

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEPHEN BRIAN TURNER,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. [14-cv-04525-MEJ](#)

**ORDER RE: CROSS-MOTIONS FOR
SUMMARY JUDGMENT**

Re: Dkt. Nos. 19, 20

INTRODUCTION

Plaintiff Stephen Brian Turner (“Plaintiff”) brings this action pursuant to 42 U.S.C. § 405(g), seeking judicial review of a final decision of Defendant Carolyn W. Colvin, the Acting Commissioner of Social Security, denying Plaintiff’s claim for disability benefits. Pending before the Court are the parties’ cross-motions for summary judgment. Dkt. Nos. 19, 20. Pursuant to Civil Local Rule 16-5, the motions have been submitted on the papers without oral argument. Having carefully reviewed the parties’ positions, the Administrative Record (“AR”), and relevant legal authority, the Court hereby **DENIES** Plaintiff’s motion and **GRANTS** the Commissioner’s cross-motion for the reasons set forth below.

BACKGROUND

Plaintiff was born on October 19, 1954, and was 51 years old on his disability onset date. AR 149, 156. He completed more than four years of college and graduated from medical school. AR 225, 406. His past relevant work was as a medical examiner or medical assistant. AR 18.

During his medical residency, Plaintiff was convicted of lewd and dissolute conduct for exposing himself to two minors at his workplace as well as other public places in 1984. AR 332. His medical license was revoked initially for unprofessional conduct, then stayed pending

1 probation. *Id* He was convicted of indecent exposure after exposing himself again in 1992. *Id*.
2 His medical license was suspended and he was placed on probation by the medical board. AR
3 327, 333, 340-42. During his probationary period, Plaintiff was required to undergo therapy. AR
4 334. His psychiatrist diagnosed him with exhibitionism and personality disorder with
5 predominance of narcissistic and passive aggressive features of moderate severity. AR 336. In
6 the context of administrative proceedings before the medical board, Plaintiff's psychiatrists
7 differed on their optimism about Plaintiff's prognosis, but they all noted that personality
8 characteristics are very difficult to treat. AR 336-37, 339. Plaintiff eventually agreed to surrender
9 his medical license in 1998. AR 345.

10 From May 2006 to January 2010, Plaintiff was incarcerated for grand theft and practicing
11 medicine without a license. AR 406. He had been providing medical care to immigrant patients
12 and billing for payment on procedures and tests that were never done. AR 760. He was
13 repeatedly incarcerated after 2010 due to parole violations. AR 483, 502, 525, 591, 631, 635, 763,
14 784. While incarcerated, Plaintiff obtained mental health treatment primarily for diagnoses of
15 exhibitionism, major depressive disorder, adjustment disorder, dysthymic disorder, anxiety, and
16 narcissistic personality traits. AR 395, 398, 410, 416. His Global Assessment of Functioning
17 ("GAF") scores generally ranged from 60-65.¹ AR 410, 412.

18 In an evaluation on May 14, 2007, Plaintiff reported he attended a residential school for
19 emotionally disturbed children when ages 10-14. AR 403, 406, 409. While incarcerated, he was
20 on several anti-depressants, but felt that none of them worked. AR 407. On examination, he had
21 an anxious and depressed mood, poor sleep, paranoia, poor insight, and poor judgment. AR 408.
22 Plaintiff was not interested in taking psychiatric medications at that time. AR 409. On mental
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24 ¹ According to the American Psychiatric Association's Diagnostic and Statistical Manual of
25 Mental Disorders, Fourth Edition ("DSM-IV"), a GAF of 51-60 indicates moderate symptoms
26 (e.g., flat affect and circumstantial speech, occasional panic attacks) or moderate difficulty in
27 social, occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers).
28 *See* Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 34 (4th ed. text
rev. 2000). GAF scores of 61 to 70 indicate some mild symptoms or some difficulty in social,
occupational, or school functioning, but the patient is generally functioning pretty well. *Id*.

1 status examination, Plaintiff exhibited cooperative behavior, anxious and depressed mood, normal
2 affect, normal intellectual functioning, normal memory, normal attention, normal thought process,
3 but some paranoia, and poor insight and judgment. AR 408.

4 On May 30, 2007, Plaintiff presented with anxiety and some depression. AR 399. He was
5 quite fearful, having recently been beaten. *Id.* Plaintiff received a prescription for Prozac. *Id.* On
6 mental status examination, he exhibited an anxious mood, normal affect, and normal cognition.
7 AR 400. Plaintiff's doctor assessed a GAF score of 60, and opined that Plaintiff's functional
8 impairment was "mild." AR 401.

9 In October 2007, Plaintiff reported that he was "not doing very well at all." AR 419. He
10 was not taking his prescribed medication, and he reported a long history of poor and impulsive
11 behaviors and decision-making. *Id.* In January 2008, Plaintiff's psychologist discussed his poor
12 social skills with him. AR 418. His energy was down but his activities of daily living were
13 improving. *Id.* In March 2008, Plaintiff's psychiatrist noted that Plaintiff was cooperative but
14 attention seeking at times. AR 412. He was assessed a GAF score ranging between 60 and 65.
15 AR 412. In August 2008, Plaintiff was somewhat hyper-talkative; his behavior was cooperative;
16 his mood and affect were within normal limits; his attention, concentration, and memory were
17 within normal limits; and his insight and judgment were fair to poor. AR 397.

18 In May 2009, Plaintiff had not been taking psychotropic medications and requested
19 removal from the mental health system. AR 393. On mental status examination, he was
20 cooperative, with mood and affect within normal limits; normal attention, memory and
21 concentration; and his insight and judgment were impaired. AR 394. His diagnoses were
22 exhibitionism and narcissistic personality traits, with a GAF score of 65. AR 395.

23 Plaintiff was released from prison in January 2010 and placed on parole, after which he
24 continued treatment. AR 314, 445. He returned to prison at least eight times for parole violations.
25 AR 32, 348. During an initial evaluation on March 1, 2010, Plaintiff's mental status was a little
26 hyper, intense, and obsessive; there was no indication of significant psychiatric disturbance; his
27 cognition was organized and goal directed; his speech was clear; his memory was intact; his mood
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1 seemed euthymic (non-depressed); and his affect was appropriate. AR 763-64. His children were
2 upset with him, but he was mending his relations with his ex-wife. AR 764. He reported having a
3 girlfriend while married and was a frequent visitor to massage parlors. *Id.* Plaintiff reported that
4 he became depressed and had some suicidal thoughts while he was in prison, but he was
5 prescribed anti-depressant medications for a while “and they ‘snapped [him] out of [his]
6 depression.’” *Id.* Plaintiff was considered “low risk for sexual recidivism while on supervised
7 and monitored parole.” AR 763.

