



1 Having considered the briefing and record in this matter, the Court finds the decision of the  
2 Administrative Law Judge (“ALJ”) to be supported by substantial evidence in the record as a whole  
3 and based upon proper legal standards. Accordingly, the Court affirms the agency’s determination to  
4 deny benefits.

5 **FACTS AND PRIOR PROCEEDINGS**

6 On March 20, 2014, Plaintiff filed an application for a period of disability and DBI. AR 196-  
7 199.<sup>3</sup> Plaintiff also filed an application for SSI on March 21, 2014. AR 200-206. In both  
8 applications, Plaintiff alleged disability beginning January 1, 2012. AR 196, 200. Plaintiff’s  
9 applications were denied initially and on reconsideration and Plaintiff subsequently requested a  
10 hearing before an Administrative Law Judge (“ALJ”). AR 73-121, 124-153. ALJ Sharon Madsen  
11 held a hearing on July 7, 2016, and issued an order denying benefits on September 1, 2016. AR 23-72.  
12 Plaintiff sought review of the ALJ’s decision, which the Appeals Council denied, making the ALJ’s  
13 decision the Commissioner’s final decision. AR 1-3. This appeal followed.

14 **Relevant Hearing Testimony**

15 The ALJ held a hearing on July 7, 2016, in Fresno, California. Plaintiff was incarcerated at the  
16 time of the hearing and appeared telephonically. Plaintiff was represented by his attorney, Jonathan  
17 Pena. Impartial Vocational Expert Jose Chaparro also appeared. AR 26, 40, 42, 45.

18 In response to questioning by the ALJ, Plaintiff testified that his birthdate is January 7, 1990,  
19 and he is married but has no children. Plaintiff testified that prior to his incarceration he was “kind of  
20 homeless” and “bouncing around a lot.” He had his driver’s license and sometimes drove. Plaintiff  
21 has a high school education and completed some college units but did not obtain a degree or  
22 certificate. AR 45-47.

23 When asked about his typical daily activities, Plaintiff testified that he did not shower very  
24 often because he did not like to do so. Plaintiff’s household chores included feeding his dog. He did  
25 not cook but was able to use the microwave. Plaintiff did not like to go grocery shopping and  
26 typically did so late at night when there were fewer people present. He sometimes attended church  
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28 <sup>3</sup> References to the Administrative Record will be designated as “AR,” followed by the appropriate page number.

1 with his mother but did not like to go because he would get nervous while around other people. AR  
2 48-50.

3 Plaintiff testified that his typical day prior to incarceration included getting up, feeding his dog,  
4 and, if he felt like eating and food was available, eating whatever his wife was eating. Plaintiff's wife  
5 would brush and style his hair and Plaintiff would get dressed, drink coffee, and attend medical or  
6 parole appointments. Plaintiff testified that he did not watch television but enjoyed listening to music  
7 and reading, although he did not read for long periods of time because he got headaches, needed  
8 glasses, and had difficulty concentrating unless he found the material to be very interesting. When  
9 asked about his prior work history, Plaintiff testified that he worked for McDonald's for more than a  
10 year on a full-time basis. During that time, Plaintiff did not cashier and mostly worked in the back.  
11 He did not like helping the customers because he found them to be rude and mean. AR 50-53.

12 With respect to his mental impairments, Plaintiff testified that he does not like people and gets  
13 overwhelmingly nervous and paranoid around them. Plaintiff's mind races and he sometimes feels  
14 like he wants to fight and that others are looking at him strangely, thinking about him, or following  
15 him. He additionally testified that he hears voices, experiences suicidal thoughts on an ongoing basis,  
16 and sometimes cuts himself. Plaintiff has a history of drug abuse and previously used  
17 methamphetamine. Plaintiff was not receiving treatment or medication while incarcerated. Plaintiff  
18 was drinking alcohol and smoking marijuana prior to his incarceration but testified that he does not  
19 drink or do drugs while he is on medication. Additionally, Plaintiff is a former gang member although  
20 he testified that he is no longer affiliated with any gang. AR 53-59.

