the back of your

1 The Court disagrees. Here, the ALJ thoroughly summarized the
2 medical evidence, including the four pieces of evidence on which Plaintiff
3 relies. He then explained his reasons for crediting or discounting certain pieces
4 of evidence. After weighing the evidence, he concluded that the severity of
5 Plaintiff's condition was not supported by the objective medical findings in the
6 record. AR 29, 31-34.

7 Specifically, the ALJ referenced an electroencephalogram from March 2,
8 2011, that was normal. AR 32 (citing AR 214). He explained that a cervical
9 spine x-ray from February 19, 2013, showed only mild degenerative joint
10 disease, a thoracic spine x-ray on the same date revealed "mild generalized
11 degenerative joint disease involving the disc spaces with questionable mild
12 cardiomegaly," a lumbar spine MRI on April 2, 2013, revealed mild
13 degenerative changes, a thoracic spine MRI on April 4, 2013, showed small
14 disc bulges, and a May 21, 2013 cervical spine MRI revealed "mild central
15 canal stenosis," "minimal central canal stenosis," "multilevel moderate to
16 severe foraminal stenosis," and "mild degenerative disease at C5-C6." AR 32-
17 33 (citing AR 546, 548, 608, 611, 677). Additionally, as Plaintiff himself
18 points out, the 2011 electrodiagnostic study suggested only a possible left S1
19 radiculopathy – a condition not detected by later tests in 2013.

20 After reviewing and summarizing the medical evidence, and noting the
21 mild-to-moderate findings in the record, the ALJ properly determined that

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23 leg below the knee when your affected leg is raised, the test is positive
24 (abnormal). It means that one or more of the nerve roots leading to your
25 sciatic nerve may be compressed or irritated." See [http://www.webmd.com/
26 a-to-z-guides/straight-leg-test-for-evaluating-low-back-pain-topic-overview.](http://www.webmd.com/a-to-z-guides/straight-leg-test-for-evaluating-low-back-pain-topic-overview)
27 Plaintiff cites several instances in the record from 2009, 2012, and 2013 that
28 reveal positive straight-leg raise tests. See Dkt. 21 at 9, 15 (citing AR 222, 223,
250, 263, 524, 538, 553, 559). The record, however, also contains a negative
straight-leg raise test in Dr. Heikali's 2011 report. AR 310.

1 Plaintiff's condition did not satisfy all of the criteria in Listing 1.04(A). See
2 AR 31-33; see also Cavalic v. Colvin, No. 15-0234, 2015 WL 5243881, at *4
3 (D. Ariz. Sept. 9, 2015) (finding that ALJ did not err in determining that
4 claimant's degenerative disc disease did not satisfy Listing 1.04 based on mild-
5 to-moderate findings in medical evidence of record); Cass v. Colvin, No. 14-
6 5847, 2015 WL 3407185, at *3 (W.D. Wash. May 22, 2015) (holding that ALJ
7 properly found that claimant did not meet Listing 1.04 at step three in part
8 because evidence including MRI, electrodiagnostic evaluation, and testing
9 showed mild-to-moderate abnormalities).

10 Moreover, the ALJ properly considered and resolved any conflicts in the
11 medical opinions. See Batson v. Comm'r Soc. Sec. Admin., 359 F.3d 1190,
12 1195 (9th Cir. 2004) ("When presented with conflicting medical opinions, the
13 ALJ must determine credibility and resolve the conflict."). The ALJ pointed
14 out that Dr. Rocely Ella Tamayo, whose opinion he accorded "great weight,"
15 concluded that Plaintiff could perform a range of light work. AR 34. On
16 February 1, 2012, Dr. Tamayo performed a consultative examination on
17 Plaintiff and opined that he suffered from low back pain and some difficulty
18 with walking, sitting, getting up from sitting, bending, and lifting. AR 32
19 (citing AR 373-77). She concluded that Plaintiff "is able to lift 20 pounds
20 occasionally and 10 pounds frequently because of his back conditions. He will
21 be able to stand and walk six out of an eight-hour work period with normal
22 breaks. He is able to kneel, squat, and sit without restrictions." AR 377. In
23 relying on Dr. Tamayo opinion, the ALJ noted that she examined Plaintiff in-
24 person, supported her opinion with "objective, medically acceptable clinical
25 and laboratory diagnostic techniques," cited specific facts, and her conclusion
26 that Plaintiff could perform work with light limitations was largely consistent
27 with the record as a whole. AR 34.

