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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GEORGIA ABRAHAM,	)	Case No. ED CV 11-1327-PJW
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of the	)	
Social Security Administration,	)	
	)	
Defendant.	)	

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I. INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying her application for Supplemental Security Income ("SSI"). She claims that the Administrative Law Judge ("ALJ") erred in failing to: 1) properly consider the examining psychiatrist's opinion; 2) correctly determine Plaintiff's residual functional capacity; and 3) pose a complete hypothetical question to the vocational expert. (Joint Stip. at 3-6, 8-12.) For the reasons discussed below, the Court finds that the ALJ erred in addressing the examining psychiatrist's opinion that Plaintiff would have difficulty completing a workweek, which impacted the residual functional capacity determination and the hypothetical

1 question to the vocational expert. As such, the Agency's decision is  
2 reversed and the case is remanded for further proceedings consistent  
3 with this Memorandum Opinion and Order.

4 II. SUMMARY OF PROCEEDINGS

5 In November 2008, Plaintiff applied for SSI, alleging that she  
6 was disabled as of 2006, due to bipolar disorder, depression, anxiety,  
7 and obsessive-compulsive disorder. (Administrative Record ("AR") 120,  
8 124.) Her application was denied initially and on reconsideration.  
9 (AR 60-66, 70-76.) She then requested and was granted a hearing  
10 before an ALJ. On June 9, 2010, she appeared with counsel for the  
11 hearing. (AR 26-57.) On August 6, 2010, the ALJ issued a decision  
12 denying benefits. (AR 10-20.) Plaintiff appealed to the Appeals  
13 Council, which denied review. (AR 1-6.) This action followed.

14 III. ANALYSIS

15 All of Plaintiff's claims hinge on her contention that the ALJ  
16 failed to properly consider examining psychiatrist Ernest Bagner's  
17 opinion that Plaintiff would have difficulty completing a workweek.  
18 For the following reasons, the Court finds that the ALJ erred in this  
19 regard and that remand is required to address this issue.

20 Dr. Bagner saw Plaintiff for a psychiatric evaluation on December  
21 29, 2008, in connection with her application for benefits. (AR 273-  
22 76.) Among other things, he found that she would have moderate to  
23 marked limitations in completing a normal workweek without interrup-  
24 tion.<sup>1</sup> (AR 275.)

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25  
26 <sup>1</sup> Dr. Bagner noted a history of mood swings and anxiety and that  
27 the psychiatric medications Plaintiff was taking provided minimal  
28 improvement. (AR 275.) He opined that she would have mild  
limitations interacting with supervisors, peers, and the public,  
maintaining concentration and attention, and completing simple tasks.

1 The ALJ seemed to accept Dr. Bagner's opinion and based her  
2 residual functional capacity determination on it: "The [residual  
3 functional capacity finding] in this decision is generally consistent  
4 with the medical source statement provided by Dr. Bagner." (AR 275.)  
5 However, she did not include in the residual functional capacity  
6 determination any limitation for Plaintiff's inability to complete a  
7 workweek and did not include this limitation in the hypothetical  
8 question to the vocational expert. (AR 16-17, 55-57.) This was  
9 error. See *Bolden v. Astrue*, 2010 WL 3767968, at \*4 (E.D. Cal. Sept.  
10 22, 2010) (finding ALJ erred when he failed to take into account  
11 doctors' opinions that claimant would have moderate difficulty  
12 completing a workweek). By ignoring this limitation, the ALJ tacitly  
13 rejected it. For her to do so where, as here, the opinion was  
14 contradicted by the non-examining physicians, she was required to  
15 provide specific and legitimate reasons that were supported by  
16 substantial evidence in the record. *Lester v. Chater*, 81 F.3d 821,  
17 830-31 (9th Cir. 1995). The ALJ's failure to provide any reasons was  
18 error.

19 The Agency disagrees. It contends that the ALJ took into account  
20 Dr. Bagner's finding that Plaintiff would have difficulty completing a  
21 workweek when she found that Plaintiff would have difficulty  
22 maintaining concentration, persistence, and pace. (Joint Stip. at 7.)  
23 This argument is rejected. Concentration, persistence, and pace are  
24 attributes that relate to what a worker does once she gets to work.  
25 They do not relate to the worker's ability to come to work every day,

26 \_\_\_\_\_  
27 (AR 275.) He also believed that she would have mild to moderate  
28 limitations handling normal stresses at work and completing complex  
tasks. (AR 275.)

1 which Plaintiff would apparently have difficulty doing. The ALJ's  
2 failure to address this limitation mandates reversal and remand.

3 On remand, the ALJ should address Dr. Bagner's opinion that  
4 Plaintiff would have moderate to marked limitations in completing a  
5 workweek. Assuming that she accepts Dr. Bagner's view, she should  
6 explain how this limitation translates into the residual functional  
7 capacity finding. A vocational expert should then be consulted to  
8 provide an opinion as to whether someone who has moderate to marked  
9 limitations in completing a workweek can hold down a job.


10 If, on the other hand, the ALJ finds that Dr. Bagner's opinion  
11 regarding Plaintiff's inability to complete a workweek should be  
12 disregarded, she should explain why.<sup>2</sup>

13 IV. CONCLUSION

14 For the reasons set forth above, the Agency's decision is  
15 reversed and the case is remanded for further proceedings consistent  
16 with this Memorandum Opinion and Order.<sup>3</sup>

17 IT IS SO ORDERED.

18 DATED: July 2, 2012.

  
\_\_\_\_\_  
PATRICK J. WALSH  
UNITED STATES MAGISTRATE JUDGE

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21  
22 <sup>2</sup> Though not raised by the Agency in the brief, the Court notes  
23 that the ALJ did include a limitation for being "off-task 20 percent  
24 of the time." (AR 56.) The Court finds, however, that that limitation  
25 does not translate into not coming to work every day, either; rather,  
26 it relates to not staying on task once getting to work.

27 <sup>3</sup> The Court has considered Plaintiff's request that the case be  
28 remanded for an award of benefits. That request is denied. It is not  
clear from this record that Plaintiff is disabled and further  
proceedings are necessary to resolve that issue. Only after the issue  
of Plaintiff's assumed inability to complete a workweek is addressed  
will it become clear whether she is entitled to benefits.