

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WAYNE EDWARD STEIGER,)	Case No. EDCV 14-0027-JPR
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
vs.)	AFFIRMING COMMISSIONER
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner’s final decision denying his application for Social Security disability insurance benefits (“DIB”). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). This matter is before the Court on the parties’ Joint Stipulation, filed October 8, 2014, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner’s decision is affirmed.

1 **II. BACKGROUND**

2 Plaintiff was born on September 11, 1964. (Administrative
3 Record ("AR") 162.) He completed eighth grade (AR 42), and he
4 worked as an electronics technician and tractor-trailer truck
5 driver (AR 65-66, 167).

6 On June 14, 2010, Plaintiff submitted an application for
7 DIB, alleging that he had been unable to work since March 3,
8 2009, because of "[b]lack and neck injury" and "possible cancer
9 under tongue."¹ (AR 162, 166.) After his application was denied
10 initially and on reconsideration, he requested a hearing before
11 an Administrative Law Judge. (AR 96.) A hearing was held on
12 August 7, 2012, at which Plaintiff, who was represented by
13 counsel, testified, as did a vocational expert and Plaintiff's
14 fiancée, Norma Perez. (AR 38-77.) In a written decision issued
15 August 16, 2012, the ALJ found Plaintiff not disabled. (AR 21-
16 31.) On November 7, 2013, the Appeals Council denied Plaintiff's
17 request for review. (AR 1.) This action followed.

18 **III. STANDARD OF REVIEW**

19 Under 42 U.S.C. § 405(g), a district court may review the
20 Commissioner's decision to deny benefits. The ALJ's findings and
21 decision should be upheld if they are free of legal error and
22 supported by substantial evidence based on the record as a whole.
23 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra
24 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
25 evidence means such evidence as a reasonable person might accept

26
27 ¹ Plaintiff clarified at the hearing that the lesion under
28 his tongue was not cancerous and did not interfere with his
ability to work. (AR 49.)

1 as adequate to support a conclusion. Richardson, 402 U.S. at
2 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).
3 It is more than a scintilla but less than a preponderance.
4 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
5 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
6 substantial evidence supports a finding, the reviewing court
7 "must review the administrative record as a whole, weighing both
8 the evidence that supports and the evidence that detracts from
9 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
10 720 (9th Cir. 1996). "If the evidence can reasonably support
11 either affirming or reversing," the reviewing court "may not
12 substitute its judgment" for that of the Commissioner. Id. at
13 720-21.

14 **IV. THE EVALUATION OF DISABILITY**

15 People are "disabled" for purposes of receiving Social
16 Security benefits if they are unable to engage in any substantial
17 gainful activity owing to a physical or mental impairment that is
18 expected to result in death or which has lasted, or is expected
19 to last, for a continuous period of at least 12 months. 42
20 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257
21 (9th Cir. 1992).

22 A. The Five-Step Evaluation Process

23 An ALJ follows a five-step sequential evaluation process to
24 assess whether someone is disabled. 20 C.F.R. § 404.1520(a)(4);
25 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995) (as
26 amended Apr. 9, 1996). In the first step, the Commissioner must
27 determine whether the claimant is currently engaged in
28 substantial gainful activity; if so, the claimant is not disabled

1 and the claim must be denied. § 404.1520(a)(4)(i). If the
2 claimant is not engaged in substantial gainful activity, the
3 second step requires the Commissioner to determine whether the
4 claimant has a "severe" impairment or combination of impairments
5 significantly limiting his ability to do basic work activities;
6 if not, a finding of not disabled is made and the claim must be
7 denied. § 404.1520(a)(4)(ii). If the claimant has a "severe"
8 impairment or combination of impairments, the third step requires
9 the Commissioner to determine whether the impairment or
10 combination of impairments meets or equals an impairment in the
11 Listing of Impairments ("Listing") set forth at 20 C.F.R., Part
12 404, Subpart P, Appendix 1; if so, disability is conclusively
13 presumed and benefits are awarded. § 404.1520(a)(4)(iii).

