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

7 Case No. 5:16-CV-01328 (VEB)

8 CLARK ALLEN FOX,

9 Plaintiff,

10 vs.

11 CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

12 Defendant.

DECISION AND ORDER

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I. INTRODUCTION

15 In January of 2013, Plaintiff Clark Allen Fox applied for Disability Insurance
16 benefits and Supplemental Security Income benefits under the Social Security Act.
17 The Commissioner of Social Security denied the applications.¹ Plaintiff, represented

18 ¹ On January 23, 2017, Nancy Berryhill took office as Acting Social Security Commissioner. The
19 Clerk of the Court is directed to substitute Acting Commissioner Berryhill as the named defendant
in this matter pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure.

1 by the Law Offices of Bill LaTour, Esq., Shaza Quadi, Esq., of counsel, commenced
2 this action seeking judicial review of the Commissioner’s denial of benefits pursuant
3 to 42 U.S.C. §§ 405 (g) and 1383 (c)(3).

4 The parties consented to the jurisdiction of a United States Magistrate Judge.
5 (Docket No. 10,12, 25). On June 6, 2017, this case was referred to the undersigned
6 pursuant to General Order 05-07. (Docket No. 24).

7 8 **II. BACKGROUND**

9 Plaintiff applied for benefits on January 22, 2013, alleging disability
10 beginning December 31, 2009, due to various physical impairments. (T at 14).² The
11 applications were denied initially and on reconsideration. Plaintiff requested a
12 hearing before an Administrative Law Judge (“ALJ”). On January 14, 2015, a
13 hearing was held before ALJ Nancy Stewart. (T at 24). Plaintiff appeared with his
14 attorney and testified. (T at 28-47). The ALJ also received testimony from Scott
15 Troy, a vocational expert (T at 48-53).

16 On January 27, 2012, the ALJ issued a written decision denying the
17 applications for benefits. (T at 9-23). The ALJ’s decision became the
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19 ² Citations to (“T”) refer to the administrative record at Docket No. 16.

1 Commissioner’s final decision on June 7, 2016, when the Appeals Council denied
2 Plaintiff’s request for review. (T at 1-4).

3 On June 22, 2016, Plaintiff, acting by and through his counsel, filed this
4 action seeking judicial review of the Commissioner’s decision. (Docket No. 1). The
5 Commissioner interposed an Answer on November 16, 2016. (Docket No. 15).
6 Plaintiff filed a supporting memorandum of law on December 23, 2016. (Docket No.
7 18). The Commissioner filed an opposing memorandum on February 17, 2017.
8 (Docket No. 23).

9 After reviewing the pleadings, memoranda of law, and administrative record,
10 this Court finds that the Commissioner’s decision should be affirmed and this case
11 must be dismissed.

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13 **III. DISCUSSION**

14 **A. Sequential Evaluation Process**

15 The Social Security Act (“the Act”) defines disability as the “inability to
16 engage in any substantial gainful activity by reason of any medically determinable
17 physical or mental impairment which can be expected to result in death or which has
18 lasted or can be expected to last for a continuous period of not less than twelve
19 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a

1 claimant shall be determined to be under a disability only if any impairments are of
2 such severity that he or she is not only unable to do previous work but cannot,
3 considering his or her age, education and work experiences, engage in any other
4 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),
5 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and
6 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

7 The Commissioner has established a five-step sequential evaluation process
8 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step
9 one determines if the person is engaged in substantial gainful activities. If so,
10 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the
11 decision maker proceeds to step two, which determines whether the claimant has a
12 medically severe impairment or combination of impairments. 20 C.F.R. §§
13 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

14 If the claimant does not have a severe impairment or combination of
15 impairments, the disability claim is denied. If the impairment is severe, the
16 evaluation proceeds to the third step, which compares the claimant's impairment(s)
17 with a number of listed impairments acknowledged by the Commissioner to be so
18 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),
19 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or
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1 equals one of the listed impairments, the claimant is conclusively presumed to be
2 disabled. If the impairment is not one conclusively presumed to be disabling, the
3 evaluation proceeds to the fourth step, which determines whether the impairment
4 prevents the claimant from performing work which was performed in the past. If the
5 claimant is able to perform previous work, he or she is deemed not disabled. 20
6 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant’s residual
7 functional capacity (RFC) is considered. If the claimant cannot perform past relevant
8 work, the fifth and final step in the process determines whether he or she is able to
9 perform other work in the national economy in view of his or her residual functional
10 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
11 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

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

1 **B. Standard of Review**

2 Congress has provided a limited scope of judicial review of a Commissioner’s
3 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,
4 made through an ALJ, when the determination is not based on legal error and is
5 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir.
6 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).

7 “The [Commissioner’s] determination that a plaintiff is not disabled will be
8 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*
9 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial
10 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119
11 n 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d
12 599, 601-02 (9th Cir. 1989). Substantial evidence “means such evidence as a
13 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
14 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and
15 conclusions as the [Commissioner] may reasonably draw from the evidence” will
16 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965). On review,
17 the Court considers the record as a whole, not just the evidence supporting the
18 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir.
19 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

1 It is the role of the Commissioner, not this Court, to resolve conflicts in
2 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
3 interpretation, the Court may not substitute its judgment for that of the
4 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th
5 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be
6 set aside if the proper legal standards were not applied in weighing the evidence and
7 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d
8 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the
9 administrative findings, or if there is conflicting evidence that will support a finding
10 of either disability or non-disability, the finding of the Commissioner is conclusive.
11 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

12 **C. Commissioner's Decision**

13 The ALJ determined that Plaintiff had not engaged in substantial gainful
14 activity since December 31, 2009 (the alleged onset date) and met the insured status
15 requirements of the Social Security Act through December 31, 2014 (the date last
16 insured). (T at 14). The ALJ found that Plaintiff's spinal disorder, degenerative disc
17 disease with compression fracture of L1, Lyme's disease, hypertension, chronic
18 obstructive pulmonary disorder with continued tobacco dependence, inflammatory
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1 arthritis, and multiple fractures secondary to a motor vehicle accident were “severe”
2 impairments under the Act. (T at 14).

3 However, the ALJ concluded that Plaintiff did not have an impairment or
4 combination of impairments that met or medically equaled one of the impairments
5 set forth in the Listings. (T at 14).

6 The ALJ determined that Plaintiff retained the residual functional capacity
7 (“RFC”) to perform sedentary work as defined in 20 CFR § 416.967 (a), with the
8 following limitations: he can lift/carry 10 pounds frequently and push/pull within
9 this limitation; he cannot utilize foot pedals with his left lower extremity and can
10 only occasionally push/pull with the left upper extremity; he can stand/walk for 2
11 hours in an 8-hour period, with no prolonged walking greater than 15 minutes at a
12 time; he can sit for 6 hours in an 8-hour workday (provided he can stand and stretch
13 not more than 10% of the day); he cannot work with ladders, ropes, or scaffolds; he
14 cannot kneel or crawl; he must avoid exposure to respiratory irritants and workplace
15 hazards; he cannot perform jobs that required reading or writing as a primary part of
16 the job; and he is limited to non-complex, routine tasks, with no fast-paced work. (T
17 at 15).

18 The ALJ found that Plaintiff could not perform his past relevant work as a
19 painter. (T at 18). However, considering Plaintiff’s age (41 on the alleged onset

1 date), education (at least high school), work experience, and residual functional
2 capacity, the ALJ determined that there were jobs that exist in significant numbers in
3 the national economy that Plaintiff can perform. (T at 18).

4 As such, the ALJ found that Plaintiff was not entitled to benefits under the
5 Social Security Act from December 31, 2009 (the alleged onset date) through
6 February 9, 2015 (the date of the ALJ's decision). (T at 19). As noted above, the
7 ALJ's decision became the Commissioner's final decision when the Appeals
8 Council denied Plaintiff's request for review. (T at 1-4).

9 **D. Disputed Issues**

10 Plaintiff offers three (3) main arguments in support of his claim that the
11 Commissioner's decision should be reversed. First, he argues that the ALJ's
12 Listings analysis was flawed. Second, Plaintiff contends that the ALJ did not
13 properly analyze the medical opinion evidence. Third, Plaintiff challenges the
14 ALJ's step five analysis. This Court will address each argument in turn.

15 **IV. ANALYSIS**

16 **A. Listings Analysis**

17 At step three of the sequential evaluation, the ALJ must determine whether the
18 claimant has an impairment or combination of impairments that meets or equals an
19 impairment listed in Appendix 1 of the Regulations (the "Listings"). *See* 20 C.F.R.

1 §§ 404.1520(d), 416.920(d). If a claimant meets or equals a listed impairment, he or
2 she is “conclusively presumed to be disabled and entitled to benefits.” *Bowen v. City*
3 *of New York*, 476 U.S. 467, 471, 106 S. Ct. 2022, 90 L. Ed. 2d 462 (1986); *see also*
4 *Ramirez v. Shalala*, 8 F.3d 1449, 1452 (9th Cir. 1993); *see also* 20 C.F.R. §§
5 404.1525(a); 416.925(a).

6 An impairment meets a Listing if the impairment matches all of the medical
7 criteria specified in the Listing. *Sullivan v. Zebley*, 493 U.S. 521, 530, 110 S. Ct.
8 885, 107 L. Ed. 2d 967 (1990); *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.
9 1999). An impairment or combination of impairments that satisfies some, but not all
10 of the criteria, does not qualify. *Sullivan*, 493 U.S. at 530; *Tackett*, 180 F.3d at 1099.

11 The claimant bears the burden of proving that she has an impairment or
12 combination of impairments that meets or equals the criteria of a listed impairment.
13 To satisfy this burden, the claimant must offer medical findings equal in severity to
14 all requirements, which findings must be supported by medically acceptable clinical
15 and laboratory diagnostic techniques. 20 C.F.R. § 416.926(b).

16 If a claimant’s impairment does not satisfy the Listings criteria, he or she may
17 still be disabled if the impairment “equals” a listed impairment. 20 C.F.R. §
18 404.1520(d). Equivalence will be found if the medical findings are (at a minimum)
19 equal in severity and duration to the Listed impairment. *Marcia v. Sullivan*, 900 F.2d

1 172, 175 (9th Cir. 1990). To determine medical equivalence, the Commissioner
2 compares the findings concerning the alleged impairment with the medical criteria of
3 the listed impairment. 20 C.F.R. §§ 416.924(e), 416.926.

4 If a claimant has multiple impairments, the ALJ must determine “whether the
5 combination of [the] impairments is medically equal to any listed impairment.” 20
6 C.F.R. § 404.1526(a). The claimant’s symptoms “must be considered in combination
7 and must not be fragmentized in evaluating their effects.” *Lester v. Chater*, 81 F.3d
8 821, 829 (9th Cir. 1996). “A finding of equivalence must be based on medical
9 evidence only.” *See Lewis v. Apfel*, 236 F.3d 503, 514 (9th Cir. 2001)(citing 20
10 C.F.R. § 1529(d)(3)).

11 “[I]n determining whether a claimant equals a listing under step three . . . the
12 ALJ must explain adequately his evaluation of alternative tests and the combined
13 effects of the impairments.” *Marcia*, 900 F.2d at 176 (9th Cir. 1990). A remand may
14 be required if ALJ fails adequately to consider a Listing that plausibly applies to the
15 claimant’s case. *See Lewis*, 236 F.3d at 514.

16 In the present case, the ALJ concluded that Plaintiff did not have an
17 impairment or combination of impairments that met or medically equaled one of the
18 impairments set forth in the Listings. (T at 14). The ALJ stated that she had
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1 considered, in particular, Listings §1.04 (Disorders of the Spine) and §14.09
2 (Inflammatory Arthritis). (T at 15).

3 Plaintiff argues that the ALJ failed to properly consider Listing § 1.04. That
4 impairment requires the presence of a spinal disorder “resulting in compromise of a
5 nerve root (including the cauda equina) or the spinal cord,” along with other factors
6 outlined in subsections A, B, and C in §1.04.

7 However, while Plaintiff cites evidence that his impairment has some of the
8 aspects identified in the various subsections of §1.04, he cites no evidence of
9 compromise of a nerve root (including the cauda equina) or the spinal cord. Indeed,
10 the medical imaging is to the contrary. (T at 322, 339, 347).

11 As further support for the ALJ’s determination, the State Agency review
12 physicians found no evidence of a Listing level impairment. (T at 59-69, 71-81, 84-
13 95, 97-108). *See* 20 CFR § 404.1527 (f)(2)(i)(“State agency medical and
14 psychological consultants and other program physicians, psychologists, and other
15 medical specialists are highly qualified physicians, psychologists, and other medical
16 specialists who are also experts in Social Security disability evaluation.”).

17 Dr. David Easley, a consultative orthopedic examiner, noted that Plaintiff had
18 good muscle strength, negative straight leg raising test, and normal gait. (T at 327-
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1 329). He opined that Plaintiff could stand/walk for 6 hours in an 8-hour workday
2 and sit for 6 hours in an 8-hour workday. (T at 330).

3 In light of the foregoing, this Court finds no error in the ALJ's conclusion that
4 Plaintiff did not have an impairment or combination of impairments that met or
5 medically equaled one of the impairments set forth in the Listings, including
6 Listings §1.04. (T at 14).

7 **B. Medical Opinion Evidence**

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

1 reasons for disregarding a treating or examining physician’s opinion. *Flaten v.*
2 *Secretary of Health and Human Servs.*, 44 F.3d 1453, 1463-64 (9th Cir. 1995).

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

9 In this case, as referenced above, Dr. David Easley, an orthopedic surgeon,
10 performed a consultative examination in May of 2013. Dr. Easley opined that
11 Plaintiff could perform work at a light exertional level, with some postural and
12 environmental limitations. (T at 325-330). The ALJ gave “significant weight” to Dr.
13 Easley’s findings when rendering her decision. (T at 17).

14 Dr. Easley’s assessment included a finding that Plaintiff was “unable to walk
15 on uneven terrain.” (T at 330). The ALJ, while incorporating numerous postural and
16 environmental limitations into the RFC, did not include this particular limitation and
17 did not explain its absence, even though she had given “substantial weight” to Dr.
18 Easley’s assessment. (T at 15).

1 This was error, as the ALJ was obliged to address this aspect of the
2 consultative examiner's opinion. However, this Court finds the error harmless.
3 Even if one assumes that Plaintiff is unable to walk on uneven terrain, he still would
4 not meet the requirements of Listing §1.04 due to the absence of evidence of nerve
5 root or spinal cord compromise, as discussed above.

6 Further, the ALJ concluded, based on the vocational expert's testimony, that
7 Plaintiff retained the RFC to perform three representative occupations, bench
8 assembler, information clerk, and charge account clerk. (T at 19). All of these
9 positions are at the sedentary work level. Plaintiff offers no evidence or argument to
10 suggest that an inability to walk on uneven terrain would preclude a person from
11 performing any of these three positions. *See Delavera v. Astrue*, No. CV 12-06138,
12 2013 U.S. Dist. LEXIS 24031, at *3-4 (Cal. C.D. Feb. 20, 2013)(affirming ALJ's
13 conclusion that claimant retained the RFC to perform sedentary work even with
14 limitation precluding walking on uneven terrain).

15 Finally, it is well-settled that an inability to walk on uneven terrain is a limited
16 finding that does not imply an overall inability to "ambulate effectively," as that
17 term is defined in the Social Security Regulations. *See Perez v. Astrue*, 831 F. Supp.
18 2d 1168, 1176 (C.D. Cal. 2011) (holding that inability to walk on uneven terrain did
19 not establish an inability to ambulate effectively).

1 An ALJ's error may be deemed harmless if, in light of the other reasons
2 supporting the overall finding, it can be concluded that the error did not "affect[] the
3 ALJ's conclusion." *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th
4 Cir. 2004); *see also Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1054-55 (9th
5 Cir. 2006) (describing the harmless error test as whether "the ALJ's error did not
6 materially impact his decision"); *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 885
7 (9th Cir.2006) (holding that an error is harmless if it was "inconsequential to the
8 ultimate nondisability determination").

9 Here, while this Court certainly does not condone the ALJ's omission of the
10 "uneven terrain" finding from her analysis, that error was harmless and does not
11 warrant a remand for the reasons outlined above.

12 **C. Step Five Analysis**

13 At step five of the sequential evaluation, the burden is on the Commissioner to
14 show that (1) the claimant can perform other substantial gainful activity and (2) a
15 "significant number of jobs exist in the national economy" which the claimant can
16 perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984). If a claimant cannot
17 return to his previous job, the Commissioner must identify specific jobs existing in
18 substantial numbers in the national economy that the claimant can perform. See
19 *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir.1995).

1 The Commissioner may carry this burden by “eliciting the testimony of a
2 vocational expert in response to a hypothetical that sets out all the limitations and
3 restrictions of the claimant.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.1995).
4 The ALJ's depiction of the claimant's disability must be accurate, detailed, and
5 supported by the medical record. *Gamer v. Secretary of Health and Human Servs.*,
6 815 F.2d 1275, 1279 (9th Cir.1987). “If the assumptions in the hypothetical are not
7 supported by the record, the opinion of the vocational expert that claimant has a
8 residual working capacity has no evidentiary value.” *Gallant v. Heckler*, 753 F.2d
9 1450, 1456 (9th Cir. 1984).

10 Here, the ALJ relied on the vocational expert’s testimony to support her step
11 five findings that Plaintiff retained the RFC to perform three representative,
12 sedentary jobs that exist in significant numbers in the national economy. (T at 19).
13 Plaintiff notes, correctly, that the ALJ did not include the “uneven terrain” limitation
14 in the hypothetical presented to the vocational expert. (T at 49-52). This was error.
15 The ALJ was obliged to either reject that limitation, and explain why by reference to
16 substantial evidence, or accept the limitation and include it in the hypothetical.

17 However, this was harmless error for the reasons outlined above. Plaintiff
18 offers no evidence or argument that including the uneven terrain limitation would
19 have changed the vocational expert’s testimony. Indeed, a review of the *Dictionary*

1 of *Occupational Titles* (“DOT”) descriptions for each of the positions identified by
2 the vocational expert (and accepted by the ALJ) finds no indication of any
3 requirement to ambulate on uneven terrain as part of these sedentary jobs, which are
4 performed in an office environment.³ As such, this Court finds no reversible error as
5 to this aspect of the ALJ’s decision.

6 7 V. CONCLUSION

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

17 _____
18 ³ The Social Security Administration has taken administrative notice of the *Dictionary of*
19 *Occupational Titles*, which is published by the Department of Labor and gives detailed physical
20 requirements for a variety of jobs.” *Massachi v. Astrue*, 486 F.3d 1149, 1152 n. 8 (9th Cir.
2007)(citing 20 C.F.R. § 416.966(d)(1)).

1 **VI. ORDERS**

2 IT IS THEREFORE ORDERED that:

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

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

6 DATED this 14th day of November 2017,

7 /s/Victor E. Bianchini
8 VICTOR E. BIANCHINI
9 UNITED STATES MAGISTRATE JUDGE