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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANTONIO GRILLO,

No. C-12-04262 DMR

Plaintiff,

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT  
AND DENYING PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT**

v.

MICHAEL J. ASTRUE,

Defendant.

Plaintiff Antonio Grillo moves for summary judgment to reverse the Commissioner of the Social Security Administration's (the "Commissioner's") final administrative decision, which found Grillo not disabled and therefore denied his applications for Title II Social Security Disability Insurance Benefits. The Commissioner cross-moves to affirm. For the reasons stated below, the court grants the Commissioner's motion and denies Plaintiff's motion.

**I. Procedural and Factual History**

Plaintiff first filed for Title II Social Security Disability Insurance Benefits on September 8, 2009, alleging a disability onset date of January 1, 2007. (A.R. 128-131, 142.) Plaintiff's application was initially denied on January 4, 2010 (A.R. 68-72) and again on reconsideration on June 4, 2010 (A.R. 76-81). On July 13, 2010, Plaintiff filed a timely request for a hearing before an Administrative Law Judge (ALJ). (A.R. 64-65.)

1 After the March 3, 2011 hearing, the ALJ issued a decision finding Plaintiff not disabled.  
2 (A.R. 45-59.) The ALJ determined that Plaintiff suffers from depression and attention deficit  
3 hyperactivity disorder (ADHD), which are severe impairments. (A.R. 50.) The ALJ found that  
4 Plaintiff’s mental impairment causes “mild restriction of activities of daily living, moderate  
5 difficulties in maintaining social functioning, [and] moderate difficulties in maintaining  
6 concentration, persistence, or pace.” (A.R. 51.) Although the ALJ determined that Plaintiff is  
7 unable to perform his past work as an engineer (*see* A.R. 37), he determined that Plaintiff has the  
8 following residual functional capacity (“RFC”):

9 I find that the claimant has the residual functional capacity to perform a full range  
10 of work at all exertional levels but with certain non-exertional limitations.  
11 Specifically, the claimant is limited to performing primarily simple, routine, and  
12 repetitive tasks involving only simple, work-related decisions and few, if any,  
13 workplace changes. The claimant is also limited to only occasional contact with the  
14 public.

15 (A.R. 51.) Relying on the opinion of a vocational expert who testified that an individual with such  
16 an RFC could perform a significant number of jobs existing in the economy, the ALJ concluded that  
17 Plaintiff is not disabled. (A.R. 58-59.)

18 Plaintiff filed a request for review of the hearing on May 23, 2011 (A.R. 6-7), which the  
19 Appeals Council denied on June 13, 2012. (A.R. 1-5.) The ALJ’s decision therefore became the  
20 final decision of the Commissioner. *Taylor v. Comm’r of Soc. Sec. Admin.*, 659 F.3d 1228, 1231  
21 (9th Cir. 2011). Plaintiff then filed suit in this court pursuant to 42 U.S.C. § 405(g).

## 22 **II. The Five-Step Sequential Evaluation Process**

23 To qualify for disability benefits, a claimant must demonstrate a medically determinable  
24 physical or mental impairment that prevents her from engaging in substantial gainful activity<sup>1</sup> and  
25 that is expected to result in death or to last for a continuous period of at least twelve months.  
26 *Reddick v. Chater*, 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The  
27 impairment must render the claimant incapable of performing the work she previously performed

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28 <sup>1</sup> Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done for pay or profit. 20 C.F.R. §§ 404.1510, 416.910.

1 and incapable of performing any other substantial gainful employment that exists in the national  
2 economy. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

3 To decide if a claimant is entitled to benefits, an ALJ conducts a five-step inquiry. 20 C.F.R.  
4 §§ 404.1520, 416.920. The steps are as follows:

