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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 JO ANN HALL, O/B/O JON C. HALL
8 (DECEASED),

9 Plaintiff,

10
11 v.

12 CAROLYN W. COLVIN,
13 Commissioner of Social Security,

14 Defendant.
15

No. CV-13-00043-JTR

ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

16 **BEFORE THE COURT** are cross-Motions for Summary Judgment. ECF
17 Nos. 12, 16. Attorney Cory J. Brandt represents Plaintiff;¹ Special Assistant
18 United States Attorney Richard A. Morris represents the Commissioner of Social
19 Security (Defendant). The parties have consented to proceed before a magistrate
20 judge. ECF No. 4. After reviewing the administrative record and the briefs filed
21 by the parties, the court **GRANTS** Defendant's Motion for Summary Judgment
22 and **DENIES** Plaintiff's Motion for Summary Judgment.

23 **JURISDICTION**

24 On February 24, 2010, Plaintiff filed a Title II application for a period of
25

26 _____
27 ¹While his application for benefits was pending, on March 14, 2012,
28 Plaintiff unexpectedly died of a heart attack. Tr. 8-10. His mother was substituted
as a party pursuant to HALLEX I-3-4-4. Tr. 8.

1 disability and disability insurance benefits, alleging disability beginning May 4,
2 2003. Tr. 25; 211. Plaintiff injured his back while working as a nurse's aide in a
3 nursing home. Tr. 62-63. He testified that his pain grew progressively worse over
4 time. Tr. 63. Plaintiff's claim was denied initially and on reconsideration, and he
5 requested a hearing before an administrative law judge (ALJ). Tr. 89-135. A
6 hearing was held on June 1, 2011, at which medical expert Thomas Colmey, M.D.,
7 vocational expert Thomas Polsin, and Plaintiff, who was represented by counsel,
8 testified. Tr. 44-88. ALJ Caroline Siderius presided. Tr. 44. The ALJ denied
9 benefits on June 30, 2011. Tr. 25-38. The instant matter is before this court
10 pursuant to 42 U.S.C. § 405(g).

11 **STATEMENT OF FACTS**

12 The facts have been presented in the administrative hearing transcript, the
13 ALJ's decision, and the briefs of the parties and thus, they are only briefly
14 summarized here. At the time of the hearing, Plaintiff was single, 41 years old, and
15 lived alone in an apartment. Tr. 65. He did not complete high school, and he
16 earned a GED in 1992. Tr. 81. Plaintiff said he attended community college
17 courses for approximately eighteen months, but quit because he had trouble
18 walking, carrying his bags, and with his concentration and memory. Tr. 65.

19 Plaintiff testified that during his prior job as a certified nursing assistant, he
20 injured his back. Tr. 62. He continued to work after his injury, but eventually was
21 let go. Tr. 64. Plaintiff's other prior work history includes work as a roofer, siding
22 applicator and machinist. Tr. 79-80.

23 Plaintiff testified that he had trouble falling asleep and staying asleep at
24 night. Tr. 75. He testified that he napped at least an hour approximately three to
25 four times per day. Tr. 75. Plaintiff also testified that his daily activities were
26 minimal. Tr. 68. He said he previously cared for a dementia patient who lived
27 upstairs in his building, he performed small repairs at the building, and he mowed
28 the lawn but later "regretted" it. Tr. 68-70. Plaintiff testified that he was not able

1 to keep his apartment clean, he did laundry “a little bit,” he vacuumed “some,” but
2 in general, “I just don’t do it.” Tr. 70. He also said he shopped for groceries once
3 a month. Tr. 70.

4 Plaintiff testified he was able to sit for about 15 minutes and stand for ten
5 minutes at a time before he had to change positions. Tr. 73-74. He said he could
6 walk “a couple hundred feet” before he had to stop and rest. Tr. 74. He estimated
7 he was able to lift between 20 and 30 pounds. Tr. 74.

