



1 **I. SOCIAL SECURITY CASES: FRAMEWORK & FIVE-STEP ANALYSIS**

2 The Social Security Act provides benefits for qualifying individuals unable to  
3 “engage in any substantial gainful activity by reason of any medically determinable  
4 physical or mental impairment[.]” 42 U.S.C. § 423(d)(1)(a). When an individual (the  
5 “claimant”) seeks Social Security disability benefits, the process for administratively  
6 reviewing the request can consist of several stages, including: (1) an initial determination  
7 by the Social Security Administration; (2) reconsideration; (3) a hearing before an  
8 Administrative Law Judge (“ALJ”); and (4) review of the ALJ’s determination by the  
9 Social Security Appeals Council. 20 C.F.R. § 416.1400(a).

10 At the hearing stage, the ALJ is to hear testimony from the claimant and other  
11 witnesses, accept into evidence relevant documents, and issue a written decision based  
12 on a preponderance of the evidence in the record. 20 C.F.R. § 416.1429. In evaluating a  
13 claimant’s eligibility, the ALJ is to apply the following five-step analysis:

14 **Step One:** Is the claimant engaged in substantial gainful activity? If yes,  
the claimant is not disabled. If no, proceed to step two.

15 **Step Two:** Does the claimant have a “severe” impairment? If no, the  
16 claimant is not disabled. If yes, proceed to step three.

17 **Step Three:** Does the claimant’s combination of impairments meet or  
equal those listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1 (the “Listings”)?  
18 If yes, the claimant is disabled. If no, proceed to step four.

19 **Step Four:** Is the claimant capable of performing past relevant work? If  
yes, the claimant is not disabled. If no, proceed to step five.

20 **Step Five:** Does the claimant have the residual functional capacity to  
21 perform any other work? If yes, the claimant is not disabled. If no, the  
claimant is disabled.

22 *Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995); 20 C.F.R. § 416.920(a)(4). The  
23 burden of proof rests with the claimant through step four, and with the Commissioner at  
24 step five. *Ford v. Saul*, 950 F.3d 1141, 1148 (9th Cir. 2020). If the ALJ finds a claimant  
25 not disabled, and the Social Security Appeals Council declines review, the ALJ’s  
26 decision becomes the final decision of the Commissioner. *Brewes v. Comm’r*, 682 F.3d  
27 1157, 1161-62 (9th Cir. 2012) (noting the Appeals Council’s denial of review is a non-  
28 final agency action). At that point, the claimant may seek judicial review of the

1 Commissioner’s final decision by a federal district court. 42 U.S.C. § 405(g).

2 The district court may enter a judgment affirming, modifying, or reversing the final  
3 decision of the Commissioner. *Id.* (“Sentence Four” of § 405(g)). In seeking judicial  
4 review, the plaintiff is responsible for raising points of error, and the Ninth Circuit has  
5 repeatedly admonished that the court cannot manufacture arguments for the plaintiff.  
6 *See Mata v. Colvin*, 2014 WL 5472784, at \*4 (E.D. Cal, Oct. 28, 2014) (citing *Indep.*  
7 *Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (stating that the court  
8 should “review only issues which are argued specifically and distinctly,” and noting a  
9 party who fails to raise and explain a claim of error waives it).

10 A district court may reverse the Commissioner’s denial of benefits only if the ALJ’s  
11 decision contains legal error or is unsupported by substantial evidence. *Ford*, 950 F.3d.  
12 at 1154. Substantial evidence is “more than a mere scintilla” but “less than a  
13 preponderance,” i.e., “such relevant evidence as a reasonable mind might accept as  
14 adequate to support a conclusion.” *Id.* (citations omitted). The court reviews evidence in  
15 the record that both supports and detracts from the ALJ’s conclusion, but it may not  
16 affirm on a ground upon which the ALJ did not rely. *Luther v. Berryhill*, 891 F.3d 872,  
17 875 (9th Cir. 2018). The ALJ is responsible for resolving issues of credibility, conflicts in  
18 testimony, and ambiguities in the record. *Ford*, 950 F.3d at 1154. The ALJ’s decision  
19 must be upheld where the evidence is susceptible to more than one rational  
20 interpretation, or where any error is harmless. *Id.*

## 21 **II. FACTUAL BACKGROUND AND ALJ’S FIVE-STEP ANALYSIS**

22 On August 13, 2020, Plaintiff applied for supplemental security income under Title  
23 XVI of the Social Security Act, alleging he has been disabled since his application date.  
24 Administrative Transcript (“AT”) 190 (available at ECF No. 12). Plaintiff claimed disability  
25 due to mental health issues; suicidal tendencies; need for surgery on his back, foot, and  
26 anus; anal fissure; pain; discomfort; and mental breakdowns. *See* AT 61. Plaintiff’s  
27 application was denied initially and upon reconsideration; he sought review before an  
28 ALJ. AT 82, 105, 120. On March 4, 2022, Plaintiff appeared at a remote hearing before

1 an ALJ, which quickly adjourned because Plaintiff stated he wished to obtain counsel.  
2 AT 54-59. On June 24, 2022, Plaintiff appeared with a representative at a remote  
3 hearing before the ALJ, where Plaintiff testified about his impairments and where a  
4 vocational expert testified about hypothetical available jobs. AT 34-53.

5 On July 6, 2022, the ALJ issued a decision finding Plaintiff was not disabled. AT  
6 10-26. At step one, the ALJ found Plaintiff had not engaged in substantial gainful activity  
7 since August 13, 2020. AT 12. At step two, the ALJ determined Plaintiff had the following  
8 severe impairments: degenerative disc disease of the lumbar spine, depressive  
9 disorder, and anxiety disorder. AT 13. The ALJ found the evidence surrounding Plaintiff's  
10 asthma, right foot pain prostatitis, pelvic floor dysfunction, and rectal pain showed these  
11 issues had no more than a minimal effect on his ability to carry out basic work activities.  
12 AT 13-14. Thus, these conditions were deemed non-severe. *Id.*

13 At step three, the ALJ found Plaintiff's combination of impairments did not meet or  
14 medically equal any Listing. AT 14 (citing 20 C.F.R Part 404, Subpart P, Appendix 1).  
15 For Plaintiff's physical impairments, the ALJ considered Listings 1.15 (nerve root spinal  
16 disorder), 1.16 (lumbar spinal stenosis), 1.18 (major joint abnormality), 3.03 (asthma),  
17 5.02 (gastrointestinal hemorrhaging), and for his mental impairments, Listings 12.04  
18 (depression) and 12.06 (anxiety). The ALJ applied the "Paragraph B" criteria<sup>2</sup> for the  
19 mental impairments, finding Plaintiff moderately limited in interacting with others, but  
20 finding no limitations in understanding, remembering, or applying information; in  
21 concentrating, persisting or maintaining pace; or in adapting or managing oneself. AT  
22 14-16. In making these findings, the ALJ noted conflicts in the record between Plaintiff's  
23 testimony, the medical evidence, and the medical opinions in the record. *Id.*

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25 <sup>2</sup> "Paragraph B" lists four categories for evaluating how a claimant's mental disorders  
26 limit their functioning: understanding, remembering, or applying information; interacting  
27 with others; concentrating, persisting, or maintaining pace; and adapting or managing  
28 oneself. To be found disabled under the Paragraph B categories, the mental disorder  
must result in an "extreme" limitation of one, or "marked" limitation of two, of the four  
areas of mental functioning. See 20 C.F.R. § Pt. 404, Subpt. P, App. 1, 12.00 Mental  
Disorders, sub. A.2.b.

1 The ALJ then found Plaintiff had the residual functional capacity to perform light  
2 work (20 C.F.R. § 416.967(b)), except that Plaintiff could only:

3 Occasionally crawl and climb ladders, ropes, or scaffolds;  
4 frequently balance, stoop, kneel, crouch, and climb ramps or  
5 stairs; occasionally interact with the public, in the work  
6 setting, and with coworkers and supervisors; and no tandem  
7 tasks involved.

8 AT 16. In crafting this residual functional capacity, the ALJ stated he considered  
9 Plaintiff's statements from his 2020-2021 disability and function reports and from the  
10 June 24, 2022 hearing. AT 17-18 (citing AT 38-48, 239, 258-66, 286, 299). The ALJ also  
11 considered the medical evidence in the record from 2019-2022, the medical opinions  
12 from the examining doctors, and the prior administrative medical findings. See AT 18-24.

13 Based on the residual functional capacity, the ALJ determined at step four that  
14 Plaintiff was incapable of performing past relevant work. AT 24. However, at step five,  
15 the ALJ found Plaintiff could perform other jobs requiring light exertion and SVP 2,<sup>3</sup>  
16 including: (i) garment sorter, 54,500 jobs nationally; (ii) electronics worker, 32,900 jobs  
17 nationally; and (iii) "assembler, small products I," 305,600 jobs nationally. AT 25. The  
18 ALJ found Plaintiff not disabled during the relevant period. AT 26.

19 On June 27, 2023, the Appeals Council rejected Plaintiff's appeal. AT 1-3. Plaintiff  
20 then filed this action requesting judicial review of the Commissioner's final decision, and  
21 the parties filed cross-motions for summary judgment. (ECF Nos. 1, 13, 17.)

### 22 **III. ISSUES PRESENTED FOR REVIEW**

23 Plaintiff contends the ALJ erred by: (A) failing to offer clear and convincing  
24 reasons for rejecting the more severe aspects of his symptom testimony; and (B) failing  
25 to develop the record regarding a January 2022 blood test. (ECF No. 13.) Plaintiff seeks  
26 a remand for further proceedings. (*Id.*)

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27 <sup>3</sup> "Light" in the ALJ's step-five determination references light work, as defined by  
28 20 C.F.R. § 416.967(b).

"SVP" is "specific vocational preparation," defined as "the amount of lapsed time  
required by a typical worker to learn the techniques, acquire the information, and  
develop the facility needed for average performance in a specific job-worker situation."  
See DOT, App. C, § II, available at 1991 WL 688702.

1 The Commissioner argues the ALJ: (A) reasonably evaluated Plaintiff's  
2 subjective symptom testimony; and (B) had no duty to develop the record further. (ECF  
3 No. 17.) Thus, the Commissioner contends the decision as a whole is free from legal  
4 error, is supported by substantial evidence, and should be affirmed. (*Id.*)

#### 5 **IV. DISCUSSION**

##### 6 **A. Subjective Symptom Testimony**

###### 7 1. Legal Standards

8 A claimant's statements of subjective symptoms alone are insufficient grounds to  
9 establish disability. 20 C.F.R § 416.929(a). If an ALJ was required to believe every  
10 allegation of pain or impairment, disability benefits would run afoul of the Social Security  
11 Act and its purpose. *Treichler v. Comm'r*, 775 F.3d 1090, 1106 (9th Cir. 2014). In  
12 evaluating the extent to which an ALJ must credit the claimant's report of their  
13 symptoms, the Ninth Circuit has stated:

14 First, the ALJ must determine whether the claimant has presented  
15 objective medical evidence of an underlying impairment which could  
16 reasonably be expected to produce the pain or other symptoms  
17 alleged. In this analysis, the claimant is not required to show that her  
18 impairment could reasonably be expected to cause the severity of the  
19 symptom she has alleged; she need only show that it could  
20 reasonably have caused some degree of the symptom. Nor must a  
21 claimant produce objective medical evidence of the pain or fatigue  
22 itself, or the severity thereof.

19 If the claimant satisfies the first step of this analysis, and there is no  
20 evidence of malingering, the ALJ can reject the claimant's testimony  
21 about the severity of her symptoms only by offering specific, clear and  
22 convincing reasons for doing so. This is not an easy requirement to  
meet: The clear and convincing standard is the most demanding  
required in Social Security cases.

23 *Revels v. Berryhill*, 874 F.3d 648, 655 (9th Cir. 2017) (quotations omitted). The ALJ's  
24 reasons for discounting or rejecting a claimant's subjective symptom testimony must be  
25 sufficiently specific to allow a reviewing court to conclude the adjudicator did not  
26 arbitrarily discredit a claimant's testimony. *Brown-Hunter v. Colvin*, 806 F.3d 487, 493  
27 (9th Cir. 2015) (quotations omitted). Examples of "specific, clear and convincing  
28 reasons" for discounting or rejecting a claimant's subjective symptom testimony include:

1 prescription of conservative treatment, *Parra v. Astrue*, 481 F.3d 742, 750-51 (9th Cir.  
2 2007); inconsistencies between the plaintiff's testimony and conduct (including daily  
3 activities), *Burch v. Barnhart*, 400 F.3d 676, 680-81 (9th Cir. 2005); whether the alleged  
4 symptoms are consistent with the medical evidence of record, *Rollins v. Massanari*, 261  
5 F.3d 853, 857 (9th Cir. 2001); or an unexplained or inadequately explained failure to  
6 follow a prescribed course of treatment, *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir.  
7 1991). A lack of corroborating, objective medical evidence alone is insufficient grounds  
8 for an ALJ to discount subjective symptoms; however, it is a factor the ALJ may  
9 consider. *Rollins*, 261 F.3d at 857 (citing 20 C.F.R § 404.1529(c)(2)).

## 10 2. Symptom Testimony Regarding Physical Impairments

11 Regarding Plaintiff's statements that he had disabling physical pain such that he  
12 could not work, the ALJ began by summarizing Plaintiff's statements in his 2020-2021  
13 disability and function reports and at the June 24, 2022 hearing. AT 17-18. Plaintiff  
14 asserted he "was not able to sit for more than 10 minutes or stand or drive more than 10  
15 minutes" because he had "chronic pain 24 hours a day" in his spine. AT 286. Plaintiff  
16 also stated he could not wear pants, shoes, or socks because of his legs going numb  
17 from the deteriorating discs, pelvic dysfunction, anal fissure, and unbalanced hips. *Id.*  
18 Plaintiff asserted he had muscle spasms, nerve damage, and walked slow with a twitch,  
19 had to constantly change position due to pain, and had to use a cane when the pain  
20 made it hard to stand. AT 259, 265, 299. Plaintiff reasserted many of these things at the  
21 June 24, 2022 hearing, adding he could only "hold one grandchild at a time" (15 pounds  
22 and 12 pounds). AT 41-46. Plaintiff stated he was prescribed baclofen and gabapentin  
23 for pain, and he confirmed that surgery and epidural injections had been recommended  
24 but were delayed due to the COVID-19 pandemic. AT 42. The ALJ found Plaintiff's  
25 symptoms could reasonably be expected to cause the alleged symptoms, but the  
26 "intensity, persistence and limiting effects of these symptoms are not entirely consistent  
27 with the medical evidence and other evidence in the record for the reasons explained in  
28 this decision." AT 18.

1 First, the ALJ properly discounted Plaintiff's symptom testimony by noting the  
2 conflicts between his statements and the objective medical evidence. AT 18. The ALJ  
3 cited records showing Plaintiff had "multilevel disc herniations without high grade spinal  
4 stenosis, moderate narrowing of the right L4-L5 foramen, and possible impingement  
5 upon the extraforaminal portion of the left L3 nerve sleeve" in June 2019 and August  
6 2020. AT 492, 496. At a December 31, 2019 exam, Plaintiff reported 10/10 pain in his  
7 spine, buttock, and thigh, and the examiner confirmed lumbar tenderness and pain with  
8 motion, positive facet loading, and positive straight leg raise bilaterally. AT 1006-08.  
9 However, this exam also found strength of 4+/5, intact reflexes and normal gait. AT  
10 1008. Other exams of Plaintiff's spine from 2020-2022 confirmed spinal tenderness with  
11 spasms and reduced range of motion (AT 538, 934), but also full strength in his hips and  
12 legs, negative straight leg raising, intact sensation and reflexes, and normal gait (AT  
13 541, 544, 547, 550, 556, 564, 569, 576, 891, 934, 970). Plaintiff was prescribed anti-  
14 inflammatory medication and pregabalin (Lyrica) in December 2019, and subsequently  
15 reported reduced pain of 6/10 in February 2020, December 2020, and February 2021.  
16 AT 999-1003, 1008. Records in 2022 showed moderate foraminal narrowing extending  
17 into Plaintiff's spine at L1- L5, mild narrowing at L5-S1, and facet effusions at L2-L4. AT  
18 1014. The ALJ also noted Plaintiff's mentioning of sensory neuropathy to his providers,  
19 but noted the exams showed Plaintiff's sensation was intact. AT 19 (citing AT 541, 544,  
20 547, 550, 556, 564, 891, 1004, 1008).

21 Additionally, the ALJ noted the results of a November 18, 2020 exam performed  
22 by Dr. Shahid Ali, M.D., which showed Plaintiff could sit, stand, walk, and perform other  
23 postural activities without difficulty. AT 842-45. This included that Plaintiff was able to  
24 walk into the exam room without assistance, got on and off the exam table without  
25 difficulty, and could take his shoes off without difficulty. AT 842. Dr. Ali opined Plaintiff  
26 could lift/carry at the medium level (50 pounds occasionally and 25 pounds frequently);  
27 had no limitation sitting, standing, or walking; could frequently climb, balance, stoop, and  
28 kneel; and never crouch or crawl. *Id.* The ALJ found this opinion partially persuasive,



1 adopting most of Dr. Ali's opined limitations into the residual functional capacity, but  
2 reducing the lift/carry limitations to the light level (20 pounds occasionally and 10 pounds  
3 frequently) due to Plaintiff developing facet effusions and mild giveaway weakness in  
4 2022. AT 22 (citing AT 1004, 1008, 1014). The ALJ also found partially persuasive the  
5 opinion of Dr. J. Lane, M.D., expressed on March 11, 2021 during the reconsideration  
6 stage. AT 23 (citing AT 96-98). The ALJ adopted Dr. Lane's opinion Plaintiff could  
7 frequently crouch or crawl given the "reduction in postural maneuvers," and rejected Dr.  
8 Lane's assignment of medium work for the same reasons as with Dr. Ali. AT 23. Plaintiff  
9 did not challenge the ALJ's assessment of the medical opinions in the record, and so  
10 waived any challenge to these findings. See *Mata*, 2014 WL 5472784, at \*4.

11 The ALJ was within his authority to resolve the conflict between the medical and  
12 opinion evidence, which supports some physical limitations at the light level, and  
13 Plaintiff's testimony that he could only sit, stand, and walk for no more than 10 minutes  
14 at a time; had to use a cane to walk; and could not wear pants, shoes, or socks due to  
15 24 hour a day pain. See *Ford*, 950 F.3d at 1154. Objective medical evidence can be  
16 cited when evaluating the severity of Plaintiff's testimony, and the ALJ did not err in  
17 finding Plaintiff's stated severe limitations to be contradicted by the medical evidence in  
18 the record. See *Rollins*, 261 F.3d at 857; see also *Marshall v. Saul*, 830 F. App'x 179,  
19 181 (9th Cir. 2020) (finding clear and convincing reasons to reject the plaintiff's symptom  
20 testimony where there was a "disjunction between his statements that [he] could not  
21 walk and medical evidence showing that his gait was normal").

22 Plaintiff contends the ALJ's rationale on this point is not clear and convincing  
23 because the ALJ relied too heavily on Dr. Ali's opinion and did not account for other  
24 medical records. (ECF No. 13 at 10.) For support, Plaintiff points to medical records from  
25 his pain management provider generated June 3, 2019, December 31, 2019, and  
26 February 4, 2020 that Plaintiff argues demonstrates his increased physical impairments  
27 and confirms Plaintiff's subjective complaints. See AT 1003-10. However, as noted  
28 above, the ALJ took account of these records in rejecting Dr. Ali's (and Dr. Lane's)

1 assignment of medium work. See AT 22-23 (“I have further reduced the claimant’s lifting  
2 and carrying to the light level given the new imaging with some facet effusions and with  
3 other exams showing mild giveaway weakness of 4+ out of 5.”) (citing AT 1004, 1008,  
4 1014). Thus, the Court finds the ALJ did not ignore the evidence cited by Plaintiff. See  
5 *Wesselius v. Kijakazi*, 2021 WL 4948928, at \*1 (9th Cir. Oct. 25, 2021) (stating an ALJ’s  
6 decision was not a result of “cherry-picking” where the ALJ’s findings were supported by  
7 a broad set of exams covering the entire relevant time period); *cf. Ghanim v. Colvin*, 763  
8 F.3d 1154, 1164 (9th Cir. 2014) (finding error where the ALJ’s decision did not account  
9 for record “as a whole,” but rather relied on “cherry picked” evidence).

10 Instead, the decision demonstrates the ALJ fulfilled his duty to address conflicts in  
11 the record; the Court has no authority to reweigh Plaintiff’s cited evidence to arrive at a  
12 different conclusion. See *Ford*, 950 F.3d at 1154.

13 In addition to the medical evidence, the ALJ found Plaintiff’s symptoms were not  
14 as severe as he stated because his treatment “remained conservative” and because he  
15 failed to take prescribed medications despite assertions he found some relief with those  
16 medications. AT 20 (citing AT 999-1001). Plaintiff contends the ALJ failed to note that  
17 Plaintiff did not want to become addicted to opiates, that his insurance would not cover  
18 the Lyrica in February 2020, and that the COVID-19 pandemic delayed his ability to  
19 receive epidural shots. (ECF No. 13 at 10.) However, the ALJ also cited as proof of  
20 Plaintiff’s conservative treatment his prescriptions of topical creams, muscle relaxants,  
21 Tylenol, and gabapentin (AT 934, 971), his being referred to physical therapy (AT 896)  
22 and home exercise (AT 935), and his reporting of moderate relief with adjustments to his  
23 prescription regimen (AT 999). These were additional, permissible reasons for the ALJ to  
24 reject the more limiting aspects of Plaintiff’s symptom testimony. See *Parra*, 481 F.3d at  
25 750-51 (prescription of conservative treatment); *Bunnell*, 947 F.2d at 346 (unexplained  
26 or inadequately explained failure to follow a prescribed course of treatment).

27 Finally, the ALJ noted Plaintiff was able to do his personal care, fix simple meals,  
28 and do household chores. AT 20 (citing AT 260, 842). Inconsistencies between a

1 plaintiff's testimony and daily activities is an additional permissible reason to reject  
2 symptom testimony. See *Burch*, 400 F.3d at 680-81 (finding symptom statements  
3 contradicted by the plaintiff's ability to care for her personal needs, cook, clean and  
4 shop). While the ALJ's analysis on this point is cursory, it rationally supports the ALJ's  
5 conclusion Plaintiff was not as limited as he asserted in his testimony. See *id.* at 681  
6 (stating that while the ALJ's determination on daily activities "may also admit of an  
7 interpretation more favorable to [the plaintiff], the ALJ's interpretation was rational" and  
8 must be upheld where susceptible to more than one rational interpretation). Plaintiff did  
9 not explicitly challenge the ALJ's findings in her opening brief, and so waived any  
10 challenge on the ALJ's findings here. See *Mata*, 2014 WL 5472784, at \*4.

11 In sum, the ALJ did not wholly discount Plaintiff's symptom testimony or deem him  
12 able to perform any job in the national economy. Instead, the ALJ found Plaintiff was  
13 limited to light work, with many additional physical limitations included in the residual  
14 functional capacity. Under the regulations, Plaintiff's statements of subjective symptoms  
15 alone are insufficient grounds to establish disability. 20 C.F.R § 416.929(a). The Court  
16 finds the ALJ provided clear and convincing reasons for discounting the more severe  
17 aspects of Plaintiff's symptom testimony regarding his physical impairments, such that  
18 the Court does not find Plaintiff's testimony was arbitrarily discredited. See *Brown-*  
19 *Hunter*, 806 F.3d at 493.

### 20 3. Symptom Testimony Regarding Mental Impairments

21 Regarding Plaintiff's statements that he could not work due to his disabling mental  
22 impairments, the ALJ began by summarizing Plaintiff's statements in his 2020-2021  
23 disability and function reports and at the June 24, 2022 hearing. AT 17-18. This included  
24 Plaintiff's "wanting to give up on life" and having "mental break downs," as well as his  
25 assertions that his walking impairments "affected his mind," that his physical pain caused  
26 his depression and anxiety, and that these things interfered with his concentration. AT  
27 47-48, 239, 299. Plaintiff stated he was "in the process of seeing a psychiatrist" but  
28 ended his last psychiatric appointment in 2020 "because he could not concentrate due to

1 the pain.” AT 42. Plaintiff stated he took Prozac and Trazodone to help him sleep. *Id.*  
2 The ALJ found Plaintiff’s symptoms could reasonably be expected to cause the alleged  
3 symptoms, but did not find the “intensity, persistence and limiting effects of these  
4 symptoms . . .entirely consistent with the medical evidence and other evidence in the  
5 record for the reasons explained in this decision.” AT 18.

6 First, the ALJ properly discounted Plaintiff’s testimony by noting the conflicts  
7 between his testimony and the medical record. AT 20. The ALJ noted Plaintiff’s reporting  
8 of suicidal ideation, anxiety, and depression in June 2020. AT 457. Plaintiff attended a  
9 behavioral health appointment in August 2020, where he was “initially oppositional,”  
10 anxious, sad, and discussed his history of depression and relationship problems. AT  
11 524. However, the ALJ also noted Plaintiff and the therapist established rapport and  
12 developed trust; Plaintiff presented as oriented with normal attention, concentration, and  
13 intact memory; and the therapist referred Plaintiff to medication management. *Id.* At a  
14 November 13, 2020 mental status exam, Plaintiff was cooperative, engaging with normal  
15 speech, had linear/logical thought processes, intact abstraction and judgment, and  
16 adequate attention, concentration, and memory. AT 835-38. The ALJ noted additional  
17 records throughout 2021-2022 supporting the presence of anxiety and depression, but  
18 also demonstrating normal memory, orientation, cognition, mood, and affect. AT 21  
19 (citing AT 528, 553, 556, 891, 930, 934, 954, 957-58, 962, 967, 970). Plaintiff was  
20 prescribed Prozac and Vistaril in November 2020. AT 849. In early 2022, Plaintiff told his  
21 health provider he was not taking his prescribed medications, was not attending  
22 counseling, and was given a crisis intervention resource list. AT 958.

