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

PATRICK K. G.,¹

Plaintiff,

v.

ANDREW M. SAUL, Commissioner of
Social Security,
Defendant.

Case No. SA CV 18-01156-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Patrick K. G. (“Plaintiff”) challenges the Commissioner’s denial of his application for a period of disability and disability insurance benefits (“DIB”). For the reasons stated below, the decision of the Commissioner is AFFIRMED.

II. PROCEEDINGS BELOW

On April 15, 2015, Plaintiff filed a Title II application for DIB alleging disability beginning January 11, 2013. (Administrative Record (“AR”) 524-27.) Plaintiff later amended his alleged onset date to December 7, 2014. (*See* AR 636.)

¹ Partially redacted in compliance 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 His application was denied initially on September 11, 2015, and upon reconsideration
2 on January 5, 2016. (AR 452, 460.) On January 25, 2016, Plaintiff filed a written
3 request for hearing, and a hearing was held on August 29, 2017. (AR 81, 467.)
4 Represented by counsel, Plaintiff appeared and testified, along with an impartial
5 vocational expert. (AR 83-113.) On September 12, 2017, the Administrative Law
6 Judge (“ALJ”) found that Plaintiff had not been under a disability, pursuant to the
7 Social Security Act,² since December 7, 2014. (AR 74-75.) The ALJ’s decision
8 became the Commissioner’s final decision when the Appeals Council denied
9 Plaintiff’s request for review. (AR 1.) Plaintiff filed this action on June 29, 2018.
10 (Dkt. No. 1.)

11 The ALJ followed a five-step sequential evaluation process to assess whether
12 Plaintiff was disabled under the Social Security Act. *See Lester v. Chater*, 81 F.3d
13 821, 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not
14 engaged in substantial gainful activity since December 7, 2014, the alleged onset date
15 (“AOD”). (AR 63.) At **step two**, the ALJ found that Plaintiff had the following
16 severe impairments: degenerative disc disease; osteoarthritis of the left knee; a
17 history of rotator cuff syndrome; obesity; and sleep apnea. (*Id.*) At **step three**, the
18 ALJ found that Plaintiff “does not have an impairment or combination of
19 impairments that meets or medically equals the severity of one of the listed
20 impairments in 20 CFR Part 404, Subpart P, Appendix 1.” (AR 65.)

21 Before proceeding to step four, the ALJ found that Plaintiff had the residual
22 functional capacity (“RFC”) to:

23 [P]erform medium work . . . except he can frequently climb stairs and
24 ramps and occasionally climb ladders, ropes and scaffolds. He can
25 frequently balance, stoop, kneel, crouch and crawl. He can have

26 ² Persons are “disabled” for purposes of receiving Social Security benefits if they are
27 unable to engage in any substantial gainful activity owing to a physical or mental
28 impairment expected to result in death, or which has lasted or is expected to last for
a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

1 frequent exposure to conditions of extreme heat and pulmonary irritants
2 such as dusts, odors, fumes and the like.

3 (AR 66.) At **step four**, based on Plaintiff's RFC and the vocational expert's
4 testimony, the ALJ found that Plaintiff was unable to perform any past relevant work.

5 (AR 72.) At **step five**, the ALJ found that "there are jobs that exist in significant
6 numbers in the national economy that the claimant can perform." (AR 73.)
7 Accordingly, the ALJ determined that Plaintiff had not been under a disability from
8 the AOD through the date of decision. (AR 74-75.)

9 **III. STANDARD OF REVIEW**

10 Under 42 U.S.C. § 405(g), a district court may review the Commissioner's
11 decision to deny benefits. A court must affirm an ALJ's findings of fact if they are
12 supported by substantial evidence and if the proper legal standards were applied.
13 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). "'Substantial evidence'
14 means more than a mere scintilla, but less than a preponderance; it is such relevant
15 evidence as a reasonable person might accept as adequate to support a conclusion."
16 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*
17 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial
18 evidence requirement "by setting out a detailed and thorough summary of the facts
19 and conflicting clinical evidence, stating his interpretation thereof, and making
20 findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

21 "[T]he Commissioner's decision cannot be affirmed simply by isolating a
22 specific quantum of supporting evidence. Rather, a court must consider the record
23 as a whole, weighing both evidence that supports and evidence that detracts from the
24 Secretary's conclusion." *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001)
25 (citations and internal quotation marks omitted). "'Where evidence is susceptible to
26 more than one rational interpretation,' the ALJ's decision should be upheld." *Ryan*
27 *v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing *Burch v.*
28

1 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see Robbins*, 466 F.3d at 882 (“If the
2 evidence can support either affirming or reversing the ALJ’s conclusion, we may not
3 substitute our judgment for that of the ALJ.”). The Court may review only “the
4 reasons provided by the ALJ in the disability determination and may not affirm the
5 ALJ on a ground upon which he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th
6 Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)).

