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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOYCE E. HAASE,	)	Case No. EDCV 11-1902-JPR
	)	
Plaintiff,	)	MEMORANDUM OPINION AND ORDER
	)	AFFIRMING THE COMMISSIONER
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of the Social	)	
Security Administration,	)	
	)	
Defendant.	)	
_____	)	

**I. PROCEEDINGS**

Plaintiff seeks review of the Commissioner's final decision denying her application for Social Security Disability Insurance Benefits ("DIB"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed August 9, 2012. The Court has taken the Joint Stipulation under submission without oral argument. For the reasons stated below, the Commissioner's decision is affirmed and this action is dismissed.

1 **II. BACKGROUND**

2 Plaintiff was born on August 10, 1959. (Administrative  
3 Record ("AR") 84.) She has a high school education and is able  
4 to communicate in English. (AR 149, 159.) She claims to have  
5 been disabled since December 2, 2000, because of  
6 neurofibromatosis type 2 - a rare disease that causes tumors to  
7 grow on the central nervous system - which has resulted in  
8 complete hearing loss in her left ear and progressive hearing  
9 loss in the right. (AR 150.)

10 On January 31, 2008, Plaintiff filed her application for  
11 DIB. (AR 84-85.) After it was denied, she requested a hearing  
12 before an Administrative Law Judge ("ALJ"), which was held on May  
13 26, 2010. (AR 33.) Plaintiff, who was represented by counsel,  
14 testified at the hearing; medical expert Dr. Ross Elliott Lipton  
15 and vocational expert ("VE") Jose L. Chaparro also testified.  
16 (AR 31-83.)

17 On September 22, 2010, the ALJ denied Plaintiff's claim.  
18 She first found that Plaintiff last met the insured status  
19 requirements of the Social Security Act on June 30, 2005, and did  
20 not engage in substantial gainful activity from the alleged onset  
21 date of December 2, 2000, to that date. (AR 13.) She then  
22 determined that Plaintiff had the severe impairments of  
23 "neurofibromatosis type 2 (NF2) with hearing loss." (Id.) She  
24 found, however, that as of June 30, 2005, Plaintiff retained the  
25 residual functional capacity ("RFC")<sup>1</sup> to perform "light

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26  
27 <sup>1</sup> RFC is what a claimant can still do despite existing  
28 exertional and nonexertional limitations. 20 C.F.R.  
§ 416.945(a); see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5

1 exertional level work" with the additional limitations that  
2 Plaintiff

3 could occasionally climb ramps and stairs, should never  
4 balance or climb ladders, ropes, or scaffolds, should not  
5 walk on uneven terrain, lacked any other postural  
6 limitations if these activities were performed in well  
7 lit areas and in the presence of others, should avoid  
8 even moderate exposure to temperature extremes, should  
9 avoid immersion in water, should avoid concentrated  
10 exposure to vibrations and fumes, should avoid areas with  
11 noise above the noise level of a typical normal quiet  
12 office, should not drive a motor vehicle, and should  
13 avoid all exposure to moving machinery and unprotected  
14 heights.

15 (AR 16.) She agreed with the VE that Plaintiff was capable of  
16 performing the jobs of "office helper" and "paper-pattern folder"  
17 and that those jobs existed in significant numbers in the  
18 national and regional economy; thus, the ALJ found Plaintiff not  
19 disabled. (AR 20-21.)

20 On November 1, 2010, Plaintiff requested review by the  
21 Appeals Council. (AR 6-7.) On August 26, 2011, the Council  
22 denied Plaintiff's request for review. (AR 1-3.) This action  
23 followed.

### 24 **III. STANDARD OF REVIEW**

25 Pursuant to 42 U.S.C. § 405(g), a district court may review  
26 the Commissioner's decision to deny benefits. The Commissioner's

27 \_\_\_\_\_  
28 (9th Cir. 1989).

1 or ALJ's findings and decision should be upheld if they are free  
2 of legal error and are supported by substantial evidence based on  
3 the record as a whole. § 405(g); Richardson v. Perales, 402 U.S.  
4 389, 401, 91 S. Ct. 1420, 1427, 28 L. Ed. 2d 842 (1971); Parra v.  
5 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence  
6 means such evidence as a reasonable person might accept as  
7 adequate to support a conclusion. Richardson, 402 U.S. at 401;  
8 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It  
9 is more than a scintilla but less than a preponderance.  
10 Lingenfelter, 504 F.3d at 1035. To determine whether substantial  
11 evidence supports a finding, the reviewing court "must review the  
12 administrative record as a whole, weighing both the evidence that  
13 supports and the evidence that detracts from the Commissioner's  
14 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.  
15 1996). "If the evidence can reasonably support either affirming  
16 or reversing," the reviewing court "may not substitute its  
17 judgment" for that of the Commissioner. Id. at 720-21.

#### 18 **IV. THE EVALUATION OF DISABILITY**

19 People are "disabled" for purposes of receiving Social  
20 Security benefits if they are unable to engage in any substantial  
21 gainful activity because of a physical or mental impairment that  
22 is expected to result in death or which has lasted, or is  
23 expected to last, for a continuous period of at least 12 months.  
24 42 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257  
25 (9th Cir. 1992).

##### 26 A. The Five-Step Evaluation Process

27 The Commissioner (or ALJ) follows a five-step sequential  
28 evaluation process in assessing whether a claimant is disabled.

1 20 C.F.R. § 404.1520(a)(4); Lester v. Chater, 81 F.3d 821, 828  
2 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first  
3 step, the Commissioner must determine whether the claimant is  
4 currently engaged in substantial gainful activity; if so, the  
5 claimant is not disabled and the claim is denied.

6 § 404.1520(a)(4)(I). If the claimant is not engaged in  
7 substantial gainful activity, the second step requires the  
8 Commissioner to determine whether the claimant has a "severe"  
9 impairment or combination of impairments significantly limiting  
10 her ability to do basic work activities; if not, a finding of  
11 nondisability is made and the claim is denied.

12 § 404.1520(a)(4)(ii). If the claimant has a "severe" impairment  
13 or combination of impairments, the third step requires the  
14 Commissioner to determine whether the impairment or combination  
15 of impairments meets or equals an impairment in the Listing of  
16 Impairments ("Listing") set forth at 20 C.F.R. Part 404, Subpart  
17 P, Appendix 1; if so, disability is established and benefits are  
18 awarded. § 404.1520(a)(4)(iii). If the claimant's impairment or  
19 combination of impairments does not meet or equal an impairment  
20 in the Listing, the fourth step requires the Commissioner to  
21 determine whether the claimant has sufficient RFC to perform her  
22 past work; if so, the claimant is not disabled and the claim must  
23 be denied. § 404.1520(a)(4)(iv). The claimant has the burden of  
24 proving that she is unable to perform past relevant work.

25 Drouin, 966 F.2d at 1257. If the claimant meets that burden, a  
26 prima facie case of disability is established. Id. If that  
27 happens or if the claimant has no past relevant work, the  
28 Commissioner then bears the burden of establishing that the

1 claimant is not disabled because she can perform other  
2 substantial gainful work in the economy. § 404.1520(a)(4)(v).  
3 That determination comprises the fifth and final step in the  
4 sequential analysis. Id.; Lester, 81 F.3d at 828 n.5; Drouin,  
5 966 F.2d at 1257.

6 B. The ALJ's Application of the Five-Step Process

7 At step one, the ALJ found that Plaintiff had not engaged in  
8 any substantial gainful activity from the onset of her alleged  
9 disability, December 2, 2000, to the date last insured, June 30,  
10 2005. (AR 13.) At step two, the ALJ concluded that Plaintiff  
11 had the severe impairments of "neurofibromatosis type 2 (NF2)  
12 with hearing loss." (Id.) At step three, the ALJ found that  
13 Plaintiff did not have an impairment or combination of  
14 impairments that met or equaled any of the impairments in the  
15 Listing. (AR 15.) At step four, the ALJ found that as of June  
16 30, 2005, Plaintiff had the RFC to perform "light exertional  
17 level work" with the additional limitations that Plaintiff  
18 could occasionally climb ramps and stairs, should never  
19 balance or climb ladders, ropes, or scaffolds, should not  
20 walk on uneven terrain, lacked any other postural  
21 limitations if these activities were performed in well  
22 lit areas and in the presence of others, should avoid  
23 even moderate exposure to temperature extremes, should  
24 avoid immersion in water, should avoid concentrated  
25 exposure to vibrations and fumes, should avoid areas with  
26 noise above the noise level of a typical normal quiet  
27 office, should not drive a motor vehicle, and should  
28 avoid all exposure to moving machinery and unprotected

1 heights.

2 (AR 16 (emphasis added).) The ALJ concluded that Plaintiff was  
3 unable to perform her past relevant work as a purchasing agent.

4 (AR 18.) At step five, the ALJ found, based on the VE's  
5 testimony and application of the Medical-Vocational Guidelines,  
6 that jobs existed in significant numbers in the national and  
7 regional economy that Plaintiff could perform. (AR 19-20.) The  
8 ALJ disagreed with the VE that Plaintiff could perform the job of  
9 "cafeteria attendant" "because the environment of a cafeteria  
10 would likely be too noisy for an individual with the auditory  
11 challenges faced by an individual such as [Plaintiff]," but she  
12 agreed with the VE that Plaintiff could perform the work of  
13 "office helper" and "paper-pattern folder." (AR 20.)

14 Accordingly, the ALJ determined that Plaintiff was not disabled.  
15 (AR 20-21.)

16 **V. DISCUSSION**

17 Plaintiff alleges that the ALJ erred in (1) questioning the  
18 VE and (2) relying on the VE's testimony. (J. Stip. at 5.) She  
19 does not challenge any of the ALJ's findings at steps one through  
20 four.

21 A. The ALJ Properly Questioned the Vocational Expert

22 Plaintiff asserts that the ALJ improperly failed to include  
23 the limitation against working in an environment "with noise  
24 above the noise level of a typical normal quiet office" in her  
25 hypothetical to the VE. (J. Stip. at 7.) Although her argument  
26 is not clear, Plaintiff appears to assert that when the ALJ found  
27 that she was "limited to a quiet work environment of a typical or  
28 normal office, that finding necessarily precluded work that

1 required exposure to moderate levels of noise"; further, although  
2 the DOT describes office work as a "moderate" or "level 3" noise  
3 level, that description was formulated in the days when noisy  
4 typewriters were commonly found in offices, whereas an office  
5 today lacks typewriters and is more accurately described as a  
6 "quiet environment of noise level 2." (J. Stip. at 7-8.)  
7 Because the "office helper" and "paper-pattern folder" jobs  
8 require exposure to "moderate noise," Plaintiff argues, it is not  
9 clear that she is capable of performing them given her limitation  
10 against noise above the noise level of a "typical quiet office,"  
11 and the ALJ should have questioned the VE about the discrepancy.  
12 (J. Stip. at 8-9.)

13 1. Applicable law

14 At step five of the five-step process, the Commissioner has  
15 the burden to demonstrate that the claimant can perform some work  
16 that exists in "significant numbers" in the national or regional  
17 economy, taking into account the claimant's RFC, age, education,  
18 and work experience. Tackett v. Apfel, 180 F.3d 1094, 1100 (9th  
19 Cir. 1999); 42 U.S.C. § 423(d)(2)(A); 20 C.F.R. § 404.1560(c).  
20 The Commissioner may satisfy that burden either through the  
21 testimony of a vocational expert or by reference to the Medical-  
22 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,  
23 Appendix 2. Tackett, 180 F.3d at 1100-01; see also Hill v.  
24 Astrue, No. 10-35879, \_\_\_ F.3d \_\_\_, 2012 WL 3185576, at \*7 (9th  
25 Cir. Aug. 7, 2012) ("The ALJ may meet his burden at step five by  
26 asking a vocational expert a hypothetical question based on  
27 medical assumptions supported by substantial evidence in the  
28 record and reflecting all the claimant's limitations, both



1 physical and mental, supported by the record."). "If a  
2 vocational expert's hypothetical does not reflect all the  
3 claimant's limitations, then the expert's testimony has no  
4 evidentiary value to support a finding that the claimant can  
5 perform jobs in the national economy." Matthews v. Shalala, 10  
6 F.3d 678, 681 (9th Cir. 1993).

