

1 **II. Failure to State a Claim**

2 **A. Screening Requirement**

3 The Court is required to screen complaints brought by prisoners seeking relief against a
4 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C.
5 § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous
6 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
7 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C.
8 § 1915(e)(2)(B)(ii).

9 A complaint must contain “a short and plain statement of the claim showing that the
10 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
11 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
12 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
13 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as
14 true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc.,
15 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

16 To survive screening, Plaintiff’s claims must be facially plausible, which requires
17 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
18 for the misconduct alleged. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. U.S.
19 Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted
20 unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the
21 plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572 F.3d at 969.

22 **B. Plaintiff’s Allegations**

23 Plaintiff is currently housed at California State Prison in Corcoran, California, where the
24 events in the complaint are alleged to have occurred. Plaintiff purports to bring a class action and
25 names the following defendants: (1) K. Clark, Warden; (2) Edmund G. Brown, Governor of
26 California; (3) Director, California Department of Corrections and Rehabilitation (“CDCR”); and
27 (4) California Department of Health.

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1 In Claim 1, Plaintiff asserts a violation of the Eighth Amendment and alleges as
2 follows:

3 Plaintiffs were exposed to excessive heats on outside exercise cages on numerous
4 different occasions and presently. Defendants are aware of effects of excessive
5 heat on inmates/persons/mentally ill patients but refused to turn on “misterters” in
6 walk alone cages all days that UHT was/is [illegible]. Defendants refused to
follow policy and procedures. Plaintiffs asked correctional officers to turn on
misterters but were told that it was the job of maintenance workers.

7 (ECF No. 1, p. 3.)

8 In Claim 2, Plaintiff asserts deliberate indifference and alleges, in relevant part, as
9 follows:

10 Defendants knew about Plaintiffs need for hydration “misterters.” Defendants knew
11 or should have known basically by “common sense” that leaving Plaintiffs outside
12 for upwards to 3 hours at a time in sweltering heat without misterters especially to
13 non African inmates could cause severe sun burn, heat stroke etc and out of
“laziness” continued to ignore these possibly life-threatening issues after Plaintiff
consistently made comments and references to “misterters” not being turned on!

14 (Id. at 4.)

15 Plaintiff seeks injunctive relief along with punitive damages.

16 **C. Discussion**

17 **1. Class Action**

18 Plaintiff purports to bring this case as a “class action lawsuit” on behalf of himself and
19 other “similarly situated individuals.” (ECF No. 1, p. 1.) However, he may not do so. A non-
20 attorney proceeding pro se may bring his own claims to court, but he may not represent others.
21 Fymbo v. State Farm Fire & Cas. Co., 213 F.3d 1320, 1321 (10th Cir. 2000); Johns v. Cty. of San
22 Diego, 114 F.3d 874, 876 (9th Cir. 1997); C.E. Pope Equity Tr. v. United States, 818 F.2d 696,
23 697 (9th Cir. 1987). A pro se litigant simply cannot “fairly and adequately protect the interests of
24 the class.” Fed. R. Civ. P. 23(a)(4); Fymbo, 213 F.3d at 1321. Therefore, this action will be
25 construed as an individual civil suit brought only by Plaintiff and not a class action.

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1 **2. Linkage Requirement**

2 The Civil Rights Act under which this action was filed provides:

3 Every person who, under color of [state law] ... subjects, or causes to be
4 subjected, any citizen of the United States ... to the deprivation of any rights,
5 privileges, or immunities secured by the Constitution ... shall be liable to the party
6 injured in an action at law, suit in equity, or other proper proceeding for redress.

7 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between
8 the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See
9 Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The
10 Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional
11 right, within the meaning of section 1983, if he does an affirmative act, participates in another’s
12 affirmative acts, or omits to perform an act which he is legally required to do that causes the
13 deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

14 Plaintiff’s complaint fails to link any factual allegation to an individual defendant.

15 Plaintiff may not refer generally to all “defendants” in order to state a cognizable claim. Plaintiff
16 must allege what each individual did or did not do that resulted in a violation of Plaintiff’s rights.

