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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 RYAN L.,

12 Plaintiff,

13 v.

14 MARTIN O'MALLEY, Commissioner of
15 Social Security,¹

16 Defendant.

Case No.: 23-cv-338-DDL

**ORDER AFFIRMING
COMMISSIONER'S DECISION**

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18 Plaintiff Ryan L. seeks judicial review of the Social Security Commissioner's
19 denial of his application for disability benefits. See Dkt. No. 1. The parties have
20 consented to the undersigned's jurisdiction. Dkt. No. 6. Plaintiff moves the Court
21 to remand his application to the Social Security Administration for an award of
22 benefits or, alternatively, for further proceedings. See *generally* Dkt. No. 15. For
23 the reasons stated below, the Court finds the Commissioner's determination that
24 Plaintiff is not disabled is free of legal error and supported by substantial evidence.
25 The Commissioner's decision is therefore **AFFIRMED**.

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28 ¹ Commissioner O'Malley is automatically substituted pursuant to Federal
Rule of Civil Procedure 25(d).

I.

BACKGROUND

A. Plaintiff’s Application for Disability Benefits

On January 30, 2020, Plaintiff filed an application for disability insurance benefits and supplemental security income under Titles II and XVI of the Social Security Act (the “Act”), alleging his fibromyalgia, chronic pain, asthma, depression and other conditions rendered him unable to work as of June 19, 2015. See Certified Administrative Record (“AR”) [Dkt. Nos. 9, 10] at 592, 628, 642, 684.² After his application was denied at the initial stage and upon reconsideration, Plaintiff requested a hearing before an administrative law judge (“ALJ”), which took place on June 29, 2021 before ALJ Eric Benham. *Id.* at 592, 608-627. Plaintiff appeared with counsel and gave testimony. *Id.* The ALJ issued an unfavorable decision on December 21, 2021,³ having concluded Plaintiff “has not been under a disability, as defined in [the Act], from June 19, 2015, through the date of [the] decision.” *Id.* at 601-02. On January 19, 2023, the Appeals Council denied review, and the ALJ’s decision became final. See *id.* at 799-801.

B. Summary of the ALJ’s Findings

A person is considered “disabled” within the meaning of the Act if they suffer from a medically determinable physical or mental impairment which is expected to last at least a year and is of such severity that they cannot work, considering their

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² The Court uses the parties’ pagination of the AR. All other docket citations are to the CM/ECF page numbers.

³ Plaintiff erroneously identified the date of the ALJ’s decision as December 16, 2021. Dkt. No. 15 at 2.

1 age, education, and work experience. See 42 U.S.C. § 423(d). The Administration
2 employs a sequential five-step evaluation to make this determination.⁴

3 The ALJ followed this five-step process in adjudicating Plaintiff's disability
4 claim. See *generally* AR at 589-607. At step one, the ALJ found Plaintiff had not
5 engaged in substantial gainful activity since June 19, 2015, the alleged date of
6 onset of his disability. *Id.* at 594. At step two, the ALJ found Plaintiff had the
7 following severe impairments: fibromyalgia syndrome; lumbar spine degenerative
8 joint disease and degenerative disc disease; chronic pain syndrome; and asthma.⁵
9 AR at 595. At step three, the ALJ found Plaintiff's impairments did not meet or
10 medically equal a listed impairment. *Id.* at 597.

11 Proceeding to step four, the ALJ determined despite Plaintiff's impairments,
12 he could:

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15 ⁴ The five-step sequential evaluation is the same for both disability insurance
16 benefits and supplemental security income. See 20 C.F.R. § 404.1520; 20 C.F.R.
17 § 416.920. The ALJ must determine the following: at step one, whether the
18 claimant is engaged in substantial gainful activity; at step two, whether the claimant
19 suffers from a severe impairment within the meaning of the regulations; at step
20 three (if the claimant suffers from a severe impairment), whether the impairment
21 meets or is medically equal to one of the impairments identified in the Listing of
22 Impairments; at step four, the claimant's residual functional capacity ("RFC") based
23 on all impairments and whether, given the RFC, the claimant can perform his or
24 her past relevant work; at step five, whether the claimant can make an adjustment
25 to other work based on his or her RFC. If the claimant is found not disabled at any
26 step, the analysis does not proceed to the next step.