- 5 1. At the first step, the ALJ considers the claimant’s work activity, if any. If the claimant is  
6 doing substantial gainful activity, the ALJ will find that the claimant is not disabled.
- 7 2. At the second step, the ALJ considers the medical severity of the claimant’s impairment(s).  
8 If the claimant does not have a severe medically determinable physical or mental impairment  
9 that meets the duration requirement in [20 C.F.R.] § 416.909, or a combination of  
10 impairments that is severe and meets the duration requirement, the ALJ will find that the  
11 claimant is not disabled.
- 12 3. At the third step, the ALJ also considers the medical severity of the claimant’s  
13 impairment(s). If the claimant has an impairment(s) that meets or equals one of the listings in  
14 20 C.F.R., Pt. 404, Subpt. P, App. 1 [the “Listings”] and meets the duration requirement, the  
15 ALJ will find that the claimant is disabled.
- 16 4. At the fourth step, the ALJ considers an assessment of the claimant’s residual functional  
17 capacity (“RFC”) and the claimant’s past relevant work. If the claimant can still do his or  
18 her past relevant work, the ALJ will find that the claimant is not disabled.
- 19 5. At the fifth and last step, the ALJ considers the assessment of the claimant’s RFC and age,  
20 education, and work experience to see if the claimant can make an adjustment to other work.  
21 If the claimant can make an adjustment to other work, the ALJ will find that the claimant is  
22 not disabled. If the claimant cannot make an adjustment to other work, the ALJ will find that  
23 the claimant is disabled.

24 20 C.F.R. § 416.920(a)(4); 20 C.F.R. §§ 404.1520; *Tackett*, 180 F.3d at 1098-99.

### 25 **III. Issues Presented**

- 26 1. Whether the ALJ erred in rejecting the opinion of Plaintiff’s treating physician;
- 27 2. Whether the ALJ improperly rejected the credibility of Plaintiff’s allegations; and
- 28 3. Whether the ALJ improperly rejected lay witness testimony.

1 **IV. Standard of Review**

2 Pursuant to 42 U.S.C. § 405(g), this court has the authority to review a decision by the  
3 Commissioner denying a claimant disability benefits. The ALJ’s underlying determination “will be  
4 disturbed only if it is not supported by substantial evidence or it is based on legal error.”  
5 *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989) (internal quotation marks omitted).  
6 Substantial evidence is evidence within the record that could lead a reasonable mind to accept a  
7 conclusion regarding disability status. *See Richardson v. Perales*, 402 U.S. 389, 401 (1971). It is  
8 “more than a mere scintilla” but less than a preponderance. *Id.* If the evidence reasonably could  
9 support two conclusions, the court “may not substitute its judgment for that of the Commissioner”  
10 and must affirm the decision. *Jamerson v. Chater*, 112 F.3d 1064, 1066 (9th Cir. 1997) (citation  
11 omitted). “Finally, the court will not reverse an ALJ’s decision for harmless error, which exists  
12 when it is clear from the record that the ALJ’s error was inconsequential to the ultimate  
13 nondisability determination.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (citations  
14 and internal quotation marks omitted).

15 **V. Discussion**

16 **A. The ALJ’s Evaluation of Dr. Dimas’s Opinions**

17 Plaintiff first argues that the ALJ erred in rejecting the opinions of treating physician Dr.  
18 Juanita Dimas, Ph.D. regarding his mental limitations in favor of the assessments of nontreating  
19 physician Dr. Maria Kerosky, Ph.D. and nontreating, non-examining physicians Beverley Morgan,  
20 M.D., Kim Morris, Psy.D., and R.E. Brooks, M.D. Specifically, Plaintiff argues that the ALJ erred  
21 in formulating his RFC by failing to provide legitimate reasons for rejecting Dr. Dimas’s opinions.

22 **1. Legal Standard**

23 Courts employ a hierarchy of deference to medical opinions based on the relation of the  
24 doctor to the patient. Namely, courts distinguish between three types of physicians: those who treat  
25 the claimant (“treating physicians”) and two categories of “nontreating physicians,” those who  
26 examine but do not treat the claimant (“examining physicians”) and those who neither examine nor  
27 treat the claimant (“non-examining physicians”). *See Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
28 1996). A treating physician’s opinion is entitled to more weight than an examining physician’s

1 opinion, and an examining physician’s opinion is entitled to more weight than a non-examining  
2 physician’s opinion. *Id.*

3         The Social Security Act tasks the ALJ with determining credibility of medical testimony and  
4 resolving conflicting evidence and ambiguities. *Reddick*, 157 F.3d at 722. A treating physician’s  
5 opinion, while entitled to more weight, is not necessarily conclusive. *Magallanes*, 881 F.2d at 751  
6 (citation omitted). To reject the opinion of an uncontradicted treating physician, an ALJ must  
7 provide “clear and convincing reasons.” *Lester*, 81 F.3d at 830; *see, e.g., Roberts v. Shalala*, 66  
8 F.3d 179, 184 (9th Cir. 1995) (affirming rejection of examining psychologist’s functional  
9 assessment which conflicted with his own written report and test results); *see also* 20 C.F.R.  
10 § 416.927(d)(2); SSR 96-2p, 1996 WL 374188. If another doctor contradicts a treating physician,  
11 the ALJ must provide “specific and legitimate reasons” supported by substantial evidence to  
12 discount the treating physician’s opinion. *Lester*, 81 F.3d at 830. The ALJ meets this burden “by  
13 setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his  
14 interpretation thereof, and making findings.” *Reddick*, 157 F.3d at 725. “[B]road and vague”  
15 reasons do not suffice. *McAllister v. Sullivan*, 888 F.2d 599, 602 (9th Cir. 1989). This same  
16 standard applies to the rejection of an examining physician’s opinion as well. *Lester*, 81 F.3d at  
17 830-31. A non-examining physician’s opinion alone cannot constitute substantial evidence to reject  
18 the opinion of an examining or treating physician, *Pitzer v. Sullivan*, 908 F.2d 502, 506 n.4 (9th Cir.  
19 1990); *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984), though a non-examining physician’s  
20 opinion may be persuasive when supported by other factors. *See Tonapetyan v. Halter*, 242 F.3d  
21 1144, 1149 (9th Cir. 2001) (noting that opinion by “non-examining medical expert . . . may  
22 constitute substantial evidence when it is consistent with other independent evidence in the record”);  
23 *Magallanes*, 881 F.2d at 751-55 (upholding rejection of treating physician’s opinion given  
24 contradictory laboratory test results, reports from examining physicians, and testimony from  
25 claimant). An opinion that is more consistent with the record as a whole generally carries more  
26 persuasiveness. *See* 20 C.F.R. § 416.927(d)(4).

27                   **2. Analysis**  
28

1 The record contains two opinions by Dr. Dimas, who reported that she treated Plaintiff in  
2 weekly psychotherapy sessions from March 27, 2007 to December 3, 2009: a November 25, 2009  
3 “Short-Form Evaluation for Mental Disorders” and a January 8, 2011 “Physical Residual Functional  
4 Capacity Questionnaire.” (A.R. 366-368, 437-441.)

5 In her 2009 opinion, Dr. Dimas opined that Plaintiff’s ability to maintain concentration,  
6 attention, and persistence was “poor,” meaning that “the individual cannot usefully perform or  
7 sustain the activity.”<sup>2</sup> (A.R. 368.) She also opined that Plaintiff’s ability to understand, remember,  
8 and carry out simple instructions was good to fair, and for complex instructions his ability was fair  
9 to poor. His ability to perform activities within a schedule and to maintain regular attendance was  
10 good and his ability to complete a normal workday and workweek without interruptions from  
11 psychologically based symptoms was unlimited. He also had a fair ability to respond appropriately  
12 to changes in a work setting. (A.F. 368.) Plaintiff’s prognosis was “guarded.” (A.R. 368.)

13 In her January 2011 opinion, Dr. Dimas diagnosed Plaintiff with major depressive disorder.  
14 She wrote that he exhibited a depressed mood, decreased interests, concentration, and energy, sleep  
15 disregulation, isolation, and history of suicidal ideation. (A.R. 437.) She noted that he had an  
16 “[a]bnormal neuro psych eval consistent with right hemispheric damage, [secondary to] remote  
17 traumatic brain injury that likely resulted in developmental delays [and] [Attention Deficit Disorder  
18 (ADD)].” She opined that Plaintiff’s prognosis was fair. (A.R. 437.) His recommended treatment  
19 included cognitive behavioral therapy, medication prescribed by a psychiatrist, and referrals for a  
20 “neuro psych” evaluation and neurological examination. (A.R. 438.) Dr. Dimas opined that  
21 Plaintiff’s symptoms were severe enough to constantly interfere with his attention and concentration  
22 and that he was severely limited in his ability to deal with work stress. (A.R. 438-439.) She also  
23 noted that she had first seen Plaintiff in March 2007 and that his symptoms were “long standing” at  
24 that time. (A.R. 441.)

