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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JEFFREY DALE ELLSWORTH,)	NO. CV 13-302-AS
)	
Plaintiff,)	
)	MEMORANDUM OPINION
v.)	
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

PROCEEDINGS

On January 30, 2013, Plaintiff filed a Complaint seeking review of the Commissioner's denial of disability benefits. (Docket Entry No. 3). On August 1, 2013, Defendant filed an Answer and the Certified Administrative Record. (Docket Entry Nos. 14-15). On August 26, 2013, the matter was transferred and referred to the current Magistrate Judge. (Docket Entry No. 16). The parties have consented to proceed before a United States Magistrate Judge. (Docket Entry Nos. 17-18). On December

1 5, 2013, the parties filed a Joint Stipulation ("Joint Stip.") setting
2 forth their respective positions on the three issues relevant to the
3 consideration of Plaintiff's claim (Docket Entry No. 26). The Court has
4 taken this matter under submission without oral argument. See L.R. 7-
5 15; See "Order," filed February 4, 2013 (Docket Entry No. 6).

6
7 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
8

9 Plaintiff asserts disability based on the following physical and
10 mental impairments: "emotional distress, knees, back and neck pain."
11 (Administrative Record ("A.R.") 137). Plaintiff claims that his
12 disability began on June 1, 1991 when he sustained an injury to his
13 neck. Plaintiff has been incarcerated since 1991 and was released in
14 May 2010. (A.R. 16).¹ An Administrative Law Judge ("ALJ") examined the
15 record and conducted an administrative hearing on December 6, 2011.
16 (A.R. 24-59). The ALJ heard testimony from Plaintiff (A.R. 31-45, 45-
17 46), and vocational expert ("VE") Gregory Smith Jones. (A.R. 45, 46-
18 54). Plaintiff was and remains represented by counsel. (A.R. 25, 58).
19 On December 22, 2011, the ALJ issued a decision finding that Plaintiff
20 was not disabled and denying Plaintiff's application for disability
21 benefits. (A.R. 20). On December 11, 2012, the Appeals Council denied
22 review. (A.R. 1-5).

23
24 The ALJ followed the five-step evaluation process for determining
25 whether a claimant is disabled as set forth in 20 C.F.R. § 404.1520, and
26

27 ¹ According to a Department of Corrections' medical consultant
28 report dated February 15, 2005, Plaintiff has been incarcerated since
1995. (See A.R. 200).

1 made the following findings: (1) Plaintiff has not engaged in
2 substantial gainful activity since July 8, 2010, the date he submitted
3 his application for disability benefits to the Social Security
4 Administration (A.R. 14); (2) Plaintiff has the following severe
5 medically determinable impairments: degenerative joint disease of the
6 neck and bilateral knees, degenerative arthritis of the lumbar spine,
7 depression and polysubstance abuse (Id.); (3) Plaintiff's impairments
8 do not meet or equal a listing impairment (A.R. 14-15); (4) Plaintiff
9 retains the residual functional capacity ("RFC") to perform light work
10 with the following modifications: he "can occasionally push/pull with
11 the bilateral lower extremities; occasionally climb, balance, stop,
12 kneel, crouch, or crawl; must avoid work requiring far acuity; avoid
13 concentrated exposure to extreme cold, unprotected heights and hazardous
14 machinery; can occasionally interact with supervisors and coworkers; and
15 never interact with the public." (A.R. 15); (5) Plaintiff has no past
16 relevant work (A.R. 18); and (6) Plaintiff is able to perform jobs
17 consistent with his age, education, work experience, and RFC that exist
18 in significant numbers in the national economy. (A.R. 19).
19 Specifically, the ALJ determined that Plaintiff could perform the
20 requirements of representative light, unskilled occupations such as
21 housekeeping cleaner, cafeteria attendant, and routing clerk. (Id.).
22 In making these findings, the ALJ found Plaintiff's allegations and
23 testimony regarding the intensity, persistence, and limiting effects of
24 his symptoms to be less than fully credible, (A.R. 16-18), noting that
25 "[t]he available medical record provides little objective support for
26 the [plaintiff]'s allegations and, in fact, highlight the [plaintiff]'s
27 devastating lack of credibility and actual ability to work at a

28

1 substantial gainful level at or even above the [RFC] set forth." (A.R.
2 16).

3
4 **PLAINTIFF'S CONTENTIONS**

5
6 Plaintiff contends that the ALJ erred: (1) in her assessment of
7 Plaintiff's mental RFC; (2) in her credibility findings; and (3) in her
8 reliance on the VE's response to purportedly incomplete hypothetical
9 questions. (Joint Stip. 2-3).

