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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CHRISTIAN MCCART,

 Plaintiff,

 v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security

 Defendant.

**Case No. 1:14-cv-00214-GSA
ORDER REGARDING PLAINTIFF’S
SOCIAL SECURITY COMPLAINT**

I. INTRODUCTION

Plaintiff Christian McCart (“Plaintiff”) seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner” or “Defendant”) denying his application for supplemental security income (“SSI”) and disability insurance benefits pursuant to Titles II and XVI of the Social Security Act. The matter is currently before the Court on the parties’ briefs, which were submitted without oral argument to the Honorable Gary S. Austin, United States Magistrate Judge.¹

II. BACKGROUND AND PRIOR PROCEEDINGS²

Plaintiff was 53 years old at the time of his hearing before the Social Security Administration. AR 30. He has completed his GED and has some vocational training in welding,

¹ The parties consented to the jurisdiction of the United States Magistrate Judge. (ECF Nos. 8, 9.)
² References to the Administrative Record will be designated as “AR,” followed by the appropriate page number.

1 although he did not complete his training. AR 41. He was also in the United States Marine Corps
2 from 1978 to 1980, although he received a less than honorable discharge. AR 41, 471. Plaintiff
3 most recently worked as a caregiver providing in-home care and/or nursing home care in 2009.³
4 AR 43, 191. His employment was terminated in 2009 after a number of conflicts with co-workers.
5 AR 191, 215. Plaintiff has no dependent children and is divorced. AR 31. He lives alone in an
6 apartment. AR 31.

7 Plaintiff's alleged physical conditions include prostate cancer, irritable bowel syndrome,
8 diverticulosis, and major depressive disorder. AR 191. He takes (or has taken) dicyclomine,
9 famotidine, fluoxetine, hydrocodone, hydroxyzine, and terazosin to manage his symptoms. AR
10 194.

11 On March 1, 2011, Plaintiff filed applications for disability insurance benefits and SSI
12 under Titles II and XVI. AR 140-148, 149-156. The applications were denied initially on June 13,
13 2011 and on reconsideration on October 25, 2011. AR 69-71, 72-75, 79-84. Plaintiff filed a
14 request for a hearing on November 10, 2011. AR 85-86. The hearing was conducted before
15 Administrative Law Judge Robert E. Lowenstein (the "ALJ") on September 19, 2012. AR 9. On
16 October 3, 2012, the ALJ issued an unfavorable decision determining that Plaintiff was not
17 disabled. AR 9-20. Plaintiff filed an appeal of this decision with the Appeals Council. The
18 Appeals Council denied his appeal, rendering the order the final decision of the Commissioner.
19 AR 1-4.

20 Plaintiff now challenges the ALJ's decision, arguing that the ALJ incorrectly rejected the
21 opinion of treating physician Mayurkumar Amin, M.D. Moreover, Plaintiff argues, the ALJ had a
22 duty to develop the record with respect to Dr. Amin's opinion. As a result, the case should be
23 remanded with instructions to contact Dr. Amin and solicit clarification on his opinion. (Opening
24 Brief 10:10-20, ECF No. 20.)

25 Defendant responds that: (1) Dr. Amin's findings were correctly discounted because they
26 were based on non-credible self reports by Plaintiff; (2) Dr. Amin's findings were unsupported by
27 the record; and (3) the ALJ had no duty to develop the record because Dr. Amin's opinion was

28 ³ Plaintiff provides different dates for the end of his employment at various points in the record. AR 43, 172, 191.

1 not ambiguous—it was simply unsupported by the record. (Opposition Brief 11-21, ECF No. 21.)

2 **III. THE DISABILITY DETERMINATION PROCESS**

3 To qualify for benefits under the Social Security Act, a plaintiff must establish that he or
4 she is unable to engage in substantial gainful activity due to a medically determinable physical or
5 mental impairment that has lasted or can be expected to last for a continuous period of not less
6 than twelve months. 42 U.S.C. § 1382c(a)(3)(A). An individual shall be considered to have a
7 disability only if:

8 . . . his physical or mental impairment or impairments are of such severity that he
9 is not only unable to do his previous work, but cannot, considering his age,
10 education, and work experience, engage in any other kind of substantial gainful
11 work which exists in the national economy, regardless of whether such work
exists in the immediate area in which he lives, or whether a specific job vacancy
exists for him, or whether he would be hired if he applied for work.

