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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

<b>LINDA WATT,</b>	)	<b>NO. EDCV 10-938-MAN</b>
	)	
<b>Plaintiff,</b>	)	<b>MEMORANDUM OPINION</b>
	)	
<b>v.</b>	)	<b>AND ORDER</b>
	)	
<b>MICHAEL J. ASTRUE,</b>	)	
<b>Commissioner of Social Security,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

Plaintiff filed a Complaint on June 29, 2010, seeking review of the denial by the Social Security Commissioner (the "Commissioner") of plaintiff's application for supplemental security income ("SSI"). On August 4, 2010, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. The parties filed a Joint Stipulation on March 1, 2011, in which: plaintiff seeks an order reversing the Commissioner's decision and remanding this case for the payment of benefits or, alternatively, for further administrative proceedings; and defendant requests that the Commissioner's decision be affirmed or, alternatively, remanded for further administrative proceedings. The Court has taken the parties' Joint Stipulation under submission without oral argument.



1 back pain, arthritis, asthma, and a hearing impairment. (*Id.*) The ALJ  
2 also determined that plaintiff does not have an impairment or  
3 combination of impairments that meets or medically equals in severity  
4 any impairment listed in 20 C.F.R. Part 404, Subpart P, Appendix 1.  
5 (*Id.*)

6  
7 After reviewing the record, the ALJ determined that plaintiff has  
8 the residual functional capacity ("RFC") to perform medium work as  
9 defined in 20 C.F.R. § 416.967(c), with the following exceptions:

10  
11 [Plaintiff] should not work in a noisy environment and should  
12 have the ability to wear assistive devices for hearing if  
13 needed. [Plaintiff] is precluded from climbing ladders,  
14 ropes, or scaffolds, from working around vibrations,  
15 unprotected machinery, and at heights. Related to her asthma,  
16 the claimant should work in a clean air environment and must  
17 avoid extreme heat or cold, wetness, and changes in humidity.

18  
19 (A.R. 11.)

20  
21 The ALJ concluded that, because plaintiff has no past relevant  
22 work, "[t]ransferability of job skills is not an issue." (A.R. 15.)  
23 Based on plaintiff's "age, education, work experience, and [RFC]," the  
24 ALJ determined that plaintiff is able to perform jobs "that exist in  
25 significant numbers in the national economy." (*Id.*) Accordingly, the  
26 ALJ concluded that plaintiff has not been under a disability within the  
27 meaning of the Social Security Act since May 2, 2007, the date the  
28 application was filed. (A.R. 16.)



1 affirm the ALJ on a ground upon which he did not rely." Orn, 495 F.3d  
2 at 630; see also Connett, 340 F.3d at 874. The Court will not reverse  
3 the Commissioner's decision if it is based on harmless error, which  
4 exists only when it is "clear from the record that an ALJ's error was  
5 'inconsequential to the ultimate nondisability determination.'" Robbins  
6 v. Soc. Sec. Admin., 466 F.3d 880, 885 (9th Cir. 2006)(quoting Stout v.  
7 Comm'r, 454 F.3d 1050, 1055 (9th Cir. 2006)); see also Burch, 400 F.3d  
8 at 679.

## 10 DISCUSSION

11  
12 Plaintiff makes the following claims: (1) the ALJ failed to  
13 properly develop the record regarding plaintiff's treating physician's  
14 opinions; (2) the ALJ improperly considered plaintiff's RFC; and (3)  
15 using the Dictionary of Occupational Titles (the "DOT"), the ALJ  
16 improperly determined that plaintiff could perform the jobs of hand  
17 packager, packing machine operator, electronics assembler, and cashier.  
18 (Joint Stipulation ("Joint Stip.") at 2-3.)

### 20 I. The ALJ Failed To Consider All Medical Records And To Develop The 21 Record Fully.

22  
23 Plaintiff contends that the ALJ failed to fully and fairly develop  
24 the record. Specifically, plaintiff contends that the ALJ: improperly  
25 disregarded a form completed by plaintiff's treating physician; failed  
26 to consider a second form completed by plaintiff's treating physician;  
27 and failed to properly develop the record even though plaintiff was  
28

1 unrepresented at the hearing.<sup>3</sup> (Joint Stip. at 4-6.) As discussed  
2 below, the ALJ erred by failing to: (1) consider a treating physician's  
3 form; and (2) further develop the record, particularly given that  
4 plaintiff was unrepresented at her hearing.

5  
6 It is the responsibility of the ALJ to resolve conflicts in medical  
7 testimony and analyze evidence. Magallanes v. Bowen, 881 F.2d 747, 750  
8 (9th Cir. 1989). In the hierarchy of physician opinions considered in  
9 assessing a social security claim, "[g]enerally, a treating physician's  
10 opinion carries more weight than an examining physician's, and an  
11 examining physician's opinion carries more weight than a reviewing  
12 physician's." Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir.  
13 2001); see also 20 C.F.R. § 416.927(d). The opinions of treating  
14 physicians are entitled to the greatest weight, because the treating  
15 physician is hired to cure and has a better opportunity to observe the  
16 claimant. Magallanes, 881 F.2d at 751. When a treating physician's  
17 opinion is not contradicted by another physician, it may be rejected  
18 only for "clear and convincing" reasons. Lester v. Chater, 81 F.3d 821,  
19 830 (9th Cir. 1995)(as amended). When the treating physician's "opinion  
20 is contradicted by another doctor, the Commissioner may not reject this  
21 opinion without providing 'specific and legitimate reasons' supported by  
22 substantial evidence in the record for so doing." *Id.*

23  
24  
25 <sup>3</sup> While there was some confusion as to plaintiff's primary  
26 physician, the ALJ credits Dr. Sisson as a treating physician for the  
27 purpose of his decision. The ALJ states that: "In the record the  
28 [plaintiff] identified Mr. Martinez, a physicians' assistant, as her  
primary caregiver. Nevertheless, even if Dr. Sisson, who completed  
[the] forms and is an associate of Mr. Martinez [the physicians'  
assistant who acted as plaintiff's caregiver], were to be considered a  
treating source, little weight is accorded to his opinions." (A.R. 14.)

1 An ALJ "has a special duty to fully and fairly develop the record  
2 and to assure that claimant's interests are considered." Brown v.  
3 Heckler, 713 F.2d 441, 443 (9th Cir. 1983). Pursuant to 20 C.F.R.  
4 § 416.912(e), the Administration "will seek additional evidence or  
5 clarification from your medical source when the report from your medical  
6 source contains a conflict or ambiguity that must be resolved, [or] the  
7 report does not contain all the necessary information . . . ." See  
8 Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996) (noting that "[i]f  
9 the ALJ thought he needed to know the basis of [the doctor's] opinions  
10 in order to evaluate them, he had a duty to conduct an appropriate  
11 inquiry"). "Ambiguous evidence, or the ALJ's own finding that the  
12 record is inadequate to allow for proper evaluation of the evidence,  
13 triggers the ALJ's duty to 'conduct an appropriate inquiry.'" Tonapetyan v. Halter,  
14 242 F.3d 1144, 1150 (9th Cir. 2001)(*quoting*  
15 Smolen, 80 F.3d at 1288; see also Bayliss v. Barnhart, 427 F.3d 1211,  
16 1217 (9th Cir. 2005)("An ALJ is required to recontact a doctor only if  
17 the doctor's report is ambiguous or insufficient for the ALJ to make a  
18 disability determination."). An ALJ may discharge his duty to make an  
19 inquiry "in several ways, including: subpoenaing the claimant's  
20 physicians, submitting questions to the claimant's physicians,  
21 continuing the hearing, or keeping the record open after the hearing to  
22 allow supplementation of the record." Tonapetyan, 242 F.3d at 1150.

23  
24 "This duty extends to the represented as well as the unrepresented  
25 claimant." Tonapetyan, 242 F.3d at 1150. When a claimant is not  
26 represented by counsel, an ALJ "must be especially diligent in exploring  
27 for all the relevant facts." *Id.* The ALJ's duty to develop the record  
28 extends from the basic premise that social security hearings are not

1 adversarial in nature. Orcutt v. Barnhart, 2005 WL 2387702, at \*3 (C.D.  
2 Cal. Sept. 27, 2005); see also Sims v. Apfel, 530 U.S. 103, 111, 120 S.  
3 Ct. 2080, 2085 (2000)("[i]t is the ALJ's duty to investigate the facts  
4 and develop the arguments both for and against granting benefits").  
5 "The ALJ's duty to supplement a claimant's record is triggered by  
6 ambiguous evidence, the ALJ's own findings that the record is inadequate  
7 or the ALJ's reliance on an expert's conclusion that the evidence is  
8 ambiguous." Webb v. Barnhart, 433 F.3d 683, 687 (9th Cir. 2005).

9  
10 However, an "ALJ need not accept the opinion of any physician,  
11 including a treating physician, if that opinion is brief, conclusory,  
12 and inadequately supported by clinical findings." Thomas v. Barnhart,  
13 278 F.3d 947, 957 (9th Cir. 2002); see also Batson v. Comm'r of Soc.  
14 Sec. Admin., 359 F.3d 1190, 1195 & n.3 (9th Cir. 2004)(upholding the  
15 ALJ's rejection of an opinion that was "conclusionary in the form of a  
16 check-list," and lacked supporting clinical findings); Crane v. Shalala,  
17 76 F.3d 251, 253 (9th Cir. 1996)(ALJ properly rejected doctors'  
18 psychological evaluations because they were contained in check-off forms  
19 and lacked any explanation for their bases).

20  
21 In this case, the ALJ gave "greatest weight" to the opinion of Dr.  
22 Girgis, the consultative examiner. (A.R. 14.) In his decision, the ALJ  
23 states that "[m]inimal weight has been given to the two [April 2007]  
24 forms submitted by [plaintiff]." <sup>4</sup> (*Id.*) The ALJ did not give probative

25  
26 <sup>4</sup> In his decision, the ALJ states that "[t]he first [form],  
27 completed on April 17, 2007, is [in] a check the box format that alleges  
28 [plaintiff] is unable to work or attend vocational training due to  
'breath' . . . . Likewise the second check-the-box opinion, completed  
two days later, is a form excusing [plaintiff] from having to



1 weight to the April 2007 forms completed by Dr. V. Duane Sisson, M.D.,  
2 who the ALJ characterized as plaintiff's treating physician, because  
3 those forms "consisted of check-off reports that did not include any  
4 explanation of the bases of [Dr. Sisson's] conclusions." (*Id.*) The ALJ  
5 cites Crane, 76 F.3d at 253, to support his dismissal of the conclusory  
6 check-off reports. (*Id.*) The ALJ also states that "the final  
7 responsibility for determining the issue of disability is reserved for  
8 the Social Security Administration." (*Id.*) The ALJ relies on 20 C.F.R.  
9 § 416.927 to support his dismissal of Dr. Sisson's conclusory opinion  
10 that plaintiff is unable to work.<sup>5</sup> (*Id.*)  
11

12 As an initial matter, while the ALJ discussed the April 2007 forms  
13 in his decision, it appears that the ALJ failed to discuss Dr. Sisson's  
14 March 9, 2009 "Authorization To Release Medical Information" form  
15 ("March 2009 form") (A.R. 170),<sup>6</sup> which plaintiff submitted at the April  
16 14, 2009 hearing (A.R. 21).<sup>7</sup> In pertinent part, the March 2009 form  
17 indicates that: plaintiff has a medically verifiable condition that  
18

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19 participate in the 'Welfare to Work' program for one year." (A.R. 14.)

20 <sup>5</sup> Notwithstanding defendant's argument that Dr. Sisson's "forms  
21 addressed an issue reserved to the Commissioner, specifically that  
22 Plaintiff could not work" (Joint Stip. at 12), the ALJ had a duty to be  
23 "especially diligent in exploring for all the relevant facts," because  
24 plaintiff was unrepresented at the hearing. Tonapetyan, 242 F.3d at  
25 1150. While the ultimate determination of disability is reserved for  
26 the Commissioner, this fact does not undermine the ALJ's *heightened* duty  
27 to further develop the record in a case, such as this, in which the  
28 plaintiff is unrepresented.

25 <sup>6</sup> Like the April 13, 2007 "Authorization To Release Medical  
26 Information" form, the March 2009 form contains the signature of  
27 Physicians' Assistant Martinez and a stamp with Dr. Sisson's name,  
28 title, and medical license number. (A.R. 170.)

25 <sup>7</sup> It appears that plaintiff submitted only three cursory forms  
26 in support of her disability claim. (A.R. 143, 169, 170.)

1 would limit or prevent her from performing certain tasks; plaintiff's  
2 condition is "chronic" with an onset date of 1997; plaintiff is actively  
3 seeking treatment; plaintiff is unable to work; plaintiff has  
4 limitations that affect her ability to work or participate in education  
5 or training; plaintiff's condition does not prevent her from providing  
6 care for the child(ren) in the home; and plaintiff's condition does not  
7 require someone to be in the home to care for her. (A.R. 170.) While  
8 an ALJ need not discuss every piece of evidence, an ALJ must explain  
9 why significant and probative evidence -- such as the March 2009 opinion  
10 of Dr. Sisson, plaintiff's treating doctor -- is rejected. The ALJ's  
11 failure to discuss Dr. Sisson's March 2009 opinion, let alone to give  
12 any reason for rejecting that opinion, constitutes error.

13  
14 Further, because plaintiff was not represented by counsel at the  
15 hearing, the ALJ had a heightened responsibility to assist plaintiff  
16 during the hearing and to develop all facts, both for and against  
17 disability, so that the ALJ could make a proper disability determination  
18 on a complete record. Tonapetyan, 242 F.3d at 1150. The ALJ failed to  
19 satisfy his duty here. At the hearing, plaintiff presented the ALJ with  
20 Dr. Sisson's March 2009 form which indicated, *inter alia*, that plaintiff  
21 is actively seeking treatment -- a fact which, if true, would indicate  
22 that additional treatment records may be available that reflect the  
23 nature and extent of plaintiff's medical care. In view of these  
24 circumstances, the ALJ should have, and did not, seek to develop the  
25 record fully by contacting Dr. Sisson, obtaining plaintiff's treatment  
26 records, and seeking the reasoning behind Dr. Sisson's opinion that  
27 plaintiff is unable to work. (A.R. 143, 170.) The ALJ's failure to  
28

1 develop the record constitutes reversible error.<sup>8</sup>

2  
3 **II. The ALJ Improperly Assessed Plaintiff's RFC.**

4  
5 Plaintiff contends that the ALJ failed to fully and properly  
6 consider the opinion of examining physician Dr. Bahaa Girgis, M.D., in  
7 determining plaintiff's RFC. (Joint Stip. at 16-17.) As discussed  
8 below, the ALJ erred in failing either to properly incorporate, or to  
9 explain the dismissal of portions of, Dr. Girgis's RFC findings.

10  
11 The opinions of examining physicians may constitute substantial  
12 evidence upon which an ALJ may rely in assessing a claimant's RFC if  
13 they are properly supported by the medical evidence. See, e.g.,  
14 Tonapetyan, 242 F.3d at 1149 (consultative examiner's opinion on its own  
15 constituted substantial evidence, because it rested on independent  
16 examination of claimant). In his decision, the ALJ summarized Dr.  
17 Girgis's opinion, and stated that "the greatest weight is given to Dr.  
18 Girgis' conclusions." (A.R. 14.) While it is not entirely clear, it  
19 appears that the ALJ nevertheless implicitly rejected Dr. Girgis's  
20 opinion in part, and without giving any reason for doing so, because the  
21 ALJ's RFC assessment does not reflect work restrictions consistent with

22 \_\_\_\_\_  
23 <sup>8</sup> Defendant's argument that there are no ambiguities that would  
24 trigger the ALJ's duty to develop the record is unconvincing. (A.R.  
25 13.) In fact, the ALJ points out the following two ambiguities in his  
26 decision: plaintiff alleged that she was hit by a car on October 6,  
27 2007; and the check box "that alleges [plaintiff] is unable to work or  
28 attend vocational training due to 'breath.'" (A.R. 12, 14.) Further,  
the conclusory forms submitted by plaintiff, particularly in view of the  
absence of other treating records, strongly suggest that further  
development of the record would aid the ALJ in making a proper  
determination of whether plaintiff has an impairment or combination of  
impairments that preclude(s) her from gainful employment.

1 Dr. Girgis's opinion that plaintiff must avoid working on "machinery  
2 equipment."<sup>9</sup> (A.R. 11, 14, 155.) The ALJ's implicit rejection of Dr.  
3 Girgis's opinion -- by his RFC restriction that plaintiff must not work  
4 around "unprotected machinery" (A.R. 11) -- does not meet the specific  
5 and legitimate standard contemplated by Ninth Circuit precedent.<sup>10</sup> See  
6 Salvador v. Sullivan, 917 F.2d 13, 15 (9th Cir. 1990)(mere summarization  
7 and implicit rejection of physician's opinion does not suffice). As  
8 plaintiff correctly asserts in the Joint Stipulation, "although the ALJ  
9 determined in his RFC that plaintiff is precluded from working around  
10 *unprotected machinery*, he completely omitted from the RFC that plaintiff  
11 should avoid working on machinery equipment. Dr. Girgis did not opine  
12

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13  
14 <sup>9</sup> Defendant contends that the ALJ believed "Dr. Girgis's  
15 restriction against 'machinery equipment' was based on a concern that  
16 [plaintiff] avoid 'injury due to deafness'" and "linked the concern with  
17 avoiding injury to a restriction against unprotected machinery." (Joint  
18 Stip. at 18.) However, a reviewing court cannot affirm the denial of  
19 benefits based on a reason not stated or a finding not made by the ALJ,  
20 and defendant's after-the-fact attempt to supply an acceptable basis for  
21 the ALJ's decision is unavailing. See, e.g., Connett, 340 F.3d at 874  
22 (noting that a reviewing court is "constrained to review the reasons the  
23 ALJ asserts," and an ALJ's decision cannot be affirmed on the basis of  
evidence he did not discuss); Pinto v. Massanari, 249 F.3d 840, 847-48  
(9th Cir. 2001)(an agency decision cannot be affirmed on the basis of a  
ground that the agency did not invoke in making its decision); see also  
Barbato v. Comm'r of Soc. Sec. Admin., 923 F.Supp. 1273, 1276 n.2 (C.D.  
Cal. 1996)(remand is appropriate when a decision does not adequately  
explain how a decision was reached, "[a]nd that is so even if [the  
Commissioner] can offer proper post hoc explanations for such  
unexplained conclusions," because "the Commissioner's decision must  
stand or fall with the reasons set forth in the ALJ's decision, as  
adopted by the Appeals Council")(citation omitted).

24 <sup>10</sup> Moreover, defendant's attempt to uphold the ALJ's "unprotected  
25 machinery" limitation is not persuasive. Defendant argues that "whether  
26 Dr. Girgis's assessment required a total preclusion against any sort of  
27 machinery, or a preclusion against unprotected machinery is, at best,  
28 subject to more than one rational interpretation." (Joint Stip. at 18.)  
However, if Dr. Girgis's limitation was ambiguous, the ALJ should have  
conducted an appropriate inquiry, especially as the limitation may  
significantly impact the determination of what jobs, if any, plaintiff  
can perform.

1 that plaintiff be precluded from working around *unprotected machinery*,  
2 he opined that plaintiff should avoid working on machinery equipment."  
3 (Joint Stip. at 15-16; emphasis added). The fact that plaintiff may be  
4 precluded from working around any machinery, rather than working around  
5 unprotected machinery, may be significant and may impact the vocational  
6 base for possible jobs that plaintiff can perform. Therefore, the ALJ's  
7 unexplained replacement of Dr. Girgis's limitation that plaintiff not  
8 work around "machinery equipment" with a limitation that plaintiff not  
9 work around "unprotected machinery" was improper.

10  
11 Accordingly, the ALJ's RFC assessment is inconsistent with the  
12 medical evidence that plaintiff has deafness that prohibits her from  
13 working around machinery. On remand, the ALJ should reassess his RFC  
14 finding.

15  
16 **III. The ALJ Must Reconsider What Jobs Plaintiff May Be Able to Hold In**  
17 **View Of Plaintiff's Reconsidered RFC.**

18  
19 Plaintiff contends that, in addition to erring by omitting Dr.  
20 Girgis's opinion "that plaintiff should avoid working on machinery  
21 equipment," the ALJ erred at step five by identifying jobs that "require  
22 demands in excess of plaintiff's RFC, such as exposure to working in a  
23 noisy environment, working on machinery equipment and not working in a  
24 clean air environment and not avoiding extreme heat." (Joint Stip. at  
25 20.) Defendant acknowledges that the jobs of hand packager and packing  
26 machine operator are in excess of plaintiff's RFC. (Joint Stip. at 28-  
27 29.) As discussed below, the ALJ must reconsider his step five  
28 determination after reassessing plaintiff's RFC.

1 At step five of the sequential evaluation process, the Commissioner  
2 has the burden to show that a claimant is capable of performing a job  
3 that exists in substantial numbers in the national economy. Tackett v.  
4 Apfel, 180 F.3d 1094, 1099 (9th Cir. 1999). The Commissioner must take  
5 into consideration the claimant's RFC, age, education, and work  
6 experience. *Id.* at 1100. The Commissioner may satisfy this burden by  
7 obtaining the testimony of a vocational expert or referring to the  
8 Medical-Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart  
9 P, Appendix 2. *Id.* at 1101.

10  
11 Because the ALJ may have erred in determining plaintiff's RFC and  
12 thus may not have posed a proper hypothetical to the vocational expert,  
13 his step five determination may be erroneous and should be reexamined  
14 upon remand. If the ALJ accepts Dr. Girgis's opinion that plaintiff  
15 should not work around any machinery, then he must identify appropriate  
16 jobs that do not include working with machinery. If he rejects Dr.  
17 Girgis's opinion based upon specific and legitimate reasons for doing  
18 so, then the ALJ must properly designate jobs that would accomodate  
19 plaintiff's RFC.

20  
21 **IV. Remand Is Required.**

22  
23 The decision whether to remand for further proceedings or order an  
24 immediate award of benefits is within the district court's discretion.  
25 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no  
26 useful purpose would be served by further administrative proceedings, or  
27 where the record has been fully developed, it is appropriate to exercise  
28 this discretion to direct an immediate award of benefits. *Id.* at 1179

1 ("[T]he decision of whether to remand for further proceedings turns upon  
2 the likely utility of such proceedings."). However, where there are  
3 outstanding issues that must be resolved before a determination of  
4 disability can be made, and it is not clear from the record that the ALJ  
5 would be required to find the claimant disabled if all the evidence were  
6 properly evaluated, remand is appropriate. *Id.* at 1179-81.

7  
8 Remand is the appropriate remedy to allow the ALJ the opportunity  
9 to remedy the above-mentioned deficiencies and errors. *See, e.g.,*  
10 Benecke v. Barnhart, 379 F.3d 587, 593 (9th Cir. 2004)(remand for  
11 further proceedings is appropriate if enhancement of the record would be  
12 useful); McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir.  
13 1989)(remand appropriate to remedy defects in the record).

14  
15 On remand, the ALJ must correct the above-mentioned deficiencies  
16 and errors.<sup>11</sup> After so doing, the ALJ may need to reassess plaintiff's  
17 RFC and those jobs that plaintiff can perform, in which case additional  
18 testimony from a vocational expert likely will be needed to determine  
19 what work, if any, plaintiff can perform.

## 20 21 CONCLUSION

22  
23 Accordingly, for the reasons stated above, IT IS ORDERED that the  
24 decision of the Commissioner is REVERSED, and this case is REMANDED for  
25

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26 <sup>11</sup> Upon developing the record, the ALJ should address other  
27 ambiguities in the record identified in his opinion, including the  
28 ambiguity regarding a car accident identified in Exhibit 8E (A.R. 115)  
and the ambiguity in Exhibit 1F in which the ALJ believed Dr. Sisson  
wrote "breath," but which plaintiff contends is "birth" (A.R. 14).

1 further proceedings consistent with this Memorandum Opinion and Order.

2

3 IT IS FURTHER ORDERED that the Clerk of the Court shall serve  
4 copies of this Memorandum Opinion and Order and the Judgment on counsel  
5 for plaintiff and for defendant.

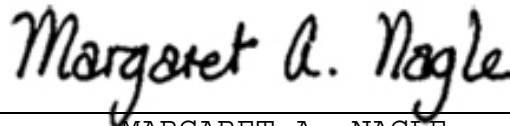
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7 LET JUDGMENT BE ENTERED ACCORDINGLY.

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9 DATED: July 28, 2011

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MARGARET A. NAGLE  
UNITED STATES MAGISTRATE JUDGE

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