

1 **I.**

2 **DISPUTED ISSUE**

3 As reflected in the Joint Stipulation, the disputed issue raised by Plaintiff as
4 the grounds for reversal and/or remand is whether there is an inconsistency
5 between the Dictionary of Occupational Titles (“DOT”) and the ALJ’s
6 determination that Plaintiff can perform the jobs of Small Products Assembler I
7 and Electronics Worker. (JS at 2.)

8 **II.**

9 **STANDARD OF REVIEW**

10 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision
11 to determine whether the Commissioner’s findings are supported by substantial
12 evidence and whether the proper legal standards were applied. DeLorme v.
13 Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more
14 than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402
15 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of
16 Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial
17 evidence is “such relevant evidence as a reasonable mind might accept as adequate
18 to support a conclusion.” Richardson, 402 U.S. at 401 (citation omitted). The
19 Court must review the record as a whole and consider adverse as well as
20 supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986).
21 Where evidence is susceptible of more than one rational interpretation, the
22 Commissioner’s decision must be upheld. Gallant v. Heckler, 753 F.2d 1450, 1452
23 (9th Cir. 1984).

24 **III.**

25 **DISCUSSION**

26 **A. The ALJ’s Findings.**

27 The ALJ found that Plaintiff has the medically determinable severe
28 impairments of diabetes mellitus II; obesity; and a history of bipolar disorder.

1 (Administrative Record (“AR”) at 11.)

2 The ALJ concluded that Plaintiff has the residual functional capacity
3 (“RFC”) to perform a range of light work, with the following limitations: lift
4 twenty pounds occasionally and ten pounds frequently; stand and/or walk for a
5 total of two hours out of an eight-hour workday, but no more than 15 minutes at a
6 time, and sit for a total of six hours out of an eight-hour workday; occasionally
7 climb stairs, stoop, and bend; precluded from climbing ladders, power gripping,
8 work on dangerous machinery or unprotected heights, and in environments from
9 temperature extremes; and restricted to simple repetitive tasks involving no public
10 contact, and no intense interaction with co-workers. (Id.)

11 Relying on the testimony of the vocational expert (“VE”), the ALJ
12 determined Plaintiff was unable to perform his past relevant work. (Id. at 21.)
13 Based on the VE’s testimony, the ALJ concluded that there are jobs in the national
14 and regional economy that exist in significant number that Plaintiff can perform,
15 such as Assembly, Small Products I (Dictionary of Occupational Titles (“DOT”)
16 No. 706.684-022); and Electronics Worker (DOT No. 726.687-010). (AR at 22.)
17 Although not included in the ALJ’s findings regarding alternative work, the VE
18 also testified that Plaintiff could perform the light work of Sewing Machine
19 Operator (DOT No. 786.685-030), and the sedentary occupation of Addresser
20 (DOT No. 209.587-010).⁴ (AR at 384.) The ALJ did not include these latter two
21 positions in his step five finding.

22 **B. There Was No Error.**

23 Plaintiff contends that the ALJ’s RFC limitations are inconsistent with the
24 jobs suggested by the VE. (JS at 3.) As a result, Plaintiff contends, the ALJ did
25 not satisfy his burden of proving there is other work in the economy that Plaintiff

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27 ⁴ The world of light work generally encompasses sedentary work as well.
28 See 20 C.F.R. § 416.967(b) (“If someone can do light work, we determine that he
or she can also do sedentary work”).

1 can perform. Plaintiff contends that: (1) the Small Products Assembler I
2 occupation would require Plaintiff to be exposed to light work, as well as power
3 gripping and working with dangerous machinery (id. at 4); and (2) the Electronics
4 Worker job would require Plaintiff to be exposed to light work, as well as power
5 gripping (id. at 7). Specifically, because both jobs are categorized as light work by
6 the DOT, Plaintiff claims they must involve six hours of standing and/or walking,
7 and he is limited to only two hours, and because the job descriptions refer to the
8 use of hand tools, or loading and unloading machines, they must involve power
9 gripping. (Id. at 6, 9.)

10 Once a claimant has met his burden at step four of demonstrating that he
11 cannot perform his past relevant work, the burden shifts to the Commissioner at
12 step five to establish that the claimant is capable of performing other jobs in the
13 economy. 20 C.F.R. §§ 404.1520(f)(g), 404.1560(c); see Johnson v. Shalala, 60
14 F.3d 1428, 1432 (9th Cir. 1995). This burden can be met through the use of a VE.
15 See 20 C.F.R. § 404.1566(e); see also Tackett v. Apfel, 180 F.3d 1094, 1101 (9th
16 Cir. 1999). It can also be satisfied by taking notice of reliable job information
17 contained in various publications, including the DOT. 20 C.F.R. § 404.1566(d).
18 The DOT is a presumptively authoritative source on the characteristics of jobs.
19 See Pinto v. Massanari, 249 F.3d 840, 845-46 (9th Cir. 2001). Nevertheless, the
20 DOT is not the sole source for this information, and the Commissioner may rely on
21 the testimony of a VE for information about jobs. Johnson, 60 F.3d at 1435.
22 Where the VE's testimony differs from the DOT, however, he or she must provide
23 a persuasive rationale supported by the evidence to justify the departure. See Light
24 v. Soc. Sec. Admin., 119 F.3d 789, 793 (9th Cir. 1997).