8 On March 11, 2010, Plaintiff reported high anxiety, some compulsiveness, and insomnia.
9 AR 446. He was alert, oriented, and had an anxious mood. AR 452. Plaintiff’s diagnoses were
10 OCD, generalized anxiety disorder, and narcissistic personality disorder. *Id.* His GAF score was
11 38. *Id.* Plaintiff also stated that he “loathe[d] . . . restart[ing] SSRIs due to sexual side effects”
12 and was prescribed Ambien. *Id.*

13 The next month, April 2010, Plaintiff was re-incarcerated after a parole violation. AR 483.
14 In a Prison Health Services Medical Request Form dated April 11, 2010, Plaintiff reported being
15 extremely depressed and distraught because he was arrested for talking to his fiancé. AR 591. He
16 reported having a multi-million dollar lawsuit against the parole department and believed that his
17 current incarceration was a vendetta against him for filing the lawsuit. *Id.*

18 While incarcerated on July 16, 2010, Plaintiff reported a chronically low mood. AR 483.
19 His mood was agitated with matching affect. AR 494. He was having difficulty managing myriad
20 legal issues which he started as a result of his perception that he was treated unconstitutionally.
21 AR 494. On mental status examination, Plaintiff exhibited no apparent memory or cognitive
22 deficits, his thinking was clear and organized, and he received a GAF score of 65. AR 484. His
23 characterological problems had seriously interfered with his insight and judgment around his legal
24 and emotional issues. *Id.*

25 On July 30, 2010, Plaintiff was seen for a wellness check. AR 493. He reported that he
26 was a little anxious, but “pretty good generally.” *Id.* Plaintiff exhibited euthymic mood, normal
27 cognition, logical and goal-oriented thought process, and he appeared to be stable. *Id.*

1 In August 2010, his provider told him he rambles, had very poor listening skills, and was
2 difficult to interrupt. AR 492. The next month he stated he was very depressed. AR 573. He was
3 paroled again but re-incarcerated in October 2010, with another parole violation when he was at a
4 park. AR 483, 491.

5 In October 2010, Plaintiff's chief complaint to his therapist was largely around the
6 injustices of the legal system. AR 483. Plaintiff denied that medications were substantially
7 effective in the past. *Id.* The therapist noted a strong axis II component of the clinical picture and
8 that Plaintiff had a long history of narcissism, as well as traits and features of antisocial behaviors.
9 *Id.* He was stable without psychiatric medications. AR 491. Plaintiff was not ready to take
10 psychiatric medications, as he understood that his primary problem was a personality disorder. *Id.*
11 Plaintiff also noted that medications might only temporarily soften that pathology, as he did not
12 take any psych meds on the street. *Id.* He was marginally groomed with an anxious/euthymic
13 mood. *Id.* His cognition was within normal limits, and his thought process was logical and goal-
14 oriented. *Id.* He talked a lot and had a hard time listening. *Id.* Plaintiff received a GAF diagnosis
15 of 70. AR 479.

16 On November 12, 2010, Plaintiff reported that he was doing "fine," and "overall ha[d] few
17 outstanding [mental health] complaints." AR 490. On mental status examination, he had
18 cooperative behavior, euthymic mood, normal cognition, and he appeared to be stable. *Id.* On
19 November 17, 2010, Plaintiff reported that he had pervasive interpersonal difficulties leading to
20 multiple relationship, job, and ultimately, legal problems. AR 489. Plaintiff reported that he was
21 successfully treated with Effexor while he was in jail, but that the dosage of his current
22 prescription was too high, which caused anxiety. *Id.* Plaintiff then refused Effexor for a month.
23 *Id.* Plaintiff reported that his mood improved with decreased anxiety, because he was due to be
24 released on parole *Id.* On mental status examination, he exhibited an "ok" mood, affect and
25 cognition within normal limits, linear thought process, but was "somewhat digressive." *Id.* Given
26 the benefit of a low dose of Effexor, Plaintiff resumed the medication. *Id.*

27 In December 2010, Plaintiff was restarted on a low dose of Effexor and appeared stable.
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1 AR 488. On mental status examination, Plaintiff exhibited cooperative behavior, euthymic mood,
2 cognition within normal limits, and logical and goal-directed thought process. *Id.* He denied any
3 suicidal ideation. *Id.*

4 On January 1, 2011, Plaintiff reported that he was a little depressed, but that the
5 medication helped. AR 487. He exhibited an angry and depressed mood, and received a GAF
6 score of 60. *Id.* On January 18, 2011, Plaintiff exhibited cooperative behavior, euthymic mood,
7 cognition within normal limits, and received a GAF of 65. AR 475-76.

8 On January 27, 2011, Plaintiff reported that his “medication [wa]s very helpful with
9 depression.” AR 767. Plaintiff believed that his indecent exposure problem continued to be in
10 sustained remission, and that he no longer had any interest in deviant sexual behavior. AR 770.
11 Plaintiff’s social worker assessed that Plaintiff had recent situational depression while in custody,
12 but improved with medication. *Id.* Plaintiff received a GAF of 65. *Id.* He presented as pleasant
13 and friendly, a little hyper and intense and obsessive, with no indication of significant psychiatric
14 disturbance. AR 772. His cognition was organized and goal-directed, his memory was intact, and
15 his mood seemed euthymic with appropriate affect. *Id.*

16 In February 2011, Plaintiff was back on parole. AR 766-67. He described being either in
17 his room or at the law library, and was busy preparing documents for court. AR 767. He was
18 mentally stable and at low risk for recidivism. *Id.*

19 Later in February 2011, Plaintiff had another parole violation after his ankle bracelet
20 apparently broke. AR 524-25. He was hospitalized for three days on a 5150 when he stated that
21 he wanted to kill himself. AR 525, 530. Plaintiff was “mildly grandiose and somewhat expansive
22 but mindful enough and clearly intelligent enough to attenuate responses in an amended way that
23 was more appropriate.” AR 531. He admitted to frequent highs, rapid thoughts, plenty of energy,
24 and chronic difficulty sleeping. *Id.* He was perseverating about his almost 300 page legal writ.
25 *Id.* There was no genuine psychosis. AR 525. His thoughts of self-harm were considered at the
26 time, genuine and his anxiety attack real. *Id.* His GAF was 40 on admission and 50 on discharge.
27 AR 524.

1 In April 2011, Plaintiff was hospitalized again with another 5150 with thoughts of killing
2 himself after another parole violation for downloading pornography on his computer, which he
3 denied. AR 502, 756. He “was caught up in technicalities and blamed the situation, rather than
4 his repeated behavior.” AR 511. His GAF was 20 on admission and 50 on discharge. AR 502.
5 His mood was angry, affect irritable with overvalued ideations, insight diminished and impaired
6 judgment. AR 509. His diagnoses were mood disorder and personality disorder. AR 502. He
7 was “worked up and unable to speak coherently or be redirected.” AR 511. He also reported a
8 September 2010 suicide attempt.. AR 503.

9 On August 2, 2011, Plaintiff was mentally stable, but stressed about his parole conditions.
10 AR 783. On mental status examination, his cognition was organized and goal-directed, his
11 memory was intact, his mood was euthymic and his affect was appropriate. AR 792. He received
12 a GAF score of 65. AR 791.

13 On August 11, 2011, Plaintiff reported that Effexor was “effective without side effect.”
14 AR 781. Plaintiff admitted to increasing the dosage due to ongoing anxiety in regards to his
15 difficult parole conditions. *Id.* On mental status examination, he was polite with a calm mood.
16 *Id.* He continued to have depression and anxiety, but they were improved and stable on a low
17 dose of medication. AR 781-82. Plaintiff reported that his case was going to the California
18 Supreme Court. AR 782. His social worker noted that Plaintiff seemed resistant to getting a job
19 because he was busy with legal proceedings and wanted to write a book. *Id.* On August 17, 2011,
20 Plaintiff “denie[d] feeling depressed.” AR 781. On August 31, 2011, he reported getting real
21 anxious, but Effexor helped. AR 780. He found a lawyer and was in good spirits, but he was
22 “wound up like a top.” *Id.* His social worker noted that his anxiety was improved with Effexor.
23 *Id.*

24 In September 2011, Plaintiff reported that he had not received his Effexor medication for
25 two weeks. AR 779-80. He needed Effexor and was anxious. AR 80. He was quite wound-up
26 over his parole situation and legal pursuits, but he was “[g]enerally stable on psych medication.”
27 *Id.* He continued to pursue legal counsel. *Id.*

1 In November 2011, Plaintiff continued Effexor. AR 779. It was noted that the medication
2 was partially effective, but Plaintiff still felt quite anxious. *Id.* He was chronically frustrated and
3 had difficulty sleeping, ruminating over the injustice of his parole conditions. *Id.* It was
4 suggested that Plaintiff receive a higher dose of Effexor. *Id.* In December 2011, a higher dose of
5 Effexor helped. *Id.* Plaintiff did not have any side effects to the medication, was less anxious,
6 and his outlook appeared somewhat brighter and more hopeful. *Id.* Plaintiff's doctors assessed
7 improved anxiety and mood symptoms on higher dose of Effexor. *Id.*

8 Later in December 2011, another 5150 hold resulted after an arrest for a parole violation.
9 AR 635. Plaintiff was suing several hotels for allowing parole agents to enter without arrest
10 warrants. AR 641. He was kicked out of his hotel because of the lawsuits and stayed in a shelter,
11 which resulted in him violating parole. *Id.* He also filed two lawsuits against the parole
12 department for his charges of resisting arrest and terrorist threats. AR 641, 744-45. Plaintiff
13 believed he was a victim of persecution, retaliation, and entrapment. AR 641. His discharge GAF
14 was 40. AR 635.

15 On December 20, 2011, Plaintiff reported that he was no longer suicidal. AR 745, 748.
16 He claimed his mood was "normal" and reported that he was not feeling as overwhelmed as when
17 he was first brought into custody. AR 745. He presented with a sad, blunted affect and appeared
18 to have low energy, but no suicidal ideation and his behavior was within normal limits. AR 745,
19 748.

20 On January 5, 2012, Plaintiff was planning to write a book. AR 744. He was taking
21 Depakote and Effexor, which were "working well for him," and decreased his level of anxiety.
22 AR 743-44. On mental status examination, Plaintiff exhibited euthymic mood, full affect,
23 intelligent, linear and logical thought process, cooperative and polite behavior, and no suicidal
24 ideation. AR 744. On January 19, 2012, Plaintiff reported that he was "doing alright," and
25 exhibited a euthymic mood, full affect, he was fully engaged, with a linear and intelligent though
26 process. AR 742.

27 On March 1, 2012, Plaintiff continued to feel that his current dose of "Effexor . . . [wa]s
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1 helping [his] mood and anxiety.” AR 778. His history included being kicked out of several
2 medical residency programs and being a problem employee who could not get along with others.
3 *Id.* Plaintiff stated that his prior history was the reason for him being self-employed during his last
4 job. *Id.* It was unclear if his chronic interpersonal and work difficulties were attributable to
5 residual ADHD or possibly represented a personality disorder. *Id.* Plaintiff’s doctor assessed that
6 his mood and anxiety were improved on Effexor. *Id.*

7 When taken into custody in April 2012, Plaintiff was placed on another 5150 hold. AR
8 631. He was clearly manic, hypervocal, circumstantial, labile, talkative, and reported poor sleep.
9 *Id.* His presentation was somewhat grandiose. *Id.* Plaintiff claimed that he was being persecuted
10 and that he had written a book about to be published, which would cause the parole agency to be
11 shut down. *Id.* His impulse control, insight, and judgment were poor. *Id.* He made it clear he
12 was not depressed until his parole was revoked. *Id.* His providers stated this incident was the
13 fourth time he was claiming depression and suicidal ideations in context of returning to jail for
14 parole violations. AR 633. The provider also noted that it was likely an attempt to avoid
15 incarceration, but that Plaintiff required a brief period of observation to assure his safety. *Id.* His
16 GAF was 50. *Id.*

17 Later in April 2012, Plaintiff exhibited an excited mood, but he had full range of affect, he
18 was easily engaged, and he had intelligent, linear, and logical thought process. AR 739. In May
19 2012, Plaintiff exhibited an “alright” mood and reported that his medications were “okay.” AR
20 736. He exhibited a euthymic mood. *Id.*

21 In July 2012, Plaintiff was arrested when he went out of the county to file a federal lawsuit.
22 AR 784. He was focused on what he believed was unfair and abusive treatment. AR 776.
23 Plaintiff reported that as far as his mental health treatment was concerned, the Effexor medication
24 was helpful for his anxiety with no side effects, and that he did not require further assistance. .
25 AR 776-77.

26 In addition to his psychiatric treatment, Plaintiff also had an emergency room visit due to a
27 syncopal episode of an unknown cause in 2007. AR 358, 363. In 2008, he had a left shoulder
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1 rotator tear after rolling off his bunk bed, falling onto a concrete floor. AR 366. Imaging also
2 showed C4-5 degenerative disc disease with prominent posterior osteophyte neural encroachment
3 bilaterally. AR 379, 381.

4 State agency reviewing physicians initially found insufficient evidence to evaluate
5 Plaintiff's claims. AR 466, 469. Heather Barrons, Psy.D, later noted in July 2011 that medical
6 evidence was borderline as to sufficiency of functional evidence. AR 606-16. B. Williams, M.D.,
7 opined that Plaintiff had a "clear" medically determinable impairment, but that his level of
8 functioning was unclear.. AR 619. Dr. Williams noted that it would be helpful to see Plaintiff's
9 reports as well as collateral evidence from a third party. *Id.*

10 Dr. Barrons diagnosed depression and personality disorder with antisocial and narcissistic
11 features. AR 606, 611. She found moderate limitations in social functioning; moderate
12 limitations in concentration, persistence, or pace; and mild limitations in activities of daily living.
13 AR 614. In a Residual Function Capacity ("RFC")² assessment, Dr. Barrons concluded that
14 Plaintiff was capable of understanding and remembering simple instructions and brief public
15 contact. AR 605. Dr. Barrons reasoned that Plaintiff's primary medically determinable
16 impairment was his personality disorder and he likely had a more mild mood component as well.
17 AR 616. She noted that Plaintiff was rather sophisticated in his manipulation of the legal process
18 as well as the mental health system, but that objective observations by treating physicians showed
19 few significant symptoms. *Id.*

20 In his disability reports, Plaintiff reported he was occasionally disoriented and had
21 difficulty with memory and periodic episodes of severe depression. AR 242. His depression
22 interfered with proper hygiene, grooming, and sleep. AR 245. He also reported that he did not eat
23 well, had trouble sleeping, and had more difficulty taking care of himself due to his depression.
24 AR 281.

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27 ² As discussed below, RFC refers to what an individual can do in a work setting, despite mental or
28 physical limitations caused by impairments or related symptoms. 20 C.F.R. § 404.1545(a)(1).

SOCIAL SECURITY ADMINISTRATION PROCEEDINGS

This matter arises from Plaintiff's applications for Disability Insurance Benefits and Supplemental Security Income on March 16, 2010. Administrative Record ("AR") 149, 156. In both applications, Plaintiff's alleged onset date is February 1, 2006, and his date last insured is December 2009. AR 160, 178. Following the denial of his claims, Plaintiff requested a hearing, which was held on February 7, 2013, before Administrative Law Judge ("ALJ") Philip E. Callis. AR 26-44. Plaintiff testified in person at the hearing and was represented by counsel, Aggie Rose-Chavez. The ALJ also heard testimony from Vocational Expert, Joel Greenberg.

A. Plaintiff's Testimony

Plaintiff testified with representation by counsel at the February 7, 2013 hearing. He testified that he was currently living at a shelter. AR 31. At the time, he was on parole and had been violated eight times. AR 32. He could not work because he was taking Effexor for severe anxiety and depression, and his parole was a very difficult situation. *Id.* Plaintiff had problems with just about every job he had ever had. *Id.*

Plaintiff spent his time reading and going to the library. AR 33. Though he had contacted about 100 attorneys, he found it difficult to find an attorney to take his case either pro bono or on a contingency basis. *Id.* He was under tremendous stress. *Id.* Because Plaintiff was suing his psychologist, he did not complete psychiatry treatment as required by the terms of his parole. AR 33-34. In regards to his daily activities, Plaintiff testified that he reads, is involved in litigation, and goes to the library. AR 33.

