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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PHILLIP E. HATCHER, ¹)	Case No. EDCV 15-1352-JPR
)	
Plaintiff,)	
)	MEMORANDUM DECISION AND ORDER
v.)	AFFIRMING COMMISSIONER
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
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I. PROCEEDINGS

Plaintiff seeks review of the Commissioner’s final decision denying his applications for Social Security disability insurance benefits (“DIB”) and supplemental security income benefits (“SSI”). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). The matter is before the Court on the parties’ Joint Stipulation, filed June 24, 2016, which the Court has taken under submission

¹ The documents in the Administrative Record seem to indicate that Plaintiff’s first name is spelled with one “l.” The Court uses the spelling on the Complaint, however.

1 without oral argument. For the reasons stated below, the
2 Commissioner's decision is affirmed.

3 **II. BACKGROUND**

4 Plaintiff was born in 1959. (Administrative Record ("AR")
5 31.) He obtained a GED (AR 1034) and worked as a construction
6 supervisor, sales assistant, auto detailer, and plumber (AR
7 1056).

8 On January 27, 2012, Plaintiff filed an application for SSI
9 and on January 30 he filed one for DIB, alleging in each that he
10 had been unable to work since October 1, 2006 (AR 99, 153),
11 because of two shoulder surgeries and "constant low back pain"
12 radiating down his legs (AR 31, 163). After his applications
13 were denied initially and on reconsideration, he requested a
14 hearing before an Administrative Law Judge. (AR 67.) A hearing
15 was held on January 29, 2013, at which Plaintiff, who was
16 represented by counsel, testified, as did a vocational expert.
17 (AR 1030-66.) At the hearing, Plaintiff amended his alleged
18 onset date to January 1, 2011. (AR 1052.) In a written decision
19 issued December 26, 2013, the ALJ found Plaintiff not disabled.
20 (AR 13-29.) Plaintiff requested review from the Appeals Council,
21 and on May 11, 2015, it denied review. (AR 7-10.) This action
22 followed.

23 **III. STANDARD OF REVIEW**

24 Under 42 U.S.C. § 405(g), a district court may review the
25 Commissioner's decision to deny benefits. The ALJ's findings and
26 decision should be upheld if they are free of legal error and
27 supported by substantial evidence based on the record as a whole.
28 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra

1 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
2 evidence means such evidence as a reasonable person might accept
3 as adequate to support a conclusion. Richardson, 402 U.S. at
4 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).
5 It is more than a scintilla but less than a preponderance.
6 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
7 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
8 substantial evidence supports a finding, the reviewing court
9 "must review the administrative record as a whole, weighing both
10 the evidence that supports and the evidence that detracts from
11 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
12 720 (9th Cir. 1996). "If the evidence can reasonably support
13 either affirming or reversing," the reviewing court "may not
14 substitute its judgment" for the Commissioner's. Id. at 720-21.

15 **IV. THE EVALUATION OF DISABILITY**

16 People are "disabled" for purposes of receiving Social
17 Security benefits if they are unable to engage in any substantial
18 gainful activity owing to a physical or mental impairment that is
19 expected to result in death or has lasted, or is expected to
20 last, for a continuous period of at least 12 months. 42 U.S.C.
21 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
22 1992).

23 A. The Five-Step Evaluation Process

24 The ALJ follows a five-step sequential evaluation process to
25 assess whether a claimant is disabled. 20 C.F.R.
26 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,
27 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first
28 step, the Commissioner must determine whether the claimant is

1 currently engaged in substantial gainful activity; if so, the
2 claimant is not disabled and the claim must be denied.

3 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

4 If the claimant is not engaged in substantial gainful
5 activity, the second step requires the Commissioner to determine
6 whether the claimant has a "severe" impairment or combination of
7 impairments significantly limiting his ability to do basic work
8 activities; if not, the claimant is not disabled and his claim
9 must be denied. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

10 If the claimant has a "severe" impairment or combination of
11 impairments, the third step requires the Commissioner to
12 determine whether the impairment or combination of impairments
13 meets or equals an impairment in the Listing of Impairments
14 ("Listing") set forth at 20 C.F.R. part 404, subpart P, appendix
15 1; if so, disability is conclusively presumed.

16 §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

17 If the claimant's impairment or combination of impairments
18 does not meet or equal an impairment in the Listing, the fourth
19 step requires the Commissioner to determine whether the claimant
20 has sufficient residual functional capacity ("RFC")² to perform
21 his past work; if so, he is not disabled and the claim must be
22 denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The claimant
23 has the burden of proving he is unable to perform past relevant
24 work. Drouin, 966 F.2d at 1257. If the claimant meets that
25 burden, a prima facie case of disability is established. Id.

27
28 ² RFC is what a claimant can do despite existing exertional
and nonexertional limitations. §§ 404.1545, 416.945; see Cooper
v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 If that happens or if the claimant has no past relevant
2 work, the Commissioner then bears the burden of establishing that
3 the claimant is not disabled because he can perform other
4 substantial gainful work available in the national economy.
5 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); Drouin, 966 F.2d at 1257.
6 That determination comprises the fifth and final step in the
7 sequential analysis. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v);
8 Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

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

10 At step one, the ALJ found that Plaintiff had not engaged in
11 substantial gainful activity since January 1, 2011, the alleged
12 onset date. (AR 19.) At step two, he concluded that Plaintiff
13 had severe impairments of degenerative disc disease,
14 spondylosis,³ degenerative joint disease, chronic pain,
15 hypertension, and compression fracture. (Id.) At step three, he
16 determined that Plaintiff's impairments did not meet or equal a
17 listing. (AR 20.)

18 At step four, the ALJ found that Plaintiff had the RFC to
19 perform light work but was limited to "occasional postural
20 activities" and "occasional overhead reaching bilaterally." (AR
21 21.) Plaintiff could never climb ladders, ropes, or scaffolds
22 and should avoid all exposure to hazards. (Id.) He was limited
23 to unskilled work "largely due to [his] physical impairments" and
24 "must be allowed to have a sit/stand option every 30 minutes."
25 (Id.) The Commissioner contends that by this the ALJ intended to
26 limit Plaintiff to four hours of standing a day, consistent with

27
28 ³ Spondylosis refers generally to degeneration of the
vertebrae. Stedman's Medical Dictionary 1678 (27th ed. 2000).

1 the treating doctors' opinions. (J. Stip. at 13.)

2 Based on the VE's testimony, the ALJ concluded that
3 Plaintiff could not perform his past relevant work. (AR 26-27.)
4 At step five, he relied on the VE's testimony to find that given
5 Plaintiff's RFC for light work "impeded by additional
6 limitations," he could perform three light, unskilled
7 "representative occupations" in the national economy: (1) "small
8 products assembler II," DOT 739.687-030, 1991 WL 680180; (2)
9 "cashier II," DOT 211.462-010, 1991 WL 671840; and (3) "bench
10 assembler," DOT 706.684-042, 1991 WL 679055. (AR 27-28.)
11 Accordingly, he found Plaintiff not disabled. (AR 29.)

12 **V. DISCUSSION**

13 Plaintiff argues that the ALJ erred in (1) assessing his
14 standing and reaching limitations; (2) assessing his credibility;
15 and (3) finding that he could perform light-exertion jobs. (See
16 J. Stip. at 4.)

17 A. The ALJ Properly Assessed the Medical Evidence

18 Plaintiff contends that the ALJ failed to properly assess
19 the medical evidence: specifically, he erred in "rejecting" the
20 opinions of Dr. Giorgio Roveran, Dr. Andrew Guo, and Dr. Roy
21 Rusch by finding that he could work with a "sit/stand option
22 every 30 minutes" and in "rejecting" the opinion of Dr. Mark
23 Stern by finding that Plaintiff had no forward- or side-reaching
24 limitations. (Id. at 6-12, 22-26.) For the reasons discussed
25 below, remand is not warranted on this ground.

26 1. Applicable law

27 Three types of physicians may offer opinions in Social
28 Security cases: (1) those who directly treated the plaintiff, (2)

1 those who examined but did not treat the plaintiff, and (3) those
2 who did neither. Lester, 81 F.3d at 830. A treating physician's
3 opinion is generally entitled to more weight than an examining
4 physician's, and an examining physician's opinion is generally
5 entitled to more weight than a nonexamining physician's. Id.

6 This is so because treating physicians are employed to cure
7 and have a greater opportunity to know and observe the claimant.
8 Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996). If a
9 treating physician's opinion is well supported by medically
10 acceptable clinical and laboratory diagnostic techniques and is
11 not inconsistent with the other substantial evidence in the
12 record, it should be given controlling weight.

13 §§ 404.1527(c)(2), 416.927(c)(2). If a treating physician's
14 opinion is not given controlling weight, its weight is determined
15 by length of the treatment relationship, frequency of
16 examination, nature and extent of the treatment relationship,
17 amount of evidence supporting the opinion, consistency with the
18 record as a whole, the doctor's area of specialization, and other
19 factors. §§ 404.1527(c)(2)-(6), 416.927(c)(2)-(6).

20 When a treating physician's opinion is not contradicted by
21 other evidence in the record, it may be rejected only for "clear
22 and convincing" reasons. See Carmickle v. Comm'r, Soc. Sec.
23 Admin., 533 F.3d 1155, 1164 (9th Cir. 2008) (citing Lester, 81
24 F.3d at 830-31). When it is contradicted, the ALJ must provide
25 only "specific and legitimate reasons" for discounting it. Id.
26 (citing Lester, 81 F.3d at 830-31). Furthermore, "[t]he ALJ need
27 not accept the opinion of any physician, including a treating
28 physician, if that opinion is brief, conclusory, and inadequately

1 supported by clinical findings." Thomas v. Barnhart, 278 F.3d
2 947, 957 (9th Cir. 2002); accord Batson v. Comm'r of Soc. Sec.
3 Admin., 359 F.3d 1190, 1195 (9th Cir. 2004).

4 2. Relevant background

5 a. *Dr. Sheralene Ng*

6 Since the alleged onset date, January 1, 2011, Plaintiff had
7 been prescribed oxycodone and acetaminophen for his pain by his
8 primary-care doctor, Sheralene H. Ng.⁴ (AR 545.) He was in a
9 car accident on April 9, 2011, and was taken to the emergency
10 room. (AR 293.) On April 22, 2011, he met with Dr. Ng to follow
11 up on the ER visit, complaining of neck pain. (AR 284-86.) Dr.
12 Ng noted that his neck pain "had resolved." (AR 284.) Plaintiff
13 wanted to see an orthopaedic specialist to check his right
14 shoulder and his "chronic lower back pain." (Id.) Dr. Ng noted
15 that Plaintiff was "unable to lift over [his] head" on the right
16 side but had "no spinal tenderness." (AR 285.) Plaintiff
17 reported a "9/10" pain level in his right shoulder. (AR 287.)
18 Dr. Ng referred him to an orthopaedic specialist. (AR 285.)

19 On April 26, 2011, Plaintiff had x-rays of his lumbar spine
20 and right shoulder because of his "worsening back pain" and
21 right-shoulder pain. (AR 309-10.) Both revealed abnormalities
22 (id.), but the shoulder x-ray showed "unchanged" minimal chronic
23 degenerative joint disease when compared to an image from
24 February 10, 2009 (AR 310, 361), and the lumbar-spine x-ray

25
26 ⁴ Oxycodone is an opiate used to relieve moderate to severe
27 pain. See Oxycodone, MedLinePlus, [https://medlineplus.gov/
28 druginfo/meds/a682132.html](https://medlineplus.gov/druginfo/meds/a682132.html) (last updated Aug. 15, 2016).
Acetaminophen is a nonprescription pain reliever. See
Acetaminophen, MedlinePlus, [https://medlineplus.gov/druginfo/
meds/a681004.html](https://medlineplus.gov/druginfo/meds/a681004.html) (last updated Aug. 15, 2014).

1 showed "[s]evere" degenerative joint disease with "marginal"
2 osteophytosis present at L1-5, which indicated no "acute" change
3 from an image also taken on February 10, 2009 (AR 309, 362).

4 On May 26, 2011, Plaintiff complained of "constant neck
5 pain" and headaches, stating that he had hit his head on a garage
6 door after a fall. (AR 277.) He requested referral to a
7 specialist and stated that he had noticed memory loss. (Id.) On
8 June 8, 2011, Plaintiff complained of "low back" and knee pain,
9 both of which he rated as nine out of 10. (AR 275.) Dr. Ng
10 noted that Plaintiff had "not discussed his knee pain with [her]
11 before" and requested more history about his knees. (AR 276.) A
12 registered nurse reviewed Plaintiff's records and informed Dr. Ng
13 that Plaintiff was seen by an orthopaedist for knee issues and
14 surgery in March 2007. (AR 277.)

15 On March 7, 2012, Plaintiff complained of right-shoulder and
16 left-index-finger pain. (AR 249.) Dr. Ng noted that Plaintiff
17 "had seen a lawyer" and wanted Dr. Ng to "sign to say that he
18 cannot work as he wants to get SSI and disability." (Id.) She
19 noted that Plaintiff had decreased range of motion in his right
20 shoulder and swelling and tenderness in his left index finger.
21 (AR 250-51.) For Plaintiff's back pain, Dr. Ng recommended
22 continuing pain medication and referral to a specialist to make a
23 functional assessment for disability purposes. (AR 251.) On
24 March 14, 2012, Plaintiff returned to Dr. Ng, complaining of back
25 pain. (AR 246.) On June 29, 2012, Plaintiff asked Dr. Ng to
26 provide a note stating that his condition was "the same [as] last
27 yr." (AR 480.)

1 b. *Dr. Bryan H. To*

2 Dr. Bryan H. To, a consulting examiner specializing in
3 internal medicine, examined Plaintiff on July 27, 2011. (AR 226-
4 30.) Plaintiff reported back pain that was "getting worse," with
5 "radiation down his left leg more than [his] right leg." (AR
6 226.) He said his back pain was aggravated by sitting for 10
7 minutes or standing for 30 minutes. (*Id.*) Dr. To tested
8 Plaintiff's grip strength; he had slightly better grip with his
9 left, nondominant hand, but both hands had grip strength of at
10 least 110 pounds.⁵ (AR 227.) Dr. To reported that Plaintiff
11 "ambulat[ed] with a normal gait" and did not use any assistive
12 devices. (*Id.*) Plaintiff "complain[ed] of some range of motion
13 pain during the exam"; Dr. To found that Plaintiff had decreased
14 range of motion in his back but normal range of motion in his
15 knees and other extremities. (AR 228-29.) Based on his
16 examination, Dr. To found that Plaintiff could push, pull, lift,
17 and carry 20 pounds occasionally and 10 pounds frequently; stand
18 and walk for six hours in an eight-hour workday; sit with no
19 restrictions; frequently walk on uneven terrain, climb ladders,
20 and work with heights; use his hands for fine and gross
21 manipulative movements without restriction; frequently bend,
22 kneel, stoop, crawl, and crouch; and hear and see with no
23 restrictions. (AR 229-30.) Dr. To "would restrict [Plaintiff]
24 from working with heavy and moving machineries." (AR 230.) He

26 ⁵ The mean grip strength for men Plaintiff's then age, 52,
27 is apparently about 114 pounds on the right and 102 on the left.
28 See JAMAR Hydrolic Hand Dynamometer User Instructions (2004)
<https://www.chponline.com/store/pdfs/j-20.pdf> (last visited Nov.
21, 2016).

1 reviewed two x-rays, of Plaintiff's lumbar spine and right knee.
2 (AR 231.) The spine x-ray showed an "old compression fracture of
3 L1 of unknown age," "[l]evo-scoliosis,"⁶ and "[s]pondylosis."
4 (Id.) The knee x-ray showed "well-maintained" joints and "early
5 degenerative changes of the knee and patello-femoral joints."
6 (Id.)

7 c. *Dr. Roger Gustafson*

8 On June 29, 2011, Plaintiff met with Dr. Roger Gustafson, an
9 orthopaedic surgeon. (AR 273-74.) He complained of low-back
10 pain "7/10" and "radiating numbness and tingling down [his]
11 legs." (AR 273.) Dr. Gustafson noted that Plaintiff had a
12 "normal heel/toe walk." (Id.) He looked at an April 1, 2009 MRI
13 of Plaintiff's lumbar spine and found "[m]ultilevel neural
14 foraminal stenosis," a "stable old 40% anterior compression
15 fracture of L1," and a "6mm posterior subluxation of L1." (AR
16 274.) Dr. Gustafson noted that Plaintiff preferred to start with
17 conservative treatment. (Id.) Plaintiff had an x-ray on June
18 29, 2011, and it was noted that his right knee had normal
19 patellar tracking, minimal narrowing of the medial-knee-joint
20 compartment, patella spurring, and a possible loose body. (AR
21 307.) In his left knee, he had minimal patellar spurring,
22 minimal narrowing, and normal patellar tracking. (Id.) It was
23 noted that "[n]o att[ention] [was] needed." (Id.)

