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

MICHAEL R.,¹
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

Case No. 2:19-cv-08689-AFM

**MEMORANDUM OPINION AND
ORDER AFFIRMING DECISION
OF THE COMMISSIONER**

Plaintiff filed this action seeking review of the Commissioner’s final decision denying his applications for disability insurance benefits and supplemental security income. In accordance with the Court’s case management order, the parties have filed briefs addressing the merits of the disputed issues. The matter is now ready for decision.

BACKGROUND

In October 2015, Plaintiff applied for disability insurance benefits and supplemental security income, alleging disability since May 23, 2015.

¹ Plaintiff’s name has been partially redacted in accordance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 (Administrative Record [“AR”] 380-391.) Plaintiff’s applications were denied
2 initially and upon reconsideration. (AR 250-258, 261-267.) A hearing took place on
3 October 5, 2018 before an Administrative Law Judge (“ALJ”). Plaintiff, who was
4 represented by counsel, and a vocational expert (“VE”) testified at the hearing. (AR
5 111-144.)

6 In a decision dated October 26, 2018, the ALJ found that Plaintiff suffered
7 from the following severe impairments: bilateral status post-boxer’s fracture; status
8 post-right ankle gunshot wound and open reduction and internal fixation with
9 residual arthritis; obesity; left ankle degenerative arthritis; left hand 4th finger mallet
10 deformity; malunion of 5th left and 4th right fingers; right hand/wrist ganglion cysts;
11 back arthralgias; and depressive and anxiety disorders. (AR 78.) The ALJ determined
12 that Plaintiff had the residual functional capacity (“RFC”) to perform a range of light
13 work with the following restrictions: needing a cane to walk more than four blocks;
14 standing/walking no more than four hours in an eight-hour workday; occasionally
15 walking on uneven terrain; no climbing ladders or working at unprotected heights;
16 occasional postural activities; frequent handling and fingering and reaching
17 bilaterally; performance of simple and routine tasks; no more than incidental contact
18 with the public and co-workers; and no more than occasional contact with
19 supervisors. (AR 82.) Relying on the testimony of the VE, the ALJ concluded that
20 Plaintiff could perform jobs existing in significant numbers in the national economy.
21 Accordingly, the ALJ concluded that Plaintiff was not disabled. (AR 86-87.)

22 The Appeals Council subsequently denied Plaintiff’s request for review (AR
23 1-6), rendering the ALJ’s decision the final decision of the Commissioner.

24 **DISPUTED ISSUES**

25 Plaintiff, who is proceeding *pro se*, has not presented any disputed issue with
26 specificity. In his brief supporting his complaint, Plaintiff alleges that he is “still
27 going to physical therapy” and “still dealing with major pain in both hands due to the
28 breakage of the bones.” He also states that the screws in his ankle make it “hard for

1 me to stand and walk to keep my balance” and that his conditions affect his ability to
2 perform “normal daily tasks,” which “can be very depressing.” (ECF No. 23 at 4-5.)
3 Finally, Plaintiff states that his mental health physician, Dr. Kopp, “has been helping
4 me with my issues.” (ECF No. 23 at 5.)

5 Generally, the Court need not consider claims that Plaintiff fails to present with
6 any specificity and that lack citation to evidence or legal authority. *See, e.g., DeBerry*
7 *v. Comm’r of Soc. Sec. Admin.*, 352 F. App’x 173, 176 (9th Cir. 2009) (declining to
8 consider claim that ALJ failed properly to apply Social Security Ruling where
9 claimant did not argue the issue “with any specificity” in her opening brief and failed
10 to cite “any evidence or legal authority” in support of her position); *Nazarian v.*
11 *Berryhill*, 2018 WL 2938581, at *4 (C.D. Cal. June 7, 2018) (finding plaintiff
12 “provide[d] no specific argument regarding how the ALJ in this case specifically
13 erred in such respect, and thus fail[ed] to persuade the Court that a remand is
14 warranted on such conclusory grounds”). Nevertheless, the Court has liberally
15 construed Plaintiff’s memorandum in support of the complaint to raise the issues
16 discussed below.

17 STANDARD OF REVIEW

18 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to
19 determine whether the Commissioner’s findings are supported by substantial
20 evidence and whether the proper legal standards were applied. *See Treichler v.*
21 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). Under the
22 substantial-evidence standard, this Court asks whether the administrative record
23 contains sufficient evidence to support the Commissioner’s factual determinations.
24 *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019). As the Supreme Court stated in
25 *Biestek*, “whatever the meaning of “substantial” in other contexts, the threshold for
26 such evidentiary sufficiency is not high.” *Id.* It means “more than a mere scintilla”
27 but less than a preponderance and is “such relevant evidence as a reasonable mind
28 might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S.

1 389, 401 (1971). This Court must review the record as a whole, weighing both the
2 evidence that supports and the evidence that detracts from the Commissioner’s
3 conclusion. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). Where
4 evidence is susceptible of more than one rational interpretation, the Commissioner’s
5 decision must be upheld. *See Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

6 DISCUSSION

7 I. Medical Record

8 The ALJ summarized the relevant medical record. With regard to Plaintiff’s
9 physical impairments, the ALJ began by discussing Plaintiff’s history of bilateral
10 status post-boxer’s fracture and status post-right ankle gunshot wound and open
11 reduction and internal fixation. (AR 78, citing AR 508-512.) The ALJ noted that
12 updated x-rays from June 2015 showed signs of old injuries but no acute fracture or
13 significant arthritis. (AR 617-620.) In July 2015, Plaintiff was prescribed ibuprofen
14 and Naproxen for relief of pain related to these “old injuries.” (AR 620-622.)

15 In January 2016, Plaintiff presented to the emergency room complaining of
16 residual pain related to his hand and ankle injuries. Plaintiff was found to have a cyst
17 on his right hand and some claw deformity but showed no tenderness. Plaintiff had some
18 diminished range of motion in his left ankle due to pain. No other physical deficits
19 were noted. Plaintiff was discharged with a prescription for pain medication (Norco).
20 (AR 686-691.)

21 In February 2016, Plaintiff was treated at South Bay Family Health Care for
22 complaints of chronic pain in left ankle and hands based upon his prior injuries. He
23 was diagnosed with osteoarthritis of his hands and left ankle and advised to continue
24 using pain medication. (AR 705-707.) The ALJ noted that Plaintiff made intermittent
25 reports of similar pain throughout 2016. (AR 709-724.)

26 In March 2016, Plaintiff underwent an orthopedic consultation with Samer
27 Alnajjar, M.D., at the California Orthopedic Institute. Dr. Alnajjar diagnosed
28 Plaintiff with right wrist ganglion cyst and a left mallet finger. His mallet finger was

1 treated with a splint and hand therapy. Plaintiff underwent surgical ganglion removal
2 in July 2016, followed by occupational therapy. (AR 727-755.)

3 The ALJ noted x-rays of Plaintiff's left ankle taken in September 2016 and
4 June 2018 revealed severe degenerative arthritis. (AR 1111, 1350.)

5 In January and April 2017, Plaintiff presented to the emergency room
6 complaining about the return of his right wrist ganglion cyst with mild tingling in his
7 fingers. The fluid was removed from the joint capsule without complication, and
8 Plaintiff was discharged. (AR 775-788, 789-798.) In September 2017, Dr. Alnajjar
9 performed a surgical excision of Plaintiff's right wrist ganglion cyst. (AR 894.)
10 Thereafter, Plaintiff continued to participate in physical therapy. (AR 1120-1177,
11 1471-1552.)

12 Warren Yu, M.D., performed a consultative orthopedic evaluation of Plaintiff
13 in January 2018. Plaintiff reported residual bilateral wrist and left ankle pain. He
14 denied back pain. Examination revealed normal range of motion in back, neck and
15 extremities. Straight-leg raising was negative bilaterally in both the supine and seated
16 position. Plaintiff exhibited residual tenderness on palpation over the right wrist, but
17 range of motion was full and painless in all planes; there was no swelling or effusion;
18 and Tinel's sign over the carpal tunnel, cubital tunnel, radial tunnel, and Guyon's
19 tunnel were negative. Plaintiff showed pain in the fourth and fifth metacarpals of his
20 left hand and the fourth metacarpal of his right hand, but there was no atrophy or
21 tenderness. Plaintiff had no loss of fine or gross manipulative functioning and range
22 of motion of the fingers was full and painless. Plaintiff also showed some left ankle
23 tenderness and reduced ranges of motion, but retained normal neurological
24 functioning. Dr. Yu diagnosed Plaintiff with mild posttraumatic arthritis of the left
25 ankle; malunion of the fifth metacarpal on the left hand and fourth metacarpal on the
26 right hand; mallet finger of the fourth digit on the left hand; and myofascial low back
27 pain. In Dr. Yu's opinion, Plaintiff retained the ability to lift/carry 10-20 pounds;
28 stand/walk for four hours in an eight-hour workday; sit for six hours in an eight-hour

1 workday; perform occasional postural movements; and frequent manipulative tasks.
2 (AR 762- 772.)

3 Throughout 2018, Plaintiff continued to complain of left ankle arthralgias. (AR
4 1558, 1564-1565, 1568-1572, 1581-1583.)

5 In treatment notes from July 2018, Dr. Alnajjar observed that Plaintiff had
6 developed a new right wrist cyst near his previously treated lesion. The cyst limited
7 full extension and flexion of the wrist and Tinel's test as positive with percussion
8 over the main and radial nerve. Dr. Alnajjar recommended another procedure to
9 aspirate the new cyst and the use of a short-arm splint until Plaintiff could be
10 scheduled for surgery to excise the cyst. (AR 1600-1601.)

11 With regard to Plaintiff's mental impairments, the ALJ noted that he was
12 treated at Gateway Homeless Services between 2014 and 2017. At his initial
13 assessment in September 2014, Plaintiff reported a history of depression with
14 paranoia, insomnia, low energy, anxiety, and hallucinations but had not previously
15 sought formal mental health treatment. Plaintiff indicated he self-medicated with
16 marijuana and alcohol. He was diagnosed with major depressive disorder with
17 psychotic features and alcohol and cannabis abuse. (AR 514-515, 518-530.)
18 Plaintiff's treating psychiatrist, Arthur Kopp, M.D, prescribed Remeron, an anti-
19 depressant medication. (AR 518, 525-526.)

20 Every one or two months from 2015 through 2017, Plaintiff continued follow-
21 up outpatient therapy treatment with Dr. Kopp. (AR 803-886.) Treatment notes from
22 November 2014, January 2015, and February 2015 all reflect that Plaintiff was
23 compliant with his medication and denied side effects. Mental status examination
24 revealed a sad mood and blunted affect. Plaintiff's thought process was well
25 organized, his speech was normal, his personal hygiene was good, he denied audio
26 or visual hallucinations and denied suicide ideation. (AR 594, 596, 599.)

27 Notes from a March 2015 follow-up revealed Plaintiff to be alert, cooperative,
28 and clean. No abnormal movements were observed. Plaintiff's speech was normal;

1 his mood was euthymic; his memory, attention, and concentration were intact. His
2 thought process exhibited no delusions and his cognitive functions appeared to be
3 grossly intact. Plaintiff reported that he was doing “much better” and his mood was
4 not as irritable as before. He denied suicidal ideation, auditory or visual
5 hallucinations. Dr. Kopp continued Plaintiff’s medication. (AR 611-613.)

6 Dr. Kopp next saw Plaintiff in June 2015. Plaintiff had missed several
7 appointments and presented with exacerbation of depressed mood and irritability. As
8 a result of missed appointments, Plaintiff’s medication compliance was noted to be
9 poor. Nevertheless, other than dysphoric mood and blunted affect, Plaintiff’s mental
10 status examination was essentially normal. (AR 806-807.) Later that month, Plaintiff
11 reported paranoia. Mental status examination revealed Plaintiff’s speech was low and
12 slow; his mood was dysphoric; his affect was blunted; his attention and concentration
13 were impaired; his thought content exhibited paranoid - persecutory delusions; and
14 his insight and judgment were poor. Dr. Kopp prescribed Seroquel. (AR 809-811.)
15 In July 2015, Plaintiff complained of depression, and Dr. Kopp increased the dosage
16 of Plaintiff’s anti-depressant medication. (AR 812-814.) In August 2015, Dr. Kopp
17 noted that Plaintiff was alert, cooperative, and clean. He did not exhibit abnormal
18 movements; he was oriented; his memory, attention, and concentration were intact;
19 he denied suicidal ideation and hallucinations; and his through content did not exhibit
20 delusions. However, Plaintiff’s mood was dysphoric; his affect was blunted; his
21 speech rate, tone, and volume were abnormal; and Dr. Kopp noted that Plaintiff’s
22 cognitive functions “appeared to be impaired.” (AR 815-816.) By September 2015,
23 Plaintiff reported medication compliance with no side effects. His mental status
24 examination returned to essentially normal but for dysphoric mood and blunted
25 affect. Notably, Plaintiff’s speech was normal; he was alert and oriented; his memory,
26 attention, and concentration were intact; and his cognitive functions were grossly
27 intact. (AR 818-819.)

