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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARC ABBINK,)	Case No. SACV 16-0324-JPR
)	
Plaintiff,)	
)	MEMORANDUM DECISION AND ORDER
v.)	AFFIRMING COMMISSIONER
)	
NANCY A. BERRYHILL, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
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I. PROCEEDINGS

Plaintiff seeks review of the Commissioner’s final decision denying his applications for Social Security disability insurance benefits (“DIB”) and supplemental security income benefits (“SSI”). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). The matter is before the Court on the parties’ Joint Stipulation, filed November 3, 2016, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner’s decision is affirmed.

1 **II. BACKGROUND**

2 Plaintiff was born in 1962. (Administrative Record ("AR")
3 168.) He completed two years of college (AR 219) and worked as
4 an architectural draftsman, general laborer, and tutor (AR 220).

5 On January 17, 2013, Plaintiff filed an application for DIB
6 and on January 22 he filed one for SSI, alleging in each that he
7 had been unable to work since December 30, 2012 (AR 168, 170),
8 because of a head injury, physical limitations, anxiety,

9 arthritis, and diabetes (AR 218). After his applications were
10 denied initially and on reconsideration (AR 73-74, 105-06), he
11 requested a hearing before an Administrative Law Judge (AR 127).

12 A hearing was held on September 21, 2015, at which Plaintiff, who
13 was represented by counsel, testified, as did a vocational
14 expert. (AR 33-48.) In a written decision issued October 27,
15 2015, the ALJ found Plaintiff not disabled. (AR 16-32.)

16 Plaintiff requested review from the Appeals Council, and on
17 January 28, 2016, it denied review. (AR 1-6.) This action
18 followed.

19 **III. STANDARD OF REVIEW**

20 Under 42 U.S.C. § 405(g), a district court may review the
21 Commissioner's decision to deny benefits. The ALJ's findings and
22 decision should be upheld if they are free of legal error and
23 supported by substantial evidence based on the record as a whole.

24 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra
25 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
26 evidence means such evidence as a reasonable person might accept
27 as adequate to support a conclusion. Richardson, 402 U.S. at
28 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).

1 It is more than a scintilla but less than a preponderance.
2 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
3 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
4 substantial evidence supports a finding, the reviewing court
5 "must review the administrative record as a whole, weighing both
6 the evidence that supports and the evidence that detracts from
7 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
8 720 (9th Cir. 1996). "If the evidence can reasonably support
9 either affirming or reversing," the reviewing court "may not
10 substitute its judgment" for the Commissioner's. Id. at 720-21.

11 **IV. THE EVALUATION OF DISABILITY**

12 People are "disabled" for purposes of receiving Social
13 Security benefits if they are unable to engage in any substantial
14 gainful activity owing to a physical or mental impairment that is
15 expected to result in death or has lasted, or is expected to
16 last, for a continuous period of at least 12 months. 42 U.S.C.
17 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
18 1992).

19 A. The Five-Step Evaluation Process

20 The ALJ follows a five-step sequential evaluation process to
21 assess whether a claimant is disabled. 20 C.F.R.
22 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,
23 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first
24 step, the Commissioner must determine whether the claimant is
25 currently engaged in substantial gainful activity; if so, the
26 claimant is not disabled and the claim must be denied.
27 §§ 404.1520(a)(4)(I), 416.920(a)(4)(I).

28 If the claimant is not engaged in substantial gainful

1 activity, the second step requires the Commissioner to determine
2 whether the claimant has a "severe" impairment or combination of
3 impairments significantly limiting his ability to do basic work
4 activities; if not, the claimant is not disabled and his claim
5 must be denied. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

6 If the claimant has a "severe" impairment or combination of
7 impairments, the third step requires the Commissioner to
8 determine whether the impairment or combination of impairments
9 meets or equals an impairment in the Listing of Impairments set
10 forth at 20 C.F.R. part 404, subpart P, appendix 1; if so,
11 disability is conclusively presumed. §§ 404.1520(a)(4)(iii),
12 416.920(a)(4)(iii).

13 If the claimant's impairment or combination of impairments
14 does not meet or equal an impairment in the Listing, the fourth
15 step requires the Commissioner to determine whether the claimant
16 has sufficient residual functional capacity ("RFC")¹ to perform
17 his past work; if so, he is not disabled and the claim must be
18 denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The claimant
19 has the burden of proving he is unable to perform past relevant
20 work. Drouin, 966 F.2d at 1257. If the claimant meets that
21 burden, a prima facie case of disability is established. Id.

22 If that happens or if the claimant has no past relevant
23 work, the Commissioner then bears the burden of establishing that
24 the claimant is not disabled because he can perform other
25 substantial gainful work available in the national economy.

27
28 ¹ RFC is what a claimant can do despite existing exertional
and nonexertional limitations. §§ 404.1545, 416.945; see Cooper
v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); Drouin, 966 F.2d at 1257.
2 That determination comprises the fifth and final step in the
3 sequential analysis. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v);
4 Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

5 B. The ALJ's Application of the Five-Step Process

6 At step one, the ALJ found that Plaintiff had not engaged in
7 substantial gainful activity since December 30, 2012, the alleged
8 onset date. (AR 21.) At step two, he concluded that Plaintiff
9 had severe impairments of "status post remote motorcycle accident
10 in 1980; status post remote cardiac arrest; status post fracture
11 and reconstructive surgery of right tibia; and anxiety
12 disorders." (Id.) At step three, he determined that Plaintiff's
13 impairments did not meet or equal a listing. (AR 23.)

14 At step four, the ALJ found that Plaintiff had the RFC to
15 perform medium work, was able to lift and carry 25 pounds
16 frequently and 50 pounds occasionally, could sit and stand about
17 six hours in an eight-hour workday, and could perform "no greater
18 than simple routine tasks" with "no more than occasional contact
19 with the public and coworkers." (AR 24.)

20 Based on the VE's testimony, the ALJ concluded that
21 Plaintiff could not perform his past relevant work. (AR 26.) At
22 step five, he relied on the VE's testimony to find that given
23 Plaintiff's RFC for medium work "impeded by additional
24 limitations," he could perform two "representative" medium,
25 unskilled occupations in the national economy: (1) "dishwasher,"²

26
27 ² Although the VE and the ALJ both used the job title
28 "dishwasher," the DOT number provided by the VE and repeated by
the ALJ corresponds to the job of "kitchen helper," which is a
medium, unskilled position.

1 DOT 318.687-010, 1991 WL 672755, and (2) "hand packager," DOT
2 920.587-018, 1991 WL 687916. (AR 26-27.) Accordingly, he found
3 Plaintiff not disabled. (AR 27.)

4 **V. DISCUSSION**

5 Plaintiff argues that the ALJ erred in (1) considering and
6 evaluating the opinion of Dr. Jason B. Miller and (2) assessing
7 Plaintiff's credibility. (See J. Stip. at 3.)

8 A. The ALJ Properly Assessed the Medical Evidence

9 Plaintiff contends that the ALJ failed to properly consider
10 and evaluate Dr. Miller's medical opinion, including that
11 Plaintiff would be "off task 30% or more of the time." (Id. at
12 3-7.) For the reasons discussed below, remand is not warranted
13 on this ground.

14 1. Applicable law

15 Three types of physicians may offer opinions in Social
16 Security cases: (1) those who directly treated the plaintiff, (2)
17 those who examined but did not treat the plaintiff, and (3) those
18 who did neither. Lester, 81 F.3d at 830. A treating physician's
19 opinion is generally entitled to more weight than an examining
20 physician's, and an examining physician's opinion is generally
21 entitled to more weight than a nonexamining physician's. Id.

22 This is so because treating physicians are employed to cure
23 and have a greater opportunity to know and observe the claimant.
24 Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996). If a
25 treating physician's opinion is well supported by medically
26 acceptable clinical and laboratory diagnostic techniques and is
27 not inconsistent with the other substantial evidence in the
28 record, it should be given controlling weight.

1 §§ 404.1527(c)(2), 416.927(c)(2). If a treating physician's
2 opinion is not given controlling weight, its weight is determined
3 by length of the treatment relationship, frequency of
4 examination, nature and extent of the treatment relationship,
5 amount of evidence supporting the opinion, consistency with the
6 record as a whole, the doctor's area of specialization, and other
7 factors. §§ 404.1527(c)(2)-(6), 416.927(c)(2)-(6).

8 When a treating physician's opinion is not contradicted by
9 other evidence in the record, it may be rejected only for "clear
10 and convincing" reasons. See Carmickle v. Comm'r, Soc. Sec.
11 Admin., 533 F.3d 1155, 1164 (9th Cir. 2008) (citing Lester, 81
12 F.3d at 830-31). When it is contradicted, the ALJ must provide
13 only "specific and legitimate reasons" for discounting it. Id.
14 (citing Lester, 81 F.3d at 830-31). Furthermore, "[t]he ALJ need
15 not accept the opinion of any physician, including a treating
16 physician, if that opinion is brief, conclusory, and inadequately
17 supported by clinical findings." Thomas v. Barnhart, 278 F.3d
18 947, 957 (9th Cir. 2002); accord Batson v. Comm'r of Soc. Sec.
19 Admin., 359 F.3d 1190, 1195 (9th Cir. 2004).

20 2. Relevant background

21 Plaintiff severely injured his head, brain stem, and tibia
22 in a motorcycle accident in 1980. (AR 261.) From 2006 to 2010,
23 he was evaluated and treated by Dr. James S. Sands. (See AR 368-
24 99, 449-54.) In 2007, Dr. Sands diagnosed anxiety and
25 depression. (AR 449, 451.) On July 22, 2010, Plaintiff
26 complained of an earlier anxiety attack but was noted to be
27 "doing well on meds." (AR 368.) On January 1, 2013, Plaintiff
28 was referred to Dr. Aimee David for treatment and counseling.

1 (AR 410.) In 2013, Dr. David noted that Plaintiff complained of
2 stress and anxiety, wanted to finish an architect degree, was
3 completing training classes, and was taking Paxil.³ (AR 402-04.)
4 On February 18, 2013, Plaintiff reported to a doctor that he
5 "desire[d] to be placed on disability" and noted that he had
6 stopped taking his medications. (AR 408.) On April 8, 2013, he
7 reported to Dr. David that although he felt "overwhelmed," his
8 anxiety was "not bad" and he was a "pretty happy guy." (AR 570.)

9 On May 23, 2013, state consulting psychologist Sonia G.
10 Martin completed a psychological examination and evaluation. (AR
11 426-30.) Dr. Martin noted Plaintiff's history of head and brain-
12 stem injury in 1980 and that he was taking Paxil, metformin, and
13 simvastatin.⁴ (AR 427.) Plaintiff showed "good" concentration
14 and attention span, "average" intellectual functioning, and
15 "intact" insight and judgment. (AR 428.) Dr. Martin diagnosed
16 Plaintiff with anxiety disorder and assigned him a global
17 assessment of functioning ("GAF") score of 70.⁵ (AR 429.)

18
19 ³ Paxil is a selective serotonin reuptake inhibitor used to
20 treat depression and other conditions. Paroxetine, MedlinePlus,
21 <https://www.nlm.nih.gov/medlineplus/druginfo/meds/a698032.html>
(last updated Nov. 15, 2014).

22 ⁴ Metformin is used to treat diabetes. Metformin,
23 MedlinePlus, <https://medlineplus.gov/druginfo/meds/a696005.html>
24 (last updated Apr. 15, 2016). Simvastatin is used to reduce
cholesterol. Simvastatin, MedlinePlus, [https://medlineplus.gov/
druginfo/meds/a692030.html](https://medlineplus.gov/druginfo/meds/a692030.html) (last updated Sept. 15, 2014).

