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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL BELBIN,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

No. 2:13-cv-02657-AC

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying applications for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act (“Act”), respectively. For the reasons discussed below, the court will deny plaintiff’s motion for summary judgment and grant the Commissioner’s cross-motion for summary judgment.

I. PROCEDURAL BACKGROUND

Plaintiff, born December 13, 1983, applied on September 2, 2010 for DIB and SSI, alleging disability beginning March 19, 2003. Administrative Record (“AR”) 144, 147. Plaintiff alleged he was unable to work due to his bipolar disorder, manic depression, stomach, back and neck pain, bowel problems, insomnia, fatigue, intense anger, vertigo, sleep apnea, and posttraumatic stress disorder. AR 187. In a decision dated August 30, 2012, the ALJ determined

1 that plaintiff was not disabled. AR 32. The ALJ made the following findings (citations to 20
2 C.F.R. omitted):

3 1. Born on December 13, 1983, the claimant had not attained age
4 22 as of March 19, 2003, the alleged onset date.

5 2. The claimant has not engaged in substantial gainful activity
6 since March 19, 2003, the alleged onset date.

7 3. The claimant has the following severe impairments: learning
8 disorder, borderline intellectual functioning, bipolar disorder, and
9 posttraumatic stress disorder.

10 4. The claimant does not have an impairment or combination of
11 impairments that meets or medically equals one of the listed
12 impairments in 20 CFR Part 404, Subpart P, Appendix 1.

13 5. After careful consideration of the entire record, the undersigned
14 finds that the claimant had the residual functional capacity to
15 perform a full range of work at all exertional levels but with the
16 following nonexertional limitations: the claimant can perform
17 simple, repetitive tasks. He can interact with supervisors, but can
18 occasionally work with coworkers and the public. He may initially
19 require additional instructions to learn tasks but is able to learn
20 simple, repetitive tasks. The claimant is able to maintain regular
21 attendance. He cannot work in a competitive environment with
22 quotas or pacing.

23 6. The claimant has no past relevant work.

24 7. The claimant was born on December 13, 1983 and was 19 years
25 old, which is defined as a younger individual age 18-49, on the
26 alleged disability onset date.

27 8. The claimant has limited education and is able to communicate
28 in English.

9. Transferability of job skills is not an issue because the claimant
does not have past relevant work.

10. Considering the claimant's age, education, work experience,
and residual functional capacity, there are jobs that exist in
significant numbers in the national economy that the claimant can
perform.

11. The claimant has not been under a disability, as defined in the
Social Security Act, from March 19, 2003, through the date of this
decision.

26 AR 16-32.

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1 II. FACTUAL BACKGROUND

2 Born on December 13, 1983, plaintiff was 19 years old on the alleged onset date of
3 disability and 28 at the hearing before the ALJ. AR 39, 144. Plaintiff has some high school
4 education. AR 47. He has no past relevant work. AR 31.

5 III. ISSUES PRESENTED

6 Plaintiff argues that the ALJ committed the following errors in finding plaintiff not
7 disabled: (1) the ALJ failed to consider all of plaintiff's impairments in assessing plaintiff's RFC
8 and, as a result, posed an incomplete hypothetical to the vocational expert; (2) the ALJ
9 improperly evaluated the opinions of plaintiff's treating physicians; and (3) the ALJ failed to
10 develop the record with regard to the time period between December 2010 and January 2011.

11 IV. LEGAL STANDARDS

12 The court reviews the Commissioner's decision to determine whether (1) it is based on
13 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
14 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
15 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
16 F.3d 871, 873 (9th Cir. 2003). It means "such relevant evidence as a reasonable mind might
17 accept as adequate to support a conclusion." Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007),
18 quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). "The ALJ is responsible for
19 determining credibility, resolving conflicts in medical testimony, and resolving ambiguities."
20 Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citations omitted). "The court will
21 uphold the ALJ's conclusion when the evidence is susceptible to more than one rational
22 interpretation." Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

23 The record as a whole must be considered, Howard v. Heckler, 782 F.2d 1484, 1487 (9th
24 Cir. 1986), and both the evidence that supports and the evidence that detracts from the ALJ's
25 conclusion weighed. See Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not
26 affirm the ALJ's decision simply by isolating a specific quantum of supporting evidence. Id.; see
27 also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the
28 administrative findings, or if there is conflicting evidence supporting a finding of either disability

1 or nondisability, the finding of the ALJ is conclusive, see Sprague v. Bowen, 812 F.2d 1226,
2 1229-30 (9th Cir. 1987), and may be set aside only if an improper legal standard was applied in
3 weighing the evidence. See Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

4 V. ANALYSIS

5 A. RFC Assessment

6 Plaintiff contends the ALJ failed to include all of plaintiff's impairments in determining
7 his residual functional capacity. In particular, plaintiff asserts the ALJ failed to account for
8 limitations suggested by Drs. Terrini and Daigle. In determining a claimant's RFC, an ALJ must
9 assess all the evidence to determine what capacity the claimant has for work despite her
10 impairments. See 20 C.F.R. §§ 404.1545(a), 416.945(a). The court will affirm the ALJ's
11 determination of plaintiff's RFC if the ALJ applied the proper legal standard and her decision is
12 supported by substantial evidence. See Bayliss v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005).
13 An examining physician's opinion alone constitutes substantial evidence if it rests on that
14 physician's own independent examination. See Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th
15 Cir. 2001). Hypothetical questions posed to a vocational expert must set out all the substantial,
16 supported limitations and restrictions of the particular claimant. Magallanes v. Bowen, 881 F.2d
17 at 747, 756 (9th Cir. 1989). However, the ALJ need only include the limitations that he or she
18 finds to exist. Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001).

19 The ALJ assessed plaintiff's RFC as follows:

20 [T]he claimant has the residual functional capacity to perform a full
21 range of work at all exertional levels but with the following
22 nonexertional limitations: the claimant can perform simple,
23 repetitive tasks. He can interact with supervisors, but can
24 occasionally work with coworkers and the public. He may initially
require additional instructions to learn tasks but is able to learn
simple, repetitive tasks. The claimant is able to maintain regular
attendance. He cannot work in a competitive work environment
with quotas or pacing.

25 AT 20. In making this determination, the ALJ took into account those limitations for which there
26 was support in the record, including, to varying degrees, the medical opinions of Drs. Regazzi,
27 Daigle, Richwerger, Bible, and Terrini. AR 22–31.

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1 Dr. Michelina Regazzi performed a psychological evaluation on January 22, 2002, when
2 plaintiff was 18 years old. AR 477. In the course of the evaluation, plaintiff's performance on
3 the Vineland Adaptive Behavior test revealed that he communicated at an age-equivalency of 8
4 years old, had the daily living skills of a 12 year old, and the social skills of a 13 year old. AR
5 479–80. His adaptive behavior composite was that of an 11 year old. AR 480. Dr. Regazzi
6 diagnosed plaintiff with a learning disorder, borderline intellectual functioning, and a Global
7 Assessment Functioning (“GAF”) of 68.¹ AR 481. She opined that plaintiff would have the
8 following capabilities and limitations:

9 Paul is capable of understanding and carrying out simple and two-
10 part instructions. He is capable of communicating appropriately
11 with others. He is capable of interacting appropriately with others
12 at least in a one-on-one setting. He has a relative strength in
13 vocabulary, practical knowledge, and factual knowledge. He seems
14 motivated to do well and would benefit from a job training
15 program.

13 Paul cannot be expected to learn at the rate of his peers. He would
14 have difficulty performing tasks at length without supervision. He
15 would have difficulty understanding and carrying out complex
16 tasks.

16 AR 481–82. The ALJ concluded that Dr. Regazzi's opinion was supported by the medical
17 evidence and consistent with her own objective findings. AR 24.

18 Dr. Bradley Daigle performed a psychiatric evaluation of plaintiff on June 27, 2003. AR
19 266. Dr. Daigle noted that plaintiff has had lifelong learning and performance problems. AR
20 266. He stated that plaintiff is “essentially functionally illiterate and has been said to function in
21 the borderline intellectual range” (AT 266) and that “in general, he may be able to make some
22 progress in a sheltered situation” (AT 270). Dr. Daigle diagnosed plaintiff with learning disorder,

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25 ¹ GAF is a scale reflecting the “psychological, social, and occupational functioning on a
26 hypothetical continuum of mental health-illness.” Diagnostic Statistical Manual of Mental
27 Disorders at 34 (4th ed. 2000) (“DSM IV-TR”). A 61-70 GAF indicates “[s]ome mild symptoms
28 (e.g., depressed mood and mild insomnia) OR some difficulty in social, occupational, or school
functioning (e.g., occasional truancy, or theft within the household), but generally functioning
pretty well, has some meaningful interpersonal relationships.” *Id.*

1 borderline intellectual functioning, and assessed his global functioning at 60.² AR 270. He
2 opined that plaintiff is slightly limited in his ability to: understand, remember, and carry out
3 simple 1-or 2-step job instructions; relate and interact with supervisors, co-workers and the
4 public; and adapt to the stresses common to a normal work environment. AR 271. Dr. Daigle
5 also opined that plaintiff is moderately limited in his ability to: follow detailed and complex
6 instructions; maintain concentration, attention, persistence and pace; and associate with day-to-
7 day work activity, including attendance and safety. AR 271. Plaintiff contends the ALJ's RFC
8 assessment failed to account for Dr. Daigle's opinion that plaintiff may be able to make some
9 progress in a sheltered situation with limited expectations. However, the ALJ's limitation that
10 plaintiff not work in a competitive work environment with quotas or pacing reasonably accounts
11 for this portion of Dr. Daigle's opinion.

12 Dr. David Richwerger performed a psychological evaluation of plaintiff on December 29,
13 2004. AR 277. Dr. Richwerger also noted plaintiff's learning problems. AR 277. He performed
14 several tests, including the Bender-Gestalt, II, Trails A and Trail B, the Wechsler Adult
15 Intelligence Scale, III (WAIS-III) and the Wechsler Memory Scale, III. AR 277. Plaintiff
16 received a score of 66 on the Bender-Gestalt-II and a percentile rank of 1. AR 280. With respect
17 to Trails A and Trails B, plaintiff scored within normal limits and borderline range, respectively.
18 AR 280. As to the Wechsler Adult Intelligence Scale, III, plaintiff had a verbal IQ of 86, a
19 performance IQ of 77 and full scale IQ score of 80. AR 280. These placed plaintiff in the 18th,
20 6th and 9th percentiles, respectively. AR 280. Dr. Richwerger noted that plaintiff scored at the
21 higher end of the borderline range with his verbal skills somewhat better than his nonverbal skills.
22 AR 280. With regard to the Wechsler Memory Scale, III, plaintiff scored in the borderline range
23 on tasks of concentration and memory. AR 281. Dr. Richwerger diagnosed plaintiff with
24 adjustment disorder with mixed disturbance of emotions and conduct, borderline intellectual
25 functioning, and antisocial personality traits. AR 281. He further noted that there were

26 ² 51 to 60 GAF indicates "[moderate] symptoms (e.g., flat affect and circumstantial speech,
27 occasional panic attacks) OR moderate difficulty in social, occupational, or school functioning
28 (e.g., few friends, conflicts with peers or co-workers)." DSM IV-TR at 34.

1 employment-related concerns and assessed plaintiff's GAF was 65³ at the time of the exam. AR

2 281. As to plaintiff's functional assessment, Dr. Richwerger opined as follows:

3 The claimant appears to have a moderate impairment in his ability
4 to perform detailed and complex tasks.

5 The claimant appears to have no impairment in his ability to
6 perform simple and repetitive tasks.

7 The claimant appears to have slight impairment in his ability to
8 perform work activities on a consistent basis.

9 The claimant appears to have no impairment in his ability to
10 perform work activities without special supervision.

11 The claimant appears to have slight impairment in his ability to
12 complete a normal workday or workweek without interruption from
13 a psychiatric condition.

14 The claimant appears to have slight impairment in his ability to
15 understand and accept instructions from supervisors.

16 The claimant appears to have slight impairment in his ability to
17 interact with coworkers and the public.

18 The claimant appears to have no impairment in his ability to
19 maintain regular attendance in the workplace.

20 The claimant appears to have slight impairment in his ability to deal
21 with the usual stresses encountered in competitive work.

22 The claimant appears to be capable of managing his own funds.

23 AR 281–82.

24 Dr. Charlotte Bible performed a psychiatric review on January 18, 2005. AR 283. Dr.
25 Bible diagnosed plaintiff with adjustment disorder and borderline intellectual functioning. AR
26 283. She opined that plaintiff was moderately restricted in his daily activities; experienced
27 moderate difficulties in maintaining social functioning; had moderate difficulties in maintaining,
28 concentration, persistence, or pace; and would not experience any episodes of decompensation of
an extended duration. AR 290. On that same day, Dr. Bible completed a mental residual
functional capacity assessment. AR 293. She opined that plaintiff was moderately limited in his
ability to: understand and remember detailed instructions, carry out detailed instructions, maintain

³ See supra footnote 1.

1 attention and concentration for extended periods, perform activities within a schedule, maintain
2 regular attendance, be punctual within customary tolerances, work in coordination with or
3 proximity to others without being distracted by them, complete a normal workday and workweek
4 without interruptions from psychologically-based symptoms and perform at a consistent pace
5 without an unreasonable number and length of rest periods, interact with the general public, get
6 along with coworkers or peers without distracting them or exhibiting behavioral extremes, and
7 respond appropriately to changes in the work setting. AR 293–94.

8 On December 3, 2010, Dr. Steven J. Terrini performed a comprehensive psychiatric
9 evaluation of plaintiff. AR 345. Dr. Terrini diagnosed plaintiff with bipolar disorder, chronic
10 posttraumatic stress disorder, panic disorder, and had features of antisocial personality disorder.
11 Dr. Terrini assessed plaintiff’s global functioning was 54⁴ at the time. AR 348. Dr. Terrini
12 assessed plaintiff’s functional limitations as follows:

13 The claimant may be capable of managing his funds, although it is
14 likely his arithmetic skills are somewhat below average.

15 The claimant should be able to perform simple and repetitive tasks.
16 He may have some trouble with detailed and complex tasks due to
his psychiatric symptoms.

17 The claimant should be able to accept instructions from supervisors.
18 He may have trouble working with coworkers and the public, as he
claimed he does not trust other people.

19 The claimant may have trouble performing work activities on a
20 consistent basis without special or additional instruction due to his
psychiatric symptoms.

21 The claimant may be able to maintain regular attendance in a
22 workplace, although he has a minimal work history. He is likely
mildly to moderately impaired in his ability to complete a normal
workday and workweek without interruptions from a psychiatric
condition.

23 The claimant is likely moderately impaired in his ability to deal
24 with the stress encountered in a competitive workplace.

25 AT 349. Plaintiff asserts the ALJ failed to account for Dr. Terrini’s opinion with regard to
26 plaintiff’s ability to perform work activities without special or additional instruction. However,

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28 ⁴ See supra footnote 2.

1 the ALJ stated that plaintiff might initially require additional instructions to learn simple,
2 repetitive tasks. AR 20. This finding reasonably accounts for Dr. Terrini’s opinion regarding
3 plaintiff’s need for additional instruction. Plaintiff also contends the ALJ failed to account for Dr.
4 Terrini’s opinion regarding plaintiff’s work-attendance limitations. However, plaintiff does not
5 present a full picture of Dr. Terrini’s opinion with respect to these limitations. As stated above,
6 Dr. Terrini opined that plaintiff may be able to maintain regular attendance in a workplace, which
7 seems to contradict the opinion that plaintiff would miss work because of his psychiatric
8 condition. See AR 20.

9 As demonstrated above, the ALJ reasonably accounted for the limitations expressed in the
10 opinions of Drs. Regazzi, Daigle, Richwerger, Bible, and Terrini. For the reasons stated, the
11 ALJ’s RFC assessment was supported by substantial evidence.

12 B. Medical Opinions

13 Plaintiff contends the ALJ erred in evaluating the opinions of his treating physicians.
14 There are three types of physicians relevant to disability determinations: treating physicians,
15 examining physicians, and nonexamining physicians. “If a treating doctor’s opinion is not
16 contradicted by another doctor (i.e., there are no other opinions from examining or nonexamining
17 sources), it may be rejected only for ‘clear and convincing’ reasons supported by substantial
18 evidence in the record.” See Ryan v. Comm’r of Soc. Sec. Admin., 528 F.3d 1194, 1198 (9th
19 Cir.2008); Lester v. Chater, 81 F.3d 821, 830 (9th Cir.1996). “If the ALJ rejects a treating or
20 examining physician’s opinion that is contradicted by another doctor, he must provide specific,
21 legitimate reasons based on substantial evidence in the record.” Valentine v. Comm’r of Soc. Sec.
22 Admin., 574 F.3d 685, 692 (9th Cir.2009); Ryan, 528 F.3d at 1198.

23 “[T]he medical opinions of a claimant’s treating physicians are entitled to special weight.”
24 Embrey v. Bowen, 849 F.2d 418, 421 (9th Cir.1988). If the ALJ disregards a treating physician’s
25 opinion, the ALJ must “set[] out a detailed and thorough summary of the facts and conflicting
26 clinical evidence, stating his interpretation thereof, and making findings.” Id. (quoting Cotton v.
27 Bowen, 799 F.2d 1403, 1408 (9th Cir.1986)). Moreover, “[t]he ALJ need not accept the opinion
28 of any physician, including a treating physician, if that opinion is brief, conclusory, and

1 inadequately supported by clinical findings.” Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir.
2 2002). “To evaluate whether an ALJ properly rejected a medical opinion, in addition to
3 considering its source, the court considers whether (1) contradictory opinions are in the record;
4 and (2) clinical findings support the opinions.” Esposito v. Astrue, 2012 WL 1027601, CIV S-
5 10-2862-EFB at *3 (E.D.Cal. Mar. 26, 2012).

6 A nonexamining physician’s function is to read medical evidence in a claimant’s case
7 records, decide whether or not the claimant’s impairments meet or equal the Listings, and
8 determine the claimant’s Residual Functional Capacities. 20 C.F.R. § 416.927(e)(1)(i). Because
9 nonexamining physicians do not have the benefit of hearing the claimant’s complaints of pain,
10 their opinions as to claimant’s pain are of “very limited value.” Penny v. Sullivan, 2 F.3d 953,
11 957 (9th Cir. 1993).

12 Shirley Rigg, a family nurse practitioner, treated plaintiff with respect to several physical
13 illnesses from July 2011 to June 2012. AR 524–535. Rigg wrote a note, dated March 23, 2012,
14 stating that plaintiff “suffers from significant mental health issues which prevent him from being
15 gainfully employed.” AR 484. Rigg also stated that plaintiff suffered from bipolar disorder and
16 borderline personality disorder, and that he would be unemployable from March 23, 2012 to
17 March 23, 2013. AR 484. The ALJ did not recognize the signature on the note but addressed the
18 opinion nonetheless, giving it little weight because it “conflicts with every acceptable medical
19 source opinion in the medical evidence of record and with objective findings including the results
20 of two separate batteries of psychometric tests.” AR 30.

21 Plaintiff contends that Rigg’s note, suggesting plaintiff was “unemployable” due to
22 bipolar disorder, does not conflict with all the medical source opinions. Plaintiff cites his
23 treatment at El Hogar Community Services, El Hogar’s Guesthouse Services Program, Guest
24 House Homeless Services program, and at the Primary Care Clinic. Plaintiff asserts that these
25 medical sources, including the opinion of consultative examiner Dr. Terrini, all diagnosed
26 plaintiff with bipolar disorder and thus Dr. Rigg’s note is consistent with medical source
27 opinions. This argument misses the mark. The ALJ rejected Rigg’s note with regard to the

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1 opinion that plaintiff was “unemployable,” not with respect to the diagnoses given in the note.
2 AR 30.

3 Plaintiff also contends that the ALJ failed to articulate clear and convincing reasons for
4 rejecting Rigg’s opinion, or, in the alternative, failed to articulate specific and legitimate reasons
5 for doing so. As an initial matter, Rigg’s opinion regarding plaintiff’s employability is
6 contradicted by Drs. Regazzi, Daigle, Richwerger, and Terrini. All opined that plaintiff could
7 perform simple jobs albeit with limitation, and could with some difficulty carry out simple
8 instructions from his supervisors. See e.g., AR 481–82 (Dr. Regazzi’s opinion that plaintiff could
9 perform simple tasks); 271 (Dr. Daigle describing plaintiff’s work limitations as slight or
10 moderate); 281–82 (Dr. Richwerger describing plaintiff’s mental impairments as nonexistent,
11 slight or moderate); 349 (Dr. Terrini opining that plaintiff could perform simple and repetitive
12 tasks and could accept instructions from supervisors). In light of the conflict, the ALJ was
13 required to provide specific and legitimate reasons for rejecting Rigg’s opinion.

14 As noted by the Commissioner, Rigg was a family nurse practitioner who treated plaintiff
15 for his physical ailments. She did not conduct psychological testing or a psychiatric evaluation,
16 nor did she provide treatment for plaintiff’s mental health concerns. The several mental health
17 professionals who evaluated plaintiff with regard to his mental impairments opined that plaintiff
18 had the capacity to perform simple work. Relying on the opinions of those mental health
19 professionals and their objective findings, the ALJ gave Rigg’s opinion little weight because it
20 contradicted the opinions and objective findings of the appropriate specialists. AR 22–31. These
21 are specific and legitimate reasons for rejecting Rigg’s opinion, and are supported by substantial
22 evidence. There was no error in the ALJ’s evaluation of the medical opinions.

23 C. Duty to Develop the Record

24 Plaintiff contends the ALJ failed to develop the record with respect to plaintiff’s mental
25 health treatment records from December 2008 to January 2011. The ALJ has a duty “to fully and
26 fairly develop the record and to assure the claimant’s interests are considered.” Brown v. Heckler,
27 713 F.2d 441, 443 (9th Cir. 1983). “The ALJ must be ‘especially diligent’ when the claimant is
28 unrepresented” McLeod v. Astrue, 640 F.3d 881, 885 (9th Cir. 2011). The duty to develop

1 the record is “triggered only when there is ambiguous evidence or when the record is inadequate
2 to allow for proper evaluation of the evidence.” Mayes v. Massanari, 276 F.3d 453, 459–60 (9th
3 Cir. 2001). “Ambiguous evidence, or the ALJ’s own finding that the record is inadequate to
4 allow for proper evaluation of the evidence, triggers the ALJ’s duty to conduct an appropriate
5 inquiry.” Tonapetyan, 242 F.3d at 1150. “A specific finding of ambiguity or inadequacy of the
6 record is not necessary to trigger this duty to inquire, where the record establishes ambiguity or
7 inadequacy.” McLeod, 640 F.3d at 885. “The ALJ may discharge this duty in several ways,
8 including: subpoenaing the claimant’s physicians, submitting questions to the claimant’s
9 physicians, continuing the hearing, or keeping the record open after the hearing to allow
10 supplementation of the record.” Tonapetyan, 242 F.3d at 1150 (citations omitted). Generally,
11 there must be some objective evidence suggesting a condition that could have a material impact
12 on the disability decision. See Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996); Wainwright
13 v. Sec’y of Health and Human Servs., 939 F.2d 680, 682 (9th Cir.1991). The ALJ’s decision may
14 be set aside due to his failure to develop the record if the claimant can demonstrate prejudice or
15 unfairness as a result of said failure. Vidal v. Harris, 637 F.2d 710, 713 (9th Cir.1991).

16 Plaintiff argues that the ALJ had a duty to order mental health treatment records from the
17 jail and from Genesis counseling, because there are references in plaintiff’s other treatment notes
18 to treatment provided by those entities. Specifically, other records reflect that plaintiff’s best
19 medication response to his borderline personality disorder occurred when he was in jail receiving
20 Paxil and Trazadone (AT 359), and that he was referred to Genesis counseling (AT 435, 438).

21 The ALJ’s duty to further develop the record with respect to these records was not
22 triggered. The ALJ found that the medical evidence and opinions were consistent with each other
23 over the years. AT 30 (“All recognized the claimant’s history of learning disability, borderline
24 intellectual functioning, and limitations of concentration, persistence or pace and thus all limited
25 the claimant to the performance of simple repetitive tasks.”). This consistency among the
26 medical opinions demonstrates that the record was not ambiguous and that the ALJ could conduct
27 an appropriate inquiry on the record before her. Cf. Smolen, 80 F.3d 1288 (the ALJ had a duty to
28 augment the record when the basis of the opinion of plaintiff’s treating physician was unknown to

1 the ALJ); Armstrong v. Commissioner of Social Sec. Admin., 160 F.3d 587, 590 (9th Cir. 1998)
2 (the ALJ had a duty to call a medical expert to help determine the onset date of disability);
3 Tonapetyan, 242 F.3d at 1150 (the ALJ was required to develop the record when opinion of non-
4 examining expert, upon which the ALJ heavily relied, was equivocal and suggested a more
5 detailed report from plaintiff's treating psychiatrist). Ultimately, the ALJ concluded that the
6 medical records and medical opinions supported the RFC assessment. AT 30.

7 Furthermore, plaintiff has not shown prejudice or unfairness resulting from the absence of
8 these records. The record referencing plaintiff's mental health treatment in jail state that plaintiff
9 experienced stability from his symptoms when he was receiving Paxil and Trazadone. AT 359.
10 These records support the ALJ's conclusion that plaintiff's "psychological symptoms were
11 controlled with compliance with psychiatric medications." AT 30. Plaintiff did not state what the
12 records from Genesis counseling, if they even existed, would have stated or how those records
13 would have materially impacted the disability decision. See Smolen, 80 F.3d at 1288.
14 Accordingly, the ALJ did not fail to develop the record with respect to the time period between
15 December 2008 and January 2011.

16 VI. CONCLUSION


17 For the reasons stated herein, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's motion for summary judgment (ECF No. 19) is denied;
- 19 2. The Commissioner's cross-motion for summary judgment (ECF No. 22) is granted;

20 and

- 21 3. Judgment is entered for the Commissioner.

22 DATED: March 2, 2015

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24 ALLISON CLAIRE
25 UNITED STATES MAGISTRATE JUDGE
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28