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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHIRLEY RENEE MARTIN,

Plaintiff,

No. 2:12-cv-0033-KJN

v.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

ORDER

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Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying plaintiff’s application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“Act”).<sup>1</sup> In her motion for summary judgment, plaintiff principally contends that the Commissioner erred by finding that plaintiff was not disabled from April 29, 2009, the date that her SSI application was filed, through the date of the final administrative decision. (Dkt. No. 18.) The Commissioner filed an opposition to plaintiff’s motion and a cross-motion for summary judgment. (Dkt. No. 21.) Thereafter, plaintiff filed a reply brief. (Dkt. No. 24.) For the reasons that follow, the court denies plaintiff’s motion

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<sup>1</sup> This case was referred to the undersigned pursuant to E.D. Cal. L.R. 302(c)(15) and 28 U.S.C. § 636(c), and both parties voluntarily consented to proceed before a United States Magistrate Judge. (Dkt. Nos. 6, 9.)

1 for summary judgment, grants the Commissioner’s cross-motion for summary judgment, and  
2 enters judgment for the Commissioner.

3 I. BACKGROUND

4 Plaintiff was born on April 7, 1958, has a high school education, and does not  
5 have past relevant work.<sup>2</sup> (Administrative Transcript (“AT”) 26-27, 33, 128, 132.) On April 29,  
6 2009, plaintiff applied for SSI, alleging that she was unable to work as of July 1, 2006, primarily  
7 due to a stroke, high blood pressure, and difficulties with her vision and balancing. (AT 17, 68,  
8 72, 128, 137, 140.) Plaintiff had been in a long-term abusive relationship and also alleged  
9 depression and anxiety attributable to post-traumatic stress disorder. (AT 48-49, 175.) On  
10 August 24, 2009, the Commissioner determined that plaintiff was not disabled. (AT 68.) Upon  
11 plaintiff’s request for reconsideration, the determination was affirmed on January 28, 2010. (AT  
12 72.) Thereafter, plaintiff requested a hearing before an administrative law judge (“ALJ”), which  
13 took place on November 10, 2010. (AT 17, 30.)

14 In a decision dated December 21, 2010, the ALJ determined that plaintiff had not  
15 been under a disability, as defined in the Act, from the SSI application date of April 29, 2009,  
16 through the date of that decision. (AT 17-28.) The ALJ’s decision became the final decision of  
17 the Commissioner when the Appeals Council denied plaintiff’s request for review on November  
18 10, 2011. (AT 1-6.) Thereafter, plaintiff filed this action in federal district court on January 5,  
19 2012, to obtain judicial review of the Commissioner’s final decision. (Dkt. No. 1.)

20 II. ISSUES PRESENTED

21 Plaintiff has raised the following issues: (1) whether the ALJ improperly  
22 evaluated the medical opinion evidence concerning plaintiff’s physical and mental limitations;  
23 (2) whether the ALJ erroneously failed to include social functioning limitations in plaintiff’s

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24 <sup>2</sup> Because the parties are familiar with the factual background of this case, including  
25 plaintiff’s medical history, the court does not exhaustively relate those facts in this order. The  
26 facts related to plaintiff’s impairments and medical history will be addressed insofar as they are  
relevant to the issues presented by the parties’ respective motions.

1 residual functional capacity (“RFC”); and (3) whether the ALJ erred at step five by relying on the  
2 “Grids” and failing to obtain vocational expert (“VE”) testimony.<sup>3</sup>

3 III. LEGAL STANDARD

4 The court reviews the Commissioner’s decision to determine whether (1) it is  
5 based on proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in  
6 the record as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999).  
7 Substantial evidence is more than a mere scintilla, but less than a preponderance. Connett v.  
8 Barnhart, 340 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means “such relevant evidence  
9 as a reasonable mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d  
10 625, 630 (9th Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The  
11 ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and  
12 resolving ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citation  
13 omitted). “The court will uphold the ALJ’s conclusion when the evidence is susceptible to more  
14 than one rational interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

15 IV. DISCUSSION

16 A. Summary of the ALJ’s Findings

17 The ALJ evaluated plaintiff’s entitlement to SSI pursuant to the Commissioner’s  
18 standard five-step analytical framework.<sup>4</sup> At the first step, the ALJ concluded that plaintiff had  
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20 <sup>3</sup> Although plaintiff’s briefing raised these issues in a different order, the court addresses  
21 them in an order that more logically comports with the sequential evaluation process employed in  
22 social security cases.

