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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Neil M. Heggem,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin,

13 Defendant.  
14

No. CV-13-02218-PHX-JAT

**ORDER**

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17  
18 Plaintiff Neil M. Heggem appeals a denial of benefits by the Acting Commissioner  
19 of Social Security (“Commissioner”). The Court now rules on his appeal.

20 **I. BACKGROUND**

21 **A. Procedural History**

22 Plaintiff filed an application for disability insurance benefits on August 30, 2011,  
23 alleging disability beginning September 1, 2010. The claim was denied on February 23,  
24 2012, and again upon reconsideration on September 19, 2012. Plaintiff requested a  
25 hearing, which was conducted by an Administrative Law Judge (“ALJ”) on April 10,  
26 2013 in Phoenix, Arizona.

27 **B. Factual Background**

28 Plaintiff’s alleged disability centers on his battles with depression and anxiety. The

1 earliest evidence of this condition on the record are notes from his emergency room visit  
2 in July of 2010, where Plaintiff reported that his “life feels unmanageable” and that he  
3 had a medical history of depression and anxiety. Plaintiff was taken from that emergency  
4 room to a behavioral health center, where he was assessed by several doctors. After  
5 participating in an inpatient program, Plaintiff was discharged from the behavioral center  
6 in the fall of 2010.

7 Plaintiff began treatment with a mental health counselor, Karen Merry, L.P.C., in  
8 November of 2010. She completed a Medical Assessment of Claimant’s Ability to  
9 Perform Work-Related Activities in December 2010, opining that Plaintiff had “severe”  
10 limitations in his abilities to respond to customary work pressures. Ms. Merry also opined  
11 that Plaintiff had “moderately severe” limitations in his ability to relate to other people,  
12 understand and carry out instructions, and perform simple, repetitive, or varied tasks. Ms.  
13 Merry further opined that there were “moderate” restrictions on Plaintiff’s ability to  
14 perform daily activities, respond appropriately to supervision, and respond appropriately  
15 to co-workers.

16 In February of 2011, Plaintiff began treatment with Adam Koelsch, M.D. Plaintiff  
17 continued treatment with Dr. Koelsch for several years, and Dr. Koelsch kept hand-  
18 written notes of each visit and treatment plan. Dr. Koelsch completed his Medical  
19 Assessment of Claimant’s Ability to Perform Work-Related Activities in March 2013, in  
20 which he concluded that Plaintiff had a “severe” deterioration in personal habits, as well  
21 as “moderate” restrictions on his ability to relate to other people, engage in daily  
22 activities, understand, carry out, and remember instructions, and respond appropriately to  
23 supervision and coworkers.

24 In March 2012, Plaintiff’s wife called the police when he, in a depressed state,  
25 pulled a knife. Plaintiff was jailed because the police thought he was trying to hurt his  
26 wife, although Plaintiff claims he was contemplating hurting himself. Plaintiff was  
27 subsequently hospitalized, where he was given new medication which Plaintiff reported  
28 to be helpful.

1 Plaintiff was examined by several non-treating physicians. In February of 2012,  
2 Charles House, Ph.D. performed an in-depth assessment, concluding that while he “did  
3 not observe any obvious signs of malingering,” Plaintiff “did not seem as limited as he  
4 would sometimes describe himself as being.” That same month, Plaintiff was examined  
5 by Robert Campion, M.D., who concluded that Plaintiff’s ability to understand,  
6 remember, and carry out complex instruction is “mildly limited.” Dr. Campion also  
7 concluded that Plaintiff’s ability to get along with coworkers and maintain socially  
8 appropriate behavior in a work setting is “mild to moderately limited” and his ability to  
9 adapt to a workplace changes is “mildly limited.” Plaintiff was also examined by  
10 Shannon Tromp, Ph.D, who observed that Plaintiff had trouble with concentration but  
11 scored Plaintiff perfectly on a mental status examination. Dr. Tromp specifically noted  
12 that her conclusions were largely based on Plaintiff’s subjective reports.

13 Plaintiff completed a function report, in which he reported that although he  
14 sometimes helped with household chores, shopping with his wife, and caring for his  
15 disabled daughter, was usually “too ill to be functional” and too “overwhelmed and  
16 stressed out” to perform assigned tasks. He also reported that he had difficulty sleeping  
17 and that he needed prompting to get the motivation to eat or bathe. Plaintiff’s wife also  
18 completed a function report, which reported largely the same information in Plaintiff’s  
19 self-report.

## 20 **II. DISABILITY**

### 21 **A. Definition of Disability**

22 To qualify for disability benefits under the Social Security Act, a claimant must  
23 show, among other things, that he is “under a disability.” 42 U.S.C. § 423(a)(1)(E). The  
24 Act defines “disability” as the “inability to engage in any substantial gainful activity by  
25 reason of any medically determinable physical or mental impairment which can be  
26 expected to result in death or which has lasted or can be expected to last for a continuous  
27 period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). A person is:

28 under a disability only if his physical or mental impairment or  
impairments are of such severity that he is not only unable to

1 do his previous work but cannot, considering his age,  
2 education, and work experience, engage in any other kind of  
3 substantial gainful work which exists in the national  
4 economy.

42 U.S.C. § 423(d)(2)(A).

### 5 **B. Five-Step Evaluation Process**

6 The Social Security regulations set forth a five-step sequential process for  
7 evaluating disability claims. 20 C.F.R. § 404.1520(a)(4); *see also Reddick v. Chater*, 157  
8 F.3d 715, 721 (9th Cir. 1998). A finding of “not disabled” at any step in the sequential  
9 process will end the inquiry. 20 C.F.R. § 404.1520(a)(4). The claimant bears the burden  
10 of proof at the first four steps, but the burden shifts to the Commissioner at the final step.  
11 *Reddick*, 157 F.3d at 721. The five steps are as follows:

12 1. First, the ALJ determines whether the claimant is “doing substantial gainful  
13 activity.” 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not disabled.

14 2. If the claimant is not gainfully employed, the ALJ next determines whether  
15 the claimant has a “severe medically determinable physical or mental impairment.” 20  
16 C.F.R. § 404.1520(a)(4)(ii). To be considered severe, the impairment must “significantly  
17 limit[] [the claimant's] physical or mental ability to do basic work activities.” 20 C.F.R. §  
18 404.1520(c). Basic work activities are the “abilities and aptitudes to do most jobs,” such  
19 as lifting, carrying, reaching, understanding, carrying out and remembering simple  
20 instructions, responding appropriately to co-workers, and dealing with changes in routine.  
21 20 C.F.R. § 404.1521(b). Further, the impairment must either have lasted for “a  
22 continuous period of at least twelve months,” be expected to last for such a period, or be  
23 expected “to result in death.” 20 C.F.R. § 404.1509 (incorporated by reference in 20  
24 C.F.R. § 404.1520(a)(4)(ii)). The “step-two inquiry is a de minimis screening device to  
25 dispose of groundless claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). If  
26 the claimant does not have a severe impairment, then the claimant is not disabled.

27 3. Having found a severe impairment, the ALJ next determines whether the  
28 impairment “meets or equals” one of the impairments listed in the regulations. 20 C.F.R.

1 § 404.1520(a)(4)(iii). If so, the claimant is found disabled without further inquiry. If not,  
2 before proceeding to the next step, the ALJ will make a finding regarding the claimant's  
3 “residual functional capacity based on all the relevant medical and other evidence in [the]  
4 case record.” 20 C.F.R. § 404.1520(e). A claimant's “residual functional capacity” is the  
5 most he can still do despite all his impairments, including those that are not severe, and  
6 any related symptoms. 20 C.F.R. § 404.1545(a)(1).

7 4. At step four, the ALJ determines whether, despite the impairments, the  
8 claimant can still perform “past relevant work.” 20 C.F.R. § 404.1520(a)(4)(iv). To make  
9 this determination, the ALJ compares its “residual functional capacity assessment . . .  
10 with the physical and mental demands of [the claimant’s] past relevant work.” 20 C.F.R.  
11 § 404.1520(f). If the claimant can still perform the kind of work he previously did, the  
12 claimant is not disabled. Otherwise, the ALJ proceeds to the final step.

13 5. At the final step, the ALJ determines whether the claimant “can make an  
14 adjustment to other work” that exists in the national economy. 20 C.F.R. §  
15 404.1520(a)(4)(v). In making this determination, the ALJ considers the claimant's  
16 “residual functional capacity” and his “age, education, and work experience.” 20 C.F.R. §  
17 404.1520(g)(1). If the claimant can perform other work, he is not disabled. If the claimant  
18 cannot perform other work, he will be found disabled. As previously noted, the  
19 Commissioner has the burden of proving that the claimant can perform other work.  
20 *Reddick*, 157 F.3d at 721.

21 In evaluating the claimant’s disability under this five-step process, the ALJ must  
22 consider all evidence in the case record. 20 C.F.R. § 404.1520(a)(3); 20 C.F.R. §  
23 404.1520b. This includes medical opinions, records, self-reported symptoms, and third-  
24 party reporting. 20 C.F.R. § 404.1527; 20 C.F.R. § 404.1529; SSR 06-3p.

### 25 **C. The ALJ’s Evaluation Under the Three-Step Process**

26 The ALJ found in step one of the sequential evaluation process that Plaintiff has  
27 not engaged in substantial gainful activity since his alleged onset date of September 1,  
28 2010. (*Id.*) The ALJ then found Plaintiff to have the following medically determinable

1 impairments: major depressive disorder, generalized anxiety disorder with panic attacks,  
2 and history of benzodiazepine dependence/abuse. Under step three, the ALJ found that  
3 Plaintiff “does not have an impairment or combination of impairments that has  
4 significantly limited (or is expected to significantly limit) the ability to perform basic  
5 work-related activities for 12 consecutive months.” Accordingly, the ALJ concluded that  
6 Plaintiff is not disabled and therefore not entitled to benefits.

#### 7 **D. Standard of Review**

8 A district court:

9 may set aside a denial of disability benefits only if it is not  
10 supported by substantial evidence or if it is based on legal  
11 error. Substantial evidence means more than a mere scintilla  
12 but less than a preponderance. Substantial evidence is  
13 relevant evidence, which considering the record as a whole, a  
reasonable person might accept as adequate to support a  
conclusion. Where the evidence is susceptible to more than  
one rational interpretation, one of which supports the ALJ’s  
decision, the ALJ’s decision must be upheld.

14 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (internal citation and quotation  
15 marks omitted). This is because “[t]he trier of fact and not the reviewing court must  
16 resolve conflicts in the evidence, and if the evidence can support either outcome, the  
17 court may not substitute its judgment for that of the ALJ.” *Matney v. Sullivan*, 981 F.2d  
18 1016, 1019 (9th Cir. 1992). Under this standard, the Court will uphold the ALJ’s findings  
19 if supported by inferences reasonably drawn from the record. *Batson v. Comm’r of the*  
20 *Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). However, the Court must consider  
21 the entire record as a whole and cannot affirm simply by isolating a “specific quantum of  
22 supporting evidence.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (internal  
23 quotation omitted).

## 24 **II. PLAINTIFF’S REPORTED SYMPTOMS**

25 The Court first turns to Plaintiff’s objection to the ALJ’s finding that his  
26 statements regarding the severity of his impairment were “not entirely credible.”

#### 27 **A. Legal Standard**

28 An ALJ must engage in a two-step analysis to determine

1 whether a claimant's testimony regarding subjective pain or  
2 symptoms is credible. *Lingenfelter*, 504 F.3d at 1035–36.  
3 First, as a threshold matter, “the ALJ must determine whether  
4 the claimant has presented objective medical evidence of an  
5 underlying impairment ‘which could reasonably be expected  
6 to produce the pain or other symptoms alleged.’” *Id.* at 1036  
7 (quoting *Bunnell*, 947 F.2d at 344). The claimant is not  
8 required to show objective medical evidence of the symptom  
9 itself or of a causal relationship between the impairment and  
10 the symptom. *Smolen*, 80 F.3d 1273, 1282 (9th Cir. 1996).  
11 Instead, the claimant must only show that an objectively  
12 verifiable impairment “could reasonably be expected” to  
13 produce the claimed symptom. *Lingenfelter*, 504 F.3d at 1036  
14 (quoting *Smolen*, 80 F.3d at 1282); *see also* SSR 96–7p at 2;  
15 *Carmickle*, 533 F.3d at 1160–61 (“reasonable inference, not a  
16 medically proven phenomenon”). If the claimant fails this  
17 threshold test, then the ALJ may reject the claimant's  
18 subjective complaints. *See Smolen*, 80 F.3d at 1281 (citing  
19 *Cotton v. Bowen*, 799 F.2d 1403 (9th Cir. 1986) (reaffirmed  
20 in *Bunnell*, 947 F.2d 341))

21  
22 Second, if the claimant meets the first test, then “the  
23 ALJ ‘may not discredit a claimant's testimony of pain and  
24 deny disability benefits solely because the degree of pain  
25 alleged by the claimant is not supported by objective medical  
26 evidence.’” *Orteza v. Shalala*, 50 F.3d 748, 749–750 (9th Cir.  
27 1995) (quoting *Bunnell*, 947 F.2d at 346–47). Rather, “unless  
28 an ALJ makes a finding of malingering based on affirmative  
evidence thereof,” the ALJ may only find the claimant not  
credible by making specific findings supported by the record  
that provide clear and convincing reasons to explain his  
credibility evaluation. *Robbins*, 466 F.3d at 883 (citing  
*Smolen*, 80 F.3d at 1283–84 (“Once a claimant meets [step  
one] and there is no affirmative evidence suggesting she is  
malingering, the ALJ may reject the claimant's testimony  
regarding the severity of her symptoms only if he makes  
specific findings stating clear and convincing reasons for  
doing so.”)); *see also, e.g., Lingenfelter*, 504 F.3d at 1036 (if  
the ALJ has found no evidence of malingering, then the ALJ  
may reject the claimant's testimony “only by offering  
specific, clear and convincing reasons for doing so”).

22 *Trembulak v. Colvin*, No. CV-12-02420-PHX-JAT, 2014 WL 523007, at \*8–9 (D. Ariz.  
23 Feb. 10, 2014).

## 24 **B. Discussion**

25 The ALJ in this case found that “the claimant's medically determinable  
26 impairments could reasonably be expected to produce the alleged symptoms.” (Tr. at 15).  
27 Thus, the first step in the test for determining the credibility of a claimant's subjective  
28 reports is satisfied.

1           Regarding the second step, the ALJ found that “the claimant’s statements  
2 concerning the intensity, persistence, and limiting effects of these symptoms are not  
3 entirely credible” for several reasons. (Tr. at 16). First, the ALJ pointed out that “the  
4 record reflects significant gaps in treatment and in reported medication use.” (Tr. at 16).  
5 These gaps, the ALJ reasoned, “suggest the claimant’s symptoms were not as severe as  
6 he has alleged.” (Tr. at 16). Next, the ALJ noted that despite Plaintiff’s reports that  
7 antidepressant medications had been ineffective, some of Plaintiff’s medications had  
8 actually been effective in controlling his symptoms. The ALJ also found that Plaintiff had  
9 made “inconsistent statement[s] regarding the reason behind his reduced functioning.”  
10 (Tr. at 16). Specifically, the ALJ noted that Plaintiff reported in February 2012 that he  
11 had quit work because of medication side effects, but in August 2012 he reported that he  
12 quit because of his anxiety symptoms. Finally, the ALJ noted that an examining  
13 psychologist observed that Plaintiff did “not seem to be as limited as he would sometimes  
14 describe himself to be.” (Tr. at 16).

15           Plaintiff explains that one gap in his medication was because he had checked into  
16 a treatment facility to address his drug dependency issues. Plaintiff does not, however,  
17 explain the second gap in his medication mentioned by the ALJ. Plaintiff explains the gap  
18 in his mental health counseling by stating that he had seen a counselor “only three weeks  
19 prior.” Regarding his medications being “helpful,” Plaintiff admits that Xanax and Zoloft  
20 were “initially effective, but their efficacy was lost.” Thus, Plaintiff argues, because the  
21 drugs were “not ultimately helpful,” it was not inconsistent for him to report that  
22 antidepressants were ineffective. Regarding Plaintiff’s conflicting statements about his  
23 departure from the workforce, Plaintiff argues that he did not report that the medications’  
24 side effects were the reason he quit, but that he more generally stated that he left because  
25 he “wasn’t functioning.” Finally, Plaintiff argues that the consulting psychiatrist’s  
26 opinion that Plaintiff “did not seem as limited as he would sometimes describe himself as  
27 being” is not credible because the psychiatrist made multiple unrelated factual errors in  
28 the report.

1 Plaintiff's arguments are unavailing. First, Plaintiff does not explain every issue  
2 that gave the ALJ reason to doubt his credibility. Most notably, Plaintiff offers no  
3 explanation for one of the gaps in his medication treatment that troubled the ALJ.  
4 Additionally, Plaintiff's explanations for his inconsistent statements are not all supported  
5 by the record. For example, despite Plaintiff's claim to the contrary, he did report that his  
6 medications' side effects were the reasons he left his job, which, as the ALJ noted,  
7 contradicts his later statement that he quit because of his symptoms. (*Compare* R. 516  
8 ("He stated he left his job because 'I wasn't functioning.' He indicated he was having  
9 problems functioning because of side effects he was having from his medication.") *and*  
10 R. 660 ("The claimant was asked what problems make it difficult to work. 'My chronic  
11 anxiety. My mood disorder. And my major depression. All the physical symptoms that I  
12 get from that. I get terrible insomnia. I get palpitations, stomach upset, nausea/vomiting,  
13 sweating, mental fatigue.' . . . His last job was as an assistant controller, the last day was  
14 a year ago, 8/11. He had been there four months and the job ended 'because I was too . . .  
15 I couldn't work there with my anxiety.'").

16 The remainder of Plaintiff's arguments amount to requests for this Court to re-  
17 evaluate the record evidence and accept Plaintiff's explanations over the ALJ's rational  
18 factual findings. This the Court cannot do. The ALJ rationally concluded that inconsistent  
19 statements, gaps in medication, and successful medication undermine Plaintiff's reports  
20 of severe symptoms that overcome his ability to work. That Plaintiff offers alternative,  
21 plausible explanations is not enough for this Court to set aside the ALJ's findings.  
22 *Thomas*, 278 F.3d at 954 ("Where the evidence is susceptible to more than one rational  
23 interpretation, one of which supports the ALJ's decision, the ALJ's decision must be  
24 upheld.")

25 Therefore, the Court concludes that the ALJ did not err by finding that Plaintiff's  
26 statements regarding his mental impairments were "not entirely credible."

### 27 **III. THE OPINION OF PLAINTIFF'S TREATING PHYSICIAN**

28 The Court now turns to Plaintiff's objection to the ALJ's discrediting the opinion

1 of Dr. Koelsch and assigning “great” and “significant” weight to consultative examining  
2 physicians.

3 **A. Legal Standard**

4 “The ALJ is responsible for resolving conflicts in the medical record.” *Carmickle*  
5 *v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008). Such conflicts may  
6 arise between a treating physician’s medical opinion and other evidence in the claimant’s  
7 record. A treating physician’s opinion is entitled to controlling weight when it is “well-  
8 supported by medically accepted clinical and laboratory diagnostic techniques and is not  
9 inconsistent with the other substantial evidence in [the claimant’s] case record.” 20  
10 C.F.R. § 404.1527(d)(2); *see also Orn*, 495 F.3d at 631. On the other hand, if a treating  
11 physician’s opinion “is not well-supported” or “is inconsistent with other substantial  
12 evidence in the record,” then it should not be given controlling weight. *Orn*, 495 F.3d at  
13 631.

14 “When an examining physician relies on the same clinical findings as a treating  
15 physician, but differs only in his or her conclusions, the conclusions of the examining  
16 physician are not substantial evidence.” *Orn*, 495 F.3d at 632 (citing *Murray v. Heckler*,  
17 722 F.2d 499, 501-02 (9th Cir. 1984)). To constitute substantial evidence, the examining  
18 physician must provide “independent clinical findings that differ from the findings of the  
19 treating physician.” *Id.* (citing *Miller v. Heckler*, 770 F.2d 845, 849 (9th Cir. 1985)).  
20 Independent clinical findings can be either “diagnoses that differ from those offered by  
21 another physician and that are supported by substantial evidence, . . . or findings based on  
22 objective medical tests that the treating physician has not herself considered.” *Id.* (citing  
23 *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984); *Andrews v. Shalala*, 53 F.3d 1035,  
24 1041 (9th Cir. 1995)).

25 If a treating physician’s opinion is contradicted by another physician’s opinion,  
26 then the ALJ may reject the treating physician’s opinion if there are “specific and  
27 legitimate reasons that are supported by substantial evidence in the record.” *Id.* (quoting  
28 *Lester*, 81 F.3d at 830). Importantly, “[a]n ALJ may reject a treating physician’s opinion

1 if it is based ‘to a large extent’ on a claimant’s self-reports that have been properly  
2 discounted as incredible.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008)  
3 (citing *Morgan v. Comm’r Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999)).  
4 Furthermore, an ALJ may discredit a treating physician’s opinion when it is unsupported  
5 by or in conflict with objective medical findings. *Batson v. Comm’r of Soc. Sec. Admin.*,  
6 359 F.3d 1190, 1195 (9th Cir. 2004).

7 The Ninth Circuit has recently cautioned that “checklist” styled assessments  
8 should not be discredited merely because they are not formally accompanied by  
9 supporting evidence. *Garrison v. Colvin*, 759 F.3d 955, 1013–14 (9th Cir. 2014). Rather,  
10 “checklist assessments” that are consistent with treatment notes created in the course of a  
11 physician’s relationship with a patient are entitled to the same weight as any other form  
12 of medical opinion. *Id.*

### 13 **B. Discussion**

14 The ALJ discredited Dr. Koelsch’s March 2013 assessment for several reasons.  
15 First, the ALJ found that the assessment was in “check-list format with no supporting  
16 evidence provided.” (Tr. at 18). The ALJ further suggested that the consultative and DDS  
17 specialists were more credible because Dr. Koelsch, unlike the other examining  
18 physicians, did not include objective findings such as a mental status examination. The  
19 ALJ found Dr. Koelsch’s treatment notes to be “unpersuasive” because they “describe the  
20 claimant’s medications as being helpful (with weight gain as the only side effect),  
21 described work or work-like activity (programming), and documented increased  
22 symptoms following periods of non-compliance with medication.” (Tr. at 18).

23 Plaintiff argues that the ALJ erred by ignoring the objective findings in Dr.  
24 Koelsch’s treatment notes when she discredited Dr. Koelsch’s “checklist assessment.”  
25 The Court disagrees. The ALJ clearly did not ignore Dr. Koelsch’s treatment notes; in  
26 fact, the ALJ made several findings regarding the notes which support her decision to  
27 assign little weight to the assessment. Most notably, the ALJ found that Dr. Koelsch did  
28 not support his assessment with objective findings. Although the Court recognizes that

1 Dr. Koelsch’s treatment notes did include some objective findings, such as his  
2 observations of Plaintiff’s mood, affect, and weight, the treatment notes appear to be  
3 largely based on Plaintiff’s subjective reports about his anxiety, depression, and lack of  
4 concentration. Given that the ALJ properly discredited Plaintiff’s subjective reports  
5 regarding the severity of his symptoms, it was appropriate for the ALJ to discredit Dr.  
6 Koelsch’s assessment, which relied heavily on those reports. *Tommasetti*, 533 F.3d at  
7 1041. By contrast, the opinions of non-treating medical examiners were based on  
8 examinations that appear to be much more in-depth and include significantly more  
9 objective findings. (Tr. at 513–19, 660–66). The ALJ therefore did not err by discrediting  
10 Dr. Koelsch’s assessment.<sup>1</sup>

#### 11 **IV. THE OPINION OF PLAINTIFF’S MENTAL HEALTH COUNSELOR**

12 The Court now turns to Plaintiff’s objection to the ALJ’s assignment of “little  
13 weight” to Ms. Merry’s December 2010 assessment.

##### 14 **A. Legal Standard**

15 The regulations differentiate between opinions from “acceptable medical sources,”  
16 such as physicians and psychologists, and opinions from “other sources,” such as nurse-  
17 practitioners and therapists. 20 C.F.R. § 404.1513(a), (c). While the ALJ must give  
18 specific, legitimate reasons supported by substantial evidence to reject an opinion from a  
19 treating medical source, she need not give the same deference to opinions from non-  
20 medical sources. *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Rather, opinions  
21 from non-medical sources may be rejected as long as the ALJ gives reasons for doing so  
22 that are “germane to each witness” and “substantiated by the record.” *Id.*

##### 23 **B. Discussion**

24 The ALJ gave several reasons for rejecting Ms. Merry’s assessment, several of  
25 which mirror her reasoning with regard to Dr. Koelsch’s opinion. First, the ALJ states

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26  
27 <sup>1</sup> Plaintiff also argues that the ALJ erred by focusing on several instances of  
28 improvement when assigning little weight to Dr. Koelsch’s assessment. The Court does  
not reach this issue, however, since it concludes that the reasons stated above are  
sufficient to support the ALJ’s decision to discredit Dr. Koelsch’s assessment.

1 that while Ms. Merry’s “checklist assessment” provided “a bit more information” than  
2 Dr. Koelsch’s, “there is no indication that a formal mental status examination was  
3 performed.” (Tr. at 18). Next, the ALJ reasons that Ms. Merry’s assessment was “not  
4 consistent with the assessments of the DDS doctors and consultative examiners,” which  
5 are more reliable because they are “acceptable medical sources” under the regulations.  
6 (Tr. at 18).

7 The Court concludes that the reasons given by the ALJ for discrediting Ms.  
8 Merry’s assessment are germane to that assessment. Like with Dr. Koelsch’s treatment  
9 notes, the Court recognizes that Ms. Merry’s treatment notes also contain some objective  
10 findings. However, as the ALJ pointed out, Ms. Merry’s treatment notes do not contain a  
11 formal mental status examination. In light of the in-depth examinations performed by the  
12 consultative sources and those source’s higher qualifications, it was not inappropriate for  
13 the ALJ to assign Ms. Merry’s assessment less weight than the consultative physicians.  
14 The ALJ therefore did not err by assigning “little weight” to Ms. Merry’s assessment.

## 15 **VI. Plaintiff’s Wife**

### 16 **A. Legal Standard**

17 “Lay testimony as to a claimant’s symptoms is competent evidence which the  
18 Secretary must take into account, unless he expressly determines to disregard such  
19 testimony, in which case ‘he must give reasons that are germane to each witness.’”  
20 *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996) (quoting *Dodrill v. Shalala*, 12  
21 F.3d 915, 919 (9th Cir. 1993)) (internal citations omitted). Examples of legitimate  
22 reasons for disregarding lay testimony include inconsistency with medical sources and  
23 close relationships with the claimant. *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir.  
24 2006)

### 25 **B. Discussion**

26 The ALJ listed several reasons for discrediting the statements of Plaintiff’s wife.  
27 First, the ALJ reasoned that because Plaintiff’s wife is not medically trained, her ability  
28 to “make exacting observations” about Plaintiff’s condition “is questionable.” (Tr. at 18).

1 Next, the ALJ stated that Plaintiff’s wife would be biased because of her “affection for  
2 the claimant and a natural tendency to agree with the symptoms and limitations the  
3 claimant alleges.” (Tr. at 18). Finally, the ALJ explained that she discredited the  
4 statements of Plaintiff’s wife because they were “not consistent with the preponderance  
5 of the opinions and observations by medical doctors in this case.” (Tr. at 18).

6 Plaintiff argues that since the regulations require ALJs to consider lay testimony,  
7 the ALJ cannot discount the statements of Plaintiff’s wife simply because she is  
8 untrained. Indeed, Plaintiff points out that the regulations specifically state that non-  
9 medical sources—even spouses—“may provide insight into the severity of the  
10 impairment(s) and how it affects the individual’s ability to function.” SSR 06-03P.  
11 Plaintiff further argues that the statements of Plaintiff’s wife are, in fact, consistent with  
12 medical evidence, such as Dr. Koelsch’s notes and assessments, as well as one of the  
13 consultative examiners who opined that Plaintiff appeared “credible” and that Plaintiff  
14 has developed an “inability to cope with even a simple daily routine on a regular basis.”  
15 (Tr. at 664).

16 As noted above, the Ninth Circuit has held that inconsistency with medical sources  
17 and close relationships with the claimant are legitimate reasons to disregard lay  
18 testimony. *Greger*, 464 F.3d at 972. These are precisely the reasons the ALJ here gave  
19 for rejecting Plaintiff’s wife’s statement. While Plaintiff offers rational reasons why the  
20 ALJ could have accepted to statements of Plaintiff’s wife, these reasons do nothing more  
21 than show that the evidence is in conflict. In such circumstances, this Court must uphold  
22 that ALJ’s rational conclusions. *Thomas*, 278 F.3d at 954. Accordingly, the Court  
23 concludes that the ALJ did not err by rejecting the statement of Plaintiff’s wife.

24 **VII. Conclusion**

25 Accordingly,

26 **IT IS ORDERED** that the decision of the Administrative Law Judge is affirmed.

27 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment  
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accordingly. The judgment will serve as the mandate of this Court.

Dated this 22nd day of January, 2015.



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James A. Teilborg  
Senior United States District Judge