23 Additionally, the ALJ noted the opinions from Drs. F. Mateus, M.D., and Anna  
24 Franco, Psy.D., who reviewed Plaintiff’s records in December 2020 and March 2021 at  
25 the initial and reconsideration stages. AT 75-76, 92-94. These doctors opined Plaintiff  
26 should be limited to occasional interaction with coworkers, supervisors, and the public,  
27 but otherwise was not limited due to his mental impairments. *Id.* The ALJ adopted this  
28 limitation into Plaintiff’s residual functional capacity, finding the doctors’ opinions

1 persuasive because of their cited support and consistency with the record. AT 23-24.  
2 Plaintiff waived any challenge to the ALJ's findings on these medical opinions by failing  
3 to address the issue in the briefing. See *Mata*, 2014 WL 5472784, at \*4.

4 The ALJ was within his authority to resolve the conflict between the medical and  
5 opinion evidence, which supports some mental limitations, and Plaintiff's statements that  
6 he could not work due to his depression and anxiety, which he alleged was caused by  
7 his physical pain, affected his mind, and interfered with his concentration. AT 47-48, 239,  
8 299. Objective medical evidence can be cited when evaluating the severity of Plaintiff's  
9 testimony, and the ALJ did not err in finding Plaintiff's stated severe limitations were  
10 contradicted by the medical evidence. See *Rollins*, 261 F.3d at 857; see also *Tidwell v.*  
11 *Saul*, 836 F. App'x 523, 525-26 (9th Cir. 2020) (finding in part that medical evidence  
12 showing improvements in mental health undercut such expansive limitations that it was  
13 "impossible" to work around others, he had difficulties concentrating and was unable to  
14 follow instructions); *Gregg v. Astrue*, 2009 WL 3295117, at \*4 (E.D. Wash. Oct. 13,  
15 2009) (discounting the plaintiff's symptom testimony in part based on the medical  
16 evidence because it was not consistent with the plaintiff's broad assertions she could not  
17 work anymore due to worsening mental illness, nervousness around people, poor  
18 memory, inability to focus, and experience of panic attacks).

19 Plaintiff contends the ALJ's rationale on this point is not clear and convincing  
20 because other evidence supports the more severe aspects of his symptom testimony,  
21 including records showing he only held down part-time jobs with accommodations for a  
22 short time but quit, missed mental health appointments, clashed with staff at other  
23 appointments, and often presented with severe depression. (ECF No. 13 at 10-11.)  
24 However, as noted above, the ALJ took account of many of these records, finding  
25 Plaintiff's depression and anxiety severe at step two and assigning a limitation of  
26 occasional contact with others in the residual functional capacity. AT 13, 16. The Court  
27 finds the ALJ did not ignore the evidence cited by Plaintiff, and did not "cherry pick" only  
28 certain items in the record. See *Wesselius v. Kijakazi*, 2021 WL 4948928, at \*1. The

1 decision demonstrates the ALJ fulfilled his duty to address conflicts in the record; the  
2 Court has no authority to reweigh Plaintiff's cited evidence to arrive at a different  
3 conclusion. See *Ford*, 950 F.3d at 1154.

4 In addition to the medical evidence, the ALJ noted that despite Plaintiff being  
5 prescribed Prozac and Vistaril in November 2020 (AT 849), he stated in early 2022 that  
6 he did not take these medications and did not attend counseling. AT 958. This was an  
7 additional, permissible reason for the ALJ to reject the more limiting aspects of Plaintiff's  
8 symptom testimony. See *Bunnell*, 947 F.2d at 346 (unexplained or inadequately  
9 explained failure to follow a prescribed course of treatment).

10 In sum, the ALJ did not wholly discount Plaintiff's symptom statements or deem  
11 him able to perform any job in the national economy. Instead, the ALJ found Plaintiff was  
12 limited to light work in the residual functional capacity, including a restriction to  
13 occasional interactions with others. AT 16. Under the regulations, Plaintiff's statements  
14 of subjective symptoms alone are insufficient grounds to establish disability. 20 C.F.R.  
15 § 416.929(a). The Court finds the ALJ provided clear and convincing reasons for  
16 discounting the more severe aspects of Plaintiff's symptom testimony regarding his  
17 mental impairments, such that the Court does not find Plaintiff's testimony was arbitrarily  
18 discredited. See *Brown-Hunter*, 806 F.3d at 493.

## 19 **B. Duty to Develop the Record**

20 Plaintiff also contends the ALJ erred by failing to develop the record regarding a  
21 January 2022 blood test. (ECF No. 13.)

