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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LONNIE K. HOWLAND,
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:15-cv-1079-KJN

ORDER

Plaintiff seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner”) denying plaintiff’s application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“Act”).¹ In his motion for summary judgment, plaintiff principally contends that the Commissioner erred by finding that plaintiff was not disabled from October 21, 2013, through the date of the final administrative decision. (ECF No. 14.) The Commissioner filed a cross-motion for summary judgment and opposition to plaintiff’s motion for summary judgment. (ECF No. 15.) Plaintiff filed a reply. (ECF No. 16.)
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¹ This action was referred to the undersigned pursuant to E.D. Cal. L.R. 302(c)(15), and both parties voluntarily consented to proceed before a United States Magistrate Judge for all purposes. (ECF Nos. 9, 18.)

1 After carefully considering the parties' written briefing, the court's record, and the
2 applicable law, the court DENIES plaintiff's motion, GRANTS the Commissioner's cross-
3 motion, and AFFIRMS the final decision of the Commissioner.

4 I. BACKGROUND

5 Plaintiff was born on January 31, 1966, did not complete high school but later obtained a
6 GED, and is able to communicate in English. (Administrative Transcript ("AT") 40-41.)² He has
7 no past relevant work. (AT 31.) Plaintiff applied for SSI on October 21, 2013, alleging that his
8 disability began on September 1, 2006. (AT 157-166.) Plaintiff alleged that he was disabled
9 primarily due to stage two liver cancer, knee and joint pains, hepatitis C, depression, a mood
10 disorder, attention deficit hyperactivity disorder, anger issues, anxiety, high blood pressure, sleep
11 issues, high cholesterol, and fatigue. (AT 203.) After plaintiff's application was denied initially
12 and on reconsideration, plaintiff requested a hearing before an administrative law judge ("ALJ"),
13 which took place on July 11, 2014 and at which plaintiff, represented by an attorney, testified.
14 (AT 37-57.) The ALJ issued a decision dated October 24, 2014, determining that plaintiff had not
15 been under a disability, as defined in the Act, from October 21, 2013, through the date of that
16 decision. (AT 23-33.) The ALJ's decision became the final decision of the Commissioner when
17 the Appeals Council denied plaintiff's request for review on March 17, 2015. (AT 1-6.) Plaintiff
18 then filed this action in federal district court on May 18, 2015, to obtain judicial review of the
19 Commissioner's final decision. (ECF No. 1.)

20 II. ISSUES PRESENTED

21 On appeal, plaintiff raises the sole issue of whether the ALJ erred in weighing the medical
22 opinion evidence in the record with regard to plaintiff's mental impairments and physical
23 impairments when determining plaintiff's residual functional capacity ("RFC").

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26 ² Because the parties are familiar with the factual background of this case, including plaintiff's
27 medical history, the court does not exhaustively relate those facts in this order. The facts related
28 to plaintiff's impairments and treatment will be addressed insofar as they are relevant to the issues
presented by the parties' respective motions.

1 III. LEGAL STANDARD

2 The court reviews the Commissioner’s decision to determine whether (1) it is based on
3 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record
4 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
5 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340
6 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means “such relevant evidence as a reasonable
7 mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th
8 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is
9 responsible for determining credibility, resolving conflicts in medical testimony, and resolving
10 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citation omitted). “The
11 court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one rational
12 interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

13 IV. DISCUSSION

14 A. Summary of the ALJ’s Findings

15 The ALJ evaluated plaintiff’s entitlement to SSI pursuant to the Commissioner’s standard
16 five-step analytical framework.³ At the first step, the ALJ concluded that plaintiff had not

17 ³ Disability Insurance Benefits are paid to disabled persons who have contributed to the Social
18 Security program. 42 U.S.C. §§ 401 et seq. Supplemental Security Income is paid to disabled
19 persons with low income. 42 U.S.C. §§ 1382 et seq. Both provisions define disability, in part, as
20 an “inability to engage in any substantial gainful activity” due to “a medically determinable
21 physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A). A parallel
22 five-step sequential evaluation governs eligibility for benefits under both programs. See 20
23 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-
24 42 (1987). The following summarizes the sequential evaluation:

25 Step one: Is the claimant engaging in substantial gainful activity? If so, the
26 claimant is found not disabled. If not, proceed to step two.

27 Step two: Does the claimant have a “severe” impairment? If so, proceed to step
28 three. If not, then a finding of not disabled is appropriate.

Step three: Does the claimant’s impairment or combination of impairments meet or
equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1? If so, the
claimant is automatically determined disabled. If not, proceed to step four.

Step four: Is the claimant capable of performing his past relevant work? If so, the

1 engaged in substantial gainful activity since October 21, 2013, the application date. (AT 25.) At
2 step two, the ALJ found that plaintiff had the following severe impairments: “right knee
3 degenerative joint disease, depression, anxiety, personality disorder.” (Id.) However, at step
4 three, the ALJ determined that plaintiff did not have an impairment or combination of
5 impairments that met or medically equaled the severity of an impairment listed in 20 C.F.R. Part
6 404, Subpart P, Appendix 1. (AT 27.)

7 Before proceeding to step four, the ALJ assessed plaintiff’s RFC as follows:

8 After careful consideration of the entire record, the undersigned
9 finds that the claimant has the residual functional capacity to
10 perform a full range of work of medium exertion except mentally,
11 he is capable of performing simple, unskilled work with no public
12 contact and only occasional contact with fellow employees.

13 (AT 29.)

14 At step four, the ALJ found that plaintiff had no past relevant work. (AT 31.) At step
15 five, the ALJ found that considering plaintiff’s age, education, work experience, and RFC, there
16 were jobs that existed in significant numbers in the national economy that plaintiff could have
17 performed. (AT 31.) Accordingly, the ALJ determined that plaintiff was not disabled within the
18 meaning of the Act since October 21, 2013, the date plaintiff’s SSI application was filed. (AT
19 33.)

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23 claimant is not disabled. If not, proceed to step five.

24 Step five: Does the claimant have the residual functional capacity to perform any
25 other work? If so, the claimant is not disabled. If not, the claimant is disabled.

26 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

27 The claimant bears the burden of proof in the first four steps of the sequential evaluation
28 process. Bowen, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential
evaluation process proceeds to step five. Id.

1 B. Plaintiff's Substantive Challenges to the Commissioner's Determinations

2 1. *Whether the ALJ Erred in Weighing the Medical Opinion Evidence in the*
3 *Record*

4 Plaintiff's sole argument is that the ALJ erred by failing to properly consider the medical
5 opinion evidence in the record when determining plaintiff's RFC.⁴ More specifically, plaintiff
6 contends that the ALJ erred in failing to properly consider the opinions of Dr. Lacy, a
7 consultative examining psychologist, and Dr. Regan, a state agency reviewing physician, when
8 assessing plaintiff's RFC related to his mental impairments. Similarly, plaintiff asserts that the
9 ALJ erred in his consideration of the opinions of Dr. Selcon, a consultative examining physician,
10 and Dr. Hanna, a state agency reviewing physician, when determining plaintiff's physical RFC.

11 The weight given to medical opinions depends in part on whether they are proffered by
12 treating, examining, or non-examining professionals. Holohan v. Massanari, 246 F.3d 1195,
13 1201-02 (9th Cir. 2001); Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). Generally speaking,
14 a treating physician's opinion carries more weight than an examining physician's opinion, and an
15 examining physician's opinion carries more weight than a non-examining physician's opinion.
16 Holohan, 246 F.3d at 1202.

17 To evaluate whether an ALJ properly rejected a medical opinion, in addition to
18 considering its source, the court considers whether (1) contradictory opinions are in the record;
19 and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted opinion of a
20 treating or examining medical professional only for "clear and convincing" reasons. Lester, 81
21 F.3d at 830-31. In contrast, a contradicted opinion of a treating or examining professional may be
22 rejected for "specific and legitimate" reasons. Id. at 830. While a treating professional's opinion

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24 ⁴ Plaintiff also asserts, in a conclusory fashion, in the preliminary statement of his motion for
25 summary judgment that the "ALJ failed to articulate legally sufficient reasons for discounting
26 [plaintiff's] subjective complaints of pain." (ECF No. 14 at 3.) However, plaintiff in no way
27 argues or otherwise addresses this alleged error with regard to the ALJ's consideration of
28 plaintiff's testimony with any specificity in his initial motion or his reply briefing. The court
need not address an issue where the claimant "failed to argue [the] issue with any specificity in
[his or her] briefing." Carmickle v. Comm'r, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008).
Accordingly, the court declines to address whether this aspect of the ALJ's decision was made in
error.

1 generally is accorded superior weight, if it is contradicted by a supported examining
2 professional's opinion (supported by different independent clinical findings), the ALJ may
3 resolve the conflict. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing Magallanes
4 v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). The regulations require the ALJ to weigh the
5 contradicted treating physician opinion, Edlund, 253 F.3d at 1157,⁵ except that the ALJ in any
6 event need not give it any weight if it is conclusory and supported by minimal clinical findings.
7 Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999) (treating physician's conclusory, minimally
8 supported opinion rejected); see also Magallanes, 881 F.2d at 751. The opinion of a non-
9 examining professional, by itself, is insufficient to reject the opinion of a treating or examining
10 professional. Lester, 81 F.3d at 831.

11 a. Dr. Lacy and Dr. Regan

12 On December 6, 2013, Dr. Lacy, a clinical psychologist, conducted a consultative mental
13 examination of plaintiff, consisting of a review of plaintiff's medical records, an interview with
14 plaintiff, and a full mental status examination. (AT 323-31.) Based on the results of this
15 examination, Dr. Lacy opined that plaintiff was moderately impaired in his abilities to maintain
16 regular attendance, perform work activities on a consistent basis, and complete a normal workday
17 or work week without interruption resulting from psychiatric conditions. (AT 330.) Dr. Lacy
18 opined further that plaintiff was severely impaired in his abilities to relate and interact with
19 coworkers and the public and to deal with the usual stresses encountered in competitive work.
20 (Id.) Dr. Lacy found plaintiff unimpaired in all other aspects of mental functioning, particularly,
21 in his abilities to perform detailed and complex tasks, simple and repetitive tasks, and perform
22 work activities without special or additional supervision. (Id.) The ALJ assigned "substantial
23 evidentiary weight to Dr. Lacy's opinion because it found that plaintiff has "severe mental
24 impairments that affect his socialization." (AT 31.)

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27 ⁵ The factors include: (1) length of the treatment relationship; (2) frequency of examination; (3)
28 nature and extent of the treatment relationship; (4) supportability of diagnosis; (5) consistency;
(6) specialization. 20 C.F.R. §§ 404.1527, 416.927.

1 Dr. Regan reviewed plaintiff's mental health records on December 17, 2013, as part of the
2 determination of plaintiff's disability application. (AT 67-69.) Based on this review, Dr. Regan
3 opined that plaintiff was moderately limited in the following areas: ability to maintain attention
4 and concentration for extended periods; ability to perform activities within a schedule, maintain
5 regular attendance, and be punctual within customary tolerances; ability to work in coordination
6 with or in proximity to others without being distracted by them; ability to complete a normal
7 workday and workweek without interruptions from psychologically based symptoms and to
8 perform at a consistent pace without an unreasonable number and length of rest periods; ability to
9 get along with coworkers or peers without distracting them or exhibiting behavioral extremes;
10 ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and
11 cleanliness; ability to respond appropriately to changes in the work setting; and ability to be
12 aware of normal hazards and take appropriate precautions. (AT 68-69.) Dr. Regan opined further
13 that plaintiff was markedly limited in the ability to interact appropriately with the general public.
14 (AT 68.) Dr. Reagan found that plaintiff was not significantly limited with regard to all other
15 areas of mental functioning. (AT 67-69.) Overall, Dr. Regan determined that plaintiff's
16 limitations in those areas translated to a mental RFC permitting plaintiff to "sustain simple 1-2
17 step tasks with no public contact." (AT 69.) The ALJ assigned Dr. Regan's opinion "[g]reat
18 evidentiary weight" because that physician found plaintiff "capable of sustaining simple 1 to 2
19 step tasks with no public contact due to personality issues, depression and anger management."
20 (AT 31.)

21 With regard to Dr. Lacy's opinion, plaintiff argues that the ALJ mischaracterized it by
22 concluding in his RFC determination that plaintiff had mental limitations less restrictive than
23 some of those opined by Dr. Lacy despite giving that physician's opinion substantial evidentiary
24 weight. In particular, plaintiff contends that "the ALJ's finding that [plaintiff] could have
25 occasional contact with fellow employees does not logically flow from Dr. Lacy's opinion that
26 [plaintiff] is severely impaired in his ability to interact with coworkers." (ECF No. 14 at 8.)
27 Plaintiff argues further that the ALJ's RFC determination did not adequately capture Dr. Lacy's
28 opinion that "plaintiff is precluded from dealing with the usual stresses of competitive work,"

1 which plaintiff contends indicates that plaintiff has lost, or is at least severely restricted in, the
2 ability to carry out many basic mental workplace functions. (Id.) Plaintiff also asserts that the
3 ALJ improperly failed to provide any reasons for implicitly rejecting the limitations Dr. Lacy
4 opined but that the ALJ did not incorporate into his RFC determination. Finally, plaintiff
5 contends that the significant non-exertional limitations that Dr. Lacy opined, but the ALJ did not
6 adequately capture or reject, required the ALJ to consult a vocational expert, which the ALJ did
7 not do. The court finds plaintiff's arguments regarding Dr. Lacy's opinion to lack merit.

8 The ALJ was not required to adopt wholesale every limitation contained in Dr. Lacy's
9 opinion in order to consider that opinion as substantial evidence in support of his RFC
10 determination. Magallanes, 881 F.2d at 753 (quoting Russell v. Bowen, 856 F.2d 81, 83 (9th Cir.
11 1988)) ("It is not necessary to agree with everything an expert witness says in order to hold that
12 his testimony contains 'substantial evidence.'"). Indeed, the ALJ accorded Dr. Lacy's opinion
13 "substantial evidentiary weight," indicating that, while he found that opinion persuasive, he did
14 not adopt in full every limitation contained therein. (AT 31.)

15 Similarly, the ALJ was not required to provide reasons for why he rejected Dr. Lacy's
16 opinion, because he did not reject it. Rather than outright adopt or reject the limitations contained
17 in Dr. Lacy's opinion, the ALJ considered it as one piece of the body of opinion evidence before
18 him and weighed it in the context of that evidence as a whole. Indeed, the ALJ also accorded
19 "[g]reat evidentiary weight" to Dr. Regan's opinion, who found that plaintiff was only
20 "moderately limited" with regard to interacting with coworkers. (AT 68.) The ALJ also noted
21 that Dr. Regan's opinion was affirmed by another State Agency reviewing physician, Dr. Franco.
22 (AT 31.) It is the responsibility of the ALJ to consider and weigh the opinion evidence in the
23 record and determine the claimant's RFC based on substantial evidence from that record. 20
24 C.F.R. § 416.927(d)(2); see also Magallanes, 881 F.2d at 753. The ALJ here considered the
25 opinion evidence in the record regarding plaintiff's limitations in his ability to interact with
26 coworkers and made a reasonable RFC determination that plaintiff was capable of only
27 occasional interaction based on the relative weights he assigned those opinions. (See AT 29.)
28 Similarly, the ALJ also appropriately considered and synthesized the other limitations opined by

1 the mental health physicians who provided opinions into the mental limitations contained in his
2 RFC determination when he concluded that plaintiff was limited to only simple, unskilled work.
3 (See AT 29-31.)

4 The ALJ also did not err in not utilizing a vocational expert in determining whether there
5 existed work that plaintiff could perform at step five. Plaintiff argues that Dr. Lacy's opinion that
6 plaintiff was severely impaired in certain areas of mental functioning means that the ALJ was
7 required to obtain the testimony of a vocational expert before rendering his conclusion at step
8 five. However, the ALJ properly considered and weighed Dr. Lacy's opinion for the reasons
9 discussed above, and reached a well-reasoned RFC determination based on substantial evidence
10 that reasonably reflected the weight of all opinion evidence in the record regarding plaintiff's
11 mental impairments, including Dr. Lacy's opinion. Moreover, the non-exertional mental
12 limitations contained in the ALJ's RFC decision are consistent with his determination that
13 plaintiff could perform unskilled work. Unskilled work is defined as "work which needs little or
14 no judgment to do simple duties that can be learned on the job in a short period of time." 20
15 C.F.R. § 416.968. The ALJ's RFC determination specifically limits plaintiff to "performing
16 simple, unskilled work." (AT 29.) Moreover, because unskilled work generally does not require
17 working with people, 20 C.F.R. Pt. 404, Subpt. P, App. 2, Rules 201.00(I), 202.00(g); SSR 85-15,
18 the additional social interaction limitations contained in the ALJ's RFC determination do not
19 conflict with the ALJ's determination that plaintiff could perform a wide range of unskilled work.
20 Accordingly, the ALJ was not required to obtain the testimony of a VE before rendering his step
21 five determination, and he did not err in not obtaining such testimony.

22 With regard to Dr. Regan, plaintiff concedes that the ALJ correctly considered that
23 physician's opinion by assigning it great evidentiary weight. Plaintiff argues, however, that the
24 ALJ erred by not adequately taking Dr. Regan's opinion that plaintiff is limited to simple one-to-
25 two step tasks into account in his overall RFC determination. Plaintiff contends that the Ninth
26 Circuit Court of Appeals has recently determined that there exists a conflict between a restriction
27 to simple repetitive tasks, which the ALJ included as part of his RFC determination, and one-to-
28 two step tasks, the limitation Dr. Regan opined. Plaintiff argues that this means that the ALJ

1 could not determine that plaintiff was capable of performing all unskilled work at step five as he
2 did because the limitation to simple one-to-two step tasks would necessarily preclude at least
3 some of that work. This argument is not well taken.

4 The Ninth Circuit Court of Appeals recently held in Rounds v. Comm’r Soc. Sec. Admin.
5 that there exists an apparent conflict between an RFC limitation to “simple one-to-two step tasks”
6 and the demands of Level 2 Reasoning as defined in the Dictionary of Occupational Titles
7 (“DOT”), which “requires a person to ‘[a]pply commonsense understanding to carry out detailed
8 but uninvolved written or oral instructions.’” 807 F.3d 996, 1003-04 (9th Cir. 2015) (quoting
9 DOT, App. C, § III, 1991 WL 688702 (4th ed. 1991)). The court further held that such a conflict
10 must be reconciled before the ALJ may find a claimant with a limitation to simple one-to-two
11 step tasks capable of performing work requiring Level 2 Reasoning. Id. at 1004.

12 While a limitation to one-to-two step tasks would create a conflict with a determination
13 that plaintiff could perform work requiring Level 2 Reasoning, the ALJ here did not include such
14 a limitation in his RFC determination. Rather, he determined that plaintiff “is capable of
15 performing simple, unskilled work.” (AT 29.) Plaintiff appears to argue that the ALJ’s
16 determination failed to incorporate Dr. Regan’s opinion that plaintiff is limited to one-to-two step
17 tasks. However, as noted above with regard to Dr. Lacy’s opinion, the ALJ was not required to
18 adopt wholesale Dr. Regan’s opinion that plaintiff was limited in such a manner. The ALJ also
19 gave substantial evidentiary weight to the opinion of Dr. Lacy, who opined that plaintiff had no
20 limitations with regard to his ability to carry out simple or complex tasks. (AT 330.) The ALJ
21 was permitted to consider the opinions of both physicians in determining plaintiff’s RFC, and his
22 conclusion that plaintiff is capable of performing simple, unskilled work is a wholly reasonable
23 determination in light of those opinions and the rest of the objective evidence in the record.
24 Accordingly, the ALJ’s RFC determination did not conflict with his finding that plaintiff was
25 capable of performing unskilled work at step five.

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1 interpretation of plaintiff's physical functioning or the limitations caused by plaintiff's right knee
2 impairment highlighted by the MRI results. Instead, the medical findings of plaintiff's treating
3 physicians lend further support to the ALJ's decision to adopt the physical limitations opined by
4 Dr. Selcon and Dr. Hannah into the ALJ's RFC determination. See, e.g., AT 260-61, 296-97,
5 304-05, 309, 338-39, 356. None of plaintiff's medical records suggest that plaintiff's right knee
6 impairment reflected in the MRI caused greater limitations than those Dr. Selcon and Dr. Hannah
7 opined, and the ALJ adopted through his RFC determination that plaintiff can "perform a full
8 range of work of medium exertion." (AT 29.) The ALJ was permitted to rely on the opinions of
9 Dr. Selcon and Dr. Hanna as substantial evidence in support of his RFC determination. See
10 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001) (an examining physician's opinion
11 "constitutes substantial evidence, because it rests on his own independent examination of [the
12 claimant]," and a non-examining physician's opinion "may constitute substantial evidence when
13 it is consistent with other independent evidence in the record.").

14 Plaintiff also contends that the ALJ erred in failing to consider the impact plaintiff's
15 obesity had on his physical functioning pursuant to Social Security Ruling ("SSR") 02-01p,
16 which requires an ALJ to "do an individualized assessment of the impact of obesity on an
17 individual's functioning." However, the Ninth Circuit Court of Appeals has held that an ALJ
18 does not commit reversible error by not considering a claimant's obesity where the record does
19 not indicate that the claimant's obesity exacerbated his or her other impairments. Burch v.
20 Barnhart, 400 F.3d 676, 682 (9th Cir. 2005). Here, nothing in the record indicates that plaintiff's
21 weight exacerbated any of plaintiff's physical impairments or otherwise further limited plaintiff's
22 physical functional capacity in a meaningful manner. Furthermore, plaintiff argues that there was
23 evidence in the record that plaintiff may have been obese at some point during the relevant
24 period, but in no way demonstrates that that condition had any material impact on his physical
25 functioning. Nor does plaintiff show how the evidence that plaintiff may have been obese
26 somehow conflicts with or undermines the opinions provided by Dr. Selcon and Dr. Hannah
27 regarding plaintiff's physical impairments such that it was error for the ALJ to rely on them in
28 formulating plaintiff's RFC. Accordingly, plaintiff's argument regarding the ALJ's failure to

1 consider his obesity is not well taken.

2 In sum, the ALJ considered all of the medical evidence in the record and properly based
3 his physical RFC determination on two physicians' opinions that contained limitations that were
4 supported by that evidence. Accordingly, the ALJ did not err in assessing the medical evidence
5 regarding plaintiff's physical RFC.

6 V. CONCLUSION

7 In sum, the ALJ's decision was free from prejudicial error and supported by substantial
8 evidence in the record as a whole. Accordingly, IT IS HEREBY ORDERED that:

9 1. Plaintiff's motion for summary judgment (ECF No. 14) is DENIED.

10 2. The Commissioner's cross-motion for summary judgment (ECF No. 15) is
11 GRANTED.

12 3. The Commissioner's final decision is AFFIRMED, and judgment is entered for the
13 Commissioner.

14 4. The Clerk of Court shall close this case.

15 IT IS SO ORDERED.

16 Dated: January 12, 2017

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19 KENDALL J. NEWMAN
20 UNITED STATES MAGISTRATE JUDGE
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