Carol Nye-Wilson
PO Box 717
Felton, CA 95018
E: carolnyewilson@yahoo.com
P: 808-756-0936
In Pro Se

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CAROL NYE-WILSON, Plaintiff, vs. U. S. DEPARTMENT OF EDUCATION 400 Maryland Avenue, S.W. Washington, DC 20202, Defendants.	Civil Action No. CV-18-01846-VKD **PLAINTIFF'S MOTION REQUESTING AN ORDER OF DISMISSAL WITHOUT PREJUDICE; ORDER**

MOTION TO DISMISS WITHOUT PREJUDICE

On March 26, 2018, Plaintiff filed a lawsuit regarding three FOIA requests due to Defendant's failure to answer as required by law. Defendant has repeatedly forced Plaintiff to file FOIA lawsuits, rather than timely produce records as required by law. In this case, various communications between Defendant and Plaintiff occurred which concluded two of the three pending FOIA requests, at the direct order of the court. Each side produced status reports: Dkt. No. 21 for the Plaintiff, and No. 22 for the Defendant. At that time, Plaintiff stated, "The apparent litigation strategy of the Defendant is to claim records have been produced, even though they have *never* been produced, and then force a summary judgment to be entered against Plaintiff based on false claims to the Court." (Fraud upon the Court). In response to the Defendants, Plaintiff noted a few of her requests: "Defendant claims records exist concerning: (1) rescinded letters that never have been rescinded; (2) Defendant's administrators and/or legal counsel can override the U.S. Constitution and

Amendments; (3) Defendant's low-level staff set Department policy or can override federal law; (4) parties, have been a) debarred per Executive Order 12549, or b) reprimanded for making false statements (18 USC § 1001), or c) have been indicted, or d) civil settlement agreements have been entered while receiving Title IV money, etc. etc., etc., …"

On September 5, 2018, the Court ordered in part the following, "If they are unable to resolve any such disputes on their own, then by October 26, 2018, Ms. Nye-Wilson shall file a motion to compel production that identifies each request and issue in dispute and explain the basis for her contention that she is entitled to the requested materials." Dkt. No. 23. Plaintiff complied.

The September 13, 2018, Declaration of Jill Spieglebaum under penalty of perjury is based on her previous statement of search on July 2018, that noted:

> ¶ 4c. With respect to the remaining items, the Department determined that any records that may be responsive to the request would have been included in the Department's previous responses to Plaintiff's FOIA requests.
>
> ¶ 8 – As set forth above, the Department has no additional records responsive to Plaintiff's FOIA requests beyond what has already been released to Plaintiff.

Ms. Spieglebaum is claiming that prior to April, 2017, Defendant previously produced records for the other outstanding requests. The following are a few examples to clarify what Defendant is claiming:

Categories	Description
1-9	These requests involve the Nancy C. Regan and Cheryl Oldham letters in 2008. The Defendant claims under penalty of perjury these responses were "produced" to me as a defense for statue of limitations against my son and me in the future, or to claim it took some sort of action to limit the damages, which is not the case. The Regan and Oldham letters have *never* been rescinded. We have *never* asked this request before.
20, 22	Defendant claims it has produced records to me that ATS/NWCCU has a policy or standard that schools can commit fraud against the government. This is complete nonsense. This fabrication is protecting both accreditors and Western Seminary against any fraud claims, since "somewhere" there is an accreditation policy or standard allowing schools to commit fraud against the government. We have *never* asked this request before.
26	Defendant claims it has produced a government policy that schools can commit fraud against the government. This is outright nonsense. This particular fabrication is

