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

CASEY WILKERSON,  
Plaintiff,  
v.  
MICHAEL J. ASTRUE,  
Commissioner of the Social  
Security Administration,  
Defendant.

) NO. EDCV 10-01940-SS  
)  
)  
) **MEMORANDUM DECISION AND ORDER**  
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**I.  
INTRODUCTION**

Plaintiff Casey Wilkerson ("Plaintiff") brings this action seeking to overturn the decision of the Commissioner of the Social Security Administration (hereinafter the "Commissioner" or the "Agency") denying Plaintiff's application for Social Security Income benefits ("SSI"). The parties consented to the jurisdiction of the undersigned United States Magistrate Judge, pursuant to 28 U.S.C. § 636(c). For the reasons stated below, the decision of the Agency is AFFIRMED.

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**II.**

**PROCEDURAL HISTORY**

Plaintiff filed an SSI application on May 5, 2009, alleging a disability onset of June 1, 2008, due to depression and borderline personality disorder. (Administrative Record ("AR") 102-04, 111). The Agency denied Plaintiff's claim on June 15, 2009, as well as at the reconsideration level on September 18, 2009. (AR 46-57).

On October 20, 2009, Plaintiff requested a hearing before an Administrative Law Judge (the "ALJ"), which was held on June 17, 2010. (AR 17-43, 60). On October 27, 2010, the ALJ issued an unfavorable decision. (AR 9-16). Plaintiff appealed the ALJ's decision on November 11, 2010. (AR 4). The Appeals Council denied Plaintiff's request for review and the ALJ's decision became the final decision of the Commissioner. (AR 1-3). Plaintiff's Complaint, filed on December 29, 2010, seeks review of Defendant's decision denying disability benefits.

**III.**

**FACTUAL BACKGROUND**

Plaintiff was born on March 15, 1988, was twenty-one (21) when he filed his SSI application, and has a limited education. (AR 20, 165). Prior to the onset of the alleged impairments, Plaintiff worked as a laborer for a roofing business two or three days per week. (AR 112). Plaintiff asserts that he is disabled due to his mental impairments. (AR 27, 111). The ALJ found that claimant has the following severe

1 impairments: mood disorder, marijuana dependence, and alcohol  
2 dependance. (AR 11).

3  
4 **A. Plaintiff's Mental Health History**

5  
6 **1. Dr. Andrew Janik, Treating Physician**

7  
8 Plaintiff was a patient of Dr. Andrew Janik from April 2009 until  
9 March 2010. (AR 234, 247). Plaintiff testified that he usually saw Dr.  
10 Janik "[o]nce every month." (AR 24). In a case record report from  
11 April 20, 2009, Dr. Janik diagnosed Plaintiff with mood disorder not  
12 otherwise specified ("NOS"), polysubstance abuse, and personality  
13 disorder. (AR 253). Plaintiff's GAF score was 50. (Id.). Dr. Janik  
14 noted that Plaintiff "blows up," but denies suicidal ideations. (AR  
15 255-56). Dr. Janik stated that "therapy [was] encouraged." (AR 253).  
16 Dr. Janik reported positive heroin use and indicated usage of various  
17 other illegal drugs. (AR 255). Dr. Janik also stated that Plaintiff's  
18 last use of a street drug was cocaine six months prior. (Id.). Dr.  
19 Janik noted that Plaintiff sporadically drank alcohol, and was not in  
20 a drug rehabilitation program. (Id.).  
21

22 In a case record report from May 19, 2009, Dr. Janik again reported  
23 that Plaintiff had no suicidal ideations, but that Plaintiff was "[n]ot  
24 going to therapy." (AR 252). On June 16, 2009 Plaintiff asked for a  
25 therapist, and Dr. Janik gave Plaintiff a referral. (AR 251). Dr.  
26 Janik noted that Plaintiff "still smokes weed" and "needs [to] stop  
27 drugs." (Id.). On August 11, 2009, Dr. Janik reported that Plaintiff  
28 "[said that he] can't afford therapy." (AR 250). Dr. Janik also noted

1 that Plaintiff's behavior was indicative of "O.C.D." because  
2 "[Plaintiff] has to over clean, if something drops[,] [he] has to  
3 [indecipherable] it 3 times. Lots of things - X2." (Id.). In  
4 addition, Dr. Janik stated that Plaintiff "denie[d] all marijuana - [and  
5 Plaintiff] was getting more nervous." (Id.). On September 29, 2009 Dr.  
6 Janik reported that Plaintiff showed signs of OCD, but that "[Plaintiff  
7 did not] want to address it." (AR 249). Dr. Janik noted that otherwise  
8 Plaintiff was "stable" with no suicidal ideations. (Id.). On January  
9 24, 2009 Plaintiff reported "still feeling very angry" and "[c]laim[ed]  
10 [to be] off marijuana." (AR 248). "[Plaintiff said that he] stays home  
11 [and] does (sic) [the] computer." (Id.). Dr. Janik also noted that  
12 Plaintiff "[r]efuses med [change]" and was "[n]ot even going to  
13 therapy." (Id.). Plaintiff again reported no suicidal ideations.  
14 (Id.). As of March 22, 2010, Dr. Janik reported that Plaintiff "still"  
15 had "[n]o other treatment." (AR 247). Plaintiff again "denie[d]  
16 [marijuana and] other drugs" and continued to have no suicidal  
17 ideations. (Id.).

18  
19 On November 24, 2009 Dr. Janik completed a "Work Capacity  
20 Evaluation" for mental impairments. In his evaluation, Dr. Janik  
21 reported that Plaintiff had serious limitations in his ability to work  
22 and would be anticipated to be absent from work three or more days per  
23 month due to his impairments and treatment. (AR 244-45).

24  
25 Dr. Janik also administered a self-rating test and a mood disorder  
26 questionnaire to Plaintiff. (AR 257-260). Plaintiff indicated that his  
27 mood caused him "moderate problem[s]." (AR 257-260).

28 //

1           **2. Robin Rhodes Campbell, Ph.D., Consultative Licensed Clinical**  
2           **Psychologist**

3  
4           On August 18, 2010 Dr. Robin Rhodes Campbell examined Plaintiff and  
5 submitted a complete psychological evaluation. (AR 276-287). Dr.  
6 Campbell reviewed Plaintiff's medication records and reported that  
7 "[Plaintiff] reports [that] he has difficulty with concentration and  
8 memory." (AR 277). Dr. Campbell noted that "[u]pon query, it did not  
9 appear that [Plaintiff] is experiencing psychotic symptoms, but [he] has  
10 some intrusive thoughts." (Id.). Dr. Campbell stated that "[Plaintiff]  
11 report[ed] depression and substance abuse" and "drinks alcohol nightly  
12 to help him sleep." (Id.). Dr. Campbell reported that Plaintiff  
13 "currently takes Lamotrigine [and Plaintiff stated that] the medication  
14 has been beneficial." (Id.).  
15

16           In terms of Plaintiff's current level of functioning, Dr. Campbell  
17 noted that "[Plaintiff] is able to do household chores, run errands,  
18 shop, cook, dress and bathe himself. [Plaintiff] does not drive.  
19 [Plaintiff] enjoys swimming and drawing." (AR 278). "In the morning,  
20 [Plaintiff] will smoke a cigarette, go swimming, watch television and  
21 take a nap." (AR 278-79). "In the afternoon, [Plaintiff] will eat.  
22 [Plaintiff] will play with his dog and feed his lizard. In the evening,  
23 [Plaintiff] is not sure what his routine is." (AR 279). Dr. Campbell  
24 noted that "[t]here was nothing usual about [Plaintiff's] posture,  
25 bearing, manner, or hygiene." (Id.). Dr. Campbell reported that while  
26 "[Plaintiff's] mood was described as 'irritated,' . . . [Plaintiff's]  
27 [a]ffect was within normal limits with an adequate range." (Id.). Dr.  
28 Campbell found that "[Plaintiff's] thought processes were linear and

1 goal-directed with no loosening of associations, flight of ideas, racing  
2 thoughts, thought blocking, thought insertion, withdrawal or  
3 broadcasting." (Id.). Further, Dr. Campbell noted that "[Plaintiff]  
4 exhibited no evidence of auditory or visual hallucinations, delusions,  
5 or illusions. There were no obsessions, compulsions, or paranoia.  
6 [Plaintiff] denied current suicidal or homicidal ideation, plan or  
7 intent." (Id.) Dr. Campbell stated that "[Plaintiff] was alert and  
8 oriented to person, place, time, and situation. [Plaintiff] did not  
9 present with obvious cognitive delays." (Id.). In terms of Plaintiff's  
10 ability to concentrate, Dr. Campbell stated that "[Plaintiff's]  
11 attention was unimpaired" and "[Plaintiff's] concentration was adequate  
12 for conversation and time-limited assessment tasks." (Id.). In  
13 addition, Dr. Campbell found that "[Plaintiff's] insight and judgment  
14 were good. [Plaintiff] demonstrated no impairment in social and common  
15 sense understanding." (Id.).

16  
17 Dr. Campbell administered the Wechsler Adult Intelligence Scale  
18 test (WAIS-IV), the Wechsler Memory Scale test, the Bender Gestalt  
19 Visual Motor Test II, the Trail-Making test, the Rey 15-Item Memory  
20 test, the test of memory malingering, the Minnesota Multiphasic  
21 Personality Inventory test, and diagnosed Plaintiff using the DSM-IV.  
22 (AR 280-83). Dr. Campbell noted that her "test results should be  
23 interpreted cautiously given the [Plaintiff's] poor effort." (AR 279).  
24 The Wechsler Memory Scale test was aborted "due to [Plaintiff's] lack  
25 of motivation." (AR 281). Dr. Campbell reported that:

26  
27 Current test result indicate that [Plaintiff was] functioning  
28 in the borderline range. However, given [Plaintiff's] poor

1 effort on the testing procedures, [the results are] unlikely  
2 to be an accurate representation of the [Plaintiff's] current  
3 cognitive and psychological functioning. [Plaintiff] scored  
4 very poorly on the measure of memory; however, his effort on  
5 this task was minimal. On a neurological screening  
6 instrument, [Plaintiff] scored as impaired in terms of his  
7 perceptual ability and unimpaired in terms of his motor  
8 functioning. On a second neurological screening instrument,  
9 [Plaintiff] also scored as impaired. On the Measure of  
10 Memory Malingered, [Plaintiff] scored as malingered memory  
11 deficits. [Plaintiff's] MMPI-2 profile is invalid and  
12 uninterpretable. [Plaintiff's] validity profile was  
13 consistent with exaggeration or feigning of psychiatric  
14 symptoms or also potentially a measure of his objective  
15 distress and could also be interpreted as 'a cry for help.'

16  
17 (AR 282). Dr. Campbell diagnosed Plaintiff with cannabis dependence and  
18 mood disorder. (AR 283). Dr. Campbell further reported that:

19  
20 Based on the current findings, the [Plaintiff's] current test  
21 results are invalid in regard to his intellectual memory  
22 functioning. It is not possible at this time to ascertain  
23 the degree to which [Plaintiff] has psychiatric symptoms that  
24 would interfere with his ability to understand, remember and  
25 carry out detailed instructions. [Plaintiff] did not appear

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1 to be giving tasks his best effort. Based upon  
2 [Plaintiff's] history, [Plaintiff] does have some mood  
3 instability as well as probable substance dependence.  
4

