



1 Dr. Friedman first evaluated Plaintiff in January 2007. (AR 275-90, 337-52.)  
2 Plaintiff's mood was "moderately depressed," and her thought content revealed themes  
3 of diminished self-confidence, low self-esteem, anxiety, anger, and depression. (AR  
4 286.) Plaintiff was oriented to person, place, time and situation, her judgment was intact,  
5 and she appeared to have above-average intelligence, a clear and coherent thought  
6 process, and no short-term or long-term memory impairment. (AR 286.) Dr. Friedman  
7 noted that Plaintiff was able to perform a wide range of daily activities. (AR 277-78.) Dr.  
8 Friedman diagnosed depression, single episode, severe, non-psychotic, and assigned  
9 Plaintiff a Global Assessment of Function ("GAF") score of 45, denoting serious  
10 symptoms or serious impairment with social and occupational functioning. (AR 287); *see*  
11 American Psychiatric Association, Diagnostic and Statistical Manual of Mental  
12 Disorders, Fourth Edition ("DSM-IV") Multiaxial Assessment, 27-36 (rev. 2000)). Dr.  
13 Friedman recommended weekly psychotherapy and psychoactive medication. (AR 289.)  
14 In February 2007, Plaintiff began receiving mental health treatment from a psychologist  
15 and a physician associated with Dr. Friedman's practice. (AR 269, 271-73, 274, 333-36.)  
16 In an August 2007 re-evaluation report, Dr. Friedman reported that Plaintiff was still  
17 moderately depressed, but Plaintiff had benefitted from treatment. (AR 263, 265.) Dr.  
18 Friedman gave Plaintiff a GAF of score of 51, indicating moderate symptoms or  
19 moderate difficulty in social, occupational, or school functioning. DSM-IV at 32.  
20 Plaintiff continued to receive mental health treatment at Dr. Friedman's office through  
21 June 2009. (AR 226-49.)

22 In December 2010, Dr. Friedman completed a form assessing Plaintiff's ability to  
23 perform mental work-related activities. (AR 518-19.) In 24 out of 25 mental functional  
24 abilities listed, Dr. Friedman checked the boxes indicating that Plaintiff was "unable to  
25 meet competitive standards." (AR 518-19.) By giving Plaintiff this rating, Dr. Friedman  
26 necessarily found that Plaintiff could not satisfactorily perform the described work  
27 activities independently, appropriately, or effectively on a sustained basis in a regular  
28 work setting. (AR 518.) The ALJ accorded no weight to this assessment. (AR 15.)

1 As Dr. Friedman's opinion was controverted by the opinions of other medical  
2 sources, the ALJ was obligated to provide specific and legitimate reasons for rejecting  
3 it. *Lester v. Chater*, 81 F.3d 821, 831 (9th Cir. 1996) (if a treating or examining  
4 physician's opinion on disability is controverted, it can be rejected only with specific and  
5 legitimate reasons supported by substantial evidence in the record). The ALJ properly  
6 found that Dr. Friedman's "checksheet" assessment conflicted with his previous findings  
7 that Plaintiff was able "to perform a wide range of activities independently and with little  
8 interruption" from her alleged mental impairments. (AR 15, 252, 277-78.) In January  
9 2007, Dr. Friedman reported that daily activities included exercising, doing household  
10 chores, shopping, and reading. (AR 277.) Plaintiff enjoyed cooking, and interacting with  
11 friends and family on a regular basis. (AR 277-78.) Dr. Friedman also reported that  
12 Plaintiff was working on her taxes and had been assisting her brother in compiling  
13 paperwork for his taxes. (AR 278.) In August 2007, Dr. Friedman reported that while  
14 Plaintiff's mood was still "moderately depressed," she had benefitted from treatment.  
15 (AR 263, 265.) The extreme limitations assessed in the December 2010 mental  
16 functional ability check sheet conflicted with Dr. Friedman's earlier findings. As there  
17 was no indication that Plaintiff's condition had deteriorated since August 2007, the ALJ  
18 provided a specific, legitimate reason for discounting Dr. Friedman's opinion. *See*  
19 *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004) (holding that  
20 the ALJ did not err in giving "minimal evidentiary weight" to controverted treating  
21 source opinions that were "in the form of a checklist," and lacked supportive objective  
22 medical findings); *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) ("[t]he ALJ  
23 need not accept the opinion of any physician, including a treating physician, if that  
24 opinion is brief, conclusory, and inadequately supported by clinical findings");  
25 *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) ("[w]hen confronted with  
26 conflicting medical opinions, an ALJ need not accept a treating physician's opinion that  
27 is conclusory and brief and unsupported by clinical findings").

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1 In addition, the ALJ accorded “great weight” to the non-examining medical expert,  
2 psychologist Dr. Betty Borden. (AR 15-16, 102-03.) Dr. Borden testified that Plaintiff  
3 was capable of performing simple, repetitive tasks, and could occasionally interact with  
4 the public and complete complex and detailed tasks. (AR 103.) A nonexamining medical  
5 expert’s opinion may constitute substantial evidence when it is consistent with other  
6 independent evidence. *Morgan v. Apfel*, 169 F.3d 595, 599-600 (9th Cir. 1999)  
7 (“Opinions of a nonexamining, testifying medical advisor may serve as substantial  
8 evidence when they are supported by other evidence in the record and are consistent with  
9 it.”); *Tonapetyan*, 242 F.3d at 1149. Here, Dr. Borden’s opinion was corroborated by the  
10 opinion of the examining psychiatrist, Ernest Bagner, M.D. (AR 491-94.) Dr. Bagner  
11 found that Plaintiff would have no more than “mild” limitations in completing simple  
12 tasks, and “mild to moderate” limitations handling normal work stresses, maintaining  
13 concentration and attention, completing complex tasks, and completing a normal work  
14 week without interruption. (AR 15-16, 494.) Because Dr. Bagner’s opinion was based  
15 on “independent clinical findings,” the ALJ had discretion to disregard Dr. Friedman’s  
16 assessment of Plaintiff’s functional limitations. (AR 15-16); *see, e.g., Tonapetyan*, 242  
17 F.3d at 1149 (consultative examiner’s opinion constituted substantial evidence, because  
18 it rested on independent examination of claimant); *Andrews v. Shalala*, 53 F.3d 1035,  
19 1041 (9th Cir. 1989) (“Reports of consultative physicians called in by the Secretary may  
20 serve as substantial evidence”). Furthermore, the ALJ gave weight to the state agency  
21 physician’s opinion that Plaintiff had mild to moderate limitations in mental functioning.  
22 (AR 15-16, 495-508.) The state agency physician’s opinion, which was based in part on  
23 the medical findings of Dr. Bagner and was consistent with other record evidence,  
24 provides additional support for the ALJ’s rejection of Dr. Friedman’s opinion. *See*  
25 *Tonapetyan*, 242 F.3d at 1149; *Andrews*, 53 F.3d at 1041. The ALJ’s resolution of the  
26 conflicting medical opinions is supported by substantial evidence.

27 Accordingly, Plaintiff is not entitled to a reversal or remand based upon Issue #1.

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1 **Issue #2**

2 Plaintiff contends that the ALJ erred in failing to comment upon a function report  
3 completed by Plaintiff's friend, Gilbert Davis ("Davis"). (AR 214-21.)

4 Generally, lay testimony regarding a claimant's symptoms is competent evidence  
5 that the ALJ must consider unless he "expressly determines to disregard such testimony  
6 and gives reasons germane to each witness for doing so." *Lewis v. Apfel*, 236 F.3d 503,  
7 511 (9th Cir. 2001). However an error in addressing lay witness testimony is harmless,  
8 if a reviewing court "can confidently conclude that no reasonable ALJ, when fully  
9 crediting the testimony, could have reached a different disability determination." *Stout*  
10 *v. Comm'r*, 454 F.3d 1050, 1054 (9th Cir. 2006); *Molina v. Astrue*, 674 F.3d 1104, 1122  
11 (9th Cir. 2012) (explaining that if an ALJ's failure to discuss testimony favorable to the  
12 claimant was "inconsequential to the ultimate nondisability determination in the context  
13 of the record as a whole" then the failure is harmless error); *see also Graham v. Comm'r*,  
14 441 Fed. Appx. 487, 489 (9th Cir. 2011).

15 Here, the ALJ's error in failing to discredit Davis's statement is harmless because  
16 the ALJ would not have reached a different disability determination had he considered  
17 it. *Stout*, 454 F.3d at 1056; *see also Robbins v. Social Sec. Admin.*, 466 F.3d 880, 885  
18 (9th Cir. 2006). Davis's statement essentially reiterated Plaintiff's subjective complaints.  
19 Davis reported that Plaintiff has difficulty dealing with stress and changes in routine,  
20 experiences panic attacks, and has deficiencies in memory and concentration. (AR 215,  
21 220-21.) Davis also described Plaintiff as a person who was physically and socially  
22 active. Davis reported that Plaintiff spends her days doing housework and chores,  
23 reading, exercising, cooking, caring for her friend's dogs, and interacting with others  
24 through emails, talking on the telephone and visiting in person. (AR 214-21.) Because  
25 Davis did not offer any new evidence or insight to establish disability, no reasonable ALJ  
26 would have reached a more favorable determination had Davis's statement been properly  
27 addressed. *Stout*, 454 F.3d at 1056. Moreover, the ALJ found that the inconsistency  
28 between Plaintiff's subjective complaints and admitted daily activities provided a legally

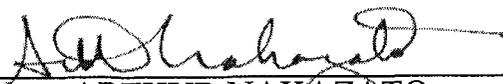
1 sufficient basis to discount Plaintiff's credibility. (AR 14-16, 198-202, 252, 277); see  
2 *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002); *Light v. Social Security*  
3 *Admin.*, 119 F.3d 789, 792 (9th Cir. 1997) (inconsistencies between testimony and  
4 conduct may be considered in weighing a claimant's credibility). As Davis's statement  
5 contained the same internal inconsistencies between Plaintiff's subjective complaints and  
6 her daily activities, any error on the ALJ's part in failing to specifically reject Davis's  
7 statement was inconsequential to the ultimate nondisability determination. See *Molina*,  
8 674 F.3d at 1121-22 ("an ALJ's failure to comment upon lay witness testimony is  
9 harmless where the same evidence that the ALJ referred to in discrediting the claimant's  
10 claims also discredits the lay witness's claims" (brackets and internal quotation marks  
11 omitted)); *Valentine v. Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009)  
12 (holding that an ALJ's clear and convincing reasons for discounting a claimant's  
13 testimony are equally germane to reject similar testimony by a lay witness).

14 Accordingly, a reversal or remand is not warranted on the basis of Issue #2.

15  
16 **ORDER**

17 The Court finds that the ALJ's determination of non-disability is free of legal error  
18 and supported by substantial evidence in the record. Therefore, Plaintiff's request for  
19 an order directing the payment of benefits or remanding this case for further proceedings  
20 is DENIED, and the Commissioner's request for an order affirming the Commissioner's  
21 final decision and dismissing the action is GRANTED. The clerk shall enter judgment,  
22 close the file and terminate all pending motions.

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25 DATED: September 30, 2013

  
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ARTHUR NAKAZATO  
UNITED STATES MAGISTRATE JUDGE