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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SANDRA C., ¹)	Case No. EDCV 17-1379-JPR
)	
Plaintiff,)	
)	MEMORANDUM DECISION AND ORDER
v.)	AFFIRMING COMMISSIONER
)	
NANCY A. BERRYHILL, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying her applications for Social Security disability insurance benefits ("DIB") and supplemental security income benefits ("SSI"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). The matter is before the Court on the parties' Joint Stipulation,

¹ Plaintiff's name is partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 filed June 11, 2018, which the Court has taken under submission
2 without oral argument. For the reasons stated below, the
3 Commissioner's decision is affirmed.

4 **II. BACKGROUND**

5 Plaintiff was born in 1963. (Administrative Record ("AR")
6 43.) She completed high school (AR 44) and worked as a mail
7 handler, assembler, recovery clerk, and childcare provider (AR
8 45-47).

9 On August 30, 2013, Plaintiff applied for DIB, alleging that
10 she had been disabled since October 15, 2011, the day after an
11 earlier final decision finding her not disabled. (AR 179-82; see
12 also AR 76-77, 83.) She applied for SSI the same day, alleging
13 that she had been disabled since January 1, 2012. (AR 183-91;
14 see also AR 95.) She claimed disability from "[f]ibromyalgia,
15 tinnitus, ankylosing spondylitis, [and] obesity" as well as type-
16 2 diabetes, high blood pressure, Bell's Palsy, back injury,
17 asthma, hypothyroidism, and sleep apnea. (AR 227.) After her
18 applications were denied initially (AR 93, 105) and the DIB
19 application was denied on reconsideration (AR 119, 127-31), she
20 requested a hearing before an Administrative Law Judge (AR 135-
21 36). A hearing was held on December 3, 2015, at which Plaintiff,
22 who was represented by an attorney, testified, as did a
23 vocational expert. (AR 39-62.) In a written decision issued
24 April 19, 2016, the ALJ found Plaintiff not disabled. (AR 23-
25 33.) Plaintiff requested review from the Appeals Council (AR
26 19), which denied it on May 12, 2017 (AR 3-5). This action
27 followed.

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2 **III. STANDARD OF REVIEW**

3 Under 42 U.S.C. § 405(g), a district court may review the
4 Commissioner's decision to deny benefits. The ALJ's findings and
5 decision should be upheld if they are free of legal error and
6 supported by substantial evidence based on the record as a whole.
7 See Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.
8 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence
9 means such evidence as a reasonable person might accept as
10 adequate to support a conclusion. Richardson, 402 U.S. at 401;
11 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It
12 is more than a scintilla but less than a preponderance.
13 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
14 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
15 substantial evidence supports a finding, the reviewing court
16 "must review the administrative record as a whole, weighing both
17 the evidence that supports and the evidence that detracts from
18 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
19 720 (9th Cir. 1998). "If the evidence can reasonably support
20 either affirming or reversing," the reviewing court "may not
21 substitute its judgment" for the Commissioner's. Id. at 720-21.

22 **IV. THE EVALUATION OF DISABILITY**

23 People are "disabled" for purposes of receiving Social
24 Security benefits if they are unable to engage in any substantial
25 gainful activity owing to a physical or mental impairment that is
26 expected to result in death or has lasted, or is expected to
27 last, for a continuous period of at least 12 months. 42 U.S.C.
28 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.

1 1992).

2 A. The Five-Step Evaluation Process

3 The ALJ follows a five-step sequential evaluation process to
4 assess whether a claimant is disabled. 20 C.F.R.

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

10 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

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

17 If the claimant has a "severe" impairment or combination of
18 impairments, the third step requires the Commissioner to
19 determine whether the impairment or combination of impairments
20 meets or equals an impairment in the Listing of Impairments set
21 forth at 20 C.F.R. part 404, subpart P, appendix 1; if so,
22 disability is conclusively presumed. §§ 404.1520(a)(4)(iii),
23 416.920(a)(4)(iii).

