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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

9 Jerome Wayne Wringer,

10 Plaintiff,

11 v.

12 Carolyn W Colvin,

13 Defendant.

No. CV-15-02554-PHX-DLR

**ORDER**

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16 Plaintiff Jerome Wringer seeks review under 42 U.S.C. § 405(g) of the final  
17 decision of the Commissioner of Social Security (Commissioner) denying his application  
18 for supplemental security income and disability insurance benefits. Because the decision  
19 of the Administrative Law Judge (ALJ) is supported by substantial evidence and is not  
20 based on legal error, the Commissioner's decision is affirmed.

21 **I. Background**

22 **A. Factual Background**

23 Wringer is 67 years old and has an eleventh grade education. (A.R. 18.) He last  
24 worked as an automobile service manager. (Doc. 12 at 1.) The business closed in 2008,  
25 and he has not worked since that time. (A.R. 21.) Wringer reported looking for work in  
26 March 2012, immediately before he applied for benefits. (*Id.* at 761.) He alleges  
27 disability due to chronic back pain, nerve damage, hernia, irregular heartbeat, left eye  
28 blindness, sleep apnea, and anxiety. (*Id.* at 18.)

1 **B. Procedural History**

2 On March 16, 2012, Wringer applied for disability insurance benefits and  
3 supplemental security income, alleging disability beginning March 1, 2008. (*Id.* at 11.)  
4 On May 14, 2014, he appeared with his attorney and testified at a hearing before the ALJ.  
5 A vocational expert also testified.

6 On July 25, 2014, the ALJ issued a decision that Wringer was not disabled within  
7 the meaning of the Social Security Act. The Appeals Counsel denied Wringer’s request  
8 for review of the hearing decision, making the ALJ’s decision the Commissioner’s final  
9 decision. On December 16, 2015, Wringer sought review by this Court.

10 **II. Legal Standard**

11 The district court reviews only those issues raised by the party challenging the  
12 ALJ’s decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court  
13 may set aside the Commissioner’s disability determination only if the determination is  
14 not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d  
15 625, 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, less than a  
16 preponderance, and relevant evidence that a reasonable person might accept as adequate  
17 to support a conclusion considering the record as a whole. *Id.* In determining whether  
18 substantial evidence supports a decision, the court must consider the record as a whole  
19 and may not affirm simply by isolating a “specific quantum of supporting evidence.” *Id.*  
20 As a general rule, “[w]here the evidence is susceptible to more than one rational  
21 interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be  
22 upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

23 **III. Five-Step Sequential Evaluation Process**

24 To determine whether a claimant is disabled for purposes of the Social Security  
25 Act, the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears  
26 the burden of proof on the first four steps, but at step five, the burden shifts to the  
27 Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

28 At the first step, the ALJ determines whether the claimant is engaging in

1 substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not  
2 disabled and the inquiry ends. *Id.* At step two, the ALJ determines whether the claimant  
3 has a “severe” medically determinable physical or mental impairment.  
4 § 404.1520(a)(4)(ii). If not, the claimant is not disabled and the inquiry ends. *Id.* At step  
5 three, the ALJ considers whether the claimant’s impairment or combination of  
6 impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P  
7 of 20 C.F.R. Pt. 404. § 404.1520(a)(4)(iii). If so, the claimant is automatically found to  
8 be disabled. *Id.* If not, the ALJ proceeds to step four. At step four, the ALJ assesses the  
9 claimant’s residual functional capacity (RFC) and determines whether the claimant is still  
10 capable of performing past relevant work. § 404.1520(a)(4)(iv). If so, the claimant is not  
11 disabled and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step,  
12 where he determines whether the claimant can perform any other work based on the  
13 claimant’s RFC, age, education, and work experience. § 404.1520(a)(4)(v). If so, the  
14 claimant is not disabled. *Id.* If not, the claimant is disabled. *Id.*

15 At step one, the ALJ found that Wringer meets the insured status requirements of  
16 the Social Security Act through December 31, 2013, and that he has not engaged in  
17 substantial gainful activity since August 12, 2008. (A.R. 13.) At step two, the ALJ found  
18 that Wringer has the following severe impairments: left ear decreased hearing, blindness  
19 in left eye, depression, mild cognitive impairment, and anxiety. (*Id.*) At step three, the  
20 ALJ determined that Wringer does not have an impairment or combination of  
21 impairments that meets or medically equals an impairment listed in Appendix 1 to  
22 Subpart P of 20 C.F.R. Pt. 404. (*Id.* at 15.)

23 At step four, the ALJ found that Wringer has the RFC to perform:

24 medium work as defined in 20 C.F.R. § 404.1567(c) with the following  
25 additional limitations: frequently climb, balance, stoop, crouch, kneel and  
26 crawl; has to avoid concentrated exposure to excessive, loud noise; needs  
27 work that is simple, routine and repetitive; work with only occasional  
28 interaction with public, coworkers and supervisors but he can still be in  
vicinity of others; limited depth perception due to monocular vision.

1 (*Id.* at 17.) At step five, the ALJ concluded that, considering Wringer’s age, education,  
2 work experience, and residual functional capacity, there are jobs that exist in significant  
3 numbers in the national economy that he could perform. (*Id.* at 22.)

#### 4 **IV. Analysis**

5 Wringer argues the ALJ’s decision should be overturned because (1) the ALJ  
6 improperly discounted the testimony of treating physician Dr. Robert Rosenberg, and (2)  
7 the RFC is not supported by substantial evidence. (Doc. 12 at 4, 13.) The Court will  
8 address each argument in turn.

##### 9 **A. The ALJ Did Not Err in Evaluating Medical Opinion Evidence**

10 The ALJ is responsible for resolving conflicts in medical testimony. *Andrews v.*  
11 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). Generally, more weight should be given to  
12 the opinion of a treating physician than to the opinions of non-treating physicians. *Lester*  
13 *v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Where a treating physician’s opinion is not  
14 contradicted by another physician, it may be rejected only for “clear and convincing”  
15 reasons, and where it is contradicted, it may not be rejected without “specific and  
16 legitimate reasons” supported by substantial evidence in the record. *Id.* Likewise, an  
17 examining physician’s opinion generally must be given greater weight than that of a non-  
18 examining physician. *Id.* at 830. As with a treating physician, there must be clear and  
19 convincing reasons for rejecting the uncontradicted opinion of an examining physician,  
20 and specific and legitimate reasons, supported by substantial evidence in the record, for  
21 rejecting an examining physician’s contradicted opinion. *Id.* at 830-31.

22 Dr. Rosenberg treated Wringer for approximately four years. On July 13, 2013, he  
23 submitted a check-box style medical source statement regarding Wringer’s symptoms.  
24 (A.R. 463-66.) He opined that Wringer could sit, stand or walk for 0-2 hours in an eight-  
25 hour workday. (*Id.* at 464.) Wringer could rarely lift and carry less than 10 pounds and  
26 never carry lift and carry twenty pounds. (*Id.*) Dr. Rosenberg opined that Wringer has  
27 significant limitations in doing repetitive reaching, handling, fingering or lifting and  
28 would be unable to keep his neck in a constant position. (*Id.*) In addition, Dr.

1 Rosenberg opined that Wringer was not able to work full time, that emotional factors  
2 contributed to the severity of Wringer’s symptoms, that Wringer was only capable of low  
3 stress work, and that he would miss more than three days of work per month. (*Id.* at 465-  
4 66.) He also found Wringer is unable to stoop, push, pull, and kneel. (*Id.* at 465.) Dr.  
5 Rosenberg stated that the basis for his opinion is “patient’s response to these questions  
6 [and] interview—plus seeing the patient in my office monthly for the past 4 years[.]”  
7 (*Id.*)

8 Dr. Rosenberg’s opinion was contradicted by the opinions of Dr. John Vorhies and  
9 Dr. Kenneth Glass. Both non-examining physicians opined that Wringer could sit, stand  
10 or walk for 6 hours in an eight-hour workday; lift and carry 50 pounds occasionally; lift  
11 and carry 25 pounds frequently; and was unlimited in his ability to push and pull. (*Id.* at  
12 67, 83.) In addition, both physicians found that Wringer could frequently climb ramps  
13 and stairs; climb ladders, ropes, and scaffolds, balance, stoop, kneel, crouch, and crawl.  
14 (*Id.* at 68, 83.) Therefore, the ALJ was required to provide specific and legitimate  
15 reasons supported by substantial evidence for discounting Dr. Rosenberg’s opinion. *See*  
16 *Lester*, 81 F.3d at 830.<sup>1</sup>

17 The ALJ gave reduced weight to Dr. Rosenberg’s opinion because it was a “form  
18 consisting largely of checked boxes without further explanation” and the extreme  
19 findings “contrast sharply” with the other record medical evidence, including Dr.  
20 Rosenberg’s own treatment notes. (A.R. 19.) The form contains 25 questions, only one  
21 of which calls for Dr. Rosenberg’s conclusions regarding his findings. (*Id.* at 465.)  
22 Therein, Dr. Rosenberg explained that his findings were based on Wringer’s answers to  
23 the questions, as well as past visits. (*Id.*) The form, however, contains no clinical

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25 <sup>1</sup> Wringer argues the clear and convincing reasons standard applies because Dr.  
26 Rosenberg’s opinion was uncontradicted by another “examining source”—neither Dr.  
27 Vorhies nor Dr. Glass examined Wringer. (Doc. 12 at 7.) But Wringer cites no authority  
28 for the proposition that a treating physician opinion may be contradicted only by another  
examining source. A non-examining physician’s contradictory opinion triggers the  
specific and legitimate reasons standard. *See Lester*, 81 F.3d at 830 (“if the treating  
doctor’s opinion is *contradicted by another doctor*, the Commissioner may not reject this  
opinion without providing ‘specific and legitimate reasons’ supported by substantial  
evidence”) (emphasis added).

1 evidence and cites to no prior treatment notes or medical diagnoses. Instead, it appears to  
2 be based largely on Wringer’s subjective complaints. It is proper for an ALJ to reject  
3 medical opinion testimony that consists of a check-off report unsupported by explanation.  
4 *See Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996) (finding the ALJ “permissibly  
5 rejected [three psychological evaluations] because they were check-off reports that did  
6 not contain any explanation of the bases of their conclusions”).<sup>2</sup>

7 Furthermore, the record does not support such extreme findings. Both Dr. Vorhies  
8 and Dr. Glass found far greater functional abilities than Dr. Rosenberg. In addition, one  
9 month after Dr. Rosenberg completed the assessment form, his treatment notes indicate  
10 that Wringer had normal muscle strength and tone, normal gait, and normal muscle  
11 appearance. (*Id.* at 743.) In fact, there were no remarkable physical findings. (*Id.*)  
12 Further, the record consistently indicates normal physical findings, including no joint or  
13 muscle tenderness, normal muscle strength, and normal range of motion in the  
14 extremities. (*See, e.g., id.* at 264 (noting “[f]ull range of motion of all 4 extremities. No  
15 joint or muscle tenderness.”); 637 (noting “[j]oints are intact and stable,” “normal gait,”  
16 “[n]o midline back tenderness”); 654-55 (noting normal extremities and normal MRI);  
17 665 (“the thoracolumbar spine had a normal appearance, normal gait and muscle strength  
18 and tone were normal”); 700 (noting unremarkable physical findings)). Nonetheless, Dr.  
19 Rosenberg concluded that Wringer was incapable of standing or sitting more than two  
20 hours in a workday; that he could not push, pull stoop, kneel, finger, reach, handle or  
21 keep his neck in a constant position; and that he could never lift or carry 20 pounds. The  
22 evidence does not support this assessment, and Wringer fails to cite to one treatment note  
23 that supports Dr. Rosenberg’s physical findings. The Court agrees with the ALJ that the  
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26 <sup>2</sup> Wringer asserts the form contains several narrative sections where Dr. Rosenberg  
27 described Wringer’s medical condition. (Doc. 12 at 10.) But the sections cite no medical  
28 evidence—Dr. Rosenberg merely cites conclusory diagnoses. Wringer also argues that  
Dr. Vorheis and Dr. Glass used similar forms. (*Id.*) Indeed, the forms are in the check-  
box style. Both, however, contain numerous citations to record medical evidence,  
evidence summaries, and refer to Dr. Rosenberg’s own treatment notes. Moreover, both  
physicians provided adequate explanation for their findings.

1 evidence is wholly inconsistent with Dr. Rosenberg’s extreme findings.<sup>3</sup>

2 Accordingly, the Court finds the ALJ set forth specific and legitimate reasons  
3 supported by substantial evidence for discounting Dr. Rosenberg’s opinion. *See Lester*,  
4 81 F.3d at 830.

5 **B. The ALJ Did Not Err in Formulating the RFC**

6 Wringer argues the RFC fails to account for his mental limitations. (Doc. 12 at  
7 14.) He claims the ALJ failed to fully incorporate the cognitive findings of the state  
8 agency reviewing psychologists and Dr. Amy Knapp, examining psychologist. (*Id.*) The  
9 Court disagrees.

10 The ALJ found that Wringer had the mental capacity to perform “work that is  
11 simple, routine and repetitive; [and] work with only occasional interaction with public,  
12 coworkers and supervisors but he can still be in vicinity of others.” (A.R. 17.) This  
13 formulation is consistent with the evidence. On October 25, 2012, state agency  
14 reviewing physician Dr. Diane Kogut concluded that Wringer was not significantly  
15 limited in his ability to carry out very short and simple instructions, work in coordination  
16 with or in proximity to others, and make simple work-related decisions. (*Id.* at 69.) She  
17 also noted that Wringer was moderately limited in his ability to carry out detailed  
18 instructions, maintain concentration and attention for extended periods, and sustain an  
19 ordinary routine without special supervision. (*Id.*) As such, she concluded Wringer  
20 could perform “work where interpersonal contact is incidental to work performed, e.g.  
21 assembly work; complexity of tasks is learned and performed by rote, few variables, little  
22 judgment; supervision required is simple, direct and concrete.” (*Id.* at 70.) Similarly, in  
23 May 2013, another state agency reviewing physician concluded that Wringer could  
24 perform the same type of work. (*Id.* at 81.)

25 On April 30, 2014, Wringer underwent a neuropsychological evaluation with Dr.

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27 <sup>3</sup> Wringer points to his hernia surgeries, vascular compromise in the left testicle,  
28 and abdominal cramping as evidence in support of Dr. Rosenberg’s conclusions. (Doc.  
14 at 4.) But these medical conditions occurred in 2007 and 2008, (*see id.*), and there is  
no evidence that they later affected Wringer’s physical functional abilities.

1 Amy Knapp. (*Id.* at 1934-40.) Dr. Knapp concluded that tests revealed Wringer had  
2 “intact cognitive functioning for his age and education in the areas of overall mental  
3 status, reading skills, verbal comprehension, perceptual reasoning, auditory working  
4 memory, attention, visuomotor processing, visuoconstruction ability, and language.” (*Id.*  
5 at 1937.) In addition, “[s]ignificant and profound cognitive impairment was found in the  
6 areas of visual memory and verbal recognition ability.” (*Id.*) Consequently, Dr. Knapp  
7 concluded that Wringer suffered from “mild cognitive impairment,” but that “[f]urther  
8 monitoring of his cognitive disruption is needed to better determine whether his cognitive  
9 decline is related to a neurological or medical condition, or is better accounted for by his  
10 significant anxiety and other mental health concerns.” (*Id.* at 1937-38.) She  
11 recommended Wringer adhere to a regimen of physical exercise and mind stimulating  
12 activities, such as crossword puzzles. (*Id.* at 1939.)

13 “[T]he ALJ is the final arbiter with respect to resolving ambiguities in the medical  
14 evidence,” *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008), and there is no  
15 requirement that the RFC mirror any specific medical opinion, 20 C.F.R. § 404.945(a).  
16 Furthermore, “[w]here the evidence is susceptible to more than one rational  
17 interpretation, it is the ALJ’s conclusion that must be upheld.” *Morgan v. Comm’r of*  
18 *Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

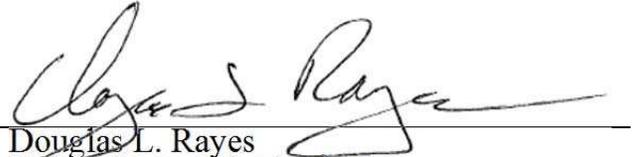
19 Here, the Court finds the ALJ’s interpretation of the medical evidence is  
20 reasonable, and thus the RFC is supported by substantial evidence in the record.  
21 Notwithstanding his cognitive limitations, both state agency reviewing physicians found  
22 Wringer capable of simple, routine work with little interpersonal contact. Dr. Knapp’s  
23 conclusions support this finding, and the ALJ accounted for Wringer’s mental limitations  
24 in the RFC, including the limitation that Wringer be limited to occasional contact with  
25 other people. Other than Dr. Rosenberg’s medical opinion, to which the ALJ assessed  
26 reduced weight, there is no evidence suggesting Wringer cannot follow simple  
27 instructions, perform routine and repetitive work, and occasionally act with other people.

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1 Accordingly, the Court will not disturb the ALJ's decision.<sup>4</sup>

2 **IT IS ORDERED** that the final decision of the Commissioner of Social Security  
3 is **AFFIRMED**. The Clerk shall enter judgment accordingly and terminate this case.

4 Dated this 27th day of July, 2016.

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9 Douglas L. Rayes  
United States District Judge

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27 <sup>4</sup> Wringer argues that the RFC fails to account for Dr. Kogut's conclusion that  
28 Wringer be limited to "simple, direct and concrete supervision." (Dc. 12 at 16.) But the  
RFC limits Wringer to simple work with occasional contact with supervisions. It can be  
inferred that simple work only requires simple and concrete supervision to perform. This  
argument is unpersuasive.