7           2.    Relevant facts

8           At the hearing, the ALJ first questioned Dr. Lipton, the  
9 medical expert, about Plaintiff's limitations. Based on his  
10 review of Plaintiff's medical records, Dr. Lipton testified that  
11 Plaintiff's functional limitations included a limitation on  
12 exposure to noise. (AR 52.) Specifically, he testified that  
13 Plaintiff should "avoid all exposure to noise with vigilance, to  
14 try to preserve whatever hearing . . . is there." (Id.) The ALJ  
15 clarified that Plaintiff "should avoid all exposure to noise . .  
16 . like a factory situation and things like that, because that  
17 could adversely affect what little hearing [Plaintiff] had or . .  
18 . make the hearing [Plaintiff] had in [her] right ear deteriorate  
19 faster." (AR 53.) Neither Plaintiff nor her attorney (or Dr.  
20 Lipton, for that matter) objected to the ALJ's characterization  
21 of the expert's noise limitation as referring only to the type of  
22 noise "in a factory situation." (See id.)

23           The ALJ then posed a hypothetical to the VE regarding a  
24 person who "has no exertional limitations" but, based on Dr.  
25 Lipton's testimony, had the following RFC:

26                   [Such a person should avoid all hazards that depend  
27                   upon attention, concentration or hearing. The specific  
28                   limitations would be never climbing ladders and

1 scaffolds; never balancing; occasionally stairs and  
2 ramps; and the - and occasionally, on the other  
3 posturals, and - but those, the climbing stairs and ramps  
4 and the other posturals would only be in situations where  
5 it was well lit, there were other people around and there  
6 was an ability for Ms. Haase to provide - catch herself  
7 or to provide, you know, stability, if necessary. She  
8 would not - should not have a job that depends on  
9 hearing, so answering a phone would be out; responding to  
10 requests and commands that were oral in nature, so a help  
11 desk in a department store wouldn't work.

12 Environmentally she should avoid even moderate  
13 exposure to extreme cold or extreme heat; should not be  
14 in a situation where she would be immersed in water;  
15 should never be around noise; avoid concentrated  
16 vibrations and fumes and should not have a position where  
17 she would be required to drive or operate machinery.

18 (AR 64-65 (emphasis added).) The VE responded that based on that  
19 hypothetical, Plaintiff could do the jobs of "cafeteria  
20 attendant," "office helper," and "paper-pattern folder." (AR 67-  
21 69.) The ALJ then asked for clarification regarding the noise  
22 level of the cafeteria-attendant job. (AR 71.) The VE  
23 responded:

24 [O]ne of the definitions is noise intensity level  
25 and that is 3 and noise 3, I can tell you what that - how  
26 they define that, 3 is moderate as in a business office  
27 where typewriters are used, department store, grocery  
28 store, light traffic, fast food restaurant at off hours.

1 That's how it's defined. And, and I do agree with that  
2 assessment. The next level above that, just, just for,  
3 for kicks here is, would be loud, which is a can  
4 manufacturing department, large earth-moving equipment  
5 and heavy traffic. As I'm understanding the  
6 hypothetical, that's the kind of noise intensity that's  
7 to be avoided, as I understand it.

8 (Id.) Plaintiff did not interject or object in any way that the  
9 VE's understanding was erroneous. The ALJ clarified that "under  
10 the Dictionary of Occupational Titles, they say the noise in a  
11 cafeteria, as they describe this job, is the same as in an office  
12 where there would be typewriters being used, so that it meets the  
13 . . . parameters." (AR 71-72.)

14 In her written opinion, the ALJ found that Plaintiff had the  
15 RFC to perform "light" work with several limitations, including  
16 the limitation that Plaintiff "should avoid areas with noise  
17 above the noise level of a typical normal quiet office." (AR  
18 16.) She agreed with the VE that Plaintiff could perform the  
19 jobs of "office helper" and "paper-pattern folder," but she  
20 disagreed that Plaintiff could perform the "cafeteria attendant"  
21 job because "the environment of a cafeteria would likely be too  
22 noisy for an individual with the auditory challenges faced by an  
23 individual such as [Plaintiff]." (AR 20.)

### 24 3. Analysis

25 Based on the ALJ's hypothetical, the VE found that Plaintiff  
26 was capable of performing the jobs of "cafeteria attendant,"  
27 "office helper," and "paper-pattern folder." (AR 67-69.) Those  
28 jobs are all categorized by the DOT as noise level three -

1 "moderate" noise. See DOT 311.677-010, 1991 WL 672694 (cafeteria  
2 attendant); DOT 239.567-010, 1991 WL 672232 (office helper); DOT  
3 794.687-034, 1991 WL 681322 (paper-pattern folder). The DOT does  
4 not define noise level three, but it is defined in the U.S.  
5 Department of Labor's Revised Handbook for Analyzing Jobs as  
6 "moderate" noise such as that found in a "business office where  
7 typewriters are used; department store; grocery store; light  
8 traffic; fast food restaurant at off-hours." See U.S. Dep't of  
9 Labor, Revised Handbook for Analyzing Jobs ("RHAJ") 12-10 (1991).

10 The ALJ's hypothetical to the VE was consistent with  
11 Plaintiff's limitations as reflected by the medical evidence of  
12 record. The medical evidence showed that as of June 30, 2005,  
13 Plaintiff had only moderate hearing loss in her right ear and  
14 could still hear out of that ear. (AR 15, 47-48, 331 (stating  
15 that Plaintiff's surgery in March 2005 "has stabilized her  
16 hearing for the present"), 345 (March 2005 progress report  
17 stating that Plaintiff's right ear has "still very serviceable  
18 hearing"), 347 (audiogram dated September 19, 2002, showing  
19 normal hearing in right ear), 392-94 (December 11, 2001 letter  
20 from surgeon describing Plaintiff's hearing loss and noting that  
21 "she has some fullness in the right ear but maintains normal  
22 hearing on that side").) Dr. Lipton testified that Plaintiff  
23 should "avoid all exposure to noise" but did not object to the  
24 ALJ's clarification that that statement meant "like a factory  
25 situation and things like that" as opposed to moderate noise  
26 levels like those found in a business office where typewriters  
27 are used. (AR 52-53.) That finding is consistent with the  
28 medical evidence, and Plaintiff has not pointed to any medical

1 opinions or other evidence suggesting that in early 2005 she had  
2 an RFC capable of tolerating only less than moderate noise  
3 levels. The ALJ's ultimate finding that Plaintiff had the RFC to  
4 perform the "office helper" and "paper-pattern folder" jobs is  
5 consistent with both her hypothetical and the VE's response, as  
6 well as the medical evidence of record. (See AR 71-72 (using  
7 RHAJ definition of "moderate" noise), 331, 345, 347, 392-94.)

8 Plaintiff claims that because those jobs involve noise  
9 levels such as those found in a "business office where  
10 typewriters are used," the ALJ's finding that she could perform  
11 them conflicts with her ultimate finding that Plaintiff could  
12 tolerate only the noise levels found in "a typical normal quiet  
13 office" (AR 16). According to Plaintiff, because typewriters are  
14 no longer typically used in an office setting, a "typical normal  
15 quiet office" is more akin to level two, or "light," noise.<sup>2</sup> But  
16 the fact that typewriters are no longer typically used in an  
17 office setting does not render the hypothetical invalid. Both  
18 the ALJ and the VE were clear that Plaintiff had the RFC to  
19 perform a job with moderate noise level, such as that made by  
20 typewriters, regardless of whether she would actually encounter a  
21 typewriter in the workplace. To the extent that "a typical,  
22 normal quiet office" suggests Plaintiff can tolerate only  
23 something less than moderate noise, it is a misstatement because  
24 it is not consistent with the rest of the ALJ's opinion, the

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25  
26 <sup>2</sup> The RHAJ defines "light" noise as that found in a  
27 "library; many private offices; funeral reception; golf course;  
28 [and] art museum." See U.S. Dep't of Labor, Revised Handbook for  
Analyzing Jobs 12-10 (1991).

1 hypothetical posed to the VE, or the medical evidence. To the  
2 extent the ALJ erred in making that statement, however, the error  
3 was harmless because that finding was not determinative and the  
4 ALJ's analysis and additional findings throughout the rest of her  
5 opinion were consistent with the medical evidence and the VE's  
6 testimony. See Stout v. Comm'r, 454 F.3d 1050, 1055 (9th Cir.  
7 2006) (nonprejudicial or irrelevant mistakes harmless); Lee v.  
8 Astrue, 472 F. App'x 553, 555 (9th Cir. 2012) (ALJ's failure to  
9 include claimant's personality disorder as "severe" impairment at  
10 step two harmless when ALJ later accounted for impairment at step  
11 four); Wright v. Comm'r of Soc. Sec., 386 F. App'x 105, 109 (3d  
12 Cir. 2010) (Tashima, J., sitting by designation) (ALJ's  
13 misstatements in written decision harmless error when regardless  
14 of them "ALJ gave an adequate explanation supported by  
15 substantial evidence in the record"); Castel v. Comm'r of Soc.  
16 Sec., 355 F. App'x 260, 265-66 (11th Cir. 2009) (ALJ's erroneous  
17 reference to wrong medical reports harmless when he referred to  
18 reports "in two sentences" but "dedicate[d] two paragraphs" to  
19 correct reports, and decision conformed to medical evidence);  
20 Taylor v. Astrue, No. 4:07-CV-160-FL, 2009 WL 50156, at \*10  
21 (E.D.N.C. Jan. 7, 2009) (ALJ's misstatement of claimant's RFC in  
22 one sentence of decision "akin to a typographical error and  
23 constitutes harmless error" given that ALJ correctly stated RFC  
24 elsewhere in opinion and it was "overwhelmingly supported by  
25 substantial evidence").

26 Nor did the ALJ's finding that the cafeteria-attendant job  
27 required a noise level beyond Plaintiff's functional capacity  
28 imply that all jobs with noise level three were beyond

1 Plaintiff's capabilities. The ALJ ultimately decided that the  
2 cafeteria-attendant position would expose Plaintiff to noise  
3 beyond "moderate" levels; she did not hold, as Plaintiff appears  
4 to contend, that all jobs requiring "moderate" noise exposure  
5 were beyond Plaintiff's RFC. (See AR 20 (noting that "the  
6 environment of a cafeteria would likely be too noisy for an  
7 individual with the auditory challenges faced by" Plaintiff));  
8 Magallanes v. Bowen, 881 F.2d 747, 755 (9th Cir. 1989) (court may  
9 make reasonable inferences from ALJ's rationale and record).  
10 Similarly, the ALJ's statement during the hearing that the noise  
11 in a cafeteria is "the same as in an office where there would be  
12 typewriters being used" (AR 71) does not imply that because she  
13 found Plaintiff could not tolerate cafeteria noise, she  
14 necessarily must have found that Plaintiff could not tolerate  
15 typewriter noise. Rather, during that portion of the hearing,  
16 the ALJ was attempting to explain to Plaintiff that the DOT  
17 classified both the cafeteria-attendant job and the office-helper  
18 job as "moderate" noise level, which the ALJ explained "under the  
19 [DOT] . . . is the same as in an office where there would be  
20 typewriters being used," that is, noise level three. (See AR  
21 71.)

22 Because the ALJ's hypothetical to the VE properly reflected  
23 Plaintiff's limitations consistent with the medical evidence of  
24 record, the VE's testimony was sufficient evidence to support the  
25 ALJ's finding that Plaintiff could perform the "office helper"  
26 and "paper-pattern folder" jobs. Reversal therefore is not  
27 warranted on that basis.

1           B.    The ALJ Properly Relied on the Vocational Expert's  
2                    Testimony

3           Plaintiff next contends that the VE's testimony deviated  
4 from the DOT because the ALJ included in the hypothetical a  
5 limitation that Plaintiff "should not have a job that depends on  
6 hearing," but hearing is a "bona fide occupational qualification  
7 as designated by the classificatory data contained in the DOT"  
8 for the "office helper" job. (J. Stip. at 18-19.) Thus,  
9 according to Plaintiff, because the VE did not explain the  
10 alleged deviation from the DOT, his testimony did not provide  
11 substantial evidence for the ALJ's finding that Plaintiff was  
12 capable of performing the "office helper" job. (Id.) As to the  
13 "paper-pattern folder" job, Plaintiff argues that she cannot  
14 perform that job because it does not exist in significant numbers  
15 in the regional or national economy. (J. Stip. at 19-20.)

16           1.    The VE's testimony did not deviate from the DOT

17           An ALJ must ask a hypothetical question to a VE that is  
18 based on medical assumptions supported by substantial evidence in  
19 the record and that reflects all of the plaintiff's limitations.  
20 Roberts v. Shalala, 66 F.3d 179, 184 (9th Cir. 1995). When a VE  
21 provides evidence about the requirements of a job, the ALJ has a  
22 responsibility to ask about "any possible conflict" between that  
23 evidence and the DOT. See SSR 00-4p, 2000 WL 1898704, at \*4;  
24 Massachi v. Astrue, 486 F.3d 1149, 1152-54 (9th Cir. 2007)  
25 (holding that application of SSR 00-4p is mandatory). An ALJ's  
26 failure to do so is procedural error, although the error is  
27 harmless if no actual conflict exists or the VE provided  
28 sufficient evidence to support the conclusion. Id. at 1154 n.19.



1 Here, no conflict existed between the VE's testimony and the  
2 DOT, and thus the ALJ did not err in failing to inquire about a  
3 conflict. The VE testified that Plaintiff had the RFC to perform  
4 the jobs of "cafeteria attendant," "office helper," and "paper-  
5 pattern folder," all of which entail exposure to "moderate"  
6 noise. As discussed above, the ability to tolerate exposure to  
7 "moderate" noise was within Plaintiff's RFC in 2005, and the  
8 ALJ's hypothetical was consistent with that limitation.

9 Moreover, the ALJ clarified to the VE that Plaintiff was not  
10 barred from all jobs that required hearing but only from those  
11 that "depended on" hearing. (AR 67.) The DOT does not state  
12 that the "office helper," "cafeteria attendant," or "paper-  
13 pattern folder" job is dependent on hearing. See DOT 239.567-  
14 010, 1991 WL 672232 (office helper: describing need for hearing  
15 as "occasionally - Exists up to 1/3 of the time"); DOT 311.677-  
16 010, 1991 WL 672694 (cafeteria attendant: same); DOT 794.687-034,  
17 1991 WL 681322 (paper-pattern folder: describing need for hearing  
18 as "Not Present - Activity or condition does not exist"). Thus,  
19 there was no conflict between the VE's testimony and the DOT.

20 Further, to the extent any conflict existed between the DOT  
21 job descriptions and the VE's testimony with respect to whether  
22 the jobs "depended on" hearing ability, the VE sufficiently  
23 explained it. The VE clarified that the "cafeteria attendant"  
24 job was unlike a waitress position in that it did not require  
25 Plaintiff to listen to or speak to customers, and the office  
26 helper position did not require answering phones. (AR 71, 74.)  
27 Reversal is therefore not warranted on this basis.

1           2.    The "paper-pattern folder" job exists in  
2                    significant numbers in the national economy

3           The Ninth Circuit has "never set out a bright-line rule for  
4 what constitutes a 'significant number' of jobs." Beltran v.  
5 Astrue, 676 F.3d 1203, 1206 (9th Cir. 2012). The Ninth Circuit  
6 has held, however, that 1266 jobs regionally is a "significant  
7 number," see id. (citing Barker v. Sec'y of Health & Human  
8 Servs., 882 F.2d 1474, 1479 (9th Cir. 1989)), and 64,000  
9 nationally is a "significant number," see Moncada v. Chater, 60  
10 F.3d 521, 524 (9th Cir. 1995) (2300 jobs regionally and 64,000  
11 nationally significant numbers). See also Albidrez v. Astrue,  
12 504 F. Supp. 2d 814, 824 (C.D. Cal. 2007) (17,382 jobs nationally  
13 is a "significant number"). A mere 135 regional jobs and 1680  
14 national ones, however, are "very rare" numbers and thus not  
15 "significant" within the meaning of the Social Security Act.  
16 See Beltran, 676 F.3d at 1206. If the number of jobs available  
17 either regionally or nationally is "significant," the ALJ's  
18 decision must be upheld. See 42 U.S.C. § 423(d)(2)(A); Beltran,  
19 676 F.3d at 1206.

20           The VE testified that 13,000 "paper-pattern folder" jobs  
21 existed nationally and 1800 in California. (AR 69-70.)<sup>3</sup> These  
22 numbers are akin to the numbers the Ninth Circuit has found  
23 sufficiently "significant" to satisfy the Social Security Act,  
24 see Beltran, 676 F.3d at 1206 (collecting cases), and far from  
25 the small numbers, for example, 135 jobs regionally and 1680 jobs

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27           <sup>3</sup> Plaintiff has not submitted any evidence showing that the  
28 number of paper-pattern folder jobs available in the regional or  
national economy is less than what the VE claimed.

1 nationally, see id., that it has found insufficient. Plaintiff  
2 argues that 1800 jobs in California is not "sufficient" because  
3 the analysis must focus on the availability of jobs in  
4 Plaintiff's region rather than the state of California as a whole  
5 (J. Stip. at 19), but even if that were so, 13,000 jobs  
6 nationally is a "significant" number and thus the ALJ's decision  
7 must be upheld. See Albidrez, 504 F. Supp. 2d at 824 (17,382  
8 jobs nationally is "significant number"); Johnson v. Chater, 108  
9 F.3d 178, 181 (8th Cir. 1997) (10,000 jobs nationally is  
10 "significant number"); Vining v. Astrue, 720 F. Supp. 2d 126, 128  
11 (D. Me. 2010) (10,000 to 11,000 jobs nationally is "significant  
12 number"); 42 U.S.C. § 423(d)(2)(a); Beltran, 676 F.3d at 1206.

13 Plaintiff admits that no conflict existed between the DOT's  
14 job description and the VE's testimony with respect to the  
15 "paper-pattern folder" position. (See J. Stip. at 19.) Thus,  
16 even if the ALJ erred in finding that Plaintiff was capable of  
17 performing the "office helper" job, that error was harmless  
18 because she did not err in finding Plaintiff capable of  
19 performing the "paper-pattern folder" job, which exists in  
20 significant numbers in the national economy; the ALJ's decision  
21 must therefore be upheld.

1 VI. CONCLUSION

2 Consistent with the foregoing and pursuant to sentence four  
3 of 42 U.S.C. § 405(g),<sup>4</sup> IT IS ORDERED that judgment be entered  
4 AFFIRMING the decision of the Commissioner and dismissing this  
5 action with prejudice. IT IS FURTHER ORDERED that the Clerk  
6 serve copies of this Order and the Judgment on counsel for both  
7 parties.

8  
9 DATED: August 27, 2012

  
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10 JEAN ROSENBLUTH  
11 U.S. Magistrate Judge  
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25 \_\_\_\_\_  
26 <sup>4</sup> This sentence provides: "The [district] court shall have  
27 power to enter, upon the pleadings and transcript of the record,  
28 a judgment affirming, modifying, or reversing the decision of the  
Commissioner of Social Security, with or without remanding the  
cause for a rehearing."