23 <sup>4</sup> Disability Insurance Benefits are paid to disabled persons who have contributed to the  
24 Social Security program. 42 U.S.C. §§ 401 et seq. Supplemental Security Income is paid to  
25 disabled persons with low income. 42 U.S.C. §§ 1382 et seq. Both provisions define disability,  
26 in part, as an “inability to engage in any substantial gainful activity” due to “a medically  
determinable physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A).  
A parallel five-step sequential evaluation governs eligibility for benefits under both programs.  
See 20 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S.  
137, 140-42, 107 S. Ct. 2287 (1987). The following summarizes the sequential evaluation:

1 not engaged in substantial gainful activity since April 29, 2009, plaintiff's SSI application date.  
2 (AT 19.) At step two, the ALJ determined that plaintiff had the following medically severe  
3 combination of impairments: history of stroke, left eye visual loss, hypertension, history of  
4 kidney disease, borderline intellectual functioning, organic mental disorder, posttraumatic stress  
5 disorder, depression, and a history of polysubstance abuse. (Id.) However, at step three, the ALJ  
6 determined that plaintiff did not have an impairment or combination of impairments that meet or  
7 medically equal an impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. (Id.)

8 Before proceeding to step four, the ALJ assessed plaintiff's RFC as follows:

9 After careful consideration of the entire record, I find that the  
10 claimant has the residual functional capacity to perform medium  
11 work as defined in 20 CFR 416.967(c) except she cannot engage in  
12 tasks requiring good binocular vision or depth perception and  
13 should avoid hazards, such as heights and heavy machinery. She is  
14 limited to work involving no more than simple repetitive tasks.

15 (AT 21.)

16 ///

17 Step one: Is the claimant engaging in substantial gainful  
18 activity? If so, the claimant is found not disabled. If not, proceed  
19 to step two.

20 Step two: Does the claimant have a "severe" impairment?  
21 If so, proceed to step three. If not, then a finding of not disabled is  
22 appropriate.

23 Step three: Does the claimant's impairment or combination  
24 of impairments meet or equal an impairment listed in 20 C.F.R., Pt.  
25 404, Subpt. P, App.1? If so, the claimant is automatically  
26 determined disabled. If not, proceed to step four.

Step four: Is the claimant capable of performing his past  
work? If so, the claimant is not disabled. If not, proceed to step  
five.

Step five: Does the claimant have the residual functional  
capacity to perform any other work? If so, the claimant is not  
disabled. If not, the claimant is disabled.

Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

The claimant bears the burden of proof in the first four steps of the sequential evaluation  
process. Bowen, 482 U.S. at 146 n.5, 107 S. Ct. at 2294 n.5. The Commissioner bears the  
burden if the sequential evaluation process proceeds to step five. Id.

1           At step four, the ALJ found that plaintiff had no past relevant work. (AT 26.)  
2 Finally, at step five, the ALJ determined, in reliance on the “Grids” (see 20 C.F.R. Part 404,  
3 Subpart P, Appendix 2), that, considering plaintiff’s age, education, work experience, and RFC,  
4 there were jobs that existed in significant numbers in the national economy that plaintiff could  
5 perform. (AT 27.) Accordingly, the ALJ concluded that plaintiff had not been under a disability,  
6 as defined in the Act, from plaintiff’s SSI application date of April 29, 2009, through the date of  
7 the ALJ’s decision. (AT 28.)

8           B.     Plaintiff’s Substantive Challenges to the Commissioner’s Determinations

9           1.     Whether the ALJ improperly evaluated the medical opinion evidence  
10                   concerning plaintiff’s physical and mental limitations

11           The weight given to medical opinions depends in part on whether they are  
12 proffered by treating, examining, or non-examining professionals. Holohan v. Massanari,  
13 246 F.3d 1195, 1201-02 (9th Cir. 2001); Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995).  
14 Ordinarily, more weight is given to the opinion of a treating professional, who has a greater  
15 opportunity to know and observe the patient as an individual. Id.; Smolen v. Chater, 80 F.3d  
16 1273, 1285 (9th Cir. 1996).

17           To evaluate whether an ALJ properly rejected a medical opinion, in addition to  
18 considering its source, the court considers whether (1) contradictory opinions are in the record;  
19 and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted opinion of a  
20 treating or examining medical professional only for “clear and convincing” reasons. Lester,  
21 81 F.3d at 830-31. In contrast, a contradicted opinion of a treating or examining professional  
22 may be rejected for “specific and legitimate” reasons. Lester, 81 F.3d at 830. While a treating  
23 professional’s opinion generally is accorded superior weight, if it is contradicted by a supported  
24 examining professional’s opinion (supported by different independent clinical findings), the ALJ  
25 may resolve the conflict. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing  
26 Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). The regulations require the ALJ to

1 weigh the contradicted treating physician opinion, Edlund, 253 F.3d at 1157,<sup>5</sup> except that the ALJ  
2 in any event need not give it any weight if it is conclusory and supported by minimal clinical  
3 findings. Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999) (treating physician’s conclusory,  
4 minimally supported opinion rejected); see also Magallanes, 881 F.2d at 751. The opinion of a  
5 non-examining professional, without other evidence, is insufficient to reject the opinion of a  
6 treating or examining professional. Lester, 81 F.3d at 831.

