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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DAVID SANCHEZ,	)	Case No. EDCV 16-2067-JPR
	)	
Plaintiff,	)	
	)	<b>MEMORANDUM DECISION AND ORDER</b>
v.	)	<b>AFFIRMING COMMISSIONER</b>
	)	
NANCY A. BERRYHILL, Acting	)	
Commissioner of Social	)	
Security, <sup>1</sup>	)	
	)	
Defendant.	)	
_____	)	

**I. PROCEEDINGS**

Plaintiff seeks review of the Commissioner’s final decision denying his application for Social Security disability insurance benefits (“DIB”). 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 October 27, 2017, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner’s decision is affirmed.

<sup>1</sup> Nancy A. Berryhill is substituted in as the correct Defendant. See Fed. R. Civ. P. 25(d).

1 **II. BACKGROUND**

2 Plaintiff was born in 1963. (Administrative Record ("AR")  
3 166, 180.) He completed the 11th grade (AR 40, 287) and last  
4 worked in a warehouse (see AR 39, 293).

5 In August 2013, Plaintiff filed an application for DIB (see  
6 AR 267-68), alleging that he had been disabled since November 5,  
7 2007, because of deterioration of the spine, hips, and knees;  
8 muscle spasms; high blood pressure; numbness in the hands, back,  
9 legs, and feet; and severe anxiety (AR 166-67, 180-81). After  
10 his application was denied initially (AR 197-201) and on  
11 reconsideration (AR 204-08), he requested a hearing before an  
12 Administrative Law Judge (AR 210-11). A hearing was held on  
13 February 5, 2015 (see AR 24), at which Plaintiff, who was  
14 represented by counsel, testified, as did a vocational expert.<sup>2</sup>  
15 (AR 36-53.) In a written decision issued March 19, 2015, the ALJ  
16 found Plaintiff not disabled. (AR 24-35.) Plaintiff requested  
17 review from the Appeals Council (AR 17), and on July 25, 2016, it  
18 denied review (AR 2-8). This action followed.

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19  
20 <sup>2</sup> Plaintiff had two prior applications, both of which were  
21 denied in final decisions. (See AR 146-60.) The hearing for the  
22 latter of those apparently also took place on February 5, but in  
23 2012. (See AR 83-142 (hearing date of Feb. 5, but marked as  
24 2015). But see AR 146 (prior ALJ noting hearing date of Mar. 8,  
25 2012).) During the hearing that is marked on the transcript as  
26 having taken place in February 2012, the ALJ and claimant clearly  
27 discuss, in the past tense, things from April 2012 through "the  
28 late part" of that year. (E.g., AR 41.) Moreover, the hearing  
in the transcript that is marked as having taken place in  
February 2015 was presided over by ALJ Lynn Ginsberg, who issued  
the 2012 decision. (See AR 83-160.) Thus, it appears that the  
February 2015 hearing transcript was inadvertently marked as  
2012, and the one from 2012 was mistakenly marked as 2015. The  
parties do not contend otherwise. (See, e.g., J. Stip. at 17  
n.7.)

1 **III. STANDARD OF REVIEW**

2 Under 42 U.S.C. § 405(g), a district court may review the  
3 Commissioner's decision to deny benefits. The ALJ's findings and  
4 decision should be upheld if they are free of legal error and  
5 supported by substantial evidence based on the record as a whole.  
6 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra  
7 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial  
8 evidence means such evidence as a reasonable person might accept  
9 as adequate to support a conclusion. Richardson, 402 U.S. at  
10 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).  
11 It is more than a scintilla but less than a preponderance.  
12 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.  
13 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether  
14 substantial evidence supports a finding, the reviewing court  
15 "must review the administrative record as a whole, weighing both  
16 the evidence that supports and the evidence that detracts from  
17 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,  
18 720 (9th Cir. 1998). "If the evidence can reasonably support  
19 either affirming or reversing," the reviewing court "may not  
20 substitute its judgment" for the Commissioner's. Id. at 720-21.

21 **IV. THE EVALUATION OF DISABILITY**

22 People are "disabled" for purposes of receiving Social  
23 Security benefits if they are unable to engage in any substantial  
24 gainful activity owing to a physical or mental impairment that is  
25 expected to result in death or has lasted, or is expected to  
26 last, for a continuous period of at least 12 months. 42 U.S.C.  
27 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.  
28 1992).

1           A.    The Five-Step Evaluation Process

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

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

9           If the claimant is not engaged in substantial gainful  
10 activity, the second step requires the Commissioner to determine  
11 whether the claimant has a "severe" impairment or combination of  
12 impairments significantly limiting his ability to do basic work  
13 activities; if not, the claimant is not disabled and his claim  
14 must be denied.  § 404.1520(a)(4)(ii).

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

21           If the claimant's impairment or combination of impairments  
22 does not meet or equal an impairment in the Listing, the fourth  
23 step requires the Commissioner to determine whether the claimant  
24 has sufficient residual functional capacity ("RFC")<sup>3</sup> to perform

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26           <sup>3</sup> RFC is what a claimant can do despite existing exertional  
27 and nonexertional limitations.  § 404.1545; see Cooper v.  
28 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, 867 F.3d 1151, 1153 (9th Cir. 2017)

1 his past work; if so, he is not disabled and the claim must be  
2 denied. § 404.1520(a)(4)(iv). The claimant has the burden of  
3 proving he is unable to perform past relevant work. Drouin, 966  
4 F.2d at 1257. If the claimant meets that burden, a prima facie  
5 case of disability is established. Id.

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

10 § 404.1520(a)(4)(v); Drouin, 966 F.2d at 1257. That  
11 determination comprises the fifth and final step in the  
12 sequential analysis. § 404.1520(a)(4)(v); Lester, 81 F.3d at 828  
13 n.5; Drouin, 966 F.2d at 1257.

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

15 At step one, the ALJ found that Plaintiff had not engaged in  
16 substantial gainful activity between November 5, 2007, the  
17 alleged disability-onset date, and December 31, 2012, his date  
18 last insured. (AR 26.) At step two, he concluded that he had  
19 the following severe impairments: "low back pain, obesity,  
20 hypertension, panic disorder with agoraphobia, anxiety,  
21 obsessive-compulsive disorder, atrial fibrillation, and umbilical  
22 hernia." (AR 27.) At step three, he found that he did not have  
23 an impairment or combination of impairments falling under a  
24 Listing. (AR 27-28.)

25 At step four, the ALJ found that Plaintiff had the RFC to  
26 perform medium work subject to the following limitations:

27 \_\_\_\_\_  
28 (citing § 416.920(a)(4)).

1 lift and carry 50 pounds occasionally and 25 pounds  
2 frequently; never climb ladders, ropes, or scaffolds; no  
3 jobs requiring the use of moving hazardous machinery or  
4 exposure to unprotected heights; capable of  
5 understanding, remembering, and carrying out simple  
6 instructions; capable of making judgments on simple work-  
7 related decisions; capable of interacting appropriately  
8 with supervisors and coworkers, but can have only  
9 superficial and no direct interaction with the public;  
10 and is able to respond to usual work situations and  
11 changes in routine work settings.

12 (AR 28.) The RFC repeats the limitations assessed in a prior  
13 ALJ's decision, from April 13, 2012. (AR 146-60.) The ALJ here  
14 determined that "there [was] no new and material evidence  
15 warranting a change" from those earlier findings and found that  
16 the prior decision gave rise to a presumption of continuing  
17 nondisability after that adjudicated period. (AR 24.) As  
18 discussed in Section V, that was appropriate under Chavez v.  
19 Bowen, 844 F.2d 691, 693 (9th Cir. 1988).

20 Based on the VE's testimony, the ALJ concluded that  
21 Plaintiff could not perform his past relevant work. (AR 31.) At  
22 step five, the ALJ found that given Plaintiff's age, education,  
23 work experience, and RFC, he could perform three "representative"  
24 jobs in the national economy. (AR 31-32.) Thus, the ALJ found  
25 Plaintiff not disabled. (AR 32.)

## 26 **V. DISCUSSION**

27 Plaintiff argues that the ALJ erred in rejecting his  
28 subjective symptom testimony. (J. Stip. at 5-13.) The ALJ,

1 however, provided several acceptable reasons for doing so:  
2 Plaintiff "appeared to exaggerate some of his symptoms" (AR 30);  
3 "the medical evidence [did] not corroborate" the "alleged  
4 worsening of his physical and mental impairments," which  
5 "appear[ed] to have occurred well after the date last insured"  
6 (AR 29-30); he failed to "follow up" on treatment for a hernia  
7 and there was "little in the way of mental status examinations"  
8 (id.); and his alleged "condition [did] not keep him from  
9 performing activities of daily living" during the relevant period  
10 (AR 30; see also AR 27). Accordingly, because the ALJ did not  
11 err, remand is unwarranted.

12 As discussed by the ALJ (AR 24), the relevant period for  
13 purposes of DIB was from April 13 to December 31, 2012: a prior  
14 decision finding Plaintiff not disabled was issued on April 13;  
15 it apparently was not appealed and became final (see AR 146-60);  
16 and Plaintiff's date last insured was December 31 (see AR 29).  
17 During that period, a presumption of continuing nondisability  
18 applied under Chavez, 844 F.2d at 693, and could be rebutted by a  
19 showing of "changed circumstances" indicating a "greater  
20 disability," id.; Lester, 81 F.3d at 827 (citing Taylor v.  
21 Heckler, 765 F.2d 872, 875 (9th Cir. 1985)). The ALJ determined  
22 that no such showing was made (AR 24), and Plaintiff has not  
23 challenged that finding (see generally J. Stip).

24 A. Applicable Law

25 An ALJ's assessment of the credibility of a claimant's  
26 allegations concerning the severity of his symptoms is entitled  
27 to "great weight." See Weetman v. Sullivan, 877 F.2d 20, 22 (9th  
28 Cir. 1989) (as amended); Nyman v. Heckler, 779 F.2d 528, 531 (9th

1 Cir. 1985) (as amended Feb. 24, 1986). “[T]he ALJ is not  
2 ‘required to believe every allegation of disabling pain, or else  
3 disability benefits would be available for the asking, a result  
4 plainly contrary to 42 U.S.C. § 423(d)(5)(A).’” Molina v.  
5 Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012) (quoting Fair v.  
6 Bowen, 885 F.2d 597, 603 (9th Cir. 1989)).

7 In evaluating a claimant’s subjective symptom testimony, the  
8 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d  
9 at 1035-36; see also SSR 96-7p, 1996 WL 374186 (July 2, 1996).<sup>4</sup>  
10 “First, the ALJ must determine whether the claimant has presented  
11 objective medical evidence of an underlying impairment [that]  
12 could reasonably be expected to produce the pain or other  
13 symptoms alleged.” Lingenfelter, 504 F.3d at 1036. If such  
14 objective medical evidence exists, the ALJ may not reject a  
15 claimant’s testimony “simply because there is no showing that the  
16 impairment can reasonably produce the degree of symptom alleged.”  
17 Smolen v. Chater, 80 F.3d 1273, 1282 (9th Cir. 1996) (emphasis in  
18 original).

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21 <sup>4</sup> Social Security Ruling 16-3p, 2016 WL 1119029, effective  
22 March 16, 2016, rescinded SSR 96-7p, which provided the framework  
23 for assessing the credibility of a claimant’s statements. SSR  
24 16-3p was not in effect at the time of the ALJ’s decision in this  
25 case, however, and therefore does not apply. Still, the Ninth  
26 Circuit has clarified that SSR 16-3p “makes clear what our  
27 precedent already required: that assessments of an individual’s  
28 testimony by an ALJ are designed to ‘evaluate the intensity and  
persistence of symptoms after [the ALJ] find[s] that the  
individual has a medically determinable impairment(s) that could  
reasonably be expected to produce those symptoms,’ and not to  
delve into wide-ranging scrutiny of the claimant’s character and  
apparent truthfulness.” Trevizo v. Berrhill, 871 F.3d 664, 678  
n.5 (9th Cir. 2017) (as amended) (alterations in original)  
(quoting SSR 16-3p).



1           If the claimant meets the first test, the ALJ may discredit  
2 the claimant's subjective symptom testimony only if he makes  
3 specific findings that support the conclusion. See Berry v.  
4 Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent a finding or  
5 affirmative evidence of malingering, the ALJ must provide "clear  
6 and convincing" reasons for rejecting the claimant's testimony.  
7 Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir. 2015) (as  
8 amended); Treichler v. Comm'r of Soc. Sec. Admin., 775 F.3d 1090,  
9 1102 (9th Cir. 2014). If evidence of malingering exists,  
10 however, the ALJ may reject the claimant's symptom testimony by  
11 stating why the testimony is unpersuasive. Greger v. Barnhart,  
12 464 F.3d 968, 972 (9th Cir. 2006); see also Bagoyan Sulakhyan v.  
13 Astrue, 456 F. App'x 679, 682 (9th Cir. 2011) ("When there is  
14 affirmative evidence of malingering, which is present in this  
15 case, the ALJ is relieved of the burden of providing specific,  
16 clear, and convincing reasons to discount claimant's  
17 testimony."); Schow v. Astrue, 272 F. App'x 647, 651 (9th Cir.  
18 2008) ("[T]he weight of our cases hold that the mere existence of  
19 'affirmative evidence suggesting' malingering vitiates the clear  
20 and convincing standard of review.")

21           In assessing credibility, the ALJ may consider, among other  
22 factors, (1) ordinary techniques of credibility evaluation, such  
23 as the claimant's reputation for lying, prior inconsistent  
24 statements, and other testimony by the claimant that appears less  
25 than candid; (2) unexplained or inadequately explained failure to  
26 seek treatment or to follow a prescribed course of treatment; (3)  
27 the claimant's daily activities; (4) the claimant's work record;  
28 and (5) testimony from physicians and third parties. Rounds v.

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

6 B. Relevant Background

7 In April 2012, Plaintiff was found not disabled by a prior  
8 ALJ. (AR 146-60.) She assessed him with severe impairments of  
9 "low back pain; obesity; hypertension; panic disorder with  
10 agoraphobia; anxiety; obsessive-compulsive disorder; atrial  
11 fibrillation; and umbilical hernia" (AR 149) but found his  
12 subjective symptom testimony only "partially credible." (AR  
13 152.) Plaintiff, she reasoned, "portray[ed] limitations that  
14 [were] not actually present," pointing to a consulting orthopedic  
15 physician and a psychiatrist who noted that he was  
16 "exaggerat[ing] some symptoms." (AR 152, 156.) The ALJ noted  
17 that Plaintiff was at one point deemed ineligible for "narcotic  
18 pain medication" because he was "accused of altering the  
19 prescription." (AR 154.)<sup>5</sup> And despite complaints of pain in his  
20

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21 <sup>5</sup> At his 2012 hearing, the prior ALJ asked Plaintiff about  
22 "evidence [in] the record[] showing that [his] doctor reported  
23 [him] to the police for changing prescriptions." (AR 90-91  
24 (referencing Mar. 23, 2011 medical note from doctor who had  
25 "called to report [Plaintiff's] illegal activity to Riverside  
26 County dispatcher".) Plaintiff stated that he had "no idea"  
27 what that was about and that his doctors "wouldn't give [him] a  
28 reason" why he "couldn't have [Vicodin] no more." (AR 91-92.)  
He indicated that he was taking Ibuprofen instead. (AR 114.)  
Plaintiff's counsel clarified that his Vicodin prescription had  
been altered in October 2010 from 30 pills to 90 and that he was  
never contacted by the hospital or police department regarding  
that change. (AR 117.) Despite having testified that he was not  
given any explanation for why his Vicodin prescription was

1 lower back, hips, and knees, his condition was "controlled" with  
2 medication, and a consulting orthopedic surgeon found him to have  
3 "no functional limitations." (See AR 154-56.) The ALJ further  
4 noted that Plaintiff was assessed with an umbilical hernia and  
5 had been referred to a general surgeon. (AR 155.) She also  
6 indicated that he was diagnosed with atrial fibrillation and  
7 reported shortness of breath but "no chest pain or  
8 palp[ita]tions."<sup>6</sup> (Id.)

9 Plaintiff's first doctor's visit after the end of the  
10 adjudicated period, April 13, 2012, occurred in June 2012, when  
11 he visited a Riverside county health center "to establish a  
12 [doctor]," complaining of pain in his back, hip, and right knee.  
13 (AR 434, 436.) He denied any injury and stated that he had had  
14 pain "since age 17" and that it was "constant." (AR 434.) He  
15 also reported decreased pain with medication. (Id.) He was  
16 noted as being obese, was assessed with "a. fib," anxiety,  
17 bipolar disorder, pain, and obesity, among other conditions, and  
18 was prescribed Vicodin.<sup>7</sup> (AR 434, 436.)

19 \_\_\_\_\_  
20 stopped, Plaintiff later testified that he "was told" that his  
21 doctors thought he was "selling" because of "the way [he]  
22 look[ed]." (AR 118-19.) Before the hearing closed, he stated  
23 that he was "messed up . . . with the police thing" and that he  
24 had "[n]ever been in juvenile hall, cuffs on me, and then they  
25 treat me like that." (AR 141.)

26 <sup>6</sup> Atrial fibrillation is a type of arrhythmia that involves  
27 irregular twitchings of the muscular wall and a problem with the  
28 speed or rhythm of the heartbeat. See Stedman's Medical  
Dictionary 668 (27th ed. 2000); Atrial Fibrillation, MedlinePlus,  
<https://medlineplus.gov/atrialfibrillation.html> (last updated  
Feb. 12, 2018).

<sup>7</sup> Vicodin is a narcotic hydrocodone combination product  
containing acetaminophen and is used to relieve moderate to

1 Plaintiff returned in July 2012 to review the results of  
2 "labs" done the previous month. (AR 432; see also AR 460-61.)  
3 He was again assessed with "a. fib," anxiety, depression,  
4 obesity, and chronic pain, among other conditions. (AR 432.)  
5 Later that month, he requested medication refills, including  
6 Vicodin. (AR 430.) He complained that he was "not getting  
7 Vicodin anymore . . . and ha[d] to pay for it now." (Id.) He  
8 suggested a method for getting it paid for once again. (Id.) He  
9 was noted as being obese but "s[at] comfortably." (Id.) He was  
10 assessed with lower-back pain, anxiety, and atrial fibrillation.  
11 (Id.) X-rays of his back were ordered, and he was referred for  
12 an electrocardiogram. (Id.; see also AR 451.)

13 By August 2012, the x-rays and EKG hadn't been completed.  
14 (AR 428.) At that time, he complained of back pain, for which he  
15 was requesting "Vicodin again," and "bad heartburn" and was  
16 assessed with "chronic [low-back pain]" and "GERD."<sup>8</sup> (Id.) By  
17 September 2012, the x-rays still hadn't been completed because  
18 Plaintiff didn't "have [money] to drive to" the medical center.  
19 (AR 426.) He stated that he had "no money," "[couldn't] get work  
20 at Home Depot," and "want[ed] disab[ility] for all his  
21 prob[lems]." (Id.)

22 \_\_\_\_\_  
23 severe pain. See Hydrocodone Combination Products, MedlinePlus,  
24 <https://medlineplus.gov/druginfo/meds/a601006.html> (last updated  
25 Jan. 25, 2018). Plaintiff's new doctor may have been unaware  
that he had previously been denied any more Vicodin because he  
was suspected of abusing or reselling it.

26 <sup>8</sup> Gastroesophageal reflux disease occurs when a muscle at  
27 the end of the esophagus does not close properly, allowing  
stomach contents to leak back into the esophagus and irritate it.  
28 See GERD, MedlinePlus, <https://medlineplus.gov/gerd.html> (last  
updated Oct. 17, 2017).

1 X-rays of his lumbar spine were completed in October 2012  
2 (AR 448-50), and x-rays of his knees, feet, and hips were  
3 completed in November (AR 444-47). During that time, Plaintiff  
4 began meeting with family-medicine doctor Edward Bacho, who  
5 reviewed his x-rays. (AR 448, 450, 452; see also AR 500.) In  
6 October, Plaintiff complained to Dr. Bacho of ongoing low-back  
7 pain, knee pain, and foot pain but stated that the pain was  
8 "controlled on Norco"<sup>9</sup> and that his goal was to work as a  
9 "forklift/warehouse worker [with] controlled pain." (AR 423.)  
10 In November, Plaintiff noted "no change" since his October visit  
11 (AR 421), and Dr. Bacho indicated that his x-rays showed no  
12 problems in his feet, hips, or spine except for spurring at "L2-  
13 L5" (id.; see also AR 445-50) and "mild degenerative change" in  
14 his right knee, with no problems in his left (AR 421; see also AR  
15 444). Dr. Bacho recommended that Plaintiff receive a "steroid  
16 injection" for his right knee. (AR 421.) That injection was  
17 administered in December 2012. (AR 419.)

18 Plaintiff indicated in January 2013 that his knee pain  
19 "significantly improved" following the injection and that his  
20 "pain [was] controlled on Norco." (AR 417.) He was next seen in  
21 April 2013 and did not complain of any pain. (AR 410.) In June,  
22 he reported "numbness in [his] back legs" and "feeling weak."  
23 (AR 409.) The next month, Plaintiff reported that he had had  
24 "good results" from the December 2012 knee injection but that his

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25  
26 <sup>9</sup> Norco is a narcotic hydrocodone combination product  
27 containing acetaminophen and is used to relieve moderate to  
28 severe pain. See Hydrocodone Combination Products, MedlinePlus,  
<https://medlineplus.gov/druginfo/meds/a601006.html> (last updated  
Jan. 25, 2018).

1 pain was "recently slowly returning." (AR 416.) Dr. Bacho  
2 administered another steroid injection to his right knee in  
3 August 2013. (AR 414-15.) An echocardiogram was also conducted  
4 at that time, which showed "[a]trial fibrillation" and "moderate  
5 concentric left ventricular hypertrophy" but overall "normal"  
6 "left ventricular systolic function" and otherwise "normal"  
7 results. (AR 405-06; see also AR 442 (Apr. 2013 medical image of  
8 Plaintiff's chest showing "no evidence of acute cardiac or  
9 respiratory disease").) In September, Plaintiff met with Dr.  
10 Bacho to review his "Echo results" and had "no other complaints."  
11 (AR 412.) In November, Plaintiff reported "8/10 pain" because he  
12 was out of medication. (AR 407.)

13 Plaintiff completed an Adult Function Report in September  
14 2013, nine months after the relevant period had ended. (AR 305-  
15 13.) He answered the questions in the present tense and did not  
16 indicate how long his symptoms had lasted. (Id.) He stated that  
17 he was unable to work because his atrial fibrillation caused him  
18 to be dizzy, light-headed, and short of breath and his back and  
19 hips caused severe pain. (AR 305.) He reported that he took  
20 care of his dog by walking and feeding him (AR 306); had "no  
21 problem with personal care" despite "sometimes" getting short of  
22 breath or experiencing dizziness, severe pain, or "numbness in  
23 [his] legs" (id.); prepared his own meals daily, a habit that had  
24 not changed since his alleged conditions began (AR 307); washed  
25 his own dishes "each day" (id.); walked, rode in cars, and went  
26 out alone (AR 308); shopped in stores for food (id.); and went to  
27 the "doctors" and "store" on "a regular basis" (AR 309). He  
28 stated that he "could use a wheel chair or a cane [or] walker"

1 but that he "d[idn't] have any money" for one. (AR 311.)

2 He also reported having problems getting along with family,  
3 friends, neighbors, and others because of his "depression [and]  
4 anxiety." (AR 310.) He stated that he "sometimes" didn't go out  
5 because of his "anxiety." (AR 308.) Plaintiff further indicated  
6 that he lived with family (AR 305; see also AR 98-101 (testifying  
7 before prior ALJ that he and his fiancé lived with seven  
8 friends)) and that his fiancé and grandson helped him care for  
9 his dog (AR 306). He stated that he shopped in stores regularly  
10 (AR 308, 309), regularly saw doctors (AR 309), and talked with  
11 his grandchildren every day (id.; see also AR 105-06 (testifying  
12 in Feb. 2012 that he saw his grandchildren "once, twice a week"  
13 to help babysit)).

14 At his February 2015 hearing, Plaintiff was asked  
15 specifically about his experiences between April and December  
16 2012, his date last insured. (AR 41-49.) He testified that in  
17 the late part of 2012, he experienced problems with his lower  
18 back, feet, ankles, and knee. (AR 42.) He stated that his right  
19 knee caused pain and "off and on" swelling. (AR 43-44.) He had  
20 received two steroid shots as treatment, and he testified that  
21 the "first one" brought "a little bit" of relief, while the  
22 "second one, none at all."<sup>10</sup> (AR 44.) He experienced "numbness,  
23 aching, [and pain]" in his right ankle and numbness in his left  
24

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25 <sup>10</sup> As noted, Plaintiff in fact told Dr. Bacho that his pain  
26 "significantly improved" with the first shot but that after six  
27 months it was "slowly returning." (AR 416-17.) A month after  
28 the second injection, he had "no complaints" for the doctor (AR  
412), which presumably indicated that the second shot had at  
least temporarily relieved his pain.

1 thigh. (Id.) He did not need a cane in 2012 but started using  
2 one "six months" before the hearing, in late 2014. (AR 43.)

3 He also testified to experiencing problems breathing "every  
4 day" in late 2012 because of "AFib." (AR 45.) He had to "lay  
5 down and rest to relieve the symptoms," which included shortness  
6 of breath, for "[f]ive, ten minutes." (AR 46.) He also had  
7 problems with a hernia. (AR 48.)

8 Plaintiff further testified that he had anxiety and  
9 depression in late 2012. (AR 47.) When he was around "crowds of  
10 people," he stated, he would get "light headed" and have to go to  
11 the car "to get some fresh air" and "just not be around people."  
12 (Id.) Plaintiff stated that medication "help[ed]" and that he  
13 was not "presently" getting mental-health therapy because he had  
14 moved. (Id.) When asked if his "doctors ever told [him] that  
15 [he] needed that sort of therapy," he responded, "Not lately."  
16 (Id.)

### 17 C. Analysis

18 Plaintiff argues that the ALJ provided "woefully  
19 insufficient reasons to reject [his] testimony."<sup>11</sup> (J. Stip. at  
20 \_\_\_\_\_)

21 <sup>11</sup> Plaintiff initially argues that the ALJ discounted his  
22 testimony using "oft rejected boilerplate language." (J. Stip.  
23 at 7-8.) Boilerplate can be problematic, such as when an ALJ  
24 finds a claimant's statements not credible "to the extent they  
25 are inconsistent with the [RFC]." See, e.g., Laborin v.  
26 Berryhill, 867 F.3d 1151, 1154 (9th Cir. 2017); Treichler, 775  
27 F.3d at 1102-03. But the ALJ's finding that Plaintiff's  
28 statements were "not entirely credible for the reasons explained  
in this decision" hardly fits that mold. (AR 29.) Even assuming  
the ALJ used some boilerplate, he specifically identified the  
testimony he found not credible and provided appropriate reasons  
supporting his finding; thus, any error was harmless. See, e.g.,  
Laborin, 867 F.3d at 1154 ("[B]oilerplate language is not, by  
itself, reversible error and can be harmless."); Treichler, 775



1 7.) He focuses in particular on the ALJ's rationale that his  
2 testimony "lack[ed] support in the objective medical evidence,"  
3 which he argues was a "legally insufficient" reason (id. at 8  
4 (citing AR 29-30)), and also briefly contends that the ALJ's  
5 highlighting of his "daily activities" was in error because he  
6 "fail[ed] to adequately consider" how he performed his "sporadic  
7 activities of daily living" (id. at 10-11). But the ALJ did not  
8 err in either regard and provided additional acceptable reasons  
9 not challenged by Plaintiff.

10 1. Malingering

11 As discussed, Plaintiff was found not disabled in a final  
12 ALJ decision in April 2012, and a presumption of nondisability  
13 under Chavez applied during the relevant period. (See AR 24,  
14 146-60.) The ALJ found that the presumption was not rebutted by  
15 a showing of "changed circumstances" (AR 24), and Plaintiff has  
16 not challenged that determination (see generally J. Stip.).  
17 Incorporating the prior ALJ's findings, the ALJ identified  
18 evidence that Plaintiff "appeared to exaggerate some of his  
19 symptoms." (AR 30; see AR 152 (prior ALJ discussing consulting  
20 orthopedic doctor's note that Plaintiff "exaggerate[d] some  
21 symptoms"), 154 (prior ALJ discussing how Plaintiff "was no  
22 longer eligible for narcotic pain medication refills because he  
23 was accused of altering the prescription"), 156 (prior ALJ  
24 discussing psychiatrist's note that Plaintiff "exaggerate[d] some  
25 of his symptoms"); see also AR 362 (mental-health-treatment

26 \_\_\_\_\_  
27 F.3d at 1103 ("After making this boilerplate statement, the ALJs  
28 typically identify what parts of the claimant's testimony were  
not credible and why.").

1 record stating that Plaintiff "appear[ed] to exaggerate some  
2 symptoms"). Evidence of malingering relieves an ALJ of  
3 providing clear and convincing reasons for discounting pain  
4 testimony and is alone a sufficient basis to find a claimant not  
5 credible. See Bagoyan Sulakhyan, 456 F. App'x at 682; Schow, 272  
6 F. App'x at 651; see also Rounds, 807 F.3d at 1006 (ALJ may rely  
7 on plaintiff's reputation for lying, prior inconsistent  
8 statements, and other testimony that appears less than candid).  
9 Thus, the ALJ properly rejected Plaintiff's testimony for that  
10 reason alone. See Baghoomian v. Astrue, 319 F. App'x 563, 565  
11 (9th Cir. 2009) (evidence of malingering, which "indicated that  
12 [plaintiff] was exaggerating his symptoms," "relieved the ALJ  
13 from the burden of providing specific, clear, and convincing  
14 reasons to discount [his] testimony"); Swinscoe v. Astrue, No.  
15 1:10-cv-01614-AWI-BAM, 2012 WL 2317550, at \*13 (E.D. Cal. June  
16 18, 2012) ("ALJ noted evidence that Plaintiff was exaggerating  
17 her symptoms," and "[t]his evidence of malingering arguably  
18 relieved the ALJ from the burden of providing specific, clear,  
19 and convincing reasons to discount [her] testimony").

20 Even assuming the clear-and-convincing standard applied, see  
21 Ghanim v. Colvin, 763 F.3d 1154, 1163 n.9 (9th Cir. 2014) (noting  
22 but not resolving ambiguity in case law regarding whether clear-  
23 and-convincing standard does not apply only when ALJ makes  
24 "actual finding of malingering" or also when record merely  
25 contains "evidence of malingering"), the ALJ articulated several  
26 additional reasons for rejecting Plaintiff's testimony, each of  
27 which was proper.

28

1           2.    Objective medical evidence

2           The ALJ found that Plaintiff's allegations that his  
3 impairments had worsened during the relevant eight-month period  
4 were not corroborated by the objective medical evidence because  
5 any worsening "appear[ed] to have occurred well after the date  
6 last insured." (AR 29-30.) Contradiction with evidence in the  
7 medical record is a "sufficient basis" for rejecting a claimant's  
8 subjective symptom testimony. Carmickle v. Comm'r, Soc. Sec.  
9 Admin., 533 F.3d 1155, 1161 (9th Cir. 2008); see Morgan v. Comm'r  
10 of Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir. 1999) (upholding  
11 "conflict between [plaintiff's] testimony of subjective  
12 complaints and the objective medical evidence in the record" as  
13 "specific and substantial" reason undermining credibility).  
14 Although a lack of medical evidence "cannot form the sole basis  
15 for discounting pain testimony, it is a factor that the ALJ can  
16 consider in his credibility analysis." Burch v. Barnhart, 400  
17 F.3d 676, 681 (9th Cir. 2005); Rollins v. Massanari, 261 F.3d  
18 853, 857 (9th Cir. 2001) (citing § 404.1529(c)(2)).<sup>12</sup> Not only  
19 did the ALJ properly consider the medical evidence, but it was  
20 not his sole basis for discrediting Plaintiff's testimony.

21           Plaintiff stated that he was unable to work between April  
22 and December 2012 because of "severe pain" in his back, hips,  
23 right knee, and ankles (AR 42, 305) and atrial fibrillation,  
24

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25           <sup>12</sup> Though Plaintiff challenges the ALJ's reliance on  
26 objective medical evidence to discount his testimony, he does so  
27 primarily as a matter of law and provides no argument  
28 demonstrating that the medical record in this case in fact  
supported a finding of changed circumstances or worsened  
symptoms. (See generally J. Stip.)

1 which caused shortness of breath (AR 45, 305). The ALJ  
2 acknowledged similar complaints alleged during the prior period  
3 (see AR 29 (noting that Plaintiff previously complained of "low  
4 back pain," "pain in the hips and knees," and "atrial  
5 fibrillation")), at the end of which Plaintiff was found not  
6 disabled, and discussed medical records demonstrating no  
7 worsening of those symptoms during the relevant eight-month  
8 period (id.). His analysis was supported by substantial  
9 evidence.

10 Plaintiff's medical records from the relevant period mostly  
11 involved complaints of pain in his back, hips, knee, and ankles.  
12 (See, e.g., AR 434, 436, 430, 432.) He was prescribed and took  
13 narcotic medication for that pain (AR 421, 423, 428, 430, 432,  
14 434), which he repeatedly described as "controll[ing]" or  
15 "decreas[ing]" it (AR 434 (June 2012), 423 (Oct. 2012), 421 (Nov.  
16 2012: no change since previous month); see also AR 417 (Jan.  
17 2013); 410 (Apr. 2013: no pain alleged), 412 (Sept. 2013: no  
18 complaints), 528 (Jan. 2014), 516 (Aug. 2014), 508 (Oct. 2014),  
19 504 (Nov. 2014)). In December 2012, he received a steroid  
20 injection in his right knee (AR 419), which he reported as  
21 "significantly improv[ing]" his pain (AR 417; see also AR 416).  
22 Those treatment records failed to demonstrate that his symptoms,  
23 which had been previously considered and deemed nondisabling,  
24 worsened in any way. (See AR 154-56 (prior ALJ noting findings  
25 that Plaintiff's back and hip pain were "controlled" with  
26 medication and that he had "no functional limitations" despite  
27 complaints of pain in his low back, hips, and "right knee"); see  
28 also Warre v. Comm'r of Soc. Sec. Admin., 439 F.3d 1001, 1006

1 (9th Cir. 2006) (“Impairments that can be controlled effectively  
2 with medication are not disabling[.]”); Rodriquez v. Berryhill,  
3 \_\_\_ F. App’x \_\_\_, No. 16-15252, 2017 WL 4118371, at \*2 (9th Cir.  
4 Sept. 14, 2017) (upholding fact that “condition and pain were  
5 controlled with medication” as “specific, clear, and convincing”  
6 reason to reject plaintiff’s symptom testimony).

7 After the relevant period, Plaintiff required another knee  
8 injection (AR 414-15 (Aug. 2013)) and continued to report knee,  
9 back, and ankle pain (see, e.g., AR 502 (Dec. 2014), 504 (Nov.  
10 2014), 508-11 (Oct. 2014), 512-15 (Sept. 2014), 518 (July 2014),  
11 520 (June 2014), 532 (Jan. 2014)). But medical-imaging reports  
12 from during and after the relevant period consistently indicated  
13 that his impairments were mild or unsubstantiated, as mentioned  
14 by the ALJ. (See AR 29 (ALJ describing x-rays from 2012 with  
15 “mild” or “unremarkable” findings); see also AR 444-50 (2012 x-  
16 rays showing “normal” left knee, “mild degenerative joint  
17 disease” in right knee, “no acute pathology” in right foot,  
18 “normal” and “unremarkable” left foot, “unremarkable” hips, and  
19 “[m]ild” spurring in spine).)<sup>13</sup>

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21 <sup>13</sup> Even more than a year after the relevant time period,  
22 diagnostic imaging showed only “mild degenerative changes without  
23 significant spinal stenosis or neural foraminal narrowing” in  
24 Plaintiff’s back (AR 539) and “mild soft tissue swelling with no  
acute fracture” in his left ankle, an “unremarkable” left knee,  
and “normal” hips (AR 474-76).

25 The ALJ also relied on the fact that Plaintiff began using a  
26 cane only six months before the February 2015 hearing, which was  
27 “well after the date last insured.” (AR 30.) But Plaintiff  
28 testified at the hearing that he wore a “brace” on his right knee  
during the relevant period (AR 43; cf. AR 95 (testifying before  
prior ALJ on Feb. 5, 2012, that he didn’t wear brace at that  
time)) and stated in his function report that he didn’t use a

1           Moreover, contrary to Plaintiff's assertions of debilitating  
2 atrial fibrillation, that condition apparently required little  
3 treatment during the relevant period, as Plaintiff received only  
4 an EKG referral, in July 2012. (See AR 430.) No medical imaging  
5 was completed at that time, but as identified by the ALJ, an  
6 echocardiogram conducted in August 2013 indicated that  
7 Plaintiff's atrial fibrillation remained stable, if not improved  
8 (compare AR 405-06 (Aug. 2013 echo report indicating "moderate  
9 concentric left ventricular hypertrophy" but "[o]verall left  
10 ventricular systolic function is normal with an [ejection  
11 fraction] between 65-70%"), with AR 371-72 (Oct. 2011 echo report  
12 indicating "[o]verall left ventricular systolic function . . .  
13 moderately impaired with an [ejection fraction] between 35-  
14 40%")).<sup>14</sup> Moreover, as pointed out by the ALJ, a chest x-ray

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15  
16 cane, wheelchair, or walker because he "d[idn't] have any money"  
17 for it (AR 311). See Smolen, 80 F.3d at 1284 (recognizing  
18 inability to "afford treatment" as "good reason" for lack of  
19 treatment and invalidating such lack of treatment as "clear and  
20 convincing reason for discrediting . . . symptom testimony"). As  
21 discussed above, however, despite Plaintiff's possible use of a  
22 brace during the relevant period, the ALJ properly discounted his  
23 testimony because the severity of his right-knee pain was not  
24 supported by the medical evidence, which showed that his  
25 condition was mild and that the pain was controlled with  
26 treatment. Thus, even if the ALJ erred, he provided other clear  
27 and convincing reasons for his adverse credibility assessment,  
28 and any error was harmless. See Larkins v. Colvin, 674 F. App'x  
632, 633 (9th Cir. 2017) (citing Batson v. Comm'r of Soc. Sec.  
Admin., 359 F.3d 1190, 1197 (9th Cir. 2004)).

<sup>14</sup> Left ventricular ejection fractions measure how much  
blood is pumped from the left ventricle of the heart. See  
Ejection Fraction, Cleveland Clinic, [https://  
my.clevelandclinic.org/health/diseases/17069-heart-failure-  
understanding-heart-failure/ejection-fraction](https://my.clevelandclinic.org/health/diseases/17069-heart-failure-understanding-heart-failure/ejection-fraction) (last updated Oct.  
2016). An ejection fraction of "55% to 70%" indicates normal  
pumping ability and heart function; an ejection fraction of "35%

1 from April 2013 "showed no evidence of acute cardiac or  
2 respiratory disease." (AR 29; see AR 442.) Accordingly, the  
3 ALJ's rejection of Plaintiff's symptom testimony because it  
4 lacked medical evidentiary support was proper and based on  
5 substantial evidence.

6           3.    Failure to seek treatment

7           An "unexplained, or inadequately explained, failure to seek  
8 treatment or follow a prescribed course of treatment" is a clear  
9 and convincing reason for discounting the credibility of a  
10 claimant's subjective symptom statements. Bunnell v. Sullivan,  
11 947 F.2d 341, 346-47 (9th Cir. 1991) (en banc); accord Molina,  
12 674 F.3d at 1113. At his hearing, Plaintiff complained of a  
13 "stomach" hernia during the relevant period. (AR 48-49.) As the  
14 ALJ discussed, repeating the unrebutted findings of the prior  
15 ALJ, Plaintiff was "diagnosed with an umbilical hernia and was  
16 referred for surgical consultation," but he apparently did not  
17 "follow up." (AR 29; see also AR 155.) Indeed, Plaintiff's  
18 medical records indicate that on September 30, 2011, he  
19 complained of an umbilical hernia but refused a physical exam.  
20 (AR 375.) The record contains no further treatment for his  
21 alleged hernia, and Plaintiff offers no explanation for his  
22 evident lack of follow-up. The ALJ therefore properly relied on  
23 Plaintiff's failure to seek treatment in discounting his  
24 credibility. See Bunnell, 947 F.2d at 346-47; see also Hite v.  
25 Colvin, No. EDCV 14-1925 AGR, 2015 WL 4873559, at \*7 (C.D. Cal.  
26 Aug. 12, 2015) (upholding ALJ's finding that plaintiff's failure  
27 \_\_\_\_\_  
28 to 39%" indicates moderately below normal pumping ability and  
mild heart failure. Id.

1 to seek hernia treatment for over 16 months supported adverse  
2 credibility assessment).

3 Plaintiff stated that he was also unable to work because of  
4 severe anxiety. (AR 47.) The ALJ found that the "available  
5 medical evidence d[id] not substantiate [his] alleged severe  
6 anxiety" and that "there [was] little in the way of mental status  
7 examinations." (AR 30.) Indeed, Plaintiff's only available  
8 mental-health records are from before the relevant period. (See,  
9 e.g., AR 337 (Mar. 2012), 361-62 (Jan. 2012), 360 (Dec. 2011),  
10 346 (Nov. 2011), 355 (Oct. 2011).) At his last appointment,  
11 Plaintiff was noted as being "very upset" regarding a recent  
12 "hearing for disability" in which "the judge noted an incident  
13 where [he] reportedly altered a prescription for Vicodin." (See  
14 AR 337, 363; see also AR 90-92, 117-20, 154.) He was given  
15 "homework" to complete and return at his next appointment (AR  
16 338), but no further appointment notes are in the record.  
17 Plaintiff testified at his February 2015 hearing that he stopped  
18 receiving mental-health therapy because he moved "from Menifee to  
19 M[ore]no Valley" and "lately" no doctor "told [him] that [he]  
20 needed that sort of therapy." (AR 47.)

21 Though Plaintiff attempted to explain his failure to seek  
22 mental-health treatment by attributing it to his move to Moreno  
23 Valley, see Trevino v. Colvin, No. CV 12-7740 JC, 2013 WL  
24 1191803, at \*4 (C.D. Cal. Mar. 22, 2013) (plaintiff's failure to  
25 obtain mental-health treatment was "not caused by lack of effort"  
26 but instead in part by her "mov[ing away] to Santa Barbara" and  
27 "inability to locate affordable treatment"), the record indicates  
28 that the mental-health treatment he did receive was in fact in



1 Moreno Valley (see AR 337, 346, 355, 360-63), where he also  
2 received at least some treatment for his physical impairments  
3 (see, e.g., AR 444-50). Accordingly, without additional  
4 explanation, the record supports the ALJ's credibility  
5 determination, as Plaintiff was evidently more than capable of  
6 obtaining both physical- and mental-health treatment in the  
7 Moreno Valley area but simply did not do so during the relevant  
8 period. See Burkstrand v. Astrue, 346 F. App'x 177, 179 (9th  
9 Cir. 2009) (upholding as clear and convincing reason for  
10 discrediting mental-health testimony that plaintiff "did not seek  
11 treatment for depression during the relevant period"); Judge v.  
12 Astrue, No. CV 09-4743-PJW, 2010 WL 3245813, at \*4 (C.D. Cal.  
13 Aug. 16, 2010) ("[The claimant's] failure to get treatment after  
14 1997 seems more a function of the fact that she did not need it,  
15 as opposed to her inability to comprehend that she needed  
16 it.").<sup>15</sup>

17 Thus, substantial evidence supports the ALJ's finding that  
18 the severity of Plaintiff's allegations was undermined by his  
19

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20 <sup>15</sup> It is sometimes "questionable practice to chastise one  
21 with a mental impairment for the exercise of poor judgment in  
22 seeking rehabilitation." Nguyen v. Chater, 100 F.3d 1462, 1465  
23 (9th Cir. 1996) (citation omitted); see also Rosas v. Colvin, No.  
24 CV 13-2756-SP, 2014 WL 3736531, at \*11 (C.D. Cal. July 28, 2014)  
25 (finding that failure to attend therapy sessions was "not  
26 necessarily a clear and convincing reason to discount [a  
27 claimant's] testimony"). Nguyen, however, is distinguishable.  
28 It dealt with an ALJ who discredited a psychologist's diagnosis  
of depression based on lack of a treatment record, whereas here  
the ALJ relied on Plaintiff's unexplained lack of mental-health  
treatment during the relevant period, despite regular treatment  
in the six months prior, to discredit the severity of his alleged  
symptoms. Moreover, Plaintiff's explanation for why he did not  
seek mental-health treatment during that time appears to have  
been demonstrably false.

1 failure to seek treatment.

2 4. Daily activities

3 An ALJ may also properly discount the credibility of a  
4 plaintiff's subjective symptom statements when they are  
5 inconsistent with his daily activities. See Molina, 674 F.3d at  
6 1112. "Even where those [daily] activities suggest some  
7 difficulty functioning, they may be grounds for discrediting the  
8 claimant's testimony to the extent that they contradict claims of  
9 a totally debilitating impairment." Id. at 1113. The ALJ here  
10 found that Plaintiff's function report, in which he alleged that  
11 his activities of daily living were "mostly [limited] due to his  
12 physical impairments," was completed "almost ten months after the  
13 date last insured" and further found that his "psychiatric  
14 condition d[id] not keep him from performing activities of daily  
15 living." (AR 30.) He specifically noted that despite his  
16 alleged limitations, Plaintiff was "capable of performing  
17 personal care, preparing simple meals, cleaning up after himself,  
18 going out alone sometimes, driving sometimes, and shopping in  
19 stores." (AR 27.) He also "socialize[d] with his grandchildren,  
20 attend[ed] medical appointments, [went] to the store, and g[ot]  
21 along with authority figures." (Id.)

22 Indeed, "[a]ssuming [his] activities of daily living during  
23 the relevant period were the same as described in [his function  
24 report]," see Stevens v. Colvin, No. CV 15-1259-SP, 2016 WL  
25 3390753, at \*5 (C.D. Cal. June 14, 2016), they were inconsistent  
26 with the alleged severity of his symptoms. Plaintiff, for  
27 example, alleged having severe pain in his back, hips, and right  
28 knee and experiencing shortness of breath related to atrial

1 fibrillation. (AR 42, 305.) But he reported that he walked and  
2 fed his dog, had no problem with personal care despite his  
3 symptoms, prepared his own meals daily, washed dishes daily,  
4 walked, drove, went out alone, shopped in stores, and went to the  
5 doctor. (AR 306-09.) Similar activities were reported to the  
6 prior ALJ, who noted that his described activities of daily  
7 living were "not limited to the extent one would expect[] given  
8 the complaints of disabling symptoms and limitations." (AR 152  
9 (noting that "he could manage his own finances, drive, do light  
10 household chores, take care of his grandchild, walk his dog, and  
11 perform personal care independently"). Thus, substantial  
12 evidence supported the ALJ's adverse credibility determination.  
13 See Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1227 (9th  
14 Cir. 2009) (upholding ALJ's adverse credibility determination in  
15 part because ALJ found that plaintiff "le[d] an active lifestyle,  
16 including cleaning, cooking, walking her dogs, and driving to  
17 appointments"); Sharp v. Colvin, No. 1:13-cv-02028-BAM, 2015 WL  
18 1274727, at \*5 (E.D. Cal. Mar. 19, 2015) (finding that ALJ  
19 properly discounted plaintiff's testimony as inconsistent with  
20 daily activities when plaintiff cleaned his room, swept carpet,  
21 washed dishes, did laundry, cooked occasionally, went grocery  
22 shopping with his mother, cared for his dog, and walked around  
23 block).

24 Moreover, to the extent Plaintiff alleged an inability to be  
25 around others, including family and friends, because of his  
26 severe anxiety and depression, he demonstrated otherwise. As the  
27 ALJ noted (AR 27), he was capable of living with family, spoke  
28 with his grandchildren every day, and regularly saw doctors and

1 shopped in stores (AR 305-09). To the extent he also allegedly  
2 could not "go out" because of his anxiety, he reported taking his  
3 dog out for walks, walking, driving, going out alone, shopping in  
4 stores, and seeing doctors. (AR 305-10.) Further still, his  
5 reported activities just before the relevant period were more of  
6 the same: he lived with friends and regularly saw his  
7 grandchildren to help babysit. (See, e.g., AR 98-101, 105-06.)  
8 Accordingly, substantial evidence in the record supports the  
9 ALJ's conclusion that Plaintiff's activities were neither limited  
10 by nor consistent with his allegedly debilitating psychiatric  
11 condition. See Womeldorf v. Berryhill, 685 F. App'x 620, 621  
12 (9th Cir. 2017) (upholding ALJ's discounting of plaintiff's  
13 credibility in part because his activities of daily living "were  
14 not entirely consistent with his claimed inability to engage in  
15 social interactions").


16 Finally, Plaintiff's contention that the ALJ "fail[ed] to  
17 adequately consider" how he performed his daily activities is  
18 unconvincing. As discussed, "[e]ven where [a claimant's daily]  
19 activities suggest some difficulty functioning, they may be  
20 grounds for discrediting the claimant's testimony to the extent  
21 that they contradict claims of a totally debilitating  
22 impairment." Molina, 674 F.3d at 1113. Indeed, Plaintiff's  
23 activities demonstrated that both his physical and mental  
24 impairments were not totally debilitating, as he was able to  
25 function and interact successfully with people despite any  
26 alleged limitation. Thus, the inconsistency between Plaintiff's  
27 allegations and reported daily activities was a clear and  
28 convincing reason to reject his testimony. See Valentine v.

1 Comm'r Soc. Sec. Admin., 574 F.3d 685, 693 (9th Cir. 2009)  
2 (evidence that plaintiff's daily activities "contradicted [his]  
3 contentions about how debilitating his fatigue was" constituted  
4 "clear and convincing reason to reject [his] subjective  
5 testimony" even though that evidence "did not suggest [plaintiff]  
6 could return to his old job").

7 **VI. CONCLUSION**

8 Consistent with the foregoing and under sentence four of 42  
9 U.S.C. § 405(g),<sup>16</sup> IT IS ORDERED that judgment be entered  
10 AFFIRMING the Commissioner's decision, DENYING Plaintiff's  
11 request for remand, and DISMISSING this action with prejudice.

12  
13 DATED: February 15, 2018

  
\_\_\_\_\_  
14 JEAN ROSENBLUTH  
15 U.S. Magistrate Judge  
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25 \_\_\_\_\_  
26 <sup>16</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."