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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

EDUARDO VELLANOWETH,	)	Case No. CV 10-3105-MLG
	)	
Plaintiff,	)	MEMORANDUM OPINION AND ORDER
	)	
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of the	)	
Social Security	)	
Administration,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Eduardo Vellanoweth ("Plaintiff") seeks judicial review of the Commissioner's final decision denying his application for disability insurance benefits ("DIB") pursuant to Title II of the Social Security Act. For the reasons stated below, the Commissioner's decision is affirmed.

**I. Factual and Procedural Background**

Plaintiff was born on September 24, 1951. (Administrative Record ("AR") at 16). He has a high school education and relevant work experience as a security guard and musician. (AR at 16).

1 Plaintiff filed an application for DIB on October 25, 2006,  
2 alleging that he has been disabled since July 16, 2006, due to mental  
3 problems, nervousness, panic attacks, hepatitis C, memory loss, bipolar  
4 disorder, aggression, and mood disorder. (AR at 136). The Social  
5 Security Administration denied Plaintiff's application initially and on  
6 reconsideration. (AR at 9, 68-72, 76-80).

7 An administrative hearing was held before Administrative Law Judge  
8 Ariel L. Sotolongo ("the ALJ") on August 20, 2008. (AR at 24-65).  
9 Plaintiff, who was represented by counsel, testified at the hearing. (AR  
10 at 28-52). A vocational expert and Plaintiff's brother also testified at  
11 the hearing. (AR at 52-65). The ALJ issued a decision on November 4,  
12 2008, denying Plaintiff's application. (AR at 9-17). The ALJ found that  
13 Plaintiff: (1) has not engaged in substantial gainful activity since his  
14 alleged onset date of disability, (step 1); (2) suffers from the severe  
15 impairments of mood disorder, nos, and substance abuse disorder (step  
16 2); (3) does not have any impairments that meet or equal the criteria of  
17 a listed impairment (step 3); (4) has the residual functional capacity  
18 ("RFC") to perform a full range of work at all exertional levels, but is  
19 limited to simple repetitive work with no more than occasional exposure  
20 to the general public and co-workers; (5) is unable to perform past  
21 relevant work as a security guard or musician; but (6) is capable of  
22 performing other work that exists in significant numbers in the economy.  
23 (AR at 11-12, 14, 16-17). The Appeals Council denied review on February  
24 26, 2010. (AR at 1-4).

25 Plaintiff commenced this action for judicial review on April 26,  
26 2010. The parties filed a joint statement of disputed issues on November  
27 4, 2010. Plaintiff contends that the ALJ failed to give proper  
28 consideration to Plaintiff's credibility, lay witnesses testimony, and

1 the opinions of Plaintiff's treating doctors. Plaintiff seeks remand for  
2 payment of benefits or, in the alternative, remand for further  
3 administrative proceedings. (Joint Stipulation at 22). The Commissioner  
4 requests that the ALJ's decision be affirmed. (Joint Stipulation at 22).  
5 The Joint Stipulation has been taken under submission without oral  
6 argument.

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8 **II. Standard of Review**

9 Under 42 U.S.C. § 405(g), a district court may review the  
10 Commissioner's decision to deny benefits. The Commissioner's or ALJ's  
11 findings and decision should be upheld if they are free from legal error  
12 and are supported by substantial evidence based on the record as a  
13 whole. 42 U.S.C. § 405(g); *Richardson v. Perales*, 402 U.S. 389, 401  
14 (1971); *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). Substantial  
15 evidence means such evidence as a reasonable person might accept as  
16 adequate to support a conclusion. *Richardson*, 402 U.S. at 401;  
17 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more  
18 than a scintilla, but less than a preponderance. *Lingenfelter*, 504 F.3d  
19 at 1035 (citing *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir.  
20 2006)). To determine whether substantial evidence supports a finding,  
21 the reviewing court "must review the administrative record as a whole,  
22 weighing both the evidence that supports and the evidence that detracts  
23 from the Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715,  
24 720 (9th Cir. 1996). "If the evidence can reasonably support either  
25 affirming or reversing," the reviewing court "may not substitute its  
26 judgment" for that of the Commissioner. *Id.* at 720-721.

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1 **III. DISCUSSION**

2 **A. Plaintiff's Credibility**

3 Plaintiff contends that the ALJ erred by discounting his subjective  
4 symptom testimony. (Joint Stipulation at 4-7, 10-11). At the hearing,  
5 Plaintiff testified he had to stop working because he was going "nuts."  
6 (AR at 31). He reported experiencing daily episodes of uncontrollable  
7 rage, anxiety, nervousness, fatigue, depression, confusion, insomnia,  
8 suicidal thoughts, panic attacks, auditory hallucinations, chest pain,  
9 and shortness of breath. (AR at 32-35, 136, 147, 157). Plaintiff also  
10 complained of an inability to concentrate, difficulty driving at night,  
11 and side effects from medication, including unbearable headaches and  
12 dizziness. (AR at 44, 51, 147, 157).

13 The determination of credibility and the resolution of conflicts in  
14 the testimony are functions of the ALJ. *Morgan v. Commissioner of Social*  
15 *Security*, 169 F.3d 595, 599 (9th Cir. 1999). In general, an ALJ's  
16 assessment of credibility should be given great weight. *Nyman v.*  
17 *Heckler*, 779 F.2d 528, 531 (9th Cir. 1985). However, once a claimant has  
18 presented medical evidence of an underlying impairment, the ALJ may not  
19 discredit the claimant's testimony regarding subjective pain and other  
20 symptoms merely because the symptoms, as opposed to the impairments, are  
21 unsupported by objective medical evidence. *Lingenfelter*, 504 F.3d at  
22 1035-36; *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009); *Light v.*  
23 *Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997). "[T]he ALJ can  
24 reject the claimant's testimony about the severity of her symptoms only  
25 by offering specific, clear and convincing reasons for doing so."  
26 *Lingenfelter*, 504 F.3d at 1036 (quoting *Smolen v. Chater*, 80 F.3d 1273,  
27 1281 (9th Cir. 1996)).

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1 Here, the ALJ determined that Plaintiff's medically determinable  
2 impairments could have reasonably been expected to produce Plaintiff's  
3 reported symptoms, but that the intensity, persistence and limiting  
4 effects of those symptoms were not credible to the extent alleged. (AR  
5 at 15). The ALJ's decision was supported by substantial evidence.

6 In making the adverse credibility determination, the ALJ properly  
7 cited inconsistent statements in Plaintiff's testimony. (AR at 15); see  
8 *Fair v. Bowen*, 885 F.2d 597, 604 n.5 (9th Cir. 1989) (explaining that  
9 the ALJ may employ ordinary techniques of credibility evaluation and may  
10 take into account prior inconsistent statements or a lack of candor by  
11 the witness). In particular, Plaintiff made contradictory statements  
12 about his use of marijuana. (AR at 15). At his hearing in August 2008,  
13 Plaintiff testified that he takes no more than "a few hits" of marijuana  
14 once or twice a month and that he does not even like to smoke marijuana.  
15 (AR at 39-41). He stated that his marijuana use had decreased  
16 significantly since September 2006, when he began receiving psychiatric  
17 treatment and medication. (AR at 40). In December 2008, however,  
18 Plaintiff admitted to a consultative psychologist that he was smoking  
19 marijuana on a daily basis "to calm down." (AR at 238, 407). Lab tests  
20 confirmed ongoing marijuana use. (AR at 379, 386, 408). Plaintiff's  
21 inconsistent statements regarding the frequency of his marijuana use  
22 provide a clear and convincing reason for discounting his testimony. See  
23 *Fair*, 885 F.2d at 604 n.5; *Tonapetyan v. Halter*, 242 F.3d 1144, 1148  
24 (9th Cir. 2001).

25 The ALJ also cited inconsistencies between Plaintiff's subjective  
26 complaints and his doctor's clinical observations. (AR at 15);  
27 *Regennitter v. Commissioner of SSA*, 166 F.3d 1294, 1297 (9th Cir. 1998)  
28 (explaining that a determination that a claimant's complaints are

1 "inconsistent with clinical observations" can satisfy the clear and  
2 convincing requirement). In his disability reports and at the hearing,  
3 Plaintiff claimed he suffers from insomnia, panic attacks, daily  
4 thoughts of suicide, auditory hallucinations, and terrible headaches and  
5 dizziness, as side effects from his medication. (AR at 32-34, 147, 157,  
6 239). However, Plaintiff's treating psychiatrist, Larisa Levin, M.D.,  
7 made contradictory findings. Over a three year period, Dr. Levin  
8 consistently reported that Plaintiff had no panic attacks, suicidal  
9 ideation, perceptual disturbances or thought process disturbances.<sup>1</sup> (AR  
10 at 289-90, 321-22, 369, 371-72, 376, 415-20, 422). Dr. Levin also noted  
11 that Plaintiff denied experiencing any side effects from his medication  
12 and he slept fairly well. (AR at 289-90, 321-22, 369, 371-72, 376, 415-  
13 20, 422). While subjective symptom testimony cannot be rejected solely  
14 on the ground that it is not fully corroborated by objective medical  
15 evidence, the medical evidence is still a relevant factor in determining  
16 Plaintiff's credibility. *Rolling v. Massanari*, 261 F.3d 853, 957 (9th  
17 Cir. 2001) (citing 20 CFR § 404.1529(c)(2)). Here, it is clear that the  
18 ALJ's adverse credibility finding was supported by substantial evidence,  
19 given the inconsistencies between Plaintiff's complaints and his  
20 doctor's clinical findings, taken together with Plaintiff's inconsistent  
21 statements regarding his marijuana use.

22 **B. Lay Witness Testimony**

23 Plaintiff's brother Carlos testified at the hearing, and  
24 Plaintiff's mother and two other brothers, Rene and Robert, submitted  
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27 <sup>1</sup> The Court notes that Dr. Levin reported Plaintiff had complaints  
28 of "transient suicidal ideation" at his initial evaluation in September  
2006. (AR at 288). Later, however, Dr. Levin expressly noted the absence  
of suicidal ideation. (AR at 321, 415).

1 written statements.<sup>2</sup> (Joint Stipulation at 11-12). Plaintiff contends the  
2 ALJ improperly rejected this lay witness testimony.

3 Lay witness testimony as to a claimant's symptoms or how an  
4 impairment affects the ability to work is competent evidence that the  
5 Commissioner must take into account. *Nguyen v. Chater*, 100 F.3d 1462,  
6 1467 (9th Cir. 1996); 20 C.F.R. §§ 404.1513(d), 404.1545(a)(3). An ALJ  
7 may disregard such evidence only if he gives reasons "that are germane  
8 to each witness." *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993).  
9 The ALJ, however, need not discuss all evidence presented. *See Vincent*  
10 *on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984).  
11 Rather, the ALJ need only explain why "significant probative evidence  
12 has been rejected." *Id.*

13 In the decision, the ALJ summarized the lay witness testimony of  
14 Plaintiff's brother Carlos. (AR at 16, 52-58). Carlos testified that  
15 Plaintiff suffered from flashes of anger and rage, poor social and  
16 coping skills, and insomnia. (AR at 16, 52-58). According to Carlos,  
17 Plaintiff had been experiencing many of these problems since he was a  
18 child. (AR at 55-56). The ALJ credited Carlos's testimony generally, but  
19 concluded that it did not establish disability. (AR at 16). The ALJ  
20 explained that despite Plaintiff's reported limitations, he had been  
21 able to maintain employment as a security guard and as a musician for  
22 significant periods of time. (AR at 16). Thus, to the extent the ALJ  
23 rejected Carlos's testimony, he stated a germane reason for doing so.

24 The ALJ did not discuss the statements written by Plaintiff's  
25 mother or two other brothers, Rene and Robert. (AR at 431-33, 435).  
26 Plaintiff's mother reported that as a child, Plaintiff was nervous,

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27 <sup>2</sup> The lay witnesses are referred to by their first names as they  
28 all share the same last name.

1 sullen, and angry. (AR at 435). In 1997, Plaintiff moved back to his  
2 mother's home for about a year. (AR at 435). Plaintiff seemed depressed  
3 and was very antisocial. (AR at 435). Plaintiff's mother reported that  
4 he would wake up at 4:00 in the morning and speak "in tongues." (AR at  
5 435). She concluded that Plaintiff suffered from a mental illness and  
6 anxiety attacks. (AR at 435). Rene and Robert both discussed their  
7 childhood memories of Plaintiff's behavior, which included violent  
8 outbursts and dysfunctional people skills. (AR at 431-33). They also  
9 mentioned several recent family trips to Mexico with Plaintiff. Robert  
10 emphasized Plaintiff's need to isolate himself due to his inability to  
11 interact positively with others. (AR at 433). Rene noted that Plaintiff  
12 "hardly sleeps." (AR at 431). Rene also stated that he thought Plaintiff  
13 may be suffering from bipolar disorder. (AR at 432).

14 An ALJ's failure to address a lay witness's statement is harmless  
15 if "a reviewing court ... can confidently conclude that no reasonable  
16 ALJ, when fully crediting the testimony, could have reached a different  
17 disability determination." *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d  
18 1050, 1056 (9th Cir. 2006); see also *Robbins v. Soc. Sec. Admin.*, 466  
19 F.3d 880, 885 (9th Cir. 2006).

20 Here, the ALJ's failure to address the testimony of Plaintiff's  
21 mother, Rene, and Robert was harmless. *Stout*, 454 F.3d at 1056; see also  
22 *Robbins*, 466 F.3d at 885. First, the witnesses's descriptions of  
23 Plaintiff's mental condition during childhood and adult life prior to  
24 his alleged onset date are not probative of disability. Second, to the  
25 extent the witnesses addressed Plaintiff's current symptoms, their  
26 statements were merely corroborative of other evidence in the record,  
27 namely, Plaintiff suffers from violent outbursts, depression, social  
28 difficulties, and problems with sleep and social interactions. (AR at



1 431-33, 435). Finally, the medical diagnoses made by Plaintiff's mother  
2 and Rene, e.g., Plaintiff suffers from a mental illness, anxiety  
3 attacks, and bipolar disorder, were beyond the competence of lay  
4 witnesses and do not constitute competent evidence. See 20 C.F.R. §  
5 404.1513(a); *Nguyen*, 100 F.3d at 1467 (explaining that "medical  
6 diagnoses are beyond the competence of lay witnesses and therefore do  
7 not constitute competent evidence"). Under these circumstances, no  
8 reasonable ALJ considering this case would have reached a different  
9 conclusion had the statements from Plaintiff's mother, Rene, and Robert  
10 been addressed. Accordingly, reversal is not warranted on this claim.

### 11 **C. Plaintiff's Mental Impairment**

12 Plaintiff contends that the ALJ erred in his evaluation of  
13 Plaintiff's mental impairment. In particular, Plaintiff faults the ALJ  
14 for improperly rejecting the opinions of his treating psychiatrist, Dr.  
15 Levin, treating psychologist, Tim Blanco, Ph.D., and a licensed clinical  
16 social worker, Rose Brancone, LCSW. (AR at 260-322, 328-38, 386-88).

17 The Commissioner is directed to weigh medical opinions based in  
18 part on their source, specifically, whether proffered by treating,  
19 examining, or non-examining professionals. *Lester v. Chater*, 81 F.3d  
20 821, 830-31 (9th Cir. 1995). Generally, more weight is given to the  
21 opinion of a treating professional, who has a greater opportunity to  
22 know and observe the patient as an individual, than the opinion of a  
23 non-treating professional. See *id.*; *Smolen*, 80 F.3d at 1285.

24 The Commissioner must also consider whether a medical opinion is  
25 supported by clinical findings and is contradicted by other medical  
26 evidence of record. The Commissioner may reject the uncontradicted  
27 opinion of a treating or examining medical professional only for "clear  
28 and convincing" reasons supported by substantial evidence in the record.

1 See *Lester*, 81 F.3d at 831. A contradicted opinion of a treating or  
2 examining professional may be rejected only for "specific and  
3 legitimate" reasons supported by substantial evidence. *Lester*, 81 F.3d  
4 at 830. If a treating professional's opinion is contradicted by an  
5 examining professional's opinion, which is supported by different  
6 independent clinical findings, the Commissioner may resolve the conflict  
7 by relying on the latter. See *Andrews v. Shalala*, 53 F.3d 1035, 1041  
8 (9th Cir. 1995); see also *Orn v. Astrue*, 495 F.3d 625, 632 (9th Cir.  
9 2007) (ALJ may reject opinion of treating physician in favor of  
10 examining physician whose opinion rests of independent clinical  
11 findings). An ALJ may reject the testimony of an "other source" simply  
12 by providing reasons germane to that witness. See *Lewis v. Apfel*, 236  
13 F.3d 503, 511 (9th Cir. 2001) ("Lay testimony as to a claimant's  
14 symptoms is competent evidence that an ALJ must take into account,  
15 unless he or she expressly determines to disregard such testimony and  
16 gives reasons germane to each witness for doing so.") (citation  
17 omitted); see also *Dodrill*, 12 F.3d at 918-19.

18 Dr. Levin

19 Plaintiff began seeing Dr. Levin at the Los Angeles County  
20 Department of Mental Health in September 2006. (AR at 288-89). Plaintiff  
21 presented with anxiety, tension, crying spells, sleep problems,  
22 transient suicidal ideation, reduced concentration, low energy and  
23 frequent outbursts of anger. (AR at 288). He admitted marijuana use. (AR  
24 at 288). Dr. Levin diagnosed Plaintiff with mood disorder, nos, cannabis  
25 abuse, and polysubstance abuse in early remission. (AR at 288).

26 Dr. Levin continued to see Plaintiff on a regular basis through  
27 November 2009. While Plaintiff's mood was sometimes described as  
28 dysphoric, Dr. Levin's reports consistently showed that Plaintiff

1 appeared oriented, slept and ate fairly well, was not anhedonic, and  
2 denied suicidal and homicidal ideation, visual and auditory  
3 hallucinations, side effects from medication, and panic attacks. (AR at  
4 289-90, 321-22, 369, 371-72, 376, 415-20, 422).

5 In November 2006, Dr. Levin completed a state unemployment  
6 disability form indicating that Plaintiff would not be able to return to  
7 his regular or customary work until April 27, 2007. (AR at 282). And,  
8 without explanation, Dr. Levin changed Plaintiff's diagnosis to bipolar  
9 affective disorder, nos, from mood disorder, nos, cannabis abuse, and  
10 polysubstance abuse in early remission. (AR at 282). Dr. Levin did note,  
11 however, that Plaintiff suffered from irritability, lack of  
12 concentration, mood changes, racing thoughts, decreased memory, and  
13 frequent outbursts of anger. (AR at 282).

14 In April 2007, Dr. Levin completed a supplemental certification  
15 form. (AR at 340). She opined that Plaintiff would not be able to return  
16 to his regular or customary work until September 27, 2007. (AR at 340).

17 The ALJ found that Dr. Levin's opinion that Plaintiff was disabled  
18 was inadequately supported by clinical findings. (AR at 15, 282, 289-90,  
19 321-22, 340, 369, 371-72, 376, 415-20, 422); *Thomas v. Barnhart*, 278  
20 F.3d 947, 957 (9th Cir. 2002) ("[t]he ALJ need not accept the opinion of  
21 any physician, including a treating physician, if that opinion is brief,  
22 conclusory, and inadequately supported by clinical findings"); see also  
23 *Batson v. Commissioner of Social Security Administration*, 359 F.3d 1190,  
24 1195 (9th Cir. 2004) (noting that "an ALJ may discredit treating  
25 physicians' opinions that are conclusory, brief, and unsupported by the  
26 record as a whole, ... or by objective medical findings"); *Tonapetyan*,  
27 242 F.3d at 1149 ("[w]hen confronted with conflicting medical opinions,  
28 an ALJ need not accept a treating physician's opinion that is conclusory

1 and brief and unsupported by clinical findings"); 20 CFR § 404.1527(d)  
2 (treatment history, consistency with the record as a whole, and  
3 supportability of report affect weight accorded physician's report).  
4 Thus, the ALJ gave a specific and legitimate reason for rejecting Dr.  
5 Levin's opinion. (AR at 15-16).

6 The ALJ also relied on the opinion of the consultative examiner,  
7 clinical psychologist Ahmad Riahinejad, Ph.D. (AR at 12-13, 15-16, 237-  
8 41). In December 2006, Dr. Riahinejad conducted a psychological  
9 evaluation of Plaintiff at the request of the Commissioner. (AR at 237-  
10 41). Plaintiff complained that he has had suicidal thoughts since 1985,  
11 hears the voice of a woman screaming, and has seen shadows. (AR at 238-  
12 39). After administering a mental status examination, Dr. Riahinejad  
13 found Plaintiff to be generally pleasant and cooperative and oriented to  
14 time, place and person. (AR at 239). There was no evidence of  
15 psychomotor slowness. (AR at 239). Dr. Riahinejad noted Plaintiff's  
16 attitude was sufficient, affect was euthymic, and mood was depressed.  
17 (AR at 239). Plaintiff's intellectual functioning and general fund of  
18 knowledge were in the low average range, and his memory, concentration  
19 and judgment were fair. (AR at 239). Dr. Riahinejad diagnosed Plaintiff  
20 as suffering from polysubstance dependence, in partial remission,  
21 substance-induced mood disorder, antisocial personality disorder, and  
22 hepatitis C. (AR at 240-41). Dr. Riahinejad concluded that Plaintiff  
23 would have mild to moderate difficulty understanding, remembering and  
24 carrying out complex and detailed instructions, but was able to  
25 understand, remember and carry out simple, repetitive-type instructions  
26 without limitation and could relate with other people and accept  
27 supervision. (AR at 241). Dr. Riahinejad's evaluation was based on his  
28 own clinical findings made after he examined Plaintiff and reviewed the

1 results of clinical tests. Thus, to the extent the medical evidence from  
2 Plaintiff's treating source conflicted with, or undermined Dr.  
3 Riahinejad's opinion, the ALJ was free to resolve the conflict as he saw  
4 fit. *Andrews*, 53 F.3d at 1041 (ALJ has "sole[ ] province" to resolve  
5 conflicts between credible, yet conflicting, medical evidence); (AR at  
6 35).

7 Dr. Blanco

8 Dr. Blanco conducted an initial assessment of Plaintiff in  
9 September 2006. (AR at 265-70). He reported that Plaintiff had a life-  
10 long history of poor coping skills and difficulties addressing stressful  
11 situations. (AR at 270). Plaintiff was recovering from his abuse of  
12 drugs, but was still using marijuana. (AR at 270). Dr. Blanco diagnosed  
13 Plaintiff with mood disorder, nos, and hepatitis C. (AR at 270). Dr.  
14 Blanco also assessed Plaintiff with a Global Assessment of Functioning  
15 ("GAF") score of 45, indicating "serious symptoms or serious impairment  
16 with social and occupational functioning." (AR at 270).

17 In August 2008, Plaintiff asked Dr. Blanco to complete a medical  
18 report in support of his claim for disability benefits. (AR at 405). Dr.  
19 Blanco administered a mental status exam at that time. (AR at 405). Dr.  
20 Blanco found that Plaintiff was oriented to person, place and time, his  
21 verbal responses were adequate, there was no evidence of psychomotor  
22 slowness, his thoughts were organized, and his concentration, attention  
23 span, focus, reasoning ability, and memory were good. (AR at 405). Dr.  
24 Blanco was concerned about Plaintiff's admitted marijuana use and  
25 requested that Plaintiff submit to drug testing. (AR at 405). As noted  
26 above, lab tests came back positive for marijuana. (AR at 379, 386,  
27 408).

28 Plaintiff contends that the ALJ erred by failing to give proper

1 consideration to the GAF score assessed by Dr. Blanco in September 2006.  
2 (AR at 270). However, the GAF scale was intended to be used to make  
3 treatment decisions. See DSM-IV at 32. Neither the Social Security  
4 regulations nor case law require an ALJ to determine the extent of an  
5 individual's disability based solely on a GAF score. Thus, the ALJ did  
6 not err in his consideration of Dr. Blanco's opinion. See *Vincent*, 739  
7 F.2d at 1395 (the ALJ need only explain why "significant probative  
8 evidence has been rejected"). Further, Dr. Riahinejad's opinion provided  
9 substantial evidence in support of the ALJ's evaluation of Plaintiff's  
10 mental impairment. *Andrews*, 53 F.3d at 1041.

11 Rose Brancone, LCSW

12 In October 2008, licensed clinical social worker Rose Brancone  
13 completed an annual assessment and a client care coordination plan on  
14 Plaintiff's behalf. (AR at 386-88). Ms. Brancone reported that Plaintiff  
15 had an anger management problem, was very depressed and angry, had vague  
16 ideas that came and went, and was suicidal at times. (AR at 386). Ms.  
17 Brancone also noted that Plaintiff suffered from mood swings, anxiety,  
18 sleep problems, agitation, and audio hallucinations. (AR at 388). Ms.  
19 Brancone reported that Plaintiff could not work. (AR at 386).

20 A social worker without a doctorate does not meet the regulations'  
21 requirements for an "acceptable medical source." 20 C.F.R. §  
22 404.1513(a). An ALJ may properly discount a social worker's opinion  
23 without satisfying the legal standards applicable to a treating  
24 physician. *Gomez v. Chater*, 74 F.3d 967, 970-71 (9th Cir. 1996)  
25 (opinions from "other sources" can be afforded "less weight than  
26 opinions from acceptable medical sources.").

27 Although the ALJ did not state express reasons for discounting Ms.  
28 Brancone's opinion of disability, any error was harmless. As discussed

1 above, the ALJ rejected the conclusion that Plaintiff's mental  
2 impairment rendered him unable to work because it was unsupported by the  
3 medical evidence. See 20 C.F.R. § 404.1513(a) ("We need evidence from  
4 acceptable medical sources to establish whether you have a medically  
5 determinable impairment(s)."); 20 C.F.R. § 404.1508 (mental impairment  
6 "must be established by medical evidence consisting of signs, symptoms,  
7 and laboratory findings"); *Gomez*, 74 F.3d at 970-71. Further, Ms.  
8 Brancone's opinion conflicted with the findings of the consultative  
9 psychologist. An ALJ may reject testimony when it conflicts with the  
10 medical evidence. See *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir.  
11 1993) (stating that inconsistency with medical evidence was a germane  
12 reason for rejecting certain testimony).

13 Accordingly, the ALJ's evaluation of Plaintiff's mental impairment  
14 is supported by substantial evidence.

15  
16 **IV. Conclusion**

17 For the reasons stated above, the decision of the Commissioner is  
18 affirmed.

19  
20 DATED: December 6, 2010



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22 \_\_\_\_\_  
MARC L. GOLDMAN  
United States Magistrate Judge