

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERNEST ALFRED G.,¹) Case No. EDCV 17-1130-JPR
)
Plaintiff,)
) **MEMORANDUM DECISION AND ORDER**
v.) **AFFIRMING COMMISSIONER**
)
NANCY A. BERRYHILL, Acting)
Commissioner of Social)
Security,)
)
Defendant.)
_____)

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying his application for Social Security disability insurance benefits ("DIB"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). The matter is before the Court on the parties' Joint Stipulation, filed March 23, 2018, which the Court has taken under submission

_____ ¹ Plaintiff's name is partially redacted in compliance 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 without oral argument. For the reasons stated below, the
2 Commissioner's decision is affirmed.

3 **II. BACKGROUND**

4 On August 30, 2013, Plaintiff applied for DIB, alleging that
5 he had been disabled since April 3, 2012,² because of depression,
6 bipolar disorder, left-eye problems, anxiety, and high blood
7 pressure. (AR 152-55, 175-76.) After his application was denied
8 initially (AR 68-81) and on reconsideration (AR 83-95), he
9 requested a hearing before an Administrative Law Judge (AR 109).
10 A hearing was held on December 2, 2015, at which Plaintiff, who
11 was represented by counsel, testified, as did a vocational
12 expert. (AR 37-67.) In a written decision issued January 20,
13 2016, the ALJ found Plaintiff not disabled. (AR 18-32.)
14 Plaintiff requested review (AR 11-14) and submitted additional
15 medical evidence (AR 2, 255-63). On April 14, 2017, the Appeals
16 Council denied review, finding that the additional evidence did
17 not provide a basis for changing the ALJ's decision. (AR 1-7.)
18 Specifically, as to the March 26, 2016 medical-source statement
19 from Plaintiff's treating psychiatrist, Dr. Salvador Arella, that
20 is the focus of this appeal, the council found that the "new
21 information is about a later time."³ (AR 2.) This action

22
23 ² The ALJ and the parties refer to the disability-onset date
24 as July 31, 2009. (See, e.g., AR 18; J. Stip. at 2.) That date
25 appears to come from Plaintiff's Disability Report. (AR 172.)
For the sake of argument, the Court considers whether Plaintiff
was disabled at any time after the earlier, 2009 date.

26 ³ As of January 17, 2017, a claimant must show good cause
27 for having failed to submit evidence to the ALJ before the
28 Appeals Council will consider that evidence. See § 404.970(b)
(2017). Although Plaintiff provided none, he apparently was not
required to because he submitted the new evidence before January

1 followed.

2 **III. STANDARD OF REVIEW**

3 Under 42 U.S.C. § 405(g), a district court may review the
4 Commissioner's decision to deny benefits. The ALJ's findings and
5 decision should be upheld if they are free of legal error and
6 supported by substantial evidence based on the record as a whole.
7 See Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.
8 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence
9 means such evidence as a reasonable person might accept as
10 adequate to support a conclusion. Richardson, 402 U.S. at 401;
11 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It
12 is more than a scintilla but less than a preponderance.
13 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
14 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
15 substantial evidence supports a finding, the reviewing court
16 "must review the administrative record as a whole, weighing both
17 the evidence that supports and the evidence that detracts from
18 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
19 720 (9th Cir. 1998). "If the evidence can reasonably support
20 either affirming or reversing," the reviewing court "may not
21 substitute its judgment" for the Commissioner's. Id. at 720-21.

22 **IV. THE EVALUATION OF DISABILITY**

23 People are "disabled" for purposes of receiving Social
24 Security benefits if they are unable to engage in any substantial
25 gainful activity owing to a physical or mental impairment that is
26 expected to result in death or has lasted, or is expected to

27
28 2017 (AR 255-63), though the council did not deny review until
three months later (AR 1-7).

1 last, for a continuous period of at least 12 months. 42 U.S.C.
2 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
3 1992).

4 A. The Five-Step Evaluation Process

5 The ALJ follows a five-step sequential evaluation process to
6 assess whether a claimant is disabled. 20 C.F.R.

7 § 404.1520(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th
8 Cir. 1995) (as amended Apr. 9, 1996). In the first step, the
9 Commissioner must determine whether the claimant is currently
10 engaged in substantial gainful activity; if so, the claimant is
11 not disabled and the claim must be denied. § 404.1520(a)(4)(i).

12 If the claimant is not engaged in substantial gainful
13 activity, the second step requires the Commissioner to determine
14 whether the claimant has a "severe" impairment or combination of
15 impairments significantly limiting his ability to do basic work
16 activities; if not, the claimant is not disabled and his claim
17 must be denied. § 404.1520(a)(4)(ii).

18 If the claimant has a "severe" impairment or combination of
19 impairments, the third step requires the Commissioner to
20 determine whether the impairment or combination of impairments
21 meets or equals an impairment in the Listing of Impairments set
22 forth at 20 C.F.R. part 404, subpart P, appendix 1; if so,
23 disability is conclusively presumed. § 404.1520(a)(4)(iii).

24 If the claimant's impairment or combination of impairments
25 does not meet or equal an impairment in the Listing, the fourth
26 step requires the Commissioner to determine whether the claimant
27
28

1 has sufficient residual functional capacity ("RFC")⁴ to perform
2 his past work; if so, he is not disabled and the claim must be
3 denied. § 404.1520(a)(4)(iv). The claimant has the burden of
4 proving he is unable to perform past relevant work. Drouin, 966
5 F.2d at 1257. If the claimant meets that burden, a prima facie
6 case of disability is established. Id.

7 If that happens or if the claimant has no past relevant
8 work, the Commissioner then bears the burden of establishing that
9 the claimant is not disabled because he can perform other
10 substantial gainful work available in the national economy.
11 § 404.1520(a)(4)(v); Drouin, 966 F.2d at 1257. That
12 determination comprises the fifth and final step in the
13 sequential analysis. § 404.1520(a)(4)(v); Lester, 81 F.3d at 828
14 n.5; Drouin, 966 F.2d at 1257.

15 B. The ALJ's Application of the Five-Step Process

16 At step one, the ALJ found that Plaintiff had not engaged in
17 substantial gainful activity since July 31, 2009, the alleged
18 onset date. (AR 20.) At step two, she concluded that he had two
19 severe medically determinable impairments: schizoaffective
20 disorder and left-eye keratoconus. (Id.) She also found
21 medically determinable impairments of obesity, hypertension,
22 sleep apnea, hyperlipidemia, gastroesophageal reflux disease, and
23 a history of left-knee meniscus tear, but she concluded that all
24 were nonsevere. (AR 21-22.) At step three, she found that he

26 ⁴ RFC is what a claimant can do despite existing exertional
27 and nonexertional limitations. § 404.1545; see Cooper v.
28 Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). The
Commissioner assesses the claimant's RFC between steps three and
four. Laborin v. Berryhill, 867 F.3d 1151, 1153 (9th Cir. 2017).

1 did not have an impairment or combination of impairments that met
2 or equaled a Listing. (AR 22.)

3 At step four, the ALJ found that Plaintiff had the RFC to
4 perform a limited range of medium work:

5 [T]he claimant has the [RFC] to perform medium work as
6 defined in 20 CFR 404.1567(c) except he can occasionally
7 lift and carry 50 pounds and frequently 25 pounds; he can
8 sit, stand, and walk for up to six hours each in an
9 eight-hour day; can push and pull as much as he can lift
10 and carry. He can frequently climb stairs and ramps,
11 balance, stoop, kneel, and crouch, and never crawl or
12 climb ladders or scaffolds. He is limited to work that
13 requires monocular vision. He should never be exposed to
14 unprotected heights, moving mechanical parts, or
15 operating a motor vehicle. He is capable of frequent
16 supervisory contact, occasional contact with coworkers,
17 and no contact with the public.

18 (AR 25.) Based on the VE's testimony, the ALJ concluded that
19 Plaintiff could not perform any past relevant work. (AR 30.) At
20 step five, she determined that given his "age, education, work
21 experience, and [RFC]," he could successfully perform numerous
22 medium-level jobs available in the national economy. (AR 31-32.)
23 Thus, she found Plaintiff not disabled. (AR 32.)

1 **V. RELEVANT BACKGROUND⁵**

2 A. Treating Physicians

3 1. *Heritage Victor Valley Medical Group*

4 Plaintiff was initially treated for his mental impairments
5 by his general practitioners at Heritage. (See AR 28, 265-325.)
6 Before the alleged onset date, he saw Dr. Beverly J. Nester⁶ for
7 panic attacks (AR 300-01) and anxiety as well as his physical
8 ailments (AR 291). He began taking Xanax⁷ and Lexapro⁸ as early
9 as May 9, 2008. (AR 301.) Following the alleged onset date, he
10 saw Dr. Nester five times in 2009 (AR 278-87) and was treated for
11 psychiatric impairments on one of those visits: on December 10,
12 2009, when he was diagnosed with depressive disorder and given
13 samples of Lexapro (AR 278-79).

14 On March 18, 2010, Plaintiff again saw Dr. Nester, who noted
15 that he was "[n]egative for psychiatric symptoms," had "[n]o
16 unusual anxiety or evidence of depression," and couldn't afford
17 his Lexapro. (AR 274-77.)

19 ⁵ Because Plaintiff challenges the RFC based only on new
20 evidence relating to his mental impairments, the Court does not
21 address the evidence of his physical impairments.

22 ⁶ The record does not indicate Dr. Nester's medical
specialty.

23 ⁷ Xanax is name-brand alprazolam, a benzodiazepine used to
24 treat anxiety and panic disorders. See Xanax, WebMD, [https://](https://www.webmd.com/drugs/2/drug-9824/xanax-oral/details)
25 www.webmd.com/drugs/2/drug-9824/xanax-oral/details (last visited
Jan. 7, 2019).

26 ⁸ Lexapro is name-brand escitalopram oxalate, which is used
27 to treat depression and anxiety by helping to restore the balance
of serotonin in the brain. See Lexapro, WebMD, [https://](https://www.webmd.com/drugs/2/drug-63990/lexapro-oral/details)
28 www.webmd.com/drugs/2/drug-63990/lexapro-oral/details (last
visited Jan. 7, 2019).

1 In 2011, Plaintiff saw Dr. Alireza Raboubi⁹ three times for
2 treatment of psychiatric impairments, among other things. (See
3 AR 265-73.) On January 20, 2011, he sought care for depression
4 and anxiety, which he reported experiencing for four to five
5 years. (AR 271-73.) Dr. Raboubi described Plaintiff as anxious
6 but without hopelessness or suicidal ideation, and she increased
7 his dosage of Prozac.¹⁰ (AR 272-73.) On January 24, 2011,
8 Plaintiff saw Dr. Raboubi for panic attacks and high blood
9 pressure and reported that he had stopped taking his medication.
10 (AR 268-70.) Dr. Raboubi diagnosed "panic anxiety syndrome" and
11 "depression" and administered Ativan.¹¹ (AR 270.) She noted
12 that Plaintiff was agitated and anxious but denied hopelessness,
13 suicidal ideation, or intent to harm others. (AR 269-70.) She
14 prescribed Klonopin.¹² (Id.) On February 4, 2011, Plaintiff saw
15 Dr. Raboubi for anxiety and high blood pressure; treatment notes
16 indicate that he was "completely stable" on Klonopin and Prozac,
17

18 ⁹ The record does not indicate Dr. Raboubi's medical
19 specialty.

20 ¹⁰ Prozac is name-brand fluoxetine, which is used to treat
21 depression and panic attacks. See Prozac, WebMD, [https://](https://www.webmd.com/drugs/2/drug-6997/prozac-oral/details)
22 www.webmd.com/drugs/2/drug-6997/prozac-oral/details (last visited
Jan. 7, 2019).

23 ¹¹ Ativan is name-brand lorazepam, a benzodiazepine
24 medication used to treat anxiety. See Ativan, WebMD, [https://](https://www.webmd.com/drugs/2/drug-6685/ativan-oral/details)
25 www.webmd.com/drugs/2/drug-6685/ativan-oral/details (last visited
Jan. 7, 2019). It produces a calming effect in the central
nervous system. Id.

26 ¹² Klonopin is name-brand clonazepam, a benzodiazepine
27 medication used to treat panic attacks. See Klonopin, WebMD,
28 [https://www.webmd.com/drugs/2/drug-920-6006/klonopin-oral/](https://www.webmd.com/drugs/2/drug-920-6006/klonopin-oral/clonazepam-oral/details)
[clonazepam-oral/details](https://www.webmd.com/drugs/2/drug-920-6006/klonopin-oral/clonazepam-oral/details) (last visited Jan. 7, 2019). It produces
a calming effect in the central nervous system. Id.

1 with a stable mood and no evidence of unusual anxiety,
2 depression, or suicidal ideation. (AR 265-66.)

3 2. *Telecare High Desert Crisis Walk-In-Center*

4 Plaintiff sought specialized psychiatric treatment at
5 Telecare beginning on April 3, 2012, when he saw psychiatrist
6 Aubrey King. (AR 335.) He visited Telecare 11 times at regular
7 intervals over the next 16 months, usually seeing Dr. King but
8 once psychiatrist Anicia Pollcar instead. (AR 326-36.) He
9 returned some months later, on March 7, 2014, and was treated by
10 psychiatrist Harvey Presser (AR 352) and again on April 7, 2014,
11 when he saw Dr. Pollcar (AR 351). Medical-status exam notes from
12 the Telecare doctors, although difficult to read, indicate that
13 Plaintiff was generally anxious (AR 326-30, 332-35, 352), with a
14 reactive affect (AR 327-35, 351) and hallucinations (AR 328-34,
15 336, 351-52). The exam notes also state that he was alert (AR
16 326-36, 351) and that medication was helpful (AR 326-27, 329-31,
17 333-34, 336).

18 3. *LaSalle Medical Associates*

19 Plaintiff sought general medical care at LaSalle numerous
20 times between 2010 and 2015, and a handful of those visits
21 provide detail about his psychiatric impairments. (See AR 338-
22 42, 349-50, 353-407, 497-98.) On May 7, 2010, he sought care for
23 depression, among other things, and was prescribed Lexapro. (AR
24 338.) On July 5, 2012, the treating provider noted bipolar
25 disorder, anxiety, and depression. (AR 339.) On February 11,
26 March 27, and June 23, 2014, the treating providers noted his
27 anxiety and prescribed Xanax. (AR 349, 403, 406.) On June 10,
28 2014, Plaintiff sought care for depression and high blood

1 pressure, and he received a referral for a mental-health exam.
2 (AR 405.) On September 10, 2014, he saw a physician's assistant,
3 whose "psych" examination notes state that his cognitive function
4 was "intact" and he was taking alprazolam. (AR 378.) On
5 December 21, 2014, he saw a different physician's assistant;
6 treatment notes indicate he had stopped taking alprazolam and
7 showed a "mildly depressed affect." (AR 366, 368-69.)

8 4. *Mission City Community Network*

9 Beginning on October 23, 2014, Plaintiff saw psychiatrist
10 Salvador Arella at Mission City approximately monthly. (See AR
11 408-33, 495-96.) At each visit, Dr. Arella completed a
12 preprinted form indicating nearly identical assessments:
13 Plaintiff was anxious, sad, and irritable; his medication was
14 beneficial; he had no thoughts of harm to self or others; he was
15 not having visual or auditory hallucinations although he had a
16 history of them; and he was diagnosed with schizoaffective
17 disorder. (Id.) Only at the first visit, in October 2014, did
18 Plaintiff display any signs of impaired thought process or
19 abnormal affect (compare AR 432, with AR 408, 410, 412, 414, 416,
20 418, 420, 422, 424, 426, 428, 430), and only at the first two
21 visits was his speech unusual (compare AR 432, 430, with AR 408,
22 410, 412, 414, 416, 418, 420, 422, 424, 426, 428). Although at
23 early visits Dr. Arella checked a box indicating that
24 schizophrenia had to be ruled out (see AR 431-32), he
25 subsequently stopped checking the box and never diagnosed him
26 with that condition (see AR 409, 411, 413, 415, 417, 419, 421,
27
28

1 423, 425, 427, 429).¹³ The purpose of Plaintiff's visits appears
2 largely to have been medication management. (See AR 413, 415,
3 417, 419, 421, 423, 425, 427, 429, 431 (indicating "pharmacologic
4 mgmt" at 10 visits).) While under Dr. Arella's care, Plaintiff
5 took differing combinations of Xanax, Lexapro, Ambien,¹⁴
6 olanzapine,¹⁵ lithium, Abilify,¹⁶ and Topamax.¹⁷ (See, e.g., id.)

7 Plaintiff's condition improved during the course of Dr.
8 Arella's treatment. At the three most recent visits, Dr. Arella
9 noted that he was "stable." (AR 409, 411, 413.) On August 7 and
10 October 2, 2015, Plaintiff told Dr. Arella he was "more better."
11 (AR 410, 412.) At the October 30, 2015 visit, Dr. Arella

13 ¹³ Plaintiff stated at the December 2, 2015 hearing that he
14 was "diagnosed as schizophrenic" about "a year, year and a half
15 ago" (AR 42), but it is unclear what in the record he is
referring to.

16 ¹⁴ Ambien is name-brand zolpidem and is used to treat
17 insomnia in adults. See Ambien, WebMD, [https://www.webmd.com/
18 drugs/2/drug-9690/ambien-oral/details](https://www.webmd.com/drugs/2/drug-9690/ambien-oral/details) (last visited Jan. 7,
2019).

19 ¹⁵ Olanzapine is used to treat certain mood conditions, such
20 as schizophrenia and bipolar disorder, and can be used in
combination with other medication to treat depression. See
21 Olanzapine, WebMD, [https://www.webmd.com/drugs/2/drug-1644-9274/
22 olanzapine-oral/olanzapine-oral/details](https://www.webmd.com/drugs/2/drug-1644-9274/olanzapine-oral/olanzapine-oral/details) (last visited Jan. 7,
2019). It can decrease hallucinations. Id.

23 ¹⁶ Abilify is name-brand aripiprazole, an antipsychotic used
24 to treat bipolar disorder, schizophrenia, and, in combination
with other drugs, depression. See Abilify, WebMD, [https://
25 www.webmd.com/drugs/2/drug-64439/abilify-oral/details](https://www.webmd.com/drugs/2/drug-64439/abilify-oral/details) (last
visited Jan. 7, 2019).

26 ¹⁷ Topamax is name-brand topiramate and is used to treat
27 bipolar disorder. See Topiramate (Topamax), Nat'l All. Mental
28 Illness, [https://www.nami.org/Learn-More/Treatment/
Mental-Health-Medications/Types-of-Medication/
Topiramate-\(Topamax\)](https://www.nami.org/Learn-More/Treatment/Mental-Health-Medications/Types-of-Medication/Topiramate-(Topamax)) (last visited Jan. 7, 2019).

1 indicated that Plaintiff had "done well with the medicine" and
2 had "no major[] complaints." (AR 408.)

3 5. *Emergency Medical Treatment*

4 Plaintiff visited the emergency room on May 27, 2014, for
5 high blood pressure and left-shoulder pain. (AR 438.) The
6 treating provider noted that he reported no psychiatric symptoms.
7 (AR 439.)

8 B. Examining Psychiatrist Earbin Stanciell

9 On February 17, 2014, consultative examining psychiatrist
10 Earbin Stanciell performed a complete psychiatric evaluation of
11 Plaintiff. (AR 343-47.) Plaintiff reported his medical history,
12 and Dr. Stanciell reviewed the Telecare treatment notes. (AR
13 343.) Dr. Stanciell observed that he was "engaged and
14 cooperative" during the evaluation. (AR 343.) He appeared "well
15 kept" and "in no apparent distress." (AR 345.) "There was
16 nothing unusual about his posture, bearing, manner, or hygiene."
17 (Id.) His speech was fluent, his affect appropriate, and his
18 thought processes were linear and goal-directed. (Id.) He
19 exhibited no evidence of auditory or visual hallucinations;
20 reported no obsessions, compulsions or paranoia; and denied
21 suicidal or homicidal ideation. (Id.) He was "alert and
22 oriented to person, place, time, and situation." (Id.) He also
23 had "common sense understandings" and "responded appropriately to
24 imaginary situations requiring social judgment and knowledge of
25 the norms." (Id.) He reported that he was not receiving any
26 psychiatric treatment at the time. (AR 344.)

27 Dr. Stanciell determined that Plaintiff had moderate
28 difficulty maintaining social functioning and mild difficulty

1 focusing and maintaining attention, his level of personal
2 independence was adequate, and he was intellectually and
3 psychologically capable of performing his activities of daily
4 living. (AR 346.) Accordingly, Dr. Stanciell concluded that he
5 would have no limitations performing either simple and repetitive
6 tasks or detailed and complex ones; mild limitations performing
7 work activities on a consistent basis without supervision,
8 completing a normal workday or workweek, and handling the usual
9 stress and demands of gainful employment; and moderate
10 limitations accepting instructions from supervisors and
11 interacting with coworkers and the public. (Id.)

12 C. Plaintiff's New Evidence

13 On March 26, 2016, just over two months after the ALJ issued
14 her decision, Dr. Arella completed a preprinted "MEDICAL SOURCE
15 STATEMENT OF ABILITY TO DO WORK-RELATED ACTIVITIES (MENTAL)."
16 (J. Stip., Ex. 1.) His check-box responses indicated that
17 Plaintiff had "marked"¹⁸ restrictions in every category listed on
18 the form. (See id. at 1-2.) As to those affecting his "ability
19 to understand, remember, and carry out instructions," he had
20 "marked" restrictions in understanding, remembering, and carrying
21 out short and simple or detailed instructions and in making
22 judgments on simple or complex work-related decisions. (Id. at
23 1.) As to working and responding to others, Dr. Arella checked
24 boxes indicating that Plaintiff had "marked" restrictions on
25 maintaining attendance and punctuality during a workday and

27 ¹⁸ "Marked" was defined as a "serious limitation" impacting
28 the "ability to function independently, appropriately,
effectively, and on a sustained basis." (J. Stip., Ex. 1 at 1.)

1 workweek; performing at a consistent pace without more than
2 regular breaks in a workday; interacting appropriately with the
3 public, supervisors, and co-workers; sustaining an ordinary
4 routine without special supervision; and responding appropriately
5 to changes in a routine work setting. (Id. at 2.) He listed no
6 medical or clinical findings supporting these assessments in the
7 blank spaces provided for that purpose. (Id. at 1-2.)

8 The second portion of the statement, titled "EVALUATION FORM
9 FOR MENTAL DISORDERS," contains Dr. Arella's short answers to
10 questions about Plaintiff's impairments. (Id. at 4-7.) It is
11 dated March 26, 2016, indicating that date as the most recent
12 examination. (Id. at 4.) Dr. Arella noted that Plaintiff needed
13 reminders for his appointments; suffered from depression,
14 anxiety, and poor memory; had a history of sadness and depression
15 for four years; and had issues in his marital relationship.
16 (Id.) For questions concerning Plaintiff's "mental status," Dr.
17 Arella responded that he was tearful and labile, had poor
18 judgment, had an "isolative" affective status, and heard voices.
19 (Id. at 5.) As to his "current level of functioning," Dr. Arella
20 noted that he was "unable to maintain good functioning" for his
21 daily activities, "could not communicate" socially, was "unable
22 to complete tasks," and had "poor judgment" in work or worklike
23 situations. (Id. at 6.) He was taking Abilify and Xanax and
24 suffered from schizoaffective disorder. (Id. at 7.) His
25 prognosis was "guarded" and he "need[ed] help," but he was
26 competent to manage funds on his own behalf. (Id.)

27 Plaintiff first presented Dr. Arella's medical-source
28 statement to the Appeals Council, seeking remand in order to

1 allow the ALJ to consider the new evidence. (AR 256-57.) The
2 Appeals Council "looked at" the document but noted that it was
3 "new information [] about a later time" and therefore did not
4 "affect the decision about whether [Plaintiff] was disabled
5 beginning on or before January 20, 2016." (AR 2.) As a result,
6 the Appeals Council denied review. (AR 1.)

7 **VI. DISCUSSION**

8 Remand Is Not Warranted Based on Dr. Arella's Medical-Source 9 Statement

10 Plaintiff argues that the new evidence he submitted with his
11 appeal demonstrates that the ALJ's RFC assessment was "not based
12 on substantial evidence and is a result of legal error." (J.
13 Stip. at 5-9.) He asks the Court to remand for further
14 proceedings so that the ALJ can consider the new evidence.¹⁹
15 (Id. at 9.) For the reasons discussed below, remand is not
16 warranted.

17 A. Applicable Law

18 A district court must uphold an ALJ's RFC assessment when
19 the ALJ has applied the proper legal standard and substantial
20 evidence in the record as a whole supports the decision. Bayliss
21 v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005). The ALJ should
22 consider all the medical evidence in the record and "explain in
23 [his] decision the weight given to . . . [the] opinions from
24

25 ¹⁹ Most of the "new" evidence submitted to the Appeals
26 Council was already in the record. (See AR 2.) In addition to
27 Dr. Arella's March 2016 opinion, the other truly new evidence
28 consisted of treatment notes from Mission City from July through
September 2016. (Id.) Those notes are from more than six months
after the relevant period ended, however, and Plaintiff does not
discuss them. Accordingly, the Court doesn't either.

1 treating sources, nontreating sources, and other nonexamining
2 sources." § 404.1527(e)(2)(ii); see also § 404.1545(a)(1) ("We
3 will assess your residual functional capacity based on all the
4 relevant evidence in your case record."); SSR 96-8p, 1996 WL
5 374184, at *2 (July 2, 1996) (RFC must be "based on all of the
6 relevant evidence in the case record"). In making an RFC
7 determination, the ALJ may consider those limitations supported
8 in the record and need not consider properly rejected evidence or
9 subjective complaints. See Bayliss, 427 F.3d at 1217 (upholding
10 ALJ's RFC determination because "the ALJ took into account those
11 limitations for which there was record support that did not
12 depend on [claimant's] subjective complaints"); Batson v. Comm'r
13 of Soc. Sec. Admin., 359 F.3d 1190, 1197 (9th Cir. 2004) (ALJ not
14 required to incorporate into RFC any findings from treating-
15 physician opinions that were "permissibly discounted").

16 At the time of the relevant proceedings here, Social
17 Security Administration regulations allowed claimants to submit
18 "new and material evidence to the Appeals Council and require[d]
19 the Council to consider that evidence in determining whether to
20 review the ALJ's decision, so long as the evidence relate[d] to
21 the period on or before the ALJ's decision." Brewes v. Comm'r of
22 Soc. Sec. Admin., 682 F.3d 1157, 1162 (9th Cir. 2012); see also
23 § 404.970(b). "[W]hen the Appeals Council considers new evidence
24 in deciding whether to review a decision of the ALJ, that
25 evidence becomes part of the administrative record, which the
26 district court must consider when reviewing the Commissioner's
27 final decision for substantial evidence." Brewes, 682 F.3d at
28 1163. Remand is necessary when a "reasonable possibility" exists

1 that "the new evidence might change the outcome of the
2 administrative hearing." Borrelli v. Comm'r of Soc. Sec., 570 F.
3 App'x 651, 652 (9th Cir. 2014).

4 Medical examinations taking place after the ALJ's decision
5 may still relate to a claimant's conditions "during the relevant
6 time period." Handy v. Colvin, No. CV 14-02149-SH., 2014 WL
7 4895678, at *3 (C.D. Cal. Sept. 30, 2014). In such circumstance,
8 the Appeals Council errs in dismissing the evidence solely
9 because it was dated after the ALJ's decision. See id.; see also
10 Baccari v. Colvin, No. EDCV 13-2393 RNB., 2014 WL 6065900, at *2
11 (C.D. Cal. Nov. 13, 2014) (that claimant submitted evidence to
12 Appeals Council that was "generated after the ALJ's decision
13 . . . is not dispositive of whether the evidence was
14 chronologically relevant" and collecting cases). This is
15 especially true when the plaintiff's condition is "chronic" or
16 relatively "longstanding." See Baccari, 2014 WL 6065900, at *2;
17 Bergmann v. Apfel, 207 F.3d 1065, 1070 (8th Cir. 2000) (finding
18 that posthearing evidence required remand because it concerned
19 deterioration of "relatively longstanding" impairment).

20 B. Analysis

21 Even assuming Dr. Arella's medical-source opinion concerned
22 the relevant time period, it does not undermine the ALJ's
23 decision that Plaintiff could perform a limited range of medium
24 work. (See AR 25-30.) His medical records showed that despite a
25 history of depression, anxiety, auditory hallucinations, and
26 paranoia (AR 28, 326-36, 351-52, 408-33), regular treatment and
27 medication stabilized his condition (AR 265, 269, 275-75, 326-27,
28 329-31, 333-34, 336, 408-33). For example, after she had

1 prescribed Plaintiff Lexapro, Dr. Nester found that he was
2 "negative for psychiatric symptoms," without "unusual anxiety or
3 evidence of depression." (AR 275-76.) Dr. Raboubi described him
4 as "completely stable on [K]lonopin." (AR 265.) When he visited
5 the emergency room on May 27, 2014, he reported no psychiatric
6 symptoms to the treating physician. (AR 439.) Dr. Arella noted
7 that Plaintiff had "done well with the medicine" and had "no
8 major complaints." (AR 408.) As the ALJ discussed, Dr. Arella's
9 most recent treatment notes generally indicated that he was
10 feeling better and was assessed as stable. (AR 28 (citing AR
11 408-33).) Medical records indicated that since beginning his
12 medication regimen, he had not expressed suicidal ideation (AR
13 265, 270, 272, 408-33) and more recently had not reported any
14 auditory hallucinations (AR 408-33).²⁰

15 Despite substantial evidence in the record that Plaintiff
16 had few if any limitations arising from his mental impairments,
17 the ALJ limited him to "frequent supervisory contact, occasional
18 contact with coworkers, and no contact with the public," giving
19 him the benefit of the doubt. (AR 25.) Substantial evidence
20 supported the finding that he was not disabled. See Warre v.
21 Comm'r of Soc. Sec., 439 F.3d 1001, 1006 (9th Cir. 2006) (stating
22 that "[i]mpairments that can be controlled effectively with
23 medication are not disabling for the purpose of determining
24 eligibility for SSI benefits"); Carey v. Berryhill, No. 16cv2891-
25 CAB (BLM), 2017 WL 3457386, at *5 (S.D. Cal. Aug. 11, 2017)

26
27 ²⁰ Plaintiff claimed at the hearing to hear voices every day
28 (AR 42), but the ALJ found those statements not credible (AR 26),
which he has not challenged on appeal.

1 (finding plaintiff diagnosed with anxiety and panic disorder not
2 disabled when medical records showed symptoms were improving and
3 were controlled with medication), accepted by 2017 WL 4856874
4 (S.D. Cal. Aug. 29, 2017).

5 Plaintiff claims that remand is necessary because consulting
6 examiner Dr. Stanciell, whose opinion the ALJ gave "partial
7 weight," found that Plaintiff had only moderate and mild
8 difficulties and might have changed his view with access to Dr.
9 Arella's March 2016 opinion. (J. Stip. at 8.) There is no
10 "reasonable possibility" of that. See Borrelli, 570 F. App'x at
11 652.

12 As Defendant correctly notes (J. Stip. at 12-14), Dr.
13 Arella's March 26, 2016 medical-source statement is entitled to
14 little weight given its conclusory nature. See Thomas v.
15 Barnhart, 278 F.3d 947, 957 (9th Cir. 2002) ("The ALJ need not
16 accept the opinion of any physician, including a treating
17 physician, if that opinion is brief, conclusory, and inadequately
18 supported by clinical findings.") Indeed, that portion of the
19 medical opinion listing Plaintiff's limitations as "marked" is a
20 check-box form with no medical or clinical findings provided in
21 the spaces to support the assessment (see J. Stip., Ex. 1 at 1-3)
22 and thus is properly discounted. See Van Orsdol v. Colvin, 671
23 F. App'x 410, 410 (9th Cir. 2016) (physician's opinion properly
24 rejected when it was "unexplained and unsupported by evidence");
25 see also Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012)
26 (ALJ may reject opinions that consist "primarily of a
27 standardized, check-the-box form").

28 Moreover, the new evidence contradicts Dr. Arella's numerous

1 prior treatment notes indicating that Plaintiff's symptoms were
2 under control with medication and that he was feeling better,
3 which the ALJ properly noted. (AR 28 (citing AR 409-13, 417,
4 419, 422-23, 425-26, 428-29)); see Saelee v. Chater, 94 F.3d 520,
5 522 (9th Cir. 1996) (per curiam) (as amended) (ALJ properly
6 disregarded doctor's report when it varied from his treatment
7 notes); O'Neal v. Barnhart, No. EDCV 04-01007-MAN., 2006 WL
8 988253, at *8 (C.D. Cal. Apr. 13, 2006) (inconsistency between
9 treating physician's medical opinion and examination notes was
10 specific and legitimate reason for rejecting opinion). In
11 addition, Dr. Stanciell did review the Telecare treatment notes
12 (see AR 343), which were similar to Dr. Arella's notes (compare
13 AR 326-36, with AR 408-33). Dr. Stanciell was unlikely to give
14 any weight to another doctor's opinion so flatly undermined by
15 the doctor's own treatment notes and the rest of the record,
16 including the Telecare notes.

17 Because Dr. Arella's statement does not render the ALJ's RFC
18 assessment unsupported by substantial evidence, remand is not
19 warranted. See Bayliss, 427 F.3d at 1217; Marin v. Astrue, No.
20 CV 11-09331 AJW., 2012 WL 5381374, at *6 (C.D. Cal. Oct. 31,
21 2012) (declining to reverse when new evidence submitted to
22 Appeals Council did "not alter the conclusion that the ALJ's
23 decision was supported by substantial evidence in the record as a
24 whole").

1 VII. CONCLUSION

2 Consistent with the foregoing and under sentence four of 42
3 U.S.C. § 405(g),²¹ IT IS ORDERED that judgment be entered
4 AFFIRMING the Commissioner's decision, DENYING Plaintiff's
5 request for remand, and DISMISSING this action with prejudice.

6
7 DATED: January 8, 2019



8 JEAN ROSENBLUTH
9 U.S. Magistrate Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25
26 ²¹ That sentence provides: "The [district] court shall have
27 power to enter, upon the pleadings and transcript of the record,
28 a judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."