28 Finally, while Plaintiff points to a few instances in the record when he

1 experienced a level of impairment that may meet Listing 1.04 (Dkt. 21 at 6-9,
2 (citing 216-19, 235, 250-51, 289, 299, 326, 548, 659, 677)), he failed to show
3 that the impairment lasted, or was expected to last, for a continuous period of
4 12 months or more, as required by the regulations. See 20 C.F.R. § 404.1509;
5 Tackett, 180 F.3d at 1098.

6 In sum, when the record as a whole is considered, Plaintiff has not met
7 his burden of demonstrating that his impairments met the criteria of Listing
8 1.04(A). The ALJ reviewed the medical evidence in detail and correctly found
9 that Plaintiff's impairments did not meet Listing 1.04(A). Remand is therefore
10 not warranted on this basis.

11 **B. The ALJ Gave Clear and Convincing Reasons for Discounting**
12 **Plaintiff's Credibility.**

13 Plaintiff claims that he suffers from low back, leg, knee, shoulder and
14 arm pain, as well as headaches. Dkt. 21 at 16. Because of the pain, he can
15 only walk for 30 minutes, sit for 30-35 minutes at a time, and carry 20 pounds
16 after which he feels debilitating pain. Dkt. 21 at 16-17. He alleges that he has
17 about two to three "good days" per month, and the rest of the time he feels
18 "real bad pain." Dkt. 21 at 17.

19 Plaintiff contends that the ALJ erred in assessing his credibility
20 concerning the limiting effects of his pain. Dkt. 21 at 16-22, 27.

21 **1. Applicable Law**

22 An ALJ's assessment of symptom severity and claimant credibility is
23 entitled to "great weight." See Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir.
24 1989); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is
25 not required to believe every allegation of disabling pain, or else disability
26 benefits would be available for the asking, a result plainly contrary to 42
27 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012)
28 (internal quotation marks omitted).

1 In evaluating a claimant’s subjective symptom testimony, the ALJ
2 engages in a two-step analysis. See Vasquez v. Astrue, 572 F.3d 586, 591
3 (9th Cir. 2009); Lingenfelter v. Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007).
4 “First, the ALJ must determine whether the claimant has presented objective
5 medical evidence of an underlying impairment [that] could reasonably be
6 expected to produce the pain or other symptoms alleged.” Lingenfelter, 504
7 F.3d at 1036. If so, the ALJ may not reject a claimant’s testimony “simply
8 because there is no showing that the impairment can reasonably produce the
9 degree of symptom alleged.” Smolen v. Chater, 80 F.3d 1273, 1282 (9th Cir.
10 1996).

11 Second, if the claimant meets the first test, the ALJ may discredit the
12 claimant’s subjective symptom testimony only if he makes specific findings
13 that support the conclusion. Berry v. Astrue, 622 F.3d 1228, 1234 (9th Cir.
14 2010). Absent a finding or affirmative evidence of malingering, the ALJ must
15 provide “clear and convincing” reasons for rejecting the claimant’s testimony.
16 Lester, 81 F.3d at 834; Ghanim v. Colvin, 763 F.3d 1154, 1163 & n.9 (9th Cir.
17 2014). The ALJ must consider a claimant’s work record, observations of
18 medical providers and third parties with knowledge of claimant’s limitations,
19 aggravating factors, functional restrictions caused by symptoms, effects of
20 medication, and the claimant’s daily activities. Smolen, 80 F.3d at 1283-84 &
21 n.8. “Although lack of medical evidence cannot form the sole basis for
22 discounting pain testimony, it is a factor that the ALJ can consider in his
23 credibility analysis.” Burch, 400 F.3d at 681.

