

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

HAROLD HOLCOMB,	)	Case No. EDCV 17-1341-JPR
	)	
Plaintiff,	)	
	)	<b>MEMORANDUM DECISION AND ORDER</b>
v.	)	<b>AFFIRMING COMMISSIONER</b>
	)	
NANCY A. BERRYHILL, Acting	)	
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	
<hr/>	)	

**I. PROCEEDINGS**

Plaintiff seeks review of the Commissioner's final decision denying his application for supplemental security income benefits ("SSI"). The parties consented to the jurisdiction of the undersigned under 28 U.S.C. § 636(c). The matter is before the Court on the parties' Joint Stipulation, filed April 30, 2018, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner's decision is affirmed.

1 **II. BACKGROUND**

2 Plaintiff was born in 1962. (Administrative Record ("AR")  
3 38.) He completed high school (AR 39) and has no relevant work  
4 experience (see AR 23, 40).

5 In August or September 2013,<sup>1</sup> Plaintiff filed an application  
6 for SSI, alleging that he had been disabled since August 8, 2013,  
7 because of a stroke, difficulty speaking, diabetes, high blood  
8 pressure, right-side paralysis, depression, and morbid obesity.  
9 (AR 57, 61, 148.) After his application was denied initially and  
10 on reconsideration, he requested a hearing before an  
11 Administrative Law Judge. (AR 86, 95, 102-03.) A hearing was  
12 held on March 30, 2016, at which Plaintiff, who was represented  
13 by counsel, testified, as did a vocational expert. (AR 34-56,  
14 145.) In a written decision issued May 6, 2016, the ALJ found  
15 Plaintiff not disabled. (AR 17-33.) Plaintiff requested Appeals  
16 Council review (AR 147), which was denied on May 3, 2017 (AR 1-  
17 5). This action followed.

18 **III. STANDARD OF REVIEW**

19 Under 42 U.S.C. § 405(g), a district court may review the  
20 Commissioner's decision to deny benefits. The ALJ's findings and  
21 decision should be upheld if they are free of legal error and  
22 supported by substantial evidence based on the record as a whole.  
23 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra  
24 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial

---

25  
26 <sup>1</sup> Both the ALJ (AR 17) and the state-agency reviewers (AR  
27 57) noted an application date of August 15, 2013. But the  
28 parties list the application date as September 6, 2013. (J.  
Stip. at 2; see also AR 148 (SSI application dated Sept. 6,  
2013).) Under either date, the ALJ's decision is affirmed.

1 evidence means such evidence as a reasonable person might accept  
2 as adequate to support a conclusion. Richardson, 402 U.S. at  
3 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).  
4 It is more than a scintilla but less than a preponderance.  
5 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.  
6 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether  
7 substantial evidence supports a finding, the reviewing court  
8 "must review the administrative record as a whole, weighing both  
9 the evidence that supports and the evidence that detracts from  
10 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,  
11 720 (9th Cir. 1998). "If the evidence can reasonably support  
12 either affirming or reversing," the reviewing court "may not  
13 substitute its judgment" for the Commissioner's. Id. at 720-21.

#### 14 **IV. THE EVALUATION OF DISABILITY**

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

##### 22 A. The Five-Step Evaluation Process

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

1 not disabled and the claim must be denied. § 416.920(a)(4)(i).

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

8 If the claimant has a "severe" impairment or combination of  
9 impairments, the third step requires the Commissioner to  
10 determine whether the impairment or combination of impairments  
11 meets or equals an impairment in the Listing of Impairments set  
12 forth at 20 C.F.R. part 404, subpart P, appendix 1; if so,  
13 disability is conclusively presumed. § 416.920(a)(4)(iii).

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

23 If that happens or if the claimant has no past relevant  
24

---

25 <sup>2</sup> RFC is what a claimant can do despite existing exertional  
26 and nonexertional limitations. § 416.945; see Cooper v.  
27 Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). The  
28 Commissioner assesses the claimant's RFC between steps three and  
four. Laborin v. Berryhill, 867 F.3d 1151, 1153 (9th Cir. 2017)  
(citing § 416.920(a)(4)).

1 work, the Commissioner then bears the burden of establishing that  
2 the claimant is not disabled because he can perform other  
3 substantial gainful work available in the national economy.

4 § 416.920(a)(4)(v); Drouin, 966 F.2d at 1257. That determination  
5 comprises the fifth and final step in the sequential analysis.  
6 § 416.920(a)(4)(v); Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d  
7 at 1257.

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

9 At step one, the ALJ found that Plaintiff had not engaged in  
10 substantial gainful activity since the application date. (AR  
11 19.) At step two, he concluded that Plaintiff had the following  
12 severe impairments: "status post ischemic stroke; degenerative  
13 disc disease of lumber spine; mild left hip degenerative joint  
14 disease; and obesity." (Id.) At step three, he determined that  
15 Plaintiff's impairments did not meet or equal a Listing. (AR  
16 22.)

17 At step four, the ALJ found that Plaintiff had the RFC to  
18 perform a limited range of light work:

19 [He] is able to lift and carry 20 pounds occasionally and  
20 10 pounds frequently; stand and walk for six hours each  
21 in an eight-hour workday; and sit for six hours in an  
22 eight-hour workday. [He] is limited to occasional  
23 climbing but never climbing ladders, ropes or scaffolds,  
24 and frequent balancing. [He] can perform unskilled work.  
25 (Id.) The ALJ found that he had no past relevant work. (AR 27.)

26 At step five, the ALJ concluded that given Plaintiff's age,  
27 education, work experience, and RFC, he could perform three  
28 representative jobs in the national economy. (AR 28.) Thus, the

1 ALJ found Plaintiff not disabled. (AR 28-29.)

2 **V. DISCUSSION<sup>3</sup>**

3 Plaintiff argues that the ALJ erroneously rejected his  
4 subjective symptom statements. (J. Stip. at 4-11.) But as  
5 discussed below, the ALJ did not err and remand is not warranted.  
6 Because the ALJ's RFC and step-five analyses may have been based  
7 in part on his adverse credibility assessment, the Court  
8 construes Plaintiff's briefing liberally to include indirect  
9 challenges to them.

10 A. Applicable Law

11 An ALJ's assessment of a claimant's allegations concerning  
12 the severity of his symptoms is entitled to "great weight." See  
13 Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989) (as  
14 amended); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985) (as  
15 amended Feb. 24, 1986). "[T]he ALJ is not 'required to believe  
16 every allegation of disabling pain, or else disability benefits  
17 would be available for the asking, a result plainly contrary to  
18 42 U.S.C. § 423(d)(5)(A).'" Molina v. Astrue, 674 F.3d 1104,  
19 1112 (9th Cir. 2012) (quoting Fair v. Bowen, 885 F.2d 597, 603  
20 (9th Cir. 1989)).

21 In evaluating a claimant's subjective symptom testimony, the  
22

---

23 <sup>3</sup> In Lucia v. SEC, 585 U.S. \_\_\_, 2018 WL 3057893, at \*8  
24 (2018), the Supreme Court recently held that ALJs of the  
25 Securities and Exchange Commission are "Officers of the United  
26 States" and thus subject to the Appointments Clause. To the  
27 extent Lucia applies to Social Security ALJs, Plaintiff has  
28 forfeited the issue by failing to raise it during his  
administrative proceedings. (See AR 36-56, 147; J. Stip. at 4-  
11, 16-17); Meanel v. Apfel, 172 F.3d 1111, 1115 (9th Cir. 1999)  
(as amended) (plaintiff forfeits issues not raised before ALJ or  
Appeals Council).

1 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d  
2 at 1035-36; see also SSR 16-3p, 2016 WL 1119029, at \*3 (Mar. 16,  
3 2016). "First, the ALJ must determine whether the claimant has  
4 presented objective medical evidence of an underlying impairment  
5 [that] could reasonably be expected to produce the pain or other  
6 symptoms alleged." Lingenfelter, 504 F.3d at 1036. If such  
7 objective medical evidence exists, the ALJ may not reject a  
8 claimant's testimony "simply because there is no showing that the  
9 impairment can reasonably produce the degree of symptom alleged."  
10 Smolen v. Chater, 80 F.3d 1273, 1282 (9th Cir. 1996) (emphasis in  
11 original).

12 If the claimant meets the first test, the ALJ may discredit  
13 the claimant's subjective symptom testimony only if he makes  
14 specific findings that support the conclusion. See Berry v.  
15 Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent a finding or  
16 affirmative evidence of malingering, the ALJ must provide "clear  
17 and convincing" reasons for rejecting the claimant's testimony.  
18 Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir. 2015) (as  
19 amended); Treichler v. Comm'r of Soc. Sec. Admin., 775 F.3d 1090,  
20 1102 (9th Cir. 2014). The ALJ may consider, among other factors,  
21 (1) ordinary techniques of credibility evaluation, such as the  
22 claimant's reputation for lying, prior inconsistent statements,  
23 and other testimony by the claimant that appears less than  
24 candid; (2) unexplained or inadequately explained failure to seek  
25 treatment or to follow a prescribed course of treatment; (3) the  
26 claimant's daily activities; (4) the claimant's work record; and  
27 (5) testimony from physicians and third parties. Rounds v.  
28 Comm'r Soc. Sec. Admin., 807 F.3d 996, 1006 (9th Cir. 2015) (as

1 amended); Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir.  
2 2002). If the ALJ's assessment of the claimant's subjective  
3 symptom statements is supported by substantial evidence in the  
4 record, the reviewing court "may not engage in second-guessing."  
5 Thomas, 278 F.3d at 959.

6 B. Relevant Background

7 1. *Medical Records*

8 On March 13, 2013, Plaintiff was admitted to a hospital  
9 emergency room after being hit by a car. (AR 239-40.) He  
10 complained of hip and back pain (AR 239-40, 243-44) and received  
11 x-rays of his lumbosacral spine (AR 243) and left hip (AR 244).  
12 The spine x-ray demonstrated "mild dextroscoliosis,"  
13 "[m]ultilevel degenerative disc disease," "lumbar spondylosis,"  
14 and "[m]arginal spurring." (AR 243.) It also showed "no  
15 compression fractures or subluxation," and the "sacroiliac  
16 joints" and "transverse processes and pedicles" were all  
17 "intact." (Id.) The hip x-ray showed "[m]ild degenerative joint  
18 disease" and was otherwise unremarkable. (AR 244.)

19 On August 8, 2013, the alleged onset date, Plaintiff went to  
20 an emergency room after noticing "facial droop" on the right side  
21 of his face and slurred speech. (AR 306.) An MRI of his brain  
22 revealed two "small" foci of acute ischemia and evidence of  
23 "small vessel disease." (AR 246.) On examination, his gait was  
24 ataxic, he had slurred speech, and he was "unable to write using  
25 [a] pen." (AR 307.) But his arm strength was "5/5," and his  
26 extremities were functioning normally. (Id.) He was diagnosed  
27 as having suffered an ischemic stroke and admitted to the  
28 hospital. (Id.)



1 As an inpatient, Plaintiff was seen by a physical therapist,  
2 speech therapist, and occupational therapist. (AR 271.) On  
3 August 9, 2013, the physical therapist noted that he was  
4 independent in almost all areas of functional activity, including  
5 standing up and "ambulation," and used no assistive device for  
6 ambulation or standing. (AR 279.) The therapist recommended an  
7 occupational-therapy assessment and speech-therapy services but  
8 no further physical therapy. (Id.) The speech therapist that  
9 same day noted some right-side weakness and speech and swallowing  
10 issues. (AR 276.) On August 11, 2013, the occupational  
11 therapist found that his right arm was performing "[within  
12 functional limits]" but at "3+/5" strength and that his grip  
13 strength was "3/5." (AR 274.) The hospital discharged him on  
14 August 13, 2013. (AR 270.)

15 An outpatient note from August 20, 2013, stated that he was  
16 referred to "PT/speech therapy." (AR 298.) An exam that day  
17 indicated that his right-hand strength was "4-/5" and his upper-  
18 right-arm strength was "4/5." (AR 293.) He returned for  
19 occupational therapy on September 12, 2013, during which his  
20 right hand, shoulder, and arm strength were "4/5" each. (AR 266-  
21 67.) Speech-therapy notes from the same day showed mild to  
22 moderate issues with speech intelligibility and conversation and  
23 mild oral motor-functioning issues. (AR 268.) No further  
24 documentation of occupational, speech, or physical therapy exists  
25 in the record.

26 By September 26, 2013, his right hand and leg had "5/5"  
27 strength and his right arm had "5-/5" strength, which the  
28 attending doctor noted had "improved from [the] last visit." (AR

1 299.)<sup>4</sup> On November 14, 2013, he was operating within normal  
2 limits and had full "5/5" strength in his upper extremities and  
3 right hand. (AR 294, 297.)

4 Plaintiff was seen again on February 14, 2014. (AR 292.)  
5 He had "residual slurred speech." (AR 295.) No issues with his  
6 right arm, hand, or leg were noted, and his "[m]usculoskeletal"  
7 functioning was within normal limits. (AR 292, 295.)

8 Thereafter, Plaintiff visited an emergency room in April 2014 for  
9 a dog bite on his right hand (AR 305) and again in July 2014 for  
10 diabetes complications (AR 319). No other visits with medical  
11 professionals are contained in the record.

## 12 2. Consulting and Reviewing Doctors

13 On January 31, 2014, consulting neurologist Sarah L. Maze  
14 met with Plaintiff and reviewed his medical records, which  
15 included a recent MRI of his brain and x-ray of his lumbar spine.  
16 (AR 281.) Plaintiff reported that he had "weakness in [his]  
17 right arm and right leg," "move[d] very slowly," and had "had low  
18 back pain for many years." (Id.) On examination he was noted as  
19 having "br[ought] a single-point cane," and "he st[ood] slowly"  
20 and "walk[ed] with a slightly widened base." (AR 283.) Dr. Maze  
21 noted that Plaintiff was "somewhat unsteady when standing" and  
22 had "slight residual weakness in the right hand." (Id.) Her  
23 motor examination found that his right arm and hand were  
24 operating at "5-/5" strength and that his grip strength was

---

25  
26 <sup>4</sup> A shower chair was apparently recommended by the doctor  
27 that day, seemingly as treatment for stroke-related symptoms.  
28 (AR 296.) The outpatient occupational-therapy evaluation from  
two weeks earlier, however, indicated that he was already using a  
shower chair at the time. (AR 267.)

1 "60/60 on the right and 20/20 on the left." (AR 282-83.)

2 Dr. Maze concluded that Plaintiff could "occasionally lift  
3 20 pounds and frequently lift 10 pounds," "stand and walk  
4 independently for six hours of an 8-hour workday," "sit six hours  
5 of an 8-hour workday," and "perform fine detailed movements with  
6 the right arm without restriction." (AR 283.) In March and July  
7 2014, respectively, internist Nancy Armstrong (AR 69) and  
8 otolaryngologist K. Wahl (AR 83) found the same after reviewing  
9 Plaintiff's medical records. (See AR 65-66, 79-80.)

10 3. *Plaintiff's Statements*

11 Plaintiff represented in his SSI application that he "[did]  
12 not need help in personal care, hygiene or upkeep of a home" (AR  
13 149), but a function report completed by his mother in December  
14 2013 suggested that he was unable to dress himself, put on shoes  
15 or socks, shave, bathe, eat, or use the toilet on his own (AR  
16 181-88).<sup>5</sup> She attributed these issues to his "arm." (AR 182.)  
17 She also claimed that he used a wheelchair "sometimes," a walker,  
18 and a shower chair. (AR 187-88.) In a May 2014 exertion  
19 questionnaire, he similarly claimed that he was unable to "do  
20 to[o] much," including "tie [his] shoe," because of the lack of  
21 function in his "right side." (AR 212.) He stated that he could  
22 not walk far, "[e]specially in the heat," and had a "bad" back.  
23 (Id.) He explicitly wrote, "[I] don't lift anything bec[a]use I

---

24  
25 <sup>5</sup> The ALJ treated this function report as a third-party  
26 report representing the mother's own statements. (AR 27.) The  
27 report is at times written in the first person from Plaintiff's  
28 perspective, however. (See AR 181.) To the extent the report  
represents Plaintiff's own statements, it is considered as part  
of his subjective symptom allegations.

1 was hit by [a] car[.]” (AR 213.)

2 At his March 30, 2016 hearing, Plaintiff reiterated that he  
3 had difficulty dressing and getting in the shower, though he did  
4 not mention needing assistance with either. (AR 44.) He  
5 remarked that he could not be in the sun long without getting  
6 “woozy.” (AR 43.) He confirmed that he used a cane but stated,  
7 “I try not to.” (AR 44.) He also “[couldn’t] move around that  
8 much because of the stroke.” (Id.) He reported walking “a block  
9 and back” for exercise. (AR 45.) When asked if he could walk  
10 “throughout an eight-hour period,” he replied that he could not  
11 because he would “feel woozy” and that “sometimes if it’s hot [he  
12 was] not going to be out there trying to commit another stroke.”  
13 (AR 47.) When asked if he could lift things, he said he wouldn’t  
14 want to because he didn’t want to fall or have “another stroke.”  
15 (AR 50.) He said that he could lift two gallons of milk but  
16 could not carry even one gallon throughout an eight-hour day  
17 because of difficulty walking, specifically, in keeping his  
18 balance. (Id.) He claimed he had difficulty standing up and  
19 that he could stand “maybe for a good hour” before wanting “to  
20 sit down again.” (AR 51.) He also claimed that his “right hand”  
21 was “partially paralyzed . . . from the stroke.” (AR 52.)

22 Regarding treatment, he mentioned that he had seen a speech  
23 therapist but had stopped because he “[didn’t] have  
24 transportation” and “it was too far.” (AR 42, 54.) He did not  
25 have a car, so he either got rides from family or friends or  
26 “[would] take the bus when [he had] money.” (AR 42, 46.) He  
27 could use the bus on his own, he testified. (AR 46.) Plaintiff  
28 reported that he still got “checked up all the time.” (Id.) He

1 was walking to a healthcare center "a block-and-a-half down,"  
2 presumably from where he lived, which he visited "two or three  
3 times out of the month." (Id.) He discussed seeing a "Dr.  
4 Emblue" regarding his legs. (AR 51.) He stated that he was  
5 seeing a "foot doctor" for "new shoes" and that he planned to see  
6 an "eye doctor" next. (AR 44.)<sup>6</sup>

7 C. Analysis

8 The ALJ partially discounted Plaintiff's testimony because  
9 it was "not entirely consistent with the medical evidence and  
10 other evidence in the record." (AR 24.) Plaintiff argues that  
11 in making this finding, the ALJ erred for two reasons. (J. Stip.  
12 at 4-11.) Neither warrants remand, however.

13 First, Plaintiff argues that the ALJ's use of "boilerplate  
14 language" was "woefully insufficient" to reject his subjective  
15 symptom testimony. (Id. at 6-7.) He takes issue with the ALJ's  
16 conclusion that

17 [a]fter careful consideration of the evidence, the  
18 undersigned finds that [Plaintiff's] medically  
19 determinable impairments could reasonably be expected to  
20 cause some of the alleged symptoms; however,  
21 [Plaintiff's] statements concerning the intensity,  
22 persistence, and limiting effects of these symptoms are  
23 not entirely consistent with the medical evidence and  
24 other evidence in the record for the reasons explained  
25 throughout this decision.

---

26  
27 <sup>6</sup> There are no records of checkups at any local health  
28 center, nor are there records of visits with any "Dr. Emblue" or  
a "foot doctor."

1 (Id. at 6 (citing AR 24).) Although the ALJ certainly used some  
2 prefatory boilerplate language, as is common, he did not err  
3 because he explained throughout his decision acceptable reasons  
4 for discrediting Plaintiff's testimony. See Treichler, 775 F.3d  
5 at 1103 ("After making this boilerplate statement, the ALJs  
6 typically identify what parts of the claimant's testimony were  
7 not credible and why."); Tipton v. Colvin, No. 1:13-cv-00359-REB,  
8 2014 WL 4773964, at \*6 & n.5 (D. Idaho Sept. 24, 2014) ("Though  
9 the use of such common boilerplate language runs the risk of  
10 'getting things backwards,' its mere use is not cause for remand  
11 if the ALJ's conclusion is followed by sufficient reasoning."  
12 (citation omitted)).

13 Second, Plaintiff contends that the ALJ erred by rejecting  
14 his testimony for only its inconsistency with the objective  
15 medical evidence. (J. Stip. at 7-8.) But the ALJ in fact  
16 provided another reason for discrediting his statements:  
17 Plaintiff failed to seek "follow-up treatment." (See AR 24-26.)  
18 Because both reasons were clear and convincing, remand is  
19 unwarranted.

20 1. *Medical Records Contradicted Plaintiff's Testimony*

21 Contradiction with evidence in the medical record is a  
22 "sufficient basis" for rejecting a claimant's subjective symptom  
23 testimony. Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155,  
24 1161 (9th Cir. 2008); see Morgan v. Comm'r of Soc. Sec. Admin.,  
25 169 F.3d 595, 600 (9th Cir. 1999) (upholding "conflict between  
26 [plaintiff's] testimony of subjective complaints and the  
27 objective medical evidence in the record" as "specific and  
28 substantial" reason undermining credibility). Although a lack of

1 medical evidence "cannot form the sole basis for discounting pain  
2 testimony, it is a factor that the ALJ can consider in his  
3 credibility analysis."<sup>7</sup> Burch v. Barnhart, 400 F.3d 676, 681 (9th  
4 Cir. 2005); Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir.  
5 2001). Here, the ALJ properly discounted Plaintiff's testimony  
6 by considering its inconsistency with the medical record.

7 First, Plaintiff claimed stroke-related weakness on his  
8 right side. (See, e.g., AR 52 (testifying that his right hand  
9 was "partially paralyzed . . . from the stroke"), 182 (claiming  
10 inability to do many things because of right-arm issues), 212  
11 (stating that he was unable to "do to[o] much" because of his  
12 paralysis).) This weakness was allegedly so severe that he  
13 needed help to dress himself (AR 43-44, 181-82), put on shoes (AR  
14 181, 212), shave (AR 181-83, 185), bathe (AR 44, 182, 185), eat  
15 (AR 181-82), and use the toilet on his own (AR 182-83, 188).

16 Yet within two months of his stroke, Plaintiff's medical  
17 records showed that his right hand, arm, and leg had "improved"  
18 to "5/5" strength and were functioning within normal limits.  
19 (See, e.g., AR 274 (Aug. 11, 2013: right-hand strength "3+/5"),  
20 293 (Aug. 20, 2013: hand strength at "4-/5" and upper-right-arm  
21 strength at "4/5"), 299 (Sept. 2013: strength at "5/5"), 297  
22 (Nov. 2013: strength at "5/5"), 282-83 (Jan. 2014: Dr. Maze  
23 finding only "slight residual weakness" and right-side strength  
24 was "5-/5"), 295 (Feb. 2014: "Musculoskeletal" within normal

---

26  
27 <sup>7</sup> Plaintiff thus incorrectly states that inconsistency with  
28 objective medical evidence is "always" a "legally insufficient"  
basis for discrediting a claimant's testimony. (J. Stip. at 7-  
8.)

1 limits).) There was no mention of problems with his right hand  
2 or side when he was seen on February 14, 2014, even though his  
3 visit that day specifically addressed other continuing side  
4 effects from the stroke. (AR 295.) Further, medical records  
5 after February 2014 make no mention of any stroke-related  
6 symptoms whatsoever. (See AR 305 (Apr. 2014: emergency-room  
7 visit for dog bite to right hand), 319 (July 2014: emergency-room  
8 visit for diabetes complications)); see also Womeldorf v.  
9 Berryhill, 685 F. App'x 620, 621 (9th Cir. 2017) ("[ALJ] properly  
10 discounted [plaintiff's] severity claims by pointing to . . . the  
11 nature of the medical evidence itself[.]").

12 Second, Plaintiff's claimed walking, standing, and lifting  
13 limitations, which he attributed to his hip and back (see AR 50,  
14 212-13), were also unsupported by the record. The ALJ properly  
15 noted that the only medical records regarding his hip or back  
16 were from his March 2013 emergency-room visit (before the  
17 relevant period) and the January 2014 opinion of Dr. Maze. (AR  
18 25-26, 239-40, 243-44, 281-84.) Although his March 2013 lumbar-  
19 spine x-ray showed "[m]ultilevel degenerative disc disease" (AR  
20 243) and his hip x-ray that same day showed "[m]ild degenerative  
21 joint disease" (AR 244), Dr. Maze reviewed those images, examined  
22 Plaintiff, and found that he could "stand and walk independently  
23 for six hours of an 8-hour workday" and "occasionally lift 20  
24 pounds and frequently lift 10 pounds" (AR 283). No doctor opined  
25 otherwise. Dr. Maze's findings contradicted Plaintiff's claims  
26 that he could stand for only an hour (AR 51), walk two blocks a  
27 day (AR 45), and not lift "anything" (AR 213). See Leak v.  
28 Berryhill, No. 5:16-CV-01501-SK, 2017 WL 7833633, at \*2 (C.D.



1 Cal. Aug. 14, 2017) (ALJ properly rejected plaintiff's subjective  
2 testimony in part because it was inconsistent with x-rays showing  
3 only "mild" ailments and findings of consultative examiner who  
4 assessed "no functional limitations").

5 Plaintiff apparently sometimes used a cane. (AR 44.) But  
6 none of the medical evidence suggested that it was prescribed,  
7 and Plaintiff explained that "he [tried] not to" use it,

8 suggesting that it was elective rather than necessary. (Id.)

9 Moreover, just after his stroke, on August 8, 2013, a physical  
10 therapist noted that Plaintiff was independent in standing and  
11 walking and did not need an assistive device. (AR 279.)

12 Plaintiff brought a cane to his evaluation with Dr. Maze, but she  
13 observed that "he [was] able to stand and walk alone." (AR 283);

14 see also Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999)

15 (ALJ properly discounted credibility when claimant "walked slowly  
16 and used a cane at the hearing" even though no doctor indicated  
17 he used or needed assistive device and two doctors noted he did  
18 not need one); Castaneda v. Astrue, 344 F. App'x 396, 398 (9th  
19 Cir. 2009) (upholding adverse credibility determination when  
20 claimant asserted difficulty walking and use of cane and back  
21 brace but had been prescribed neither and used neither at  
22 hearing).

23 Further, the ALJ found that Plaintiff had few "subjective  
24 complaints" on record regarding his hip and back. (AR 26.) At  
25 his hearing, when Plaintiff was asked why he would be unable to  
26 walk consistently throughout an eight-hour day, he did not  
27 mention any hip or back pain; instead, he focused on fears that  
28 he would have another stroke, stating, "I feel woozy and

1 sometimes if it's hot I'm not going to be out there trying to  
2 commit another stroke." (AR 47.) Those statements suggest that  
3 any alleged hip or back issues were not as severe or as limiting  
4 as Plaintiff claimed.<sup>8</sup> Cf. McCawley v. Astrue, 423 F. App'x 687,  
5 689-90 (9th Cir. 2011) ("The ALJ also discounted [plaintiff]'s  
6 excess pain testimony because she failed to complain to her  
7 treating physicians of extreme pain.").

8 Finally, the ALJ properly considered that Plaintiff's claims  
9 were undermined by the consulting and reviewing doctors'  
10 opinions. See Rounds, 807 F.3d at 1006; Thomas, 278 F.3d at  
11 958-59. As previously noted, Dr. Maze found a much lesser degree  
12 of limitation than that claimed by Plaintiff. (See AR 283.) Her  
13 assessments, moreover, were corroborated by the state-agency  
14 reviewers' similar findings. (See AR 57-68, 70-82, 285-89.) And  
15 the ALJ gave each of those uncontradicted opinions "great weight"  
16 (AR 26), which Plaintiff hasn't challenged on appeal.

17 Thus, substantial medical evidence contradicted Plaintiff's  
18 subjective symptom statements, and the ALJ appropriately  
19 considered that in his credibility assessment.

---

21 <sup>8</sup> Plaintiff's allegations of stroke-related wooziness,  
22 moreover, were unsupported by the record. Although the ALJ noted  
23 it (AR 24) and likely "reasonably account[ed]" for it in the RFC  
24 as part of Plaintiff's "status post ischemic stroke" (AR 25; see  
25 also AR 22 (RFC limiting him to "occasional climbing but never  
26 climbing ladders, rope or scaffolds, and frequent balancing")),  
27 outside the hearing the only mention of wooziness was when  
28 Plaintiff denied it. (AR 299 (Sept. 2013: "[Plaintiff] denies  
any dizziness"); see also AR 312 (July 2014: negative for  
dizziness).) And Plaintiff's purported fears of having another  
stroke, too, were unsupported by the record. Indeed, the ALJ  
considered his alleged mental impairments and found them  
nonsevere, a finding he hasn't challenged on appeal.

1           2.    *Failure to Seek Treatment*

2           An "unexplained, or inadequately explained, failure to seek  
3 treatment" is a clear and convincing reason for discounting the  
4 credibility of a claimant's subjective symptom statements.  
5 Bunnell v. Sullivan, 947 F.2d 341, 346-47 (9th Cir. 1991) (en  
6 banc); accord Molina, 674 F.3d at 1113; Tommasetti v. Astrue, 533  
7 F.3d 1035, 1039 (9th Cir. 2008); see also SSR 16-3p, 2016 WL  
8 1119029, at \*8 ("[I]f the frequency or extent of the treatment  
9 sought by an individual is not comparable with the degree of the  
10 individual's subjective complaints . . . we may find the alleged  
11 intensity and persistence of an individual's symptoms [to be]  
12 inconsistent with the overall evidence of record."). Here, the  
13 ALJ properly found that Plaintiff failed to seek treatment for  
14 his allegedly disabling impairments. (See, e.g., AR 24  
15 ("[F]ollow-up treatment essentially stopped shortly after  
16 February 2014.").)

17           Indeed, Plaintiff received no follow-up treatment for any  
18 alleged hip or back pain after March 2013. (See AR 239 (only  
19 hip/back treatment of record).) And he received no follow-up  
20 treatment for his right arm or hand after September 12, 2013,  
21 despite alleging disability well beyond then. (See AR 267 (last  
22 occupational-therapy visit).) Indeed, Plaintiff complained of  
23 such issues in his December 2013 function report (AR 181-88) and  
24 May 2014 exertion questionnaire (AR 212-14) but apparently  
25 declined to seek treatment at the time or during near-  
26 contemporaneous hospital visits (see AR 305 (Apr. 2014:  
27 emergency-room visit after dog bit his right hand), 319 (July  
28 2014: emergency room and hospital admission from diabetes

1 complications)); see also Gilder v. Berryhill, 703 F. App'x 597,  
2 598 (9th Cir. 2017) (upholding ALJ's finding that plaintiff's  
3 "sporadic treatment history" and failure to seek treatment  
4 "despite the availability" of suitable healthcare "undermined his  
5 testimony").

6 Plaintiff had some follow-up treatment for a month following  
7 his August 8, 2013 stroke. (AR 267-68, 298.) He was recommended  
8 for continued treatment at his occupational- and speech-therapy  
9 visits on September 12, 2013, yet he discontinued them after that  
10 date. (See AR 267 (occupational-therapy treatment plan set to  
11 last six weeks), 269 (speech therapy to continue additional  
12 month)); see also Bunnell, 947 F.2d at 346-47. Plaintiff  
13 reported that he failed to pursue speech therapy because it was  
14 too "far" and he lacked "transportation," but he also testified  
15 that he could take a bus on his own if he had to. (AR 46.)  
16 Though he "sometimes" didn't have money for it, he nonetheless  
17 had the funds and means to attend his initial follow-up visits,  
18 see a "foot doctor" for "new shoes," and get "checkups all the  
19 time" at a local healthcare center. (AR 44, 46); cf. Bubion v.  
20 Barnhart, 224 F. App'x 601, 604 (9th Cir. 2007) ("[Plaintiff]  
21 said she lacked transportation to physical therapy . . . [but]  
22 her statement was not credible since she drove to other  
23 locations."). Further, by the time of his hearing, he testified  
24 that he had plans to see an "eye doctor" in addition to his other  
25 ongoing treatment. (AR 44.) He did not mention plans to see  
26 doctors about his arm, hip, or back despite noting related  
27 impairments just moments earlier. (See AR 43-44.)

28 Thus, Plaintiff's failure to pursue treatment during the

1 relevant period for his allegedly disabling impairments was  
2 properly considered by the ALJ in discounting his subjective  
3 symptom testimony.<sup>9</sup>

4 **VI. CONCLUSION**

5 Consistent with the foregoing and under sentence four of 42  
6 U.S.C. § 405(g),<sup>10</sup> IT IS ORDERED that judgment be entered  
7 AFFIRMING the Commissioner's decision, DENYING Plaintiff's  
8 request for remand, and DISMISSING this action with prejudice.

9  
10 DATED: June 27, 2018

  
\_\_\_\_\_  
JEAN ROSENBLUTH  
U.S. Magistrate Judge

11  
12  
13  
14  
15  
16  
17 <sup>9</sup> Defendant argues that the ALJ further discounted  
18 Plaintiff's testimony based on his "exaggerated statements"  
19 regarding his daily activities and on his "spotty and minimal  
20 work history." (J. Stip. at 13-14.) Neither reason was provided  
21 by the ALJ as a basis for discounting Plaintiff's statements'  
22 credibility, however. The ALJ's discussion of Plaintiff's daily  
23 activities was in his step-two analysis; there, he concluded that  
24 Plaintiff had no severe mental impairment in part because he had  
25 "no limitation" in his activities of daily living stemming from  
psychiatric issues. (AR 21.) And the ALJ simply noted the  
sparse nature of Plaintiff's work history without tying it to his  
credibility. (See AR 23); Bray v. Comm'r of Soc. Sec. Admin.,  
554 F.3d 1219, 1225 (9th Cir. 2009) (district court must "review  
the ALJ's decision based on the reasoning and factual findings  
offered by the ALJ – not post hoc rationalizations that attempt  
to intuit what the adjudicator may have been thinking").

26 <sup>10</sup> That sentence provides: "The [district] court shall have  
27 power to enter, upon the pleadings and transcript of the record,  
28 a judgment affirming, modifying, or reversing the decision of the  
Commissioner of Social Security, with or without remanding the  
cause for a rehearing."