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

Case No. EDCV14-00321-VEB

<p>STEVEN HERNANDEZ, JR.,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>CAROLYN W. COLVIN, Acting Commissioner of Social Security,</p> <p style="text-align: center;">Defendant.</p>
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DECISION AND ORDER

**I. INTRODUCTION**

In September of 2010, Plaintiff Steven Hernandez, Jr. applied for Disability Insurance Benefits under the Social Security Act. The Commissioner of Social Security denied the application. Plaintiff, represented by Bill LaTour, Esq.,

1 commenced this action seeking judicial review of the Commissioner’s partial denial  
2 of benefits pursuant to 42 U.S.C. §§ 405 (g) and 1383 (c)(3).

3 The parties consented to the jurisdiction of a United States Magistrate Judge.  
4 (Docket No. 9, 10). On December 28, 2015, this case was referred to the  
5 undersigned pursuant to General Order 05-07. (Docket No. 18).

## 7 **II. BACKGROUND**

8 Plaintiff applied for benefits on September 27, 2010, alleging disability  
9 beginning May 4, 2009, due to various physical impairments. (T at 59).<sup>1</sup> The  
10 application was denied initially and on reconsideration. Plaintiff requested a hearing  
11 before an Administrative Law Judge (“ALJ”). On January 20, 2012, a hearing was  
12 held before ALJ Mark Greenberg. (T at 30). Plaintiff appeared with his attorney and  
13 testified. (T at 33-47). The ALJ also received testimony from Gloria Lasoff, a  
14 vocational expert (T at 48-53).

15 On January 27, 2012, the ALJ issued a written decision denying the  
16 application for benefits. (T at 11-28). The ALJ’s decision became the  
17 Commissioner’s final decision on January 10, 2014, when the Appeals Council  
18 denied Plaintiff’s request for review. (T at 1-3).

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19 <sup>1</sup> Citations to (“T”) refer to the administrative record at Docket No. 14.

1 On February 20, 2014, Plaintiff, acting by and through his counsel, filed this  
2 action seeking judicial review of the Commissioner’s decision. (Docket No. 3). The  
3 Commissioner interposed an Answer on August 27, 2014. (Docket No. 13). The  
4 parties filed a Joint Stipulation on November 24, 2014. (Docket No. 17).

5 After reviewing the pleadings, Joint Stipulation, and administrative record,  
6 this Court finds that the Commissioner’s decision should be affirmed and this case  
7 be dismissed.

### 8 9 **III. DISCUSSION**

#### 10 **A. Sequential Evaluation Process**

11 The Social Security Act (“the Act”) defines disability as the “inability to  
12 engage in any substantial gainful activity by reason of any medically determinable  
13 physical or mental impairment which can be expected to result in death or which has  
14 lasted or can be expected to last for a continuous period of not less than twelve  
15 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a  
16 claimant shall be determined to be under a disability only if any impairments are of  
17 such severity that he or she is not only unable to do previous work but cannot,  
18 considering his or her age, education and work experiences, engage in any other  
19 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),

1 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and  
2 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001).

3 The Commissioner has established a five-step sequential evaluation process  
4 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step  
5 one determines if the person is engaged in substantial gainful activities. If so,  
6 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the  
7 decision maker proceeds to step two, which determines whether the claimant has a  
8 medically severe impairment or combination of impairments. 20 C.F.R. §§  
9 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

10 If the claimant does not have a severe impairment or combination of  
11 impairments, the disability claim is denied. If the impairment is severe, the  
12 evaluation proceeds to the third step, which compares the claimant's impairment(s)  
13 with a number of listed impairments acknowledged by the Commissioner to be so  
14 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),  
15 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or  
16 equals one of the listed impairments, the claimant is conclusively presumed to be  
17 disabled. If the impairment is not one conclusively presumed to be disabling, the  
18 evaluation proceeds to the fourth step, which determines whether the impairment  
19 prevents the claimant from performing work which was performed in the past. If the