24 The ALJ may also use ordinary techniques of credibility evaluation,
25 such as considering the claimant’s reputation for lying and inconsistencies in
26 his statements or between his statements and his conduct. Id. at 1284; Thomas
27 v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002).

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1 **2. Analysis**

2 Following the two-step process outlined above, the ALJ found as
3 follows:

4 The credibility of the claimant’s allegations regarding the
5 severity of his symptoms and limitations is diminished because
6 those allegations are greater than expected in light of the objective
7 evidence of record. Even if the claimant’s daily activities are truly
8 as limited as alleged, it is difficult to attribute that degree of
9 limitation to the claimant’s medical condition, in view of the
10 relatively benign medical evidence, discussed below.

11 AR 31.

12 The ALJ gave three clear and convincing reasons for discounting
13 Plaintiff’s credibility: (1) the “relatively benign” medical evidence that did not
14 support Plaintiff’s allegations concerning the severity of his pain, (2) despite his
15 alleged pain, Plaintiff engaged in a “relatively normal level of daily activity;”
16 and (2) Plaintiff chose to receive routine, conservative, and non-emergency
17 treatment over a number of years. AR 31.

18 a. The “relatively benign” medical evidence of record did not
19 support Plaintiff’s allegations of disabling pain.

20 Plaintiff contends that the ALJ’s justification for discounting Plaintiff’s
21 credibility “because of the lack of objective evidence in the record lacks merit.”
22 Dkt. 21 at 19.

23 Again, the Court disagrees. First, the ALJ’s factual determination that
24 there is a lack of objective evidence in the record supporting Plaintiff’s claim of
25 disabling pain is supported by substantial evidence. Over the course of three
26 pages, the ALJ expressly discussed in detail how the “relatively benign”
27 objective clinical findings did not support the degree of limitation Plaintiff had
28 alleged. See AR 31-33; see also Reddick v. Chater, 157 F.3d 715, 725 (9th Cir.

1 1998) (An ALJ may resolve questions of credibility “by setting out a detailed
2 and thorough summary of the facts and conflicting clinical evidence, stating his
3 interpretation thereof, and making findings”); Rodriguez v. Colvin, No. 13-
4 0549, 2013 WL 6797896, at *3 (C.D. Cal. Dec. 20, 2013) (finding that ALJ
5 properly discounted claimant’s credibility in part because record contained
6 relatively benign evidence). As discussed above, the ALJ referenced Plaintiff’s
7 MRIs of the knees, lumbar and cervical spine, x-rays of the lumbar and
8 cervical spine, and examinations by Drs. Tamayo, Singer, and Aun. AR 31.
9 The record showed mild-to-moderate findings that did not support Plaintiff’s
10 allegations of disabling pain. AR 33.

11 Second, the ALJ did not rely solely on the lack of supporting medical
12 evidence. As discussed below, the ALJ gave two other clear and convincing
13 reasons to discount Plaintiff’s credibility concerning the severity and limiting
14 effects of his pain. The ALJ was permitted to consider the lack of supporting
15 medical evidence as a factor confirming his other two reasons. See Burch,
16 400 F.3d at 681; Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001)
17 (“While subjective pain testimony cannot be rejected on the sole ground that it
18 is not fully corroborated by objective medical evidence, the medical evidence is
19 still a relevant factor in determining the severity of the claimant’s pain and its
20 disabling effects.”); Social Security Ruling 96–7p (same).

21 b. Plaintiff’s daily activities were inconsistent with his claims of
22 disabling pain.

23 The ALJ noted that despite Plaintiff’s alleged disabling pain, he
24 “engaged in a relatively normal daily activity and interaction.” AR 31.
25 Plaintiff testified to driving, watching television, and using a computer. AR 31
26 (citing AR 81, 85, 86). In a function report, he admitted that he took care of
27 his wife and children, prepared meals, did house cleaning and laundry, went
28 out daily, went shopping, visited relatives, and went to church. AR 31 (citing

1 AR 179-86). The ALJ also referenced Plaintiff's report to psychiatrist Dr.
2 Jobst Singer stating that he shopped, cooked, dressed and bathed himself
3 without assistance, went to church, and exercised. AR 31, 33 (citing AR 382).
4 At the administrative hearing, Plaintiff testified that he went grocery stopping
5 two or three times per week. AR 79.

