

1 **FACTS AND PRIOR PROCEEDINGS**

2 On November 21, 2011, Plaintiff filed an application for disability insurance benefits. AR
3 118-21.¹ Plaintiff alleged that he became disabled on February 17, 2011, due to kidney stones, high
4 blood pressure, a bulging disc in the lower back and migraine headaches. AR 142-56. Plaintiff's
5 application was denied initially and on reconsideration. AR 61-64, 67-71. Subsequently, Plaintiff
6 requested a hearing before an Administrative Law Judge ("ALJ"). ALJ G. Ross Wheatley held a
7 hearing on May 1, 2013, and issued an order denying benefits on June 13, 2013. AR 8-17, 22-54.
8 Plaintiff sought review of the ALJ's decision, which the Appeals Council denied, making the ALJ's
9 decision the Commissioner's final decision. AR 1-4. This appeal followed.

10 **Hearing Testimony**

11 The ALJ held a hearing on May 1, 2013, in Stockton, California. AR 22-54. Plaintiff
12 appeared and testified. He was represented by counsel, Steve Gimlin. AR 24-25. Impartial
13 Vocational Expert ("VE") Steven Schmidt also appeared. AR 24.

14 In response to questioning by the ALJ, Plaintiff testified that he was 56 years old, 6 feet tall
15 and weighed 310 pounds. AR 27-28. Plaintiff graduated from high school, but did not attend college
16 or receive occupational training. He can read and write, add and subtract and multiply and divide. AR
17 28-29.

18 Plaintiff testified that he stopped working in 2011 because of the frequency of his pain. He
19 started making mistakes, getting very little sleep and taking a lot of pain pills. He is not currently
20 working. AR 29-30. Plaintiff confirmed that he suffers from kidney stones, lower-back pain related
21 to disc, migraines and hypertension or high blood pressure. He also confirmed that he takes
22 medication for his hypertension, and if he is not under any stress or pain, his blood pressure is almost
23 perfect. AR 30-31.

24 Plaintiff reported that he only gets one or two migraines a year since he started taking
25 medication called Inderal. He also takes Tylenol and codeine to help with his pain. AR 31.

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¹ References to the Administrative Record will be designated as "AR," followed by the appropriate page number.

1 With respect to his weight, Plaintiff reported that his doctors have not ever recommended any
2 type of weight-reduction program, but they have recommended exercise. Plaintiff said that he was
3 able to do a little bit of exercise, and will “get out there and play ball with the kids.” AR 31. His
4 doctors did not tell him to adjust his diet “because for the most part” he is “pretty healthy” other than
5 the “kidney stones” and his back. His kidney stones cause his back to flare up. AR 32.

6 With respect to his kidney stones, Plaintiff testified that every week he will pass either some
7 kind of pepper flakes or sand, which is constant and very painful. Occasionally, he will pass larger
8 stones. In the past year, he estimated passing 50 to 60 stones. AR 32-34. He takes allopurinol, which
9 his doctor said did not seem to be doing any good. AR 33.

10 When asked about the frequency of his medical treatment, Plaintiff testified that he had not
11 seen his doctor as much as he should have because of financial reasons. He has no medical coverage.
12 However, Pfizer is providing him with medications for free, which has helped. AR 35-36. Plaintiff
13 believed that his left kidney was full of stones, but he could not afford an x-ray. AR 38-39.

14 Plaintiff reported that Dr. Eagan from Kaiser did not think there was anything else they could
15 do for Plaintiff’s kidney stones. AR 37. However, Plaintiff testified that he has had surgery to get
16 stones unblocked. He has had a torso lobotomy where they cut stones from his back. He also has had
17 stones blasted with ultrasound and a laser. These processes have been successful. AR 37-38.

18 When asked about his back, Plaintiff confirmed that when he has problems passing a stone his
19 back gets tight. It causes the bulging disc to flare up. He has had an MRI, which showed that he has a
20 bulging disc between L4 and 5. He went to physical therapy for six weeks, which helped at the time.
21 He also does stretching exercises. Plaintiff explained that the pain is in the middle of the back and
22 travels down the back of his left leg to his knee. He has never had surgery for his back. AR 40-42.