	protecting Western Seminary under any fraud claims, since "somewhere" there is a government policy allowing schools to commit fraud against the government. We have *never* asked this request before.
46-47	These requests refer to Randy's degrees. The key phrase in these requests is '"*is not compliant*" with one or more of the ATS General Institutional Standards and/or Degree Program Standards.' This is the antithesis to the claims made by the Defendant in the Nancy C. Regan and Cheryl Oldham letters of 2008. Here, the Defendant now claims it produced records to me that declare the degree program criteria *is not compliant* with ATS standards in contradiction to the Nancy C. Regan and Cheryl Oldham letters of 2008 that the Defendant defended as "valid and without error" for ten years! We have *never* asked this request before.
48, 50	These requests reference the claim that "cover up of child molestations is not a reasonable 'exception' or a reasonable 'individual exception' to the ATS General Institutional Standards and/or Degree Program Standards." Defendant's declarations claim produced records stating ATS has gone on record admitting the cover up of child molestations is not a reasonable exception to ATS. However, it is ATS' position that the cover up of child molestation, like the ones Korch committed in 1975, are valid individual exceptions as criteria for Randy's degrees. ATS *never* repudiated Western Seminary's demands on Randy and me to cover up Korch's molestations as criteria for Randy's education, and neither has NWCCU repudiated it. We have *never* asked this request before.
91	Defendant claims in its declarations under oath it has produced a record to me that purports granting power to the U.S. Department of Education administrators and/or legal counsel to override the U.S. Constitution and Amendments. This is both illegal and against the Constitution itself. This claim by the Defendant before the court acts to defraud the court into thinking something is "true" that could never be true. We have *never* asked this request before.
101-106	These requests reflect the federal investigation of 2007-2008 about Randy's master degrees in Western Seminary's settlement agreement. The wording is taken from 18 U.S. Code § 1001 and would indicate criminal conduct has occurred by the parties and such records have been produced. However, the Defendant's position since 2008 is that these parties did nothing wrong. Thus, no records should exist. In fact, the Defendant came to the aid of ATS in 2012 to co-defend with it against my son and me, in support of the government corruption and educational fraud we documented. We have *never* asked this request before.
108-110	The wording for these requests is taken from 18 U.S. Code § 1001 and would indicate criminal conduct by the parties. However, it has been the position of the Defendant since 2005 that these parties have done nothing wrong. Thus, no records should exist. We have *never* asked this request before.
111, 113	Defendant claims it produced records to me about the parties have been indicted, or that some sort of agreement has been reached. I have never received any such record, while the Defendant has instead defended the parties over and against my son for over 13 years! We have *never* asked this request before.
112	This request references Western Seminary's Program Participation Agreement (20 U.S.C. § 1094). If Defendant took action against Western Seminary's promissory

	fraud due to retaliation against my son and Section 504 violations, Western Seminary would not be able to receive Title IV funds. Western Seminary continues to receive Title IV funds based on the Defendant's own website. We have *never* asked this request before. Western's current Program Participation Agreement ends Dec 2018.
114-117	These requests reflect OCR's failure to enforce Randy's complaint about Western's retaliation against him (whistle blower) in 2005, and the Defendant's failed federal investigation of 2007-2008. These also go with Nos. 1-9 and are another way to ask for those categories. Like in the case of Nancy C. Regan and Cheryl Oldham letters of 2008, no records exist, because the Office of General Counsel instructed DOE employees to ignore us on Oct 10, 2008 (Dkt No. 31, Exh. 8), in violation of our due process and to obstruct our justice. We have *never* asked this request before.
118-120	Defendant is claiming that it has produced records to me about Western Seminary, or ATS, or NWCCU involved in fraud against the government. It has been the Defendant's position it defended for years that Western Seminary, or ATS, or NWCCU are not involved in any fraud against the government. We have *never* previously requested these records, and we have *never* received records proving Defendant's claim of production. If this were true, we would have followed up with additional FOIA requests and would have sued Western Seminary, or ATS, or NWCCU using those documents.
121	Defendant claims it has produced records to me about it "instituted administrative actions" against Western, ATS, and NWCCU, etc. We have *never* asked this request before, and we have *never* received records from the Defendant about it. If the Defendant's declaration was true, we would have filed additional FOIA requests about it, just as concerning No. 107.
122-125	Defendant claims it produced records to me that low-level employees are in charge of setting policy for the Department and can modify federal law. This is both nonsense and would be illegal. We have *never* asked this request before. Defendant is acting to defraud the court into thinking something is "true" when it could *never* be true.
131	Defendant claims it produced records to me indicating that it asked the DOJ to "investigate attorneys or law offices." This request was *never* previously asked, and the Defendant *never produced* records for it. If this were true, it would have been followed up with additional FOIA requests just like for No. 107, including additional FOIA requests to the DOJ.
132	Defendant claims it has produced records to me indicating that it asked the DOJ to "perform a pattern or practice investigation concerning Western Seminary." This request was *never* previously asked, and we have *never* received such records. If this were true, it would have been followed up with additional FOIA requests like in the case of No. 107, including additional FOIA requests to the DOJ.
135-149	Like in the case of Nos. 1-9, Defendant claims it has produced records and is attempting to backdate its alleged action to limit damages or as a defense for statue of limitations. By 2012, the damages to us were catastrophic and irreparable. Randy has been ignored by the government since 2005. The Defendant fabricated that it took actions in the distant past to limit damages with no material evidence as proof, and in contradiction to the recorded case history. We have *never* asked this request before.

