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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

KIRSTEN GISA WILSON,	)	Case No.: 1:11-cv-01238 - JLT
Plaintiff,	)	
v.	)	ORDER DIRECTING ENTRY OF JUDGMENT IN
	)	FAVOR OF DEFENDANT, MICHAEL J. ASTRUE,
	)	COMMISSIONER OF SOCIAL SECURITY, AND
MICHAEL J. ASTRUE,	)	AGAINST PLAINTIFF KIRSTEN GISA WILSON
Commissioner of Social Security,	)	
	)	(Doc. 17)
Defendant.	)	
	)	

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Kirsten Wilson (“Plaintiff”) asserts she is entitled to disability insurance benefits and supplemental security income under Titles II and XVI of the Social Security Act. (Doc. 17) Plaintiff argues the administrative law judge (“ALJ”) erred in evaluating the medical evidence. Therefore, Plaintiff seeks review of the administrative decision denying her claims for benefits. For the reasons set forth below, the administrative decision is **AFFIRMED**.

**PROCEDURAL HISTORY**

Plaintiff filed an application for disability insurance benefits on December 5, 2008. (Doc. 11-6 at 6- 11). On December 15, 2008, Plaintiff filed an application for a supplemental security income. *Id.* at 12-15. In both applications, Plaintiff alleged disability beginning April 2, 2007. *Id.* at 8, 12. The Social Security Administration denied her claims initially and upon reconsideration. (Doc. 11-4 at 2-34). After requesting a hearing, Plaintiff testified before an ALJ on May 28, 2010. (Doc. 16-3).

1 The ALJ determined Plaintiff was not disabled and issued an order denying benefits on June 23, 2010.  
2 (Doc. 11-3 at 7-17). Plaintiff requested review of the ALJ’s decision by the Appeals Council of Social  
3 Security, which was denied on May 5, 2011. *Id.* at 2-4. Therefore, the ALJ’s determination became  
4 the decision of the Commissioner of Social Security (“Commissioner”).

### 5 **STANDARD OF REVIEW**

6 District courts have a limited scope of judicial review for disability claims after a decision by  
7 the Commissioner to deny benefits under the Social Security Act. When reviewing findings of fact,  
8 such as whether a claimant was disabled, the Court must determine whether the Commissioner’s  
9 decision is supported by substantial evidence or is based on legal error. 42 U.S.C. § 405(g). The  
10 ALJ’s determination that the claimant is not disabled must be upheld by the Court if the proper legal  
11 standards were applied and the findings are supported by substantial evidence. *See Sanchez v. Sec’y of*  
12 *Health & Human Serv.*, 812 F.2d 509, 510 (9th Cir. 1987).

13 Substantial evidence is “more than a mere scintilla. It means such relevant evidence as a  
14 reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S.  
15 389, 401 (1971) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197 (1938)). The record as a whole  
16 must be considered, because “[t]he court must consider both evidence that supports and evidence that  
17 detracts from the ALJ’s conclusion.” *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985).

### 18 **DISABILITY BENEFITS**

19 To qualify for benefits under the Social Security Act, Plaintiff must establish she is unable to  
20 engage in substantial gainful activity due to a medically determinable physical or mental impairment  
21 that has lasted or can be expected to last for a continuous period of not less than 12 months. 42 U.S.C.  
22 § 1382c(a)(3)(A). An individual shall be considered to have a disability only if:

23 physical or mental impairment or impairments are of such severity that he is not only  
24 unable to do his previous work, but cannot, considering his age, education, and work  
25 experience, engage in any other kind of substantial gainful work which exists in the  
26 national economy, regardless of whether such work exists in the immediate area in  
which he lives, or whether a specific job vacancy exists for him, or whether he would  
be hired if he applied for work.

27 42 U.S.C. § 1382c(a)(3)(B). The burden of proof is on a claimant to establish disability. *Terry v.*  
28 *Sullivan*, 903 F.2d 1273, 1275 (9th Cir. 1990). When a claimant establishes a prima facie case of

1 disability, the burden shifts to the Commissioner to prove the claimant is able to engage in other  
2 substantial gainful employment. *Maounis v. Heckler*, 738 F.2d 1032, 1034 (9th Cir. 1984).

### 3 **DETERMINATION OF DISABILITY**

4 To achieve uniform decisions, the Commissioner established a sequential five-step process for  
5 evaluating a claimant's alleged disability. 20 C.F.R. §§ 404.1520(a), 416.920 (a)-(f). The process  
6 requires the ALJ to determine whether Plaintiff (1) engaged in substantial gainful activity during the  
7 period of alleged disability, (2) had medically determinable severe impairments (3) that met or equaled  
8 one of the listed impairments set forth in 20 C.F.R. § 404, Subpart P, Appendix 1; and whether  
9 Plaintiff (4) had the residual functional capacity to perform to past relevant work or (5) the ability to  
10 perform other work existing in significant numbers at the state and national level. *Id.* In making these  
11 determinations, the ALJ must consider objective medical evidence and opinion (hearing) testimony.  
12 20 C.F.R. §§ 404.927, 416.927.

#### 13 **A. Relevant Medical Opinions**

14 On August 13, 2008, Dr. Murillo completed a psychiatric review technique form and opined  
15 there was insufficient evidence to determine Plaintiff's mental impairment. (Doc. 11-8 at 22). Dr.  
16 Murillo explained Plaintiff was "failing to cooperate w[ith] disability determination process by not  
17 returning necessary forms." *Id.* at 33.

18 Dr. Shireen Damania performed a consultative examination on February 19, 2009. (Doc. 11-8  
19 at 45-51). Dr. Damania observed Plaintiff demonstrated "an initial period of hostility," but then "was  
20 entirely cooperative and pleasant throughout the interview." *Id.* at 46. According to Dr. Damania,  
21 Plaintiff's mood "was labile," and she "alternated with depression and tearfulness and at other times  
22 she smiled and laughed appropriately." *Id.* at 50. In addition, Dr. Damania observed:

23 There was no evidence of a thought disorder. She was oriented to time, place and  
24 person. Memory for recent and past recall was intact. Attention span was within  
25 normal limits. She had no difficulty concentrating during the course of the interview,  
26 although she did indicate that she had "concentration difficulties." She was functioning  
in the average range of intellectual functioning. ... Insight and judgment were fair.

27 *Id.* at 50. Dr. Damania did not notice any difficulties in concentration, persistence or pace, but opined  
28 Plaintiff "would have difficulty concentrating for two-hour increments in a work like setting." *Id.* at

1 51. Further, Dr. Damania believed that, at the present time, Plaintiff “would have difficulty  
2 responding appropriately to coworkers, supervisors, and the public on a consistent basis” as well as  
3 “difficulty responding appropriately to usual work situations and dealing with changes in a routine  
4 work setting with normal supervision.” *Id.* Based upon her assessment, Dr. Damania opined Plaintiff  
5 was “able to understand, carryout and remember simple one-and two-step job instructions however not  
6 on a consistent basis.” *Id.*

7 On March 11, 2009, Dr. Danilo Lucila opined Dr. Damania’s opinion that Plaintiff was unable  
8 to sustain simple, repetitive tasks should not be “given great weight” because Plaintiff was able to care  
9 for her personal needs, watch television, shop with her spouse, perform calculations, and had a normal  
10 attention span and memory. (Doc. 11-8 at 53). According to Dr. Lucila, Plaintiff had mild limitations  
11 with her activities of daily living; moderate limitations in maintaining social functioning; and  
12 moderate difficulties in maintaining concentration, persistence, or pace. *Id.* at 62. Dr. Lucila noted  
13 also Plaintiff had a “lower frustration tolerance.” *Id.* at 53. Based upon her observations, Dr. Lucila  
14 opined Plaintiff “[w]ould be able to sustain 8 hr/40 hr work schedules on a sustained basis.” *Id.* at 67.  
15 In addition, Dr. Lucila concluded Plaintiff was able to perform “[simple repetitive tasks] with limited  
16 public contact.” *Id.* at 53. This assessment was affirmed by Dr. Middleton on June 24, 2009.<sup>1</sup> *Id.* at 74.

17 Dr. John Middleton, Plaintiff’s treating physician, completed a mental capacities assessment on  
18 September 14, 2009. (Doc. 11-10 at 41-44). Dr. Middleton explained the effect of Plaintiff’s mental  
19 impairments on her daily activities as follows: “Patient sleeps poorly, can be tired and unfocused,  
20 concentration can be poor. She can be disorganized.” *Id.* at 41. In addition, Dr. Middleton explained  
21 that Plaintiff “can act inappropriately, be loud, [and] irritable” when her condition worsened. *Id.*  
22 According to Dr. Middleton, Plaintiff’s ability to adapt to work-like situations was limited because she  
23 could “have a labile affect, become irritable, loud, [and] inappropriate.” *Id.* Dr. Middleton opined  
24 Plaintiff did not have exertional limitations, and could lift up to forty pounds occasionally. *Id.* at 42-  
25 43. Plaintiff’s medication “could cause dizziness or sedation,” but she could occasionally climb,  
26 balance, stoop, kneel, crouch, crawl, and reach. *Id.* at 43.

