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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 2:17-CV-03754 (VEB)

<p>JULIAN M. RODRIGUEZ,  Plaintiff,  vs.  NANCY A. BERRYHILL, Acting Commissioner of Social Security,  Defendant.</p>
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DECISION AND ORDER

**I. INTRODUCTION**

In July of 2013, Plaintiff Julian M. Rodriguez applied for Disability Insurance Benefits and Supplement Security Income benefits under the Social Security Act. The Commissioner of Social Security denied the applications. Plaintiff, represented by Lawrence D. Rohlfing, Esq., commenced this action seeking judicial review of

1 the Commissioner’s denial of benefits pursuant to 42 U.S.C. §§ 405 (g) and 1383  
2 (c)(3).

3 The parties consented to the jurisdiction of a United States Magistrate Judge.  
4 (Docket No. 12, 13, 20, 21). On November 29, 2017, this case was referred to the  
5 undersigned pursuant to General Order 05-07. (Docket No. 19).

## 7 **II. BACKGROUND**

8 Plaintiff applied for benefits on July 22, 2013, alleging disability beginning  
9 August 2, 2012. (T at 158-64, 165-76).<sup>1</sup> The applications were denied initially and  
10 on reconsideration. Plaintiff requested a hearing before an Administrative Law  
11 Judge (“ALJ”). On October 15, 2015, a hearing was held before ALJ Michael  
12 Radensky. (T at 42). Plaintiff appeared with an attorney and testified with the  
13 assistance of an interpreter. (T at 45-53). The ALJ also received testimony from  
14 Carmen Roman, a vocational expert (T at 53-56).

15 On November 19, 2015, the ALJ issued a written decision denying the  
16 applications for benefits. (T at 23-41). The ALJ’s decision became the  
17 Commissioner’s final decision on March 22, 2017, when the Appeals Council  
18 denied Plaintiff’s request for review. (T at 1-9).

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19 <sup>1</sup> Citations to (“T”) refer to the transcript of the administrative record at Docket No. 16.

1 On May 18, 2017, Plaintiff, acting by and through his counsel, filed this  
2 action seeking judicial review of the Commissioner’s decision. (Docket No. 1). The  
3 Commissioner interposed an Answer on September 14, 2017. (Docket No. 15).  
4 Plaintiff moved for summary judgment on October 16, 2017. (Docket No. 17).  
5 Defendant filed a summary judgment motion on November 15, 2017. (Docket No.  
6 18).

7 After reviewing the pleadings, motion papers, and administrative record, this  
8 Court finds that the Commissioner’s decision should be affirmed and this case must  
9 be dismissed.

### 11 III. DISCUSSION

#### 12 A. Sequential Evaluation Process

13 The Social Security Act (“the Act”) defines disability as the “inability to  
14 engage in any substantial gainful activity by reason of any medically determinable  
15 physical or mental impairment which can be expected to result in death or which has  
16 lasted or can be expected to last for a continuous period of not less than twelve  
17 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a  
18 claimant shall be determined to be under a disability only if any impairments are of  
19 such severity that he or she is not only unable to do previous work but cannot,

1 considering his or her age, education and work experiences, engage in any other  
2 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),  
3 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and  
4 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001).

5 The Commissioner has established a five-step sequential evaluation process  
6 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step  
7 one determines if the person is engaged in substantial gainful activities. If so,  
8 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the  
9 decision maker proceeds to step two, which determines whether the claimant has a  
10 medically severe impairment or combination of impairments. 20 C.F.R. §§  
11 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

12 If the claimant does not have a severe impairment or combination of  
13 impairments, the disability claim is denied. If the impairment is severe, the  
14 evaluation proceeds to the third step, which compares the claimant's impairment(s)  
15 with a number of listed impairments acknowledged by the Commissioner to be so  
16 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),  
17 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or  
18 equals one of the listed impairments, the claimant is conclusively presumed to be  
19 disabled. If the impairment is not one conclusively presumed to be disabling, the

1 evaluation proceeds to the fourth step, which determines whether the impairment  
2 prevents the claimant from performing work which was performed in the past. If the  
3 claimant is able to perform previous work, he or she is deemed not disabled. 20  
4 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant’s residual  
5 functional capacity (RFC) is considered. If the claimant cannot perform past relevant  
6 work, the fifth and final step in the process determines whether he or she is able to  
7 perform other work in the national economy in view of his or her residual functional  
8 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
9 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

10       The initial burden of proof rests upon the claimant to establish a *prima facie*  
11 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup>  
12 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden  
13 is met once the claimant establishes that a mental or physical impairment prevents  
14 the performance of previous work. The burden then shifts, at step five, to the  
15 Commissioner to show that (1) plaintiff can perform other substantial gainful  
16 activity and (2) a “significant number of jobs exist in the national economy” that the  
17 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup> Cir. 1984).

1 **B. Standard of Review**

2 Congress has provided a limited scope of judicial review of a Commissioner’s  
3 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,  
4 made through an ALJ, when the determination is not based on legal error and is  
5 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup> Cir.  
6 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999).

7 “The [Commissioner’s] determination that a plaintiff is not disabled will be  
8 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*  
9 *Heckler*, 722 F.2d 570, 572 (9<sup>th</sup> Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial  
10 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119  
11 n 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d  
12 599, 601-02 (9<sup>th</sup> Cir. 1989). Substantial evidence “means such evidence as a  
13 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*  
14 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and  
15 conclusions as the [Commissioner] may reasonably draw from the evidence” will  
16 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On review,  
17 the Court considers the record as a whole, not just the evidence supporting the  
18 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir.  
19 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

1           It is the role of the Commissioner, not this Court, to resolve conflicts in  
2 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational  
3 interpretation, the Court may not substitute its judgment for that of the  
4 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup>  
5 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be  
6 set aside if the proper legal standards were not applied in weighing the evidence and  
7 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d  
8 432, 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to support the  
9 administrative findings, or if there is conflicting evidence that will support a finding  
10 of either disability or non-disability, the finding of the Commissioner is conclusive.  
11 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9<sup>th</sup> Cir. 1987).

12 **C. Commissioner’s Decision**

13           The ALJ determined that Plaintiff had not engaged in substantial gainful  
14 activity since August 2, 2012 (the alleged onset date) and met the insured status  
15 requirements of the Social Security Act through December 31, 2017. (T at 31). The  
16 ALJ found that Plaintiff’s diabetes mellitus was a “severe” impairment under the  
17 Act. (Tr. 31).

1           However, the ALJ concluded that Plaintiff did not have an impairment or  
2 combination of impairments that met or medically equaled one of the impairments  
3 set forth in the Listings. (T at 33).

4           The ALJ determined that Plaintiff retained the residual functional capacity  
5 (“RFC”) to perform the full range of medium work as defined in 20 CFR § 416.967  
6 (c). (T at 33). The ALJ found that Plaintiff could perform his past relevant work as  
7 an auto parts delivery driver. (T at 36).

8           As such, the ALJ concluded that Plaintiff was not entitled to benefits under  
9 the Social Security Act from August 2, 2012 (the alleged onset date) through  
10 November 19, 2015 (the date of the ALJ’s decision). (T at 36-37). As noted above,  
11 the ALJ’s decision became the Commissioner’s final decision when the Appeals  
12 Council denied Plaintiff’s request for review. (T at 1-9).

13 **D.    Disputed Issues**

14           As set forth in his moving papers, Plaintiff offers a single argument in support  
15 of his claim that the Commissioner’s decision should be reversed. Plaintiff contends  
16 that the ALJ did not adequately account for the findings of Dr. David Paikal, who  
17 performed a consultative ophthalmological examination.



1 IV. ANALYSIS

2 In disability proceedings, a treating physician’s opinion carries more weight  
3 than an examining physician’s opinion, and an examining physician’s opinion is  
4 given more weight than that of a non-examining physician. *Benecke v. Barnhart*,  
5 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
6 1995). If the treating or examining physician’s opinions are not contradicted, they  
7 can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If  
8 contradicted, the opinion can only be rejected for “specific” and “legitimate” reasons  
9 that are supported by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d  
10 1035, 1043 (9th Cir. 1995).

11 An ALJ satisfies the “substantial evidence” requirement by “setting out a  
12 detailed and thorough summary of the facts and conflicting clinical evidence, stating  
13 his interpretation thereof, and making findings.” *Garrison v. Colvin*, 759 F.3d 995,  
14 1012 (9<sup>th</sup> Cir. 2014)(quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9<sup>th</sup> Cir. 1998)).  
15 “The ALJ must do more than state conclusions. He must set forth his own  
16 interpretations and explain why they, rather than the doctors,’ are correct.” *Id.*

17 In this case, Dr. David Paikal performed a consultative ophthalmological  
18 examination in March of 2014. Dr. Paikal assessed 20/40 visual acuity in both of  
19 Plaintiff’s eyes. (T at 398). He diagnosed early cataracts and background diabetic

1 retinopathy. (T at 398). Dr. Paikal reported that Plaintiff did not require any  
2 assistance to enter the examination room or sit in the examination chair. (T at 398).  
3 Dr. Paikal also performed visual field testing and provided the results as a  
4 supplement to his report. (T at 399-400).

5 Although the ALJ referenced Dr. Paikal's opinion and discussed the visual  
6 acuity findings, he did not specifically mention the visual field testing results. (T at  
7 35). Plaintiff argues that the visual field testing results suggest vision problems  
8 inconsistent with the conclusion that he could perform his past relevant work as an  
9 auto parts delivery driver.

10 This Court finds the ALJ's decision supported by substantial evidence. The  
11 ALJ gave weight to the opinion of Dr. John Vorhies, Jr., a State Agency review  
12 physician. (T at 35). In April of 2014, Dr. Vorhies reviewed and summarized the  
13 record, including the visual field testing results from Dr. Paikal, and concluded that  
14 Plaintiff's visual impairments had no more than a minimal effect on his ability to  
15 perform work activities. (T at 66).

16 The ALJ was entitled to rely on this assessment of the visual field testing  
17 results, which is not contradicted by other evidence in the record. *See Saelee v.*  
18 *Chater*, 94 F.3d 520, 522 (9<sup>th</sup> Cir. 1996); *see also* 20 CFR § 404.1527 (f)(2)(i) ("State  
19 agency medical and psychological consultants and other program physicians,

1 psychologists, and other medical specialists are highly qualified physicians,  
2 psychologists, and other medical specialists who are also experts in Social Security  
3 disability evaluation.”). The fact that the ALJ did not specifically reference the  
4 visual field testing results is not dispositive. *See Hiler v. Astrue*, 687 F.3d 1208,  
5 1212 (9<sup>th</sup> Cir. 2012)(“The ALJ is not required to discuss every piece of evidence.”).  
6 The ALJ clearly considered Dr. Paikal’s assessment (T at 35) and reasonably relied  
7 on Dr. Vorhies’s interpretation of that assessment, including the visual field testing  
8 results.

9 The ALJ’s decision was supported by substantial evidence and must therefore  
10 be sustained. *See Tackett v. Apfel*, 180 F.3d 1094, 1098 (9<sup>th</sup> Cir. 1999)(holding that  
11 if evidence reasonably supports the Commissioner’s decision, the reviewing court  
12 must uphold the decision and may not substitute its own judgment).

## 13 14 **V. CONCLUSION**

15 After carefully reviewing the administrative record, this Court finds  
16 substantial evidence supports the Commissioner’s decision, including the objective  
17 medical evidence and supported medical opinions. The ALJ thoroughly examined  
18 the record, afforded appropriate weight to the medical evidence, including the  
19 assessments of the examining medical providers and the non-examining consultants,

1 and afforded the subjective claims of symptoms and limitations an appropriate  
2 weight when rendering a decision that Plaintiff is not disabled. This Court finds no  
3 reversible error and substantial evidence supports the Commissioner's decision.

4  
5 **VI. ORDERS**

6 IT IS THEREFORE ORDERED that:

7 Plaintiff's motion for summary judgment (Docket No. 17) is DENIED; the  
8 Commissioner's motion for summary judgment (Docket No. 18) is GRANTED; and  
9 Judgment shall be entered AFFIRMING the Commissioner's decision; and

10 The Clerk of the Court shall file this Decision and Order, serve copies upon  
11 counsel for the parties, and CLOSE this case.

12 DATED this 25<sup>th</sup> day of September, 2018,

13 /s/Victor E. Bianchini  
14 VICTOR E. BIANCHINI  
UNITED STATES MAGISTRATE JUDGE