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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MELCHOR LIMPIN,  
  
Plaintiff,  
  
v.  
  
STATE OF CALIFORNIA, et al.,  
  
Defendants.

Case No.: 23-cv-037-JES-JLB

**ORDER GRANTING IFP,  
DISMISSING COMPLAINT &  
DENYING MOTION TO APPOINT  
COUNSEL**

**[ECF Nos. 2 and 3]**

On January 9, 2023, Plaintiff, proceeding *pro se*, filed a complaint alleging four causes of action against numerous defendants. Plaintiff also filed a Motion for Leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) and a Motion to Appoint Counsel. ECF Nos. 2, 3. For the reasons stated below, the Court grants Plaintiff’s motion to proceed IFP, dismisses his complaint without leave to amend and denies his motion to appoint counsel as moot.

**I. Motion to Proceed IFP**

The Court first addresses Plaintiffs’ motion to proceed IFP. ECF No. 2. Typically, parties instituting a civil action in a United States District Court must pay a filing fee of

1 \$402.<sup>1</sup> But if granted the right to proceed IFP, a plaintiff can proceed without paying the  
2 fee. *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). It is well-settled that a party  
3 need not be completely destitute to proceed IFP. *Adkins v. E.I. DuPont de Nemours &*  
4 *Co.*, 335 U.S. 331, 339-40 (1948). The determination of indigency falls within the district  
5 court’s discretion. *See Cal. Men’s Colony v. Rowland*, 939 F.2d 854, 858 (9th Cir. 1991)  
6 (noting “Section 1915 typically requires the reviewing court to exercise its sound  
7 discretion in determining whether the affiant has satisfied the statute’s requirement of  
8 indigency”), *rev’d on other grounds*, 506 U.S. 194 (1993). “An affidavit in support of an  
9 IFP application is sufficient where it alleges that the affiant cannot pay the court costs  
10 and still afford the necessities of life.” *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th  
11 Cir. 2015) (*citing Adkins*, 335 U.S. at 339).

12 Here, Plaintiff states that he receives \$1,451 a month from social security  
13 disability, has \$23 in cash, \$177.54 in his checking account and has monthly expenses of  
14 \$1,382.70. The Court finds that plaintiff has sufficiently shown an inability to pay the  
15 filing fee. Therefore, the Court **GRANTS** Plaintiff’s request to proceed IFP (ECF No. 2).

## 16 **II. Screening Pursuant to 28 U.S.C. § 1915(e)(2)(B)**

### 17 **A. Legal Standard**

18 A complaint filed by a plaintiff proceeding IFP is subject to screening under 28  
19 U.S.C. § 1915(e)(2) and the court is required to review the complaint and dismiss the  
20 action if it: “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be  
21 granted; or (iii) seeks monetary relief from a defendant who is immune from such relief.”  
22 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1126-1127 (9th Cir. 2000).  
23 “The standard for determining whether a plaintiff has failed to state a claim upon which  
24 relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil  
25 Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d  
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28 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an administrative fee of \$52. *See* 28  
U.S.C. § 1914(a); District Court Misc. Fee Schedule, § 14 (effective Dec. 1, 2020).

1 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.  
2 2012). Rule 12(b)(6) requires that a complaint “contain sufficient factual matter . . . to  
3 state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
4 (2009) (internal quotation marks omitted). While detailed factual allegations are not  
5 required, “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
6 conclusory statements, do not suffice” to state a claim. *Id.* “A claim has facial plausibility  
7 when the plaintiff pleads factual content that allows the court to draw the reasonable  
8 inference that the defendant is liable for the misconduct alleged.” *Id.* To pass screening,  
9 all complaints 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).

## 11 **B. Background**

12 Plaintiff sues forty-two Defendants, including the State of California, and various  
13 elected officials in their individual capacities. Plaintiff alleges violations of the Equal  
14 Protection Clause of the Fourteenth Amendment, Racketeer Influenced and Corrupt  
15 Organizations (RICO) under 18 U.S.C. §§ 1961-1964, civil rights violations under 42  
16 U.S.C. § 1983 and conspiracy to interfere with civil rights under 42 U.S.C. § 1985(3).  
17 Each of Plaintiff’s causes of action derive from the implementation of California Senate  
18 Bill 88 (“SB-88”) and Senate Bill 139 (“SB-139”).

19 SB-88 and SB-139 were enacted on February 23, 2021, and July 12, 2021,  
20 respectively. SB-88 modified California Welfare & Institutions Code § 8150 and  
21 provided for a one-time stimulus payment to low-income Californians impacted by the  
22 COVID-19 emergency. S.B. 88, 2021-2022 Reg. Sess. (Cal 2021); S.B. 139, 2021-2022  
23 Reg. Sess. (Cal 2021); Cal. Welf. & Inst. § 8150 (West 2023). The bill created the  
24 Golden State Stimulus Emergency Fund, which provided for payments in the amount of  
25 either \$600 or \$1,200 to a “qualified recipient.” *Id.* SB-88 defined a “qualified recipient”  
26 as an individual who received the earned income tax credit for the 2020 tax year by  
27 November 15, 2021, or an individual who satisfied all of the following: filed a California  
28 income tax return on or before October 15, 2021, included their federal individual

1 taxpayer identification number, and had an adjusted gross income of \$75,000 or less. S.B.  
2 88, *supra*; Cal. Welf. & Inst. § 8150, *supra*. If an individual received the earned income  
3 tax credit and satisfied each of the following listed conditions above, they received a  
4 \$1,200 stimulus payment. *Id.* If an individual only satisfied one of the above conditions,  
5 they received a \$600 stimulus payment. *Id.* SB-88 explicitly provided that the tax credits  
6 would be available to undocumented persons as long as they met the requirements  
7 provided above. S.B. 88, *supra*.

8 SB-139 provided for an additional one-time stimulus payment to low-income  
9 Californians but redefined the definition of “qualified recipient” to include a specified  
10 individual who received an earned income tax credit on an individual tax return filed by  
11 February 15, 2022. S.B. 139, *supra*; Cal. Welf. & Inst. § 8150(b)(B)(3)(B)(i) (West  
12 2023). Plaintiff takes issue with undocumented persons being eligible to receive a  
13 stimulus payment under the Golden State Stimulus. Plaintiff files these causes of action  
14 as a citizen and taxpayer of the State of California.

## 15 **C. Discussion**

### 16 **1. Plaintiff Lacks Article III Standing to File a Cause of Action**

17 State taxpayers have no standing under Article III to challenge state tax or  
18 spending decisions simply by virtue of their status as a taxpayer. *Arakaki v. Lingle*, 477  
19 F.3d 1048, 1063 (9<sup>th</sup> Cir 2007). The Court has consistently denied both federal and state  
20 taxpayers standing under Article III to object to a particular expenditure of funds simply  
21 because they are taxpayers. *Id.* at 1064. To establish Article III standing, “the [taxpayer]  
22 must be able to show ... that he has sustained ... some direct injury ... and not merely that  
23 he suffers in some indefinite way in common with people generally.” *Doremus v. Board*  
24 *of Ed. Of Borough of Hawthorne*, 342 U.S. 429, 433-434 (quoting *Commonwealth of*  
25 *Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923); *See DaimlerChrysler Corp. v. Cuno*,  
26 547 U.S. 332, 345 (2006). State policymakers, no less than their federal counterparts,  
27 retain broad discretion to make “policy decisions” concerning state spending “in different  
28 ways ... depending on their perceptions of wise state fiscal policy and myriad other

1 circumstances.” *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615 (1989); *See DaimlerChrysler*  
2 *Corp., supra*, 547 U.S. at 346. Indeed, because state budgets frequently contain an array  
3 of tax and spending provisions, any number of which may be challenged on a variety of  
4 bases, affording state taxpayers standing to press such challenges simply because their  
5 tax burden gives them an interest in the state treasury would interpose the federal courts  
6 as “‘virtually continuing monitors of the wisdom and soundness’ ” of state fiscal  
7 administration, contrary to the more modest role Article III envisions for federal courts.  
8 *Laird v. Tatum*, 408 U.S. 1, 15 (1972).

9 Plaintiff’s first cause of action seeks injunctive relief and alleges that SB-88 and  
10 SB-139 and “its corresponding public welfare laws (WIC § 8150 and WIC § 8150.2) ...  
11 [are] class-based discrimination against the indigent under the Equal Protection Clause of  
12 the Fourteenth Amendment.” (Compl. ¶ 15). Plaintiff alleges that an undocumented  
13 person with income less than \$30,000 would receive a stimulus payment in the amount of  
14 \$1,200 because they have a federal individual taxpayer identification number, whereas a  
15 California citizen who has the same income of less than \$30,000 would only receive a  
16 \$600 stimulus payment because they have a social security number. (Compl. ¶ 4).  
17 Plaintiff alleges the public welfare laws are money laundering and that Governor  
18 Newsom devised the Golden State Stimulus program as a “scheme ... to reward  
19 undocumented persons under his employ” at one of his several vineyards. (Compl. ¶¶ 32-  
20 34, 54).

