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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Karim Al-Abbaddy,

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CIV 13-1489-PHX-MHB

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Plaintiff,

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**ORDER**

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vs.

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Carolyn W. Colvin, Commissioner of the  
Social Security Administration,

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Defendant.

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Pending before the Court is Plaintiff Karim Al-Abbaddy’s appeal from the Social Security Administration’s final decision to deny his claim for disability insurance benefits and supplemental security income. After reviewing the administrative record and the arguments of the parties, the Court now issues the following ruling.

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**I. PROCEDURAL HISTORY**

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On April 30, 2010, Plaintiff filed applications for disability insurance benefits and supplemental security income alleging disability beginning January 1, 2010. (Transcript of Administrative Record (“Tr.”) at 11, 156-62, 163-70.) His applications were denied initially and on reconsideration. (Tr. at 98-104, 106-111.) Thereafter, Plaintiff requested a hearing before an administrative law judge. (Tr. at 113-14.) A hearing was held on November 7, 2011, (Tr. at 25-61), and the ALJ issued a decision finding that Plaintiff was not disabled (Tr. at 8-23). The Appeals Council denied Plaintiff’s request for review (Tr. at 1-6), making the ALJ’s decision the final decision of the Commissioner. Plaintiff then sought judicial review of the ALJ’s decision pursuant to 42 U.S.C. § 405(g).

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1 **II. STANDARD OF REVIEW**

2 The Court must affirm the ALJ’s findings if the findings are supported by substantial  
3 evidence and are free from reversible legal error. See Reddick v. Chater, 157 F.3d 715, 720  
4 (9<sup>th</sup> Cir. 1998); Marcia v. Sullivan, 900 F.2d 172, 174 (9<sup>th</sup> Cir. 1990). Substantial evidence  
5 means “more than a mere scintilla” and “such relevant evidence as a reasonable mind might  
6 accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389, 401  
7 (1971); see Reddick, 157 F.3d at 720.

8 In determining whether substantial evidence supports a decision, the Court considers  
9 the administrative record as a whole, weighing both the evidence that supports and the  
10 evidence that detracts from the ALJ’s conclusion. See Reddick, 157 F.3d at 720. “The ALJ  
11 is responsible for determining credibility, resolving conflicts in medical testimony, and for  
12 resolving ambiguities.” Andrews v. Shalala, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir. 1995); see  
13 Magallanes v. Bowen, 881 F.2d 747, 750 (9<sup>th</sup> Cir. 1989). “If the evidence can reasonably  
14 support either affirming or reversing the [Commissioner’s] conclusion, the court may not  
15 substitute its judgment for that of the [Commissioner].” Reddick, 157 F.3d at 720-21.

16 **III. THE ALJ’S FINDINGS**

17 In order to be eligible for disability or social security benefits, a claimant must  
18 demonstrate an “inability to engage in any substantial gainful activity by reason of any  
19 medically determinable physical or mental impairment which can be expected to result in  
20 death or which has lasted or can be expected to last for a continuous period of not less than  
21 12 months.” 42 U.S.C. § 423(d)(1)(A). An ALJ determines a claimant’s eligibility for  
22 benefits by following a five-step sequential evaluation:

- 23 (1) determine whether the applicant is engaged in “substantial gainful activity”;
- 24 (2) determine whether the applicant has a medically severe impairment or  
25 combination of impairments;
- 26 (3) determine whether the applicant’s impairment equals one of a number of listed  
27 impairments that the Commissioner acknowledges as so severe as to preclude the  
28 applicant from engaging in substantial gainful activity;

1 (4) if the applicant's impairment does not equal one of the listed impairments,  
2 determine whether the applicant is capable of performing his or her past relevant  
work;

3 (5) if the applicant is not capable of performing his or her past relevant work,  
4 determine whether the applicant is able to perform other work in the national  
economy in view of his age, education, and work experience.

5 See Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987) (citing 20 C.F.R. §§ 404.1520,  
6 416.920). At the fifth stage, the burden of proof shifts to the Commissioner to show that the  
7 claimant can perform other substantial gainful work. See Penny v. Sullivan, 2 F.3d 953, 956  
8 (9<sup>th</sup> Cir. 1993).

