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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 GREG ALLEN SIMPSON,
12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL, Acting
15 Commissioner of Social
16 Security,
17 Defendant.

CASE NO. CV 17-1095 SS

MEMORANDUM DECISION AND ORDER

18 **I.**

19 **INTRODUCTION**
20

21 Greg Allen Simpson ("Plaintiff") brings this action seeking
22 to overturn the decision of the Acting Commissioner of Social
23 Security (the "Commissioner" or "Agency") denying his application
24 for Disability Insurance Benefits. The parties consented, pursuant
25 to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned
26 United States Magistrate Judge. (Dkt. Nos. 11-13). For the reasons
27 stated below, the Court AFFIRMS the Commissioner's decision.
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1 **A. Plaintiff's Statements And Testimony**

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3 In a July 2013 statement, Plaintiff reported being in a car
4 accident on March 27, 1999. (AR 258). He suffered permanent nerve
5 damage, which leaves him in severe pain on a daily basis even while
6 medicated. (AR 258). Over the last few years, the frequency and
7 level of his pain has increased, even with increased medication
8 dosages. (AR 257-58). Plaintiff is always tired but unable to
9 sleep more than three to four hours. (AR 257-58). He has frequent,
10 severe, uncontrollable spasms in his arms. (AR 258). The pain
11 has caused additional conditions, including erectile dysfunction
12 and depression. (AR 258). In 2010, Plaintiff broke his lower back
13 and wrist falling off the roof of a two-story home. (AR 258).
14 These injuries caused pain in his left leg making it difficult to
15 stand or sit for long periods of time. (AR 258). He has extreme
16 difficulty bending, tying his shoes, cooking, eating, bathing and
17 driving. (AR 258).

18
19 Plaintiff testified that he has had ongoing problems since he
20 fractured his neck in a motor vehicle accident in 1999. (AR 51-
21 52). In 2008, he fell off a ladder, fracturing his back in two
22 places. (AR 56-57). Plaintiff has trouble sleeping because of
23 the pain. (AR 59). His pain frequently radiates to his
24 extremities, limiting his ability to use his arms and hold objects.
25 (AR 66).

1 **B. Treatment History**

2
3 **1. Medical Evidence Prior To Alleged Onset Date**

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5 In 1999, Plaintiff was involved in a motor vehicle accident,
6 resulting in a neck fracture and severe neck pain. (AR 615-17).
7 He subsequently was surgically treated with a C5-6 fusion and bone
8 graft. (AR 615-17).
9

10 Plaintiff presented to the emergency room on November 6, 2000,
11 complaining of neck soreness and right shoulder stiffness. (AR
12 351). An x-ray of Plaintiff's cervical spine confirmed the C5-6
13 fusion but was otherwise unremarkable. (AR 367). No acute
14 compression fractures or subluxations were observed from C1 through
15 T1. (AR 367). No bone destruction or systemic arthritis was seen.
16 (AR 367). Robert E. Krause, M.D., found mild neural foraminal
17 encroachment at C5-6 but the remainder of the neural foramen were
18 symmetrically patent. (AR 367). Dr. Krause concluded that there
19 were no acute bony abnormalities. (AR 367). Plaintiff was
20 prescribed Vicodin and ordered to rest and apply ice to his neck.
21 (AR 350).3
22

23 In February 2001, Plaintiff presented to the emergency room
24 with lower back pain "after painting all day." (AR 345). He
25 denied any previous lower back pain symptoms. (AR 345). He was
26 diagnosed with a lumbar spine sprain and prescribed Motrin and
27 Vicodin. (AR 345, 347). Plaintiff was fully ambulatory upon
28 discharge. (AR 346).

1 In June 2002, Plaintiff presented to the emergency room,
2 complaining of swelling in his right leg. (AR 342). An x-ray of
3 Plaintiff's right tibia and fibula from the knee to the ankle joint
4 found no evidence of fracture, malalignment, radiopaque foreign
5 body or soft tissue gas. (AR 366). Plaintiff was discharged home
6 to rest. (AR 342). He was advised to elevate the leg and treat
7 the swollen area with ice. (AR 342).

8 9 **2. Medical Evidence After Date Last Insured**

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11 In monthly visits from February through October 2007,
12 Plaintiff reported that his medications were controlling his pain,
13 with no problems sleeping. (AR 535-43). In January 2008, Plaintiff
14 reported that his pain control was "not good" but by March 2008,
15 his pain was back under control with his medications. (AR 529,
16 531).

17
18 On April 28, 2008, Plaintiff was admitted to the hospital
19 after he fell from a ladder at work. (AR 293). Multiple CT scans
20 demonstrated an acute injury of the lumbar spine, with compression
21 deformities. (AR 293). He was discharged on May 2, 2008, with
22 medications to control his pain. (AR 293). On July 30, 2008,
23 Plaintiff had good range of motion and was cleared to return to
24 work. (AR 515). In September 2008, Plaintiff reported "doing
25 well," with his pain being controlled by medications. (AR 513).

26
27 In July 2013, Plaintiff injured his thumb after "[m]oving
28 furniture all day." (AR 411). In January 2014, Plaintiff

1 complained of severe arm pain after "he did a lot of lifting and
2 moving furniture." (AR 396). An examination was largely
3 unremarkable. (AR 396-98). Plaintiff was administered pain
4 medications and advised to follow-up with his primary care
5 physician. (AR 398). By February 2014, Plaintiff's pain had
6 stabilized with his current medications. (AR 389).

7
8 **C. State Agency Consultant**

9
10 On January 9, 2013, John T. Bonner, M.D., a state agency
11 consultant, reviewed all the available evidence in the medical
12 file. (AR 81-86). Dr. Bonner found that there was insufficient
13 evidence prior to December 31, 2006, the date last insured, of any
14 disabling condition. (AR 86).

15
16 **IV.**

17 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

18
19 To qualify for disability benefits, a claimant must
20 demonstrate a medically determinable physical or mental impairment
21 that prevents the claimant from engaging in substantial gainful
22 activity and that is expected to result in death or to last for a
23 continuous period of at least twelve months. Reddick v. Chater,
24 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)).
25 The impairment must render the claimant incapable of performing
26 work previously performed or any other substantial gainful
27 employment that exists in the national economy. Tackett v. Apfel,

1 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.
2 § 423(d)(2)(A)).

3
4 To decide if a claimant is entitled to benefits, an ALJ
5 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The
6 steps are:

7
8 (1) Is the claimant presently engaged in substantial gainful
9 activity? If so, the claimant is found not disabled. If
10 not, proceed to step two.

11 (2) Is the claimant's impairment severe? If not, the
12 claimant is found not disabled. If so, proceed to step
13 three.

14 (3) Does the claimant's impairment meet or equal one of the
15 specific impairments described in 20 C.F.R. Part 404,
16 Subpart P, Appendix 1? If so, the claimant is found
17 disabled. If not, proceed to step four.

18 (4) Is the claimant capable of performing his past work? If
19 so, the claimant is found not disabled. If not, proceed
20 to step five.

21 (5) Is the claimant able to do any other work? If not, the
22 claimant is found disabled. If so, the claimant is found
23 not disabled.

24
25 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,
26 262 F.3d 949, 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b)-
27 (g)(1), 416.920(b)-(g)(1).
28

The claimant has the burden of proof at steps one through four and the Commissioner has the burden of proof at step five. Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an affirmative duty to assist the claimant in developing the record at every step of the inquiry. Id. at 954. If, at step four, the claimant meets his or her burden of establishing an inability to perform past work, the Commissioner must show that the claimant can perform some other work that exists in "significant numbers" in the national economy, taking into account the claimant's residual functional capacity ("RFC"), age, education, and work experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may do so by the testimony of a VE or by reference to the Medical-Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P, Appendix 2 (commonly known as "the grids"). Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both exertional (strength-related) and non-exertional limitations, the Grids are inapplicable and the ALJ must take the testimony of a vocational expert ("VE"). Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th Cir. 1988)).

V.

THE ALJ'S DECISION

The ALJ employed the five-step sequential evaluation process and concluded that Plaintiff was not disabled within the meaning of the Social Security Act. (AR 25). At step one, the ALJ found

1 that Plaintiff has not engaged in substantial gainful activity
2 during the period from June 1, 2003, his alleged onset date, through
3 December 31, 2006, his date last insured. (AR 21). At step two,
4 the ALJ found that Plaintiff's right arm neuropathy and cervical
5 pain syndrome status-post cervical spine injury and fusion are
6 severe impairments. (AR 21). At step three, the ALJ determined
7 that Plaintiff does not have an impairment or combination of
8 impairments that meet or medically equal the severity of any of
9 the listings enumerated in the regulations. (AR 22).

10
11 The ALJ then assessed Plaintiff's RFC and concluded that he
12 can perform light work, as defined in 20 C.F.R. § 404.1567(b),¹
13 except that Plaintiff is limited to "walking and/or standing for
14 six hours out of an eight-hour workday; and occasional overhead
15 use of bilateral arms." (AR 22). At step four, the ALJ found that
16 Plaintiff is capable of performing past relevant work as a
17 construction painter. (AR 25). Accordingly, the ALJ found that
18 Plaintiff was not under a disability, as defined by the Social
19 Security Act, at any time from June 1, 2003, the alleged onset
20 date, through December 31, 2006, the date last insured. (AR 25).

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22
23 ¹ "Light work involves lifting no more than 20 pounds at a time with
24 frequent lifting or carrying of objects weighing up to 10 pounds. Even
25 though the weight lifted may be very little, a job is in this category
26 when it requires a good deal of walking or standing, or when it involves
27 sitting most of the time with some pushing and pulling of arm or leg
28 controls. To be considered capable of performing a full or wide range
of light work, you must have the ability to do substantially all of these
activities. If someone can do light work, we determine that he or she
can also do sedentary work, unless there are additional limiting factors
such as loss of fine dexterity or inability to sit for long periods of
time." 20 C.F.R. § 404.1567(b).

1 VI.

2 STANDARD OF REVIEW

3
4 Under 42 U.S.C. § 405(g), a district court may review the
5 Commissioner's decision to deny benefits. The court may set aside
6 the Commissioner's decision when the ALJ's findings are based on
7 legal error or are not supported by substantial evidence in the
8 record as a whole. Garrison v. Colvin, 759 F.3d 995 (9th Cir.
9 2014) (citing Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050,
10 1052 (9th Cir. 2006)); Auckland v. Massanari, 257 F.3d 1033, 1035
11 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); Smolen v.
12 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v. Bowen,
13 885 F.2d 597, 601 (9th Cir. 1989)).

14
15 "Substantial evidence is more than a scintilla, but less than
16 a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v.
17 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant
18 evidence which a reasonable person might accept as adequate to
19 support a conclusion." Id. (citing Jamerson, 112 F.3d at 1066;
20 Smolen, 80 F.3d at 1279). To determine whether substantial
21 evidence supports a finding, the court must "'consider the record
22 as a whole, weighing both evidence that supports and evidence that
23 detracts from the [Commissioner's] conclusion.'" Auckland, 257
24 F.3d at 1035 (citing Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.
25 1993)). If the evidence can reasonably support either affirming
26 or reversing that conclusion, the court may not substitute its
27 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-
28 21 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

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1 claimant's testimony regarding the severity of her symptoms only
2 if he makes specific findings stating clear and convincing reasons
3 for doing so."); Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883
4 (9th Cir. 2006) ("[U]nless an ALJ makes a finding of malingering
5 based on affirmative evidence thereof, he or she may only find an
6 applicant not credible by making specific findings as to
7 credibility and stating clear and convincing reasons for each.").
8 "This is not an easy requirement to meet: The clear and convincing
9 standard is the most demanding required in Social Security cases."
10 Garrison, 759 F.3d at 1015 (citation omitted).

11
12 In discrediting the claimant's subjective symptom testimony,
13 the ALJ may consider the following:

14
15 (1) ordinary techniques of credibility evaluation, such
16 as the claimant's reputation for lying, prior
17 inconsistent statements concerning the symptoms, and
18 other testimony by the claimant that appears less than
19 candid; (2) unexplained or inadequately explained
20 failure to seek treatment or to follow a prescribed
21 course of treatment; and (3) the claimant's daily
22 activities.

23
24 Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014) (citation
25 omitted). Inconsistencies between a claimant's testimony and
26 conduct, or internal contradictions in the claimant's testimony,
27 also may be relevant. Burrell v. Colvin, 775 F.3d 1133, 1137 (9th
28 Cir. 2014); Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir.

1 1997). In addition, the ALJ may consider the observations of
2 treating and examining physicians regarding, among other matters,
3 the functional restrictions caused by the claimant's symptoms.
4 Smolen, 80 F.3d at 1284; accord Burrell, 775 F.3d at 1137. However,
5 it is improper for an ALJ to reject subjective testimony based
6 "solely" on its inconsistencies with the objective medical evidence
7 presented. Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1227
8 (9th Cir. 2009) (citation omitted).

9
10 Further, the ALJ must make a credibility determination with
11 findings that are "sufficiently specific to permit the court to
12 conclude that the ALJ did not arbitrarily discredit claimant's
13 testimony." Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir.
14 2008) (citation omitted); see Brown-Hunter v. Colvin, 806 F.3d 487,
15 493 (9th Cir. 2015) ("A finding that a claimant's testimony is not
16 credible must be sufficiently specific to allow a reviewing court
17 to conclude the adjudicator rejected the claimant's testimony on
18 permissible grounds and did not arbitrarily discredit a claimant's
19 testimony regarding pain.") (citation omitted). Although an ALJ's
20 interpretation of a claimant's testimony may not be the only
21 reasonable one, if it is supported by substantial evidence, "it is
22 not [the court's] role to second-guess it." Rollins v. Massanari,
23 261 F.3d 853, 857 (9th Cir. 2001).

24
25 The ALJ provided two specific, clear and convincing reasons
26 to find Plaintiff's complaints of disabling pain and right arm
27 neuropathy not entirely credible. (AR 23). These reasons are
28 sufficient to support the Commissioner's decision.

1 The ALJ found Plaintiff not entirely credible because his
2 reported symptoms were inconsistent with "ongoing activities such
3 as climbing roofs and moving furniture." (AR 23). "ALJs must be
4 especially cautious in concluding that daily activities are
5 inconsistent with testimony about pain, because impairments that
6 would unquestionably preclude work and all the pressures of a
7 workplace environment will often be consistent with doing more than
8 merely resting in bed all day." Garrison, 759 F.3d at 1016.
9 Nevertheless, an ALJ properly may consider the claimant's daily
10 activities in weighing credibility. Tommasetti, 533 F.3d at 1039.
11 If a claimant's level of activity is inconsistent with the
12 claimant's asserted limitations, it has a bearing on credibility.
13 Garrison, 759 F.3d at 1016.

14
15 Here, the ALJ determined that despite Plaintiff's alleged
16 disabling pain, right arm neuropathy and difficulty with activities
17 of daily living, he acknowledged activities "that are not
18 consistent with an inability to work, use his arms, and move." (AR
19 23). In February 2001, Plaintiff presented to the emergency room
20 after admittedly "painting all day." (AR 56, 345).² In April
21 2008, Plaintiff fell off a roof while working. (AR 293). In July
22 2013 and January 2014, Plaintiff reported minor injuries after
23 lifting and moving furniture all day. (AR 396, 411). The
24 discrepancy between Plaintiff's alleged disabilities and his
25 ongoing activities supports the ALJ's determination that Plaintiff
26 was not entirely credible. See Molina v. Astrue, 674 F.3d 1104,

27 ² The ALJ misread "painting" as "partying." (Compare AR 56, with id.
28 345).

1 1112 (9th Cir. 2012) ("ALJ may consider inconsistencies either in
2 the claimant's testimony or between the testimony and the
3 claimant's conduct"). If a claimant's daily activities are
4 consistent with a work environment, such as painting, then it is
5 reasonable for an ALJ to consider those activities when assessing
6 a claimant's credibility.

7
8 The ALJ also identified inconsistencies between Plaintiff's
9 testimony and the objective medical evidence. (AR 20-21).
10 "Contradiction with the medical record is a sufficient basis for
11 rejecting the claimant's subjective testimony." Carmickle v.
12 Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1161 (9th Cir. 2008); see
13 Social Security Ruling ("SSR") 16-3p,³ at *5 ("objective medical
14 evidence is a useful indicator to help make reasonable conclusions
15 about the intensity and persistence of symptoms, including the
16 effects those symptoms may have on the ability to perform work-
17 related activities"). The relevant period for Plaintiff's Title
18 II claim runs from June 1, 2003, the alleged onset date, through
19 December 31, 2006, the date last insured. (AR 21). As the ALJ
20 observed, there is no treatment documented during the relevant
21 period. (AR 23); (see also id. at 24) (ALJ noting that state
22 agency consultants found insufficient evidence prior to the date
23 last insured); Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1175 (9th
24 Cir. 2008) (finding that the medical evidence, i.e., physicians'

25
26 ³ Social Security Rulings (SSRs) "do not carry the 'force of law,' but
27 they are binding on ALJs nonetheless." Bray, 554 F.3d at 1224. They
28 "reflect the official interpretation of the [Agency] and are entitled to
some deference as long as they are consistent with the Social Security
Act and regulations." Id. (citation omitted).

1 opinions that the claimant was able to perform a limited range of
2 work, supported the ALJ's credibility determination). The lack of
3 treatment records during the relevant period suggests that
4 Plaintiff's symptoms were not as severe as he has alleged. See
5 Tommasetti, 553 F.3d at 1039-40 (ALJ may properly infer that
6 claimant's pain "was not as all-disabling as he reported in light
7 of the fact that he did not seek an aggressive treatment program").
8 Further, in monthly visits during February through October 2007,
9 Plaintiff reported that his medications were controlling his pain,
10 with no problems sleeping. (AR 535-43); see Warre v. Comm'r of
11 Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir. 2006) ("Impairments
12 that can be controlled effectively with medication are not
13 disabling for the purpose of determining eligibility for SSI
14 benefits."). In July 2008, Plaintiff had good range of motion and
15 was cleared to return to work. (AR 515). While these records are
16 after his date last insured, they provide strong circumstantial
17 evidence that Plaintiff's impairments were not disabling within
18 the relevant time period. See Parra v. Astrue, 481 F.3d 742, 751
19 (9th Cir. 2007) ("[E]vidence of conservative treatment is
20 sufficient to discount a claimant's testimony regarding severity
21 of an impairment.") (citation omitted); Meanel v. Apfel, 172 F.3d
22 1111, 1114 (9th Cir. 1999), as amended (June 22, 1999) ("Meanel's
23 claim that she experienced pain approaching the highest level
24 imaginable was inconsistent with the 'minimal, conservative
25 treatment' that she received."). The ALJ properly could find,
26 after considering Plaintiff's sparse and conservative treatment
27 history, that Plaintiff's testimony and statements regarding his
28 disabling pain were not entirely credible.

1 Plaintiff contends that "the ALJ simply rejects [his]
2 testimony based on a belief that the testimony is not credible
3 because it lacks support in the objective medical evidence." (Dkt.
4 No. 20 at 6-7). While the ALJ "may not reject a claimant's
5 subjective complaints based solely on a lack of objective medical
6 evidence to fully corroborate the claimant's allegations," Bray,
7 554 F.3d at 1227, the ALJ "must consider whether an individual's
8 statements about the intensity, persistence, and limiting effects
9 of his or her symptoms are consistent with the medical signs and
10 laboratory findings of record," SSR 16-3p, at *5 (emphasis added).
11 Here, the ALJ did not reject Plaintiff's subjective symptoms
12 because of a lack of evidence to support Plaintiff's allegations.
13 Instead, the ALJ discredited Plaintiff's subjective symptoms
14 because they were inconsistent with his conservative treatment and
15 his reports to treating sources that his medications were
16 controlling his pain.

17
18 Plaintiff also asserts that his "descriptions of his
19 limitations demonstrate that she [sic] is incapable of maintaining
20 substantial gainful work activity because of her [sic] severe
21 impairments." (Dkt. No. 20 at 8). However, other than his own
22 subjective allegations, which the ALJ properly discredited,
23 Plaintiff does not demonstrate how his right arm neuropathy and
24 cervical pain syndrome status-post cervical spine injury and fusion
25 limited his ability to work during the relevant time period. See
26 Mayes v. Massanari, 276 F.3d 453, 459 (9th Cir. 2001) ("It was
27 [claimant's] duty to prove that she was disabled.") (citing 20
28 C.F.R. § 404.1512(a)); see also Terry v. Sullivan, 903 F.2d 1273,

1 1275 (9th Cir. 1990) ("The burden of establishing disability
2 is . . . on the claimant, who must prove that she is unable to
3 return to her former type of work."). In assessing Plaintiff's
4 RFC, the ALJ, despite the sparse evidence in the record, gave
5 partial credit to Plaintiff's testimony and "generous consideration
6 to [Plaintiff's] history of back and neck surgery and neuropathy."
7 (AR 23). Plaintiff cites to no medical evidence indicating that
8 Plaintiff's right arm neuropathy and cervical pain syndrome status-
9 post cervical spine injury and fusion, which the ALJ found to be
10 severe, limit his functional capacity more than the limitations
11 found by the ALJ.

12
13 In sum, the ALJ offered clear and convincing reasons,
14 supported by substantial evidence in the record, for his adverse
15 credibility findings. Accordingly, because substantial evidence
16 supports the ALJ's assessment of Plaintiff's credibility, no remand
17 is required.

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VIII.

CONCLUSION

Consistent with the foregoing, IT IS ORDERED that Judgment be entered AFFIRMING the decision of the Commissioner. The Clerk of the Court shall serve copies of this Order and the Judgment on counsel for both parties.

DATED: December 15, 2017

/s/

SUZANNE H. SEGAL
UNITED STATES MAGISTRATE JUDGE

**THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,
LEXIS/NEXIS OR ANY OTHER LEGAL DATABASE.**