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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 ROY A.

8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL
11 SECURITY,

12 Defendant.

NO: 4:21-CV-5079-TOR

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

13 BEFORE THE COURT are the parties' cross motions for summary
14 judgment (ECF Nos. 16, 17). The motions were submitted for consideration
15 without oral argument. The Court has reviewed the administrative record and the
16 parties' completed briefing and is fully informed. For the reasons discussed below,
17 Plaintiff's Motion for Summary Judgment (ECF No. 16) is **DENIED**, and
18 Defendant's Motion for Summary Judgment (ECF No. 17) is **GRANTED**.

19 **JURISDICTION**

20 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g).

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT~ 1

STANDARD OF REVIEW

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2 A district court's review of a final decision of the Commissioner of Social
3 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
4 limited: the Commissioner's decision will be disturbed "only if it is not supported
5 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
6 1158 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means
7 relevant evidence that "a reasonable mind might accept as adequate to support a
8 conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently,
9 substantial evidence equates to "more than a mere scintilla[,] but less than a
10 preponderance." *Id.* In determining whether this standard has been satisfied, a
11 reviewing court must consider the entire record as a whole rather than searching
12 for supporting evidence in isolation. *Id.*

13 In reviewing a denial of benefits, a district court may not substitute its
14 judgment for that of the Commissioner. If the evidence in the record "is
15 susceptible to more than one rational interpretation, [the court] must uphold the
16 ALJ's findings if they are supported by inferences reasonably drawn from the
17 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (citation omitted).
18 Further, a district court "may not reverse an ALJ's decision on account of an error
19 that is harmless." *Id.* An error is harmless "where it is inconsequential to the
20 [ALJ's] ultimate nondisability determination." *Id.* at 1115 (quotation and citation

1 omitted). The party appealing the ALJ’s decision generally bears the burden of
2 establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

3 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

4 A claimant must satisfy two conditions to be considered “disabled” within
5 the meaning of the Social Security Act. First, the claimant must be unable “to
6 engage in any substantial gainful activity by reason of any medically determinable
7 physical or mental impairment which can be expected to result in death or which
8 has lasted or can be expected to last for a continuous period of not less than 12
9 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
10 impairment must be “of such severity that [he or she] is not only unable to do [his
11 or her] previous work[,] but cannot, considering [his or her] age, education, and
12 work experience, engage in any other kind of substantial gainful work which exists
13 in the national economy.” 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

14 The Commissioner has established a five-step sequential analysis to
15 determine whether a claimant satisfies the above criteria. *See* 20 §§
16 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
17 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
18 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
19 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
20 404.1520(b), 416.920(b).

1 If the claimant is not engaged in substantial gainful activities, the analysis
2 proceeds to step two. At this step, the Commissioner considers the severity of the
3 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
4 claimant suffers from “any impairment or combination of impairments which
5 significantly limits [his or her] physical or mental ability to do basic work
6 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
7 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
8 however, the Commissioner must find that the claimant is not disabled. *Id.*

9 At step three, the Commissioner compares the claimant’s impairment to
10 several impairments recognized by the Commissioner to be so severe as to
11 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§
12 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
13 severe than one of the enumerated impairments, the Commissioner must find the
14 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

15 If the severity of the claimant’s impairment does meet or exceed the severity
16 of the enumerated impairments, the Commissioner must pause to assess the
17 claimant’s “residual functional capacity.” Residual functional capacity, defined
18 generally as the claimant’s ability to perform physical and mental work activities
19 on a sustained basis despite his or her limitations (20 C.F.R. §§ 404.1545(a)(1),
20 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

1 At step four, the Commissioner considers whether, in view of the claimant's
2 RFC, the claimant is capable of performing work that he or she has performed in
3 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv),
4 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
5 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
6 404.1520(f), 416.920(f). If the claimant is incapable of performing such work, the
7 analysis proceeds to step five.

8 At step five, the Commissioner considers whether, in view of the claimant's
9 RFC, the claimant is capable of performing other work in the national economy.
10 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
11 the Commissioner must also consider vocational factors such as the claimant's age,
12 education and work experience. *Id.* If the claimant is capable of adjusting to other
13 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
14 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
15 work, the analysis concludes with a finding that the claimant is disabled and is
16 therefore entitled to benefits. *Id.*

17 The claimant bears the burden of proof at steps one through four above.
18 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
19 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
20 capable of performing other work; and (2) such work "exists in significant

1 numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2);
2 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

3 **ALJ’S FINDINGS**

4 Plaintiff initially applied for a period of disability and Title II disability
5 insurance benefits on August 26, 2015, alleging disability beginning July 15, 2014.
6 Tr. 17. The claim was denied initially on November 12, 2015, and upon
7 reconsideration on February 16, 2016. *Id.* Following a video hearing before an
8 administrative law judge (“ALJ”) on December 11, 2017, the ALJ denied
9 Plaintiff’s claim on March 9, 2018. *Id.*; Tr. 24. Plaintiff appealed the decision to
10 this Court. On August 18, 2020, the Court reversed and remanded the matter for
11 further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g).
12 Tr. 625–69. A second telephonic hearing before the same ALJ was held on
13 February 17, 2021. Tr. 525. The second hearing consolidated Plaintiff’s claim for
14 Title XVI benefits filed on November 22, 2016. *Id.* On March 16, 2021, the ALJ
15 denied Plaintiff’s claim. Tr. 537.

16 At step one, the ALJ found that Plaintiff had not engaged in substantial
17 gainful activity since July 15, 2014, the alleged onset date. Tr. 528. At step two,
18 the ALJ found Plaintiff had the following severe impairments: alcohol use
19 disorder, anxiety disorder, depressive disorder, and ADHD. *Id.* At step three, the
20 ALJ found that by including Plaintiff’s substance use disorder, the severity of his

1 impairments met the criteria of sections 12.04 (depressive, bipolar and related
2 disorders), 12.06 (anxiety and obsessive-compulsive disorders), and 12.11
3 (neurodevelopmental disorders) of 20 C.F.R. 404, Subpart, P, Appendix 1. Tr.
4 529. However, the ALJ also found Plaintiffs' impairments would improve and
5 impose only mild to moderate limitations if Plaintiff stopped using substances, and
6 therefore, would not meet or medically equal a listed impairment. *Id.*

7 Next, the ALJ found if Plaintiff stopped his substance use, he would have
8 the residual capacity to perform a full range of work at all exertional levels with
9 the following nonexertional limitations:

10 [Plaintiff] would be limited to simple, routine tasks and well-learned
11 detailed tasks consistent with a reasoning level of 3 or less; he could
12 not multi-task; he could not perform at an assembly-line pace or do
13 other fast-paced work; he could have no public contact, and only
occasional, superficial contact with supervisors and coworkers; and he
would require a routine, predictable work environment with no more
than occasional changes.

14 Tr. 531–32.

15 At step four, the ALJ found it appropriate to expedite Plaintiff's claim to
16 step five.¹ At step five, the ALJ found that, considering Plaintiff's age, education,
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19 ¹ An ALJ is permitted to expedite the sequential process and proceed to step
20 five if the claimant is not disabled at the third step and there is insufficient

1 work experience, and RFC, there were other jobs that exist in significant numbers
2 in the national economy that Plaintiff could perform if Plaintiff stopped substance
3 use. Tr. 536. Those jobs included (1) small parts assembler, (2) cleaner II, and (3)
4 marker. *Id.* The ALJ found Plaintiff's substance use disorder is a contributing
5 factor material to the determination of disability because Plaintiff would not be
6 disabled if he stopped substance use. Tr. 537. Consequently, the ALJ concluded
7 Plaintiff has not been disabled within the meaning of the Social Security Act, from
8 July 15, 2014, through March 16, 2021, the date of the ALJ's decision. *Id.*

9 ISSUES

10 Plaintiff seeks judicial review of the ALJ's final decision denying his
11 disability insurance benefits under Title II and Title XVI of the Social Security
12 Act. Plaintiff raises the following issues:

- 13 1. Whether the ALJ failed to develop the record by declining to order a
14 consultative psychological examination and canceling the testimony of the
15 prepared psychological expert;
- 16 2. Whether the ALJ erred by rejecting certain medical opinion testimony;

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evidence regarding the claimant's past relevant work to make a finding at step
20 four. 20 C.F.R. §§ 404.1520(h), 416.920(h).

- 1 3. Whether the ALJ erred at step three by failing to find Plaintiff's impairments
- 2 meet or medically equal a Listing;
- 3 4. Whether the ALJ erred by rejecting Plaintiff's subjective symptom
- 4 testimony; and
- 5 5. Whether the ALJ conducted a proper analysis at step five.

6 ECF No. 19 at 2.

7 DISCUSSION

8 A. Duty to Develop the Record

9 Plaintiff asserts the ALJ failed to meet his duty to develop the record. ECF
10 No. 16 at 9. Specifically, Plaintiff argues the ALJ should have ordered a
11 consultative psychological examination and that the ALJ should not have cancelled
12 the testimony of a prepared medical expert. *Id.*

13 While a claimant ultimately bears the burden of establishing his disability,
14 the ALJ has an affirmative duty to supplement the medical record to the extent it is
15 incomplete. *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005). The ALJ has a
16 special duty to fully and fairly develop the record and to assure that the claimant's
17 interests are considered. *Id.* (quotation and citation omitted). The ALJ's duty to
18 develop the record is triggered by ambiguous evidence or the ALJ's own finding
19 that the record is "inadequate to allow for proper evaluation of the evidence."
20 *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001). The ALJ may

1 supplement an inadequate medical record by ordering a consultative examination.
2 *Reed v. Massanari*, 270 F.3d 838, 843 (9th Cir. 2001).

3 Here, the ALJ did not make a finding that the record was inadequate or
4 incomplete or that the evidence in the record was ambiguous, nor does Plaintiff
5 cite to any ambiguity or inadequacy in the record. To the contrary, the ALJ found
6 the evidence in the record demonstrated a clear difference between Plaintiff's
7 limitations during sobriety as compared to the periods of substance use. Tr. 530,
8 532. Moreover, because Plaintiff had been sober for an extended period of time
9 during the ALJ's second evaluation, the ALJ was able to obtain a more clear
10 picture of the effects of Plaintiff's sobriety. Tr. 532–33. For example, Plaintiff
11 consistently reported doing much better while sober (*e.g.*, reduced anxiety and
12 depression, felt more stable, able to run errands with his daughter) and his
13 psychiatrist regularly reported Plaintiff's depressive symptoms were not enough to
14 raise concerns of major depressive disorder. Tr. 533 (citations to the record
15 omitted).

16 Plaintiff implies the ALJ was required by the Court to order a consultative
17 examination upon remand. ECF No. 16 at 9. However, the Court's Order merely
18 indicated the ALJ should have consulted a consultative psychologist "if an
19 evaluation of a longer period of sobriety was necessary or would have been
20 useful." Tr. 653. At the time of the second hearing, more time had elapsed,

1 enabling the ALJ to review a longer period of sobriety. Consequently, it was
2 unnecessary for the ALJ to rely on a consultative psychologist.

3 Because the ALJ did not find the record was incomplete or ambiguous, the
4 duty to further develop the record was not triggered. The Court finds the ALJ's
5 evaluation of Plaintiff's alleged limitations was properly supported by substantial
6 evidence.

7 **B. Medical Opinion Evidence**

8 Plaintiff argues the ALJ improperly rejected the medical opinions of Dr.
9 Marks, Dr. Petaja, Deborah Rogers, and Adriana Lozano. ECF No. 16 at 10–17.
10 Under the applicable regulations, there are three types of physicians: “(1) those
11 who treat the claimant (treating physicians); (2) those who examine but do not treat
12 the claimant (examining physicians); and (3) those who neither examine nor treat
13 the claimant [but who review the claimant's file] (nonexamining [or reviewing]
14 physicians).” *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001)
15 (citations omitted). Generally, the opinion of a treating physician carries more
16 weight than the opinion of an examining physician, and the opinion of an
17 examining physician carries more weight than the opinion of a reviewing
18 physician. *Id.* In addition, the Commissioner's regulations give more weight to
19 opinions that are explained than to opinions that are not, and to the opinions of
20 specialists on matters relating to their area of expertise over the opinions of non-

1 specialists. *Id.* (citations omitted).

2 If a treating or examining physician's opinion is uncontradicted, an ALJ may
3 reject it only by offering "clear and convincing reasons that are supported by
4 substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
5 "However, the ALJ need not accept the opinion of any physician, including a
6 treating physician, if that opinion is brief, conclusory, and inadequately supported
7 by clinical findings." *Bray v. Comm'r of Soc. Sec.*, 554 F.3d 1229, 1228 (9th Cir.
8 2000) (internal quotations and brackets omitted). An ALJ may only reject the
9 opinion of a treating or examining doctor by providing specific and legitimate
10 reasons that are supported by a substantial weight of the evidence, even if that
11 opinion is contradicted by another doctor. *Lester v. Chater*, 81 F.3d 821, 830-831
12 (9th Cir. 1995). The opinion of a nonexamining physician may serve as substantial
13 evidence if it is supported by other independent evidence in the record. *Andrews v.*
14 *Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

15 *1. Dr. Marks, Ph.D., Dr. Petaja, Ph.D.*

16 Dr. Marks conducted a psychodiagnostics evaluation of Plaintiff in October
17 2015,² finding Plaintiff's combined impairments would have a severe impact on his

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19 ² Plaintiff claims the evaluation was on November 4, 2015, but the records
20 show it was completed on October 27, 2015. Tr. 310.

1 ability to perform work. Tr. 534. The ALJ gave Dr. Marks' opinion great weight
2 as an opinion of Plaintiff's functioning while using substances but little weight as
3 an opinion regarding Plaintiff's functioning while not using. *Id.* The ALJ noted
4 Dr. Marks did not provide an opinion of Plaintiff's functioning during sobriety
5 because Plaintiff was actively abusing alcohol during Dr. Marks' evaluation and
6 there were no other records for her to review that documented Plaintiff's ability to
7 function absent alcohol abuse. *Id.*

8 Dr. Marks conducted another evaluation of Plaintiff in April 2016, opining
9 Plaintiff was markedly limited in carrying out detailed instructions, maintaining
10 attendance, learning new tasks, communicating and performing effectively, and
11 setting realistic goals. *Id.* The ALJ gave this opinion some weight as an opinion
12 regarding Plaintiff's function with alcohol abuse. *Id.* The ALJ noted Plaintiff was
13 three months sober at the time of the April 2016 evaluation, however, subsequent
14 records demonstrated improved functioning as Plaintiff's sobriety progressed. *Id.*
15 The ALJ gave little weight to Dr. Marks' April 2016 evaluation as an opinion of
16 Plaintiff's functional ability without alcohol abuse, finding other evidence in the
17 record did not support the degree of limitation Dr. Marks assigned. *Id.*
18 Specifically, the ALJ noted that as Plaintiff's sobriety continued, his functioning
19 did very well with minimal symptoms. *Id.* (citation to the record omitted).

20 Also in April 2016, Dr. Petaja reviewed Dr. Marks' assessment and found

1 Dr. Marks' assessment supported by objective medical evidence. Tr. 381. The
2 ALJ gave some weight to Dr. Petaja's opinion of Plaintiff's functioning with
3 alcohol abuse but little weight regarding Plaintiff's functioning absent alcohol
4 abuse. Tr. 534. Because Dr. Petaja's opinion was based on Dr. Marks' evaluation,
5 the ALJ discredited the opinion for the same reason's he discredited Dr. Marks'
6 opinion, namely because subsequent records demonstrated Plaintiff's functionality
7 improved significantly with continued sobriety. *Id.* (citations to the record
8 omitted).

9 Relevant factors to evaluating any medical opinion include the amount of
10 relevant evidence that supports the opinion, the quality of the explanation provided
11 in the opinion, and the consistency of the medical opinion with the record as a
12 whole. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir. 2007); *Orn v. Astrue*,
13 495 F.3d 625, 631 (9th Cir. 2007). Because the ALJ found Dr. Marks' and Dr.
14 Petaja's opinions inconsistent with subsequent evaluations of Plaintiff's
15 functioning during extended periods of sobriety, the Court finds no error. The
16 ALJ's clear and convincing findings are supported by substantial evidence.

17 *2. Deborah Rogers, ARNP*

18 Ms. Rogers completed a physical functional evaluation of Plaintiff in March
19 2015 and a medical report in October 2017. Tr. 535. In both reports, she opined
20 that Plaintiff would be limited to only sedentary work and attributed his limitations

1 primarily to Plaintiff's alcohol or drug use. *Id.* Despite assigning primarily
2 physical limitations, Ms. Rogers supported her opinion with reference almost
3 exclusively to Plaintiff's mental impairments. *Id.* For example, Ms. Rogers
4 assessed Plaintiff's limitations due to Hepatitis C as moderate but assessed his
5 mental impairments as marked or severe. *Id.* (citation to the record omitted).
6 Consequently, the ALJ gave Ms. Rogers' opinions little weight. The ALJ also
7 noted Plaintiff did not allege significant physical difficulties at the hearing or in his
8 functioning report, and his ability to engage in daily activities was inconsistent
9 with Ms. Rogers' evaluations. *Id.* Finally, to the extent Ms. Rogers relied on
10 Plaintiff's mental impairments, the ALJ found the opinion inconsistent with
11 subsequent records reflecting Plaintiff's functional abilities without alcohol use.
12 *Id.*

13 A nurse practitioner, such as Ms. Rogers, is considered an "other source"
14 under the applicable regulations, and thus is not entitled to the same deference as
15 other medically acceptable sources. *Molina*, 674 F.3d at 1111 (citation omitted);
16 *see also* SSR 06-03p, 2006 WL 2329939. An ALJ may discount testimony from
17 "other sources" by providing "reasons germane to each witness." *Molina*, 674
18 F.3d at 1111. Here, the ALJ provided specific reasons for discounting Ms. Rogers'
19 opinion. The Court finds the ALJ's findings were supported by substantial
20 evidence in the record.

1 3. *Adriana Lozano*

2 In October 2017, Ms. Lozano completed a Division of Vocational
3 Rehabilitation assessment and concluded Plaintiff was not ready for competitive
4 employment. Tr. 535. The ALJ gave the assessment little weight for the same
5 reason Dr. Marks' assessment was given little weight. *Id.* Specifically, the ALJ
6 noted Plaintiff had only been sober for about three months at the time of the
7 evaluation, and therefore, it was not indicative of his functional ability after a
8 longer period of sobriety. *Id.*

9 Like Ms. Rogers, Ms. Lozano is an "other source" under the applicable
10 regulations. SSR 06-03p, 2006 WL 2329939. The ALJ provided germane reasons
11 for rejecting Ms. Lozano's opinion; therefore, the ALJ did not err in giving the
12 opinion little weight and finding the opinion was inconsistent with the record as a
13 whole.

14 **C. Listings**

15 Plaintiff argues the ALJ erred at step three by finding Plaintiff did not meet
16 the Listing criteria when Plaintiff was sober. ECF No. 16 at 18. At step three, the
17 ALJ first determines whether a claimant's impairment meets or equals an
18 impairment in the Listing of Impairments (the "Listings"). *See* 20 C.F.R. §§
19 404.1520(a)(4)(iii), 416.920(a)(4)(iii). The Listings describe specific impairments
20 that are recognized as severe enough to prevent a person from engaging in

1 substantially gainful activities. *See* 20 C.F.R. Pt. 404, Subpt. P, App. 1. Each
2 impairment is described using characteristics established through “symptoms, signs
3 and laboratory findings.” *Tackett*, 180 F.3d at 1099.

4 To meet an impairment, a claimant must establish she meets each of the
5 characteristics of the listed impairment. *Id.* To equal an impairment, a claimant
6 must establish symptoms, signs, and laboratory findings “at least equal in severity
7 and duration” to the characteristics of the listed impairment, or, if a claimant’s
8 impairment is not listed, to the impairment “most like” the claimant’s own. *Id.* If
9 a claimant meets or equals one of the listed impairments, the claimant will be
10 considered disabled without further inquiry. *See* 20 C.F.R. §§ 404.1520(d),
11 416.920(d).

12 Here, Plaintiff does not cite to any evidence in the record to demonstrate he
13 meets or equals a Listing; instead, Plaintiff simply argues the ALJ’s findings were
14 not supported by substantial evidence. ECF No. 16 at 18. The Court disagrees.
15 The ALJ found that Plaintiff met the “paragraph A” criteria for Listings 12.04,
16 12.06, and 12.11 because he had a history of depressive disorder, anxiety disorder,
17 and ADHD, and medically documented symptoms, such as depressed mood,
18 diminished interest in most activities, sleep disturbances, decreased energy,
19 feelings of guilt or worthlessness, and difficulty concentrating. Tr. 530; 20 C.F.R.
20 Pt. 404, Subpt. P, App. 1.

1 To satisfy the criteria of paragraph B, a claimant's mental impairments must
2 result in at least one extreme, or two marked, limitations in understanding,
3 remembering, or applying information; interacting with others; concentrating,
4 persisting, or maintaining pace; or adapting or managing oneself. 20 C.F.R. Pt.
5 404, Subpt. P, App. 1. The ALJ addressed each of the categories and found
6 Plaintiff met the requisite limitations when he was abusing alcohol, but when
7 Plaintiff stopped using alcohol, his limitations were only mild to moderate. Tr.
8 530–31. In arriving at this conclusion, the ALJ compared Plaintiff's records
9 during his periods of alcohol abuse to those during which Plaintiff was sober for an
10 extended period of time. *Id.* (citation to the record omitted). The ALJ also
11 assessed the criteria for paragraph C, which may be used to satisfy Listings 12.04
12 and 12.06. *Id.*; 20 C.F.R. Pt. 404, Subpt. P, App. 1. The ALJ concluded the
13 evidence did not support the criteria for paragraph C if Plaintiff stopped using
14 alcohol. Tr. 531.

15 The Court finds the ALJ cited to substantial evidence in the record to
16 support his finding that Plaintiff did not satisfy the Listing criteria when Plaintiff
17 attained prolonged periods of sobriety. Where the ALJ's interpretation of the
18 record is reasonable as it is here, it should not be second-guessed. *Rollins v.*
19 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

1 **D. Subjective Symptom Testimony**

2 Plaintiff argues the ALJ failed to provide clear and convincing reasons for
3 rejecting Plaintiff’s subjective symptom testimony. ECF No. 16 at 19. An ALJ
4 engages in a two-step analysis to determine whether a claimant’s subjective
5 symptom testimony can be reasonably accepted as consistent with the objective
6 medical and other evidence in the claimant’s record. SSR 16-3p, 2016 WL
7 1119029, at *2. “First, the ALJ must determine whether there is ‘objective
8 medical evidence of an underlying impairment which could reasonably be
9 expected to produce the pain or other symptoms alleged.’” *Molina*, 674 F.3d at
10 1112 (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). “The
11 claimant is not required to show that her impairment ‘could reasonably be expected
12 to cause the severity of the symptom she has alleged; she need only show that it
13 could reasonably have caused some degree of the symptom.’” *Vasquez*, 572 F.3d
14 at 591 (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035–36 (9th Cir. 2007)).

15 Second, “[i]f the claimant meets the first test and there is no evidence of
16 malingering, the ALJ can only reject the claimant’s testimony about the severity of
17 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
18 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
19 omitted). General findings are insufficient; rather, the ALJ must identify what
20 symptom claims are being discounted and what evidence undermines these claims.

1 *Id.* (citation omitted); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002)
2 (requiring the ALJ to sufficiently explain why he or she discounted claimant’s
3 symptom claims). “The clear and convincing [evidence] standard is the most
4 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,
5 1015 (9th Cir. 2014) (citation omitted).

6 The ALJ is instructed to “consider all of the evidence in an individual’s
7 record,” “to determine how symptoms limit ability to perform work-related
8 activities.” SSR 16-3p, 2016 WL 1119029, at *2. When evaluating the intensity,
9 persistence, and limiting effects of a claimant’s symptoms, the following factors
10 should be considered: (1) daily activities; (2) the location, duration, frequency, and
11 intensity of pain or other symptoms; (3) factors that precipitate and aggravate the
12 symptoms; (4) the type, dosage, effectiveness, and side effects of any medication
13 an individual takes or has taken to alleviate pain or other symptoms; (5) treatment,
14 other than medication, an individual receives or has received for relief of pain or
15 other symptoms; (6) any measures other than treatment an individual uses or has
16 used to relieve pain or other symptoms; and (7) any other factors concerning an
17 individual’s functional limitations and restrictions due to pain or other symptoms.
18 SSR 16-3p, 2016 WL 1119029, at *7–8; 20 C.F.R. §§ 404.1529(c)(3),
19 416.929(c)(3).

20 Here, the ALJ found Plaintiff’s impairments could reasonably be expected to

1 cause the alleged symptoms; however, Plaintiff's statements concerning the
2 intensity, persistence, and limiting effects of those symptoms were not entirely
3 consistent with the evidence. Tr. 532. In arriving at this conclusion, the ALJ
4 considered several of the factors described above.

5 With regard to daily activities, the ALJ noted Plaintiff testified at the remand
6 hearing that he still had difficulties leaving his house, but, after being sober since
7 2017 (with a brief relapse in 2019), he was able to go shopping, trade coins, go
8 swimming, and attend appointments. Tr. 533. Plaintiff's reports to care providers
9 during the extended period of sobriety showed he could leave the house on a
10 regular basis and was highly functional in his daily activities. *Id.* (citation to the
11 record omitted).

12 In terms of the persistence and intensity of Plaintiff's symptoms, the ALJ
13 found Plaintiff's symptoms significantly improved when he abstained from using
14 alcohol. Tr. 533 (citations to the record omitted). Relatedly, the ALJ observed
15 alcohol was an aggravating factor to Plaintiff's symptoms. *Id.* When Plaintiff was
16 sober, mental status exam findings were largely unremarkable and showed
17 improvement when compared to times when Plaintiff was drinking. *Id.* The ALJ
18 also noted medication effectively treated Plaintiff's depression and anxiety
19 symptoms, particularly when Plaintiff was sober. *Id.* "Impairments that can be
20 controlled effectively with medication are not disabling." *Warre v. Comm'r*, 439

1 F.3d 1001, 1006 (9th Cir. 2006) (citations omitted). Plaintiff regularly reported
2 reduced and stable symptoms to care providers and stated he would experience
3 anxiety symptoms only when he would go to the store. *Id.*

4 The Court finds the ALJ cited to substantial evidence to support his
5 conclusion that Plaintiff's symptom testimony was inconsistent with the evidence
6 in the record. It is the ALJ's duty to resolve conflicts in the record, and where the
7 ALJ arrives at a rational conclusion that is supported by the record, the ALJ's
8 decision must stand. *Andrews*, 53 F.3d at 1039; *Rollins*, 261 F.3d at 857.

9 **E. Step Five Analysis**

10 Plaintiff argues the ALJ's analysis at step five was inadequate because the
11 ALJ failed to consider a more complete hypothetical. ECF No. 16 at 20–21. If a
12 claimant cannot perform his or her past relevant work, at step five the ALJ must
13 show there are a significant number of jobs in the national economy the claimant is
14 able to do. *Tackett v. Apfel*, 180 F.3d 1094, 1098–99 (9th Cir. 1999); 20 C.F.R. §§
15 404.1520(d)–(e); 416.920(d)–(e). To do so, the ALJ may employ the testimony of
16 a vocational expert. *Tackett*, 180 F.3d at 1100–01; *Osenbrock v. Apfel*, 240 F.3d
17 1157, 1162 (9th Cir. 2000). The ALJ's findings will be upheld if the weight of
18 medical evidence in the record supports the hypothetical posed by the ALJ.
19 *Martinez v. Heckler*, 807 F.2d 771, 774 (9th Cir. 1987); *Gallant v. Heckler*, 753
20 F.2d 1450, 1456 (9th Cir. 1984). The vocational expert's testimony will qualify as

1 substantial evidence if it is reliable. *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir.
2 1988).

3 Here, the ALJ asked the vocational expert to consider a hypothetical
4 claimant with Plaintiff's age, education, and work experience, who is capable of
5 performing a full range of work at all exertional levels with the following non-
6 exertional limitations:

7 [T]he individual is limited to simple, routine tasks and well-learned
8 detailed tasks consistent with a reasoning level of 3 or less; the
9 individual cannot multi-task; cannot perform on an assembly line pace
10 or do other fast-paced work; can have no contact with the public and
only occasional superficial contact with supervisors and coworkers;
and needs a routine, predictable work environment with no more than
occasional charges.

11 Tr. 563. The vocational expert testified that the hypothetical individual would be
12 able to perform the following representative occupations: small parts assembler
13 with 319,280 jobs available in the national economy; cleaner with 55,900 jobs
14 available in the national economy; and marker with 130,200 jobs available in the
15 national economy. *Id.*

16 The ALJ also asked the vocational expert to consider the above-described
17 hypothetical claimant with the following additional limitations: medium level work
18 with occasional climbing of ladders, ropes and scaffolds; and no concentrated
19 exposure to hazards such as unprotected heights and moving mechanical parts. Tr.
20 537, 564. The vocational expert testified that such a claimant would still be able to

1 perform the identified jobs. Tr. 537.

2 Plaintiff argues the hypothetical was incomplete. ECF No. 16 at 20–21.
3 Had the vocational expert considered a hypothetical claimant who would be absent
4 more than six to eight days per year, off task more than 10% of the time, and
5 needed close supervision/instruction past the probationary period, Plaintiff would
6 have been precluded from competitive work. *Id.* Plaintiff does not cite to any
7 evidence in the record to support the inclusion of these additional limitations.

8 Having concluded the ALJ’s findings with regard to Plaintiff’s alleged
9 impairments were all supported by substantial evidence, the Court concludes the
10 ALJ carried his burden to prove Plaintiff retains the residual functional capacity to
11 perform certain jobs in the national economy. Plaintiff’s own interpretation of the
12 record cannot overcome the ALJ’s properly supported conclusions. “Where
13 evidence is susceptible to more than one rational interpretation, it is the ALJ’s
14 conclusion that must be upheld.” *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir.
15 2005) (citation omitted). The ALJ’s findings are supported by substantial
16 evidence.

17 CONCLUSION

18 Having reviewed the record and the ALJ’s findings, this Court concludes
19 that the ALJ’s decision is supported by substantial evidence and free of harmful
20 legal error.

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 2 1. Plaintiff’s Motion for Summary Judgment (ECF No. 16) is **DENIED**
- 3 2. Defendant’s Motion for Summary Judgment (ECF No. 17) is
- 4 **GRANTED.**

5 The District Court Executive is directed to file this Order, enter Judgment
6 for Defendant, provide copies to counsel, and **CLOSE** this file.

7 DATED May 2, 2022.



Thomas O. Rice
 THOMAS O. RICE
 United States District Judge

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