24 If the claimant's impairment or combination of impairments
25 does not meet or equal an impairment in the Listing, the fourth
26 step requires the Commissioner to determine whether the claimant

1 has sufficient residual functional capacity ("RFC")² to perform
2 her past work; if so, she is not disabled and the claim must be
3 denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The claimant
4 has the burden of proving she is unable to perform past relevant
5 work. Drouin, 966 F.2d at 1257. If the claimant meets that
6 burden, a prima facie case of disability is established. Id.

7 If that happens or if the claimant has no past relevant
8 work, the Commissioner then bears the burden of establishing that
9 the claimant is not disabled because she can perform other
10 substantial gainful work available in the national economy.

11 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); Drouin, 966 F.2d at 1257.
12 That determination comprises the fifth and final step in the
13 sequential analysis. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v);
14 Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

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

16 The ALJ found that Plaintiff had not shown "changed
17 circumstances material to the determination of disability" since
18 her last denial and thus had not rebutted the presumption of
19 continuing disability. (AR 24.) He therefore found that res
20 judicata applied and adopted the findings of the prior decision.
21 (Id.) He then nonetheless applied the five-step process.

22 At step one, the ALJ found that Plaintiff had not engaged in
23 substantial gainful activity since October 15, 2011, the alleged
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25 ² RFC is what a claimant can do despite existing exertional
26 and nonexertional limitations. §§ 404.1545, 416.945; see Cooper
27 v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). The
28 Commissioner assesses the claimant's RFC between steps three and
four. Laborin v. Berryhill, 867 F.3d 1151, 1153 (9th Cir. 2017)
(citing § 416.920(a)(4)).

1 disability onset date.³ (AR 26.) At step two, he concluded that
2 she had the following severe impairments: "fibromyalgia; obesity;
3 Bell's Palsy; and asthma[.]" (Id.) At step three, he found that
4 she did not have an impairment or combination of impairments that
5 met or equaled a Listing. (AR 28.)

6 At step four, the ALJ found that Plaintiff had the RFC to
7 perform modified light work:

8 [She can] lift and carry 20 pounds occasionally and 10
9 pounds frequently; and sit, stand, and walk for six hours
10 each in an eight-hour workday. [She] must alternate
11 positions every hour for one to three minutes but remain
12 at the workstation. [She] is able to occasionally climb
13 but never ladders, ropes, or scaffolds. [She] is able to
14 occasionally balance, stoop, kneel, crouch, and crawl.
15 [She] can frequently [perform] fine and gross
16 manipulation. [She] should avoid extreme cold, extreme
17 noise, vibration, pulmonary irritants, and hazards.

18 (Id.)

19 Based on the VE's testimony, the ALJ concluded that
20 Plaintiff could perform her past relevant work as a "[m]ail
21 handler," DOT 209.687-014, 1991 WL 671810 (Jan. 1, 2016), and as
22 a "[s]ales attendant (recovery clerk)," DOT 299.677-010, 1991 WL
23 672643 (Jan. 1, 2016). (AR 31.) Thus, he found Plaintiff not
24 disabled. (AR 32.)

26 ³ Plaintiff's SSI application lists January 1, 2012, as the
27 disability onset date. (AR 183.) The ALJ apparently used the
28 onset date listed on her DIB application to analyze both claims.
(AR 23, 26.)

1 **V. DISCUSSION⁴**

2 Plaintiff argues that the ALJ erred by failing to articulate
3 appropriate reasons for rejecting her subjective symptom
4 testimony. (J. Stip. at 5-14.) For the reasons discussed below,
5 remand is not warranted.

6 A. Plaintiff Has Forfeited Her Appeal by Never Contesting
7 the ALJ's Chavez Ruling

8 1. *Applicable law*

9 a. Chavez

10 When an ALJ has issued a final decision finding a claimant
11 not disabled, an ALJ considering a subsequent claim regarding an
12 unadjudicated period must "apply a presumption of continuing
13 nondisability and determine that the claimant is not disabled,
14 unless the claimant rebuts the presumption." SSAR 97-4(9), 1997
15 WL 742758, at *3 (Dec. 3, 1997); see also Chavez v. Bowen, 844
16 F.2d 691, 693 (9th Cir. 1988) ("The principles of res judicata
17 apply to administrative decisions, although the doctrine is
18 applied less rigidly to administrative proceedings than to
19 judicial proceedings."). A claimant may rebut the presumption of
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22 ⁴ In Lucia v. SEC, 138 S. Ct. 2044, 2055 (2018), the Supreme
23 Court held that ALJs of the Securities and Exchange Commission
24 are "Officers of the United States" and thus subject to the
25 Appointments Clause. To the extent Lucia applies to Social
26 Security ALJs, Plaintiff has forfeited the issue by failing to
27 raise it during her administrative proceedings. (See AR 37-62,
28 135-36.); Meanel v. Apfel, 172 F.3d 1111, 1115 (9th Cir. 1999)
(as amended) (plaintiff forfeits issues not raised before ALJ or
Appeals Council); see also generally Kabani & Co. v. SEC, 733 F.
App'x 918, 919 (9th Cir. 2018) (rejecting Lucia challenge because
plaintiff did not raise it during administrative proceedings),
pet. for cert. filed, __ U.S.L.W. __ (U.S. Feb. 22, 2019) (No.
18-1117).

1 nondisability by showing "'changed circumstances' indicating a
2 greater disability." Chavez, 844 F.3d at 693 (quoting Taylor v.
3 Heckler, 765 F.2d 872, 875 (9th Cir. 1985)); Lester, 81 F.3d at
4 827 (same). Changed circumstances include an increase in the
5 severity of a previously existing impairment, a change in age
6 category, and any new issue, "such as the existence of an
7 impairment not considered in the previous application." Lester,
8 81 F.3d at 827.

9 b. Forfeiture

10 In Meanel v. Apfel, 172 F.3d 1111, 1115 (9th Cir. 1999) (as
11 amended), the Ninth Circuit held that "at least when claimants
12 are represented by counsel, they must raise all issues and
13 evidence at their administrative hearings in order to preserve
14 them on appeal" or those issues are forfeited. Indeed, when a
15 claimant fails entirely to raise an issue before both the ALJ and
16 the Appeals Council, she "forfeits such a challenge on appeal, at
17 least when that claimant is represented by counsel." Shaibi v.
18 Berryhill, 883 F.3d 1102, 1109 (9th Cir. 2017) (as amended Feb.
19 28, 2018); see also Phillips v. Colvin, 593 F. App'x 683, 684
20 (9th Cir. 2015) (finding that "issue was waived⁵ by [claimant]'s
21 failure to raise it at the administrative level when he was
22 represented by counsel").

23 Similarly, claims not raised in the district court are
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25 ⁵ Some of the cases refer to "waiver," although the issue is
26 actually forfeiture. See United States v. Scott, 705 F.3d 410,
27 415 (9th Cir. 2012) ("Waiver is the intentional relinquishment or
28 abandonment of a known right, whereas forfeiture is the failure
to make the timely assertion of that right." (citation and
alterations omitted)).

1 forfeited. See Greger v. Barnhart, 464 F.3d 968, 973 (9th Cir.
2 2006). Courts "will only excuse a failure to comply with this
3 rule when necessary to avoid a manifest injustice." Id. (citing
4 Meanel, 172 F.3d at 1115). "A manifest injustice is . . . an
5 error in the trial court that is direct, obvious, and
6 observable[.]" Sanchez v. Berryhill, No. 1:15-cv-00510-EPG, 2017
7 WL 1709326, at *3 (E.D. Cal. May 3, 2017) (citation omitted); see
8 also Goodman v. Colvin, No. CV-15-00807-PHX-JAT, 2016 WL 4190738,
9 at *17-18 (D. Ariz. Aug. 9, 2016) (no manifest injustice in
10 forfeiture of claim when plaintiff failed to question VE about
11 conflicts between RFC limitations and DOT); Hinkley v. Colvin,
12 No. CV-15-00633-PHX-ESW, 2016 WL 3563663, at *10 n.7 (D. Ariz.
13 July 1, 2016) (no manifest injustice in forfeiture of claim when
14 plaintiff failed to challenge weight ALJ gave to medical
15 assessment); cf. Jones v. Colvin, No.: 2:15-cv-09489 KS, 2016 WL
16 4059624, at *3 & n.2 (C.D. Cal. July 27, 2016) (finding manifest
17 injustice when ALJ failed to reconcile RFC with DOT job
18 description because Ninth Circuit had previously found "an
19 apparent conflict between the [RFC] to perform simple, repetitive
20 tasks and the demands of Level Three Reasoning" (citation
21 omitted)).

22 In Oberg v. Astrue, 472 F. App'x 488 (9th Cir. 2012), the
23 Ninth Circuit considered whether a plaintiff had overcome the
24 continuing presumption of nondisability from a prior decision.
25 It rejected the plaintiff's arguments that the Chavez presumption
26 did not apply because the ALJ had reopened the prior decision and
27 because there had been a substantial change in her condition and
28 the ALJ had improperly discredited her related testimony. Id. at

1 489-90. Although the plaintiff had failed to raise the issue,
2 which would generally constitute a "waiver" of it, id. at 490
3 n.8, the court remanded for consideration of whether the
4 plaintiff's changed age category had rebutted the presumption of
5 continuing disability under Chavez given that Defendant had
6 himself raised the issue in his answering brief. Id. at 490-91.

7 2. *Analysis*

8 Because the ALJ applied Chavez, Plaintiff bore the burden of
9 showing a changed circumstance to rebut the presumption of
10 continuing nondisability. See 844 F.2d at 693; Taylor, 765 F.2d
11 at 875. She has not done so. She failed to raise the issue with
12 the ALJ (see AR 135-36 (request for hearing), 39-62 (hearing
13 transcript)), although he confirmed at the hearing that her
14 counsel had "explained the impact of [the prior] decision to her"
15 (AR 41). She did not raise it with the Appeals Council, either
16 (AR 374-75), or in the Joint Stipulation submitted to this Court
17 (see J. Stip. at 4-14). Nor did she respond to Defendant's
18 argument in the Joint Stipulation that res judicata precludes her
19 claim. (See id. at 20 (failing to reply to Defendant's
20 forfeiture argument, id. at 14-16).)

21 Unlike in Oberg, 472 F. App'x at 489-90, in which the
22 plaintiff's arguments on appeal centered on rebutting the Chavez
23 presumption, Plaintiff's lone claim here – that the ALJ failed to
24 credit her testimony – is not framed in any terms related to
25 Chavez or the continuing presumption of nondisability. (See J.
26 Stip. at 4-14.) Indeed, she mentions neither. (See generally
27 id.) She does not argue, as did the plaintiff in Oberg, that the
28 ALJ reopened the prior decision or that he erred in rejecting her

1 testimony that one of her conditions had worsened and was a
2 changed circumstance. See 472 F. App'x at 489-90. To the
3 contrary, her credibility claim is the garden-variety sort that
4 the Court sees frequently, alleging simply that the ALJ did not
5 give sufficient reasons for rejecting her testimony. (See J.
6 Stip. at 4-14.) Accordingly, her claim is forfeited.⁶ See
7 Greger, 464 F.3d at 973.

8 B. In Any Event, the ALJ Did Not Plainly Err in Partially
9 Rejecting Plaintiff's Subjective Symptom Statements,
10 and No Manifest Injustice Requires Reversal

11 As an initial matter, the ALJ afforded some weight to
12 Plaintiff's subjective complaints of significant pain: he limited
13 her to light work with various restrictions, including that she
14 alternate positions every hour and only occasionally engage in
15 such activities as climbing, balancing, and stooping. (AR 28.)
16 But to the extent the ALJ did reject her subjective complaints,
17 he provided two clear and convincing reasons for doing so.

