

1 pleadings (Plaintiff’s Complaint; Defendant’s Answer; Memorandum in Support of
2 Plaintiff’s Complaint; Defendant’s Brief; Reply Memorandum in Support of
3 Plaintiff’s Complaint) and the certified transcript of record. After reviewing the
4 matter, the Court concludes that the decision of the Commissioner should be
5 affirmed.

6 On May 1, 2008, plaintiff David Cabrera filed a timely application for a
7 period of Disability Insurance Benefits, alleging an inability to work since June 22,
8 2007 due to schizophrenia, hearing loss and obesity. (Administrative Record
9 (“AR”) 54-62, 114-122). On October 5, 2009 an Administrative Law Judge
10 (“ALJ”) determined that plaintiff had severe impairments of schizophrenia, hearing
11 loss and obesity but was not disabled within the meaning of the Social Security Act.
12 (AR 5-18).

13 Following the Appeals Council’s denial of plaintiff’s request for a review of
14 the hearing decision (AR 1-4), plaintiff filed an action in this Court.

15 Plaintiff challenges one aspect of the ALJ’s Decision denying benefits.
16 Plaintiff alleges that the ALJ failed to properly determine plaintiff’s residual
17 functional capacity by declining to limit plaintiff to non-stressful jobs.

18 For the reasons discussed below, the Court finds that plaintiff’s claim of error
19 does not have merit.

20 Plaintiff asserts the ALJ failed to properly determine plaintiff’s residual
21 functional capacity (“RFC”). Specifically, plaintiff claims the ALJ should have
22 limited plaintiff’s RFC to non-stressful jobs based on plaintiff’s own testimony (see
23 AR 44-45 [plaintiff testified that the stress of being back at work would cause his
24 hallucinations to return]). Defendant replies that the ALJ properly assessed
25 plaintiff’s RFC.

26 The ALJ found that plaintiff had an RFC to perform less than a full range of
27 light work. (AR 11). The RFC finding precluded plaintiff “from work requiring
28 hypervigilance [sic], work with deadlines, and fast-paced work like rapid assembly

1 lines.” (AR 11-12). However, the RFC did not otherwise limit plaintiff to non-
2 stressful jobs.

3 Here, the ALJ properly based the RFC finding on the testimony of Dr. Kania,
4 a psychologist. (AR 15-16). See Saelee v. Chater, 94 F.3d 520, 522 (9th Cir. 1996)
5 (holding that the findings of a non-treating, non-examining physician are substantial
6 medical evidence when supported in the record). Dr. Kania reviewed the medical
7 records, questioned plaintiff and heard his testimony. Dr. Kania testified that
8 plaintiff should work in a non-public environment, have limited contact with
9 supervisors and should not work in dangerous situations requiring hyper-vigilance.
10 (AR 30). But Dr. Kania noted that the record showed medication had controlled
11 hallucination symptoms and they had not returned since June 2007. Thus, Dr. Kania
12 maintained that limiting plaintiff to jobs without time pressure would suffice to
13 avoid the recurrence of stress and accompanying problematic symptoms. (See AR
14 30-33).

15 Moreover, the ALJ noted there were no medical records supporting an
16 additional functional limitation sought by plaintiff. (AR 16). See Matthews v.
17 Shalala, 10 F.3d 678, 680-81 (9th Cir. 1993) (finding substantial evidence supported
18 the ALJ’s RFC determination where no doctor who examined claimant supported
19 a finding of disability). Despite treatment records showing plaintiff is stable and
20 experiencing no hallucinations, plaintiff feared those symptoms could return if he
21 was exposed to stressful situations, like work with deadlines at his last job. (AR 16
22 [citing AR 44-45]). Though the ALJ does not fully credit this testimony, the RFC
23 accommodates it by precluding work at plaintiff’s former job and similar jobs with
24 deadlines.

25 Contrary to plaintiff’s assertion, (see Plaintiff’s Brief at 3) the ALJ made a
26 proper credibility assessment of plaintiff. The ALJ explicitly found “claimant’s
27 statements . . . concerning the intensity, persistence, and limiting effects of these
28 symptoms are not credible to the extent those statements are inconsistent with the

1 above residual functional capacity assessment.” (AR 14). In making his credibility
2 determination, the ALJ properly concluded that plaintiff was not fully credible
3 based on inconsistencies and attempts to exaggerate the severity of his symptoms
4 in his testimony. (See AR 13-14 [citing AR 232-51 and 255-62 (where plaintiff
5 denied experiencing hallucinations even without medication since 2008, despite
6 present claims to the contrary)]); see Thomas v. Barnhart, 278 F.3d 947, 958 (9th
7 Cir. 2002) (finding that inconsistencies in the plaintiff’s testimony concerning the
8 nature, severity, and effect of the symptoms of which the plaintiff complains are
9 factors for weighing plaintiff’s credibility).

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11 ORDER

12 For the foregoing reasons, the decision of the Commissioner is affirmed and
13 the Complaint is dismissed.

14 DATED: August 11, 2011

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19 STEPHEN J. HILLMAN
20 UNITED STATES MAGISTRATE JUDGE
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