12 42 U.S.C. § 1382c(a)(3)(B).

13
14 To achieve uniformity in the decision-making process, the Commissioner has established
15 a sequential five-step process for evaluating a claimant’s alleged disability. 20 C.F.R. §§
16 404.1520(a)-(f) and 416.920(a)-(f). The ALJ proceeds through the steps and stops upon reaching
17 a dispositive finding that the claimant is or is not disabled. 20 C.F.R. §§ 404.1520(a)(4) and
18 416.920(a)(4). The ALJ must consider objective medical evidence and opinion testimony. 20
19 C.F.R. §§ 404.1527, 404.1529, 416.927, 416.929.

20 Specifically, the ALJ is required to determine: (1) whether a claimant engaged in
21 substantial gainful activity during the period of alleged disability, (2) whether the claimant had
22 medically-determinable “severe” impairments,⁴ (3) whether these impairments meet or are
23 medically equivalent to one of the listed impairments set forth in 20 C.F.R. § 404, Subpart P,
24 Appendix 1, (4) whether the claimant retained the residual functional capacity (“RFC”) to
25 perform his past relevant work,⁵ and (5) whether the claimant had the ability to perform other jobs

26 ⁴ “Severe” simply means that the impairment significantly limits the claimant’s physical or mental ability to do basic
work activities. *See* 20 C.F.R. §§ 404.1520(c) and 416.920(c).

27 ⁵ Residual functional capacity captures what a claimant “can still do despite [his or her] limitations.” 20 C.F.R. §§
404.1545 and 416.945. “Between steps three and four of the five-step evaluation, the ALJ must proceed to an
28 intermediate step in which the ALJ assesses the claimant’s residual functional capacity.” *Massachi v. Astrue*, 486
F.3d 1149, 1151 n. 2 (9th Cir. 2007).

1 existing in significant numbers at the regional and national level. 20 C.F.R. §§ 404.1520(a)-(f)
2 and 416.920(a)-(f).

3 Using the Social Security Administration’s five-step sequential evaluation process, the
4 ALJ determined that Plaintiff did not meet the disability standard. AR 9-20. In particular, the ALJ
5 found that Plaintiff had not engaged in substantial gainful activity since November 1, 2010, the
6 date specified in his application. AR 11. Further, the ALJ identified major depressive disorder,
7 chronic abdominal pain from irritable bowel syndrome, and diverticulosis as severe impairments.⁶
8 AR 11. Nonetheless, the ALJ determined that the severity of Plaintiff’s impairments did not meet
9 or exceed any of the listed impairments. AR 12.

10 Based on a review of the entire record, the ALJ determined that Plaintiff had the RFC to
11 “perform a full range of work at all exertional levels but with the following nonexertional
12 limitations: he is able to perform work where interpersonal contact is incidental to work
13 performed, such as assembly work, and where the complexity of tasks is learned and performed
14 by rote, there are few variables, little judgment, and the supervision required is simple, direct, and
15 concrete.” AR 14. Plaintiff was unable to perform his past relevant work. AR 18. However, the
16 ALJ determined that there were jobs that exist in significant numbers in the national economy that
17 Plaintiff could perform. AR 19.

18 **IV. STANDARD OF REVIEW**

19 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's decision to determine
20 whether: (1) it is supported by substantial evidence; and (2) it applies the correct legal standards.
21 *See Carmickle v. Commissioner*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d
22 1071, 1074 (9th Cir. 2007).

23 “Substantial evidence means more than a scintilla but less than a preponderance.”
24 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). It is “relevant evidence which,
25 considering the record as a whole, a reasonable person might accept as adequate to support a
26 conclusion.” *Id.* “Where the evidence is susceptible to more than one rational interpretation, one

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28 ⁶ Although Plaintiff alleged prostate cancer as a disability, the ALJ’s review of the record uncovered no evidence that Plaintiff had ever been diagnosed with prostate cancer. AR 12.

1 of which supports the ALJ's decision, the ALJ's conclusion must be upheld.” *Id.*

2 **V. DISCUSSION**

3 **A. The Relevant Medical Evidence**

4 Plaintiff contends that the ALJ failed to provide legitimate reasons for rejecting the
5 opinion of treating physician Mayurkumar Amin, M.D. To reach this conclusion, the ALJ
6 considered a number of different medical opinions. Because Dr. Amin only treated Plaintiff’s
7 psychiatric symptoms, the Court’s review of the medical evidence will be limited to the records
8 dealing with his mental impairments. Plaintiff does not challenge the ALJ’s findings with respect
9 to his physical impairments or credibility.

10 *i. Burke Bonilla, M.D.*

11 Dr. Bonilla, a treating psychiatrist, first saw Plaintiff on November 3, 2010. AR 327.
12 Plaintiff was referred to Dr. Bonilla by his primary care physician and “was surprised he was
13 asked to see a psychiatrist as all he was wanting was [sic] refill of Prozac.” AR 327. Plaintiff
14 reported that he had been taking Prozac since 2005 and had been doing well on it, although he
15 stopped in 2007. AR 327. He reported that he had experienced symptoms of depression “all of my
16 life.” AR 327. Dr. Bonilla prescribed Prozac and set a follow up appointment with Plaintiff. AR
17 330.

18 Plaintiff saw Dr. Bonilla again on December 1, 2010. AR 333. Plaintiff reported feelings
19 of anxiety based on problems with his family that stemmed from childhood and told Dr. Bonilla
20 that he had recently lost his job.⁷ AR 333. Plaintiff was referred to therapy.⁸ AR 333. The next
21 time Plaintiff reported to Dr. Bonilla, on March 25, 2011, Plaintiff told Dr. Bonilla that the

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23 ⁷ It is not clear what job Plaintiff was referring to; according to his other statements in the record, his last date of
employment was in 2008 or 2009.

24 ⁸ Plaintiff attended multiple group sessions of therapy lead by Kathleen Friedland, Ph.D. The ALJ discusses the
25 contents of these sessions to provide context for Plaintiff’s daily activities, but does not determine how much weight
26 to give Dr. Friedland. Presumably, the ALJ chose not to do so because the therapy sessions were group oriented and
27 Dr. Friedland’s notes thus do not include the kinds of recommendations regarding Plaintiff’s ability to function that
28 might be expected of a treating physician. Plaintiff does not challenge the ALJ’s treatment of Dr. Friedland. Her
notes would not be helpful for Plaintiff, in any case. Among other things, Dr. Friedland noted that Plaintiff mentioned
that he watches television, goes to movies, goes out to eat, plays computer games, and once chopped down a tree and
placed the resulting firewood in a designated location. AR 432, 459, 465, 471, 477. These statements were largely
contrary to Plaintiff’s depiction of his daily activities and ability to function at the hearing in front of the ALJ. AR 32,
39, 45.

1 therapy had been helpful and that he had been taking Wellbutrin, which had decreased his
2 symptoms. AR 343. Dr. Bonilla described Plaintiff's demeanor as "pleasant and cooperative," his
3 thought process and content as "logical and normal," and his impulse control, insight, and
4 judgment as "good." AR 344.

5 In a follow up appointment on April 19, 2011, Dr. Bonilla reported that Plaintiff was
6 "satisfied with the results of the medications and doesn't want to make any changes for now." AR
7 349. Dr. Bonilla also noted that Plaintiff laughed and joked with him during the appointment and
8 that he "would like to try and wean [Plaintiff] off Prozac when he is stable and things in his life
9 are more stable." AR 350. Later in 2011, Plaintiff asked Dr. Bonilla to fill out several
10 supplemental certification forms from the California Employment Development Department
11 which stated that Plaintiff was unable to perform his "regular or customary work." AR 531-540.
12 Each form noted that Plaintiff would be able to return to work within a month or two after the
13 dates of the respective forms. AR 531-540. In his last visit with Dr. Bonilla on November 30,
14 2011, Plaintiff reported that he was "doing better," had reduced symptoms of depression, "and an
15 overall improvement." AR 428.

16 The ALJ accorded Dr. Bonilla little weight, saying that his statements that Plaintiff was
17 disabled only accounted for brief periods of time and were thus of limited value. AR 18.

