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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEREMIAH HUTTON,
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:15-cv-2002-KJN

ORDER

Plaintiff seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner”) denying plaintiff’s application for Disability Insurance Benefits (“DIB”) under Title II of the Social Security Act (“Act”).¹ In his motion for summary judgment, plaintiff principally contends that the Commissioner erred by finding that plaintiff was not disabled from September 7, 2011, through the date of the final administrative decision. (ECF No. 13.) The Commissioner filed a cross-motion for summary judgment and opposition to plaintiff’s motion for summary judgment. (ECF No. 18.) Plaintiff did not file a reply brief.

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¹ This action was referred to the undersigned pursuant to E.D. Cal. L.R. 302(c)(15), and both parties voluntarily consented to proceed before a United States Magistrate Judge for all purposes. (ECF Nos. 7, 9.)

1 For the reasons discussed below, the court DENIES plaintiff's motion for summary
2 judgment, GRANTS the Commissioner's cross-motion for summary judgment, and enters
3 judgment for the Commissioner.

4 I. BACKGROUND

5 Plaintiff was born on January 11, 1975; he has a high school education; he previously
6 worked as a warehouse worker; and he last worked on September 6, 2011.² (Administrative
7 Transcript ("AT") 25, 36-3.) Plaintiff applied for DIB on April 13, 2012, alleging that his
8 disability began on September 7, 2011, and that he was disabled due to a prior brain injury,
9 depression, anxiety attacks, a learning disability, digestive and bowel problems, back pain, and
10 difficulties with focus and concentration. (AT 74, 163, 167.) After plaintiff's application was
11 denied initially and on reconsideration, he requested a hearing before an administrative law judge
12 ("ALJ"), which took place on March 4, 2014. (AT 31-64.) In a decision dated April 4, 2014, the
13 ALJ found plaintiff not disabled. (AT 16-26.) The ALJ's decision became the final decision of
14 the Commissioner when the Appeals Council denied plaintiff's request for review on August 17,
15 2015. (AT 1-5.) Thereafter, plaintiff filed this action in federal district court on September 22,
16 2015, to obtain judicial review of the Commissioner's final decision. (ECF No. 1.)

17 II. ISSUES PRESENTED

18 Plaintiff raises the following issues: (1) whether the ALJ improperly discounted
19 plaintiff's testimony regarding the intensity, persistence, and limiting effects of the symptoms
20 stemming from his impairments; and (2) whether the ALJ improperly rejected the opinion of
21 Nurse Practitioner Deborah Jamieson when determining plaintiff's residual functional capacity
22 ("RFC").

23 III. LEGAL STANDARD

24 The court reviews the Commissioner's decision to determine whether (1) it is based on
25 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record

26 ² Because the parties are familiar with the factual background of this case, including plaintiff's
27 medical and mental health history, the court does not exhaustively relate those facts in this order.
28 The facts related to plaintiff's impairments and treatment will be addressed insofar as they are
relevant to the issues presented by the parties' respective motions.

1 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
2 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
3 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means “such relevant evidence as a reasonable
4 mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th
5 Cir. 2007) (quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)). “The ALJ is
6 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
7 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citation omitted). “The
8 court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one rational
9 interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

10 IV. DISCUSSION

11 A. Summary of the ALJ’s Findings

12 The ALJ evaluated plaintiff’s entitlement to disability benefits pursuant to the
13 Commissioner’s standard five-step analytical framework.³ As an initial matter, the ALJ

14 ³ Disability Insurance Benefits are paid to disabled persons who have contributed to the Social
15 Security program. 42 U.S.C. §§ 401, et seq. Supplemental Security Income is paid to disabled
16 persons with low income. 42 U.S.C. §§ 1382, et seq. Both provisions define disability, in part, as
17 an “inability to engage in any substantial gainful activity” due to “a medically determinable
18 physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A). A parallel
19 five-step sequential evaluation governs eligibility for benefits under both programs. See 20
20 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-
21 42 (1987). The following summarizes the sequential evaluation:

19 Step one: Is the claimant engaging in substantial gainful
20 activity? If so, the claimant is found not disabled. If not, proceed
21 to step two.

21 Step two: Does the claimant have a “severe” impairment?
22 If so, proceed to step three. If not, then a finding of not disabled is
23 appropriate.

22 Step three: Does the claimant’s impairment or combination
23 of impairments meet or equal an impairment listed in 20 C.F.R., Pt.
24 404, Subpt. P, App.1? If so, the claimant is automatically
25 determined disabled. If not, proceed to step four.

24 Step four: Is the claimant capable of performing his past
25 work? If so, the claimant is not disabled. If not, proceed to step
26 five.

26 Step five: Does the claimant have the residual functional
27 capacity to perform any other work? If so, the claimant is not
28 disabled. If not, the claimant is disabled.

Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

1 determined that plaintiff meets the insured status requirements of the Act through December 31,
2 2016. (AT 18.) At the first step, the ALJ concluded that plaintiff had not engaged in substantial
3 gainful activity since September 7, 2011, the alleged onset date. (Id.) At step two, the ALJ
4 determined that plaintiff had the following severe impairments: “depressive disorder, bipolar
5 disorder, anxiety disorder, personality disorder, and a history of brain injury.” (Id.) However, at
6 step three, the ALJ determined that the plaintiff did not have an impairment or combination of
7 impairments that meets or medically equals an impairment listed in 20 C.F.R. Part 404, Subpart
8 P, Appendix 1. (AT 19.)

9 Before proceeding to step four, the ALJ assessed plaintiff’s RFC as follows:

10 After careful consideration of the entire record, the undersigned
11 finds that the claimant has the residual functional capacity to
12 perform a full range of work at all exertional levels but with the
13 following non-exertional limitations: he is limited to simple
14 (defined in the Dictionary of Occupational Titles (DOT) as Specific
15 Vocational Preparation (SVP) levels (SVP) [*sic*] 1 and 2), routine,
16 and repetitive tasks.

15 (AT 21.)

16 At step four, the ALJ concluded that plaintiff is capable of performing his past relevant
17 work as a warehouse worker given his RFC.⁴ (AT 25.) Accordingly, the ALJ concluded that the
18 plaintiff had not been under a disability from September 7, 2011, the alleged onset date, through
19 the date of the decision. (Id.)

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25 The claimant bears the burden of proof in the first four steps of the sequential evaluation
26 process. Bowen, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential
27 evaluation process proceeds to step five. Id.

27 ⁴ Because the ALJ determined, at step four of the sequential analysis, that plaintiff was capable of
28 performing his past relevant work and thus was not disabled, he did not continue on to step five of
the analysis.

1 B. Plaintiff's Substantive Challenges to the Commissioner's Determinations

2 1. *Whether the ALJ Improperly Discounted Plaintiff's Testimony Regarding the*
3 *Intensity, Persistence, and Limiting Effects of his Symptoms*

4 First, plaintiff argues that the ALJ erred by improperly discounting his testimony
5 regarding the extent of the pain and limitations stemming from his impairments without providing
6 clear and convincing reasons supported by substantial evidence for doing so.

7 In Lingenfelter v. Astrue, 504 F.3d 1028 (9th Cir. 2007), the Ninth Circuit Court of
8 Appeals summarized the ALJ's task with respect to assessing a claimant's credibility:

9 To determine whether a claimant's testimony regarding subjective
10 pain or symptoms is credible, an ALJ must engage in a two-step
11 analysis. First, the ALJ must determine whether the claimant has
12 presented objective medical evidence of an underlying impairment
13 which could reasonably be expected to produce the pain or other
14 symptoms alleged. The claimant, however, need not show that her
15 impairment could reasonably be expected to cause the severity of
16 the symptom she has alleged; she need only show that it could
17 reasonably have caused some degree of the symptom. Thus, the
18 ALJ may not reject subjective symptom testimony . . . simply
19 because there is no showing that the impairment can reasonably
20 produce the degree of symptom alleged.

21 Second, if the claimant meets this first test, and there is no evidence
22 of malingering, the ALJ can reject the claimant's testimony about
23 the severity of her symptoms only by offering specific, clear and
24 convincing reasons for doing so. . . .

25 Lingenfelter, 504 F.3d at 1035-36 (citations and quotation marks omitted). "At the same time, the
26 ALJ is not required to believe every allegation of disabling pain, or else disability benefits would
27 be available for the asking" Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012).

28 "The ALJ must specifically identify what testimony is credible and what testimony
undermines the claimant's complaints." Valentine v. Comm'r of Soc. Sec. Admin., 574 F.3d 685,
693 (9th Cir. 2009) (quoting Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir.
1999)). In weighing a claimant's credibility, an ALJ may consider, among other things, the
"[claimant's] reputation for truthfulness, inconsistencies either in [claimant's] testimony or
between [his] testimony and [his] conduct, [claimant's] daily activities, [his] work record, and
testimony from physicians and third parties concerning the nature, severity, and effect of the
symptoms of which [claimant] complains." Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir.

1 2002) (modification in original) (quoting Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir.
2 1997)). If the ALJ’s credibility finding is supported by substantial evidence in the record, the
3 court “may not engage in second-guessing.” Id. at 959.

4 Here, the ALJ found plaintiff’s testimony regarding the intensity, persistence, and limiting
5 effects of the symptoms stemming from his impairments to be not entirely credible. (AT 22.)
6 The ALJ provided the following reasons for discounting plaintiff’s testimony in such a manner:

7 [T]he claimant’s allegations of debilitating mental symptoms are
8 not well supported by the mental health evidence of record.
9 Despite his alleged symptoms, his mental functioning was
10 relatively normal during the Mental Consultative Examination (CE)
11 conducted on February 7, 2012. In addition, the evidence of record
12 shows that he has received little specialized mental health
13 treatment, such as psychotherapy, since the alleged disability onset
14 date. This is inconsistent with the alleged severity of his mental
15 symptoms and diminishes the credibility of those allegations. He
16 also has not been hospitalized for psychiatric treatment since the
17 alleged disability onset date. Moreover, his psychiatric medications
18 are admittedly effective in reducing his mental symptoms.

19 Overall, the record contains little medical evidence and reveals
20 relatively infrequent trips to doctors and mental health professionals
21 for the allegedly disabling symptoms, which shows that the
22 claimant has not generally received the type of mental health
23 treatment one would expect for a totally disabled individual.

24 The claimant has described daily activities that are not limited to
25 the extent one would expect, given the complaints of disabling
26 symptoms and limitations. Despite his mental impairments, he is
27 essentially independent in self-care. He can prepare simple meals,
28 perform household chores, and do grocery shopping. He is able to
make change at stores. He is able to use a computer and utilize
social media. He is able to spend time with others weekly. He can
go out alone and attend church. He also has the ability to drive a
car.

The claimant admitted that he received unemployment
compensation during the relevant period at issue. Unemployment
compensation required the claimant to certify that he was willing
and able to engage in work activity, which is inconsistent with his
allegation of disability.

The claimant’s brain injury happened in 1983, but he was able to
work with this impairment for many years between 1983 and 2011.

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This fact indicates that this impairment was generally not debilitating.

The record indicates that the claimant stopped working primarily due to a business-related layoff rather than the allegedly disabling impairments, which raises a question as to whether the claimant's impairments are as debilitating as he has alleged.

During the hearing, the undersigned observed that the claimant was able to respond to questions and interact appropriately, which indicated some social functioning ability. Moreover, the undersigned observed that the claimant was able to follow closely and participate fully during the hearing, which indicated some concentration ability. While the hearing was short-lived and cannot be considered a conclusive indicator of the claimant's overall level of mental problems on a day-to-day basis, the apparent lack of mental difficulties during the hearing is given some slight weight in reaching the conclusion regarding the credibility of the claimant's allegations and the claimant's residual functional capacity.

