

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LUIS SALAZAR,

Case No. CV 16-6721 (SS)

Plaintiff,

13

NANCY A. BERRYHILL,<sup>1</sup> Acting  
Commissioner of Social  
Security.

**MEMORANDUM DECISION AND ORDER**

Defendant.

1

## INTRODUCTION

21 Luis Salazar ("Plaintiff") brings this action seeking to  
22 overturn the decision of the Commissioner of the Social Security  
23 Administration (the "Commissioner" or "Agency") denying his  
24 application for Supplemental Security Income ("SSI") benefits. The  
25 parties consented, pursuant to 28 U.S.C. § 636(c), to the

26       1   Nancy A. Berryhill is now the Acting Commissioner of Social  
27       Security and is substituted for Acting Commissioner Carolyn W.  
28       Colvin in this case.    See 42 U.S.C. § 405(g); Fed. R. Civ. P.  
25(d).

1 jurisdiction of the undersigned United States Magistrate Judge.  
2 (Dkt. Nos. 11, 12). For the reasons stated below, the Court AFFIRMS  
3 the Commissioner's decision.

4

5 **II.**

6 **PROCEDURAL HISTORY**

7

8 Plaintiff filed an application for SSI on May 16, 2013. (AR  
9 134-39). Plaintiff alleged a disability onset date of November  
10 19, 2005. (AR 118). The Agency denied Plaintiff's application on  
11 October 3, 2013. (AR 59-67). On October 10, 2013, Plaintiff  
12 requested a hearing before an Administrative Law Judge ("ALJ").  
13 (AR 71). On December 29, 2014, ALJ David G. Marcus conducted a  
14 hearing to review Plaintiff's claim. (AR 39-58). On January 29,  
15 2015, the ALJ found that Plaintiff was not disabled under the  
16 Social Security Act. (AR 28-35). Plaintiff sought review of the  
17 ALJ's decision before the Appeals Council on March 16, 2015. (AR  
18 22). On June 29, 2016, the Appeals Council denied review. (AR 8-  
19 10). The ALJ's decision then became the final decision of the  
20 Commissioner. (AR 8). Plaintiff commenced the instant action on  
21 September 7, 2016. (Dkt. No. 1).

22

23 **III.**

24 **FACTUAL BACKGROUND**

25

26 Plaintiff was born on March 9, 1965. (AR 134). He was 40  
27 years old as of the alleged disability onset date of November 19,  
28

1 2005, and 49 years old when he testified before the ALJ. (AR 39,  
2 134). Plaintiff previously worked as a security guard and  
3 mover/driver. (AR 46, 34). Plaintiff alleges disability due to  
4 lower back injury/screws in back, low blood count, stomach surgery  
5 for holes in esophagus, and depression. (AR 59, 161).

6

7 **A. Plaintiff's Testimony And Statements**

8

9 Plaintiff testified that he worked as a mover and driver for  
10 approximately five years beginning in 2001. (AR 46, 161-62). In  
11 1999 and 2000, Plaintiff worked as a security guard at a homeless  
12 shelter. (AR 46-47, 162). Plaintiff has not worked since he filed  
13 his application for SSI benefits in May 2013. (AR 48).

14

15 Plaintiff had prior back surgeries in February 2009 and  
16 February 2010. (AR 164). Plaintiff testified that there is a  
17 "ball" in the lumbar area of his back at the location of his past  
18 surgeries that "hurts" and does "not feel right." (AR 51-52).  
19 This pain prevents him from laying on his bed and leaning over.  
20 (AR 52). Plaintiff testified that he "can't do anything." (Id.).  
21

22 Plaintiff reports that his condition has worsened since his  
23 initial application for SSI benefits. (AR 170). Plaintiff  
24 testified that, due to his back pain and other limitations, he can  
25 lift only ten to fifteen pounds, stand for three to four hours out  
26 of an eight-hour work day, and walk for about eight hours out of  
27 an eight-hour work day. (AR 53-55).

1 Plaintiff testified that the only medical care he is receiving  
2 is for treatment of his back. (AR 50). The last time Plaintiff  
3 saw a doctor for his back symptoms was in March 2013.<sup>2</sup> (Id.).  
4 Plaintiff has not seen a doctor since that time "because they cut  
5 me off of my workman's comp . . . [, i.e.,] being covered." (AR  
6 51). Plaintiff testified that the only medications he takes are  
7 over-the-counter Ibuprofen and Tylenol. (Id.).  
8

9 **B. Physicians' Opinions**

10 **1. Worker's Compensation Physician Simon Lavi, D.O.**

11 Simon Lavi, D.O., was Plaintiff's original worker's  
12 compensation physician. (AR 31). Dr. Lavi treated Plaintiff for  
13 ongoing symptoms associated with retained symptomatic lumbar spine  
14 hardware and status post L4 to S1 bilateral transforaminal lumbar  
15 interbody fusion. (AR 258; see also AR 50). Dr. Lavi's physical  
16 examination on October 18, 2013, revealed tenderness from the mid  
17 to distal lumbar segment of Plaintiff's spine. (AR 257). Dr. Lavi  
18 reported pain with terminal motion and a positive seated nerve root  
19 test with dysesthesia at the L5-S1 dermatome. (Id.). Dr. Lavi's  
20 treatment plan included obtaining updated magnetic resonance  
21 imaging of Plaintiff's lumbar spine and bilateral lower extremities  
22 and ordering an electromyogram study to assess Plaintiff's  
23 radicular symptoms. (AR 258).  
24  
25

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26  
27 <sup>2</sup> Plaintiff's medical records indicate that he last saw a physician  
28 in October, not March, 2013. (AR 256-60).

1           **2. Consultative Examining Physician Conception A. Enriquez,**  
2           **M.D.**

3

4           On September 11, 2013, Plaintiff was examined by Conception  
5           A. Enriquez, M.D., a consultative examining internist. (AR 244-  
6           47). Dr. Enriquez noted that Plaintiff presented for treatment  
7           for a history of peptic ulcer disease and back pain. (AR 244).  
8           Dr. Enriquez reported that Plaintiff drove himself to his  
9           appointment. (AR 245).

10

11           Dr. Enriquez's physical examination of Plaintiff's spine  
12           revealed that his cervical spine range of motion was within normal  
13           limits with no tenderness or muscle spasm. (AR 246). While there  
14           was tenderness in Plaintiff's lumbosacral spine with decreased  
15           range of motion at 70/90 degrees on trunk flexion, there was no  
16           tenderness to palpation or muscle spasm in that area. (Id.).  
17           Plaintiff's straight leg raising test was positive at 70 degrees.  
18           (Id.).

19

20           Dr. Enriquez reported that Plaintiff's gait and balance are  
21           within normal limits and Plaintiff does not require an assistive  
22           device for ambulation. (AR 247). Using the Jamar dynamometer,  
23           Dr. Enriquez noted that Plaintiff is able to generate 80 pounds of  
24           force using his right hand and 90 pounds of force using his left  
25           hand. (AR 245). The remaining portions of Dr. Enriquez's  
26           examination of Plaintiff were unremarkable. (AR 244-47).

1       Dr. Enriquez's medical impressions were that Plaintiff's back  
2 revealed tenderness and decreased range of motion in the  
3 lumbosacral spine area with signs of radiculopathy. (AR 247). As  
4 a functional assessment, the doctor opined that Plaintiff can  
5 occasionally lift or carry twenty pounds and frequently lift and/or  
6 carry ten pounds, stand and/or work with normal breaks for six  
7 hours in an eight-hour work day, sit with normal breaks for six  
8 hours in an eight-hour work day, and occasionally bend, stoop, and  
9 twist. (Id.).

10

11       **3. Consultative Examining Physician Richard Pollis, M.D.**

12

13       On August 7, 2014, Plaintiff underwent a consultative  
14 orthopedic examination by Richard Pollis, M.D. (AR 666-71). Dr.  
15 Pollis reported that Plaintiff's gait was "normal without signs of  
16 limp or antalgia." (AR 668). Dr. Pollis further noted that  
17 Plaintiff is able to stand on his heels and toes without difficulty  
18 and no evidence of weakness in the ankle flexors and extensors.  
19 (Id.). Further, Plaintiff has no difficulty getting on and off of  
20 the examination table, sat in a chair comfortably without tilt, is  
21 able to rise from a sitting and supine position, and requires no  
22 assistive devices to ambulate. (Id.).

23

24       Dr. Pollis's examination of Plaintiff's spine revealed  
25 paravertebral muscle tenderness and spasm, forward flexion to 70  
26 degrees, extension to zero degrees, right and left lateral flexion  
27 to fifteen degrees, and straight leg raise test to 80 degrees  
28 bilaterally with hamstring spasm. (Id.). The Jamar dynamometer

1 measured Plaintiff's grip strength at 80/70/80 in both hands. (AR  
2 667). The remaining portions of Dr. Pollis's examination of  
3 Plaintiff were unremarkable. (AR 666-71).

4

5 Dr. Pollis diagnosed Plaintiff with "[l]ower back pain, status  
6 post lumbar laminectomy and fusion." (AR 670). In his medical  
7 source statement, Dr. Pollis opined that Plaintiff is capable of  
8 lifting and carrying twenty pounds occasionally and ten pounds  
9 frequently, standing and walking six hours out of an eight-hour  
10 work day with appropriate breaks, and sitting six hours out of an  
11 eight-hour work day with appropriate breaks. (Id.). Dr. Pollis  
12 further assessed the limitation of occasional bending, climbing,  
13 stooping, kneeling, and crouching. (AR 670-71).

14

15 **4. State Agency Reviewing Physician L. Limos, M.D.**

16

17 On October 2, 2013, L. Limos, M.D., concluded that Plaintiff  
18 has a severe back condition that does not medically meet or equal  
19 a listed impairment. (AR 59-67; see also AR 33). Dr. Limos opined  
20 that Plaintiff retains the ability to lift or carry twenty pounds  
21 occasionally and ten pounds frequently, stand or walk six hours in  
22 an eight-hour work day, sit six hours in an eight-hour work day,  
23 and occasionally perform postural functions. (AR 64; see also AR  
24 33).

1           **5. Worker's Compensation Examiner Jeffrey A. Berman, M.D.**

2  
3           The Agreed Medical Examiner in Plaintiff's Worker's  
4 Compensation case Jeffrey A. Berman, M.D., examined Plaintiff on  
5 October 15, 2009. (AR 424). Dr. Berman's physical examination of  
6 Plaintiff's lumbar spine revealed tenderness around and to the  
7 sides of Plaintiff's scar and a "needle" sensation reported by  
8 Plaintiff upon palpation. (AR 427). Further, Plaintiff reported  
9 pain in the lower back with lumbar mobility, mainly with flexion  
10 and extension. (Id.). Dr. Berman noted a slightly diminished  
11 ability to perform sitting straight leg raise with stiffness in  
12 the lower back and lower back complaints. (Id.). In addition,  
13 the doctor reported that Plaintiff is unable to sit and forward  
14 flex to reach his fingertips to his toes. (Id.). In a supine  
15 position the doctor noted that a straight right leg raise elicits  
16 a non-radiating lower back pain, while a straight left leg raise  
17 elicits lower back pain and some radiation. (Id.).  
18

19           Dr. Berman reported that Plaintiff's x-rays of his lumbar  
20 spine show evidence of a decompression as well as screw fixations  
21 and fusions. (AR 429). Dr. Berman's remaining findings were  
22 unremarkable. (AR 424-36).  
23

24           Dr. Berman concluded that, as of October 2009, Plaintiff was  
25 "permanent and stationary, having reached maximum medical  
26 improvement." (AR 431). Due to Plaintiff's limited mobility and  
27 resulting pain, as well as the "hint" of left side radiculopathy  
28 in response to straight leg raising and left calf atrophy

1 consistent with chronic radicular involvement, Plaintiff is  
2 "precluded from substantial activities, along with prolonged weight  
3 bearing activities." (AR 432).

4

5 Based upon these findings, Dr. Berman initially assessed  
6 Plaintiff with a 28 percent "whole person impairment." (Id.). Due  
7 to Plaintiff's additional weight-bearing limitation, however, Dr.  
8 Berman assessed an additional nine percent impairment, for a total  
9 orthopedic impairment of 34 percent. (AR 433-34). Dr. Berman  
10 opined that Plaintiff's weight-bearing limitation would cause him  
11 to fall into a category of persons able to rise to a standing  
12 position and walk but having difficulty with elevations, grade,  
13 stairs, deep chairs, and long distances. (AR 433).

14

15 **IV.**

16 **THE FIVE STEP SEQUENTIAL EVALUATION PROCESS**

17

18 To qualify for disability benefits, a claimant must  
19 demonstrate a medically determinable physical or mental impairment  
20 that prevents the claimant from engaging in substantial gainful  
21 activity and that is expected to result in death or to last for a  
22 continuous period of at least twelve months. Reddick v. Chater,  
23 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)).  
24 The impairment must render the claimant incapable of performing  
25 the work she previously performed and incapable of performing any  
26 other substantial gainful employment that exists in the national  
27 economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999)  
28 (citing 42 U.S.C. § 423(d)(2)(A)).

1  
2       To decide if a claimant is entitled to benefits, an ALJ  
3 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The  
4 steps are as follows:

5

6       (1) Is the claimant presently engaged in substantial gainful  
7 activity? If so, the claimant is found not disabled. If  
8 not, proceed to step two.

9       (2) Is the claimant's impairment severe? If not, the  
10 claimant is found not disabled. If so, proceed to step  
11 three.

12       (3) Does the claimant's impairment meet or equal one of the  
13 specific impairments described in 20 C.F.R. Part 404,  
14 Subpart P, Appendix 1? If so, the claimant is found  
15 disabled. If not, proceed to step four.

16       (4) Is the claimant capable of performing his past work? If  
17 so, the claimant is found not disabled. If not, proceed  
18 to step five.

19       (5) Is the claimant able to do any other work? If not, the  
20 claimant is found disabled. If so, the claimant is found  
21 not disabled.

22

23       Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,  
24 262 F.3d 949, 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b) -  
25 (g) (1) & 416.920(b) - (g) (1).

26

27       The claimant has the burden of proof at steps one through four  
28 and the Commissioner has the burden of proof at step five.

1 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an  
2 affirmative duty to assist the claimant in developing the record  
3 at every step of the inquiry. Id. at 954. If, at step four, the  
4 claimant meets his or her burden of establishing an inability to  
5 perform past work, the Commissioner must show that the claimant  
6 can perform some other work that exists in "significant numbers"  
7 in the national economy, taking into account the claimant's  
8 residual functional capacity ("RFC"), age, education, and work  
9 experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at  
10 721; 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner  
11 may do so by the testimony of a VE or by reference to the Medical-  
12 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,  
13 Appendix 2 (commonly known as "the grids"). Osenbrock v. Apfel,  
14 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both  
15 exertional (strength-related) and non-exertional limitations, the  
16 Grids are inapplicable and the ALJ must take the testimony of a  
17 VE. Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000) (citing  
18 Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th Cir. 1988)).

1

## THE ALJ'S DECISION

23 The ALJ employed the five-step sequential evaluation process  
24 and concluded that Plaintiff was not disabled within the meaning  
25 of the Social Security Act. (AR 35). At step one, the ALJ found  
26 that Plaintiff had not engaged in substantial gainful activity  
27 since May 16, 2013, which is the date Plaintiff filed his  
28 application for SSI benefits. (AR 30). At step two, the ALJ found

1 that Plaintiff had the severe medically determinable impairments  
2 of status posterior fusion with pedicle screw fixation (L4-5 and  
3 L5-S1) and interbody fusions and obesity. (Id.). At the third  
4 step, the ALJ found that the severe impairments at step two did  
5 not meet or medically equal a listed impairment. (AR 31).

6

7 At step four, the ALJ found that Plaintiff had the RFC to  
8 perform light work as defined in 20 C.F.R. § 416.967(b) except that  
9 Plaintiff can lift or carry twenty pounds occasionally and ten  
10 pounds frequently, stand and walk six hours in an eight-hour work  
11 day, sit six hours in an eight-hour work day, and occasionally  
12 bend, climb, stoop, kneel, and crouch. (AR 32). The ALJ found  
13 that Plaintiff was capable of performing his past relevant work as  
14 a security guard. (AR 34). The ALJ determined that this past work  
15 did not require the performance of work-related activities  
16 precluded by Plaintiff's RFC. (Id.). Accordingly, the ALJ found  
17 that Plaintiff was not under a disability as defined by the Social  
18 Security Act since Plaintiff filed his application for SSI benefits  
19 on May 16, 2013. (AR 35).

20

21 **VI.**

22

#### **STANDARD OF REVIEW**

23

24 Under 42 U.S.C. § 405(g), a district court may review the  
25 Commissioner's decision to deny benefits. "[The] court may set  
26 aside the Commissioner's denial of benefits when the ALJ's findings  
27 are based on legal error or are not supported by substantial  
28 evidence in the record as a whole." Aukland v. Massanari, 257 F.3d

1 1033, 1035 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); see  
2 also Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing  
3 Fair v. Bowen, 885 F.2d 597, 601 (9th Cir. 1989)).

4

5 "Substantial evidence is more than a scintilla, but less than  
6 a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v.  
7 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant  
8 evidence which a reasonable person might accept as adequate to  
9 support a conclusion." (Id.). To determine whether substantial  
10 evidence supports a finding, the court must "'consider the record  
11 as a whole, weighing both evidence that supports and evidence that  
12 detracts from the [Commissioner's] conclusion.'" Aukland, 257 F.3d  
13 at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.  
14 1993)). If the evidence can reasonably support either affirming  
15 or reversing that conclusion, the court may not substitute its  
16 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-  
17 21 (citing Flaten v. Sec'y of Health & Human Servs., 44 F.3d 1453,  
18 1457 (9th Cir. 1995)).

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VII.

## DISCUSSION

The ALJ's Reasons For Rejecting Plaintiff's Credibility Were Clear And Convincing

7 Plaintiff alleges that the ALJ improperly assessed Plaintiff's  
8 credibility. (Pl's Mem. in Support of Complaint at 3). The Court  
9 disagrees. The ALJ's reasons for rejecting Plaintiff's credibility  
10 were supported by substantial evidence in the record and were clear  
11 and convincing. Accordingly, for the reasons discussed below, the  
12 ALJ's decision is AFFIRMED.

When assessing a claimant's credibility regarding subjective pain or intensity of symptoms, the ALJ must engage in a two-step analysis. Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012). Initially, the ALJ must determine if there is medical evidence of an impairment that could reasonably produce the symptoms alleged. Id. (citation omitted). If such evidence exists, and there is no evidence of malingering, the ALJ must provide specific, clear and convincing reasons for rejecting the claimant's testimony about the symptom severity. Id. (citation omitted). In so doing, the ALJ may consider the following:

25 (1) ordinary techniques of credibility evaluation, such  
26 as the claimant's reputation for lying, prior  
27 inconsistent statements concerning the symptoms, and  
28 other testimony by the claimant that appears less than

1           candid; (2) unexplained or inadequately explained  
2           failure to seek treatment or to follow a prescribed  
3           course of treatment; and (3) the claimant's daily  
4           activities.

5

6           Smolen, 80 F.3d at 1284; see also Tommasetti v. Astrue, 533 F.3d  
7           1035, 1039 (9th Cir. 2008).

8

9           An ALJ also may rely upon inconsistencies between a claimant's  
10          testimony and conduct, or internal contradictions in the claimant's  
11          testimony. Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir.  
12          1997). In addition, the ALJ may consider the observations of  
13          treating and examining physicians regarding, among other matters,  
14          the functional restrictions caused by a claimant's symptoms.  
15          Smolen, 80 F.3d at 1284 (citing Social Security Ruling ("SSR") 88-  
16          13). However, it is improper for an ALJ to reject subjective  
17          testimony based "solely" on its inconsistencies with the objective  
18          medical evidence presented. Bray v. Comm'r of Soc. Sec. Admin.,  
19          554 F.3d 1219, 1227 (9th Cir. 2009) (citing Bunnell v. Sullivan,  
20          947 F.2d 341, 345 (9th Cir. 1991)).

21

22          Regardless of the reason, the ALJ's credibility determination  
23          must be supported with findings that are "sufficiently specific to  
24          permit the court to conclude that the ALJ did not arbitrarily  
25          discredit [the claimant's] testimony." Tommasetti, 533 F.3d at  
26          1039 (citation omitted). Although an ALJ's interpretation of a  
27          claimant's testimony may not be the only reasonable one, if it is  
28          supported by substantial evidence, "it is not [the court's] role

1 to second-guess it." Rollins v. Massanari, 261 F.3d 853, 857 (9th  
2 Cir. 2001) (citing Fair, 885 F.2d at 604).

3

4 Here, Plaintiff testified to suffering from "unbearable,"  
5 stabbing pain in his lower back that limits his ability to stand  
6 and requires him to lay down for much of the day. (AR 51-52; see  
7 also AR 32). Due to this pain, Plaintiff testified that he can  
8 lift only up to ten or fifteen pounds bilaterally, stand for one  
9 hour at a time before he begins to feel pain, stand a total of  
10 three or four hours, and walk for eight hours a day. (AR 53-55).

11

12 The ALJ relied on the following reasons to reject Plaintiff's  
13 testimony: (1) conservative treatment; (2) lack of objective  
14 medical evidence; (3) inconsistencies between Plaintiff's  
15 testimony and conduct; (4) Drs. Enriquez's and Pollis's  
16 observations that Plaintiff's gait is unimpaired; and (5)  
17 consultative examining and state agency reviewing physicians'  
18 opinions that Plaintiff can do light work. As discussed below,  
19 the ALJ's reasons for discrediting Plaintiff's statements were  
20 based upon substantial evidence in the record and were clear and  
21 convincing.

22

23 First, the ALJ properly rejected Plaintiff's credibility  
24 because Plaintiff's treatment has been conservative. Evidence of  
25 conservative treatment is sufficient to discredit a claimant's  
26 testimony regarding the severity of an impairment. Parra v.  
27 Astrue, 481 F.3d 742, 751 (9th Cir. 2007) (citing Johnson v.  
28 Shalala, 60 F.3d 1428, 1434 (9th Cir. 1995)).

1        The ALJ found that Plaintiff is not a surgical candidate and  
2 received no medical treatment in 2014, despite filing his  
3 application in May 2013 and claiming that his condition worsened  
4 after filing. (AR 32-33, 170). While Plaintiff explained that he  
5 failed to seek treatment in 2014 because his worker's compensation  
6 coverage was terminated (AR 51), the ALJ noted that Plaintiff's  
7 medical "records show[] that his condition is responsive to  
8 treatment." (AR 33). In addition, the ALJ reasoned that Dr.  
9 Lavi's records show only conservative management after his second  
10 surgery in 2010, including trigger point injections with symptom  
11 relief. (AR 34). The ALJ also took note that Plaintiff admitted  
12 to taking no prescribed medications for pain and using only over-  
13 the counter Tylenol. (AR 33).

14

15        Substantial evidence in the record supports the ALJ's  
16 conclusion that Plaintiff received conservative, effective  
17 treatment. From this evidence, the ALJ properly could infer that  
18 Plaintiff's pain was exaggerated and not completely disabling. Cf.  
19 Tommasetti, 533 F.3d at 1040 (favorable response to conservative  
20 treatment, including medication, may undermine a claimant's  
21 assertions); Parra, 481 F.3d at 750-51 ("that [claimant's] physical  
22 ailments were treated with an over-the-counter pain medication" is  
23 "evidence of conservative treatment . . . sufficient to discount a  
24 claimant's credibility regarding severity of an impairment").  
25 Accordingly, Plaintiff's conservative treatment was a clear and  
26 convincing reason to discount the credibility of his statements.

27

28

1       Second, while a lack of objective medical evidence may not  
2 serve as the sole reason for an adverse credibility determination,  
3 the ALJ properly relied on a lack of medical evidence as one of  
4 many reasons to discount Plaintiff's credibility. Cf. Rollins,  
5 261 F.3d at 857 ("[w]hile subjective pain testimony cannot be  
6 rejected on the sole ground that it is not fully corroborated by  
7 objective evidence, the medical evidence is still a relevant factor  
8 in determining the severity of the claimant's pain and its  
9 disabling effects"); see also 20 C.F.R. § 416.929(c)(2). The ALJ  
10 noted that Plaintiff's medical treatment has not confirmed that  
11 Plaintiff's condition is worsening "per objective evidence." (AR  
12 32). Further, Plaintiff received no medical treatment at all in  
13 2014 despite his claims of suffering from a worsening medical  
14 condition. (AR 33; see also AR 50-51). In addition, the ALJ  
15 indicated that Dr. Enriquez's September 2013 examination of  
16 Plaintiff's back revealed no signs of radiculopathy. (AR 33).  
17 Further, Dr. Berman's examination revealed only a "hint" of  
18 radiculopathy on the left in response to straight leg raising. (AR  
19 34; see also AR 432).

20  
21       This evidence was substantial and reasonably supported the  
22 ALJ's conclusion that Plaintiff's symptoms were not consistent with  
23 the objective medical evidence. Accordingly, the ALJ properly  
24 relied on a lack of objective medical evidence as one of several  
25 reasons to discount Plaintiff's credibility.

26  
27       Third, the ALJ properly relied on Plaintiff's own conduct to  
28 impeach the credibility of his statements. The ALJ noted that

1 Plaintiff "is able to drive a car, which reasonably supports a  
2 retained ability to bend, twist, use the upper and lower  
3 extremities in a coordinated fashion and an ability to turn his  
4 neck." (AR 33). The ALJ further determined that Plaintiff's  
5 "testimony regarding the ability to lift or carry is undermined by  
6 his ability to exert a grip force up to 80 pounds with the bilateral  
7 extremities." (Id.)

8

9 Substantial evidence supported the ALJ's conclusion. Dr.  
10 Enriquez observed that Plaintiff drove himself to his appointment.  
11 (AR 245). He also reported that Plaintiff is able to generate 80  
12 pounds of force using the right hand and 90 pounds of force using  
13 the left hand. (Id.). Similarly, Dr. Pollis measured Plaintiff's  
14 grip strength as 80/70/80 in both hands. (AR 667). Accordingly,  
15 the inconsistencies between Plaintiff's conduct and abilities and  
16 his claimed limitations constitutes a clear and convincing reason  
17 supporting the ALJ's adverse credibility determination. Cf. Light,  
18 119 F.3d at 792; see also Berry v. Astrue, 622 F.3d 1228, 1234 (9th  
19 Cir. 2010) (ALJ properly "concluded that [claimant] was not  
20 entirely credible because he found contradictions between  
21 complaints in [plaintiff's] activity questionnaire and hearing  
22 testimony and some of his other self-reported activities.").

23

24 Fourth, the ALJ properly relied on the observations of  
25 Plaintiff's examining physicians to discount Plaintiff's  
26 credibility. The ALJ found that Plaintiff "walks effectively as  
27 noted by the consultative examining physicians." (AR 34).  
28 Further, the ALJ noted that Drs. Enriquez and Pollis failed to

1 observe any gait disturbances or upper or lower extremity weakness  
2 or loss of function. (AR 34).  
3

4 Substantial evidence supported the ALJ's finding. Dr.  
5 Enriquez's notes indicate that Plaintiff's "[g]ait and balance are  
6 within normal limits" and Plaintiff does not require an assistive  
7 device for ambulation. (AR 247). Dr. Pollis similarly reported  
8 that Plaintiff's "gait is normal without signs of limp or  
9 antalgia." (AR 668). In addition, Dr. Pollis observed that  
10 Plaintiff is able to stand on his heels and toes without difficulty  
11 and there is no evidence of weakness in the angle flexors and  
12 extensors. (Id.). Further, he observed that Plaintiff had no  
13 difficulty getting on and off of the examination table, sat in a  
14 chair comfortably, is able to rise from a sitting and supine  
15 position, and requires no assistive devices to ambulate. (Id.).  
16

17 Moreover, while Dr. Berman assessed a nine percent loss of  
18 function due to Plaintiff's weight-bearing limitation, he  
19 nonetheless noted that Plaintiff falls within a category of persons  
20 who can rise to a standing position and walk, but has difficulty  
21 with elevations, grade, stairs, deep chairs, and long distances.  
22 (AR 433). The ALJ reasonably interpreted this assessment of  
23 Plaintiff's weight-bearing capacity as consistent with the opinions  
24 of Drs. Pollis, Enriquez, and Limos. (AR 34). It is not the  
25 Court's task to second-guess the reasonable interpretation of an  
26 ALJ when, as here, it is supported by substantial evidence. Cf.  
27 Rollins, 261 F.3d at 857. Accordingly, the ALJ properly considered  
28 the observations of Plaintiff's examining physicians to discount

1 Plaintiff's credibility. Cf. Smolen, 80 F.3d at 1284 (citing SSR  
2 88-13).

3

4 Fifth, the ALJ properly discounted Plaintiff's credibility  
5 because consultative examiners Drs. Pollis and Enriquez and state  
6 agency reviewer Dr. Limos opined that Plaintiff was capable of  
7 performing a level of work consistent with Plaintiff's RFC. (AR  
8 33). The ALJ also interpreted Dr. Berman's opinion as consistent  
9 with the other medical opinion evidence and Plaintiff's RFC. (AR  
10 33-34).

11

12 The opinions of these physicians constituted substantial  
13 evidence upon which the ALJ was entitled to rely to discount  
14 Plaintiff's credibility. Cf. Stubbs-Danielson v. Astrue, 539 F.3d  
15 1169, 1175 (9th Cir. 2008) ("the medical evidence, including Dr.  
16 Eather's report and Dr. Neville's report - which both found  
17 [claimant] could perform a limited range of work - support the  
18 ALJ's credibility determination"); Molina, 674 F.3d at 1113 (ALJ  
19 supported adverse credibility finding based on "conclusions of both  
20 Dr. Yost and the state examining physician that [claimant's]  
21 anxiety disorder was not severe and that she was able to control  
22 it with [medication] and other self-calming measures"). Dr.  
23 Enriquez opined that Plaintiff can occasionally lift or carry  
24 twenty pounds and frequently lift and/or carry ten pounds, stand  
25 and/or work with normal breaks for six hours in an eight-hour work  
26 day, sit with normal breaks for six hours in an eight-hour work  
27 day, and occasionally bend, stoop, and twist. (AR 247).

1       Dr. Pollis similarly opined that Plaintiff is capable of  
2 lifting and carrying twenty pounds occasionally and ten pounds  
3 frequently, standing and walking six hours out of an eight-hour  
4 work day with appropriate breaks, and sitting six hours out of an  
5 eight-hour work day with appropriate breaks. (AR 670). Dr. Pollis  
6 noted the limitation of occasional bending, climbing, stooping,  
7 kneeling, and crouching. (AR 670-71). Dr. Limos's functional  
8 assessment was fully consistent with the assessments of Drs.  
9 Enriquez and Pollis. (AR 64).

10

11       Further, although Dr. Berman assessed Plaintiff with a 28  
12 percent "whole person impairment" and an additional nine percent  
13 impairment due to Plaintiff's weight-bearing limitation, the ALJ  
14 reasonably determined that Dr. Berman's opinion nonetheless was  
15 consistent with the other medical opinions. The ALJ reasoned that,  
16 "given the claimant's previous very heavy work activity," he would  
17 not be precluded from performing activities consistent with the  
18 assessed RFC even with the percentage impairment assessed by Dr.  
19 Berman. (AR 34). The Court does not second-guess this reasonable  
20 interpretation where it is supported by substantial evidence in  
21 the record. Cf. Rollins, 261 F.3d at 857.

22

23       In sum, the ALJ offered clear and convincing reasons,  
24 supported by substantial evidence in the record, for his adverse  
25 credibility finding. Accordingly, no remand is required.

26 //

27 //

28 //

VIII.

## CONCLUSION

Consistent with the foregoing, IT IS ORDERED that Judgment be entered AFFIRMING the decision of the Commissioner. The Clerk of the Court shall serve copies of this Order and the Judgment on counsel for both parties.

DATED: June 12, 2017

/S/

SUZANNE H. SEGAL  
UNITED STATES MAGISTRATE JUDGE

THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW, LEXIS OR  
ANY OTHER LEGAL DATABASE.