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

Case No. 14-CV-04577 (VEB)

<p>RUBEN DE ARCOS GAMA,  Plaintiff,  vs.  CAROLYN W. COLVIN, Acting Commissioner of Social Security,  Defendant.</p>
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DECISION AND ORDER

**I. INTRODUCTION**

In January of 2011, Plaintiff Ruben De Arcos Gama applied for Disability Insurance Benefits under the Social Security Act. The Commissioner of Social Security denied the application. Plaintiff, represented by Patricia McCabe, Esq.,

1 commenced this action seeking judicial review of the Commissioner’s denial of  
2 benefits pursuant to 42 U.S.C. §§ 405 (g) and 1383 (c)(3).

3 The parties consented to the jurisdiction of a United States Magistrate Judge.  
4 (Docket No. 9, 10, 21, 22). On March 7, 2016, this case was referred to the  
5 undersigned pursuant to General Order 05-07. (Docket No. 20).

## 7 **II. BACKGROUND**

8 Plaintiff applied for benefits on January 24, 2011, alleging disability  
9 beginning January 16, 2009. (T at 59).<sup>1</sup> The application was denied initially and on  
10 reconsideration. Plaintiff requested a hearing before an Administrative Law Judge  
11 (“ALJ”). On October 9, 2012, a hearing was held before ALJ Elizabeth R. Lishner.  
12 (T at 47). Plaintiff appeared with an attorney and testified through an interpreter. (T  
13 at 52-70). The ALJ also received testimony from Ronald Hatakeyama, a vocational  
14 expert (T at 75-77), and Olga De Arcos, Plaintiff’s wife, who testified as a lay  
15 witness. (T at 71-75).

16 On November 8, 2012, the ALJ issued a written decision denying the  
17 application for benefits. (T at 20-39). The ALJ’s decision became the  
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19 <sup>1</sup> Citations to (“T”) refer to the administrative record at Docket No. 14.

1 Commissioner’s final decision on February 28, 2014, when the Appeals Council  
2 denied Plaintiff’s request for review. (T at 9-13).

3 On June 13, 2014, Plaintiff, acting by and through his counsel, filed this  
4 action seeking judicial review of the Commissioner’s decision. (Docket No. 3). The  
5 Commissioner interposed an Answer on December 19, 2014. (Docket No. 13). The  
6 parties filed a Joint Stipulation on May 19, 2015. (Docket No. 19).

7 After reviewing the pleadings, Joint Stipulation, and administrative record,  
8 this Court finds that the Commissioner’s decision should be affirmed and this case  
9 must be dismissed.

### 11 **III. DISCUSSION**

#### 12 **A. Sequential Evaluation Process**

13 The Social Security Act (“the Act”) defines disability as the “inability to  
14 engage in any substantial gainful activity by reason of any medically determinable  
15 physical or mental impairment which can be expected to result in death or which has  
16 lasted or can be expected to last for a continuous period of not less than twelve  
17 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a  
18 claimant shall be determined to be under a disability only if any impairments are of  
19 such severity that he or she is not only unable to do previous work but cannot,

1 considering his or her age, education and work experiences, engage in any other  
2 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),  
3 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and  
4 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001).

5 The Commissioner has established a five-step sequential evaluation process  
6 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step  
7 one determines if the person is engaged in substantial gainful activities. If so,  
8 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the  
9 decision maker proceeds to step two, which determines whether the claimant has a  
10 medically severe impairment or combination of impairments. 20 C.F.R. §§  
11 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

12 If the claimant does not have a severe impairment or combination of  
13 impairments, the disability claim is denied. If the impairment is severe, the  
14 evaluation proceeds to the third step, which compares the claimant's impairment(s)  
15 with a number of listed impairments acknowledged by the Commissioner to be so  
16 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),  
17 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or  
18 equals one of the listed impairments, the claimant is conclusively presumed to be  
19 disabled. If the impairment is not one conclusively presumed to be disabling, the

1 evaluation proceeds to the fourth step, which determines whether the impairment  
2 prevents the claimant from performing work which was performed in the past. If the  
3 claimant is able to perform previous work, he or she is deemed not disabled. 20  
4 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant’s residual  
5 functional capacity (RFC) is considered. If the claimant cannot perform past relevant  
6 work, the fifth and final step in the process determines whether he or she is able to  
7 perform other work in the national economy in view of his or her residual functional  
8 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
9 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

10         The initial burden of proof rests upon the claimant to establish a *prima facie*  
11 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup>  
12 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden  
13 is met once the claimant establishes that a mental or physical impairment prevents  
14 the performance of previous work. The burden then shifts, at step five, to the  
15 Commissioner to show that (1) plaintiff can perform other substantial gainful  
16 activity and (2) a “significant number of jobs exist in the national economy” that the  
17 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup> Cir. 1984).

1 **B. Standard of Review**

2 Congress has provided a limited scope of judicial review of a Commissioner’s  
3 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,  
4 made through an ALJ, when the determination is not based on legal error and is  
5 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup> Cir.  
6 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999).

7 “The [Commissioner’s] determination that a plaintiff is not disabled will be  
8 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*  
9 *Heckler*, 722 F.2d 570, 572 (9<sup>th</sup> Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial  
10 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119  
11 n 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d  
12 599, 601-02 (9<sup>th</sup> Cir. 1989). Substantial evidence “means such evidence as a  
13 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*  
14 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and  
15 conclusions as the [Commissioner] may reasonably draw from the evidence” will  
16 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On review,  
17 the Court considers the record as a whole, not just the evidence supporting the  
18 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir.  
19 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

1           It is the role of the Commissioner, not this Court, to resolve conflicts in  
2 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational  
3 interpretation, the Court may not substitute its judgment for that of the  
4 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup>  
5 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be  
6 set aside if the proper legal standards were not applied in weighing the evidence and  
7 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d  
8 432, 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to support the  
9 administrative findings, or if there is conflicting evidence that will support a finding  
10 of either disability or non-disability, the finding of the Commissioner is conclusive.  
11 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9<sup>th</sup> Cir. 1987).

12 **C. Commissioner’s Decision**

13           The ALJ determined that Plaintiff had not engaged in substantial gainful  
14 activity since January 16, 2009 (the alleged onset date) and met the insured status  
15 requirements of the Social Security Act through December 31, 2014 (the date last  
16 insured). (T at 28). The ALJ found that Plaintiff’s left leg amputation, diabetes,  
17 depression, and anxiety were “severe” impairments under the Act. (Tr. 28).





1 be reversed. First, he contends that the ALJ did not properly weigh the medical  
2 opinion evidence. Second, Plaintiff challenges the ALJ's credibility determination.  
3 Third, Plaintiff contends that the ALJ erred by failing to consider his back and lower  
4 extremity pain as a severe impairment. Fourth, he argues that the ALJ's RFC  
5 determination was flawed because it did not consider the combined effects of his  
6 impairments. Fifth, Plaintiff challenges the hypothetical question that formed the  
7 basis of the ALJ's step four analysis. This Court will address each argument in turn.

#### 8 9 **IV. ANALYSIS**

##### 10 **A. Medical Opinion Evidence**

11 In disability proceedings, a treating physician's opinion carries more weight  
12 than an examining physician's opinion, and an examining physician's opinion is  
13 given more weight than that of a non-examining physician. *Benecke v. Barnhart*,  
14 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
15 1995). If the treating or examining physician's opinions are not contradicted, they  
16 can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If  
17 contradicted, the opinion can only be rejected for "specific" and "legitimate" reasons  
18 that are supported by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d  
19 1035, 1043 (9th Cir. 1995). Historically, the courts have recognized conflicting

1 medical evidence, and/or the absence of regular medical treatment during the alleged  
2 period of disability, and/or the lack of medical support for doctors' reports based  
3 substantially on a claimant's subjective complaints of pain, as specific, legitimate  
4 reasons for disregarding a treating or examining physician's opinion. *Flaten v.*  
5 *Secretary of Health and Human Servs.*, 44 F.3d 1453, 1463-64 (9th Cir. 1995).

6 An ALJ satisfies the "substantial evidence" requirement by "setting out a  
7 detailed and thorough summary of the facts and conflicting clinical evidence, stating  
8 his interpretation thereof, and making findings." *Garrison v. Colvin*, 759 F.3d 995,  
9 1012 (9<sup>th</sup> Cir. 2014)(quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9<sup>th</sup> Cir. 1998)).  
10 "The ALJ must do more than state conclusions. He must set forth his own  
11 interpretations and explain why they, rather than the doctors,' are correct." *Id.*

12 In this case, the medical record contains extensive records of Plaintiff's  
13 treatment history with several physicians and therapists. In sum, these records  
14 indicate that Plaintiff consistently presented with complaints of chronic low back  
15 and right lower extremity pain; difficulties with a poorly-fitting prosthesis on his left  
16 lower extremity; poorly controlled diabetes; diabetic dyslipidemia; depression; and  
17 anxiety.

18 The ALJ discussed these records and concluded that they established severe  
19 impairments. (T at 29). However, the ALJ found that the treating record (1) did not

1 “reveal significant abnormalities” in Plaintiff’s knees, (2) indicated good pain  
2 control from physical therapy, (3) suggested good control of psychiatric symptoms  
3 with medication, and (4) indicated generally stable treatment of diabetes. (T at 33).

4 Plaintiff disputes these findings, offering alternative interpretations of the  
5 treating record. However, it is the role of the Commissioner, not this Court, to  
6 resolve conflicts in evidence. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.  
7 1989); *Richardson*, 402 U.S. at 400. If the evidence supports more than one rational  
8 interpretation, this Court may not substitute its judgment for that of the  
9 Commissioner. *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). If there is substantial  
10 evidence to support the administrative findings, or if there is conflicting evidence  
11 that will support a finding of either disability or nondisability, the Commissioner’s  
12 finding is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).  
13 Here, the ALJ’s finding was supported by substantial evidence and must therefore be  
14 sustained.

15 Diagnostic testing indicated mild degenerative changes in Plaintiff’s spine; a  
16 knee x-ray was unremarkable, showing normal alignment, no evidence of joint  
17 effusive, and “no significant degenerative disease.” (T at 341-42, 366-68). Although  
18 Plaintiff’s diabetes was not always well-controlled, there was no evidence of organ  
19 damage. (T at 32, 274-75, 316). The ALJ noted evidence of medication non-

1 compliance, which impacted the management of Plaintiff's diabetes. (T at 32). The  
2 ALJ cited evidence indicating that Plaintiff's diabetes was generally stable and  
3 uncomplicated when he was compliant with his medications. (T at 29, 32, 275, 286,  
4 293, 299, 507, 520). Formal psychological testing did not reveal any significant  
5 cognitive deficits. (T at 29, 319-24). The ALJ cited evidence indicating that  
6 Plaintiff's depression and anxiety improved with medication. (T at 33, 281-82).

7         The ALJ recognized that Plaintiff's partial amputation<sup>2</sup> impacted his ability to  
8 work to some degree, but also noted that Plaintiff worked for over 30 years after that  
9 surgery, including 20 years as a forklift operator. (T at 33). The ALJ also  
10 recognized that Plaintiff had difficulty with his prosthetic in 2011, due to changes in  
11 Plaintiff's weight, and that a new prosthetic was ordered. (T at 33, 329-67, 394, 430-  
12 31, 506-507).

13         Dr. Steven Strode, a non-examining State Agency review consultant,  
14 performed a review in March of 2011. Dr. Strode opined that Plaintiff could lift 50  
15 pounds occasionally, 25 pounds frequently, stand/walk for about 6 hours in an 8-  
16 hour workday, and sit for about 6 hours in an 8-hour workday. (T at 310).

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19 <sup>2</sup> Plaintiff suffered a childhood accident, which resulted in a left leg, below the knee, amputation between the proximal  
tibia and fibula. (T at 28).

1 Dr. R.E. Brooks, a non-examining State Agency review consultant, performed  
2 a psychiatric review in October of 2011 and concluded that Plaintiff had no  
3 restriction in activities of daily living, no difficulties in maintaining social  
4 functioning, and no difficulties in maintaining concentration, persistence, or pace. (T  
5 at 486).

6 State Agency review physicians are highly qualified experts and their  
7 opinions, if supported by other record evidence, may constitute substantial evidence  
8 sufficient to support a decision to discount a treating physician's opinion. *See Saelee*  
9 *v. Chater*, 94 F.3d 520, 522 (9<sup>th</sup> Cir. 1996); *see also* 20 CFR § 404.1527  
10 (f)(2)(i) ("State agency medical and psychological consultants and other program  
11 physicians, psychologists, and other medical specialists are highly qualified  
12 physicians, psychologists, and other medical specialists who are also experts in  
13 Social Security disability evaluation.").

14 In June of 2011, Dr. William Goldsmith completed a consultative psychiatric  
15 evaluation. Dr. Goldsmith found Plaintiff cooperative and cheerful, with organized  
16 thought process, appropriate orientation, and intact memory. (T at 321). He noted  
17 that Plaintiff's concentration did not appear impaired and he had adequate judgment  
18 and normal intelligence. (T at 322). Dr. Goldsmith assigned a Global Assessment of  
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1 Functioning (“GAF”)<sup>3</sup> score of 60 (T at 322), which is indicative of moderate  
2 symptoms or difficulty in social, occupational or educational functioning. *Metcalfe*  
3 *v. Astrue*, No. EDCV 07-1039, 2008 US. Dist. LEXIS 83095, at \*9 (Cal. CD Sep’t  
4 29, 2008). Dr. Goldsmith assessed no work-related limitations arising from  
5 Plaintiff’s mental health issues. (T at 322-23).

6 Dr. Goldsmith opined that Plaintiff did not have any psychiatric impairment,  
7 although he noted that Plaintiff was “understandably troubled about his  
8 unemployment.” (T at 322). The ALJ gave some weight to Dr. Goldsmith’s  
9 assessment, but also credited the hearing testimony concerning Plaintiff’s depression  
10 and anxiety, concluding that his ability to consistently perform complex/detailed  
11 tasks would be somewhat limited. (T at 34).

12 In sum, this Court find that the ALJ’s decision is supported by substantial  
13 evidence (including the treatment notes, diagnostic testing, State Agency review  
14 physician’s assessments, and consultative examiner’s evaluation) and must therefore  
15 be sustained. Plaintiff’s treating physicians documented his complaints and  
16 treatment history, but did not assess his functional, work-related limitations. The  
17 ALJ adequately addressed the treating physicians’ notes and the overall evidentiary  
18 record reasonably supports the ALJ’s decision. *See Tackett v. Apfel*, 180 F.3d 1094,

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19 <sup>3</sup> “A GAF score is a rough estimate of an individual's psychological, social, and occupational functioning used to  
20 reflect the individual's need for treatment.” *Vargas v. Lambert*, 159 F.3d 1161, 1164 n.2 (9th Cir. 1998).

1 1098 (9th Cir. 1999)(holding that if evidence reasonably supports the  
2 Commissioner’s decision, the reviewing court must uphold the decision and may not  
3 substitute its own judgment).

4 **B. Credibility**

5 A claimant’s subjective complaints concerning his or her limitations are an  
6 important part of a disability claim. *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d  
7 1190, 1195 (9<sup>th</sup> Cir. 2004)(citation omitted). The ALJ’s findings with regard to the  
8 claimant’s credibility must be supported by specific cogent reasons. *Rashad v.*  
9 *Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir. 1990). Absent affirmative evidence of  
10 malingering, the ALJ’s reasons for rejecting the claimant’s testimony must be “clear  
11 and convincing.” *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995). “General  
12 findings are insufficient: rather the ALJ must identify what testimony is not credible  
13 and what evidence undermines the claimant’s complaints.” *Lester*, 81 F.3d at 834;  
14 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

15 However, subjective symptomatology by itself cannot be the basis for a  
16 finding of disability. A claimant must present medical evidence or findings that the  
17 existence of an underlying condition could reasonably be expected to produce the  
18 symptomatology alleged. See 42 U.S.C. §§423(d)(5)(A), 1382c (a)(3)(A); 20 C.F.R.  
19 § 404.1529(b), 416.929; SSR 96-7p.

1 In this case, Plaintiff testified as follows: He was 50 years old in October of  
2 2012 (when the administrative hearing was held). (T at 52). He stopped working in  
3 January of 2009, when he was laid off. (T at 52). Thereafter he received  
4 unemployment benefits and continued looking for work. (T at 52-53). Leg pain  
5 prevents him from standing for extended periods. Back pain also limits his ability to  
6 work. (T at 53). He had issues with replacing his prosthesis, which resulted in  
7 ongoing pain in his leg, back, and hips. (T at 55-56). These problems prevent him  
8 from working. (T at 57). Pain prevents Plaintiff from sitting or standing for  
9 prolonged periods. (T at 58). He can sit for 30-60 minutes. (T at 58). He has sleep  
10 problems and cannot perform household chores. (T at 58). His wife manages his  
11 medications. (T at 60-61). He has pain in his hands, which he described as “almost  
12 like tingling.” (T at 63). He has experienced falls. (T at 64). Physical therapy did  
13 not provide symptom relief. (T at 66-67).

14 The ALJ concluded that Plaintiff’s medically determinable impairments could  
15 reasonably be expected to cause the alleged symptoms, but that his statements  
16 concerning the intensity, persistence, and limiting effects of the symptoms were not  
17 fully credible. (T at 31).

18 This Court finds the ALJ’s credibility determination supported by substantial  
19 evidence and consistent with applicable law. First, Plaintiff’s testimony was



1 contradicted by the objective medical evidence. As summarized above, diagnostic  
2 testing indicated mild degenerative changes in Plaintiff's spine and a knee x-ray was  
3 unremarkable, showing normal alignment, no evidence of joint effusive, and "no  
4 significant degenerative disease." (T at 341-42, 366-68). Plaintiff's diabetes was  
5 generally stable and uncomplicated when he was compliant with his medications. (T  
6 at 29, 32, 275, 286, 293, 299, 507, 520). Formal psychological testing did not reveal  
7 any significant cognitive deficits. (T at 29, 319-24). Treatment notes indicated that  
8 Plaintiff's depression and anxiety improved with medication. (T at 33, 281-82). Dr.  
9 Strode opined that Plaintiff could lift 50 pounds occasionally, 25 pounds frequently,  
10 stand/walk for about 6 hours in an 8-hour workday, and sit for about 6 hours in an 8-  
11 hour workday. (T at 310). Dr. Brooks concluded that Plaintiff had no restriction in  
12 activities of daily living, no difficulties in maintaining social functioning, and no  
13 difficulties in maintaining concentration, persistence, or pace. (T at 486). Dr.  
14 Goldsmith assessed no work-related limitations arising from Plaintiff's mental  
15 health issues. (T at 322-23).

16 Although lack of supporting medical evidence cannot form the sole basis for  
17 discounting pain testimony, it is a factor the ALJ may consider when analyzing  
18 credibility. *Burch v. Barnhart*, 400 F.3d 676, 680 (9<sup>th</sup> Cir. 2005). In other words, an  
19 ALJ may properly discount subjective complaints where, as here, they are

1 contradicted by medical records. *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d  
2 1155, 1161 (9<sup>th</sup> Cir. 2008); *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9<sup>th</sup> Cir.  
3 2002).

4 Second, the ALJ noted that Plaintiff had a generally conservative course of  
5 treatment for both his physical and psychological impairments. (T at 32-33).  
6 “Evidence of ‘conservative treatment’ is sufficient to discount a claimant’s  
7 testimony regarding the severity of an impairment.” *Parra v. Astrue*, 481 F.3d 742,  
8 751 (9th Cir. 2007).

9 Third, the ALJ cited evidence that Plaintiff stopped working due to being laid  
10 off and continued looking for work thereafter. (T at 31). The fact that a claimant  
11 stopped working for reasons other than the alleged impairments is a valid reason for  
12 the ALJ to discount the claimant’s credibility. *Bruton v. Massanari*, 268 F.3d 824,  
13 828 (9th Cir. 2001).

14 Fourth, the ALJ reasonably relied upon Plaintiff’s activities of daily living,  
15 which she found inconsistent with Plaintiff’s claims of disabling limitations. (T at  
16 31). In particular, Plaintiff occasionally accompanied his grandchildren to school  
17 and the park, helped with household tasks, drives, handled finances, and engaged in  
18 social activities. (T at 31-32, 189, 230-38).

1           When assessing a claimant’s credibility, the ALJ may employ “ordinary  
2 techniques of credibility evaluation.” *Turner v. Comm’r of Soc. Sec.*, 613 F.3d 1217,  
3 1224 n.3 (9<sup>th</sup> Cir. 2010)(quoting *Smolen v. Chater*, 80 F.3d 1273, 1284 (9<sup>th</sup> Cir.  
4 1996)). Activities of daily living are a relevant consideration in assessing a  
5 claimant’s credibility. See *Rollins v. Massanari*, 261 F.3d 853, 857 (9<sup>th</sup> Cir. 2001).  
6 Although the claimant need not “vegetate in a dark room” to be considered disabled,  
7 *Cooper v. Brown*, 815 F.2d 557, 561 (9<sup>th</sup> Cir. 1987), the ALJ may discount a  
8 claimant’s testimony to the extent his or her activities of daily living “contradict  
9 claims of a totally debilitating impairment.” *Molina v. Astrue*, 674 F.3d 1104, 1112-  
10 13 (9<sup>th</sup> Cir. 2011).

11           In light of the above, this Court finds that the ALJ’s credibility determination  
12 must be sustained. See *Morgan v. Commissioner*, 169 F.3d 595, 599 (9<sup>th</sup> Cir.  
13 1999)(“[Q]uestions of credibility and resolutions of conflicts in the testimony are  
14 functions solely of the [Commissioner].”).

15           Plaintiff also argues that the ALJ did not adequately consider the testimony of  
16 his wife. “Testimony by a lay witness provides an important source of information  
17 about a claimant’s impairments, and an ALJ can reject it only by giving specific  
18 reasons germane to each witness.” *Regennitter v. Comm’r*, 166 F.3d 1294, 1298 (9<sup>th</sup>  
19 Cir. 1999). However, the ALJ did consider, and afforded some weight to, Mrs.

1 DeArcos testimony about Plaintiff’s mood difficulties, relying on that testimony to  
2 find that Plaintiff was limited to some degree by his mental health impairments. (T  
3 at 34). The ALJ also noted Mrs. DeArcos’s testimony that Plaintiff performed a  
4 variety of daily activities on various occasions and could concentrate and manage  
5 finances. (T at 31, 189, 230-38). This Court finds no error in the ALJ’s  
6 consideration of Mrs. DeArco’s lay testimony.

7 **C. Step Two Analysis**

8 At step two of the sequential evaluation process, the ALJ must determine  
9 whether the claimant has a “severe” impairment. See 20 C.F.R. §§ 404.1520(c),  
10 416.920(c). The fact that a claimant has been diagnosed with and treated for a  
11 medically determinable impairment does not necessarily mean the impairment is  
12 “severe,” as defined by the Social Security Regulations. *See, e.g., Fair v. Bowen*,  
13 885 F.2d 597, 603 (9th Cir. 1989); *Key v. Heckler*, 754 F.2d 1545, 1549-50 (9th Cir.  
14 1985). To establish severity, the evidence must show the diagnosed impairment  
15 significantly limits a claimant's physical or mental ability to do basic work activities  
16 for at least 12 consecutive months. 20 C.F.R. § 416.920(c).

17 The step two analysis is a screening device designed to dispose of *de minimis*  
18 complaints. *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). “[A]n impairment  
19 is found not severe . . . when medical evidence establishes only a slight abnormality

1 or a combination of slight abnormalities which would have no more than a minimal  
2 effect on an individual's ability to work." *Yuckert v. Bowen*, 841 F.2d 303 (9th Cir.  
3 1988) (quoting SSR 85-28). The claimant bears the burden of proof at this stage and  
4 the "severity requirement cannot be satisfied when medical evidence shows that the  
5 person has the ability to perform basic work activities, as required in most jobs."  
6 SSR 85-28. Basic work activities include: "walking, standing, sitting, lifting,  
7 pushing, pulling, reaching, carrying, or handling; seeing, hearing, speaking;  
8 understanding, carrying out and remembering simple instructions; responding  
9 appropriately to supervision, coworkers, and usual work situation." *Id.*

10 Here, the ALJ found that Plaintiff's left leg amputation, diabetes, depression,  
11 and anxiety were "severe" impairments under the Act. (Tr. 28). Plaintiff argues that  
12 his progressive back and lower extremity pain should also have been considered a  
13 severe impairment. However, Plaintiff's pain appeared to be related to his  
14 prosthesis, which in turn is related to his left leg amputation (which the ALJ found to  
15 be a severe impairment). (T at 50-51, 55-56, 250, 394). The ALJ carefully  
16 considered Plaintiff's complaints of back and lower extremity pain and found that he  
17 was limited to medium work with some postural limitations. (T at 28-30). There is  
18 no indication that classifying Plaintiff's back and lower extremity pain as a separate,  
19 severe impairment, as opposed to a symptom of the left leg amputation (which *was*

1 found to be severe) would have made any material difference in the outcome. This  
2 is particularly so where, as here, the ALJ considered all of the Plaintiff's  
3 impairments and complaints and the RFC determination is supported by treatment  
4 records, as well as assessments of State Agency review physicians and a consultative  
5 examiner.

6 In sum, this Court finds no error with regard to the ALJ's step two analysis.  
7 The step two analysis was resolved in Plaintiff's favor, *i.e.* the ALJ concluded that  
8 Plaintiff had severe impairments and proceeded with the sequential analysis. *See*  
9 *Burch v. Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005). Even assuming *arguendo* that  
10 the ALJ should have considered Plaintiff's back and lower extremity pain as a  
11 separate severe impairment, any error in that regard was harmless because the ALJ  
12 considered that pain when determining Plaintiff's RFC. *See Lewis v. Astrue*, 498  
13 F.3d 909, 911 (9th Cir. 2007).

#### 14 **D. RFC Determination**

15 An ALJ's assessment of the claimant's residual functional capacity ("RFC")  
16 must be upheld if the ALJ has applied the proper legal standard and substantial  
17 evidence in the record supports the decision. *Bayliss v. Barnhart*, 427 F.3d 1211,  
18 1217 (9th Cir. 2005). The ALJ must consider all the medical evidence in the record  
19 and "explain in [her] decision the weight given to . . . [the] opinions from treating  
20

1 sources, nontreating sources, and other nonexamining sources.” 20 C.F.R. §  
2 404.1527(e)(2)(ii); see also § 404.1545(a)(1).

3 In determining the claimant’s RFC, the ALJ considers those limitations for  
4 which there is support in the record and need not consider properly rejected evidence  
5 or subjective complaints. *See Bayliss*, 427 F.3d at 1217; *see also Batson v. Comm'r*  
6 *of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004) (holding that the ALJ was  
7 not required to incorporate into RFC findings from treating-physician opinions that  
8 were “permissibly discounted”).

9 Here, the ALJ determined that Plaintiff retained the RFC to perform medium  
10 work as defined in 20 CFR § 416.967 (c), with the following limitations:  
11 standing/walking 4 hours in an 8-hour workday; sitting 6 hours in an 8-hour  
12 workday; no pushing/pulling with the lower extremities; frequent stair and ramp  
13 climbing, with other postural activities occasionally; and frequent performance of  
14 detailed/complex tasks. (T at 30).

15 This Court finds the ALJ’s decision supported by substantial evidence. As  
16 discussed above, objective and diagnostic findings were generally unremarkable. (T  
17 at 29, 33, 341-42, 367). Plaintiff worked for more than 30 years with his prosthetic  
18 left leg and continued looking for work after being laid off. (T at 284, 336, 376). Dr.  
19 Strode opined that Plaintiff could lift 50 pounds occasionally, 25 pounds frequently,

1 stand/walk for about 6 hours in an 8-hour workday, and sit for about 6 hours in an 8-  
2 hour workday. (T at 310). Dr. Brooks concluded that Plaintiff had no restriction in  
3 activities of daily living, no difficulties in maintaining social functioning, and no  
4 difficulties in maintaining concentration, persistence, or pace. (T at 486). Dr.  
5 Goldsmith assessed no work-related limitations arising from Plaintiff's mental  
6 health issues. (T at 322-23).

7 The ALJ credited, in part, the evidence of impairment, concluding that  
8 Plaintiff had some exertional, postural, and non-exertional limitations. (T at 30).  
9 Contrary to Plaintiff's contention, the ALJ's decision, read in whole, demonstrates  
10 that the ALJ considered all of Plaintiff's impairments, both singly and in  
11 combination. *See Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999)(holding that  
12 if evidence reasonably supports the Commissioner's decision, the reviewing court  
13 must uphold the decision and may not substitute its own judgment).

14 **E. Hypothetical Question**

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



1 substantial numbers in the national economy that the claimant can perform. See  
2 *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir.1995). The Commissioner may  
3 carry this burden by “eliciting the testimony of a vocational expert in response to a  
4 hypothetical that sets out all the limitations and restrictions of the claimant.”  
5 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.1995). The ALJ's depiction of the  
6 claimant's disability must be accurate, detailed, and supported by the medical record.  
7 *Gamer v. Secretary of Health and Human Servs.*, 815 F.2d 1275, 1279 (9th  
8 Cir.1987). “If the assumptions in the hypothetical are not supported by the record,  
9 the opinion of the vocational expert that claimant has a residual working capacity  
10 has no evidentiary value.” *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9<sup>th</sup> Cir. 1984).

11 In this case, the ALJ’s step four analysis was based on the vocational expert’s  
12 response to a hypothetical question that incorporated the limitations set forth in the  
13 RFC determination. (T at 76). Plaintiff’s past relevant work was performed from a  
14 seated position, requiring lifting less than 10 pounds, required constant reaching, and  
15 occasional postural activities. (T at 50-52, 67, 173). Plaintiff essentially restates his  
16 prior arguments, contending that the ALJ should have included additional, more  
17 significant limitations in the hypothetical question to the vocation expert. However,  
18 an ALJ is not obliged to accept as true limitations alleged by Plaintiff and may  
19 decline to include such limitations in the vocational expert’s hypothetical if they are

1 not supported by sufficient evidence. *See Martinez v. Heckler*, 807 F.2d 771 (9th  
2 Cir. 1986); *see also Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005); *Hall*  
3 *v. Colvin*, No. CV-13-0043, 2014 U.S. Dist. LEXIS 45006, at \*24-25 (E.D. Wash.  
4 Mar. 31, 2014)(“A claimant fails to establish that a Step 5 determination is flawed  
5 by simply restating argument that the ALJ improperly discounted certain evidence,  
6 when the record demonstrates the evidence was properly rejected.”)(citing *Stubbs-*  
7 *Danielson v. Astrue*, 539 F.3d 1169, 1175-76 (9th Cir. 2008).

## 8 9 **V. CONCLUSION**

10 After carefully reviewing the administrative record, this Court finds  
11 substantial evidence supports the Commissioner’s decision, including the objective  
12 medical evidence and supported medical opinions. It is clear that the ALJ thoroughly  
13 examined the record, afforded appropriate weight to the medical evidence, including  
14 the assessments of the examining medical providers and the non-examining  
15 consultants, and afforded the subjective claims of symptoms and limitations an  
16 appropriate weight when rendering a decision that Plaintiff is not disabled. This  
17 Court finds no reversible error and substantial evidence supports the  
18 Commissioner’s decision.

1 **VI. ORDERS**

2 IT IS THEREFORE ORDERED that:

3 Judgment be entered AFFIRMING the Commissioner’s decision; and

4 The Clerk of the Court shall file this Decision and Order, serve copies upon  
5 counsel for the parties, and CLOSE this case.

6 DATED this 26<sup>th</sup> day of April, 2016,

7 /s/Victor E. Bianchini  
8 VICTOR E. BIANCHINI  
9 UNITED STATES MAGISTRATE JUDGE  
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