24 d. *Dr. Bradley Cole*

25 On July 14, 2011, Plaintiff had a consult with Dr. Bradley
26

27 ⁶ Levo-scoliosis is abnormal lateral and rotational
28 curvature of the vertebral column on the left side. Stedman's,
supra, at 994, 1606.

1 Cole, a neurologist. (AR 268-70.) Plaintiff was complaining of
2 neck pain and headaches following an accident in "late April,"
3 when he "hit his head on a garage door." (AR 268.) The
4 neurologic examination and head CT were both normal, and
5 Plaintiff reported that his "symptoms [were] back to baseline"
6 and that "his headaches [were] better than they were years ago."
7 (AR 269.) Dr. Cole found Plaintiff's gait "steady" and noted
8 that he was "able to perform tandem gait unassisted." (Id.)

9 e. *Dr. Stern*

10 On July 28, 2011, Plaintiff met with Dr. Stern, an
11 orthopaedic specialist. (AR 267.) He reported "new" "pain in
12 [his] right knee when he squats." (Id.) Dr. Stern found no
13 swelling, deformity, or atrophy in Plaintiff's right knee, which
14 had a full range of motion without pain. (Id.) He noted that
15 Plaintiff had mild degenerative joint disease and a "possible"
16 loose body in his right knee. (Id.) He ordered an MRI of the
17 right knee (id.), which Plaintiff had on July 29, 2011 (AR 304).
18 Plaintiff had 16-millimeter and 13-millimeter calcified intra-
19 articular loose bodies and a "probable anterior cruciate ligament
20 tear." (AR 306.) He had mild degenerative disease and small
21 joint effusion. (Id.)

22 On September 1, 2011, Plaintiff complained of bilateral knee
23 and right-shoulder pain. (AR 265.) Dr. Stern found that
24 Plaintiff had no diminished strength, swelling, or deformity.
25 (Id.) He had full range of motion in both knees without pain but
26 reported "aching pain" in his right knee after the testing.
27 (Id.) A shoulder examination found no diminished strength and no
28 pain with "external rotation," but he had severe tenderness and

1 pain at "anterior-lateral aspect" of his shoulder with internal
2 rotation. (Id.) Plaintiff refused a steroid injection for his
3 knee but had one in his right shoulder. (Id.) He had an MRI on
4 his left knee on October 17, 2011. (AR 302.) It was noted that
5 he had a "possible oblique tear." (AR 303.) No fracture,
6 significant joint effusion, or degenerative disease were seen.
7 (AR 304.)

8 On October 11, 2012, Plaintiff contacted Dr. Stern to ask
9 for "a note to his attorney documenting that he cannot reach out
10 or work overhead without severe pain in the right shoulder." (AR
11 758.) Relying on Dr. Rusch's treatment note from May 17, 2012,
12 Dr. Stern wrote:

13 [Plaintiff] has been followed in the Orthopedic Clinic
14 for a severely painful right shoulder. This pain is
15 exacerbated by reaching out and by working overhead.
16 (Id.) Plaintiff's diagnoses were "gleno-humeral arthritis" and
17 "acromio-clavicular joint arthritis and bursitis." (Id.)

18 f. *Other radiology reports*

19 On March 25, 2012, Plaintiff had an x-ray of his right knee,
20 which he had recently reinjured by falling. (AR 351.) In
21 comparison with a May 17, 2007 image, there was medial
22 compartment narrowing amounting to no "appreciabl[e] change[],"
23 "mild proliferative changes," and "medial and lateral
24 chondrocalcinosis, which was not demonstrated on the previous
25 study." (AR 352.) A new possible loose body was identified.
26 (Id.)

27 On March 27, 2012, Plaintiff had an x-ray of his right
28 shoulder. (AR 350.) The x-ray showed moderate degenerative

1 change, with spurring (AR 350), from an April 22, 2011 study (AR
2 284-86). There was no evidence of fracture or subluxation, and
3 "no substantial interval changes" were found. (Id.)

4 g. *Dr. Guo*

5 On April 20, 2012, Plaintiff was seen by Dr. Guo, a
6 specialist in occupational medicine, for a functional evaluation
7 of his right shoulder and right knee. (AR 407-10.) Plaintiff
8 complained of "increasing pain in the knee with accelerated
9 development of arthritis" (AR 407), "inability to raise the
10 shoulder over his head" (AR 408), "shooting tenderness from the
11 anterior shoulder to the lateral elbow" (id.), and "chronic back
12 pain due to [degenerative joint disease]" (id.). Dr. Guo noted
13 that Plaintiff was applying for disability and that the exam had
14 been requested by Dr. Ng to "assist her in the [disability]
15 process." (Id.) Dr. Guo examined Plaintiff and found that he
16 had low-back pain, osteoarthrosis of the knee, and joint pain in
17 his shoulder. (AR 410.) He recommended that Plaintiff not lift,
18 pull, or push over 25 pounds; reach overhead with the right arm;
19 squat, kneel, or crawl; climb ladders; run or jump; grasp heavy
20 objects with the right hand; "stand[]/walk[] over 30 minutes per
21 hour"; or bend repetitively. (Id.)

22 h. *Dr. Rusch*

23 On May 17, 2012, Plaintiff saw Dr. Rusch, an orthopaedic
24 specialist. (AR 483.) Plaintiff reported "mild pain with rest
25 and walking on flat surfaces" and a significant increase in pain
26 in walking on uneven surfaces or going up stairs. (Id.) He also
27 complained of right-shoulder pain at rest. (Id.) Dr. Rusch
28 diagnosed "knee pain due to synovitis" and "[right] shoulder pain

1 due to Gleno-humeral arthritis, and subacromial bursitis and
2 [right] A/C arthritis." (AR 484.)

3 On July 19, 2012, Dr. Rusch noted that he had "reviewed
4 [Plaintiff's] VA orthopedic record from 2009 to the present" and
5 that "it is medically probable that the disability he currently
6 experiences with regards to his lumbar spine, shoulders and knee
7 existed at least 2 years ago." (AR 477.)

8 i. *Dr. H. Robbins*

9 On May 23, 2012, Dr. H. Robbins,⁷ a state-agency medical
10 consultant, assessed Plaintiff's RFC on initial review. (AR 37-
11 42.) Dr. Robbins opined that Plaintiff could "[s]tand and/or
12 walk" for a total of "[a]bout 6 hours in an 8-hour workday." (AR
13 38.) He could sit for a total of "[m]ore than 6 hours on a
14 sustained basis in an 8-hour workday." (*Id.*) Dr. Robbins noted
15 that Plaintiff had limited overhead-reaching ability on his right
16 side. (AR 39.)

17 j. *Dr. Roveran*

18 On October 2, 2012, Dr. Roveran completed a "treating
19 source" RFC questionnaire. (AR 742-43.) In the section for
20 "[f]requency and length of contact," Dr. Roveran wrote,
21 "[i]nformation from occupational medicine specialist report [of]
22 Dr. Guo 4/20/12 and records review." (AR 742.) Dr. Roveran
23 diagnosed Plaintiff with "low back pain," a "vertebral fracture,"
24 "[right] knee osteoarthrosis," and degenerative joint disease of
25 the right shoulder. (*Id.*) He noted that Plaintiff could walk

26
27 ⁷ Dr. Robbins has a speciality code of "8," indicating
28 "[e]ar, [n]ose, and [t]hroat" (AR 43); see POMS DI 24501.004,
U.S. Soc. Sec. Admin. (May 5, 2015), <http://policy.ssa.gov/poms.nsf/lnx/0424501004>.

1 only one to two city blocks without rest or severe pain. (Id.)
2 He could sit for 30 minutes "at one time . . . before needing to
3 get up" and stand "at one time" the same amount "before needing
4 to sit down, walk around, etc." (Id.) When asked to indicate
5 "how long [Plaintiff] can sit and stand/walk total in an 8-hour
6 working day (with normal breaks)," Dr. Roveran marked "about 4
7 hours" for both sitting and standing/walking.⁸ (Id.) Dr.
8 Roveran noted that Plaintiff "needs to alternate sitting to
9 standing/walking due to pain." (Id.)

10 k. *Dr. C. Scott*

11 On January 30, 2013, Dr. C. Scott, a state-agency medical
12 consultant, completed a case analysis upon reconsideration. (AR
13 49-56.) Dr. Scott considered medical evidence submitted since
14 Dr. Robbins's May 23, 2012 assessment and affirmed his findings.
15 (AR 49-50.)

