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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Frank Joseph Zompa,

Plaintiff,

v.

Acting Commissioner of the Social Security
Administration,

Defendant.

No. CV-16-04204-PHX-ESW

ORDER

Pending before the Court is Frank Joseph Zompa’s (“Plaintiff”) appeal of the Social Security Administration’s (“Social Security”) denial of his claim for disability benefits. The Court has jurisdiction to decide Plaintiff’s appeal pursuant to 42 U.S.C. § 405(g). Under 42 U.S.C. § 405(g), the Court has the power to enter, based upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the case for a rehearing. Both parties have consented to the exercise of U.S. Magistrate Judge jurisdiction. (Doc. 17).

After reviewing the Administrative Record (“A.R.”) and the parties’ briefing (Docs. 18, 19, 26, 27), the Court finds that the Administrative Law Judge’s (“ALJ”) decision contains harmful legal error. For the reasons explained in Section II below, the

1 decision is reversed and the case is remanded to the Commissioner of Social Security for
2 an immediate award of benefits.

3 I. LEGAL STANDARDS

4 A. Disability Analysis: Five-Step Evaluation

5 The Social Security Act (the “Act”) provides for disability insurance benefits to
6 those who have contributed to the Social Security program and who suffer from a
7 physical or mental disability. 42 U.S.C. § 423(a)(1). The Act also provides for
8 Supplemental Security Income to certain individuals who are aged 65 or older, blind, or
9 disabled and have limited income. 42 U.S.C. § 1382. To be eligible for benefits based
10 on an alleged disability, the claimant must show that he or she suffers from a medically
11 determinable physical or mental impairment that prohibits him or her from engaging in
12 any substantial gainful activity. 42 U.S.C. § 423(d)(1)(A); 42 U.S.C. § 1382c(A)(3)(A).
13 The claimant must also show that the impairment is expected to cause death or last for a
14 continuous period of at least 12 months. *Id.*

15 To decide if a claimant is entitled to Social Security benefits, an ALJ conducts an
16 analysis consisting of five questions, which are considered in sequential steps. 20 C.F.R.
17 §§ 404.1520(a), 416.920(a). The claimant has the burden of proof regarding the first four
18 steps:¹

19 **Step One:** Is the claimant engaged in “substantial gainful
20 activity”? If so, the analysis ends and disability benefits are
21 denied. Otherwise, the ALJ proceeds to Step Two.

22 **Step Two:** Does the claimant have a medically severe
23 impairment or combination of impairments? A severe
24 impairment is one which significantly limits the claimant’s
25 physical or mental ability to do basic work activities. 20
26 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does not
27 have a severe impairment or combination of impairments,
28 disability benefits are denied at this step. Otherwise, the ALJ
proceeds to Step Three.

¹ *Parra v. Astrue*, 481 F.3d 742,746 (9th Cir. 2007).

1 **Step Three:** Is the impairment equivalent to one of a number
2 of listed impairments that the Commissioner acknowledges
3 are so severe as to preclude substantial gainful activity? 20
4 C.F.R. §§ 404.1520(d), 416.920(d). If the impairment meets
5 or equals one of the listed impairments, the claimant is
6 conclusively presumed to be disabled. If the impairment is
7 not one that is presumed to be disabling, the ALJ proceeds to
8 the fourth step of the analysis.

9 **Step Four:** Does the impairment prevent the claimant from
10 performing work which the claimant performed in the past?
11 If not, the claimant is “not disabled” and disability benefits
12 are denied without continuing the analysis. 20 C.F.R. §§
13 404.1520(f), 416.920(f). Otherwise, the ALJ proceeds to the
14 last step.

15 If the analysis proceeds to the final question, the burden of proof shifts to the
16 Commissioner:²

17 **Step Five:** Can the claimant perform other work in the
18 national economy in light of his or her age, education, and
19 work experience? The claimant is entitled to disability
20 benefits only if he or she is unable to perform other work. 20
21 C.F.R. §§ 404.1520(g), 416.920(g). Social Security is
22 responsible for providing evidence that demonstrates that
23 other work exists in significant numbers in the national
24 economy that the claimant can do, given the claimant’s
25 residual functional capacity, age, education, and work
26 experience. *Id.*

27 **B. Standard of Review Applicable to ALJ’s Determination**

28 The Court must affirm an ALJ’s decision if it is supported by substantial evidence
and is based on correct legal standards. *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir.
2012); *Marcia v. Sullivan*, 900 F.2d 172, 174 (9th Cir. 1990). Although “substantial
evidence” is less than a preponderance, it is more than a “mere scintilla.” *Richardson v.*
Perales, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison v. NLRB*, 305 U.S. 197,

² *Parra*, 481 F.3d at 746.

1 229 (1938)). It is “such relevant evidence as a reasonable mind might accept as adequate
2 to support a conclusion.” *Id.*

3 In determining whether substantial evidence supports the ALJ’s decision, the
4 Court considers the record as a whole, weighing both the evidence that supports and
5 detracts from the ALJ’s conclusions. *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir.
6 1998); *Tylitzki v. Shalala*, 999 F.2d 1411, 1413 (9th Cir. 1993). If there is sufficient
7 evidence to support the ALJ’s determination, the Court cannot substitute its own
8 determination. *See Morgan v. Comm’r of the Social Sec. Admin.*, 169 F.3d 595, 599 (9th
9 Cir. 1999) (“Where the evidence is susceptible to more than one rational interpretation, it
10 is the ALJ’s conclusion that must be upheld.”); *Magallanes v. Bowen*, 881 F.2d 747, 750
11 (9th Cir. 1989). This is because the ALJ, not the Court, is responsible for resolving
12 conflicts and ambiguities in the evidence and determining credibility. *Magallanes*, 881
13 F.2d at 750; *see also Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

14 The Court also considers the harmless error doctrine when reviewing an ALJ’s
15 decision. This doctrine provides that an ALJ’s decision need not be remanded or
16 reversed if it is clear from the record that the error is “inconsequential to the ultimate
17 nondisability determination.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008)
18 (citations omitted); *Molina*, 674 F.3d at 1115 (an error is harmless so long as there
19 remains substantial evidence supporting the ALJ’s decision and the error “does not
20 negate the validity of the ALJ’s ultimate conclusion”) (citations omitted).

21 **II. PLAINTIFF’S APPEAL**

22 **A. Procedural Background**

23 Plaintiff, who was born in 1963, has worked as a retail cashier, stocker,
24 storekeeper, and security guard. (A.R. 76, 87). In 2012, Plaintiff filed applications for
25 disability insurance benefits and supplemental security income. (A.R. 197-210).
26 Plaintiff’s applications alleged that on September 1, 2011, Plaintiff became unable to
27 work due to back problems, walking problems, breathing problems, diabetes, and
28 glaucoma. (A.R. 87, 108). Social Security denied the applications on November 1, 2012.

1 (A.R. 131-37). In May 2013, upon Plaintiff’s request for reconsideration, Social Security
2 affirmed the denial of benefits. (A.R. 143-50). Plaintiff sought further review by an
3 ALJ, who conducted a hearing in November 2014. (A.R. 8-9, 38-84).

4 In her June 26, 2015 decision, the ALJ found that Plaintiff is not disabled within
5 the meaning of the Social Security Act. (A.R. 13-29). The Appeals Council denied
6 Plaintiff’s request for review, making the ALJ’s decision the final decision of the Social
7 Security Commissioner. (A.R. 1-7). On December 2, 2016, Plaintiff filed a Complaint
8 (Doc. 1) pursuant to 42 U.S.C. § 405(g) requesting judicial review and reversal of the
9 ALJ’s decision.

10 **B. The ALJ’s Application of the Five-Step Disability Analysis**

11 **1. Step One: Engagement in “Substantial Gainful Activity”**

12 The ALJ determined that Plaintiff has not engaged in substantial gainful activity
13 since September 1, 2011. (A.R. 15). Neither party disputes this determination.

14 **2. Step Two: Presence of Medically Severe Impairment/Combination**
15 **of Impairments**

16 The ALJ found that Plaintiff has the following severe impairments: (i) obesity; (ii)
17 lumbar degenerative disc disease; (iii) osteoarthritis of the knees; and (iv) “asthma v.
18 chronic pulmonary disease (COPD).” (A.R. 15). Plaintiff asserts that the ALJ erred by
19 omitting Plaintiff’s alleged mood and anxiety disorders in the list of severe impairments.
20 (Doc. 18 at 15-20).

21 **3. Step Three: Presence of Listed Impairment(s)**

22 The ALJ determined that Plaintiff does not have an impairment or combination of
23 impairments that meets or medically equals an impairment listed in 20 C.F.R. Part 404,
24 Subpart P, Appendix 1 of the Social Security regulations. (A.R. 19-20). Neither party
25 disputes the ALJ’s determination at this step.

26 **4. Steps Four and Five: Capacity to Perform Work**

27 The ALJ found that Plaintiff has retained the residual functional capacity (“RFC”)
28 to perform light work as defined in 20 C.F.R. § 404.1567(b) and 416.967(b). (A.R. 20).

1 Based on the assessed RFC, the ALJ determined that Plaintiff can perform his past
2 relevant work as a security guard. (A.R. 27). The ALJ made the alternative
3 determination at Step Five that Plaintiff is not disabled under the Medical-Vocational
4 Guidelines. (A.R. 28). Plaintiff argues that the ALJ improperly weighed the evidence in
5 assessing his RFC and asserts that he is unable to engage in any work. (Doc. 18 at 8-24).

6 **C. The ALJ Failed to Provide Valid Reasons for Discounting the Opinions of**
7 **Treating Physician Suhair Stipho-Majeed, M.D.**

8 In weighing medical source opinions in Social Security cases, there are three
9 categories of physicians: (i) treating physicians, who actually treat the claimant; (2)
10 examining physicians, who examine but do not treat the claimant; and (3) non-examining
11 physicians, who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821,
12 830 (9th Cir. 1995). An ALJ must provide clear and convincing reasons that are
13 supported by substantial evidence for rejecting the uncontradicted opinion of a treating or
14 examining doctor. *Id.* at 830-31; *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.
15 2005). An ALJ cannot reject a treating or examining physician's opinion in favor of
16 another physician's opinion without first providing specific and legitimate reasons that
17 are supported by substantial evidence. *Bayliss*, 427 F.3d at 1216; 20 C.F.R. §
18 404.1527(c)(4) (an ALJ must consider whether an opinion is consistent with the record as
19 a whole); *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); *Tommasetti*, 533 F.3d
20 at 1041 (finding it not improper for an ALJ to reject a treating physician's opinion that is
21 inconsistent with the record).

22 The ALJ reviewed records from Plaintiff's treating physician, Suhair Stipho-
23 Majeed, M.D. On October 30, 2014, Dr. Stipho-Majeed completed a "Pain Functional
24 Capacity (RFC) Questionnaire" (the "Pain Questionnaire") and a "Medical Assessment of
25 Ability To Do Work Related Physical Activities" (the "Medical Assessment") (A.R. 983-
26 87). In the Pain Questionnaire, Dr. Stipho-Majeed opined that Plaintiff suffers from
27 "moderately severe" pain that is to be reasonably expected from objective clinical or
28 diagnostic findings (i.e. "MRI spine"). (A.R. 983). Dr. Stipho-Majeed assessed that

1 Plaintiff's pain would frequently interfere with attention, concentration, persistence or
2 pace, which would result in the failure to complete tasks in a timely manner. (A.R. 983-
3 84).

4 In the Medical Assessment, Dr. Stipho-Majeed stated that Plaintiff has been
5 diagnosed with osteoarthritis, spinal stenosis, COPD, "chronic back pain (moderate
6 foraminal stenosis in lumbar spine)," and schizoaffective disorder. (A.R. 985, 987). Dr.
7 Stipho-Majeed stated that Plaintiff can (i) lift and/or carry less than ten pounds; (ii) can
8 stand and/or walk for less than two hours in an eight hour work day; (iii) sit less than six
9 hours in an eight hour work day; and (iv) must alternate between sitting and standing
10 every forty-five minutes. (A.R. 985). Dr. Stipho-Majeed indicated that Plaintiff requires
11 a cane for ambulation, but can (i) continuously climb, balance, stoop, kneel, crouch, and
12 crawl; and (ii) frequently use his left and right hands for handling, fine manipulation,
13 feeling, and reaching. (A.R. 985-86).

14 The ALJ gave Dr. Stipho-Majeed's opinions above "very little weight." (A.R.
15 24).³ As discussed below, the Court finds that the ALJ's reasons for discounting Dr.
16 Stipho-Majeed's opinions are not specific, legitimate, and supported by substantial
17 evidence in the record.⁴

18 In explaining why Dr. Stipho-Majeed's opinions were discounted, the ALJ first
19 stated: "The objective medical evidence does suggest the claimant has limitations but not
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21 ³ The ALJ gave no weight to Dr. Stipho-Majeed's letter dated May 9, 2014 in
22 which Dr. Stipho-Majeed stated that Plaintiff has a "very limited capability to work" due
23 to multiple medical conditions, such as schizoaffective disorder. (A.R. 24, 785).
24 Plaintiff does not challenge this rejection. (Doc. 18 at 13). The Court, however, notes
25 that the ALJ erroneously rejected the letter in part on the basis that Dr. Stipho-Majeed
26 rendered a "diagnosis of 'schizoaffective disorder' which is an impairment outside his
27 field of specialty." (A.R. 24); *see Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir.
1987) ("Under general principles of evidence law Dr. Gehlen is qualified to give a
28 medical opinion as to Mrs. Sprague's mental state as it relates to her physical disability
even though Dr. Gehlen is not a psychiatrist."). In addition, the ALJ's decision
erroneously states that no treating mental health professional rendered that diagnosis.
The record reflects that Plaintiff's mental health provider diagnosed Plaintiff with
"psychotic disorder w/ hallucinations." (*See, e.g.*, A.R. 880).

⁴ Plaintiff does not assert that the clear and convincing standard applies. (Doc. 18
at 9).

1 to the degree purported by Dr. Stipho-Majeed. The doctor’s own notes do not support
2 that degree of limitation.” (A.R. 25). The ALJ cites one medical record in support of this
3 conclusion, recounting that “[i]n November 2013, [Dr. Stipho-Majeed] noted the
4 claimant’s stress testing showed no evidence of left ventricular myocardial ischemia or
5 infarction, the COPD was well controlled with Advair and lumbar X-rays showed “mild”
6 degenerative joint disease of back (45F:117).” (*Id.*). However, the November 2013
7 record also states that Plaintiff has chronic back pain and osteoarthritis in both knees.
8 (A.R. 1162). Additionally, as Dr. Stipho-Majeed’s Medical Assessment notes, a
9 magnetic resonance imaging (“MRI”) report stated that Plaintiff has “[m]oderate
10 foraminal stenosis” at L5-S1. (A.R. 987, 988). ALJs “must review the whole record;
11 they cannot cherry-pick evidence to support their findings.” *Bostwick v. Colvin*, No. 13-
12 cv-1936-LAB, 2015 WL 12532350, at *2 (S.D. Cal. Mar. 30, 2015); *see also Holohan v.*
13 *Massanari*, 246 F.3d 1195, 1207 (9th Cir. 2001) (holding that an ALJ erred by selectively
14 considering some entries in the medical record while ignoring others); *see Garrison v.*
15 *Colvin*, 759 F.3d 995, 1017 n.23 (9th Cir. 2014) (“The ALJ was not permitted to ‘cherry-
16 pick’ from those mixed results to support a denial of benefits.”). Further, an ALJ may
17 not insert his or her interpretation of the results in place of an examining physician’s
18 opinion. *See also Schmidt v. Sullivan*, 914 F.2d 117, 118 (7th Cir. 1990) (“[J]udges,
19 including administrative law judges of the Social Security Administration, must be
20 careful not to succumb to the temptation to play doctor. The medical expertise of the
21 Social Security Administration is reflected in regulations; it is not the birthright of the
22 lawyers who apply them. Common sense can mislead; lay intuitions about medical
23 phenomena are often wrong.”) (citations omitted).

24 The Court finds that the ALJ’s decision does not sufficiently explain the ALJ’s
25 reasons for concluding that the objective medical evidence does not support Dr. Stipho-
26 Majeed’s opinions. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015)
27 (explaining that the Court cannot “speculate as to the grounds for the ALJ’s
28 conclusions”); *see also Orn v. Astrue*, 495 F.3d 625, 632 (9th Cir. 2007) (“The ALJ must

1 do more than offer his conclusions. He must set forth his own interpretations and explain
2 why they, rather than the doctors', are correct.") (citation omitted); *Regennitter v.*
3 *Comm'r of Soc. Sec. Admin.*, 166 F.3d 1294, 1299 (9th Cir. 1999) ("[C]onclusory reasons
4 will not justify an ALJ's rejection of a medical opinion."). Accordingly, the ALJ's first
5 reason for discounting Dr. Stipho-Majeed's opinions is legally improper.

6 Next, the ALJ observed that Dr. Stipho-Majeed stated in the Medical Assessment
7 that Plaintiff requires a cane, but Plaintiff's "physical therapist in the same month and
8 year noted [Plaintiff] was able to ambulate without assistance and without the use of
9 adaptive equipment (37F:3)." (A.R. 25). The ALJ found that "[t]hese are inconsistencies
10 suggesting the doctor's opinion is somewhat overstated." (*Id.*).⁵ As Plaintiff notes, the
11 record cited by the ALJ is from the Pain Center of Arizona, not from a physical therapist.
12 (Doc. 18 at 10; A.R. 826). In addition, the record states that Plaintiff arrived at the
13 appointment with a cane. (A.R. 824). Numerous other records indicate that Plaintiff
14 needs a cane to ambulate. (*See., e.g.*, A.R. 813, 816, 819, 846, 862). The Court finds that
15 the ALJ's second reason for discounting Dr. Stipho-Majeed's opinions is not specific,
16 legitimate, and supported by substantial evidence.

17 As another reason for discounting Dr. Stipho-Majeed's opinions, the ALJ wrote
18 that the "opinion is itself conflicting. While the opinion suggests a great degree of
19 limitation, the doctor specifically concluded the claimant would not have any limitations
20 in the following areas, climbing, balancing, stopping, kneeling, crouching and crawling."
21 (A.R. 25). The ALJ also recounted that Dr. Stipho-Majeed:

22 listed the claimant's July 2014 MRI as a significant reason for
23 the limitations and yet the MRI has relatively mild findings
24 including a mild disc bulge at L4-5, and L5-S1 with
borderline spinal stenosis and bilateral foraminal stenosis

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26 ⁵ The ALJ also commented that it is of "note that [Dr. Stipho-Majeed] stated the
27 conclusions in the opinions were based on the evaluation of a physical therapist, which
28 implies the opinion is not based on his own observations making the opinion less reliable
(45F:61)." (A.R. 25). Plaintiff correctly asserts that this misstates the record. (Doc. 18
at 11). It was Dr. Shahrzad Saririan, M.D., not Dr. Stipho-Majeed, who wrote in a June
2014 progress note: "Fill forms based on PT evaluation." (A.R. 1106).

1 (42F). The degree of limitation and mild findings are
2 inconsistent and suggest the doctor was advocating for his
3 patent.

4 (A.R. 25). The ALJ's decision omits that the July 2014 MRI found "moderate foraminal
5 stenosis" at L5-S1. (A.R. 988). To reiterate, an ALJ may not insert his or her
6 interpretation of the results in place of an examining physician's opinion. *See Schmidt*,
7 914 F.2d at 118. The ALJ has failed to sufficiently explain how Dr. Stipho-Majeed's
8 opinions reflected in the Pain Questionnaire and Medical Assessment are conflicting.

9 Finally, the ALJ concluded that because Dr. Stipho-Majeed's opinions are
10 presented in a "check-off" report format that does not contain an adequate explanation of
11 the bases for the conclusions, the opinions may be rejected. (A.R. 25). The Ninth
12 Circuit, however, has explained that "the treating physician's opinion as to the combined
13 impact of the claimant's limitations—both physical and mental—is entitled to special
14 weight." *Lester*, 81 F.3d at 833. "The treating physician's continuing relationship with
15 the claimant makes him especially qualified to evaluate reports from examining doctors,
16 to integrate the medical information they provide, and to form an overall conclusion as to
17 functional capacities and limitations, as well as to prescribe or approve the overall course
18 of treatment." *Id.* An ALJ is "not entitled to reject the responses of a treating physician
19 without specific and legitimate reasons for doing so, even where those responses were
20 provided on a 'check-the-box' form, were not accompanied by comments, and did not
21 indicate to the ALJ the basis for the physician's answers." *Trevizo v. Berryhill*, 871 F.3d
22 664, 677 n.4 (9th Cir. 2017) (stating that "there is no authority that a 'check-the-box'
23 form is any less reliable than any other type of form; indeed, agency physicians routinely
24 use these types of forms to assess the intensity, persistence, or limiting effects of
25 impairments").

26 Dr. Stipho-Majeed's Pain Questionnaire and Medical Assessment were completed
27 on the same day that Dr. Stipho-Majeed examined Plaintiff. (A.R. 983-87, 1046-47).
28 The examination notes are consistent with the opinions expressed in the Pain
Questionnaire and Medical Assessment. Further, the opinions in the Pain Questionnaire

1 and Medical Assessment are supported by Dr. Stipho-Majeed's prior examination reports.
2 (A.R. 1046-50, 1060-64, 1066-70, 1079, 1081-84, 1123-24, 1130-31, 1147, 1156, 1159-
3 60, 1161-68, 1189-93). In this circumstance, the Court finds that the ALJ's erred in
4 rejecting Dr. Stipho-Majeed's opinions on the ground that the opinions were presented in
5 a "check-off" report. *See Garrison*, 759 F.3d at 1013 (finding that an ALJ committed "a
6 variety of egregious and important errors," including failing "to recognize that the
7 opinions expressed in check-box form in the February 2008 RFC Questionnaire were
8 based on significant experience with Garrison and supported by numerous records, and
9 were therefore entitled to weight that an otherwise unsupported and unexplained check-
10 box form would not merit").

11 Based on the foregoing, the Court finds that the ALJ improperly discounted Dr.
12 Stipho-Majeed's opinions. This error is harmful and alone requires remand. The Court
13 therefore does not address Plaintiff's arguments regarding the other alleged errors in the
14 ALJ's decision.

15 **D. The Case Will Be Remanded for an Award of Benefits**

16 Ninth Circuit jurisprudence "requires remand for further proceedings in all but the
17 rarest cases." *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1101 n.5 (9th Cir.
18 2014). The Ninth Circuit, however, has adopted a test to determine when a case should
19 be remanded for payment of benefits in cases where an ALJ has improperly rejected
20 claimant testimony or medical opinion evidence. *Id.* at 1100-01; *Garrison*, 759 F.3d at
21 1020. This test is commonly referred to as the "credit-as-true" rule, which consists of the
22 following three factors:

- 23 1. Has the ALJ failed to provide legally sufficient reasons for
24 rejecting evidence, whether claimant testimony or medical
25 opinion? *Treichler*, 775 F.3d at 1100-01.
- 26 2. Has the record been fully developed, are there outstanding
27 issues that must be resolved before a disability
28 determination can be made, or would further administrative
proceedings be useful? *Id.* at 1101. To clarify this factor,
the Ninth Circuit has stated that "[w]here there is

1 conflicting evidence, and not all essential factual issues
2 have been resolved, a remand for an award of benefits is
3 inappropriate.” *Id.*

- 4 3. If the improperly discredited evidence were credited as true,
5 would the ALJ be required to find the claimant disabled on
6 remand? *Id.*; *Garrison*, 759 F.3d at 1020.

7 Where a court has found that a claimant has failed to satisfy one of the factors of
8 the credit-as-true rule, the court does not need to address the remaining factors.
9 *Treichler*, 775 F.3d at 1107 (declining to address final step of the rule after determining
10 that the claimant has failed to satisfy the second step). Moreover, even if all three factors
11 are met, a court retains the discretion to remand a case for additional evidence or to
12 award benefits. *Id.* at 1101-02. A court may remand for further proceedings “when the
13 record as a whole creates serious doubt as to whether the claimant is, in fact, disabled
14 within the meaning of the Social Security Act.” *Garrison*, 759 F.3d at 1021. In
15 *Treichler*, the Ninth Circuit noted that “[w]here an ALJ makes a legal error, but the
16 record is uncertain and ambiguous, the proper approach is to remand the case to the
17 agency.” 775 F.3d at 1105.

18 After examining the record, the Court finds no outstanding issues of fact to be
19 resolved through further proceedings. At the administrative hearing, the VE testified that
20 based on Dr. Stipho-Majeed’s opinions regarding Plaintiff’s deficiencies in attention,
21 concentration, and persistence or pace, Plaintiff would not be able to retain employment.
22 (A.R. 82-83). The VE’s testimony establishes that if Dr. Stipho-Majeed’s opinions were
23 credited-as-true, the ALJ would be required to find that Plaintiff is disabled. The Court
24 does not find any material evidence in the record that creates serious doubt that Plaintiff
25 is in fact disabled. Therefore, based on the record, the Court finds it inappropriate to
26 remand the case for further proceedings. *See Benecke*, 379 F.3d at 595 (“Allowing the
27 Commissioner to decide the issue again would create an unfair ‘heads we win; tails, let’s
28 play again’ system of disability benefits adjudication.”); *Moisa v. Barnhart*, 367 F.3d
882, 887 (9th Cir. 2004) (“The Commissioner, having lost this appeal, should not have

1 another opportunity to show that Moisa is not credible any more than Moisa, had he lost,
2 should have an opportunity for remand and further proceedings to establish his
3 credibility.”) (citation omitted). The Court will remand the case for an immediate award
4 of benefits effective September 1, 2011 (the disability onset date).

5 **III. CONCLUSION**

6 Based on the foregoing,

7 **IT IS ORDERED** reversing the decision of the Commissioner of Social Security
8 and remanding this case to the Commissioner for an immediate award of benefits
9 effective September 1, 2011.

10 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter judgment
11 accordingly.

12 Dated this 19th day of February, 2018.

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15 Eileen S. Willett
16 United States Magistrate Judge
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