

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARVEL SCOTT HASE,  
Plaintiff,  
v.  
COMMISSIONER OF SOCIAL  
SECURITY,  
Defendant.

No. 2:16-cv-2522-KJN

ORDER

Plaintiff Carvel Scott Hase seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner”) denying plaintiff’s application for Disability Insurance Benefits (“DIB”) under Title II of the Social Security Act (“Act”).<sup>1</sup> In his motion for summary judgment, plaintiff principally contends that the Commissioner erred by finding that plaintiff was not disabled from April 1, 2010, plaintiff’s alleged disability onset date, through December 31, 2012, plaintiff’s date last insured. (ECF No. 13.) The Commissioner opposed plaintiff’s motion and filed a cross-motion for summary judgment. (ECF No. 14.) Subsequently, plaintiff also filed a reply brief. (ECF No. 18.)

---

<sup>1</sup> This action was referred to the undersigned pursuant to Local Rule 302(c)(15), and both parties voluntarily consented to proceed before a United States Magistrate Judge for all purposes. (ECF Nos. 5, 7.)

1 After carefully considering the record and the parties' briefing, the court GRANTS IN  
2 PART plaintiff's motion for summary judgment, DENIES the Commissioner's cross-motion for  
3 summary judgment, and REMANDS the action for further administrative proceedings.

4 I. BACKGROUND

5 Plaintiff was born on February 12, 1969; has a bachelor's degree and a paralegal  
6 certificate; can communicate in English; and previously worked primarily in the mortgage loan  
7 industry. (Administrative Transcript ("AT") 39, 51.)<sup>2</sup> On December 16, 2012, plaintiff applied  
8 for DIB, alleging that he became disabled on April 1, 2010, due to headaches, a levator muscle  
9 spasm, depression, and temporomandibular joint disorder. (AT 13, 79, 167, 190.) After  
10 plaintiff's application was denied initially and on reconsideration, an ALJ conducted a hearing on  
11 October 27, 2014, at which plaintiff, represented by an attorney, and a vocational expert ("VE")  
12 testified. (AT 32-78.) The ALJ subsequently issued a decision dated February 17, 2015,  
13 determining that plaintiff had not been under a disability, as defined in the Act, from April 1,  
14 2010, plaintiff's alleged disability onset date, through December 31, 2012<sup>3</sup>, plaintiff's date last  
15 insured. (AT 13-23.) The ALJ's decision became the final decision of the Commissioner when  
16 the Appeals Council denied plaintiff's request for review on August 29, 2016. (AT 1-3.) Plaintiff  
17 subsequently filed this action on October 22, 2016, to obtain judicial review of the  
18 Commissioner's final decision. (ECF No. 1.)

19 II. ISSUES PRESENTED<sup>4</sup>

20 On appeal, plaintiff raises the following issues: (1) whether the ALJ erred at step two of  
21 the sequential disability analysis; (2) whether the ALJ improperly discounted the opinions of  
22

---

23 <sup>2</sup> Because the parties are familiar with the factual background of this case, including plaintiff's  
24 medical and mental health history, the court does not exhaustively relate those facts in this order.  
25 The facts related to plaintiff's impairments and treatment will be addressed insofar as they are  
relevant to the issues presented by the parties' respective motions.

26 <sup>3</sup> In some portions of the ALJ's decision, a date last insured of December 31, 2013 is referenced.  
27 Because plaintiff's date last insured is not material to the court's decision here, any  
inconsistencies regarding plaintiff's date last insured can be resolved on remand.

28 <sup>4</sup> Plaintiff's briefing raised the issues in a somewhat different order.

1 plaintiff's treating physicians; (3) whether the RFC assessment itself is unsupported; (4) whether  
2 the ALJ improperly discounted plaintiff's credibility; and (5) whether the ALJ erroneously  
3 discounted the testimony of third party witnesses.