23 When questioned about his daily activities, Plaintiff testified that on a good day he walks
24 around inside of his house. On a bad day, he lies in bed, sits on the couch, rolls on the floor, soaks in
25 the hot tub and does whatever he can to get comfortable. He usually goes to the toilet every 20-30
26 minutes. AR 42-43.

27 Plaintiff testified that he could walk less than a block and could stand for a short period of
28 time. He could lift 10, 15, 20 pounds and does not have any issues with respect to the use of his arms

1 or hands. AR 44. Plaintiff mostly watches TV while at home, and very rarely goes on the computer.
2 He also reads. AR 44-45. Although he has a driver's license, he had not driven in a couple of years.
3 He lives with his wife, son, two daughters and a granddaughter. AR 46. He does not socialize with
4 anyone outside of the house. He last attended church about 11 months before the hearing. Prior to
5 that, he would go pretty much every Sunday. AR 46-47. Plaintiff is able to bathe and dress himself,
6 but he does not cook, shop or help with housework. AR 47-48. Plaintiff stopped smoking cigarettes a
7 year prior to the hearing and now uses an electronic cigarette. AR 48.

8 Following Plaintiff's testimony, the ALJ elicited testimony from the vocational expert ("VE")
9 Stephen Schmidt. The VE testified that Plaintiff's past work was classified as guard. AR 51. In the
10 first hypothetical, the ALJ asked the VE to assume a person of Plaintiff's age, education and work
11 experience capable of performing medium work with the following limitations: avoid all hazards, use
12 of hazardous machinery and all exposure to unprotected heights. The VE testified that this person
13 could perform Plaintiff's past work. AR 52.

14 For the second hypothetical, the ALJ asked the VE to assume a person of Plaintiff's age,
15 education and work experience capable of performing light work with the following limitations:
16 frequent ladders, ropes, and scaffolds, ramps, stairs, balancing, stooping, crouching, kneeling, or
17 crawling; should avoid all use of hazardous machinery and all exposure to unprotected heights. The
18 VE testified that this person could perform Plaintiff's past work. AR 52-53. If the ALJ added to
19 either of the hypotheticals that due to a combination of medical conditions and associated pain, this
20 person would have three or more unexcused or unscheduled absences per month, it would preclude all
21 work. AR 53.

22 For the third hypothetical, the ALJ asked the VE to assume a person of Plaintiff's age,
23 education and work experience capable of performing light work with the following limitations: a
24 sit/stand option provided that the person is not off task more than 10% of the period; no ladders, ropes,
25 or scaffolds; frequent stairs, balancing, stooping, crouching, kneeling and crawling; and must avoid all
26 use of hazardous machinery and exposure to unprotected heights. The VE testified that this person
27 could not perform Plaintiff's past work. The VE indicated that off task 10% precludes competitive
28 employment. AR 53.

1 Following the ALJ's questioning, Plaintiff's counsel elicited testimony from the VE. Counsel
2 asked the VE to assume the same restrictions posed in hypothetical three and that the individual should
3 avoid extreme heat and cold. The VE testified that this would preclude Plaintiff's past work. AR 54.

4 For the next hypothetical, counsel asked the VE to assume all the same restrictions as posed in
5 hypothetical number three and that the person would need to take five unscheduled breaks lasting up
6 to 30 minutes each with the option of lying down. The VE testified that this person would not be able
7 to perform Plaintiff's past work or be competitive in the work environment. AR 54-55.

8 Medical Record

9 The entire medical record was reviewed by the Court. AR 202-363. The relevant medical
10 evidence, summarized here, will be referenced below as necessary to this Court's decision.

11 On March 5, 2011, Plaintiff sought treatment from Dr. David Hilburn. Plaintiff complained of
12 a kidney stone with lower back pain and urine in his blood for three weeks. On examination,
13 Plaintiff's lumbosacral spine area revealed no local tenderness or mass and no painful or reduced
14 lower spine range of motion. Straight leg raise was negative and his motor strength and sensation
15 were normal. Plaintiff's urinalysis showed blood. Dr. Hilburn planned to treat Plaintiff with pain
16 medications and time off work. Dr. Hilburn hoped the pain would lessen and Plaintiff would be able
17 to return to work within the week. AR 204-05.