16 1. *The VE's testimony*

17 At the 2013 hearing, the ALJ asked the VE to consider a
18 hypothetical individual "who is closely approaching advanced age,
19 with a GED . . . [restricted to] light work, occasional
20 posturals[,] . . . occasional overhead reaching bilaterally, no
21 ladders, ropes, or scaffolds or hazards, limited to unskilled
22 work with a sit/stand option every half-hour." (AR 1057-58.)
23 The VE testified that such a person could perform three light,
24

25 ⁸ It appears that Dr. Roveran initially marked "less than 2
26 hours" under the "stand/walk" column. (AR 742.) But he marked
27 and also circled the "about 4 hours" column for both "sitting"
28 and "stand/walk" and initialed the change with the notation "ERR"
next to the "less than 2 hours" mark. (Id.) Thus, the Court
assumes he found that Plaintiff could stand or walk four hours in
an eight-hour day.

1 unskilled jobs but eroded the available jobs by 75 to 90 percent
2 primarily because of the sit-stand option. (AR 1058.) The VE
3 testified that the sit-stand option would impair productivity
4 unless the person could alternate sitting and standing at "a work
5 site where it's bench height with a stool." (AR 1062.) She
6 noted that for the job of cashier, for example, an individual
7 would be "at a height where they can stand or they can have
8 stools." (Id.) Because the hypothetical person would need a
9 bench-height stool to sit down at will, she eroded the job base
10 by 75 to 90 percent. (Id.)

11 3. Analysis

12 The ALJ found that Plaintiff could do light work but "must
13 be allowed to have a sit/stand option every 30 minutes." (AR
14 21.) He limited Plaintiff to "occasional overhead reaching" but
15 put no restrictions on reaching forward or to the side. (Id.)
16 In so finding, the ALJ considered but gave "little weight" to the
17 opinions of Drs. Roveran, Rusch, and Stern and "partial weight"
18 to the opinion of Dr. Guo. (AR 25-26.) He assigned "great
19 weight" to the opinions of the state-agency medical consultants,
20 Drs. Robbins and Scott, and to the opinion of the consultative
21 examiner, Dr. To. (AR 25.) Because the opinions of Drs.
22 Roveran, Rusch, Stern, and Guo were contradicted by other medical
23 opinions in the record, the ALJ had to give only specific and
24 legitimate reasons for discounting all or part of them. See
25 Carmickle, 533 F.3d at 1164. As discussed below, the ALJ did so.

26 As an initial matter, it is not clear that all of these
27 doctors were treating Plaintiff. Dr. Roveran appears to have
28 been among Plaintiff's treating doctors (see, e.g., AR 737 (Jan.

1 2013 radiology report ordered by Dr. Roveran), 745 (health
2 summary listing Dr. Roveran as Plaintiff's "PCMM Provider" as of
3 Nov. 2012), 748-49 (listing multiple visits with Dr. Roveran from
4 July to Oct. 2012), 761-64 (note signed by Dr. Roveran describing
5 Oct. 2012 physical exam of Plaintiff)), as does Dr. Stern (see,
6 e.g., AR 267 (clinic-visit note by Dr. Stern describing July 2011
7 right-knee exam and diagnosis), 265 (Sept. 1 2011 clinic-visit
8 note describing shoulder and knee exam, diagnosis, and treatment
9 provided).) Dr. Rusch appears to have had a more limited
10 relationship with Plaintiff; the record shows that Plaintiff saw
11 him in person only once before Dr. Rusch wrote his July 19, 2012
12 note and only once after. (See, e.g., AR 483-84 (note signed by
13 Dr. Rusch detailing Plaintiff's May 17, 2012 orthopaedic clinic
14 visit), 775 (health summary noting Sept. 4, 2012 outpatient
15 visit).) There is no evidence in the record that Dr. Guo was one
16 of Plaintiff's treating doctors. He examined Plaintiff once, at
17 the request of Dr. Ng. (See, e.g., AR 792-95 (Apr. 20, 2012
18 functional evaluation noting that Plaintiff's primary-care
19 provider "requested [the] exam to assist her" in the disability
20 process), 795 (follow-up note from Dr. Guo noting that Plaintiff
21 had called about a disability form).) Even if the Court assumes
22 all were treating doctors, the length of the treatment
23 relationship is important in assessing whether the ALJ gave
24 specific and legitimate reasons for rejecting each doctor's
25 opinion to the extent he did so. See §§ 404.1527(c), 416.927(c).

26 a. *The sit-stand option*

27 Plaintiff argues that the ALJ erred in "rejecting" the
28 opinions of Drs. Roveran, Guo, and Rusch as to Plaintiff's

1 standing limitations. (J. Stip. at 6-12.) Specifically,
2 Plaintiff alleges that Dr. Roveran limited his standing and
3 walking to "only 30 minutes at a time with a total of standing
4 less than two hours in a day" (J. Stip. at 5), Dr. Guo assigned
5 "[n]o standing/walking over 30 minutes per hour" (id.), and Dr.
6 Rusch opined that Plaintiff was "unable to walk on uneven
7 surfaces and was only able to walk for two to three blocks at a
8 time because of his knee disorder" (id. at 6). In his reply,
9 Plaintiff appears to concede that Dr. Roveran in fact found that
10 he could stand four hours a day. (See J. Stip. at 21 ("Dr.
11 Roveran also opined that Plaintiff would be able to . . .
12 stand/walk about 4 hours in an 8-hour workday[.]").)

13 The ALJ's requirement of "a sit/stand option every 30
14 minutes," when coupled with his finding that Plaintiff could
15 perform light-level work with some additional limitations, is
16 reasonably interpreted to mean that every 30 minutes Plaintiff
17 must be allowed to take a short break from walking or standing
18 but that he could walk or stand for a total of six hours a day.
19 See SSR 83-10, 1983 WL 31251, at *6 (Jan. 1, 1983) (defining "the
20 full range of light work" as requiring "standing or walking, off
21 and on, for a total of approximately 6 hours of an 8-hour
22 workday"); see also Buckner-Larkin v. Astrue, 450 F. App'x 626,
23 627 (9th Cir. 2011) (court using information from record to
24 interpret intended meaning of sit-stand option); cf. SSR 83-12,
25 1983 WL 31253, at *4 (Jan. 1, 1983) (describing, under heading
26 "[a]lternate [s]itting and [s]tanding," an individual who "may be
27 able to sit for a time, but must then get up and stand or walk
28 for awhile before returning to sitting"). Interpreted this way,

1 the ALJ's sit-stand option appears to be inconsistent with the
2 medical-opinion evidence, which generally limits Plaintiff to
3 four hours of standing a day. (See, e.g., AR 742 (Dr. Roveran
4 limiting Plaintiff to four hours of daily standing), 410 (Dr. Guo
5 limiting Plaintiff to no more than 30 minutes of standing an
6 hour); see also J. Stip at 13 (Defendant conceding that Plaintiff
7 was limited to four hours of standing a day).) As explained
8 below, however, any error was harmless.

9 The VE interpreted the ALJ's sit-stand option to mean that
10 Plaintiff had to be able to sit or stand "at will." Indeed, the
11 VE's primary reason for eroding the available jobs by 75 to 90
12 percent was Plaintiff's need to be "at a bench height with a
13 stool." (AR 1062.) She noted that "alternating sitting and
14 standing would have to be at a work site where it's bench height
15 with a stool" because "[o]therwise, it's going to impair
16 productivity." (Id.) Thus, the VE contemplated a sit-stand
17 option not just allowing the individual to stand or sit briefly
18 every 30 minutes but one in which the individual could choose to
19 sit or stand at will throughout the workday, remaining generally
20 at "bench height" so as not to impair productivity.

21 Because the "at will" sit-stand option considered by the VE
22 to determine the job base accommodated a limit to no more than
23 four hours of standing a day, any error was harmless. See Stout
24 v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050, 1055 (9th Cir. 2006)
25 (nonprejudicial or irrelevant mistakes harmless); cf. Heston v.
26 Comm'r of Soc. Sec., 245 F.3d 528, 536 (6th Cir. 2001) (finding
27 harmless error when ALJ did not discuss opinion of treating
28 physician but VE took relevant limitations into consideration

1 anyway). Thus, the ALJ's finding that Plaintiff could perform
2 the three jobs listed by the VE adequately took into account
3 Plaintiff's limitation of four hours of standing a day as well as
4 the specific limits imposed by Drs. Roveran, Guo, and Rusch.
5 Moreover, as explained below, the ALJ's RFC finding – with a sit-
6 stand option interpreted as the VE and Commissioner have done –
7 was fully supported by the record.

8 To the extent the ALJ rejected any portions of the opinions
9 of Drs. Roveran, Guo, and Rusch, he gave legally sufficient
10 reasons for doing so.⁹ First, the ALJ gave "little weight" to
11 the opinions of Drs. Rusch and Roveran and "partial weight" to
12 the opinion of Dr. Guo because they were inconsistent with the
13 medical record and unsupported by diagnostic evidence. (AR 25.)
14 Dr. Roveran opined that Plaintiff could walk only one or two city
15 blocks without rest or severe pain. (AR 742.) This opinion was
16 apparently largely based on Dr. Guo's report and a review of
17 Plaintiff's medical records. (Id.) In his report, Dr. Guo
18 opined only that Plaintiff could not stand or walk "over 30
19 minutes per hour." (AR 410.) In his brief note, Dr. Rusch
20 opined "that it is medically probable that the disability
21 [Plaintiff] currently experiences with regards to his lumbar
22 spine, shoulders and knee" had existed for at least two years.
23 (AR 477.)

24 The other medical evidence in the record, however, shows
25

26 ⁹ As Defendant points out, the sit-stand option assessed by
27 the ALJ is largely consistent with the standing and walking
28 limitations assessed by Drs. Roveran and Guo. (J. Stip. at 13,
19.) Both opined that Plaintiff could stand or walk about four
hours in an eight-hour workday, which was the same limitation
applied by the VE. (See supra, Section V(A)(3)(a).)

1 that Plaintiff had a normal gait and could stand for six hours a
2 day. Dr. To reported that Plaintiff "ambulat[ed] with a normal
3 gait," did not use any assistive devices (AR 227), and could
4 "stand and walk for six hours in an eight-hour workday" and
5 "frequently walk on uneven terrain" (AR 230). Dr. Gustafson
6 found that Plaintiff had a "normal heel/toe walk" (AR 273); Dr.
7 Cole noted that Plaintiff's gait was "steady" and he was "able to
8 perform tandem gait unassisted" (AR 269). Drs. Scott and Robbins
9 agreed with Dr. To's finding that he could walk "about" six hours
10 a day. (AR 38-39, 52.)

11 Inconsistency with the medical record and lack of diagnostic
12 evidence are permissible reasons for the ALJ to give portions of
13 the opinions of Drs. Roveran, Guo, and Rusch little weight. See
14 Batson, 359 F.3d at 1195 (ALJ may discredit treating physicians'
15 opinions that are "unsupported by the record as a whole");
16 Thomas, 278 F.3d at 957 (ALJ need not accept treating-physician
17 opinion that is "inadequately supported by clinical findings");
18 cf. §§ 404.1527(c)(3), 416.927(c)(3) ("The more a medical source
19 presents relevant evidence to support an opinion, particularly
20 medical signs and laboratory findings, the more weight we will
21 give that opinion.").

22 Second, to the limited extent these opinions were more
23 restrictive than Plaintiff's RFC, the ALJ gave them "little
24 weight" because they were inconsistent with Plaintiff's "admitted
25 activities of daily living." (AR 25.) The ALJ noted that
26 Plaintiff "lived alone, drove, ran errands, shopped, cooked,
27 performed personal care tasks, and read." (Id.) The ALJ noted
28 that the more restrictive findings – the limit to walking one or

1 two blocks at a time, for example – were contradicted by some of
2 these admitted activities of daily living, including regularly
3 running errands and shopping. This is a specific and legitimate
4 reason to disregard the medical opinions that Plaintiff had more
5 restrictive limitations than his assessed RFC. See Rollins v.
6 Massanari, 261 F.3d 853, 856 (9th Cir. 2001) (ALJ’s finding that
7 doctor’s “restrictions appear to be inconsistent with
8 [plaintiff’s] level of activity” was specific and legitimate
9 reason for discounting opinion); Morgan v. Comm’r of Soc. Sec.
10 Admin., 169 F.3d 595, 601-02 (9th Cir. 1999) (ALJ permissibly
11 rejected treating physician’s opinion when it conflicted with
12 plaintiff’s activities); see also Fisher v. Astrue, 429 F. App’x
13 649, 652 (9th Cir. 2011) (conflict between doctor’s opinion and
14 claimant’s daily activities was specific and legitimate reason to
15 discount opinion).

16 Finally, the ALJ gave “great weight” to the opinions of Drs.
17 Robbins, Scott, and To because those opinions were consistent
18 with the diagnostic evidence and other medical evidence in the
19 record. (AR 25.) Because Dr. To examined Plaintiff, his opinion
20 alone can be substantial evidence for the ALJ to rely on. See
21 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001);
22 Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995).

23 Plaintiff argues that the ALJ erred in giving great weight
24 to the opinion of Dr. To because his condition worsened after Dr.
25 To’s July 2011 examination. But this claim is not supported by
26 the medical evidence or by Plaintiff’s subjective complaints.
27 For example, on June 29, 2012, he told Dr. Ng that his
28 “condition” was “the same [as] last [year].” (AR 480.) Further,

1 as discussed in more detail below, despite his testimony at the
2 hearing to the contrary, Plaintiff's subjective assessment of his
3 pain did not increase from 2011 to 2013 – rather, it fluctuated
4 between "8/10" and "9/10" (see, e.g., AR 477, 516), and Plaintiff
5 consistently reported that his pain reduced to "5/10" when he
6 used medication (see, e.g., AR 77, 262; see also infra, Section
7 V(B)(2) (describing Plaintiff's subjective ratings of pain
8 between 2011 and 2013)).¹⁰

9 Plaintiff also argues that because (as Defendant concedes)
10 he can stand only up to four hours a day, he was "entitled to
11 disability" with application of the "sedentary" grid and that the
12 ALJ erred in not so finding. (See J. Stip. at 21-22.) If the
13 grids do not "completely and accurately represent a claimant's
14 limitations," however, reliance on them is not appropriate and a
15 vocational expert's testimony is warranted. Tackett, 180 F.3d at
16 1101-02 (emphasis omitted). The ALJ therefore properly consulted
17 a VE to determine whether any available light-work jobs would
18 adequately accommodate Plaintiff's specific limitations. See SSR
19 83-12, 1983 WL 31253, at *2 (noting that when individual's
20 exertional RFC does not coincide with any of defined ranges of
21 work but instead includes "considerably greater restriction(s),"
22 VE testimony can clarify extent of erosion of occupational base);
23 Moore v. Apfel, 216 F.3d 864, 870 (9th Cir. 2000) ("SSR 83-12
24 directs that when a claimant falls between two grids,
25 consultation with a VE is appropriate."); Thomas, 278 F.3d at 960

26
27 ¹⁰ Also, because Plaintiff's date last insured was March 31,
28 2011 (see AR 17), for at least DIB purposes Dr. To's assessment,
dated July 2011, was more relevant than subsequent medical
reports, including those from 2012.

1 (same).

2 The VE applied a sit-stand option to the light-work jobs,
3 accommodating Plaintiff's limitations as found by the ALJ and
4 noting appropriate levels of erosion in the job base. (AR 1058.)
5 The ALJ was entitled to rely on the VE's informed, specific, and
6 uncontradicted explanation that consistent with his RFC for a
7 limited range of light work, Plaintiff was able to work as a
8 cashier II, small-products assembler II, and bench assembler.
9 See Bayliss v. Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2005) ("A
10 VE's recognized expertise provides the necessary foundation for
11 his or her testimony."). Accordingly, the ALJ did not err.

12 b. *Reaching limitations*

13 Plaintiff argues that the ALJ also erred in not including
14 any forward- or side-reaching limitations in his RFC. (J. Stip.
15 at 22-26.) Specifically, he argues that the ALJ should have
16 credited Dr. Stern's 2012 note stating that Plaintiff's pain was
17 "exacerbated by reaching out and working overhead." (AR 758.)

18 Dr. Stern apparently wrote the note for Plaintiff at his
19 request after not having treated him for a year. (Compare AR 265
20 (Dr. Stern's last treatment note, from Plaintiff's Sept. 1, 2011
21 clinic visit), with AR 758 (Plaintiff's Oct. 2012 request for
22 note from Dr. Stern).) The ALJ gave "little weight" to the note
23 because it was not supported by the medical evidence. Indeed,
24 most of the medical records before and after Dr. Stern wrote his
25 October 11, 2012 note do not support such a limitation. (See,
26 e.g., AR 228-29 (July 2011: Dr. To noting normal range of motion
27 and normal motor function in all extremities), 898 (Dec. 2013:
28 "[f]ull active ROM" and "5/5" shoulder-rotation muscle strength

1 noted).)

2 Plaintiff consistently complained to doctors that he was
3 "unable to lift over [his] head" on the right side (see, e.g., AR
4 285, 408) but did not complain of pain reaching forward or to the
5 side. Drs. Guo and Robbins mentioned Plaintiff's overhead
6 restrictions but did not cite any limitations in reaching forward
7 or to the side. (See AR 39, 410.) Dr. To found that Plaintiff
8 had normal range of motion in all extremities; could push, pull,
9 lift, and carry 20 pounds occasionally and 10 pounds frequently;
10 and could even climb ladders. (AR 228-30.) As the ALJ noted (AR
11 26), even Dr. Stern's own treatment notes do not support the
12 limitation. He reported in September 2011 that Plaintiff had "no
13 pain" with "external rotation" of his shoulder, which presumably
14 would include reaching forward and to the side.¹¹ (AR 265.)

15 Further, nothing indicates that Plaintiff's shoulder
16 condition deteriorated after his assessment by Dr. To in 2011, as
17 Plaintiff alleges. (See J. Stip. at 11-12.) Indeed, on June 29,
18 2012, he told Dr. Ng that his "condition" was "the same [as] last
19 [year]" (AR 480), and he described consistent levels of pain from
20 2011 to 2012 (see infra, Section V(B)(2)). Inconsistency with
21 the medical evidence was a permissible reason for the ALJ to give
22 Dr. Stern's opinion little weight. See Batson, 359 F.3d at 1195

24 ¹¹ External rotation of the shoulder is evaluated in part by
25 asking patients to reach forward, keeping their elbow bent at 90
26 degrees, and rotate their arm outward. See A Practical Guide to
27 Clinical Medicine, Univ. of Cal., San Diego, [https://](https://meded.ucsd.edu/clinicalmed/joints2.htm)
28 meded.ucsd.edu/clinicalmed/joints2.htm (last updated Feb. 10,
2011). Internal rotation is evaluated by asking patients to
place their hand behind their back and reach as high up the spine
as possible. Id. External rotation, then, involves reaching
both forward and to the side.

1 (ALJ may discredit treating physicians' opinions that are
2 "unsupported by the record as a whole"); Thomas, 278 F.3d at 957
3 (ALJ need not accept treating-physician opinion that is
4 "inadequately supported by clinical findings").

5 B. The ALJ Properly Assessed Plaintiff's Credibility

6 Plaintiff argues that the ALJ failed to articulate legally
7 sufficient reasons for rejecting his testimony. (J. Stip. at
8 31.) For the reasons discussed below, the ALJ did not err.

9 1. Applicable law

10 An ALJ's assessment of symptom severity and claimant
11 credibility is entitled to "great weight." See Weetman v.
12 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779
13 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to
14 believe every allegation of disabling pain, or else disability
15 benefits would be available for the asking, a result plainly
16 contrary to 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674
17 F.3d 1104, 1112 (9th Cir. 2012) (citing Fair v. Bowen, 885 F.2d
18 597, 603 (9th Cir. 1989)).

19 In evaluating a claimant's subjective symptom testimony, the
20 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d
21 at 1035-36. "First, the ALJ must determine whether the claimant
22 has presented objective medical evidence of an underlying
23 impairment [that] could reasonably be expected to produce the
24 pain or other symptoms alleged." Id. at 1036. If such objective
25 medical evidence exists, the ALJ may not reject a claimant's
26 testimony "simply because there is no showing that the impairment
27 can reasonably produce the degree of symptom alleged." Smolen,
28 80 F.3d at 1282 (emphasis in original).

1 If the claimant meets the first test, the ALJ may discredit
2 the claimant's subjective symptom testimony only if he makes
3 specific findings that support the conclusion. See Berry v.
4 Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent a finding or
5 affirmative evidence of malingering, the ALJ must provide "clear
6 and convincing" reasons for rejecting the claimant's testimony.
7 Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir. 2015) (as
8 amended); Treichler v. Comm'r of Soc. Sec. Admin., 775 F.3d 1090,
9 1102 (9th Cir. 2014). The ALJ may consider, among other factors,
10 (1) ordinary techniques of credibility evaluation, such as the
11 claimant's reputation for lying, prior inconsistent statements,
12 and other testimony by the claimant that appears less than
13 candid; (2) unexplained or inadequately explained failure to seek
14 treatment or to follow a prescribed course of treatment; (3) the
15 claimant's daily activities; (4) the claimant's work record; and
16 (5) testimony from physicians and third parties. Rounds v.
17 Comm'r Soc. Sec. Admin., 807 F.3d 996, 1006 (9th Cir. 2015) (as
18 amended); Thomas, 278 F.3d at 958-59. If the ALJ's credibility
19 finding is supported by substantial evidence in the record, the
20 reviewing court "may not engage in second-guessing." Thomas, 278
21 F.3d at 959.

22 2. Relevant background

23 Plaintiff reported consistent levels of pain – between
24 "8/10" and "9/10" without medication and "4/10" and "5/10" with
25 it – in his lower back, right shoulder, and knees from 2011 to
26 2012. (See, e.g., AR 516 (Aug. 15, 2011: pain in back "9/10"),
27 262 (Sept. 15, 2011: pain in low back "8/10," shoulder "5/10,"
28 and knees "5/10"), 261 (Oct. 17, 2011: "9/10" pain in lower back,

1 shoulder, and knees), 259 (Nov. 15, 2011: "9/10" pain in lower
2 back, "5/10" pain in knees), 258 (Dec. 8, 2011: "8/10" pain in
3 lower back and knees, reduced to "4/10" with medication), 254-55
4 (Jan. 9 & Feb. 14, 2012: "8/10" pain in "low back" and knees),
5 481 (May 24, 2012: pain "8/10" in low back, knee, shoulder), 477
6 (July 19, 2012: "8/10" pain in back and shoulder), 756 (Oct. 16,
7 2012: pain in back "8/10" without medication, "5/10" with
8 medication), 771 (Sept. 20, 2012: pain in back "5/10" with
9 medication, "8/10" without).) On January 11, 2013, Plaintiff
10 reported "persistent pain" in his lower back. (AR 973.) He
11 rated the pain as "10" and stated that it was "so bad [he could]
12 hardly breath[e]." (Id.) He could not lift over his head.
13 (Id.)

14 In a March 22, 2012 exertion questionnaire, Plaintiff noted
15 that he could walk "for about 5 to 10 min. slowly" before needing
16 to stop. (AR 178.) Basic cleaning was "hard and difficult," but
17 he was able to do things "in moderation and slowly." (Id.) He
18 was able to go shopping one or two times a week but could only
19 drive for about 10 minutes before experiencing intolerable back
20 and shoulder pain. (AR 179.) He was able to dress himself, but
21 with "a lot of difficulty [and] pain." (AR 178.) He did not
22 work on cars or do yard work. (AR 179.)

23 At the January 29, 2013 hearing, Plaintiff testified that he
24 was "in considerable pain, whether . . . standing or sitting."
25 (AR 1037.) Standing "beyond 20 minutes to a half hour" at a time
26 was "unbearable to the point [he] need[ed] to sit." (Id.) But
27 sitting also caused him "considerable pain." (Id.) He testified
28 that he could sit for only "a half hour" before having to change

1 position. (AR 1038.) Raising his right arm caused "considerable
2 aching." (Id.) He had pain in his knees, especially the right
3 one. (AR 1039-40.) He took ibuprofen, oxycodone, morphine,
4 morphine sulfate, and lidocaine for his pain. (AR 1040.) He was
5 able to keep his house clean, cook, and shop. (AR 1041-42.) He
6 had difficulty "shampooing" with his right arm. (AR 1042.) His
7 lower back hurt when he bent over. (Id.) He "frequently" used
8 his recliner chair and drove his car "a few times a day." (AR
9 1043.) He testified that he had "difficulty just with ordinary
10 tasks throughout the day" and was in "constant pain." (AR 1045.)
11 He noted that his back pain had "increased considerably" in the
12 last two years. (Id.) He worked for a friend for two days in
13 2010 but "couldn't even complete the job because of my shoulder."
14 (AR 1050.) He noted, however, that his shoulder pain in 2010 was
15 "pretty much the same" as it was at the time of the hearing.
16 (Id.) He testified that he would have difficulty lifting a
17 gallon of milk past a certain point¹² and that he would have
18 issues lifting 20 pounds from the floor up to a table because of
19 his knee and back pain. (Id.)

20 In early 2013 Plaintiff reported levels of pain similar to
21 those of 2011 and 2012. (See, e.g., AR 963 (Apr. 30, 2013: pain
22 in lower back "9/10" without medication, "5/10" with medication),
23 951 (May 28, 2013: pain in lower back "8/10" without medication,
24 "6/10" with medication).) In November 2013 Plaintiff reported
25 that he had been "working on [a] car engine," which aggravated
26

27 ¹² A gallon of milk weighs approximately eight pounds. See
28 Hernandez v. Colvin, No. 1:12-CV-00330-SMS, 2013 WL 4041862, at
*9 n.4 (E.D. Cal. Aug. 8, 2013).

1 his shoulder pain. (AR 925.) He requested pain injections in
2 both shoulders (AR 929) but declined rotator-cuff surgery (AR
3 925). The pain was in his left arm and increased with movement.
4 (AR 930.) He reported it as "6/10." (AR 932.)

5 3. Analysis

6 The ALJ found Plaintiff "partially credible." (AR 22.) But
7 he discredited some of Plaintiff's complaints, finding that
8 although his "medically determinable impairments could reasonably
9 be expected to cause some of the alleged symptoms," his
10 "statements concerning the intensity, persistence and limiting
11 effects of [those] symptoms" were not credible to the extent they
12 were inconsistent with his RFC. (Id.) As discussed below, to
13 the extent the ALJ rejected Plaintiff's subjective complaints, he
14 provided clear and convincing reasons for doing so.

15 First, the ALJ found that Plaintiff's "activities of daily
16 living" were inconsistent with his statements about his
17 disability and "demonstrate[d] [his] capacity for work." (Id.)
18 At the hearing, Plaintiff testified that he was able to keep his
19 house clean, cook, and shop as necessary. (AR 1041-42.) He
20 worked on his car in 2013 (AR 925) despite stating in 2012 that
21 he was unable to do so (AR 179). Keeping a house clean, shopping
22 once or twice a week, driving, and working on a car are
23 inconsistent with Plaintiff's allegation that he was unable to
24 reach forward or to the side, for example. (AR 758, 1039.) An
25 ALJ may properly discount a plaintiff's credibility when his
26 daily activities are inconsistent with his subjective symptom
27 testimony. See Molina, 674 F.3d at 1112 (ALJ may discredit
28 claimant's testimony when "claimant engages in daily activities

1 inconsistent with the alleged symptoms" (citing Lingenfelter, 504
2 F.3d at 1040)). "Even where those [daily] activities suggest
3 some difficulty functioning, they may be grounds for discrediting
4 the claimant's testimony to the extent that they contradict
5 claims of a totally debilitating impairment." Molina, 674 F.3d
6 at 1113.

7 Second, the ALJ found that Plaintiff's testimony about his
8 daily activities and "statements concerning his capacity to walk"
9 were "inconsistent with statements from examining physicians" and
10 the medical evidence in the record. (AR 22.) Indeed, as
11 discussed in detail above, Plaintiff's alleged inability to walk
12 in excess of his assessed RFC and his alleged restrictions on
13 reaching forward or to the side are not supported by the medical
14 record. Further, Plaintiff testified on January 29, 2013, that
15 his pain had "increased considerably" during the past two years,
16 but his own statements to various doctors from 2011 to 2013
17 showed a stable, if not decreasing, level of pain. (See supra,
18 Section V(B)(2) (describing Plaintiff's subjective rating of
19 pain).) Inconsistency between Plaintiff's testimony and the
20 medical evidence was a permissible reason to discount his
21 subjective complaints. See Thomas, 278 F.3d at 958-59 (in
22 assessing credibility, ALJ may consider inconsistencies either in
23 claimant's testimony or between testimony and conduct).

24 Finally, the ALJ noted that the objective evidence
25 supporting Plaintiff's subjective claims of symptom severity was
26 "meager." (AR 23.) Indeed, other than Dr. Stern's 2012 note,
27 which appears to have been based at least in part on Plaintiff's
28 subjective complaints, there is no evidence in the medical record

1 that Plaintiff had any limitations reaching forward or to the
2 side. The ALJ was entitled to consider the lack of objective
3 medical evidence as one factor in assessing Plaintiff's
4 subjective complaints and credibility. See Burch v. Barnhart,
5 400 F.3d 676, 681 (9th Cir. 2005) ("Although lack of medical
6 evidence cannot form the sole basis for discounting pain
7 testimony, it is a factor that the ALJ can consider in his
8 credibility analysis."); Carmickle, 533 F.3d at 1161
9 ("Contradiction with the medical record is a sufficient basis for
10 rejecting the claimant's subjective testimony.").

11 In sum, the ALJ provided clear and convincing reasons for
12 finding Plaintiff only partially credible. Because those
13 findings were supported by substantial evidence, this Court may
14 not engage in second-guessing. See Thomas, 278 F.3d at 959.
15 Plaintiff is not entitled to remand on this ground.

16 C. Plaintiff's Significant-Erosion Argument Under
17 POMS Lacks Merit

18 Plaintiff argues that the VE's exclusion of 75 percent of
19 the total available cashier II jobs and 90 percent of the small-
20 products assembler II and bench assembler jobs caused a
21 "significant" erosion of the occupational base, necessitating
22 application of the "sedentary grid rule" under POMS. (J. Stip.
23 at 39.) As discussed below, remand is not warranted on this
24 ground.

25 1. Applicable law

26 Jobs are classified as "sedentary, light, medium, heavy, and
27 very heavy" according to their "physical exertion requirements."
28 §§ 404.1567, 416.967. "Sedentary work" generally involves

1 lifting no more than 10 pounds at a time, with occasional lifting
2 or carrying of small objects and articles, and predominantly
3 features sitting, with walking or standing "required
4 occasionally." §§ 404.1567(a), 416.967(a). Social Security
5 Ruling 83-10 further explains that "periods of standing or
6 walking should generally total no more than about 2 hours of an
7 8-hour workday, and sitting should generally total approximately
8 6 hours of an 8-hour workday." SSR 83-10, 1983 WL 31251, at *5
9 (describing requirements for "full range" of sedentary work).

10 "Light work" generally involves "lifting no more than 20
11 pounds at a time with frequent lifting or carrying of objects
12 weighing up to 10 pounds," though "the weight lifted may be very
13 little." §§ 404.1567(b), 416.967(b); see SSR 83-10, 1983 WL
14 31251, at *5. Light work "requires a good deal of walking or
15 standing, or . . . involves sitting most of the time but with
16 some pushing and pulling of arm or leg controls."

17 §§ 404.1567(b), 416.967(b); see SSR 83-10, 1983 WL 31251, at *5.
18 "To be considered capable of performing a full or wide range of
19 light work, [a claimant] must have the ability to do
20 substantially all of these activities." §§ 404.1567(b),
21 416.967(b).

22 At step five of the five-step process, the Commissioner has
23 the burden to demonstrate that the claimant can perform some work
24 that exists in "significant numbers" in the national or regional
25 economy, taking into account the claimant's RFC, age, education,
26 and work experience. Tackett v. Apfel, 180 F.3d 1094, 1100 (9th
27 Cir. 1999); see 42 U.S.C. § 423(d)(2)(A); 20 C.F.R.
28 §§ 404.1560(c), 416.960(c). The Commissioner may satisfy that

1 burden either through the testimony of a VE or by reference to
2 the grids. Tackett, 180 F.3d at 1100-01.

3 The DOT "is not the sole source of admissible information
4 concerning jobs," and the ALJ "may take administrative notice of
5 any reliable job information, including the services of a
6 vocational expert." Johnson v. Shalala, 60 F.3d 1428, 1435 (9th
7 Cir. 1995) (alteration and citations omitted). The DOT "lists
8 maximum requirements of occupations as generally performed, not
9 the range of requirements of a particular job as it is performed
10 in specific settings," and a VE "may be able to provide more
11 specific information about jobs or occupations than the DOT."
12 SSR 00-4p, 2000 WL 1898704, at *3 (Dec. 4, 2000). "A VE's
13 recognized expertise provides the necessary foundation for his or
14 her testimony," and "no additional foundation is required."
15 Bayliss, 427 F.3d at 1218.

16 2. Relevant background

17 The ALJ asked the VE to consider a hypothetical individual
18 "who is closely approaching advanced age, with a GED," who could
19 perform "light work, occasional posturals[,]. . . occasional
20 overhead reaching bilaterally, no ladders, ropes or scaffolds or
21 hazards, limited to unskilled work with a sit/stand option every
22 half-hour." (AR 1057-58.) The VE testified that such a
23 hypothetical individual could perform three jobs in the regional
24 and national economy: "small products assembler II," "cashier
25 II," and "bench assembler." (AR 1058.) Taking into account the
26 sit-stand option, the VE eroded the "small products assembler II"
27 job by 90 percent, which "would leave 900 positions regionally
28 and 8,000 nationally." (Id.) She eroded the "cashier II" job by

1 75 percent, leaving "1,125 positions regionally and 25,000
2 nationally." (Id.) She applied a 90 percent erosion to the
3 "bench assembler" job, leaving "250 jobs regionally and 4,000
4 nationally." (Id.)

5 3. Analysis

6 As an initial matter, Plaintiff misplaces his reliance on
7 POMS DI 25001.001.B.72, available at [https://secure.ssa.gov/
8 poms.NSF/lrx/0425001001](https://secure.ssa.gov/poms.NSF/lrx/0425001001), which is a "Quick Reference Guide"
9 defining, among other terms, "[s]ignificant erosion" as "[a]
10 considerable reduction in the available occupations at a
11 particular exertional level." It indicates that in such
12 circumstances, an ALJ should generally "use a lower exertional
13 rule as a framework for a decision." See id.

14 Notably, POMS is an internal agency manual that "does not
15 have the force of law," Warre v. Comm'r of Soc. Sec. Admin., 439
16 F.3d 1001, 1005 (9th Cir. 2006), and is binding on neither the
17 ALJ nor the Court, see Lockwood v. Comm'r Soc. Sec. Admin., 616
18 F.3d 1068, 1073 (9th Cir. 2010) ("POMS constitutes an agency
19 interpretation that does not impose judicially enforceable duties
20 on either this court or the ALJ."). Moreover, "even if POMS had
21 the force and effect of law, POMS DI 25001.001 ¶ B.71¹³ does not
22 mandate the ALJ to use a lower exertional rule level";
23 "[i]nstead, it merely suggests using a lower exertional rule as a
24 framework if there is a 'considerable reduction in the available
25 occupations at a particular exertional level.'" Durden v.
26 Astrue, No. CV 11-1211-SP, 2012 WL 682880, at *3 (C.D. Cal. Mar.

27
28 ¹³ Apparently former subsection B.71 was subsequently
renumbered as B.72.

1 2, 2012) (citation omitted), aff'd, 546 F. App'x 690 (9th Cir.
2 2013). Thus, the ALJ was free not to apply POMS subsection B.72.

3 Here, application of subsection B.72 was not warranted
4 because there remained a significant number of available light-
5 exertional occupations identified by the VE after she had eroded
6 them.¹⁴ A 75 percent reduction in available cashier II jobs
7 still left 25,000 such jobs available in the national economy; a
8 90 percent reduction in bench-assembler jobs left 4000 such jobs
9 nationally; a 90 percent reduction in small-products-assembler II
10 positions left 8000 such jobs nationally. (AR 1058.) The 75 to
11 90 percent erosion applied by the VE left 37,000 jobs available
12 in the national economy. That is a significant number of jobs.
13 See Gutierrez v. Comm'r of Soc. Sec., 740 F.3d 519, 528-29 (9th
14 Cir. 2014) (holding that 25,000 nationally available jobs
15 presented a "close call" but nonetheless sufficed as "work which
16 exists in significant numbers"). Accordingly, the concerns
17 animating POMS B.72 were not present here.

18 Plaintiff also argues that the ALJ "could only name" three
19 positions he could perform and that "[t]he full range of light
20 work is surely eroded significantly when only three jobs eroded
21 by 75 [percent] and 90 [percent] is all that is left of the
22 vocational base." (J. Stip. at 41.) In fact, the ALJ said that
23 the three light occupations the VE identified were merely
24 "representative" of occupations in the national economy that

25
26 ¹⁴ Plaintiff relies on Distasio v. Shalala, 47 F.3d 348 (9th
27 Cir. 1995), to argue that the ALJ should have applied the
28 sedentary grid rule. As Defendant correctly points out, however,
in Distasio the VE expressly limited the claimant to sedentary
work. Id. at 349-50. Here, the VE identified three light-work
jobs Plaintiff was capable of performing.

1 Plaintiff could perform.¹⁵ (AR 28.) In any event, even just one
2 occupation suffices as long as it provides a significant number
3 of jobs. See Tommasetti v. Astrue, 533 F.3d 1035, 1043-44 (9th
4 Cir. 2008) (holding that VE's testimony describing single
5 occupation for which significant number of jobs existed
6 sufficed); Tamayo v. Colvin, No. CV 12-8484 JCG, 2013 WL 5651420,
7 at *2 (C.D. Cal. Oct. 11, 2013) (finding one occupation
8 sufficient "as long as [it] still has a significant number of
9 positions that exist in the national economy" (citation
10 omitted)).

11 The ALJ did not err in not applying the sedentary grid rule.

12 D. Substantial Evidence Supported the ALJ's Determination
13 that Plaintiff Could Perform the Representative Light-
14 Exertion Jobs¹⁶

15 Plaintiff also argues that the ALJ's nondisability finding
16 was "not supported by substantial evidence because it cannot be
17 determined whether [Plaintiff] would be performing the jobs (with
18 the sit-stand option and no lifting identified) in a sedentary
19 manner." (J. Stip. at 45.) Plaintiff claims that the ALJ should
20 have further developed the record to determine "whether the jobs
21 named retained the lifting requirements of light work." (Id. at
22 42.) Plaintiff states that the VE "offered no testimony as to
23 what actual lifting would be required" in the three jobs listed,
24

25 ¹⁵ Indeed, no rule requires the VE to list all or even
26 substantially all occupations a claimant can do. Given that the
27 DOT includes thousands of occupations, any such rule would
28 overwhelm the Agency and grind disability proceedings to a halt.

¹⁶ Plaintiff included this argument in his section on
significant erosion. (See J. Stip. at 42, 45-46.) For clarity,
the Court has separated it out into its own section.

1 and the ALJ failed to "establish . . . whether these three jobs
2 are actually being performed in a light manner." (Id.)

3 Plaintiff's RFC was reduced light work with limitations on
4 postural activities and overhead reaching; no climbing; and a
5 sit-stand option every 30 minutes. (AR 21.) If the grids do not
6 "completely and accurately represent a claimant's limitations,"
7 reliance on them is not appropriate and vocational-expert
8 testimony is necessary. Tackett, 180 F.3d at 1101-02 (emphasis
9 omitted). The ALJ therefore properly consulted the VE to
10 determine whether any available light-work jobs would adequately
11 accommodate Plaintiff's specific limitations. See SSR 83-12,
12 1983 WL 31253, at *2 (noting that when individual's exertional
13 RFC does not coincide with any of defined ranges of work but
14 instead includes "considerably greater restriction(s)," VE
15 testimony can clarify extent of erosion of occupational base);
16 Moore, 216 F.3d at 870; Thomas, 278 F.3d at 960.

17 Substantial evidence supported the ALJ's finding that
18 Plaintiff could perform the lifting requirements of the three
19 jobs identified by the VE. The ALJ asked the VE, "What if the
20 lifting or carrying on the right side is limited to 10 pounds
21 rather than 10-20?" (AR 1059.) The VE responded, "That would
22 not impact cashier II . . . [but] there could be further erosion
23 on the assembly positions, so another [five] percent." (Id.)
24 The ALJ's question and the VE's answer demonstrate that both
25 understood that the three jobs listed retained the normal lifting
26 limitations of light work. See §§ 404.1567(b), 416.967(b)
27 ("Light work involves lifting no more than 20 pounds at a time
28 with frequent lifting or carrying of objects weighing up to 10


1 pounds."). The ALJ amended his hypothetical to the VE to account
2 for a potential lifting and carrying limitation on Plaintiff's
3 right side. (AR 1059.) The VE applied the amendment to her
4 previous erosion analysis for each job and concluded that it
5 would not affect the cashier II job and might erode the other two
6 jobs by a further five percent. (Id.) Ultimately, the ALJ did
7 not include this limitation in Plaintiff's RFC, a finding he has
8 not challenged. No doctor opined that Plaintiff could not lift
9 20 pounds or frequently lift and carry up to 10 pounds.

10 The ALJ was entitled to rely on the VE's informed, specific,
11 and uncontradicted explanation that consistent with his RFC for a
12 limited range of light work, Plaintiff was able to work as a
13 cashier II, small-products assembler II, and bench assembler.
14 See Bayliss, 427 F.3d at 1218. Accordingly, remand is not
15 warranted on this basis.

16 **VI. CONCLUSION**

17 Consistent with the foregoing and under sentence four of 42
18 U.S.C. § 405(g),¹⁷ IT IS ORDERED that judgment be entered
19 AFFIRMING the decision of the Commissioner, DENYING Plaintiff's
20 request for remand, and DISMISSING this action with prejudice.

22 DATED: 12/5/2016



JEAN ROSENBLUTH
U.S. Magistrate Judge

26 _____
27 ¹⁷ That sentence provides: "The [district] court shall have
28 power to enter, upon the pleadings and transcript of the record,
a judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."