6 That Plaintiff maintained a reasonably normal level of daily activities
7 was a clear and convincing reason to discount his credibility, even if his
8 impairments made those activities somewhat more challenging. See Burch,
9 400 F.3d at 681 (noting that ALJ may discredit allegations of disability on
10 basis that claimant engages in daily activities involving skills that could be
11 transferred to the workplace); Curry v. Sullivan, 925 F.2d 1127, 1130 (9th Cir.
12 1990) (as amended) (finding that the claimant's ability to "take care of her
13 personal needs, prepare easy meals, do light housework and shop for some
14 groceries . . . may be seen as inconsistent with the presence of a condition
15 which would preclude all work activity") (citing Fair v. Bowen, 885 F.2d 597,
16 604 (9th Cir. 1989)); Molina, 674 F.3d at 1113 ("Even where [claimant's]
17 activities suggest some difficulty functioning, they may be grounds for
18 discrediting the claimant's testimony to the extent that they contradict claims
19 of a totally debilitating impairment.").

20 c. Plaintiff received routine, conservative, and non-emergency
21 treatment since the alleged onset date.

22 In assessing the claimant's credibility, an ALJ may also consider
23 evidence of conservative treatment in discounting testimony regarding the
24 severity of an impairment. See Parra v. Astrue, 481 F.3d 742, 751 (9th Cir.
25 2007). Here, the ALJ determined that Plaintiff had not "generally received the
26 type of medical treatment one would expect for a totally disabled individual"
27 and noted Plaintiff's conservative treatment, including pain medication.
28 AR 31-33. Plaintiff testified that when he feels pain, he uses a TENS unit, ices

1 his back, applies creams including “Bengay” and “Tiger Balm,” and takes
2 Vicodin twice per day. AR 77-81; see Warre, 439 F.3d at 1006 (“Impairments
3 that can be controlled effectively with medication are not disabling.”); Medel
4 v. Colvin, No. 13-2052, 2014 WL 6065898, at *8 (C.D. Cal. Nov. 13,
5 2014) (affirming ALJ's characterization of claimant’s treatment as conservative
6 where his medical records showed that he had been “prescribed
7 only Vicodin and Tylenol for his allegedly debilitating low-back pain.”);
8 Morris v. Colvin, No. 13-6236, 2014 WL 2547599, at *4 (C.D. Cal. June 3,
9 2014) (ALJ properly discounted credibility in part because claimant received
10 conservative treatment consisting of use of TENS unit and Vicodin).

11 Therefore, the ALJ’s finding that Plaintiff’s treatment was inconsistent
12 with the claimed severity of his pain is supported by substantial evidence, and
13 it provides another clear and convincing reason for discounting Plaintiff’s
14 testimony. See Burch, 400 F.3d at 681.

15 On appellate review, this Court is limited to determining whether the
16 ALJ properly identified reasons for discrediting Plaintiff’s credibility. Smolen,
17 80 F.3d at 1284. The lack of evidence to support the severity of Plaintiff’s pain
18 allegations in the medical evidence, his daily activities, and his conservative
19 treatment were proper and sufficiently specific bases for discounting his claims
20 of disabling symptoms, and the ALJ’s reasoning was clear and convincing.
21 See Tommasetti v. Astrue, 533 F.3d 1035, 1039-40 (9th Cir. 2008); Houghton
22 v. Comm’r Soc. Sec. Admin., 493 F. App’x 843, 845 (9th Cir. 2012). Because
23 the ALJ’s findings were supported by substantial evidence, this Court may not
24 engage in second-guessing. See Thomas, 278 F.3d at 959; Fair, 885 F.2d at
25 604.

26 Remand is not warranted.

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IV.
CONCLUSION

For the reasons stated above, the decision of the Social Security
Commissioner is AFFIRMED and the action is DISMISSED with prejudice.

Dated: February 16, 2016

Karen E. Scott

KAREN E. SCOTT
United States Magistrate Judge