7 In this case, although the record includes some treatment notes and records, none  
8 of plaintiff’s treating physicians submitted detailed assessments concerning plaintiff’s functional  
9 limitations. Accordingly, the parties’ briefing primarily focuses on the opinions of the various  
10 consultative examiners and state agency physicians. The court separately addresses the issues  
11 raised by plaintiff with respect to evaluation of plaintiff’s physical and mental limitations.

12 *Physical Limitations*

13 Plaintiff argues that the ALJ improperly rejected the January 14, 2007 opinion of  
14 consultative examiner and internal medicine specialist, Dr. Jenna Brimmer, by failing to include  
15 balancing limitations in the RFC. Dr. Brimmer diagnosed plaintiff with high blood pressure and  
16 a history of stroke, resulting in a left eye visual deficit and disequilibrium. (AT 202.) She  
17 assessed no exertional limitations, but opined that plaintiff was “not able to participate in  
18 activities requiring binocular vision. She should also avoid activities requiring climbing or  
19 balancing because of her disequilibrium.” (Id.)

20 Plaintiff’s argument lacks merit, because the ALJ specifically acknowledged  
21 plaintiff’s balancing limitations and accounted for them by including a restriction for hazards,  
22 such as heights and heavy machinery, as well as lifting and carrying restrictions. (AT 21, 25-26.)  
23 SSR 85-15 states, in part, that:

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25 <sup>5</sup> The factors include: (1) length of the treatment relationship; (2) frequency of  
26 examination; (3) nature and extent of the treatment relationship; (4) supportability of diagnosis;  
(5) consistency; (6) specialization. 20 C.F.R. § 404.1527.

1 Limitations in *climbing and balancing* can have varying effects on  
2 the occupational base, depending on the degree of limitation and  
3 the type of job. Usual everyday activities, both at home and at  
4 work, include ascending or descending ramps or a few stairs and  
5 maintaining body equilibrium while doing so. These activities are  
6 required more in some jobs than in others, and they may be critical  
7 in some occupations. Where a person has some limitation in  
8 climbing and balancing and it is the only limitation, it would not  
9 ordinarily have a significant impact on the broad world of work.  
10 Certain occupations, however, may be ruled out; e.g., the light  
11 occupation of construction painter, which requires climbing ladders  
12 and scaffolding, and the very heavy occupation of firefighter,  
13 which sometimes requires the individual to climb poles and ropes.  
14 Where the effects of the person's actual limitations of climbing and  
15 balancing on the occupational base are difficult to determine, the  
16 services of a VS may be necessary.

17 SSR 85-15, at \*6.

18 Although plaintiff argues that Dr. Brimmer opined that plaintiff could not engage  
19 in *any balancing whatsoever*, and that the RFC therefore does not capture that more severe  
20 limitation, plaintiff's interpretation of Dr. Brimmer's opinion is inconsistent with Dr. Brimmer's  
21 clinical findings. During her examination, Dr. Brimmer noted that while plaintiff had difficulty  
22 walking heel-to-toe, she had no difficulty generally moving about the exam room, or on and off  
23 the exam table, and she "does not walk with her hands outstretched or bump into items in this  
24 unfamiliar environment." (AT 200.) Dr. Brimmer further opined that plaintiff did not require an  
25 assistive device. (AT 202.) Plaintiff herself reported to Dr. Brimmer that she could dress  
26 herself, perform her own hygiene, cook, do dishes, mop, and vacuum, all of which involve some  
basic balancing requirements. (AT 199.) Therefore, the ALJ's interpretation and translation of  
Dr. Brimmer's opinion, in the context of her report as whole, was reasonable.

Furthermore, plaintiff's extreme interpretation is also inconsistent with other  
substantial evidence in the record. On April 3, 2007, plaintiff's treating neurologist, Dr. Eileen  
Bardolph, found plaintiff's gait as well as toe, heel, and tandem walking to be normal. (AT 441-  
42.) Subsequently, on July 23, 2009, consultative examiner and internal medicine specialist, Dr.  
Satish Sharma, observed that plaintiff's gait was normal and that although she had brought a

1 walking cane with her, plaintiff could walk across the room without it. (AT 228-29.) Finally, on  
2 August 6, 2009, plaintiff also denied any issues with balance or coordination to consultative  
3 examiner and psychiatrist, Dr. Wong, who noted that plaintiff walked with no observable  
4 abnormality of gait. (AT 238-39.)<sup>6</sup>

5 Therefore, the court finds that the ALJ did not reject Dr. Brimmer’s opinion, but  
6 instead adequately accounted for plaintiff’s balancing limitations in the assessed RFC.

7 Mental Limitations

8 Plaintiff next contends that the ALJ improperly rejected the opinions of Drs.  
9 Wong, Carlson, Wakefield, and Kalman with respect to plaintiff’s mental limitations.

