

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

|   |   |                              |
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| SUSAN KAY SISCO,                              | ) | Case No.: 13-CV-01817-LHK    |
|   | ) |                              |
| Plaintiff,                                    | ) |                              |
|   | ) |                              |
| v.  | ) | ORDER DENYING PLAINTIFF’S    |
|   | ) | MOTION FOR SUMMARY           |
|   | ) | JUDGMENT; GRANTING           |
| CAROLYN W. COLVIN, Acting                     | ) | DEFENDANT’S CROSS-MOTION FOR |
| Commissioner, Social Security Administration, | ) | SUMMARY JUDGMENT             |
|   | ) |                              |
| Defendant.                                    | ) |                              |

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Plaintiff Susan Kay Sisco (“Sisco”) appeals a final decision of the Commissioner of Social Security (“Commissioner”) denying Sisco’s application for a period of disability and disability insurance benefits under Title II of the Social Security Act. Before the Court are Sisco’s motion for summary judgment or, in the alternative, for remand, (“Pl. MSJ”) ECF No. 10, and the Commissioner’s cross-motion for summary judgment, (“Def. MSJ”) ECF No. 13. Both motions are fully briefed. *See* Pl. MSJ, Def. MSJ, (“Pl. Reply”) ECF No. 14. Upon consideration of the briefing, the record in this case, and for the reasons set forth below, the Court DENIES Sisco’s motion for summary judgment and GRANTS the Commissioner’s cross-motion for summary judgment.

1 **I. BACKGROUND**

2 **A. Plaintiff's Age and Educational, Vocational, and Medical History**

3 Sisco was born in 1952. Admin. R. ("AR") 94. Sisco completed a bachelor's degree in  
4 human development. AR 629. Sisco last worked on December 30, 2008 at which time she was a  
5 social service director at a senior housing facility. AR 193. Sisco had held the social service  
6 director job for approximately six years. *Id.* Sisco claims she was fired by her employer for  
7 repeated absences due to her medical conditions. AR 192. Prior to the social service director job,  
8 Sisco worked in a variety of functions, including as children's bookseller, government clerk,  
9 interpretative guide, job developer/counselor, medical social caseworker, tour guide, and travel  
10 consultant. AR 193.

11 Sisco was diagnosed with stage one breast cancer in 2003. AR 24. The cancer was  
12 successfully treated with surgery and radiation, and there have been no signs of recurrence. *Id.*  
13 Sisco was also diagnosed with multiple sclerosis ("MS") in 2003. AR 315. In addition, Sisco  
14 suffers from orthopedic problems in her neck, back, hips, and knees, depression, and anxiety. AR  
15 22.

16 **B. Procedural History**

17 On July 22, 2009, Sisco applied for a period of disability and disability insurance benefits,  
18 alleging that she had become disabled on December 30, 2008, at the age of fifty-six. AR 22. Sisco  
19 alleged disability resulting from breast cancer; MS; orthopedic problems in her neck, back, hips,  
20 and knees; and depression and anxiety. *Id.* Sisco's application was denied initially and upon  
21 reconsideration. AR 96, 106. An Administrative Law Judge ("ALJ") conducted a hearing on March  
22 29, 2011. AR 22, 51-93. On September 6, 2011, the ALJ issued a written decision concluding that  
23 Sisco was not disabled and therefore was not entitled to benefits. AR 22-44.

24 The ALJ first determined that Sisco had acquired sufficient quarters of coverage to remain  
25 insured through December 31, 2013. AR 22, 24. The ALJ then applied the five-step evaluation  
26 process for determining disability described in 20 C.F.R. § 404.1520(a). AR 23. At step one, the  
27 ALJ found that Sisco had not engaged in substantial gainful activity since December 30, 2008, the  
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1 alleged onset date. AR 24. At step two, the ALJ concluded that Sisco suffers from a severe  
2 combination of impairments consisting of MS, degenerative disc disease of the cervical spine,  
3 trochanteric bursitis of the right hip, and bilateral chondromalacia of the patella. *Id.* The ALJ  
4 determined that Sisco’s breast cancer was not a severe impairment as it had been successfully  
5 treated and showed no signs of recurring. *Id.* The ALJ also determined that Sisco’s depression and  
6 anxiety were not a severe impairment. AR 25. At step three, the ALJ found that Sisco’s  
7 impairments did not meet or medically equal an impairment listed in 20 C.F.R. Part 404, Subpart P,  
8 Appendix 1. *Id.*

9 At step four, the ALJ found that although Sisco was significantly restricted by MS, Sisco  
10 retained the residual functional capacity (“RFC”) to perform a narrowed range of sedentary work,  
11 including her previous jobs of social worker and travel consultant. AR 26, 37. The ALJ found that  
12 Sisco’s mental condition was “generally mild in nature” and imposed “no significant functional  
13 restrictions.” AR 41. At the hearing, the ALJ asked the vocational expert if a person with Sisco’s  
14 physical limitations could perform her prior work. AR 87-90. The vocational expert testified that  
15 such a person would be able to work as a social worker or travel consultant. AR 89. As a result of  
16 the ALJ’s RFC determination, the ALJ did not progress to step five. AR 44.

17 The Appeals Council denied Sisco’s request for review on February 22, 2013, making the  
18 ALJ’s decision the final decision of the Commissioner. AR 2-8. Sisco timely filed a complaint  
19 seeking judicial review of the Commissioner’s decision in this Court on April 22, 2013. ECF 1.

## 20 **II. LEGAL STANDARD**

### 21 **A. Standard of Review**

22 This Court has the authority to review the Commissioner’s decision to deny benefits. 42  
23 U.S.C. § 405(g). The Commissioner’s decision will be disturbed only if it is not supported by  
24 substantial evidence or if it is based upon the application of improper legal standards. *See Morgan*  
25 *v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Moncada v. Chater*, 60 F.3d  
26 521, 523 (9th Cir. 1995). In this context, “substantial evidence” means “more than a mere scintilla  
27 but less than a preponderance—it is such relevant evidence that a reasonable mind might accept as  
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1 adequate to support the conclusion.” *Moncada*, 60 F.3d at 523; *see also Drouin v. Sullivan*, 966  
2 F.2d 1255, 1257 (9th Cir. 1992). When determining whether substantial evidence exists to support  
3 the Commissioner’s decision, the court examines the administrative record as a whole, considering  
4 adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257; *Hammock v. Bowen*, 879 F.2d  
5 498, 501 (9th Cir. 1989). Where evidence exists to support more than one rational interpretation,  
6 the court must defer to the decision of the Commissioner. *Moncada*, 60 F.3d at 523; *Drouin*, 966  
7 F.2d at 1258.

8 **B. Standard for Determining Disability**

9 The Social Security Act defines disability as the “inability to engage in any substantial  
10 gainful activity by reason of any medically determinable physical or mental impairment which can  
11 be expected to result in death or which has lasted or can be expected to last for a continuous period  
12 of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). The impairment must also be so severe that  
13 a claimant is unable to do her previous work, and cannot “engage in any other kind of substantial  
14 gainful work which exists in the national economy,” given her age, education, and work  
15 experience. 42 U.S.C. § 423(d)(2)(A).

16 “ALJs are to apply a five-step sequential review process in determining whether a claimant  
17 qualifies as disabled.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009).  
18 At step one, the ALJ determines whether the claimant is performing “substantial gainful activity.”  
19 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not disabled. If not, the analysis proceeds to  
20 step two. At step two, the ALJ determines whether the claimant suffers from a severe impairment  
21 or combination of impairments. 20 C.F.R. § 404.1520(a)(4)(ii). If not, the claimant is not disabled.  
22 If so, the analysis proceeds to step three. At step three, the ALJ determines whether the claimant’s  
23 impairment or combination of impairments meets or equals an impairment contained in 20 C.F.R.  
24 Part 404, Subpart P, Appendix 1 (“Listings”). 20 C.F.R. § 404.1520(a)(4)(iii). If so, the claimant is  
25 disabled. If not, the analysis proceeds to step four. At step four, the ALJ determines whether the  
26 claimant has the RFC to perform his or her past relevant work. 20 C.F.R. § 404.1520(a)(4)(iv). If  
27 so, the claimant is not disabled. If not, the analysis proceeds to step five. At step five, the ALJ  
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1 determines whether the claimant can perform other jobs in the national economy. 20 C.F.R.  
2 § 404.1520(a)(4)(v). If so, the claimant is not disabled. If not, the claimant is disabled.

3 “The burden of proof is on the claimant at steps one through four, but shifts to the  
4 Commissioner at step five.” *Bray*, 554 F.3d at 1222. “The Commissioner can meet this burden  
5 through the testimony of a vocational expert or by reference to the Medical Vocational Guidelines  
6 at 20 C.F.R. pt. 404, subpt. P, app. 2.” *Thomas v. Barnhart*, 278 F.3d 947, 955 (9th Cir. 2002).

### 7 **III. DISCUSSION**

8 Sisco challenges the ALJ’s RFC determination regarding her mental condition. Pl. MSJ at  
9 7-10. Sisco asserts that the ALJ: (1) ignored without explanation the opinion of Sisco’s treating  
10 psychiatrist, Dr. Xing-Xing Luo, regarding Sisco’s mental limitations; (2) relied on Global  
11 Assessment of Functioning (“GAF”) scores instead of Dr. Luo’s determination; and (3) failed to  
12 include any mental limitations in evaluating Sisco’s disability, including in the hypotheticals posed  
13 to the vocational expert.<sup>1</sup> *Id.* The Court first considers the relevant medical evidence, and then turns  
14 to each of Sisco’s arguments.

#### 15 **A. Relevant Medical Evidence**

16 “There are three types of medical opinions in social security cases: those from treating  
17 physicians, examining physicians, and non-examining physicians.” *Valentine v. Comm’r of Soc.*  
18 *Sec. Admin.*, 574 F.3d 685, 692 (9th Cir. 2009). “As a general rule, more weight should be given to  
19 the opinion of a treating source than to the opinion of doctors who do not treat the claimant.”  
20 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). “The opinion of an examining physician is, in  
21 turn, entitled to greater weight than the opinion of a nonexamining physician.” *Id.*

22 Accordingly, when evaluating medical evidence, an ALJ must give a treating physician’s  
23 opinion “substantial weight.” *Bray*, 554 F.3d at 1228. “When evidence in the record contradicts the  
24 opinion of a treating physician, the ALJ must present ‘specific and legitimate reasons’ for

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25 <sup>1</sup> In her opening brief, Sisco additionally argued that the ALJ failed to consider a November 23,  
26 2011 assessment of her treating physician, Dr. Joanna Cooper. Pl. MSJ at 4. However, this  
27 assessment postdates the ALJ’s hearing on September 6, 2011. Def. MSJ at 2. Dr. Cooper’s  
28 assessment was therefore not before the ALJ and was presented only to the Appeals Council as part  
of Sisco’s request for review. *Id.* Sisco withdrew this argument in her reply brief. Pl. Reply at 3.  
Accordingly, the Court will not address this argument further.

1 discounting the treating physician’s opinion, supported by substantial evidence.” *Id.* (citing *Lester*,  
2 81 F.3d at 830). “However, ‘the ALJ need not accept the opinion of any physician, including a  
3 treating physician, if that opinion is brief, conclusory and inadequately supported by clinical  
4 findings.’” *Id.* (quoting *Thomas*, 278 F.3d at 957).

5 The record evidence regarding Sisco’s mental condition is summarized below:

6 **1. Xing-Xing Luo, M.D. (Treating Psychiatrist)**

7 Sisco first saw Dr. Luo on January 11, 2010, when Dr. Luo performed Sisco’s intake  
8 assessment at Pathways to Wellness, a psychiatric clinic. AR 624-34. Sisco’s treating therapist,  
9 Karla Sagramoso, Ph.D., had previously encouraged her to visit a psychiatrist. AR 788. Based on  
10 Sisco’s medical history and Dr. Luo’s clinical impression, Dr. Luo diagnosed Sisco with anxiety  
11 and depression. AR 630. Dr. Luo prescribed an antidepressant and advised Sisco to continue seeing  
12 her therapist. AR 631-32.

