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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

CARLOS ANGUIANO,  
  
Plaintiff,  
  
v.  
  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
  
Defendant.

Case No. CV 16-03587 AFM

**MEMORANDUM OPINION AND  
ORDER AFFIRMING DECISION  
OF COMMISSIONER**

**I.  
BACKGROUND**

Plaintiff Carlos Anguiano filed his application for disability benefits under Title II of the Social Security Act and application for supplemental security income under Title XVI of the Social Security Act on December 14, 2012. After denial on initial review and on reconsideration, a hearing took place before an Administrative Law Judge (ALJ) on January 16, 2015 at which Plaintiff testified on his own behalf. A vocational expert (“VE”) also testified. In a decision dated February 11, 2015, the ALJ found that Plaintiff was not disabled within the meaning of the Social Security Act for the period from November 8, 2011 through the date of the decision. The Appeals Council declined to set aside the ALJ’s unfavorable decision

1 in a notice dated April 4, 2016. Plaintiff filed a Complaint herein on May 23, 2016,  
2 seeking review of the Commissioner’s denial of his application for benefits.

3 In accordance with the Court’s Order Re: Procedures in Social Security  
4 Appeal, Plaintiff filed a memorandum in support of the complaint on November 15,  
5 2016 (“Pl. Mem.”), and the Commissioner filed a memorandum in support of her  
6 answer on December 20, 2016 (“Def. Mem.”). Plaintiff did not file a reply. This  
7 matter now is ready for decision.<sup>1</sup>

8 **II.**  
9 **DISPUTED ISSUES**

10 As reflected in the parties’ memoranda, the disputed issues are as follows:

- 11 (1) Whether the ALJ failed to properly evaluate the findings of  
12 consultative examiner Dr. Siekerkotte; and  
13 (2) Whether the ALJ failed to pose a complete hypothetical question to the  
14 vocational expert and to provide a complete and proper assessment of  
15 Plaintiff’s residual functional capacity.

16 **III.**  
17 **STANDARD OF REVIEW**

18 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to  
19 determine whether the Commissioner’s findings are supported by substantial  
20 evidence and whether the proper legal standards were applied. *See Treichler v.*  
21 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). Substantial  
22 evidence means “more than a mere scintilla” but less than a preponderance. *See*  
23 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter v. Astrue*, 504 F.3d  
24 1028, 1035 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a  
25 reasonable mind might accept as adequate to support a conclusion.” *Richardson*,

26 \_\_\_\_\_  
27 <sup>1</sup> The decision in this case is being made based on the pleadings, the  
28 administrative record (“AR”), and the parties’ memoranda in support of their  
pleadings.

1 402 U.S. at 401. This Court must review the record as a whole, weighing both the  
2 evidence that supports and the evidence that detracts from the Commissioner’s  
3 conclusion. *Lingenfelter*, 504 F.3d at 1035. Where evidence is susceptible of more  
4 than one rational interpretation, the Commissioner’s decision must be upheld. *See*  
5 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

6 Error in a social security determination is subject to harmless error analysis.  
7 *Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012). Reversal “is not automatic,  
8 but requires a determination of prejudice.” *Id.* A reviewing federal court must  
9 consider case-specific factors, including “an estimation of the likelihood that the  
10 result would have been different, as well as the impact of the error on the public  
11 perception of such proceedings.” *Id.* (footnote and citation omitted).

#### 12 IV.

#### 13 FIVE-STEP EVALUATION PROCESS

14 The Commissioner (or ALJ) follows a five-step sequential evaluation process  
15 in assessing whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920;  
16 *Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995), *as amended* April 9, 1996.  
17 In the first step, the Commissioner must determine whether the claimant is  
18 currently engaged in substantial gainful activity; if so, the claimant is not disabled  
19 and the claim is denied. *Id.* If the claimant is not currently engaged in substantial  
20 gainful activity, the second step requires the Commissioner to determine whether  
21 the claimant has a “severe” impairment or combination of impairments significantly  
22 limiting his ability to do basic work activities; if not, a finding of nondisability is  
23 made and the claim is denied. *Id.* If the claimant has a “severe” impairment or  
24 combination of impairments, the third step requires the Commissioner to determine  
25 whether the impairment or combination of impairments meets or equals an  
26 impairment in the Listing of Impairments (“Listing”) set forth at 20 C.F.R. part  
27 404, subpart P, appendix 1; if so, disability is conclusively presumed and benefits  
28 are awarded. *Id.* If the claimant’s impairment or combination of impairments does

1 not meet or equal an impairment in the Listing, the fourth step requires the  
2 Commissioner to determine whether the claimant has sufficient “residual functional  
3 capacity” to perform his past work; if so, the claimant is not disabled and the claim  
4 is denied. *Id.* The claimant has the burden of proving that he is unable to perform  
5 past relevant work. *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992). If the  
6 claimant meets this burden, a *prima facie* case of disability is established. *Id.* The  
7 Commissioner then bears the burden of establishing that the claimant is not  
8 disabled, because he can perform other substantial gainful work available in the  
9 national economy. *Id.* The determination of this issue comprises the fifth and final  
10 step in the sequential analysis. 20 C.F.R. §§ 404.1520, 416.920; *Lester*, 81 F.3d at  
11 828 n.5; *Drouin*, 966 F.2d at 1257.

## 12 V.

### 13 THE ALJ’S APPLICATION OF THE FIVE-STEP PROCESS

14 At step one, the ALJ found that Plaintiff had not engaged in substantial  
15 gainful activity since November 8, 2011, the alleged onset date. (AR 12.) At step  
16 two, the ALJ found that Plaintiff had the following medically determinable  
17 impairments: degenerative disc disease of the cervical and lumbar spine and  
18 affective disorder, not otherwise specified. (AR 13.) At step three, the ALJ found  
19 that Plaintiff did not have an impairment or combination of impairments that meets  
20 or medically equals the severity of one of the listed impairments. (AR 15.) At step  
21 four, the ALJ found that Plaintiff had the residual functional capacity (“RFC”) to  
22 perform less than the full range of medium work:

23 [Plaintiff] can lift and carry 50 pounds occasionally and 25 pounds  
24 frequently. . . . can stand and walk six hours out of an eight-hour day  
25 and sit six hours out of an eight-hour day. . . . can frequently climb,  
26 balance, kneel, and crawl. . . . can occasionally crouch and stoop.  
27 (AR 16.)  
28

1 Finally, at step five, based on the VE's testimony, the ALJ concluded that  
2 Plaintiff is capable of performing his past relevant work as a Forklift Operator,  
3 Building Material Sales Attendant, Truck Driver, Maintenance Worker and  
4 Grounds Keeper. (AR 19.) Accordingly, the ALJ concluded that Plaintiff was not  
5 disabled as defined by the Social Security Act from November 8, 2011 through the  
6 date of the decision. (AR 20.)

## 7 VI.

### 8 DISCUSSION

#### 9 A. The ALJ's Evaluation of Dr. Siekerkotte's Findings

10 It is well established in this Circuit that opinions of a consultative examining  
11 physician, if supported by independent clinical observations, are substantial medical  
12 evidence and may be relied upon by the ALJ in order to determine the Plaintiff's  
13 residual functional capacity. *See Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir.  
14 1995). An ALJ must provide "clear and convincing" reasons for rejecting the  
15 uncontroverted opinion of an examining physician and may reject the controverted  
16 opinion of an examining physician only for "specific and legitimate reasons that are  
17 supported by substantial evidence in the record." *Carmickle v. Comm'r, Soc. Sec.*  
18 *Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008) (quoting *Lester*, 81 F.3d at 830-31).  
19 An ALJ need not discuss every piece of evidence when evaluating the findings of a  
20 physician, but he must not ignore "significant probative evidence." *Vincent v.*  
21 *Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984); accord *Howard ex rel. Wolff v.*  
22 *Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003).

23 Here, Dr. Siekerkotte conducted an independent internal medical evaluation  
24 and completed a medical source statement assessing Plaintiff's alleged disabilities  
25 on June 26, 2013. (AR 287-290.) Based on the evaluation, Dr. Siekerkotte  
26 diagnosed low back pain, left wrist pain, anxiety and depression. (AR 290.) He  
27 assessed Plaintiff with the ability to stand/walk up to six hours, sit with no  
28 limitations, and carry 50 pounds occasionally and 25 pounds frequently. *Id.*

1 Dr. Siekerkotte also noted that Plaintiff “may use a cane as needed only” but “there  
2 is no need to use it all the time.” (*Id.*)

3 In the decision, the ALJ assessed Plaintiff with an RFC for a reduced range  
4 of medium work. (AR 16-19.) The ALJ accorded “great weight” to Dr.  
5 Siekerkotte’s opinion, but did not discuss his statement that Plaintiff may use a cane  
6 as needed only. (AR 16-19, 290.) Plaintiff contends that the ALJ improperly  
7 evaluated the findings of consultative examiner Dr. Siekerkotte because without  
8 explanation, she “implicitly rejected” Dr. Siekerkotte’s statement that Plaintiff may  
9 use a cane. (Pl. Mem. at 3-4; AR 290.) Plaintiff further contends that the ALJ’s  
10 disregard of this aspect of Dr. Siekerkotte’s opinion has significant vocational  
11 ramifications that may lead to a more restrictive residual functional capacity. (Pl.  
12 Mem. at 3.)

13 The Court concurs with the Commissioner that the ALJ properly evaluated  
14 Dr. Siekerkotte’s opinion. In her evaluation, Dr. Siekerkotte did not state that  
15 Plaintiff’s use of a cane might affect his physical abilities, did not prescribe  
16 Plaintiff a cane, and instead opined that a cane was not necessary. (AR 287-90.)  
17 Dr. Siekerkotte’s brief statement about Plaintiff’s possible use of a cane was merely  
18 an observation, not an opinion or recommendation that Plaintiff needed to use a  
19 cane. *See Cashin v. Astrue*, 2010 WL 749884, at \*11 (C.D. Cal. Feb. 24, 2010)  
20 (physician’s observation that plaintiff needed to use a cane does not constitute an  
21 objective finding that plaintiff’s cane was medically required). Additionally, no  
22 physician in the medical record suggested Plaintiff required a cane, and Plaintiff  
23 himself did not testify that he needed a cane. (Def. Mem. at 2.) Consequently, the  
24 ALJ was not required to address Dr. Siekerkotte’s observation that Plaintiff may  
25 use a cane, and the failure to mention a cane was not an implicit rejection of  
26 Dr. Siekerkotte’s opinion. *See Howard ex rel. Wolff*, 341 F.3d at 1012 (an ALJ  
27 need only discuss evidence that is significant and probative); *Cashin*, 2010 WL  
28 749884 at \*11 (physician's observation that claimant needed a cane was not

1 significant probative evidence that the ALJ had to discuss in the absence of  
2 evidence that the cane was medically required). Reversal or remand is not  
3 warranted on this ground. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir.  
4 2005).

5 **B. The ALJ's RFC Finding and Hypothetical Question to the VE**

6 Plaintiff also contends that reversal or remand is required because the ALJ  
7 did not provide a complete and proper assessment of the Plaintiff's RFC and failed  
8 to pose a complete hypothetical question to the vocational expert (VE). (Pl. Mem.  
9 at 4.) Plaintiff claims that the ALJ erred in not incorporating into the RFC and the  
10 hypothetical question Dr. Siekerkotte's statement that Plaintiff may use a cane as  
11 needed only, but that Plaintiff has no need to use it all the time (*Id.*; AR 290.) The  
12 Court disagrees.

13 For the vocational expert's testimony to constitute substantial evidence, the  
14 hypothetical question posed must "consider all of the claimant's limitations."  
15 *Andrews*, 53 F.3d at 1044. As discussed above, the ALJ properly evaluated the  
16 opinion of Dr. Siekerkotte. Plaintiff's RFC is not affected by the ALJ's failure to  
17 address evidence of Plaintiff's cane use because the RFC finding was an accurate  
18 statement of Plaintiff's physical abilities, and Dr. Siekerkotte's observation (and the  
19 medical record as a whole) do not constitute significant probative evidence that the  
20 use of a cane was medically necessary or reflects any functional limitations. *See*  
21 *Earle v. Colvin*, 2014 WL 2812312 at \*4 (C.D. Cal. Jun. 23, 2014) (brief references  
22 to plaintiff's cane use were not significant and probative evidence that the ALJ was  
23 required to discuss before making his RFC determination). As a result, the ALJ  
24 posed a complete hypothetical question to the vocational expert, including a proper  
25 assessment of Plaintiff's residual functional capacity.<sup>2</sup> *See Bayliss* 427 F.3d at  
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27 <sup>2</sup> Commissioner also contends that Plaintiff waived his current challenges by  
28 failing to raise them during the administrative proceedings. (Def. Mem. at 5.)

1 1217 (an ALJ's hypothetical question is proper where it contains only limitations  
2 that are credible and supported by substantial evidence in the record).

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IT THEREFORE IS ORDERED that Judgment be entered affirming the  
6 decision of the Commissioner and dismissing this action with prejudice.

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DATED: June 22, 2017

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ALEXANDER F. MacKINNON  
UNITED STATES MAGISTRATE JUDGE

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The Court need not reach this issue given the resolution of the substantive issues  
raised by Plaintiff.