10 On January 25, 2008, plaintiff was evaluated by consultative examining  
11 psychologist, Dr. James Wakefield. (AT 203-06.) Dr. Wakefield found plaintiff to be oriented  
12 and cooperative with normal appearance, adequate grooming, appropriate affect, normal speech,  
13 adequate verbal skills, and normal thought content. (AT 204.) However, Dr. Wakefield  
14 administered intelligence and memory tests, which revealed deficient intellectual ability, some  
15 concentration and memory deficits, and a possible organic disorder. (AT 204-06.)

16 Dr. Wakefield diagnosed plaintiff with an organic mental disorder, provisional  
17 borderline intellectual functioning, a history of abuse, and a GAF score of 65.<sup>7</sup> (AT 206.) He  
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19 <sup>6</sup> As the ALJ noted, although plaintiff also testified that she frequently fell or passed out,  
20 the medical records only document a few instances where plaintiff sought treatment for such  
21 incidents. (AT 24.) A presyncopal episode in June 2010 was attributed by her treating providers  
22 mainly to dehydration and a dental infection. (AT 611.) Furthermore, during a subsequent  
23 November 2010 incident, when plaintiff presented with possible stroke-type symptoms and high  
24 blood pressure, she admitted to having used marijuana, cocaine, and tobacco, and her laboratory  
25 tests were positive for cocaine. (At 716-17.) Treatment notes at times also noted plaintiff  
26 running out of blood pressure medication and otherwise poor compliance with hypertension  
control. (AT 605, 607-08, 728.) Therefore, it was reasonable for the ALJ to conclude that  
plaintiff’s alleged frequent falls or fainting episodes were likely the result of factors other than a  
more persistent medical condition. (AT 24.)

<sup>7</sup> GAF is a scale reflecting “psychological, social, and occupational functioning on a  
hypothetical continuum of mental health-illness.” Diagnostic and Statistical Manual of Mental  
Disorders 34 (4th ed. 2000). A GAF score of 61-70 indicates “[s]ome mild symptoms (e.g.,



1 opined that plaintiff could follow simple work rules, although more complex procedures would  
2 present difficulties. (Id.) Dr. Wakefield stated that plaintiff's persistence and verbal  
3 concentration were adequate, but that her pace and visual concentration were deficient. (Id.) He  
4 further opined that plaintiff's ability to reason and make occupational, personal, and social  
5 decisions in her best interests was deficient, although he also found that her social and behavioral  
6 functioning was appropriate and that she could interact with co-workers, supervisors, and the  
7 public at a minimally acceptable level. (Id.) Dr. Wakefield stated that plaintiff was not able to  
8 handle her own funds. (Id.)

9           Thereafter, on August 6, 2009, plaintiff underwent an evaluation by consultative  
10 examining psychiatrist, Dr. Patrick Wong. (AT 238-42.) Dr. Wong reviewed plaintiff's prior  
11 records, including the evaluation by Dr. Wakefield. (AT 238.) Plaintiff informed Dr. Wong that  
12 she had not had any previous psychotherapy or psychiatric treatment. (Id.) She reported that she  
13 had her purse snatched a few days before, causing her to be fearful in public and experience night  
14 sweats. (Id.) Plaintiff also reported that she graduated from high school, was not enrolled in  
15 special education classes, and that she was previously in a long-term relationship with some  
16 domestic violence, but she claimed to have no resulting posttraumatic symptoms, indicating that  
17 she felt positive about moving forward with her life. (AT 239.) Dr. Wong noted that plaintiff  
18 was well groomed and conventional in appearance, without any asymmetric weakness; was  
19 oriented; had fluent speech; was generally cooperative and friendly, exhibiting good social  
20 reciprocity; and was without hypervigilance, motor tension, or agitation. (Id.) Although  
21 plaintiff's mood was mildly worried/depressed, she had a full affect without excessive anxiety;  
22 linear and organized thought form; normal thought content; an intact fund of knowledge; intact  
23 judgment; some insight; good attention; and intact concentration. (Id.) She was able to spell a

24 \_\_\_\_\_  
25 depressed mood and mild insomnia) OR some difficulty in social, occupational, or school  
26 functioning (e.g., occasional truancy, or theft within the household), but generally functioning  
pretty well, has some meaningful interpersonal relationships.” Id.

1 word forwards and backwards, write a sentence, and perform simple calculations. (Id.) Memory  
2 exercises and tests revealed that plaintiff's short and long term memory were intact. (AT 239-  
3 40.)

