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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DARRIN L. S.,

12 Plaintiff,

13 v.

14 KILOLO KIJAKAZI, Acting
15 Commissioner of Social Security,

16 Defendant.
17

Case No.: 21cv385-KSC

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT [Doc. No. 21];
DENYING DEFENDANT'S CROSS-
MOTION FOR SUMMARY
JUDGMENT [Doc. No. 24]; AND
REMANDING FOR FURTHER
ADMINISTRATIVE PROCEEDINGS**

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19 Plaintiff Darrin L. S. seeks review of the Acting Commissioner of Social Security's
20 denial of his application for disability benefits. Doc. No. 8. Currently before the Court is
21 plaintiff's Motion for Summary Judgment [Doc. No. 21], defendant's Opposition and
22 Cross-Motion for Summary Judgment [Doc. No. 24], and plaintiff's Reply [Doc. No. 25].
23 For the reasons outlined below, the Court GRANTS plaintiff's Motion for Summary
24 Judgment, DENIES defendant's Cross-Motion for Summary Judgment, and REMANDS
25 the case for further administrative proceedings.

26 ***I. Background and Procedural History.***

27 Plaintiff filed an application for Social Security disability insurance benefits on
28 February 4, 2019, alleging he was disabled as of February 1, 2017, and had stopped

1 working because of his medical condition. AR 143-153.¹ The Social Security
2 Administration (“SSA”) denied his application initially and on reconsideration. Doc.
3 Nos. 83-86, 90-94. Plaintiff requested and received an Administrative Law Judge (“ALJ”)
4 hearing. AR 33-53, 97-99. The ALJ found plaintiff not disabled. AR 12-32. The Appeals
5 Counsel denied plaintiff’s request for review [AR 1-6] and this case followed [Doc. No. 1].

6 ***II. The ALJ’s Decision.***

7 The ALJ followed the Commissioner’s five-step sequential evaluation process for
8 determining whether an applicant is disabled. 20 C.F.R. § 404.1520(a).

9 At step one the ALJ found plaintiff had “not engaged in substantial gainful activity
10 since January 31, 2019.” AR 17.

11 At step two, the ALJ found plaintiff had the following medically determinable severe
12 impairments: lumbar degenerative disc disease, history of hernia repair, migraine
13 headaches, history of scoliosis of the cervical and thoracic spine, and depressive disorder.
14 *Id.* The ALJ also concluded that plaintiff’s hypertension, hyperlipidemia, history of right
15 arm fracture, history of left shoulder fracture, and history of tremors are non-severe because
16 they do not cause more than a minimal limitation in his ability to perform basic work
17 activities. AR 18-19.

18 At step three, the ALJ concluded that plaintiff’s impairments, whether considered
19 alone or in combination, do not meet or equal any of the relevant listings in the SSA’s
20 Listing of Impairments. AR 19-20.

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26 ¹ “AR” refers to the Administrative Record lodged on October 5, 2022. Doc. No. 15. The
27 Court’s citations to the AR use the page references on the original document rather than
28 the page numbers designation by the Court’s case management/electronic case filing
system (“CM/ECF”). For all other documents, the Court’s citations are to the page numbers
affixed by CM/ECF.

1 Before proceeding to step four, the ALJ determined plaintiff had the residual
2 functional capacity (“RFC”) to perform light work² except he is able to “lift and carry 20
3 pounds occasionally and ten pounds frequently; stand[] and/or walk[] for six hours in an
4 eight-hour workday; sit[] for six hours in an eight-hour workday; [] occasionally climb
5 ropes, ladders, or scaffolds and ramps and stairs; [] occasionally balance, stoop, kneel,
6 crouch, and crawl; [] frequently reach overhead on the right; frequently [use] gross
7 manipulation on the right; [] only occasionally use hand tools requiring torquing motion
8 or pressure; [] understand, remember, and carry out simple instructions and tasks; [] [and]
9 respond appropriately to supervisors and coworkers in a task oriented setting where contact
10 with others is casual and infrequent.” AR 20-21. However, he “should avoid concentrated
11 exposure to loud noise and vibration. . . [and] should not work in a setting which includes
12 constant or regular contact with the general public or more than infrequent handling of
13 customer complaints.” *Id.*

14 At step four, the ALJ concluded plaintiff had no past relevant work. AR 26.

15 At step five, the ALJ accepted Vocational Expert (“VE”) opinion testimony and
16 concluded “jobs . . . existed in significant numbers in the national economy that [plaintiff]
17 could perform,” including a Raw Shellfish Preparer; a Housekeeper/ Cleaner; and a
18 Routing Clerk. AR 27.

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23 ² “Light work involves lifting no more than 20 pounds at a time with frequent lifting or
24 carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very
25 little, a job is in this category when it requires a good deal of walking or standing, or when
26 it involves sitting most of the time with some pushing and pulling of arm or leg controls.
27 To be considered capable of performing a full or wide range of light work, you must have
28 the ability to do substantially all these activities. If someone can do light work, we
determine that he or she can also do sedentary work, unless there are additional limiting
factors such as loss of fine dexterity or inability to sit for long periods of time.” 20 C.F.R.
§ 404.1567(b).

1 **III. Standard of Review.**

2 The Court reviews the ALJ’s decision to determine whether the ALJ applied the
3 proper legal standards and whether the decision is supported by substantial evidence.
4 42 U.S.C. § 405(g); *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005).
5 Substantial evidence is “such relevant evidence as a reasonable mind might accept as
6 adequate to support a conclusion.” *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012)
7 (quotations omitted), *superseded by regulation on other grounds as stated in Thomas v.*
8 *Saul*, 830 Fed. App’s 196, 198 (9th Cir. 2020). It is “more than a mere scintilla but, less
9 than a preponderance” *Garrison v. Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014) (quoting
10 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007)).

11 The Court “must consider the entire record as a whole and may not affirm simply by
12 isolating a specific quantum of supporting evidence.” *Ghanim v. Colvin*, 763 F.3d 1154,
13 1160 (9th Cir. 2014) (internal quotation omitted). The Court may not impose its own
14 reasoning to affirm the ALJ’s decision. *See Garrison*, 759 F.3d at 1010. “[I]f evidence
15 exists to support more than one rational interpretation, [then the Court] must defer to the
16 [SSA]’s decision.” *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir.
17 2004) (citing *Morgan v. Comm’r of the SSA*, 169 F.3d 595, 599 (9th Cir. 1999)). The Court
18 will not reverse the ALJ’s decision if any error is harmless. *Marsh v. Colvin*, 792 F.3d 1170,
19 1173 (2015) (“ALJ errors in social security cases are harmless if they are inconsequential
20 to the ultimate nondisability determination and that a reviewing court cannot consider [an]
21 error harmless unless it can confidently conclude that no reasonable ALJ . . . could have
22 reached a different disability determination.”) (internal citations and quotations omitted).

23 **IV. Discussion**

24 Plaintiff argues “[t]he ALJ failed to properly consider the consultative examiner’s
25 opinion.” Doc. No. 21-1 at 4-8. Plaintiff contends board certified psychiatrist Dr. Jaga
26 Nath Glassman’s “opinion is supported and consistent with the record” and “[t]he ALJ’s
27 reasons for finding otherwise are not supported by substantial evidence.” *Id.* at 8.
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1 Plaintiff filed his claim after March 27, 2017; therefore, the 2017 amendments
2 governing medical opinions apply. *Woods v. Kijakazi*, 32 F.4th 785, 789 (9th Cir. 2022).
3 Under those amendments, the SSA “will not defer or give any specific evidentiary weight,
4 including controlling weight, to any medical opinion(s) or prior administrative medical
5 finding(s), including those from . . . medical sources.” 20 C.F.R. § 404.1520c(a). Instead,
6 all medical opinions are evaluated based on supportability, consistency, relationship with
7 the claimant, specialization, and other factors. *Id.* § 404.1520c(c). The SSA is required to
8 explain how it considered the most important factors, supportability and consistency, but
9 is not required to explain how it considered the other factors. *Id.* § 404.1520c(b)(2). “Even
10 under the new regulations, an ALJ cannot reject an examining or treating doctor's opinion
11 as unsupported or inconsistent without providing an explanation supported by substantial
12 evidence.” *Woods*, 32 F.4th at 792.

13 On June 23, 2019, Dr. Glassman, made a psychiatric disability evaluation based on
14 his mental status examination of plaintiff and review of plaintiff’s La Maestra Community
15 Health Center records. AR 323-27. Dr. Glassman noted “during the examination [plaintiff]
16 presented as extremely depressed-appearing, with a sense of underlying rage and
17 volatility.” AR 327. Dr. Glassman further observed:

18 [plaintiff] was very poorly engaged . . . completely avoided eye contact, [and]
19 spoke in a soft monotone, giving very brief responses. He was very agitated,
20 tense, with a sense of underlying rage and potential volatility, and it was scary
21 to be with him. I felt I had to “tread very carefully,” there were marked signs
22 of psychomotor agitation. He rocked back and forth in an agitated manner
23 throughout the interview. He clenched his fists at all times. He twisted
Kleenex into tight wads. I thought he might be psychotic. There was an odd
quality, with some odd and poor relatedness.

24 . . .

25 Cognitively, he presented as of possible low-average intellectual functioning.

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1 He stated he has been depressed since his wife was murdered in his 20s, and
2 apparently has become more severely depressed over the last two to three
3 years, since the injury to his right arm.

4 AR 326-27.

5 Dr. Glassman's diagnosis was: severe major depression; probably somatic symptom
6 disorder; history of adolescent conduct problems; possible dysfunctional personality
7 features; musculoskeletal/orthopedic problems; and a GAF of 45, noting "[plaintiff's] level
8 of functioning appears to be quite impaired." AR 327. Dr. Glass then opined plaintiff had
9 marked impairment in his capacity to: "get along adequately with others and . . . behave in
10 a socially appropriate manner; . . . understand and follow even simple instructions
11 consistently; . . . maintain concentration, persistence, and pace, and to adapt to changes and
12 stresses in the workplace setting. He is not currently in any kind of psychiatric or mental
13 health treatment, which could help decrease symptoms and improve his functioning." *Id.*

14 The ALJ concluded:

15 Dr. Glassman's opinion was unpersuasive because it was inconsistent with
16 and not supported by the objective medical evidence. Dr. Glassman's opinion
17 appeared to rely almost purely on the claimant's presentation during the
18 evaluation. The claimant's effort at both consultative evaluations was
19 questionable and his intimidating presentation at the evaluation with
20 Dr. Glassman contrasted sharply with his presentation with his treating
21 medical providers. The claimant has not sought any significant mental health
22 treatment since February 2019, and he was negative for depression in
23 February 2020. The objective medical evidence did not support marked
24 limitations. The claimant's mental and social limitations would not preclude
25 the performance of all competitive work.

26 AR 26.

27 The ALJ's conclusion that Dr. Glassman's opinion was "not supported by the
28 objective medical evidence. . . [and] appeared to rely almost purely on [plaintiff's]
presentation during the evaluation," is not supported by substantial evidence. Dr.
Grossman's clinical interview and mental status examination of plaintiff are objective
measures for evaluating psychiatric conditions like depressive disorder. *See Buck v.*

1 *Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017) (finding ALJ erred in rejecting psychiatric
2 opinion and holding these “clinical interview[s] and ... mental status evaluation[s] ... are
3 objective measures and cannot be discounted as a ‘self-report.’”); *Mickayla Lynne Marie*
4 *P. v. Comm’r of Soc. Sec.*, No. 22-cv-5183-DWC, 2022 WL 4131597 at *2 (W.D. Wash.
5 Sept. 12, 2022) (finding ALJ erred in determining that a psychiatrist opinion was
6 “unsupported by objective findings” when the doctor conducted a mental status
7 examination.)

8 The ALJ’s conclusion that plaintiff’s effort during Dr. Glassman’s evaluation was
9 “questionable” is based on his own interpretation of that examination and, therefore, is also
10 not supported by substantial evidence.³ *See Tackett v. Apfel*, 180 F.3d 1094, 1102–03 (9th
11 Cir. 1999) (ALJ may not substitute his own interpretation of the medical evidence for the
12 opinion of medical professionals); *Morales v. Apfel*, 225 F.3d 310, 319 (3rd Cir. 2000)
13 (“The principle that an ALJ should not substitute his lay opinion for the medical opinion
14 of experts is especially profound in a case involving a mental disability”).

15 The ALJ’s finding that Dr. Glassman’s opinion was inconsistent with plaintiff’s lack
16 of mental health treatment is not supported by the record or the law. AR 26. Dr. Glassman
17 considered plaintiff’s lack of treatment in forming his opinion. AR 324. Moreover, the
18 Ninth Circuit has “criticized the use of a lack of treatment to reject mental complaints both
19 because mental illness is notoriously underreported and because it is a questionable
20 practice to chastise one with a mental impairment for the exercise of poor judgment in
21 seeking rehabilitation.” *Regennitter v. Comm’r of Soc. Sec. Admin.*, 166 F.3d 1294, 1299-
22 300 (9th Cir. 1999) (internal quotation and citation omitted); *see also Dupree v. Astrue*,

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25 ³ The SSA argues the ALJ’s decision is supported by a January 2016 “disability
26 investigation indicat[ing] that plaintiff was functioning at a higher level than he alleged.”
27 Doc. No. 24 at 7. However, the ALJ found this report “unpersuasive.” AR 22. Moreover,
28 the ALJ did not rely on this report in rejecting Dr. Glassman’s opinion and the Court is
“constrained to review the reasons the ALJ asserts.” *Connett v. Barnhart*, 340 F.3d 871,
874 (9th Cir. 2003).

1 No. C08-5211-KLS, 2009 WL 367203, at *5 (W.D. Wash. Feb. 6, 2009) (“Nor does the
2 Court find the ALJ's statement that there is little evidence in the record of plaintiff having
3 sought and undergone treatment an adequate basis on which to reject those limitations,
4 especially given that Dr. Essink appears to have been well aware of the lack of such
5 treatment on plaintiff's part.”).

6 The ALJ's error was not harmless. For example, Dr. Glassman opined that plaintiff
7 had marked impairment in his capacity to: “understand and follow even simple instructions
8 consistently . . . [and] maintain concentration, persistence, and pace.” AR 327. The VE
9 testified that a hypothetical individual “who can't follow even simple, repetitive
10 instructions” or is “off task 15% or more of the workday” due to “concentration and
11 persistence and pace issues” would not be able to maintain employment. AR 52. In contrast,
12 the ALJ concluded plaintiff is “able to understand, remember, and carry out simple
13 instructions and tasks . . . and respond appropriately to supervisors and coworkers in a task-
14 oriented setting.” AR 20-21. The Court, therefore, cannot conclude the ALJ's failure to
15 properly consider Dr. Glassman's opinion was inconsequential to the disability
16 determination. *See Sawyer v. Astrue*, 303 Fed. Appx. 453, 455 (9th Cir. 2008) (ALJ's failure
17 to properly consider medical opinions not harmless because error was “directly relevant to
18 the ultimate issue” of the plaintiff's capacity for exertion.”)

19 Here remand is required, at a minimum, in order for the ALJ to reevaluate the
20 medical evidence. *See Bunnell v. Barnhart*, 336 F.3d 1112, 1116 (9th Cir. 2003)
21 (remanding for further administrative proceedings where “outstanding issues” remained to
22 be resolved and it was “not clear from the record that an [ALJ] would be required to find
23 the claimant disabled and award disability benefits”); *Trevizo v. Berryhill*, 871 F.3d 664,
24 682 (9th Cir. 2017) (“The decision whether to remand a case for additional evidence, or
25 simply to award benefits is within the discretion of the court.”)

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1 **V. Conclusion**

2 Based on the foregoing, plaintiff's Motion for Summary Judgment is GRANTED
3 [Doc. No. 21], defendant's Cross-Motion for Summary Judgment is DENIED [Doc.
4 No. 24], and the case is REMANDED for further proceedings consistent with this Order.

5 IT IS SO ORDERED.

6 Dated: September 1, 2023



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8 Hon. Karen S. Crawford
9 United States Magistrate Judge

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