The claimant has not alleged any ongoing side effects from the use of medications.

(AT 22-23 (citations to the record omitted)). In essence, the ALJ provided eight separate reasons for discounting plaintiff's testimony. However, plaintiff contests that the ALJ erred with regard to only two of those reasons, specifically, that plaintiff did not receive specialized mental health treatment, and that plaintiff's daily activities indicated that he had greater functional capacity than he alleged. Plaintiff in no way addresses in his briefing the ALJ's other reasons for discounting plaintiff's testimony, let alone asserts that the ALJ erred in providing those reasons in support of his adverse credibility determination. The court need not address an issue where the claimant "failed to argue [the] issue with any specificity in [his or her] briefing." Carmickle v. Comm'r, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008). Accordingly, the court finds plaintiff's argument that the ALJ failed to provide any clear and convincing reasons for discounting plaintiff's testimony to be without merit as plaintiff does not contest the large majority of the reasons the ALJ provided in support of that determination.

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1 Moreover, even assuming, without deciding, that the two reasons plaintiff contests were
2 provided by the ALJ in error, many of the other reasons the ALJ provided were, by themselves,
3 clear and convincing reasons for discounting plaintiff’s testimony that were supported by
4 substantial evidence from the record.

5 For instance, the ALJ properly determined that the fact that plaintiff obtained
6 unemployment compensation immediately at the onset of the alleged disability period, which
7 began the day after plaintiff testified he had been laid off from his most recent job, demonstrated
8 that plaintiff was willing and able to engage in work activity and was inconsistent with plaintiff’s
9 allegations of disabling symptoms. The Ninth Circuit Court of Appeals has held that a claimant’s
10 receipt of unemployment benefits can constitute a reason in support of an ALJ’s adverse
11 credibility determination. Copeland v. Bowen, 861 F.2d 536, 542 (9th Cir. 1988) (upholding
12 ALJ’s adverse credibility determination where one of the reasons the ALJ provided in support of
13 that determination was that the claimant “received unemployment insurance benefits”); see also
14 Hasso v. Colvin, 617 F. App’x 780, 781 (9th Cir. 2015) (unpublished) (upholding adverse
15 credibility determination based in part on the claimant’s “receipt of unemployment benefits”).
16 Here, plaintiff testified that he filed for and received unemployment after he had been laid off
17 from his most recent job and was “ready, willing, and able to work” at the time he filed for those
18 benefits. (AT 39.) Accordingly, there is substantial evidence in the record to support the ALJ’s
19 proper reasoning.

20 The ALJ also determined that plaintiff had been laid off from his most recent job for non-
21 medical reasons, which undermined plaintiff’s claim that his impairments caused totally
22 debilitating symptoms. Indeed, plaintiff testified at the hearing that he was laid off from his most
23 recent job on September 6, 2011, just one day prior to the alleged disability onset date, because
24 there was a lack of work for him to perform, and not for reasons related to plaintiff’s
25 impairments. (AT 38-39.) Plaintiff testified further that he began to look for other work after he
26 had been laid off, and continued to interview for other jobs in the same field as the one he was
27 laid off from throughout 2012 and 2013. (AT 40-41.) The Ninth Circuit Court of Appeals has
28 held that it is proper for an ALJ to consider the fact that a claimant left work for non-medical

1 reasons when assessing credibility. Bruton v. Massanari, 268 F.3d 824, 828 (9th Cir. 2001)
2 (holding that leaving work for non-medical reasons is a proper factor in assessing credibility); see
3 also Williams v. Colvin, 609 F. App'x 495, 496 (9th Cir. 2015) (unpublished) (“The ALJ also
4 permissibly relied on Claimant’s own report that he had stopped working in 2007 not because of
5 medical problems but, rather, because he was laid off.”). Therefore, the ALJ’s consideration here
6 was an appropriate reason for discounting plaintiff’s testimony that was supported by substantial
7 evidence.

8 In addition, the ALJ noted that plaintiff had been able to work for many years despite his
9 brain injury and the symptoms stemming from that impairment, which form the primary basis of
10 plaintiff’s claim of disability. In particular, the ALJ noted that while plaintiff incurred his brain
11 injury in 1983, that condition had not prevented him from working consistently between 1993 and
12 2011. (AT 23 (citing AT 159-60).) This fact also constituted a clear and convincing reason for
13 discounting plaintiff’s testimony. See Gregory v. Bowen, 844 F.2d 664, 667 (9th Cir. 1988)
14 (upholding adverse credibility determination where there existed substantial evidence in the
15 record indicating that the claimant’s “back problems had not prevented her from working” over
16 the course of a number of years); Crosby v. Comm’r of Soc. Sec. Admin., 489 F. App’x 166, 168
17 (9th Cir. 2012) (unpublished) (upholding credibility determination based on the fact that the
18 claimant’s testimony that he suffered debilitating symptoms was inconsistent “with his work
19 history showing that his longstanding conditions did not preclude work in the past”).

20 The ALJ also highlighted plaintiff’s report that his impairments improved while he was
21 using his medications as a reason for discounting plaintiff’s allegations of debilitating symptoms.
22 A condition that can be controlled or corrected by medication is not disabling for purposes of
23 determining eligibility for benefits under the Act. See Warre v. Comm’r of Soc. Sec. Admin.,
24 439 F.3d 1001, 1006 (9th Cir. 2006); Montijo v. Sec’y of Health & Human Servs., 729 F.2d 599,
25 600 (9th Cir. 1984); Odle v. Heckler, 707 F.2d 439, 440 (9th Cir. 1983). The record here
26 provides substantial support for the ALJ’s reasoning. For instance, the treating notes in the record
27 show that after plaintiff began taking lithium in early 2013, he began to report that he was not
28 experiencing anxiety attacks, felt calmer, and was less anxious. (AT 278.) Plaintiff similarly

1 reported that Lamictal was “controlling his symptoms appropriately” without side effects when he
2 was given a particular dosage of that medication. (AT 297.) Accordingly, the ALJ properly
3 relied on this additional reason for discounting plaintiff’s testimony.

4 In short, the ALJ provided a multitude of clear and convincing reasons for discounting
5 plaintiff’s testimony regarding the extent of his symptoms that are all supported by substantial
6 evidence in the record.⁵ Therefore, the ALJ did not err in rendering his adverse credibility
7 determination.

8 2. *Whether the ALJ Erred in Rejecting the Opinion of Nurse Practitioner*
9 *Jamieson*

10 Second, plaintiff contends that the ALJ erred in assigning little weight to the opinion of
11 Nurse Practitioner Jamieson, who was plaintiff’s primary treating source. Plaintiff argues that the
12 ALJ erred in not crediting Nurse Practitioner Jamieson’s opinion that plaintiff had a poor ability
13 to deal with work stress and maintain concentration.

14 Nurse practitioners are categorized as an “other source” under the applicable regulations,
15 and are not entitled to the same level of deference as medical doctors and other “acceptable
16 medical sources.” 20 C.F.R. § 404.1513(a), (d); Molina, 674 F.3d at 1111. Accordingly, an ALJ
17 is only required to provide “germane” reasons supported by substantial evidence in the record in
18 support of a decision to discount a nurse practitioner’s opinion. Turner v. Comm’r of Soc. Sec.,
19 613 F.3d 1217, 1224 (9th Cir. 2010).

20 Here, the ALJ assigned “little weight” to Nurse Practitioner Jamieson’s opinion based on
21 the following rationale:

22 [S]he is not an acceptable medical source and lacks the medical
23 proficiency to render a reliable opinion on the claimant’s
24 limitations. In addition, the opinion is inconsistent with the general

25 ⁵ The ALJ also cited to two other reasons in support of his adverse credibility that plaintiff does
26 not contest and that the court does not address above. Specifically, the ALJ also determined that
27 plaintiff’s testimony was inconsistent with the objective medical evidence in the record and with
28 the ALJ’s own personal observations of plaintiff at the hearing. (AT 22-23.) Because the ALJ’s
other reasons in support of his determination that are addressed above constitute clear and
convincing reasons for discounting plaintiff’s testimony in and of themselves, the court declines
to address these additional reasons provided by the ALJ.

1 absence of evidence of specialized mental health treatment in the
2 record. Moreover, the opinion is inconsistent with the relatively
3 normal mental functioning that the claimant exhibited at the mental
consultative examination conducted on February 7, 2012.

4 (AT 24.) This rationale provides at least one germane reason for discounting Nurse Practitioner
5 Jamieson’s opinion, specifically, the fact that Nurse Practitioner Jamieson’s opinion is
6 inconsistent with the objective medical findings regarding plaintiff’s mental functioning observed
7 and opined upon by Dr. Fetterman, an acceptable medical source, during plaintiff’s February 7,
8 2012 consultative examination. The fact that the opinion of an “other source” conflicts with the
9 medical findings and opinion of a physician or other “acceptable medical source” is a germane
10 reason in support of discounting the opinion of the “other source.” See, e.g., Turner, 613 F.3d at
11 1224 (upholding ALJ’s decision to discount social worker’s opinion that conflicted with the
12 opinions and medical findings of plaintiff’s treating physicians); Putman v. Colvin, 586 F. App’x
13 691, 693 (9th Cir. 2014) (unpublished) (holding that the ALJ properly discounted counselor’s
14 opinion on the basis that the opinions of the claimant’s physicians conflicted with that opinion).
15 Dr. Fetterman’s examination findings and opinion provide substantial support for the ALJ’s
16 reasoning. Indeed, Dr. Fetterman, a psychologist, noted that plaintiff’s mental function
17 examination produced largely unremarkable results. (AT 241-44.) Moreover, Dr. Fetterman
18 opined that plaintiff’s mental impairments caused few, if any, limitations in all areas of mental
19 functioning. (AT 244.) In particular, Dr. Fetterman noted that plaintiff had a “good ability” to
20 handle workplace stress, only “mild” memory impairments, and a “good ability” to complete a
21 normal workday or workweek without interruptions from his mental impairments. (Id.) These
22 findings directly conflicted with the limitations Nurse Practitioner Jamieson opined. The ALJ
23 was permitted to rely on this conflict to discount Nurse Practitioner Jamieson’s opinion.

24 Plaintiff appears to argue that the ALJ still erred in assessing Nurse Practitioner
25 Jamieson’s opinion because he also noted that Nurse Practitioner Jamieson was not an
26 “acceptable medical source.” However, even assuming that such an additional reason was
27 improper, the fact that the ALJ provided at least one germane reason in support of his decision
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1 means that any such error is harmless.⁶ See Curry v. Sullivan, 925 F.2d 1127, 1129 (9th
2 Cir.1990) (harmless error analysis applicable in judicial review of social security cases); Molina
3 v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012) (“we may not reverse an ALJ’s decision on
4 account of an error that is harmless”).

5 V. CONCLUSION

6 In sum, the ALJ’s decision was free from prejudicial error and supported by substantial
7 evidence in the record as a whole. Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Plaintiff’s motion for summary judgment (ECF No. 13) is DENIED.
- 9 2. The Commissioner’s cross-motion for summary judgment (ECF No. 18) is


10 GRANTED.

11 3. The Commissioner’s final decision is AFFIRMED, and judgment is entered for the
12 Commissioner.

- 13 4. The Clerk of Court shall close this case.

14 IT IS SO ORDERED.

15 Dated: January 6, 2017

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18 KENDALL J. NEWMAN
19 UNITED STATES MAGISTRATE JUDGE
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26 _____
27 ⁶ Plaintiff appears to also argue that the ALJ was also required to find that plaintiff would be off
28 task 15 percent of the workday and adopt that finding into his RFC determination based on Nurse
Practitioner Jamieson’s opinion. However, this argument is without merit because the ALJ
properly discounted Nurse Practitioner Jamieson’s opinion for the reasons discussed above.