21 In response to questioning by his attorney, Plaintiff testified that he has been receiving  
22 treatment since he was a child and experiences manic and depressive episodes. Plaintiff described  
23 periods of extreme excitement followed by periods of extreme depression during which he was unable  
24 to get out of bed for days. According to Plaintiff, he will sometimes go without sleeping for days and  
25 then will sleep for weeks. He further described his depressive periods as lasting for more than a  
26 month at a time. Plaintiff also testified that he needs reminders to shower and sometimes will go long  
27 periods without brushing his teeth or shaving. He additionally needs assistance brushing his hair. AR  
28 60-61, 64.

1 Plaintiff testified that he was attending and doing well in school prior to his incarceration.  
2 Plaintiff's teachers and his wife, who was taking the same classes as him, would help him to attend  
3 school and feel comfortable around other students. Plaintiff would sometimes have trouble in school  
4 and would need to sit near the back of the class or close to the door. He would occasionally  
5 experience difficulty getting out of bed and attending his classes. When Plaintiff was unable to get up  
6 and attend his classes, his wife would alert his teachers and get his homework so that he could do it at  
7 home. Plaintiff would sometimes be unable to do his work and reported sitting in bed and crying all  
8 day and being unable to eat. During this time period, Plaintiff was taking his medications off and on.  
9 Plaintiff testified that the dosage of his medications was constantly changing and while his medication  
10 helped control his symptoms he still experienced episodes of depression while on medication.  
11 Additionally, he frequently got in fights with others and had trouble sitting through a full class period  
12 unless he had used marijuana. However, Plaintiff testified that he did not have disciplinary issues and  
13 would leave class as soon as instruction ended or he began feeling bad. AR 61-65.

14 Following Plaintiff's testimony, the ALJ elicited testimony from the Vocational Expert ("VE")  
15 Jose L. Chaparro. The VE testified that Plaintiff's work history included sandwich maker. The ALJ  
16 also asked the VE hypothetical questions. For the first hypothetical, the ALJ asked the VE to assume  
17 a person of the same age, education, and work background as Plaintiff. This person had no exertional  
18 limitations but was restricted to simple, routine tasks and occasional public contact. The VE testified  
19 that Plaintiff's past work as performed would be available, although there are sandwich maker jobs  
20 with extensive public contact. Additionally, there were other jobs available, including heavy unskilled  
21 work as a house cleaner, light unskilled work as a housekeeping cleaner, or medium unskilled work as  
22 a laboratory equipment cleaner. AR 67-68.

23 For the second hypothetical, the ALJ asked the VE to assume that a hypothetical person had no  
24 exertional limitations, could perform simple, routine tasks, and could have occasional contact with co-  
25 workers and supervisors, meaning the hypothetical person could be in the same building but not  
26 working side-by-side with them. The VE testified that the same three other jobs would be available as  
27 in the first hypothetical with no reduction in the number of jobs available. AR 68-69.

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1 For the third hypothetical, the ALJ asked the VE to assume that a hypothetical person had no  
2 exertional limitations, could perform simple, routine tasks, and would require no contact with the  
3 public, co-workers, or supervisors. The VE testified there would be no work available. For the fourth  
4 hypothetical, the ALJ asked the VE to assume that a hypothetical person had no exertional limitations,  
5 could perform simple, routine tasks, and occasional contact with the public, co-workers, and  
6 supervisors, but would be off-task approximately 15 percent of the time due to difficulty  
7 concentrating. The VE testified that there would be no work available. AR 69.

8 Finally, Plaintiff's attorney asked the VE hypothetical questions. Plaintiff's attorney asked the  
9 VE to assume a hypothetical individual with no exertional limitations who could perform simple,  
10 routine tasks and have occasional contact with the public and co-workers but would require additional  
11 supervision 15 percent or more of the time for reminders and instructions on how to preform duties or  
12 complete tasks or the work would cease. The VE testified that there would be no work available. AR  
13 69-70.

#### 14 **Medical Record**

15 The relevant medical record was reviewed by the Court and will be referenced below as  
16 necessary to the Court's decision.

