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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

KRISTOPHER EMILLE FISHER,	)	Case No. CV 16-2680-JPR
	)	
Plaintiff,	)	
	)	<b>MEMORANDUM DECISION AND ORDER</b>
v.	)	<b>AFFIRMING COMMISSIONER</b>
	)	
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 August 17, 2017, 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 1972. (Administrative Record ("AR")  
3 41.) He completed the 12th grade and has received his high-  
4 school diploma. (Id.) Through 2008, he worked as a bus driver,  
5 sales clerk, grocery clerk, and mail carrier. (AR 169.)

6 On October 30, 2012, Plaintiff filed applications for DIB  
7 and SSI, alleging in each that he had been unable to work since  
8 December 31, 2008 (AR 138, 145), because of depression, loss of  
9 memory, posttraumatic stress disorder, and anxiety (AR 163).

10 After his applications were denied initially (AR 94-95), he  
11 requested a hearing before an Administrative Law Judge (AR 99).  
12 A hearing was held on April 24, 2014, at which Plaintiff, who was  
13 represented by counsel, testified, as did a vocational expert.  
14 (AR 35-69.) In a written decision issued on May 29, 2014, the  
15 ALJ found Plaintiff not disabled. (AR 20-34.) Plaintiff  
16 requested review from the Appeals Council, and on February 3,  
17 2016, it denied review. (AR 1-7.) This action followed.

18 **III. STANDARD OF REVIEW**

19 Under 42 U.S.C. § 405(g), a district court may review the  
20 Commissioner's decision to deny benefits. The ALJ's findings and  
21 decision should be upheld if they are free of legal error and  
22 supported by substantial evidence based on the record as a whole.  
23 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra  
24 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial  
25 evidence means such evidence as a reasonable person might accept  
26 as adequate to support a conclusion. Richardson, 402 U.S. at  
27 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).  
28 It is more than a scintilla but less than a preponderance.

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

#### 10 **IV. THE EVALUATION OF DISABILITY**

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

##### 18 A. The Five-Step Evaluation Process

19 The ALJ follows a five-step sequential evaluation process to  
20 assess whether a claimant is disabled. 20 C.F.R.

21 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,  
22 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first  
23 step, the Commissioner must determine whether the claimant is  
24 currently engaged in substantial gainful activity; if so, the  
25 claimant is not disabled and the claim must be denied.

26 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

27 If the claimant is not engaged in substantial gainful  
28 activity, the second step requires the Commissioner to determine

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

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

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

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

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26 <sup>1</sup> RFC is what a claimant can do despite existing exertional  
27 and nonexertional limitations. §§ 404.1545, 416.945; see Cooper  
28 v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). The  
Commissioner assesses the claimant's RFC between steps three and  
four. Laborin v. Berryhill, \_\_\_F.3d\_\_\_, No. 15-15776, 2017 WL  
3496031, at \*2 (9th Cir. Aug. 16, 2017) (citing § 416.920(a)(4)).

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 31, 2008, the alleged  
8 onset date. (AR 26-27.) At step two, he concluded that  
9 Plaintiff had no physical impairments but had medically  
10 determinable mental ones: depression and PTSD. (AR 27.) Those  
11 impairments were not severe, however. (Id.) Plaintiff's  
12 depression and PTSD produced "only mild limitations" on his  
13 activities of daily living, social functioning, and ability to  
14 maintain concentration, persistence, and pace. (AR 30.) Thus,  
15 the ALJ concluded that Plaintiff was not disabled and did not  
16 proceed to the later steps of the sequential evaluation. (AR 30-  
17 31.)

18 **V. DISCUSSION**

19 Plaintiff argues that the ALJ erred in rejecting the  
20 credibility of his testimony because he failed to articulate  
21 clear and convincing reasons for doing so. (See J. Stip. at 4.)  
22 For the reasons discussed below, the ALJ did not err.<sup>2</sup> Moreover,  
23 Plaintiff does not challenge the ALJ's finding at step two that

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25 <sup>2</sup> This claim is likely forfeited because Plaintiff never  
26 raised it to the Appeals Council. (See AR 216 (challenging only  
27 ALJ's rejection of treating doctor's opinion and his assessment  
28 of RFC)); see also Meanel v. Apfel, 172 F.3d 1111, 1115 (9th Cir.  
1999) (as amended); Shaibi v. Berryhill, \_\_\_F.3d\_\_\_, No. 15-16849,  
2017 WL 3598085, at \*6 (9th Cir. Aug. 22, 2017). Because  
Defendant has not raised waiver, however, the Court considers  
Plaintiff's claim on the merits.

1 his impairments were not severe. That finding mandates the  
2 conclusion that Plaintiff was not disabled. See Baxter v.  
3 Sullivan, 923 F.2d 1391, 1395 (9th Cir. 1991) ("If the impairment  
4 is not severe, the claimant is not disabled."). Because that  
5 finding may have been based in part on the ALJ's rejection of  
6 Plaintiff's symptom testimony, however, the Court construes  
7 Plaintiff's briefing liberally to include a challenge to it.

8 A. Applicable Law

9 An ALJ's assessment of the credibility of a claimant's  
10 allegations concerning the severity of his symptoms is entitled  
11 to "great weight." See Weetman v. Sullivan, 877 F.2d 20, 22 (9th  
12 Cir. 1989) (as amended); Nyman v. Heckler, 779 F.2d 528, 531 (9th  
13 Cir. 1986) (as amended). "[T]he ALJ is not required to believe  
14 every allegation of disabling pain, or else disability benefits  
15 would be available for the asking, a result plainly contrary to  
16 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674 F.3d 1104, 1112  
17 (9th Cir. 2012) (citing Fair v. Bowen, 885 F.2d 597, 603 (9th  
18 Cir. 1989)).

19 In evaluating a claimant's subjective symptom testimony, the  
20 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d  
21 at 1035-36; see also SSR 96-7p, 1996 WL 374186 (July 2, 1996).<sup>3</sup>  
22 "First, the ALJ must determine whether the claimant has presented  
23 objective medical evidence of an underlying impairment [that]  
24 could reasonably be expected to produce the pain or other  
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26 <sup>3</sup> Social Security Ruling 16-3p, 2016 WL 1119029, effective  
27 March 28, 2016, rescinded SSR 96-7p, which provided the framework  
28 for assessing the credibility of a claimant's statements. SSR  
16-3p was not in effect at the time of the ALJ's decision in this  
case, however.

1 symptoms alleged." Lingenfelter, 504 F.3d at 1036. If such  
2 objective medical evidence exists, the ALJ may not reject a  
3 claimant's testimony "simply because there is no showing that the  
4 impairment can reasonably produce the degree of symptom alleged."  
5 Smolen v. Chater, 80 F.3d 1273, 1282 (9th Cir. 1996) (emphasis in  
6 original).

7 If the claimant meets the first test, the ALJ may discredit  
8 the claimant's subjective symptom testimony only if he makes  
9 specific findings that support the conclusion. See Berry v.  
10 Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent a finding or  
11 affirmative evidence of malingering, the ALJ must provide "clear  
12 and convincing" reasons for rejecting the claimant's testimony.  
13 Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir. 2015) (as  
14 amended); Treichler v. Comm'r of Soc. Sec. Admin., 775 F.3d 1090,  
15 1102 (9th Cir. 2014). The ALJ may consider, among other factors,  
16 (1) ordinary techniques of credibility evaluation, such as the  
17 claimant's reputation for lying, prior inconsistent statements,  
18 and other testimony by the claimant that appears less than  
19 candid; (2) unexplained or inadequately explained failure to seek  
20 treatment or to follow a prescribed course of treatment; (3) the  
21 claimant's daily activities; (4) the claimant's work record; and  
22 (5) testimony from physicians and third parties. Rounds v.  
23 Comm'r Soc. Sec. Admin., 807 F.3d 996, 1006 (9th Cir. 2015) (as  
24 amended); Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir.  
25 2002). If the ALJ's credibility finding is supported by  
26 substantial evidence in the record, the reviewing court "may not  
27 engage in second-guessing." Thomas, 278 F.3d at 959.

28

1           B.    Relevant Background

2           Plaintiff has sought and received limited treatment for his  
3 mental impairments. The record contains no psychiatric or  
4 mental-health records from before 2012 even though his disability  
5 allegedly began in December 2008. (AR 138, 145.) In September  
6 2012, Plaintiff received an "adult short assessment" at Augustus  
7 F. Hawkins Mental Health Center. (AR 218-20.) He reported  
8 depressive symptoms, paranoia, and an unspecified childhood  
9 trauma. (Id.) Afterward, he received follow-up medication  
10 support services in December 2012 and January 2013, through which  
11 he was prescribed medication for depression. (AR 222-24.)

12           In March 2013, Plaintiff was assessed at Harbor UCLA Medical  
13 Center, where he again reported suffering from depression. (AR  
14 225-31.) In April 2013, he was interviewed by a Harbor  
15 psychiatrist, who diagnosed him with depression, noting his "flat  
16 affect," "anxiety," and feelings of "sad[ness], poor appetite,  
17 poor sleep/insomnia, [and] pain." (AR 232-38.) But the record  
18 does not contain any later Harbor treatment records except for  
19 consultations for foot and mouth issues. (See AR 301-12 (June  
20 2013 tooth extraction), 279-90 (July 2013 tooth extraction), 291-  
21 300 (Aug. 2013 tooth extraction), 270-78 (same), 265-69 (Apr.  
22 2014 foot sprain).)

23           In June 2013, Plaintiff received a complete psychological  
24 evaluation by the Department of Social Services. (AR 239-44.)  
25 Plaintiff complained of depression, anxiety, and PTSD and  
26 reported that he was sexually molested when he was young, that he  
27 could not keep a job, and that he was uncomfortable being around  
28 "a lot of people." (AR 240.) Plaintiff had never been



1 psychiatrically hospitalized, however. (Id.) He took medication  
2 that "helped" him with his depression and anxiety and indicated  
3 that he was able to "take care of [his grandmother]," "manage his  
4 own funds," and "dress, bathe, shop and do household chores."  
5 (AR 240-41.) He also had friends and "enjoyed" playing video  
6 games "most of the day." (AR 241.)

7 As part of the evaluation, Plaintiff underwent psychometric  
8 testing. (See AR 239.) Though he completed a standardized  
9 questionnaire with "copious notations," he put forth "very little  
10 effort" on the test, "lowering his scores to within the  
11 borderline range." (Id.) The test results were noted to be an  
12 underestimation of his ability. (AR 242.) Plaintiff had  
13 organized, linear thoughts; moderately diminished memory;  
14 moderately diminished attention and concentration; and age-  
15 appropriate insight and judgment, responding "appropriately to  
16 imaginary situations requiring social judgment and knowledge of  
17 the norms." (AR 241.) The evaluation concluded that Plaintiff  
18 likely had dysthymia<sup>4</sup> and personality-disorder dependent traits.  
19 (AR 242.) Despite a "mild inability to understand, remember and  
20 carry out detailed instructions," Plaintiff was found capable of  
21 "interact[ing] appropriately with supervisors, coworkers and  
22 peers," managing his own finances, and making simple "work-  
23 related decisions without special supervision." (AR 243.)

24 At his April 24, 2014 hearing, Plaintiff testified that he  
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26 <sup>4</sup> Dysthymia is a "chronic mood disorder manifested as  
27 depression." Stedman's Medical Dictionary 556 (27th ed. 2000);  
28 see also Types of Depression, PubMed Health, <https://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0072472/> (last updated Jan. 12, 2017) ("chronic depressive disorder").

1 was no longer working because of his mental-health issues. (AR  
2 45.) He testified that he sometimes had suicidal thoughts, did  
3 not like to be around a lot of people, and had trouble sleeping.<sup>5</sup>  
4 (AR 50-52.) He attributed his mental issues to his past abuse  
5 (AR 47) and testified that he intended to speak to his doctor  
6 about future therapy (AR 48). He also testified that he was  
7 living with his father, grandmother, and aunt (AR 42) and that he  
8 fed and bathed his grandmother and drove her to doctor's  
9 appointments after "getting her in the car" and later out (AR  
10 43). In his own words, he provided "a lot [of] assistance" to  
11 his grandmother. (Id.)

12 Plaintiff's Adult Function Report and the Third-Party  
13 Function Report submitted by his sister, both completed on March  
14 7, 2013, indicated that he took care not only of his grandmother  
15 but also his father. (AR 182, 191.) Plaintiff also apparently  
16 cared for his father's dog by himself in exchange for room and  
17 board. (Id.) The function reports stated that he had no problem  
18 with personal care (id.), prepared his own meals daily (AR 183,  
19 192), and regularly went to church (AR 185, 194). His sister  
20 specifically noted that despite his "increased anxiety in public  
21 around strangers," Plaintiff did not "have any problems getting  
22 along with family, friends, neighbors, or others." (AR 195.)

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23  
24 <sup>5</sup> Plaintiff's testimony about his insomnia implied that it  
25 resulted from his depression. (See, e.g., AR 52 (attributing it  
26 to "nightmares" and his "stressful" situation).) But elsewhere  
27 the record shows that it actually occurred because his father,  
28 who was hard of hearing, watched TV "all night" with "very loud  
volume." (AR 191 (sister's function report); see also AR 182  
(Plaintiff acknowledging in Adult Function Report that his father  
"keeps [him] up" at night, the only reason given for poor  
sleep).)

1 C. Analysis

2 The ALJ found that Plaintiff did not have a "severe mental  
3 impairment" in part because his allegations regarding the  
4 severity of his symptoms and his functional limitations were not  
5 fully credible. (AR 29-30.) Plaintiff argues that the ALJ  
6 failed to give clear and convincing reasons to support his  
7 credibility assessment. (J. Stip. at 4.) As discussed below,  
8 the ALJ's credibility assessment was based on specific, clear and  
9 convincing findings that Plaintiff's allegations were (1)  
10 unsupported by his medical records and (2) inconsistent with his  
11 daily activities.<sup>6</sup> (AR 29.) Accordingly, the ALJ did not err.

12 First, the ALJ correctly noted that Plaintiff not only had  
13 "very scarce" medical records (AR 28) but also "no treating  
14 record . . . showing any sustained course of psychiatric  
15 treatment" (AR 29). The ALJ, in great detail, evaluated  
16 Plaintiff's medical records, which established that his  
17 impairments were not severe. (See AR 27-30.) Plaintiff had only  
18 a few psychiatric assessments, with generally mild diagnoses  
19 therein, and lacked substantiating treatment records. (See id.)  
20 The ALJ in particular relied on the conclusions of Dr. Barbara  
21 Moura, a consulting psychologist who reviewed Plaintiff's medical

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22  
23 <sup>6</sup> Plaintiff initially argues that the ALJ used "oft rejected  
24 boilerplate language" to dismiss his testimony. (J. Stip. at 6-  
25 7.) Indeed, use of boilerplate language is disfavored, see  
26 Laborin v. Berryhill, \_\_F.3d\_\_, No. 15-15776, 2017 WL 3496031, at  
27 \*3 (9th Cir. Aug. 16, 2017), and the ALJ arguably used some (see,  
28 e.g., AR 29). But the ALJ specifically identified the testimony  
he found not credible and then provided several reasons  
supporting the finding. Thus, any use of boilerplate language  
was harmless. See Laborin, 2017 WL 3496031, at \*3  
("[B]oilerplate language is not, by itself, reversible error and  
can be harmless.").

1 records and found his mental impairments to be mild. (AR 30.)  
2 Plaintiff has not challenged the ALJ's finding that Dr. Moura's  
3 opinion was entitled to "significant weight." (Id.) And Dr.  
4 Moura concluded that Plaintiff's depression was "currently  
5 nonsevere" given the lack of significant longitudinal history,  
6 his mild affective symptoms, and the poor effort he displayed in  
7 his psychological testing.<sup>7</sup> (AR 89.) She recounted Plaintiff's  
8 or his sister's statements that he had "no problem" with personal  
9 care, preparing meals, shopping in stores and by computer,  
10 counting change and handling bank accounts, and spending time at  
11 church with others. (See AR 87 (apparently referring to AR 182-  
12 86, 191-95).) Thus, to the extent that Plaintiff alleges his  
13 depression and PTSD reach disability-level severity, such  
14 allegations are not corroborated by his medical records.

15 Further, the ALJ properly found that Plaintiff had no  
16 sustained treatment. Tommasetti v. Astrue, 533 F.3d 1035, 1039  
17 (9th Cir. 2008) (ALJ may discount claimant's testimony in light  
18 of "unexplained or inadequately explained failure to seek  
19 \_\_\_\_\_

20 <sup>7</sup> The ALJ specifically noted that Plaintiff "put forth very  
21 little effort" on his June 2013 psychometric test, which  
22 artificially lowered his scores to within a borderline range of  
23 functionality. (AR 29; see AR 239, 242.) Though not explicitly  
24 tied to the assessment of Plaintiff's credibility, the finding  
25 relates to the consistency between Plaintiff's medical records  
26 and his testimony regarding his symptoms. Plaintiff's poor  
27 effort on his psychometric test was itself a legally sufficient  
28 and factually supported reason for discounting the credibility of  
his statements. See Thomas, 278 F.3d at 959 (ALJ properly  
considered claimant's "self-limiting behaviors" and "efforts to  
impede accurate testing" during two physical-capacity  
evaluations); Tonapetyan v. Halter, 242 F.3d 1144, 1148 (9th Cir.  
2001) (ALJ properly considered claimant's poor effort during  
consulting examinations in discounting her statements'  
credibility).

1 treatment or to follow a prescribed course of treatment"); see  
2 also Orn v. Astrue, 495 F.3d 625, 638 (9th Cir. 2007). The  
3 record indicates only that Plaintiff is on depression medication  
4 and may have attended psychotherapy sessions since 2013 that have  
5 been "minimally helpful." (AR 29.) Moreover, though Plaintiff  
6 appears to have suffered mental issues since childhood, no record  
7 of treatment seems to exist from before 2012, let alone from the  
8 time of the alleged disability onset date, December 31, 2008.  
9 Thus, substantial evidence supports the ALJ's finding that  
10 Plaintiff's testimony was not credible, and hence that his  
11 symptoms were not severe, in part because the lack of treatment  
12 records so indicates. See Carmickle v. Comm'r, Soc. Sec. Admin.,  
13 533 F.3d 1155, 1161 (9th Cir. 2008) ("Contradiction with the  
14 medical record is a sufficient basis for rejecting the claimant's  
15 subjective testimony."); Burch v. Barnhart, 400 F.3d 676, 681  
16 (9th Cir. 2005) ("Although lack of medical evidence cannot form  
17 the sole basis for discounting pain testimony, it is a factor  
18 that the ALJ can consider in his credibility analysis."). The  
19 ALJ therefore properly found that Plaintiff's testimony  
20 concerning his symptoms was undermined by the lack of medical  
21 evidence to support it. See Womeldorf v. Berryhill, 685 F. App'x  
22 620, 621 (9th Cir. 2017) ("[The ALJ] properly discounted  
23 [Plaintiff's] severity claims by pointing to . . . the nature of  
24 the medical evidence itself.").

25 Plaintiff argues that the ALJ's reliance on his lack of  
26 mental-health treatment was inappropriate because "it is a  
27 questionable practice to chastise one with a mental impairment  
28 for the exercise of poor judgment in seeking rehabilitation."

1 (J. Stip. at 10 (quoting Nguyen v. Chater, 100 F.3d 1462, 1465  
2 (9th Cir. 1996).) Nguyen, however, is distinguishable. It  
3 involved an ALJ who discredited a psychologist's diagnosis of  
4 depression based on the lack of a treatment record, whereas here  
5 the ALJ relied on Plaintiff's lack of treatment records to  
6 discredit his claims as to the severity of his symptoms.  
7 Moreover, even once Plaintiff apparently sought treatment in  
8 2012, it was minimal. The ALJ concluded that Plaintiff was  
9 mentally impaired by depression but reasonably found that the  
10 impairment did not meet the degree of functional limitation  
11 claimed. Thus, without treatment records to indicate otherwise,  
12 and with the only functional assessments in the record showing  
13 mostly mild findings, the substantial weight of the evidence  
14 supports the ALJ's finding that Plaintiff's depression produced  
15 only mild limitations. See Judge v. Astrue, No. CV 09-4743-PJW,  
16 2010 WL 3245813, at \*4 (C.D. Cal. Aug. 16, 2010) ("[The  
17 claimant's] failure to get treatment after 1997 seems more a  
18 function of the fact that she did not need it, as opposed to her  
19 inability to comprehend that she needed it.").

20 Second, the ALJ properly found that Plaintiff's activities  
21 of daily living were inconsistent with his claims of functional  
22 limitation. (AR 29-30.) An ALJ may properly discount the  
23 credibility of a plaintiff's subjective symptom statements when  
24 they are inconsistent with his daily activities. See Molina, 674  
25 F.3d at 1112. "Even where those [daily] activities suggest some  
26 difficulty functioning, they may be grounds for discrediting the  
27 claimant's testimony to the extent that they contradict claims of  
28 a totally debilitating impairment." Id. at 1113.

1 To the extent Plaintiff's symptom statements focused on his  
2 alleged inability to be around other people, substantial evidence  
3 in the record suggests otherwise. Plaintiff testified that he  
4 did not "like [being] around a lot of . . . people" (AR 51) and  
5 was "very [cautious] of others" (AR 187). But both Plaintiff and  
6 his sister said he was able to go out and shop, attend church and  
7 church outings, and apparently get along well with "family,  
8 friends, neighbors, and others" (AR 184-86, 193-94), suggesting  
9 that he was indeed able to be around people and function  
10 effectively. His June 2013 psychological evaluation similarly  
11 concluded that he was capable of interacting "appropriately with  
12 supervisors, coworkers and peers." (AR 243.) Thus, despite  
13 Plaintiff's statements of being anxious around others,  
14 substantial evidence in the record regarding his activities of  
15 daily living supports the ALJ's finding that such statements  
16 lacked credibility. See Womeldorf, 685 F. App'x at 621  
17 (upholding ALJ's discounting of plaintiff's credibility in part  
18 because his activities of daily living "were not entirely  
19 consistent with his claimed inability to engage in social  
20 interactions").

21 Plaintiff also claimed that he was unable to work because of  
22 his "lack of productivity" (AR 44), which was in part because of  
23 his "passive attitude" and lack of motivation (AR 45; see AR 51).  
24 But this claim, too, lacked credibility given the record as a  
25 whole. Plaintiff testified that he was able to care for his  
26 grandmother and provide "a lot [of] assistance," apparently on an  
27 on-call basis. (AR 43.) He fed, bathed, and drove her to  
28 doctor's appointments, getting her in and out of the car. (Id.)

1 He also took care of his father and his father's dog in exchange  
2 for room and board. (AR 182, 191.) Plaintiff prepared his own  
3 meals every day, shopped in stores and by computer, handled  
4 money, played video games, and went to church. (AR 182-86, 191-  
5 95.) These daily tasks are inconsistent with Plaintiff's  
6 allegations that he was unable to be productive.

7 Plaintiff argues that despite his ability to help his  
8 grandmother, his activity is "far short of what is needed to  
9 demonstrate the capacity to perform work activity on a sustained  
10 basis." (J. Stip. at 11.) "[I]f a claimant engages in numerous  
11 daily activities involving skills that could be transferred to  
12 the workplace, the ALJ may discredit the claimant's allegations  
13 upon making specific findings relating to those activities."

14 Burch, 400 F.3d at 681. While the ALJ could have explained his  
15 findings more fully, as discussed above, they were sufficient.

16 But even had the ALJ erred in his credibility determination,  
17 the error was likely harmless. See Stout v. Comm'r, Soc. Sec.  
18 Admin., 454 F.3d 1050, 1055 (9th Cir. 2006) (nonprejudicial or  
19 irrelevant mistakes harmless). The VE testified that a person  
20 with "moderate limitation in dealing with co-workers,  
21 supervisors, and the general public" and "moderate limitation in  
22 attention[ and] concentration" – the most severe functional  
23 limitations appearing anywhere in the record – could perform jobs  
24 available in the economy. (AR 67-68.) Counsel did not challenge  
25 that testimony. Because the testimony took into account  
26 Plaintiff's alleged limitations and concluded he would  
27 nonetheless be able to work, any error in the ALJ's credibility  
28 determination was likely harmless. See Tommasetti, 533 F.3d at



1 1038 (9th Cir. 2008) (error is harmless when it is  
2 "inconsequential to the ultimate nondisability determination");  
3 cf. Heston v. Comm'r of Soc. Sec., 245 F.3d 528, 536 (6th Cir.  
4 2001) (finding error harmless when ALJ did not discuss opinion of  
5 treating physician but VE took relevant limitations into  
6 consideration anyway).

7 For all these reasons, Plaintiff is not entitled to relief.

8 **VI. CONCLUSION**

9 Consistent with the foregoing and under sentence four of 42  
10 U.S.C. § 405(g),<sup>8</sup> IT IS ORDERED that judgment be entered  
11 AFFIRMING the Commissioner's decision, DENYING Plaintiff's  
12 request for remand, and DISMISSING this action with prejudice.

13  
14 DATED: September 5, 2017\_\_\_\_\_



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