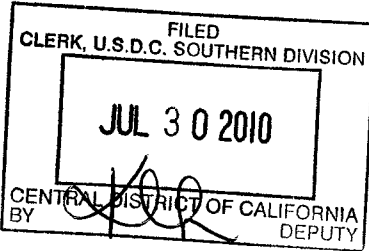


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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 STEVEN PIERCE, ) Case No. CV 09-8177 RNB  
12 Plaintiff, )  
13 vs. ) ORDER AFFIRMING DECISION OF  
14 MICHAEL J. ASTRUE, ) COMMISSIONER  
15 Commissioner of Social Security, )  
16 Defendant. )  
17

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19 The Court now rules as follows with respect to the three disputed issues listed  
20 in the Joint Stipulation.<sup>1</sup>

21 With respect to Disputed Issue No. 3, for the reasons stated by the  
22 Commissioner (see Jt Stip at 17-19), the Court finds and concludes that reversal is not  
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25 <sup>1</sup> As the Court advised the parties in its Case Management Order, the  
26 decision in this case is being made on the basis of the pleadings, the administrative  
27 record ("AR"), and the Joint Stipulation ("Jt Stip") filed by the parties. In accordance  
28 with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined  
which party is entitled to judgment under the standards set forth in 42 U.S.C. §  
405(g).

1 warranted based on the ALJ's alleged failure to make a proper adverse credibility  
2 determination. Put another way, the Court finds and concludes that the ALJ's adverse  
3 credibility determination was proper because it was supported by substantial evidence  
4 and was sufficiently specific to permit the Court to conclude that the ALJ did not  
5 arbitrarily discredit plaintiff's subjective testimony. See Fair v. Bowen, 885 F.2d  
6 597, 604 (9th Cir. 1989) ("Where, as here, the ALJ has made specific findings  
7 justifying a decision to disbelieve an allegation of excess pain, and those findings are  
8 supported by substantial evidence in the record, our role is not to second-guess that  
9 decision."); see also, e.g., Burch v. Barnhart, 400 F.3d 676, 680-81 (9th Cir. 2005)  
10 (ALJ may properly rely on inconsistency between claimant's subjective complaints  
11 and objective medical findings, and lack of consistent treatment); Morgan v. Comm'r  
12 of Soc. Sec., 169 F.3d 595, 600 (9th Cir. 1999) (ALJ may properly rely on conflict  
13 between claimant's testimony of subjective complaints and objective medical  
14 evidence in the record); Tidwell v. Apfel, 161 F.3d 599, 602 (9th Cir. 1998) (ALJ  
15 may properly rely on lack of treatment); Johnson v. Shalala, 60 F.3d 1428, 1432 (9th  
16 Cir. 1995) (ALJ may properly rely on the fact that only conservative treatment had  
17 been prescribed); Orteza v. Shalala, 50 F.3d 748, 750 (9th Cir. 1995) (ALJ may  
18 properly rely on lack of objective evidence to support claimant's subjective  
19 complaints and failure to pursue treatment); Flaten v. Secretary of Health & Human  
20 Svcs., 44 F.3d 1453, 1464 (9th Cir. 1995) (ALJ may properly rely on minimal  
21 medical treatment for back pain).

22 With respect to Disputed Issue No. 1, plaintiff contends that the ALJ's  
23 determination that plaintiff could perform his past relevant work as an Estimator  
24 (Contractor) was inconsistent with plaintiff's limitations because that job "exposes  
25 plaintiff to work that would require him to climb ladders or scaffolds" and the ALJ's  
26 residual functional capacity ("RFC") determination included a preclusion from such  
27 climbing. (See Jt Stip at 3.) However, the determination that a claimant is capable of  
28 performing his/her past relevant work properly may be based on **either** the past

1 relevant work as performed by the claimant or the past relevant work as generally  
2 performed in the national economy. See, e.g., Matthews v. Shalala, 10 F.3d 678, 681  
3 (9th Cir. 1993); Sanchez v. Secretary of Health and Human Svcs., 812 F.2d 509, 511  
4 (9th Cir. 1987). Here, in his work history report, plaintiff described his estimator job  
5 as involving no climbing. (See AR 105.) Thus, the ALJ's determination that plaintiff  
6 could perform his past relevant work as actually performed was supported by the  
7 evidence of record. Consequently, it is unnecessary for the Court to address  
8 plaintiff's contention that the vocational expert's opinion that plaintiff was capable  
9 of performing his past relevant work as generally performed in the national economy  
10 conflicted with the Dictionary of Occupational Titles because even if the ALJ erred  
11 in determining that plaintiff could perform his past relevant work as generally  
12 performed, the error was harmless. See Burch, 400 F.3d at 679 ("A decision of the  
13 ALJ will not be reversed for errors that are harmless."); Curry v. Sullivan, 925 F.2d  
14 1127, 1131 (9th Cir. 1991) (harmless error rule applies to review of administrative  
15 decisions regarding disability).

16 The Court's finding and conclusion that the ALJ's determination that plaintiff  
17 could perform his past relevant work as actually performed was supported by the  
18 evidence of record, and specifically plaintiff's work history report, also is dispositive  
19 of Disputed Issue No. 2. Even if the ALJ erred in failing to make specific findings  
20 of fact as to the physical and mental demands of the estimator job that the ALJ found  
21 plaintiff remained capable of performing (see Social Security Ruling 82-62<sup>2</sup>; Pinto  
22 v. Massanari, 249 F.3d 840, 844-45 (9th Cir. 2001); see also Acosta v. Apfel, 15 F.  
23 Supp. 2d 947, 950 (C.D. Cal. 1998)), the Court finds that the error was harmless,  
24 given plaintiff's description of the requirements of that job in his work history report.

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27 <sup>2</sup> The Ninth Circuit has stated that Social Security Rulings are binding on  
28 ALJs. See Terry v. Sullivan, 903 F.2d 1273, 1275 n.1 (9th Cir. 1990).

1 IT THEREFORE IS ORDERED that Judgment be entered affirming the  
2 decision of the Commissioner and dismissing this action with prejudice.

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4 DATED: July 28, 2010



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7 ROBERT N. BLOCK  
8 UNITED STATES MAGISTRATE JUDGE  
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