#### 17 **The ALJ's Decision**

18 Using the Social Security Administration's five-step sequential evaluation process, the ALJ  
19 determined that Plaintiff was not disabled under the Social Security Act. AR 26-34. Specifically, the  
20 ALJ found that Plaintiff met the insured status requirements of the Social Security Act through June  
21 30, 2012 and had not engaged in any substantial gainful activity since January 1, 2012, his alleged  
22 onset date. AR 28. Further, the ALJ identified schizoaffective disorder, amphetamine dependence,  
23 alcohol dependence, and polysubstance dependence as severe impairments. AR 28-29. Nonetheless,  
24 the ALJ determined that Plaintiff did not have an impairment or combination of impairments that met  
25 or medically equaled the severity of one of the listed impairments. AR 29-30. Based on her review of  
26 the entire record, the ALJ determined that Plaintiff retained the residual functional capacity ("RFC")  
27 to perform a full range of work at all exertional levels but with limitations on his ability to perform  
28 simple, routine work and could have occasional contact with the public, coworkers, and supervisors,

1 meaning he can be in the same building with them but cannot work side-by-side with them. AR 30-  
2 33. With this RFC, the ALJ found that Plaintiff could not perform any past relevant work, but there  
3 were other jobs existing in significant numbers in the national economy that Plaintiff could perform.  
4 AR 33-34. The ALJ therefore concluded that Plaintiff was not disabled under the Social Security Act.  
5 AR 34.

### 6 SCOPE OF REVIEW

7 Congress has provided a limited scope of judicial review of the Commissioner's decision to  
8 deny benefits under the Act. In reviewing findings of fact with respect to such determinations, this  
9 Court must determine whether the decision of the Commissioner is supported by substantial evidence.  
10 42 U.S.C. § 405(g). Substantial evidence means "more than a mere scintilla," *Richardson v. Perales*,  
11 402 U.S. 389, 402 (1971), but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112,  
12 1119, n. 10 (9th Cir. 1975). It is "such relevant evidence as a reasonable mind might accept as  
13 adequate to support a conclusion." *Richardson*, 402 U.S. at 401. The record as a whole must be  
14 considered, weighing both the evidence that supports and the evidence that detracts from the  
15 Commissioner's conclusion. *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). In weighing the  
16 evidence and making findings, the Commissioner must apply the proper legal standards. *See, e.g.,*  
17 *Burkhart v. Bowen*, 856 F.2d 1335, 1338 (9th Cir. 1988). This Court must uphold the Commissioner's  
18 determination that the claimant is not disabled if the Commissioner applied the proper legal standards,  
19 and if the Commissioner's findings are supported by substantial evidence. *See Sanchez v. Sec'y of*  
20 *Health and Human Servs.*, 812 F.2d 509, 510 (9th Cir. 1987).

### 21 REVIEW

22 In order to qualify for benefits, a claimant must establish that he or she is unable to engage in  
23 substantial gainful activity due to a medically determinable physical or mental impairment which has  
24 lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. §  
25 1382c(a)(3)(A). A claimant must show that he or she has a physical or mental impairment of such  
26 severity that he or she is not only unable to do his or her previous work, but cannot, considering his or  
27 her age, education, and work experience, engage in any other kind of substantial gainful work which  
28 exists in the national economy. *Quang Van Han v. Bowen*, 882 F.2d 1453, 1456 (9th Cir. 1989). The

1 burden is on the claimant to establish disability. *Terry v. Sullivan*, 903 F.2d 1273, 1275 (9th Cir.  
2 1990).

3 **DISCUSSION**<sup>4</sup>

4 Plaintiff contends that the ALJ’s findings regarding Plaintiff’s mental RFC are not supported  
5 by substantial evidence. (Doc. No. 19 at 6-12.) Specifically, Plaintiff asserts that the ALJ erred in  
6 evaluating Plaintiff’s medical records that were not considered by consultative examiner Mary Lewis,  
7 Psy.D, or state agency psychological consultants Timothy Schumacher, Ph.D. and H. Thomas Unger,  
8 M.D. without the help of a medical expert. (Doc. No. 19 at 7, 10-12.) Plaintiff asserts that the ALJ  
9 had a duty to develop the record if the evidence was ambiguous or inadequate and failed to do so here  
10 by not requesting a medical expert to evaluate Plaintiff’s more recent treatment records. (Doc. No. 19  
11 at 10.)

12 **A. The ALJ Properly Evaluated the Medical Evidence**

13 Plaintiff first argues that the ALJ erred by “evaluat[ing] the bulk of the medical records  
14 without the help of a medical expert” because “[t]he ALJ is not a medical expert and may not properly  
15 rely on its own lay understanding to interpret medical records to gauge the functional severity of  
16 [Plaintiff’s] impairments.” (Doc. No. 19 at 10.) According to Plaintiff, “the ALJ should not have  
17 translated the medical evidence in this case to interpret [Plaintiff’s] residual functional capacity.” (*Id.*)

18 In opposition, the Commissioner argues that the RFC is not a medical finding, but an  
19 administrative finding, and ALJs have wide discretion to weigh medical evidence, including opinion  
20 evidence. (Doc. No. 24 at 3-4.) Contrary to Plaintiff’s assertions, “the ALJ is specifically tasked with  
21 evaluating medical evidence in assessing a claimant’s RFC” and the cases cited by Plaintiff in support  
22 of his arguments are inapposite. (Doc. No. 24 at 3-4.) Moreover, Plaintiff has failed to specify how  
23 and why the RFC finding is not supported by substantial evidence and what alternative RFC finding  
24 the ALJ should have made. (Doc. No. 24 at 5.) The Court agrees.

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26  
27 <sup>4</sup> The parties are advised that this Court has carefully reviewed and considered all of the briefs, including arguments,  
28 points and authorities, declarations, and/or exhibits. Any omission of a reference to any specific argument or brief is not to be construed that the Court did not consider the argument or brief.

1           Despite a recitation of certain medical evidence, Plaintiff does not identify any objective  
2 medical evidence that the ALJ failed to consider or cite to any objective medical or opinion evidence  
3 that is inconsistent with the ALJ’s RFC. (Doc. No. 19 at 3.) While Plaintiff is correct that an RFC  
4 requires evidentiary support and an ALJ may not go outside the record to make his or her own  
5 independent medical findings or arbitrarily substitute his or her own judgment for a competent medical  
6 opinion, Plaintiff does not identify any such errors in the ALJ’s decision. (*See id.*) *See also Tackett v.*  
7 *Apfel*, 180 F.3d 1094, 1102 (9th Cir. 1999); *Banks v. Barnhart*, 434 F.Supp.2d 800, 805 (C.D. Cal.  
8 2006); *Day v. Weinberger*, 522 F.2d 1154, 1156 (9th Cir. 1975).

9           The determination of a claimant’s RFC is wholly within the province of the ALJ. *See* 20 C.F.R.  
10 § 404.1546(c); SSR 96-8p. The RFC assessment is based on all the evidence in the record, and it is  
11 the ALJ’s duty to consider and weigh that evidence. *See* 20 C.F.R. 404.1545(a)(1); SSR 96-8p.  
12 Despite Plaintiff’s failure to identify specific error, the Court finds that the ALJ properly considered  
13 the medical evidence spanning 2011 through 2016 as well as the remaining evidence in the record.  
14 AR 31-33. The ALJ ‘s analysis considered all of Plaintiff’s reported symptoms and the extent to  
15 which the symptoms were reasonable consistent with the objective medical evidence and other  
16 evidence in the record, including Plaintiff’s testimony and reports of his symptoms and typical  
17 activities. In reaching her decision, the ALJ acted appropriately within her responsibility to determine  
18 Plaintiff’s RFC from the administrative record as a whole. For example, with respect to Plaintiff’s  
19 contact with the public, coworkers, and supervisors, the ALJ considered evidence that Plaintiff was  
20 attending classes and doing well prior to incarceration and was able to function when seeking  
21 treatment and compliant with treatment. AR 30-31, 61, 64-65. The ALJ further noted that Plaintiff’s  
22 GAF scores ranged from 30-65, “usually depending on his medication compliance or sobriety” and  
23 these opinions were given little weight because the lower scores were obtained during short episodes  
24 of decompensation while Plaintiff was incarcerated, when the record indicated Plaintiff sought and  
25 used drugs and had poor medical compliance. AR 31. Mary Lewis, Psy.D., consultatively examined  
26 Plaintiff and opined that he was not significantly impaired in any work-related mental functioning.  
27 AR 32. The ALJ considered Dr. Lewis’ report and gave it some weight but found that Plaintiff’s  
28 treatment record as a whole indicating suicide attempts and ideation, intermittent substance abuse, and



1 problems with treatment compliance warranted some mental limitations on contact with others and  
2 complex tasks. *Id.* The ALJ additionally considered the opinions of state agency psychological  
3 consultants Timothy Schumacher, Ph.D. and H. Thomas Unger, M.D., who opined that Plaintiff had  
4 mild restrictions in his activities of daily living, social function, and concentration, persistence and  
5 pace, and no extended periods of decompensation. AR 33. The ALJ found that the record supported  
6 greater restrictions to simple routine tasks and limited contact with others. *Id.* Plaintiff does not cite  
7 any specific evidence which contradicts the ALJ’s findings.

8 In light of the foregoing, the Court finds that the ALJ did not err in her evaluation of the  
9 medical evidence in determining Plaintiff’s RFC.

10 **B. The ALJ Did Not Err in Failing to Request a Medical Expert**

11 Plaintiff further argues that the ALJ failed to adhere to her duty to fully and fairly develop the  
12 record by not requesting a medical expert in this case because Plaintiff’s “more recent medical  
13 evidence” was not available at the time of the state agency psychological consultant Dr. Unger’s  
14 review of the record. (Doc. No. 19 at 10-12.) The Commissioner, in turn, contends that the state  
15 agency physicians reviewed the medical evidence pertinent to the relevant period and Plaintiff’s “more  
16 recent records” do not contradict the ALJ’s RFC findings. (Doc. No. 24 at 7-8.) Moreover, according  
17 to the Commissioner, the record was neither incomplete nor ambiguous and the Plaintiff’s mere  
18 disagreement with the ALJ’s interpretation of the medical evidence does not amount to error. (*Id.* at  
19 8.)

20 An RFC “is the most [one] can still do despite [his or her] limitations” and it is “based on all  
21 the relevant evidence in [one’s] case record,” rather than a single medical opinion or piece of  
22 evidence. 20 C.F.R. § 404.1545(a)(1); *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001) (“It is  
23 clear that it is the responsibility of the ALJ, not the claimant’s physician, to determine residual  
24 functional capacity.”). Further, an ALJ’s RFC determination need not precisely reflect any particular  
25 medical provider’s assessment. *See Turner v. Comm’r Soc. Sec. Admin.*, 613 F.3d 1217, 1222-23 (9th  
26 Cir. 2010) (the ALJ properly incorporated physician’s observations in the RFC determination while, at  
27 the same time, rejecting the implication that plaintiff was unable to “perform simple, repetitive tasks in  
28 an environment without public contact or background activity”).

1 The record indicates that, on July 30, 2014, Dr. Schumacher reviewed the record and noted that  
2 no medical records had been provided but considered Dr. Lewis' report, which had found normal  
3 cognitive functioning and no evidence of mental symptomatology. AR 89. Dr. Schumacher opined  
4 that Plaintiff's mental impairment was nonsevere. *Id.* On October 7, 2014, Dr. Unger performed a  
5 review of records through September 2014 and likewise opined that Plaintiff's mental impairment was  
6 nonsevere. AR 112-115. Dr. Unger did not make any residual functional capacity assessments. AR  
7 115. The ALJ considered the opinions of Drs. Schumacher and Unger but found that the record  
8 supported restrictions to simple, routine tasks with limited contact with others. AR 33.

9 Plaintiff argues that the ALJ erred by failing to obtain additional medical source opinions.  
10 However, Plaintiff failed to submit any medical opinions from a treating or examining physician as to  
11 his ability to work or his functional limitations. The burden is on the claimant to establish disability.  
12 *Terry*, 903 F.2d at 1275. Because it is the Plaintiff's burden to present evidence of disability, the mere  
13 absence of a report from a treating or examining physician does not give rise to a duty to develop the  
14 record; rather, that duty is triggered only where there is an inadequacy or ambiguity. *Bayliss v.*  
15 *Barnhart*, 427 F.3d 1211, 1217 (9th Cir.2005); *Alvarez v. Astrue*, No. 1:08-cv-01205-SMS, 2009 WL  
16 2500492, at \*10 (E.D. Cal. Aug. 14, 2009) (finding absence of report from treating physician did not  
17 give rise to a duty to develop the record where record contained opinions of the state agency  
18 physicians and plaintiff's complete treatment records); *see also* 42 U.S.C. § 423(d)(5)(A) ("An  
19 individual shall not be considered to be under a disability unless he furnishes such medical and other  
20 evidence of the existence thereof as the Commissioner of Social Security may require."); 20 C.F.R. §  
21 404.1512(a) ("[Y]ou have to prove to us that you are ... disabled....").

