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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

STEPHEN JARED WILLIAMS,
Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

Case No. CV 16-00031-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Stephen Jared Williams (“Plaintiff”) challenges the Commissioner’s¹ denial of his applications for supplemental security income (“SSI”) and disability insurance benefits (“DIB”).² For the reasons stated below, the decision of the Commissioner is REVERSED and the action is REMANDED for further proceedings consistent with this Order.

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill, the current Acting Commissioner of Social Security, is hereby substituted as the defendant herein.

² According to Plaintiff, he effectively withdrew his claim for DIB at the hearing when he amended his alleged disability onset date to April 22, 2014. (Joint Statement (“Joint Stmt.”) at 2; Administrative Record (“AR”) 33-34.)

1 **II. PROCEEDINGS BELOW**

2 On April 22, 2014, Plaintiff protectively applied for DIB and SSI alleging
3 disability beginning September 1, 2010. (AR 139-52.) His applications were denied
4 on June 25, 2014. (AR 68-87.) On July 30, 2014, Plaintiff filed a written request for
5 hearing, and a hearing was held on July 1, 2015. (AR 28-67, 94-95.) Represented
6 by counsel, Plaintiff appeared and testified, along with an impartial medical expert
7 and an impartial vocational expert. (AR 28-67.) At the hearing, Plaintiff amended
8 the alleged disability onset date to April 22, 2014. (AR 33-34.) On July 17, 2015,
9 the Administrative Law Judge (“ALJ”) found that Plaintiff had not been under a
10 disability, pursuant to the Social Security Act,³ since September 1, 2010.⁴ (AR 24.)
11 The ALJ’s decision became the Commissioner’s final decision when the Appeals
12 Council denied Plaintiff’s request for review. (AR 1-7.) Plaintiff filed this action on
13 January 4, 2016. (Dkt. No. 1.)

14 The ALJ followed a five-step sequential evaluation process to assess whether
15 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,
16 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged
17 in substantial gainful activity since the alleged onset date. (AR 16.) At **step two**, the
18 ALJ found that Plaintiff has a severe impairment, namely, depression/bipolar
19 disorder. (AR 17.) At **step three**, the ALJ found that Plaintiff “does not have an
20 impairment or combination of impairments that meets or medically equals the
21 severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix
22 1.” (AR 18.)

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25 ³ Persons are “disabled” for purposes of receiving Social Security benefits if they are
26 unable to engage in any substantial gainful activity owing to a physical or mental
27 impairment expected to result in death, or which has lasted or is expected to last for
a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

28 ⁴ The ALJ makes no reference to the amended alleged disability onset date in the
decision. (AR 14-24.)

1 Before proceeding to step four, the ALJ found that Plaintiff has the residual
2 functional capacity (“RFC”) to:

3 [P]erform a full range of work at all exertional levels but with the
4 following non-exertional limitations: perform no work tasks involving
5 contact with the public and no tasks requiring more than occasional
6 interactions with co-workers and/or supervisors.

6 (AR 19.)

7 At **step four**, the ALJ found that Plaintiff is unable to perform any past relevant
8 work. (AR 22-23.) At **step five**, based on Plaintiff’s age, education, work
9 experience, RFC, and the testimony of the vocational expert, the ALJ found that there
10 are jobs that exist in significant numbers in the national economy that Plaintiff can
11 perform. (AR 23-24.) Accordingly, the ALJ found that Plaintiff was not disabled.

12 (AR 24.)

13 **III. STANDARD OF REVIEW**

14 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s
15 decision to deny benefits. A court must affirm an ALJ’s findings of fact if they are
16 supported by substantial evidence, and if the proper legal standards were applied.
17 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “‘Substantial evidence’
18 means more than a mere scintilla, but less than a preponderance; it is such relevant
19 evidence as a reasonable person might accept as adequate to support a conclusion.”
20 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*
21 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial
22 evidence requirement “by setting out a detailed and thorough summary of the facts
23 and conflicting clinical evidence, stating his interpretation thereof, and making
24 findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

25 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a
26 specific quantum of supporting evidence. Rather, a court must consider the record
27 as a whole, weighing both evidence that supports and evidence that detracts from the
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1 Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001)
2 (citations and internal quotations omitted). “‘Where evidence is susceptible to more
3 than one rational interpretation,’ the ALJ’s decision should be upheld.” *Ryan v.*
4 *Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing *Burch v. Barnhart*,
5 400 F.3d 676, 679 (9th Cir. 2005)); see also *Robbins*, 466 F.3d at 882 (“If the
6 evidence can support either affirming or reversing the ALJ’s conclusion, we may not
7 substitute our judgment for that of the ALJ.”). The Court may review only “the
8 reasons provided by the ALJ in the disability determination and may not affirm the
9 ALJ on a ground upon which he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th
10 Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)).

11 **IV. DISCUSSION**

12 Plaintiff contends that the ALJ: (1) erred in assessing Plaintiff’s mental RFC
13 by improperly rejecting the findings and opinions of his treating psychiatrist and
14 improperly relying on the opinion of the non-examining medical expert; and (2) erred
15 in the credibility findings. (Joint Stmt. at 2-10, 23-27.) The Commissioner contends
16 that the ALJ: (1) properly evaluated the medical opinions and properly assessed
17 Plaintiff’s mental RFC; and (2) properly discounted Plaintiff’s credibility. (Joint
18 Stmt. at 10-23, 27-35.) For the reasons below, the Court agrees with Plaintiff.

19 **A. The ALJ Erred in Evaluating the Medical Opinion Evidence**

20 Plaintiff argues that the ALJ failed to provide legally sufficient reasons for
21 rejecting the findings and opinion of his treating psychiatrist, Dr. Bonnici, regarding
22 his mental impairments and limitations, and gave improper weight to the opinion of
23 the medical expert, Dr. Akins. (Joint Stmt. at 3-9.) The Commissioner argues that
24 the ALJ properly evaluated the medical evidence, including the opinion of Dr.
25 Bonnici. (Joint Stmt. at 10-23.)

26 **1. *Dr. Bonnici’s Opinion***

27 According to the treatment records, Dr. Bonnici started treating Plaintiff in
28 July 2014 at the San Fernando Valley Community Mental Health Center/Los Angeles

1 County Department of Mental Health Center (“LACDMH”). (AR 295.) Prior to
2 seeing Dr. Bonnici, Plaintiff was brought involuntarily to the hospital on April 16,
3 2014, for feeling out of control and like he was going to hurt someone, and was
4 psychiatrically hospitalized from April 17-21, 2014. (AR 268-82.) He subsequently
5 underwent an initial assessment at LACDMH in June 2014, and was assessed with
6 slowed speech, dysphoric and irritable mood, blunted affect, moderately impaired
7 judgment and insight, and isolative tendencies. (AR 286-87.) He was diagnosed
8 with bipolar disorder, most recent manic without psychotic features, with a Global
9 Assessment of Functioning (“GAF”) score of 37. (AR 287.) At a July 2014
10 appointment, Dr. Bonnici noted that Plaintiff complained of worsening depressive
11 symptoms in the context of severe social stressors and requested a change in
12 medication. (AR 295.) He diagnosed Plaintiff with bipolar NOS and PTSD, with a
13 GAF score of 30. (AR 296.) He changed Plaintiff’s medication and referred Plaintiff
14 to therapy. (AR 296.)

15 Dr. Bonnici continued to see Plaintiff once or twice a month through the time
16 of the hearing and consistently assigned GAF scores of 30. (AR 58, 283-303, 309-
17 13.) On February 13, 2015, Dr. Bonnici completed a Medical Source Statement of
18 Ability to do Work-Related Activities (Mental). (AR 305-07.) Dr. Bonnici opined
19 that Plaintiff had moderate limitations in carrying out detailed instructions and
20 making judgments on simple work-related decisions; moderate limitations in
21 interacting appropriately with the public and responding appropriately to changes in
22 a routine work setting; and marked limitations in interacting appropriately with
23 supervisors and co-workers and responding appropriately to work pressures in a usual
24 work setting. (AR 305-06.) He noted findings of impaired judgment, irritability,
25 depression, anxiety, low frustration tolerance, and difficulty maintaining a schedule,
26 all secondary to mental illness. (AR 305-06.)

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1 **2. Dr. Akins’ Opinion**

2 At the hearing, Dr. Akins testified as a medical expert. (AR 35-48.)
3 He testified that the record supports a bipolar diagnosis, with a marked impairment
4 in social functioning, particularly in the areas of dealing with the public, supervisors,
5 and coworkers. (AR 35-36.) He opined that Plaintiff would “probably be able to
6 work” with no public contact, limited contact with coworkers, and occasional contact
7 with supervisors, and he could perform detailed tasks. (AR 36-37.) He also opined
8 that Plaintiff had “mild to moderate issues in [the] areas of concentration and work
9 adjustment.” (AR 36.) When asked by Plaintiff’s attorney whether Plaintiff would
10 be able to handle the work pressures of a usual work setting, Dr. Akins testified that
11 he did not think Plaintiff could handle a high pressure work environment, but did not
12 “know that that rules out him not being able to perform adequately in a low stress
13 environment where the pace of demands on him are lessened.” (AR 45-46.)

14 **3. Pertinent Law**

15 Courts give varying degrees of deference to medical opinions based on the
16 provider: (1) treating physicians who examine and treat; (2) examining physicians
17 who examine, but do not treat; and (3) non-examining physicians who do not examine
18 or treat. *Valentine v. Comm’r, Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th Cir. 2009).
19 Most often, the opinion of a treating physician is given greater weight than the
20 opinion of a non-treating physician, and the opinion of an examining physician is
21 given greater weight than the opinion of a non-examining physician. See *Garrison*
22 *v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014). When a treating physician’s opinion
23 is contradicted by another opinion, the ALJ may only reject it by providing specific
24 and legitimate reasons supported by substantial evidence in the record. *Orn*, 495
25 F.3d at 633. “An ALJ can satisfy the ‘substantial evidence’ requirement by ‘setting
26 out a detailed and thorough summary of the facts and conflicting evidence, stating
27 his interpretation thereof, and making findings.’” *Garrison*, 759 F.3d at 1012
28 (citation omitted). A non-examining physician’s opinion can constitute substantial

1 evidence if it is supported by other evidence in the record and is consistent with it.
2 *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999) (citation
3 omitted).

4 **4. Discussion**

5 The ALJ found Dr. Bonnici’s opinion “not . . . persuasive or controlling,” and
6 accepted the conclusions of Dr. Akins. (AR 21-22.) The ALJ rejected Dr. Bonnici’s
7 opinion, which she interpreted as “effectively indicat[ing] that [Plaintiff] is unable to
8 work,” on the following grounds: (1) his findings did not support a disabling
9 condition; (2) the limitations were inconsistent with his mild clinical observations,
10 lack of significant treatment, and the record as a whole; and (3) he took Plaintiff’s
11 subjective complaints at face value. (AR 21.) The reasons given by the ALJ for
12 rejecting Dr. Bonnici’s opinion are not specific and legitimate and lack substantial
13 support in the record.

14 An ALJ may discount a treating physician’s opinion when it contradicts his
15 treatment notes. See *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). The
16 ALJ found that Dr. Bonnici’s findings did not support a determination that Plaintiff’s
17 mental condition is of disabling severity, and pointed to Dr. Bonnici’s January 2015
18 progress note, where Plaintiff was described as “‘calm, cooperative, and friendly with
19 good eye contact’ and otherwise displayed mild clinical findings, but still received a
20 GAF score of 30.” (AR 21, 297.) The ALJ failed to mention, for example, that at
21 that same visit, Plaintiff reported that he continued to struggle with quickness to anger
22 and frustration, and he was “anxious and on edge” often; on examination, Plaintiff’s
23 affect was “dysthymic appearing;” Dr. Bonnici noted Plaintiff’s “traumatic history”
24 of several psychiatric hospitalizations for threats against others; and Dr. Bonnici
25 adjusted Plaintiff’s antipsychotic medication and advised starting therapy. (AR 297.)
26 Nor did the ALJ discuss a February 13, 2015 treatment note (the same date as the
27 Medical Source Statement), in which Dr. Bonnici prescribed anxiety medication,
28 continued mood stabilization medication, and indicated that Plaintiff was in crisis

1 stabilization at Didi Hirsch from January 28 through February 4, where he received
2 individual therapy, social skills, and anger management to assist in resolving “current
3 crisis needs.” (AR 108, 312.) Further, the ALJ did not discuss how these treatment
4 notes did not support the GAF score of 30 or Dr. Bonnici’s opinion. Accordingly,
5 the ALJ’s conclusory and incomplete statement that Dr. Bonnici’s findings did not
6 support a disabling condition is not a specific and legitimate reason supported by
7 substantial evidence. See Reddick, 157 F.3d at 725 (ALJs satisfy substantial evidence
8 requirement “by setting out a detailed and thorough summary of the facts and
9 conflicting clinical evidence, stating his interpretation thereof, and making
10 findings”).

11 An ALJ may also discount a treating physician’s opinion when it is
12 “unsupported by the record as a whole or by objective medical findings.” Burrell v.
13 Colvin, 775 F.3d 1133, 1140 (9th Cir. 2014) (citation omitted). Here, the ALJ merely
14 pointed out that Plaintiff generally performed well on the mental status examinations
15 and did not discuss how a history of psychiatric hospitalizations, repeated references
16 to anger issues and lack of impulse control, and GAF scores of 20-35 from Olive
17 View, Penn Mar and Cornerstone did not support Dr. Bonnici’s opinion. (AR 21,
18 214-313.) Notably, as the ALJ failed to recognize, Dr. Akins agreed with Dr.
19 Bonnici’s assessment of marked limitations in social functioning.⁵ (AR 21, 35-36.)
20 While the ALJ need not discuss each piece of evidence in the record, Howard ex rel.
21 Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003), he is required to view
22 evidence “in light of the overall diagnostic record.” Ghanim v. Colvin, 763 F.3d
23 1154, 1164 (9th Cir. 2014) (citations omitted). The ALJ’s selective reference to
24 evidence and misunderstanding of Dr. Akins’ opinion leaves the Court with an
25 inadequate basis to conclude that this reason is specific and legitimate and supported

26 ⁵ The ALJ appeared to rely on an incorrect understanding of Dr. Akins’ testimony,
27 noting that “Dr. Akins took issue with [“Dr. Bonnici’s assessment], finding the
28 clinical evidence failed to support marked deficits in any area of functioning.” (AR
21.)

1 by substantial evidence. See *Holohan v. Massanari*, 246 F.3d 1195, 1207 (9th Cir.
2 2001) (ALJ cannot selectively rely on some entries in administrative records and
3 ignore others).

4 Further, the record does not support the ALJ's assertion that Dr. Bonnici
5 merely accepted Plaintiff's subjective complaints at face value and reiterated his
6 allegations, and failed to take into account "other medical reports and opinions." (AR
7 21.) Dr. Bonnici noted Plaintiff's subjective complaints, but also documented
8 clinical findings and observations. (AR 283-303, 309-13.) Regarding the "other
9 medical reports and opinions" that Dr. Bonnici supposedly ignored, the Court does
10 not know to what the ALJ refers. Other than the medical records from LACDMH,
11 the record contains medical evidence from Plaintiff's psychiatric hospitalization in
12 April 2014, including findings of paranoid thought content; partial insight, judgment
13 and impulse control; moderate danger to others; a diagnosis of mood disorder NOS
14 with psychotic features; and a GAF score of 20. (AR 214-65, 268-82.) The record
15 also contains progress notes from a Cornerstone case worker, including reference to
16 a "heated" incident between Plaintiff and L.A. Family Housing staff that jeopardized
17 his housing and treatment. (AR 289.) Even if Dr. Bonnici did not take these records
18 into account, the ALJ did not explain how they would have changed Dr. Bonnici's
19 opinion, particularly because they appear to support Dr. Bonnici's opinion.

20 Moreover, even assuming Dr. Bonnici based his opinion largely on Plaintiff's
21 subjective complaints, this was not a valid reason for rejecting Dr. Bonnici's opinion
22 given that the ALJ did not properly discount Plaintiff's complaints, as explained
23 below. See *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999)
24 ("A physician's opinion . . . premised to a large extent upon the claimant's own
25 accounts of his symptoms and limitations may be disregarded where those complaints
26 have been properly discounted.") (internal quotation marks omitted) (citation
27 omitted); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (medical
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1 opinion premised on subjective complaints may be disregarded where record
2 supports ALJ in discounting claimant’s credibility).

3 Regarding Dr. Akins’ opinion, the ALJ noted that Dr. Akins “took issue” with
4 Dr. Bonnici’s opinion, “finding the clinical evidence failed to support marked deficits
5 in any area of functioning,” and the GAF score of 30 “did not correspond to
6 [Plaintiff’s] clinical presentations.” (AR 21.) As discussed above, Dr. Akins found
7 that the record supported a bipolar diagnosis and marked impairment in social
8 functioning, which the ALJ misunderstood. (AR 35-36.) Dr. Akins also testified that
9 he did not give the GAF score much weight because “[t]hirty is exceedingly low[;]
10 that would be somebody who is in a hospital,” and the exhibits did not “match up.”
11 (AR 42.) Unfortunately, the ALJ did not allow Plaintiff’s attorney to question Dr.
12 Akins on what evidence was inconsistent with Dr. Bonnici’s opinion or how he
13 arrived at his conclusion that Plaintiff’s marked limitations in social functioning
14 translated to no public contact, limited contact with coworkers, and occasional
15 contact with supervisors. ⁶ (AR 43-47.) The ALJ further found Dr. Akins’ opinion
16 “coincide[d] with and support[ed] the . . . medical evidence . . . and the assessment
17 of the State Agency.” (AR 22.) The ALJ, however, failed to identify what medical
18 evidence was supported by Dr. Akins’ opinion. As discussed above, the psychiatric
19 hospitalization and LACDMH records appear to support Dr. Bonnici’s opinion.
20 Furthermore, the State Agency physician opined that Plaintiff was not significantly
21 limited in the ability to interact appropriately with the general public and get along
22 with coworkers or peers, and moderately limited in the ability to accept instructions
23 and respond appropriately to criticism from supervisors. (AR 84-85.) Again, the
24 ALJ did not explain how the State Agency assessment supported Dr. Akins’ finding
25 of marked limitations in social functioning and limitations on Plaintiff’s ability to

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27 ⁶ The Commissioner’s argument that Plaintiff “had ample opportunity to question
28 Dr. Akins” is not well taken. A review of the hearing transcript reveals that the ALJ
repeatedly prevented Plaintiff’s attorney from questioning Dr. Akins. (AR 39-48.)

1 interact with the public, coworkers, and supervisors. In light of the ALJ’s errors, the
2 Court cannot find that Dr. Akins’ opinion constitutes substantial evidence here.⁷ The
3 Commissioner argues that any error in failing to acknowledge that Dr. Akins found
4 marked deficits in social functioning is harmless because the ALJ’s RFC finding
5 would remain the same. (Joint Stmt. at 18.) Based on the record as a whole, the
6 Court cannot conclude that the ALJ’s error is inconsequential to the nondisability
7 determination. See *Molina v. Astrue*, 674 F.3d 1104, 1122 (9th Cir. 2012) (a harmless
8 error is one which is “inconsequential to the ultimate nondisability determination in
9 the context of the record as a whole”) (citations omitted).

10 Remand is warranted on this issue for the ALJ to properly evaluate the medical
11 opinions and determine Plaintiff’s mental RFC.

12 **B. The ALJ Erred in the Credibility Determination**

13 Plaintiff next contends that the ALJ erred in discrediting his subjective
14 testimony and statements. (Joint Stmt. at 23-27.) The Commissioner argues that the
15 ALJ’s reasons for finding Plaintiff not fully credible are supported by substantial
16 evidence. (Joint Stmt. at 27-35.) For the reasons set forth below, the Court agrees
17 with Plaintiff.

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21 ⁷ Plaintiff’s argument that the ALJ failed to consider Dr. Akins’ opinion that he had
22 mild to moderate limitations in concentration and work adjustment is rejected. (Joint
23 St. at 6.) Dr. Akins testified that Plaintiff could perform detailed tasks, but not “the
24 more skilled tasks.” (AR 37.) The ALJ’s hypothetical to the VE included the ability
25 to “probably handle detailed tasks,” and the VE testified that Plaintiff could perform
26 unskilled work. (AR 22, 63.) In addition, Plaintiff argues that Dr. Akins improperly
27 relied on his level of education to assess his mental functioning. (Joint St. at 6-7.)
28 Plaintiff’s counsel, however, clarified Plaintiff’s level of education and asked Dr.
Akins if that information changed his opinion. (Joint St. at 39.) Dr. Akins testified
that it “put[] a different light on things,” but he did not see support in the record for
“significant problems with concentration.” (Joint St. at 39.) Thus, Dr. Akins
considered Plaintiff’s correct level of education.

1 **1. Plaintiff's Testimony**

2 Plaintiff testified that he has a ninth grade education and took a vocational
3 carpentry course. (AR 49.) He worked in construction from 2001 to 2003, “until the
4 market was not conducive to construction anymore.” (AR 49.) In 2009, he worked
5 as a debt negotiator, calling people to collect debts. (AR 50.) After eight to nine
6 months, he was terminated for getting into an argument with his manager. (AR 51.)
7 Thereafter, he actively tried to get work, but he was consistently fired because he
8 could not get along with others. (AR 53.) He had ongoing problems getting along
9 with management, coworkers, and the public. (AR 57.) In the last ten years, he had
10 ten to 14 jobs, and he was terminated from all of these jobs after six to nine months
11 for an attitude problem. (AR 58.) When he could not hold a job, he ended up in jail
12 for battery, drug possession, and traffic offenses. (AR 54.) Regarding his marijuana
13 use, Plaintiff testified that he has been using medical marijuana for years, and he was,
14 at the time of the hearing, using it once a day under his doctor’s prescription. (AR
15 55.) The marijuana immediately calms him down, whereas his other medications
16 take an hour and a half to start working. (AR 59-60.) He has been under the care of
17 Dr. Bonnici for about a year, and he sees him one or two times a month for about an
18 hour or hour and a half. (AR 58.) He takes the medications that are prescribed. (AR
19 59.) He also sees a social worker once or twice a week at Cornerstone, and sees a
20 social worker daily through L.A. Family Housing. (AR 58-59.) Prior to his
21 psychiatric hospitalization in April 2014, he was hospitalized in Florida at least three
22 or four times, and he received psychiatric care when he was in prison. (AR 59.)
23 Plaintiff spends his days trying to keep to himself. (AR 60.) He goes to his programs
24 in the morning to meet with his counselors, goes to Cornerstone on some days, and
25 otherwise stays in his room. (AR 60-61.) He does not participate in therapy when it
26 requires interacting with other people, which occurs about six or seven times a month.
27 (AR 61.) He believes he cannot work because he is violent, “[a]nd my attitude and
28 my temper is a very large part of my issue.” (AR 56.) He testified that his anger

1 “shuts me down.” (AR 56.) He could not work at a job that does not deal with the
2 public because he has problems being by himself and with people. (AR 57.)

3 **2. Applicable Legal Standards**

4 “In assessing the credibility of a claimant’s testimony regarding subjective
5 pain or the intensity of symptoms, the ALJ engages in a two-step analysis.” Molina,
6 674 F.3d at 1112 (citing Vasquez v. Astrue, 572 F.3d 586, 591 (9th Cir. 2009)). “First,
7 the ALJ must determine whether the claimant has presented objective medical
8 evidence of an underlying impairment which could reasonably be expected to
9 produce the pain or other symptoms alleged.” *Treichler v. Comm’r of Soc. Sec.*
10 *Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting Lingenfelter, 504 F.3d at 1036)
11 (internal quotation marks omitted). If so, and if the ALJ does not find evidence of
12 malingering, the ALJ must provide specific, clear and convincing reasons for
13 rejecting a claimant’s testimony regarding the severity of his symptoms. *Id.* The ALJ
14 must identify what testimony was found not credible and explain what evidence
15 undermines that testimony. *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir.
16 2001). “General findings are insufficient.” *Lester*, 81 F.3d at 834.

17 **3. Discussion**

18 “After careful consideration of the evidence,” the ALJ found that Plaintiff’s
19 “medically determinable impairments could reasonably be expected to cause the
20 alleged symptoms,” but found that Plaintiff’s “statements concerning the intensity,
21 persistence and limiting effects of these symptoms are not entirely credible for the
22 reasons explained in this decision.” (AR 20.) The ALJ relied on the following
23 reasons: (1) lack of supporting objective evidence; (2) non-compliance with
24 medication; (3) successful treatment; (4) evasiveness; and (5) activities of daily
25 living. (AR 20-21.) No malingering allegation was made, and therefore, the ALJ’s
26 reasons must be “clear and convincing.”

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d. Evasiveness

The ALJ found that Plaintiff was evasive with respect to his education, work history, and how he affords to pay for marijuana. (AR 21.) Evasiveness can be a legitimate reason for discounting credibility. See *Anderson v. Sullivan*, 914 F.2d 1121, 1123-24 (9th Cir. 1990) (“[T]he ALJ had substantial evidence on which to find a lack of credibility based on [plaintiff’s] evasiveness” when responding to the question of whether he informed the SSA about his two Social Security numbers.). The ALJ noted that Plaintiff testified that he had a 9th grade education,⁹ while in the Disability Report, he stated that he had a 12th grade education. (AR 20, 38, 169.) In his admission papers for his psychiatric hospitalization in April 2014, Plaintiff reported that he was “home schooled” up to the 12th grade. (AR 274.) The record also indicates that Plaintiff reported in an initial assessment that he was unsure if he had “legally” completed high school and reported completing three years of college, despite his testimony that he did not complete vocational school. (AR 38, 285.) In discussing both his college and vocational education, Plaintiff reported that he did not have the “paperwork.” (AR 38, 285.) The ALJ also noted that when motivated by the birth of his child, Plaintiff was able to maintain steady employment. (AR 20-21.) Regarding paying for marijuana, Plaintiff testified that he pays for the marijuana out of his General Relief money. (AR 56.)

With respect to Plaintiff’s education, Plaintiff’s responses do differ and, although Plaintiff may have been confused about his education, it was not unreasonable for the ALJ to conclude that Plaintiff’s inconsistent statements regarding his education negatively impacted his credibility. The ALJ’s finding that Plaintiff was evasive about his work history and paying for the marijuana, however, is not supported by substantial evidence. The ALJ failed to acknowledge that it was

⁹ Plaintiff testified that he “officially only made it to ninth grade and once I made it to ninth grade I was involved in situations that got me kicked out of school so I never returned to school.” (AR 38.)

1 five years prior to the alleged disability onset date when Plaintiff was working full
2 time, the job lasted only eight to nine months because he was fired for getting into an
3 argument with his manager, and Plaintiff was consistently unable to keep subsequent
4 jobs because he could not get along with others. (AR 50-51, 53.) The ALJ concluded
5 that Plaintiff “failed to show that a chronic psychiatric condition has impacted his
6 ability to sustain employment” because his problems interacting appropriately with
7 a manager caused his job to end. (AR 21.) Instead of viewing the argument with the
8 manager as related to Plaintiff’s mental impairments, the ALJ assumed it was an
9 isolated incident, which is not supported by the record. Regarding how Plaintiff pays
10 for marijuana, Plaintiff testified that he uses his General Relief money. (AR 56.)
11 While the ALJ reasonably considered Plaintiff’s inconsistent statements regarding
12 his education when weighing credibility, she did not properly discount Plaintiff’s
13 credibility based on evasiveness about his work history and paying for his marijuana.

14 **e. Activities of Daily Living**

15 The ALJ discounted Plaintiff’s credibility on the ground that there was “no
16 indication that [Plaintiff] is incapable of caring for his personal needs or performing
17 daily living activities.” (AR 21.) The ALJ noted that Plaintiff “appears capable of
18 getting around on his own and he was recently able to obtain subsidized housing.”
19 (AR 21-22.) Inconsistencies between symptom allegations and daily activities may
20 act as a clear and convincing reason to discount a claimant’s credibility, see
21 *Tommasetti*, 533 F.3d at 1039; *Bunnell*, 947 F.2d at 346, but a claimant need not be
22 utterly incapacitated to obtain benefits. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.
23 1989). The fact that Plaintiff could care for his personal needs, get around on his own,
24 and obtain subsidized housing with assistance does not detract from his overall
25 credibility, as the record does not show that these activities consumed a substantial
26 part of Plaintiff’s day. See *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001).
27 The ALJ failed to explain how any of these activities reflect on his mental ability to
28 perform work, particularly with others, on a sustained basis. The Court finds that this

1 reason is not a clear and convincing reason, supported by substantial evidence, to
2 discount Plaintiff’s credibility.

3 In sum, only one of the ALJ’s reasons for discounting Plaintiff’s credibility –
4 inconsistent statements regarding his education – is clear and convincing and
5 supported by substantial evidence. The Court must decide whether the ALJ’s
6 reliance on the other reasons for discounting Plaintiff’s credibility was harmless
7 error. *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008).
8 The relevant inquiry “is not whether the ALJ would have made a different decision
9 absent any error,” but whether the ALJ’s decision is still “legally valid, despite such
10 error.” *Id.* The “remaining reasoning and ultimate credibility determination [must
11 be] . . . supported by substantial evidence in the record.” *Id.* (emphasis in original)
12 (citing *Batson v. Comm’r, Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004)).
13 Here, the Court finds that in light of the record as a whole, substantial evidence does
14 not support the ALJ’s credibility finding. Accordingly, remand is warranted on this
15 issue.

16 **C. Remand for Further Administrative Proceedings**

17 Because further administrative review could remedy the ALJ’s errors, remand
18 for further administrative proceedings, rather than an award of benefits, is warranted
19 here. See *Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015) (remanding for
20 an award of benefits is appropriate in rare circumstances). Before ordering remand
21 for an award of benefits, three requirements must be met: (1) the Court must
22 conclude that the ALJ failed to provide legally sufficient reasons for rejecting
23 evidence; (2) the Court must conclude that the record has been fully developed and
24 further administrative proceedings would serve no useful purpose; and (3) the Court
25 must conclude that if the improperly discredited evidence were credited as true, the
26 ALJ would be required to find the claimant disabled on remand. *Id.* (citations
27 omitted). Even if all three requirements are met, the Court retains flexibility to
28 remand for further proceedings “when the record as a whole creates serious doubt as

1 to whether the claimant is, in fact, disabled within the meaning of the Social Security
2 Act.” Id. (citation omitted).

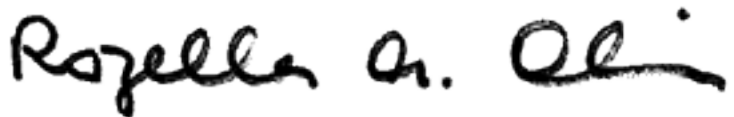
3 Here, remand for further administrative proceedings is appropriate. On
4 remand, the ALJ shall (1) reassess Dr. Bonnici’s treating opinion in light of a correct
5 reading of the medical evidence, including Dr. Akins’ opinion, and provide legally
6 adequate reasons for discounting or rejecting any portion of the opinion; (2) reassess
7 Plaintiff’s subjective allegations in light of Social Security Ruling 16-3p—
8 Evaluation of Symptoms in Disability Claims, 2016 WL 1119029 (S.S.A. Mar. 16,
9 2016), which would apply upon remand; and (3) if necessary, reassess Plaintiff’s
10 RFC. The ALJ shall then proceed through steps four and five to determine what
11 work, if any, Plaintiff is capable of performing.

12 **V. CONCLUSION**

13 IT IS ORDERED that Judgment shall be entered REVERSING the decision of
14 the Commissioner denying benefits, and REMANDING the matter for further
15 proceedings consistent with this Order.

16 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
17 Order and the Judgment on counsel for both parties.

18
19
20 DATED: May 9, 2017



21 ROZELLA A. OLIVER
22 UNITED STATES MAGISTRATE JUDGE

23
24 **NOTICE**

25 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,
26 LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**