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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

MARK RICHARD WELLS,  
  
Plaintiff,

Case No. 1:17-cv-00078-SKO

**ORDER ON PLAINTIFF’S SOCIAL  
SECURITY COMPLAINT**

v.

**(Doc. 1)**

COMMISSIONER OF SOCIAL SECURITY,  
  
Defendant.

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On December 11, 2015, Plaintiff Mark Richard Wells (“Plaintiff”) filed a complaint under 42 U.S.C. §§ 405(g) and 1383(c)(3) seeking judicial review of a final decision of the Commissioner of Social Security (the “Commissioner” or “Defendant”) denying his applications for disability insurance benefits and supplemental security income. (Doc. 1.) Plaintiff filed his Motion for Summary Judgment (“Plaintiff’s Motion”) on July 27, 2016, (Doc. 13), and Defendant filed their Cross-Motion for Summary Judgment (“Defendant’s Motion”) on October 28, 2016, (Doc. 16). The matter is currently before the Court on the parties’ briefs, which were submitted without oral argument.<sup>1</sup>

For the reasons provided herein, the Court DENIES Plaintiff’s Motion, (Doc. 13), GRANTS Defendant’s Motion, (Doc. 16), and AFFIRMS the final decision of the Commissioner.

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<sup>1</sup> The parties consented to the jurisdiction of a U.S. Magistrate Judge. (Docs. 8 & 9.)

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## I. BACKGROUND

The following includes the pertinent medical and procedural background for this matter. Plaintiff was born on March 2, 1969, and is currently 48 years old. (Administrative Record (“AR”) 215.)

On November 26, 2013, Plaintiff filed initial claims for disability insurance benefits and supplemental security income. (See AR 215–28.) In his claims, Plaintiff alleges that he became disabled on October 28, 2013. (See AR 215 & 219.) Plaintiff stated that the following conditions limit his ability to work: (1) chronic leg and feet swelling, pain, and numbness, (2) shortness of breath, chest pain, and dizziness, (3) high blood pressure, (4) diabetes, (5) hypertension, (6) fluid that weeps out of legs when the legs are swollen, (7) high cholesterol, and (8) obstructive sleep apnea. (AR 241.)

In a summary of past earnings, Plaintiff reported receiving between \$10,900 and \$33,700 in earnings per year between 1997 and 2004. (See AR 231.) However, Plaintiff reported that his earnings dropped precipitously after 2004. (See AR 231 (providing that Plaintiff earned \$0 in 2005, \$1,224.00 in 2006, \$0 in 2007, \$0 in 2008, \$3,652.04 in 2009, \$5,849.21 in 2010, \$3,079.15 in 2011, \$276.00 in 2012, and \$1,543 in 2013).)

The Social Security Administration denied Plaintiff’s claims initially on May 9, 2014, (see AR 126–35), and again on reconsideration on July 25, 2014, (see AR 141–52). Plaintiff then requested a hearing before an administrative law judge (“ALJ”) on August 26, 2014. (AR 153–55.) On April 8, 2014, the ALJ held a hearing regarding Plaintiff’s claims (the “Hearing”). (See AR 28–71.)

In a decision dated June 1, 2015, the ALJ found that Plaintiff was not disabled. (See AR 11–27.) In the decision, the ALJ conducted the five-step sequential evaluation analysis set forth in 20 C.F.R. § 416.920. (See AR 11–22.) At step one, the ALJ found that Plaintiff “has not engaged in substantial gainful activity since . . . the alleged onset date.” (AR 13.) At step two, the ALJ found that Plaintiff “has the following severe impairments: diabetes mellitus, essential hypertension, obesity, edema in the lower extremity, chronic venous insufficiency, osteoarthritis in

1 the knees bilaterally, and depressive disorder not otherwise specified with anxious features.” (AR  
2 14.)

3 At step three, the ALJ determined that Plaintiff “does not have an impairment or  
4 combination of impairments that meets or medically equals the severity of one of the listed  
5 impairments in 20 [C.F.R.] Part 404, Subpart P, Appendix 1.” (AR 14.) The ALJ noted the  
6 following regarding Plaintiff’s activities of daily living during the ALJ’s step-three analysis:

7 In activities of daily living, [Plaintiff] has mild restriction. [Plaintiff] reported  
8 activities of daily [sic] such as needing no help with bathing, dressing, and  
9 grooming, and having adequate motivation for them. He also reported that he could  
10 travel alone, manage money, prepare food for himself, and take his children to and  
from school. He spends the day mostly at home, sleeping, watching television, and  
doing a little yard work . . . .

11 (AR 14.)

12 The ALJ next found that Plaintiff has the residual functional capacity (“RFC”) “to perform  
13 light work,” with certain restrictions. (AR 15.) During the course of the RFC analysis, the ALJ  
14 noted the following regarding Plaintiff’s allegations of pain and limitations:

15 [Plaintiff] alleged he was unable to work due to physical and mental conditions,  
16 including chronic leg and feet swelling, pain, and numbness, as well as shortness of  
17 breath, chest pain, dizziness, diabetes, hypertension, high cholesterol, obstructive  
18 sleep apnea, depression, and fluid that weeps out of the legs when swollen . . . .  
19 [Plaintiff] completed an [e]xertional [q]uestionnaire dated February 5, 2014 . . . ,  
20 and reported that he has a hard time picking up his 6 year old child, his back  
muscles will pull, and his legs and feet will swell up. He also stated that he was  
able to drive 2-3 hours, tries to rake leaves and water plants for about 2-3 hours, and  
sometimes uses a cane when his feet swell.

21 (AR 16.) The ALJ then found “that [Plaintiff’s] medically determinable impairments could  
22 reasonably be expected to cause the alleged symptoms,” but Plaintiff’s “statements concerning the  
23 intensity, persistence and limiting effects of these symptoms are not entirely credible.” (AR 16.)  
24 The ALJ also engaged in an extensive discussion regarding the evidence of Plaintiff’s physical and  
25 mental impairments. (*See* AR 16–19.) Additionally, the ALJ stated the following in the RFC  
26 analysis regarding Plaintiff’s credibility:

27 As for [Plaintiff’s] credibility, [the ALJ] find[s] the allegations not fully credible.  
28 He described daily activities that are not limited to the extent one would expect,

1 given the complaints of disabling symptoms and limitations. [Plaintiff] reported  
2 activities of daily [sic] such as needing no help with bathing, dressing, and  
3 grooming, and having adequate motivation for them. He also reported that he could  
4 travel alone, manage money, prepare food for himself, and take his children to and  
5 from school. He spends the day mostly at home, sleeping, watching television, and  
6 doing a little yard work . . . .

7 [Plaintiff's] credibility is further undermined by the diagnostic and other objective  
8 medical evidence, which failed to show a physiological basis for the extreme pain  
9 and limitation alleged. There was no history of hospitalizations, surgeries,  
10 complicated medication regimen, therapy, or any other extraordinary treatment  
11 commiserate with the alleged intensity, duration, frequency and purportedly  
12 limiting effects of his symptoms during the relevant period. Furthermore, there  
13 were no psychiatric hospitalizations, no history of suicide attempts, no history of  
14 outpatient treatment, no history of psychotherapy, and no history of psychosis or  
15 manic episodes.

16 [The ALJ] also considered [Plaintiff's] work history in assessing his credibility . . . .  
17 The evidence of record raises a question as to whether [Plaintiff's] unemployment  
18 since the alleged onset of disability was actually due to his medical condition. A  
19 review of [Plaintiff's] work history shows that [Plaintiff] worked 7 years at  
20 substantial gainful activity levels within the past relevant 15 years, but had no years  
21 at substantial gainful activity levels in the last 8 years. Moreover, [Plaintiff]  
22 reported that part of the reason he stopped working was because his business went  
23 bankrupt.

24 . . .

25 The medical evidence of record does not support the extent of [Plaintiff's]  
26 subjective complaints and his credibility is weakened because of inconsistent and  
27 unsupported statements.

28 (AR 19–20.)

At step four, the ALJ found that Plaintiff “is unable to perform any past relevant work.”  
(AR 20.) Finally, at step five, the ALJ determined that “there are jobs that exist in significant  
numbers in the national economy that [Plaintiff] can perform.” (AR 21.) Ultimately, the ALJ  
found that Plaintiff “is not disabled under sections 216(i) and 223(d) of the Social Security Act.”  
(AR 22.)

Plaintiff sought review of the ALJ's decision before the Appeals Council. (AR 7.) On  
October 21, 2015, the Appeals Council denied Plaintiff's request for review of the ALJ's decision.  
(AR 1–6.)

1 Plaintiff then filed the Complaint in this Court on December 11, 2015. (Doc. 1.) Plaintiff  
2 filed Plaintiff's Motion on July 27, 2016, (Doc. 13), and Defendant filed Defendant's Motion on  
3 October 28, 2016, (Doc. 16). To date, Plaintiff has not filed a reply in support of Plaintiff's  
4 Motion. As such, the briefing in this case is complete and this matter is ready for disposition.

## 5 II. LEGAL STANDARD

### 6 A. Applicable Law

7 An individual is considered "disabled" for purposes of disability benefits if he or she is  
8 unable "to engage in any substantial gainful activity by reason of any medically determinable  
9 physical or mental impairment which can be expected to result in death or which has lasted or can  
10 be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A).  
11 However, "[a]n individual shall be determined to be under a disability only if his physical or  
12 mental impairment or impairments are of such severity that he is not only unable to do his  
13 previous work but cannot, considering his age, education, and work experience, engage in any  
14 other kind of substantial gainful work which exists in the national economy." *Id.* § 423(d)(2)(A).

15 "In determining whether an individual's physical or mental impairment or impairments are  
16 of a sufficient medical severity that such impairment or impairments could be the basis of  
17 eligibility [for disability benefits], the Commissioner" is required to "consider the combined effect  
18 of all of the individual's impairments without regard to whether any such impairment, if  
19 considered separately, would be of such severity." *Id.* § 423(d)(2)(B). For purposes of this  
20 determination, "a 'physical or mental impairment' is an impairment that results from anatomical,  
21 physiological, or psychological abnormalities which are demonstrable by medically acceptable  
22 clinical and laboratory diagnostic techniques." *Id.* § 423(d)(3).

