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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 RYAN DAVID WICK,

12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL, Acting  
15 Commissioner of Social Security,

16 Defendant.  
17

Case No.: 16cv1987 JM (AGS)

**ORDER ADOPTING REPORT AND  
RECOMMENDATION ON CROSS-  
MOTIONS FOR SUMMARY  
JUDGMENT**

18  
19 On August 8, 2016, Plaintiff Ryan David Wick filed a complaint, pursuant to 42  
20 U.S.C. § 405(g), asking for judicial review of the denial of Social Security disability  
21 benefits. (Doc. No. 1.) On January 30, 2017, Plaintiff moved for summary judgment.  
22 (Doc. No. 13.) Shortly thereafter, Defendant Nancy A. Berryhill, Acting Commissioner of  
23 Social Security, did the same. (Doc. No. 14.) Magistrate Judge Andrew G. Schopler issued  
24 a Report and Recommendation (“R&R”) recommending that this court deny Plaintiff’s  
25 motion and grant Defendant’s motion. (Doc. No. 23.) Neither party filed objections to the  
26 R&R by the date required. Now, having carefully considered the thorough and thoughtful  
27 R&R, the record before the court, the applicable authorities, and the absence of any  
28 objections to the R&R, the court adopts the R&R in its entirety and grants summary

1 judgment in favor of Defendant.

## 2 **BACKGROUND**

3 The court hereby incorporates by reference the background presented in the R&R.  
4 (Doc. No. 23 at 2.)

## 5 **LEGAL STANDARDS**

### 6 **A. District Court Review of R&R**

7 The duties of the district court in connection with a magistrate judge’s R&R are  
8 governed by 28 U.S.C. § 636 and Federal Rule of Civil Procedure 72(b). The district court  
9 “shall make a de novo determination of those portions of the report . . . to which objection  
10 is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings  
11 or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); see also United  
12 States v. Raddatz, 447 U.S. 667, 673–74 (1980); McDonnell Douglas Corp. v. Commodore  
13 Bus. Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). If neither party contests the  
14 magistrate judge’s proposed findings of fact, “the court may assume their correctness and  
15 decide the motion on the applicable law.” Orand v. United States, 602 F.2d 207, 208 (9th  
16 Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo, however,  
17 regardless of whether any party filed objections thereto. See Robbins v. Carey, 481 F.3d  
18 1143, 1146–47 (9th Cir. 2007).

### 19 **B. Judicial Review of the Commissioner’s Decision**

20 Under the Social Security Act, an unsuccessful claimant may seek judicial review of  
21 the Commissioner’s final agency decision. 42 U.S.C. §§ 405(g), 1383(c)(3). As indicated  
22 in the R&R, the court “may set aside a denial of benefits only if it is not supported by  
23 substantial evidence or is based on legal error.” Garcia v. Comm’r of Soc. Sec., 768 F.3d  
24 925, 929 (9th Cir. 2014); see also Tidwell v. Apfel, 161 F.3d 599, 601 (9th Cir. 1999) (“The  
25 ALJ’s decision denying the disability insurance benefits will be disturbed only if that  
26 decision is not supported by substantial evidence or it is based upon legal error.”).

27 “Substantial evidence is more than a mere scintilla but less than a preponderance.”  
28 Tidwell, 161 F.3d at 601 (citation omitted). “Substantial evidence is such relevant

1 evidence as a reasonable mind might accept as adequate to support a conclusion.” Parra v.  
2 Astrue, 481 F.3d 742, 746 (9th Cir. 2007) (citing Flaten v. Sec’y of Health & Human  
3 Servs., 44 F.3d 1453, 1457 (9th Cir. 1995)). If the evidence “can reasonably support either  
4 affirming or reversing the decision, [the court] may not substitute [its] judgment for that of  
5 the Commissioner.” Id.

### 6 **C. Drug Abuse as a Material Contributing Factor to Disability**

7 To determine whether a claimant is disabled under Title II of the Social Security  
8 Act, an administrative law judge (“ALJ”) must employ the five-step sequential process laid  
9 out in 20 C.F.R. § 416.920(a)(4). However, the inquiry does not end there. As indicated  
10 in the R&R, disability benefits are prohibited if drug addiction is “a contributing factor  
11 material to the Commissioner’s determination that the individual is disabled.” Parra, 481  
12 F.3d at 746 (citing 42 U.S.C. § 423(d)(2)(C)). The court incorporates by reference the  
13 legal standard presented in the R&R. (Doc. No. 23 at 3, ¶ 2.) Ultimately, the claimant  
14 “bears the burden of proving that his substance abuse is not a material contributing factor  
15 to his disability.” Parra, 481 F.3d at 748.

### 16 **DISCUSSION**

17 Plaintiff, while not contesting the ALJ’s finding that he abused drugs, argues that  
18 the ALJ’s finding that such drug abuse was a material contributing factor to his disability  
19 “lacks the support of substantial evidence.” (See Doc. No. 13-1 at 4–7.) In his R&R,  
20 Magistrate Judge Schopler rejected Plaintiff’s argument and found that the ALJ’s finding  
21 is supported by substantial record evidence. This court agrees.

22 First, Plaintiff failed to carry his burden to produce evidence that his drug abuse was  
23 not a material contributing factor to his disability. See Parra, 481 F.3d at 748 (affirming  
24 denial of benefits because the claimant failed to carry his burden of proving that his  
25 alcoholism was not a material contributing factor to his disability). Dr. Nathan Strahl  
26 testified that Plaintiff’s schizophrenia likely resulted from his drug abuse, and it was  
27 exacerbated by Plaintiff’s voluntary non-compliance with prescribed treatment. (A.R. 19,  
28 60–62, 67–68.) Dr. Strahl’s testimony provided the ALJ with substantial evidence to

1 support his conclusion regarding the effect Plaintiff's drug abuse had on his schizophrenia.

2 Second, the ALJ appropriately gave less weight to the letter from Plaintiff's mother,  
3 Suzanne Browne, because it contained inaccurate information about Plaintiff's drug use.  
4 See Bayliss v. Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2005) ("An ALJ need only give  
5 germane reasons for discrediting the testimony of lay witnesses." (citing Lewis v. Apfel,  
6 236 F.3d 503, 511 (9th Cir. 2001))). The available medical records and admissions made  
7 by Plaintiff contradicted Ms. Browne's statement regarding his drug use. (See A.R. 17-  
8 18, 262, 272; Doc. No. 13-1 at 8.) The ALJ thus concluded that Ms. Browne "may not be  
9 as aware of [Plaintiff's] activities and symptoms as she may believe she is"; accordingly,  
10 he gave her letter "less weight." (A.R. 18.)

11 In sum, the court finds that the agency's decision is not based on legal error or  
12 unsupported by substantial evidence. Therefore, it will not be disturbed. Tidwell, 161 F.3d  
13 at 601.

#### 14 CONCLUSION

15 For the reasons stated, the court adopts the R&R in its entirety. Accordingly, the  
16 court denies Plaintiff's motion for summary judgment and grants Defendant's motion for  
17 summary judgment. The Clerk of Court is directed to close the file.

18 IT IS SO ORDERED.

19 DATED: September 22, 2017

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22 JEFFREY T. MILLER  
23 United States District Judge  
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