13 Sisco subsequently saw Dr. Luo three more times, between September 2010 and February  
14 2011. AR 701-06. At Sisco’s first visit on September 20, 2010, Dr. Luo assessed Sisco to have  
15 “mild depression.” AR 706. On Sisco’s second visit on January 3, 2011, Dr. Luo assessed Sisco to  
16 have “depression.” AR 704. On Sisco’s third visit on February 7, 2010, Dr. Luo assessed Sisco to  
17 have “anxiety.” AR 702. At all three visits, Dr. Luo assessed Sisco’s GAF score at 65. AR 701,  
18 703, 705. These correspond to “relatively normal” functioning. AR 35.

19 **2. Karla Sagramoso, Ph.D. (Treating Psychologist)**

20 Sisco started attending regular individual therapy sessions with Dr. Sagramoso in January  
21 2009, shortly after being fired from her job as a social service director. AR 767. Sisco was referred  
22 to Dr. Sagramoso by her treating physician, Denise Davis, M.D. *Id.* Dr. Sagramoso summarized  
23 her therapy sessions with Sisco in reports dated April 22, 2009, March 10, 2010, and March 16,  
24 2011. AR 696, 766, 767-68. Dr. Sagramoso diagnosed Sisco with Dysthymic Disorder and  
25 Generalized Anxiety Disorder. *Id.*

26 In both the April 22, 2009 and March 10, 2010, summaries, Dr. Sagramoso explained that  
27 Sisco experienced “difficulty sleeping, symptoms of anxiety attacks including shortness of breath,  
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1 significant worry, tearful affect, difficulty concentrating, periodic feelings of hopelessness,  
2 emotional disconnectedness from others, and low self esteem.” AR 696; *see also* AR 766. Dr.  
3 Sagramoso noted that these symptoms had “been present to some extent” since Sisco was  
4 diagnosed with MS and breast cancer, but became “significantly worse” following her job loss. AR  
5 696; *see also* AR 766. Dr. Sagramoso observed that Sisco “experienced some lessening of  
6 symptoms” since starting psychotherapy, though Sisco still experienced “difficulty with  
7 management of her emotions.” AR 696; *see also* AR 766.

8 In the March 16, 2011 summary, prepared in advance of Sisco’s application for  
9 reconsideration following the initial denial of benefits, Dr. Sagramoso expanded on the effect that  
10 Sisco’s MS had on her functioning. AR 767. Dr. Sagramoso concluded that she had “serious  
11 concerns” about Sisco’s ability to maintain employment given Sisco’s “physical symptoms”  
12 significant impact on [Sisco’s] ability to keep regularly scheduled activities, lowered vitality, and  
13 their impingement on [Sisco’s] concentration and mood.” AR 768.

14 **3. Patricia Spivey, Psy.D. (Examining Psychologist)**

15 Sisco underwent a psychological disability evaluation by Dr. Spivey on October 30, 2009.  
16 AR 551-54. Following the evaluation, Dr. Spivey concluded that Sisco did “not appear to have any  
17 significant psychological issues.” AR 554. In particular, Dr. Spivey found that Sisco had no mental  
18 impairments relating to any work-related abilities. *Id.* Dr. Spivey observed that Sisco “responded  
19 appropriately,” “displayed full effort,” and that Sisco’s “mood was very good.” AR 552.

20 **4. Mario Morando, M.D. (Examining Psychiatrist)**

21 Sisco underwent a mental RFC assessment by Dr. Morando on February 17, 2010. AR 657-  
22 70. Dr. Morando concluded that Sisco had a severe mental impairment, but that this impairment  
23 was not expected to last 12 months. AR 657. Dr. Morando found that Sisco suffered from  
24 depressive disorder leading to several functional limitations. AR 660, 665. Dr. Morando also found  
25 that Sisco was “not significantly limited” in any work-related function, and that “with continuous  
26 treatment [Sisco was] expected to be non-severe by 1/2011.” AR 668-70.

27 **B. The ALJ’s Treatment of Dr. Luo’s Opinions**

1 Sisco claims that as part of the January 11, 2010 intake assessment at Pathways to  
2 Wellness, Dr. Luo determined that Sisco had “moderate” mental limitations in all four of the  
3 functional areas that the Social Security Administration (“SSA”) uses to evaluate the severity of a  
4 mental impairment.<sup>2</sup> Pl. MSJ at 7. Sisco contends that the ALJ should have considered Dr. Luo’s  
5 determination of “moderate limitations” in evaluating Sisco’s disability.<sup>3</sup> *Id.* In the alternative, as  
6 Dr. Luo was a treating physician, Sisco argues that the ALJ should have provided “specific and  
7 legitimate reasons based on substantial evidence in the record” for rejecting or discounting Dr.  
8 Luo’s determination. *Id.* at 8 (citing *Lester*, 81 F.3d at 830-31). Sisco asserts that the ALJ instead  
9 committed reversible error by disregarding Dr. Luo’s opinion without discussion. *Id.* at 9.

10 The Court disagrees with Sisco’s characterization of Dr. Luo’s January 11, 2010  
11 assessment. Dr. Luo’s so-called “determination” that Sisco suffered from “moderate limitations” as  
12 a result of her mental symptoms appears as part of a seven-page standardized intake assessment  
13 form. AR 626-32. The fifth page of the intake form lists four “Functional Limitation[s]”: (1)  
14 “Restriction of activities of daily living”; (2) “Difficulties in maintaining social  
15 functioning/relationships”; (3) “Difficulties in maintaining concentration, persistence of place”;  
16 and (4) “Episodes of decomposition and increase of symptoms, each of extended duration.” AR  
17 630. These categories broadly align with the four functional areas the SSA uses to assess the  
18 severity of a claimant’s mental impairment. *See supra* note 2. The intake form asks the individual  
19

20 <sup>2</sup> The SSA evaluates the severity of a claimant’s mental impairment based on the degree of  
21 functional limitation that results from the impairment. 20 C.F.R. § 404.1520a(b)(2). A claimant’s  
22 limitations are evaluated in four functional areas: (1) activities of daily living; (2) social  
23 functioning; (3) concentration, persistence, or pace; and (4) episodes of decompensation. 20 C.F.R.  
24 § 404.1520a(c)(3). The first three functional areas are rated on a five-point scale: “none,” “mild,”  
25 “moderate,” “marked,” and “extreme.” 20 C.F.R. § 404.1520a(c)(4). The fourth functional area,  
26 episodes of decompensation, is rated on a four-point scale ranging from “none” to “four or more.”  
27 *Id.*

28 <sup>3</sup> Under the Listings a mental disorder is considered “severe” only if the disorder results in  
“marked” or greater limitations in at least two of the four functional areas. 20 C.F.R. pt. 404, subpt.  
P, app. 1. The ALJ must find that the claimant suffers from a severe impairment in order to find  
that the claimant is disabled at step three. 20 C.F.R. § 404.1520(a)(4)(iii). As Dr. Luo found that  
Sisco had at most “moderate” limitations—which are less than “marked”—the Court does not  
understand Sisco to challenge the ALJ’s finding that Sisco was not disabled at step three. Rather,  
the Court understands Sisco’s contention to be that even “moderate” limitations impose some  
functional burden, and that the ALJ should therefore have considered these limitations at steps four  
and five.



1 completing the form to rate the degree of each of these limitations as: “None,” “Mild,” “Moderate,”  
2 “Marked,” “Extreme,” or “Insufficient Evidence.” AR 630. Again, these categories broadly align  
3 with the scale set out in the Social Security regulations. *See supra* note 2. Under the intake form’s  
4 “Functional Limitation[s]” section is a space for “Supporting Comments.” AR 630.

5 On Sisco’s intake form, Dr. Luo checked the boxes for “Moderate” for all four functional  
6 limitations. *Id.* Dr. Luo did not provide any supporting comments. *Id.* There is no indication that  
7 Dr. Luo had Social Security standards in mind or that he intended to apply them when filling out  
8 this intake form. The intake form makes no mention of Social Security standards, and while the  
9 intake form’s functional areas and severity scale broadly align with SSA’s functional areas and  
10 severity scale, the standards are not identical. Without supporting comments or other evidence  
11 from the January 11, 2010 assessment, there is no basis for concluding that Dr. Luo, in checking  
12 “moderate” on this section of the intake form, meant to conclude that Sisco suffered from moderate  
13 limitations for purposes of a Social Security disability analysis.<sup>4</sup>

14 Consequently, the Court disagrees with Sisco’s contention that these four “moderate”  
15 limitations checkmarks—which constitute a small and otherwise unsubstantiated part of a  
16 standardized form—amounted to a “determination” of “moderate mental limitations” for Social  
17 Security purposes. Rather, the checkmarks are better characterized as “check-off reports that [do]  
18 not contain any explanation of the bases of their conclusions.” *Molina v. Astrue*, 674 F.3d 1104,  
19 1111 (9th Cir. 2012) (quoting *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996)). ALJs are  
20 permitted to reject such check-off evidence. *Id.*; *see also Batson v. Comm’r of Soc. Sec. Admin.*,  
21 359 F.3d 1190, 1195 (9th Cir. 2004) (finding that ALJ properly disregarded conclusory evidence in  
22 the form of a checklist that lacked supportive objective evidence and was contradicted in other  
23 parts of the record).

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25  
26 <sup>4</sup> Sisco argues that if a medical opinion is “vague,” SSA rulings require the ALJ to follow up with  
27 the physician for clarification. Pl. Reply at 6. This is not an accurate characterization of the  
28 relevant SSA ruling. The ALJ’s obligation to follow up with a treating physician applies only when  
the evidence does not support a treating physician’s opinion *and* the ALJ cannot otherwise  
ascertain the basis for that opinion from the record. SSR 96-5p, 1996 WL 374183, at \*6 (July 2,  
1996). The ruling does not extend to “vague” opinions.

1           Moreover, the ALJ clearly did consider and discuss Dr. Luo’s medical opinions, including  
2 opinions contained in the January 11, 2010 assessment. The ALJ quoted directly from the intake  
3 form, finding it “persuasive” that Sisco reported “no difficulty with appetite, energy, or  
4 concentration” at that time. AR 35. Overall, the ALJ noted that he accorded “significant probative  
5 weight” to Dr. Luo’s assessments. AR 42. While an ALJ must *consider* all medical evidence, the  
6 ALJ is not required to *discuss* every piece of evidence. *See Howard ex rel. Wolff v. Barnhart*, 341  
7 F.3d 1006, 1012 (9th Cir. 2003). In particular, the ALJ need not discuss evidence that is neither  
8 significant nor probative. *Id.* Given the lack of context or elaboration, the four “moderate”  
9 limitations checkmarks on the January 11, 2010 intake form were neither significant nor probative,  
10 and thus the ALJ did not need to discuss the checkmarks specifically. The Court finds that the ALJ  
11 properly evaluated Dr. Luo’s assessment of January 11, 2010 and gave Dr. Luo’s treatment records  
12 the “substantial weight” the records were due.

13           Finally, the Court notes that even if the ALJ erred in not discussing Dr. Luo’s checkmarks  
14 specifically, such an error was harmless as it was “‘inconsequential to the ultimate nondisability  
15 determination’ in the context of the record as a whole” *Molina*, 674 F.3d at 1122 (quoting  
16 *Carmickle v. Comm’r of Soc. Security Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008)) (internal  
17 quotation marks omitted). The ALJ’s finding that Sisco’s psychiatric condition was “generally mild  
18 in nature” and imposed “no significant functional restrictions,” AR 41, is supported by substantial  
19 evidence in the record beyond Dr. Luo’s opinion, including Dr. Spivey’s conclusions regarding the  
20 relatively mild nature of Sisco’s depression, AR 554, and Dr. Morando’s assessment that Sisco’s  
21 psychiatric condition was not expected to last for a continuous 12-month period, AR 668-70. The  
22 ALJ’s finding is similarly consistent with the lack of references to Sisco’s depression or anxiety in  
23 the treatment records of her primary physician, Dr. Davis, or her treating neurologist, Joanna  
24 Cooper, M.D. AR 41.

25           The ALJ recognized that Dr. Sagramoso’s opinion of March 16, 2011, raised “serious  
26 concerns” regarding any employment. AR 42. However, the ALJ gave specific and legitimate  
27 reasons for discounting Dr. Sagramoso’s March 16, 2011, opinion. AR 42-43. The ALJ noted Dr.  
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1 Sagramoso’s opinion concerned mainly the physical effects of Sisco’s MS, a subject in which Dr.  
2 Sagramoso is not an expert, rather than the effects of Sisco’s depression or anxiety. AR 42. The  
3 ALJ further noted that the opinion was unsupported by Dr. Sagramoso’s own treatment notes,  
4 which contain relatively few references to anxiety or depression. *Id.* The notes also indicate that  
5 Sisco’s concerns regarding her ability to work stemmed mostly from her physical condition rather  
6 than from depression. AR 780-96. The ALJ therefore found that Dr. Sagramoso’s opinion was  
7 conclusory, unsupported, and as a result “entitled to minimal probative weight.” AR 43.

8 Sisco does not challenge the ALJ’s evaluation or use of these other medical opinions.  
9 Therefore, the ALJ’s ultimate decision regarding Sisco’s mental limitations is supported by  
10 substantial evidence even if the “moderate” limitations checkmarks are considered. Accordingly,  
11 any error the ALJ may have committed in failing to specifically address Dr. Luo’s checkmarks was  
12 harmless. *See Carmickle*, 533 F.3d at 1163.

### 13 C. The ALJ’s Use of Dr. Luo’s GAF Scores

14 Sisco further argues that the ALJ improperly relied on Dr. Luo’s GAF scores while not  
15 considering Dr. Luo’s “moderate limitations” determination. Pl. MSJ at 9. Sisco argues that  
16 because GAF scores do not directly correlate to the severity determinations used by the SSA, the  
17 ALJ should instead have given Dr. Luo’s more specific determination of “moderate” limitations  
18 more weight. *Id.*

19 As discussed above, the Court finds that Dr. Luo’s checkmarks did not constitute a  
20 “determination” of moderate limitations. In any event, while Sisco is correct in that GAF scores are  
21 not on their own determinative, *see McFarland v. Astrue*, 288 F. App’x 357, 359 (9th Cir. 2008)  
22 (“The Commissioner has determined the GAF scale ‘does not have a direct correlation to the  
23 severity requirements in [the Social Security Administration’s] mental disorders listings.’”  
24 (alteration in original) (quoting 65 Fed. Reg. 50,746, 50,765 (Aug. 21, 2000))); *see also Vance v.*  
25 *Astrue*, No. 07-4418, 2008 WL 2955140, at \*5 (C.D. Cal. July 30, 2008) (“GAF scores are not  
26 dispositive in social security cases.”), the record shows that the ALJ did not exclusively or even  
27 primarily rely on Dr. Luo’s GAF scores. *See* AR 41-43. The GAF scores were just one of the  
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1 pieces of evidence the ALJ considered in determining that Sisco did not suffer from any mental  
2 limitations. The other evidence, as discussed above, included the opinions of three other  
3 physicians, Drs. Spivey, Morando, and Sagramoso, and the treatment records of two others, Drs.  
4 Davis and Cooper. *Id.* The Court therefore concludes that the ALJ gave the appropriate  
5 consideration to Dr. Luo’s GAF scores.

6 **D. The ALJ’s Consideration of Mental Limitations**

7 Finally, Sisco argues that the ALJ erred in not including any mental limitations in  
8 evaluating Sisco’s disability, in particular in the hypotheticals posed to the vocational expert. Pl.  
9 MSJ at 9. Sisco argues, based primarily on *Hutton v. Astrue*, 491 F. App’x 850 (9th Cir. 2012), that  
10 even if Dr. Luo’s opinion supported only a finding of mild mental impairment, all such non-severe  
11 limitations must be included in the hypotheticals posed to vocational experts. Pl. MSJ at 10.

12 In *Hutton*, the ALJ determined at step two of the disability analysis that the claimant’s  
13 PTSD caused mild limitations in one of the functional areas. 491 F. App’x at 850. At step four,  
14 however, the ALJ excluded the claimant’s PTSD from consideration altogether. *Id.* at 851. The  
15 Ninth Circuit held that this constituted reversible error: though the ALJ was free to discount the  
16 claimant’s testimony, the ALJ could not ignore the ALJ’s own previous findings. *Id.* at 850-51.

17 *Hutton* is inapposite to the present case. The ALJ here did not disregard any prior findings  
18 regarding Sisco’s mental limitations. Rather, the ALJ specifically addressed Sisco’s mental  
19 condition at step four of his disability analysis, by evaluating all of the evidence regarding Sisco’s  
20 mental condition, including the treatment records of Drs. Luo, Davis, and Cooper, and the opinions  
21 of Drs. Spivey, Morando, and Sagramoso. AR 41-43. Upon consideration of this evidence, the ALJ  
22 concluded that Sisco’s mental impairment was “generally mild in nature” and “impose[d] *no*  
23 significant functional limitations.” AR 41 (emphasis added).

24 Therefore, contrary to Sisco’s assertion, the Court finds that the ALJ did consider Sisco’s  
25 mental condition in evaluating Sisco’s disability. As the ALJ determined that Sisco’s mental  
26 impairment imposed “no significant functional limitations,” the ALJ was not required to include a  
27 mental limitation in the hypotheticals posed to the vocational expert. *See Magallanes v. Bowen*,

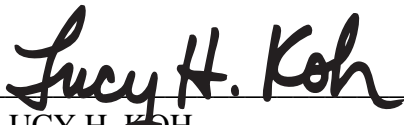
1 881 F.2d 747, 756-57 (9th Cir. 1989) (holding that an ALJ may limit hypotheticals to restrictions  
2 supported by substantial evidence on the record). Accordingly, the Court concludes that the ALJ  
3 did not act improperly in failing to include mental limitations in the hypotheticals posed to the  
4 vocational expert.<sup>5</sup>

5 **IV. ORDER**

6 For the foregoing reasons, IT IS ORDERED THAT:

- 7 1. Plaintiff's motion for summary judgment is DENIED;
- 8 2. Defendant's cross-motion for summary judgment is GRANTED; and
- 9 3. The Clerk shall close the file.

10  
11 Dated: June 20, 2014

12   
13 LUCY H. KOH  
14 United States District Judge

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20 <sup>5</sup> In her Reply, Sisco objects to the Commissioner's argument that the ALJ need not have accorded  
21 special weight to Dr. Luo's medical opinions because Dr. Luo was not yet a "treating physician" at  
22 the time of his initial January 11, 2010 assessment. *See* Reply at 4-5; Opp'n at 8-9. Sisco argues  
23 that even if Dr. Luo was not a treating physician, his opinion was still entitled to some weight and  
24 could not be disregarded without explanation. Reply at 4-5. Sisco further points out that the ALJ  
did accord weight to the opinions of other doctors who only examined Sisco on one occasion. *Id.*  
Sisco also objects to the Commissioner's suggestion that the ALJ was entitled to disregard Dr.  
Luo's January 11, 2010 assessment because Dr. Luo apparently had not reviewed Sisco's medical  
records or performed any tests at the time of the assessment. *See id.* at 5-6; Opp'n at 9.

25 The Court finds that it need not resolve these objections. The arguments to which Sisco objects  
26 appear only in the Commissioner's cross-motion for summary judgment; they do not form any part  
27 of the basis for the ALJ's decision. To the contrary, and as discussed above, *see supra* Part III.B,  
28 the ALJ accorded "significant probative weight" to Dr. Luo's opinions, including the January 11,  
2010 assessment. AR 35, 42. As the ALJ's decision does not depend on either the distinction  
between treating and non-treating physicians or the weight to be accorded to the medical opinions  
of doctors who have not reviewed the claimant's medical records or performed tests on the  
claimant, further discussion of these arguments is unnecessary.