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26 <sup>2</sup> Dr. Dimas’s 2009 opinion included a “check the box” format with the following additional  
27 descriptions: “fair” was defined as “[t]he evidence supports the conclusion that the individual’s capacity  
28 to perform the activity is impaired, but the degree/extent of the impairment needs to be further  
described.” “Good” was defined as “[t]he effects of the mental disorder do not significantly limit the  
individual from consistently and usefully performing the activity.” “Unlimited” was defined as “[t]he  
mental disorder does not affect the ability to perform this activity.” (A.R. 368.)

1           The ALJ acknowledged and summarized Dr. Dimas’s two opinions. He explained that he  
2 did not give significant weight to the 2009 opinion because Dr. Dimas did not “document positive  
3 objective clinical or diagnostic findings to support her assessment” and there were no treatment  
4 notes even though Dr. Dimas had held weekly therapy sessions with Plaintiff. (A.R. 56.) The ALJ  
5 also found that Dr. Dimas’s opinion was not consistent with the record as a whole, including  
6 diagnostic testing results and Plaintiff’s self-described activities of daily living. (A.R. 56.) As to the  
7 2011 opinion, the ALJ declined to give any weight to the opinion because Dr. Dimas had not seen  
8 Plaintiff since 2009 and because the assessment was not consistent with the record as a whole.  
9 (A.R. 56.) The ALJ rejected Dr. Dimas’s opinions in favor of the opinions of examining physician  
10 Dr. Kerosky and nontreating, non-examining physicians Drs. Morgan, Morris, and Brooks, who  
11 each found that Plaintiff could perform at least simple instruction work<sup>3</sup> and that he was no more  
12 than moderately impaired in his ability to maintain adequate attention and concentration. (A.R. 56;  
13 *see* A.R. 358 (“[Plaintiff] would have mild difficulty to maintain adequate attention/concentration”  
14 (Kerosky)); 369-374 (no relevant limitations (Morgan)); 383, 386 (moderate difficulties in  
15 maintaining concentration, persistence, or pace; not significantly limited in the ability to maintain  
16 attention and concentration for extended periods (Morris)); 427 (“has problems with . . .  
17 concentration” (Brooks).)

18           As Dr. Dimas’s opinions were contradicted by the opinions of Drs. Kerosky, Morgan,  
19 Morris, and Brooks, the ALJ was required to provide “specific and legitimate reasons” supported by  
20 substantial evidence to discount Dr. Dimas’s opinions. *See Lester*, 81 F.3d at 830. Upon review of  
21 the record, the court concludes that the ALJ did not err with respect to Dr. Dimas’s opinions. First,  
22 the ALJ noted that the 2009 and 2011 assessments were not consistent with the record as a whole,  
23 including Plaintiff’s self-described activities of daily living and diagnostic testing results. (A.R. 56.)

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25           <sup>3</sup> Drs. Morris, Morgan, and Brooks each opined that Plaintiff could perform simple and some  
26 complex tasks. (*See* A.R. 373 (Plaintiff retains “ability to complete simple and some complex tasks”  
27 (Morgan)); 388 (Plaintiff has “sufficient ability to understand and remember simple and some complex  
28 instructions” (Morris)); 426 (“fair ability to do complex tasks” (Brooks)).) The ALJ gave “some  
weight” to their assessments of Plaintiff’s functional limitations but did not accept their conclusion that  
Plaintiff has the “ability to understand and remember some complex instructions,” finding it inconsistent  
with the record as a whole. (A.R. 56.)

1 As to Plaintiff’s activities of daily living, the ALJ noted that Plaintiff reported driving; spending five  
2 to six hours per day on the computer searching for jobs; frequent reading of science fiction,  
3 constitutional law, and aviation technology; weekly ballroom dancing and participation in  
4 Toastmasters. (A.R. 53.) Plaintiff also reported caring for his personal needs, doing weekly grocery  
5 shopping, and performing household chores. (A.R. 53.) The ALJ noted that these activities were  
6 inconsistent with Plaintiff’s allegations of disabling functional limitations, and specifically noted  
7 that “some of the physical and mental abilities and social interactions required to perform these  
8 activities are the same as those necessary to obtain and maintain employment.” (A.R. 53.) Further,  
9 in direct contradiction to Dr. Dimas’s 2011 opinion that Plaintiff was “severely limited in his ability  
10 to deal with work stress,” (A.R. 439), Plaintiff himself indicated that he was “average” at handling  
11 stress.” (A.R. 167.) Plaintiff disputes the ALJ’s characterization of his activities. However, as  
12 discussed further below, the ALJ’s interpretation of the evidence regarding Plaintiff’s daily activities  
13 was rational, and thus supports his decision to discount Dr. Dimas’s opinions. *See Burch v.*  
14 *Barnhart*, 400 F.3d 676, 680-81 (holding that a court must “uphold the ALJ’s decision where the  
15 evidence is susceptible to more than one rational interpretation.” (quoting *Magallanes*, 881 F.2d at  
16 750) (quotation marks omitted)).

17       Regarding diagnostic testing results, the ALJ discussed two consultative examinations from  
18 November 2009 as well as a July 2007 neuropsychological examination. Dr. Kerosky, a  
19 psychological consultative examiner, examined Plaintiff in November 2009. (A.R. 353-359.) She  
20 performed a complete psychological evaluation/history/mental status examination of Plaintiff and  
21 administered four tests. She diagnosed Plaintiff with recurrent, severe major depressive disorder.  
22 (A.R. 358.) Noting the results of his IQ tests, she stated that Plaintiff appeared to function  
23 intellectually in the “average to high average range,” with a very superior fund of knowledge and  
24 knowledge of conventional standards of behavior/judgment. (A.R. 358.) She noted that he  
25 performed in the average range on verbal memory tasks and in the average to high average range on  
26 visual memory tasks. Dr. Kerosky concluded that “[f]rom [a] cognitive standpoint,” Plaintiff would  
27 be able to “maintain adequate pace and persistence to perform simple, repetitive tasks,” and would  
28 have only “mild difficulty to maintain adequate attention/concentration.” (A.R. 358.) She also

1 concluded that Plaintiff’s ability to interact appropriately with the public, coworkers, and  
2 supervisors would be mildly impaired. (A.R. 358.)

3 Dr. Farah M. Rana, a neurologist, examined Plaintiff later in November 2009. (A.R. 360-  
4 363.) She stated that Plaintiff presented with some cognitive difficulties, but that he scored 29 out of  
5 30 on a “superficial” mini-mental exam. (A.R. 362.) In her opinion, Plaintiff’s severe depression  
6 very likely contributed to his memory problems. She noted that given Plaintiff’s memory problems,  
7 “he would have difficulty doing a job in NASA, but otherwise he should be able to function without  
8 any problem.”<sup>4</sup> (A.R. 362-363.) The assessments of Drs. Kerosky and Rana are inconsistent with  
9 Dr. Dimas’s opinion that Plaintiff could not “usefully perform or sustain” his concentration,  
10 attention, and persistence. (*See* A.R. 368.)

11 The ALJ also discussed a July 2007 examination of Plaintiff by neuropsychologist Nancy  
12 Canning, Psy.D., and a July 2009 neuro-optometric evaluation by the Binocular Vision Clinic at the  
13 University of California, Berkeley. (A.R. 54, 210-218, 306-307.) Dr. Canning, who administered a  
14 battery of tests, concluded that Plaintiff’s cognitive deficits were consistent with a history of  
15 probable traumatic brain injury that likely resulted in developmental delays and attention deficit  
16 disorder. (A.R. 215.) Dr. Canning made a number of clinical findings, but did not translate them  
17 into functional limitations. Her findings include that Plaintiff would have difficulty focusing and  
18 sustaining attention, but other of her findings include intact verbal and visuospatial fluency,  
19 improved attention with more salient stimuli, efficient and accurate mental arithmetic, good  
20 sequencing skills, average verbal abstract reasoning skills, average memory for contextual  
21 information, and strong work ethic and knowledge of social norms. (A.R. 215.) In sum, although  
22 Dr. Canning’s opinion provides some support for Dr. Dimas’s opinion about Plaintiff’s difficulty in  
23 sustaining concentration, in light of the entire record, the court finds that her opinion is not

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25 <sup>4</sup> The ALJ also rejected portions of Dr. Kerosky and Dr. Rana’s opinions. Specifically, the ALJ  
26 did not accept Dr. Kerosky’s opinion that Plaintiff’s ability to withstand the stress of a routine workday  
27 would be moderately to markedly impaired, (A.R. 358), nor Dr. Rana’s opinion that Plaintiff’s  
28 depression would greatly affect his daily activities. (A.R. 57.) While Plaintiff challenges the ALJ’s  
rejection of these portions of their opinions, (*see* Pl.’s Mot. 17 n.2, 19), he does so merely in passing and  
does not explain how the ALJ’s acceptance of these opinions would have impacted the ultimate  
nondisability determination.

1 inconsistent with the opinions of Drs. Kerosky and Rana, who each found that Plaintiff was not  
2 markedly impaired in concentration.

3 Similarly, following two visual perceptual screenings in 2009 at the Binocular Vision Clinic,  
4 Plaintiff's testing showed reduced results in several areas. (A.R. 306-307.) Based on Plaintiff's test  
5 results, the Clinic recommended that Plaintiff "work in less visually demanding environments or  
6 where visual accuracy/details are de-emphasized." (A.R. 308.) Again, while this testing generally  
7 showed deficiencies in Plaintiff's visual perception skills, the clinic did not translate its findings into  
8 functional limitations that are inconsistent with the opinions of Drs. Kerosky and Rana. Therefore,  
9 the ALJ's finding that Dr. Dimas's opinions were inconsistent with the record as a whole is  
10 supported by substantial evidence. Further, Dr. Dimas's opinions were contradicted by the opinions  
11 of Drs. Morgan, Morris, and Brooks, whose opinions may serve as substantial evidence as they are  
12 consistent with other independent evidence in the record, as noted by the ALJ, (A.R. 56). *See*  
13 *Lester*, 81 F.3d at 831.

14 The ALJ also noted that Dr. Dimas's 2009 opinion did not document objective clinical or  
15 diagnostic findings to support her assessment. (A.R. 56.) Plaintiff contends that it was the ALJ's  
16 "duty to conduct an appropriate inquiry," and that the ALJ should have recontacted Dr. Dimas if he  
17 needed the underlying treatment records. (Pl.'s Mot. 16 (citing *Smolen v. Chater*, 80 F.3d 1273,  
18 1288 (9th Cir. 1996).) However, an ALJ is required to recontact a physician "only if the doctor's  
19 report is ambiguous or insufficient for the ALJ to make a disability determination." *Bayliss v.*  
20 *Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005). Here, the ALJ, with support in the record, found the  
21 evidence adequate to make a determination regarding Plaintiff's disability. Therefore, he did not  
22 have a duty to recontact Dr. Dimas. *See id.*

23 In sum, the court finds that the ALJ provided specific and legitimate reasons supported by  
24 substantial evidence to reject Dr. Dimas's opinions.

### 25 **B. Plaintiff's Credibility**

26 Plaintiff next argues that the ALJ improperly failed to credit Plaintiff's testimony regarding  
27 the nature and extent of his functional limitations. According to Plaintiff, the ALJ erred in  
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1 discounting Plaintiff’s testimony as partially credible because he failed to provide clear and  
2 convincing reasons for rejecting his testimony.

3 In general, credibility determinations are the province of the ALJ. “It is the ALJ’s role to  
4 resolve evidentiary conflicts. If there is more than one rational interpretation of the evidence, the  
5 ALJ’s conclusion must be upheld.” *Allen v. Sec’y of Health & Human Servs.*, 726 F.2d 1470, 1473  
6 (9th Cir. 1984). An ALJ is not “required to believe every allegation of disabling pain” or other  
7 nonexertional impairment. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.1989) (citing 42 U.S.C. §  
8 423(d)(5) (A)). Nevertheless, the ALJ’s credibility determinations “must be supported by specific,  
9 cogent reasons.” *Reddick*, 157 F.3d at 722 (citation omitted). If an ALJ discredits a claimant’s  
10 subjective symptom testimony, the ALJ must articulate specific reasons for doing so. *Greger v.*  
11 *Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006). In evaluating a claimant’s credibility, the ALJ cannot  
12 rely on general findings, but “must specifically identify what testimony is credible and what  
13 evidence undermines the claimant’s complaints.” *Id.* at 972 (quotations omitted); *see also Thomas*  
14 *v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (ALJ must articulate reasons that are “sufficiently  
15 specific to permit the court to conclude that the ALJ did not arbitrarily discredit claimant’s  
16 testimony.”). The ALJ may consider “ordinary techniques of credibility evaluation,” including the  
17 claimant’s reputation for truthfulness and inconsistencies in testimony, and may also consider a  
18 claimant’s daily activities, and “unexplained or inadequately explained failure to seek treatment or  
19 to follow a prescribed course of treatment.” *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996).  
20 The determination of whether or not to accept a claimant’s testimony regarding subjective symptoms  
21 requires a two-step analysis. 20 C.F.R. §§ 404.1529, 416.929; *Smolen*, 80 F.3d at 1281 (citations  
22 omitted). First, the ALJ must determine whether or not there is a medically determinable  
23 impairment that reasonably could be expected to cause the claimant’s symptoms. 20 C.F.R. §§  
24 404.1529(b), 416.929(b); *Smolen*, 80 F.3d at 1281-82. Once a claimant produces medical evidence  
25 of an underlying impairment, the ALJ may not discredit the claimant’s testimony as to the severity  
26 of symptoms “based solely on a lack of objective medical evidence to fully corroborate the alleged  
27 severity of” the symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 343, 346-47 (9th Cir. 1991) (en banc)

28

1 (citations omitted). Absent affirmative evidence that the claimant is malingering,<sup>5</sup> the ALJ must  
2 provide specific “clear and convincing” reasons for rejecting the claimant’s testimony. *Smolen*, 80  
3 F.3d at 1283-84.

4 Here, the ALJ found that Plaintiff’s “medically determinable impairments could reasonably  
5 be expected to cause the alleged symptoms; however, the claimant’s statements concerning the  
6 intensity, persistence and limiting effects of these symptoms are not credible to the extent that they  
7 are inconsistent with the above residual functional capacity assessment.” (A.R. 53.) The ALJ  
8 considered the evidence for making this determination, and gave clear and convincing reasons  
9 supported by substantial evidence for failing to fully credit Plaintiff’s credibility. First, the ALJ  
10 explained that while Plaintiff was “partially credible,” many of his self-described daily activities,  
11 “such as driving, spending five to six hours per day on the computer, frequent reading, and weekly  
12 ballroom dancing, are inconsistent [with] his allegations of disabling functional limitations.” (A.R.  
13 53.) The ALJ also noted that Plaintiff reported performing weekly grocery shopping, household  
14 chores, and participation in Toastmasters. (A.R. 53.)

15 Plaintiff argues that the ALJ’s characterization of his statements about his daily activities did  
16 not convey the depth and extent of his functional limitations. Specifically, Plaintiff notes that he  
17 testified that he had a difficult time staying on track while reading, usually finding that he was  
18 “reading the same thing over and over again.” (A.R. 29.) However, as the ALJ noted, Plaintiff also  
19 acknowledged that he ultimately finishes what he reads. (A.R. 29 (“I get through it, but it takes – it  
20 takes a long time”).) As to the time he spends on the computer looking for a job, Plaintiff testified  
21 that he makes numerous mistakes completing online applications and the applications get rejected,  
22 and that it sometimes takes him days or over a week to complete and file one application. (A.R. 31,  
23 34.) He also points to his testimony about walking two dogs twice a week; he testified that he could  
24 not do this on a full time basis because he feels “like [he’s] on some sort of cognitive overload when  
25 [he’s] done.” (A.R. 36.) Although this evidence is susceptible to an interpretation more favorable to  
26 Plaintiff, the court cannot say that the ALJ’s interpretation was not rational. A court must “uphold  
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28 <sup>5</sup> The ALJ did not conclude that plaintiff was a malingerer.