23 "The Social Security Regulations set out a five-step sequential process for determining  
24 whether a claimant is disabled within the meaning of the Social Security Act." *Tackett v. Apfel*,  
25 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 20 C.F.R. § 404.1520). The Ninth Circuit provided  
26 the following description of the sequential evaluation analysis:

27 In step one, the ALJ determines whether a claimant is currently engaged in  
28 substantial gainful activity. If so, the claimant is not disabled. If not, the ALJ

1 proceeds to step two and evaluates whether the claimant has a medically severe  
2 impairment or combination of impairments. If not, the claimant is not disabled. If  
3 so, the ALJ proceeds to step three and considers whether the impairment or  
4 combination of impairments meets or equals a listed impairment under 20 C.F.R. pt.  
5 404, subpt. P, [a]pp. 1. If so, the claimant is automatically presumed disabled. If  
6 not, the ALJ proceeds to step four and assesses whether the claimant is capable of  
performing her past relevant work. If so, the claimant is not disabled. If not, the  
ALJ proceeds to step five and examines whether the claimant has the [RFC] . . . to  
perform any other substantial gainful activity in the national economy. If so, the  
claimant is not disabled. If not, the claimant is disabled.

7 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005); *see, e.g.*, 20 C.F.R. § 404.1520(a)(4)  
8 (providing the “five-step sequential evaluation process”); *id.* § 416.920(a)(4) (same). “If a  
9 claimant is found to be ‘disabled’ or ‘not disabled’ at any step in the sequence, there is no need to  
10 consider subsequent steps.” *Tackett*, 180 F.3d at 1098 (citing 20 C.F.R. § 404.1520).

11 “The claimant carries the initial burden of proving a disability in steps one through four of  
12 the analysis.” *Burch*, 400 F.3d at 679 (citing *Swenson v. Sullivan*, 876 F.2d 683, 687 (9th Cir.  
13 1989)). “However, if a claimant establishes an inability to continue her past work, the burden  
14 shifts to the Commissioner in step five to show that the claimant can perform other substantial  
15 gainful work.” *Id.* (citing *Swenson*, 876 F.2d at 687).

## 16 **B. Scope of Review**

17 “This court may set aside the Commissioner’s denial of disability insurance benefits [only]  
18 when the ALJ’s findings are based on legal error or are not supported by substantial evidence in  
19 the record as a whole.” *Tackett*, 180 F.3d at 1097 (citation omitted). “Substantial evidence is  
20 defined as being more than a mere scintilla, but less than a preponderance.” *Edlund v. Massanari*,  
21 253 F.3d 1152, 1156 (9th Cir. 2001) (citing *Tackett*, 180 F.3d at 1098). “Put another way,  
22 substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to  
23 support a conclusion.” *Id.* (citing *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

24 “This is a highly deferential standard of review . . . .” *Valentine v. Comm’r of Soc. Sec.*  
25 *Admin.*, 574 F.3d 685, 690 (9th Cir. 2009). “The ALJ’s findings will be upheld if supported by  
26 inferences reasonably drawn from the record.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th  
27 Cir. 2008) (citation omitted). Additionally, “[t]he court will uphold the ALJ’s conclusion when  
28

1 the evidence is susceptible to more than one rational interpretation.” *Id.*; *see, e.g., Edlund*, 253  
2 F.3d at 1156 (“If the evidence is susceptible to more than one rational interpretation, the court may  
3 not substitute its judgment for that of the Commissioner.” (citations omitted)).

4 Nonetheless, “the Commissioner’s decision ‘cannot be affirmed simply by isolating a  
5 specific quantum of supporting evidence.’” *Tackett*, 180 F.3d at 1098 (quoting *Sousa v. Callahan*,  
6 143 F.3d 1240, 1243 (9th Cir. 1998)). “Rather, a court must ‘consider the record as a whole,  
7 weighing both evidence that supports and evidence that detracts from the [Commissioner’s]  
8 conclusion.’” *Id.* (quoting *Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993)).

9 Finally, courts “may not reverse an ALJ’s decision on account of an error that is harmless.”  
10 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (citing *Stout v. Comm’r, Soc. Sec. Admin.*,  
11 454 F.3d 1050, 1055–56 (9th Cir. 2006)). Harmless error “exists when it is clear from the record  
12 that ‘the ALJ’s error was inconsequential to the ultimate nondisability determination.’”  
13 *Tommasetti*, 533 F.3d at 1038 (quoting *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 885 (9th Cir.  
14 2006)). “[T]he burden of showing that an error is harmful normally falls upon the party attacking  
15 the agency’s determination.” *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009) (citations omitted).

### 16 III. DISCUSSION

17 Plaintiff argues that the ALJ erred by finding that Plaintiff’s allegations regarding his  
18 limitations were not credible. (*See* Doc. 13 at 7–15.) As discussed below, the Court finds that  
19 substantial evidence supports the ALJ’s credibility determination and affirms the ALJ’s decision.

#### 20 A. Overview of Analysis

21 The ALJ determines a claimant’s RFC before step four of the sequential evaluation  
22 analysis. *See, e.g.*, 20 C.F.R. §§ 404.1520(e) & 416.920(e). A claimant’s RFC “is the most [the  
23 claimant] can still do despite [their] limitations.” *Id.* §§ 404.1545(a)(1) & 416.945(a)(1). “In  
24 determining a claimant’s RFC, an ALJ must consider all relevant evidence in the record . . . .”  
25 *Robbins*, 466 F.3d at 883. “The ALJ is entitled to formulate an RFC and resolve any ambiguity or  
26 inconsistency in the medical evidence . . . .” *Jenkins v. Colvin*, Case No. 1:15-cv-01135-SKO,  
27 2016 WL 4126707, at \*6 (E.D. Cal. Aug. 2, 2016) (citing *Lewis v. Apfel*, 236 F.3d 503, 509 (9th  
28 Cir. 2001)). Additionally, “[t]he ALJ can . . . decide what weight to give to what evidence as long

1 as the ALJ’s reasoning is free of legal error and is based on substantial evidence.” *Tremayne v.*  
2 *Astrue*, No. CIV 08–2795 EFB, 2010 WL 1266850, at \*12 (E.D. Cal. Mar. 29, 2010) (citing  
3 *Reddick v. Chater*, 157 F.3d 715 (9th Cir. 1998)).