19 ⁶ Because the ALJ found two new severe impairments since
20 Plaintiff's earlier denial (compare AR 68 (ALJ listing severe
21 impairments of fibromyalgia, sleep apnea, hypertension, hearing
22 loss, and asthma in Oct. 2011), with AR 26 (ALJ adding severe
23 impairments of obesity and Bell's Palsy in Apr. 2016, although
24 eliminating others), he was likely wrong in finding that the
25 rebuttable presumption of continuing nondisability applied – a
26 point never raised or conceded by Defendant here, unlike in
27 Oberg, 472 F. App'x at 490. See Lester, 81 F.3d at 827-28 (new
28 impairment is changed circumstance rebutting presumption).
Forfeiture nonetheless applies because the analysis of whether a
claim is forfeited is separate from whether the underlying claim
has merit. See, e.g., United States v. Drayton, No. PWG-13-
0251., 2014 WL 2919792, at *11 (D. Md. June 26, 2014) (noting
that claim "may have had merit" but nonetheless refusing to
consider it because Defendant had not raised it at trial or on
appeal).

1 First, he noted Plaintiff's failure to follow prescribed
2 courses of treatment, explaining that she "reportedly stopped
3 taking all of her medications despite being encouraged to
4 continue taking them, because she was convinced they were making
5 her worse." (AR 30 (citing AR 391 (notes from May 2013 office
6 visit indicating that Plaintiff had discontinued all
7 medications).) He also noted her failure to pursue physical
8 therapy. (AR 29 (citing AR 463 (Mar. 2015 referral to physical
9 therapy); see also AR 54 (plaintiff testifying at hearing that
10 she went to physical therapy only once because it "hurt too
11 much").)

12 That Plaintiff failed to follow prescribed courses of
13 treatment was a clear and convincing reason for discrediting her
14 allegations of disabling pain. See Tommasetti v. Astrue, 533
15 F.3d 1035, 1039 (9th Cir. 2008) (ALJ may discount claimant's
16 testimony in light of "unexplained or inadequately explained
17 failure to seek treatment or to follow a prescribed course of
18 treatment" (citation omitted)); see also SSR 16-3p, 2016 WL
19 1119029, at *8 (Mar. 16, 2016)⁷ ("[I]f the individual fails to
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21 ⁷ The Commissioner applies SSR 16-3p, which went into
22 effect a few weeks before the ALJ issued his decision, to all
23 "determinations and decisions on or after March 28, 2016." Soc.
24 Sec. Admin., Policy Interpretation Ruling, SSR 16-3p n.27,
25 <https://www.ssa.gov/OPHome/rulings/di/01/SSR2016-03-di-01.html>
26 (last visited Mar. 22, 2019). Though the new ruling eliminates
27 the term "credibility" and focuses on "consistency" instead,
28 Plaintiff refers to weighing "credibility" (J. Stip. at 5), and
much of the relevant case law uses that language too (see, e.g.,
id. at 5-6, 8-9 (discussing applicable case law)). As the Ninth
Circuit has clarified, SSR 16-3p

makes clear what our precedent already required: that
assessments of an individual's testimony by an ALJ are

1 follow prescribed treatment that might improve symptoms, we may
2 find the alleged intensity and persistence of an individual's
3 symptoms are inconsistent with the overall evidence of record.");
4 see also Donathan v. Astrue, 264 F. App'x 556, 558 (9th Cir.
5 2008) (finding that ALJ provided clear and convincing reasons for
6 rejecting claimant's subjective allegations regarding
7 fibromyalgia pain, including "unwillingness to seriously pursue
8 prescribed physical and medical therapies" and inconsistencies
9 regarding his need to use cane or scooter).⁸

10 Second, the ALJ properly discounted some of Plaintiff's
11 statements by identifying inconsistencies concerning them. (See
12 AR 29-31); Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155,
13 1161 (9th Cir. 2008); see also Smith v. Berryhill, 752 F. App'x
14 473, 475 (9th Cir. 2019) (ALJ properly discredited claimant's
15 testimony of fibromyalgia symptoms based on inconsistencies in
16 testimony, inconsistencies with activities of daily living, and
17 contradictory medical evidence); Haislip v. Astrue, 316 F. App'x

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19 designed to "evaluate the intensity and persistence of
20 symptoms after [the ALJ] find[s] that the individual has
21 a medically determinable impairment(s) that could
22 reasonably be expected to produce those symptoms," and
not to delve into wide-ranging scrutiny of the claimant's
character and apparent truthfulness.

23 Trevizo v. Berryhill, 871 F.3d 664, 678 n.5 (9th Cir. 2017) (as
amended) (alterations in original) (quoting SSR 16-3p).

24 ⁸ Plaintiff argues that all treatment for fibromyalgia is
25 conservative in nature, and thus the ALJ improperly relied on her
26 purportedly conservative treatment to discredit her subjective
27 symptom testimony. (J. Stip. at 11-12.) As explained above,
28 however, he found her not credible based in part on her failure
to follow her doctors' prescribed courses of treatment –
medication and physical therapy – not because such treatment was
conservative in nature. (See AR 29-30.)

1 538, 539 (9th Cir. 2008) (ALJ properly discounted claimant's
2 subjective symptoms relating to fibromyalgia and migraines by
3 noting lack of objective medical evidence to support them,
4 inconsistencies between allegations and medical record, and
5 conflicts between alleged symptoms and activities of daily
6 living). For example, the ALJ noted that evidence contradicted
7 her statements that she had problems walking and needed a cane.
8 (See AR 30 (citing AR 537 (no cane at Aug. 2013 emergency-room
9 visit) & 559 (doctor at hospital noting that Plaintiff was
10 ambulatory, with steady gait).) The record also contradicted her
11 testimony about difficulty breathing while walking. (See AR 31.)
12 As the ALJ noted, her treatment records from August 2013
13 indicated normal breathing, with the last asthma attack more than
14 a year before then. (Id. (citing AR 550).) He noted that the
15 record contained no evidence of any subsequent asthma attacks
16 (id.) and that diagnostic images of her chest from 2012 and 2014
17 revealed negative findings (id. (citing AR 410 (May 2012), 431
18 (Jan. 2012), 619 (Jan. 2014))).

19 Plaintiff claims that the ALJ rejected her symptom testimony
20 based on the "legally insufficient" "belief that the testimony is
21 not credible because it lacks objective support in the record."⁹
22 (J. Stip. at 9.) "While subjective pain testimony cannot be
23 rejected on the sole ground that it is not fully corroborated by
24 objective medical evidence, the medical evidence is still a

26 ⁹ She also claims that the ALJ merely recited "boilerplate"
27 language and provided "no clue" as to what weight he gave her
28 testimony. (J. Stip. at 8-9.) This argument is disingenuous, as
the "boilerplate" is followed by the ALJ's lengthy evaluation of
her testimony and the evidence of record. (See AR 30-31.)

1 relevant factor in determining the severity of the claimant's
2 pain and its disabling effects." Rollins v. Massanari, 261 F.3d
3 853, 857 (9th Cir. 2001) (holding that ALJ properly relied on
4 lack of objective medical evidence and other factors in
5 discrediting plaintiff's testimony about fibromyalgia symptoms
6 (citing 20 C.F.R. § 404.1529(c)(2))). In any event, as explained
7 above, the ALJ gave two valid reasons to support his partially
8 discrediting her testimony that she suffered from disabling pain:
9 her failure to follow prescribed courses of treatment and
10 specific inconsistencies between her complaints and the evidence
11 of record. (AR 30.)

12 Accordingly, the ALJ appears to have provided clear and
13 convincing reasons, supported by substantial evidence in the
14 record, to support his discounting of Plaintiff's subjective
15 symptom testimony, and no manifest injustice will result from not
16 considering her appeal because it has been forfeited.

17 **VI. CONCLUSION**

18 Consistent with the foregoing and under sentence four of 42
19 U.S.C. § 405(g),¹⁰ IT IS ORDERED that judgment be entered
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26 ¹⁰ That sentence provides: "The [district] court shall have
27 power to enter, upon the pleadings and transcript of the record,
28 a judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."

1 AFFIRMING the Commissioner's decision, DENYING Plaintiff's
2 request for reversal or remand, and DISMISSING this action with
3 prejudice.

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DATED: March 25, 2019



JEAN ROSENBLUTH
U.S. Magistrate Judge