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6 UNITED STATES DISTRICT COURT  
7 CENTRAL DISTRICT OF CALIFORNIA  
8 SOUTHERN DIVISION

9  
10 JOANN AMBROSE, ) Case No. SACV 12-00954-MLG  
11 )  
12 ) Plaintiff, ) MEMORANDUM OPINION AND ORDER  
13 )  
14 ) v. )  
15 )  
16 ) MICHAEL J. ASTRUE, )  
17 ) Commissioner of the )  
18 ) Social Security )  
19 ) Administration, )  
20 )  
21 ) Defendant. )  
22 )

23 Plaintiff Joann Ambrose seeks judicial review of the Commissioner's  
24 final decision denying her application for disability insurance benefits  
25 ("DIB"). For the reasons stated below, the decision of the Commissioner  
26 is affirmed and the matter is dismissed with prejudice.

27 **I. Background**

28 Plaintiff was born on May 25, 1950, and was 57 years old at the  
time she filed her application for benefits. (Administrative Record  
("AR") at 187.) She has a high school education and has relevant work  
experience as a medical biller and medical billing manager. (AR at 168,  
173.) Plaintiff filed her DIB application on February 12, 2008, alleging  
disability beginning January 10, 2003, due to degenerative disc disease

1 of the cervical spine, right and left shoulder pain, left hand numbness,  
2 and degenerative joint disease of the right knee. (AR at 156-57, 167.)

3 Plaintiff's application was denied initially on April 30, 2008 and  
4 upon reconsideration on August 29, 2008. (AR at 83-87, 89-94.) An  
5 administrative hearing was held on May 11, 2010, before Administrative  
6 Law Judge ("ALJ") Wendy Weber. Plaintiff, represented by counsel,  
7 testified, as did a medical expert and a vocational expert. (AR at 49-  
8 80.)

9 On July 10, 2010, the ALJ issued an unfavorable decision. (AR at  
10 34-42.) The ALJ found that the medical evidence established that  
11 Plaintiff suffered from the following severe impairments: multi-level  
12 degenerative disc disease of the cervical spine without radiculopathy,  
13 bulging discs in the lumbar spine, rotator cuff tear of the left  
14 shoulder, tendinitis of the right shoulder, and chondromalacia and  
15 degenerative joint disease of the right knee. (AR at 36.) The ALJ  
16 determined that Plaintiff's impairments did not meet, and were not  
17 medically equal to, one of the listed impairments in 20 C.F.R., Part  
18 404, Subpart P, Appendix 1. (AR at 37.) The ALJ further found that  
19 Plaintiff retained the following residual functional capacity ("RFC"):

20 lift and carry twenty pounds occasionally and ten pounds  
21 frequently with the right upper extremity but only carry ten  
22 pounds occasionally and less than ten pounds frequently with  
23 the left upper extremity; sit for six hours and stand or walk  
24 for six hours during an eight-hour work day; only occasionally  
25 perform pedal operations with the right lower extremity; never  
26 climb ladders, ropes, or scaffolds; only occasionally climb  
27 ramps and stairs; only occasionally stoop, crouch, or kneel;  
28 never walk on uneven terrain; never reach at or above

1 shoulder-level or perform forceful grasping or torquing with  
2 the left upper extremity; and only frequently flex, extend, or  
3 move side-to-side with the neck.

4 (AR at 37.)

5 The ALJ concluded that Plaintiff was capable of performing her past  
6 relevant work as a medical coder/biller and office manager, and  
7 therefore Plaintiff was not disabled within the meaning of the Social  
8 Security Act. See 20 C.F.R. § 416.920(f). (AR at 30-31.)

9 On May 1, 2012, the Appeals Council denied review. (AR at 1-4.)  
10 Plaintiff then timely commenced this action for judicial review. On  
11 December 21, 2012, the parties filed a Joint Stipulation ("Joint Stip.")  
12 of disputed facts and issues. Plaintiff contends that the ALJ erred by  
13 failing to: (1) perform a proper credibility analysis; (2) consider the  
14 statement of Plaintiff's husband; and (3) give proper weight to the  
15 opinion of three of Plaintiff's treating physicians. (Joint Stip. at 2-  
16 3.) Plaintiff seeks reversal of the Commissioner's denial of her  
17 application and payment of benefits or, in the alternative, remand for  
18 a new administrative hearing. (Joint Stip. at 31.) The Commissioner  
19 requests that the ALJ's decision be affirmed. (Joint Stip. at 31-32.)

## 21 **II. Standard of Review**

22 Under 42 U.S.C. § 405(g), a district court may review the  
23 Commissioner's decision to deny benefits. The Commissioner's or ALJ's  
24 decision must be upheld unless "the ALJ's findings are based on legal  
25 error or are not supported by substantial evidence in the record as a  
26 whole." *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1990); *Batson v.*  
27 *Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004); *Parra*  
28 *v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence means

1 such evidence as a reasonable person might accept as adequate to support  
2 a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Widmark*  
3 *v. Barnhart*, 454 F.3d 1063, 1066 (9th Cir. 2006). It is more than a  
4 scintilla, but less than a preponderance. *Robbins v. Soc. Sec. Admin.*,  
5 466 F.3d 880, 882 (9th Cir. 2006). To determine whether substantial  
6 evidence supports a finding, the reviewing court "must review the  
7 administrative record as a whole, weighing both the evidence that  
8 supports and the evidence that detracts from the Commissioner's  
9 conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996). "If  
10 the evidence can support either affirming or reversing the ALJ's  
11 conclusion," the reviewing court "may not substitute its judgment for  
12 that of the ALJ." *Robbins*, 466 F.3d at 882.

### 13 14 **III. Discussion**

#### 15 **A. The ALJ Properly Evaluated Plaintiff's Subjective Symptom** 16 **Testimony**

17 Plaintiff contends that the ALJ erred by failing to provide clear  
18 and convincing reasons for discounting her subjective symptom testimony.  
19 (Joint Stip. at 3.) To determine whether a claimant's testimony about  
20 subjective pain or symptoms is credible, an ALJ must engage in a two-  
21 step analysis. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)  
22 (citing *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007)).  
23 First, the ALJ must determine whether the claimant has presented  
24 objective medical evidence of an underlying impairment which could  
25 reasonably be expected to produce the alleged pain or other symptoms.  
26 *Lingenfelter*, 504 F.3d at 1036. "[O]nce the claimant produces objective  
27 medical evidence of an underlying impairment, an adjudicator may not  
28 reject a claimant's subjective complaints based solely on a lack of

1 objective medical evidence to fully corroborate the alleged severity of  
2 pain." *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc).  
3 To the extent that an individual's claims of functional limitations and  
4 restrictions due to alleged pain is reasonably consistent with the  
5 objective medical evidence and other evidence in the case, the  
6 claimant's allegations will be credited. SSR 96-7p, 1996 WL 374186 at \*2  
7 (explaining 20 C.F.R. §§ 404.1529(c)(4), 416.929(c)(4)).<sup>1</sup>

8 Unless there is affirmative evidence showing that the claimant is  
9 malingering, the ALJ must provide specific, clear and convincing reasons  
10 for discrediting a claimant's complaints. *Robbins*, 466 F.3d at 883.  
11 "General findings are insufficient; rather, the ALJ must identify what  
12 testimony is not credible and what evidence undermines the claimant's  
13 complaints." *Reddick*, 157 F.3d at 722 (quoting *Lester v. Chater*, 81 F.3d  
14 821, 834 (9th Cir. 1996)). The ALJ must consider a claimant's work  
15 record, observations of medical providers and third parties with  
16 knowledge of claimant's limitations, aggravating factors, functional  
17 restrictions caused by symptoms, effects of medication, and the  
18 claimant's daily activities. *Smolen v. Chater*, 80 F.3d 1273, 1283-84 &  
19 n.8 (9th Cir. 1996). The ALJ may also consider an unexplained failure to  
20 seek treatment or follow a prescribed course of treatment and employ  
21 other ordinary techniques of credibility evaluation. *Id.* (citations  
22 omitted).

23 Plaintiff testified at the administrative hearing to the following  
24 symptoms and functional limitations: she has difficulty looking up or  
25

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26 <sup>1</sup> "The Secretary issues Social Security Rulings to clarify the  
27 Secretary's regulations and policy .... Although SSRs are not published  
28 in the federal register and do not have the force of law, [the Ninth  
Circuit] nevertheless give[s] deference to the Secretary's  
interpretation of its regulations." *Bunnell*, 947 F.2d at 346 n.3.

1 down or sitting because of pain in her neck; she can only sit or stand  
2 for about 15 minutes and walk for 10 minutes; she can lift only about  
3 five pounds; she has stiffness and pain in her neck which radiates into  
4 her shoulder, back and hand; she has pain in her knees; she has trouble  
5 sleeping at night because of the pain; and she must lie down or recline  
6 several times a day for up to a third of the day to relieve the pain in  
7 her knees. (AR at 53-62.)

8         The ALJ found that Plaintiff's medical impairments could reasonably  
9 be expected to produce the alleged symptoms. (AR at 41.) The ALJ was  
10 therefore required to provide specific, clear and convincing reasons for  
11 rejecting Plaintiff's subjective allegations of pain and functional  
12 limitations. The ALJ provided various reasons for discrediting  
13 Plaintiff's testimony, each of which is fully supported by the record.  
14 The ALJ noted that Plaintiff's daily activities were inconsistent with  
15 her allegations of severe pain and serious functional limitations.  
16 Plaintiff reported being able to drive, shop, do some light chores and  
17 attend to her personal grooming. In addition, as noted by the ALJ,  
18 Plaintiff indicated to the examining orthopedic specialist, Dr. Henry  
19 E. Bruce, M.D., that "she was able to do all activities of daily living  
20 and personal grooming," although she needs to pace her work and avoid  
21 heavy lifting. (AR at 40, citing AR at 709.) Although a claimant "does  
22 not need to be 'utterly incapacitated' in order to be disabled,"  
23 *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001), the ability to  
24 perform certain activities of daily life can support a finding that the  
25 claimant's reports of his or her impairment are not fully credible. See  
26 *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009);  
27 *Curry v. Sullivan*, 925 F.2d 1127, 1130 (9th Cir. 1990) (finding that the  
28 claimant's ability to "take care of her personal needs, prepare easy

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

5 The ALJ also noted that Plaintiff's claim that she could not walk  
6 for more than 10 minutes at a time was inconsistent with recent physical  
7 therapy reports, which indicated that Plaintiff had only a mild  
8 limitation in her ability to walk, and with the opinion of Plaintiff's  
9 primary care physician, Dr. Carmela Yacoob, M.D., that Plaintiff could  
10 walk frequently, defined as 3-6 hours out of an eight-hour work day. (AR  
11 at 40-41, citing AR at 650, 734.) See *Smolen*, 80 F.3d at 1284 (the ALJ  
12 may use ordinary techniques of credibility evaluation, such as  
13 considering inconsistent statements and whether the claimant has been  
14 candid).

15 The ALJ also noted that Plaintiff testified that she takes over the  
16 counter pain relief medication and herbal supplements, which  
17 significantly help her symptoms. (AR at 40, citing AR at 55, 199, 709.)  
18 Plaintiff's testimony that her symptoms are greatly alleviated with over  
19 the counter pain medication and herbal supplements undermines her  
20 statements of disabling pain and serious limitations. See *Smolen*, 80  
21 F.3d at 1284; see also *Warre v. Comm'r*, 439 F.3d 1001, 1006 (9th Cir.  
22 2006) ("Impairments that can be controlled effectively with medication  
23 are not disabling for purposes of determining eligibility for SSI  
24 benefits.").

25 It is the responsibility of the ALJ to determine credibility and  
26 resolve conflicts or ambiguities in the evidence, *Magallanes v. Bowen*,  
27 881 F.2d 747, 750 (9th Cir. 1989), and a reviewing court may not second-  
28 guess the ALJ's credibility determination when it is supported by

1 substantial evidence in the record, as here. See *Fair*, 885 F.2d at 604.  
2 Accordingly, it was reasonable for the ALJ to rely on the reasons stated  
3 above in finding that Plaintiff's subjective testimony regarding the  
4 severity of her symptoms was not wholly credible.

5 **B. The ALJ Properly Considered the Statements of Plaintiff's**  
6 **Husband**

7 Plaintiff contends that the ALJ improperly failed to discuss the  
8 lay witness testimony offered by her husband. (Joint Stp. at 13.) On  
9 June 18, 2008, Plaintiff's husband, Donald G. Ambrose, Jr., filled out  
10 a "Function Report - Adult - Third Party" regarding his knowledge about  
11 Plaintiff's daily activities and abilities. Mr. Ambrose reported the  
12 following: Plaintiff wakes up at night with pain; he has to help her dry  
13 her hair; she can only perform light household chores and must take  
14 frequent breaks; she is limited in lifting, standing, reaching, walking,  
15 sitting, and using her hands; she can only lift light objects; and she  
16 can walk for only about 10 minutes at a time. (AR at 202-209.)

17 A lay witness can provide testimony about Plaintiff's symptoms and  
18 limitations. See *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996).  
19 "Lay testimony as to a claimant's symptoms is competent evidence that an  
20 ALJ must take into account, unless he or she expressly determines to  
21 disregard such testimony and gives reasons germane to each witness for  
22 doing so." *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001); see also  
23 *Dodrill v. Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993). Appropriate  
24 reasons include testimony unsupported by the medical record or other  
25 evidence and inconsistent testimony. *Lewis*, 236 F.3d at 512.

26 Here, the ALJ cited Plaintiff's husband's report, noting that  
27 Plaintiff's claims of restricted daily activities, which were  
28 corroborated by her husband's report, were contradicted by her



1 statements to Dr. Bruce that she was able to perform all activities of  
2 daily living. (AR at 40, citing AR at 202-206.) "[I]f the ALJ gives  
3 germane reasons for rejecting testimony by one witness, the ALJ need  
4 only point to those reasons when rejecting similar testimony by a  
5 different witness." *Molina v. Astrue*, 674 F.3d 1104, 1114 (9th Cir.  
6 2012) (citing *Valentine v. Comm.*, 574 F.3d 685, 694 (9th Cir. 2009)  
7 (holding that because "the ALJ provided clear and convincing reasons for  
8 rejecting [the claimant's] own subjective complaints, and because [the  
9 lay witness's] testimony was similar to such complaints, it follows that  
10 the ALJ also gave germane reasons for rejecting [the lay witness's]  
11 testimony"). Because the ALJ appropriately rejected Petitioner's  
12 statements regarding her daily activities, it was proper for the ALJ to  
13 similarly reject Plaintiff's husband's statements as not fully credible  
14 because they were substantially similar to Plaintiff's.

15 Furthermore, unlike lay testimony, there is no controlling  
16 precedent requiring an ALJ to explicitly address written statements,  
17 such as the "Function Report - Adult - Third Party" form in this case.  
18 Indeed, it is clear that an ALJ is not required "to discuss every piece  
19 of evidence." See *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1012  
20 (9th Cir. 2003); see also *Molina*, 674 F.3d at 1114 ("We have not,  
21 however, required the ALJ discuss every witness's testimony on a  
22 individualized, witness-by-witness basis."). In this case, the ALJ  
23 appropriately considered the written statement provided by Plaintiff's  
24 husband.

25 **C. The ALJ Accorded Appropriate Weight to the Opinions of**  
26 **Plaintiff's Treating Physicians**

27 Plaintiff contends that the ALJ erred in failing to give  
28 controlling weight to the opinions of her treating physicians, Drs.

1 Wesley Nottage, M.D., Michael Luciano, M.D., and Carmela Yacoob, M.D.  
2 (Joint Stip. at 17-30.) For the reasons discussed below, Plaintiff's  
3 contention is without merit.

4 **1. Dr. Wesley Nottage**

5 On September 10, 2005, Dr. Nottage, an orthopedic surgeon, opined  
6 that "it seems more probable than not that [Plaintiff] would be  
7 incapable of returning back to her job duties as a billing manager ...  
8 providing the job could not be accommodated to avoid prolonged neck  
9 flexion." (AR at 256.) Plaintiff contends that the ALJ's failure to  
10 address this report was error because Dr. Nottage's opinion contradicts  
11 the ALJ's conclusion that Plaintiff was capable of returning to her past  
12 relevant work as a billing manager. (Joint Stip. at 17.)

13 An ALJ should generally accord greater probative weight to a  
14 treating physician's opinion than to opinions from non-treating sources.  
15 See 20 C.F.R. § 404.1527(d)(2). The ALJ must give specific and  
16 legitimate reasons for rejecting a treating physician's opinion in favor  
17 of a non-treating physician's contradictory opinion. *Orn v. Astrue*, 495  
18 F.3d 625 (9th Cir. 2007); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
19 1996). However, the ALJ need not accept the opinion of any medical  
20 source, including a treating medical source, "if that opinion is brief,  
21 conclusory, and inadequately supported by clinical findings." *Thomas v.*  
22 *Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); *accord Tonapetyan v.*  
23 *Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001). The factors to be  
24 considered by the adjudicator in determining the weight to give a  
25 medical opinion include: "[l]ength of the treatment relationship and the  
26 frequency of examination" by the treating physician; and the "nature and  
27 extent of the treatment relationship" between the patient and the  
28 treating physician. *Orn*, 495 F.3d at 631-33; 20 C.F.R. §§

1 404.1527(d)(2)(i)-(ii), 416.927(d)(2)(i)-(ii).

2 Contrary to Plaintiff's contention, the ALJ did in fact consider  
3 Dr. Nottage's September 10, 2005 opinion that Plaintiff could not return  
4 to her past work as a billing manager, but disregarded it because it was  
5 "outside of [Dr. Nottage's] area of expertise" and because it concerned  
6 an issue which fell within the sole discretion of the Commissioner. (AR  
7 at 39, fn. 2.) This was an appropriate reason under the Social Security  
8 regulations for rejecting Dr. Nottage's opinion that Plaintiff could not  
9 return to her former work as a billing manager. The ultimate  
10 determination of disability (*i.e.* whether a claimant can perform work in  
11 the national economy) rests solely with the Commissioner, and a  
12 physician's statement that a claimant is "unable to work" is not  
13 entitled to special weight. 20 C.F.R. 416.927(e); *see McLeod v. Astrue*,  
14 640 F.3d 881, 884-85 (9th Cir. 2011) (ALJ not bound by opinion of  
15 treating physician with respect to whether claimant can work or to the  
16 ultimate issue of disability); *see also Tonapetyan*, 242 F.3d at 1148-49.

17 Furthermore, the ALJ reviewed and summarized Dr. Nottage's other  
18 records and accorded them "significant weight." (AR at 39.) The ALJ also  
19 incorporated additional restrictions into her RFC assessment based upon  
20 Dr. Nottage's findings regarding Plaintiff's need to avoid prolonged  
21 neck flexion and extension. (*Id.*) Thus, it is clear that the ALJ  
22 properly considered Dr. Nottage's opinions and incorporated them into  
23 the RFC assessment but merely declined to defer to Dr. Nottage's opinion  
24 that Plaintiff could not return to her past relevant work because that  
25 was an issue reserved solely to the Commissioner.

26 **2. Dr. Michael Luciano**

27 Plaintiff argues that the ALJ erred in failing to consider the  
28 opinion of Dr. Luciano. (Joint Stip. at 22.) On March 21, 2006, Dr.

1 Luciano, an orthopedic surgeon, provided a report in the context of  
2 Plaintiff's state workers' compensation case. (AR at 468-501.) Dr.  
3 Luciano concluded that vocational rehabilitation was indicated for  
4 Plaintiff based upon her job description and her symptoms and subjective  
5 complaints. (AR at 489.) Plaintiff contends that Dr. Luciano's finding  
6 that Plaintiff could not perform her past job based upon her impairments  
7 contradicts the ALJ's conclusion that Plaintiff could perform her past  
8 relevant work.

9       However, as discussed above, the ALJ was not required to credit Dr.  
10 Luciano's conclusion that Plaintiff could not return to her past work.  
11 Moreover, the ALJ cited Dr. Luciano's report while summarizing  
12 Plaintiff's medical history; however, the ALJ was not required to  
13 discuss the report at great length. See *Howard*, 341 F.3d at 1012.  
14 Finally, Dr. Luciano's prophylactic work restrictions for Plaintiff  
15 included avoiding prolonged neck flexion, very heavy lifting, repetitive  
16 at or above-shoulder-level work with the left shoulder, forceful  
17 pushing, power grasping with the left wrist and forceful activities with  
18 the right wrist. (AR at 489.) These restrictions are consistent with the  
19 ALJ's RFC assessment which limited Plaintiff's neck, shoulder and left  
20 arm motion. (AR at 37.) Accordingly, the ALJ properly considered Dr.  
21 Luciano's report and Plaintiff is not entitled to relief with respect to  
22 this claim of error.

### 23           **3. Dr. Carmela Yacoob**

24       Finally, Plaintiff contends that the ALJ failed to properly  
25 consider Dr. Yacoob's March 6, 2007 report in which she opined that  
26 Plaintiff was unable to work and in which she provided various  
27 restrictions on Plaintiff's ability to sit, stand, walk, lift, carry,  
28 use her hands and reach. (Joint Stip. at 25, citing AR at 650.)

1           The ALJ provided legitimate reasons for refusing to give Dr.  
2 Yacoob's March 6, 2007 opinion controlling weight, each of which are  
3 supported by substantial evidence in the record. First, the ALJ rejected  
4 the report because it was inconsistent with Dr. Yacoob's own records.  
5 The March 6, 2007 report restricted Plaintiff to only occasional power  
6 grasping, pushing and pulling, and fine manipulating with both her right  
7 and left hand. (AR at 650.) However, as noted by the ALJ, in opinions  
8 rendered in July 2006 and February 2008, Dr. Yacoob only precluded  
9 Plaintiff from prolonged use of the left shoulder and left hand. (AR at  
10 38, citing AR at 324, 649.) The Commissioner may take into account  
11 whether a medical opinion is internally inconsistent in determining the  
12 weight to accord the evidence. See 20 C.F.R. § 404.1527(c)(2); see also  
13 *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir. 1995) (holding that ALJ  
14 properly rejected physician's determination where it was "conclusory and  
15 unsubstantiated by relevant medical documentation").

16           Plaintiff argues that Dr. Yacoob's March 6, 2007 report is not  
17 necessarily inconsistent with Dr. Yacoob's July 2006 and February 2008  
18 treatment records because the March 6, 2007 report focuses specifically  
19 on Plaintiff's manipulative limitations. (Joint Stip. at 25.) However,  
20 a review of the records finds that the ALJ's interpretation of the March  
21 6, 2007 report as inconsistent is a reasonable interpretation of the  
22 evidence. See *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999);  
23 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1989) (noting that it  
24 is the responsibility of the ALJ to resolve conflicts and ambiguities in  
25 the medical record and determine the credibility of medical sources).

26           The ALJ also correctly refused to credit Dr. Yacoob's conclusion  
27 that Plaintiff was unable to work because it was outside the scope of  
28 Dr. Yacoob's expertise and was a decision reserved to the Commissioner.

1 (AR at 38.) See *McLeod*, 640 F.3d at 884-85.

2 Plaintiff next contends that the ALJ erred in failing to credit Dr.  
3 Yacoob's limitation of Plaintiff to lifting and carrying no more than  
4 five pounds. (Joint Stip. at 25.) Here, the ALJ properly relied upon the  
5 contrary opinions of the orthopedic consultative examiner, Dr. Bruce,  
6 Plaintiff's treating physician, Dr. Nottage, and the medical expert, Dr.  
7 Jensen, in determining Plaintiff's RFC for lifting and carrying.  
8 Contrary to Dr. Yacoob's limitation to lifting five pounds, Dr. Bruce  
9 determined that Plaintiff could lift and carry 20 pounds occasionally  
10 and 10 pounds frequently. (AR at 713.) If a treating professional's  
11 opinion is contradicted by an examining professional's opinion, which is  
12 supported by different independent clinical findings, the Commissioner  
13 may resolve the conflict by relying on the latter. See *Andrews*, 53 F.3d  
14 at 1041; see also *Orn*, 495 F.3d at 632 (ALJ may reject opinion of  
15 treating physician in favor of examining physician whose opinion rests  
16 on independent clinical findings). Because Dr. Bruce's opinion was based  
17 upon his independent examination of Plaintiff, the ALJ properly relied  
18 upon Dr. Bruce's lifting restrictions.

19 In addition, the ALJ appropriately relied upon the opinion of Dr.  
20 Nottage, Plaintiff's treating physician, who concluded that Plaintiff  
21 would only be precluded from "very heavy lifting." (AR at 39, citing AR  
22 at 275.) The ALJ's RFC assessment with respect to Plaintiff's ability to  
23 lift and carry was also supported by the medical expert's opinion. After  
24 reviewing all of Plaintiff's medical records, Dr. Jensen testified that  
25 Plaintiff could lift and carry 20 pounds occasionally and 10 pounds  
26 frequently with the right arm and 10 pounds occasionally and less than  
27 10 pounds frequently with the left arm. (AR at 65-66.) The ALJ adopted  
28 Dr. Jensen's lifting and carrying restrictions in her assessment of

1 Plaintiff's RFC. (AR at 37.) The ALJ was entitled to rely on the  
2 reviewing physician's findings, particularly when they were consistent  
3 with the other medical evidence in the record. The findings of a  
4 nontreating, nonexamining physician can amount to substantial evidence,  
5 so long as other evidence in the record supports those findings.  
6 *Andrews*, 53 F.3d at 1041; *Magallanes*, 881 F.2d at 752.

7 Accordingly, because the ALJ provided legitimate reasons supported  
8 by the record for refusing to give Dr. Yacoob's March 6, 2007 opinion  
9 controlling weight, Plaintiff is not entitled to relief with respect to  
10 this issue.

11  
12 **IV. Conclusion**

13 For the reasons stated above, the decision of the Social Security  
14 Commissioner is **AFFIRMED** and the action is **DISMISSED** with prejudice.

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16  
17 DATED: January 9, 2013



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20 Marc L. Goldman  
United States Magistrate Judge