8 STANDARD OF REVIEW

9 The ALJ is responsible for determining credibility, resolving conflicts in
10 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
11 1039 (9th Cir. 1995). The ALJ’s determinations of law are reviewed *de novo*,
12 although deference is owed to a reasonable construction of the applicable statutes.
13 *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ
14 may be reversed only if it is not supported by substantial evidence or if it is based
15 on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
16 evidence is defined as being more than a mere scintilla, but less than a
17 preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant
18 evidence as a reasonable mind might accept as adequate to support a conclusion.
19 *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to
20 more than one rational interpretation, the court may not substitute its judgment for
21 that of the ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec.*
22 *Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). Nevertheless, a decision supported by
23 substantial evidence will still be set aside if the proper legal standards were not
24 applied in weighing the evidence and making the decision. *Browner v. Secretary*
25 *of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial
26 evidence exists to support the administrative findings, or if conflicting evidence
27 exists that will support a finding of either disability or non-disability, the ALJ’s
28 determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th

1 Cir. 1987).

2 SEQUENTIAL PROCESS

3 The Commissioner has established a five-step sequential evaluation process
4 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
5 416.920(a); see *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). In steps one
6 through four, the burden of proof rests upon the claimant to establish a prima facie
7 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-99. This
8 burden is met once a claimant establishes that a physical or mental impairment
9 prevents him from engaging in his previous occupation. 20 C.F.R. §§
10 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the
11 ALJ proceeds to step five, and the burden shifts to the Commissioner to show that
12 (1) the claimant can make an adjustment to other work; and (2) specific jobs exist
13 in the national economy which claimant can perform. *Batson v. Commissioner of*
14 *Social Sec. Admin.*, 359 F.3d 1190, 1193-94 (2004). If a claimant cannot make an
15 adjustment to other work in the national economy, a finding of “disabled” is made.
16 20 C.F.R. §§ 404.1520(a)(4)(I-v), 416.920(a)(4)(I-v).

17 ALJ’S FINDINGS

18 At step one of the sequential evaluation process, the ALJ found Plaintiff has
19 not engaged in substantial gainful activity since December 1, 2008, through his last
20 date of insured, December 31, 2008. Tr. 27. At step two, the ALJ found Plaintiff
21 suffered from the severe impairments of “degenerative disc disease, degenerative
22 changes right knee, and depression.” Tr. 27. At step three, the ALJ found
23 Plaintiff’s impairments, alone and in combination, did not meet or medically equal
24 one of the listed impairments. Tr. 27. The ALJ determined that Plaintiff had the
25 residual functional capacity (“RFC”) to perform light work with a few limitations:

26 The claimant could not climb ladders, ropes, or scaffolding and he
27 could occasionally climb stairs and ramps. He could frequently
28 balance and he could occasionally stoop, crouch, kneel, and crawl.

1 He should have no exposure to heavy equipment or unprotected
2 heights. The claimant can have occasional contact with the general
3 public and coworkers. He can perform no more than average
production requirements. He can perform one to three step tasks.

4 Tr. 29. At step four, the ALJ found that Plaintiff is unable to perform past
5 relevant work. Tr. 36. The ALJ found that, considering Plaintiff's age,
6 education, work experience and residual functional capacity, job existed in
7 significant numbers in the national economy that Plaintiff could have
8 performed, such as small parts assembler, or photocopy machine operator.
9 Tr. 36-37. As a result, the ALJ found that Plaintiff was not disabled. Tr. 37.

10 ISSUES

11 Plaintiff contends that the ALJ erred by improperly weighing the medical
12 evidence, the lay witness testimony, and by failing to identify specific jobs that
13 Plaintiff could perform at Step Five. ECF No. 12 at 11.

14 DISCUSSION

15 A. Medical opinions.

16 1. Merel Janes, M.D.

17 Plaintiff contends that the ALJ erred by failing to provide a valid reason for
18 rejecting the opinion from Merle Janes, M.D., and by failing to identify the
19 findings that were inconsistent with other examining physician opinions. ECF No.
20 12 at 13-14.

21 On May 21, 2006, Dr. Janes completed a physical evaluation form, opining
22 that Plaintiff was limited to sedentary work. Tr. 645. Dr. Janes estimated
23 Plaintiff's limitations would last 4-6 months. Tr. 646. Dr. Janes indicated that the
24 treatment necessary to improve Plaintiff's employability involved strengthening
25 Plaintiff's ligaments and muscles. Tr. 646.

26 The ALJ gave little weight to the March 2006, DSHS physical evaluation
27 completed by Dr. Janes that indicated Plaintiff is limited to sedentary work. Tr.
28 34. The ALJ rejected this assessment because it was provided two years prior to

1 Plaintiff's onset date, is inconsistent with other exam findings from the same time
2 period, and the evidence reveals Plaintiff frequently exaggerated his symptoms.
3 Tr. 34.

4 Contrary to Plaintiff's argument, the ALJ's reasons for rejecting Dr. Janes'
5 opinion were valid. First, medical opinions that predate the alleged onset of
6 disability are of limited relevance. *See Fair v. Bowen*, 885 F.2d 597, 600 (9th Cir.
7 1989); *Carmickle v. Comm'r, SSA*, 533 F.3d 1155, 1165 (9th Cir. 2008). Second,
8 an ALJ may discredit treating physicians' opinions that are unsupported by the
9 record as a whole, or by objective medical findings. *Tonapetyan v. Halter*, 242
10 F.3d 1144, 1149 (9th Cir. 2001). Also, a physician's opinion may be rejected if it is
11 based on a claimant's subjective complaints which were properly discounted.
12 *Tonapetyan*, 242 F.3d at 1149.

13 In this case, Plaintiff's onset date was two years after the March 2006
14 evaluation. The record also reveals that during that timeframe, other medical
15 records reveal Plaintiff could do more than sedentary work, and that Plaintiff
16 tended to exaggerate his symptoms. Tr. 57; 496-99; 701-04; 758-66. As such, the
17 ALJ's reasons were valid and supported by the record.

18 Finally, even if the ALJ improperly rejected the opinion, such error would
19 be harmless in light of the fact that Dr. Janes estimated Plaintiff's limitations
20 would not last more than six months. In order to be considered disabled, a
21 plaintiff's disability must have either have lasted or be expected to last for a
22 continuous period of not less than 12 months. 20 C.F.R. § 416.905(a). Because
23 Plaintiff's impairments were expected to last less than twelve months, the
24 impairments were deemed not disabling under the regulations. The ALJ did not err
25 by giving little weight to the March 2006 opinion of Dr. Janes.

26 **2. William Greene, Ph.D.**

27 Plaintiff contends that the ALJ erred by rejecting the opinions of William
28 Greene, Ph.D., on the basis that the opinions were not supported by a narrative

1 explanation or objective evidence. ECF No. 12 at 14.

2 On March 2, 2010, William Greene, Ph.D., completed a Psychological/
3 Psychiatric Evaluation. Tr. 722-34. In that form, Dr. Greene indicated Plaintiff's
4 ability to work was moderately affected by depression. Tr. 723. Dr. Greene found
5 that Plaintiff was moderately limited in his abilities to appropriately relate to
6 coworkers and supervisors, interact appropriately in public contacts, respond
7 appropriately to and tolerate the pressures and expectations of a normal work
8 setting, care for himself including personal hygiene and appearance and maintain
9 appropriate behavior in a work setting. Tr. 725. Dr. Greene estimated Plaintiff
10 would experience his limitations for six months. Tr. 726. Dr. Greene indicated
11 that while Plaintiff should train for work that was less strenuous than CNA work,
12 his limitations were not expected to permanently prevent him from working:

13 [Plaintiff] appears to need some brief therapy to help him deal with
14 his pain and consequently his depression. At the same time he needs
15 to be retrained in a job that is more sedentary than working as a CNA.
16 The extent of his physical capacity is deferred to a physician. His
17 difficulties are not seen as permanently preventing him from working,
but he may need to change the type of work he has been doing.

18 Tr. 727.

19 On August 26, 2010, Dr. Greene again completed a Psychological/
20 Psychiatric Evaluation. Tr. 769-84. Dr. Greene assessed Plaintiff with the same
21 four moderate limitations in social functioning, and noted, "Nothing appears to
22 have changed for this client. ... as before, this client needs some brief therapy....
23 His difficulties are still not seen as permanently preventing him from working, but
24 he may need to change the type of work he has been doing."
25 Tr. 774. During this assessment, Dr. Greene estimated Plaintiff's symptoms would
26 last between six to nine months. Tr. 773.

27 The ALJ gave little weight to February and August 2010, DSHS evaluations.
28 Tr. 35. The ALJ noted that Dr. Greene opined Plaintiff's limitations would last

1 less than 12 months, and Plaintiff required brief therapy. Tr. 35. Also, the ALJ
2 found that Dr. Greene did not provide a narrative report, and he provided cursory
3 responses on the form. Tr. 35.

