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7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
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10 HUMBERTO PALMA, ) Case No. CV 12-9123-JPR  
11 )  
12 Plaintiff, )  
13 vs. ) MEMORANDUM OPINION AND ORDER  
14 ) AFFIRMING THE COMMISSIONER  
15 CAROLYN W. COLVIN, )  
16 Acting Commissioner of )  
17 Social Security,<sup>1</sup> )  
18 Defendant. )  
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1 under submission without oral argument.<sup>2</sup> For the reasons  
2 discussed below, the Commissioner's decision is affirmed and this  
3 action is dismissed.

## 4 **II. BACKGROUND**

5 Plaintiff was born on January 12, 1959. (AR 169, 173.) He  
6 completed high school. (AR 204.) Plaintiff's previous work was  
7 collecting and recycling scrap metal, glass, cans, and plastic  
8 bottles. (AR 56-57, 200, 209-10.)

9 On March 31, 2008, Plaintiff filed applications for DIB and  
10 SSI. (AR 85-86, 169-77.) He alleged that he had been unable to  
11 work since March 18, 2008, because of "[o]pen heart surgery, high  
12 cholesterol, high blood pressure, [and] diabetes." (AR 199.)  
13 After Plaintiff's applications were denied, he requested a  
14 hearing before an Administrative Law Judge. (AR 96.)

15 A hearing was held on May 12, 2010, at which Plaintiff, who  
16 was represented by counsel, testified, as did a vocational expert  
17 ("VE").<sup>3</sup> (AR 52-78.) In a written decision issued August 10,  
18 2010, the ALJ determined that Plaintiff was not disabled. (AR  
19 30-38.) On August 8, 2012, the Appeals Council denied review.

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20  
21 <sup>2</sup> Throughout the joint stipulation, Plaintiff's counsel  
22 refers to Plaintiff by different wrong names and the wrong  
23 gender. (See, e.g., J. Stip. at 4, 7, 11 (referring to Plaintiff  
24 as "Ms. Palma"), 5 (twice referring to Plaintiff as "Jessie  
25 Aguirre"), 9 (referring to Plaintiff as "Ms. Mendez" and "Ms.  
26 Aguirre").) Such sloppiness does not instill confidence in  
27 counsel's arguments. The Court has endeavored, however, not to  
28 factor the presentation of the joint stipulation into its  
analysis.

<sup>3</sup> A hearing was first held on January 19, 2010, but the  
ALJ ended it without taking any testimony after Plaintiff  
requested a postponement so he could obtain counsel. (AR 79-84.)

1 (AR 7-9.) This action followed.

### 2 **III. STANDARD OF REVIEW**

3 Pursuant to 42 U.S.C. § 405(g), a district court may review  
4 the Commissioner's decision to deny benefits. The ALJ's findings  
5 and decision should be upheld if they are free of legal error and  
6 supported by substantial evidence based on the record as a whole.  
7 § 405(g); Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct.  
8 1420, 1427, 28 L. Ed. 2d 842 (1971); Parra v. Astrue, 481 F.3d  
9 742, 746 (9th Cir. 2007). Substantial evidence means such  
10 evidence as a reasonable person might accept as adequate to  
11 support a conclusion. Richardson, 402 U.S. at 401; Lingenfelter  
12 v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than  
13 a scintilla but less than a preponderance. Lingenfelter, 504  
14 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d 880,  
15 882 (9th Cir. 2006)). To determine whether substantial evidence  
16 supports a finding, the reviewing court "must review the  
17 administrative record as a whole, weighing both the evidence that  
18 supports and the evidence that detracts from the Commissioner's  
19 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.  
20 1996). "If the evidence can reasonably support either affirming  
21 or reversing," the reviewing court "may not substitute its  
22 judgment" for that of the Commissioner. Id. at 720-21.

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

24 People are "disabled" for purposes of receiving Social  
25 Security benefits if they are unable to engage in any substantial  
26 gainful activity owing to a physical or mental impairment that is  
27 expected to result in death or which has lasted, or is expected  
28 to last, for a continuous period of at least 12 months. 42

1 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257  
2 (9th Cir. 1992).

3 A. The Five-Step Evaluation Process

4 The ALJ follows a five-step sequential evaluation process in  
5 assessing whether a claimant is disabled. 20 C.F.R.

6 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,  
7 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first  
8 step, the Commissioner must determine whether the claimant is  
9 currently engaged in substantial gainful activity; if so, the  
10 claimant is not disabled and the claim must be denied.

