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

| | | |
|------------------------------|---|---------------------------|
| RUBEN L., |) | NO. CV 19-9052-E |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | MEMORANDUM OPINION |
| |) | |
| ANDREW SAUL, Commissioner of |) | |
| Social Security, |) | |
| |) | |
| Defendant. |) | |
| |) | |

PROCEEDINGS

Plaintiff filed a complaint on October 21, 2019, seeking review of the Commissioner’s denial of benefits. On November 22, 2019, the parties consented to proceed before a United States Magistrate Judge. Plaintiff filed a motion for summary judgment on March 27, 2020. Defendant filed a motion for summary judgment on June 2, 2020. Plaintiff filed an opposition to Defendant’s motion for summary judgment on June 17, 2020 (“Plaintiff’s Opposition”). The Court has taken the motions under submission without oral argument. See L.R. 7-15; “Order,” filed October 24, 2019.

1 **BACKGROUND**

2
3 In March of 2015, when Plaintiff was 16 years old, his mother
4 filed an application for Supplemental Security Income on his behalf
5 (Administrative Record ("A.R.") 19, 509-15, 540). The application
6 asserts disability since January 31, 2012, based on autism, a learning
7 disorder and "half of [Plaintiff's] brain [being] not fully
8 develop[ed]" (id.). While this application was pending, Plaintiff
9 turned 18 years of age (A.R. 20, 24).
10

11 An Administrative Law Judge ("ALJ") reviewed the record and heard
12 testimony from Plaintiff, Plaintiff's mother, Plaintiff's brother, a
13 medical expert and a vocational expert (A.R. 19-38, 45-168). The ALJ
14 found that Plaintiff has a severe learning disorder, not otherwise
15 specified (A.R. 24, 32-33). The ALJ found that Plaintiff did not meet
16 or equal a listed impairment set forth at 20 C.F.R. Pt. 404, Subpt. P,
17 App. 1 (the "Listings"), either before or after he turned 18 (A.R. 25-
18 34 (adopting, inter alia, medical expert's opinion at A.R. 59-61 for
19 the period before Plaintiff turned 18)). The ALJ also found that,
20 after Plaintiff turned 18, he has had the residual functional capacity
21 to perform work at all exertion levels, limited to work involving:
22 (1) simple routine tasks; (2) occasional contact with supervisors; and
23 (3) brief and superficial contact with the public and coworkers. See
24 A.R. 34-36 (giving moderate weight to the opinion of the psychological
25 consultative examiner). The ALJ identified certain jobs Plaintiff
26 assertedly could perform. See A.R. 37 (adopting vocational expert
27 testimony at A.R. 129-30). Thus, the ALJ denied benefits (A.R. 38).
28 The Appeals Council denied review (A.R. 1-3).

1 **STANDARD OF REVIEW**

2

3 Under 42 U.S.C. section 405(g), this Court reviews the

4 Administration's decision to determine if: (1) the Administration's

5 findings are supported by substantial evidence; and (2) the

6 Administration used correct legal standards. See Carmickle v.

7 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,

8 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner,

9 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such

10 relevant evidence as a reasonable mind might accept as adequate to

11 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401

12 (1971) (citation and quotations omitted); see also Widmark v.

13 Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

14

15 If the evidence can support either outcome, the court may

16 not substitute its judgment for that of the ALJ. But the

17 Commissioner's decision cannot be affirmed simply by

18 isolating a specific quantum of supporting evidence.

19 Rather, a court must consider the record as a whole,

20 weighing both evidence that supports and evidence that

21 detracts from the [administrative] conclusion.

22

23 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and

24 quotations omitted).

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1 **DISCUSSION**

2
3 Plaintiff argues that the ALJ erred in: (1) evaluating whether
4 Plaintiff met the criteria for child disability; (2) evaluating
5 Plaintiff's testimony and statements; (3) evaluating the testimony of
6 Plaintiff's mother and brother; (4) failing to include all of
7 Plaintiff's alleged limitations in the ALJ's residual functional
8 capacity assessment; and (5) failing to include all of Plaintiff's
9 alleged limitations in the hypothetical questioning of the vocational
10 expert. See Plaintiff's Motion, pp. 3-11; Plaintiff's Opposition, pp.
11 2-10.

12
13 After consideration of the record as a whole, Plaintiff's motion
14 is denied and Defendant's motion is granted. The Administration's
15 findings are supported by substantial evidence and are free from
16 material¹ legal error. Plaintiff's contrary arguments are unavailing.

17
18 **I. Summary of the Record**

19
20 **A. Plaintiff's Medical Records**

21
22 The medical records, which are relatively sparse, reflect
23 diagnoses of, inter alia, "anxiety state unspecified" in April of
24 2010, learning problems at school in August of 2012, lack of normal
25

26
27 ¹ The harmless error rule applies to the review of
28 administrative decisions regarding disability. See Garcia v. Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v. Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011).

1 development (unspecified) and development delay (unspecified) in
2 September of 2012, attention deficit without hyperactivity in October
3 of 2012, autistic disorder (active) and autonomic brain abnormality in
4 June of 2015 (A.R. 672, 858).

5
6 According to a progress note from June of 2015, Plaintiff's
7 mother stated that Plaintiff had autism with a history of abnormal
8 brain/missing corpus callosum midbrain, and she requested a
9 "neurodevelopment" follow-up (A.R. 878). Examination findings
10 reportedly were normal (A.R. 878-79). Plaintiff was diagnosed with
11 learning problems at school, autonomic brain abnormality and autistic
12 disorder (active) (A.R. 879). Plaintiff was referred to neurology
13 (A.R. 880).

14
15 A neurology consultation note from July of 2015 reported that
16 Plaintiff complained of attention deficit and a learning disability
17 (A.R. 875). An electroencephalography report from the following week
18 was abnormal, and the neurologist recommended clinical correlation
19 (A.R. 881). At a follow-up in September of 2015, the neurologist
20 reported that Plaintiff complained of a learning disability/autistic
21 syndrome and attention deficit (A.R. 872). At both neurology
22 examinations, Plaintiff reportedly had a symmetrical face, 5/5 motor
23 strength and 2/4 deep tendon reflexes (A.R. 873, 876). Plaintiff was
24 diagnosed with autistic disorder (active) and anxiety state
25 (unspecified) (A.R. 873-74, 876). No medications were prescribed
26 (A.R. 873).

27 ///

28 ///

1 A primary care progress note from August of 2017 reported that
2 Plaintiff presented for a skin condition, but also complained of a
3 history of agenesis of the corpus callosum,² claimed that he became
4 anxious and "very retracted socially" and asserted he was failing "in
5 scholar matters" (A.R. 868). A primary care progress note from
6 October of 2017 also reported that Plaintiff had corpus callosum
7 agenesis with mild autism, for which Plaintiff's mother had requested
8 help (A.R. 861). Plaintiff had no reported abnormal examination
9 findings (beyond a skin condition) at either primary care visit, but
10 Plaintiff nevertheless was diagnosed with autistic disorder (active),
11 autonomic brain abnormality and "anxiety state unspecified" (A.R. 862,
12 869). Again, Plaintiff was referred to neurology (A.R. 870).

13
14 Neurological consultations in October and December of 2017
15 reported intact cranial nerves, 5/5 motor strength, 2/4 deep tendon
16 reflexes and normal sensation (A.R. 858-59, 865-66). No other
17 examination findings were reported (A.R. 858-59, 865-66). The
18 neurologist diagnosed development delay (unspecified) and autistic
19 disorder (active) (A.R. 859). The neurologist prescribed no
20 medications and referred Plaintiff for follow-up with psychiatry (A.R.
21 860). There are no additional medical records.

22
23 ² Agenesis of the corpus callosum is "a rare birth defect
24 in which the structure that connects the two hemispheres of the
25 brain (the corpus callosum) is partially or completely absent."
26 Kimes v. Colvin, 2016 WL 1253543, at *1 (N.D. Ind. Mar. 31, 2016)
27 (citation omitted); see also National Institute of Neurological
28 Disorders and Stroke, Agenesis of the Corpus Callosum Information
Page, at [https://www.ninds.nih.gov/Disorders/All-Disorders/
Agenesis-Corpus-Callosum-Information-Page](https://www.ninds.nih.gov/Disorders/All-Disorders/Agenesis-Corpus-Callosum-Information-Page) (last visited July 16,
2020) ("[t]he effects of the disorder range from subtle or mild
to severe, depending on associated brain abnormalities").

1 **B. Plaintiff's School Records**

2
3 Plaintiff received a 2014 Individualized Education Program
4 ("IEP") when Plaintiff was 16 years old and in the 11th grade (A.R.
5 718-45). Plaintiff reportedly had increased his reading level by 3.1
6 grades within the preceding year and then was reading at a 7.8 grade
7 level (A.R. 720). He reportedly struggled with reading, writing and
8 math due to a learning disability (A.R. 720-22, 724). Plaintiff
9 reportedly had excellent school attendance, was always prepared with
10 necessary school supplies, was eager to learn, always put forth his
11 best effort and was friendly and cooperative, but did not participate
12 actively in group work (A.R. 723, 725). Plaintiff was characterized
13 as an introvert who failed properly to engage with other students
14 (A.R. 741). However, a December, 2015 annual review reflected that
15 Plaintiff had met all of the goals set by Plaintiff's IEP (A.R. 818-
16 19).

17
18 Plaintiff also received an April, 2016 IEP when Plaintiff was 17
19 years old and in the 12th grade (A.R. 820-44). He reportedly was able
20 to understand and follow simple multiple-step oral instructions for
21 work-related activities, but needed to develop conversational skills
22 to negotiate and initiate social conversations (A.R. 820). Within the
23 preceding year, Plaintiff had made "exponential progress" in reading
24 (A.R. 821). According to the IEP, Plaintiff reportedly knew how to
25 ask for help when he needed it, did his best to complete assignments
26 in class, did the majority of his homework, was able to work well with
27 others and was able to make and keep friends (A.R. 823). Plaintiff
28 reportedly was going to take the "CAHSEE" (California High School Exit

1 Exam) with accommodations (A.R. 830). The record does not reflect the
2 results of any such examination.

3
4 Special education teacher Salvador Plascencia³ completed a
5 teacher questionnaire dated April 30, 2015 (A.R. 757-64). Mr.
6 Plascencia had known Plaintiff for three years and spent 90 minutes
7 per day teaching Plaintiff English and History (A.R. 757). Plaintiff
8 reportedly received special education instruction because of an
9 auditory processing learning disability (A.R. 766). Mr. Plascencia
10 indicated that Plaintiff's reading, math, and written language levels
11 were "far below basic" (A.R. 757). Mr. Plascencia rated Plaintiff in
12 five domains of functioning used in evaluating child disability
13 (discussed below) (A.R. 758-62). The ratings utilized a problems
14 scale ascending from "no problems" to "slight problems" to "obvious
15 problems" to "serious problems" to "very serious problems" (id.). Mr.
16 Plascencia rated Plaintiff as having "obvious" to "serious" problems
17 in acquiring and using information, stating that directions and
18 instructions had to be repeated and rephrased to ensure Plaintiff
19 understood (A.R. 758). In regard to attending and completing tasks,
20 Plascencia rated "none" to "slight" problems in all areas except
21 carrying out multi-step instructions, where Mr. Plascencia opined that
22 Plaintiff had "obvious" problems (A.R. 759). Plaintiff reportedly
23 needed prompting to finish assignments and needed to develop
24 organizational skills (A.R. 759). However, Mr. Plascencia reported no
25

26
27 ³ The name of this teacher appears as "S. Plascencia" on
28 the questionnaire, but the full name, "Salvador Plascencia,"
appears on certain testing results in the administrative record
(A.R. 750, 764, 813).

1 problems in "interacting and relating with others," "moving about and
2 manipulating objects" or "caring for himself" (A.R. 760-62).

3
4 Education specialist Edward Miller completed a teacher
5 questionnaire dated October 22, 2015 (A.R. 771-78). Mr. Miller had
6 known Plaintiff for two years and spent 90 minutes per school day with
7 Plaintiff teaching History and English (A.R. 771). Mr. Miller
8 reported that Plaintiff's reading was at a 6th grade level, and his
9 math and written language were at a 5th grade level (A.R. 771). Mr.
10 Miller rated Plaintiff as having "none" to "slight" problems in
11 acquiring and using information, with the exception of reading and
12 comprehension, expressing ideas in written form, and recalling and
13 applying previously learned material, for which he rated Plaintiff as
14 having "obvious" problems (A.R. 772). Mr. Miller indicated that
15 Plaintiff was able to follow instructions and answer teacher-generated
16 prompts orally and in writing, but needed extended time and support to
17 succeed academically (A.R. 772). However, Mr. Miller reported no
18 problems in "attending and completing tasks," "interacting and
19 relating with others," "moving about and manipulating objects" or
20 "caring for himself" (A.R. 773-76).

21
22 **C. Opinion Evidence**

23
24 Consultative examiner Dr. Banafshe P. Sharokhi prepared a
25 complete psychological evaluation of Plaintiff dated January 2, 2014,
26 (when Plaintiff was 15 years old) (A.R. 661-67). Plaintiff reportedly
27 was cooperative and friendly, had fair eye contact and appeared to
28 give genuine effort (A.R. 661). Dr. Sharokhi did not review any

1 records before preparing the evaluation (A.R. 663). Rather,
2 Plaintiff's mother was the source of the historical information for
3 the evaluation (A.R. 661-62). To Dr. Sharokhi, Plaintiff's mother
4 "appear[ed] to be highly embellishing academic and psychiatric
5 symptomatology, as reported symptoms appear[ed] highly discrepant with
6 presentation and current functioning" (A.R. 661-62). Plaintiff's
7 mother claimed that Plaintiff had an underdeveloped half side of his
8 brain (A.R. 663). She said Plaintiff had a history of speech delays,
9 communication deficits, and difficulty expressing himself (A.R. 662).
10 She asserted that Plaintiff did not speak until he was five years old,
11 and spoke only 2-3 words at 5.5 years old (id.). She said that the
12 school district had diagnosed Plaintiff with a learning disability at
13 age three (A.R. 662). She also said that, in 2011, Plaintiff was
14 diagnosed with high functioning autism by a mental health practitioner
15 (but not by the school district or Plaintiff's doctor, which Dr.
16 Sharokhi considered "highly suspicious") (id.).

17
18 Plaintiff reportedly was attending 10th grade special education
19 classes for problems with reading, writing, math and social adjustment
20 (A.R. 663). Plaintiff reportedly had friends who were younger than
21 him and a history of anger spells (A.R. 662-63). Reportedly,
22 Plaintiff generally got along well with other children and sometimes
23 with adults, enjoyed playing with his friends at school and playing
24 video games with his friends outside of school (A.R. 662-63).
25 Plaintiff was generally well behaved (A.R. 662).

26
27 On mental status examination, Plaintiff was cooperative,
28 friendly, had normal mood and affect, normal speech, intact

1 comprehension, mildly impaired immediate memory, attention and
2 concentration, coherent thought processes with mild distractibility
3 evident, and fair insight and judgment (A.R. 664). Intelligence
4 testing yielded a valid full scale IQ of 85, within the low average
5 range, with an indication to rule out a learning disorder (not
6 otherwise specified), given the significant discrepancies within his
7 index scores (which ranged from 78 to 100). See A.R. 665-66; see also
8 A.R. 668-69 (addendum to Dr. Sharokhi's report re additional reading,
9 spelling and math testing given which tended to confirm that the 85 IQ
10 score was accurate); A.R. 749-52, 765 (additional academic testing by
11 Mr. Plascencia from January of 2015 reflecting below average scores in
12 math and reading with a recommendation for special education
13 services). Dr. Sharokhi opined that Plaintiff did not meet diagnostic
14 criteria for autistic disorder or any pervasive developmental
15 disorders (A.R. 667). Dr. Sharokhi opined that Plaintiff's overall
16 limitations appeared mild, with the lowest index being a processing
17 speed of 78 (A.R. 666). Dr. Sharokhi assessed a Global Assessment of
18 Functioning ("GAF") score of 60 (A.R. 666).⁴ Dr. Sharokhi opined that
19 Plaintiff would have mild inability to: (1) understand and respond to
20 complex requests, instructions or questions; (2) initiate and use
21 language; (3) interact with peers and adults; and (4) take care of
22 daily living skills. See A.R. 667; see also A.R. 669-70 (reaffirming
23

24 ⁴ The GAF scale is used by clinicians to report an
25 individual's overall level of functioning. See American
26 Psychological Association, Diagnostic and Statistical Manual of
27 Mental Disorders 34 (4th ed. 2000) ("DSM"). A GAF of 51-60
28 indicates "[m]oderate symptoms (e.g., flat affect and
circumstantial speech, occasional panic attacks) or moderate
difficulty in social, occupational, or school functioning (e.g.,
temporarily falling behind in schoolwork)." Id.

1 same after reviewing academic records, including a December, 2012 IEP
2 and a December, 2013 questionnaire by Mr. Plascencia which are not in
3 the record).

4
5 A state agency psychiatrist reviewed the record in May of 2015,
6 when Plaintiff was 16 years old, and opined that Plaintiff had less
7 than marked limitations in all domains of functioning for evaluating
8 child disability (discussed below), and therefore did not meet the
9 Listings (A.R. 169-78). A state agency psychologist reviewed the
10 record in November of 2015, when Plaintiff was 17 years old, and
11 agreed with the prior findings that Plaintiff did not meet the
12 Listings (A.R. 180-89).

13
14 Medical expert Dr. Theron Aikens testified on two separate
15 occasions. Dr. Aikens testified that there was evidence Plaintiff has
16 some kind of a learning disorder (A.R. 58-59, 156). While there was
17 mention in the record of autism spectrum disorder and corpus callosum
18 agenesis, Dr. Aikens found no objective support for these diagnoses
19 (A.R. 156-57).⁵ Dr. Aikens opined that, for the period before
20 Plaintiff turned 18, Plaintiff had a marked limitation in his ability
21 to acquire and use information, but less than marked limitations in

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25
26 ⁵ The ALJ gave Plaintiff's counsel time to supplement the
27 record with any objective evidence regarding these diagnoses
28 (A.R. 165-68). It appears that no additional records were
provided.

1 the remaining areas of functioning (A.R. 60-61).⁶ Dr. Aikens declined
2 to render an opinion as to Plaintiff's condition as an adult because
3 Dr. Aikens felt there was insufficient evidence in the record after
4 Plaintiff turned 18 (A.R. 50-56, 61). The ALJ then ordered an adult
5 consultative examination (A.R. 65).

6
7 Consultative examiner Dr. Danita Stewart prepared a complete
8 psychological evaluation of Plaintiff dated December 18, 2017, when
9 Plaintiff was 19 years old (A.R. 852-57). Dr. Stewart reviewed Dr.
10 Sharokhi's evaluation and the December, 2015 IEP (A.R. 853).
11 Plaintiff's mother claimed that half of Plaintiff's brain was not
12 fully developed (A.R. 853). Plaintiff reported a history of learning
13 difficulties, attending special education since middle school, and
14 graduating from high school in 2016 (A.R. 853). Plaintiff also
15 reported that he socialized with friends on a monthly basis (A.R.
16 854).

17
18 On mental status examination, Plaintiff was pleasant and
19 cooperative, with borderline intellectual functioning, euthymic mood
20 and stable affect, moderately diminished memory, mildly diminished
21 attention and concentration, and a low fund of knowledge (A.R. 854-
22 55). Testing yielded a full scale IQ score of 74, but with two

23
24 ⁶ Regarding Plaintiff's ability to interact and relate to
25 others, Dr. Aikens acknowledged that an IEP reported that
26 Plaintiff had failed to do group work and was an introvert who
27 did not engage other students (A.R. 60, 64). However, Dr. Aikens
28 also observed that: (1) none of the teachers reported any
problems in that domain; (2) Plaintiff had reported to Dr.
Sharokhi that he had friends in and out of school; and (3) other
records suggested that Plaintiff was well liked by his peers
(A.R. 60, 64 (citing A.R. 663, 669, 686, 741)).

1 reported subtest scaled scores of zero (an apparent error, see below)
2 (A.R. 855). Dr. Stewart opined that the test was a valid estimate of
3 Plaintiff's functional level (A.R. 856). Dr. Stewart assessed a
4 learning disorder (not otherwise specified), borderline intellectual
5 functioning, and a GAF of 60 (A.R. 856). Dr. Stewart opined that
6 Plaintiff would be able to understand, remember and carry out short,
7 simplistic instructions without difficulty, would have mild inability
8 to understand, remember and carry out detailed instructions based on
9 his borderline intellectual functioning, would be able to make
10 simplistic work-related decisions without special supervision, would
11 be able to interact appropriately with coworkers, supervisors and the
12 public, would have no difficulties maintaining social functioning,
13 would have a mild restriction on daily activities, would have mild
14 difficulties in concentration, persistence or pace, and would have
15 mild inability to maintain attendance and complete an eight-hour
16 workday in a regular workplace setting, but would be able to deal with
17 usual stressors of a competitive workplace setting (A.R. 856-57).⁷

18
19 Returning for another hearing after Dr. Stewart's examination,
20 Dr. Aikens opined that Dr. Stewart's evaluation had been incomplete

21
22
23 ⁷ The record also contains a medical source statement
24 from Dr. Stewart dated December 18, 2017 (A.R. 848-51). She
25 opined that Plaintiff has none-to-mild impairments in his ability
26 to understand, remember and carry out instructions due to his
27 borderline cognitive functioning (A.R. 848). Dr. Stewart
28 indicated Plaintiff has no limits in his ability to interact with
others or respond to changes in the work setting (A.R. 850). She
stated that Plaintiff has a mild inability to focus and
concentrate, particularly on tasks of increasing difficulty, and
that he tested low on measures of auditory and visual memory
(A.R. 850).

1 (A.R. 145-61). Specifically, (as Plaintiff's counsel had suggested
2 (see, e.g., A.R. 645-49)), Dr. Aikens stated that the ALJ should not
3 rely on intelligence testing in Dr. Stewart's evaluation due to the
4 apparently erroneous reporting of zeros for some subtest results (A.R.
5 158). Dr. Aikens suggested that the ALJ "toss out" Dr. Stewart's
6 opinions in total (A.R. 158). However, Plaintiff's counsel refused
7 the ALJ's offer to have Plaintiff undergo another consultative
8 examination in the event the ALJ deemed Dr. Stewart's evaluation
9 inadequate (A.R. 136-37).⁸

10
11 **D. Plaintiff's Statements and Testimony and those of the Lay**
12 **Witnesses**

13
14 Plaintiff testified that he attended special education classes,
15 eight to nine classes at a time, with 10 to 12 other students, a
16 teacher and a teacher's assistant (A.R. 76-78). Plaintiff claimed
17 that his teachers had to repeat things more than twice for him to get
18 it "stuck into [his] head" (A.R. 78-79). However, Plaintiff said he
19 had graduated from high school with a regular diploma and did not have
20 to take the California test usually required for such a diploma (A.R.
21 85-86).⁹

22 ///

23
24 ⁸ Plaintiff does not claim that the ALJ erred by deciding
the case without ordering a further consultative examination.

25
26 ⁹ Plaintiff's counsel stated she did not think that
Plaintiff had received a regular diploma, so the ALJ gave counsel
27 the opportunity to submit additional evidence regarding the issue
(A.R. 86-87). It does not appear that counsel submitted any
28 additional evidence contrary to Plaintiff's testimony that he
graduated from high school with a regular diploma.

1 Plaintiff said he had not looked for work since he graduated
2 because he gets nervous and scared around people he does not know
3 (A.R. 84-85). Plaintiff said he had refused to learn how to use the
4 bus by himself and he did not like going out alone (A.R. 79).
5 Plaintiff said that, when he was in school, he did not really have
6 friends with whom he hung out (A.R. 85). However, he admitted he did
7 have one friend with whom he goes to the mall, movies, and other
8 places by taxi or with rides from that friend's mother (A.R. 79-80).
9 Plaintiff said his mother was teaching him to cook, and he was able to
10 do dishes, vacuum, do laundry with his mother, take care of two cats,
11 play video games and watch television (A.R. 80-84, 88).

12
13 Plaintiff testified that, through a school program, he had worked
14 part time (i.e., 50 hours a month for two months) as a stock clerk for
15 Walgreen's during his senior year of high school (A.R. 89-90).
16 Plaintiff walked to and from this job by himself (A.R. 94).
17 Plaintiff said he had trouble in the first couple of weeks with people
18 asking him where things were in the store because he had not learned
19 about the store's products (A.R. 90). Plaintiff also had made one
20 mistake by failing to check for expiration dates (A.R. 93-94). He
21 said he was able to accept feedback from his boss (A.R. 93-94).
22 Plaintiff said he could stock shelves after three weeks of learning,
23 but he had not wanted to continue working after the school program
24 ended because he did not like dealing with people (A.R. 91-93).
25 Plaintiff said he thought he could do simple work if he did not have
26 to deal with people and if the job were near him (A.R. 91-92).

27 ///

28 ///

1 Plaintiff's mother testified that Plaintiff could not cook
2 without her there because he supposedly is afraid (A.R. 97). She said
3 she has to remind Plaintiff many times to do his household chores
4 (A.R. 97-98). She said that Plaintiff rarely communicates and he gets
5 nervous, timid and fearful when he meets people whom he does not know
6 (A.R. 99-100, 125). She claimed Plaintiff never goes out alone and
7 always has "a whole lot of excuses" for not doing things (A.R. 125-
8 27).¹⁰

9
10 Plaintiff's brother testified that Plaintiff feels weird around
11 other people and does not feel safe being out "on the street" by
12 himself (A.R. 67-68). He said that Plaintiff was able to walk alone
13 to school after the brother spent two or three weeks showing him the
14 way (A.R. 72; but see A.R. 95-96 (Plaintiff testifying that his
15 brother did not walk with him to school)). The brother also said
16 Plaintiff walked home from school with friends who lived on the same

17 _____
18 ¹⁰ In a Disability Report - Child form in English
19 completed by Plaintiff's mother dated March 2, 2015, Plaintiff's
20 mother reported that she could not speak and understand or read
21 and understand English; her preferred language was Spanish (A.R.
22 538-49). In a Function Report - Child form stamped March 12,
23 2015, which was also in English, Plaintiff's mother reported,
24 inter alia, that Plaintiff: (1) was attending school full time;
25 (2) could not repeat stories he had heard; (3) could not explain
26 why he did something; (4) is very shy, "has little people
27 skills," only makes friends when he wants to make friends;
28 (5) reads and understands at an eighth grade level; (6) cannot
make new friends or generally get along with her, adults, or his
siblings; (7) cannot help around the house, cook meals for
himself, take needed medication, use public transportation by
himself, accept criticism or correction or obey rules at home,
and he rarely asks for help; and (8) cannot keep busy on his own,
finish things he starts or complete chores most of the time, and
he must be told more than once and reminded of what he needs to
do to stick with a task (A.R. 550-58).

1 street (A.R. 73). Plaintiff's brother had met only one of Plaintiff's
2 friends with whom Plaintiff spent time (A.R. 68-69). That friend's
3 mother would drive Plaintiff and the friend to the mall or to the
4 movies approximately once a month (A.R. 68, 73). He said that
5 Plaintiff needed reminding, but was able to do household chores (A.R.
6 69-70). Plaintiff was able to watch television and play simple video
7 games that do not involve critical thinking (A.R. 71-72, 74-75). He
8 said that Plaintiff had not tried to work since he turned 18 because
9 Plaintiff was afraid that other people would see him as "different"
10 (A.R. 75).

11
12 **II. Substantial Evidence Supports the Conclusion that Plaintiff is**
13 **Not Disabled.**

14
15 Substantial evidence supports the conclusion Plaintiff was not
16 disabled during either of the relevant time periods.

17
18 **A. Plaintiff Did Not Meet His Burden of Establishing Disability**
19 **Before He Turned 18.**

20
21 For the period before he turned 18 years old, Plaintiff had the
22 burden to prove that his impairment(s) then met or medically equaled a
23 listed impairment. See 20 C.F.R. § 416.924 (outlining disability
24 determination procedure); see also 20 C.F.R. § 416.912(a) (child
25 claimant bears the burden of establishing how his impairments affects
26 his functioning). Plaintiff did not meet this burden.

27 ///

28 ///

1 In determining whether a child's impairment or combination of
2 impairments functionally equals an impairment in the Listings, the
3 Commissioner must assess the child's functioning in six domains:
4 (1) acquiring and using information; (2) attending and completing
5 tasks; (3) interacting and relating with others; (4) moving about and
6 manipulating objects; (5) caring for oneself; and (6) health and
7 physical well-being. See 20 C.F.R. 416.926a(a)-(b). To functionally
8 equal the Listings, the impairment(s) must result in a "marked"
9 limitation in two domains or an "extreme" limitation in one domain (20
10 C.F.R. 416.926a(d)). A "marked" limitation is one that "interferes
11 seriously" with the ability independently to initiate, sustain, or
12 complete activities (20 C.F.R. 416.926a(e)(2)). An "extreme"
13 limitation is one that "interferes very seriously" with the ability
14 independently to initiate, sustain, or complete activities (20 C.F.R.
15 416.926a(e)(3)).

16
17 Here, the ALJ found that Plaintiff had marked limitations in
18 acquiring and using information, but less than marked limitations in
19 the remaining domains (A.R. 27-32 (giving great weight to Dr. Aikens'
20 opinion finding the same, great weight to Dr. Sharokhi's opinion that
21 Plaintiff at most had mild limitations, and moderate weight to the
22 state agency physicians' opinions that Plaintiff would have less than
23 marked limitations in all domains)). The referenced medical opinions
24 constitute substantial evidence supporting the ALJ's non-disability
25 determination. See Orn v. Astrue, 495 F.3d 625, 631-32 (9th Cir.
26 2007) (opinion of examining physician based on independent clinical
27 findings can provide substantial evidence to support administrative
28 conclusion of non-disability); Tonapetyan v. Halter, 242 F.3d 1144,

1 1149 (9th Cir. 2001) (opinion of non-examining physician "may
2 constitute substantial evidence when it is consistent with other
3 independent evidence in the record"); Andrews v. Shalala, 53 F.3d
4 1035, 1041 (9th Cir. 1995) (where the opinions of non-examining
5 physicians do not contradict "all other evidence in the record" an ALJ
6 properly may rely on these opinions) (citation and emphasis omitted).
7

8 Significantly, no medical source (or non-medical source outside
9 of Plaintiff's family) opined that Plaintiff had materially greater
10 limitations. The record contains no treating doctor's opinion
11 concerning Plaintiff's functional limitations. Plaintiff's special
12 education teachers did not report marked limitations in any two
13 domains of functioning (A.R. 757-64, 771-78).
14

15 Plaintiff argues that the ALJ erred in finding that Plaintiff did
16 not have marked limitations in the domains of attending and completing
17 tasks (Domain 2) and interacting and relating with others (Domain 3)
18 (Plaintiff's Motion, p. 3). Plaintiff argues that the ALJ should have
19 discerned marked limitations in these domains based on: (1) Mr.
20 Plascencia's opinion that Plaintiff needed prompting to finish
21 assignments and Mr. Miller's assertedly similar opinion (Domain 2)
22 (A.R. 759, 772); (2) the claims of Plaintiff's mother that Plaintiff
23 required repeated prompting to remind him of tasks and that Plaintiff
24 did not complete tasks (Domain 2) (A.R. 557); (3) Plaintiff's
25 testimony that he required repeated prompts from his teachers for him
26 to complete a task (Domain 2) (A.R. 78-79); (4) Plaintiff's IEP
27 indicating that he was unable actively to participate in group work,
28 was an introvert who failed properly to engage other students and

1 needed to develop conversational skills to negotiate and initiate
2 social conversations (Domain 3) (A.R. 686, 707, 820); (5) the
3 testimony of Plaintiff and his brother that Plaintiff had only one
4 friend whom Plaintiff saw once a month (Domain 3) (A.R. 68-69, 73, 79-
5 80); and (6) the claims of Plaintiff's mother that Plaintiff did not
6 get along with adults or siblings, did not make new friends, rarely
7 communicates with others, gets nervous and does not trust others
8 (Domain 3) (A.R. 125, 555). See Plaintiff's Motion, pp. 3-5;
9 Plaintiff's Opposition, pp. 2-4.

10
11 An ALJ is not required to discuss all evidence found
12 unpersuasive; an ALJ is only required to explain why significant
13 probative evidence has been rejected. See Howard ex rel. Wolff v.
14 Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003); Vincent v. Heckler, 739
15 F.2d 1393, 1394-95 (9th Cir. 1984). Here, the ALJ expressly
16 acknowledged the conflicting evidence on which Plaintiff relies (A.R.
17 26, 29-30, 33-34). However, the ALJ also expressly found more
18 persuasive other aspects of Plaintiff's testimony, other aspects of
19 the IEP reports, and other statements made by Plaintiff and his mother
20 to Dr. Sharokhi (A.R. 26, 29-30 (citing A.R. 85, 89-93, 667, 686,
21 823)). Such evidence reflected that Plaintiff had proper school
22 attendance for a full schedule of classes, did his best to complete
23 assignments in class, did the majority of his homework, graduated with
24 a regular diploma, was able to work independently stocking shelves for
25 two months (even though he had some difficulty interacting with
26 customers), got along with adults and siblings, made and kept friends
27 and was able to work well with others (id.).

28 ///

1 It was the ALJ's prerogative to weigh the evidence and to find,
2 (in accordance with the opinions of Plaintiff's teachers, the state
3 agency psychiatrist and Dr. Aikens) that Plaintiff did not have marked
4 limitations in Domains 2 and 3. As detailed above, Mr. Plascencia
5 opined that Plaintiff did not have any "serious" problems in attending
6 and completing tasks and had no problems interacting and relating with
7 others, and Mr. Miller found no problems in either of these two
8 domains (A.R. 759-60, 773-74). The state agency psychiatrist found
9 that Plaintiff did not have marked impairments in any domains (A.R.
10 173-74). Dr. Aikens considered Plaintiff's IEPs and the teachers'
11 reports referencing the alleged limitations Plaintiff urges, but Dr.
12 Aikens nevertheless concluded that Plaintiff had less than marked
13 limitations in Domains 2 and 3 (A.R. 59-64).

14
15 While Plaintiff argues contrary interpretations of the evidence
16 in the record and relies heavily on the claims of his mother and
17 brother, it was for the ALJ to interpret the evidence, evaluate
18 credibility and resolve any conflicts in the evidence. See Treichler
19 v. Commissioner, 775 F.3d 1090, 1098 (9th Cir. 2014) (court "leaves it
20 to the ALJ" "to resolve conflicts and ambiguities in the record");
21 accord Lewis v. Apfel, 236 F.3d 503, 509 (9th Cir. 2001); Andrews v.
22 Shalala, 53 F.3d at 1039-40. When evidence "is susceptible to more
23 than one rational interpretation," the Court must uphold the
24 administrative decision. See Andrews v. Shalala, 53 F.3d at 1039-40;
25 accord Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002);
26 Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997). The Court
27 will uphold the ALJ's rational interpretation of the evidence in the
28 present case notwithstanding any conflicts in the evidence.

1 **B. Substantial Evidence Supports the Conclusion that Plaintiff**
2 **Was Capable of Work After He Turned 18.**

3
4 Substantial evidence also supports the ALJ's non-disability
5 determination for the time period after Plaintiff turned 18. No
6 treating doctor opined that Plaintiff has greater limitations than the
7 limitations the ALJ found to exist. The ALJ relied on Dr. Stewart's
8 opinions (minus the unreliable IQ scores) in determining Plaintiff's
9 residual functional capacity, supported by Dr. Aikens' earlier
10 opinions, Dr. Sharokhi's opinions, the IEPs, the teacher
11 questionnaires, and much of the testimony of Plaintiff and his family
12 (A.R. 35-36). Dr. Stewart's opinions provide substantial evidence for
13 the ALJ's decision. See Orn v. Astrue, 495 F.3d at 631-32.

14
15 The vocational expert testified that a person with the residual
16 functional capacity the ALJ found to exist could perform certain jobs
17 existing in significant numbers in the national economy (A.R. 129-30).
18 The ALJ properly relied on this testimony in denying disability
19 benefits for the period after Plaintiff turned 18. See Barker v.
20 Secretary of Health and Human Services, 882 F.2d 1474, 1478-80 (9th
21 Cir. 1989); Martinez v. Heckler, 807 F.2d 771, 774-75 (9th Cir. 1986).

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1 **III. Plaintiff's Remaining Arguments are Unavailing.**¹¹
2

3 Plaintiff argues that the ALJ erred in: (a) evaluating evidence
4 from Plaintiff; (b) evaluating evidence from the other lay witnesses;
5 (c) failing to include all of Plaintiff's alleged limitations in the
6 ALJ's residual functional capacity assessment; and (d) failing to
7 include all of Plaintiff's limitations in the hypothetical questioning
8 of the vocational expert. See Plaintiff's Motion, pp. 3-11;
9 Plaintiff's Opposition, pp. 2-10. As discussed below, these arguments
10 are rejected.
11

12 An ALJ's assessment of a claimant's credibility is entitled to
13 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.
14 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). Where, as
15 here, an ALJ finds that the claimant's medically determinable
16 impairments reasonably could be expected to cause some degree of the
17 alleged symptoms of which the claimant subjectively complains, any
18 discounting of the claimant's complaints must be supported by
19 specific, cogent findings. See Berry v. Astrue, 622 F.3d 1228, 1234
20 (9th Cir. 2010); Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995);
21 but see Smolen v. Chater, 80 F.3d 1273, 1282-84 (9th Cir. 1996)
22 (indicating that ALJ must offer "specific, clear and convincing"
23

24 ¹¹ The Court has considered and rejected all of the
25 arguments raised in Plaintiff's motion for summary judgment and
26 in Plaintiff's Opposition. The Court discusses Plaintiff's
27 principal arguments herein. Neither Plaintiff's arguments nor
28 the circumstances of this case show any "substantial likelihood
of prejudice" resulting from any error allegedly committed by the
ALJ. See generally McLeod v. Astrue, 640 F.3d 881, 887-88 (9th
Cir. 2011) (discussing the standards applicable to evaluating
prejudice).

1 reasons to reject a claimant's testimony where there is no evidence of
2 "malingering").¹² An ALJ's credibility finding "must be sufficiently
3 specific to allow a reviewing court to conclude the ALJ rejected the
4 claimant's testimony on permissible grounds and did not arbitrarily
5 discredit the claimant's testimony." Moisa v. Barnhart, 367 F.3d 882,
6 885 (9th Cir. 2004) (internal citations and quotations omitted); see
7 also Social Security Ruling ("SSR") 96-7p (explaining how to assess a
8 claimant's credibility), superseded, SSR 16-3p (eff. Mar. 28, 2016).¹³
9

10 An ALJ may discount lay witness testimony where the testimony is
11 similar to the claimant's testimony and the ALJ has given legally
12 sufficient reasons for discounting the claimant's testimony. See
13 Valentine v. Commissioner Social Sec. Admin., 574 F.3d 685, 694 (9th
14 Cir.2009) ("In light of our conclusion that the ALJ provided clear and
15 convincing reasons for rejecting Valentine's own subjective
16

17 ¹² In the absence of an ALJ's reliance on evidence of
18 "malingering," most recent Ninth Circuit cases have applied the
19 "clear and convincing" standard. See, e.g., Leon v. Berryhill,
20 880 F.3d 1041, 1046 (9th Cir. 2017); Brown-Hunter v. Colvin, 806
21 F.3d 487, 488-89 (9th Cir. 2015); Burrell v. Colvin, 775 F.3d
22 1133, 1136-37 (9th Cir. 2014); Treichler v. Commissioner, 775
23 F.3d at 1102; Ghanim v. Colvin, 763 F.3d 1154, 1163 n.9 (9th Cir.
24 2014); Garrison v. Colvin, 759 F.3d 995, 1014-15 & n.18 (9th Cir.
25 2014); see also Ballard v. Apfel, 2000 WL 1899797, at *2 n.1
26 (C.D. Cal. Dec. 19, 2000) (collecting earlier cases). In the
27 present case, the ALJ's findings are sufficient under either
28 standard, so the distinction between the two standards (if any)
is academic.

25 ¹³ The appropriate analysis under the superseding SSR is
26 substantially the same as the analysis under the superseded SSR.
27 See R.P. v. Colvin, 2016 WL 7042259, at *9 n.7 (E.D. Cal. Dec. 5,
28 2016) (stating that SSR 16-3p "implemented a change in diction
rather than substance") (citations omitted); see also Trevizo v.
Berryhill, 871 F.3d 664, 678 n.5 (9th Cir. 2017) (suggesting that
SSR 16-3p "makes clear what our precedent already required").

1 complaints, and because Ms. Valentine's testimony was similar to such
2 complaints, it follows that the ALJ gave germane reasons for rejecting
3 her testimony."); see generally Smolen v. Chater, 80 F.3d at 1288
4 ("[T]he ALJ can reject the testimony of lay witnesses only if he gives
5 reasons germane to each witness whose testimony he rejects."). Here,
6 the ALJ stated sufficient reasons for deeming Plaintiff's subjective
7 complaints and the lay witnesses' statements less than fully credible.
8

9 In finding Plaintiff capable of performing work limited to simple
10 routine tasks with occasional contact with supervisors and brief and
11 superficial contact with the public and coworkers, the ALJ considered
12 Plaintiff's statements concerning his limitations (A.R. 35). As
13 summarized above, Plaintiff had testified, inter alia, that he
14 attended special education classes with 10 to 12 other students,
15 needed teachers to repeat things more than twice for him to get it
16 "stuck into [his] head"¹⁴ and gets nervous and scared around people he
17 does not know (A.R. 76-79, 84-85).
18

19 To the extent these statements may have suggested greater
20 limitations than the ALJ found to exist, the ALJ found these
21 statements not entirely consistent with other evidence in the record,
22 including other evidence from Plaintiff himself (A.R. 26, 33-35).
23 Specifically, the ALJ found Plaintiff was capable of greater learning
24 than he or his mother and brother sometimes reported, as evidenced by:
25

26 ¹⁴ The vocational expert testified that, if a person with
27 the limitations the ALJ found to exist were further limited by
28 the need to be reminded two to three times a day to complete
tasks, or were off task 15 percent or more of the workday, such
limitations would preclude employment (A.R. 130).

1 (1) an IEP reflecting that Plaintiff was able to increase his reading
2 abilities by more than three grades in one school year (A.R. 720);
3 (2) the testimony of Plaintiff's brother that Plaintiff plays simple
4 video games without needing instruction (A.R. 74-75); (3) Plaintiff's
5 testimony that he took a full schedule of 8-9 high school classes and
6 graduated with a regular diploma (A.R. 77-78, 85-86);¹⁵ and
7 (4) Plaintiff's testimony that he was able to work as a stock clerk
8 for Walgreen's for 100 hours over a two month period, where he learned
9 to work independently stocking shelves and was able to take
10 instruction and learn from his errors (A.R. 89-94). See A.R. 26, 33-
11 35. The ALJ also noted that Plaintiff had testified that he was able
12 to walk to and from school by himself and was able to walk to and from
13 Walgreen's by himself (A.R. 94-96), that he was learning how to cook
14 from his mother and could cook a couple of dishes (A.R. 80-81), and
15 that he could go to the mall and to movies with a friend (A.R. 79-80).
16 See A.R. 35. The ALJ was not required to accept other, inconsistent
17 reports of Plaintiff's abilities. See Molina v. Astrue, 674 F.3d
18 1104, 1112 (9th Cir. 2012) (claimant's inconsistencies can adversely
19 impact claimant's credibility); Verduzco v. Apfel, 188 F.3d 1087, 1090
20 (9th Cir. 1999) (inconsistencies in a claimant's statements were among
21 the "clear and convincing reasons" for discounting claimant's

22
23 ¹⁵ Plaintiff's counsel takes issue with the ALJ's reliance
24 on Plaintiff's diploma. Counsel argues that Plaintiff did not
25 pass the California proficiency exam. See Plaintiff's Motion,
26 pp. 6-7 (citing A.R. 685, 797 concerning testing information
27 before Plaintiff's senior year). The evidence in the record did
28 not require the ALJ to dismiss the significance of the diploma.
Although there was discussion of accommodations for testing (A.R.
797), there is no report in the record of any senior year test
results. Further, Plaintiff testified that he earned a regular
diploma and did not have to take the test (A.R. 85-86).

1 credibility).

2
3 The ALJ acknowledged claims by Plaintiff's mother and brother
4 that Plaintiff could not make new friends, generally did not get along
5 with adults or siblings, could not keep busy on his own, did not
6 finish things he started, required constant reminding to do chores,
7 did not complete chores, has difficulty with video games requiring
8 critical thinking, will not go places by himself, and has difficulty
9 interacting with people he does not know (A.R. 26, 33-35). However,
10 the ALJ also cited evidence to the contrary, e.g.: (1) Plaintiff's
11 mother had reported to Dr. Sharokhi that Plaintiff generally got along
12 with other children (A.R. 662); (2) Plaintiff's teachers did not
13 report that Plaintiff had any problems in "interacting and relating
14 with others" (A.R. 761, 774); (3) Plaintiff's IEP review reported that
15 Plaintiff was able to work well with others, could make and keep
16 friends, did his best to complete assignments and did the majority of
17 his homework (A.R. 823); (4) Plaintiff had testified that he could
18 wash dishes, vacuum, take out trash, clean his room, care for two
19 cats, and work for Walgreen's without someone constantly watching over
20 him and telling him what to do (A.R. 80-84, 88, 93) (suggesting to the
21 ALJ that any issue with completing household chores was actually a
22 "motivational problem"); and (5) Dr. Sharokhi had reported that
23 Plaintiff's mother appeared to be highly embellishing Plaintiff's
24 symptomatology, which included great discrepancies from Plaintiff's
25 presentation and functioning (A.R. 661-62). See A.R. 30, 34-35. The
26 ALJ's discussion of such evidence more than satisfied the requirement
27 of stating reasons germane for the rejection of the lay witness
28 testimony at issue. See Lewis v. Apfel, 236 F.3d 503 (9th Cir. 2001)

1 (conflicts with the medical evidence or with evidence from the
2 claimant can constitute "germane reasons" to reject the testimony of
3 a lay witness).
4

5 In the present case, the ALJ stated sufficient valid reasons to
6 allow this Court to conclude that the ALJ discounted on permissible
7 grounds the portions of the statements of Plaintiff and the portions
8 of the statements of the lay witnesses on which Plaintiff now relies.
9 See Moisa v. Barnhart, 367 F.3d at 885. The Court therefore defers to
10 the ALJ's credibility determinations. See Lasich v. Astrue, 252 Fed.
11 App'x 823, 825 (9th Cir. 2007) (court will defer to Administration's
12 credibility determination when the proper process is used and proper
13 reasons for the decision are provided); accord Flaten v. Secretary of
14 Health & Human Services, 44 F.3d 1453, 1464 (9th Cir. 1995).¹⁶
15

16 The Court also rejects Plaintiff's arguments that the ALJ should
17 have included in the ALJ's residual functional capacity assessment,
18 and in the hypothetical questioning of the vocational expert, various
19 alleged limitations the ALJ did not find to exist. As discussed
20 above, substantial evidence supports the ALJ's residual functional
21 capacity assessment, and the ALJ properly discounted the testimony and
22 statements suggesting greater limitations. Hypothetical questions
23 posed to a vocational expert need not include all conceivable
24 limitations that a favorable interpretation of the record might
25

26
27 ¹⁶ The Court should not and does not determine the
28 credibility of the witnesses' testimony. Absent legal error, it
is for the Administration, and not this Court, to do so. See
Magallanes v. Bowen, 881 F.2d 747, 750, 755-56 (9th Cir. 1989).

1 suggest to exist - only those limitations the ALJ finds to exist.
2 See, e.g., Bayliss v. Barnhart, 427 F.3d 1211, 1217-18 (9th Cir.
3 2005); Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001);
4 Magallanes v. Bowen, 881 F.2d at 756-57. Here, the hypothetical
5 questioning of the vocational expert included all of the limitations
6 the ALJ properly found to exist.

7
8 **CONCLUSION**

9
10 For all of the foregoing reasons, Plaintiff's motion for summary
11 judgment is denied and Defendant's motion for summary judgment is
12 granted.

13
14 LET JUDGMENT BE ENTERED ACCORDINGLY.

15
16 DATED: July 22, 2020.

17
18 /s/
19 CHARLES F. EICK
20 UNITED STATES MAGISTRATE JUDGE
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