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

HUMBERTO ROMERO,)	Case No. EDCV 12-0615-JPR
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
vs.)	AFFIRMING THE COMMISSIONER
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security, ¹)	
)	
Defendant.)	
)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying his application for Social Security disability insurance benefits ("DIB") and Supplemental Security Income benefits ("SSI"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed January 2, 2013, which the Court has taken

¹ On February 14, 2013, Colvin became the Acting Commissioner of Social Security. Pursuant to Federal Rule of Civil Procedure 25(d), the Court therefore substitutes Colvin for Michael J. Astrue as the proper Respondent.

1 under submission without oral argument. For the reasons stated
2 below, the Commissioner's decision is affirmed and this action is
3 dismissed.

4 **II. BACKGROUND**

5 Plaintiff was born on February 17, 1951. (Administrative
6 Record ("AR") 32.) He has some elementary-school education and
7 speaks "some" English. (AR 32-33, 218.) Plaintiff previously
8 worked as a warehouse worker and assembler. (AR 43.)

9 On April 10, 2009, Plaintiff filed applications for DIB and
10 SSI. (AR 14, 60-61.) Plaintiff alleged that he had been unable
11 to work since April 20, 2007, because of his status after hip
12 replacement, osteoarthritis of the left shoulder, obesity, and a
13 mood disorder. (Id.) His applications were denied initially, on
14 July 14, 2009 (AR 80-85), and upon reconsideration, on October
15 23, 2009 (AR 88-93).

16 After Plaintiff's applications were denied, he requested a
17 hearing before an ALJ. (AR 94-97.) A hearing was held on
18 October 19, 2010, at which Plaintiff, who was represented by
19 counsel, appeared and testified through an interpreter; a medical
20 expert, a vocational expert ("VE"), and Plaintiff's son also
21 testified. (AR 29-54.) In a written decision issued on December
22 8, 2010, the ALJ determined that Plaintiff was not disabled. (AR
23 8-28.) On March 28, 2012, the Appeals Council denied Plaintiff's
24 request for review. (AR 1-5.) This action followed.

25 **III. STANDARD OF REVIEW**

26 Pursuant to 42 U.S.C. § 405(g), a district court may review
27 the Commissioner's decision to deny benefits. The ALJ's findings
28 and decision should be upheld if they are free of legal error and

1 supported by substantial evidence based on the record as a whole.
2 § 405(g); Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct.
3 1420, 1427, 28 L. Ed. 2d 842 (1971); Parra v. Astrue, 481 F.3d
4 742, 746 (9th Cir. 2007). Substantial evidence means such
5 evidence as a reasonable person might accept as adequate to
6 support a conclusion. Richardson, 402 U.S. at 401; Lingenfelter
7 v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than
8 a scintilla but less than a preponderance. Lingenfelter, 504
9 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d 880,
10 882 (9th Cir. 2006)). To determine whether substantial evidence
11 supports a finding, the reviewing court "must review the
12 administrative record as a whole, weighing both the evidence that
13 supports and the evidence that detracts from the Commissioner's
14 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
15 1996). "If the evidence can reasonably support either affirming
16 or reversing," the reviewing court "may not substitute its
17 judgment" for that of the Commissioner. Id. at 720-21.

18 **IV. THE EVALUATION OF DISABILITY**

19 People are "disabled" for purposes of receiving Social
20 Security benefits if they are unable to engage in any substantial
21 gainful activity owing to a physical or mental impairment that is
22 expected to result in death or which has lasted, or is expected
23 to last, for a continuous period of at least 12 months. 42
24 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257
25 (9th Cir. 1992).

26 **A. The Five-Step Evaluation Process**

27 The ALJ follows a five-step sequential evaluation process in
28 assessing whether a claimant is disabled. 20 C.F.R.

1 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,
2 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first
3 step, the Commissioner must determine whether the claimant is
4 currently engaged in substantial gainful activity; if so, the
5 claimant is not disabled and the claim must be denied.

6 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If the claimant is not
7 engaged in substantial gainful activity, the second step requires
8 the Commissioner to determine whether the claimant has a "severe"
9 impairment or combination of impairments significantly limiting
10 his ability to do basic work activities; if not, a finding of not
11 disabled is made and the claim must be denied.

12 §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the claimant has a
13 "severe" impairment or combination of impairments, the third step
14 requires the Commissioner to determine whether the impairment or
15 combination of impairments meets or equals an impairment in the
16 Listing of Impairments ("Listing") set forth at 20 C.F.R., Part
17 404, Subpart P, Appendix 1; if so, disability is conclusively
18 presumed and benefits are awarded. §§ 404.1520(a)(4)(iii),
19 416.920(a)(4)(iii). If the claimant's impairment or combination
20 of impairments does not meet or equal an impairment in the
21 Listing, the fourth step requires the Commissioner to determine
22 whether the claimant has sufficient residual functional capacity
23 ("RFC")² to perform his past work; if so, the claimant is not
24 disabled and the claim must be denied. §§ 404.1520(a)(4)(iv),
25

26
27 ² RFC is what a claimant can still do despite existing
28 exertional and nonexertional limitations. 20 C.F.R. §§ 404.1545,
416.945; see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th
Cir. 1989).

1 416.920(a)(4)(iv). The claimant has the burden of proving that
2 he is unable to perform past relevant work. Drouin, 966 F.2d at
3 1257. If the claimant meets that burden, a prima facie case of
4 disability is established. Id. If that happens or if the
5 claimant has no past relevant work, the Commissioner then bears
6 the burden of establishing that the claimant is not disabled
7 because he can perform other substantial gainful work available
8 in the national economy. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).
9 That determination comprises the fifth and final step in the
10 sequential analysis. §§ 404.1520, 416.920; Lester, 81 F.3d at
11 828 n.5; Drouin, 966 F.2d at 1257.

12 B. The ALJ's Application of the Five-Step Process

13 At step one, the ALJ found that Plaintiff had not engaged in
14 any substantial gainful activity since April 20, 2007. (AR 16.)
15 At step two, the ALJ concluded that Plaintiff had the severe
16 impairments of "status post hip replacement, osteoarthritis of
17 the left shoulder and lumbar spine, and obesity." (AR 16.) He
18 concluded that Plaintiff's "medically determinable mental
19 impairment of mood disorder" was not severe. (AR 17-18.) At
20 step three, the ALJ determined that Plaintiff's impairments did
21 not meet or equal any of the impairments in the Listing. (AR
22 18.) At step four, the ALJ found that Plaintiff retained the RFC
23 to perform "less than the full range of medium work," with
24 certain additional limitations. (AR 18-19.) Based on the VE's
25 testimony, the ALJ concluded that Plaintiff was unable to perform
26 any past relevant work as actually or generally performed. (AR
27 22.) At step five, the ALJ concluded that Plaintiff was not
28 disabled under the framework of the Medical-Vocational

1 Guidelines, 20 C.F.R. Part 404, Subpart P, Appendix 2, and that
2 jobs existed in significant numbers in the national economy that
3 Plaintiff could perform. (AR 22-23.) Based on the VE's
4 testimony, the ALJ found that Plaintiff could perform such jobs
5 as hand packager (DOT 920.587-018, 1991 WL 687916) and dining
6 room attendant (DOT 311.677-018, 1991 WL 672696). (AR 23.)
7 Accordingly, the ALJ determined that Plaintiff was not disabled.
8 (Id.)

9 **V. DISCUSSION**

10 Plaintiff alleges that the ALJ erred in (1) finding that his
11 mental impairment was not severe; (2) evaluating the lay-witness
12 testimony of Plaintiff's son; and (3) evaluating Plaintiff's
13 credibility.³ (J. Stip. at 3-4.)

14 A. The ALJ Did Not Err in Determining that Plaintiff's
15 Mood Disorder Was Not a Severe Impairment

16 Plaintiff first contends that the ALJ erred in determining
17 that his mood disorder was not a severe impairment. (J. Stip. at
18 3-6.) Reversal is not warranted on this basis because
19 substantial evidence in the record supports the ALJ's finding
20 that Plaintiff's mood disorder was not severe.

21 1. Applicable law

22 At step two of the sequential evaluation process, a
23 plaintiff has the burden to present evidence of medical signs,
24 symptoms, and laboratory findings that establish a medically
25 determinable physical or mental impairment that is severe and can

27 ³ The Court addresses Plaintiff's contentions in an order
28 different from that used by the parties, to avoid repetition and
for other reasons.

1 be expected to result in death or last for a continuous period of
2 at least 12 months. Ukolov v. Barnhart, 420 F.3d 1002, 1004-05
3 (9th Cir. 2005) (citing 42 U.S.C. §§ 423(d)(3), 1382c(a)(3)(D));⁴
4 see 20 C.F.R. §§ 404.1520, 416.920, 404.1509, 416.909.

5 Substantial evidence supports an ALJ's determination that a
6 claimant is not disabled at step two when "there are no medical
7 signs or laboratory findings to substantiate the existence of a
8 medically determinable physical or mental impairment." Ukolov,
9 420 F.3d at 1004-05 (citing SSR 96-4p). An impairment may never
10 be found on the basis of the claimant's subjective symptoms
11 alone. Id. at 1005.

12 Step two is "a de minimis screening device [used] to dispose
13 of groundless claims." Smolen v. Chater, 80 F.3d 1273, 1290 (9th
14 Cir. 1996). Applying the applicable standard of review to the
15 requirements of step two, a court must determine whether an ALJ
16 had substantial evidence to find that the medical evidence
17 clearly established that the claimant did not have a medically
18 severe impairment or combination of impairments. Webb v.
19 Barnhart, 433 F.3d 683, 687 (9th Cir. 2005); see also Yuckert v.
20 Bowen, 841 F.2d 303, 306 (9th Cir. 1988) ("Despite the deference
21 usually accorded to the Secretary's application of regulations,
22 numerous appellate courts have imposed a narrow construction upon
23 the severity regulation applied here."). An impairment or
24 combination of impairments is "not severe" if the evidence
25

26
27 ⁴ A "medical sign" is "an anatomical, physiological, or
28 psychological abnormality that can be shown by medically
acceptable clinical diagnostic techniques." Ukolov, 420 F.3d at
1005.

1 established only a slight abnormality that had "no more than a
2 minimal effect on an individual's ability to work." Webb, 433
3 F.3d at 686 (citation omitted).

4 2. Relevant facts

5 On April 27, 2007, Plaintiff was seen at Upland Community
6 Counseling by a clinician, Julie Porter, under the supervision of
7 Dr. Guia Montenegro, because of "depressive and psychotic"
8 symptoms. (AR 336-41.) After speaking with Plaintiff and his
9 daughter, Porter noted that Plaintiff was "extremely
10 unresponsive," reported eating and sleeping poorly, and was
11 capable of "very limited" "self-care." (AR 336-37.) Based on
12 speaking to his daughter, she noted that he appeared to have been
13 depressed for the past two years but with a "recent onset of
14 psychotic features (paranoia, delusional thinking)," in the
15 preceding two weeks. (Id.) She diagnosed Plaintiff with
16 "psychotic disorder [not otherwise specified]" and assessed a
17 Global Assessment of Functioning ("GAF") score of 20.⁵ (AR 341.)

18 Plaintiff was prescribed medications for his depression and
19 visited Dr. Montenegro approximately every one to two months
20 between 2007 and 2010 for checkups. (AR 342-44, 447-49.) On
21 January 25, 2008, Dr. Montenegro diagnosed Plaintiff with bipolar
22 disorder and assessed a GAF score of 45.⁶ (AR 341.) His

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24 ⁵ A GAF score of 20 indicates "[s]ome danger of hurting
25 self or others," "occasionally fail[ing] to maintain minimal
26 personal hygiene," or "gross impairment in communication." See
27 Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of
28 Mental Disorders 34 (4th ed. 2000).

27 ⁶ A GAF score of 45 indicates "serious symptoms ([e.g.]
28 suicidal ideation . . .) OR any serious impairment in social,
occupational or school functioning." See Am. Psychiatric Ass'n,

1 treatment notes between 2007 and 2010, however, indicate that
2 Plaintiff's symptoms markedly improved on medications and he had
3 few, if any, ongoing issues. (See AR 345-66, 418-61.) For
4 example, in May 2007, just a month after Plaintiff's original
5 symptoms of psychosis, Dr. Montenegro noted that Plaintiff's
6 affect was "better," he was "able to answer questions more than
7 the last visit," and his paranoia was "still present, but
8 improved." (AR 365.) In July 2007 Dr. Montenegro noted that
9 Plaintiff's affect was "improved," he was "more verbal," his
10 sleeping and eating habits had improved, and he had increased
11 energy. (AR 362.) In October 2007, Dr. Montenegro noted that
12 Plaintiff's affect was "markedly improved" and his "depression is
13 completely controlled." (AR 358.) In May 2008, Dr. Montenegro
14 noted that Plaintiff rode his bike on his own to his appointment,
15 denied auditory and visual hallucinations and paranoia, and had a
16 "good" appetite and a "stable" mood. (AR 351.) In April 2009,
17 Dr. Montenegro noted that Plaintiff came to his appointment by
18 himself, was "alert" and "compliant with medications," denied
19 auditory and visual hallucinations and paranoia, and was eating
20 and sleeping normally. (AR 345.) In March 2010, Dr. Montenegro
21 noted that Plaintiff came to his appointment by himself, had lost
22 15 pounds by dieting and walking 30 minutes a day for exercise,
23 denied auditory and visual hallucinations and paranoia, denied
24 being depressed, and had "no problems with meds." (AR 418.) In
25 August 2010, the most recent treatment notes in the record, Dr.
26 Montenegro noted that Plaintiff "came in good spirits," was

27
28 Diagnostic and Statistical Manual of Mental Disorders 34 (4th ed.
2000).

1 "compliant [with] medications," "feels better," "denies
2 depression," slept 10-11 hours a night, "watches his diet [and]
3 exercises," "walks 3 miles per day," denied audio and visual
4 hallucinations and paranoia, and had no problems with his
5 medications. (AR 458.)

6 On August 27, 2007, Plaintiff was evaluated by consulting
7 psychiatrist Dr. Ernest Bagner. (AR 303-06.) Dr. Bagner
8 diagnosed Plaintiff with "depressive disorder, not otherwise
9 specified," and assessed a GAF score of 73.⁷ (AR 305.) He noted
10 that Plaintiff had a "good" relationship with his friends and
11 family; his affect was "mood congruent"; his thought processes
12 were "tight"; his intellectual functioning was average; he was
13 "alert to person and place"; he had adequate fund of knowledge,
14 memory, concentration, abstractions, insight, and judgment; and
15 there was "no evidence of auditory or visual hallucinations" or
16 "paranoid or grandiose delusions." (AR 304-05.) Dr. Bagner
17 concluded that Plaintiff "does self-care and other activities of
18 daily living," "gets along well with family and friends," and, if
19 he "continues with psychiatric treatment, . . . should be
20 significantly better in less than six months." (AR 305-06.) Dr.
21 Bagner opined that Plaintiff would have "no limitations
22 interacting with supervisors, peers or the public," "zero to mild
23 limitations maintaining concentration and attention and
24

25 ⁷ A GAF score of 73 indicates that "[i]f symptoms are
26 present, they are transient and expectable reactions to
27 psychosocial stressors" and "no more than slight impairment in
28 social, occupational or school functioning." See Am. Psychiatric
Ass'n, Diagnostic and Statistical Manual of Mental Disorders 34
(4th ed. 2000).

1 completing simple tasks," "mild limitations completing complex
2 tasks and completing a normal workweek without interruption," and
3 "mild to moderate limitations handling normal stresses at work."
4 (AR 306.)

5 On September 5, 2007, consulting psychiatrist Dr. H. Amado
6 evaluated Plaintiff and filled out a Mental Residual Functional
7 Capacity Assessment form, noting that Plaintiff was "moderately
8 limited" in the ability to carry out detailed instructions,
9 maintain attention and concentration for extended periods,
10 complete a normal workday and workweek without interruptions from
11 psychologically based symptoms, perform at a consistent pace
12 without an unreasonable number and length of rest periods, and
13 respond appropriately to changes in the work setting. (AR 312-
14 13.) He found that Plaintiff was "not significantly limited" in
15 any other respect. (Id.) On the same day, Dr. Amado also
16 completed a Psychiatric Review Technique form, noting that
17 Plaintiff had depressive disorder, not otherwise specified, but
18 that insufficient evidence supported any other limitations. (AR
19 315-22.) He noted that Plaintiff had "moderate" difficulties in
20 maintaining concentration, persistence, or pace, "mild"
21 restrictions of activities of daily living and difficulties in
22 maintaining social functioning, and no episodes of
23 decompensation. (AR 323.) He noted that Plaintiff "has some
24 degree of psychomotor retardation . . . and mild/moderate
25 problems with sustained concentration . . . while the functional
26 information as per third-party seems to convey fairly pervasive
27 depression." (AR 325.) He concluded that although "[t]he
28 proposed Non-severe determination may be a little too optimistic

1 in this case," he "agree[d] that listings are not met and
2 therefore allegations are only partially supported." (AR 325.)

3 On June 3, 2009, Plaintiff underwent another consultative
4 psychiatric evaluation, by psychiatrist Dr. H. Skopec. (AR 367-
5 77.) Dr. Skopec noted that Plaintiff had depression and "mild"
6 restrictions of activities of daily living, "mild" difficulties
7 in maintaining social functioning and concentration, persistence,
8 or pace, and no episodes of decompensation. (Id.) He concluded
9 that Plaintiff was "partially credible" but "the psychiatric
10 [symptoms] do not significantly decrease [Plaintiff's] ability to
11 function." (AR 377.)

12 On June 22, 2007, Plaintiff's son Humberto Romero, Jr.,
13 filled out a Third Party Function Report, stating that Plaintiff
14 was "depressed," "hardly eats," refused to care for his personal
15 needs, had lost interest in cooking and doing chores, was "scared
16 to go outside," was unable to manage money, no longer pursued his
17 hobbies of "gardening, watching TV, [and] working on cars," was
18 "isolated" and "withdrawn from friends," could not handle "any
19 stress at all," and was "paranoid." (AR 224-31.) On the same
20 day, Plaintiff filled out a Function Report providing
21 substantially the same information. (AR 235-42.)

22 On April 26, 2009, Humberto Jr. filled out another Third
23 Party Function Report,⁸ stating that Plaintiff's daily activities
24

25 ⁸ Plaintiff's son gives his name as "Robert" on this
26 form, whereas the June 2007 form lists his name as "Humberto R.
27 Romero." The handwriting is the same on both forms, and it
28 appears that "Robert" may be Plaintiff's son's middle name. (See
AR 224, 255.) For clarity, the Court refers to him as "Humberto
Jr." (See AR 46.)

1 consisted of "eat[ing], sleep[ing], tak[ing] meds, and watch[ing]
2 TV" and then falling asleep, and "once a week [he] takes out
3 trash." (AR 254.) He stated that Plaintiff "sleeps at odd hours
4 (during day) and is lethargic," needed help with grooming and
5 personal care, and could not prepare meals. (AR 255-56.) He
6 also stated that Plaintiff mowed the lawn for 30 minutes every
7 two weeks and took out the trash for 15 minutes every week; went
8 outside for approximately one hour a day; did grocery shopping
9 once a week for 30 minutes; watched TV for two to three hours
10 daily; was able to "talk and share meals with family members";
11 and went to the doctor's office and to church. (AR 256-58.) He
12 stated that Plaintiff could not follow written instructions well
13 but could follow "very simple" spoken instructions and did not
14 have any problems with authority figures. (AR 259-60.) He
15 stated that "stress dampens disabled person['s] performance and
16 accuracy" and "disabled person does not respond well to changes
17 in routine." (AR 260.) He concluded by stating that Plaintiff
18 could drive "very little" "for short trips during the day" and
19 otherwise "walks to the local market and is driven everywhere
20 else"; Plaintiff was "socially withdrawn from church and cares
21 little of his physical appearance"; Plaintiff "lacks clarity of
22 thought and many times has trouble following simple directions";
23 and Plaintiff's "mental sharpness is clouded and does not
24 function at a normal level." (AR 261.) On the same day,
25 Plaintiff filled out a Function Report providing substantially
26 the same information. (AR 262-69.)

27 At the hearing, Plaintiff testified that he could not work
28 because he had ongoing problems with his hip, left knee, and

1 right shoulder after he was injured in a fall in 2006. (AR 34-
2 35, 295-96.) Although Plaintiff testified that he took
3 medications for his pain (AR 36), the only prescribed medications
4 appearing in the record were for depression, cholesterol, and
5 diabetes (AR 251, 283). The ALJ asked Plaintiff if he had "any
6 other medical conditions, either physical or mental," that he
7 claimed were disabling besides those stemming from his fall, and
8 Plaintiff replied "no, none." (AR 35.) The ALJ then asked if
9 Plaintiff's complaints "involve your hip, left knee, and you hit
10 your head and your right shoulder?" and Plaintiff responded,
11 "Yes." (Id.) It was only when later prompted by his attorney
12 that Plaintiff testified that he also had "emotional problems"
13 that limited his ability to work. (Id.) Plaintiff testified
14 that he "felt a lot of anxiety" when he first sought psychiatric
15 treatment in 2007, after having hip surgery, but answered "no"
16 when asked if he had "any other kinds of mental health symptoms."
17 (AR 35-36.) He testified that he had problems remembering things
18 "at times," but he "slept well at night . . . 10 or 11 hours."
19 (AR 36.)

20 Medical Expert Dr. Craig Rath then testified that he had
21 reviewed the medical evidence in the record, and it indicated
22 that Plaintiff had a medically determinable impairment of "mood
23 disorder not otherwise specified, with depression and anxiety
24 present." (AR 39.) Dr. Rath then summarized the treatment notes
25 from Dr. Montenegro and noted that they indicated that
26 Plaintiff's symptoms improved after he was placed on medication,
27 in April 2007; Dr. Rath concluded that Plaintiff "had an
28 emotional reaction to his physical situation which didn't last

1 very long, so there are durational issues and severity issues,
2 and no limitations." (AR 40.) When questioned by Plaintiff's
3 attorney, Dr. Rath reiterated that Plaintiff appeared to have
4 been "depressed for a short period of time with possibly some
5 psychotic symptoms, and he remained at some level of depression
6 and anxiety, but not so bad to be psychotic." (AR 41.) He
7 stated that a GAF score of 45 indicated "severe depression" but
8 that that score in January 2008 was not indicative of Plaintiff's
9 symptoms at that time because Dr. Montenegro did not perform a
10 "multiaxial diagnosis" to update the GAF score but instead noted
11 Plaintiff's progress in clinical notes. (AR 41-42.)

12 Humberto Jr. also testified at the hearing. (AR 46-52.) He
13 testified that Plaintiff stopped working in April 2007 after "an
14 onset of major depression," for which he started seeing Dr.
15 Montenegro. (AR 48.) He testified that Plaintiff had anxiety,
16 severe depression, and psychotic symptoms until he started seeing
17 Dr. Montenegro, who put him on medication. (AR 48-49.) He
18 stated that Plaintiff exercised and helped with grocery shopping,
19 and he "tried" to look for work but had trouble finding jobs he
20 was qualified to do. (AR 50-51.) He testified that Plaintiff's
21 condition was "managed pretty much with the medications" and
22 exercises, and his depression was "a little bit better, . . . a
23 little bit more stable" after he started taking psychiatric
24 medication, though his symptoms worsened when he didn't take his
25 medication. (Id.)

26 3. Analysis

27 In his written decision, the ALJ found that "a thorough
28 review of the objective record supports the diagnosis of mood

1 disorder, [not otherwise specified] with symptoms of depression
2 and anxiety" and that Plaintiff was "severely depressed for a
3 brief period of time, likely with psychotic features," but his
4 depression stabilized with medication and was not severe after
5 that brief period. (AR 17.) The ALJ summarized the medical
6 evidence from Dr. Bagner and Dr. Montenegro that indicated that
7 Plaintiff's mood improved with medication, and he also noted that
8 during the hearing Plaintiff said he had no impairments other
9 than physical ones until his attorney prompted him to testify
10 about his "emotional problems." (AR 17-18.) He concluded by
11 finding that Plaintiff's

12 mood disorder is a non-severe impairment because it
13 results in only minimal limitations of functioning.
14 Specifically, there are mild restrictions of activities
15 of daily living, difficulties in maintaining social
16 functioning, and difficulties in maintaining
17 concentration, persistence or pace. Furthermore, there
18 are no episodes of decompensation. This is supported by
19 the findings of two reviewing physicians for the State
20 agency who opined the claimant's mental impairment was
21 non-severe. This opinion is assessed great weight
22 because it is consistent with the evidence of record and
23 the medical expert's opinion.

24 Thus, the claimant's medically determinable mental
25 impairment does not cause minimal limitations in the
26 claimant's ability to perform basic mental work
27 activities and is therefore non-severe.

28 (AR 18 (citations omitted).)

1 Substantial evidence supports the ALJ's finding that
2 Plaintiff's mood disorder was not severe. Although evidence in
3 the record shows that Plaintiff had some type of mood disorder,
4 the existence of a mood disorder alone does not constitute a
5 severe impairment if it does not prevent a person from working.
6 See 20 C.F.R. § 404.1520(c) (severe impairment is one that
7 "significantly limits [claimant's] physical or mental ability to
8 do basic work activities"), § 416.920(c) (same). Dr.
9 Montenegro's notes from May 2007 to August 2010 show that
10 Plaintiff's condition improved steadily after he was placed on
11 medication, and by as early as October 2007 Plaintiff's affect
12 was "markedly improved" and his depression was "completely
13 controlled." (AR 358; see AR 342-44, 447-49.) All the way up
14 until August 2010, Plaintiff continued to show few, if any,
15 symptoms. In August 2010, just two months before the ALJ hearing
16 and the most recent notes in the record, Dr. Montenegro noted
17 that Plaintiff was "in good spirits," was "compliant [with]
18 medications," "feels better," "denies depression," slept 10 to 11
19 hours a night, "watches his diet [and] exercises," "walks 3 miles
20 per day," denied audio and visual hallucinations and paranoia,
21 and had no problems with his medications. (AR 458.) Drs.
22 Bagner's and Skopec's reports showed that Plaintiff's mood
23 disorder caused no more than minimal limitations on his ability
24 to work. (See AR 303-06, 312-25, 367-77.) Based on the
25 aforementioned evidence, the ALJ reasonably concluded that
26 Plaintiff's mood disorder was effectively controlled with
27 medication and did not affect his ability to work. (AR 17); see
28 20 C.F.R. § 404.1529(c)(4)(iv) (ALJ may consider effectiveness of

1 medication in evaluating severity and limiting effects of
2 impairment), § 416.929(c)(4)(iv) (same); Beck v. Astrue, 303 F.
3 App'x 455, 457 (9th Cir. 2008) (holding that substantial evidence
4 supported ALJ's finding that plaintiff's "sleep apnea and
5 depression with anxiety are not severe impairments" because
6 conditions could be "controlled effectively" with treatment and
7 medical records "[did] not indicate any severe problems"); Warre
8 v. Comm'r of Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir.
9 2006) ("Impairments that can be controlled effectively with
10 medication are not disabling for the purpose of determining
11 eligibility for SSI benefits."); see also Fields v. Astrue, No.
12 EDCV 07-1442-JTL, 2008 WL 4384248, at *7 (C.D. Cal. Sept. 3,
13 2008) (holding that substantial evidence supported ALJ's finding
14 that plaintiff's depression was "not severe and adequately
15 controlled with mild anti-depressive medication with no more than
16 mild functional limitations" because record showed that plaintiff
17 "responds well to medications").

18 Dr. Rath's hearing testimony also supported the ALJ's
19 determination that Plaintiff's mood disorder was not severe. The
20 ALJ found that Dr. Rath's opinion was consistent with the medical
21 record. (AR 17.) Substantial evidence supported that finding;
22 as noted above, virtually all of the medical evidence in the
23 record showed that Plaintiff's mood disorder was effectively
24 treated with medication and was not severe. The ALJ was
25 therefore entitled to rely on Dr. Rath's corroborative testimony
26 as further evidence that Plaintiff's mood disorder was not
27 severe. See Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir.
28 2002) ("The opinions of non-treating or non-examining physicians

1 may also serve as substantial evidence when the opinions are
2 consistent with independent clinical findings or other evidence
3 in the record."); Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d
4 595, 600 (9th Cir. 1999) ("Opinions of a nonexamining, testifying
5 medical advisor may serve as substantial evidence when they are
6 supported by other evidence in the record and are consistent with
7 it" (citing Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir.
8 1995)); see 20 C.F.R. §§ 404.1527(c)(4) (ALJ will generally give
9 more weight to opinions that are "more consistent . . . with the
10 record as a whole"), 416.927(c)(4) (same). Dr. Rath reviewed all
11 of the medical evidence and heard Plaintiff testify before
12 rendering his opinion. See 20 C.F.R. §§ 404.1527(c)(3) (in
13 weighing medical opinions, ALJ "will evaluate the degree to which
14 these opinions consider all of the pertinent evidence in
15 [claimant's] claim, including opinions of treating and other
16 examining sources"), 416.927(c)(3) (same). Moreover, the ALJ
17 could credit Dr. Rath's opinion because he testified at the
18 hearing and was subject to cross-examination. See Andrews, 53
19 F.3d at 1042 (greater weight may be given to nonexamining doctors
20 who are subject to cross-examination).

21 To the extent Plaintiff ever had a "severe" mood disorder,
22 the ALJ properly found that it did not last very long. (AR 17.)
23 An impairment is not severe unless it has lasted or is expected
24 to last for a continuous period of at least 12 months. 20 C.F.R.
25 §§ 404.1520(a)(4)(ii) ("If you do not have a severe medically
26 determinable physical or mental impairment that meets the
27 duration requirement in § 404.1509 . . . , we will find that you
28 are not disabled."), 416.920(a)(4)(ii) (same, referencing

1 durational requirement in § 416.909); id. §§ 404.1509 (impairment
2 "must have lasted or must be expected to last for a continuous
3 period of at least 12 months"), 416.909 (same). Dr. Montenegro's
4 notes reflect that by May 2007, only a month after Plaintiff was
5 first diagnosed with depression, his symptoms had started to
6 improve (AR 365), and by October 2007 Plaintiff's affect was
7 "markedly improved" and his "depression [was] completely
8 controlled" (AR 358). In August 2007, Dr. Bagner evaluated
9 Plaintiff, found that Plaintiff would have only mild to moderate
10 limitations handling normal stresses at work and zero to mild
11 limitations in all other aspects, diagnosed him with a GAF score
12 of 73 (indicating little to no impairment), and found that if he
13 continued with treatment Plaintiff "should be significantly
14 better in less than six months." (AR 305-06.) In September 2007
15 Dr. Amado evaluated Plaintiff and concluded that Plaintiff was
16 only moderately limited in certain abilities and not
17 significantly limited in any other respect. (AR 312-13.) After
18 reviewing the evidence, Dr. Rath agreed that Plaintiff's mood
19 disorder did not meet the 12-month durational requirement. (AR
20 39-40.) Substantial evidence thus supported the ALJ's finding
21 that Plaintiff's mood disorder, to the extent it was ever
22 "severe," did not last for the requisite 12 months.

23 Plaintiff argues that Dr. Montenegro's assessment of a GAF
24 score of 45 in January 2008 shows that Plaintiff's condition had
25 not improved over time. (J. Stip. at 4-5.) As an initial
26 matter, a score of 45 was an improvement over the score of 20
27 eight months earlier, before Plaintiff began taking medications
28 for his depression. Dr. Rath testified that Dr. Montenegro's

1 treatment notes showed that Plaintiff's condition had improved,
2 the GAF score was likely a reflection of Plaintiff's past
3 condition, and nothing in the record indicated that it was
4 updated to show Plaintiff's progress after being treated for his
5 depression. (AR 41-42.) Dr. Bagner assessed a GAF score of 73
6 in August 2007 (AR 305), and nothing in the record indicates that
7 Plaintiff's condition worsened between then and January 2008 -
8 indeed, the record shows just the opposite (see AR 342-44, 447-
9 49). Dr. Rath's testimony was thus consistent with the record.
10 Moreover, GAF scores "[do] not have a direct correlation to the
11 severity requirements in the Social Security Administration's
12 mental disorders listings," and an ALJ may properly disregard a
13 low GAF score if other substantial evidence supports a finding
14 that the claimant was not disabled. Doney v. Astrue, 485 F.
15 App'x 163, 165 (9th Cir. 2012) (alterations and citations
16 omitted). The only other medical evidence indicating that
17 Plaintiff's mood disorder may have been severe was Dr. Amado's
18 note in September 2007 - near the beginning of Plaintiff's mood
19 disorder - that "[t]he proposed Non-severe determination may be a
20 little too optimistic in this case." (AR 325.) But Dr. Amado
21 also found that Plaintiff was not severely limited in performing
22 any mental tasks and agreed that Plaintiff's allegations of the
23 severity of his symptoms were not entirely credible. (See AR
24 312-25.) Any conflict in the properly supported medical-opinion
25 evidence was the sole province of the ALJ to resolve. See
26 Thomas, 278 F.3d at 956-57.

27 The only other evidence in the record concerning Plaintiff's
28 mood disorder was his own testimony and that of his son.

1 Plaintiff and his son both stated at the hearing and in their
2 function reports that Plaintiff's depression essentially rendered
3 him incapable of caring for himself and performing all but the
4 most basic activities. (See AR 35-36, 39-45, 224-31, 235-42,
5 254-61, 262-69.) But as the ALJ noted, Plaintiff initially
6 testified that the only conditions preventing him from working
7 were physical impairments; he had to be prompted by his attorney
8 before he mentioned his mood disorder. (See AR 18, 35-36.)
9 Moreover, Plaintiff's and his son's 2009 function reports
10 indicated that his condition had improved since 2007 - they both
11 noted in 2009 that Plaintiff was able to once again do such
12 chores as grocery shopping and mowing the lawn, went outside for
13 at least an hour each day whereas in 2007 he was afraid to go
14 outside, had resumed his hobby of TV watching, exercised
15 regularly, and once again was socializing with his family and
16 with his friends at church. (See AR 254-61, 262-69.) Humberto
17 Jr. also admitted during the hearing that Plaintiff's condition
18 had improved with medication. (See AR 52.)

19 Dr. Montenegro's notes also indicate that by October 2007
20 Plaintiff's depression was "completely controlled" and by at
21 least May 2008 he was able to ride his bicycle to his
22 appointments on his own. (See AR 351- 358.) Plaintiff's ability
23 to exercise, socialize, manage his doctor's appointments on his
24 own, and perform various daily activities belies his and his
25 son's claims that his depression was severe. See Bray v. Comm'r
26 of Soc. Sec. Admin., 554 F.3d 1219, 1227 (9th Cir. 2009); Curry
27 v. Sullivan, 925 F.2d 1127, 1130 (9th Cir. 1990) (finding that
28 claimant's ability to "take care of her personal needs, prepare

1 easy meals, do light housework and shop for some groceries . . .
2 may be seen as inconsistent with the presence of a condition
3 which would preclude all work activity”) (citing Fair v. Bowen,
4 885 F.2d 597, 604 (9th Cir. 1989)).

5 Plaintiff is not entitled to remand on this ground.

6 B. The ALJ Did Not Err in Assessing Plaintiff’s
7 Credibility

8 Plaintiff argues that the ALJ failed to provide clear and
9 convincing reasons for discounting his credibility. (J. Stip. at
10 17-23.) Because the ALJ did provide clear and convincing reasons
11 supporting his evaluation of Plaintiff’s testimony and those
12 reasons were supported by substantial evidence in the record,
13 reversal is not warranted on this basis.

14 1. Applicable law

15 An ALJ’s assessment of pain severity and claimant
16 credibility is entitled to “great weight.” See Weetman v.
17 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779
18 F.2d 528, 531 (9th Cir. 1986). “[T]he ALJ is not required to
19 believe every allegation of disabling pain, or else disability
20 benefits would be available for the asking, a result plainly
21 contrary to 42 U.S.C. § 423(d)(5)(A).” Molina v. Astrue, 674
22 F.3d 1104, 1122 (9th Cir. 2012). In evaluating a claimant’s
23 subjective symptom testimony, the ALJ engages in a two-step
24 analysis. See Lingenfelter, 504 F.3d at 1035-36. “First, the
25 ALJ must determine whether the claimant has presented objective
26 medical evidence of an underlying impairment [that] could
27 reasonably be expected to produce the pain or other symptoms
28 alleged.” Id. at 1036 (internal quotation marks omitted). If

1 such objective medical evidence exists, the ALJ may not reject a
2 claimant's testimony "simply because there is no showing that the
3 impairment can reasonably produce the *degree* of symptom alleged."
4 Smolen, 80 F.3d at 1282 (emphasis in original). When the ALJ
5 finds a claimant's subjective complaints not credible, the ALJ
6 must make specific findings that support the conclusion. See
7 Berry v. Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent
8 affirmative evidence of malingering, those findings must provide
9 "clear and convincing" reasons for rejecting the claimant's
10 testimony. Lester, 81 F.3d at 834. If the ALJ's credibility
11 finding is supported by substantial evidence in the record, the
12 reviewing court "may not engage in second-guessing." Thomas, 278
13 F.3d at 959.

14 2. Relevant facts

15 On June 22, 2007, Plaintiff filled out a Function Report,
16 mainly attesting to his mental condition. (AR 235-42.) He did
17 not discuss his physical capacities. (See id.) On April 26,
18 2009, Plaintiff filled out another Function Report, again mostly
19 discussing his mental condition, but he also stated that he was
20 able to mow the lawn, take out the trash, and go grocery
21 shopping. (AR 262-69.) He stated that his ability to lift,
22 squat, bend, stand, and kneel was limited and that "because of my
23 physical injuries [right] hip replacement, [left] knee
24 microspopic [sic] surgery I can lift no more than 30 [pounds]"
25 and "cannot bend squat or stand very long." (AR 267.) He stated
26 that he could walk an eighth of a mile before having to rest for
27 at least 15 minutes. (Id.) He stated that his family generally
28 drove him places, but he was able to drive "for short distances

1 during the day." (AR 269.)

2 At the hearing, Plaintiff testified that sometime in 2006 he
3 was injured in a fall and fractured his right hip, injured his
4 left knee, and hit his head and his shoulder. (AR 34.) He
5 stated that he took pain medication for his hip and knee but
6 could not remember what it was called. (AR 36.) He also
7 testified that he had been diagnosed with diabetes approximately
8 four months earlier and took insulin. (AR 36-37.)

9 3. Analysis

10 The ALJ found, "[a]fter careful consideration of the
11 evidence," that Plaintiff's "medically determinable impairments
12 could reasonably be expected to cause the alleged symptoms;
13 however, the claimant's statements concerning the intensity,
14 persistence and limiting effects of these symptoms are not
15 credible to the extent they are inconsistent with" the ALJ's RFC
16 assessment. (AR 19.) The ALJ noted that there were "significant
17 gaps" in Plaintiff's medical treatment for his physical ailments,
18 including the three years between May 2006 and March 2009. (AR
19 19, 407-16.) He noted that a physical exam by Plaintiff's
20 treating physician in November 2009 "revealed no joint swelling
21 or tenderness . . . , although the claimant's gait was antalgic"
22 and the doctor noted that Plaintiff was not able to sit or stand
23 for prolonged periods. (Id.) He noted that the most recent
24 evidence, from January 2010, showed that Plaintiff "has right
25 shoulder pain with decreased range of motion on exertion," but
26 there were no diagnostic images from January 2010 in the file.
27 (AR 20, 407.) He discussed the effect of Plaintiff's obesity on
28 his ability to work as well as the opinions of Dr. Boeck, Dr. To,

1 and the two state agency reviewing physicians finding that
2 Plaintiff was able to perform a range of medium work with certain
3 additional limitations. (AR 20, 307-11, 328-32, 380-85, 388-93,
4 406.) He discussed the opinion of Plaintiff's treating
5 physician, Dr. Miguel Doningo, who opined that Plaintiff was
6 unable to perform even sedentary work because of his diabetes,
7 and rejected that opinion because it was unsupported by clinical
8 findings and inconsistent with the other evidence in the record
9 (AR 21, 451-53), a finding Plaintiff does not challenge.

10 The ALJ then summarized Plaintiff's testimony and noted that
11 Plaintiff admitted that he was able to perform a range of daily
12 activities; medical reports revealed that Plaintiff was able to
13 walk long distances, exercise, and ride his bicycle, and
14 Plaintiff was not prescribed any pain medication, all of which
15 conflicted with Plaintiff's allegations of disabling pain. (AR
16 21.) Plaintiff's failure to mention his alleged mental
17 impairments until prompted by his attorney did "not work towards
18 [Plaintiff's] favor." (AR 18.) The ALJ concluded that
19 Plaintiff's

20 pain allegations are not credible in light of the medical
21 evidence. While the claimant has complained that his
22 pain level appears to be increasing with constant pain,
23 the objective findings have not changed. His condition
24 does not show any deterioration or any additional medical
25 difficulties. Furthermore, the claimant is not
26 prescribed any pain medications as his current list of
27 medications only includes those for cholesterol and
28 depression.

1 (AR 21.) The ALJ therefore found Plaintiff's allegations of
2 disabling pain not credible. (Id.)

3 Reversal is not warranted based on the ALJ's alleged failure
4 to make proper credibility findings or properly consider
5 Plaintiff's subjective symptoms. To the extent Plaintiff
6 challenges the ALJ's rejection of his subjective testimony with
7 respect to his mood disorder, the ALJ's decision was supported by
8 substantial evidence for the reasons discussed above in Section
9 V(A).

10 With respect to Plaintiff's physical impairments, the ALJ
11 provided clear and convincing reasons for rejecting Plaintiff's
12 subjective symptom testimony to the extent it was inconsistent
13 with the RFC assessment. (AR 26-30.) All of the medical
14 evidence with the exception of Dr. Doningo's report - the
15 rejection of which Plaintiff does not challenge - indicated that
16 Plaintiff was capable of performing a range of medium work. As
17 the ALJ noted, the record showed that Plaintiff was not taking
18 any prescription pain medication or undergoing any other
19 treatment for pain, which cast serious doubt on his allegations
20 of disabling pain. (AR 21, 283, 380.) Consulting orthopedist
21 Dr. William Boeck and consulting internist Dr. Brian To both
22 found after examining Plaintiff that he was able to perform a
23 range of medium work with certain additional limitations. (AR
24 20, 307-11, 380-85.) Drs. Boeck's and To's opinions were
25 supported by their own examinations of Plaintiff and test
26 results, including x-rays (see AR 308-10, 381-84), and thus
27 constituted substantial evidence upon which the ALJ could
28 properly rely. See Tonapetyan v. Halter, 242 F.3d 1144, 1149

1 (9th Cir. 2001) (ALJ may rely on consulting physician's opinion
2 when it "rests on [physician's] own independent examination of
3 [claimant]"); Andrews, 53 F.3d at 1041. Two state agency
4 reviewing physicians also reviewed the record and opined that
5 Plaintiff was capable of performing a range of medium work. (AR
6 328-32, 388-93, 406.) The ALJ was entitled to credit those
7 opinions as well because they were consistent with substantial
8 other evidence in the record. See Thomas, 278 F.3d at 957.
9 Thus, the ALJ properly rejected Plaintiff's subjective testimony.
10 See Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1161
11 (9th Cir. 2008) ("Contradiction with the medical record is a
12 sufficient basis for rejecting the claimant's subjective
13 testimony."); Lingenfelter, 504 F.3d at 1040 (in determining
14 credibility, ALJ may consider "whether the alleged symptoms are
15 consistent with the medical evidence"); Burch v. Barnhart, 400
16 F.3d 676, 681 (9th Cir. 2005) ("Although lack of medical evidence
17 cannot form the sole basis for discounting pain testimony, it is
18 a factor that the ALJ can consider in his credibility
19 analysis."); Kennelly v. Astrue, 313 F. App'x 977, 979 (9th Cir.
20 2009) (same); Tommasetti v. Astrue, 533 F.3d 1035, 1039-40 (9th
21 Cir. 2008) (ALJ may consider "unexplained or inadequately
22 explained failure to seek treatment" and may also infer that
23 claimant's "response to conservative treatment undermines
24 [claimant's] reports regarding the disabling nature of his
25 pain").

26 Moreover, as the ALJ noted, both Plaintiff and Humberto Jr.
27 admitted that Plaintiff was able to exercise and do various
28 chores around the house, such as going to the grocery store,

1 mowing the lawn, and taking out the trash. (Id.) Dr.
2 Montenegro's notes also showed that Plaintiff often rode his
3 bicycle to his medical appointments, further casting doubt on his
4 claims of physical disability. (AR 21, 342-44, 447-49.) At
5 approximately the same time as Humberto Jr. said Plaintiff could
6 walk only around the block (see AR 259), Plaintiff told Dr.
7 Montenegro that he walked three miles a day and four miles to one
8 appointment (see AR 418). That Plaintiff's allegations of
9 disabling pain were inconsistent with his daily activities was
10 also a valid reason for the ALJ to discount his testimony. See
11 Bray, 554 F.3d at 1227.

12 Because the ALJ gave clear and convincing reasons for his
13 credibility finding and those reasons were supported by
14 substantial evidence, the Court "may not engage in
15 second-guessing." Thomas, 278 F.3d at 959 (citation omitted).
16 Plaintiff is not entitled to reversal on this claim.

17 C. The ALJ Did Not Err in Evaluating the Third-Party
18 Testimony of Plaintiff's Son

19 Plaintiff contends that the ALJ erred in considering the
20 third-party reports submitted by Plaintiff's son, Humberto Jr.,
21 and Humberto Jr.'s hearing testimony. (J. Stip. at 9-15.)
22 Reversal is not warranted on this basis.

23 1. Applicable law

24 "In determining whether a claimant is disabled, an ALJ must
25 consider lay witness testimony concerning a claimant's ability to
26 work." Bruce v. Astrue, 557 F.3d 1113, 1115 (9th Cir. 2009)
27 (quoting Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050, 1053
28 (9th Cir. 2006) (internal quotation marks omitted)); see also 20

1 C.F.R. § 404.1513(d) (statements from therapists, family, and
2 friends can be used to show severity of impairment(s) and effect
3 on ability to work), § 416.913(d) (same). Such testimony is
4 competent evidence and "cannot be disregarded without comment."
5 Bruce, 557 F.3d at 1115 (quoting Nguyen v. Chater, 100 F.3d 1462,
6 1467 (9th Cir. 1996) (internal quotation marks omitted));
7 Robbins, 466 F.3d at 885 ("[T]he ALJ is required to account for
8 all lay witness testimony in the discussion of his or her
9 findings."). When rejecting the testimony of a lay witness, an
10 ALJ must give specific reasons that are germane to that witness.
11 Bruce, 557 F.3d at 1115; see also Stout, 454 F.3d at 1054;
12 Nguyen, 100 F.3d at 1467.

13 If an ALJ fails to discuss competent lay testimony favorable
14 to the claimant, "a reviewing court cannot consider the error
15 harmless unless it can confidently conclude that no reasonable
16 ALJ, when fully crediting the testimony, could have reached a
17 different disability determination." Stout, 454 F.3d at 1056;
18 see also Robbins, 466 F.3d at 885. But "an ALJ's failure to
19 comment upon lay witness testimony is harmless where 'the same
20 evidence that the ALJ referred to in discrediting [the
21 claimant's] claims also discredits [the lay witness's] claims."
22 Molina, 674 F.3d at 1122 (quoting Buckner v. Astrue, 646 F.3d
23 549, 560 (8th Cir. 2011)).

24 2. Relevant facts

25 On June 22, 2007, Humberto Jr. filled out a Third Party
26 Function Report, primarily attesting to Plaintiff's mental
27 functioning. (AR 224-31.) On April 26, 2009, Humberto Jr.
28 filled out another Third Party Function Report, again primarily

1 attesting to Plaintiff's mental functioning but also stating that
2 Plaintiff was limited in his ability to lift, squat, bend, stand,
3 and kneel; his "physical injuries affect ability to lift more
4 than 30 [pounds]"; and "squatting, bending, kneeling [are] very
5 hard to do." (AR 259.) He stated that Plaintiff could walk an
6 eighth of a mile before needing to rest for 15 to 30 minutes.
7 (Id.) He noted that Plaintiff did not need any assistive devices
8 to move around and that he walked to the local market but family
9 members drove him "everywhere else." (AR 260-61.)

10 At the hearing, Humberto Jr. testified about Plaintiff's
11 depression and that Plaintiff was "overweight," "had arthroscopic
12 knee surgery in his left knee," had "a complete replacement in
13 his right hip" that limited his ability to move, walk, stand, and
14 do other physical activities, and had diabetes, which required
15 Humberto Jr. to administer insulin to Plaintiff. (AR 49.) He
16 further testified that Plaintiff had "difficulty sitting and
17 standing," could not sit or stand for more than one hour at a
18 time, and could not walk farther than "a very short block." (AR
19 50.) He also testified that in his opinion, Plaintiff could not
20 last eight hours at work and could not lift more than 10 pounds.
21 (AR 51.) He stated that Plaintiff took a nap twice a day for 20
22 to 30 minutes. (Id.) He also stated that Plaintiff's
23 "condition" was managed with medication and "a few exercises."
24 (AR 52.)

25 3. Analysis

26 The ALJ addressed Humberto Jr.'s statements and testimony in
27 his written opinion as follows:

28 I considered two third party function reports submitted

1 by the claimant's son and the testimony of the claimant's
2 son, in which he discussed the claimant's restrictions.
3 While these reports are not inconsistent with the
4 claimant's subjective complaints, it is not supported by
5 the greater objective medical evidence of record.
6 Therefore, I assign little weigh to these reports and
7 statements.

8 (AR 21 (citation omitted).)

9 The ALJ did not err in evaluating Humberto Jr.'s testimony
10 and reports. To the extent the ALJ rejected those concerning
11 Plaintiff's mental condition, that decision was supported by
12 substantial evidence, for the reasons discussed above in Section
13 V(A). To the extent the ALJ rejected Humberto Jr.'s statements
14 about Plaintiff's physical abilities, he gave specific reasons
15 for doing so and those reasons were supported by substantial
16 evidence.

17 Plaintiff argues that the ALJ's three-sentence rejection of
18 Humberto Jr.'s testimony and reports was insufficient. (AR 13-
19 14.) But the ALJ discussed the reasons for rejecting them in
20 connection with his reasons for rejecting Plaintiff's own
21 testimony and reports (see AR 21-22), and the two sources
22 provided substantially similar and repetitive information
23 (compare AR 49-52, 221-31, 254-61 with AR 32-38, 232-42, 262-69).
24 The ALJ did not need to separately summarize and discuss Humberto
25 Jr.'s statements when "the same evidence that the ALJ referred to
26 in discrediting" Plaintiff's testimony and reports also
27 discredited Humberto Jr.'s. Molina, 674 F.3d at 1122. As
28 discussed above in Section V(B), the ALJ gave clear and

1 convincing reasons for rejecting Plaintiff's subjective testimony
2 and reports, and those reasons were supported by substantial
3 evidence. Reversal is therefore not warranted on this basis.

4 **VI. CONCLUSION**

5 Consistent with the foregoing, and pursuant to sentence four
6 of 42 U.S.C. § 405(g),⁹ IT IS ORDERED that judgment be entered
7 AFFIRMING the decision of the Commissioner and dismissing this
8 action with prejudice. IT IS FURTHER ORDERED that the Clerk
9 serve copies of this Order and the Judgment on counsel for both
10 parties.

11
12
13 DATED: March 20, 2013


JEAN ROSENBLUTH
U.S. Magistrate Judge

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26 _____
27 ⁹ This sentence provides: "The [district] court shall
28 have power to enter, upon the pleadings and transcript of the
record, a judgment affirming, modifying, or reversing the
decision of the Commissioner of Social Security, with or without
remanding the cause for a rehearing."