### 4 III. LEGAL STANDARD

5 The court reviews the Commissioner's decision to determine whether (1) it is based on  
6 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record  
7 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial  
8 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340  
9 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means "such relevant evidence as a reasonable  
10 mind might accept as adequate to support a conclusion." Orn v. Astrue, 495 F.3d 625, 630 (9th  
11 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). "The ALJ is  
12 responsible for determining credibility, resolving conflicts in medical testimony, and resolving  
13 ambiguities." Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citation omitted). "The  
14 court will uphold the ALJ's conclusion when the evidence is susceptible to more than one rational  
15 interpretation." Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

### 16 IV. DISCUSSION

#### 17 Summary of the ALJ's Findings

18 The ALJ evaluated plaintiff's entitlement to DIB pursuant to the Commissioner's standard  
19 five-step analytical framework.<sup>5</sup> As an initial matter, the ALJ found that plaintiff last met the

---

20  
21 <sup>5</sup> Disability Insurance Benefits are paid to disabled persons who have contributed to the Social  
22 Security program. 42 U.S.C. §§ 401 et seq. Supplemental Security Income is paid to disabled  
23 persons with low income. 42 U.S.C. §§ 1382 et seq. Both provisions define disability, in part, as  
24 an "inability to engage in any substantial gainful activity" due to "a medically determinable  
25 physical or mental impairment. . . ." 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A). A parallel  
26 five-step sequential evaluation governs eligibility for benefits under both programs. See 20  
27 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-  
28 42 (1987). The following summarizes the sequential evaluation:

Step one: Is the claimant engaging in substantial gainful activity? If so, the  
claimant is found not disabled. If not, proceed to step two.

Step two: Does the claimant have a "severe" impairment? If so, proceed to step  
three. If not, then a finding of not disabled is appropriate.

1 insured status requirements of the Act on December 31, 2012. (AT 15.) At the first step, the ALJ  
2 concluded that plaintiff had not engaged in substantial gainful activity during the period from his  
3 alleged disability onset date of April 1, 2010, through his date last insured of December 31, 2012.  
4 (Id.) At step two, the ALJ found that plaintiff had the following severe impairments through the  
5 date last insured: migraines, temporomandibular joint disorder, degenerative disc disease of the  
6 cervical spine, and tinnitus. (AT 16.) However, at step three, the ALJ determined that, through  
7 the date last insured, plaintiff did not have an impairment or combination of impairments that met  
8 or medically equaled the severity of an impairment listed in 20 C.F.R. Part 404, Subpart P,  
9 Appendix 1. (Id.)

10 Before proceeding to step four, the ALJ assessed plaintiff's residual functional capacity  
11 ("RFC") as follows:

12 After careful consideration of the entire record, I find that, through  
13 the date last insured, the claimant had the residual functional  
14 capacity to perform light work as defined in 20 CFR 404.1567(b)  
15 except the claimant can lift, carry, push, and pull 10 pounds  
16 frequently and 20 pounds occasionally; sit for 8-hours in an 8-hour  
17 day with normal breaks; stand or walk for 8-hours in an 8-hour day  
18 with normal breaks; occasionally flex, twist, and extend the cervical  
spine; no climbing ladders, ropes, and scaffolds; occasionally be  
exposed to loud noise; no crawling; no work from unprotected  
heights or around complicated or hazardous machinery; the  
claimant can receive, understand, remember, and carry out simple  
jobs tasks; frequently perform detailed tasks; occasionally perform

---

19 Step three: Does the claimant's impairment or combination of impairments meet or  
20 equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1? If so, the  
21 claimant is automatically determined disabled. If not, proceed to step four.

22 Step four: Is the claimant capable of performing her past relevant work? If so, the  
23 claimant is not disabled. If not, proceed to step five.

24 Step five: Does the claimant have the residual functional capacity to perform any  
25 other work? If so, the claimant is not disabled. If not, the claimant is disabled.