7 **IV. DISCUSSION**

8 Plaintiff raises the following issues for review: (1) whether the RFC
9 assessment is supported by substantial evidence; and (2) whether the ALJ properly
10 evaluated Plaintiff’s subjective complaints. (*See* Joint Submission (“JS”) 4.) For the
11 reasons below, the Court affirms.

12 **A. The ALJ Properly Evaluated Plaintiff’s Subjective Complaints**³

13 Plaintiff argues that the ALJ failed to properly consider Plaintiff’s subjective
14 testimony. (JS 13-14.) The Commissioner argues that the ALJ provided legally
15 sufficient reasons for discounting Plaintiff’s complaints. (JS 14-19.)

16 **1. Plaintiff’s Testimony**

17 Plaintiff last worked installing solar panels in 2013. (AR 89.) He injured his
18 knee and back, and he could no longer do the job. (AR 90.) Plaintiff saw an
19 orthopedic surgeon for pain management and therapy. (*Id.*) He was laid off or
20 terminated from his job, but he still received medical care for five years. (*Id.*)

21 Plaintiff drove himself to the hearing. (AR 88.) He lives in his own home
22 with his wife, son, and grandson. (AR 91.) Plaintiff also has two houses, which he
23 inherited from his parents, that he rents for income. (AR 91, 93.) Plaintiff writes a
24 receipt when a tenant mails a check, and his son does the maintenance for the rental
25 properties. (AR 92.) Plaintiff explained that he keeps the rent low as an incentive

26
27 ³ Because subjective symptom testimony is one factor that the ALJ must consider
28 when assessing a claimant’s RFC, the Court addresses the issue of credibility first
before discussing the overall RFC determination.

1 for tenants to take care of their own minor maintenance. (*See* AR 93.) Plaintiff hires
2 a contractor for large jobs, such as plumbing. (AR 92.)

3 Plaintiff testified that, according to his doctor, Plaintiff's blood pressure and
4 cholesterol are high due to his weight. (AR 87-88.) Plaintiff's painkillers make it
5 hard to lose weight. (AR 88.) Plaintiff also has sleep apnea, and he uses a CPAP
6 machine. (AR 97.)

7 Plaintiff stated that he has problems waking up because his medication makes
8 him groggy. (AR 94.) He usually stays home with his wife or grandson. (*Id.*)
9 Plaintiff's grandson, who is disabled, goes to school during the day. (AR 94-95.)
10 When his grandson is home, Plaintiff gets him milk and changes his diapers. (AR
11 95.) Plaintiff explained that he does not need to lift his grandson, and when he
12 changes his diapers, his grandson lifts his own feet up. (AR 105.)

13 Plaintiff tries to do as much cooking, cleaning, laundry, and yard work as he
14 can, but he is "discouraged now because [he] can't do it." (AR 95.) He explained
15 that his yard is overgrown. (AR 96.) Plaintiff needs help putting on his socks and
16 shoes. (AR 104.)

17 According to Plaintiff, his neurologist says that Plaintiff has nerve damage
18 from his legs "all the way up." (AR 96.) Plaintiff also has problems with his neck,
19 back, and legs. (*Id.*) Plaintiff's knees give out, and he almost falls to the ground.
20 (*Id.*) Plaintiff is receiving alignments, heat treatments, and electro stimulus for his
21 back. (AR 99.) He was prescribed a brace for his left knee. (*Id.*) Plaintiff stated
22 that he sometimes cannot pick up a cup of coffee because of the arthritis in his wrists.
23 (AR 96.) Plaintiff also stated that he has hearing loss due to the equipment used when
24 Plaintiff was a machinist and worked in construction. (AR 97.) Plaintiff explained
25 that he cannot hear certain frequencies. (AR 105.) He has been prescribed hearing
26 aids, but he cannot afford them. (*Id.*)

27 Plaintiff testified that he can stand for about ten minutes before he needs to
28 change position. (AR 103.) With medication, he can stand for a half hour to an hour,

1 and he can sit for up to an hour. (AR 103-04.) According to Plaintiff, he can lift
2 about ten pounds. (*Id.*)

3 **2. Plaintiff's Function Report**

4 Plaintiff submitted a Function Report in May 2015, which was written in the
5 first person but was completed by a third party. (AR 593-601.) Plaintiff explained
6 that he has severe pain in his lower back and left knee, which makes it painful for
7 him to walk, stand, sit, bend, climb, or kneel. (AR 593.) Plaintiff also gets migraines,
8 cannot hear well, is depressed, and has blurry vision, among other ailments. (*Id.*)

9 During the day, Plaintiff does "a little walking." (AR 594.) He attempts
10 housework and yard work, but he needs to stop and rest after thirty minutes. (*Id.*)
11 Plaintiff explained that it can take him several hours to do laundry, mow the yard, or
12 clean when he is not in a lot of pain, and he needs to stop and rest. (AR 595.) When
13 Plaintiff starts chores but cannot complete them, a family member finishes them for
14 him. (*Id.*) Plaintiff goes to the market to do some shopping and goes to the pharmacy
15 for his medications. (AR 594, 596.) Plaintiff also rests and watches television, but
16 he cannot sit for very long. (AR 594.) Plaintiff has trouble dressing and sometimes
17 needs help bathing. (*Id.*) His wife reminds him to shower, dress, and take his
18 medications. (AR 595.) Plaintiff can prepare sandwiches, frozen dinners,
19 microwavable dishes, and a cup of soup. (*Id.*) He is able to pay bills, count change,
20 and handle a savings account. (AR 596.)

21 Plaintiff tries to walk at the mall and go to church once a week. (AR 597.) He
22 went fishing with his son two or three times in the prior six months. (*Id.*) He also
23 goes camping about once a year and swims when he is not in a lot of pain. (*Id.*)

24 Plaintiff's condition affects his ability to lift, squat, bend, stand, reach, walk,
25 sit, kneel, hear, climb stairs, remember, concentrate, understand, follow instructions,
26 and get along with others. (AR 598.) Plaintiff can slowly walk about two to three
27 blocks before needing to rest for ten to fifteen minutes. (*Id.*) He sometimes cannot
28 understand or remember instructions, and he does not handle stress or changes in

1 routine well. (AR 598-99.) Plaintiff was prescribed a knee brace in 2013, which he
2 uses “all the time,” especially when he walks. (AR 599.) Plaintiff was also
3 prescribed new glasses in February 2015, but he could not get them due to his
4 finances. (*Id.*)

5 **3. Applicable Legal Standards**

6 “In assessing the credibility of a claimant’s testimony regarding subjective
7 pain or the intensity of symptoms, the ALJ engages in a two-step analysis.” *Molina*
8 *v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing *Vasquez v. Astrue*, 572 F.3d
9 586, 591 (9th Cir. 2009)). “First, the ALJ must determine whether the claimant has
10 presented objective medical evidence of an underlying impairment which could
11 reasonably be expected to produce the pain or other symptoms alleged.” *Treichler v.*
12 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (internal quotation
13 marks omitted) (quoting *Lingenfelter*, 504 F.3d at 1036). If so, and if the ALJ does
14 not find evidence of malingering, the ALJ must provide specific, clear and
15 convincing reasons for rejecting a claimant’s testimony regarding the severity of his
16 symptoms. *Id.* The ALJ must identify what testimony was found not credible and
17 explain what evidence undermines that testimony. *Holohan v. Massanari*, 246 F.3d
18 1195, 1208 (9th Cir. 2001). “General findings are insufficient.” *Lester*, 81 F.3d at
19 834.

20 **4. Discussion**

21 “After careful consideration of the evidence,” the ALJ found that Plaintiff’s
22 “medically determinable impairments could reasonably be expected to cause the
23 alleged symptoms,” but found that Plaintiff’s “statements concerning the intensity,
24 persistence and limiting effects of these symptoms are not entirely consistent with
25 the medical evidence and other evidence in the record.” (AR 67.) The ALJ relied on
26 the following reasons: (1) activities of daily living; and (2) lack of supporting
27 objective medical evidence. (AR 67-70.) No malingering allegation was made, and
28 therefore the ALJ’s reasons must be “clear and convincing.”

1 **a. The Commissioner’s Arguments**

2 Preliminarily, the Court addresses the Commissioner’s contention that the ALJ
3 “properly considered five legally valid factors.” (JS 15.) In addition to Plaintiff’s
4 activities of daily living and objective medical evidence, the Commissioner relies on
5 the ALJ’s statements regarding Plaintiff’s lack of treatment, the ALJ’s own
6 observations at the hearing, and Plaintiff’s improvement with treatment. (JS 17-19.)

7 According to the Commissioner, the ALJ discounted Plaintiff’s subjective
8 complaints due to Plaintiff’s lack of treatment for his mental and physical conditions,
9 and the ALJ reasonably considered that his own observations at the hearing
10 contradicted Plaintiff’s alleged impairments. (JS 17-18.) In arguing these points, the
11 Commissioner cites the ALJ’s “step two” determination that Plaintiff’s mental
12 impairments are nonsevere. (JS 17-18 (citing AR 64-65).) Because these issues were
13 not discussed along with the ALJ’s discussion of Plaintiff’s symptom testimony, they
14 are not considered to be proper credibility findings. *See Trevizo v. Berryhill*, 871
15 F.3d 664, 682 n.10 (9th Cir. 2017).

16 The Commissioner also contends that the ALJ reasonably considered that
17 Plaintiff’s physical condition improved with treatment. (JS 18.) However, the ALJ
18 made this observation when objectively summarizing Plaintiff’s medical records (AR
19 67), and he did not connect the evidence to Plaintiff’s symptoms or testimony. The
20 ALJ must explain which symptoms are inconsistent with the evidence of record and
21 must explain how his evaluation of the symptoms led to that conclusion. *See SSR*
22 *16-3p*, 2016 WL 1119029, at *8 (S.S.A. Mar. 16, 2016); *Holohan*, 246 F.3d at 1208
23 (“[T]he ALJ must specifically identify the testimony she or he finds not to be credible
24 and must explain what evidence undermines the testimony.”). The determination
25 must contain specific reasons for the weight given to the individual’s symptoms and
26 must clearly articulate how the ALJ evaluated the claimant’s symptoms. 2016 WL
27 1119029, at *9; *see Lester*, 81 F.3d at 834 (“General findings are insufficient.”).

28 ///

1 Because the ALJ did not connect this evidence to any of Plaintiff’s symptom
2 testimony, these reasons are not clear and convincing reasons, supported by
3 substantial evidence, for discounting Plaintiff’s credibility.

4 **b. Reason No. 1: Activities of Daily Living**

5 The ALJ found that Plaintiff’s reported daily activities are inconsistent with
6 the extent of his allegations. (AR 70.) Inconsistencies between symptom allegations
7 and daily activities may act as a clear and convincing reason to discount a claimant’s
8 credibility. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008); *Bunnell*
9 *v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991). But a claimant need not be utterly
10 incapacitated to obtain benefits. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).
11 “If a claimant is able to spend a substantial part of his day engaged in pursuits
12 involving the performance of physical functions that are transferable to a work
13 setting, a specific finding as to this fact may be sufficient to discredit a claimant’s
14 allegations.” *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir.
15 1999); *accord Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001).

16 The ALJ noted that Plaintiff can “prepare simple meals.” (AR 70.) But
17 Plaintiff described making sandwiches, frozen dinners, microwavable dishes, and a
18 cup of soup. (AR 595.) Plaintiff’s meal preparation does not require a substantial
19 amount of time or effort, and the ALJ failed to explain how this translates into an
20 ability to perform regularly in the workplace. Similarly, regarding the ALJ’s reliance
21 on Plaintiff’s ability to manage his two rental properties, the ALJ failed to explain
22 how collecting rent checks and hiring contractors for repairs (*see* AR 91-93) are
23 inconsistent with Plaintiff’s limitations or are transferrable to the workplace. *See*
24 *Orn*, 495 F.3d at 639 (stating that an ALJ erred in rejecting a claimant’s testimony
25 due to daily activities that were “so undemanding that they cannot be said to bear a
26 meaningful relationship to the activities of the workplace”).

27 On the other hand, the ALJ observed that Plaintiff is not precluded from
28 mowing his yard or driving a vehicle, “which involves lowering into and rising from

1 a seated position, twisting, reaching and operating foot pedals.” (AR 70.) The ALJ
2 also noted that Plaintiff walks at the mall once a week, fishes every other month, and
3 camps once a year. (*Id.*) Finally, the ALJ considered Plaintiff’s ability to care for
4 his disabled grandson, including feeding him and changing his diapers. (*Id.*) The
5 ALJ was permitted to consider inconsistencies between these activities and Plaintiff’s
6 allegations. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (affirming
7 an ALJ’s adverse credibility determination, despite “equivocal” testimony about how
8 regularly the claimant engaged in her activities, because the ALJ’s interpretation was
9 reasonable); *cf. Trevizo*, 871 F.3d at 682 (finding that childcare responsibilities did
10 not undermine a claimant’s symptom testimony when there was “almost no
11 information in the record about [the claimant]’s childcare activities”).

12 In sum, the Court finds that this reason is a clear and convincing reason,
13 supported by substantial evidence, to discount Plaintiff’s credibility. *See Batson v.*
14 *Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004) (“[T]he
15 Commissioner’s findings are upheld if supported by inferences reasonably drawn
16 from the record, and if evidence exists to support more than one rational
17 interpretation, we must defer to the Commissioner’s decision.” (citations omitted));
18 *see also Williams v. Comm’r Soc. Sec. Admin.*, No. 6:16-CV-01543-MC, 2018 WL
19 1709505, at *3 (D. Or. Apr. 9, 2018) (“Because the ALJ is only required to provide
20 a single valid reason for rejecting a claimant’s pain complaints, any one of the ALJ’s
21 reasons would be sufficient to affirm the overall credibility determination.” (citing
22 *Batson*, 359 F.3d at 1196)).

23 **c. Reason No. 2: Lack of Objective Medical Evidence**

24 The lack of supporting objective medical evidence cannot form the sole basis
25 for discounting testimony, but it is a factor that the ALJ may consider in making a
26 credibility determination. *Burch*, 400 F.3d at 681.

27 The ALJ found that Plaintiff’s testimony regarding his symptoms was “not
28 entirely consistent with the medical evidence and other evidence in the record.” (AR

1 67.) The ALJ then summarized Plaintiff's medical records, concluding that "the
2 evidence of record does not support the full extent of [Plaintiff's] allegations." (AR
3 70.)

4 Plaintiff injured his left knee in August 2012, but he retained a normal gait,
5 normal range of motion, and full weightbearing in both legs. (See AR 660-61.)
6 Plaintiff received conservative treatment consisting of anti-inflammatories, an
7 injection, a brace, and physical therapy. (See AR 1045.) Later treatment notes
8 document crepitus, but Plaintiff otherwise had normal range of motion, gait, strength,
9 and reflexes. (See, e.g., AR 793, 908, 918, 920, 1052, 1209, 1277, 1283-84.) X-rays
10 showed "some symmetrical compartmental narrowing," but the patellofemoral
11 compartments were "pretty much unremarkable." (AR 1052.)

12 Plaintiff also injured his lower back in 2012. (See AR 789, 1100.) Plaintiff
13 had a reduced range of motion with muscle spasm, but he also had a normal gait and
14 posture without weakness in the lower extremities. (AR 1100, 1159, 1167.) Plaintiff
15 also had no deformity of the spine or pelvis, normal reflexes, intact sensation, and
16 negative straight leg raising. (AR 646, 1100, 1110, 1137, 1143, 1159, 1283-84.)
17 Plaintiff reported improvement after physical therapy in early 2013. (AR 1105.) A
18 December 2013 MRI revealed normal alignment and cord signal intensity, normal
19 spine canal diameter, and no evidence of lesions or fracture. (AR 1073.) Plaintiff
20 had minimal disc height loss at L4-L5, and the remainder of the intervertebral body
21 discs demonstrated normal height with minimal desiccation and no significant neural
22 foraminal stenosis. (AR 1073-74.) An x-ray of Plaintiff's lumbar spine was
23 "essentially within normal limits," with no evidence of spondylolysis or
24 spondylolisthesis. (AR 1284-85.) A February 2014 nerve conduction was negative.
25 (AR 1075.) In September 2014, Plaintiff's clinical response had improved as it
26 relates to radiculopathy. (AR 1064.) In July 2015, Plaintiff had mild tenderness but
27 no spasm and no low back pain with axial compression. (AR 792.) Plaintiff also had
28 normal motor function, sensation, and reflexes with negative straight leg raising

1 bilaterally. (AR 793-94.) X-rays of the lumbar and cervical spine were “completely
2 unremarkable,” and an examining physician noted that objectively, Plaintiff has no
3 abnormal findings. (AR 794.) A July 2016 x-ray also showed only mild degenerative
4 spurring at L2-L3, with no compression fractures or spondylolysis. (AR 904.) An
5 x-ray of Plaintiff’s cervical spine was unremarkable. (AR 906.) Although Plaintiff
6 described neck pain and stiffness, records show only “mild” or “subtle” changes, no
7 evidence of radiculopathy, no evidence of deformity, and no tenderness or spasm.
8 (AR 792, 794, 885, 1046, 1304-05, 1314-15.) In December 2016, Plaintiff had
9 normal reflexes, grossly intact strength in the upper extremities, full grip strength,
10 and normal circulation. (AR 893.)

11 In late 2016, treatment notes began referencing Plaintiff’s shoulder pain. (AR
12 920.) Plaintiff had full range of motion of the shoulders with good muscle strength
13 and circulation in the upper extremities. (AR 1314.)

14 Plaintiff has been diagnosed with sleep apnea since at least 2008, but he was
15 noncompliant with his treatment and did not use his CPAP machine. (AR 784.)
16 Plaintiff was advised to lose weight to improve his sleep apnea. (AR 774.)

17 The ALJ thoroughly considered Plaintiff’s medical records and found that they
18 did not support Plaintiff’s allegations of disabling symptoms and limitations. *See*
19 *Reddick*, 157 F.3d at 725. The ALJ was permitted to rely on the normal examination
20 results and lack of significant medical findings in assessing the credibility of
21 Plaintiff’s testimony. *See Garza v. Astrue*, 380 F. App’x 672, 674 (9th Cir. 2010)
22 (finding that an ALJ properly considered a claimant’s normal exam findings when
23 noting a lack of objective medical evidence to support the claimant’s allegations).

24 The Court finds that this is a clear and convincing reason, supported by
25 substantial evidence, for discounting Plaintiff’s credibility.

26 **B. The RFC Determination is Supported by Substantial Evidence**

27 The ALJ is responsible for assessing a claimant’s RFC “based on all of the
28 relevant medical and other evidence.” 20 CFR §§ 404.1545(a)(3), 404.1546(c); *see*

1 *Robbins*, 466 F.3d at 883 (citing SSR 96-8p, 1996 WL 374184, at *5 (S.S.A. July 2,
2 1996)). In doing so, the ALJ may consider any statements provided by medical
3 sources, including statements that are not based on formal medical examinations. *See*
4 20 CFR §§ 404.1513(a), 404.1545(a)(3). An ALJ’s determination of a claimant’s
5 RFC must be affirmed “if the ALJ applied the proper legal standard and his decision
6 is supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th
7 Cir. 2005); *accord Morgan*, 169 F.3d at 599.

8 In determining Plaintiff’s RFC, the ALJ “considered all symptoms and the
9 extent to which these symptoms can reasonably be accepted as consistent with the
10 objective medical evidence and other evidence . . . [and] also considered opinion
11 evidence” in accordance with social security regulations. (AR 66.)

12 **1. Opinion Evidence⁴**

13 Plaintiff argues that the ALJ improperly gave partial weight to the opinion of
14 Jeffrey A. Berman, M.D., and erred in relying on other medical opinions. (JS 5-6,
15 12.) The Commissioner argues that the ALJ correctly weighed the medical opinions.
16 (*See* JS 7-11.)

17 **a. Legal Standards**

18 Courts give varying degrees of deference to medical opinions based on the
19 provider: (1) treating physicians who examine and treat; (2) examining physicians
20 who examine, but do not treat; and (3) non-examining physicians who do not examine
21 or treat. *Valentine v. Comm’r, Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th Cir. 2009).
22 Most often, the opinion of a treating physician is given greater weight than the
23 opinion of a non-treating physician, and the opinion of an examining physician is
24 given greater weight than the opinion of a non-examining physician. *See Garrison*
25 *v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014).

26
27 ⁴ Plaintiff does not challenge the ALJ’s evaluation of Behnam Khalegi, M.D.’s
28 opinion (*see generally* JS 4-7, 12), and thus that issue is not before this Court. *See*
Carmickle, 533 F.3d at 1161 n.2.

1 The ALJ must provide “clear and convincing” reasons to reject the ultimate
2 conclusions of a treating or examining physician. *Embrey v. Bowen*, 849 F.2d 418,
3 422 (9th Cir. 1988); *Lester*, 81 F.3d at 830-31. When a treating or examining
4 physician’s opinion is contradicted by another opinion, the ALJ may reject it only by
5 providing specific and legitimate reasons supported by substantial evidence in the
6 record. *Orn*, 495 F.3d at 633; *Lester*, 81 F.3d at 830; *Carmickle v. Comm’r, Soc. Sec.*
7 *Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008). “An ALJ can satisfy the ‘substantial
8 evidence’ requirement by ‘setting out a detailed and thorough summary of the facts
9 and conflicting evidence, stating his interpretation thereof, and making findings.’”
10 *Garrison*, 759 F.3d at 1012 (citation omitted).

11 **b. Jeffrey A. Berman, M.D.**

12 In September 2014, Dr. Berman evaluated Plaintiff for his workers’
13 compensation claim. (See AR 1044-70.) Plaintiff contends that this is “[t]he most
14 comprehensive opinion” regarding Plaintiff’s limitations, and it is not consistent with
15 other opinions that limited Plaintiff to medium, rather than light, work. (JS 6.)
16 According to Plaintiff, Dr. Berman’s opinion suggests “an RFC closer to light work”
17 due to the bending, stooping, and weight-bearing limitations. (JS 6; see JS 12.)
18 Specifically, Dr. Berman assessed that Plaintiff should avoid heavy lifting, repetitive
19 bending and stooping, running, jumping, prolonged weight-bearing, and repetitive or
20 prolonged squatting, kneeling, climbing, pivoting, and working on uneven terrain.
21 (AR 1065.) He assessed a 23-percent whole person impairment. (AR 1066.)

22 However, as the ALJ noted (AR 71), Dr. Berman did not define all of his terms.
23 Dr. Berman precluded Plaintiff from “repetitive” bending and stooping. (AR 1065.)
24 In contrast, the ALJ’s RFC determination limits Plaintiff to “frequent” stooping,
25 kneeling, crouching, and crawling. (AR 66.) Dr. Berman also precluded Plaintiff
26 from “heavy lifting.” (AR 1065.) Plaintiff contends that this supports a limitation to
27 light work, which involves lifting no more than 20 pounds at a time, with frequent
28 lifting or carrying objects up to 10 pounds. 20 CFR § 404.1567(b). Instead, the ALJ

1 found that Plaintiff was able to perform medium work, which involves lifting no more
2 than 50 pounds at a time, with frequent lifting or carrying objects up to 25 pounds.
3 20 CFR § 404.1567(c).

4 It is the duty of the ALJ to resolve conflicts in the evidence. *See Tommasetti*,
5 533 F.3d at 1041 (“[T]he ALJ is the final arbiter with respect to resolving ambiguities
6 in the medical evidence.”). Here, the ALJ’s interpretation of Dr. Berman’s undefined
7 terms is reasonable, and it must be upheld. *See Ryan*, 528 F.3d at 1198 (an ALJ’s
8 decision should be upheld “[w]here evidence is susceptible to more than one rational
9 interpretation”). Accordingly, the Court finds that the ALJ properly evaluated Dr.
10 Berman’s opinion.

11 c. State Agency Consultants

12 State agency consultant Soraya Amanullah, Ph.D. reviewed Plaintiff’s
13 application with respect to psychiatric impairment. (*See* AR 428-29.) Dr. Amanullah
14 found that Plaintiff had mild to no mental limitations. (AR 429.) The ALJ gave this
15 opinion great weight because it was well reasoned and consistent with the record as
16 a whole. (AR 70.) State agency consultant G. Spinka, M.D. initially reviewed
17 Plaintiff’s application (*see* AR 427-32), and R. Weeks, M.D. reviewed the
18 application upon reconsideration (*see* AR 444-46). Dr. Spinka found that Plaintiff
19 could perform medium work with frequent postural activities, but Plaintiff must
20 avoid concentrated exposure to vibrations and pulmonary irritants. (AR 430-32.) Dr.
21 Weeks agreed, but he found that Plaintiff could occasionally climb ladders, ropes,
22 and scaffold. (AR 447-48.) The ALJ gave great weight to both opinions, finding
23 that they were largely consistent with the record as a whole. (AR 71.) The ALJ also
24 noted that the opinions were similar to those of the independent orthopedic
25 consultative examiner and a final workers’ compensation assessment. (*Id.*)

26 Plaintiff contends that the opinions of Dr. Amanullah, Dr. Spinka, and Dr.
27 Weeks do not provide substantial evidence to support the RFC because the physicians
28 did not have an opportunity to review records, including Dr. Berman’s report, after

1 January 5, 2016. (JS 5.) However, the ALJ properly reviewed the entire record and
2 found that Dr. Berman’s specific limitations were “broadly consistent with the
3 evidence as a whole.” (AR 71). *See Sportsman v. Colvin*, 637 F. App’x 992, 995
4 (9th Cir. 2016) (stating that it is not error for a state agency consultant to fail to review
5 subsequent medical records if the ALJ reviews the entire record and concludes that
6 the later-dated medical records are consistent with the overall medical evidence).
7 Thus, the ALJ did not err in assigning great weight to the opinions of Dr. Amanullah,
8 Dr. Spinka, and Dr. Weeks. *See Ruiz v. Colvin*, 638 F. App’x 604, 606 (9th Cir.
9 2016) (finding that the ALJ did not err in giving the greatest weight to non-examining
10 state agency medical consultants because “the ALJ found their opinions consistent
11 with the greater medical record, progress and treating notes, and [the plaintiff]’s
12 description of her daily activities”); *see also Magallanes v. Bowen*, 881 F.2d 747,
13 752 (9th Cir. 1989) (“[T]he reports of consultative physicians called in by the
14 Secretary may serve as substantial evidence.”).

15 **d. Consultative Examiners**

16 Psychiatric consultative examiner Norma Aguilar, M.D. completed an
17 examination of Plaintiff in July 2015. (AR 801-05.) Dr. Aguilar found that Plaintiff
18 had only mild limitations and his prognosis was good. (AR 804-05.) The ALJ gave
19 this opinion great weight because it was consistent with the evidence as a whole. (AR
20 70.) The ALJ also noted that Dr. Aguilar was able to examine Plaintiff, administer
21 tests, and obtain first-hand observations. (*Id.*) Orthopedic consultative examiner
22 Ibrahim Yashruli, M.D. completed an examination of Plaintiff in July 2015. (AR
23 789-95.) Dr. Yashruli found that Plaintiff could perform medium work. (*See* AR
24 794-95.) The ALJ gave this opinion “great, but slightly less weight” because it was
25 consistent with the state agency opinions and generally consistent with treatment
26 notes and Plaintiff’s reported activities. (AR 71.) However, the ALJ incorporated
27 additional postural and environmental limitations. (*Id.*)

28 ///

1 Plaintiff notes that the consultative examiners did not review Plaintiff's
2 medical records. (JS 5.) But Dr. Aguilar's and Dr. Yashruli's opinions alone may
3 constitute substantial evidence because they are based on the doctors' own
4 independent examinations of Plaintiff. *See Tonapetyan v. Halter*, 242 F.3d 1144,
5 1149 (9th Cir. 2001). Plaintiff has therefore identified no error.

6 2. Objective Medical Evidence

7 As discussed above in connection with Plaintiff's subjective complaints, the
8 ALJ thoroughly reviewed the medical records submitted to him.

9 Plaintiff also submitted additional records to the Appeals Council. (*See* AR
10 2.) The Appeals Council stated: "We find this evidence does not show a reasonable
11 probability that it would change the outcome of the decision. We did not consider
12 and exhibit this evidence." (*Id.*)

13 When the Appeals Council considers new evidence in denying review of the
14 ALJ's decision, this Court considers on appeal both the ALJ's decision and the
15 additional material submitted to the Appeals Council. *Ramirez v. Shalala*, 8 F.3d
16 1449, 1452 (9th Cir. 1993); *see Brewes v. Comm'r of Soc. Sec. Admin.*, 682 F.3d
17 1157, 1163 (9th Cir. 2012) ("[W]e have routinely considered evidence submitted for
18 the first time to the Appeals Council to determine whether, in light of the record as a
19 whole, the ALJ's decision was supported by substantial evidence."); *Decker v.*
20 *Berryhill*, 856 F.3d 659, 664 (9th Cir. 2017) (citing *Brewes*, 682 F.3d at 1163-64).

21 Plaintiff argues that the Appeals Council erred in stating that it did not consider
22 and exhibit his additional evidence because "in order for [the Appeals Council] to
23 reach the conclusion that [the additional evidence] did not show a reasonable
24 probability that it would change the outcome of the decision, the Appeals Council
25 necessarily had to consider this evidence."⁵ (JS 7.) The Court agrees. Although the

26 ⁵ Plaintiff does not challenge the Appeals Council's refusal to consider treatment
27 records that postdated the ALJ's decision. (*See* AR 2.) In any event, the Appeals
28 Council correctly stated that this evidence does not affect the disability
determination. *See* 20 CFR §§ 404.970(b), 416.1470(b) ("If new material evidence

1 Appeals Council stated that it “did not consider” Plaintiff’s new evidence, it appears
2 that the Appeals Council necessarily did consider the evidence in order to determine
3 that it “does not show a reasonable probability that it would change the outcome of
4 the decision.” The Court therefore addresses this additional evidence in the record.
5 *See Reyes v. Comm’r of Soc. Sec. Admin.*, No. CV-17-08192-PCT-SMB, 2019 WL
6 2098755, at *3 (D. Ariz. May 14, 2019); *Mayeda-Williams v. Comm’r of Soc. Sec.*
7 *Admin.*, No. 1:18-CV-0009-HRH, 2019 WL 157918, at *5 (D. Alaska Jan. 10, 2019).

8 According to Plaintiff, “[r]ecords during the relevant period reveal the
9 presence of crepitus in both knees and painful external rotation of the hips,
10 paracervical muscle spasm and moderate cortical atrophy of the brain (somewhat
11 more expected for age).”⁶ (JS 7.) The Court has reviewed the records cited by
12 Plaintiff and finds that the ALJ’s decision continues to be supported by substantial
13 evidence. While Plaintiff accurately describes some treatment notes (*see* AR 139,
14 150, 162-63), these records also show that Plaintiff also had no peripheral joint
15 synovitis or joint deformities (AR 139), good proximal and distal muscle strength
16 (*id.*), no atrophy (AR 150), and unremarkable brainstem and cerebellum (AR 162).
17 Additionally, crepitus and painful external rotation of the hips were previously
18 documented in other treatment notes that the ALJ did consider. (AR 908, 918, 920;
19 *see* AR 68.) The Court therefore finds that the objective medical evidence continues

20 _____
21 is submitted, the Appeals Council shall consider the additional evidence only where
22 it relates to the period on or before the date of the administrative law judge hearing
23 decision.”).

23 ⁶ The Court has limited its review to the issues identified by Plaintiff. *See Carmickle*,
24 533 F.3d at 1161 n.2 (9th Cir. 2008) (the Court need not address arguments that a
25 claimant failed to argue with any specificity); *see also Indep. Towers of Wash. v.*
26 *Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (the Court “cannot ‘manufacture
27 arguments for an appellant’” and only reviews “‘issues which are argued specifically
28 and distinctly’” (citations omitted)); *Hibbs v. Dep’t of Human Res.*, 273 F.3d 844,
873 (9th Cir. 2001) (the Court need not consider arguments that are “too undeveloped
to be capable of assessment”), *aff’d sub nom. Nevada Dep’t of Human Res. v. Hibbs*,
538 U.S. 721, 123 S. Ct. 1972, 155 L. Ed. 2d 953 (2003).

1 to support the RFC determination. *See Batson*, 359 F.3d at 1193 (the Court must
2 defer to the Commissioner’s decision if evidence exists to support more than one
3 rational interpretation of the record).

4 **3. Conclusion**

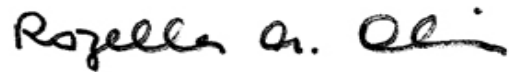
5 In sum, the Court finds that the ALJ’s RFC assessment is supported by
6 substantial evidence. *See Arrieta v. Astrue*, 301 F. App’x 713, 715 (9th Cir. 2008)
7 (finding that substantial evidence supported the RFC determination when the ALJ
8 properly evaluated the opinion evidence and relied on supporting medical reports and
9 testimony).

10 **V. CONCLUSION**

11 IT IS ORDERED that Judgment shall be entered AFFIRMING the decision of
12 the Commissioner denying benefits.

13 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
14 Order and the Judgment on counsel for both parties.

15 DATED: June 26, 2019



16 _____
17 ROZELLA A. OLIVER
18 UNITED STATES MAGISTRATE JUDGE

19 **NOTICE**

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