27 ⁵ Plaintiff also suffers from gastroesophageal reflux disease ("GERD"),
28 eosinophilic esophagitis, and obstructive sleep apnea, but the ALJ found "little
evidence" that these conditions limited Plaintiff's ability to perform work activities
and therefore deemed these conditions not severe. AR at 595. The ALJ likewise
found Plaintiff's medically determinable mental impairments of attention deficit
hyperactivity disorder, possible autism spectrum disorder, and depressive disorder
were non-severe, finding the record did not demonstrate they caused "more than
mild" limitations in the Paragraph B criteria. *Id.* at 595-96. Plaintiff does not
challenge these findings. See *generally* Dkt. No. 15.

1 perform a range of light work as defined in 20 CFR [§] 404.1567(b) and
2 416.967(b) as follows: lift as much as 20 pounds frequently; stand and
3 walk 6 hours in an 8-hour day; sit 6 hours in an 8-hour day; would be
4 limited to occasional stooping, crouching, kneeling, crawling, as well
5 as climbing stairs, or ladders or scaffolds; [and should] avoid work in
6 [any] environment that would expose him to concentrated extreme
7 cold, vibrations, or pulmonary irritants.

8 AR at 598.

9 In formulating this RFC, the ALJ considered Plaintiff's subjective testimony
10 regarding his limitations. *Id.* at 598-99. The ALJ found Plaintiff's medically
11 determinable impairments could reasonably be expected to cause Plaintiff's
12 alleged symptoms, but that the objective medical evidence did not support
13 Plaintiff's allegations as to their limiting effects. *Id.* As discussed in more detail
14 below, the ALJ noted Plaintiff's impairments were effectively treated with
15 medications and other conservative measures, including behavioral therapy and
16 physical rehabilitation. *Id.* at 599. The ALJ also noted Plaintiff's treatment history
17 was "infrequent," and there was no evidence of progressively escalating
18 treatments or "additional interventions" despite allegations of worsening pain and
19 other limitations. *Id.* For the same reasons, the ALJ found Plaintiff's "statements
20 about the level of pain associated with his impairments leading to . . . limited daily
21 activities are not fully consistent with the objective medical evidence of record." *Id.*

22 The ALJ also considered the opinion evidence and prior administrative
23 medical findings in the record. AR at 600. Based upon their review of the medical
24 record, state agency medical consultants M. Mazuryk, M.D. and T. Do, M.D. both
25 assessed Plaintiff as able to perform light work, subject to additional environmental
26 limitations. *Id.* Consultative internist A. Kanner, M.D., opined Plaintiff was capable
27 of medium work. Based on his review of the record and the consistency of the
28 consultants' opinions with that record, the ALJ found the Drs. Mazuryk's and Do's
29 assessments persuasive but found Dr. Kanner's opinion "less persuasive." *Id.*

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1 Having considered the record as described above, ALJ concluded:

2 The above residual functional capacity assessment is supported by the
3 totality of the evidence including the prior administrative medical
4 findings from the state agency medical consultants and the consistent
5 notation of normal physical examinations in the file. [Plaintiff] does
6 have underlying impairments that do cause some symptoms of pain.
7 However, the treatment provided that is only in the form of medications
8 and the notation that being off medications for a few months only
9 resulted in a 10% increase in the symptoms of pain without the need
10 for further intervention shows [Plaintiff's] pain symptoms are not as
11 significant as alleged.

12 *Id.* at 600-01. Based on the above RFC and the testimony of the vocational expert,
13 the ALJ further found at step four Plaintiff could perform his past relevant work as
14 User Support Analyst as that position is generally performed in the national
15 economy. *Id.* at 601. Accordingly, the ALJ did not proceed to step five but instead
16 concluded Plaintiff was not disabled within the meaning of the Act. *Id.* at 601-02;
17 see 20 C.F.R. § 404.1520(a)(4)(iv) (“If you can still do your past relevant work, we
18 will find that you are not disabled.”); 20 C.F.R. § 416.920(a)(4)(iv) (same).

19 II.

20 **DISPUTED ISSUES**

21 The issue before the Court is whether the ALJ provided specific, clear and
22 convincing reasons to reject Plaintiff’s subjective assessment of the limiting effects
23 of his impairments. See Dkt. No. 15 at 4, 10.

24 III.

25 **STANDARD OF REVIEW**

26 The Court’s review of the Commissioner’s final decision is “highly
27 deferential.” *Kitchen v. Kijakazi*, 82 F. 4th 732, 738 (9th Cir. 2023).⁶ The Court

28 ⁶ All citations, internal quotation marks, and subsequent history are omitted
unless otherwise noted.

1 “will disturb the denial of benefits only if the decision contains legal error or is not
2 supported by substantial evidence.” *Id.* “Substantial evidence is such relevant
3 evidence that a reasonable mind might accept as adequate to support a
4 conclusion, and must be more than a mere scintilla, but may be less than a
5 preponderance.” *Id.* This Court must review the entire record and consider
6 adverse as well as supporting evidence. *See Ahearn v. Saul*, 988 F.3d 1111, 1115
7 (9th Cir. 2021). The Court “may not reweigh the evidence or substitute [its]
8 judgment for that of the ALJ.” *Id.* Moreover, “[t]he ALJ is responsible for
9 determining credibility, resolving conflicts in medical testimony, and for resolving
10 ambiguities.” *Id.* If the evidence is susceptible of more than one rational
11 interpretation, the ALJ’s decision must be upheld. *See id.* at 1115-16. However,
12 the Court cannot affirm “on a ground upon which [the ALJ] did not rely.” *Garrison*
13 *v. Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014). Where the ALJ commits legal error,
14 the Court may affirm the decision if the error is harmless, meaning “it is
15 inconsequential to the ultimate nondisability determination, or that, despite the
16 legal error, the agency’s path may reasonably be discerned, even if the agency
17 explains its decision with less than ideal clarity.” *Brown-Hunter v. Colvin*, 806 F.3d
18 487, 492 (9th Cir. 2015).

19 IV.

20 DISCUSSION

21 **A. The ALJ Did Not Err in Evaluating Plaintiff’s Subjective Testimony**

22 1. Legal Standards

23 “[T]he credibility determination is exclusively the ALJ’s to make, and [the
24 Court’s] only to review.” *Brown-Hunter*, 806 F.3d at 494. In assessing whether to
25 credit a claimant’s subjective testimony regarding their functional limitations, the
26 ALJ follows a two-step process. “First, the ALJ must determine whether the
27 claimant has presented objective medical evidence of an underlying impairment
28 which could reasonably be expected to produce the pain or other symptoms

1 alleged.” *Ferguson v. O’Malley*, --- F.4th ---, 2024 WL 1103364, at *3 (9th Cir. Mar.
2 14, 2024). When a claimant satisfies the first step, and absent any evidence of
3 malingering, “the ALJ can reject the claimant’s testimony . . . only by offering
4 specific, clear and convincing reasons for doing so.” *Id.*; see also *Smartt v.*
5 *Kijakazi*, 53 F.4th 489, 497 (9th Cir. 2022) (“an adverse credibility finding must be
6 based on clear and convincing reasons”).

7 The Ninth Circuit has explained that “the ‘clear and convincing’ standard . . .
8 requires an ALJ to show his work.” *Smartt*, 53 F.4th at 499. Requiring an ALJ to
9 support their credibility determination with specific findings enables the reviewing
10 court to determine whether the ALJ “arbitrarily discredit[ed] [the] claimant’s
11 testimony.” *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002); accord
12 *Lambert v. Saul*, 980 F.3d 1266, 1277 (9th Cir. 2020) (noting that “the ALJ must
13 provide sufficient reasoning” to “permit meaningful review”). If the ALJ does not
14 provide sufficient reasons for rejecting the claimant’s testimony, “then the ALJ’s
15 credibility determination is not supported by substantial evidence.” *Ferguson*,
16 2024 WL 1103364, at *3. However, if the ALJ’s credibility determination is
17 adequately supported, this Court “may not engage in second-guessing.” *Thomas*,
18 278 F.3d at 959.

19 The Administration has issued guidance for the evaluation of fibromyalgia-
20 based disability claims. See Social Security Administration, Social Security Ruling
21 12-2p: Titles II and XVI: Evaluation of Fibromyalgia (2012) (hereafter “SSR 12-
22 2p”).⁷ Fibromyalgia, the Administration explains, “is a complex medical condition
23 characterized primarily by widespread pain in the joints, muscles, tendons, or
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26 ⁷ SSRs are the Administration’s “precedent final opinions and orders and
27 statements of policy and interpretations,” and are binding on the ALJ although they
28 “do not carry the force of law.” See *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d
1219, 1224 (9th Cir. 2009).

1 nearby soft tissues that has persisted for at least 3 months.” See *id.* There is no
2 objective test for fibromyalgia; for purposes of a disability claim, the impairment is
3 established through the patient’s subjective reports of pain and corroborated by
4 either a physical examination of so-called “tender points” or the “repeated
5 manifestation” of certain coextensive conditions, together with evidence that other
6 potential causes of the patient’s symptoms have been ruled out. See *generally*
7 SSR 12-2p. “In evaluating whether a claimant’s residual functional capacity
8 renders them disabled because of fibromyalgia, the medical evidence must be
9 construed in light of fibromyalgia’s unique symptoms and diagnostic methods . . .”
10 *Revels v. Berryhill*, 874 F.3d 648, 662 (9th Cir. 2017). Because a person with
11 fibromyalgia “may have ‘bad days and good days,’” the ALJ must “look[] at the
12 longitudinal records” to the extent possible. *Id.* at 663.

13 A fibromyalgia diagnosis does not *per se* require a finding of disability,
14 however. See SSR 12-2p (noting fibromyalgia “is not a listed impairment”). The
15 ALJ is not bound by a claimant’s subjective testimony, and can and should
16 consider other medical and non-medical evidence to determine whether a claimant
17 is rendered disabled by fibromyalgia. See *Diane B. v. Kijakazi*, No. 21-cv-00794-
18 TSH, 2022 WL 94915, at *9 (N.D. Cal. Jan. 10, 2022) (“The Court is aware of no
19 authority that requires an ALJ to give dispositive weight to [p]laintiff’s symptom
20 allegations simply because they were associated with fibromyalgia.”). Indeed,
21 SSR 12-2p directs the ALJ to consider the “longitudinal records” to “establish[] both
22 the existence **and severity** of the impairment.” See SSR 12-2p (emphasis added).

23 Furthermore, although Plaintiff focuses most of his argument on the unique
24 nature of fibromyalgia, Plaintiff also alleged disability based on other impairments,
25 some of which (namely, lumbar spine degenerative joint disease and degenerative
26 disc disease, chronic pain, and asthma) the ALJ found to be severe. AR at 595.
27 Whether Plaintiff’s alleged disability is due to fibromyalgia or another impairment,
28 the ALJ was required to employ the two-step process described above to evaluate

1 Plaintiff's subjective reports of the limiting effects of his impairments. See SSR 12-
2 2p; SSR 16-3p.

3 2. Application

4 Plaintiff asserts the ALJ's discrediting of Plaintiff's subjective symptom
5 testimony reflects "a fundamental misunderstanding of fibromyalgia," and that the
6 ALJ failed to appreciate the relationship between Plaintiff's fibromyalgia and his
7 other conditions. *Id.* at 7-8. Plaintiff further asserts the ALJ's "rationale" for
8 rejecting Plaintiff's symptom testimony is "insufficient" and that the ALJ "failed to
9 articulate legally sufficient reasons for rejecting the testimony and fibromyalgia
10 issues of [Plaintiff]." Dkt. No. 15 at 10. The Court disagrees.

11 After reviewing the evidence in the record, the ALJ determined Plaintiff's
12 fibromyalgia, chronic pain, degenerative conditions in his lower back, and asthma
13 could reasonably be expected to cause his alleged symptoms. AR at 598.
14 However, the ALJ found the evidence in the record did not support Plaintiff's
15 allegations regarding the extent to which those symptoms limited his ability to
16 work.⁸ *Id.* at 599. Insofar as the ALJ found Plaintiff's testimony credible,
17 appropriate limitations were reflected in the RFC. *Id.* at 600.

18 The Court turns first to the ALJ's assessment of Plaintiff's allegations of
19 disabling pain and fatigue. Plaintiff testified he was prevented from working
20 because his "fatigue is quite severe," his fibromyalgia "makes standing [and] sitting
21 quite painful" for anything "longer than 5 minutes," and his "fingers cramp up within
22 minutes of doing any tasks . . . even holding a glass" or typing. *Id.* at 613, 616.
23 Plaintiff stated if absolutely necessary, he might be able to lift 20 pounds but would
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26 ⁸ Plaintiff chides the ALJ for "clump[ing]" his symptoms together, Dkt. No. 15
27 at 7, but Plaintiff himself stated "all [his] medical conditions . . . compound[ed]" to
28 prevent him from working. AR at 612. The Court finds it was appropriate for the
ALJ to address Plaintiff's allegations of disabling pain and fatigue by reference to
the severe impairments that caused those symptoms.

1 experience pain for “three or four hours” afterward, and to avoid pain and possible
2 injury he should not lift “anything more than . . . two or three pounds.” *Id.* at 617.
3 Plaintiff further testified even performing small tasks like brushing his teeth or
4 “scrubbing up in the shower” causes his muscles to “instantly feel like they’re on
5 fire.” *Id.* at 617-18. Due to his pain and fatigue, “from the moment [he] wake[s]
6 up,” he will “get some food and . . . sit in the recliner pretty much all day until I go
7 to bed.” *Id.* at 618. He rarely leaves the house “because it’s just too much, you
8 know, just too painful and not really worth it.” *Id.* at 621.

9 In finding these allegations less than credible, the ALJ identified that
10 Plaintiff’s fibromyalgia was effectively treated with medications, and discontinuing
11 his medication “showed only a 10% increase in his pain symptoms.” AR at 599;
12 *see also id.* at 600-01 (noting Plaintiff’s pain was treated “only in the form of
13 medications and . . . being off medications for a few months only resulted in a 10%
14 increase in symptoms of pain without the need for further intervention”).
15 “Impairments that can be controlled effectively with medication are not disabling
16 for the purposes of determining eligibility for [disability] benefits.” *Warre v. Comm’r*,
17 439 F.3d 1001, 1006 (9th Cir. 2006). The ALJ further noted that the treatment plan
18 for Plaintiff’s degenerative joint disease and degenerative disc disease was
19 medication, behavioral therapy and rehabilitation. AR at 599. “[E]vidence of
20 ‘conservative treatment’ is sufficient to discount a claimant’s testimony regarding
21 severity of an impairment.” *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007). The
22 ALJ also noted that Plaintiff “infrequent[ly]” received treatment for his conditions.
23 AR at 599. The ALJ may appropriately “consider lack of treatment in his credibility
24 determination,” *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005), and may
25 reasonably conclude that “the level or frequency of treatment” is “inconsistent with
26 the level of complaints.” *Molina*, 674 F.3d at 1114. The ALJ further observed that
27 despite an alleged worsening of Plaintiff’s symptoms and “significantly limit[ed]
28 function,” there was no evidence in the record of escalating treatments or that

1 Plaintiff's conditions merited "additional intervention" beyond the medications and
2 other conservative measures described. AR 599. The ALJ reasonably concluded
3 that "minimal, conservative treatment" is inconsistent with Plaintiff's allegation that
4 the pain and fatigue attributable to his impairments rendered him unable to work.
5 *Meanel v. Apfel*, 172 F.3d 1111, 1114 (9th Cir. 1999), *as amended* (June 22, 1999).

6 The ALJ also found that Plaintiff's allegations that his pain limited his daily
7 activities were "not entirely consistent" with the objective medical record, which
8 showed "normal" physical examinations outside of the "tenderness" noted during
9 a 2015 examination. AR at 599. While the ALJ specifically identified reports of
10 physical examinations in 2015 and 2019, he later observed that "the full medical
11 evidence of record" consistently showed "normal examinations despite allegations
12 of pain symptoms." *Id.* at 600. It is true that "subjective pain is not always verifiable
13 through a physical examination." *Ferguson*, 2024 WL 1103364, at *4. However,
14 "[w]hen objective medical evidence in the record is *inconsistent* with the claimant's
15 subjective testimony, the ALJ may indeed weigh it as undercutting such testimony."
16 *Smartt*, 53 F.4th at 498 (collecting cases) (emphasis in original). The ALJ found
17 the consistently normal findings on physical examination over a period of years
18 rendered Plaintiff's allegations that he could not sit upright, walk "down the street,"
19 or use his arms, hands or fingers without pain less than credible. See AR at 600-
20 01, 616-18. This was a "significant and substantial reason[] to find [Plaintiff's]
21 testimony less than completely credible." *Parra*, 481 F.3d at 750 (upholding ALJ's
22 finding that subjective complaints of pain were contradicted by normal examination
23 findings); *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir.
24 2008) ("Contradiction with the medical record is a sufficient basis for rejecting the
25 claimant's subjective testimony.").

26 Turning next to Plaintiff's allegations of disabling asthma, Plaintiff testified
27 that he wheezes and "become[s] short of breath" when the weather changes or in
28 humid environments. AR at 614. Approximately once a week, he needs to use an

1 inhaler which “helps” but does not “fully resolve” his symptoms. *Id.* The ALJ
2 identified that Plaintiff’s asthma was described in the medical records as well-
3 controlled and even “improving” with medication. *Id.* at 599. The ALJ also
4 observed that Plaintiff’s asthma was conservatively treated and required “no
5 special intervention” beyond medications. *Id.* Finally, the ALJ noted that the lone
6 pulmonary function test in the record was normal, indicating there were no “deficits”
7 in Plaintiff’s lung functioning. *Id.* (citing AR at 1710). For the same reasons
8 discussed above, this evidence that Plaintiff’s asthma was conservatively and
9 effectively treated with medication (and nothing else) is a sufficient basis for
10 adverse credibility determination. *See Smartt*, 53 F.4th at 500.

11 The ALJ also considered the medical opinions and prior administrative
12 findings in the record. *See* AR at 600. At the initial and reconsideration levels,
13 Drs. Mazuryk and Do, respectively, assessed Plaintiff as capable of light work with
14 some additional environmental restrictions due to Plaintiff’s asthma. *Id.* at 600.
15 The ALJ found these assessments persuasive, noting Drs. Mazuryk and Do
16 supported their conclusions with citations to “generally normal examinations” and
17 that these findings were “consistent with the full medical evidence of record and
18 are supported by the analysis in the disability determination explanation forms.”
19 *Id.* However, the ALJ found the consultative internist A. Kanner, M.D.’s opinion
20 that Plaintiff was capable of medium work “less persuasive.” *Id.* Although Dr.
21 Kanner’s opinion was “supported by the observations made during [a] consultative
22 examination,” the ALJ noted that a review of the “full medical evidence” provided
23 context that could not be “fully examined and realized during this one-time
24 examination.” *Id.*

25 Based upon his consideration of the objective medical evidence and the
26 opinions and prior administrative findings described above, the ALJ concluded that
27 while Plaintiff “does have underlying impairments that do cause some symptoms
28 of pain,” the foregoing facts demonstrated Plaintiff’s symptoms were “not as

1 significant as alleged.” AR at 600-01. Contrary to Plaintiff’s arguments, given this
2 detailed review of the evidence, the Court is not persuaded that the ALJ improperly
3 extrapolated one or two isolated unremarkable physical examinations to the entire
4 record, or failed to base his assessment on an evaluation of the record as a whole.
5 See Dkt. No. 15 at 6-7. Plaintiff’s related assertion that he has “at least 11 tender
6 points” and fibromyalgia-related symptoms of “significant fatigue,” “widespread
7 pain” and “difficulty sleeping” misses the mark.⁹ *Id.* at 8. The ALJ agreed that
8 Plaintiff has fibromyalgia, a severe impairment, as well as other severe
9 impairments that cause him pain, fatigue and related symptoms. AR at 598-99.
10 Rather, the ALJ concluded those symptoms were not disabling. *Id.* On the record
11 before it, the Court cannot say that determination was arbitrary. *Thomas*, 278 F.3d
12 at 958.

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16 ⁹ Plaintiff’s complaint that the ALJ did not address his pain, fatigue, and other
17 “symptoms alleged by the fibromyalgia pain,” Dkt. No. 15 at 8, is not well-taken.
18 As Plaintiff acknowledges, his testimony was that *due to his pain* he had difficulty
19 sitting, standing, using his hands, and sleeping. *Id.* at 8; *see also* AR at 616-618.
20 For the reasons discussed herein, the ALJ devoted considerable discussion to
21 Plaintiff’s pain and fatigue and provided several clear and convincing reasons for
22 rejecting Plaintiff’s testimony regarding its the limiting effects. To the extent the
23 ALJ was required to explicitly address each manifestation of Plaintiff’s pain, the
24 Court finds any error in that regard was harmless given the ALJ’s provision of other,
25 adequate reasons for rejecting Plaintiff’s testimony. *See Callahan v. Kijakazi*, 657
26 F.Supp.3d 1368, 1387 (E.D. Cal. 2023) (finding harmless error where the ALJ
27 “cited another clear and convincing reason for their credibility determination”);
28 *accord Howland v. Saul*, 804 F. App’x 467, 470-71 (9th Cir. 2020) (error in
discounting claimant’s testimony was harmless where “the ALJ offered several
specific, clear and convincing reasons for doing so”). The Court also notes Plaintiff
did not give any testimony regarding “his depression,” Dkt. No. 15 at 8, which in
any event the ALJ deemed a non-severe impairment that did not cause more than
mild limitations in functioning, a finding reflected in the RFC and not challenged in
this appeal. See AR at 595-96, 597.

1 The Court finds the ALJ provided “specific, clear and convincing” reasons for
2 his credibility determination, by “enumerat[ing] the objective evidence that
3 undermine[d] [Plaintiff’s] testimony,” *Kitchen*, 82 F.4th at 739, and “explain[ing] why
4 the medical evidence is *inconsistent* with the claimant’s subjective testimony.”
5 *Ferguson*, 2024 WL 1103364, at *4 (emphasis in original). Stated simply, the ALJ
6 “show[ed] his work.” *Smartt*, 53 F.4th at 499.

7 **B. Substantial Evidence Supports the ALJ’s Decision**

8 Having found the ALJ supported his credibility determination with clear and
9 convincing reasons, the Court turns to the question of whether that determination,
10 and the resulting finding that Plaintiff was not disabled, is supported by substantial
11 evidence. The Court has independently “assess[ed] the entire record, weighing
12 the evidence both supporting and detracting from the [ALJ’s] conclusion.” See
13 *Ahearn*, 988 F.3d at 1115. Based on this review, the Court finds substantial
14 evidence supports the ALJ’s conclusions. A summary of that evidence follows.¹⁰

15 Office notes from a complete physical examination by Edward Yamada,
16 M.D., dated June 18, 2015 document that Plaintiff complained of “joint pain” that
17 had been ongoing for a year, “especially in the right ankle.” AR at 1371.
18 Examination of his musculoskeletal system revealed tenderness in the right ankle
19 but none in the left, nor in the left or right elbows, wrists, knees, or hands. *Id.* at
20 1375. His examination was otherwise normal. *Id.* Dr. Yamada assessed Plaintiff
21 with bronchospasm (improved), chronic sinusitis, joint pain, GERD, depression
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24 ¹⁰ Plaintiff alleges disability as of June 19, 2015, and last met the insured status
25 requirements of the Act on June 30, 2016 (the “last date insured”). AR at 592.
26 Therefore, and as correctly noted by the ALJ, to be eligible for disability insurance
27 benefits, Plaintiff must have been disabled on or before that date. See *id.*; accord
28 42 U.S.C. § 416(i)(2) and (3) (defining “period of disability” and eligibility
requirements). Plaintiff’s application for supplemental security income is not
tethered to his last date insured. See 20 C.F.R. § 406.202 (defining eligibility).

1 and obstructive sleep apnea, ordered several lab tests, and instructed Plaintiff to
2 follow up in one year. *Id.* at 1376. On June 24, 2015, Dr. Yamada made a note
3 following what appears to be a discussion with an unnamed rheumatologist that
4 the specialist “doesn’t think pt has rheum sx.” *Id.* at 1402; *see also id.* at 1507 (Dr.
5 Yamada’s August 2015 note that a rheumatologist he spoke with in June “didn’t
6 think pt’s condition was outwardly rheumatological”).

7 Dr. Yamada examined Plaintiff again on August 27, 2015, for complaints of
8 joint pain. AR at 1503-09. On examination, Plaintiff exhibited tenderness in his
9 right and left elbows, right and left upper and forearms, and mild tenderness in his
10 right and left upper legs. *Id.* at 1506-07. Findings for his wrists, knees, ankles,
11 back (cervical, thoracic, and lumbar), and hands were benign. *Id.* Dr. Yamada
12 diagnosed Plaintiff with “myalgia and joint pain” and ordered lab tests. *Id.* at 1507,
13 1512-17. On September 3, 2015, Dr. Yamada informed Plaintiff that his “labs are
14 normal” and revealed “no evidence of rheumatological disease.” *Id.* at 1524.

15 On September 8, 2015, Dr. Yamada reiterated to Plaintiff, “[y]our
16 inflammatory tests are normal and rheumatological markers are negative so I don’t
17 have any explanation for your muscle and joint pain. You don’t quite fit the criteria
18 for fibromyalgia.” AR at 1518. Further lab tests were also normal. *Id.* at 1534-36.
19 Dr. Yamada diagnosed Plaintiff with chronic pain syndrome and prescribed
20 Cymbalta. *Id.* Plaintiff reported to Dr. Yamada on September 29, 2015 that the
21 Cymbalta was effective: “I do notice a difference for the better. This is really
22 amazing!! Most of the pain while resting is gone. If I start doing some work, the
23 pain returns, but is not as strong as before.” *Id.* at 1561.

24 Plaintiff continued to report in 2017 that Cymbalta “relieved 90% [of his] pain”
25 and again in 2019 that Cymbalta “helps a lot” with his pain. *Id.* at 1690, 1901.
26 Starting in 2019, Plaintiff was also prescribed meloxicam, pregabalin (Lyrica) and
27 gabapentin (Neurontin) for his pain. *Id.* at 1920, 1947, 1953. In 2017, Plaintiff had
28 a “neg[ative] rheum[atology] eval[uation]” despite complaints of joint pain. *Id.* at

1 1718. Plaintiff's physical examinations were largely normal, and Plaintiff denied
2 pain at office visits during this period. AR at 1637, 1834. By 2019, Plaintiff's
3 physician determined he had fibromyalgia based on positive findings of back pain,
4 joint pain and myalgias. See *id.* at 1691, 1902. In 2020, Plaintiff ceased all pain
5 medications to participate in a fibromyalgia study, and "[o]nly had increase in pain
6 10% getting off meds." *Id.* at 2027. After the study ended, Plaintiff resumed taking
7 Cymbalta. *Id.*; see also *id.* at 615 (Plaintiff's hearing testimony that medication
8 "helped [him] with pain and fatigue" and he anticipated restarting Lyrica at "a proper
9 dose" to increase its efficacy).

10 In 2020, the state agency medical consultant noted upon initial review of the
11 medical record that between the alleged onset date and Plaintiff's last date insured,
12 Plaintiff received "routine" care for his joint pain and asthma, and his "rheumatology
13 labs were normal." *Id.* at 659, 673-74. Following Plaintiff's fibromyalgia diagnosis,
14 he was treated with medications, his "general physical exam is unremarkable," and
15 Plaintiff "remains able to drive, do light housework, and is ambulatory" without
16 assistance. *Id.* at 659, 673-74. On reconsideration, another state agency medical
17 consultant also noted that despite "ongoing issues due to fibromyalgia," Plaintiff's
18 activities of daily living demonstrated he remained "functional," and able to work
19 subject to certain limitations. *Id.* at 693.

20 In March 2021, Plaintiff was seen by his primary care physician, who noted
21 Plaintiff's back pain and fibromyalgia were "stable." AR at 2152-54. Physical
22 examination was positive for back pain. *Id.* at 2153. An x-ray of Plaintiff's
23 lumbosacral spine taken the same day showed degenerative disc disease at L5-
24 S1. *Id.* at 2158. On a March 30, 2021 follow up with a physical medicine specialist,
25 reported that he had "pain across the lower back . . . daily and all the time." *Id.* at
26 2261. Plaintiff further stated sitting, standing and walking were all painful for him,
27 but denied numbness or tingling associated with his back pain. *Id.* Examination
28 revealed tenderness to palpation of more than 11 of 18 fibromyalgia trigger points.

1 *Id.* at 2262. The specialist recommended guided injections. *Id.* at 2263. On April
2 19, 2021, chronic pain specialist G. Goldwaser, Ph.D. recommended “education”
3 and cognitive behavioral therapy to address Plaintiff’s complaints of pain. *Id.* at
4 2409-11. The consultative examiner’s report of her September 2021 examination
5 documents findings of tenderness at 10 out of 18 fibromyalgia trigger points, and
6 a lower back examination that was “within normal limits.” *Id.* at 3045.

7 The objective medical record also demonstrates that Plaintiff’s asthma was
8 well-controlled with an inhaler and other medications, by both subjective report and
9 objective findings. See, e.g., AR at 1362 (Plaintiff’s self-report of asthma
10 “symptoms” which were alleviated by use of an albuterol inhaler); 1691
11 (“intermittent asthma” under “good control”), 1901 (“seasonal” asthma relieved by
12 medication), 2152 (“asthma stable no wheezing or s[hortness] o[f] b[reath]”).
13 Plaintiff variously reported that exposure to “strong chemicals,” high humidity and
14 air conditioning worsened his symptoms. *Id.* at 1437, 1499, 1699. However,
15 pulmonary function tests and sinus imaging were normal. *Id.* at 1710, 1437, 1455.
16 Plaintiff’s pulmonologist informed Plaintiff on January 31, 2017 that the results of
17 his “breathing tests” were “normal,” which did not “exclude asthma . . . [but] usually
18 means there is not severe or uncontrolled asthma.” *Id.* at 1714. The September
19 2021 consultative examination report documents an increased respiratory rate with
20 exertion, without evidence of shortness of breath or wheezing. *Id.* at 3042, 3045.

21 The Court finds the foregoing is relevant and substantial evidence adequate
22 to support the ALJ’s adverse credibility assessment, and the subsequent
23 determination based on Plaintiff’s RFC that he was not disabled. Accordingly, the
24 ALJ’s decision will not be disturbed. See *Ahearn*, 988 F.3d at 1115 (“If substantial
25 evidence in the record supports the ALJ’s decision we must defer to the ALJ.”);
26 see also 42 U.S.C.A. § 405(g) (providing that “[t]he findings of the Commissioner
27 of Social Security as to any fact, if supported by substantial evidence, shall be
28 conclusive”).

V.

CONCLUSION

For the foregoing reasons, the Court concludes that the ALJ's decision was not legally erroneous and was supported by substantial evidence. Plaintiff's request for reversal and remand is therefore **DENIED**. The final decision of the Commissioner of Social Security is **AFFIRMED**. The Clerk of the Court shall enter judgment accordingly and terminate the case.

IT IS SO ORDERED.

Dated: March 26, 2024



Hon. David D. Leshner
United States Magistrate Judge

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