25 In this case, at the May 17, 2011, administrative hearing, the ALJ asked the
26 VE whether a hypothetical individual who was limited as is Plaintiff – i.e., limited
27 to lifting or carrying twenty pounds occasionally, ten pounds frequently; could
28 stand or walk only two hours out of an eight-hour day, but no more than fifteen

1 minutes at a time or in fifteen minute intervals; unrestricted sitting; no pushing or
2 pulling with the legs; no work on unprotected heights; no work on dangerous
3 machinery; no temperature extremes; no ladders; occasional stairs; occasional
4 stooping and bending; no power gripping; and work in a non-public setting on
5 simple, repetitive tasks with no intense interaction with coworkers. (AR at 383-
6 84.) The VE testified that such an individual could perform the light jobs of Small
7 Products Assembler I, Electronics Worker, and Sewing Machine Operator (DOT
8 No. 786.685-030), as well as the sedentary positions of Addresser (DOT No.
9 209.587-010). (AR at 383-84.) The ALJ asked the VE whether the DOT
10 descriptions of those jobs was consistent with the hypothetical, and the VE testified
11 that they were. (Id. at 384.) In response to a question from Plaintiff’s counsel, the
12 VE stated there would be no reduction in available job numbers due to the
13 limitations set out in the ALJ’s hypothetical. (Id.)

14 First, there is nothing in the DOT to indicate that power gripping is a
15 requirement of either job. For instance, the job of Small Products Assembler may
16 involve any combination of certain repetitive tasks on an assembly line to mass
17 produce small products, and a few of the enumerated tasks involve “using hands,
18 tweezers, or tongs,” or “hand tools or portable powered tools.” DOT No. 706.684-
19 022. The job of Electronics Worker may involve any combination of a number of
20 tasks to “clean, trim, or prepare components or parts for assembly by other
21 workers,” and a few of the enumerated tasks involve using cutting tools, files,
22 spray guns, brushes, rollers, hand tools, and power tools and equipment. DOT
23 Nos. 706.684-022, 726.687-010. Both jobs include other tasks that do not require
24 anything but use of the hands to perform the task and there is no indication that
25 “power gripping” is necessary even for use of the hand tools or portable powered
26 tools. Thus, the Court finds no error with respect to Plaintiff’s RFC limitation to
27 no power gripping and his ability to perform the requirements of these occupations.

28 Plaintiff also contends that both jobs require standing and/or walking in

1 excess of six hours of an eight-hour workday,⁵ contrary to his RFC limiting him to
2 standing and/or walking only two hours out of an eight-hour day, but no more than
3 fifteen minutes at a time, or in fifteen minute intervals, with unrestricted sitting.

4 The DOT description for both positions indicates the following:

5 Even though the weight lifted may be only a negligible amount,
6 a job should be rated Light Work: (1) when it requires walking or
7 standing to a significant degree; *or* (2) when it requires sitting most of
8 the time but entails pushing and/or pulling of arm or leg controls; *and/or*
9 (3) when the job requires working at a production rate pace entailing the
10 constant pushing and/or pulling of materials even though the weight of
11 those materials is negligible.

12 DOT Nos. 706.684-022, 726.687-010 (emphasis added).

13 The ALJ's hypothetical to the VE restricted walking or standing to two
14 hours in an eight-hour workday, as well as to no pushing and/or pulling with the
15 legs. (AR at 383.) As a result, in order to satisfy Plaintiff's RFC limitations, the
16 two occupations must either require sitting most of the time but entail pushing
17 and/or pulling of arm controls, and/or require working at a production rate pace
18 with constant pushing and/or pulling of materials, rather than requiring "walking or
19 standing to a significant degree." DOT Nos. 706.684-022, 726.687-010.

20 The Court sees nothing in the job description for either occupation that
21 indicates either would require standing and/or walking in excess of two hours per
22 workday to the exclusion of the other potential reasons for rating an occupation as
23 light work. Both positions could fit the rubrics of "sitting most of the time but with
24 pushing or pulling of arm controls," or "working at a production rate pace entailing
25 the constant pushing and/or pulling of materials even though the weight of those

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27 ⁵ The full range of light work requires the ability to stand or walk for six
28 hours in an eight-hour day. 20 C.F.R. §§ 404.1567(b), 416.967(b); Soc. Sec.
Ruling 85-15, 83-10, 83-14.

1 materials is negligible.” In fact, the Assembler occupation states that it consists of
2 repetitive tasks on an assembly line. DOT No. 706.684-022. Moreover, the VE
3 testified that the DOT requirements of these jobs were consistent with the
4 hypothetical suggested by the ALJ and that there was no reduction in the numbers
5 due to the RFC limitations. (AR at 384.)

6 Accordingly, the Court finds that the VE’s testimony that Plaintiff could
7 perform the Small Products Assembler I and Electronics Worker jobs did not
8 conflict with the DOT, and, therefore, the ALJ did not err in relying on that
9 testimony.

10 **IV.**

11 **ORDER**

12 Based on the foregoing, IT THEREFORE IS ORDERED that Judgment be
13 entered affirming the decision of the Commissioner, and dismissing this action
14 with prejudice.

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16 Dated: August 8, 2013



17 **HONORABLE OSWALD PARADA**
18 **United States Magistrate Judge**