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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

ROBERT ROBERTS,

Plaintiff,

vs.

W. BRUCE WATSON, et. al.,

Defendants.

No. C 12-6402 PJH (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Plaintiff, an inmate at Humboldt County Correctional Facility, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual

1 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
2 requires more than labels and conclusions, and a formulaic recitation of the elements of a
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
5 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
6 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
7 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
8 framework of a complaint, they must be supported by factual allegations. When there are
9 well-pleaded factual allegations, a court should assume their veracity and then determine
10 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct.
11 1937, 1950 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
13 elements: (1) that a right secured by the Constitution or laws of the United States was
14 violated, and (2) that the alleged deprivation was committed by a person acting under the
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **B. Legal Claims**

17 Plaintiff alleges that between 7:00 am and 9:30 pm, he is not allowed to be under his
18 blankets or bedding while in his cell. If he is, he faces disciplinary action. Plaintiff cites to
19 the Eighth Amendment, though it is not clear if he is a convicted prisoner or a pre-trial
20 detainee.

21 Plaintiff is informed that the Constitution does not mandate comfortable prisons, but
22 neither does it permit inhumane ones. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994).
23 The treatment a prisoner receives in prison and the conditions under which he is confined
24 are subject to scrutiny under the Eighth Amendment. *See Helling v. McKinney*, 509 U.S.
25 25, 31 (1993). The Amendment imposes duties on prison officials, who must provide all
26 prisoners with the basic necessities of life such as food, clothing, shelter, sanitation,
27 medical care and personal safety. *See Farmer*, 511 U.S. at 832.

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1 A prison official violates the Eighth Amendment when two requirements are met: (1)
2 the deprivation alleged must be, objectively, sufficiently serious, Farmer, at 834 (citing
3 *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)), and (2) the prison official possesses a
4 sufficiently culpable state of mind, id. (citing *Wilson*, 501 U.S. at 297).

5 In determining whether a deprivation of a basic necessity is sufficiently serious to
6 satisfy the objective component of an Eighth Amendment claim, a court must consider the
7 circumstances, nature, and duration of the deprivation. The more basic the need, the
8 shorter the time it can be withheld. See *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir.
9 2000).

10 Not being allowed to be under blankets during the day fails to state a sufficiently
11 serious basic necessity. The complaint will be dismissed, but plaintiff will be provided one
12 opportunity to file an amended complaint.

13 **CONCLUSION**

14 1. The complaint is **DISMISSED** with leave to amend in accordance with the
15 standards set forth above. The amended complaint must be filed no later than **March 11,**
16 **2013**, and must include the caption and civil case number used in this order and the words
17 AMENDED COMPLAINT on the first page. Because an amended complaint completely
18 replaces the original complaint, plaintiff must include in it all the claims he wishes to
19 present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not
20 incorporate material from the original complaint by reference. Failure to amend within the
21 designated time will result in the dismissal of these claims.

22 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
23 court informed of any change of address by filing a separate paper with the clerk headed
24 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.
25 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
26 Federal Rule of Civil Procedure 41(b).

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IT IS SO ORDERED.

Dated: February 4, 2013.



PHYLLIS J. HAMILTON
United States District Judge

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