18 ***ii. Abesie Kelly, Ph.D.***

19 Dr. Kelly, a reviewing psychologist, examined Plaintiff's records on June 10, 2011. AR
20 358-361. Dr. Kelly described moderate limitations in Plaintiff's ability to carry out detailed
21 instructions; ability to maintain attention and concentration for extended periods; ability to sustain
22 an ordinary routine without special supervision; ability to complete a normal workday and
23 workweek without interruptions from psychologically based symptoms and to perform at a
24 consistent pace without an unreasonable number and length of rest periods; ability to accept
25 instructions and respond appropriately to criticism from supervisors; ability to respond
26 appropriately to changes in the work setting; and ability to set realistic goals or make plans
27 independently of others. AR 360. Dr. Kelly determined that none of Plaintiff's other abilities were
28 significantly limited. AR 360. Dr. Kelly also explained that Plaintiff's mental status was within

1 normal limits and that “[t]here is no evidence of marked impairment in functioning.” AR 361. Dr.
2 Kelly concluded that “[t]hough the Claimant may have some problems, symptoms do not
3 preclude him from engaging in [simple, routine, repetitive tasks] in a consistent, predictable
4 fashion.” AR 361. The ALJ gave Dr. Kelly’s opinion significant weight. AR 18.

5 **iii. *Mayurkumar Amin, D.O.***

6 Dr. Amin is Plaintiff’s most recent treating psychiatrist and has seen Plaintiff on at least
7 three occasions. AR 515. On December 16, 2011, Dr. Amin filled out a form for the Fresno
8 County Department of Social Services on which he checked a box indicating that Plaintiff was
9 not able to work. AR 542. To explain this conclusion, Dr. Amin wrote: “Recurrent depression
10 and health problems from chemicals he was exposed to in service. In chronic pain.” AR 542. The
11 form indicated that Plaintiff’s inability to work was permanent. AR 543. On January 25, 2012,
12 Dr. Amin saw Plaintiff and noted that he was cooperative, had normal speech, orientation, and
13 cognition, and had organized thought processes. AR 520. He also noted that Plaintiff reported he
14 had “been feeling about the same” and that he had “attempted to purchase [a] weapon to end his
15 life.” AR 520. Dr. Amin recommended Plaintiff continue his current medications and supported
16 his decision to attend group therapy. AR 521. Dr. Amin again saw Plaintiff on February 23, 2012
17 and reported that he was well groomed, cooperative, and had normal cognition, speech, and
18 orientation. AR 518. He also showed organized thought processes and normal insight and
19 judgment. AR 518. Dr. Amin’s notes were largely unchanged from Plaintiff’s January visit. AR
20 519. The ALJ gave Dr. Amin’s opinion little weight. AR 18.

21 **B. Legal Standards**

22 The weight given to medical opinions depends in part on whether they are proffered by
23 treating, examining, or non-examining (reviewing) professionals. *Holohan v. Massanari*, 246
24 F.3d 1195, 1201 (9th Cir. 2001); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Ordinarily,
25 more weight is given to the opinion of a treating professional, who has a greater opportunity to
26 know and observe the patient as an individual. *Id.*; *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th Cir.
27 1996).

28 An ALJ may reject an *uncontradicted* opinion of a treating or examining medical

1 professional only for “clear and convincing” reasons. *Lester*, 81 F.3d at 831. In contrast, a
2 *contradicted* opinion of a treating or examining professional may be rejected for “specific and
3 legitimate” reasons. *Lester*, 81 F.3d at 830. While a treating professional's opinion is generally
4 accorded superior weight, if it is contradicted by an examining professional's opinion (when
5 supported by different independent clinical findings), the ALJ may resolve the conflict. *Andrews*
6 *v. Shalala*, 53 F.3d 1035, 1041 (9th Cir.1995), *citing Magallanes v. Bowen*, 881 F.2d 747, 751
7 (9th Cir.1989). The regulations require the ALJ to weigh the contradicted treating physician
8 opinion, *Edlund v. Massanari*, 253 F.3d 1152 (9th Cir.2001), except that the ALJ need not give it
9 any weight if it is conclusory and supported by minimal clinical findings. *Meanel v. Apfel*, 172
10 F.3d 1111, 1113 (9th Cir.1999) (treating physician's conclusory, minimally supported opinion
11 rejected); *see also Magallanes*, 881 F.2d at 751.

12 The opinion of an examining physician is, in turn, entitled to greater weight than the
13 opinion of a non-examining physician. *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990);
14 *Gallant v. Heckler*, 753 F.2d 1450 (9th Cir.1984). As is the case with the opinion of a treating
15 physician, the Commissioner must provide “clear and convincing” reasons for rejecting the
16 uncontradicted opinion of an examining physician. And like the opinion of a treating doctor, the
17 opinion of an examining doctor, even if contradicted by another doctor, can only be rejected for
18 specific and legitimate reasons that are supported by substantial evidence in the record. *Lester v.*
19 *Chater*, 81 F.3d 821, 830 (9th Cir. 1996).

20 The opinion of a non-examining physician may constitute substantial evidence when it is
21 “consistent with independent clinical findings or other evidence in the record.” *Thomas v.*
22 *Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002). Such independent reasons may include laboratory
23 test results or contrary reports from examining physicians, and plaintiff's testimony when it
24 conflicts with the treating physician's opinion. *Lester*, 81 F.3d at 831, *citing Magallanes*, 881 F.2d
25 at 751–55.

26 **C. The ALJ Appropriately Considered Dr. Amin's Findings**

27 The ALJ rejected Dr. Amin's conclusion that Plaintiff was precluded from performing any
28 regular work activity. AR 18. Because Dr. Amin's opinion is more restrictive than the opinions of

1 Drs. Bonilla and Kelly, the ALJ need only have provided specific and legitimate reasons
2 supported by substantial evidence to reject Dr. Amin's opinion.

3 The ALJ discusses Dr. Amin's findings in one paragraph:

4 Mayurkumar Amin, M.D., the claimant's current psychiatrist, noted in December
5 2011 that, because of recurrent depression and health problems related to
6 chemicals he was exposed to in the service, the claimant cannot work. Dr. Amin
7 has examined the claimant several times, but this opinion is not consistent with
8 the evidence of record. Dr. Amin fails to describe what the claimant remains able
9 to do despite his impairments. Further, he has no personal knowledge of the
10 claimant's chemical exposure and has made no findings regarding that exposure,
11 suggesting that his opinion is based largely on the claimant's subjective
12 statements rather than his own observations of the claimant's abilities. Finally,
13 whether an individual is capable of working is an administrative conclusion that is
14 reserved to the Commissioner. Dr. Amin's opinion is vague and addresses issues
15 reserved to the Commissioner; therefore, the undersigned gives it little weight.

16 AR 18 (internal citations omitted).

17 The ALJ thus rejected Dr. Amin's findings because: (1) the findings were inconsistent
18 with the evidence in the record; and (2) the findings were based on apparent self-reports by the
19 Plaintiff. It is unclear whether (1) refers to the inconsistency of Dr. Amin's findings with the rest
20 of the record as a whole or the inconsistency of the findings with Dr. Amin's own notes.
21 Defendant argues, however, that Dr. Amin's conclusions are inconsistent with both. (Opposition
22 Brief 7:12-21; 7:22-8:8, ECF No. 21.)

23 Inconsistencies with the overall record or with a physician's own notes are both specific
24 and legitimate reasons to reject a physician's opinion. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216
25 (9th Cir. 2005) (rejecting physician opinion where physician's "other recorded observations and
26 opinions" contradicted his ultimate conclusions); *Morgan v. Comm'r of Soc. Sec. Admin.*, 169
27 F.3d 595, 602 (9th Cir. 1999) (physician's finding of "marked limitations" legitimately rejected
28 where "no substantial evidence existed demonstrating [plaintiff's] mental impairments prevented
him from working").

Both reasons also appear to be supported by substantial evidence. Dr. Amin's ultimate
conclusion that Plaintiff is precluded from working is supported by only six pages of notes taken
from three encounters with Plaintiff. AR 518-519, 520-521, 542-543. Two of those three
encounters lasted less than 30 minutes. AR 518, 520. And despite saying that Plaintiff was

1 completely disabled on December 13, 2011, Dr. Amin later described Plaintiff's orientation,
2 motor activity, cognition, speech, thought processes, affective range, intelligence, insight, and
3 judgment as normal. AR 518, 520. Dr. Amin did note that Plaintiff had attempted to purchase a
4 weapon to end his own life. AR 518, 520. But Dr. Amin's treatment notes do not reveal any sense
5 of alarm at this event; he continued Plaintiff's medication at the then-existing levels and
6 recommended he get involved in group therapy sessions. AR 519. And Plaintiff later denied "any
7 suicide attempts" to Cecilia Salazar, a nurse practitioner who worked with Dr. Amin.⁹ AR 514.
8 Based on these facts, the ALJ could reasonably have found that Dr. Amin's notes did not support
9 his conclusions.

10 As Defendant points out, Dr. Amin's conclusions are inconsistent with the other evidence
11 in the record, as well. Records from a number of other sources, including Drs. Bonilla, Kelly, and
12 Friedland, discuss Plaintiff's essentially normal mental status, despite his depression. AR 327,
13 334, 344, 350, 361, 382, 459, 465, 471, 477. Dr. Amin made similar observations, as discussed
14 above.

15 Finally, the ALJ found that Dr. Amin's opinion was based primarily on self-reports
16 because he did not explain why he would ascribe Plaintiff's health problems to "chemicals he was
17 exposed to" while serving in the military. AR 18. Such a rationale can form a specific and
18 legitimate reason to reject a medical opinion, particularly given the ALJ's finding that Plaintiff
19 lacked credibility. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) ("An ALJ may
20 reject a treating physician's opinion if it is based 'to a large extent' on a claimant's self-reports
21 that have been properly discounted as incredible"). Whether there is substantial evidence to
22 support the ALJ's reasoning is a closer question. The ALJ suggests that Dr. Amin "has no
23 personal knowledge of the claimant's chemical exposure and has made no findings regarding that
24 exposure, suggesting that his opinion is based largely on the claimant's subjective statements
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26 ⁹ Other evidence in the record makes it unclear whether Plaintiff's allegations of a suicide attempt are credible. In
27 December 2011, Plaintiff told his assigned social worker, Joan Hennes, that his attempt to buy a gun occurred in May
28 2011. AR 523. He also told Hennes that he told his psychiatrist at the time, Dr. Bonilla, about the attempt. AR 523.
Dr. Bonilla's notes from this period of time, however, make no mention of this event. In fact, Dr. Bonilla's notes
from May 2011 indicate Plaintiff told him that he was not feeling suicidal and Dr. Bonilla determined that there was
no imminent risk of suicide. AR 382.

1 rather than his own observations of the claimant’s abilities.” AR 18. And, in fact, there are
2 instances in the record in which Plaintiff tells others about potential exposure to contaminants
3 related to his military service, although no such instances are recorded in Dr. Amin’s notes. AR
4 381 (“More recently he received a notice from the government saying while serving he was
5 exposed to water contaminated by a chemical now known to cause cancer and birth defects”), 471
6 (“he feels they are delaying because they know that some people were exposed to what he was
7 exposed to and don’t want to admit it”). Given the facts that: (1) Dr. Amin does not explain how
8 he learned of the potential chemical contamination; and (2) all the other instances referencing
9 Plaintiff’s potential chemical contamination in the record are self-reports by Plaintiff, it was
10 reasonable for the ALJ to conclude that Dr. Amin learned of the chemical contamination through
11 a self-report by Plaintiff.¹⁰

12 **D. The Duty to Develop the Record**

13 Plaintiff argues that the ALJ had a duty to develop the record with respect to Dr. Amin’s
14 opinion because: (1) Dr. Amin rendered an opinion on an issue reserved to the Commissioner
15 (*e.g.*, whether Plaintiff could work); and (2) the basis for Dr. Amin’s opinion was unclear because
16 the ALJ held that Dr. Amin had no personal knowledge of Plaintiff’s potential chemical exposure.
17 (Opening Brief 9:20-26, ECF No. 20.)

18 An ALJ has a duty to “fully and fairly develop the record and to assure that the claimant’s
19 interests are considered.” *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001). This duty is
20 triggered when there is “[a]mbiguous evidence” or on “the ALJ’s own finding that the record is
21 inadequate to allow for proper evaluation of the evidence.” *Id.* Once the duty is triggered, the ALJ
22 must “conduct an appropriate inquiry,” which can include “subpoenaing the claimant’s
23 physicians, submitting questions to the claimant’s physicians, continuing the hearing, or keeping
24 the record open after the hearing to allow supplementation of the record.” *Id.*

25 Such an inquiry need not be all-encompassing, however. An ALJ “does not have to

26 ¹⁰ Dr. Amin’s conclusion that Plaintiff is precluded from working is notably brief and conclusory, as well. It would
27 be within the ALJ’s discretion to give it little weight on this basis alone. *Chaudry v. Astrue*, 688 F.3d 661, 671 (9th
28 Cir. 2012) (“The ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is
brief, conclusory, and inadequately supported by clinical findings”), *quoting Bray v. Comm’r of Soc. Sec. Admin.*,
554 F.3d 1219, 1228 (9th Cir. 2009).

1 exhaust every possible line of inquiry in an attempt to pursue every potential line of questioning.”
2 *Hawkins v. Chater*, 113 F.3d 1162, 1168 (10th Cir. 1997) (“The standard is one of reasonable
3 good judgment”). Indeed, an ALJ is only required to conduct further inquiries with a treating or
4 consulting physician “if the medical records presented to him do not give sufficient medical
5 evidence to determine whether the claimant is disabled.” *Johnson v. Astrue*, 627 F.3d 316, 319-20
6 (8th Cir. 2010). The duty to develop the record is typically triggered where, for example, a
7 claimant’s medical records are incomplete or there is an “issue sought to be developed which, on
8 its face, must be substantial.” *Flaherty v. Astrue*, 515 F.3d 1067, 1071 (10th Cir. 2007).

9 The ALJ did not find that the record with respect to Dr. Amin was incomplete or
10 ambiguous. The issue with Dr. Amin’s opinion was not that it was ambiguous—it was that the
11 opinion was contradicted by the evidence in the record. The ALJ was not raising Dr. Amin’s lack
12 of personal knowledge to show that Dr. Amin’s opinion was ambiguously based. Rather, the lack
13 of personal knowledge was discussed to demonstrate that Dr. Amin relied on Plaintiff’s
14 subjective self-reports. AR 18 (“he has no personal knowledge of the claimant’s chemical
15 exposure and has made no findings regarding that exposure, ***suggesting that his opinion is based***
16 ***largely on the claimant’s subjective statements rather than his own observations of the***
17 ***claimant’s abilities***”) (emphasis added). Put simply, the ALJ never determined that the basis of
18 Dr. Amin’s opinion was unclear—he determined that it was incorrect and unsupported.

19 And, in any case, the ALJ had adequate grounds to reject Dr. Amin’s opinion which were
20 unrelated to the basis of his knowledge of Plaintiff’s potential chemical exposure. Even if the
21 basis of his opinion were ambiguous and the ALJ was required to inquire further, the ALJ would
22 still have been within his discretion to give little weight to Dr. Amin because, as discussed above,
23 Dr. Amin’s conclusions are inconsistent with the record and inconsistent with his own personal
24 notes. The basis of Dr. Amin’s opinion about Plaintiff’s potential chemical contamination is thus
25 not substantial on its face and cannot trigger the duty to develop. Moreover, any error committed
26 by the ALJ here would have been harmless and need not justify remand. *Molina v. Astrue*, 674
27 F.3d 1104, 1115 (9th Cir. 2012) (“an ALJ’s error is harmless where it is ‘inconsequential to the
28 ultimate nondisability determination’”).

1 **VI. CONCLUSION**

2 Based on the foregoing, the Court finds that the ALJ's decision that the Plaintiff is not
3 significantly limited in his ability to perform basic work activities is supported by substantial
4 evidence in the record as a whole and is based on proper legal standards. Accordingly, this Court
5 DENIES Plaintiff's appeal from the administrative decision of the Commissioner of Social
6 Security. The Clerk of this Court is DIRECTED to enter judgment in favor of Defendant, Carolyn
7 W. Colvin, Commissioner of Social Security and against Plaintiff, Christian McCart.

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9 IT IS SO ORDERED.

10 Dated: August 4, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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