

No. 17-56624

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AGNES MORRISSEY-BERRU,

Plaintiff-Appellant,

v.

OUR LADY OF GUADALUPE SCHOOL,

Defendant-Appellee.

On Appeal from the United States District Court
for the Central District of California, Western Division – Los Angeles
D.C. No. 2:16-cv-09353-SVW-AFM
The Honorable Stephen V. Wilson

APPELLANT’S EXCERPTS OF RECORD

Volume 2 of 5

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Joseph M. Lovretovich, SBN 73403

Cathryn G. Fund, SBN 293766

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(SPACE BELOW FOR FILING STAMP ONLY)

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7 SCHOOL

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 AGNES DEIRDRE MORRISSEY-
BERRU, an individual

12 Plaintiff,

13 vs.

14 OUR LADY OF GUADALUPE
15 SCHOOL, a California non-profit
corporation and DOES 1 through 50,
16 inclusive

17 Defendants.

CASE NO. 2:16-CV-09353-SVW-AFM

[Assigned to Hon Stephen V. Wilson]

**DEFENDANT'S SUPPLEMENTAL
MEMORANDUM CLARIFYING
SCOPE OF DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

[Fed. R. Civ. P. 56]

Date: September 18, 2017
Time: 1:30 p.m.
Ctrm: 10A

Action Filed: December 19, 2016

BALLARD ROSENBERG GOLPER & SAVITT LLP
15760 VENTURA BOULEVARD, EIGHTEENTH FLOOR
ENCINO, CA 91436

1 Per the Court's request Defendant hereby files this supplemental memorandum to
 2 clarify the scope of Defendant's Motion for Summary Judgment ("MSJ") in light of the
 3 recent dismissal of claims. Defendant clarifies that the recent dismissal does not impact
 4 Defendant's MSJ, as the MSJ was dedicated solely to Plaintiff's first claim for relief,
 5 which is the only remaining claim for relief in this action.

6 Specifically, Plaintiff's Complaint originally alleged three claims for relief.
 7 Defendant engaged in extensive meet and confer with Plaintiff in advance of filing the
 8 MSJ. During and in response to this meet and confer, Plaintiff advised that she would
 9 dismiss the second and third claim for relief, leaving only the first claim for relief. The
 10 parties began working on a stipulation regarding the dismissal of these claims, which
 11 was ultimately filed with the Court.

12 Based on Plaintiff's representations that she would be dismissing the second and
 13 third claims for relief, Defendant dedicated its Motion for Summary Judgment solely to
 14 the first claim for relief, which is the only remaining claim for relief in this action. In
 15 doing so, Defendant also advised the Court with regard to the pending stipulation in its
 16 Notice of Motion for Summary Judgment, and the Declaration of Stephanie Kantor in
 17 support of the Motion for Summary Judgment, ¶7.

18
 19
 20 DATED: September 12, 2017 BALLARD ROSENBERG GOLPER &
 21 SAVITT, LLP

22 By: 

23 STEPHANIE B. KANTOR
 24 Attorneys for Defendant OUR LADY OF
 25 GUADALUPE SCHOOL
 26
 27
 28

PROOF OF SERVICE**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 15760 Ventura Boulevard, Eighteenth Floor, Encino, California 91436.

On September 12, 2017 I served the following document(s) described as **DEFENDANT'S SUPPLEMENTAL MEMORANDUM CLARIFYING SCOPE OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Joseph M. Lovretovich
Cathryn Fund
JML LAW
21052 Oxnard Street
Woodland Hills, CA 91367
Tel: (818) 610-8800
Fax: (818) 610-3030
jml@jmlaw.com
Cathryn@JMLLAW.com

☒ **BY ELECTRONIC MAIL TRANSMISSION: VIA CM/ECF** By electronic mail transmission by transmitting a PDF format copy of such document(s) to each such person at the email address listed below their address(es). The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 12, 2017 at Encino, California.



Lisa Aguilar

Nadia Rodriguez

From: cacd_ecfmail@cacd.uscourts.gov
Sent: Friday, September 08, 2017 4:44 PM
To: ecfnef@cacd.uscourts.gov
Subject: Activity in Case 2:16-cv-09353-SVW-AFM Agnes Deirdre Morrissey-Berru v. Our Lady of Guadalupe School et al Text Only Scheduling Notice

oCaseID: 20091

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered on 9/8/2017 at 4:44 PM PDT and filed on 9/8/2017

Case Name: Agnes Deirdre Morrissey-Berru v. Our Lady of Guadalupe School et al

Case Number: 2:16-cv-09353-SVW-AFM

Filer:

Document Number: 48(No document attached)

Docket Text:

IN CHAMBERS ONLY-TEXT ONLY ENTRY by Judge Stephen V. Wilson: The Court orders that Defendant Our Lady of Guadalupe School clarify the scope of the Motion for Summary Judgment [27], in light of the recent dismissal of claims. The defendant shall file a supplemental memorandum no later than Wednesday, September 13, 2017. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (pc) TEXT ONLY ENTRY

2:16-cv-09353-SVW-AFM Notice has been electronically mailed to:

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2:16-cv-09353-SVW-AFM Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

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Our Lady of Guadalupe School

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA OF CALIFORNIA

AGNES MORRISSEY-BERRU,
an individual,

Plaintiff,

vs.

OUR LADY OF GUADALUPE
CATHOLIC SCHOOL, a
California non-profit corporation;
and DOES 1-50, inclusive,

Defendants.

Case No. 2:16-cv-09353-SVW-AFM
(Assigned for all purposes to the Hon.
Stephen Wilson,)

**JOINT STIPULATION OF
DISMISSAL OF THE SECOND
AND THIRD CAUSES OF ACTION
WITH PREJUDICE**

Case No. 2:16-cv-09353-SVW-AFM
JOINT STIPULATION OF DISMISSAL
OF THE SECOND AND THIRD CAUSES
OF ACTION WITH PREJUDICE

Pursuant to Federal Rule of Civil Procedure 41, the undersigned counsel hereby stipulate that the Second and Third causes of action of Plaintiff, AGNES MORRISSEY-BERRU, herein against Defendant, OUR LADY OF GUADALUPE SCHOOL, will be dismissed with prejudice, each party to bear its own costs.

The parties further agree that Plaintiff will not seek punitive damages as alleged in paragraph 30 of the operative complaint. Plaintiff is, however, not waiving her right to seek liquidated damages.

DATED: ~~August 6~~ ^{September} 6, 2017

JML LAW, A Professional Law Corporation

By: Cathryn Fund

JOSEPH M. LOVRETOVICH

JARED W. BEILKE

CATHRYN G. FUND

Attorneys for Plaintiff

DATED: August 25, 2017

BALLARD ROSENBERG GOLPER &
SAVITT, LLP

By: Linda M. Savitt

LINDA M. SAVITT

STEPHANIE KANTOR

Attorneys for Defendant

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OUR LADY OF GUADALUPE
7 SCHOOL

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11

12 AGNES DEIRDRE MORRISSEY-
BERRU, an individual

13 Plaintiff,

14 vs.

15 OUR LADY OF GUADALUPE
16 SCHOOL, a California non-profit
corporation and DOES 1 through 50,
17 inclusive

18 Defendants.
19

CASE NO. 2:16-CV-09353-SVW-AFM

[Assigned to Hon Stephen V. Wilson]

**DECLARATION OF STEPHANIE
B. KANTOR IN SUPPORT OF
DEFENDANT'S REPLY IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

Date: September 18, 2017
Time: 1:30 p.m.
Ctm: 10A

(Filed concurrently with Objections to
Plaintiff's Evidence; Reply Statement of
Uncontroverted Facts; Reply MPA;
Notice of Lodgment of Objection to
Evidence)

Action Filed: December 19, 2016

BALLARD ROSENBERG GOLPER & SAVITT LLP
15760 VENTURA BOULEVARD, EIGHTEENTH FLOOR
ENCINO, CA 91436

1 **DECLARATION OF STEPHANIE B. KANTOR**

2

3 I, STEPHANIE B. KANTOR, declare as follows:

4 1. I am an attorney at law licensed to practice before the Courts of the State

5 of California and before this Court. I am a Counsel with Ballard Rosenberg Golper &

6 Savitt, LLP, attorneys of record for Defendant OUR LADY OF GUADALUPE

7 SCHOOL ("Defendant"). This declaration is made in support of Defendant's Reply in

8 support of Motion for Summary Judgment. I am responsible for the day-to-day

9 handling of this matter. As such, I am familiar with the facts of this case and the instant

10 dispute. If called and sworn as a witness, I would testify to the following facts.

11 2. Excerpts from the transcript of Ms. Morrissey-Beru's deposition, which are

12 relevant to rebut assertions in Plaintiff's Separate Statement of Controverted and

13 Uncontroverted Material Facts and Conclusions of Law in Opposition To Defendant's

14 Motion For Summary Judgment are attached hereto as Exhibit A.

15 3. Excerpts from the transcript of Ms. Bosch's deposition, which are relevant

16 to rebut assertions in Plaintiff's Separate Statement of Controverted and

17 Uncontroverted Material Facts and Conclusions of Law in Opposition To Defendant's

18 Motion For Summary Judgment are attached hereto as Exhibit B.

19 4. Plaintiff asserts in her Separate Statement of Additional Material Facts,

20 Fact No. 133 that her religious training consisted of a "single course in 2012." As

21 evidence in support thereof, Plaintiff relies on Exhibit 4 to Plaintiff's deposition.


22 However, the Exhibit 4 filed with the Court has improperly blacked out or redacted the

23 pages of this Exhibit that demonstrate there were in fact multiple courses. Attached

24 hereto as Exhibit C is a true and correct copy of the complete and unredacted Exhibit 4

25 to Plaintiff's deposition. (see OLG 120.)

1 I declare under penalty under the laws of the United States of America that the
2 foregoing in true and correct. This Declaration is executed on September 1, 2017, at
3 Encino, California.

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6 Stephanie B. Kantor, Declarant
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BALLARD ROSENBERG GOLPER & SAVITT LLP
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ENCINO CA 91436

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AGNES DEIRDRE MORRISSEY-BERRU, AN)
INDIVIDUAL,)
PLAINTIFF,) CASE NO.
VS.) 2:16-CV-09353-
OUR LADY OF GUADALUPE SCHOOL, A) SVW-AFM
CALIFORNIA NON-PROFIT CORPORATION;)
AND DOES 1 THROUGH 50, INCLUSIVE,)
DEFFNDANTS.)

VIDEOTAPED DEPOSITION OF AGNES DEIRDRE MORRISSEY-BERRU
WEDNESDAY, APRIL 26, 2017

JOB NO. 98169

REPORTED BY: MONICA T. CORLEY, CSR NO. 8803

1 Q Who was the parent?

2 A Beatrice Botha.

3 Q Okay. And did anybody from the
4 administration ever advise that the music teacher
5 would be taking your job?

6 A I didn't know about it. I just heard it
7 through Mrs. Bosch and Mrs. Botha.

8 Q What was this music teacher's name?

9 A Jimmy Hazen.

10 Q Okay. Did Mr. Hazen ever take your job
11 actually?

12 A It was -- it was given to somebody else
13 so --

14 Q So the answer is "no"?

15 A No.

16 Q All right. And then did anybody from the
17 administration ever say Mr. Hazen was going to,
18 quote unquote, take your job?

19 A Only from Mrs. Bosch and Mrs. Botha.

20 Q Was Mrs. Botha part of the administration?

21 A She's a parent.

22 Q Was Ms. Bosch part of the administration?

23 A Yes.

24 Q Was she in a position to decide who takes
25 what job?

1 A Okay.

2 Q My -- my fault, not yours.

3 So you're saying in August of 2014, it was
4 your understanding that other teachers at OLG were
5 complaining about Writers Workshop?

6 A Yes.

7 Q And then how does that relate to your age?

8 A Because I wasn't given any books. I had
9 been terminated, and yet Amy and Erica got all new
10 supplies and new resources and new books.

11 Q Uh-huh. And I'm talking about this August
12 2014 meeting you're now talking about.

13 A Yes, that's when I was informed.

14 Q That -- about this thing with the Erica
15 and Amy getting books?

16 A Yes.

17 Q But you can't recall if you ever asked for
18 more books?

19 A I can't remember.

20 Q Uh-huh. Do you think that Mrs. Beuder
21 would refuse to give you books if you had asked
22 because of your age?

23 A I don't know.

24 Q Do you know how old Mrs. Beuder is?

25 A Yes, I do.

1 who asked for more books and got them?

2 A Yes.

3 Q And do you have any knowledge about
4 Ms. Hendry's performance of Readers and Writers
5 Workshop?

6 A No.

7 Q Who is Erica Melendez?

8 A A 3rd grade teacher. The 3rd grade
9 teacher.

10 Q Is she the one who you had referenced
11 earlier with the same story?

12 A Yes.

13 Q What do you believe Ms. Melendez would be
14 a witness to in this matter?

15 A The fact that she asked for extra
16 resources for the Writing Workshop and was
17 accommodated.

18 Q Who is Kathy Barnes?

19 A Kathy Barnes is the vice principal.

20 Q And what do you believe she would be a
21 witness to in this matter?

22 A I'm not sure. She was the vice
23 president -- or principal.

24 Q How about Heather Cortez, who is she?

25 A Heather Cortez is the mother of a special

EXHIBIT B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AGNES DEIRDRE MORRISSEY-BERRU,)
AN INDIVIDUAL,)

PLAINTIFF,)

VS.)

OUR LADY OF GUADALUPE SCHOOL, A)
CALIFORNIA NON-PROFIT)
CORPORATION1 AND DOES 1 THROUGH)
50, INCLUSIVE,)

DEFENDANTS.)

CASE NO.
2:16-CV-09353-SVW-AFM

DEPCSION OF SILVIA BOSCH
THURSDAY, JULY 20, 2017

JOB NO. 105779

REPORTED BY IZUMI KONO, CSR NO. 14156

1 A No.

2 Q I tricked myself with the "correct."

3 [Did she have a contract that could be renewed?]

4 [A Again, physical contract? No.]

5 Q So you believe at some point you just told her
6 that she was not welcome back?

7 A Correct.

8 Q Do you know -- do you remember what you said
9 about that?

10 A Specifically, no.

11 Q Do you remember what she said?

12 A I believe she was upset, very upset. I believe
13 she was very upset, and that's all I can remember.

14 Q Without saying anybody's names, do you recall
15 having any interactions with Mrs. Beuder about younger
16 employees -- employment concerns with younger employees?

17 MS. FUND: Younger than who?

18 BY MS. KANTOR:

19 Q With any employees under the age of 40.

20 A Yes.

21 Q How many?

22 A The one I remember -- and I can't recall her
23 name.

24 Q Yeah, don't say her name.

25 A Okay.

EXHIBIT C



MINISTRY FORMATION CENTER
Office of Religious Education
Archdiocese of Los Angeles



CATECHIST CERTIFICATION PROGRESS TRANSCRIPT

Please print information clearly. It will appear on the final certificate exactly as it appears here.

TITLE (circle one): MR. MRS. MISS Ms. REV. BR. SR. DR.

Morrissey-Barru

LAST NAME

Deirdre

FIRST NAME

MOBILE INITIAL

1602 Spreckels Lane

STREET ADDRESS

Redondo Beach

CITY

CA

STATE

APT #

90278

Zip

(310) 376 -8844

PHONE ☒ HOME ☐ WORK ☐ MOBILE

Deechr1602@aol.com

EMAIL

IMPORTANT! PUT ONLY ONE NUMBER OR LETTER PER BOX

Please identify the level by code number: 1-early childhood, 2-elementary, 3-junior high, 4-youth ministry, 5-confirmation, 6-young adult ministry, 7-ministry with adults, T-Catholic Schools.

Level _____

CENTER NUMBER: 2012 - 19 - 54

Theology Phase ¹

St. Catherine Laboure Church/Torrance

CENTER LOCATION

August 7, 2012

DATE COMPLETED

Jeannie Nestojko

MASTER CATECHIST (PRINT)

MASTER CATECHIST SIGNATURE

Applications (Specialization) Phase ²

CENTER LOCATION

DATE COMPLETED

SPECIALIZATION FACILITATOR (PRINT)

SPECIALIZATION FACILITATOR SIGNATURE

Practicum Phase ³

PRACTICUM LOCATION

DATE COMPLETED

MASTER CATECHIST (PRINT)

MASTER CATECHIST SIGNATURE

Rev. 201116

EXHIBIT 29

WIT: Morrissey

DATE: 4-26-17

Monica T. Corley, CSR #8803

REG-11-050
OLG 0117

NOTES

This Progress Transcript is to be opened by the Master Catechist or Specialization Facilitator.

It is the responsibility of the Candidate to keep this transcript safely. It is the only record of progress.

It is the responsibility of the Candidate to present this progress transcript to the Master Catechist for their signature upon fulfillment of the requirements for completion of the Theology Phase.

It is the responsibility of the Candidate to present this progress transcript to the Specialization Facilitator for their signature upon fulfillment of the requirements for completion of the Applications (Specialization) Phase.

It is prudent for the Candidate to make a copy of this form upon completion of both the Theology Phase Record and the Applications (Specialization) Phase Records.

It is the responsibility of the Candidate to present this progress transcript to the Master Catechist for their signature upon fulfillment of the requirements for completion of the Practicum Phase.

Theology Phase

¹ Upon fulfillment of the requirements for the Theology Phase, the Master Catechist is to complete the record and return this form to the Candidate.

Applications (Specialization) Phase

² Upon fulfillment of the requirements for the Applications (Specialization) Phase, the Specialization Facilitator is to complete the record and return this form to the Candidate.

Practicum Phase

³ Upon fulfillment of the requirements for the Practicum Phase, the Master Catechist who serves as Contact Person for the Theology Phase is to complete the record and return this form to the Regional Coordinator (It is recommended that the MC make a copy for their own records).

This Progress Transcript is to be closed by the Regional Coordinator *no later than three (3) years from the date of its opening*.

All appropriately completed transcripts received by July 1st at the Archdiocesan Office of Religious Education will be processed to allow for the certification of candidates and the issuance of certificates in the Fall.

Transcripts received after July 1st may be held over until the following year.

Catechist Commissioning usually takes place on the Second Sunday of September
at the
Cathedral of Our Lady of the Angels

Office Use Only

OLG 0118



"Keeping the Promise Alive" 2012 Recertification



Keep this certificate for proof of your recertification.
Give a copy to the parish/school where you work or volunteer.

The person named below has completed attendance at

VIRTUS® Keeping the Promise Alive™

Deirdre Morrissey-Berru

Name

May 31, 2012

Date

Archdiocese of Los Angeles

Sponsored By

American Martyrs Church, Manhattan Beach

Location

San Pedro

Region

Patti Williams

Facilitator's Signature

OLG 0119

4-3

Case 2:16-cv-09353-SVW-AFM Document 46 Filed 09/01/17 Page 16 of 19 Page ID #1060

MINISTRY FORMATION CENTER

Office of Religious Education

Archdiocese of Los Angeles

CATECHIST CERTIFICATION PROGRESS TRANSCRIPT

Please print information clearly. It will appear on the final certificate exactly as it appears here.

Title (circle one): MR MRS MISS MS REV BR SR DR

Morrissey-Berru

Deirdre

LAST NAME

FIRST NAME

MIDDLE INITIAL

1602 Spreckels Lane

STREET ADDRESS

Redondo Beach

CA

90278

CITY

STATE

(310) 376-6844

Deechr1602@aol.com

PHONE ☒ HOME ☐ WORK ☐ MOBILE

EMAIL

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Please identify the level by code number: 1-early childhood, 2-elementary, 3-junior high, 4-youth ministry, 5-confirmation, 6-young adult ministry, 7-ministry with adults, T-Catholic Schools.

Level

2

COVER NUMBER

Theology Phase¹

CENTER LOCATION

DATE COMPLETED

MASTER CATECHIST (PRINT)

MASTER CATECHIST SIGNATURE

St Matthew, Long Beach

CENTER LOCATION

Applications (Specialization) Phase²

8/17/13 8/18/13 HOD 1+4 only

DATE COMPLETED

Giovanni Perez / Marie Skaton

SPECIALIZATION FACILITATOR (PRINT)

SPECIALIZATION FACILITATOR SIGNATURE

Practicum Phase³

PRACTICUM LOCATION

DATE COMPLETED

MASTER CATECHIST (PRINT)

MASTER CATECHIST SIGNATURE

NOTES

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Catechist Commissioning usually takes place on the Second Sunday of September
at the
Cathedral of Our Lady of the Angels


Office Use Only



"Keeping the Promise Alive"
2010 Recertification

Keep this certificate for proof of your recertification.
Give a copy to the parish/school where you work or volunteer.

The person named below has completed attendance at
VIRTUS® Keeping the Promise Alive™



Deirdre Morrissey-Berru
Name

January 8, 2010
Date

Archdiocese of Los Angeles
Sponsored By

Our Lady of Guadalupe School, Hermosa Beach
Location

Jeannie Nestojko
Facilitator's Signature

OLG 0122

4-6

PROOF OF SERVICE**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 15760 Ventura Boulevard, Eighteenth Floor, Encino, California 91436.

On September 1, 2017 I served the following document(s) described as **DECLARATION OF STEPHANIE B. KANTOR IN SUPPORT OF DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Joseph M. Lovretovich
Cathryn Fund
JML LAW
21052 Oxnard Street
Woodland Hills, CA 91367
Tel: (818) 610-8800
Fax: (818) 610-3030
jml@jmlaw.com
Cathryn@JMLLAW.com

☒ **BY ELECTRONIC MAIL TRANSMISSION: VIA CM/ECF** By electronic mail transmission by transmitting a PDF format copy of such document(s) to each such person at the email address listed below their address(es). The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error.

☒ **BY FEDEX:** I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I deposited such document(s) in a box or other facility regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by FedEx to receive documents, in an envelope or package designated by FedEx with delivery fees paid or provided for, addressed to the person(s) being served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 1, 2017 at Encino, California.



Lisa Aguilar

(SPACE BELOW FOR FILING STAMP ONLY)

1 LINDA MILLER SAVITT, SBN 94164
lsavitt@brgslaw.com
2 STEPHANIE KANTOR, SBN 272421
skantor@brgslaw.com
3 BALLARD ROSENBERG GOLPER & SAVITT, LLP
15760 Ventura Boulevard, Eighteenth Floor
4 Encino, CA 91436
Telephone: (818) 508-3700
5 Facsimile: (818) 506-4827

6 Attorneys for Defendant
OUR LADY OF GUADALUPE
7 SCHOOL

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 AGNES DEIRDRE MORRISSEY-
BERRU, an individual

13 Plaintiff,

14 vs.

15 OUR LADY OF GUADALUPE
16 SCHOOL, a California non-profit
17 corporation and DOES 1 through 50,
inclusive

18 Defendants.
19
20
21
22
23
24
25
26
27
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CASE NO. 2:16-CV-09353-SVW-AFM

[Assigned to Hon Stephen V. Wilson]

**NOTICE OF LODGMENT OF
DEFENDANT'S OBJECTIONS TO
PLAINTIFF'S EVIDENCE**

Date: September 18, 2017

Time: 1:30 p.m.

Ctrm: 10A

(Filed concurrently with Objections to
Plaintiffs Evidence; Kantor Reply
Declaration; Reply MPA; Reply
Statement of Uncontroverted Facts)

Action Filed: December 19, 2016

BALLARD ROSENBERG GOLPER & SAVITT LLP
15760 VENTURA BOULEVARD, EIGHTEENTH FLOOR
ENCINO, CA 91436

1 **TO PLAINTIFF AND HER COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that Defendant OUR LADY OF GUADALUPE SCHOOL is
3 lodging herewith their Objections to Plaintiff's Evidence Filed in Opposition to
4 Defendant's Motion for Summary Judgment.

5
6
7 DATED: September 1, 2017

BALLARD ROSENBERG GOLPER &
SAVITT. LLP

8
9
10 By: 

STEPHANIE B. KANTOR

Attorneys for Defendant

OUR LADY OF GUADALUPE SCHOOL

BALLARD ROSENBERG GOLPER & SAVITT LLP
15760 VENTURA BOULEVARD, EIGHTEENTH FLOOR
PACIFIC, CA 91436

PROOF OF SERVICE**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 15760 Ventura Boulevard, Eighteenth Floor, Encino, California 91436.