18 On May 7, 2011, Plaintiff sought follow-up treatment from Dr. Hilburn and an extension of his
19 disability due to kidney stones. Plaintiff continued to have back pain due to stones, but had not passed
20 one "in a while." AR 202. Dr. Hilburn noted that Plaintiff had chronic kidney stone problems and
21 continued to have back pain. Dr. Hilburn planned to give Plaintiff a disability extension. AR 202-03.

22 On November 15, 2011, Plaintiff sought treatment at a urology clinic in Modesto, California.
23 Plaintiff reported taking allopurinol and Tylenol, and passing multiple stones since his last urology
24 consultation. Plaintiff also reported that he had lost his insurance. With regard to symptoms, Plaintiff
25 indicated that he had mild soreness, flank pain and blood when urinating. On physical examination,
26 Plaintiff had costovertebral angle tenderness bilaterally. He denied inguinal and groin pain. Plaintiff's
27 symptoms were mild, and he was stable and in no acute stress. Plaintiff was to continue with
28 allopurinol for stone prevention and Tylenol for pain. AR 224-25.

1 On February 28, 2012, Dr. Hilburn was notified that Plaintiff had been accepted into the Pfizer
2 program for his Norvasc medication. AR 266.

3 On April 12, 2012, Dr. Frank Chen completed a consultative internal medicine examination.
4 Dr. Chen noted that Plaintiff had a history of kidney stones, hypertension with blood pressure still not
5 under good control and low back pain with possible bulging discs. Plaintiff reported his activities of
6 daily living to include watching TV, using a computer, listening to music, reading and taking walks.
7 Plaintiff also drove, attended church, did photography and fished. On physical examination, Plaintiff
8 walked without difficulty and sat comfortably during the exam. His back was within normal limits as
9 were his coordination, station and gait. He also had normal muscle bulk and tone, with motor strength
10 of 5/5 in the upper and lower extremities bilaterally. Dr. Chen diagnosed Plaintiff with chronic
11 recurrent kidney stones, hypertension, low back pain due to myalgia versus joint disease of the lumbar
12 spine and obesity. Dr. Chen opined that Plaintiff could stand and walk for six hours in an eight-hour
13 workday and could sit for six hours in an eight-hour workday. He also could lift and carry 50 pounds
14 occasionally and 25 pounds frequently. There were no other functional limitations. AR 231-32.

15 On July 26, 2012, Plaintiff sought follow-up treatment with Dr. Hilburn for his blood pressure.
16 Plaintiff also reported continuing problems with kidney stones and that he was applying for permanent
17 disability. On physical examination, Plaintiff was alert and in no acute distress. Plaintiff was
18 instructed to continue his current medications. Dr. Hilburn indicated that records would be obtained
19 from the urologist “who stated there was nothing he could do about [Plaintiff’s] chronic stone
20 formation.” AR 249-50.

21 On March 4, 2013, Dr. Hilburn completed a Medical Opinion Re: Ability to Do Work-Related
22 Activities (Physical) form. Dr. Hilburn opined that Plaintiff could lift and carry less than 10 pounds,
23 could stand and walk less than 2 hours in an 8-hour day and could sit less than 2 hours in an 8-hour
24 day. Dr. Hilburn further opined that Plaintiff needed the opportunity to shift at will from sitting or
25 standing/walking and would need to lie down 5-6 times per shift. Plaintiff could sit 10 minutes before
26 changing positions, stand 5 minutes before changing positions and must walk every 10 minutes for 5
27 minutes each time. With regard to postural activities, Dr. Hilburn opined that Plaintiff occasionally
28 could twist, crouch and climb stairs, but could never stoop (bend) or climb ladders. Plaintiff’s

1 reaching and pushing/pulling were also affected by his impairment. With regard to environmental
2 restrictions, Dr. Hilburn opined that Plaintiff must avoid even moderate exposure to extreme cold,
3 extreme heat, high humidity, fumes, odors, dusts, gases, perfumes, soldering fluxes, solvents/cleaners
4 and chemicals. Dr. Hilburn anticipated that Plaintiff's impairments or treatment would cause him to
5 be absent from work more than four days per month. AR 273-76.

6 On March 28, 2013, Plaintiff sought treatment from Dr. Hilburn, along with completion of his
7 social security forms. On examination, Plaintiff was not in any apparent distress. Dr. Hilburn noted
8 that Plaintiff had recurrent kidney stone pain, 1-2 times per day 4-5 times per week. Plaintiff took
9 pain medications regularly and medications for nausea. Plaintiff reportedly had seen several urologists
10 and they stated that there was nothing they could do to prevent his stones. AR 356-57.

11 On the same date, Dr. Hilburn completed a second Medical Opinion Re: Ability to do Work-
12 Related Activities (Physical) form. Dr. Hilburn opined that Plaintiff could lift and carry 20 pounds
13 occasionally, 10 pounds frequently, could stand and walk less than 2 hours in an 8-hour day and could
14 sit less than 2 hours in an 8-hour day. Dr. Hilburn further opined that Plaintiff needed the opportunity
15 to shift at will from sitting or standing/walking and would need to lie down 3 times per day. Plaintiff
16 could sit 30 minutes before changing positions, could stand 30 minutes before changing positions and
17 must walk around every 30 minutes for 20 minutes each time. Dr. Hilburn explained that when
18 Plaintiff had kidney stones, which was frequent/constant, he could not function. With regard to
19 postural activities, Dr. Hilburn opined that Plaintiff occasionally could twist and climb stairs, but
20 could never stoop (bend), crouch or climb ladders. Dr. Hilburn explained that this was because of pain
21 from stones and having to take medications. Dr. Hilburn also indicated that Plaintiff's reaching,
22 handling and pushing/pulling were affected because of pain. With regard to environmental
23 restrictions, Dr. Hilburn opined that Plaintiff must avoid even moderate exposure to extreme cold and
24 avoid all exposure to extreme heat, high humidity, fumes, odors, dusts, gases, perfumes, soldering
25 fluxes, solvents/cleaners and chemicals. Dr. Hilburn explained that Plaintiff needed a cane for
26 walking/stability because of pain medications. Plaintiff also needed to keep his feet elevated because
27 of swelling and he had no ability to kneel because of persistent knee pain. Dr. Hilburn anticipated that
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1 Plaintiff's impairments or treatment would cause him to be absent from work more than four days per
2 month. AR 277-80.

3 On March 28, 2013, Dr. Hilburn also completed a Lumbar Spine Medical Source Statement
4 form. Plaintiff was diagnosed with persistent kidney stones and had a poor prognosis. Dr. Hilburn
5 identified Plaintiff's symptoms as abdominal and back pain, along with persistent fatigue/nausea from
6 his medications. Dr. Hilburn indicated that Plaintiff had back pain which radiated to the front lower
7 abdomen and occurred constantly. Plaintiff also took daily medications that caused dizziness,
8 drowsiness, irritability and stomach upset. Dr. Hilburn opined that Plaintiff could not walk a city
9 block without rest or severe pain. In an eight-hour day, he could sit less than two hours and stand less
10 than two hours. Plaintiff needed a job that permitting shifting positions at will. Dr. Hilburn believed
11 that Plaintiff would need to take 5 unscheduled breaks per day for 20-30 minutes each. He also
12 needed to elevate his legs for 25% of the day. Plaintiff must use a cane or other assistive device
13 because of instability with medications. Dr. Hilburn opined that Plaintiff could lift less than 10
14 pounds occasionally, but could lift 10, 20 or 50 pounds frequently. He could never twist, stoop (bend),
15 crouch/squat, climb ladders or climb stairs. Dr. Hilburn estimated that Plaintiff was likely to be off
16 task 25% or more of a typical workday. Dr. Hilburn believed that Plaintiff was incapable of even low
17 stress work because of his pain and pills, and he would be absent from work more than four days per
18 month. AR 281-85.

19 **The ALJ's Decision**

20 Using the Social Security Administration's five-step sequential evaluation process, the ALJ
21 determined that Plaintiff did not meet the disability standard. AR 8-17. More particularly, the ALJ
22 found that Plaintiff had not engaged in any substantial gainful activity since February 17, 2011, his
23 alleged onset date. Further, the ALJ identified obesity, urinary tract disorder and kidney stones as
24 severe impairments. AR 13. Nonetheless, the ALJ determined that the severity of Plaintiff's
25 impairments did not meet or exceed any of the listed impairments. AR 14. Based on his review of the
26 entire record, the ALJ determined that Plaintiff retained the residual functional capacity ("RFC") to
27 perform less than a full range of light work. Plaintiff could lift and/or carry ten pounds frequently,
28 twenty pounds occasionally, could sit, stand and/or walk for six hours out of an eight-hour workday,

1 could frequently climb, balance, stoop, crouch, kneel and crawl, and must avoid all exposure to
2 hazardous machinery and unprotected heights. AR 14-17. The ALJ found that Plaintiff could perform
3 his past relevant work as a guard. The ALJ therefore concluded that Plaintiff was not disabled under
4 the Social Security Act. AR 17.

5 SCOPE OF REVIEW

6 Congress has provided a limited scope of judicial review of the Commissioner's decision to
7 deny benefits under the Act. In reviewing findings of fact with respect to such determinations, this
8 Court must determine whether the decision of the Commissioner is supported by substantial evidence.
9 42 U.S.C. § 405(g). Substantial evidence means "more than a mere scintilla," *Richardson v. Perales*,
10 402 U.S. 389, 402 (1971), but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112,
11 1119, n. 10 (9th Cir. 1975). It is "such relevant evidence as a reasonable mind might accept as
12 adequate to support a conclusion." *Richardson*, 402 U.S. at 401. The record as a whole must be
13 considered, weighing both the evidence that supports and the evidence that detracts from the
14 Commissioner's conclusion. *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). In weighing the
15 evidence and making findings, the Commissioner must apply the proper legal standards. *E.g.*,
16 *Burkhart v. Bowen*, 856 F.2d 1335, 1338 (9th Cir. 1988). This Court must uphold the Commissioner's
17 determination that the claimant is not disabled if the Commissioner applied the proper legal standards,
18 and if the Commissioner's findings are supported by substantial evidence. *See Sanchez v. Sec'y of*
19 *Health and Human Servs.*, 812 F.2d 509, 510 (9th Cir. 1987).

20 REVIEW

21 In order to qualify for benefits, a claimant must establish that he or she is unable to engage in
22 substantial gainful activity due to a medically determinable physical or mental impairment which has
23 lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. §
24 1382c(a)(3)(A). A claimant must show that he or she has a physical or mental impairment of such
25 severity that he or she is not only unable to do his or her previous work, but cannot, considering his or
26 her age, education, and work experience, engage in any other kind of substantial gainful work which
27 exists in the national economy. *Quang Van Han v. Bowen*, 882 F.2d 1453, 1456 (9th Cir. 1989). The
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1 burden is on the claimant to establish disability. *Terry v. Sullivan*, 903 F.2d 1273, 1275 (9th Cir.
2 1990).

3 DISCUSSION²

4 Plaintiff argues that the ALJ failed to provide clear and convincing reasons for rejecting his
5 credibility. The Commissioner counters that substantial evidence supports the ALJ’s credibility
6 determination.