4 “To determine whether a claimant’s testimony regarding subjective pain or symptoms is  
5 credible, an ALJ must engage in a two-step analysis.” *Lingenfelter v. Astrue*, 504 F.3d 1028,  
6 1035–36 (9th Cir. 2007). “First, the ALJ must determine whether the claimant has presented  
7 objective medical evidence of an underlying impairment ‘which could reasonably be expected to  
8 produce the pain or other symptoms alleged.’” *Id.* at 1036 (quoting *Bunnell v. Sullivan*, 947 F.2d  
9 341, 344 (9th Cir. 1991)). “The claimant, however, ‘need not show that her impairment could  
10 reasonably be expected to cause the severity of the symptom she has alleged; she need only show  
11 that it could reasonably have caused some degree of the symptom.’” *Id.* (quoting *Smolen v.*  
12 *Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996)). “Thus, the ALJ may not reject subjective symptom  
13 testimony . . . simply because there is no showing that the impairment can reasonably produce the  
14 *degree* of symptom alleged.” *Id.* (alterations in original) (quoting *Smolen*, 80 F.3d at 1282); *cf.*  
15 *Reddick*, 157 F.3d at 722 (“Once the claimant produces medical evidence of an underlying  
16 impairment, the Commissioner may not discredit the claimant’s testimony as to the severity of  
17 symptoms merely because they are unsupported by objective medical evidence.” (citing *Bunnell*,  
18 947 F.2d at 343)). Additionally, a claimant is not required to “produce ‘objective medical  
19 evidence of the pain or fatigue itself, or the severity thereof.’” *Garrison v. Colvin*, 759 F.3d 995,  
20 1014 (9th Cir. 2014) (quoting *Smolen*, 80 F.3d at 1282).

21 In this case, the ALJ found “that [Plaintiff’s] medically determinable impairments could  
22 reasonably be expected to cause the alleged symptoms.” (AR 16.) As such, the first step in this  
23 credibility analysis is satisfied.

24 As to the second step, the ALJ did not reference any evidence of malingering. (*See* AR  
25 16–20.) Thus, “the ALJ can reject the claimant’s testimony about the severity of her symptoms  
26 only by offering specific, clear and convincing reasons for doing so.” *Lingenfelter*, 504 F.3d at  
27 1036 (quoting *Smolen*, 80 F.3d at 1281); *see, e.g., Robbins*, 466 F.3d at 883 (“[U]nless an ALJ  
28 makes a finding of malingering based on affirmative evidence thereof, he or she may only find an



1 applicant not credible by making specific findings as to credibility and stating clear and  
2 convincing reasons for each.” (citation omitted). “A finding that a claimant’s testimony is not  
3 credible ‘must be sufficiently specific to allow a reviewing court to conclude the adjudicator  
4 rejected the claimant’s testimony on permissible grounds and did not arbitrarily discredit a  
5 claimant’s testimony regarding pain.’” *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir.  
6 2015) (quoting *Bunnell*, 947 F.2d at 345–46).

7 The clear and convincing standard is “not an easy requirement to meet” and it “is the most  
8 demanding [standard] required in Social Security cases.” *Garrison*, 759 F.3d at 1015 (citation  
9 omitted). “General findings are insufficient” to satisfy this standard. *Burrell v. Colvin*, 775 F.3d  
10 1133, 1138 (9th Cir. 2014) (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)).  
11 “[R]ather, the ALJ must identify what testimony is not credible and what evidence undermines the  
12 claimant’s complaints.” *Id.* (quoting *Lester*, 81 F.3d at 834); *see, e.g., Vasquez v. Astrue*, 572 F.3d  
13 586, 592 (9th Cir. 2008) (“To support a lack of credibility finding, the ALJ [is] required to ‘point  
14 to specific facts in the record which demonstrate that [the claimant] is in less pain than she  
15 claims.’” (quoting *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993))); *cf. Burrell*, 775 F.3d at  
16 1138 (stating that the Ninth Circuit’s “decisions make clear that [courts] may not take a general  
17 finding . . . and comb the administrative record to find specific” support for the finding).

18 The ALJ in the present matter found that Plaintiff’s “allegations” were “not fully credible.”  
19 (AR 19.) The ALJ provided the following four reasons for this finding: (1) Plaintiff “described  
20 daily activities that are not limited to the extent one would expect, given the complaints of  
21 disabling symptoms and limitations,” (2) Plaintiff’s work record, (3) Plaintiff’s conservative  
22 treatment history, and (4) “the diagnostic and other objective medical evidence . . . failed to show  
23 a physiological basis for the extreme pain and limitation alleged.” (AR 19–20.) The Court shall  
24 address each reason, in turn.

## 25 **B. Daily Activities**

26 Plaintiff first argues that the ALJ’s rationale relating to Plaintiff’s activities of daily living  
27 is not a valid clear and convincing reason for the ALJ’s adverse credibility finding. (*See* Doc. 13  
28 at 9–11.) The Court agrees with Plaintiff’s position.

