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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LISARDO S.,¹

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No. 5:18-cv-00480-AFM

**MEMORANDUM OPINION AND
ORDER REVERSING AND
REMANDING DECISION OF
COMMISSIONER**

Plaintiff filed this action seeking review of the Commissioner’s final decision denying his applications for disability insurance benefits and supplemental security income. In accordance with the Court’s case management order, the parties have filed memorandum briefs addressing the merits of the disputed issues. The matter is now ready for decision.

BACKGROUND

On April 2, 2014, Plaintiff applied for disability insurance benefits and

¹ Plaintiff’s name has been partially redacted in accordance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 supplemental security income, alleging disability since January 4, 2014. Plaintiff's
2 applications were denied initially and on reconsideration. (Administrative Record
3 ["AR"] 111-118.) A hearing took place on January 10, 2017 before an Administrative
4 Law Judge ("ALJ"). Both Plaintiff, who was represented by counsel, and a vocational
5 expert ("VE") testified at the hearing. (AR 37-85.)

6 In a decision dated April 28, 2017, the ALJ found that Plaintiff suffered from
7 the following severe impairments: obsessive compulsive disorder, anxiety disorder,
8 and depressive disorder. (AR 20.) The ALJ concluded that Plaintiff retained the
9 residual functional capacity ("RFC") to perform a full range of work at all exertional
10 levels but restricted to work involving simple and repetitive tasks; limited public
11 contact; and a work setting that is predictable, routine, with infrequent changes and
12 not requiring more than simple decision making. (AR 23-24.) Relying upon the
13 testimony of the VE, the ALJ found that Plaintiff was capable of performing work
14 existing in significant numbers in the national economy, including the occupations
15 of laundry worker, kitchen helper, and hand packager. (AR 30-31.) Accordingly, the
16 ALJ concluded that Plaintiff was not disabled. (AR 31-32.)

17 The Appeals Council subsequently denied Plaintiff's request for review (AR
18 1-6), rendering the ALJ's decision the final decision of the Commissioner.

19 **DISPUTED ISSUE**

20 Whether the ALJ properly evaluated the opinion of examining psychiatrist,
21 Denisse Joseph, M.D.

22 **STANDARD OF REVIEW**

23 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's decision to
24 determine whether the Commissioner's findings are supported by substantial
25 evidence and whether the proper legal standards were applied. *See Treichler v.*
26 *Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). Substantial
27 evidence means "more than a mere scintilla" but less than a preponderance. *See*
28 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter v. Astrue*, 504 F.3d

1 1028, 1035 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a
2 reasonable mind might accept as adequate to support a conclusion.” *Richardson*, 402
3 U.S. at 401. This Court must review the record as a whole, weighing both the
4 evidence that supports and the evidence that detracts from the Commissioner’s
5 conclusion. *Lingenfelter*, 504 F.3d at 1035. Where evidence is susceptible of more
6 than one rational interpretation, the Commissioner’s decision must be upheld. *See*
7 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

8 DISCUSSION

9 1. Medical Record

10 Dr. Joseph

11 On July 23, 2014 and at the request of the Department of Social Services,
12 Denisse Joseph, M.D., performed a consultative psychiatric examination of Plaintiff.
13 Plaintiff informed Dr. Joseph that he had a long history of obsessive compulsive
14 disorder, especially regarding a phobia to germs. Plaintiff also complained of
15 depression, and anxiety. (AR 305.) Plaintiff told Dr. Joseph that he had been seeing
16 a psychiatrist and a therapist for six months. He had been placed on Prozac and
17 trazodone and that he currently took Zoloft and Xanax, but the medications did not
18 help. (AR 306.)

19 Under the heading “Activities of Daily Living,” Dr. Joseph noted that Plaintiff
20 was able to dress, bath, and take care of his personal hygiene, but it took him a lengthy
21 amount of time to do so. Plaintiff also was able to go out alone, drive, and pay bills.
22 According to Plaintiff, his relationships with his family were poor, and he did not
23 relate to friends. (AR 307.)

24 Per Dr. Joseph’s mental status examination, Plaintiff was “neatly and casually
25 groomed,” and made “fair eye contact and fair interpersonal contact with this
26 interviewer.” Plaintiff was cooperative and able to volunteer information
27 spontaneously. Dr. Joseph noted “some obvious psychomotor agitation, but no
28

1 psychomotor retardation.” Although Plaintiff appeared “genuine and truthful,” he
2 also exhibited “some exaggeration and manipulation.” (AR 308.)