5 (AR 283). Dr. Campbell made the following conclusion:  
6

7 [Plaintiff] would have no impairment in understanding,  
8 remembering, and carrying out short, simple instructions. In  
9 addition, [Plaintiff's] ability to understand, remember, and  
10 carry out detailed instructions would be unimpaired.  
11 [Plaintiff] would be unimpaired in his ability to make  
12 judgment on simple, work-related decisions. [Plaintiff] may  
13 have moderate-to-marked difficulty in relating appropriately  
14 to the public, supervisors, and co-workers. [Plaintiff's]  
15 ability to withstand the stress and changes associated with  
16 an eight-hour workday and day-to-day work activities is  
17 mildly to moderately impaired.  
18

19 (AR 283). Dr. Campbell also noted that "[Plaintiff] does not appear to  
20 be able to appropriately handle funds in his own best interest due to  
21 ongoing substance abuse." (Id.). Dr. Campbell reported that  
22 "[Plaintiff] drinks a case of alcohol a week," "uses marijuana daily,"  
23 and "last used methamphetamines six months ago and cocaine two years  
24 ago." (AR 278). "[Plaintiff] last used heroin and PCP." (Id.). Dr.  
25 Campbell stated that "[Plaintiff] has good physical health" and "[t]here  
26 was no report of head injury or loss of consciousness." (Id.).  
27 \\



1           **3. Dr. R. Paxton, Medical Consultant**

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3           In a July 11, 2009 Mental Residual Function Capacity Assessment,

4 Dr. R. Paxton indicated that Plaintiff's ability to understand and

5 remember very short and simple instructions was not significantly

6 limited, while Plaintiff's ability to understand and remember detailed

7 instructions was moderately limited. (AR 214). Dr. Paxton also noted

8 that while Plaintiff's ability to carry out very short and simple

9 instructions was not significantly limited, Plaintiff's ability to carry

10 out detailed instructions was moderately limited. (Id.) Dr. Paxton

11 noted that Plaintiff is not significantly limited in his ability to

12 maintain attention and concentration for extended periods, to sustain

13 an ordinary routine without special supervision, and to work in

14 coordination with or proximity to others without being distracted by

15 them. (Id.)

16

17           Dr. Paxton also noted that Plaintiff is moderately limited in his

18 ability to interact appropriately with the general public, but is not

19 significantly limited in his ability to accept instructions and respond

20 appropriately to criticism from supervisors or to maintain socially

21 appropriate behavior and to adhere to basic standards of neatness and

22 cleanliness. (AR 215). In his functional capacity assessment, Dr.

23 Paxton stated that "[Plaintiff] is able to understand and remember

24 simple but not detailed tasks[;] [Plaintiff] is able to maintain

25 concentration, pace and persistence over a normal work day and work

26 week[;] [Plaintiff] should have limited public contact[;] and

27 [Plaintiff] is able to adapt to normal work environment and situations."

28

1 (AR 216). Dr. Paxton concluded that an RFC assessment was necessary.  
2 (AR 217).

3  
4 **4. Hospitalization**

5  
6 The Desert Regional Medical Center admitted Plaintiff on February  
7 25, 2009 on a 5150 hold.<sup>1</sup> (AR 176-179). After an altercation with his  
8 father and brother, Plaintiff "pretended to take an overdose of [his]  
9 medications and state[ed] that he did not want[] to live anymore." (AR  
10 177). "[Plaintiff] reports [that] he actually threw the medication in  
11 his room[,] [but] [h]e does admit to going to friend (Derek's) house to  
12 look for Derek's father's gun." (AR 184). In a hospital report  
13 "[Plaintiff] admitt[ed] that he easily becomes enraged and often has  
14 suicidal thoughts." (AR 177). The Emergency Department Record noted  
15 Plaintiff's use of marijuana. (AR 184, 189).

16  
17 Plaintiff was transferred to Aurora Charter Oak Hospital for a 72-  
18 hour hold. (AR 205). A February 26, 2009 mental status exam revealed  
19 "[Plaintiff's] orientation and memory to be adequate." (Id.).  
20 Plaintiff's February 28, 2009 discharge summary stated that he "does use  
21 marijuana, and his urine drug screen was positive for it." (Id.). The  
22 summary also indicated that Plaintiff had "[i]mproved." (AR 206).  
23 Plaintiff's discharge diagnosis indicated bipolar disorder and

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24  
25 <sup>1</sup> Under California Welfare and Institutions Code § 5150, "[w]hen  
26 any person, as a result of mental disorder, is a danger to others, or to  
27 himself or herself, or gravely disabled, a peace officer . . . may, upon  
28 probable cause, take, or cause to be taken, the person into custody and  
place him or her in a facility designated by the county and approved by  
the State Department of Mental Health as a facility for 72-hour  
treatment and evaluation."

1 polysubstance abuse. (Id.). Dr. Adib Bitar stated that Plaintiff's  
2 "[p]rognosis [was] good [at the time of release] if the [Plaintiff]  
3 abstain[ed] from polysubstance abuse, and continue[d] treatment with  
4 Lamictal and outpatient treatment." (AR 207).

5  
6 **B. Plaintiff's History of Substance Abuse**

7  
8 Plaintiff testified that he smokes a pack of cigarettes every two  
9 days, does not drink, and stopped smoking marijuana when he was sixteen.  
10 (AR 21). Plaintiff stated that he "stopped smoking marijuana because  
11 it got [him] in trouble at school a lot." (Id.). However, Plaintiff  
12 also testified that he had relapsed "a couple times . . . to help [him]  
13 calm down. . . ." (AR 21-22). Plaintiff noted that "[he] never use[s]  
14 [marijuana] anymore because it seems to mess with [his] emotions a lot."  
15 (AR 22). Plaintiff testified that the last time he used marijuana was  
16 in 2009 when "[he] bought a \$10 bag off someone and [his] brother knew  
17 and then [Plaintiff] got drunk and the next day [he] just didn't feel  
18 right and they put [Plaintiff] in the solitaire lockdown." (AR 28).  
19 In a February 25, 2009 emergency room report "[Plaintiff] admit[ted] to  
20 smoking 1 gram of marijuana daily[,] [but] [d]enie[d] all other drug  
21 use." (AR 184, 189). A February 28, 2009 discharge summary indicated  
22 a positive urine test for marijuana. (AR 205).

23  
24 In a case record report from April 20, 2009, Dr. Janik reported  
25 positive heroin use and indicated usage of multiple other drugs. (AR  
26 255). In his testimony before the ALJ, Plaintiff denied ever using  
27 heroin. (AR 39). Dr. Janik also stated that Plaintiff's last use of  
28 a street drug was cocaine six months prior. (AR 255). Dr. Janik noted

1 that Plaintiff sporadically drank alcohol, was not in a drug  
2 rehabilitation program, and did not abuse prescription drugs. (Id.).  
3 On June 16, 2009, Dr. Janik noted that Plaintiff "still smokes weed" and  
4 "needs [to] stop drugs." (AR 251). On August 11, 2009 Dr. Janik stated  
5 that Plaintiff "denie[d] all marijuana - [and Plaintiff] was getting  
6 more nervous." (AR 250).

7  
8 In her psychological evaluation on August 18, 2010, Dr. Campbell  
9 reported that "[Plaintiff] drinks a case of alcohol a week," "uses  
10 marijuana daily," and "last used methamphetamines six months ago and  
11 cocaine two years ago" and she noted heroin and PCP use. (AR 278).  
12 Dr. Campbell diagnosed Plaintiff with cannabis dependence. (AR 283).

13  
14 **C. Plaintiff And Cathy Wooley's Testimony**

15  
16 **1. Plaintiff**

17  
18 Plaintiff testified that he usually sees a doctor "[o]nce every  
19 month." (AR 24). Plaintiff stated that he has been a patient of Dr.  
20 Janik for a "year and a half maybe." (AR 24). Plaintiff testified that  
21 he cannot work due to his mental condition:

22  
23 I just don't know when I'm going to burst out or some days I  
24 just don't want to wake up. I feel, just don't feel like  
25 going and, I just can't deal with coping with people telling  
26 me what to do all the time. It's hard for me to do that.

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1 (AR 22). Plaintiff stated that he worked for his father for a few  
2 years, but that "[his] father . . . doesn't want [Plaintiff] going to  
3 work because of [Plaintiff's] outbursts. [Plaintiff's father] doesn't  
4 want [Plaintiff] to be around there." (AR 22-23). When asked if he  
5 looked for other employment, Plaintiff stated "[y]eah, but I just  
6 haven't, I just don't feel like doing it. I tried but I just can't seem  
7 to get on it and do it every day." (AR 23). Plaintiff testified that  
8 during the day he "swim[s]. Sometimes [Plaintiff] just get[s] real mad.  
9 [Plaintiff] just go[es] swimming. [Plaintiff doesn't] know what else to  
10 do really." (AR 23). Plaintiff further explained that he usually  
11 spends "[f]our hours a day" in the pool. (AR 23). During the winter,  
12 Plaintiff testified that he "[j]ust eat[s] and watch[es] TV and that's  
13 about it." (AR 23). Plaintiff has not applied for any work at all in  
14 the past year. (AR 26). Plaintiff further testified:

15  
16 It bothers [Plaintiff] that [he] can't go to school and do  
17 what they ask [him] to do. [Plaintiff] get[s] pissed about  
18 things [that Plaintiff does not] agree with and [Plaintiff  
19 has] to do it. [Plaintiff] just [doesn't] want to deal with  
20 that. That's why [Plaintiff does not] want to get in trouble  
21 with [him] outbursts so [he] just (inaudible) to even bother.

22  
23 (AR 25). Plaintiff stated that he has felt suicidal in the past. (AR  
24 26). Plaintiff affirmed that his only symptoms are anger and suicidal  
25 thinking. (AR 27). Plaintiff testified that he also somewhat has  
26 problems with OCD. (AR 27-28). Plaintiff also stated that he does not  
27 sleep well and that he hears voices everyday. (AR 28-29). Plaintiff  
28 takes Lamictal and he stated that it improves his condition. (AR 27).

1           **2. Cathy Wooley**

2  
3           Cathy Wooley, Plaintiff's mother, submitted a Third Party Function  
4 Report on May 17, 2009, and testified at the administrative hearing.  
5 (AR 31-39, 139-146). Wooley reported that "[Plaintiff] has a very short  
6 attention span. [Plaintiff] angers quickley (sic) and sometimes he[']s  
7 a danger to himself and others." (AR 139). Wooley noted that Plaintiff  
8 "[s]pends time drawing, smoking, arguing with family, naping (sic), and  
9 complaining about most everything." (Id.). Wooley stated that  
10 "[s]ometimes [Plaintiff] needs [a] reminder to take a shower and to  
11 eat." (AR 141). Wooley noted that "[Plaintiff] has to (sic) much rage  
12 sometimes" and that "[i]t's like walking on eggshells with [Plaintiff].  
13 You never no (sic) when he[']s going to blow up." (AR 142, 144).

14  
15           Wooley reported that Plaintiff has difficulty "[c]ompleting tasks,  
16 concentrat[ing], following [i]nstructions, and getting along with others  
17 . . . [because] of his bipolar [condition.]" (AR 144). Wooley also  
18 noted that Plaintiff "[d]oesn't have the patience to read instructions"  
19 and that he does "not get a [l]ong (sic) with authority figures" because  
20 "[Plaintiff] tends to mouth off." (AR 144-45). Wooley stated that  
21 Plaintiff "walked[ed] off [from work] or he was sent home for not  
22 getting along with others . . . because of his [l]anguage [and] out  
23 bursts." (AR 145).

24  
25           Wooley testified that she does not currently live with Plaintiff  
26 and sees Plaintiff "[a]bout every two days" for ten minutes. (AR 30-  
27 31). Wooley stated that she lived with Plaintiff until two months prior  
28 to the hearing. (AR 32). Wooley testified that Plaintiff threatens to

1 kill himself "every couple of weeks." (Id.). Wooley stated that  
2 Plaintiff has been depressed his whole life. (AR 33). Wooley also  
3 testified that "[she didn't] think the counseling helps much," but that  
4 the Lamictal "[is] helping [Plaintiff]." (AR 34).

5  
6 Wooley stated that Plaintiff's most difficult time is in the  
7 morning because he has no medicine in his system. (AR 34-35). Wooley  
8 noted that "[w]ithin an hour or so [of Plaintiff taking his medicine,]  
9 [Plaintiff] calms down[,] but it's just like walking on eggshells with  
10 [Plaintiff] all the time." (AR 35). Wooley stated that she has seen  
11 Plaintiff "punch his face" and "hit his [own] head on the wall." (Id.).  
12 Wooley testified that "[Plaintiff] can't control his anger." (AR 36).

13  
14 **D. The Vocational Expert's Testimony**

15  
16 Abbie May, an impartial vocational expert ("VE"), testified on June  
17 17, 2010. (AR 17-18, 40-43). The ALJ provided the following  
18 hypothetical question to the VE: "Assume a hypothetical individual the  
19 claimant's age, education, prior work experience or maybe no work  
20 experience. Assume this person has no exertional limitations; no work  
21 on dangerous machinery; requires a nonpublic setting with limited  
22 communication with fellow employees." (AR 41). The VE responded that  
23 a person with these limitations "could perform work as, various labor  
24 type jobs. A landscape laborer, unskilled . . . This person could also  
25 work as a construction laborer, unskilled . . . [or] [t]his person might  
26 also work a light occupation such as a laundry worker in the resorts."  
27 (AR 41- 42). The ALJ posed a second hypothetical question to the VE:  
28 "Assume a hypothetical individual[,] same restrictions [as the first

1 hypothetical above.] This person would be off task at least 20 percent  
2 of the time due to psychological based symptoms." (AR 42). The VE  
3 responded that this additional limitation "would preclude work." (Id.).  
4

5 **IV.**

6 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**  
7

8 To qualify for disability benefits, a claimant must demonstrate  
9 a medically determinable physical or mental impairment that prevents him  
10 from engaging in substantial gainful activity<sup>2</sup> and that is expected to  
11 result in death or to last for a continuous period of at least twelve  
12 months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing  
13 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant  
14 incapable of performing the work he previously performed and incapable  
15 of performing any other substantial gainful employment that exists in  
16 the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir.  
17 1999) (citing 42 U.S.C. § 423(d)(2)(A)).  
18

19 To decide if a claimant is entitled to benefits, an ALJ conducts  
20 a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are:  
21

- 22 (1) Is the claimant presently engaged in substantial gainful  
23 activity? If so, the claimant is found not disabled.  
24 If not, proceed to step two.
- 25 (2) Is the claimant's impairment severe? If not, the  
26

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27 <sup>2</sup> Substantial gainful activity means work that involves doing  
28 significant and productive physical or mental duties and is done for pay  
or profit. 20 C.F.R. §§ 404.1510, 416.910.



1 claimant is found not disabled. If so, proceed to step  
2 three.

3 (3) Does the claimant's impairment meet or equal one of a  
4 list of specific impairments described in 20 C.F.R. Part  
5 404, Subpart P, Appendix 1? If so, the claimant is  
6 found disabled. If not, proceed to step four.

7 (4) Is the claimant capable of performing his past work? If  
8 so, the claimant is found not disabled. If not, proceed  
9 to step five.

10 (5) Is the claimant able to do any other work? If not, the  
11 claimant is found disabled. If so, the claimant is  
12 found not disabled.

13  
14 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d  
15 949, 953-54 (9th Cir. 2001) (citing Tackett); 20 C.F.R. §§ 404.1520(b)-  
16 404.1520(f)(1) & 416.920(b)-416.920(f)(1).

17  
18 The claimant has the burden of proof at steps one through four, and  
19 the Commissioner has the burden of proof at step five. Bustamante, 262  
20 F.3d at 953-54 (citing Tackett). Additionally, the ALJ has an  
21 affirmative duty to assist the claimant in developing the record at  
22 every step of the inquiry. Id. at 954. If, at step four, the claimant  
23 meets his burden of establishing an inability to perform past work, the  
24 Commissioner must show that the claimant can perform some other work  
25 that exists in "significant numbers" in the national economy, taking  
26 into account the claimant's residual functional capacity,<sup>3</sup> age,

27  
28 <sup>3</sup> Residual functional capacity is "what [one] can still do  
despite [his] limitations" and represents an "assessment based upon all

1 education, and work experience. Tackett, 180 F.3d at 1098, 1100;  
2 Reddick, 157 F.3d at 721; 20 C.F.R. §§ 404.1520(f)(1), 416.920(f)(1).  
3 The Commissioner may do so by the testimony of a vocational expert or  
4 by reference to the Medical-Vocational Guidelines appearing in 20 C.F.R.  
5 Part 404, Subpart P, Appendix 2 (commonly known as "the Grids").  
6 Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001) (citing  
7 Tackett). When a claimant has both exertional (strength-related) and  
8 nonexertional limitations, the Grids are inapplicable and the ALJ must  
9 take the testimony of a vocational expert. Moore v. Apfel, 216 F.3d  
10 864, 869 (9th Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340  
11 (9th Cir. 1988)).

12  
13 **V.**

14 **THE ALJ'S DECISION**

15  
16 The ALJ employed the five-step sequential evaluation process  
17 discussed above. At the first step, the ALJ indicated that Plaintiff  
18 had not engaged in substantial gainful activity since April 27, 2009,  
19 the application date. (AR 11). Second, the ALJ found that Plaintiff  
20 suffers from mood disorder, marijuana dependence, and alcohol  
21 dependence. (Id.). At the third step, the ALJ found that "[Plaintiff  
22 did] not have an impairment or combination of impairments that [met] or  
23 medically [equaled] one of the listed impairments in 20 CFR Part 404,  
24 Subpart P, Appendix 1." (Id.). In the fourth step of his analysis, the  
25 ALJ incorporated the limitations prescribed by the vocational expert and  
26  
27  
28 \_\_\_\_\_  
of the relevant evidence." 20 C.F.R. §§ 404.1545(a), 416.945(a).