10
11 **STANDARD OF REVIEW**

12
13 Under 42 U.S.C. § 405(g), this Court reviews the Administration's
14 decision to determine if: (1) the Administration's findings are
15 supported by substantial evidence; and (2) the Administration used
16 correct legal standards. See Carmickle v. Commissioner, 533 F.3d 1155,
17 1159 (9th Cir. 2008); Hoopai v. Astrue, 499 F.3d 1071, 1074 (9th Cir.
18 2007). "Substantial Evidence is more than a scintilla, but less than
19 a preponderance." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998)
20 (citing Jamerson v. Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It
21 is "relevant evidence, consistent with the entire record, which a
22 reasonable person might accept as adequate to support a conclusion."
23 Hoopai, 499 F.3d at 1074; Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir.
24 1996). To determine whether substantial evidence supports a finding,
25 "a court must 'consider the record as a whole, weighing both evidence
26 that supports and evidence that detracts from the [Commissioner's]
27 conclusion.'" Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir.
28

1 1997)(internal citations omitted); see Widmark v. Barnhart, 454 F.3d
2 1063, 1066 (9th Cir. 2006)(inferences "reasonably drawn from the record"
3 can constitute substantial evidence).

4
5 This Court "may not affirm [the Administration's] decision simply
6 by isolating a specific quantum of supporting evidence, but must also
7 consider evidence that detracts from [the Administration's] conclusion."
8 Ray v. Bowen, 813 F.2d 914, 915 (9th Cir. 1987) (citation and quotations
9 omitted); see Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir.
10 2007) (same). However, the Court cannot disturb findings supported by
11 substantial evidence, even though there may exist other evidence
12 supporting Plaintiff's claim. See Torske v. Richardson, 484 F.2d 59,
13 60 (9th Cir. 1973). "If the evidence can reasonably support either
14 affirming or reversing the [Commissioner's] conclusion, [a] court may
15 not substitute its own judgment for that of the [Commissioner]."
16 Reddick, 157 F.3d 715, 720-21 (9th Cir. 1998)(internal citations
17 omitted).

18
19 **APPLICABLE LAW**

20
21 "The Social Security Act defines disability as the inability to
22 engage in any substantial gainful activity by reason of any medically
23 determinable physical or mental impairment which can be expected to
24 result in death or which has lasted or can be expected to last for a
25 continuous period of not less than 12 months." Webb v. Barnhart, 433
26 F.3d 683, 686 (9th Cir. 2005) (citing 42 U.S.C. § 423 (d)(1)(A)). The
27 impairment must "render[] the claimant incapable of performing the work
28 [he or she] previously performed and . . . of performing any other

1 substantial gainful employment that exists in the national economy."
2 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.
3 § 423(d)(2)(A)).
4

5 The ALJ follows a five-step, sequential analysis to determine
6 whether a claimant has established disability. 20 C.F.R. § 404.1520.
7 At step one, the ALJ determines whether the claimant is engaged in
8 substantial gainful employment activity. Id. at § 404.1520(a)(4)(I).
9 "Substantial gainful activity" is defined as "work that . . . [i]nvolves
10 doing significant and productive physical or mental duties[] and . . .
11 [i]s done (or intended) for pay or profit." 20 C.F.R. §§ 404.1510,
12 404.1572. If the ALJ determines that the claimant is not engaged in
13 substantial gainful activity, the ALJ proceeds to step two which is to
14 determine whether the claimant has a medically severe impairment or
15 combination of impairments that significantly limits his ability to do
16 basic work activities. See Webb, 433 F.3d at 686; see also 20 C.F.R.
17 § 404.1520(a)(4)(ii). The "ability to do basic work activities" is
18 defined as "the abilities and aptitudes necessary to do most jobs." 20
19 C.F.R. § 404.1521(b). Webb, 433 F.3d at 686. An impairment is not
20 severe if it is merely "a slight abnormality (or combination of slight
21 abnormalities) that has no more than a minimal effect on the ability to
22 do basic work activities." Id. If the ALJ concludes that a claimant
23 has a medically severe impairment, then step three requires the ALJ to
24 evaluate whether the claimant's impairment satisfies certain statutory
25 requirements entitling him to a disability finding. Id. If the
26 impairment does not satisfy the statutory requirements entitling the
27 claimant to a disability finding, the ALJ must determine the claimant's
28 residual functional capacity ("RFC"), that is, the ability to do

1 physical and mental work activities on a sustained basis despite
2 limitations from all of his impairments. (A.R. 13; 20 C.F.R. §
3 416.920(e)). Once the RFC is determined, the ALJ proceeds to step four
4 to assess whether the claimant is able to do any work that he or she has
5 done in the past, defined as work performed in the last 15 years or 15
6 years prior to the disability onset date. If the ALJ finds that the
7 claimant is not able to do the type of work that he or she has done in
8 the past or does not have any past relevant work, the ALJ proceeds to
9 step five to determine whether - taking into account the claimant's age,
10 education, work experience and RFC - there is any other work that the
11 claimant can do and if so, whether there are a significant number of
12 such jobs in the national economy. Tackett v. Apfel, 180 F.3d 1094,
13 1098 (9th Cir. 1999); 20 C.F.R. § 404.1520(a)(4)(iii)-(v). The
14 claimant has the burden of proof at steps one through four, and the
15 Commissioner has the burden of proof at step five. Id.

16
17 **DISCUSSION**
18

19 After consideration of the record as a whole, the Court finds that
20 the ALJ's findings are supported by substantial evidence and are free
21 from material² legal error.

22 ///

23 ///

24
25 _____
26 ² The harmless error rule applies to the review of
27 administrative decisions regarding disability. See McLeod v. Astrue,
28 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart, 400 F.3d 676,
679 (9th Cir. 2005) (A decision of the ALJ will not be reversed for
errors that are harmless).

1 I. Substantial Evidence Supports the ALJ's Conclusion Regarding the
2 Plaintiff's Mental Residual Functional Capacity

3
4 Substantial evidence supports the ALJ's assessment of Plaintiff's
5 mental RFC. RFC is defined as "the most [a claimant] can still do
6 despite [a claimant's] limitations." 20 C.F.R. § 416.945(a). After
7 considering the entire record, the ALJ determined that Plaintiff had the
8 mental RFC to perform light work as defined in 20 C.F.R. 416.967(b) with
9 the following modifications: "[H]e . . . can occasionally interact with
10 supervisors and coworkers; and never interact with the general public."
11 (A.R. 15). The ALJ's findings were based on her review of Plaintiff's
12 medical records, the opinion of the consultative psychological examiner,
13 and the state agency medical consultant.

14
15 Plaintiff's medical treatment records show that despite Plaintiff's
16 claimed disability onset date of June 1991, Plaintiff was incarcerated
17 for a significant portion of time from 1991 to 2010 and did not seek or
18 receive mental health treatment for his depression until 2009. (A.R.
19 17, 208-13). Records from the California Department of Corrections and
20 Rehabilitation ("CDCR") dated July 22, 2009 reflect that, "based on this
21 initial screening, there is not an indication that this offender is
22 suffering from a mental illness. Referral to a mental health
23 professional is not indicated." (A.R. 213). Treatment records from
24 the CDCR in 2009 and 2010 revealed unremarkable clinical examination
25 findings and reported that Plaintiff's behavior was "cordial" and
26 "cooperative," and that he exhibited normal speech, affect,
27 concentration, attention, memory, thought process, thought content,
28 insight, and judgment. (A.R. 203, 206, 211). During an examination on

1 October 28, 2009, Plaintiff indicated that he feels confused and angry,
2 but that "[he] knows it's not real." (A.R. 203). In December 2009,
3 Plaintiff's sleep and depression was noted to be improved and Plaintiff
4 was observed as "highly motivated to address issues in [individual
5 treatment]." (A.R. 219). A mental health evaluation in March 2010
6 described Plaintiff as "calm, alert, cooperative, coherent, [having a]
7 good rapport, affect appropriate," and having "no abnormal/involuntary
8 movements." (A.R. 215). In September 2010, Plaintiff reported that he
9 was doing well on his medications. (A.R. 299). In addition, Plaintiff
10 was assessed with a global assessment of functioning (GAF) score in the
11 range of 55-65 at various times during his incarceration.³
12

13 The December 2010 consultative psychological evaluation of Melanie
14 K. Moran, Ph.D., (A.R. 249-56), reported that Plaintiff was generally
15 alert and cooperative, "oriented to time, place and person, and the
16 purpose of the visit," and appeared interested in his improvement. (A.R.
17 252). Dr. Moran also noted that Plaintiff "interacted adequately," his
18

19 ³ Plaintiff's records from the California Department of Corrections
20 and Rehabilitation note seven global assessment of functioning ("GAF")
21 scores, ranging between 55 and 65. (A.R. 204, 207, 215-17, 224-25).
22 "The Global Assessment of Functioning Scale is a rating for reporting
23 the clinician's judgment of the patient's overall level of functioning
24 and carrying out activities of daily living. The GAF Score is measured
25 on a scale of 0-100, with a higher number associated with higher
26 functioning." Montalvo v. Barnhart, 457 F.Supp.2d 150 n.5 (W.D.N.Y.
27 2006). A GAF score in the 61-70 Range indicates some mild symptoms
28 (e.g., depressed mood and mild insomnia) or some difficulty in social,
occupational, or school functioning (e.g., occasional truancy, or theft
within the household), but generally functioning pretty well, has some
meaningful interpersonal relationships. A GAF score in the 51-60 range
corresponds to moderate symptoms (e.g., flat affect and circumstantial
speech, occasional panic attacks) or moderate difficulty in social
occupational, or school functioning (e.g., few friends, conflicts with
peers or co-workers). DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS,
AMERICAN PSYCHIATRIC ASSOCIATION 34 (4th ed. 2000).

