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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

MAX M. DE VIVO,  
Plaintiff,  
v.  
COMMISSIONER OF SOCIAL  
SECURITY,  
Defendant.

**Case No. 1:15-cv-01332-EPG  
FINAL JUDGMENT AND ORDER  
REGARDING PLAINTIFF’S SOCIAL  
SECURITY COMPLAINT**

This matter is before the Court on Plaintiff’s complaint for judicial review of an unfavorable decision of the Commissioner of the Social Security Administration regarding his application for disability insurance benefits. The parties have consented to entry of final judgment by the United States Magistrate Judge under the provisions of 28 U.S.C. § 636(c) with any appeal to the Court of Appeals for the Ninth Circuit. (ECF Nos. 10, 11.)

At the hearing on February 28, 2017, the Court heard from the parties and, having reviewed the record, administrative transcript, the briefs of the parties, and the applicable law, finds as follows:

For the reasons announced by the Court on the record at the conclusion of the parties’ oral argument on February 28, 2017, the Court finds that the decision of the Commissioner of Social Security should be reversed and the case should be remanded for further proceedings. The Administrative Law Judge found Plaintiff’s mental impairments not severe at step two of the five

1 step analysis. In doing so, however, the Administrative Law Judge did not discuss reviewing  
2 psychologist Frances Breslin, Ph.D., who found moderate limitations in Plaintiff's ability to  
3 maintain concentration, persistence, and pace. The Administrative Law Judge also did not discuss  
4 Kathleen Friedland, Ph.D., who found that Plaintiff may have "attention problems" and  
5 difficulties with "complex tasks and instructions." Finally, the Administrative Law Judge did not  
6 discuss the limitations suggested by Paul Berg, Ph.D., who determined that Plaintiff had  
7 "difficulty managing routine affairs . . . poor memory and concentration and the inability to make  
8 decisions." The ALJ's failure to consider these three medical sources constituted legal error.

9 On remand, the Administrative Law Judge shall examine the record with respect to the  
10 above medical sources and determine whether they should be incorporated in the step two  
11 severity analysis. If they should not be incorporated, the Administrative Law Judge should  
12 explain why. Alternatively, the Administrative Law Judge may incorporate their findings and  
13 continue the analysis using the five step process.

14 Accordingly, the Court GRANTS Plaintiff's appeal from the administrative decision of  
15 the Commissioner of Social Security and the case is remanded to the Social Security  
16 Administration. The Clerk of the Court is DIRECTED to enter judgment in favor of Plaintiff Max  
17 De Vivo and against Defendant Nancy A. Berryhill, Acting Commissioner of Social Security.

18 IT IS SO ORDERED.

19 Dated: March 1, 2017

20 /s/ Eric P. Shroy  
21 UNITED STATES MAGISTRATE JUDGE  
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