1 the ALJ’s decision where the evidence is susceptible to more than one rational interpretation.” *See*  
2 *Burch*, 400 F.3d at 680-81 (quoting *Magallanes*, 881 F.2d at 750) (quotation marks omitted).

3 The ALJ also noted that the diagnostic testing results, including Dr. Kerosky’s November  
4 2009 report, did not support Plaintiff’s alleged degree of impairment. (A.R. 53.) As discussed  
5 above, Dr. Kerosky performed a complete examination of Plaintiff, including a psychological  
6 evaluation, a mental status exam, and a battery of tests. Plaintiff showed minimal abnormalities and  
7 scored average to above average results in all but one of the tests. (A.R. 355-357.) Dr. Kerosky  
8 concluded that “[f]rom [a] cognitive standpoint,” Plaintiff would be able to “maintain adequate pace  
9 and persistence to perform simple, repetitive tasks,” and would have only “mild difficulty to  
10 maintain adequate attention/concentration.” (A.R. 358.) Similarly, Dr. Rana opined that Plaintiff  
11 “would have difficulty doing a job in NASA, but otherwise he should be able to function without  
12 any problem.” (A.R. 362-363.) The ALJ also cited the July 2009 evaluation by the Binocular  
13 Vision Clinic, in which the Clinic recommended that Plaintiff “work in less visually demanding  
14 environments or where visual accuracy/details are de-emphasized.” (A.R. 308.)

15 The ALJ considered all of the above factors in concluding that Plaintiff’s testimony was not  
16 fully credible. The court finds that the ALJ provided clear and convincing reasons supported by  
17 substantial evidence for his decision.

### 18 C. Lay Witness Credibility

19 Finally, Plaintiff also alleges that the ALJ failed to give proper weight to a letter submitted  
20 by Plaintiff’s brother.

21 “In determining whether a claimant is disabled, an ALJ must consider lay witness testimony  
22 concerning a claimant’s ability to work.” *Bruce v. Astrue*, 557 F.3d 1113, 1115 (9th Cir. 2009)  
23 (citations and quotation marks omitted). Ordinarily, an ALJ must provide specific reasons,  
24 “germane to each witness,” to reject the testimony of a lay witness. *Id.* (citations and quotation  
25 marks omitted). “Inconsistency with medical evidence is one such reason.” *Bayliss*, 427 F.3d at  
26 1218 (citation omitted).

27 Evelio Grillo submitted a letter dated February 28, 2011 in which he detailed his  
28 observations of Plaintiff’s condition over the last ten years and gave his opinion that he did not

1 believe “that [Plaintiff] is capable of obtaining steady employment, or working any job unless there  
2 is substantial improvement in his condition.” (A.R. 201-202.) The ALJ stated that he found the  
3 letter credible “only to the extent it is consistent with the conclusion that the claimant can do work  
4 as described herein.” (A.R. 53.) He noted that the letter did not add significant details to Plaintiff’s  
5 own allegations, and that the symptoms reported by Plaintiff’s brother were within the assessed  
6 RFC. Specifically, Plaintiff’s brother observed that Plaintiff’s executive functioning had  
7 deteriorated and “appears to have worsened his depression and to have compounded his social  
8 awkwardness.” (A.R. 202.) The ALJ also noted that as a lay witness, Plaintiff’s brother was not  
9 competent to make a diagnosis or argue the severity of Plaintiff’s symptoms relative to his inability  
10 to work, and that as a family member, his opinion was not unbiased. (A.R. 53.) While “the fact that  
11 a lay witness is a family member cannot be a ground for rejecting his or her testimony,” *Smolen*, 80  
12 F.3d at 1289, the ALJ did not discount the letter solely on this basis. The ALJ provided specific and  
13 germane reasons to reject Plaintiff’s brother’s statements. The court finds that the ALJ’s rejection of  
14 the letter is supported by substantial evidence and was not error.

15 **VI. Conclusion**

16 For the foregoing reasons, the court finds that the ALJ’s decision that Plaintiff was not  
17 disabled was supported by substantial evidence in the record and in accordance with law.  
18 Accordingly, the court grants Defendant’s motion for summary judgment and denies Plaintiff’s  
19 motion for summary judgment.

20  
21 IT IS SO ORDERED.

22  
23 Dated: June 3, 2014

