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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JEFFERY L.C.,	)	NO. ED CV 17-1956-E
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM OPINION</b>
	)	
NANCY A. BERRYHILL, Acting	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	
	)	

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**PROCEEDINGS**

Plaintiff filed a Complaint on September 26, 2017, seeking review of the Commissioner's denial of disability benefits. On April 25, 2018, this action was reassigned to Magistrate Judge Eick upon the resignation of Magistrate Judge Gandhi (to whom the action originally was assigned). On April 26, 2018, the parties consented to proceed before a Magistrate Judge. On February 12, 2019, the parties filed a "Joint Stipulation." The Court construes the arguments in the "Joint Stipulation" as the parties' cross-motions for summary judgment. The Court has taken these motions under submission without oral argument.

1 **BACKGROUND**

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3 Plaintiff asserted disability since December 18, 2013, based  
4 primarily on alleged knee, back and hip pain (Administrative Record  
5 ("A.R.") 36-53). An Administrative Law Judge ("ALJ") examined the  
6 record and heard testimony from Plaintiff and a vocational expert  
7 (A.R. 16-686).

8  
9 The ALJ found Plaintiff "has the following severe impairments:  
10 subtle tear in the medial meniscus right knee; degenerative changes  
11 lumbar spine; osteoarthritis in the right hip; and obesity" (A.R. 19).  
12 The ALJ also found, however, that Plaintiff retains the residual  
13 functional capacity to perform a reduced range of light work (A.R.  
14 22). In reliance on the testimony of the vocational expert, the ALJ  
15 determined that a person having such capacity could perform jobs  
16 existing in significant numbers in the national economy (A.R. 27; see  
17 A.R. 59-61). The Appeals Council denied review (A.R. 1-4).

18  
19 Plaintiff now raises a single issue. Plaintiff argues that the  
20 ALJ erred by failing to accept the opinions of Dr. Troy Handojo  
21 regarding Plaintiff's functional capacity. Dr. Handojo, one of  
22 Plaintiff's primary care physicians, opined Plaintiff lacks any  
23 capacity for light work (A.R. 684-86).

24  
25 **STANDARD OF REVIEW**

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27 Under 42 U.S.C. section 405(g), this Court reviews the  
28 Administration's decision to determine if: (1) the Administration's

1 findings are supported by substantial evidence; and (2) the  
2 Administration used correct legal standards. See Carmickle v.  
3 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,  
4 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner,  
5 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such  
6 relevant evidence as a reasonable mind might accept as adequate to  
7 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401  
8 (1971) (citation and quotations omitted); see also Widmark v.  
9 Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

10  
11 If the evidence can support either outcome, the court may  
12 not substitute its judgment for that of the ALJ. But the  
13 Commissioner's decision cannot be affirmed simply by  
14 isolating a specific quantum of supporting evidence.  
15 Rather, a court must consider the record as a whole,  
16 weighing both evidence that supports and evidence that  
17 detracts from the [administrative] conclusion.

18  
19 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and  
20 quotations omitted).

21  
22 **DISCUSSION**

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24 After consideration of the record as a whole, Defendant's motion  
25 is granted and Plaintiff's motion is denied. The Administration's  
26 findings are supported by substantial evidence and are free from

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1 material<sup>1</sup> legal error.

2  
3 The ALJ did not err by discounting Dr. Handojo's opinions  
4 regarding Plaintiff's residual functional capacity. Unlike the other  
5 physicians of record who rendered opinions regarding Plaintiff's  
6 functional capacity,<sup>2</sup> Dr. Handojo opined Plaintiff cannot perform any  
7 light work. According to Dr. Handojo, Plaintiff cannot frequently  
8 lift and carry as much as ten pounds and cannot stand and walk as much  
9 as a total of two hours during an eight hour day (A.R. 684). Where,  
10 as here, a treating physician's opinion is contradicted, "if the ALJ  
11 wishes to disregard the opinion[s] of the treating physician he [or  
12 she] . . . must make findings setting forth specific, legitimate  
13 reasons for doing so that are based on substantial evidence in the  
14 record." Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987)  
15 (citation, quotations and brackets omitted); see Rodriguez v. Bowen,  
16 876 F.2d 759, 762 (9th Cir. 1989) ("The ALJ may disregard the treating  
17 physician's opinion, but only by setting forth specific, legitimate  
18 reasons for doing so, and this decision must itself be based on  
19 substantial evidence") (citation and quotations omitted). Contrary to  
20 Plaintiff's arguments, the ALJ stated sufficient reasons for  
21 discounting Dr. Handojo's opinions.

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25 <sup>1</sup> The harmless error rule applies to the review of  
26 administrative decisions regarding disability. See Garcia v.  
27 Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v.  
Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011).

28 <sup>2</sup> See A.R. 72-74, 97-104, 110-17, 418-22.

1           The ALJ aptly characterized Dr. Handojo's assessment of  
2 Plaintiff's standing and walking restrictions as "excessive" in  
3 comparison with "examination findings in the record," and the ALJ  
4 accurately stated that "the weight of the evidence simply does not  
5 support a sedentary functional capacity" (A.R. 25). Relevant  
6 examination findings included the following: Plaintiff was able to  
7 walk without a cane; a March, 2014 xray of Plaintiff's knee was  
8 "unremarkable without fracture or degenerative disease"; in late 2015,  
9 knee xrays showed only early osteoarthritis; at the same time, an MRI  
10 showed only a possible subtle meniscus tear; at the same time, lumbar  
11 spine xrays showed only moderate degenerative change; scans of  
12 Plaintiff's right hip in 2014 and 2015 showed only moderate  
13 osteoarthritis; Plaintiff had normal range of motion of his knees and  
14 hips; and Plaintiff had normal muscle bulk and tone without atrophy  
15 (A.R. 420-21, 513, 559-60, 563, 685). An ALJ properly may reject a  
16 treating physician's opinion that is "unsupported by the record as a  
17 whole . . . or by objective medical findings." Batson v.  
18 Commissioner, 359 F.3d 1190, 1195 (9th Cir. 2004).

19  
20           More specifically, the ALJ stressed the disconnect between the  
21 profound functional restrictions embodied in Dr. Handojo's opinions  
22 and the records reflecting the medical treatment (or lack thereof)  
23 received by Plaintiff (A.R. 25). Plaintiff did not receive any  
24 surgery beyond an arthroscopic knee surgery occurring years before the  
25 period of claimed disability. As of the end of 2015, "[n]o further  
26 Orthopedic surgical management [was] planned" (A.R. 563). At the same  
27 time, which was during the period of claimed disability, Plaintiff  
28 rejected the offer of a steroid injection for his supposedly disabling

1 hip pain (A.R. 563). Despite opining Plaintiff has disabling  
2 standing/walking limitations from knee, back and hip impairments, Dr.  
3 Handojo's treatment notes nowhere suggested Plaintiff might benefit  
4 from surgery or even from the use of a cane. An ALJ properly may  
5 discount a treating physician's opinion where the opinion is  
6 unsupported by the claimant's treatment history and the physician's  
7 own treatment notes. See Tommasetti v. Astrue, 533 F.3d 1035, 1041  
8 (9th Cir. 2008) (ALJ may reject a treating physician's opinion that is  
9 inconsistent with other medical evidence, including the physician's  
10 own treatment notes); Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th  
11 Cir. 2005) (conflict between treating physician's assessment and  
12 clinical notes justifies rejection of assessment); Batson v.  
13 Commissioner, 359 F.3d at 1195 ("an ALJ may discredit treating  
14 physicians' opinions that are conclusory, brief, and unsupported by  
15 the record as a whole . . . or by objective medical findings");  
16 Connett v. Barnhart, 340 F.3d 871, 875 (9th Cir. 2003) (treating  
17 physician's opinion properly rejected where physician's treatment  
18 notes "provide no basis for the functional restrictions he opined  
19 should be imposed on [the claimant]"); see also Kessler v. Colvin,  
20 2016 WL 2654274, at \*18 (E.D. Cal. May 10, 2016) (in rejecting  
21 physician's opinion, court noted that the claimant had "abandoned  
22 steroid injection treatments after one attempt").