22 Plaintiff contends that the record is "unclear and ambiguous concerning whether Dr. Unger  
23 reviewed any evidence concerning [Plaintiff's] borderline disorder." (Doc. No. 19 at 11.)  
24 Furthermore, neither Dr. Unger's opinion nor the ALJ's decision describe Plaintiff as impulsive,  
25 despite the fact that Plaintiff's providers specifically described him as such on more than one occasion,  
26 thus Plaintiff contends that the record is "inadequate and ambiguous" as it relates to his RFC. (*Id.* at  
27 12.) However, the ALJ did not selectively analyze the evidence and she was not required to discuss  
28 every piece of evidence or descriptor of Plaintiff's conduct. *Howard ex rel. Wolff v. Barnhart*, 341

1 F.3d 1006, 1012 (9th Cir. 2003). Moreover, the ALJ considered not only the opinions of the state  
2 agency physicians, but also evaluated the objective medical evidence pertaining to Plaintiff's mental  
3 impairments post-dating Dr. Unger's opinion. Although the ALJ considered the state agency  
4 physicians' opinions, those opinions were not dispositive and the ALJ ultimately formulated an RFC  
5 that included additional limitations. AR 33. These additional limitations were based on the record as  
6 a whole and accounted for Plaintiff's mental impairments by restricting him to simple, routine tasks  
7 and limiting his contact with others. AR 30, 33. As discussed above, the ALJ's consideration of the  
8 medical evidence post-dating Dr. Unger's opinion was within her province in determining Plaintiff's  
9 RFC. Furthermore, Plaintiff's suggestion that the medical records post-dating Dr. Unger's review  
10 would have changed his opinion is mere speculation and not persuasive.

11 Plaintiff's suggestion that the ALJ had a duty to further develop the record as a result of the  
12 existence of medical records post-dating Dr. Unger's review is likewise unpersuasive. "An ALJ's  
13 duty to develop the record further is triggered only when there is ambiguous evidence or when the  
14 record is inadequate to allow for proper evaluation of the evidence." *See Mayes v. Massanari*, 276  
15 F.3d 453, 459-60 (9th Cir. 2001). Plaintiff has not demonstrated that the record was otherwise  
16 ambiguous or inadequate to allow for proper evaluation. The mere existence of medical records post-  
17 dating a state agency physician's review does not in and of itself trigger a duty to further develop the  
18 record. The ALJ summarized record evidence spanning from 2011 through 2016 and found with the  
19 support of that record that Plaintiff had not established he was disabled. AR 30-33. Notably,  
20 Plaintiff's summary of the medical evidence post-dating the state agency physicians' opinions is  
21 consistent with the evidence that the ALJ's summary of the evidence considered in determining  
22 Plaintiff's RFC. (*See* Doc. No. 19 at 7-9.) AR 31-33. The record contained what appears to be  
23 Plaintiff's complete treatment records, which supported the ALJ's findings and did not present an  
24 ambiguity or inadequacy. Indeed, the Court notes that at the hearing, the ALJ asked Plaintiff's attorney  
25 if there was any additional evidence and he responded that there was none. AR 43. (*Id.* at 12.) Under  
26 these circumstances, the Court finds that the ALJ was not obligated to further develop the record as  
27 Plaintiff suggests.

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**CONCLUSION**

Based on the foregoing, the Court finds that the ALJ’s decision is supported by substantial evidence in the record as a whole and is based on proper legal standards. Accordingly, this Court **DENIES** Plaintiff’s appeal from the administrative decision of the Commissioner of Social Security. The Clerk of this Court is **DIRECTED** to enter judgment in favor of Defendant Andrew M. Saul, Commissioner of Social Security, and against Plaintiff Alexis Alfredo Ortiz.

IT IS SO ORDERED.

Dated: September 10, 2019

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE