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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERTO H.P., ¹)	Case No. EDCV 19-1543-JPR
)	
Plaintiff,)	MEMORANDUM DECISION AND ORDER
)	
v.)	
)	
ANDREW SAUL, Commissioner of)	
Social Security,)	
)	
Defendant.)	
)	
_____)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying his application for Social Security Disability Insurance benefits ("DIB"). The matter is before the Court on the parties' Joint Stipulation, filed May 8, 2020, which the court has taken under submission without oral argument. For the reasons stated below, the Commissioner's decision is affirmed.

¹ Plaintiff's name is partially redacted in line with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 **II. BACKGROUND**

2 Plaintiff was born in 1956. (Administrative Record ("AR") 69,
3 139.) He has a GED (AR 69, 155) and worked on a farm, in
4 construction, and as a janitor (AR 69-70, 156, 165-69). He applied
5 for DIB on September 22, 2015, alleging that he had been unable to
6 work since September 10, 2014 (AR 139), because of left-knee pain
7 from having "no cartilage," "[a]rthritis" throughout his body, and
8 back, hip, shoulder, neck, and right-knee "[p]roblems" (AR 154).
9 After his claim was denied initially and on reconsideration, he
10 requested a hearing. (AR 118-19.) A hearing was held on February
11 27, 2018 (AR 64), at which Plaintiff, who was represented by
12 counsel, testified (AR 66, 68-71, 73-77), as did a vocational
13 expert (AR 71-73, 77-78). In a written decision dated June 21,
14 2018, the ALJ found him not disabled. (AR 60.) Plaintiff
15 requested review from the Appeals Council (AR 7), but it denied his
16 request (AR 1).

17 **III. STANDARD OF REVIEW**

18 Under 42 U.S.C. § 405(g), a district court may review the
19 Commissioner's decision to deny benefits. The ALJ's findings and
20 decision should be upheld if they are free of legal error and
21 supported by substantial evidence based on the record as a whole.
22 See Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.
23 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence
24 means such evidence as a reasonable person might accept as adequate
25 to support a conclusion. Richardson, 402 U.S. at 401; Lingenfelter
26 v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is "more than a
27 mere scintilla, but less than a preponderance." Lingenfelter, 504
28 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882

1 (9th Cir. 2006)). “[W]hatever the meaning of ‘substantial’ in
2 other contexts, the threshold for such evidentiary sufficiency is
3 not high.” Biestek v. Berryhill, 139 S. Ct. 1148, 1154 (2019). To
4 determine whether substantial evidence supports a finding, the
5 reviewing court “must review the administrative record as a whole,
6 weighing both the evidence that supports and the evidence that
7 detracts from the Commissioner’s conclusion.” Reddick v. Chater,
8 157 F.3d 715, 720 (9th Cir. 1998). “If the evidence can reasonably
9 support either affirming or reversing,” the reviewing court “may
10 not substitute its judgment” for the Commissioner’s. Id. at 720-
11 21.

12 **IV. THE EVALUATION OF DISABILITY**

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

19 A. The Five-Step Evaluation Process

20 The ALJ follows a five-step sequential evaluation process in
21 assessing whether a claimant is disabled. 20 C.F.R.
22 § 404.1520(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir.
23 1995) (as amended Apr. 9, 1996). In the first step, the
24 Commissioner must determine whether the claimant is currently
25 engaged in substantial gainful activity; if so, the claimant is not
26 disabled and the claim must be denied. § 404.1520(a)(4)(i).

27 If the claimant is not engaged in substantial gainful
28 activity, the second step requires the Commissioner to determine

1 whether the claimant has a "severe" impairment or combination of
2 impairments significantly limiting his ability to do basic work
3 activities; if not, a finding of not disabled is made and the claim
4 must be denied. § 404.1520(a)(4)(ii) & (c).

5 If the claimant has a "severe" impairment or combination of
6 impairments, the third step requires the Commissioner to determine
7 whether the impairment or combination of impairments meets or
8 equals an impairment in the Listing of Impairments ("Listing") set
9 forth at 20 C.F.R. part 404, subpart P, appendix 1; if so,
10 disability is conclusively presumed and benefits are awarded.
11 § 404.1520(a)(4)(iii) & (d).

12 If the claimant's impairment or combination of impairments
13 does not meet or equal an impairment in the Listing, the fourth
14 step requires the Commissioner to determine whether the claimant
15 has sufficient residual functional capacity ("RFC")² to perform his
16 past work; if so, the claimant is not disabled and the claim must
17 be denied. § 404.1520(a)(4)(iv). The claimant has the burden of
18 proving he is unable to perform past relevant work. Drouin, 966
19 F.2d at 1257. If the claimant meets that burden, a prima facie
20 case of disability is established. Id.

21 If that happens or if the claimant has no past relevant work,
22 the Commissioner then bears the burden of establishing that the
23 claimant is not disabled because he can perform other substantial
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25 ² RFC is what a claimant can do despite existing exertional
26 and nonexertional limitations. § 404.1545(a)(1); 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 gainful work available in the national economy, the fifth and final
2 step of the sequential analysis. §§ 404.1520(a)(4)(v),
3 404.1560(b).

