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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 SAN FRANCISCO DIVISION
7

8 G.N.,¹

9 Plaintiff,

10 v.

11 MARTIN O'MALLEY, Commissioner of
12 Social Security,

13 Defendant.

Case No. [23-cv-04293-PHK](#)

ORDER REMANDING CASE

14 Plaintiff G.N. ("Plaintiff") brings this action under the Social Security Act, 42 U.S.C.
15 § 405(g) ("the Act"), seeking judicial review of a final decision by the Commissioner of the Social
16 Security Administration, Defendant Martin O'Malley ["Commissioner"], denying her application
17 for supplemental security income. [Dkt. 1]. In this Court, Plaintiff filed a Motion for Summary
18 Judgment, which the Court construes as Plaintiff's Opening Brief, the Commissioner filed a
19 Cross-Motion for Summary Judgment, which the Court construes as the Commissioner's
20 Response Brief, and Plaintiff filed a Reply Brief.² [Dkts. 12, 14-15]. The Commissioner has also

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22 ¹ In actions involving requested review of a decision by the Commissioner of the Social Security
23 Administration, the Court generally uses the first name and initial of last name (or just the initials)
of the Plaintiff in the Court's public Orders out of an abundance of caution and regard for the
Plaintiff's potential privacy concerns.

24 ² The Parties filed their briefing as cross-motions for summary judgment which was the standard
25 practice in this District for many years. Effective December 1, 2022, the Supplemental Rules for
26 Social Security establish a "simplified procedure that recognizes the essentially appellate character
of actions that seek only review of an individual's claims on a single administrative record" and
"displace[] summary judgment as the means of review on the administrative record." Fed. R. Civ.
27 P. Supp. Soc. Sec. R. advisory committee's note; see Fed. R. Civ. P. Supp. Soc. Sec. R. 5 ("The
action is presented for decision by the parties' briefs."). Accordingly, the Court construes the
28 Parties' summary judgment briefing as Plaintiff's Opening Brief, the Commissioner's Response
Brief, and Plaintiff's Reply Brief. See *Sabrina M.C. v. Kijakazi*, No. EDCV 22-2187-KS, 2023 WL

1 filed the Administrative Record. [Dkts. 10-11 (hereinafter, “AR”)].

2 After carefully analyzing the briefs, the record, and the applicable law, the Court
3 **REVERSES** the Commissioner’s final decision and **REMANDS** for further proceedings
4 consistent with this Order.

5 **BACKGROUND**

6 Plaintiff was born on December 8, 2001; she claims to have been disabled since infancy.
7 [AR 44]. Plaintiff was eighteen years old on the alleged disability onset date.³ [AR 46]. She
8 speaks English and has completed several years of college. [AR 200, 1019]. Plaintiff has no
9 employment history. [AR 201].

10 On August 20, 2020, Plaintiff protectively filed an application for supplemental security
11 income, pursuant to Title XVI of the Act. [AR 182-88]. In her application, Plaintiff claimed that
12 she was unable to work due to spina bifida. [AR 201]. The Commissioner denied Plaintiff’s
13 application on October 5, 2020, and again denied the application upon reconsideration, on
14 November 10, 2021. [AR 71-76, 84-89].

15 **June 28, 2022 Hearing**

16 Plaintiff successfully requested a hearing before an Administrative Law Judge (“ALJ”).
17 [AR 97-168]. That hearing took place on June 28, 2022, before ALJ Serena Hong. [AR 1011-
18 037]. Plaintiff appeared and testified at the hearing, accompanied by her attorney. *Id.* The ALJ
19 also heard testimony from a Vocational Expert. *Id.* Medical opinions were provided by two non-
20 examining state agency physicians, H. Jone, M.D., and S. Hanna, M.D.; a consulting internal
21 medicine physician, Robert Tang, M.D.; and a treating pediatrician, Lisa Leavitt, M.D. *See* AR
22 46-50, 59-60, 377-80, 927.

23 At the hearing, Plaintiff testified that she is unable to work primarily because of limited
24 mobility in her legs and other complications resulting from spina bifida. [AR 1018, 1020].

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8945707, at *1 (C.D. Cal. Nov. 20, 2023).

27 ³ In her application for supplemental security income, Plaintiff alleged that she had been disabled
28 since April 1, 2002. [AR 182]. However, the relevant period for Title XVI applications begins on
the date of filing. 20 C.F.R. § 416.335.

1 Plaintiff testified that, due to back pain, she can sit for no more than forty minutes continuously
2 before she must stand and walk around for several minutes to alleviate the pain. [AR 1020, 1023,
3 1025]. She testified that she wears orthopedic foot supports to walk, that the supports frequently
4 cause bruising, and that she sometimes has to go to the hospital to get the orthopedics readjusted.
5 [AR 1020-21]. Plaintiff testified that she requires a catheter to urinate. [AR 1021]. She testified
6 that she usually self-catheterizes, a process that takes five to ten minutes each time. *Id.* She
7 further testified that she frequently has to call her mother for assistance with catheterizations. AR
8 1021, 1028-29]. Plaintiff testified that she must undergo a “special procedure” every night for
9 bowel movements. [AR 1022, 1029].

10 Plaintiff testified that, at the time of the hearing, she was about to enter her third year of
11 college. [AR 1019]. She reported that she would be switching from a hybrid course schedule (due
12 to COVID-19) to a fully in-person course schedule. *Id.* She testified that she planned to take five
13 classes. *Id.* Plaintiff testified that she receives special accommodations from the college for her
14 impairments. [AR 1019-20]. Specifically, Plaintiff testified that she is permitted to stand up
15 and/or take bathroom breaks “when needed.” [AR 1020]. She further testified that she is allotted
16 “extra time” to walk between classes. *Id.* Plaintiff reported that school was “going good so far”
17 and that she was making good grades. [AR 1019-20]. She testified that she planned to be a
18 dentist. [AR 1022-23].

19 At the time of the hearing, Plaintiff testified that she currently lives with her parents and
20 two siblings. [AR 1018]. She testified that she relies on her mother for car transportation,
21 cooking, and assistance with medical issues (such as catheterization as discussed above). [AR
22 1027-29]. Plaintiff recently started bicycling with her family approximately once or twice each
23 week for thirty to forty minutes each time. [AR 1022]. She reported that her mother always
24 accompanies her on these bike rides. [AR 1022, AR 1027-28].

25 **ALJ’s September 28, 2022 Written Decision**

26 On September 28, 2022, the ALJ issued a written decision in accordance with the
27 Commissioner’s five-step, sequential evaluation process. [AR 15-24]. The five-step analysis
28 requires the ALJ to consider whether the claimant: (1) has engaged in “substantial gainful activity”

1 during the alleged period of disability; (2) has a medically determinable impairment or
2 combination of such impairments that is “severe;” (3) has a condition that meets or equals the
3 severity of a listed impairment; (4) has the residual functional capacity (“RFC”) to return to their
4 past relevant work; and, if not, (5) can perform other work in the national economy. 20 C.F.R.
5 §§ 404.1520(a)(4), 416.920(a)(4); *Wischmann v. Kijakazi*, 68 F.4th 498, 504 & n.3 (9th Cir.
6 2023). It is well-settled that, under this analysis, the claimant has the burden to establish a *prima*
7 *facie* case of disability at steps one through four. *Triechler v. Comm’r of Soc. Sec. Admin.*, 775
8 F.3d 1090, 1096 n.1 (9th Cir. 2014) (quoting *Hoopai v. Astrue*, 499 F.3d 1071, 1074-75 (9th Cir.
9 2007)). The burden then shifts to the Commissioner, at step five to show that the claimant retains
10 sufficient RFC to perform work in the national economy, given the claimant’s age, education, and
11 work experience. *Id.* A finding that a claimant is “disabled” or “not disabled” at any point in the
12 five-step review is conclusive and terminates the analysis. *Tackett v. Apfel*, 180 F.3d 1094, 1098
13 (9th Cir. 1999) (citing 20 C.F.R. § 404.1520). To be disabling, the claimant’s condition must be
14 so functionally limiting as to preclude any substantial gainful activity for at least twelve
15 consecutive months. 42 U.S.C. §§ 423(d)(1)(A), (2)(A).

16 In the September 28, 2022 written decision, the ALJ determined, at step one, that Plaintiff
17 had not engaged in substantial gainful activity since August 20, 2020, the operative alleged
18 disability onset date. [AR 17]. At step two of the analysis, the ALJ found that Plaintiff had the
19 following severe impairments: “spina bifida, shunted hydrocephalus, neurogenic bladder and
20 bowel, [and] foot deformities.” *Id.* The ALJ also found that Plaintiff suffered from “myopia with
21 bilateral astigmatism,” but determined that that specific impairment was non-severe. [AR 18].
22 None of Plaintiff’s impairments, alone or in combination, were found to be presumptively
23 disabling at step three. *Id.*

24 Prior to reaching step four, the ALJ assessed Plaintiff’s RFC and found her capable of
25 sedentary work, subject to the following limitations:

26 [The claimant] cannot perform any pushing or puling [sic] or operation of foot
27 controls with the bilateral lower extremities; must avoid uneven terrain. The
28 individual cannot climb ladders, ropes[,] and scaffolds. The individual is limited to
occasional postural maneuvers such as stooping, crouching, crawling[,] and

1 balancing as described in the SOC. The individual would require bilateral knee
2 braces for ambulation. The individual cannot work around hazards.

3 [AR 18-19].

4 In establishing this RFC, the ALJ evaluated Plaintiff's subjective allegations of her
5 symptoms, the objective medical evidence, and the medical opinion evidence. [AR 19-22]. The
6 ALJ determined that, while Plaintiff's medically determinable impairments could reasonably be
7 expected to cause her alleged symptoms, Plaintiff's testimony regarding the intensity, persistence,
8 and limiting effects of the symptoms was "not entirely consistent" with the overall record. [AR
9 22]. The ALJ likewise concluded that the objective medical evidence, though supportive of some
10 functional limitations, did not support the existence of limitations greater than those set forth in
11 the RFC assessment. *Id.*

12 In addition, the ALJ considered the medical opinion evidence. The ALJ first discussed the
13 opinion from Dr. Jone regarding Plaintiff's functional limitations caused by her physical
14 impairments. [AR 21; *see* AR 48-50]. In sum, Dr. Jone opined that Plaintiff was capable of
15 lifting and carrying less than ten pounds frequently and occasionally; standing and walking for up
16 to two hours within an eight-hour day; sitting for up to six hours within an eight-hour day; and
17 precluded from pushing/pulling with the lower extremities, climbing ladders, ropes, or scaffolds,
18 or exposure to hazards such as machinery or heights. [AR 48-50]. The ALJ found Dr. Jone's
19 opinion "partially persuasive." [AR 21]. The ALJ found that Dr. Jone's specific limitation of
20 lifting and carrying less than ten pounds was "overly restrictive and inconsistent with the
21 claimant's activities of daily living, treatment record[,] and recommendation for exercising
22 including swimming and gymnastics." *Id.*

23 The ALJ briefly discussed Dr. Hanna's opinion. *Id.*; *see* AR 59-60. Dr. Hanna's opinion
24 largely tracked with Dr. Jone's opinion, except that Dr. Hanna restricted Plaintiff to lifting and
25 carrying up to ten pounds frequently and occasionally. [AR 59-60]. The ALJ found Dr. Hanna's
26 opinion to be "persuasive" because it was "consistent with the claimant's activities of daily living
27 and normal examinations." [AR 21].

28 The ALJ next discussed Dr. Tang's opinion testimony. [AR 21-22; *see* AR 377-80]. Dr.

1 Tang opined that Plaintiff could lift and/or carry up to twenty pounds occasionally and up to ten
2 pounds frequently; that she could stand and/or sit for up to four hours within an eight-hour
3 workday; that she required “time-out” for regular bathroom breaks; that she not handle activity or
4 danger; that she required bilateral orthopedic foot supports to ambulate; and that she required
5 “absolute lumbar spine protection.” [AR 380]. The ALJ accorded Dr. Tang’s opinion with
6 “partial weight,” finding that the opinion was “consistent with a reduction in standing and walking
7 and a sedentary exertional level,” but “vague as to absolute protection of her lumbar spine.” [AR
8 21-22]. The ALJ found that Dr. Tang’s opinion was inconsistent with the overall record, because
9 the “records document bike riding and encouragement to continue such activity.” [AR 22].

10 The ALJ’s written decision does not discuss Dr. Leavitt’s opinion at all. *See generally* AR
11 15-24.

12 At step four, the ALJ found that Plaintiff had no past relevant work. [AR 22].

13 At step five of the analysis, the ALJ determined, based on the Vocational Expert’s
14 testimony, that Plaintiff was “capable of making a successful adjustment to other work that exists
15 in significant numbers in the national economy,” based on her age, education, work experience,
16 and residual functional capacity. [AR 22-23]. The ALJ determined that Plaintiff would be able to
17 perform such jobs as a hand packager, a final assembler, or an order clerk. [AR 23]. For that
18 reason, the ALJ concluded that Plaintiff was not under a “disability,” as defined by the Act, and
19 denied Plaintiff’s application for supplemental security income. *Id.*

20 That denial prompted Plaintiff’s request for judicial review. *See* Dkt. 1; AR 1-11. The
21 Parties have consented to proceed before a Magistrate Judge for all purposes, including the entry
22 of final judgment, under 28 U.S.C. § 636(c). *See* Dkts. 7, 9.

23 STANDARD OF REVIEW

24 In Social Security disability cases, the Court’s review is limited to determining: (1)
25 whether substantial evidence supports the Commissioner’s decision; and (2) whether the
26 Commissioner’s decision comports with relevant legal standards. *Stout v. Comm’r, Soc. Sec.*
27 *Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006) (“We will uphold the Commissioner’s denial of
28 benefits if the Commissioner applied the correct legal standards and substantial evidence supports

1 the decision.”); accord *Woods v. Kijakazi*, 32 F.4th 785, 788 (9th Cir. 2022); see generally 42
2 U.S.C. § 405(g). “Overall, the standard of review is highly deferential.” *Kitchen v. Kijakazi*, 82
3 F.4th 732, 738 (9th Cir. 2023) (quoting *Rounds v. Comm’r*, 807 F.3d 996, 1002 (9th Cir. 2015)).

4 “Substantial evidence” is “more than a mere scintilla”—it is “such relevant evidence as a
5 reasonable mind might accept as adequate to support a conclusion. *Woods*, 32 F.4th at 788
6 (quoting *Biestek v. Berryhill*, 587 U.S. 97, 103 (2019)). Any conflict in the evidence is to be
7 resolved by the ALJ, and not the Court. *Smartt v. Kijakazi*, 53 F.4th 489, 494 (9th Cir. 2022)
8 (“Where evidence is susceptible to more than one rational interpretation, the ALJ’s decision must
9 be affirmed.”).

10 ANALYSIS

11 Plaintiff challenges the ALJ’s decision on two main grounds. Plaintiff argues, first, that
12 the ALJ’s RFC determination is not supported by substantial evidence, because the ALJ
13 improperly evaluated her credibility and subjective complaints of pain. [Dkt. 12 at 6-11]. In her
14 second point of contention, Plaintiff argues that the ALJ failed to properly evaluate and weigh the
15 medical opinion evidence. *Id.* at 12-20. The Commissioner insists, however, that the ALJ
16 properly considered the entire evidentiary record and followed the applicable, controlling law in
17 determining that Plaintiff is not disabled for purposes of the Act. [Dkt. 14 at 3-10].

18 **I. Whether the ALJ’s RFC Determination Erroneously Relied on Improperly** 19 **Rejecting Plaintiff’s Testimony on Pain Symptoms and Credibility**

20 Plaintiff challenges the ALJ’s RFC findings, which are based on an evaluation of the
21 Plaintiff’s subjective allegations regarding the intensity, persistence, and limiting effects of her
22 medically determinable impairments. [Dkt. 12 at 6-11]. Specifically, Plaintiff argues that the
23 ALJ’s adverse credibility determination was erroneous because the ALJ failed to provide “clear,
24 convincing, and well-supported reasons” for making that determination. *Id.*

25 “[S]ubstantial evidence does not support an ALJ’s RFC assessment if ‘the ALJ improperly
26 rejected [the claimant’s] testimony as to the severity of his pain and symptoms.’” *Ferguson v.*
27 *O’Malley*, 95 F.4th 1194, 1199 (9th Cir. 2023) (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028,
28 1035 (9th Cir. 2007)). The Ninth Circuit has established a two-part analysis for determining the

1 extent to which a claimant’s symptom testimony must be credited. *Trevizo v. Berryhill*, 871 F.3d
 2 664, 678 (9th Cir. 2017). “First, the ALJ must determine whether the claimant has presented
 3 objective medical evidence of an underlying impairment which could reasonably be expected to
 4 produce the pain or other symptoms alleged.” *Ferguson*, 95 F.4th at 1199 (quoting *Garrison v.*
 5 *Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014)). “If the claimant meets the first step of this analysis
 6 and there is no evidence of malingering, [then in the second step] the ALJ can reject the claimant’s
 7 testimony about the severity of their symptoms only by offering specific, clear and convincing
 8 reasons for doing so.” *Id.* (quoting *Garrison*, 759 F.3d at 1014-15) (alteration omitted).

9 The clear and convincing standard requires the ALJ to “specifically identify” which
 10 portions of the claimant’s testimony the ALJ finds “not to be credible” and “explain what evidence
 11 undermines that testimony.” *Lambert v. Saul*, 980 F.3d 1266, 1277 (9th Cir. 2020) (quoting
 12 *Treichler*, 775 F.3d at 1102) (remaining citations omitted). “This is not an easy requirement to
 13 meet: ‘The clear and convincing standard is the most demanding required in Social Security
 14 cases.’” *Trevizo*, 871 F.3d at 678 (quoting *Garrison*, 759 F.3d at 1014-15). The ALJ determines
 15 “credibility, resolve[s] conflicts in the testimony, and resolve[s] ambiguities in the record.”
 16 *Lambert*, 980 F.3d at 1277 (quoting *Treichler*, 775 F.3d at 1098). The ALJ may not “reject a
 17 claimant’s subjective complaints based solely on a lack of medical evidence to fully corroborate
 18 the alleged severity of pain.” *Smartt*, 53 F.4th at 494 (quoting *Burch v. Barnhart*, 400 F.3d 676,
 19 681 (9th Cir. 2005)). Nor may the ALJ “justify a credibility finding ‘by ignoring competent
 20 evidence in the record that suggests another result.’” *Diedrich v. Berryhill*, 874 F.3d 634, 643 (9th
 21 Cir. 2017) (quoting *Gallant v. Heckler*, 763 F.2d 1450, 1456 (9th Cir. 1984)).

22 Here, Plaintiff alleges physical impairments resulting from spina bifida. In her written
 23 decision, the ALJ found that Plaintiff’s impairments could reasonably have given rise to the severe
 24 pain and functional limitations to which Plaintiff testified that she suffers. [AR 22]. As a result,
 25 because the ALJ’s decision relied on evaluating the credibility of Plaintiff’s testimony about pain,
 26 then the ALJ was required to make the legally mandated subsidiary findings required by the Ninth
 27 Circuit as to Plaintiff’s own testimony (*i.e.*, specifically identify the testimony found not credible
 28 and explain what evidence supports that finding). Because the ALJ made no finding that Plaintiff

1 was malingering, the ALJ was required to give specific, clear, and convincing reasons in support
2 of her adverse credibility finding. *Garrison*, 759 F.3d at 1014-15.

3 In her written decision, the ALJ essentially rejected Plaintiff’s symptom testimony for the
4 following reasons: (1) the ALJ found Plaintiff’s symptoms testimony to be inconsistent with
5 medical treatment records showing that Plaintiff’s physicians encouraged her to exercise; and (2)
6 the ALJ found Plaintiff’s symptoms testimony to be inconsistent with Plaintiff’s own reports that
7 she was bicycling on a weekly basis, that she was doing well in school, and that she was studying
8 to become a dentist. [AR 22].

9 First, in making this adverse credibility finding, the ALJ cited treatment records showing
10 that Plaintiff was encouraged to exercise. *Id.* (“The claimant’s physicians have encouraged
11 exercise.”). The ALJ references a treatment record, dated July 17, 2020, which reports that
12 Plaintiff “enjoys biking 3x/week, 40-60 minutes each session.” [AR 750]. The ALJ also
13 references a treatment record, dated July 5, 2019, which reports that Plaintiff “[f]unctions
14 independently with all [activities of daily living]” and states that Plaintiff “has previously been
15 recommended at the last several visits[] that she participate in an activity such as dance, yoga,
16 swimming or gymnastics.” [AR 743, 745].

17 While an ALJ may rely on records that “contradict claims of a totally debilitating
18 impairment,” the ALJ’s conclusion here is not supported by substantial evidence, much less clear
19 and convincing evidence. *See Smartt*, 53 F.4th at 499-500 (explaining that “[e]ven if the claimant
20 experiences some difficulty or pain, her daily activities may be grounds for discrediting the
21 claimant’s testimony to the extent that they contradict claims of a totally debilitating impairment,”
22 and concluding that the claimant’s daily activities of cooking, cleaning, “doing crafts,” and
23 “completing various chores, albeit in short increments due to pain,” supported the ALJ’s decision).

24 First, the fact that Plaintiff was *encouraged* by her physicians to engage in various forms
25 of exercise does not demonstrate that Plaintiff was *actually able* to engage in those activities for a
26 duration inconsistent with her testimony. *See Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir.
27 2001) (holding claimant’s ability to swim, do physical therapy, and exercise at home did not
28 detract from claimant’s credibility); *Feliz v. Colvin*, No. CV-12-02196-PHX-BSB, 2014 WL

1 847137, at *9 (D. Ariz. Mar. 5, 2014) (“Plaintiff’s limited walking on a treadmill, which was
2 consistent with her doctor’s advice that she exercise ‘as tolerated,’ is not inconsistent with her
3 claims of severe abdominal pain.”). The ALJ does not point to *any* evidence in the record to show
4 that Plaintiff was actually capable of such levels or amounts of consistent exercise.

5 Indeed, other evidence in the record demonstrates that Plaintiff did not engage in
6 significant exercise. *See, e.g.*, AR 349 (“It has previously been recommended at the last several
7 office visits, that [Plaintiff] participate in an activity such as dance, yoga, swimming or
8 gymnastics. She has not engaged in any of these activities. She has previously indicated an
9 interest in swimming and even was looking into modifying [sic] braces for swimming, but she has
10 not been swimming much recently.”).

11 To meet the clear and convincing standard, the ALJ must identify, with specificity, the
12 inconsistent portions of the medical report, link that evidence to the aspects of the testimony that
13 are deemed not credible, and explain why the two are incongruent. *Lambert*, 980 F.3d at 1277.
14 The ALJ failed to satisfy this demanding standard here.

15 Further, to the extent that the ALJ relied on Plaintiff’s reports of bicycle riding and
16 attending school to support an adverse credibility finding, the ALJ appears to have either ignored
17 or mischaracterized aspects of Plaintiff’s testimony necessary to understand the scope of her
18 reported activities. *See Garrison*, 759 F.3d at 1016 (finding ALJ’s selective presentation of the
19 claimant’s reported daily activities erroneous, where the ALJ failed to note that the claimant had to
20 rest between activities, needed help to do the activities, and could not always complete the
21 activities given her pain); *A.P. v. Kijakazi*, No. 23-cv-01184-EMC, 2024 WL 116307, at *10 (N.D.
22 Cal. Jan. 10, 2024) (“The ALJ cannot mischaracterize statements and documents in the record or
23 take these out of context in order to reach [her] conclusion on the claimant’s credibility.”).
24 Specifically, Plaintiff testified that she only goes bicycling accompanied by her mother in case
25 Plaintiff requires assistance with catheterization. [AR 1028]. The ALJ did not discuss this
26 limitation on Plaintiff’s ability to ride bicycles in the written decision, much less provide specific,
27 clear, and convincing reasons for disregarding it. *See Revels v. Berryhill*, 874 F.3d 648, 668 (9th
28 Cir. 2017) (holding that the ALJ erred by not providing “clear and convincing” evidence to

1 discredit the claimant on the basis of activities of daily living).

2 In discounting Plaintiff's symptoms testimony, the ALJ also pointed to the fact that
3 Plaintiff "excelled academically" in school and planned to become a dentist. [AR 22 ("The
4 claimant has excelled academically. The claimant was earning all A grades in high school[.] She
5 attended Dominican College[.]"). Specifically, the ALJ referenced a treatment record, dated June
6 23, 2016, which reports that Plaintiff was "earning [a]ll A's" in her ninth-grade class." See AR
7 980. The ALJ also appears to reference Plaintiff's testimony that she was entering her third year
8 of college and that she planned to be a dentist. See AR 1019, 1022-23. However, Plaintiff
9 testified that she received specific accommodations for her impairments from the college and
10 further testified that she would not be doing well in school but for those accommodations. [AR
11 1019-20]. Plaintiff also testified that she often relied on her mother's travelling to the campus and
12 assisting Plaintiff with catheterization while at school. [AR 1021]. The ALJ did not discuss these
13 limitations in the written decision, or provide specific, clear, and convincing reasons for
14 disregarding them. See *Revels*, 874 F.3d at 668. As a general matter, the fact that Plaintiff was
15 able to excel academically with accommodations and parental support and has set laudable
16 professional careers goals, despite her uncontradicted limitations for which there is objective
17 medical evidence to support, are not clear and convincing reasons for rejecting the credibility of
18 her testimony about symptoms and pain.

19 Accordingly, the Court finds that the ALJ erred by not linking specific medical evidence to
20 the relevant testimony about Plaintiff's symptoms and pain (which are supported by objective and
21 uncontroverted medical evidence) and further erred by failing to adequately explain why the
22 former rendered the latter not credible. The Court finds that the ALJ's written decision
23 mischaracterizes and/or ignores portions of Plaintiff's testimony as to her daily activities and
24 limitations (and accommodations and parental assistance). The Court finds that the written
25 decision erred in concluding that Plaintiff's reports of bicycling, attending school, and wanting to
26 become a dentist are inconsistent with her testimony as to her limitations, symptoms, and pain.
27 After reviewing the record and the written decision, ultimately the Court finds that the ALJ by
28 failed to provide "specific, clear, and convincing" reasons for relying on portions of the testimony

1 regarding those activities to discredit Plaintiff’s testimony about her limitations, symptoms, and
2 pain. Remand on these issues is, therefore, required.

3 **II. Evaluation of Medical Opinions**

4 As a second grounds for reversal, Plaintiff argues that the ALJ’s RFC determination is not
5 supported by substantial evidence because the ALJ failed to properly evaluate and weigh the
6 medical opinion evidence of record. [Dkt. 12 at 12-20]. Specifically, Plaintiff challenges the
7 ALJ’s consideration of a four-page comprehensive internal medicine evaluation report from an
8 examining physician, Dr. Robert Tang, dated September 25, 2021; a Physical Residual Functional
9 Capacity Assessment, which was completed by a non-examining state agency physician, Dr. H.
10 Jone, on September 30, 2020; and a one-page letter from a treating physician, Dr. Lisa Leavitt,
11 dated March 22, 2018. *Id.*; see AR 48-51, 377-80, 927.

12 An ALJ has a duty to evaluate and assign weight to all medical opinions in the record.
13 *Cross v. O’Malley*, 89 F.4th 1211, 1213-14 (9th Cir. 2024) (“When determining whether a
14 claimant is eligible for benefits, . . . the ALJ must scrutinize the various—often conflicting—
15 medical opinions to determine how much weight to afford each opinion.”). As of March 27, 2017,
16 the regulations governing the procedures and standards for evaluating medical source opinions
17 were substantially revised. See 20 C.F.R. § 404.1520c (explaining how any adjudicator considers
18 medical opinions for claims filed after March 27, 2017).

19 Under the current regulations applicable here, the ALJ “will not defer or give any specific
20 evidentiary weight, including controlling weight, to any medical opinion(s), or prior
21 administrative medical finding(s), including those from [the claimant’s] medical sources.” 20
22 C.F.R. § 1520c(a). Instead, the ALJ must consider the “persuasiveness” of each medical source
23 opinion using five factors: (1) supportability; (2) consistency; (3) relationship with the claimant
24 (including the length, purpose, and extent of the treatment relationship, as well as the “examining
25 relationship,” and the frequency of examination); (4) specialization; and (5) “other factors that
26 tend to support or contradict a medical opinion,” such as “evidence showing a medical source has
27 familiarity with the other evidence in the claim or an understanding of [the Social Security
28 Administration’s] disability program’s policies and evidentiary requirements.” 20 C.F.R.

1 § 1520c(c).

2 In evaluating the persuasiveness of a medical source opinion, the “most important” factors
3 for the ALJ to consider are the first two listed factors: “supportability” and “consistency.”
4 *Woods*, 32 F.4th at 791 (quoting 20 C.F.R. § 1520c(a)). “Supportability means the extent to which
5 a medical source supports the medical opinion by explaining the ‘relevant objective medical
6 evidence.’” *Id.* at 791-92 (quoting 20 C.F.R. § 1520c(c)(1)) (alterations omitted). “Consistency
7 means the extent to which a medical opinion is ‘consistent with the evidence from other medical
8 sources and nonmedical sources in the claim.” *Id.* at 792 (quoting 20 C.F.R. § 1520c(c)(2))
9 (alterations omitted).

10 “An ALJ may discuss other factors, such as the medical source’s ‘relationship with the
11 claimant’ or ‘specialization,’ but generally has no obligation to do so.” *Cross*, 89 F.4th at 1214
12 (quoting 20 C.F.R. § 416.920c(b)(2)). “Only if the ALJ finds two or more contradictory medical
13 opinions ‘both equally well-supported . . . and consistent with the record’ must the ALJ then
14 articulate how he or she considered these other factors.” *Id.* (quoting 20 C.F.R. §§ 416.920c(b)(3),
15 (c)(3)-(5)).

16 Under the new framework, the ALJ is no longer required to “provide specific and
17 legitimate reasons for rejecting an examining doctor’s opinion.” *Woods*, 32 F.4th at 787. Rather,
18 the ALJ’s decision must “simply be supported by substantial evidence.” *Id.* “Even under the
19 revised regulations, however, ‘an ALJ cannot reject an examining or treating doctor’s opinion as
20 unsupported or inconsistent without providing an explanation supported by substantial evidence.’”
21 *Cross*, 89 F.4th at 1214 (quoting *Woods*, 32 F.4th at 792).

22 The ALJ’s Analysis of Dr. Tang’s Opinion

23 Plaintiff underwent a one-time, comprehensive internal medicine evaluation by an
24 internist, Dr. Robert Tang, on September 25, 2021. [AR 377-80]. In his report, Dr. Tang wrote
25 that Plaintiff’s chief complaint was “[s]pina bifida surgery.” [AR 377]. Dr. Tang summarized
26 Plaintiff’s medical history as follows:

27 [The claimant] is a sincere and intelligent historian who has a polite presentation,
28 very brave, medium build, very neat with combed black hair. The claimant has spina

1 bifida lumbar 4-5, myelomeningocele where she had a surgery repair; no cerebral shunt
2 needed; for her neurogenic bowel she had MACE procedure as described; for
3 neurogenic bladder she self-catheterizes; in order to walk she absolutely needs her
4 bilateral AFOs (ankle-foot orthotic) due to absent Achilles reflex and abnormal foot
5 development. For her MACE procedure, she has an umbilicus channel where she is
6 able to inject fluid and then one hour later she would have a bowel movement.

7 *Id.*

8 A MACE (Malone Antegrade Continence Enema) procedure is a surgical procedure by
9 which a pathway is created between the patient’s abdomen and large intestine, using a portion of
10 the appendix. *See generally* Konrad M. Szymanski et al., *People with Spina Bifida Use their*
11 *MACE on Long-Term Follow-up: A Single Institutional Retrospective Cohort Study*, J. PEDIATRIC
12 UROLOGY, Aug. 2023. After the pathway is created, a patient uses an enema connected via a tube
13 to the pathway to flush the large intestine with a saline solution and thus helps relieve severe
14 constipation or incontinence. In daily usage, the MACE procedure involves the potential for
15 leakage at the access site and other complications at the site.

16 Dr. Tang described Plaintiff’s self-reported activities of daily living as follows:

17 The claimant is fully able to take care of her personal needs and she can only perform
18 light activities of daily living. After going through Special Education and
19 occupational therapy, the claimant is now in her second year of college and she has
20 plans for some type of future occupation. Currently she lives with her intact family.

21 [AR 377].

22 Dr. Tang wrote that Plaintiff required an ankle-foot orthosis (“AFO”) to walk. [AR 377-
23 80]. He observed that Plaintiff was unable to tandem walk or toe-heel stand. [AR 378]. Upon
24 examination, Dr. Tang found that Plaintiff had zero degrees of extension in her lumbar spine
25 region and bilateral knees; twenty-five degrees of lateral extension in her lumbar spine region
26 bilaterally; zero degrees of plantar flexion and no more than five degrees of dorsiflexion in her
27 bilateral ankles; and decreased motor strength in her ankles. *Id.* Dr. Tang diagnosed Plaintiff as
28 suffering from: “Spina bifida requiring L4-5 myelomeningocele surgery. She has residual
neurogenic bladder and bowel as discussed; some deformity of the feet and absent Achilles reflex
where the claimant absolutely needs her AFOs to ambulate. The claimant needs absolute lumbar

1 spine protection.” [AR 380].

2 Based on his examination, Dr. Tang concluded that Plaintiff was limited to standing and/or
3 walking for up to four hours continuously; that she could lift and/or carry up to twenty pounds
4 occasionally and up to 10 pounds frequently; that she required “absolute protection of her lumbar
5 spine,” bilateral AFOs to ambulate, and “time-out [] for her bathroom privileges.” *Id.*

6 In her written decision, the ALJ discussed Dr. Tang’s opinion and summarized these
7 points. [AR 21]. The ALJ recounted Dr. Tang’s findings as follows:

8 Dr. Tang commented that the claimant had spina bifida lumbar 4-5,
9 myelomeningocele where she had a surgery repair. No cerebral shunt was needed.
10 For her neurogenic bowel she had a MACE procedure and for her neurogenic bladder
11 she self-catheterized. In order to walk, she absolutely needed her bilateral AFOs
12 (ankle-foot orthotic) due to absent Achilles reflex and abnormal foot development.
13 The claimant was fully able to take care of her personal needs and she could only
14 perform light activities of daily living. After going through Special Education and
15 occupational therapy, the claimant was now in her second year of college and had
16 plans for some type of future occupation. The claimant needed absolute lumbar spine
17 protection. There was decrease in physical function, also time-out needed to use the
18 bathroom. She had a negative straight leg raising test. A sensory exam was grossly
19 intact to light touch and pinprick. She had 2-/5 strength in the ankles, otherwise 5/5
20 strength everywhere else and normal bulk and tone. Dr. Tang diagnosed her with
21 spina bifida requiring L4-5 myelomeningocele surgery. Her maximum
22 standing/walking capacity was up to four hours. She had no maximum sitting
23 capacity. She could lift and carry 20 pounds occasionally and 10 pounds frequently.
24 She had limitations working around heights, heavy machinery and needed absolute
25 protection of her lumbar spine. She had a neurogenic bladder and bowel, and
26 absolute need for her bilateral AFOs. No other workplace limitations.

18 *Id.*

19 The ALJ then assigned “partial weight” to Dr. Tang’s opinion overall, because it was
20 “consistent with a reduction in standing and walking and a sedentary exertional level.” [AR 21-
21 22]. However, the ALJ found that Dr. Tang’s specific opinion that Plaintiff required “absolute
22 protection of her lumbar spine” was impermissibly “vague.” [AR 22]. In addition, the ALJ found
23 that Dr. Tang’s specific opinion that Plaintiff required “complete elimination of activity or danger”
24 in work settings was not supported by “the record” which “document[s] bike riding and
25 encouragement to continue such activity.” *Id.*

26 Plaintiff argues that the ALJ’s assessment of Dr. Tang’s opinion is fatally flawed and not
27 supported by substantial evidence because: (1) the ALJ did not adopt or reject a “crucial portion”
28 of Dr. Tang’s opinion—that Plaintiff required extra breaks “for her bathroom privileges;” and (2)

1 the ALJ did not consider the supportability factor in evaluating Dr. Tang’s specific opinion that
2 Plaintiff required “absolute protection of her lumbar spine.” [Dkt. 12 at 14-15].

3 The Commissioner, in response, argues that the ALJ properly considered Dr. Tang’s
4 opinion and adhered to the correct legal framework in doing so. [Dkt. 14 at 7-9]. In response to
5 Plaintiff’s first argument regarding bathroom privileges, the Commissioner argues that the ALJ
6 was not required to explicitly adopt or reject Dr. Tang’s opinion regarding “bathroom privileges,”
7 because it was “not discussed in any detail in Dr. Tang’s report,” and because “what little
8 information is provided in the report appears to have been based upon Plaintiff’s subjective reports
9 to Dr. Tang at her consultative examination.” *Id.* at 8-9. In response to Plaintiff’s second
10 argument regarding protection of her lumbar spine, the Commissioner argues that the ALJ
11 properly concluded that Dr. Tang’s opinion regarding “absolute protection of her lumbar spine”
12 was “vague and otherwise inconsistent with Plaintiff’s regular bike riding.” *Id.* at 8. The
13 Commissioner insists that the ALJ may find an opinion unpersuasive based on *either* consistency
14 or supportability but need not explicitly address both factors. *Id.* at 7-8.

15 The Court finds that the ALJ erred by failing to discuss (much less accept, reject, or
16 explain the impact of) Dr. Tang’s opinion regarding Plaintiff’s need for bathroom breaks given
17 that the ALJ excluded such a limitation in the RFC. *See* SSR 96-8p (“If the RFC assessment
18 conflicts with an opinion from a medical source, the adjudicator must explain why the opinion was
19 not adopted.”). Although the Commissioner proffers a potential rationale for the ALJ’s apparent
20 rejection of Dr. Tang’s limitation for bathroom breaks (*viz.*, that it was “not a quantifiable
21 limitation” and “based upon Plaintiff’s subjective reports to Dr. Tang at a single consultative
22 examination”), the ALJ did not provide such reasoning in the written decision, and the Court
23 cannot consider *post hoc* rationalizations. *See Bray v. Comm’r Soc. Sec. Admin.*, 554 F.3d 1219,
24 1225-26 (9th Cir. 2009) (“Long-standing principles of administrative law require us to review the
25 ALJ’s decision based on the reasonings and factual findings offered by the ALJ—not *post hoc*
26 rationalizations that attempt to intuit what the adjudicator may have been thinking.”). As
27 discussed, the MACE procedure requires opening a valve or aperture in the wall of the abdomen,
28 injecting or introducing an enema solution into the MACE opening, and then allowing that fluid to

1 flush the large intestine to empty the bowels. Dr. Tang’s opinion regarding the need for bathroom
2 breaks is thus entirely understandable and the ALJ’s failure to discuss the issue entirely is
3 unexplained on the current record, and hence, erroneous. The error in failing to discuss Dr. Tang’s
4 limitation for bathroom breaks impacted the ALJ’s RFC assessment and further impacted the
5 hypothetical questions posed to the Vocational Expert. As such, the error was harmful.

6 The Court likewise finds that the ALJ erred by failing to explicitly discuss the
7 supportability of Dr. Tang’s opinion concerning an “absolute need” for lumbar spine protection.
8 To the extent that the ALJ’s statement that Dr. Tang’s opinion is inconsistent with other evidence
9 in the record was intended to address supportability of the opinion, the finding is insufficient. The
10 ALJ is required to explain how the supportability factor was considered. 20 C.F.R.
11 § 404.1520c(b)(2); *see S.W. v. O’Malley*, No. 24-cv-00248-SVK, 2024 WL 3580825, at *6 (N.D.
12 Cal. Jul. 30, 2024) (finding reversible error where the ALJ failed to “explicitly discuss the
13 ‘supportability’ of a [medical source] opinion”); *Anne B. v. Kijakazi*, No. 22-CV-07012-TSH,
14 2023 WL 8039639, at *10 (N.D. Cal. Nov. 20, 2023) (“The ALJ discussed consistency, but he is
15 required to address both consistency and supportability.”).

16 The ALJ’s Analysis of Dr. Jone’s Opinion

17 Dr. Jone, a non-examining state agency physician, completed a Physical Residual
18 Functional Capacity Assessment on Plaintiff’s abilities, on September 30, 2020. [AR 48-51].
19 Based on their review of the medical evidence, Dr. Jone restricted Plaintiff to lifting and carrying
20 less than ten pounds either occasionally or frequently. [AR 48]. Dr. Jone additionally restricted
21 Plaintiff to two hours of standing and/or walking and six hours of sitting within an eight-hour
22 workday. *Id.* Dr. Jone reported that Plaintiff could only occasionally climb ramps or stairs,
23 balance, kneel, crouch, or crawl, and that she could never climb ladders, ropes, or scaffolds. [AR
24 49]. Dr. Jone further reported that Plaintiff required a handheld assistive device to walk and that
25 she was unable to push or pull using her lower extremities. [AR 48]. Dr. Jone concluded that
26 Plaintiff’s environmental limitations were unlimited, meaning that she could not work (under any
27 circumstances) where there was extreme cold, extreme heat, wetness, humidity, noise, vibrations,
28 fumes, odors, dusts, gases, or poor ventilation. [AR 49].

1 In her written decision, the ALJ summarized Dr. Jone’s opinion that Plaintiff “could
2 occasionally lift and/or carry less than 10 pounds; frequently lift and/or carry less than 10 pounds;
3 stand and/or walk (with normal breaks) for a total of about 2 hours in an 8-hour workday; sit (with
4 normal breaks) for a total of about 6 hours in an 8-hour workday; no push pull with the bilateral
5 lower extremities and no foot controls[;]” that Plaintiff “could occasionally climb stairs/ramps[,] .
6 . . . could never climb ladders, ropes and scaffolds[;]” that Plaintiff “could occasionally balance,
7 stoop, kneel, crouch and crawl[;]” that Plaintiff “had [assistive devices] for all ambulation . . .
8 [and] should avoid all exposure to hazards such as machinery and heights[;]” and that Plaintiff
9 “was precluded from push/pull with the lower extremities.” [AR 21]. While finding that Dr.
10 Jone’s opinion was mostly consistent with that of Dr. Hanna, a non-examining state agency
11 physician who subsequently reviewed Plaintiff’s record at the reconsideration level, the ALJ
12 concluded that Dr. Jone’s opinion at the initial level was only “partially persuasive,” because
13 “[I]mitations of lifting and carrying less than ten pounds are overly restrictive and inconsistent
14 with [Plaintiff’s] activities of daily living, treatment record and recommendation for exercising
15 including swimming and gymnastics.” *Id.*

16 Plaintiff argues that the ALJ erred in evaluating Dr. Jone’s opinion regarding Plaintiff’s
17 being restricted to lifting and/or carrying less than ten pounds frequently or occasionally, because
18 the ALJ failed to consider or discuss the extent to which the limitation was supported by other
19 evidence in the record. [Dkt. 12 at 16-17]. Plaintiff also contends that the ALJ’s finding that Dr.
20 Jone’s opinion was inconsistent with Plaintiff’s activities of daily living was not supported by
21 substantial evidence (and thus erroneous), because the ALJ “ignored” other evidence in the record
22 that was “clearly consistent” with Dr. Jone’s finding. *Id.* at 17-18.

23 The Commissioner, in response, does not appear to dispute Plaintiff’s contention that the
24 ALJ failed to address the supportability factor in connection with the ALJ’s assessment of Dr.
25 Jone’s opinion. [Dkt. 14 at 9]. Rather, the Commissioner argues that the ALJ’s evaluation is
26 supported by substantial evidence because the ALJ found Dr. Jone’s lifting restrictions “partially
27 persuasive” based on the fact that they were inconsistent with other evidence and “the Ninth
28 Circuit has held that the ALJ may find less persuasive an opinion on either consistency or

1 supportability.” *Id.* (citing *Allen v. Kijakazi*, No. 22-35056, 2023 WL 2728857, at *1 (9th Cir.
2 Mar. 31, 2023); *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002)).

3 The Court finds that the ALJ erred by failing to follow the proper legal framework in
4 evaluating Dr. Jone’s opinion. The ALJ did not address the extent to which Dr. Jone’s lifting and
5 carrying restrictions were or were not supported by the objective medical evidence. 20 C.F.R.
6 § 404.1520c(b)(2). The Commissioner’s tacit admission that the ALJ failed to explicitly address
7 supportability is evident. By arguing the legal issue that an ALJ may properly find a medical
8 source opinion unpersuasive based on either a lack of consistency or a lack of support with the
9 objective medical evidence, the Commissioner fails to explain how the Court is to review a written
10 decision that fails to explicitly address the legally required factors. Regardless of how the law
11 may allow an ALJ to reach a conclusion based on a proper application of the factors in the
12 abstract, the ALJ must still consider both factors prior to making such a finding. The ALJ failed
13 to do so here. Remand on this issue is, therefore, required.

14 The ALJ’s Analysis of Dr. Leavitt’s Opinion

15 Dr. Leavitt, a pediatrician, treated Plaintiff for spina bifida and other ailments on an
16 ongoing basis dating back to at least 2012. *See* AR 846-1007. The record contains a single-page
17 typewritten letter from Dr. Leavitt, dated March 22, 2018, regarding her assessment of Plaintiff’s
18 medical conditions. [AR 927]. In the letter, Dr. Leavitt diagnosed Plaintiff as suffering from
19 spina bifida, which she characterized as a “chronic” condition requiring “lifelong treatment” that
20 “will never be improved or cured.” *Id.*

21 In her written decision, the ALJ neither discusses, nor even mentions, Dr. Leavitt’s opinion
22 even though the opinion was clearly a part of the record before the ALJ. *See generally* AR 15-24.
23 The controlling regulations make clear that the ALJ must evaluate every medical opinion that the
24 ALJ receives, regardless of its source. SSR 96-8p (“The RFC assessment must always consider
25 and address medical source opinions. If the RFC assessment conflicts with an opinion from a
26 medical source, the adjudicator must explain why the opinion was not adopted.”). In this case, the
27 ALJ’s failure to consider Dr. Leavitt’s opinion in the written decision, or give any reason for
28 disregarding it, is contrary to the requirements of the governing regulations. As such, the ALJ’s

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failure to discuss (much less evaluate) Dr. Leavitt’s opinion constituted clear legal error. Remand is therefore required on this issue as well.

CONCLUSION

For the foregoing reasons, **IT IS ORDERED THAT:**

1. The Commissioner’s final decision is **REVERSED** and this case is **REMANDED** to the Commissioner for further administrative proceedings consistent with this Order.
2. Plaintiff is awarded costs pursuant to Federal Rule of Civil Procedure 54(d)(1).

IT IS SO ORDERED.

Dated: September 24, 2024



PETER H. KANG
United States Magistrate Judge