### 22 1. Legal Standards

23 An ALJ must "fully and fairly [to] develop the record and to assure that the  
24 claimant's interests are considered." *Celaya v. Halter*, 332 F.3d 1177, 1183 (9th Cir.  
25 2003). This includes the duty to develop the record when the evidence is ambiguous or  
26 when the record is inadequate to allow for proper evaluation of the evidence. *Mayes v.*  
27 *Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001). The ALJ's duty to develop the record  
28 exists even when the claimant is represented by counsel. *Tonapetyan v. Halter*, 242

1 F.3d 1144, 1150 (9th Cir. 2001).

2 2. Analysis

3 Plaintiff contends the ALJ failed to fully and fairly develop the record. (ECF No. 13  
4 at 12-13.) Plaintiff cites a record from January 21, 2022 from Dr. El-Hadi Mouderrres,  
5 M.D., noting Plaintiff's blood work showed "positive ANA [antinuclear antibody]." AT  
6 1017. Dr. Mouderrres recommended a referral to a rheumatologist because he believed  
7 Plaintiff's neuropathy was "related to most likely autoimmune disease." AT 1013. Plaintiff  
8 notes the ALJ failed to assign any limitations for Plaintiff's neuropathy based on Dr.  
9 Mouderrres's referral and the blood test, and so argues had a duty to develop the record  
10 further if the evidence was inadequate for a proper finding. The Court disagrees.

11 First, the ALJ noted Plaintiff's assertions to his health providers that he had  
12 sensory neuropathy, and the ALJ specifically cited multiple records from April 2019  
13 through February 25, 2021 showing Plaintiff's sensation was "intact." AT 19 (citing AT  
14 541, 544, 547, 550, 556, 564, 891, 1004, 1008). This evidence does not demonstrate a  
15 worsening of Plaintiff's sensory neuropathy, and the ALJ was not required to develop the  
16 record further. See *DeLeon v. Kijakazi*, 2023 WL 8242132, at \*9 (E.D. Cal. Nov. 28,  
17 2023) (rejecting the plaintiff's argument where the evidence cited by the plaintiff  
18 appeared cherry picked and did not show a worsening of the plaintiff's conditions, and  
19 where the remainder of the record consistently showed stable conditions); *Martin v.*  
20 *Colvin*, 2015 WL 3631623, at \*10 (C.D. Cal. June 10, 2015) (finding that a physician's  
21 recommendation for further testing did not create a duty to develop the record further  
22 when the "extensive" record supported the ALJ's findings).

23 Second, while courts in this circuit have held the duty to develop the record exists  
24 even when counsel represents the plaintiff, this is balanced against the principle that  
25 counsel "must raise all issues and evidence at their administrative hearings in order to  
26 preserve them on appeal." See *Meanel v. Apfel*, 172 F.3d 1111, 1115 (9th Cir. 1999).  
27 Plaintiff was represented by counsel at the June 24, 2022 hearing before the ALJ, as  
28 well as during Plaintiff's appeal to the Appeals Council. See AT 3, 34. The blood test

1 issue and Dr. Mouderrres’s referral was not raised by Plaintiff at either proceeding.  
2 Courts have found the plaintiff waives the issue under these circumstances. See  
3 *Newbanks v. Berryhill*, 2017 WL 2889022, at \*2 (C.D. Cal. July 6, 2017).

4 For these reasons, the Court finds the ALJ had no duty to develop the record  
5 further concerning the January 2022 blood test and Dr. Mouderrres’s referral  
6 recommendation.

7 **V. CONCLUSION**

8 Having addressed all of the points of error raised by Plaintiff, the Court finds the  
9 ALJ’s decision otherwise supported by substantial evidence in the record and free from  
10 legal error. See *Ford*, 950 F.3d at 1148 (noting that a district court may reverse only if  
11 the ALJ’s decision “contains legal error or is not supported by substantial evidence”).

12 **ORDER**

13 Accordingly, the Court ORDERS/RECOMMENDS:

- 14 1. Plaintiff’s motion for summary judgment (ECF No. 13) is DENIED;
- 15 2. The Commissioner’s cross-motion (ECF No. 17) is GRANTED;
- 16 3. The final decision of the Commissioner is AFFIRMED; and
- 17 4. The Clerk of the Court is directed to CLOSE this case.

18  
19 Dated: September 25, 2024

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22 CHI SOO KIM  
23 UNITED STATES MAGISTRATE JUDGE

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