



## BACKGROUND

1  
2 Plaintiff is a 56 year old female who applied for Social Security Disability Insurance  
3 benefits on August 18, 2009. (AR 10.) The ALJ determined that Plaintiff has not engaged in  
4 substantial gainful activity since April 29, 2009, the alleged onset date of her disability. (AR 12.)

5 Plaintiff's claim was denied initially on November 4, 2009, and on reconsideration on  
6 January 26, 2010. (AR 10.) Plaintiff filed a timely request for hearing, which was held before  
7 Administrative Law Judge ("ALJ") Kevin M. McCormick on January 25, 2011, in Orange,  
8 California. (AR 10.) Claimant appeared and testified at the hearing and was represented by  
9 counsel. (AR 10.) Vocational expert ("VE") Kelly Winn-Boaitey also appeared and testified at  
10 the hearing. (AR 10.)

11 The ALJ issued an unfavorable decision on May 4, 2011. (AR 10-16.) The Appeals  
12 Council denied review on June 22, 2012. (AR 1-3.)

## DISPUTED ISSUES

13  
14 As reflected in the Joint Stipulation, Plaintiff raises the following disputed issues as  
15 grounds for reversal and remand:

- 16 1. Whether the ALJ properly considered the consultative examiner's opinion.
- 17 2. Whether the ALJ provided a complete and proper assessment of Plaintiff's  
18 residual functional capacity ("RFC").
- 19 3. Whether the ALJ properly considered the Plaintiff's testimony and made proper  
20 credibility findings.
- 21 4. Whether the ALJ fully and fairly developed the record.

## STANDARD OF REVIEW

22  
23 Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether  
24 the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v.  
25 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846  
26 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and  
27 based on the proper legal standards).

1 Substantial evidence means “more than a mere scintilla,’ but less than a  
2 preponderance.” Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v.  
3 Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is “such relevant evidence as a  
4 reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at  
5 401 (internal quotation marks and citation omitted).

6 This Court must review the record as a whole and consider adverse as well as  
7 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where  
8 evidence is susceptible to more than one rational interpretation, the ALJ’s decision must be  
9 upheld. Morgan v. Comm’r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).  
10 “However, a reviewing court must consider the entire record as a whole and may not affirm  
11 simply by isolating a ‘specific quantum of supporting evidence.’” Robbins, 466 F.3d at 882  
12 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495  
13 F.3d 625, 630 (9th Cir. 2007).

#### 14 THE SEQUENTIAL EVALUATION

15 The Social Security Act defines disability as the “inability to engage in any substantial  
16 gainful activity by reason of any medically determinable physical or mental impairment which  
17 can be expected to result in death or . . . can be expected to last for a continuous period of not  
18 less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has  
19 established a five-step sequential process to determine whether a claimant is disabled. 20  
20 C.F.R. §§ 404.1520, 416.920.

21 The first step is to determine whether the claimant is presently engaging in substantial  
22 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging  
23 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,  
24 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or  
25 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not  
26 significantly limit the claimant’s ability to work. Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir.  
27 1996). Third, the ALJ must determine whether the impairment is listed, or equivalent to an  
28 impairment listed, in 20 C.F.R. Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d

1 at 746. If the impairment meets or equals one of the listed impairments, the claimant is  
2 presumptively disabled. Bowen v. Yuckert, 482 U.S. at 141. Fourth, the ALJ must determine  
3 whether the impairment prevents the claimant from doing past relevant work. Pinto v.  
4 Massanari, 249 F.3d 840, 844-45 (9th Cir. 2001).

5 Before making the step four determination, the ALJ first must determine the claimant's  
6 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). Residual functional capacity  
7 ("RFC") is "the most [one] can still do despite [his or her] limitations" and represents an  
8 assessment "based on all the relevant evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).  
9 The RFC must consider all of the claimant's impairments, including those that are not severe.  
10 20 C.F.R. §§ 416.920(e), 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

11 If the claimant cannot perform his or her past relevant work or has no past relevant work,  
12 the ALJ proceeds to the fifth step and must determine whether the impairment prevents the  
13 claimant from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864,  
14 869 (9th Cir. 2000). The claimant bears the burden of proving steps one through four,  
15 consistent with the general rule that at all times the burden is on the claimant to establish his or  
16 her entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established  
17 by the claimant, the burden shifts to the Commissioner to show that the claimant may perform  
18 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support  
19 a finding that a claimant is not disabled at step five, the Commissioner must provide evidence  
20 demonstrating that other work exists in significant numbers in the national economy that the  
21 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.  
22 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled and  
23 entitled to benefits. Id.

#### 24 **THE ALJ DECISION**

25 In this case, the ALJ determined at step one of the sequential process that Plaintiff has  
26 not engaged in substantial gainful activity since April 29, 2009, the alleged onset date. (AR 12.)  
27  
28

1 At step two, the ALJ determined that Plaintiff has the the following severe impairments:  
2 spondylolisthesis L5-S1, degenerative disc disease of the cervical spine, right lateral  
3 epicondylitis, and right carpal tunnel syndrome. (AR 12.)

4 At step three, the ALJ determined that Plaintiff does not have an impairment or  
5 combination of impairments that meets or medically equals one of the listed impairments. (AR  
6 12.)

7 The ALJ then found that Plaintiff has the RFC to lift and carry 20 pounds occasionally  
8 and 10 pounds frequently, stand, and/or walk for 6 hours out of an 8 hour day, occasionally  
9 climb ladders, stoop, crouch, kneel, crawl, balance, and work at heights; she has no sitting  
10 limitations and no limitations in the left upper extremity; Plaintiff is limited to frequent reaching  
11 and handling with the right upper extremity and occasional fingering with the right upper  
12 extremity. (AR 13-15.) In determining this RFC, the ALJ made an adverse credibility  
13 determination. (AR 13-15.)

14 At step four, the ALJ found that Plaintiff is unable to perform her past relevant work as a  
15 dental hygienist. (AR 15.) At step five, the ALJ found that there are jobs that exist in significant  
16 numbers in the national economy that Claimant can perform, including cashier II and office  
17 helper. (AR 15-16.)

18 Consequently, the ALJ found Claimant not disabled within the meaning of the Social  
19 Security Act at any time from the alleged onset date through the date of the ALJ's decision.  
20 (AR 16.)

## 21 **DISCUSSION**

22 The ALJ decision must be affirmed. The ALJ properly rejected the opinion of the  
23 consulting orthopedist and properly discounted the Claimant's credibility. The ALJ's RFC is  
24 supported by substantial evidence and the record is fully and fairly developed. The ALJ's non-  
25 disability determination is supported by substantial evidence and free of legal error.

1 **I. THE ALJ PROPERLY DISCOUNTED THE OPINION**  
2 **OF DR. SIMMONDS**

3 Plaintiff contends that the ALJ erred in rejecting the occasional right upper extremity  
4 limitation assessed by consulting orthopedist Dr. Simmonds. The Court disagrees.

5 **A. Relevant Federal Law**

6 In evaluating medical opinions, the case law and regulations distinguish among the  
7 opinions of three types of physicians: (1) those who treat the claimant (treating physicians); (2)  
8 those who examine but do not treat the claimant (examining physicians); and (3) those who  
9 neither examine nor treat the claimant (non-examining, or consulting, physicians). See 20  
10 C.F.R. §§ 404.1527, 416.927; see also Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). In  
11 general, an ALJ must accord special weight to a treating physician's opinion because a treating  
12 physician "is employed to cure and has a greater opportunity to know and observe the patient  
13 as an individual." Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989) (citation omitted). If  
14 a treating source's opinion on the issues of the nature and severity of a claimant's impairments  
15 is well-supported by medically acceptable clinical and laboratory diagnostic techniques, and is  
16 not inconsistent with other substantial evidence in the case record, the ALJ must give it  
17 "controlling weight." 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

