

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Selzer v. Commissioner of Social Security

Selzer · No. 1:24-cv-00706-SAB · Decided August 11, 2025

SUMMARY

The United States District Court for the Eastern District of California reviews a final decision denying Michael Thomas Selzer’s application for Social Security disability benefits. The court rejects challenges to the administrative law judge’s assessment of Selzer’s mental residual functional capacity, alleged physical symptoms, and duty to develop the record. The court concludes that substantial evidence supports the Commissioner’s decision and affirms it.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Stanley A. Boone
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	August 11, 2025
DOCKET	1:24-cv-00706-SAB
DISPOSITION	affirmed
PROCEDURAL POSTURE	Judicial review under 42 U.S.C. § 405(g) of the Commissioner's final decision denying supplemental security income benefits.
STANDARD OF REVIEW	The court reviews only issues raised by the challenging party and may disturb the Commissioner's decision only for legal error or findings unsupported by substantial evidence. The court must consider the record as a whole, may not affirm on grounds not relied upon by the ALJ, and must uphold the ALJ's conclusion when the evidence is susceptible to more than one rational interpretation. Any error is harmless if inconsequential to the ultimate nondisability determination.
PRECEDENTIAL VALUE	unpublished
PARTIES	Michael Thomas Selzer v. Commissioner of Social Security

TOPICS

judicial review of agency action

administrative law

agency adjudication

PRACTICE AREAS

Social Security disability

administrative law

judicial review of agency action

QUESTIONS PRESENTED

1. Whether the ALJ adequately assessed Selzer's mental residual functional capacity.
2. Whether the ALJ was required to obtain a medical opinion that reviewed the majority or entirety of Selzer's mental-health treatment records.
3. Whether the ALJ failed to fulfill the duty to develop the administrative record.
4. Whether the ALJ provided legally sufficient reasons for evaluating Selzer's subjective complaints about the intensity and limiting effects of his symptoms.
5. Whether the ALJ's failure to provide specific reasons for rejecting the testimony of Selzer's uncle was harmful error.

HOLDINGS

1. The ALJ did not err by failing to obtain a treating or consultative medical opinion that reviewed the majority or entirety of Selzer's mental-health records; no statute, regulation, or binding authority requires such a comprehensive record review by a single physician.
2. The ALJ's heightened duty to develop the record was not triggered because the record was not incomplete or ambiguous.
3. The ALJ adequately supported the mental RFC with substantial evidence and did not improperly interpret medical evidence or fail to develop the record.
4. The ALJ did not err in evaluating Selzer's subjective complaints because the decision identified and discussed evidence that was inconsistent with the alleged severity of his symptoms and otherwise provided legally sufficient reasons.
5. Any error in failing to provide a specific germane reason for rejecting the uncle's testimony was harmless because the testimony was cumulative of evidence the ALJ appropriately rejected and did not alter the ultimate nondisability determination.

KEY QUOTATIONS

"The claimant has the burden of proving that she is disabled." (discussion of duty to develop the record)

"Ultimately, the 'clear and convincing' standard requires an ALJ to show his work." (discussion of subjective complaints)

"For the foregoing reasons, IT IS HEREBY ORDERED that the decision of the Commissioner of Social Security is AFFIRMED." (conclusion)

FACTUAL BACKGROUND

Selzer alleged disability based principally on mental impairments, including schizoaffective disorder, bipolar disorder, and posttraumatic stress disorder. The ALJ found that Selzer had no past relevant work but retained the residual functional capacity for work at all exertional levels with limitations to simple, routine, repetitive, low-stress work, occasional decision-making and workplace changes, occasional coworker interaction, and no direct public interaction. The record included treatment for hallucinations, anxiety, depression, and social difficulties, as well as an inpatient psychiatric admission in October 2021, later behavioral-health treatment, and participation in an adult day program.

PROCEDURAL HISTORY

Selzer protectively filed an application for supplemental security income alleging disability beginning January 30, 2020. The application was denied initially and on reconsideration; following a February 17, 2023 hearing, the ALJ found that Selzer was not disabled because he could perform jobs existing in significant numbers in the national economy. The Appeals Council denied review on December 22, 2023. After the parties consented to magistrate-judge jurisdiction and submitted briefs without oral argument, the court affirmed the Commissioner's decision and directed entry of judgment for the Commissioner.

DISPOSITION

affirmed

CASES CITED

- Batson v. Commissioner of Social Security Administration, 359 F.3d 1190, 1194 (9th Cir. 2004)
- Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052, 1055-56 (9th Cir. 2006)
- Ford v. Saul, 950 F.3d 1141, 1148-49, 1154 (9th Cir. 2020)
- Vertigan v. Halter, 260 F.3d 1044, 1049 (9th Cir. 2001)
- Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006)
- Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001)
- Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995)
- Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996)
- Celaya v. Halter, 332 F.3d 1177, 1183 (9th Cir. 2003)
- Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983)
- Higbee v. Sullivan, 975 F.2d 558, 561-62 (9th Cir. 1992)
- Tonapetyan v. Halter, 242 F.3d 1144, 1150-51 (9th Cir. 2001)
- Labuga v. Commissioner of Social Security, No. 1:24-cv-00890-SAB, 2025 WL 1911690, at *6 (E.D. Cal. July 11, 2025)
- Obrien v. Bisignano, 142 F.4th 687, 699 (9th Cir. 2025)
- Scott T. C. v. Commissioner of Social Security, No. 1:23-cv-01776-SAB, 2025 WL 227288, at *5 (E.D. Cal. Jan. 17, 2025)
- Penny v. Sullivan, 2 F.3d 953, 957 (9th Cir. 1993)
- Stevenson v. Colvin, No. 2:15-cv-0463-CKD, 2015 WL 6502198 (E.D. Cal. Oct. 27, 2015)

- Lewis v. Apfel, 236 F.3d 503, 517 n.13 (9th Cir. 2001)
- Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998)
- Biestek v. Berryhill, 587 U.S. 97, 103 (2019)
- Stiffler v. O'Malley, 102 F.4th 1102, 1106 (9th Cir. 2024)
- Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002)
- Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457 (9th Cir. 1995)
- Leach v. Kijakazi, 70 F.4th 1251, 1255 (9th Cir. 2023)
- Molina v. Astrue, 674 F.3d 1104, 1115, 1122 (9th Cir. 2012)
- Hill v. Astrue, 698 F.3d 1153, 1159 (9th Cir. 2012)
- Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir. 2006)
- Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007)
- Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003)
- Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)
- Garrison v. Colvin, 759 F.3d 995, 1010 (9th Cir. 2014)
- Lambert v. Saul, 980 F.3d 1266, 1277-78 (9th Cir. 2020)
- Brown-Hunter v. Colvin, 806 F.3d 487, 488-89 (9th Cir. 2015)
- Smartt v. Kijakazi, 53 F.4th 489, 498-99 (9th Cir. 2022)
- Treichler v. Commissioner of Social Security Administration, 775 F.3d 1090, 1102 (9th Cir. 2014)
- Carmickle v. Commissioner, Social Security Administration, 533 F.3d 1155 (9th Cir. 2008)
- Miller v. Gammie, 335 F.3d 889, 893 (9th Cir. 2003)
- Hudnall v. Dudek, No. 23-3727, 2025 WL 1379101, at *3-*4 (9th Cir. May 13, 2025)