14 If the claimant's impairment or combination of impairments
15 does not meet or equal one in the Listing, the fourth step
16 requires the Commissioner to determine whether the claimant has
17 sufficient residual functional capacity ("RFC")² to perform his
18 past work; if so, he is not disabled and the claim must be
19 denied. § 404.1520(a)(4)(iv). The claimant has the burden of
20 proving he is unable to perform past relevant work. Drouin, 966
21 F.2d at 1257. If the claimant meets that burden, a prima facie
22 case of disability is established. Id. If that happens or if
23 the claimant has no past relevant work, the Commissioner then
24 bears the burden of establishing that the claimant is not
25 disabled because he can perform other substantial gainful work

26
27 ² RFC is what a claimant can do despite existing exertional
28 and nonexertional limitations. § 404.1545; see Cooper v.
Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 available in the national economy. § 404.1520(a)(4)(v). That
2 determination comprises the fifth and final step in the
3 sequential analysis. § 404.1520; Lester, 81 F.3d at 828 n.5;
4 Drouin, 966 F.2d at 1257.

5 B. The ALJ's Application of the Five-Step Process

6 At step one, the ALJ found that Plaintiff had not engaged in
7 substantial gainful activity since March 3, 2009, the alleged
8 onset date. (AR 23.) At step two, he concluded that Plaintiff
9 had the severe impairments of "degenerative joint disease of the
10 lumbar spine with radiculopathy,³ status post lumbar fusion at
11 L5-S1 with residual back pain and probable pseudoarthritis,
12 status post hardware removal and augmentation of fusion at L5-S1,
13 and mild lateral recess stenosis at L4-5." (Id.) At step three,
14 the ALJ determined that Plaintiff's impairments did not meet or
15 equal any of the impairments in the Listing. (AR 25.) At step
16 four, he found that Plaintiff had the RFC to perform light work
17 except that he could "occasionally climb ramps and stairs"; was
18 "prohibited from climbing ladders, ropes, and scaffolds"; could
19 "frequently balance, stoop, kneel, crouch, and crawl"; "should
20 avoid working around unprotected heights and hazardous
21 machinery"; and could "use the bilateral lower extremities for
22 frequent pushing and pulling." (Id.) Based on the VE's
23 testimony, the ALJ concluded that Plaintiff could not perform his
24 past work as a truck driver and electronics installer. (AR 30.)
25 At step five, the ALJ found that Plaintiff could perform jobs
26

27 ³ Radiculopathy is disease of the spinal cord. See
28 Stedman's Medical Dictionary 1503 (27th ed. 2000).

1 that existed in significant numbers in the national economy.
2 (Id.) Accordingly, he found Plaintiff not disabled. (AR 31.)

3 **V. DISCUSSION**

4 Plaintiff contends that the ALJ erred in assessing the
5 testimony of Norma Perez, a lay witness and Plaintiff's fiancée,
6 and in failing to consider one aspect of the treating physician's
7 opinion. (J. Stip. at 5.)

8 A. Any Error in the ALJ's Failure to Address the Lay
9 Witness's Testimony Was Harmless

10 Plaintiff contends that the ALJ erred because he did not
11 "acknowledge much less address" Perez's testimony. (J. Stip. at
12 6-8.) For the reasons discussed below, any error was harmless
13 and remand is not warranted on this ground.

14 1. Applicable law

15 "'In determining whether a claimant is disabled, an ALJ must
16 consider lay witness testimony concerning a claimant's ability to
17 work.'" Bruce v. Astrue, 557 F.3d 1113, 1115 (9th Cir. 2009)
18 (quoting Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050, 1053
19 (9th Cir. 2006)); see also § 404.1513(d) (statements from
20 therapists, family, and friends can be used to show severity of
21 impairments and effect on ability to work). Such testimony is
22 competent evidence and "cannot be disregarded without comment.'" Bruce,
23 557 F.3d at 1115 (emphasis in original) (quoting Nguyen v.
24 Chater, 100 F.3d 1462, 1467 (9th Cir. 1996)); Robbins, 466 F.3d
25 at 885 ("[T]he ALJ is required to account for all lay witness
26 testimony in the discussion of his or her findings."). When
27 rejecting the testimony of a lay witness, an ALJ must give
28 specific reasons germane to that witness. Bruce, 557 F.3d at

1 1115; see also Stout, 454 F.3d at 1053; Nguyen, 100 F.3d at 1467.

2 An ALJ's failure to address a lay witness's testimony is
3 harmless if it is "inconsequential to the ultimate nondisability
4 determination in the context of the record as a whole." Molina
5 v. Astrue, 674 F.3d 1104, 1122 (9th Cir. 2012) (internal
6 quotation marks omitted); see also Tommasetti v. Astrue, 533 F.3d
7 1035, 1038 (9th Cir. 2008); Carmickle v. Comm'r, Soc. Sec.
8 Admin., 533 F.3d 1155, 1162 (9th Cir. 2008). That happens when
9 "the same evidence that the ALJ referred to in discrediting [the
10 claimant's] claims also discredits [the lay witness's] claims."
11 Molina, 674 F.3d at 1122 (alterations in original) (quoting
12 Buckner v. Astrue, 646 F.3d 549, 560 (8th Cir. 2011)).

13 2. Analysis

14 In determining Plaintiff's RFC, the ALJ discredited
15 Plaintiff's allegations regarding the severity of his upper-back,
16 neck, and hip pain because they were inconsistent with the
17 medical evidence and his daily activities and because Plaintiff
18 had not complied with his treatment regimen. (AR 26-27.)
19 Plaintiff has not challenged on appeal the ALJ's credibility
20 determination regarding his own statements and testimony.

21 Perez heard Plaintiff's testimony at the hearing (AR 41) and
22 then testified herself (AR 71-76). The ALJ did not address her
23 testimony in his written decision. (See AR 25-30.) Although
24 that was error, see Bruce, 557 F.3d at 1115, it was harmless
25 because Perez described the same limitations as Plaintiff did in
26 his own testimony, and the ALJ's reasons for rejecting
27 Plaintiff's testimony "appl[ied] with equal force" to Perez's
28 testimony. Molina, 674 F.3d at 1122.

1 The ALJ first rejected Plaintiff's allegations because of
2 his "inconsistency in reporting his activities of daily living."
3 (AR 26); see Tommasetti, 533 F.3d at 1039 (ALJ may consider
4 claimant's daily activities in assessing his credibility); see
5 also Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002) (in
6 weighing credibility, ALJ may consider daily activities and
7 "inconsistencies either in claimant's testimony or between [his]
8 testimony and [his] conduct" (alteration omitted)). As the ALJ
9 noted, in an "Exertion Questionnaire" dated September 1, 2010,
10 Plaintiff stated that his back injury prevented him from doing
11 chores around the house because of "excruciating pain." (AR
12 172.) Because of back and leg pain it was "hard for [Plaintiff]
13 to sit or stand or even drive for any one period of time" (id.),
14 though he acknowledged that he could drive up to 30 miles at a
15 time (AR 173). He indicated that he could not go grocery
16 shopping "any more cause it[']s too much work." (Id.)

17 At the hearing, by contrast, Plaintiff testified that he
18 occasionally washed dishes, made the bed, did laundry, and "once
19 in a while" watered the yard. (AR 41.) He also testified that
20 he could drive himself 30 miles to go to doctor's appointments,
21 "pay a couple bills here or there," and go "to the stores." (AR
22 42.) He also occasionally drove one hour to family gatherings.
23 (Id.) He no longer did hobbies like "hiking, fishing, [and]
24 riding dirt bikes" very much. (AR 58.) He explained that his
25 "wife ha[d] to carry everything" when they went fishing. (Id.)
26 He added, "So it's [sic] kind of makes you not feel like a man
27 having to have your wife carry everything while you're trying to
28 enjoy yourself." (Id.)

1 Perez's testimony on his activities was nearly identical to
2 Plaintiff's, as Plaintiff seems to acknowledge. (J. Stip. at 7
3 (noting that Perez "confirmed the testimony of [Plaintiff] as to
4 his limited ability to do chores".) She testified that
5 Plaintiff did some chores – washing dishes, making the bed, and
6 watering the yard, the same ones Plaintiff testified to – but did
7 not vacuum, mop, or take out the trash. (AR 73.) She stated
8 that Plaintiff could "go the [sic] store, run errands and
9 everything." (AR 74.) When asked by the ALJ why she believed
10 Plaintiff was disabled, she answered that they could not go
11 camping and ride bikes like they used to and she carried "all the
12 equipment." (AR 75.) She said, "[H]e feels like he's not a
13 man." (Id.) Because Perez's testimony did not add anything
14 beyond Plaintiff's own testimony, the ALJ's discussion of daily
15 activities applied with equal force to Perez's testimony.

16 The ALJ's other reasons for discrediting Plaintiff's
17 allegations also applied to Perez's testimony. He discredited
18 Plaintiff's allegations because they were inconsistent with the
19 medical evidence. (AR 27-28); see Carmickle, 533 F.3d at 1161
20 (contradiction with medical record sufficient basis for rejecting
21 claimant's subjective testimony). Plaintiff testified that
22 despite two surgeries, he still experienced muscle spasms,
23 cramps, and sharp, shooting pain in his hips and legs. (AR 44,
24 46, 51.) But as the ALJ noted, a February 22, 2012 CT scan
25 showed "no significant bony spinal canal or neural foraminal
26 stenosis." (AR 440-41.) Additionally, the findings from an
27 April 17, 2012 EMG and nerve-conduction study of both lower
28 extremities and lumbar paraspinals were "entirely within normal

1 limits" and "rule[d] out lumbar radiculopathy." (AR 442-45.) To
2 the extent Perez testified that Plaintiff could not perform any
3 work (see AR 75), the ALJ's reasoning applied equally to her
4 testimony.

5 The ALJ also discredited Plaintiff's allegations of
6 disabling pain because Plaintiff had not complied with his
7 treatment regimen. (AR 26); see Smolen v. Chater, 80 F.3d 1273,
8 1285 (9th Cir. 1996) (ALJ may rely on "unexplained or
9 inadequately explained failure to seek treatment or follow a
10 prescribed course of treatment" in discounting claimant's
11 testimony regarding severity of impairment). As the ALJ noted,
12 despite doctors' recommendations that he receive physical therapy
13 (see, e.g., AR 299, 302), Plaintiff testified that he "never had
14 physical therapy for any of [his] surgeries" even though he had
15 "heard a lot of scar tissue builds up" (AR 46-47). He
16 acknowledged that the lack of therapy had "hindered [his]
17 healing." (AR 47.) He explained ambiguously that his doctor and
18 insurance company "could never get it worked out right," implying
19 that he had not attended the sessions because they were "down the
20 hill." (Id.) The ALJ's reasoning also applied in discrediting
21 Perez's testimony that Plaintiff was unable to work.

22 In sum, Perez's testimony was nearly identical to
23 Plaintiff's and did not describe any limitations beyond those
24 Plaintiff himself described.⁴ See Molina, 674 F.3d at 1122.

25
26 ⁴ Plaintiff asserts that Perez's testimony was "important"
27 because "she testified to his mental state." (J. Stip. at 7.)
28 He overstates her testimony regarding his mental health, however;
she testified only that Plaintiff's medication seemed to cause
mood swings and that he was forgetful, stressed, and irritable.

1 Further, the ALJ extensively discussed Plaintiff's alleged
2 limitations and rejected them based on specific, clear, and
3 convincing reasons, a determination Plaintiff has not challenged
4 on appeal. Because the evidence on which the ALJ relied to
5 discredit Plaintiff's testimony also discredited Perez's, any
6 error was inconsequential to the ultimate nondisability
7 determination and was therefore harmless. Id.; see also
8 Valentine v. Comm'r Soc. Sec. Admin., 574 F.3d 685, 694 (9th Cir.
9 2009) (when lay witness's testimony is similar to claimant's and
10 ALJ gives clear and convincing reasons for rejecting claimant's
11 testimony, "it follows that the ALJ also gave germane reasons for
12 rejecting" lay witness's testimony).

13 Plaintiff is not entitled to remand on this ground.

14 B. The ALJ Properly Considered the Treating Physician's
15 Opinion

16 Plaintiff contends that the ALJ erred in failing to consider
17 one finding of Dr. Sunny Uppal, his treating physician. (J.
18 Stip. at 11-13.) Specifically, he asserts that the ALJ "did not
19 address" Dr. Uppal's statement on March 16, 2010, that he should
20 not perform heavy lifting, bending, or stooping. (Id.; see also
21 AR 305.)

22
23
24
25 (See AR 73-74.) The ALJ's reasons for discounting Plaintiff's
26 mental-health allegations (see AR 24-25) also applied to Perez's
27 testimony, as her testimony overlapped with portions of
28 Plaintiff's (see, e.g., AR 59 (Plaintiff testifying medication
made him feel "cloudy" and he would "forget stuff constantly")).
Indeed, Plaintiff does not challenge the ALJ's finding that his
mental impairments were nonsevere. (AR 24-25.)

1 1. Relevant background

2 On December 11, 2009, Plaintiff started seeing Dr. Uppal, an
3 orthopedic surgeon, for his leg and back pain. (See AR 314,
4 318.) An MRI revealed a five-millimeter herniated disc at L5-S1
5 that was "not responsive to conservative treatment." (AR 311.)
6 Dr. Uppal recommended – and Plaintiff requested – surgery to
7 perform anterior and posterior decompression and fusion. (Id.)

8 On January 8, 2010, before the surgery, Dr. Uppal diagnosed
9 spondylosis⁵ of L5-S1, noting again that the condition was "not
10 responsive to conservative treatment." (AR 309.)

11 Plaintiff had back surgery on February 27, 2010. (See AR
12 371, 442.) On March 16, 2010, in a postoperative checkup, Dr.
13 Uppal noted that Plaintiff's

14 preoperative level of pain is essentially gone. He used
15 to have severe pain in his leg, which is now gone. He is
16 very happy.

17 (AR 306). Plaintiff's back exhibited 60 degrees of flexion and
18 10 degrees of extension, and straight-leg raising was negative.

19 (Id.) He demonstrated motor strength of five out of five in
20 ankle plantar flexion and dorsiflexion, quadriceps, and
21 iliopsoas.⁶ (Id.) Under the "Treatment Plan" heading, Dr. Uppal
22 noted that "[d]o's and don'ts were explained to [Plaintiff]" and
23 recommended that he continue his "home walking program" and

24
25 ⁵ Spondylosis refers generally to degeneration of the
vertebrae. See Stedman's Medical Dictionary, supra, at 1678.

26 ⁶ The iliopsoas muscle is part of a group of muscles known
27 as the hip flexors. See Hip flexor strain – aftercare,
28 MedlinePlus, [http://www.nlm.nih.gov/medlineplus/ency/
patientinstructions/000682.htm](http://www.nlm.nih.gov/medlineplus/ency/patientinstructions/000682.htm) (last updated May 15, 2013).

1 perform "[n]o heavy lifting, bending or stooping." (AR 305.)

2 On May 21, 2010, Dr. Uppal noted that Plaintiff's
3 "preoperative level of pain ha[d] improved" but he continued to
4 have "some degree of pain." (AR 303.) Plaintiff's back
5 exhibited 60 degrees of flexion and 10 degrees of extension, and
6 straight-leg raising was negative. (Id.) He demonstrated motor
7 strength of five out of five in ankle plantar and dorsiflexion,
8 quadriceps, and iliopsoas. (Id.) Plaintiff's FABER test was
9 negative, which indicated "no hip pathology."⁷ (Id.)

10 Plaintiff saw Dr. Uppal again on July 9, 2010. (AR 299-
11 300.) Dr. Uppal again noted that Plaintiff's preoperative pain
12 had improved but that he continued to have lower back pain. (AR
13 300.) Plaintiff's back exhibited the same flexion, extension,
14 and motor strength as it did in May, and straight-leg raising and
15 FABER tests were again negative. (Id.) In neither the May nor
16 the July treatment plans did Dr. Uppal include a limitation on
17 lifting, bending, or stooping. (AR 299, 302.)

18 2. Applicable law

19 Three types of physicians may offer opinions in Social
20 Security cases: (1) those who directly treated the plaintiff, (2)
21 those who examined but did not treat the plaintiff, and (3) those
22 who did not treat or examine the plaintiff. Lester, 81 F.3d at
23 830. A treating physician's opinion is generally entitled to

24
25 ⁷ The FABER test is used to assess the sacroiliac joint as a
26 source of lower back pain. See Comprehensive Diagnostic Approach
27 for the Sacroiliac (SI) Joint, Spine-health, [http://www.spine-](http://www.spine-health.com/education-centers/sacroiliac-joint-disorders/physicians/comprehensive-diagnostic-approach-sacroiliac)
28 [health.com/education-centers/sacroiliac-joint-disorders/](http://www.spine-health.com/education-centers/sacroiliac-joint-disorders/physicians/comprehensive-diagnostic-approach-sacroiliac)
physicians/comprehensive-diagnostic-approach-sacroiliac (last
visited Feb. 9, 2015). FABER is an acronym for flexion,
abduction, and external rotation. Id.

1 more weight than that of an examining physician, and an examining
2 physician's opinion is generally entitled to more weight than
3 that of a nonexamining physician. Id.

4 This is true because treating physicians are employed to
5 cure and have a greater opportunity to know and observe the
6 claimant. Smolen, 80 F.3d at 1285. If a treating physician's
7 opinion is well supported by medically acceptable clinical and
8 laboratory diagnostic techniques and is not inconsistent with the
9 other substantial evidence in the record, it should be given
10 controlling weight. § 404.1527(c)(2). If a treating physician's
11 opinion is not given controlling weight, its weight is determined
12 by length of the treatment relationship, frequency of
13 examination, nature and extent of the treatment relationship,
14 amount of evidence supporting the opinion, consistency with the
15 record as a whole, the doctor's area of specialization, and other
16 factors. § 404.1527(c)(2)-(6).

17 When a treating or examining physician's opinion is not
18 contradicted by other evidence in the record, it may be rejected
19 only for "clear and convincing" reasons. See Carmickle, 533 F.3d
20 at 1164 (quoting Lester, 81 F.3d at 830-31). When a treating or
21 examining physician's opinion is contradicted, the ALJ must
22 provide only "specific and legitimate reasons" for discounting
23 it. Id. The weight given an examining physician's opinion,
24 moreover, depends on whether it is consistent with the record and
25 accompanied by adequate explanation, among other things.

26 § 404.1527(c)(3)-(6).

1 3. Analysis

2 In determining Plaintiff's RFC, the ALJ expressly rejected
3 Dr. Uppal's March 16, 2010 statement that Plaintiff was
4 "temporarily totally disabled" and similar state disability
5 certificates completed by Dr. Darren Bergey. (AR 29; see AR 308,
6 311, 320, 328, 332, 487-89.) The ALJ noted that the phrase
7 "temporarily totally disabled" was a "term of art in workers'
8 compensation law that is not determinative" under Social Security
9 law. (AR 29.) He found that the "temporarily totally disabled"
10 determination was "not relevant" and had "no probative value."
11 (Id.) He did not explicitly address the portion of Dr. Uppal's
12 March 16, 2010 treatment note in which Dr. Uppal recommended that
13 Plaintiff perform no heavy lifting, bending, or stooping. (See
14 AR 25-30.)

15 Plaintiff asserts that the ALJ erred by failing to address
16 that limitation. (J. Stip. at 11-12.) But Plaintiff takes Dr.
17 Uppal's statement out of context and mistakenly characterizes it
18 as a functional assessment. In actuality, the statement was one
19 of several recommendations in Plaintiff's post-surgery treatment
20 plan, not an opinion regarding Plaintiff's functional
21 limitations. The "Treatment Plan" noted that "[d]o's and don'ts
22 were explained to [Plaintiff]," and Dr. Uppal recommended that
23 Plaintiff continue his "home walking program" and perform "[n]o
24 heavy lifting, bending or stooping." (AR 305.) Significantly,
25 Dr. Uppal did not include any such limitation in his May and July
26 2010 treatment plans. (AR 299, 302.) Thus, in context, Dr.
27 Uppal's opinion was not that Plaintiff could not ever perform
28 heavy lifting, bending, or stooping but that he should not do

1 those things during his post-surgery recovery.


2 In any event, the ALJ extensively referenced Dr. Uppal's
3 findings in his decision, including the March 16, 2010
4 examination. For example, the ALJ noted Dr. Uppal's findings
5 that Plaintiff's preoperative pain was "essentially gone." (AR
6 27 (citing AR 306).) Reviewing Dr. Uppal's treatment notes from
7 March 16 to July 9, 2010, the ALJ observed that Plaintiff "was
8 generally noted to have normal patellar and Achilles reflexes,
9 ankle dorsiflexors, plantarflexors, quadriceps, and iliopsoas
10 were all 5/5, and he was mostly negative for straight leg raising
11 and Faber test." (AR 28 (citing AR 297-306, 394-411).) He also
12 noted Dr. Uppal's findings that despite surgery and post-surgery
13 treatment, Plaintiff continued to complain of pain, exhibited
14 decreased range of motion in his back, had tenderness over the
15 screw tops, occasionally tested positive in straight-leg raising,
16 and had muscle spasms. (AR 27; see AR 404, 412, 415.) The ALJ
17 also reviewed all of Dr. Uppal's examinations and Plaintiff's
18 imaging from after the removal of his hardware on June 6, 2011
19 (AR 433-34), noting medical evidence that was inconsistent as
20 well as consistent with Plaintiff's alleged functional
21 limitations (AR 28; see AR 412). Nothing in the ALJ's decision
22 suggests that he selectively analyzed the medical evidence, nor
23 was he required to discuss every piece of evidence. See Howard
24 ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003).
25 Dr. Uppal's medical findings were duly considered.

26 Plaintiff is not entitled to remand on this ground.

1 **VI. CONCLUSION**

2 Consistent with the foregoing, and under sentence four of 42
3 U.S.C. § 405(g),⁸ IT IS ORDERED that judgment be entered
4 AFFIRMING the decision of the Commissioner, DENYING Plaintiff's
5 request for remand, and DISMISSING this action with prejudice.
6 IT IS FURTHER ORDERED that the Clerk serve copies of this Order
7 and the Judgment on counsel for both parties.

8
9 DATED: February 13, 2015



10 JEAN ROSENBLUTH
11 U.S. Magistrate Judge
12
13
14
15
16
17
18
19
20
21
22
23
24

25 _____
26 ⁸ This sentence provides: "The [district] court shall have
27 power to enter, upon the pleadings and transcript of the record,
28 a judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."