3 Dr. Joseph recorded Plaintiff’s speech as “tense without dysarthria.” The rate
4 and prosody were normal, and the volume was intermittently increased. (AR 308.)
5 Plaintiff’s thoughts were logical and linear, “but not goal directed other than needing
6 financial assistance.” She noted that Plaintiff was circumstantial, disorganized, and
7 tangential. However, no loose associations, flight of ideas, mind racing, or thought
8 blocking were present. (AR 308.) Plaintiff’s thought content was generally relevant.
9 Dr. Joseph detected no bizarre or psychotic thought content, delusional material,
10 neologisms, or suicidal ideation. Plaintiff denied auditory or visual hallucinations.
11 (AR 308.) Plaintiff’s mood was anxious and depressed; his affect was irritable, angry,
12 sad, and constricted. His affect was appropriate to context and congruent with thought
13 content. (AR 308.)

14 Dr. Joseph found Plaintiff alert and oriented to person, place, time, and
15 circumstances. He was able to perform digit span forward, but not backward. Plaintiff
16 could recall three items immediately and after five minutes. He also was able to list
17 the last four United States Presidents. His fund of knowledge was normal. Plaintiff’s
18 attention, concentration, and calculations were normal. According to Dr. Joseph,
19 Plaintiff’s insight and judgment did not appear to be intact regarding his current
20 situation. As an example, Dr. Joseph noted that when asked how he would handle it
21 if he wrote a check that bounced, Plaintiff responded, “I don’t know.” (AR 309.) She
22 opined that Plaintiff’s intelligence was average. (AR 310.)

23 Dr. Joseph diagnosed Plaintiff with obsessive compulsive disorder, depressive
24 disorder, and generalized anxiety disorder. She opined that Plaintiff’s current global
25 assessment of functioning (“GAF”) score was 54. She stated that Plaintiff would
26 benefit from continued psychotherapy and active treatment including psychotropic
27 medications. Under “Prognosis,” Dr. Joseph wrote that from a psychiatric standing,
28 Plaintiff’s condition is “fair.” (AR 310.)

1 Dr. Joseph included a functional assessment based upon her examination. Dr.
2 Joseph opined that Plaintiff was not impaired in his ability to perform simple and
3 repetitive tasks or his ability to maintain regular attendance. (AR 310.) However, she
4 opined that Plaintiff was moderately impaired in the following functional areas: his
5 ability to perform detailed and complex tasks; his ability to perform work activities
6 on a consistent basis; his ability to perform work activities without special or
7 additional supervision; his ability to complete a normal workday or work week
8 without interruptions resulting from psychiatric conditions; his ability to relate and
9 interact with coworkers and the public; and his ability to deal with the usual stresses
10 encountered in competitive work. (AR 310-311.)

11 Dr. Frank

12 Michael Franc, Psy.D, completed an Evaluation Form for Mental Disorders on
13 February 26, 2015. Dr. Franc indicated that he began treating Plaintiff in October
14 2013 and had weekly visits since that time. (AR 333.) Dr. Franc noted that Plaintiff
15 was pleasant and cooperative. His intellectual functioning, concentration, task
16 completion, and contact with reality were normal. (AR 334-335.) Dr. Franc opined
17 that Plaintiff was unable to adapt to normal stressors in the work environment
18 because of compulsions and anxiety about contamination. (AR 335.) He also opined
19 that Plaintiff had no useful ability to function in the following areas: maintaining
20 regular work attention and working in coordination with or proximity to others
21 without becoming distracted. Furthermore, Dr. Franc opined that Plaintiff's mental
22 impairment rendered him unable to meet competitive standards in the following
23 areas: complete a normal workday and work week without interruptions from
24 psychologically based symptoms; perform at a consistent pace without an
25 unreasonable number and length of rest periods; respond appropriately to changes in
26 routine work setting; deal with stress of semiskilled and skilled work; and interact
27 appropriately with the public. Finally, Dr. Franc opined that Plaintiff would be absent
28 from work more than four days per month. (AR 336-339.)

