

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF WASHINGTON
4

5 LANCE DERRICK PRATT,

6 Plaintiff,

7
8 v.

9 CAROLYN W. COLVIN,
10 Commissioner of Social Security,

11 Defendant.
12

No. 2:15-CV-00148-JTR

ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

13 **BEFORE THE COURT** are cross-Motions for Summary Judgment. ECF
14 No. 19, 20. Attorney Dana C. Madsen represents Lane Derrick Pratt (Plaintiff);
15 Special Assistant United States Attorney Terry E. Shea represents the
16 Commissioner of Social Security (Defendant). The parties have consented to
17 proceed before a magistrate judge. ECF No. 6. After reviewing the administrative
18 record and briefs filed by the parties, the Court **GRANTS** Defendant's Motion for
19 Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

20 **JURISDICTION**

21 Plaintiff filed an application for Supplemental Security Income (SSI) on
22 August 23, 2012, alleging disability since March 2, 2002, due to Degenerative
23 arthritis in neck, bipolar disorder, type II diabetes, schizophrenia, and low back
24 pain.¹ Tr. 1464, 1471. The application was denied initially and upon
25

26 ¹The Court notes that there is no application for SSI in the record. However,
27 there is an SSI determination at all of the administrative levels of review. Tr. 15-
28 17, 26-38, 1421-1424, 1428-1429.

1 reconsideration. Tr. 1421-1424, 1428-1429. Administrative Law Judge (ALJ) R.J.
2 Payne held a hearing on November 19, 2013, at which Plaintiff, represented by
3 counsel, and psychological expert, Margaret Ruth Moore, Ph.D., testified. Tr.
4 1899-1930. At the hearing, Plaintiff amended his date of onset to August 23, 2012.
5 Tr. 1901. The ALJ issued an unfavorable decision on January 13, 2014. Tr. 26-38.
6 The Appeals Council denied review on April 14, 2015. Tr. 15-17. The ALJ's
7 January 13, 2014, decision became the final decision of the Commissioner, which
8 is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this
9 action for judicial review on June 9, 2015. ECF No. 1, 4.

10 **STATEMENT OF FACTS**

11 The facts of the case are set forth in the administrative hearing transcript, the
12 ALJ's decision, and the briefs of the parties. They are only briefly summarized
13 here.

14 Plaintiff was 49 years old at the amended date of onset. Tr. 1471. Plaintiff
15 completed one year of college in 2006. Tr. 1465. He last worked in 2002, and
16 reported that he stopped working because of his condition. Tr. 1464.

17 **STANDARD OF REVIEW**

18 The ALJ is responsible for determining credibility, resolving conflicts in
19 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
20 1039 (9th Cir. 1995). The Court reviews the ALJ's determinations of law *de novo*,
21 deferring to a reasonable interpretation of the statutes. *McNatt v. Apfel*, 201 F.3d
22 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is
23 not supported by substantial evidence or if it is based on legal error. *Tackett v.*
24 *Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as
25 being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put
26 another way, substantial evidence is such relevant evidence as a reasonable mind
27 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402
28 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational

1 interpretation, the court may not substitute its judgment for that of the ALJ.
2 *Tackett*, 180 F.3d at 1097. Nevertheless, a decision supported by substantial
3 evidence will be set aside if the proper legal standards were not applied in
4 weighing the evidence and making the decision. *Browner v. Secretary of Health*
5 *and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence
6 supports the administrative findings, or if conflicting evidence supports a finding
7 of either disability or non-disability, the ALJ's determination is conclusive.
8 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

9 SEQUENTIAL EVALUATION PROCESS

10 The Commissioner has established a five-step sequential evaluation process
11 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *see Bowen*
12 *v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of
13 proof rests upon the claimant to establish a *prima facie* case of entitlement to
14 disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once the
15 claimant establishes that physical or mental impairments prevent him from
16 engaging in his previous occupations. 20 C.F.R. § 416.920(a)(4). If the claimant
17 cannot do his past relevant work, the ALJ proceeds to step five, and the burden
18 shifts to the Commissioner to show that (1) the claimant can make an adjustment to
19 other work, and (2) specific jobs exist in the national economy which the claimant
20 can perform. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193-1194
21 (2004). If the claimant cannot make an adjustment to other work in the national
22 economy, a finding of "disabled" is made. 20 C.F.R. § 416.920(a)(4)(v).

23 ADMINISTRATIVE DECISION

24 On January 13, 2014, the ALJ issued a decision finding Plaintiff was not
25 disabled as defined in the Social Security Act.

26 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
27 activity since August 23, 2012, the amended date of onset. Tr. 28.

28 At step two, the ALJ determined Plaintiff had the following severe

1 impairments: diabetes mellitus and antisocial personality disorder with cluster B
2 traits. Tr. 28.

3 At step three, the ALJ found Plaintiff did not have an impairment or
4 combination of impairments that met or medically equaled the severity of one of
5 the listed impairments. Tr. 32.

6 At step four, the ALJ assessed Plaintiff's residual function capacity and
7 determined he could perform a full range of work at all exertional levels with the
8 following non-exertional limitations:

9 Occasional climbing of ladders, ropes, and scaffolds, and avoid
10 concentrated exposure to hazards (such as unprotected heights and
11 hazardous machinery), avoid concentrated exposure to heavy industrial
12 type-vibration, and avoid concentrated exposure to pulmonary irritants.
13 . . . He is capable of simple routine, and repetitive tasks, as well as well
14 learned complex tasks: he would do best working away from the
15 general public; and, due to his legal history, cannot work around
16 children: and he is able to adapt to workplace changes.

16 Tr. 33. The ALJ identified Plaintiff's past relevant work as saw operator and
17 concluded that Plaintiff was not able to perform this past relevant work. Tr. 37.

18 At step five, the ALJ determined that, considering Plaintiff's age, education,
19 work experience and residual functional capacity, there were other jobs that exist
20 in significant numbers in the national economy Plaintiff could perform. Tr. 37-38.
21 The ALJ thus concluded Plaintiff was not under a disability within the meaning of
22 the Social Security Act at any time from August 23, 2012, through the date of the
23 ALJ's decision, January 13, 2014. Tr. 38.

24 ISSUES

25 The question presented is whether substantial evidence supports the ALJ's
26 decision denying benefits and, if so, whether that decision is based on proper legal
27 standards. Plaintiff contends the ALJ erred by (1) failing to properly consider
28 Plaintiff's credibility, and (2) failing to properly weigh the medical source

1 statements in the record.

2 DISCUSSION

3 A. Credibility

4 Plaintiff contests the ALJ's adverse credibility determination in this case.
5 ECF No. 19 at 10-13.

6 It is generally the province of the ALJ to make credibility determinations,
7 *Andrews*, 53 F.3d at 1039, but the ALJ's findings must be supported by specific
8 cogent reasons, *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent
9 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's
10 testimony must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d
11 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).
12 "General findings are insufficient: rather the ALJ must identify what testimony is
13 not credible and what evidence undermines the claimant's complaints." *Lester*, 81
14 F.3d at 834.

15 The ALJ found Plaintiff less than fully credible concerning the intensity,
16 persistence, and limiting effects of his symptoms. Tr. 34-35. The ALJ reasoned
17 that Plaintiff was less than fully credible because (1) his symptom reporting was
18 contrary to the medical evidence, (2) his symptom reporting was contrary to his
19 reported TV watching, (3) he was noncompliance with treatment, and (4) he made
20 inconsistent statements regarding drug and alcohol use. Tr. 35-36.

21 1. Contrary to the objective medical evidence

22 The ALJ's first reason for finding Plaintiff less than fully credible, that
23 Plaintiff's symptoms are not supported by objective medical evidence, is a specific,
24 clear, and convincing reason to undermine Plaintiff's credibility.

25 Although it cannot serve as the sole ground for rejecting a claimant's
26 credibility, objective medical evidence is a "relevant factor in determining the
27 severity of the claimant's pain and its disabling effects." *Rollins v. Massanari*, 261
28 F.3d 853, 857 (9th Cir. 2001).

1 In the decision, the ALJ pointed to four specific parts of Plaintiff's testimony
2 that was not supported by objective evidence. First, the ALJ found that Plaintiff's
3 testimony about blurry vision, nerve pain, and numbness were unsupported, as
4 there was "no documentation of diabetic nerve damage causing sensation loss in
5 his feet or blurry vision." Tr. 35. The ALJ cited two exhibits in the record to
6 support his determination. *Id. citing* Tr. 1691-1721, 1723-1796. Plaintiff's
7 sensory foot exams on January 14, 2013, February 21, 2013, May 23, 2013, July 8,
8 2013, and August 20, 2013, were normal. Tr. 1725, 1732, 1745, 1752, 1768.
9 Plaintiff argues that in forming his determination, the ALJ ignored a left foot ulcer
10 on August 15, 2011, and a prescription for diabetic shoes on January 13, 2014.
11 ECF No. 19 at 10 *citing* Tr. 1602, 1724. However, neither of these citations
12 support Plaintiff's assertion that he experienced blurry vision, nerve pain, or
13 numbness in his feet. Therefore, the ALJ's determination that Plaintiff's
14 complaints are not supported by objective evidence is supported by substantial
15 evidence.

16 Second, the ALJ found that Plaintiff's statements regarding exertional
17 limitations in lifting, walking, and standing were not supported, stating "there is
18 simply no support in the treatment record for any exertional limitations and
19 certainly not for any need for a cane." Tr. 35. The ALJ cited to the lack of
20 peripheral neuropathy, as discussed above, and the lack of evidence supporting
21 back and hip pain. *Id.* The ALJ determined that the file did not contain imaging or
22 physical examinations supporting Plaintiff's complaints of hip and back pain. Tr.
23 33. Plaintiff failed to challenge the ALJ's determination that Plaintiff's hip and
24 back pain were unsupported by objective evidence, instead, he simply asserted that
25 this reason could not stand alone. ECF No. 19 at 12. As addressed below, the ALJ
26 provided other legally sufficient reasons to find Plaintiff less than fully credible.
27 Therefore, Plaintiff's challenge is insufficient. *See Carmickle v. Comm'r Soc. Sec.*
28 *Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008). (The court ordinarily will not

1 consider matters on appeal that are not specifically and distinctly argued in a
2 claimant’s opening brief.)

3 Third, the ALJ found that Plaintiffs complaints of mental health impairments
4 were not supported by objective evidence. Tr. 35. To support his determination,
5 the ALJ noted that treatment records suggested Plaintiff may have experienced
6 some waxing and waning in symptoms, but overall, he had a positive response to
7 treatment and cited five locations in the record. *Id.* Again, Plaintiff failed to
8 challenge the ALJ’s findings. ECF No. 19.

9 Fourth, the ALJ found that Plaintiff’s complaints of difficulty hearing were
10 not supported by the objective evidence. Tr. 35-36. Specifically, the ALJ noted
11 that there was “no mention that this difficulty was observed in the longitudinal
12 record.” Tr. 36. Plaintiff failed to challenge this finding. ECF No. 19.

13 **2. Watching TV**

14 The ALJ’s second reason for finding Plaintiff less than fully credible, that
15 Plaintiff’s reported activity of watching TV for seven to eight hours a day was
16 inconsistent with his report of blurry vision, Tr. 35, is not a specific, clear, and
17 convincing reason to undermine Plaintiff’s credibility.

18 A claimant’s daily activities may support an adverse credibility finding if (1)
19 the claimant’s activities contradict his other testimony, or (2) “the claimant is able
20 to spend a substantial part of his day engaged in pursuits involving performance of
21 physical functions that are transferable to a work setting.” *Orn v. Astrue*, 495 F.3d
22 625, 639 (9th Cir. 2007) (citing *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)).

23 Here, the ALJ found that Plaintiff’s report of watching TV was inconsistent
24 with his statements of blurry vision. Tr. 35. Plaintiff asserts that it was “unclear
25 how Mr. Pratt’s blurred vision claim is belied by his ability to watch old television
26 programs on and off, especially when the ALJ did not take the opportunity to
27 question Mr. Pratt with regard to his blurred vision problems.” ECF No. 19 at 10-
28 11.

1 The Court agrees. The ALJ's reliance on Plaintiff's blurry vision being
2 inconsistent with the ability to watch TV is not a specific, clear and convincing
3 reason to find Plaintiff less than fully credible. However, any error stemming from
4 this finding is harmless. *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir.
5 2008) (an error is harmless when "it is clear from the record that the . . . error was
6 inconsequential to the ultimate nondisability determination").

7 **3. Treatment Noncompliance**

8 The ALJ's third reason for finding Plaintiff less than fully credible, that
9 Plaintiff's failure to follow prescribed treatment, is a specific, clear and convincing
10 reason.

11 Noncompliance with medical care or unexplained or inadequately explained
12 reasons for failing to seek medical treatment casts doubt on a claimant's subjective
13 complaints. 20 C.F.R. § 416.930; *Fair*, 885 F.2d at 603; *Macri v. Chater*, 93 F.3d
14 540, 544 (9th Cir. 1996) (finding the ALJ's decision to reject the claimant's
15 subjective pain testimony was supported by the fact that claimant was not taking
16 pain medication).

17 The ALJ noted that while Plaintiff testified that he had trouble with
18 controlling his diabetes due to the State not allowing him the proper supplies, the
19 record showed that Plaintiff failed to take both his psychiatric and diabetic
20 medication, and failed to follow through with diet and exercise. Tr. 35. The
21 failure to take prescribed medication is an example of noncompliance with
22 treatment. Therefore, the ALJ's determination is supported by substantial
23 evidence.

24 **4. Inconsistent Statements**

25 The ALJ's final reason for finding Plaintiff less than fully credible, he made
26 inconsistent statements regarding drug and alcohol use, is a specific, clear and
27 convincing reason.

28 An ALJ may properly consider whether or not a claimant is a reliable

1 historian regarding drug and alcohol usage in assessing credibility. *Thomas v.*
2 *Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002); *see Verduzco v. Apfel*, 188 F.3d 1087,
3 1090 (9th Cir. 1999) (conflicting or inconsistent testimony concerning alcohol or
4 drug use can contribute to an adverse credibility finding).

5 The ALJ acknowledged that there was no evidence of a substance abuse
6 problem in the 2013 treatment records from Rockwood Clinic; however, Plaintiff's
7 statements regarding his past drinking were inconsistent. Tr. 35. At the November
8 19, 2013, hearing, Plaintiff testified that he stopped drinking years ago and had
9 stopped using illicit drugs at least twelve years ago. Tr. 1923-1924. On November
10 1, 2012, he told Dr. Garrett he had stopped drinking about five or six years prior
11 and last used cocaine nine years ago. Tr. 1525. On August 14, 2012, Plaintiff
12 stated that he stopped drinking forty days ago. Tr. 1561. In April 2012, there is a
13 note from a counselor in which Plaintiff admitted to drinking that day. Tr. 1618.

14 Plaintiff argues that the evidence of drinking predates the relevant time
15 period and therefore is of little relevance. ECF No. 19 at 1-12. However,
16 Plaintiff's statements within the relevant time period, both at the hearing and a year
17 prior to the hearing are proven inaccurate by the evidence that predates the relevant
18 time period. In determining a claimant's credibility, the ALJ may consider
19 "ordinary techniques of credibility evaluation, such as the claimant's reputation for
20 lying, prior inconsistent statements . . . and other testimony by the claimant that
21 appears less than candid." *Smolen*, 80 F.3d at 1284. The ALJ's finding that
22 Plaintiff made inconsistent statements regarding his drug and alcohol use is
23 supported by the record.

24 Plaintiff argues that the ALJ erred in his reliance on Plaintiff's criminal
25 history in the credibility determination. ECF No. 19 at 15. However, a review of
26 the ALJ's decision shows that he did not rely on Plaintiff's criminal history in
27 forming his credibility determination, but instead mentioned it as a barrier to
28 employment and associated into the Plaintiff's residual functional capacity. Tr. 33.

1 The Court will not disturb the ALJ’s credibility determination.

2 **B. Medical Source Statements**

3 Plaintiff argues the ALJ failed to properly consider and weigh the medical
4 opinion expressed by Justin Garrett, D.O., Serban Ionescu, M.D., and Margaret R.
5 Moore, Ph.D. ECF No. 19 at 13-16.

6 In weighing medical source opinions, the ALJ should distinguish between
7 three different types of physicians: (1) treating physicians, who actually treat the
8 claimant; (2) examining physicians, who examine but do not treat the claimant;
9 and, (3) nonexamining physicians who neither treat nor examine the claimant.
10 *Lester*, 81 F.3d at 830. The ALJ should give more weight to the opinion of a
11 treating physician than to the opinion of an examining physician. *Orn*, 495 F.3d at
12 631. The ALJ should give more weight to the opinion of an examining physician
13 than to the opinion of a nonexamining physician. *Id.*

14 When a treating physician’s opinion is not contradicted by another
15 physician, the ALJ may reject the opinion only for “clear and convincing” reasons.
16 *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991). When a treating
17 physician’s opinion is contradicted by another physician, the ALJ is only required
18 to provide “specific and legitimate reasons” for rejecting the opinion of the first
19 physician. *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983). Likewise, when
20 an examining physician’s opinion is not contradicted by another physician, the
21 ALJ may reject the opinion only for “clear and convincing” reasons. *Lester*, 81
22 F.2d at 830. When an examining physician’s opinion is contradicted by another
23 physician, the ALJ is only required to provide “specific and legitimate reasons” for
24 rejecting the opinion of the examining physician. *Id.* at 830-831.

25 The specific and legitimate standard can be met by the ALJ setting out a
26 detailed and thorough summary of the facts and conflicting clinical evidence,
27 stating his interpretation thereof, and making findings. *Magallanes v. Bowen*, 881
28 F.2d 747, 751 (9th Cir. 1989). The ALJ is required to do more than offer his

1 conclusions, he “must set forth his interpretations and explain why they, rather
2 than the doctors’, are correct.” *Embrey v. Bowen*, 849 F.2d 418, 421-422 (9th Cir.
3 1988).

4 **1. Justin Garrett, D.O.**

5 On November 1, 2012, Dr. Garrett completed a consultative examination of
6 Plaintiff. Tr. 1522-1527. He reviewed records from Dr. Ionescu and Josh Ott. Tr.
7 1522. Dr. Garrett diagnosed Plaintiff with schizoaffective disorder, cocaine
8 dependence in full-sustained remission, and alcohol dependence in full sustained
9 remission. Tr. 1524. Dr. Garrett opined that Plaintiff was moderately impaired in
10 his ability to perform simple and repetitive tasks, markedly impaired in his ability
11 to perform detailed and complex tasks, moderately impaired in his ability to
12 interact with coworkers and the public, moderately impaired in his ability to
13 perform work activities on a consistent basis without special or additional
14 instructions, markedly impaired in his ability to maintain regular attendance in the
15 workplace and complete a normal workday without interruptions from a
16 psychiatric conditions, and moderately impaired in his ability to deal with the usual
17 stress encountered in the workplace. Tr. 1526. Dr. Garrett stated “[t]he stress and
18 pace of a typical job would likely overwhelm this individual.” Tr. 1526. The ALJ
19 gave Dr. Garrett’s opinion no weight because he relied on Plaintiff’s statements in
20 forming his opinion. Tr. 37.

21 A doctor’s opinion may be discounted if it relies on a claimant’s unreliable
22 self-report. *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005); *Tommasetti*
23 *533 F.3d at 1041*. But the ALJ must provide the basis for his conclusion that the
24 opinion was based on a claimant’s self-reports. *Ghanim v. Colvin*, 763 F.3d 1154,
25 1162 (9th Cir. 2014). Here, the ALJ concluded Dr. Garrett’s opinion relied heavily
26 on Plaintiff’s self-reports because Dr. Garrett accepted Plaintiff’s statements that
27 he had suffered a traumatic brain injury in childhood and that he was five to six
28 years sober, statements that were not supported by records from Frontier

1 Behavioral Health. Tr. 37 referring to Tr. 1522, 1525. Additionally, the ALJ
2 noted Dr. Garrett relied on Plaintiff's reports of delusions, paranoia, a history of
3 violent thoughts, low motivation, and being frequently late to a previous job. Tr.
4 37 referring to Tr. 1526.

5 Plaintiff argues that Dr. Garrett did not base his opinion on a brain injury,
6 but on objective observations he made while evaluating Plaintiff. ECF No. 19 at
7 14-15. Dr. Garrett provided a rationale for his opinions, including poor memory
8 and concentration on mental status testing, delusions of paranoia, history of violent
9 thoughts, slow thought process, reported history of low motivation, and a history of
10 being frequently late to previous job. Tr. 1526. The ALJ acknowledged that this is
11 what Dr. Garrett based his opinion on, and that it was error to rely so heavily on
12 Plaintiff's reports. Tr. 37. The only objective evidence Dr. Garrett relied upon
13 were the mental status testing for two limitations. Tr. 1526. The remainder were
14 based on Plaintiff's reports. *Id.* Therefore, the ALJ's determination is supported
15 by substantial evidence and is a legally sufficient reason to reject Dr. Garrett's
16 opinion.

17 **2. Serban Ionescu, M.D.**

18 On October 30, 2013, Dr. Ionescu sent a letter to Plaintiff's counseling
19 stating "I reviewed Dr. Garrett's evaluation of Mr. Pratt's current medical status
20 and completely agree with it. I do not think that Mr. Pratt is capable of gainful
21 employment." Tr. 1669.

22 The ALJ gave Dr. Ionescu's opinion no weight because the opinion relied
23 upon the opinion of Dr. Garrett, which the ALJ also gave no weight. Tr. 37.
24 Additionally, the ALJ noted that medical expert, Dr. Moore, found Dr. Ionescu's
25 statement to be a "silly kind of statement." *Id.*

26 Here, Dr. Ionescu's opinion was derivative of Dr. Garrett's, whose opinion
27 has been given no weight. The ALJ gave legally sufficient reasons for rejecting
28 Dr. Garrett's opinion. Therefore, the ALJ was not in error in rejecting Ionescu's

1 opinion.

2 **3. Margaret R. Moore, Ph.D.**

3 Additionally, Plaintiff argues that the ALJ relied too heavily on the opinion
4 of Dr. Moore, a nonexamining medical expert who testified at the hearing. ECF
5 No. 19 at 15-16. Considering the ALJ provided legally sufficient reasons for
6 rejecting the opinions of the examining and treating providers, his reliance on a
7 nonexamining provider is supported by the record. As such, the Court will not
8 disturb the weight the ALJ prescribed to medical source opinions.

9 **CONCLUSION**

10 Having reviewed the record and the ALJ's findings, the Court finds the
11 ALJ's decision is supported by substantial evidence and free of harmful legal error.
12 Accordingly, **IT IS ORDERED:**

13 1. Defendant's Motion for Summary Judgment, **ECF No. 20**, is
14 **GRANTED.**

15 2. Plaintiff's Motion for Summary Judgment, **ECF No. 19**, is **DENIED.**

16 The District Court Executive is directed to file this Order and provide a copy
17 to counsel for Plaintiff and Defendant. **Judgment shall be entered for Defendant**
18 **and the file shall be CLOSED.**

19 DATED July 11, 2016.





JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE