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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BENITO RAMOS,	)	Case No. CV 09-1644-OP
	)	
Plaintiff,	)	
v.	)	MEMORANDUM OPINION; ORDER
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

The Court<sup>1</sup> now rules as follows with respect to the disputed issues listed in the Joint Stipulation (“JS”).<sup>2</sup>

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<sup>1</sup> Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the United States Magistrate Judge in the current action. (See Dkt. Nos. 8, 9.)

<sup>2</sup> As the Court stated in its Case Management Order, the decision in this case is made on the basis of the pleadings, the Administrative Record, and the Joint Stipulation filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g).

1 I.

2 **DISPUTED ISSUES**

3 As reflected in the Joint Stipulation, the disputed issues which Plaintiff  
4 raises as the grounds for reversal and/or remand are as follows:

- 5 1. Whether the Administrative Law Judge (“ALJ”) properly considered  
6 Plaintiff’s subjective complaints and credibility;  
7 2. Whether the ALJ properly evaluated the lay witness testimony; and  
8 3. Whether the ALJ afforded Plaintiff’s treating physician appropriate  
9 weight.

10 (JS at 3.)

11 II.

12 **STANDARD OF REVIEW**

13 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision  
14 to determine whether the Commissioner’s findings are supported by substantial  
15 evidence and whether the proper legal standards were applied. DeLorme v.  
16 Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more  
17 than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402  
18 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of  
19 Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial  
20 evidence is “such relevant evidence as a reasonable mind might accept as adequate  
21 to support a conclusion.” Richardson, 402 U.S. at 401 (citation omitted). The  
22 Court must review the record as a whole and consider adverse as well as  
23 supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986).  
24 Where evidence is susceptible of more than one rational interpretation, the  
25 Commissioner’s decision must be upheld. Gallant v. Heckler, 753 F.2d 1450,  
26 1452 (9th Cir. 1984).

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1 III.

2 **DISCUSSION**

3 **A. The ALJ Properly Considered Plaintiff’s Subjective Complaints and**  
4 **Properly Assessed Plaintiff’s Credibility.**

5 Plaintiff contends that the ALJ failed to provide specific and legitimate  
6 reasons for rejecting Plaintiff’s subjective complaints of pain. (JS at 3-5.) The  
7 Court disagrees.

8 **1. Applicable Law.**

9 An ALJ’s assessment of pain severity and claimant credibility is entitled to  
10 “great weight.” Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v.  
11 Heckler, 779 F.2d 528, 531 (9th Cir. 1986). When, as here, an ALJ’s disbelief of a  
12 claimant’s testimony is a critical factor in a decision to deny benefits, the ALJ  
13 must make explicit credibility findings. Rashad v. Sullivan, 903 F.2d 1229, 1231  
14 (9th Cir. 1990); Lewin v. Schweiker, 654 F.2d 631, 635 (9th Cir. 1981); see also  
15 Albalos v. Sullivan, 907 F.2d 871, 874 (9th Cir. 1990) (an implicit finding that  
16 claimant was not credible is insufficient).

17 Under the “Cotton test,” where the claimant has produced objective medical  
18 evidence of an impairment which could reasonably be expected to produce some  
19 degree of pain and/or other symptoms, and the record is devoid of any affirmative  
20 evidence of malingering, the ALJ may reject the claimant’s testimony regarding  
21 the severity of the claimant’s pain and/or other symptoms only if the ALJ makes  
22 specific findings stating clear and convincing reasons for doing so. See Cotton v.  
23 Bowen, 799 F.2d 1403, 1407 (9th Cir. 1986); see also Smolen v. Chater, 80 F.3d  
24 1273, 1281 (9th Cir. 1996); Dodrill v. Shalala, 12 F.3d 915, 918 (9th Cir. 1993);  
25 Bunnell v. Sullivan, 947 F.2d 341, 343 (9th Cir. 1991).

26 To determine whether a claimant’s testimony regarding the severity of his  
27 symptoms is credible, the ALJ may consider, *inter alia*, the following evidence:

28 (1) ordinary techniques of credibility evaluation, such as the claimant’s reputation

1 for lying, prior inconsistent statements concerning the symptoms, and other  
2 testimony by the claimant that appears less than candid; (2) unexplained or  
3 inadequately explained failure to seek treatment or to follow a prescribed course of  
4 treatment; (3) the claimant's daily activities; and (4) testimony from physicians  
5 and third parties concerning the nature, severity, and effect of the claimant's  
6 symptoms. Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002); see also  
7 Smolen, 80 F.3d at 1284.

8 SSR 96-7p<sup>3</sup> further provides factors that may be considered to determine a  
9 claimant's credibility such as: 1) the individual's daily activities; 2) the location,  
10 duration, frequency, and intensity of the individual's pain and other symptoms; 3)  
11 factors that precipitate and aggravate the symptoms; 4) the type, dosage,  
12 effectiveness, and side effects of any medication the individual takes or has taken  
13 to alleviate pain or other symptoms; 5) treatment, other than medication, the  
14 individual receives or has received for relief of pain or other symptoms; 6) any  
15 measures other than treatment the individual uses or has used to relieve pain or  
16 other symptoms (e.g., lying flat on his or her back, standing for 15 to 20 minutes  
17 every hour, or sleeping on a board); and 7) any other factors concerning the  
18 individual's functional limitations and restrictions due to pain or other symptoms.  
19 SSR 96-7p.

20 **3. Analysis.**

21 Here, the ALJ discredited Plaintiff's subjective symptoms for several  
22 reasons: (i) Plaintiff's claims are unsupported by the objective medical evidence;  
23 (ii) Plaintiff's daily activities are inconsistent with his allegations of disabling  
24 pain; and (iii) Plaintiff's testimony regarding his literacy in English was less than  
25 candid. (Administrative Record ("AR") at 23-24.)

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26  
27 <sup>3</sup> Social Security Rulings are binding on ALJs. See Terry v. Sullivan, 903  
28 F.2d 1273, 1275 n.1 (9th Cir. 1990).

1 First, the ALJ based his adverse credibility determination of the findings of  
2 the medical sources and the lack of objective medical evidence, including  
3 treatment records, to support Plaintiff's disabling symptoms. (Id. at 24.) The ALJ  
4 stated:

5 The claimant's credibility is reduced by the lack of objective  
6 medical evidence to substantiate his claims. I note that no examining  
7 or reviewing physician had rendered an opinion fully supporting the  
8 claimant's allegations.

9 Further, despite access to medical care, the claimant has had  
10 very little treatment for his lumbar spine since being released by Dr.  
11 Schmidt in 2004. Indeed, the bulk of the medical records during this  
12 time period do not even reference back pain. In addition, there  
13 appears to be no treatment whatsoever between February 2004 and  
14 February 2006 when the claimant sought treatment in Tijuana. In  
15 August 2006, he began treatment at El Monte Comprehensive Health  
16 Center and then at LAC USC. Even if the claimant could not afford  
17 treatment, which he did not allege, he could have accessed the county  
18 facility he eventually went to.

19 I also noted that the claimant testified to having side effects from  
20 medications, as well as having trouble sleeping. However, these  
21 allegations are not documented in the medical records. It seems  
22 reasonable to expect that an individual would first complain to his  
23 doctor about medication or sleep problems, and seek adjustment or  
24 change his medications, rather than waiting until a disability hearing to  
25 first complain.

26 (Id. at 24 (citations omitted).) The objective medical evidence does not support  
27 Plaintiff's allegations of disabling symptoms. As to Plaintiff's back pain, the ALJ  
28 noted that Plaintiff has had little treatment for his lumbar spine after being

1 released from the hospital in 2004. (AR at 293-314.) In fact, the medical records  
2 do not reference any complaints of back pain. (Id.) While Plaintiff points to  
3 medical evidence regarding potential back impairments, no doctor opined that  
4 Plaintiff suffered or complained of any functional limitations as a result. (Id. at  
5 214-66, 292.) As Defendant points out, there is no evidence of treatment from  
6 February 2004 through February 2005. Additionally, Plaintiff's allegations of  
7 medication side-effects is not documented in the record prior to his disability  
8 hearing. Thus, the objective medical evidence does not substantiate Plaintiff's  
9 allegations of disabling symptoms.

10 Next, relying upon Plaintiff's own description of his daily activities, the  
11 ALJ found Plaintiff not be a credible witness and discredited the severity of his  
12 subjective complaints. (Id. at 24.) According to Plaintiff's own statements and  
13 testimony, he was able to perform household chores including laundry,  
14 vacuuming, and yard work; he also was able to shop for groceries, take his  
15 children to and from school, drive, prepare meals for himself and others, take his  
16 medication, and groom himself. (Id. at 120-35.) Plaintiff also managed his own  
17 finances, attended church twice a week, and went out alone. (Id.) The Court finds  
18 that the ALJ could properly rely on Plaintiff's daily activities, such as, *inter alia*,  
19 completing household chores, cooking, and shopping, to support his adverse  
20 credibility determination. See, e.g., Thomas, 278 F.3d at 958-59 (ALJ may  
21 properly consider inconsistencies between claimant's testimony and claimant's  
22 daily activities); Morgan v. Apfel, 169 F.3d 595, 599-600 (9th Cir. 1999) (ALJ  
23 may properly rely on contradictions between claimant's reported limitations and  
24 claimant's daily activities); Tidwell v. Apfel, 161 F.3d 599, 602 (9th Cir. 1998)  
25 (daily activities inconsistent with total disability undermined subjective testimony  
26 of disabling pain); Orteza v. Shalala, 50 F.3d 748, 750 (9th Cir. 1995) (ALJ may  
27 properly rely on claimant's daily activities, including ability to drive); Fair v.  
28 Bowen, 885 F.2d 597, 604 (9th Cir. 1989) (ALJ may properly rely on daily

1 activities inconsistent with claim of disabling pain); SSR 96-7p.

2 Finally, the ALJ also based his adverse credibility determination on  
3 Plaintiff's testimony regarding his literacy in English. (AR at 24.) The ALJ  
4 stated:

5 Finally, the claimant claims that he is illiterate in the English language.  
6 This allegation is less than credible for several reasons. First, the  
7 claimant has been in the United States for 32 years. Second, he is a  
8 United States citizen, and even passed the citizenship test in English  
9 which requires a basic ability to communicate in, read, and write  
10 English. This raises considerable doubt under 8 CFR 312.1. Claimant's  
11 ability to portray himself as illiterate in English detracts from his overall  
12 credibility. However, in the end, determining whether or not the  
13 claimant is literate in English is not essential to making a determination  
14 at step four.

15 (Id. at 24 (citations omitted).) By utilizing ordinary techniques of credibility  
16 evaluation, the ALJ rejected Plaintiff's credibility partially based on his less than  
17 candid testimony regarding his literacy in English. Thomas, 278 F.3d at 958-59;  
18 see also Smolen, 80 F.3d at 1284. Assuming that the ALJ erred in relying on  
19 Plaintiff's literacy in English, the Court notes that any such error is harmless. The  
20 adverse credibility determination would remain unchanged, as the ALJ relied on  
21 the lack of objective medical evidence and Plaintiff's daily activities to support the  
22 determination. Curry v. Sullivan, 925 F.2d 1127, 1131 (9th Cir. 1991) (harmless  
23 error rules applies to review of administrative decisions regarding disability).

24 Based on the foregoing, the Court finds that the ALJ provided clear and  
25 convincing reasons, supported by substantial evidence, for rejecting Plaintiff's  
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1 subjective symptoms and discounting his credibility. Thus, there was no error.<sup>4</sup>

2 **B. The ALJ Properly Considered the Lay Witness Testimony.**

3 Plaintiff contends the ALJ failed to provide sufficient reason for  
4 disregarding the testimony of a lay witness, Rebecca Ramos. (JS at 11-13.) The  
5 Court disagrees.

6 Title 20 C.F.R. §§ 404.1513(d) and 416.913(d) provides that, in addition to  
7 medical evidence, the Commissioner “may also use evidence from other sources to  
8 show the severity of [an individual’s] impairment(s) and how it affects [her]  
9 ability to work.” Further, the Ninth Circuit has repeatedly held that “[d]escriptions  
10 by friends and family members in a position to observe a claimant’s symptoms and  
11 daily activities have routinely been treated as competent evidence.” Sprague v.  
12 Bowen, 812 F.2d 1226, 1232 (9th Cir. 1987). This applies equally to the sworn  
13 hearing testimony of witnesses (see Nguyen v. Chater, 100 F.3d 1462, 1467 (9th  
14 Cir. 1996)), as well as to unsworn statements and letters of friends and relatives.  
15 See Schneider v. Comm’r of Soc. Sec. Admin., 223 F.3d 968, 974 (9th Cir. 2000).  
16 If the ALJ chooses to reject such evidence from “other sources,” he may not do so  
17 without comment. Nguyen, 100 F.3d at 1467. When rejecting lay witness  
18 testimony, the ALJ must provide “reasons that are germane to each witness.”  
19 Dodrill, 12 F.3d at 919.

20 In this case, the ALJ explicitly considered Ms. Ramos’ testimony and  
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22 <sup>4</sup> In his adverse credibility determination, the ALJ also relied on two prior  
23 instances where Plaintiff traveled to Mexico to support a finding that Plaintiff can  
24 perform, at a minimum, sedentary work. (AR at 24.) The Court is unpersuaded  
25 that this prior travel, occurring rather infrequently and at different time periods, is  
26 a reliable indicator that Plaintiff is able to perform sedentary activity on a daily  
27 basis. Accordingly, the Court does not find this particular argument persuasive.  
28 However, the ALJ provided other clear and convincing reasons, supported by  
substantial evidence, to reject Plaintiff’s subjective symptoms and to discount his  
credibility. See supra, Discussion, Part III.A. Thus, any error regarding the  
adverse credibility determination is harmless. Curry, 925 F.2d at 1131.



1 afforded it little weight. (AR at 25.) The ALJ rejected Ms. Ramos’ statements for  
2 the following reasons: (i) the statement was unsworn, enabling Ms. Ramos not to  
3 suffer any consequences for perjured statements; (ii) Ms. Ramos did not testify at  
4 the hearing, preventing any cross-examination regarding her observations; (iii)  
5 Ms. Ramos may have been biased, financially or personally, as she lives with  
6 Plaintiff; and (iv) Ms. Ramos’ statements are unsupported by the medical  
7 evidence. (Id.) The ALJ stated, “I have given Ms. Ramos’s statements of  
8 disabling symptoms little weight.” (Id.)

9         The Court finds that the ALJ erred in affording Ms. Ramos’ statements less  
10 weight because the statements were unsworn or due to the fact that Ms. Ramos did  
11 not testify at the hearing. As stated above, the ALJ must consider and properly  
12 reject sworn and unsworn testimony of lay witnesses. See Schneider, 223 F.3d at  
13 974; Nguyen, 100 F.3d at 1467. Despite this failing, any error here was harmless,  
14 as the ALJ provided other reasons germane to the witness for giving her  
15 statements less weight. Curry, 925 F.2d at 1131. First, the ALJ relied on the fact  
16 that Ms. Ramos may have been financially or personally biased, as she may have  
17 benefitted from a disability award. (AR at 25); see also Regenniter v. Comm’r of  
18 Soc. Sec. Admin., 166 F.3d 1294, 1298 (9th Cir. 1999) (the mere fact that the lay  
19 witness is a relative may not be a valid a reason alone for rejecting lay witness  
20 testimony); but see Greger v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006) (the  
21 ALJ’s consideration of the claimant’s prior girlfriend’s close relationship with the  
22 plaintiff and desire to help him as a possible reason for bias was a reason germane  
23 to that witness). Next, the ALJ also reasoned that Ms. Ramos’ allegations were  
24 unsupported by the objective medical evidence, a finding that is consistent with  
25 the record. (AR at 25); see supra, Discussion Part III.A; see infra, Discussion Part  
26 III.C. Accordingly, the Court finds that the ALJ provided sufficient reasons  
27 germane to the witness for giving her statement less weight. Thus, there was no  
28 error.

1 **C. The ALJ Properly Considered the Opinion of the Treating Physician.**

2 Plaintiff's last contention is that the ALJ failed to provide specific and  
3 legitimate reasons, supported by substantial evidence, to reject the findings of his  
4 treating physician, Dr. Isaac Schmidt. (JS at 15-17.) The Court disagrees.

5 **1. Applicable Law.**

6 It is well-established in the Ninth Circuit that a treating physician's opinions  
7 are entitled to special weight, because a treating physician is employed to cure and  
8 has a greater opportunity to know and observe the patient as an individual.

9 McAllister v. Sullivan, 888 F.2d 599, 602 (9th Cir. 1989). "The treating  
10 physician's opinion is not, however, necessarily conclusive as to either a physical  
11 condition or the ultimate issue of disability." Magallanes v. Bowen, 881 F.2d 747,  
12 751 (9th Cir. 1989). The weight given a treating physician's opinion depends on  
13 whether it is supported by sufficient medical data and is consistent with other  
14 evidence in the record. See 20 C.F.R. § 404.1527(d)(2). If the treating  
15 physician's opinion is uncontroverted by another doctor, it may be rejected only  
16 for "clear and convincing" reasons. Lester v. Chater, 81 F.3d 821, 830 (9th Cir.  
17 1995); Baxter v. Sullivan, 923 F.2d 1391, 1396 (9th Cir. 1991). If the treating  
18 physician's opinion is controverted, it may be rejected only if the ALJ makes  
19 findings setting forth specific and legitimate reasons that are based on the  
20 substantial evidence of record. Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir.  
21 2002); Magallanes, 881 F.2d at 751; Winans v. Bowen, 853 F.2d 643, 647 (9th  
22 Cir. 1987).

23 However, the Ninth Circuit also has held that "[t]he ALJ need not accept the  
24 opinion of any physician, including a treating physician, if that opinion is brief,  
25 conclusory, and inadequately supported by clinical findings." Thomas, 278 F.3d  
26 at 957; see also Matney ex rel. Matney v. Sullivan, 981 F.2d 1016, 1019 (9th Cir.  
27 1992). A treating or examining physician's opinion based on the plaintiff's own  
28 complaints may be disregarded if the plaintiff's complaints have been properly

1 discounted. Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 595, 602 (9th Cir.  
2 1999); see also Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997); Andrews  
3 v. Shalala, 53 F.3d 1035, 1043 (9th Cir. 1995). Additionally, “[w]here the opinion  
4 of the claimant’s treating physician is contradicted, and the opinion of a  
5 nontreating source is based on independent clinical findings that differ from those  
6 of the treating physician, the opinion of the nontreating source may itself be  
7 substantial evidence; it is then solely the province of the ALJ to resolve the  
8 conflict.” Andrews, 53 F.3d at 1041; Magallanes, 881 F.2d at 751; Miller v.  
9 Heckler, 770 F.2d 845, 849 (9th Cir. 1985).

## 10 **2. Analysis.**

11 Here, the ALJ considered Dr. Schmidt’s opinion, determined it was not  
12 entitled to controlling weight, and provided specific and legitimate reasons for  
13 rejecting the opinion. (AR at 22-23.)

14 The ALJ found that Dr. Schmidt’s opinion was “dated” and “not supported  
15 by the longitudinal records in the past three years” before the hearing. (Id. at 22.)

16 The ALJ stated:

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18 [I]n April 2007, the claimant’s treating physicians from LAC USC  
19 merely noted that he should lie on a hard bed and must avoid heavy  
20 lifting. The claimant has not pursued any significant treatment for his  
21 lumbar spine since being released as permanent and stationary by Dr.  
22 Schmidt. Instead, it appears that he had only two examinations in a  
23 year’s time for complaints about his back. He was also prescribed  
24 medications and given patient education. However, the claimant was  
25 not given any recommendation for therapy or orthopedic clinic referral  
26 which is readily available with the county health system managed by  
27 LAC USC. Indeed, the records from LAC USC militate against any  
28 more restrictive limitations as the objective findings were minimal – on

1 June 1, 2007, the claimant had decreased range of motion of his back  
2 with no focal vertebral tenderness, no paraspinal muscle spasm, but  
3 straight leg raising was positive and on October 4, 2007 the claimant  
4 had no tenderness of the paraspinal muscle of his lower back. At other  
5 times, the claimant missed his appointments or merely came in for a  
6 blood pressure visit.

7 (Id. at 22-23 (citations omitted).) The record is consistent with the ALJ's finding,  
8 and it reflects a stagnation or an improvement in Plaintiff's allegations of back  
9 pain, rather than an exacerbation of back pain. (Id. at 293-314.) While Plaintiff  
10 relies on Dr. Schmidt's opinion regarding Plaintiff's functional limitations, the  
11 Court notes that Dr. Schmidt's findings predate Plaintiff's most recent treatment  
12 records, and do not reflect the stagnation or improvement in Plaintiff's back pain.  
13 (Id. at 217, 228, 233-35, 240, 239-314.) Thus, the ALJ properly afforded Dr.  
14 Schmidt's opinion less weight, as it was dated and inconsistent with the  
15 longitudinal record.

16 Next, in rejecting the opinion of Dr. Schmidt, the ALJ relied upon the  
17 medical opinions of two consultative physicians, Drs. Ibrahim Yashruti and H.M.  
18 Estrin. (Id. at 21-23.) On March 16, 2006, Dr. Yashruti performed an orthopedic  
19 evaluation on Plaintiff. (Id. at 272-77.) Based on his evaluation, Dr. Yashruti  
20 assessed Plaintiff's functional limitations as follows:

21 From a functional standpoint, the claimant can lift and carry 25 pounds  
22 occasionally and 10 pounds frequently. He can stand on level ground  
23 six hours in an eight-hour workday. He can sit six hours in an eight-  
24 hour workday with normal rest periods. He is able to squat, kneel,  
25 crouch, and crawl frequently. He is able to reach with the arms and  
26 manipulate with the hands with no limitations.

27  
28 (Id. at 277.) Dr. Yashruti's evaluation, based on independent clinical findings,

1 suggests a higher functioning of physical capacity than Dr. Schmidt found.<sup>5</sup>

2 On May 8, 2007, Dr. Estrin completed a physical residual functional  
3 capacity (“RFC”) assessment for Plaintiff. (Id. at 282-29.) Dr. Estrin opined that  
4 Plaintiff could occasionally lift or carry twenty pounds, frequently lift or carry ten  
5 pounds, and stand, sit , or walk with normal breaks for six hours in an eight-hour  
6 workday. (Id. at 283.) Dr. Estrin also indicated that Plaintiff can occasionally  
7 climb ramps or stairs, balance, stoop, kneel, crouch, or crawl. (Id. at 284.) Here  
8 again, Dr. Estrin, based upon independent clinical findings, assessed a greater  
9 level of physical functioning than Dr. Schmidt’s assessment. Thus, the opinions  
10 of the consultative physicians constitute substantial evidence since they were  
11 based on independent clinical findings, and any conflict between these findings  
12 and Dr. Schmidt’s opinion was for the ALJ to resolve. See Andrews, 53 F.3d at  
13 1041 (opinion of nontreating source based on independent clinical findings may  
14 itself be substantial evidence).

15 Finally, the ALJ indicated that even if Dr. Schmidt’s opinion was fully  
16 credited, the non-disability finding would remain unchanged as Plaintiff would  
17 still be able to perform his past relevant work. (AR at 23.) The record supports  
18 the ALJ’s finding as to Plaintiff’s past relevant work.<sup>6</sup> (Id. at 25-26, 338-56.)  
19 Thus, any error by the ALJ here would be harmless. Curry, 925 F.2d at 1131.

20 Based on the foregoing, the ALJ provided specific and legitimate reasons,  
21 supported by substantial evidence in the record, to reject Dr. Schmidt’s opinion.  
22 Thomas, 278 F.3d at 957; Andrews, 53 F.3d at 1041; Magallanes, 881 F.2d at 751;  
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25 <sup>5</sup> On February 3, 2004, Dr. Schmidt advised Plaintiff to avoid “any heavy  
26 and/or repetitious lifting, carrying, pushing, pulling, bending, stooping, squatting,  
27 kneeling, prolonged standing, walking, etc.” (AR at 217.)

28 <sup>6</sup> Plaintiff does not contest his ability to perform his past relevant work.  
Thus, the Court declines to discuss this issue.

1 Miller, 770 F.2d at 849. Thus, there was no error.

2 **IV.**

3 **ORDER**

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5 Based on the foregoing, IT THEREFORE IS ORDERED that Judgment be  
6 entered affirming the decision of the Commissioner, and dismissing this action  
7 with prejudice.

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9 Dated: December 11, 2009



10 **HONORABLE OSWALD PARADA**  
11 United States Magistrate Judge  
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