1 claimant is able to perform previous work, he or she is deemed not disabled. 20  
2 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant’s residual  
3 functional capacity (RFC) is considered. If the claimant cannot perform past relevant  
4 work, the fifth and final step in the process determines whether he or she is able to  
5 perform other work in the national economy in view of his or her residual functional  
6 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
7 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

8 The initial burden of proof rests upon the claimant to establish a *prima facie*  
9 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup>  
10 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden  
11 is met once the claimant establishes that a mental or physical impairment prevents  
12 the performance of previous work. The burden then shifts, at step five, to the  
13 Commissioner to show that (1) plaintiff can perform other substantial gainful  
14 activity and (2) a “significant number of jobs exist in the national economy” that the  
15 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup> Cir. 1984).

16 **B. Standard of Review**

17 Congress has provided a limited scope of judicial review of a Commissioner’s  
18 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,  
19 made through an ALJ, when the determination is not based on legal error and is

1 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup> Cir.  
2 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999).

3 “The [Commissioner’s] determination that a plaintiff is not disabled will be  
4 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*  
5 *Heckler*, 722 F.2d 570, 572 (9<sup>th</sup> Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial  
6 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119  
7 n 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d  
8 599, 601-02 (9<sup>th</sup> Cir. 1989). Substantial evidence “means such evidence as a  
9 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*  
10 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and  
11 conclusions as the [Commissioner] may reasonably draw from the evidence” will  
12 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On review,  
13 the Court considers the record as a whole, not just the evidence supporting the  
14 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir.  
15 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

16 It is the role of the Commissioner, not this Court, to resolve conflicts in  
17 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational  
18 interpretation, the Court may not substitute its judgment for that of the  
19 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup>

1 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be  
2 set aside if the proper legal standards were not applied in weighing the evidence and  
3 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d  
4 432, 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to support the  
5 administrative findings, or if there is conflicting evidence that will support a finding  
6 of either disability or non-disability, the finding of the Commissioner is conclusive.  
7 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9<sup>th</sup> Cir. 1987).

### 8 **C. Commissioner's Decision**

9 The ALJ determined that Plaintiff had not engaged in substantial gainful  
10 activity since May 4, 2009 (the alleged onset date) and met the insured status  
11 requirements of the Social Security Act through December 31, 2012. (T at 16). The  
12 ALJ found that Plaintiff's degenerative disc disease with failed back syndrome post  
13 fusion and history of reported seizures were "severe" impairments under the Act.  
14 (Tr. 16).

15 However, the ALJ concluded that Plaintiff did not have an impairment or  
16 combination of impairments that met or medically equaled one of the impairments  
17 set forth in the Listings. (T at 16).

18 The ALJ determined that Plaintiff retained the residual functional capacity  
19 ("RFC") to perform sedentary work as defined in 20 CFR § 416.967 (a), as follows:

1 he can lift/carry 10 pounds occasionally and less than 10 pounds frequently; he can  
2 stand/walk for 6 hours in an 8-hour workday with regular breaks; he can sit for 6  
3 hours in an 8-hour workday with regular breaks; he needs a sit/stand option every 20  
4 to 30 minutes as needed; he has no limitation as to pushing or pulling; he can  
5 perform occasional stooping, kneeling, crouching, crawling or balancing; he cannot  
6 climb ladders, ropes, or scaffolds; he must avoid hazards and environments with  
7 vibrations; and he must avoid concentrated extremes of cold or humidity. (T at 17).

8 The ALJ found that Plaintiff could not perform his past relevant work as a  
9 store laborer, sales clerk, library helper, vehicle washer, waiter, or bell captain. (T at  
10 22). Considering Plaintiff's age (33 on the alleged onset date), education (at least  
11 high school), work experience, and residual functional capacity, the ALJ determined  
12 that there were jobs that exist in significant numbers in the national economy that  
13 Plaintiff can perform. (T at 22).

14 As such, the ALJ found that Plaintiff was not entitled to benefits under the  
15 Social Security Act from May 4, 2009 (the alleged onset date) through January 27,  
16 2012 (the date of the ALJ's decision). (T at 23-24). As noted above, the ALJ's  
17 decision became the Commissioner's final decision when the Appeals Council  
18 denied Plaintiff's request for review. (T at 1-6).

1 **D. Disputed Issues**

2 As set forth in the parties’ Joint Stipulation (Docket No. 17), Plaintiff offers  
3 two (2) arguments in support of his claim that the Commissioner’s decision should  
4 be reversed. First, he contends that the ALJ did not properly weigh the medical  
5 opinion evidence. Second, Plaintiff challenges the ALJ’s credibility determination.  
6 This Court will address both arguments in turn.

7  
8 **IV. ANALYSIS**

9 **A. Medical Opinion Evidence**

10 In disability proceedings, a treating physician’s opinion carries more weight  
11 than an examining physician’s opinion, and an examining physician’s opinion is  
12 given more weight than that of a non-examining physician. *Benecke v. Barnhart*,  
13 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
14 1995). If the treating or examining physician’s opinions are not contradicted, they  
15 can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If  
16 contradicted, the opinion can only be rejected for “specific” and “legitimate” reasons  
17 that are supported by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d  
18 1035, 1043 (9th Cir. 1995). Historically, the courts have recognized conflicting  
19 medical evidence, and/or the absence of regular medical treatment during the alleged

1 period of disability, and/or the lack of medical support for doctors’ reports based  
2 substantially on a claimant’s subjective complaints of pain, as specific, legitimate  
3 reasons for disregarding a treating or examining physician’s opinion. *Flaten v.*  
4 *Secretary of Health and Human Servs.*, 44 F.3d 1453, 1463-64 (9th Cir. 1995).

5 An ALJ satisfies the “substantial evidence” requirement by “setting out a  
6 detailed and thorough summary of the facts and conflicting clinical evidence, stating  
7 his interpretation thereof, and making findings.” *Garrison v. Colvin*, 759 F.3d 995,  
8 1012 (9<sup>th</sup> Cir. 2014)(quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9<sup>th</sup> Cir. 1998)).  
9 “The ALJ must do more than state conclusions. He must set forth his own  
10 interpretations and explain why they, rather than the doctors,’ are correct.” *Id.*

11 In this case, Dr. Sam Lin, Plaintiff’s treating physician, completed a Medical  
12 Source Statement Concerning the Nature and Severity of an Individual’s Physical  
13 Impairment in January of 2012. Dr. Lin reported that he had treated Plaintiff  
14 monthly since May of 2009. He diagnosed low back pain due to failed back surgery  
15 and characterized Plaintiff’s prognosis as “poor.” (T at 531). He noted that Plaintiff  
16 suffered from chronic pain, fatigue, and limited mobility, and was unable to bend,  
17 stoop, or kneel. (T at 531). On a scale of 1-10, Dr. Lin rated Plaintiff’s level of pain  
18 as a 9 and level of fatigue as a 7. (T at 531). Dr. Lin opined that Plaintiff could sit  
19 for 0-2 hours in an 8-hour workday and stand/walk for 0-2 hours in an 8-hour

1 workday. (T at 532). He found that Plaintiff could not sit continuously in a work  
2 setting, could not lift/carry any weight, had significant limitations with regard to  
3 repetitive reaching, handling, fingering or lifting, and needed a cane or other  
4 assistive device when standing/walking. (T at 532).

5 Dr. Lin believed Plaintiff's condition would interfere with his ability to keep  
6 his neck in a constant position (e.g. looking at a computer screen or down at a desk)  
7 and opined that Plaintiff could not perform a full time competitive job that required  
8 activity on a sustained basis. (T at 532-33). Dr. Lin stated that Plaintiff was not a  
9 malingerer and was incapable of even a low stress job. (T at 533). He explained that  
10 he would expect Plaintiff to be absent from work more than 3 times per month as a  
11 result of his impairments or treatment. (T at 534). Dr. Lin reported that he expected  
12 Plaintiff's condition to worsen over time. (T at 535).

