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

ANDREW SWARTZ,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social
Security,

Defendant.

CASE NO. CV 17-4186 SS

MEMORANDUM DECISION AND ORDER

**I.
INTRODUCTION**

Andrew Swartz ("Plaintiff") brings this action seeking to overturn the decision of the Acting Commissioner of Social Security (the "Commissioner" or "Agency") denying his application for Supplemental Security Income. The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge. (Dkt. Nos. 13-15). For the reasons stated below, the Court AFFIRMS the Commissioner's decision.

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II.

PROCEDURAL HISTORY

On December 30, 2013, Plaintiff filed an application for Supplemental Security Income ("SSI") pursuant to Title XVI of the Social Security Act alleging a disability onset date of July 15, 2009. (AR 56, 114-21). The Commissioner denied Plaintiff's application initially. (AR 55-68). Plaintiff requested a hearing before an Administrative Law Judge ("ALJ"), which took place on February 10, 2016. (AR 69-80, 35-54). The ALJ issued an adverse decision on March 4, 2016, finding that Plaintiff was not disabled because he was capable of performing his past relevant work as a telemarketer, and there are other jobs in the national economy that he can perform. (AR 23-31). On April 10, 2017, the Appeals Council denied Plaintiff's request for review. (AR 1-6). This action followed on June 5, 2017.

III.

FACTUAL BACKGROUND

Plaintiff was born on July 26, 1967. (AR 131). He was forty-eight (48) years old when he appeared before the ALJ on February 10, 2016. (AR 38). Plaintiff has a high-school degree and completed three years of college. (AR 38, 136). He is single and lives in a group home. (AR 114, 146). Plaintiff last worked in June 2009 as a telemarketer. (AR 135, 141). He alleges disability due to chronic asthma and chronic migraines. (AR 135).

1 **A. Plaintiff's Testimony**

2
3 Plaintiff testified that he stopped working after missing too
4 many days of work due to his migraine headaches. (AR 40).
5 Plaintiff asserted that he still gets migraines three to four times
6 a week, which can last from a day to two days. (AR 41-42). When
7 he experiences migraines, he needs to lay down in a dark room. (AR
8 43). His head pounds and hurts more when he stands up. (AR 47).
9 Sometimes he also experiences nausea and vomiting. (AR 47-48).
10 Plaintiff avoids strenuous activities, which tend to bring on his
11 headaches. (AR 45).

12
13 Plaintiff takes Imitrex for his migraines, but he claims that
14 he has mixed results.¹ (AR 41). "Sometimes it will make the
15 headache not as severe or as long, but as lot of times it really
16 doesn't have a great effect." (AR 41). Plaintiff acknowledged
17 that in the past, he self-medicated for his migraines and became
18 addicted to "substances." (AR 50).

19
20 **B. Treatment History**

21
22 Plaintiff began treating with Wesley Health Centers in July
23 2013. (AR 188). He complained of a light cough due to his asthma
24 but denied any other complaints. (AR 188). He stated that his

25
26

¹ Imitrex (sumatriptan) "is used to treat migraine headaches.
27 Imitrex will only treat a headache that has already begun. It will
28 not prevent headaches or reduce the number of attacks."
<<https://www.drugs.com/imitrex.html>> (last visited March 8, 2018).

1 migraine headaches are controlled by Naproxen. (AR 188).
2 Plaintiff's doctor instructed him to avoid taking caffeine products
3 and engage in a regular exercise program. (AR 189). In October
4 2013, Plaintiff denied any migraine symptoms. (AR 191). In
5 December 2013, Plaintiff acknowledged that he continues to use
6 caffeine and energy drinks on a daily basis, but reported that his
7 migraines were being controlled by Naproxen. (AR 195).

8
9 In January and March 2014, Plaintiff acknowledged still
10 consuming caffeine and energy drinks daily, but did not report any
11 migraine symptoms. (AR 198, 221, 224, 229-30). On March 20, 2014,
12 Plaintiff reiterated that his migraine headaches are controlled
13 with Naproxen. (AR 229). Relpax (eletriptan) was also prescribed
14 to be used as needed. (AR 231, 237). In October 2014, Plaintiff
15 reported that his migraine symptoms were controlled with
16 medications. (AR 281). Relpax was discontinued and Imitrex
17 prescribed. (AR 281, 283). Plaintiff was advised to take one 50mg
18 tablet as early as possible after onset of a migraine attack, which
19 may be repeated after two hours if the headache returns, not to
20 exceed 200mg in a 24-hour period. (AR 286). In November 2014,
21 Plaintiff did not report any migraine attacks, but acknowledged
22 continuing to use caffeine and energy drinks. (AR 287-89). A
23 neurological examination was normal. (AR 289).

24
25 In March and July 2015, Plaintiff asserted that his migraines
26 were controlled with Imitrex. (AR 290, 292, 298, 309). A
27 neurological examination was normal. (AR 292, 309). In December
28 2015, Plaintiff reported that his migraine symptoms, which he

1 described as "moderate," are chronic and occur randomly. (AR 302).
2 He further acknowledged that the symptoms are usually relieved with
3 Imitrex. (AR 302). His doctor diagnosed migraine without status
4 migrainosus, not intractable, unspecified migraine type,
5 concluding that it was "fairly controlled with current
6 management."² (AR 302, 304) (emphasis added).

7
8 On April 10, 2014, Steven B. Gerber, M.D., performed an
9 internal medicine evaluation at the request of the Agency. (AR
10 205-09). Plaintiff reported experiencing headaches for many years,
11 asserting that they now occur two to three times weekly, lasting
12 for up to two days. (AR 205). The headaches are occasionally
13 accompanied by nausea and vomiting, but no visual disturbances.
14 (AR 205). Plaintiff stated that the migraines are triggered by
15 chocolate, wine, and cheese, and are relieved with medications.
16 (AR 205). A neurological examination was unremarkable. (AR 208-
17 09). Dr. Gerber concluded that while Plaintiff has a history of
18 migraine headaches, Dr. Gerber observed "no abnormalities on
19 neurologic examination today." (AR 209). He opined that Plaintiff
20 can lift or carry twenty pounds occasionally and ten pounds
21 frequently; stand, walk, or sit for six hours in an eight-hour day;

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25 ² Cf. <<https://migraine.com/blog/the-ins-and-outs-of-intractable/>>
26 (last visited March 8, 2018) ("Intractable migraine, also called
27 refractory migraine and/or status migrainosus, is the medical term
28 used to describe a persistent migraine that is either 1) difficult
to treat or b) fails to respond to standard and/or aggressive
treatments.").

1 and should avoid concentrated exposure to dust and fumes. (AR
2 209).

3
4 **C. State Agency Consultant**

5
6 On April 24, 2014, Jerry Thomas, M.D., a state agency
7 consultant, reviewed all the available evidence in the medical
8 file. (AR 56-64). Dr. Thomas opined that Plaintiff's statements
9 regarding his symptoms were not consistent with the preponderance
10 of evidence in the file. (AR 61). He concluded that Plaintiff
11 can occasionally lift twenty pounds, frequently lift ten pounds;
12 stand, walk, or sit six hours in an eight-hour workday; and should
13 avoid even moderate exposure to fumes, odors, dusts, or gasses.
14 (AR 61-62).

15
16 **IV.**

17 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

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

1 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.
2 § 423(d)(2)(A)).

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

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

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

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

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

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

24
25 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,
26 262 F.3d 949, 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b)-
27 (g)(1), 416.920(b)-(g)(1).
28

1 that Plaintiff has not engaged in substantial gainful activity
2 since December 30, 2013, the application date. (AR 25). At step
3 two, the ALJ found that Plaintiff's migraine headaches, asthma,
4 hypertension, hyperlipidemia/dyslipidemia, and clinical obesity
5 are severe impairments. (AR 25). At step three, the ALJ determined
6 that Plaintiff does not have an impairment or combination of
7 impairments that meet or medically equal the severity of any of
8 the listings enumerated in the regulations. (AR 25).

9
10 The ALJ then assessed Plaintiff's RFC and concluded that he
11 can perform light work, as defined in 20 C.F.R. § 416.967(b),³
12 except that Plaintiff is limited to "no exposure to dusts or fumes
13 as defined in the DOT and no hazards as defined in the DOT." (AR
14 25). At step four, the ALJ found that Plaintiff is capable of
15 performing past relevant work as a telemarketer. (AR 29).
16 Alternatively, based on Plaintiff's RFC, age, education, work
17 experience and the VE's testimony, the ALJ determined at step five
18 that there are jobs that exist in significant numbers in the
19 national economy that Plaintiff can perform, including
20 assembler/small products, inspector, and marker. (AR 30).

21 _____
22 ³ "Light work involves lifting no more than 20 pounds at a time
23 with frequent lifting or carrying of objects weighing up to 10
24 pounds. Even though the weight lifted may be very little, a job
25 is in this category when it requires a good deal of walking or
26 standing, or when it involves sitting most of the time with some
27 pushing and pulling of arm or leg controls. To be considered
28 capable of performing a full or wide range of light work, you must
have the ability to do substantially all of these activities. If
someone can do light work, we determine that he or she can also do
sedentary work, unless there are additional limiting factors such
as loss of fine dexterity or inability to sit for long periods of
time." 20 C.F.R. § 416.967(b).

1 Accordingly, the ALJ found that Plaintiff was not under a
2 disability, as defined by the Social Security Act, at any time
3 since December 30, 2013, the application date. (AR 31).
4

5 **VI.**

6 **STANDARD OF REVIEW**

7
8 Under 42 U.S.C. § 405(g), a district court may review the
9 Commissioner's decision to deny benefits. The court may set aside
10 the Commissioner's decision when the ALJ's findings are based on
11 legal error or are not supported by substantial evidence in the
12 record as a whole. Garrison v. Colvin, 759 F.3d 995 (9th Cir.
13 2014) (citing Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050,
14 1052 (9th Cir. 2006)); Auckland v. Massanari, 257 F.3d 1033, 1035
15 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); Smolen v.
16 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v. Bowen,
17 885 F.2d 597, 601 (9th Cir. 1989)).
18

19 "Substantial evidence is more than a scintilla, but less than
20 a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v.
21 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant
22 evidence which a reasonable person might accept as adequate to
23 support a conclusion." Id. (citing Jamerson, 112 F.3d at 1066;
24 Smolen, 80 F.3d at 1279). To determine whether substantial
25 evidence supports a finding, the court must " 'consider the record
26 as a whole, weighing both evidence that supports and evidence that
27 detracts from the [Commissioner's] conclusion.' " Auckland, 257
28 F.3d at 1035 (citing Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.

1 1993)). If the evidence can reasonably support either affirming
2 or reversing that conclusion, the court may not substitute its
3 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-
4 21 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

5
6 **VII.**

7 **DISCUSSION**

8
9 Plaintiff contends that the ALJ erred for the following two
10 reasons: (1) the ALJ impermissibly rejected the opinions of his
11 treating physician; and (2) the ALJ impermissibly found Plaintiff's
12 testimony not credible. (Dkt. No. 19 at 3-15).

13
14 **A. The ALJ's Reasons for Discrediting Plaintiff's Subjective**
15 **Symptom Testimony Were Specific, Clear and Convincing**

16
17 Plaintiff asserted that he is unable to work due to chronic
18 asthma and chronic migraine headaches.⁴ (AR 135). He testified
19 that he gets migraines three to four times a week, which can last
20 up to a day or two. (AR 42). He takes Imitrex for his migraines,
21 but he has mixed results. (AR 41). "Sometimes it will make the
22 headache not as severe or as long, but a lot of times it really
23 doesn't have a great effect." (AR 41). Sometimes, he does not

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25
26 ⁴ The ALJ accommodated Plaintiff's asthma by restricting him to "no
27 exposure to dust or fumes . . . and no hazards." (AR 25).
28 Plaintiff does not dispute the ALJ's finding in this regard. (See
generally Dkt. No. 19 at 11-15).

1 take the Imitrex because he doesn't "feel it really works." (AR
2 47).

3
4 When assessing a claimant's credibility regarding subjective
5 pain or intensity of symptoms, the ALJ must engage in a two-step
6 analysis. Trevizo v. Berryhill, 874 F.3d 664, 678 (9th Cir. 2017).
7 First, the ALJ must determine if there is medical evidence of an
8 impairment that could reasonably produce the symptoms alleged.
9 Garrison, 759 F.3d at 1014. "In this analysis, the claimant is
10 not required to show that her impairment could reasonably be
11 expected to cause the severity of the symptom she has alleged; she
12 need only show that it could reasonably have caused some degree of
13 the symptom." Id. (emphasis in original) (citation omitted). "Nor
14 must a claimant produce objective medical evidence of the pain or
15 fatigue itself, or the severity thereof." Id. (citation omitted).
16

17 If the claimant satisfies this first step, and there is no
18 evidence of malingering, the ALJ must provide specific, clear and
19 convincing reasons for rejecting the claimant's testimony about
20 the symptom severity. Trevizo, 874 F.3d at 678 (citation omitted);
21 see also Smolen, 80 F.3d at 1284 ("[T]he ALJ may reject the
22 claimant's testimony regarding the severity of her symptoms only
23 if he makes specific findings stating clear and convincing reasons
24 for doing so."); Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883
25 (9th Cir. 2006) ("[U]nless an ALJ makes a finding of malingering
26 based on affirmative evidence thereof, he or she may only find an
27 applicant not credible by making specific findings as to
28 credibility and stating clear and convincing reasons for each.").

1 "This is not an easy requirement to meet: The clear and convincing
2 standard is the most demanding required in Social Security cases."
3 Garrison, 759 F.3d at 1015 (citation omitted).

4
5 In discrediting the claimant's subjective symptom testimony,
6 the ALJ may consider the following:

7
8 (1) ordinary techniques of credibility evaluation, such
9 as the claimant's reputation for lying, prior
10 inconsistent statements concerning the symptoms, and
11 other testimony by the claimant that appears less than
12 candid; (2) unexplained or inadequately explained
13 failure to seek treatment or to follow a prescribed
14 course of treatment; and (3) the claimant's daily
15 activities.

16
17 Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014) (citation
18 omitted). Inconsistencies between a claimant's testimony and
19 conduct, or internal contradictions in the claimant's testimony,
20 also may be relevant. Burrell v. Colvin, 775 F.3d 1133, 1137 (9th
21 Cir. 2014); Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir.
22 1997). In addition, the ALJ may consider the observations of
23 treating and examining physicians regarding, among other matters,
24 the functional restrictions caused by the claimant's symptoms.
25 Smolen, 80 F.3d at 1284; accord Burrell, 775 F.3d at 1137. However,
26 it is improper for an ALJ to reject subjective testimony based
27 "solely" on its inconsistencies with the objective medical evidence
28

1 presented. Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1227
2 (9th Cir. 2009) (citation omitted).

3
4 Further, the ALJ must make a credibility determination with
5 findings that are "sufficiently specific to permit the court to
6 conclude that the ALJ did not arbitrarily discredit claimant's
7 testimony." Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir.
8 2008) (citation omitted); see Brown-Hunter v. Colvin, 806 F.3d 487,
9 493 (9th Cir. 2015) ("A finding that a claimant's testimony is not
10 credible must be sufficiently specific to allow a reviewing court
11 to conclude the adjudicator rejected the claimant's testimony on
12 permissible grounds and did not arbitrarily discredit a claimant's
13 testimony regarding pain.") (citation omitted). Although an ALJ's
14 interpretation of a claimant's testimony may not be the only
15 reasonable one, if it is supported by substantial evidence, "it is
16 not [the court's] role to second-guess it." Rollins v. Massanari,
17 261 F.3d 853, 857 (9th Cir. 2001).

18
19 The ALJ provided multiple, specific, clear, and convincing
20 reasons to find Plaintiff's complaints of disabling migraine
21 headaches only partially credible. (AR 23). These reasons are
22 sufficient to support the Commissioner's decision.

23
24 The ALJ found that Plaintiff's claims of debilitating
25 migraines, occurring three to four times a week and lasting up to
26 a day or two, were belied by treatment notes, which indicated that
27 his migraines were moderate and "random". (AR 26, 29). Indeed,
28 in December 2015, Plaintiff reported that his migraines, while

1 chronic, are "moderate" and occur only randomly. (AR 302; accord
2 id. 28). "Contradiction with the medical record is a sufficient
3 basis for rejecting the claimant's subjective testimony."
4 Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1161 (9th
5 Cir. 2008); see SSR 16-3p, at *5 ("objective medical evidence is a
6 useful indicator to help make reasonable conclusions about the
7 intensity and persistence of symptoms, including the effects those
8 symptoms may have on the ability to perform work-related
9 activities").

10
11 In contrast to his testimony that Imitrex does not work,
12 Plaintiff consistently reported to his treating doctors that his
13 migraines, when they did occur, were controlled with medication.
14 (AR 188, 229, 231, 237, 281, 283, 290, 292, 298, 302, 304, 309;
15 accord id. 26-27, 28, 29). "Impairments that can be controlled
16 effectively with medication are not disabling for the purpose of
17 determining eligibility for SSI benefits." Warre v. Comm'r of Soc.
18 Sec. Admin., 439 F.3d 1001, 1006 (9th Cir. 2006). Plaintiff's
19 acknowledgment that he achieved "fair relief" of his headaches
20 through over-the-counter medications and were "controlled" with
21 prescription medications (AR 229, 281; accord id. 27) indicates
22 that his migraines were not as disabling as his testimony
23 suggested. See Tommasetti, 553 F.3d at 1039-40 (ALJ may properly
24 infer that claimant's pain "was not as all-disabling as he reported
25 in light of the fact that he did not seek an aggressive treatment
26 program").

1 Plaintiff's migraines were addressed with conservative
2 treatment. See Parra v. Astrue, 481 F.3d 742, 751 (9th Cir. 2007)
3 ("[E]vidence of conservative treatment is sufficient to discount a
4 claimant's testimony regarding severity of an impairment.")
5 (citation omitted); Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir.
6 1999), as amended (June 22, 1999) ("Meanel's claim that she
7 experienced pain approaching the highest level imaginable was
8 inconsistent with the 'minimal, conservative treatment' that she
9 received."). The ALJ noted that Plaintiff was advised to control
10 his migraines merely by avoiding caffeine products and engaging in
11 regular exercise. (AR 189; accord id. 26). Plaintiff, however,
12 continued to consume caffeine, against the advice of this doctor.
13 (AR 195, 198, 221, 224, 229-30, 287-89; accord id. 27). Instances
14 of noncompliance with a treatment regimen may properly be weighed
15 against a claimant's credibility. Trevizo, 874 F.3d at 681.

16
17 Plaintiff's claims of debilitating symptoms were contradicted
18 by clinical tests. Multiple neurological examinations were
19 unremarkable. (AR 208-09, 289, 292, 309; accord id. 27). While
20 inconsistencies with the objective medical evidence cannot be the
21 sole ground for rejecting a claimant's subjective testimony, it is
22 a factor that the ALJ may consider when evaluating credibility.
23 Bray, 554 F.3d at 1227; Burch v. Barnhart, 400 F.3d 676, 681 (9th
24 Cir. 2005); Rollins, 261 F.3d at 857.

25
26 Finally, Plaintiff's allegations were internally
27 inconsistent. See 20 C.F.R. § 416.929(c)(4) (ALJ may consider
28 inconsistencies in the claimant's testimony); Burch, 400 F.3d at

1 680 ("an ALJ may engage in ordinary techniques of credibility
2 evaluation, such as . . . inconsistencies in claimant's
3 testimony"). While Plaintiff asserted in his disability
4 application that he stopped working in 2009 due to chronic asthma
5 and chronic migraines, he testified that he stopped working in 2009
6 due to substance abuse issues and did not become sober until 2013.
7 (Compare AR 40, 114, 135, 205, with id. 50). Thus, the ALJ could
8 properly infer that "[Plaintiff's] disability allegations are also
9 somewhat diminished given his testimony that his sparse work
10 history is due to past substance abuse. This raises the question
11 as to whether [Plaintiff's] continued unemployment is actually due
12 to his medical condition." (AR 26).

13
14 In sum, the ALJ offered clear and convincing reasons,
15 supported by substantial evidence in the record, for his adverse
16 credibility findings. Accordingly, because substantial evidence
17 supports the ALJ's assessment of Plaintiff's credibility, no remand
18 is required.

19
20 **B. The ALJ Provided Specific And Legitimate Reasons For Rejecting**
21 **Dr. Bleakley's Opinions**

22
23 Plaintiff contends that the ALJ failed to properly evaluate
24 the opinions of Dennis Bleakley, M.D., regarding Plaintiff's
25 limitations from his migraine headaches. (Dkt. No. 19 at 3-11).

26
27 "To reject an uncontradicted opinion of a treating or
28 examining doctor, an ALJ must state clear and convincing reasons

1 that are supported by substantial evidence.” Bayliss v. Barnhart,
2 427 F.3d 1211, 1216 (9th Cir. 2005); see Lester v. Chater, 81 F.3d
3 821, 830 (9th Cir. 1995), as amended (Apr. 9, 1996) (“As is the
4 case with the opinion of a treating physician, the Commissioner
5 must provide ‘clear and convincing’ reasons for rejecting the
6 uncontradicted opinion of an examining physician.”). “If a
7 treating or examining doctor’s opinion is contradicted by another
8 doctor’s opinion, an ALJ may only reject it by providing specific
9 and legitimate reasons that are supported by substantial evidence.”
10 Bayliss, 427 F.3d at 1216; see Lester, 81 F.3d at 830-31 (“And like
11 the opinion of a treating doctor, the opinion of an examining
12 doctor, even if contradicted by another doctor, can only be
13 rejected for specific and legitimate reasons that are supported by
14 substantial evidence in the record.”). Further, when weighing
15 conflicting medical opinions, an ALJ may reject an opinion that is
16 conclusory, brief, and unsupported by clinical findings. Bayliss,
17 427 F.3d at 1216; Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th
18 Cir. 2001).

19
20 On March 20, 2014, Dr. Bleakley, Plaintiff’s treating
21 physician, completed a Migraine Headache Form at the request of
22 the Agency. (AR 202). He reported that Plaintiff’s bitemporal
23 migraines occur two-to-three times weekly and last for a day. (AR
24 202). Plaintiff’s symptoms include nausea, vomiting, photophobia,
25 throbbing, and pulsing. (AR 202). He opined that Plaintiff has a
26 “fair” response to his medications, but that his migraines would
27 interfere with his ability to work, causing him to miss two-to-
28 three days of work per week. (AR 202).

1 On November 6, 2014, Dr. Bleakley completed a Physical RFC
2 Questionnaire at the request of Plaintiff. (AR 242-46). He opined
3 that Plaintiff's prognosis was "good with treatment." (AR 242).
4 Plaintiff's migraine pain, which he characterized as 10/10, is
5 accompanied by nausea and photophobia, and is triggered by certain
6 foods. (AR 242). Nevertheless, Dr. Bleakley acknowledged that a
7 neurological examination was "normal" and that Plaintiff's
8 migraines are relieved if Plaintiff takes Imitrex at the outset of
9 an attack. (AR 242-43). He opined that Plaintiff's migraines
10 cause frequent interruptions with concentration and attention and
11 a marked limitation in Plaintiff's ability to cope with work
12 stresses. (AR 243-44). Dr. Bleakley also concluded that when
13 Plaintiff has a migraine, he would be able to sit or stand only
14 five minutes continuously and less than two hours during an eight-
15 hour workday, and can lift less than ten pounds. (AR 244-45). He
16 opined that Plaintiff would have good days and bad days and would
17 likely miss more than three days a month due to his migraines. (AR
18 246).

19
20 The ALJ gave "little weight" to Dr. Bleakley's opinions
21 because they were internally inconsistent, contrary to his own
22 treatment notes, unsupported by clinical testing, based on
23 Plaintiff's subjective allegations, and contradicted by the
24 opinions of the consultative examiner and the state agency
25 consultant. (AR 28). The ALJ has provided specific and legitimate
26 reasons, supported by substantial evidence, for rejecting Dr.
27 Bleakley's opinions.

1 Dr. Bleakley's opinion that Plaintiff suffers from significant
2 functional limitations due to his migraine headaches is
3 inconsistent with Dr. Bleakley's observation that Plaintiff's
4 prognosis is "good with treatment" and "relieved by Imitrex if
5 taken at onset." (Compare AR 202, 244-46, with id. 242-43).
6 Internal inconsistencies and ambiguities within a doctor's opinion
7 provide specific and legitimate reasons for an ALJ to reject the
8 opinion. Rollins; 261 F.3d at 856; Morgan v. Comm'r of Soc. Sec.
9 Admin., 169 F.3d 595, 603 (9th Cir. 1999). Plaintiff contends that
10 "[t]he fact that Imitrex[] relieves the symptoms at onset does
11 not mean that [Plaintiff] experiences no symptoms at all." (Dkt.
12 No. 19 at 6). However, the ALJ is not questioning whether Plaintiff
13 suffers from any migraine symptoms. Instead, the ALJ was skeptical
14 that someone whose prognosis is good and whose migraine symptoms
15 are relieved with medication would be incapable of performing any
16 work.

17
18 Dr. Bleakley's opinion is also belied by his own treatment
19 notes. "A conflict between treatment notes and a treating
20 provider's opinions may constitute an adequate reason to discredit
21 the opinions of a treating physician or another treating provider."
22 Ghanim, 763 F.3d at 1161. Dr. Bleakley's treatment records
23 indicate that Plaintiff's symptoms are being controlled with
24 Imitrex. (AR 281, 290). Dr. Bleakley observed that Plaintiff's
25 migraine headaches occur only randomly, are relieved by Imitrex,
26 and are "fairly controlled" with the current treatment regimen.
27 (AR 302, 304). Further, Dr. Bleakley diagnosed migraine without
28 status migrainosus, not intractable, which indicates that

1 Plaintiff's migraines are responding to treatment. (AR 304). The
2 issue is not whether Plaintiff experiences migraine headaches.
3 Instead, it is whether the headaches, when they occur, are
4 uncontrollable, such that Plaintiff is precluded from all work
5 capacities. "Impairments that can be controlled effectively with
6 medication are not disabling for the purpose of determining
7 eligibility for SSI benefits." Warre, 439 F.3d at 1006.

8
9 Dr. Bleakley's opinions are also unsupported by clinical
10 testing. "[A]n ALJ may discredit treating physicians' opinions
11 that are conclusory, brief, and unsupported by the record as a
12 whole or by objective medical findings." Batson v. Comm'r of Soc.
13 Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004) (citation
14 omitted). As the ALJ found, "Dr. Bleakley does not provide any
15 specific explanations for why [Plaintiff] is so functionally
16 limited." (AR 28). Indeed, there is nothing in the record that
17 supports Dr. Bleakley's opinion that Plaintiff can only lift less
18 than ten pounds and is incapable of sitting or standing more than
19 two hours in an eight-hour workday. To the contrary, the clinical
20 testing performed was largely unremarkable. (AR 289, 292, 309).

21
22 The ALJ properly concluded that "Dr. Bleakley took
23 [Plaintiff's] subjective allegations at face value and merely
24 reiterated those allegations in his reports when making his
25 assertions regarding [Plaintiff's] ability to work." (AR 28). "An
26 ALJ may reject a treating physician's opinion if it is based to a
27 large extent on a claimant's self-reports that have been properly
28 discounted as incredible." Tommasetti, 533 F.3d at 1041 (citation

1 omitted). As discussed above, the ALJ's rejection of Plaintiff's
2 subjective complaints was supported by substantial evidence. Here,
3 given that Plaintiff's allegations of disabling symptoms from his
4 migraine attacks are otherwise unsupported in the record, it
5 appears that Dr. Bleakley's opinions were based to a large extent
6 on Plaintiff's self-reports and were, therefore, properly rejected
7 by the ALJ.

8
9 These findings provide a specific and legitimate basis for
10 the ALJ to discount Dr. Bleakley's opinions in favor of other
11 opinions. The ALJ properly found other opinions in the record to
12 be better supported by the evidence and more consistent with the
13 record as a whole. See Tonapetyan, 242 F.3d at 1149. Dr.
14 Bleakley's opinions were contradicted by the opinions of the
15 consultative examiner and the state agency consultant. Drs. Gerber
16 and Thomas opined that Plaintiff is capable of "light" exertion,
17 with no concentrated exposure to dust or fumes. (AR 61-62, 209).
18 The ALJ found that these opinions were consistent with the medical
19 record and gave them great weight. (AR 28). He emphasized that
20 the consultative examiner included "detailed clinical findings and
21 narratives explaining and supporting the examiner's medical opinion
22 and functional assessment." (AR 28). The opinions of a
23 consultative examiner and state agency consultant constitute
24 substantial evidence in support of the ALJ's RFC assessment.
25 Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1174 (9th Cir. 2008);
26 see Tonapetyan, 242 F.3d at 1149 ("[Consultative examiner's]
27 opinion alone constitutes substantial evidence, because it rests
28 on his own independent examination of [the claimant].").