25 ⁵ GAF scores assess a person's overall psychological
26 functioning on a scale of 1 to 100. See Diagnostic and
27 Statistical Manual of Mental Disorders 32 (revised 4th ed. 2000).
28 A GAF score of 61 to 70 indicates "some mild symptoms (e.g.,
depressed mood and mild insomnia) OR some difficulty in social,
occupational, or school functioning . . . but generally
functioning pretty well, has some meaningful interpersonal

1 Plaintiff was "unimpaired" in his ability to follow simple – and
2 complex or detailed – instructions; maintain adequate pace or
3 persistence to perform one- or two-step simple repetitive tasks
4 or complex tasks; maintain adequate attention or concentration;
5 adapt to changes in job routine; and interact appropriately with
6 coworkers, supervisors, and the public on a regular basis. (AR
7 430). He had mild impairment in his ability to withstand the
8 stress of a routine workday and adapt to the changes, hazards,
9 and stressors in a workplace setting. (Id.) His prognosis was
10 "good with comprehensive mental health services to address his
11 anxiety." (Id.)

12 On June 18, 2013, state-agency medical consultant Dr. Dan
13 Funkenstein⁶ completed the psychiatric portion of the disability
14 determination for Plaintiff's SSI and DIB claims. (AR 49-60, 61-
15 72.) Dr. Funkenstein found that Plaintiff had "mild to no
16 limitations" in his mental functioning (AR 54, 66); no
17 restrictions in his activities of daily living; no difficulty
18 maintaining social functioning; and "mild" difficulty maintaining
19 concentration, persistence, or pace (AR 55, 67). On December 22,
20 2013, state-agency medical consultant Dr. Richard Kaspar⁷

21 _____
22 relationships." DSM-IV 34. GAF scores have been excluded from
23 the latest edition of DSM because of concerns about their
24 reliability and lack of clarity, however. See DSM-V 15-16 (5th
25 ed. 2013).

26 ⁶ Dr. Funkenstein's signature line includes a medical-
27 consultant code of "20," indicating "[n]eurology" (AR 54); see
28 Program Operations Manual System (POMS) DI 24501.004, U.S. Soc.
29 Sec. Admin. (May 5, 2015), <https://secure.ssa.gov/poms.nsf/lnx/0424501004>.

⁷ Dr. Kaspar's signature line includes a medical-consultant
code of "38," indicating "[p]sychology" (AR 82); see POMS DI

1 completed the psychiatric portion of the disability determination
2 for Plaintiff's SSI and DIB claims on reconsideration. (AR 75-
3 89, 90-104.) Dr. Kaspar confirmed Dr. Funkenstein's assessment.
4 (AR 81-82, 96-97.)

5 Plaintiff reported symptoms of anxiety to various healthcare
6 professionals in 2014; his symptoms waxed and waned. (See, e.g.,
7 AR 512 (Sept. 4, 2014: "I'm so anxious. It's debilitating"), 510
8 (Sept. 11, 2014: feeling "much better . . . less anxious and on
9 edge"; reported exercising and interacting socially with others),
10 495 (Oct. 10, 2014: reporting symptoms of anxiety).) On November
11 6, 2014, Plaintiff stated that he "just want[ed] to kick back and
12 be happy" and was "[h]oping to get SSI" because he "does not feel
13 able to look for or maintain a new job," but he was "heading out
14 after [the] appointment to help a friend paint her kitchen" and
15 had slept "12 straight hours after doing physical labor with [a]
16 friend." (AR 493.) On December 4, 2014, Plaintiff reported that
17 his ex-wife had recently died and that he "can't control [his]
18 emotions." (AR 491.) Dr. David noted that his "grief appear[ed]
19 normal given [the] situation"⁸ and that he otherwise reported
20 "good sleep and more stabilization of his mood overall with the
21
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23 24501.004, U.S. Soc. Sec. Admin. (May 5, 2015), [https://](https://secure.ssa.gov/poms.nsf/lnx/0424501004)
24 secure.ssa.gov/poms.nsf/lnx/0424501004.

25 ⁸ Indeed, Plaintiff's anxiety apparently increased in
26 response to normal stressors, such as visits with his parents.
27 (See, e.g., AR 513 (Sept. 4, 2014: Dr. David noting "[v]isit with
28 father triggered past memories and poor emotional presence and
support from father"), 704 (June 18, 2015: Dr. David noting
Plaintiff's "increased irritability" when his mother was
visiting).) At other times his symptoms were well controlled.

1 use of citalopram.”⁹ (Id.)

2 On November 3, 2014, Plaintiff was evaluated by therapist
3 Tanya White at a behavioral health center. (See AR 2383-405.)
4 Plaintiff was apparently advised to go to the center by his
5 attorney, following the initial denials of his SSI and DIB
6 claims. (AR 2384.) White described Plaintiff’s self-reported
7 symptoms as “moderate[ly]” severe mood, anxiety, attention, and
8 conduct problems. (AR 2384-85.) Plaintiff was taking
9 atorvastatin,¹⁰ citalopram, and metformin; he found all three
10 drugs “helpful.” (AR 2401.) In a mental-status exam, Plaintiff
11 was alert, oriented, and cooperative and had intact concentration
12 and appropriate attention and judgment. (AR 2394.) White
13 diagnosed “Depressive Disorder” and a “moderate” occupational
14 impairment, noting that Plaintiff had “impulsively said
15 inappropriate statements to his employers that has led to his
16 being fired from multiple jobs.” (AR 2395-96.) She found no
17 significant impairment or “probability of deterioration” in “an
18 important area of life functioning.” (AR 2397.) White noted
19 that Plaintiff had been working part time for the past three
20 years as an extra in movies. (AR 2403.) He had been fired from
21 eight jobs since 2002 but “was not fired for his behavior at
22 work” but because “the economy was changing.” (Id.) White found
23 that Plaintiff “does not meet criteria for [behavioral health]

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25 ⁹ Citalopram is used to treat depression and social phobia.
26 Citalopram, MedlinePlus, <https://medlineplus.gov/druginfo/meds/a699001.html> (last updated Nov. 15, 2014).

27 ¹⁰ Atorvastatin is used to reduce the risk of heart attack
28 and stroke. Atorvastatin, MedlinePlus, <https://medlineplus.gov/druginfo/meds/a600045.html> (last updated Aug. 15, 2015).

1 services" and discharged him because of "No Medical Necessity."
2 (AR 2390.)

