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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JUAN HOODYE,	)	Case No. CV 12-2184-OP
	)	
Plaintiff,	)	
v.	)	MEMORANDUM OPINION AND
	)	ORDER
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

The Court<sup>1</sup> now rules as follows with respect to the disputed issues listed in the Joint Stipulation (“JS”).<sup>2</sup>

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<sup>1</sup> Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the United States Magistrate Judge in the current action. (ECF Nos. 7, 9.)

<sup>2</sup> As the Court advised the parties in its Case Management Order, the decision in this case is made on the basis of the pleadings, the Administrative Record, and the Joint Stipulation filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g). (ECF No. 8 at 3.)

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**I.**

**DISPUTED ISSUES**

As reflected in the Joint Stipulation, the disputed issues which Plaintiff raises as the grounds for reversal and/or remand are as follows:

- (1) Whether the Administrative Law Judge (“ALJ”) properly considered the opinion of Plaintiff’s treating physician; and
- (2) Whether the ALJ properly developed the record regarding Plaintiff’s treating source opinions.

(JS at 3.)

**II.**

**STANDARD OF REVIEW**

Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine whether the Commissioner’s findings are supported by substantial evidence and whether the proper legal standards were applied. DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at 401 (citation omitted). The Court must review the record as a whole and consider adverse as well as supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986). Where evidence is susceptible of more than one rational interpretation, the Commissioner’s decision must be upheld. Gallant v. Heckler, 753 F.2d 1450, 1452 (9th Cir. 1984).

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**III.**

**DISCUSSION**

**A. The ALJ’s Findings.**

The ALJ found that Plaintiff has the severe impairments of mood disorder, not otherwise specified; a history of ethyl alcohol abuse; asthma; and eczema. (Administrative Record (“AR”) at 14.) The ALJ concluded that Plaintiff has the residual functional capacity (“RFC”) to perform a “narrowed range of light exertion work,” including the ability to lift and/or carry up to twenty pounds occasionally, up to ten pounds frequently; to stand and/or walk for six hours out of an eight-hour workday; to sit for six hours of an eight-hour workday; and to push and/or pull within the above weight limits. (*Id.* at 15-16.) The ALJ found Plaintiff limited to simple repetitive tasks, and to low-stress work involving no contact with the public, although he can frequently interact with supervisors and coworkers; that he cannot be exposed to extreme heat or extreme cold; and that he cannot tolerate exposure to concentrated dusts, fumes, or chemicals. (*Id.* at 16.)

Relying on the testimony of the vocational expert (“VE”), the ALJ determined that Plaintiff was able to perform the requirements of such occupations as assembler (Dictionary of Occupational Titles (“DOT”) 712.687-010); and packer (DOT 920.687-010). (AR at 19.)

**B. The ALJ Properly Considered the Opinion of Plaintiff’s Treating Physician and Properly Developed the Record.**

On April 13, 2011, Plaintiff’s treating physician, Dr. King, completed a two page check-box form relating Plaintiff’s ability to do work related activities because of mental limitations. (*Id.* at 662-63.) For three of the twenty-five categories, Dr. King indicated that Plaintiff was seriously limited but was not precluded from performing the ability (e.g., ability to remember procedures; ability to understand and remember short and simple instructions; and ability to be aware

1 of normal hazards and take appropriate precautions); for eighteen of the twenty-  
2 five tasks, Dr. King indicated that Plaintiff was unable to meet competitive  
3 standards (e.g., in his ability to: carry out short and simple instructions; maintain  
4 attention for two hours; maintain regular attendance and punctuality; sustain an  
5 ordinary routine without special supervision; work in coordination with or  
6 proximity to others without being unduly distracted; make simple work-related  
7 decisions; complete a normal workday/workweek without interruptions from  
8 psychologically-based symptoms; perform at a consistent pace without an  
9 unreasonable number and length of rest periods; respond appropriately to changes  
10 in a routine work setting; deal with normal work stress; set realistic goals; interact  
11 appropriately with the general public; maintain socially appropriate behavior;  
12 travel in unfamiliar places; and use public transportation); and for six of the  
13 twenty-five categories, Dr. King indicated that Plaintiff had no useful ability to  
14 function (e.g., accepting instructions and responding appropriately to supervisors;  
15 getting along with coworkers without unduly distracting them or exhibiting  
16 behavioral extremes; understanding and remembering detailed instructions;  
17 carrying out detailed instructions; dealing with the stress of semi-skilled and  
18 skilled work; and adherence to basic standards of neatness and cleanliness. (Id.)  
19 Dr. King also noted that Plaintiff would miss more than four days of work per  
20 month. (Id.)

21 The ALJ discussed Plaintiff’s mental impairments, including Dr. King’s  
22 opinion, as follows:

23 Turning to the claimant’s alleged mental impairments, the record  
24 reveals that the claimant has complained of “anxiety and depression.”

25 The claimant is apparently in treatment for his mental impairments, but  
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1 his treating clinician, Dr. King, has declined to submit treatment notes.<sup>[3]</sup>  
2 The claimant's treating clinician has opined that the claimant is  
3 seriously-to-completely precluded from performing almost all usual  
4 mental requirements of work. However, nothing in the credible  
5 evidence of record supports such limitations. Indeed, numerous  
6 emergency department[s] make little or no mention of psychiatric  
7 symptoms, and certainly give no indication that the claimant experiences  
8 the very significant mental limitations assigned by the claimant's  
9 treating clinician.

10 . . . .

11 Given Dr. Singer's narrative report, and the lack of other medical  
12 evidence supporting Dr. King's assessment of significant work-related  
13 mental limitations, the undersigned gives little evidentiary weight to Dr.  
14 King's assessment. Giving the claimant every benefit of doubt, the  
15 undersigned finds that the claimant's mild mood disorder limits him to  
16 simple repetitive tasks and low stress work. The claimant's mood  
17 disorder precludes him from working with the general public, but does  
18 not preclude him from frequent interactions with co-workers and  
19 supervisors. In regard to the Part B criteria of section 12.00, the  
20 undersigned finds the claimant has no restriction of activities of daily  
21 living; moderate limitation in the ability to maintain social functioning;  
22 and mild limitation in concentration, persistence, and pace. The  
23 claimant has never experienced an episode of decompensation, of

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25 <sup>3</sup> As discussed infra, the ALJ kept the record open for several months so  
26 that Plaintiff could submit additional records from Dr. King and from his treating  
27 cardiologist. (AR at 53.) Between May and August 2011, Plaintiff submitted  
28 additional records regarding his cardiac treatment, but he submitted nothing from  
Dr. King. (Id. at 664-1164.)

1 extended duration.

2 (Id. at 17-18 (citations omitted).)

3 Plaintiff contends that the ALJ failed to “describe with any specificity” the  
4 April 13, 2011, “Medical Opinion Re: Ability To Do Work-Related Activities  
5 (Mental)” form, completed by Dr. King. (JS at 5.) Plaintiff also contends that the  
6 ALJ failed to state whether he accepted or rejected Dr. King’s opinion, did not  
7 explicitly state the weight given to the opinion, and did not provide specific and  
8 legitimate reasons supported by substantial evidence for rejecting that opinion.  
9 (Id. at 5-6.) Moreover, according to Plaintiff, since the ALJ stated that Dr. King  
10 had declined to produce any treatment notes, the ALJ failed to properly develop  
11 the record and should have subpoenaed those notes as they were vital to  
12 determining whether the assessment was supported by those notes. (Id. at 7.)

13 It is well-established in the Ninth Circuit that a treating physician’s opinions  
14 are entitled to special weight, because a treating physician is employed to cure and  
15 has a greater opportunity to know and observe the patient as an individual.  
16 McAllister v. Sullivan, 888 F.2d 599, 602 (9th Cir. 1989). “The treating  
17 physician’s opinion is not, however, necessarily conclusive as to either a physical  
18 condition or the ultimate issue of disability.” Magallanes v. Bowen, 881 F.2d 747,  
19 751 (9th Cir. 1989). The weight given a treating physician’s opinion depends on  
20 whether it is supported by sufficient medical data and is consistent with other  
21 evidence in the record. See 20 C.F.R. § 404.1527(d)(2). If the treating  
22 physician’s opinion is uncontroverted by another doctor, it may be rejected only  
23 for “clear and convincing” reasons. Lester v. Chater, 81 F.3d 821, 830 (9th Cir.  
24 1995); Baxter v. Sullivan, 923 F.2d 1391, 1396 (9th Cir. 1991). If the treating  
25 physician’s opinion is controverted, it may be rejected only if the ALJ makes  
26 findings setting forth specific and legitimate reasons that are based on the  
27 substantial evidence of record. Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir.

1 2002); Magallanes, 881 F.2d at 751; Winans v. Bowen, 853 F.2d 643, 647 (9th  
2 Cir. 1987).

3         However, the Ninth Circuit also has held that “[t]he ALJ need not accept the  
4 opinion of any physician, including a treating physician, if that opinion is brief,  
5 conclusory, and inadequately supported by clinical findings.” Thomas, 278 F.3d  
6 at 957; see also Matney ex rel. Matney v. Sullivan, 981 F.2d 1016, 1019 (9th Cir.  
7 1992). A treating or examining physician’s opinion based on the plaintiff’s own  
8 complaints may be disregarded if the plaintiff’s complaints have been properly  
9 discounted. Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 595, 602 (9th Cir.  
10 1999); see also Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997); Andrews  
11 v. Shalala, 53 F.3d 1035, 1043 (9th Cir. 1995). Additionally, “[w]here the opinion  
12 of the claimant’s treating physician is contradicted, and the opinion of a  
13 nontreating source is based on independent clinical findings that differ from those  
14 of the treating physician, the opinion of the nontreating source may itself be  
15 substantial evidence; it is then solely the province of the ALJ to resolve the  
16 conflict.” Andrews, 53 F.3d at 1041; Magallanes, 881 F.2d at 751; Miller v.  
17 Heckler, 770 F.2d 845, 849 (9th Cir. 1985).

18         **1. Dr. King’s Opinion Was Inconsistent with the Record as a Whole**  
19         **and Supported by Substantial Evidence.**

20         In his decision, the ALJ set forth a detailed summary of Plaintiff’s mental  
21 health evidence, including the consultative examination report conducted by  
22 psychiatrist Jobst Singer, M.D., who performed an examination in September  
23 2008. (AR at 17.) Dr. Singer diagnosed Plaintiff with a mood disorder, not  
24 otherwise specified, and opined that Plaintiff’s mood disorder would likely  
25 improve with regularly scheduled activity, such as employment. (Id. (citation  
26 omitted).) Dr. Singer found Plaintiff “normally groomed,” cooperative, with  
27 stable affect and clear thought processes, oriented, memory and concentration  
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1 intact, and with fair judgment. (Id. (citation omitted).) In his report, Dr. Singer  
2 noted Plaintiff's reports of visual and auditory hallucinations, frequent mood  
3 swings, and psychiatric hospitalization ten years prior. (Id. at 629-31.) Dr. Singer  
4 noted that Plaintiff appeared low in mood and concluded that he would be  
5 unimpaired in simple tasks, mildly impaired in complex tasks, and that there was  
6 "no psychiatric basis . . . that would prevent [Plaintiff] from completing a full day  
7 of work." (Id. at 631.)

8         The ALJ also noted that the many emergency room documents made "little  
9 or no mention of psychiatric signs or symptoms," and gave "no indication" that  
10 Plaintiff suffered from the extreme mental limitations suggested by Dr. King. (Id.  
11 at 17.) The ALJ also reviewed the October 2010 report of psychiatric consultant  
12 R.E. Brooks, M.D., who found that Plaintiff did not have a severe mental  
13 impairment, had no restrictions of activities of daily living, no difficulties in  
14 maintaining social functioning, and no difficulties in maintaining concentration,  
15 persistence, and pace. (Id.) Dr. Brooks also noted no episodes of decompensation  
16 of extended duration. (Id.)

17         The ALJ discussed Plaintiff's history of alcohol abuse but also found that  
18 there was "no indication that [Plaintiff's] alcohol abuse precludes him from  
19 working for an eight-hour day, or a five-day workweek. (Id. at 18.) The ALJ  
20 noted that Plaintiff had given "shifting stories" regarding his alcohol use  
21 problems, telling Dr. Singer he had no problems, testifying at the hearing that he  
22 drinks only a few times a week, but that the medical evidence "indicates  
23 significant alcohol use." (Id. (citations omitted).)

24         Although the ALJ gave little weight to Dr. King's assessment, based in part  
25 on the opinions of Dr. Singer and Dr. Brooks, as well as the emergency  
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1 department records, and Plaintiff's lack of credibility,<sup>4</sup> he also gave Plaintiff the  
2 benefit of the doubt when he limited him to simple repetitive tasks, low stress  
3 work, and precluded him from working with the general public. The Court finds  
4 the ALJ's discussion to be sufficiently clear that he was giving Dr. King's  
5 assessment little to no weight, and, therefore, was rejecting the extreme limitations  
6 posited by Dr. King. The Court further finds the ALJ's reasons for rejecting Dr.  
7 King's opinions to be specific and legitimate reasons, supported by substantial  
8 evidence. Thus, there was no error.

9 **2. Lack of Specificity.**

10 Plaintiff contends the ALJ failed to describe Dr. King's assessment with  
11 "any specificity." (JS at 5.) The Court is unclear as to the meaning of this  
12 contention. If Plaintiff is contending that the ALJ did not go through each and  
13 every one of Dr. King's findings, the ALJ was not required to do so, as an ALJ is  
14 not required to address every piece of information in the record. See Howard ex  
15 rel. Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003 (expressing that an ALJ  
16 need not discuss "evidence that is neither significant nor probative. . ."). Thus, the  
17 Court finds no error.

18 **3. Develop the Record.**

19 Plaintiff contends the ALJ failed to properly develop the record and should  
20 have subpoenaed Dr. King's treatment notes as these were vital to a determination  
21 of whether his assessment of Plaintiff was supported by those notes. (JS at 7.)

22 Under the Commissioner's regulations, both the disability benefits claimant  
23 and the Social Security Administration bear a regulatory responsibility for  
24 developing the evidentiary record. In fact, the claimant must produce medical  
25 evidence showing that the claimant has an impairment and how severe that  
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28 <sup>4</sup> Plaintiff does not dispute the ALJ's credibility determination.

1 impairment is during the time the claimant claims to be disabled. See 20 C.F.R.  
2 §§ 404.1512(c) (applicable to claims for disability benefits), 416.912(c)  
3 (applicable to claims for SSI benefits). Before deciding that a claimant is not  
4 disabled, the Administration must develop a claimant’s complete medical history  
5 for at least the twelve months preceding the month in which the claimant files his  
6 application. The SSA must make every reasonable effort to help the claimant get  
7 medical reports from the claimant’s medical sources when the claimant gives  
8 permission to request the reports. See 20 C.F.R. §§ 404.1512(d), 416.912(d).

9         The ALJ has an independent duty to fully and fairly develop a record in  
10 order to make a fair determination as to disability, even where the claimant is  
11 represented by counsel. See Celaya v. Halter, 332 F.3d 1177, 1183 (9th Cir.  
12 2003); see also Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir. 2001) (citing  
13 Smolen, 80 F.3d at 1288); Crane v. Shalala, 76 F.3d 251, 255 (9th Cir. 1996)  
14 (citing Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983)). Ambiguous  
15 evidence, or the ALJ’s own finding that the record is inadequate to allow for  
16 proper evaluation of the evidence, triggers the ALJ’s duty to “conduct an  
17 appropriate inquiry.” See Tonapetyan, 242 F.3d at 1150 (citing Smolen, 80 F.3d  
18 at 1288). That duty is heightened when the claimant is unrepresented or is  
19 mentally ill and thus unable to protect his or her own interests. Celaya, 332 F.3d  
20 at 1183; see also Tonapetyan, 242 F.3d at 1150; Crane, 76 F.3d at 255. However,  
21 it is the plaintiff’s burden to prove disability. Bayliss v. Barnhart, 427, F.3d 1211,  
22 1217 (9th Cir. 2005) (quoting Meanel v. Apfel, 172 F.3d 1111, 1113 (9th Cir.  
23 1999) (“The claimant bears the burden of proving that she is disabled”)).

24         When the duty to develop the record is triggered, the ALJ can develop the  
25 record by (1) making a reasonable attempt to obtain medical evidence from the  
26 claimant’s treating sources; (2) ordering a consultative examination when the  
27 medical evidence is incomplete or unclear and undermines the ability to resolve  
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1 the disability issue; (3) subpoenaing or submitting questions to the claimant's  
2 physicians; (4) continuing the hearing; or (5) keeping the record open for more  
3 supplementation. Tonapetyan, 242 F.3d at 1150; 20 C.F.R. § 416.917. As  
4 previously discussed, the evidence relied on by the ALJ was not so ambiguous as  
5 to trigger the ALJ's duty to supplement the record, but even if were, by agreeing to  
6 receive additional evidence from Plaintiff's counsel after the hearing, the ALJ  
7 satisfied any duty to develop the record. Id.

8 Here, the record reflects that Plaintiff was advised prior to the date of the  
9 administrative hearing that if there was more evidence he wanted the ALJ to see,  
10 he should submit it as soon as possible. (AR at 85.) Plaintiff also was advised to  
11 contact the Administration if he needed help securing medical evidence, including  
12 the issuance of a subpoena. (Id.) Consequently, the Court has no basis for finding  
13 or concluding that the Administration failed to fulfill its affirmative obligation  
14 under 20 C.F.R. §§ 404.1512(d) and 416.912(d) to assist Plaintiff in securing  
15 medical evidence from his treating sources prior to the hearing.

16 Moreover, as previously discussed, the ALJ properly relied on multiple  
17 reasons for rejecting Dr. King's opinions. Accordingly, the duty to develop the  
18 record was not triggered by any ambiguities or other issues. In fact, at the  
19 beginning of the hearing, Plaintiff's counsel stated there was no other written  
20 evidence for the ALJ's consideration. (Id. at 28.) The record also reflects that at  
21 the conclusion of the hearing, Plaintiff's counsel stated the following:

22 The claimant has testified to receiving treatment from Dr. King,  
23 who executed an RFC, mental RFC on his behalf and he's testified that  
24 he's at least seen Dr. King, you know, three or four times since the filing  
25 of this claim[.]. Could we have an additional two weeks to get these  
26 records . . . from Central Mental?  
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28 (Id. at 53.) The ALJ agreed to keep the record open for an additional fifteen days

1 so that Plaintiff could obtain records from Dr. King or the Mental Health Clinic as  
2 well as from Plaintiff's treating cardiologist. (Id.) The ALJ noted that if the  
3 evidence was not received within that time frame, without a showing of good  
4 cause to extend the time, the decision would issue without the additional evidence.  
5 (Id. at 53-54.)

6 Plaintiff admits he provided no additional records from Dr. King. (JS at  
7 14.) He argues, however, that because he failed to provide additional records, the  
8 ALJ had a duty to attempt to obtain them himself. (Id.) The Court notes that at  
9 the hearing, Plaintiff's counsel had explicitly asked that the record be held open so  
10 that Plaintiff could provide the records and did not notify the ALJ either then or  
11 later that there was any problem obtaining the records, or that a subpoena was  
12 needed. In fact, the ALJ held the record open for almost three months after the  
13 hearing date and during that time, Plaintiff submitted voluminous records  
14 regarding his cardiac treatments. (AR at 664-1164.) The ALJ's actions were  
15 sufficient to satisfy his duty to develop the record with respect to Plaintiff's mental  
16 health condition. Tidwell v. Apfel, 161 F.3d 599, 602 (9th Cir. 1998) (ALJ  
17 satisfied his duty to develop the record by holding the record open so that the  
18 claimant could supplement the evidence); see also Petrosyan v. Massanari, 13 F.  
19 App'x 653, 644 (9th Cir. 2001 (same)).

20 Moreover, after the decision was denied, Plaintiff was informed that he  
21 could appeal the decision and send a written statement about the case "and any  
22 new evidence" with his appeal. (AR at 9.) Plaintiff did not send any additional  
23 records from Dr. King to support his appeal.

24 Based on the foregoing, the Court finds that there was no error by the ALJ  
25 in developing the record.  
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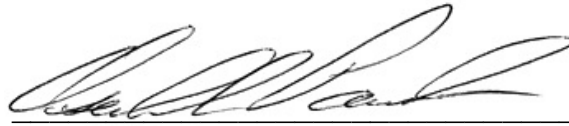
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1 IV.

2 ORDER

3 Based on the foregoing, IT THEREFORE IS ORDERED that Judgment be  
4 entered affirming the decision of the Commissioner, and dismissing this action  
5 with prejudice.

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7 Dated: October 16, 2012



8 HONORABLE OSWALD PARADA  
9 United States Magistrate Judge

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