UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JOSEPH F. ALBA, Plaintiff, v. NANCY A. BERRYHILL, Acting Commissioner of Social Security Administration, Defendant.	Case No. ED CV 15-2524-SP MEMORANDUM OPINION AND ORDER

I.

INTRODUCTION

On December 10, 2015, plaintiff Joseph F. Alba filed a complaint against defendant, the Commissioner of the Social Security Administration ("Commissioner"),[1] seeking a review of a denial of a period of disability and disability insurance benefits ("DIB"). The parties have fully briefed the matters in dispute, and the court deems the matter suitable for adjudication without oral

[1] Pursuant to Fed. R. Civ. P. 25(d), Nancy A. Berryhill, the current Acting Commissioner, has been substituted as the defendant.

argument.

Plaintiff presents two disputed issues for decision: (1) whether the Administrative Law Judge ("ALJ") erred at step five; and (2) whether the ALJ properly considered the opinion of a State Agency physician. Plaintiff's Memorandum in Support of Plaintiff's Complaint ("P. Mem.") at 5-15; Memorandum in Support of Defendant's Answer ("D. Mem.") at 2-11.

Having carefully studied the parties' memoranda on the issues in dispute, the Administrative Record ("AR"), and the decision of the ALJ, the court concludes that, as detailed herein, the ALJ did not err at step five and properly considered the opinion of the State Agency physician. Consequently, the court affirms the decision of the Commissioner denying benefits.

II.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, who was thirty-six years old on the alleged disability onset date, is a high school graduate. AR at 49, 153. Plaintiff has past relevant work as a truck driver. *Id*. at 44.

On April 28, 2012, plaintiff filed an application for a period of disability and DIB, alleging an onset date of April 9, 2007 due to diabetes, depression, anxiety/panic disorder, and injuries to the back, shoulders, elbows, and neck. *Id*. at 49. The Commissioner denied plaintiff's application initially and upon reconsideration, after which he filed a request for a hearing. *Id*. at 75-84.

On January 10, 2014, plaintiff, represented by counsel, appeared and testified at a hearing before the ALJ. *Id*. at 30-48. The ALJ also heard testimony from Gloria Lasoff, a vocational expert ("VE"). *Id*. at 44-47. On March 24, 2014, the ALJ denied plaintiff's claim for benefits. *Id*. at 10-26.

Applying the well-known five-step sequential evaluation process, the ALJ found, at step one, that plaintiff did not engage in substantial gainful activity from

the April 9, 2007 alleged disability onset date through December 31, 2010, the date last insured. *Id*. at 12.

At step two, the ALJ found plaintiff suffered from the following severe impairments: acromioclavicular osteoarthritis; hypertension; diabetes mellitus; gout; gastroesophageal reflux disease; degenerative disc disease of the cervical and lumbar spine; obesity; anxiety; depression; post-traumatic stress disorder; adhesive capsulitis, right shoulder; and right shoulder rotator cuff syndrome. *Id*.

At step three, the ALJ found plaintiff's impairments, whether individually or in combination, did not meet or medically equal one of the listed impairments set forth in 20 C.F.R. part 404, Subpart P, Appendix 1 (the "Listings"). *Id*. at 13. The ALJ then assessed plaintiff's residual functional capacity ("RFC"),[2] and determined he had the RFC to perform a range of light work, with the limitations that plaintiff could: lift and/or carry twenty pounds occasionally and ten pounds frequently; stand and/or walk for six hours out of an eight-hour workday for no more than 20 minutes at a time; sit for six hours out of an eight-hour workday with brief position changes after approximately one to two hours; occasionally perform postural activities; have occasional non-intense interactions with the public; and perform unskilled work. *Id*. at 14-15. The ALJ found plaintiff precluded from: climbing ladders, ropes, or scaffolds; working around unprotected heights, moving machinery, or other hazards; performing work requiring hypervigilance or intense concentration on a particular task; and performing overhead reaching or lifting bilaterally. *Id*.

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[2] Residual functional capacity is what a claimant can do despite existing exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152, 1155-56 n.5-7 (9th Cir. 1989). "Between steps 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).

The ALJ found, at step four, that plaintiff was unable to perform his past relevant work as a truck driver. *Id*. at 24.

At step five, the ALJ found there were jobs that existed in significant numbers in the national economy that plaintiff could perform, including office helper, laundry worker, and production inspector. *Id*. at 25-26. Consequently, the ALJ concluded plaintiff did not suffer from a disability as defined by the Social Security Act. *Id.* at 26.

Plaintiff filed a timely request for review of the ALJ's decision, which was denied by the Appeals Council. *Id.* at 1-3. The ALJ's decision stands as the final decision of the Commissioner.

III.

STANDARD OF REVIEW

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

"Substantial evidence is more than a mere scintilla, but less than a preponderance." *Aukland*, 257 F.3d at 1035. Substantial evidence is such "relevant evidence which a reasonable person might accept as adequate to support a conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276 F.3d at 459. To determine whether substantial evidence supports the ALJ's finding, the reviewing court must review the administrative record as a whole,

"weighing both the evidence that supports and the evidence that detracts from the ALJ's conclusion." *Mayes*, 276 F.3d at 459. The ALJ's decision "'cannot be affirmed simply by isolating a specific quantum of supporting evidence.'" *Aukland*, 257 F.3d at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th Cir. 1998)). If the evidence can reasonably support either affirming or reversing the ALJ's decision, the reviewing court "'may not substitute its judgment for that of the ALJ.'" *Id.* (quoting *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992)).

IV.

DISCUSSION

A. The ALJ Did Not Err at Step Five

Plaintiff contends the ALJ erred at step five because she erroneously relied on the testimony of the vocational expert without asking the VE to resolve an apparent conflict with the Dictionary of Occupational Titles ("DOT"). P. Mem. at 5-9. Specifically, plaintiff argues the jobs identified by the VE all require frequent reaching, which would include overhead reaching because reaching is defined as "'extending the hands and arms in any direction.'" P. Mem. at 8 (quoting Social Security Ruling ("SSR") 85-15).[3] As the ALJ precluded plaintiff from overhead reaching, plaintiff argues the ALJ failed to resolve the apparent conflict by obtaining a reasonable explanation from the VE, and as such the VE's testimony cannot constitute substantial evidence.

Defendant argues plaintiff waived this argument because his counsel failed

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[3] "The Commissioner issues Social Security Rulings to clarify the Act's implementing regulations and the agency's policies. SSRs are binding on all components of the SSA. SSRs do not have the force of law. However, because they represent the Commissioner's interpretation of the agency's regulations, we give them some deference. We will not defer to SSRs if they are inconsistent with the statute or regulations." *Holohan v. Massanari*, 246 F.3d 1195, 1203 n.1 (9th Cir. 2001) (internal citations omitted).

to question the VE about the potential conflict with the DOT at the hearing. D. Mem. at 2-3. Defendant's argument is without merit. There is no statutorily, regulatory, or judicially created issue exhaustion requirement in social security proceedings. *See Sims v. Apfel*, 530 U.S. 103, 108-12, 120 S. Ct. 2080, 147 L. Ed. 2d 80 (2000). Indeed, the Supreme Court declined to require issue exhaustion in social security proceedings, noting the inquisitorial rather than adversarial nature of the proceedings. *Id*. at 110-12 (claimant did not waive issue simply because she failed to exhaust it before the Appeals Council). Therefore, plaintiff's counsel's failure to question the VE about a potential conflict does not preclude plaintiff from raising it here. *See, e.g., Guido v. Colvin*, 2016 WL 6781152, at *4 (C.D. Cal. Nov. 15, 2016) (plaintiff's failure to challenge VE testimony as inconsistent at the time of the hearing did not waive the argument); *Harrison v. Colvin*, 2016 WL 1258447, at *4 (C.D. Cal. Mar. 30, 2016) (plaintiff's counsel's failure to point out errors at the time of the administrative hearing did not bar plaintiff from raising them); *Hernandez v. Colvin*, 2016 WL 1071565, at *5 (C.D. Cal. Mar. 14, 2016) (despite declining to question the VE at the hearing, plaintiff did not waive argument the VE's testimony conflicted with the DOT). The court thus considers plaintiff's claim of step five error.

At step five, the burden shifts to the Commissioner to show the claimant retains the ability to perform other gainful activity. *Lounsburry v. Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006). To support a finding that a claimant is not disabled at step five, the Commissioner must provide evidence demonstrating that other work exists in significant numbers in the national economy that the claimant can perform, given his or her age, education, work experience, and RFC. 20 C.F.R. § 404.1512(f).

ALJs routinely rely on the Dictionary of Occupational Titles "in evaluating whether the claimant is able to perform other work in the national economy."

Terry v. Sullivan, 903 F.2d 1273, 1276 (9th Cir. 1990) (citations omitted); *see also* 20 C.F.R. § 404.1566(d)(1) (DOT is source of reliable job information). The DOT is the rebuttable presumptive authority on job classifications. *Johnson v. Shalala*, 60 F.3d 1428, 1435 (9th Cir. 1995). An ALJ may not rely on a VE's testimony regarding the requirements of a particular job without first inquiring whether the testimony conflicts with the DOT, and if so, the reasons therefor. *Massachi*, 486 F.3d at 1152-53 (citing SSR 00-4p). But failure to so inquire can be deemed harmless error where there is no apparent conflict or the VE provides sufficient support to justify deviation from the DOT. *Id.* at 1154 n.19.

In order for an ALJ to accept a VE's testimony that contradicts the DOT, the record must contain "'persuasive evidence to support the deviation.'" *Id.* at 1153 (quoting *Johnson*, 60 F.3d at 1435). Evidence sufficient to permit such a deviation may be either specific findings of fact regarding the claimant's residual functionality, or inferences drawn from the context of the expert's testimony. *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 793 (9th Cir. 1997) (citations omitted).

The ALJ's obligations do not end with the initial inquiry. Even where a VE wrongly testifies that there is no conflict, where "evidence from a VE 'appears to conflict with the DOT,' SSR 00-4p requires further inquiry: an ALJ must obtain 'a reasonable explanation for the apparent conflict.'" *Overman v. Astrue*, 546 F.3d 456, 463 (7th Cir. 2008) (quoting SSR 00-4p). Where the ALJ fails to obtain an explanation for and resolve an apparent conflict – even where the VE did not identify the conflict – the ALJ errs. *See Hernandez v. Astrue*, 2011 WL 223595, at *2-5 (C.D. Cal. Jan. 21, 2011) (where VE incorrectly testified there was no conflict between her testimony and DOT, ALJ erred in relying on VE's testimony and failing to acknowledge or reconcile the apparent conflict); *Mkhitaryan v. Astrue*, 2010 WL 1752162, at *3 (C.D. Cal. Apr. 27, 2010) ("Because the ALJ incorrectly adopted the VE's conclusion that there was no apparent conflict [and]

the ALJ provided no explanation for the deviation," the ALJ "therefore committed legal error warranting remand.").

Here, when asked about a hypothetical person with the same RFC as plaintiff, including "no overhead reaching," the VE testified such person could perform work existing in the national economy including office helper (DOT 239.567-010), laundry worker (DOT 302.685-010), and production inspector (DOT 559.687-074). AR at 45-46. The VE further testified that the job of laundry worker would be eroded by fifty percent. *Id*. at 46. When asked whether her testimony was consistent with the DOT, the VE testified it was consistent. *Id*. at 47. According to the DOT, the occupations of office helper and production inspector require frequent reaching, and the occupation of laundry worker requires constant reaching. DOT 239.567-010, 559.687-074, 302.685-010.

The Ninth Court recently addressed the issue raised here in *Gutierrez v. Colvin*, 844 F.3d 804 (9th Cir. 2016). In *Gutierrez*, the plaintiff's RFC precluded her from lifting her right arm above her shoulder, and the VE opined a person with that limitation could work as a cashier. *Id*. at 807. The plaintiff argued the ALJ erred because he failed to further question the VE as to an apparent conflict, namely, the DOT specified cashiers must engage in frequent reaching. *Id*. The Ninth Circuit disagreed and found that for a conflict to be apparent, the VE's testimony must be at odds with the essential, integral, or expected requirements of a job. *Id*. at 808. "[T]asks that aren't essential, integral, or expected parts of a job are less likely to qualify as apparent conflicts . . . Likewise, where the job itself is a familiar one – like cashiering – less scrutiny by the ALJ is required." *Id*. Recognizing that "not every job that involves reaching requires the ability to reach overhead," the Ninth Circuit then looked at the typical duties of a cashier set forth by the DOT and applied common knowledge of the job to conclude that there was no apparent conflict with the DOT in that instance. *Id*. Therefore, when a VE

testifies there is no conflict, whether an ALJ is required to ask follow-up questions is fact-dependent. *Id*. "[W]here the frequency or necessity of a task is unlikely and unforeseeable," there is no obligation for an ALJ to ask further questions. *Id*.

Here too, there was no apparent conflict. All three jobs identified by the VE require frequent or constant reaching. But similar to cashiers discussed in *Gutierrez*, it is uncommon for office helpers, laundry workers, and production inspectors to have to engage in overhead reaching. Officer helpers perform a wide range of tasks such as sorting and distributing mail, collecting and distributing paperwork, and filing (DOT 239.567-010); laundry workers generally load and unload washing machines, iron, and fold (DOT 302.685-010); and production inspectors perform duties such as inspecting products for defects and packing items into cartons (DOT 559.687-074). While some office helpers, laundry workers, and production inspectors may have to reach overhead in certain circumstances, the frequency or necessity of overhead reaching is unlikely and unforeseeable. Accordingly, the ALJ did not have to ask the VE follow up questions and correctly relied on the VE's testimony, which constituted substantial evidence. The ALJ therefore did not err at step five.

B. <u>The ALJ Properly Considered the Opinion of the State Agency Physician</u>

Plaintiff argues the ALJ failed to properly consider the opinion of State Agency physician Dr. Evelyn Adamo and therefore her RFC determination was not supported by substantial evidence. P. Mem. at 9-15. Specifically, plaintiff contends the ALJ failed to consider Dr. Adamo's opinion that plaintiff had moderate limitations in her ability to accept instructions and respond appropriately to criticism from supervisors. *Id*.

In determining whether a claimant has a medically determinable impairment, among the evidence the ALJ considers is medical evidence. 20

C.F.R. § 404.1527(b). In evaluating medical opinions, the regulations distinguish among three types of physicians: (1) treating physicians; (2) examining physicians; and (3) non-examining physicians.[4] 20 C.F.R. § 404.1527(c), (e); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (as amended). "Generally, a treating physician's opinion carries more weight than an examining physician's, and an examining physician's opinion carries more weight than a reviewing physician's." *Holohan*, 246 F.3d at 1202; 20 C.F.R. § 404.1527(c)(1)-(2). The opinion of the treating physician is generally given the greatest weight because the treating physician is employed to cure and has a greater opportunity to understand and observe a claimant. *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th Cir. 1996); *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).

Nevertheless, the ALJ is not bound by the opinion of the treating physician. *Smolen*, 80 F.3d at 1285. If a treating physician's opinion is uncontradicted, the ALJ must provide clear and convincing reasons for giving it less weight. *Lester*, 81 F.3d at 830. If the treating physician's opinion is contradicted by other opinions, the ALJ must provide specific and legitimate reasons supported by substantial evidence for rejecting it. *Id.* at 830. Likewise, the ALJ must provide specific and legitimate reasons supported by substantial evidence for rejecting the contradicted opinions of examining physicians. *Id.* at 830-31. The opinion of a non-examining physician, standing alone, cannot constitute substantial evidence. *Widmark v. Barnhart*, 454 F.3d 1063, 1066-67 n.2 (9th Cir. 2006); *Morgan v. Comm'r*, 169 F.3d 595, 602 (9th Cir. 1999); *see also Erickson v. Shalala*, 9 F.3d 813, 818 n.7 (9th Cir. 1993).

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[4] Psychologists are considered acceptable medical sources whose opinions are accorded the same weight as physicians. 20 C.F.R. § 404.1513(a)(2). Accordingly, for ease of reference, the court will refer to all psychologists as physicians.

1. The Physicians' Findings and Medical Records

Here, the Administrative Record contains no opinion from a treating or examining physician concerning plaintiff's mental limitations.[5]

Dr. Ronald D. Morgan, a psychologist, treated plaintiff from September 13, 2008 through January 23, 2012. *See* AR at 366-77. Dr. Morgan's treatment notes indicate that for the relevant period, plaintiff primarily complained of frustration with his lawsuit and attorneys, as well as his family members. *See id*. at 366-72. Dr. Morgan diagnosed plaintiff with major depressive disorder and anxiety disorder and opined that plaintiff had dysfunctional ways of dealing with his anger that tended to alienate others. *See, e.g.*, *id*. at 396, 398, 405.

Dr. Eugene A. Ikhimiukor examined plaintiff on June 10, 2010. Plaintiff showed limited impulse control and fair judgment, insight, and reliability during his mental status examination. Based on plaintiff's complaints and the examination, Dr. Ikhimiukor diagnosed plaintiff with major depressive disorder, panic disorder, and post-traumatic stress disorder. *See id*. at 441-43.

Dr. P.M. Balson, a State Agency physician, reviewed some of plaintiff's medical records at the initial level, including the treatment notes of Dr. Morgan. *See id*. at 52-53. Dr. Balson determined there was insufficient evidence to make a disability determination. *See id.*

Dr. Evelyn Adamo, a State Agency physician, reviewed some of plaintiff's medical records upon reconsideration, including the treatment notes of Dr. Morgan. *See id.* at 63, 66, 69-70. Based on her review of plaintiff's treatment notes, Dr. Adamo found plaintiff had: mild restrictions of activities of daily living; moderate difficulties in maintaining social functioning; and mild but not sustained difficulties in maintaining concentration, persistence, or pace. *Id*. at 66, 69. With respect to the limitations in social functioning specifically, Dr. Adamo

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[5] The court limits its discussion to records from the relevant period.

found plaintiff had moderate limitations in his ability to interact appropriately with the general public and to accept instructions and respond appropriately to criticism from supervisors. *Id* at 69-70. This meant plaintiff's "irritability and variable anger control problems" would limit him "to superficial interactions with others in the workplace." *Id*. at 70.

2. The ALJ's Findings

In reaching her RFC determination, the ALJ discussed all of the medical history and gave little weight to the opinions of Dr. Balson and Dr. Adamo, the State Agency physicians. *Id*. at 23-24. Although Dr. Balson did not offer an opinion, the ALJ addressed Dr. Balson's assessment that there was insufficient evidence to make a determination. *See id*. at 52-53. The ALJ noted that there was additional medical evidence before her that was unavailable to Dr. Balson. *Id*. at 24. As for Dr. Adamo, the ALJ gave her opinion little weight because she failed to adequately consider the effects of plaintiff's anxiety, chronic pain, and subjective allegations of impaired memory and difficulty concentrating.[6] *Id*. at 23. The ALJ also stated Dr. Adamo did not have the benefit of reviewing the additional records available at the hearing level. *Id*.

Plaintiff contends the ALJ erred because she did not include in plaintiff's assessed RFC specific limitations regarding plaintiff's ability to accept

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[6] The ALJ found plaintiff less credible because, inter alia, he engaged in a somewhat normal level of daily activity and interaction and was suspected of malingering by a physician. AR at 16. The court notes it is somewhat curious that, in spite of plaintiff's discounted credibility, the ALJ gave less weight to Dr. Adamo's opinion because it failed to adequately consider plaintiff's complaints. *See Morgan*, 169 F.3d at 602 ("A physician's opinion of disability premised to a large extent upon the claimant's own accounts of his symptoms and limitations may be disregarded where those complaints have been properly discounted.") (internal quotation marks and citation omitted). But as this benefitted plaintiff, the court will not address it further.

instructions and respond to criticism from supervisors. But although Dr. Adamo stated plaintiff had moderate limitations with accepting instructions and responding to criticism from supervisors, these limitations are set forth only in Section I of the Mental Residual Functional Capacity Assessment ("MRFCA"), and as such they are not an RFC assessment and the ALJ was not required to consider them.[7] *See* AR at 69-70; Social Security Program Operations Manual System ("POMS") DI 24510.060(B); *Merritt v. Colvin*, 572 Fed. Appx. 468, 470 (9th Cir. 2014) ("the ALJ was not required to consider, let alone adopt, the mental functional limitations checked in Section I of the MRFCA form") (internal quotation marks omitted). Rather, Section III of the MRFCA form, which asks the physician to explain in a narrative form the summary conclusions or limitations, contains the actual mental RFC limitations opined. *See* POMS DI 24510.060(B)(4); *Nathan v. Colvin*, 551 Fed. Appx. 404, 408 (9th Cir. 2014) (ALJ did not err in excluding the limitations identified in Section I because, as POMS instructs, "Section I of the MRFCA is not an RFC assessment. Instead, the ALJ is to use Section III . . . in determining a claimant's RFC.") (internal citation omitted). As such, Dr. Adamo only actually opined one functional limitation, the sole limitation stated in Section III, that plaintiff is limited "to superficial interactions with others in the workplace. AR at 70.

The ALJ specifically identified this sole opined limitation, and rejected it as inadequate to account for all of plaintiff's mental limitations, and because Dr. Adamo did not have the benefit of additional evidence adduced at the hearing level. *Id.* at 23. The ALJ actually determined plaintiff had a more restrictive mental RFC than Dr. Adamo opined, at least in part. The ALJ's limitation of

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[7] Although Dr. Adamo's opinion is not on the MRFCA form (SSA-4734-F4-SUP) itself, the opinion is categorized as an MRFCA and its questions and format correspond to the MRFCA form. *See* AR at 69-70.

plaintiff to occasional, non-intense interactions with the public was more limiting than Dr. Adamo's opinion that plaintiff should only have superficial interactions with others in the workplace. *Compare id*. at 15, 70. The ALJ also limited plaintiff to unskilled work that did not require hypervigilance or intense concentration, while Dr. Adamo opined no concentration limitations. *Compare id*. at 15, 69.

Plaintiff correctly points out that Dr. Adamo opined plaintiff should be limited in his interactions with others in the workplace generally – which would include supervisors and coworkers, as well as the public – whereas the ALJ only limited plaintiff's interactions with the public. *Compare id.* at 15, 70. But this was not error, as the ALJ properly considered and gave little weight to the entirety of Dr. Adamo's opinion.

The ALJ has a duty to consider all relevant medical evidence to reach an RFC determination. *See* 20 C.F.R. § 404.1545(a)(1) (it is the responsibility of the ALJ to reach an RFC determination by reviewing and considering all of the relevant evidence). Dr. Adamo's opinion, by itself, does not constitute substantial evidence. *See Widmark*, 454 F.3d at 1066 n.2. Rather, the "opinions of non-treating or non-examining physicians may [] serve as substantial evidence when the opinions are consistent with independent clinical findings or other evidence in the record." *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002). None of the treatment records contain objective evidence of anything beyond plaintiff's broader anger and irritability issues that would support limiting plaintiff's interactions with his supervisors or coworkers.

Moreover, the ALJ here properly synthesized the medical evidence and determined that Dr. Adamo's opinion should be given little weight, in part because she did not have the opportunity to review the complete record. AR at 23; *see, e.g., McKinzie v. Colvin*, 634 Fed. Appx. 177, 179-80 (9th Cir. 2015) (among the

reasons the treating physician's opinion should have been given greater weight over the examining physician's opinion was the fact that the examining physician did not review any medical records). Thus, to the extent the ALJ needed to support her rejection of Dr. Adamo's opinion, she properly did so based on a specific and legitimate reason supported by substantial evidence.

Accordingly, the ALJ properly considered Dr. Adamo's opinion, and her RFC determination was supported by substantial evidence.

V.

CONCLUSION

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

DATED: April 4, 2017

SHERI PYM
United States Magistrate Judge