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

VAN R.,

Plaintiff,

MARTIN J. O'MALLEY,¹
Commissioner of Social Security,

Defendant.

Case No. CV 5:23-00637 RAO

**MEMORANDUM OPINION AND
ORDER**

17 **I. INTRODUCTION**

18 Plaintiff Van R.² ("Plaintiff") challenges the Commissioner's denial of a
19 period of disability and disability insurance benefits ("DIB"). For the reasons
20 stated below, the decision of the Commissioner is **REVERSED**, and the matter
21 **REMANDED**.

22 **II. BACKGROUND**

23 On September 17, 2019, Plaintiff applied for DIB, alleging disability
24 beginning March 30, 2013. (AR 70-72.) Plaintiff's application was denied on

25 _____
26 ¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin J. O'Malley,
the Commissioner of Social Security, is hereby substituted as the defendant.

27 ² Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B)
28 and the recommendation of the Committee on Court Administration and Case
Management of the Judicial Conference of the United States.

1 September 26, 2019, and upon reconsideration on January 7, 2020. (AR 70, 82.)

2 On February 10, 2020, Plaintiff appealed the Commissioner’s decision and
3 requested a hearing before an Administrative Law Judge (“ALJ”). (AR 101-03,
4 105.) One hearing took place on June 22, 2020, and another on March 10, 2021.
5 (AR 29-52, 53-69.)

6 The March 31, 2021, Decision

7 On March 31, 2021, the ALJ issued his first unfavorable decision. (AR 15-
8 23.) At **step one**, the ALJ found Plaintiff had not engaged in substantial gainful
9 activity between March 30, 2013, the alleged disability onset date, and December
10 31, 2017, his date last insured. (AR 17.) At **step two**, the ALJ determined Plaintiff
11 had multiple severe impairments: depressive disorder, post-traumatic stress disorder
12 (“PTSD”), and alcohol dependence. (*Id.*) At **step three**, the ALJ found Plaintiff
13 did not have an impairment or combination of impairments that medically equals
14 the severity of the impairments listed in 20 C.F.R. §§ 404.1520(d), 404.1525, and
15 404.1526. (AR 18.) Before proceeding to step four, the ALJ assessed that Plaintiff
16 had the residual functional capacity (“RFC”) to perform a full range of work at all
17 exertional levels with some non-exertional limitations: can perform complex but
18 routine tasks with few changes, can have frequent interaction with coworkers and
19 supervisors, and is limited to minimal public contact. (AR 19.) At **step four**, the
20 ALJ concluded Plaintiff could perform past relevant work as an electronics
21 technician. (AR 22.) Considering Plaintiff’s age, education, work experience, and
22 RFC, the ALJ found Plaintiff could perform past relevant work as an electronics
23 technician. (*Id.*)

24 On May 14, 2021, the Appeals Council denied Plaintiff’s request for review.
25 (AR 1-6, 1177.) Plaintiff first filed suit asking this Court to reverse and remand the
26 matter on July 8, 2021. *Van R. v. Saul*, No. 21-01143 (C.D. Cal. closed Nov. 16,
27 2021). On November 15, 2021, the parties stipulated to a voluntary remand, which
28 the Court granted. *Id.*; (AR 1176). On February 15, 2022 on remand, the ALJ was

1 directed to evaluate Plaintiff's alleged symptoms, give further consideration to
2 medical source opinions, further consider whether Plaintiff has and is able to
3 perform past relevant work, and, if warranted, obtain supplemental evidence from a
4 vocational expert ("VE") to clarify limitations on Plaintiff's occupational base.
5 (AR 1200-04.)

6 The February 17, 2023, Decision

7 On January 23, 2023, another hearing at which a VE and Plaintiff testified,
8 occurred. (See AR 1133-56.) The ALJ rendered his second unfavorable decision
9 on February 17, 2023. (AR 1105-25.)

10 At **step one**, the ALJ found Plaintiff did not engage in substantial gainful
11 activity between his alleged disability onset date, March 30, 2013, and his date last
12 insured, December 31, 2017. (AR 1110.) At **step two**, the ALJ found Plaintiff had
13 two severe impairments: depression and PTSD. (*Id.*) At **step three**, the ALJ found
14 Plaintiff did not have an impairment or combination of impairments that medically
15 equals the severity of one of the impairments listed in 20 C.F.R. §§ 404.1520(d),
16 404.1525, and 404.1526. (AR 1111.) With respect to RFC, the ALJ determined
17 Plaintiff can perform a full range of work at all exertional levels with the following
18 non-exertional limitations: can perform simple repetitive tasks and up to detailed
19 tasks; is precluded from complex tasks; cannot perform teamwork; can frequently
20 interact with supervisors and coworkers but cannot have intense personal
21 interactions or perform teamwork; can focus and concentrate for two hours at a time
22 congruent with normal breaks; can tolerate ordinary stress and changes; is
23 precluded from work requiring high-production quotas or frequent changes in the
24 work setting. (AR 1112.) At **step four**, the ALJ determined transferability of job
25 skills from past relevant work was immaterial because Plaintiff is considered "not
26 disabled" regardless. (AR 1117.) At **step five**, considering Plaintiff's age,
27 education, work experience, and RFC, the ALJ concluded there were a significant
28 number of jobs in the national economy that Plaintiff could have performed through

1 the date last insured. (AR 1117-18.)

2 On April 12, 2023, Plaintiff filed the present suit challenging the
3 Commissioner’s decision. (Dkt. No. 1.) The parties filed their respective briefs for
4 the Court’s consideration. (*See generally* Dkt. Nos. 11 (“Pl. Brief”), 18 (“Comm’r
5 Brief”), 19 (“Pl. Reply”).)

6 **III. STANDARD OF REVIEW**

7 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s
8 decision to deny benefits. A court must affirm an ALJ’s findings of fact if, when
9 applied against proper legal standards, they are supported by substantial evidence.
10 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “Substantial evidence
11 . . . is ‘more than a mere scintilla[.]’ . . . [which] means—and means only—‘such
12 relevant evidence as a reasonable mind might accept as adequate to support a
13 conclusion.’” *Biestek v. Berryhill*, 587 U.S. ___, 139 S. Ct. 1148, 1154, 203 L. Ed.
14 2d 504 (2019) (citations omitted); *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir.
15 2017). Substantial evidence is shown “by setting out a detailed and thorough
16 summary of the facts and conflicting clinical evidence, stating his interpretation
17 thereof, and making findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir.
18 1998) (citation omitted). “[T]he Commissioner’s decision cannot be affirmed
19 simply by isolating a specific quantum of supporting evidence. Rather, a court must
20 consider the record as a whole, weighing both evidence that supports and evidence
21 that detracts from the Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d
22 1033, 1035 (9th Cir. 2001) (citations and internal quotation marks omitted).
23 “However, the ALJ ‘need not discuss *all* evidence presented’” to her, but “must
24 only explain why ‘significant probative evidence has been rejected.’” *Hurn v.*
25 *Berryhill*, No. 17-00884, 2018 WL 4026357, at *3 (W.D. Wash. Aug. 23, 2018)
26 (citing *Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984)).

27 “‘Where evidence is susceptible to more than one rational interpretation,’ the
28 ALJ’s decision should be upheld.” *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194,

1 1198 (9th Cir. 2008) (citing *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005));
2 *see Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (“If the
3 evidence can support either affirming or reversing the ALJ’s conclusion, we may
4 not substitute our judgment for that of the ALJ.”). The Court may review only “the
5 reasons provided by the ALJ in the disability determination and may not affirm the
6 ALJ on a ground upon which [s]he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630
7 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)).

8 **IV. DISCUSSION**

9 Plaintiff contends the ALJ (1) failed to provide clear and convincing reasons
10 for discounting Plaintiff’s subject symptom testimony; (2) failed to properly
11 evaluate the examining medical source opinion of David Vermeersch, Ph.D., a
12 consultative psychologist; (3) failed to properly evaluate the opinion of the
13 testifying medical expert, Michael Lace, Psy.D.; and (4) improperly relied upon VE
14 testimony given in response to an incomplete hypothetical question.

15 **a. Claim One—Subjective Testimony**

16 Plaintiff contends the ALJ failed to provide clear and convincing reasons for
17 discounting Plaintiff’s subjective symptom testimony about his mental
18 impairments. (Pl. Brief at 2; Pl. Reply at 1-2.) The Commissioner argues the
19 ALJ’s reasons for discounting Plaintiff’s testimony are sufficiently specific.
20 (Comm’r Brief at 5.)

21 The Court agrees with the Commissioner.

22 **i. Plaintiff’s Testimony**

23 Plaintiff testified he last worked in March 2013 as a computer technician.
24 (AR 58-59, 1139.) His job did not require him to do any heavy lifting; it involved
25 sitting, taking calls, and resolving issues. (AR 59.) Up until that point, he had
26 worked in information technology (“IT”) for around 10 years. (AR 60-61.) Prior to
27 IT, Plaintiff was a truck driver for about five years. (AR 61, 1139.) Before that,
28 Plaintiff did gig work. (AR 62, 64.) He testified he could not work because of his

1 deep depression, anxiety, and triggers. (AR 64.) The mental problems started
2 around 2000; the Veterans' Administration diagnosed him, and he began attending
3 both group and one-on-one PTSD, anxiety, and depression courses. (AR 64, 1143-
4 44.) The symptoms seemed to worsen around 2013, and he became homeless. (*Id.*;
5 AR 47.) He has attended treatment offered by the VETS program ever since. (AR
6 64, 47.)

7 Plaintiff testified to being in the Marine Corps. from 1989 to 1993, and, after
8 leaving the military, working as a truck driver from 1993 to 1998. (AR 37, 65.)
9 Between 1998 and 2001, Plaintiff worked part-time jobs. (*Id.*) He worked as a
10 computer technician for Sprint between 2000 and 2008, was "the eyes of the control
11 centers," and worked on troubleshooting problems. (AR 38-39; 65-66.) He did not
12 lift more than 20-30 pounds while at Sprint. (*See* AR 39, 41.) In late 2008,
13 Plaintiff worked for Pomeroy Select Advisory Services as an IT contractor. (*Id.*)
14 In 2010, Plaintiff commissioned sales sites for Convergence. In 2012 and 2013,
15 Plaintiff worked for Demco Collaboration Services, or Collab, also in technology.
16 (AR 42.)

17 Plaintiff does not work because he has nightmares and becomes triggered
18 from things like being tapped on the shoulder. (AR 67.) He attributes his mental
19 impairments to his military service because he did not experience symptoms prior
20 to service, which exposed him to "life altering" situations. (*Id.*) For years, Plaintiff
21 attempted to stay busy and did not receive treatment, but "it just all caught up" to
22 him. (AR 68.)

23 Plaintiff testified to having trouble standing because of reconstructive knee
24 surgery. (AR 45.) He could stand for about seven minutes before needing to sit or
25 change posture or position. (*Id.*) At some point, he could sit for no more than
26 about 30 minutes before needing to stand up. (AR 46.) Plaintiff testified to having
27 some hearing loss in his right ear. (*Id.*) He has trouble hearing every day and
28 discerning tones, pitches, or directions of sound. (*Id.*) He is nearsighted and has

1 floaters and black spots in his eye. (*Id.*) He has trouble concentrating because his
2 thoughts drift off. (AR 47; *see* AR 1142.) He “take[s] it day by day.” (AR 47.)
3 He attends therapy twice per week. (AR 1143.)

4 Plaintiff testified his impairments are related to his military service. (AR
5 1144.) Plaintiff testified that his PTSD has become so severe he has “severe
6 internal nervousness about [him]self” and he has “certain perception issues.” (AR
7 1145.) He was “normal” prior to serving in the military, but now experiences
8 flashbacks from the situations and dead bodies he encountered in the military. (*Id.*)
9 He drinks a couple of alcoholic drinks per week but does not have a dependency on
10 alcohol. (AR 1146.) Plaintiff has two kids, one of which he has a poor relationship
11 with, and the other he is in contact with and assists financially. (AR 1147-48.) He
12 has two sisters, who he speaks to once every two weeks. (AR 1148-49.) He shares
13 an apartment with his partner of several years, Ann, who helps him out a lot, works
14 remotely, and “takes care of everything.” (AR 1149-50.) Plaintiff avoids going
15 outside the house, so he does not help out with the shopping. (AR 1150.)

16 **ii. The ALJ’s Analysis**

17 The ALJ discounted Plaintiff’s subjective symptom testimony, taking into
18 account his activities of daily living; noncompliance with medication; Plaintiff’s
19 friend Jeffrey Hill’s Third-Party Function Report from January 2, 2018; and objective
20 medical evidence, which includes Dr. Michael Lace’s medical opinion. (AR 1112-
21 16); *see Williams v. Berryhill*, No. 17-03624, 2018 WL 791144, at *4 (C.D. Cal. Feb.
22 8, 2018) (“Medical opinion evidence is merely an example of objective medical
23 evidence, and thus, does not constitute a separate and distinct reason for rejecting
24 Plaintiff’s subjective symptom testimony.” (citing *Vigil v. Comm’r of Soc. Sec.*,
25 No. 16-1677, 2017 WL 4075581, at *8 (E.D. Cal. Sept. 14, 2017); *Petit v. Astrue*,
26 No. 11-2001, 2012 WL 3965146, at *7 (C.D. Cal. Sept. 11, 2012))).

27 The ALJ determined Plaintiff’s activities of daily living undermined the
28 alleged severity of his symptoms, noting he has a “robust range of activities of daily

1 living that include[] being able to maintain a healthy lifestyle, walk daily, go to the
2 gym daily, visit a vet center regularly, and take care of his own bills and day-to-day
3 living.” (AR 1114 (citing Exhs. 2F, 3F).) The ALJ also noted that Plaintiff
4 reported visiting family in Arkansas, Tennessee, and Mississippi in 2016, and was
5 able to participate in group therapy for PTSD and attended school three days a
6 week (all day) in 2014. (AR 1115.)

7 The ALJ noted Plaintiff was at times noncompliant with his medication
8 because treatment notes indicated his psychotropic medications helped when he
9 took them, and “he had not filled some medication prescriptions and was only
10 taking Gabapentin ‘on and off.’” (AR 1115.) Thus, the ALJ concluded it was
11 reasonable to assume Plaintiff would have responded better to his course of
12 treatment had he been compliant with his medications. (*Id.*)

13 The ALJ found Jeffrey Hill’s Adult Function Report unpersuasive because
14 “the preponderance of the objective evidence does not support the extent of the
15 function loss described in the report and alleged by [Plaintiff.]” (AR 1113.)

16 The ALJ also determined Dr. Michael Lace’s opinion was partially
17 persuasive with respect to the paragraph B criteria because while it reflects the most
18 recent assessment of Plaintiff’s functioning, it does not fully support Plaintiff’s
19 moderate limitation in interacting with others and only occasional contact with
20 coworkers, supervisors, and the public. (AR 1114.) The ALJ also opined that Dr.
21 Lace’s opinion about the complexity of work tasks overestimates Plaintiff’s mental
22 RFC, which limits him to no more than detailed tasks. (*Id.*)

23 The ALJ noted objective medical evidence, such as mental status
24 examinations and other treatment notes, that showed that even though Plaintiff had
25 anxious mood and constricted affect, Plaintiff displayed cooperative and
26 appropriate behavior, normal cognition and insight, and no difficulty making
27 decisions. (AR 1114-15.)

28 ///

1 **iii. Analysis**

2 There is a two-step process for evaluating a claimant’s testimony about the
3 severity and limiting effect of the claimant’s symptoms. *Vasquez v. Astrue*, 572
4 F.3d 586, 591 (9th Cir. 2009). “First, the ALJ must determine whether the claimant
5 has presented objective medical evidence of an underlying impairment ‘which
6 could reasonably be expected to produce the pain or other symptoms alleged.’”
7 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (quoting *Bunnell v.*
8 *Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991) (en banc)). Once satisfied, the ALJ
9 must examine the entire case record, which includes the claimant’s own testimony,
10 for evidence on the intensity, persistence, and limiting effects of claimant’s
11 symptoms. *Id.* at 1035.

12 The ALJ must also take care not to pick and choose only that evidence that
13 bolsters his findings. *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001);
14 *see Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014). If the ALJ discounts
15 the claimant’s testimony for lack of credibility, he must provide specific, clear, and
16 convincing reasons for doing so. *Brown-Hunter v. Colvin*, 806 F.3d 487, 488-89
17 (9th Cir. 2015).

18 **1. Objective Medical Evidence of an Underlying**
19 **Impairment**

20 For the first step of the analysis, Plaintiff must present objective medical
21 evidence of an underlying impairment ““which could reasonably be expected to
22 produce the pain or other symptoms alleged.”” *Lingenfelter*, 504 F.3d at 1036
23 (quoting *Bunnell*, 947 F.2d at 344).

24 Here, Plaintiff presented objective medical evidence of an underlying
25 impairment that could reasonably be expected to produce his alleged symptoms
26 because he has depression and PTSD, the cumulative effect of which could
27 reasonably cause detachment, social isolation, poor focus, and hyper-alertness,
28 among other symptoms. (AR 1113.)

1 Finding step one satisfied, the Court proceeds to step two. *Samuel Z. v.*
2 *Kijakazi*, No. 20-1924, 2022 WL 4842936, at *3 (C.D. Cal. Sept. 30, 2023);
3 *Kimberli M. S. v. Kijakazi*, No. 21-1836, 2023 WL 2346330, at *10 (S.D. Cal. Mar.
4 3, 2023).

5 **2. Examination of Entire Case Record**

6 For the second step of the analysis, the ALJ must examine the entire case
7 record—including the claimant’s testimony—for evidence on the intensity,
8 persistence, and limiting effects of the claimant’s symptoms. In evaluating the
9 claimant’s credibility, a court may consider a multitude of factors, such as
10 inconsistencies between the claimant’s statements, objective medical evidence,
11 daily activities, work record, and statements from healthcare providers or third
12 parties about the nature, severity, and effect of the symptoms. *Thomas v. Barnhart*,
13 278 F.3d 947, 958-59 (9th Cir. 2002). A lack of objective medical evidence
14 substantiating the claimant’s statements about symptoms by itself is not grounds for
15 discrediting the claimant’s symptom testimony. *Id.*

16 a. Activities of Daily Living

17 The mere fact a claimant can perform “certain daily activities, such as grocery
18 shopping, driving a car, or limited walking for exercise,” does not discredit her claim
19 of disability. *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001). Only when
20 these physical activities consume a substantial part of the claimant’s day can they
21 undermine her testimony of alleged symptoms. *Id.* at 1049.

22 Here, the ALJ properly discounted Plaintiff’s subjective symptom testimony
23 on the basis of his daily living activities because the ALJ noted Plaintiff engages in
24 activities of daily living (walking and going to the gym daily, visiting a veterans’
25 center regularly, taking care of his own bills and day-to-day living, and maintaining
26 a healthy lifestyle) that undermine the alleged severity of his symptoms. activities.
27 See *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999);
28 *Guthrie v. Kijakazi*, No. 21-36023, 2022 WL 15761380, at *1 (9th Cir. Oct. 28,

1 2022). The ALJ reasonably determined Plaintiff's ability to attend school three times
2 per week in 2014 and visit family in different states in 2016 undermined the alleged
3 severity of his depression. (AR 1114-15.) The ALJ reasoned Plaintiff's daily living
4 activities are "an indication of generally intact cognitive, social and adaptive
5 functioning" despite Plaintiff's allegations of symptoms. (AR 1115.) Therefore,
6 Plaintiff's subjective symptom testimony cannot be discounted for inconsistencies
7 with his daily living activities.

8 **b. Noncompliance with Medication**

9 The failure to follow prescribed treatment, absent good cause, is a valid reason
10 to discount a claimant's subjective symptom testimony. *Orn*, 495 F.3d at 638; *Fair*
11 *v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989), *superseded on other grounds by* 20
12 C.F.R. § 404.1502(a); *Peters v. Colvin*, No. 13-8907, 2015 WL 349421, at *5 (C.D.
13 Cal. Jan. 23, 2015) (citing 20 CFR § 416.930(a)).

14 Here, the ALJ's analysis of Plaintiff's noncompliance with medication is
15 insufficient to discount his testimony because the ALJ merely notes that Plaintiff
16 was not always compliant with his medications without connecting the
17 noncompliance to the symptom testimony it purports to discount. *See Morgan*, 169
18 F.3d at 599. The Commissioner's argument that the ALJ's analysis is rational and
19 should therefore stand, necessarily requires the ALJ to have written an analysis
20 connecting Plaintiff's medication noncompliance to statements he made about his
21 symptoms. (*See Comm'r Brief* at 9-10); *Guthrie*, 2022 WL 15761380, at *1. The
22 ALJ did not do so here. Therefore, Plaintiff's subjective symptom testimony
23 cannot be discounted on the basis of noncompliance with medication. *Garrison v.*
24 *Colvin*, 759 F.3d 995, 1018 n.24 (9th Cir. 2014).

25 **c. Jeffrey Hill's Adult Function Report**

26 "Lay testimony as to a claimant's symptoms is competent evidence that an
27 ALJ must take into account, unless he or she expressly determines to disregard such
28 testimony and gives reasons germane to each witness for doing so." *Lewis v. Apfel*,

Commented [RO1]: Let's include a citation to *Garrison v. Colvin*, 759 F.3d 995 n.24 to shore this part of the analysis

1 236 F.3d 503, 511 (9th Cir. 2001). A lack of support from overall medical
2 evidence is an improper basis to disregard lay testimony because “[t]he fact that lay
3 testimony and third-party function reports may offer a different perspective than
4 medical records alone is precisely why such evidence is valuable.” *Diedrich v.*
5 *Berryhill*, 874 F.3d 634, 640 (9th Cir. 2017).

6 Here, the ALJ’s analysis of Mr. Hill’s Adult Function Report is insufficient
7 to discount Plaintiff’s testimony because the ALJ cited a lack of medical evidence
8 as the sole reason for discounting Plaintiff’s testimony. (AR 1113); *see Kelli C. v.*
9 *Berryhill*, No. 18-02237, 2019 WL 1330890, at *6 (C.D. Cal. Mar. 25, 2019) (citing
10 *Smolen v. Chater*, 80 F.3d 1273, 1289; *Bray v. Berryhill*, No. 17-1385, 2018 WL
11 3076919, at *9 (C.D. Cal. June 19, 2018); *Stewart v. Astrue*, No. 11-852, 2012 WL
12 487467, at *6 (C.D. Cal. Feb. 15, 2012) (“A lack of support from the ‘clinical or
13 diagnostic medical evidence’ is not a proper basis for disregarding lay witness’
14 observations.” (quoting *Diedrich*, 874 F.3d at 640)). Therefore, Plaintiff’s
15 subjective symptom testimony cannot be rejected on the basis of Mr. Hill’s Adult
16 Function Report.

17 d. Objective Medical Evidence

18 A lack of objective medical reason is a valid reason to discount a claimant’s
19 subjective symptom testimony as long as it is not the only reason. *See Bunnell*, 947
20 F.2d at 345; *Venegas v. Astrue*, No. 08-8636, 2009 WL 4267439, at *4 (C.D. Cal.
21 Nov. 24, 2009).

22 Here, the ALJ properly discounted Plaintiff’s subjective symptom testimony
23 for lack of objective medical evidence, relying on normal mental status examinations
24 with some reported anxiety and PTSD symptoms and the rare occasion Plaintiff
25 presented outside his normal limits. (AR 1114, citing Exhs. 2F, 3F; *see Comm’r*
26 *Brief* at 5-6.) The ALJ also noted that although Dr. Lace found a report stating
27 Plaintiff was unable to work, he found that report was unsupported. (*Id.*) The ALJ
28 explained that although Plaintiff showed anxious and constricted mood and affect,

1 recurring thoughts and nightmares of trauma, avoidance behaviors, and hyperarousal,
2 Plaintiff still retained the ability to not be distracted, and he was cooperative with
3 appropriate behavior. (*Id.*) The ALJ further pointed out Plaintiff demonstrated
4 normal cognition and insight in his examinations. (*See generally* AR 1114-16.)

5 Plaintiff’s argument the Commissioner erred by not discussing other medical
6 evidence of Plaintiff’s mental impairments, (Pl. Brief at 14), is unpersuasive because
7 an ALJ need not discuss every shred of evidence presented to him. *Christopher R.*
8 *M. v. Kijakazi*, No. 22-7555, 2023 WL 4562825, at *4 (C.D. Cal. July 17,
9 2023); *Ackley v. Astrue*, No. 08-1880, 2009 WL 1705781, at *2 (C.D. Cal. June 10,
10 2009) (citing *Vincent*, 739 F.2d at 1394-95). As long as the ALJ’s conclusion is
11 supported by substantial evidence, as is here, it must be upheld. (Comm’r Brief at 9
12 (citing *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020) (“If the evidence is
13 susceptible to more than one rational interpretation, it is the ALJ’s conclusion that
14 must be upheld.”))); *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

15 Because the ALJ properly discounted Plaintiff’s subjective symptom
16 testimony for his activities of daily living, the ALJ did not err in relying on a lack of
17 objective medical evidence to discount Plaintiff’s testimony. *See Bunnell*, 947 F.2d
18 at 345. The ALJ therefore did not err.

19 **b. Claims Two and Three—Medical Source Opinions**

20 An ALJ cannot reject an examining or treating physician’s opinion as
21 unsupported or inconsistent without providing an explanation supported by
22 substantial evidence. *Kitchen v. Kijakazi*, 82 F.4th 732, 739 (9th Cir. 2023) (citing
23 *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022)). The ALJ considers several
24 factors in weighing a treating physician’s opinions and must explain specifically
25 how it considered the supportability and consistency factors. *Id.* at 739-40.
26 “Supportability concerns how ‘a medical source supports a medical opinion’ with
27 relevant evidence, while consistency concerns how ‘a medical opinion is consistent
28 with the evidence from other medical and nonmedical sources.’” *Id.* (quoting

1 *Woods*, 32 F.4th at 791-92). An ALJ “need not accept the opinion of any physician
2 . . . if that opinion is brief, conclusory, and inadequately supported by clinical
3 findings.” *Thomas*, 278 F.3d at 957.

4 **i. David Vermeersch, Ph.D**

5 Plaintiff claims the ALJ improperly discounted Dr. Vermeersch’s opinion as
6 conclusory and unsupported. (Pl. Brief at 13-17.) The Commissioner claims the
7 ALJ’s analysis of Dr. Vermeersch’s opinion was proper. (Comm’r Brief at 10-12.)

8 The Court agrees with Plaintiff.

9 **1. Dr. Vermeersch’s Testimony**

10 Dr. Vermeersch noted Plaintiff has PTSD and major depressive order. (AR
11 570.) Plaintiff has significant problems in his relationships and experiences
12 depressed mood, anxiety, suspiciousness, weekly panic attacks, chronic sleep
13 impairment, mild memory loss, flattened affect, impaired judgment, disturbances of
14 motivation and mood, difficulty in adapting to stressful circumstances, obsessional
15 rituals, and impaired impulse control. (*Id.*; AR 574.) Dr. Vermeersch opined
16 Plaintiff has severe obstructive sleep apnea that requires medication to manage.
17 (AR 576.) Plaintiff uses a continuous positive airway pressure machine to help him
18 sleep and exhibits symptoms attributable to sleep apnea. (AR 577.) His sleep
19 apnea does not impact his ability to work, and he is morbidly obese. (AR 578.)

20 **2. The ALJ’s Analysis**

21 The ALJ found Dr. Vermeersch’s opinions unpersuasive because they were
22 “conclusory and not accompanied by an explanation as to how the objective
23 evidence supports his assertions.” (AR 1116.) Further, Dr. Vermeersch’s opinion
24 was “not a function-by-function assessment” of Plaintiff’s RFC. (AR 1116-17.)

25 **3. Analysis**

26 The ALJ’s analysis of Dr. Vermeersch’s opinion is improper because it is
27 conclusory. (AR 1116-17.) *See Ann M. v. Kijakazi*, No. 23-1081, 2024 WL 39193,
28 at *5 (C.D. Cal. Jan. 3, 2024). The ALJ very broadly summarizes Dr.

1 Vermeersch’s findings, and then states his conclusions that: the evidence conveys
2 Plaintiff experienced some limitations; Dr. Vermeersch’s statements are conclusory
3 and unaccompanied by an explanation; and Dr. Vermeersch’s opinion is not a
4 function-by-function assessment of Plaintiff’s RFC. *See Sandra B. v. Kijakazi*,
5 No. 20-11359, 2022 WL 2651981, at *6 (C.D. Cal. July 8, 2022).

6 Commissioner’s arguments are unpersuasive because, as Plaintiff states, a
7 medical opinion cannot be disregarded for “not . . . using Social Security
8 terminology.” (Pl. Brief at 11.) The ALJ’s additional reasons do not save the
9 analysis because he did not explain what about or how Dr. Vermeersch’s opinion
10 was conclusory or unsupported. Although the ALJ did analyze the consistency
11 factor—contrary to Plaintiff’s assertion he did not—when he “concur[red] that the
12 evidence conveys [Plaintiff] had severe mental impairments that pose some
13 limitation with respect” to certain areas of functioning, his analysis is insufficient
14 for the same reasons as is the supportability analysis. (AR 1116). *Sandra B.*, 2022
15 WL 2651981, at *6; *see Ann M.*, 2024 WL 39193, at *2 (“[I]t is sometimes possible
16 to ascertain which factor the ALJ analyzed by looking at the context of the ALJ’s
17 reasoning and whether the ALJ compared the opinion to the medical source’s own
18 treatment notes . . . or other evidence in the record.”).

19 **ii. Michael Lace, Psy.D**

20 Plaintiff claims the ALJ failed to properly evaluate the supportability and
21 consistency factors and did not provide a proper explanation for rejecting Dr.
22 Lace’s assessment of Plaintiff’s social work restrictions. (Pl. Brief at 19.) The
23 Commissioner argues that even if Plaintiff’s interpretation of the evidence of record
24 is different from that of the ALJ’s, that interpretation is insufficient to rebut the
25 ALJ’s opinion because the ALJ’s opinion is rational and reasonable. (Comm’r
26 Brief at 14.)

27 The Court agrees with Plaintiff.

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1 regarding the complexity of the work tasks is an overestimate of [Plaintiff's] mental
2 [RFC]." (AR 1114). Cf. *Rosalio O. v. Kijakazi*, No. 22-8679, 2023 WL 5180325
3 (C.D. Cal. Aug. 11, 2023) (providing an adequate rationale for finding a healthcare
4 provider's opinion minimally persuasive).

5 The Commissioner's arguments are unpersuasive because while it is true that
6 ALJ's are not required to perform "a line-by-line exegesis of the claimant's
7 testimony, nor . . . to draft dissertations when denying benefits," *Lambert v. Saul*,
8 980 F.3d 1266, 1277 (9th Cir. 2020), the ALJ must still "provide *some* reasoning"
9 for the Court to review. *Treichler*, 775 F.3d at 1103 (emphasis added). The ALJ
10 did not do so here and instead produced a mere summary of Dr. Lace's opinion.

11 **c. Claim Four—Incomplete Hypothetical**

12 Plaintiff argues the ALJ improperly relied upon VE testimony that was based
13 on an incomplete hypothetical. (Pl. Brief at 19-21; Pl. Reply at 3-4.) Specifically,
14 the ALJ's second hypothetical question did not encompass the mental work
15 restrictions set forth in the first hypothetical question, thereby making the second
16 hypothetical question "a new scenario limiting a person to a set of new work
17 restrictions: light work and simple, repetitive tasks." (Pl. Brief at 20.) The
18 Commissioner contends the ALJ's step-five finding is supported by substantial
19 evidence. (Comm'r Brief at 14-17.)

20 The Court agrees with the Commissioner.

21 **i. Applicable Law**

22 "If an ALJ's hypothetical does not reflect all of the claimant's limitations, [a
23 vocational expert's] testimony has no evidentiary value to support a finding that the
24 claimant can perform jobs in the national economy." *Kitchen*, 82 F.4th at 742
25 (internal quotation marks omitted) (citing *Bray v. Comm'r of Soc. Sec. Admin.*, 554
26 F.3d 1219, 1228 (9th Cir. 2009)). The ALJ need only present those limitations he
27 deems to be credible and supported by substantial evidence. *Bayliss v. Barnhart*,
28 427 F.3d 1211, 1217 (9th Cir. 2005). He must then craft an RFC that reflects the

1 limitations determined by clinical findings. *Rounds v. Comm'r Soc. Sec. Admin.*,
2 807 F.3d 996, 1006 (9th Cir. 2015).

3 **ii. Analysis**

4 Here, the hypothetical was not incomplete because the ALJ explicitly stated
5 the second hypothetical assumed “the same residual functional capacities in
6 hypothetical #1” in addition to other limitations, and the limitations in hypothetical
7 #1 included no teamwork, frequent interaction with coworkers and supervisors, no
8 intense personal interactions, only ordinary stress, no more than frequent changes in
9 the work setting, and no high production quota work. (AR 1152-54); *cf. Fradiue v.*
10 *Astrue*, No. 07-4533, 2008 WL 2397505, at *4 (C.D. Cal. June 6, 2008) (finding the
11 ALJ excluded limitations in posing a third hypothetical when, the ALJ said to
12 “forget[] the first two hypotheticals”).

13 The ALJ did not err in relying upon the VE testimony.

14 **V. REMAND FOR FURTHER ADMINISTRATIVE PROCEEDINGS**

15 The Court finds that remand for further administrative proceedings is
16 appropriate, as further administrative review could remedy the ALJ’s errors. *See*
17 *Brown-Hunter*, 806 F.3d at 495 (remanding for an award of benefits is appropriate
18 in rare circumstances). On remand, the ALJ shall reassess the medical opinions of
19 Drs. Lace and Vermeersch. The ALJ shall then reassess Plaintiff’s RFC and
20 proceed through steps four and five to determine what work, if any, Plaintiff is
21 capable of performing. This order does not preclude the ALJ from considering, on
22 remand, any other arguments raised by Plaintiff.

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1 **VI. CONCLUSION**

2 IT IS ORDERED that Judgment shall be entered **REVERSING** and
3 **REMANDING** the decision of the Commissioner denying his period of disability
4 and application for DIB.

5 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
6 Order and the Judgment on counsel for both parties.

7 DATED: February 29, 2024

8 _____ /s/
9 ROZELLA A. OLIVER
10 UNITED STATES MAGISTRATE JUDGE

11 **NOTICE**

12 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,**
13 **LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**