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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 EUREKA DIVISION

7
8 JALEEL ABDUL-ALI,
9 Plaintiff,

10 v.

11 NANCY A. BERRYHILL,
12 Defendant.

Case No. 18-cv-03615-RMI

**ORDER ON MOTIONS FOR
SUMMARY JUDGMENT**

Re: Dkt. Nos. 12, 15

13
14 Plaintiff, Jaleel Abdul-Ali, appearing pro se, seeks judicial review of an administrative law
15 judge (“ALJ”) decision denying his application for disability insurance benefits and supplemental
16 security income under Titles II and XVI of the Social Security Act. Plaintiff’s request for review
17 of the ALJ’s unfavorable decision was denied by the Appeals Council, thus, the ALJ’s decision is
18 the “final decision” of the Commissioner of Social Security which this court may review. See 42
19 U.S.C. §§ 405(g), 1383(c)(3). Both parties have consented to the jurisdiction of a magistrate judge
20 (dks. 4 & 8), and both parties have moved for summary judgment (dks. 12 & 15). For the reasons
21 stated below, the court will grant Plaintiff’s motion for summary judgment, and will deny
22 Defendant’s motion for summary judgment.

23 **LEGAL STANDARDS**

24 The Commissioner’s findings “as to any fact, if supported by substantial evidence, shall be
25 conclusive.” 42 U.S.C. § 405(g). A district court has a limited scope of review and can only set
26 aside a denial of benefits if it is not supported by substantial evidence or if it is based on legal
27 error. *Flaten v. Sec’y of Health & Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995). Substantial
28 evidence is “more than a mere scintilla but less than a preponderance; it is such relevant evidence

1 as a reasonable mind might accept as adequate to support a conclusion.” Sandgathe v. Chater, 108
2 F.3d 978, 979 (9th Cir. 1997). “In determining whether the Commissioner’s findings are supported
3 by substantial evidence,” a district court must review the administrative record as a whole,
4 considering “both the evidence that supports and the evidence that detracts from the
5 Commissioner’s conclusion.” Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998). The
6 Commissioner’s conclusion is upheld where evidence is susceptible to more than one rational
7 interpretation. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005).

8 **PROCEDURAL HISTORY**

9 On August 4, 2014, Plaintiff filed applications for disability insurance benefits under Title
10 II, and for supplemental security income under Title XVI, alleging an onset date of October 2,
11 2007 as to both applications. *See Administrative Record “AR”* (dkt. 11) at 23. The ALJ denied the
12 application on April 18, 2017. *Id.* at 23. The Appeals Council denied Plaintiff’s request for review
13 on April 27, 2018. *Id.* at 1-7.

14 **SUMMARY OF THE RELEVANT EVIDENCE**

15 Introduction:

16 Initially, it should be noted that while Plaintiff was represented by an attorney when
17 appearing before the ALJ, he is proceeding pro se in this court. Plaintiff submits in pertinent part
18 that the ALJ failed to fully and fairly develop the record (by failing to order podiatry records);
19 failed to give proper weight to the medical opinions of treating physicians (also related to his
20 bilateral foot pain); and, inter alia, that “[t]he ALJ also failed to properly consider other evidence
21 from all referred psychiatrist or psychologist in the past.” *Pl.’s Mot.* (dkt. 12) at 2, 5-7.

22 The ALJ found that the record contained evidence that Plaintiff suffered from obstructive
23 sleep apnea, obesity, knee tendonitis and right knee pain, osteophyte formation in the cervical
24 spine, flat feet and foot arthritis, difficulties with vision, bipolar disorder without psychotic
25 features, polysubstance abuse dependence, schizophrenia, antisocial personality disorder, and
26 depression. *AR* (dkt. 11) at 14-15. However, the ALJ found all of these conditions to be non-
27 severe with the exception of Plaintiff’s flat feet and foot arthritis. *Id.* at 14.

28 Plaintiff, now 42 years old, has experienced a history of problems with handling

1 confrontation and provocation, as well as managing his reactions to everyday stress, frequently
2 finding himself thwarted or frustrated, and resulting in problems with anger control. Id. at 390. As
3 a young man, Plaintiff spent 6 years studying music and psychology at Rutgers University,
4 however, no degree was conferred. Id. at 42-45. Later, Plaintiff joined the U.S. Navy in 2004,
5 eventually attaining the rank of Petty Officer 2nd Class; however, because of a period of
6 unauthorized absence due to family circumstances, Plaintiff was jailed and separated from the
7 service through a bad conduct discharge. Id. at 45-46, 390. Since then, Plaintiff has suffered from
8 the above-mentioned physical and psychological impairments while living in poverty, including
9 occasions of homelessness. Id. at 40-41, 46-53.

10 The Medical Evidence:

11 In the course of seeking a disability finding as to his physical and psychological
12 impairments, Plaintiff underwent psychiatric evaluations in 2011 and again in 2015. Id. at 390,
13 478. In March of 2011, Solomon Miskin, M.D., noted Plaintiff's reports of a "history of problems
14 with anger dyscontrol . . . difficulties in managing being thwarted or frustrated . . . and significant
15 problems in handling confrontation or provocation and becom[ing] angry in reaction to everyday
16 stress." Id. at 390. Following a mental status examination and a review of Plaintiff's history, Dr.
17 Miskin diagnosed Plaintiff with two Axis-I psychological disorders: bipolar disorder (chronic,
18 mixed, without psychotic features) and polysubstance abuse and dependence; additionally, Dr.
19 Miskin diagnosed Plaintiff as suffering from an Axis-II personality disorder with "impulsive and
20 explosive traits." Id. at 392. Dr. Miskin's report noted that, at the time, Plaintiff was living at a
21 homeless shelter where he was receiving some psychotherapy sessions. Id. at 390. Further, Dr.
22 Miskin assessed Plaintiff with a Global Assessment of Functioning score of 55. Id.

23 Four years later, in March of 2015, Plaintiff underwent a psychiatric evaluation by Les
24 Kalman, M.D., Psy.D. Id. at 478. After noting that Plaintiff arrived late to the examination, Dr.
25 Kalman reported the chief complaint in Plaintiff's own words: "I'm always pissed off. I got pulled
26 over by the police. Then they took it away. Cops have too much authority." Id. Dr. Kalman's
27 description of the history of Plaintiff's present illness noted that the "Patient rambled on for
28 several minutes with themes of anger, irritability, blaming society for his ills and complaining

1 about the system and how he’s been wronged.” Id. When discussing recent bouts of incarceration
2 with Plaintiff, Dr. Kalman observed as follows: “Plaintiff would go off on rants yelling,
3 complaining with significant paranoid themes evident throughout the interview. The more agitated
4 he became, the more disorganized his speech became. He would ramble, stating ‘electrocuting
5 dog. I gotta get out of here. License suspended.’” Id. at 479. As part of the intellectual functioning
6 portion of this mental status examination, Dr. Kalman noted that when Plaintiff was asked to
7 interpret the proverb, “you can’t judge a book by its cover,” Plaintiff responded to the following
8 effect: “this country shouldn’t be prejudiced, but you still get shot. You shouldn’t be controversial.
9 You get a job with big tips whatever.” Id. at 480. Dr. Kalman further described Plaintiff’s mental
10 status, characterizing his judgment as poor, his mood as irritable, his affect as constricted, and, that
11 “Patient was angry, annoyed.” Id. Regarding Plaintiff’s thought process, Dr. Kalman found
12 Plaintiff’s “form of thought was illogical, tangential and circumstantial . . . [marked by] loose
13 associations and derailment with significant paranoid themes.” Id. Quoting Plaintiff’s statements
14 during the exam – “This country they kill all over the world. They put sanctions on countries.
15 They do things to you” – Dr. Kalman found that Plaintiff’s thought content was likewise
16 “[p]ositive for paranoid delusions,” Id. As to social functioning, Dr. Kalman found that Plaintiff is
17 estranged from family, has no friends, and spends his days trying to figure out how to provide for
18 himself without going to jail. Id. In the end, Dr. Kalman diagnosed Plaintiff with paranoid
19 schizophrenia and antisocial personality disorder and opined that Plaintiff would not be able to
20 interact with supervisors and co-workers; deal with the public; understand, remember and carry
21 out simple one and two-step job instructions; maintain attention, concentration and memory; or,
22 withstand the stress and pressures associated with daily work activities. Id. at 480-481. Lastly, Dr.
23 Kalman noted that Plaintiff’s condition was not expected to improve significantly within the next
24 12 months. Id. at 481.

25 The ALJ Hearing:

26 At the hearing before the ALJ, Plaintiff’s counsel opened by noting that “Mr. Abdul Ali
27 suffers from both mental and physical issues, depression, anger on the mental side . . . [a]nd he’ll
28 explain their severity to you upon questioning.” Id. at 36. The ALJ then proceeded to question

1 Plaintiff, mostly about his physical impairments. See *id.* at 39-49. After establishing Plaintiff's
2 poverty and occasional homelessness, the ALJ did ask Plaintiff whether he was currently receiving
3 any psychiatric treatment, or if he had received any in the past. *Id.* at 49. Confirming a past
4 psychiatric examination, Plaintiff mentioned Dr. Kalman, at which point, noting that Dr. Kalman
5 "says you're a bit angry," the ALJ asked Plaintiff himself, "[w]hy are you so angry?" *Id.* at 49-50.
6 Plaintiff responded, "I - - I don't know what you call it, but how I - - my emotional reaction or my
7 overall reaction to what I'm dealing with." *Id.* at 50. When asked by the ALJ if he gets along with
8 his roommates, Plaintiff stated that he does not socialize with them; when asked if he gets along
9 with teachers and other students at school, Plaintiff again stated that he doesn't socialize there
10 either, but that "I just have one problem with one student last semester . . . [and] one student made
11 a complaint about me, but that was just a disagreement basically." *Id.* The ALJ also asked
12 Plaintiff, "[b]esides being angry, are you sad?" *Id.* at 53. Plaintiff responded in the affirmative and
13 explained that "I'm pretty much alone and don't have any help, so it's just, you know, I go
14 through the mixture of different emotions . . . dealing with the anger, being confrontational to
15 authority figures . . . every situation I've been in, including the Navy, and just not having a
16 solution myself, so just trying to see what the doctors can do for me." *Id.*

17 The ALJ then asked the Vocation Expert ("VE") a series of hypothetical questions, all but
18 one of which were focused entirely on Plaintiff's physical impairments. See *id.* at 53-60. First, the
19 ALJ had the VE state the equivalents to Plaintiff's past work in the Navy and the VE identified the
20 job descriptions of IT technician and substitute teacher. *Id.* at 57. The ALJ's first hypothetical
21 asked the VE whether someone with Plaintiff's education who is limited to medium work, simple
22 routine tasks, simple work related decisions and few changes in the work setting could perform the
23 job of network administrator or substitute teacher – the VE answered in the negative. *Id.* at 57-58.
24 When asked whether such an individual could perform any other work, the VE suggested
25 employment as a machine heater, a vehicle cleaner, or a laundry worker. *Id.* at 58. The ALJ then
26 asked the VE to assume the same hypothetical, but with the individual being limited to light work;
27 the VE suggested housekeeping cleaner, laundry press operator, and small products assembler. *Id.*
28 at 59. The ALJ also asked the VE to assume the same hypothetical again, but this time limiting the

1 individual to sedentary work; the VE suggested document preparer, addresser, and stuffer. Lastly,
2 the ALJ asked the VE, “if the hypothetical individual was unable to sustain an appropriate
3 relationship with supervisors, would there be any work?” Id. at 60. The VE responded that there
4 would not be any work for such a person in the national economy. Id. At this point, when asked by
5 the ALJ whether there was anything else, Plaintiff’s counsel added that “[y]es, we are, we are
6 saying that his anger is going to interfere with any attempt at substantial gainful activity, so that is
7 that.” Id. at 61.

8 The ALJ’s Decision:

9 The ALJ found that Plaintiff’s flat feet and osteoarthritis of the feet were severe
10 impairments because they cause “more than a minimal effect on claimant’s ability to function.” Id.
11 at 14 (citing 20 C.F.R. §§ 404.1520(c) and 416.920(c)). However, the ALJ found Plaintiff’s
12 bipolar disorder, polysubstance abuse, schizophrenia, antisocial personality disorder, and
13 depression “considered singly and in combination, do not cause more than minimal limitation in
14 the claimant’s ability to perform basic mental work activities and therefore are nonsevere.” AR
15 (dkt. 11) at 15. The ALJ explained that conclusion by noting that Plaintiff “has not had any
16 significant, ongoing psychiatric treatment . . . [has] never been hospitalized for mental health
17 reasons . . . has not consistently taken any psychotropic medications . . . [and that] his impairment
18 does not appear to cause work limitations on a consistent basis for 12 consecutive months.” Id.
19 Incidentally, it is unclear if the use of the word “impairment” (singular) is a typographic error, or
20 if the ALJ was referring only to one or another of Plaintiff’s five mental impairments.

21 Noting that Dr. Miskin diagnosed Plaintiff with bipolar disorder and polysubstance abuse,
22 the ALJ only gave Dr. Miskin’s opinion “partial weight,” explaining only that the “report consists
23 of only a one-time examination,” and that Plaintiff “has had mostly normal mental status
24 examinations.” Id. at 15, 16-17. As to Dr. Kalman’s opinion that Plaintiff is unable to interact with
25 others, carry out simple instructions, maintain attention, and deal with stress, the ALJ afforded
26 “little weight to this opinion.” Id. at 17. By way of explanation, the ALJ noted that “[t]he claimant
27 did not exhibit any inability to follow along and answer questions at the hearing . . . [and that] the
28 opinion is inconsistent with the examiner’s own findings, which indicate that the claimant was

1 cooperative, could perform calculations, and had average intelligence.” Id. The ALJ added that Dr.
2 Kalman’s opinion was somehow invalid because at the time of the examination, Plaintiff “was not
3 on any medications and was not receiving any significant mental health treatment,” and because
4 the opinion was inconsistent with Plaintiff’s statement that he “is able to play chess, play music,
5 socialize with others, go grocery shopping alone, and go to school full-time.” Id. Lastly, the ALJ
6 concluded by stating that in any event, “finding that the claimant’s mental impairments are non-
7 severe is not outcome determinative as there are a number of unskilled simple, and repetitive jobs
8 that the claimant can perform.” Id.

9 **THE FIVE STEP SEQUENTIAL ANALYSIS FOR DETERMINING DISABILITY**

10 A person filing a claim for social security disability benefits (“the claimant”) must show
11 that she has the “inability to do any substantial gainful activity by reason of any medically
12 determinable physical or mental impairment” which has lasted or is expected to last for twelve or
13 more months. See 20 C.F.R. §§ 416.920(a)(4)(ii), 416.909.¹ The ALJ must consider all evidence in
14 the claimant’s case record to determine disability (see id. § 416.920(a)(3)), and must use a five-
15 step sequential evaluation process to determine whether the claimant is disabled (see id. §
16 416.920). “[T]he ALJ has a special duty to fully and fairly develop the record and to assure that
17 the claimant’s interests are considered.” *Brown v. Heckler*, 713 F.2d 441, 443 (9th Cir. 1983).

18 Here, the ALJ evaluated Plaintiff’s application for benefits under the required five-step
19 sequential evaluation. AR (dkt. 11) at 12-23. At Step One, the claimant bears the burden of
20 showing he has not been engaged in “substantial gainful activity” since the alleged date the
21 claimant became disabled. See 20 C.F.R. § 416.920(b). If the claimant has worked and the work is
22 found to be substantial gainful activity, the claimant will be found not disabled. See id. The ALJ
23 found that Plaintiff had not engaged in substantial gainful activity since the alleged onset date. AR
24 (dkt. 11) at 13-14.

25 At Step Two, the claimant bears the burden of showing that he has a medically severe
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28 ¹ The regulations for supplemental security income (Title XVI) and disability insurance benefits
(Title II) are virtually identical though found in different sections of the CFR. For the sake of
convenience, the court will generally cite to the SSI regulations herein unless noted otherwise.

1 impairment or combination of impairments. See 20 C.F.R. § 416.920(a)(4)(ii), (c). “An
2 impairment is not severe if it is merely ‘a slight abnormality (or combination of slight
3 abnormalities) that has no more than a minimal effect on the ability to do basic work activities.’”
4 *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005) (quoting S.S.R. No. 96–3(p) (1996)). The
5 ALJ found that Plaintiff suffered from the following severe impairments: bilateral pes planus (flat
6 feet) and osteoarthritis of the feet. AR (dkt. 11) at 14.

7 At Step Three, the ALJ compares the claimant’s impairments to the impairments listed in
8 appendix 1 to subpart P of part 404. See 20 C.F.R. § 416.920(a)(4)(iii), (d). The claimant bears the
9 burden of showing her impairments meet or equal an impairment in the listing. *Id.* If the claimant
10 is successful, a disability is presumed and benefits are awarded. *Id.* If the claimant is unsuccessful,
11 the ALJ assesses the claimant’s residual functional capacity (“RFC”) and proceeds to Step Four.
12 See *id.* § 416.920(a)(4)(iv), (e). Here, the ALJ found that Plaintiff did not have an impairment or
13 combination of impairments that met or medically equaled one of the listed impairments. AR (dkt.
14 11) at 18. Next, the ALJ determined that Plaintiff retained the RFC “to perform the full range of
15 light work.” AR (dkt. 11) at 18-21.

16 At Step Four, the ALJ determined that Plaintiff is capable of performing the equivalent of
17 his past relevant work as an IT technician or a substitute teacher; or, in the alternative, Plaintiff
18 could work as a housekeeping cleaner, laundry press operator, or small products assembler. AR
19 (dkt. 11) at 21-23. Lastly, at Step Five, the ALJ concluded that based on the RFC for the full range
20 of light work, that Plaintiff had not been under a disability, as defined in the Social Security Act,
21 from October 2, 2007, through the date of the issuance of the ALJ’s decision, April 18, 2017. AR
22 (dkt. 11) at 23.

23 **ISSUESS PRESENTED**

24 Plaintiff presents four issues for review, claiming that the ALJ failed to fully and fairly
25 develop the record (by failing to order podiatry records); failed to give proper weight to the
26 medical opinions of treating physicians (also related to his feet); that “[t]he ALJ also failed to
27 properly consider other evidence from all referred psychiatrist or psychologist in the past”; and,
28 that the RFC was not supported by substantial evidence. *Pl. ’s Mot.* (dkt. 12) at 2, 5-8.

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2 **DISCUSSION**

3 The court will note at the outset that Plaintiff, a non-lawyer, is proceeding pro se,
4 accordingly, the court will construe his arguments liberally.² However, in this case a great deal of
5 liberal construction is not required to interpret Plaintiff’s claim to the effect that the ALJ did not
6 properly consider the psychiatric and psychological evidence (which Plaintiff has plainly stated),
7 and therefore made an incorrect Step-II determination as to Plaintiff’s mental impairments, which
8 then infected the remainder of the sequential evaluation process (which is the logical conclusion of
9 Plaintiff’s stated issue). In this regard, the court will begin with noting that while it is true that it is
10 incumbent on claimants to provide sufficient medical evidence of one or more disabling
11 impairments, it has “long [been] recognized that the ALJ is not a mere umpire at [an
12 administrative proceeding], but has an independent duty to fully develop the record[.]” Higbee v.
13 Sullivan, 975 F.2d 558, 561 (9th Cir. 1992, as amended Sept. 17, 1992) (per curiam); see also
14 Sims v. Apfel, 530 U.S. 103, 110-11 (“Social Security proceedings are inquisitorial rather than
15 adversarial. It is the ALJ’s duty to investigate the facts and develop the arguments both for and
16 against granting benefits[.]”).

17 As part of this duty, the ALJ has an obligation to take reasonable steps to ensure that issues
18 and questions raised by medical evidence, particularly evidence from treating physicians, are
19 addressed so that the disability determination is fairly made on a sufficient record of information,
20 be it favorable or unfavorable to the claimant. See Tidwell v. Apfel, 161 F.3d 599, 602 (9th Cir.
21 1999); and, Cox v. Califano, 587 F.2d 988, 991 (9th Cir. 1978); see also 42 U.S.C. § 421(h). The
22 ALJ has not only the power, but the duty, to “conduct an appropriate inquiry” if the evidence is

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24 ² Court must construe pro se pleadings liberally and “interpret them ‘to raise the strongest
25 arguments that they suggest.’” McPherson v. Coombe, 174 F.3d 276, 280 (2d Cir. 1999) (quoting
26 Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994)); see also Bernhardt v. Los Angeles County,
27 339 F.3d 920, 925 (9th Cir. 2003) (“[c]ourts have a duty to construe pro se pleadings liberally,
28 including pro se motions”); Vaughn v. Berryhill, No. 2:16-CV-02425 (VEB), 2017 U.S. Dist.
LEXIS 51575, at *8 (C.D. Cal. Apr. 3, 2017) (pro se litigant’s pleadings in social security cases
are construed more liberally than pleadings prepared by counsel); and, Swart v. Berryhill, No. 16-
CV-05383-LHK, 2017 U.S. Dist. LEXIS 176133, at *6 (N.D. Cal. Oct. 24, 2017) (same) (citing
Bernhardt, 339 F.3d at 925).

1 ambiguous or inadequate to permit a proper evaluation of a claimant’s impairments. Smolen, 80
2 F.3d at 1288. If evidence from a medical source is inadequate to determine if the claimant is
3 disabled, an ALJ may be required to re-contact the medical source, including a treating physician,
4 to determine if additional needed information is readily available. See 20 C.F.R. §§
5 404.1520b(c)(1), 416.920b(c)(1); see also Webb, 433 F.3d at 687 (“[t]he ALJ’s duty to
6 supplement a claimant’s record is triggered by ambiguous evidence [or] the ALJ’s own finding
7 that the record is inadequate”). The responsibility to fulfill this duty belongs entirely to the ALJ; it
8 is not part of the claimant’s burden. See e.g., White v. Barnhart, 287 F.3d 903, 908 (10th Cir.
9 2001); see also Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir. 2001) (“This duty extends to
10 the represented as well as to the unrepresented claimant . . . The ALJ’s duty to develop the record
11 fully is also heightened where the claimant may be mentally ill and thus unable to protect her own
12 interests. Ambiguous evidence, or the ALJ’s own finding that the record is inadequate to allow for
13 proper evaluation of the evidence, triggers the ALJ’s duty to conduct an appropriate inquiry . . .
14 including: subpoenaing the claimant’s physicians, submitting questions to the claimant’s
15 physicians, continuing the hearing, or keeping the record open after the hearing to allow
16 supplementation of the record.”).

17 Here, it can not be reasonably said that the ALJ discharged the “duty to investigate the
18 facts and develop the arguments both for and against granting benefits.” Sims, 530 U.S. 103, 110-
19 11. Under circumstances presented by the findings and diagnoses of medical professionals
20 including Dr. Miskin and Dr. Kalman (paranoid schizophrenia, chronic bipolar disorder,
21 polysubstance abuse, antisocial personality disorder with impulsive and explosive traits, and
22 depression), the ALJ cannot be said to have fully and fairly developed the record in a manner that
23 protects Plaintiff’s interests by merely asking, “why are you so angry?” or “are you sad?”

24 Viewing the facts of this case in light of Tonapetyan, and notwithstanding Defendant’s
25 contention that the ALJ adequately explained why Plaintiff’s mental impairments were non-severe
26 (*see Def.’s Mot.* (dkt. 15) at 4) the court finds that the ALJ had a duty to develop the record and
27 erred by not doing so. Because both the record and Plaintiff’s testimony demonstrated the
28 existence of a series of mental impairments, the ALJ’s duty to develop the record was

1 “heightened.” See Tonapetyan, 242 F.3d at 1150; see also Plummer v. Apfel, 186 F.3d 422, 434
2 (3d Cir. 1999) (when there is a suggestion of mental impairment, an ALJ must inquire into the
3 current status of that impairment and its possible effect on a claimant’s ability to work); Jones v.
4 Bowen, 829 F.2d 524, 526 (5th Cir. 1987) (a claimant only needs to raise suspicion about a mental
5 impairment to trigger the duty to develop the record); Hilliard v. Barnhart, 442 F. Supp. 2d 813,
6 817 (N.D. Cal. 2006) (same)).

7 Here, Dr. Miskin diagnosed Plaintiff with two Axis-I psychological disorders (chronic
8 bipolar disorder and polysubstance abuse and dependence) combined with an Axis-II personality
9 disorder with “impulsive and explosive traits.” However, the ALJ appears to have rejected these
10 diagnoses in finding the conditions to be non-severe. Additionally, Dr. Kalman diagnosed Plaintiff
11 with paranoid schizophrenia and antisocial personality disorder and opined that Plaintiff would not
12 be able to interact with supervisors and co-workers; deal with the public; understand, remember
13 and carry out simple one and two-step job instructions; maintain attention, concentration and
14 memory; or, withstand the stress and pressures associated with daily work activities. Likewise, the
15 ALJ found these impairments non-severe, while also rejecting Dr. Kalman’s opinions as to their
16 work-related limitations.

17 As to Dr. Miskin’s diagnoses, the ALJ reasoned that the “report consists of only a one-time
18 examination,” and that Plaintiff otherwise “has had mostly normal mental status examinations.”
19 The court finds that this is not the sort of specific and legitimate reason for which the opinion or
20 diagnosis of an examining physician may be rejected. See Lester v. Chater, 81 F.3d 821, 830-31
21 (9th Cir. 1995) (“And like the opinion of a treating doctor, the opinion of an examining doctor,
22 even if contradicted by another doctor, can only be rejected for specific and legitimate reasons that
23 are supported by substantial evidence in the record.”). This is especially true in light of the fact
24 that the ALJ also erred by merely asking Plaintiff why he was angry, whether he was sad, and
25 whether he got along with his roommates and classmates. In light of the record before the court,
26 which reflects Plaintiff’s long history with mental illness, the ALJ should have, at a minimum,
27 asked more pointed questions to establish the parameters within which Plaintiff is able to interact
28 with those around him, or to contact Dr. Miskin to inquire further about his findings and opinions.

1 Likewise, as to Dr. Kalman’s opinions, the ALJ erred in rejecting the opinions of an
2 examining physician and basing that rejection on the notion that Plaintiff seemed okay at the
3 hearing, or that Plaintiff was “cooperative” during Dr. Kalman’s examination, or that he was
4 found to have average intelligence, perform simple calculations, play chess, socialize with others,
5 go grocery shopping alone, and attend school. On this basis, the ALJ found that Plaintiff’s mental
6 impairments do not disqualify him from performing simple, unskilled, repetitive jobs. Once again,
7 the court finds that this reasoning falls short of the standard described above due to logical
8 disconnects. For example, being cooperative during Dr. Kalman’s examination, or compliant at the
9 hearing before the ALJ, does not diminish Dr. Kalman’s diagnosis of paranoid schizophrenia or
10 antisocial personality disorder. Further, the ability to engage in certain aspects of everyday life,
11 such as playing chess or playing music, grocery shopping alone, socializing, or attending school
12 do not, by themselves, diminish Dr. Kalman’s opinions regarding Plaintiff’s work-related
13 limitations. A plaintiff’s daily activities can constitute a specific and legitimate reason to reject a
14 medical opinion only where the daily activities are inconsistent with that opinion. *Ghanim v.*
15 *Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014). Once again, in light of the record of Plaintiff’s
16 history of mental illness, the ALJ should have, at a minimum, asked more pointed questions to
17 establish the parameters within which Plaintiff is able to interact with those around him in the
18 workplace setting, or to contact Dr. Kalman to inquire further about his findings and opinions.

19 In light of the above, because the court finds that further administrative proceedings would
20 serve a useful purpose, the court orders this matter remanded for further development of the record
21 and for a reengagement of the sequential evaluation process from Step-II forward. *Garrison*, 759
22 F.3d at 1020 (before remanding for an award of benefits, the Court must find “the record has been
23 fully developed and further administrative proceedings would serve no useful purpose.”).

24 Plaintiff has also argued that the ALJ erred in failing to develop the record as to certain
25 podiatry records, failed to give proper weight to certain treating podiatric physicians’ opinions,
26 and erred in formulating the RFC. *Pl. ’s Mot.* (dkt. 12) at 3-8. However, because the court is
27 already remanding the case for further proceedings, the court declines to address Plaintiff’s
28 remaining arguments. See *Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir. 2012) (“Because we

1 remand the case to the ALJ for the reasons stated, we decline to reach [plaintiff's] alternative
2 ground for remand.”); see also Augustine ex rel. Ramirez v. Astrue, 536 F. Supp. 2d 1147, 1153
3 n.7 (C.D. Cal. 2008) (“[The] Court need not address the other claims plaintiff raises, none of
4 which would provide plaintiff with any further relief than granted, and all of which can be
5 addressed on remand.”).

6 **CONCLUSION**

7 For the reasons stated above, Plaintiff’s Motion for Summary Judgment (dkt. 12) is
8 **GRANTED**, and Defendant’s Motion for Summary Judgment (dkt. 15) is **DENIED**. The case is
9 remanded for further proceedings consistent with this opinion.

10 **IT IS SO ORDERED.**

11 Dated: August 15, 2019



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14 **ROBERT M. ILLMAN**
15 United States Magistrate Judge
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