4 Dr. Wong diagnosed plaintiff with an adjustment disorder, secondary to the recent  
5 purse snatching assault; depression; "rule out acute stress disorder"; "rule out posttraumatic  
6 stress disorder"; "rule out cognitive disorder"; "rule out borderline intellectual functioning"; and  
7 a GAF of 60-70. (AT 240.) Dr. Wong observed that plaintiff exhibited minimal, but possible,  
8 organic findings; that her level of functioning and educational history suggested functionality  
9 somewhat superior to that found by Dr. Wakefield; and that plaintiff's capacity for simple, basic  
10 work was not impaired by any borderline intellectual functioning. (Id.) Dr. Wong opined that  
11 plaintiff's ability to carry out simple instructions was intact; her ability to carry out complex  
12 instructions was generally intact; her ability to maintain an adequate pace and level of endurance  
13 over an eight-hour workday was mildly reduced by her adjustment disorder and mild depression;  
14 her ability to relate to co-workers and the public was mild to moderately diminished; her ability  
15 to take instructions from a supervisor was generally intact; the probability of functional  
16 deterioration due to typical workplace stressors was mildly elevated; her stress tolerance was  
17 mildly diminished; her ability to adapt to a workplace was generally intact; and she was capable  
18 of staying consistently aware of workplace safety issues. (Id.) She was also capable of managing  
19 her own funds. (Id.)

20 Subsequently, on January 26, 2010, state agency psychiatrist, Dr. Carlson,  
21 reviewed plaintiff's records and opined that plaintiff was moderately limited in her ability to  
22 understand, remember, and carry out detailed instructions; work in coordination with or  
23 proximity to others without being distracted by them; interact appropriately with the general  
24 public; and get along with coworkers or peers without distracting them or exhibiting behavioral  
25 extremes. (AT 284-85.) He found plaintiff to be not significantly limited in all other areas. (Id.)  
26 Dr. Carlson summarized his findings by noting that plaintiff would have moderate difficulty with

1 detailed and complex work and in interacting with others, but otherwise had minimal difficulties.  
2 (AT 286.)

3 Finally, on November 5, 2010, at the request of plaintiff's counsel, plaintiff was  
4 examined by psychiatrist, Dr. Les Kalman, who also reviewed plaintiff's prior records. (AT 629-  
5 40.) Plaintiff was tearful and complained of frequent, severe nightmares and flashbacks related  
6 to her prior abusive relationship. (AT 630.) She stated that she was estranged from her family,  
7 had no friends, and mostly stayed in her room watching TV. (AT 632.) However, plaintiff  
8 indicated that she was able to do her own cooking, shopping, and housekeeping; care for her  
9 personal hygiene; manage her own transportation; and pay bills. (Id.) She denied ever using  
10 drugs or alcohol. (AT 631.) Dr. Kalman found plaintiff to be groomed with a normal posture,  
11 pleasant and cooperative, alert and oriented, and with normal speech and good eye contact. (AT  
12 630-31.) In terms of memory, she was able to recall two of three objects at five minutes; was  
13 able to repeat five digits forward and three backward; and recalled two of the past five U.S.  
14 presidents. (AT 631.) Although she could not do serial 3's, she was able to add, subtract,  
15 multiply, and do basic calculations involving money. (Id.) Dr. Kalman noted that her  
16 abstractions were not intact, but her insight and judgment were fair. (Id.) Plaintiff had a  
17 depressed mood and a constricted affect, and was hypervigilant, although her thought process  
18 was logical and goal directed without mood swings and emotional lability. (AT 632.)

19 Dr. Kalman diagnosed plaintiff with post traumatic stress disorder, major  
20 depression, and a history of abuse, and assessed a GAF of 48.<sup>8</sup> (AT 632.) Dr. Kalman found  
21 plaintiff to be competent to manage her own funds and not significantly limited in her ability to  
22 remember locations and work-like procedures; understand and remember short and simple  
23 repetitive instructions or tasks; perform activities within a schedule, maintain regular attendance,

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25 <sup>8</sup> A GAF of 41-50 indicates "[s]erious symptoms (e.g., suicidal ideation, severe  
26 obsessional rituals, frequent shoplifting) OR any serious impairment in social, occupational, or  
school functioning (e.g., no friends, unable to keep a job). Diagnostic and Statistical Manual of  
Mental Disorders 34 (4th ed. 2000).

1 and be punctual with customary tolerances; sustain an ordinary routine without special  
2 supervision; ask simple questions or request assistance from supervisors; maintain socially  
3 appropriate behavior and adhere to basic standards of neatness and cleanliness; respond  
4 appropriately to changes; be aware of and take precautions regarding hazards; travel in unfamiliar  
5 places and with public transportation; and set goals and make plans independently of others. (AT  
6 633, 635-37.) He opined that plaintiff was mildly limited in her ability to carry out short and  
7 simple instructions or tasks; maintain attention and concentration for extended periods; work in  
8 coordination with or proximity to others without being unduly distracted by them; get along with  
9 co-workers or peers without unduly distracting them or exhibiting behavioral extremes; and  
10 interact appropriately with the general public or customers. (AT 636-37.) He further opined that  
11 plaintiff was moderately limited in her ability to understand, remember, and carry out detailed  
12 instructions or tasks; and that plaintiff was markedly impaired in her ability to accept instructions  
13 and respond appropriately to criticism from supervisors. (Id.) Finally, Dr. Kalman stated that  
14 work-related stressors would increase plaintiff's level of impairment and that she would be  
15 unable to complete a workday more than three or four times per month. (AT 637-38.) He listed  
16 the onset date of these limitations as 1998. (AT 638.)

