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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 PHILLIP LEE BOYER,

8 Plaintiff,

Case No. C18-5263 RAJ

9 v.

10 NANCY A. BERRYHILL, Deputy
11 Commissioner of Social Security for Operations,

12 Defendant.

**ORDER AFFIRMING THE
COMMISSIONER'S FINAL
DECISION AND DISMISSING THE
CASE WITH PREJUDICE**

13 Plaintiff seeks review of the denial of his application for Supplemental Security Income.
14 Plaintiff contends the ALJ erred by rejecting his and lay witnesses' testimony and an examining
15 doctor's opinions, and failing to account for all his limitations. Dkt. 15. As discussed below, the
16 Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with prejudice.

17 **BACKGROUND**

18 Plaintiff is currently 50 years old, has a high school education, and has worked as an
19 animal care attendant and a seafood laborer. Administrative Transcript (Tr.) 34. In January
20 2014 plaintiff applied for benefits, alleging disability as of April 2011. Tr. 77. Plaintiff's
21 application was denied initially and on reconsideration. Tr. 89, 103. After the ALJ conducted a
22 hearing in November 2016, the ALJ issued a decision finding plaintiff not disabled. Tr. 48, 18-

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1 35.

2 THE ALJ'S DECISION

3 Utilizing the five-step disability evaluation process,¹ the ALJ found:

4 **Step one:** Plaintiff has not engaged in substantial gainful activity since the January 2014
5 application date.

6 **Step two:** Plaintiff has the following severe impairments: a neurocognitive disorder,
7 personality change secondary to brain injury, an anxiety disorder, depression, an avoidant
8 personality disorder, and kyphosis.

9 **Step three:** These impairments do not meet or equal the requirements of a listed
10 impairment.²

11 **Residual Functional Capacity:** Plaintiff can perform medium work, lifting, carrying,
12 pushing or pulling 50 pounds occasionally and 25 pounds frequently, sitting six hours per
13 day, and standing and walking six hours per day. He is limited to simple, routine,
14 repetitive tasks, simple work-related decisions, and superficial contact with coworkers
15 and the public. Superficial contact is defined as being able to pass people in the
16 hallways, but not being required to interact with coworkers or the public as part of his
17 daily job requirements. Any task must be able to be completed independently without the
18 need for coordinated effort from coworkers.

19 **Step four:** Plaintiff cannot perform past relevant work.

20 **Step five:** As there are jobs that exist in significant numbers in the national economy that
21 plaintiff can perform, he is not disabled.

22 Tr. 20-35. The Appeals Council denied plaintiff's request for review, making the ALJ's decision
23 the Commissioner's final decision. Tr. 1.³

24 DISCUSSION

25 This Court may set aside the Commissioner's denial of social security benefits only if the
26 ALJ's decision is based on legal error or not supported by substantial evidence in the record as a
27

28 ¹ 20 C.F.R. § 416.920.

29 ² 20 C.F.R. Part 404, Subpart P. Appendix 1.

30 ³ The rest of the procedural history is not relevant to the outcome of the case and is thus omitted.

1 whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017). Each of an ALJ’s findings must
2 be supported by substantial evidence. *Reddick v. Chater*, 157 F.3d 715, 721 (9th Cir. 1998).
3 “Substantial evidence” is more than a scintilla, less than a preponderance, and is such relevant
4 evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
5 *Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989).
6 The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and
7 resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
8 Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh
9 the evidence nor substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278
10 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one interpretation,
11 the Commissioner’s interpretation must be upheld if rational. *Burch v. Barnhart*, 400 F.3d 676,
12 680-81 (9th Cir. 2005).

13 **A. Examining Doctor Daryl Birney, Ph.D.**

14 An ALJ may only reject the uncontradicted opinion of a treating or examining doctor by
15 giving “clear and convincing” reasons. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017).
16 Even if, as here, an examining doctor’s opinion is contradicted by another doctor’s opinion, an
17 ALJ may only reject it by stating “specific and legitimate” reasons. *Id.* The ALJ can meet this
18 standard by providing “a detailed and thorough summary of the facts and conflicting clinical
19 evidence, stating his interpretation thereof, and making findings.” *Id.* (citation omitted). “The
20 ALJ must do more than offer his conclusions. He must set forth his own interpretations and
21 explain why they, rather than the doctors’, are correct.” *Reddick*, 157 F.3d at 725.

22 In 2005, Dr. Birney opined that plaintiff “would likely not show up for work regularly.”
23 Tr. 773. He also opined that plaintiff would be unable to “[s]et realistic goals or make plans

1 independently of others.” *Id.* The ALJ gave Dr. Birney’s opinions “partial weight” because they
2 were unsupported by the record and his own findings, and based instead on plaintiff’s self-report.
3 Tr. 31-32. The ALJ also discounted Dr. Birney’s opinions because they were partly based on
4 alcohol dependence with relapses, which no longer contributed to plaintiff’s limitations. Tr. 32.

5 Plaintiff argues that the ALJ’s findings regarding alcohol relapses are not supported by
6 substantial evidence because Dr. Birney’s report notes that plaintiff had two relapses in two
7 years, while a more recent 2014 report notes that plaintiff relapsed once in the previous year. Tr.
8 763, 799. However, the 2014 report noted “one drink” while Dr. Birney’s 2005 report noted that
9 in his latest relapse plaintiff had “consumed a bottle of champagne.” Tr. 799, 763. The 2014
10 medical opinion diagnosed alcohol use disorder “in sustained remission” while Dr. Birney
11 diagnosed alcohol dependence “in sustained partial remission.” Tr. 801, 764. The 2014 report
12 noted 11 years of sobriety while Dr. Birney’s report was based on only two years of sobriety. Tr.
13 798-99, 763. It was reasonable for the ALJ to find that a relapse of one drink, with an 11-year
14 track record of sobriety, is different from relapsing by consuming an entire bottle relatively early
15 in plaintiff’s recovery. *See Batson v. Comm’r, Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir.
16 2004) (“[T]he Commissioner’s findings are upheld if supported by inferences reasonably drawn
17 from the record.”). Dr. Birney wrote that plaintiff’s alcohol dependence contributes to his
18 limitations because he “may have [alcohol] relapses.” Tr. 774. The ALJ therefore reasonably
19 concluded that plaintiff’s current limitations were less severe, because the relapses had
20 diminished. The ALJ did not err by discounting Dr. Birney’s opinions on the grounds of
21 lessened alcohol dependence.

22 Incongruity between a treating physician’s opinions and her own medical records is a
23 “specific and legitimate reason for rejecting” the opinions. *Tommasetti v. Astrue*, 533 F.3d 1035,

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1 1041 (9th Cir. 2008). Dr. Birney found largely normal intelligence and memory; however,
2 plaintiff completed the trails-making tests so slowly that it indicated “cognitive impairment.” Tr.
3 764; Tr. 763. Mental status results were mixed, with abnormal mood and affect but full
4 orientation and no delusions. Tr. 763. Plaintiff argues that Dr. Birney’s opinions are adequately
5 supported by his findings of flat affect, depressed mood, brief communication, “mildly
6 defective” everyday judgment, marginal grooming, and cognitive impairment. Tr. 762-65. Dr.
7 Birney’s findings showed some normal and some abnormal results, and Dr. Birney used his
8 professional expertise and judgment to interpret the findings into opined limitations. The ALJ is
9 not equipped to substitute his judgment for Dr. Birney’s in interpreting the mix of normal and
10 abnormal results. *See Moghadam v. Colvin*, No. C15-2009-TSZ-JPD, 2016 WL 7664487, at *6
11 (W.D. Wash. Dec. 21, 2016); *Schmidt v. Sullivan*, 914 F.2d 117, 118 (7th Cir. 1990) (“[J]udges,
12 including administrative law judges of the Social Security Administration, must be careful not to
13 succumb to the temptation to play doctor. . . . The medical expertise of the Social Security
14 Administration is reflected in regulations; it is not the birthright of the lawyers who apply them.
15 Common sense can mislead; lay intuitions about medical phenomena are often wrong.”) (internal
16 citations omitted). In particular, the ALJ’s discounting Dr. Birney’s opinions because he did
17 “not reconcile the claimant’s relatively normal cognitive testing” ignores both Dr. Birney’s
18 findings of cognitive impairment and the fact that some of plaintiff’s non-cognitive results, such
19 as mood and affect, were abnormal. Tr. 32; Tr. 763. The ALJ erred by discounting Dr. Birney’s
20 opinions as unsupported by his own findings.

