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

OBED B. QUINTERO,
Plaintiff,

v.

NANCY A. BERRYHIL,¹
Acting Commissioner of the
Social Security Administration,
Defendant.

Case No. EDCV 17-0435 SS

MEMORANDUM DECISION AND ORDER

I.

INTRODUCTION

Plaintiff Obed B. Quintero ("Plaintiff") brings this action seeking to overturn the decision of the Commissioner of the Social Security Administration (the "Commissioner" or the "Agency") denying his application for Supplemental Security Income ("SSI").

¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security and is substituted for former Acting Commissioner Carolyn W. Colvin in this case. See Fed. R. Civ. P. 25(d).

1 (Dkt. No. 8). Alternatively, he asks for a remand. (Id.). On
2 March 13, 2017, Plaintiff filed a complaint (the "Complaint")
3 commencing the instant action. (Id.). On July 27, 2017, Defendant
4 filed an Answer to the Complaint (the "Answer"). (Dkt. No. 19).
5 The parties have consented to the jurisdiction of the undersigned
6 United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).
7 (Dkt. Nos. 12, 14). For the reasons stated below, the decision of
8 the Commissioner is AFFIRMED.

9
10 **II.**

11 **PROCEDURAL HISTORY**

12
13 On August 29, 2013, Plaintiff filed an application for SSI
14 under Title XVI. (Administrative Record ("AR") 75, 180).
15 Plaintiff's application alleges disability beginning on February
16 22, 2013 due to "major depression, pain in abdomen, fatigue,
17 prolonged symptoms such as blood in stool, knee and hip and back
18 pain, [and] sleep apnea." (AR 75, 215). Plaintiff's SSI
19 application was denied both initially on January 10, 2014 and upon
20 reconsideration on March 14, 2014. (AR 103-06, 110-14).

21
22 On March 26, 2014, Plaintiff requested a hearing by an
23 Administrative Law Judge ("ALJ"). (AR 115-17). The hearing took
24 place in Moreno Valley, California on August 27, 2015 with ALJ
25 Andrew Verne presiding. (AR 37-74). On October 28, 2015, ALJ
26 Verne issued an unfavorable decision, finding Plaintiff able to
27 perform "a range of light work." (AR 16-36). On November 5, 2015,
28 Plaintiff requested review of the ALJ's decision before the Appeals

1 Council. (AR 15). On January 26, 2017, the Appeals Council denied
2 Plaintiff's request for review and the ALJ's decision became the
3 final decision of the Commissioner. (AR 1-7).

4
5
6 **III.**

7 **FACTUAL BACKGROUND**

8
9 Plaintiff was born on June 29, 1964 and was 49 years old at
10 the alleged onset date of disability on August 29, 2013. (AR 75).
11 Plaintiff stopped working on that date. (AR 215).

12
13 **A. Plaintiff's Medical History²**

14
15 On December 16, 2011, Plaintiff went to the Emergency Room at
16 Menifee Valley Medical Center. (AR 285). He complained of rectal
17 bleeding, fleeting abdominal pain and feeling weak throughout his
18 body. (AR 285). The doctor noted Plaintiff weighed approximately
19 247 pounds. (AR 285). Plaintiff's height is approximately six
20 feet. (AR 315). The doctor also noted a history of hypertension
21 and gallbladder disease with gallstones. (AR 285). Plaintiff
22 stated that he was not taking any medications. (AR 286). He also
23 reported smoking at least one pack of cigarettes per day. (AR
24

25 _____
26 ² Plaintiff also alleged mental impairments and other physical
27 impairments. However, in his brief before this Court, Plaintiff
28 only challenges the ALJ's consideration of treating physician Dr.
Sharif's opinions. Accordingly, the Court limits the medical
history discussion to that history which is relevant to Dr.
Sharif's opinions.

1 286). Plaintiff presented with a blood pressure of 201/104 mmHg.
2 (AR 286). He also had visible hemorrhoids. (AR 286). The doctor
3 assessed Plaintiff with "hemorrhoidal bleeding, rectal; and
4 hypertension, acute." (AR 287). Plaintiff received treatment for
5 the hypertension. (AR 287). The doctor prescribed blood pressure
6 medication and gave Plaintiff instructions on hemorrhoids, high
7 blood pressure, and blood pressure medication. (AR 287, 289-94).

8
9 On August 20, 2012, Plaintiff went to the Emergency Room at
10 Riverside County Regional Medical Center. (AR 370). Plaintiff
11 complained of chest pain, anxiety, blurry vision and fatigue. (AR
12 393). He reported he ran out of blood pressure medication two
13 weeks earlier. (AR 393). The doctor refilled his blood pressure
14 medication. (AR 395).

15
16 Plaintiff first sought treatment for knee and hip pain at the
17 Family Care Clinic at Riverside County Regional Medical Center on
18 November 16, 2012. (AR 388). He complained of pain in his right
19 knee and hip. (AR 388). The doctor ordered x-rays of Plaintiff's
20 right knee and hip. (AR 388). The doctor also prescribed tramadol
21 for pain after Plaintiff stated he did not want a narcotic. (AR
22 388, 390).

23
24 On April 2, 2013, Plaintiff went to the Emergency Room at
25 Menifee Valley Medical Center. (AR 297). He complained of pain
26 in his right flank radiating from his back into his groin area.
27 (AR 297). The doctor noted a history of kidney stones and
28 hypertension. (AR 297). A CT scan revealed Plaintiff had a 5 mm

1 ureteral stone near mid pelvis on his right side. (AR 298). The
2 doctor diagnosed Plaintiff with right ureterolithiasis and treated
3 him. (AR 298). The Radiology Report on Plaintiff's CT scan further
4 concluded Plaintiff had colonic diverticula without inflammation,
5 multiple small kidney stones and gallbladder stones. (AR 305-06).
6 The doctor prescribed an antibiotic and Lortab and gave Plaintiff
7 instructions on the medications. (AR 298, 307-10).

8
9 On April 18, 2013, Plaintiff went to the Emergency Room at
10 Menifee Valley Medical Center. (AR 312). He complained of pain
11 in his right flank area again. (AR 312). The doctor diagnosed
12 him with a kidney stone on his right side. (AR 313). The doctor
13 treated him and discharged him. (AR 313).

14
15 On April 22, 2013, Plaintiff sought treatment at the Family
16 Care Clinic at Riverside County Regional Medical Center. (AR 382).
17 Plaintiff complained of pain from kidney stones. (AR 382). The
18 clinic prescribed medication. (AR 383-87).

19
20 On April 30, 2013, Plaintiff went to the Family Care Clinic
21 at Riverside County Regional Medical Center. (AR 370). Plaintiff
22 had a follow-up visit since he was previously diagnosed with kidney
23 stones. (AR 370). The doctor found Plaintiff's musculoskeletal
24 and psychiatric presentations were normal. (AR 371). The doctor
25 also ordered a sleep study and managed Plaintiff's medications.
26 (AR 372).

1 On May 15, 2013, Plaintiff sought treatment at the Family Care
2 Clinic at Riverside County Regional Medical Center. (AR 374).
3 Plaintiff complained of blood in his stool and fatigue. (AR 374).
4 The clinic refilled his medication. (AR 376). He also underwent
5 ultrasounds of his bladder and pelvis as well as his abdomen. (AR
6 410-11). The ultrasound of his bladder and pelvis revealed no
7 abnormal findings. (AR 410). The ultrasound of his abdomen
8 revealed an enlarged liver and gallbladder stones. (AR 411).

9
10 On June 4, 2013, Plaintiff went to the Family Care Clinic at
11 Riverside County Regional Medical Center. (AR 365). He requested
12 refills of his pain and hypertension medications. (AR 365).
13 Plaintiff reported using an antidepressant. (AR 365). The doctor
14 noted Plaintiff was negative for joint pain and had normal
15 psychiatric findings. (AR 366). The doctor refilled Plaintiff's
16 medication but also changed his medications because he was not
17 experiencing renal issues. (AR 367). On July 17, 2013, Plaintiff
18 underwent a sleep apnea assessment. (AR 794). The test concluded
19 that Plaintiff has sleep apnea. (AR 794).

20
21 On July 9, 2013, Plaintiff went to the Emergency Room at
22 Riverside County Regional Medical Center. (AR 353). He requested
23 a refill of his pain and hypertension medication. (AR 353). The
24 doctor partially refilled Plaintiff's medication but directed him
25 to follow up with his primary care provider. (AR 353). The doctor
26 noted lower back and hip pain. (AR 353). On July 11, 2013, a
27 medical summary was prepared by the Gastro-Enterology department.
28 (AR 363). In that summary, it was reported that Plaintiff smoked

1 a pack of cigarettes daily, used alcohol occasionally, and used
2 marijuana daily. (AR 363). On an August 8, 2013 report for a
3 psychiatric evaluation, the doctor noted that Plaintiff stated he
4 "drank alcohol and used marijuana [after his divorce], as he had
5 when he was an older adolescent/young adult. Pt. denies a history
6 of other illicit drug use and reports he is not drinking more than
7 once or twice a month at this time." (AR 360),

8
9 On July 15, 2013, Plaintiff went to the Emergency Room at
10 Riverside County Regional Medical Center. (AR 346). He complained
11 of generalized weakness, depression, and having a reaction to
12 medication. (AR 346). The notes describe Plaintiff as having a
13 flat affect. (AR 347). The doctor ordered an echocardiogram
14 ("ECG") which revealed sinus bradycardia and ST junctional
15 depression nonspecific. (AR 347).

16
17 On September 3, 2013, Plaintiff saw Dr. Yi-Pin Cheng at
18 Riverside County Regional Medical Center. (AR 336). Plaintiff
19 requested pain pills for joint pain. (AR 343). Plaintiff claimed
20 he normally receives 180 pills per month. (AR 343). Dr. Cheng
21 noted Plaintiff had chronic pain in his back, knee, and hip but
22 did not have saddle anesthesia. (AR 344). Dr. Cheng wrote
23 "[e]ncourage exercise and lose weight." (AR 344). Dr. Cheng
24 partially renewed Plaintiff's prescriptions for
25 hydrochlorothiazide, tramadol, and amlodipine. (AR 336). However,
26 Dr. Cheng advised Plaintiff he needed to return to his primary care
27 provider to obtain a full refill of his pain pills. (AR 343). Dr.

28

1 Cheng observed Plaintiff was properly oriented and displayed the
2 appropriate mood and affect. (AR 344).

3
4 On September 18, 2013, Plaintiff sought treatment at the
5 Family Care Clinic at Riverside County Regional Medical Center.
6 (AR 337). He complained of rectal bleeding which he reported had
7 been ongoing for the last six months. (AR 337). Additionally, he
8 reported a history of right knee pain resulting from an injury to
9 his ACL when he was 19 years old. (AR 337). Plaintiff also said
10 he felt "achy" and "heavy." (AR 337). During this visit, the
11 clinic noted Plaintiff had "normal range of motion, muscle
12 strength, and stability in all extremities with no pain on
13 inspection." (AR 338). The clinic further noted Plaintiff was
14 properly oriented, exhibited normal judgment and demonstrated "the
15 appropriate mood and affect." (AR 339). The clinic found Plaintiff
16 was stable and noted "no need for admission based on symptoms and
17 vitals." (AR 339). The clinic took an x-ray of Plaintiff's knee,
18 referred him to physical therapy, and continued his medication.
19 (AR 339).

20
21 The x-ray taken of Plaintiff's knee on September 18, 2013
22 revealed no acute problems with the knee. (AR 409). The x-ray
23 included three views of the knee. (AR 409). The doctor found the
24 knee was "unremarkable" but did state a joint effusion could not
25 be excluded based on the x-rays. (AR 409).

26
27 On March 25, 2014, Plaintiff completed a physical therapy
28 questionnaire for Cure Physical Therapy and Wellness Center ("Cure

1 PT"). (AR 488). He was referred to Cure PT by Dr. Sharif. (AR
2 489). Plaintiff complained of back, hip, right knee and right
3 wrist pain. (AR 488). In response to the question "Approximately
4 when did your current complaints start?" Plaintiff wrote "Approx.
5 1 yr. ago." (AR 488). He attended physical therapy from March 25
6 through July 30, 2014 for a total of thirteen sessions. (AR 489-
7 503).

8
9 On July 9, 2014, Plaintiff underwent an x-ray of his abdomen
10 and an ultrasound of his kidneys. (AR 616-17). The doctor found
11 the results of the x-ray showed "[m]ild degenerative changes of
12 the bilateral hips and pubic symphysis" but were non-definitive
13 regarding kidney stones. (AR 617). The doctor found the results
14 of the ultrasound were most compatible with nonobstructing left
15 renal stones. (AR 616).

16
17 On July 18, 2014, Plaintiff underwent an x-ray of his right
18 shoulder. (AR 612). The x-ray revealed "inferior acromial
19 osteophyte". (AR 612). On September 8, 2014, Plaintiff completed
20 a physical therapy questionnaire for Cure PT. (AR 504). He
21 complained of right shoulder pain. (AR 504). He stated his current
22 complaint started one month prior. (AR 504). He attended physical
23 therapy for his right shoulder from September 8 through December
24 19, 2014 for a total of 9 visits. (AR 505-13).

25
26 On October 16, 2014, Plaintiff underwent an x-ray of his
27 lumbar spine. (AR 595). Three views revealed mild osteoarthritic
28 changes at L4-5 including disc height loss and mild

1 anterolisthesis. (AR 595). The x-rays also revealed mild
2 levoscoliosis of the lumbar spine centered at L3. (AR 595).

3
4 On January 15, 2015, Plaintiff had an initial evaluation for
5 physical therapy at "Cure PT". (AR 514). He was referred to Cure
6 PT by Dr. Sharif. (AR 515). He complained of lower back pain.
7 (AR 514). He reported he had experienced this pain since he was
8 19 years old but that it began to increase 2 years ago. (AR 514).
9 He attended physical therapy for his lower back from January 15
10 through May 1, 2015 for a total of 9 visits. (AR 522).

11
12 On March 5, 2015, Plaintiff underwent an x-ray of his right
13 hip. (AR 584). The x-ray impression was "normal right hip". (AR
14 584).

15
16 On May 12, 2015, Plaintiff received an injection to his right
17 hip to help alleviate pain. (AR 570-72). He also received a
18 recommendation for physical therapy for his right hip. (AR 573).
19 On June 25, 2015, Plaintiff completed a physical therapy
20 questionnaire for "Cure PT". (AR 523). He complained of hip and
21 lower back pain. (AR 523). The physical therapist felt Plaintiff's
22 right hip should be the focus of treatment because of possible
23 bursitis. (AR 524). Plaintiff's record shows he started physical
24 therapy for his right hip on June 25, 2015 with recommended
25 treatment to last for four weeks with two visits per week. (AR
26 524). The physical therapist observed that Plaintiff had treatment
27 with the "Cure" facility previously, which "[Plaintiff] notes has
28 provided good relief." (AR 524).

1 **B. Treating Physician Opinion**

2

3 On June 26, 2015, Plaintiff's treating physician, Dr. Subhi

4 Sharif, filled out a medical opinion form related to Plaintiff's

5 physical ability to do work-related tasks. (AR 663-65). He stated

6 that Plaintiff can occasionally lift ten pounds or less. (AR

7 663). He indicated that Plaintiff can stand and walk for less than

8 two hours and can sit for less than two hours during an eight-hour

9 day with normal breaks. (AR 663). Dr. Sharif further qualified

10 that Plaintiff can only stand for ten minutes and sit for fifteen

11 minutes before needing to alter position to relieve discomfort.

12 (AR 663). He stated that Plaintiff needs to walk around every

13 fifteen minutes and he needs to be able to alternate freely between

14 sitting and standing. (AR 664). Dr. Sharif also indicated

15 Plaintiff would need to lie down "several times a day" during

16 working hours. (AR 664). According to Dr. Sharif, Plaintiff can

17 only occasionally twist, stoop, crouch, and climb stairs and can

18 never climb ladders. (AR 664). Plaintiff's ability to reach,

19 handle, feel, and push/pull are impaired. (AR 664). His ability

20 to finger or use fine manipulation is not impaired. (AR 664). He

21 has no restriction on exposure to wetness. (AR 665). He needs to

22 avoid even moderate exposure to humidity, noise, and fumes, odors,

23 dusts, gases, poor ventilation, etc. (AR 665). Dr. Sharif opined

24 that Plaintiff would miss work more than three times a month as a

25 result of his impairments. Finally, Dr. Sharif believes that

26 Plaintiff must avoid all exposure to extreme cold and heat and

27 hazards such as machinery and heights. (AR 665).

28

1 Dr. Sharif found all of these restrictions were based on
2 Plaintiff's "significant bone degeneration[,] the slipped disks in
3 vertebrae[,] arthritis in spine[, and] pain (chronic)." (AR 664).
4 Additionally, Dr. Sharif stated Plaintiff has depression which
5 causes anxiety and his chronic pain restricts him from working.
6 (AR 665). Dr. Sharif is a general practitioner. (AR 559).

7
8 **C. State Agency Doctors**

9
10 **1. Initial Level Residual Assessment**

11
12 On January 9, 2014, State Agency Medical Consultant Dr. A.
13 Wong completed the Residual Assessment of Plaintiff. (AR 75-84).
14 For the physical limitations assessment, Dr. Wong found Plaintiff
15 can occasionally lift 50 pounds and can frequently lift 25 pounds.
16 (AR 83). Dr. Wong also found Plaintiff can stand and/or walk about
17 6 hours in an 8-hour work day and can sit for about 6 hours in an
18 8-hour workday. (AR 83). Dr. Wong found the Plaintiff can push
19 and/or pull subject to the lifting limitations. (AR 83). Dr. Wong
20 found Plaintiff's postural limitations were such that he can
21 frequently climb ramps, ladders and stairs, balance, stoop, kneel,
22 crouch and crawl. (AR 83-84). Dr. Wong did not find any
23 manipulative, visual, communicative or environmental limitations.
24 (AR 84).

1 **2. Reconsideration Level Residual Assessment**

2

3 On March 13, 2014, State Agency Medical Consultant Dr. Mazuryk

4 completed the Residual Assessment of Plaintiff at the

5 reconsideration level. (AR 88-101). Dr. Mazuryk found Plaintiff

6 had the same exertional limitations as the initial level Residual

7 Assessment except that Plaintiff could only occasionally lift 20

8 pounds and frequently lift 10 pounds. (AR 97). Dr. Mazuryk found

9 that Plaintiff can sit, stand and walk about 6 hours in an 8-hour

10 work day. (AR 97). For Plaintiff's postural limitations, Dr.

11 Mazuryk found Plaintiff could only occasionally climb ramps,

12 ladders and stair, balance, stoop, kneel, crouch and crawl. (AR

13 97). Dr. Mazuryk found no manipulative, visual or communicative

14 limitations. (AR 97). However, Dr. Mazuryk did find environmental

15 limitations. (AR 97). Dr. Mazuryk stated Plaintiff needed to

16 avoid concentrated exposure to extreme cold, vibration, and hazards

17 such as machinery and heights. (AR 98). Dr. Mazuryk explained

18 that Plaintiff needed to avoid cold and vibration because it could

19 exacerbate his pain. (AR 98). Dr. Mazuryk further stated Plaintiff

20 should avoid uneven terrain because it might cause his right knee

21 might to become unstable. (AR 98).

22

23 Overall, the State Agency doctors at the reconsideration level

24 found Plaintiff was not disabled and had the residual functional

25 capacity to perform light work. (AR 94, 100). Dr. Mazuryk found

26 Plaintiff could perform some of his past relevant work. (AR 99-

27 100).

1 **D. Orthopedic Consultant**

2
3 Dr. Vicente R. Bernabe, a board certified orthopedic surgeon,
4 examined Plaintiff on December 13, 2013. (AR 418-23). Plaintiff
5 reported low back, right hip and right knee pain. (AR 418). He
6 stated he "tore his right knee" when he was 19 but did not have
7 surgery to repair it and has experienced pain since then. (AR
8 418). He also stated his current treatment only involved pain
9 medications including Tramadol. (AR 418). He reported
10 occasionally using a cane but not a knee brace. (AR 418). The
11 doctor further noted Plaintiff's family history included his father
12 having "arthritis and bone and joint disease." (AR 419).

13
14 Dr. Bernabe concluded Plaintiff had "lumbar musculoligamentus
15 strain, internal derangement of the right knee, and greater
16 trochanteric bursitis of the right hip." (AR 422). The doctor
17 observed Plaintiff could walk without a cane and perform a fifty
18 percent squat. (AR 419). The doctor found Plaintiff was "tender
19 at the lumbosacral region" and observed a paravertebral muscle
20 spasm on Plaintiff's left side. (AR 420). However, the straight-
21 leg raise test returned negative results bilaterally both in the
22 seated position to 90 degrees and the supine position. (AR 420).
23 Plaintiff's right shoulder had the same range of motion as his left
24 shoulder. (AR 420). He also had a negative cross arm adduction
25 test. (AR 420). The doctor found Plaintiff's right shoulder had
26 no instability. (AR 420). Plaintiff experienced pain when Dr.
27 Bernabe palpated his right hip along the greater trochanter area.
28 (AR 421). However, the doctor found Plaintiff's range of motion

1 in both hips was within normal limits. (AR 421). His right knee
2 had 1+ effusion and tenderness at the medial patella femoral joint
3 line with crepitus. (AR 421). However, the doctor found
4 Plaintiff's right knee ligament appeared to be stable. (AR 421).

5
6 Dr. Bernabe took two radiological views of Plaintiff's lumbar
7 spine, right knee and right hip each. (AR 422). The views of the
8 lumbar spine revealed straightening of the lumbar lordosis. (AR
9 422). However, Plaintiff's intervertebral disc spaces were
10 preserved and there was no compression fracture or dislocation.
11 (AR 422). The views of the right knee showed no findings. (AR
12 422). The views of the right hip also resulted in no findings.
13 (AR 422).

14
15 Dr. Bernabe completed a functional assessment of Plaintiff.
16 (AR 422). He opined that Plaintiff can lift and carry 50 pounds
17 occasionally and 25 pounds frequently. (AR 422). He found no
18 limitations on Plaintiff's pushing and pulling abilities. (AR
19 422). He opined that Plaintiff can walk and stand for six hours
20 out of an eight-hour work day. (AR 422). He further opined that
21 Plaintiff can sit for six hours out of an eight-hour work day. (AR
22 422). He also found Plaintiff can bend, kneel, stoop, crawl and
23 crouch frequently and can walk on uneven terrain, climb ladders
24 and work at heights frequently. (AR 422).

1 IV.

2 THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

3
4 To qualify for disability benefits, a claimant must
5 demonstrate a medically determinable physical or mental impairment
6 that prevents him from engaging in substantial gainful activity³
7 and that is expected to result in death or to last for a continuous
8 period of at least twelve months. Reddick v. Chater, 157 F.3d 715,
9 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The
10 impairment must render the claimant incapable of performing the
11 work he previously performed and incapable of performing any other
12 substantial gainful employment that exists in the national economy.
13 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42
14 U.S.C. § 423(d)(2)(A)).

15
16 To decide if a claimant is entitled to benefits, an ALJ
17 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The
18 steps are:

- 19
20 (1) Is the claimant presently engaged in substantial gainful
21 activity? If so, the claimant is found not disabled. If
22 not, proceed to step two.
- 23 (2) Is the claimant's impairment severe? If not, the claimant
24 is found not disabled. If so, proceed to step three.
- 25 (3) Does the claimant's impairment meet or equal one of a list
26

27
28 ³ Substantial gainful activity means work that involves doing
significant and productive physical or mental duties and is done
for pay or profit. 20 C.F.R. §§ 404.1510, 416.910.

1 of specific impairments described in 20 C.F.R. Part 404,
2 Subpart P, Appendix 1? If so, the claimant is found
3 disabled. If not, proceed to step four.

4 (4) Is the claimant capable of performing his past work? If
5 so, the claimant is found not disabled. If not, proceed to
6 step five.

7 (5) Is the claimant able to do any other work? If not, the
8 claimant is found disabled. If so, the claimant is found
9 not disabled.

10
11 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,
12 262 F.3d 949, 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b) -
13 404.1520(f) (1) & 416.920(b) - 416.920(f) (1).

14
15 The claimant has the burden of proof at steps one through
16 four, and the Commissioner has the burden of proof at step five.
17 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an
18 affirmative duty to assist the claimant in developing the record
19 at every step of the inquiry. Id. at 954. If, at step four, the
20 claimant meets his burden of establishing an inability to perform
21 past work, the Commissioner must show that the claimant can perform
22 some other work that exists in "significant numbers" in the
23 national economy, taking into account the claimant's residual
24 functional capacity,⁴ age, education, and work experience.
25 Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20
26

27
28 ⁴ Residual functional capacity is "what [one] can still do despite
[his] limitations" and represents an "assessment based upon all of
the relevant evidence." 20 C.F.R. §§ 404.1545(a), 416.945(a).

1 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1) (2017). The Commissioner
2 may do so by the testimony of a vocational expert or by reference
3 to the Medical-Vocational Guidelines appearing in 20 C.F.R. Part
4 404, Subpart P, Appendix 2 (commonly known as "the Grids").
5 Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a
6 claimant has both exertional (strength-related) and nonexertional
7 limitations, the Grids are inapplicable and the ALJ must take the
8 testimony of a vocational expert. Moore v. Apfel, 216 F.3d 864,
9 869 (9th Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340
10 (9th Cir. 1988)).

11
12 **V.**

13 **THE ALJ'S DECISION**

14
15 The ALJ used the above five-step process and found Plaintiff
16 was not disabled according to the Social Security Act. (AR 19-
17 31). At step one, the ALJ found Plaintiff had not engaged in
18 substantial gainful activity from the application date of August
19 29, 2013. (AR 21). At step two, the ALJ found Plaintiff had
20 following severe impairments:

21 "pain in the hip, knees, and back; lumbar
22 musculoligamentous strain; internal derangement of
23 of the right knee; and greater trochanteric bursitis
of the right hip."

24 (AR 21). The ALJ further found Plaintiff's hemorrhoids with rectal
25 bleeding, hypertension and depressive disorder with anxiety were
26 nonsevere impairments. (AR 21-23).

1 At step three, the ALJ found Plaintiff's impairments did not
2 meet or medically equal in whole or in part any of the specific
3 impairments as required under this step of the process. (AR 24).
4 Next, the ALJ determined Plaintiff's residual functional capacity
5 for use in steps four and five. (AR 25-31). The ALJ found
6 Plaintiff had the RFC to perform light work with certain
7 exceptions:

8
9 "the claimant can lift and/or carry 20 pounds
10 occasionally and 10 pounds frequently; he can
11 stand and/or walk for six hours out of an eight-
12 hour work day with regular breaks; he can sit for
13 six hours out of an eight-hour workday with
14 regular breaks; he can occasionally climb ramps
15 and stairs; he can occasionally climb ladders,
16 ropes, and scaffolds, stoop, balance, kneel,
17 crouch, and crawl; he is precluded from
18 concentrated exposure to extreme cold, wetness,
19 vibration, uneven terrain and hazards including
20 machinery and unprotected heights." (AR 25).

21 Based on this residual functional capacity, at step four the
22 ALJ found Plaintiff is capable of performing some of his past
23 relevant work. (AR 30). Thus, the ALJ found Plaintiff was not
24 disabled under the Social Security Act. (AR 31).

25 VI.

26 STANDARD OF REVIEW

27 Under 42 U.S.C. § 405(g), a district court may review the
28 Commissioner's decision to deny benefits. The court may set aside
the Commissioner's decision when the ALJ's findings are based on
legal error or are not supported by substantial evidence in the

1 record as a whole. Garrison v. Colvin, 759 F.3d 995 (9th Cir.
2 2014) (citing Stout v. Comm’r, Soc. Sec. Admin., 454 F.3d 1050, 1052
3 (9th Cir. 2006); Auckland v. Massanari, 257 F.3d 1033, 1035 (9th
4 Cir. 2001) (citing Tackett, 180 F.3d at 1097); Smolen v. Chater, 80
5 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v. Bowen, 885 F.2d 597,
6 601 (9th Cir. 1989)).

7
8 “Substantial evidence is more than a scintilla, but less than
9 a preponderance.” Reddick, 157 F.3d at 720 (citing Jamerson v.
10 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is “relevant
11 evidence which a reasonable person might accept as adequate to
12 support a conclusion.” Id. (citing Jamerson, 112 F.3d at 1066;
13 Smolen, 80 F.3d at 1279). To determine whether substantial
14 evidence supports a finding, the court must “consider the record
15 as a whole, weighing both evidence that supports and evidence that
16 detracts from the [Commissioner’s] conclusion.” Auckland, 257 F.3d
17 at 1035 (citing Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)).
18 If the evidence can reasonably support either affirming or
19 reversing that conclusion, the court may not substitute its
20 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-
21 21 (citing Flaten v. Sec’y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

22 23 **VII.**

24 **DISCUSSION**

25
26 Plaintiff contends the ALJ failed to properly consider the
27 opinion of treating physician, Subhi Sharif, M.D. (Memorandum In
28 Support Of Plaintiff’s Complaint (“MSC”), Dkt. No. 21, at 2-6).

1 Specifically, Plaintiff argues that "the ALJ failed to provide
2 specific and legitimate reasons supported by substantial evidence
3 for rejecting" Dr. Sharif's opinion. (Id. at 4).

4
5 The Court disagrees with Plaintiff's contentions. The ALJ
6 provided specific and legitimate reasons supported by substantial
7 evidence for rejecting Dr. Sharif's opinion. Accordingly, the
8 ALJ's decision must be AFFIRMED.

9
10 **The ALJ Provided Specific And Legitimate Reasons To Reject**
11 **Plaintiff's Treating Doctor's Opinion**

12
13 As a matter of law, the greatest weight is accorded to the
14 claimant's treating physician. Ghanim v. Golvin, 763 F.3d 1154,
15 1160-61 (9th Cir. 2014). The opinions of treating physicians are
16 entitled to special weight because the treating physician is hired
17 to cure and has a better opportunity to know and observe the
18 claimant as an individual. Id. Further, as a general rule, when
19 a treating or examining physician's opinion is not contradicted by
20 another physician, it may be rejected only for "clear and
21 convincing" reasons. See Trevizo v. Berryhill, 871 F.3d 664, 675
22 (9th Cir. 2017). The ALJ can meet this burden by setting forth a
23 detailed and thorough summary of the facts. Trevizo, 871 F.3d at
24 675.
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1 When a treating or an examining physician's opinion is
2 contradicted by another doctor, it may only be rejected if the ALJ
3 provides "specific and legitimate" reasons supported by substantial
4 evidence in the record. See Garrison v. Colvin, 759 F.3d 995, 1012
5 (9th Cir. 2014); see also Orn v. Astrue, 495 F.3d 625, 633 (9th
6 Cir. 2007).

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8
9 Here, Consultative Examiner Vincente Bernabe, D.O., and the
10 State Agency Medical Consultants contradicted treating doctor
11 Sharif's opinion. (Compare AR 663-65 with AR 82-84, 96-98 and 418-
12 23). Dr. Sharif opined that Plaintiff can lift and carry 10 pounds
13 at most, and can sit, stand, and walk 2 hours in an 8-hour day.
14 (AR 663). Consultative examiner Dr. Bernabe and the State Agency
15 Medical Consultants opined Plaintiff can lift and carry at least
16 20 pounds occasionally, and can sit, stand, and walk 6 hours in an
17 8-hour day. (AR 83, 97, and 422). Because of the conflicting
18 opinions, the ALJ is required to provide "specific and legitimate"
19 reasons for rejecting Dr. Sharif's opinion.

20
21 The Court finds that the ALJ provided specific and legitimate
22 reasons supported by substantial evidence for rejecting Dr.
23 Sharif's opinion. Specifically, in the written decision, the ALJ
24 summarized the objective medical evidence prior to assigning weight
25 to the opinions of the physicians. In assigning little weight to
26 Dr. Sharif's opinion, the ALJ provided three specific and
27 legitimate reasons.

1 First, the ALJ explained that Dr. Sharif's opinion is "grossly
2 [inconsistent] with the x-rays contained in the record, which
3 revealed no more than mild findings." (AR 29). There is sufficient
4 evidence in the record to support the ALJ's determination. With
5 regard to Plaintiff's hip, x-rays taken in 2013 and 2015 both
6 revealed a "Normal right hip." (AR 422, 584). Similarly, x-rays
7 of plaintiff's right knee taken in September and December 2013
8 revealed unremarkable findings. (AR 409, 422). Plaintiff had x-
9 rays performed of his right shoulder, which revealed that he had
10 "inferior acromial osteophyte," but there is no evidence that
11 Plaintiff received more than routine physical therapy treatment
12 for any shoulder pain. (AR 612). Finally, X-rays of Plaintiff's
13 lumbar spine also yielded unremarkable findings. X-rays taken in
14 2013 revealed that Plaintiff had a "straightening of the lumbar
15 lordosis" but his lumbar spine was otherwise normal. (AR 422).
16 X-rays taken on October 16, 2014 revealed that Plaintiff had only
17 mild osteoarthritic changes and mild levoscoliosis. (AR 595).
18 These largely unremarkable x-ray results do not support Dr.
19 Sharif's extremely limiting opinions. Accordingly, the x-ray
20 results are a specific and legitimate reason for rejecting Dr.
21 Sharif's opinion.

22
23 Second, the ALJ rejected Dr. Sharif's opinion because it was
24 "inconsistent with the general benign findings from the orthopedic
25 consultative examination." (AR 29). Plaintiff argues that this
26 is not a specific and legitimate reason because the ALJ gave little
27 weight to the consultative examiner's opinion. (MSC at 6).
28 Plaintiff's argument lacks merit because the ALJ did not reject

1 Dr. Sharif's opinion based on the consultative examiner's opinion.
2 Instead, the ALJ found that Dr. Sharif's opinion was inconsistent
3 with the "benign findings" of the consultative examination. (AR
4 29). There is sufficient evidence in the record to support the
5 ALJ's determination. The consultative examiner performed a
6 physical examination, which reflected that Plaintiff was in "no
7 acute or chronic distress." (AR 419). Further, Plaintiff does
8 not use a brace. (AR 418). Although Plaintiff claims to use a
9 cane, it is "not medically necessary." (AR 419). The consultative
10 examiner observed plaintiff ambulate without a cane and walked
11 unassisted. (AR 419). The examination of Plaintiff's spine and
12 extremities was largely unrevealing. (See AR 420-21). Finally, as
13 mentioned above, the consultative examiner performed x-rays of
14 Plaintiff's lumbar spine, right knee, and right hip, which all
15 yielded unremarkable findings. (AR 422). These benign findings
16 do not support Dr. Sharif's extremely limiting opinions.
17 Accordingly, the benign findings of the consultative examination
18 are a specific and legitimate reason for rejecting Dr. Sharif's
19 more limiting opinion.

20
21 Third, the ALJ wrote that it appears Dr. Sharif was
22 "sympathetic" to Plaintiff as Dr. Sharif's opinions are not
23 "supported by the longitudinal treatment notes." (AR 29). While
24 Plaintiff challenges the ALJ's comment that Dr. Sharif was
25 "sympathetic" to Plaintiff as an improper basis to reject a
26 treating doctor, Plaintiff overlooks the entire reason provided by
27 the ALJ. The ALJ expressly stated that the "longitudinal treatment
28

1 notes" do not support the degree of limitation suggested by the
2 treating doctor.

3
4 Reliance upon the longitudinal treatment notes -- essentially
5 the totality of Plaintiff's treatment history -- was a specific
6 and legitimate reason to reject Dr. Sharif's extremely limiting
7 opinion. When completing the questionnaire regarding Plaintiff's
8 physical capability, Dr. Sharif did not distinguish any of the
9 treatment notes or contrary test results to explain his
10 determinations. Instead, Dr. Sharif repeatedly listed "pain" as
11 the reason for the limitations. (See AR 664-65). The longitudinal
12 treatment notes show that Plaintiff received physical therapy and
13 pain medication for his symptoms, but the treatment notes
14 themselves fail to support the degree of limitation suggested by
15 Dr. Sharif. Accordingly, the conflict with the treatment record
16 was a specific and legitimate reason for rejecting Dr. Sharif's
17 opinion.

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VIII.

CONCLUSION

Consistent with the foregoing, IT IS ORDERED that Judgment be entered AFFIRMING the decision of the Commissioner and dismissing this action with prejudice. IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment on counsel for both parties.

DATED: December 5, 2017

/s/

SUZANNE H. SEGAL
UNITED STATES MAGISTRATE JUDGE

THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW, LEXIS OR ANY OTHER LEGAL DATABASE.