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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MANUEL R.,  
Plaintiff,  
v.  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
Defendant.

Case No. 2:17-cv-07266-KES

MEMORANDUM OPINION AND  
ORDER

**I.**  
**BACKGROUND**

In January 2014, Manuel R. (“Plaintiff”) filed an application for social security disability benefits (“SSDI”) alleging disability commencing August 20, 2012, due to shoulder pain, depression, anxiety, sleep disturbances, back pain, leg pain, and hand pain. Administrative Record (“AR”) 134-40. Plaintiff was born in 1962 and has a marginal education, having dropped out of school in Mexico in the 6th grade. AR 82, 67.

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<sup>1</sup> Effective November 17, 2017, Ms. Berryhill’s new title is “Deputy Commissioner for Operations, performing the duties and functions not reserved to the Commissioner of Social Security.”

1 On October 29, 2015, an Administrative Law Judge (“ALJ”) conducted a  
2 hearing at which Plaintiff, who was unrepresented,<sup>2</sup> appeared and testified, as did a  
3 medical expert (“ME”) and a vocational expert (“VE”). AR 42-80.

4 On May 16, 2016, the ALJ issued a decision denying Plaintiff’s application.  
5 AR 20-34. The ALJ found that Plaintiff suffered from medically determinable  
6 severe impairments consisting of (1) degenerative disc disease of the lumbar spine  
7 with right-sided radiculopathy, status post laminectomy on August 20, 2012 (i.e.,  
8 his alleged onset date); (2) degenerative disc disease of the cervical spine;  
9 (3) rotator cuff tendinosis of the left shoulder; (4) history of rotator cuff tear of the  
10 right shoulder; and (5) major depressive disorder. AR 25-26.

11 Despite these impairments, the ALJ determined that Plaintiff had the  
12 residual functional capacity (“RFC”) to perform work a reduced range of light  
13 work including limitations on reaching and postural activities, a limitation to  
14 standing or walking only 15 minutes at a time with the use of a cane, and doing  
15 “simple, routine, and repetitive tasks” with only incidental interpersonal  
16 interactions. AR 28.

17 Based on the RFC and the VE’s testimony, the ALJ determined that Plaintiff  
18 could not perform his past relevant work as a truck driver or lot attendant. AR 32.  
19 The ALJ found, however, that Plaintiff could work as a marker (Dictionary of  
20 Occupational Titles (“DOT”) 920.687-126), production assembler (DOT 706.687-  
21 010), or semiautomatic sewing machine operator (DOT 786.785-030). AR 33. The  
22 ALJ concluded that Plaintiff was not disabled. AR 34.

## 23 II.

### 24 STANDARD OF REVIEW

25 A district court may review the Commissioner’s decision to deny benefits.  
26 The ALJ’s findings and decision should be upheld if they are free from legal error

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27 <sup>2</sup> Plaintiff is represented by counsel in his federal court appeal.  
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1 and are supported by substantial evidence based on the record as a whole. 42  
2 U.S.C. § 405(g); Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v. Astrue,  
3 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence means such relevant  
4 evidence as a reasonable person might accept as adequate to support a conclusion.  
5 Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir.  
6 2007). It is more than a scintilla, but less than a preponderance. Lingenfelter, 504  
7 F.3d at 1035 (citing Robbins v. Comm’r of SSA, 466 F.3d 880, 882 (9th Cir.  
8 2006)). To determine whether substantial evidence supports a finding, the  
9 reviewing court “must review the administrative record as a whole, weighing both  
10 the evidence that supports and the evidence that detracts from the Commissioner’s  
11 conclusion.” Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998). “If the  
12 evidence can reasonably support either affirming or reversing,” the reviewing court  
13 “may not substitute its judgment” for that of the Commissioner. Id. at 720-21.

14 “A decision of the ALJ will not be reversed for errors that are harmless.”  
15 Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). Generally, an error is  
16 harmless if it either “occurred during a procedure or step the ALJ was not required  
17 to perform,” or if it “was inconsequential to the ultimate nondisability  
18 determination.” Stout v. Comm’r of SSA, 454 F.3d 1050, 1055 (9th Cir. 2006).

### 19 III.

#### 20 ISSUES PRESENTED

21 Issue One: Whether the ALJ deprived Plaintiff of a fair hearing.

22 Issue Two: Whether the ALJ erred in evaluating Plaintiff’s subjective  
23 symptom testimony.

24 (Dkt. 26, Joint Stipulation [“JS”] at 3.)

1 **IV.**

2 **DISCUSSION**

3 **A. ISSUE ONE: The Fairness of the Hearing Process.**

4 **1. Summary of Claimed Errors.**

5 In a social security case, the ALJ has an independent “duty to fully and fairly  
6 develop the record and to assure that the claimant’s interests are considered.”

7 Smolen v. Chater, 80 F.3d 1273, 1288 (9th Circuit 1996) (citation omitted).

8 Plaintiff argues that the ALJ failed to discharge this duty by (1) failing to prompt  
9 Plaintiff to question the VE; and (2) accepting into the AR post-hearing Exhibits  
10 18F and 19F (interrogatories [AR 1866-69] and responses [AR 1870] from ME Dr.  
11 Ghazi) and relying, in part, on that evidence to deny benefits without giving  
12 Plaintiff notice and an opportunity to respond.

13 **2. Questioning the VE.**

14 When Dr. Ghazi finished his testimony, the ALJ asked Plaintiff if he had any  
15 questions for the ME. AR 52. Plaintiff asked him a question about a recent MRI.

16 Id. In contrast, when the ALJ finished questioning the VE, Ms. Maron, the  
17 following exchange occurred:

18 ALJ: I don’t need to ask anything else. All right, Ms. Maron, that’s  
19 going to do it. Mr. [R.] – so, Ms. Marron, let me, let me release you  
20 as a witness. Okay?

21 VE: Yes. I will be waiting.

22 ALJ: We’ll call you on the next one.

23 VE: Thank you.

24 ALJ: All right. Mr. [R.], so we got a plan now. What I need to do  
25 is, is get those additional medical records, okay? I’ll consider those  
26 along with all the testimony that we had today and I will, I’ll make a  
27 written decision. It’s going to be a little delayed because I’m going  
28 to get those records directly. The order’s going to be that you have

1 30 days to submit anything else that you think I need to see.

2 Clmt: Okay, sir.

3 AR 77.

4 Based on this testimony, Plaintiff argues that he neither received an  
5 opportunity to question the VE nor waived his right to do so. (JS at 8-9.) He  
6 further argues that this was legal error or an abuse of discretion amounting to a due  
7 process violation, and that the only remedy is remand to permit him to question the  
8 VE. (Id.) He suggests questions that his attorney could ask the VE that might  
9 elicit testimony relevant to the ALJ's conclusions. (Id. at 9.)

10 A disability claimant is entitled to such cross-examination as may be  
11 necessary to develop the facts fully and accurately. 5 U.S.C. § 556(d). The ALJ  
12 has the discretion to decide whether cross-examination is necessary. Solis v.  
13 Schweiker, 719 F.2d 301, 302 (9th Cir. 1983). When a disability claimant does not  
14 request an opportunity to cross-examine an expert, he may not complain in an  
15 appeal that he was denied the right of confrontation and cross-examination. Moon  
16 v. Astrue, 2012 U.S. Dist. LEXIS 86370, at \*25-26 (E.D. Cal. June 20, 2012)  
17 (citing Richardson, 402 U.S. at 404-05). Moon presented the same facts as this  
18 case: the ALJ failed to offer a self-represented claimant the opportunity to question  
19 the VE. The district court found no legal error. Id.

20 Given Plaintiff's informed choice to represent himself (AR 42-44),  
21 demonstrated ability to ask questions about matters of concern (AR 52), and the  
22 ALJ's asking "Okay?" before dismissing Ms. Maron as a witness (AR 77),  
23 Plaintiff has failed to carry his burden of demonstrating prejudicial legal error.

### 24 **3. Responding to Dr. Ghazi's Interrogatory Responses.**

25 At the hearing, the medical evidence ended at Exhibit 11F, i.e., AR 708-09.  
26 AR 53. After the hearing, the ALJ received additional medical evidence at AR  
27 710-1864. The ALJ sent these new exhibits to Dr. Ghazi and asked, via  
28 interrogatories, if the new evidence caused any change to his hearing testimony.

1 AR 1867. Dr. Ghazi responded “no.” AR 1870. He added a notation, “The new  
2 exhibits do not present any different evidence of the claimant’s previously assessed  
3 condition.” (Id.)

4 When an ALJ receives post-hearing evidence, the ALJ is required to notify  
5 the claimant in writing and give the claimant “an opportunity to review and  
6 comment on the additional evidence.” 20 C.F.R. § 416.1416(f). Defendant agrees  
7 that the ALJ failed to do so regarding Dr. Ghazi’s responses to the interrogatories  
8 but argues that the error was harmless. (JS at 12.) Per Defendant, Plaintiff heard  
9 Dr. Ghazi’s testimony at his hearing and had the opportunity to question him. (Id.,  
10 citing AR 49, 52-55). Thus, Plaintiff already had the opportunity to question Dr.  
11 Ghazi regarding his opinions, and the 1-page, check-the-blank interrogatory  
12 responses only confirmed that his opinions had not changed. (Id., citing AR 1870.)

13 Plaintiff responds that he did not have an opportunity to question Dr. Ghazi  
14 as to why the new medical records did not change his opinions and cause him to  
15 assess additional functional limitations. Plaintiff points to records documenting  
16 diminished strength of a foot muscle and argues that Plaintiff could have asked Dr.  
17 Ghazi why these new records did not justify a restriction against operating foot  
18 controls. (JS at 7, citing AR 1040, 1046, 1052, 1058, 1063, 1068, 1073, 1078.<sup>3</sup>)  
19 Similarly, Plaintiff points to records indicating that he complained of neck pain and  
20 pain radiating down his upper extremities and argues that he could have asked Dr.  
21 Ghazi why these new records did not change his opinion that Plaintiff’s “upper  
22 extremities are normally functioning,” perhaps resulting in limitations on handling  
23 or fingering. AR 47.

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25 <sup>3</sup> These records are summarized as follows: AR 1040 (progress report  
26 summarizing Plaintiff’s history, assessing his gait as “non-antalgic,” rating his  
27 right-side planta dorsiflexion EHL as “4+/5,” and finding a reduced range of spinal  
28 motion); AR 1046 (same); AR 1052 (same); AR 1058 (same); AR 1063 (same);  
AR 1068 (same); AR 1073 (same); AR 1078 (same).

1            “[T]he burden of showing that an error is harmful normally falls upon the  
2 party attacking the agency’s determination.” Molina v. Astrue, 674 F.3d 1104,  
3 1111 (9th Cir. 2012). Plaintiff has not met this burden. He has not concretely  
4 identified any information in the new exhibits about which he might have  
5 questioned Dr. Ghazi and prompted a material change in Dr. Ghazi’s opinions.  
6 First, at the hearing, Dr. Ghazi was aware that Plaintiff reported suffering from  
7 disabling pain. There is no likelihood that questioning Dr. Ghazi about the  
8 subjective complaints in Plaintiff’s new medical evidence would have changed Dr.  
9 Ghazi’s opinions. Second, even if Plaintiff had questioned Dr. Ghazi about new  
10 evidence rating his right-side planta dorsiflexion EHL as “4+/5,” Plaintiff has  
11 made no showing that (1) such a minor deficit would affect his ability to operate  
12 foot controls, or (2) that any of the three alternate jobs identified by the ALJ  
13 require operating foot controls. Indeed, Plaintiff admits that he can drive and does  
14 so daily, thereby demonstrating an ability to use foot controls. AR 62; see also  
15 Hart v. Massanari, 20 Fed. App’x 668 (9th Cir. 2001) (holding that any error that  
16 may have resulted from the claimant’s inability to comment on post-hearing  
17 reports was harmless).

## 18 **B. ISSUE TWO: Plaintiff’s Subjective Symptom Testimony.**

### 19 **1. Rules for Evaluating Subjective Symptom Testimony.**

20            An ALJ’s assessment of pain level is entitled to “great weight.” Weetman v.  
21 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989) (citation omitted); see also Nyman v.  
22 Heckler, 779 F.2d 528, 531 (9th Cir. 1986). “[T]he ALJ is not ‘required to believe  
23 every allegation of disabling pain, or else disability benefits would be available for  
24 the asking, a result plainly contrary to 42 U.S.C. § 423(d)(5)(A).” Molina, 674  
25 F.3d at 1112 (citation omitted).

26            If the ALJ finds that a claimant’s testimony as to the severity of his pain and  
27 impairments is unreliable, “the ALJ must make a credibility determination with  
28 findings sufficiently specific to permit the court to conclude that the ALJ did not

1 arbitrarily discredit claimant’s testimony.” Thomas v. Barnhart, 278 F.3d 947, 958  
2 (9th Cir. 2002). If the ALJ’s credibility finding is supported by substantial  
3 evidence in the record, courts may not engage in second-guessing. Id.

4 In evaluating a claimant’s subjective symptom testimony, the ALJ engages  
5 in a two-step analysis. Lingenfelter, 504 F.3d at 1035-36. “First, the ALJ must  
6 determine whether the claimant has presented objective medical evidence of an  
7 underlying impairment [that] could reasonably be expected to produce the pain or  
8 other symptoms alleged.” Id. at 1036. If so, the ALJ may not reject a claimant’s  
9 testimony “simply because there is no showing that the impairment can reasonably  
10 produce the degree of symptom alleged.” Smolen, 80 F.3d at 1282.

11 Second, if the claimant meets the first test, the ALJ may discredit the  
12 claimant’s subjective symptom testimony only if he makes specific findings that  
13 support the conclusion. Berry v. Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010).  
14 Absent a finding or affirmative evidence of malingering, the ALJ must provide  
15 “clear and convincing” reasons for rejecting the claimant’s testimony. Lester, 81  
16 F.3d at 834; Ghanim v. Colvin, 763 F.3d 1154, 1163 & n.9 (9th Cir. 2014).

## 17 **2. Summary of the ALJ’s Findings.**

18 The ALJ found that while Plaintiff’s medically determinable impairments  
19 could reasonably be expected to cause his alleged symptoms, Plaintiff’s statements  
20 concerning the intensity, persistence, and limiting effects of his symptoms were  
21 “not entirely consistent with the medical evidence and other evidence of record  
22 ....” AR 29. The ALJ ultimately gave seven reasons for discrediting Plaintiff’s  
23 subjective symptom testimony: (1) lack of supporting objective evidence, (2) lack  
24 of significant mental health treatment, (3) treatment history inconsistent with the  
25 alleged degree of impairment, (4) inconsistency between Plaintiff’s testimony and  
26 treating medical records, (5) poor compliance with medications, (6) symptoms are  
27 controlled with treatment, and (7) inconsistency with Plaintiff’s daily activities.

28 As discussed further below, Reasons One, Two, Five, and Seven are



1 sufficient clear and convincing reasons to discount Plaintiff's testimony. The  
2 Court therefore does not reach the remaining reasons.

### 3 **3. Analysis of the ALJ's Reasons.**

#### 4 a. Reason One: Lack of Supporting Objective Evidence.

5 The lack of supporting objective evidence, standing alone, is insufficient to  
6 discount a claimant's subjective symptom testimony, but ALJs can consider it  
7 together with other clear and convincing reasons to discount that testimony. See  
8 Burch, 400 F.3d at 681 ("Although lack of medical evidence cannot form the sole  
9 basis for discounting pain testimony, it is a factor that the ALJ can consider in his  
10 credibility analysis.").

11 With respect to his physical symptoms, Plaintiff testified that his back  
12 "always hurts 24 hours a day," and his neck "always hurt[s]" and "won't let [him  
13 sleep." AR 64. Plaintiff testified that he has a problem with a nerve in his right  
14 leg and his leg gives out after 10 to 15 minutes of walking. Id. He can lift a gallon  
15 of milk, but his elbow and shoulder "hurt[] so bad" when he tries to lift things. AR  
16 65.

17 The objective medical evidence supports the ALJ's relatively restrictive  
18 RFC, but not Plaintiff's more extreme testimony. Plaintiff alleged low back pain  
19 beginning in 2004 after a car accident, but x-rays were negative and he continued  
20 to work as a truck driver until 2012.<sup>4</sup> AR 29, 1804, 152. He described that work  
21 as requiring frequent lifting of over 50 pounds. AR 183. Plaintiff underwent a  
22 laminectomy in August 2012 after being diagnosed with degenerative disc disease  
23 of the lumbar spine with right-sided radiculopathy. AR 29, 239-40. Nerve  
24 conduction studies in June 2013 of the lower extremities were within the normal  
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26 <sup>4</sup> Respondent views the ALJ's reference to Plaintiff's work history as an  
27 additional reason to discount his testimony. (See JS at 26.) The Court views it as  
28 part of the "objective medical evidence" reason.

1 limits. AR 276. Although Plaintiff had decreased range of motion and tenderness  
2 as of April 2013 (AR 291), an April 2015 examination revealed that Plaintiff had  
3 no tenderness in his neck with a full range of motion, a normal respiratory/chest  
4 exam, regular heart and abdomen exams, no swelling in the extremities with a full  
5 range of motion, normal sensation, and a normal motor exam.<sup>5</sup> AR 1789-90. In  
6 July 2015, Plaintiff had a non-antalgic gait, decreased lumbar range of motion,  
7 diminished palpation and sensation to light touch, normal Achilles reflexes,  
8 tenderness in the cervical spine with decreased range of motion and diminished  
9 sensation, and intact motor strength. AR 1040-41. An August 2015 MRI showed  
10 no evidence of spondylolisthesis or compression deformity, although there was  
11 severe right neural foraminal narrowing at L4-5 possibly correlated with Plaintiff's  
12 surgical history (AR 29, 708-09). A February 2016 CT of the lumbar spine  
13 showed stable findings with respect to the August 2015 MRI. AR 1873-74. An  
14 MRI of the left shoulder in January 2014 revealed mild rotator cuff tendinosis with  
15 moderate joint degeneration, but no tear or retraction. AR 29, 659. With respect to  
16 Plaintiff's alleged mental impairments, as discussed further below, there was  
17 minimal objective medical evidence to support Plaintiff's allegations of disabling  
18 mental impairments.

19 The ALJ adequately accounted for Plaintiff's impairments with a restrictive  
20 RFC. To the extent Plaintiff alleged more severe symptoms, the objective medical  
21 evidence did not support his allegations. Thus, when considered alongside the  
22 below reasons, the ALJ appropriately considered this factor in discounting  
23 Plaintiff's testimony.

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25 <sup>5</sup> The Court recognizes that this record is from an emergency room visit at  
26 which Plaintiff presented with statements that he wanted to kill himself but with no  
27 plan. AR 1788. There is no reason to think, however, that the physician who  
28 "personally performed" the physical exam did not accurately record the results of  
his examination. AR 1793.

1                   b. Reason Two: Lack of Significant Mental Health Treatment.

2           Regarding his mental impairments, Plaintiff reported that he has no problem  
3 with understanding and following instructions or completing tasks, but sometimes  
4 he cannot remember what he did last week and has trouble concentrating. AR 194.  
5 At the hearing, he testified that he is always thinking negative thoughts and does  
6 not see any hope for resolving his problems. AR 65. He feels like he is not  
7 present because he is worrying about his future, and he sometimes contemplates  
8 suicide so that he will not bother anyone. AR 65-66. He also testified that he has a  
9 “really bad memory” and “cannot keep things for too long [in his] head.” AR 56.

10           The ALJ found that “there is virtually no evidence of mental health  
11 treatment.” AR 30. The ALJ then summarized Plaintiff’s mental health treatment  
12 records as follows:

13           [Plaintiff] reported having depression since 2004. (AR 1788.)  
14           However, the record is devoid of evidence of treatment in this regard  
15 until progress reports in July 2013 through September 2013  
16 indicating he had individual therapy and biofeedback to cope with  
17 depression, stress, anxiety, and insomnia. (AR 1842-64.) Notably,  
18 however, the treatment notes consist of no more than duplicated  
19 information. (Id.) In January 2014, a psychiatrist who conducted an  
20 initial evaluation in connection with the claimant’s worker’s  
21 compensation claim diagnosed major depressive disorder and  
22 recommended psychopharmacologic intervention. (AR 256-57.) A  
23 permanent and stationary report in February 2015 indicated that his  
24 psychotropic medications were likely reducing his psychological  
25 symptoms. (AR 1828.) In April 2015, he presented to the emergency  
26 department stating that he wanted to kill himself but had no plan.  
27 (AR 1788). However, on examination, he was stable and agreed with  
28 the treatment plan. (AR 1792.) Accordingly, the [RFC’s] restriction

1 to simple work with limited interpersonal contact more than  
2 adequately conforms to the limitations posed by the claimant's  
3 mental impairments.

4 AR 29-30. Ultimately, the ALJ found that his depressive disorder was a  
5 severe impairment and included significant restrictions in the RFC to account for  
6 its limiting effects, i.e., a restriction to simple, routine tasks with only incidental  
7 personal interactions. AR 28. Given Plaintiff's minimal treatment for his  
8 allegedly disabling mental impairments, the Court sees no legal error in the ALJ's  
9 analysis.

10 c. Reason Five: Noncompliance with Prescribed Medications.

11 The ALJ stated, "there is evidence of poor compliance with medications."  
12 AR 30, citing AR 1751 and 1755. These documents are progress notes from the  
13 Valley View Medical Clinic, summarized as follows:

14 • AR 1755 (August 2013): It states, "poor compliance é [with] meds" and  
15 "DM [diabetes mellitus] not well controlled;"<sup>6</sup> it lists prescriptions to be refilled,  
16 including one for the diabetes medication metformin.

17 • AR 1753 (November 2013): It notes DM and HTN [hypertension]. It notes  
18 Plaintiff's A1C (blood sugar) and an increase in his dosage of metformin.

19 • AR 1752 (August 2014): It discusses metformin and other medications,  
20 A1C, HTN, and obesity.

21 • AR 1751 (August 2015): It states, "non-compliant é [with] meds for DM  
22 [and] HTN."

23 Thus, these records reflect non-compliance with prescribed medication for  
24 treating his diabetes and hypertension. That Plaintiff was noncompliant with this  
25 medication despite his allegations of extreme pain in many areas of his body is an

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26  
27 <sup>6</sup> Plaintiff is 5'6" and weighs approximately 250 pounds. AR 1638. At step  
28 two, the ALJ found that Plaintiff's diabetes was not severe. AR 26.

1 additional clear and convincing reason to discount his testimony. See Smolen, 80  
2 F.3d at 1284 (noting that ALJ may consider unexplained or inadequately explained  
3 failure to follow prescribed course of treatment when assessing symptom  
4 testimony).

5 d. Reason Seven: Inconsistent with Daily Activities.

6 The ALJ found that Plaintiff's alleged degree of impairment was  
7 inconsistent with his reported activities. AR 30. Per the ALJ, "His activities are  
8 reasonably normal and tend to show that he does have the ability to perform basic  
9 work functions." Id. As activities requiring exertion inconsistent with his  
10 subjective symptom testimony, the ALJ listed the following: performing personal  
11 care, doing household chores, shopping, carrying light groceries, driving his wife  
12 and son daily, reading, and watching TV. Id.

13 Plaintiff's shopping consists of two, 30-minute monthly outings and his  
14 grocery carrying is limited to bread or a gallon of milk. AR 65, 192. His  
15 household chores consist of washing dishes (daily), cleaning, sweeping the floor  
16 (weekly), and picking up trash outside with a hand extension (monthly). AR 191.  
17 He has no difficulties dressing, bathing, shaving, feeding himself, or using the  
18 toilet. AR 190. He takes care of his teenage son at home. Id. He needs no  
19 reminders to take care of his personal needs or take his medicine. AR 191. He  
20 needs no help or encouragement doing his chores. Id. He reads several times a  
21 week and watches television every day, with no change in these activities since the  
22 onset of his alleged disability. AR 193. He reports no changes in social activities  
23 since his alleged disability onset. AR 194. He follows written and spoken  
24 instructions well. Id. Plaintiff drives his son to school "mostly every day" and  
25 drives his wife to work. AR 62, 171.

26 At the very least, Plaintiff's mental activities, such as socializing, finishing  
27 projects, reading, and driving are inconsistent with his having a disabling cognitive  
28 impairment. Plaintiff's testimony concerning the limiting effects of his depression

1 is consistent with the restrictive RFC assessed by the ALJ (i.e., only simple,  
2 routine tasks with limited socializing). Furthermore, it is unlikely that a person  
3 with Plaintiff's alleged physical impairments would have no difficulties  
4 performing personal care and the home chores that Plaintiff described. This is a  
5 further clear and convincing reason to discount Plaintiff's testimony.

6 V.

7 **CONCLUSION**

8 For the reasons stated above, IT IS ORDERED that judgment shall be  
9 entered AFFIRMING the decision of the Commissioner denying benefits.

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11 DATED: October 25, 2018

*Karen E. Scott*

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KAREN E. SCOTT  
14 United States Magistrate Judge  
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