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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 RAYMOND DARELL CHAPPLE,

8 Plaintiff,

9 v.

10 NANCY A. BERRYHILL,

11 Defendant.

Case No. 15-cv-06048-KAW

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AND GRANTING DEFENDANT'S
CROSS-MOTION FOR SUMMARY
JUDGMENT**

Re: Dkt. Nos. 15, 16

12
13 Plaintiff Raymond Chapple seeks judicial review, pursuant to 42 U.S.C. § 405(g), of the
14 Commissioner's final decision, and the remand of this case for payment of benefits, or, in the
15 alternative, for further proceedings. Pending before the Court is Plaintiff's motion for summary
16 judgment and Defendant's cross-motion for summary judgment. Having considered the papers
17 filed by the parties, and for the reasons set forth below, the Court DENIES Plaintiff's motion for
18 summary judgment, and GRANTS Defendant's cross-motion for summary judgment.

19 **I. BACKGROUND**

20 On October 27, 2011, Plaintiff filed an application for Title XVI benefits, alleging
21 disability beginning on January 1, 1981. (Administrative Record ("AR") 242.) Plaintiff was 45
22 years of age at the time of the filing of his application. (AR 54.) He did not complete high school,
23 and has never worked. (AR 269, 270.) Rather, Plaintiff has spent most of his adult life in and out
24 of jail, and has thus never held a full-time job. (AR 291, 590, 626.) Plaintiff's disability report
25 lists medical conditions of depression, anxiety, hallucinations, right leg pain, and psychosis. (AR
26 269.) The Social Security Administration ("SSA") denied Plaintiff's applications initially and on
27 reconsideration. (AR 71, 88.) Plaintiff requested a hearing before an Administrative Law Judge
28 ("ALJ"). (AR 108.) The assigned ALJ held a hearing on June 5, 2014. (AR 33.)

1 The ALJ considered a number of different medical opinions in making her determination.
2 Puran Khalsa, Psy.D, assessed Plaintiff on the referral of Plaintiff's prior attorney on December 2,
3 2011. (AR 590-596.) Plaintiff reported that with little support, he relied on his girlfriend for help
4 with daily activities like laundry and cooking. (AR 590.) Dr. Khalsa's report states that Plaintiff
5 first developed psychiatric symptoms when he was fifteen years old, reporting excessive paranoia.
6 (AR 591.) Since his early teens, Plaintiff also experienced periods of severe agitation, delusions
7 of persecution, and auditory hallucinations. Plaintiff also experienced traumatic attacks leading to
8 injury, including a beating in 1988, a stabbing in 1991, and a shooting in 2005. (Id.) Plaintiff was
9 being treated with antipsychotic medication, but showed little relief from the reported symptoms.
10 (Id.) Instead, Plaintiff's delusions of persecution created a pattern of isolation and fear of going
11 outside, and auditory hallucinations disrupted his sleep and eating patterns. (Id.) Plaintiff also
12 reported a period of drug use prior to turning 21, but denied any form of drug use after becoming
13 an adult other than occasional alcohol use. (Id.) Dr. Khalsa described Plaintiff as looking
14 "scattered" upon arrival, "with eyes darting around the room." (Id.) Plaintiff was "extremely
15 agitated and panicking[,] making paranoid statements about people being after him." (Id.)
16 Despite his anxiety, Plaintiff's speech was slowed and slurred, and the right side of his face visibly
17 drooped while his facial expression did not change throughout the assessment, showing severely
18 restricted affect. Plaintiff's thought flow was tangential and incorporated wild and unrelated
19 concepts, and his thoughts revolved around suicidality and assaultive ideas. Plaintiff was also
20 excessively paranoid, repeated auditory and visual hallucinations, and showed significantly
21 impaired insight. (Id.)

22 Dr. Khalsa performed a number of tests, and found severe impairments in memory, severe
23 impairments in attention/concentration, marked limitations in language, marked impairments in
24 executive functioning, and severe impairments in visual/spatial abilities. (AR 592-93.) Overall,
25 Dr. Khalsa concluded that Plaintiff might be suffering from schizophrenia, based on his paranoia,
26 delusions of reference and persecution, and auditory hallucinations, but that without a prior
27 diagnosis, it was "unlikely." (AR 595.) Dr. Khalsa also found that Plaintiff showed signs of
28 severe agitation, and that Plaintiff might suffer from PTSD based on prior attacks, which led to

1 Plaintiff becoming obsessed with themes of violence and avoiding most public places in fear of
2 being attacked. (Id.) Dr. Khalsa found that Plaintiff was completely inappropriate for any type of
3 job setting, and stated that his prognosis was "extremely poor." (Id.)

4 On April 27, 2012, Plaintiff had a consultative exam with Patricia Spivey, Psy.D. (AR
5 626-629.) During the exam, Plaintiff claimed that he had not had an alcohol or drug problem, and
6 denied abuse of any substances currently or historically, both verbally and on intake forms. (AR
7 626.) Dr. Spivey noted that Plaintiff had admitted on prior psychological evaluations to cocaine
8 and opiate abuse, and was diagnosed with polysubstance dependence and substance-induced
9 psychosis. (Id.) The report stated that Plaintiff was able to perform most activities of daily living,
10 and that he could get around on public transportation. (AR 627.) Dr. Spivey observed Plaintiff as
11 being guarded about his legal and drug history, but was not acutely psychotic or visibly anxious,
12 and showed no signs of responding to internal stimuli or losing concentration. (Id.) Dr. Spivey
13 also found that Plaintiff's speech, thought process, and content were normal, that he had no loose
14 associations or other signs of thought disturbance, and that he demonstrated a full affect and
15 neutral mood. (Id.) Dr. Spivey performed a number of exams. (AR 627-28.) Dr. Spivey
16 determined that Plaintiff's symptoms of psychosis were "possibly real but attributable to drug use."
17 Dr. Spivey also found that Plaintiff was not presenting as a person with schizophrenia and was not
18 on medication. (AR 628.) Dr. Spivey concluded that Plaintiff had no impairments in any of his
19 work-related abilities. (Id.)

20 Following his consultative exam, Plaintiff was in jail. (AR 20.) There, he was treated by
21 Fred Rosenthal, M.D., for depression and anxiety. (AR 655.) In his September 26, 2012
22 assessment, Dr. Rosenthal found current symptoms of depression, flat affect, and anxiety. Dr.
23 Rosenthal also noted a history of substance abuse, including the use of cocaine in July 2011. (Id.)
24 On October 5, 2012, Plaintiff complained of auditory hallucinations, which Dr. Rosenthal found
25 "somewhat questionable" and vague as to content. (AR 657.) Dr. Rosenthal also observed
26 Plaintiff as calm with no evidence of a thought disorder or any severe disturbance in mood. Dr.
27 Rosenthal also opined that Plaintiff's claims of auditory hallucinations might be drug-seeking, in
28 light of his history. Dr. Rosenthal prescribed Zyprexa. (AR 657.) On October 24, 2012, Dr.

1 Rosenthal reported that Plaintiff stated the medication made him jittery but that the auditory
2 hallucinations had decreased. (AR 658.) On November 2, 2012 and November 14, 2012, Dr.
3 Rosenthal again observed that the complaints of auditory hallucination were questionable, and that
4 there was no evidence of a thought disorder or any severe disturbance in mood. (AR 659, 660.)
5 Plaintiff reported that the medication had reduced the auditory hallucinations. (Id.) On November
6 28, 2012, Plaintiff again reported that the medication was helpful, and was observed as being
7 cooperative, alert, fully oriented, well-groomed, engaging, and having good eye contact. (AR
8 661.)

9 On March 11, 2013, Plaintiff had a second consultative exam with Ute Kollath, Ph.D. (AR
10 666-669.) Dr. Kollath recorded Plaintiff's chief complaints as the gunshot wound to his right leg,
11 paranoid ideation, and auditory hallucination. (Id.) Dr. Kollath observed Plaintiff as being
12 friendly and cooperative, making good eye contact and with adequate facial expressions. Plaintiff
13 interacted appropriately with the examiner and office staff, and did not exhibit any bizarre
14 behavior. (Id.) Plaintiff stated that he had psychotic symptoms, auditory hallucinations, and
15 paranoid ideation since he was fifteen years old, and that past psychiatric medication was effective
16 but that he was not medication compliant. (Id.) He reported a history of substance abuse, but
17 claimed that the last time he used drugs was a couple of years prior. (AR 667.) Plaintiff was
18 independent for basic activities, did not need help with preparing meals, was able to make change
19 at the store, and typically spent his day sitting in the park. (AR 667.) Dr. Kollath conducted
20 several exams, and found that Plaintiff's attention and concentration were impaired. (AR 668.)
21 Dr. Kollath observed, however, that the test results were "an unreliable representation of the
22 claimant's current psychological functioning," due to Plaintiff's "suboptimal efforts." (AR 668.)
23 Thus, the "results cannot be considered as a reasonably valid or reliable estimate of his level of
24 functioning. (Id.) Dr. Kollath concluded that Plaintiff was unimpaired in all work-related
25 abilities. (AR 669.)

26 At the June 5, 2014 hearing, Dr. C. Richard Johnson testified on behalf of Plaintiff, finding
27 diagnoses of depressive disorder, poly-substance dependence, post-traumatic stress disorder,
28 schizo affective disorder, and generalized anxiety disorder. (AR 35.) Dr. Johnson opined that

1 Plaintiff had marked limitations based on Dr. Khalsa's opinion and a medical source statement
2 from July 2011, prior to Plaintiff's application date. (AR 36.) The medical source statement was
3 signed by Dr. Rosenthal and clinician Sarah M. Ulloa, and assessed marked functional limitations.
4 (AR 548.) When the ALJ inquired as to why Dr. Johnson relied on these opinions rather than the
5 opinions by Dr. Spivey and Dr. Kollath, which were later and showed improvement, Dr. Johnson
6 responded that the later opinions were one-time examinations. (AR 40.) The ALJ then pointed
7 out that Dr. Khalsa's opinion was also a one-time examination, which Dr. Johnson did not
8 contradict. (Id.)

9 The ALJ issued an unfavorable decision on June 23, 2014. (AR 10-24.) A request for
10 review of the hearing decision was filed with the Appeals Council on August 21, 2014. (AR 9.)
11 On October 26, 2015, the Appeals Court denied Plaintiff's request for review. (AR 1-6.) On
12 December 23, 2015, Plaintiff commenced this action for judicial review pursuant to 42 U.S.C. §
13 405(g). (Compl., Dkt. No. 1.)

14 On September 26, 2016, Plaintiff filed a motion for summary judgment. (Plf.'s Mot., Dkt.
15 No. 15.) On October 24, 2016, Defendant filed an opposition and cross motion for summary
16 judgment. (Def.'s Opp'n, Dkt. No. 16.) On December 7, 2016, Plaintiff filed a reply. (Plf.'s
17 Reply, Dkt. No. 19.)

18 II. LEGAL STANDARD

19 A court may reverse the Commissioner's denial of disability benefits only when the
20 Commissioner's findings are 1) based on legal error or 2) are not supported by substantial
21 evidence in the record as a whole. 42 U.S.C. § 405(g); Tackett v. Apfel, 180 F.3d 1094, 1097
22 (9th Cir. 1999). Substantial evidence is "more than a mere scintilla but less than a
23 preponderance"; it is "such relevant evidence as a reasonable mind might accept as adequate to
24 support a conclusion." Id. at 1098; Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996). In
25 determining whether the Commissioner's findings are supported by substantial evidence, the
26 Court must consider the evidence as a whole, weighing both the evidence that supports and the
27 evidence that detracts from the Commissioner's conclusion. Id. "Where evidence is susceptible
28 to more than one rational interpretation, the ALJ's decision should be upheld." Ryan v. Comm'r

1 of Soc. Sec., 528 F.3d 1194, 1198 (9th Cir. 2008).

2 Under SSA regulations, disability claims are evaluated according to a five-step sequential
3 evaluation. Reddick, 157 F.3d at 721. At step one, the Commissioner determines whether a
4 claimant is currently engaged in substantial gainful activity. Id. If so, the claimant is not disabled.
5 20 C.F.R. § 404.1520(b). At step two, the Commissioner determines whether the claimant has a
6 "medically severe impairment or combination of impairments," as defined in 20 C.F.R. §
7 404.1520(c). Reddick, 157 F.3d 715 at 721. If the answer is no, the claimant is not disabled. Id.
8 If the answer is yes, the Commissioner proceeds to step three, and determines whether the
9 impairment meets or equals a listed impairment under 20 C.F.R. § 404, Subpart P, Appendix 1. 20
10 C.F.R. § 404.1520(d). If this requirement is met, the claimant is disabled. Reddick, 157 F.3d 715
11 at 721.

12 If a claimant does not have a condition which meets or equals a listed impairment, the
13 fourth step in the sequential evaluation process is to determine the claimant's residual functional
14 capacity ("RFC") or what work, if any, the claimant is capable of performing on a sustained basis,
15 despite the claimant's impairment or impairments. 20 C.F.R. § 404.1520(e). If the claimant can
16 perform such work, he is not disabled. 20 C.F.R. § 404.1520(f). RFC is the application of a legal
17 standard to the medical facts concerning the claimant's physical capacity. 20 C.F.R. §
18 404.1545(a). If the claimant meets the burden of establishing an inability to perform prior work,
19 the Commissioner must show, at step five, that the claimant can perform other substantial gainful
20 work that exists in the national economy. Reddick, 157 F.3d 715 at 721. The claimant bears the
21 burden of proof in steps one through four. Bustamante, 262 F.3d at 953-954. The burden shifts to
22 the Commissioner in step five. Id. at 954.

23 III. THE ALJ'S DECISION

24 On June 23, 2014, the ALJ issued an unfavorable decision. (AR 13-24.) At step one, the
25 ALJ determined that Plaintiff had not been engaged in substantial gainful activity since October
26 24, 2011, the application date. (AR 15.)

27 At step two, the ALJ determined that Plaintiff suffered from the following severe
28 impairments: status-post gunshot wound to the right leg, polysubstance dependence, and

1 depressive disorder. (Id.)

2 At step three, the ALJ determined that Plaintiff did not have an impairment or combination
3 of impairments that met or medically equaled the severity of a listed impairment. (AR 15-17.) In
4 reaching this determination, the ALJ found that Plaintiff did not satisfy the paragraph B or C
5 criteria. First, the ALJ found that Plaintiff had "mild restriction" in activities of daily living, based
6 on his ability to perform most daily activities and care for his personal hygiene. (AR 16.) Second,
7 the ALJ found that Plaintiff had "moderate difficulties" in social functioning, based on his history
8 of fights since childhood. The ALJ also acknowledged that Plaintiff had "endorsed hallucinations
9 and felt that people stared at him," but explained that "[m]oderating these problems, prison
10 officials have not felt the need to isolate the claimant. He shares his cell with another inmate,"
11 developed and maintained relationships during the relevant period, rode public transportation, and
12 spent time in parks. (Id.) Such activities put him in contact with other people, which in turn
13 demonstrated an ability for individual and social interactions. Third, the ALJ found that Plaintiff
14 had "moderate difficulties" in concentration, persistence, or pace, based primarily on the
15 evaluation of Dr. Spivey. (Id.) The ALJ acknowledged that Dr. Khalsa classified Plaintiff's
16 memory and concentration as "extremely low," but concluded that Dr. Khalsa's observations "do
17 not outweigh the intact functioning reported by Dr. Spivey." (AR 16-17.) Finally, the ALJ found
18 no episodes of decompensation of an extended duration. (AR 17.) Based on these findings, the
19 ALJ concluded that Plaintiff did not satisfy the Paragraph B criteria because the claimant's mental
20 impairments did not cause at least two "marked" limitations or one "marked" limitation and
21 repeated episodes of decompensation. The ALJ also concluded that Plaintiff did not satisfy the
22 Paragraph C criteria because there were no repeated episodes of decompensation, a disease that
23 would cause decompensation, or an inability to function outside a highly supportive living
24 arrangement. (Id.)

25 At step four, the ALJ determined that Plaintiff had the RFC to perform medium work,
26 restricted to simple, routine tasks with no public contact and only occasional interaction with
27 coworkers and supervisors. (AR 17.) The ALJ found that Plaintiff could maintain attention and
28 concentration for two-hour increments with normal breaks. The ALJ reviewed Plaintiff's past

1 history of mental impairments and the medical reports, and concluded that the medically
2 determinable impairments could reasonably be expected to cause the alleged symptoms, but that
3 Plaintiff's statements concerning the intensity, persistence, and limiting effects were not entirely
4 credible. (AR 21.) First, the ALJ pointed to the lack of Plaintiff's work history as undermining
5 credibility. (Id.) Second, the ALJ found that the medical records further undermined Plaintiff's
6 credibility, based on Plaintiff's failure to attend at least two consultative examinations that were
7 scheduled after his release from prison, and his inconsistency in admitting substance abuse to the
8 consultative examiners. (Id.) Further, the ALJ found that Plaintiff's mental health issues appeared
9 to improve on prescription medications, and that even when Plaintiff was noncompliant in
10 continuing treatment, he did not suffer any decompensations and exhibited normal presentation.
11 (Id.) Finally, the ALJ found that the RFC was consistent with Plaintiff's daily activities, including
12 going to the park and riding public transportation, which reflected some level of social interaction.
13 (Id.)

14 The ALJ then analyzed the medical opinions, stating that Dr. Spivey's opinion received
15 great weight for her opinion that Plaintiff had mild impairments and a good prognosis, based on
16 Plaintiff's normal performance, Dr. Spivey's review of prior reports, and her note that Plaintiff
17 incorrectly denied his substance abuse history. (AR 21-22.) The ALJ noted that the two State
18 agency consultants gave different opinions, and gave the most weight to the consultant who
19 restricted Plaintiff to simple tasks with limited public interaction as consistent with Dr. Spivey and
20 the rest of the medical record. (AR 22.) The ALJ gave less weight to the consultant who found no
21 severe impairments. Next, the ALJ gave Dr. Kollath little weight for his opinion that Plaintiff was
22 unimpaired, as the statement conflicted with Dr. Kollath's description of inconclusive cognitive
23 performance and the ample records which supported the existence of some limitations. (Id.) The
24 ALJ also gave little weight to Dr. Khalsa's opinion that Plaintiff had an extremely poor prognosis
25 and was unable to perform any job, explaining that that determination was reserved to the
26 Commissioner. (Id.) The ALJ stated that while she still considered Dr. Khalsa's opinion, it
27 conflicted with the two subsequent examinations. The ALJ gave little weight to the July 2011
28 medical source statement from Ms. Ulloa and Dr. Rosenthal, stating that the opinion was

1 incomplete and gave no explanation for the restrictions, which predated the relevant period. (Id.)
2 Finally, the ALJ gave little weight to Dr. Johnson for his hearing testimony, noting that Dr.
3 Johnson could not explain his decision to focus on some evaluations and not others. (Id.)

4 At step five, the ALJ concluded there were jobs that existed in significant numbers in the
5 national economy that Plaintiff could perform, based on the RFC. (AR 23.)

6 IV. DISCUSSION

7 In his motion for summary judgment, Plaintiff argues that the ALJ erred in denying his
8 application for social security benefits for five reasons: (1) the ALJ erred in evaluating the medical
9 evidence, (2) the ALJ erred in determining Plaintiff's severe impairments at step two, (3) the ALJ
10 erred in determining that Plaintiff did not meet or equal a listing at step three, (4) the ALJ erred in
11 evaluating Plaintiff's credibility, and (5) the ALJ erred in determining Plaintiff's RFC.

12 A. Weighing of Medical Evidence

13 Plaintiff argues that the ALJ improperly weighed the medical evidence by: (1) giving little
14 weight to the treating source's opinion, (2) assigning the greatest weight to examining physician
15 Dr. Spivey, and (3) giving little weight to examining physician Dr. Kollath. (Plf.'s Mot. at 4-11.)
16 Conversely, Defendant argues that the ALJ properly addressed the various opinions. (Def.'s Opp'n
17 at 3.)

18 In evaluating medical evidence from different physicians, the Ninth Circuit distinguishes
19 among the opinions of three types of physicians. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
20 1995). The three types are classified as: (1) those who treat the claimant (treating physicians); (2)
21 those who examine but do not treat the claimant (examining physicians); and (3) those who neither
22 examine nor treat the claimant (non-examining physicians). *Id.* A treating physician's opinion is
23 entitled to controlling weight if it is well-supported and consistent with other substantial evidence
24 in the record. 20 C.F.R. § 404.1527(d)(2). The opinions of treating medical sources may be
25 rejected only for clear and convincing reasons if not contradicted by another doctor, and, if
26 contradicted, only for specific and legitimate reasons supported by substantial evidence. *Chater*,
27 81 F.3d at 830. Where the ALJ fails to provide adequate reasons for rejecting the opinion of a
28 treating or examining physician, that opinion is accepted as true. *Id.* at 834.

1 **i. July 2011 Medical Source Statement**

2 First, Plaintiff challenges the ALJ decision to give little weight to a July 2011 medical
3 source statement by treating physician Dr. Rosenthal and Ms. Ulloa.¹ (Plf.'s Mot. at 4.) The July
4 2011 medical source statement is a one-page document, which states that Plaintiff "appears to
5 have symptoms of paranoia," that the conditions were expected to last (but not how long), and that
6 Plaintiff was incarcerated and symptoms were still present. (AR 548.) The 2011 medical source
7 statement assessed "marked" limitations on Plaintiff's daily living activities, ability to maintain
8 social functioning, and abilities to concentrate. (Id.) The 2011 medical source also noted three
9 episodes of decompensation within a 12-month period, each of at least two weeks of duration.
10 (Id.)

11 The 2011 medical source statement is contradicted by examining medical expert Dr.
12 Spivey's opinion that Plaintiff had mild impairments and a good prognosis, examining medical
13 expert Dr. Kollath's opinion that Plaintiff had no impairments, and the two agency consultants.
14 The 2011 medical source statement is also contradicted by Dr. Rosenthal's own treatment notes
15 from 2012, which found that there was no evidence of thought disorders or any severe disturbance
16 in mood, that medication reduced hallucinations, and that Plaintiff's claims of auditory
17 hallucinations might be drug-seeking. (AR 655-62.) Since the 2011 medical source statement is
18 contradicted, the ALJ must provide specific and legitimate reasons for rejecting this opinion of the
19 treating physician. See Chater, 81 F.3d at 830.

20 The ALJ gave the 2011 medical source statement "little weight" because the opinion was
21 "incomplete" and provided no explanation for the restrictions, which predate the relevant period
22 by three months. (AR 22.) The Court finds that the failure to provide an explanation for the
23 restrictions is a specific and legitimate reason for rejecting the opinion. The Ninth Circuit has held
24 that an ALJ may reject 'check-off reports that did not contain any explanation of the bases of their
25

26 ¹ Plaintiff argues generally that the ALJ erred in assigning little weight to the opinion of treating
27 physician Dr. Rosenthal, but focuses solely on the ALJ's review of the 2011 medical source
28 statement. (Plf.'s Mot. at 4-5.) Plaintiff does not appear to challenge the ALJ's review of Dr.
Rosenthal's later treatment notes, which found no evidence of thought disorders or any severe
disturbance in mood, and questioned Plaintiff's claims of hallucinations as "drug-seeking." (See
AR 655-62.)

1 conclusions." *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1995); see also *Molina v. Astrue*, 674
2 F.3d 1104, 1111-12 (9th Cir. 2012) (finding that ALJ properly rejected an opinion that "consisted
3 primarily of a standardized, check-the-box form in which she failed to provide supporting
4 reasoning or clinical findings"). Applying this principal, courts in this circuit have found that
5 ALJs could reject medical source statements that contained only check-the-box opinions. In
6 *Huntsman v. Colvin*, the district court concluded that the ALJ could reject a treating physician's
7 medical source statement solely because the physician "did not explain any of the objective bases
8 for his opinions that plaintiff had disabling functional limitations." Case No. EDCV 13-1300 JC,
9 2014 WL 808020, at *4 (C.D. Cal. Feb. 28, 2014). The district court observed that the physician
10 "did not reference any medically acceptable clinical or laboratory diagnostic findings--either his
11 own or from another doctor--to support his opinions." *Id.* Similarly, in *Jimenez v. Colvin*, the
12 district court rejected a medical source statement where the physician diagnosed moderate
13 shoulder pain but "failed to explain how the Claimant's impairments impose the severe exertional
14 and postural limitations he assessed when the identified diagnosis involves only the right upper
15 extremity." Case No. CV 12-1676-JEM, 2013 WL 3200523, at *4 (C.D. Cal. June 24, 2013).

16 Here, the 2011 medical source statement states that Plaintiff "appears to have symptoms of
17 paranoia." (AR 548.) In response to the question of whether the impairments remain severe in the
18 absence of substance use, the 2011 medical source statement notes that Plaintiff was incarcerated
19 and that the symptoms were still present, although it does not indicate that the symptoms were
20 severe.² (*Id.*) The 2011 medical source statement does not, however, reference any clinical or
21 laboratory diagnostic findings to support the opinion, instead referring only to Plaintiff
22 "appear[ing]" to have symptoms of paranoia. (*Id.* (emphasis added).) The 2011 medical source
23 statement also fails to explain why the symptoms of paranoia would lead to marked restrictions of
24 daily living, difficulties in maintaining social functioning, or deficiencies in concentration.
25 Contrast with *Smolen*, 80 F.3d at 1288 (finding that the ALJ should not have rejected responses to
26

27 _____
28 ² Plaintiff suggests that an "inference" can be drawn from this that Plaintiff's symptoms are not
related to substance abuse. Notably, as the ALJ noted, Dr. Rosenthal later questioned Plaintiff's
allegations of hallucinations as "drug seeking," thus contradicting this inference. (AR 20, 657.)

1 questions that called for only yes-or-no answers where the physician's responses were
2 accompanied by comments explaining the reasons for each of his responses). Given the lack of
3 explanation connecting what appeared to be symptoms of paranoia to the marked limitations, the
4 ALJ did not err in rejecting the 2011 medical source statement.

5 Plaintiff next argues that there is ample evidence showing multiple symptoms, pointing to
6 prior treatment notes by Dr. Rosenthal and Ms. Ulloa showing hallucinations, rapid stutters, and
7 depressed and anxious mood. (Plf.'s Mot. at 5.) None of these symptoms or treatment notes,
8 however, were referred to by the 2011 medical source statement in concluding that Plaintiff had
9 marked limitations. Thus, the ALJ's finding that the 2011 medical source statement lacked an
10 explanation for the restrictions is valid.

11 Alternatively, Plaintiff contends that the ALJ had a duty to re-contact the treating
12 physician to ascertain what the treating physician's opinion was based on. (Plf.'s Mot. at 6.) "The
13 ALJ in a social security case has an independent duty to fully and fairly develop the record and to
14 assure that the claimant's interests are considered." *Tonapetyan v. Halter*, 242 F.3d 1144, 1150
15 (9th Cir. 2001) (internal quotation omitted). An ALJ may, however, reject a conclusory and brief
16 opinion that is unsupported by clinical findings when confronted with conflicting medical
17 opinions. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 ("an ALJ may discredit
18 treating physicians' opinions that are conclusory, brief, and unsupported by the record as a whole,
19 or by objective medical findings"). Such is the case here, where the 2011 medical source
20 statement's diagnosis of marked limitations is contradicted not only by examining physicians, but
21 by the treating physician's later examinations, which found no evidence of thought disorder or
22 severe disturbance in mood. Compare with *Davis v. Colvin*, No. C13-1209 HRL, 2014 WL
23 3962663, at *3 (N.D. Cal. Aug. 13, 2014) (explaining that an ALJ did not have to "conduct an
24 inquiry whenever presented with an unsubstantiated opinion," particularly where "the record,
25 containing opinions from multiple medical doctors, was sufficiently developed to allow for proper
26 evaluation").

27 Finally, Plaintiff contends that the ALJ should have considered the opinion despite
28 predating the relevant period by three months. (Plf.'s Mot. at 6-7.) Plaintiff argues that the

1 records were relevant because they established that the onset of his mental disorders "occurred
2 very early in life and persisted throughout." (Id. at 7.) As discussed above, the ALJ validly
3 rejected the 2011 medical source statement based on its failure to explain the restrictions.
4 Moreover, the ALJ did review Plaintiff's long history of mental impairments, describing Plaintiff's
5 impairments from the age of 16 and reviewing the various reports. (AR 19.) The 2011 medical
6 source statement adds little to this discussion, particularly where the document includes no
7 reference to any past clinical results or patient history.

8 Thus, the Court finds that the ALJ did not err in assigning little weight to the 2011 medical
9 source statement.

10 **ii. Dr. Patricia Spivey**

11 Second, Plaintiff argues that the ALJ erred in assigning the greatest weight to the opinion
12 of examining physician, Dr. Spivey. (Plf.'s Mot. at 8.) The ALJ assigned Dr. Spivey great weight
13 for her examining opinion that Plaintiff had a mild impairment in maintaining emotional stability
14 and a good prognosis, based on Plaintiff's normal performance during the evaluation. (AR 21-22.)
15 The ALJ also noted that Dr. Spivey took time to review prior reports and noted that Plaintiff had
16 incorrectly denied his substance abuse history. (AR 22.)

17 In challenging the weight given to Dr. Spivey, Plaintiff contends that Dr. Spivey
18 misinterpreted the results of the administered exams because his test results placed him in low
19 percentiles. (Plf.'s Mot. at 8.) Specifically, Plaintiff points to his examination results that gave
20 him an IQ score of 72 (3rd percentile), auditory memory in the 5th percentile, and visual memory
21 in the 12th percentile. (Id. at 9; AR 627.) Plaintiff also points to his results in the Trails A/B,
22 which Plaintiff asserts indicates a mild and severe impairment respectively.³ (Plf.'s Mot. at 9.)
23 Plaintiff argues that "[t]hese test scores do not show a person with no functional limitations, but
24

25 ³ Plaintiff also argues that the Trails results were disqualifying because of their proximity to the
26 tests conducted by Dr. Khalsa, relying on the Handbook of Psychological Assessment's (which the
27 Court cannot independently verify because Plaintiff did not provide the Handbook to the Court)
28 statement that "retesting in a 6 to 12 month period shows the lowest overall reliability for
schizophrenics of only .36 on Trial [sic] A." (Plf.'s Mot. at 9.) This, however, assumes Plaintiff
has schizophrenia, which is not clear from the record, as only Dr. Khalsa found that Plaintiff might
be suffering from schizophrenia, before noting that "it is unlikely." (AR 595.)

1 rather . . . they show a person with severe functional abilities," and thus Dr. Spivey's conclusion
2 that Plaintiff was mildly impaired was a misinterpretation of the results, and thus does not support
3 the ALJ's assignment of great weight. (Id. at 8-9.) Plaintiff also challenges the ALJ's finding that
4 Dr. Spivey reviewed the record, arguing that Dr. Spivey only examined one note from Santa Rita
5 jail, an excerpt of a psychological evaluation, and a January 2012 evaluation by Dr. Rana. (Id. at
6 9.)

7 The Court finds that the ALJ gave specific and legitimate reasons, and therefore did not err
8 in assigning Dr. Spivey great weight. Plaintiff primarily challenges Dr. Spivey's opinion based on
9 her impairment findings in light of the administered exams; Dr. Spivey's evaluation, however, was
10 not based solely on the administered exams. Dr. Spivey is clear that her diagnosis is based not
11 only on the test score, but the clinical interview and mental status exam. (AR 628.) In the clinical
12 interview, Dr. Spivey observed that Plaintiff was "not acutely psychotic and did not appear
13 anxious," and "exhibited no signs of responding to internal stimuli or losing concentration." (AR
14 627.) Plaintiff was also able to perform most activities of daily living and get around on public
15 transportation. (Id.) From the mental status exam, Dr. Spivey found that Plaintiff's speech,
16 thought process, and content were normal. There was also no evidence of poor reality testing, no
17 response to internal stimuli, and no loose associations or other signs of thought disturbance.
18 Plaintiff also presented with a full affect and neutral mood. (Id.) The ALJ could reasonably find
19 that this normal performance supported Dr. Spivey's opinion, and assign great weight accordingly.
20 As to the examination of the record, even though Dr. Spivey's review of prior reports was limited,
21 this does not preclude the ALJ from assigning Dr. Spivey great weight, particularly when her
22 assessment was based on her own independent examination of Plaintiff. See *Castaneda v. Astrue*,
23 344 Fed. Appx. 396, 398 (9th Cir. 2009) ("Even assuming [the examining physician] did not
24 review [the plaintiff's] MRI, the ALJ did not err [because the examining physician's] assessment
25 rested on his own independent examination of [the plaintiff] and was consistent with the record as
26 a whole").

27 **iii. Dr. Puran Khalsa**

28 Third, Plaintiff challenges the ALJ's decision to give little weight to Dr. Khalsa's opinion.

1 (Plf.'s Mot. at 10.) The ALJ gave little weight to Dr. Khalsa's opinion that the claimant had an
2 extremely poor prognosis and was unable to perform any job, explaining that such a determination
3 was reserved to the commissioner under 20 C.F.R. § 416.927(e). (AR 22.) The ALJ stated that
4 she still considered the opinion, but noted that it conflicted with the more recent examinations by
5 Dr. Spivey and Dr. Kollath. (Id.)

6 Plaintiff argues that the ALJ incorrectly cited 20 C.F.R. § 416.927(e), which pertains to
7 non-examining sources, rather than 20 C.F.R. § 416.927(d). (Plf.'s Mot. at 10.) Plaintiff also
8 argues that even if Dr. Khalsa's report conflicts with the two subsequent evaluations, there was
9 substantial evidence elsewhere in the record which support the schizoaffective and psychosis
10 diagnoses, although Plaintiff fails to provide any citations to the record. (Id. at 11.) Finally,
11 Plaintiff challenges the two subsequent evaluations, in particular arguing that Dr. Kollath admitted
12 in his report that the test results were an "unreliable representation of [Plaintiff's] current
13 psychological functioning." (Id.) Defendants respond that the ALJ could reject Dr. Khalsa's
14 opinion based on the two subsequent evaluations. (Def.'s Opp'n at 8-9.)⁴

15 The Court finds that the ALJ adequately explained her decision to give little weight to Dr.
16 Khalsa's opinion about Plaintiff's prognosis and ability to perform any job. With respect to
17 Plaintiff's assertion that the ALJ cited to the wrong regulation, while Plaintiff appears to be correct
18 that the wrong section was identified, Plaintiff fails to explain why this mistake was prejudicial.
19 Indeed, 20 C.F.R. § 416.927(d) describes issues that are reserved to the Commissioner, including
20 whether a claimant is disabled and the residual functional capacity. Citation to the wrong section
21 is not harmful in this case because the ALJ correctly explained the principal of law being applied,
22 which Plaintiff does not challenge. As such, the Court rejects this argument.

23 Likewise, the Court rejects Plaintiff's argument that there is "substantial evidence" of
24 schizoaffective and psychosis diagnoses, as Plaintiff provides no citations to the record in support
25 of this conclusory statement. See Pulido v. Comm'r of Soc. Sec., No. 2:14-CV-2611-CMK, 2016

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27 _____
28 ⁴ Defendant also argues that the ALJ rejected Dr. Khalsa's opinion based on the GAF score, but
the ALJ did not refer to the GAF score in explaining why she gave little weight to Dr. Khalsa's
opinion. (Def.'s Opp'n at 8-9; AR 22.)

1 WL 1170856, at *9 (E.D. Cal. Mar. 25, 2016) ("The court rejects plaintiff's conclusory statement.
2 Plaintiff provides no citation to the record supporting mental limitations not included in the ALJ's
3 residual functional capacity assessment"). The Court also rejects Plaintiff's argument that the two
4 subsequent evaluations were problematic. As discussed above, Dr. Spivey's evaluation was
5 adequate. With respect to Dr. Kollath, while Dr. Kollath did find that his test results were an
6 "unreliable representation" of Plaintiff's abilities, this was due to Plaintiff's "suboptimal efforts."
7 (AR 668.) Moreover, Dr. Kollath's opinion was not limited to the mental status exam, but the
8 clinical interview as well. (AR 669.) Dr. Kollath described Plaintiff as being friendly and
9 cooperative, and with good eye contact and adequate facial expression. (AR 666.) Plaintiff was
10 also observed interacting appropriately with Dr. Kollath and the staff, and displaying no bizarre
11 behavior. (Id.) Plaintiff also reported being independent for basic activities. (AR 667.) Taken
12 together, Plaintiff's focus on Dr. Kollath's statement that the test results were an "unreliable
13 representation" alone does not invalidate Dr. Kollath's opinion, such that the ALJ could not find
14 that Dr. Khalsa's opinion was contradicted by two subsequent examinations. The Court finds that
15 the ALJ gave specific and legitimate reasons in giving little weight to Dr. Khalsa's opinion.

16 **B. Step Two Severe Impairments**

17 Next, Plaintiff argues that the ALJ erred by not finding that Plaintiff suffered
18 schizoaffective disorder, PTSD, and anxiety. (Plf.'s Mot. at 11.) Plaintiff also argues that the ALJ
19 erred by finding Plaintiff's polysubstance abuse to be severe. (Id.) The second step of the
20 sequential evaluation process is the determination of whether the claimant's impairment or
21 combination of impairments is "severe." Reddick, 157 F.3d at 721. Under the de minimis step
22 two standard, "an impairment or combination of impairments may be found not severe only if
23 evidence establishes a slight abnormality that has no more than a minimal effect on an individual's
24 ability to work." Webb v. Barnhart, 433 F.3d 683, 686-87 (9th Cir. 2005). Step two is a "de
25 minimis screening device [used] to dispose of groundless claims." Id. at 687. An ALJ may only
26 find that a claimant lacks a medically severe impairment or combination of impairments when the
27 conclusion is based on "clearly established medical evidence." Id.

28 In support of his argument, Plaintiff points to a March 9, 2008 medical record which lists a

1 secondary diagnosis of schizophrenia/psychosis, as well as Dr. Khalsa's examination. (Plf.'s Mot.
2 at 12.) With respect to Plaintiff's contention that the ALJ erred by finding Plaintiff's
3 polysubstance abuse to be severe, Plaintiff offers no legal or factual argument in support.
4 Defendant responds that only Dr. Khalsa diagnosed schizophrenia, PTSD, and anxiety, and that
5 Dr. Khalsa's opinion was properly discounted by the ALJ. (Def.'s Opp'n at 11-12.)

6 The Court finds that the ALJ did not err in not finding schizophrenia, PTSD, and anxiety.
7 Plaintiff primarily relies on Dr. Khalsa's opinion, but as discussed above, the ALJ properly
8 explained why she discounted Dr. Khalsa's opinion.⁵ While Plaintiff points to other medical
9 records which state that Plaintiff had schizophrenia and that he was taking medication for anxiety,
10 these medical records do not demonstrate that Plaintiff's schizophrenia or anxiety had any effect
11 on his ability to work.⁶ (AR 470, 471, 474, 479, 480, 485, 486, 489, 495.) "Having a diagnosis
12 and taking medication for over one year does not automatically render an impairment severe for
13 the purposes of step two." *Saballos v. Colvin*, Case No. 13-cv-5943-KAW, 2015 WL 1481563, at
14 *7 (N.D. Cal. Mar. 31, 2015). Similarly, these records provide no information on whether the
15 medication was effective, such that with medication, the effects were mild or had more than a
16 minimal effect on Plaintiff's ability to work. See *id.*; see also AR 491 (finding that Plaintiff's
17 agitation and paranoia "improved significantly" after being placed on Seroquel).

18 Further, even if the ALJ had erred in not finding schizophrenia, PTSD, and anxiety,
19 Plaintiff fails to identify how any error was harmful given that the ALJ considered these
20 symptoms when continuing the sequential analysis. See *Lewis v. Astrue*, 498 F. 3d 909, 911 (9th
21 Cir. 2007) (harmless error when decision reflects that the ALJ considered the plaintiff's limitations
22 at step four). At step three, the ALJ considered Plaintiff's allegations of hallucinations and
23

24 ⁵ It is also not clear Dr. Khalsa's opinion supports a diagnosis of schizophrenia, as Dr. Khalsa
25 stated that such a diagnosis was "unlikely." (AR 595.)

26 ⁶ The Court notes that these medical records were from 2008, well before the relevant period. See
27 *Tate v. Colvin*, Case No. ED CV 14-1248-DFM, 2015 WL 5234015, at *4 (C.D. Cal. Sept. 8,
28 2015) ("records that predate the relevant period by two to four years are of only limited
relevance"); *Fair v. Brown*, 885 F.2d 597, 600 (9th Cir. 1989) (finding that a medical report that
predated the period at issue was relevant only to the claimant's burden of proving that his
condition had worsened since).

1 paranoia in determining that Plaintiff had moderate difficulties in social functioning. (AR 16.)
2 Those hallucinations and paranoia were the basis of Dr. Khalsa's finding that Plaintiff could be
3 suffering from schizoaffective disorder. (AR 595.) The ALJ also considered these symptoms in
4 determining Plaintiff's RFC, recounting Plaintiff's hallucinations and paranoia, before noting that
5 his condition improved on medications and that several medical doctors, including treating
6 physician Dr. Rosenthal, questioned the allegations of hallucinations. (AR 19-20.)

7 As to Plaintiff's argument that the ALJ erred by finding Plaintiff's polysubstance abuse to
8 be severe, again, Plaintiff provides no argument in support. Absent any explanation, the Court
9 need not entertain this argument. See *Schlegel v. Wells Fargo Bank, NA*, 720 F.3d 1204, 1210 n.4
10 (9th Cir. 2013) (declining to consider assertions unsupported by argument). In any case, the
11 record contains significant evidence that Plaintiff had abused drugs, and that these actions may
12 have caused Plaintiff's symptoms. (See AR 628 (finding that Plaintiff's reported symptoms of
13 psychosis were "possibly real but attributable to drug use"), 657 (finding that Plaintiff's claims of
14 auditory hallucinations "may be drug seeking in view of his history").)

15 Accordingly, the Court concludes that the ALJ's decision not to include schizophrenia,
16 PTSD, and anxiety as severe impairments was supported by substantial evidence.

17 **C. Step Three Listing**

18 **i. Paragraph A Criteria**

19 Plaintiff argues that the ALJ erred because she failed to consider whether Plaintiff met the
20 A criteria for a 12.03, 12.04, and/or 12.06 listing. (Plf.'s Mot. at 13.) While the ALJ did not
21 discuss whether Plaintiff met the A criteria, this was not error. In order to meet a listing in
22 Appendix 1 for a mental disorder, a claimant must satisfy criteria in paragraph A of the listings,
23 which medically substantiate the presence of a mental disorder, and the criteria in paragraphs B or
24 C, which describe the functional limitations associated with the disorder that are incompatible
25 with the ability to work. 20 C.F.R. Pt. 404, Subpt. P, App'x 1, § 12.00. Thus, even if Plaintiff met
26 the A criteria, he would still need to demonstrate that he met the criteria in paragraphs B or C.
27 The ALJ did, however, consider whether Plaintiff met the B or C criteria for a 12.03, 12.04, 12.06,
28 and 12.09 listing. (AR 16 ("Contrary to the testimony of medical expert . . . the severity of the

1 claimant's mental impairments, considered singly and in combination, do not meet or medically
2 equal the criteria of listings **12.03, 12.04, 12.06**, and 12.09) (emphasis added).) As discussed
3 below, the ALJ's decision that Plaintiff did not meet the B or C criteria was supported by
4 substantial evidence. Thus, the ALJ's failure to explicitly consider whether Plaintiff met the A
5 criteria for 12.03, 12.04, and/or 12.06 listing was harmless.

6 **ii. Paragraph B Criteria**

7 In order to satisfy the criteria in paragraph B, Plaintiff's paragraph A impairment must
8 result in at least two of the following: (1) marked restriction in the activities of daily living; (2)
9 marked difficulties in maintaining social functioning; (3) deficiencies of concentration,
10 persistence, or pace resulting in frequent failure to complete tasks in a timely manner (in work
11 settings or elsewhere); or (4) repeated episodes of decompensation, each of extended duration (i.e.,
12 three episodes within one year, or an average of once every four months, each lasting for at least
13 two weeks). 20 C.F.R. Pt. 404, Subpt. P, App'x 1 § 12.04(B).

14 First, Plaintiff argues that the ALJ erred in determining that Plaintiff had only a mild
15 impairment in activities of daily living. Plaintiff contends that the ALJ should not have relied on
16 Dr. Spivey's and Dr. Kollath's findings, and that Plaintiff had informed Dr. Khalsa that his
17 girlfriend helped with chores such as washing laundry and cooking meals. (Plf.'s Mot. at 16.) The
18 Court finds that the ALJ's finding was supported by substantial evidence. Dr. Spivey found that
19 Plaintiff was able to perform most activities of daily living. (AR 627.) Dr. Kollath's report also
20 indicated that Plaintiff was independent for basic activities of daily living, and that he did not need
21 help with preparing meals. (AR 667.) The fact that Plaintiff informed Dr. Khalsa that his
22 girlfriend helped with chores such as washing laundry and cooking meals does not alone
23 demonstrate that Plaintiff had a marked impairment in activities of daily living, particularly when
24 later examinations found that Plaintiff did not require assistance in activities of daily living,
25 including with meals.

26 Second, Plaintiff contends that the ALJ erred in finding that Plaintiff was only moderately
27 impaired in social functioning. (Plf.'s Mot. at 16.) Plaintiff relies on the July 2011 medical source
28 statement, Dr. Khalsa's report, and Dr. Johnson's testimony. The Court finds that the ALJ did not

1 err in finding that Plaintiff was only moderately impaired. The ALJ explained that Plaintiff had a
2 history of fights and violence, which suggested social deficits, as well as endorsing hallucinations
3 and felt that people stared at him. (AR 16.) The ALJ found, however, that moderating these
4 problems, Plaintiff was able to share his cell with another inmate, was able to develop and
5 maintain relationships during the relevant period, and engaged in activities that put him in contact
6 with other people, such as riding the bus and spending time in the park. (AR 16.) Thus, contrary
7 to Plaintiff's reports of being paranoid of other people and avoiding public places in fear of being
8 attacked, Plaintiff demonstrated that he was able to interact with others and did go to public
9 places, where he would be put in contact with other people. Further, as discussed above, the ALJ
10 did not err in finding that the July 2011 medical source statement and Dr. Khalsa's report were
11 entitled to little or no weight. As for Dr. Johnson's testimony, Dr. Johnson explained that his
12 opinion was reliant on the July 2011 medical source statement and Dr. Khalsa's report. (AR 36.)
13 For that reason, the ALJ gave his hearing testimony little weight. (AR 22.) The Court finds that
14 the ALJ's assessment is supported by substantial evidence.

15 Finally, Plaintiff argues that the ALJ erred in finding that Plaintiff was only moderately
16 impaired in concentration and persistence in pace. (Plf.'s Mot. at 18.) Again, Plaintiff primarily
17 relies on Dr. Khalsa's report, to which the ALJ did not err in giving reduced weight. Plaintiff also
18 relies on the results from Dr. Spivey's testing, which gave Plaintiff low marks in IQ, verbal
19 comprehension, perceptual reasoning, working memory, and processing speed. (Id.) The ALJ
20 acknowledged these test results, but ultimately relied on Dr. Spivey's finding that Plaintiff's
21 functioning was intact, as well as Plaintiff's ability to handle money. (AR 16-17.) Dr. Spivey's
22 opinion was based not only on the test results, but on the full evaluation, which included an
23 interview with Plaintiff. The Court concludes that the ALJ's finding was supported by substantial
24 evidence.⁷

25
26 ⁷ Moreover, even if the ALJ had erred in finding moderate restrictions, as opposed to marked
27 restrictions, in Plaintiff's concentration, persistence, and pace, the error would be harmless.
28 Plaintiff must demonstrate marked impairment in at least two of the four paragraph B criteria; as
discussed, the ALJ did not err in finding that Plaintiff lacked marked restrictions in activities of
daily living and social functioning. As for periods of decompensation, Plaintiff does not argue
that this requirement is satisfied under paragraph B. (See Plf.'s Mot. at 15-19.)

1 Therefore, the Court concludes that the ALJ did not err in finding that Plaintiff did not
2 satisfy the paragraph B criteria.

3 **iii. Paragraph C Criteria**

4 Next, Plaintiff argues that the ALJ erred by finding that Plaintiff did not meet the
5 paragraph C criteria when she concluded that Plaintiff had experienced no episodes of
6 decompensation, which have been of extended duration. (Plf.'s Mot. at 19.) To satisfy the criteria
7 of paragraph C, Plaintiff's paragraph A impairment, of at least 2 years' duration, must cause more
8 than a minimal limitation of ability to do basic work activities, with symptoms or signs currently
9 attenuated by medication or psychosocial support, as well as one of the following: (1) repeated
10 episodes of decompensation, each of extended duration; (2) a residual disease process that has
11 resulted in such marginal adjustment that even a minimum increase in mental demands or change
12 in environment would cause decompensation; or (3) current history of one or more years' inability
13 to function outside a highly supportive living arrangement. 20 C.F.R. Pt. 404, Subp. P, App'x 1 §
14 12.04(C).

15 Here, Plaintiff first relies on the July 2011 medical source statement, which indicated that
16 Plaintiff had three episodes of decompensation within a 12 month period, each of at least two
17 weeks duration. (Plf.'s Mot. at 19; AR 548.) Again, the ALJ could give the July 2011 medical
18 source statement little weight, given its lack of explanation. Moreover, the July 2011 medical
19 source statement preceded the relevant period; there is no evidence that Plaintiff suffered repeated
20 episodes of decompensation, each of extended duration, during the relevant period. Compare with
21 *Fry v. Comm'r of Soc. Sec.*, No. 2:15-cv-2023-KJN, 2017 WL 999459, at *5 (E.D. Cal. Mar. 15,
22 2017) (no evidence that the plaintiff had experienced any episodes of decompensation during the
23 relevant period); *Phillips v. Colvin*, Civil Action No. 2:14CV67, 2015 WL 1268292, at *27
24 (N.D.W.V. Mar. 19, 2015) ("although Dr. Salman opined that Plaintiff had experienced three (3)
25 episodes of decompensation [citation], the record is silent as to any episodes of decompensation
26 during the relevant period"); *Havens v. Colvin*, Civil No. 3:13-cv-600, 2014 WL 4659957, at *9
27 ("Havens' medical records do not document a single episode of decompensation within the
28 relevant period, and thus the requirements of subparagraph 1 are not met"). While Plaintiff also

1 points to Dr. Johnson's testimony that Plaintiff had at least four hospitalizations, Dr. Johnson did
2 not explain when these hospitalizations occurred, did not cite to any medical records, and admitted
3 that none of the episodes were of extended period. (Plf.'s Mot. at 19; AR 44.) The Court therefore
4 finds that the ALJ did not err in finding that Plaintiff did not meet the paragraph C criteria based
5 on Plaintiff suffering repeated episodes of decompensation of extended duration.

6 **D. Credibility Determination**

7 Plaintiff argues that the ALJ erred in evaluating Plaintiff's credibility by failing to consider
8 the entire case record and provide clear and convincing reasons. (Plf.'s Mot. at 20.) The ALJ
9 found that Plaintiff's statements concerning the intensity, persistence, and limiting effects of his
10 impairments was not entirely credible, focusing on Plaintiff's limited work history, failure to
11 attend at least two consultative examinations, inconsistency in admitting substance abuse, and
12 treatment history. (AR 21.)

13 In evaluating a claimant's testimony regarding subjective pain or other symptoms, and ALJ
14 must engage in a two-step inquiry. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (citation
15 omitted). An ALJ must first "determine whether the claimant has presented objective medical
16 evidence of an underlying impairment which could reasonably be expected to produce the pain or
17 other symptoms." *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (internal quotations
18 and citations omitted). At this step, a claimant need not show that her impairment "could
19 reasonably be expected to cause the severity of the symptom she has alleged; she need only show
20 that it could reasonably have caused some degree of the symptom." *Id.* (internal quotation and
21 citations omitted). Next, if a claimant meets this first prong and there is no evidence of
22 malingering, the ALJ must then provide "specific, clear, and convincing reasons" for rejecting a
23 claimant's testimony about the severity of her symptoms. *Id.* The Ninth Circuit has found that:

24 [t]he ALJ may consider many factors in weighing a claimant's
25 credibility, including (1) ordinary techniques of credibility
26 evaluation, such as the claimant's reputation for lying, prior
27 inconsistent statements concerning the symptoms, and other
28 testimony by the claimant that appears less than candid; (2)
unexplained or inadequately explained failure to seek treatment or to
follow a prescribed course of treatment; and (3) the claimant's daily
activities. [Citations.] If the ALJ's finding is supported by
substantial evidence, the court may not engage in second-guessing.

1 Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir. 2008).

2 Plaintiff argues that the failure to submit to psychiatric treatment is not a clear and
3 convincing reason to discount credibility. (Plf.'s Mot. at 20.) Plaintiff relies on cases in which the
4 Ninth Circuit has found that the failure of a claimant to seek treatment was not a reason to reject a
5 medical opinion. *Regennitter v. Comm'r of Soc. Sec. Admin.*, 166 F.3d 1294, 1299 (9th Cir. 1999)
6 ("Nor is Regennitter's failure, because of his poverty, to seek treatment by any mental professional
7 a valid reason for the ALJ to reject Dr. Manfield's opinion"); *Nguyen v. Chater*, 100 F.3d 1462,
8 1465 (9th Cir. 1996) ("the fact that claimant may be one of millions of people who did not seek
9 treatment for a mental disorder until late in the day is not a substantial basis on which to conclude
10 that Dr. Brown's assessment of claimant's condition is inaccurate"). These cases, however, "say[]
11 nothing about whether a claimant's failure to follow a recommended course of treatment . . . is a
12 factor that can adversely impact the claimant's credibility concerning the severity of his psychiatric
13 symptoms." *Dreesman v. Colvin*, Case No. 13-cv-2009-LHK, 2014 WL 4626006, at *9 (N.D. Cal.
14 Sept. 15, 2014). Moreover, Plaintiff presents no evidence that his failure to seek treatment was
15 attributable to his mental impairment rather than personal preference. *Molina*, 674 F.3d at 1113-
16 14 ("a claimant's failure to assert a good reason for not seeking treatment . . . can cast doubt on the
17 sincerity of the claimant's . . . testimony"). Thus, the ALJ did not err in basing her adverse
18 credibility finding on Plaintiff's failure to seek treatment.

19 Similarly, the ALJ did not err in basing her adverse credibility finding on Plaintiff's failure
20 to attend consultative exams. Plaintiff does not explain why he failed to attend at least two
21 consultative examinations, and courts in this district have found that an "unexcused failure to
22 attend a consultative evaluation would justify an ALJ's decision to discredit that claimant's
23 testimony." *Zamora v. Astrue*, No. C 09-4852 JSW, 2010 WL 3768001, at *7 (N.D. Cal. Sept. 22,
24 2010), affirmed by *Zamora v. Comm'r of Soc. Sec. Admin.*, 471 Fed. Appx. 579 (9th Cir. 2012).

25 Plaintiff also challenges the ALJ's finding that Plaintiff was inconsistent in admitting his
26 substance abuse. (Plf.'s Mot. at 21.) Plaintiff argues that he was open about his substance abuse,
27 pointing to his records from one medical provider. Plaintiff admits, however, that there are
28 "conflicting reports" from Dr. Kollath and McMillian, but argues that Dr. Kollath's results are

1 unreliable. (Id.) Plaintiff also theorizes that memory loss "[wa]s a particular symptom related to
2 his illness," but provides no evidence that he was suffering from memory loss at the time of Dr.
3 Kollath's examination. The Court finds the ALJ did not err in basing her adverse credibility
4 finding on Plaintiff's inconsistency in admitting substance abuse. While Plaintiff has been
5 forthcoming at some times about his drug use, he has also denied his substance abuse at other
6 times. For example, on April 27, 2012, Plaintiff told Dr. Spivey that he had not had an alcohol or
7 drug problem, and denied the abuse of any substances currently or historically, both verbally and
8 on his intake forms. (AR 626.) On March 11, 2013, Plaintiff admitted to Dr. Kollath that he had a
9 history of substance abuse, but claimed that the last time he used drugs was "a couple years ago."
10 (AR 667.) That very same day, however, Plaintiff informed Dr. McMillan that he had snorted
11 cocaine three days prior. (AR 673.) While Plaintiff argues that Dr. Kollath described the test
12 results as "unreliable," this description concerned the test results, and does not invalidate Plaintiff's
13 own statements made to Dr. Kollath. Plaintiff's selectiveness in admitting to substance abuse
14 justifies the ALJ's adverse credibility finding.

15 Next, Plaintiff challenges the ALJ's finding that Plaintiff's limited work history undermines
16 credibility, arguing that this assessment is "tenuous at best and not supported by regulations or
17 case law." (Plf.'s Mot. at 21.) Plaintiff provides no authority for this proposition. The Ninth
18 Circuit has, in fact, found that an ALJ may consider a claimant's work record as one of the factors
19 in weighing claimant credibility. *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002) ("The
20 ALJ may consider at least the following factors when weighing the claimant's credibility: . . . [her]
21 work record"). The ALJ therefore could validly consider Plaintiff's work record as one factor in
22 weighing Plaintiff's credibility.

23 Plaintiff also challenges the ALJ's discussion of Plaintiff's daily activities, which included
24 going to the park and riding public transportation. In support, Plaintiff cites to authority that
25 claimants need not be utterly incapacitated to be eligible for benefits. (Plf.'s Reply at 12.) Such
26 authority does not mean that the ALJ erred in considering Plaintiff's daily activities in determining
27 Plaintiff's credibility; daily activities are one of the factors the Ninth Circuit has found may be
28 considered in determining credibility. *Thomas*, 278 F.3d at 959 (listing factors that may be

1 considered in weighing a claimant's credibility, including daily activities"). Given that Plaintiff
2 claimed paranoia to the point that he was afraid of leaving his home, the ALJ could find that his
3 daily activities contradicted these claims, as riding public transportation and going to the park
4 would put him in contact with the public. (AR 16, 21.) Such discrepancies would then go to
5 Plaintiff's credibility. *Molina*, 674 F.3d at 1112 ("the ALJ may consider inconsistencies . . .
6 between the testimony and the claimant's conduct, [including] whether the claimant engages in
7 daily activities inconsistent with the alleged symptoms") (internal quotation omitted).

8 Finally, Plaintiff challenges the ALJ's findings regarding Plaintiff's improvement on
9 medication, arguing that "just because a person suffers from depression or anxiety and makes
10 some improvement does not mean that the person's impairment no longer seriously affect her
11 ability to function in a workplace." (Plf.'s Mot. at 21 (internal quotation omitted).) Plaintiff does
12 not, however, explain why this would affect Plaintiff's credibility. It is not clear how much the
13 ALJ considered Plaintiff's improvement on medication in her credibility determination; regardless,
14 the ALJ articulated multiple reasons why she did not find Plaintiff credible, including his failure to
15 seek treatment, his limited work history, his failure to attend at least two consultative
16 examinations, his inconsistency in admitting substance abuse, and the inconsistency between his
17 daily activities and claims of symptoms. Therefore, the Court concludes that the ALJ provided
18 multiple specific, clear, and convincing reasons in support of her credibility determination.

19 **E. Residual Functional Capacity Determination**

20 Finally, Plaintiff argues that the ALJ's RFC was not based on substantial evidence. (Plf.'s
21 Mot. at 22.) A social security claimant's RFC is what the claimant is capable of doing despite his
22 or her mental and physical limitations. 20 C.F.R. §§ 404.1545(a)(1), 415.945(a)(1); *Valentine v.*
23 *Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009). An RFC is "an assessment of an
24 individual's ability to do sustained work-related physical and mental activities in a work setting on
25 a regular and continuing basis." SSR 96-8p, 1996 SSR LEXIS 5. The ALJ must consider all
26 relevant evidence in formulating an RFC, and "an RFC that fails to take into account a claimant's
27 limitations is defective." *Valentine*, 574 F.3d at 690. The ALJ's findings may be set aside if not
28 supported by substantial evidence. *McCartey v. Massanari*, 298 F.3d 1072, 1075 (9th Cir. 2002);

1 Smolen, 80 F.3d at 1040-41 (RFC excluding subjective limitations was not supported by
2 substantial evidence where the ALJ did not provide clear and convincing reasons for discrediting
3 claimant's testimony).

4 Here, the ALJ found that Plaintiff had the residual functional capacity to perform medium
5 work, and that he could occasionally stoop, kneel, and crouch. (AR 17.) The ALJ restricted
6 Plaintiff to simple, routine tasks with no public contact and only occasional interaction with
7 coworkers and supervisors. The ALJ also found that Plaintiff could maintain attention and
8 concentration for two-hour increments with normal breaks. (Id.) Plaintiff asserts that the ALJ
9 erred in this RFC determination because there was evidence of greater limitations; in support,
10 Plaintiff relies solely on the conclusions in the July 2011 medical source statement, Dr. Khalsa's
11 report, and Dr. Johnson's testimony. (Plf.'s Mot. at 24.) As discussed above, the ALJ provided
12 valid explanations for why she gave these reports lower or no weight. Plaintiff does not otherwise
13 challenge the RFC, and therefore the Court concludes that ALJ's findings were supported by
14 substantial evidence.⁸

15 V. CONCLUSION

16 For the reasons set forth above, Plaintiff's motion for summary judgment is DENIED, and
17 Defendant's cross-motion for summary judgment is GRANTED. The Clerk shall close the case.

18 IT IS SO ORDERED.

19 Dated: August 29, 2017

20 
21 KANDIS A. WESTMORE
22 United States Magistrate Judge

23 _____
24 ⁸ In the reply, Plaintiff for the first time challenges the vocational expert analysis, arguing that the
25 ALJ did not include limitations in her hypotheticals to include the ALJ's findings that Plaintiff has
26 mild restrictions in activities of daily living and moderate restrictions in social functioning and
27 concentration, persistence, and pace. (Plf.'s Reply at 13.) As this issue was not raised in Plaintiff's
28 motion, it is waived. See *Whiteway v. FedEx Kinkos Office & Print Servs., Inc.*, No. C 05-2320
SBA, 2007 WL 4531783, at *3 (N.D. Cal. Dec. 17, 2007) ("Courts decline to consider arguments
raised for the first time in reply" (internal citations omitted). In any case, the RFC reflects these
restrictions; the ALJ specifically explained that "[t]he mental impairments limit the complexity of
tasks [Plaintiff] can perform and his interactions with other people." (AR 22.) Thus, by asking
the vocational expert questions that were based on the RFC, the ALJ included these limitations.