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF
 CALIFORNIA 10 MICHAEL THOMAS SELZER, Case No. 1:24-cv-00706-SAB 11 Plaintiff,
 ORDER AFFIRMING DECISION OF THE 12 COMMISSIONER OF SOCIAL SECURITY v. 13
 (ECF Nos. 12, 16) COMMISSIONER OF SOCIAL 14 SECURITY, 15 Defendant. 16 17 Plaintiff
 Michael Thomas Selzer (“Plaintiff”) seeks judicial review of a final decision of the 18
 Commissioner of Social Security (“Commissioner”) denying his application for disability benefits
 19 pursuant to the Social Security Act.

The matter is currently before the Court on the parties’ 20 briefs, which were submitted without
 oral argument. 21 Plaintiff requests the decision of Commissioner be vacated and the case be
 remanded for 22 further proceedings, arguing that the decision below was not supported by
 substantial evidence. 23 Specifically, Plaintiff argues that the Administrative Law Judge (“ALJ”)
 erred in its analysis of 24 Plaintiff’s mental residual functional capacity and failed to adequately
 consider the nature and 25 intensity of Plaintiff’s alleged physical symptoms.

26 For the reasons explained herein, the Court will affirm the decision of the Commissioner. 27 / / / / 1 I. 2 BACKGROUND 3 A. Procedural History 4 On March 29, 2021, Plaintiff protectively filed an application for supplemental security 5 income, alleging disability beginning January 30, 2020. (ECF No. 11, Administrative Record 6 (“AR”), 25.) Plaintiff’s application was initially denied on October 13, 2021, and denied upon 7 reconsideration on February 16, 2022.

(AR 25.) Plaintiff requested before a hearing before an 8 ALJ. On February 17, 2023, Plaintiff, represented by counsel, appeared for a hearing in front of 9 an ALJ. (Id.) Plaintiff and vocation expert (“VE”) Mark Anderson testified. (Id.)

On March 27, 10 2023, the ALJ issued a decision concluding that Plaintiff was not disabled. (AR 35.) On 11 December 22, 2023, the Appeals Council denied Plaintiff’s request for review. (AR 5-9.) 12 B. The ALJ’s Findings of Fact and Conclusions of Law 13 In the decision, the ALJ found that Plaintiff had not engaged in substantial gainful activity 14 since March 29, 2021, the alleged onset date.

(AR. 28.) The ALJ found that Plaintiff had the 15 following severe impairments: schizoaffective disorder; bipolar disorder; and posttraumatic stress 16 disorder. (Id.) However, Plaintiff did not have an impairment or combination of impairments 17 that met or medically equaled the severity of one of the listed in impairments in 20 C.F.R. Part 18 404, Subpart P, Appendix 1.

(AR 29.) 19 After considering the entire record, the ALJ found that Plaintiff had the residual functional 20 capacity (“RFC”) to perform full range of work at all exertional levels but with the following 21 nonexertional limitations: Plaintiff can perform simple, routine, and repetitive tasks. Plaintiff can 22 perform low stress work; defined as, only occasional decision-making and only occasional 23 changes in the work setting.

Plaintiff can tolerate occasional interaction with coworkers and can 24 tolerate being in the vicinity of the public but cannot tolerate direct interaction with the public. 25 (AR 31.) 26 The ALJ then found that that Plaintiff had no past relevant work, he was 42 on the alleged 27 onset date, and he had at least a high school education. (AR 34.)

The ALJ discussed that 1 not have past relevant work. (Id.) Considering Plaintiff’s age, education, work experience, and 2 RFC, the ALJ found that there were jobs that existed in significant numbers in the national 3 economy that Plaintiff could perform. (Id.)

Accordingly, the ALJ concluded that Plaintiff had 4 not been under disability, as defined by the Social Security Act, from March 29, 2021, through 5 the date of the decision, March 27, 2023. (AR 35.) 6 Plaintiff sought timely review of the Commissioner’s decision in the federal courts. (ECF 7 No. 1.)

The parties consented to the jurisdiction of the United States Magistrate Judge. (ECF 8 Nos. 7, 9, 10.) Thereafter, the parties filed their briefs on the matter.¹ 9 II. 10 LEGAL STANDARD 11 A. The Disability Standard 12 To qualify for disability insurance benefits under the Social Security Act, a claimant must 13 show she is unable “to engage in any substantial gainful activity by reason of any medically 14 determinable physical or mental impairment which can be expected to result in death or which has 15 lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. § 16 423(d)(1)(A).

The Social Security Regulations set out a five-step sequential evaluation process to 17 be used in determining whether a claimant is disabled. 20 C.F.R. § 404.1520; 2 Batson v. 18 Comm’r of Soc. Sec. Admin., 359 F.3d 1190, 1194 (9th Cir. 2004).

The five steps in the 19 sequential evaluation in assessing whether the claimant is disabled are: 20 1 On December 1, 2022, the Supplemental Rules for Social Security became effective. Rule 5 states, “[t]he action is 21 presented for decision by the parties’ briefs.” Fed. R. Civ. P. Appx. Rule 5.

The 2022 Advisory Committee noted that “Rule 5 states the procedure for presenting for decision on the merits a [42 U.S.C.] § 405(g) review action that 22 is governed by the Supplemental Rules.” Fed. R. Civ. P. Appx. Rule 5 advisory committee note 2022. Like an appeal, “the briefs present the action for decision on the merits. This procedure displaces summary judgment or 23 such devices as a joint statement of facts as the means of review on the administrative record.” Id. The 2022 Advisory Committee unambiguously clarified that “Rule 5 also displaces local rules or practices that are inconsistent 24 with the simplified procedure established by these Supplemental Rules for treating the action as one for review on the administrative record.” Id. Here, Plaintiff filed a motion for summary judgment, which the Court will construe 25 as a brief in support of his position on whether the Court should affirm, modify, or reverse the decision of the Commissioner.

42 U.S.C. § 405(g). 26 2 The regulations which apply to disability insurance benefits, 20 C.F.R. §§ 404.1501 et seq., and the regulations which apply to SSI benefits, 20 C.F.R. §§ 416.901 et seq., are generally the same for both types of benefits. 27 Accordingly, while Plaintiff seeks only Social Security benefits under Title II in this case, to the extent cases cited herein may reference one or both sets of regulations, the Court notes these cases and regulations are applicable to the 1 Step one: Is the claimant presently engaged in substantial gainful activity?

If so, the claimant is not disabled. If not, proceed to step two. 2 Step two: Is the claimant’s alleged impairment sufficiently severe to limit his or her 3 ability to work? If so, proceed to step three. If not, the claimant is not disabled. 4 Step three: Does the claimant’s impairment, or combination of impairments, meet or equal an impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1?

If so, the claimant is disabled. If not, proceed to step four. 6 Step four: Does the claimant possess the residual functional capacity (“RFC”) to perform his or her past relevant work? If so, the claimant is not disabled. If not, 7 proceed to step five. 8 Step five: Does the claimant’s RFC, when considered with the claimant’s age, education, and work experience, allow him or her to adjust to other work that exists in 9 significant numbers in the national economy?

If so, the claimant is not disabled. If not, the claimant is disabled. 10 11 *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006). The burden of proof is 12 on the claimant at steps one through four. *Ford v. Saul*, 950 F.3d 1141, 1148 (9th Cir. 2020). A 13 claimant establishes a prima facie case of qualifying disability once she has carried the burden of 14 proof from step one through step four.

15 Before making the step four determination, the ALJ first must determine the claimant’s 16 RFC. 20 C.F.R. § 416.920(e). The RFC is “the most [one] can still do despite [his or her] 17 limitations” and represents an assessment “based on all the relevant evidence.” 20 C.F.R. §§ 18 404.1545(a)(1), 416.945(a)(1).

The RFC must consider all the claimant’s impairments, including 19 those that are not severe. 20 C.F.R. §§ 416.920(e); 416.945(a)(2); Social Security Ruling 20 (“SSR”) 96-8p, 1996 WL 374184 (July 2, 1996).³ “[I]t is the responsibility of the ALJ, not the 21 claimant’s physician, to determine residual functional capacity.” *Vertigan v. Halter*, 260 F.3d 22 1044, 1049 (9th Cir.

2001); 20 C.F.R. §§ 404.1545(a)(1), 404.1546(c). 23 At step five, the burden shifts to the Commissioner, who must then show that there are a 24 significant number of jobs in the national economy that the claimant can perform given her RFC, 25 age, education, and work experience. 20 C.F.R. § 416.912(g); *Lounsbury v. Barnhart*, 468 F.3d 26 3 SSRs are “final opinions and orders and statements of policy and interpretations” issued by the Commissioner.

20 27 C.F.R. § 402.35(b)(1). While SSRs do not have the force of law, the Court gives the rulings deference “unless they are plainly erroneous or inconsistent with the Act or regulations.” *Han v. Bowen*, 882 F.2d 1453, 1457 (9th Cir. 1 1111, 1114 (9th Cir. 2006).

To do this, the ALJ can use either the Medical Vocational Guidelines 2 (“grids”) or rely upon the testimony of a VE. See 20 C.F.R. § 404 Subpart P, Appendix 2; 3 *Lounsbury*, 468 F.3d at 1114; *Osenbrock v. Apfel*, 240 F.3d 1157, 1162 (9th Cir. 2001). 4 “Throughout the five-step evaluation, the ALJ ‘is responsible for determining credibility, 5 resolving conflicts in medical testimony, and for resolving ambiguities.’” *Ford*, 950 F.3d at 1149, 6 quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.

1995). 7 B. Standard of Review 8 Congress has provided that an individual may obtain judicial review of any final decision 9 of the Commissioner of Social Security regarding entitlement to benefits. 42 U.S.C. § 405(g).

In 10 determining whether to affirm, modify, or reverse an ALJ's decision, the Court reviews only 11 those issues raised by the party challenging the decision. See *Lewis v. Apfel*, 236 F.3d 503, 517 12 n.13 (9th Cir. 2001). Further, the Court's review of the Commissioner's decision is a limited one; 13 the Court may not disturb the Commissioner's final decision unless it is based on legal error or 14 the findings of fact are not supported by substantial evidence.

42 U.S.C. § 405(g); *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998). "[T]he threshold for such evidentiary sufficiency is 16 not high." *Biestek v. Berryhill*, 587 U.S. 97, 103 (2019). Rather, "[s]ubstantial evidence is more 17 than a mere scintilla, and means only such relevant evidence as a reasonable mind might accept as 18 adequate to support a conclusion." *Stiffler v. O'Malley*, 102 F.4th 1102, 1106 (9th Cir.

2024), 19 quoting *Ford*, 950 F.3d at 1154. In other words, "[s]ubstantial evidence is relevant evidence 20 which, considering the record as a whole, a reasonable person might accept as adequate to support 21 a conclusion." *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002), quoting *Flaten v. Sec'y of 22 Health & Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995).

23 Should the ALJ err, the Court will not reverse where the error was harmless. *Stout*, 454 24 F.3d at 1055-56. "An error is harmless only if it is 'inconsequential to the ultimate nondisability 25 determination.'" *Leach v. Kijakazi*, 70 F.4th 1251, 1255 (9th Cir. 2023), quoting *Lambert v. 26 Saul*, 980 F.3d 1266, 1278 (9th Cir. 2020).

The burden of showing that an error is not harmless 27 "normally falls upon the party attacking the agency's determination." *Molina v. Astrue*, 674 F.3d 1 Finally, "a reviewing court must consider the entire record as a whole and may not affirm 2 simply by isolating a specific quantum of supporting evidence." *Hill v. Astrue*, 698 F.3d 1153, 3 1159 (9th Cir. 2012), quoting *Robbins v. Soc.*

Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). 4 Nor may the Court affirm the ALJ on a ground upon which he or she did not rely; rather, the 5 Court may review only the reasons stated by the ALJ in his decision. *Orn v. Astrue*, 495 F.3d 6 625, 630 (9th Cir. 2007); see also *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). It is 7 not this Court's function to second guess the ALJ's conclusions and substitute the Court's 8 judgment for the ALJ's; rather, if the evidence "is susceptible to more than one rational 9 interpretation, it is the ALJ's conclusion that must be upheld." *Ford*, 950 F.3d at 1154, quoting 10 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir.

2005). 11 III. 12 DISCUSSION AND ANALYSIS 13 Plaintiff argues that the ALJ erred in two ways. First, Plaintiff argues that the ALJ 14 committed error in its assessment of Plaintiff's mental RFC. (ECF No. 12, pp. 14-19.)

Second, 15 Plaintiff contends that the ALJ erred by failing to give clear and convincing reasons why the ALJ 16 rejected Plaintiff's subjective complaints regarding his mental symptoms. (*Id.* at

pp. 19-23.) The 17 Commissioner opposes, arguing that substantial evidence supports the ALJ's decision. (ECF No. 18 16.)

The Court agrees with the Commissioner. 19 A. The ALJ's Assessment of Plaintiff's Mental RFC 20 Under this heading, Plaintiff brings several arguments. First, Plaintiff argues that "the 21 ALJ disagreed with all reviewing physicians, including the consultant that found no severe 22 impairment, and the consultant that found minimal social limitations." (ECF No. 12, p. 14.)

23 Second, Plaintiff contends the ALJ did not explain how the evidence in the record supported the 24 RFC. (Id.) Third, Plaintiff argues that the ALJ erred by discussing medical evidence that was not 25 reviewed by an examining or consulting physician and that this constituted a failure to develop the 26 record. (Id. at pp. 14-17.)

In opposition, the Commissioner frames Plaintiff's arguments as all 27 centering around the development of the record and argues that substantial evidence supports the 1 Plaintiff's arguments in the order it views makes the most logical sense. 2 1. Duty to Develop the Record and Medical Evidence Review 3 Plaintiff argues that the ALJ did not have a medical opinion that reviewed the majority of 4 Plaintiff's mental health records when crafting the RFC.

(Id. at p. 14-15.) This error, Plaintiff 5 seemingly asserts, also implicates the ALJ's duty to develop the record. (Id. at pp. 17-18.) The 6 Court is not persuaded. 7 To begin, the Court notes that the Commissioner starts by arguing that Plaintiff's duty to 8 develop the record was 'forfeited' by Plaintiff's request at the administrative hearing to hold the 9 record open for two weeks in order to submit additional records from the Family Wellness Center.

10 (ECF No. 16, p. 2.) On this, the Court disagrees. 11 "The claimant has the burden of proving that she is disabled." *Smolen v. Chater*, 80 F.3d 12 1273, 1288 (9th Cir. 1996). However, "[t]he ALJ always has a 'special duty to fully and fairly 13 develop the record and to assure that the claimant's interests are considered... even when the 14 claimant is represented by counsel.'" *Celaya v. Halter*, 332 F.3d 1177, 1183 (9th Cir.

2003), 15 quoting *Brown v. Heckler*, 713 F.2d 441, 443 (9th Cir. 1983). "[I]t is incumbent upon the ALJ to 16 scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts. [The 17 ALJ] must be especially diligent in ensuring that favorable as well as unfavorable facts and 18 circumstances are elicited." *Id.*, quoting *Higbee v. Sullivan*, 975 F.2d 558, 561 (9th Cir.

1992). 19 Further, the ALJ's duty to develop the record fully is heightened where the claimant may be 20 mentally ill and thus unable to protect his own interests. *Tonapetyan v. Halter*, 242 F.3d 1144, 21 1150 (9th Cir. 2001), citing *Higbee*, 975 F.2d at 562. 22 The Ninth Circuit has explained that ambiguous evidence, or the ALJ's own finding that 23 the record is inadequate to allow for proper evaluation of the evidence, triggers the ALJ's duty to 24 "conduct an appropriate inquiry."

Tonapetyan, 242 F.3d at 1150, quoting Smolen, 80 F.3d at 25 1288. “The ALJ may discharge this duty in several ways, including: subpoenaing the claimant’s 26 physicians, submitting questions to the claimant’s physicians, continuing the hearing, or keeping 27 the record open after the hearing to allow supplementation of the record.” Id. (citations omitted).

1 an inconsistency in the evidence or when the evidence as a whole is insufficient to support a 2 determination or decision.” See 20 C.F.R. § 416.919a. Examples of situations under which further 3 developing the record may be required include when the additional evidence needed is not 4 contained in the records of the claimant’s medical sources, and when highly technical or 5 specialized medical evidence not available from the claimant’s medical sources is needed.

20 6 C.F.R. § 416.919a(b). Once the duty to further develop the record is triggered, failure to do so 7 constitutes reversible error. See Tonapetyan, 242 F.3d at 1150-51. 8 This Court recently held that a claimant need not talismanically preserve the issue of the 9 ALJ’s duty to develop the record at the administrative hearing in order for judicial review. Labuga 10 v. Commissioner of Social Security, No. 1:24-cv-00890-SAB, 2025 WL 1911690, at *6 (E.D.

Cal. 11 July 11, 2025). Part of that analysis was the well-trodden explanation from the Ninth Circuit that 12 “the ALJ has a special duty to fully and fairly develop the record and to assure that the claimant’s 13 interests are considered. This duty exists even when the claimant is represented by counsel.” 14 Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996).

In addition, “an ALJ is to be expected, 15 without issue-specific prompting by the parties, to make the predicate findings that are necessary 16 under the governing five-step disability evaluation process to support the conclusions that the ALJ 17 makes.” Obrien v. Bisignano, 142 F.4th 687, 699 (9th Cir. 2025) (emphasis in original). 18 With this in mind, the Court observes that simply because the ALJ holds open the record 19 for additional records at a claimant’s request does not necessarily mean the duty to develop the 20 record was even necessarily triggered, much less satisfied.

Notwithstanding a request by a 21 claimant to keep the record open for the introduction of specific documents, the record may 22 nonetheless be incomplete or ambiguous even with the addition of the specific later records.

Here, 23 the Commissioner’s forfeiture argument puts the cart before the horse. 24 Therefore, the Court will turn to the duty to develop the record argument and begin by 25 analyzing whether the record was incomplete or ambiguous.

However, to address this issue, the 26 Court must in turn look to Plaintiff’s related argument that the ALJ failed to obtain an opinion by a 27 reviewing or consultative physician that “had the benefit of the entirety of the medical records 1 Plaintiff contends, the ALJ “interpreted medical evidence reviewed by no examining or consulting 2 physician.” (Id. at p. 14.)

3 “While it is apparent that comprehensive consultative examinations of records would be 4
helpful to ALJs, the Court has not found any statute, regulation, or caselaw that establishes that at
5 least one physician must conduct a metanalysis of the ‘the majority’ of a claimant’s mental
health 6 treatment records.” *Scott T. C. v. Commissioner of Social Security*, No. 1:23-cv-01776-
SAB, 7 2025 WL 227288, at *5 (E.D.

Cal. Jan. 17, 2025); see 20 C.F.R. § 404.1545(a)(3). As in *Scott T. 8 C.*, Plaintiff has not provided
the Court with any binding or persuasive authority for this position. 9 Therefore, the ALJ did not
err by not obtaining a treating or consultative opinion that had the 10 benefit of the majority of
Plaintiff’s mental health records. And on this basis, the record was 11 neither incomplete nor
ambiguous.

12 Circling back to the broader argument regarding the duty to develop the record, Plaintiff 13 has
not persuasively argued that the record was otherwise incomplete or ambiguous. Rather, 14
Plaintiff’s discussion is more focused on what he contends is the ALJ impermissibly interpreting
15 medical evidence (which the Court discusses in the section below).

To support this, Plaintiff again 16 argues that the ALJ should have sought a medical opinion that
had access to the majority of 17 Plaintiff’s mental health record. Yet, with this logic, it would
appear that Plaintiff is not arguing 18 that the record was incomplete but that another opinion
should have been secured that reviewed the 19 record.

The only avenue left would be for Plaintiff to demonstrate that the record was ambiguous. 20
Plaintiff has not demonstrated as such, and the Court does not independently find that the record
21 itself was ambiguous.

The Court finds that the ALJ’s duty to develop the record was not triggered. 22 Plaintiff’s offered
caselaw is not persuasive because it is distinguishable. See *Penny v. 23 Sullivan*, 2 F.3d 953, 957
(9th Cir. 1993) (discussing that the ALJ erred where he relied on a sole 24 medical opinion for the
determination that a claimant could perform sedentary work and that 25 opinion, in turn, relied
solely on medical records from outside the period of disability); *Stevenson 26 v. Colvin*, No. 2:15-
cv-0463-CKD, 2015 WL 6502198 (E.D.

Cal. Oct. 27, 2015) (finding ALJ 27 erred where he relied on a sole opinion that the claimant did
not have a severe spinal impairment 1 evidence or explain the later evidence; the court implicitly
also found the record to be incomplete 2 given that the later records consisted of medical
impressions as opposed to opinions regarding the 3 claimant’s ability to work on a function-by-
function basis).

4 Regarding these arguments, the ALJ did not err. 5 2. Medical Opinions 6 While Plaintiff initially
argues that the ALJ disagreed with the medical opinions, Plaintiff 7 does not develop this
argument further in his brief. (ECF No. 12, p. 14.)

In any event, the Court finds that Plaintiff has mischaracterized the ALJ's assessment of medical opinions from the prior administrative proceeding. Regarding Plaintiff's physical impairments, the ALJ noted that G. Lee, M.D., found that Plaintiff's impairments were not severe. (AR 33.)

The ALJ found this opinion to be persuasive because it was supported by citation to evidence and was consistent with the updated treatment notes and Plaintiff's testimony at the recent administrative hearing. (Id.) Turning to mental health opinions, the ALJ discussed that the opinion of Helen C. Patterson, Ph.D., found that Plaintiff's mental health impairments were not severe.

(Id.) The ALJ found this opinion to not be persuasive because the findings were "inconsistent with the records that show persistent impairment in the ability to perform work activities, despite treatment." (Id.) Finally, the ALJ discussed the opinion of L. Colsky, M.D., who opined that Plaintiff's mental impairments are severe and that Plaintiff could perform simple, repetitive tasks with limited public contact.

(Id.) The ALJ found this opinion to be "somewhat persuasive" because "the record as a whole supports additional social limitation and additional limitations related to stress..." (Id.) Thus, Plaintiff is incorrect in that the ALJ disagreed with all medical opinions.

The ALJ agreed with the medical opinion regarding Plaintiff's physical impairments. The ALJ then 'disagreed' with Dr. Patterson's opinion that suggested Plaintiff's mental health impairments were not severe, finding Plaintiff did demonstrate some persistent mental impairments. Similarly, the ALJ agreed with part of Dr. Colsky's opinion except that Plaintiff would require only limited additional limitations related to stress.

These mental health findings, as should be apparent, were in Plaintiff's favor. Plaintiff does not address this fact nor argue that these findings nonetheless were inadequate. On this basis, the ALJ did not err. 3. Explanation of Mental RFC The RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis, which means eight hours a day, for five days a week, or an equivalent work schedule.

Titles II & XVI: Assessing Residual Functional Capacity in Initial Claims, SSR 96-9p, 1996 WL 374184, at *1 (S.S.A. July 2, 1996). 9 "The RFC assessment must first identify the individual's functional limitations or restrictions and assess his or her work-related abilities on a function-by-function basis, including the functions in paragraphs (b), (c), and (d) of 20 C.F.R. 404.1545 and 416.945." Id. An "RFC is not the least an individual can do despite his or her limitations or restrictions, but the most." Id. (emphasis in original).

As relevant here, when an ALJ assess mental abilities, “[the ALJ] first assess the nature 14 and extent of [a claimant’s] mental limitations and restrictions and then determine[s] [a claimant’s] 15 residual functional capacity for work activity on a regular and continuing basis.” 20 C.F.R. 16 404.1545(c); 20 C.F.R. 416.945(c). “A limited ability to carry out certain mental activities, such 17 as limitations in understanding, remembering, and carrying out instructions, and in responding 18 appropriately to supervision, co-workers, and work pressures in a work setting, may reduce [a 19 claimant’s] ability to do past work and other work.” Id. 20 In the opinion, the ALJ gave the following limitations in the RFC relevant to Plaintiff’s 21 mental impairments: Plaintiff can perform simple, routine, and repetitive tasks.

Plaintiff can 22 perform low stress work; defined as, only occasional decision-making and only occasional changes 23 in the work setting. Plaintiff can tolerate occasional interaction with coworkers and can tolerate 24 being in the vicinity of the public but cannot tolerate direct interaction with the public. (AR 31.) 25 The ALJ then summarized Plaintiff’s testimony regarding subjective complaints of mental 26 health impairments: 27 The claimant testified that he takes medication to manage his mental impairments: anxiety and depression.

He has experienced 1 started medications to manage hallucinations. He has difficulty being around other people in large groups. He has difficulty with 2 daily tasks such as getting dressed, cooking meals and taking showers. His family helps him with bills, he does not pay them. 3 He takes medications and attends an adult daycare program during the day; he plays bingo and interacts others.

He misses meals 4 related to increased symptoms of anxiety or bipolar. 5 Id. In support of rejecting some of Plaintiff’s statements concerning the intensity, persistence and 6 limiting effects of his symptoms, the ALJ began by summarizing Plaintiff’s treatment notes, which 7 the Court is compelled to go through. 8 In a set of medication progress notes from Fresno Behavioral Health, dated April 3, 2020, 9 to March 12, 2021, the ALJ cites that in in December 2020, Plaintiff reported symptoms of 10 isolation and unhealthy friendships.

(AR 32, citing AR 501.) However, that record notes that 11 Plaintiff reported that “[s]ocializes periodically with other residents in his apartment [building] so 12 he doesn’t feel too lonely.” (AR 501.) In the next progress note in the same record, from March 13 2021, Plaintiff reports “he’s struggling with isolation since living alone during pandemic.” (AR 14 498.)

Here, Plaintiff also talks about having unhealthy friendships. (Id.) Assuming the ALJ 15 meant to cite to AR 498, the ALJ cites that in same record, Plaintiff was evaluated as having 16 “normal cognition, normal speech, normal mood, average intelligence, cooperative, and with 17 organized thought process.” (AR 32.)

The Court notes that this record was from outside the 18 alleged onset disability date, of which the ALJ seemed aware. (Id.) The ALJ continued and noted 19 that Plaintiff had been diagnosed with schizoaffective disorder, PTSD, and polysubstance abuse in 20 full sustained remission and that treatment included behavioral health visits and monitored 21 medication.

(Id.) The ALJ then found that these examination findings “suggest that these 22 treatments were effective in managing [Plaintiff’s] symptoms.” (Id.) 23 The ALJ then generally cites to Exhibit D2F for another record in March 2021. Upon 24 review of the exhibit, it appears that the ALJ is directing the Court to AR 490-94, wherein Plaintiff 25 reported that, despite treatment, he has ongoing issues with depression, anxiety, irritability, and 26 dwelling on the past.

(See AR 490.) The ALJ noted that the examination also indicated that 27 Plaintiff was oriented, had logical thought flow, intact memory, normal abstraction, fair judgment, and fair insight. (AR 32; see 492-93.) 1 The first record the ALJ discusses from within the period of alleged disability that the ALJ 2 discusses is from October 2021. (AR 32.)

In an emergency provider note, from Community 3 Medical Centers dated October 4, 2021, it was noted that Plaintiff sought treatment in the 4 emergency room, reporting with auditory hallucinations and was observed to be responding to 5 internal stimuli. (AR 520.)

The note also reported that Plaintiff was malnourished. (AR 521.) 6 Under psychiatric symptoms, comments stated that Plaintiff was “[r]esponding to internal stimuli, 7 pressured speech, grandiose thoughts.” (Id.) Plaintiff was given benzodiazepine, which calmed 8 him but did not resolve the problem. (AR 522.) Anna von Reinhart, MD, commented that 9 Plaintiff appeared “[d]isheveled, think grandiose delusions, suspect meth +/- mania, VS, exam, and 10 w/u not suggestive of ‘organic’ cause.” (AR 524.)

Plaintiff would be transferred to inpatient 11 mental health treatment on a 5150 hold. (AR 522.) 12 On October 5, 2021, Plaintiff, while in inpatient treatment, presented with nonsensical 13 speech, disorganized thought process, and did not understand why he was being treated. (AR 582; 14 see AR 32.) Plaintiff was also severely underweight.

The treatment note indicated that it was 15 “[u]nclear if [Plaintiff] was compliant with medications.” (AR 583.) Plaintiff was treated with 16 medication and psychiatric treatment with therapy until October 19, 2021, when he was 17 discharged. (AR 577.) 18 The ALJ noted that Plaintiff continued treatment with Fresno Behavioral Health in 19 November and December 2021.

(AR 32.) The ALJ observed that a progress note dated December 20 15, 2021, indicated that Plaintiff had normal cognition, above average intelligence, normal insight 21 and judgment, denials of hallucinations, denials of suicidal ideation, organized thought process, 22 and normal speech. (Id.)

The Court notes that Plaintiff also discussed increased anxiety. (AR 23 558.) 24 Next, the ALJ addressed progress notes from Fresno County Behavioral Health dated from 25 January 2022 to December 2022. (AR 32, citing 655-709.)

The ALJ began by generally citing to 26 this year of records and demonstrating that Plaintiff was in fair compliance with treatment. (AR 27 32.) The ALJ did observe one instance where Plaintiff was getting back from being off his 1 707.)

The ALJ stated that the progress notes all indicated that Plaintiff had normal thought 2 content, average intelligence, normal insight and judgment, normal speech, cooperative behavior, 3 and organized thought process. (AR 32-33.)

The ALJ also observed that Plaintiff's medications 4 did not change throughout the year. (AR 33.) 5 Upon review of these records, the Court also observes that Plaintiff reported anxiety. (AR 6 656, 662.) Plaintiff reported having problems telling people no and needed to learn how to set 7 limits. (AR 665-66.) Plaintiff showed his licensed clinical social worker his house, which 8 included "an area that has accumulated a lot of stuff that he needs help with managing and 9 cleaning." (AR 666.)

At times, Plaintiff reported "laying on the couch more[] so the past couple 10 of weeks, with not much motivation." (AR 667.) Plaintiff stated his fears of setting limits with 11 others would lead to being "completely disconnected." (AR 666, 668.)

On June 7, 2022, Plaintiff 12 reported feeling depressed regarding his financial situation and that he had not showered the past 13 five days. (AR 672.) Plaintiff also stated that he had been isolating in his apartment and that "he 14 felt that his life did not feel[] very meaningful for the future." (Id.) Plaintiff stated, "Lately I have 15 been feeling that [it] would [be] better off if I didn't exist." (Id.)

At one point, Plaintiff "made a 16 friend with a homeless kitten," (AR 686), but he later found out it belonged to a neighbor. (AR 17 692.) While Plaintiff had "taught the cat to go to his apartment voluntarily," he threw water on the 18 cat twice in order to prevent it from clawing at his door. (Id.)

The licensed clinical social worker 19 discussed with Plaintiff that he could give the neighbor the leftover cat food he had secured and 20 offer to help care for the cat. (Id.) 21 In July 2022, Plaintiff began going to an adult day program, eventually attending twice per 22 week. (AR 677-79.) Also in July, hoarding was discussed with Plaintiff and the licensed clinical 23 social worker "observed an incredible amount of thick dust" in Plaintiff's apartment.

(AR 680.) 24 In August 2022, Plaintiff stated that he did not want to throw out trash, making several excuses to 25 not clean it out. (AR 681.) The licensed clinical social worker noted that

there were layers of 26 paper and multiple pill bottles dating back to 2014. (Id.)

In December 2022, Plaintiff reported that 27 he was “doing fine, mild depression.” (AR 693.) At other times, Plaintiff reported doing well or 1 The ALJ then concluded, following a discussion of the medical opinions, that the record 2 supported the limitations within the mental RFC. (AR 33.) 3 Despite Plaintiff’s suggestion otherwise, the Court finds that the ALJ’s discussion of the 4 medical record, and Plaintiff’s symptoms, adequately supports the RFC.

As previously observed, 5 it appears the ALJ credited some of Plaintiff’s testimony at the administrative hearing. (AR 33.) 6 And while the ALJ gave a parsimonious discussion regarding Plaintiff’s treatment notes from 7 2022, the Court finds the ALJ’s discussion to be sufficient. (AR 32-33.) Significantly, Plaintiff’s 8 characterizations of these records are at times overblown.

For example, the adult day program 9 Plaintiff attended began with two days a week, (AR 681), and then increased to five days a week. 10 (AR 133.) It was noted that Plaintiff “likes [the program] because it gets him out of the apartment 11 and he is around other people from about 8 till 1 PM daily and he has two friends he really likes to 12 hang around.” (AR 686.)

Though Plaintiff stated that he ‘heavily relied’ upon the program, 13 Plaintiff has not directed the Court to any record that would suggest that Plaintiff required “a 14 highly structured setting.” (ECF No. 12, p. 17.)

In addition, that Plaintiff attended the adult day 15 program five days a week cuts against Plaintiff’s characterization that Plaintiff “does not leave his 16 home for days at a time,” and further, upon review of the records Plaintiff cites, they do not 17 necessarily state that Plaintiff did not leave his home for multiple days consistently. (Id., citing 18 AR 665, 667, 668, 672, 674.)

19 Plaintiff’s remaining ancillary arguments are without merit. While the ALJ did not give a 20 line-by-line exergies of Plaintiff’s treatment notes from 2022, the Court finds that the ALJ did not 21 paraphrase the record, rendering it not entirely accurate regarding content or tone.

The ALJ did 22 not offer a lay medical opinion. Additionally, Plaintiff’s assertion that “[t]his District holds that 23 the ALJ must build an accurate and logical bridge to his conclusions,” was supported by no 24 caselaw from this District nor the Ninth Circuit. (ECF No. 12, p. 16.)⁴ 25 Accordingly, the ALJ did not err. 26 27 4 The Court does not necessarily disagree with the phrase in principle; however, this formulation of such a proposition has not gained traction in this District.

Thus, the Court will continue to utilize prevailing Ninth Circuit 1 B. Plaintiff’s Subjective Complaints 2 When discrediting some of Plaintiff’s subjective complaints, Plaintiff argues that the ALJ 3 failed to discuss the 2022 treatment notes (discussed above), mischaracterized the reason

for 4 Plaintiff's admission to the emergency room, did not discuss third-party, non-medical statements 5 from Plaintiff's uncle.

(ECF No. 12, p. 20.) The Court is not persuaded. 6 "The ALJ is responsible for determining credibility, resolving conflicts in medical 7 testimony, and for resolving ambiguities." *Garrison v. Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014), 8 quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.1995).

As relevant here, where the ALJ 9 "determines that a claimant... is not malingering and has provided objective medical evidence of 10 an underlying impairment which might reasonably produce the pain or other symptoms she 11 alleges, the ALJ may reject the claimant's testimony about the severity of those symptoms only by 12 providing specific, clear, and convincing reasons for doing so." *Lambert*, 980 F.3d at 1277, 13 quoting *Brown-Hunter v. Colvin*, 806 F.3d 487, 488-89 (9th Cir.

2015). "Ultimately, the 'clear 14 and convincing' standard requires an ALJ to show his work." *Smartt v. Kijakazi*, 53 F.4th 489, 15 499 (9th Cir. 2022). An ALJ must show their work by "identify[ing] the testimony [from a 16 claimant] she or he finds not to be credible and... explain[ing] what evidence undermines that 17 testimony." *Lambert*, 980 F.3d at 1277, quoting *Treichler v. Comm. of Soc.*

Sec. Admin., 775 18 F.3d 1090, 1102 (9th Cir. 2014). Boilerplate statements and general summaries of the evidence, 19 without more, are not enough. *Id.* at 1277-78. That said, an ALJ is not required "to perform a 20 line-by-line exegesis of the claimant's testimony" or "draft dissertations when denying benefits." 21 *Id.* at 1277. 22 While "an ALJ cannot insist on clear medical evidence to support each part of a claimant's 23 subjective pain testimony when there is no objective testimony evincing otherwise,... [w]hen 24 objective medical evidence in the record is inconsistent with the claimant's subjective testimony, 25 the ALJ may indeed weigh it as undercutting such testimony." *Smartt*, 53 F.4th at 498 (emphasis 26 in original).

Indeed, "[c]ontradiction with the medical record is a sufficient basis for rejecting the 27 claimant's subjective testimony." *Carmickle v. Commissioner, Social Sec. Admin.*, 533 F.3d 1 whether the ALJ's rationale is clear enough that it has the power to convince." *Smartt*, 53 F.4th at 2 499. 3 Again, the ALJ summarized Plaintiff's subjective complaints as follows: 4 The claimant testified that he takes medication to manage his mental impairments: anxiety and depression.

He has experienced 5 auditory hallucinations in the past, but they stopped when he started medications to manage hallucinations. He has difficulty 6 being around other people in large groups. He has difficulty with daily tasks such as getting dressed, cooking meals and taking 7 showers. His family helps him with bills, he does not pay them. He takes medications and attends an adult daycare program during 8 the day; he plays bingo and interacts others.

He misses meals related to increased symptoms of anxiety or bipolar. 9 (AR 31.) 10 Plaintiff begins by taking issue with the ALJ's determination that with medication and 11 therapy, Plaintiff was able to manage his symptoms. (ECF No. 12, citing AR 33.) Plaintiff again 12 cites to the 2022 progress notes, arguing that these demonstrate that Plaintiff isolated for days at a 13 time, failed to shower for days at a time, was suicidal, and hoarding.

Yet, as the Court previously 14 explained, the record cites do not support Plaintiff's characterizations. In the records Plaintiff 15 cites, the first few do not even touch on the topics Plaintiff raises. (AR 665, 667, 668.)

On June 7, 16 2022, Plaintiff reported feeling depressed, that he had not showered for five days but had taken a 17 shower recently, and wondered if it would be better off if he didn't exist. (AR 672.) However, 18 Plaintiff denied ever wanting to harm himself and denied any intention of harming himself. (Id.) 19 On June 13, 2022, Plaintiff talked about how he had been isolating, but he also talked about 20 attending the adult day program.

(AR 674.) On July 26, 2022, Plaintiff's licensed clinical social 21 worker discussing hoarding with Plaintiff after observing trash bags and thick dust. (AR 680.) 22 Thus, the ALJ was aware of and discussed Plaintiff's difficulty being around people, difficulty 23 showering, and difficulty with daily tasks. (AR 31.) Furthermore, Plaintiff's assertion that he was 24 suicidal is not supported by the record.

(AR 672.) Plaintiff explicitly denied suicidal ideation ever 25 or currently and the licensed clinical social worker did not make a finding that would contradict 26 this. Similarly, that a licensed clinical social worker discussed hoarding with Plaintiff does not 27 necessarily mean Plaintiff was hoarding. (AR 680.) And while Plaintiff discussed at times 1 isolating, Plaintiff also discussed attending the adult program and making friends.

In this section, 2 the Court notes that Plaintiff characterized Plaintiff splashing a neighbor's cat with water as 3 "animal abuse." (ECF No. 12, pp. 21-22.) As previously discussed, that is clearly a 4 misinterpretation of the situation.

Therefore, the Court finds that the ALJ properly considered the 5 2022 treatment notes. 6 Next, Plaintiff takes issue with the ALJ noting that Plaintiff's admission to the emergency 7 room because he "was not persistent with treatment and possibly relapsed on substance abuse that 8 required intensive treatment to regulate his symptoms." (AR 33.) Yet, the record supports the 9 ALJ's observation that Plaintiff's visit to the emergency room in 2021 and was "possibly" due to 10 substance abuse.

As noted above, a doctor observed that there was no apparent "organic" cause 11 for Plaintiff's symptoms and that she "suspect[ed] meth +/- mania." (AR 524.) In any event, 12 Plaintiff has not

articulated how this observation by the ALJ affected or would affect the analysis 13 of Plaintiff's subjective complaints or, in turn, the crafting of the RFC. This argument is 14 unavailing.

15 Last, Plaintiff argues that the ALJ failed to articulate any reason for rejecting statements 16 from Plaintiff's uncle, a third-party, non-medical opinion. For example, Plaintiff notes that his 17 uncle stated that he tries to get Plaintiff to take better care of himself and that Plaintiff sometimes 18 looks homeless. Plaintiff asserts that his uncle reported that Plaintiff did not eat properly and was 19 obsessive or compulsive about things.

His uncle noted that Plaintiff was alone and has other 20 communication issues. (ECF No. 12, p. 22.) 21 Following the implementation of the 2017 regulations, ALJs "are not required to articulate 22 how [they] considered evidence from nonmedical sources using the requirements [that apply to 23 medical sources]." 20 C.F.R. §§ 404.1520c(d), 416.920c(d) (emphasis added).

In light of the 24 superseding regulations, that appear clear on their face, the Court seriously questions the propriety 25 of the judicially created "germane reasons" requirement previously articulated by the Ninth 26 Circuit. Compare *Hudnall v. Dudek*, No. 23-3727, 2025 WL 1379101, at *4 (9th Cir. May 13, 27 2025) (Bumatay, J., concurring) with *id.* at *3 (Graber, J., concurring).

1 ALJ in not giving a germane reason for rejecting Plaintiff's uncle's testimony was harmless. 2 *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003). The testimony from Plaintiff's uncle was 3 cumulative of the record and of Plaintiff's own testimony. 4 On August 31, 2021, Plaintiff's uncle filled out a Functional Report, Third Party form, 5 wherein under the heading "Personal Care," that Plaintiff's personal care was "good for the most 6 part." (AR 427.)

Under a subheading labeled "Shave," his uncle wrote, "sometimes looks like a 7 homeless person," and later wrote, "when [Plaintiff] has a beard, I try to get him to trim and take 8 better care of himself." (AR 428.) While his uncle noted that he believed Plaintiff was not eating 9 a balanced diet (AR 427), his uncle also stated that Plaintiff made all his meals, daily, and that 10 Plaintiff has always been a "finiky" eater.

(AR 428.) Plaintiff could shop in grocery stores for an 11 hour weekly, pay bills, and count change; Plaintiff had issues with a savings account or using a 12 checkbook. (AR 429.) Yet, Plaintiff's uncle expanded that Plaintiff "used to spend money all on a 13 car until he lost his job. Now he is very careful with my money." (AR 430.)

Under hobbies, his 14 uncle noted that Plaintiff can be obsessive or compulsive regarding his hobbies regarding history 15 and internet use. (*Id.*) While his uncle noted that he believed Plaintiff was alone and without 16 friends, in that same answer, his uncle stated that Plaintiff attended AA meetings a couple time a 17 week to socialize, despite possibly not suffering from alcoholism.

(Id.) His uncle stated that it 18 was hard at times for him to understand Plaintiff due to Plaintiff's very fast speech. (AR 431.) 19 And when asked to describe how Plaintiff's abilities affect certain areas, his uncle wrote "hard to 20 participate when you go sit in a corner with your head down." (Id.) 21 As discussed above, elsewhere in the record there are observations of Plaintiff's issues with 22 personal care, eating habits, social and communication issues, and money issues.

Indeed, the ALJ 23 noted many of these in his summary of Plaintiff's subjective complaints. Because Plaintiff's 24 uncle's lay witness testimony was substantially similar to evidence that the ALJ appropriately 25 rejected, "the ALJ's failure to give specific witness-by-witness reasons for rejecting the lay 26 testimony did not alter the ultimate nondisability determination." *Molina*, 674 F.3d at 1122.

27 In sum, the ALJ did not err in his analysis of Plaintiff's subjective complaints, or if there 1 IV. 2 CONCLUSION AND ORDER 3 For the foregoing reasons, IT IS HEREBY ORDERED that the decision of the 4 | Commissioner of Social Security is AFFIRMED. It is FURTHER ORDERED that judgment be 5 | entered in favor of Defendant Commissioner of Social Security and against Plaintiff Michael 6 | Thomas Selzer.

The Clerk of the Court is directed to CLOSE this action. 7 8 IT IS SO ORDERED. FA. Se 9 | Dated: _ August 11, 2025 STANLEY A. BOONE 10 United States Magistrate Judge 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28