1 Dr. Gulasekaram

2 Bala Gulasekaram, M.D., completed a Mental Disorder Questionnaire Form in
3 May 2016. Dr. Gulaskaram had treated Plaintiff since February 2008 and saw him
4 every three months. (AR 352, 356.) He diagnosed Plaintiff with depression, anxiety,
5 and obsessive compulsive behavior. He noted that Plaintiff was cooperative, but had
6 many fears – in particular, a fear of germs. Dr. Gulasekaram indicated that Plaintiff’s
7 intelligence was average, and Plaintiff had no memory impairment. (AR 352-353.)
8 He also indicated that Plaintiff was able to attend to his activities of daily living. (AR
9 354.) Dr. Gulasekaram opined that Plaintiff’s ability to adapt to work or work-like
10 situations was poor. (AR 355.)

11 State Agency physicians

12 Both State Agency physicians, Judy K. Martin, M.D., and Phaedra Caruso-
13 Radin, Psy.D., opined that Plaintiff was moderately limited in the following areas:
14 his ability to carry out detailed instructions; his ability to maintain attention and
15 concentration for extended periods; his ability to work in coordination with or in
16 proximity to others without being distracted; his ability to complete a normal
17 workday and workweek without interruptions from psychiatric symptoms and to
18 perform at a consistent pace without an unreasonable number and length of rest
19 periods; his ability to interact appropriately with the general public; his ability to get
20 along with coworkers or peers without distracting them or exhibiting behavioral
21 extremes; his ability to maintain socially appropriate behavior and to adhere to basic
22 standards of cleanliness; and his ability to respond appropriately to changes in the
23 work setting. (AR 93-95, 106-108.)

24 **2. The ALJ’s Decision.**

25 In assessing Plaintiff’s RFC, the ALJ discussed the foregoing medical
26 opinions. The ALJ assigned “partial weight” to the opinions of the State Agency
27 reviewing physicians. However, she specifically rejected the State Agency
28 physicians’ opinions that Plaintiff was limited to minimal social contacts. The ALJ

1 concluded that the social contacts limitation was inconsistent with evidence showing
2 minimal treatment and inconsistent with Dr. Joseph’s report indicating that Plaintiff
3 had “normal grooming, eye contact, interpersonal contact, cooperation, behavior,
4 logical thoughts, thought content, orientation, cognitive function, attention,
5 concentration, calculations, fund of knowledge, and intelligence.” (AR 27.) Further,
6 the ALJ found that the term “‘minimal’ social contact” was “vague and unclear.” (AR
7 27.)

8 The ALJ also assigned “partial weight” to the opinion of Dr. Joseph. However,
9 the ALJ specifically rejected Dr. Joseph’s limitations related to coworkers, additional
10 supervision, and an inability to complete a normal workday or work week. The ALJ
11 explained that “the term ‘moderate’ is not defined and does not specify [Plaintiff’s]
12 functional abilities.” (AR 27.) In addition, the ALJ found these three limitations were
13 inconsistent with Dr. Joseph’s report, which found that Plaintiff “had normal
14 grooming, eye contact, interpersonal contact, cooperation, behavior, logical thoughts,
15 thought content, orientation, cognitive function, attention, concentration,
16 calculations, fund of knowledge and intelligence.” (AR 27.)

17 The ALJ afforded little weight to the opinion of Dr. Franc, finding it
18 conclusory, inadequately supported by objective medical evidence, and inconsistent
19 with Plaintiff’s admitted activities of daily living. (AR 28.) Similarly, the ALJ gave
20 little weight to the opinion of Dr. Gulasekaram, finding it had “no probative value.”
21 The ALJ reiterated most of the same reasons he provided for rejecting Dr. Franc’s
22 opinion and added that Dr. Gulasekaram’s opinion “primarily summarized
23 [Plaintiff’s] subjective complaints....” (AR 28.)

24 As mentioned above, the ALJ concluded that Plaintiff retained the RFC to
25 perform simple, repetitive tasks; work involving limited public contact; and work in
26 settings that were predictable, routine, with infrequent changes, and did not require
27 more than simple decision making. (AR 23-24.)
28

1 **3. Analysis.**

2 A claimant’s RFC is the most he can still do despite his limitations. *Smolen v.*
3 *Chater*, 80 F.3d 1273, 1291 (9th Cir. 1996) (citing 20 C.F.R. § 404.1545(a)). In
4 determining a claimant’s RFC, an ALJ must consider all relevant evidence of record,
5 including medical opinions. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir.
6 2008); *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006); *see* 20 C.F.R.
7 § 404.1527(b). Before rejecting the uncontradicted opinion of a treating or examining
8 physician, an ALJ must provide clear and convincing reasons for doing so. *Hill v.*
9 *Astrue*, 698 F.3d 1153, 1159-1160 (9th Cir. 2012); *Carmickle v. Comm’r, Soc. Sec.*
10 *Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008). “Even if contradicted by another doctor,
11 the opinion of an examining doctor can be rejected only for specific and legitimate
12 reasons that are supported by substantial evidence in the record.” *Hill*, 698 F.3d at
13 1160 (quoting *Regennitter v. Comm’r of the Soc. Sec. Admin.*, 166 F.3d 1294, 1298-
14 1299 (9th Cir. 1999)). An ALJ meets the requisite specific and legitimate standard
15 “by setting out a detailed and thorough summary of the facts and conflicting clinical
16 evidence, stating his interpretation thereof, and making findings.” *Trevizo v.*
17 *Berryhill*, 871 F.3d 664, 675 (9th Cir. 2017) (citations and internal quotation marks
18 omitted).

19 **a. The ALJ rejected three of Dr. Joseph’s opinions.**

20 Plaintiff contends that the ALJ impermissibly rejected Dr. Joseph’s opinions
21 without providing legally sufficient reasons for doing so. (ECF No. 18 at 4-10.) The
22 Commissioner does not directly address this contention. Instead, the Commissioner
23 argues that the ALJ properly translated Dr. Joseph’s opinions into a concrete RFC
24 assessment. (ECF No 19 at 4-9.) In making this argument, the Commissioner
25 necessarily contends that the ALJ did not actually reject Dr. Joseph’s opinions, but
26 rather “interpreted” them.

27 The Commissioner is correct that an ALJ’s RFC assessment may sufficiently
28 account for a physician’s opinion regarding limitations without using the same

1 language as the physician. *See Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1173-
2 1174 (9th Cir. 2008). So, for example, an RFC may account for a physician’s opinion
3 that the claimant suffers from moderate difficulties in concentration and persistence
4 by assessing an RFC restricting the claimant to simple, routine, repetitive tasks. *See*
5 *Hughes v. Colvin*, 599 F. App’x 765, 766 (9th Cir. 2015); *Stubbs-Danielson*, 539
6 F.3d at 1171 (ALJ’s limitation to “simple, routine, repetitive” work sufficiently
7 accommodated physician’s opinion evidence that claimant had “moderate” limitation
8 in pace and “other mental limitations regarding attention, concentration, and
9 adaption”). Similarly, an RFC for independent work with no more than occasional
10 public interaction adequately accommodates a physician’s opinion that the claimant
11 is moderately limited in social functioning. *Hughes*, 599 F. App’x at 766.

12 Here, the ALJ acknowledged Dr. Joseph’s conclusion that Plaintiff had
13 “moderate limitations” and found these limitations “generally consistent with the
14 above residual functional capacity assessment.” (AR 27.) The ALJ assessed Plaintiff
15 with an RFC of (a) simple work; (b) limited contact with the public; (c) a predictable
16 work routine; and (d) no more than simple decisions. This RFC fairly accommodates
17 Dr. Joseph’s opinions that Plaintiff was moderately limited in (a) his ability to
18 perform detailed complex tasks, (b) relate to the public and (c) deal with stress. *See,*
19 *e.g., Williams v. Colvin*, 2016 WL 7480245, at *7-8 (C.D. Cal. Dec. 29, 2016) (ALJ
20 adequately accounted for medical opinion that plaintiff suffered moderate difficulties
21 in concentration, persistence, and pace by assessing plaintiff with the mental RFC to
22 perform “simple, repetitive tasks”).

23 However, contrary to the Commissioner’s suggestion, the ALJ did not purport
24 to accommodate all of Dr. Joseph’s opinions regarding Plaintiff’s moderate
25 limitations. The ALJ explicitly rejected Dr. Joseph’s opinions that Plaintiff is
26 moderately limited in his abilities to (a) relate to coworkers, (b) perform work without
27 special or additional supervision, and (c) complete a normal workday or workweek.
28 (AR 27.) Furthermore, these three limitations are not subsumed within the ALJ’s

1 RFC restricting Plaintiff to simple work, limited contact with the public, and a
2 predictable work routine with no more than simple decision making. *See, e.g.,*
3 *Raymond v. Berryhill*, 2018 WL 3691842, at *6 (C.D. Cal. Aug. 2, 2018) (“Although
4 the ALJ’s restriction for unskilled work may encompass Plaintiff’s moderate
5 limitations in concentration, persistence, and pace, the RFC does not sufficiently
6 account for Plaintiff’s moderate limitations in performing routine work duties and
7 maintaining consistent attendance in the workplace.”); *Atkinson v. Colvin*, 2015 WL
8 5840210, at *3 (C.D. Cal. Oct. 5, 2015) (RFC restriction to non-complex tasks “may
9 encompass the concentration, persistence, and pace limitations assessed” by
10 physician, but did “not sufficiently account for Plaintiff’s moderate limitations in
11 performing activities within a schedule, maintaining regular attendance in the
12 workplace, or completing a normal workday and workweek without interruption”);
13 *Hunter v. Colvin*, 2015 WL 501466, at *1 (C.D. Cal. Feb. 5, 2015) (ALJ’s RFC
14 limiting claimant’s contact with the public did not account for physician’s opinion
15 that claimant was limited in ability to interact with co-workers and supervisors);
16 *Jackson v. Colvin*, 2014 WL 562240, at *2 (C.D. Cal. Feb. 11, 2014) (ALJ’s RFC of
17 “mild-to-moderate limitations in understanding and remembering tasks, sustaining
18 concentration and persistence, socially interacting with the general public and
19 adapting to workplace changes” did not encompass opinion that claimant was
20 moderately limited to interacting with co-workers, maintaining regular attendance,
21 and completing normal workday and workweek). Thus, the Court rejects the
22 Commissioner’s characterization of the ALJ’s decision as essentially “translating”
23 Dr. Joseph’s opinions and incorporating them into an RFC.

24 **b. The ALJ failed to provide legally sufficient reasons for rejecting**
25 **Dr. Joseph’s opinions.**

26 As set forth in detail above, at least some of Dr. Joseph’s opinions regarding
27 Plaintiff’s moderate limitations were uncontroverted. In particular, both the State
28 Agency physicians and Dr. Joseph specifically concluded that Plaintiff was limited

1 in his ability to interact with others. No other physicians’ opinions were inconsistent
2 with this conclusion. Consequently, the ALJ arguably was required to provide clear
3 and convincing reason for rejecting at least this opinion. Nevertheless, even assuming
4 that some or all of Dr. Joseph’s opinions were controverted, the ALJ still was required
5 to provide specific and legitimate reasons supported by substantial evidence in the
6 record for rejecting them. *Orn*, 495 F.3d at 632.

7 The ALJ provided two reasons for rejecting Dr. Joseph’s opinions. First, the
8 ALJ stated that Dr. Joseph’s opinion was “vague and unclear” because she assessed
9 “moderate limitations” and “the term ‘moderate’ is not defined and does not specify
10 the claimant’s functional abilities.” (AR 27.) At least in the circumstances of this
11 case, merely characterizing a term that is frequently used in the social security context
12 as “vague and unclear” is not a sufficient reason to reject an examining physician’s
13 opinion. *See Vasquez v. Berryhill*, 2017 WL 2633413, at *7 (E.D. Cal. June 19, 2017)
14 (ALJ could not properly reject examining physician’s opinion that claimant had
15 moderate limitations by stating that the definition of the term “moderate” was “vague
16 and ambiguous”); *Lockhart v. Comm’r of Soc. Sec.*, 2015 WL 5173049, at *9 (E.D.
17 Cal. Sept. 3, 2015) (ALJ erred by rejecting physician’s opinion regarding claimant’s
18 concentration ability as vague without seeking to develop and clarify the record),
19 *report and recommendation adopted*, 2015 WL 11233047 (E.D. Cal. Nov. 4, 2015);
20 *Dean v. Colvin*, 2015 WL 6158874, at *7 (W.D. Wash. Sept. 29, 2015) (the ALJ
21 improperly rejected physician’s opinion of functional limitations as “mild” and
22 “moderate” on ground that terms were “too vague to be useful”), *report and*
23 *recommendation adopted*, 2015 WL 6158913 (W.D. Wash. Oct. 19, 2015).

24 Second, the ALJ found that Dr. Joseph’s opinions that Plaintiff was limited in
25 his ability to relate to coworkers, work without supervision, and complete a normal
26 workday or work week were inconsistent with Dr. Joseph’s findings showing that
27 Plaintiff “had normal grooming, eye contact, interpersonal contact, cooperation,
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1 behavior, logical thoughts, thought content, orientation, cognitive function, attention,
2 concentration, calculations, fund of knowledge, and intelligence.” (AR 27.)

3 As a general matter, an ALJ may reject a medical conclusion that is
4 inconsistent with the findings from the physician’s own examination. *See Hernandez*
5 *v. Berryhill*, 707 F. App’x 456, 457-458 (9th Cir. 2017) (fact that physician’s opinion
6 that was inconsistent with physician’s “own treatment notes” is a specific and
7 legitimate reason for discounting opinion); *Bayliss v. Barnhart*, 427 F.3d 1211, 1216
8 (9th Cir. 2005) (discrepancy between a physician’s notes and recorded observations
9 and opinions and the physician’s assessment of limitations is a clear and convincing
10 reason for rejecting the opinion).

11 Here, however, the ALJ’s conclusion that Dr. Joseph’s report was inconsistent
12 with her opinions is not supported by the record. In particular, it is not evident, and
13 the ALJ did not explain, how findings that Plaintiff had “fair eye contact and fair
14 interpersonal contact with this interviewer,” was cooperative, logical, able to perform
15 calculations and of average intelligence, were inconsistent moderate limitations in an
16 ability to interact with coworkers, work without supervision, or complete a normal
17 workday or workweek. *See Anderson v. Berryhill*, 2018 WL 2081848, at *4 (C.D.
18 Cal. Apr. 30, 2018) (although ALJ correctly noted physician’s report found claimant
19 was “polite and cooperative,” “oriented in all spheres,” “made good eye contact,”
20 had normal speech, and “reportedly had not abused drugs in a year,” he failed to
21 “explain how these particular aspects of the mental status examination are
22 inconsistent with the limitations assessed by Dr. El Sokkary, such as moderate
23 restrictions in the ability to understand, remember, and perform simple tasks and
24 difficulties completing a normal workday/workweek without brief interruptions from
25 psychiatric symptoms”); *Deen v. Colvin*, 214 F. Supp. 3d 1000, 1006 (W.D. Wash.
26 2016) (ALJ’s reason for rejecting physician opinion was not supported by substantial
27 evidence because report finding claimant cooperative during a portion of the
28 evaluation did not undermine physician’s findings concluding that claimant would

1 have severe social impairments in a full-time workplace); *see also, Popa v. Berryhill*,
2 872 F.3d 901, 906 (9th Cir. 2017) (ALJ failed to provide legally sufficient reasons
3 for rejecting examining psychologist’s opinion that claimant was “not likely to
4 maintain regular attendance [at work] due to [her] mental health” where the ALJ
5 concluded that the opinion conflicted with the claimant’s daily activities but failed to
6 explain how the ability to attend church, shop for groceries, and watch television
7 establishes the ability to maintain regular attendance at work).

8 Moreover, the ALJ did not address several of Dr. Joseph’s other findings in
9 the mental status examination. For example, the ALJ failed to consider Dr. Joseph’s
10 findings that Plaintiff’s thought process was circumstantial, disorganized, and
11 tangential; his mood was anxious and depressed; his affect was irritable, angry, sad,
12 and constricted; and his insight and judgment did not appear to be intact regarding
13 his current situation. (AR 308-310.) The ALJ’s selective reliance on only some of
14 Dr. Joseph’s findings in the mental status examination does not provide a sufficient
15 basis for rejecting her opinion. *See Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th
16 Cir. 2001) (a treating doctor’s “statements must be read in context of the overall
17 diagnostic picture he draws”); *Anderson*, 2018 WL 2081848, at *4 (ALJ improperly
18 relied only on some findings to conclude physician’s report was inconsistent with
19 opinion).

