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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JUAN J. GODINEZ,  
Plaintiff,

v.

NANCY A. BERRYHILL,<sup>1</sup> Acting  
Commissioner of Social  
Security,  
Defendant.

CASE NO. SACV 17-0194 SS

**MEMORANDUM DECISION AND ORDER**

**I.**

**INTRODUCTION**

Juan J. Godinez ("Plaintiff") seeks review of the final decision of the Acting Commissioner of Social Security (the "Commissioner" or "Agency") denying his application for social security benefits. The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States

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<sup>1</sup> Nancy A. Berryhill, Acting Commissioner of Social Security, is substituted for the Commissioner of Social Security Administration, whom Plaintiff named in the Complaint. See 42 U.S.C. § 405(g); Fed. R. Civ. P. 25(d).

1 Magistrate Judge. (Dkt. Nos. 13, 17, 18). For the reasons stated  
2 below, the decision of the Commissioner is REVERSED and this case  
3 is REMANDED for further administrative proceedings consistent with  
4 this decision.

5  
6 **II.**

7 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

8  
9 To qualify for disability benefits, a claimant must  
10 demonstrate a medically determinable physical or mental impairment  
11 that prevents the claimant from engaging in substantial gainful  
12 activity and that is expected to result in death or to last for a  
13 continuous period of at least twelve months. Reddick v. Chater,  
14 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)).  
15 The impairment must render the claimant incapable of performing  
16 work previously performed or any other substantial gainful  
17 employment that exists in the national economy. Tackett v. Apfel,  
18 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.  
19 § 423(d)(2)(A)).

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

- 24  
25 (1) Is the claimant presently engaged in substantial gainful  
26 activity? If so, the claimant is found not disabled. If  
27 not, proceed to step two.

1 (2) Is the claimant's impairment severe? If not, the  
2 claimant is found not disabled. If so, proceed to step  
3 three.

4 (3) Does the claimant's impairment meet or equal one of the  
5 specific impairments described in 20 C.F.R. Part 404,  
6 Subpart P, Appendix 1? If so, the claimant is found  
7 disabled. If not, proceed to step four.

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

11 (5) Is the claimant able to do any other work? If not, the  
12 claimant is found disabled. If so, the claimant is found  
13 not disabled.

14  
15 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,  
16 262 F.3d 949, 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b)-  
17 (g)(1), 416.920(b)-(g)(1).

18  
19 The claimant has the burden of proof at steps one through four  
20 and the Commissioner has the burden of proof at step five.  
21 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an  
22 affirmative duty to assist the claimant in developing the record  
23 at every step of the inquiry. Id. at 954. If, at step four, the  
24 claimant meets his or her burden of establishing an inability to  
25 perform past work, the Commissioner must show that the claimant  
26 can perform some other work that exists in "significant numbers"  
27 in the national economy, taking into account the claimant's  
28 residual functional capacity ("RFC"), age, education, and work

1 experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at  
2 721; 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner  
3 may do so by the testimony of a VE or by reference to the Medical-  
4 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,  
5 Appendix 2 (commonly known as "the grids"). Osenbrock v. Apfel,  
6 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both  
7 exertional (strength-related) and non-exertional limitations, the  
8 Grids are inapplicable and the ALJ must take the testimony of a  
9 vocational expert ("VE"). Moore v. Apfel, 216 F.3d 864, 869 (9th  
10 Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th Cir.  
11 1988)).

### 12 13 **III.**

#### 14 **THE ALJ'S DECISION**

15  
16 The ALJ employed the five-step sequential evaluation process  
17 in evaluating Plaintiff's case. At step one, the ALJ found that  
18 Plaintiff has not engaged in substantial gainful activity since  
19 October 15, 2013, the application date. (AR 23). At step two,  
20 the ALJ found that Plaintiff's cervical stenosis post decompression  
21 and fusion, lumbar degenerative disc disease with foraminal  
22 stenosis, thoracic degenerative disc disease with stenosis, distal  
23 polyneuropathy and low intellectual functioning are severe  
24 impairments. (AR 23). At step three, the ALJ determined that  
25 Plaintiff does not have an impairment or combination of impairments  
26 that meet or medically equal the severity of any of the listings  
27 enumerated in the regulations. (AR 24-26).  
28

1           The ALJ then assessed Plaintiff's RFC and concluded that he  
2 can perform sedentary work, as defined in 20 C.F.R. § 416.967(a),<sup>2</sup>  
3 except:

4  
5           [Plaintiff can] stand and walk with normal breaks for up  
6 to two hours in an eight-hour day; sit for normal breaks  
7 for a total of six hours in an eight-hour day with the  
8 ability to change positions every 45 minutes and stand  
9 and stretch every three to four minutes at the work  
10 station; frequently use the bilateral upper extremities  
11 for pushing and pulling, reaching in all directions,  
12 grasping, handling and fingering; pushing and pulling  
13 occasionally in the lower extremities bilaterally;  
14 occasionally climbing ladders, ropes, scaffolds or  
15 crawling; limited to moderately complex tasks with a  
16 reasoning level of three or below.

17  
18 (AR 26). At step four, the ALJ found that Plaintiff was unable to  
19 perform any past relevant work. (AR 30). Based on Plaintiff's  
20 RFC, age, education, work experience and the VE's testimony, the  
21 ALJ determined at step five that there are jobs that exist in  
22 significant numbers in the national economy that Plaintiff can  
23 perform, including assembler and table worker. (AR 30-31).

24 \_\_\_\_\_  
25 <sup>2</sup> "Sedentary work involves lifting no more than 10 pounds at a time and  
26 occasionally lifting or carrying articles like docket files, ledgers,  
27 and small tools. Although a sedentary job is defined as one which involves  
28 sitting, a certain amount of walking and standing is often necessary in  
carrying out job duties. Jobs are sedentary if walking and standing are  
required occasionally and other sedentary criteria are met." 20 C.F.R.  
§ 416.967(a).

1 Accordingly, the ALJ found that Plaintiff was not under a  
2 disability as defined by the Social Security Act since October 15,  
3 2013, the date the application was filed. (AR 31).

4  
5 **IV.**

6 **STANDARD OF REVIEW**

7  
8 Under 42 U.S.C. § 405(g), a district court may review the  
9 Commissioner's decision to deny benefits. "[The] court may set  
10 aside the Commissioner's denial of benefits when the ALJ's findings  
11 are based on legal error or are not supported by substantial  
12 evidence in the record as a whole." Aukland v. Massanari, 257 F.3d  
13 1033, 1035 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); see  
14 also Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing  
15 Fair v. Bowen, 885 F.2d 597, 601 (9th Cir. 1989)).

16  
17 "Substantial evidence is more than a scintilla, but less than  
18 a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v.  
19 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant  
20 evidence which a reasonable person might accept as adequate to  
21 support a conclusion." (Id.). To determine whether substantial  
22 evidence supports a finding, the court must "'consider the record  
23 as a whole, weighing both evidence that supports and evidence that  
24 detracts from the [Commissioner's] conclusion.'" Aukland, 257 F.3d  
25 at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.  
26 1993)). If the evidence can reasonably support either affirming  
27 or reversing that conclusion, the court may not substitute its  
28 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-

1 21 (citing Flaten v. Sec'y of Health & Human Servs., 44 F.3d 1453,  
2 1457 (9th Cir. 1995)).

3  
4 **V.**

5 **DISCUSSION**

6  
7 **A. The ALJ's Reasons for Discrediting Plaintiff's Subjective**  
8 **Symptom Testimony Were Not Supported By Substantial Evidence**

9  
10 Plaintiff testified that he is unable to work due to neck and  
11 back pain, weakness in his legs and tingling in his hands. (AR  
12 51-52, 55, 58). To relieve the pain, Plaintiff needs to lay down  
13 for two hours during the day. (AR 53). He needs a walker to  
14 ambulate in the morning before his back gets stretched out. (AR  
15 55). Plaintiff can walk or sit for about thirty minutes before  
16 needing to change positions. (AR 57). He also has difficulty  
17 fingering and reaching because of tingling and weakness in his arms  
18 and hands. (AR 58-59).

19  
20 Plaintiff asserted that due to his pain, he has difficulty  
21 putting on his shoes and socks, preparing meals and picking up  
22 trash off the floor. (AR 190-91). He can prepare his own meals  
23 only once a day because he has trouble standing for very long. (AR  
24 191). Once a week he is able to perform some household chores but  
25 only for thirty minutes at a time. (AR 191). He is able to shop  
26 for groceries for twenty to thirty minutes. (AR 192). His  
27 impairments limit his ability to lift, squat, bend, stand, reach,  
28 walk, sit, kneel, climb, concentrate and follow instructions. (AR

1 194). He can walk for only a couple blocks before needing to rest  
2 for five minutes. (AR 194). He uses a walker on occasion when  
3 the pain gets worse. (AR 195).

4  
5 The ALJ found that Plaintiff was "not entirely credible":

6  
7 The medical evidence of record does not entirely support  
8 the credibility of [Plaintiff's] allegations regarding  
9 his impairments. The objective medical findings reveal  
10 some limitations, but not to the extent alleged by  
11 [Plaintiff]. The record shows [Plaintiff] has a history  
12 of back and neck pain, which was treated with a  
13 successful cervical fusion in 2014. Post-surgery  
14 [Plaintiff] was noted to have improvement in his  
15 condition. He was noted as being independent in his  
16 ability to ambulate, carry, move and handle objects. The  
17 undersigned notes the record shows [Plaintiff] does  
18 experience pain; however, he testified that he is able  
19 to walk for up to half an hour at a time and drive a car.

20  
21 (AR 28-29; see id. 26-27) (citation omitted).

22  
23 **1. Standards**

24  
25 When assessing a claimant's credibility regarding subjective  
26 pain or intensity of symptoms, the ALJ must engage in a two-step  
27 analysis. Trevizo v. Berryhill, 874 F.3d 664, 678 (9th Cir. 2017).  
28 First, the ALJ must determine if there is medical evidence of an



1 impairment that could reasonably produce the symptoms alleged.  
2 Garrison v. Colvin, 759 F.3d 995, 1014 (9th Cir. 2014). "In this  
3 analysis, the claimant is not required to show that her impairment  
4 could reasonably be expected to cause the severity of the symptom  
5 she has alleged; she need only show that it could reasonably have  
6 caused some degree of the symptom." Id. (emphasis in original)  
7 (citation omitted). "Nor must a claimant produce objective medical  
8 evidence of the pain or fatigue itself, or the severity thereof."  
9 Id. (citation omitted).

10  
11 If the claimant satisfies this first step, and there is no  
12 evidence of malingering, the ALJ must provide specific, clear and  
13 convincing reasons for rejecting the claimant's testimony about  
14 the symptom severity. Trevizo, 874 F.3d at 678 (citation omitted);  
15 see also Smolen, 80 F.3d at 1284 ("[T]he ALJ may reject the  
16 claimant's testimony regarding the severity of her symptoms only  
17 if he makes specific findings stating clear and convincing reasons  
18 for doing so."); Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883  
19 (9th Cir. 2006) ("[U]nless an ALJ makes a finding of malingering  
20 based on affirmative evidence thereof, he or she may only find an  
21 applicant not credible by making specific findings as to  
22 credibility and stating clear and convincing reasons for each.").  
23 "This is not an easy requirement to meet: The clear and convincing  
24 standard is the most demanding required in Social Security cases."  
25 Garrison, 759 F.3d at 1015 (citation omitted).

26  
27 In discrediting the claimant's subjective symptom testimony,  
28 the ALJ may consider the following:

1 (1) ordinary techniques of credibility evaluation, such  
2 as the claimant's reputation for lying, prior  
3 inconsistent statements concerning the symptoms, and  
4 other testimony by the claimant that appears less than  
5 candid; (2) unexplained or inadequately explained  
6 failure to seek treatment or to follow a prescribed  
7 course of treatment; and (3) the claimant's daily  
8 activities.

9  
10 Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014) (citation  
11 omitted). Inconsistencies between a claimant's testimony and  
12 conduct, or internal contradictions in the claimant's testimony,  
13 also may be relevant. Burrell v. Colvin, 775 F.3d 1133, 1137 (9th  
14 Cir. 2014); Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir.  
15 1997). In addition, the ALJ may consider the observations of  
16 treating and examining physicians regarding, among other matters,  
17 the functional restrictions caused by the claimant's symptoms.  
18 Smolen, 80 F.3d at 1284; accord Burrell, 775 F.3d at 1137. However,  
19 it is improper for an ALJ to reject subjective testimony based  
20 "solely" on its inconsistencies with the objective medical evidence  
21 presented. Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1227  
22 (9th Cir. 2009) (citation omitted).

23  
24 Further, the ALJ must make a credibility determination with  
25 findings that are "sufficiently specific to permit the court to  
26 conclude that the ALJ did not arbitrarily discredit claimant's  
27 testimony." Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir.  
28 2008) (citation omitted); see Brown-Hunter v. Colvin, 806 F.3d 487,

1 493 (9th Cir. 2015) (“A finding that a claimant’s testimony is not  
2 credible must be sufficiently specific to allow a reviewing court  
3 to conclude the adjudicator rejected the claimant’s testimony on  
4 permissible grounds and did not arbitrarily discredit a claimant’s  
5 testimony regarding pain.”) (citation omitted). Although an ALJ’s  
6 interpretation of a claimant’s testimony may not be the only  
7 reasonable one, if it is supported by substantial evidence, “it is  
8 not [the court’s] role to second-guess it.” Rollins v. Massanari,  
9 261 F.3d 853, 857 (9th Cir. 2001).

10  
11 **2. Objective Evidence Supports Plaintiff’s Subjective**  
12 **Symptoms**

13  
14 The ALJ contends that “the objective findings in this case  
15 fail to provide strong support for [Plaintiff’s] allegations of  
16 disabling symptoms and limitations.” (AR 27). The Court  
17 disagrees.

18  
19 Initially, it is problematic that the ALJ failed to indicate  
20 which of Plaintiff’s allegations are not supported by objective  
21 findings. See Holohan v. Massanari, 246 F.3d 1195, 1208 (9th Cir.  
22 2001) (“[T]he ALJ must specifically identify the testimony she or  
23 he finds not to be credible and must explain what evidence  
24 undermines the testimony.”); accord Brown-Hunter, 806 F.3d at 493.  
25 Furthermore, there is significant evidence in the medical record  
26 that supports Plaintiff’s alleged limitations. On November 8,  
27 2013, Carlos T. Garcia, D.C., reported that Plaintiff has had  
28 recurring severe neck and back pain and stiffness for over two

1 years. (AR 363). Plaintiff periodically requires the use of a  
2 walker for support. (AR 363). On November 14, 2013, the Agency's  
3 Field Office noted that Plaintiff needed a walker to ambulate. (AR  
4 168); see 20 C.F.R. § 416.929(c)(3) (ALJ must "consider all of the  
5 evidence presented, including . . . observations by [Agency]  
6 employees").

7  
8 On May 21, 2014, Plaintiff reported nearly constant and  
9 worsening lower back pain, with pain and numbness radiating to his  
10 legs. (AR 374). On examination, John S. Godes, M.D.,<sup>3</sup> found  
11 tenderness of the lower lumbar spine and paravertebral areas,  
12 bilaterally, with "marked limitation of motion." (AR 377, 379).  
13 Forward flexion was limited to 20/90 degrees, extension to 5/25  
14 degrees and lateral flexion to 5/25 degrees. (AR 377). Due to  
15 Plaintiff's low back pain, Dr. Godes could not perform a straight-  
16 leg-raising test. (AR 377). Plaintiff ambulated with a "marked  
17 limp." (AR 378). On August 28, 2014, Plaintiff reported sharp  
18 lower back pain, radiating to his lower extremities with tingling  
19 and numbness. (AR 413). He had weakness in his lower extremities  
20 and ambulated with an unstable gait. (AR 413-14). Plaintiff's  
21 unstable gait was also observed on September 18 and October 3,  
22 2014, along with difficulty with fine motor motion and activity in  
23 both hands. (AR 406, 410).

24  
25 The ALJ stated that Plaintiff's condition improved following  
26 his October 2014 surgery. (AR 28, 29). However, the evidence does

27 \_\_\_\_\_  
28 <sup>3</sup> The ALJ gave Dr. Garcia's opinion "great weight." (AR 28).

1 not support this statement. On November 21, 2014, Plaintiff  
2 reported difficulty ambulating and diffuse numbness in his legs.  
3 (AR 500). He uses a walker because of significant stability issues.  
4 (AR 500). He exhibited a broad-based gait with short steps. (AR  
5 501). On December 17, 2014, Plaintiff had reduced range of motion  
6 and impaired strength. (AR 483-84). On June 3, 2015, Plaintiff  
7 complained of low back pain and poor balance. (AR 507). He  
8 reported using a walker due to difficulty walking, particularly in  
9 the mornings. (AR 507). Plaintiff complained of numbness and  
10 tingling in his lower extremities, bilaterally. (AR 507). On  
11 examination, Peyman Tabrizi, M.D., found that Plaintiff ambulates  
12 "quite poorly." (AR 507). His feet are everted, and he is unable  
13 to walk on his heels or toes. (AR 507). Dr. Tabrizi also found  
14 motor loss, sensory loss and deep tendon reflex loss. (AR 507-  
15 08).

16  
17 These medical records are consistent with Plaintiff's  
18 allegations of disabling pain, numbness and tingling in his back  
19 and lower extremities. See Social Security Ruling ("SSR") 16-3p,<sup>4</sup>  
20 at \*5 (S.S.A. Oct. 25, 2017) ("objective medical evidence is a  
21 useful indicator to help make reasonable conclusions about the  
22 intensity and persistence of symptoms, including the effects those  
23 symptoms may have on the ability to perform work-related activities  
24 for an adult"); see also Diedrich v. Berryhill, 874 F.3d 634, 642

25 \_\_\_\_\_  
26 <sup>4</sup> Social Security Rulings (SSRs) "do not carry the 'force of law,' but  
27 they are binding on ALJs nonetheless." Bray, 554 F.3d at 1224. They  
28 "reflect the official interpretation of the [Agency] and are entitled to  
some deference as long as they are consistent with the Social Security  
Act and regulations." Id. (citation omitted).

1 (9th Cir. 2017) (finding it "improper for the ALJ to discount  
2 Diedrich's testimony by cherry picking the absence of certain  
3 symptoms") (citation and alteration omitted); Garrison, 759 F.3d  
4 at 1017 & n.23 (ALJ may not cherry-pick from mixed results).

5  
6 **3. Plaintiff's Daily Activities Do Not Detract From His**  
7 **Credibility**

8  
9 The ALJ also asserts that Plaintiff's statements regarding  
10 his subjective symptoms and his daily activities are inconsistent.  
11 (AR 29). However, the ALJ fails to explain how being able to walk  
12 for only a half hour or drive a car is inconsistent with Plaintiff's  
13 allegations of disabling pain. See Brown-Hunter, 806 F.3d at 493  
14 (ALJ must "identify specifically which of [claimant's] statements  
15 she found not credible and why"); Holohan, 246 F.3d at 1208 (same).  
16 In any event, Plaintiff's testimony that he can walk for half an  
17 hour is consistent with his statements that he can walk or sit for  
18 thirty minutes before needing to change positions, perform some  
19 household chores but only for thirty minutes, and shop for only  
20 twenty to thirty minutes. (AR 57, 191-92). While Plaintiff stated  
21 that he is able to drive a car, the ALJ did not inquire as to how  
22 long he could drive without disabling pain. (AR 53).

23  
24 Nor does the ALJ explain how Plaintiff's daily activities are  
25 transferable to a work setting. "[I]f a claimant is able to spend  
26 a substantial part of his day engaged in pursuits involving the  
27 performance of physical functions that are transferable to a work  
28 setting, a specific finding as to this fact may be sufficient to

1 discredit an allegation of disabling excess pain.” Fair, 885 F.2d  
2 at 603 (emphasis in original). However, the ALJ “must make specific  
3 findings relating to the daily activities and their transferability  
4 to conclude that a claimant’s daily activities warrant an adverse  
5 credibility determination.” Orn v. Astrue, 495 F.3d 625, 639 (9th  
6 Cir. 2007) (citation and alteration omitted). Here, the ALJ  
7 neither made specific findings nor pointed to any record evidence  
8 to support his conclusion that Plaintiff’s daily activities were  
9 “transferable” to a work setting. See Orn, 495 F.3d at 639.

10  
11 Defendant points to Plaintiff’s reported daily activities,  
12 including gardening, washing dishes, doing laundry, cleaning,  
13 vacuuming, emptying the trash, using a weeder, sweeping, mopping  
14 and running errands as evidence that Plaintiff is able to function  
15 in a work setting. (Dkt. No. 20 at 5-6). While the ALJ cited  
16 these daily activities in his decision, they were not included in  
17 his credibility analysis. (Compare AR 25, 27, with id. 29). The  
18 Court is “constrained to review the reasons the ALJ asserts.”  
19 Burrell, 775 F.3d at 1138 (citation omitted). Further, the ALJ  
20 misstated Plaintiff’s reported activities. While Plaintiff is able  
21 occasionally to do some household chores, his impairments limit  
22 him to thirty minutes before needing to rest. (AR 191). The ALJ  
23 does not explain how such occasional chores are transferable to an  
24 eight-hour workday. “One does not need to be ‘utterly  
25 incapacitated’ in order to be disabled.” Vertigan v. Halter, 260  
26 F.3d 1044, 1050 (9th Cir. 2001).

1 The ALJ failed to provide clear and convincing reasons,  
2 supported by substantial evidence, for rejecting Plaintiff's  
3 subjective symptoms. The matter is remanded for further  
4 proceedings. On remand, the ALJ shall reevaluate Plaintiff's  
5 symptoms in accordance with SSR 16-3p, taking into account the full  
6 range of medical evidence.

7  
8 **B. The ALJ Failed To Properly Weigh The Treating Physicians'**  
9 **Opinions**

10  
11 An ALJ must afford the greatest weight to the opinion of the  
12 claimant's treating physician. The opinions of treating physicians  
13 are entitled to special weight because the treating physician is  
14 hired to cure and has a better opportunity to know and observe the  
15 claimant as an individual. Connett v. Barnhart, 340 F.3d 871, 874  
16 (9th Cir. 2003); Thomas v. Barnhart, 278 F.3d 947, 956-57 (9th Cir.  
17 2002); Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989).  
18 Where the treating doctor's opinion is not contradicted by another  
19 doctor, it may be rejected only for "clear and convincing" reasons.  
20 Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995) (as amended).  
21 Even if the treating physician's opinion is contradicted by another  
22 doctor, the ALJ may not reject this opinion without providing  
23 specific, legitimate reasons, supported by substantial evidence in  
24 the record. Id. at 830-31; see Orn, 495 F.3d at 632; Ryan v.  
25 Comm'r of Soc. Sec., 528 F.3d 1194, 1198 (9th Cir. 2008). "If a  
26 treating physician's opinion is not given 'controlling weight'  
27 because it is not 'well-supported' or because it is inconsistent  
28 with other substantial evidence in the record," the ALJ shall



1 consider "specified factors in determining the weight it will be  
2 given[, including] . . . the length of the treatment relationship  
3 and the frequency of examination by the treating physician[ ] and  
4 the nature and extent of the treatment relationship between the  
5 patient and the treating physician." Orn, 495 F.3d at 631 (citation  
6 omitted); see 20 C.F.R. §§ 404.1527(d)(2) (listing factors to  
7 consider), 416.927(d)(2) (same).

8  
9 **1. Dr. Meka**

10  
11 Dr. Meka opined that Plaintiff can sit, stand or walk up to  
12 two hours in an eight-hour day and has "limited" use of his hands.  
13 (AR 476). In a single-sentence analysis, the ALJ gave this opinion  
14 "little weight," finding that "it is more restrictive than the  
15 testimony of [Plaintiff] regarding his activities of daily living."  
16 (AR 29). The ALJ's analysis is not supported by substantial  
17 evidence.

18  
19 First, the ALJ's analysis fails to provide sufficient  
20 analysis. A single-sentence conclusion does not provide  
21 sufficiently specific reasoning to allow a reviewing court to  
22 conclude that an ALJ rejected a treating physician's opinion for  
23 legitimate reasons supported by substantial evidence. The ALJ does  
24 not explain how Plaintiff's testimony contradicts Dr. Meka's  
25 opinion.

26  
27 Second, the ALJ misstated Dr. Meka's opinion. The ALJ  
28 contends that Dr. Meka found that Plaintiff can "never use [his]

1 upper extremities." (AR 29). While Dr. Meka checked a column  
2 labeled "N", which the form does not define, he clearly wrote  
3 "limited" in his assessment of Plaintiff's ability to grasp,  
4 manipulate and reach with his hands. (AR 476). If the ALJ had a  
5 question about Dr. Meka's opinion, the ALJ had a duty to develop  
6 the record. Mayes v. Massanari, 276 F.3d 453, 459-60 (9th Cir.  
7 2001) ("An ALJ's duty to develop the record further is  
8 triggered . . . when there is ambiguous evidence or when the record  
9 is inadequate to allow for proper evaluation of the evidence.").

10  
11 Plaintiff testified that he can walk or sit for only thirty  
12 minutes before needing to rest. (AR 57). Plaintiff also testified  
13 that he has difficulty fingering and reaching because of tingling  
14 and weakness in his arms and hands. (AR 58-59). He stated that  
15 he could reach at or below shoulder level only ten minutes before  
16 needing to rest for fifteen minutes. (AR 58-59). Dr. Meka's  
17 opinion is consistent with this testimony.

18  
19 In sum, the ALJ did not provide specific and legitimate  
20 reasons for rejecting Dr. Meka's opinion. On remand, the ALJ shall  
21 reevaluate the weight to be afforded Dr. Meka's opinion. If the  
22 ALJ finds appropriate reasons for not giving the opinion  
23 controlling weight, the ALJ may not reject the opinion without  
24 providing specific and legitimate reasons supported by substantial  
25 evidence in the record.

1           **2.     Dr. Multani**

2  
3           Dr. Multani opined that Plaintiff can occasionally lift and  
4 carry up to fifty pounds and frequently lift and carry up to twenty  
5 pounds. (AR 478). Plaintiff is limited in his ability to use his  
6 upper extremities. (AR 478-79). He can sit up to one hour and  
7 stand or walk up to thirty minutes in an eight-hour day. (AR 479).  
8 Plaintiff can never climb, can only occasionally balance, stoop,  
9 crouch, kneel or crawl, and would likely miss more than three days  
10 of work each month. (AR 480-81).

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12           In a single-sentence conclusion, the ALJ gave this opinion  
13 "little weight," finding that "it is more restrictive than the  
14 testimony of [Plaintiff] and unsupported by the medical evidence  
15 of record that showed a successful cervical fusion. (AR 29). The  
16 ALJ's analysis is not supported by substantial evidence. Again, a  
17 single-sentence conclusion does not provide sufficiently specific  
18 reasoning to allow a reviewing court to conclude that an ALJ  
19 rejected a treating physician's opinion for legitimate reasons  
20 supported by substantial evidence. The ALJ does not explain how  
21 Plaintiff's testimony or the cervical fusion surgery contradicts  
22 Dr. Multani's opinion.

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24           Second, while there are some discrepancies between Dr.  
25 Multani's opinion and Plaintiff's testimony, in other regards they  
26 are quite similar. Both Dr. Multani and Plaintiff agree that he  
27 is limited in his ability to use his upper extremities and to  
28 climb, balance, stoop, crouch, kneel and crawl. (Compare AR 58-

1 59, 194 with id. 478-80). While they appear to disagree on the  
2 number of hours in an eight-hour workday that Plaintiff can sit,  
3 stand or walk, they agree generally that Plaintiff can stand or  
4 walk an hour or less before needing to rest. (Compare AR 53, 57,  
5 191-92, with id. 479).

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7 Finally, the medical evidence does not support the ALJ's  
8 conclusion that Plaintiff's cervical fusion surgery "successfully"  
9 alleviated his functional impairments. Following his October 2014  
10 surgery, Plaintiff still had difficulty ambulating, needing a  
11 walker on occasion. (AR 500, 507). The numbness and tingling in  
12 his lower extremities continued. (AR 500, 507). In December 2014,  
13 he had reduced range of motion and impaired strength. (AR 483-  
14 84). In June 2015, Plaintiff was ambulating "quite poorly," with  
15 everted feet and motor, sensory and deep tendon reflex loss. (AR  
16 507-08).

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18 In sum, the ALJ failed to provide specific and legitimate  
19 reasons for rejecting Dr. Multani's opinion. On remand, the ALJ  
20 shall reevaluate the weight to be afforded Dr. Multani's opinion.  
21 If the ALJ finds appropriate reasons for not giving the opinion  
22 controlling weight, the ALJ may not reject the opinion without  
23 providing specific and legitimate reasons supported by substantial  
24 evidence in the record.<sup>5</sup>

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27 <sup>5</sup> Plaintiff also argues that the ALJ erred by failing to properly consider  
28 listings 1.04A and 1.04C. (Dkt. No. 19 at 6-11). Plaintiff similarly  
contends that the ALJ erred in crediting the Medical Expert's opinion on  
these listings. (Id. at 15-16). However, it is unnecessary to reach

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**VI.**

**CONCLUSION**

Accordingly, IT IS ORDERED that Judgment be entered REVERSING the decision of the Commissioner and REMANDING this matter for further proceedings consistent with this decision. IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment on counsel for both parties.

DATED: December 11, 2017

\_\_\_\_\_  
/s/  
SUZANNE H. SEGAL  
UNITED STATES MAGISTRATE JUDGE

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

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Plaintiff's arguments on these grounds, as the matter is remanded for the alternative reasons discussed at length in this Order.