9 At step one, the ALJ determined that Plaintiff had not engaged in substantial gainful  
10 activity since January 1, 2010 – the alleged onset date. (Tr. at 13.) At step two, he found  
11 that Plaintiff had the following severe impairments: tobacco abuse, posttraumatic stress  
12 disorder; depression; mild lumbar stenosis; cervicalgia; thoracic and lumbar pain. (Tr. at 13.)  
13 At step three, the ALJ stated that Plaintiff did not have an impairment or combination of  
14 impairments that met or medically equaled an impairment listed in 20 C.F.R. Part 404,  
15 Subpart P, Appendix 1 of the Commissioner's regulations. (Tr. at 13-15.) After  
16 consideration of the entire record, the ALJ found that Plaintiff retained "the residual  
17 functional capacity to perform medium work as defined in 20 CFR 404.1567(c) and  
18 416.967(c) with the following exceptions: capable of simple, unskilled work with occasional  
19 decision making, occasional changes in the work setting, and occasional interaction with the  
20 public and coworkers."<sup>1</sup> (Tr. at 15-18.) The ALJ stated that Plaintiff is capable of  
21 performing past relevant work as an auto washer and found that this work does not require  
22 the performance of work-related activities precluded by the claimant's residual functional  
23 capacity. (Tr. at 18-19.)

24 Therefore, the ALJ concluded that Plaintiff has not been under a disability from  
25 January 1, 2010, through the date of his decision. (Tr. at 19.)

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27 <sup>1</sup> "Residual functional capacity" is defined as the most a claimant can do after  
28 considering the effects of physical and/or mental limitations that affect the ability to perform  
work-related tasks.

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2 **IV. DISCUSSION**

3 In his brief, Plaintiff contends that the ALJ erred by: (1) failing to properly weigh  
4 medical source opinion evidence; and (2) failing to fully develop the record. Plaintiff  
5 requests that the Court remand for determination of benefits.

6 **A. Medical Source Opinion Evidence**

7 Plaintiff contends that the ALJ erred by failing to properly weigh medical source  
8 opinion evidence. Specifically, Plaintiff argues that the ALJ did not appropriately weigh the  
9 opinions of physicians from the Jewish Family and Children’s Services (JFCS), Dr. Inayat  
10 Alikhan, Dr. T.A. Tahir, and Dr. Dale Ratcliffe.

11 “The ALJ is responsible for resolving conflicts in the medical record.” Carmickle v.  
12 Comm’r, Soc. Sec. Admin., 533 F.3d at 1164. Such conflicts may arise between a treating  
13 physician’s medical opinion and other evidence in the claimant’s record. In weighing  
14 medical source opinions in Social Security cases, the Ninth Circuit distinguishes among three  
15 types of physicians: (1) treating physicians, who actually treat the claimant; (2) examining  
16 physicians, who examine but do not treat the claimant; and (3) non-examining physicians,  
17 who neither treat nor examine the claimant. See Lester v. Chater, 81 F.3d 821, 830 (9<sup>th</sup> Cir.  
18 1995). Generally, more weight is given to a treating physician’s opinion. See id. The ALJ  
19 must provide clear and convincing reasons supported by substantial evidence for rejecting  
20 a treating or an examining physician’s uncontradicted opinion. See id.; Reddick, 157 F.3d  
21 at 725. An ALJ may reject the controverted opinion of a treating or an examining physician  
22 by providing specific and legitimate reasons that are supported by substantial evidence in the  
23 record. See Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9<sup>th</sup> Cir. 2005); Reddick, 157 F.3d at  
24 725.

25 Opinions from non-examining medical sources are entitled to less weight than treating  
26 or examining physicians. See Lester, 81 F.3d at 831. Although an ALJ generally gives more  
27 weight to an examining physician’s opinion than to a non-examining physician’s opinion,  
28 a non-examining physician’s opinion may nonetheless constitute substantial evidence if it

1 is consistent with other independent evidence in the record. See Thomas v. Barnhart, 278  
2 F.3d 947, 957 (9<sup>th</sup> Cir. 2002). When evaluating medical opinion evidence, the ALJ may  
3 consider “the amount of relevant evidence that supports the opinion and the quality of the  
4 explanation provided; the consistency of the medical opinion with the record as a whole;  
5 [and] the specialty of the physician providing the opinion ... .” Orn v. Astrue, 495 F.3d 625,  
6 631 (9<sup>th</sup> Cir. 2007).

7 Since both examining and reviewing physicians, as well as, other objective medical  
8 evidence in the record contradicted the physicians which Plaintiff relies upon in his brief, the  
9 specific and legitimate standard applies.

10 Historically, the courts have recognized the following as specific, legitimate reasons  
11 for disregarding a treating or examining physician’s opinion: conflicting medical evidence;  
12 the absence of regular medical treatment during the alleged period of disability; the lack of  
13 medical support for doctors’ reports based substantially on a claimant’s subjective complaints  
14 of pain; and medical opinions that are brief, conclusory, and inadequately supported by  
15 medical evidence. See, e.g., Bayliss v. Barnhart, 427 F.3d at 1216; Flaten v. Secretary of  
16 Health and Human Servs., 44 F.3d 1453, 1463-64 (9<sup>th</sup> Cir. 1995); Fair v. Bowen, 885 F.2d  
17 597, 604 (9<sup>th</sup> Cir. 1989).

18 The ALJ considered the following medical evidence as set forth in the administrative  
19 record and in his decision to deny Plaintiff’s claim for disability insurance benefits and  
20 supplemental security income.

21 Plaintiff was treated at Desert Pain & Rehab Specialists (DPRS) in January 2010 for  
22 lower back pain. His spinal range of motion was slightly limited, but his physical  
23 examination was otherwise unremarkable. At a subsequent appointment in February,  
24 Plaintiff had pain in his mid- and lower back, lower back spasms, and positive straight leg  
25 raise tests (a test for radicular pain) bilaterally, but a normal gait and normal motor function  
26 in his extremities. Plaintiff returned the next week, requesting hydrocodone for pain relief  
27 and stating that he was planning a trip to Iraq in the near future. (Tr. at 266-322.)  
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1 Plaintiff returned to DPRS again in April 2010; he indicated that he had been in Iraq  
2 for the past two months. An MRI of Plaintiff's lumbar spine in May 2010 revealed  
3 "[b]orderline mild narrowing" of the spinal canal at two levels in the lower back and a "mild"  
4 disc bulge at one level. An MRI of his mid-back revealed only "[m]ild degenerative  
5 changes" at a few levels but was otherwise normal. Plaintiff cancelled an appointment at  
6 DPRS in May 2010 and was a "no show" at his next two appointments in June 2010. (Tr.  
7 at 266-322.)

8 In July 2010, Keith Cunningham, M.D., conducted a consultative examination of  
9 Plaintiff in connection with his disability claims. (Tr. at 256-262.) Plaintiff complained of  
10 vague, diffuse body pain since 2001, and stated that he had constant pain such that he could  
11 barely move or walk. Dr. Cunningham noted that Plaintiff was "a very limited historian and  
12 gave a very poor effort." Plaintiff reported smoking three-quarters of a pack of cigarettes  
13 daily. On physical examination, Dr. Cunningham observed that Plaintiff "had very poor  
14 effort ... He will not participate in the exam whatsoever ... When I touch him anywhere, he  
15 has pain, which is completely exaggerated." Dr. Cunningham found that Plaintiff had "good  
16 muscle tone and development throughout" and that his back was "symmetric" and  
17 "well-developed." However, Plaintiff refused to participate in coordination or further testing.  
18 Dr. Cunningham assessed Plaintiff with chronic pain syndrome with high pain behavior,  
19 consistent with malingering, and noted that Plaintiff's subjective complaints outweighed the  
20 objective findings. He concluded that Plaintiff's condition would not impose any limitations  
21 for 12 continuous months. (Tr. at 256-262.)

22 Plaintiff was evaluated again by DPRS in July 2010. Treatment notes indicated that  
23 he was in "no apparent distress," had back spasms and limited spinal range of motion, but  
24 a normal gait and station and full functional range of motion in his extremities. In August  
25 2010, Plaintiff was seen at DPRS reporting "very severe pain." Upon examination, Plaintiff  
26 exhibited "very poor lower extremity range of motion," but the treating provider felt that he  
27 was "pulling back." Although Plaintiff exhibited a "slow gait with a very antalgic station"  
28 in front of the treating provider, after the examination, Plaintiff was observed by the treating

1 provider leaving the building on a video camera; she noted that he was “walking down the  
2 hallway following [a] medical assistant ... who was moving at a pretty good pace. [Plaintiff]  
3 had no difficulty keeping up with him ... [Plaintiff] appears to have no problems with  
4 ambulation, except when he is in front of a provider.” (Tr. at 266-322.)

5 Plaintiff began psychiatric treatment for depression with Inayat Alikhan, M.D., in  
6 September 2010. (Tr. at 323-31.) At his second visit, Plaintiff had started taking an  
7 anti-depressant (Cymbalta), which he was tolerating well, and his sleep and appetite had  
8 improved. At the end of September 2010, Dr. Alikhan opined that Plaintiff was “suffering  
9 from severe depression, recurrent type” and would not be able to “engage in gainful  
10 employment for [the] next 12 months.” (Tr. at 323-31.)

11 In October 2010, Plaintiff began treatment at Total Medical Care reporting a cough,  
12 unexplained weight loss, and low back pain. (Tr. at 340-74.) The treating provider noted  
13 that Plaintiff was “negative for anxiety, depression, and sleep disturbances.” Upon  
14 examination, Plaintiff was “well developed and nourished,” in “no apparent distress,” and  
15 had normal range of motion, strength, and tone; normal reflexes; normal motor and sensory  
16 function; and normal gait and coordination. He was advised to discontinue smoking. (Tr.  
17 at 340-74.)

18 Plaintiff returned to Total Medical Care in January 2011. Plaintiff reported lower  
19 back pain and a “mild degree” of depression to the treatment provider. He had some spinal  
20 pain with range of motion, but his physical examination was otherwise normal. (Tr. at 340-  
21 74.) That same month, Plaintiff told Dr. Alikhan that he was depressed and unable to focus,  
22 but was “doing some house work to keep himself occupied.” (Tr. at 335-38.) Dr. Alikhan  
23 prescribed another anti-depressant (Prozac) and recommended that Plaintiff “continue  
24 working.” Later in January 2011, Dr. Alikhan completed a questionnaire for Plaintiff,  
25 opining that he had “moderate” to “extreme” mental limitations. (Tr. at 335-38.)

26 In March 2011, Dr. T.A. Tahir wrote a letter for Plaintiff stating that he had seen  
27 Plaintiff in his “private clinic six months ago” (treatment notes do not appear in the record)  
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1 with symptoms of depression, lack of concentration, poor appetite, suicidal thoughts, and  
2 sleep disturbances. (Tr. at 339.)

3 In April and May 2011, Plaintiff was treated again at Total Medical Care. The  
4 treating provider indicated that Plaintiff had normal range of motion, strength, and tone in  
5 his muscles, and his reflexes, coordination, and gait were all intact. (Tr. at 340-74.)

6 Plaintiff also returned to DPRS in April 2011; he reported that his pain level was  
7 about a five out of a possible 10. He reported “moderate improvement” due to pain  
8 medication and denied any side effects. His gait was slow and antalgic and he had tenderness  
9 in his mid to upper back, but his straight leg raise tests were negative (i.e., normal) bilaterally  
10 and he had full (5/5) strength in all of his extremities. (Tr. at 382-88.)

11 Plaintiff was seen by Michael Fermo, M.D., at Jewish Family and Children’s Services  
12 (JFCS) in May 2011. (Tr. at 375-81.) Dr. Fermo assessed Plaintiff with depression and  
13 post-traumatic stress disorder (PTSD), assigned a Global Assessment of Functioning (GAF)  
14 score of 60, and increased his anti-depressant medications. (Tr. at 375-81.)<sup>2</sup>

15 In June 2011, Plaintiff reported lower back pain to the treating provider at Total  
16 Medical Care. (Tr. at 340-74.) He stated that his back pain was constant and moderate in  
17 intensity, but he had normal range of motion, strength, and tone in his muscles. (Tr. at 340-  
18 74.)

19 Plaintiff was seen at DPRS in July and August 2011 for mid- and lower back  
20 (thoracolumbar) pain. (Tr. at 382-88.) He rated his pain at a five out of 10 and had  
21 tenderness to palpation in his mid- to upper back, but full (5/5) strength in his extremities.  
22 (Tr. at 382-88.)

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26 <sup>2</sup> The GAF (Global Assessment of Functioning) is essentially a snapshot of an  
27 individual’s functioning at a specific point in time. A GAF score in the range of 51-60  
28 indicates “moderate difficulty in social, occupational, or school functioning.” Am.  
Psychiatric Ass’n, Diagnostic & Statistical Manual of Mental Disorders 32 (4<sup>th</sup> ed. text  
revision 2000) (“DSM-IV-TR”).

1 Plaintiff was also treated at JFCS in August 2011; he reported depression and  
2 nightmares and was noted to have limited memory, insight, and concentration, but was  
3 assigned a GAF score of 60, indicating only moderate limitations. (Tr. at 375-81.)

4 In October 2011, Dr. Ratcliffe completed a Medical Assessment at Plaintiff's request.  
5 (Tr. at 392-94.) He opined that Plaintiff could sit for less than one hour at a time and up to  
6 two hours in an eight-hour day; stand/walk for less than one hour at a time and stand/walk  
7 for a total of one hour in an eight-hour day; occasionally lift up to 10 pounds; and  
8 occasionally carry up to five pounds. (Tr. at 392-94.)

9 During the administrative proceedings, State agency physician Ernest Griffith, M.D.,  
10 reviewed the record and determined that Plaintiff's failure to cooperate at the consultative  
11 examination resulted in insufficient evidence to make a determination. (Tr. at 64-68.)  
12 Mikhail Bargan, M.D., later reviewed the record and opined that Plaintiff's physical  
13 impairments were not severe. (Tr. at 80-85.) State agency psychologist Larry Waldman,  
14 Ph.D., reviewed the record and determined that there was insufficient evidence to establish  
15 a mental medically determinable impairment. (Tr. at 86.)

16 In his evaluation of the objective medical evidence, the ALJ first addressed Dr.  
17 Cunningham's opinion stating, "Dr. Cunningham diagnosed chronic pain syndrome with  
18 high pain behavior, consistent with malingering and noted the subjective complaints  
19 outweighed objective findings. He opined the claimant's condition would impose no  
20 limitations. This opinion is given great weight because it is consistent with the totality of  
21 evidence. However, I have limited the claimant to according to the residual functional  
22 capacity above in order to give him the greatest benefit of the doubt." (Tr. at 17, 256-62.)

23 Next, the ALJ discussed the assessments of the State agency experts affording them  
24 "great weight." The ALJ found that Drs. Griffith and Waldman opined that there was  
25 insufficient evidence of disability to make a determination and Dr. Bargan found that  
26 Plaintiff's impairments were nonsevere. The ALJ, however, limited Plaintiff as set forth in  
27 his RFC assessment in order to give Plaintiff the greatest benefit of the doubt. (Tr. at 17, 64-  
28 70, 80-88.)

1           Then, the ALJ discussed Dr. Alikhan’s opinion giving “no weight” as “[t]he physician  
2 provides scant analysis to support this level of limitation and there are no treatment notes that  
3 support the claimant has marked limitations for simple tasks or decisions.” The ALJ  
4 continued stating that Dr. Alikhan’s treatment notes actually recommend that Plaintiff  
5 continue working, indicate no substance abuse, and as of January 7, 2011, no problems.  
6 Lastly, the ALJ noted that the treating relationship appears to have been minimal. (Tr. at 17,  
7 335-38, 323-31.)

8           The ALJ continued his discussion of the objective medical evidence by addressing the  
9 opinions and treatment notes from the JFCS. The ALJ gave “little weight” to the treating  
10 physician’s opinion given in August 2011, which assigned Plaintiff a GAF of 60, for lack of  
11 analysis and support. The ALJ found that the GAF of 60 in August 2011 and 55 in  
12 September 2010 were both inconsistent with Plaintiff’s treatment notes during those time  
13 periods. The ALJ also found that the treating physician in August 2011 saw Plaintiff once  
14 for approximately 60 minutes with a relatively normal mental status examination, and noted  
15 that treatment records from this same period of time demonstrated that Plaintiff was only  
16 mildly depressed and psychologically normal. (Tr. at 17, 375-81, 340-74, 382-88.)

17           Lastly, the ALJ discussed the findings of Dr. Radcliffe giving “little weight” to his  
18 October 2011 medical source statement. First, the ALJ found that Dr. Radcliffe’s assessment  
19 was purely subjective in nature as he merely asked Plaintiff questions on the questionnaire  
20 and recorded his answers. The ALJ stated that there is no indication that a physical  
21 examination was given. Second, the ALJ found that the limitations opined by Dr. Radcliffe  
22 were inconsistent with the objective evidence in the record which demonstrated that Plaintiff  
23 has only mild changes in the back and physical examinations have resulted in disparate  
24 findings. Third, the ALJ found that Plaintiff’s alleged pain and symptoms have been  
25 alleviated with treatment and medication, and Plaintiff has been told that he should get  
26 regular exercise. (Tr. at 18, 392-94, 266-322, 340-74, 382-88.)

27           The Court finds that the ALJ properly weighed the medical source opinion evidence,  
28 and gave specific and legitimate reasons, based on substantial evidence in the record, for

1 discounting the physicians and evidence which Plaintiff relies upon in his brief. The ALJ  
2 discredited the various physicians' assessments due to inconsistencies with Plaintiff's  
3 treatment record and the medical evidence as a whole. The ALJ also found that the opinions  
4 were vague, conclusory, lacked supporting clinical findings, and were based on Plaintiff's  
5 own subjective complaints. See, e.g., Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9<sup>th</sup> Cir.  
6 2008) (finding the incongruity between doctor's questionnaire responses and her medical  
7 records provides a specific and legitimate reason for rejecting the opinion); Connett v.  
8 Barnhart, 340 F.3d 871, 875 (9<sup>th</sup> Cir. 2003) ("We hold that the ALJ properly found that [the  
9 physician's] extensive conclusions regarding [the claimant's] limitations are not supported  
10 by his own treatment notes. Nowhere do his notes indicate reasons why [the physician would  
11 limit the claimant to a particular level of exertion]."); Tonapetyan v. Halter, 242 F.3d 1144,  
12 1149 (9<sup>th</sup> Cir. 2001) (holding that the ALJ properly rejected a physician's testimony because  
13 "it was unsupported by rationale or treatment notes, and offered no objective medical  
14 findings to support the existence of [the claimant's] alleged conditions"); Morgan v. Comm'r  
15 Soc. Sec. Admin., 169 F.3d 595, 602 (9<sup>th</sup> Cir. 1999) (citing Fair, 885 F.2d at 605 (An ALJ  
16 may reject a treating physician's opinion if it is based "to a large extent" on a claimant's  
17 self-reports that have been properly discounted as incredible.)<sup>3</sup> Therefore, the Court finds  
18 no error.

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22 <sup>3</sup> In his brief, Plaintiff argues that the ALJ did not discuss Dr. Tahir's letter. As stated  
23 previously, in March 2011, Dr. Tahir wrote a two-sentence letter for Plaintiff stating that he  
24 had seen Plaintiff in his "private clinic six months ago" with symptoms of depression, lack  
25 of concentration, poor appetite, suicidal thoughts, and sleep disturbance. (Tr. at 339.) There  
26 are no treatment notes or other medical documentation supplied with Dr. Tahir's letter. And,  
27 Dr. Tahir failed to indicate that Plaintiff had any functional limitations or form any opinion  
28 as to Plaintiff's ability to work. Thus, the relevance of Dr. Tahir's letter to the ALJ's residual  
functional capacity assessment is unclear, and Plaintiff has failed to establish that Dr. Tahir's  
letter would have changed the outcome of his case. See Burch v. Barnhart, 400 F.3d 676,  
679 (9<sup>th</sup> Cir. 2005) ("A decision of the ALJ will not be reversed for errors that are harmless."  
(citation omitted)).

1 **B. Development of the Record**

2 Plaintiff argues that the ALJ did not “fairly and fully develop the record.”  
3 Specifically, Plaintiff contends that at the November 7, 2011 hearing, counsel advised the  
4 ALJ that there were additional medical records that needed to be submitted. As such, counsel  
5 asked to have the record left open for the submission of these documents. The ALJ granted  
6 the request and advised that the record would be left open for two weeks. Apparently, in  
7 need of more time to submit the additional material, a letter was sent to the ALJ requesting  
8 an extension of time. The record reflects that the ALJ did not receive or was not notified of  
9 Plaintiff’s request. The supplemental material was never submitted and the ALJ’s decision  
10 was issued on December 1, 2011.

11 The ALJ has a “duty to fully and fairly develop the record and to assure that the  
12 claimant’s interests are considered.” Tonapetyan v. Halter, 242 F.3d at 1150 (citing Smolen  
13 v. Chater, 80 F.3d 1273, 1288 (9<sup>th</sup> Cir. 1996)). The ALJ must be especially diligent when the  
14 claimant is not represented and “scrupulously and conscientiously probe into, inquire of, and  
15 explore all the relevant facts.” Id.; see Cox v. Califano, 587 F.2d 988, 991 (9<sup>th</sup> Cir. 1978).  
16 However, “an ALJ’s duty to develop the record further is triggered only when there is  
17 ambiguous evidence or when the record is inadequate for proper evaluation of evidence.”  
18 Mayes v. Massanari, 276 F.3d 453, 459-60 (9<sup>th</sup> Cir. 2001). Ultimately, it is the plaintiff’s  
19 burden to prove that he or she is disabled. See id. at 459 (citing 42 U.S.C. § 423(d)(5) (Supp.  
20 2011)).

21 The ALJ had a chronology of detailed medical records from Plaintiff’s treating  
22 physicians, as well as, the examining and non-examining physicians. Plaintiff provided  
23 ample documentation during the entire administrative process. There is no evidence of  
24 missing but relevant pieces of the puzzle, such as missing reports or ambiguous conclusions.  
25 Furthermore, the ALJ did not need to order additional testing or evaluation, as sufficient  
26 testing had already been performed. In addition, Plaintiff’s lack of cooperation was well  
27 documented. The amount of testing conducted was entirely consistent with the impairments  
28 about which Plaintiff complained. And, existing medical records were produced by

1 Plaintiff's treating providers. Since the record fails to demonstrate ambiguous evidence or  
2 an inadequate record to allow for proper evaluation of the evidence, the Court finds that the  
3 ALJ had no duty to further develop the record.

4 **V. CONCLUSION**

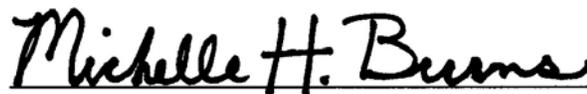
5 Substantial evidence supports the ALJ's decision to deny Plaintiff's claim for  
6 disability insurance benefits and supplemental security income in this case. Consequently,  
7 the ALJ's decision is affirmed.

8 Based upon the foregoing discussion,

9 **IT IS ORDERED** that the decision of the ALJ and the Commissioner of Social  
10 Security be affirmed;

11 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment  
12 accordingly. The judgment will serve as the mandate of this Court.

13 DATED this 22nd day of August, 2014.

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16 Michelle H. Burns  
17 United States Magistrate Judge  
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