20 The Commissioner points out that moderate mental limitations are defined as
21 “more than a slight limitation in this area but the individual is still able to function
22 satisfactorily.” (ECF No. 19 at 5.) While moderate limitations do not necessarily
23 indicate that Plaintiff is unable to perform all work activity, the ALJ was required to
24 either include these limitations in Plaintiff’s RFC assessment or provide legally
25 sufficient reasons for rejecting them. *See Farnetti v. Comm’r of Soc. Sec.*, 2018 WL
26 4182493, at *4 (E.D. Cal. Aug. 29, 2018) (that “moderate limitations” do not render
27 a claimant disabled does not permit ALJ to ignore them by failing to include them in
28 RFC or properly reject them); *Wiles v. Berryhill*, 2017 WL 5186333, at *3 (C.D. Cal.

1 Nov. 8, 2017) (although moderate limitations in various areas of functioning, such as
2 in the ability to maintain regular attendance or to complete a normal workday and
3 workweek are not per se disabling, ALJ erred in assessing RFC without either
4 including the limitations or offering specific reasons for rejecting opinion).

5 Finally, an ALJ’s failure to properly evaluate a treating physician’s opinion
6 may be harmless error when a reviewing court “can confidently conclude that no
7 reasonable ALJ, when fully crediting the [opinion], could have reached a different
8 disability determination.” *Marsh v. Colvin*, 792 F.3d 1170, 1173 (9th Cir. 2015)
9 (quoting *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055-1056 (9th Cir.
10 2006)). If Dr. Joseph’s opinions were credited, it would likely have affected the
11 ALJ’s RFC and, consequently, the hypothetical posed to the VE. Further, the VE did
12 not offer testimony regarding a hypothetical claimant with the limitations that the
13 ALJ failed to properly address. (*See* AR 77-83.) Accordingly, the Court cannot
14 conclude that the error was harmless. *See Adkins v. Berryhill*, 2018 WL 4735714, at
15 *4 (C.D. Cal. Sept. 28, 2018) (error was not harmless because, in failing to either
16 expressly reject or incorporate physician’s restrictions into RFC or the hypothetical
17 questions posed to the VE, the VE’s opinion regarding claimant’s ability to perform
18 work lacked evidentiary value); *Devery v. Colvin*, 2016 WL 3452487, at *5 (C.D.
19 Cal. June 22, 2016) (ALJ’s erroneous failure to provide reasons for rejecting
20 physician’s limitations was not harmless because VE did not testify that a
21 hypothetical person with those limitations could work).

22 REMEDY

23 Ninth Circuit case law “precludes a district court from remanding a case for an
24 award of benefits unless certain prerequisites are met.” *Dominguez v. Colvin*, 808
25 F.3d 403, 407 (9th Cir. 2016) (citations omitted). “The district court must first
26 determine that the ALJ made a legal error, such as failing to provide legally sufficient
27 reasons for rejecting evidence. . . . If the court finds such an error, it must next review
28 the record as a whole and determine whether it is fully developed, is free from

1 conflicts and ambiguities, and all essential factual issues have been resolved.”
2 *Dominguez*, 808 F.3d at 407 (citation and internal quotation marks omitted).

3 Although the Court has found error as discussed above, the record on the whole
4 is not fully developed, and factual issues remain outstanding. The issues concerning
5 Plaintiff’s alleged disability “should be resolved through further proceedings on an
6 open record before a proper disability determination can be made by the ALJ in the
7 first instance.” See *Brown-Hunter v. Colvin*, 806 F.3d 487, 496 (9th Cir. 2015); see
8 also *Treichler*, 775 F.3d at 1101 (remand for award of benefits is inappropriate where
9 “there is conflicting evidence, and not all essential factual issues have been
10 resolved”) (citation omitted); *Strauss v. Comm’r of the Soc. Sec. Admin.*, 635 F.3d
11 1135, 1138 (9th Cir. 2011) (same where the record does not clearly demonstrate the
12 claimant is disabled within the meaning of the Social Security Act).

13 Accordingly, the appropriate remedy is a remand for further administrative
14 proceedings pursuant to sentence four of 42 U.S.C. § 405(g).²

15 IT IS THEREFORE ORDERED that Judgment be entered reversing the
16 decision of the Commissioner of Social Security and remanding this matter for
17 further administrative proceedings consistent with this opinion.

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19 DATED: 2/20/2019



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22 ALEXANDER F. MacKINNON
UNITED STATES MAGISTRATE JUDGE

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² It is not the Court’s intent to limit the scope of the remand.