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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JASON JONATHAN WILLIAM
ERSTAD,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,¹

Defendant.

Case No. CV 16-1629-DFM

MEMORANDUM OPINION
AND ORDER

Jason Jonathan William Erstad (“Plaintiff”) appeals from the Social Security Commissioner’s final decision denying his application for Supplemental Security Income (“SSI”). For the reasons discussed below, the Commissioner’s decision is affirmed and this matter is dismissed with prejudice.

///

¹ On January 23, 2017, Berryhill became the Acting Social Security Commissioner. Thus, she is automatically substituted as Defendant under Federal Rule of Civil Procedure 25(d).

1 I.

2 BACKGROUND

3 Plaintiff was born in 1992. Administrative Record (“AR”) 182, 191. In
4 January 2003, he filed an application for SSI; the application was approved
5 and he began receiving benefits. AR 19, 92. After the Social Security
6 Administration (“SSA”) began to suspect that Plaintiff was malingering, a
7 Cooperative Disability Investigations Unit (“CDI Unit”) opened an
8 investigation and found that Plaintiff was “functioning at a higher level than
9 his allegations.”² AR 366. The SSA terminated Plaintiff’s SSI benefits in
10 August 2010. AR 19, 27, 92.

11 On May 15, 2012, Plaintiff filed a new application for SSI. AR 19, 103,
12 182-90. After his application was denied, Plaintiff requested a hearing before
13 an administrative law judge (“ALJ”). AR 115-17. A hearing was held on
14 August 27, 2013, at which Plaintiff, who was represented by counsel, testified,
15 as did a vocational expert. AR 40-79.³

16 In a written decision issued August 21, 2014, the ALJ denied Plaintiff’s
17 claim for benefits. AR 19-32. The ALJ found that Plaintiff had the following
18 “severe combination of impairments”: asthma, headaches, obesity, “a mood
19 disorder with psychotic features,” anxiety disorder, and borderline intellectual
20 functioning; as of December 29, 2012, the date Plaintiff was in a car accident
21 and injured his left eye, Plaintiff’s severe combination of impairments also

22 ² The SSA and the SSA’s Office of the Inspector General established the
23 CDI program to investigate suspected fraud in disability claims. See
24 Cooperative Disability Investigations (CDI), Office of the Inspector General,
25 <https://oig.ssa.gov/cooperative-disability-investigations-cdi> (last accessed July
26 26, 2017).

27 ³ The ALJ stated that a “continued hearing” was held on January 28,
28 2014, at which Plaintiff’s mother and the VE testified. AR 19. The transcript
from that hearing was not included in the administrative record.

1 included “corneal staining (due to chronic hyphema),” vitreous hemorrhage,
2 and retinal detachment.⁴ AR 21. The ALJ found that Plaintiff retained the
3 residual functional capacity (“RFC”) to perform “a full range of work at all
4 exertional levels but with the following non-exertional limitations: he remains
5 able to do work consisting of simple, repetitive tasks, cannot interact with the
6 public, has only monocular vision with no stereo function, and should avoid
7 hazards.” AR 26. Based on the VE’s testimony, the ALJ found that Plaintiff
8 could perform jobs that existed in significant numbers in the national
9 economy. AR 31-32. He therefore concluded that Plaintiff was not disabled.
10 AR 32.

11 Plaintiff requested review of the ALJ’s decision. AR 14-15. After
12 considering new evidence submitted by Plaintiff, the Appeals Council denied
13 review on January 19, 2016. AR 1-6.⁵ This action followed.

14 **II.**
15 **DISCUSSION**

16 Plaintiff argues that the ALJ erred in (1) discounting the opinion of his
17 treating psychiatrist, Dr. Desmond B. Chiong, and (2) assessing his credibility.
18 Joint Stipulation (“JS”) at 6. For the reasons discussed below, the Court finds
19

20 ⁴ The ALJ found that Plaintiff’s asthma was not severe, but he
21 nonetheless considered it in evaluating whether Plaintiff was disabled. AR 21-
22 22. He found that Plaintiff’s mental condition was properly characterized as a
23 mood disorder with psychotic features, not schizophrenia. AR 22-23. And he
24 concluded that Plaintiff’s alleged back pain was not a medically determinable
impairment. AR 23. Plaintiff has not challenged those findings.

25 ⁵ When the Appeals Council considers new evidence in deciding whether
26 to review an ALJ’s decision, “that evidence becomes part of the administrative
27 record, which the district court must consider when reviewing the
28 Commissioner’s final decision for substantial evidence.” Brewes v. Comm’r of
Soc. Sec. Admin., 682 F.3d 1157, 1163 (9th Cir. 2012).

1 that the ALJ did not err.⁶

2 **A. Dr. Chiong's Opinion**

3 Plaintiff argues that the ALJ erred by according little to no weight to Dr.
4 Chiong's opinion. JS at 6-17.

5 **1. Applicable Law**

6 Three types of physicians may offer opinions in Social Security cases:
7 those who treated the plaintiff, those who examined but did not treat the
8 plaintiff, and those who did neither. See 20 C.F.R. § 416.927(c); Lester v.
9 Chater, 81 F.3d 821, 830 (9th Cir. 1995) (as amended Apr. 9, 1996). A treating
10 physician's opinion is generally entitled to more weight than an examining
11 physician's opinion, which is generally entitled to more weight than a
12 nonexamining physician's. Lester, 81 F.3d at 830. When a treating or
13 examining physician's opinion is uncontroverted by another doctor, it may be

14 ⁶ Social Security Regulations regarding the evaluation of opinion
15 evidence and credibility were amended effective March 27, 2017. Where, as
16 here, the ALJ's decision is the final decision of the Commissioner, the
17 reviewing court generally applies the law in effect at the time of the ALJ's
18 decision. See Lowry v. Astrue, 474 F. App'x 801, 805 n.2 (2d Cir. 2012)
19 (applying version of regulation in effect at time of ALJ's decision despite
20 subsequent amendment); Garrett ex rel. Moore v. Barnhart, 366 F.3d 643, 647
21 (8th Cir. 2004) ("We apply the rules that were in effect at the time the
22 Commissioner's decision became final."); Spencer v. Colvin, No. 15-05925,
23 2016 WL 7046848, at *9 n.4 (W.D. Wash. Dec. 1, 2016) ("42 U.S.C. § 405
24 does not contain any express authorization from Congress allowing the
25 Commissioner to engage in retroactive rulemaking"); cf. Revised Medical
26 Criteria for Determination of Disability, Musculoskeletal System and Related
27 Criteria, 66 Fed. Reg. 58010, 58011 (Nov. 19, 2001) ("With respect to claims
28 in which we have made a final decision, and that are pending judicial review in
Federal court, we expect that the court's review of the Commissioner's final
decision would be made in accordance with the rules in effect at the time of the
final decision."). Accordingly, the Court applies the versions of 20 C.F.R.
§§ 416.927 and 416.929 that were in effect at the time of the ALJ's August
2014 decision.

1 rejected only for “clear and convincing reasons.” See Carmickle v. Comm’r
2 Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008) (citing Lester, 81 F.3d
3 at 830-31). Where such an opinion is contradicted, the ALJ must provide only
4 “specific and legitimate reasons” for discounting it. Id.; see also Garrison v.
5 Colvin, 759 F.3d 995, 1012 (9th Cir. 2014). Moreover, “[t]he ALJ need not
6 accept the opinion of any physician, including a treating physician, if that
7 opinion is brief, conclusory, and inadequately supported by clinical findings.”
8 Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002); accord Tonapetyan v.
9 Halter, 242 F.3d 1144, 1149 (9th Cir. 2001). The weight accorded to a
10 physician’s opinion depends on whether it is consistent with the record and
11 accompanied by adequate explanation, the nature and extent of the treatment
12 relationship, and the doctor’s specialty, among other things. § 416.927(c).

13 **2. Relevant Facts**

14 a. Dr. Rosa Colonna

15 On June 24, 2010, Dr. Colonna, a psychologist, examined Plaintiff at the
16 SSA’s request. AR 358-62. Dr. Colonna diagnosed mood disorder and
17 borderline intellectual functioning. AR 361. She concluded that Plaintiff would
18 be able to understand, remember, and carry out “short, simplistic
19 instructions.” Id. He had a “mild inability” to understand, remember, and
20 carry out detailed instructions. Id. Plaintiff would be able to make “simplistic
21 work-related decisions without special supervision.” Id. He was “socially
22 appropriate” and “present[ed] with the ability to interact appropriately with
23 supervisors, coworkers and peers.” AR 362.

24 b. Medical Consultants

25 On August 1, 2012, at the SSA’s request, psychologist Sonya Adamo
26 reviewed Plaintiff’s medical records and rendered an opinion as to his mental
27 limitations. AR 83-89. Dr. Adamo opined that Plaintiff was moderately
28 limited in his ability to remember and carry out detailed instructions and

1 interact appropriately with the general public. AR 86-87. She opined that he
2 was “not significantly limited” in all other listed functional areas, including the
3 ability to remember and carry out very short and simple instructions,
4 remember work procedures, maintain a schedule, work with others, and make
5 simple decisions. AR 86-87. Dr. Adamo wrote that Plaintiff “may have some
6 difficulty with recalling detailed instructions, but [he] is able to complete and
7 remember short, basic instructions” and “simple tasks.” Id. She believed that
8 Plaintiff’s “anxiety and restricted affect may create problems if interacting with
9 the public occupies a large part of his work; he is able to conform his behaviors
10 in superficial work settings.” AR 87.

11 On November 2, 2012, Dr. F.L. Williams reviewed Plaintiff’s medical
12 records and rendered an assessment similar to Dr. Adamo’s. AR 98-102. Dr.
13 Williams concluded that Plaintiff could perform only nonpublic, simple,
14 repetitive tasks. AR 101.

15 c. Dr. Chiong

16 On December 12, 2013, Dr. Chiong met with Plaintiff for the first time
17 and he completed an “Initial Medication Support Service” form. AR 782-84.
18 In the section of the form for listing “Chief Complaint/Presenting
19 Problem/Client Goals,” Dr. Chiong wrote that Plaintiff was “unable to do a
20 job” and “disabled for job,” and that he had a history of “mood swings,”
21 “hear[ing] voices,” and other symptoms. AR 782.

22 Under the section of the form for listing Plaintiff’s “mental status,” Dr.
23 Chiong wrote, “stays home, graduated H.S., no college, worked [at] Career
24 Partners 2.5 months (unable to do the job), no job. Mood stable.” AR 783.
25 Although the form is difficult to read, it appears that Dr. Chiong noted that
26 Plaintiff’s anxiety was “high,” he was paranoid, and he heard voices calling his
27 name. Id. Under “assessment,” Dr. Chiong wrote, “p[atient] is disabled for
28 work.” AR 784. He diagnosed “severe generalized anxiety disorder (v. severe

1 anxiety),” “panic disorder” with panic attacks “once a w[ee]k,” schizophrenia,
2 and “chronic paranoia.” Id. At the end of the form, Dr. Chiong reiterated, “Pt.
3 is disabled for work and is totally [and] permanently disabled.” AR 784.

4 On December 20, 2013, Dr. Chiong completed a Medi-Cal Presumptive
5 Disability Certification. AR 778-79. Dr. Chiong listed Plaintiff’s conditions as
6 “chronic schizophrenia,” “severe generalized anxiety disorder (very severe),”
7 and “panic disorder (panic attack once a week).” AR 778.

8 On January 13, 2014, Dr. Chiong completed a mental-impairment
9 questionnaire. AR 786. He stated that he first treated Plaintiff on December 12,
10 2013, and he listed the “date of most recent exam” as “12/ /13,” leaving the
11 date blank. Id. Dr. Chiong stated that he had seen Plaintiff twice and that he
12 would thereafter be seeing Plaintiff every two months. Id.

13 Dr. Chiong listed Plaintiff’s impairments as “schizophrenia, paranoid”
14 and “panic disorder.” Id. He checked boxes indicating that Plaintiff was
15 irritable, emotionally labile, and easily distracted; his thinking was illogical; his
16 immediate memory was poor; and his sleep was erratic. AR 787. Dr. Chiong
17 indicated that Plaintiff displayed difficulty thinking or concentrating; agitation;
18 generalized or persistent anxiety; paranoia or suspiciousness; persistent
19 irrational fears; recurrent panic attacks; vigilance and scanning; “[d]eeply
20 ingrained, maladaptive patterns of behavior”; impulsive or damaging behavior;
21 intense and unstable interpersonal relationships; “[p]athological dependence,
22 passivity, or aggressiveness”; social withdrawal or isolation; and delusions. Id.

23 Dr. Chiong checked boxes indicating that Plaintiff had “marked”
24 limitation—which was defined as “symptoms constantly interfere with
25 ability,” the highest degree of limitation listed on the form—to perform all 23
26 listed mental activities, including understanding and carrying out one- to two-
27 step instructions, making simple work-related decisions, and asking simple
28 questions or requesting assistance. AR 788. When asked whether Plaintiff

1 experienced “any other work-related limitations,” Dr. Chiong wrote, “unable
2 to hold down a job.” AR 789. Dr. Chiong believed that Plaintiff would be
3 absent from work as a result of his impairments more than three times a
4 month, and that the described symptoms and limitations existed as of April 24,
5 2010. Id. In the section for writing additional comments, Dr. Chiong wrote
6 that Plaintiff was “totally [and] permanently disabled.” Id.

7 On February 5, 2014, Dr. Chiong wrote a letter “to whom it may
8 concern,” stating that Plaintiff suffered from chronic paranoid schizophrenia
9 and “extremely high anxiety.” AR 790. Dr. Chiong wrote that Plaintiff was
10 “extremely restricted in his functioning capacity due to his illness” and that he
11 was “totally and permanently disabled for work.” Id. Dr. Chiong wrote that
12 Plaintiff had “very little insight into his illness” and needed long-term
13 medication treatment, supportive therapy, and “psycho-education.” Id.

14 In a treatment note signed on February 5, 2014, Dr. Chiong noted that
15 Plaintiff had suffered from “severe schizophrenia” since he was 11 years old.
16 AR 824.⁷ Dr. Chiong noted that Plaintiff had “little insight” into his illness and
17 disability and that he was “unable to work and [was] disabled for work totally
18 and permanently.” Id. In a separate note that was also signed February 5,
19 2014, Dr. Chiong wrote that Plaintiff had “poor insight into his illness [and]
20 thought he could work” and that he was “disabled for work totally and
21 permanently.”⁸ AR 823.

22 On March 13, 2014, Dr. Chiong noted that Plaintiff was nervous and
23 complained of worrying “all the time” and “every day.” AR 822. Dr. Chiong

25 ⁷ This note was dated December 12, 2013, but it was signed on February
26 5, 2014. AR 824.

27 ⁸ This note was dated January 16, 2014, but it was signed on February 5,
28 2014. AR 823.

1 noted that Plaintiff was “better” but was “still depressed over not getting SSI.”
2 Id. Plaintiff heard voices “randomly.” Id. Dr. Chiong noted that Plaintiff had
3 “made up [with] his girlfriend.” Id. He opined that Plaintiff was “disabled for
4 work.” Id.

5 d. The ALJ’s findings

6 With respect to Plaintiff’s mental limitations, the ALJ accepted the
7 opinions of the medical consultants, Drs. Adamo and Williams, finding that
8 their opinions that Plaintiff could perform simple, repetitive, nonpublic tasks
9 were consistent with the objective medical evidence, Dr. Colonna’s opinion,
10 and Plaintiff’s reported activities. AR 29. The ALJ accorded “little weight” to
11 Dr. Chiong’s opinion. AR 30.

12 **3. Discussion**

13 The ALJ provided legally sufficient reasons for discounting Dr. Chiong’s
14 controverted opinion. As an initial matter, the ALJ permissibly discounted the
15 portions of Dr. Chiong’s opinions stating that Plaintiff was disabled and unable
16 to work, finding that those were issues “reserved to the Commissioner of the
17 Social Security Administration.” AR 31; § 416.927(d)(1) (“A statement by a
18 medical source that you are ‘disabled’ or ‘unable to work’ does not mean that
19 we will determine that you are disabled.”).

20 The ALJ also provided specific and legitimate reasons for discounting
21 Dr. Chiong’s opinion that Plaintiff suffered from extreme mental limitations.
22 First, the ALJ found that Dr. Chiong’s findings were “inconsistent with
23 progress notes from longtime treating doctors, which show essentially good
24 response to medication(s) with improved symptoms.” AR 31. Indeed, in
25 August 2011, one of Plaintiff’s treating physicians, Dr. R. Scott Bailey II,
26 noted that Plaintiff had constricted affect and reported auditory hallucinations,
27 but he had good grooming and cooperation; fair eye contact, insight, and
28 judgment; normal speech; “okay” mood; and a linear thought process. AR

1 401. Dr. Bailey noted that Plaintiff had a good response to medication with no
2 adverse effects and a good prognosis. Id. In May 2012, Dr. Bailey noted that
3 Plaintiff's symptoms were "all improved somewhat with medication," with
4 better functioning at home, better communication, and decreased isolative
5 behavior. AR 402. Dr. Bailey noted that Plaintiff had an anxious affect but an
6 "okay" mood; good grooming, eye contact, cooperation, insight, and
7 judgment; normal speech; linear and goal-directed thought process; and no
8 delusions. Id. Plaintiff denied auditory and visual hallucinations. Id. Dr. Bailey
9 noted that Plaintiff had good medication compliance, a good response to
10 medication with no adverse effects, and a good prognosis. Id. In May 2013,
11 Dr. Bailey noted that Plaintiff's mood was irritable but "appropriate" and he
12 had appropriate affect, appearance, behavior, and speech; logical association;
13 intact memory; fair insight; and adequate judgment. AR 495. Plaintiff was
14 oriented and attentive and he did not have any hallucinations or delusions. Id.
15 Dr. Bailey noted that Plaintiff was complying with his medication and did not
16 have any significant side effects. Id. He believed that Plaintiff's prognosis was
17 good. Id.

18 In treatment notes dating from December 2012 to September 2013, Dr.
19 Marta Blesa, who also treated Plaintiff for anxiety and psychiatric issues, AR
20 314, 668, consistently noted that mental-status examinations were negative for
21 anxiety, depression, and psychiatric symptoms and that Plaintiff was oriented
22 with intact memory, normal insight and judgment, and appropriate mood and
23 affect. See AR 679, 687, 689, 696, 698, 717, 719-20, 727, 729, 735, 741, 743,
24 749, 751, 757, 759, 765, 767, 772, 775. And in July 2014, a different doctor in
25 Dr. Chiong's office, Dr. Ju Zhang, noted that Plaintiff's medication had
26 "decreased [his] symptoms and signs" and that Plaintiff had no side effects.
27 AR 820. Dr. Zhang noted that Plaintiff had constricted affect and endorsed
28 intermittent auditory and visual hallucinations that people were "there talking

1 to him,” but he had no delusions, his mood was “fine,” and he was “calm with
2 organized thoughts.” Id. Such lack of support in the record as a whole was a
3 specific and legitimate reason for discounting Dr. Chiang’s opinion.⁹ See
4 Batson v. Commissioner, 359 F.3d 1190, 1195 (9th Cir. 2004) (“[A]n ALJ may
5 discredit treating physicians’ opinions that are conclusory, brief, unsupported
6 by the record as a whole, or by objective medical findings.” (citations
7 omitted)); § 416.927(c)(4) (“Generally, the more consistent an opinion is with
8 the record as a whole, the more weight we will give to that opinion.”).

9 Second, the ALJ permissibly discounted Dr. Chiong’s opinions as based
10 on only “cursory examination[s]” of “dubious thoroughness.” AR 30-31.
11 Indeed, in his December 2013 note, Dr. Chiong stated only that Plaintiff’s
12 mood was stable, his anxiety was “high,” he was paranoid, and he
13 occasionally heard voices calling his name. AR 783. And in his February and
14 March 2014 notes, Dr. Chiong mainly noted only that Plaintiff was nervous
15 and worried, had poor insight into his illness, reported that he heard voices
16 “randomly,” and was “still depressed over not getting SSI.” See AR 822-24.

17
18 ⁹ Plaintiff’s treatment records showing a good response to medication
19 and milder symptoms are consistent with treating psychiatrist Barbara Huynh’s
20 June 2015 mental-impairment opinion, which Plaintiff submitted to the
21 Appeals Council after the ALJ rendered his opinion. See AR 4; Brewes, 682
22 F.3d at 1163. Dr. Huynh listed Plaintiff’s diagnoses as mood disorder,
23 generalized anxiety disorder, and posttraumatic stress disorder. AR 832. On a
24 list of 46 “signs and symptoms,” Dr. Huynh checked only “persistent or
25 generalized anxiety,” AR 833, and on a list of 23 work-related mental
26 functions, Dr. Huynh checked that Plaintiff had a “moderate” limitation in his
27 ability to accept instructions and respond appropriately to criticism, AR 835.
28 She found that Plaintiff had “none-to-mild” limitation—which was defined as
symptoms “do not” or only “rarely” “interfere with ability”—in all other areas.
Id. Dr. Huynh opined that Plaintiff psychiatric condition “should not have
major limitation on his ability to work in a normal work environment w/
normal work pressures w/o special accommodations.” AR 836.

1 Such limited examination findings fail to support Dr. Chiong’s finding that
2 Plaintiff was so debilitated by his mental illness as to have “marked” limitation
3 in every work-related functional area. See Thomas, 278 F.3d at 957 (“The ALJ
4 need not accept the opinion of any physician, including a treating physician, if
5 that opinion is brief, conclusory, and inadequately supported by clinical
6 findings.”); accord Batson, 359 F.3d at 1195.

7 Finally, the ALJ noted that Dr. Chiong provided “little treatment based
8 on the few progress notes of record.” AR 31. This, too, was a permissible
9 reason for discounting Dr. Chiong’s opinion. See § 416.927(c)(2)(i)-(ii) (in
10 assessing treating-physician opinion, ALJ may consider “[l]ength of the
11 treatment relationship and the frequency of examination” and the “[n]ature
12 and extent of the treatment relationship”).

13 Remand is not warranted on this ground.

14 **B. Plaintiff’s Credibility**

15 Plaintiff contends that the ALJ erred in finding that Plaintiff’s subjective
16 complaints were not fully credible. JS at 23-29.

17 **1. Applicable Law**

18 To determine whether a claimant’s testimony about subjective pain or
19 symptoms is credible, an ALJ must engage in a two-step analysis. Lingenfelter
20 v. Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007). “First, the ALJ must
21 determine whether the claimant has presented objective medical evidence of an
22 underlying impairment ‘[that] could reasonably be expected to produce the
23 pain or other symptoms alleged.’” Id. at 1036 (citation omitted). Once a
24 claimant does so, the ALJ “may not reject a claimant’s subjective complaints
25 based solely on a lack of objective medical evidence to fully corroborate the
26 alleged severity of pain.” Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991)
27 (en banc).

28 If the claimant meets the first step and there is no affirmative evidence of

1 malingering, the ALJ must provide specific, clear and convincing reasons for
2 discrediting a claimant's complaints. Robbins v. Soc. Sec. Admin., 466 F.3d
3 880, 883 (9th Cir. 2006) (citing Smolen v. Chater, 80 F.3d 1273, 1283-84 (9th
4 Cir. 1996)). "General findings are insufficient; rather, the ALJ must identify
5 what testimony is not credible and what evidence undermines the claimant's
6 complaints." Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir. 2015) (as
7 amended) (citation omitted). The ALJ may consider, among other factors, a
8 claimant's reputation for truthfulness, inconsistencies either in his testimony or
9 between his testimony and his conduct, unexplained or inadequately explained
10 failure to seek treatment or follow a prescribed course of treatment, his work
11 record, and his daily activities. Light v. Soc. Sec. Admin., 119 F.3d 789, 792
12 (9th Cir. 1997) (as amended); Smolen, 80 F.3d at 1283-84 & n.8. If the ALJ's
13 credibility finding is supported by substantial evidence in the record, the
14 reviewing court "may not engage in second-guessing." Thomas, 278 F.3d at
15 959.

16 **2. Relevant Facts**

17 In an undated disability report, Plaintiff stated that he had been unable
18 to work since September 30, 2011, because of anxiety, "psychological issues,"
19 a learning disorder, hearing voices, "see[ing] things," an "anger problem,"
20 depression, and headaches. AR 206.

21 In a July 2012 function report,¹⁰ Plaintiff wrote that he lived in a house
22 with family, gave his dogs water and sometimes walked them, and needed his
23 mother to remind him to bathe, care for his hair, and shave because he was
24 "forgetful." AR 241-42. Plaintiff also needed reminders to take his medication
25 and go to doctor's appointments. AR 243, 245. He prepared his own meals,
26 which included oatmeal, "T.V. dinners," sandwiches, and cereal. AR 243. He

27 ¹⁰ Some of this report is illegible.
28

1 took the trash out if his legs were “ok” and he did not have a migraine. Id.
2 Plaintiff could drive and he shopped in stores with his mother or girlfriend two
3 or three times a month for medication or personal items. AR 244. He could
4 count change but he could not pay bills or manage a savings or checking
5 account because that was “too much for [him] to handle.” Id. His hobbies
6 included model cars, swimming, watching television, and playing video and
7 computer games. AR 245. He did not spend time with others, and he went to
8 church a “few times a month if [he] fe[lt] well enough on Sunday.” Id. Plaintiff
9 needed someone to accompany him when he went to church. Id.

10 Plaintiff reported that he had trouble getting along with others because
11 he argued “throughout the day.” AR 246. His conditions affected his ability to
12 walk, hear, climb stairs, remember, complete tasks, concentrate, understand,
13 follow directions, and get along with others. Id. He could walk a block or two
14 before needing to rest for 5 or 10 minutes. Id. He could pay attention “not too
15 long.” Id. He did not follow written instructions well because he got “confused
16 easily.” Id. He was better at following spoken instructions but they had to be
17 repeated to him “a few times.” Id. Plaintiff got along with authority figures.
18 AR 247. He did not handle stress or changes in routine well and he had
19 unusual behaviors or fears. Id.

20 At the August 27, 2013 hearing, Plaintiff testified that every day he had
21 “a lot of pain” in his lower back, and that in the morning he would “almost fall
22 down” because his back would give way. AR 45. Lifting and “falling” made
23 his back pain worse and he could not lift more than 40 pounds. AR 45-46.
24 Medication was effective in treating his pain, but it did not completely resolve
25 it. AR 46. Plaintiff stated that his doctors had suggested back surgery but “they
26 try and send us out to so far away” and there was “no way to get out there.”
27 AR 46-47.

28 Plaintiff testified that had “really bad asthma” and got migraines a few

1 times a week, which lasted between a couple hours and all day. AR 48-49. His
2 medication helped him be able to “walk around” and “function somewhat”
3 despite his migraines. AR 49. Plaintiff vomited every morning from anxiety,
4 AR 50, he had anxiety all day, and he played video games to keep himself
5 “side tracked,” AR 51-52. Medication controlled his anxiety a “little bit.” AR
6 54. Given his anxiety, Plaintiff could work for only 10 to 20 minutes before he
7 would “[s]tart freaking out.” AR 55. Plaintiff testified that he also had “anger
8 and depression issues” and that his medication did not help him because he
9 went to a “kid’s place,” the Enki Clinic, that was limited in the medication it
10 could prescribe.¹¹ AR 54-55, 60. Plaintiff also testified that his medication,
11 Seroquel, helped “a lot” in controlling his auditory and visual hallucinations,
12 but he complained that he had “really, really weird . . . reactions” to that
13 medication in that he woke up at 4 a.m. “freaking out, sweating, clothes
14 soaked.” AR 60.

15 When the ALJ asked whether Plaintiff had ever sought treatment at an
16 “adult clinic,” Plaintiff testified that he “would, but they’re all so far away”
17 and that his mother was busy taking care of Plaintiff’s disabled father and
18 brother and could not drive Plaintiff there. AR 55-56. When asked whether
19 Plaintiff had sought treatment at an adult facility when he had had his own
20 car, before his December 2012 car accident, Plaintiff testified that he had not
21 because he “wasn’t on the Social Security thing” and was “just trying to
22 work,” and it was “very stressful” and “uncomfortable” for him to drive to a
23 different clinic. AR 55-58.

24
25 ¹¹ Although Plaintiff testified at the hearing that because the Enki Clinic
26 was a “kid’s place,” his doctor there could provide only certain medications,
27 AR 60, in the joint stipulation, Plaintiff states that the Enki Clinic treated
28 “children and adolescents and severely and persistently mentally ill adults
throughout Los Angeles,” JS at 8 n.3.

1 Plaintiff testified that he had abscesses on his legs that affected his ability
2 to walk, he did not like to sit for very long because it hurt his neck and back,
3 and he had to get up and walk around after sitting for a half hour to an hour.
4 AR 61-62. Plaintiff testified that he spent his time building model cars, helping
5 his mom with “little things” like fixing her bike, and trying to play basketball.
6 AR 62-63. He would lie down three or four hours a day. AR 64. His mom
7 reminded him to brush his teeth. AR 67. He showered every other day. Id.
8 Plaintiff did his own laundry but it made him “stressed out.” AR 66-67. He
9 heard voices throughout the day that sounded like people calling him. AR 67-
10 68. Plaintiff would go to his friend’s house, but it was “kinda rough.” AR 68.
11 He went to the grocery store but stayed in the car because he did not want “to
12 be around all those people.” AR 68-69.

13 3. Discussion

14 The ALJ concluded that Plaintiff’s statements concerning the intensity,
15 persistence, and limiting effects of his symptoms were not credible to the extent
16 they were inconsistent with his RFC for simple, repetitive, nonpublic, and
17 nonhazardous work that could be performed with only “monocular vision.”
18 AR 26-27. As discussed below, the ALJ provided clear and convincing
19 reasons, supported by substantial evidence, for discounting Plaintiff’s
20 credibility.

21 First, the ALJ discounted Plaintiff’s credibility because the 2010 “CDI
22 investigation shows [Plaintiff] as independent in activities of daily living
23 without signs of physical or mental limitations,” AR 27, and no “progress
24 notes or reports from a reliable treating source” showed that Plaintiff’s
25 functioning had thereafter dramatically declined, AR 29. Indeed, CDI
26 investigators noted that Plaintiff had alleged that he “needs reminders to take
27 care of his personal needs/grooming, does not like to go out alone, and rarely
28 drives,” and that he “has difficulty with memory, completing tasks,

1 concentration, understanding, following instructions, and getting along with
2 others.” AR 366-67. But investigators observed Plaintiff drive with a woman
3 about five miles to a strip mall, enter a store, exit about 10 minutes later, and
4 drive away. AR 367. A shopkeeper in Plaintiff’s neighborhood reported that a
5 few times a month, Plaintiff went to a store in his neighborhood with “several
6 individuals about the same age as” Plaintiff and that he bought cigarettes and
7 sweets. AR 367. A neighbor told investigators that Plaintiff drove and cleaned
8 a vehicle, cleaned the yard, and carried objects outside his residence. AR 368.
9 Both the shopkeeper and the neighbor stated that Plaintiff did not appear to
10 have any mental or physical impairment. AR 367-68.

11 Plaintiff told the CDI investigators that he was able to dress, bathe,
12 groom, and feed himself. Id. He drove a car unaccompanied; drove himself to
13 school; shopped at various stores and made purchases with cash; performed
14 some car repairs with assistance, such as replacing the battery and changing
15 the oil; washed and waxed his car; performed household chores such as
16 maintaining his bedroom, helping with laundry, and cleaning up after his dog;
17 operated a computer; and socialized with friends and relatives in public. Id.
18 Plaintiff reported that he usually spent his days playing interactive video
19 games, watching television, and listening to music. Id. He handled his own
20 finances but needed help with some calculations. Id. He could stay home alone
21 and did not require daily care or assistance. Id. The ALJ permissibly relied on
22 the CDI investigators’ findings regarding Plaintiff’s extensive daily activities
23 and lack of mental or physical symptoms to discount Plaintiff’s credibility. See
24 Rothery v. Berryhill, __ F. App’x __, 2017 WL 1089545, at *1 (9th Cir. Mar.
25 23, 2017) (finding that substantial evidence supported ALJ’s credibility
26 assessment in part because CDI Unit “found that [plaintiff] shopped more
27 frequently than he reported in his disability application and that his observed
28 demeanor was inconsistent with someone suffering from [his] claimed

1 symptoms”); Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012) (stating
2 that ALJ may discredit claimant’s testimony when “claimant engages in daily
3 activities inconsistent with the alleged symptoms” (citation omitted)); id. at
4 1113 (stating that even when plaintiff’s “activities suggest some difficulty
5 functioning, they may be grounds for discrediting the [his] testimony to the
6 extent that they contradict claims of a totally debilitating impairment”); cf.
7 Elmore v. Colvin, 617 F. App’x 755, 757 (9th Cir. 2015) (stating that ALJ
8 permissibly relied on evidence related to CDI Unit investigation and noting
9 that “there is nothing nefarious about ensuring that only deserving claimants
10 receive benefits”).

11 Second, the ALJ permissibly discounted Plaintiff’s alleged limitations
12 because they were not supported by the medical evidence. See Burch v.
13 Barnhart, 400 F.3d 676, 681 (9th Cir. 2005) (“Although lack of medical
14 evidence cannot form the sole basis for discounting pain testimony, it is a
15 factor that the ALJ can consider in his credibility analysis.”); Carmickle, 533
16 F.3d at 1161 (“Contradiction with the medical record is a sufficient basis for
17 rejecting the claimant’s subjective testimony.”). The ALJ found that “[w]ith
18 respect to [Plaintiff’s] mental impairments, the longitudinal record shows that
19 [he] is doing well mentally on medications, and his symptoms have improved
20 despite little consistent mental health treatment from a specialist, Dr. Bailey,
21 who appeared to be just monitoring [Plaintiff].” AR 27-28. Indeed, as
22 discussed in Section A.3, Dr. Bailey noted that Plaintiff’s symptoms improved
23 with medication and that Plaintiff no longer suffered from hallucinations. And
24 as also previously discussed, Dr. Blesa similarly noted that Plaintiff’s mental-
25 status examinations were negative for anxiety, depression, and psychiatric
26 symptoms and that Plaintiff was oriented with intact memory, normal insight
27 and judgment, and appropriate mood and affect. Indeed, Plaintiff himself
28 reported to another doctor that his medication “took care of [his]

1 hallucinations.” AR 30, 646 (Plaintiff reporting to doctor after car accident that
2 he was on Seroquel “started with 400 mg and went down to 100 mg which
3 took care of the hallucinations”).

4 The ALJ also found that the treatment for Plaintiff’s physical problems,
5 other than his left-eye condition that had resulted from a car accident, was
6 “routine,” and that nothing substantiated the alleged severity of Plaintiff’s
7 asthma and back pain. AR 28. Indeed, as the ALJ found, nothing shows that
8 Plaintiff required emergency-room treatment or hospitalization for his asthma,
9 and examinations showed that his lungs were usually clear. AR 21-22; see,
10 e.g., 676 (Dr. Blesa finding that examination was negative for cough, dyspnea,
11 and wheezing), 686 (same), 695 (same), 706 (same), 689 (Dr. Blesa noting that
12 lungs were clear and respiratory effort was normal), 708 (same), 702 (Dr. Blesa
13 noting that asthma was “stable”), 724 (Dr. Blesa diagnosing asthma, “Fairly
14 Controlled”). Moreover, Plaintiff testified that he had “a lot” of low-back pain
15 every day and that he would “almost fall down” because his back would give
16 way. AR 45-47. He reported that his doctors had recommended back surgery
17 and that because of his back pain, he could not lift more than 40 pounds. Id.
18 But as the ALJ noted, “the record contains no objective evidence to
19 substantiate the etiology of such complaints other than rare muscle spasms”
20 and no “imaging studies, such as x-rays,” supported “the existence of a back
21 impairment.” AR 23; see also AR 678-79 (Dr. Blesa noting spine tenderness
22 and diagnosing “Backache, unspecified”), 720 (Dr. Blesa diagnosing “[l]ow
23 back pain . . . , [s]table”). Nor does the evidence show that any doctor
24 recommended surgery for Plaintiff’s back condition. Indeed, the ALJ found
25 that Plaintiff’s alleged back pain was not a medically determinable impairment,
26 AR 23, and Plaintiff has not challenged that finding. The ALJ did not err in
27 discounting Plaintiff’s subjective complaints based on the lack of objective
28 evidence supporting them.

1 The ALJ also noted that inconsistencies in Plaintiff’s statements “greatly
2 diminished” his credibility. AR 28-29. For example, Plaintiff stated in a
3 disability report that he had only an 11th-grade education and could not read
4 English or write more than his name. AR 205, 207. But Plaintiff completed an
5 eight-page written function report in connection with this case, AR 29, 241-48
6 (listing Plaintiff’s name as “[n]ame of person completing this form”), and
7 Plaintiff’s later testimony and his high-school records show that he graduated
8 from high school with a regular diploma, AR 29, 44, 426, 428, 430, 432. The
9 ALJ also noted that Plaintiff alleged “significant side effects” from his
10 psychiatric medication, but that was contradicted by Dr. Bailey’s and other
11 doctors’ findings that Plaintiff did not experience any adverse side effects. AR
12 28, 401-02, 495, 819 (Dr. Barbara Huynh’s Oct. 2014 treatment note stating
13 that Plaintiff had “fairly good” response to medication with no side effects),
14 820 (Dr. Zhang’s July 2014 treatment note stating that Plaintiff’s medication
15 was effective and he had no side effects), 832 (Dr. Huynh’s opinion stating that
16 Plaintiff had no side effects from medications); see also AR 403, 418 (Dr.
17 Bailey’s medication order sheets), AR 27-28 (ALJ’s summary of Dr. Bailey’s
18 notes).

19 The ALJ also discounted Plaintiff’s credibility because he had a “poor
20 work history and has never shown any real commitment to work.” AR 29; see
21 Thomas, 278 F.3d at 959 (finding that ALJ permissibly discounted claimant’s
22 credibility when claimant “had an ‘extremely poor work history’ and ‘has
23 shown little propensity to work in her lifetime’”). But as the ALJ also
24 acknowledged, AR 29, Plaintiff testified that he had had many job interviews
25 but no one would hire him, AR 44 (Plaintiff testifying that he had looked for
26 work and had “many, many interviews, but no one wants to hire me”). Thus,
27 this portion of ALJ’s reasoning may not be supported by substantial evidence.
28 But any error was harmless because the ALJ gave other, legally sufficient

1 reasons for discounting Plaintiff's credibility. See Carmickle, 533 F.3d at 1162
2 ("So long as there remains 'substantial evidence supporting the ALJ's
3 conclusions on . . . credibility' and the error 'does not negate the validity of the
4 ALJ's ultimate [credibility] conclusion,' such is deemed harmless and does not
5 warrant reversal." (alterations in original) (citations omitted)).


6 Remand is not warranted.

7 **III.**

8 **CONCLUSION**

9 For the reasons stated above, the decision of the Social Security
10 Commissioner is AFFIRMED and the action is DISMISSED with prejudice.

11
12 Dated: July 28, 2017

13 
14 DOUGLAS F. McCORMICK
15 United States Magistrate Judge
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