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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7

8 BARRY G. DENTON,
9 Plaintiff,

No. C 13-1374 SI (pr)

ORDER OF DISMISSAL

10 v.

11 C/O BALA; et al.,

12 Defendants.
13 _____/

14 **INTRODUCTION**

15 Barry G. Denton, currently an inmate at the California State Prison - Sacramento, filed
16 this *pro se* civil rights action under 42 U.S.C. § 1983 to complain about events at Salinas Valley
17 State Prison, where he previously was incarcerated. His complaint is now before the court for
18 review under 28 U.S.C. § 1915A.
19

20 **BACKGROUND**

21 Denton alleges in his complaint that he tripped and fell while descending stairs and
22 continues to have back problems from the fall. The complaint alleges the following:

23 On March 29, 2012, Denton was housed in a cell on the second tier of a housing unit that
24 was on lockdown at Salinas Valley State Prison. Correctional officer ("C/O") Bala came to the
25 cell door to ask if Denton and his cellmate wanted to shower. They said they did, but Denton
26 stated that he should be able to shower free of restraints and an escort because he was not a gang
27 member. C/O Bala disagreed, and said he was marked as a "crip" on the board. This
28 classification was a mistake, and was later corrected to show that Denton was non-affiliated.

1 They argued, but eventually Denton and his cellmate were handcuffed behind their backs and
2 exited their cell. According to a plan of operation for the facility then in place, the inmates were
3 to be escorted to showers, and the policy was "one inmate per shower - own tier." Docket # 1-2,
4 p. 2. C/O Bala escorted the cellmate's arm to take him to a shower on the second tier, and
5 ordered Denton "to proceed to the downstairs shower, without an escort, where Defendant
6 McClean waited, adjacent to the lower tier shower on the dayroom floor." Docket # 1, p. 9.

7 Restrained inmates were supposed to be moved under escort, according to prison policy.
8 The policy attached to the complaint that shows this policy states that during all escorts of
9 inmates in restraints, "one of the escorting staff will maintain physical control of the inmate. The
10 staff member will physically hold the inmate at the upper arm area. *The physical hold will allow*
11 *the escorting officer to immediately apply physical force should the inmate attempt to resist the*
12 *escort."* Docket # 1-4, p. 2 (emphasis added). The policy does not state that the physical control
13 was to protect inmates from slip-and-falls.

14 When told to walk down to the first floor, Denton told Bala and McClean, "'y'all want me
15 to walk down these damn steps handcuffed with my bad knee? I might fall on my face.'" Docket
16 # 1, p. 9. C/O Bala "responded in part, 'Denton, you're in better shape than me,' while he
17 (Defendant Bala) and Plaintiff's cellmate laughed as if Plaintiff's statement was a joke." *Id.* C/O
18 McLean said, "'it's always something, Denton.'" *Id.* Denton descended the stairs handcuffed and
19 unescorted "while exchanging heated words with Defendant McClean [who was on the first tier]
20 and Defendant Benaag (Control Unit Officer) who was at the tower window ordering the
21 Plaintiff to keep it moving on the tier." Docket # 1, p. 10. Denton tripped on the fifth step from
22 the bottom of the staircase and fell down to the floor of the dayroom. He was momentarily
23 knocked unconscious. When he regained consciousness, defendant McClean was leaning over
24 him and asking if he was all right. Denton said he was not all right, and the medical staff was
25 summoned. Medical staff examined him, put him in a neck brace and "transportation chains,"
26 and sent him on a gurney to the prison's emergency room. Docket # 1, pp. 10-11.

27 At the emergency room, Dr. Tavera examined him, and ordered x-rays. X-rays were
28 taken of his hand, back and knee area. Shortly thereafter, Dr. Tavera informed Denton that his

1 x-rays were within normal limits. Denton complained of extreme pain, and Dr. Tuvera stated
2 that it was irritation due to the fall and that the inflammation would subside in due time. He was
3 discharged from the emergency room in a wheelchair when he was unable to walk due to back
4 and knee pain.

5 Denton sought and received additional care for his ongoing pain issues over the ensuing
6 months. He received a lower tier/bunk chrono for 30 days, and later a lower bunk chrono for
7 six months; was given several different kinds of pain medications for complaints of pain; had
8 additional x-rays of his lumbar spine; had blood tests; had physical therapy; and was provided
9 with an in-cell stretching program. As of the filing of the complaint in this action, however,
10 Denton continued to suffer from lower back pain and complications from the fall on March 29,
11 2012.

12 13 **DISCUSSION**

14 A federal court must engage in a preliminary screening of any case in which a prisoner
15 seeks redress from a governmental entity or officer or employee of a governmental entity. *See*
16 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss
17 any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted,
18 or seek monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b).
19 *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d
20 696, 699 (9th Cir. 1990).

21 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that
22 a right secured by the Constitution or laws of the United States was violated and (2) that the
23 violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487
24 U.S. 42, 48 (1988).

25 The Eighth Amendment's prohibition of "cruel and unusual punishments" imposes a duty
26 on prison officials to, among other things, "take reasonable measures to guarantee the safety of
27 the inmates." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (quoting *Hudson v. Palmer*, 468
28 U.S. 517, 526-27 (1984)). A prison official violates the Eighth Amendment only when two

1 requirements are met: (1) the deprivation is, objectively, sufficiently serious; and (2) the prison
2 official is, subjectively, deliberately indifferent to inmate safety. *See Farmer*, 511 U.S. at 834.
3 The test for deliberate indifference is the same as criminal recklessness, i.e., the official must
4 actually know of and disregard an excessive risk to inmate safety. *See id.* at 837. The official
5 "must both be aware of facts from which the inference could be drawn that a substantial risk of
6 serious harm exists, and he must also draw the inference." *Id.* Neither negligence nor gross
7 negligence constitutes deliberate indifference. *See id.* at 835-36 & n.4; *Estelle v. Gamble*, 429
8 U.S. 97, 106 (1976).

9 Even with liberal construction, the complaint does not state a claim for an Eighth
10 Amendment violation. The objective prong of an Eighth Amendment claim is not satisfied.
11 "[E]very injury suffered by an inmate does not necessarily translate into constitutional liability
12 for prison officials." *Osolinski v. Kane*, 92 F.3d 934, 936-37 (9th Cir. 1996). "[O]nly those
13 deprivations denying 'the minimal civilized measure of life's necessities,' are sufficiently grave
14 to form the basis of an Eighth Amendment violation." *Wilson v. Seiter*, 501 U.S. 294, 298
15 (1991) (citation omitted); *see, e.g., Osolinski*, 92 F.3d at 938 (defendants entitled to qualified
16 immunity against prisoner's Eighth Amendment claim stemming from second degree burns
17 suffered when oven door fell off its hinges and burned his arms); *Jackson v. State of Arizona*,
18 885 F.2d 639, 641 (9th Cir. 1989) (slippery floors, by themselves, do not amount to cruel and
19 unusual punishment); *Connolly v. County of Suffolk*, 533 F. Supp. 2d 236 (D. Mass. 2008)
20 (summary judgment granted for defendants because ladderless bunk beds did not meet objective
21 component of Eighth Amendment in light of evidence that "[t]housands of . . . inmates access
22 bunk beds daily without the aid of a ladder and without incident" and only about a dozen injuries
23 had been reported). Requiring an inmate to descend stairs while handcuffed behind his back
24 does not deny him the minimal civilized measure of life's necessities. Outside of prison, large
25 numbers of people regularly climb and descend stairs without falling, large numbers of people
26 regularly climb and descend stairs without holding arm-rails, and large numbers of people
27 regularly climb and descend stairs with their arms restricted (e.g., by holding packages, children,
28 etc.) – all without falling. Prison officials requiring the handcuffed inmate to descend a flight

1 of stairs did not present an objectively serious condition required for an Eighth Amendment
2 claim. Further, the allegations are very clear that Denton fell; he was not pushed and no one was
3 even near him when he fell. Denton's allegation that the absence of an escort on the stairs was
4 contrary to policy does not aid him because the policy requiring the officer to physically hold
5 the inmate's arm was, by its own terms, to prevent a breach of security and not to prevent falls.

6 The Eighth Amendment claim also falters on the subjective prong because the allegations
7 do not suggest that prison officials acted with deliberate indifference to a known risk to his
8 safety. The alleged facts do not suggest that any of the correctional staff told him to descend the
9 stairs unescorted with "knowledge of a substantial risk of serious harm" to him. *See Farmer*,
10 511 U.S. at 842. The allegations of the complaint indicate that those persons present did not
11 perceive there to be a risk to him. When Denton mentioned he might fall because of his bad
12 knee, C/O Bala laughed and said he was in better shape than Bala was, and the cellmate also
13 "laughed as if Plaintiff's statement was a joke." Docket # 1, p. 9. Another guard made a
14 comment that indicated that Denton always complained about something. These allegations
15 indicate that the defendants and the cellmate did not perceive a genuine risk to his safety.
16 Denton's allegations also indicate that *he* didn't perceive much of a risk because, rather than
17 paying close attention to the task at hand, he descended while engaging in a yelling match with
18 correctional staff.

19 An Eighth Amendment claim is not stated. Leave to amend will not be granted because
20 the complaint well describes the incident, and it simply does not amount to deliberate
21 indifference to a risk to the inmate's safety. This is not to say that the inmate was not hurt, as
22 his allegations clearly indicate that he was hurt. Rather, as *Osolinski*, 92 F.3d at 936-37,
23 observed, not every injury translates into constitutional liability for prison officials. This is such
24 a case.

25 Denton may have a claim for negligence, but the court declines to exercise supplemental
26 jurisdiction over the state law claim now that it has dismissed the federal constitutional claim
27 that gave the court federal question jurisdiction. *See* 28 U.S.C. § 1367(c)(3). Plaintiff may pursue
28 his negligence claim in a state court action.


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CONCLUSION

The complaint is dismissed without leave to amend because it fails to state a claim under § 1983 for a violation of plaintiff's Eighth Amendment rights. Having resolved the federal question claims, the court declines to exercise supplemental jurisdiction over the state law claims. *See* 28 U.S.C. § 1367(c)(3). The dismissal of this action is without prejudice to plaintiff filing an action in state court to assert any state law claims he has. The clerk shall close the file.

IT IS SO ORDERED.

Dated: June 13, 2013



SUSAN ILLSTON
United States District Judge