26 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

27 The claimant bears the burden of proof in the first four steps of the sequential evaluation  
28 process. Bowen, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential  
evaluation process proceeds to step five. Id.

1 complex tasks; frequently interact with the public, coworkers, and  
2 supervisors; adjust to simple job changes in job routine; and make  
simple workplace judgments.

3 (AT 18.) At step four, the ALJ determined that plaintiff was unable to perform any past relevant  
4 work through the date last insured. (AT 22.) Nevertheless, at step five, the ALJ found that, based  
5 on plaintiff's age, education, work experience, RFC, and the VE's testimony, there were other  
6 jobs that existed in significant numbers in the national economy that plaintiff could have  
7 performed through the date last insured. (AT 22-23.) Consequently, the ALJ concluded that  
8 plaintiff had not been under a disability, as defined in the Act, from April 1, 2010, plaintiff's  
9 alleged disability onset date, through December 31, 2012, plaintiff's date last insured. (AT 23.)

#### 10 Plaintiff's Substantive Challenges to the Commissioner's Determinations

##### 11 *Whether the ALJ erred at step two of the sequential disability analysis*

12 Under the Commissioner's regulations, an impairment or combination of impairments is  
13 deemed to be severe at step two if it "significantly limits your physical or mental ability to do  
14 basic work activities." 20 C.F.R. §§ 404.1520(c), 404.1521(a). As the Ninth Circuit Court of  
15 Appeals has explained, "the step-two inquiry is a de minimis screening device to dispose of  
16 groundless claims. An impairment or combination of impairments can be found not severe only  
17 if the evidence establishes a slight abnormality that has no more than a minimal effect on an  
18 individual's ability to work." Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir. 1996) (internal  
19 citations and quotation marks omitted).

20 Plaintiff contends that the ALJ erred by finding plaintiff's mental impairments of  
21 depressive disorder, anxiety disorder, and obsessive compulsive disorder not severe at step two,  
22 because the ALJ's decision assessed at least moderate difficulties in concentration, persistence,  
23 and pace, and included mental limitations in the RFC. That argument lacks merit, because the  
24 ALJ's decision specifically assessed the moderate difficulties in concentration, persistence, and  
25 pace *due to plaintiff's pain*. (AT 17.) Therefore, although mental limitations were found, the  
26 ALJ's decision did not attribute them to a mental disorder, but instead to plaintiff's pain resulting  
27 from his migraines. Furthermore, even though the medical records contain some scattered  
28 references to diagnoses of depressive disorder, anxiety disorder, and obsessive compulsive

1 disorder, no medical source assessed any specific functional limitations attributable to such  
2 impairments. As such, the ALJ properly found that the record did not support a finding that those  
3 mental impairments were severe for purposes of step two. Moreover, as required by applicable  
4 law, the ALJ expressly considered all of plaintiff's impairments when determining plaintiff's  
5 RFC, "including impairments that are not severe." (AT 14.)

6 Therefore, the court finds no error at step two.

7 *Whether the ALJ improperly discounted the opinions of plaintiff's treating*  
8 *physicians*

9 The weight given to medical opinions depends in part on whether they are proffered by  
10 treating, examining, or non-examining professionals. Holohan v. Massanari, 246 F.3d 1195,  
11 1201-02 (9th Cir. 2001); Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). Generally speaking,  
12 a treating physician's opinion carries more weight than an examining physician's opinion, and an  
13 examining physician's opinion carries more weight than a non-examining physician's opinion.  
14 Holohan, 246 F.3d at 1202.

15 To evaluate whether an ALJ properly rejected a medical opinion, in addition to  
16 considering its source, the court considers whether (1) contradictory opinions are in the record;  
17 and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted opinion of a  
18 treating or examining medical professional only for "clear and convincing" reasons. Lester, 81  
19 F.3d at 830-31. In contrast, a contradicted opinion of a treating or examining professional may be  
20 rejected for "specific and legitimate" reasons. Id. at 830. While a treating professional's opinion  
21 generally is accorded superior weight, if it is contradicted by a supported examining  
22 professional's opinion (supported by different independent clinical findings), the ALJ may  
23 resolve the conflict. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing Magallanes  
24 v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). The regulations require the ALJ to weigh the  
25 contradicted treating physician opinion, Edlund, 253 F.3d at 1157,<sup>6</sup> except that the ALJ in any  
26

---

27 <sup>6</sup> The factors include: (1) length of the treatment relationship; (2) frequency of examination;  
28 (3) nature and extent of the treatment relationship; (4) supportability of diagnosis;  
(5) consistency; and (6) specialization. 20 C.F.R. § 404.1527.

1 event need not give it any weight if it is conclusory and supported by minimal clinical findings.  
2 Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999) (treating physician's conclusory, minimally  
3 supported opinion rejected); see also Magallanes, 881 F.2d at 751. The opinion of a non-  
4 examining professional, by itself, is insufficient to reject the opinion of a treating or examining  
5 professional. Lester, 81 F.3d at 831.

6 In this case, plaintiff's primary care treating physician, Dr. Tobias Paiva, submitted  
7 multiple medical source statements indicating as follows:

8 Mr. Hase has been under my care since May 10, 2011 and due to  
9 ongoing severe, debilitating headaches, he has been unable to  
10 maintain a healthy, pain-free existence much less consistent  
11 employment. In my experience of treating this patient I have found  
12 him to be compliant with all medical treatment recommendations  
13 and eager to improve his symptoms in order to pursue regular  
14 employment.

15 (See, e.g., AT 494.) The ALJ discussed Dr. Paiva's opinion, but gave it reduced weight, because  
16 it was essentially conclusory in nature. (AT 20.) The court agrees that Dr. Paiva's opinion, at  
17 least standing alone, is conclusory, and would be inclined to defer to the ALJ's assessment of the  
18 opinion. However, as plaintiff points out, the ALJ also entirely failed to discuss the opinion of  
19 plaintiff's treating neurologist, Dr. David Chesak.

20 Dr. Chesak provided two medical source statements. On May 23, 2014, he wrote:

21 I first saw Mr. Scott Hase on 2/20/14 in the Sutter Neurology Clinic  
22 for severe recurrent chronic headaches that began in 2010. He had  
23 already seen 2 prior neurologists as well as a pain specialist,  
24 subsequently failing multiple medications that were prescribed to  
25 try and bring him relief. Under my care, we are now attempting  
26 some additional options, and if they do not work, he will need to be  
27 referred to a specialty headache center. Please consider this  
28 additional information in your decision to offer him disability  
benefits which I believe are appropriate until his disabling condition  
can be resolved.

(AT 507.) Thereafter, on October 9, 2014, Dr. Chesak provided the following additional  
information:

[Plaintiff] first presented to my office in February 2014  
complaining of a chronic headache described as a band from the  
right temple across the top of the ear and down the scalp posterior  
to the ear running toward the neck, sometimes dull and other times  
of ice-pick quality, that had begun upon waking from a nap in

1 October 2010 and has since persisted continuously. Between 2010  
2 and 2014, he had seen neurologist Dr. Knox, neurologist Dr.  
3 Grewal, and pain management specialist Dr. Nijher. Under these  
4 doctors, he was treated unsuccessfully with multiple courses of  
5 occipital nerve blocks, trigger point injections, and Botox injections  
6 as well as multiple medications including Indocin, Naprosyn,  
7 verapamil, and nortriptyline for prophylaxis and Fioricet, Midrin,  
8 Imitrex, Cafergot, Flexeril, Valium, and baclofen for treatment. He  
9 also tried physical therapy, TENS, and had a dentist manufacture a  
10 jaw guard to wear at night. I began managing his care in 2/2014,  
11 trying steroid and Depacon infusions, Depakote, Topamax, Inderal,  
12 Indocin, Effexor, and Botox. More recently, his PCP has prescribed  
13 Fioricet, Oxycodone, and Tylenol with codeine. Unfortunately,  
14 either these treatments or medications have not been efficacious or  
15 caused intolerable side-effects, and his chronic headache persists.  
16 His PCP is currently referring him to Stanford for further  
17 assistance.

18 (AT 732.) Dr. Chesak's medical source statements are generally supported by the medical  
19 records, which document that plaintiff had consistently sought care and pursued the above-  
20 mentioned treatment modalities. They are also consistent with the (albeit conclusory) opinion of  
21 treating primary care provider Dr. Paiva. Consequently, on this record, the court cannot find that  
22 the ALJ's failure to consider Dr. Chesak's opinion was harmless error. Indeed, because  
23 headaches or migraines are difficult impairments to evaluate because they do not always have  
24 objective physical manifestations, a proper consideration of plaintiff's documented treatment,  
25 including the opinion of a neurological specialist, is especially important.

26 Therefore, the court finds it appropriate to remand the case for further consideration of Dr.  
27 Chesak's opinion along with the record as a whole. The ALJ is also free to develop the record in  
28 any other respects deemed appropriate, such as obtaining additional medical or vocational expert  
testimony. Importantly, the court does not instruct the ALJ to credit any particular opinion or  
evidence on remand. Indeed, the court expresses no opinion regarding how the evidence should  
ultimately be weighed, and any ambiguities or inconsistencies resolved, at any particular step on  
remand, provided that the ALJ's decision is based on proper legal standards and supported by  
substantial evidence in the record as a whole.

The court specifically declines plaintiff's invitation to remand the case for an award of  
benefits. As the Ninth Circuit has explained, "we generally remand for an award of benefits only  
in rare circumstances where no useful purpose would be served by further administrative



1 proceedings and the record has been thoroughly developed.” Treichler v. Comm’r of Soc. Sec.  
2 Admin., 775 F.3d 1090, 1100 (9th Cir. 2014). Here, despite the court’s conclusion that further  
3 evaluation of Dr. Chesak’s opinion is warranted, there is other evidence in the record that  
4 potentially raises serious doubts as to plaintiff’s disability. For example, although plaintiff  
5 represented that his headache stayed more or less constant, he had actually been working full-time  
6 at a kiosk in Home Depot for a solar energy company for about 3 months at the time of the  
7 administrative hearing. (AT 39-42.) To be sure, that evidence is potentially subject to different  
8 interpretations, because plaintiff also testified to having great difficulties with the job and that he  
9 did not believe that he would be able to sustain it much longer. (AT 41, 53-54.) Nevertheless,  
10 the court cannot conclude that further record development and administrative proceedings would  
11 serve no useful purpose.

12 *Other Issues*

13 In light of the court’s conclusion that the case should be remanded for further  
14 consideration of the medical opinion evidence, including Dr. Chesak’s opinion, the court declines  
15 to reach the other issues concerning assessment of the RFC, plaintiff’s credibility, and the  
16 credibility of third party witnesses. On remand, the ALJ will have an opportunity to reconsider  
17 those issues, if appropriate.

18 V. CONCLUSION

19 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 20 1. Plaintiff’s motion for summary judgment (ECF No. 13) is GRANTED IN PART.
- 21 2. The Commissioner’s cross-motion for summary judgment (ECF No. 14) is  
22 DENIED.
- 23 3. The final decision of the Commissioner is REVERSED, and the case is  
24 REMANDED for further administrative proceedings consistent with this order pursuant to  
25 sentence four of 42 U.S.C. § 405(g).

26 ///

27 ///

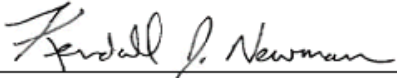
28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4. The Clerk of Court shall close this case.

IT IS SO ORDERED.

Dated: February 12, 2018

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE