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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

OTTO R. GUTIERREZ, JR.,)	Case No. CV 16-6957-JPR
)	
Plaintiff,)	
)	MEMORANDUM DECISION AND ORDER
v.)	AFFIRMING COMMISSIONER
)	
NANCY A. BERRYHILL, Acting)	
Commissioner of Social)	
Security, ¹)	
)	
Defendant.)	
)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying his application for supplemental security income benefits ("SSI"). The parties consented to the jurisdiction of a U.S. Magistrate Judge under 28 U.S.C. § 636(c). The matter is before the Court on the parties' Joint Stipulation, filed July 3, 2017, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner's decision is

¹ Nancy A. Berryhill is substituted in as the correct Defendant.

1 affirmed.

2 **II. BACKGROUND**

3 Plaintiff was born in 1990. (Administrative Record ("AR")
4 138.) He completed high school and attended Cerritos Community
5 College. (AR 69, 285, 528.) He has never worked. (AR 75, 174.)

6 On January 29, 2013, Plaintiff filed an application for SSI,
7 alleging that he had been unable to work since June 24, 2008 (AR
8 66, 138), because of Asperger's disorder, speech disorder,
9 anxiety disorder, allergies, asthma, and insomnia (AR 66). After
10 his application was denied (AR 82-86), he requested a hearing
11 before an Administrative Law Judge (AR 87-89). A hearing was
12 held on November 13, 2014, at which Plaintiff testified, as did
13 Plaintiff's mother and a vocational expert.² (AR 38-59.) In a
14 written decision issued March 6, 2015, the ALJ found Plaintiff
15 not disabled. (AR 26-34.) Plaintiff requested review, which the
16 Appeals Council denied on August 5, 2016. (AR 1-4.) This action
17 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
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26 ² Plaintiff was not represented at the November 13, 2014
27 hearing (AR 40), but he retained counsel several months before
28 the ALJ issued his decision (AR 135-37) and was represented
during the Appeals Council proceedings (AR 198-200).

1 evidence means such evidence as a reasonable person might accept
2 as adequate to support a conclusion. Richardson, 402 U.S. at
3 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).
4 It is more than a scintilla but less than a preponderance.
5 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
6 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
7 substantial evidence supports a finding, the reviewing court
8 "must review the administrative record as a whole, weighing both
9 the evidence that supports and the evidence that detracts from
10 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
11 720 (9th Cir. 1998). "If the evidence can reasonably support
12 either affirming or reversing," the reviewing court "may not
13 substitute its judgment" for the Commissioner's. Id. at 720-21.

14 **IV. THE EVALUATION OF DISABILITY**

15 People are "disabled" for purposes of receiving Social
16 Security benefits if they are unable to engage in any substantial
17 gainful activity owing to a physical or mental impairment that is
18 expected to result in death or has lasted, or is expected to
19 last, for a continuous period of at least 12 months. 42 U.S.C.
20 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
21 1992).

22 A. The Five-Step Evaluation Process

23 The ALJ follows a five-step sequential evaluation process to
24 assess whether a claimant is disabled. 20 C.F.R.
25 § 416.920(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir.
26 1995) (as amended Apr. 9, 1996). In the first step, the
27 Commissioner must determine whether the claimant is currently
28 engaged in substantial gainful activity; if so, the claimant is

1 not disabled and the claim must be denied. § 416.920(a)(4)(i).

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

8 If the claimant has a "severe" impairment or combination of
9 impairments, the third step requires the Commissioner to
10 determine whether the impairment or combination of impairments
11 meets or equals an impairment in the Listing of Impairments
12 ("Listing") set forth at 20 C.F.R. part 404, subpart P, appendix
13 1; if so, disability is conclusively presumed.

14 § 416.920(a)(4)(iii).

15 If the claimant's impairment or combination of impairments
16 does not meet or equal an impairment in the Listing, the fourth
17 step requires the Commissioner to determine whether the claimant
18 has sufficient residual functional capacity ("RFC")³ to perform
19 his past work; if so, he is not disabled and the claim must be
20 denied. § 416.920(a)(4)(iv). The claimant has the burden of
21 proving he is unable to perform past relevant work. Drouin, 966
22 F.2d at 1257. If the claimant meets that burden, a prima facie
23 case of disability is established. Id. If that happens or if

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25 ³ RFC is what a claimant can do despite existing exertional
26 and nonexertional limitations. § 416.945; see Cooper v.
27 Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). The
28 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 the claimant has no past relevant work, the Commissioner then
2 bears the burden of establishing that the claimant is not
3 disabled because he can perform other substantial gainful work
4 available in the national economy. § 416.920(a)(4)(v); Drouin,
5 966 F.2d at 1257. That determination comprises the fifth and
6 final step in the sequential analysis. § 416.920(a)(4)(v);
7 Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

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

9 At step one, the ALJ found that Plaintiff had not engaged in
10 substantial gainful activity since January 29, 2013, the
11 application date. (AR 28.) At step two, he concluded that
12 Plaintiff had severe impairments of "paranoid schizophrenia and
13 Asperger's syndrome." (Id.) At step three, he determined that
14 Plaintiff's impairments did not meet or equal a listing. (AR
15 29.)

16 At step four, the ALJ found that Plaintiff had the RFC to
17 perform all physical work at all exertional levels but with the
18 following nonexertional limitations: he "can understand and
19 remember tasks; can sustain concentration and persistence; can
20 adapt to workplace changes frequently enough to perform
21 unskilled, low stress jobs that require simple instructions; and
22 should have no job requiring interaction with the general
23 public." (AR 30.) Plaintiff had no past relevant work for the
24 ALJ to evaluate against this RFC. (AR 32.) Based on the VE's
25 testimony, he found that Plaintiff could perform jobs existing in
26 significant numbers in the national economy. (AR 33.)
27 Accordingly, he found Plaintiff not disabled. (AR 33-34.)

1 **V. DISCUSSION**

2 Plaintiff alleges that the ALJ erred in (1) assessing the
3 medical evidence (J. Stip. at 3-5, 7-8, 14) and (2) evaluating
4 his credibility (id. at 15-16, 21-22).⁴ Remand is not warranted
5 on either basis.

6 A. The ALJ Did Not Err in Assessing the Medical Evidence

7 Plaintiff contends that his "impairments were more severe
8 than are reflected in the ALJ's decision." (Id. at 8.) He
9 argues that the ALJ did not recognize that his symptoms were
10 getting worse over the course of 2014 and that the ALJ's analysis
11 of his GAF scores was misguided. (Id. at 8, 14.) For the
12 reasons discussed below, remand is not warranted on this basis.

13 1. Applicable law

14 Three types of physicians may offer opinions in Social
15 Security cases: (1) those who directly treated the plaintiff, (2)
16 those who examined but did not treat the plaintiff, and (3) those
17 who did neither. Lester, 81 F.3d at 830. A treating physician's
18 opinion is generally entitled to more weight than that of an
19 examining physician, and an examining physician's opinion is
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21 ⁴ For convenience and other reasons, the Court has combined
22 the parties' three disputed issues into two. Plaintiff also
23 contends that the "record was inadequate because it was missing
24 approximately one year of treatment notes." (J. Stip. at 7.)
25 Any error in this regard was harmless. Though the additional
26 medical evidence was not considered by the ALJ, Plaintiff
27 submitted it to the Appeals Council. (AR 6.) It "considered
28 . . . the additional evidence" and "found that [the] information
[did] not provide a basis for changing the [ALJ's] decision."
(AR 2.) As such, the evidence is part of the record, see Brewes
v. Astrue, 682 F.3d 1157, 1163 (9th Cir. 2012), and the only
question is whether the ALJ's decision was correct in light of it
and the rest of the medical evidence.

1 generally entitled to more weight than that of a nonexamining
2 physician. Id.

3 This is true because treating physicians are employed to
4 cure and have a greater opportunity to know and observe the
5 claimant. Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996).
6 If a treating physician's opinion is well supported by medically
7 acceptable clinical and laboratory diagnostic techniques and is
8 not inconsistent with the other substantial evidence in the
9 record, it should be given controlling weight. § 416.927(c)(2).⁵
10 If a treating physician's opinion is not given controlling
11 weight, its weight is determined by length of the treatment
12 relationship, frequency of examination, nature and extent of the
13 treatment relationship, amount of evidence supporting the
14 opinion, consistency with the record as a whole, the doctor's
15 area of specialization, and other factors. § 416.927(c)(2)-(6).

16 When a treating or examining physician's opinion is not
17 contradicted by other evidence in the record, it may be rejected
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20 ⁵ Social Security regulations regarding the evaluation of
21 opinion evidence were amended effective March 27, 2017. When, as
22 here, the ALJ's decision is the final decision of the
23 Commissioner, the reviewing court generally applies the law in
24 effect at the time of the ALJ's decision. See Lowry v. Astrue,
25 474 F. App'x 801, 804 n.2 (2d Cir. 2012) (applying version of
26 regulation in effect at time of ALJ's decision despite subsequent
27 amendment); Garrett ex rel. Moore v. Barnhart, 366 F.3d 643, 647
28 (8th Cir. 2004) ("We apply the rules that were in effect at the
time the Commissioner's decision became final."); Spencer v.
Colvin, No. 3:15-CV-05925-DWC, 2016 WL 7046848, at *9 n.4 (W.D.
Wash. Dec. 1, 2016) ("42 U.S.C. § 405 does not contain any
express authorization from Congress allowing the Commissioner to
engage in retroactive rulemaking"). Accordingly, citations to 20
C.F.R. § 416.927 are to the version in effect from August 24,
2012, to March 26, 2017.

1 only for "clear and convincing" reasons. See Carmickle v.
2 Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008)
3 (quoting Lester, 81 F.3d at 830-31). When it is contradicted,
4 the ALJ must provide only "specific and legitimate reasons" for
5 discounting it. Id. (quoting Lester, 81 F.3d at 830-31). The
6 weight given an examining physician's opinion, moreover, depends
7 on whether it is consistent with the record and accompanied by
8 adequate explanation, among other things. § 416.927(c)(3)-(6).
9 These factors also determine the weight afforded the opinions of
10 nonexamining physicians. § 416.927(e).

11 The ALJ's findings and decision should be upheld if they are
12 free of legal error and supported by substantial evidence based
13 on the record as a whole. See 42 U.S.C. § 405(g); Richardson,
14 402 U.S. at 401; Parra, 481 F.3d at 746. The ALJ must consider
15 all the medical opinions "together with the rest of the relevant
16 evidence." 20 C.F.R. § 416.927(b). If the "'evidence is
17 susceptible to more than one rational interpretation,' the ALJ's
18 decision should be upheld." Ryan v. Comm'r of Soc. Sec., 528
19 F.3d 1194, 1198 (9th Cir. 2008) (citation omitted).

20 2. Relevant facts

21 To support his application for SSI, Plaintiff provided
22 almost six years of clinical records (see AR 224) and almost four
23 years of treatment notes from various doctors at Kaiser
24 Permanente (see AR 280-471, 541-53). These included treatment
25 notes from 12 visits with Dr. Oscar Estrada, Plaintiff's treating
26 psychiatrist, through January 21, 2014. (AR 335, 428, 447, 454,
27 461, 483, 489, 491, 495, 497, 499, 505.) The ALJ held the record
28 open for 30 days after Plaintiff's hearing to allow him to obtain

1 and submit an evaluation from Dr. Estrada regarding his mental
2 condition as it applied to his ability to work. (AR 53-55, 57-
3 58.) Despite obtaining counsel shortly after the hearing – and
4 three months before the ALJ issued his decision – Plaintiff never
5 submitted an evaluation by Dr. Estrada or any additional
6 treatment notes from him to the ALJ.

7 To supplement the record, the ALJ ordered a psychological
8 consultative examination (AR 63), which was completed on June 25,
9 2014, by Dr. Kara Cross (AR 527-31). Dr. Cross assigned
10 Plaintiff a global assessment of functioning ("GAF") score of
11 52.⁶ (AR 530.) She found that Plaintiff had no significant
12 limitations in understanding and following simple tasks for an
13 eight-hour day and 40-hour workweek as long as he was not under
14 any time pressure and wasn't working with the public; he had
15 moderate limitations in performing complex tasks for long hours
16 and interacting properly with peer supervisors and the public.
17 (AR 530.)

18 Plaintiff began treatment with Dr. Estrada in December 2010.
19 (AR 335.) He "report[ed] experiencing depressive and anxiety
20 [symptoms, including] insomnia, variable appetite, irritability
21 and sadness." (AR 336.) Dr. Estrada assigned him a GAF score of
22 55. (AR 337.) In August 2012, Plaintiff complained of similar
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26 ⁶ GAF scores assess a person's overall psychological
27 functioning on a scale of 1 to 100. See Diagnostic and
28 Statistical Manual of Mental Disorders 32 (revised 4th ed. 2000).
A GAF score of 51 to 60 indicates moderate symptoms or difficulty
in social, occupational, or school functioning. See id.

1 symptoms and was also experiencing "polyphagia,⁷ fear of being
2 alone, [and] excessive worry"; he said he "ha[d] become isolated,
3 irritable and verbally aggressive." (AR 429.) Dr. Estrada
4 observed that Plaintiff's attitude was "uncooperative, defensive
5 and somewhat hostile," his mood was "sad and irritable," and his
6 affect was "blunted." (Id.) Plaintiff was "[n]on-compliant with
7 medication" (id.), and his GAF score was 45 (AR 430).⁸

8 By January 2013, after Plaintiff became "compliant with
9 medication," he reported that "[h]is mood [had] improved [and he
10 was] experiencing less tantrums and irritability." (AR 455.)
11 Dr. Estrada noted that his attitude was "cooperative" though his
12 mood was "anxious." (Id.) Throughout 2013, Plaintiff's
13 treatment notes show, he was "overall stable and open to
14 medication for depression and anxiety" (AR 491 (May 21, 2013)),
15 "moderate[ly] improv[ing] . . . since he restarted his
16 medication" (AR 495 (July 19, 2013)), "not explosive anymore and
17 . . . less anxious" (AR 497 (Aug. 25, 2013)), and not
18 experiencing "any psychiatric" symptoms" (AR 499 (Oct. 22,
19 2013)). Dr. Estrada's treatment notes stop recording Plaintiff's
20 GAF scores after July 2013, when he assigned him a score of 50.
21 (See AR 496.) In January 2014, Plaintiff reported "episodes of
22 rage and aggressive behavior" as well as "increasing anxiety,
23 insomnia and irritability." (AR 505.) Nonetheless, Dr. Estrada
24 recorded that there were "no major changes since [Plaintiff's]

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26 ⁷ Polyphagia is the medical term for excessive eating.
Stedman's Medical Dictionary 1424 (27th ed. 2000).

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28 ⁸ A GAF score of 41 to 50 indicates "serious symptoms." See
DSM-IV 32.

1 last visit," his attitude was "cooperative," and he was "stable."
2 (AR 505-06.)

3 The treatment notes Plaintiff submitted with his appeal
4 spanned four visits with Dr. Estrada, from January 21, 2014,
5 through January 7, 2015. (AR 5, 542-53.) The records from one
6 of those visits, in January 2014, were before the ALJ (see 505-
7 06, 542-44), so the additional evidence represents treatment
8 notes from three doctor's visits (see AR 545-47 (Apr. 2014), 548-
9 50 (June 2014), 551-53 (Jan. 2015)). In April 2014, Plaintiff
10 was "cooperative, [though] initially agitated." (AR 546.) He
11 reported symptoms of "insomnia, irritability, excessive worry and
12 agitation." (Id.) Dr. Estrada noted that Plaintiff was "stable
13 for outpatient treatment" though "non-compliant with medication."
14 (Id.) By June 2014, Plaintiff reported similar symptoms, was
15 "stable," and was "compliant with medication." (AR 549.)
16 Treatment notes show that his "stressors" included his SSI appeal
17 and his brother's wedding. (Id.) Finally, in January 2015,
18 Plaintiff was "cooperative" though "very upset because [his] SSI
19 [had been] denied for the 3rd time." (AR 552.) He was still
20 "stable" and "compliant with medication." (AR 553.)

21 3. Analysis

22 Plaintiff claims the ALJ erred in evaluating "the severity
23 of [his] symptoms." (J. Stip. at 14.) He relies on the
24 allegedly worsening symptoms shown in the evidence he submitted
25 with his appeal and on the supposed ambiguity noted by the ALJ in
26 his GAF scores. (Id. at 8, 14.)

27 Although Plaintiff implies that the ALJ did not give enough
28 weight to Dr. Estrada's opinion (see id. at 7-8 (citing law

1 regarding rejecting treating physician's opinion but not
2 explicitly raising issue)), the ALJ in fact relied on Dr.
3 Estrada's treatment notes (see, e.g., AR 31), as well as Dr.
4 Cross's psychological evaluation (see AR 527-31),⁹ in assessing
5 Plaintiff's mental impairments, and substantial evidence supports
6 the ALJ's decision.

7 Dr. Estrada's four years of treatment notes – including
8 those submitted for the first time to the Appeals Council – show
9 that Plaintiff was stabilizing over time and that his enduring
10 symptoms were managed through medication. See Presley-Carrillo
11 v. Berryhill, __ F. App'x __, No. 15-17286, 2017 WL 2839505, at
12 *2 (9th Cir. July 3, 2017) (holding ALJ's discounting of
13 claimant's testimony supported by substantial evidence when
14 treatment notes indicated treatment rendered her mentally
15 stable); § 416.929 (allowing ALJ to consider effectiveness of
16 treatment as factor in determining severity of claimant's
17 symptoms). His new medical evidence – made up of three meetings
18 with Dr. Estrada over the course of 2014 – provides further
19 support for the ALJ's finding that although Plaintiff had severe
20 mental impairments "impos[ing] more than a minimal effect on
21 [his] ability to perform basic work activities" (AR 28),
22 "treatment [had] been generally successful in controlling those
23 symptoms" (AR 31). Plaintiff argues that Dr. Estrada's notes
24 from 2014 show that his symptoms were worsening. (J. Stip. at
25 8.) He cites treatment notes from January 2014 to show that he

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28 ⁹ The ALJ gave "great weight" to Dr. Cross's opinion (AR 32), which Plaintiff has not challenged.

1 "continued having episodes of rage and aggressive behavior"
2 (id.), but Dr. Estrada also noted at the time that he was "stable
3 [though] having problems coping with stress" (AR 543). He refers
4 to Dr. Estrada's observance of possible "paranoid delusions" in
5 April 2014 (J. Stip. at 8), but at that time his attitude was
6 "cooperative" and his thought process was "coherent" (AR 546).
7 Moreover, the "[p]ossibly paranoid [d]elusions" correlated with
8 Plaintiff's "non-complian[ce] with medication." (Id.) Dr.
9 Estrada's treatment notes for June 2014 reveal that secondary
10 stressors, such as his SSI case and his brother's wedding,
11 contributed to Plaintiff's anxiety, as they might with anyone.
12 (See AR 549.) Moreover, at about the same time as his June 2014
13 appointment with Dr. Estrada, Dr. Cross found that Plaintiff had
14 only a few moderate limitations (AR 530), which the ALJ accepted
15 and incorporated into the RFC and which Plaintiff has not
16 challenged. Finally, in January 2015, despite exhibiting
17 continued anxiety regarding his SSI denial, Plaintiff was
18 "compliant with medication" and "stable for outpatient
19 treatment." (AR 553.)

20 Nothing requires a claimant to be entirely free of symptoms
21 in order to work. See Fair v. Bowen, 885 F.2d 597, 603 (9th Cir.
22 1989) (noting that disability benefits are intended for "people
23 who are unable to work; awarding benefits in cases of
24 nondisabling pain would expand the class of recipients far beyond
25 that contemplated in the statute"). The ALJ properly assessed
26 Plaintiff's limitations and incorporated them into the RFC, see
27 Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1173-74 (9th Cir.
28 2008) (moderate limitations accounted for by restriction in RFC

1 to "simple, routine, repetitive tasks"), and Dr. Estrada's few
2 later treatment notes were consistent with those findings.

3 Plaintiff's claim about the ALJ's analysis of his GAF scores
4 is similarly unconvincing. The ALJ did not ultimately place much
5 weight on them, noting that the scores "were only a snapshot in
6 time." (AR 31.) Moreover, Plaintiff's fluctuating GAF score was
7 unreliable as an "indication of his overall mental health over a
8 twelve month period" (id.), especially as Dr. Estrada stopped
9 recording the score around the time Plaintiff once again became
10 stable and compliant with medication. Further, to the extent
11 Plaintiff contends his scores show that his condition was
12 serious, his most recent GAF assessment, a score of 52, was
13 completed by Dr. Cross in June 2014 (AR 530) and indicates only
14 moderate symptoms or difficulty in social, occupational, or
15 school functioning, see Diagnostic and Statistical Manual of
16 Mental Disorders 32 (revised 4th ed. 2000). Plaintiff takes
17 issue with the ALJ's statement that a "score of 50 is very close
18 to a finding of moderate symptoms" when in fact the score
19 indicates "serious" symptoms. (J. Stip. at 8 (citing AR 31).)
20 But his most recent GAF score was 52, squarely in the "moderate"
21 range, where the majority of his scores fell. In any case, the
22 Commissioner has declined to endorse GAF scores, Revised Medical
23 Criteria for Evaluating Mental Disorders and Traumatic Brain
24 Injury, 65 Fed. Reg. 50764-65 (Aug. 21, 2000) (codified at 20
25 C.F.R. pt. 404) (GAF score "does not have a direct correlation to
26 the severity requirements in our mental disorders listings"), and
27 the most recent edition of the DSM "dropped" the GAF scale,
28 citing its lack of conceptual clarity and questionable

1 psychological measurements in practice. Diagnostic and
2 Statistical Manual of Mental Disorders 16 (5th ed. 2012).

3 Thus, the ALJ's decision was supported by substantial
4 evidence based on the record as a whole, and remand is not
5 warranted on this basis.

6 B. The ALJ Properly Assessed Plaintiff's Credibility

7 Plaintiff argues that the ALJ erred because he "dismissed
8 the Plaintiff's complaints without the most recent medical
9 evidence" (J. Stip. at 16), his "activities of daily living are
10 more restricted [than] those presented by the ALJ" (id. at 21),
11 and the ALJ's analysis of his treatment plan did not recognize
12 its intensive nature (id. at 22). For the reasons discussed
13 below, the ALJ did not err, and if he did, any error was
14 harmless.

15 1. Applicable law

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

24 In evaluating a claimant's subjective symptom testimony, the
25 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d
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1 at 1035-36; see also SSR 96-7p, 1996 WL 374186 (July 2, 1996).¹⁰

2 "First, the ALJ must determine whether the claimant has presented
3 objective medical evidence of an underlying impairment [that]
4 could reasonably be expected to produce the pain or other
5 symptoms alleged." Lingenfelter, 504 F.3d at 1036. If such
6 objective medical evidence exists, the ALJ may not reject a
7 claimant's testimony "simply because there is no showing that the
8 impairment can reasonably produce the degree of symptom alleged."
9 Smolen, 80 F.3d at 1282 (emphasis in original).

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

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26 ¹⁰ 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 on March 6, 2015, however, when the ALJ
issued his decision.

1 and (5) testimony from physicians and third parties. Rounds v.
2 Comm'r Soc. Sec. Admin., 807 F.3d 996, 1006 (9th Cir. 2015) (as
3 amended); Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir.
4 2002). If the ALJ's credibility finding is supported by
5 substantial evidence in the record, the reviewing court "may not
6 engage in second-guessing." Thomas, 278 F.3d at 959.

7 2. Relevant background

8 Dr. Cross completed her psychological evaluation of
9 Plaintiff on June 25, 2014. (AR 527-31.) Her observations of
10 Plaintiff included that "[h]e had no impairment to [his] fine
11 motor skills, . . . [s]peech, hearing [or] vision." (AR 527-28.)
12 "He was not having trouble with attention or concentration." (AR
13 528.) She noted that his mood was "mostly stable," and "[h]e did
14 not appear to be angry or in distress but was anxious." (AR
15 529.) She said he "was slow to process information," but "[h]e
16 put out good effort." (AR 528.) She reported that he claimed he
17 was "not sleeping well or eating well": "he [said] he feels
18 hungry because he is stressed a lot" and wasn't sleeping well
19 because of "ghosts that haunt him at night." (AR 529.)

20 Plaintiff told Dr. Cross that he was able to "do household
21 chores and to dress and bathe." (Id.) "He spends his day
22 helping out around the house and exercising" and is able to drive
23 a car. (Id.) She noted a few moderate limitations but otherwise
24 assessed Plaintiff as able to work. (AR 530.) The ALJ gave
25 "great weight" to Dr. Cross's evaluation because it was
26 "supported by the treating records, the claimant's own
27 statements, reported activities of daily living, and [other]
28 objective findings." (AR 32.)

1 Dr. Cross's evaluation largely aligns with Dr. Estrada's
2 treatment notes. Dr. Estrada first saw Plaintiff in December
3 2010 and noted that his mood was anxious and his affect was
4 blunted. (AR 336.) In August 2012, Plaintiff was
5 "uncooperative, defensive and somewhat hostile." (AR 429.) By
6 2013, Plaintiff showed increased stability, though his symptoms
7 still fluctuated: in January, "[h]is mood [had] improved [and he
8 was] experiencing less tantrums and irritability" (AR 455); in
9 February, July, August, and October he was "improving and stable"
10 (AR 463); but in May he complained of "increasing depressive"
11 symptoms (AR 492). In January 2014, Dr. Estrada noted that
12 Plaintiff was "stable but having problems coping with stress."
13 (AR 506.) In April 2014, Plaintiff's symptoms included
14 "insomnia, irritability, excessive worry and agitation," but he
15 had a "cooperative" attitude and was "stable for outpatient
16 treatment." (AR 546.) Dr. Estrada noted he was "non-compliant
17 with medication." (Id.) In June 2014 and January 2015,
18 Plaintiff resumed "complian[ce] with medication" and continued to
19 be "stable for outpatient treatment." (AR 549, 553.)

20 In a Function Report completed on March 7, 2013, Plaintiff
21 noted that his daily activities included "doing [his] bedroom,
22 wash[ing] dishes/cleaning the kitchen, vaccuming [sic] the
23 apartment, doing laundry[], going to the gym, tak[ing] out the
24 trash, cleaning the bathroom, [and] check[ing] [his] email
25 accounts." (AR 175.) He watched TV, went to Bally Fitness, and
26 walked with his parents daily. (AR 178, 231.) He had no
27 problems with personal care (AR 175), prepared his own food (AR
28 176), and shopped "once or twice a week [for] about two or three

1 hours" (AR 177). He stated that he got along "very well" with
2 authority figures, namely, his teacher at school. (AR 180.) In
3 a Disability Determination Explanation completed on May 30, 2013,
4 Plaintiff was noted for "talk[ing] on the face book with others
5 daily." (AR 71.) He also "usually [went] to Laughlin 2 times a
6 year during the summer" with his family. (AR 368.)

7 At the November 13, 2014 hearing, Plaintiff testified that
8 he had attended Cerritos Community College several days a week
9 for six years, taking general-education courses and a computer
10 class. (AR 43, 45.) Plaintiff stated that he spent his days
11 going to class, studying, and doing homework. (AR 49-50.) He
12 claimed never to go outside the house other than to school. (AR
13 49.) He alleged that people, including employers he had applied
14 to work for, discriminated against him because of his disability.
15 (AR 48-49.) When asked by the ALJ about any mental healthcare or
16 treatment he was receiving, Plaintiff said that he sees a
17 psychiatrist once a month and takes three pills a day (AR 45-46):
18 Zoloft, Seroquel, and Lamictal for his Asperger's, depression,
19 and anger problems (AR 47-48). Plaintiff's mother also testified
20 at the hearing. (AR 51.) She stated that he cleans the house
21 often, "maybe two or three times a day." (Id.) She also said
22 that he is alone "all the time" and is sometimes "very rude with"
23 her. (AR 52.)

24 3. Analysis

25 The ALJ discredited some of Plaintiff's complaints, finding
26 that although his "medically determinable impairments could
27 reasonably be expected to cause the alleged symptoms," his
28 "statements concerning the intensity, persistence and limiting

1 effects of [those] symptoms [were] not entirely credible." (AR
2 31.) As discussed below, to the extent the ALJ rejected
3 Plaintiff's subjective complaints, he provided clear and
4 convincing reasons for doing so.

5 First, the ALJ found that Plaintiff's "daily activities
6 . . . [were] not limited to the extent one would expect, given
7 the complaints of disabling symptoms and limitations." (AR 30.)
8 An ALJ may properly discount a plaintiff's credibility when his
9 daily activities are inconsistent with his subjective symptom
10 testimony. See Molina, 674 F.3d at 1112 (citing Lingenfelter,
11 504 F.3d at 1040)). "Even where those [daily] activities suggest
12 some difficulty functioning, they may be grounds for discrediting
13 the claimant's testimony to the extent that they contradict
14 claims of a totally debilitating impairment." Id. at 1113.
15 Indeed, Plaintiff's activities were considerably more wide-
16 reaching than his alleged disability would indicate. He often
17 did household chores, such as washing dishes, vacuuming the
18 apartment, doing laundry, and taking out the trash. (AR 175.)
19 He checked his email, spent time on Facebook, cooked for himself,
20 and "shop[ped] once or twice a week [for] about two or three
21 hours." (AR 175-78.) He drove himself to school and to the gym
22 daily (see AR 178, 529), activities that inherently require going
23 outside and interacting with people.¹¹ These activities are
24 inconsistent with Plaintiff's allegation that he is totally

26 ¹¹ Although Plaintiff indicated at the hearing that he never
27 left the house except to go to school (AR 49), he admitted
28 elsewhere that he went to a Bally Fitness gym every day (see,
e.g., AR 178, 231).

1 disabled and unable to function, see Matthews v. Shalala, 10 F.3d
2 678, 679-80 (9th Cir. 1993) (affirming ALJ's finding that
3 "attending school . . . [is] an activity which is inconsistent
4 with an alleged inability to perform all work"); Presley-
5 Carrillo, __ F. App'x __, 2017 WL 2839505, at *2 (discounting
6 claimant's testimony concerning disabling nature of symptoms when
7 it conflicted with evidence of daily activities and effective
8 treatment), in particular because he allegedly has difficulty
9 being around people.

10 Second, the ALJ noted that Plaintiff received "routine
11 and/or conservative" treatment that had been "relatively
12 effective in controlling the [Plaintiff's] symptoms." (AR 31.)
13 "Impairments that can be controlled effectively with medication
14 are not disabling for the purpose of determining eligibility for
15 SSI benefits." Warre v. Comm'r of Soc. Sec., 439 F.3d 1001, 1006
16 (9th Cir. 2006). Dr. Estrada's treatment notes confirm that
17 Plaintiff stabilized and showed "moderate improvement" after
18 becoming "compliant with medication." (AR 495.) After being
19 prescribed and agreeing to follow a treatment course of
20 Lamictal¹² and Seroquel¹³ in November 2012 (AR 448), Plaintiff
21 showed a decrease in symptoms. In January 2013, he reported that
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23 ¹² Lamictal is an antiepileptic medication that is also used
24 to delay mood episodes in adults with bipolar disorder (manic
25 depression). See Lamictal, Drugs.com, <https://www.drugs.com/lamictal.html> (last updated Apr. 30, 2015).

26 ¹³ Seroquel is an antipsychotic medicine that is used to
27 treat schizophrenia and bipolar disorder. It is also used
28 together with antidepressants to treat major depressive disorder
in adults. See Seroquel, Drugs.com, <https://www.drugs.com/seroquel.html> (last updated Feb. 28, 2017).

1 his "mood [had] improved [and that he was] experiencing less
2 tantrums and irritability." (AR 455.) In February 2013, after
3 discontinuing Seroquel but continuing to take Lamictal, Plaintiff
4 "report[ed] feeling better, less irritable, impulsive and
5 [a]ggressive since his medication was adjusted." (AR 462.) In
6 March 2013, he "report[ed] doing well since the addition of
7 Lamictal," though his mother stated that he "forgets to take his
8 medication frequently." (AR 489.) Dr. Estrada's notes from
9 followup visits in August and October 2013 show that Plaintiff
10 was "improving and stable." (AR 498, 500.) His notes from a
11 January 21, 2014 visit show that Plaintiff was "stable but having
12 problems coping with stress" even though he was "compliant with
13 medication." (AR 506.) In April 2014, Plaintiff was "non-
14 compliant with medication" when Dr. Estrada observed that
15 Plaintiff was possibly exhibiting paranoid delusions. (AR 546.)
16 In June 2014 and January 2015, Plaintiff was again "compliant
17 with medication" and "stable for outpatient treatment," with no
18 further mention of possible paranoia in his treatment notes. (AR
19 549, 553.) Thus, even if the ALJ was wrong in finding that the
20 treatment was routine or conservative, see, e.g., Childress v.
21 Colvin, No. EDCV 14-0009-MAN, 2015 WL 2380872, at *14 (C.D. Cal.
22 May 18, 2015) (finding treatment of prescription antidepressants,
23 prescription antipsychotics, and talk therapy not properly
24 characterized as conservative), he did not err in concluding that
25 it was largely effective. Plaintiff was generally stable, and to
26 the extent he suffered from anxiety, it did not prevent him from
27 regularly venturing out into the world.

28 Finally, to the extent Plaintiff argues that "the [ALJ's]

1 credibility analysis was insufficient because the ALJ dismissed
2 the Plaintiff's complaints without the most recent medical
3 evidence" (see J. Stip. at 16), that contention has been
4 dispensed with above. The treatment notes from the three
5 additional visits with Dr. Estrada are part of the record and do
6 not reveal any new or significantly different information from
7 what the ALJ considered and addressed.

8 In sum, the ALJ provided clear and convincing reasons for
9 finding Plaintiff only partially credible. Because those
10 findings were supported by substantial evidence, this Court may
11 not engage in second-guessing. See Thomas, 278 F.3d at 959.
12 Plaintiff is not entitled to remand on this ground.

13 **VI. CONCLUSION**

14 Consistent with the foregoing and under sentence four of 42
15 U.S.C. § 405(g),¹⁴ IT IS ORDERED that judgment be entered
16 AFFIRMING the Commissioner's decision, DENYING Plaintiff's
17 request for remand, and DISMISSING this action with prejudice.

18
19 DATED: September 13, 2017_



JEAN ROSENBLUTH
U.S. Magistrate Judge

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26 ¹⁴ 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."