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28 <sup>1</sup> It is unclear whether Dr. Middleton is Plaintiff’s treating physician or another physician.

1 **B. Hearing Testimony**

2 Plaintiff testified at the hearing before the ALJ on May 28, 2010. (Doc. 16-3 at 2). Plaintiff  
3 reported she attended three years of college in paralegal studies. *Id.* at 5. Plaintiff reported she  
4 worked as a secretary and technician at Dewey Pest Control. *Id.* at 7. She stated that she “trained  
5 about six months” to be a pest technician, and the most weight she had to lift was “about 10, 15  
6 pounds.” *Id.* at 8. Plaintiff estimated she worked about 70 percent of the time as a pest technician,  
7 and performed clerical work 30 percent of the time at Dewey. *Id.* at 9.

8 After she was laid off from Dewey, Plaintiff worked as a long-haul truck driver until April  
9 2007. (Doc. 16-3 at 10). According to Plaintiff, she lifted up to 75 pounds while working as a truck  
10 driver. *Id.* at 8. Plaintiff said she no longer had a driver’s license. *Id.* at 5-6. She explained she lost  
11 her Class A license because she was not able to perform her job, and her Class C license was  
12 suspended for an unpaid parking ticket. *Id.* at 6. Plaintiff stated that even if she had a license she  
13 would not drive because she got claustrophobic and suffered “anxiety attacks.” *Id.* at 6-7. In addition,  
14 Plaintiff believed she “couldn’t function” as a truck driver due to her depression. *Id.* at 8. According  
15 to Plaintiff, it was “[i]mpossible” for her to work any job eight hours a day, five days a week due to  
16 her COPD, a schizoaffective disorder, “[a]nxiety, hypertension, bipolar . . . [and] insomnia.” (Doc.  
17 16-3 at 10). Further, Plaintiff stated she had “body aches and pains” as side effects from her  
18 medication. *Id.* at 10-11.

19 Plaintiff explained she took medication “several times a day” for her hypertension. (Doc. 16-3  
20 at 11). She reported that she had shortness of breath with COPD whenever she had an anxiety attack,  
21 which happened “about two or three” times each day. *Id.* Plaintiff stated each attack lasted “about 20,  
22 30 minutes” when she took Ativan. *Id.* at 12. She explained that she would lock herself in a dark  
23 room for a couple of hours to relieve an anxiety attack. *Id.* at 13. Plaintiff testified her bipolar  
24 disorder caused exhaustion and her “emotions fluctuate[d]” from crying to anger and confusion  
25 “within seconds.” *Id.* at 13-14, 22.

26 She described her husband as her “live-in maid,” and said she was unable to do much without  
27 his assistance. (Doc. 16-3 at 13-14). Plaintiff explained on a typical day she did not get up until 10:00  
28 a.m., and it was “a fight every morning” to get dressed, which her husband told her to do. *Id.* at 14.

1 She stated she was able to wash herself when her husband “shoves [her] in the shower.” *Id.* After a  
2 shower, Plaintiff said she usually wanted to go back to bed, where she stayed “[a]t least six hours”  
3 each day, for a minimum of two hours each time. *Id.* According to Plaintiff, between the times she  
4 rested in bed, she would try to do projects but was unable to finish because she could not focus for  
5 more than ten minutes at a time. *Id.* at 16, 19.

6 Plaintiff testified she felt “closed in” and “claustrophobic around people.” (Doc. 16-3 at 18).  
7 She explained she felt that way whether in a conference room with three people or in a store like Wal-  
8 Mart. *Id.* Plaintiff stated that if she went grocery shopping, her husband would have to get her out of  
9 bed at 4:00 a.m. because there would not be anyone in the store. *Id.* at 19.

10 Plaintiff reported she had a prescription for cannabis for her sleeping problem. (Doc. 16-3 at  
11 20). In addition, she stated she received treatment every two or three months from Dr. Middleton, a  
12 psychiatrist, who prescribed her medication. *Id.* at 20-21. Plaintiff believed the medication helped her  
13 not “flip-flop as much,” but she still had anxiety and hypertension. *Id.* at 21. Although Plaintiff said  
14 she never tried to hurt herself, she had suicidal thoughts about once a week. *Id.* at 23.

