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

MARTHA ALICIA GOMEZ,)	Case No. CV 12-8594-JPR
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
vs.)	AFFIRMING THE COMMISSIONER
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security, ¹)	
)	
Defendant.)	
)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying her application for Social Security disability insurance benefits ("DIB") and supplemental security income benefits ("SSI"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed June 19, 2013, which the Court has taken under

¹ On February 14, 2013, Colvin became the Acting Commissioner of Social Security. Pursuant to Federal Rule of Civil Procedure 25(d), the Court therefore substitutes Colvin for Michael J. Astrue as the proper Respondent.

1 submission without oral argument. For the reasons discussed
2 below, the Commissioner's decision is affirmed and this action is
3 dismissed.

4 **II. BACKGROUND**

5 Plaintiff was born on December 10, 1971. (Administrative
6 Record ("AR") 85.) She attended high school but did not complete
7 12th grade. (AR 29.) Plaintiff previously worked as a retail
8 clerk and a shipping clerk. (AR 30-31.)

9 On April 24 and 30, 2009, respectively, Plaintiff filed
10 applications for DIB and SSI. (AR 40-41, 85-96.) After
11 Plaintiff's applications were denied, she requested a hearing
12 before an Administrative Law Judge ("ALJ"). (AR 58.) A hearing
13 was held on March 28, 2011, at which Plaintiff, who was not
14 represented by counsel, and a vocational expert ("VE") testified.
15 (AR 28-38.) On April 19, 2011, the ALJ issued a written decision
16 finding Plaintiff not disabled. (AR 13-21.) On June 13, 2011,
17 Plaintiff requested review of the ALJ's decision. (AR 8-9.) On
18 August 30, 2012, the Appeals Council denied her request for
19 review. (AR 1-5.) This action followed.

20 **III. STANDARD OF REVIEW**

21 Pursuant to 42 U.S.C. § 405(g), a district court may review
22 the Commissioner's decision to deny benefits. The ALJ's findings
23 and decision should be upheld if they are free of legal error and
24 supported by substantial evidence based on the record as a whole.
25 § 405(g); Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct.
26 1420, 1427, 28 L. Ed. 2d 842 (1971); Parra v. Astrue, 481 F.3d
27 742, 746 (9th Cir. 2007). Substantial evidence means such
28 evidence as a reasonable person might accept as adequate to

1 support a conclusion. Richardson, 402 U.S. at 401; Lingenfelter
2 v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than
3 a scintilla but less than a preponderance. Lingenfelter, 504
4 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d 880,
5 882 (9th Cir. 2006)). To determine whether substantial evidence
6 supports a finding, the reviewing court "must review the
7 administrative record as a whole, weighing both the evidence that
8 supports and the evidence that detracts from the Commissioner's
9 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
10 1996). "If the evidence can reasonably support either affirming
11 or reversing," the reviewing court "may not substitute its
12 judgment" for that of the Commissioner. Id. at 720-21.

13 **IV. THE EVALUATION OF DISABILITY**

14 People are "disabled" for purposes of receiving Social
15 Security benefits if they are unable to engage in any substantial
16 gainful activity owing to a physical or mental impairment that is
17 expected to result in death or which has lasted, or is expected
18 to last, for a continuous period of at least 12 months. 42
19 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257
20 (9th Cir. 1992).

21 A. The Five-Step Evaluation Process

22 The ALJ follows a five-step sequential evaluation process in
23 assessing whether a claimant is disabled. 20 C.F.R.
24 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,
25 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first
26 step, the Commissioner must determine whether the claimant is
27 currently engaged in substantial gainful activity; if so, the
28 claimant is not disabled and the claim must be denied.

1 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If the claimant is not
2 engaged in substantial gainful activity, the second step requires
3 the Commissioner to determine whether the claimant has a "severe"
4 impairment or combination of impairments significantly limiting
5 her ability to do basic work activities; if not, a finding of not
6 disabled is made and the claim must be denied.

7 §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the claimant has a
8 "severe" impairment or combination of impairments, the third step
9 requires the Commissioner to determine whether the impairment or
10 combination of impairments meets or equals an impairment in the
11 Listing of Impairments ("Listing") set forth at 20 C.F.R., Part
12 404, Subpart P, Appendix 1; if so, disability is conclusively
13 presumed and benefits are awarded. §§ 404.1520(a)(4)(iii),
14 416.920(a)(4)(iii). If the claimant's impairment or combination
15 of impairments does not meet or equal an impairment in the
16 Listing, the fourth step requires the Commissioner to determine
17 whether the claimant has sufficient residual functional capacity
18 ("RFC")² to perform her past work; if so, the claimant is not
19 disabled and the claim must be denied. §§ 404.1520(a)(4)(iv),
20 416.920(a)(4)(iv). The claimant has the burden of proving that
21 she is unable to perform past relevant work. Drouin, 966 F.2d at
22 1257. If the claimant meets that burden, a prima facie case of
23 disability is established. Id. If that happens or if the
24 claimant has no past relevant work, the Commissioner then bears
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27 ² RFC is what a claimant can do despite existing
28 exertional and nonexertional limitations. 20 C.F.R. §§ 404.1545,
416.945; see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th
Cir. 1989).

1 the burden of establishing that the claimant is not disabled
2 because she can perform other substantial gainful work available
3 in the national economy. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).
4 That determination comprises the fifth and final step in the
5 sequential analysis. §§ 404.1520, 416.920; Lester, 81 F.3d at
6 828 n.5; Drouin, 966 F.2d at 1257.