1           “One does not need to be ‘utterly incapacitated’ in order to be disabled,” *Vertigan v.*  
2 *Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001) (quoting *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.  
3 1989)), and “disability claimants should not be penalized for attempting to lead normal lives in the  
4 face of their limitations,” *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). The Ninth Circuit  
5 has “repeatedly warned that ALJs must be especially cautious in concluding that daily activities  
6 are inconsistent with testimony about pain, because impairments that would unquestionably  
7 preclude work and all the pressures of a workplace environment will often be consistent with  
8 doing more than merely resting in bed all day.” *Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir.  
9 2014) (citations omitted). “Only if the level of activity were inconsistent with [the claimant’s]  
10 claimed limitations would these activities have any bearing on [the claimant’s] credibility.”  
11 *Reddick*, 157 F.3d at 722.

12           Here, the ALJ stated that Plaintiff’s “described daily activities . . . are not limited to the  
13 extent one would expect” because Plaintiff reported (1) “needing no help with bathing, dressing,  
14 and grooming,” (2) “that he could travel alone, manage money, prepare food for himself, and take  
15 his children to and from school,” and (3) that he “spends the day mostly at home, sleeping,  
16 watching television, and doing a little yard work.” (AR 19.) This rationale is deficient for two  
17 reasons.

18           First, the Ninth Circuit has noted that similar minimal daily activities have no bearing on a  
19 claimant’s credibility. *See, e.g., Vertigan*, 260 F.3d at 1050 (“[T]he mere fact that a plaintiff has  
20 carried on certain daily activities, such as grocery shopping, driving a car, or limited walking for  
21 exercise, does not in any way detract from her credibility as to her overall disability.”). Absent  
22 any further pertinent discussion in the ALJ’s decision, the record reflects only that the ALJ  
23 impermissibly penalized Plaintiff’s credibility due to Plaintiff’s minimal efforts to lead a normal  
24 life.

25           Second, the ALJ failed to describe how these tasks are transferrable to a work setting.  
26 “[D]aily activities may be grounds for an adverse credibility finding ‘if a claimant is able to spend  
27 a substantial part of his day engaged in pursuits involving the performance of physical functions  
28 that are transferable to a work setting.’” *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (quoting

1 *Fair*, 885 F.2d at 603); *see, e.g., Fair*, 885 F.2d at 603 (“[I]f, despite his claims of pain, a claimant  
2 is able to perform household chores and other activities that involve many of the same physical  
3 tasks as a particular type of job, it would not be farfetched for an ALJ to conclude that the  
4 claimant’s pain does not prevent the claimant from working.”). *See generally Smolen v. Chater*,  
5 80 F.3d 1273, 1284 n.7 (9th Cir. 1996) (“The Social Security Act does not require that claimants  
6 be utterly incapacitated to be eligible for benefits, and many home activities may not be easily  
7 transferable to a work environment where it might be impossible to rest periodically or take  
8 medication.” (citation omitted)). “The ALJ must make ‘specific findings relating to [the daily]  
9 activities’ and their transferability to conclude that a claimant’s daily activities warrant an adverse  
10 credibility determination.” *Orn*, 495 F.3d at 639 (alteration in original) (quoting *Burch v.*  
11 *Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005)).

12 In this case, the ALJ failed to describe how Plaintiff’s minimal physical activities occupied  
13 a substantial part of his day, or provide any discussion, whatsoever, as to how those activities are  
14 transferable to a work setting. (*See* AR 15–20.) The ALJ’s failure to address the minimal extent  
15 of these activities and whether they are transferable to a work setting demonstrates that the ALJ’s  
16 credibility determination regarding Plaintiff’s daily activities is not supported by substantial  
17 evidence. *See, e.g., Orn*, 495 F.3d at 639 (finding that substantial evidence did not support the  
18 ALJ’s conclusion regarding the claimant’s credibility where “there [was] neither evidence to  
19 support that [the claimant’s] activities were transferable to a work setting nor proof that [the  
20 claimant] spent a substantial part of his day engaged in transferable skills”).

21 Based on the foregoing, the Court finds that the ALJ’s stated rationale pertaining to  
22 Plaintiff’s activities of daily living is not a valid clear and convincing reason for the adverse  
23 credibility determination.

#### 24 **C. Work History**

25 Plaintiff next argues that the ALJ’s rationale relating to Plaintiff’s work history is not a  
26 valid clear and convincing reason for the adverse credibility finding. (*See* Doc. 13 at 13.) The  
27 Court disagrees with Plaintiff’s position on this point.

28

1           “An ALJ is required to consider work history when assessing credibility.” *Matthews v.*  
2 *Berryhill*, Case No. 1:16-cv-00536-SKO, 2017 WL 3383118, at \*12 (E.D. Cal. Aug. 7, 2017)  
3 (citing 20 C.F.R. § 404.1529(c)(3) and Social Security Ruling (“SSR”) 95-7p). “Evidence of a  
4 poor work history that suggests a claimant is not motivated to work is a proper reason to discredit  
5 a claimant’s testimony that he is unable to work.” *Franz v. Colvin*, 91 F. Supp. 3d 1200, 1209 (D.  
6 Or. 2015) (citing *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002)); *see, e.g., Albidrez v.*  
7 *Astrue*, 504 F. Supp. 2d 814, 822 (C.D. Cal. 2007) (“An ALJ may properly consider a claimant’s  
8 poor or nonexistent work history in making a negative credibility determination.” (collecting  
9 cases)). However, a claimant’s work history does not support a negative credibility determination  
10 if the claimant “experience[d] pain and limitations severe enough to preclude him from  
11 maintaining substantial gainful employment.” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1038 (9th  
12 Cir. 2007).

13           Here, Plaintiff reported earning typically well in excess of \$10,000 per year between 1997  
14 and 2004, but then suffered a dramatic decrease in earnings after 2004—including no earnings, at  
15 all, in 2005, 2007, and 2008. (*See* AR 231.) Additionally, Plaintiff does not assert—and the  
16 record does not otherwise indicate—that Plaintiff’s dramatic decrease in gainful employment after  
17 2004 was due to his disability or disability related pain. (*See* Doc. 13 at 13.) Plaintiff’s poor work  
18 record is therefore a valid clear and convincing reason for an adverse credibility finding. *See, e.g.,*  
19 *Matthews*, 2017 WL 3383118, at \*12 (“Evidence of a poor work history is a clear and convincing  
20 reason to discredit [a] plaintiff’s credibility.” (citations omitted)).

21           Plaintiff nonetheless argues that his work history does not support an adverse credibility  
22 finding because the construction industry “fell on rough times,” Plaintiff’s “earnings nose dive  
23 [sic] right around the time that the housing bubble burst in the mid 2000s,” and Plaintiff’s business  
24 “suffered bankruptcy.” (Doc. 13 at 13.) In other words, Plaintiff argues that economic factors  
25 outside of his propensity or motivation to work precluded his opportunity to engage in gainful  
26 employment. (*See id.*)

27           The Court disagrees with this argument for two reasons. First, an ALJ is allowed to make  
28 an adverse credibility finding based on a claimant’s work history where the claimant lost their

1 previous employment due to reasons that were not related to their disability. *See, e.g., Drouin v.*  
2 *Sullivan*, 966 F.2d 1255, 1258–59 (9th Cir. 1992) (finding that the ALJ did not err by discounting  
3 the plaintiff’s credibility because, in part, the plaintiff “did not lose her past two jobs because of  
4 pain”); *Caldwell v. Comm’r of Soc. Sec.*, No. 2:15-cv-1002-KJN, 2016 WL 4041331, at \*6 (E.D.  
5 Cal. July 26, 2016) (finding that “the ALJ reasonably relied on [the] plaintiff’s work record in  
6 discounting her credibility” where “there [was] evidence suggesting that [the] plaintiff had stopped  
7 working for reasons not related to her impairments”); *Clark v. Colvin*, No. C13–0747–JCC, 2013  
8 WL 6095842, at \*3 (W.D. Wash. Nov. 20, 2013) (finding that the ALJ did not err in finding the  
9 claimant’s “subjective complaints . . . less credible” based on the claimant’s work history where  
10 the claimant’s “job ended for economic reasons instead of impairment-related reasons”). As  
11 Plaintiff’s assertions regarding the reasons for his lack of gainful employment are not related to his  
12 impairments, the ALJ reasonably relied on Plaintiff’s poor work history in making an adverse  
13 credibility finding.

14         Second, it is well-established that the Court “may not ‘second-guess’ the ALJ’s credibility  
15 finding simply because the evidence may have been susceptible of other interpretations more  
16 favorable to Plaintiff.” *Matthews*, 2017 WL 3383118, at \*12 (citing *Tommasetti v. Astrue*, 533  
17 F.3d 1035, 1039 (9th Cir. 2008)). Here, the reason for Plaintiff’s poor work history could be  
18 conditions in the national economy, as asserted by Plaintiff, (*see* Doc. 13 at 13), or a lack of  
19 motivation from Plaintiff in finding employment, as found by the ALJ, (*see* AR 20). Ultimately,  
20 “[w]hile it is true that factor(s) other than a lack of propensity to work could account for  
21 Plaintiff’s” poor work history, the Court shall not second-guess the ALJ’s credibility  
22 determination based on Plaintiff’s alternative explanation for his work record. *Matthews*, 2017  
23 WL 3383118, at \*12.

24         For these reasons, the Court finds that the ALJ provided a valid clear and convincing  
25 reason for an adverse credibility finding based on Plaintiff’s poor work record.

26 **D. Conservative Treatment**

27         Defendant argues that substantial evidence supports the ALJ’s credibility determination  
28 due, in part, to the ALJ’s discussion regarding Plaintiff’s history of conservative treatment, (*see*

1 Doc. 16 at 7–8)—an issue that Plaintiff failed to address in his briefing, (*see* Doc. 13). The Court  
2 agrees with Defendant’s position.

3 “The treatment [a claimant] received, especially when conservative, is a legitimate  
4 consideration in a credibility finding.” *McKnight v. Comm’r of Soc. Sec.*, Case No.: 1:12-cv-  
5 00726-AWI-JLT, 2013 WL 12073218, at \*2 (E.D. Cal. Sept. 30, 2013) (citing *Meanel v. Apfel*,  
6 172 F.3d 1111, 1114 (9th Cir. 1999)). Thus, “[a]n ALJ may rely on the conservative nature of  
7 treatment or a lack of treatment in rejecting a claimant’s subjective complaint of pain.”  
8 *Khounesavatdy v. Astrue*, 549 F. Supp. 2d 1218, 1225 (E.D. Cal. 2008) (citing *Johnson v. Shalala*,  
9 60 F.3d 1428, 1433–34 (9th Cir. 1995)); *see, e.g., Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir.  
10 2007) (“[E]vidence of conservative treatment is sufficient to discount a claimant’s testimony  
11 regarding severity of an impairment.” (citation omitted)). In other words, “[t]he conservative  
12 nature of [a] plaintiff’s treatment provides a clear and convincing reason for rejecting [a]  
13 plaintiff’s statements concerning the severity of her impairments.” *Bifarella v. Colvin*, 51 F. Supp.  
14 3d 926, 935 (E.D. Cal. 2014) (citing *Parra*, 481 F.3d at 751).

15 Here, the ALJ made an adverse credibility finding because, in part, Plaintiff’s treatment  
16 history was inconsistent with Plaintiff’s statements regarding his limitations. (*See* AR 19.)  
17 Specifically, the ALJ noted that there was (1) “no history of hospitalizations, surgeries,  
18 complicated medication regimen, therapy, or any other extraordinary treatment,” and (2) “no  
19 psychiatric hospitalizations, no history of suicide attempts, no history of outpatient treatment, no  
20 history of psychotherapy, and no history of psychosis or manic episodes.” (AR 19.) Plaintiff has  
21 not argued that he received anything other than conservative treatment, (*see* Doc. 13), and the  
22 Court is not otherwise aware of any indication in the record that Plaintiff received more than  
23 conservative treatment. As such, the Court finds that the ALJ reasonably relied on Plaintiff’s  
24 conservative treatment in discounting Plaintiff’s credibility. *See, e.g., Osenbrock v. Apfel*, 240  
25 F.3d 1157, 1165–66 (9th Cir. 2001) (finding that the ALJ did not err in making an adverse  
26 credibility finding where the ALJ stated, in part, that “the claimant has not participated in any  
27 significant pain regimen or therapy program”); *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989)  
28 (finding that the ALJ did not err in making an adverse credibility finding because, in part, the

1 claimant “alleged persistent and increasingly severe pain and discomfort,” but “denied having  
2 received more than rather minimal conservative treatment for his various complaints”); *see also* 20  
3 C.F.R. § 416.929(c)(3)(iv)–(v) (noting that, in evaluating credibility, the Commissioner will  
4 consider “[t]he type, dosage, effectiveness, and side effects of any medication [a claimant] take[s]  
5 or ha[s] taken to alleviate [the claimant’s] pain or other symptoms” and “[t]reatment, other than  
6 medication, [a claimant] receive[s] or ha[s] received for relief of [the claimant’s] pain or other  
7 symptoms”). *But see Kuharski v. Colvin*, No. 2:12-cv-01055-AC, 2014 WL 3385183, at \*4  
8 (E.D. Cal. July 10, 2014) (“[T]he ALJ’s reliance on the lack of hospitalization is unreasonable and  
9 does not constitute a clear and convincing reason for rejecting [a] plaintiff’s credibility regarding  
10 his mental limitations.” (citations omitted)). The Court therefore also finds that Plaintiff’s history  
11 of conservative treatment constitutes a valid clear and convincing reason for the ALJ’s adverse  
12 credibility finding. *See, e.g., Bifarella*, 51 F. Supp. 3d at 935 (“The conservative nature of [a]  
13 plaintiff’s treatment provides a clear and convincing reason for rejecting [a] plaintiff’s statements  
14 concerning the severity of her impairments.” (citing *Parra*, 481 F.3d at 751)).

15 **E. Objective Evidence**

16 Plaintiff’s final argument is that the ALJ’s stated rationale relating to the objective medical  
17 evidence is not a valid clear and convincing reason for the adverse credibility finding. (*See* Doc.  
18 13 at 11–13.) The Court again disagrees with Plaintiff’s position.

19 “[T]he Ninth Circuit has repeatedly emphasized that, ‘in evaluating the credibility of pain  
20 testimony after a claimant produces objective medical evidence of an underlying impairment, an  
21 ALJ may not reject a claimant’s subjective complaints based *solely* on a lack of medical evidence  
22 to fully corroborate the alleged severity of pain.’” *Ondracek v. Comm’r of Soc. Sec.*, Case No.  
23 1:15-cv-01308-SKO, 2017 WL 714374, at \*8 (E.D. Cal. Feb. 22, 2017) (alteration in original)  
24 (quoting *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005)); *see, e.g., Rollins v. Massanari*,  
25 261 F.3d 853, 857 (9th Cir. 2001) (“[S]ubjective pain testimony cannot be rejected on the sole  
26 ground that it is not fully corroborated by objective medical evidence . . . .”); *see also* SSR 96-7p  
27 (“An individual’s statements about the intensity and persistence of pain or other symptoms or  
28 about the effect the symptoms have on his or her ability to work may not be disregarded solely

1 because they are not substantiated by objective medical evidence.”). Nonetheless, “lack of  
2 medical evidence . . . is a factor that the ALJ can consider in his credibility analysis.” *Burch*, 400  
3 F.3d at 681. Stated differently, “[a]lthough the inconsistency of objective findings with subjective  
4 claims may not be the sole reason for rejecting subjective complaints of pain, it is one factor which  
5 may be considered with others.” *Salas v. Colvin*, No. 1:13-cv-00429-BAM, 2014 WL 4186555,  
6 at \*6 (E.D. Cal. Aug. 21, 2014) (citations omitted).

7 Here, the ALJ discounted Plaintiff’s credibility because, in part, “the diagnostic and other  
8 objective medical evidence . . . failed to show a physiological basis for the extreme pain and  
9 limitation alleged.” (AR 19.) Contrary to Plaintiff’s assertion, (*see* Doc. 13 at 11–12), the ALJ  
10 provided ample support for this conclusion, including an extensive discussion regarding the  
11 relevant medical evidence during the course of the RFC analysis,<sup>2</sup> (*see* AR 15–19). As the ALJ  
12 fully explored the pertinent medical evidence relating to the credibility determination, the Court  
13 finds that the ALJ’s stated rationale pertaining to the objective medical evidence is a valid clear  
14 and convincing reason for the ALJ’s adverse credibility finding.<sup>3</sup> *See, e.g., Bifarella v. Colvin*, 51  
15 F. Supp. 3d 926, 934–35 (E.D. Cal. 2014) (finding that the ALJ’s rationale relating to an  
16 inconsistency between the plaintiff’s statements and the objective medical evidence was a valid  
17 clear and convincing reason for an adverse credibility finding where the ALJ addressed the  
18 pertinent evidence and reached an “interpretation of the objective evidence [that] was  
19 reasonable”); *see also Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002) (finding that the  
20 “ALJ gave specific, clear and convincing reasons for discounting [the claimant’s] testimony”  
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22 <sup>2</sup> The Court notes that Plaintiff does not argue that the ALJ failed to discuss any pertinent medical evidence in the  
ALJ’s decision. (*See* Doc. 13 at 11–13.)

23 <sup>3</sup> Plaintiff also argues that the ALJ employed the incorrect standard when determining whether Plaintiff’s subjective  
statements were consistent with the objective medical evidence. In particular, Plaintiff argues that the ALJ improperly  
24 “rel[ie]d on objective evidence” regarding “the degree of limitation,” while Plaintiff only had to “show that it could  
reasonably have caused some degree of symptom.” (Doc. 13 at 12 (citation omitted).)

25 The Court disagrees with Plaintiff’s position. The standard proffered by Plaintiff—only a showing of some  
degree of symptom—is the appropriate standard at the *first* stage of the credibility analysis. *See, e.g., Lingenfelter v.*  
26 *Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007). As noted above, the ALJ found that Plaintiff satisfied this stage. (*See*  
AR 16.) Plaintiff’s objections to the ALJ’s decision pertain to the *second* stage of the credibility analysis, in which  
27 “the ALJ can reject the claimant’s testimony about the severity of her symptoms by offering specific, clear and  
convincing reasons for doing so.” *Lingenfelter*, 504 F.3d at 1036 (quoting *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th  
28 Cir. 1996)). The Court is therefore not persuaded by Plaintiff’s argument regarding the standard employed by the ALJ  
when making the credibility determination.



1 where the ALJ found, in part, that “no objective medical evidence” supported the claimant’s  
2 “descriptions of her pain and limitations”).

3 In summary, the Court finds that the ALJ gave three valid clear and convincing reasons for  
4 the adverse credibility finding—Plaintiff’s poor work record, his history of conservative treatment,  
5 and inconsistencies between Plaintiff’s subjective statements and the objective medical evidence.  
6 These reasons readily constitute substantial evidence in support of the ALJ’s credibility  
7 determination. *See, e.g., Matthews v. Berryhill*, Case No. 1:16-cv-00536-SKO, 2017 WL  
8 3383118, at \*10 (E.D. Cal. Aug. 7, 2017) (finding that the ALJ’s three valid reasons for an  
9 adverse credibility finding—the plaintiff’s “conservative treatment history,” “poor work history,”  
10 and “evidence in the record that conflicted with [the plaintiff’s] allegation[s]”—constituted  
11 substantial evidence in support of the ALJ’s credibility determination). While the ALJ erred in  
12 providing one invalid reason for the credibility finding—Plaintiff’s activities of daily living—that  
13 error was harmless, as substantial evidence still supports the ALJ’s credibility determination  
14 notwithstanding the single errant rationale. *See, e.g., Carmickle v. Comm’r, Soc. Sec. Admin.*, 533  
15 F.3d 1155, 1162 (9th Cir. 2008) (“So long as there remains ‘substantial evidence supporting the  
16 ALJ’s conclusions on . . . credibility’ and the error ‘does not negate the validity of the ALJ’s  
17 ultimate [credibility] conclusion,’ such is deemed harmless and does not warrant reversal.”  
18 (alterations in original) (quoting *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th  
19 Cir. 2004))); *Matthews*, 2017 WL 3383118, at \*10 (“[B]ecause the ALJ articulated permissible  
20 reasons for discounting [the plaintiff’s] credibility, specifically [the plaintiff’s] conservative  
21 treatment history, [the plaintiff’s] poor work history, and evidence in the record that conflicted  
22 with [the plaintiff’s] allegation of total disability, . . . this error was harmless.” (citations omitted)).  
23 The Court therefore finds that the ALJ’s decision is properly affirmed.

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**IV. CONCLUSION**

For the foregoing reasons, the Court DENIES Plaintiff's Motion, (Doc. 13), GRANTS Defendant's Motion, (Doc. 16), and AFFIRMS the final decision of the Commissioner. The Court DIRECTS the Clerk to enter judgment in favor of Defendant.

IT IS SO ORDERED.

Dated: August 22, 2017

*/s/ Sheila K. Oberto*  
UNITED STATES MAGISTRATE JUDGE