21 It is unclear from the Complaint, but the Court assumes that the first cause of  
22 action is filed against the State of California and each of the government officials listed  
23 as defendants. Plaintiff’s entire complaint makes conclusory statements. Throughout his  
24 complaint, Plaintiff fails to allege a direct injury and not merely that he suffers similarly  
25 to other taxpayers generally under the requirements of SB-88 and SB-139. Not receiving  
26 a \$1,200 stimulus payment is not a direct injury. Under the requirements of SB-88 and  
27 SB-139, many taxpayers do not receive a stimulus payment at all, including those with an  
28 adjusted gross income over \$75,000.

1           Therefore, Plaintiff lacks Article III standing and all claims are dismissed without  
2 leave to amend.

3           **2. SB-88 and SB-139 Do Not Violate the Equal Protection Clause of the**  
4           **Fourteenth Amendment**

5           Even if Plaintiff were to establish Article III standing, SB-88 and SB-139 do not  
6 violate the equal protection clause of the Fourteenth Amendment. In his first cause of  
7 action, Plaintiff seeks injunctive relief and alleges that SB-88 and SB-139 “intentionally  
8 discriminates against a suspect class who are indigent” and is subject to strict scrutiny  
9 review by the court. (Compl. ¶¶ 19-22). Indigent persons are not a protected, or suspect,  
10 class for purposes of equal protection: “poverty, standing alone [,] is not a suspect  
11 classification.” *Harris v. McRae*, 448 U.S. 297, 323 (1980). The Supreme Court has  
12 “never held that financial need alone identifies a suspect class for purposes of equal  
13 protection analysis.” *Maher v. Roe*, 432 U.S. 464, 471 (1977).

14           “Generally, legislation is presumed to pass constitutional muster and will be  
15 sustained if the classification drawn by the statute or ordinance is rationally related to a  
16 legitimate state interest. If the classification disadvantages a ‘suspect class’ or impinges a  
17 ‘fundamental right,’ the ordinance is subject to strict scrutiny.” *Nunez by Nunez v. City of*  
18 *San Diego*, 114 F.3d 935, 944 (9<sup>th</sup> Cir. 1997) (citing *City of Cleburne, Texas v. Cleburne*  
19 *Living Center*, 473 U.S. 432, 439-440 (1985)). However, if the classification does not  
20 target a suspect class or impinge upon a fundamental right, the ordinance is subject to  
21 rational review. Under this standard, “the Equal Protection Clause is satisfied so long as  
22 there is a plausible policy reason for the classification, ... the legislative facts on which  
23 the classification is apparently based rationally may have been considered to be true by  
24 the governmental decisionmaker, ... and the relationship of the classification to its goal is  
25 not so attenuated as to render the distinction arbitrary or irrational.” *Nordlinger v. Hahn*,  
26 505 U.S. 1, 11 (1992). This standard is especially deferential in the context of  
27 classifications made by complex tax laws. *Id.* “[I]n structuring internal taxation schemes  
28 ‘the States have large leeway in making classifications and drawing lines which in their

1 judgment produce reasonable systems of taxation.” *Id.* (citing *Williams v. Vermont*, 472  
2 U.S. 14, 22 (1985), quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359  
3 (1973)). A classification will not fail rational-basis review even if “it is not made with  
4 mathematical nicety or because in practice it results in some inequality.” *United States v.*  
5 *Pickard*, 100 F. Supp. 3d 981, 1005 (E.D. Cal. 2015) (citing *Heller v. Doe by Doe*, 509  
6 U.S. 312, 319 (1993)).

7 SB-88 and SB-139 both provide for “[economic] relief to low-income Californians  
8 impacted by the COVID-19 emergency.” S.B. 88, *supra*; S.B. 139, *supra*. That policy  
9 reason is plausible and rational. It does not render the legislation arbitrary or irrational.  
10 For those reasons, SB-88 and SB-139 survive rational review and do not violate the  
11 Equal Protection Clause of the Fourteenth Amendment.

### 12 **3. Defendants Have Immunity under the Eleventh Amendment**

13 Plaintiff’s second, third and fourth cause of action seek to recover monetary  
14 damages against the State of California and forty-one elected officials who acted in their  
15 official capacities in enacting SB-88 and SB-139. Plaintiff seeks to bring this action  
16 against the elected officials in their individual capacities, however, this entire suit is  
17 based on the passage of SB-88 and SB-139, which was done in the official capacities of  
18 each of the elected officials.

19 The Eleventh Amendment bars suits against a State or its agencies in federal court  
20 for all types of relief, absent unequivocal consent by the state. *Romano v. Bible*, 169 F.3d  
21 1182, 1185 (9th Cir.1999) (citing *Pennhurst v. Halderman*, 465 U.S. 89, 100, 104 S.Ct.  
22 900, 79 L.Ed.2d 67 (1984)). The Eleventh Amendment’s jurisdictional bar applies  
23 regardless of the nature of relief sought and extends to state instrumentalities and  
24 agencies. *Krainski v. Nevada ex rel. Bd. of Regents of the Nevada System of Higher*  
25 *Educ.*, 616 F.3d 963, 967 (2010).

26 Eleventh Amendment immunity also shields state officials acting in their official  
27 capacity. *Id.* at 967-968. A narrow exception exists “where the relief sought is  
28 prospective in nature and is based on an ongoing violation of the plaintiff’s federal

1 constitutional or statutory rights.” *Central Reserve Life of N. Am. Ins. Co. v. Struve*, 852  
2 F.2d 1158, 1161 (9<sup>th</sup> Cir. 1988). State officials are entitled to qualified immunity from  
3 suits for damages “insofar as their conduct does not violate clearly established statutory  
4 or constitutional rights of which a reasonable person would have known.” *Harlow v.*  
5 *Fitzgerald*, 457 U.S. 800, 818, (1982). “Determining whether officials are owed qualified  
6 immunity involves two inquiries: (1) whether, taken in the light most favorable to the  
7 party asserting the injury, the facts alleged show the officer's conduct violated a  
8 constitutional right; and (2) if so, whether the right was clearly established in light of the  
9 specific context of the case.” *Krainski, supra*, at 968. “For a constitutional right to be  
10 clearly established, its contours must be sufficiently clear that a reasonable official would  
11 understand that what he is doing violates that right.” *Hope v. Pelzer*, 536 U.S. 730, 739  
12 (2002).

13 A suit against a state official in his or her official capacity is not a suit against the  
14 official but rather is a suit against the official's office. *Brandon v. Holt*, 469 U.S. 464, 471  
15 (1985). As such, it is no different from a suit against the State itself. *Will v. Michigan*  
16 *Dept. of State Police*, 491 U.S. 58 (1989). See, e.g., *Kentucky v. Graham*, 473 U.S. 159,  
17 165–166, (1985). Neither a State nor its officials acting in their official capacities are  
18 “persons” under § 1983. *Will, supra*, 491 U.S. at 70-71.

19 Plaintiff may not recover monetary damages against the State of California or any  
20 of the elected officials named as defendants for violations of the Equal Protection Clause  
21 of the Fourteenth Amendment, RICO, civil rights violations under 42 U.S.C. § 1983 and  
22 conspiracy to interfere with civil rights under 42 U.S.C. § 1985(3). The Eleventh  
23 Amendment bars such claims. Therefore, all claims against the defendants for monetary  
24 damages based on federal constitutional equal protection will be dismissed with  
25 prejudice.

26 Therefore, all claims against the State of California and the forty-one state officials  
27 are all dismissed without leave to amend.

28 ///



1 **III. CONCLUSION**

2 A pro se litigant must be given leave to amend his or her complaint to state a claim  
3 unless it is absolutely clear the deficiencies of the complaint cannot be cured by  
4 amendment. *See Lopez, supra*, 203 F.3d at 1130. However, for the reasons stated above,  
5 the Court grants Plaintiffs’ Motion to Proceed IFP (**ECF No. 2**) and dismisses the  
6 Complaint with prejudice as no amendment will overcome the hurdles mentioned above.  
7 Accordingly, the Motion to Appoint Counsel (**ECF No. 3**) is denied as moot.

8 **IT IS SO ORDERED.**

9 Dated: May 2, 2023

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12 Honorable James E. Simmons, Jr.  
13 United States District Judge