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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PEDRO ENRIQUE MEDEL,)	Case No. EDCV 13-2052-JPR
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
vs.)	AFFIRMING COMMISSIONER
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying his application for Social Security Disability Insurance benefits ("DIB"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed July 3, 2014, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner's decision is affirmed and judgment is entered in her favor.

1 **II. BACKGROUND**

2 Plaintiff was born November 27, 1969. (Administrative
3 Record ("AR") 148.) He completed the 12th grade and worked as a
4 machine operator at three different companies and general helper
5 at a company that produced cardboard boxes. (AR 166-67.)

6 Plaintiff filed an application for DIB on February 1, 2010.
7 (AR 71, 148-51.) He alleged that he had been unable to work
8 since October 10, 2008, because of a "[b]lack and legs injury,"
9 "numbness in both hands," and headaches. (AR 165.) After his
10 application was denied, he requested a hearing before an
11 Administrative Law Judge. (AR 90.) A hearing was held on
12 January 30, 2012, at which Plaintiff, who was represented by
13 counsel, and a vocational expert ("VE") testified. (AR 32-70.)
14 In a written decision issued August 2, 2012, the ALJ found that
15 Plaintiff was not disabled. (AR 14-27.) On September 11, 2013,
16 the Appeals Council denied Plaintiff's request for review. (AR
17 1-3.) This action followed.

18 **III. STANDARD OF REVIEW**

19 Under 42 U.S.C. § 405(g), a district court may review the
20 Commissioner's decision to deny benefits. The ALJ's findings and
21 decision should be upheld if they are free of legal error and
22 supported by substantial evidence based on the record as a whole.
23 Id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.
24 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence
25 means such evidence as a reasonable person might accept as
26 adequate to support a conclusion. Richardson, 402 U.S. at 401;
27 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It
28 is more than a scintilla but less than a preponderance.

1 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
2 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
3 substantial evidence supports a finding, the reviewing court
4 "must review the administrative record as a whole, weighing both
5 the evidence that supports and the evidence that detracts from
6 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
7 720 (9th Cir. 1996). "If the evidence can reasonably support
8 either affirming or reversing," the reviewing court "may not
9 substitute its judgment" for that of the Commissioner. Id. at
10 720-21.

11 **IV. THE EVALUATION OF DISABILITY**

12 People are "disabled" for purposes of receiving Social
13 Security benefits if they are unable to engage in any substantial
14 gainful activity owing to a physical or mental impairment that is
15 expected to result in death or which has lasted, or is expected
16 to last, for a continuous period of at least 12 months. 42
17 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257
18 (9th Cir. 1992).

19 A. The Five-Step Evaluation Process

20 The ALJ follows a five-step sequential evaluation process in
21 assessing whether a claimant is disabled. 20 C.F.R.
22 § 404.1520(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th
23 Cir. 1995) (as amended Apr. 9, 1996). In the first step, the
24 Commissioner must determine whether the claimant is currently
25 engaged in substantial gainful activity; if so, the claimant is
26 not disabled and the claim must be denied. § 404.1520(a)(4)(i).
27 If the claimant is not engaged in substantial gainful activity,
28 the second step requires the Commissioner to determine whether

1 the claimant has a "severe" impairment or combination of
2 impairments significantly limiting his ability to do basic work
3 activities; if not, a finding of not disabled is made and the
4 claim must be denied. § 404.1520(a)(4)(ii). If the claimant has
5 a "severe" impairment or combination of impairments, the third
6 step requires the Commissioner to determine whether the
7 impairment or combination of impairments meets or equals an
8 impairment in the Listing of Impairments ("Listing") set forth at
9 20 C.F.R., Part 404, Subpart P, Appendix 1; if so, disability is
10 conclusively presumed and benefits are awarded.

11 § 404.1520(a)(4)(iii).

12 If the claimant's impairment or combination of impairments
13 does not meet or equal an impairment in the Listing, the fourth
14 step requires the Commissioner to determine whether the claimant
15 has sufficient residual functional capacity ("RFC")¹ to perform
16 his past work; if so, the claimant is not disabled and the claim
17 must be denied. § 404.1520(a)(4)(iv). The claimant has the
18 burden of proving he is unable to perform past relevant work.
19 Drouin, 966 F.2d at 1257. If the claimant meets that burden, a
20 prima facie case of disability is established. Id. If that
21 happens or if the claimant has no past relevant work, the
22 Commissioner then bears the burden of establishing that the
23 claimant is not disabled because he can perform other substantial
24 gainful work available in the national economy.

25 § 404.1520(a)(4)(v). That determination comprises the fifth and
26

27 ¹RFC is what a claimant can do despite existing exertional and
28 nonexertional limitations. § 404.1545; see Cooper v. Sullivan, 880
F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 final step in the sequential analysis. § 404.1520; Lester, 81
2 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

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

4 At step one, the ALJ found that Plaintiff had not engaged in
5 substantial gainful activity since October 10, 2008, his alleged
6 onset date. (AR 16.) At step two, the ALJ concluded that
7 Plaintiff had severe impairments of "chronic cervical strain with
8 mild degenerative disc disease; chronic lumbosacral strain with
9 mild degenerative disc disease; chronic bilateral knee strain;
10 chronic bilateral wrist strain; and obesity." (Id.)
11 The ALJ found that Plaintiff's left-knee osteoarthritis,
12 gastrointestinal issues, and depression were not severe (AR 16-
13 18), findings Plaintiff does not challenge. At step three, the
14 ALJ determined that Plaintiff's impairments did not meet or equal
15 a Listing. (AR 18.) At step four, she found that Plaintiff
16 retained the RFC to perform "light work," specifically, he could
17 "lift 20 pounds occasionally and 10 pounds frequently; he can
18 stand and walk for six hours out of an eight-hour workday and sit
19 for six hours out of an eight-hour workday," and he was "limited
20 to frequent gross handling and fingering."² (AR 19.) Based on
21 the VE's testimony, the ALJ concluded that Plaintiff was able to
22 perform his past relevant work as an "extension edger" as

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24 ²"Light work involves lifting no more than 20 pounds at a time
25 with frequent lifting or carrying of objects weighing up to 10
26 pounds." § 404.1567(b). "Even though the weight lifted may be
27 very little, a job is in this category when it requires a good deal
28 of walking or standing, or when it involves sitting most of the
time with some pushing and pulling of arm or leg controls." Id.
A person who can do light work can generally also do sedentary
work. Id.

1 generally performed in the regional and national economies. (AR
2 26.) The ALJ therefore concluded that Plaintiff was not
3 disabled. (AR 26-27.)

4 **V. DISCUSSION**

5 Plaintiff argues that the ALJ erred in (1) evaluating the
6 medical evidence, (2) assessing his credibility, and (3)
7 "develop[ing] and analyz[ing]" the vocational evidence. (J.
8 Stip. at 3-4.)

9 A. The ALJ Did Not Err in Assessing the Medical Evidence

10 Plaintiff argues that the ALJ "failed to properly consider
11 relevant medical evidence which is supportive of [Plaintiff's]
12 claim of disability" (*id.* at 4), including evidence of his
13 meniscus tears and parts of Dr. Kim's opinion (*id.* at 5-6). For
14 the reasons discussed below, reversal is not warranted on this
15 ground.

16 1. Applicable law

17 A district court must uphold an ALJ's RFC assessment when
18 the ALJ has applied the proper legal standard and substantial
19 evidence in the record as a whole supports the decision. Bayliss
20 v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005). The ALJ must
21 consider all the medical evidence in the record and "explain in
22 [her] decision the weight given to . . . [the] opinions from
23 treating sources, nontreating sources, and other nonexamining
24 sources." 20 C.F.R. § 404.1527(e)(2)(ii); see also
25 § 404.1545(a)(1) ("We will assess your residual functional
26 capacity based on all the relevant evidence in your case
27 record."); SSR 96-8p, 1996 WL 374184, at *2 (July 2, 1996)
28 (same). In making an RFC determination, the ALJ may consider

1 those limitations for which there is support in the record and
2 need not consider properly rejected evidence or subjective
3 complaints. See Bayliss, 427 F.3d at 1217 (upholding ALJ's RFC
4 determination because "the ALJ took into account those
5 limitations for which there was record support that did not
6 depend on [claimant's] subjective complaints"); Batson v. Comm'r
7 of Soc. Sec. Admin., 359 F.3d 1190, 1197 (9th Cir. 2004) (ALJ not
8 required to incorporate into RFC any findings from treating-
9 physician opinions that were "permissibly discounted").

10 2. Relevant facts³

11 On February 16, 2008, an MRI of Plaintiff's left knee
12 revealed "[m]inimal tricompartmental osteoarthritic changes" and
13 "an oblique tear of the posterior horn of the medial meniscus
14 extending to the inferior articular surface." (AR 248.) An MRI
15 of Plaintiff's right knee showed an "[o]blique tear of the
16 posterior horn of the medial meniscus extending to the inferior
17 articular surface." (AR 250.)

18 On July 16, 2008, Dr. David S. Kim, who was board certified
19 in orthopedic surgery, reviewed Plaintiff's medical records and
20 completed an orthopedic examination as part of Plaintiff's
21 workers' compensation case.⁴ (AR 205-33.) Dr. Kim noted that
22 "clinical examination of [Plaintiff's] cervical spine reveals
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24 ³Because the parties are familiar with the facts, they are
summarized only to the extent relevant to this contested issue.

25 ⁴Dr. Kim was apparently selected by agreement of both parties
26 to examine Plaintiff and render an opinion as to his impairments
27 and limitations. (See AR 205 (Dr. Kim's notation that he performed
28 evaluation "in [his] capacity as AGREED MEDICAL EVALUATOR")); see
also Cal. Labor Code § 4062.2 (procedure for parties in workers'
compensation case to together select "agreed medical evaluator").

1 complaints of tenderness and loss of cervical range of motion,"
2 but orthopedic testing was negative and x-rays were normal. (AR
3 217.) He found that examination of Plaintiff's "bilateral
4 hands/wrists reveal[ed] some loss of range of motion and
5 complaints of tenderness," but "Tinel sign and Phalen testing at
6 this time are negative with no clinical indication of an
7 underlying problem such as carpal tunnel syndrome."⁵ (Id.) Dr.
8 Kim noted that examination of Plaintiff's low back revealed
9 "complaints of tenderness with limited and painful range of
10 motion," but straight-leg-raising was "negative for a radicular
11 problem." (Id.) He further noted with regard to Plaintiff's low
12 back that electrodiagnostic studies revealed "some
13 abnormalities," but they were "not correlated by clinical
14 examination or the MRI study which only reveals 1 mm disc bulges
15 at two levels with no impingement on neural structures." (Id.)

16 Finally, Dr. Kim found that examination of Plaintiff's knees
17 revealed "complaints of tenderness, as well as bilateral knee
18 discomfort with attempts at squatting and positive McMurray
19 maneuver which appears consistent with the MRI studies, revealing
20 tears to the posterior horns of the medial menisci."⁶ (Id.) Dr.

23 ⁵Tinel's sign and Phalen's sign tests are used to diagnose
24 carpal tunnel syndrome. Carpal Tunnel Syndrome Health Center,
25 WebMD, <http://www.webmd.com/pain-management/carpal-tunnel/physical-exam-for-carpal-tunnel-syndrome> (last updated Oct. 2, 2012).

26 ⁶The McMurray's test is used to diagnose meniscal pathology
27 within the knee joint. Wayne Hing et al., Validity of the
28 McMurray's Test and Modified Versions of the Test: A Systematic
Literature Review, 17 J. Manual & Manipulative Therapy 22-35
(2009), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2704345/>.

1 Kim opined that Plaintiff "should avoid very heavy work
2 activities, as well as any activities involving repetitive
3 forceful gripping, grasping, or torquing, and any activities
4 involving prolonged walking or standing." (AR 221.)

5 On November 12, 2008, Dr. Kim examined Plaintiff and
6 completed a follow-up evaluation (AR 235-44), noting Plaintiff's
7 report that his condition was "essentially unchanged" from the
8 time of the July 2008 evaluation (AR 243). Dr. Kim diagnosed
9 "[c]hronic cervical sprain/strain"; "[c]hronic bilateral wrist
10 strain"; "[c]hronic lumbosacral sprain/strain, superimposed upon
11 1 mm disc protrusion at L4-5 and L5-S1 per MRI"; "[s]tatus post
12 lower extremity contusions with bilateral knee strains," and
13 "[o]blique tears of the posterior horns of medial menisci, per
14 MRI studies." (AR 242.)

15 Dr. Kim noted that at the time of his July 2008 evaluation,
16 Plaintiff had been performing "modified work duties" that had
17 restricted him from lifting more than 20 pounds and provided "a
18 ten minute break after 1.5 hours of work." (AR 243.) On October
19 10, 2008, however, Plaintiff had been "placed off work as
20 modified duties were no longer available." (Id.) Dr. Kim found
21 that Plaintiff's modified work duties fell "within the
22 recommended work restrictions" stated in his July 2008
23 evaluation, and he "believe[d] [Plaintiff] was capable of
24 performing" them. (Id.) Dr. Kim opined that "[f]ollowing review
25 of [Plaintiff's] entire file, [his] opinions regarding the work
26 restrictions remain as outlined in [his] July 16, 2008 report."
27 (Id.)

28 On May 13, 2010, Dr. Warren David Yu, a board-certified

1 orthopedic surgeon, examined Plaintiff at the Social Security
2 Administration's request. (AR 408-11.) Dr. Yu diagnosed
3 myofascial neck and back pain, upper-extremity myofascial pain,
4 and anterior knee pain. (AR 411.) He opined that Plaintiff
5 would be able to sit, stand, or walk for up to six hours in an
6 eight-hour day; lift 20 pounds occasionally and 10 pounds
7 frequently; and frequently use his upper extremities for pushing,
8 pulling, fine motor finger movements, handling, and fingering.
9 (Id.)

10 On May 26, 2010, Dr. G. Taylor-Holmes, who specialized in
11 internal medicine,⁷ reviewed Plaintiff's medical records and
12 completed a physical-residual-functional-capacity assessment.
13 (AR 412-16.) He noted Plaintiff's primary diagnoses as
14 myofascial cervical-spine and lumbar-spine pain syndrome and his
15 secondary diagnoses as history of carpal tunnel syndrome and knee
16 strain. (AR 412.) Dr. Taylor-Holmes opined that Plaintiff could
17 lift 20 pounds occasionally and 10 pounds frequently, stand and
18 walk about six hours in an eight-hour day, sit about six hours in
19 an eight-hour day, and perform unlimited pushing and pulling.
20 (AR 413.) The doctor believed that Plaintiff was limited to
21 "frequent" handling and fingering. (AR 414.) Dr. Taylor-Holmes
22 noted that those findings were consistent with Dr. Yu's. (AR
23 416.) On January 7, 2011, Dr. M. Bayar, who specialized in

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26 ⁷Dr. Taylor-Holmes's electronic signature includes a medical
27 specialty code of 19, indicating internal medicine. (AR 416); see
28 Program Operations Manual System (POMS) DI 26510.089, U.S. Soc.
Sec. Admin. (Oct. 25, 2011), <http://policy.ssa.gov/poms.nsf/lnx/0426510089>; POMS DI 26510.090, U.S. Soc. Sec. Admin. (Aug. 29, 2012), <https://secure.ssa.gov/poms.nsf/lnx/0426510090>.

1 surgery,⁸ reviewed Plaintiff's medical records and affirmed Dr.
2 Taylor-Holmes's decision. (AR 457-58.)

3 On January 26, 2012, Plaintiff's treating physician, Dr.
4 Felix A. Albano, noted that Plaintiff suffered from "Herniated
5 Disc Disease [sic] of the Cspine and Lumbosacral spine, Gastro-
6 esophageal Reflux Disease and Helicobacter Pylori."⁹ (AR 484.)
7 Dr. Albano stated, without further explanation, that Plaintiff
8 was "disabled and unable to work." (Id.)

9 Finally, on June 30, 2012, Dr. Vincente R. Bernabe, a board-
10 certified orthopedic surgeon, examined Plaintiff at the Social
11 Security Administration's request. (AR 486-91.) Dr. Bernabe
12 observed, among other things, that Plaintiff had "multiple
13 Waddell's signs," including severe back pain on "[a]xial loading
14 of the head" and on "[r]otation of the shoulder while keeping the
15 back straight."¹⁰ (AR 488.) He noted that "[e]ven the slightest
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17 ⁸Dr. Bayar's electronic signature includes a medical specialty
18 code of 45, indicating surgery. (AR 458); see Program Operations
19 Manual System (POMS) DI 26510.089, U.S. Soc. Sec. Admin. (Oct. 25,
20 2011), <http://policy.ssa.gov/poms.nsf/lnx/0426510089>; POMS DI
26510.090, U.S. Soc. Sec. Admin. (Aug. 29, 2012), <https://secure.ssa.gov/poms.nsf/lnx/0426510090>.

21 ⁹Helicobacter pylori is a bacterium commonly found in the
22 stomach. H. pylori (Helicobacter pylori), WebMD, <http://www.webmd.com/digestive-disorders/h-pylori-helicobacter-pylori> (last visited
23 Nov. 8, 2014). "The bacteria's shape and the way they move allow
24 them to penetrate the stomach's protective mucous lining, where
25 they produce substances that weaken the lining and make the stomach
more susceptible to damage from gastric acids." Id.

26 ¹⁰Waddell's signs are used to detect a nonorganic component of
27 back pain. Asley Blom et al., A new sign of inappropriate lower
28 back pain, 84 Annals of The Royal Coll. of Surgeons of England 342-
43 (2002), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2504150/>. They include overreactions to the examination,
widespread superficial tenderness not corresponding to any

1 palpation of the skin caused severe pain throughout the whole
2 spine." (Id.) He further noted that Plaintiff "had significant
3 symptom exaggeration grabbing his back and hips during [the]
4 examination" and gave "obvious suboptimal effort" on range-of-
5 motion testing. (Id.) Dr. Bernabe diagnosed "[l]umbosacral
6 strain with multiple Waddell's signs and symptom exaggeration and
7 magnification" and found that Plaintiff had no functional
8 limitations. (AR 490.)

9 After summarizing the medical evidence, including the
10 February 2008 right- and left-knee MRIs (AR 21-22), the ALJ
11 accorded "significant weight" to the opinions of Drs. Kim, Yu,
12 Taylor-Holmes, and Bayar. (AR 25.) She noted that these doctors
13 generally agreed on Plaintiff's limitations but had assessed
14 "some differences in the degree of specific function-by-function
15 limitations," and she "adopted those specific restrictions on a
16 function-by-function basis that are best supported by the
17 objective evidence as a whole." (AR 26.) She "considered" but
18 gave "less weight" to Dr. Bernabe's opinion, finding that "the
19 clinical evidence does actually support more restrictive
20 limitations" than he found.¹¹ (AR 25.) The ALJ gave "no weight"
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23 anatomical distribution, pain on axial loading of the skull or pain
24 on rotation of the shoulder and pelvis together, severely limited
25 straight-leg raising on formal testing in a patient who can sit
26 forward with the legs extended, and lower limb weakness or sensory
27 loss not corresponding to a nerve-root distribution. Id. "Three
28 or more positive signs are strongly suggestive of a non-organic
component to the lower back pain." Id.

¹¹As noted in Section B below, the ALJ considered Dr. Bernabe's
findings of symptom exaggeration in assessing Plaintiff's
credibility.

1 to Dr. Albano's opinion because it was conclusory and in conflict
2 with the other medical opinions, among other reasons.¹² (AR 24-
3 25.)

4 3. Analysis

5 Contrary to Plaintiff's contentions, the ALJ's assessment of
6 the medical evidence and her resulting RFC finding were legally
7 sufficient and supported by substantial evidence.

8 Plaintiff contends that the ALJ "failed to comment or
9 provide any discussion or analysis regarding what weight if any
10 she is attributing to [Plaintiff's] bilateral meniscus tears" and
11 "misdiagnose[d]" them as "simply strains." (J. Stip. at 5.) But
12 the ALJ in fact fully discussed Plaintiff's knee MRIs, noting
13 that they showed tears of the right and left medial meniscuses.
14 (See AR 21-22.) Moreover, in formulating Plaintiff's RFC, she
15 accorded significant weight to the opinion of Dr. Kim (AR 25),
16 who examined Plaintiff's knees (AR 213-14, 240-41), discussed his
17 MRI reports (AR 217), and diagnosed "bilateral knee strains" and
18 "[o]blique tears through the posterior horns of the medial
19 menisci, per MRIs" (AR 216; accord AR 242). The ALJ also relied
20 on the opinion of Dr. Yu, who examined Plaintiff's knees and made
21 findings consistent with those of Dr. Kim. (Compare AR 409-10
22 (Dr. Yu's knee examination, finding anterior knee tenderness,
23 "mildly positive grind and inhibition tests," normal range of
24 motion, no instability or effusion, and normal gait, motor
25 strength, and sensation), with (AR 213-14 (Dr. Kim's knee
26 examinations, showing discomfort when attempting to squat and
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28 ¹²Plaintiff does not challenge the ALJ's rejection of Dr.
Albano's opinion.

1 infrapatellar tenderness but normal gait, no swelling, and no
2 instability) and 217 (noting that Plaintiff's knee discomfort was
3 "consistent with the MRI studies, revealing tears to the
4 posterior horns of the medial menisci".) To the extent there
5 were differences among the opinions of the doctors she relied on,
6 the ALJ stated that she had adopted "those specific restrictions
7 on a function-by-function basis that are best supported by the
8 objective evidence as a whole." (AR 26.) Indeed, as discussed
9 below, Plaintiff does not convincingly point to any medical
10 evidence showing that he suffered from more significant
11 limitations because of his meniscus tears, and his own treating
12 physician listed Plaintiff's conditions as only herniated disc
13 disease of the cervical and lumbosacral spine, gastroesophageal
14 reflux disease, and helicobacter pylori, not any knee condition.
15 (See AR 484.) Thus, even if the ALJ somehow erred by finding
16 that Plaintiff suffered from "chronic bilateral knee strain," not
17 meniscus tears, it was harmless. See Stout v. Comm'r Soc. Sec.
18 Admin., 454 F.3d 1050, 1055 (9th Cir. 2006) (nonprejudicial or
19 irrelevant mistakes harmless).

20 Plaintiff further contends that Dr. Kim found that Plaintiff
21 "would require a 10 minute break every hour and a half" and was
22 restricted from "prolonged standing and walking," and that the
23 ALJ erred by failing to include those limitations in her RFC
24 assessment. (J. Stip. at 5-6.) Dr. Kim, however, never opined
25 that Plaintiff required a 10-minute break after every hour and a
26 half of work. Rather, he simply noted that Plaintiff's employer
27 had provided modified work that was limited to lifting a maximum
28 of 20 pounds and provided a break every hour and a half, and that

1 such "modified work duties" fell within his previously
2 recommended work restrictions of avoiding very heavy work
3 activities, repetitive gripping and grasping, and prolonged
4 walking or standing. (AR 243.) In doing so, Dr. Kim
5 specifically affirmed his previously recommended work
6 restrictions (id.), which did not include any requirement that
7 Plaintiff be given breaks throughout the day (id.; see also AR
8 221). The ALJ, moreover, accurately summarized Dr. Kim's
9 findings. (See AR 22-23.) As such, the ALJ did not err by
10 omitting from the RFC a limitation to 10-minute breaks every one
11 and a half hours. See Bayliss, 427 F.3d at 1217 (in assessing
12 RFC, ALJ need take into account only limitations for which there
13 was record support).

14 Moreover, Dr. Kim's finding in the workers'-compensation
15 context that Plaintiff was precluded from "prolonged" standing
16 and walking does not appear to be inconsistent with Plaintiff's
17 RFC for standing and walking six hours in an eight-hour day.
18 Indeed, California's 1997 Schedule for Rating Permanent
19 Disabilities in workers'-compensation cases states that a
20 preclusion from "Prolonged Weight-Bearing" "contemplates ability
21 to do work approximately 75% of time in standing and walking
22 position, and requires sitting approximately 25% of time." See
23 State of Cal. Dep't of Indus. Relations, Div. of Workers' Comp.,
24 Schedule for Rating Permanent Disabilities 2-19 (Apr. 1997),
25 available at <https://www.dir.ca.gov/dwc/PDR1997.pdf>; see also
26 Desrosiers v. Sec'y of Health & Human Servs., 846 F.2d 573, 576
27 (9th Cir. 1988) (noting that different measurements and
28 terminology are used in workers' compensation and social security

1 disability cases); Jones v. Astrue, No. EDCV08-1001-CT, 2008 WL
2 5351631, at *5 n.9 (C.D. Cal. Dec. 18, 2008) (finding limitation
3 to standing and walking six out of eight hours consistent with
4 doctors' finding, in context of workers'-compensation case, that
5 plaintiff was precluded from "prolonged standing").¹³ The ALJ's
6 interpretation of Dr. Kim's opinion, moreover, is fully
7 consistent with the credited opinions of examining physician Yu
8 and consulting physicians Taylor-Holmes and Bayar, all of whom
9 found that Plaintiff could stand and walk for six hours in an
10 eight-hour day. (See AR 411, 413, 458.) The ALJ therefore did
11 not err by failing to include in Plaintiff's RFC and the
12 hypotheticals to the VE any further limitations on his ability to
13 stand and walk. See Molina v. Astrue, 674 F.3d 1104, 1111 (9th
14 Cir. 2012) ("Even when the evidence is susceptible to more than
15 one rational interpretation, we must uphold the ALJ's findings if
16 they are supported by inferences reasonably drawn from the
17 record."); Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir.
18 2008) (ALJ is "final arbiter with respect to resolving
19 ambiguities in the medical evidence").

20 Plaintiff is not entitled to remand on this ground.
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25 ¹³Although the term "prolonged weight bearing" was omitted from
26 the January 2005 Schedule for Rating Permanent Disabilities, see
27 State of Cal. Dep't of Indus. Relations, Div. of Workers' Comp.,
28 Schedule for Rating Permanent Disabilities (Jan. 2005), available
at <https://www.dir.ca.gov/dwc/PDR.pdf>, the Court uses the 1997
version for guidance.

1 B. The ALJ Did Not Err in Assessing Plaintiff's
2 Credibility

3 Plaintiff contends that the ALJ failed to give any clear and
4 convincing reasons for "rejecting" his subjective complaints.
5 (J. Stip. at 9-13.) For the reasons discussed below, reversal is
6 not warranted on this ground.

7 1. Applicable law

8 An ALJ's assessment of symptom severity and claimant
9 credibility is entitled to "great weight." See Weetman v.
10 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779
11 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to
12 believe every allegation of disabling pain, or else disability
13 benefits would be available for the asking, a result plainly
14 contrary to 42 U.S.C. § 423(d)(5)(A)." Molina, 674 F.3d at 1112
15 (internal quotation marks omitted). In evaluating a claimant's
16 subjective symptom testimony, the ALJ engages in a two-step
17 analysis. See Lingenfelter, 504 F.3d at 1035-36. "First, the
18 ALJ must determine whether the claimant has presented objective
19 medical evidence of an underlying impairment [that] could
20 reasonably be expected to produce the pain or other symptoms
21 alleged." Id. at 1036 (internal quotation marks omitted). If
22 such objective medical evidence exists, the ALJ may not reject a
23 claimant's testimony "simply because there is no showing that the
24 impairment can reasonably produce the *degree* of symptom alleged."
25 Smolen v. Chater, 80 F.3d 1273, 1282 (9th Cir. 1996) (emphasis in
26 original). When the ALJ finds a claimant's subjective complaints
27 not credible, the ALJ must make specific findings that support
28 the conclusion. See Berry v. Astrue, 622 F.3d 1228, 1234 (9th

1 Cir. 2010).

2 Absent a finding or affirmative evidence of malingering, the
3 ALJ must provide "clear and convincing" reasons for rejecting the
4 claimant's testimony. Lester, 81 F.3d at 834.¹⁴ If the ALJ's
5 credibility finding is supported by substantial evidence in the
6 record, the reviewing court "may not engage in second-guessing."
7 Thomas v. Barnhart, 278 F.3d 947, 959 (9th Cir. 2002).

8 2. Relevant facts

9 In an undated disability report, Plaintiff alleged that he
10 had been unable to work since October 10, 2008, because of a
11 "[b]lack and leg[] injury," "numbness in both hands," and
12 "headaches." (AR 165.) At the January 2012 hearing, Plaintiff
13 testified that he was unable to work because of back pain. (AR
14 39.) He could not move his arms without having pain in his back
15 and shoulders, his hands and legs were numb, and he had neck pain
16 "[o]ff and on." (AR 39-40, 46-47.) Plaintiff could lift about
17 15 pounds but could not carry that weight for very long, and he
18 could not write a one-page letter holding a pencil because of
19 hand numbness. (AR 41-42.) He could stand only 15 minutes at a
20 time because his back would start to hurt (AR 44-45), and he
21 could sit for only 10 to 15 minutes at a time (AR 51). Plaintiff
22 spent about four hours a day resting in a recliner. (AR 51-52.)

23
24 ¹⁴In Ghanim v. Colvin, the Ninth Circuit noted that its
25 precedent was inconsistent on whether the "clear and convincing"
26 standard does not apply only when an ALJ makes an "actual finding
27 of malingering" or also when the record merely contains "evidence
28 of malingering." 763 F.3d 1154, 1163 n.9 (9th Cir. 2014). The
Ninth Circuit declined to decide the issue, however. Id. Here, as
discussed below, because the ALJ made a finding of malingering, she
was relieved of the obligation to provide clear and convincing
reasons under either iteration of the standard.

1 On a "good day," Plaintiff would walk about a half block, which
2 would take about a half hour, or shop with his wife. (AR 48-50.)
3 On a bad day, Plaintiff would "relax" and spend almost all day in
4 a recliner or in bed. (AR 49, 53.) He testified that "[e]very
5 movement of [his] body cause[d] [him] pain." (AR 54.) Plaintiff
6 also testified that since his alleged onset date, in October
7 2008, he had applied for jobs and received unemployment benefits.
8 (AR 55-56.)

9 3. Analysis

10 The ALJ found that Plaintiff's medically determinable
11 impairments could reasonably be expected to cause some of the
12 alleged symptoms, but that his "statements concerning the
13 intensity, persistence and limiting effects of these symptoms are
14 not credible to the extent they are inconsistent with" his RFC
15 for light work. (AR 20.) As discussed below, the ALJ gave
16 legally sufficient reasons for discounting Plaintiff's
17 credibility.

18 As an initial matter, the ALJ was entitled to reject
19 Plaintiff's testimony without providing clear and convincing
20 reasons because she specifically found that "the record includes
21 statements by a doctor suggesting [Plaintiff] was engaged in
22 possible malingering or misrepresentation," undermining
23 Plaintiff's credibility. (AR 20); see Benton ex. el. Benton v.
24 Barnhart, 331 F.3d 1030, 1040 (9th Cir. 2003) (ALJ can reject
25 claimant's testimony only upon "(1) finding evidence of
26 malingering, or (2) expressing clear and convincing reasons for
27 doing so"); Flores v. Comm'r of Soc. Sec., 237 F. App'x 251, 252-
28 53 (9th Cir. 2007) (ALJ did not err in rejecting subjective pain

1 testimony when record contained affirmative evidence of
2 malingering "in abundance"). Indeed, as the ALJ found (AR 20),
3 Dr. Bernabe examined Plaintiff and found "multiple Waddell's
4 signs," including severe back pain on axial loading of the head
5 and on rotation of the shoulder while keeping the back straight
6 (AR 488). Plaintiff also displayed "significant symptom
7 exaggeration[,] grabbing his back and hips during [the]
8 examination," and "[e]ven the slightest palpation of the skin
9 caused severe pain throughout the whole spine." (Id.) Dr.
10 Bernabe further noted that Plaintiff gave "obvious suboptimal
11 effort" on range-of-motion testing of the lumbar spine. (Id.)
12 He diagnosed lumbosacral strain "with multiple Waddell's signs
13 and symptom exaggeration and magnification." (AR 490.) The ALJ
14 reasonably concluded that Dr. Bernabe's findings "detract from
15 [Plaintiff's] credibility." (AR 20.)

16 Plaintiff contends that the ALJ should not have relied on
17 Dr. Bernabe's findings of symptom magnification because he did
18 not review Plaintiff's MRI, EMG, and nerve-conduction-study
19 reports. (J. Stip. at 12-13.) But Dr. Bernabe based his
20 conclusion on his own findings of Waddell's signs, exaggeration,
21 and obvious lack of effort during his examination, not any lack
22 of corroborating evidence. Substantial evidence therefore
23 supports the ALJ's finding of malingering, and she was entitled
24 to discount Plaintiff's credibility on that basis.

25 In addition, and although the finding of malingering
26 obviated the need to do so, Lester, 81 F.3d at 834, the ALJ
27 provided clear and convincing reasons for discounting Plaintiff's
28 allegations regarding his symptoms and limitations.

1 First, the ALJ found that Plaintiff had received only
2 conservative treatment for his allegedly disabling conditions.
3 (AR 20); see Tommasetti, 533 F.3d at 1040 (holding that
4 claimant's response to conservative treatment undermined his
5 reports of disabling symptoms); Parra, 481 F.3d at 751 (noting
6 that "evidence of 'conservative treatment' is sufficient to
7 discount a claimant's testimony regarding severity of an
8 impairment"). Indeed, Plaintiff testified that he took the
9 medications Norco and Naprosyn¹⁵ (AR 50) and that his doctors did
10 not recommend that he undergo surgery (AR 47). Dr. Kim,
11 moreover, opined that Plaintiff would require only "additional
12 orthopaedic consultation and treatment for flare-ups, with the
13 treatment most likely consisting of symptomatic medication such
14 as light analgesics, nonsteroidal anti-inflammatory medication,
15 and muscle relaxants, as well as up to 24 sessions of physical
16 therapy per year for any type of acute flare-up of symptoms."
17 (AR 222.) He found that Plaintiff was "not in need of surgical
18 intervention in relation to his low back complaints." (AR 217.)
19 Dr. Kim noted that Plaintiff may possibly require pain injections
20 in the future, and that he could not "rule out" future knee
21 arthroscopic surgery (AR 222), but nothing indicates that
22 Plaintiff's doctors ever recommended such treatment or that he

23
24 ¹⁵Norco contains acetaminophen and hydrocodone. Hydrocodone
25 Combination Products, MedlinePlus, [http://www.nlm.nih.gov/](http://www.nlm.nih.gov/medlineplus/druginfo/meds/a601006.html)
26 <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a601006.html> (last updated Oct. 15,
27 2014). Hydrocodone is an opiate (narcotic) analgesic used to
28 relieve pain. Id. Naprosyn, or Naproxyn, is a nonsteroidal
anti-inflammatory drug used to relieve pain. Naprosyn,
MedlinePlus, WebMD, [http://www.webmd.com/drugs/2/drug-1705-1289/](http://www.webmd.com/drugs/2/drug-1705-1289/naprosyn-oral/naproxen-oral/details)
[naprosyn-oral/naproxen-oral/details](http://www.webmd.com/drugs/2/drug-1705-1289/naprosyn-oral/naproxen-oral/details) (last accessed Nov. 8, 2014).

1 ever underwent it. Indeed, Plaintiff's medical records show that
2 since his alleged disability onset date, he was prescribed only
3 Vicodin¹⁶ and Tylenol for his allegedly debilitating low-back
4 pain. (See AR 471, 473, 481.)¹⁷ The ALJ therefore permissibly
5 discounted Plaintiff's credibility based on his conservative
6 treatment.¹⁸ See Stephenson v. Colvin, No. CV 13-8303-AGR, 2014
7 WL 4162380, at *9 (C.D. Cal. Aug. 20, 2014) (ALJ properly
8 discounted credibility based on plaintiff's conservative
9 treatment, which included Vicodin but did not include surgery or
10 pain-relief injections for back impairment); Morris v. Colvin,
11 No. CV 13-6236-OP, 2014 WL 2547599, at *4 (C.D. Cal. June 3,
12 2014) (ALJ properly discounted credibility when plaintiff
13 received conservative treatment consisting of physical therapy,
14 use of TENS unit, chiropractic treatment, Vicodin, and Tylenol
15 with Vicodin); compare Lapeirre-Gutt v. Astrue, 382 F. App'x 662,
16 664 (9th Cir. 2010) (treatment with narcotic pain medication,
17 occipital nerve blocks, triggerpoint injections, and
18 cervical-fusion surgery not conservative).

19 The ALJ also permissibly discounted Plaintiff's subjective
20

21 ¹⁶Vicodin contains hydrocodone and acetaminophen. Hydrocodone
22 Combination Products, MedlinePlus, [http://www.nlm.nih.gov/](http://www.nlm.nih.gov/medlineplus/druginfo/meds/a601006.html)
23 [medlineplus/druginfo/meds/a601006.html](http://www.nlm.nih.gov/medlineplus/druginfo/meds/a601006.html) (last updated Oct. 15,
2014).

24 ¹⁷The notes from Plaintiff's treatment at LaSalle Medical
25 Clinic are largely illegible. (See, e.g., AR 451, 470, 474.)

26 ¹⁸The ALJ did not, as Plaintiff contends, suggest that "some
27 form of surgery is required in order to qualify for benefits." (J.
28 Stip. at 10.) Rather, she merely observed that Plaintiff did not
undergo surgery, which supported her finding that he received only
conservative treatment.

1 complaints because they were inconsistent with the medical
2 evidence. (AR 20); see Carmickle v. Comm'r, Soc. Sec. Admin.,
3 533 F.3d 1155, 1161 (9th Cir. 2008) ("Contradiction with the
4 medical record is a sufficient basis for rejecting the claimant's
5 subjective testimony."); Lingenfelter, 504 F.3d at 1040 (in
6 determining credibility, ALJ may consider "whether the alleged
7 symptoms are consistent with the medical evidence"); Burch v.
8 Barnhart, 400 F.3d 676, 681 (9th Cir. 2005) ("Although lack of
9 medical evidence cannot form the sole basis for discounting pain
10 testimony, it is a factor that the ALJ can consider in his
11 credibility analysis."). Plaintiff claimed to be so debilitated
12 by his conditions that he was unable to lift more than 15 pounds,
13 stand for more than 15 minutes, or sit for more than 15 minutes,
14 and he needed to spend a minimum of four hours a day lying in a
15 recliner because of back pain. (AR 41-42, 44-45, 51-52.) But as
16 discussed above, Dr. Kim examined Plaintiff and reviewed his
17 medical records, back MRIs, knee MRIs, and electrodiagnostic
18 studies and opined that Plaintiff need only avoid "very heavy
19 work activities," "repetitive forceful gripping, grasping, or
20 torquing," and "prolonged standing and walking." (AR 217, 221.)
21 Similarly, examining physician Yu and consulting physicians
22 Taylor-Holmes and Bayar all found that Plaintiff could sit,
23 stand, or walk for six hours in an eight-hour day; lift 20 pounds
24 occasionally and 10 pounds frequently; and frequently use his
25 upper extremities for pushing, pulling, and fine motor movements.
26 (See AR 411-18, 458.) And although Plaintiff's treating
27 physician, Dr. Albano, believed that Plaintiff was "disabled and
28 unable to work," he provided no assessment of Plaintiff's

1 specific limitations. (AR 484.) The ALJ therefore permissibly
2 discounted Plaintiff's credibility in part because his testimony
3 was unsupported by the medical evidence.

4 Finally, the ALJ discounted Plaintiff's credibility because
5 he worked with modified duties from the time of his July 2007
6 injury until October 2008. (AR 20.) Indeed, Plaintiff alleged
7 that he stopped working on October 10, 2008, "[b]ecause of his
8 condition(s)" (AR 165), but he reported to Dr. Kim that he
9 stopped working because "modified work activities were no longer
10 available" (AR 243). Cf. Bruton v. Massanari, 268 F.3d 824, 828
11 (9th Cir. 2001) (as amended) (ALJ properly discounted credibility
12 when plaintiff left job because he was laid off, not because he
13 was injured). Indeed, even after Plaintiff stopped working, he
14 held himself out as available for work by receiving unemployment
15 benefits and applying for jobs. (AR 19 (ALJ's notation that
16 Plaintiff received unemployment benefits and applied for jobs),
17 55-56 (Plaintiff's testimony)); see Carmickle, 533 F.3d at
18 1161-62 (noting that applying for unemployment benefits can be
19 inconsistent with disability because one has to hold oneself out
20 as available to work). Plaintiff contends that the ALJ
21 improperly relied on this factor because the fact that he could
22 perform modified work did not mean that competitive occupations
23 existed that would accommodate those same limitations. (J. Stip.
24 at 10-11.) But even if the ALJ erred in relying on this factor,
25 it was harmless because she affirmatively found malingering and
26 provided other clear and convincing reasons for discounting
27 Plaintiff's credibility. See Carmickle, 533 F.3d at 1162-63
28 (ALJ's reliance on erroneous reasons for adverse credibility

1 determination harmless when substantial evidence supported
2 determination and errors did not negate its validity).¹⁹

3 This Court may not second-guess the ALJ's credibility
4 finding simply because the evidence may have been susceptible of
5 other interpretations more favorable to Plaintiff. See
6 Tommasetti, 533 F.3d at 1039. The ALJ reasonably and properly
7 discredited Plaintiff's testimony regarding the severity of his
8 symptoms and gave clear and convincing reasons for her adverse
9 credibility finding. Reversal is therefore not warranted.

10 C. The ALJ and VE Properly Classified Plaintiff's Past
11 Relevant Work

12 Plaintiff contends that the VE misclassified one of his past
13 jobs as "extension edger" and that the ALJ's reliance on that
14 testimony to find that Plaintiff could perform his past work as
15 generally performed was therefore in error. (J. Stip. at 17-18.)

16 1. Applicable law

17 At step four of the five-step disability analysis, a
18 claimant has the burden of proving that he cannot return to his
19 past relevant work, as either actually or generally performed in
20 the national economy. Pinto v. Massanari, 249 F.3d 840, 844-45
21 (9th Cir. 2001); § 404.1520(e). Although the burden of proof
22 lies with the claimant at step four, the ALJ still has a duty to
23 make factual findings to support her conclusion. Pinto, 249 F.3d
24

25 ¹⁹The Commissioner contends that the ALJ properly discounted
26 Plaintiff's credibility based on his reported daily activities.
27 (J. Stip. at 15-16.) In fact, the ALJ found that Plaintiff's
28 reported daily activities supported the credibility of his claimed
limitations, but that this factor was outweighed by the others that
detracted from his credibility. (AR 20.)

1 at 844. The ALJ can meet this burden by comparing the physical
2 and mental demands of the past relevant work with the claimant's
3 actual RFC. Id. at 844-45.

4 To ascertain the requirements of occupations as generally
5 performed in the national economy, the ALJ may rely on
6 information from the Dictionary of Occupational Titles ("DOT") or
7 VE testimony. Id. at 845-46; SSR 00-4P, 2000 WL 1898704, at *2
8 (Dec. 4, 2000) (at steps four and five, SSA relies "primarily" on
9 DOT "for information about the requirements of work in the
10 national economy" and "may also use VEs . . . at these steps to
11 resolve complex vocational issues"); SSR 82-61, 1982 WL 31387, at
12 *2 (Jan. 1, 1982) ("The [DOT] descriptions can be relied upon -
13 for jobs that are listed in the DOT - to define the job as it is
14 usually performed in the national economy." (emphasis in
15 original)).

16 2. Relevant facts

17 In a work-history report, Plaintiff described three previous
18 jobs as a "machine operator" and one as a "general helper." (AR
19 175-80.) Plaintiff wrote that in his most recent machine-
20 operator job, he operated a glue machine; he set it up to "work
21 in gluing cardboard boxes together," loaded the machine,
22 supervised two assistants, and cleaned the machine and area at
23 the end of the day. (AR 176.) In each workday, Plaintiff walked
24 for four hours, stood for eight hours, stooped for two hours,
25 kneeled for one hour, crawled for one hour, handled objects and
26 reached for eight hours, and handled small objects for four
27
28

1 hours.²⁰ (Id.) He lifted up to 50 pounds and frequently lifted
2 25 pounds. (Id.)

3 In an undated and unsigned "Medical/Vocational Decision
4 Guide," an unidentified state-agency employee found that
5 Plaintiff was limited to light work with frequent "gross handling
6 & fingering." (AR 72.) He or she classified Plaintiff's past
7 relevant work as "machine operator," listing a DOT code of
8 641.685-054, and "general helper," listing a DOT code of 641.686-
9 014. (Id.) Both jobs listed an "M," presumably indicating
10 medium work.²¹ (Id.) The employee checked that Plaintiff was
11 unable to perform his past relevant work but could perform other
12 work, listing three unskilled light-exertion jobs.²² (AR 72-74.)
13 Under the heading "Medical/Vocational Decision," the employee
14 checked "not disabled." (AR 73.) Plaintiff's application was
15 denied on that basis at the initial and reconsideration levels.
16 (AR 77-80, 82-86.)

17 At the hearing, the VE categorized Plaintiff's past jobs as
18 a machine feeder, DOT 699.686-010, extension edger, 641.685-046,
19 and cylinder-die-machine operator, DOT 649.682-014. (AR 60.)
20 She testified that the DOT classified the extension-edger job at
21 the light-exertion level but that Plaintiff had performed it at
22

23 ²⁰It is not clear how Plaintiff managed to do all of these
things for the indicated times in one work day.

24 ²¹"Medium work involves lifting no more than 50 pounds at a
25 time with frequent lifting or carrying of objects weighing up to 25
pounds." § 404.1567(c).

26 ²²Specifically, the employee found that Plaintiff could perform
27 the jobs of collator operator, DOT 208.685-101; cleaner,
28 housekeeping, DOT 323.687-014; and photocopy-machine operator,
207.685-014. (AR 74.)

1 the medium-exertion level. (Id.) The VE further testified, in
2 response to the ALJ's hypothetical, that a person with
3 Plaintiff's RFC could perform the extension-edger job "as
4 described by the DOT, not as [Plaintiff] performed [it]." (AR
5 60-61.) She also found that such a person could perform other
6 light-exertion jobs, such as bench assembler, DOT 706.684-042,
7 inspector and hand packager, DOT 559.687-074, and cleaner-
8 housekeeper, DOT 323.687-014.²³ (AR 62.) Plaintiff's counsel
9 questioned the VE regarding some of her findings and posed
10 alternative hypotheticals, but he did not challenge her
11 characterization of Plaintiff's previous job as an extension
12 edger or point to the state-agency employee's findings in the
13 Medical/Vocational Decision Guide. (See AR 63-69.)

14 Based on the VE's testimony, the ALJ concluded at step four
15 that Plaintiff could perform his past work of extension edger as
16 generally performed in the regional and national economies. (AR
17 26.) She therefore concluded that he was not disabled. (AR 26-
18 27.)

19 3. Analysis

20 Plaintiff contends that the VE's categorization of his past
21 work as an extension-edger was erroneous because it "incorrectly
22 describes Plaintiff's past relevant work as a machine operator
23 where he in fact operated a machine that actually made the boxes
24 themselves, and which required him to lift entire bundles of
25

26 ²³The VE testified that 2500 bench-assembler positions existed
27 regionally and 35,000 nationally, 900 inspector-and-hand-packager
28 positions existed regionally and 18,000 nationally, and 5500
cleaner-housekeeper jobs existed regionally and more than 70,000
nationally. (AR 62.)

1 finished boxes weighing as much as 50 pounds." (J. Stip. at 17-
2 18 (citing AR 176).) Plaintiff contends that "[a]t no time did
3 [he] perform an occupation where he simply glued a small piece of
4 cardboard onto a pre-made box," as allegedly required by the
5 extension-edger job. (Id. at 18.) Plaintiff also asserts,
6 without any elaboration, that the state-agency vocational
7 decision properly identified Plaintiff's past relevant work as a
8 machine operator with a DOT code of 641.685-054. (Id.)

9 The DOT defines the extension-edger job as light work that
10 involves "[e]xerting up to 20 pounds of force occasionally" and
11 "up to 10 pounds of force frequently." DOT 641.685-046, 1991 WL
12 685589. In that job, an individual

13 [t]ends machine that glues oversized piece of cardboard
14 (extension piece) to box top or bottom to form decorative
15 protecting edge or flange around box: Loads cardboard
16 pieces into machine feed hopper, fills glue reservoir,
17 and starts machine. Positions formed box on block and
18 presses pedal to activate machine that glues piece onto
19 box. Removes box from machine and stacks on pallet for
20 wrapping.

21 Id.

22 The VE's classification of Plaintiff's past relevant work as
23 an extension edger is consistent with Plaintiff's description of
24 his former job. Plaintiff stated that his most recent machine-
25 operator job involved operating a glue machine to "glu[e]
26 cardboard boxes together," setting up and loading the machine,
27 supervising assistants, and cleaning the machine at the end of
28 the day. (AR 176.) The extension-edger job similarly involved

1 filling a glue machine with glue, loading cardboard into the
2 machine, activating the machine to apply glue, and removing the
3 box from the machine; the machine glues the pieces, not the
4 person, just as Plaintiff testified his prior work involved. DOT
5 641.685-046, 1991 WL 685589. And although Plaintiff stated that
6 in that job he lifted up to 50 pounds and frequently lifted 25
7 pounds (AR 176), the VE accommodated that statement by testifying
8 that Plaintiff had performed that job at the medium level but
9 that given his RFC limitations, he could perform it only as
10 generally performed, at the light level (AR 60-61).

11 Plaintiff's description of his most recent job, moreover,
12 was not consistent with the machine-operator job noted in the
13 state-agency Medical/Vocational Decision Guide. (See AR 72-74.)
14 The DOT describes that job, which is titled "four-corner-stayer-
15 machine operator," as medium work involving "[e]xerting 20 to 50
16 pounds of force occasionally" and "10 to 25 pounds of force
17 frequently." DOT 641.685-054, 1991 WL 685591. An individual in
18 that job

19 [t]ends machine that folds and tapes corners of cardboard
20 box blanks to form containers: Bolts box form to machine
21 ram, using wrench, and adjusts walls of well to
22 correspond to size of box form. Places reels of tape on
23 machine feedrack and threads tape through feed and
24 moisture rolls. Starts machine and loads scored box
25 blanks into automatic feedrack. Examines boxes to detect
26 defects as they are ejected from machine and stacks boxes
27 on pallets or in bins. May tend wrapping machine that
28 glues wrappers onto boxes [WRAPPING-MACHINE OPERATOR

1 (paper goods)].

2 Id. Plaintiff never stated that his most recent machine-operator
3 job involved operating a machine that folds and tapes boxes,
4 bolting forms to the machine using a wrench, loading the machine
5 with tape, or loading box blanks. (See AR 176.) The ALJ
6 therefore reasonably relied on the testimony of the VE - rather
7 than the opinion of an unidentified state-agency employee of
8 unknown credentials - to find that Plaintiff's past relevant work
9 was that of an extension edger, particularly given that Plaintiff
10 never objected to the VE's characterization of his past work.
11 See Bayliss, 427 F.3d at 1218 (finding that "VE's recognized
12 expertise provides the necessary foundation for his or her
13 testimony," and "no additional foundation is required").

14 Plaintiff nevertheless contends that the VE's testimony was
15 in error because he did not "simply glue[] a small piece of
16 cardboard on to a pre-made box as is described in the extension
17 edger job." (J. Stip. at 18.) But the DOT description actually
18 states that the job involves "[t]end[ing] [a] machine" that glues
19 "oversized," not small, pieces of cardboard to boxes. DOT
20 641.685-046, 1991 WL 685589. Moreover, that description does not
21 appear to be materially inconsistent with Plaintiff's report that
22 he operated a glue machine to "glu[e] cardboard boxes together."
23 (AR 176.)²⁴

24
25
26 ²⁴In any event, even if the ALJ had erred in finding that
27 Plaintiff could perform his past relevant work as an edger as
28 generally performed, it was likely harmless given the VE's
testimony that he could also perform three other jobs that existed
in significant numbers in the regional and national economies.
(See AR 62); Stout 454 F.3d at 1055.


1 In sum, the ALJ's reliance on the VE's testimony was
2 reasonable, especially in light of Plaintiff's failure at the
3 hearing to object to the VE's categorization of his past work,
4 question the VE about her opinion regarding Plaintiff's past
5 relevant work, or even point out the contradictory state-agency
6 decision guide. (See AR 63-69); see also Solorzano v. Astrue,
7 No. EDCV 11-369-PJW, 2012 WL 84527, at *6 (C.D. Cal. Jan. 10,
8 2012) (at administrative hearing, counsel has "obligation to take
9 an active role and to raise issues that may impact the ALJ's
10 decision while the hearing is proceeding so that they can be
11 addressed"). Plaintiff is not entitled to remand on this
12 ground.²⁵

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27 ²⁵To the extent Plaintiff asserts that the ALJ erred by failing
28 to include in her hypothetical to the VE further limitations
supposedly found in Dr. Kim's opinion (J. Stip. at 17), that
argument fails for the reasons discussed in Section IV.A.3 above.

1 **VI. CONCLUSION**

2 Consistent with the foregoing, and pursuant to sentence four
3 of 42 U.S.C. § 405(g),²⁶ 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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9
10 DATED: November 13, 2014



JEAN ROSENBLUTH
U.S. Magistrate Judge

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26 _____
27 ²⁶This sentence provides: "The [district] court shall have
28 power to enter, upon the pleadings and transcript of the record, a
judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."