As a result of the above, Plaintiff filed her Motion to Compel with declarations and a proposed order as the court ordered (Dkt. No. 25-27). Defendant filed a response with three new declarations and a proposed order (Dkt. No. 29). Pedersen's declaration ¶ 3 contradicts Siegelbaum's declaration of September 13, 2018. In Mula's Declaration ¶¶ 3-7, he claims to have searched in June 2018 and later in August 2018, after receiving my meet and confer of July 31, 2018. In both searches, Mula claims he identified no responsive records that have not already been provided to the Plaintiff in response to her previous FOIA requests. The Lefor Dec. ¶¶4-5 & 8-11 repeats Siegelbaum's declaration, and claims she performed a search in June 2018, which is well before receiving my meet and confer of July 31, 2018. She also notes -- no responsive records that had not already been provided to the Plaintiff in response to her previous FOIA requests. It is the contention by the Defendant that Nos. 1-9, 20, 22, 26, 46-55, 58-61, 64, 70-72, 74-76, 80-81, 86, 91-93, 101-106, 108-125, 131-132, 135-149 have already been produced prior to April 2017 and thus nothing is required to be produced now.

Plaintiff filed a response to Defendant's opposition, with her additional declaration and a declaration from her son. Dkt. No. 30-32. Plaintiff's Motion and declarations provided the evidences and background for the 97 unanswered FOIA categories at issue. Those categories represent 80 requests that remain in contention, and the 17 other requests noted in the Court's December 4th order. Plaintiff has repeatedly explained the basis for her contention since May 15, 2017. Dkt. No. 26, Exhibit 1. Further, if those 80 requests had been produced as the Defendant claimed, they would reflect actual records with a time and date for those records *purportedly* produced, a *purported* FOIA request number that caused the *purported* production of the records sought that remain in question, and possibly an order referencing such requests due to Defendant filing a motion for summary judgment under the claim the records have been *purportedly* produced. The Defendant has *never*

referenced any of those items listed above for over 20 months, rather, Defendant has left claims misty. In addition, Plaintiff has made detailed meet and confer documents regarding categories for the last one-and-one-half-years in a diligent effort for resolution without court intervention. Rather than self-correcting, Defendant continued to explore just how far it can push the court, by using a court's vulnerability ("good will afforded to agencies") as a legal advantage against the court itself. This is infelicitous and an act of bad faith. *Western Center for Journalism v. IRS*, 116 F. Supp. 2d 1, 10 (D.D.C. 2000) ("what is expected of an agency is that the agency admit and correct error when error is revealed"), aff'd, 22 F. App'x 14 (D.C. Cir. 2001). Thus, for the 97 categories, Plaintiff and Defendant have opposing views concerning the paper trail of this FOIA case, and the powers afforded in the U.S. Constitution and in federal law.