7 In deciding whether to admit a claimant’s subjective complaints of pain, the ALJ must engage
8 in a two-step analysis. *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1196 (9th Cir. 2004).
9 First, the claimant must produce objective medical evidence of his impairment that could reasonably
10 be expected to produce some degree of the symptom or pain alleged. *Id.* If the claimant satisfies the
11 first step and there is no evidence of malingering, the ALJ may reject the claimant’s testimony
12 regarding the severity of his symptoms only if he makes specific findings and provides clear and
13 convincing reasons for doing so. *Id.* The ALJ must “state which testimony is not credible and what
14 evidence suggests the complaints are not credible.” *Mersman v. Halter*, 161 F.Supp.2d 1078, 1086
15 (N.D. Cal. 2001) (“The lack of specific, clear, and convincing reasons why Plaintiff’s testimony is not
16 credible renders it impossible for [the] Court to determine whether the ALJ’s conclusion is supported
17 by substantial evidence.”). Factors an ALJ may consider include: (1) the claimant’s reputation for
18 truthfulness, prior inconsistent statements or other inconsistent testimony; (2) unexplained or
19 inadequately explained failure to seek treatment or to follow a prescribed course of treatment; and (3)
20 the claimant’s daily activities. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996).

21 In this instance, at the first step of the analysis, the ALJ found that Plaintiff’s “medically
22 determinable impairments could reasonably be expected to cause the alleged symptoms.” AR 15. At
23 the second step, however, the ALJ found that Plaintiff’s statements concerning the intensity,
24 persistence and limiting effects of these symptoms were not entirely credible. AR 15.

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27 ² The parties are advised that this Court has carefully reviewed and considered all of the briefs, including
28 arguments, points and authorities, declarations, and/or exhibits. Any omission of a reference to any specific argument or
brief is not to be construed that the Court did not consider the argument or brief.

1 The Court finds that the ALJ provided clear and convincing reasons for finding Plaintiff not
2 fully credible. AR 15-16. First, the ALJ discounted Plaintiff's credibility because he "engaged in a
3 somewhat normal level of daily activity and interaction." AR 15. An ALJ may properly consider a
4 plaintiff's daily activities when discounting a plaintiff's subjective testimony. *Valentine v. Comm'r*
5 *Soc. Sec. Admin.*, 574 F.3d 685, 693 (9th Cir. 2009) (evidence that plaintiff "exercised and undertook
6 several projects after he retired" suggested that his "later claims about the severity of his limitations
7 were exaggerated"); *Branham v. Colvin*, No. ED CV 15-00050-DFM, 2015 WL 8664157, at *2 (C.D.
8 Cal. Dec. 11, 2015) (ALJ properly considered plaintiff's activities of daily living in assessing
9 credibility; plaintiff was able to use a computer, attend church, shop, ride in a car, cook occasionally
10 and take care of her own personal care). Here, the ALJ found that Plaintiff admitted activities of daily
11 living that included playing basketball with the kids, watching television, going on the computer and
12 doing email, reading and having a driver's license. AR 15, 31, 44-45. Plaintiff also went to church
13 until eleven months prior, he socialized with his family, could shower and dress, and climb stairs in his
14 home. AR 15, 46-47, 163. The ALJ also considered Plaintiff's report to Dr. Chen that he drove,
15 listened to music, read, took walks, did some photography and fished. AR 15, 230.

16 Plaintiff agrees that an ALJ may consider activities of daily living in evaluating a disability
17 claim, but argues that he has both good days and bad days and that the ALJ mischaracterized and
18 oversimplified his activities, noting that he only played basketball with his kids a little bit, he stopped
19 attending church 11 months prior to the hearing and his socializing with family was limited to the
20 people with which he resides. Doc. 14 at pp. 7-8. Despite Plaintiff's arguments, an ALJ "may
21 discredit a claimant's testimony when the claimant reports participation in everyday activities
22 indicating capacities that are transferable to a work setting." *Molina v. Astrue*, 674 F.3d 1104, 1113
23 (9th Cir. 2012). In this case, the ALJ concluded that "the physical and mental capabilities" required to
24 perform plaintiff's daily activities and the social interactions "replicate[d] those necessary for
25 obtaining and maintaining employment." AR 15. "Even where those activities suggest some
26 difficulty functioning, they may be grounds for discrediting the claimant's testimony to the extent that
27 they contradict claims of a totally debilitating impairment." *Id.*; see also *Ghanim v. Colvin*, 763 F.3d
28 1154, 1165 (9th Cir. 2014) ("Engaging in daily activities that are incompatible with the severity of the

1 symptoms alleged can support an adverse credibility determination.”). Further, if the ALJ's
2 interpretation of the evidence is reasonable and supported by substantial evidence then it is not Court's
3 role to second-guess it. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir.2001).