18 Where a treating doctor's opinion is not contradicted by another doctor, it may be  
19 rejected only for "clear and convincing" reasons. Lester, 81 F.3d at 830. However, if the  
20 treating physician's opinion is contradicted by another doctor, such as an examining physician,  
21 the ALJ may reject the treating physician's opinion by providing specific, legitimate reasons,  
22 supported by substantial evidence in the record. Lester, 81 F.3d at 830-31; see also Orn, 495  
23 F.3d at 632; Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). Where a treating  
24 physician's opinion is contradicted by an examining professional's opinion, the Commissioner  
25 may resolve the conflict by relying on the examining physician's opinion if the examining  
26 physician's opinion is supported by different, independent clinical findings. See Andrews v.  
27 Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995); Orn, 495 F.3d at 632. Similarly, to reject an  
28 uncontradicted opinion of an examining physician, an ALJ must provide clear and convincing

1 reasons. Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005). If an examining physician's  
2 opinion is contradicted by another physician's opinion, an ALJ must provide specific and  
3 legitimate reasons to reject it. Id. However, "[t]he opinion of a non-examining physician cannot  
4 by itself constitute substantial evidence that justifies the rejection of the opinion of either an  
5 examining physician or a treating physician"; such an opinion may serve as substantial  
6 evidence only when it is consistent with and supported by other independent evidence in the  
7 record. Lester, 81 F.3d at 830-31; Morgan, 169 F.3d at 600.

### 8 **B. Analysis**

9 The ALJ found that Claimant retained the residual functional capacity for light work, but  
10 with a limitation to "frequent reaching and handling with the right upper extremity and  
11 occasional fingering with the right upper extremity." (AR 13 (emphasis added).) This limitation  
12 is in conflict with the October 14, 2009, opinion of consulting orthopedic examiner Dr. John  
13 Simmonds who opined that "gross manipulation, specifically handling can be done on an  
14 occasional basis for the right upper extremity." (AR 14, 262 (emphasis added).) The ALJ  
15 rejected Dr. Simmonds' "occasional" right upper extremity limitation because it was "a one time  
16 exam and is not supported by the overall medical evidence of record." (AR 15.)

17 Dr. Simmonds' entire opinion is as follows:

18 Based on today's examination, it is the examiner's opinion from an  
19 orthopaedic standpoint that the claimant is able to push, pull, lift and carry 20  
20 pounds occasionally and 10 pounds frequently. Walking and standing can  
21 be done for 6 hours per day. No assistive device is required for ambulation.  
22 Postural activities, i.e. bending, kneeling, stooping, crawling and crouching  
23 can be done on an occasional basis. Agility, i.e. walking on uneven terrain,  
24 climbing ladders, or working at heights can be done on an occasional basis.  
25 Sitting can be done without restrictions. Fine and gross manipulative  
26 movements can be done without restrictions for the left upper extremity.  
27 Gross manipulation, specifically handling can be done on an occasional  
28 basis for the right upper extremity however other forms of gross

1 manipulation such as overhead activities and handling can be done on a  
2 frequent basis. Fine manipulation can be done on an occasional basis for  
3 the right upper extremity.

4 (AR 262 (emphasis added).) Plaintiff contends that her medical record supports Dr. Simmonds'  
5 occasional right upper extremity limitation and the ALJ, therefore, failed to set forth specific,  
6 legitimate reasons for rejecting Dr. Simmonds' opinion.

7 Although the ALJ largely credited Dr. Simmonds' opinion (AR 14), on the issue of  
8 right upper extremity limitations the ALJ decision gives more weight to the November 3, 2009,  
9 opinion of State agency reviewer Dr. Phillips that Claimant was capable of "frequent" reaching  
10 and handling. (AR 14-15, 265.) Dr. Phillips was a non-examining physician, but the opinion is  
11 based on independent medical evidence and other evidence of record. (AR 263-268.) Thus,  
12 Dr. Phillips' opinion constitutes substantial evidence. Lester, 81 F.3d at 830-31; Morgan, 169  
13 F.3d at 600. Plaintiff does not contend otherwise. Dr. Phillips' opinion specifically states that  
14 Claimant is only partially credible, citing inconsistent daily activities that include pilates, pool  
15 exercises, and walking for exercise. (AR 267.) As discussed below, the ALJ discounted  
16 Plaintiff's credibility in part for the same activities. (AR 13, 14.) Dr. Simmonds makes no  
17 mention of these activities.

18 The ALJ also cites the findings of treating physician Dr. Kris Hirata, which Dr. Phillips  
19 would have reviewed. Dr. Hirata diagnosed lumbar spondylolisthesis and degeneration of  
20 lumbosacral intervertebral disc (AR 14, 239), but also reported only mild tenderness to  
21 palpation at the lumbosacral junction and that range of motion of the lumbar spine showed full  
22 flexion. (AR 14.) Dr. Hirata noted that Claimant reported no medication side effects or  
23 problems with sleeping. (AR 14.) Dr. Hirata also noted that Claimant was doing pilates and  
24 yoga. (AR 14, 223.) The ALJ reasonably interpreted this evidence as consistent with Dr.  
25 Phillips' frequent right upper extremity limitation. (AR 14.)

26 The ALJ also relied on Dr. Simmonds' own findings. (AR 14.) The ALJ noted that  
27 Dr. Simmonds did not find any limits to cervical range of motion and grip strength was 40  
28 pounds. (AR 14.) Although the Claimant indicated discomfort along the paravertebral muscular



1 groups, Claimant had a negative axial compression test and negative Spurling's sign. (AR 14.)  
2 Dr. Simmonds reported tenderness over the right lateral epicondyle, but range of motion of the  
3 elbow and wrist was within normal limits. (AR 14.) Claimant also had a normal 2-point  
4 discrimination along the ulnar and median nerve distribution; there was no thenar atrophy. (AR  
5 14.) Again, the ALJ reasonably interpreted these findings as consistent with Dr. Phillips'  
6 opinion. (AR 14.)

7 Plaintiff cites evidence to support his interpretation of the evidence but does not discuss  
8 or rebut the evidence supporting Dr. Phillips' opinion and the ALJ's finding of frequent upper  
9 extremity handling. In the final analysis, Plaintiff simply disagrees with the ALJ's interpretation  
10 of the evidence, but it is the ALJ who is responsible for resolving conflicts in the medical  
11 evidence and ambiguities in the record. Andrews, 53 F.3d at 1039; Magallanes, 881 F.2d at  
12 750. Where the ALJ's interpretation of the evidence is reasonable as it is here, it should not be  
13 second-guessed. Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001).

14 The ALJ rejected Dr. Simmonds' occasional right upper extremity limitation for specific,  
15 legitimate reasons.

## 16 **II. THE ALJ PROPERLY DISCOUNTED PLAINTIFF'S CREDIBILITY**

17 Plaintiff contends that the ALJ improperly discounted Plaintiff's credibility. The Court  
18 disagrees.

### 19 **A. Relevant Federal Law**

20 The test for deciding whether to accept a claimant's subjective symptom testimony turns  
21 on whether the claimant produces medical evidence of an impairment that reasonably could be  
22 expected to produce the pain or other symptoms alleged. Bunnell v. Sullivan, 947 F.2d 341,  
23 346 (9th Cir. 1991); see also Reddick, 157 F.3d at 722; Smolen v. Chater, 80 F.3d at 1281-82  
24 esp. n.2. The Commissioner may not discredit a claimant's testimony on the severity of  
25 symptoms merely because they are unsupported by objective medical evidence. Reddick, 157  
26 F.3d at 722; Bunnell, 947 F.2d at 343, 345. If the ALJ finds the claimant's pain testimony not  
27 credible, the ALJ "must specifically make findings which support this conclusion." Bunnell, 947  
28 F.2d at 345. The ALJ must set forth "findings sufficiently specific to permit the court to conclude

1 that the ALJ did not arbitrarily discredit claimant’s testimony.” Thomas, 278 F.3d at 958; see  
2 also Rollins, 261 F.3d at 856-57; Bunnell, 947 F.2d at 345-46. Unless there is evidence of  
3 malingering, the ALJ can reject the claimant’s testimony about the severity of a claimant’s  
4 symptoms only by offering “specific, clear and convincing reasons for doing so.” Smolen, 80  
5 F.3d at 1283-84; see also Reddick, 157 F.3d at 722. The ALJ must identify what testimony is  
6 not credible and what evidence discredits the testimony. Reddick, 157 F.3d at 722; Smolen, 80  
7 F.3d at 1284.

### 8 **B. Analysis**

9 In determining Plaintiff’s RFC, the ALJ concluded that Plaintiff’s medically determinable  
10 impairments reasonably could be expected to cause her alleged symptoms. (AR 13.) The ALJ,  
11 however, found that Plaintiff’s statements regarding the intensity, persistence and limiting  
12 effects of these symptoms were not credible to the extent they are consistent with the ALJ’s  
13 RFC assessment. (AR 13.) Because the ALJ did not make a finding of malingering, he was  
14 required to provide clear and convincing reasons supported by substantial evidence to discount  
15 Plaintiff’s credibility. Smolen 80 F.3d at 1283-84. The ALJ did so.

16 First, the ALJ found that the RFC assessment was consistent with the overall objective  
17 medical evidence. (AR 15.) An ALJ is entitled to consider whether there is a lack of medical  
18 evidence to corroborate a claimant’s alleged pain symptoms so long as it is not the only reason  
19 for discounting a claimant’s credibility. Burch v. Barnhart, 400 F.3d 676, 680-81 (9th Cir. 2005);  
20 Thomas, 278 F.3d at 959. The Court already rejected Plaintiff’s contention that the ALJ  
21 improperly rejected Dr. Simmonds’ occasional right upper extremity limitations.

22 At the hearing, Plaintiff alleged chronic pain in the right side of her body, trouble  
23 sleeping, ability to sit only 20 to 30 minutes before experiencing jarring pain, and trouble  
24 gripping or grasping objects with her right hand. (AR 26-27, 29, 30.) The ALJ, however,  
25 rejected Claimant’s assertions of problems with her neck, hands, and back, including chronic  
26 pain in the hips and problems sleeping, “because they are not supported in the medical  
27 evidence of record.” (AR 14.) Plaintiff disputes the ALJ’s findings by referring only to notations  
28 in the record where Plaintiff made a complaint to a physician but not to any medical findings by

1 a physician. No physician supported Plaintiff's claims except for the portion of Simmonds'  
2 opinion rejected by the ALJ. Additionally, there was contrary evidence regarding Claimant's  
3 sleep patterns and grip strength. (AR 14.) The objective medical evidence is inconsistent with  
4 Plaintiff's subjective symptom allegations.

5 Second, the ALJ found that Plaintiff's daily activities were inconsistent with her  
6 allegations of disabling pain. (AR 14.) Claimant's daily activities are a legitimate factor in  
7 determining the credibility of a claimant's pain allegations. Bunnell, 947 F.2d at 345-346. Here  
8 the ALJ found that Plaintiff attends water aerobic classes, pilates classes, walks for an hour at a  
9 moderate pace, and performs household chores such as cooking, washing the dishes and  
10 doing the laundry. (AR 14.) The ALJ also found that Claimant is able to drive a manual or stick  
11 shift car for an hour at a time. (AR 14.)

12 Plaintiff disagrees with the ALJ's interpretation of the evidence. For example, Plaintiff  
13 explains that her water aerobics and pilates classes were non-jarring exercises that were part of  
14 her overall treatment and pain management plan, but even so the ability to participate in and do  
15 these activities suggests Plaintiff can do more than she alleges, as the ALJ found. Plaintiff  
16 contends that the fact she can engage in some normal daily activities does not disprove her  
17 disability claim. Yet, even though these activities do not prove Plaintiff can return to work, the  
18 ALJ reasonably found that, because of the activities cited, Plaintiff's pain was not as severe or  
19 as limiting as she claims. Valentine v. Comm'r, Soc. Sec. Adm., 574 F.3d 685, 693 (9th Cir.  
20 2009).

21 Again, the ALJ is responsible for resolving conflicts in the medical evidence and  
22 ambiguities in the record. Andrews, 53 F.3d at 1039; Magallenes, 881 F.2d at 750. Where the  
23 ALJ's interpretation of the evidence is reasonable as is the case here, it should not be second-  
24 guessed. Rollins, 261 F.3d at 857.

25 The ALJ properly discounted Plaintiff's credibility and subjective symptom testimony.  
26  
27  
28

1 **III. THE ALJ’S RFC IS SUPPORTED BY SUBSTANTIAL EVIDENCE**

2 Plaintiff challenges the ALJ’s RFC on the basis of Dr. Simmonds’ occasional right upper  
3 extremity limitation. The Court upheld the ALJ’s rejection of that limitation and also upheld the  
4 ALJ’s adverse credibility determination. The ALJ’s RFC is supported by substantial evidence.

5 **IV. THE ALJ DID NOT FAIL TO DEVELOP THE RECORD PROPERLY**

6 Plaintiff asserts that the ALJ failed to develop the record fully and fairly because the  
7 medical record does not contain Dr. Hirata’s medical reports from August 18, 2009, to March  
8 2010. The Court disagrees.

9 In Social Security cases, the ALJ has a special, independent duty to develop the record  
10 fully and fairly and to assure that the claimant’s interests are considered. Tonapetyan v. Halter,  
11 242 F.3d 1144, 1150 (9th Cir. 2001); Smolen, 80 F.3d at 1288; Brown v. Heckler, 713 F.2d 441,  
12 443 (9th Cir. 1983). Ambiguous evidence or the ALJ’s own finding that the record is inadequate  
13 to allow for proper evaluation of the evidence triggers the ALJ’s duty to “conduct an appropriate  
14 inquiry.” Smolen, 80 F.3d at 1288; Tonapetyan, 242 F.3d at 1150. The ALJ may discharge this  
15 duty by subpoenaing the claimant’s physicians, submitting questions to them, continuing the  
16 hearing, or keeping the record open after the hearing to allow supplementation of the record.  
17 Smolen, 80 F.3d at 1288; Tonapetyan, 242 F.3d at 1150.

18 Plaintiff’s argument that the ALJ had a duty to develop the record further fails for two  
19 reasons. First, Plaintiff’s assertion seeks to shift to the ALJ her own burden to prove she is  
20 disabled by furnishing relevant medical evidence. Mayes v. Massanari, 276 F.3d 453, 459 (9th  
21 Cir. 2001) (“It was [Claimant’s] duty to prove that she was disabled,” citing 42 U.S.C.  
22 § 423(d)(5) (“An individual shall not be considered to be under a disability unless he furnishes  
23 such medical and other evidence of the existence thereof as the Secretary may require”)).  
24 Nothing prevented Plaintiff from obtaining any missing medical records from Dr. Hirata or  
25 Kaiser. In fact, Plaintiff’s attorney representative submitted additional medical evidence from  
26 Kaiser on June 14, 2010. (AR 290.) The ALJ had no reason to believe the record was  
27 incomplete and Plaintiff never raised the issue until after the ALJ decision was filed and the  
28

1 Appeals Council denied review. Plaintiff, moreover, did not indicate in her testimony any  
2 impairments or medical evidence or treatment not fully addressed in the medical record.

3 Second, an ALJ's duty to develop the record further is triggered only when there is  
4 ambiguous evidence or when the record is inadequate to allow for proper evaluation of the  
5 evidence. Mayes, 276 F.3d at 459-60. Here, the ALJ did not indicate the evidence was  
6 ambiguous or inadequate to make a disability determination, and thus there was no duty to  
7 develop the record further.

8 \* \* \*

9 The ALJ properly rejected Dr. Simmonds' occasional right upper extremity limitation and  
10 properly discounted Plaintiff's credibility. The ALJ's RFC is supported by substantial evidence  
11 and there was no duty to develop the record further. The ALJ's non-disability determination is  
12 supported by substantial evidence and free of legal error.

13 **ORDER**

14 IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the  
15 Commissioner of Social Security and dismissing this action with prejudice.

16  
17 DATED: May 10, 2013

/s/ John E. McDermott  
JOHN E. MCDERMOTT  
UNITED STATES MAGISTRATE JUDGE