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II.

BACKGROUND

Plaintiff was born on July 26, 1962. [Administrative Record (“AR”) at 32, 232, 234.] He has past relevant work experience in the composite job of surgical technician and medical assistant. [AR at 32, 74, 75.]

On December 28, 2012, plaintiff filed an application for a period of disability and DIB, and an application for SSI payments, alleging that he has been unable to work since June 4, 2012. [AR at 21, 232-33, 234-39.] After his applications were denied initially and upon reconsideration, plaintiff timely filed a request for a hearing before an Administrative Law Judge (“ALJ”). [AR at 21, 195-96.] A hearing was held on August 14, 2015, at which time plaintiff appeared represented by an attorney, and testified on his own behalf. [AR at 41-89.] A vocational expert (“VE”) also testified. [AR at 71-88.] On September 14, 2015, the ALJ issued a decision concluding that plaintiff was not under a disability from June 4, 2012, the alleged onset date, through September 14, 2015, the date of the decision. [AR at 21-35.] Plaintiff requested review of the ALJ’s decision by the Appeals Council. [AR at 15-16.] When the Appeals Council denied plaintiff’s request for review on March 21, 2017 [AR at 1-5], the ALJ’s decision became the final decision of the Commissioner. See Sam v. Astrue, 550 F.3d 808, 810 (9th Cir. 2008) (per curiam) (citations omitted). This action followed.

III.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court has authority to review the Commissioner’s decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence or if it is based upon the application of improper legal standards. Berry v. Astrue, 622 F.3d 1228, 1231 (9th Cir. 2010) (citation omitted).

“Substantial evidence means more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Revels v. Berryhill, 874 F.3d 648, 654 (9th Cir. 2017) (citation omitted). “Where

1 evidence is susceptible to more than one rational interpretation, the ALJ's decision should be
2 upheld." Id. (internal quotation marks and citation omitted). However, the Court "must consider
3 the entire record as a whole, weighing both the evidence that supports and the evidence that
4 detracts from the Commissioner's conclusion, and may not affirm simply by isolating a specific
5 quantum of supporting evidence." Id. (quoting Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir.
6 2014) (internal quotation marks omitted)). The Court will "review only the reasons provided by the
7 ALJ in the disability determination and may not affirm the ALJ on a ground upon which he did not
8 rely." Id. (internal quotation marks and citation omitted); see also SEC v. Chenery Corp., 318 U.S.
9 80, 87, 63 S. Ct. 454, 87 L. Ed. 626 (1943) ("The grounds upon which an administrative order
10 must be judged are those upon which the record discloses that its action was based.").

11 12 IV.

13 THE EVALUATION OF DISABILITY

14 Persons are "disabled" for purposes of receiving Social Security benefits if they are unable
15 to engage in any substantial gainful activity owing to a physical or mental impairment that is
16 expected to result in death or which has lasted or is expected to last for a continuous period of at
17 least twelve months. Garcia v. Comm'r of Soc. Sec., 768 F.3d 925, 930 (9th Cir. 2014) (quoting
18 42 U.S.C. § 423(d)(1)(A)).

19 20 A. THE FIVE-STEP EVALUATION PROCESS

21 The Commissioner (or ALJ) follows a five-step sequential evaluation process in assessing
22 whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920; Lounsbury v. Barnhart, 468
23 F.3d 1111, 1114 (9th Cir. 2006) (citing Tackett v. Apfel, 180 F.3d 1094, 1098-99 (9th Cir. 1999)).
24 In the first step, the Commissioner must determine whether the claimant is currently engaged in
25 substantial gainful activity; if so, the claimant is not disabled and the claim is denied. Lounsbury,
26 468 F.3d at 1114. If the claimant is not currently engaged in substantial gainful activity, the
27 second step requires the Commissioner to determine whether the claimant has a "severe"
28 impairment or combination of impairments significantly limiting his ability to do basic work

1 activities; if not, a finding of nondisability is made and the claim is denied. Id. If the claimant has
2 a “severe” impairment or combination of impairments, the third step requires the Commissioner
3 to determine whether the impairment or combination of impairments meets or equals an
4 impairment in the Listing of Impairments (“Listing”) set forth at 20 C.F.R. § 404, subpart P,
5 appendix 1; if so, disability is conclusively presumed and benefits are awarded. Id. If the
6 claimant’s impairment or combination of impairments does not meet or equal an impairment in the
7 Listing, the fourth step requires the Commissioner to determine whether the claimant has sufficient
8 “residual functional capacity” to perform his past work; if so, the claimant is not disabled and the
9 claim is denied. Id. The claimant has the burden of proving that he is unable to perform past
10 relevant work. Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir. 1992). If the claimant meets
11 this burden, a prima facie case of disability is established. Id. The Commissioner then bears
12 the burden of establishing that the claimant is not disabled because there is other work existing
13 in “significant numbers” in the national or regional economy the claimant can do, either (1) by
14 the testimony of a VE, or (2) by reference to the Medical-Vocational Guidelines at 20 C.F.R. pt.
15 404, subpt. P, app. 2. Lounsbury, 468 F.3d at 1114. The determination of this issue comprises
16 the fifth and final step in the sequential analysis. 20 C.F.R. §§ 404.1520, 416.920; Lester v.
17 Chater, 81 F.3d 721, 828 n.5 (9th Cir. 1995); Drouin, 966 F.2d at 1257.

18

19 **B. THE ALJ’S APPLICATION OF THE FIVE-STEP PROCESS**

20 At step one, the ALJ found that plaintiff had not engaged in substantial gainful activity since
21 June 4, 2012, the alleged onset date.¹ [AR at 23.] At step two, the ALJ concluded that plaintiff
22 has the severe impairments of degenerative disc disease; affective disorder; seizure disorder; and
23 anxiety. [Id.] The ALJ also determined that plaintiff’s past alcohol abuse is not material to the
24 determination of disability. [AR at 25.] At step three, the ALJ determined that plaintiff does not
25 have an impairment or a combination of impairments that meets or medically equals any of the
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28 ¹ The ALJ concluded that plaintiff met the insured status requirements of the Social Security Act through June 30, 2012. [AR at 23.]

1 impairments in the Listing. [AR at 25.] The ALJ further found that plaintiff retained the residual
2 functional capacity (“RFC”)² to perform medium work as defined in 20 C.F.R. §§ 404.1567(c) and
3 416.967(c),³ as follows:

4 [Plaintiff] cannot be around unprotected heights, moving mechanical parts or
5 operate a mechanical vehicle. [He] cannot climb ladders, ropes and scaffolds. [He]
6 was limited to performing simple, routine tasks with simple work related decisions
7 and occasional contact with supervisors, and incidental contact with coworkers and
8 the public and few changes in the routine work setting defined as the work being
9 generally the same every day. [Plaintiff] cannot perform work at a production rate
10 pace.

11 [AR at 27.] At step four, based on plaintiff’s RFC and the testimony of the VE, the ALJ concluded
12 that plaintiff is unable to perform his past relevant work in the composite job of surgical technician
13 and medical assistant. [AR at 32, 76-77.] At step five, based on plaintiff’s RFC, vocational factors,
14 and the VE’s testimony, the ALJ found that there are jobs existing in significant numbers in the
15 national economy that plaintiff can perform, including work as a “truck washer” (Dictionary of
16 Occupational Titles (“DOT”) No. 529.687-018), “furniture cleaner” (DOT No. 709.687-014), and
17 “equipment cleaner” (DOT No. 381.687-022). [AR at 33-34, 77, 78-79.] Accordingly, the ALJ
18 determined that plaintiff was not disabled at any time from the alleged onset date of June 4, 2012,
19 through September 14, 2015, the date of the decision. [AR at 34.]

20 V.

21 THE ALJ’S DECISION

22 Plaintiff contends that the ALJ erred when he: (1) rejected the opinions of plaintiff’s treating
23 psychiatrist, Lucy Liao, M.D., regarding plaintiff’s mental limitations; (2) rejected plaintiff’s

24 ² RFC is what a claimant can still do despite existing exertional and nonexertional
25 limitations. See Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). “Between steps
26 three and four of the five-step evaluation, the ALJ must proceed to an intermediate step in which
the ALJ assesses the claimant’s residual functional capacity.” Massachi v. Astrue, 486 F.3d 1149,
1151 n.2 (9th Cir. 2007) (citation omitted).

27 ³ “Medium work involves lifting no more than 50 pounds at a time with frequent lifting or
28 carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that
he or she can also do sedentary and light work.” 20 C.F.R. §§ 404.1567(c), 416.967(c).

1 subjective symptom testimony; and (3) found that plaintiff can perform jobs existing in significant
2 numbers in the national economy. [JS at 3.] As set forth below, the Court agrees with plaintiff,
3 in part, and remands for further proceedings.

4 5 **A. MEDICAL OPINIONS**

6 **1. Legal Standard**

7 “There are three types of medical opinions in social security cases: those from treating
8 physicians, examining physicians, and non-examining physicians.” Valentine v. Comm’r Soc. Sec.
9 Admin., 574 F.3d 685, 692 (9th Cir. 2009); see also 20 C.F.R. §§ 404.1502, 404.1527.⁴ The Ninth
10 Circuit has recently reaffirmed that “[t]he medical opinion of a claimant’s treating physician is given
11 ‘controlling weight’ so long as it ‘is well-supported by medically acceptable clinical and laboratory
12 diagnostic techniques and is not inconsistent with other substantial evidence in [the claimant’s]
13 case record.” Trevizo v. Berryhill, 871 F.3d 664, 675 (9th Cir. 2017) (quoting 20 C.F.R. §
14 404.1527(c)(2)). Thus, “[a]s a general rule, more weight should be given to the opinion of a
15 treating source than to the opinion of doctors who do not treat the claimant.” Lester, 81 F.3d at
16 830; Garrison, 759 F.3d at 1012 (citing Ryan v. Comm’r of Soc. Sec., 528 F.3d 1194, 1198 (9th
17 Cir. 2007)); Turner v. Comm’r of Soc. Sec., 613 F.3d 1217, 1222 (9th Cir. 2010). “The opinion of
18 an examining physician is, in turn, entitled to greater weight than the opinion of a nonexamining
19 physician.” Lester, 81 F.3d at 830; Ryan, 528 F.3d at 1198.

20 “[T]he ALJ may only reject a treating or examining physician’s uncontradicted medical
21 opinion based on clear and convincing reasons.” Trevizo, 871 F.3d at 675 (citing Ryan, 528 F.3d

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23 ⁴ The Court notes that for all claims filed on or after March 27, 2017, the Rules in 20 C.F.R.
24 § 404.1520c (not § 404.1527) shall apply. The new regulations provide that the Social Security
25 Administration “will not defer or give any specific evidentiary weight, including controlling weight,
26 to any medical opinion(s) or prior administrative medical finding(s), including those from your
27 medical sources.” 20 C.F.R. § 404.1520c. Thus, the new regulations eliminate the term “treating
28 source,” as well as what is customarily known as the treating source or treating physician rule.
See 20 C.F.R. § 404.1520c; see also 81 Fed. Reg. 62560, at 62573-74 (Sept. 9, 2016). However,
the claim in the present case was filed before March 27, 2017, and the Court therefore analyzed
plaintiff’s claim pursuant to the treating source rule set out herein. See also 20 C.F.R. § 404.1527
(the evaluation of opinion evidence for claims filed prior to March 27, 2017).

1 at 1198). “Where such an opinion is contradicted, however, it may be rejected for specific and
2 legitimate reasons that are supported by substantial evidence in the record.” Id. (citing Ryan, 528
3 F.3d at 1198). When a treating physician’s opinion is not controlling, the ALJ should weigh it
4 according to factors such as the nature, extent, and length of the physician-patient working
5 relationship, the frequency of examinations, whether the physician’s opinion is supported by and
6 consistent with the record, and the specialization of the physician. Trevizo, 871 F.3d at 676; see
7 20 C.F.R. § 404.1527(c)(2)-(6). The ALJ can meet the requisite specific and legitimate standard
8 “by setting out a detailed and thorough summary of the facts and conflicting clinical evidence,
9 stating his interpretation thereof, and making findings.” Reddick v. Chater, 157 F.3d 715, 725 (9th
10 Cir. 1998). The ALJ “must set forth his own interpretations and explain why they, rather than the
11 [treating or examining] doctors’, are correct.” Id.

12 Although the opinion of a non-examining physician “cannot by itself constitute substantial
13 evidence that justifies the rejection of the opinion of either an examining physician or a treating
14 physician,” Lester, 81 F.3d at 831, state agency physicians are “highly qualified physicians,
15 psychologists, and other medical specialists who are also experts in Social Security disability
16 evaluation.” 20 C.F.R. §§ 404.1527(e)(2)(i), 416.927(e)(2)(i); Soc. Sec. Ruling (“SSR”)⁵ 96-6p;
17 Bray v. Astrue, 554 F.3d 1219, 1221, 1227 (9th Cir. 2009) (the ALJ properly relied “in large part
18 on the DDS physician’s assessment” in determining the claimant’s RFC and in rejecting the
19 treating doctor’s testimony regarding the claimant’s functional limitations). Reports of
20 non-examining medical experts “may serve as substantial evidence when they are supported by
21 other evidence in the record and are consistent with it.” Andrews v. Shalala, 53 F.3d 1035, 1041
22 (9th Cir. 1995).

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24 /

26 ⁵ “SSRs do not have the force of law. However, because they represent the Commissioner’s
27 interpretation of the agency’s regulations, we give them some deference. We will not defer to SSRs
28 if they are inconsistent with the statute or regulations.” Holohan v. Massanari, 246 F.3d 1195, 1202
n.1 (9th Cir. 2001) (citations omitted).

1 **2. Dr. Liao**

2 On September 4, 2013, Dr. Liao completed a very detailed Mental Disorder Questionnaire
3 Form regarding plaintiff’s mental health (“Form”). [AR at 537-42.] In the Form, Dr. Liao indicated
4 that she had first examined plaintiff on November 19, 2012, and had seen him “1-2x/month” since
5 that time. [AR at 541.] In the Form, among other things, Dr. Liao reported the following: plaintiff
6 first experienced depressive symptoms in 1982, including a lack of motivation, anger, social
7 withdrawal, and a desire not to be around other people, as well as the use of alcohol as a coping
8 mechanism; he “isolates to the extreme and cannot establish or maintain contact during
9 employment oriented activities”; his isolation and paranoia “markedly impact his ability to engage
10 in any social or vocational activities”; he has an unrealistic fear for his own safety; some of his
11 more severe symptoms decreased after he began his psychiatric treatment and medication
12 regime, but he continues “to isolate whenever possible and expresses belief that persons or
13 people are watching him”; he exhibits marked anxiety “and repetition of his belief in persecution
14 or of persons talking about him in community settings”; he “manifests severe isolation and feelings
15 of persecution that have resulted in his homelessness”; his “reactions to any close personal
16 relationships or even an effective therapeutic alliance are hindered” by his fear and isolation
17 behaviors and he “remains aloof from close exploration by his case manager”; he “personalizes
18 many stimuli as directed at him and responds aggressively to any of these perceptions,” which
19 “would surely impact [him] in any work environment as it has in his current communal living
20 situation”; he completes household chores “but to an extreme compulsive level” and is “exacting
21 and demanding in an overly obsessive manner”; he demands that his peers adhere to his strict
22 perception of standards and is “not open to understanding of the limitations of his peers”; he
23 presents in a “grandiose manner” and describes himself as an expert in his field “despite the
24 evidence of his becoming unemployed”; his anxiety prevents social interaction; he is “rigid and
25 uncompromising” in his style of interaction, his grandiose and exacting nature makes social
26 contact difficult, his belief that others are watching him “also contributes to difficult social
27 engagement” and his expectations are concrete and inflexible; his “expectations that others need
28 to concede to him in some manner, further affect[] his ability to engage in healthy relationships”;

1 he endorses paranoid delusions “but is generally unspecific about how or why this is happening”;
2 he responds to all questions in a compulsive manner with many hand gestures; he describes
3 memory lapses involving his work activities and has difficulty remembering the basic chores of his
4 job as a surgical assistant; he manages many activities of daily living “well enough to survive in
5 an environment where he is provided structure and guidance” but when he is allowed to “direct
6 his own actions his anxiety and paranoia can result in extreme aggression and defensive
7 behaviors”; and his “symptoms continue to impact his ability to function or to obtain gainful
8 employment.” [AR at 537-41.] Dr. Liao noted that plaintiff participates voluntarily and
9 “strenuously” in his treatment “but remains in a guarded condition,” and he “is likely to worsen”
10 without ongoing, consistent and supportive services. [AR at 541.] She opined that his condition
11 “is expected to remain for the foreseeable future.” [Id.]

12 On January 15, 2014, Dr. Liao completed a “Medical Source Statement of Ability to do
13 Work-Related Activities (Mental)” (“Statement”). [AR at 667-69.] In the Statement, Dr. Liao
14 indicated that plaintiff was moderately⁶ limited in his ability to understand, remember, and carry
15 out detailed instructions, and to make simple work-related decisions. [AR at 667.] She noted only
16 “slight” limitation in his ability to understand, remember, and carry out short, simple instructions.
17 [Id.] She stated that her findings were supported by plaintiff’s diagnosis of Major Depressive
18 Disorder with Psychotic Features, and that his symptoms include impaired sleep, poor energy, and
19 poor concentration that affects his ability to understand/remember/carry out instructions, especially
20 when more detailed. [Id.] She also indicated he was moderately limited in his ability to interact
21 appropriately with the public, supervisors, and coworkers, and markedly limited in his ability to
22 respond appropriately to work pressure in a usual work setting, and to changes in a routine work
23 setting. [AR at 668.] She stated that these findings were supported by plaintiff’s depressive
24 symptoms, which present as irritability and low frustration tolerance; poor sleep; poor attention

26 ⁶ For purposes of completing the Form, “moderate” is defined as there being “moderate
27 limitations in this area but the individual is still able to function satisfactorily”; “marked” is defined
28 as there being “serious limitation in this area. The ability to function is severely limited but not
precluded.” [AR at 667.]

1 span; and poor energy level. [Id.] She further noted that he “can have significant interpersonal
2 issues due to his mood disturbance,” and that he “currently has significant trouble adjusting and
3 dealing with changes at the program due to depressive symptoms.” [Id.]

4 On June 3, 2015, Dr. Liao completed another Medical Source Statement [AR at 692-94],
5 in which she assessed the same limitations as in January 15, 2014, except that she now indicated
6 that plaintiff had deteriorated such that he would have marked limitations in his ability to interact
7 appropriately with supervisors. [AR at 693.] She also indicated that the severity of his symptoms
8 “can at times affect his judgment when it comes to decision making.” [AR at 692.]

9 The ALJ gave “this opinion”⁷ of Dr. Liao “partial weight”:

10 [Plaintiff] does have limitations in concentration, persistence and pace but is not as
11 limited in social interaction as Dr. Liao opined. [His] medical records showed that
12 he was stable with treatment, as in his examinations, he had an euthymic mood,
13 linear thoughts and no suicidal thoughts or other hallucinations. He was calm and
14 had normal speech. [He] was also well groomed, calm, cooperative and made good
eye contact.⁸ Dr. Liao also reported in her treatment notes that [plaintiff’s]
symptoms were stable with treatment. Therefore, [plaintiff] does have limitations in
concentration, persistence and pace, but not as severe as Dr. Liao indicated.

15 [AR at 30 (citing AR at 548, 549, 551, 552, 610, 671, 672, 673, 687).] The ALJ instead gave the
16 May 9, 2015, opinion of clinical psychologist Ahmad R. Riahinehad, Ed.S., Ph.D, the consultative
17 examiner, “significant weight,” finding it consistent with plaintiff’s medical records that showed he
18 was stable on medication “and was cooperative, pleasant and goal oriented.” [Id. (citing AR at
19 660-65).] Dr. Riahinehad opined that plaintiff was able to remember, understand, and carry out
20 simple and repetitive instructions and would have moderate difficulty with complex and detailed
21 instructions; had slightly slow pace and could have problems in fast-paced positions; and “was
22 able to relate with others and accept supervision.” [Id. (citing AR at 665).] The ALJ also
23 suggested that Dr. Riahinehad’s opinion was consistent with the fact that plaintiff was “able to

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25 ⁷ It is unclear whether the ALJ was referring only to the June 2015 opinion, or whether he
26 was referring to all of Dr. Liao’s opinions. For purposes of this discussion, the Court assumes the
latter.

27 ⁸ The Court sees one record cited to by the ALJ that reflects “good” eye contact [see AR at
28 687]; indeed, most of plaintiff’s records reflected “fair” or “fair to poor” eye contact. [See, e.g., AR
at 545, 546, 548, 549, 551, 552, 554, 671, 672, 679, 683, 684, 685.]

1 attend group meetings and go on walks with others,” go shopping, volunteer occasionally in the
2 kitchen at his treatment center, and “engage in a relationship with another person.” [Id. (citing
3 hearing testimony; AR at 548, 549, 551, 552, 610).] The ALJ similarly gave “great weight” to the
4 December 2013 opinion of the State agency psychologist at the reconsideration level [AR at 143-
5 54], for much the same reasons. [See AR at 31 (noting that the State agency psychologist found
6 limitations in social functioning and concentration, but the medical record also reflected that “with
7 treatment, [plaintiff] was able to manage his symptoms as he was cooperative and pleasant in his
8 examinations and made good eye contact . . . , [and] also was able to attend group therapy
9 sessions and interact with others during walks.”)] The ALJ concluded that -- viewing the evidence
10 in the light most favorable to plaintiff -- plaintiff “should not have production pace requirements at
11 work based on his allegations of difficulty concentrating as well as difficulties in social interaction
12 based on his allegations of anxiety and paranoia around others.” [Id.]

13 Plaintiff contends that the ALJ did not provide specific and legitimate reasons for
14 discounting the opinions of Dr. Liao, who was plaintiff’s treating psychiatrist for almost three years
15 as of the time of the hearing. [JS at 7 (citing AR at 606-39, 670-90).] He submits that the ALJ also
16 “mischaracterized the extent and duration of Plaintiff’s daily activities and interactions with other
17 people, and failed to offer any explanation how any of Plaintiff’s limited daily activities and social
18 interactions contradicted Dr. Liao’s opinions regarding [plaintiff’s] mental capacity to perform work-
19 related activities.”⁹ [JS at 9.]

21 ⁹ The Court notes that the ALJ did not rely on plaintiff’s activities of daily living to discount
22 Dr. Liao’s opinions; he only relied on plaintiff’s activities to discount plaintiff’s subjective symptom
23 testimony. Notwithstanding the foregoing, an ALJ may reject a medical opinion regarding a
24 claimant’s mental health because the claimant’s activities of daily life contradict it, but only if
25 substantial evidence supports that conclusion. See Rollins v. Massanari, 261 F.3d 853, 856 (9th
26 Cir. 2001) (finding that inconsistency between doctor’s opinion and claimant’s “maintaining a
27 household and raising two young children, with no significant assistance from her ex husband”
28 supported discounting the doctor’s opinion). The record must provide details about the nature,
extent, and frequency of the activities for them to “constitute ‘substantial evidence’ inconsistent
with [an examining physician’s] informed opinion.” Trevizo, 871 F.3d at 666. In this case, the
evidence regarding plaintiff’s *limitations* in his limited social interactions far outweighs the ALJ’s
findings. For instance, the ALJ found that plaintiff “was able to attend group meetings,” but plaintiff
(continued...)

1 Defendant argues that the ALJ noted that with treatment plaintiff showed an improvement
2 in his mental state, “with records showing Plaintiff as well groomed, cooperative and making good
3 eye contact,” and that he was “stable with treatment.” [JS at 11 (citing AR at 30, 58, 549, 551,
4 552, 610, 671-73, 687).] According to defendant, plaintiff’s mental status examinations “show him
5 as well-groomed, cooperative and with logical thinking,” and other treatment providers “did not
6 observe any obvious signs of mental illness or anti-social behavior.”¹⁰ [Id. (citing AR at 697, 701,
7 708, 711).] Defendant further notes that while “Dr. Liao’s check the box¹¹ function reports indicate
8 serious limitations in Plaintiff’s ability to function in a work setting, the ALJ pointed to evidence in
9 the record that contradicts the opinion in ways that show Plaintiff’s symptoms and limitations were
10 not as dire as indicated.” [JS at 13 (citing AR at 30).] Thus, although plaintiff “had limitations in
11 his ability to work, regarding pace, concentration and social interactions,” the ALJ determined that
12 plaintiff “is able to perform within the modest demands of his [RFC], which properly limits [him] to
13

14 ⁹(...continued)

15 testified he does not contribute and believes that the 45 minute to one hour meeting is “about as
16 much as [he] can tolerate” [AR at 52, 61]; that he goes on walks with a “walking group” -- but
17 plaintiff testified that he does not talk to the others during the walk [id.]; that he occasionally
18 volunteered in the kitchen at his treatment center -- doing dishes [AR at 54]; and, that although
19 plaintiff had a relationship “with another person” in the past, he testified that it was a “long-distance
20 relationship” that consisted of re-contacting someone from his past, but “nothing ever[] came of
21 it” and it did not work out. [AR at 63-64.]

22 ¹⁰ To the extent defendant suggests that the ALJ properly discounted Dr. Liao’s opinions
23 because other treating providers did not observe signs of mental illness, a reason that was *not*
24 given by the ALJ with respect to discounting Dr. Liao’s opinions, “[l]ong-standing principles of
25 administrative law require [this Court] to review the ALJ’s decision based on the reasoning and
26 factual findings offered *by the ALJ* -- not post hoc rationalizations that attempt to intuit what the
27 adjudicator may have been thinking.” Bray, 554 F.3d at 1225-26 (emphasis added, citation
28 omitted); Pinto v. Massanari, 249 F.3d 840, 847 (9th Cir. 2001) (“[W]e cannot affirm the decision
of an agency on a ground that the agency did not invoke in making its decision.”). The Court will
not consider reasons for rejecting Dr. Liao’s opinions that were not given by the ALJ in the
decision. See Trevizo, 871 F.3d at 677 & nn. 2, 4 (citation omitted).

26 ¹¹ Although defendant impliedly disparages these forms as “check the box” forms, the function
27 reports completed by Dr. Liao are the Agency’s own “approved” forms. [See AR at 667, 692
28 (denoting the forms completed by Dr. Liao to be Social Security Administration Office of Disability
Adjudication and Review form number HA-1152-U3, replacing SSA-1152, as approved by OMB
No. 0960-0650).]

1 unskilled work, limited social interactions and the types of jobs having little changes in the work
2 setting or routine, and little pace or production demands.” [JS at 13-14 (citing AR at 27, 30, 33-
3 34).]

4 The ALJ’s reasons for discounting Dr. Liao’s opinions, rather than being specific and
5 legitimate, are confusing at best. While first acknowledging that plaintiff has limitations in
6 concentration, persistence and pace, the ALJ then states: “but” plaintiff is not as limited in social
7 interaction as Dr. Liao opined. [AR at 30.] He then comments on a few medical records that
8 purportedly reflect that plaintiff was calm and cooperative, or had a euthymic mood, linear
9 thoughts, no suicidal ideations during examinations, and was “stable” with treatment -- none of
10 which provides any support for the ALJ’s previous statement regarding plaintiff’s limitations in
11 social interactions, let alone with concentration, persistence or pace. [Id.] After discussing these
12 record findings relating to plaintiff’s mood and affect, the ALJ concludes with another non sequitur
13 (and without support), stating that “therefore,” plaintiff’s limitations in concentration, persistence
14 or pace are not as severe as indicated by Dr. Liao. [Id.]

15 Even if the few records cited to by the ALJ reflect good grooming, normal speech, calm
16 behavior, or that plaintiff was “stable with treatment” at a specific treatment visit, it is clear after
17 reviewing the records that the ALJ did little more than pick and choose among the records for
18 these examples to support his decision. And, even within the same few records cited to by the
19 ALJ, the treatment notes reflect that -- despite plaintiff’s good grooming, normal speech, and calm
20 behavior -- he was experiencing, among other things, low energy, “fair” eye contact at best,
21 restricted affect, and uncontrolled anxiety:

- 22 • March 13, 2013, Medication Log, Ex. 4F at 17 [AR at 552]: energy is average; fair to poor
23 eye contact; mildly reduced reactivity and mildly restricted range of affect; and fair to good
24 focus;
- 25 • April 3, 2013, Medication Log, Ex. 4F at 16 [AR at 551]: increased anxiety; fair to poor eye
26 contact; fair to good focus; appeared to not comprehend some concepts; and doing well
27 on Effexor except he complains of anxiety, not well controlled;
- 28 • May 1, 2013, Medication Log, Ex. 4F at 14 [AR at 549]: mood is up and down and energy

1 is low; fair to poor eye contact; mildly reduced reactivity and mildly restricted range of
2 affect; fair to good focus; and appeared to not comprehend some concepts;

3 • June 5, 2013, Medication Log, Ex. 4F at 13 [AR at 548]: plaintiff “reports more anxiety
4 lately”; he is stable with “some current stressor being not getting along with some people
5 at the shelter”; fair to poor eye contact; mildly reduced reactivity and mildly constricted
6 range of affect; and appeared to not comprehend some concepts;

7 • December 11, 2013, Medication Log, Ex. 10F at 18 [AR at 687]: plaintiff moved into a new
8 apartment and is feeling lonely, which is contributing to his mood dysphoria; poor energy
9 due to insomnia; affect constricted; insight and judgment impaired; and medication only
10 “mildly effective” in anxiety control, but ineffective in helping with sleep issues;

11 • March 25, 2015, Ex. 10F at 4 [AR at 673]: plaintiff feels more calm and does not pace
12 while waiting for bus stops or clinic visits; he has noticed no “change in anxiety in social
13 situations and still avoids”; fair eye contact; he reported his mood as “I’m stable”; and
14 insight and judgment impaired;

15 • April 22, 2015, Medication Log, Ex. 10F at 3 [AR at 672]: “has been feeling ‘alright’”; “feels
16 lessening of his anxiety in most situations such as on the bus, dealing with neighbors’
17 situations; although still has anxiety and irritability while in groups”; still avoiding social
18 situations and crowds; fair response to medications; fair compliance with medications; fair
19 eye contact; mood reported as “I’m stable”; affect constricted; insight and judgment
20 impaired; and therapist recommended for cognitive behavioral therapy work targeting
21 claustrophobic tendencies, mild OCD traits, and social anxiety; and

22 • May 20, 2015, Medication Log, Ex. 10F at 2 [AR at 671]: fair response to medications; fair
23 compliance with medications; fair eye contact; mood reported as “I’m OK”; affect
24 constricted; insight and judgment impaired; and therapist recommended for cognitive
25 behavioral therapy work targeting claustrophobic tendencies, mild OCD traits, and social
26 anxiety.

27 Moreover, a review of even just a few of the records the ALJ did *not* cite to during the same time
28 periods reflects the following, also showing that even when plaintiff’s mood was reported to be

1 “stable,” he continued to experience issues with depression, anxiety, low motivation, irritability, and
2 insomnia, among other things:

- 3 • December 12, 2012, Progress Notes [AR at 565, 566, 567]: still has some depression but
4 is better with medications; “extremely anxious today”; and highly anxious and feeling
5 depressed;
- 6 • December 17, 2012, Medication Log [AR at 555]: “anxiety & depression are still there”;
7 energy varies throughout the day; low appetite; low motivation; tearful the day before;
8 increased feelings of worthlessness; stable but sad mood; and continues being depressed
9 and anxious despite treatment;
- 10 • January 17, 2013, Medication Log [AR at 554]: increased anxiety, easily irritable, and
11 positive for depression; had suicidal thoughts in the prior week; and fair to poor eye
12 contact;
- 13 • July 10, 2013, Medication Log [AR at 546]: response to medication and compliance fair;
14 worsening mood; insomnia; suicidal ideations with intermittent plans; doing fair; fair eye
15 contact; and affect mildly constrained;
- 16 • August 14, 2013, Medication Log [AR at 545]: expressed frustration when his expectations
17 are not met; complains of anxiety; reports his mood as “still anxious”; fair eye contact; affect
18 constricted; and relatively stable mood but with residual anxiety due to persistent
19 psychosocial stressors;
- 20 • January 15, 2014, Medication Log [AR at 686]: still has insomnia; experiencing teeth
21 grinding; sleeping only four hours a night; poor energy level; impaired concentration during
22 the day; still has anxiety; reported that he feels anxious; fair eye contact; constricted affect;
23 and impaired insight and judgment;
- 24 • February 5, 2014, Medication Log [AR at 685]: reported feeling depressed due to a recent
25 break up; fair eye contact; and worsening sleep and mood;
- 26 • March 12, 2014, Medication Log [AR at 684]: persistent anxiety and irritability; anxiety
27 while attending group sessions, community meetings at his apartment, and while waiting
28 for the bus; fair eye contact; feels “anxious and . . . still can’t sleep”; and constricted affect;

- 1 • April 2, 2014, Medication Log [AR at 683]: mood stable; no significant changes in anxiety;
2 fair eye contact; and impaired insight and judgment;
- 3 • June 25, 2014, Medication Log [AR at 680]: worsening mood; decreased motivation;
4 worsening anxiety and irritability; fair eye contact; constricted affect; and reported mood as
5 “I’m feeling bad”;
- 6 • July 23, 2014, Medication Log [AR at 679]: persistent insomnia; fair eye contact; reported
7 “I’m ok, but still get[] irritated”; and improved mood and anxiety on higher dose of Cymbalta;
8 and
- 9 • August 20, 2014, Medication Log [AR at 678]: residual depressive symptoms; fair eye
10 contact; constricted affect; and appetite poor.

11 Thus, the treatment notes mentioned above and others in the record indicated some ups
12 and downs in plaintiff’s mental health condition, and also consistently revealed that plaintiff had
13 difficulties concentrating, focusing and maintaining attention, and with social interactions. See
14 Ghanim, 763 F.3d at 1161 (treatment notes that consistently reflected recurring symptoms did not
15 support the ALJ’s conclusion that the treating physician’s opinion was inconsistent with treatment
16 notes). An ALJ’s rejection of a treating physician’s opinion for inconsistencies between the
17 treatment notes and the physician’s opinion is not a specific and legitimate reason to reject that
18 opinion where -- as here -- no interpretation of the inconsistencies is proffered. Trevizo, 871 F.3d
19 at 666-67.

20 Additionally, an ALJ must consider all of the relevant evidence in the record and may not
21 point to only those portions of the records that bolster his findings. See, e.g., Holohan, 246 F.3d
22 at 1207-08 (holding that an ALJ cannot selectively rely on some entries in plaintiff’s records while
23 ignoring others). As the Ninth Circuit has explained, “[c]ycles of improvement and debilitating
24 symptoms are a common occurrence, and in such circumstances it is error for an ALJ to pick out
25 a few isolated instances of improvement over a period of months or years and to treat them as a
26 basis for concluding a claimant is capable of working.” Garrison, 759 F.3d at 1017 (citing Holohan,
27 246 F.3d at 1205); see also Scott v. Astrue, 647 F.3d 734, 739-40 (7th Cir. 2011) (citations
28 omitted) (“There can be a great distance between a patient who responds to treatment and one

1 who is able to enter the workforce, and that difference is borne out in [the] treatment notes. Those
2 notes show that although [plaintiff] had improved with treatment, [h]e nevertheless continued to
3 frequently experience bouts of crying and feelings of paranoia. The ALJ was not permitted to
4 ‘cherry-pick’ from those mixed results to support a denial of benefits.”). Thus, “[r]eports of
5 ‘improvement’ in the context of mental health issues must be interpreted with an understanding
6 of the patient’s overall well-being and the nature of [his] symptoms.” Garrison, 759 F.3d at 1017
7 (citing Ryan, 528 F.3d at 1200-01); see also Holohan, 246 F.3d at 1205 (“[The treating physician’s]
8 statements must be read in context of the overall diagnostic picture he draws. That a person who
9 suffers from severe panic attacks, anxiety, and depression makes some improvement does not
10 mean that the person’s impairments no longer seriously affect [his] ability to function in a
11 workplace.”).

12 As reflected above, the ALJ in this case “pointed” only to the portions of the medical records
13 that bolstered his findings, specifically, those findings relating to such things as plaintiff’s
14 grooming, generally calm and cooperative demeanor on examination, normal speech, and the fact
15 that he typically had linear thought processes without suicidal thoughts or hallucinations.
16 Additionally, in giving greater weight to the one-time consultative examiner’s opinions and the non-
17 examining reviewing psychologist’s opinion, over those of the treating psychiatrist, the ALJ failed
18 to consider such factors as the nature, extent, and length of plaintiff’s doctor-patient working
19 relationship with Dr. Liao, the frequency of his treatment visits with Dr. Liao, and the fact that Dr.
20 Liao is a psychiatrist, and Dr. Riahinehad, while highly qualified as an educational specialist and
21 Ph.D. clinical psychologist, had no medical records available for his review, and his entire opinion
22 was based on his one-time evaluation and observation of plaintiff on May 9, 2015. [AR at 661.]
23 Indeed, based on no observable evidence and contrary to the great weight of evidence in the
24 record, Dr. Riahinehad determined that plaintiff “is able to relate with others and accept
25 supervision” [AR at 665], while also noting that plaintiff’s concentration and attention span was
26 “variable,” that he had “some” insight into his condition, and that his judgment was “fair.” [AR at
27 662.] Similarly, the State agency psychologist’s review in December 2013, was based primarily
28 on Dr. Liao’s September 2013 Form, without the benefit of Dr. Liao’s treatment notes through mid-

1 2015 and her two additional mental health reports.

2 Based on plaintiff's longitudinal mental health history and treatment with Dr. Liao -- and
3 considering the fact that Dr. Riahinehad and the State agency psychologist did not have the
4 benefit of plaintiff's longitudinal mental health records -- the Court cannot conclude that under the
5 circumstances here the reasons for the weight given to Dr. Liao's opinions regarding plaintiff's
6 limitations in attention, concentration or pace, and moderate to marked limitations in his social
7 interactions both inside and outside of the work environment, in favor of Dr. Riahinehad's "snap-
8 shot" opinion, and the reviewing psychologist's December 2013 opinion, were specific and
9 legitimate and supported by substantial evidence. Remand is warranted on this issue.¹²

10
11 **B. SUBJECTIVE SYMPTOM TESTIMONY**

12 Plaintiff provided evidence that he is unable to work due to depression, anxiety, problems
13 with focus and concentration, lack of energy, lack of motivation, and "paranoia" around other
14 people. [JS at 16 (citations omitted).] He generally stated that he "doesn't like people, feels
15 uncomfortable around people, can't be around people for any long period of time, and has
16 difficulties with concentration and focus with activities" such as communication, reading, and
17 watching television; he attends group therapy and walking groups, but does not talk or otherwise
18 participate in these groups; when he describes his symptoms as "stable," he generally means that
19 his symptoms are not getting any worse or any better; he goes food shopping; he occasionally
20 volunteers by washing dishes and helping in the kitchen at his treatment center; he needs
21 reminders to perform personal hygiene and other tasks when he is depressed; he experiences
22 anxiety when he has to travel by bus; he has few friends; and he had a long-distance relationship
23 with someone whom he had grown up with, and "started communicating with, but nothing ever[]
24 came of it." [JS at 16-17; AR at 47-70.]

25
26 _____
27 ¹² In his third issue, plaintiff contends that because the ALJ did not properly credit Dr. Liao's
28 opinions and plaintiff's subjective symptom testimony, the ALJ's hypothetical to the VE did not
adequately reflect all of plaintiff's mental limitations. [JS at 28.] Because the matter is being
remanded on this first issue, the Court will not consider plaintiff's third issue herein.

1 The ALJ discounted plaintiff's subjective symptom testimony based on a number of
2 reasons¹³: (1) in his examinations, plaintiff "was consistently oriented, had normal insight and an
3 appropriate mood and affect"¹⁴; he showed improvement with mental health treatment and the
4 records reflected "euthymic mood, linear thoughts, and no suicidal thoughts or other
5 hallucinations"; he was calm and had normal speech, and in his "most recent examination" he was
6 "well groomed, calm, cooperative and made good eye contact"; he had linear thoughts and was
7 goal directed; he was cooperative and pleasant in his examinations and made "good" eye contact;
8 (2) plaintiff reported his anxiety symptoms were decreasing; (3) Dr. Riahinehad noted plaintiff
9 arrived on time, took the bus, was adequately dressed, denied drug and alcohol use, was oriented
10 to person, place and time, and understood the evaluation, and had fair immediate memory; (4)
11 plaintiff provided inconsistent information about his volunteering and his alleged back surgery; and
12 (5) his activities of daily living support a finding that he can perform "the above residual functional
13 capacity," and the "inconsistency between the alleged limitations and the admitted activities"
14 supports the RFC. [AR at 29.]

15 Plaintiff argues that none of the reasons provided by the ALJ for discounting his subjective
16 symptom testimony is specific, clear and convincing, and defendant counters those arguments.
17 Because the matter is being remanded for reconsideration of the medical opinions, and the ALJ
18 on remand as a result must reconsider plaintiff's RFC in light of the record evidence, the ALJ must
19 also reconsider on remand, pursuant to SSR 16-3p,¹⁵ plaintiff's subjective symptom testimony and,
20

21 ¹³ Many of these "reasons" have already been discussed -- and rejected -- in connection with
22 plaintiff's first issue.

23 ¹⁴ As outlined in the prior issue, most of plaintiff's records actually reflected impaired insight
24 and judgment.

25 ¹⁵ The Ninth Circuit in Trevizo noted that SSR 16-3p, which went into effect on March 28, 2016,
26 "makes clear what our precedent already required: that assessments of an individual's testimony
27 by an ALJ are designed to 'evaluate the intensity and persistence of symptoms after [the ALJ]
28 find[s] that the individual has a medically determinable impairment(s) that could reasonably be
expected to produce those symptoms,' and 'not to delve into wide-ranging scrutiny of the
claimant's character and apparent truthfulness.'" Trevizo, 871 F.3d at 687 n.5 (citing SSR 16-3p).
Thus, SSR 16-3p shall apply on remand.

1 based on his reconsideration of plaintiff's RFC, provide specific, clear and convincing reasons for
2 discounting plaintiff's subjective symptom testimony if warranted. See Trevizo, 871 F.3d at 678
3 n.5; Treichler v. Comm'r of Soc. Sec. Admin., 775 F.3d 1090, 1103 (9th Cir. 2014) (citation
4 omitted) (the "ALJ must identify the testimony that was not credible, and specify 'what evidence
5 undermines the claimant's complaints.'"); Brown-Hunter v. Colvin, 806 F.3d 487, 493-94 (9th Cir.
6 2015) (the ALJ must identify the testimony he found not credible and "link that testimony to the
7 particular parts of the record" supporting his non-credibility determination).

8 9 VI.

10 **REMAND FOR FURTHER PROCEEDINGS**

11 The Court has discretion to remand or reverse and award benefits. Trevizo, 871 F.3d at
12 682 (citation omitted). Where no useful purpose would be served by further proceedings, or where
13 the record has been fully developed, it is appropriate to exercise this discretion to direct an
14 immediate award of benefits. Id. (citing Garrison, 759 F.3d at 1019). Where there are outstanding
15 issues that must be resolved before a determination can be made, and it is not clear from the
16 record that the ALJ would be required to find plaintiff disabled if all the evidence were properly
17 evaluated, remand is appropriate. See Garrison, 759 F.3d at 1021.

18 In this case, there are outstanding issues that must be resolved before a final determination
19 can be made. In an effort to expedite these proceedings and to avoid any confusion or
20 misunderstanding as to what the Court intends, the Court will set forth the scope of the remand
21 proceedings. First, because the ALJ failed to provide specific and legitimate reasons for
22 discounting the opinions of Dr. Liao, the ALJ on remand shall reassess the medical evidence of
23 record and must explain the weight afforded to each opinion and provide legally adequate reasons
24 for any portion of the opinion that the ALJ discounts or rejects, including a legally sufficient
25 explanation for crediting one doctor's opinion over any of the others. Next, the ALJ on remand,
26 in accordance with SSR 16-3p, shall reassess plaintiff's subjective allegations and either credit his
27 testimony as true, or provide specific, clear and convincing reasons, supported by substantial
28 evidence in the case record, for discounting or rejecting any testimony. Finally, the ALJ shall

1 reassess plaintiff's RFC and determine, at step five, with the assistance of a VE if necessary,
2 whether there are jobs existing in significant numbers in the national economy that plaintiff can still
3 perform.¹⁶ See Shaibi v. Berryhill, 870 F.3d 874, 882-83 (9th Cir. 2017).

4
5 **VII.**

6 **CONCLUSION**

7 **IT IS HEREBY ORDERED** that: (1) plaintiff's request for remand is **granted**; (2) the
8 decision of the Commissioner is **reversed**; and (3) this action is **remanded** to defendant for further
9 proceedings consistent with this Memorandum Opinion.

10 **IT IS FURTHER ORDERED** that the Clerk of the Court serve copies of this Order and the
11 Judgment herein on all parties or their counsel.

12 **This Memorandum Opinion and Order is not intended for publication, nor is it**
13 **intended to be included in or submitted to any online service such as Westlaw or Lexis.**

14 

15 DATED: April 9, 2018

16 _____
17 PAUL L. ABRAMS
18 UNITED STATES MAGISTRATE JUDGE

19
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27 _____
28 ¹⁶ Nothing herein is intended to disrupt the ALJ's step four finding that plaintiff is unable to return to his past relevant work.