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

5 At step one, the ALJ found that Plaintiff had not engaged in
6 substantial gainful activity since September 10, 2014, the alleged
7 onset date. (AR 54 (citation omitted).) His date last insured was
8 March 31, 2018. (Id.) At step two, the ALJ determined that
9 Plaintiff had severe impairments of osteoarthritis³ of the left knee
10 and spondylosis⁴ of the cervical spine. (Id. (citation omitted).)
11 At step three, he found that Plaintiff's impairments did not meet
12 or equal a listing. (Id. (citations omitted).) At step four, he
13 concluded that Plaintiff had the RFC to perform the full range of
14 medium work (AR 55), which "involves lifting no more than 50 pounds
15 at a time with frequent lifting or carrying of objects weighing up
16 to 25 pounds," § 404.1567(c), and "standing or walking, off and on,
17 for a total of approximately 6 hours in an 8-hour workday," SSR 83-
18 10, 1983 WL 31251 (Jan. 1, 1983). Because he could perform his
19 past relevant work as a "fruit farm worker II," DOT 403.687-010,
20 1991 WL 673305, and "industrial cleaner," DOT 381.687-018, 1991 WL
21 673258, as actually and generally performed and his past work as a
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23
24 ³ Osteoarthritis is "arthritis characterized by erosion of
25 Stedman's Medical Dictionary 1282 (27th ed. 2000).

26 ⁴ Spondylosis is the stiffening of the vertebrae and is "often
27 applied nonspecifically to any lesion of the spine of a
28 Stedman's Medical Dictionary 1678 (27th ed. 2000).

1 "construction worker II," DOT 869.687-026, 1991 WL 687635, as
2 actually performed (AR 59), the ALJ found him not disabled (AR 60).⁵

3 **V. DISCUSSION⁶**

4 Plaintiff argues that the ALJ "failed to acknowledge" that the
5 three medical opinions he relied on limited Plaintiff to six hours
6 of standing or walking in an eight-hour workday. (J. Stip. at 18-
7 19.) He claims this restriction rendered him unable to complete
8 the full range of medium work the ALJ said he could. (Id. at 18-
9 21.) Plaintiff also argues that the ALJ erred by failing to
10 consider his right-knee impairment at step two of the five-step
11 analysis (id. at 11) and in discounting his subjective symptom
12 testimony (id. at 6-9). For the reasons discussed below, any error
13 was harmless.

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19 ⁵ The ALJ also determined, at step five, that there were
20 unspecified "other jobs" existing in the national economy that
21 Plaintiff could perform. (AR 59-60.)

22 ⁶ In Lucia v. SEC, 138 S. Ct. 2044, 2055 (2018), the Supreme
23 Court held that ALJs of the Securities and Exchange Commission are
24 "Officers of the United States" and thus subject to the
25 Appointments Clause. To the extent Lucia applies to Social
26 Security ALJs, Plaintiff has forfeited the issue by failing to
27 raise it during his administrative proceedings. (See AR 64-80,
28 110, 118-19, 135-38); Meanel v. Apfel, 172 F.3d 1111, 1115 (9th
Cir. 1999) (as amended) (plaintiff forfeits issues not raised
before ALJ or Appeals Council); see also Kabani & Co. v. SEC, 733
F. App'x 918, 919 (9th Cir. 2018) (rejecting Lucia challenge
because plaintiff did not raise it during administrative
proceedings), cert. denied, 139 S. Ct. 2013 (2019).

1 A. Applicable Background

2 1. Objective medical and other evidence

3 On August 27, 2015, Plaintiff visited Anthony Smith, a
4 certified physician's assistant, with complaints of left-knee pain.⁷
5 (AR 228.) He attributed the pain to a "head on car crash" (id.)
6 but reported later that the pain began after he fell from a ladder
7 while picking avocados in 1982 (AR 221). He was given an
8 osteoarthritic brace and was referred to a physical therapist for
9 treatment of his left-knee pain, "[s]tiffness," "[i]nstability,"
10 and "[c]hronic" degenerative joint disease. (AR 230.) X-rays of
11 his left knee taken that month showed "[m]arked medial, moderate
12 patellofemoral and mild lateral joint compartment osteoarthritis
13 with genu varus."⁸ (AR 215.)

14 Plaintiff began physical therapy on September 9, 2015. (AR
15 212.) He presented with an "[a]ntalgic gait pattern," with
16 "decreased" weight bearing through his lower left leg.⁹ (Id.) He
17 arrived using a quad cane but was instructed to switch to a single-
18 point one. (Id.) He had 127 degrees of flexion and zero degrees
19 of extension in his left knee and 135 degrees of flexion and zero
20 degrees of extension in his right.¹⁰ (Id.) Examination revealed

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22 ⁷ Although Plaintiff claimed disability beginning in September
23 2014, the earliest medical records in the record are from nearly a
24 year later. Indeed, Plaintiff acknowledged that he stopped working
25 in September 2014 because he was "laid off." (AR 155.)

26 ⁸ Genu varus is "an outward bowing of the legs." Stedman's
27 Medical Dictionary 739 (27th ed. 2000).

28 ⁹ An antalgic gait results from pain when bearing weight.
Stedman's Medical Dictionary 722 (27th ed. 2000).

¹⁰ Normal knee flexion for a male between ages 45 and 69 is
132.9 degrees. Normal Joint Range of Motion Study, CDC,

1 left-knee "impairments associated with osteoarthritis." (AR 213.)
2 He had "[g]ood" rehabilitation potential. (AR 214.)

3 Treatment notes throughout October 2015 reflect continued
4 reports of knee pain. (See AR 207-10, 232-34, 240-41, 265-66.)
5 That month, Plaintiff visited Dr. Surya Reddy¹¹ complaining of
6 right-knee pain. (AR 207.) Dr. Reddy diagnosed Plaintiff with
7 "[g]eneralized osteoarthritis" and prescribed Tylenol and
8 exercise.¹² (AR 208.) In a separate visit to PA Smith that month,
9 he received a "[l]eft knee lateral joint line injection" to address
10 his osteoarthritis. (AR 234.)

11 Plaintiff saw PA Smith again on January 7, 2016, complaining
12 of pain on his left side. (AR 235.) He had an antalgic gait and
13 135 degrees of flexion, zero degrees of extension, and an active
14 range of motion in his left knee. (AR 236.) He did not have
15 "crepitation"¹³ in the left patella but did have a positive McMurray
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18 <https://www.cdc.gov/ncbddd/jointrom/index.html> (last visited July
19 21, 2020). Normal knee extension for a male of the same age is 0.5
20 degrees. Id.

21 ¹¹ Dr. Reddy practices primarily family medicine. See Cal.
22 Dep't Consumer Aff. License Search, <https://search.dca.ca.gov>
(search for "Reddy" under "Last Name") (last visited July 20,
2020).

23 ¹² Records in connection with Plaintiff's visits name Dr.
24 Sharma Bishop as the treating doctor (see AR 82, 83, 94, 95), but
25 corresponding treatment notes indicate that Plaintiff was treated
by Dr. Reddy (see, e.g., AR 207-11).

26 ¹³ Crepitus refers to the "[n]oise or vibration produced by
27 rubbing bone or irregular degenerated cartilage surfaces together
28 as in arthritis and other conditions." Stedman's Medical
Dictionary 424 (27th ed. 2000).

1 test.¹⁴ (Id.) He was prescribed a narcotic painkiller to take
2 daily as needed. (AR 237.)

3 Plaintiff visited Dr. Reddy on February 10, 2016, with
4 shortness of breath and "mild" gastroesophageal reflux disease (AR
5 242) as well as pain in his right knee (AR 243.) Dr. Reddy
6 prescribed a narcotic painkiller. (AR 243-44.) X-rays of his
7 right knee taken the following day showed "[m]arked medial and
8 moderate patellofemoral and lateral knee joint compartment
9 osteoarthritis," "[g]enu varus," and "[s]mall joint effusion."¹⁵
10 (AR 246.)

11 Plaintiff complained to Dr. Hadia Ashraf¹⁶ on October 30, 2017,
12 of bilateral knee pain, decreased mobility, and joint tenderness.
13 (AR 290.) His left knee had an "[a]ctive painful" range of motion
14 and 100 degrees of flexion. (AR 289.) His right knee does not
15 appear to have been assessed. (See AR 287-90.) Despite having a
16 "[l]imp" (AR 288), he was able to "heel-and-toe-walk normally" (AR
17 289). He had tenderness on the right side of his sciatic notch but
18 not the left. (AR 288.) He was able to move without pain in his
19 lumbar spine, crepitus, or evident instability. (Id.) October
20 2017 x-rays of his cervical and lumbar spines showed
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23 ¹⁴ The McMurray test is a "rotation of the tibia on the femur
24 to determine injury to meniscal structures." Stedman's Medical
Dictionary 1805 (27th ed. 2000).

25 ¹⁵ Joint effusion is "increased fluid in synovial cavity of a
26 joint." Stedman's Medical Dictionary 570 (27th ed. 2000).

27 ¹⁶ Dr. Ashraf is a family-medicine doctor. See Cal. Dep't
28 Consumer Aff. License Search, <https://search.dca.ca.gov> (search for
"Ashraf" under "Last Name") (last visited July 20, 2020).

1 "[s]pondylosis" and "degenerative disc disease"¹⁷ (AR 283-84), and
2 x-rays of his left knee showed "[m]oderate osteoarthritic changes"
3 (AR 285). No right-knee x-rays were taken. (See AR 282-86.)

4 Plaintiff visited PA Smith again on November 1, 2017,
5 complaining of "moderate-severe" left-knee pain that was "chronic
6 non-traumatic," "occur[ing] with mild activity," and getting
7 "worse." (AR 251.) His left knee had an active range of motion,
8 flexion of 135 degrees, and extension of zero degrees. (AR 253.)
9 His gait was "[a]ntalgic," and he presented with mild effusion and
10 mild swelling of the left knee and maximum tenderness of the left
11 medial joint line. (Id.) He had a positive McMurray test. (Id.)
12 Smith diagnosed him with "[c]hronic" osteoarthritis (id.), but his
13 reflexes, sensation, and pulse were normal (id.).

14 2. Medical-opinion evidence

15 On December 9, 2015, Plaintiff underwent a complete orthopedic
16 examination by Vicente Bernabe, an orthopedic surgeon, at
17 Defendant's request. (AR 221-27.) Plaintiff presented with
18 complaints of "left knee pain" and reported taking Tylenol for it.
19 (AR 221.) Dr. Bernabe observed that he did not appear to be in
20 "acute or chronic distress" and "moved freely . . . without the use
21 of any assistive device." (AR 222.) His gait was normal, without
22 antalgia, and he "was able to toe and heel walk." (Id.) A
23 cervical-spine examination "revealed normal attitude and posture of
24 the head," without "significant tenderness to palpation," and his

25 ¹⁷ Degenerative disc disease is "a condition where one or more
26 discs in the back lose their strength" and "happens over time from
27 wear and tear, or injury." Everything You Should Know About
28 Degenerative Disc Disease (DDD), Healthline, [https://
www.healthline.com/health/degenerative-disc-disease](https://www.healthline.com/health/degenerative-disc-disease) (last visited
July 21, 2020).

