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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Eugene Edward Canez,

10 Plaintiff,

11 v.

12 Nancy A. Berryhill,

13 Defendant.

No. CV-18-00191-TUC-LCK

ORDER

14
15 Plaintiff Eugene Canez brought this action pursuant to 42 U.S.C. §§ 405(g) and
16 1383(c)(3), seeking judicial review of a final decision by the Commissioner of Social
17 Security (Commissioner). Canez filed an opening brief, Defendant filed a brief requesting
18 remand, and Canez filed a reply. (Docs. 16, 20, 22.) The parties have consented to
19 Magistrate Judge jurisdiction. (Doc. 13.) Based on the pleadings and the Administrative
20 Record, the Court remands this matter for benefits.

21 **PROCEDURAL HISTORY**

22 Canez filed an application for Supplemental Security Income (SSI) in December
23 2013. (Administrative Record (AR) 185.) He alleged disability from December 19, 2006.
24 (*Id.*) Canez's application was denied upon initial review (AR 64-76) and on reconsideration
25 (AR 77-90). A hearing was held on January 23, 2017 (AR 33-53), after which the ALJ
26 found that Canez was not disabled because he could perform other work available in the
27 national economy (AR 15-26). The Appeals Council denied Canez's request to review the
28 ALJ's decision. (AR 1.)

1 **FACTUAL HISTORY**

2 Canez was born in 1964 and was 49 at his protective filing date. (AR 185.) Canez
3 has past relevant work as a nursing home housekeeper and a yard worker. (AR 24, 37, 38.)

4 The ALJ found Canez had severe impairments of degenerative disc disease and right
5 eye blindness. (AR 17.) The ALJ determined Canez had the residual functional capacity
6 (RFC) to perform:

7 Light work as defined in 20 CFR 416.967(a), specifically the Claimant can
8 lift and carry twenty pounds occasionally and ten pounds frequently, stand
9 or walk for six hours total, and sit for six hours total in an eight-hour
10 workday. However, the climbing of ramps and stairs must be limited to
11 occasionally, while the climbing of ladders, ropes, and scaffolds must be
12 entirely precluded from work duties as assigned. Stooping or bending at the
waist are limited to occasionally. Kneeling, crouching, bending at the knees,
and crawling must be entirely precluded from assigned work duties. Tasks
requiring depth perception or field of vision must likewise be entirely
precluded from duties as assigned. Finally, exposure to dust, odors, and gases
must be precluded entirely from within the assigned work area.

13 (AR 19.) The ALJ concluded at Step Five, based on the Medical-Vocational Rules and the
14 testimony of a vocational expert (VE), that Canez could perform work that exists in
15 significant numbers in the national economy (fast food worker and cashier II). (AR 25.)

16 **STANDARD OF REVIEW**

17 The Commissioner employs a five-step sequential process to evaluate SSI claims.
18 20 C.F.R. § 416.920; *see also Heckler v. Campbell*, 461 U.S. 458, 460-462 (1983). To
19 establish disability the claimant bears the burden of showing he (1) is not working; (2) has
20 a severe physical or mental impairment; (3) the impairment meets or equals the
21 requirements of a listed impairment; and (4) claimant’s RFC precludes him from
22 performing his past work. 20 C.F.R. § 416.920(a)(4). At Step Five, the burden shifts to the
23 Commissioner to show that the claimant has the RFC to perform other work that exists in
24 substantial numbers in the national economy. *Hoopai v. Astrue*, 499 F.3d 1071, 1074 (9th
25 Cir. 2007). If the Commissioner conclusively finds the claimant “disabled” or “not
26 disabled” at any point in the five-step process, she does not proceed to the next step. 20
27 C.F.R. § 416.920(a)(4).

1 in an eight-hour day. Defendant argues that further proceedings are necessary, and she
2 disagrees with Canez's request for an award of benefits. Defendant argues there are
3 conflicts in the record that the ALJ must resolve: Dr. Hassman's opinion on Canez's
4 standing and walking abilities conflicted with the opinions of Drs. Fahlberg and Hirsch;
5 and examinations from various doctors were in conflict regarding whether Canez's gait
6 was impaired and if he needed a cane. Other than her citations to conflicting evidence,
7 Defendant's brief did not address the substance of Canez's claims of error numbered by
8 the Court as two through five.

9 As discussed below, the Court finds Canez's first three claims dispositive and,
10 therefore, does not address his last two arguments.

11 **Canez's Need for a Cane**

12 The ALJ rejected examining physician Dr. Hassman's finding that Canez needed a
13 cane to ambulate. (AR 22-23.) During her examination, Dr. Hassman observed that Canez
14 leaned heavily on a cane to avoid weightbearing on his right leg, putting most of his weight
15 on his left leg, and he experienced pain when putting weight on his right leg. (AR 335-36.)
16 Canez used a cane throughout the standing portion of the exam. (*Id.*) Dr. Hassman found
17 poor lumbar range of motion due to pain and lumbar pain with right hip range of motion.
18 (AR 336.) Dr. Hassman also recorded a positive straight leg raise (SLR) test. (*Id.*) Based
19 on Canez's range of motion, SLR test, and muscle tenderness, Dr. Hassman diagnosed
20 Canez with chronic low back pain. (AR 337.) Dr. Hassman concluded that a cane was
21 medically necessary for Canez on all terrains due to pain. (AR 338.)

22 The ALJ rejected Dr. Hassman's opinion that Canez needed a cane because it was
23 likely based on Canez's report that he had been using a cane for a long time and Canez's
24 demonstration of a subjective need for a cane. Further, the ALJ determined the finding was
25 inconsistent with certain normal exam findings. (AR 22-23.)

26 The opinion of an examining physician generally is afforded more weight than a
27 non-examining or reviewing physician's opinion. *See Lester v. Chater*, 81 F.3d 821, 830
28 (9th Cir. 1995). Here, the opinion of Dr. Hassman was contradicted by reviewing

1 physicians Drs. Fahlberg and Hirsch. When there are contradictory medical opinions, to
2 reject an examining physician’s opinion, the ALJ must provide “specific and legitimate
3 reasons that are supported by substantial evidence.” *Lester*, 81 F.3d at 830; *Bayliss v.*
4 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).

5 The ALJ erred in rejecting Dr. Hassman’s opinion because it was based on Canez’s
6 historical use of a cane and on “the doctor’s observations of the claimant’s subjective
7 demonstration of his need for the cane to avoid weight bearing on the right leg.” (AR 22-
8 23.) Dr. Hassman supported her finding that a cane was medically necessary for Canez on
9 all terrains by stating: “Claimant has been using a cane on and off since the 1990s. He has
10 pain with weightbearing on the right lower extremity and uses a cane to decrease stress on
11 the right lumbar area by decreasing weightbearing on the right lower extremity.” (AR 338.)
12 Although Dr. Hassman noted Canez’s long-time periodic use of a cane, she conducted a
13 physical exam, which the ALJ found to be thorough and consistent with her opinion. (AR
14 22.) As part of the exam, she asked Canez to perform numerous movements including
15 walking, standing, heel walking, toe walking (unable to do), hopping (unable to do on right
16 foot), tandem walking, and bending. (AR 335-36.) During those activities, Dr. Hassman
17 observed Canez had an inability to bear weight on his right leg without pain. (*Id.*) It was
18 not legitimate for the ALJ to conclude Dr. Hassman’s opinion was based on Canez’s
19 “subjective demonstration” when it was based on a series of clinical tests.

20 The ALJ also concluded that medical necessity of a cane was inconsistent with
21 several of Dr. Hassman’s physical findings. This determination was contrary to the ALJ’s
22 general finding that Dr. Hassman’s opinion “was consistent with her physical examination
23 findings.” (AR 22.) The ALJ discounted Dr. Hassman’s opinion, in part, based on her
24 finding that Canez had “poor lumbar range of motion associated with pain.” (AR 336.) The
25 governing regulations consider range of motion restrictions to be objective medical
26 evidence relevant to evaluating the intensity of a claimant’s symptoms. 20 C.F.R. §
27 416.929(c)(2). A finding of limited lumbar range of motion supported Dr. Hassman’s
28 opinion rather than providing a legitimate basis to reject it.

1 Next, the ALJ discounted Dr. Hassman's opinion based on certain normal
2 examination findings: normal lower extremity sensation, a straight spine, no tenderness
3 over the lumbar spine, minimal pain with side bending, no pain in knees and ankles, and
4 no atrophy, tenderness or edema in either leg. To a lay person, there is no apparent
5 contradiction between these normal findings and Canez needing a cane due to back pain
6 and inability to bear weight on his right leg. When Dr. Hassman considered all her
7 examination findings, the normal results as well as Canez's avoidance of weightbearing on
8 his right leg, tenderness and hypertonicity over right lumbar muscles, poor lumbar range
9 of motion with pain on forward and back bending, positive SLR test, lumbar pain on
10 rotation of right hip, and absent ankle reflexes, she found a cane medically necessary. (AR
11 336-37.) The ALJ imposed her own lay-person interpretation on Dr. Hassman's findings,¹
12 which she was not qualified to do; therefore, it was not a legitimate reason to discount an
13 examining doctor's opinion. *See Pina v. Berryhill*, No. CV 16-00354-TUC-BPV, 2017 WL
14 4216253, at *9 (D. Ariz. Sept. 22, 2017); *Winans v. Colvin*, No. CV-13-613-BPV, 2014
15 WL 4259471, at *6 (D. Ariz. Aug. 29, 2014) (holding substantial evidence does not support
16 an ALJ's decision that substitutes her opinion of the medical findings over that of a
17 physician); *see also Lapeirre-Gutt v. Astrue*, 382 Fed. App'x 662, 665 (9th Cir. 2010)
18 (finding that lack of muscle atrophy as a sign of low activity was an assumption by the ALJ
19 without support in the medical record).

20 The two reasons identified by the ALJ as her basis to discount Dr. Hassman's
21 opinion are not legitimate or supported by substantial evidence. The ALJ mentioned
22 repeatedly in her opinion that there was conflicting evidence on whether Canez needed a
23 cane some or all the time. (AR 20-24.) She did not, however, directly rely on this evidence
24 as a reason to discount Dr. Hassman's opinion. However, because Defendant relies upon

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26 ¹ The State agency medical consultants rejected all of Dr. Hassman's conclusions;
27 however, their decisions were not based on the consultants' interpretation of Dr. Hassman's
28 findings. (AR 72, 85.) Instead, the consultants found Dr. Hassman's opinion was based on
Canez's subjective complaints that they concluded were not credible. (*Id.*) The ALJ did not
rely on their opinions or reasoning in rejecting Dr. Hassman's opinion, which the ALJ
determined was supported by Dr. Hassman's thorough examination.

1 those findings to conclude there are unresolved factual conflicts in the record, the Court
2 discusses this portion of the ALJ's decision.

3 The ALJ's discussion of the conflicting evidence regarding Canez's gait is itself
4 inconsistent. First, the ALJ noted that some medical records documented a normal gait,
5 while others noted an antalgic gait and the use of a cane. (AR 22.) The ALJ then concluded
6 that, despite the mix of evidence on Canez's use of a cane, Dr. Hassman's opinion (which
7 included a cane as a medical necessity) was consistent with her examination findings. (*Id.*)
8 But, the ALJ rejected Dr. Hassman's conclusion that Canez needed a cane. Next, the ALJ
9 rejected the State agency medical consultants' opinions that Canez could do medium
10 exertion work because evidence "demonstrate[d] the use of a cane as well as limitations in
11 walking that would limit the Claimant to a light exertional level."² (AR 23.) After noting
12 that the consultants did not have the opportunity to review evidence of Canez's walking
13 limitations, the ALJ adopted the consultants' opinion that Canez could walk or stand six
14 hours per workday. (AR 19, 72, 87.) The ALJ then concluded that Canez did not have a
15 medical necessity for a cane "on a consistent basis." (*Id.*) That finding implicitly included
16 a determination that Canez would need a cane at least some of the time. However, the ALJ
17 wholesale rejected Dr. Hassman's finding that Canez needed a cane, and the ALJ included
18 no use of a cane in Canez's RFC.

19 The ALJ cited the following records as documenting that Canez had a normal gait
20 and/or an ability to exercise: at a September 28, 2015 appointment with a pulmonologist,
21 Canez was documented with a normal gait (AR 484); hepatologist Dr. Iftikhar recorded a
22 normal gait in June 2014, and April and December 2016 (AR 455, 459, 543); and Dr. Nabha
23 (a kidney specialist) noted a normal gait at March 2015 and March 2016 appointments (AR
24 513, 527). The ALJ also noted that cardiologist, Dr. Lancaster, recorded a normal gait and

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26 ² The State agency medical consultant that conducted the initial review, Dr.
27 Fahlberg, concluded Canez could do medium-level work, while the consultant that
28 conducted the review on reconsideration, Dr. Hirsch, concluded Canez could do light-level
work. (AR 72, 87, 89.) The ALJ erroneously stated that they both found Canez had a
medium exertional capacity. (AR 23.) The ALJ also rejected, without discussion, both their
opinions on Canez's ability to climb, stoop, kneel, crouch, and crawl, and whether Canez
had visual limitations. (*Compare* AR 19 with AR 73, 86.)

1 ability to exercise on October 14, 2016. (AR 537.) The prior month, however, on
2 September 9, 2016, Dr. Lancaster noted that Canez was not engaged in any exercise due to
3 back pain, and he noted use of a cane and inability to exercise. (AR 470, 472.)³ A
4 subsequent test ordered by Dr. Lancaster was done by alternative procedure because Canez
5 was unable to exercise to adequate working level on a treadmill. (AR 472, 474.) In June
6 and July 2014, Dr. Lancaster recorded that Canez used a cane, limped, and did no exercise
7 due to low back pain; the records inconsistently also reported that he had the ability to
8 exercise. (AR 476, 477, 482.)

9 The only record cited in support of the ALJ's finding that Canez had the ability to
10 exercise was squarely contradicted by that doctor's other records. Further, none of the
11 doctors cited were treating Canez for his spinal impairment or related pain. Those doctors
12 did not record any functional testing and there is no indication their cited findings were
13 more than a cursory reflection of Canez's gait upon entering the doctor's office. In contrast,
14 the doctors that were treating or examining Canez for his musculoskeletal problems
15 consistently documented impairment in his gait. Dr. Johnson, a treating pain specialist,
16 noted an antalgic gait on January 14, 2015. (AR 423.) At subsequent appointments through
17 2016, he documented an antalgic gait and use of a cane for support and ambulation.⁴ (AR
18 415, 504, 511, 539, 626.) Dr. Hassman thoroughly examined Canez as to his back pain and
19 concluded he always needed a cane. Dr. Din, his treating neurologist, repeatedly noted that
20 Canez had an unsteady gait (although his walking was "normal"). (AR 487, 495, 501-02.)
21 In sum, Canez's physicians that were treating him for spinal impairments and back pain
22 consistently noted his abnormal gait and use of a cane. Similarly, the cardiologist whose
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25 ³ The ALJ cited this record as one documenting Canez's walking limitations. (AR
26 23.) In reliance on that record, and others, the ALJ rejected, in part, the State agency
27 medical consultants' opinions. (*Id.* (citing Ex. 15F/4).)

28 ⁴ Canez refers to this as a medical opinion by Dr. Johnson that Canez needed a cane
to stand and walk. The Court does not consider the cited evidence to be a medical opinion;
rather, it is Dr. Johnson's medical record documenting that Canez was using a cane on
those dates and the purpose of it.

1 treatment included evaluating Canez's ability to exercise documented his inability to do
2 so, and that he had a limp and used a cane.

3 After summarizing all the relevant records, the Court finds they consistently
4 document Canez's gait abnormalities by the doctors to whom that finding was relevant to
5 their treatment of Canez. Additionally, the ALJ's various findings about Canez's need for
6 a cane were inconsistent.

7 **Dr. Moeen Din's Opinion**

8 On April 22, 2016, Dr. Din, a treating neurologist, opined that Canez could not stand
9 or sit for six or more hours in a work day and could stand for less than one hour due to foot
10 numbness (AR 435); had to lay down during the day; could not walk long distances due to
11 pain; and could lift and carry less than five pounds (AR 436). The ALJ discounted Dr.
12 Din's opinion because Canez reported pain relief for up to one year from epidural steroid
13 injections in 2014 and 2015; physical exams had documented a normal gait, ability to
14 exercise, and normal sensation in the lower extremities; and Canez reported an ability to
15 take out the trash if not too heavy. (AR 23.)

16 The opinion of a treating physician generally is afforded more weight than a non-
17 examining or reviewing physician's opinion. *Lester*, 81 F.3d at 830. The opinion of Dr.
18 Din was contradicted by that of reviewing physicians Drs. Fahlberg and Hirsch. When
19 there are contradictory medical opinions, to reject a treating physician's opinion, the ALJ
20 must provide "specific and legitimate reasons that are supported by substantial evidence."
21 *Id.*; *Bayliss*, 427 F.3d at 1216.

22 First, the ALJ discounted Dr. Din's opinion because Canez received pain relief from
23 treatment. In 2015 and 2016, Canez told Dr. Johnson that he got "great relief" from his
24 prior epidurals. (AR 503, 510.) Canez had epidural injections in March 2015, November
25 2015, and December 2016. (AR 431-32, 508, 626-27.) All of Dr. Johnson's records reflect
26 that Canez's pain was constant and could reach 8-10/10 when aggravated, such as by
27 standing. (*Id.*) Dr. Din's records indicate that, in June 2014, Canez reported constant
28 shooting pain with minimal relief from oxycodone. (AR 343.) For the remainder of the

1 year, his pain continued but he was getting some relief from medication. (AR 346, 349,
2 500.) In March 2016, Dr. Din recorded that Canez continued to have low back pain, but
3 medication provided some relief. (AR 497.) From May to September 2016, Canez reported
4 pain with prolonged standing or sitting and that his medication was insufficient. (AR 486,
5 491, 494.) As of May, he desired another injection but did not have the money to travel to
6 Tucson for the appointment (AR 494); he did not get another injection until December.
7 Despite obtaining benefit from the injections, Canez continued to be treated for chronic
8 pain, Dr. Din documented an unsteady gait, and Dr. Johnson documented Canez's use of
9 a cane to ambulate. Additionally, Dr. Din was the referring doctor for the injections (AR
10 423); thus, his proffered opinion was formed with awareness of the impact of the injections
11 on Canez's functioning. Critically, the pain relief provided by injections would not reduce
12 Canez's foot numbness, which was the basis for Dr. Din's opinion that he could not stand
13 for more than an hour and one of the reasons he needed to lay down during the day. For
14 these reasons, this was not a legitimate reason to discount the entirety of Dr. Din's opinion.

15 Second, the ALJ discounted Dr. Din's opinion based on specific physical findings
16 in the record – normal gait, ability to exercise, and normal sensation in the lower
17 extremities. As discussed above, the ALJ cited one contradicted medical record to support
18 her finding that Canez remained able to exercise; there is not substantial evidence to
19 support that finding. Further, the Court concluded above that, when the record is viewed
20 holistically, there is not substantial evidence that Canez had a normal gait. The ALJ cited
21 three records from Dr. Din to support his finding that Canez had a normal gait. (AR (citing
22 AR 487, 495, 502).) However, what those records (and the other records from Dr. Din)
23 stated was that Canez's walking/tandem/heels/toes was normal but his gait was unsteady.
24 (AR 344-45, 348, 351, 487, 492, 495, 498, 502.) These findings by Dr. Din are not
25 inconsistent with the findings of other doctors treating Canez's symptoms due to his spinal
26 impairment. The only controverting evidence of normal sensation cited by the ALJ was Dr.
27 Hassman's one-time exam. In contrast, at every appointment over the course of more than
28 two years, Dr. Din found Canez had decreased sensation. (AR 344, 347, 350, 487, 492,

1 495, 498, 501.) The ALJ provided no reasoning for his decision to accept a singular finding
2 by Dr. Hassman over the treating records from Dr. Din. There is not substantial evidence
3 to support the ALJ's finding that Canez had normal lower extremity sensation.

4 Third, the ALJ relied upon Canez's self-reported ability to take out the trash if it
5 was not too heavy. The ALJ found that inconsistent with Dr. Din's opinion that Canez
6 could not lift and carry more than five pounds regularly. (AR 23.) In February 2014, Canez
7 reported that on an average day he walked as much as possible without back pain and took
8 out his trash if it wasn't too heavy. (AR 229.) In the same report, when asked what kinds
9 of things he could lift and carry, Canez stated a gallon of milk or a "very" light bag of
10 groceries. (AR 230.) In October 2014, Canez stated that he could lift "a broom, light mop
11 & very small bag of grocery." (AR 243.) At the January 2017 hearing, Canez testified that
12 his maximum lifting was a gallon of milk. (AR 39.) He also testified that he had difficulty
13 lifting things because of numbness in his hands. (AR 43-44.)

14 Canez's various self-reports on how much he could lift were generally consistent,
15 although several of the items he identified do not have a set weight: trash if not too heavy,
16 a gallon of milk, a broom, a light mop, and very light groceries. There is no evidence as to
17 what weight trash bag he considered "too heavy." But it is not inconsistent with his
18 testimony that the maximum weight he could lift was a gallon of milk, which weighs about
19 eight pounds. In turn, that testimony is not inconsistent with Dr. Din's finding that he could
20 not lift more than five pounds regularly. Therefore, this was not a legitimate reason to reject
21 Dr. Din's opinion.

22 The Court concludes the ALJ failed to provide any specific, legitimate reasons
23 supported by substantial evidence to reject the opinion of Dr. Din.

24 CONCLUSION

25 A federal court may affirm, modify, reverse, or remand a social security case. 42
26 U.S.C. § 405(g). When a court finds that an administrative decision is flawed, the remedy
27 should generally be remand for "additional investigation or explanation." *INS v. Ventura*,
28 537 U.S. 12, 16 (2006) (quoting *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744

1 (1985)); *see also Moisa v. Barnhart*, 367 F.3d 882, 886 (9th Cir. 2004). However, a district
2 court should credit as true medical opinions and a claimant's testimony that was improperly
3 rejected by the ALJ and remand for benefits if:

4 (1) the ALJ failed to provide legally sufficient reasons for rejecting the
5 testimony; (2) there are no outstanding issues that must be resolved before a
6 determination of disability can be made; and (3) it is clear from the record
7 that the ALJ would be required to find the claimant disabled were such
8 evidence credited.

9 *Benecke*, 379 F.3d at 594; *Garrison*, 759 F.3d at 1021 (precluding remand for further
10 proceedings if the purpose is solely to allow ALJ to revisit the medical opinion he rejected).
11 The Ninth Circuit holds that application of the credit as true rule is *mandatory* unless the
12 record creates serious doubt that the claimant is disabled. *Garrison*, 759 F.3d at 1021.

13 Here, Defendant conceded the ALJ failed to provide a sufficient reason to reject Dr.
14 Hassman's opinion that Canez could stand or walk for only three hours of a work day.
15 Additionally, the Court concluded the ALJ erred in rejecting Dr. Hassman's opinion that
16 Canez required a cane for all walking and in rejecting the entirety of Dr. Din's opinion.
17 The record is developed and there are no outstanding issues requiring resolution before the
18 Court can make a disability finding.

19 Defendant argues there are outstanding issues to be resolved on remand because
20 there are conflicts in the record between the opinions of the examining and consulting
21 physicians and various doctor's findings regarding Canez's gait. The ALJ noted these
22 factual issues and had an opportunity to resolve them. However, she failed to do so and
23 issued an internally contradictory opinion. She also relied on less than the full record in
24 making her findings, leading to conclusions that were not supported by substantial
25 evidence. The Court's holistic review of the medical records revealed substantial
26 consistency among the doctors treating Canez for his spinal impairment. The only two
27 doctors that examined Canez and offered a functional opinion, Drs. Hassman and Din,
28 agreed that Canez cannot stand for more than three hours per workday. The record needs
no further development and Defendant does not argue otherwise. If the Court were to
remand for further proceedings, it would be solely for the ALJ to reconsider evidence she

1 has already reviewed and rejected on a legally insufficient basis. A mulligan to re-evaluate
2 the same evidence does not qualify as a useful purpose for a remand under the credit-as-
3 true analysis. *Garrison*, 759 F.3d at 1021-22.

4 Dr. Hassman opined that Canez could only stand or walk for three hours of an eight-
5 hour work day, and Dr. Din opined that Canez could stand less than one hour. Also, Dr.
6 Hassman found that Canez required a cane for walking. The Vocational Expert testified
7 that a person with those limitations could not perform any work. (AR 48.) Crediting the
8 testimony of Drs. Hassman and Din, the ALJ would be required to find Canez disabled
9 based on the vocational expert's testimony.

10 Alternatively, although not argued by Canez, Medical Vocational Rule 201.09
11 would direct a finding of disabled based solely on crediting Dr. Hassman's improperly
12 rejected opinion that Canez could not stand for more than three hours. The vocational
13 expert testified that a limitation to three hours of standing or walking would place a
14 claimant in the sedentary exertion category. (AR 49.) Canez reached the age category of
15 closely approaching advanced age in January 2014, less than two months after his
16 protective filing date, or within a month of his eligibility to be paid SSI benefits.⁵ *See* 20
17 C.F.R. § 416.335. His 11th grade education is classified as limited or less (AR 24 (citing
18 20 C.F.R. § 416.964(b)(3)), and his prior work was unskilled (AR 45-46). Based on those
19 categories, Rule 201.09 would require the ALJ to find Canez disabled.

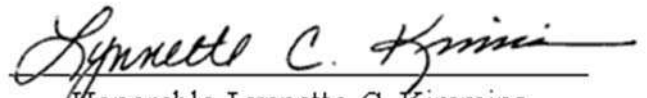
20 After a thorough review of the entire record, the Court does not have serious doubts
21 as to whether Canez is disabled.

22 Accordingly,

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25 ⁵ In the initial and reconsideration decisions by the Commissioner, she evaluated
26 Canez's age as closely approaching advanced age. (AR 74, 89.) At the hearing, the ALJ
27 based his hypotheticals on Canez's current age of 53, which qualifies as closely
28 approaching advanced age. (AR 36, 46.) However, in her decision, the ALJ classified
Canez as a "younger individual age 18-49," based on the filing date of his application. (AR
24.) The regulations state that the agency will use "each of the age categories that applies
to you during the period for which we must determine if you are disabled." 20 C.F.R.
§ 416.963. And, if a claimant is within a few months of an older age category, the agency
will consider using that category if it would result in a finding of disability. *Id.*

1 **IT IS ORDERED** that the decision of the Commissioner is **REVERSED AND**
2 **REMANDED** for an award of benefits. The Clerk of Court should enter judgment and
3 close this case.

4 Dated this 20th day of May, 2019.

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7 
8 Honorable Lynnette C. Kimmins
9 United States Magistrate Judge
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