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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON

7 YURIY PISKUNOV,

8 Plaintiff,

9 v.

10 NANCY A. BERRYHILL, Acting
11 Commissioner of Social Security,

12 Defendant.
13

Case No. C17-1137 RSM

ORDER DISMISSING CASE

14 The Court, after careful consideration of Plaintiff's Complaint, the parties' briefs, all
15 papers and exhibits filed in support and opposition thereto, the Report and Recommendation
16 ("R&R") of the Honorable James P. Donohue, Plaintiff's Objections to the R&R, the
17 government's response to those Objections, and the balance of the record, does hereby find and
18 ORDER:
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20 (1) The Court ADOPTS the Report and Recommendation. Plaintiff objects only to that
21 portion of the R&R in which Judge Donohue determined that the ALJ's error in
22 failing to address his treating chiropractor's opinion was harmless. *See* Dkts. #17 at
23 9-10 and #18. Plaintiff asserts that the ALJ's failure to consider the opinion was not
24 harmless error because the jobs cited by the ALJ in his decision are all light jobs
25 which would require the ability to lift more than ten pounds. Dkt. #18 at 5. Plaintiff
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1 further asserts that because the ALJ did not adopt the vocational expert's testimony
2 that there were sedentary jobs Plaintiff could perform, the Court cannot affirm the
3 ALJ's decision on that basis. Dkt. #18 at 5. The Court is not persuaded by Plaintiff.

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5 The entirety of Plaintiff's argument with respect to Dr. Borisenko's opinion is as
6 follows:

7 The record shows that Plaintiff has had long term treatment by
8 chiropractor Slava Borisenko, D.C. Tr. 409-561, 692-708. In
9 February 2014, Dr. Borisenko wrote a letter describing his
10 examination and treatment of Plaintiff. Tr. 507-07. Dr. Borisenko
concluded that Plaintiff was not able to lift over ten pounds. Tr.
506.

11 Dr. Borisenko is not an acceptable medical source under Social
12 Security's rules, but he is a medical source. Adjudicators generally
13 should explain the weight given to such sources or otherwise
14 ensure that the discussion of the evidence in the determination or
15 decision allows a reviewed to follow the ALJ's reasoning when
such opinions may have an effect on the outcome of the case. 20
C.F.R. 404.1527(f)(2).

16 The ALJ erred because he failed to even mention Dr. Borisenko's
17 opinion in his decision. **This is significant because the
18 vocational expert testified that if Plaintiff could not lift more
than ten pounds he would not be able to perform any of the
light jobs he identified. Tr. 80.**

19 Plaintiff requests remand for further consideration of Dr.
20 Borisenko's opinion.

21 Dkt. #12 at 7-8 (emphasis added).

22 However, the vocational expert identified sedentary jobs and stated that a person
23 limited to sedentary work with the other limitations found in Plaintiff's residual
24 functional capacity would be able to perform the jobs of charge-account clerk, call-
25

1 out operator, and table worker. Tr. 77–78. Plaintiff has failed to demonstrate that he
2 could not do the other jobs the vocational expert cited.

3 Judge Donohue concluded that the vocational expert’s testimony ultimately
4 supported the ALJ’s finding that Plaintiff could perform other work, even considering
5 the unaddressed sedentary limitation. Dkt. #17 at 9-10. Plaintiff’s reliance on *Bray*
6 does not compel a different conclusion. In that case, the Ninth Circuit found that the
7 ALJ’s decision could only be supported through *post hoc* reasoning because the
8 vocational expert’s testimony did not provide the evidence to support the necessary
9 findings. In this case, however, the vocational expert did testify that a person with
10 the limitations the ALJ found but further limited to sedentary work would be able to
11 perform other work. Tr. 77–78. Thus, the Court agrees with the government that no
12 inferences need be drawn and no new grounds need be provided; the testimony is
13 clear.
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16 Finally, even if this Court credited Plaintiff’s argument that two of the three sedentary
17 jobs were beyond his residual functional capacity, the remaining job cited by the ALJ
18 – table worker – numbered over 100,000 jobs nationally, which exceeds numbers that
19 the Ninth Circuit has upheld as reasonable. *See Moncada v. Chater*, 60 F.3d 521,
20 524 (9th Cir. 1995) (64,000 jobs nationally was significant). Accordingly, this Court
21 agrees that any error was harmless.
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24 (2) The final decision of the Commissioner is AFFIRMED and this case is dismissed
25 with prejudice.
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1 (3) The Clerk of the Court is directed to send copies of this Order to the parties and to
2 Judge Donohue.

3 DATED this 13th day of March 2018.
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6 RICARDO S. MARTINEZ
7 CHIEF UNITED STATES DISTRICT JUDGE
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