1 the medical record in formulating Plaintiff's residual function  
2 capacity:

3  
4 After careful examination of the entire record, [the ALJ  
5 found] that [Plaintiff] has the residual function capacity to  
6 perform a full range of work at all exertional levels[,] but  
7 with the following nonexertional limitations: [Plaintiff] is  
8 limited to work in a non-public setting and should have  
9 limited interaction with coworkers and supervisors.  
10 [Plaintiff] should not work around moving or dangerous  
11 machinery because of his substance abuse.

12  
13 (AR 12). The ALJ noted that he "[gave] very limited weight to [the]  
14 check sheet from Dr. Janik because it is not consistent with or  
15 supported by the other medical evidence including Dr. Janik's own  
16 treatment records." (AR 13) The ALJ instead noted that he "[gave]  
17 great weight to the assessment of the psychological consulting  
18 examiner." (Id.).

19  
20 With respect to Plaintiff's testimony, the ALJ "found that  
21 [Plaintiff's] allegations about his impairments [were] not fully  
22 credible . . . . In general, [the ALJ noted that Plaintiff's] statements  
23 concerning the intensity, persistence and limiting effects of his  
24 symptoms [were] credible only to the extent that they [were] consistent  
25 with the . . . residual functional capacity assessment." (AR 14).  
26 Further, the ALJ "considered the Third Party Function Report form  
27 completed by Cathy Wooley, mother of [Plaintiff], dated May 17, 2009.  
28 . . . Ms. Wooley state[d] that [Plaintiff's] activities [were] very

1 limited due to his mental impairments. Although the mother [was]  
2 obviously concerned about [Plaintiff's] well-being, she [was] not a  
3 medical professional or otherwise qualified to diagnose severe  
4 impairments or to assess their effect on [Plaintiff's] ability to  
5 perform work-related activities. [The ALJ] [t]herefore [gave] very  
6 little probative weight to the Third Party Function Report." (Id.).

7  
8 The ALJ found that "[Plaintiff] is unable to perform any past  
9 relevant work[,] " but that Plaintiff "is capable of making a successful  
10 adjustment to other work that exists in significant numbers in the  
11 national economy." (AR 14-15). The ALJ therefore concluded that  
12 Plaintiff is not disabled. (AR 15).

13  
14 **VI.**  
15 **STANDARD OF REVIEW**  
16

17 Under 42 U.S.C. § 405(g), a district court may review the  
18 Commissioner's decision to deny benefits. The court may set aside the  
19 Commissioner's decision when the ALJ's findings are based on legal error  
20 or are not supported by substantial evidence in the record as a whole.  
21 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citing  
22 Tackett, 180 F.3d at 1097); Smolen v. Chater, 80 F.3d 1273, 1279 (9th  
23 Cir. 1996) (citing Fair v. Bowen, 885 F.2d 597, 601 (9th Cir. 1989)).  
24 "Substantial evidence is more than a scintilla, but less than a  
25 preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v. Chater,  
26 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant evidence which  
27 a reasonable person might accept as adequate to support a conclusion."  
28 Id. (citing Jamerson, 112 F.3d at 1066; Smolen, 80 F.3d at 1279). To

1 determine whether substantial evidence supports a finding, the court  
2 must “consider the record as a whole, weighing both evidence that  
3 supports and evidence that detracts from the [Commissioner’s]  
4 conclusion.” Aukland, 257 F.3d at 1035 (citing Penny v. Sullivan, 2  
5 F.3d 953, 956 (9th Cir. 1993)). If the evidence can reasonably support  
6 either affirming or reversing that conclusion, the court may not  
7 substitute its judgment for that of the Commissioner. Reddick, 157 F.3d  
8 at 720-21 (citing Flaten v. Sec’y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

9  
10 **VII.**

11 **DISCUSSION**

12  
13 Plaintiff contends that remand is required because the ALJ: (1)  
14 improperly considered the opinions of Consultative Examiner Robin  
15 Campbell and (2) improperly discredited Wooley’s Third Party Function  
16 Report. (Memorandum in Support of Complaint (“Compl. Mem.” at 2-7)).<sup>4</sup>  
17 The Court finds that remand is not required based upon these claims.

18  
19 **A. The ALJ Properly Considered the Opinion of Robin Rhodes Campbell**

20  
21 Plaintiff argues that while the “ALJ [gave] ‘great weight’ to Dr.  
22 Campbell’s opinions[,] [the ALJ] overlooked [Dr. Campbell’s] opinion  
23 about stress.” (Compl. Mem. at 2). “Although [the ALJ] credited Dr.  
24

---

25  
26 <sup>4</sup> The Court notes that Plaintiff does not contest the ALJ’s  
27 treatment of Dr. Janik’s findings, nor the ALJ’s rejection of  
28 Plaintiff’s credibility. (See Compl. Mem. at 2-7). Plaintiff instead  
limits his contentions to (A) the ALJ’s treatment of Consultative  
Examiner Robin Campbell’s report and (B) the ALJ’s rejection of the  
Third Party Testimony by Cathy Wooley. (See id.).

1 Campbell generally, [the ALJ] did not even mention Dr. Campbell's  
2 opinion about stress. [The ALJ] thereby implicitly denied it [and] [b]y  
3 so doing, the ALJ erred." (Id.). Plaintiff further noted that "Dr.  
4 Campbell's observation about stress corroborates the lay observations  
5 of Cathy Wooley . . . who indicated that Plaintiff could not deal with  
6 stress and in fact would sometimes react to it by violence." (Id. at  
7 4). The Court disagrees.

8  
9 Here, Plaintiff's allegation that the ALJ erred in overlooking Dr.  
10 Campbell's opinion about stress is without merit. Dr. Campbell examined  
11 Plaintiff at the Agency's request. (See AR 42-43, 276). As noted  
12 above, Dr. Campbell diagnosed Plaintiff with cannabis dependence and  
13 mood disorder. (AR 283). Dr. Campbell also noted that unemployment is  
14 a psychosocial stressor for Plaintiff. (Id.). With respect to stress,  
15 Dr. Campbell noted that "[Plaintiff's] ability to withstand the stress  
16 and changes associated with an eight-hour workday and day-to-day work  
17 activities [was] mildly to moderately impaired." (Id.).

18  
19 The record refutes Plaintiff's claim that the ALJ failed to  
20 properly consider or discuss Dr. Campbell's findings with respect to  
21 Plaintiff's stress levels. In his discussion of Dr. Campbell's opinion,  
22 the ALJ specifically noted that Dr. Campbell reported that "[Plaintiff]  
23 would have mild to moderate impairment dealing with workday stresses and  
24 changes and moderate to marked difficulty relating to the public,  
25 supervisors, and coworkers." (AR 13). After considering Dr. Campbell's  
26 opinion, as well as the remaining medical evidence, the ALJ included  
27 certain mental limitations in Plaintiff's residual function capacity.  
28 Specifically, the ALJ included "the following nonexertional limitations:

1 [Plaintiff] is limited to work in a non-public setting and should have  
2 limited interaction with coworkers and supervisors. [Plaintiff] should  
3 not work around moving or dangerous machinery because of his substance  
4 abuse." (AR 12). Further, in his hypothetical to the VE, the ALJ  
5 included these limitations: "no work on dangerous machinery; requires  
6 a nonpublic setting with limited communication with fellow employees."  
7 (AR 41). Thus, the Court concludes that the ALJ properly assessed  
8 Plaintiff's RFC and included limitations suggested by Dr. Campbell's  
9 August 18, 2010 psychological evaluation. Plaintiff's claim that the  
10 ALJ failed to consider Dr. Campbell's opinion with respect to  
11 Plaintiff's stress level is undermined by the record.

12  
13 Moreover, Dr. Campbell's findings do not support Plaintiff's claims  
14 of disability. As noted, Dr. Campbell found that "[Plaintiff's] thought  
15 processes were linear and goal-directed with no loosening of  
16 associations, flight of ideas, racing thoughts, thought blocking,  
17 thought insertion, withdrawal or broadcasting." (AR 279). Further, Dr.  
18 Campbell noted that "[Plaintiff] exhibited no evidence of auditory or  
19 visual hallucinations, delusions, or illusions. There were no  
20 obsessions, compulsions, or paranoia. [Plaintiff] denied current  
21 suicidal or homicidal ideation, plan or intent." (Id.). Dr. Campbell  
22 stated that "[Plaintiff] was alert and oriented to person, place, time,  
23 and situation. [Plaintiff] did not present with obvious cognitive  
24 delays." (Id.) In terms of Plaintiff's ability to concentrate, Dr.  
25 Campbell stated that "[Plaintiff's] attention was unimpaired" and  
26 "[Plaintiff's] concentration was adequate for conversation and time-  
27 limited assessment tasks." (Id.). In addition, Dr. Campbell found  
28 that "[Plaintiff's] insight and judgment were good. [Plaintiff]

1 demonstrated no impairment in social and common sense understanding."  
2 (Id.). Furthermore, Dr. Campbell noted that "[t]he [Plaintiff] would  
3 have no impairment in understanding, remembering, and carrying out  
4 short, simple instructions. In addition, [Plaintiff's] ability to  
5 understand, remember, and carry out detailed instructions would be  
6 unimpaired. [Plaintiff] would be unimpaired in his ability to make  
7 judgment on simple, work-related decisions." (AR 283). These findings  
8 support the ALJ's RFC determination.

9  
10 Furthermore, Dr. Campbell's assessment is corroborated by the  
11 findings of Dr. Paxton and Dr. Bitar. In his functional capacity  
12 assessment, Dr. Paxton stated that "[Plaintiff] is able to understand  
13 and remember simple but not detailed tasks[;] [Plaintiff] is able to  
14 maintain concentration, pace and persistence over a normal work day and  
15 work week[;] [Plaintiff] should have limited public contact[;] and  
16 [Plaintiff] is able to adapt to normal work environment and situations."  
17 (AR 216). After Plaintiff's 5150 hold, Dr. Adib Bitar noted that  
18 Plaintiff's "[p]rognosis [was] good [at the time of release] if the  
19 [Plaintiff] abstain[ed] from polysubstance abuse, and continue[d]  
20 treatment with Lamictal and outpatient treatment." (AR 207).

21  
22 Even if the ALJ should have considered additional non-exertional  
23 limitations, this consideration would have only led to a slight  
24 modification of the RFC, and therefore any error was harmless error.  
25 See Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1162 (9th Cir.  
26 2008) (if ALJ's error was inconsequential to the ultimate nondisability

27 \\  
28 \\  
29



1 determination, no remand required); Burch v. Barnhart, 400 F.3d 676, 679  
2 (9th Cir. 2005) (“A decision of the ALJ will not be reversed for errors  
3 that are harmless.”). No remand is required.  
4

5 **B. The ALJ Properly Rejected Wooley’s Third Party Statement**  
6

7 Plaintiff also argues that the “ALJ did not give a reason germane  
8 to Ms. Wooley for rejecting her written report.” (Compl. Mem. at 5).  
9 Specifically, Plaintiff contends that the “ALJ erred in rejecting Ms.  
10 Wooley’s testimony on the ground that she did not have the medical  
11 expertise necessary to offer such observations.” (Id. at 6). Plaintiff  
12 further argues that the ALJ’s rationale “is a categorical statement that  
13 could apply to most if not all lay witnesses. It is also inaccurate:  
14 Ms. Wooley did not attempt to diagnose a condition. [Ms. Wooley] merely  
15 reported relevant observations of symptoms and limitations that affect  
16 Plaintiff’s ability to work.” (Id. at 5). While the Court agrees that  
17 the reason provided by the ALJ was a reason that would be germane to  
18 many lay witnesses, and therefore is arguably not a proper reason for  
19 rejecting Wooley’s testimony, the Court finds that such error was  
20 harmless error here.  
21

22 The ALJ stated that he “considered the Third Party Function Report  
23 form completed by Cathy Wooley, mother of the claimant, dated May 17,  
24 2009. Ms. Wooley state[d] that [Plaintiff’s] activities are very  
25 limited due to his mental impairments. Although the mother is obviously  
26 concerned about [Plaintiff’s] well-being, she is not a medical  
27 professional or otherwise qualified to diagnose severe impairments or  
28 to assess their effect on [Plaintiff’s] ability to perform work-related

1 activities. Therefore, [the ALJ gave] very little probative weight to  
2 the Third Party Function Report." (AR 14).

3  
4 The ALJ is required to consider the credibility of lay testimony  
5 concerning a plaintiff's ability to work. Bruce v. Astrue, 557 F.3d  
6 1113, 1115 (9th Cir. 2009). If an ALJ rejects lay witness testimony,  
7 the ALJ must provide specific reasons that are germane to each witness  
8 whose testimony he rejects. Id. (citing Stout v. Comm'r, Soc. Sec.  
9 Admin., 454 F.3d 1050, 1054 (9th Cir. 2006)); see also Carmickle, 533  
10 F.3d at 1164 (noting that an ALJ need only provide reasons "germane to  
11 [the] witness" for rejecting lay witness testimony). An ALJ need not  
12 discuss "medical diagnoses" made by lay witnesses because they "are  
13 beyond the competence of lay witnesses and therefore do not constitute  
14 competent evidence." Nguyen v. Chater, 100 F.3d 1462, 1467 (9th Cir.  
15 1996) (citing 20 C.F.R. § 404.1513(a)). "However, lay witness testimony  
16 as to a claimant's symptoms or how an impairment affects ability to work  
17 is competent evidence, and therefore cannot be disregarded without  
18 comment." Id. (internal citations omitted).

19  
20 Wooley submitted a Third Party Function Report on May 17, 2009 and  
21 testified at the administrative hearing. (AR 31-39, 139-146). With  
22 respect to Plaintiff's medical condition, Wooley reported that Plaintiff  
23 has difficulty "[c]ompleting tasks, concentrat[ing], following  
24 [i]nstructions, and getting along with others . . . [because] of his  
25 bipolar [condition.]" (AR 144). Wooley also noted that Plaintiff  
26 "[d]oesn't have the patience to read instructions" and that he does "not  
27 get a [l]ong (sic) with authority figures" because "[Plaintiff] tends  
28 to mouth off." (AR 144-45). Wooley stated that Plaintiff "walked[ed]

1 off [from work] or he was sent home for not getting along with others  
2 . . . because of his [l]anguage [and] outbursts." (AR 145). Wooley  
3 testified that Plaintiff has been depressed his whole life. (AR 33).  
4 Wooley also stated that "[she didn't] think the counseling helps much,"  
5 but that the Lamictal "[was] helping [Plaintiff]." (AR 34).

6  
7 Here, the ALJ expressly considered Wooley's statements. (See AR  
8 14). Wooley offered her opinions as to how Plaintiff's mental condition  
9 affected Plaintiff's ability to concentrate and work. (See AR 144).  
10 While the reason given for rejecting her testimony was a reason that was  
11 germane to the witness, i.e., she was not a medical professional, it was  
12 a reason that would be germane to most lay witnesses. The Court agrees  
13 that the ALJ's proffered reason was not a legitimate reason to reject  
14 a lay witnesses' testimony.

15  
16 However, such error was harmless error because the decision remains  
17 legally valid. See Keyser v. Commissioner Social Sec. Admin., \_\_\_ F.3d  
18 \_\_\_, 2011 WL 2138237, at \* 6 (9th Cir. June 1, 2011) ("an error  
19 'inconsequential to the ultimate nondisability determination' is  
20 harmless") (quoting Stout, 454 F.3d at 1055). Wooley's testimony was  
21 merely cumulative of Plaintiff's own testimony, which was properly  
22 rejected. Even if the ALJ should have given greater weight to Wooley's  
23 report and testimony, this consideration would have only led to a slight  
24 modification of the RFC, and therefore any error was harmless error  
25 because the ALJ would have continued to find Plaintiff not entitled to  
26 benefits. No reasonable ALJ would have reached a different decision  
27 based upon this evidence, even if Wooley's statements were fully  
28 credited. See Stout, 454 F.3d at 1056 ("[Where the ALJ's error lies in

1 a failure to properly discuss competent lay testimony favorable to the  
2 claimant, a reviewing court cannot consider the error harmless unless  
3 it can confidently conclude that no reasonable ALJ, when fully crediting  
4 the testimony, could have reached a different determination."").

5  
6 The Court finds that the ALJ's conclusion that Plaintiff can  
7 perform work with certain nonexertional limitations is supported by  
8 substantial evidence in the record. Accordingly, no remand is required.

9  
10 **VIII.**  
11 **CONCLUSION**

12  
13 Consistent with the foregoing, IT IS ORDERED that Judgment be  
14 entered AFFIRMING the decision of the Commissioner and dismissing this  
15 action with prejudice. IT IS FURTHER ORDERED that the Clerk of the  
16 Court serve copies of this Order and the Judgment on counsel for both  
17 parties.

18  
19  
20 DATED: August 4, 2011

21  
22 \_\_\_\_\_/S/  
23 SUZANNE H. SEGAL  
24 UNITED STATES MAGISTRATE JUDGE  
25  
26  
27  
28