1 In an April 2016 Mental Disorder Questionnaire Form, Dr. Kopp diagnosed
2 Plaintiff with major depressive episode, and noted that Plaintiff had no deficits of
3 behavior, memory, or intelligence. Dr. Kopp also indicated that Plaintiff was able to
4 independently perform daily living activities and public transportation. However, he
5 noted that Plaintiff had poor judgment and was generally paranoid, fearful and
6 delusional. In Dr. Kopp's opinion, Plaintiff was able to follow simple instructions,
7 but had problems accepting direction or supervision. (AR 700-704.) In December
8 2016, Dr. Kopp completed a form entitled "Medical Opinion Re: Ability to Do Work-
9 Related Activities (Mental)." At that time, Dr. Kopp assessed Plaintiff's ability to
10 perform all but two work-related activities as either "seriously limited" or "unable to
11 meet competitive standards." (AR 756-757.)

12 In February 2016, Plaintiff underwent a consultative psychiatric evaluation
13 conducted by Larisa Levin, M.D. Plaintiff complained of depression, mood swings,
14 low motivation, and ongoing marijuana and alcohol use. He indicated that he received
15 outpatient therapy and took medications including Remeron and Seroquel. He stated
16 that he was "doing fairly stable on his medications," experienced "fewer mood
17 swings," "sleeps and eats well," has no perceptual disturbances, suicidal or homicidal
18 ideations. Plaintiff denied problems caring for his personal needs, performing
19 household chores or daily activities, getting along with others, maintaining attention,
20 or completing household tasks. Plaintiff's mental status examination revealed him to
21 be appropriately dressed and groomed; cooperative; oriented; with intact memory,
22 concentration, judgment, and cognitive functioning. Plaintiff's mood was dysphoric
23 and showed no signs of psychosis. Dr. Levin diagnosed Plaintiff with mood disorder,
24 not otherwise specified and cannabis and alcohol abuse. She opined that Plaintiff's
25 mental impairments resulted in no work-related mental functional deficits. (AR 692-
26 697.)

27 The ALJ noted that in January 2017, Dr. Kopp found Plaintiff was calm and
28 cooperative. Plaintiff reported good medication compliance and no side effects.

1 Other than a dysphoric mood and blunted affect, Plaintiff's mental status examination
2 was normal. (AR 80, citing AR 861-862.) The ALJ observed that "[l]ittle change was
3 noted during 2017, and as of a December 2017 visit to Dr. Kopp, [Plaintiff] again
4 generally performed well upon mental status testing, but for a dysphoric mood." (AR
5 80, citing AR 761.)

6 In March 2016, a State agency medical evaluator reviewed the medical record
7 and found that there had been no material change since the prior ALJ's unfavorable
8 determination. The physician opined that Plaintiff suffered from a medically severe
9 impairment of osteoarthritis and allied disorders, but that his mental impairment was
10 not severe. In the State agency physician's opinion, Plaintiff could lift/carry 25-50
11 pounds; sit/stand/walk for six hours each in an eight-hour workday; and perform
12 frequent postural movements. (AR 169-184, 187-203.) On reconsideration, a State
13 agency physician reached the same conclusion regarding Plaintiff's physical
14 impairments. After considering Dr. Kopp's latest report, the State agency physician
15 found Plaintiff's affective disorder severe and opined that it resulted in a moderate
16 concentration deficit. (AR 205-223, 225-244.)

17 **II. The ALJ's Decision**

18 At the outset, the ALJ noted that Plaintiff had filed a prior claim for disability:
19 In a decision dated May 22, 2015, another ALJ had found Plaintiff not disabled. (AR
20 75; *see* AR 145-161.) As the ALJ recognized, a final determination that a claimant is
21 not disabled creates a presumption that the claimant continued to be able to work
22 after that date. *See Vasquez v. Astrue*, 572 F.3d 586, 597 (9th Cir. 2009). While a
23 claimant can rebut this presumption by establishing changed circumstances
24 indicating a greater disability, the ALJ concluded that Plaintiff had failed to do so.
25 (AR 75-76, citing *Chavez v. Bowen*, 844 F.2d 691, 693 (9th Cir. 1988).)

26 As set forth in detail above, the ALJ considered all of the medical evidence as
27 well as the medical opinions. (AR 78-81.) With respect to Plaintiff's physical
28 impairments, the ALJ noted there was no evidence of new injuries, trauma, or

1 significant changes in Plaintiff’s physical health since the prior unfavorable hearing
2 decision. (AR 83-84.) The ALJ stated that Plaintiff was primarily treated with pain
3 medications and underwent various procedures to treat recurrent ganglion cysts on
4 his right hand, used splints to treat finger contracture, and received intermittent
5 occupational/physical therapy for his hands and ankles. Nevertheless, the ALJ found
6 it significant that Plaintiff had not required major orthopedic surgical procedures on
7 his hands, wrists, ankles or back or ongoing pain management treatment. Plaintiff’s
8 treating surgeon, Dr. Alnajjar, did not assess Plaintiff as being wholly precluded from
9 using his hands/wrists/fingers, and Plaintiff generally performed well during
10 Dr. Yu’s 2018 examination. The ALJ noted that Dr. Yu opined that Plaintiff was able
11 to perform a reduced range of light work and that no treating or examining medical
12 source assessed Plaintiff with more restricted than Dr. Yu had. (AR 84.) Accordingly,
13 the ALJ determined Plaintiff could perform light work with the restrictions set out
14 above – namely, standing/walking up to four hours in an eight-hour workday;
15 frequent handling and fingering and reaching bilaterally; occasional postural
16 activities; no climbing ladders or working at unprotected heights; and required a cane
17 to walk more than four blocks. (AR 85.)

18 With respect to Plaintiff’s mental impairments, the ALJ concluded that the
19 medical record did not demonstrate any significant change or deterioration in
20 Plaintiff’s mental health since the prior unfavorable decision. In particular, the ALJ
21 noted that Plaintiff had not required inpatient psychiatric care or intensive outpatient
22 therapy. Instead, Plaintiff’s mental health treatment consisted of “intermittent”
23 treatment at the Gateway Homeless services between 2014 and 2017, during which
24 time he “performed well upon mental status testing, particularly after being
25 prescribed various anti-depressant medications.” (AR 84.) The ALJ observed that
26 Dr. Kopp’s November 2016 assessment was inconsistent with Plaintiff’s presentation
27 to Dr. Levin, with Dr. Kopp’s own assessment from a few months earlier in which
28 he found Plaintiff capable of performing simple tasks, with Dr. Kopp’s 2017

1 treatment notes revealing Plaintiff's mental status examinations were generally
2 unremarkable, and with the medical record which lacked any referral for more
3 significant mental health treatment or the use of stronger psychiatric medication. (AR
4 84-85.) Accordingly, the ALJ determined that Plaintiff could perform work involving
5 simple and routine tasks, no more than incidental contact with the public and
6 coworkers, and no more than occasional contact with supervisors. (AR 85-86.)

7 The ALJ found the opinions of the State agency physicians were consistent
8 with the record and restricted Plaintiff to simple routine tasks. The ALJ gave
9 Plaintiff's allegations of isolation and problems with people "the benefit of the
10 doubt" and incorporated into the RFC additional limitations in interacting with
11 others. (AR 22.)

12 **III. Analysis**

13 **A. The ALJ did not commit error at Steps One, Two, or Three of the** 14 **Sequential Evaluation**

15 At Step One of the Sequential Evaluation, the ALJ determined that Plaintiff
16 had not engaged in substantial gainful activity since the alleged onset date of May 22,
17 2015. (AR 77.) In addition, the ALJ noted that despite having performed past work
18 activity, Plaintiff's earnings had never risen to the level of presumptive substantial
19 gainful activity. (AR 77-78.) Plaintiff does not contend that the ALJ committed error
20 in this regard. *See* 20 C.F.R. §§ 404.1520(b), 416.920(b).

21 At Step Two, the ALJ determined that Plaintiff suffered from numerous severe
22 medically determinable impairments: bilateral status post-boxer's fracture; status
23 post-right ankle gunshot wound and open reduction and internal fixation with
24 residual arthritis; obesity; left ankle degenerative arthritis; left hand fourth finger
25 mallet deformity; malunion of the fifth left and fourth right fingers; right hand/wrist
26 ganglion cysts; back arthralgias; and depressive and anxiety disorders. (AR 78.)
27 Plaintiff does not allege that he suffered from an additional severe medically
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1 determinable impairment that the ALJ failed to address. *See* 20 C.F.R.
2 §§ 404.1520(c), 416.920(c).

3 At Step Three, the ALJ found that Plaintiff’s impairments did not meet or equal
4 any listed impairment. (AR 81.) Plaintiff does not contend that the ALJ erred in this
5 determination. *See* 20 C.F.R. §§ 404.1520(d), 416.920(d).

6 **B. The ALJ’s RFC determination is supported by substantial evidence**

7 Prior to reaching Step Four of the sequential evaluation process, the ALJ was
8 required to assess Plaintiff’s RFC. An RFC is the most a claimant can do despite his
9 or her limitations. *See* 20 C.F.R. §§404.1545(a)(1), 416.945(a)(1). In determining a
10 claimant’s RFC, an ALJ must consider all relevant evidence in the record. *Robbins*
11 *v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006). The ALJ need not include
12 properly rejected evidence or subjective complaints. *See Bayliss v. Barnhart*, 427
13 F.3d 1211, 1217 (9th Cir. 2005); *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d
14 1190, 1197 (9th Cir. 2004). The Court considers the ALJ’s determination in the
15 context of “the entire record as a whole,” and if the “evidence is susceptible to more
16 than one rational interpretation, the ALJ’s decision should be upheld.” *Ryan v.*
17 *Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (internal quotation marks
18 omitted).

19 As set out above, the ALJ considered all of the medical evidence and
20 determined that Plaintiff retained the ability to perform light work except he would
21 need to use a cane to walk more than four blocks; could stand/walk up to four hours
22 in an eight-hour workday; could occasionally walk on uneven terrain; could not climb
23 ladders or work at unprotected heights; could occasionally perform postural
24 activities; could frequently handle and finger and reach bilaterally; and could perform
25 simple, routine tasks with no more than incidental contact with the public and co-
26 workers and no more than occasional contact with supervisors. (AR 82.) In reaching
27 the determination regarding the functional limitations imposed by Plaintiff’s physical
28 impairments, the ALJ considered and essentially adopted the opinion of Dr. Yu, who

1 performed an orthopedic examination of Plaintiff in January 2018. (AR 79, 762-766.)
2 In assessing the limitations imposed by Plaintiff’s mental impairments, the ALJ
3 relied upon the psychiatric evaluation performed by Dr. Levin – although the ALJ
4 imposed additional limitations beyond those opined by Dr. Levin. (AR 80, 692-697.)

5 The ALJ properly relied upon the opinions of examining physicians, and these
6 opinions constitute substantial evidence supporting the ALJ’s RFC determination.
7 *See Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) (“opinions of non-treating
8 or non-examining physicians may also serve as substantial evidence when the
9 opinions are consistent with independent clinical findings or other evidence in the
10 record”); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (consultative
11 examiner’s opinion on its own constituted substantial evidence, because it rested on
12 independent examination of claimant).

13 At best, Plaintiff’s arguments about his bilateral hand pain and the limitations
14 caused by his ankle impairment amount to a disagreement as to how the evidence
15 should be interpreted. So long as the ALJ’s interpretation of the record is rational and
16 supported by substantial evidence, which it is here, the Court may not disturb it. *See*
17 *Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007) (“[I]f evidence is susceptible of
18 more than one rational interpretation, the decision of the ALJ must be upheld”); *see*
19 *generally Biestek*, 139 S. Ct. at 1154 (observing that in the social security context,
20 the threshold for “substantial evidence” is “not high”).

21 For the foregoing reasons, the ALJ’s RFC assessment must be affirmed. *See*
22 *Bayliss*, 427 F.3d at 1217 (“We will affirm the ALJ’s determination of Bayliss’s RFC
23 if the ALJ applied the proper legal standard and his decision is supported by
24 substantial evidence.”).

25 **C. The ALJ did not err at Steps Four or Five of the Sequential Evaluation**

26 At Step Four, the ALJ is required to determine whether Plaintiff’s RFC enabled
27 him to perform his past relevant work. *See* 20 C.F.R. §§ 404.1520(f), 416.920(f).

1 Here, the ALJ concluded Plaintiff did not have any past relevant work, and Plaintiff
2 does not challenge this finding. (AR 77-78, 86.)

3 At Step Five, the ALJ considered Plaintiff's age, education, work experience,
4 and RFC in order to determine whether Plaintiff could perform work existing in
5 significant numbers in the national economy. *See* 20 C.F.R. §§ 404.1520(g),
6 416.920(g). At the hearing, the ALJ asked the VE whether an individual with
7 Plaintiff's vocational profile and RFC could perform work existing in significant
8 numbers in the national economy. The VE testified in the affirmative, and identified
9 representative jobs of assembler, inspector, and sorter. (AR 141-142.) The
10 hypothetical that the ALJ posed to the VE contained all of the limitations that the
11 ALJ found credible and supported by substantial evidence in the record. Accordingly,
12 the ALJ's reliance on the VE's testimony was proper. *See Bayliss*, 427 F.3d at 1217-
13 1218 (ALJ properly relied on VE testimony where hypothetical posed to VE
14 contained all limitations the ALJ found credible and supported).

15 **D. Plaintiff's assertions do not fairly raise any other claim of error**

16 Plaintiff states that he is "still dealing with major pain in both hands," his ankle
17 impairment makes it "hard for [him] to stand and walk to keep [his] balance," and
18 "just normal daily tasks affects me to the highest [sic] exchange." (ECF No. 23 at 4-
19 5.) Even liberally construed, these assertions do not fairly present a claim that the
20 ALJ erred in discounting Plaintiff's testimony. *See, e.g., DeBerry*, 352 F. App'x at
21 176 (declining to consider claim that ALJ failed properly to apply Social Security
22 Ruling where claimant did not argue the issue "with any specificity" in her opening
23 brief and failed to cite "any evidence or legal authority" in support of her position);
24 *Nazarian*, 2018 WL 2938581, at *4 (plaintiff "provides no specific argument
25 regarding how the ALJ in this case specifically erred in such respect, and thus fails
26 to persuade the Court that a remand is warranted on such conclusory grounds");
27 *Moody v. Berryhill*, 245 F. Supp. 3d 1028, 1033 (C.D. Ill. 2017) (where plaintiff does
28

1 not clearly identify the ALJ’s problematic findings or legal support, court “cannot fill
2 the void by crafting arguments and performing the necessary legal research”).

3 The ALJ discussed Plaintiff’s subjective complaints (including his allegations
4 of pain and limitations) and rejected them. The ALJ provided several reasons for
5 discounting Plaintiff’s credibility, including (a) the absence of significant clinical or
6 diagnostic findings supporting the degree of disability Plaintiff alleged; (b) the
7 inconsistency between Plaintiff’s allegations and his statements to Dr. Levin that he
8 had no difficulties getting along with others, making decisions, maintain attention or
9 concentration, following instructions, or completing tasks; (d) the fact that Plaintiff
10 had not experienced any new trauma or injuries since the prior unfavorable decision,
11 nor had he required any significant additional medical procedures apart from some
12 draining/removal of his hand cysts; and (e) the inconsistency between Plaintiff’s
13 allegations of disabling symptoms and his ability to perform daily activities including
14 light household chores, care for his personal needs, and use public transportation.
15 (AR 84-85.) Plaintiff has not presented a legitimate challenge to the ALJ’s credibility
16 determination, and the Court’s review does not suggest that the ALJ erred. *See*
17 *generally Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (factors ALJ may
18 consider when making credibility determination include lack of objective medical
19 evidence, claimant’s treatment history, claimant’s daily activities, and
20 inconsistencies in testimony).

21 **ORDER**

22 IT IS THEREFORE ORDERED that Judgment be entered affirming the
23 decision of the Commissioner and dismissing this action with prejudice.

24 DATED: 3/4/2021

25 

26
27 ALEXANDER F. MacKINNON
28 UNITED STATES MAGISTRATE JUDGE