17 **3. Supervisory Liability**

18 Insofar as Plaintiff is attempting to hold the Warden, Governor, and CDCR Director liable
19 based solely on their supervisory roles, he may not do so. Liability may not be imposed on
20 supervisory personnel for the actions or omissions of their subordinates under the theory of
21 respondeat superior. Iqbal, 556 U.S. at 676–77; Simmons v. Navajo Cty., Ariz., 609 F.3d 1011,
22 1020–21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones
23 v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Supervisors may be held liable only if they
24 “participated in or directed the violations, or knew of the violations and failed to act to prevent
25 them.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); accord Starr v. Baca, 652 F.3d 1202,
26 1205–06 (9th Cir. 2011); Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009). Plaintiff may
27 also allege the supervisor “implemented a policy so deficient that the policy ‘itself is a
28 repudiation of constitutional rights’ and is ‘the moving force of the constitutional violation.’”
 Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted).

1 Here, Plaintiff’s complaint fails to allege that the Warden, Governor, or CDCR Director
2 participated in, directed or knew of any purported violation of Plaintiff’s constitutional rights.
3 Plaintiff’s complaint also fails to allege that any of these supervisory defendants implemented a
4 policy so deficient that it was a repudiation of Plaintiff’s rights and the moving force of any
5 constitutional violation. Plaintiff must allege what each individual defendant did or did not do
6 that resulted in a violation of Plaintiff’s constitutional rights, and liability may not be premised
7 solely on defendants’ supervisory roles.

8 **4. Agency Defendant – California Department of Health**

9 The Eleventh Amendment prohibits federal courts from hearing a Section 1983 lawsuit in
10 which damages or injunctive relief is sought against state agencies (such as CDCR or the
11 California Department of Health), absent “a waiver by the state or a valid congressional
12 override” Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). “The Eleventh
13 Amendment bars suits which seek either damages or injunctive relief against a state, ‘an arm of
14 the state,’ its instrumentalities, or its agencies.” See Fireman’s Fund Ins. Co. v. City of Lodi,
15 Cal., 302 F.3d 928, 957 n.28 (9th Cir. 2002) (internal quotation and citations omitted), cert.
16 denied, 538 U.S. 961 (2003). “The State of California has not waived its Eleventh Amendment
17 immunity with respect to claims brought under § 1983 in federal court” Dittman, 191 F.3d
18 at 1025–26 (citing Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 241 (1985)); see also Brown
19 v. Cal. Dep’t. of Corr., 554 F.3d 747, 752 (9th Cir. 2009). However, “the Eleventh Amendment
20 does not bar actions seeking only prospective declaratory or injunctive relief against state officers
21 in their official capacities[,]” Fireman’s Fund, 302 F.3d at 957 n.28 (internal quotation and
22 citation omitted), or, in appropriate instances, in their individual capacities, Idaho v. Coeur
23 d’Alene Tribe of Idaho, 521 U.S. 261, 269 (1997) (citing Ex Parte Young, 209 U.S. 123 (1908)).

24 **5. Eighth Amendment – Conditions of Confinement**

25 To constitute cruel and unusual punishment in violation of the Eighth Amendment, prison
26 conditions must involve “the wanton and unnecessary infliction of pain.” Rhodes v. Chapman,
27 452 U.S. 337, 347 (1981). A prisoner’s claim does not rise to the level of an Eighth Amendment
28 violation unless (1) “the prison official deprived the prisoner of the ‘minimal civilized measure of

1 life's necessities,' ” and (2) “the prison official ‘acted with deliberate indifference in doing so.’ ”
2 Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting Hallett v. Morgan, 296 F.3d
3 732, 744 (9th Cir. 2002) (citation omitted)). In order to find a prison official liable under the
4 Eighth Amendment for denying humane conditions of confinement within a prison, the official
5 must know “that inmates face a substantial risk of serious harm and disregard[] that risk by
6 failing to take reasonable measures to abate it.” Farmer v. Brennan, 511 U.S. 825, 847 (1994).

7 It is axiomatic that a prison official’s failure to provide inmates relief from extreme
8 temperatures may constitute an Eighth Amendment violation. Wilson v. Seiter, 501 U.S. 294,
9 304 (1991) (“low cell temperature at night combined with a failure to issue blankets” could
10 constitute an Eighth Amendment violation); Graves v. Arpaio, 623 F.3d 1043, 1049 (9th Cir.
11 2010) (“The district court did not err . . . in concluding that dangerously high temperatures that
12 pose a significant risk to detainee health violate the Eighth Amendment.”); Chandler v. Crosby,
13 379 F.3d 1278, 1294 (11th Cir. 2004) (“[T]he Eighth Amendment applies to prisoner claims of
14 inadequate cooling and ventilation.”). The Ninth Circuit has held that the “Eighth Amendment
15 guarantees adequate heating” but not necessarily a “comfortable” temperature. Keenan v. Hall,
16 83 F.3d 1083, 1091 (9th Cir. 1996). One measure of an inadequate, as opposed to merely
17 uncomfortable, temperature is that it poses ‘a substantial risk of serious harm.’” Graves, 623 F.3d
18 at 1049.

19 Plaintiff’s complaint fails to state a cognizable Eighth Amendment claim arising out of
20 extreme temperatures while outside in walk alone cages. At a minimum, Plaintiff does not
21 provide factual allegations sufficient to state a claim, such as the dates, times, and temperatures at
22 issue or the names of any defendants that he informed of the issue. Plaintiff’s complaint also
23 does not link any individual defendant to a violation of his constitutional rights. Indeed, Plaintiff
24 suggests that unnamed maintenance personnel were responsible for the failure to use misters.

25 **III. Failure to Prosecute and Failure to Obey a Court Order**

26 **A. Legal Standard**

27 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with
28 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .

1 within the inherent power of the Court.” District courts have the inherent power to control their
2 dockets and “[i]n the exercise of that power they may impose sanctions including, where
3 appropriate, . . . dismissal.” Thompson v. Hous. Auth., 782 F.2d 829, 831 (9th Cir. 1986). A
4 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,
5 failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46
6 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet,
7 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
8 amendment of complaint); Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987)
9 (dismissal for failure to comply with court order).

10 In determining whether to dismiss an action, the Court must consider several factors:
11 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
12 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
13 cases on their merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779
14 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

15 **B. Discussion**

16 Here, Plaintiff’s first amended complaint is overdue, and he has failed to comply with the
17 Court’s order. The Court cannot effectively manage its docket if Plaintiff ceases litigating his
18 case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal.

19 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
20 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
21 Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against
22 dismissal because public policy favors disposition on the merits. Pagtalunan v. Galaza, 291 F.3d
23 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose
24 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
25 progress in that direction,” which is the case here. In re Phenylpropanolamine (PPA) Products
26 Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

27 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
28 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262;

1 Malone, 833 at 132–33; Henderson, 779 F.2d at 1424. The Court’s October 10, 2018 screening
2 order expressly warned Plaintiff that his failure to file an amended complaint would result in a
3 recommendation of dismissal of this action, with prejudice, for failure to obey a court order and
4 for failure to state a claim. (ECF No. 11, p. 7.) Thus, Plaintiff had adequate warning that
5 dismissal could result from his noncompliance.

6 Additionally, at this stage in the proceedings there is little available to the Court that
7 would constitute a satisfactory lesser sanction while protecting the Court from further
8 unnecessary expenditure of its scarce resources. Plaintiff is proceeding *in forma pauperis* in this
9 action, making monetary sanctions of little use, and the preclusion of evidence or witnesses is
10 likely to have no effect given that Plaintiff has ceased litigating his case.

11 **IV. Conclusion and Recommendation**

12 Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY
13 RECOMMENDS that this action be dismissed, with prejudice, for failure to state a claim, for
14 failure to obey a Court order, and for Plaintiff’s failure to prosecute this action.

15 These Findings and Recommendation will be submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
17 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written
18 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
19 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the
20 specified time may result in the waiver of the “right to challenge the magistrate’s factual
21 findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.
22 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23
24 IT IS SO ORDERED.

25 Dated: November 26, 2018

25 /s/ Barbara A. McAuliffe
26 UNITED STATES MAGISTRATE JUDGE