7 B. The ALJ's Application of the Five-Step Process

8 At step one, the ALJ found that Plaintiff had not engaged in
9 substantial gainful activity since February 4, 2008, the alleged
10 onset date. (AR 15.) At step two, the ALJ concluded that
11 Plaintiff had the severe impairments of degenerative disc
12 disease, depression, and bipolar disorder. (Id.) At step three,
13 the ALJ determined that Plaintiff's impairments did not meet or
14 equal any of the impairments in the Listing. (AR 15-16.) At
15 step four, the ALJ found that Plaintiff had the RFC to perform
16 "light work"³ except that she could only

17 stand/walk 6 hours in an 8 hour period; sit 6 hours in an
18 8 hour period; occasionally climb, balance, stoop, kneel,
19 crouch, and crawl; and [has] mild limitations in
20 understanding and remembering tasks, sustain[ing]

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22 ³ "Light work" involves "lifting no more than 20 pounds
23 at a time with frequent lifting or carrying of objects weighing
24 up to 10 pounds." 20 C.F.R. §§ 404.1567(b), 416.967(b). The
25 regulations further specify that "[e]ven though the weight lifted
26 may be very little, a job is in this category when it requires a
27 good deal of walking or standing, or when it involves sitting
28 most of the time with some pushing and pulling of arm or leg
controls." Id. A person capable of light work is also capable
of "sedentary work," which involves lifting "no more than 10
pounds at a time and occasionally lifting or carrying [small
articles]" and may involve occasional walking or standing.
§§ 404.1567(a)-(b); 416.967(a)-(b).

1 concentration and persistence, socially interacting with
2 the general public, and adapting to workplace changes.
3 (AR 16.) Based on the VE's testimony, the ALJ concluded that
4 Plaintiff could perform her past relevant work as a retail clerk
5 as well as other jobs that existed in significant numbers in the
6 national economy. (AR 19-20.) Accordingly, the ALJ determined
7 that Plaintiff was not disabled.⁴ (AR 21.)

8 **V. DISCUSSION**

9 Plaintiff alleges that the ALJ erred in (1) determining
10 Plaintiff's mental RFC and (2) failing to properly assess her
11 credibility. (J. Stip. at 3.)

12 A. The ALJ Did Not Err in Determining Plaintiff's Mental
13 RFC

14 Plaintiff contends that in determining her RFC, the ALJ
15 "improperly rejected and misstated material medical evidence"
16 concerning Plaintiff's mental functioning. (J. Stip. at 3.)
17 Specifically, Plaintiff contends that the ALJ erred by rejecting
18 "treating" physician Surinder Sidhy's opinion regarding
19 Plaintiff's mental limitations and instead relying on the opinion
20 of examining physician Joseph Mirkovich. (J. Stip. at 4-6.) As
21 discussed below, however, the ALJ properly determined Plaintiff's
22 RFC.

23 1. Applicable law

24 In determining disability, the ALJ "must develop the record
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26 ⁴ The parties state that Plaintiff filed a second
27 application for DIB on June 16, 2011, and that on May 7, 2013, a
28 different ALJ found that Plaintiff had been disabled since April
20, 2011 – the day after the decision at issue in this case – and
awarded her DIB benefits. (J. Stip. at 2.)

1 and interpret the medical evidence" but need not discuss "every
2 piece of evidence" in the record. Howard v. Barnhart, 341 F.3d
3 1006, 1012 (9th Cir. 2003). The ALJ is responsible for resolving
4 conflicts in the medical evidence. Carmickle v. Comm'r, Soc.
5 Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008). When evidence
6 in the record is susceptible to more than one rational
7 interpretation, the ALJ's decision must be affirmed. Vasquez v.
8 Astrue, 572 F.3d 586, 591 (9th Cir. 2009).

9 A district court must uphold an ALJ's RFC assessment when
10 the ALJ has applied the proper legal standard and substantial
11 evidence in the record as a whole supports the decision. Bayliss
12 v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005). The ALJ must
13 consider all the medical evidence in the record and "explain in
14 [his] decision the weight given to . . . [the] opinions from
15 treating sources, nontreating sources, and other nonexamining
16 sources." §§ 404.1527(e)(2)(ii), 416.927(e)(2)(ii). In making
17 an RFC determination, the ALJ may consider those limitations for
18 which there is support in the record and need not consider
19 properly rejected evidence or subjective complaints. See
20 Bayliss, 427 F.3d at 1217 (upholding ALJ's RFC determination
21 because "the ALJ took into account those limitations for which
22 there was record support that did not depend on [claimant's]
23 subjective complaints").

24 Three types of physicians may offer opinions in Social
25 Security cases: "(1) those who treat[ed] the claimant (treating
26 physicians); (2) those who examine[d] but d[id] not treat the
27 claimant (examining physicians); and (3) those who neither
28 examine[d] nor treat[ed] the claimant (non-examining

1 physicians)." Lester, 81 F.3d at 830. A treating physician's
2 opinion is generally entitled to more weight than the opinion of
3 a doctor who examined but did not treat the claimant, and an
4 examining physician's opinion is generally entitled to more
5 weight than that of a nonexamining physician. Id.

6 The opinions of treating physicians are generally afforded
7 more weight because they are employed to cure and have a greater
8 opportunity to know and observe the claimant. Smolen v. Chater,
9 80 F.3d 1273, 1285 (9th Cir. 1996). If a treating physician's
10 opinion is well supported by medically acceptable clinical and
11 laboratory diagnostic techniques and is not inconsistent with the
12 other substantial evidence in the record, it should be given
13 controlling weight. §§ 404.1527(c)(2), 416.927(c)(2). If a
14 treating physician's opinion is not given controlling weight, its
15 weight is determined by length of the treatment relationship,
16 frequency of examination, nature and extent of the treatment
17 relationship, amount of evidence supporting the opinion,
18 consistency with the record as a whole, the doctor's area of
19 specialization, and other factors. §§ 404.1527(c)(2)-(6),
20 416.927(c)(2)-(6).

21 When a treating doctor's opinion is not contradicted by
22 another doctor, it may be rejected only for "clear and
23 convincing" reasons. Carmickle, 533 F.3d at 1164 (quoting
24 Lester, 81 F.3d at 830-31). When a treating physician's opinion
25 conflicts with another doctor's, the ALJ must provide only
26 "specific and legitimate reasons" for discounting it. Id.
27 Further, the ALJ need not accept any medical opinion that
28 conflicts with the physician's own treatment notes or the record

1 as a whole. See Bayliss, 427 F.3d at 1216 (holding that
2 discrepancy between physician's notes and his assessment of
3 limitations was "clear and convincing" reason for rejecting
4 opinion); Connett v. Barnhart, 340 F.3d 871, 874-75 (9th Cir.
5 2003) (affirming ALJ's rejection of physician's RFC questionnaire
6 because it was "not supported by his own notes" and "had multiple
7 inconsistencies with all other evaluations" (alteration
8 omitted)).

9 2. Relevant facts

10 On February 23, 2007, Dr. Gerald Ray Watkins at Kaiser
11 Permanente noted that Plaintiff was doing "significantly better"
12 on her psychiatric medication, was less emotionally labile and
13 anxious, "fe[lt] bad or sad less of the time," and had fewer and
14 less severe headaches. (AR 203.) He noted that Plaintiff still
15 awoke early in the morning and had "irregular" eating habits.
16 (Id.) Plaintiff had an "unremarkable" mental-status exam and was
17 "not obviously tense, anxious, or in any distress." (AR 204.)
18 He diagnosed bipolar II disorder, "[s]ignificantly improved";
19 major depression in partial remission, "[s]ignificantly (at least
20 moderately) improved"; dysthymic disorder, organic mood disorder,
21 pain disorder, and insomnia. (Id.)

22 On February 8, 2008, four days after the alleged onset date,
23 Dr. Watkins noted that since he had last seen Plaintiff a year
24 earlier, she had lost her home and her job at Walmart, suffered a
25 miscarriage, and given birth to a premature baby who had died
26 earlier that week. (AR 202.) He noted that Plaintiff was
27 "undeniably melancholic," "quite anxious," fidgety, restless, and
28 impatient, but she denied having suicidal ideation or delusions.

1 (Id.) He diagnosed dysthymia; bipolar II disorder, major
2 depressive episode; organic mood disorder related to chronic
3 pain; pain disorder; and insomnia. (Id.) Dr. Watkins prescribed
4 medication and noted that Plaintiff would seek counseling through
5 a program for mothers who had lost children. (AR 202-03.)

6 On June 16, 2009, Plaintiff underwent an Adult Initial
7 Assessment with E. Nagatani, a therapist at the Los Angeles
8 County Department of Mental Health ("DMH"). (AR 286-90, 306.)
9 Nagatani noted that Plaintiff reported receiving inpatient
10 psychiatric treatment in 1995 and 1996, and she currently
11 complained of daily depressed mood, sleep difficulties, poor
12 appetite, and an increase in symptoms since February 2008. (AR
13 286.) Nagatani noted that without treatment, Plaintiff was
14 agitated, irritable, and anxious; with treatment, Plaintiff "will
15 be stable and able to sleep better." (Id.) Upon examination,
16 Nagatani noted that Plaintiff had restless and agitated motor
17 activity, average grooming, normal eye contact, unimpaired but
18 pressured speech, unimpaired intellectual functioning and memory,
19 average fund of knowledge, irritable mood, constricted affect,
20 unimpaired thought process, and moderately impaired judgment and
21 insight. (AR 289.) Plaintiff had intact concentration but was
22 "easily distracted by outside stimulus." (Id.) Nagatani noted
23 that Plaintiff had poor impulse control and was aggressive,
24 demanding, violent, destructive, and self-destructive. (Id.)
25 Nagatani diagnosed bipolar II and alcohol dependence and assigned
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1 a Global Assessment of Functioning ("GAF") score of 51.⁵ (AR
2 290.)

3 On June 23, 2009, Plaintiff underwent an initial medication
4 evaluation with a DMH doctor. (AR 440-42.) The doctor diagnosed
5 bipolar affective disorder and post-traumatic stress disorder
6 ("PTSD") and prescribed medication. (AR 442.) On July 7, 2009,
7 a DMH doctor noted that Plaintiff had some anxiety, but her mood
8 and sleep were better and her appetite was "o.k." (AR 439.) The
9 doctor prescribed medication. (Id.)

10 On August 4, 2009, Plaintiff began group therapy, which she
11 continued to attend about once a week until at least early
12 October 2009. (AR 402-11.) On September 8, 2009, a DMH doctor
13 noted that Plaintiff reported mood swings, depressed mood, low
14 motivation, low energy at times, and thoughts of death and dying.
15 (AR 435.) On September 29, 2009, a DMH doctor noted that
16 Plaintiff had a flat mood and social anxiety. (AR 437.)
17 Plaintiff complained of mood swings, but the doctor noted that
18 they were not readily evident that day. (Id.) The doctor noted
19 that Plaintiff had a diagnosis of major depressive disorder,
20 bipolar disorder, and PTSD and adjusted her medications. (Id.)

21 On September 26, 2009, Dr. Joseph Mirkovich, a board-
22 certified psychiatrist, evaluated Plaintiff at the Social
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24 ⁵ A GAF score represents a rating of overall
25 psychological functioning on a scale of 0 to 100. See Am.
26 Psychiatric Ass'n, Diagnostic and Statistical Manual of
27 Disorders, Text Revision 34 (4th ed. 2000). A GAF score in the
28 range of 51 to 60 indicates "[m]oderate symptoms (e.g., flat
affect and circumstantial speech, occasional panic attacks) OR
moderate difficulty in social, occupational or school functioning
(e.g., few friends, conflicts with peers or co-workers)." Id.

1 Security Administration's request. (AR 310-14.) He noted that
2 Plaintiff was able to drive herself to her appointment and that
3 she reported two previous psychiatric hospitalizations, for
4 suicidal ideation and depression. (AR 310-11.) Plaintiff's
5 daily activities included staying at home, trying to clean her
6 room, performing household chores with her husband's help, doing
7 some cooking, taking care of her own hygiene and grooming,
8 reading books, and watching television, including "court shows."
9 (AR 311-12.)

10 Dr. Mirkovich found that Plaintiff had a dysthymic mood and
11 restricted affect but a normal and cooperative attitude and
12 behavior, logical mental activity, normal but soft speech, and
13 appropriate thought content. (AR 312.) Plaintiff was unable to
14 correctly spell the word "world" backward, but she could
15 correctly perform a three-step command, count by twos up to 20,
16 and do simple mathematical calculations. (AR 312-13.) Dr.
17 Mirkovich diagnosed "[b]ipolar 2 per history" and assigned a GAF
18 score of 55 to 60. (AR 313.) He opined that Plaintiff could
19 perform simple and repetitive tasks as well as detailed and
20 complex tasks and noted that Plaintiff "was able to perform well
21 in the mental status exam today." (Id.) He believed that
22 Plaintiff could accept instructions from supervisors, interact
23 with coworkers and the public, perform work activities on a
24 consistent basis without special or additional instruction,
25 maintain regular attendance in the workplace, complete a normal
26 workday and workweek without interruptions from a psychiatric
27 condition, and deal with the usual stress encountered in a
28 competitive work environment. (AR 313-14.)

1 On September 29, 2009, a DMH doctor noted that Plaintiff
2 reported feeling "somewhat better" but was tired and not sleeping
3 well. (AR 432.) The doctor diagnosed bipolar II disorder and
4 PTSD and adjusted her medications. (AR 433-34.)

5 On October 14, 2009, Dr. L.O. Mallare reviewed Plaintiff's
6 medical records and completed a mental-RFC assessment and
7 psychiatric-review-technique form. (AR 324-37.) In the mental-
8 RFC assessment, Dr. Mallare opined that Plaintiff was moderately
9 limited in her ability to understand, remember, and carry out
10 detailed instructions and respond appropriately to changes in the
11 work setting.⁶ (AR 324-25.) He opined that Plaintiff was not
12 significantly limited in her ability to remember locations and
13 worklike procedures; understand, remember, and carry out very
14 short and simple instructions; maintain attention and
15 concentration for extended periods; perform activities on a
16 schedule; maintain regular attendance and be punctual; sustain an
17 ordinary routine without special supervision; work in
18 coordination with or proximity to others without being distracted
19 by them; make simple work-related decisions; complete a normal
20 workday and workweek; perform at a consistent pace; interact with
21 the public; ask simple questions or request assistance; accept
22 instructions and respond appropriately to criticism from
23 supervisors; get along with coworkers without distracting them or
24 exhibiting behavioral extremes; maintain socially appropriate

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27 ⁶ The mental-RFC-assessment form included check-off boxes
28 for indicating whether a claimant was "[n]ot [s]ignificantly
[l]imited," "[m]oderately [l]imited," or "[m]arkedly [l]imited"
in each of several categories. (See AR 324-25.)

1 behavior and adhere to basic standards of neatness and
2 cleanliness; be aware of normal hazards and take appropriate
3 precautions; travel to unfamiliar places and use public
4 transportation; or set realistic goals and make plans
5 independently of others. (AR 324-25.) Dr. Mallare also noted
6 that Plaintiff had "adequate mental function to perform 1-2 step
7 and some detailed instr[uctions]" and was able to interact
8 appropriately with others and adapt to simple changes in the
9 workplace. (AR 326.)

10 On the psychiatric-review-technique form, Dr. Mallare noted
11 Plaintiff's diagnoses as "BAD," or bipolar affective disorder,
12 and substance abuse. (AR 330, 333.) He opined that Plaintiff's
13 mental impairments resulted in mild restriction of activities of
14 daily living; mild difficulties in maintaining social
15 functioning; and mild difficulties in maintaining concentration,
16 persistence, or pace. (AR 335.) Dr. Mallare also indicated that
17 he had reviewed Dr. Mirkovich's September 2009 report and
18 "various intermittent notes" dating from December 2006 to June
19 2009. (AR 337.)

20 On October 20, 2009, a DMH doctor noted that Plaintiff had
21 no abnormalities on mental-status examination and that her
22 "unstable mood" had "improved substantially since the start of
23 treatment." (AR 430-31.) The doctor adjusted Plaintiff's
24 medication. (AR 431.) On December 2, 2009, a DMH doctor noted
25 that Plaintiff had no abnormalities on mental-status examination
26 and prescribed medications. (AR 428-29.) On December 20, 2009,
27 and February 4, 2010, a DMH doctor met with Plaintiff and
28 adjusted her medications. (AR 423-24, 426-29.) On February 23,

1 2010, a DMH doctor recorded "no notable findings" on mental-
2 status examination and prescribed medication. (AR 421-22.)

3 On March 10, 2010, Dr. C. Dudley, a nonexamining reviewing
4 doctor, affirmed Dr. Mallare's assessment of Plaintiff's mental
5 functioning. (AR 384-85.) On March 17, 2010, a DMH doctor noted
6 that Plaintiff complained of feeling restless, depressed, and
7 anxious. (AR 420.) On March 18, 2010, a DMH doctor noted that
8 Plaintiff appeared depressed but did not have hallucinations or
9 delusions; the doctor prescribed medication. (AR 418-19.)

10 On March 31, 2010, a DMH doctor noted that Plaintiff
11 complained that she felt depressed, tired, and aggravated and
12 could not take care of her six-year-old daughter. (AR 417.) The
13 doctor noted that Plaintiff had a depressed and irritable mood
14 and fair insight and judgment. (Id.) The doctor diagnosed
15 bipolar disorder, manic and paranoid, and prescribed medication.
16 (Id.) On May 10, 2010, a DMH doctor noted that Plaintiff
17 complained of depression, anxiety, restlessness, and insomnia.
18 (AR 416.) The doctor noted that Plaintiff's mood was depressed
19 and affect constricted, and she had "severe psychomotor
20 retardation"; the doctor diagnosed "bipolar illness" and chronic
21 alcoholism and prescribed medication. (Id.)

22 Also on May 10, 2010, Dr. Sidhy, a DMH physician, completed
23 a mental-disorder-questionnaire form that listed the "[d]ate of
24 first examination" as May 10, 2010, the same date she was
25 completing the report.⁷ (AR 390-94.) Dr. Sidhy noted that

27 ⁷ Although Dr. Sidhy's notes do not indicate the doctor's
28 gender, Plaintiff and the ALJ refer to the doctor as "she." (See
AR 19; J. Stip. at 4.) The Court therefore does as well.

1 Plaintiff was irritable, anxious, and "severely depressed." (AR
2 390, 392.) She had a "very slow" gait, a "blank" stare, severe
3 psychomotor retardation, poor concentration, poor insight and
4 judgment, and a fair memory. (AR 390-91, 393.) Plaintiff
5 reported that she spent most of the day at home and sometimes
6 cooked dinner for her family. (AR 391.)

7 Dr. Sidhy listed Plaintiff's diagnosis as major depression
8 with psychosis and noted that her prognosis was "poor." (AR
9 394.) Dr. Sidhy noted that Plaintiff was "afraid of people,"
10 communicated poorly, and was isolated and withdrawn. (AR 393.)
11 Dr. Sidhy believed that Plaintiff was unable to sustain
12 concentration but was able to understand written and verbal
13 commands. (Id.) Dr. Sidhy opined that because of Plaintiff's
14 major depression with psychosis, she was unable to handle any
15 stresses at work and was unable to make any decisions. (Id.)
16 She concluded that Plaintiff was "totally disabled," "unable to
17 function," and "unable to drive her car." (Id.)

18 3. Discussion

19 The ALJ found that despite Plaintiff's mental impairments,
20 she retained the RFC to perform a limited range of light work,
21 with only "mild limitations in understanding and remembering
22 tasks, sustain[ing] concentration and persistence, socially
23 interacting with the general public, and adapting to workplace
24 changes." (AR 16.) In doing so, the ALJ accorded "significant
25 weight" to the opinions of examining physician Mirkovich and
26 nonexamining physician Mallare and "little weight" to the opinion
27 of Dr. Sidhy. (AR 18-19.)

28 The ALJ gave specific and legitimate reasons for rejecting

1 Dr. Sidhy's findings and controverted opinion that Plaintiff was
2 totally disabled. See Carmickle, 533 F.3d at 1164. First, the
3 ALJ correctly concluded that he need not accept Dr. Sidhy's
4 assertion that Plaintiff was totally disabled because the
5 determination of a claimant's ultimate disability is reserved to
6 the Commissioner. (AR 19); see §§ 404.1527(d)(1) ("A statement
7 by a medical source that you are 'disabled' or 'unable to work'
8 does not mean that we will determine that you are disabled."),
9 416.927(d)(1) (same); SSR 96-5p, 1996 WL 374183, at *5
10 (treating-source opinions that a person is disabled or unable to
11 work "can never be entitled to controlling weight or given
12 special significance"); see also McLeod v. Astrue, 640 F.3d 881,
13 885 (9th Cir. 2011) (as amended) ("A disability is an
14 administrative determination of how an impairment, in relation to
15 education, age, technological, economic, and social factors,
16 affects ability to engage in gainful activity."). The ALJ
17 therefore was not obligated to accept Dr. Sidhy's opinion that
18 Plaintiff was totally disabled.

19 Second, the ALJ permissibly discounted Dr. Sidhy's findings
20 that Plaintiff had significant psychological symptoms because
21 they conflicted with the treatment records, which indicated that
22 "[Plaintiff's] symptoms significantly improved with medication"
23 and therapy. (AR 18); see Batson v. Comm'r of Soc. Sec. Admin.,
24 359 F.3d 1190, 1195 (9th Cir. 2004) ("an ALJ may discredit
25 treating physicians' opinions that are conclusory, brief, and
26 unsupported by the record as a whole . . . or by objective
27 medical findings"); §§ 404.1527(c)(4) ("Generally, the more
28 consistent an opinion is with the record as a whole, the more

1 weight we will give to that opinion."), 416.927(c)(4) (same); see
2 also Valentine v. Comm'r, Soc. Sec. Admin., 574 F.3d 685, 692-93
3 (9th Cir. 2009) (contradiction between treating physician's
4 opinion and evidence in record, including his own treatment
5 notes, constituted specific and legitimate reason for rejecting
6 treating physician's opinion). Indeed, Plaintiff began receiving
7 consistent mental-health treatment in June 2009, and by July
8 2009, Plaintiff was noted to have some anxiety, but her mood and
9 sleep were better and her appetite was "o.k." (AR 439.) In
10 September 2009, she was feeling tired but "somewhat better" (AR
11 431); in October 2009, she was noted to have made progress during
12 her three months of group therapy (AR 402), and a doctor found
13 she had no abnormalities on mental-status exam and her "unstable
14 mood" had "improved substantially since the start of treatment"
15 (AR 430-31); and in December 2009 and February 2010, doctors
16 noted no abnormalities during mental-status examinations (AR 421-
17 22, 428-29). In September 2009, Dr. Mirkovich similarly found
18 that Plaintiff was able to perform well on a mental-status exam.
19 (AR 313.) Indeed, Plaintiff's medical records from before her
20 onset date also showed that her condition responded well to
21 treatment. (See, e.g., AR 203 (Feb. 2007, noting that Plaintiff
22 was "significantly better" on psychiatric medication).) Dr.
23 Sidhy's observation that Plaintiff was "unable to drive her car"
24 (AR 393) was also inconsistent with Plaintiff's own testimony at
25 the March 2011 hearing that she was able to drive (AR 34-35) and
26 with Dr. Mirkovich's September 2009 observation that Plaintiff
27 had driven herself to the appointment (AR 310). Dr. Sidhy's
28 inconsistency with the treatment notes and the evidence of record

1 was therefore a specific and legitimate reason for discounting
2 Dr. Sidhy's opinion.

3 Third, the ALJ found that Dr. Sidhy's opinion was entitled
4 to less weight because she "did not have a treating relationship
5 with [Plaintiff] prior to making her conclusions" and in fact
6 "first examined [Plaintiff] the same day that she rendered her
7 opinion." (AR 19.) Indeed, Dr. Sidhy reported that she had
8 first examined Plaintiff on "5-10-10," the same day she completed
9 the mental-disorder-questionnaire form. (AR 394.) The ALJ was
10 entitled to consider Dr. Sidhy's limited relationship with
11 Plaintiff when determining how much weight to give her opinion.
12 See Orn v. Astrue, 495 F.3d 625, 631 (9th Cir. 2007) (factors in
13 assessing treating physician's opinion include length of
14 treatment relationship, frequency of examination, and nature and
15 extent of treatment relationship); accord §§ 404.1527(c)(2),
16 416.927(c)(2).

17 The ALJ was also entitled to rely on Drs. Mirkovich's and
18 Mallare's opinions because they were supported by independent
19 clinical findings and thus constituted substantial evidence upon
20 which the ALJ could properly rely. See Tonapetyan v. Halter, 242
21 F.3d 1144, 1149 (9th Cir. 2001); Andrews v. Shalala, 53 F.3d
22 1035, 1041 (9th Cir. 1995). Dr. Mirkovich noted Plaintiff's
23 psychiatric history and performed a full psychiatric evaluation,
24 finding, for example, that Plaintiff had a dysthymic mood and
25 restricted affect but normal and cooperative attitude and
26 behavior, logical mental activity and speech, and appropriate
27 thought content; could perform a three-step command correctly;
28 and had "good mathematical ability." (AR 312-13.) Dr. Mallare's

1 opinion, moreover, relied on Dr. Mirkovich's findings and was
2 consistent with them. See Thomas v. Barnhart, 278 F.3d 947, 957
3 (9th Cir. 2002) ("The opinions of non-treating or non-examining
4 physicians may also serve as substantial evidence when the
5 opinions are consistent with independent clinical findings or
6 other evidence in the record."). Dr. Mallare also reviewed some
7 of Plaintiff's medical records before rendering his opinion. (AR
8 337.) See §§ 404.1527(c)(3) (in weighing medical opinions, ALJ
9 "will evaluate the degree to which these opinions consider all of
10 the pertinent evidence in [claimant's] claim, including opinions
11 of treating and other examining sources"), 416.927(c)(3) (same).
12 Indeed, Plaintiff does not challenge the ALJ's reliance on Dr.
13 Mallare's opinion. (See J. Stip. at 3-7, 11-13.) Any conflict
14 in the properly supported medical-opinion evidence was "solely
15 the province of the ALJ to resolve." Andrews, 53 F.3d at 1041.

16 Plaintiff contends that the ALJ erred in relying on Dr.
17 Mirkovich's opinion because it was inconsistent with his findings
18 that Plaintiff had a dysthymic mood, restricted affect, tired
19 appearance, and GAF score of 55-60, which indicated moderate
20 psychological symptoms. (J. Stip. at 6); Am. Psychiatric Ass'n,
21 supra, at 34. Notwithstanding those symptoms, however, Dr.
22 Mirkovich found that Plaintiff was cooperative, with logical and
23 normal mental activity and speech and appropriate thought
24 content; could perform a three-step command and simple
25 mathematical computations; and was able to perform "well" on the
26 mental-status exam. (AR 312-13.) Those findings support Dr.
27 Mirkovich's conclusion that Plaintiff could, for example, perform
28 simple and detailed tasks, accept instruction from supervisors,

1 interact with coworkers and the public, and maintain regular
2 attendance in the workplace. (AR 313-14.) They were also
3 consistent with the findings of one of Plaintiff's treating
4 doctors, who noted, around that same time, that Plaintiff had no
5 abnormalities on mental-status examination and that her unstable
6 mood had improved "substantially" since she started treatment.
7 (AR 430-31.)

8 Plaintiff is not entitled to remand on this ground.

9 B. The ALJ Permissibly Discounted Plaintiff's Credibility

10 Plaintiff argues that the ALJ "improperly undermined
11 Plaintiff's credibility and rejected her testimony regarding her
12 symptoms and limitations in mental functioning."⁸ (J. Stip. at
13 13.)

14 1. Applicable law

15 An ALJ's assessment of symptom severity and claimant
16 credibility is entitled to "great weight." See Weetman v.
17 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779
18 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to
19 believe every allegation" of disability, or else disability
20 benefits would be available for the asking, a result plainly
21 contrary to 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674
22 F.3d 1104, 1112 (9th Cir. 2012) (internal quotation marks and
23 citation omitted). In evaluating a claimant's subjective symptom
24 testimony, the ALJ engages in a two-step analysis. See
25 Lingenfelter, 504 F.3d at 1035-36. "First, the ALJ must

26
27 ⁸ Plaintiff does not challenge the ALJ's rejection of her
28 testimony regarding her physical complaints. (See J. Stip. at
13-15, 20-22.)

1 determine whether the claimant has presented objective medical
2 evidence of an underlying impairment [that] could reasonably be
3 expected to produce the pain or other symptoms alleged." Id. at
4 1036 (internal quotation marks omitted). If such objective
5 medical evidence exists, the ALJ may not reject a claimant's
6 testimony "simply because there is no showing that the impairment
7 can reasonably produce the *degree* of symptom alleged." Smolen,
8 80 F.3d at 1282 (emphasis in original). When the ALJ finds a
9 claimant's subjective complaints not credible, the ALJ must make
10 specific findings that support the conclusion. See Berry v.
11 Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent affirmative
12 evidence of malingering, those findings must provide "clear and
13 convincing" reasons for rejecting the claimant's testimony.
14 Lester, 81 F.3d at 834. If the ALJ's credibility finding is
15 supported by substantial evidence in the record, the reviewing
16 court "may not engage in second-guessing." Thomas, 278 F.3d at
17 959.

18 2. Relevant facts

19 On May 20, 2009, Plaintiff completed a function-report form,
20 stating that on a "good day," which was "rare," she would take
21 her daughter to school, take her medication, "hopefully" clean up
22 a bit, pick her daughter up at 11 a.m. and "tend to her needs,"
23 nap, give her daughter lunch and play with her, make dinner, and
24 watch television. (AR 127.) She cooked "daily for the most
25 part" and made "quick and easy meals." (AR 129.) She performed
26 "basic cleaning," which would take all day because she would stop
27 to take breaks. (Id.) Plaintiff wrote that she would take care
28 of her husband and two children by cooking, cleaning, and

1 attending to other household needs "when I can." (AR 128.)
2 Plaintiff wrote that on "bad day[s]," which outnumbered her good
3 days, she would "only tend to [her] little one [and] do nothing
4 else because of [her] back pain [and] depression." (AR 134.)

5 Plaintiff wrote that she went outside two or three times a
6 week but could not go out alone and needed her husband or kids to
7 go with her. (AR 130.) She shopped in stores for groceries and
8 clothing for her children, which would take "less than an hour"
9 because she would get "tired" and "anxious around people." (Id.)

10 Plaintiff got along well with authority figures and was able to
11 pay bills, count change, and use money orders. (AR 130, 133.)
12 Her hobbies included watching television, which she did every
13 day, and reading, which she did "once in a while." (AR 131.)

14 Plaintiff wrote that her conditions affected her ability to
15 lift, squat, bend, stand, walk, sit, kneel, talk, climb stairs,
16 remember, concentrate, complete tasks, and get along with others.
17 (AR 132.) She could walk for less than 30 minutes before needing
18 to rest for 15 and could pay attention for one hour before
19 "get[ting] annoyed." (Id.) Plaintiff could follow written
20 instructions "ok" but would "forget and have to read [them]
21 again," and she could "sometimes" follow spoken instructions
22 well. (Id.) Plaintiff wrote that she had been fired from her
23 job at Walmart because she was dating her supervisor. (AR 133.)

24 In an undated disability report, Plaintiff wrote that she
25 was unable to work because of her bipolar disorder, chronic back
26 pain, anxiety, and depression. (AR 116.) She wrote that she
27 "c[ouldn't] stand to be around people anymore" or stand or sit
28 for a "long time" and was "always in pain" and "very withdrawn

1 and irritable all the time." (Id.) Plaintiff wrote that she
2 last worked on December 24, 2007, and left that job because it
3 was seasonal and she was pregnant. (Id.) She wrote that she
4 became unable to work because of her disability on February 4,
5 2008. (Id.)

6 In an undated "Disability Report - Appeal," Plaintiff wrote
7 that regarding her physical conditions, she could "no longer
8 function without pain medication," and regarding her mental
9 limitations, she couldn't function "properly" and was working
10 with a psychiatrist to find the correct medications. (AR 160.)
11 In another undated "Disability Report - Appeal," Plaintiff wrote
12 that her back condition was "ok" as long as her doctor kept
13 giving her "shots," but she still had spasms. (AR 172.)
14 Plaintiff wrote that even with medication, she "fe[lt] worse
15 mentally" and couldn't "find any peace." (Id.)

16 At the hearing on March 28, 2011, Plaintiff testified that
17 she was unable to work because her back would "spasm" a lot, she
18 was "bipolar," and she had "anxiety issues." (AR 31-34.)
19 Plaintiff believed she could stand or walk for a few hours, sit
20 for a "couple hours" in an eight-hour day, and comfortably lift
21 about 20 pounds at a time. (AR 32-33.) Plaintiff testified that
22 she could drive and would try to cook and do the dishes and
23 laundry, but her husband helped her or did a lot of the chores
24 himself. (AR 34-35.) Plaintiff and her husband would go grocery
25 shopping and pick her daughter up from school. (AR 35.) She
26 said she didn't "really do a whole lot of . . . anything" and
27 usually "s[a]t at home" watching television. (Id.) Plaintiff
28 said she had just started treatment at DMH but would not receive

1 psychiatric medication for about two more months. (AR 34.)
2 Plaintiff also testified that she was fired from her retail job
3 because she had been having a relationship with her supervisor.
4 (AR 31.)

5 3. Discussion

6 The ALJ found that Plaintiff's medically determinable
7 impairments could reasonably be expected to produce the alleged
8 symptoms but that her "statements concerning the intensity,
9 persistence and limiting effects of these symptoms are not
10 credible to the extent they are inconsistent with" an RFC for a
11 limited range of light work with mild limitations in
12 understanding and remembering tasks, sustaining concentration and
13 persistence, socially interacting with the general public, and
14 adapting to workplace changes. (AR 17.) Reversal is not
15 warranted based on the ALJ's alleged failure to make proper
16 credibility findings or properly consider Plaintiff's subjective
17 symptoms.

18 First, the ALJ discounted Plaintiff's subjective complaints
19 because her "psychiatric symptoms appear stable with medication
20 and therapy." (AR 19.) As discussed above in Section V.A,
21 Plaintiff's psychiatric symptoms did improve "substantially"
22 after she started treatment, and she was often noted to have no
23 abnormal findings upon mental-status examination, which was
24 inconsistent with Plaintiff's allegations of totally debilitating
25 psychiatric symptoms. (See, e.g., AR 430-31.) This was
26 therefore a legally sufficient reason for discounting Plaintiff's
27 credibility. See Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d
28 1219, 1227 (9th Cir. 2009) (ALJ permissibly discounted

1 credibility when claimant's "statements at her hearing [did] not
2 comport with objective evidence in her medical record");
3 Carmickle, 533 F.3d at 1161 ("Contradiction with the medical
4 record is a sufficient basis for rejecting the claimant's
5 subjective testimony."); see also Garcia v. Comm'r of Soc. Sec.
6 Admin., 498 F. App'x 710, 711 (9th Cir. 2012) (ALJ permissibly
7 discounted plaintiff's credibility based on conflicts between his
8 testimony and doctor's testimony); cf. Warre v. Comm'r Soc. Sec.
9 Admin., 439 F.3d 1001, 1006 (9th Cir. 2006) ("Impairments that
10 can be controlled effectively with medication are not disabling
11 for the purpose of determining eligibility for SSI benefits.").

12 Second, the ALJ was entitled to discount Plaintiff's
13 credibility because her claims of disability conflicted with her
14 reported daily activities. (See AR 19); Smolen, 80 F.3d at 1284
15 (ALJ may use "ordinary techniques of credibility evaluation,"
16 such as "prior inconsistent statements concerning the symptoms,
17 and other testimony by the claimant that appears less than
18 candid"); Thomas, 278 F.3d at 958-59 (in assessing credibility,
19 ALJ may consider inconsistencies either in claimant's testimony
20 or between testimony and conduct); cf. Molina, 674 F.3d at 1113
21 ("Even where [claimant's] activities suggest some difficulty
22 functioning, they may be grounds for discrediting the claimant's
23 testimony to the extent that they contradict claims of a totally
24 debilitating impairment."). Plaintiff asserted that she was able
25 to shop in stores for groceries and clothing; care for her young
26 daughter and take her to and from school; get along well with
27 authority figures; cook most days; perform basic cleaning, albeit
28 with some help; pay bills and use money orders; watch television,

1 including court shows; and read. (AR 34-35, 127, 129-30, 134.)
2 Those activities appear inconsistent with Plaintiff's claims that
3 she was totally disabled and, for example, "c[ouldn't] stand to
4 be around people anymore," was "very withdrawn and irritable all
5 the time," and couldn't function "properly" because of her
6 psychological condition. (AR 132, 160.)

7 One of the ALJ's credibility findings, however, was not
8 clear and convincing. The ALJ noted that Plaintiff had stopped
9 working because she was fired from her job at Walmart for having
10 a relationship with her supervisor, not because she was disabled
11 and unable to perform her job. (AR 19.) The Commissioner argues
12 that this was a permissible reason for discounting Plaintiff's
13 credibility, citing Bruton v. Massanari, 268 F.3d 824, 828 (9th
14 Cir. 2001). (J. Stip. at 18.) But in Bruton, the claimant's
15 alleged disability-onset date was the same date he was laid off
16 from his job as a machinist, and the Ninth Circuit found that the
17 ALJ permissibly discounted the claimant's credibility based on
18 his statements that "he left his job because he was laid off,
19 rather than because he was injured." 268 F.3d at 826, 828.
20 Here, by contrast, Plaintiff never claimed to have stopped
21 working at Walmart because she was disabled; in fact, she
22 thereafter worked at another retail job for about a month before
23 stopping work on December 24, 2007, assertedly because it was a
24 seasonal job and she was pregnant. (AR 30, 116.) Plaintiff's
25 alleged onset date, moreover, was over a month later, on February
26 4, 2008, apparently right around the time she gave birth to a
27 premature baby who soon died. (See AR 202.) The fact that
28 Plaintiff was fired from her job at Walmart months before her

1 alleged disability onset date thus does not appear to be a clear
2 and convincing reason for discounting her credibility. See
3 McGowan v. Astrue, No. C12-281-TSZ-BAT, 2012 WL 5390337, at *5
4 (W.D. Wash. Oct. 17, 2012) (noting that "the reasons [plaintiff]
5 left her 2006 job was [sic] not a proper basis to discount her
6 credibility" because the job "ended long before her alleged
7 [disability] onset"); Shehan v. Astrue, No. EDCV 08-01302(MLG),
8 2009 WL 2524573, at *3 (C.D. Cal. Aug. 17, 2009) (noting that
9 "[u]nlike Bruton, the record here does not support the inference
10 that Plaintiff sought disability benefits simply because she was
11 laid off from work," because "[a]lthough Plaintiff admitted that
12 she stopped working in her previous two positions for reasons
13 unrelated to her alleged impairments, both jobs ended long before
14 her alleged onset date of August 2005"). The ALJ's error,
15 however, was harmless because his credibility finding was
16 supported by other clear and convincing reasons. See Bray, 554
17 F.3d at 1227; Carmickle, 533 F.3d at 1162.⁹

18 In sum, the ALJ provided sufficient clear and convincing
19 reasons for discounting Plaintiff's credibility. Plaintiff is
20 not entitled to remand on this ground.

21

22

23 ⁹ The ALJ also noted that "no evidence" indicated "severe
24 disuse muscle atrophy that would be compatible with [Plaintiff's]
25 alleged inactivity and inability to function." (AR 19.) The
26 observation of no severe muscle atrophy, while true, was not
27 particularly meaningful because Plaintiff did not claim to be
28 unable to perform any activity at all. Compare Meanel v. Apfel,
172 F.3d 1111, 1114 (9th Cir. 1999) (ALJ permissibly discounted
claimant's complaint that her pain required her to "lie in a
fetal position all day" because she "did not exhibit muscular
atrophy or any other physical signs of an inactive, totally
incapacitated individual").

1 **VI. CONCLUSION**

2 Consistent with the foregoing, and pursuant to sentence four
3 of 42 U.S.C. § 405(g),¹⁰ IT IS ORDERED that judgment be entered
4 AFFIRMING the decision of the Commissioner and dismissing this
5 action with prejudice. IT IS FURTHER ORDERED that the Clerk
6 serve copies of this Order and the Judgment on counsel for both
7 parties.

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11 DATED: October 4, 2013


JEAN ROSENBLUTH
U.S. Magistrate Judge

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26 _____
27 ¹⁰ This sentence provides: "The [district] court shall
28 have power to enter, upon the pleadings and transcript of the
record, a judgment affirming, modifying, or reversing the
decision of the Commissioner of Social Security, with or without
remanding the cause for a rehearing."