23  
24 The ALJ also expressly relied on the nature of Plaintiff's  
25 admitted activities, stating that "the effort involved in doing those  
26 types of activities suggest [sic] that [Plaintiff] is not as limited  
27 as indicated by Dr. Handojo" (A.R. 25). The record does reflect that,  
28 during the period of claimed disability, Plaintiff engaged in

1 relatively extensive exertional activities. Plaintiff's activities  
2 included: watching his grandson; visiting with his children;  
3 performing electrical work; doing home remodeling; drywalling a  
4 bathroom; gardening; mowing the lawn; cleaning; taking out the trash;  
5 doing laundry; ironing; running errands; and shopping in stores for  
6 food and clothing (A.R. 47, 49-52, 267-69, 460). Inconsistencies  
7 between a treating physician's opinion and a claimant's admitted  
8 activities can furnish a sufficient reason for discounting the  
9 treating physician's opinion. See, e.g., Rollins v. Massanari, 261  
10 F.3d 853, 856 (9th Cir. 2001). From the nature of the activities  
11 cited, it is reasonable to conclude Plaintiff is not as functionally  
12 limited as Plaintiff claimed or as Dr. Handojo reportedly believed.  
13 See id.; see also Thune v. Astrue, 499 Fed. App'x 701, 703 (9th Cir.  
14 2012) (ALJ properly discredited pain allegations as contradicting  
15 claimant's testimony that she gardened, cleaned, cooked, and ran  
16 errands); Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1175 (9th Cir.  
17 2008) (claimant's "normal activities of daily living, including  
18 cooking, house cleaning, doing laundry, and helping her husband in  
19 managing finances" was sufficient explanation for discounting  
20 claimant's testimony).

21  
22 The ALJ also observed that Dr. Handojo is a "primary care  
23 physician," rather than "an orthopedic specialist" (A.R. 25). The  
24 applicable regulation provides that ALJs "generally give more weight  
25 to the medical opinion of a specialist about medical issues related to  
26 his or her area of speciality than to the medical opinion of a source  
27 who is not a specialist." 20 C.F.R. § 404.1527(c)(5); see Belknap v.  
28 Astrue, 364 Fed. App'x 353, 355 (9th Cir. 2010) (ALJ properly

1 discounted the opinions of a treating physician based on, inter alia,  
2 the fact that the treating physician was not a specialist). It may be  
3 that an ALJ cannot properly discount a treating physician's opinion in  
4 exclusive reliance on the physician's lack of specialization. See  
5 Kennelly v. Astrue, 313 Fed. App'x 977, 978 (9th Cir. 2009); Lester v.  
6 Chater, 81 F.3d 821, 833 (9th Cir. 1995); Hickle v. Acting  
7 Commissioner, 2017 WL 1731567, at \*7 (D. Ariz. May 2, 2017). In the  
8 present case, however, any such reliance was not exclusive.

9  
10 It is the prerogative of the ALJ to resolve the types of  
11 conflicts in the medical evidence that exist in the present case. See  
12 Lewis v. Apfel, 236 F.3d 503, 509 (9th Cir. 2001). When evidence "is  
13 susceptible to more than one rational interpretation," the Court must  
14 uphold the administrative decision. See Andrews v. Shalala, 53 F.3d  
15 at 1039-40; accord Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir.  
16 2002); Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997). The  
17 Court will uphold the ALJ's rational interpretation of the evidence in  
18 the present case. Under the circumstances, it was plainly rational  
19 for the ALJ to find the opinions of the other physicians of record  
20 more persuasive than the opinions of Dr. Handojo.

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