1 "verbal response time was average" and his speech was "clear and well-
2 modulated." (Id.). Plaintiff's "[t]houghts were organized and
3 productive" and Plaintiff did not show any specific psychomotor
4 retardation. (Id.). Plaintiff's conceptual level is in the average
5 range, and he "did not show any peculiarities in stream of
6 consciousness." (A.R. 253). Dr. Moran noted that "[t]here was no
7 blocking, confusion, bizarreness, or tangentiality . . . speech was not
8 pressured or disorganized during the evaluation." (A.R. 253). Plaintiff
9 also reported that his medication was helping him and Dr. Moran noted
10 that Plaintiff showed "an average range of expression during the
11 assessment." (A.R. 252). With respect to Plaintiff's adaptation to
12 work-related activities, Dr. Moran concluded that Plaintiff "has the
13 ability to learn simple skills," would "function best in a
14 noninteractive setting," is able to "persist independently without
15 supervision" and "relate[d] adequately [to authority] in a supportive
16 environment." (A.R. 255). Dr. Moran indicated that Plaintiff would
17 have difficulty with normal interactional settings but concluded that
18 Plaintiff "appears capable of maintaining a schedule," noting that he
19 arrived on time for his examination, using public transportation. (A.R.
20 249, 255).

21
22 The state agency medical consultant, R. Tashjian, M.D., found,
23 based on his review of the record, that Plaintiff had mild restriction
24 of activities of daily living, moderate difficulties in maintaining
25 social functioning, and moderate difficulties in maintaining
26 concentration, persistence or pace. (A.R. 15, 270). Dr. Tashjian
27 concluded that Plaintiff "retains the ability to understand, remember
28 and carry out simple work-related tasks in a work setting [with] reduced

1 interpersonal contact" and that "there are no significant limitations
2 in the ability to complete or adapt to the requirements of normal work."
3 (A.R. 261).

4
5 The findings of Dr. Moran and Dr. Tashjian, coupled with
6 Plaintiff's treatment records constitute sufficient evidence for the
7 ALJ's assessment of Plaintiff's mental RFC. See Thomas v. Barnhart, 278
8 F.3d 947, 957 (9th Cir. 2002) ("The opinions of non-treating or non-
9 examining physicians may also serve as substantial evidence when the
10 opinions are consistent with independent clinical findings or other
11 evidence in the record."); Tonapetyan v. Halter, 242 F.3d 1144, 1149
12 (9th Cir. 2001) (non-examining physician's opinion may constitute
13 substantial evidence when opinion is consistent with independent
14 evidence of record). See also Magallanes v. Bowen, 881 F.2d 747, 751
15 (9th Cir. 1989).

16
17 Contrary to Plaintiff's claims, the ALJ incorporated Dr. Moran's
18 opinions into her determination that Plaintiff retained the mental RFC
19 to do certain jobs. For example, based on Dr. Moran's assessment that
20 Plaintiff would have difficulty with normal interactional settings and
21 would "function best in a noninteractive setting," (A.R. 255), the ALJ
22 determined that Plaintiff would have the ability to perform a job that
23 required no interaction with the general public, and occasional
24 interaction with supervisors and coworkers. (A.R. 15). Accordingly,
25 the ALJ found, based on Dr. Moran's findings and the VE's testimony,
26 that Plaintiff was able to work as a housekeeping cleaner, cafeteria,
27 attendant and routing clerk, positions which did not require significant
28 social interaction. (A.R. 19). Plaintiff's claim that the ALJ was

1 required to find Plaintiff disabled based upon Dr. Moran's finding that
2 Plaintiff would have difficulty with normal interactional settings is
3 unavailing. (Joint Stip. 4-5 (citing A.R. 254-55)). Dr. Moran did not
4 opine that Plaintiff was incapable of any social interaction and her
5 findings were consistent with the ALJ's determination that Plaintiff
6 would be able to occasionally interact with supervisors and co-workers.

7
8 Plaintiff contends that the ALJ did not consider Dr. Tashjian's
9 conclusion that Plaintiff has moderate difficulties in maintaining
10 concentration, persistence or pace. (Joint Stip. 5 (citing A.R. 260)).
11 The Ninth Circuit has held that a plaintiff who has moderate mental
12 restrictions can still nonetheless conceivably be able to carry out
13 "simple tasks." Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1173-74 (9th
14 Cir. 2008). Moreover, evidence that a claimant's condition is improving
15 can support the ALJ's decision if "the severity of the problem had
16 decreased sufficiently to enable him to engage in gainful activity."
17 Warre v. Comm'r of Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir.
18 2006). As set forth above, Plaintiff's treatment records and his
19 admissions to Dr. Moran show that the medication he was taking caused
20 his condition to improve.

21
22 Thus, the Court finds that the ALJ provided "specific and
23 legitimate reasons supported by substantial evidence" for his mental RFC
24 assessment and that her determination was supported by substantial
25 evidence.

26 ///

27 ///

1 II. The ALJ Did Not Materially Err In Evaluating Plaintiff's
2 Credibility

3
4 Plaintiff contends that the ALJ erred in her credibility assessment
5 of his subjective symptoms and functional limitations and failed to give
6 clear, specific and convincing reasons supported by substantial evidence
7 in the record. (Joint Stip. 15-16). In support of his position,
8 Plaintiff points out that the ALJ misstated the record in concluding
9 that Plaintiff was not truthful regarding his drug use, improperly
10 relied on Plaintiff's work activities during his incarceration, failed
11 to consider Dr. Moran's finding that Plaintiff had provided reliable
12 information, and failed to consider the third party statement of
13 Plaintiff's friend. (Joint Stip. at 16-17).

14
15 An ALJ's assessment of a claimant's credibility is entitled to
16 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.
17 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). The ALJ may
18 not discount the claimant's testimony regarding the severity of the
19 symptoms without making "specific, cogent" findings. Lester v. Chater,
20 81 F.3d 821, 834 (9th Cir. 1995); see also Berry v. Astrue, 622 F.3d
21 1228, 1234 (9th Cir. 2010) (reaffirming same) but see Smolen, 80 F.3d
22 at 1283-84 (indicating that ALJ must provide "specific, clear and
23 convincing reasons to reject a claimant's testimony where there is no
24 evidence of malingering). See Rashad v. Sullivan, 903 F.2d 1229, 1231
25 (9th Cir. 1990).⁴ Generalized, conclusory findings do not suffice. See

26
27 ⁴ In the absence of evidence of "malingering," most recent Ninth
28 Circuit cases have applied the "clear and convincing" standard. See,
e.g., Chaudhry v. Astrue, 688 F.3d 661, 670, 672 n.10 (9th Cir. 2012);

1 Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir. 2004) (the ALJ's
2 credibility findings "must be sufficiently specific to allow a reviewing
3 court to conclude the ALJ rejected the claimant's testimony on
4 permissible grounds and did not arbitrarily discredit the claimant's
5 testimony") (internal citations and quotations omitted); Holohan v.
6 Massanari, 246 F.3d 1195, 1208 (9th Cir. 2001) (the ALJ must
7 "specifically identify the testimony [the ALJ] finds not to be credible
8 and must explain what evidence undermines the testimony"); and Smolen,
9 80 F.3d at 1284 ("The ALJ must state specifically which symptom
10 testimony is not credible and what facts in the record lead to that
11 conclusion."). See also Social Security Ruling 96-7p.

12
13 In the present case, the ALJ stated sufficient reasons for deeming
14 Plaintiff's testimony less than fully credible. As set forth above,
15 Plaintiff's mental status examinations were largely unremarkable and did
16 not support Plaintiff's claimed limitations. The medical records also
17 indicated that Plaintiff's condition had improved with the medication
18 that he was taking. Although a claimant's credibility "cannot be
19 rejected on the sole ground that it is not fully corroborated by
20 objective medical evidence, the medical evidence is still a relevant
21 factor. . . ." Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001).
22 Here, the ALJ was entitled to consider the lack of medical evidence for
23 Plaintiff's claimed disability to support his finding that Plaintiff's

24 _____
25 Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012); Taylor v.
26 Commissioner, 659 F.3d 1228, 1234 (9th Cir. 2011); Valentine v.
27 Commissioner, 574 F.3d 685, 693 (9th Cir. 2009); Ballard v. Apfel, 2000
28 WL 1899797, at *2 n.1 (C.D. Cal. Dec. 19, 2000) (collecting cases). As
set forth infra, the ALJ's findings in this case are sufficient under
either standard, so the distinction between the two standards (if any)
is academic.

1 mental limitations were not as disabling as he claimed.

2
3 The ALJ also noted that Plaintiff had an extensive history of drug
4 use and reported that he last used drugs in May 2010, after serving a
5 13-month sentence for drug possession. (A.R. 16-17). Although
6 Plaintiff contends that the ALJ misstated the record, the ALJ's
7 findings were supported by the record. According to Dr. Moran, the
8 consultative examiner, Plaintiff "stated that he has been completely
9 sober and off drugs since April 2009." (A.R. 18). See A.R. 251.
10 However, a mental health treatment record dated January 15, 2010, while
11 Plaintiff was in prison, revealed that Plaintiff's "drug of choice" is
12 heroin and that he has used it "1993-present." (A.R. 205). Similarly,
13 notes by a prison staff psychologist dated January 21, 2010 report
14 Plaintiff's history of drug use as "heroin 1993-present." (A.R. 217).
15 Although some of Plaintiff's treatment records were inconsistent with
16 Plaintiff's statement to Dr. Moran, the ALJ was permitted to consider
17 this inconsistency as bearing on Plaintiff's credibility. See Thomas
18 v. Barnhart, 278 F.3d 948, 959 (9th Cir. 2002) (inconsistent statements
19 about prior drug and alcohol use permissible to undermine claimant's
20 veracity); Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999)
21 (inconsistencies in claimant's various statements cited as a clear and
22 convincing reason for rejecting the claimant's testimony).

23
24 Plaintiff contends that the ALJ misconstrued the type of work
25 Plaintiff was doing while he was incarcerated and "erroneously pointed
26 to Plaintiff's work while incarcerated as a reason for finding
27 Plaintiff's assertions regarding his symptoms and functional limitations
28 not credible." (Joint Stip. 16). Plaintiff testified at the

1 administrative hearing that while he was in prison, he had performed
2 some clerical work while in prison, answered the telephone, and "did a
3 lot of research" for the assignment lieutenant. (A.R. 34-35). He also
4 stated that he worked at a water plant, which was essentially a
5 "gardening" position but had not otherwise been gainfully employed since
6 1991 and was living largely on public assistance since his release from
7 prison. (A.R. 35-36). The ALJ noted these facts as relevant to his
8 finding that Plaintiff had not sought gainful employment since his
9 release from incarceration. (A.R. 16). "[S]ince his 2010 release, he
10 has not attempted to find any work . . . and now seeks Disability
11 benefits . . . despite the lack of any effort on his behalf to
12 productively contribute to his own income." (A.R. 16). Plaintiff's
13 work activity in prison, coupled with the lack of medical evidence to
14 support a preset disability, was relevant to the ALJ's determination of
15 Plaintiff's mental RFC and his ability to engage in gainful employment
16 and the ALJ's reliance on this information was permissible. 20 C.F.R.
17 § 416.929(c)(3) (all evidence presented may be considered "including
18 information about [a claimant's] prior work record"). See also Matney
19 v. Sullivan, 981 F.2d 1016, 1020 (9th Cir. 1992)(claimant's well-
20 documented motivation to obtain social security benefits is relevant
21 when assessing credibility).

22
23 Plaintiff's claim that the ALJ was required to consider Dr. Moran's
24 assessment that Plaintiff was "reliable" is without merit. First,
25 Plaintiff misinterprets the following statement in Dr. Moran's report
26 to mean that Dr. Moran found Plaintiff to be credible: "The source of
27 information was the claimant, who was a good historian. The information
28 contained herein is considered reliable." (A.R. 249). That statement,

1 viewed in the context of the "identifying data" portion of Dr. Moran's
2 report, did not represent an opinion regarding Plaintiff's overall
3 credibility but was merely a statement of Dr. Moran's acceptance of the
4 information Plaintiff provided about his background. Second, even if
5 this statement could be viewed as a credibility determination, Dr.
6 Moran's belief regarding Plaintiff's credibility was not binding on the
7 ALJ, who was required to make a credibility assessment based upon a
8 review of the entire record. Here, the ALJ properly considered the
9 entire record in finding that Plaintiff was not completely credible.
10 (A.R. 18, 255).

11
12 Plaintiff's contention that the ALJ failed to give significant
13 weight to the third party function report authored by Plaintiff's friend
14 is also without merit. (Joint Stip. at 17). The ALJ properly
15 discredited these third-party statements, noting that Plaintiff claimed
16 that he could pay attention "until things get complicated," and that his
17 friend added that "the claimant becomes despondent and will cry." (A.R.
18 16). An ALJ may reject lay testimony inconsistent with the medical
19 evidence. Lewis v. Apfel, 236 F.3d 503, 512 (9th Cir. 2001). See Molina
20 v. Astrue, 674 F.3d 1104, 1117 (9th Cir. 2012) ("Where lay witness
21 testimony does not describe any limitations not already described by the
22 claimant . . . the ALJ's well supported reasons for rejecting the
23 claimant's testimony apply equally well to the lay witness testimony,
24 it would be inconsistent with our prior harmless error precedent to deem
25 the ALJ's failure to discuss the lay witness testimony to be prejudicial
26 per se."); Valentine v. Commissioner, 574 F.3d 685, 694 (9th Cir. 2009)
27 (where ALJ provides clear and convincing reasons for rejecting the
28 claimant's own subjective complaints and where lay witness testimony was

1 similar, ALJ also gave germane reasons for rejecting witness testimony).

2
3 The ALJ's credibility assessment was also based on inconsistencies
4 regarding the claimed disability onset date, Plaintiff's lack of regular
5 or consistent treatment, Plaintiff's statement that he was doing well
6 on his medication and his stated belief that his difficulties
7 interacting with others were based on his prison stay. (A.R. 17-18).
8 Thus, the ALJ concluded, after reviewing all the entire record, that
9 "the medical record provides little objective support for the claimant's
10 allegations and, in fact, highlight the claimant's devastating lack of
11 credibility and actual ability to work at a substantial gainful level
12 at or even above the residual functional capacity set forth." (A.R.
13 16). The ALJ is permitted to "engage in ordinary techniques of
14 credibility evaluation such as considering claimant's reputation for
15 truthfulness." Burch v. Barnhart, 400 F.3d 676, 680 (9th Cir.
16 2005)(internal citation omitted).

17
18 The Court finds that the ALJ stated sufficient reasons to allow
19 this Court to conclude that the ALJ discounted Plaintiff's credibility
20 on permissible grounds. The Court therefore defers to the ALJ's
21 credibility determination. See Lasich v. Astrue, 252 Fed. Appx. 823,
22 825 (9th Cir. 2007) (court will defer to ALJ's credibility determination
23 when the proper process is used and proper reasons for the decision are
24 provided); accord Flaten v. Secretary of Health and Human Services, 44
25 F.3d 1453, 1464 (9th Cir. 1995). Where the ALJ has made specific
26 findings justifying a decision to disbelieve Plaintiff's symptom
27 allegations and those findings are supported by substantial evidence in
28 the record, "we may not engage in second guessing." Thomas v. Barnhart,

1 278 F.3d 947, 958-59 (9th Cir. 2002).

2
3 **III. The ALJ Did Not Err In Questioning The Vocational Expert**
4 **About Plaintiff's Ability To Perform Certain Jobs Given**
5 **His Limitations**
6

7 Plaintiff contends that the hypothetical questions posed by the ALJ
8 to the VE were incomplete because the questions did not include the
9 "work-related limitations in mental functioning assessed by the
10 consultative examiner, Dr. Moran." (Joint Stip. 25). Specifically,
11 Plaintiff contends that the ALJ failed to take into account the VE's
12 statement - in response to a question posed by Plaintiff's counsel -
13 that an individual restricted to "no contact with the general public,
14 co-worker or supervisors" could not perform the jobs identified. (A.R.
15 26). As set forth below, Plaintiff's argument is without merit.
16

17 The ALJ properly questioned the VE about whether someone of
18 plaintiff's age and education, with certain physical constraints,⁵ could
19 "perform simple, repetitive tasks with occasional interaction with
20 supervisors, co-workers and the general public." (A.R. 47). In response
21 to this question, the VE identified a number of medium and unskilled
22 occupations that were available in substantial numbers in the regional
23

24 ⁵ In the first hypothetical question to the VE, the ALJ asked
25 whether a person with the same age and education as the claimant, who
26 does not have any past relevant work, but who could "lift and carry 50
27 pounds occasionally, 25 pounds frequently; who could stand, walk and/or
28 sit six hours out of an eight-hour day with normal breaks; who could
perform frequent climbing, balancing, stooping, kneeling, crouching and
crawling; who could be able to perform simple repetitive tasks with
occasional interaction with supervisors, co-workers and the general
public." (A.R. 47.)

1 and national economy, including: (1) hand packager; (2) cleaner; and (3)
2 machine packager. (A.R. 47-48). The ALJ proposed a second hypothetical
3 that incorporated the same limitations as the first hypothetical, except
4 that the individual would be "limited to occasional pushing and pulling
5 with the bilateral lower extremity; occasional climbing, balancing,
6 stooping, kneeling, crouching and crawling; should avoid work requiring
7 far acuity; also avoid concentrated exposure to extreme cold,
8 unprotected heights, hazardous machinery; also limited to simple,
9 repetitive tasks with *occasional interaction with supervisors and co-*
10 *workers, but no interaction with the general public."* (A.R. 48)
11 (emphasis added). The VE testified that such an individual could
12 perform the medium and unskilled work of a general laborer and a day
13 worker and that such occupations were available in substantial numbers
14 in the regional and national economy. (A.R. 49). The ALJ's third
15 hypothetical incorporated the same limitations of the previous
16 hypothetical except that the lifting and carrying would be limited to
17 20 pounds occasionally, 10 pounds frequently. (Id.). The VE testified
18 that such an individual could perform the light and unskilled work of
19 a housekeeping cleaner, cafeteria attendant, or a routing clerk and that
20 such occupations were available in substantial numbers in the regional
21 and national economy. (A.R. 50) The fourth and final hypothetical
22 incorporated the same limitations of the previous hypothetical but added
23 the following additional limitations: "walk and/or sit six hours out of
24 an eight-hour day with an assistive device,"(A.R. 50), and "able to
25 perform simple, repetitive tasks with *occasional interaction with*
26 *supervisors; only conversational interaction and contact with co-*
27 *workers; no interaction with the public."* (A.R. 51) (emphasis added).
28 The VE responded that such an individual could perform the light and

1 unskilled work of a bench assembler, electronics worker and production
2 assembler and that such occupations were available in substantial
3 numbers in the regional and national economy. (A.R. 51-52).

4
5 This testimony furnished substantial evidence for the ALJ's
6 determination that Plaintiff is not disabled. See Bray v. Comm'r of
7 Soc. Sec. Admin., 554 F.3d 1219, 1228 (9th Cir. 2009) (vocational expert
8 opinion evidence is reliable to support a finding that a claimant can
9 work if hypothetical questioning "set[s] out all the limitations and
10 restrictions of a particular claimant") (citation omitted); see also 20
11 C.F.R. §§ 404.1560(b)(2), 416.960(b)(2); Bayliss v. Barnhart, 427 F.3d
12 1211, 1218 (9th Cir. 2005) ("A [vocational expert's] recognized
13 expertise provides the necessary foundation for his or her testimony.
14 Thus, no additional foundation is required.").

15
16 Plaintiff contends that the ALJ failed to consider the VE's
17 testimony that "someone interacting inappropriately with a supervisor
18 is not going to be tolerated." (A.R. 53-54). This statement was in
19 response to a question posed by plaintiff's counsel who asked the VE
20 whether an individual with Plaintiff's age, education, work experience,
21 and RFC, who would have "no contact with the general public, co-workers
22 and supervisors," would be able to perform any job. (Id.)(emphasis
23 added). However, the ALJ was not required to consider whether the
24 Plaintiff could perform jobs involving "no contact with the general
25 public, co-workers and supervisors" because such a limitation was not
26 supported by the record. Contrary to Plaintiff's contention, Dr. Moran
27 did not opine that Plaintiff *could not have any contact* with the general
28 public, co-workers or supervisors or that Plaintiff was *unable to*

1 interact in a normal interactional work setting. Rather, Dr. Moran
2 concluded that Plaintiff "may have difficulty . . . interacting with
3 others on a regular basis . . . would function best in a non interactive
4 setting" and also found that Plaintiff "related adequately to this
5 authority figure in a supportive environment, but would have difficulty
6 with normal interactional settings." (A.R. 255). The ALJ took Dr.
7 Moran's assessment of Plaintiff's limitations into account in
8 determining Plaintiff's RFC and properly found, based on Dr. Moran's
9 assessment and his review of the record as a whole, that Plaintiff,
10 "could occasionally interact with supervisors and coworkers and never
11 interact with the general public." (A.R. 15)(emphasis added). Bayliss
12 v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005) (hypothetical posed to
13 VE may contain "all of the limitations that the ALJ found credible and
14 supported by substantial evidence in the record."). Because the
15 limitation that Plaintiff's counsel incorporated in her questions to the
16 VE - that Plaintiff can have no contact with the general public, co-
17 workers or supervisors - was not supported by the record, the ALJ was
18 not required to include this limitation in a hypothetical to the VE.
19 The ALJ is "free to accept or reject restrictions in a hypothetical
20 question that are not supported by substantial evidence." Greger v.
21 Barnhart, 464 F.3d 968, 974 (9th Cir. 2006)(internal citation omitted).
22 Thus, the ALJ did not pose an incomplete or inappropriate hypothetical
23 to the VE.

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3 **CONCLUSION**

4 For all of the foregoing reasons, the decision of the
5 Administrative Law Judge is affirmed.

6 LET JUDGMENT BE ENTERED ACCORDINGLY.

7
8 DATED: July 1, 2014.

9
10 /s/
11 ALKA SAGAR
12 UNITED STATES MAGISTRATE JUDGE
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