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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 DARYL M. MAGDZIAK,
11 Plaintiff,
12 v.
13 NANCY A. BERRYHILL, Acting
14 Commissioner of Social Security,
15 Defendant.

Case No.: 17cv1367-JAH (RNB)

ORDER:

**(1) ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION (Doc. No. 31);**

**(2) DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT (Doc. No. 26), and**

**(3) GRANTING DEFENDANT'S
CROSS-MOTION FOR SUMMARY
JUDGMENT (Doc. No. 27)**

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20 **INTRODUCTION**

21 The matter before the Court is the review of the Report and Recommendation, (Doc.
22 No. 31), issued by United States Magistrate Judge Robert N. Block, recommending that
23 Plaintiff's Motion for Summary Judgment, (Doc. No. 26), be denied and Defendant's
24 Cross-Motion for Summary Judgment, (Doc. No. 27), be granted. After careful
25 consideration of the entire record, the Court (1) **ADOPTS** the Magistrate Judge's Report
26 and Recommendation; (2) **DENIES** Plaintiff's Motion for Summary Judgment; and (3)
27 **GRANTS** Defendant's Cross-Motion for Summary Judgment.
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BACKGROUND

On April 28, 2014, Plaintiff filed an application for disability insurance benefits. (Doc. 16-5 at 2). Plaintiff's claim was denied at the initial level and upon reconsideration. (Doc. No. 16-4 at 4-10). Plaintiff then requested a hearing before an administrative law judge ("ALJ"), which was held on April 19, 2016. (*Id.* at 22, 31). On May 6, 2016, the ALJ issued a written decision finding that Plaintiff has not been under a disability, as defined in the Social Security Act, "from the amended alleged onset date to the date last insured." (See Doc. No. 16-2 at 24). On June 9, 2017, the Appeals Council for the Social Security Administration denied Plaintiff's request for further review. (Doc. No. 16-2 at 2).

On July 6, 2017, Plaintiff commenced this action seeking judicial review of Defendant's decision pursuant to 42 U.S.C. § 405(g). On January 18, 2019, Plaintiff filed a Motion for Summary Judgment. (Doc. No. 26). On February 21, 2019, Defendant filed a Cross-Motion for Summary Judgment. (Doc. No. 27).

On August 14, 2019, the Magistrate Judge issued the Report and Recommendation. (Doc. No. 31). The Report and Recommendation recommends that Plaintiff's Motion for Summary Judgment be denied and Defendant's Cross-Motion for Summary Judgment be granted.

The Report and Recommendation states, "Any party having objections to the Court's proposed findings and recommendations shall serve and file specific written objections within 14 days after being served with a copy of this Report and Recommendation." (Doc. No. 31 at 33). The docket reflects that no objections to the Report and Recommendation have been filed.

REVIEW OF THE REPORT AND RECOMMENDATION

The duties of the district court in connection with a report and recommendation of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b). The district judge must "make a *de novo* determination of those portions of the report ... to which objection is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge]." 28 U.S.C. § 636(b).

1 The district court need not review *de novo* those portions of a Report and Recommendation
2 to which neither party objects. *See Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir.
3 2005); *U.S. v. Reyna–Tapia*, 328 F.3d 1114, 1121–22 (9th Cir. 2003) (*en banc*).

4 A court “will disturb the denial of benefits only if the decision contains legal error
5 or is not supported by substantial evidence.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038
6 (9th Cir. 2008) (quotation omitted). “Substantial evidence is such relevant evidence as a
7 reasonable mind might accept as adequate to support a conclusion. The evidence must be
8 more than a mere scintilla but not necessarily a preponderance.” *Id.* (quotations omitted).
9 Even if an ALJ commits errors, “[a] decision of the ALJ will not be reversed for errors that
10 are harmless.” *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005); *see also Stout v.*
11 *Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006) (“We have ... affirmed
12 under the rubric of harmless error where the mistake was nonprejudicial to the claimant or
13 irrelevant to the ALJ's ultimate disability conclusion.”).

14 After review of the Report and Recommendation, the written opinion of the ALJ,
15 the administrative record, and the submissions of the parties, the Court concludes that the
16 Magistrate Judge correctly found that the ALJ articulated specific and legitimate reasons
17 based on substantial evidence in the record for rejecting Plaintiff’s claim. The Magistrate
18 Judge correctly found that substantial evidence supports the ALJ's decision that Plaintiff is
19 not disabled.

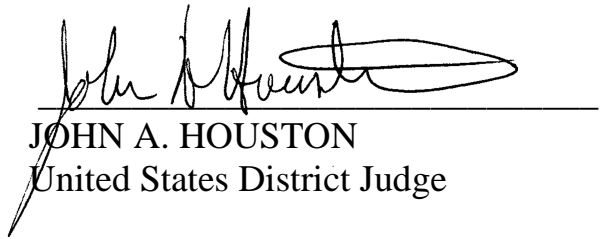
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1 **CONCLUSION**

2 IT IS HEREBY ORDERED that: (1) the Report and Recommendation, (Doc. No.
3 31), is **ADOPTED** in its entirety; (2) Plaintiff's Motion for Summary Judgment, (Doc. No.
4 26), is **DENIED**; and (3) Defendant's Cross-Motion for Summary Judgment, (Doc. No.
5 27), is **GRANTED**. The Clerk shall enter judgment for Defendant and against Plaintiff.

6 **IT IS SO ORDERED.**

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8 DATED: November 18, 2019

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11 JOHN A. HOUSTON
12 United States District Judge
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