13 The ALJ afforded little weight to Dr. Lin's opinion. (T at 20). This Court  
14 finds the ALJ's decision supported by substantial evidence and consistent with  
15 applicable law. First, Dr. Lin did not cite detailed clinical or diagnostic findings to  
16 support his highly restrictive assessment. The ALJ is not obliged to accept a treating  
17 source opinion that is "brief, conclusory and inadequately supported by clinical  
18 findings." *Lingenfelter v. Astrue*, 504 F.3d 1028, 1044-45 (9th Cir. 2007) (citing  
19 *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002)).

1           Second, the ALJ found that Dr. Lin’s assessment was inconsistent with his  
2 contemporaneous treatment notes. On May 25, 2011, Dr. Lin noted that Plaintiff  
3 wanted to decrease his pain medication and was able to walk without pain. (T at  
4 522). On June 11, 2011, Dr. Lin described Plaintiff as “doing well” on methadone  
5 and “happy” with his current medications. (T at 524). The treatment notes from  
6 August 1, 2011 and October 10, 2011 indicate that Plaintiff planned to engage in  
7 vocational training. (T at 525, 526). Notes from September and October of 2011  
8 reported that Plaintiff was “more mobile” and not using a cane. (T at 526, 528). On  
9 November 22, 2011, Dr. Lin described Plaintiff’s pain as “controlled.” (T at 529).

10           The ALJ reasonably relied on the inconsistency between Dr. Lin’s treatment  
11 notes and his highly restrictive assessment as a reason for discounting the  
12 physician’s opinion. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9<sup>th</sup> Cir.  
13 2005)(finding that “discrepancy” between treatment notes and opinion was “a clear  
14 and convincing reason for not relying on the doctor's opinion regarding” the  
15 claimant’s limitations).

16           Third, the ALJ noted that Dr. Lin’s assessment was contradicted by the  
17 conservative course of treatment and other evidence of record. The record indicated  
18 that Plaintiff’s condition improved following surgery in May of 2009 and that his  
19 pain was controlled with medication. (T at 19-20, 313, 316, 524, 525, 526). A

1 January 2010 lumbar spine x-ray showed the screws from Plaintiff's surgery, but no  
2 compromise of disc space height and no subluxation. (T at 256). A December 2010  
3 MRI revealed no fracture or subluxation, no significant marrow signal abnormality,  
4 mild diffuse disc bulge at L3-4, mild bilateral facet hypertrophy and mild right  
5 neural foramen at L4-5 (but no disc protrusion or spinal stenosis), and mild bilateral  
6 facet hypertrophy at L5-S1 (but no disc protrusion, spinal stenosis, or significant  
7 neural foramen). (T at 412). The lack of medical support for a physician's opinion is  
8 a proper reason for discounting a treating physician's opinion. *Flaten v. Secretary of*  
9 *Health and Human Servs.*, 44 F.3d 1453, 1463-64 (9th Cir. 1995).

10 The ALJ also noted the lack of aggressive treatment (e.g. additional surgical  
11 intervention, referral to a specialist), finding the conservative course of treatment  
12 inconsistent with the extreme restrictions assessed by Dr. Lin. (T at 18). The fact  
13 that a claimant received only conservative treatment is a proper basis upon which to  
14 reject an opinion that the impairment is disabling. *See Johnson v. Shalala*, 60 F.3d  
15 1428,1434 (9th Cir. 1995)(finding that the claimant received only conservative  
16 treatment for back injury is a clear and convincing reason for disregarding testimony  
17 that the claimant is disabled).

18 Lastly, the ALJ noted that Dr. Lin's opinion was contradicted by the  
19 assessment of Dr. Francis Greene and Dr. Thu Do, non-examining State Agency

1 review physicians. In November of 2010, Dr. Greene reviewed the record and  
2 concluded that Plaintiff could frequently lift 10 pounds, stand/walk for at least 2  
3 hours in an 8-hour workday, and sit for about 6 hours in an 8-hour workday with  
4 normal breaks. (T at 370). He opined that Plaintiff could occasionally climb ramps  
5 and stairs, but never climb ladders/rope/scaffolds, and could occasionally balance,  
6 stoop, kneel, crouch, and crawl. (T at 371). Dr. Greene concluded that Plaintiff  
7 could perform sedentary work. (T at 373). Dr. Do performed a review in February of  
8 2011 and likewise concluded that Plaintiff retained the RFC to perform sedentary  
9 work. (T at 487-88).

10 State Agency review physicians are highly qualified experts and their  
11 opinions, if supported by other record evidence, may constitute substantial evidence  
12 sufficient to support a decision to discount a treating physician's opinion. *See Saelee*  
13 *v. Chater*, 94 F.3d 520, 522 (9<sup>th</sup> Cir. 1996); *see also* 20 CFR § 404.1527  
14 (f)(2)(i)("State agency medical and psychological consultants and other program  
15 physicians, psychologists, and other medical specialists are highly qualified  
16 physicians, psychologists, and other medical specialists who are also experts in  
17 Social Security disability evaluation.").

1 For the foregoing reasons, this Court finds the ALJ's decision to discount the  
2 opinion of Dr. Lin was supported by substantial evidence and consistent with  
3 applicable law.

4 **B. Credibility**

5 A claimant's subjective complaints concerning his or her limitations are an  
6 important part of a disability claim. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d  
7 1190, 1195 (9<sup>th</sup> Cir. 2004)(citation omitted). The ALJ's findings with regard to the  
8 claimant's credibility must be supported by specific cogent reasons. *Rashad v.*  
9 *Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir. 1990). Absent affirmative evidence of  
10 malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear  
11 and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995). "General  
12 findings are insufficient: rather the ALJ must identify what testimony is not credible  
13 and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834;  
14 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

15 However, subjective symptomatology by itself cannot be the basis for a  
16 finding of disability. A claimant must present medical evidence or findings that the  
17 existence of an underlying condition could reasonably be expected to produce the  
18 symptomatology alleged. See 42 U.S.C. §§423(d)(5)(A), 1382c (a)(3)(A); 20 C.F.R.  
19 § 404.1529(b), 416.929; SSR 96-7p.

1 In this case, Plaintiff testified as follows: He was born in October of 1975 and  
2 has a college education. He has been disabled since May of 2009, when he had the  
3 first of two back operations. (T at 33). Neither surgery (the first, in May of 2009, or  
4 the second, in February of 2011) were successful in terms of addressing Plaintiff's  
5 chronic pain. (T at 34). He made an attempt to return to work in June 2011 at a  
6 "Michael's" store, but it lasted only four hours and was a "nightmare." (T at 34). He  
7 cannot sit for more than 20-30 minutes before needing to get up due to chronic pain;  
8 standing is limited to 30-45 minutes before he needs to lie down due to pain. (T at  
9 35). Most of his day is spent lying down. (T at 35).

10 Medication helps Plaintiff function around the house, e.g. brushing teeth,  
11 showering. (T at 35). He lives with his parents and spends his typical day dealing  
12 with pain and limited mobility. (T at 35-36). He uses a cane to walk, even in the  
13 house, and uses a "grabber" to pick items up. (T at 36). He lies down for 2 to 3  
14 hours periods during each day and alternates between sitting, standing, and lying  
15 down. (T at 38). Medication allows him to do laundry, use the computer, and make  
16 doctors' appointments. (T at 40). He can sit at a computer for about 15 minutes and  
17 perform simple cooking tasks. (T at 40). He does no yard work and cannot lift more  
18 than 10 pounds. (T at 41). He does not need assistance with self-care tasks, but it  
19 takes longer than it did before his back problems. (T at 42).

1 Pain causes difficulty sleeping. (T at 43). He has chronic fatigue. (T at 43).  
2 He relies on his parents for shopping. (T at 43). He no longer engages in hobbies or  
3 attends social functions. (T at 44). His daughter occasionally visits, but his  
4 activities with her are limited by pain. (T at 44). In September of 2010, Plaintiff was  
5 looking for work, but he no longer believes he could perform full-time work. (T at  
6 46).

7 The ALJ concluded that Plaintiff's medically determinable impairments could  
8 reasonably be expected to cause the alleged symptoms, but that his statements  
9 concerning the intensity, persistence, and limiting effects of the symptoms were not  
10 fully credible. (T at 22).

11 This Court finds that the ALJ's credibility determination was supported by  
12 substantial evidence and consistent with applicable law. First, the ALJ noted that  
13 Plaintiff's testimony was contradicted by the objective medical evidence. Plaintiff  
14 testified that he had experience no improvement in his symptoms since his first  
15 surgery. (T at 34-35). However, as discussed above, the treatment notes showed  
16 improvement and indicated that Plaintiff's pain was generally well-controlled with  
17 medication. (T at 524-30). The x-ray and MRI findings were also generally benign.  
18 (T at 256-57, 412). Although the lack of supporting medical evidence cannot form  
19 the sole basis for discounting subjective pain testimony, it is a factor the ALJ may

1 consider when analyzing credibility. *Burch v. Barnhart*, 400 F.3d 676, 680 (9<sup>th</sup> Cir.  
2 2005). In other words, an ALJ may properly discount subjective complaints where,  
3 as here, they are contradicted by medical records. *Carmickle v. Comm’r of Soc. Sec.*  
4 *Admin.*, 533 F.3d 1155, 1161 (9<sup>th</sup> Cir. 2008); *Thomas v. Barnhart*, 278 F.3d 947,  
5 958-59 (9<sup>th</sup> Cir. 2002).

6 Second, the ALJ noted that Plaintiff had a conservative course of treatment,  
7 e.g. no additional surgical intervention, no referral to a specialist. (T at 18).  
8 “Evidence of ‘conservative treatment’ is sufficient to discount a claimant’s  
9 testimony regarding the severity of an impairment.” *Parra v. Astrue*, 481 F.3d 742,  
10 751 (9<sup>th</sup> Cir. 2007).

11 Third, the ALJ noted that Plaintiff was less than truthful regarding his receipt  
12 of unemployment benefits. Although Plaintiff testified that he had not received  
13 unemployment benefits since the alleged onset date (T at 46), this was contradicted  
14 by the record. (T at 121, 367). This inconsistency was a valid reason for discounting  
15 the overall credibility of Plaintiff’s claims.

16 In light of the above, this Court finds that the ALJ’s credibility determination  
17 must be sustained. *See Morgan v. Commissioner*, 169 F.3d 595, 599 (9<sup>th</sup> Cir.  
18 1999)(“[Q]uestions of credibility and resolutions of conflicts in the testimony are  
19 functions solely of the [Commissioner].”).

1 **V. CONCLUSION**

2 After carefully reviewing the administrative record, this Court finds  
3 substantial evidence supports the Commissioner’s decision, including the objective  
4 medical evidence and supported medical opinions. It is clear that the ALJ thoroughly  
5 examined the record, afforded appropriate weight to the medical evidence, including  
6 the assessments of the examining medical providers and the non-examining  
7 consultants, and afforded the subjective claims of symptoms and limitations an  
8 appropriate weight when rendering a decision that Plaintiff is not disabled. This  
9 Court finds no reversible error and substantial evidence supports the  
10 Commissioner’s decision.

11 **VI. ORDERS**

12 IT IS THEREFORE ORDERED that:

13 Judgment be entered AFFIRMING the Commissioner’s decision; and

14 The Clerk of the Court shall file this Decision and Order, serve copies upon  
15 counsel for the parties, and CLOSE this case.

16 DATED this 6th day of March, 2016.

17 /s/Victor E. Bianchini  
18 VICTOR E. BIANCHINI  
19 UNITED STATES MAGISTRATE JUDGE