On September 1, 2017 I served the following document(s) described as **NOTICE OF LODGMENT OF DEFENDANT'S OBJECTIONS TO PLAINTIFF'S EVIDENCE** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Joseph M. Lovretovich
Cathryn Fund
JML LAW
21052 Oxnard Street
Woodland Hills, CA 91367
Tel: (818) 610-8800
Fax: (818) 610-3030
jml@jmlaw.com
Cathryn@JMLLAW.com

☒ **BY ELECTRONIC MAIL TRANSMISSION: VIA CM/ECF** By electronic mail transmission by transmitting a PDF format copy of such document(s) to each such person at the email address listed below their address(es). The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error.

☒ **BY FEDEX:** I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I deposited such document(s) in a box or other facility regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by FedEx to receive documents, in an envelope or package designated by FedEx with delivery fees paid or provided for, addressed to the person(s) being served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 1, 2017 at Encino, California.



Lisa Aguilar

(SPACE BELOW FOR FILING STAMP ONLY)

1 LINDA MILLER SAVITT, SBN 94164
lsavitt@brgslaw.com
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6 Attorneys for Defendant
OUR LADY OF GUADALUPE
7 SCHOOL

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 AGNES DEIRDRE MORRISSEY-
BERRU, an individual
13
14 Plaintiff,
15
16 vs.
17 OUR LADY OF GUADALUPE
SCHOOL, a California non-profit
18 corporation and DOES 1 through 50,
inclusive
19
20 Defendants.
21
22
23
24
25
26
27
28

CASE NO. 2:16-CV-09353-SVW-AFM
[Assigned to Hon Stephen V. Wilson]

**DEFENDANT'S OBJECTIONS TO
PLAINTIFF'S EVIDENCE IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Date: September 18, 2017
Time: 1:30 p.m.
Ctrm: 10A

(Filed concurrently with Reply
Statement of Uncontroverted Facts;
Kantor Reply Declaration; Reply MPA;
Notice of Lodgment of Objection to
Evidence)

Action Filed: December 19, 2016

BALLARD ROSENBERG GOLPER & SAVITT LLP
15760 VENTURA BOULEVARD, EIGHTEENTH FLOOR
ENCINO, CA 91436

1 Defendant OUR LADY OF GUADALUPE SCHOOL hereby objects to the
 2 following evidence submitted or cited by Plaintiff AGNES DEIRDRE MORRISSEY-
 3 BERRU in support of her Opposition to Summary Judgment:

4 (1) Beatriz Botha Declaration dated August 20, 2017 in Opposition to
 5 Defendant's Motion for Summary Judgment;

6 (2) Silvia Bosch Declaration dated June 6, 2017 in Opposition to Defendant's
 7 Motion for Summary Judgment;

8 (3) Excerpts of Deposition Transcript of Agnes Morrissey-Berru dated April
 9 26, 2017;

10 For the Court's convenience, these objections have been prepared in a format to
 11 allow the Court to indicate with a "check-mark" following each objection whether the
 12 objection is sustained or overruled.

13 **I. OBJECTIONS TO THE DECLARATION OF BEATRIZ BOTHA**

14
 15 **1. Objection No. 1:** (Par. 6, pg. 2, lines 19-20.)

16 April Beuder, Principal at Our Lady of Guadalupe, is notorious for retaliating
 17 against parents of students and employees.

18 **Grounds for Objection No. 1:**

19 This does not comply with Fed. R. Civ. P. Rule 56(e), which in pertinent part
 20 provides "affidavits must be made on personal knowledge, set out facts as would be
 21 admissible in evidence, and show that the affiant or declarant is competent to testify to
 22 the matters stated.". Botha's assertion is conclusory, hearsay, irrelevant, totally lacking
 23 in foundation, vague and ambiguous, improper opinion, speculation, and fails to
 24 establish any personal knowledge. As such, it should be stricken.

25 **Court's Ruling on Objection 1:** Sustained _____
 26 Overruled _____
 27
 28

ER 54

1 **III. OBJECTIONS TO EXHIBIT – EXCERPTS FROM THE DEPOSITION**
 2 **OF AGNES MORRISSEY-BERRU**
 3

4 **6. Objection No. 6:** Morrissey-Berru Deposition Transcript pgs. 55:2-55:4

5 Q: And are you aware of who made the hiring decision?

6 A: The Board

7 **Grounds for Objection No. 6:**

8 Conclusory, no personal knowledge, lacking in foundation, improper opinion,
 9 speculation, irrelevant.

10
 11 **Court's Ruling on Objection 6:** Sustained _____
 12 Overruled _____
 13
 14
 15

16 DATED: September 1, 2017

BALLARD ROSENBERG GOLPER &
 SAVITT. LLP

17
 18 By: 
 19

20 /STEPHANIE B. KANTOR
 Attorneys for Defendant
 21 OUR LADY OF GUADALUPE SCHOOL
 22
 23
 24
 25
 26
 27
 28

PROOF OF SERVICE**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 15760 Ventura Boulevard, Eighteenth Floor, Encino, California 91436.

On September 1, 2017 I served the following document(s) described as **DEFENDANT'S OBJECTIONS TO PLAINTIFF'S EVIDENCE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

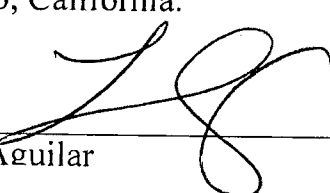
Joseph M. Lovretovich
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 1, 2017 at Encino, California.



Lisa Aguilar

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6 Attorneys for Defendant
 OUR LADY OF GUADALUPE
 7 SCHOOL

8
 9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11
 12 AGNES DEIRDRE MORRISSEY-
 BERRU, an individual

13 Plaintiff,

14 vs.

15 OUR LADY OF GUADALUPE
 16 SCHOOL, a California non-profit
 corporation and DOES 1 through 50,
 17 inclusive

18 Defendants.

CASE NO. 2:16-CV-09353-SVW-AFM

[Assigned to Hon Stephen V. Wilson]

**DEFENDANT'S REPLY TO
 PLAINTIFF'S STATEMENT OF
 CONTROVERTED AND
 UNCONTROVERTED MATERIAL
 FACTS AND CONCLUSIONS OF
 LAW RE: MOTION OF
 DEFENDANT FOR SUMMARY
 JUDGMENT
 [Fed. R. Civ. P. 56]**

Date: September 18, 2017

Time: 1:30 p.m.

Ctrm: 10A

(Filed concurrently with Objections to
 Plaintiffs Evidence; Kantor Reply
 Declaration; Reply MPA; Notice of
 Lodgment of Objection to Evidence)

Action Filed: December 19, 2016

BALLARD ROSENBERG GOLPER & SAVITT LLP
 15760 VENTURA BOULEVARD, EIGHTEENTH FLOOR
 ENCINO, CA 91436

Defendant OUR LADY OF GUADALUPE SCHOOL ("Defendant") respectfully asks this Court to consider this Reply to Plaintiff AGNES DEIRDRE MORRISSEY-BERRU's Separate Statement of Controverted and Uncontroverted Material Facts and Conclusions of Law in Opposition to Defendant's Motion for Summary Judgment. This Reply Separate Statement is in two parts.

- Part I contains the 82 undisputed facts and supporting evidence from Defendant's Separate Statement in support of its Motion; Plaintiff's responses and supporting evidence; and Defendant's replies to Plaintiff's purported disputes.

- Part II contains "Plaintiff's Separate Statement of Additional Material Facts" and Defendant's responses. Plaintiff has added 76 facts – many of which are duplicative.

Plaintiff's responses to Defendant's facts are non-responsive to the Undisputed Facts set forth by Defendant. As set forth below, all of Plaintiff's purported disputes of Defendant's facts are illusory and none establishes any genuine, triable issues of material fact.

I. STATEMENT OF UNCONTROVERTED FACTS

<u>Defendant's Uncontroverted Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>
<p>1. Our Lady of Guadalupe School is a Catholic parish school under the jurisdiction of the Archdiocese of Los Angeles.</p> <p><u>Supporting Evidence:</u></p> <p>Plaintiff Deirdre Morrissey-Berru Deposition Transcript "Plaintiff Depo." 27:10-16; Declaration of April Beuder "Beuder Decl." ¶3; Declaration of Sister Mary Elizabeth Galt "Galt Decl." ¶1-5; Exh.</p>	UNCONTROVERTED

BALLARD ROSENBERG GOLPER & SAVITT LLP
15760 VENTURA BOULEVARD, EIGHTEENTH FLOOR
ENCINO, CA 91436

1	3 - History and Philosophy; Exh. 4 -	
2	Mission Statement; Exh. 5 - About Us; Exh.	
3	26 - Catholic School Communities Faith	
4	Formation guidelines from the Los Angeles	
5	Archdioceses Administrative Handbook	
6	2. Our Lady of Guadalupe School is a non-	UNCONTROVERTED
7	profit religious entity.	
8	<u>Supporting Evidence:</u>	
9	Beuder Decl. ¶3; Galt Decl. ¶1-5; Plaintiff	
10	Depo. 27:10-19; Exh. 27 - IRS letters	
11	recognizing non-profit, tax exempt status	
12	of Our Lady of Guadalupe parish and	
13	school; Exh. 28 - State of California	
14	Franchise Tax Board Entity Status Letter;	
15	Exh. 29 - Certificates of Amendment of	
16	Articles of Incorporation of Archdiocese of	
17	Los Angeles Education & Welfare	
18	Corporation; Exh. 3 - History and	
19	Philosophy; Exh. 4 - Mission Statement;	
20	Exh. 5 - About Us; Exh. 26 - Catholic	
21	School Communities Faith Formation	
22	guidelines from the Los Angeles	
23	Archdioceses Administrative Handbook	
24	3. Our Lady of Guadalupe School was	CONTROVERTED
25	established to serve the educational needs of	
26	the children of the Our Lady of Guadalupe	In practice, the school does not limit its enrollment to children of the Our Lady of Guadalupe parish. In fact, the current principal testified that
27	parish.	
28		