21 The ALJ also erred by discounting Dr. Birney’s opinions on the grounds that plaintiff’s
22 lack of mental health treatment contradicted the finding that his mood was depressed. *See* Tr.

23 32. While Dr. Birney observed that plaintiff appeared depressed, he reported that plaintiff

1 “denie[d] feeling depressed other than ‘sometimes, for a day,’ about every two weeks.” Tr. 763.
2 That plaintiff did not believe he suffered from depression explains why he did not seek treatment
3 for it. “[I]t is common knowledge that depression is one of the most underreported illnesses in
4 the country because those afflicted often do not recognize that their condition reflects a
5 potentially serious mental illness.” *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996)
6 (citing Warren E. Leavy, *Hidden Depression*, Chi. Trib., Feb. 1, 1996 at 7 (noting that nearly 17
7 million adult Americans suffer from depression in a given year and that two-thirds of them do
8 not get treatment)).

9 The ALJ also erred by discounting Dr. Birney’s opinions as heavily based on plaintiff’s
10 self-report. “[T]he rule allowing an ALJ to reject opinions based on self-reports does not apply
11 in the same manner to opinions regarding mental illness.” *Buck v. Berryhill*, 869 F.3d 1040,
12 1049 (9th Cir. 2017). Clinical interviews and mental status evaluations “are objective measures
13 and cannot be discounted as a ‘self-report.’” *Id.* While Dr. Birney of course reported plaintiff’s
14 statements, he also performed a clinical interview, mental status examination, and several
15 cognitive tests. Tr. 762-71. As in *Buck*, Dr. Birney’s “partial reliance on [plaintiff’s] self-
16 reported symptoms is thus not a reason to reject his opinion.” *Id.*

17 The errors are harmless, however, because the ALJ provided the specific and legitimate
18 reason that plaintiff’s alcohol dependence had decreased since Dr. Birney examined him. The
19 Court concludes the ALJ did not err by discounting Dr. Birney’s opinions.

20 **B. Plaintiff’s Testimony**

21 Where, as here, an ALJ determines a claimant has presented objective medical evidence
22 establishing underlying impairments that could cause the symptoms alleged, and there is no
23 affirmative evidence of malingering, the ALJ can only discount the claimant’s testimony as to

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1 symptom severity by providing “specific, clear, and convincing” reasons that are supported by
2 substantial evidence. *Trevizo*, 871 F.3d at 678. At the 2016 hearing plaintiff testified that he has
3 a “bad back curve” and “sitting for too long hurts [his] back.” Tr. 69. In a 2014 function report
4 plaintiff stated that, as a child, he suffered a near-fatal drowning, associated with convulsions,
5 and had resulting brain damage. Tr. 257. Due to the brain damage, he has an “anger issue” and
6 is “slow with everything” he does and often forgets things. Tr. 257, 259. He has difficulty
7 understanding and remembering oral instructions. Tr. 262. He does not like people, “and
8 usually avoid[s] them when [he] can.” Tr. 294. The ALJ discounted plaintiff’s testimony for a
9 lack of supporting objective medical evidence, failure to seek treatment, and improvement after
10 only minimal conservative treatment. Tr. 24-29. The ALJ also cited inconsistent statements, and
11 activities that contradicted his testimony. Tr. 29-30.

12 An ALJ may reject a claimant’s subjective symptom testimony when it is contradicted by
13 the medical evidence. *See Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th
14 Cir. 2008); *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 599-600 (9th Cir. 1999). The
15 ALJ cited “relatively normal” intelligence and memory testing results, and largely normal mental
16 status examination results in 2014. Tr. 24-25 (citing Tr. 763-64). The memory results contradict
17 plaintiff’s reports that he often forgets things. This was a clear and convincing reason to discount
18 plaintiff’s testimony.

19 An “unexplained or inadequately explained failure” to seek treatment or follow
20 prescribed treatment can be a valid reason to discount a claimant’s testimony, but an ALJ must
21 consider a claimant’s proffered reasons. *Trevizo*, 871 F.3d at 679-80. Here, plaintiff did not
22 seek treatment for depression because he did not recognize he was depressed and, when taken to
23 therapy as a teenager, he found it unhelpful. Tr. 763, 799. The ALJ did not address either

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1 reason, and thereby erred.

2 The ALJ found that plaintiff’s mental health symptoms improved significantly with only
3 six weeks of therapy. Tr. 25. Impairments that can be effectively controlled by treatment are not
4 considered disabling for purposes of Social Security benefits. *See Warre v. Comm’r of Soc. Sec.*
5 *Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006). At his first appointment, on September 7, 2016,
6 plaintiff reported “patterns of depression, anxiety and isolation that create distress.” Tr. 841. At
7 the latest appointment in the record, on October 18, 2016, plaintiff reported he had “been feeling
8 less isolation and less emotional explosions.” Tr. 834. This provides substantial evidence
9 supporting the ALJ’s finding that plaintiff’s symptoms had improved since his 2014 function
10 report describing anger issues and social withdrawal.

11 Inconsistent statements are a valid reason to discount a claimant’s testimony. *Orn v.*
12 *Astrue*, 495 F.3d 625, 636 (9th Cir. 2007). At the 2016 hearing, plaintiff testified that he last
13 used marijuana in 2005. Tr. 58-59. Yet, as the ALJ noted, this is contradicted by plaintiff’s
14 statements to doctors. Tr. 29. For example, in 2014, plaintiff told John Adler, Ph.D., that he
15 “uses marijuana on a regular basis, 3-5 times per week, ... last using six days ago.” Tr. 799.
16 The contradictory statements undermine plaintiff’s credibility and were a valid reason to
17 discount his testimony.

18 An ALJ may discount a claimant’s testimony based on daily activities that either
19 contradict her testimony or that meet the threshold for transferable work skills. *Orn*, 495 F.3d at
20 639. The ALJ found that plaintiff engaged in “a fairly wide range of independent activities of
21 daily living that suggest a higher level of functioning than alleged.” Tr. 30. But the activities the
22 ALJ cites, such as household chores, making packaged food occasionally, playing video games,
23 watching television, and shopping in stores, do not contradict plaintiff’s testimony. Tr. 30. The

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1 ALJ asserted that the video games plaintiff plays are “complex” and require “some”
2 concentration and memory, but plaintiff never claimed he had no ability to concentrate or
3 remember. Tr. 30; *see Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (“The Social Security
4 Act does not require that claimants be utterly incapacitated to be eligible for benefits”). The ALJ
5 notes that plaintiff “could go out in public when necessary[,]” but plaintiff never asserted his
6 social problems kept him completely housebound. Tr. 30. The ALJ erred by discounting
7 plaintiff’s testimony based on his daily activities.

8 The inclusion of erroneous reasons was harmless, however, because the remaining
9 reasons of contradictory statements, contradictory medical evidence, and improvement with
10 treatment were clear and convincing. *See Carmickle*, 533 F.3d at 1163. The Court concludes the
11 ALJ did not err by discounting plaintiff’s testimony.

12 **C. Lay Witness Statements**

13 An ALJ may discount lay witness testimony by giving a germane reason. *Diedrich v.*
14 *Berryhill*, 874 F.3d 634, 640 (9th Cir. 2017).

15 **1. Former Employer Wendy Pemberton**

16 Wendy Pemberton, who employed plaintiff part-time at a dog kennel until he was
17 terminated in 2011, wrote in a 2016 statement that plaintiff could perform simple tasks but had
18 great difficulty when he had to adapt to changing circumstances. Tr. 739. If a task “was out of
19 sequence or if the pace caused him anxiety he had a very difficult time completing the task.” *Id.*
20 For example, plaintiff could clean kennels but, when it rained and the dogs had to be inside,
21 plaintiff struggled to work around the dogs and failed to clean the kennels correctly. *Id.* She
22 observed that “[w]hen he gets frustrated he has a difficult time controlling his temper....” *Id.*

23 The ALJ gave Ms. Pemberton’s testimony “some weight, as Ms. Pemberton was able to observe

1 the claimant’s work functioning at this job.” Tr. 32. The ALJ provided two sentences that
2 appear to be aimed at discounting Ms. Pemberton’s statements, but neither gives a germane
3 reason. First, the ALJ stated “this was only one job in 2011, and the claimant has had minimal
4 opportunity to try different jobs....” Tr. 32. Trying different jobs is irrelevant to Ms.
5 Pemberton’s observation that plaintiff handled changing circumstances poorly. Second, the ALJ
6 relied on plaintiff’s testimony that he thought he could handle “the mental requirements for a job
7 such as putting shoes in shoeboxes that were labeled by color and size....” Tr. 32 (citing Tr. 70).
8 But plaintiff’s speculation is not germane to Ms. Pemberton’s observation of his real abilities,
9 and the hypothetical job description did not include any changing circumstances. *See* Tr. 69-70.
10 The Court concludes the ALJ did not provide a germane reason, and thus erred by discounting
11 Ms. Pemberton’s statements.

12 The error is harmless, however, because the ALJ accounted for Ms. Pemberton’s
13 statement in the RFC determination. The ALJ agreed with Ms. Pemberton that plaintiff could
14 not perform his past work at the kennel. Tr. 33-34. The RFC limits plaintiff to “simple, routine,
15 and repetitive tasks” and “simple work-related decisions....” Tr. 22. As described in Ms.
16 Pemberton’s statement, when plaintiff’s job required more than routine tasks or simple decisions,
17 his work suffered. Tr. 739. The RFC captures plaintiff’s limitations as described by Ms.
18 Pemberton. *See Turner v. Comm’r of Soc. Sec.*, 613 F.3d 1217, 1223 (9th Cir. 2010) (affirming
19 decision where “ALJ incorporated [doctor’s] observations into [claimant’s] residual functional
20 capacity”).

21 **2. Former Employer Steve Powell**

22 Mr. Powell wrote in a 2016 statement that plaintiff “was employed by our company and
23 could not function in the work place environment. He does not have the social skills, the

1 physical stamina or coordination to be employed. He has anger issues that could cause legal
2 problems for anyone who employs him.” Tr. 325. The ALJ gave the statement “little weight”
3 because it lacked examples or context and because the medical records provided evidence that
4 plaintiff had the “social skills to interact with others and normal physical examination and
5 coordination.” Tr. 33. Lay witness testimony may not be rejected on the grounds that it lacks
6 support from medical evidence, but it may be rejected if contradicted by medical and other
7 evidence. *Diedrich*, 874 F.3d at 640; *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005).
8 Here, substantial evidence supports the ALJ’s finding that medical evidence contradicted Mr.
9 Powell’s statements. After examining plaintiff in 2014, Joshua Knight, M.D., opined he could
10 stand/walk eight hours a day and lift 25 pounds frequently. Tr. 797. The ALJ gave this opinion
11 “great weight” and plaintiff does not challenge the ALJ’s assessment. Tr. 31. Whether or not
12 plaintiff had the stamina to perform the work Mr. Powell employed him for, the ALJ reasonably
13 discounted his statement that plaintiff lacked the stamina for any employment at all. Even if the
14 other reasons the ALJ provided were erroneous, any error is harmless because the ALJ provided
15 at least one germane reason to discount Mr. Powell’s statement. The Court concludes the ALJ
16 did not err by giving Mr. Powell’s statement little weight.

17 **3. Division of Vocational Rehabilitation**

18 Vocational rehabilitation counselor Lisa Oldham supported plaintiff’s Social Security
19 application because his long-term employment difficulty was “definitely related to his
20 disabilities and health.” Tr. 354. Ms. Oldham stated she was helping plaintiff find a job that
21 would provide 15 to 25 hours of work per week. Tr. 354. The ALJ gave her opinion “little
22 weight” because of a lack of objective support in DVR records or any explanation for why
23 plaintiff could work 25 hours a week but not 40. Tr. 33, 29. Plaintiff argues that Ms. Oldham’s

1 opinion is supported by Dr. Birney’s medical opinions, but the ALJ reasonably discounted those.
2 Dkt. 15 at 5-6. Plaintiff also argues that Ms. Oldham’s opinion is supported by her knowledge of
3 plaintiff’s “traits” as a worker. Dkt. 15 at 6. However, lacking medical training, Ms. Oldham is
4 not in a position to determine that these traits are due to his disabilities, or that his disabilities
5 prevented plaintiff from working 40 hours a week. The Court concludes the ALJ did not err by
6 discounting Ms. Oldham’s opinion.

7 Vocational rehabilitation counselor Karen M. Heater certified plaintiff as disabled for
8 purposes of receiving DVR services. Tr. 555. The ALJ discounted this opinion for purposes of
9 the Social Security disability analysis because it was based on Dr. Birney’s opinions, 2003
10 substance abuse treatment records, and 2009 diverticulitis treatment records. Tr. 33. The ALJ
11 permissibly discounted Dr. Birney’s opinions, as discussed above. The ALJ also found that
12 substance abuse and diverticulitis were no longer severe impairments, and plaintiff does not
13 challenge this finding. Tr. 20-21. The ALJ did not err in discounting Ms. Heater’s opinion on
14 the grounds that it relied on evidence that he permissibly rejected. *See Valentine v. Comm’r Soc.*
15 *Sec. Admin.*, 574 F.3d 685, 695 (9th Cir. 2009) (affirming ALJ’s rejection of a claimant’s VA
16 disability rating because the VA rating rested on medical opinions that were properly rejected by
17 the ALJ).

18 **D. Residual Functional Capacity Determination**

19 Plaintiff argues the ALJ erred by failing to include in the RFC limitations contained in
20 opinions give great weight. Dkt. 15 at 2. The Court disagrees.

21 State agency nonexamining doctor Gerald L. Peterson, Ph.D., opined that plaintiff
22 “should not be expected to set and meet his own goals. He is capable of meeting reasonable
23 employer established goals.” Tr. 86. On reconsideration, state agency nonexamining doctor Jan

1 L. Lewis, Ph.D., concurred. Tr. 100. The ALJ gave these opinions “great weight.” Tr. 31.
2 Examining physician John Adler, Ph.D., opined that plaintiff’s ability to “[c]op[e] with stress is
3 somewhat impaired...” Tr. 801. The ALJ gave Dr. Adler’s opinions “significant weight.” Tr.
4 31. In assessing plaintiff’s RFC, the ALJ included a limitation to “simple, routine, and repetitive
5 tasks; simple work-related decisions; and superficial contact with coworkers and the public.” Tr.
6 22.

7 An ALJ’s assessment of a claimant’s RFC will be upheld “where the assessment is
8 consistent with restrictions identified in the medical testimony.” *Stubbs-Danielson v. Astrue*,
9 539 F.3d 1169, 1174 (9th Cir. 2008). It is the ALJ’s responsibility to translate medical testimony
10 into concrete limitations. *Id.* Plaintiff argues that a limitation to “low stress jobs” and a
11 limitation on the “ability to set realistic goals or make plans independently” should have been
12 included in the RFC. Dkt. 15 at 2. The ALJ accounted for plaintiff’s reduced ability to cope
13 with stress and to set goals by limiting him to simple, routine, repetitive tasks and simple
14 decisions. Avoiding complex decisions and tasks, and reducing interactions with people, reduces
15 stress. Other features of a job or workplace may create stress, but Dr. Adler did not opine that
16 plaintiff could not deal with any stress at all. *See* Tr. 801. Performing simple, repetitive tasks set
17 by the employer does not require independent goal-setting, and making only simple decisions
18 further reduces the need to set goals or make plans. The RFC is consistent with the medical
19 testimony and thus must be upheld. *See Stubbs-Danielson*, 539 F.3d at 1174.

20 Plaintiff argues that this case resembles *Andrews*, where the ALJ failed to incorporate
21 into the RFC the claimant’s limitations in the ability “to set realistic goals or make plans
22 independently of others.” *Andrews*, 53 F.3d at 1044. However, unlike in this case, in *Andrews*
23 the RFC did not include limitations to simple, routine, repetitive tasks and simple decisions.

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1 Plaintiff argues that this case also resembles *Bagby*, where the ALJ failed to address the
2 claimant’s limitations in the ability to “make judgments on complex work-related decisions.”
3 *Bagby v. Comm’r of Soc. Sec.*, 606 F. App’x 888, 890 (9th Cir. 2015). But here, the ALJ
4 included a limitation to only simple decisions.

5 The Court concludes the ALJ did not err in formulating the RFC.

6 **CONCLUSION**

7 For the foregoing reasons, the Commissioner’s final decision is **AFFIRMED** and this
8 case is **DISMISSED** with prejudice.

9 DATED this 30th day of November, 2018.

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13 The Honorable Richard A. Jones
14 United States District Judge