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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JESSE S.,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting  
Commissioner of Social Security  
Administration,

Defendant.

Case No. 2:21-cv-04620-SP

MEMORANDUM OPINION AND  
ORDER

**I.**

**INTRODUCTION**

On June 4, 2021, plaintiff Jesse S. filed a complaint against defendant, the Commissioner of the Social Security Administration (“Commissioner”), seeking a review of a denial of supplemental security income (“SSI”). The parties have fully briefed the issue in dispute, and the court deems the matter suitable for adjudication without oral argument.

Plaintiff presents one disputed issues for decision, whether the Administrative Law Judge (“ALJ”) properly considered the opinions of

1 consultative examiner Edward Ritvo, M.D. in making his residual functional  
2 capacity (“RFC”) determination. Memorandum in Support of Plaintiff’s  
3 Complaint (“P. Mem.”) at 3-8; *see* Memorandum in Support of Defendant’s  
4 Answer (“D. Mem.”) at 2-10.

5 Having carefully studied the parties’ memoranda, the Administrative Record  
6 (“AR”), and the decision of the ALJ, the court concludes that, as detailed herein,  
7 the ALJ properly considered Dr. Ritvo’s opinions. Consequently, the court affirms  
8 the decision of the Commissioner denying benefits.

## 9 II.

### 10 FACTUAL AND PROCEDURAL BACKGROUND

11 Plaintiff, who was 21 years old on the alleged disability onset date, has a  
12 high school education. AR at 70, 209. Plaintiff has no past relevant work. *Id.* at  
13 63.

14 On July 10, 2018, plaintiff applied for supplemental security income  
15 alleging disability since July 1, 2017. AR at 70-71. The application was denied  
16 initially, and on reconsideration. AR at 107-12, 117-21. On September 14, 2020,  
17 plaintiff, represented by counsel, appeared and testified at a hearing before the  
18 ALJ. AR at 37-69. The ALJ also heard testimony from Rebecca Williams, a  
19 vocational expert. AR at 62-69. On September 25, 2020, the ALJ issued a  
20 decision denying plaintiff’s claim. AR at 15-32.

21 Applying the well-known five-step sequential evaluation process, the ALJ  
22 found at step one that plaintiff had not engaged in substantial gainful activity since  
23 July 10, 2018, the application date. AR at 17.

24 At step two, the ALJ found plaintiff suffered from the severe impairments of  
25 major depressive disorder, generalized anxiety disorder, obsessive compulsive  
26 disorder, and polysubstance abuse. AR at 18.

27 At step three, the ALJ found plaintiff’s impairments, whether individually or  
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1 in combination, did not meet or medically equal one of the listed impairments set  
2 forth in 20 C.F.R. part 404, Subpart P, Appendix 1. *Id.*

3 The ALJ then assessed plaintiff's RFC,<sup>1</sup> and determined that based on all of  
4 the impairments, including the substance use disorder, plaintiff had the RFC to  
5 perform a full range of work at all exertional levels, but had nonexertional  
6 limitations such that plaintiff: was limited to simple, repetitive tasks; was limited to  
7 not more than occasional interactions with co-workers, the general public, and  
8 supervisors; and would also be absent from the workplace one day per week. AR  
9 at 20.

10 The ALJ found at step four that plaintiff had no past relevant work. AR at  
11 25.

12 At step five, considering plaintiff's age, education, work experience, and  
13 RFC, including his substance abuse disorder, the ALJ determined there were no  
14 jobs that existed in significant numbers in the national economy that plaintiff could  
15 perform. AR at 26. The ALJ concluded that a finding of "disabled" would  
16 therefore be appropriate. *Id.*

17 The ALJ then considered plaintiff's substance use and sobriety and found  
18 that if plaintiff stopped the substance use, the remaining limitations would cause  
19 more than a minimal impact on his ability to perform basic work activities, but he  
20 would not have an impairment or combination of impairments that meets or  
21 medically equals the severity of one of the impairments listed in 20 C.F.R. Part  
22 404, Subpart P, Appendix 1 (20 C.F.R. 416.994(b)(5)(I)). AR at 26-27. The ALJ  
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25 <sup>1</sup> Residual functional capacity is what a claimant can do despite existing  
26 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152, 1155-  
27 56 n.5-7 (9th Cir. 1989). "Between steps three and four of the five-step evaluation,  
28 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).

1 next found that if plaintiff stopped the substance use, he would have the same RFC,  
2 except that he would no longer be absent from the workplace one day a week. AR  
3 at 28.

4 Returning to step five, the ALJ determined that, if plaintiff stopped the  
5 substance use, there were jobs that exist in significant numbers in the national  
6 economy that plaintiff could perform, including church janitor, conveyor feeder-  
7 offbearer, and machine feeder. AR at 31. The ALJ therefore concluded that  
8 plaintiff's substance use disorder was a contributing factor material to the  
9 determination of disability because plaintiff would not be disabled if he stopped  
10 substance use. AR at 32. Consequently, the ALJ concluded plaintiff did not suffer  
11 from a disability as defined by the Social Security Act. *Id.*

12 Plaintiff filed a timely request for review of the ALJ's decision, which the  
13 Appeals Council denied. *Id.* at 1-4. The ALJ's decision stands as the final  
14 decision of the Commissioner.

### 15 III.

#### 16 STANDARD OF REVIEW

17 This court is empowered to review decisions by the Commissioner to deny  
18 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security  
19 Administration must be upheld if they are free of legal error and supported by  
20 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001)  
21 (as amended). But if the court determines the ALJ's findings are based on legal  
22 error or are not supported by substantial evidence in the record, the court may  
23 reject the findings and set aside the decision to deny benefits. *Aukland v.*  
24 *Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*, 242 F.3d  
25 1144, 1147 (9th Cir. 2001).

26 "Substantial evidence is more than a mere scintilla, but less than a  
27 preponderance." *Aukland*, 257 F.3d at 1035. Substantial evidence is such  
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1 “relevant evidence which a reasonable person might accept as adequate to support  
2 a conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276  
3 F.3d at 459. To determine whether substantial evidence supports the ALJ’s  
4 finding, the reviewing court must review the administrative record as a whole,  
5 “weighing both the evidence that supports and the evidence that detracts from the  
6 ALJ’s conclusion.” *Mayes*, 276 F.3d at 459. The ALJ’s decision “cannot be  
7 affirmed simply by isolating a specific quantum of supporting evidence.”  
8 *Aukland*, 257 F.3d at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th  
9 Cir. 1998)). If the evidence can reasonably support either affirming or reversing  
10 the ALJ’s decision, the reviewing court “may not substitute its judgment for that  
11 of the ALJ.” *Id.* (quoting *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir.  
12 1992)).

#### 13 IV.

#### 14 DISCUSSION

15 Plaintiff challenges the ALJ’s determination that plaintiff was not disabled  
16 because if he stopped the substance use, he would have the RFC to perform work  
17 at all exertional levels limited to simple, repetitive tasks and occasional social  
18 interactions. P. Mem. at 3-8. Specifically, plaintiff argues the ALJ improperly  
19 evaluated Dr. Ritvo’s findings of marked limitations.

20 RFC is what one can “still do despite [his or her] limitations.” 20 C.F.R.  
21 § 404.1545(a)(1). Among the evidence an ALJ relies on in an RFC assessment is  
22 medical evidence and opinions. 20 C.F.R. § 404.1545(a)(3).

23 For claims filed before March 27, 2017, the opinion of a treating physician  
24 was given more weight than an examining physician’s opinion, which was given  
25 more weight than a reviewing physician’s opinion. *See Holohan v. Massanari*, 246  
26 F.3d 1195, 1202 (9th Cir. 2001). Under this previous hierarchy of medical  
27 opinions framework, the Ninth Circuit required an ALJ to provide clear and  
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1 convincing reasons supported by substantial evidence to reject an uncontradicted  
2 opinion of a treating or examining physician, or specific and legitimate reasons  
3 supported by substantial evidence to reject a contradicted opinion of a treating or  
4 examining physician. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996) (as  
5 amended).

6 Under the revised regulations, for cases filed on or after March 27, 2017, an  
7 ALJ will no longer defer or give specific evidentiary weight to any medical  
8 opinions. 20 C.F.R. § 404.1520c(a).

9 For claims subject to the new regulations, the former hierarchy of  
10 medical opinions – in which we assign presumptive weight based on  
11 the extent of the doctor’s relationship with the claimant – no longer  
12 applies. Now, an ALJ’s decision, including the decision to discredit  
13 any medical opinion, must simply be supported by substantial  
14 evidence.

15 *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). As such, the previous  
16 requirement that an ALJ provide “specific and legitimate” reasons to reject a  
17 treating or examining physician’s opinion “is clearly irreconcilable” with the new  
18 regulations. *Id.* at 790.

19 An ALJ now will consider the persuasiveness of the medical opinions and  
20 findings based on five factors: (1) supportability; (2) consistency; (3) relationship  
21 with the claimant; (4) specialization; and (5) other factors that tend to support or  
22 contradict the medical opinion. 20 C.F.R. § 404.1520c(a), (c). The most important  
23 of these factors are supportability and consistency. 20 C.F.R. § 404.1520c(a),  
24 (b)(2). The ALJ “must ‘articulate . . . how persuasive’ [he or she] finds ‘all of the  
25 medical opinions’ from each doctor or other source . . . and ‘explain how [he or  
26 she] considered the supportability and consistency factors’ in reaching these  
27 findings.” *Woods*, 32 F.4th at 792 (quoting 20 C.F.R. § 404.1520c(b), (b)(2)). The  
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1 ALJ may, but is not required to, explain how he or she considered the other three  
2 factors. 20 C.F.R. § 404.1520c(b)(2). But when two or more medical opinions  
3 “about the same issue are both equally well-supported . . . and consistent with the  
4 record . . . but are not exactly the same,” the ALJ is then required to explain how  
5 “the other most persuasive factors in paragraphs (c)(3) through (c)(5)” were  
6 considered. 20 C.F.R. § 404.1520c(b)(3).

7 With respect to supportability, the regulations state: “[t]he more relevant the  
8 objective medical evidence and supporting explanations presented by a medical  
9 source are to support his or her medical opinion(s) or prior administrative medical  
10 finding(s), the more persuasive the medical opinions or prior administrative  
11 medical finding(s) will be.” 20 C.F.R. § 404.1520c(c)(1). Regarding consistency,  
12 the regulations state: “[t]he more consistent a medical opinion(s) or prior  
13 administrative medical finding(s) is with the evidence from other medical sources  
14 and nonmedical sources in the claim, the more persuasive the medical opinion(s) or  
15 prior administrative medical finding(s) will be.” 20 C.F.R. § 404.1520c(c)(2).

### 16 **Relevant Medical Opinions**

17 On November 20, 2018, Dr. Edward Ritvo, a psychiatrist, examined plaintiff  
18 and reviewed his medical records. AR at 411-18. During the mental status  
19 examination Dr. Ritvo observed plaintiff was nervous, “shaking with gross body  
20 tremors and shaking of his arms.” AR at 414. Plaintiff’s chief complaint was that  
21 he had “anxieties all the time and can’t concentrate. AR at 412. Plaintiff reported  
22 to have never held a job because of his anxiety and difficulties in interpersonal  
23 situations. AR at 414 He described himself as being socially isolated, with no  
24 friends or social activities. *Id.* Although plaintiff described himself as having  
25 “difficulty following our conversation,” Dr. Ritvo noted that plaintiff was “able to  
26 volunteer information spontaneously” and that there was “no obvious psychomotor  
27 agitation or retardation.” *Id.* at 414-15. Dr. Ritvo also observed that plaintiff was  
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1 “coherent and organized” and that he did not exhibit “tangentiality or loosening of  
2 associations.” AR at 415. Although plaintiff described his inability to concentrate,  
3 including intrusive OCD thoughts, Dr. Ritvo noted that plaintiff was “relevant and  
4 non-delusional,” and did not exhibit “bizarre or psychotic thought content,” or  
5 “suicidal, homicidal, or paranoid ideation.” *Id.* Dr. Ritvo further observed  
6 plaintiff was “alert and oriented in all spheres,” appeared “to be of at least average  
7 intelligence,” and was able to follow their conversation “well.” *Id.* Dr. Ritvo also  
8 noted that plaintiff’s insight and judgment appeared to be intact. AR at 416.  
9 Dr. Ritvo stated it was possible plaintiff had “an underlying psychotic process such  
10 as schizoaffective disorder with a history of auditory hallucinations in the past of a  
11 paranoid nature,” and that he was “quite impaired” at the time of the examination.  
12 *Id.*

13 Based on the history, examination, and tests administered, Dr. Ritvo opined  
14 plaintiff had: no impairment in ability to understand, remember, or complete  
15 simple commands; a marked impairment in ability to understand, remember, or  
16 complete complex commands; a marked impairment in ability to interact  
17 appropriately with supervisors, coworkers or the public; a marked impairment in  
18 ability to comply with job rules such as safety and attendance; a marked  
19 impairment in ability to respond to the change in the normal workplace setting; and  
20 a marked impairment in ability to maintain persistence and pace in a normal  
21 workplace setting. *Id.* at 417.

22 On February 28, 2019, State Agency psychologist Dr. Sergiy Barsukov  
23 reviewed plaintiff’s medical records and the consultative examiner’s opinion. AR  
24 at 91-102. Dr. Barsukov noted it appeared the consultative examiner “relied too  
25 heavily” on plaintiff’s report. AR at 95, 97. Dr. Barsukov indicated plaintiff’s  
26 mental status examination was normal (AR at 95), and that he “is capable of simple  
27 and routine tasks” although with limited social contact. AR at 97-99. Dr.  
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1 Barsukov stated he did not see a marked impairment in plaintiff’s understanding  
2 and remembering, and determined plaintiff performed all tasks adequately at the  
3 examination but would likely struggle with complex tasks. AR at 95. Dr.  
4 Barsukov further noted that plaintiff’s statement regarding social isolation conflicts  
5 with his statement that he stays on a couch at a friend’s house, which “would not  
6 be considered marked or extreme limit on social.” *Id.* Ultimately, Dr. Barsukov  
7 found no marked limitations, but opined plaintiff was moderately limited in his  
8 ability to carry out detailed instructions, maintain attention and concentration for  
9 extended periods, and interact appropriately with the general public. AR at 98-99.  
10 He found plaintiff was not able to perform complex tasks and should have only  
11 rare contact with the general public. AR at 99.

### 12 **The ALJ’s Findings**

13 In assessing plaintiff’s RFC, the ALJ found Dr. Ritvo’s opinions to be “not  
14 entirely persuasive.” AR at 24. The ALJ discounted Dr. Ritvo’s opinion that  
15 plaintiff had marked limitations because it was not supported by the medical  
16 evidence in the record, including being at odds with Dr. Ritvo’s own clinical  
17 observations. *Id.* As the ALJ noted, Dr. Ritvo’s own observations showed normal  
18 findings that could reasonably appear inconsistent with the degree of limitations he  
19 opined. AR at 24 (citing AR at 415). For example, records cited by the ALJ reveal  
20 findings of plaintiff being “coherent and organized,” having “no tangentiality or  
21 loosening of associations,” being “oriented in all spheres,” and being “of at least  
22 average intelligence.” AR at 415. The ALJ recognized that Dr. Ritvo’s opinions  
23 could be supported by plaintiff’s self-reported symptoms, such as “having  
24 difficulty following a conversation, and nervous appearance with ‘gross body  
25 tremors and shaking of his arms.’” AR at 24. But despite plaintiff’s account of his  
26 inability to concentrate and loss of focus due to his OCD, Dr. Ritvo noted that  
27 plaintiff was “able to follow [their] conversation well” and “able to perform  
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1 memory and concentration tasks on evaluation.” *Id.*

2 The ALJ’s also recognized that other medical opinions found plaintiff’s  
3 limitations were not as great as what Dr. Ritvo suggested. *See* AR at 23-24. The  
4 ALJ particularly cited and found persuasive the prior administrative medical  
5 findings of Dr. Barsukov that plaintiff was “capable of simple and routine tasks  
6 with limited social contact.” AR at 23 (citing AR at 97). The ALJ reasoned that  
7 Dr. Barsukov’s findings were supported by analysis of the record, noting no  
8 marked limitations in social functioning or adaptation. AR at 23 (citing AR at 95-  
9 96). Dr. Barsukov additionally found that descriptions of plaintiff as a recluse and  
10 staying on his friend’s couch would not be considered marked social limitations.  
11 *Id.* The ALJ determined Dr. Barsukov’s findings were also consistent with the  
12 medical records documenting that prescription medication helped stabilize  
13 plaintiff’s mood and mental status, although without plaintiff’s disclosure to his  
14 doctor of marijuana and prescription drug use. AR at 23 (citing AR at 95, 332,  
15 359, 394, 405, 424-25, 436, 445).

16 While rejecting Dr. Ritvo’s findings of marked limitations in many areas, the  
17 ALJ found persuasive Dr. Ritvo’s opinion that plaintiff had “no impairment in his  
18 ability to understand, remember, or complete simple commands.” AR at 24. The  
19 ALJ noted that the findings of no impairment were supported by plaintiff’s report  
20 of being able to take care of his personal needs and to go out alone. AR at 24  
21 (citing AR at 381, 383, 384, 398). Additionally, the ALJ determined the record as  
22 a whole documented minimal abnormal mental status examination findings during  
23 the relevant period. *Id.*

24 Finally with respect to Dr. Ritvo’s opinions, the ALJ stated that plaintiff’s  
25 “report of cessation of drug use and failure to disclose his abuse of marijuana and  
26 prescription drugs reduce[d] the reliability of the opinions and any greater degree  
27 of restriction may be due to [plaintiff’s] polysubstance abuse, rather than his  
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1 mental medically determinable impairments.” AR at 24. Plaintiff takes issue with  
2 this, maintaining that plaintiff was truthful as to his drug use at the time of his  
3 November 20, 2018 examination by Dr. Ritvo. P. Mem. at 7-8. Yet the ALJ cited  
4 records reflecting plaintiff’s steady marijuana and prescription drug use for years,  
5 apparently including the time of his examination by Dr. Ritvo. *See* AR at 24, 28,  
6 467, 475, 638, 674.

7 Plaintiff advances a number of other arguments for why the ALJ did not  
8 properly consider Dr. Ritvo’s opinions. P. Mem. at 6-8. These were addressed  
9 above, are no longer applicable under the new regulations, or are inapposite.

10 In sum, the ALJ here adequately considered the persuasiveness of the  
11 medical opinions, particularly as to supportability and consistency, and sufficiently  
12 explained why Dr. Ritvo’s opinions were not entirely persuasive. Substantial  
13 evidence in the record supports the ALJ’s evaluation. The ALJ cited to Dr. Ritvo’s  
14 own clinical findings, plaintiff’s medical records, and to Dr. Barsukov’s prior  
15 administrative findings, explaining why those were inconsistent with Dr. Ritvo’s  
16 finding of marked limitations. Nothing requires the ALJ to discuss every piece of  
17 evidence so long as the decision does not broadly reject evidence in a way that  
18 prevents meaningful judicial review. *See* 20 C.F.R. §§ 404.1520c(b)(1),  
19 416.920c(b)(1). The court finds that the ALJ fully and adequately addressed the  
20 basis for his finding that some of Dr. Ritvo’s opinions were unpersuasive.

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V.

**CONCLUSION**

IT IS THEREFORE ORDERED that Judgment shall be entered  
AFFIRMING the decision of the Commissioner denying benefits, and dismissing  
this action with prejudice.

DATED: July 5, 2022



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SHERI PYM  
United States Magistrate Judge

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