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

JAMAL GREENFIELD,)	NO. CV 16-7525-KS
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
v.)	
)	
NANCY A. BERRYHILL,¹ Acting)	
Commissioner of Social Security,)	
)	
Defendant.)	

INTRODUCTION

Plaintiff Jamal Greenfield filed a Complaint on October 7, 2016, seeking review of the denial by the Commissioner of the Social Security Administration (“SSA”) of his application for Title XVI Supplemental Security Income (“SSI”) benefits. (*See* Dkt. No. 1.) On September 8, 2017, the parties filed a Joint Stipulation (“J. Stip.”) setting forth the disputed

¹ The Court notes that Nancy A. Berryhill is now the Acting Commissioner of the Social Security Administration. Accordingly, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, the Court orders that the caption be amended to substitute Nancy A. Berryhill for Carolyn Colvin as the defendant in this action.

1 issues in the case. (Dkt. No. 27.) Pursuant to 28 U.S.C. § 636(c), all parties have consented
2 to proceed before the undersigned United States Magistrate Judge for all further proceedings,
3 including entry of Judgment. (See Dkt. Nos. 11, 13.) The matter is now under submission
4 and ready for decision.

5 6 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**

7
8 Plaintiff was born on March 14, 1995. When he was 6 years old, his mother, Shirley
9 Reed, filed an application on his behalf for SSI benefits, which were awarded on October 31,
10 2001 based on the disability criteria for children. (See AR 16.) Plaintiff was initially
11 determined to be disabled due to: (1) attention deficit hyperactivity; and (2) asthma. (AR
12 16.) When Plaintiff turned 18 on March 14, 2013, his eligibility for SSI benefits was
13 redetermined under adult disability rules. (AR 16.) On August 9, 2013, the agency
14 determined that Plaintiff was no longer disabled, and the “cessation date” for the termination
15 of his SSI benefits was set at August 1, 2013. (See AR 16, citing 20 C.F.R. § 416.987(e).)

16
17 Plaintiff’s August 1, 2013 cessation date was upheld upon reconsideration after a
18 disability hearing by a State Agency Disability Hearing Officer. (AR 16.) On March 12,
19 2014, Plaintiff filed a written request for a hearing before an Administrative Law Judge
20 (“ALJ”). (AR 16.)

21
22 An initial hearing was held before an ALJ on June 25, 2014, and Plaintiff and his
23 mother appeared at that hearing. (See AR 16, 83 *et seq.*) The ALJ apprised Plaintiff and his
24 mother of Plaintiff’s right to be represented by an attorney, but they elected to proceed
25 without representation. (AR 16.) Plaintiff did not testify at that initial hearing. (AR 16.)
26 The ALJ continued that initial hearing to allow Plaintiff and his mother time to provide
27 additional evidence, and the ALJ ordered a new consultative psychological evaluation.
28 (AR 16.)

1 A second hearing was held on October 21, 2014. (*See* AR 16, 40 *et seq.*) Both
2 Plaintiff and his mother testified at the second hearing. (AR 48-65.) A psychological
3 expert, Dr. Betty Borden, a medical expert, Dr. Henry Maimon, and a vocational expert
4 (“VE”), Jane Haile, also testified. (AR 16.) The ALJ again apprised Plaintiff and his mother
5 of their right to counsel at the hearing, but they still elected to proceed without
6 representation. (*See* AR 16, 43-45.)

7
8 The VE testified, based on a hypothetical from the ALJ, that with limitations to
9 “simple, routine tasks in a non-public setting” and “occasional contact with coworkers and
10 supervisors,” Plaintiff could perform three “medium unskilled jobs”: (1) “laborer, stores,”
11 DOT 922.687-058, medium unskilled, SVP 2; (2) “hand packager,” DOT 920.587-018,
12 medium unskilled, SVP 2; and (3) “cook helper,” DOT 317.687-010, medium unskilled,
13 SVP 2. (AR 79-80.) After the VE’s testimony, Plaintiff’s mother protested, saying “I don’t
14 understand why she [*i.e.*, the VE] would say that he could get out there and work. I clearly
15 don’t believe he can get out there and work.” (AR 81.)

16
17 **SUMMARY OF ADMINISTRATIVE DECISION**
18

19 On January 29, 2015, the ALJ issued a decision denying Plaintiff’s application for SSI
20 disability benefits. (*See* AR 16-32.)

21
22 The ALJ began with the observation that “[m]any of the medical records predate
23 August 2013, the month the claimant’s disability status ceased” and noted that “[w]hile I
24 have considered those documents, particularly the documents that describe the claimant’s
25 mental condition, I focus on evidence that describes the claimant during the period under
26 consideration.” (AR 17.)

1 The ALJ found that Plaintiff had two “severe” impairments: (1) “asthma/mild
2 obstructive pulmonary disease,” and (2) “a learning disorder.” (AR 19.) The ALJ also noted
3 that Plaintiff “may have obstructive sleep apnea,” but he found “that there is insufficient
4 evidence to establish obstructive sleep apnea as a medically determinable impairment.” (AR
5 19-20.) The ALJ noted that Plaintiff “was in the obese range,” and had “mildly elevated
6 blood pressure” but concluded that these conditions could not be considered “severe.” (AR
7 20.) The ALJ found that since August 1, 2013, the cessation of benefits date, Plaintiff did
8 not have an impairment or combination of impairments that met or equaled a listed
9 impairment. (AR 22, citing 20 C.F.R. Part 404, Subpart P, Appendix 1.)
10

11 The ALJ determined that since August 1, 2013, Plaintiff had the residual functional
12 capacity (“RFC”) to do a reduced range of medium work (*see* 20 C.F.R. § 416.967(c)), with
13 certain additional limitations, including lifting and/or carrying 50 pounds occasionally and
14 25 pounds frequently, and “perform[ing] simple repetitive tasks in an environment that
15 requires no public contact and no more than occasional contact with supervisors and co-
16 workers.” (AR 23.)
17

18 The ALJ determined that Plaintiff has no past relevant work but that there are jobs that
19 exist in significant numbers in the national economy that Plaintiff could perform, including
20 the representative occupations of: (1) store laborer; (2) hand packager; or (3) cook’s helper.
21 (AR 31-32.) Accordingly, the ALJ found that “[t]he claimant’s disability ended on August
22 1, 2013, and the claimant has not become disabled again since that date.” (AR 32, citing 20
23 C.F.R. §§ 416.987(e), 416.920(g).)
24

25 STANDARD OF REVIEW

26

27 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to
28 determine whether it is free from legal error and supported by substantial evidence in the

1 record as a whole. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). “Substantial evidence
2 is ‘more than a mere scintilla but less than a preponderance; it is such relevant evidence as a
3 reasonable mind might accept as adequate to support a conclusion.’” *Gutierrez v. Comm'r of*
4 *Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir. 2014) (internal citations omitted). “Even when the
5 evidence is susceptible to more than one rational interpretation, we must uphold the ALJ's
6 findings if they are supported by inferences reasonably drawn from the record.” *Molina v.*
7 *Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012).

8
9 Although this Court cannot substitute its discretion for the Commissioner’s, the Court
10 nonetheless must review the record as a whole, “weighing both the evidence that supports
11 and the evidence that detracts from the [Commissioner’s] conclusion.” *Lingenfelter v.*
12 *Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (internal quotation marks and citation omitted);
13 *Desrosiers v. Sec’y of Health and Hum. Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). “The ALJ
14 is responsible for determining credibility, resolving conflicts in medical testimony, and for
15 resolving ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

16
17 The Court will uphold the Commissioner’s decision when the evidence is susceptible
18 to more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir.
19 2005). However, the Court may review only the reasons stated by the ALJ in his decision
20 “and may not affirm the ALJ on a ground upon which he did not rely.” *Orn*, 495 F.3d at
21 630; *see also Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). Nevertheless, the
22 Court will not reverse the Commissioner's decision if it is based on harmless error, which
23 exists if the error is “‘inconsequential to the ultimate nondisability determination,’ or if
24 despite the legal error, ‘the agency’s path may reasonably be discerned.’” *Brown-Hunter v.*
25 *Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (internal citations omitted).

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1 Immediately following the Sanchez Statement is an “Evaluation Form for Mental
2 Disorders.” (AR 1041-44; also part of Ex. 29F.) The signature page for that evaluation form
3 shows December 18, 2014 as the “date of Most Recent Examination,” is signed in the same
4 distinctive handwriting as the Sanchez Statement at AR 1040, and bears a notation of “NP”
5 and a stamp reading “Pacific Clinics.” (AR 1044.) “Andrew Sanchez” is written in block
6 uppercase letters on that signature page. (See AR 1044.) The only information provided in
7 any of the specific areas of inquiry on the mental evaluation form are: (1) a handwritten
8 notation under “Prognosis” stating “fair if client continues [illegible] medication and
9 therapy” and (2) under “Additional Comments” it says “See attached medication evaluation
10 form.” (AR 1044.)
11

12 Immediately following the evaluation form is a 3-page form entitled “Initial
13 Medication Support Service.” (AR 1045-47.) The first page of that form is dated September
14 16, 2014, and the last page of that 3-page form appears to be dated December 18, 2014.”
15 (See AR 1045, 1047.) That form is signed in the same distinctive signature that apparently
16 belongs to Andrew Sanchez and bears a notation “NP.” (AR 1047.)
17

18 **III. Applicable Law**

19

20 Under the applicable Social Security regulations and rulings, a nurse practitioner is not
21 an “acceptable medical source.”² See Social Security Ruling (“SSR”) 06-03p, citing 20
22 C.F.R. § 416.913(d); see also *Britton v. Colvin*, 787 F.3d 1011, 1013 (9th Cir. 2015) (nurse
23 practitioner is not “acceptable medical source” (citation omitted)). Nevertheless, a nurse
24 practitioner’s opinion is entitled to the weight that is warranted by the facts of the case, 20
25 C.F.R. § 416.927(f)(1), and the ALJ was permitted to discount Nurse Sanchez’s opinion
26

27 ² Because Plaintiff’s efforts to reverse the agency’s ineligibility determination date back to 2013, the new
28 regulations governing opinions from “acceptable” medical sources and other sources that apply to applications filed after
March 17, 2017, do not apply here. See 20 C.F.R. § 416.927, (“Evaluating opinion evidence for claims filed before
March 27, 2017.”).

1 after articulating “germane” reasons for doing so. *See Britton*, 787 F.3d at 1013; *Molina*,
2 674 F.3d at 1111 (ALJ may discount testimony from “other sources” that are not “acceptable
3 medical sources” if he “gives reasons germane to each witness for doing so” (citations and
4 internal punctuation omitted)).

5
6 Where an ALJ fails to discuss an opinion from a nurse practitioner, such a failure may
7 be analyzed for harmlessness. *See, e.g., Whitford v. Barnhart*, 133 F. App’x 388, 389-90
8 (9th Cir. 2005) (where ALJ failed to discuss opinion from psychiatric nurse practitioner,
9 error was nevertheless harmless where ALJ provided “lengthy and detailed analysis in
10 support of his ultimate conclusion” and “result would have been the same even if he had
11 done so,” that is, discussed nurse practitioner’s opinion); *Nestle v. Astrue*, No. CIV. 10-
12 6203-JE, 2011 WL 7082542, at *13 (D. Or. Dec. 30, 2011) (where ALJ did not address
13 opinion from nurse practitioner, error may still be analyzed for harmlessness (citing *Stout v.*
14 *Commissioner*, 454 F.3d 1050, 1055 (9th Cir. 2006)). An error is harmless if it is
15 inconsequential to the ultimate determination, or if, despite the error, the Agency’s path may
16 be reasonably discerned. *Brown-Hunter*, 806 F.3d at 492.

17
18 **IV. Discussion**

19
20 As an initial matter, the Court’s review of the record indicates that, contrary to
21 Plaintiff’s contentions, the ALJ cited and discussed records provided by Nurse Practitioner
22 Sanchez and Pacific Clinics. The ALJ stated in his opinion that “[t]here is no evidence of
23 psychiatric treatment between March 2014 and August 2014, when Mr. Greenfield began
24 treatment at *Pacific Clinics*.” (AR 21) (emphasis added). The ALJ went on to state that “[a]
25 doctor diagnosed schizophrenia and paranoia, and estimated the claimant’s GAF at 32,”
26 citing to “Exhibit 24F, p.8” in support of that assertion. (AR 21.) The Court’s review
27 reveals that Exhibit 24F at page 8 is at AR 834, which is part of the 3-page report from
28 Pacific Clinics entitled “Initial Medication Support Service” and signed with the distinctive

1 signature that this Court has identified as the signature of Nurse Practitioner Sanchez. (*See*
2 AR 832-34 and *compare id. with* AR 1040, 1044, 1047.) The ALJ also noted that “[t]he
3 initial notes from Pacific Clinics confirm that Ms. Reed [sic] ‘has not been compliant with
4 med[ication] management.’ (AR 21, citing Ex. 24F at 6 [AR 832]; “sic” added; other
5 bracketed material in original.) Thus, to the extent that Plaintiff may assert that the ALJ did
6 not consider any opinions of Pacific Clinics or Nurse Practitioner Sanchez, that assertion
7 appears to be contradicted by the record.

8
9 Further, while the ALJ apparently mischaracterized the report at AR 832-34 as being
10 from a “doctor,” the ALJ nonetheless discussed the findings contained in that report in his
11 overall opinion. (*See* AR 21.) Indeed, the ALJ discussed the record evidence of Plaintiff’s
12 complaints of mental disorder(s), including possible schizophrenia, paranoia and hearing
13 voices, in considerable detail. (*See, e.g.,* AR 20-22; 24-28.). First, the ALJ noted that while
14 Plaintiff and his mother “consistently state that he is disabled due to symptoms of paranoia
15 and schizophrenia, which problems manifested when he was a young child,” the medical
16 records from ENKI documenting treatment from 2004 until 2006 reveal that “the only
17 complaint was a learning disability and attention deficit hyperactivity disorder.” (AR 20,
18 citing Ex. 28F.) The ALJ further explained that because Plaintiff’s mother “specifically
19 reported no history of psychiatric disorders” during that period, “[t]he evidence from ENKI
20 does not support the allegation of paranoia and schizophrenia since childhood.” (*Id.*)

21
22 The ALJ also noted that in July 2013, Plaintiff reported to the consultative
23 psychologist that he was “not in mental health treatment and was not taking any psychiatric
24 medication” despite reporting a diagnosis of schizoaffective disorder. (AR 20-21.) The ALJ
25 also noted that in 2014 when Plaintiff was referred to two urgent care facilities for
26 psychiatric medication, “there is no evidence he pursued diagnosis at either facility.” (AR
27 21.) Further, the ALJ found “the diagnosis of psychotic disorder and paranoid schizophrenia
28 are not well established” because of credibility issues raised by Dr. Riahinejad, who

1 diagnosed possible malingering, and medical expert in psychology, Dr. Borden, who found
2 “little evidence of treatment for psychotic symptoms.” (A.R 21- 22.) Finally, based on his
3 review of the records, the ALJ explained that “[e]ven if schizophrenia were established as a
4 medically determinable impairment, it would not be considered disabling.” (AR 25.) Taken
5 together, the Court finds that these are germane reasons for discounting the nurse
6 practitioner’s cursory references to diagnoses of “schizophrenia, hallucinations, paranoia.”
7 *See Britton*, 787 F.3d at 1013; *Molina*, 674 F.3d at 1111. Accordingly, while the ALJ may
8 have misidentified Nurse Practitioner Sanchez’s Medication Support documentation as
9 having been written by a “doctor”, the record plainly establishes that the ALJ considered this
10 information and provided germane reasons for discounting its notations regarding
11 “schizophrenia, hallucinations, paranoia.”
12

13 The Court also concludes that any errors regarding the ALJ’s discussion of the records
14 from Nurse Practitioner Sanchez or Pacific Clinics more generally were harmless. As
15 Defendant reasonably argues, the Sanchez Statement cited by Plaintiff at AR 1038-40 is a
16 standardized “check the box” form that offers virtually no explanation for its findings, and
17 that type of form report is typically entitled to little weight. *See, e.g., Molina*, 674 F.3d at
18 1111-12 (ALJ may permissibly reject check-off report that does not contain explanation of
19 the bases for conclusions). Furthermore, as noted above, even though the ALJ does not
20 explicitly mention the Sanchez Statement at AR 1038, the ALJ’s opinion discusses in detail
21 Plaintiff’s history of mental health complaints, the lack of evidence of consistent treatment
22 for any psychotic disorder, and the overall absence of evidence to support the schizophrenia,
23 hallucinations, and paranoia diagnosis listed on the Sanchez Statement.
24

25 Finally, to the extent that the ALJ erred in failing to explicitly discuss all 41 pages of
26 records in Exhibit 29F, which Plaintiff characterizes as including in relevant part “not only
27 Sanchez’s opinion but a December 18, 2014 note indicating a continued diagnosis of
28 schizophrenia, paranoid type, a global assessment of functioning (GAF) of 32, and the

1 prescription of Abilify” (J. Stip. at 6), the error is also harmless. As discussed above,
2 although the ALJ did not discuss these 41 pages specifically, the ALJ did acknowledge
3 Plaintiff’s use of antipsychotic medication (Risperdal, Latuda, and, most recently, Abilify)
4 (see AR 21, 25), and he provided an extensive rationale for discounting other medical
5 professionals’ diagnoses of schizophrenia and/or psychosis not otherwise specified (AR 21).
6 The ALJ’s reasons for not crediting these diagnoses include the absence of any “records of
7 counseling or therapy for a psychotic disorder until . . . September 2013, *after* [Plaintiff] was
8 notified that his SSI benefits would cease” (AR 21) (emphasis added). The ALJ also cited
9 the findings of the consultative psychologist, Dr. Riahinejad, who saw Plaintiff twice – first
10 in July 2013 before Plaintiff’s August 1, 2013 eligibility cessation date, and second, a year
11 later in July 2014 (AR 21) (citing AR 426-29 and AR 564-68) – and at both examinations
12 observed possible malingering and did not diagnose schizophrenia. (See AR 21) (discussing
13 Exhs. 6F at 2-5, 21F at 2-6). The psychological expert, Dr. Borden, also stated that “the
14 diagnosis of psychotic disorder and paranoid schizophrenia are not well established.” (AR
15 22.) Finally, the record reflects that Plaintiff was discharged from mental health treatment
16 through Foothill Family Services in March 2014 because his mother declined further
17 treatment (AR 21) (discussing Exhs. 23F at 38, 47-48, 50), Plaintiff then went without any
18 psychiatric treatment for nearly six months (*id.*), and there are no mental status examinations
19 or other psychological test results during the relevant period that would support a diagnosis
20 of psychosis or schizophrenia.

21
22 In light of the foregoing, even if the ALJ had explicitly discussed the Sanchez
23 Statement and the Pacific Clinics records at issue, it would have had no effect on the
24 ultimate nondisability determination. Accordingly, any error is harmless and the ALJ’s
25 decision must be affirmed. See *Brown-Hunter*, 806 F.3d at 492 (error is harmless when
26 inconsequential to ultimate disability determination).

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3 **CONCLUSION**

4 IT IS ORDERED that the decision of the Commissioner is AFFIRMED, and Judgment
5 shall be so ENTERED.

6 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of this
7 Memorandum Opinion and Order and the Judgment on the respective counsel for Plaintiff
8 and Defendant.

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10 LET JUDGMENT BE ENTERED ACCORDINGLY.

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12 DATE: October 27, 2017

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14 KAREN L. STEVENSON
15 UNITED STATES MAGISTRATE JUDGE
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