

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA

**R.W. v. Commissioner of Social Security**

R.W. · No. 25-cv-02302-EMC · Decided December 3, 2025

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OPINION

Wise

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 R.W., Case No. 25-cv-02302-EMC 8 Plaintiff,

ORDER

9 v. 10 COMMISSIONER OF SOCIAL Docket Nos. 15, 17, 18

SECURITY,

11 Defendant. 12

13 14 Plaintiff R.W. seeks review of the Commissioner’s final decision denying his Title II 15  
application for disability insurance benefits and his Title XVI application for supplemental 16  
security income (“SSI”). R.W. has exhausted his administrative remedies with respect to his claim  
17 of disability. This Court has jurisdiction pursuant to 42 U.S.C. § 405(g). R.W. asks that the  
final 18 decision be reversed and the case remanded for additional administrative proceedings.  
Having 19 considered the parties’ briefs and the administrative record, the Court hereby DENIES  
R.W.’s 20 request for relief.

21 I. FACTUAL & PROCEDURAL BACKGROUND

22 On June 4, 2020, R.W. filed a Title II application for disability insurance benefits and a 23 Title  
XVI application for SSI. See AR 378, 385 (applications). He claimed a disability onset date 24 of  
December 2, 2012. The disabilities initially asserted were physical impairments: high blood 25  
pressure and back problems. See AR 422 (Disability Report Adult). Medical records later 26  
submitted also indicated mental impairments, including a learning/development disability and 27  
schizoaffective and bipolar disorders. 1 R.W. with a developmental disability, following a report  
by R.W. that he had been in special 2 education during his school-age years. See AR 684 (medical  
records from Dr. Jennings, dated

3 June 2017) (noting that “[a] friend who is with the patient brings out disability paperwork for  
SSI

4 relating to this patient's history of low level education with going through early school and high  
5 school on special education[;] turns out he has some developmental disability issues it

appears”); 6 see also AR 75 (R.W. testifying during first ALJ hearing that he was in special education classes 7 during school). Dr. Jennings later characterized that learning/developmental disability as mild. 8 See, e.g., AR 784 (medical records from Dr. Jennings, dated November 2021) (noting “[m]ild 9 cognitive impairment developmental disability”); see also AR 718 (social worker’s assessment, 10 dated March 2018) (noting “[m]ild development[a]l impairment (learning disability)”).

11 In 2018, R.W. reported to a social worker that he was having “intrusive thoughts” and 12 “paranoia”; the social worker assessed “mild to moder[a]te depression and anxiety as a result of 13 life stressors.” AR 711, 718 (social worker’s assessment, dated March 2018). Approximately two 14 years later, in 2020, R.W. was referred to a psychiatrist, Dr. Anderson. R.W. reported to Dr. 15 Anderson that he had been hearing voices for the past three years. See AR 654 (medical records 16 from Dr. Anderson, dated April 2020). Dr. Anderson found that R.W.’s thinking was “frequently 17 illogical” and his insight/judgment was “impaired.” AR 654. He diagnosed R.W. with a 18 schizoaffective disorder and depression. See AR 654. R.W. was prescribed Abilify/aripiprazole, 19 an antipsychotic medication, see AR 655, but, on a return visit to Dr. Anderson several months 20 later, R.W. reported that he had stopped taking the medication because it caused him bad 21 headaches. He also reported that he “occasionally” heard voices but “no specific delusions [were] 22 identified.” AR 652 (medical records from Dr. Anderson, dated July 2020). Dr. Anderson noted 23 that R.W. was “somewhat improved,” did not issue any further prescription, and informed R.W. 24 that he could get treatment from the clinic “in the future if needed.” AR 652. 25 It appears that R.W. did not seek mental health treatment again until two years later, when 26 he began to see Dr. Friedman, another psychiatrist. R.W. reported that he sometimes heard voices. 27 Dr. Friedman noted that no delusional content was expressed, that R.W.’s memory and cognition 1 Dr. Friedman, dated August 2022). She prescribed Wellbutrin for anxiety and depression, see AR 2 853, but R.W. stopped taking the medication shortly thereafter as it did not appear to help and 3 seemed to contribute to irritability. Subsequently, Dr. Friedman diagnosed bipolar 2 disorder and 4 prescribed Latuda, another antipsychotic medication. See AR 855 (medical records from Dr. 5 Friedman, dated September 2022). R.W. stopped seeing Dr. Friedman by late 2022. 6 R.W. later sought treatment from a physician’s assistant, Mr. Pickett, who also diagnosed 7 bipolar 2 disorder. R.W. declined a behavioral health referral, and several months later Mr. 8 Pickett noted that the disorder was stable. See AR 836, 839 (medical records from Mr. Pickett, 9 dated March 2023 and June 2023). During proceedings before the Social Security Administration, 10 an ALJ found that R.W. was not physically or mentally disabled and therefore not entitled to 11 relief. The ALJ employed the five-step sequential process to determine whether R.W. was 12 disabled. See 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). Under that process, if an ALJ finds 13 that the claimant is disabled at a given step, then the ALJ need not proceed to the next step. If the 14 ALJ cannot determine whether the claimant is disabled, the ALJ will continue to the next step. 15 A. First ALJ Decision 16 The ALJ initially held a hearing on

R.W.'s claims in March 2022. See AR 166 (ALJ 17 decision). In May 2022, the ALJ issued her decision denying benefits. 18 First, the ALJ dismissed the Title II claim for disability insurance benefits because R.W. 19 had voluntarily withdrawn it. R.W. had amended his alleged disability onset date to June 3, 2020 20 (i.e., the date he applied for benefits). But his date last insured was years earlier – March 31, 21 2014. Accordingly, disability insurance benefits could not be awarded. See *Moore v. Barnhart*, 22 405 F.3d 1208, 1211 (11th Cir. 2005) (explaining that, for disability insurance benefits, “a 23 claimant is eligible . . . where she demonstrates disability on or before the last date for which she 24 were insured”) (emphasis added). 25 As for the Title XVI claim, the ALJ engaged in the five-step sequential process. At step 26 one, she determined that R.W. had not engaged in substantial gainful activity since June 3, 2020, 27 the amended disability onset date (as asserted by R.W.). See AR 169 (ALJ decision). At step two, 1 hypertension. See AR 169. At step three, she concluded that R.W. did not have an impairment or 2 combination of impairments that met or medically equaled the severity of one of the listed 3 impairments (physical or mental) in 20 C.F.R. Part 404, Subpart P, Appendix 1. See AR 169. At 4 step four, she found that R.W. had the residual functional capacity (“RFC”) to perform medium 5 work but with certain exceptions: “the claimant can perform simple, routine tasks equivalent to 6 unskilled work with a maximum SVP of 2[,] [and] [t]he claimant can have less than occasional 7 interactions with the general public and coworkers.” AR 171. Based on this RFC assessment, the 8 ALJ held that R.W. was capable of performing past relevant work as an auto detailer. See AR 9 174. Alternatively, the ALJ held that, at step five, there were other jobs that existed in significant 10 numbers in the national economy that R.W. could perform considering his age, education, work 11 experience, and RFC. See AR 174. 12 R.W. appealed the ALJ's decision to the Appeals Council, which granted review. The 13 Appeals Council vacated the ALJ decision, identifying several issues: 14 • First, the ALJ's RFC assessment used “nonspecific qualifying terms in describing 15 the claimant's limitations. . . . The RFC assessment include[d] a restriction to ‘less 16 than occasional’ interactions with the public and coworkers [but] does not define 17 the term ‘less than occasional.’ The RFC assessment is the most a claimant can do, 18 not the least. Further consideration should be given to the claimant's maximum 19 mental RFC.” AR 185 (Appeals Council decision) (emphasis added). 20 • Second, the ALJ's decision did not “contain an adequate evaluation of opinion 21 evidence in assessing the claimant's RFC. . . . [B]oth State agency psychological 22 consultants opined that the claimant is limited to brief and superficial contact with 23 supervisors, coworkers, and the public. But, the decision does not explain why 24 such limitations were not warranted. . . . [T]he RFC assessment contains no 25 limitations pertaining to the claimant's ability to interact with supervisors.” AR 26 186 (emphasis added). 27 • Third, the record was not clear. Although the state agency psychological

1 April 10, 2021, the record did not contain a consultative psychological examiner

2 report. “The record does contain a report from an internal medical consultative 3 examiner dated April 10, 2021. On remand, an [ALJ] should ensure that the record 4 is complete in this regard.”

AR 186 (emphasis added). 5 The Appeals Council then directed the ALJ to do the following on remand: 6 • Obtain additional evidence concerning the claimant's impairments in order to complete the administrative record in 7 accordance with the regulatory standards regarding consultative examinations and existing medical evidence. The additional 8 evidence may include, if warranted and available, a consultative examination and medical source opinions about what the 9 claimant can still do despite the impairments. 10 • Give further consideration to the claimant's maximum [RFC] during the entire period at issue and provide rationale with 11 specific references to evidence of record in support of assessed limitations. In so doing, evaluate the medical source opinions 12 and prior administrative medical findings pursuant to the provisions of 20 CFR 404.1520c and 416.920c. As appropriate, 13 the [ALJ] may request the medical sources to provide additional evidence and/or further clarification of the opinions. 14 15 AR 186. 16 B. Second ALJ Decision 17 On remand, the ALJ held a second hearing in September 2023. See AR 17 (ALJ decision). 18 In March 2024, she issued a decision which again denied benefits. 19 Before conducting the five-step sequential process, the ALJ addressed two preliminary 20 matters. First, she addressed the alleged disability onset date. She noted that R.W. had first 21 claimed December 2, 2012, as the onset date and then amended it. But in post-remand filings and 22 proceedings, R.W. appeared to revert to the first date – and to reassert a Title II claim. The ALJ 23 therefore proceeded with the understanding that R.W. was asserting both Title II and Title XVI 24 claims based on the original asserted onset date of December 2, 2012. See AR 17-18. 25 Second, the ALJ addressed the Appeals Council's directive to ensure that the record was 26 complete – i.e., to ensure that a report from a consultative psychological examination was included 27 as part of the record. She noted as follows: 1 [T]he Appeals Council indicated that “the state agency consultants reference a psychological consultative examination [as] completed 2 on April 10, 2021,” and added that “the medical evidence of record does not contain a psychological consultative examiner report. The 3 record does contain a report from an internal medical consultative examiner dated April 10, 2021. . . .” There are in fact two pages in 4 evidence that variously suggest (on their face) that a consultative psychological evaluation had been ordered from (and billed by) 5 “Tania Shertock, Ph.D” and that Dr. Shertock had thereafter “produced a consultative examination report.” After careful review 6 of the electronic record (including all exhibited and non-exhibited documents), however, the undersigned concludes that no 7 consultative psychological examination was ever conducted in his matter, whether on April 10, 2021 or otherwise. Instead, the 8 claimant was presented for a consultative internal medicine evaluation by Rose Lewis, M.D., on April 10, 2021. Thereafter on 9 May 17, 2021, a state agency disability examiner reported having contact[ed] the claimant to ask about “his developmental delay or 10 any mental health issues” and added that the claimant “said he has been diagnosed with some in the past but doesn't really think he has 11 a problem.” The examiner then indicated, “I asked if he would like to attend a mental consultative evaluation and [the claimant] said 12 absolutely not as he does not feel he has

a real psych[ological] issue.” 13 14 AR 18. 15 The ALJ recognized that R.W. had, shortly before the hearing, asked to postpone 16 proceedings so that a consultative psychological examination could be conducted ““as ordered by 17 the Appeals Council.”” AR 19. But, the ALJ noted, the Appeals Council did not order such an 18 examination. The ALJ further noted that, although she had previously agreed to order such an 19 examination, that was based on her belief that a consultative psychological examination had taken 20 place in April 2021 but simply was not exhibited or considered. “[W]hen it later became clear” 21 that the state agency consultants had erred in referring to such an examination, that “changed the 22 [ALJ’s] perspective and position regarding the need for any consultative psychological 23 evaluation.” AR 19. 24 The ALJ ultimately determined that there was no need to order a consultative 25 psychological examination. R.W. had provided testimony about his mental impairments at the 26 hearing, and the record contained medical records and/or opinions related to R.W.’s mental 27 impairments, see AR 18-20, including from a psychiatrist in 2020, see, e.g., AR 652-55 (Dr. 1 assistant (PA) in 2023. See, e.g., AR 906-11 (Mr. Pickett). The ALJ thus concluded that there 2 was sufficient evidence in the record to evaluate R.W.’s “alleged history of learning 3 disorder/unspecified developmental disorder and his mental [RFC].” AR 20 (ALJ decision). 4 Having addressed the above preliminary matters, the ALJ turned to the five-step sequential 5 process. At step one, she found that R.W. had not engaged in any substantial gainful activity since 6 the claimed disability onset date of December 2, 2012. See AR 22. 7 At step two, the ALJ essentially separated out the Title II and Title XVI claims. 8 • For Title II disability insurance benefits, R.W. had to establish a disability on or 9 before his date last insured, which was March 31, 2014. The ALJ noted that there 10 were “no medical records constituting direct evidence of any mental or physical 11 evaluations [or] examinations of the claimant for any relevant time period through 12 the Title II date last insured, or indeed for any prior time period prior [to] his 13 earliest documented clinical examination (for physical symptoms only) conducted 14 on May 31, 2017.” AR 22-23. The ALJ thus found that R.W. “had no medically 15 determinable mental or physical impairments through the Title II date last insured.” 16 AR 23; see also SSR 16-3p (noting that “an individual’s statements of symptoms 17 alone are not enough to establish the existence of a physical or mental impairment 18 or disability”); 20 C.F.R. § 404.1529 (providing that “statements about your pain or 19 other symptoms will not alone establish that you are disabled”). However, 20 recognizing that, in years after the date last insured, R.W. had been diagnosed with 21 a learning disorder or an unspecified developmental disorder, the ALJ also made an 22 alternative finding: to wit, “any history of learning disorder or unspecified 23 developmental disorder was non-severe through the Title II date last insured.”1 AR 24 23. 25 26 1 In his papers, R.W. argues that there was insufficient evidence for the ALJ to come up with a RFC with respect to his Title II claim. See Op. Br. at 28. But the ALJ did not need to make an 27 RFC assessment for the Title II claim because she disposed of the Title II claim at step two, and 1 • For the Title XVI claim SSI, the ALJ determined that, since the application filing 2 date (June 2020), R.W. had several severe

impairments: “lumbar degenerative disc 3 disease; anxiety disorder; bipolar disorder; depressive disorder; schizoaffective 4 disorder; and (in combination with those other severe mental impairments) a 5 history of learning disorder.” AR 23. The ALJ recognized that R.W. had other 6 medical issues – including hypertension, Type II diabetes, bilateral cataracts, and 7 obesity – but found that these conditions “no more than minimally impaired 8 [R.W.’s] ability to perform work” and thus the impairments were not severe. AR 9 23-24. The ALJ added, however, that any impairments related to such conditions 10 would still be considered in the remaining steps (i.e., as they could affect R.W.’s 11 RFC). 12 Because step two for the Title II claim resulted in a finding of no disability, the ALJ 13 continued the five-step sequential process for the Title XVI claim only. 14 At step three (for the Title XVI claim), the ALJ determined that R.W. did not have an 15 impairment or combination of impairments that met or medically equaled the severity of one of 16 the listed impairments in the regulations. See AR 25. The ALJ considered both physical as well 17 as mental impairments. See AR 26-29. 18 At step four, the ALJ found that, “since the claim application filing date [June 2020], the 19 claimant has the [RFC] to perform medium work . . . except that: the claimant is limited to 20 performing simple work; and the claimant is limited to no more than occasional interaction with 21 the general public, coworkers, and supervisors.” AR 29. Accordingly, she concluded that R.W. 22 could perform his past relevant work as an automobile detailer. See AR 43. As an alternative 23 holding, the ALJ stated, at step five, that “there are other jobs that exist in significant numbers in 24 the national economy that the claimant also can perform, considering [his] age, education, work 25 experience, and [RFC].” AR 43-44. The ALJ pointed to both jobs with medium exertional level 26 and jobs with light exertional level. See AR 44-45. 27 The Appeals Council affirmed the ALJ’s finding of no disability, both for the Title II and 1 lawsuit in federal court.

## 2 II. DISCUSSION

3 A. Legal Standard 4 After a final decision on a claim of disability has issued, the claimant may seek judicial 5 review of that decision by a district court. See 42 U.S.C. § 405(g). The Commissioner’s decision 6 will be disturbed only if the ALJ committed legal error or if the ALJ’s findings are not supported 7 by substantial evidence. See *Obrien v. Bisignano*, 142 F.4th 687, 693 (9th Cir. 2025). 8 “Substantial evidence” is a legal term of art. It “means only[] such relevant evidence as a 9 reasonable mind might accept as adequate to support a conclusion.” *Id.* (internal quotation marks 10 omitted). In conducting its review, a court evaluates “the record as a whole, . . . weighing both the 11 evidence that supports and detracts from the ALJ’s conclusion” to determine if substantial 12 evidence supports a finding. *Mayes v. Massanari*, 276 F.3d 453, 459 (9th Cir. 2001). If the 13 evidence supports “more than one rational interpretation,” a court must uphold the ALJ’s decision. 14 *Burch v. Barnhart*, 400 F.3d 676, 680-81 (9th Cir. 2005). 15 B. Duty to Develop Record 16 R.W. argues first that he is entitled to a remand because the ALJ failed to properly develop 17 the record to evaluate his claims. 18 “Social Security proceedings are inquisitorial rather than adversarial,” and therefore an 19 ALJ has a “duty to investigate the facts

and develop the arguments both for and against granting 20 benefits.” *Sims v. Apfel*, 530 U.S. 103, 110-11 (2000). The ALJ has this duty even when a 21 claimant is represented by counsel. See *Celaya v. Halter*, 332 F.3d 1177, 1183 (9th Cir. 2003). 22 The ALJ’s duty to develop the record, however, is triggered only in certain circumstances: “[1] 23 when there is ambiguous evidence or [2] when the record is inadequate to allow for proper 24 evaluation of the evidence.” *McLeod v. Astrue*, 640 F.3d 881, 885 (9th Cir. 2011). 25 In his motion for relief, R.W. argues that the ALJ erred because she failed to develop the 26 record in two ways: (1) the ALJ failed to obtain information about his medical condition prior to

27 March 31, 2014, and (2) the ALJ failed to order a consultative psychological evaluation.

1 1. Medical Condition Prior to March 31, 2014 2 According to R.W., the ALJ should not have rejected his Title II claim for disability 3 insurance benefits because there was an insufficient record as to what his medical condition was 4 on or before March 31, 2014 (his date last insured). He maintains that the ALJ failed in her duty 5 to develop the record to assess his Title II claim. 6 R.W.’s argument lacks merit. The record reflects that efforts were made to get medical 7 records prior to 2017, but apparently R.W. did not provide names or addresses for any providers. 8 See, e.g., AR 531 (Disability Determination Services, Case Activities) (“Activity Date: 9 09/04/2020 . . . . Misc - Call-in /F6 insert - Claimant Call In Letter w/F6 Instructions[.] Clmnt 10 Requested to call analyst/Due Process Given[.] THE ADVENTIST HEALTH RECORDS ONLY

11 GO BACK TO 2017. IF YOU HAVE ANY OTHER TREATING SOURCES PRIOR TO 2017, 12 PLEASE CALL AND ADVISE SO WE CAN OBTAIN TH[E]SE RECORDS.”); AR 92 (Title II

13 Initial Disability Determination Explanation) (“2020/09/18: rcvd call from clmnt & he said he has 14 seen some doctors prior to 2017 but he doesn't have names or addresses. He needs to look them 15 up & will call back.”). 16 To the extent R.W. suggests that the ALJ should have ordered a consultative examination 17 “to give retroactive opinions,” Op. Br. at 16, he has failed to explain how a retroactive opinion 18 could realistically have been given. There were no medical records from before 2017 for an 19 examiner to consider, and, even if an evaluation of his current condition (in 2023 or 2024) could 20 have been provided to the ALJ as part of the post-remand proceedings, it would likely shed little, 21 if any, light on what his condition was more a decade earlier. See *Salazar v. Barnhart*, 180 Fed.

22 Appx. 39, 50 (10th Cir. 2006) (“find[ing] it difficult to imagine that any medical or psychological

23 professional would be able to prepare a retrospective analysis of Ms. Salazar's mental 24 impairments” five years earlier); *Leach v. Kijakazi*, No. 4:21-CV-1331 PLC, 2023 U.S. Dist. 25 LEXIS 55000, \*31 n.14 (E.D. Mo. Mar. 30, 2023) (stating that “remand for further development 26 of the record would likely be futile” because “[t]he relevant three-month time period in this case . . 27 . is now almost 15 years in the past[;] [n]othing in the record suggests that recontacting Plaintiff's 1 of a consultative exam would be practical or fruitful”); *Almodovar v. Astrue*, No. CV-

11-9227-SP, 2 2012 U.S. Dist. LEXIS 125283, \*28-30 (C.D. Cal. Aug. 31, 2012) (stating that “a consultative 3 examiner would have been of no assistance because a present-day examination would not be able 4 to shed any light on plaintiff's condition and RFC prior to the DLI”; “the medical records for the 5 relevant period consists of a mere seven pages,” and so “a consultative examiner would not have 6 been able to offer a supported opinion of plaintiff's pre-DLI limitations” and instead “would only 7 have been able to opine on plaintiff's current condition, which was not in dispute”). 8 2. Consultative Psychological Examination 9 R.W. argues next that the ALJ failed to properly develop the record because she did not 10 order a “full” consultative psychological examination – one that would address the disability onset 11 date and cover not only learning disorders but also his “medically diagnosed anxiety disorder, 12 bipolar disorder, depressive disorder[,] and schizoaffective disorder.” Op. Br. at 17. The Court 13 finds no error here as well. Similar to above, a consultative examiner would likely be unable to 14 provide competent evidence with respect to the alleged onset date of December 2, 2012. 15 Furthermore, as noted above, the duty to develop the record is triggered only if there is 16 ambiguous evidence or the record is inadequate to allow for proper evaluation. See *McLeod*, 640 17 F.3d at 885; see also *Castle v. Colvin*, 557 F. App'x 849, 853 (11th Cir. 2014) (noting that an ALJ 18 is “not required to order a consultative examination as long as the record contains sufficient 19 evidence for the ALJ to make an informed decision”). The record was adequate for the ALJ to 20 assess R.W.'s mental condition. See *Wellington v. Berryhill*, 878 F.3d 867, 874 (9th Cir. 2017) 21 (indicating that an “ALJ's duty to develop the record is discharged” when, “despite some 22 inadequacies, ‘a relatively complete medical chronology’ of the claimant’s condition during the 23 relevant time period is available”). As the ALJ noted, the record contained medical records and/or 24 opinions related to mental impairments, see AR 18-20, including from one of R.W.'s main treating 25 providers (Dr. Jennings), see AR 772-74; a psychiatrist who evaluated R.W. in mid-2020 (Dr. 26 Anderson), see AR 652-55; another psychiatrist who treated R.W. for several months in late 2022 27 (Dr. Friedman), see AR 851-62; and a physician’s assistant (PA) who treated R.W. in early to 1 The ALJ’s decision is not inconsistent with the Appeals Council decision. The Appeals 2 Council did not order a mental examination; it simply said that the ALJ could obtain, “if warranted 3 and available, a consultative examination.” AR 186 (Appeals Council decision). The Appeals 4 Council’s concern was that the record did not seem to be complete because a state agency 5 consultant had referred to a psychological consultative exam with a specific date but the record did 6 not contain that report. The ALJ determined that the state agency consultant had made an error – 7 i.e., the report was actually an internal medicine consultative exam. The absence of a 8 psychological consultative exam did not render the medical record incomplete in view of the 9 medical records available to and reviewed by the ALJ. 10 Nor has R.W. shown how the evidence was ambiguous with respect to his mental 11 condition. For example, R.W. has not contended that there was something “unclear or ambiguous 12 about what [the above providers who treated his mental condition] said.”<sup>2</sup> *McLeod*, 640 F.3d at 13 844. In addition, the medical records regarding



his learning/developmental disability were 14 consistent, with the disability being characterized as mild. As for the schizoaffective and bipolar 2 15 disorders, R.W.'s treating providers all recognized a disability. The mere fact that their 16 assessment of his disabilities differed in some respects (e.g., Dr. Anderson stated that R.W.'s 17 insight/judgment was impaired in 2020 but Dr. Friedman found otherwise in 2022) does not mean 18 that the record was ambiguous so as to mandate sua sponte a consultative examination. As several 19 courts have noted, "inconsistent evidence is not the same as ambiguous evidence." *Loaiza v. 20 Comm'r of Soc. Sec.*, No. 2:23-cv-01964-CKD, 2024 U.S. Dist. LEXIS 132536, at \*9 (E.D. Cal.

21 July 25, 2024); see also *Torres v. Comm'r Soc. Sec.*, No. 2:19-CV-1246-DMC, 2020 U.S. Dist. 22 LEXIS 181273, at \*19-20 (E.D. Cal. Sept. 30, 2020) (noting that an ALJ is asked with resolving 23 conflicting, or contradictory, evidence and that a conflict does not mean there is ambiguity for 24 purposes of triggering the duty to develop the record; ambiguous evidence is unclear evidence – 25 e.g., where a doctor does not render a clear opinion). 26 27 1 C. Evaluation of Medical Opinions 2 R.W. argues that, even if the ALJ did not fail in her duty to develop the record, she 3 committed a number of other errors that warrant a remand. R.W. focuses first on the ALJ's 4 evaluation of the medical opinions in the record. 5 1. Specialization of Provider 6 According to R.W., the ALJ improperly "disregarded" the opinions of two treating 7 providers, Dr. Jennings and Mr. Pickett, Op. Br. at 24, on the basis that they are not mental health 8 professionals but rather a primary care physician and PA, respectively. See AR 39 (ALJ decision). 9 R.W. is correct that a primary care provider – though not a specialist – can still provide an opinion 10 on a claimant's mental condition. See *Sprague v. Brown*, 812 F.2d 1226, 1232 (9th Cir. 1987) 11 (stating that "Dr. Gehlen is qualified to give a medical opinion as to Mrs. Sprague's mental state as 12 it relates to her physical disability even though Dr. Gehlen is not a psychiatrist," especially as 13 "primary care physicians (those in family or general practice) 'identify and treat the majority of 14 Americans' psychiatric disorders'"); *Lester v. Chater*, 81 F.3d 821, 833 (9th Cir. 1995) (noting that 15 "Dr. Kho provided treatment for the claimant's psychiatric impairment, including the prescription 16 of psychotropic medication" and thus "[h]is opinion constitutes 'competent psychiatric evidence' 17 and may not be discredited on the ground that he is not a board certified psychiatrist"), superseded 18 by statute on other grounds as stated in *Claudia Z. v. Kijakazi*, No. CV 20-10992-PLA, 2022 U.S. 19 Dist. LEXIS 6485, at \*7-8 (C.D. Cal. Jan. 12, 2022). But that does not mean that the ALJ erred in 20 the case at bar. Under the Social Security regulations, the ALJ was allowed to take into account 21 the providers' lack of specialization in evaluating their opinions. See 20 C.F.R. §§ 22 404.1520c(c)(4), 416.920c(c)(4) ("The medical opinion or prior administrative medical finding of 23 a medical source who has received advanced education and training to become a specialist may be 24 more persuasive about medical issues related to his or her area of specialty than the medical 25 opinion or prior administrative medical finding of a medical source who is not a specialist in the 26 relevant area of specialty."). More important, the ALJ did not reject Dr. Jennings and Mr. 27 Pickett's opinions solely because they are not mental

health professionals. Rather, what drove her 1 and/or were not consistent with other evidence in the record. See AR 39-40 (ALJ decision). See 2 *infra*. Thus, even if the ALJ erred as R.W. claims, that was at most harmless error. 3

2. Supportability of Medical Opinions 4 R.W. argues next that the ALJ erred in evaluating the medical opinions of record because 5 she failed to consider the “supportability” of any medical opinion, as to opposed to its 6 “consistency.” See Op. Br. at 22-23; see also 20 C.F.R. § 404.1520c(b)(2), 416.920c(b)(2) (“The 7 factors of supportability (paragraph (c)(1) of this section) and consistency (paragraph (c)(2) of this 8 section) are the most important factors we consider when we determine how persuasive we find a 9 medical source’s medical opinions or prior administrative medical findings to be.”). 10 The Social Security regulations address “supportability” and “consistency” as follows: 11 (1) Supportability. The more relevant the objective medical evidence and supporting explanations presented by a medical 12 source are to support his or her medical opinion(s) or prior administrative medical finding(s), the more persuasive the 13 medical opinions or prior administrative medical finding(s) will be. 14

(2) Consistency. The more consistent a medical opinion(s) or 15 prior administrative medical finding(s) is with the evidence from other medical sources and nonmedical sources in the 16 claim, the more persuasive the medical opinion(s) or prior administrative medical finding(s) will be. 17 18 *Id.* §§ 404.1520c(c); 416.920c(c). As indicated by the text above, there is a distinction between 19 supportability and consistency. See also *Woods v. Kijakazi*, 32 F.4th 785, 793 n.4 (9th Cir. 2022) 20 (taking note of the distinction). 21 R.W. is correct that, per the regulations, an ALJ is required to consider both supportability 22 and consistency in evaluating medical opinions. Indeed, the regulations provide that, because 23 supportability and consistency are the most important factors, the agency “will explain how we 24 considered the supportability and consistency factors for a medical source’s medical opinions or 25 prior administrative medical findings in your determination or decision.” 20 C.F.R. §§ 26 404.1520c(b)(2), 416.920c(b)(2) (emphasis added). Hence, a failure to consider supportability 27 may provide a basis for reversal. 1 However, the ALJ did include supportability analysis in her decision. Much of R.W.’s 2 argument hinges on his contention that, when a medical opinion is provided in a document, what 3 “support” that opinion has must be contained within the four corners of that document only. 4 Anything outside the four corners is considered as part of the consistency analysis, not the 5 supportability analysis. But R.W. does not cite any authority to support this narrow view of 6 supportability. 7 Instead, supportability is ultimately focused on how a doctor reaches the medical opinion. 8 See *Charlot v. Bisignano*, No. 24-12610-MPK, 2025 U.S. Dist. LEXIS 167213, \*25 (D. Mass.

9 Aug. 22, 2025) (“What is missing is any mention of how Dr. Feliz made these findings: his 10 examination of the record, his patient interview, and the physical examination he conducted.”) 11 (emphasis in original). Thus, e.g., if a treating doctor renders a medical opinion in one document 12 but has considered earlier treatment notes in rendering that opinion, those earlier treatment notes 13 are part of the supportability of the medical opinion even if they are outside the

four corners of the 14 document that contains the medical opinion. Cf. *King v. Bisignano*, No. 24-4619, 2025 U.S. App. 15 LEXIS 17150, \*2 (9th Cir. July 11, 2025) (stating that “[s]upportability refers to whether a 16 medical opinion is supported by the source's own medical evidence; consistency refers to whether 17 a medical opinion is consistent with evidence in the record provided by other sources”) (emphasis 18 added); see also *Stein v. O'Malley*, No. 23-16115, 2024 U.S. App. LEXIS 18784, at \*2 (9th Cir. 19 Aug. July 30, 2024) (stating that “[s]ubstantial evidence supports the ALJ's conclusion that 20 Pence's sedation opinion is not supported by her own treatment notes and is inconsistent with 21 treatment notes from other providers”) (emphasis added); see also *Black v. Comm'r of SSA*, No. 22 CV-23-08618-PCT-DLR, 2025 U.S. Dist. LEXIS 30169, at \*9 (D. Ariz. Feb. 19, 2025) (stating 23 that “the supportability factor focuses on how the treating physician's notes support his own 24 assessment”) (emphasis added). Accord *Keyes v. O'Malley*, No. 24-61991-CV-GOODMAN, 2025 25 U.S. Dist. LEXIS 200697, \*13 (S.D. Fla. July 7, 2025) (indicating that the supportability factor 26 has not been sufficiently addressed if the ALJ fails to explain how the doctor's own treatment and 27 examination notes do not support his opinions). 1 With this understanding, it is clear that the ALJ did conduct a proper supportability 2 analysis. For example, one of R.W.'s treating providers, Dr. Jennings, completed a mental 3 capacity assessment in June 2021 in which he stated, inter alia, that R.W. had marked limitations 4 with respect to the ability to set realistic goals based on his learning/developmental disability. See 5 AR 773 (mental capacity assessment). However, this was inconsistent with Dr. Jennings's own 6 medical notes which characterized the mental disability as mild. See, e.g., AR 784 (medical 7 records from Dr. Jennings, dated November 2021) (stating that R.W. had a mild cognitive 8 impairment developmental disability). Similarly, in September 2023, Mr. Pickett filled out a 9 mental impairment questionnaire in which he stated, inter alia, that R.W. had had either three or 10 four or more episodes of decompensation within a twelve-month period, each of at least two 11 weeks in duration. See AR 910 (mental impairment questionnaire). But Mr. Pickett's medical 12 records did not suggest any such issues with mental condition, see, e.g., AR 835, 839 (medical 13 records from Mr. Pickett, dated March and June 2023) (describing psychiatric state as “[a]lert and 14 interactive with normal affect” and not mentioning any episodes of decompensation), and Mr. 15 Pickett even characterized the bipolar 2 disorder as stable. See AR 835, 839 (also noting reports 16 by R.W. that his behavioral health was “stable” with no suicidal ideation and that “his mental 17 health is well at this time”). See generally AR 39-40 (ALJ decision) (stating that “Dr. Jennings' 18 own progress notes variously document observations of essentially unremarkable mental status”; 19 also stating that Mr. Pickett's medical notes indicated R.W. was reporting doing well and that 20 mental status examinations were unremarkable). 21 The ALJ also addressed the supportability of the state agency consultants' opinions. For 22 instance, the ALJ noted that “Dr. Cremerius and Dr. Cools [the consultants who evaluated R.W.'s 23 mental impairments] reviewed claims examiner findings of fact that included reporting that there 24 was no medical evidence of record for any time period through the March 31, 2014 Title

II date 25 last insured.” AR 37. This supported “Dr. Cremerius’ administrative medical finding regarding 26 insufficient evidence through the date last insured.” AR 37. The ALJ also noted that the two 27 consultants’ administrative medical findings were partially supported by “some evidence of 1 of developmental/learning disorder, while also noting observations of intact attention and memory 2 and ‘generally intact’ cognitive functioning.” AR 37; see also AR 111 (Dr. Cremerius notes) 3 (“The records in file partially support the existence, intensity & persistence of the alleged mental 4 impairments. Some record of mood disorder noted in the treating source documentation. 5 Cognitive functioning noted to be generally intact. Claimant described as capable of performing a 6 variety of independent activities. Overall, the record provide[s] some consistency and 7 supportability of the mental allegations.”). 8 Accordingly, the Court rejects R.W.’s contention that the ALJ failed to conduct a 9 supportability analysis of any medical opinion. The ALJ considered the supportability of medical 10 findings of both those which were supportive of as well as those adverse to his claims of 11 disability. 12 3. Specificity of Analysis

13 R.W. next criticizes the ALJ for not providing sufficient specificity in her analysis: 14 The ALJ: (1) does not identify the many specific instances where her findings differed from those of each medical source; (2) does not 15 explain how she resolved each conflict; and (3) does not identify specific evidence supporting her finding and the specific evidence 16 undercutting the medical source’s found limitations. At most, the ALJ states her assessment of the global opinions offered by a given 17 medical source and then regurgitates parts of treatment notes untied to any of the many opinions offered by each medical source. . . . [A] 18 mindless recitation of treatment notes not tied to specific found limitations simply does not satisfy requirements of specificity that 19 must be satisfied by an ALJ. 20 Op. Br. at 24. 21 The Court is not persuaded. As an initial matter, the Court notes that R.W.’s argument is 22 somewhat tied to now-superseded authority holding, e.g., that an ALJ must provide specific and 23 legitimate reasons for rejecting a treating or examining doctor’s opinion. See *Woods*, 32 F.4th at 24 792 (noting that such authority is “incompatible with the revised [Social Security] regulations”). 25 That authority is no longer controlling. 26 To be sure, under the now-applicable regulations, an ALJ cannot reject a treating (or even 27 examining) doctor’s opinion “as unsupported or inconsistent without providing an explanation 1 the medical opinions’ from each doctor or other source and ‘explain how [it] considered the 2 supportability and consistency factors’ in reaching these findings.” *Id.*; see also 20 C.F.R. §§ 3 404.1520c(b), 416.920c(b) (“We will articulate in our determination or decision how persuasive 4 we find all of the medical opinions and all of the prior administrative medical findings in your 5 case record.”). But that simply means that an ALJ must provide sufficient reasoning such that a 6 court can meaningfully review the ALJ’s decision. See also *Regina V. v. Bisignano*, No. 2:24-CV- 7 01661-RAL, 2025 U.S. Dist. LEXIS 190476, \*19 (W.D. Pa. Sept. 26, 2025) (stating that “the law 8 imposes no obligation on an ALJ to provide the level of detail Plaintiff seeks here”; the 9 “substantial evidence standard is deferential, requiring only that the ALJ’s path of reasoning be 10 traceable, not that it be exhaustively detailed”); *LaBona v. Kijakazi*,

No. 5: 23-035-DCR, 2023 11 U.S. Dist. LEXIS 112293, \*7-8 (E.D. Ky. June 29, 2023) (stating that an ALJ “must adequately 12 explain why he weighed the evidence as he did” – so that a court can conduct a meaningful 13 review – but the “explanation need not be lengthy” and the ALJ does not need to explain his 14 evaluation of each portion of a medical source’s opinion); Michael L.A. v. Kijakazi, No. 2:20- 15 04918 ADS, 2021 U.S. Dist. LEXIS 206701, \*11 (C.D. Cal. Oct. 26, 2021) (explaining that an 16 ALJ cannot conclusorily state that a medical opinion is not consistent with or supported by the 17 medical record; rather, “[t]he ALJ is required to state in more detail what in the medical records 18 conflicts with or is missing to support [a medical] opinion” so that there can be meaningful 19 review) (emphasis added)<sup>3</sup>. 20 Here, the ALJ met that standard in issuing her 29-page, single-spaced opinion. As noted 21 above, the ALJ addressed various medical opinions – for both physical and mental impairments – 22 including those from Dr. Jennings, Dr. Anderson, Dr. Friedman, Mr. Pickett, Dr. Lewis, and state 23 agency consultants. And she provided specific and substantial evidence, see *Obrien v. Bisignano*, 24 142 F.4th at 693 (explaining that “[s]ubstantial evidence means only[] such relevant evidence as a 25 reasonable mind might accept as adequate to support a conclusion”) (internal quotation marks 26 omitted), in explaining why she found those opinions persuasive. 27 1 For example, with respect to mental impairments, Dr. Anderson was a treating provider 2 who conducted a psychiatric evaluation in April 2020. See AR 674 (medical records from Dr. 3 Jennings, dated September 2019) (noting that referral was being made to Dr. Anderson for 4 “depression issues and mood swings”). Dr. Anderson noted, inter alia, that R.W. reported hearing 5 voices for the last three years, that R.W.’s thought process was “frequently illogical, and that R.W. 6 had impaired insight or judgment. See AR 654 (medical records from Dr. Anderson). Dr. 7 Anderson diagnosed R.W. with schizoaffective disorder and depression. See AR 655. He 8 prescribed Abilify/aripiprazole, recommended psychotherapy, and set a return visit for four weeks 9 later. See AR 655; see also AR 424 (Disability Report) (R.W. indicating that aripiprazole was 10 prescribed to address “aggression”). It appears that R.W. did not return for evaluation until 11 several months later. On the return visit in July 2020, Dr. Anderson again noted illogical thinking 12 as well as impaired insight or judgment. He also took note once again of R.W.’s reporting that he 13 occasionally heard voices, but “[n]o specific delusions are identified.” AR 652. R.W. informed 14 Dr. Anderson that he “did not do well with Abilify” because it caused bad headaches and that he 15 was “doing fine” and was not depressed. AR 652. Dr. Anderson found that R.W. was “somewhat 16 improved” and decided not to prescribe any other medication but “offered the services of the clinic 17 in the future if needed.” AR 652 (stating that a return visit was only “[a]s needed”). There is no 18 indication in the record that R.W. ever returned to Dr. Anderson or another psychiatric specialist 19 until Dr. Friedman in 2022. 20 In her decision, the ALJ implicitly recognized that Dr. Anderson’s medical opinions had 21 some support given the mental evaluations he conducted. See also AR 23 (finding, at step two, 22 that among R.W.’s severe impairments were depressive disorder and schizoaffective disorder). 23 However, she also took

into account that Dr. Anderson's own medical notes indicated 24 improvement. Furthermore, Dr. Anderson's assessments were not consistent with other medical 25 evidence in the record. For example, in examinations conducted by a nurse practitioner in October 26 and December 2020, there were no psychiatric symptoms or issues noted and R.W. even denied 27 stopping use of Abilify due to headaches. See AR 739, 782 (Ms. Marquette medical notes). 1 heard voices calling his name, see AR 854 (medical records from Dr. Friedman), Dr. Friedman 2 found no hallucinations and "[n]o delusional content expressed." AR 855. She also found R.W.'s 3 thought process linear and goal oriented and assessed his insight or judgment as fair. See AR 855. 4 To the extent R.W. argues that Dr. Friedman's findings conflict with those of Dr. Jennings and 5 Mr. Pickett the ALJ was entitled under the regulations to find Dr. Friedman's opinions more 6 persuasive given her specialization. Moreover, as indicated above, the ALJ fairly found that the 7 treatment notes of Dr. Jennings and Mr. Pickett could be viewed as not supporting their statements 8 that R.W. had severe or marked limitations. See, e.g., AR 791, 799 (medical notes from Dr. 9 Jennings, dated February and August 2021) (describing R.W. as alert and oriented with no acute 10 distress and with appropriate mood and affect); AR 836 (medical notes from Mr. Pickett, dated 11 June 2023) (stating that R.W.'s bipolar 2 disorder was stable).

12 For physical impairments, the ALJ properly took into account that R.W.'s main complaint 13 was related to back problems. The record supported lumbar degenerative disc disease but, as the 14 ALJ noted, showed no more than mild to moderate abnormalities. See, e.g., AR 689 (lumbar spine 15 evaluation by Dr. Horn in June 2017) (noting "T11-L1 mild and L3-5 early degenerative disc 16 disease without acute osseous abnormality"); AR 750-51 (internal medicine evaluation by Dr. 17 Lewis in April 2021) (diagnosing lumbago but finding that R.W. could still "stand and walk up to 18 six hours" and "sit without limitations"; indicating normal range of motion in cervical and lumbar 19 spine); AR 863 (lumbar spine evaluation by Dr. Duge in May 2022) (finding "mild degenerative 20 disc disease at T11-L1 and L3-4"); AR 864 (lumbar spine evaluation by Dr. Duge in July 2022) 21 (finding mild to moderate central stenosis at L3-4 and mild central stenosis and mild bilateral 22 foraminal stenosis at L4-5); AR 838 (findings by Mr. Pickett in March 2023) (noting mild to 23 moderate central stenosis in L3-4 and mild central stenosis and mild bilateral foraminal stenosis in 24 L4-5). 25 / / / 26 / / / 27 / / / 1 D. Evaluation of Credibility 2 R.W. contends that, putting aside the medical opinions, the ALJ further erred in her 3 assessment of his credibility.4 4 To determine whether a claimant's subjective symptom testimony is credible, the ALJ must engage in a two-step analysis: "First, the ALJ 5 must determine whether the claimant has presented objective medical evidence of an underlying impairment which could 6 reasonably be expected to produce the pain or other symptoms alleged." In this analysis, the claimant is "not required to show that 7 [their] impairment could reasonably be expected to cause the severity of the symptom [they have] alleged; [they] need only show 8 that it could reasonably have caused some degree of the symptom." Further, the claimant is not required to produce "objective medical 9 evidence of the pain or fatigue itself, or the severity thereof." 10 "If the claimant satisfies the

first step of this analysis, and there is no evidence of malingering, the ALJ can reject the claimant's testimony 11 about the severity of [their] symptoms only by offering specific, clear and convincing reasons for doing so." 12 13 *Ferguson v. O'Malley*, 95 F.4th 1194, 1199 (9th Cir. 2024). 14 The Ninth Circuit has noted that "[t]he clear and convincing standard is the most 15 demanding required in Social Security cases." *Id.* Moreover, "[a]n ALJ . . . may not discredit 16 the claimant's subjective complaints solely because the objective evidence fails to fully 17 corroborate the degree of pain alleged." *Id.* at 1200 (emphasis added); see also *Smartt v. 18 Kijakazi*, 53 F.4th 489, 498 (9th Cir. 2022). In other words, "an ALJ cannot effectively render a 19 claimant's subjective symptom testimony superfluous by demanding positive objective medical 20 evidence 'fully corroborat[ing]' every allegation within the subjective testimony." *Id.* But an ALJ 21 is not barred "from using inconsistent objective medical evidence in the record to discount 22 subjective symptom testimony. . . . When objective medical evidence in the record is inconsistent 23 with the claimant's subjective testimony, the ALJ may indeed weigh it as undercutting such 24 testimony." *Id.*; see also *id.* at 499 (adding that, otherwise, a claimant's subjective evidence 25 would "effectively trump all other evidence in a case"). "Ultimately, the clear and convincing' 26 standard requires an ALJ to show his work." *Id.* 27 1 Here, the ALJ provided clear and convincing reasons supported by substantial evidence to 2 support her credibility determination. See AR 31 (ALJ decision) (finding that R.W.'s "medically 3 determinable impairments could reasonably be expected to cause the alleged symptoms," but his 4 "statements concerning the intensity, persistence and limiting effects of these symptoms are not 5 entirely consistent with the medical evidence and other evidence in the record"). 5 For example, 6 for R.W.'s mental impairments, the ALJ noted that mental status examinations largely contained 7 unremarkable findings. See, e.g., AR 836 (medical notes from Mr. Pickett, dated June 2023) 8 (indicating that R.W.'s bipolar 2 disorder was stable); AR 855 (medical notes from Dr. Friedman, 9 dated September 2022) (noting that R.W. had a linear, goal-oriented thought process, that no 10 delusional content was expressed, that R.W.'s memory and cognition was intact, and that his 11 judgment and insight were fair). To the extent R.W. claimed a learning or developmental 12 disability, the ALJ fairly took into account that did not prevent him from working at a pizza place 13 for 7 years and then a car rental company for 6 years. See AR 654 (medical notes from Dr. 14 Anderson, dated April 2020). Moreover, Dr. Jennings, one of R.W.'s main treating providers, 15 characterized the learning/developmental disability as mild in his records. See AR 784 (medical 16 notes from Dr. Jennings in November 2021) (stating that R.W. had a mild cognitive impairment 17 developmental disability). And as the ALJ also pointed out, R.W. engaged in activities that 18 suggested he could sustain attention, concentration, and adapt – including watching over a thrift 19 store during the night and early morning for a friend/helper, see AR 948-49 (hearing transcript) 20 / / / 21 / / / 22 / / / 23 / / / 24 / / / 25 26 5 R.W. suggests that the ALJ should have been more specific than this. See Op. Br. at 26 (criticizing the ALJ for not citing to any specific testimony from R.W.). But as indicated above, 27 the law does not impose such a requirement. Rather, the

ALJ simply must have “shown her 1 (testifying that, about four days a week, he watches over the store, from roughly 7:00 p.m. to 6:00 2 a.m.),6 and driving. See AR 68 (hearing transcript).7 The ALJ also fairly noted that R.W. 3 provided testimony indicating he stopped working in December 2012 (the alleged disability onset 4 date) because the business where he was working closed, see AR 65 (hearing transcript), and 5 further told a disability examiner in 2021 that he did not feel his mental health issues prevented 6 him from working. See AR 106 (note from disability examiner in May 2021) (also stating that 7 R.W. said he could not find work because he is a registered sex offender); see also AR 711, 718 8 (notes from social worker in February 2018) (noting that R.W. stated unemployment was not due 9 to his mental health condition but rather because of change in ownership at most recent job; also 10 concluding “employment challenges NOT DUE TO MH CONDITION”).8 The fact that there was 11 some evidence supporting R.W.’s testimony regarding his limitations does not negate the fact that 12 there was substantial evidence which provided clear and convincing reasons to discredit some of 13 that testimony. 14 To the extent R.W. challenges the ALJ’s discounting of mental limitations because 15 symptoms waxed and waned “secondary to the claimant’s use of medication modalities or 16 otherwise,” AR 31 (ALJ decision), that is at most harmless error on the part of the ALJ given the 17 18 6 In his papers, R.W. argues that his friend/helper was simply giving him a place to sleep several nights a week. However, at the hearing, R.W. testified that his watching over the store included 19 walking the perimeter as well as keeping an eye on things inside because there had been a break in previously. See AR 948 (hearing transcript). This evidence also refutes R.W.’s assertion that the 20 ALJ did not ask or consider “how often he engages in any of [his] activities and never asked how long he spent doing any of these activities in any given instance.” Op. Br. at 20. 21 7 At the second hearing before the ALJ, R.W. claimed that he stopped driving in 2016. See AR 22 928 (hearing transcript). But that conflicted with testimony he provided to the ALJ in 2022. See AR 68 (hearing transcript) (stating that he drives twice in an average week). 23 8 For similar reasons, the Court finds no error with respect to the ALJ’s decision not to credit fully 24 the statements provided by lay witnesses. See AR 42 (ALJ decision); AR 635-36 (letters submitted by Laurie Hernandez and Mari Roth addressing mental limitations); see also *Ballard v. 25 Bisignano*, No. 24-6560, 2025 U.S. App. LEXIS 29479, \*7 (9th Cir. Nov. 10, 2025) (explaining that an ALJ must provide germane reasons for discounting lay testimony; adding that a failure to 26 provide germane reasons “is harmless if ‘the lay testimony described the same limitations as [the claimant’s] own testimony, and the ALJ’s reasons for rejecting [the claimant’s] testimony apply 27 with equal force to the lay testimony’”). The ALJ did not discount their testimony entirely in 1 other reasons supporting her credibility determination. See *Carmickle v. Comm’r, SSA*, 533 F.3d 2 1155, 1162 (9th Cir. 2008) (“So long as there remains ‘substantial evidence supporting the ALJ’s 3 conclusions on . . . credibility’ and the error ‘does not negate the validity of the ALJ’s ultimate 4 [credibility] conclusion,’ such is deemed harmless and does not warrant reversal.”). 5 Likewise, the ALJ provided clear and convincing reasons supported by substantial 6 evidence to find R.W. only partially credible as to physical



disability. As indicated above, there 7 was substantial medical evidence indicating that R.W.'s back problems were mild to moderate. 8 Although R.W. claimed that he needed to lay down 2-3 times a day, the ALJ properly took into 9 account that he never told his treating providers that this was a means he used to alleviate his 10 symptoms; moreover, there is no evidence that his treating providers recommended that practice. 11 See AR 36 (ALJ decision). Furthermore, R.W. engaged in activities that indicated he could do 12 more than claimed, including riding his bike "daily" "all over town," AR 478 (medical notes from 13 Mr. Marquette in October 2020); AR 888 (medical notes from Ms. Casey in December 2020), and 14 helping keep the thrift store of his friend/helper secure during evening and early morning hours. 15 Compare, e.g., *Jamie B. v. Bisignano*, No. 24-1948-DRM, 2025 U.S. Dist. LEXIS 137009, \*11 16 (D. Md. July 18, 2025) (noting that "most of the activities accurately described by the ALJ are 17 basic in nature, with some requiring nothing more than a modicum of physical exertion (i.e., 18 driving, going out alone, doing laundry, and preparing meals)'" (emphasis added); cf. *Orn v. 19 Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (stating that there are "two grounds for using daily 20 activities to form the basis of an adverse credibility determination": (1) when the activity 21 contradicts testimony provided by the claimant and (2) when the activity satisfies "the threshold 22 for transferable work skills") (emphasis added). 23 In sum, the ALJ cited clear and convincing reasons supported by substantial evidence 24 justifying her decision not to fully credit R.W.'s testimony regarding his limitations. 25 E. Steps Four and Five 26 Finally, R.W. makes several arguments related to determinations that the ALJ made related 27 to steps four and five. None has merit. 1 1. Nonsevere Impairments 2 For example, R.W. contends that the ALJ failed to consider the nonsevere impairments in 3 making her RFC assessment. But that is not correct. The ALJ's decision clearly reflected her 4 consideration of the nonsevere impairments in conjunction with her RFC assessment – and that the 5 medical evidence indicated the impairments did not pose any concrete health risk and/or were 6 under control. See, e.g., AR 33 (ALJ decision) (noting that "cardiac stress testing . . . conducted in 7 late August of 2021 was largely unremarkable"); AR 40 (stating that in spite of "some evidence of 8 mild recurring obesity, and isolated reporting of mildly reduced oxygen saturation, the claimant 9 otherwise generally denied respiratory problems and presented with largely unremarkable 10 respiratory and cardiovascular exam findings over his medical history"); AR 41 (stating that "there 11 is no evidence of diabetic retinopathy, and while the claimant was diagnosed with bilateral 12 cataracts, he was consistently noted as functioning well with regard to vision (with related 13 reporting that any cataract surgery would be deferred), and his clinicians more particularly 14 observed adequate visual acuity and full visual fields"). 15 2. Seven Strength Demands 16 R.W. also criticizes the ALJ for not conducting a function-by-function assessment of each 17 of the seven strength demands before determining his physical RFC. See Op. Br. at 29. 18 Social Security Ruling 96-8p ("SSR 96-8p") prescribes the rules an ALJ must follow when making an RFC assessment. SSR 96-8p, 19 explains that the RFC is a "function-by-function assessment" of an individual's ability to do work-related activities. This function-by- 20 function

assessment must occur before the RFC may be expressed in terms of the exertional levels of work (e.g., light, medium, 21 heavy). 22 To carry out the function-by-function assessment, the ALJ must assess "the individual's remaining abilities to perform each of seven 23 strength demands: [s]itting, standing, walking, lifting, carrying, pushing, and pulling." The ruling also specifically requires that 24 "[e]ach function must be considered separately (e.g., 'the individual can walk for 5 out of 8 hours and stand for 6 out of 8 hours'), even if 25 the final RFC assessment will combine activities." SSR 96-8p explains that "it is necessary to assess the individual[']s capacity to 26 perform each of these functions in order to decide which exertional level is appropriate and whether the individual is capable of doing 27 the full range of work contemplated by the exertional level." "The maximum amount of each work-related activity the individual can 1 perform based on the evidence available." 2 Massey v. Saul, No. No. 1:20-cv-00201-CMA, 2021 U.S. Dist. LEXIS 59262, at \*6-8 (D. Colo.

3 Mar. 29, 2021).

4 R.W.'s argument is flawed for several reasons. First, to the extent he suggests that the ALJ 5 was required to explicitly address each of the seven strength demands in her written decision, that 6 is incorrect. See *Delgado v. Comm'r of Soc. Sec.*, 30 F. App'x 542, 547-48 (6th Cir. 2002) 7 ("Although a function-by-function analysis is desirable, SSR 96-8p does not require ALJs to 8 produce such a detailed statement in writing."); *Simmons v. Saul*, No. 18-cv-1293 (JDB/GMH), 9 2019 U.S. Dist. LEXIS 238124, at \*44 (D.D.C. Sept. 30, 2019) ("To the extent that Plaintiff 10 argues that the absence of explicit and separate evaluations of each of the relevant strength 11 categories in itself requires remand (or reversal), he is mistaken. . . . SSR 96-8p 'does not provide 12 the specific mandate' that an ALJ 'must undertake a specific discussion of each of the seven 13 functions'; rather the ruling requires only 'consideration of all the factors, not enumeration of all 14 the factors.'"); see also *Knox v. Astrue*, 327 F. App'x 652, 657 (7th Cir. 2009) ("Although the RFC 15 assessment is a function-by-function assessment, . . . the expression of a claimant's RFC need not 16 be articulated function-by-function; a narrative discussion of a claimant's symptoms and medical 17 source opinions is sufficient."). 18 Second, an ALJ is not required to address a strength demand if the claimant is not asserting 19 a physical limitation related to that strength demand. See SSR 96-8p (stating that, "when there is 20 no allegation of a physical or mental limitation or restriction of a specific functional capacity, and 21 no information in the case record that there is such a limitation or restriction, the adjudicator must 22 consider the individual to have no limitation or restriction with respect to that functional 23 capacity"). Here, R.W. did not clearly assert to the ALJ that he had limitations with all of the 24 seven strength demands (e.g., pushing and pulling). See *Rodriguez v. Comm'r of SSA*, No. 7:06- 25 CV-151-BH, 2008 U.S. Dist. LEXIS 35376, \*32 (N.D. Tex. Apr. 29, 2008) (noting that, 26 "[a]lthough the ALJ only explicitly assessed two of the seven strength demands (lifting and 27 carrying) specified in SSR 96-8p, there is no evidence in the medical record that Plaintiff 1 Third, based on the record, it can fairly be inferred that the ALJ did consider the relevant 2 strength demands. The ALJ's decision referenced, e.g.,

R.W.'s testimony about standing, sitting, 3 walking, and carrying/lifting. See AR 30 (ALJ decision); cf. *Depover v. Barnhart*, 349 F.3d 563, 4 567-68 (8th Cir. 2003) (finding that the ALJ did not err in failing to make explicit findings as to 5 the claimant's ability to sit, stand, or walk when it was clear the ALJ did not overlook these 6 abilities based on the hearing transcript and the written opinion). 7 Finally, for purposes of judicial review, R.W. has not identified what limitations the ALJ 8 failed to consider to the extent she failed to address any strength demand. See, e.g., *Weisbrot v. 9 SSA*, No. 3:15-cv-00581, 2016 U.S. Dist. LEXIS 134841, at \*14 (M.D. Tenn. Sept. 27, 2016) 10 ("Plaintiff has failed to identify any particular evidence supporting an impairment of physical 11 function which was not considered."); *Patterson v. Colvin*, No. 13-cv-1040-JDB-tmp, 2016 U.S. 12 Dist. LEXIS 181599, \*31 (W.D. Tenn. Dec. 16, 2016) ("Patterson does not make any specific 13 arguments about how the ALJ's failure to explicitly discuss any of the individual exertional 14 activities adversely affected the determination of her RFC."). Thus, any error by the ALJ was 15 harmless. See *Rodriguez*, 2008 U.S. Dist. LEXIS 35376, at \*33 ("Even assuming, arguendo, that 16 the ALJ erred in her application of SSR 96-8p, Plaintiff has not affirmatively demonstrated 17 ensuant prejudice from the procedural error."); see also *Khan v. Comm'r of Soc. Sec.*, No. CIV S- 18 07-0290-CMK, 2008 U.S. Dist. LEXIS 53121, at \*28 (E.D. Cal. July 3, 2008) ("[P]laintiff's 19 argument puts form over substance. Specifically, the court finds that, even if the ALJ had made 20 explicit findings as to each strength demand, no reasonable ALJ, when viewing the uncontested 21 medical evidence as a whole, would reach a different conclusion as to plaintiff's residual 22 functional capacity."). 23 3. Vocational Expert Testimony 24 Finally, R.W. faults the ALJ for accepting the vocational expert's conclusion that the job 25 of auto detailer was equivalent to R.W.'s past relevant work as an RV detailer. According to 26 R.W., "there is a significant difference between cleaning a car and cleaning [a] 45-foot 27 motorhome; cars do not have refrigerators, stoves, ovens, televisions, showers, toilets, beds, etc." 1 more like that performed by a housekeeper." Op. Br. at 30. But even if there was an error by the 2 || ALJ here, it was harmless. The ALJ found that R.W. could do medium duty work. Even if 3 || R.W.'s past relevant work was not comparable to an auto detailer and he could not do his past 4 || relevant work, either as generally performed or actually performed (step four), the ALJ found 5 || there were other jobs in the national economy that he could still perform, both medium and light 6 || duty work (step five). See AR 44-45 (ALJ decision) (identifying light exertional and medium 7 exertional jobs).

## 8 II. CONCLUSION

9 For the foregoing reasons, the Court denies R.W.'s motion for relief. The Court directs the 10 || Clerk of the Court to enter a final judgment in favor of the Commissioner and close the file in the 11 case. a 12 IT IS SO ORDERED. 15 Dated: December 3, 2025 16 it

EDWA . CHEN

18 United States District Judge 19 20 21 22 23 24 25 26 27 28

