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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LONDALE HAYNESWORTH,
Plaintiff,
v.
NANCY A. BERRYHILL,¹
Defendant.

Case No. 16-cv-04006-JCS

**ORDER ON CROSS MOTIONS FOR
SUMMARY JUDGMENT**

I. INTRODUCTION

Plaintiff Londale Haynesworth moves for summary judgment seeking judicial review of the final decision of the Commissioner of the Social Security Administration (the “Commissioner”) denying his application for disability benefits under Title XVI of the Social Security Act. Haynesworth requests the Court reverse the Commissioner’s denial of benefits and remand for an award of benefits. In the alternative, Haynesworth requests the Court remand the matter for further administrative proceedings. The Commissioner filed a cross-motion for summary judgment and requests the Court affirm the denial of benefits to Haynesworth. In the alternative, the Commissioner requests the Court remand for further administrative proceedings if the Court grants Haynesworth’s motion for summary judgment. For the reasons articulated below, the Court GRANTS Haynesworth’s motion for summary judgment, DENIES the Commissioner’s cross-motion for summary judgment, reverses the decision of the Commissioner, and remands the matter with instructions to award benefits.

¹ Nancy Berryhill became the Acting Commissioner of Social Security on January 23, 2017, and is therefore substituted for Carolyn W. Colvin as the Defendant in this action. See 42 U.S.C. § 405(g); Fed. R. Civ. P. 25(d).

1 **II. BACKGROUND**

2 **A. Procedural History**

3 On June 7, 2010, Haynesworth filed a Title XVI application for Supplemental Security
4 Income, alleging disability beginning on August 2, 2007. Administrative Record (“AR,” dkt. 19)
5 at 90 (administrative law judge’s decision summarizing the procedural history of Haynesworth’s
6 application). The Social Security Administration denied Haynesworth’s claim on December 29,
7 2010, and again on reconsideration on on March 18, 2011. *Id.* On May 25, 2011, Haynesworth
8 filed a written request for a hearing before an administrative law judge (“ALJ”). *Id.* A hearing
9 was held on March 13, 2012, but did not proceed because Haynesworth requested a continuance in
10 order to obtain representation, which ALJ John J. Flanagan granted. *Id.* At that time, ALJ
11 Flanagan requested Haynesworth update his medical record because there was no evidence of
12 treatment since 2010 in the record at that time. *Id.*

13 A second hearing was held on October 25, 2012, and additional treating medical evidence
14 was presented and entered into the record. *Id.* Haynesworth and Jose L. Chaparro, an impartial
15 vocational expert, testified at that hearing. *Id.* Haynesworth was represented by Ethel M. Prevost,
16 his grandmother, whom he lives with, and who is not an attorney. *Id.* ALJ Flanagan issued a
17 decision on December 14, 2012, finding Haynesworth not disabled under section 1614(a)(3)(A) of
18 the Social Security Act. *Id.* at 99. Haynesworth did not appeal that decision. *Id.* at 20.

19 On May 31, 2013, Haynesworth filed a second Title XVI application for Supplemental
20 Security Income, alleging disability beginning on March 1, 2013 caused by anxiety and
21 depression. *Id.* at 20. The claim was initially denied on September 3, 2013, and denied again on
22 reconsideration on November 18, 2013. *Id.* Haynesworth filed a written request for a hearing on
23 December 6, 2013, which was held on November 24, 2014 before ALJ Nancy Lisewski. *Id.*
24 Haynesworth testified and was represented by Heather Freinkel, an attorney with the Homeless
25 Action Center. *Id.* ALJ Lisewski issued an unfavorable decision on January 21, 2015. *Id.* at 17–
26 30. The Social Security Administration Appeals Council considered and denied Haynesworth’s
27 request for review on May 17, 2016, finding “no reason under [its] rules to review the
28 Administrative Law Judge’s decision.” *Id.* at 1.

1 Haynesworth filed the present action on July 15, 2016, pursuant to 42 U.S.C. § 405(g),
2 which gives the Court jurisdiction to review the Commissioner’s final decision. Compl. (dkt. 1).
3 This action was reassigned to the undersigned magistrate judge on September 8, 2016.² Pursuant
4 to Civil Local Rule 16-5, Haynesworth filed a motion for summary judgment and the
5 Commissioner filed a cross-motion for summary judgment. *See* Pl.’s Mot. (dkt. 20); Comm’r’s
6 Mot. (dkt. 23).

7 **B. Legal Background**

8 **1. Social Security Benefits Available to Disabled Claimants**

9 A disabled claimant may qualify for Supplemental Security Income (“SSI”) benefits if the
10 claimant has limited income and owns less than \$2,000 in “resources,” not counting the claimant’s
11 primary home and certain other assets. 42 U.S.C. § 1382(a). Regardless of a claimant’s disability
12 onset date, SSI benefits are payable only for months following the month in which the claimant
13 filed his application for SSI benefits. 20 C.F.R. § 416.335.

14 **2. Review of the Commissioner’s Final Decisions**

15 District courts have jurisdiction to review the final decisions of the Commissioner and
16 have the power to affirm, modify, or reverse the Commissioner’s decisions, with or without
17 remanding for further hearings. 42 U.S.C. § 405(g). When reviewing the Commissioner’s
18 decision, district courts must take as conclusive any of the Commissioner’s factual findings that
19 are supported by “substantial evidence.” *Id.* However, even if the Commissioner’s findings are
20 supported by substantial evidence, the decision should be set aside if the Commissioner did not
21 apply proper legal standards in weighing the evidence and reaching a decision. *Benitez v.*
22 *Califano*, 573 F.2d 653, 655 (9th Cir. 1978). If a reviewing court identifies defects in the
23 administrative proceeding or the Commissioner’s conclusions, it may remand for further
24 proceedings or for a calculation of benefits. *See Garrison v. Colvin*, 759 F.3d 995, 1019–21 (9th
25 Cir. 2014).

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28 ² The parties have consented to the jurisdiction of the undersigned magistrate judge for all
purposes pursuant to 28 U.S.C. § 636(c).

1 evidence shows that the individual’s impairments, when considered in combination, are not
2 medically severe, i.e., do not have more than a minimal effect on the person’s physical or mental
3 ability(ies) to perform basic work activities.” Social Security Ruling 85-28. If medical evidence
4 does not clearly establish such a finding, the evaluation proceeds to Step Three. 20 C.F.R.
5 § 404.1520(a)(4).

6 At Step Three, the Commissioner compares the claimant’s impairment(s) with a list of
7 impairments that the Commissioner has determined are disabling (“Appendix 1”). 20 C.F.R.
8 § 404.1520(a)(4)(iii). If the impairment or combination of impairments “meets or equals” in
9 severity an item on the list and meets the duration requirement, the claimant is disabled. *Id.*
10 Otherwise, the evaluation proceeds to Step Four. 20 C.F.R. § 404.1520(a)(4).

11 At Step Four, the Commissioner considers the claimant’s residual functional capacity. 20
12 C.F.R. § 404.1520(a)(4)(iv). A claimant’s residual functional capacity is the most the claimant
13 can do in light of the physical and/or mental limitations caused by the impairment(s). 20 C.F.R.
14 § 404.1545. If the claimant can perform his or her past relevant work, the claimant is not disabled.
15 *Id.* Past relevant work is work that the claimant has done in the fifteen months prior to the
16 evaluation and was substantial gainful activity that lasted long enough for the claimant to learn to
17 do it. 20 C.F.R. § 404.1560(b)(1). If the claimant cannot perform his or her past relevant work,
18 the evaluation proceeds to Step Five. *See* 20 C.F.R. § 404.1545(a)(5)(ii).

19 At Step Five, the Commissioner has the burden to demonstrate that the claimant can
20 perform “other work” that exists in “significant numbers” in the national economy, taking into
21 account the claimant’s residual functional capacity, age, education, and work experience. *Tackett*
22 *v. Apfel*, 180 F.3d 1094, 1100 (9th Cir. 1999) (citing 20 C.F.R § 404.1560(b)(3)); 20 C.F.R
23 § 404.1520(a)(4)(v). If the Commissioner finds the claimant can make an adjustment to other
24 work, the claimant is not disabled. *Id.* Otherwise, the claimant is disabled and eligible for
25 disability benefits. 20 C.F.R § 404.1520(a)(4)(v).

26 **4. Supplemental Rules for Determining Mental Disability**

27 The Social Security Administration has supplemented the five-step general disability
28 evaluation process with regulations governing the evaluation of mental impairments at Steps Two

1 and Three of the five-step process. *See generally* 20 C.F.R. § 404.1520a; *see also Clayton v.*
2 *Astrue*, No. CIV 09-2282-EFB, 2011 WL 997144, at *3 (E.D. Cal. Mar. 17, 2011) (citing *Maier v.*
3 *Comm’r of Soc. Sec. Admin.*, 154 F.3d 913 (9th Cir. 1998)). First, the Commissioner must
4 determine whether the claimant has a medically determinable mental impairment. 20 C.F.R.
5 § 404.1520a(b)(1). Next, the Commissioner must assess the degree of functional limitation
6 resulting from the claimant’s mental impairment with respect to four broad functional areas:
7 (1) activities of daily living; (2) social functioning; (3) concentration, persistence, or pace; and
8 (4) episodes of decompensation. 20 C.F.R. § 404.1520a(b)(2), (c). Finally, the Commissioner
9 must determine the severity of the claimant’s mental impairment and whether that severity meets
10 or equals the severity of a mental impairment listed in Appendix 1. 20 C.F.R. § 404.1520a(d). If
11 the Commissioner determines that the severity of the claimant’s mental impairment meets or
12 equals the severity of a listed mental impairment, the claimant is disabled. *See* 20 C.F.R.
13 § 404.1520(a)(4)(iii). Otherwise, the evaluation proceeds to Step Four of the general disability
14 inquiry. *See* 20 C.F.R. § 404.1520a(d)(3).

15 Appendix 1 provides impairment-specific “Paragraph A” criteria for determining the
16 presence of various listed mental impairments, but all listed mental impairments share certain
17 “Paragraph B” severity criteria in common (and some have alternative “Paragraph C” severity
18 criteria). *See generally* 20 C.F.R. § 404, Subpt. P, App. 1 at 12.00. Therefore, any medically
19 determinable mental impairment—i.e., one that satisfies the Paragraph A criteria of one or more
20 listed mental impairments—is sufficiently severe to render a claimant disabled if it satisfies the
21 general Paragraph B criteria, which require that the claimant suffers at least two of the following:
22 (1) marked restriction of activities of daily living; (2) marked difficulties in maintaining social
23 functioning; (3) marked difficulties in maintaining concentration, persistence, or pace; or
24 (4) repeated episodes of decompensation, each of extended duration. *See id.* A “marked”
25 limitation is one that is “more than moderate but less than extreme” and “may arise when several
26 activities or functions are impaired, or even when only one is impaired, as long as the degree of
27 limitation is such as to interfere seriously with [a claimant’s] ability to function independently,
28 appropriately, effectively, and on a sustained basis.” *Id.* at 12.00C.

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C. Haynesworth’s History

1. Personal History³

Haynesworth was born on April 16, 1989, in Oakland, California. AR at 102, 438. According to the medical records, Haynesworth reported that both his parents were substance abusers and had a difficult relationship. *Id.* at 438. Haynesworth reported his mother used to beat him when he was around two or three years old. *Id.* at 295. At around seven or eight, Haynesworth and his mother moved in with his maternal grandmother in Oakland. *Id.* at 438. A couple years later, Haynesworth and his mother moved to Salinas, California. *Id.* Haynesworth reported having been bullied and teased due to his appearance and about a year later, Haynesworth and his mother moved back to Oakland. *Id.* When he was twelve, Haynesworth’s mother became involved with a man who was physically abusive and he reported seeing his mother being beaten and mistreated. *Id.* Due to his anxiety and fear, he decided to move to Inglewood, California to live with his father. *Id.* at 380, 438. Haynesworth lived with his father from age thirteen to sixteen. *Id.* During this time, Haynesworth was left alone majority of the time, which he claimed made him feel abandoned and unloved. *Id.* Haynesworth continued to have feelings that people did not like him based on his appearance. *Id.* at 438–39. Haynesworth also reportedly joined a gang and was involved in criminal activities, but was never arrested. *Id.* at 380, 439.

When he was fifteen, Haynesworth attempted suicide due to his reported depression and anxiety. *Id.* at 348, 439. Haynesworth was briefly hospitalized, but did not receive supportive services following discharge and reported his symptoms worsened. *Id.* at 439. A year later, Haynesworth moved back to Oakland to live with his mother, her boyfriend, and his younger siblings. *Id.* Haynesworth reported he continued to suffer emotionally and dropped out of school. *Id.* At age seventeen, Haynesworth was hospitalized again for suicidal ideation and depression. *Id.* He was given therapy and medication and released after one week. *Id.* Haynesworth then moved in with his grandmother. *Id.* While living with his grandmother, Haynesworth exhibited angry outbursts and uncontrollable temper tantrums, including punching holes in the walls,

³ This summary of Haynesworth’s personal history is based on medical records, opinions, and Haynesworth’s testimony.

1 destroying property, and inflicting harm upon himself. *Id.* at 427–31, 439. Haynesworth was
2 hospitalized at age eighteen and again at age twenty-one at John George Pavilion for violent
3 outbursts and cutting behavior. *Id.*

4 After dropping out of high school, Haynesworth obtained his GED. *Id.* at 349, 439–40.
5 Haynesworth enrolled at a vocational college, but dropped out after a few days. *Id.*

6 When Haynesworth was eighteen, he enrolled in the Conservation Corps and twice was
7 employed a landscaper. *Id.* at 439. However, Haynesworth quit both times because of his
8 depression and the feeling that people were making fun of him. *Id.* Neither job lasted more than
9 two months. *Id.*

10 Haynesworth reported that, around 2012, he began choking himself until he passed out in
11 “an attempt to end his suffering for the moment.” *Id.* Haynesworth reported this behavior
12 continued through at least October 2014, when he reportedly he choked himself after hearing his
13 father had molested his younger sister when she had lived with him. *Id.* Haynesworth reported he
14 would kill his father if he had the chance. *Id.* Haynesworth also stated that he was the victim of a
15 sexual and physical assault in October 2014. *Id.* at 440.

16 2. Medical History Before 2012 Administrative Hearing

17 a. Pathways to Wellness

18 Haynesworth was seen at Pathways to Wellness on at least ten separate occasions. AR at
19 294–318 (March 12, 2008; March 20, 2008; April 10, 2008; May 8, 2008; June 5, 2008; August 4,
20 2008; September 30, 2008; February 17, 2009; June 9, 2009; and December 18, 2009). Over the
21 course of his treatment at Pathways to Wellness, as detailed below, Haynesworth was prescribed
22 Zypreza and Effexor to treat his diagnosed Major Depressive Disorder and Schizoaffective
23 Disorder. *Id.* at 318.

24 On March 12, 2008, Haynesworth had his initial evaluation, reporting symptoms of
25 depression. *Id.* at 294. At the time of the evaluation, Haynesworth was not taking any
26 psychotropic medication. *Id.* at 295. Haynesworth denied any drug or alcohol use within ninety
27 days of the evaluation, but claimed he had used alcohol and marijuana in the past. *Id.* at 296.
28 Additionally, Haynesworth denied any violent behavior within the past ninety days, but admitted

1 to property damage in the past. *Id.* Haynesworth’s treating doctor found he had mild to moderate
2 functional limitations. *Id.* at 298. Haynesworth was diagnosed with Major Depressive Disorder,
3 anxiety, and psychiatric hallucinations. *Id.* at 298–99. Additionally, his physician noted
4 Haynesworth exhibited difficulties in education, employment, and daily and social activities. *Id.*
5 Haynesworth was instructed to return in one week and see a family therapist. *Id.* at 298.

6 Haynesworth’s next appointment was on March 20, 2008. *Id.* at 316. The physician noted
7 Haynesworth had been punching holes in the walls. *Id.* Additionally, Haynesworth was noted as
8 going to Sausal Creek Clinic, where he was prescribed Zyprexa. *Id.* The physician found his
9 prognosis fair, requested he return in three weeks, and instructed Haynesworth to continue taking
10 Zyprexa. *Id.* at 317–18. On February 17, 2009, the physician noted Haynesworth had been using
11 alcohol and had stopped taking his medication, and referred him to alcohol rehabilitation. *Id.* at
12 304–05. On June 9, 2009, Haynesworth was diagnosed with Schizoaffective Disorder and alcohol
13 dependence. *Id.* at 302–03. Haynesworth returned to Pathways to Wellness on December 18,
14 2009, to obtain additional medication. *Id.* at 300–02. Haynesworth reported feeling isolated and
15 angry and wanted “something” for his depression. *Id.* at 300. The physician prescribed
16 Haynesworth medication and requested monthly medication management visits. *Id.* There are no
17 records indicating Haynesworth was treated at Pathways to Wellness after the December 2009
18 appointment.

19 **b. John George Psychiatric Pavilion**

20 Haynesworth was treated at the Alameda County Medical Center, John George Psychiatric
21 Pavilion on July 23, 2007, and on May 23, 2010. *Id.* at 319–32. Haynesworth was admitted on
22 June 23, 2007 voluntarily after his mother called 911 because he was aggressive, angry, and had
23 punched a hole in the wall. *Id.* at 325. Haynesworth’s mother reported he had been off his
24 medication for about three weeks. *Id.* An intake evaluation form from that visit states that
25 Haynesworth had a history of depression and aggressive behavior directed towards property, as
26 well as an attempted suicide at fifteen years old. *Id.* Haynesworth denied any drug or alcohol use,
27 but his mother insisted he had been using marijuana. *Id.*

28 Haynesworth was seen again on May 23, 2010, after being transferred from Alta Bates. *Id.*

1 at 319. Haynesworth’s records indicate he lost his job at Taco Bell two months prior after a
2 syncopal episode (fainting). *Id.* Haynesworth’s records also stated he had a “near syncopal
3 episode today when talking to [the] police.” *Id.* Haynesworth reported losing his medical
4 insurance over a month prior, had not been on medication since, and had worsening auditory
5 hallucinations, paranoia, anhedonia, isolativeness, and decreased appetite. *Id.* The intake
6 evaluation report indicated Haynesworth was a danger to himself, with reports—of unknown
7 origin and denied by Haynesworth—that Haynesworth had threatened to slit his throat. *Id.* at 319.
8 Haynesworth was prescribed Zyprexa. *Id.* at 321.

9 **c. Dr. James R. Liles of Schuman-Liles Clinic**

10 Haynesworth was first evaluated by Dr. James R. Liles of the Schuman-Liles Clinic on
11 July 25, 2012. *Id.* at 348. At the appointment, Haynesworth was accompanied by his mother. *Id.*
12 Dr. Liles’ report stated Haynesworth had a seven year history of decompensating into psychosis,
13 with depression, sociality, hallucinations, and mood instability. *Id.* at 351. Dr. Liles also noted
14 that Haynesworth was not in regular treatment due to lack of money. *Id.* Haynesworth was
15 diagnosed with Schizoaffective Disorder. *Id.*

16 Haynesworth was again seen on August 29, 2012,⁴ this time accompanied by his
17 grandmother. *Id.* at 343. Dr. Liles’ report described an episode in which Haynesworth awoke to
18 find some money missing, which caused him to become enraged, punch a wall, and cut himself.
19 *Id.* Haynesworth spent most days playing video games. *Id.* Haynesworth reported that he hated
20 himself. *Id.* Dr. Liles noted Haynesworth was averse to some medical treatments and was
21 difficult to treat because he was in denial. *Id.* at 345.

22 Haynesworth received additional treatment on October 23, 2012. *Id.* at 338. Dr. Liles
23 noted Haynesworth was vastly improved and had no episodes of acting out, although he
24 “remain[ed] greatly challenged.” *Id.* at 338–39. According to Dr. Liles, Haynesworth was taking
25 BART and spending time with friends, and had “met some girls but no dates yet.” *Id.* At this
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27 ⁴ The record is not entirely clear as to whether this visit occurred on August 28 or 29, 2012. A
28 “Psychiatric Medication Progress Note” lists the “Date of Service” as “08-29-2012,” but that same
report and subsequent reports include entries dated “8-28-12” that appear to refer to the same visit.
AR at 343; *see id.* at 334, 339.

1 time, Haynesworth was on five different medications. *Id.* at 339.

2 **3. 2010 Disability Application and October 2012 Administrative Hearing**

3 On June 7, 2010, Haynesworth filed an application for supplemental security income,
4 alleging disability beginning August 2, 2007. *Id.* at 90. A hearing was held by ALJ John
5 Flanagan on October 25, 2012, where Haynesworth appeared and testified, along with Jose L.
6 Chaparro, an impartial vocational expert. *Id.*

7 **a. Haynesworth's Testimony**

8 ALJ Flanagan began the hearing by addressing Haynesworth's lack of representation, to
9 which Haynesworth responded by appointing his grandmother, who is not an attorney, which is
10 permitted under 20 C.F.R § 404.1705. *Id.* at 50–53. Haynesworth answered questions about his
11 personal background. *Id.* at 60. Haynesworth testified he has had difficulty talking with people
12 his whole life. *Id.* at 60–61. Haynesworth testified he attended school in Inglewood, California,
13 but dropped out at tenth grade because he does not like to be around people. *Id.* at 61.
14 Haynesworth also described his prior employment positions at the Conservation Corps, which also
15 ended because of his dislike for being around people. *Id.* Haynesworth said his anxiety was
16 manageable during the job-training program; however, once integrated with a landscaping crew, it
17 was difficult for him to be around his coworkers. *Id.* at 73. Additionally, in 2010 he worked at a
18 Taco Bell restaurant for two days, but on his second day at work he fainted and did not return. *Id.*
19 at 62–65. Haynesworth claimed to have been clean and sober for the past two months at the time
20 of the hearing. *Id.* at 64.

21 Haynesworth testified about his treatment at various facilities for schizoaffective disorder,
22 depression, and psychotic disorder. *Id.* at 63. Haynesworth had been prescribed various
23 medications to treat these conditions, all of which he claimed to still be taking. *Id.* at 65.
24 Haynesworth claimed his mental conditions had remained constant, or at certain times worsened,
25 since June of 2010. *Id.* at 69–70. Haynesworth agreed with the ALJ's characterization of medical
26 opinions that when his medication runs out, his mental condition deteriorates and he begins
27 hearing voices and thinking people are talking about him. *Id.* at 73. Haynesworth testified that
28 when taking his medication, his condition deteriorated more slowly, but he still experienced

1 symptoms. *Id.* Haynesworth and his grandmother also added that “every few months”
2 Haynesworth got so anxious or angry that he harmed himself. *Id.* at 74–75.

3 Haynesworth testified that the main problem for why he was unable to work was because
4 he disliked being around people, was unable concentrate on certain things for long periods of time,
5 and had episodes of depression and anxiety which made him nonfunctional. *Id.* at 68. These
6 nonfunctional episodes happened every few months and lasted “a couple weeks.” *Id.* at 68–69.
7 He had not attempted to work since 2010 because he felt hopeless about working. *Id.* at 72.

8 During a typical day, Haynesworth testified he spent as much time as possible in the house,
9 only associating with his family members. *Id.* at 70–71. Outside of his family, he had one friend,
10 whom he had known since he was young, that he associated with. *Id.* at 71–72.

11 **b. Vocational Expert Jose L. Shapparo’s Testimony**

12 ALJ Flanagan then called vocational expert Jose L. Shapparo (the “VE”) to testify at the
13 hearing. *Id.* at 76–84. The VE responded to a series of hypotheticals. *Id.*

14 In the first hypothetical, ALJ Flanagan asked the VE to consider an individual of
15 Haynesworth’s age, education, and work experience who has no exertional limitations, but is
16 restricted to simple, repetitive tasks. *Id.* at 77–78. In addition, that individual would need to have
17 little contact with others, limited to around one-third of the workday, and perform low-stress work.
18 *Id.* The VE determined that based on the hypothetical circumstances, that individual could work
19 as a commercial or institutional cleaner, which is heavy work and unskilled with a Specific
20 Vocational Preparation (“SVP”) of two. *Id.* at 79. The VE also found that individual could
21 perform work as a “cleaner II,” which is medium work and unskilled with an SVP of one. *Id.*
22 Finally, the VE found that individual could perform work as a housecleaner, which is heavy and
23 unskilled with an SVP of two. *Id.* at 79–80.

24 In the second hypothetical, ALJ Flanagan kept the same limitations as the first hypothetical
25 individual, but modified the ability to interact with other coworkers to moderately restricted,
26 meaning that an individual had difficulty in doing so but could still perform that function. *Id.* at
27 80. These new terms did not change the VE’s responses regarding occupations. *Id.*

28 In the third hypothetical, ALJ Flanagan kept the same limitations as the first hypothetical

1 individual, but modified the difficulty interacting with other coworkers to marked, meaning at
2 times that the individual would be unable to interact with others depending on his mental and
3 emotional state on a particular day. *Id.* at 81. Under these terms, the VE found there to be no
4 work an individual with those limitations could perform. *Id.*

5 Haynesworth’s grandmother also asked the VE about an individual who was on medication
6 that slowed his responsiveness, which the ALJ construed as adding a limitation to someone whose
7 condition was otherwise consistent with the first hypothetical. *Id.* at 81–82. The VE testified that
8 if the person worked at a slower pace than the norm, he would be precluded from unskilled work.
9 *Id.* In addition, Haynesworth’s grandmother asked the VE about an individual who faced
10 difficulty getting to work because he was not able to use public transportation due to
11 psychological implications of exposure to crowds. *Id.* at 83. Before the VE answered, ALJ
12 Flanagan took administrative notice that if the individual could not get to work, he also could not
13 work. *Id.*

14 **c. ALJ Flanagan’s Five-Step Analysis**

15 **i. Step 1: Substantial Gainful Activity**

16 ALJ Flanagan began his analysis by finding Haynesworth had not engaged in substantial
17 gainful activity since filing his application on June 7, 2010. *Id.* at 92. Haynesworth had
18 participated in short job-training programs in 2007 and 2010, but “earnings from these programs
19 were below the level necessary to constitute gainful activity.” *Id.*

20 **ii. Step 2: Severe Impairments**

21 ALJ Flanagan identified schizoaffective disorder as Haynesworth’s only sever impairment.
22 *Id.* Haynesworth’s schizoaffective disorder was “more than minimally restrict[ing] the claimant
23 from performing basic mental work-related functions.” *Id.* ALJ Flanagan found no allegations or
24 evidence that Haynesworth suffered from any physical problems. *Id.*

25 **iii. Step 3: Medical Severity**

26 ALJ Flanagan found that Haynesworth did “not have an impairment or combination of
27 impairments that meets or medical equals the severity of one of the listed impairments.” *Id.* at 93.

28 In reaching that conclusion, ALJ Flanagan considered the criteria of listing 12.03

1 (schizophrenic, paranoid, and other psychotic disorders). *Id.* at 93. ALJ Flanagan found
2 Haynesworth did not meet the “paragraph B” or “paragraph C” criteria for the listing. *Id.* at 93.
3 “Paragraph B” is satisfied by a showing of mental impairment in at least two of the following:
4 marked restriction of activities of daily living; marked difficulties in maintaining social
5 functioning; marked difficulties in maintaining concentration, persistence or pace; or repeated
6 episodes of decompensation, each of extended duration. *Id.* ALJ Flanagan found Haynesworth’s
7 medical records indicated he suffered from mild to moderate levels of limitation relative to
8 activities of daily living, maintaining social functioning, and maintaining concentration. *Id.*
9 According to ALJ Flanagan, if Haynesworth consistently took his medications, his level of
10 limitation in the aforementioned areas would be only mild. *Id.* Finally, ALJ Flanagan concluded
11 Haynesworth did not experience any episodes of decompensation for any extended duration. *Id.*
12 ALJ Flanagan relied on the findings and opinions of two state agency psychologists, who found
13 Haynesworth only suffered from moderate functional difficulties. *Id.* ALJ Flanagan also found
14 the “paragraph C” criteria for listing section 12.03—documented history of a chronic psychotic
15 disorder of at least two years—not satisfied by the evidence in the record. *Id.* at 94. Based on the
16 aforementioned, ALJ Flanagan found Haynesworth did not meet or equal the criteria of listing
17 section 12.03. *Id.*

18 **iv. Step 4: Residual Functional Capacity**

19 ALJ Flanagan determined Haynesworth had “the physical residual functional capacity to
20 perform a full range of work at all exertional levels, including sustained very heavy work
21 activity.” *Id.* at 94. As for Haynesworth’s mental residual functional capacity, ALJ Flanagan
22 found that he would be restricted to only simple repetitive tasks, in a low stress work environment,
23 with little contact with others. *Id.*

24 ALJ Flanagan considered all of Haynesworth’s symptoms and based his conclusion on a
25 two-step process: (1) whether there was an underlying medically determinable physical or mental
26 impairment(s) that could reasonably be expected to produce Haynesworth’s pain or other
27 symptoms and (2) the extent to which the intensity, persistence, and effects of said symptoms limit
28 Haynesworth’s functioning. *Id.* at 94–95. ALJ Flanagan relied on the findings and opinions of

1 two state agency psychologists, Drs. Smith and Tasjian, but found Dr. Liles’ assessment entitled to
2 no evidentiary weight. *Id.* at 97. ALJ Flanagan found Haynesworth’s medically determinable
3 impairment was reasonably expected to cause the associated symptoms. *Id.* However, ALJ
4 Flanagan found Haynesworth’s statements regarding the intensity, persistence, and limiting effects
5 of his symptoms not credible to the extent the statements were inconsistent with the residual
6 functional capacity assessment. *Id.* This was because ALJ Flanagan found these statements were
7 not supported by medical evidence, Haynesworth’s testimony, and other statements of the record.
8 *Id.* ALJ Flanagan did not find good cause or valid reason for Haynesworth’s lack of regular
9 mental health treatment. *Id.* ALJ Flanagan mentioned various clinics where Haynesworth could
10 obtain free medical and psychiatric care. *Id.* at 97–98.

11 **v. Step 5: Ability to Perform Other Jobs in the National
12 Economy**

12 ALJ Flanagan found, based on testimony from VE Chaparro and medical records, that
13 there were jobs in the national economy that Haynesworth could perform. *Id.* at 98–99.
14 Therefore, ALJ Flanagan concluded Haynesworth was capable of making a successful adjustment
15 to other work in the national economy and thus, a finding of “not disabled” was appropriate. *Id.*
16 Haynesworth did not appeal the decision. *Id.* at 20.

17 **4. Medical History Following October 2012 Administrative Hearing**

18 **a. Subsequent Visits with Dr. Liles**

19 After the 2012 hearing, Haynesworth visited the Schuman-Liles clinic again on November
20 21, 2012, and reported he was “hanging out with friends, going out to a couple bars . . . met a girl,
21 and is dating someone right now.” *Id.* at 333. Dr. Liles urged Haynesworth to find work, but
22 reported Haynesworth still suffered from major challenges with anxiety and depression. *Id.* at
23 333–34. Given Haynesworth’s extant mental disorder, Dr. Liles recommended he return in one
24 month. *Id.* at 337.

25 Haynesworth returned to Dr. Liles on December 5, 2013, accompanied by his
26 grandmother. *Id.* at 427. Haynesworth told Dr. Liles that he “is not happy with himself, that he
27 has no friends, that he is the Bad Seed.” *Id.* at 429. Haynesworth also said he attempted to choke
28

1 himself “just to pass out, be out of it.” *Id.* His mental status examination was within normal
2 limits. *Id.*

3 Dr. Liles saw Haynesworth again on March 21, 2014. *Id.* at 422. Haynesworth reported
4 he obtained Medi-Cal coverage and thus would be able to afford treatment and more medication.
5 *Id.* at 424. Haynesworth stated he did not feel well and had been off his medication per
6 instructions from the emergency room following a seizure on March 3, 2014. *Id.* Following the
7 seizure, Haynesworth had a CT scan, which was negative. *Id.* Haynesworth’s mental status
8 examination was within normal limits in all categories. *Id.* at 424–25.

9 Haynesworth was seen by Dr. Liles on June 20, 2014, reporting “anger, irritability, low
10 stress tolerance, and was paranoid and out of control: he threw his phone; [his] mother called the
11 police but he wasn’t taken in.” *Id.* at 418. Haynesworth reported auditory hallucinations of
12 “evilness” telling him to do bad things, as well as thoughts of wishing his neighbors were killed,
13 although he denied any homicidal intent. *Id.* Haynesworth told Dr. Liles that he was hopeless and
14 would not mind dying. *Id.* Dr. Liles’ report noted he suspected poor compliance, likely referring
15 to Haynesworth’s medication. *Id.* The progress note stated that Haynesworth’s mother had been
16 using crack when she was pregnant with him, and that Haynesworth had used heroin and crystal
17 meth in the past and continued to use marijuana. *Id.* At the time of this visit, Haynesworth was
18 mostly housebound. *Id.* at 419. Dr. Liles’ report nevertheless lists the results of Haynesworth’s
19 mental status examination was within normal limits. *Id.*

20 Dr. Liles saw Haynesworth again on September 18, 2014. *Id.* at 410. Dr. Liles
21 characterized Haynesworth’s adherence to his medication as “good.” *Id.* at 411. Haynesworth
22 reported he “feel[s] very good now.” *Id.* Haynesworth informed Dr. Liles that he was “off drugs,
23 using his computer, hanging out with better people, and finding a job.” *Id.* at 412. Haynesworth’s
24 mental status exam was again within normal limits. *Id.* at 413.

25 Dr. Liles completed a Mental Impairment Questionnaire (the “Questionnaire”) in October
26 of 2014. *Id.* at 449–51. Dr. Liles found Haynesworth had functional limitations as a result of his
27 mental impairments. *Id.* Specifically, Haynesworth had moderate restrictions on activities of
28 daily living, marked to extreme difficulties in maintaining social functioning, and marked

1 difficulties in maintaining concentration, persistence, or pace. *Id.* Haynesworth’s levels of
2 impairment ranged from fair to extreme. *Id.* at 450. Additionally, Dr. Liles found Haynesworth
3 would miss more than four days per month of work due to his impairments or treatment. *Id.* at
4 449. Dr. Liles stated that his determination of the severity of Haynesworth’s symptoms and
5 mental impairments was based on mental status examinations and clinical interviews. *Id.*

6 **b. Lesleigh Franklin, Ph.D.**

7 Lesleigh Franklin, Ph.D., performed a psychological evaluation of Haynesworth on August
8 23, 2013, to determine his then-current cognitive and emotional functioning. *Id.* 379–91. Dr.
9 Franklin specifically performed: a clinical interview; Repeatable Battery for the Assessment of
10 Neuropsychological Status (RBANS); Mini Mental State Examination (MMSE); Trail Making A
11 & B; Clock Test; Miller Forensic Assessment of Symptoms (M-FAST); Minnesota Multiphasic
12 Personality Inventory, 2nd Edition, Restructured Format (MMPI-2 RF); and review of Dr. Liles
13 and John George Pavilion medical records. *Id.* at 379.

14 Haynesworth showed “adequate language abilities” and placed in the average range at the
15 fifty-third percentile. *Id.* Haynesworth scored in the low average range for visuospatial and
16 constructional abilities, though Dr. Franklin noted this finding should be interpreted with caution
17 due to the variability between the subtest performances. *Id.* at 384–85. Haynesworth’s
18 performance on the memory portion was “generally poor.” *Id.* at 385. In addition, Haynesworth
19 also showed difficulty on the attention and concentration portion. *Id.* Haynesworth’s score put
20 him below the third percentile and far below the average range. *Id.* at 386. Dr. Franklin found
21 Haynesworth had “moderately impaired executive functioning” and was “especially challenged by
22 activities where time is of the essence.” *Id.* at 385–86. Haynesworth struggled with immediate
23 memory tasks and attention. *Id.* at 386.

24 Haynesworth’s emotional functioning was tested using the MMPI-2 RF and M-FAST. *Id.*
25 386–88. The MMPI-2 RF is “an objective test of psychological functioning utilized to gather
26 information about symptoms, affect regulations, interpersonal relationships, and self perception.”
27 *Id.* at 386. The M-FAST is “a measure utilized to determine if a client is prone to overstate or
28 exaggerate symptoms.” *Id.* Haynesworth’s MMPI-2 RF scores were within normal limits, and he

1 “did not demonstrate a tendency to overstate or understate his problems,” though did “demonstrate
2 a higher level of debasement than is commonly seen.” *Id.* Additionally, Haynesworth’s M-FAST
3 score “indicate[d] that he is more distressed than is seen in the general population, but it does not
4 indicate malingering.” *Id.*

5 Overall, Dr. Franklin found Haynesworth was “having the kinds of cognitive difficulties
6 commonly seen in people with mood disorders.” *Id.* at 388. Dr. Franklin found Haynesworth’s
7 “language skills were within normal limits, but he demonstrated impairments in memory and
8 attention,” and exhibited cognitive slowing. *Id.* Dr. Franklin found no evidence Haynesworth was
9 exaggerating his symptoms for personal gain, finding many symptoms validated by psychiatric
10 records and from her observations. *Id.* Dr. Franklin diagnosed Haynesworth with Schizoaffective
11 Disorder (Depressive Type) and Cannabis Abuse. *Id.* at 388–89. In addition, she also noted he
12 had symptoms of Social Phobia, but did not assign that diagnosis. *Id.* at 389.

13 Dr. Franklin found Haynesworth’s mental limitations were either extreme or marked. *Id.*
14 at 391. Dr. Franklin determined that if Haynesworth was placed in a work situation at that time,
15 he would have “marked trouble remembering simple directions and extreme trouble remembering
16 complex directions,” “marked trouble with activities that require sustained mental attention,” and
17 “severe trouble interacting appropriately with the public, coworkers, and authorities.” *Id.* at 389.
18 Overall, Haynesworth’s “cognitive and mental health symptoms would severely interfere with his
19 job performance.” *Id.*

20 **c. Laura Catlin, Psy.D.**

21 Laura Catlin, Psy.D., performed a psychological disability evaluation on October 21, 2014.
22 *Id.* at 437–48. Dr. Catlin specifically performed: a clinical interview; Wechsler Abbreviated Scale
23 of Intelligence (WASI); Repeatable Battery for the Assessment of Neuropsychological Status
24 (RBANS); Beck Depression Inventory (BDI); Brief Symptom Inventory (BSI); Burns Anxiety
25 Inventory; Burns PTSD Inventory; and a records review. *Id.* at 437, 452.

26 Along with describing his daily activity, as well as personal and educational history,
27 Haynesworth told Dr. Catlin he heard voices in his head telling him he was “stupid, ugly, and a
28 loser.” *Id.* at 438. Haynesworth further indicated he had difficulty being around others and

1 preferred to be alone. *Id.* Dr. Catlin noted Haynesworth had medication compliance problems in
2 the past, but Haynesworth told her he had been compliant with his medication for the past nine
3 months. *Id.* at 440. Dr. Catlin also noted Haynesworth’s insufficient social insurance and welfare
4 support. *Id.* at 445.

5 During the mental status examination, Dr. Catlin found that Haynesworth exhibited a level
6 of arousal within normal limits, had average response time, and was engaged during the
7 evaluation. *Id.* at 440–41. Haynesworth reported he was still having delusions that other people
8 were speaking negatively about him. *Id.* at 441.

9 Dr. Catlin then performed several tests that measured Haynesworth’s cognitive
10 functioning. *Id.* at 441–45. Dr. Catlin found Haynesworth had a low average range of intellectual
11 functioning. *Id.* at 441–42. Haynesworth’s overall score from the RBANS evaluation, which
12 measures immediate and delayed memory, attention, language, and visuospatial skills, was in the
13 extremely low range. *Id.* at 442–44. Haynesworth’s BDI indicated symptoms of severe
14 depression. *Id.* at 444. Additionally, according to Dr. Catlin’s findings from the Burns PTSD and
15 Anxiety Inventories, Haynesworth showed signs he was experiencing many symptoms of PTSD,
16 anxiety, and psychological distress. *Id.* 444–45.

17 Based on her tests, records review, and in person examination, Dr. Catlin diagnosed
18 Haynesworth with Social Anxiety Disorder, PTSD, Major Depressive Disorder, and Generalized
19 Anxiety Disorder. *Id.* at 445. Dr. Catlin found Haynesworth severely impaired in his ability to
20 perform in the workplace. *Id.* at 447. Dr. Catlin further found extreme difficulties in maintaining
21 social functioning and performing activities of daily living, as well as marked deficiencies in
22 concentration, persistence, or pace. *Id.* at 447–48. Dr. Catlin found Haynesworth had five or
23 more episodes of decompensation within a twelve month period, each lasting over two weeks. *Id.*
24 at 448. Finally, Dr. Catlin believed Haynesworth’s impairments would result in him being absent
25 from work more than four days a month. *Id.*

26 On April 16, 2015, Dr. Catlin wrote a follow up letter stating that her opinion incorporated:
27 (1) Dr. Liles’ progress notes from July 25, 2012 through September 8, 2014; (2) Dr. Franklin’s
28 August 23, 2013 report; (3) John George Psychiatric Pavilion records from July 23, 2007 through

1 May 23, 2010; and (4) Pathways to Wellness reports from March 20, 2008 through December 18,
2 2009. *Id.* at 452. In that letter, Dr. Catlin acknowledged Haynesworth’s gap in coverage and poor
3 compliance with medication. *Id.* Dr. Catlin asserted, however, that Haynesworth’s medication
4 should have reached its therapeutic levels by the time she interviewed him, and the examination
5 therefore should have accurately reflected his functioning on medication. *Id.*

6 **d. State Agency Consultants Dr. Lee and Dr. Lucila and Disability**
7 **Determination Explanation**

8 Dr. Lee, a state agency non-examining consultant, reviewed Haynesworth’s medical
9 records and determined he was not disabled on August 30, 2013. *Id.* at 102–16. Dr. Lee found
10 Haynesworth “had mental limitations related to schizoaffective [disorder], depression, and
11 anxiety,” but determined he experienced “[v]ast improvement when compliant” with his
12 medication. *Id.* at 109. Dr. Lee also recommended that ALJ Lisewski adopt ALJ Flanagan’s
13 earlier decision finding Haynesworth capable of work with simple tasks with limited public
14 contact. *Id.* at 109–10. Dr. Lee further found that Haynesworth’s statements about the “intensity,
15 persistence, and functionally limiting effects of the symptoms [were not] substantiated by the
16 objective medical evidence alone.” *Id.* at 111. In making this determination, Dr. Lee indicated he
17 relied on “precipitating and aggravating factors,” “medication treatment,” and “treatment other
18 than medication.” *Id.* Based on medical records and testimony from the previous hearing, as well
19 as Dr. Franklin’s opinion, Dr. Lee determined Haynesworth was only partially credible, finding
20 evidence of schizoaffective disorder, but based on Haynesworth’s medical history, determining
21 that the condition improved with compliance with his medication, and that when he was not
22 compliant, his symptoms were exacerbated. *Id.*

23 Dr. Lee assessed Haynesworth’s residual functional capacity, and found Haynesworth
24 predominately moderately limited with regard to various limiting factors. *Id.* at 126–29. Dr. Lee
25 acknowledged that Dr. Franklin’s opinion found Haynesworth more restricted. *Id.* at 129.
26 However, Dr. Lee discredited Dr. Franklin’s opinion as relying “heavily on the subjective report
27 of symptoms and limitations provided by [Haynesworth],” and as not supported by other evidence
28 in the record. *Id.* at 114. Based on the residual functioning capacity, Dr. Lee found Haynesworth

1 capable of work as an addresser, nut sorter, and cuff folder. *Id.* at 115.

2 Dr. Lucila, another state agency non-examining consultant, also reviewed Haynesworth’s
3 medical records and determined he was not disabled on November 18, 2013. *Id.* at 118–131. Dr.
4 Lucila relied on the same materials and made similar conclusions to Dr. Lee. *Id.*

5 **D. Haynesworth’s Present Application and 2014 Administrative Hearing**

6 On May 31, 2013, Haynesworth filed a second Title XVI application for Supplemental
7 Security Income, alleging disability beginning on March 1, 2013 caused by anxiety and
8 depression. *Id.* at 20. ALJ Lisewski issued an unfavorable decision on January 21, 2015. *Id.* at
9 17–30. Prior to the hearing, Heather Freinkel, Haynesworth’s attorney from the Homeless Action
10 Center, submitted a brief to ALJ Lisewski on November 18, 2014. *Id.* at 274–81.

11 **1. Haynesworth’s Testimony**

12 ALJ Lisewski only briefly questioned Haynesworth, mainly regarding his age, living
13 location, and why he felt he could not work. *Id.* at 37. Haynesworth testified that he felt he could
14 not work because he is nervous and anxious around people, that he does not feel dependable, and
15 that he is worried about “mess[ing] stuff up.” *Id.* Haynesworth’s counsel, Freinkel, took over
16 questioning shortly thereafter. *Id.* Freinkel asked Haynesworth about his past work experience,
17 starting with his most recent work at Taco Bell in 2010. *Id.* At Taco Bell, Haynesworth worked
18 the cash register, which he found difficult because of the amount of interactions he had with
19 people. *Id.* On his second day of work, he fainted and an ambulance had to come. *Id.* He never
20 returned to that job. *Id.* Haynesworth also spoke about his work with the Conservation Corps,
21 which he stopped attending because he felt people were making fun of him. *Id.* at 40–41.

22 Freinkel then questioned Haynesworth about his medical history and recent treatment with
23 Dr. Liles. *Id.* at 41. Haynesworth stated Dr. Liles prescribes him medication, which he takes and
24 which makes him feel a little less anxious. *Id.* However, Haynesworth went on to say he “always
25 feel[s] down and depressed and just with a negative attitude.” *Id.* Additionally, even when taking
26 the medication, Haynesworth stated he could not be around people. *Id.* at 42. Haynesworth
27 testified that most days his symptoms leave him unable to go outside of his house. *Id.*
28 Haynesworth said he never stopped taking the medication as prescribed. *Id.*

1 **2. Vocational Expert Robert Cottle’s Testimony**

2 ALJ Lisewski then called VE Robert Cottle to testify at the hearing. *Id.* at 43–48. ALJ
3 Lisewski asked the VE two hypotheticals. *Id.* For the first hypothetical, ALJ Lisewski asked the
4 VE to consider an individual of Haynesworth’s age, education, and work background, limited to
5 “simple, repetitive work in a low-stress environment with no more than occasional social contact.”
6 *Id.* at 43. ALJ Lisewski clarified that by low-stress, she meant “work performed at lower
7 competitive levels.” *Id.* The VE determined that an individual with those limitations could be an
8 eyedropper assembler or a table worker spotter, both of which have an SVP of two and are
9 sedentary. *Id.* at 44. Additionally, the VE suggested a garment bagger, which has an SVP of one
10 and requires light strength. *Id.* For the second hypothetical, ALJ Lisewski kept the same
11 limitations as the first hypothetical, but the individual would miss about four days of work per
12 month. *Id.* The VE determined there would be no work for an individual like that. *Id.* When
13 asked by Freinkel, the VE explained that a person limited to simple, unskilled work, could only
14 miss about two days per month to be employable. *Id.* at 45.

15 Freinkel’s first hypothetical required the VE to consider an individual of Haynesworth’s
16 age, education, and work history, who is limited to simple, repetitive tasks with moderate
17 impairments. *Id.* Moderate impairments in this context mean inability to “perform the task at
18 competitive standards up to 15 percent of the workday.” *Id.* at 45–46. Freinkel listed several
19 areas where that individual would be moderately limited. *Id.* at 46. The VE found there were no
20 jobs such a person could perform. *Id.* at 46–47.

21 In her second hypothetical, Freinkel inquired whether an individual with Haynesworth’s
22 age, education and work history, who also had an extreme impairment in social functioning, and a
23 marked impairment in concentration, persistence, and pace, would be able to perform a job. *Id.* at
24 47–48. The VE did not believe such a person would be employable. *Id.* at 48.

25 **3. ALJ Lisewski’s Finding of Changed Circumstances**

26 “[A]n ALJ’s finding that a claimant is not disabled ‘create[s] a presumption that [the
27 claimant] continued to be able to work after that date.’” *Lester v. Chater*, 81 F.3d 821, 827 (9th
28 Cir. 1995) (quoting *Miller v. Heckler*, 770 F.2d 845, 848 (9th Cir. 1985)). Changed circumstances

1 can be demonstrated by showing worsening of a medical or psychiatric condition, change in age
2 category, a new impairment raised, or lack of representation. *Id.* at 827–828; *Chavez v. Bowen*,
3 844 F.2d 691, 693 (9th Cir. 1988).

4 ALJ Lisewski rejected Haynesworth’s arguments that he has made a showing of changed
5 circumstances based on an increase in the severity of his mental impairment. *Id.* at 21. ALJ
6 Lisewski did find, however, that Haynesworth made a showing of changed circumstances based
7 on representation by an inexperienced family member at the October 25, 2012 hearing. *Id.* at 23.
8 ALJ Lisewski therefore determined that she had the option to adopt any findings from ALJ
9 Flanagan’s prior decision as appropriate. *Id.* at 21. ALJ Lisewski adopted ALJ Flanagan’s
10 findings regarding the “residual functional capacity, education, and work experience, or such other
11 findings required at a step in the sequential evaluation process, because”—in her view—“there
12 [was] no new and material evidence relating to such findings proving that those findings should
13 not be adopted.” *Id.* at 23.

14 **4. ALJ Lisewski’s Five-Step Analysis**

15 **a. Step 1: Substantial Gainful Activity**

16 ALJ Lisewski began her analysis by finding Haynesworth had not engaged in substantial
17 gainful activity since filing his application on May 31, 2013. *Id.* at 23. ALJ Lisewski adopted
18 ALJ Flanagan’s finding that Haynesworth had never held a regular full-time position. *Id.*

19 **b. Step 2: Severe Impairments**

20 ALJ Lisewski also determined that Haynesworth’s sole impairment was schizoaffective
21 disorder. *Id.* at 23. ALJ Lisewski found no mental or physical impairments in the record that
22 were new since ALJ Flanagan’s decision. *Id.*

23 **c. Step 3: Medical Severity**

24 ALJ Lisewski concurred with ALJ Flanagan’s finding that the severity of Haynesworth’s
25 mental impairment did not meet or medically equal the severity of one of the listed impairments.
26 *Id.* Similar to ALJ Flanagan, in reaching this conclusion ALJ Lisewski considered the criteria of
27 listing 12.03. *Id.* ALJ Lisewski found Haynesworth did not satisfy the “paragraph B” or
28 “paragraph C” criteria. *Id.* at 23–24.

1 ALJ Lisewski found Haynesworth’s medical records indicated he suffered from mild to
2 moderate levels of limitation in activities of daily living, maintaining social functioning, and
3 maintaining concentration, persistence, or pace. *Id.* at 24. Additionally, ALJ Lisewski concluded
4 that if Haynesworth consistently and properly took his medications, his level of limitation in the
5 aforementioned areas would be mild. *Id.* Further, even if Haynesworth was not taking his
6 medication consistently, ALJ Lisewski determined his “level of limitation ha[d] not been proven
7 to be worse than moderate.” *Id.* Finally, ALJ Lisewski concluded Haynesworth did not
8 experience any episodes of decompensation for any extended duration. *Id.* ALJ Lisewski “gave
9 significant evidentiary weight to the findings and opinions of the State agency consultants.” *Id.*
10 These consultants “concluded the claimant would have no more than moderate difficulty in
11 activities of daily living, maintaining social functioning, and maintaining concentration,
12 persistence, or pace.” *Id.* Additionally, these consultants “opined the claimant’s mental disorder
13 did not meet or equal Listing level criteria.” *Id.* Based on the consultant opinions’ and findings,
14 ALJ Lisewski concluded “there [was] no significant or credible evidence in the record which
15 would contradict or rebut the assessments of these physicians, which [ALJ Lisewski] conclude[d]
16 are entitled to significant evidentiary weight.” *Id.* Therefore, Haynesworth’s mental impairment
17 did not satisfy the “paragraph B” limitations because there was no evidence of least two marked
18 limitations or one marked limitation and repeated episode of decompensation of an extended
19 duration. *Id.*

20 ALJ Lisewski also found, without explanation, that the “paragraph C” criteria for listing
21 section 12.03 not satisfied by the evidence in the record. *Id.* Based on the aforementioned, ALJ
22 Flanagan found Haynesworth did not meet or equal the criteria of listing section 12.03. *Id.*

23 **d. Step 4: Residual Functional Capacity**

24 ALJ Lisewski determined Haynesworth has a “residual functional capacity to perform a
25 full range of work at all exertional levels but with the following nonexertional limitations: he is
26 limited to simple repetitive tasks in a low stress work environment, with no more than occasional
27 social contact.” *Id.* at 25.

28 ALJ Lisewski considered all of Haynesworth’s symptoms and the extent to which these

1 symptoms reasonably could be accepted as consistent with the objective medical evidence. *Id.* at
2 25. ALJ Lisewski found Haynesworth’s medically determinable impairment was reasonably
3 expected to cause the associated symptoms. *Id.* However, ALJ Lisewski found Haynesworth’s
4 statements regarding the intensity, persistence, and limiting effects of said symptoms not credible
5 to the extent the statements were inconsistent with the residual functional capacity assessment
6 recounted above. *Id.*

7 ALJ Lisewski claimed to rely primarily on the medical evidence. *Id.* Additionally, ALJ
8 Lisewski stated that she considered Haynesworth’s testimony in light of certain credibility factors
9 as set forth in the regulations. *Id.* at 25–26 (citing 20 C.F.R. § 416.929). ALJ Lisewski adopted
10 ALJ Flanagan’s residual functional capacity determination—that Haynesworth was “capable of a
11 wide range of work at all exertional levels, with the same limitations found here”—as “well-
12 reasoned and fully supported.” *Id.* at 26. As noted above, ALJ Flanagan’s decision was based on
13 his consideration of evidence through October 2012. *Id.* ALJ Flanagan rejected the medical
14 source statement of treating psychiatrist Dr. Liles as not support by the other medical records or
15 Dr. Liles’ other treatment notes. *Id.* (citing AR at 96–97). Particularly important was evidence
16 that both ALJ Flanagan and ALJ Lisewski construed as showing that when Haynesworth took his
17 medications as prescribed, there was a vast improvement in his level of functioning. *Id.* ALJ
18 Flanagan found no evidence to explain why Haynesworth failed to attend regular treatment or take
19 his medications as prescribed. *Id.* ALJ Lisewski adopted this because, in her view, even with the
20 additional treatment records and opinions, Haynesworth’s overall capacity was not shown to have
21 worsened. *Id.*

22 ALJ Lisewski examined the evidence submitted after ALJ Flanagan’s decision, finding it
23 similar to the earlier records, and recounting the following facts in her decision. *Id.* The evidence
24 showed Haynesworth had five appointments from November 2012 through September 2014. *Id.*
25 On the November 2012 visit, Haynesworth reported he was dating, including going out to sporting
26 games and movies. *Id.* The medical report indicated Dr. Liles had “urged” Haynesworth to seek
27 employment, suggesting “fast food restaurant, warehouse job, driving, or a security guard.” *Id.*
28 At this visit, Haynesworth was described as “within normal limits.” *Id.* Haynesworth returned to

1 treatment on December 5, 2013 and no explanation was given for the duration between visits. *Id.*
2 Haynesworth again was seen on March 21, 2014, where he reported being approved for Medi-Cal
3 and having a seizure on March 3, witnessed by his mother and requiring emergency care, but
4 Haynesworth had failed to produce any medical records from the event. *Id.* The progress note
5 stated Haynesworth was within normal limits. *Id.* at 27. At the June of 2014 appointment,
6 Haynesworth reported “anger, irritability, low stress tolerance, and paranoia.” *Id.* Dr. Liles’
7 report indicated that Haynesworth may not have been complying with his medications. *Id.*
8 Haynesworth was still within normal limits. *Id.* The final appointment with Dr. Liles in the
9 records was on September 18, 2014. *Id.* Dr. Liles noted Haynesworth looked healthier, was off
10 drugs, and was looking for a job and contemplating technical school. *Id.*

11 On October 23, 2014, Dr. Liles made an assessment of Haynesworth’s functional ability,
12 similar to the one he did for ALJ Flanagan. *Id.* ALJ Lisewski criticized this report, finding
13 “[d]espite the consistently normal attributes and the improvements with medications, Dr. Liles
14 opined that the claimant would have marked difficulties in maintaining social functioning and
15 marked difficulties with concentration, persistence and pace.” *Id.* ALJ Lisewski found “no
16 references to the underlying treatment notes to explain how the normal findings related to the
17 marked limitations.” *Id.* Additionally, ALJ Lisewski was concerned that Dr. Liles did not
18 “explain why the significant improvements once the claimant became compliant with medications
19 did not result in more functionality.” *Id.* Based on these inconsistencies, ALJ Lisewski
20 determined Dr. Liles’ opinion merited reduced weight. *Id.*

21 ALJ Lisewski also gave reduced weight to the opinions from Dr. Franklin and Dr. Catlin.
22 *Id.* Dr. Franklin evaluated Haynesworth in August of 2013, and concluded Haynesworth would
23 have marked difficulties in all aspects of work activity. *Id.* When Haynesworth saw Dr. Franklin,
24 it had been eight months since his last appointment with Dr. Liles. *Id.* Dr. Franklin’s opinion
25 indicated, however, that Haynesworth stated he was complying with his medication, although he
26 was self-administering it and Dr. Franklin remarked that it was “unclear if [self-administrating
27 was] working.” *Id.* (ALJ’s opinion quoting Dr. Franklin’s treatment notes). ALJ Lisewski
28 instead inferred Haynesworth’s lack of treatment meant he was not complying with his

1 medication. *Id.* Therefore, ALJ Lisewski determined because Dr. Franklin “would have been
2 under the mistaken impression that the claimant was following a medication regimen,” her opinion
3 deserved less weight. *Id.* In October 2014, Haynesworth saw Dr. Catlin, who also concluded that
4 Haynesworth would have severe impairments with all aspects of work functioning. *Id.* at 27–28.
5 Dr. Catlin’s opinion also noted Haynesworth had told her he was complying with his medications
6 during the past nine months. *Id.* at 27. ALJ Lisewski, however, pointed out that Dr. Liles’ June
7 2014 report expressed doubt as to Haynesworth’s compliance. *Id.*

8 ALJ Lisewski found Dr. Catlin and Dr. Franklin’s evaluations “remarkably similar” but
9 did not “find a reason to assign more than a little weight to either of them.” *Id.* at 28. This was
10 because, according to ALJ Lisewski, each was based on subjective statements from Haynesworth
11 that the ALJ presumed each doctor accepted as true. *Id.* ALJ Lisewski found evidence that
12 Haynesworth’s statements “are less than fully credible.” *Id.* (“For example, his statements about
13 compliance with, or even taking, medications are questionable, based on the lack of treatment
14 from November 2012 until December 2013 and the doubts about compliance expressed by Dr.
15 Liles.”). ALJ Lisewski also noted that “both evaluations were obtained by counsel for the purpose
16 of establishing eligibility for benefits and not for treatment purposes,” and thus deserved less
17 weight. *Id.* Finally, ALJ Lisewski asserted that neither doctor reviewed the other medical records,
18 and therefore did not know about Haynesworth’s compliance with medications or the significant
19 duration between treatments. *Id.* ALJ Lisewski accordingly gave little weight to the opinions of
20 Drs. Franklin and Catlin. *Id.* ALJ Lisewski gave considerable weight to the state agency
21 consultant, Drs. Lee and Lucila, who construed Haynesworth’s medical records as showing
22 improved results when Haynesworth complied with his medications. *Id.*

23 ALJ Lisewski further found that Haynesworth’s “allegations as to the severity of his
24 symptoms are not credible, to the extent that he alleges he is incapable of any work activity.” *Id.*
25 This was based on the medical records, specifically focusing on the gaps in treatment and
26 medication compliance, and lack of a treating or examining physician “reliably” finding
27 Haynesworth disabled. *Id.*

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e. Step 5: Ability to Perform Other Jobs in the National Economy

ALJ Lisewski found, based on Haynesworth’s, residual functional capacity, age, education, and work experience in conjunction with the vocational guidelines, that there were jobs in the national economy that Haynesworth could perform. *Id.* at 29–30. Specifically, ALJ Lisewski adopted ALJ Flanagan’s conclusions regarding the work Haynesworth could perform: industrial cleaner, cleaner II, and house cleaner. *Id.* at 30. Therefore, ALJ Lisewski concluded Haynesworth was capable of making a successful adjustment to other work in the national economy, and thus, a finding of “not disabled” was appropriate. *Id.*

* * *

Haynesworth appealed ALJ Lisewski’s decision on April 17, 2015. *Id.* at 282–93. The Appeals Counsel denied the request for review on May 17, 2016. *Id.* at 1.

E. Motions for Summary Judgment

1. Haynesworth’s Motion for Summary Judgment

Haynesworth’s motion for summary judgment requests the Court reverse the Commissioner’s final decision and remand the matter in accordance with 42 U.S.C. § 405(g). Pl.’s Mot. at 1. The period of alleged disability under review is from March 1, 2013 through January 21, 2015. *Id.* at 5.

Haynesworth presents six issues to the Court: (1) whether ALJ Lisewski erred in evaluating the medical opinions; (2) whether ALJ Lisewski erred in finding Haynesworth’s testimony not credible, without providing clear and convincing reasons supported by substantial evidence; (3) whether ALJ Lisewski erred in determining Haynesworth’s impairments did not meet or equal a listed impairment; (4) whether ALJ Lisewski erred in determining Haynesworth’s residual functional capacity; (5) whether ALJ Lisewski erred in determining Haynesworth could perform other work; and (6) whether the Court should remand for payment of benefits or further proceedings. *Id.* at 4.

Haynesworth contends that ALJ Lisewski erred in rejecting the opinions of Drs. Liles, Franklin, and Catlin and affording too much weight to state agency consultants Drs. Lee and Lucila’s opinions. *Id.* at 8–18. Haynesworth argues that ALJ Lisewski rejected Drs. Liles,

1 Franklin, and Catlin’s opinions without providing “specific and legitimate reasons supported by
2 substantial evidence.” *Id.* at 8–17. With respect to Drs. Lee and Lucila’s opinions, Haynesworth
3 argues ALJ Lisewski erred in according more weight to those consulting doctors than she did to
4 the treating and examining doctors. *Id.* at 17.

5 Haynesworth next argues that ALJ Lisewski erred in not finding his testimony credible
6 based on his “‘lack of follow through and periodic non-compliance with medical treatment’ and
7 alleged improvement with medication compliance, and because, ‘no treating or evaluating
8 physician reliably finds him disabled from work.’” *Id.* at 19 (quoting AR at 28). Haynesworth
9 argues these reasons are not clear and convincing, supported by substantial evidence. *Id.*

10 Haynesworth additionally argues if ALJ Lisewski appropriately evaluated and assigned
11 weight to the opinions of Drs. Liles, Franklin, and Catlin, “she would have determined that
12 [Haynesworth’s] conditions meet or equal a listed impairment.” *Id.* at 21.

13 Haynesworth further argues that if ALJ Lisewski had not rejected the opinions of Drs.
14 Liles, Franklin, and Catlin, as well as Haynesworth’s testimony, “she would have included
15 [Haynesworth’s] marked and extreme mental impairments” in her RFC determination. *Id.* at 22.
16 According to Haynesworth, ALJ Lisewski’s determination that he could perform “‘simple
17 repetitive tasks in a low-stress work environment, with no more than occasional social contact’” is
18 not supported by the medical record. *Id.* (quoting AR at 28).

19 But for ALJ Lisewski’s error in determining Haynesworth’s RFC, Haynesworth argues
20 that she would not have determined Haynesworth was able to perform work. *Id.* Additionally,
21 Haynesworth argues ALJ Lisewski improperly relied on an incomplete hypothetical in
22 determining he was able to perform work. *Id.*

23 Finally, Haynesworth argues that the Court should remand the matter with instructions to
24 ALJ Lisewski to calculate and award benefits because all the conditions of the “credit-as-true” rule
25 are met. *Id.* at 24. In the alternative, Haynesworth argues the Court should remand the matter for
26 further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). *Id.* at 25.

27 **2. The Commissioner’s Cross-Motion for Summary Judgment**

28 The Commissioner moves for summary judgment and requests the Court affirm the final

1 decision because Haynesworth fails to demonstrate any legal error. Comm’r’s Mot. at 1. In the
2 alternative, the Commissioner requests the Court remand the matter for further administrative
3 development instead of awarding benefits. *Id.* at 14.

4 The Commissioner argues there is substantial evidence in the record to support ALJ
5 Lisewski’s evaluation of the medical opinion evidence and rejection of Drs. Liles, Franklin, and
6 Catlin’s opinions. *Id.* at 4–13. The Commissioner argues that ALJ Lisewski’s decision finding
7 Dr. Liles’ opinion of “extreme and marked limitations” inconsistent and unsupported by the
8 findings in Dr. Liles’ treatment notes is supported by substantial evidence. *Id.* at 4–6.
9 Additionally, the Commissioner argues ALJ Lisewski was also correct in discrediting Dr.
10 Franklin’s opinion. *Id.* at 6. According to the Commissioner, Dr. Franklin “accepted
11 [Haynesworth’s] subjective allegations” in writing her opinion and did not “see[] the rest of the
12 medical evidence in the record.” *Id.* The Commissioner supports this position by relying on
13 Haynesworth’s purported medication compliance inconsistencies. Specifically, the Commissioner
14 argues that Dr. Franklin concluded Haynesworth was compliant with his medication in her August
15 2013 report, but Dr. Liles’ June 2014 report stated he was suspicious of Haynesworth’s
16 medication compliance. *Id.* The Commissioner argues that because “Dr. Liles reported that
17 [Haynesworth’s] condition improved with medication, coupled with the fact that [Haynesworth]
18 was not likely taking medication at the time of his consultative examination with Dr. Franklin, it
19 was reasonable for ALJ Lisewski to give less weight to Dr. Franklin’s opinion based on that
20 examination.” *Id.* at 6–7. Finally, the Commissioner contends that ALJ Lisewski was also correct
21 in discrediting the opinion of Dr. Catlin for the same reasons she rejected Dr. Franklin’s opinion.
22 *Id.* at 7.

23 The Commissioner argues ALJ Lisewski was correct in relying instead on the opinion of
24 state agency psychiatrist Dr. Lucila. *Id.* (citing *Bray v. Astrue*, 554 F.3d 1219 (9th Cir. 2009)).
25 Dr. Lucila found Haynesworth “mentally capable of adapting to and performing sustained simple
26 tasks, with limited public/peer and supervisor interactions.” *Id.* at 7–8 (citing AR at 28, 127–28).
27 The Commissioner argues ALJ Lisewski appropriately found Dr. Lucila’s opinion supported by
28 and consistent with the treatment notes from Dr. Liles. *Id.* (citing AR at 19, 27–28, 411–13).

1 Additionally, the Commissioner argues Haynesworth’s poor compliance with his
2 medication is evident from the fact that that Haynesworth was only treated five times since ALJ
3 Flanagan’s decision. *Id.* (citing AR at 26–28, 354–55, 418–19, 424, 427). The Commissioner
4 contends that even though this non-compliance would exacerbate his symptoms, Dr. Liles
5 nevertheless found Haynesworth’s mental status examinations within normal limits, and therefore
6 Haynesworth is not disabled. *Id.*

7 The Commissioner further argues ALJ Lisewski provided valid reasons based on
8 substantial evidence to support her conclusion that Haynesworth’s testimony regarding his
9 disabling symptoms was not credible. *Id.* at 8–11. The Commissioner provides five reasons
10 justifying this position. *Id.* at 9–11. First, the Commissioner argues ALJ Lisewski reasonably
11 found that medical evidence did not support Haynesworth’s testimony, noting Dr. Liles’ medical
12 reports always placed Haynesworth’s mental status within normal limits. *Id.* at 9. Second, the
13 Commissioner argues ALJ Lisewski properly discounted Haynesworth’s testimony based on the
14 effectiveness of his medical treatment. *Id.* at 9–10. The Commissioner argues that Haynesworth’s
15 “marked improvement and good results when he [was] compliant” with his medication
16 constituted a valid reason to reject Haynesworth’s testimony that he was more restricted than the
17 RFC found. *Id.* (quoting AR at 28). Third, and related to the previous point, the Commissioner
18 argues ALJ Lisewski was justified in discrediting Haynesworth’s testimony because of the
19 unexplained gaps in treatment and his poor compliance with treatment. *Id.* at 10. Fourth,
20 according to the Commissioner, ALJ Lisewski properly evaluated Haynesworth’s claims against
21 the medical records and opinions in making her finding. *Id.* Fifth, the Commissioner argues ALJ
22 Lisewski permissibly found that medical records and Haynesworth’s testimony regarding his daily
23 activities undermined his claim for disability. *Id.*

24 Additionally, the Commissioner argues that because ALJ Lisewski properly rejected the
25 opinions of Drs. Liles, Franklin, and Catlin, it was correct for her to find that Haynesworth’s
26 impairment did not meet or equal the criteria in the appropriate listing. *Id.* at 11.

27 The Commissioner also contends ALJ Lisewski was correct in adopting ALJ Flanagan’s
28 RFC finding. *Id.* at 12. According to the Commissioner, ALJ Lisewski’s determination was

1 supported by substantial evidence, including the medical record and Haynesworth’s testimony. *Id.*

2 Finally, the Commissioner argues ALJ Lisewski properly used the VE in determining
3 whether Haynesworth could perform other work that existed in significant numbers. *Id.* (citing
4 AR at 29–30, 43–44). According to the Commissioner, ALJ Lisewski’s hypotheticals were
5 supported by substantial evidence and she was not required to add additional limitations not
6 supported by the record. *Id.*

7 **3. Haynesworth’s Reply Memorandum**

8 Haynesworth’s reply addresses largely the same issues as his motion, and requests the
9 Court remand for payment of benefits, or in the alternative, for further proceedings. *See generally*
10 Reply (dkt. 26).

11 Haynesworth’s reply again argues that ALJ Lisewski erred in discrediting Drs. Liles,
12 Franklin, and Catlin’s opinions. *Id.* at 4–9. Haynesworth stresses that the Court should not rely
13 on the Commissioner’s post hoc reasons supporting ALJ Lisewski’s determination of the weight
14 assigned to Dr. Liles opinion. *Id.* at 4–5. Additionally, even if these new reasons had been
15 included in ALJ Lisewski’s opinion, Haynesworth contends that they still do not meet the
16 applicable standard. *Id.* at 5–6.

17 Haynesworth also disputes the Commissioner’s position that ALJ Lisewski was correct in
18 discrediting Dr. Franklin’s opinion. *Id.* at 7–8. Haynesworth reiterates his argument that the basis
19 ALJ Lisewski cited for discrediting the opinion—that Dr. Franklin purportedly relied solely on
20 Haynesworth’s subjective statements—is not supported by the record, because Dr. Franklin
21 conducted her own psychological evaluations, including a clinical interview, and reviewed the
22 medical records available at that time. *Id.* at 7. Further, Haynesworth notes that Dr. Franklin
23 found his condition “severe and longstanding” and therefore argues that even if she had been able
24 to see records following her examination, there is no evidence in her opinion that it would have
25 changed had she had access to the post-examination records. *Id.* at 7–8 (citing AR at 388–89).
26 Finally, Haynesworth points out that Dr. Franklin came to the same conclusions as Dr. Liles and
27 Dr. Catlin, both of whom reviewed all of Haynesworth’s treating records. *Id.* at 7 (citing AR 391,
28 447–51).

1 Haynesworth also argues that ALJ Lisewski failed to provide adequate justification for
2 discrediting Dr. Catlin’s opinion. *Id.* at 8. Haynesworth contests the Commissioner’s argument
3 that ALJ Lisewski justifiably rejected Dr. Catlin’s opinion because Dr. Catlin did not report
4 reviewing any records. *Id.* Haynesworth argues that Dr. Catlin did in fact review all the records,
5 including any that might have shown Haynesworth was not complying with his medication. *Id.* at
6 8–9 (citing AR 452).

7 As for the ALJ’s reliance on non-examining physicians, Haynesworth argues that the
8 Commissioner’s reliance on *Bray v. Astrue* is misplaced, and that *Bray* is distinguishable from the
9 present case because the non-examining doctor’s opinion in that case regarding the claimant’s
10 mental impairments was not contradicted by other evidence in the record. *Id.* at 9 (citing *Bray*,
11 554 F.3d at 1229). According to Haynesworth, Dr. Lucila and Dr. Lee’s opinions here were
12 contradicted by the treating and examining doctors. *Id.* at 8–9. Haynesworth therefore argues that
13 *Bray* is not controlling and does not support ALJ Lisewski’s decision to rely heavily on Dr. Lucila
14 and Dr. Lee’s opinions. *Id.*

15 With regards to Haynesworth’s gap in treatment, Haynesworth argues there is no evidence
16 in the record that additional treatment during this yearlong gap would have affected the
17 effectiveness of his treatment. *Id.* at 10. Further, Haynesworth contends that when a claimant has
18 failed to engage in treatment, the ALJ ““must not draw any inferences about an individual’s
19 treatment without first considering any explanation that the individual may provide,” including
20 inability to afford treatment.” *Id.* (quoting Social Security Ruling 96-7). According to
21 Haynesworth, the gap in treatment is explained by his lack of health insurance and inability to
22 afford treatment. *Id.*

23 Haynesworth further argues that ALJ Lisewski failed to provide clear and convincing
24 reasons to justify rejecting Haynesworth’s testimony. *Id.* at 11. Haynesworth argues that the
25 Commissioner cited the wrong legal standard in arguing the credibility determination is entitled to
26 deference because the more specific standards set forth in *Lester*, 81 F.3d at 834, and *Reddick v.*
27 *Chater*, 157 F.3d 715, 722 (9th Cir. 1991), have superseded the Ninth Circuit’s earlier discussion
28 of the issue in *Bunnel v. Sullivan*, 947 F.2d 341, 345–46 (9th Cir. 1991). Reply at 10–11.

1 Haynesworth argues that ALJ Lisewski was required to identify what testimony was not credible
2 and what evidence undermined it, which according to Haynesworth, she failed to do. *Id.*
3 Haynesworth’s reply also addresses the three reasons the Commissioner provided to justify
4 discrediting Haynesworth’s testimony, arguing that gaps in treatment do not undermine his
5 credibility, that his testimony was consistent with Dr. Liles’ treatment notes, and that his activities
6 of daily living—which ALJ Lisewski did not cite as a reason for her adverse credibility finding—
7 are consistent with his alleged disability. *Id.* at 11–13.

8 Haynesworth goes on to argue that had ALJ Lisewski relied on Drs. Liles, Franklin, and
9 Catlin’s opinions, she would have determined that Haynesworth was disabled at Step Three. *Id.* at
10 13. Further, Haynesworth argues that ALJ Lisewski erred in determining his residual functional
11 capacity because she failed to properly take into account Drs. Liles, Franklin, and Catlin’s
12 opinions and instead adopted ALJ Flanagan’s determination without accounting for additional
13 records submitted after that decision. *Id.* at 14.

14 In conclusion, Haynesworth requests the Court remand for payment of benefits on the
15 basis that ALJ Lisewski would have been required to find him disabled had she properly credited
16 his testimony and the opinions of his doctors. *Id.* In the alternative, Haynesworth requests the
17 Court remand for further administrative development. *Id.*

18 **III. ANALYSIS**

19 **A. Legal Standard Under 42 U.S.C. § 405(g)**

20 District courts have jurisdiction to review the final decisions of the Commissioner and
21 have the power to affirm, modify, or reverse the Commissioner’s decisions, with or without
22 remanding for further hearings. 42 U.S.C. § 405(g); *see also* 42 U.S.C. § 1383(c)(3).

23 When asked to review the Commissioner’s decision, the Court takes as conclusive any
24 findings of the Commissioner which are free from legal error and supported by “substantial
25 evidence.” 42 U.S.C. § 405(g). Substantial evidence is “such evidence as a reasonable mind
26 might accept as adequate to support a conclusion,” and it must be based on the record as a whole.
27 *Richardson v. Perales*, 402 U.S. 389, 401 (1971). Substantial evidence means “more than a mere
28 scintilla,” *id.*, but “less than a preponderance.” *Desrosiers v. Sec’y of Health & Human Servs.*,

1 846 F.2d 573, 576 (9th Cir. 1988). Even if the Commissioner’s findings are supported by
2 substantial evidence, the decision should be set aside if proper legal standards were not applied
3 when weighing the evidence. *Benitez*, 573 F.2d at 655. In reviewing the record, the Court must
4 consider both the evidence that supports and detracts from the Commissioner’s conclusion.
5 *Smolen*, 80 F.3d at 1279 (citing *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985)).

6 If the Court identifies defects in the administrative proceeding or the ALJ’s conclusions,
7 the Court may remand for further proceedings or for a calculation of benefits. *See Garrison*, 759
8 F.3d at 1019–21.

9 **B. Evaluation of Medical Opinions**

10 **1. Legal Standard**

11 “Cases in this circuit distinguish among the opinions of three types of physicians: (1) those
12 who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant
13 (examining physicians); and (3) those who neither examine nor treat the claimant (nonexamining
14 physicians).”⁵ *Lester*, 81 F.3d at 830. “[T]he opinion of a treating physician is . . . entitled to
15 greater weight than that of an examining physician, [and] the opinion of an examining physician is
16 entitled to greater weight than that of a non-examining physician.” *Garrison*, 759 F.3d at 1012.

17 “To reject [the] uncontradicted opinion of a treating or examining doctor, an ALJ must
18 state clear and convincing reasons that are supported by substantial evidence.” *Ryan v. Comm’r of*
19 *Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citations omitted). “The opinion of a
20 nonexamining physician cannot by itself constitute substantial evidence that justifies the rejection
21 of the opinion of either an examining physician *or* a treating physician.” *Id.* (quoting *Lester*, 81
22 F.3d at 831). The Ninth Circuit has recently emphasized the high standard required for an ALJ to
23 reject an opinion from a treating or examining doctor, even where the record includes a
24 contradictory medical opinion:

25 “If a treating or examining doctor’s opinion is contradicted by

26 _____
27 ⁵ Psychologists’ opinions are subject to the same standards as physicians’ opinions. *See* 20 C.F.R.
28 § 404.1527(a)(2); *Valentine v. Comm’r of Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th Cir. 2009)
(applying standards discussing physicians’ opinions to evaluate an ALJ’s treatment of a
psychologist’s opinion).

1 another doctor’s opinion, an ALJ may only reject it by providing
2 specific and legitimate reasons that are supported by substantial
3 evidence.” *Id.* This is so because, even when contradicted, a treating
4 or examining physician’s opinion is still owed deference and will
5 often be “entitled to the greatest weight . . . even if it does not meet
6 the test for controlling weight.” *Orn v. Astrue*, 495 F.3d 625, 633
7 (9th Cir. 2007). An ALJ can satisfy the “substantial evidence”
8 requirement by “setting out a detailed and thorough summary of the
9 facts and conflicting clinical evidence, stating his interpretation
10 thereof, and making findings.” *Reddick [v. Chater]*, 157 F.3d 715,
11 725 (9th Cir. 1998). “The ALJ must do more than state conclusions.
12 He must set forth his own interpretations and explain why they,
13 rather than the doctors’, are correct.” *Id.* (citation omitted).

14 Where an ALJ does not explicitly reject a medical opinion or set
15 forth specific, legitimate reasons for crediting one medical opinion
16 over another, he errs. *See Nguyen v. Chater*, 100 F.3d 1462, 1464
17 (9th Cir. 1996). In other words, an ALJ errs when he rejects a
18 medical opinion or assigns it little weight while doing nothing more
19 than ignoring it, asserting without explanation that another medical
20 opinion is more persuasive, or criticizing it with boilerplate
21 language that fails to offer a substantive basis for his conclusion. *See*
22 *id.*

23 *Garrison*, 759 F.3d at 1012–13 (footnote omitted).

2. ALJ Lisewski Erred in Assigning Little Weight to Dr. Liles’ Opinion

24 Treating physicians bring a “unique perspective to the medical evidence.” 20 C.F.R.
25 § 404.1527(d)(2); *Lester*, 81 F.3d at 833. “The treating physician’s continuing relationship with
26 the claimant makes him especially qualified to evaluate reports from examining doctors, to
27 integrate the medical information they provide, and to form an overall conclusion as to functional
28 capacities and limitations, as well as to prescribe or approve the overall course of treatment.”
Lester, 81 F.3d at 833.

Dr. Liles began treating Haynesworth on July 25, 2012. AR at 348. Since ALJ Flanagan’s
decision, Dr. Liles has treated Haynesworth on five separate occasions. *Id.* at 409–36. In
addition, on October 23, 2014, Dr. Liles completed the Questionnaire, setting forth his opinion of
Haynesworth’s relevant limitations. *Id.* at 449–52. ALJ Lisewski rejected Dr. Liles’
Questionnaire on the grounds that (1) Dr. Liles made no reference to his treating notes, which
noted “normal attributes and the improvement with medications,” in finding Haynesworth’s would
have marked difficulties, and (2) Dr. Liles “did not explain why significant improvements once
. . . [Haynesworth] became compliant with medications did not result in more functionality.” *Id.*

1 at 27. Instead, ALJ Lisewski relied on the opinions of the state agency consultants, which found
2 Haynesworth at most moderately limited—contradicting the opinion of Dr. Liles, who found
3 Haynesworth would have marked and extreme limitations. *Id.* at 28, 102–132, 449–52. The Court
4 holds that the ALJ erred in disregarding Dr. Liles’ opinion because neither of the two reasons
5 offered by the ALJ was “specific and legitimate” and supported by substantial evidence in the
6 record. *See Ryan*, 528 F.3d at 1198.

7
8 **a. Dr. Liles’ Purported Failure to Reference His Treating Notes in
His Questionnaire**

9 ALJ Lisewski concluded Dr. Liles’ Questionnaire was not credible first because he did not
10 explain how he got from his treating notes, which always stated Haynesworth was within “normal
11 limits,” to the Questionnaire, which stated Haynesworth would have “marked difficulties” in
12 maintaining social function and with concentration, persistence, and pace. AR at 27. Dr. Liles’
13 Questionnaire states he relied on mental status examinations and clinical interviews to demonstrate
14 the severity of Haynesworth’s symptoms and mental impairments. *Id.* at 449. Each of Dr. Liles’
15 reports indicated that Haynesworth was within normal limits on the mental status examination.
16 *See generally id.* at 409–36. Dr. Liles’ narratives, however, often described a very different story
17 of functionality. For example, at the June 2014 appointment Haynesworth reported that he had
18 “anger, irritability, low stress tolerance and was paranoid and out of control,” and Dr. Liles
19 characterized him as “passive, helpless, . . . difficult to treat, in denial,” and “almost housebond.”
20 *Id.* at 418–19. The report from that visit nevertheless states that Haynesworth’s mental status
21 examination was within normal limitations. *Id.* at 419. At the September 2014 visit, Dr. Liles
22 described Haynesworth as looking healthier and much better. *Id.* at 412–13. Haynesworth’s
23 mental status examination was still within normal limits. *Id.* at 413. The discrepancy between, on
24 one hand, Liles’ consistent “within normal limits” diagnoses for Haynesworth’s mental status
25 examinations, and on the other hand, the range of Dr. Liles’ more holistic assessments that at
26 times characterized Haynesworth as virtually incapacitated, suggests that Dr. Liles did not believe
27 the mental status examinations fully captured Haynesworth’s condition, and based his overall
28 conclusions as to Haynesworth’s capabilities on more than merely those tests. ALJ Lisewski’s

1 **3. ALJ Lisewski Erred in Assigning Little Weight to Drs. Franklin and**
2 **Catlin’s Opinions**

3 ALJ Lisewski assigned little weight to the opinion of examining psychologists Drs.
4 Franklin and Catlin, both of whom characterized Haynesworth’s limitations as marked to extreme.
5 AR at 28, 391, 447–48. Drs. Franklin and Catlin each examined Haynesworth, *see id.* at 379–91,
6 437–48, and their opinions are therefore entitled to substantial weight unless (1) the ALJ presented
7 clear and convincing reasons to reject them, supported by substantial evidence, or (2) they are
8 contracted by other medical opinions and the ALJ provided specific and legitimate reasons to
9 reject them, supported by substantial evidence. *See Ryan*, 528 F.3d at 1198.

10 ALJ Lisewski gave the same three reasons as to why she rejected Drs. Franklin and
11 Catlin’s opinions: (1) their opinions were based entirely on Haynesworth’s subjective statements,
12 which ALJ Lisewski found less than fully credible, (2) their opinions were procured by
13 Haynesworth’s representative, and (3) they did not review all medical evidence of treatment that
14 was contained in the record at the time of ALJ Lisewski’s subsequent decision. AR at 28. ALJ
15 Lisewski relied on the opinions of the state agency consultants, which found Haynesworth was at
16 most moderately limited, contradicting the opinions of Drs. Franklin and Catlin. *Id.* at 28, 102–32,
17 390–91, 445–48. Therefore, she must provide specific and legitimate reasons to reject them,
18 supported by substantial evidence. *See Ryan*, 528 F.3d at 1198. The Court holds that the ALJ
19 erred in disregarding Drs. Franklin and Catlin’s opinions because none of the aforementioned
20 reasons were “specific and legitimate” and supported by substantial evidence in the record. *See*
21 *Ryan*, 528 F.3d at 1198.

22 **a. Basis of Drs. Franklin and Catlin’s Opinions**

23 ALJ Lisewski’s assigned little weight to Drs. Franklin and Catlin’s opinions because she
24 construed them as based entirely on Haynesworth’s subjective statements,⁶ which ALJ Lisewski
25 found less than fully credible because the “the lack of treatment from November 2012 until
26 December 2013 and the doubts about compliance expressed by Dr. Liles” called into question
27 whether he had taken his medication. AR at 28. For the reasons explained below, the Court holds

28

⁶ This order addresses the credibility of Haynesworth’s statements in the next section.

1 ALJ Lisewski erred in rejecting Drs. Franklin and Catlin’s opinions because that rationale is not
2 supported by substantial evidence contained in the record. *See Ryan*, 528 F.3d at 1198.

3 Haynesworth argues that Drs. Franklin and Catlin’s opinions were not based only on
4 subjective statements, but also on relevant medical records and numerous psychological tests.
5 Mot. at 14, 16 (citing AR at 379, 437, 452). The Court agrees. Dr. Franklin’s report states she
6 reviewed the records from the Schuman Liles Clinic and John George Pavilion as well as
7 administered multiple psychological tests during the evaluation. AR at 379. Dr. Catlin’s report
8 and April 2015 supplement letter state she reviewed all the medical records from the Schuman
9 Liles Clinic, Dr. Franklin’s report, John George Pavilion records, and Pathways to Wellness
10 records. *Id.* at 379, 452. Additionally, Dr. Catlin also administered numerous psychological tests.
11 *Id.* at 379. Dr. Franklin did not have Dr. Liles’s progress reports that took place after she
12 conducted her examination, which ALJ Lisewski’s claims would have shown Haynesworth was
13 not complying with his medication and therefore his statements were questionable, but Dr. Catlin
14 did. *Id.* at 379, 452. Dr. Franklin’s opinion notes Haynesworth was self-administering his
15 medication, and it was not clear if that was working. *Id.* at 389. Further, Dr. Franklin
16 acknowledges Haynesworth’s conflicting feelings towards his medication. *Id.* at 381. The record
17 does not support ALJ Lisewski’s assertion that Drs. Franklin and Catlin’s evaluations were “based
18 entirely on the subjective statements of the claimant, which both doctors . . . accepted uncritically
19 as true.” *Cf. id.* at 28.

20 Even if Drs. Franklin and Catlin’s opinions were based partially on subjective statements,
21 the Ninth Circuit has held “an ALJ does not provide clear and convincing reasons for rejecting an
22 examining physician’s opinion by questioning the credibility of the patient’s complaints where the
23 doctor does not discredit those complaints and supports his ultimate opinion with his own
24 observations.” *Ryan*, 528 F.3d at 1199–1200 (9th Cir. 2008) (citing *Edlund v. Massanari*, 253
25 F.3d 1152, 1159 (9th Cir. 2001)). Drs. Franklin and Catlin did not discredit any of Haynesworth’s
26 complaints and supported their conclusions with ample objective testing, as detailed in their
27 respective reports. AR at 379–91, 437–48. Additionally, according to the M-FAST test
28 administered by Dr. Franklin, which measures whether a client is prone to overstate or exaggerate

1 symptoms, there was no indication of malingering. *Id.* at 386.

2 Therefore, the Court holds that this reason for rejecting Drs. Franklin and Catlin’s opinions
3 is not supported by the record.

4 **b. Procurement of Drs. Franklin and Catlin’s Opinions by**
5 **Haynesworth’s Counsel**

6 “The purpose for which medical reports are obtained does not provide a legitimate basis
7 for rejecting them. An examining doctor’s findings are entitled to no less weight when the
8 examination is procured by the claimant than when it is obtained by the Commissioner.” *Lester*,
9 81 F.3d at 832 (internal citations omitted). “The ALJ is responsible for determining the credibility
10 and resolving conflicts in medical testimony,” *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir.
11 1989), and is permitted “to question a doctor’s credibility because, as here, the doctor’s opinion
12 letter had been solicited by the claimant’s counsel.” *Saelee v. Chater*, 94 F.3d 520, 522–23 (9th
13 Cir.1996) (citing *Burkhart v. Bowen*, 856 F.2d 1335 (9th Cir. 1988)). “[T]he source of a referral
14 [can] be relevant where there is no objective medical basis for the opinion, . . . and where there is
15 evidence of ‘actual improprieties’ on the part of the doctor whose report the ALJ chooses to
16 reject.” *Nguyen v. Chater*, 100 F.3d 1462, 1464 (9th Cir. 1996) (citing *Saelee*, 94 F.3d at 523;
17 *Burkhart*, 856 F.2d at 1339). “Actual improprieties” have been found when there was
18 “inconsistency between [a doctor’s] treating notes and the report . . . submitted to the ALJ or
19 evidence that [a doctor] was deliberately attempting to mislead the ALJ for the purpose of helping
20 claimant obtain benefits.” *Nguyen*, 100 F.3d at 1465 (citing *Saelee*, 94 F.3d at 522–23 (holding
21 that the ALJ did not abuse his discretion by rejecting the retained doctor’s opinion as
22 “untrustworthy because it was obtained solely for the purposes of the administrative hearing,
23 varied from . . . [the doctor’s] own treatment notes, and was worded ambiguously in an apparent
24 attempt to assist . . . [the claimant] in obtaining social security benefits”). Where such factors are
25 not present, however, a doctor’s credibility “is not subject to attack on the basis of the source of
26 his patient’s referral.” *Id.*

27 ALJ Lisewski concluded that Drs. Franklin and Catlin’s opinions were obtained “to
28 establish eligibility for benefits and not for treatment purposes.” AR at 28. ALJ Lisewski

1 acknowledged that this did not mean the opinions were not legitimate or did not deserve due
2 consideration, but ultimately found the context in which they were procured could not be ignored
3 and lessened the weight assigned. *Id.* at 28.

4 Like in *Nguyen*, and unlike in *Saelee*, there is no evidence of any “actual improprieties” in
5 the record to support ALJ Lisewski discrediting these doctors’ opinions based on the fact that they
6 were procured by Haynesworth’s representative. *See Nguyen*, 100 F.3d at 1464–65; *cf. Saelee*, 94
7 F.3d at 522–23. Moreover, their opinions are not “wholly conclusory,” and are supported by
8 objective medical evidence in the way of in person examination of Haynesworth, medical records
9 review, and numerous psychological tests. *Nguyen*, 100 F.3d at 1464–65; AR at 379–91, 437–48.
10 The Court therefore holds that ALJ Lisewski erred in relying on the source of referral to discredit
11 Drs. Franklin and Catlin’s opinions.

12 **c. Review of Medical Records**

13 Finally, ALJ Lisewski assigned little weight to Drs. Franklin and Catlin’s opinions because
14 they did not have the “benefit of reviewing the other medical reports contained in the current
15 record.” AR at 28. Particularly concerning to ALJ Lisewski was that without these records, Drs.
16 Franklin and Catlin would not have evidence indicating Haynesworth was not compliant with his
17 medication or that there was a long period in between treatments. *Id.* This reason is not supported
18 by the record.

19 Dr. Franklin examined Haynesworth on August 23, 2013, and at that time, she had all
20 available records. AR at 379–91. The most current medical record Dr. Franklin reviewed was
21 from November 2012, about seven months prior to her examination. *Id.* at 379, 381–82. Given
22 the lack of more recent medical records, Dr. Franklin would have been aware of this long gap in
23 treatment. Additionally, Dr. Franklin’s opinion acknowledges Haynesworth was not always
24 compliant with his medication. *Id.* at 381 (acknowledging Haynesworth’s report that he was “not
25 always compliant with his medications” and sometimes stopped them because “he did not believe
26 they were helping” or “he ran out of money and had no insurance”). Dr. Franklin wrote that
27 Haynesworth was currently taking his medication, but did not explain what evidence supported
28 that claim. *Id.* at 381–82.

1 Dr. Catlin performed her examination on October 21, 2014. Dr. Catlin states she reviewed
2 all of Haynesworth’s medical records—the same records that ALJ Lisewski relied on in her
3 opinion. *Id.* at 437, 452. Further, Dr. Catlin’s April 2015 letter acknowledges that she was aware
4 of Haynesworth’s lack of treatment and poor medication compliance in the past. *Id.* at 452. The
5 letter goes on to state that Dr. Catlin believed the medication Haynesworth had been taking had
6 “reached their therapeutic levels by the time [she] interviewed him” and Haynesworth’s
7 “functioning should have accurately reflected his ability to function with medication.” *Id.* ALJ
8 Lisewski herself acknowledged Haynesworth was compliant with his medication from June 2014
9 through September 2014, and identified no evidence that Haynesworth ceased compliance in the
10 month between that period and Dr. Catlin’s October examination. *Id.* at 28, 437, 452. It is not
11 clear what records ALJ Lisewski believed Dr. Catlin lacked in preparing her evaluation.

12 Additionally, the state agency consultants on whom ALJ Lisewski’s opinion heavily relies
13 also did not review all Haynesworth’s medical record in making their opinions. *Id.* at 102–32.
14 Both opinions were rendered prior to Haynesworth returning to Dr. Liles on December 2013 for
15 more consistent treatment. *Id.*; *see also Herron v. Astrue*, 407 F. App’x 139, 141 (9th Cir. 2010)
16 (holding that an ALJ erred in assigned great weight to the non-examining physician when that
17 physician “did not review a substantial portion of the relevant medical evidence, including the
18 records from [claimant’s] treating physicians and nurse practitioner” (citing 20 C.F.R. §§
19 404.1527(a)–(e), (f)(2)(ii))). ALJ Lisewski’s opinion does not address why a purported lack of
20 access to records should diminish the credibility of Drs. Franklin and Catlin, but not the credibility
21 of the state agency consultants. Given these inconsistencies in analysis, the Court finds ALJ
22 Lisewski’s reasoning unsupported by substantial evidence in the record.

23 * * *

24 ALJ Lisewski rejected Drs. Franklin and Catlin’s opinions on the grounds that (1) their
25 opinions were based entirely on Haynesworth’s subjective statements, which ALJ Lisewski found
26 less than fully credible, (2) their opinions were procured by Haynesworth’s representative, and
27 (3) they did not review all medical records ALJ Lisewski relied on. AR at 28. The Court holds
28 ALJ Lisewski erred in disregarding Drs. Franklin and Catlin’s opinion because the three reasons

1 offered were not “specific and legitimate” and supported by substantial evidence. *See Ryan*, 528
2 F.3d at 1198.

3 **4. ALJ Lisewski Erred in Assigning Great Weight to State Agency**
4 **Consultants Drs. Lee and Lucila’s Opinions**

5 Drs. Lee and Lucila are non-examining physicians, and their opinions are therefore not
6 entitled to the same weight as treating and examining doctors. *See Lester*, 81 F.3d at 830 (“As a
7 general rule, more weight should be given to the opinion of a treating source than to the opinion of
8 doctors who do not treat the claimant.”). “[N]onexaming sources have no examining or treating
9 relationship with [the claimant]” and thus “the weight [an ALJ] will give their opinions will
10 depend on the degree to which they provide supporting explanations of their opinions.” *Morgan v.*
11 *Colvin*, 531 F. App’x 793, 795 (9th Cir. 2013) (citing 20 C.F.R. § 404.1527(c)(3)).

12 ALJ Lisewski assigned great weight to these opinions because she believed they
13 “confirmed [Haynesworth’s] condition improved with compliance to treatment” and were
14 supported by medical evidence that transpired after they completed their evaluations. *Id.* at 28.
15 The Court holds ALJ Lisewski erred in assigning greater weight to Drs. Lee and Lucila’s opinions
16 than those of the treating and examining physicians, whose opinions—as discussed above—the
17 ALJ rejected without providing specific and legitimate reasons to justify doing so.

18 **C. Evaluation of Claimant’s Testimony**

19 **1. Legal Standard**

20 “[T]he ALJ is responsible for determining credibility, resolving conflicts in medical
21 testimony, and for resolving ambiguities.” *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998).
22 “The ALJ’s findings, however, must be supported by specific, cogent reasons.” *Id.* “In evaluating
23 the credibility of a claimant’s testimony regarding subjective pain, an ALJ must engage in a two-
24 step analysis.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009); *see also Molina v. Astrue*,
25 674 F.3d 1104, 1112 (9th Cir. 2012).

26 “First, the ALJ must determine whether the claimant has presented objective medical
27 evidence of an underlying impairment which could reasonably be expected to produce the pain or
28 other symptoms alleged.” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (internal

1 quotation marks and citation omitted); *see also Molina*, 674 F.3d at 1112; *Berry v. Astrue*, 622
 2 F.3d 1228, 1234 (9th Cir. 2010) (“Once the claimant produces medical evidence of an underlying
 3 impairment, the Commissioner may not discredit the claimant’s testimony as to subjective
 4 symptoms merely because they are unsupported by objective evidence.” (internal quotation marks
 5 and citation omitted)).

6 “Second, if the claimant meets this first test, and there is no evidence of malingering, the
 7 ALJ can reject the claimant’s testimony about the severity of her symptoms only by offering
 8 specific, clear and convincing reasons for doing so.” *Lingenfelter*, 504 F.3d at 1036 (internal
 9 quotation marks and citation omitted); *see also Molina*, 674 F.3d at 1112; *Valentine v.*, 574 F.3d at
 10 693; *Vasquez*, 572 F.3d at 591–93 (concluding that ALJ failed to provide “specific, clear, and
 11 convincing” reasons to support an adverse credibility determination); *Lester*, 81 F.3d at 834; *see*
 12 *also Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993); *Swenson v. Sullivan*, 876 F.2d 683, 687
 13 (9th Cir. 1989). “General findings are insufficient; rather, the ALJ must identify what testimony is
 14 not credible and what evidence undermines the claimant’s complaints.” *Berry*, 622 F.3d at 1234
 15 (internal quotation marks and citation omitted); *see also Lester*, 81 F.3d at 834; *Treichler v.*
 16 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103 (9th Cir. 2014) (“Although the ALJ’s analysis
 17 need not be extensive, the ALJ must provide some reasoning in order for us to meaningfully
 18 determine whether the ALJ’s conclusions were supported by substantial evidence.”).

19 **2. ALJ Lisewski Erred in Discrediting Haynesworth’s Testimony**

20 ALJ Lisewski found Haynesworth’s “medically determinable impairments reasonably
 21 could be expected to cause the alleged symptoms,” satisfying the first part of the inquiry. AR at
 22 25; *see Lingenfelter*, 504 F.3d at 1036. ALJ Lisewski did not identify any evidence of
 23 malingering, *see generally* AR at 20–30, and therefore was required to support her finding that
 24 Haynesworth’s testimony was not credible with clear and convincing reasons. *Lingenfelter*, 504
 25 F.3d at 1036.

26 ALJ Lisewski’s opinion presents the following conclusory explanation for finding
 27 Haynesworth’s “statements concerning the intensity, persistence and limiting effects of [his]
 28 symptoms not credible to the extent they are inconsistent with [the ALJ’s] residual functional

1 capacity assessment”:

2 The first and primary factor I considered to reach this conclusion is
3 the medical evidence, summarized below. In addition, I considered
4 his allegations in light of certain credibility factors as set forth in the
5 regulations, including the claimant’s daily activities, the location,
6 duration, frequency, and intensity of the pain or other symptoms;
7 precipitating and aggravating factors; the type, dosage effectiveness,
8 and side effects of medications; treatment other than medication;
9 other measures used to relieve pain; and other factors concerning the
10 claimant’s functional limitations and restrictions due to pain or other
11 symptoms (20 CFR 416.929).

12 AR at 25–26. ALJ Lisewski “conclude[d] that [Haynesworth’s] allegations as to the severity of
13 his symptoms are not credible, to the extent that he alleges he is incapable of any work activity,”
14 based on “the lack of follow through and periodic non-compliance with medical treatment for his
15 symptoms, contrasted with the marked improvement and good results when he is compliance, and
16 that no treating or evaluating physician reliably finds him disabled from work.” *Id.* at 28.

17 As a starting point, ALJ Lisewski does not identify with any specificity “what testimony is
18 not credible,” as required by the Ninth Circuit. *Berry*, 622 F.3d at 1234. Moreover, simply listing
19 various reasons for discrediting a claimant’s testimony allowed by regulation does not meet the
20 ALJ’s burden to present “clear and convincing reasons” for disregarding such testimony. *See*
21 *Lingenfelter*, 504 F.3d at 1036. The Court disregards the conclusory recitation of the regulation.
22 As for purported inconsistencies between Haynesworth’s testimony and medical evidence, ALJ
23 Lisewski’s opinion discusses the records from Drs. Liles, Franklin, Catlin, Lee, and Lucila. AR at
24 26–28. The Court holds ALJ Lisewski erred in her interpretation of that medical evidence, as
25 discussed above. ALJ Lisweski’s remaining reasons for discrediting Haynesworth’s testimony—
26 inconsistent treatment and compliance, improvement with medication, lack of independent
27 evidentiary support for the severity of his symptoms, and daily activities—are addressed below.

28 **a. Medical Treatment, Medication Compliance, and Improvement**

 The Ninth Circuit has determined it is an “error to reject a claimant’s testimony merely
because symptoms wax and wane in the course of treatment. Cycles of improvement and
debilitating symptoms are a common occurrence, and in such circumstances it is error for an ALJ
to pick out a few isolated instances of improvement over a period of months or years and to treat

1 them as a basis for concluding a claimant is capable of working.” *Garrison*, 759 F.3d at 1017
2 (citing *Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th Cir. 2001)). In *Garrison*, the ALJ found
3 that the claimant’s “condition had improved due to medication at a few points” and “that some of
4 [the claimant’s] mental impairments were caused by [the claimant] going off her medication.” *Id.*
5 at 1016–17. In reviewing the ALJ’s decision, the Ninth Circuit held that these were “not clear,
6 convincing, and specific grounds for rejecting [the claimant’s] testimony” regarding her symptoms
7 and the ALJ “improperly singled out a few period of temporary well-being from a sustained period
8 of impairment and relied on those instances to discredit [the claimant].” *Id.* at 1017–18.

9 ALJ Lisewski’s analysis focused on two occasions when Haynesworth saw improvements
10 in his symptoms: October 23, 2012 and September 18, 2014. *See* AR at 28, 334, 411. Only the
11 September 2014 appointment, however, took place during the time of alleged disability. *See id.*

12 Further, the only record during the alleged period of disability that supported ALJ
13 Lisewski’s finding that Haynesworth was not compliant with his medication was the June 20,
14 2014 report, where Dr. Liles noted that he “suspect[ed] poor compliance.” AR at 418.
15 Haynesworth, however, testified at trial that he “never stopped taking his medication that [Dr.
16 Liles] prescribed” when asked about that note. *Id.* at 42. Regardless, given that there was only
17 one instance of evidence to suggest poor compliance with medication, and that Haynesworth’s
18 treating and examining doctors characterized his limitations as marked or extreme at other times
19 when there was no indication of inadequate medication compliance, Dr. Liles’ June 2014 note
20 expressing doubt as to Haynesworth’s compliance at that time is not in itself a convincing reason
21 to discredit Haynesworth’s symptom testimony that was generally consistent with the opinions of
22 his doctors.

23 Additionally, the Ninth Circuit has “criticized the use of a lack of treatment to reject
24 mental complaints both because mental illness is notoriously underreported and because ‘it is a
25 questionable practice to chastise one with a mental impairment for the exercise of poor judgment
26 in seeking rehabilitation.’” *Regennitter v. Comm’r of Soc. Sec. Admin.*, 166 F.3d 1294, 1299–300
27 (9th Cir. 1999) (citing *Nguyen*, 100 F.3d at 1465). Dr. Franklin noted that Haynesworth’s
28 appointments were scheduled by his grandmother or mother. AR at 389. Haynesworth’s

1 difficulty obtaining medical insurance coverage, such as Medi-Cal, needed to afford treatment and
2 his medication further hindered his ability to obtain consistent treatment. AR 351, 424.

3 Additionally, Dr. Liles’ progress notes indicate Haynesworth is difficult to treat and in denial
4 about his mental health impairments. AR 424. The record as a whole indicates that this is the sort
5 of case where Haynesworth’s impairments could be expected to affect his ability to seek treatment
6 and maintain a consistent medication regimen.

7 **b. Lack of Independent Evidentiary Support**

8 “[T]he claimant is *not* required to show ‘that her impairment could reasonably be expected
9 to cause the severity of the symptom she has alleged; she need only show that it could reasonably
10 have caused some degree of the symptom.’ Nor must a claimant produce ‘objective medical
11 evidence of the pain or fatigue itself, or the severity thereof.’” *Garrison*, 759 F.3d at 1014
12 (quoting *Smolen*, 80 F.3d at 1282). ALJ Lisewski found Haynesworth’s “medically determinable
13 impairments reasonably could be expected to cause the alleged symptoms.” AR at 25; *see*
14 *Garrison*, 759 F.3d at 1014. Haynesworth was therefore not required to prove the severity of his
15 symptoms with evidence beyond his own testimony.

16 Further, ALJ Lisewski was incorrect in finding “no treating or evaluating physician
17 reliably finds [Haynesworth] disabled from work” as justification to discredit his testimony. AR
18 at 28. As discussed above, Drs. Liles, Franklin, and Catlin each found Haynesworth would have
19 marked to extreme difficulties performing work. Further, Dr. Liles and Dr. Catlin found
20 Haynesworth’s impairment’s would cause him to miss at least four days a month, and the VE
21 testified that a person with impairments consistent with ALJ Lisewski’s residual functional
22 capacity assessment could only miss two days of work per month to remain employable. *Id.* at 44,
23 448–49. The Court holds that Haynesworth’s testimony regarding his symptoms is supported by
24 the evidence contained in the record. *Id.* at 28.

25 **c. Significance of Daily Activities**

26 Finally, the Ninth Circuit has also “repeatedly warned that ALJs must be especially
27 cautious in concluding that daily activities are inconsistent with testimony about pain, because
28 impairments that would unquestionably preclude work and all the pressures of a workplace

1 environment will often be consistent with doing more than merely resting in bed all day.”
2 *Garrison*, 759 F.3d at 1016. ALJ Lisewski noted that Haynesworth engaged in activities including
3 going out with a girlfriend, socializing, and making plans for further education and work. AR at
4 28. However, records regarding Haynesworth having a girlfriend predate his alleged onset of
5 disability. *Id.* at 333–42 (November 21, 2012 and October 23, 2013 appointments). Haynesworth
6 did report to Dr. Liles he was “hanging out with better people,” looking online for a job, and
7 thinking of school. *Id.* at 412–13. But absent evidence of activities more directly applicable to a
8 work setting—e.g., *finding* a job rather than merely searching for one, or a clearer discussion of
9 the types of social settings Haynesworth could tolerate—the fact that Haynesworth could do
10 “more than merely resting in bed all day” is not sufficient to discredit his testimony. *See*
11 *Garrison*, 759 F.3d at 1016. ALJ Lisewski therefore erred by failing to provide “specific, clear
12 and convincing reasons” to disregard Haynesworth’s testimony regarding the severity of his
13 symptoms. *See Lingenfelter*, 504 F.3d at 1036

14 **D. Credit-as-True Rule**

15 **1. Legal Standard**

16 If an ALJ has improperly failed to credit claimant testimony or medical opinion evidence,
17 a district court must credit that testimony as true and remand for an award of benefits if three
18 conditions are satisfied:

- 19 (1) the record has been fully developed and further administrative
20 proceedings would serve no useful purpose; (2) the ALJ has failed to
21 provide legally sufficient reasons for rejecting evidence, whether
22 claimant testimony or medical opinion; and (3) if the improperly
23 discredited evidence were credited as true, the ALJ would be
24 required to find the claimant disabled on remand.

25 *Garrison*, 759 F.3d at 1020. Under such circumstances, a court should not remand for further
26 administrative proceedings to reassess credibility. *See id.* at 1019–21. This “credit-as-true” rule,
27 which is “settled” in the Ninth Circuit, *id.* at 999, is intended to encourage careful analysis by
28 ALJs, avoid duplicative hearings and burden, and reduce delay and uncertainty facing claimants,
many of whom “suffer from painful and debilitating conditions, as well as severe economic
hardship.” *Id.* at 1019 (quoting *Varney v. Sec’y of Health & Human Servs.*, 859 F.2d 1396,

1 1398–99 (9th Cir. 1988)).

2 A court may remand for further proceedings “when the record as a whole creates serious
3 doubt as to whether the claimant is, in fact, disabled within the meaning of the Social Security
4 Act.” *Id.* at 1021. A court may also remand for the limited purpose of determining when a
5 claimant’s disability began if that date is not clear from the credited-as-true opinion. *See House v.*
6 *Colvin*, 583 Fed. App’x 628, 629 (9th Cir. July 12, 2014) (citing, *e.g.*, *Luna v. Astrue*, 623 F.3d
7 1032, 1035 (9th Cir. 2010)). Outside of those circumstances, remand for further proceedings is an
8 abuse of discretion if the credit-as-true rule establishes that a claimant is disabled. *Garrison*, 759
9 F.3d at 1020.

10 2. Haynesworth Is Entitled to Benefits

11 The Ninth Circuit’s “settled” credit-as-true rule dictates that where the record has been
12 fully developed, the ALJ has failed to provide sufficient reason to discredit a medical opinion, and
13 crediting that opinion would require a finding that the claimant is disabled, a district court usually
14 must remand for an award of benefits. *Garrison*, 759 F.3d at 999, 1019–21. The Court holds
15 Haynesworth has satisfied all three conditions of the credit-as-true rule.

16 First, the Court finds no need for further development of the record or administrative
17 proceedings. *See Garrison*, 759 F.3d at 1021–22. The record here includes evaluations by a
18 treating doctor and multiple examining doctors, and Haynesworth has testified at two separate
19 hearings before ALJs. Second, as discussed above, ALJ Lisewski failed to provide legally
20 sufficient reasons to reject Drs. Liles, Catlin, and Franklin’s opinions and Haynesworth’s
21 testimony. *See id.* at 1022.

22 Third, the Court holds that if ALJ Lisewski credited the evidence and considered it when
23 rendering her opinion, she would be required to find Haynesworth disabled on remand. *See id.* at
24 1022. As one example of why the improperly discredited evidence would lead to that conclusion,
25 both Dr. Liles and Dr. Catlin determined that Haynesworth’s impairments would cause him to
26 miss more than four days of work per month. AR at 447–49. Even otherwise accepting ALJ
27 Lisewski’s residual functional capacity assessment—which limited Haynesworth to “simple
28 repetitive tasks in a low-stress environment, with no more than occasional social contact,” *id.* at

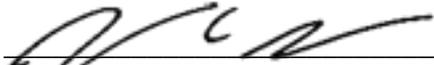
1 25—the VE testified that such a person could only miss two days of work per month to be
2 employable. *Id.* at 44–45. The ALJ did not identify and the Court is not aware of any contrary
3 medical or vocational opinion regarding the number of days that Haynesworth would be required
4 to miss from work or whether such absence would preclude employment, and the Court therefore
5 has no “serious doubt as to whether the claimant is, in fact, disabled” on that basis. *See Garrison,*
6 *759 F.3d at 1021.*⁷ Crediting Drs. Liles, Catlin, and Franklin’s remaining opinions, as well as
7 Haynesworth’s testimony, only further reinforces the conclusion that Haynesworth could not
8 perform any jobs in the national economy. The requirements for the credit-as-true rule are
9 therefore satisfied, and Haynesworth is entitled to an award of benefits.

10 **IV. CONCLUSION**

11 Based on the aforementioned, the Court holds that ALJ Lisewski erred in not finding
12 Haynesworth disabled. The Court remands the matter with instructions to award disability benefits
13 consistent with this order.

14 **IT IS SO ORDERED.**

15 Dated: July 31, 2017

16 
17 _____
18 JOSEPH C. SPERO
19 Chief Magistrate Judge

20
21
22
23
24
25
26 _____
27 ⁷ Under the statutory framework for disability benefits, not all impairments that prevent a claimant
28 from working necessarily meet the definition of “disability.” The law requires that an impairment
“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). Dr. Liles and Dr. Catlin’s opinions found Haynesworth’s impairments
would last at least twelve months. AR at 448–49. Crediting those opinions pursuant to Ninth
Circuit doctrine, that requirement is therefore satisfied here.