11 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If the claimant is not  
12 engaged in substantial gainful activity, the second step requires  
13 the Commissioner to determine whether the claimant has a "severe"  
14 impairment or combination of impairments significantly limiting  
15 his ability to do basic work activities; if not, a finding of not  
16 disabled is made and the claim must be denied.

17 §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the claimant has a  
18 "severe" impairment or combination of impairments, the third step  
19 requires the Commissioner to determine whether the impairment or  
20 combination of impairments meets or equals an impairment in the  
21 Listing of Impairments ("Listing") set forth at 20 C.F.R., Part  
22 404, Subpart P, Appendix 1; if so, disability is conclusively  
23 presumed and benefits are awarded. §§ 404.1520(a)(4)(iii),  
24 416.920(a)(4)(iii). If the claimant's impairment or combination  
25 of impairments does not meet or equal an impairment in the  
26 Listing, the fourth step requires the Commissioner to determine  
27 whether the claimant has sufficient residual functional capacity  
28

1 ("RFC")<sup>4</sup> to perform his past work; if so, the claimant is not  
2 disabled and the claim must be denied. §§ 404.1520(a)(4)(iv),  
3 416.920(a)(4)(iv). The claimant has the burden of proving that  
4 he is unable to perform past relevant work. Drouin, 966 F.2d at  
5 1257. If the claimant meets that burden, a prima facie case of  
6 disability is established. Id. If that happens or if the  
7 claimant has no past relevant work, the Commissioner then bears  
8 the burden of establishing that the claimant is not disabled  
9 because he can perform other substantial gainful work available  
10 in the national economy. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).  
11 That determination comprises the fifth and final step in the  
12 sequential analysis. §§ 404.1520, 416.920; Lester, 81 F.3d at  
13 828 n.5; Drouin, 966 F.2d at 1257.

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

15 At step one, the ALJ found that Plaintiff had not engaged in  
16 any substantial gainful activity since March 18, 2008. (AR 32.)  
17 At step two, the ALJ concluded that Plaintiff had the severe  
18 impairments of "coronary artery disease (status post bypass) and  
19 diabetes mellitus." (Id.) At step three, the ALJ determined  
20 that Plaintiff's impairments did not meet or equal any of the  
21 impairments in the Listing. (AR 33.) At step four, the ALJ  
22 found that Plaintiff had the RFC to perform the "full range" of  
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27 <sup>4</sup> RFC is what a claimant can do despite existing  
28 exertional and nonexertional limitations. 20 C.F.R. §§ 404.1545,  
416.945; see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th  
Cir. 1989).

1 light work.<sup>5</sup> (AR 34-37.) Based on the VE's testimony, the ALJ  
2 concluded that Plaintiff was able to perform his past relevant  
3 work as a "laborer, salvage," DOT 929.687-022, 1991 WL 688172, as  
4 generally and actually performed. (AR 37.) Accordingly, the ALJ  
5 determined that Plaintiff was not disabled. (AR 37-38.)

## 6 **V. DISCUSSION**

7 Plaintiff contends that the ALJ erred in (1) finding that  
8 his previous job was "past relevant work" and (2) determining  
9 that he could perform his past relevant work as actually and  
10 generally performed. (J. Stip. at 4-11.)

### 11 **A. Background**

12 In an undated disability report, Plaintiff stated that from  
13 2002 to June 2007, he was self-employed as a "recycler,"  
14 "collect[ing] cans and plastic bottles and recycl[ing]" them.  
15 (AR 200.) In that job, he had to lift and carry "plastic bags  
16 with bottles and cans"; he lifted 10 pounds "frequently," which  
17 was defined as "from 1/3 to 2/3 of the workday," and 50 pounds at  
18 most. (Id.) Plaintiff stated that he used "machines, tools, or  
19 equipment" and "technical knowledge or skills" as part of his job  
20 and that he stopped working in June 2007 because he "did not have  
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22 <sup>5</sup> "Light work" involves "lifting no more than 20 pounds  
23 at a time with frequent lifting or carrying of objects weighing  
24 up to 10 pounds." 20 C.F.R. §§ 404.1567(b), 416.967(b). The  
25 regulations further specify that "[e]ven though the weight lifted  
26 may be very little, a job is in this category when it requires a  
27 good deal of walking or standing, or when it involves sitting  
28 most of the time with some pushing and pulling of arm or leg  
controls." Id. A person capable of light work is also capable  
of "sedentary work," which involves lifting "no more than 10  
pounds at a time and occasionally lifting or carrying [small  
articles]" and may involve occasional walking or standing.  
§§ 404.1567(a)-(b); 416.967(a)-(b).

1 the necessary transportation to continue the job." (AR 199.)  
2 Plaintiff stated that he worked eight hours a day, five days a  
3 week, and earned \$240 a month. (AR 200.)

4 On April 28, 2008, Plaintiff's daughter, Mirza Palma,  
5 completed a work-history report stating that Plaintiff had worked  
6 as a "junk collector" from 2002 to 2007. (AR 209-16.) Palma  
7 wrote that in that job, Plaintiff lifted "6 f[oot] metal pieces,"  
8 cans, and plastics and used "machines, tools, or equipment" and  
9 "technical knowledge or skills." (AR 210.) She checked boxes  
10 indicating that Plaintiff "frequently" lifted "50 [pounds] or  
11 more" and that the heaviest weight he lifted was "50 [pounds]."  
12 (Id.) Palma stated that Plaintiff worked 10 to 12 hours a day,  
13 six days a week, and earned \$50 a day. (Id.) A Social Security  
14 earnings summary dated June 30, 2009, showed that Plaintiff  
15 earned \$1954 in 2002, \$10,547 in 2003, \$10,898 in 2004, \$11,632  
16 in 2005, and \$8035 in 2006. (AR 178.)

17 At the May 12, 2010 hearing, Plaintiff testified that his  
18 past work involved "go[ing] into the trash cans before the trash  
19 can was empt[ied]" and finding plastic, glass, and aluminum to  
20 recycle. (AR 57.) Plaintiff testified that the most he would  
21 lift would be a bag of recyclable material weighing about 12  
22 pounds; he said he could not lift more than that because "[a]ll  
23 of my life I've always had back problems." (AR 57-58.) After  
24 the materials were collected, Plaintiff's friend, who had a van,  
25 took them to a recycling plant, and he and Plaintiff split the  
26 money he received. (AR 57, 73.) When questioned by the VE,  
27 Plaintiff confirmed that he did not participate in the loading or  
28 unloading of materials. (AR 73.)

1 The VE testified that Plaintiff had previously worked as a  
2 "laborer, salvage," which carried a DOT code of 929.687-022 and  
3 was "generally regarded as a medium exertional level job" with a  
4 specific vocational preparation level of two.<sup>6</sup> (AR 74.) The VE  
5 further testified that someone of Plaintiff's age with his  
6 education and vocational history and who could perform a "full  
7 range" of light work would be able to perform the laborer job as  
8 Plaintiff actually performed it but not "as classified,"  
9 presumably referring to the DOT description. (Id.)

10 In his decision, the ALJ found that Plaintiff retained the  
11 RFC to perform a "full range" of light work. (AR 34.) The ALJ  
12 found that Plaintiff could perform his past relevant work as a  
13 "laborer, salvage," DOT 929.687-022, 1991 WL 688172, which the  
14 ALJ noted was "medium" work but "performed at light." (AR 37.)  
15 The ALJ found that "[t]estimony from both [Plaintiff] and the  
16 [VE] provide persuasive evidence that [Plaintiff] performed his  
17 past relevant work at a light exertional level which falls within  
18 the parameters of his [RFC]." (Id.) The ALJ also stated,  
19 somewhat contradictorily and without elaboration, that Plaintiff  
20 could perform the laborer job "as generally performed" even  
21 though it was medium exertion. (Id.) The ALJ concluded that  
22 Plaintiff was not disabled and denied his claims for benefits.  
23 (AR 37-38.)  
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27 <sup>6</sup> An SVP of two "corresponds precisely to the definition  
28 of unskilled work embodied in SSA regulations." Terry v.  
Sullivan, 903 F.2d 1273, 1276 (9th Cir. 1990).



1           B.   Past Relevant Work

2           Plaintiff contends reversal is required because it is  
3 "unclear whether the ALJ completed the proper analysis" in  
4 determining that Plaintiff had "past relevant work." (J. Stip.  
5 at 7.) Petitioner further contends that because he was a "self  
6 employed person," the ALJ was required to deduct his "normal  
7 business expenses" from his income before determining whether his  
8 work as a salvage laborer constituted "substantial gainful work  
9 activity." (J. Stip. at 9-10.)