15 Vocational expert (“VE”) Thomas Dachelet testified after Plaintiff at the hearing. (Doc. 16-3  
16 at 25). The VE characterized Plaintiff’s past relevant work under the *Dictionary of Occupational*  
17 *Titles*<sup>2</sup> as follows: the truck driver and pest technician positions were medium work, and the clerk  
18 position was light work. *Id.* at 26. The VE explained each of these positions were semi-skilled, with  
19 an SVP<sup>3</sup> ranging from 3 to 4. *Id.*

20 The ALJ asked the VE to consider a hypothetical individual the same age, educational  
21 background, and work history as Plaintiff. (Doc. 16-3 at 36). The ALJ specified the individual was  
22 “limited to simple and repetitive tasks, with no interaction with the public.” *Id.* In addition, the  
23 person could have only “limited interpersonal contact on the job . . . on an as-needed basis,” but had  
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25 <sup>2</sup> The *Dictionary of Occupational Titles* (“DOT”) by the United States Dept. of Labor, Employment & Training  
26 Admin., may be relied upon “in evaluating whether the claimant is able to perform work in the national economy. *Terry v.*  
*Sullivan*, 903 F.2d 1273, 1276 (9th Cir. 1990). The DOT classifies jobs by their exertional and skill requirements, and may  
be a primary source of information for the ALJ or Commissioner. 20 C.F.R. § 404.1566(d)(1).

27 <sup>3</sup> SVP,” or specific vocational preparation, is defined as the amount of lapsed time required by a typical worker to  
28 learn techniques, acquire information, and develop the facility needed for average performance in a specific job position.  
Employment and Training Admin., U.S. Dep’t of Labor, *Dictionary of Occupational Titles*, (4th ed. rev. 1991), page 1009.

1 no exertional limitations. *Id.* The VE opined such a person could not perform Plaintiff’s past relevant  
2 work, but was able to perform jobs in the national economy, including “over a million jobs in the light,  
3 unskilled laborer market in California.” *Id.* at 26-27. As examples, the VE identified the positions of  
4 ampoule sealer, linen-supply load builder, hand packager, and poultry worker. *Id.* at 27-28.

5 Next, the ALJ asked the VE to consider a person “limited to one to two-step tasks,” in addition  
6 to the above limitations. (Doc. 16-3 at 29). The VE explained the number of jobs available  
7 “reduce[d] dramatically,” but there were still a significant number of positions because there were no  
8 exertional limitations. *Id.* The VE explained there were about 200 different job titles at the sedentary  
9 level; 4,300 jobs at the light level; 2,000 jobs at the medium level; and 1,000 to 2,200 jobs at the heavy  
10 level. *Id.* at 29-30. As specific examples, the VE identified the positions of almond blancher, flumer/  
11 potato washer, vegetable harvester, and icer. *Id.* at 30.

12 Finally, the ALJ asked the VE to consider an individual with “a poor ability to relate to others  
13 and supervisors in the workplace,” who was “unable to complete a normal workday without  
14 psychological interruptions.” (Doc. 16-3 at 30). The VE concluded there would not be any jobs  
15 available. *Id.*

16 **C. The ALJ’s Findings**

17 Pursuant to the five-step process, the ALJ determined Plaintiff had not engaged in substantial  
18 gainful activity since the alleged onset date of April 2, 2007. (Doc. 11-3 at 12). Next, the ALJ found  
19 Plaintiff’s schizoaffective disorder and mood disorder were severe impairments, which did not meet or  
20 medically equal a listing. *Id.* After considering “the entire record,” the ALJ determined Plaintiff had  
21 the residual functional capacity (“RFC”) “to perform a full range of work at all exertional levels but  
22 with the following nonexertional limitations: limited to simple, repetitive tasks with one and two-step  
23 job instructions with no interaction with the public and limited interpersonal contact on the job.” *Id.* at  
24 14. With this RFC, Plaintiff was unable to perform past relevant work. *Id.* at 16. However, the ALJ  
25 determined that there are jobs in significant numbers in the national economy that Plaintiff could  
26 perform. *Id.* at 17. Therefore, the ALJ concluded Plaintiff was not disabled as defined by the Social  
27 Security Act. *Id.* at 18.

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1 **DISCUSSION AND ANALYSIS**

2 The only alleged error identified by Plaintiff is the ALJ’s evaluation of the opinion of Dr.  
3 Damania. Specifically, Plaintiff contends “the ALJ committed reversible error by failing to properly  
4 consider[] the examining psychiatric opinion of Shireen Damania, M.D.” (Doc. 17 at 3). According  
5 to Plaintiff, “the ALJ failed to articulate a legally sufficient rational” to reject the opinion.” *Id.* at 6.

6 In this circuit, cases distinguish the opinions of three categories of physicians: (1) treating  
7 physicians; (2) examining physicians, who examine but do not treat the claimant; and (3) non-  
8 examining physicians, who neither examine nor treat the claimant. *Lester v. Chater*, 81 F.3d 821, 830  
9 (9th Cir. 1996). Nevertheless, a physician’s opinion is not binding upon the ALJ, and may be rejected  
10 whether or not the opinion is contradicted by another. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th  
11 Cir. 1989). When there is conflicting medical evidence, “it is the ALJ’s role . . . to resolve the  
12 conflict.” *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). An ALJ may reject the contradicted  
13 opinion of a physician with “specific and legitimate” reasons, supported by substantial evidence in the  
14 record. *Lester*, 81 F.3d at 830; *see also Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002).

15 **A. The ALJ set forth specific and legitimate reasons supporting her determination.**

16 In this case, the ALJ gave little weight to the opinion of Dr. Damania “because it is  
17 inconsistent with her findings that the claimant had normal attention span and concentration, intact  
18 memory, and could do simple calculations.” (Doc. 11-3 at 15). The ALJ observed the opinion was  
19 “inconsistent with the claimant’s activities including taking care of her own personal hygiene without  
20 assistance, watching television, and shopping with her spouse.” *Id.* Significantly, the Ninth Circuit  
21 has determined a medical opinion may be rejected where there is incongruity between a doctor’s  
22 assessment and his medical records. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008).  
23 Likewise, the opinion of a physician may be discounted where it is inconsistent with a claimant’s level  
24 of functioning. *See, e.g., Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001). As a result, the  
25 ALJ identified specific and legitimate reasons for giving less weight to the opinion of Dr. Damania.

26 **B. The ALJ’s decision is supported by substantial evidence.**

27 In this case, the ALJ incorporated the evaluation of Plaintiff’s treating physician into the RFC  
28 by limiting Plaintiff “to simple one to two-step instructions, no public contact, and limited



1 interpersonal contact on the job.” (Doc. 11-3 at 15). Notably, as a general rule, the opinion of a  
2 treating physician is entitled to greater weight than the opinion of an examining physician. *Lester*, 81  
3 F.3d at 830. Specifically, the Regulations provide: “we give more weight to opinions from your  
4 treating sources, since these sources are likely to be the medical professionals most able to provide a  
5 detailed, longitudinal picture of your medical impairment(s).” 20 C.F.R. §§ 404.1527(d)(2),  
6 416.927(d)(2). Consequently, the opinion of Dr. John Middleton is substantial evidence.

7 Moreover, the opinion of non-examining physicians may be substantial evidence in support of  
8 a disability determination “when the opinions are consistent with independent clinical findings or  
9 other evidence in the record.” *Thomas*, 278 F.3d at 957; *Tonapetyan v. Halter*, 242 F.3d 1144, 1449  
10 (9th Cir. 2001). Here, the opinions of Dr. Lucila and Dr. Middleton, who concluded Plaintiff could  
11 perform simple, repetitive tasks with limited public contact, were consistent with the opinion of Dr.  
12 Middleton. Accordingly, the opinions of Dr. Lucila and Dr. Middleton are substantial evidence  
13 supporting the ALJ’s evaluation of the medical evidence.

#### 14 **CONCLUSION AND ORDER**

15 For all these reasons, the ALJ’s identified specific and legitimate reasons supporting her  
16 decision to give less weight to the opinion of Dr. Damania. In addition, the opinions of Plaintiff’s  
17 treating physician and the non-examining physicians are substantial evidence in support of the ALJ’s  
18 decision. Therefore, the ALJ’s determination that Plaintiff is not disabled must be upheld because she  
19 applied the proper legal standards. *See Sanchez*, 812 F.2d at 510.

20 Accordingly, **IT IS HEREBY ORDERED:**

- 21 1. The decision of the Commissioner of Social Security is **AFFIRMED**; and
- 22 2. The Clerk of Court **IS DIRECTED** to enter judgment in favor of Defendant Michael J.  
23 Astrue, Commissioner of Social Security, and against Plaintiff Kirsten Wilson.

24  
25 IT IS SO ORDERED.

26 Dated: September 5, 2012

/s/ Jennifer L. Thurston  
27 UNITED STATES MAGISTRATE JUDGE