

BACKGROUND

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2 Plaintiff is a 41 year-old male who applied for Social Security Disability Insurance
3 benefits on May 7, 2014, alleging disability beginning June 3, 2011. (AR 35.) The ALJ
4 determined that Plaintiff has not engaged in substantial gainful activity since June 3, 2011, the
5 alleged onset date. (AR 37.)

6 Plaintiff's claim was denied initially on August 12, 2014, and on reconsideration on
7 October 31, 2014. (AR 35.) Plaintiff filed a timely request for hearing, which was held before
8 Administrative Law Judge ("ALJ") Michael McKenna on August 18, 2016, in Pasadena,
9 California. (AR 35.) Plaintiff appeared and testified at the hearing with the assistance of a
10 Spanish interpreter. (AR 35.) Plaintiff was represented by counsel at the hearing. (AR 35.)
11 Vocational expert ("VE") Carmen Roman also appeared and testified at the hearing. (AR 35.)

12 The ALJ issued an unfavorable decision on October 19, 2016. (AR 35-49.) The
13 Appeals Council denied review on January 5, 2018. (AR 15-17.)

DISPUTED ISSUES

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15 As reflected in the Joint Stipulation, Plaintiff only raises the following disputed issue as
16 ground for reversal and remand:

- 17 1. Whether the ALJ's RFC assessment is supported by substantial evidence and
18 free of legal error.

STANDARD OF REVIEW

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20 Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether
21 the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v.
22 Chater, 80 F.3d 1273 , 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846
23 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and
24 based on the proper legal standards).

25 Substantial evidence means "more than a mere scintilla,' but less than a
26 preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v.
27 Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is "such relevant evidence as a
28

1 reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at
2 401 (internal quotation marks and citation omitted).

3 This Court must review the record as a whole and consider adverse as well as
4 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where
5 evidence is susceptible to more than one rational interpretation, the ALJ’s decision must be
6 upheld. Morgan v. Comm’r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).
7 “However, a reviewing court must consider the entire record as a whole and may not affirm
8 simply by isolating a ‘specific quantum of supporting evidence.’” Robbins, 466 F.3d at 882
9 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495
10 F.3d 625, 630 (9th Cir. 2007).

11 THE SEQUENTIAL EVALUATION

12 The Social Security Act defines disability as the “inability to engage in any substantial
13 gainful activity by reason of any medically determinable physical or mental impairment which
14 can be expected to result in death or . . . can be expected to last for a continuous period of not
15 less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has
16 established a five-step sequential process to determine whether a claimant is disabled. 20
17 C.F.R. §§ 404.1520, 416.920.

18 The first step is to determine whether the claimant is presently engaging in substantial
19 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging
20 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,
21 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or
22 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not
23 significantly limit the claimant’s ability to work. Smolen, 80 F.3d at 1290. Third, the ALJ must
24 determine whether the impairment is listed, or equivalent to an impairment listed, in 20 C.F.R.
25 Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d at 746. If the impairment
26 meets or equals one of the listed impairments, the claimant is presumptively disabled. Bowen,
27 482 U.S. at 141. Fourth, the ALJ must determine whether the impairment prevents the
28 claimant from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir.

1 2001). Before making the step four determination, the ALJ first must determine the claimant's
2 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). The RFC is "the most [one] can
3 still do despite [his or her] limitations" and represents an assessment "based on all the relevant
4 evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The RFC must consider all of the
5 claimant's impairments, including those that are not severe. 20 C.F.R. §§ 416.920(e),
6 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

7 If the claimant cannot perform his or her past relevant work or has no past relevant work,
8 the ALJ proceeds to the fifth step and must determine whether the impairment prevents the
9 claimant from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864,
10 869 (9th Cir. 2000). The claimant bears the burden of proving steps one through four,
11 consistent with the general rule that at all times the burden is on the claimant to establish his or
12 her entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established
13 by the claimant, the burden shifts to the Commissioner to show that the claimant may perform
14 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support
15 a finding that a claimant is not disabled at step five, the Commissioner must provide evidence
16 demonstrating that other work exists in significant numbers in the national economy that the
17 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.
18 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled and
19 entitled to benefits. Id.

20 THE ALJ DECISION

21 In this case, the ALJ determined at step one of the sequential process that Plaintiff has
22 not engaged in substantial gainful activity since June 3, 2011, the alleged onset date. (AR 37.)

23 At step two, the ALJ determined that Plaintiff has the following medically determinable
24 severe impairments: degenerative disc disease of the lumbar spine; lumbar herniated disc with
25 radiculopathy, status-post lumbar decompression at L5-S1; and post laminectomy syndrome.
26 (AR 37-40.)

1 At step three, the ALJ determined that Plaintiff does not have an impairment or
2 combination of impairments that meets or medically equals the severity of one of the listed
3 impairments. (AR 40.)

4 The ALJ then found that Plaintiff has the RFC to perform light work as defined in 20 CFR
5 § 404.1567(b), with the following limitations:

6 Claimant can lift and/or carry 25 pounds occasionally and 10 pounds frequently;
7 sit for six hours out of an eight-hour workday with normal breaks; stand and/or
8 walk for six hours in an eight-hour workday; occasionally climb ramps and stairs
9 but never climb ladders, ropes or scaffolds; and occasionally stoop, kneel, crouch
10 and crawl.

11 (AR 41-47.) In determining the above RFC, the ALJ made a determination that Plaintiff's
12 subjective symptom allegations were "not entirely consistent" with the medical evidence and
13 other evidence of record. (AR 41.) Significantly, Plaintiff does not challenge this finding.

14 At step four, the ALJ found that Plaintiff is not able to perform his past relevant work as a
15 scaffold builder. (AR 47.) The ALJ, however, also found at step five that, considering
16 Claimant's age, education, work experience and RFC, there are jobs that exist in significant
17 numbers in the national economy that Claimant can perform, including the jobs of laundry
18 worker, night cleaner, and price marker. (AR 47-48.)

19 Consequently, the ALJ found that Claimant is not disabled, within the meaning of the
20 Social Security Act. (AR 49.)

21 DISCUSSION

22 The ALJ decision must be affirmed. The ALJ's RFC is supported by substantial
23 evidence.

24 A. Relevant Federal Law

25 The ALJ's RFC is not a medical determination but an administrative finding or legal
26 decision reserved to the Commissioner based on consideration of all the relevant evidence,
27 including medical evidence, lay witnesses, and subjective symptoms. See SSR 96-5p; 20
28 C.F.R. § 1527(e). In determining a claimant's RFC, an ALJ must consider all relevant evidence

1 in the record, including medical records, lay evidence, and the effects of symptoms, including
2 pain reasonably attributable to the medical condition. *Robbins*, 446 F.3d at 883.

3 In evaluating medical opinions, the case law and regulations distinguish among the
4 opinions of three types of physicians: (1) those who treat the claimant (treating physicians); (2)
5 those who examine but do not treat the claimant (examining physicians); and (3) those who
6 neither examine nor treat the claimant (non-examining, or consulting, physicians). See 20
7 C.F.R. §§ 404.1527, 416.927; see also *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). In
8 general, an ALJ must accord special weight to a treating physician's opinion because a treating
9 physician "is employed to cure and has a greater opportunity to know and observe the patient
10 as an individual." *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (citation omitted). If
11 a treating source's opinion on the issues of the nature and severity of a claimant's impairments
12 is well-supported by medically acceptable clinical and laboratory diagnostic techniques, and is
13 not inconsistent with other substantial evidence in the case record, the ALJ must give it
14 "controlling weight." 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

15 Where a treating doctor's opinion is not contradicted by another doctor, it may be
16 rejected only for "clear and convincing" reasons. *Lester*, 81 F.3d at 830. However, if the
17 treating physician's opinion is contradicted by another doctor, such as an examining physician,
18 the ALJ may reject the treating physician's opinion by providing specific, legitimate reasons,
19 supported by substantial evidence in the record. *Lester*, 81 F.3d at 830-31; see also *Orn*, 495
20 F.3d at 632; *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002). Where a treating
21 physician's opinion is contradicted by an examining professional's opinion, the Commissioner
22 may resolve the conflict by relying on the examining physician's opinion if the examining
23 physician's opinion is supported by different, independent clinical findings. See *Andrews v.*
24 *Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995); *Orn*, 495 F.3d at 632. Similarly, to reject an
25 uncontradicted opinion of an examining physician, an ALJ must provide clear and convincing
26 reasons. *Bayliss*, 427 F.3d at 1216. If an examining physician's opinion is contradicted by
27 another physician's opinion, an ALJ must provide specific and legitimate reasons to reject it.
28 *Id.* However, "[t]he opinion of a non-examining physician cannot by itself constitute substantial

1 evidence that justifies the rejection of the opinion of either an examining physician or a treating
2 physician”; such an opinion may serve as substantial evidence only when it is consistent with
3 and supported by other independent evidence in the record. Lester, 81 F.3d at 830-31;
4 Morgan, 169 F.3d at 600.

5 **B. The ALJ Properly Considered The Medical Evidence**

6 Plaintiff sustained a work related back injury in June 2011. (AR 42.) He underwent a
7 lumbar decompression on August 21, 2012. (AR 42.) Plaintiff alleges back pain with radiation
8 to both legs secondary to degenerative disc disease, which limits his ability to work. (AR 41.)
9 He claims his back impairment affects his capacity to lift, squat, bend, stand, walk, or sit for
10 prolonged periods. (AR 41.) He testified he can lift and carry only 5-10 pounds and can stand,
11 walk, and sit up to 30 minutes each. (AR 41.)

12 The ALJ did find that Plaintiff has the medically determinable severe impairments of
13 degenerative disc disease of the lumbar spine, lumbar herniated disc with radiculopathy, status
14 post-lumbar decomposition, and post-laminectomy syndrome. (AR 37.) Nonetheless, the ALJ
15 assessed Plaintiff with a light work RFC with a lift and carry limitation of 25 pounds and limits
16 on sitting, standing, and walking of six hours each out of an eight hour workday. (AR 41.) The
17 ALJ also found that Plaintiff can occasionally climb ramps and stairs but never climb ladders,
18 ropes, and scaffolds, and occasionally can stoop, kneel, crouch, and crawl. (AR 41.)

19 The ALJ’s RFC is supported by the opinion of Plaintiff’s treating orthopedic surgeon, Dr.
20 Kambiz Hannani. (AR 42-45.) On January 28, 2013, Dr. Hannani indicated Plaintiff could
21 return to modified work duties following his lumbar decompression, but “patient is limited to no
22 lifting greater than 25 pounds; patient is limited to no frequent bending or stooping.” (AR 464.)
23 Dr. Hannani also prepared a Comprehensive Workers’ Compensation Maximum Medical
24 Improvement Report dated July 11, 2013. (AR 42-43, 431-33.) Plaintiff had decreased range
25 of motion of the lumbar spine, straight leg testing caused low back pain and reflex was down.
26 (AR 43.) The lower extremity neurologic exam, however, was generally unremarkable with
27 normal motor strength bilaterally and intact sensation. (AR 43.) Dr. Hannani opined that
28 Plaintiff had reached maximum medical improvement. (AR 43.) Dr. Hannani’s RFC

1 assessment was, "The patient is NOT capable of performing his usual and customary duties.
2 He will be limited to no lifting greater than 25 pounds, no frequent bending and/or stooping."
3 (AR 43, 433.) Dr. Hannani also provided a Musculoskeletal questionnaire on June 30, 2014,
4 indicating Plaintiff had spinal tenderness but intact reflexes, normal motor strength of 5/5 active
5 movement against full resistance without fatigue and no atrophy, and no upper extremity pain.
6 (AR 43, 396.) Plaintiff did not medically require an assistive device for standing or walking.
7 (AR 43.)

8 The ALJ gave great weight to Dr. Hannani's opinion because he has been Plaintiff's
9 primary treating source and his opinion is generally consistent with the ALJ's RFC. (AR 45.)
10 20 C.F.R. § 1527(c)(2) ("Generally, we give more weight to medical opinions from your treating
11 sources . . ."). The ALJ also found that Dr. Hannani's opinion that Plaintiff is limited to lifting no
12 more than 25 pounds and no frequent bending or stooping is consistent with the
13 "unremarkable" neurological findings in the record. (AR 45.) The ALJ gave partial weight to Dr.
14 Hannani's Musculoskeletal questionnaire because it lacked specific function by function
15 limitations, but the objective findings noted on the Questionnaire showed no significant
16 neurological abnormalities. (AR 45.)

17 State agency reviewing physicians Dr. Chan and Dr. Bayar also assessed Plaintiff with a
18 light work RFC with similar limitations to those imposed by Dr. Hannani. (AR 46, 86, 98-99.)
19 The ALJ gave these opinions partial weight. (AR 46.) The ALJ's RFC, then, is supported by
20 the opinions of Dr. Hannani, Dr. Chan and Dr. Bayar.¹

21 Plaintiff relies on examining physician Dr. Lincoln Yee, also an orthopedic surgeon, who
22 provided a QME dated June 15, 2016. (AR 44, 1062-1088.) Dr. Yee opined that Plaintiff was
23 precluded from any heavy lifting, repetitive bending, twisting, and turning and from prolonged
24

25 ¹ The ALJ gave little weight to the opinions of workers' compensation physicians that Plaintiff
26 was temporarily totally disabled, noting that workers' compensation disability is based on a
27 claimant's inability to perform his prior work while Social Security disability is based on a
28 claimant's inability to perform other work in the national economy. See Coria v. Heckler, 750 F.2d
245, 247 (3d Cir. 1984); Silva v. Colvin, 2013 WL 6859263*5 (C.D. Cal.) Plaintiff does not contest
the ALJ's accordance of little weight to the opinions of those workers' compensation physicians.

1 sitting in on fixed positions and no prolonged weight bearing, “in essence limited to semi-
2 sedentary work activity.” (AR 44, 1073-1085.) He also was to avoid any repetitive axial loading
3 to the lumbar spine. (AR 44.)

4 The ALJ gave only partial weight to Dr. Yee’s more restrictive RFC assessment. (AR
5 45.) The ALJ noted that Dr. Hannani is a treating physician and Dr. Yee is an examining
6 physician. Garrison v. Colvin, 759 F.3d 995, 1012 (9th Cir. 2014) (“the opinion of a treating
7 physician is . . . entitled to greater weight than that of an examining physician”). The
8 contradictory opinions of other physicians, moreover, provide specific, legitimate reasons for
9 rejecting a physician’s opinion. Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir. 2001).

10 Plaintiff focuses primarily on the medical opinion evidence, but the ALJ also found that
11 Dr. Hannani’s opinion was more consistent with the record as a whole. (AR 45.) The ALJ gave
12 exhaustive attention to the objective medical evidence, which is inconsistent with claims of
13 disabling impairment. (AR 42.) The ALJ found that clinical findings from examinations were
14 mostly unremarkable. (AR 43.) Although there was minimal tenderness to palpation over the
15 paraspinal muscles and decreased range of motion of the lumbar spine, Plaintiff has had a
16 normal gait and has been able to walk without difficulty. (AR 43, 44, 45, 40.) He does not
17 medically need any assistive device for standing or walking. (AR 45.) Straight leg raising tests
18 have been consistently negative. (AR 43.) Lower extremity neurological exams were also
19 consistently normal with intact sensation, normal reflexes, and normal motor strength of 5/5
20 bilaterally. (AR 43, 45.) Plaintiff did undergo a lumbar decompression but the surgery was
21 generally successful in improving his radiculopathy symptoms as detailed in the objective
22 medical evidence described above. (AR 44.) Plaintiff does not address the considerable
23 objective medical evidence that is consistent with Dr. Hannani’s RFC, and inconsistent with Dr.
24 Yee’s opinion. (AR 45.) See 20 C.F.R. § 404.1527(c)(4) (“Generally, the more consistent a
25 medical opinion is with the record as a whole, the more weight we will give to that opinion.”).

26 The ALJ, moreover, found that Plaintiff’s subjective symptom allegations were “not
27 entirely consistent” with the medical evidence discussed above and other evidence of record.
28 (AR 41.) In evaluating a claimant’s subjective symptom allegations, an ALJ may consider

1 whether there is a lack of medical evidence to corroborate a claimant's alleged symptoms so
2 long as it is not the only reason for discounting a claimant's subjective symptoms. Burch v.
3 Barnhart, 400 F.3d 676, 680-81 (9th Cir. 2005). An ALJ also may consider whether a
4 claimant's daily activities are inconsistent with disabling limitations. Bunnell v. Sullivan, 947
5 F.2d 341, 346 (9th Cir. 1991). Here, the ALJ found that Plaintiff is independent with respect to
6 personal care, drives daily, goes out alone, takes his children to school regularly, does light
7 household chores, cooks, shops, and manages his finances. (AR 39, 41.) These daily
8 activities, which are somewhat normal, are not as limited as one would expect in view of
9 Plaintiff's complaints. (AR 45.) An ALJ may reject a physician's opinion that is contradicted by
10 a claimant's own admitted or observed abilities. Bayliss, 427 F.3d at 1216. Plaintiff does not
11 address the ALJ's finding that Plaintiff's subjective symptom allegations are inconsistent with
12 his daily activities.

13 Plaintiff asserts that Dr. Hannani adopted Dr. Yee's QME opinion, including Dr. Yee's
14 limitations in lifting, prolonged sitting, standing, twisting, turning, and axial loading. Plaintiff
15 further asserts that the ALJ erred in failing to articulate sufficient reasons for rejecting Dr. Yee's
16 RFC limitations claimed to have been adopted by Dr. Hannani. The simple answer to Plaintiff's
17 assertion is that the ALJ rejected Dr. Yee's limitations inconsistent with the RFC, whether or not
18 adopted by Dr. Hannani. The ALJ did so based on substantial evidence, including the objective
19 medical evidence and inconsistent daily activities described above, which Plaintiff never
20 addressed or challenged.

21 Plaintiff also claims that the ALJ erred in failing to translate Dr. Yee's opinion from
22 workers' compensation terminology. An ALJ may not disregard a workers' compensation
23 opinion. Booth v. Barnhart, 181 F. Supp. 2d 1099, 1105 (C.D. Cal. 2002). The ALJ did not
24 disregard Dr. Yee's workers' compensation opinion. Plaintiff notes that with Dr. Yee's semi-
25 sedentary RFC he would not be able to perform the standing/walking requirements of
26 sedentary work, but the ALJ rejected Dr. Yee's semi-sedentary RFC. The same is true of Dr.
27 Yee's preclusion from repetitive bending, twisting, and turning activities or axial loading of the
28 lumbar spine. The ALJ rejected these limitations in his RFC. The ALJ's rejection of Dr. Yee's

1 more restrictive limitations is supported by the objective medical evidence described above and
2 Plaintiff's inconsistent daily activities, which Plaintiff never discussed or addressed. Any error
3 in not explicitly translating Dr. Yee's RFC limitations is harmless. See Tommasetti v. Astrue,
4 533 F.3d 1035, 1038 (9th Cir. 2008) (error is harmless when it is "inconsequential to the
5 ultimate nondisability determination"), quoting Stout v. Comm'r, 454 F.3d 1050, 1055-56 (9th
6 Cir. 2006).

7 Plaintiff disagrees with the ALJ's assessment of Dr. Yee's opinion, but it is the the ALJ's
8 responsibility to resolve conflicts in the medical evidence and ambiguities in the record.
9 Andrews, 53 F.3d at 1039. Where the ALJ's interpretation of the record is reasonable, as it is
10 here, it should not be second-guessed. Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir.
11 2001).

12 The ALJ rejected the opinion of Dr. Yee to the extent inconsistent with the ALJ's RFC for
13 specific, legitimate reasons supported by substantial evidence. The ALJ's RFC is supported by
14 substantial evidence.

15 The ALJ's nondisability determination is supported by substantial evidence and free of
16 legal error.

17 ORDER

18 IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the
19 Commissioner of Social Security and dismissing this action with prejudice.

20
21 DATED: October 10, 2019

/s/ John E. McDermott
JOHN E. MCDERMOTT
UNITED STATES MAGISTRATE JUDGE