3 On December 18, 2014, Plaintiff remarked to Dr. David that
4 he was "feeling good" and "happier now than [he] ever was
5 before." (AR 489.) On January 7, 2015, Dr. Miller, a clinical
6 psychologist who apparently first saw Plaintiff on December 19,
7 2014, interviewed him and administered a series of
8 neuropsychological tests. (AR 656, 667.) On January 26, Dr.
9 Miller completed a "Neuropsychological Assessment" form (AR 656-
10 65) and a "Medical Source Statement of Ability to do Work Related
11 Activities" (AR 667-69), both apparently based on the January 7
12 visit.

13 Plaintiff was friendly, cooperative, and attentive during
14 the testing. (AR 657.) Other than a moderate speech-
15 articulation defect and mild disinhibition, Plaintiff showed no
16 negative cognitive, language, psychotic, emotional, or physical
17 symptoms. (AR 657-58.) Dr. Miller noted that Plaintiff was
18 "sometimes impulsive, angry, and resentful," and "his ability to
19 concentrate and attend" were likely to be "significantly
20 compromised" because he was "plagued by worry." (AR 659.) His
21 "memory, language, calculation, construction, sensorimotor
22 skills, learning, attention, adaptive behavior and social
23 cognition remained within normal limits, with only relative
24 weaknesses in verbal memory and visual-motor speed." (AR 664.)
25 He may "sometimes evidence confusion, distractibility, and
26 difficulty concentrating." (Id.) He "can rapidly shift from
27 being friendly . . . to hostility, poorly controlled anger, and
28 harsh self-criticism." (Id.) Dr. Miller opined that as a result

1 of his brain injury, "changes in routine, unexpected events, and
2 contradictory information" were likely to cause Plaintiff
3 "untoward stress and subsequent decompensation." (Id.) Dr.
4 Miller opined that mental-health services would be "fairly
5 challenging" and "difficult" for Plaintiff, and thus he did not
6 recommend any. (AR 665.) Instead, he recommended that Plaintiff
7 "pursue disability benefits as an alternative to employment."
8 (Id.)

9 In the check-box "Medical Source Statement," Dr. Miller
10 noted that Plaintiff had no limitations in most areas of mental
11 ability, including his ability to understand, remember, and carry
12 out short and simple, as well as detailed, instructions; maintain
13 attention and concentration for extended periods of time; perform
14 activities within a schedule, maintain regular attendance, and be
15 punctual; sustain an ordinary routine without special
16 supervision; make simple work-related decisions; ask simple
17 questions or request assistance; maintain socially appropriate
18 behavior and adhere to basic standards of neatness and
19 cleanliness; be aware of normal hazards and take appropriate
20 precautions; travel to unfamiliar places or use public
21 transportation; and set realistic goals or make plans
22 independently of others. (AR 667-68.) He also had no
23 restrictions of daily living or difficulty maintaining
24 concentration, persistence, and pace. (AR 668.) Plaintiff's
25 performance would be precluded for 10 percent of a normal eight-
26 hour workday by his limitations in responding appropriately to
27 changes in a work setting. (Id.) His performance would be
28 precluded for more than 15 percent of an eight-hour workday by

1 his limitations in working in coordination with, or in proximity
2 to, others without being distracted by them; completing a normal
3 workday and workweek without interruptions from psychologically
4 based symptoms and performing at a consistent pace without an
5 unreasonable number and length of rest periods; interacting
6 appropriately with the general public; accepting instructions and
7 responding appropriately to criticism from supervisors; and
8 getting along with coworkers or peers without distracting them or
9 exhibiting behavioral extremes. (AR 667-68.) His difficulty
10 maintaining social functioning would also result in a 15 percent
11 preclusion of performance. (AR 668.) Dr. Miller anticipated
12 that Plaintiff would "never" be absent from work because of his
13 impairments, but they would cause him to be "off task" more than
14 30 percent of the time. (AR 669.) Dr. Miller wrote,

15 [Plaintiff] has a history of aggressive behavior stemming
16 from a traumatic brain injury. This has led to numerous
17 job terminations, the dissolution of his marriage, &
18 physical confrontation with roommates. This occurs under
19 perceived slights & under duress. The potential for
20 legal consequences for his behavior is high.

21 (Id.)

22 In 2015, Plaintiff reported symptoms of anxiety that were
23 generally under control. (See, e.g., AR 799 (Jan. 2015:
24 "[r]eports explosive episodes about 1x/month" but "[m]ood appears
25 stable," "[a]nxiety appears under control"), 748 (Feb. 2015:
26 "[m]ood and anxiety appear stable and controlled," he
27 "[c]ontinues to do part-time work for film industry," "began
28 tutoring auto CAD (computer animated design)," and "[f]eels much

1 more relaxed and peaceful"), 746 (Mar. 2015: "goes from joking
2 and laughter to tearfulness," but anxiety caused by "continued
3 resentment" of father and "does not interfere with daily
4 functioning or sleep," and he "[c]ontinues to get out daily for
5 walks, coffee, and meals"), 741 (Apr. 2015: reported anxiety but
6 "coping relatively well" and "[e]ngaging with others well in
7 brief encounters"), 736 (May 2015: reported emotional instability
8 caused by "recent stressor" of apparently finding out former
9 girlfriend was diagnosed with cancer, but "anxiety well under
10 control").) Plaintiff had open heart surgery in May 2015. (See
11 AR 719, 1684.) In June 2015, Dr. David noted that Plaintiff had
12 "increased irritability after . . . surgery, altered routine,
13 presence of mother for over 1 month," but he was "coping well
14 with temporary change in functional status and routine," was
15 "us[ing] therapy well," and reported "feel[ing] really good."
16 (AR 704.) Dr. David noted that Plaintiff was interested in
17 discontinuing citalopram because of "sexual side effects," but
18 she recommended that he continue using it. (Id.) She noted that
19 citalopram "has been working well" and that he had exhibited
20 "[d]ecreased anxiety since starting [it]" from when she first saw
21 him "several years ago." (Id.)

22 3. Analysis

23 The ALJ found that Plaintiff could perform medium work but
24 was limited to "no greater than simple routine tasks" and "no
25 more than occasional contact with the public and coworkers." (AR
26 24.) In so finding, the ALJ considered and gave "some weight" to
27 the opinion of Dr. Miller. (Id.) He gave "no weight" to Dr.
28 Miller's "more restrictive limitations," such as his opinion that

1 Plaintiff would be "off task 30% or more." (Id.) Because Dr.
2 Miller's opinion was contradicted by other medical opinions in
3 the record, the ALJ had to give only specific and legitimate
4 reasons for discounting all or part of it. See Carmickle, 533
5 F.3d at 1164. As discussed below, the ALJ did so.

6 As an initial matter, it is not clear that Dr. Miller was
7 among Plaintiff's treating physicians. The record shows that Dr.
8 Miller apparently first saw Plaintiff on December 19, 2014 (AR
9 667), interviewed him and administered a series of tests on
10 January 7, 2015 (AR 656), and completed two reports (AR 665,
11 669). The record does not contain any notes or treatment records
12 from December 19, 2014. Indeed, Dr. Miller's reports appear to
13 be based only on Plaintiff's January 7, 2015 visit. (See AR 656-
14 69.) Even if the Court assumes Dr. Miller was a treating doctor,
15 however, the length of the treatment relationship is relevant in
16 assessing whether the ALJ gave specific and legitimate reasons
17 for rejecting his opinion to the extent he did so, as the ALJ
18 correctly found (AR 24). See §§ 404.1527(c), 416.927(c).

19 To the extent the ALJ rejected portions of Dr. Miller's
20 opinion, he gave legally sufficient reasons for doing so. First,
21 the ALJ gave "no weight" to Dr. Miller's "more restrictive
22 limitations," such as his opinion that Plaintiff would be "off
23 task 30% or more," because they were inconsistent with the
24 medical record and "not well supported" by diagnostic evidence.
25 (AR 24.) Indeed, the opinion that Plaintiff would "be off task
26 30% or more" is inconsistent with the other findings in Dr.
27 Miller's reports, including that he would not be significantly
28 limited in performing sustained work on a mental basis. (AR 24,

1 664, 667-68.) After administering a series of psychological
2 tests, Dr. Miller found that Plaintiff's attention was within
3 normal limits (AR 664) and had no limitations in his ability to
4 maintain attention and concentration for extended periods of
5 time; perform activities within a schedule, maintain regular
6 attendance, and be punctual within customary tolerances; and
7 sustain an ordinary routine without special supervision (AR 667-
8 68). He had no restrictions of daily living or difficulty
9 maintaining concentration, persistence, and pace. (AR 668.)
10 These findings are inconsistent with an opinion that Plaintiff
11 would be off task for more than 30 percent of the time in a work
12 setting.

13 The other medical evidence in the record does not support an
14 opinion that Plaintiff would often be off task in a workplace
15 setting. Although Plaintiff reported symptoms of anxiety and
16 depression, other than Dr. Miller, no doctor or clinician opined
17 that he would be significantly impaired in his ability to be on
18 task at work. Indeed, Dr. Martin found that Plaintiff showed
19 "good" concentration and attention span (AR 428) and was
20 "unimpaired" in his ability to maintain adequate pace or
21 persistence to perform simple and complex tasks, maintain
22 adequate attention and concentration, adapt to changes in job
23 routine, and interact appropriately with coworkers, supervisors,
24 and the public on a regular basis (AR 430). State-agency doctors
25 Funkenstein and Kaspar also determined that Plaintiff had only
26 mild difficulty maintaining concentration, persistence, or pace.
27 (AR 55, 67.) Therapist White found that Plaintiff had intact
28 concentration and appropriate attention and judgment. (AR 2394.)

1 And Dr. David, who treated Plaintiff from at least 2013 to 2015,
2 did not mention any limitation in his ability to remain on task.

3 Inconsistency with the medical record and lack of diagnostic
4 evidence are permissible reasons for the ALJ to have given
5 portions of Dr. Miller's opinion little or no weight. See
6 Batson, 359 F.3d at 1195 (ALJ may discredit treating physicians'
7 opinions that are "unsupported by the record as a whole");
8 Thomas, 278 F.3d at 957 (ALJ need not accept treating-physician
9 opinion that is "inadequately supported by clinical findings");
10 cf. §§ 404.1527(c)(3), 416.927(c)(3) ("The more a medical source
11 presents relevant evidence to support an opinion, particularly
12 medical signs and laboratory findings, the more weight we will
13 give that medical opinion.").

14 The ALJ found the opinion of Dr. Martin "fully credible" in
15 "showing [Plaintiff] is not significantly limited in performing
16 sustained work on a mental basis," in part because it was
17 "buttressed by a GAF score of 70." (AR 24.) Because Dr. Martin
18 examined Plaintiff, her opinion alone can be substantial evidence
19 for the ALJ to rely on. See Tonapetyan v. Halter, 242 F.3d 1144,
20 1149 (9th Cir. 2001); Andrews v. Shalala, 53 F.3d 1035, 1041 (9th
21 Cir. 1995).

22 Finally, the ALJ noted that "[o]ther treating sources noted
23 improvement with treatment." (AR 24.) Indeed, Dr. David, who
24 treated Plaintiff over several years, consistently noted
25 improvement with the use of medication and therapy. (See, e.g.,
26 AR 748 (Feb. 2015: "[m]ood and anxiety appear stable and
27 controlled"), 704 (June 2015: Plaintiff "us[ing] therapy well"
28 and showing "[d]ecreased anxiety since starting citalopram".))

1 Improvement with treatment and medication can be substantial
2 evidence supporting an ALJ's nondisability determination. See
3 Warre v. Comm'r of Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th
4 Cir. 2006) ("Impairments that can be controlled effectively with
5 medication are not disabling for the purpose of determining
6 eligibility for . . . benefits."); Thomas, 278 F.3d at 957; Allen
7 v. Comm'r of Soc. Sec., 498 F. App'x 696, 697 (9th Cir. 2012).
8 Moreover, Dr. Miller's opinion that Plaintiff would not benefit
9 from mental-health treatment (AR 665) was inconsistent with
10 Plaintiff's substantial beneficial treatment history and thus was
11 properly discounted.

12 Plaintiff argues that Dr. Miller's opinion is consistent
13 with the record (J. Stip. at 4), but this claim is not supported
14 by the medical evidence. For example, the "record" Plaintiff
15 cites is Dr. Miller's own report (see id. (citing AR 664)),
16 which, as discussed above, is not consistent with a finding that
17 Plaintiff's limitations would cause him to often be off task. He
18 also cites to the report of therapist White (see id. at 5 (citing
19 AR 2384)), but none of White's findings support an opinion that
20 Plaintiff would be off task 30 percent of the workday.

21 Plaintiff also argues that the ALJ improperly dismissed Dr.
22 Miller's opinion "because he only began treating [Plaintiff] in
23 2014"¹¹ and that "this could not constitute a specific and
24 legitimate reason to dismiss Dr. Miller's opinion." (Id. at 6.)
25 But the length of the treatment relationship is relevant to how
26

27 ¹¹ Again, the ALJ may have been generous in so finding, as
28 it appears that Dr. Miller evaluated Plaintiff only once, on
January 7, 2015. (AR 656.)

1 much weight a doctor's opinion should be accorded. See
2 §§ 404.1527(c), 416.927(c). Moreover, Plaintiff alleged an onset
3 date of December 30, 2012, but Dr. Miller's ability to assess
4 Plaintiff's mental state in the two years prior to when he first
5 saw him was likely limited. See Magallanes v. Bowen, 881 F.2d
6 747, 754 (9th Cir. 1989) (ALJ properly rejected opinion of doctor
7 who had "no direct personal knowledge" of claimant's condition
8 until two years after alleged onset date); cf. Vincent ex rel.
9 Vincent v. Heckler, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (per
10 curiam) (ALJ properly ignored opinion of psychiatrist who
11 examined Plaintiff because "[a]fter-the-fact psychiatric
12 diagnoses are notoriously unreliable"). The ALJ properly
13 considered Plaintiff's apparently limited relationship with Dr.
14 Miller and gave his opinion "only partial weight" because of it.

15 Because the ALJ gave specific and legitimate reasons for
16 giving Dr. Miller's opinion partial weight, remand is not
17 warranted on this basis.

18 B. The ALJ Properly Assessed Plaintiff's Credibility

19 Plaintiff argues that the ALJ failed to articulate legally
20 sufficient reasons for rejecting his testimony. (J. Stip. at 21-
21 24.) For the reasons discussed below, the ALJ did not err.

22 1. Applicable law

23 An ALJ's assessment of symptom severity and claimant
24 credibility is entitled to "great weight." See Weetman v.
25 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779
26 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to
27 believe every allegation of disabling pain, or else disability
28 benefits would be available for the asking, a result plainly

1 contrary to 42 U.S.C. § 423(d)(5)(A).” Molina v. Astrue, 674
2 F.3d 1104, 1112 (9th Cir. 2012) (citing Fair v. Bowen, 885 F.2d
3 597, 603 (9th Cir. 1989)).

4 In evaluating a claimant’s subjective symptom testimony, the
5 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d
6 at 1035-36. “First, the ALJ must determine whether the claimant
7 has presented objective medical evidence of an underlying
8 impairment [that] could reasonably be expected to produce the
9 pain or other symptoms alleged.” Id. at 1036. If such objective
10 medical evidence exists, the ALJ may not reject a claimant’s
11 testimony “simply because there is no showing that the impairment
12 can reasonably produce the degree of symptom alleged.” Smolen,
13 80 F.3d at 1282 (emphasis in original).

14 If the claimant meets the first test, the ALJ may discredit
15 the claimant’s subjective symptom testimony only if he makes
16 specific findings that support the conclusion. See Berry v.
17 Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent a finding or
18 affirmative evidence of malingering, the ALJ must provide “clear
19 and convincing” reasons for rejecting the claimant’s testimony.
20 Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir. 2015) (as
21 amended); Treichler v. Comm’r of Soc. Sec. Admin., 775 F.3d 1090,
22 1102 (9th Cir. 2014). The ALJ may consider, among other factors,
23 (1) ordinary techniques of credibility evaluation, such as the
24 claimant’s reputation for lying, prior inconsistent statements,
25 and other testimony by the claimant that appears less than
26 candid; (2) unexplained or inadequately explained failure to seek
27 treatment or to follow a prescribed course of treatment; (3) the
28 claimant’s daily activities; (4) the claimant’s work record; and

1 (5) testimony from physicians and third parties. Rounds v.
2 Comm'r Soc. Sec. Admin., 807 F.3d 996, 1006 (9th Cir. 2015) (as
3 amended); Thomas, 278 F.3d at 958-59. If the ALJ's credibility
4 finding is supported by substantial evidence in the record, the
5 reviewing court "may not engage in second-guessing." Thomas, 278
6 F.3d at 959.

7 2. Relevant background

8 In a May 23, 2013 "Disability Summary" prepared by
9 Plaintiff, apparently to assist his treating doctors and the
10 agency, he reported a variety of physical ailments stemming from
11 his 1980 motorcycle accident. (See AR 260-63, 691-93.) He
12 reported treatment for anxiety and depression in 1984 and again
13 in 2013, and he noted that his physical symptoms had "left [him]
14 with lots of emotional anxiety." (AR 692-93.) He reported that
15 his anxiety "leads to compulsive, erratic decision making" and
16 that he "[c]an't sustain employment." (AR 693.)

17 On February 18, 2013, Plaintiff reported to a doctor that he
18 "desire[d] to be placed on disability" and that he had stopped
19 taking his medications. (AR 408.) In a Function Report
20 completed on March 16, 2013, Plaintiff noted that he typically
21 spent his day "look[ing] for employment, apply[ing] for jobs,
22 [using] social network[s,] and attend[ing] school for further
23 training." (AR 240.) He had no problems with personal care
24 (id.); prepared his own food (AR 241); did his own cleaning,
25 laundry, and dishes (id.); shopped "once or twice per week" (AR
26 242); and socialized "with others" - dined, watched movies, went
27 for coffee - most days (AR 243). He could pay attention for two
28 to three hours and could finish activities once he started them.