4 Second, the ALJ discounted Plaintiff's allegations because he had “not generally received the
5 type of medical treatment one would expect for a totally disabled individual.” AR 15. The ALJ
6 indicated that Plaintiff's treatment records revealed that he “received routine, infrequent, conservative
7 and non-emergency treatment since the alleged onset date.” AR 15. “[E]vidence of ‘conservative
8 treatment’ is sufficient to discount a claimant's testimony regarding severity of an impairment.” *Parra*
9 *v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007) (citation omitted); *Williams v. Colvin*, 2014 WL 4437284,
10 at *3-4 (C.D. Cal. Sept. 9, 2014) (ALJ properly considered plaintiff's infrequent and conservative
11 treatment as evidence to discredit plaintiff's testimony). Here, the ALJ cited evidence of the limited
12 nature of Plaintiff's treatment. AR 15-16.

13 Plaintiff argues that this finding by the ALJ is error because the ALJ failed to consider
14 Plaintiff's lack of medical insurance and limited finances. Doc. 14 at p. 9. As a general rule, the
15 Commissioner cannot deny benefits to someone because he is too poor to obtain medical treatment
16 that may help. *Gamble v. Chater*, 68 F.3d 319, 322 (9th Cir.1995) (citation omitted). In this instance,
17 however, it is clear from the record that the ALJ relied primarily on the conservative nature of the
18 treatment Plaintiff sought and received. Plaintiff argues that this, too, is error because his urologists
19 had stated that there was nothing they could do to prevent his stones from recurring. Doc. 14 at p. 9.
20 While Plaintiff correctly references the reported position of his urologists, the ALJ cited Plaintiff's use
21 of medications treat his pain, including Tylenol #4, in the absence of any other measures to alleviate
22 his condition. AR 16, 204, 225, 250. There is substantial evidence in the record to support this
23 finding. Moreover, at the hearing, Plaintiff testified that he had success with other procedures,
24 including surgery, ultrasounds and lasers, but medical records following his alleged onset date did not
25 include any of these treatment modalities. AR 37-38.

26 Third, and finally, the ALJ found that Plaintiff's “alleged loss of function was not supported by
27 objective medical findings.” AR 15. An ALJ is entitled to consider whether there is a lack of medical
28 evidence to corroborate a claimant's alleged symptoms so long as it is not the only reason for

1 discounting a claimant's credibility. *Burch v. Barnhart*, 400 F.3d 676, 680–81 (9th Cir. 2005);
2 *Batson*, 359 F.3d at 1196-97 (ALJ properly relied on objective medical evidence and medical opinions
3 in determining credibility); *see also Parra*, 481 F.3d at 750 (ALJ reasonably found complaints of
4 disabling knee pain not credible in light of lab tests showing knee function within normal limits).
5 Here, the ALJ considered treatment records from March 2011 in which Plaintiff complained of back
6 pain, but examination revealed no local tenderness or mass, no painful or reduced lower spine range of
7 motion, negative straight leg raising, normal deep tendon reflexes, motor strength and sensation and
8 only mild CVA tenderness. AR 15, 204-05. The ALJ also considered treatment records showing mild
9 symptoms in November 2011, and a physical examination within normal limits in July 2012. AR 15,
10 224-25, 250. Plaintiff has not challenged this reason for discounting his credibility.

11 **CONCLUSION**

12 Based on the foregoing, the Court finds that the ALJ's decision is supported by substantial
13 evidence in the record as a whole and is based on proper legal standards. Accordingly, this Court
14 **DENIES** Plaintiff's appeal from the administrative decision of the Commissioner of Social Security.
15 The Clerk of this Court is **DIRECTED** to enter judgment in favor of Defendant Carolyn W. Colvin,
16 Acting Commissioner of Social Security, and against Plaintiff Gregory Alan Curry.

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18 IT IS SO ORDERED.

19 Dated: July 25, 2016

20 /s/ Barbara A. McAuliffe
21 UNITED STATES MAGISTRATE JUDGE
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