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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

WARD B. T.,<sup>1</sup>

Plaintiff,

v.

ANDREW M. SAUL,<sup>2</sup>  
Commissioner of Social Security,

Defendant.

Case No. ED CV 19-00123-RAO

**MEMORANDUM OPINION AND  
ORDER**

**I. INTRODUCTION**

Plaintiff Ward Benjamin Tate (“Plaintiff”) challenges the Commissioner’s partial denial of his application for a period of disability, disability insurance benefits (“DIB”) and supplemental security income (“SSI”). For the reasons stated below, the decision of the Commissioner is REVERSED, and the matter is REMANDED.

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<sup>1</sup> Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

<sup>2</sup> Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Andrew M. Saul, the current Commissioner of Social Security, is hereby substituted as the defendant herein.

1 **II. PROCEEDINGS BELOW**

2 On June 7, 2012, Plaintiff filed an application for a period of disability and DIB  
3 alleging disability beginning on December 30, 2004. (Administrative Record (“AR”)  
4 69-70, 80-81.) The same day, Plaintiff also protectively filed an application for SSI  
5 under Title XVI alleging disability beginning on December 30, 2004. (AR 201-03,  
6 204-15.) His application for a period of disability and DIB was denied on December  
7 11, 2012. (AR 160.) Plaintiff filed a written request for hearing, and a hearing was  
8 held on June 16, 2014. (AR 48-77, 176-77.) Represented by counsel, Plaintiff  
9 appeared and testified, along with his wife, and an impartial vocational expert. (AR  
10 48-77.) On September 9, 2014, the Administrative Law Judge (“ALJ”) found that  
11 Plaintiff had not been under a disability, pursuant to the Social Security Act, from  
12 December 30, 2004 through the date of decision. (AR 26.) The ALJ’s decision  
13 became the Commissioner’s final decision when the Appeals Council denied  
14 Plaintiff’s request for review. (AR 5.)

15 Plaintiff filed his first action in this Court on April 28, 2016. (AR 441-42, 445-  
16 47.) The action resulted in reversal and remand of the ALJ’s decision. (AR 453, 454-  
17 59.) On remand, the Court instructed the ALJ to “reassess Plaintiff’s subjective  
18 allegations and either credit his testimony as true, or provide specific, clear and  
19 convincing reasons, supported by substantial evidence in the record, for discounting  
20 or rejecting any testimony.” (AR 458.)

21 On September 19, 2017, the Appeals Council notified Plaintiff of the remand.  
22 (AR 460-62.) Plaintiff appeared and testified at a hearing on May 7, 2018, and at a  
23 supplemental hearing on September 4, 2018. (AR 375- 423.) The supplemental  
24 hearing included testimony from David M. Glassmire, Ph.D., an impartial  
25 psychological expert, and David A. Rinehart, an impartial vocational expert. (AR  
26 401-423.) Plaintiff was represented at both hearings. (AR 375-377, 401-403.)

27 On October 16, 2018, the ALJ rendered a partially favorable decision, finding  
28 Plaintiff disabled only as of January 1, 2013. (AR 348.) Plaintiff did not file an appeal

1 with the Appeals Council. (Joint Stipulation “JS” 3.) The ALJ’s decision became the  
2 Commissioner’s final decision.<sup>3</sup> Plaintiff filed this action on January 22, 2019. (Dkt.  
3 No. 1.)

4 The ALJ followed a five-step sequential evaluation process to assess whether  
5 Plaintiff was disabled under the Social Security Act. *See Lester v. Chater*, 81 F.3d  
6 821, 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged  
7 in substantial gainful activity since December 30, 2004, the alleged onset date  
8 (“AOD”). (AR 351.) At **step two**, the ALJ found that Plaintiff has the following  
9 severe impairments since the AOD: unspecified mood disorder and unspecified  
10 anxiety disorder, hypertension, peripheral neuropathy, and back strain or sprain. (*Id.*)  
11 In addition, the ALJ found that beginning January 1, 2013, Plaintiff has had the  
12 following severe impairments: major depressive disorder, general anxiety disorder,  
13 neurocognitive disorder from depression and medications, hypertension, peripheral  
14 neuropathy, and back strain or sprain. (*Id.*) At step three, the ALJ found that prior to  
15 January 1, 2013, Plaintiff “did not have an impairment or combination of impairments  
16 that meets or medically equals the severity of one of the listed impairments in 20 CFR  
17 Part 404, Subpart P, Appendix 1.” (*Id.*)

18 Before proceeding to step four, the ALJ found that prior to January 1, 2013,  
19 Plaintiff had the residual functional capacity (“RFC”) to “perform medium work . . .  
20 with the following additional restrictions: non-complex, routine tasks; no interactions  
21 with the public; occasional teamwork with coworkers and supervisors; and would  
22 miss work one to two time[s] per month.” (AR 353.)

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24 <sup>3</sup> “[W]hen a case is remanded by a Federal court for further consideration, the  
25 decision of the administrative law judge will become the final decision of the  
26 Commissioner after remand on your case unless the Appeals Council assumes  
27 jurisdiction of the case.” 20 C.F.R. § 404.984 (a). Upon review of the record, the  
28 Court finds that the Appeals Council did not assume jurisdiction over the case and as  
such the ALJ’s decision is the Commissioner’s final decision subject to this Court’s  
review.

1 At **step four**, the ALJ found that Plaintiff has been unable to perform his past  
2 work since December 30, 2004. (AR 357.) At **step five**, the ALJ found that “[p]rior  
3 to January 1, 2013, . . .there were jobs that exist[ed] in significant numbers in the  
4 national economy that [Plaintiff] could have performed.” (AR 358.) Accordingly,  
5 the ALJ determined that, as to Plaintiff’s claim for period of disability and DIB,  
6 Plaintiff had not been under a disability from the AOD through December 31, 2007,  
7 the date last insured. (AR 362.) As to Plaintiff’s claim for SSI, the ALJ found that  
8 Plaintiff was not disabled prior to January 1, 2013. (*Id.*)

### 9 **III. STANDARD OF REVIEW**

10 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s  
11 decision to deny benefits. A court must affirm an ALJ’s findings of fact if they are  
12 supported by substantial evidence and if the proper legal standards were applied.  
13 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “‘Substantial evidence’  
14 means more than a mere scintilla, but less than a preponderance; it is such relevant  
15 evidence as a reasonable person might accept as adequate to support a conclusion.”  
16 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*  
17 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial  
18 evidence requirement “by setting out a detailed and thorough summary of the facts  
19 and conflicting clinical evidence, stating his interpretation thereof, and making  
20 findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

21 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a  
22 specific quantum of supporting evidence. Rather, a court must consider the record  
23 as a whole, weighing both evidence that supports and evidence that detracts from the  
24 Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001)  
25 (citations and internal quotation marks omitted). “‘Where evidence is susceptible to  
26 more than one rational interpretation,’ the ALJ’s decision should be upheld.” *Ryan*  
27 *v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing *Burch v.*  
28 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see Robbins*, 466 F.3d at 882 (“If the

1 evidence can support either affirming or reversing the ALJ’s conclusion, we may not  
2 substitute our judgment for that of the ALJ.”). The Court may review only “the  
3 reasons provided by the ALJ in the disability determination and may not affirm the  
4 ALJ on a ground upon which he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th  
5 Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)).

6 **IV. DISCUSSION**

7 Plaintiff raises one issue for review: whether the ALJ properly considered  
8 Plaintiff’s subjective symptoms in assessing the RFC. (*See* Joint Submission (“JS”  
9 5.) For the reasons below, the Court agrees with Plaintiff.

10 **A. The ALJ Failed to Properly Assess Plaintiff’s Subjective Symptom**  
11 **Testimony**

12 Plaintiff argues that the ALJ improperly rejected Plaintiff’s subjective  
13 symptom testimony. (*See* JS 5-14, 23-24.) The Commissioner disagrees. (*See* JS  
14 14-23.)

15 **1. Plaintiff’s June 16, 2014 Testimony**

16 Plaintiff testified that he completed a total of two years of college. (AR 42.)  
17 He was 56 years old at the time of the hearing. (*Id.*) He testified that he is six feet,  
18 two inches tall and weighs about 240 pounds. (AR 43.)

19 As to his work history, Plaintiff testified that the last time he worked was in  
20 2002. (AR 39.) He worked, and was a partner, for a company called Major Cleanup  
21 Inc. (*Id.*) Major Cleanup Inc. was a hazardous waste transporting service. (AR 61.)  
22 Plaintiff owned, operated, ran, and trained employees. (*Id.*) Plaintiff reports that he  
23 would get mad and irritated by the employees and his business partner. (AR 39-40.)  
24 Plaintiff testified that one day he “completely lost it” and “tore up the office.” (AR  
25 40.) He explained that in 2002, he accused his business partner of embezzling money  
26 but that he does not think that his partner embezzled money and it was all in his mind.  
27 (AR 41.) Plaintiff had previously worked for Budget Environmental Services in 1999  
28 and made about \$50,000 that year. (AR 39.)

1 Plaintiff then testified that he purchased an antique shop in 2007. (AR 41.) In  
2 2008 or 2009, Plaintiff filed for bankruptcy. (See AR 40-41.) He explained that  
3 “half” of the problem is that he has great ideas but that he is unable to follow through  
4 with them. (*Id.*) Plaintiff testified that he moved several times in the last years as a  
5 result of “ideas of doing great things.” (AR 49.) However, he explained that “when  
6 it came down to it, [he] couldn’t do it.” (*Id.*) Looking back on his decisions, Plaintiff  
7 testified that the ideas were “losing proposition[s]” and that those decisions put his  
8 wife “through hell.” (*Id.*) For example, the antique shop was his idea and while he  
9 intended to be there, he got worse and could not go to work. (AR 50.) He would  
10 leave his wife at the antique shop alone for seven days a week and twelve-hour days.  
11 (*Id.*) Plaintiff reported being unable to work and being stuck at home. (*Id.*)

12 In 2009, Plaintiff went to a clinic where a psychiatrist told him “what was  
13 wrong throughout” at least the last 10 years. (AR 41-42.) Plaintiff explained that it  
14 was “awfully hard” to get an appointment. (AR 42.) Plaintiff testified that the  
15 psychiatrist told him to avoid stress. (AR 50.) Plaintiff reported that when he filed  
16 for bankruptcy, the problem got worse. (*Id.*)

17 The last time Plaintiff sought treatment from a mental health provider was in  
18 2013. (AR 38.) Plaintiff was receiving counseling and medication. (*Id.*) Plaintiff  
19 testified that he had not sought treatment since then because he could not afford  
20 treatment. (*Id.*) He did not have insurance and only recently obtained Medi-Cal.  
21 (AR 38-39.)

22 As to physical ailments, Plaintiff testified that in the 1980s he was informed  
23 that he does not have cartilage between his knees. (AR 44.) As a result, Plaintiff  
24 was told not to stoop or bend because it would cause him pain. (AR 44-45.) Plaintiff  
25 was not ordered to wear knee braces. (*Id.*) Plaintiff also explained that in the 1970s  
26 he was diagnosed with mitral valve prolapse and took blood pressure medicine to  
27 help his heart. (AR 44.)

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1 Plaintiff has a driver's license but does not drive unless he absolutely has to.  
2 (AR 45.) He testified that he has problems leaving the house. (*Id.*) He gets panic  
3 attacks that worsen when he drives. (*Id.*) He used to love driving but now he cannot  
4 drive without getting the sweats. (*Id.*) He explained that his hands get clammy. (*Id.*)  
5 Plaintiff does not go out of the house and cannot really drive. (*Id.*) Plaintiff explained  
6 that he does not trust himself anymore. (*Id.*)

7 As far as daily activities, Plaintiff testified that he does “[v]ery little to  
8 nothing.” (AR 45.) Plaintiff noted that he used to be more social and had hobbies  
9 but that now he has no interests. (*Id.*) He does not have a social life. (AR 47.) He  
10 is “completely shut off from the world these days.” (AR 48-49.) He described this  
11 as “the worst time in [his] life” because he feels worthless and cannot do the things  
12 he used to do. (AR 49.)

13 Plaintiff did not shave for the hearing because he cut himself once. (AR 45.)  
14 Plaintiff explained that he was “extreme[ly] nervous” to be at the hearing. (AR 45-  
15 46.) Plaintiff does not help with chores. (AR 46.) He described himself as a  
16 “zombie,” he “might get three hours [of] sleep,” and sits on the couch. (*Id.*) Plaintiff  
17 sometimes does not sleep. (AR 48.) In the past he has gone two to three days without  
18 sleeping and did not sleep the night before the hearing. (*Id.*)

19 Plaintiff explained feeling worthless and depressed. (AR 46.) He feels that he  
20 should do something but cannot. (*Id.*) He also testified to having anger issues and  
21 that is what happened at work. (AR 47.) He noted that it had happened before, but  
22 that he was getting worse. (*Id.*) He sometimes feels “as happy as a bee” but he is  
23 unable to leave the house. (*Id.*) Plaintiff explained that he gets ideas of all the things  
24 he wants to do but when he does not do those things, he ends up getting angry at  
25 himself, his wife, and anyone around him. (*Id.*)

26 Plaintiff testified that he cannot concentrate. (AR 47.) He cannot concentrate  
27 even when he watches television, and after a while he will forget what he was  
28 watching. (*Id.*) When he watches a movie, by the middle of the movie he no longer

1 remembers the beginning. (*Id.*) If his wife asks him to do something at their house,  
2 Plaintiff will usually forget unless his wife reminds him. (*Id.*) He states that he lacks  
3 motivation and gets “panicky.” (*Id.*) He feels that he cannot do simple tasks  
4 anymore. (*Id.*) He reports being unable to keep track of bill due dates and he cannot  
5 keep track of his bank account. (AR 50.) Plaintiff does not know how much money  
6 is in the account. (*Id.*) Plaintiff states that if it was not for his wife, he would not be  
7 here. (AR 51.)

8 Plaintiff explained that if someone is aggressive or gives him instructions, he  
9 will usually get mad. (AR 47-48.) He thinks that he would have trouble at work  
10 because instead of following the instruction he would get mad, his blood pressure  
11 would rise, he would feel like he was having a panic attack, he would get sweaty, and  
12 might shake. (AR 48.)

## 13 **2. Plaintiff’s May 7, 2018 Testimony**

14 After the case was remanded, Plaintiff testified at a hearing in front of a another  
15 ALJ. (AR 375-400.) At the hearing, Plaintiff discussed his mental health. (*See id.*)  
16 Plaintiff again testified that he last worked in 2002 and owned an antique shop in  
17 2008, which was run by his wife. (AR 382.) Plaintiff explained that he was mostly  
18 at home due to his condition. (*Id.*) Plaintiff reported what the ALJ described as a  
19 “fearful anxiety.” (*Id.*) The fearfulness kept him in the house. (*Id.*)

20 Plaintiff reported that he drove to the hearing. (AR 382.) He was accompanied  
21 by his wife, but she did not drive because she does not drive on the freeway. (AR  
22 383.)

23 Plaintiff explained that he stopped working because he felt fearful and his  
24 mood would go up and down. (*Id.*) He could not function and had mood swings.  
25 (AR 384.) He reports being unable to concentrate. (*Id.*) Plaintiff stated that  
26 everything became “harder and harder” for him to do. (*Id.*) He also notes that he  
27 could not remember. (*Id.*) Plaintiff has not applied for work. (*Id.*)

28 ///



1 Plaintiff reports that he started seeing a psychiatrist after the last hearing. (AR  
2 384-85.) He also notes that he was seeing a psychiatrist or psychologist when he  
3 stopped working. (AR 385.) He denies having problems with drugs or alcohol. (*Id.*)  
4 Plaintiff testified that he did not know what was making him nervous when he  
5 stopped working. (AR 386.) However, he did explain that he could not take the  
6 pressure of dealing with people and that he was not like himself. (*Id.*) Plaintiff denies  
7 any significant physical ailments, noting that while his back would hurt, he would  
8 simply take aspirin. (*Id.*)

9 Plaintiff testified that he was unable to recover some medical records because  
10 they are “so far back.” (AR 387.) He reports having gone to acupuncturists for his  
11 anxiety. (*Id.*) He stated that it did help him calm down and that he still gets  
12 acupuncture. (*Id.*) When Plaintiff stopped working, he was not seeing a psychiatrist  
13 or psychologist but did visit a doctor who prescribed medicine for his nerves. (*Id.*)

14 He reports feeling worse now than when he stopped working. (AR 388.)  
15 Plaintiff does not go out of the house often. (*Id.*) He stopped going out of the house  
16 on and off since 2002, but completely stopped leaving the house in 2009. (*Id.*)

17 Plaintiff does not believe that in 2009 he could have taken a job that did not  
18 require dealing with people because he does not believe that he could have done  
19 anything. (AR 388.) He testified that it was not only having to deal with people or  
20 the inability to concentrate that gave him cold sweats. (AR 388-89.) He does not  
21 know what set him off and found it difficult to describe. (AR 389.) Plaintiff states  
22 that he thought a psychiatrist was helping him. (*Id.*)

23 When Plaintiff is at home, he explains that he is not active, instead he listens  
24 to music. (AR 389.) He notes that he gets irritated and frustrated by everything,  
25 including the news. (AR 389-90.) He explains that since 2002 he gets frustrated  
26 easily. (AR 390.) He believes that he it all started going downhill in 2002. (*Id.*)  
27 Plaintiff states that the doctors just “throw pills at him.” (*Id.*) Plaintiff also reports  
28 that his problem with insomnia started in 2002 or 2003, and it has gradually gotten

1 worse. (*Id.*) He takes pills to sleep but still does not sleep well. (*Id.*) His mind never  
2 stops working and he is constantly thinking about something. (*Id.*) Plaintiff testified  
3 that he first sought help in 2002 or 2003 and saw a psychiatrist. (AR 392.)

4 Plaintiff reported that with all the medication he is taking he does not know  
5 how to function. (AR 392.) He does not believe that the medication is helping him.  
6 (AR 393.) He still suffers from anxiety and insomnia. (AR 393-94.) He does not go  
7 out without his wife or brother-in-law. (AR 394.) His brother-in-law drives him  
8 most of the time. (*Id.*)

9 As far as his mood swings, Plaintiff explained that his “ups” consisted of him  
10 being happy, the feeling of being up in the morning and working and feeling good  
11 about himself. (AR 394.) He described “downs” as not being able to do anything,  
12 being depressed, unable to concentrate, and getting cold sweats. (*Id.*) Plaintiff  
13 testified that he had more downs than ups. (AR 394-95.) Plaintiff then testified as  
14 to his physical ailments. (AR 395-98.)

### 15 **3. Plaintiff’s September 4, 2018 Testimony**

16 At a supplemental hearing, Plaintiff testified that he was receiving treatment  
17 between 2004 and 2005. (AR 411.) However, Plaintiff was unable to obtain those  
18 records. (AR 412.) Plaintiff is under the impression that one of the doctors died and  
19 he was unable to find any records. (*Id.*) Plaintiff explained that at the time he was  
20 having “terrible emotional problems.” (*Id.*) This in part was due to finding out that  
21 his business partner had embezzled money from him. (*Id.*) When he found out,  
22 Plaintiff reports that he “went off the rails,” “blew up,” and “tore up the place.” (*Id.*)  
23 Plaintiff also testified that during that time he could not sleep or eat and just felt  
24 terrible. (AR 413.) He also reports being unable to work. (*Id.*) Plaintiff admits that  
25 his mood swings began before the problems with his business partner. (AR 418.)  
26 However, he does note that his mood swings worsened after his partner “betrayed  
27 him.” (*Id.*)

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1 In 2008, there was an indication that Plaintiff suffered from bipolar disorder.  
2 (AR 413.) Plaintiff explained that he had a difficult childhood that included needing  
3 a speech therapist, a father that was dependent on alcohol and committed domestic  
4 abuse. (*Id.*) He describes 2002 as terrible and notes that he felt hopeless. (AR 414.)  
5 He has felt hopeless since then. (*Id.*)

6 Plaintiff again discussed the antique store he purchased. (AR 414.) For three  
7 months Plaintiff ran the store, including doing the book work, but then his wife had  
8 to run it herself. (AR 414-15.) The store eventually went bankrupt. (AR 415.) While  
9 the idea to open the business was not “off the cuff,” Plaintiff explains that if he had  
10 looked into it more, he would not have done it. (*Id.*) While he was running the store,  
11 he was having problems talking to people. (*Id.*) He was suffering from extreme  
12 anxiety and it got worse. (AR 415-16.) He would dread going to work and a lot of  
13 days he would not go to work. (AR 416.)

14 Plaintiff would feel depressed and anxious around people. (AR 417.) Plaintiff  
15 cannot describe what stopped him from getting out of bed in the mornings. (*Id.*) He  
16 reports that the psychiatrists just throw pills at him and tell him to feel better, but he  
17 does not. (AR 417.) Plaintiff believes that he has been fighting depression since  
18 elementary school. (*Id.*) He describes himself as reserved and notes that he was  
19 never the person that was outgoing. (*Id.*) He started working when he was 16 and  
20 was proud of himself for being a good worker. (*Id.*) Plaintiff notes that he feels the  
21 opposite now. (*Id.*)

#### 22 4. Monica Tate’s June 16, 2014 Testimony

23 Monica Tate (“Mrs. Tate”) testified she has been married to Plaintiff for 25  
24 years. (AR 52.) During that time Plaintiff and Mrs. Tate have always lived together.  
25 (*Id.*) Except for the time that Mrs. Tate is at work, she is with Plaintiff most of the  
26 day. (*Id.*) Mrs. Tate begins work at 9:00 a.m. and returns home at 5:30 p.m. or 6:00  
27 p.m. (*Id.*) While she is at work, Plaintiff calls Mrs. Tate about four times a day. (*Id.*)  
28 Usually, Plaintiff asks Mrs. Tate what she is doing and what time is she going to

1 return home. (*Id.*) Plaintiff will also text Mrs. Tate. (AR 52-53.) If Mrs. Tate does  
2 not answer the phone or does not respond to Plaintiff's texts, he gets angry and yells  
3 at her. (AR 54-55.) Mrs. Tate testified that if she does not answer the phone Plaintiff  
4 does not feel good and is anxious. (AR 55.) She reported that sometimes she does  
5 not want to go home. (*Id.*) She notes that things have "gotten really bad" and that it  
6 is a bad situation. (*Id.*)

7 Mrs. Tate testified that Plaintiff is a recluse but that on the occasions that he  
8 does go out, she does not want to be in the car with him. (AR 55.) Mrs. Tate  
9 describes that Plaintiff "gets out of control and angry as soon as somebody cuts him  
10 off." (*Id.*) She also noted that Plaintiff does not like anybody, everybody makes him  
11 upset, and he hates everything. (*Id.*) She notes that Plaintiff does not like his family  
12 anymore and will fight with family. (*Id.*) She will usually go by herself to family  
13 reunions while Plaintiff stays home. (*Id.*)

14 Mrs. Tate reported that there are simple things that she wishes Plaintiff would  
15 help her with. (AR 56.) When Mrs. Tate forgets to give her dog water, Plaintiff does  
16 not do it for her. (*Id.*) If Mrs. Tate asks Plaintiff to do something like take out the  
17 frozen chicken, Plaintiff does not do it. (*Id.*) Mrs. Tate wishes Plaintiff would look  
18 for a job and be like he used to be. (*Id.*)

19 Mrs. Tate explained that Plaintiff has been trying to buy businesses for years  
20 and that they have lost a lot of money as a result. (AR 56.) She noted the purchase  
21 of a print shop in Seattle that resulted in her having to run the store. (*Id.*) She states  
22 that even though she could not do it by herself and someone was taking money from  
23 her, Plaintiff bought the antique store. (*Id.*) The money that Plaintiff and Mrs. Tate  
24 had went towards buying the antique store. (*Id.*) They thought Plaintiff would "be  
25 able to do it," but soon after Plaintiff left her alone to run the store. (*Id.*) Plaintiff  
26 would not help Mrs. Tate. (AR 56-57.) The landlord took over the store because she  
27 was unable to pay the rent. (AR 57.) She testified that Plaintiff has had a pattern of  
28 losing businesses. (AR 57.) With the previous business, Plaintiff's business partner

1 could not take Plaintiff's anger anymore. (*Id.*) Plaintiff would lose his temper and  
2 throw the phone and other items. (*Id.*)

3 Mrs. Tate does not believe that Plaintiff can get up to work or clean himself up  
4 to look decent enough for someone to hire him. (AR 57-58.) Plaintiff is sitting on  
5 the couch when she leaves for work and in bed when Mrs. Tate arrives from work.  
6 (AR 57.) She does not believe Plaintiff could complete "minimal tasks." (AR 58.)

7 Lastly, Mrs. Tate testified that Plaintiff once visited the emergency room after  
8 he got angry and slammed his hand on the door. (AR 58.) Plaintiff almost broke his  
9 fingers. (*Id.*) He has not sought emergency mental health treatment. (*Id.*) Plaintiff  
10 has hit the wall and thrown a phone at Mrs. Tate. (AR 59.) Mrs. Tate testified that  
11 Plaintiff has been working since he was 16. (*Id.*) Once they got married, Mrs. Tate  
12 became aware of Plaintiff's anger issues. (*Id.*)

### 13 **5. Plaintiff's Function Report**

14 The administrative record also contains an undated function report completed  
15 by Plaintiff. (AR 233-240.) In the report, Plaintiff states that he lives in a house with  
16 family. (AR 233.) Regarding his illnesses, Plaintiff states that most days he is unable  
17 to leave the house. (*Id.*) He describes feeling afraid. (*Id.*) Plaintiff is unable to sleep  
18 and cannot stop thinking. (*Id.*) He feels very depressed and cannot do anything. (*Id.*)  
19 His heart races and he is unable to catch his breathe. (*Id.*) He suffers from mood  
20 swings and goes from being mad to being very happy. (*Id.*) The medication he takes  
21 makes his mind unclear. (*Id.*)

22 Plaintiff spends his days trying to watch television or listening to the radio.  
23 (AR 234.) He does not have any interests and spends most of his day in the house.  
24 (*Id.*) He falls asleep during the day. (*Id.*) Plaintiff's wife cooks for him and takes  
25 care of their dog. (*Id.*) Plaintiff does not take care of anyone or any pets. (*Id.*)  
26 Before his illnesses, Plaintiff "lived a happy, normal life, worked, and had hobbies,"  
27 but now he does not. (*Id.*)

28 ///

1 As far as his personal care, Plaintiff's wife washes his clothes and lays out his  
2 clothing. (AR 234.) Plaintiff shaves once a week. (*Id.*) He bathes when his wife is  
3 home. (*Id.*) Plaintiff reports that he can groom his hair, feed himself, and use the  
4 toilet. (*Id.*) He does need his wife to remind him to take care of his personal needs  
5 and help him when he needs help. (AR 235.) Plaintiff also needs his wife to remind  
6 him to take his medicine. (*Id.*)

7 Plaintiff does not prepare his own meals. (AR 235.) Prior to his illness, he  
8 used to be able to cook. (*Id.*) Now, he is "not trusted" to prepare meals. (*Id.*)  
9 Plaintiff does not help with household chores because he feels unstable and unsafe.  
10 (AR 235-36.) He goes outside once or twice a week. (AR 236.) He notes that he is  
11 afraid to go outside. (*Id.*) When he does go out, Plaintiff walks or rides in a car.  
12 (*Id.*) He does not go out alone or drive because he is afraid. (*Id.*) Plaintiff does not  
13 go shopping. (*Id.*) Plaintiff is unable to pay bills, count change, handle a bank  
14 account, and handle a checkbook. (*Id.*) Plaintiff's wife handles their finances. (*Id.*)  
15 Before his illness, Plaintiff was able to handle money and was "normal." (AR 237.)

16 Plaintiff lists his only hobby as watching television. (AR 237.) However, he  
17 is unable to watch television for a long time because his mind begins to wander. (*Id.*)  
18 He explains that before his illness he "did all things." (*Id.*) Plaintiff talks with his  
19 wife every day and with his sister twice a month. (*Id.*) Plaintiff needs to be reminded  
20 to go to the doctor and to go shopping with his wife. (*Id.*) He needs someone to go  
21 with him because he does not trust himself. (*Id.*) He has difficulty getting along with  
22 family due to his mood swings. (AR 238.) He notes that after his illness everything  
23 went from great to bad. (*Id.*)

24 Plaintiff's illness affects his ability to lift, squat, bend, stand, walk, kneel, see,  
25 climb stairs, remember, complete tasks, concentrate, understand, follow instructions,  
26 and get along with others. (AR 238.) He can pay attention for 20 minutes. (*Id.*) He  
27 does not finish what he starts. (*Id.*) He cannot follow written instructions but is able  
28 to follow spoken instructions. (*Id.*) When dealing with authority figures, Plaintiff

1 usually gets mad. (AR 239.) He has never been fired due to problems getting along  
2 with people. (*Id.*) He cannot handle stress. (*Id.*) He does not handle changes to  
3 routine very well. (*Id.*) He has a fear of getting out of the house, gets mad and  
4 depressed. (*Id.*) Plaintiff wears reading glasses. (*Id.*) Plaintiff takes medication but  
5 the medication causes dizziness, heat palpitations, anger, fear, and issues with sleep.  
6 (AR 240.)

7 Plaintiff concludes by explaining that prior to his illness he was a well-rounded  
8 person with friends. (AR 240.) He began working at 16 years-old and was a hard  
9 worker. (*Id.*) He has been married for 24 years and notes that if it was not for his  
10 wife, he would be not be alive. (*Id.*)

### 11 **6. Third-Party Function Report**

12 On September 30, 2012, Mrs. Tate, Plaintiff's wife, prepared a function report  
13 describing Plaintiff's illnesses and conditions. (AR 224-232.) Mrs. Tate has known  
14 Plaintiff for the past 24 years. (AR 224.) Plaintiff lives in a house with family. (*Id.*)

15 Mrs. Tate explains that due to his condition, Plaintiff's ability to work is  
16 limited because he is unable to sleep, and because he takes strong medicine and has  
17 mood swings. (*Id.*) She notes that Plaintiff has been tremendously affected. (*Id.*)  
18 She describes Plaintiff as being unable to get out of bed most days, but when he does  
19 get up, he lays on a couch. (AR 225.) Plaintiff does not help with anything around  
20 the house. (*Id.*) He rarely goes out of the house. (*Id.*) Plaintiff grinds his teeth and  
21 has to wear a mouth guard. (*Id.*) Plaintiff is not responsible for taking care of anyone  
22 or taking care of pets. (*Id.*) Mrs. Tate is responsible for everything in the house,  
23 including taking care of their dog. (*Id.*) She notes that before Plaintiff's illness,  
24 Plaintiff used to do "pretty much anything." (*Id.*) Now, Plaintiff sleeps for a couple  
25 of hours and then goes to sit on the couch. (*Id.*)

26 As far as his personal care, Mrs. Tate lays out Plaintiff's clothes, cooks for  
27 Plaintiff, and she forces him to trim his beard. (AR 225.) Plaintiff bathes when Mrs.  
28 Tate is home. (*Id.*) He can care for his hair and use the toilet by himself. (*Id.*) He

1 needs to be reminded to change his clothes more often, trim his beard, and to take  
2 his medicine. (AR 226.) Mrs. Tate notes that Plaintiff does not cook and does not  
3 do any household chores. (*Id.*) Plaintiff does not show any interest in doing  
4 housework, is depressed, and cannot do it. (AR 227.)

5 Mrs. Tate reports that Plaintiff goes out once a week. (AR 227.) Plaintiff tells  
6 Mrs. Tate that he is afraid to go out and he feels sleepy. (*Id.*) When he does go out,  
7 he walks or rides in a car. (*Id.*) He does not go out alone because he feels he may  
8 have a panic attack and does not feel comfortable. (*Id.*) Plaintiff does not drive  
9 because he is on too much medicine and does not get enough sleep. (*Id.*) He does  
10 not do any shopping. (*Id.*) Mrs. Tate explains that Plaintiff used to be able to handle  
11 money but since his illness he is not able to pay bills, count change, handle a savings  
12 account, or use a checkbook because he makes too many mistakes. (AR 227-28.)  
13 Mrs. Tate notes that Plaintiff's only hobby or interest is watching television "for a  
14 while." (AR 228.) However, he is unable to concentrate on the program that he  
15 watches. (*Id.*) She reports that prior to his condition, Plaintiff was normal. (*Id.*)

16 As far as social activities, Mrs. Tate reports that Plaintiff talks on the phone  
17 with people but that he does not do this often. (AR 228.) He needs to be reminded  
18 to go to the doctor and to go grocery shopping with Mrs. Tate. (*Id.*) Plaintiff has  
19 difficulty getting along with family and friends because he does not feel like dealing  
20 with people for the most part. (AR 229.) Since his condition, Mrs. Tate states that  
21 she noticed big changes, in that, Plaintiff does not want to meet anybody and prefers  
22 to stay "in his cubicle" at home. (*Id.*)

23 Mrs. Tate explains that Plaintiff's illness affects his ability to lift, squat, bend,  
24 stand, walk, kneel, see, climb stairs, remember, complete tasks, concentrate,  
25 understand, follow instructions, and get along with others. (AR 229.) For physical  
26 limitations she notes that the problem is "bad knees" and problems with his feet are  
27 due to "extreme pain," while the remaining issues are "mental." (*Id.*) She notes that  
28 due to pain, Plaintiff is unable to walk far and will rest before continuing, depending



1 on how bad the pain is. (*Id.*) She thinks Plaintiff can pay attention for 10 minutes  
2 and he does not finish what he starts. (*Id.*) Plaintiff does not follow written  
3 instructions well and is “pretty good” with spoken instructions but does forget. (*Id.*)

4 Plaintiff gets upset with authority figures but has never been laid off for not  
5 being able to get along with people. (AR 230.) He does not handle stress well, and  
6 instead gets restless and mad. (*Id.*) Plaintiff is afraid of leaving the house, afraid of  
7 meeting people, and does not want to do anything. (*Id.*) He uses glasses and a  
8 mouthguard. (*Id.*) Mrs. Tate notes that all of Plaintiff’s medicine has side effects.  
9 (AR 231.) She explains that Plaintiff has changed a lot since he got sick. (*Id.*) As a  
10 result, she feels a lot of pressure and feels sad and helpless. (*Id.*)

### 11 **7. Applicable Legal Standards**

12 “In assessing the credibility of a claimant’s testimony regarding subjective  
13 pain or the intensity of symptoms, the ALJ engages in a two-step analysis.” *Molina*  
14 *v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing *Vasquez v. Astrue*, 572 F.3d  
15 586, 591 (9th Cir. 2009)). “First, the ALJ must determine whether the claimant has  
16 presented objective medical evidence of an underlying impairment which could  
17 reasonably be expected to produce the pain or other symptoms alleged.” *Treichler v.*  
18 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting  
19 *Lingenfelter*, 504 F.3d at 1036) (internal quotation marks omitted). If so, and if the  
20 ALJ does not find evidence of malingering, the ALJ must provide specific, clear and  
21 convincing reasons for rejecting a claimant’s testimony regarding the severity of his  
22 symptoms. *Id.* The ALJ must identify what testimony was found not credible and  
23 explain what evidence undermines that testimony. *Holohan v. Massanari*, 246 F.3d  
24 1195, 1208 (9th Cir. 2001). “General findings are insufficient.” *Lester*, 81 F.3d at  
25 834.

### 26 **8. Discussion**

27 “After careful consideration of the evidence,” the ALJ found that Plaintiff’s  
28 “medically determinable impairments could reasonably be expected to cause the

1 alleged symptoms,” but found that Plaintiff’s “statements concerning the intensity,  
2 persistence and limiting effects of the symptoms are not fully supported prior to  
3 January 1, 2013.” (AR 354.) The ALJ found that Plaintiff’s symptoms and  
4 limitations were “not entirely consistent with the objective evidence as to the period  
5 prior to January 1, 2013” and that there was “no reliable medical source statement  
6 from any physician endorsing the extent of [Plaintiff’s] alleged functional  
7 limitations.” (See AR 22-24.) No malingering allegation was made, and therefore,  
8 the ALJ’s reasons must be clear and convincing.

9 Plaintiff argues that the ALJ failed to provide clear and convincing reasons  
10 supported by substantial evidence for discounting Plaintiff’s testimony. (JS 8-14, 23-  
11 24.) Specifically, Plaintiff posits that the ALJ relied exclusively on the medical  
12 record when assessing Plaintiff’s subjective symptom testimony and that the ALJ’s  
13 reliance was reversible error. (See JS 23.) In support, Plaintiff cites to applicable  
14 law which correctly states that the ALJ may not rely solely on the lack of supporting  
15 objective medical evidence. (See JS 10-12, 23-24.)

16 The Commissioner argues that the ALJ properly discounted Plaintiff’s  
17 subjective symptom testimony due to a lack of supporting objective medical  
18 evidence, lack of a medical source statement, a showing by medical opinions that  
19 Plaintiff could function at a higher level than Plaintiff reported, Plaintiff’s course of  
20 treatment, and inconsistent statements “between Plaintiff’s allegations and the  
21 record.” (JS 16-22.) For example, the Commissioner argues that the ALJ considered  
22 Plaintiff’s course of treatment in discounting his subjective symptom testimony. (JS.  
23 21-22.) While, the ALJ described Plaintiff’s mental health treatment, which included  
24 visits with a psychiatrist and acupuncturists, as well as medication, the ALJ did not  
25 rely on Plaintiff’s course of treatment in discounting Plaintiff’s testimony. (AR 354;  
26 see AR 353-57.) Similarly, the Commissioner argues that the ALJ noted  
27 inconsistencies between Plaintiff’s complaints and the record. (JS 22.) The ALJ  
28 notes that Plaintiff’s claim that he is unable to work due to his hypertension is

1 inconsistent with the medical record which shows some high blood pressure but no  
2 end-stage organ disease. (AR 357.) This would support the ALJ’s discounting of  
3 Plaintiff’s subjective testimony due to the lack of supporting objective medical  
4 evidence but does not constitute a separate and distinct reason.

5 This Court may only “review the reasons the ALJ asserts.” *Connett v.*  
6 *Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003) (citing *SEC v. Chenery Corp.*, 332 U.S.  
7 194, 196, 67 S. Ct. 1575, 91 L.Ed. 1995 (1947); *Pinto v. Massanari*, 249 F.3d 840,  
8 847-48 (9th Cir. 2001)). The ALJ gave only two reasons for discounting Plaintiff’s  
9 subjective symptom testimony – lack of supporting objective medical evidence and  
10 lack of a medical source statement. (See AR 353-57.) The Commissioner’s  
11 arguments that the ALJ discounted Plaintiff’s subjective symptom testimony for  
12 reasons other than those laid out by the ALJ are not subject to this Court’s review.  
13 The Court reviews only whether the ALJ’s specific reasons for discounting Plaintiff’s  
14 subjective symptom testimony were clear and convincing.

15 Here, the ALJ discredits Plaintiff’s subjective symptom allegations because  
16 (1) “the symptoms and limitations are not entirely consistent to the objective evidence  
17 as to the period prior to January 1, 2013,” and (2) “there is no reliable medical source  
18 statement from any physician endorsing the extent of the claimant’s alleges  
19 functional limitations.” (AR 354-55.) Upon review, the Court finds that the  
20 reasoning provided by the ALJ for discounting Plaintiff’s testimony in fact consists  
21 of only one reason – the lack of supporting objective medical evidence. What the  
22 ALJ describes as a “reliable medical source statement” is simply a medical opinion.  
23 See 20 C.F.R. § 404.1527(a)(1) (defining “medical opinion” as “statements from  
24 acceptable medical sources that reflect judgments about the nature and severity of  
25 [claimant’s] impairment(s), including [his] symptoms, diagnosis and prognosis, what  
26 [he] can still do despite impairment(s), and [his] physical or mental restrictions”).  
27 Because “[m]edical opinion evidence is merely an example of objective medical  
28 evidence,” the lack of a reliable medical source statement cannot form a “specific

1 and distinct reason for rejecting Plaintiff’s subjective symptom testimony.” *Williams*  
2 *v. Berryhill*, No. CV 17-03624-JDE, 2018 WL 791144, at \*4 (C.D. Cal. Feb. 8, 2018)  
3 (citing *Vigil v. Comm’r of Soc. Sec.*, No. 1:16-cv-01677-SAB, 2017 WL 4075581, at  
4 \*8 (E.D. Cal. Sept. 14, 2017); *Petit v. Astrue*, No. EDCV 11-02001-JEM, 2012 WL  
5 3965146, at \*7 (C.D. Cal. Sept. 11, 2012)). Furthermore, this District has routinely  
6 found, and discussed, the absence or presence of medical source statements as a part  
7 of the objective medical evidence. *See Garcia v. Berryhill*, No. EDCV 17-01396-  
8 JEM, 2018 WL 5884540, at \*4 (C.D. Cal. Nov. 6, 2018) (discussing lack of a medical  
9 source statement as part of objective medical evidence); *Lucas v. Berryhill*, No. 5:16-  
10 cv-02464-SHK, 2018 WL 2448472, at \*10 (C.D. Cal. May 29, 2018) (weighing  
11 medical source statement as part of discussion of objective medical evidence); *King*  
12 *v. Colvin*, No. ED CV 14-533-AS, 2014 WL 5810366, at \*7-8 (discussing the  
13 absence of a medical source statement as supporting a finding that claimant’s  
14 statements were unsupported by objective medical evidence). Thus, the Court finds  
15 that the ALJ discounted Plaintiff’s subjective testimony on the sole basis of lack of  
16 supporting objective medical evidence.

17 While the lack of supporting objective medical evidence is a factor that the  
18 ALJ can use in assessing Plaintiff’s subjective symptom testimony, it cannot form  
19 the sole basis for discounting testimony. *Burch*, 400 F.3d at 681; *Rollins v.*  
20 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (citing 20 C.F.R. § 404.1529(c)(2)).  
21 Here, the ALJ provided no other reasoning for discounting Plaintiff’s subjective  
22 symptom testimony. Thus, the ALJ improperly discounted Plaintiff’s subjective  
23 symptom testimony.

## 24 **9. Conclusion**

25 In sum, the ALJ did not give clear and convincing reasons, supported by  
26 substantial evidence, for discounting Plaintiff’s subjective symptom testimony.  
27 Accordingly, remand is warranted on this issue.

28 ///

1           **B. Remand for Further Administrative Proceedings**

2           Because further administrative review could remedy the ALJ’s errors, remand  
3 for further administrative proceedings, rather than an award of benefits, is warranted  
4 here. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015) (remanding for  
5 an award of benefits is appropriate in rare circumstances). Before ordering remand  
6 for an award of benefits, three requirements must be met: (1) the Court must conclude  
7 that the ALJ failed to provide legally sufficient reasons for rejecting evidence; (2) the  
8 Court must conclude that the record has been fully developed and further  
9 administrative proceedings would serve no useful purpose; and (3) the Court must  
10 conclude that if the improperly discredited evidence were credited as true, the ALJ  
11 would be required to find the claimant disabled on remand. *Id.* (citations omitted).  
12 Even if all three requirements are met, the Court retains flexibility to remand for  
13 further proceedings “when the record as a whole creates serious doubt as to whether  
14 the claimant is, in fact, disabled within the meaning of the Social Security Act.” *Id.*  
15 (citation omitted).

16           Plaintiff argues that the ALJ’s failure, for the second time, to properly assess  
17 Plaintiff’s subjective symptom testimony warrants an order crediting Plaintiff’s  
18 testimony as true and ordering the payment of benefits. (JS 13, 24-25.) Plaintiff  
19 notes that his claims have been pending for over seven years. (JS 13.) The  
20 Commissioner argues that the credit-as-true rule is inapplicable here and that remand  
21 would be appropriate because the record contains inconsistencies that require a  
22 judicial determination by the ALJ. (JS 27.)

23           Under the credit-as-true rule, when the ALJ fails to articulate sufficient reasons  
24 for refusing to credit Plaintiff’s subjective symptom testimony, the Commissioner  
25 must accept the testimony as true if there are no outstanding issues to be resolved.  
26 *Varney v. Sec’y of Health and Human Servs.*, 859 F.2d 1396, 1398-1401 (9th Cir.  
27 1988.) However, the Ninth Circuit has expanded the circumstances under which the  
28 credit-as-true rule can be applied to include situations in which there may be

1 outstanding issues to be resolved. *See Vasquez v. Astrue*, 572 F.3d 586, 593-94 (9th  
2 Cir. 2009) The “purpose of the credit-as-true rule is meant to discourage the ALJs  
3 from reaching a conclusion about a claimant’s status first, and then attempting to  
4 justify it by ignoring any evidence in the record that suggests an opposite result.” *Id.*  
5 at 594 (citing *Hammock v. Bowen*, 879 F.2d 498, 503 (9th Cir. 1989).)

6 In *Vasquez*, the Ninth Circuit found that based on the claimant’s age and the  
7 severe delay in obtaining a resolution it was appropriate to apply the credit-as-true  
8 rule. *Id.* at 593-94. There the claimant was 58 years old and her claim had been  
9 pending for approximately 7 years. *Id.*; *see also Hammock*, 879 F.2d at 500, 503  
10 (finding that due to claimant’s age, 57 years old at the time of hearing, and the fact  
11 that her claim had been pending at least 8 years the ALJ must credit her testimony as  
12 true on remand); *Sanchez v. Berryhill*, No. EDCV 16-1774-FMO-MRW, 2018 WL  
13 4694349, at \*9 (C.D. Cal. July 19, 2018) (ordering the ALJ to credit as true where  
14 claimant was 52 years old and his claim was pending for 6 years). Here, remand for  
15 further administrative proceedings is appropriate and consistent with *Vasquez* and  
16 *Hammock*. Plaintiff is 61 years old and he filed his initial application in June 2012,  
17 more than seven years ago. (*See* AR 69-70, 80-81.)

18 The Court finds that the ALJ failed to provide clear and convincing reasons  
19 supported by substantial evidence to discount Plaintiff’s subjective testimony. On  
20 remand, the ALJ shall “credit-as-true” Plaintiff’s subjective allegations. The ALJ  
21 shall then reassess Plaintiff’s RFC and proceed through step four and step five, if  
22 necessary, to determine what work, if any, Plaintiff was capable of performing during  
23 the relevant time period.

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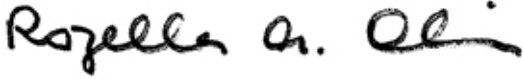
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1 **V. CONCLUSION**

2 IT IS ORDERED that Judgment shall be entered REVERSING the decision of  
3 the Commissioner denying benefits and REMANDING the matter for further  
4 proceedings consistent with this Order.

5 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this  
6 Order and the Judgment on counsel for both parties.

7  
8 DATED: November 25, 2019

  
\_\_\_\_\_  
ROZELLA A. OLIVER  
UNITED STATES MAGISTRATE JUDGE

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

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