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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANTHONY LEE  
Plaintiff  
v.  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
Defendant.

Case No. 2:17-cv-03230-GJS

**MEMORANDUM OPINION AND  
ORDER**

**I. PROCEDURAL HISTORY**

Plaintiff Anthony Lee (“Plaintiff”) filed a complaint seeking review of Defendant Commissioner of Social Security’s (“Commissioner”) denial of his application for Supplemental Security Income (“SSI”). The parties filed consents to proceed before the undersigned United States Magistrate Judge [Dkts. 11, 13] and briefs addressing disputed issues in the case [Dkt. 17 (“Pltf.’s Br.”) and Dkt. 19 (“Def.’s Br.”), Dkt. 20 (“Pltf.’s Reply).] The Court has taken the parties’ briefing under submission without oral argument. For the reasons set forth below, the Court affirms the decision of the ALJ and orders judgment entered accordingly.

**II. ADMINISTRATIVE DECISION UNDER REVIEW**

On January 31, 2014, Plaintiff filed an application for SSI, alleging that he became disabled as of December 1, 2012. [Dkt. 16, Administrative Record (“AR”)]

1 23, 169-178.] The Commissioner denied his initial claim for benefits on July 2,  
2 2014 and upon reconsideration on October 13, 2014. [AR 75-95.] On January 26,  
3 2016, a hearing was held before Administrative Law Judge (“ALJ”) Richard T.  
4 Breen. [AR 36-73.] On May 4, 2016, the ALJ issued a decision denying Plaintiff’s  
5 request for benefits. [AR 23-35.] Plaintiff requested review from the Appeals  
6 Council, which denied review on March 1, 2017. [AR 1-7.]

7 Applying the five-step sequential evaluation process, the ALJ found that  
8 Plaintiff was not disabled. *See* 20 C.F.R. §§ 416.920(b)-(g)(1). At step one, the  
9 ALJ concluded that Plaintiff has not engaged in substantial gainful activity since  
10 January 31, 2014, the application date. [AR 25.] At step two, the ALJ found that  
11 Plaintiff suffered from the following severe impairments: status post left foot  
12 ganglion cyst removal; bilateral knee osteoarthritis; and obesity. [*Id.* (citing 20  
13 C.F.R. § 416.920(c)).] Next, the ALJ determined that Plaintiff did not have an  
14 impairment or combination of impairments that meets or medically equals the  
15 severity of one of the listed impairments. [AR 26 (citing 20 C.F.R. Part 404,  
16 Subpart P, Appendix 1; 20 C.F.R. §§ 416.920(d), 416.925, and 416.926).]

17 The ALJ found that Plaintiff had the following residual functional capacity  
18 (RFC):

19 [L]ight work as defined in 20 CFR 416.967(b) except he  
20 can only occasionally climb, kneel, crouch and/or crawl.

21 [AR 26-27.] Applying this RFC, the ALJ found that Plaintiff was unable to perform  
22 past relevant work, but determined that based on his age (51 years old at the time of  
23 application), limited education, and ability to communicate in English, he could  
24 perform representative occupations such as cashier II (Dictionary of Occupational  
25 Titles (“DOT”) 211.462-010), shoe packer (DOT 920.687-166), and storage clerk  
26 (DOT 295.367-026) and, thus, is not disabled. [AR 30-31.]

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1 **III. GOVERNING STANDARD**

2 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to  
3 determine if: (1) the Commissioner’s findings are supported by substantial evidence;  
4 and (2) the Commissioner used correct legal standards. *See Carmickle v. Comm’r*  
5 *Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d  
6 1071, 1074 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a  
7 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*  
8 *Perales*, 402 U.S. 389, 401 (1971) (internal citation and quotations omitted); *see*  
9 *also Hoopai*, 499 F.3d at 1074.

10 **IV. DISCUSSION**

11 Plaintiff’s sole claim is that the ALJ improperly found Plaintiff’s testimony  
12 not fully credible. [Pltf.’s Br. at 6-11.]

13 In response to a pain questionnaire, Plaintiff stated that he has left knee and  
14 left foot pain as well as migraines.<sup>1</sup> Plaintiff reported that his left extremity pain is  
15 aggravated by walking, wearing shoes, and not keeping his leg elevated. [AR 209-  
16 210.] Plaintiff also stated in his function report that he is unable to stand for  
17 prolonged periods and “walking is a struggle.” [AR 213.] Plaintiff needs to sit  
18 down in order to shave and get dressed. [AR 214.] He uses a cane, crutches, and  
19 walker to assist with mobility. [AR 219.] Plaintiff testified at the hearing that he  
20 “can’t stand up too good” and wears two knee braces, which his doctor prescribed.  
21 [AR 49-50.] Plaintiff testified that his knees and left foot are weak and he can stand  
22 for only twenty minutes and walk for fifteen to twenty minutes. [AR 49.] In  
23 addition, he needs to elevate his leg when he sits to alleviate the pain. [AR 49-50.]

24 The ALJ found Plaintiff’s subjective symptom testimony not fully credible.  
25 [AR 27.] The ALJ noted that although Plaintiff’s medically determinable

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<sup>1</sup> The ALJ found that Plaintiff’s migraines were not a severe impairment. [AR 25.] Plaintiff does not challenge this finding.

1 impairments could reasonably be expected to cause some of Plaintiff's alleged  
2 symptoms, Plaintiff's allegations concerning the intensity, persistence, and limiting  
3 effects of his symptoms were not credible to the extent alleged. [*Id.*] "Where, as  
4 here, an ALJ concludes that a claimant is not malingering, and that [h]e has  
5 provided objective medical evidence of an underlying impairment which might  
6 reasonably produce the pain or other symptoms alleged, the ALJ may 'reject the  
7 claimant's testimony about the severity of h[is] symptoms only by offering specific,  
8 clear and convincing reasons for doing so.'" *Brown-Hunter v. Colvin*, 806 F.3d 487,  
9 492-93 (9th Cir. 2015) (internal quotation omitted). Even if "the ALJ provided one  
10 or more invalid reasons for disbelieving a claimant's testimony," if he "also  
11 provided valid reasons that were supported by the record," the ALJ's error "is  
12 harmless so long as there remains substantial evidence supporting the ALJ's  
13 decision and the error does not negate the validity of the ALJ's ultimate  
14 conclusion." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (internal  
15 quotation omitted).

16 "The ALJ may consider many factors in weighing a claimant's credibility,  
17 including (1) ordinary techniques of credibility evaluation, such as the claimant's  
18 reputation for lying, prior inconsistent statements concerning the symptoms, and  
19 other testimony by the claimant that appears less than candid; (2) unexplained or  
20 inadequately explained failure to seek treatment or to follow a prescribed course of  
21 treatment; and (3) the claimant's daily activities." *Tomasetti v. Astrue*, 533 F.3d  
22 1035, 1039 (9th Cir. 2008) (internal citations and quotations omitted); *see also*  
23 *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002) (explaining that  
24 acceptable bases for credibility determination include (1) the claimant's reputation  
25 for truthfulness; (2) inconsistencies in the claimant's testimony or between his  
26 testimony and conduct; (3) claimant's daily living activities; (4) claimant's work  
27 record; and (5) testimony from physicians or third parties concerning the nature,  
28 severity, and effect of claimant's condition).

1 Here, the ALJ gave four reasons to discount Plaintiff's credibility: (1)  
2 Plaintiff's daily living activities are inconsistent with his subjective complaints and  
3 alleged limitations; (2) Plaintiff's poor work history; (3) Plaintiff's failure to seek  
4 treatment; and (4) lack of objective evidence to support Plaintiff's claim of severe  
5 limitations. As discussed below, the ALJ offered legally sufficient reasons to  
6 support the adverse credibility determination.

### 7 **A. Plaintiff's Performance of Daily Activities**

8 First, the ALJ found that Plaintiff's subjective complaints and alleged  
9 limitations are not consistent with his ability to perform a wide range of activities of  
10 daily living. [AR 29.] Plaintiff does not challenge this rationale in his opening  
11 brief. [Pltf.'s Br. at 1-11.] However, in his reply brief, Plaintiff states that the ALJ  
12 did not describe how any of Plaintiff's daily activities would "include standing or  
13 walking for six hours in an eight-hour day." [Pltf.'s Reply at 5.]

14 Essentially, Plaintiff challenges whether his daily activities meet the threshold  
15 for light work (*i.e.*, standing or walking for six hours in an eight-hour day). [Pltf.'s  
16 Reply at 5.] However, an ALJ may rely on a claimant's daily activities to support  
17 an adverse credibility determination when those activities: (1) "contradict [the  
18 claimant's] other testimony"; *or* (2) "meet the threshold for transferable work  
19 skills." *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007). Here, the ALJ found that  
20 Plaintiff's daily activities listed in his function report *contradict* his testimony at the  
21 hearing. [AR 29.]

22 Notably, Plaintiff reported extreme limitations in functioning at the hearing.  
23 Plaintiff testified that he is unable to stand or walk for more than 20 minutes and  
24 needs to elevate his leg when he sits to alleviate the pain. [AR 49-50.] When asked  
25 about his daily activities, Plaintiff claimed that he organizes his clothes and personal  
26 items at the shelter where he resides, but otherwise does not clean or sweep. [AR  
27 40.] In terms of cooking, Plaintiff stated that the shelter provides meals and the  
28 mother of his children cooks for him occasionally. [AR 41.] Plaintiff further

1 testified that he sees his two younger children two or three days a week and his  
2 activities with them include “mostly talk[ing],” and playing PlayStation  
3 videogames, and watching his son play basketball around the house. [*Id.*] Plaintiff  
4 testified that he drove twice a week, mainly to the doctor’s office or the store. [*Id.*]

5 The ALJ reasonably found Plaintiff’s assertions that he was extremely limited  
6 in functioning not credible in light of the fact that he stated in his function report  
7 that he *cooked for his two children*, helped them with homework, put them to bed,  
8 *drove them to school in the morning*, and *picked them up from school* in the  
9 afternoon. [AR 213-214.] Plaintiff also acknowledged that he was able to *prepare*  
10 *his own meals*, do laundry, and shop in stores for food, clothing, and other items.  
11 [AR 215-216.] These statements are inconsistent with Plaintiff’s testimony at the  
12 hearing that his meals are prepared for him, he only drives twice a week, and that his  
13 main activity with his children is “mostly talking.” [*Compare* AR 49-50 & AR 213-  
14 216.] Plaintiff also stated in his function report that he spent time doing “small  
15 mechanic jobs for friends” which the ALJ found to be inconsistent with another  
16 statement in the function report that Plaintiff could not stand long enough to shave  
17 or get dressed and used a walker to assist with mobility. [*Compare* AR 213 & 214,  
18 219.] Such inconsistencies between Plaintiff’s activities reported in the function  
19 report and his testimony at the hearing support the rejection of his credibility. *See,*  
20 *e.g., Thomas*, 278 F.3d at 958-59; *see Orn*, 495 F.3d at 636 (claimant’s  
21 inconsistencies in testimony relevant when assessing credibility). Accordingly, the  
22 ALJ properly relied on inconsistencies between Plaintiff’s daily living activities and  
23 his subjective complaint to discount his credibility.

#### 24 **B. Work History**

25 Second, the ALJ asserted that Plaintiff’s limited work history was a clear and  
26 convincing reason to discount Plaintiff’s testimony. [AR 28-29.] Plaintiff does not  
27 dispute this reasoning in his opening brief, but states in his reply brief that “[t]he  
28 Commissioner lists factors for evaluating the intensity, persistence, and limiting

1 effects of symptoms, none of which includes work history.” [Pltf.’s Reply at 5  
2 (citing Social Security Ruling (“SSR”) 16-3p.] However, Plaintiff acknowledged in  
3 his opening brief and in an earlier section of his reply brief that “[t]o find the  
4 claimant not credible, any ALJ must rely...[on] *work history*” (among other factors).  
5 [Pltf.’s Reply at 3 (emphasis added); *see also* Pltf.’s Br. at 7.]

6 In addition, SSR 16-3p states that:

7 If [the Commissioner] cannot make a disability  
8 determination or decision that is fully favorable based  
9 solely on objective medical evidence, then [the  
10 Commissioner] **carefully consider[s] other evidence in  
11 the record in reaching a conclusion about intensity,  
12 persistence, and limiting effects of an individual’s  
13 symptoms.** Other evidence that [the Commissioner]  
14 considers includes statements from the individual, **medical  
15 sources**, and any other sources that might have  
16 information about the individual’s symptoms, including  
17 agency personnel, as well as the factors set forth in our  
18 regulations....Medical sources may offer diagnoses,  
19 prognoses, and opinions as well as statements and medical  
20 reports about an individual's history, treatment, responses  
21 to treatment, **prior work record**, efforts to work, daily  
22 activities, and other information concerning the intensity,  
23 persistence, and limiting effects of an individual’s  
24 symptoms.

25 SSR 16-3p (emphasis added).<sup>2</sup>

26 The Ninth Circuit has clarified that SSR 16-3p “makes clear what our  
27 precedent already required: that assessments of an individual’s testimony by an ALJ  
28 are designed to ‘evaluate the intensity and persistence of symptoms after [the ALJ]  
find[s] that the individual has a medically determinable impairment(s) that could

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<sup>2</sup> Although Social Security Rulings “do not carry the force of law,” they “are binding on all components of the [SSA]” and are entitled to deference if they are “consistent with the Social Security Act and regulations.” 20 C.F.R. § 402.35(b)(1); *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1224 (9th Cir. 2009) (internal citation and quotation marks omitted).

1 reasonably be expected to produce those symptoms,’ and not to delve into wide-  
2 ranging scrutiny of the claimant’s character and apparent truthfulness.” *Trevizo v.*  
3 *Berryhill*, 871 F.3d 664, 678 n.5 (9th Cir. 2017) (as amended) (alterations in  
4 original) (quoting SSR 16–3p). Consistent with SSR 16-3p, the Ninth Circuit has  
5 held that an ALJ may properly consider a claimant’s poor or nonexistent work  
6 history in making a negative credibility determination. *Thomas*, 278 F.3d at 958-59  
7 (internal quotation omitted) (“The ALJ may consider at least the following factors  
8 when weighing the claimant’s credibility...[his] work record”); *see, e.g., Aarestad v.*  
9 *Comm’r of Soc. Sec.*, 450 Fed. App’x. 603, 604 (9th Cir. 2011) (unpublished)  
10 (affirming ALJ’s determination of claimant’s testimony as partially not credible  
11 where claimant “worked only sporadically before the alleged onset of disability  
12 (which suggests that the claimant’s decision not to work was not based on  
13 disability)”); *Burkstrand v. Astrue*, 346 Fed. App’x. 177, 179 (9th Cir. 2009)  
14 (unpublished) (“limited work history” negatively impacted credibility).

15 Here, the ALJ found that although Plaintiff alleged that he stopped working in  
16 November 2012 due to his condition, “a review of [Plaintiff’s] earnings records  
17 reveals no evidence of any work activity performed by him in 2012, or even in the  
18 previous year. [AR 28 (citing AR 183).] The ALJ found that “[t]his tends to  
19 suggest [that] there may be a non-medical explanation for the [Plaintiff’s]  
20 unemployment since the alleged onset date, as does the fact that his earnings record  
21 [sic] reflect no evidence of substantial gainful activity in any [year] except one or  
22 two of the past 15-20 years.” [AR 28-29.]

23 The ALJ was entitled to determine from Plaintiff’s pre-disability work  
24 history (or lack thereof) that he lacked motivation to work. Indeed, the Ninth  
25 Circuit has expressly approved of an ALJ rejecting a claimant’s credibility when the  
26 claimant had an “extremely poor work history” reflecting “little propensity to work  
27 in h[is] lifetime”—*i.e.*, where a claimant’s “work history was spotty, at best, with  
28 years of unemployment between jobs, even before [the claimed disability.]”



1 *Thomas*, 278 F.3d at 959. Thus, the ALJ properly relied on Plaintiff’s work history  
2 in discounting his credibility.

3 **C. Limited Treatment**

4 Next, the ALJ discounted Plaintiff’s credibility because he found that  
5 Plaintiff’s treatment for his knee and foot was limited and Plaintiff did not seek  
6 follow-up treatment. [AR 28.] It is unquestionable that, in the abstract, such a  
7 reason is a proper basis for finding a claimant not to be credible. However,  
8 “although a conservative course of treatment can undermine allegations of  
9 debilitating pain, such fact is not a proper basis for rejecting the claimant’s  
10 credibility where the claimant has a good reason for not seeking more aggressive  
11 treatment.” *Carmickle*, 533 F.3d at 1162. Here, Plaintiff contends that he did not  
12 seek additional treatment because “the county offered no further medical services.”  
13 [Pltf.’s Br. at 9.] However, Plaintiff testified at the hearing that he had been seeing  
14 his treating physician since 2002 and did not indicate at the hearing that he was  
15 unable to access or afford certain treatments. [AR 50-52.] In fact, the medical  
16 record shows that in April 2015, Plaintiff did not respond to a letter requesting him  
17 to set up an appointment for physical therapy. [AR 360.] Thus, the ALJ properly  
18 found that Plaintiff’s failure to seek available follow-up treatment (such as physical  
19 therapy) was inconsistent with his allegedly disabling symptomology.

20 **D. The Objective Medical Evidence**

21 Finally, the ALJ found that Plaintiff’s allegations of disabling pain and  
22 incapacitating physical limitations are inconsistent with the objective medical  
23 evidence. [AR 28-29.] The ALJ provided a thorough summary of the medical  
24 record in his decision. Furthermore, Plaintiff does not challenge the ALJ’s  
25 determination of weight afforded to the findings and opinions of the various  
26 physicians. However, Plaintiff argues that there was evidence in the record that  
27 substantiated his physical impairments. [Pltf.’s Br. at 8-11.] Because the Court has  
28 already determined that sufficient evidence supported the ALJ’s decision to discount

1 Plaintiff's subjective complaints, it need not determine whether the ALJ materially  
2 erred in considering this final reason for discrediting Plaintiff's testimony. *See*  
3 *Carmickle*, 533 F.3d at 1162-63 (finding an error by the ALJ with respect to one or  
4 more factors in a credibility determination may be harmless if the ALJ's "remaining  
5 reasoning and ultimate credibility determination were adequately supported by  
6 substantial evidence in the record" (internal citation omitted).

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8 Accordingly, the Court concludes that the ALJ provided clear and convincing  
9 reasons, supported by substantial evidence, for finding Plaintiff less than fully  
10 credible, and thus, there is no error warranting reversal and remand.

11 **V. CONCLUSION**

12 For all of the foregoing reasons, **IT IS ORDERED** that the decision of the  
13 Commissioner finding Plaintiff not disabled is **AFFIRMED**.

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15 **IT IS SO ORDERED.**

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17 DATED: February 27, 2018



18 \_\_\_\_\_  
19 GAIL J. STANDISH  
20 UNITED STATES MAGISTRATE JUDGE

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