1 range of motion was "full and painless." (Id.) His thoracic
2 spine, lumbar spine, and right knee appeared normal. (AR 222-23.)
3 His "[m]otor strength was grossly intact in the upper and lower
4 extremities," "[s]ensation" in the "lower extremities was well
5 preserved," and his "[r]eflexes were physiologic throughout." (AR
6 224.) Dr. Bernabe diagnosed him with "[m]ild to moderate
7 osteoarthritis" of the left knee. (Id.) He opined that Plaintiff
8 was able to lift 50 pounds occasionally and 25 pounds frequently,
9 push and pull on a frequent basis, walk and stand six hours in an
10 eight-hour day, sit without restriction, and bend, crouch, stoop,
11 and crawl frequently. (AR 224-25.)

12 On December 21, 2015, state-agency physician S. Brodsky¹⁸
13 reviewed Plaintiff's records and found that his limitations did
14 "not prevent [him] from performing" his past work as a laborer as
15 generally performed in the national economy. (AR 89-90.) On March
16 28, 2016, state-agency physician S. Lee¹⁹ reviewed Plaintiff's
17 records and adopted Dr. Brodsky's findings. (AR 101-02.)

18 3. Plaintiff's statements and testimony

19 In Plaintiff's undated initial Disability Report, he stated
20 that his ability to work was limited by the lack of cartilage in
21

22 ¹⁸ Dr. Brodsky specializes in surgery. (See AR 85, 91 (showing
23 signature code of 45)); Soc. Sec. Admin., Program Operations Manual
24 System (POMS) DI 24501.004 (May 5, 2015), [https://secure.ssa.gov/
apps10/poms.nsf/lrx/0424501004](https://secure.ssa.gov/apps10/poms.nsf/lrx/0424501004) (signature code 45 indicates
surgery).

25 ¹⁹ Dr. Lee specializes in ophthalmology. (See AR 102 (showing
26 signature code of 28)); Soc. Sec. Admin., Program Operations Manual
27 System (POMS) DI 24501.004 (May 5, 2015), [https://secure.ssa.gov/
apps10/poms.nsf/lrx/0424501004](https://secure.ssa.gov/apps10/poms.nsf/lrx/0424501004) (signature code 28 indicates
28 ophthalmology).

1 his left knee, "[a]rthritis" throughout his "[w]hole body," and
2 back, hip, shoulder, right-knee, and neck "[p]roblems." (AR 154.)

3 At the February 27, 2018 hearing, Plaintiff testified that
4 problems with his knees "[m]ainly" prevented him from working,
5 characterizing his left knee as "worse" than his right. (AR 73.)
6 He had "no cartilage" in his knees, which made it "very painful to
7 walk." (Id.) He could walk for "[p]robably" 15 or 20 minutes
8 before the pain forced him to sit down. (AR 73-74.) He initially
9 used a four-prong cane from his wife, but a "doctor" later gave him
10 a single-point one. (AR 75.) He could not stand for more than
11 half of a "regular eight-hour day" and likely only for "[a]bout two
12 hours." (AR 74.) He could not lift "buckets of cleaning solvent"
13 weighing "about 40 pounds," a task he performed regularly as an
14 industrial cleaner. (Id.)

15 He testified that he lived with his wife, daughter, and two
16 grandchildren. (AR 76.) His grandchildren were nine and five at
17 the time (id.), and both "stay[ed] with [him] in the mornings"
18 until he drove them to school (AR 75). He "tr[ied] to help clean"
19 by "picking up" trash (id.) and doing a "little bit" of yard work
20 (AR 76), but he could not work all day because he'd "have to stay
21 on [his] feet" (id.). He had difficulty driving because of
22 shoulder pain that began two or three months before the hearing.
23 (Id.) He also had pain in his neck, though "less than" the pain in
24 his knees, and it sometimes traveled "towards [his] shoulder." (AR
25 77.)

26 4. The ALJ's decision

27 The ALJ determined that Plaintiff's "statements concerning the
28 intensity, persistence and limiting effects" of his symptoms were

1 "not entirely consistent" with the evidence in the record (AR 56),
2 including medical evidence and Plaintiff's daily activities (AR
3 59). Though the evidence demonstrated that Plaintiff "suffered
4 from a medically determinable 'severe' impairment," it also
5 "establishe[d] that [he] retain[ed] the capacity to function
6 adequately to perform many basic activities associated with work."
7 (Id.)

8 The ALJ noted that his assessment of Plaintiff's RFC as the
9 full range of medium work was supported by objective medical
10 evidence. (Id.) Further, treatment notes did "not sustain"
11 Plaintiff's allegations of disabling pain and limitations. (Id.)
12 The ALJ reviewed August 2015 x-rays of Plaintiff's left knee (AR 56
13 (citing AR 240-49)), February 2016 x-rays of his right knee (AR 57
14 (citing AR 240-49)), and October 2017 x-rays of his cervical spine,
15 lumbar spine, and left knee (AR 58 (citing AR 283-90)). He also
16 reviewed treatment notes from Plaintiff's September 2015 physical-
17 therapy examination (AR 57 (citing AR 207-20)), an October 2015
18 examination showing "only mildly reduced range of motion of the
19 bilateral knees" (id. (citing AR 207-20)), and Dr. Bernabe's
20 December 2015 examination report, finding that Plaintiff "was able
21 to toe and heel walk" and "did not use any assistive device to
22 ambulate" (id. (citing AR 221-27)). In addition, he reviewed
23 treatment notes from a January 2016 doctor's visit reflecting
24 "continued complaints of left knee pain" (id. (citing AR 228-39)),
25 an October 2017 visit at which Plaintiff "complain[ed] of bilateral
26 knee pain" (id.), and a November 2017 visit for left-knee pain (AR
27 58 (citing AR 250-82)).
28

1 The ALJ further determined that the medical-opinion evidence
2 supported the RFC. (AR 58-59.) He gave the opinions "great
3 weight" because Dr. Bernabe had the opportunity to examine
4 Plaintiff (AR 58) and the state-agency opinions were "consistent
5 with the record" and "more recent evidence including that reflexes,
6 sensation, and pulses [were] within normal limits, and with his
7 reported activities" (AR 58-59 (citing AR 64-80, 250-82, 283-90)).
8 Ultimately, he agreed with all three doctors that Plaintiff was
9 able to perform the full range of medium work. (AR 55.) As for
10 Plaintiff's daily activities, the ALJ found that they were not
11 consistent with his allegations of total impairment. (AR 59.)

12 B. Analysis²⁰

13 1. The ALJ properly considered the examining and
14 reviewing medical opinions

15 Plaintiff argues that the ALJ "failed to acknowledge" that the
16 three medical opinions to which he gave great weight "restricted
17 standing/walking to six hours" and therefore rendered him incapable
18 of performing the full range of medium work. (J. Stip. at 18-19.)
19 He further alleges that the ALJ should not have relied on these
20 opinions because the doctors did not review "probative evidence,"
21 including x-rays of his right knee and cervical and lumbar spines.
22 (Id. at 9-12.) Finally, Plaintiff argues that the ALJ erred by
23 failing to include his right-knee impairment as a "severe"
24 impairment at step two of the five-step evaluation process. (Id.
25 at 11.)

26
27 ²⁰ The Court addresses the issues in an order different from
28 that briefed by the parties, for clarity and other reasons.

1 a. *Applicable Law*

2 Three types of physicians may offer opinions in Social
3 Security cases: those who directly treated the plaintiff, those who
4 examined but did not treat the plaintiff, and those who did
5 neither. See Lester, 81 F.3d at 830. A treating physician's
6 opinion is generally entitled to more weight than an examining
7 physician's, and an examining physician's opinion is generally
8 entitled to more weight than a nonexamining physician's. Id.; see
9 § 404.1527(c)(1)-(2).²¹ This is so because treating physicians are
10 employed to cure and have a greater opportunity to know and observe
11 the claimant. Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996)
12 (citation omitted).

13 The ALJ may discount a physician's opinion regardless of
14 whether it is contradicted. Magallanes v. Bowen, 881 F.2d 747, 751
15 (9th Cir. 1989); see also Carmickle v. Comm'r, Soc. Sec. Admin.,
16 533 F.3d 1155, 1164 (9th Cir. 2008). When a doctor's opinion is
17 not contradicted by other medical-opinion evidence, however, it may
18 be rejected only for a "clear and convincing" reason. Magallanes,
19 881 F.2d at 751 (citations omitted); Carmickle, 533 F.3d at 1164

21 ²¹ For claims filed on or after March 27, 2017, the rules in
22 § 404.1520c (not § 404.1527) apply. See § 404.1520c (evaluating
23 opinion evidence for claims filed on or after Mar. 27, 2017). The
24 new regulations provide that the Social Security Administration
25 "will not defer or give any specific evidentiary weight, including
26 controlling weight, to any medical opinion(s) or prior
27 administrative medical finding(s), including those from your
28 medical sources." § 404.1520c(a). Thus, the new regulations
eliminate the term "treating source" as well as what is customarily
known as the treating-source or treating-physician rule. See
§ 404.1520c. Plaintiff's claim was filed before March 27, 2017,
and the Court therefore analyzes it under the treating-source rule
in § 404.1527.

1 (citing Lester, 81 F.3d at 830-31). When it is contradicted, the
2 ALJ need provide only a "specific and legitimate" reason for
3 discounting it. Carmickle, 533 F.3d at 1164 (citing Lester, 81
4 F.3d at 830-31). The weight given a doctor's opinion, moreover,
5 depends on whether it is consistent with the record and accompanied
6 by adequate explanation, among other things. See § 404.1527(c);
7 see also Orn v. Astrue, 495 F.3d 625, 631 (9th Cir. 2007) (factors
8 in assessing physician's opinion include length of treatment
9 relationship, frequency of examination, and nature and extent of
10 treatment relationship).

11 Medium work "involves lifting no more than 50 pounds at a time
12 with frequent lifting or carrying of objects weighing up to 25
13 pounds." § 404.1567(c); Villa v. Heckler, 797 F.2d 794, 798 (9th
14 Cir. 1986) (citations omitted). SSR 83-10 provides descriptions of
15 the standing and walking limitations that accompany light and
16 medium work. James T. v. Saul, No. 2:18-cv-08794-KES, 2019 WL
17 3017755, at *1 (C.D. Cal. July 10, 2019).²² SSR 83-10 states that a
18 "full range of medium work requires standing or walking, off and
19 on, for a total of approximately 6 hours in an 8-hour workday in
20 order to meet the requirements of frequent lifting or carrying
21 objects weighing up to 25 pounds." 1983 WL 31251, at *6. Further,
22 "[a]s in light work, sitting may occur intermittently during the
23 remaining time." Id.

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26 ²² Though SSRs lack the "force of law," they are the SSA's
27 "'interpretations of the statute it administers and of its own
28 regulations,'" and are given deference 'unless they are plainly
erroneous or inconsistent with the [Social Security] Act or
regulations.'" James T., 2019 WL 3017755, at *1.