17           Contrary to plaintiff's contention, the ALJ did not reject the opinions of  
18 consultative examining psychiatrist Dr. Wong and state agency psychiatrist Dr. Carlson. The  
19 ALJ gave substantial weight to their opinions, and consistent with those opinions, acknowledged  
20 that plaintiff had moderate social functioning limitations and at least mild limitations in  
21 concentration, persistence, or pace, leading to some difficulties with detailed and complex tasks.  
22 (AT 20, 26.) While there is a separate issue, addressed below, as to whether social functioning  
23 limitations were appropriately incorporated into plaintiff's RFC, there is no indication that the  
24 ALJ rejected Dr. Wong's or Dr. Carlson's opinion.

25           By contrast, the ALJ discounted some portions of Dr. Wakefield's and Dr.  
26 Kalman's opinions. Nevertheless, for the reasons discussed below, the court finds that the ALJ

1 provided specific and legitimate reasons for doing so.

2           The ALJ stated that he gave reduced weight to Dr. Wakefield's opinion, because it  
3 was not consistent with the other medical evidence, especially given that plaintiff showed  
4 adequate memory, attention, and concentration in subsequent evaluations. (AT 26.) Indeed, both  
5 Dr. Wong's and Dr. Kalman's subsequent mental examinations revealed only mild deficits in  
6 plaintiff's memory, attention, and concentration, and plaintiff's potential borderline intellectual  
7 functioning was found to, at most, mildly affect her ability to perform simple, repetitive tasks.  
8 (AT 240, 635-37.) In this regard, the ALJ reasonably relied on these opinions over the opinion of  
9 Dr. Wakefield, because Dr. Wong and Dr. Kalman evaluated plaintiff during the relevant period  
10 at issue (which began in April 2009 when plaintiff applied for SSI<sup>9</sup>), whereas Dr. Wakefield  
11 evaluated plaintiff more than a year earlier in January 2008. (AT 203-06, 238-42, 629-40.) The  
12 ALJ also referenced Dr. Wong's specific opinion that plaintiff's actual functional ability  
13 appeared to be superior to that indicated by Dr. Wakefield's test results. (AT 26, 240.) This  
14 conclusion is supported by the fact that plaintiff graduated from high school without any  
15 enrollment in special education classes. (AT 239.)

16           Plaintiff argues that Dr. Wong's opinion should be entitled to less weight,  
17 because, unlike Dr. Wakefield, who administered the Wechsler Adult Intelligence Scale, the  
18 Wechsler Memory Scale, and other objective tests, Dr. Wong only performed a "basic  
19 examination." (Dkt. No. 18-1 at 17.) However, even though Dr. Wong did not perform the same  
20 tests that Dr. Wakefield performed, Dr. Wong's report shows that he conducted a thorough  
21 mental examination, and that he specifically tested plaintiff's attention, concentration, memory,  
22 and intellectual functioning through a variety of different exercises and tests. (AT 239-40.)

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24           <sup>9</sup> Regardless of the alleged disability onset date, SSI is not payable prior to the month  
25 following the month in which the application was filed. 20 C.F.R. § 416.335. Although plaintiff  
26 alleged disability as of July 1, 2006, and the ALJ considered the entire record concerning  
plaintiff's medical history, it was reasonable for the ALJ to give greater weight to evaluations  
performed during the relevant period for which benefits were potentially payable. (AT 17.)

1 Moreover, Dr. Wong had access to Dr. Wakefield's prior test results and was able to consider  
2 them as part of his overall evaluation. Additionally, as noted above, Dr. Kalman, who also had  
3 access to Dr. Wakefield's prior test results, made findings similar to those of Dr. Wong, at least  
4 with respect to plaintiff's memory, attention, concentration, and intellectual functioning.  
5 Therefore, substantial evidence supports the ALJ's weighing of Dr. Wakefield's opinion.

6           The ALJ also gave reduced weight to Dr. Kalman's opinion; in particular, to his  
7 findings that plaintiff was markedly impaired in her ability to accept instructions and respond  
8 appropriately to criticism from supervisors, and that she would be unable to complete a workday  
9 more than three or four times per month. (AT 26, 637-38.) The ALJ reasoned that the opinion  
10 was inconsistent with Dr. Kalman's own report, which indicated that plaintiff only had mild or  
11 no significant limitations in most areas, including all other areas of social functioning. (AT 26.)  
12 Although plaintiff argues that her history of abuse, and Dr. Kalman's observations that plaintiff  
13 was hypervigilant and fearful of future harm by her former significant other (AT 632), could  
14 support such a limitation, Dr. Kalman never explained why these factors would so uniquely  
15 affect plaintiff's relationships with supervisors, as opposed to her other social relationships.  
16 Even though plaintiff told Dr. Kalman that she was estranged from her family and had no friends  
17 (id.), that does not necessarily suggest that plaintiff is unable to interact appropriately with  
18 supervisors in a work environment. Dr. Kalman's report is also somewhat inconsistent in that  
19 regard, because, in another portion of his report, Dr. Kalman found plaintiff to be not  
20 significantly limited in her ability to ask simple questions or request assistance from supervisors.  
21 (AT 636.) Furthermore, Dr. Kalman assessed plaintiff as not significantly limited in her ability  
22 to perform activities within a schedule, maintain regular attendance, and be punctual with  
23 customary tolerances, which again contradicts his unexplained assertion that plaintiff would be  
24 unable to complete a workday more than three or four times per month. (AT 636, 638.)

25           Additionally, the ALJ noted that Dr. Kalman's findings were also inconsistent  
26 with the other opinion evidence in the record. (AT 26.) As noted above, Dr. Wong found

1 plaintiff to be cooperative and friendly, exhibiting “good social reciprocity.” (AT 239.) He  
2 opined that plaintiff’s ability to take instructions from a supervisor was generally intact. (AT  
3 240.) Even Dr. Wakefield found plaintiff to be cooperative, and opined that she was able to  
4 interact with co-workers, supervisors, and the public at a minimally acceptable level. (AT 204,  
5 206.) Accordingly, the undersigned finds that the ALJ also provided specific and legitimate  
6 reasons to discount Dr. Kalman’s opinion.

7 2. Whether the ALJ erroneously failed to include social functioning  
8 limitations in plaintiff’s RFC

9 Having determined that the ALJ’s evaluation of the medical opinion evidence was  
10 supported by substantial evidence, the court next considers whether the ALJ appropriately  
11 translated plaintiff’s supported limitations into the RFC. In this case, plaintiff contends that the  
12 ALJ, despite finding that plaintiff suffered from moderate social functioning limitations, erred by  
13 only restricting plaintiff to simple repetitive tasks in the RFC assessment.

14 An ALJ may synthesize and translate assessed limitations into an RFC assessment  
15 without necessarily repeating each functional limitation verbatim in the RFC assessment.  
16 Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1173-74 (9th Cir. 2008); see also 20 C.F.R. §  
17 404.1545 (defining RFC as “the most you can still do despite your limitations”). Moderate  
18 mental limitations are not necessarily inconsistent with an RFC for simple repetitive tasks, as  
19 long as such an assessment is generally consistent with the concrete restrictions identified in the  
20 medical evidence. Stubbs-Danielson, 539 F.3d at 1174; see also Rogers v. Comm’r of Soc. Sec.  
21 Admin., 2012 WL 2951414, at \*2 (9th Cir. 2012) (unpublished) (holding that an RFC assessment  
22 for simple routine tasks, which did not expressly note the claimant’s moderate social functioning  
23 limitations, nonetheless adequately accounted for such limitations, because they did not result in  
24 concrete work-related limitations preventing the claimant from performing simple routine tasks  
25 involved in unskilled jobs).

26 ///

1 Here, despite concluding that plaintiff had certain mild to moderate social  
2 limitations, Dr. Wong found that plaintiff's ability to carry out simple instructions was intact, and  
3 even her ability to carry out complex instructions was generally intact. (AT 240.) Dr. Kalman  
4 also found that plaintiff's ability to carry out short and simple instructions was only mildly  
5 limited, and even Dr. Wakefield found that plaintiff could follow simple work rules. (AT 206,  
6 636.) The concrete restrictions in the opinion evidence therefore support the ALJ's RFC  
7 assessment. Additionally, because unskilled jobs "ordinarily involve dealing primarily with  
8 objects, rather than with data or people," moderate social functioning limitations are not as  
9 significant in such jobs. SSR 85-15, at \*4.

10 Moreover, even if the ALJ were technically required to include moderate social  
11 functioning limitations in the RFC, any such error was harmless. The Ninth Circuit held that  
12 moderate mental limitations do not even require vocational expert testimony. Hoopai v. Astrue,  
13 499 F.3d 1071, 1077 (9th Cir. 2007). In Hoopai, a medical source determined that the claimant  
14 was moderately limited in "his ability to maintain attention and concentration for extended  
15 periods; his ability to perform activities within a schedule, maintain regular attendance, and be  
16 punctual with customary tolerance; and his ability to complete a normal workday and workweek  
17 without interruption from psychologically-based symptoms and to perform at a consistent pace  
18 without an unreasonable number and length of rest periods." Id. After the ALJ utilized the Grids  
19 at step five to determine that the claimant was not disabled, plaintiff contended on appeal that the  
20 ALJ was required to seek vocational expert testimony regarding the limitations assessed. Id. at  
21 1075. The Ninth Circuit rejected that argument, holding that such moderate mental limitations  
22 were not sufficiently severe to prohibit the ALJ from relying on the Grids without the assistance  
23 of a vocational expert. Id. at 1077.

24 For these reasons, the ALJ's RFC assessment was supported by substantial  
25 evidence in the record as a whole, and any error in failing to expressly note moderate social  
26 functioning limitations in the RFC was harmless.



1           3.     Whether the ALJ erred at step five by relying on the Grids and failing to  
2                     obtain vocational expert testimony

3           Plaintiff contends that the ALJ erred in failing to seek vocational expert testimony  
4 concerning plaintiff's social functioning and visual limitations.

5           The "Grids" take administrative notice of the numbers of unskilled jobs that exist  
6 throughout the national economy at various functional levels. 20 C.F.R. Part 404, Subpart P,  
7 Appendix 2, § 200.00(b). "The ALJ can use the grids without vocational expert testimony when  
8 a non-exertional limitation is alleged because the grids provide for the evaluation of claimants  
9 asserting both exertional and non-exertional limitations. But the grids are inapplicable when a  
10 claimant's non-exertional limitations are sufficiently severe so as to significantly limit the range  
11 of work permitted by the claimant's exertional limitations." Hoopai, 499 F.3d at 1075 (citations  
12 and quotation marks omitted). In such a case, vocational expert testimony is required. Id.

13           For the reasons discussed above, plaintiff's moderate social functioning  
14 limitations were not sufficiently severe to require vocational expert testimony. With respect to  
15 plaintiff's vision impairment, resulting in an inability to "engage in tasks requiring good  
16 binocular vision or depth perception" (AT 21), SSR 85-15 states, in part:

17                     As a general rule, even if a person's visual impairment(s) were to  
18                     eliminate all jobs that involve very good vision (such as working  
19                     with small objects or reading small print), as long as he or she  
20                     retains sufficient visual acuity to be able to handle and work with  
                      rather large objects (and has the visual fields to avoid ordinary  
                      hazards in a workplace), there would be a substantial number of  
                      jobs remaining across all exertional levels.

21 SSR 85-15, at \*8. Plaintiff argues that this social security ruling is limited to visual acuity and  
22 does not address depth perception. However, even if that is the case, the weight of the record  
23 evidence does not suggest that plaintiff's depth perception difficulties give rise to limitations  
24 beyond a need to avoid hazards such as heights and heavy machinery.

25           For example, Dr. Brimmer noted on January 14, 2007, that plaintiff had "no  
26 difficulty moving about the exam room or on and off the exam table. She does not walk with her

1 hands outstretched or bump into items in this unfamiliar environment. She is able to find the  
2 door knob without groping. She can write her name without difficulty.” (AT 200.) Plaintiff  
3 reported to Dr. Brimmer that she could dress herself, perform her own hygiene, cook, do dishes,  
4 mop, and vacuum, although she sometimes missed things because of her vision. (AT 199.)  
5 Subsequently, on November 5, 2010, plaintiff similarly told Dr. Kalman that she was able to do  
6 her own cooking, shopping, and housekeeping; manage her own transportation; and care for her  
7 personal hygiene. (AT 632.)

8 As the ALJ observed, these activities suggest that plaintiff is at least capable of  
9 working with larger objects and avoiding more ordinary hazards in the workplace. (AT 27.) To  
10 account for plaintiff’s depth perception difficulties, the ALJ included a restriction for heights and  
11 heavy machinery, but also correctly observed that such a restriction does not have a significant  
12 impact on the number of jobs at any exertional level. (Id.); see SSR 85-15, at \*8. Therefore, the  
13 ALJ reasonably determined that plaintiff’s vision deficits, including her limited depth perception,  
14 were not sufficiently severe so as to significantly limit the amount of medium level jobs  
15 available,<sup>10</sup> and no vocational expert testimony was required.

16 V. CONCLUSION

17 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff’s motion for summary judgment (Dkt. No. 18) is DENIED.
- 19 2. The Commissioner’s cross-motion for summary judgment (Dkt. No. 21) is

20 GRANTED.

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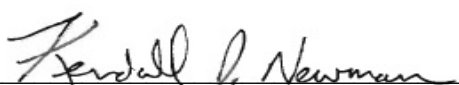
23 <sup>10</sup> According to the Grids, “[t]he functional capacity to perform medium work includes  
24 the functional capacity to perform sedentary, light, and medium work. Approximately 2,500  
25 separate sedentary, light, and medium occupations can be identified, each occupation  
26 representing numerous jobs in the national economy which do not require skills or previous  
experience and which can be performed after a short demonstration or within 30 days.” 20  
C.F.R. Part 404, Subpart P, Appendix 2, § 203.00(a).

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3. Judgment is entered for the Commissioner.

IT IS SO ORDERED.

DATE: February 12, 2013

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE