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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LUIS A. VALENZUELA,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social
Security,

Defendant.

) Case No. CV 07-7192 JC

) MEMORANDUM OPINION AND
) ORDER OF REMAND

I. SUMMARY

On November 13, 2007, plaintiff Luis A. Valenzuela (“plaintiff”) filed a Complaint seeking review of the Commissioner of Social Security’s denial of plaintiff’s applications for benefits. The parties have filed a consent to proceed before a United States Magistrate Judge.

This matter is before the Court on the parties’ cross motions for summary judgment, respectively (“Plaintiff’s Motion”) and (“Defendant’s Motion”). The Court has taken both motions under submission without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; November 15, 2007 Case Management Order, ¶ 5.

1 Based on the record as a whole and the applicable law, the decision of the
2 Commissioner is REVERSED AND REMANDED for further proceedings
3 consistent with this Memorandum and Opinion and Order of Remand.

4 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**
5 **DECISION**

6 On September 30, 2005, plaintiff filed an application for Supplemental
7 Security Income. (Administrative Record ("AR") 24-25). Plaintiff asserted that
8 he became disabled on September 30, 2003, due to post traumatic stress disorder
9 and auditory hallucinations. (AR 72). The ALJ examined the medical record and
10 heard testimony from plaintiff (who was represented by counsel) on May 31, 2007.
11 (AR 295-322).

12 On June 13, 2007, the ALJ determined that plaintiff was not disabled
13 through the date of the decision. (AR 3-23). Specifically, the ALJ found:
14 (1) plaintiff suffered from the following severe impairments: obesity and
15 depressive disorder, not otherwise specified (AR 15); (2) plaintiff's impairment or
16 combination of impairments did not meet or medically equal one of the listed
17 impairments (AR 19); (3) plaintiff retained the residual functional capacity to
18 perform work at all exertional levels but (a) was precluded from having contact
19 with the public; (b) was precluded from working at jobs requiring a production
20 rate pace commensurate with production quotas measured periodically throughout
21 the workday but could meet production quotas measured at the end of the workday
22 or workweek; and (c) was permitted to have occasional contact with supervisors
23 and/or co-workers (AR 19);¹ (4) plaintiff could not perform any past relevant work
24 (AR 21); and (5) there were jobs that exist in significant numbers in the national

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27 ¹Underlying such residual functional capacity assessment are the ALJ's findings that
28 plaintiff would have (i) mild restrictions of activities of daily living; (ii) moderate difficulties in
maintaining social functioning; (iii) moderate difficulties in maintaining concentration,
persistence, or pace; and (iv) no episodes of decompensation each of extended duration. (AR 18-
19).

1 economy that plaintiff could perform, such as a welder helper and a metal
2 fabricating shop helper (AR 22-23).

3 The Appeals Council denied plaintiff's application for review. (AR 5-7).

4 **III. APPLICABLE LEGAL STANDARDS**

5 **A. Sequential Evaluation Process**

6 To qualify for disability benefits, a claimant must show that he is unable to
7 engage in any substantial gainful activity by reason of a medically determinable
8 physical or mental impairment which can be expected to result in death or which
9 has lasted or can be expected to last for a continuous period of at least twelve
10 months. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citing 42 U.S.C.
11 § 423(d)(1)(A)). The impairment must render the claimant incapable of
12 performing the work he previously performed and incapable of performing any
13 other substantial gainful employment that exists in the national economy. Tackett
14 v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

15 In assessing whether a claimant is disabled, an ALJ is to follow a five-step
16 sequential evaluation process:

- 17 (1) Is the claimant presently engaged in substantial gainful activity? If
18 so, the claimant is not disabled. If not, proceed to step two.
- 19 (2) Is the claimant's alleged impairment sufficiently severe to limit
20 his ability to work? If not, the claimant is not disabled. If so,
21 proceed to step three.
- 22 (3) Does the claimant's impairment, or combination of
23 impairments, meet or equal an impairment listed in 20 C.F.R.
24 Part 404, Subpart P, Appendix 1? If so, the claimant is
25 disabled. If not, proceed to step four.

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1 (4) Does the claimant possess the residual functional capacity to
2 perform his past relevant work?² If so, the claimant is not
3 disabled. If not, proceed to step five.

4 (5) Does the claimant's residual functional capacity, when
5 considered with the claimant's age, education, and work
6 experience, allow him to adjust to other work that exists in
7 significant numbers in the national economy? If so, the
8 claimant is not disabled. If not, the claimant is disabled.

9 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th
10 Cir. 2006) (citing 20 C.F.R. §§ 404.1520, 416.920).

11 The claimant has the burden of proof at steps one through four, and the
12 Commissioner has the burden of proof at step five. Bustamante v. Massanari, 262
13 F.3d 949, 953-54 (9th Cir. 2001) (citing Tackett); see also Burch, 400 F.3d at 679
14 (claimant carries initial burden of proving disability).

15 **B. Standard of Review**

16 Pursuant to 42 U.S.C. section 405(g), a court may set aside a denial of
17 benefits only if it is not supported by substantial evidence or if it is based on legal
18 error. Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir.
19 2006) (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457
20 (9th Cir. 1995)). Substantial evidence is "such relevant evidence as a reasonable
21 mind might accept as adequate to support a conclusion." Richardson v. Perales,
22 402 U.S. 389, 401 (1971) (citations and quotations omitted). It is more than a
23 mere scintilla but less than a preponderance. Robbins, 466 F.3d at 882 (citing
24 Young v. Sullivan, 911 F.2d 180, 183 (9th Cir. 1990)).

25 To determine whether substantial evidence supports a finding, a court must
26 "consider the record as a whole, weighing both evidence that supports and
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28 ²Residual functional capacity is "what [one] can still do despite [one's] limitations" and represents an "assessment based upon all of the relevant evidence." 20 C.F.R. § 416.945(a).

1 evidence that detracts from the [Commissioner's] conclusion.” Aukland v.
2 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (quoting Penny v. Sullivan, 2 F.3d
3 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming
4 or reversing the ALJ's conclusion, a court may not substitute its judgment for that
5 of the ALJ. Robbins, 466 F.3d at 882 (citing Flaten, 44 F.3d at 1457).

6 **IV. PERTINENT FACTS**

7 **A. Mental Health Records/Evaluations**

8 Between April 2003 and July 2006, multiple doctors at the Parole
9 Outpatient Clinic (“POC”) evaluated and/or treated plaintiff relating to mental
10 health issues. (AR 214-33). Plaintiff also received mental health treatment while
11 he was in county jail (“CJ”) from March 2005 to September 2005. (AR 156-205).
12 The Department of Rehabilitation (“DOR”) also evaluated and/or treated plaintiff
13 from at least October 2006 to May 2007. (AR 284-292). Plaintiff's mental health
14 was also evaluated by examining and non-examining consultants. (AR 206-09,
15 234-47, 250-63).

16 On July 23, 2003, POC Dr. Baum completed an Initial Psychological
17 Evaluation, in which he noted plaintiff's criminal and substance abuse history and
18 made the following observations: plaintiff's general fund of information and
19 judgment were poor; plaintiff reported having auditory hallucinations “almost all
20 the time”; plaintiff reported having ideas of reference and persecution; and
21 plaintiff complained of experiencing periods of depression. (AR 228-29). Dr.
22 Baum diagnosed plaintiff with schizophrenia, paranoid type; and assessed a
23 Global Assessment of Functioning (“GAF”) of 50.³ (AR 228).

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26 ³A GAF is the clinician's judgment of the individual's overall level of functioning. It is
27 rated with respect only to psychological, social, and occupational functioning, without regard to
28 impairments in functioning due to physical or environmental limitations. See American
Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, 32 (4th ed.
2000) (hereinafter “DSM IV”). A GAF of 41-50 denotes “[s]erious symptoms (e.g., suicidal
ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social,
occupational, or school functioning (e.g., no friends, unable to keep a job).” DSM IV at 34.

1 On March 15, 2005, plaintiff complained to CJ Dr. Hsia that he suffered
2 from auditory hallucinations. (AR 197). Dr. Hsia noted that plaintiff had a history
3 of schizophrenia, polysubstance abuse, and noncompliance or partial compliance
4 with medication. (AR 197). She diagnosed plaintiff with polysubstance
5 dependence and rule out “[s]chizophrenia dis[order] vs. [s]ubstance induce
6 psy[chotic] disorder.” (AR 197). Dr. Hsia assessed a GAF of 48 and prescribed
7 Abilify. (AR 197).

8 On April 12, 2005, plaintiff reported to CJ Dr. Hsia that the Abilify caused
9 side effects and that he continued to have auditory hallucinations. (AR 198). Dr.
10 Hsia assessed a GAF of 50 and substituted Seroquel for Abilify. (AR 198).

11 On May 11, 2005, plaintiff stated to CJ Dr. Hsia that he continued to have
12 auditory hallucinations. (AR 198-99). Dr. Hsia increased the Seroquel dosage.
13 (AR 199).

14 On July 5, 2005, plaintiff reported to CJ Dr. Hsia that the “voices [were]
15 getting a little better[.]” (AR 200). However, plaintiff complained that he was
16 feeling depressed. (AR 200). Dr. Hsia prescribed Seroquel and Prozac. (AR
17 200).

18 On August 10, 2005, plaintiff reported to the CJ that his depression was
19 “getting better with [P]rozac[.]” (AR 201). On August 26, 2005, plaintiff asserted
20 to the CJ that his depressive and psychotic symptoms had become stable with his
21 current medication. (AR 201).

22 On November 29, 2005, POC Dr. Webb noted that plaintiff had been
23 released from county jail on September 9, 2005 after serving six months for being
24 under the influence of drugs and indecent exposure. (AR 227). He observed that
25 plaintiff’s thought processes were linear and organized but that his insight,
26 reasoning, and judgment were poor. (AR 226). Dr. Webb reported that plaintiff
27 complained of auditory hallucinations but found that plaintiff’s affect “was not
28 consistent with statements when describing voices.” (AR 226). Dr. Webb

1 diagnosed plaintiff with methamphetamine dependence in sustained full remission;
2 rule out psychotic disorder, not otherwise specified; rule out malingering; and
3 adult antisocial behavior. (AR 226). He assessed plaintiff's GAF at 60.⁴ (AR
4 226). The medical records during this period reflected that plaintiff had been
5 prescribed Seroquel and Prozac. (AR 227).

6 On December 29, 2005, Dr. Bagner, a consultative examining physician,
7 administered a psychiatric evaluation at the behest of the Social Security
8 Administration. (AR 206-10). Plaintiff complained of depression and auditory
9 and visual hallucinations. (AR 206). He reported that he experienced feelings of
10 helplessness and hopelessness and had difficulty with concentration and memory.
11 (AR 206). However, plaintiff acknowledged that he was able to manage self-care
12 and complete activities of daily living without assistance. (AR 207). Dr. Bagner
13 observed that plaintiff's affect was mood congruent; plaintiff's speech was intact
14 and coherent but mildly decreased in rate, rhythm, and volume; plaintiff's thought
15 processes were tight, and there was no flight of thought, looseness of association,
16 thought blocking, or distractibility; plaintiff appeared to have average intelligence;
17 plaintiff's fund of knowledge was intact; plaintiff was able to perform serial threes
18 and serial sevens; plaintiff's insight and judgment were fair; and plaintiff's reality
19 contact appeared normal. (AR 208). Dr. Bagner noted that, despite plaintiff's
20 complaints, there was no evidence of auditory or visual hallucinations during the
21 interview. (AR 208). He diagnosed plaintiff with depressive disorder, not
22 otherwise specified; polysubstance abuse, in early remission; and rule out
23 antisocial personality disorder. (AR 208). Dr. Bagner assessed plaintiff's GAF at

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28 ⁴A GAF of 51-60 indicates “[m]oderate symptoms (e.g., flat affect and circumstantial
speech, occasional panic attacks or moderate difficulty in social, occupational, or school
functioning (e.g., few friends, conflicts with peers or co-workers).” DSM IV at 34.

1 73.⁵ (AR 208). He opined that plaintiff would have zero to mild limitations
2 maintaining concentration and attention; zero to mild limitations completing
3 simple tasks; mild limitations interacting with supervisors, peers, and the public;
4 mild limitations completing complex tasks; mild limitations completing a normal
5 workweek without interruption; and mild to moderate limitations handling normal
6 stresses at work. (AR 209).

7 On February 7, 2006, POC Dr. Tabori commented that plaintiff had been
8 taking his medication consistently and was adjusting adequately. (AR 223).

9 On February 13, 2006, Dr. Balson, a non-examining consultative state
10 agency physician, completed a Psychiatric Review Technique form. (AR 234-47).
11 Dr. Balson found that plaintiff suffered from mood disorder, not otherwise
12 specified; and polysubstance abuse, in questionable remission. (AR 234, 237,
13 242, 246). Dr. Balson opined that plaintiff's impairments were not severe and that
14 plaintiff would have no restrictions of activities of daily living; mild difficulties in
15 maintaining social functioning; mild difficulties in maintaining concentration,
16 persistence, or pace; and no episodes of decompensation. (AR 234, 244).

17 On April 12, 2006, plaintiff reported to POC Dr. Chase that he had been
18 doing well on medication but still experienced occasional auditory hallucinations.
19 (AR 221). Dr. Chase diagnosed plaintiff with schizophrenia, "par type" in
20 remission. (AR 221).

21 On May 12, 2006, plaintiff reported to POC Dr. McCarthy that Prozac was
22 very effective in alleviating his depression and that Seroquel caused side effects.
23 (AR 220). Dr. McCarthy noted that plaintiff's thought processes were logical and
24 goal-directed but that plaintiff reported ongoing auditory hallucinations. (AR
25 220). She diagnosed plaintiff with schizoaffective disorder, depressed type
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27 ⁵A GAF of 71-80 indicates that "[i]f symptoms are present, they are transient and
28 expectable reactions to psychosocial stressors (e.g., difficulty concentrating after family
argument); no more than slight impairment in social, occupational, or school functioning (e.g.,
temporarily falling behind in schoolwork)." DSM IV at 34.

1 (provisional). (AR 220). Dr. McCarthy renewed plaintiff's prescription for
2 Prozac and also prescribed Risperdal. (AR 220).

3 On June 19, 2006, plaintiff reported to Dr. McCarthy that his auditory
4 hallucinations remained unchanged. (AR 219). Dr. McCarthy diagnosed plaintiff
5 with schizoaffective disorder, depressed; and prescribed Geodon and Prozac. (AR
6 219).

7 On July 17, 2006, plaintiff reported that Geodon was "better than the other
8 stuff" and that his auditory hallucinations had improved overall. (AR 217).
9 Plaintiff asserted, however, that his auditory hallucinations had become severe in
10 the last day or two after watching horror movies and arguing with his girlfriend.
11 (AR 217). Dr. McCarthy diagnosed plaintiff with schizoaffective disorder,
12 depressed. (AR 217). She increased plaintiff's prescription for Geodon and
13 prescribed Prozac at the same dosage as before. (AR 217).

14 On October 24, 2006, DOR Dr. Pagel administered a psychological
15 evaluation. (AR 288-92). Plaintiff reported to Dr. Pagel that he had been
16 diagnosed with post traumatic stress disorder and "low level" schizophrenia. (AR
17 289). Plaintiff also asserted that he continued to experience auditory
18 hallucinations. (AR 289). After conducting several psychological tests (*i.e.*,
19 Wechsler Adult Intelligence Scale - Revised; Raven's Progressive Matrices; Wide
20 Range Achievement Test - Revised), Dr. Pagel determined that plaintiff was of
21 average to superior intelligence. (AR 290-91). He noted, however, that plaintiff's
22 academic achievements were in the average range. (AR 291). Dr. Pagel
23 diagnosed plaintiff with methamphetamine abuse in stated remission; adjustment
24 disorder with mixed features including depression and anxiety; post traumatic
25 stress disorder with symptoms of depression; psychotic disorder, not otherwise
26 specified (hearing voices); and personality disorder with mixed features including
27 dependent, avoidant and antisocial behaviors. (AR 291). Dr. Pagel opined that
28 plaintiff appeared ready for vocational planning and capable of further education

1 and training. (AR 292). He further noted that plaintiff should avoid work where
2 alcohol or substance use was encouraged. (AR 292).

3 On October 25, 2006, Dr. Morgan, a non-examining consultative state
4 agency physician, completed a Psychiatric Review Technique form.⁶ (AR 253-
5 63). Dr. Morgan found that plaintiff suffered from schizoaffective disorder,
6 depressed; mood disorder, not otherwise specified; and a long history of
7 polysubstance abuse, in questionable remission. (AR 253, 255, 256, 259). Dr.
8 Morgan opined that plaintiff would have mild restrictions of activities of daily
9 living; moderate difficulties in maintaining social functioning; and moderate
10 difficulties in maintaining concentration, persistence, or pace.⁷ (AR 261). Dr.
11 Morgan also completed a Mental Residual Functional Capacity Assessment form,
12 in which he found that plaintiff had moderate limitations in the following areas:
13 ability to understand, remember, and carry out detailed instructions; ability to
14 work in coordination with or proximately to others without being distracted by
15 them; ability to complete a normal workday and workweek without interruptions
16 from psychologically based symptoms and to perform at a consistent pace without
17 an unreasonable number and length of rest periods; ability to accept instructions
18 and respond appropriately to criticism from supervisors; ability to get along with
19 coworkers or peers without distracting them or exhibiting behavioral extremes;
20 and ability to respond appropriately to changes in the work setting. (AR 250-52).
21 He also determined that plaintiff was not significantly limited in all other areas.
22 (AR 250-51). Based on these findings, Dr. Morgan concluded that plaintiff was
23 capable of performing “AT LEAST simple repetitive tasks, in a work setting that
24 involves limited contact with others.” (AR 252).

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27 ⁶Dr. Morgan reviewed plaintiff’s medical records through July 17, 2006. (AR 263).

28 ⁷Dr. Morgan noted that there was insufficient evidence to establish future episodes of
decompensation. (AR 261).

1 **B. Vocational Expert's Testimony**

2 At the administrative hearing in this matter, the vocational expert opined
3 that a hypothetical individual who (i) had no physical limitations; (ii) had no
4 contact with the public; (iii) had occasional contact with supervisors and
5 coworkers; and (iv) could not work at jobs requiring a production rate pace
6 commensurate with production quotas measured periodically throughout the
7 workday, but could meet production quotas measured at the end of the workday or
8 workweek could work as a welder helper (6,200 local positions, 225,000 national
9 positions) and as a metal fabricating shop helper (6,100 local positions, 122,000
10 national positions). (AR 318-20).

11 The vocational expert also opined that a hypothetical individual who,
12 because of hearing voices, could not maintain concentration, persistence, and pace
13 for five days a week, eight hours a day, at the level of substantial gainful activity,
14 could not perform any work. (AR 320).

15 **V. DISCUSSION**

16 **A. A Remand Is Appropriate Because the ALJ Erroneously Failed to**
17 **Explain The Weight, If Any, Given to Certain Findings of a State**
18 **Agency Physician and the Court Cannot Find Such Error to Be**
19 **Harmless**

20 Plaintiff contends, *inter alia*, that the ALJ erroneously failed to include in
21 his residual functional capacity assessment and in the hypothetical posed to the
22 vocational expert, certain limitations on plaintiff's ability to function as
23 determined by Dr. Morgan, a state agency physician. (Plaintiff's Motion at 7). In
24 significant part, plaintiff points to Dr. Morgan's opinion that plaintiff is
25 moderately limited in his ability to understand, remember and carrying detailed
26 instructions. (Plaintiff's Motion at 7) (citing AR 250-51).

27 An ALJ is not bound by any findings by a state agency medical consultant.
28 20 C.F.R. § 416.927(f)(2)(i). However, because these agency physicians are

1 highly qualified and are also experts in Social Security disability evaluations, the
2 ALJ “must consider” findings of an agency physician. 20 C.F.R.
3 § 416.927(f)(2)(i). When the ALJ considers the findings of a state agency medical
4 consultant, the ALJ evaluates the findings using factors such as medical specialty
5 and expertise in social security rules, supporting evidence in the case record,
6 supporting explanations provided by the physician, and any other factors relevant
7 to the weighing of the opinions. 20 C.F.R. § 416.927(f)(2)(i). Furthermore, the
8 ALJ “must explain in the decision” the weight given to the agency physician’s
9 opinion. See SSR 96-6p (ALJ may not ignore state agency physician’s opinions
10 and must explain weight given to such opinions in their decisions).

11 Here, although the ALJ expressly referenced Dr. Morgan’s foregoing
12 opinions in his summary of the medical evidence (AR 17), the ALJ did not
13 explain the weight, if any, given to such opinions. The ALJ did *not* include such
14 limitations in his residual functional capacity assessment. Although it might
15 otherwise be reasonable to infer from these facts that the ALJ silently rejected Dr.
16 Morgan’s opinions in this regard – which was within the ALJ’s province – the
17 Court cannot make such an inference here, because the ALJ stated that his residual
18 functional capacity assessment was “fully supported” by *inter alia*, opinions of the
19 treating, examining and non-examining physicians. (AR 21). Thus, the Court
20 cannot discern whether the ALJ’s failure to include the limitations identified by
21 Dr. Morgan in the residual functional capacity assessment was an oversight or an
22 intentional omission. On remand, the ALJ should clarify the matter.

23 Because at this juncture, the Court cannot exclude the probability that the
24 ALJ intended to include in his residual functional capacity assessment, the
25 limitations regarding plaintiff’s ability to understand, remember, and carry out
26 detailed instructions, the Court cannot find the ALJ’s failure to explain the weight
27 given to Dr. Morgan’s opinion to be harmless. As plaintiff notes, the limitations
28 identified by Dr. Morgan regarding plaintiff’s ability to understand, remember and

1 carry out detailed instructions were not included in the hypothetical question
2 posed to the vocational expert upon whose opinion the ALJ relied in making the
3 step five determination. A vocational expert's testimony may constitute
4 substantial evidence of a claimant's ability to perform work which exists in
5 significant numbers in the national economy when the ALJ poses a hypothetical
6 question that accurately describes all of the limitations and restrictions of the
7 claimant that are supported by the record. See Tackett, 180 F.3d at 1101. If the
8 hypothetical to the vocational expert does not reflect all the claimant's limitations
9 and/or is not supported by evidence of record, the vocational expert's testimony
10 has no evidentiary value. Matthews v. Shalala, 10 F.3d 678, 681 (9th Cir. 1993)
11 (citation and internal quotation marks omitted). Here, both jobs identified by the
12 vocational expert – welder helper and metal fabricating shop helper – require the
13 ability to “[a]pply commonsense understanding to carry out detailed but
14 uninvolved written or oral instructions.” See Dictionary of Occupational Titles
15 §§ 619.686-022, 819.687-014, 1991 WL 681631, 685229. The Court therefore
16 cannot conclude that the vocational expert would have opined (or that the ALJ
17 relying upon such opinion would have determined) that plaintiff could perform
18 work which exists in significant numbers in the national economy if the ALJ had
19 included in the hypothetical question, plaintiff's asserted limitation in
20 understanding and carrying out detailed instructions. Accordingly, the Court
21 cannot find the ALJ's error was harmless.

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1 **VI. CONCLUSION⁸**

2 For the foregoing reasons, the decision of the Commissioner of Social
3 Security is reversed, and this matter is remanded for further administrative action
4 consistent with this Opinion.⁹

5 LET JUDGMENT BE ENTERED ACCORDINGLY.

6 DATED: November 26, 2008

7 /s/

8 Honorable Jacqueline Chooljian
9 UNITED STATES MAGISTRATE JUDGE

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⁸The Court need not, and has not adjudicated plaintiff's other challenges to the ALJ's
24 decision, except insofar as to determine that a reversal and remand for immediate payment of
25 benefits would not be appropriate.

26 ⁹When a court reverses an administrative determination, "the proper course, except in rare
27 circumstances, is to remand to the agency for additional investigation or explanation."
28 Immigration & Naturalization Service v. Ventura, 537 U.S. 12, 16 (2002) (citations and
quotations omitted). Remand is proper where, as here, additional administrative proceedings
could remedy the defects in the decision. McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir.
1989).