4 The reasons provided by the ALJ for rejecting Dr. Greene's opinion are
5 valid. As noted above, in order to be considered disabled, a disability must have
6 either have lasted or be expected to last for a continuous period of not less than 12
7 months." 20 C.F.R. § 416.905(a). Both of Dr. Greene's opinions reveal Plaintiff's
8 symptoms should last less than one year. Tr. 726; 773.

9 Also, an ALJ may properly reject a treating physician's opinion that is
10 conclusory and unsupported by clinical findings, particularly check-the-box style
11 forms. *See, Batson*, 359 F.3d at 1195 (ALJ did not err in giving minimal
12 evidentiary weight to treating physician opinion in the form of a checklist, did not
13 have supportive objective evidence, was contradicted by other medical opinions,
14 and was based on the plaintiff's subjective descriptions of pain); *Thomas v.*
15 *Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) (treating physician's opinion may be
16 rejected if it is brief, conclusory, and inadequately supported by clinical findings);
17 *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996) (ALJ permissibly rejected
18 psychological evaluations because they were check-the-box reports that did not
19 contain explanations of the bases of their conclusions). In this case, neither of the
20 forms completed by Dr. Greene provided detailed observations, discussions or
21 opinions related to Plaintiff's diagnoses, prognosis or symptoms.

22 Finally, the opinions expressed by Dr. Greene do not directly contradict
23 Plaintiff's RFC. Dr. Greene explicitly indicated that Plaintiff should find work that
24 is different or "more sedentary" than the work he performed as a CNA, and he
25 deferred determinations about Plaintiff's physical capacity to a physician. Tr. 726;
26 774. Significantly, Dr. Greene opined that Plaintiff's symptoms should not
27 permanently prevent him from working. Tr. 727; 774. The ALJ's reasons for
28 giving little weight to Dr. Greene's opinions are valid and supported by substantial

1 evidence.

2 **3. John Watts, PA-C**

3 Plaintiff argues that the ALJ erred by rejecting the opinions from the nurse
4 practitioner sources, on the basis that the providers were not acceptable medical
5 sources.² ECF No. 12 at 15-18. In evaluating the weight to be given to the opinion
6 of medical providers, Social Security regulations distinguish between "acceptable
7 medical sources" and "other sources." Acceptable medical sources include, for
8 example, licensed physicians and psychologists, while other non-specified medical
9 providers are considered "other sources." 20 C.F.R. §§ 404.1513(a) and (e),
10 416.913(a) and (e), and SSR 06-03p. However, an ALJ is required to consider
11 observations by non-acceptable medical sources as to how an impairment affects a
12 claimant's ability to work. *Sprague*, 812 F.2d at 1232. An ALJ must give reasons
13 germane to "other source" testimony before discounting it. *Dodrill v. Shalala*, 12
14 F.3d 915 (9th Cir. 1993). To qualify as germane, a reason for disregarding the
15 testimony of a lay witness must be more than a wholesale dismissal of all such
16 witnesses as a group, but rather must be specific to the individual witness. *Smolen*
17 *v. Chater*, 80 F.3d 1273, 1288 (9th Cir. 1996).

18 The record does not support the Plaintiff's claim. While the ALJ noted that
19 these sources were not acceptable sources, the ALJ provided detailed reasons for
20 the weight given to each opinion. Tr. 34-35. Because the ALJ gave valid reasons,
21 discussed in detail below, for the weight accorded to each provider's opinion, the

22 _____
23 ²Plaintiff asserts that the ALJ also erred by rejecting the opinion of Deborah
24 Miller, ARNP, for the same reason. ECF No. 12 at 15. However, the Plaintiff
25 failed to provide argument or analysis related to Ms. Miller and the ALJ's rejection
26 of her opinion, and thus the court will not review the issue as it relates to her. *See*
27 *Carmickle*, 533 F.3d at 1161 n.2 (the court does not consider matters on appeal that
28 are not specifically and distinctly argued in an appellant's opening brief).

1 mere acknowledgement that the source was not an acceptable medical source does
2 not constitute error.

3 On October 25, 2006, Mr. Watts completed a Physical Evaluation form. Tr.
4 677-80. In describing Plaintiff's physical limitations, Mr. Watts wrote "low back
5 [range of movement] slightly limited due to pain." Tr. 678. Mr. Watts assessed
6 Plaintiff's low back pain as posing marked limitations in several work related
7 activities, and he assessed Plaintiff's overall work level as sedentary. Tr. 679.
8 Under the comment section, Mr. Watts noted in part: "This patient said he has
9 tried everything available and still has pain that prevents him from working." Tr.
10 680.

11 On February 23, 2007, Mr. Watts completed a second Physical Evaluation
12 form. Tr. 689-92. In describing Plaintiff's physical limitations, Mr. Watts wrote
13 "limited low back [range of movement]." Tr. 690. He again indicated Mr. Watts
14 was limited to sedentary work. Tr. 691.

15 The ALJ gave little weight to the October 2006, DSHS physical evaluation
16 by John Watts, PA-C, that indicated Plaintiff is limited to sedentary work. Tr. 34.
17 The ALJ rejected this opinion because it was provided more than two years prior to
18 Plaintiff's onset date, Mr. Watts is not an acceptable medical source, and the
19 opinion relied heavily upon Plaintiff's self-report. Tr. 34.

20 Mr. Watts' second opinion, provided in February 2007, also limited Plaintiff
21 to sedentary work. Tr. 34. This opinion was rejected because the record contains
22 no treatment notes from October 2006 to February 2007, the record reveals
23 Plaintiff sought treatment to gain benefits, and the opinion is inconsistent with the
24 objective medical evidence. Tr. 34.

25 A physician's opinion may be rejected if it is based on a claimant's
26 subjective complaints which were properly discounted. *Tonapetyan*, 242 F.3d at
27 1149. Additionally, inconsistency with medical evidence is a germane reason for
28 rejecting lay witness evidence. *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir.

1 2005).

2 Plaintiff contends the ALJ's finding that Mr. Watts relied primarily upon
3 Plaintiff's self-report was error, because Mr. Watts observed Plaintiff experience
4 difficulty moving onto and off of the exam table. ECF No. 12 at 16. The record
5 indicates that Mr. Watts examined Plaintiff six weeks apart in 2007, and Plaintiff's
6 presentation changed dramatically between the visits. On January 12, 2007, Mr.
7 Watts noted that while Plaintiff sat "very uncomfortably in the chair," he moved
8 about the room "fairly well," and "gets on and off the exam table without
9 difficulty." Tr. 606. Approximately six weeks later, on February 19, 2007, Mr.
10 Watts noted that Plaintiff "[m]oves very slowly getting on exam table. He cannot
11 lay flat with legs extended due to back pain. There is tenderness across the low
12 back. Low back [range of movement] is severely decreased due to pain and
13 stiffness." Tr. 609. On March 27, 2008, Mr. Watts noted that Plaintiff's
14 "symptoms are out of proportion with his MRI and bone scan. I have some doubts
15 whether his functional limitations are as bad as he presents" Tr. 704.

16 The fact that Mr. Watts observed Plaintiff does not negate the evidence that
17 Mr. Watts also relied upon Plaintiff's self-reports in assessing his physical
18 limitations. Significantly, Mr. Watts eventually concluded that Plaintiff's reports
19 of his symptoms were likely exaggerated. As such, the ALJ's reasons for giving
20 little weight to Mr. Watt's opinion are supported by the record.

21 **4. Arthur M.A. Flores, PA-C**

22 Plaintiff contends that the ALJ erred by indicating that she accepted Mr.
23 Flores' opinion, but determined that his opinion was consistent with light work,
24 instead of sedentary. ECF No. 12 at 16. Plaintiff argues that that the ALJ
25 impermissibly substituted her own opinion about Plaintiff's work level for that of
26 the expert. ECF No. 12 at 16.

27 On September 28, 2010, Mr. Flores completed a DSHS form that provided
28 his assessment of Plaintiff's functioning. In that form, Mr. Flores indicated that

1 Plaintiff's work function could be expected to be impaired for four months, he
2 could stand for seven hours and/or sit for seven hours in an eight-hour workday.
3 Tr. 785. He also estimated that Plaintiff can lift 20 pounds occasionally and ten
4 pounds frequently. Tr. 785. In the comment section, Mr. Flores indicated that
5 Plaintiff believed he could work in a sedentary job. Tr. 786.

6 The ALJ gave "some weight" to the September 28, 2010, opinion from
7 Arthur M.A. Flores, PA-C. Tr. 34. Mr. Flores indicated that Plaintiff is limited to
8 sedentary work, but the ALJ found that the specific limitations reveal Mr. Flores'
9 opinion that Plaintiff can perform light exertion work. Tr. 34.

10 As Defendant points out, Mr. Flores did not opine that Plaintiff was limited
11 to sedentary work, but instead he simply relayed Plaintiff's opinion about his own
12 ability to perform sedentary work. ECF No. 16 at 18. The regulations define light
13 work as work that:

14 [I]nvolves lifting no more than 20 pounds at a time with frequent
15 lifting or carrying of objects weighing up to 10 pounds. Even though
16 the weight lifted may be very little, a job is in this category when it
17 requires a good deal of walking or standing, or when it involves
18 sitting most of the time with some pushing and pulling of arm or leg
19 controls. To be considered capable of performing a full or wide range
20 of light work, you must have the ability to do substantially all of these
21 activities. If someone can do light work, we determine that he or she
22 can also do sedentary work, unless there are additional limiting factors
such as loss of fine dexterity or inability to sit for long periods of
time.

23 20 CFR §§404.1567(b), 416.967(b). By contrast, sedentary work is described as
24 work that:

25 [I]nvolves lifting no more than 10 pounds at a time and occasionally
26 lifting or carrying articles like docket files, ledgers, and small tools.
27 Although a sedentary job is defined as one which involves sitting, a
28 certain amount of walking and standing is often necessary in carrying

1 out job duties. Jobs are sedentary if walking and standing are required
2 occasionally and other sedentary criteria are met.

3 20 CFR §§404.1567(a), 416.967(a).

4 Mr. Flores' opinion that Plaintiff could stand for seven hours in an eight
5 hour workday, and could lift 20 pounds occasionally and ten pounds frequently
6 more closely resembles light, not sedentary, work under the social security
7 regulations. "Adjudicators must not assume that a medical source using terms such
8 as 'sedentary' and 'light' is aware of [the SSA] definitions of these terms." SSR
9 96-5p. As such, the ALJ's use of the limitations assessed by Mr. Flores to
10 determine Plaintiff could perform light work was not error.

11 Finally, even if the ALJ improperly rejected the opinion, such error would
12 be harmless in light of the fact that Mr. Flores estimated Plaintiff's limitations
13 would last for four months. In order to be considered disabled, a plaintiff's
14 disability must have either have lasted or be expected to last for a continuous
15 period of not less than 12 months. 20 C.F.R. § 416.905(a). Because Plaintiff's
16 impairments were expected to last less than twelve months, the impairments were
17 deemed not disabling under the regulations. The ALJ did not err by giving little
18 weight to the opinion of Mr. Flores.

19 **B. Lay Witness Evidence**

20 Plaintiff argues that the ALJ improperly rejected the testimony of Nan Kelly,
21 MSW, disability advocate, on the basis that she did not examine Plaintiff to
22 determine if he had objective findings to support his complaints. ECF No. 12 at
23 17. Ms. Kelly wrote a letter on June 4, 2010, in which she relayed she had
24 observed Plaintiff use a cane, and that he had good days and bad days that were
25 evidenced by his varied difficulty with sitting, walking, and standing. Tr. 248. On
26 August 18, 2010, Ms. Kelly stated that Plaintiff had begun to use a cane at every
27 visit and was shuffling his feet to retain balance. Tr. 258. She relayed Plaintiff's
28 concerns that his medical providers were not taking his pain complaints seriously.

1 Tr. 258.

2 The ALJ gave little weight to the letters from Ms. Kelly for several reasons.
3 Tr. 33. The ALJ noted that Ms. Kelly's assertions were contradicted by several
4 medical providers, and in light of numerous references in the record to Plaintiff's
5 exaggerated symptoms, the ALJ concluded that Plaintiff likely exaggerated his
6 symptoms to Ms. Kelly. Tr. 33.

7 The ALJ has a duty to consider lay witness testimony. 20 C.F.R. §§
8 404.1513(d); 416.913(d); *Molina v. Astrue*, 674 F.3d 1104, 1114 (9th Cir. 2012).
9 The ALJ must provide germane reasons for rejecting lay testimony. *Molina*, 674
10 F.3d at 1114. In this case, contrary to the Plaintiff's assertions, the ALJ did not
11 reject Ms. Kelly's assessment simply because she was not an accepted medical
12 provider. Instead, the ALJ compared Ms. Kelly's assessment with the medical
13 providers' opinions, and in light of the evidence of Plaintiff's symptom
14 exaggeration, determined that Ms. Kelly's opinion was entitled to less weight
15 because it contradicted the medical evidence. This is a germane reason to reject
16 lay evidence, and is supported by the record. The ALJ did not err.