Concerning the hearing on December 4, 2018, the court asked Plaintiff, "(..Is it your contention that there are no responses to items 1 -.....[80 requests]? Am I correct to understand that is not in contention?) That was translated into the record to mean, "Plaintiff agreed there is no contention for items 1 - .... [80 requests] and only 17 requests remain in contention. A major error of understanding occurred and it set the direction of the remaining hearing.

Plaintiff understood the court's questions to mean that there are no records responses for items 1 -.....[80 requests], while, apparently, the court meant, more or less, that since Plaintiff states there are no records, then those records are not in contention. In fact, they are in contention, because on September 13, 2018, Defendant stated under penalty of perjury they produced to Plaintiff records for items No. 1-9, 20, 22, 26, 46-55, 58-61, 64, 70-72, 74-76, 80-81, 86, 91-93, 101-106, 108-125, 131-132, 135-149 [80 requests], but those records have *never previously been produced or requested*. The pivotal issue has been, Defendant claims it has produced records that don't exist, using case law to avoid actually answering that the records don't exist

would be detrimental for Defendant's positions. **First**, the Defendant *purported they previously produced* responsive records *sometime* prior to April 2017 in order to avoid admitting responsive records *do not exist, because they know that admission would have a domino effect against them*. **Then**, Defendant used case law to attempt to show ***since records were "previously produced," Plaintiff's FOIA request is moot.*** This is intentional misrepresentation to the court to avoid accountability and transparency.

In prior FOIA cases where the government falsely claimed FOIA production, a motion to compel was applied as I noted on December 6, 2018, including when the government was being dishonest with a court and towards an opposing party. On December 6, 2018, the judge in *Judicial Watch v. State Dept.*, United States District Court, District of Columbia, Case No. 14-1242 noted similar conduct as found in Plaintiff's case. The Judge's order stated: "At best, State's attempts to pass-off its deficient search as legally adequate during settlement negotiations was negligence born out of incompetence. At worst, career employees in the State and Justice Departments colluded to scuttle public scrutiny of Clinton, skirt FOIA and hoodwink this court." He went on to say, "The current Justice Department made things worse."

On September 5, 2018, this court correctly required a motion to compel. On December 4, 2018, the court also correctly observed the following, "It was my expectation that the matter was close to being resolved… that clearly is not the case." Plaintiff believes all the 97 outstanding categories could have been resolved a long time ago. Plaintiff's Motion and response, noted the Defendant's deficient searches they continue to portray as legally adequate by four declarations.

The court order on December 4, 2018, doesn't directly address Plaintiff's 80 requests that remain in contention. Plaintiff's letter to the court and Mr. Pyle dated December 6, 2018, addressed how Plaintiff understood her response to the court on December 4, 2018, and the problems of the 80

some categories, in contrast to how the court apparently understood Plaintiff's response. Somewhere, Plaintiff failed, and is regretfully sorry. What is clear to Plaintiff and others now reviewing what has happened with the Plaintiff, the Defendant succeeded in passing off deficient searches as legally adequate by their claims that lack evidence and legal standing. There is no material evidence demonstrating Defendants *ever* produced records for Plaintiff's FOIA requests Nos: 1-9, 20, 22, 26, 46-55, 58-61, 64, 70-72, 74-76, 80-81, 86, 91-93, 101-106, 108-125, 131-132, 135-149. If Defendants had declared under penalty of perjury those records *do not exist*, there would be no contention about those 80 requests, but that is exactly what it is attempting to avoid by the litigation scheme it employed. The Defendant made outrageous claims in declarations knowingly committing fraud upon the court, to taint the judicial machinery itself with claims that are devoid of evidence and legal merit, using the court's vulnerability ("good will afforded to agencies") against the court itself.

Fraud on the court occurs when the judicial machinery itself has been tainted. The requisite fraud on the court occurs where "it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir.1989). Rule 60(b) as providing support for my contention: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: ... (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party...." Fed.R.Civ.P. 60(b). [T]ampering with the administration of justice in the manner indisputedly shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently

be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud. *Alexander v. Robertson*, 882 F.2d 421, 424 (9th Cir.1989) "Fraud upon the court" should, we believe, embrace only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.

Turning to Defendant's December 10, 2018 filing, Dkt 37, "Defendant believes it would be proper to dismiss the case without prejudice, and with each side bearing their own fees and costs." Plaintiff agrees. This case needs to be placed on hold before further problems arise that make it even harder to unwind prior damages. As to Mr. Pyle's other claims, the case material facts demonstrate many unfortunate events, such as: in 1975 a 16-year-old was molested by youth pastor Steve Korch and it impacted her whole life and family; Steve Korch and Western Seminary used a settlement agreement to tie their cover up of evidence, records, and transcripts about those molestations as criteria to Plaintiff's life and her son's education; Western Seminary's entire settlement agreement is criteria for Plaintiff's son's master degrees to cover for student Matt Tuck, his father Gary Tuck, and Western's fraud against the government; Western used education and extortion threats of financial retaliation against Plaintiff and her son to hide information of Western's unlawful, unfair or fraudulent business acts or practices, and untrue or misleading statements and records to the Defendant during two federal investigations in order to avoid accountability to the Defendant; Randy's ex-wife names the connected the lawsuit issues and the Defendant's prolonged actions to her forced divorce and abduction; Randy and Plaintiff pleaded to the government for help and have been

repeatedly ignored – Randy since 2005, and Plaintiff since 2008, including directions by the Defendant's own Office of General Counsel in 2008; and by 2012, the Obama Administration, with James A. Scharf, damaged Randy as his medical records clearly identify, including psychologically torturing and emotionally water boarding Randy to the point he nearly killed himself, and by 2012 that damage became catastrophic and irreparable. These things and more are uncomfortable to discuss, yet they are documented facts that form the basis of Plaintiff's contested FOIA requests. Attacking Plaintiff and her son for supporting her FOIA requests with documented evidences and case law that form the basis of the unanswered and contested categories is counter-productive and incendiary. This scandal is now headed to the press who will fault DeVos. Everything the DOJ and Defendant do and say reflects on DeVos who certain members of Congress and media are targeting. Defendant is incapable of resolution administratively or judicially. Defendant is legally incapable of fixing the damages, and refuses to pay for what they caused. Defendant obstructed justice for our two civil cases and trashed a possible FCA and RICO case against Western. Plaintiff doesn't wish Mr. Pyle or anyone to go through what we have, and only by going though it can anyone understand the pain, the spiritual and psychological torture and the emotional water boarding that her son, husband and herself have endured from the phony religious aided by corrupt government people.

Finally, the court should carefully consider that we are distressed, and Plaintiff's doctor dealt with her chest pains and breathing problems after the December 4, 2018 hearing. It cost 20 months to seek final answers from Defendants about these contentions, and I am no closer than I was 21 months ago – for my husband, for my son, for my grandson who I will never know, for my family members and friends, and for the public welfare watching this unfold.

Dated: December 11, 2018 Respectfully submitted,

_____
Carol Nye-Wilson
In Pro Se

Carol Nye-Wilson
PO Box 717
Felton, CA 95018
E: carolnyewilson@yahoo.com
P: 808-756-0936
In Pro Se

UNITED STATES DISTRICT COURT
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CAROL NYE-WILSON, Plaintiff, vs. U. S. DEPARTMENT OF EDUCATION 400 Maryland Avenue, S.W. Washington, DC 20202, Defendants.	Civil Action No. CV-18-01846-VKD **ORDER**

ORDER OF DISMISSAL WITHOUT PREJUDICE

Plaintiff Carol Nye-Wilson requests the Court to Dismiss without Prejudice. Defendant through its counsel doesn't oppose a dismissal without prejudice, with each side bearing their own fees and costs.

IT IS THEREFORE ORDERED that the case is hereby DISMISSED WITHOUT PREJUDICE. Each side shall bear their own fees and costs.

IT IS SO ORDERED this _____ day of _____, 2018.

_____
HON. VIRGINIA K. DEMARCHI
United States Magistrate Judge