B. Vocational Expert's Testimony

The vocational expert testified that Plaintiff's past relevant work was that of a medical assistant, Dictionary of Occupational Titles ("DOT") 079.362-010,³ with light specific vocational

³ The DOT describes the medical assistant position as follows: "Performs any combination of following duties under direction of physician to assist in examination and treatment of patients: Interviews patients, measures vital signs, such as pulse rate, temperature, blood pressure, weight, and height, and records information on patients' charts. Prepares treatment rooms for examination of patients. Drapes patients with covering and positions instruments and equipment. Hands instruments and materials to doctor as directed. Cleans and sterilizes instruments. Inventories and

preparation (“SVP”) 6.⁴ AR 39-40. An individual, who was limited to performing only simple, routine, or repetitive tasks with occasional public contact, would be unable to perform Plaintiff’s past work. AR 40. The individual could perform representative occupations such as hand packager, DOT 920.587-018, janitor, DOT 381.687-014, and final inspector, electrical equipment, DOT 727.687-054. AR 40-41.

The vocational expert also testified that an individual with any of the following limitations would be unable to maintain employment: (1) inability to maintain his concentration and pace throughout the day for up to 25 percent of the work day; (2) two to three absences a month on a consistent basis; (3) getting into disputes and arguments and ending up suing coworkers and supervisors; and (4) getting fed-up and leaving the job suddenly without notice to his supervisor, which happens on a consistent basis. AR 42-43. The vocational expert stated his testimony was consistent with the DOT and his own experience. AR 43.

C. The ALJ’s Findings

The regulations promulgated by the Commissioner of Social Security provide for a five-step sequential analysis to determine whether a Social Security claimant is disabled.⁵ 20 C.F.R. § 404.1520. The sequential inquiry is terminated when “a question is answered affirmatively or negatively in such a way that a decision can be made that a claimant is or is not disabled.” *Pitzer v. Sullivan*, 908 F.2d 502, 504 (9th Cir. 1990). During the first four steps of this sequential

orders medical supplies and materials. Operates x ray, electrocardiograph (EKG), and other equipment to administer routine diagnostic test or calls medical facility or department to schedule patients for tests. Gives injections or treatments, and performs routine laboratory tests. Schedules appointments, receives money for bills, keeps x ray and other medical records, performs secretarial tasks, and completes insurance forms. May key data into computer to maintain office and patient records. May keep billing records, enter financial transactions into bookkeeping ledgers, and compute and mail monthly statements to patients.” DOT 079.362–010.

⁴ “The DOT lists a specific vocational preparation (SVP) time for each described occupation. Using the skill level definitions in 20 CFR §§ 404.1568 and 416.968, unskilled work corresponds to an SVP of 1-2; semi-skilled work corresponds to an SVP of 3-4; and skilled work corresponds to an SVP of 5-9 in the DOT.” S.S.R. 00-4P. In other words, a higher SVP time corresponds to higher level positions that require increased training time.

⁵ Disability is the “inability to engage in any substantial gainful activity” because of a medical impairment which can result in death or “which has lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A).

inquiry, the claimant bears the burden of proof to demonstrate disability. *Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009). At step five, the burden shifts to the Commissioner “to show that the claimant can do other kinds of work.” *Id.* (quoting *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988)).

The ALJ must first determine whether the claimant is performing “substantial gainful activity,” which would mandate that the claimant be found not disabled regardless of medical condition, age, education, and work experience. 20 C.F.R. § 404.1520(a)(4)(i), (b). Here, the ALJ determined that Plaintiff had not performed substantial gainful activity since February 1, 2006, the alleged onset date of his disability. AR 13.

At step two, the ALJ must determine, based on medical findings, whether the claimant has a “severe” impairment or combination of impairments as defined by the Social Security Act. 20 C.F.R. § 404.1520(a)(4)(ii). If no severe impairment is found, the claimant is not disabled. 20 C.F.R. § 404.1520(c). Here, the ALJ determined that Plaintiff had the following severe impairments: narcissistic personality disorder and antisocial personality disorder. AR 13.

If the ALJ determines that the claimant has a severe impairment, the process proceeds to the third step, where the ALJ must determine whether the claimant has an impairment or combination of impairments that meet or equals an impairment listed in 20 C.F.R. Part 404, Subpt. P, App. 1. 20 C.F.R. § 404.1520(a)(4)(iii). If a claimant’s impairment either meets the listed criteria for the diagnosis or is medically equivalent to the criteria of the diagnosis, he is conclusively presumed to be disabled, without considering age, education, and work experience. 20 C.F.R. § 404.1520(d). Here, the ALJ determined that Plaintiff did not have an impairment or combination of impairments that meets the listings. AR 14.

Before proceeding to step four, the ALJ must determine the claimant’s Residual Function Capacity (“RFC”). 20 C.F.R. § 404.1520(e). RFC refers to what an individual can do in a work setting, despite mental or physical limitations caused by impairments or related symptoms. 20 C.F.R. § 404.1545(a)(1). In assessing an individual’s RFC, the ALJ must consider all of the claimant’s medically determinable impairments, including the medically determinable

1 impairments that are nonsevere. 20 C.F.R. § 404.1545(e). Here, the ALJ determined that Plaintiff
2 has the RFC to “perform a full range of work at all exertional levels but is limited to simple
3 repetitive tasks with occasional public contact.” AR 14.

4 The fourth step of the evaluation process requires that the ALJ determine whether the
5 claimant’s RFC is sufficient to perform past relevant work. 20 C.F.R. §§ 404.1520(a)(4)(iv);
6 404.1520(f). Past relevant work is work performed within the past 15 years that was substantial
7 gainful activity, and that lasted long enough for the claimant to learn to do it. 20 C.F.R. §
8 404.1560(b)(1). If the claimant has the RFC to do his past relevant work, the claimant is not
9 disabled. 20 C.F.R. § 404.1520(a)(4) (iv). Here, the ALJ determined that Plaintiff could not
10 perform his past relevant work. AR 17-18.

11 In the fifth step of the analysis, the burden shifts to the Commissioner to prove that there
12 are other jobs existing in significant numbers in the national economy which the claimant can
13 perform consistent with the claimant’s RFC, age, education, and work experience. 20 C.F.R. §§
14 404.1520(g); 404.1560(c). The Commissioner can meet this burden by relying on the testimony of
15 a vocational expert or by reference to the Medical-Vocational Guidelines at 20 C.F.R. Part 404,
16 Subpt. P, App. 2. *Lounsbury v. Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006). Here, based on
17 the testimony of the vocational expert, Plaintiff’s age, education, work experience, and RFC, the
18 ALJ determined that there are jobs that exist in significant numbers in the national economy that
19 Plaintiff could perform, such as hand packager, janitor, and final inspector of electrical equipment.
20 AR 18-19.

21 **D. ALJ’s Decision and Plaintiff’s Appeal**

22 On March 7, 2013, the ALJ issued an unfavorable decision finding that Plaintiff was not
23 disabled. AR 11-19. This decision became final when the Appeals Council declined to review it
24 on August 14, 2014. AR 1-3. Having exhausted all administrative remedies, Plaintiff commenced
25 this action for judicial review pursuant to 42 U.S.C. § 405(g). On March 13, 2015, Plaintiff filed
26 the present Motion for Summary Judgment. Dkt. No. 19. On April 9, 2015, the Commissioner
27 filed a Cross-Motion for Summary Judgment. Dkt. No. 20.

LEGAL STANDARD

This Court has jurisdiction to review final decisions of the Commissioner pursuant to 42 U.S.C. § 405(g). The ALJ's decision must be affirmed if the findings are "supported by substantial evidence and if the [ALJ] applied the correct legal standards." *Holohan v. Massanari*, 246 F.3d 1195, 1201 (9th Cir. 2001) (citation omitted). "Substantial evidence means more than a scintilla but less than a preponderance" of evidence that "a reasonable person might accept as adequate to support a conclusion." *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (quoting *Flaten v. Sec'y of Health & Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995)). The court must consider the administrative record as a whole, weighing the evidence that both supports and detracts from the ALJ's conclusion. *McAllister v. Sullivan*, 888 F.2d 599, 602 (9th Cir. 1989). However, "where the evidence is susceptible to more than one rational interpretation," the court must uphold the ALJ's decision. *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989) (citation omitted). Determinations of credibility, resolution of conflicts in medical testimony, and all other ambiguities are to be resolved by the ALJ. *Id.*

Additionally, the harmless error rule applies where substantial evidence otherwise supports the ALJ's decision. *Curry v. Sullivan*, 925 F.2d 1127, 1131 (9th Cir. 1990). A court may not reverse an ALJ's decision on account of an error that is harmless. *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (citing *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055-56 (9th Cir. 2006)). "[T]he burden of showing that an error is harmful normally falls upon the party attacking the agency's determination." *Id.* (quoting *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009)).

DISCUSSION

Plaintiff raises four issues in his motion: (1) whether his impairments met or equaled Listing 12.08; (2) whether the ALJ properly evaluated his RFC; (3) whether the ALJ provided sufficient explanation for his credibility assessment; and (4) whether the ALJ had a duty to further develop the record. The Court shall consider each in turn.

A. Listing 12.08

The ALJ found Plaintiff has severe impairments including narcissistic personality disorder and antisocial personality disorder. AR 13. Plaintiff argues that the ALJ provided no more than boilerplate findings and, despite his “attorney’s detailed pre-hearing brief explaining how Mr. Turner met each element of listing 12.08 (personality disorders), the ALJ failed to mention listing 12.08.” Pl.’s Mot. at 3. Plaintiff maintains that he meets each element of Listing 12.08, and the ALJ “erred in neglecting to mention the listing at all and provided no more than boilerplate language at step three.” *Id.*

In response, Defendant argues that the ALJ properly evaluated whether Plaintiff met a Listing at step three of the sequential evaluation process using the technique set out in 20 C.F.R. §§ 404.1520(a), 416.920(a). Def.’s Mot. at 2. Under this technique, the Commissioner rates the degree of the claimant’s mental limitations in four broad functional areas: activities of daily living; social functioning; concentration, persistence, and pace; and episodes of decompensation. 20 C.F.R. §§ 404.1520(a), 416.920(a). Then, the Commissioner compares these ratings to the criteria in the appropriate listing. *Id.* Although the ALJ did not specifically identify his consideration of Listing 12.08, Defendant maintains that the ALJ rated Plaintiff’s functioning in each of the four broad functional categories and found that Plaintiff’s mental impairments do not cause at least two “marked” limitations, which is necessary for Plaintiff to meet the criteria for Listing 12.07. Def.’s Mot. at 2.

As discussed above, at step three, the ALJ must determine whether the claimant has an impairment or combination of impairments that meet or equals an impairment listed in 20 C.F.R. Part 404, Subpt. P, App. 1. Listing 12.08 refers to “Personality Disorders.”⁶ 20 C.F.R. Part 404, Subpart P, App. 1, § 12.08. In order to meet Listing 12.08, a claimant must be able to show that that he meets the requirements of both subsections “A” and “B.” *Id.* To satisfy the criteria set

⁶ 12.08 Personality Disorders: “A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness.” 20 C.F.R. § Pt. 404, Subpt. P, App. 1.

1 forth in subsection A, the claimant must be able to show behavior associated with one of the
2 following: (1) seclusiveness or autistic thinking; (2) pathologically inappropriate suspiciousness or
3 hostility; (3) oddities of thought, perception, speech and behavior; (4) persistent disturbances of
4 mood or affect; (5) pathological dependence, passivity, or aggressivity; or (6) intense and unstable
5 interpersonal relationships and impulsive and damaging behavior. *Id.* To satisfy the criteria set
6 forth in subsection B, the claimant must be able to show that he has at least two of the following:
7 “(1) Marked restriction of activities of daily living; or (2) Marked difficulties in maintaining social
8 functioning; or (3) Marked difficulties in maintaining concentration, persistence, or pace; or (4)
9 Repeated episodes of decompensation, each of extended duration.” *Id.*

10 A claimant bears the burden of proving that his or her impairments satisfy all the criteria of
11 a particular listing. *Tackett v. Apfel*, 180 F.3d 1094, 1099 (9th Cir. 1999) (“Tackett had to
12 establish that he met or equaled each of the following characteristics of a listing.”). “For a
13 claimant to show that his impairment matches a listing, it must meet *all* of the specified medical
14 criteria. An impairment that manifests only some of those criteria, no matter how severely, does
15 not qualify.” *Sullivan v. Zebley*, 493 U.S. 521, 530 (1990) (emphasis in original).

16 In the present case, the ALJ concluded at step three that Plaintiff “does not have an
17 impairment or combination of impairments that meets or medically equals one of the listed
18 impairments in 20 CFR Part 404, Subpart P, Appendix 1.” AR 14. In coming to this conclusion,
19 the ALJ considered whether Plaintiff’s mental impairments met the criteria of Listing 12.07
20 (somatoform disorders). *Id.* 20 C.F.R. Part 404, Subpart P, App. 1, § 12.07. Listing 12.07 has the
21 same subsection B requirements as Listing 12.08, and both require a claimant to satisfy at least
22 two of the criteria set forth therein. *Id.* Thus, although the ALJ did not specifically identify
23 Listing 12.08, he rated Plaintiff’s functioning in each of the four broad functional categories. AR
24 14. The ALJ found that Plaintiff had moderate difficulties in his activities of daily living,
25 moderate difficulties with social functioning, moderate difficulties with concentration, persistence
26 and pace, and no episodes of decompensation. AR 14. Thus, the ALJ found that Plaintiff’s
27 mental impairments do not cause at least two “marked” limitations, which is necessary for him to
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1 meet the “Paragraph B” criteria for Listing 12.07. AR 14. *See* 20 C.F.R. Part 404, Subpart P,
2 App. 1, §§ 12.07, 12.08. Although the ALJ did not specifically discuss whether Plaintiff met
3 Listing 12.08, his analysis for Listing 12.07 was equally applicable to Listing 12.08.

4 Moreover, the ALJ’s determination was supported by substantial evidence. The ALJ noted
5 that Plaintiff’s “numerous jail and prison terms, the loss of his license to practice medicine for
6 repeated acts of exposing himself, and his statements about suing everyone involved, including
7 parole agents and mental health professionals, are consistent with a mental disturbance.” AR 17.
8 However, he found that “there is no persuasive evidence that the claimant would be unable to
9 perform simple, repetitive tasks, if limited to only occasional public contact.” *Id.* The record
10 supports this finding. In May 2007, Plaintiff’s doctor opined that Plaintiff’s functional impairment
11 was “mild.” AR 401. In August 2008, Plaintiff’s behavior was cooperative; his mood and affect
12 were within normal limits; his attention, concentration, and memory were within normal limits;
13 and his insight and judgment were fair to poor. AR 397. In May 2009, Plaintiff had not been
14 taking psychotropic medications and requested removal from the mental health system. AR 393.
15 On mental status examination, he was cooperative, with mood and affect within normal limits;
16 normal attention, memory and concentration; and his insight and judgment were impaired. AR
17 394. During an evaluation on March 1, 2010, the evaluator found no indication of significant
18 psychiatric disturbance; Plaintiff’s cognition was organized and goal directed; his speech was
19 clear; his memory was intact; his mood seemed euthymic (non-depressed); and his affect was
20 appropriate. AR 763-64. In July 2010, Plaintiff exhibited no apparent memory or cognitive
21 deficits, and his thinking was clear and organized. AR 484. On mental status examination in
22 November 2010, Plaintiff had cooperative behavior, euthymic mood, normal cognition and he
23 appeared to be stable. AR 490. In August 2011, Plaintiff’s cognition was organized and goal-
24 directed, his memory was intact, his mood was euthymic, and his affect was appropriate. AR 792.
25 His social worker noted that Plaintiff seemed resistant to getting a job because he was busy with
26 legal proceedings and wanted to write a book. AR 782. In December 2011, Plaintiff’s doctors
27 assessed improved anxiety and mood symptoms on higher dose of Effexor. AR 779. In January
28

2012, Plaintiff exhibited euthymic mood, full affect, intelligent, linear and logical thought process, cooperative and polite behavior, and no suicidal ideation. AR 742, 744. In April of 2012, Plaintiff had full range of affect, was easily engaged, and he had intelligent, linear, and logical thought process. AR 739. Based on this record, there is no indication that Plaintiff's mental impairments significantly limited his mental ability to do basic work activities, let alone reach the more stringent requirements of Listing 12.08.

In regards to Plaintiff's assertion that his pre-hearing brief cited supporting evidence for how he met each element of Listing 12.08, the referenced brief makes general allegations of mental dysfunction and argues that Plaintiff had marked restrictions in activities of daily living and social functioning. AR 321. However, the brief cites to no medical opinion in which these restrictions were made. Plaintiff's "generalized assertion of functional problems" is insufficient to demonstrate that he met or equaled a listing at step three. *Tackett*, 180 F.3d at 1100; *see also Lewis v. Apfel*, 236 F.3d 503, 514 (9th Cir. 2001) (claimant "offered no theory, plausible or otherwise, as to how his seizure disorder and mental retardation combined to equal a listed impairment. Nor has he pointed to evidence that shows that his combined impairments equal a listed impairment"). Absent Plaintiff presenting evidence that he met "all of the specified medical criteria" of a listing, the ALJ did not err in continuing his analysis beyond step three. *Sullivan v. Zebley*, 493 U.S. 521, 530 (1990); *see also Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005) ("An ALJ is not required to discuss the combined effects of a claimant's impairments or compare them to any listing in an equivalency determination, unless the claimant presents evidence in an effort to establish equivalence."); *Gonzalez v. Sullivan*, 914 F.2d 1197, 1201 (9th Cir. 1990) (the ALJ need not explain "why a claimant failed to satisfy every different section of the listing of impairments").

As noted above, the claimant "bears the burden of proving that . . . she has an impairment that meets or equals the criteria of an impairment listed in Appendix 1 of the Commissioner's regulations." *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005); *Tackett*, 180 F.3d at 1099. Here, Plaintiff failed to articulate a plausible theory regarding how the specific criteria of any

listing is met or equaled. Accordingly, the ALJ’s step three determination was without error.

B. RFC

In his RFC assessment, the ALJ determined that Plaintiff could “perform a full range of work at all exertional levels but is limited to simple repetitive tasks with occasional public contact.” AR 14. Plaintiff argues that the ALJ failed to discuss how the evidence supports the RFC. Pl.’s Mot. at 3. Specifically, Plaintiff maintains that the ALJ neglected to indicate what evidence he would find “persuasive,” or what specific evidence he found unpersuasive. *Id.* at 4. Plaintiff also notes that the ALJ failed to mention the only medical opinion in the record, the State agency reviewing opinion, and he did not link the RFC to any specific medical or nonmedical facts such as daily activities, or base it on medical opinion evidence. *Id.*

In response, Defendant argues that the ALJ’s RFC finding is consistent with the only medical opinion of record, that of State agency psychologist, Heather Barrons, Psy.D., who opined that Plaintiff was capable of simple work and brief/limited public contact. Def.’s Mot. at 4 (citing AR 605, 616). Defendant contends that, to the extent Dr. Barrons’ opinion was consistent with other evidence in the record, it constituted substantial evidence supporting the ALJ’s RFC finding. *Id.*

RFC is the most a claimant can do despite her limitations. 20 C.F.R. § 404.1545(a). It is assessed by considering all the relevant evidence in a claimant’s case record. *Id.*; *see also Richardson v. Perales*, 402 U.S. 389, 401 (1971). When a case is before an ALJ, it is the ALJ’s responsibility to assess a claimant’s RFC. 20 C.F.R. § 404.1546(c); *see also Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001) (“It is clear that it is the responsibility of the ALJ, not the claimant’s physician, to determine residual functional capacity.”). “Generally, the more consistent an opinion is with the record as a whole, the more weight [the ALJ] will give to that opinion.” 20 C.F.R. § 416.927(c)(4).

Here, although Plaintiff disputes the ALJ’s RFC finding, he largely relies upon his history of “troubled behavior,” dating back to 1984, and cites little evidence of significant dysfunction during the relevant disability determination period. Pl.’s Mot. at 7. Though there is no dispute

that Plaintiff has engaged in criminal and exhibitionist behavior in the past (AR 327, 332-33 – lewd and indecent exposure; 340-42, 406 – grand theft and practicing medicine without a license), such behavior did not persist during the relevant period. In fact, upon his release from prison, a treating social worker opined that Plaintiff appeared to have a “low risk” of sexual recidivism (AR 763, 767), and Plaintiff reported that he believed his exposure problem continued to be in sustained remission, and that he no longer had any interest in deviant sexual behavior (AR 770). Although he had many parole violations and brief periods of re-incarceration (AR 483, 502, 525, 591, 631, 635, 763, 781), he generally exhibited calm and cooperative behavior during treatment appointments (AR 397, 408, 475-76, 488, 490, 744, 745, 748, 770). Moreover, other than brief periods of symptom exacerbation accompanying Plaintiff’s arrests for parole violations (AR 502, 525, 530, 631, 635, 756), he received GAF scores ranging between 60 and 70, indicating only mild to moderate mental symptoms (AR 395, 401, 410, 412, 475-76, 479, 484, 487, 770, 791).

Plaintiff also emphasizes his diagnosis of personality disorder and his poor listening skills. Pl.’s Mot. at 8. However, the mere diagnosis of personality disorder did not provide any insight into the impairments limiting effects, nor did comments regarding Plaintiff’s poor listening skills during therapy sessions necessarily reflect his level of mental functioning. *See Sample v. Schweiker*, 694 F.2d 639, 642-43 (9th Cir. 1982) (an impairment alone is not “per se disabling”; rather, “there must be proof of the impairment’s disabling severity”). During mental status examinations, Plaintiff consistently demonstrated normal intellectual functioning, normal memory, normal concentration, and normal thought process (AR 397, 400, 408, 475-76, 484, 488-90, 493, 722, 744, 763-64, 770, 792). During this time, Plaintiff also reported writing a 300-page legal writ (AR 531), spent his time reading and going to the law library (AR 33, 767), and intended to write a book (AR 744, 783). He seemed resistant to getting a job because he said he was busy with his legal proceedings. AR 782.

Additionally, in regards to Plaintiff’s depression, treatment notes show that he experienced significant improvement with medication. Plaintiff reported that he had depression and suicidal thoughts while incarcerated for four years, but anti-depressant medications “snapped [him] out of”

it. AR 764. He appeared brighter and more hopeful on anti-depressant medication (Effexor) (AR 779), and reported that it was helpful and effective at treating his depression and anxiety (AR 743-744 – Depakote and Effexor “working well for him”; 776-78 – “Effexor at this dose is helping mood and anxiety”; 779-81 – “effective without side effect” and Plaintiff “denie[d] feeling depressed”). And, while taking anti-depressant medication, Plaintiff generally exhibited a euthymic (non-depressed) mood during mental status examinations (AR 475-76, 488, 490-91, 493, 722, 736, 742, 744, 763-64, 792). *See Warre v. Comm’r of Soc. Sec.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (“Impairments that can be controlled effectively with medication are not disabling for the purpose of considering eligibility for SSI benefits.”); *Sample*, 694 F.2d at 642-44 (mental impairments that are “amenable to control” are not disabling).

Finally, although Plaintiff argues that the ALJ committed error when he failed to mention Dr. Barrons’ opinion, Plaintiff subsequently concedes that the ALJ’s RFC finding was consistent with her opinion. Pl.’s Mot. at 10 (“State agency opinion is consistent with the ALJ’s RFC.”). Dr. Barron opined that Plaintiff was capable of simple work and brief/limited public contact. AR 605, 616. As a nonexamining physician, Dr. Barrons’ opinion is presumptively entitled to less weight than the opinions of treating and examining physicians. *See, e.g., Smolen v. Chater*, 80 F.3d 1273, 1285 (9th Cir. 1996) (explaining that a treating physician’s opinion is entitled to greater weight than the opinion of a nontreating, nonexamining physician). However, to the extent Dr. Barrons’ opinion was consistent with other evidence in the record, it constituted substantial evidence supporting the ALJ’s RFC finding. *See Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir. 1996) (findings of a nontreating, nonexamining physician can amount to substantial evidence, so long as other evidence in the record supports those findings); *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1221, 1227 (9th Cir. 2009) (the ALJ properly relied “in large part on the DDS physician’s assessment” in assessing the claimant’s RFC). Here, the record reflects that the ALJ thoroughly reviewed all the evidence and, as discussed above, substantial evidence, including Dr. Barrons’ consistent opinion, supports the ALJ’s RFC finding. It is the ALJ’s duty, not that of a doctor, to determine RFC. *See Vertigan*, 260 F.3d at 1049. Plaintiff fails to point to any opinion

or other evidence, which makes Dr. Barrons’ opinion or the ALJ’s decision unreasonable. Accordingly, the ALJ’s RFC determination must be upheld.

C. Credibility

In his decision, the ALJ found that Plaintiff’s “medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, his statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely credible for the reasons explained in this decision.” AR 17. The ALJ reasoned that “[e]ven crediting the claimant’s testimony, there is nothing therein which would preclude work activity consisting of simple, repetitive tasks, with only occasional public contact.” *Id.*

Plaintiff argues that this statement does not satisfy the requirement for specific reasoning, as the ALJ identified no specific testimony that undermines his credibility. Pl.’s Mot. at 4. Plaintiff also argues that his hearing testimony, disability reports, and statements to doctors are not consistent with the RFC as the ALJ alleged. *Id.* Specifically, he notes that he stated he was occasionally disoriented and had difficulty with memory and periodic episodes of severe depression (AR 242); his depression interfered with proper hygiene, grooming and sleep (AR 245); he did not eat well, had trouble sleeping and had difficulty taking care of himself due to his depression (AR 281). He conceded to his providers of pervasive interpersonal difficulties leading to multiple relationship, job, and ultimately, legal problems (AR 489); and he reported a long history of poor and impulsive behaviors and decision-making (AR 419). Pl.’s Mot. at 4-5. Plaintiff further argues that “the ALJ failed to consider that ‘the characteristics that define a personality disorder may not be considered problematic by the individual (i.e., the traits are often ego-syntonic). To help overcome this difficulty, supplemental information from other informants may be helpful.’” *Id.* at 5 (quoting American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, 647 (5th ed. 2013)). Because he was not always aware of or convinced of his disability, Plaintiff maintains that some of his statements are not dependable indications of his functional capacity. *Id.*

A two-step analysis is used when determining whether a claimant’s testimony regarding

their subjective pain or symptoms is credible. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007). First, it must be determined “whether the claimant has presented objective medical evidence of an underlying impairment ‘which could reasonably be expected to produce the pain or other symptoms alleged.’” *Id.* at 1036 (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991) (en banc)). A claimant does not need to “show that her impairment could reasonably be expected to cause the severity of the symptom she has alleged; she need only show that it could reasonably have caused some degree of the symptom.” *Id.* (quoting *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996)).

Second, if the claimant has met the first step and there is no evidence of malingering, “the ALJ can reject the claimant’s testimony about the severity of her symptoms only by offering specific, clear and convincing reasons for doing so.” *Id.* (quoting *Smolen*, 80 F.3d at 1281). “The ALJ must state specifically which testimony is not credible and what facts in the record lead to that conclusion.” *Smolen*, 80 F.3d at 1284. Where the ALJ “has made specific findings justifying a decision to disbelieve an allegation of excess pain, and those findings are supported by substantial evidence in the record,” courts must not engage in second-guessing. *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989). However, a finding that the claimant lacks credibility cannot be premised wholly on a lack of medical support for the severity of his pain. *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 793 (9th Cir. 1997) (citing *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995); *Cotton v. Bowen*, 799 F.2d 1403, 1407 (9th Cir. 1986) (“‘Excess pain’ is, by definition, pain that is unsupported by objective medical findings.”)).

Factors that an ALJ may consider in weighing a claimant’s credibility include: “[claimant’s] reputation for truthfulness, inconsistencies either in [claimant’s] testimony or between [his] testimony and [his] conduct, claimant’s daily activities, [his] work record, and testimony from physicians and third parties concerning the nature, severity, and effect of the symptoms of which claimant complains.” *Thomas*, 278 F.3d at 958-59. Here, the ALJ properly considered these factors in making an adverse credibility finding:

After careful consideration of the evidence, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are not credible to the extent they are inconsistent with the above residual capacity assessment. (Exhibits 2F and 24F). The claimant also reported that he is independent in dressing, feeding, and hygiene, and able to take out the garbage, do laundry, and drive and put gasoline into his car (Exhibit 5F, p.2). At the hearing, he admitted that he drove several times per day, transporting his children to and from school and track practice. He testified that he goes to the store with his wife, is active in his church, performs volunteer work, and plays video games.

While the claimant has an excellent work history and earnings record, the medical records do not show that he is incapable of light exertional activity.

(AR 27-28.)

While the failure of the medical record to fully corroborate a claimant's subjective symptom testimony is not, by itself, a legally sufficient basis for rejecting such testimony, it is a factor that the ALJ may take into account when making a credibility determination. *See Rollins*, 261 F.3d 853, 856, 858 (9th Cir. 2001). Thus, the Court finds that the ALJ did not err when she considered the lack of objective evidence and objective functional restrictions as a factor in assessing Plaintiff's credibility.

Here, although Plaintiff argues that the ALJ erred by providing a legally insufficient credibility evaluation, the ALJ noted that, "[e]ven crediting Plaintiff's testimony, there is nothing therein which would preclude work activity consisting of simple, repetitive tasks, with only occasional public contact." AR 17. Plaintiff fails to account for the fact that the ALJ determined the RFC determination would be the same regardless of his credibility.

Regardless, although Plaintiff generally claimed he could not work, he failed to identify any specific limitations that would prevent him from doing so. *See* AR 27-36. In fact, Plaintiff appeared to attribute most of his current stress and frustration to his parole conditions, as opposed to an underlying mental impairment. AR 32, 35, 781. He also admitted that he spent a great deal of time involved in litigation, including seeking out an attorney, reading, and going to the law library. AR 33, 531, 767. These activities are not inconsistent with Plaintiff's ability to perform

simple work and engage in occasional public contact. *See Burch*, 400 F.3d at 681 (an ALJ may discount a claimant’s credibility if the claimant engages in numerous daily activities involving skills that could be transferred to the workplace); *Light*, 119 F.3d at 793 (ALJ may also make an adverse credibility finding if there are inconsistencies between the claimant’s testimony about his daily activities and his testimony about the nature, effect, or severity of his symptoms). Moreover, as discussed above, Plaintiff’s intact cognition, cooperative behavior, and euthymic mood during mental status examinations show that he did not have disabling mental symptoms, and he admitted that anti-depressant medications were effective at treating his depression. AR 475-76, 488, 490-91, 493, 722, 736, 742-44, 763-64, 776-81, 792. Accordingly, the Court finds that the ALJ’s decision is supported by substantial evidence and free of legal error. Therefore, no reversible error was committed.

D. ALJ’s Duty to Develop the Record

Finally, Plaintiff argues that, despite indication of significant social limitations, he was never given a psychiatric or psychological evaluation. Pl.’s Mot. at 10. Plaintiff contends that additional evidence submitted after the State agency review reveals the extent of his impairment exceeds Dr. Barrons’ opinion. *Id.* This evidence includes the psychiatric opinions contained in reports of Plaintiff’s medical license suspension, his behavior on parole, his obsession with lawsuits, and frequent re-incarcerations. *Id.* (citing AR 323-45, 620-800). Additionally, Plaintiff notes that at least one doctor noted that a clarifying diagnosis would likely require psychological testing, which is further indication of the necessity of a consultative evaluation. *Id.* (citing AR 778). Plaintiff contends that the record “shows a disregard for the rights of others, repeated performance of acts that are grounds for arrest, poor impulse control, deceitfulness, consistent irresponsibility, and lack of remorse.” *Id.* at 7.

In response, Defendant argues that the evidence regarding Plaintiff’s mental functioning was neither ambiguous nor insufficient to allow proper evaluation. Def.’s Mot. at 8.

“In Social Security cases, the ALJ has a special duty to develop the record fully and fairly and to ensure that the claimant’s interests are considered, even when the claimant is represented by

counsel.” *Mayes v. Massanari*, 276 F.3d 453, 459 (9th Cir. 2001) (citations omitted); *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005) (“The ALJ’s duty to supplement a claimant’s record is triggered by ambiguous evidence, the ALJ’s own finding that the record is inadequate or the ALJ’s reliance on an expert’s conclusion that the evidence is ambiguous.”).

However, it remains the claimant’s duty to prove that he was disabled. *Mayes*, 276 F.3d at 459 (citing 42 U.S.C. § 423(d)(5) (Supp. 2001) (“An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require.”)). The ALJ is only obligated to further develop the record if the evidence is ambiguous or the record is inadequate. *Id.* at 459-60 (“An ALJ’s duty to develop the record further is triggered only when there is ambiguous evidence or when the record is inadequate to allow for proper evaluation of the evidence.”); *Rodriguez v. Astrue*, 2010 WL 3835683, *5 (N.D. Cal. Sep. 28, 2010).

At the second step in his analysis, the ALJ determined that Plaintiff had the following severe impairments: narcissistic personality disorder and antisocial personality disorder. AR 13. However, he determined that Plaintiff did not have an impairment or combination of impairments that meets the listings, and therefore found that he has the RFC to perform a full range of work, but limited him to simple repetitive tasks and occasional public contact. AR 14. As discussed above, substantial evidence supports this finding. The record contains many mental status examinations, during which Plaintiff regularly exhibited cooperative behavior, normal concentration and memory, euthymic (non-depressed) mood, and normal thought process. AR 475-76, 488, 490-91, 493, 722, 736, 742, 744, 763-64, 792. Progress notes also showed that anti-depressant medications were effective at treating Plaintiff’s depression. AR 475-76, 488, 490-91, 493, 722, 736, 742-44, 763-64, 776, 777-81, 792. Although Plaintiff was placed on an involuntary hold for suicidal thoughts on each occasion he was arrested for a parole violation (AR 502, 525, 530, 631, 635, 756), it was noted that Plaintiff’s suicidal allegations were “likely . . . an attempt to avoid incarceration” (AR 633). This is unambiguous evidence that allowed for proper evaluation of Plaintiff’s mental functional capacity. Although the ALJ has a special duty to develop the

record to ensure a claimant's interests are considered, that duty is triggered only where there is "ambiguous evidence or when the record is insufficient to allow for proper evaluation of the evidence." *Mayes*, 276 F.3d at 459-60.

Further, the burden is on Plaintiff, not the Commissioner, to produce complete medical records. *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999); *see also Mayes*, 276 F.3d at 459 (it is the claimant's duty to prove he is disabled); 42 U.S.C. § 423(d)(5)(A) (the claimant must furnish medical and other evidence of his disability); 20 C.F.R. §§ 404.1512(c), 416.912(c) ("You must provide medical evidence showing that you have impairment(s) and how severe it is during the time you say you are disabled."). While an ALJ may supplement the medical record by ordering a consultative examination, ordering such an examination is not required. *See* 20 C.F.R. §§ 404.1512(e), 404.1517; 416.912(e), 416.917 ("we *may* ask you to attend one or more consultative examinations") (emphasis added). As the record before the ALJ was neither ambiguous nor inadequate to allow for proper evaluation of the evidence, the Court finds that the ALJ had no duty to develop the record.

Plaintiff also cites to the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* ("DSM-V"), and argues that behavior and characteristics such as those in the record can cause significant enough social limitations to result in a finding of antisocial personality disorder⁷ and narcissistic personality disorder.⁸ Pl.'s Mot. at 6. However, while personality disorders may cause significant social limitations resulting in a finding of disability, the mere fact that Plaintiff was diagnosed with a personality disorder is itself,

⁷ Under the DSM-V, antisocial personality disorder is characterized as a "disregard for and violation of the rights of others, occurring since age 15 years," as indicated by three or more of several listed behaviors such as "failure to conform to social norms with respect to lawful behaviors, as indicated by repeatedly performing acts that are grounds for arrest"; and "deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure." DSM-V at 659. Other relevant behaviors are impulsivity, irritability and aggressiveness, reckless disregard for safety of self or others, consistent irresponsibility, and lack of remorse. *Id.*

⁸ Narcissistic personality disorder is characterized by a grandiose sense of self-importance, sense of entitlement, interpersonally exploitative, lacking empathy, and requiring excessive admiration, among other behaviors. *Id.* at 669-70.

1 insufficient evidence of a disabling impairment. *Sample*, 694 F.2d at 642-43 (an impairment alone
2 is not “per se disabling”; rather, “there must be proof of the impairment’s disabling severity”).
3 Thus, any such diagnosis did not mandate the ALJ to develop the record further by ordering a
4 consultative psychological examination. Once again, it remains Plaintiff’s duty to prove that he
5 was disabled. *Mayes*, 276 F.3d at 459. Accordingly, the ALJ’s decision is free of legal error.

6 **CONCLUSION**

7 For the reasons stated above, the Court hereby **DENIES** Plaintiff’s Motion for Summary
8 Judgment and **GRANTS** Defendant’s Cross-Motion for Summary Judgment. Judgment shall be
9 entered accordingly.

10 **IT IS SO ORDERED.**

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12 Dated: June 5, 2015

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16 MARIA-ELENA JAMES
17 United States Magistrate Judge
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