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

JOSEPH JOHN KOZLOWSKI,  
Plaintiff,  
v.  
CAROLYN W. COLVIN,  
COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,  
Defendant.

Case No. ED CV 15-2010 JCG  
**MEMORANDUM OPINION AND  
ORDER**

Joseph John Kozlowski (“Plaintiff”) challenges the Social Security Commissioner’s decision denying in part his application for disability benefits.<sup>1</sup> Two issues are presented for decision here:

- 1. Whether the ALJ properly rejected a treating physician’s opinion (*see* Joint Stip. at 10-18); and

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<sup>1</sup> This Court reversed and remanded for reevaluation an Administrative Law Judge (“ALJ”)’s previous decision denying benefits. (Administrative Record (“AR”) at 21-32, 712, 814-19); *see Kozlowski v. Colvin*, 2014 WL 1716048, at \*3 (C.D. Cal. Apr. 29, 2014). On remand, a different ALJ found that Plaintiff was disabled from August 31, 2010 to October 1, 2012. However, the ALJ concluded that Plaintiff’s condition improved after his second surgery, and was no longer disabled as of October 2, 2012. (*Id.* at 682-83, 687, 691-92, 701-02, 712, 728-29.)

1           2.     Whether the ALJ properly assessed Plaintiff’s credibility (*see id.* at 10-11,  
2 27-31).

3           The Court addresses Plaintiff’s contentions below, and finds that reversal is not  
4 warranted.

5           A.     The ALJ Properly Rejected the Treating Physician’s Opinion

6           Plaintiff contends that the ALJ improperly rejected the opinion of treating  
7 physician Dr. Matthew Long. (*See Joint Stip.* at 10-18.)

8           As a rule, if an ALJ wishes to disregard the opinion of a treating or examining  
9 physician, “he or she must make findings setting forth specific, legitimate reasons for  
10 doing so that are based on substantial evidence in the record.” *Murray v. Heckler*, 722  
11 F.2d 499, 502 (9th Cir. 1983); *accord Carmickle v. Comm’r, Soc. Sec. Admin.*, 533  
12 F.3d 1155, 1164 (9th Cir. 2008).

13           Here, the ALJ properly concluded that Dr. Long’s opinion – that Plaintiff was  
14 extremely limited in his ability to work<sup>2</sup> – was not entitled to significant weight, for  
15 five reasons. (AR at 667-75, 699.)

16           First, Dr. Long’s opinion “contrast[ed] sharply” with other medical opinions.  
17 (AR at 699); *see Batson v. Comm’r Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir.  
18 2004) (“[I]t was permissible for the ALJ to give [a medical opinion] minimal  
19 evidentiary weight, in light of the objective medical evidence and the opinions and  
20 observations of other doctors.”); *Kane v. Colvin*, 2015 WL 5317149, at \*3 (E.D. Cal.  
21 Sept. 10, 2015) (ALJ properly rejected treating physician’s opinion regarding  
22 claimant’s standing and walking limitations in part because opinion was contradicted  
23 by state agency physicians’ findings). Significantly, six other medical opinions  
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26 <sup>2</sup>     Dr. Long completed a multiple impairment questionnaire on February 9, 2013, and wrote a  
27 supporting letter on June 10, 2013. (AR at 667-76). He opined that Plaintiff could not (1) stand, sit,  
28 or walk for more than one hour in a workday; (2) lift more than five pounds; or (3) complete an eight  
hour workday. (*Id.* at 670-74.) He also opined that Plaintiff would likely miss work more than three  
times a month due to his impairments or treatment. (*Id.* at 674.)

1 concluded that Plaintiff could at least perform light work with limitations. (AR at 98-  
2 100, 561, 615-16, 731-35, 740-43, 773, 848-49, 1012.)

3 Second, Dr. Long examined Plaintiff on only one occasion after Plaintiff's  
4 second surgery.<sup>3</sup> (AR at 699, 719, 764, 761, 773); see *Thebo v. Astrue*, 436 F. App'x  
5 774, 776 (9th Cir. 2011) (rejecting treating physician's opinion in part because it  
6 "appeared to rest on a single meeting with [claimant], undercutting the rationale for  
7 giving greater weight to a treating physician's opinion." (internal quotation marks and  
8 citation omitted)); *Turner v. Comm'r Soc. Sec.*, 613 F.3d 1217, 1223 (9th Cir. 2010)  
9 (ALJ properly rejected medical evaluation based on infrequent interaction with  
10 claimant).

11 Third, Dr. Long's opinion was inconsistent with his September 2012  
12 examination, which included Plaintiff's statement regarding how the second surgery  
13 had "improved everything." (AR at 653, 699, 728); see *Wilhelm v. Comm'r Soc. Sec. Admin.*,  
14 597 F. App'x 425, 425 (9th Cir. 2015) (ALJ properly rejected doctor's opinion  
15 because it contradicted her own treatment notes); *Sujo v. Colvin*, 2016 WL 1045349, at  
16 \*4 (E.D. Cal. Mar. 16, 2016) (ALJ permitted to discount medical opinion based on  
17 evidence that claimant's impairments improved with successful surgeries).

18 Fourth, Dr. Long's opinion was inconsistent with his other examination and  
19 treatment notes indicating that: (1) Plaintiff had stopped taking prescription medication  
20 after the second surgery; and (2) Plaintiff's condition was otherwise under control.  
21 (AR at 525-26, 557, 592-95, 653, 699, 1042, 1063, 1076, 1082); see *Wilhelm*, 597 F.  
22 App'x at 425; *Warre v. Comm'r Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006)  
23 (impairments that can be controlled are not disabling).

24 Fifth, Dr. Long did not cite diagnostic tests by their dates or list specific  
25 findings.<sup>4</sup> (AR at 699, 767); see *Batson*, 359 F.3d at 1195 (ALJ properly rejects a

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27 <sup>3</sup> As noted by the ALJ, at the time Dr. Long completed his questionnaire, he had not examined  
28 Plaintiff in roughly five months. (AR at 668-76, 699.)

<sup>4</sup> Rather, in response to the impairment questionnaire's request to "[i]dentify laboratory or  
diagnostic test results" supporting his opinion, Dr. Long simply stated that Plaintiff "has had past CT

1 treating physician’s opinion when it is conclusory, brief, and unsupported); *Holohan v.*  
2 *Massanari*, 246 F.3d 1195, 1205 (9th Cir. 2001) (requiring ALJ to read treating  
3 physician’s statements “in context of the overall diagnostic picture he draws”).

4 Thus, the ALJ properly rejected Dr. Long’s opinion.

5 B. Any Error in Assessing Plaintiff’s Credibility Was Harmless

6 Next, Plaintiff contends that the ALJ improperly assessed his credibility.<sup>5</sup> (*See*  
7 *Joint Stip.* at 10-11, 27-31.)

8 As a rule, an ALJ can reject a claimant’s subjective complaints by “expressing  
9 clear and convincing reasons for doing so.” *Benton ex rel. Benton v. Barnhart*, 331  
10 F.3d 1030, 1040 (9th Cir. 2003). “General findings are insufficient; rather, the ALJ  
11 must identify what testimony is not credible and what evidence undermines a  
12 claimant’s complaints.” *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015)  
13 (internal quotation marks and citation omitted).

14 Preliminarily, the parties appear to agree that the ALJ erred in rejecting  
15 Plaintiff’s credibility based on a gap in treatment. (*See Joint Stip.* at 28, 34; AR at  
16 694); *see also Burrell v. Colvin*, 775 F.3d 1133, 1139 (9th Cir. 2014) (accepting  
17 government’s concession that ALJ’s statement regarding gap in treatment was contrary  
18 to record).

19 Nonetheless, any such error is harmless in light of at least five other valid  
20 reasons for rejecting the testimony. *See Carmickle*, 533 F.3d at 1162 (ALJ decision  
21 may be upheld despite ALJ’s reliance on an improper reason for adverse credibility  
22 determination if the “remaining reasoning and ultimate credibility determination” were

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23 [s]cans of [the] neck.” (AR at 669.) This lack of specificity was critical because earlier imaging  
24 studies were consistent with disability, but later, post-surgery results showed marked improvement.  
25 (*See id.* 390, 688-89, 694-95, 1034, 1052-53.) Thus, the ALJ reasonably inferred that Dr. Long “may  
26 have been considering old diagnostic tests that were no longer accurate after [Plaintiff’s] second  
27 surgery.” (*Id.* at 699, 767); *see Batson*, 359 F.3d at 1193 (“[T]he Commissioner’s findings are upheld  
28 if supported by inferences reasonably drawn from the record[.]”).

<sup>5</sup> The ALJ found Plaintiff’s allegations regarding his symptoms during the closed period of  
disability “generally credible.” (AR at 688.) However, for the period of time after Plaintiff’s second  
surgery, the ALJ found Plaintiff “not entirely credible.” (*Id.* at 693-94.)

1 supported by substantial evidence (emphasis omitted)); *Strutz v. Colvin*, 2015 WL  
2 4727459, at \*7 (D. Or. Aug. 10, 2015) (upholding credibility finding because ALJ  
3 provided at least one valid reason to discount claimant’s testimony).

4 First, Plaintiff’s testimony that his neck pain was not alleviated by surgery  
5 conflicted with his report to Dr. Long that the second surgery “improved everything.”  
6 (AR at 653, 694, 728); see *Flaten v. Sec’y of Health & Human Servs.*, 44 F.3d 1453,  
7 1464 (9th Cir. 1995) (ALJ’s decision to discredit claimant’s testimony was supported  
8 by evidence that claimant responded well to surgery); *Warre*, 439 F.3d at 1006.

9 Second, Plaintiff stopped taking medication after his second surgery and  
10 reported that his condition was controlled. (AR at 525-26, 592-95, 653, 694-96, 1029,  
11 1032, 1039, 1042-43, 1063, 1066, 1068-72, 1076, 1080, 1084, 1092); see *Swanson v.*  
12 *Sec’y of Health & Human Servs.*, 763 F.2d 1061, 1065 (9th Cir. 1985) (ALJ properly  
13 rejected subjective complaints in part because claimant stopped taking medication);  
14 see *Lindquist v. Colvin*, 588 F. App’x 544, 547 (9th Cir. 2014) (ALJ properly  
15 discounted claimant’s testimony in part because symptoms were controlled).

16 Third, Plaintiff’s testimony that his upper extremity numbness had worsened  
17 since his surgeries was inconsistent with his own prior statements and the medical  
18 evidence. (AR at 694, 764-66); see *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir.  
19 2014) (an ALJ may consider a variety of factors in weighing a claimant’s believability,  
20 including ordinary techniques of credibility evaluation, prior inconsistent statements,  
21 and testimony by the claimant that “appears less than candid”); *Rollins v. Massanari*,  
22 261 F.3d 853, 856-57 (9th Cir. 2001) (inconsistencies with objective evidence, when  
23 combined with other factors, are valid reasons for rejecting a claimant’s testimony).  
24 Specifically, (1) Plaintiff denied weakness or numbness to treatment providers; and (2)  
25 medical examinations did not show diminished upper extremity muscle strength or  
26 sensation. (*Id.* at 557, 1011, 1029, 1031, 1035-37, 1059-60.)

27 Fourth, Plaintiff’s allegation in a function report that he could not sit in a chair  
28 for 10 continuous minutes was contradicted by: (1) the ALJ’s observations that

1 Plaintiff could sit in “apparent comfort” through an hour-and-a-half hearing with  
2 needing to stretch only once;<sup>6</sup> and (2) the fact that Plaintiff drove for an hour-and-a-  
3 half to and from the hearing without medication. (AR at 694, 718-19, 737, 739, 760,  
4 764, 771, 994); *see Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (ALJ’s  
5 “observations of a claimant’s functioning” at the hearing are permissible as part of the  
6 overall credibility assessment but “may not form the sole basis for discrediting a  
7 person’s testimony”); *Terriquez v. Colvin*, 2014 WL 2803916, at \*7 (C.D. Cal. June  
8 18, 2014) (“ALJ [properly] reasoned that [claimant’s] claim that she could only sit for  
9 20 minutes was not believable, because (1) she admitted she could drive a car for 30  
10 minutes . . . ; and (2) she never stood up throughout the hour-long hearing.”).

11 Fifth, Plaintiff received conservative treatment after his second surgery, which  
12 primarily consisted of medication, hot showers, a heat pad, and referrals to physical  
13 therapy. (AR at 592-93, 695-96, 722-23, 738-39, 1008-09, 1032, 1039, 1042-43, 1061,  
14 1066, 1068-72, 1082, 1089-90); *see Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007)  
15 (“[E]vidence of ‘conservative treatment’ is sufficient to discount a claimant’s  
16 testimony regarding severity of an impairment.”) (citation omitted); *Edginton v.*  
17 *Colvin*, 625 F. App’x 334, 336 (9th Cir. 2015) (ALJ properly relied on claimant’s  
18 “routine and conservative” back treatment, which generally consisted of medication  
19 and transcutaneous electrical nerve stimulation).

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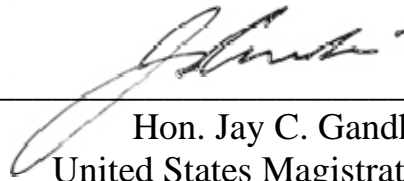
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28 <sup>6</sup> Notably, Plaintiff declined the ALJ’s invitation to stand and stretch on other occasions during the hearing. (AR at 694, 764, 771.)

1           Accordingly, the ALJ's assessment of Plaintiff's credibility does not warrant  
2 reversal.

3           Based on the foregoing, **IT IS ORDERED THAT** judgment shall be entered  
4 **AFFIRMING** the decision of the Commissioner denying benefits.

5  
6 DATED: September 15, 2016

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8 \_\_\_\_\_  
9 Hon. Jay C. Gandhi  
10 United States Magistrate Judge

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12 **This Memorandum Opinion and Order is not intended for publication. Nor is it**  
13 **intended to be included or submitted to any online service such as**  
14 **Westlaw or Lexis.**

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