10          A job qualifies as past relevant work only if it involved  
11 substantial gainful activity. Lewis v. Apfel, 236 F.3d 503, 515  
12 (9th Cir. 2001); 20 C.F.R. §§ 404.1560(b)(1) (defining past  
13 relevant work), 416.960(b)(1) (same). Substantial gainful  
14 activity is work activity that "involves doing significant  
15 physical or mental activities" and "is the kind of work usually  
16 done for pay or profit, whether or not a profit is realized."  
17 §§ 404.1572(a)-(b), 416.972(a)-(b). "Earnings can be a  
18 presumptive, but not conclusive, sign of whether a job is  
19 substantial gainful activity." Lewis, 236 F.3d at 515; see also  
20 §§ 404.1574(b) (defining earnings that will ordinarily show that  
21 claimant engaged in substantial gainful activity), 416.974(b)  
22 (same); see also SSR 83-34, 1983 WL 31256, at \*2 (Jan. 1, 1983)  
23 ("The receipt of substantial income by the operator of a  
24 one-person business will result in a finding of [substantial  
25 gainful activity]."). Thus, if a person's earnings exceed  
26 certain amounts set forth in the regulations, he is ordinarily  
27 considered to have engaged in substantial gainful activity. See  
28 §§ 404.1574(b), 416.974(b). Before determining whether a self-

1 employed person's earnings rise to that level, however, the ALJ  
2 must first deduct "normal business expenses," among other things,  
3 from the gross earnings.<sup>7</sup> §§ 404.1575(a)(2), (c)(1),  
4 416.975(a)(2), (c)(1); accord SSR 83-34, 1983 WL 31256, at \*4.

5 Plaintiff does not dispute that his income while working as  
6 a salvage laborer exceeded amounts generally considered to  
7 indicate substantial gainful activity.<sup>8</sup> Rather, Plaintiff argues  
8 that because he was a "self employed person," the ALJ was  
9 required to deduct his "normal business expenses" from his income  
10 before determining whether his work as a salvage laborer  
11 constituted "substantial gainful work activity." (J. Stip. at 9-  
12 10.) Plaintiff contends that reversal is appropriate because it  
13 is "unclear" whether the ALJ performed that analysis. (Id. at  
14 7.)

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16 <sup>7</sup> If a self-employed person's net earnings do not rise to  
17 the level set forth in the regulations, the Social Security  
18 Administration applies two other tests to determine whether the  
19 person engaged in substantial gainful activity. See §§  
20 404.1575(a)(2), 416.975(a)(2). One test assesses whether the  
21 person's "work activity, in terms of factors such as hours,  
22 skills, energy output, efficiency, duties, and responsibilities,  
23 is comparable to that of unimpaired individuals in your community  
24 who are in the same or similar businesses as their means of  
livelihood"; the other assesses whether the work activity is  
worth an amount ordinarily considered to be substantial gainful  
activity "when considered in terms of its value to the business,  
or when compared to the salary that an owner would pay to an  
employee to do the work you are doing." Id.

25 <sup>8</sup> A person who earned more than \$800 a month in 2003,  
26 \$810 a month in 2004, or \$830 a month in 2005 is ordinarily  
27 considered to have engaged in substantial gainful activity. See  
28 Substantial Gainful Activity, Social Security, <http://www.ssa.gov/oact/cola/sga.html> (last accessed Dec. 10, 2013). Plaintiff  
earned \$878 a month in 2003, \$908 a month in 2004, and \$969 a  
month in 2005. (See AR 178.)

1 During the administrative proceedings, however, Plaintiff –  
2 who was represented by counsel at the hearing and before the  
3 Appeals Council (see AR 15-16, 52, 131-32, 163-65) – never  
4 asserted that he had incurred any business expenses in connection  
5 with his work as a salvage laborer, nor did he submit any  
6 evidence of such expenses. Indeed, although Plaintiff presumably  
7 used transportation in his work (see, e.g., AR 554 (medical  
8 record noting that Plaintiff “[r]ecycle[d] cans but stopped when  
9 car broke down”)), Petitioner in fact testified that the friend  
10 with whom he worked “had a van” and that his friend would take  
11 the recyclables to the recycling plant (AR 57, 73). Thus,  
12 nothing indicates that Plaintiff incurred transportation  
13 expenses. Indeed, Plaintiff still does not point to any specific  
14 business expense that the ALJ failed to deduct from his earnings;  
15 instead, he contends only that reversal is required because the  
16 ALJ “did not perform the required analysis.” (J. Stip. at 10.)  
17 Because nothing indicates that Plaintiff incurred any business  
18 expenses, the ALJ’s failure to explicitly address the issue was  
19 at most harmless error. See Molina v. Astrue, 674 F.3d 1104,  
20 1115 (9th Cir. 2012) (ALJ’s error harmless when “inconsequential  
21 to the ultimate nondisability determination” (internal quotation  
22 marks omitted)); Stout v. Comm’r, Soc. Sec. Admin., 454 F.3d  
23 1050, 1055 (9th Cir. 2006) (same). Plaintiff is not entitled to  
24 remand on this ground.

25 C. Ability to Perform Past Relevant Work

26 Plaintiff contends that he “does not have the requisite  
27 lifting abilities to perform the past relevant work” as a salvage  
28 laborer because that work “as he actually performed it required

1 him to lift up to 50 pounds." (J. Stip. at 7-8.) Plaintiff  
2 argues that the ALJ limited him to "light work, i.e., work that  
3 requires lifting 20 pounds occasionally and 10 pounds frequently"  
4 and "offered no explanation how an individual who is limited to  
5 those weights can perform the past work where, as performed, it  
6 required lifting of up to 50 pounds." (Id. at 8.)

7 A plaintiff has the burden of proving that his alleged  
8 physical or mental impairments prevented him from engaging in his  
9 past relevant work, either as he actually performed it or as it  
10 is customarily performed in the national economy. See Vertigan  
11 v. Halter, 260 F.3d 1044, 1051 (9th Cir. 2001); Orteza v.  
12 Shalala, 50 F.3d 748, 751 (9th Cir. 1995) (holding that plaintiff  
13 has burden to prove inability to return to former type of work,  
14 not just former job). "To determine whether a claimant has the  
15 residual capacity to perform his past relevant work, the [ALJ]  
16 must ascertain the demands of the claimant's former work and then  
17 compare the demands with his present capacity." Villa v.  
18 Heckler, 797 F.2d 794, 797-98 (9th Cir. 1986). Although the  
19 burden lies with the plaintiff at step four, the ALJ still has a  
20 duty to make the requisite factual findings to support his  
21 conclusions. Pinto v. Massanari, 249 F.3d 840, 845 (9th Cir.  
22 2001). Once an ALJ determines that the plaintiff's limitations  
23 do not preclude the work as actually performed, the ALJ need not  
24 conclude that he can also return to his prior position as  
25 customarily performed in the general economy. See id. ("We have  
26 never required explicit findings at step four regarding a  
27 claimant's past relevant work both as generally performed and as  
28 actually performed." (emphasis in original)).

1 The best source of how a job is generally performed is  
2 usually the Dictionary of Occupational Titles ("DOT"). Id. at  
3 845-46; see also Massachi v. Astrue, 486 F.3d 1149, 1153 (9th  
4 Cir. 2007) ("In making disability determinations, the [SSA]  
5 relies primarily on the [DOT] for information about the  
6 requirements of work in the national economy." (internal  
7 quotation marks omitted)). The DOT describes the position of  
8 salvage laborer as collecting "reusable items or waste materials"  
9 in containers and inspecting and sorting materials, among other  
10 things. DOT 929.687-022, 1991 WL 688172. It is categorized as  
11 "[m]edium [w]ork."<sup>9</sup> Id.

12 Plaintiff argues that the requirements of his past relevant  
13 work as he actually performed it exceed his RFC for light work  
14 because, as stated in his two disability reports, he lifted a  
15 maximum of 50 pounds when working as a salvage laborer. (J.  
16 Stip. at 7-8 (citing AR 200, 210).) One of those two reports,  
17 however, was completed by Plaintiff's daughter, not Plaintiff (AR  
18 209-16), and the ALJ explicitly found her to be only partially  
19 credible (AR 36-37), a finding that Plaintiff has not challenged  
20 or even addressed. Moreover, although Plaintiff's own disability  
21 report states that the heaviest weight he lifted was 50 pounds  
22 (AR 200), at the hearing Plaintiff testified that the heaviest  
23 item he lifted was a bag of recyclable materials weighing 12  
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25 <sup>9</sup> Social Security regulations state that "medium work"  
26 involves "lifting no more than 50 pounds at a time with frequent  
27 lifting or carrying of objects weighing up to 25 pounds."  
28 §§ 404.1567(c), 416.967(c). The Social Security Administration  
has specified that its exertional classifications "have the same  
meaning as they have in the exertional classifications noted in  
the DOT." SSR 00-4p, 2000 WL 1898704, at \*3 (Dec. 4, 2000).

1 pounds; in fact, he claimed that he had always been physically  
2 unable to lift more than that because of his lifelong "back  
3 problems." (AR 57-58.) In the joint stipulation, Plaintiff does  
4 not specifically address his testimony that he never lifted more  
5 than 12 pounds in his previous work but instead merely states,  
6 without further elaboration, that "[w]hile [his] hearing  
7 testimony was unclear, the vocational reports are not." (J.  
8 Stip. at 8.)

9 The ALJ, however, permissibly credited Plaintiff's testimony  
10 at the hearing instead of his statements in the disability  
11 report. Contrary to Plaintiff's argument, his testimony at the  
12 hearing was not "unclear"; rather, he sufficiently explained his  
13 past work, including the lifting requirements, in response to the  
14 ALJ's and VE's questions. (See AR 56-58, 73.) In his decision,  
15 moreover, the ALJ specifically stated that "[t]estimony  
16 from . . . the claimant . . . provide[d] persuasive evidence that  
17 [he] performed his past relevant work at a light exertional  
18 level." (AR 37.) Thus, the ALJ sufficiently indicated that he  
19 was crediting Plaintiff's testimony regarding the requirements of  
20 his past relevant work. See SSR 82-62, 1982 WL 31386, at \*4  
21 (Jan. 1, 1982) (decision that individual has "capacity to perform  
22 a past relevant job" must include "finding of fact as to the  
23 physical and mental demands of the past job/occupation").

24 Moreover, the ALJ was entitled to reject Plaintiff's  
25 statement in his disability report that he lifted a maximum of 50  
26 pounds while working as a salvage laborer. Elsewhere in his  
27 decision, the ALJ persuasively discounted Plaintiff's credibility  
28 - a finding that Plaintiff does not challenge - based on the lack

1 of objective medical evidence supporting his complaints, his  
2 generally conservative treatment, his noncompliance with  
3 treatment recommendations, and several inconsistencies among his  
4 various statements. (AR 34-36.) Indeed, the disability reports  
5 Plaintiff relies upon are themselves contradictory: in one  
6 Plaintiff wrote that in his past work he "frequently" lifted 10  
7 pounds and earned \$240 a month (AR 200) and in the other his  
8 daughter wrote that Plaintiff frequently lifted "50 [pounds] or  
9 more," worked six days a week, and earned \$50 a day (AR 210).  
10 Given Plaintiff's overall lack of credibility, the ALJ  
11 permissibly credited his hearing testimony rather than the  
12 contradictory statements in his disability report in determining  
13 the requirements of his past work. Because Plaintiff therefore  
14 failed to carry his burden of proving that he was unable to  
15 perform his past relevant work, see Pinto, 249 F.3d at 844, he is  
16 not entitled to remand on this ground.<sup>10</sup>

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21 <sup>10</sup> The ALJ appears to have erred in finding that Plaintiff  
22 could perform his past relevant work as "generally performed."  
23 (See AR 37.) As noted, the DOT states that the salvage laborer  
24 job was medium work, DOT 929.687-022, 1991 WL 688172, which  
25 exceeded Plaintiff's RFC for a full range of light work (AR 34).  
26 But that error was harmless because, as discussed above, the ALJ  
27 permissibly found that Plaintiff could perform his past relevant  
28 work as he actually performed it. See Molina, 674 F.3d at 1115;  
Stout, 454 F.3d at 1055; cf. Tweedy v. Astrue, 460 F. App'x 659,  
661 (9th Cir. 2011) (declining to address whether claimant could  
perform past relevant work as generally performed when ALJ  
correctly concluded that claimant could perform it as actually  
performed).

1 VI. CONCLUSION

2 Consistent with the foregoing and pursuant to sentence four  
3 of 42 U.S.C. § 405(g),<sup>11</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.

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10 DATED: December 19, 2013

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