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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LESLY LYNNENE LEWIS,  
Plaintiff  
v.  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
Defendant.

Case No. 5:16-cv-01754-GJS

**MEMORANDUM OPINION  
AND ORDER**

**I. PROCEDURAL HISTORY**

Plaintiff Lesly Lynnene Lewis (“Plaintiff”) filed a complaint seeking review of Defendant Commissioner of Social Security’s (“Commissioner”) denial of her application for Disability Insurance Benefits (“DIB”). The parties filed consents to proceed before the undersigned United States Magistrate Judge [Dkts. 10, 11] and briefs addressing disputed issues in the case [Dkt. 20 (“Pltf.’s Br.”); Dkt. 23 (“Def.’s Br.”), Dkt. 24 (“Pltf.’s Statement of No Reply”)]. The Court has taken the parties’ briefing under submission without oral argument. For the reasons discussed below, the Court finds that this matter should be remanded for further proceedings.

**II. ADMINISTRATIVE DECISION UNDER REVIEW**

On July 1, 2011, Plaintiff filed an application for DIB, alleging that she became disabled as of August 1, 2010. [Dkt. 14, Administrative Record (“AR”) 10.]

1 The Commissioner denied her initial claim for benefits in October 2011 and then  
2 denied her claim upon reconsideration in May 2012. [*Id.*] On January 9, 2013, a  
3 hearing was held before Administrative Law Judge (“ALJ”) James P. Nguyen. [AR  
4 27-46.] On January 31, 2013, the ALJ issued a decision denying Plaintiff’s request  
5 for benefits. [AR 7-23.] Plaintiff requested review from the Appeals Council, but  
6 the Appeals Council denied her request for review on April 28, 2014. [AR 1-3.]

7 Plaintiff filed a civil action on July 7, 2014. This Court remanded the case to  
8 the Commissioner for further proceedings on July 9, 2015. [AR 394-407 (*Lewis v.*  
9 *Colvin*, 5:14-cv-01326-GJS, Dkt. 27).] Subsequently, on February 23, 2016, a  
10 second hearing was held before ALJ Dante M. Alegre. [AR 358-389.] On April 9,  
11 2016, the ALJ issued a decision again denying Plaintiff’s request for benefits. [AR  
12 449-467.] Plaintiff now seeks review directly from this Court. *See* 20 C.F.R. §  
13 404.984.

14 Applying the five-step sequential evaluation process, the ALJ found that  
15 Plaintiff was not disabled. *See* 20 C.F.R. §§ 404.1520(b)-(g)(1). At step one, the  
16 ALJ concluded that Plaintiff had not engaged in substantial gainful activity since the  
17 alleged onset date of August 1, 2010 through her date last insured of December 31,  
18 2015. [AR 454.] At step two, the ALJ found that Plaintiff suffered from the  
19 following severe impairments: obesity; migraines; carpal tunnel syndrome, right;  
20 peripheral neuropathy; obstructive sleep apnea (OSA); bipolar disorder; and  
21 depressive disorder with anxiety. [*Id.* (citing 20 C.F.R. § 404.1520(c).] Next, the  
22 ALJ determined that Plaintiff did not have an impairment or combination of  
23 impairments that meets or medically equals the severity of one of the listed  
24 impairments. [AR 455 (citing 20 C.F.R. Part 404, Subpart P, Appendix 1; 20 C.F.R.  
25 §§ 404.1520(d), 404.1525, 404.1526).]

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1 The ALJ found that Plaintiff had the following residual functional capacity  
2 (RFC):

3 [L]ight work as defined in 20 CFR 404.1567(b).  
4 Specifically, the claimant can lift/carry twenty pounds  
5 occasionally and ten pounds frequently; stand/walk for six  
6 hours out of an eight hour workday; sit for six hours out of  
7 an eight hour workday; occasionally climb ramps and  
8 stairs; never climb ladders, ropes, and scaffolds,  
9 occasionally balance, stoop, kneel, crouch, and crawl; and  
10 frequently handle and finger. The claimant can  
11 understand, remember and carry out simple job tasks, but  
12 capable of performing GED level 1, 2, or 3, the claimant is  
13 unable to perform work that would require directing  
14 others, abstract thought or planning, maintain attention and  
15 concentration to perform simple tasks in a work  
16 environment free of fast paced production requirements,  
17 with frequent interaction with supervisors, coworkers and  
18 the public. The claimant can work in an environment with  
19 occasional changes to the work setting and occasional  
20 work related decision making.

21 [AR 457.]<sup>1</sup> Applying this RFC, the ALJ found that Plaintiff is unable to perform  
22 any past relevant work, but determined that based on Plaintiff’s age, education,  
23 work experience, and residual functional capacity, she could perform representative  
24 occupations such as mail clerk (DOT 209.687-026), office helper (DOT 239.567-  
25 010), and, assembler, electrical (DOT 729.687-010) and, thus, is not disabled. [AR  
26 461-462.]

### 27 III. GOVERNING STANDARD

28 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to  
determine if: (1) the Commissioner’s findings are supported by substantial evidence;

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<sup>1</sup> The Court, frankly, finds this RFC to be near incoherent. It is perhaps missing  
some words, but it is unclear whether certain phrases detail things plaintiff allegedly  
*can* do or whether they are intended to be limitations, setting forth things she *cannot*  
do. The RFC says that plaintiff can perform “simple job tasks.” [AR 457.] But it  
also says, for example, that “the claimant is unable to . . . maintain attention and  
concentration and concentration to perform simple tasks in a work environment free  
of fast paced production requirements . . .” [*Id.*] The Court is unsure if there are  
words or punctuation missing that would clarify the RFC, but in any event, the  
Court hopes that the ALJ will be more careful on remand.

1 and (2) the Commissioner used correct legal standards. *See Carmickle v. Comm’r*  
2 *Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d  
3 1071, 1074 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a  
4 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*  
5 *Perales*, 402 U.S. 389, 401 (1971) (internal citation and quotations omitted); *see*  
6 *also Hoopai*, 499 F.3d at 1074.

#### 7 IV. DISCUSSION

8 Plaintiff contends that the ALJ: (1) erred in assessing her RFC and (2) erred  
9 in the assessment of her credibility. [Pltf.’s Br. at 1-2.] As set forth below, the  
10 Court agrees with Plaintiff, in part, and remands the matter for further proceedings.

##### 11 A. Plaintiff’s RFC

12 Plaintiff first contends that the ALJ erred in not including limitations in the  
13 RFC that result from Plaintiff’s severe migraine headaches. [Pltf.’s Br. at 6.] The  
14 Court disagrees.

15 A claimant’s RFC is the most a claimant can still do despite her limitations.  
16 *Smolen v. Chater*, 80 F.3d 1273, 1291 (9th Cir. 1996) (citing 20 C.F.R. §  
17 416.945(a)); Social Security Ruling (“SSR”) 96-8p (an RFC assessment is ordinarily  
18 the “maximum remaining ability to do sustained work activities in an ordinary work  
19 setting on a regular and continuing basis,” meaning “8 hours a day, for 5 days a  
20 week, or an equivalent work schedule”). In assessing a claimant’s RFC, the ALJ  
21 must consider all of the relevant evidence in the record. *See* 20 C.F.R. §§  
22 404.1545(a)(2), (3). If an RFC assessment conflicts with an opinion from a medical  
23 source, the ALJ “must explain why the opinion was not adopted.” SSR 96-8p; *see*  
24 *also Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (explaining that an  
25 ALJ is not required to discuss all the evidence presented, but must explain the  
26 rejection of uncontroverted medical evidence, as well as significant probative  
27 evidence).

28 Here, Plaintiff identifies a September 24, 2010 treatment note from Dr.

1 Purnima Thakran, M.D., a treating physician, stating that Plaintiff's headaches  
2 prevented her from working from August 31, 2010 to January 7, 2011. [AR 573-  
3 575.] In addition, on May 12, 2014, Dr. Karnani, M.D., a treating neurologist,  
4 diagnosed Plaintiff with having migraine headaches. [AR 576.] Subsequently, on  
5 November 9, 2015, Dr. Robert A. Moore, M.D., a neurological consultative  
6 examiner, diagnosed Plaintiff as having "chronic headache syndrome." [AR 554.]  
7 However, the ALJ gave "little weight" to the opinion of Dr. Thakran, in part  
8 because Dr. Thakran's opinion was inconsistent with Plaintiff's daily activities (a  
9 finding that Plaintiff does not challenge). The remainder of the medical evidence  
10 Plaintiff cites to merely documents the existence of her migraine headaches, which  
11 the ALJ recognized as a severe impairment. [AR 454.] Accordingly, Plaintiff has  
12 not met her burden of showing any findings that should have been included in  
13 Plaintiff's RFC regarding her migraine headaches.

14 Plaintiff next contends that the ALJ erred in failing to explain why the RFC  
15 assessment omitted findings of the consultative psychologist, Dr. J. Zhang, Psy.D.  
16 [Pltf.'s Br. at 8-9.] As discussed below, the Court agrees.

17 Dr. Zhang opined that Plaintiff has moderate impairment in her abilities to  
18 understand, remember, and carry out detailed and complex instructions; maintain  
19 concentration, persistence, and pace; *maintain consistent attendance and to*  
20 *perform routine work duties*; and to *respond appropriately to usual work*  
21 *situations* and to changes in a routine. [AR 564-572.] The ALJ gave Dr. Zhang's  
22 opinion regarding Plaintiff's mental functional capacity "great weight." [AR 460.]  
23 However, the ALJ's RFC did not account for Dr. Zhang's opinion that Plaintiff  
24 would have moderate impairment in her ability to maintain consistent attendance, to  
25 perform routine work duties, and to respond appropriately to usual work situations.  
26 Plaintiff contends that the ALJ erred by failing to offer any explanation as to why  
27 these limitations were omitted from the RFC.

28 Although the ALJ purportedly gave great weight to Dr. Zhang's opinion, the

1 ALJ failed to explain why he did not include in the RFC assessment Dr. Zhang's  
2 findings that Plaintiff has moderate limitations in the ability to perform routine work  
3 duties, maintain consistent attendance in the workplace, and respond appropriately  
4 to usual work situations. *See* SSR 96-8p; *see also Vincent*, 739 F.2d at 1394-95.  
5 The opinion of an examining psychologist, such as Dr. Zhang, can be rejected only  
6 for specific and legitimate reasons that are supported by substantial evidence in the  
7 record. *Regennitter v. Comm'r of Soc. Sec. Admin.*, 166 F.3d 1294, 1298-99 (9th  
8 Cir. 1999) (citing *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995)). As such, the  
9 ALJ erred by failing to provide any reasons for rejecting these portions of Dr.  
10 Zhang's opinion.

11 In response, the Commissioner contends that the RFC accounted for all the  
12 limitations assessed by Dr. Zhang. [Def.'s Br. at 6.] Specifically, the  
13 Commissioner argues that Plaintiff's moderate mental limitations were adequately  
14 captured by a restriction to simple tasks. [*Id.*] The Commissioner's argument is not  
15 persuasive. Although the ALJ's RFC restriction for simple tasks may encompass  
16 the concentration, persistence, and pace limitations assessed by Dr. Zhang, the RFC  
17 does not sufficiently account for Plaintiff's moderate limitations in performing  
18 routine work duties, maintaining consistent attendance in the workplace, or  
19 responding appropriately to usual work situations. *See, e.g., Morinskey v. Astrue*,  
20 458 Fed. Appx. 640, 641 (9th Cir. 2011) (finding ALJ erred by failing to analyze or  
21 make findings setting forth specific, legitimate reasons for rejecting the examining  
22 consultant's opinion that the claimant was moderately impaired in the ability to  
23 maintain regular attendance, sustain an ordinary routine, and complete a normal  
24 work day or workweek without interruption from his bi-polar disorder); *Padilla v.*  
25 *Colvin*, No. ED CV 14-1843-PLA, 2015 WL 3849128, at \*5-6 (C.D. Cal. June 22,  
26 2015) ("despite the ALJ's assertion that he afforded [the examining psychiatrist's]  
27 opinion significant weight . . . , the ALJ failed to explain why he apparently rejected  
28 and did not include in the RFC determination [the examining psychiatrist's]

1 moderate limitations in the ability to perform work activities on a consistent basis  
2 without special or additional supervision, and to complete a normal workday or  
3 work week due to her mental condition”); *Gloria v. Astrue*, No. C08-5714RJB-KLS,  
4 2009 WL 1763301, at \*14 (W.D. Wash. June 19, 2009). This error warrants  
5 reversal.<sup>2</sup>

## 6 V. CONCLUSION

7 The decision of whether to remand for further proceedings or order an  
8 immediate award of benefits is within the district court’s discretion. *Harman v.*  
9 *Apfel*, 211 F.3d 1172, 1175-78 (9th Cir. 2000). When no useful purpose would be  
10 served by further administrative proceedings, or where the record has been fully  
11 developed, it is appropriate to exercise this discretion to direct an immediate award  
12 of benefits. *Id.* at 1179 (“the decision of whether to remand for further proceedings  
13 turns upon the likely utility of such proceedings”). But when there are outstanding  
14 issues that must be resolved before a determination of disability can be made, and it  
15 is not clear from the record the ALJ would be required to find the claimant disabled  
16 if all the evidence were properly evaluated, remand is appropriate. *Id.*

17 The Court finds that remand is appropriate because the circumstances of this  
18 case suggest that further administrative review could remedy the ALJ’s errors. *See*  
19 *INS v. Ventura*, 537 U.S. 12, 16 (2002) (upon reversal of an administrative  
20 determination, the proper course is remand for additional agency investigation or  
21 explanation, “except in rare circumstances”); *Treichler v. Comm’r of Soc. Sec.*  
22 *Admin.*, 775 F.3d 1090, 1101 (9th Cir. 2014) (remand for award of benefits is  
23 inappropriate where “there is conflicting evidence, and not all essential factual  
24 issues have been resolved”); *Harman*, 211 F.3d at 1180-81. The Court has found

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25  
26 <sup>2</sup> The Court has not reached the last issue raised by Plaintiff regarding Plaintiff’s  
27 credibility except as to determine that reversal with a directive for the immediate  
28 address this additional contention of error in evaluating the evidence on remand.

1 that the ALJ erred at step four of the sequential evaluation process. Thus, remand is  
2 appropriate to allow the Commissioner to continue the sequential evaluation process  
3 starting at step four.

4 For all of the foregoing reasons, **IT IS ORDERED** that:

- 5 (1) the decision of the Commissioner is REVERSED and this matter  
6 REMANDED pursuant to sentence four of 42 U.S.C. § 405(g) for further  
7 administrative proceedings consistent with this Memorandum Opinion and  
8 Order; and  
9 (2) Judgment be entered in favor of Plaintiff.

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**IT IS SO ORDERED.**

DATED: May 09, 2017



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GAIL J. STANDISH  
UNITED STATES MAGISTRATE JUDGE