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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GARY LYNN WEST,  
  
                                Plaintiff,  
  
                                v.  
  
COMMISSIONER OF SOCIAL  
SECURITY,  
  
                                Defendant.

Case No. 1:21-cv-00824-EPG  
  
FINAL JUDGMENT AND ORDER  
REGARDING PLAINTIFF’S SOCIAL  
SECURITY COMPLAINT  
  
(ECF Nos. 17, 21)

This matter is before the Court on Plaintiff Gary Lynn West’s (“Plaintiff”) complaint for judicial review of an unfavorable decision by the Commissioner of the Social Security Administration. The parties have consented to entry of final judgment by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c), with any appeal to the Court of Appeals for the Ninth Circuit. (ECF Nos. 11, 13, 15.)

The matter was taken under submission on the parties’ briefs without a hearing. Having reviewed the record, the administrative transcript, the parties’ briefs, and the applicable law, the Court finds as follows.

**I. DISCUSSION**

Plaintiff’s sole issue on appeal is the weight given to the opinion of treating physician Jacob K. Peters, M.D. regarding Plaintiff’s mental limitations. (*See* ECF No. 17.) This claim is

1 governed by the agency’s “new” regulations concerning how ALJs must evaluate medical  
2 opinions for claims filed on or after March 27, 2017.<sup>1</sup> 20 C.F.R. §§ 404.1520c, 416.920c; (ECF  
3 No. 19, p. 17; ECF No. 22, pp. 4-5). The regulations set “supportability” and “consistency” as  
4 “the most important factors” when determining the opinions’ persuasiveness. 20 C.F.R. §§  
5 404.1520c(b)(2), 416.920c(b)(2). And although the regulations eliminate the “physician  
6 hierarchy,” deference to specific medical opinions, and assigning “weight” to a medical opinion,  
7 the ALJ must still “articulate how [he or she] considered the medical opinions” and “how  
8 persuasive [he or she] find[s] all of the medical opinions.” 20 C.F.R. §§ 404.1520c(a)-(b);  
9 416.920c(a)-(b).

10 Recently, the Ninth Circuit has issued the following guidance regarding treatment of  
11 physicians’ opinions after implementation of the revised regulations:

12 The revised social security regulations are clearly irreconcilable with our caselaw  
13 according special deference to the opinions of treating and examining physicians  
14 on account of their relationship with the claimant. *See* 20 C.F.R. § 404.1520c(a)  
15 (“We will not defer or give any specific evidentiary weight, including controlling  
16 weight, to any medical opinion(s) . . . , including those from your medical  
17 sources.”). Our requirement that ALJs provide “specific and legitimate reasons”  
18 for rejecting a treating or examining doctor’s opinion, which stems from the  
19 special weight given to such opinions, *see Murray*, 722 F.2d at 501–02, is likewise  
20 incompatible with the revised regulations. Insisting that ALJs provide a more  
21 robust explanation when discrediting evidence from certain sources necessarily  
22 favors the evidence from those sources—contrary to the revised regulations.

23 *Woods v. Kijakazi*, No. 21-35458, 2022 WL 1195334, at \*6 (9th Cir. Apr. 22, 2022).

24 Accordingly, under the new regulations, “the decision to discredit any medical opinion, must  
25 simply be supported by substantial evidence.” *Id.* at \*1. “Substantial evidence means more than a  
26 scintilla but less than a preponderance.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).  
27 It is “relevant evidence which, considering the record as a whole, a reasonable person might  
28 accept as adequate to support a conclusion.” *Id.*

29 In conjunction with this requirement, “[t]he agency must ‘articulate . . . how persuasive’  
30 it finds ‘all of the medical opinions’ from each doctor or other source, 20 C.F.R. § 404.1520c(b),  
31 and ‘explain how [it] considered the supportability and consistency factors’ in reaching these

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<sup>1</sup> Plaintiff protectively filed a Title II application for a period of disability and disability insurance benefits on January 17, 2019. (A.R. 210-11.)

1 findings, *id.* § 404.1520c(b)(2).” *Woods*, 2022 WL 1195334, at \*6.

2 Supportability means the extent to which a medical source supports the medical  
3 opinion by explaining the “relevant . . . objective medical evidence.” *Id.*  
4 § 404.1520c(c)(1). Consistency means the extent to which a medical opinion is  
5 “consistent . . . with the evidence from other medical sources and nonmedical  
6 sources in the claim.” *Id.* § 404.1520c(c)(2).

7 *Id.*

8 As the Ninth Circuit also noted, “[t]he revised regulations recognize that a medical  
9 source’s relationship with the claimant is still relevant when assessing the persuasiveness of the  
10 source’s opinion. *See id.* § 404.1520c(c)(3). Thus, an ALJ can still consider the length and  
11 purpose of the treatment relationship, the frequency of examinations, the kinds and extent of  
12 examinations that the medical source has performed or ordered from specialists, and whether the  
13 medical source has examined the claimant or merely reviewed the claimant’s records. *Id.* §  
14 404.1520c(c)(3)(i)–(v). However, the ALJ no longer needs to make specific findings regarding  
15 these relationship factors.” *Woods*, 2022 WL 1195334, at \*6 (citing § 404.1520c(b)(2)). “A  
16 discussion of relationship factors may be appropriate when ‘two or more medical opinions . . .  
17 about the same issue are . . . equally well-supported . . . and consistent with the record . . . but are  
18 not exactly the same.’ *Id.* § 404.1520c(b)(3). In that case, the ALJ ‘will articulate how [the  
19 agency] considered the other most persuasive factors.’” *Id.*

20 With these legal standards in mind, the Court reviews the weight given to Dr. Peters’  
21 opinion.

22 Dr. Peters completed questionnaire forms dated March 8, 2018. (A.R. 385, 492.) He  
23 opined that Plaintiff is not able to do any full-time work and is unable to do any repetitive lifting.  
24 (*Id.*) Plaintiff’s primary impairments are “widespread pain including back and knees.” (*Id.*)  
25 Plaintiff could sit for one-to-two hours at a time and could stand and/or walk for 20-30 minutes at  
26 a time without rest or support. (*Id.*) In an eight-hour period, Plaintiff could sit for three-to-four  
27 hours at a time and stand and/or walk for one-to-two hours at a time. (*Id.*) Dr. Peters opined that  
28 Plaintiff has been disabled since December 1, 2016. (*Id.*) According to Dr. Peters, Plaintiff “has  
significant chronic pain and social anxiety. Unable to control with medication.” (A.R. 493.)  
Plaintiff had a moderate inability to understand, remember, and carry out instructions, moderate  
inability to sustain activities, and moderate social anxiety impairing work with coworkers. (A.R.

1 494.) He had a marked inability to maintain attention, marked inability to perform a technical or  
2 complex job, and marked social phobia. (*Id.*) He had an extreme inability to withstand stress and  
3 pressure during an eight-hour workday and was likely to miss five-to-ten days of work per month.  
4 (*Id.*)

5 In weighing Dr. Peters' opinion, the ALJ reasoned as follows:

6 Statements from treating provider Jacob Peters, M.D. are not persuasive. (Exs. 6F;  
7 9F). The statements assessed that, among other things, the claimant could sit three  
8 to four hours and stand/walk one to two hours in an eight-hour day; had moderate  
9 to marked mental limitations; would likely miss five to ten days of work per month  
10 due to mental health issues; and had significant chronic pain and social anxiety  
11 preventing him from being able to work. The undersigned finds that this opinion is  
12 generally unpersuasive. Although Dr. Peters conducted in-person examinations,  
13 his findings were generally not supported by the examination findings and were  
14 generally not consistent with the evidence in the record, including the objective  
15 medical evidence an examination findings showing largely unremarkable  
16 examination findings and conservative treatment and improvement with such  
17 treatment, and the claimant's activities of daily living, such as, abilities to perform  
18 household chores and personal care, go grocery shopping, spend time with his  
19 children, read, watch television, and attend appointments. Moreover, an opinion  
20 that an individual is disabled or is unable to work is an opinion on the ultimate  
21 issue of disability, which is an issue that is reserved to the Commissioner of the  
22 Social Security Administration (20 CFR 404.1527(d) and 416.927(d)), and the  
23 Social Security Administration uses a different definition of disability.

24 (A.R. 22.)

25 Plaintiff only challenges the portions of Dr. Peters' opinion related to his mental  
26 functioning. (*See* ECF No. 17 at 15-18.) The ALJ first reason is that Dr. Peters' opinion was  
27 generally inconsistent with the medical record. The ALJ did not cite to any records in connection  
28 with this finding, but the preceding paragraphs contain a summary of medical records with  
specific citations and explanation. (A.R. 22-23.) For example, the ALJ cited to 2017 treatment  
records reporting that Plaintiff's depression and anxiety were controlled with current treatment  
and medication, he was noted to not be anxious appearing, and his treating provider began  
tapering his clonazepam. (A.R. 2022.) In 2018, he received refills on clonazepam and was noted  
to have anxiety but no depression and had normal neurological and other functioning. (*Id.*) In  
2019, Plaintiff was noted to have generalized anxiety disorder, panic disorder with agoraphobia,  
and major depressive disorder, and therapy and learning coping skills were recommended. (A.R.

1 23.) In June 2020, Plaintiff reported that his last panic attack was two months prior and his daily  
2 anxiety and depression ranged from a five to ten. (*Id.*) In August 2020, Plaintiff reported being  
3 able to successfully use coping skills after a panic attack. (*Id.*) Thus, while the medical record  
4 reflects that Plaintiff has mental impairments, it was reasonable for the ALJ to conclude that the  
5 record did not support the severity of Dr. Peters' opined restrictions, including that Plaintiff had  
6 an "extreme inability to withstand stress and pressure" and would miss five-to-ten days of work  
7 per month. (A.R. 494.) *See Batson v. Comm'r Soc. Sec. Admin.*, 359 F.3d 1190, 1198 (9th Cir.  
8 2004) ("When the evidence before the ALJ is subject to more than one rational interpretation, [the  
9 Court] must defer to the ALJ's conclusion.").

10 Plaintiff also argues that the ALJ's finding was improper because he "did not even  
11 acknowledge that Plaintiff was receiving care from a therapist and a psychiatrist" and failed to  
12 consider whether Dr. Peters' opinion was consistent with Plaintiff's treatment records from  
13 county mental health. (ECF No. 17 at 17). Although the ALJ did not specifically discuss  
14 consistency with the county mental health records in the evaluation of Dr. Peters' opinion, he did  
15 acknowledge and discuss those records during his summary of the medical evidence that preceded  
16 his analysis of Dr. Peters' opinion:<sup>2</sup>

17 In February 2020 the claimant's examination was largely unremarkable, including  
18 a dysphoric, anxious, and irritable mood, normal thought processes and speech,  
19 intact attention and concentration and memory, orientation x4, and intact  
20 judgment, and a normal gait. (Exs. 10F; 9F/92-99).

21 In April 2020 the claimant reported that he was being treated for fibromyalgia and  
22 depression and anxiety, among other things, and his treating provider was trying to  
23 taper him off of certain medication. At the end of June 2020 the reported having  
24 anxiety and depression daily ranging from a five to ten; he had a panic attack two  
25 months prior; and he had a good relationship with his children and he got along  
26 pretty well with them. In mid-July 2020 the claimant reported no change in his  
27 symptoms. In August 2020 the claimant reported a higher anxiety level and that he  
28 went to his son's school to pick up books and felt a panic attack, but was able to  
use coping skills and get home without an incident. He reported using coping  
skills, such as, positive thought replacement, progressive relaxation, and listening  
to soft music. Examination showed that the claimant was well-groomed, clean, and  
a normal weight; calm; pleasant; had soft, slow, and pressured speech; no  
hallucinations; was oriented to situation, time, place, and person; had normal  
attention and concentrating ability; was alert and had memory intact; had average  
intelligence; intact thought processes; sad and constricted mood and affect; and  
intact judgment and insight. (Ex. 11F).

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<sup>2</sup> The medical records cited in Plaintiff's brief correspond to Exhibits 10F and 11F in the record. (*See* Doc. No. 17 at 17; A.R. 580-611.)

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2 (A.R. 23.) See *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1005, 1012 (9th Cir. 2003) (“[I]n  
3 interpreting the evidence and developing the record, the ALJ does not need to discuss every piece  
4 of evidence.”) (citation and internal quotation mark omitted).

5 Additionally, Plaintiff does not address the ALJ’s findings that Dr. Peters’ opinion was  
6 not supported by his treatment records and inconsistent with Plaintiff’s activities of daily living or  
7 that the ultimate disability determination is reserved to the Commissioner. Therefore, even if the  
8 Court accepted Plaintiff’s argument that Dr. Peters’ opinion was consistent with the medical  
9 record, any error in connection with this finding would be harmless because the ALJ provided  
10 other valid reasons for discounting Dr. Peters’ opinion. See, e.g., *Carmickle v. Comm’r of Soc.*  
11 *Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008) (“So long as there remains ‘substantial evidence  
12 supporting the ALJ’s conclusions ...’ and the error ‘does not negate the validity of the ALJ’s  
13 ultimate ... conclusion,’ such is deemed harmless and does not warrant reversal.” (quoting *Batson*  
14 *v. Comm’r. of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004))).

15 Accordingly, the Court finds that the ALJ’s reasons for the weight given to Dr. Peters’  
16 opinion are legally sufficient and supported by substantial evidence.

17 **II. CONCLUSION AND ORDER**

18 In light of the foregoing, the decision of the Commissioner of Social Security is supported  
19 by substantial evidence, and the same is hereby affirmed.

20 The Clerk of the Court is directed to close this case.

21 IT IS SO ORDERED.

22 Dated: May 26, 2022

23 /s/ Eric P. Gray  
24 UNITED STATES MAGISTRATE JUDGE  
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