1 (AR 244.) He noted that he could follow written and spoken
2 instructions "well" but that he often got agitated or annoyed.
3 (Id.) In response to the question, "How well do you get along
4 with authority figures," he responded that he "get[s] along well
5 with most everyone." (AR 245.) He noted that he had lost
6 "several jobs due to being unable to inhibit" his emotions (id.)
7 and because of his "impulsive decision making or behavior" (AR
8 259).¹²

9 On November 6, 2014, Plaintiff told Dr. David that he "just
10 want[ed] to kick back and be happy" and was "hoping to get SSI"
11 because he "does not feel able to look for or maintain a new
12 job," but he was "heading out after [the] appointment to help a
13 friend paint her kitchen" and had recently slept "12 straight
14 hours after doing physical labor with [a] friend." (AR 493.)

15 At the September 21, 2015 hearing, Plaintiff testified that
16 he "see[s] a psychologist on a steady basis," which he found
17 helpful. (AR 39.) He was able to cook, shop, and clean up after
18 himself. (AR 40.) He stated that when he was "under stress or
19 pressure" he sometimes "speak[s] harshly" or will "fly off the
20 handle." (AR 41.) He acknowledged that his anxiety had "gotten
21 better" since taking medication (AR 42), but he sometimes
22 suffered from "uncontrollable crying spells" (AR 43).

26 ¹² This contradicts the November 3, 2014 report of therapist
27 White, who noted – apparently based on what Plaintiff told her –
28 that Plaintiff had been fired from eight jobs since 2002 but "was
not fired for his behavior at work" but because "the economy was
changing." (AR 2403.)

1 3. Analysis

2 The ALJ found Plaintiff "not credible to the extent of
3 establishing disability," finding that although his "medically
4 determinable impairments could reasonably be expected to cause
5 the alleged symptoms," his "statements concerning the intensity,
6 persistence and limiting effects of [those] symptoms" were not
7 credible to the extent they were inconsistent with his RFC. (AR
8 25.) He found that Plaintiff had the residual functional
9 capacity to perform medium work, could lift and carry 25 pounds
10 frequently and 50 pounds occasionally, and could sit and stand
11 about six hours during an eight-hour workday. (AR 24.) He could
12 perform "no greater than simple routine tasks," however,
13 "involving no more than occasional contact with the public and
14 coworkers." (Id.)

15 Plaintiff argues that the ALJ improperly rejected his
16 allegation that he "would be unable to work because of his
17 distractibility, confusion, emotional liability, difficulty with
18 changes in routine, unexpected events, and contradictory
19 instructions." (J. Stip. at 23.) Indeed, Plaintiff objects to
20 the ALJ's credibility assessment only as to his alleged mental
21 impairment; he does not contest any credibility assessment
22 related to his alleged physical symptoms. (See id. at 21-24, 32-
23 34.) The ALJ afforded some weight to Plaintiff's subjective
24 complaints of decreased mental functioning: he limited Plaintiff
25 to "no greater than simple routine tasks," "involving no more
26 than occasional contact with the public and coworkers." (AR 24.)
27 As discussed below, to the extent the ALJ rejected Plaintiff's
28 subjective complaints of mental-health impairment, he provided

1 clear and convincing reasons for doing so.

2 First, the ALJ found that Plaintiff's activities of daily
3 living were inconsistent with his statements about his severe
4 impairments and "indicate the capacity to perform focused and
5 sustained activities similar to the capacity required to perform
6 work duties at many jobs." (AR 25.) At the hearing, Plaintiff
7 testified that he was able to keep his house clean, cook, and
8 shop. (AR 40.) He typically spent his day looking and applying
9 for jobs, using social networks, and attending school for further
10 training. (AR 240.) He worked as an extra in movies in November
11 2014 (AR 2403) and February 2015 (AR 748), when he was also
12 looking into volunteering opportunities (id.). He socialized
13 most days. (AR 243.)

14 Keeping a house clean, shopping once or twice a week,
15 socializing most days, seeking and applying for jobs daily, and
16 attending training classes are inconsistent with Plaintiff's
17 allegation that he would be unable to sustain the level of
18 concentration needed to maintain employment and that his anxiety
19 was so great he would not be able to hold a job. Indeed,
20 Plaintiff spent "most days" socializing with other people at a
21 local coffee shop (AR 243, 510), lived with roommates (AR 748),
22 and reported that he "get[s] along well with most everyone" (AR
23 245), belying his claims of anxiety so great he could not work
24 with others. An ALJ may properly discount a plaintiff's
25 credibility when his daily activities are inconsistent with his
26 subjective symptom testimony. See Molina, 674 F.3d at 1112 (ALJ
27 may discredit claimant's testimony when "claimant engages in
28 daily activities inconsistent with the alleged symptoms" (citing

1 Lingenfelter, 504 F.3d at 1040)). "Even where those [daily]
2 activities suggest some difficulty functioning, they may be
3 grounds for discrediting the claimant's testimony to the extent
4 that they contradict claims of a totally debilitating
5 impairment." Molina, 674 F.3d at 1113; see also Blodgett v.
6 Comm'r of Soc. Sec. Admin., 534 F. App'x 608, 610 (9th Cir. 2013)
7 (substantial evidence supported ALJ's adverse credibility finding
8 because claimant "was social and had no difficulty getting along
9 with other people" despite allegations of anxiety); Gerard v.
10 Astrue, 406 F. App'x 229, 231 (9th Cir. 2010) (ALJ properly
11 disregarded medical opinion of severe anxiety and relational
12 problems when claimant testified that "she left her house to shop
13 for clothes and groceries, to attend GED classes, and to visit
14 with her mother").

15 In January 2013, Plaintiff was completing training classes.
16 (AR 402.) He was attending school for further training in March
17 2013. (AR 240.) In February 2015, he was advised to increase
18 the "structure" of his day and was "look[ing] into volunteering
19 activities." (AR 748.) His ability to attend and complete
20 training classes is inconsistent with Plaintiff's allegation that
21 he would be unable to remain on task in a workplace setting. See
22 Macri v. Chater, 93 F.3d 540, 544 (9th Cir. 1996) (finding that
23 ALJ properly considered claimant's completion of training course
24 when rejecting his subjective pain testimony).

25 Second, the ALJ found that Plaintiff's "[n]oncompliance with
26 medical advice tends to diminish [his] credibility." (AR 25.)
27 Indeed, Plaintiff stopped taking his prescribed medication on at
28 least two occasions; each time the doctor recommended that he

1 continue to take medication for his anxiety because it was
2 effective. (See AR 410 (Jan. 1, 2013: Plaintiff reported that he
3 had "taken Xanax before but didn't like taking [it] daily -
4 stopped when feeling better," doctor then prescribed
5 citalopram),¹³ 408 (Feb. 8, 2013: Plaintiff alleged he could not
6 tolerate citalopram prescribed in Jan. 1 visit, had stopped
7 taking it after "couple of days"; doctor "recommended trying to
8 continue with medication"), 2401 (Dec. 2, 2014: Plaintiff
9 currently taking citalopram, which was "helpful"), 704 (June 18,
10 2015: Plaintiff "interested in changing" from citalopram to
11 different psychotropic medication because of "sexual side
12 effects," Dr. David recommended waiting because "Citalopram has
13 been working well").)

14 Plaintiff argues that he stopped taking citalopram because
15 he was "unable to tolerate" it (J. Stip. at 24 (citing AR 408)),
16 but the medical record shows that he complained only of the
17 "sexual side effects" of citalopram (AR 246, 406, 704), and in
18 June 2015 Dr. David recommended that he continue to take it
19 because she had noticed "[d]ecreased anxiety" since he started it
20 (id.). Plaintiff apparently took citalopram for years despite
21 allegedly being unable to tolerate it. (See, e.g., AR 405 (Mar.
22 2013, Plaintiff reported that he "likes having citalopram"), 578
23 (Mar. 2013, Dr. David noting that Plaintiff had been taking
24

25 ¹³ Xanax is the brand name of a drug used to treat anxiety
26 and panic disorders. Alprazolam, MedlinePlus, [https://](https://medlineplus.gov/druginfo/meds/a684001.html)
27 medlineplus.gov/druginfo/meds/a684001.html (last updated Mar. 15,
2017).

1 citalopram for "1.5 months" and was "more calm"), 2401 (Dec.
2 2014, Plaintiff taking citalopram, which was "helpful"), 736-39
3 (May 2015, Plaintiff taking citalopram daily, noting that he
4 "sleep[s] well" with "anxiety well under control").¹⁴ An ALJ
5 may rely upon a claimant's noncompliance with treatment as a
6 clear and convincing reason for an adverse credibility finding.
7 See Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir. 2008)
8 (ALJ may discount claimant's testimony in light of "unexplained
9 or inadequately explained failure to seek treatment or to follow
10 a prescribed course of treatment"); Orn v. Astrue, 495 F.3d 625,
11 638 (9th Cir. 2007).

12 Finally, the ALJ noted that Plaintiff received "limited and
13 conservative treatment," which was "inconsistent with" his
14 alleged severity of symptoms. (AR 25.) Plaintiff does not
15 dispute this finding as to his physical ailments. Similarly, the
16 medical record indicates that Plaintiff's anxiety was effectively
17 managed by therapy sessions and medication and that no more
18 intensive or invasive treatment was needed. (See AR 2401 (Nov.
19 2, 2014: noting currently taking three "helpful" medications),
20 799 (Jan. 22, 2015: "[s]till taking Citalopram," "[a]nxiety
21 appears under control"), 1428 (May 23, 2015: Plaintiff reported
22 no psychiatric hospitalizations and was "coping with his
23

24 ¹⁴ Plaintiff also complained of "increased fatigue and
25 drowsiness" when his citalopram dosage was increased, but that
26 was apparently resolved by "taking medicine before bed." (AR
27 512; see also AR 246 (Mar. 2013 Function Report alleging side
28 effects of citalopram as "insomnia & impotence"), 516 (Sept. 2014
visit to doctor apparently because of side effect of "increased
citalopram dosing," resolved with Plaintiff "now taking before
bed without issue"), 799 (Jan. 2015, Plaintiff reported
"[s]leeping well" and "[s]till taking [c]italopram").)

1 condition"), 704 (June 18, 2015: Dr. David noting that Plaintiff
2 "[c]ontinues to use therapy well" and exhibited "[d]ecreased
3 anxiety since starting citalopram evident to this clinician since
4 first seeing [Plaintiff] several years ago").) Conservative
5 treatment can legitimately discredit a claimant's testimony. See
6 Parra, 481 F.3d at 751.

7 Plaintiff argues that his condition was "not amenable to
8 treatment," pointing to Dr. Miller's January 26, 2015 opinion
9 that "mental health services" were not recommended because
10 "treatment would be fairly challenging." (J. Stip. at 24, 34
11 (citing AR 664-65).) But in June 2015, after Dr. Miller's
12 examination of Plaintiff, Dr. David noted that Plaintiff "use[d]
13 therapy well" and had exhibited "[d]ecreased anxiety since
14 starting citalopram evident to this clinician since first seeing
15 [Plaintiff] several years ago." (AR 704.) Indeed, Plaintiff
16 himself noted on many occasions that his mental-health treatment
17 was helpful. (See, e.g., AR 39 (Sept. 2015 hearing testimony
18 that "see[ing] a psychologist on a steady basis" was helpful),
19 804 (Dec. 2014, Plaintiff reporting to Dr. David that he was
20 "happier now" than he "ever was before"), 2401 (Nov. 2014, noting
21 currently taking three "helpful" medications).)

22 In sum, the ALJ provided clear and convincing reasons for
23 finding Plaintiff's symptom allegations not credible. Because
24 those findings were supported by substantial evidence, this Court
25 may not engage in second-guessing. See Thomas, 278 F.3d at 959.
26 Plaintiff is not entitled to remand on this ground.

27 VI. CONCLUSION

28 Consistent with the foregoing and under sentence four of 42

1 U.S.C. § 405(g),¹⁵ IT IS ORDERED that judgment be entered
2 AFFIRMING the decision of the Commissioner, DENYING Plaintiff's
3 request for remand, and DISMISSING this action with prejudice.

4 

5 DATED: April 25, 2017

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7 JEAN ROSENBLUTH
8 U.S. Magistrate Judge
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26 _____
27 ¹⁵ That sentence provides: "The [district] court shall have
28 power to enter, upon the pleadings and transcript of the record,
a judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."