

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 FRANKLIN H. WRIGHT,

No. C 16-1371 CW

5                                    Plaintiff,

ORDER ON  
MISCELLANEOUS  
MOTIONS

6                                    v.

7 UNITED STATES DEPARTMENT OF  
EDUCATION, et al.,

(Docket Nos. 3 &  
5)

8                                    Defendants.  
9 \_\_\_\_\_/

10  
11                    The Court considers Plaintiff Franklin H. Wright's motion for  
12 leave to proceed in forma pauperis, Plaintiff's motion to resolve  
13 cases and Plaintiff's request for counsel. The Court GRANTS the  
14 application to proceed in forma pauperis and DISMISSES Plaintiff's  
15 complaint without prejudice. The Court DENIES Plaintiff's other  
16 motions.

17                    I.    Application to Proceed In Forma Pauperis

18                    A court may authorize a plaintiff to prosecute an action in  
19 federal court without prepayment of fees or security if the  
20 plaintiff submits an affidavit showing that he or she is unable to  
21 pay such fees or provide such security. See 28 U.S.C. § 1915(a).  
22 Plaintiff has submitted the required documentation, and it appears  
23 from his applications that his assets and income are insufficient  
24 to enable him to prosecute these actions. Accordingly, the  
25 application to proceed without the payment of the filing fee is  
26 GRANTED (Docket No. 3).

27 //

28 //

1 II. Complaint

2 The Court's grant of Plaintiff's application to proceed in  
3 forma pauperis, however, does not mean that he may continue to  
4 prosecute his complaint. A court is under a continuing duty to  
5 dismiss a case filed without the payment of the filing fee  
6 whenever it determines that the action "(i) is frivolous or  
7 malicious; (ii) fails to state a claim on which relief may be  
8 granted; or (iii) seeks monetary relief against a defendant who is  
9 immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(i)-(iii).  
10 Because a dismissal pursuant to § 1915(e)(2)(B) is not a dismissal  
11 on the merits, but rather an exercise of the court's discretion  
12 under the in forma pauperis statute, the dismissal does not  
13 prejudice the filing of a paid complaint making the same  
14 allegations. Denton v. Hernandez, 504 U.S. 25, 32 (1992).

15 Plaintiff filed this action requesting the Court to issue a  
16 writ of mandamus to compel John King, acting Secretary of the  
17 United States Department of Education (Department), or someone  
18 else within the Department to appear in person to answer  
19 Plaintiff's questions and to "present to Plaintiff the results of  
20 the investigation as to his FTCA claim letter." Docket No. 1,  
21 Complaint at 4. Attached to Plaintiff's Complaint is a "claim  
22 letter filed under the F.T.C.A." that was mailed to the Department  
23 on or around July 3, 2015. Id. at 2. Among other things, the  
24 letter "suggests that plaintiff's grades and test scores had been  
25 altered, perhaps with the knowledge and authority of the . . .  
26 Department . . . itself." Id. Plaintiff's theory is that the  
27 Department was required to investigate his claim and owes  
28

1 Plaintiff a fiduciary duty that requires it to share with  
2 Plaintiff the results of its investigation.

3 A writ of mandamus may be granted when (1) "the plaintiff's  
4 claim is clear and certain"; (2) the duty is "ministerial and so  
5 plainly prescribed as to be free from doubt"; and (3) "no other  
6 adequate remedy is available." Or. Nat. Res. Council v. Harrell,  
7 52 F.3d 1499, 1508 (9th Cir. 1995). The "extraordinary remedy of  
8 mandamus lies within the discretion of the trial court," even  
9 where a plaintiff satisfies these three requirements. Id.

10 Here, the Complaint's allegations do not sufficiently allege  
11 facts that would satisfy the requirements for granting mandamus.  
12 Although Plaintiff recounts general propositions regarding  
13 fiduciary relationships, Plaintiff and Defendants are not in a  
14 fiduciary relationship. Plaintiff quotes California case law that  
15 generally describes fiduciary duties and 28 U.S.C. § 530B, which  
16 describes general ethical standards for Government attorneys.  
17 These legal references are insufficient to allege a fiduciary  
18 relationship. In addition, Plaintiff cites no legal authority  
19 that creates a duty to investigate Plaintiff's letter or a duty to  
20 share results with Plaintiff. Finally, Plaintiff's allegations do  
21 not discuss any other potential remedy.

22 For these reasons, the Court finds that Plaintiff has failed  
23 to state a claim on which relief may be granted. The Court  
24 dismisses the Complaint without prejudice.

25 III. Other Motions

26 Because the Court dismisses the Complaint, it DENIES  
27 Plaintiff's motion "for an in-person hearing to resolve all  
28 related cases pending in both State and District Courts to be

1 heard in person."<sup>1</sup> Docket No. 5, Motion to Resolve at 1. The  
2 Court also DENIES Plaintiff's request for counsel under 28 U.S.C.  
3 § 1915(e)(1). See United States v. Madden, 352 F.2d 792, 793 (9th  
4 Cir. 1965) ("It is true that the appointment of counsel in a civil  
5 case is, as is the privilege of proceeding in forma pauperis, a  
6 matter within the discretion of the district court. It is a  
7 privilege and not a right.").

8 IV. Conclusion

9 In sum, the Court GRANTS Plaintiff's application to proceed  
10 in forma pauperis (Docket No. 3), DENIES Plaintiff's motion to  
11 resolve cases and request for counsel (Docket No. 5) and DISMISSES  
12 Plaintiff's Complaint without prejudice. If Plaintiff chooses to  
13 amend his Complaint, he must do so within thirty days of this  
14 order. Failure to timely amend shall result in dismissal of this  
15 action with prejudice pursuant to Federal Rule of Civil Procedure  
16 41(b).

17 IT IS SO ORDERED.

18 Dated: April 4, 2016



19 CLAUDIA WILKEN  
20 United States District Judge

21  
22  
23  
24  
25  
26 \_\_\_\_\_  
27 <sup>1</sup> The Court has reviewed Plaintiff's Notice of Request for  
28 Hearing, filed in case number 16-513 at docket number 15. This  
document does not persuade the Court otherwise.