17 **C. Step Five**

18 Finally, Plaintiff contends that the ALJ erred at step five, because the ALJ
19 relied upon a hypothetical that failed to include all of Plaintiff's limitations. ECF
20 No. 12 at 18. Also, Plaintiff argues that the ALJ erred by relying upon the
21 vocational expert testimony because the VE could not provide updated data on
22 how the jobs are currently performed, and the VE failed to provide specific job
23 numbers. ECF No. 12 at 19.

24 At step five of the sequential evaluation, the burden is on the Commissioner
25 to show that (1) the claimant can perform other substantial gainful activity and (2)
26 a "significant number of jobs exist in the national economy" which the claimant
27 can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984). If a claimant
28 cannot return to his previous job, the Commissioner must identify specific jobs

1 existing in substantial numbers in the national economy that the claimant can
2 perform. *See Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir.1995).

3 The hypothetical that ultimately serves as the basis for the ALJ's
4 determination, i.e., the hypothetical that is predicated on the ALJ's final RFC
5 assessment, must account for all of the limitations and restrictions of the particular
6 claimant. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir.
7 2009). "If an ALJ's hypothetical does not reflect all of the claimant's limitations,
8 then the expert's testimony has no evidentiary value to support a finding that the
9 claimant can perform jobs in the national economy." *Id.* However, the ALJ "is
10 free to accept or reject restrictions in a hypothetical question that are not supported
11 by substantial evidence ." *Greger v. Barnhart*, 464 F.3d 968, 973 (9th Cir. 2006).
12 Also, an ALJ may synthesize and translate assessed limitations into an RFC
13 assessment (and subsequently into a hypothetical to the vocational expert) without
14 repeating each functional limitation verbatim in the RFC assessment or
15 hypothetical. *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1173-74 (9th Cir. 2008)
16 (holding that an ALJ's RFC assessment that a claimant could perform simple tasks
17 adequately captured restrictions related to concentration, persistence, or pace,
18 because the assessment was consistent with the medical evidence). A claimant
19 fails to establish that a Step 5 determination is flawed by simply restating argument
20 that the ALJ improperly discounted certain evidence, when the record
21 demonstrates the evidence was properly rejected. *Stubbs-Danielson*, 539 F.3d at
22 1175-76.

23 In arguing the ALJ's hypothetical was incomplete, Plaintiff simply restates
24 his argument that the ALJ's RFC finding did not account for all his limitations
25 because the ALJ improperly discounted certain evidence. As discussed above, the
26 court concludes the ALJ did not err in weighing the medical evidence.

27 Plaintiff also claims that the ALJ erred at step five because the Dictionary of
28 Occupational Titles has not been updated in several years and because the

1 vocational expert could not identify data showing how jobs are currently
2 performed. ECF No. 12 at 19. Plaintiff fails to cite authority for his proposition,
3 and the court finds none. The VE testified that someone with Plaintiff's limitations
4 could perform such as small parts assembler, or photocopy machine operator. Tr.
5 36-37. Such a description is sufficiently specific to identify jobs that match
6 Plaintiff's abilities. Moreover, the DOT is considered "the best source for how a
7 job is generally performed." *Pinto v. Massanari*, 249 F.3d 840, 845 (9th Cir. 2001).
8 The DOT creates a rebuttable presumption as to the job classification. *Tommasetti*
9 *v. Astrue*, 533 F.3d 1035, 1042 (9th Cir. 2008). Plaintiff has failed to rebut the
10 presumption. As a result, the ALJ did not err at step five.

11 CONCLUSION

12 Having reviewed the record and the ALJ's conclusions, this court finds that
13 the ALJ's decision is supported by substantial evidence and free of legal error.

14 Accordingly,

15 IT IS ORDERED:

- 16 1. Defendant's Motion for Summary Judgment, **ECF No. 16**, is
17 **GRANTED**.
- 18 2. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is **DENIED**.
19 The District Court Executive is directed to file this Order, provide copies to
20 the parties, enter judgment in favor of Defendant, and **CLOSE** this file.

21 DATED March 31, 2014.

A handwritten signature in black ink, appearing to be "M" or "Rodgers".

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE