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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 ANTHONY WAYNE BRYANT,
12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL,¹ Acting
15 Commissioner of Social Security,
16 Defendant.

Case No. CV 16-8406 JC

MEMORANDUM OPINION

17
18 **I. SUMMARY**

19 On November 10, 2016, Anthony Wayne Bryant (“plaintiff”) filed a
20 Complaint seeking review of the Commissioner of Social Security’s denial of
21 plaintiff’s application for benefits. The parties have consented to proceed before
22 the undersigned United States Magistrate Judge.

23 This matter is before the Court on the parties’ cross motions for summary
24 judgment, respectively (“Plaintiff’s Motion”) and (“Defendant’s Motion”). The
25 Court has taken both motions under submission without oral argument. See Fed.
26 R. Civ. P. 78; L.R. 7-15; November 21, 2016 Case Management Order ¶ 5.

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28 ¹Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill is
hereby substituted for Carolyn W. Colvin as the defendant in this action.

1 Based on the record as a whole and the applicable law, the decision of the
2 Commissioner is AFFIRMED. The findings of the Administrative Law Judge
3 (“ALJ”) are supported by substantial evidence and are free from material error.

4 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**
5 **DECISION**

6 On October 9, 2013, plaintiff filed an application for Disability Insurance
7 Benefits alleging disability beginning on December 12, 2012, due to degenerative
8 joint disease, degenerative disc disease, and testicular pain. (Administrative
9 Record (“AR”) 31, 139, 171-72). The ALJ examined the medical record and heard
10 testimony from plaintiff (who was represented by counsel) and a vocational expert
11 on May 12, 2015. (AR 44-67).

12 On June 30, 2015, the ALJ determined that plaintiff was not disabled
13 through the date of the decision. (AR 31-39). Specifically, the ALJ found:
14 (1) plaintiff suffered from the following severe impairments: degenerative disc
15 disease, arthritic changes to the left acromioclavicular (AC) joint, status post
16 bilateral inguinal hernia repairs, and history of prostate cancer (AR 33);
17 (2) plaintiff’s impairments, considered singly or in combination, did not meet or
18 medically equal a listed impairment (AR 33-34); (3) plaintiff retained the residual
19 functional capacity to perform medium work (20 C.F.R. § 404.1567(c)) with
20 additional limitations² (AR 34); (4) plaintiff could perform past relevant work as a
21 truck driver (AR 38-39); and (5) plaintiff’s statements regarding the intensity,
22 persistence, and limiting effects of subjective symptoms were not entirely credible
23 (AR 35).

24 On September 16, 2016, the Appeals Council denied plaintiff’s application
25 for review. (AR 1).

26
27 ²The ALJ determined that plaintiff could: (i) frequently climb stairs and ramps;
28 (ii) occasionally climb ladders and scaffolds; (iii) frequently balance, stoop, kneel, crouch, and
crawl; and (iv) occasionally reach overhead with his non-dominant left arm. (AR 34).

1 **III. APPLICABLE LEGAL STANDARDS**

2 **A. Sequential Evaluation Process**

3 To qualify for disability benefits, a claimant must show that the claimant is
4 unable “to engage in any substantial gainful activity by reason of any medically
5 determinable physical or mental impairment which can be expected to result in
6 death or which has lasted or can be expected to last for a continuous period of not
7 less than 12 months.” Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012)
8 (quoting 42 U.S.C. § 423(d)(1)(A)) (internal quotation marks omitted). The
9 impairment must render the claimant incapable of performing the work the
10 claimant previously performed and incapable of performing any other substantial
11 gainful employment that exists in the national economy. Tackett v. Apfel, 180
12 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

13 In assessing whether a claimant is disabled, an ALJ is required to use the
14 following five-step sequential evaluation process:

- 15 (1) Is the claimant presently engaged in substantial gainful activity? If
16 so, the claimant is not disabled. If not, proceed to step two.
- 17 (2) Is the claimant’s alleged impairment sufficiently severe to limit
18 the claimant’s ability to work? If not, the claimant is not
19 disabled. If so, proceed to step three.
- 20 (3) Does the claimant’s impairment, or combination of
21 impairments, meet or equal an impairment listed in 20 C.F.R.
22 Part 404, Subpart P, Appendix 1? If so, the claimant is
23 disabled. If not, proceed to step four.
- 24 (4) Does the claimant possess the residual functional capacity to
25 perform claimant’s past relevant work? If so, the claimant is
26 not disabled. If not, proceed to step five.
- 27 (5) Does the claimant’s residual functional capacity, when
28 considered with the claimant’s age, education, and work

1 experience, allow the claimant to adjust to other work that
2 exists in significant numbers in the national economy? If so,
3 the claimant is not disabled. If not, the claimant is disabled.

4 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th
5 Cir. 2006) (citations omitted); see also 20 C.F.R. § 404.1520(a)(4) (2012)
6 (explaining five-step sequential evaluation process).

7 The claimant has the burden of proof at steps one through four, and the
8 Commissioner has the burden of proof at step five. Burch v. Barnhart, 400 F.3d
9 676, 679 (9th Cir. 2005) (citation omitted).

10 **B. Standard of Review**

11 Pursuant to 42 U.S.C. section 405(g), a court may set aside a denial of
12 benefits only if it is not supported by substantial evidence or if it is based on legal
13 error. Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir.
14 2006) (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457
15 (9th Cir. 1995)).

16 Substantial evidence is “such relevant evidence as a reasonable mind might
17 accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389,
18 401 (1971) (citations and quotations omitted). It is more than a mere scintilla but
19 less than a preponderance. Robbins, 466 F.3d at 882 (citing Young v. Sullivan,
20 911 F.2d 180, 183 (9th Cir. 1990)). To determine whether substantial evidence
21 supports a finding, a court must ““consider the record as a whole, weighing both
22 evidence that supports and evidence that detracts from the [Commissioner’s]
23 conclusion.”” Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001)
24 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)).

25 While an ALJ’s decision need not discuss every piece of evidence or be
26 drafted with “ideal clarity,” at a minimum it must explain the ALJ’s reasoning
27 with sufficient specificity and clarity to “allow[] for meaningful review.” Brown-
28 Hunter v. Colvin, 806 F.3d 487, 492 (9th Cir. 2015) (citations and internal

1 quotation marks omitted); Hiler v. Astrue, 687 F.3d 1208, 1212 (9th Cir. 2012)
2 (citation and quotation marks omitted).

3 An ALJ’s decision to deny benefits must be upheld if the evidence could
4 reasonably support either affirming or reversing the decision. Robbins, 466 F.3d
5 at 882 (citing Flaten, 44 F.3d at 1457); see generally Rounds v. Commissioner of
6 Social Security Administration, 807 F.3d 996, 1002 (9th Cir. 2015) (“Overall, the
7 standard of review is ‘highly deferential.’”) (citation omitted). Even when an
8 ALJ’s decision contains error, it must be affirmed if the error was harmless.
9 Treichler v. Commissioner of Social Security Administration, 775 F.3d 1090,
10 1099 (9th Cir. 2014).

11 **IV. DISCUSSION**

12 **A. The ALJ Properly Evaluated Plaintiff’s Subjective Symptoms**

13 Plaintiff contends that a remand or reversal is warranted because the ALJ
14 “failed to articulate legally sufficient reasons for rejecting [plaintiff’s]
15 testimony[.]” (Plaintiff’s Motion at 5-11). The Court disagrees.

16 **1. Pertinent Law**

17 When determining disability, an ALJ is required to consider a claimant’s
18 impairment-related pain and other subjective symptoms at each step of the
19 sequential evaluation process. 20 C.F.R. § 404.1529(a) & (d). Accordingly, when
20 a claimant presents “objective medical evidence of an underlying impairment
21 which might reasonably produce the pain or other symptoms [the claimant]
22 alleged,” the ALJ is required to determine the extent to which the claimant’s
23 statements regarding the intensity, persistence, and limiting effects of his or her
24 symptoms (“subjective statements” or “subjective complaints”) are consistent with
25 the record evidence as a whole and, consequently, whether any of the individual’s
26 symptom-related functional limitations and restrictions are likely to reduce the
27 claimant’s capacity to perform work-related activities. 20 C.F.R. § 404.1529(a),
28 (c)(4); Social Security Ruling (“SSR”) 16-3p, 2016 WL 1119029, at *4-*9; SSR

1 96-7p, 1996 WL 374186, at *1-*5.³ When an individual’s subjective statements
2 are inconsistent with other evidence in the record, an ALJ may give less weight to
3 such statements and, in turn, find that the individual’s symptoms are less likely to
4 reduce the claimant’s capacity to perform work-related activities. See SSR 16-3p,
5 2016 WL 1119029, at *7-*8; SSR 96-7p, 1996 WL 374186, at *1-*3. In such
6 cases, when there is no affirmative finding of malingering, an ALJ may “reject” or
7 give less weight to the individual’s subjective statements “by providing specific,
8 clear, and convincing reasons for doing so.” Brown-Hunter, 806 F.3d at 488-89.⁴
9 If an ALJ’s evaluation of a claimant’s statements is reasonable and is supported by
10 substantial evidence, it is not the court’s role to second-guess it. See Thomas v.
11 Barnhart, 278 F.3d 947, 959 (9th Cir. 2002) (citation omitted).

13 ³Social Security Rulings reflect the Social Security Administration’s (“SSA”) official
14 interpretation of pertinent statutes, regulations, and policies. 20 C.F.R. § 402.35(b)(1). Although
15 they “do not carry the ‘force of law,’” Social Security Rulings “are binding on all components of
16 the . . . Administration[,]” and are entitled to deference if they are “consistent with the Social
17 Security Act and regulations.” 20 C.F.R. § 402.35(b)(1); Bray v. Commissioner of Social
18 Security Administration, 554 F.3d 1219, 1224 (9th Cir. 2009) (citations and quotation marks
19 omitted); see also Heckler v. Edwards, 465 U.S. 870, 873 n.3 (1984) (discussing weight and
20 function of Social Security rulings). Effective March 28, 2016, the SSA issued SSR 16-3p which
21 superseded SSR 96-7p and, in part, eliminated use of the term “credibility” from SSA
22 “sub-regulatory policy[]” in order to “clarify that subjective symptom evaluation is not an
23 examination of an individual’s [overall character or truthfulness] . . . [and] more closely follow
24 [SSA] regulatory language regarding symptom evaluation.” See SSR 16-3p, 2016 WL 1119029,
25 at *1-*2, *10; see also 2016 WL 1237954, *1 (correcting SSR 16-3p effective date to read March
26 28, 2016). SSR 16-3p became effective after the ALJ issued the decision in the instant case but
27 before the Appeals Council denied review. Nonetheless, the possible applicability of SSR 16-3p
28 need not be resolved here since the ALJ’s evaluation of plaintiff’s subjective complaints in this
case passes muster whether SSR 16-3p or its predecessor, SSR 96-7p, governs.

24 ⁴It appears to the Court, based upon its research of the origins of the requirement that
25 there be “specific, clear and convincing” reasons to reject or give less weight to an individual’s
26 subjective statements absent an affirmative finding of malingering, that such standard of proof
27 remains applicable irrespective of whether SSR 96-7p or SSR 16-3p governs. See Burrell v.
28 Colvin, 775 F.3d 1133, 1137 (9th Cir. 2014) (citing Swenson v. Sullivan, 876 F.2d 683, 687 (9th
Cir. 1989), Gallant v. Heckler, 753 F.2d 1450, 1455 (9th Cir. 1984), Johnson v. Shalala, 60 F.3d
1428, 1433 (9th Cir. 1995), and Molina, 674 F.3d at 1112).

1 **2. Analysis**

2 First, the ALJ properly gave less weight to plaintiff’s subjective complaints
3 based on plaintiff’s unexplained failure to seek a level or frequency of medical
4 treatment that was consistent with the alleged severity of plaintiff’s pain. See
5 Molina, 674 F.3d at 1113 (ALJ may properly consider “unexplained or
6 inadequately explained failure to seek treatment or to follow a prescribed course of
7 treatment” when evaluating claimant’s subjective complaints) (citations and
8 internal quotation marks omitted); SSR 16-3p, 2016 WL 1119029, at *7-*8 (ALJ
9 may give less weight to subjective statements where “the frequency or extent of
10 the treatment sought by an individual is not comparable with the degree of the
11 individual’s subjective complaints, or if the individual fails to follow prescribed
12 treatment that might improve symptoms. . . .”); SSR 96-7p, 1996 WL 374186, *7
13 (A “[claimant’s] statements may be less credible if the level or frequency of
14 treatment is inconsistent with the level of complaints, or if the medical reports or
15 records show that the individual is not following the treatment as prescribed and
16 there are no good reasons for this failure.”).

17 For example, as the ALJ noted, despite his complaints of severe pain,
18 plaintiff apparently did not take any pain medication for significant periods of
19 time. Urology treatment records from mid-2014 reflect that plaintiff had been
20 prescribed pain medication prior to and for a short while after plaintiff’s prostate
21 cancer surgery on July 11, 2014. (AR 347, 357, 367-75, 500-627). Urology
22 records from July 22, 2014 document that plaintiff had complained about severe
23 stomach pain, but also indicate that plaintiff was “doing well” while making no
24 specific reference to any medication being prescribed. (AR 361-68). Treatment
25 notes from the Martin Luther King Jr. Medical Center reflect that during a
26 November 3, 2014 orthopaedic clinic visit, plaintiff reported that his pain was

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1 being treated by “NSAID’s” (non-steroidal anti-inflammatory drugs) and a muscle
2 relaxer, Robaxim⁵ (which may have been prescribed earlier that year). (AR 295-
3 98). During that visit plaintiff was prescribed Ultram⁶ for pain. (AR 295). A
4 January 9, 2014 treatment note from the same orthopaedic clinic states that
5 plaintiff “decline[d] meds.” (AR 299). A September 2, 2014 urgent care clinic
6 progress note shows plaintiff was prescribed Norco⁷ for pain (AR 352, 355), but,
7 as the ALJ noted, the same record reflects that plaintiff asserted “I don’t take any
8 medications.” (AR 36) (citing Exhibit 5F at 34 [AR 355]). As the ALJ also noted,
9 a December 16, 2014 ambulatory clinic outpatient note reflects that plaintiff had
10 “[n]o active medications” at the time (AR 36) (citing Exhibit 5F at 75 [AR 396]),
11 and other records reflect that at one point plaintiff “deferred any treatment to his
12 left shoulder” including trigger point injections that plaintiff’s workers’
13 compensation doctor had “recommended,” and “deferred any pain management
14 consultation due to improvement of his lower back symptoms.” (AR 36) (citing
15 Ex. 1F at 31-32 [AR 237-38]).

16 Medical records also document several occasions when plaintiff apparently
17 sought treatment for severe pain from either his urologist or a hospital emergency
18 department, but – apart from medication administered during the particular visit
19 itself – it appears that plaintiff was prescribed and/or continued on only his
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21 ⁵Robaxim is the brand name version of the prescription drug Methocarbamol, which “is
22 used to treat muscle spasms/pain.” See Methocarbamol, WebMD web site, available at
23 <http://www.webmd.com/drugs/2/drug-8677/methocarbamol-oral/details>.

24 ⁶Ultram is the brand name version of the prescription drug Tramadol, which “is used to
25 help relieve moderate to moderately severe pain . . . [like] opioid (narcotic) analgesics.”
26 Tramadol, WebMD web site, available at [http://www.webmd.com/drugs/2/drug-4398-5239/
tramadol-oral/tramadol-oral/details](http://www.webmd.com/drugs/2/drug-4398-5239/tramadol-oral/tramadol-oral/details).

27 ⁷Norco is a combination (narcotic and acetaminophen) prescription medication “used to
28 relieve moderate to severe pain.” Norco, WebMD web site, available at [http://www.webmd.
com/drugs/2/drug-63/norco-oral/details](http://www.webmd.com/drugs/2/drug-63/norco-oral/details).

1 medication for erectile dysfunction (*i.e.*, Cialis or Viagra). (See, e.g., AR 357-60
2 [8/19/14 Urology Outpatient Clinic Report]; AR 396-98 [12/16/14 Harbor-UCLA
3 Medical Center Urology Outpatient Notes]; AR 412-14 [2/1/15 Harbor-UCLA
4 Neurosurgery Consultation Notes]; AR 447-53 [4/8/15 Harbor-UCLA Medical
5 Center Emergency Department treatment records]; AR 464-80 [4/15/15 Harbor-
6 UCLA Medical Center Emergency Department treatment records]; AR 634-47
7 [4/30/15-5/1/15 Harbor-UCLA Medical Center Emergency Department treatment
8 records]). Similarly, on May 1, 2015, during a follow up visit, plaintiff apparently
9 reported “[t]aking Norco for pain control,” but no medications were administered
10 during that visit, and plaintiff’s “medication(s)” were identified only to include
11 “Viagra.” (AR 652, 655, 656).

12 In light of the foregoing, substantial evidence supports the ALJ’s conclusion
13 that “[t]he contrast between the [plaintiff’s] greater interest in improving sexual
14 function versus alleviating pain suggests that limitations resulting from his
15 impairments other than erectile dysfunction did not trouble him as much as
16 alleged.” (AR 36).

17 Second, the ALJ properly gave less weight to plaintiff’s subjective
18 complaints based on evidence that plaintiff engaged in daily activities that were
19 inconsistent with the alleged severity of plaintiff’s pain and/or limitations. See
20 Burrell v. Colvin, 775 F.3d 1133, 1137 (9th Cir. 2014) (“Inconsistencies between
21 a claimant’s testimony and the claimant’s reported activities provide a valid reason
22 for an adverse credibility determination.”) (citation omitted). For example, as the
23 ALJ noted, contrary to plaintiff’s hearing testimony that he had stopped driving a
24 truck due to disabling pain and because he was unable to “hold the steering
25 wheel,” the record contains evidence that when he still had a license (and during
26 the alleged period of disability) plaintiff was able to drive for 30 minutes at a time
27 – which the ALJ reasonably interpreted as “indicat[ing] that the [plaintiff] was
28 physically capable of holding his arms up to control a steering wheel, using his

1 legs to operate pedals, and turning his neck to view oncoming traffic.” (AR 37,
2 49, 51-52, 179). The ALJ also reasonably inferred that “[plaintiff’s] interests in
3 increasing his sexual activity [was] not consistent with [plaintiff’s] allegations of
4 extreme limitations in his neck, back, arms, and legs.” (AR 36).

5 As plaintiff correctly suggests (Plaintiff’s Motion at 9), a claimant “does not
6 need to be ‘utterly incapacitated’ in order to be disabled.” Vertigan v. Halter, 260
7 F.3d 1044, 1050 (9th Cir. 2001) (citation omitted). Nonetheless, this does not
8 mean that an ALJ must find that a claimant’s daily activities demonstrate an ability
9 to engage in full-time work (*i.e.*, eight hours a day, five days a week) in order to
10 discount conflicting subjective symptom testimony. To the contrary, even where a
11 claimant’s activities suggest some difficulty in functioning, an ALJ may also give
12 less weight to subjective complaints to the extent a claimant’s actual level of
13 activity appears inconsistent with the extent of functional limitation the claimant
14 alleged. See Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998) (ALJ may
15 consider daily activities to extent plaintiff’s “level of activity [is] inconsistent with
16 [the] . . . claimed limitations”); cf. Molina, 674 F.3d at 1113 (“Even where
17 [claimant’s] activities suggest some difficulty functioning, they may be grounds
18 for [giving less weight to] the claimant’s testimony to the extent that they
19 contradict claims of a totally debilitating impairment.”) (citations omitted). While
20 plaintiff suggests that his level of daily activities was not inconsistent with his
21 subjective complaints (Plaintiff’s Motion at 9-10), this Court may not second
22 guess the ALJ’s reasonable determination to the contrary, even if the evidence
23 could give rise to inferences more favorable to plaintiff. Thomas, 278 F.3d at 959
24 (citation omitted).

25 Finally, the ALJ properly gave less weight to plaintiff’s subjective
26 complaints due, in part, to the absence of supporting objective medical evidence.
27 (See AR 35-36); see Burch, 400 F.3d at 681 (“Although lack of medical evidence
28 cannot form the sole basis for discounting pain testimony, it is a factor that the

1 ALJ can consider”); cf. SSR 16-3p, 2016 WL 1119029, at *5 (“[ALJ may]
2 not disregard an individual’s statements about the intensity, persistence, and
3 limiting effects of symptoms solely because the objective medical evidence does
4 not substantiate the degree of impairment-related symptoms alleged by the
5 individual.”); SSR 96-7p, 1996 WL 374186, at *6 (same). To the extent plaintiff
6 argues that the objective medical evidence actually supports his subjective
7 complaints (Plaintiff’s Motion at 7-8), the Court again declines to second guess
8 the ALJ’s reasonable determination to the contrary.

9 Accordingly, a remand or reversal is not warranted on this basis.

10 **B. The ALJ Properly Evaluated the Medical Opinion Evidence**

11 Plaintiff contends that the ALJ improperly rejected the opinions expressed
12 by Dr. Naemah H. Ghaufur, plaintiff’s treating physician, in an October 17, 2013
13 physical medical source statement – specifically, that plaintiff had significant
14 functional limitations which effectively would prevent him from performing even
15 sedentary work⁸ (“Dr. Ghaufur’s Opinions”). (Plaintiff’s Motion at 11-16) (citing
16 AR 244-46). A remand or reversal is not warranted on this basis because the ALJ
17 properly rejected Dr. Ghaufur’s Opinions for clear and convincing, specific and
18 legitimate reasons supported by substantial evidence.

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23 ⁸Dr. Ghaufur diagnosed plaintiff with cervical radiculitis, “pain testicular,” “degenerat
24 cervica,” and neuralgia/neuritis, and opined that plaintiff (i) could stand/walk for up to two hours
25 and sit for four hours in an eight-hour day; (ii) needed to shift positions at will among sitting,
26 standing, and walking, and was “unable to walk, stand, or sit for more than 20 minutes [at] a
27 time”; (iii) could lift less than 10 pounds occasionally and 10 pounds rarely; (iv) could
28 occasionally twist, rarely stoop (bend), and never crouch/squat, or climb ladders or stairs;
(v) would frequently experience pain or other symptoms severe enough to interfere with the level
of attention and concentration needed to perform even simple work tasks; (vi) was incapable of
even “low stress” jobs; and (vii) would likely be absent from work about four days per month
due to plaintiff’s impairments or treatment. (AR 244-46).

1 **1. Pertinent Law**

2 In Social Security cases, the amount of weight given to medical opinions
3 generally varies depending on the type of medical professional who provided the
4 opinions, namely “treating physicians,” “examining physicians,” and
5 “nonexamining physicians” (*e.g.*, “State agency medical or psychological
6 consultant[s]”). 20 C.F.R. §§ 404.1527(c)(1)-(2) & (e), 404.1502, 404.1513(a);
7 Garrison v. Colvin, 759 F.3d 995, 1012 (9th Cir. 2014) (citation and quotation
8 marks omitted). A treating physician’s opinion is generally given the most weight,
9 and may be “controlling” if it is “well-supported by medically acceptable clinical
10 and laboratory diagnostic techniques and is not inconsistent with the other
11 substantial evidence in [the claimant’s] case record[.]” 20 C.F.R.
12 § 404.1527(c)(2); Orn v. Astrue, 495 F.3d 625, 631 (9th Cir. 2007) (citations and
13 quotation marks omitted). In turn, an examining, but non-treating physician’s
14 opinion is entitled to less weight than a treating physician’s, but more weight than
15 a nonexamining physician’s opinion. Garrison, 759 F.3d at 1012 (citation
16 omitted).

17 A treating physician’s opinion is not necessarily conclusive as to either a
18 physical condition or the ultimate issue of disability. Magallanes v. Bowen, 881
19 F.2d 747, 751 (9th Cir. 1989) (citation omitted). An ALJ may reject the
20 uncontroverted opinion of a treating physician by providing “clear and convincing
21 reasons that are supported by substantial evidence” for doing so. Bayliss v.
22 Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005) (citation omitted). Where a treating
23 physician’s opinion is contradicted by another doctor’s opinion, an ALJ may reject
24 such opinion only “by providing specific and legitimate reasons that are supported
25 by substantial evidence.” Garrison, 759 F.3d at 1012 (citation and footnote
26 omitted).

27 An ALJ may provide “substantial evidence” for rejecting a medical opinion
28 by “setting out a detailed and thorough summary of the facts and conflicting

1 clinical evidence, stating his [or her] interpretation thereof, and making findings.”
2 Id. (citing Reddick, 157 F.3d at 725) (quotation marks omitted). An ALJ must
3 provide more than mere “conclusions” or “broad and vague” reasons for rejecting
4 a treating or examining physician’s opinion. Embrey v. Bowen, 849 F.2d 418, 421
5 (9th Cir. 1988); McAllister v. Sullivan, 888 F.2d 599, 602 (9th Cir. 1989) (citation
6 omitted). “[The ALJ] must set forth his [or her] own interpretations and explain
7 why they, rather than the [physician’s], are correct.” Embrey, 849 F.2d at 421-22.

8 **2. Analysis**

9 First, Dr. Ghafur provided her opinions in a check-the-box format. (AR
10 244-46). As the ALJ noted, Dr. Ghafur identified no objective evidence or
11 specific clinical findings apart from general “tenderness” in plaintiff’s “cervical
12 spine” and “proximal part of right scrotum,” and gave “no explanation as to how
13 tenderness to palpation on 2 discrete regions of the body result[ed] in the
14 [plaintiff’s] inability to sustain a normal 8-hour workday or participate in a low-
15 stress job.” (AR 38) (citing Exhibit 2F [AR 244-46]). The ALJ was entitled to
16 give less weight to Dr. Ghafur’s Opinions on this basis alone. See, e.g., Crane v.
17 Shalala, 76 F.3d 251, 253 (9th Cir. 1996) (“ALJ [] permissibly rejected [medical
18 evaluations] because they were check-off reports that did not contain any
19 explanation of the bases of their conclusions.”); De Guzman v. Astrue, 343 Fed.
20 Appx. 201, 209 (9th Cir. 2009) (ALJ “is free to reject ‘check-off reports that d[o]
21 not contain any explanation of the bases of their conclusions.’”) (citing id.); see
22 also Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir. 2001) (“[T]he
23 regulations give more weight to opinions that are explained than to those that are
24 not. . . .”) (citation omitted); Ogin v. Colvin, 608 Fed. Appx. 519, 519-20 (9th Cir.
25 2015) (ALJ offered specific and legitimate reasons for discounting treating
26 physician’s opinions that “were expressed as ‘standardized, check-the-box
27 form[s]’ [and] that provided no ‘supporting reasoning or clinical findings.’”)
28 (quoting Molina, 674 F.3d at 1111).

1 Second, the ALJ also properly gave less weight to Dr. Ghafur’s Opinions
2 because, as the ALJ noted (AR 38), they were not supported by the evidence of
3 record, much less any treatment notes from the physician herself that might
4 explain the basis for the extreme physical limitations she found for plaintiff. Cf.,
5 e.g., Connett v. Barnhart, 340 F.3d 871, 875 (9th Cir. 2003) (ALJ properly rejected
6 treating physician’s opinion where “treatment notes provide[d] no basis for the
7 functional restrictions [physician] opined should be imposed on [claimant]”);
8 Thomas, 278 F.3d at 957 (“The ALJ need not accept the opinion of any physician,
9 including a treating physician, if that opinion is brief, conclusory, and
10 inadequately supported by clinical findings.”); Tonapetyan v. Halter, 242 F.3d
11 1144, 1149 (9th Cir. 2001) (“When confronted with conflicting medical opinions,
12 an ALJ need not accept a treating physician's opinion that is conclusory and brief
13 and unsupported by clinical findings.”).

14 Third, the ALJ also properly gave less weight to Dr. Ghafur’s Opinions
15 based on the relatively limited duration of treatment relationship with plaintiff and
16 infrequency of examination. See 20 C.F.R. § 404.1527(c)(2)(i) (“Length of the
17 treatment relationship and the frequency of examination” one factor considered
18 when “deciding the weight [given] to any medical opinion[.]”); see, e.g., Batson v.
19 Commissioner of Social Security Administration, 359 F.3d 1190, 1199 (9th Cir.
20 2004) (“The weight accorded a treating physician’s opinion depends on the length
21 of the treatment relationship, the frequency of visits, and the nature and extent of
22 treatment received.”) (citing id.).

23 Finally, the ALJ properly rejected Dr. Ghafur’s Opinions in favor of the
24 conflicting opinions of the state agency examining physician, Dr. Marvin Perer
25 (AR 249-53), who essentially opined that plaintiff was able to perform work at the
26 medium exertion level (*i.e.*, “lift[] and carry[] 50 pounds occasionally and 25

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1 pounds frequently” with no limitation on sitting, standing, and walking)⁹ (AR
2 253), as well as the opinions of Dr. Philip A. Sobol, an examining orthopedic
3 surgeon for plaintiff’s workers’ compensation claim, who noted, among other
4 things, that “[plaintiff] is able to self-modify his duties at work so that he is able to
5 complete his usual and customary duties” as an “interstate long distance semi-
6 truck driver.” (AR 237). The opinions of Drs. Perer and Sobol were supported by
7 the physicians’ independent examinations of plaintiff (AR 233-36 [Dr. Sobol]; AR
8 250-52 [Dr. Perer]), and thus, without more, constituted substantial evidence upon
9 which the ALJ could properly rely to reject Dr. Ghafur’s Opinions. See, e.g.,
10 Tonapetyan, 242 F.3d at 1149 (examining physician’s opinion on its own
11 constituted substantial evidence, because it rested on physician’s independent
12 examination of claimant) (citations omitted). To the extent plaintiff contends that
13 the medical opinion evidence does not support rejection of Dr. Ghafur’s Opinions
14 (Plaintiff’s Motion at 14-15), the Court will not second guess the ALJ’s reasonable
15 determination otherwise. See Robbins, 466 F.3d at 882 (citation omitted).

16 Accordingly, a remand or reversal is not warranted on this basis.

17 **C. The ALJ’s Non-Disability Determination at Step Four Is Free of**
18 **Material Error**

19 Plaintiff contends that the ALJ erroneously determined that he could
20 perform past relevant work as a truck driver essentially because (1) the
21 requirements of such occupation exceed plaintiff’s abilities, and thus the
22 vocational expert’s testimony that plaintiff could perform such job deviated from
23 the Dictionary of Occupational Titles; and (2) the ALJ failed to make the requisite
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25 ⁹“Medium work involves lifting no more than 50 pounds at a time with frequent lifting or
26 carrying of objects weighing up to 25 pounds.” 20 C.F.R. § 404.1567(c). “A full range of
27 medium work requires standing or walking, off and on, for a total of approximately 6 hours in an
28 8-hour workday in order to meet the requirements of frequent lifting or carrying objects weighing
up to 25 pounds. [S]itting may occur intermittently during the remaining time.” SSR 83-10 at
*6.

1 “specific findings” of fact. (Plaintiff’s Motion at 16-22). A reversal or remand is
2 not warranted on either basis.

3 **1. Pertinent Law**

4 At step four, claimants have the burden to show that they are no longer able
5 to perform their past relevant work. Pinto v. Massanari, 249 F.3d 840, 844 (9th
6 Cir. 2001) (citations omitted); 20 C.F.R. § 404.1520(e). The Commissioner may
7 only deny benefits at step four if the claimant has the residual functional capacity
8 to perform either a particular past relevant job as “actually performed,” or the
9 same kind of work as “generally” performed in the national economy. Pinto, 249
10 F.3d at 844-45 (citing SSR 82-61); SSR 82-62 at *3.

11 When classifying a claimant’s past relevant job as “actually” performed,
12 ALJs look to “a properly completed vocational report” and the claimant’s
13 testimony. Pinto, 249 F.3d at 845 (citing SSR 82-41, 82-61). The best source for
14 information regarding how an occupation is “generally” performed is usually the
15 Dictionary of Occupational Titles (“DOT”).¹⁰ Id. at 845-46 (citations omitted); see
16 also 20 C.F.R. § 404.1566(d)(1). An ALJ may also obtain testimony from a
17 vocational expert regarding how an occupation is “generally” performed. See
18 Pinto, 249 F.3d at 845-46 (citations omitted); see generally Bailey v. Astrue, 2010
19 WL 3369152, *5 (C.D. Cal. Aug. 24, 2010) (“vocational expert’s testimony
20 constitutes substantial evidence to support [] ALJ’s Step Four determination that
21 plaintiff can perform his past relevant work”) (citations and footnote omitted); see
22 also Gutierrez v. Colvin, 844 F.3d 804, 807 (9th Cir. 2016) (noting, in context of
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24 ¹⁰The DOT is the Social Security Administration’s “primary source of reliable job
25 information’ regarding jobs that exist in the national economy.” Zavalin v. Colvin, 778 F.3d
26 842, 845-46 (9th Cir. 2015) (citing Terry v. Sullivan, 903 F.2d 1273, 1276 (9th Cir. 1990)); see
27 also 20 C.F.R. §§ 404.1566(d)(1), 404.1569. Although “not comprehensive,” the DOT describes
28 the general requirements for various occupations and raises a rebuttable presumption as to a
particular job’s classification. Johnson v. Shalala, 60 F.3d 1428, 1435 (9th Cir. 1995) (citations
omitted).

1 step five, “ALJ may rely on an impartial vocational expert to provide testimony
2 about jobs [a claimant] can perform despite his or her limitations.”).

3 Whenever a vocational expert’s testimony “conflicts with, or seems to
4 conflict with” the DOT requirements for a particular occupation, the ALJ must ask
5 the vocational expert additional questions at the hearing in order to “obtain a
6 reasonable explanation for any [such] conflict.” Gutierrez, 844 F.3d at 807
7 (citation omitted); Massachi v. Astrue, 486 F.3d 1149, 1152-53 (9th Cir. 2007)
8 (quoting SSR 00-4p); SSR 00-4p at *4 (“When vocational evidence provided by a
9 [vocational expert]. . . is not consistent with information in the DOT, the [ALJ]
10 must resolve [the] conflict before relying on the [vocational expert] . . . evidence
11 to support a determination or decision that the individual is or is not disabled.”);
12 see also Zavalin, 778 F.3d at 846 (“When there is an apparent conflict between the
13 vocational expert’s testimony and the DOT – for example, expert testimony that a
14 claimant can perform an occupation involving DOT requirements that appear more
15 than the claimant can handle – the ALJ is required to reconcile the
16 inconsistency.”) (citation omitted). An ALJ may not rely on a vocational expert’s
17 opinions regarding job requirements unless the ALJ has adequately identified and
18 resolved any such conflict. Gutierrez, 844 F.3d at 807 (citing SSR 00-4p); see
19 Bailey, 2010 WL 3369152, at *5.

20 Nonetheless, an ALJ must conduct an additional inquiry at the hearing only
21 when a conflict between a vocational expert’s testimony and the DOT is “obvious
22 or apparent.” Gutierrez, 844 F.3d at 807-08. Conflicts are generally “obvious or
23 apparent” only when the vocational expert’s testimony is at odds with
24 requirements listed in the DOT that are “essential, integral, or expected” to the
25 occupation at issue. See Gutierrez, 844 F.3d at 808 (“[T]asks that aren’t essential,
26 integral, or expected parts of a job are less likely to qualify as apparent conflicts
27 that the ALJ must ask about.”). Moreover, an ALJ’s obligation to inquire further
28 is less compelling where the particular job at issue “is a familiar one[.]” Id. (“To

1 be sure, an ALJ must ask follow up questions of a vocational expert when the
2 expert's testimony is either obviously or apparently contrary to the Dictionary, but
3 the obligation doesn't extend to unlikely situations or circumstances.”).

4 In addition, while claimants have the burden at step four to prove an
5 inability to perform past relevant work, an ALJ is still required “to make specific
6 findings on the record at each phase of the step four analysis [which] provide[] for
7 meaningful judicial review.” Pinto, 249 F.3d at 847 (citation and quotation marks
8 omitted). Accordingly, an ALJ's determination at step four must contain the
9 following specific findings of fact: (1) the claimant's residual functional capacity;
10 (2) the physical and mental demands of the past relevant job/occupation; and
11 (3) that the claimant's residual functional capacity would permit a return to his or
12 her past job or occupation. Id. at 844-45; SSR 82-62 at *3-*4.

13 **2. Analysis**

14 Here, plaintiff asserts that the ALJ's conclusion that plaintiff could perform
15 past relevant work as a truck driver was erroneous essentially because (1) the
16 requirements of such occupation exceed plaintiff's abilities, and thus the
17 vocational expert's testimony that plaintiff could perform such job improperly
18 deviated from the DOT; and (2) the ALJ failed to make the requisite “specific
19 findings” of fact. (Plaintiff's Motion at 16-22). A reversal or remand is not
20 warranted on either basis.

21 First, the record does not reflect an obvious or apparent conflict between the
22 vocational expert's testimony and the DOT. As plaintiff correctly notes, the DOT
23 states that the position of truck driver requires frequent reaching. See DOT
24 § 905.663-014 [Truck Driver, Heavy]. Plaintiff argues that such requirement
25 exceeds his abilities because, as the ALJ's residual functional capacity assessment
26 reflects, plaintiff “[could] only occasionally reach overhead with the non-dominant
27 left arm.” (Plaintiff's Motion at 19-20) (citing AR 34). Nonetheless, plaintiff has
28 not identified any conflict between the vocational expert's opinion that plaintiff

1 could perform past relevant work as a truck driver despite such limitation and any
2 requirement identified in the DOT that is “essential, integral, or expected” to that
3 occupation. For example, none of the essential requirements described in the DOT
4 for the truck driver occupation necessarily appear to involve overhead reaching at
5 all.¹¹ In addition, the DOT lists several other tasks that do not appear to be an
6 integral or expected part of truck driver positions generally,¹² and only one of
7 which might obviously involve overhead reaching of some kind (*i.e.*, “May load
8 and unload truck.”). See DOT § 905.663-014.

9 Moreover, to the extent the position of truck driver arguably requires
10 frequent overhead reaching, it appears that plaintiff would still be capable of
11 performing that job since there is no evidence that plaintiff has any limitation in
12 reaching with his dominant, *right* arm. (AR 34). The vocational expert basically
13 confirmed as much when she testified that, despite plaintiff’s *left* arm limitation,
14 plaintiff could perform his past relevant work consistent with DOT requirements.
15 (AR 64-65).

16 Plaintiff’s conclusion that the requirements of the truck driver occupation
17 exceeded his abilities appears erroneously premised on the unsupported

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19 ¹¹The DOT lists the following primary tasks required for the occupation of “Truck Driver,
20 Heavy”: “Drives truck with capacity of more than 3 tons, to transport materials to and from
21 specified destinations: Drives truck to destination, applying knowledge of commercial driving
22 regulations and area roads. Prepares receipts for load picked up. Collects payment for goods
23 delivered and for delivery charges.” DOT § 905.663-014.

24 ¹²The DOT describes the following additional duties of a Truck Driver:

25 *May* maintain truck log, according to state and federal regulations. *May* maintain
26 telephone or radio contact with supervisor to receive delivery instructions. *May*
27 load and unload truck. *May* inspect truck equipment and supplies, such as tires,
28 lights, brakes, gas, oil, and water. *May* perform emergency roadside repairs, such
as changing tires, installing light bulbs, tire chains, and spark plugs. *May* position
blocks and tie rope around items to secure cargo during transit.

DOT § 905.663-014 (emphasis added).

1 assumption that the reaching required by such occupation necessarily involves the
2 use of *both* arms. However, the DOT does not expressly contain such a
3 requirement. Cf., e.g. Gutierrez, 844 F.3d at 809 n.2 (suggesting that there would
4 be no “obvious or apparent” conflict between requirements of cashier job that
5 involved overhead reaching and claimant’s abilities where claimant was only
6 restricted from reaching with one arm); Feibusch v. Astrue, 2008 WL 583554, *5
7 (D. Haw. Mar. 4, 2008) (citations omitted) (“[T]he use of two arms is not
8 necessarily required for jobs that require reaching and handling.”); Diehl v.
9 Barnhart, 357 F. Supp. 2d 804, 822 (E.D. Pa. 2005) (person with limited use of
10 one arm could perform jobs requiring frequent reaching, handling, and fingering,
11 and therefore there was no conflict between DOT and vocational expert’s
12 testimony to that effect).

13 Moreover, since the DOT does not expressly state whether the truck driver
14 job requires *bilateral* reaching, the ALJ appropriately obtained the testimony of a
15 vocational expert to assist in the step four determination. See Fuller v. Astrue,
16 2009 WL 4980273, *3 (C.D. Cal. Dec. 15, 2009) (Where nature of particular
17 action required in performance of job not specified in DOT, ALJ may properly
18 rely on testimony from vocational expert to determine whether claimant can
19 perform job in question despite claimant’s limitations). The ALJ posed a
20 hypothetical question to the vocational expert which included all of the limitations
21 on plaintiff’s left arm noted in the ALJ’s residual functional capacity assessment.
22 (AR 34, 63-64). In response, the vocational expert testified that a claimant with
23 the stated limitations could still perform the truck driver job, at least as generally
24 performed. (AR 63-64). The vocational expert’s testimony constitutes substantial
25 evidence supporting the ALJ’s determination that plaintiff could perform such past
26 relevant work as generally performed. See Gutierrez, 844 F.3d at 807. The Court
27 will not second-guess the ALJ’s reasonable interpretation of the evidence, even if
28 the record could give rise to contrary inferences.

1 To the extent plaintiff suggests that the ALJ erred at step four because the
2 record lacks substantial evidence to support the finding that plaintiff was able to
3 perform his past relevant work as “actually performed” (Plaintiff’s Motion at 20-
4 21), plaintiff fails to demonstrate that a remand is warranted. Here, the ALJ’s
5 decision is reasonably interpreted as finding at step four that plaintiff was capable
6 of performing his past relevant work as a truck driver as that occupation was
7 *generally* performed. (AR 38-39). As discussed above, that determination is
8 supported by substantial evidence. The ALJ was not also required to make
9 findings regarding plaintiff’s past relevant works as *actually* performed. See
10 generally Pinto, 249 F.3d at 845 (“We have never required explicit findings at step
11 four regarding a claimant’s past relevant work both as generally performed *and* as
12 actually performed. The vocational expert merely has to find that a claimant can
13 or cannot continue his or her past relevant work as defined by the regulations [.]”)
14 (citation omitted).

15 To the extent plaintiff also contends that the ALJ failed to make the
16 requisite specific findings at step four, plaintiff’s argument lacks merit. Here, in
17 the decision, the ALJ specified plaintiff’s residual functional capacity, and
18 expressly found, based on consideration of the requirements of the past relevant
19 work, and as informed by the vocational expert’s hearing testimony, that plaintiff’s
20 residual functional capacity would not preclude plaintiff from returning to his past
21 relevant work as a truck driver. (AR 39). Plaintiff has not persuasively identified
22 any errors in the vocational expert’s testimony, which, as discussed above,
23 constitutes substantial evidence to support the ALJ’s step four determination that
24 plaintiff could perform his past relevant work.

25 Accordingly, a reversal or remand on this basis is not warranted.

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1 **V. CONCLUSION**

2 For the foregoing reasons, the decision of the Commissioner of Social
3 Security is affirmed.

4 LET JUDGMENT BE ENTERED ACCORDINGLY.

5 DATED: June 30, 2017

6 /s/

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8 Honorable Jacqueline Chooljian
9 UNITED STATES MAGISTRATE JUDGE
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