1 b. *Analysis*

2 Plaintiff argues that SSR 83-10 makes a limitation of standing
3 or walking no more than six hours - which was included in all three
4 medical opinions the ALJ relied on - inconsistent with medium work.
5 (J. Stip. at 18-21.) According to him, the intermittent-sitting
6 language implies that some standing must occur in the remaining two
7 hours of the workday. (Id. at 20-21.) Although the language of
8 SSR 83-10 is not as clear as one would hope, this interpretation is
9 incorrect. See James T., 2019 WL 3017755, at *2 ("ALJs . . . with
10 experience conducting social security disability benefits hearings
11 have understood medium work as requiring the ability to stand or
12 walk for up to 6 hours."). Tellingly, Plaintiff does not cite a
13 single case to support his view. To the contrary, courts have
14 routinely interpreted SSR 83-10 as meaning medium work requires the
15 ability to stand or walk for up to six hours. See, e.g., id.;
16 Candia v. Sullivan, 959 F.2d 239, 239 (9th Cir. 1992) (recognizing
17 that "medium work requires that a person be able to stand for six
18 hours during an eight hour work day"); Christopher P. v. Saul, No.
19 CV 18-6484-SP, 2020 WL 551596, at *3 (C.D. Cal. Jan. 31, 2020)
20 (noting that "full range of medium work involves . . . standing or
21 walking up to approximately six hours in an eight-hour workday"
22 (citing SSR 83-10)); Campos v. Astrue, 656 F. Supp. 2d 1179, 1189
23 (C.D. Cal. 2009) (explaining that "[a] full range of medium work
24 requires standing or walking, off and on, for a total of
25 approximately 6 hours in an 8-hour workday" (citing SSR 83-10)).

26 Contrary to Plaintiff's argument, limiting standing or walking
27 to six hours a workday is not inconsistent with medium work. The
28

1 medical opinions therefore support the ALJ's assessment of him as
2 being capable of performing the full range of medium work.²³

3 Plaintiff further alleges that the ALJ erred in relying on the
4 medical opinions because the opining doctors did not review x-rays
5 of his right knee, cervical spine, and lumbar spine taken in
6 February 2016 and October 2017. (J. Stip. at 10-12.) Though he is
7 correct that the opining doctors did not review those x-rays (see
8 generally AR 82-86, 93-95, 221-27), which were taken after he
9 submitted his DIB application, the ALJ did not err in discussing
10 and relying on the opinions in determining the RFC. Dr. Bernabe,
11 an orthopedic specialist, performed a complete examination,
12 including of Plaintiff's right knee and cervical, thoracic, and
13 lumbar spines. (AR 222-23.) "The right knee examination was
14 normal and unrevealing," with "normal alignment and contour" and
15 "no tenderness on palpation." (AR 223.) Further, the thoracic-
16 spine examination was "unrevealing" and the cervical-spine
17 examination "revealed normal attitude and posture of the head,"
18 with "full and painless" range of motion. (AR 222.) The lumbar-
19 spine examination showed that "[r]ange of motion was full in all
20 planes without pain." (AR 223.) The two state-agency physicians
21 reviewed Dr. Bernabe's report in making their assessments. (See AR

22
23 ²³ It appears, however, that the ALJ erred in finding that
24 Plaintiff could perform his past relevant work as a fruit farm
25 worker II and industrial cleaner as actually performed because
26 Plaintiff did those jobs without ever sitting. (See AR 70, 166,
27 168.) Any error was harmless, however, because he could perform
28 those medium-work jobs as generally performed. See Romo v.
Berryhill, 731 F. App'x 574, 579 (9th Cir. 2018) (finding that
ALJ's error in determining claimant could perform certain past
relevant work as actually performed was harmless because ALJ
properly found claimant capable of performing other past relevant
work as generally performed).

1 86-87, 97-98.) Given this, despite not reviewing the x-rays, all
2 three physicians assessed or evaluated Plaintiff's right-knee and
3 spine ailments.

4 More importantly, the ALJ is ultimately responsible for
5 assessing a claimant's RFC. See § 404.1527; Vertigan v. Halter,
6 260 F.3d 1044, 1049 (9th Cir. 2001). Though the physicians did not
7 review evidence of Plaintiff's right-knee and spine ailments past
8 early 2016, the ALJ separately evaluated Plaintiff's complete
9 treatment record in determining that he was capable of the full
10 range of medium work. (See generally AR 56-58.) Plaintiff's
11 complaints of right-knee pain were limited. (See AR 207-08, 240-44
12 287-90). Though he listed right-knee "[p]roblems" in his DIB
13 application (AR 154), he complained of pain from it only on three
14 occasions over approximately 26 months (see AR 207-08, 240-44, 287-
15 90), with numerous doctor or physical-therapy appointments where he
16 never mentioned it (see, e.g., AR 212, 221, 228, 232, 235). His
17 complaints of back pain were even less frequent. (See generally
18 id. & AR 207-08, 240-44 (complaining of right-knee pain but not
19 back pain).) The ALJ reviewed all the x-rays, as well as the
20 treatment notes throughout Plaintiff's course of treatment. (See
21 generally AR 56-58.) For example, he reviewed treatment notes from
22 an October 2015 examination, noting that Plaintiff had "only mildly
23 reduced range of motion of the bilateral knees" and was told to
24 take Tylenol and to exercise, indicating that he was capable of
25 weight-bearing activity. (AR 57 (citing AR 207-20).) Further, the
26 ALJ discussed the February 2016 x-rays of Plaintiff's right knee
27 (id. (citing AR 240-49)) and treatment notes from his October 2017
28 visit with Dr. Ashraf, at which he complained of bilateral knee

1 pain (AR 57-58). The ALJ noted that "he was able to heel and toe
2 walk normal[ly]" during that visit (AR 57), which was only a few
3 months before the hearing.

4 Plaintiff points out that his February 2016 right-knee x-ray
5 "revealed findings similar to his left knee," including "marked
6 medial and moderate patellofemoral and lateral knee joint
7 compartment osteoarthritis, genu valgus, and small joint effusion."
8 (J. Stip. at 10 (citation omitted).) Though those x-rays do show
9 that the condition of his right knee was physiologically similar to
10 his left, treatment notes provide substantial support for the ALJ's
11 assessment that he was able to perform the full range of medium
12 work. As the ALJ noted, Plaintiff was able to toe and heel walk
13 over the course of his treatment. (See generally AR 56-58.)

14 Indeed, Dr. Bernabe's December 2015 report indicated that he could
15 "toe and heel walk," "move[] freely," and walk without the use of
16 any assistive device. (AR 222.) Further, sensation was "well
17 preserved" in the lower extremities. (AR 224.) Treatment notes
18 from his visit to Dr. Ashraf in October 2017, over a year after his
19 February 2016 right-knee x-rays, show that though he had a "[l]imp"
20 (AR 288), he was able to "heel-and-toe-walk normally" (AR 289).

21 Dr. Ashraf ordered x-rays of his cervical spine, lumbar spine, left
22 knee, and shoulder but not of his right knee, suggesting that his
23 right-knee pain was not a pressing concern. (AR 283-86.) And
24 Plaintiff did not complain of right-knee pain at his November 2017
25 visit to PA Smith (AR 251), and he conceded during his hearing
26 testimony that his "left knee [was] worse" than his right (AR 73).
27 Though this evidence does demonstrate a right-knee impairment, it
28 also provides substantial evidence for the ALJ's assessment of

1 Plaintiff's RFC. See Burch v. Barnhart, 400 F.3d 676, 679 (9th
2 Cir. 2005) ("Where evidence is susceptible to more than one
3 rational interpretation, it is the ALJ's conclusion that must be
4 upheld." (citation omitted)). Remand is not warranted on this
5 basis.²⁴

6 2. The ALJ permissibly discounted Plaintiff's
7 subjective symptom statements and testimony

8 Plaintiff contends that the ALJ erred in rejecting his
9 subjective symptom testimony as inconsistent with the objective and
10 other medical evidence and his daily activities. (J. Stip. at 5-
11 8.)

12 a. *Applicable Law*

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

21
22 ²⁴ Any error in not including Plaintiff's right knee as a
23 "severe" impairment at step two (J. Stip. at 11) was harmless
24 because "[s]tep two is merely a threshold determination" that
25 "screen[s] out weak claims" and "is not meant to identify the
26 impairments that should be taken into account when determining the
27 RFC," Buck v. Berryhill, 869 F.3d 1040, 1048-49 (9th Cir. 2017)
28 (citations omitted). In assessing a claimant's RFC, an ALJ "must
consider limitations and restrictions imposed by all of an
individual's impairments, even those that are not 'severe,'" so
impairments not listed in step two must be addressed in the
evaluation process. Id. (citations omitted). Here, as discussed,
the ALJ fully considered treatment records reflecting Plaintiff's
right-knee impairment. (See AR 56-58.)

1 (9th Cir. 2012) (quoting Fair v. Bowen, 885 F.2d 597, 603 (9th Cir.
2 1989)). In evaluating a claimant's subjective symptom testimony,
3 the ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d
4 at 1035-36; see also SSR 16-3p, 2016 WL 1119029, at *3 (Mar. 16,
5 2016). First, the ALJ must determine whether the claimant has
6 presented "objective medical evidence of an underlying impairment
7 '[that] could reasonably be expected to produce the pain or other
8 symptoms alleged.'" Lingenfelter, 504 F.3d at 1036 (citation
9 omitted). If such objective medical evidence exists, the ALJ may
10 not reject a claimant's testimony "simply because there is no
11 showing that the impairment can reasonably produce the degree of
12 symptom alleged." Id. (citation omitted; emphasis in original).

13 If the claimant meets the first test, the ALJ may discount the
14 claimant's subjective symptom testimony only if he makes specific
15 findings that support the conclusion. See Berry v. Astrue, 622
16 F.3d 1228, 1234 (9th Cir. 2010). Absent a finding or affirmative
17 evidence of malingering, the ALJ must provide a "clear and
18 convincing" reason for rejecting the claimant's testimony. Brown-
19 Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir. 2015) (as amended)
20 (citing Lingenfelter, 504 F.3d at 1036); Treichler v. Comm'r of
21 Soc. Sec. Admin., 775 F.3d 1090, 1102 (9th Cir. 2014). The ALJ may
22 consider, among other factors, the claimant's (1) reputation for
23 truthfulness, prior inconsistent statements, and other testimony
24 that appears less than candid; (2) unexplained or inadequately
25 explained failure to seek treatment or follow a prescribed course
26 of treatment; (3) daily activities; (4) work record; and (5)
27 physicians' and third parties' statements. See Rounds v. Comm'r
28 Soc. Sec. Admin., 807 F.3d 996, 1006 (9th Cir. 2015) (as amended);

1 Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002). If the
2 ALJ's evaluation of a plaintiff's alleged symptoms is supported by
3 substantial evidence in the record, the reviewing court "may not
4 engage in second-guessing." Thomas, 278 F.3d at 959.

5 In evaluating a claimant's subjective symptoms, the ALJ
6 considers "all of the available evidence" in the record,
7 § 404.1529(c)(1), including the "objective medical evidence,"
8 § 404.1529(c)(2), and "other evidence" from medical sources,
9 § 404.1529(c)(3). Objective medical evidence is obtained through
10 "medically acceptable clinical and laboratory diagnostic
11 techniques." § 404.1529(c)(2). "[O]ther evidence" is everything
12 else relevant to evaluating symptoms, including, for example,
13 "medical opinions about the individual's symptoms and their
14 effects" and the "longitudinal record of any treatment and its
15 success or failure." SSR 16-3p, 2016 WL 1119029, at *6; see
16 § 404.1529(c)(3) (evidence from medical sources about what
17 precipitates or aggravates pain, medications or treatments
18 prescribed or used to alleviate it, and how it affects claimant's
19 daily life are all "other evidence"). Contradiction with the
20 "objective medical evidence" is a "specific and legitimate" basis
21 for rejecting a claimant's subjective symptom testimony. Morgan v.
22 Comm'r of Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir. 1999); see
23 § 404.1529(c)(2). But it "cannot form the sole basis for
24 discounting" it. Burch, 400 F.3d at 681; Rollins v. Massanari, 261
25 F.3d 853, 857 (9th Cir. 2001) (applying earlier version of
26 § 404.1529(c)(2)).
27
28

1 b. *Analysis*

2 The ALJ outlined clear and convincing reasons supported by
3 substantial evidence for discounting Plaintiff's subjective symptom
4 testimony.

5 First, the ALJ properly concluded that Plaintiff's claims were
6 inconsistent with the objective medical evidence (AR 56), which is
7 a valid basis for discounting a claimant's subjective symptom
8 testimony, Morgan, 169 F.3d at 600; § 404.1529(c)(2). Plaintiff
9 claimed he was able to walk for only about 15 to 20 minutes without
10 pain (AR 73-74), but as the ALJ noted, treatment notes showed that
11 he was able to toe and heel walk normally over the course of
12 treatment (see generally AR 56-58), even after his February 2016 x-
13 ray showing osteoarthritis, genu varus, and small joint effusion in
14 his right knee (see AR 246). Further, Plaintiff had a painful but
15 active range of motion in his left knee (see generally AR 56-58),
16 and October 2017 treatment notes from an examination of his lumbar
17 spine noted that "motion was without pain, crepitus, or evident
18 instability" (AR 57 (citing AR 283-90)). Also, a September 2015
19 physical-therapy examination found "[g]ood" rehabilitation
20 potential (AR 214), and November 2017 treatment notes indicated
21 that he had flexion of 135 degrees in his left knee (AR 253), which
22 is higher than normal for a male his age, see Normal Joint Range of
23 Motion Study, CDC, <https://www.cdc.gov/ncbddd/jointrom/index.html>
24 (last visited July 21, 2020).

25 The ALJ also noted that the medical opinions contradicted
26 Plaintiff's claims that his symptoms prevented him from working.
27 (AR 58.) The ALJ's reliance on these medical opinions in
28 discounting Plaintiff's subjective symptom statements was proper.

1 See Molina, 674 F.3d at 1113 (examining doctor's opinion that
2 condition "was not severe" and could be "controlled" was "specific,
3 clear, and convincing reason[]" to reject subjective symptom
4 testimony); Moncada v. Chater, 60 F.3d 521, 524 (9th Cir. 1995)
5 (per curiam) (examining doctor's assessment that plaintiff "could
6 do sedentary work" was "specific" and "valid" reason to reject his
7 "claims of excessive pain"). As explained above, the ALJ gave
8 specific and legitimate reasons for giving great weight to the
9 three opinions, and no doctor opined contrary to them.

10 Plaintiff argues that the "ALJ failed to explain how [his]
11 reported activities . . . demonstrated the ability to perform
12 medium work." (J. Stip. at 7.) But even if the ALJ did err in
13 discounting Plaintiff's testimony as inconsistent with his daily
14 activities, the error was harmless because he provided two other
15 valid reasons for discounting the testimony. See Howland v. Saul,
16 804 F. App'x 467, 471 (9th Cir. 2020) (holding that ALJ's error in
17 relying on claimant's daily activities to discount her subjective
18 symptom testimony was harmless because "the ALJ offered other
19 specific, clear and convincing reasons" for doing so (citation
20 omitted)).

21 The ALJ stated clear and convincing reasons, supported by
22 substantial evidence, for discounting Plaintiff's subjective
23 symptom testimony. Remand is not warranted on this basis.

24 **VI. CONCLUSION**

25 Consistent with the foregoing and under sentence four of 42
26 U.S.C. § 405(g),²⁵ IT IS ORDERED that judgment be entered

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28 ²⁵ That sentence provides: "The [district] court shall have power to enter, upon the pleadings and transcript of the record, a

1 AFFIRMING the Commissioner's decision, DENYING Plaintiff's
2 request for remand, and DISMISSING this action with prejudice.

3
4 DATED: July 27, 2020


5 JEAN ROSENBLUTH
6 U.S. MAGISTRATE JUDGE

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27 judgment affirming, modifying, or reversing the decision of the
28 Commissioner of Social Security, with or without remanding the
cause for a rehearing."