BALLARD ROSENBERG GOLPER & SAVITT LLP
15763 VENTURA BOULEVARD, EIGHTEENTH FLOOR
ENCINO, CA 91436

1	<u>Supporting Evidence:</u>	students are not required to be
2	Beuder Decl. ¶3; Galt Decl. ¶1-5; Plaintiff	Catholic in order to attend the school.
3	Depo. 27:10-16; Exh. 3 - History and	[Deposition of April Beuder, Volume
4	Philosophy; Exh. 4 - Mission Statement;	I, 50:9-50:17; 71:17-71:19]
5	Exh. 5 - About Us	
6	REPLY: Plaintiff raises no genuine, material dispute. Her assertions are non-	
7	responsive to this fact, as they do not pertain to why the School was established. There	
8	is no genuine issue with respect to this fact, and it should be deemed uncontroverted.	
9		
10	4. The pastor is the ex-officio chief	UNCONTROVERTED
11	administrative officer of the school who	
12	carries out the policies of the Archdiocesan	
13	Advisory Board.	
14	<u>Supporting Evidence:</u>	
15	Beuder Decl. ¶3; Beuder Depo. 26:24-28:11,	CONTROVERTED
16	29:5-8, 100:6-8; Exh. 3 - History and	
17	Philosophy; Exh. 4 - Mission Statement;	
18	Exh. 5 - About Us; Exh. 26 -Catholic School	
19	Communities Faith Formation guidelines	
20	from the Los Angeles Archdioceses	Even though the faculty and staff may be committed to faith based education, Morrissey-Berru testified that at no time did she believed her employment at Our Lady of Guadalupe was "called" or that she was accepting a formal call to
21	Administrative Handbook	
22	5. The faculty and staff of Our Lady of	
23	Guadalupe School are committed to faith –	
24	based education, providing a quality	
25	Catholic education for the students and	
26	striving to create a spiritually enriched	
27	learning environment, grounded in Catholic	
28		

BALLARD ROSENBERG GOLPER & SAVITT LLP
15760 VENTURA BOULEVARD, EIGHTEENTH FLOOR
ENCINO, CA 91436

1 social teachings, values, and traditions.	religious service by working at the
2 <u>Supporting Evidence:</u>	school. Additionally, she testified
3 Beuder Decl. ¶4; Plaintiff Depo. 26:8-27:7,	that at no time during or after her
4 28:1-6, 40:12-41:13; Beuder Depo. 53:24-	employment with Our Lady of
5 54:9; Exh. 3 - History and Philosophy; Exh.	Guadalupe did she feel God was
6 4 - Mission Statement; Exh. 5 - About Us; ¶ 8]	[Declaration of Agnes Morrissey-Berru
7 Exh. 6 - Blest are We (OLG 0577-0596);	
8 Exh. 7 - Catechist Certification Progress	
9 Transcript (OLG 0117- 0122); Exh. 8 -	
10 Excerpts from Faculty Handbook (OLG	
11 0505-0528)	
12 REPLY: Plaintiff raises no genuine, material dispute. Instead she concedes that "the	
13 faculty and staff are committed to faith-based education." Plaintiff's purported dispute	
14 presents only argumentative, irrelevant surplusage which is non-responsive to the fact	
15 proffered. There is no genuine issue with respect to this fact, and it should be deemed	
16 uncontroverted.	
17 6. Plaintiff began working full time at the	UNCONTROVERTED
18 School as a teacher in 1999, at the age of 48	
19 <u>Supporting Evidence:</u>	
20 Plaintiff Depo. 12:19-20, 19:4-21	
21 7. The teachers at the School all work on	UNCONTROVERTED
22 one-year fixed term contracts. Teacher	
23 contracts are only for one year at a time, and	
24 renewal is determined on a year to year	
25 basis.	
26 <u>Supporting Evidence:</u>	
27 Beuder Decl. ¶6; Plaintiff Depo. 20:19-	
28	

1	23:15; Exh. 21 - 2014-2015 Employment	
2	Agreement (OLG 0001-0006); Exh. 12 -	
3	2013-2014 Employment Agreement (OLG	
4	008-0012)	
5	8. Our Lady of Guadalupe School has no	UNCONTROVERTED
6	obligation to renew contracts. Plaintiff	
7	understood that there was no implied duty	
8	by Plaintiff or the school to renew the term	
9	employment agreements and that no cause	
10	is required by either party for non-renewal.	
11	<u>Supporting Evidence:</u>	
12	Beuder Decl. ¶6; Plaintiff Depo. 20:19-	
13	23:15; Exh. 21 - 2014-2015 Employment	
14	Agreement (OLG 0001-0006); Exh. 12 -	
15	2013-2014 Employment Agreement (OLG	
16	008-0012)	
17	9. Plaintiff was provided with access the	CONTROVERTED
18	School's handbooks and policies during her	
19	employment. The School's policies prohibit	Even with an established policy against
20	discrimination, harassment and retaliation.	discrimination, harassment, and
21	The School also follows guidelines	retaliation, there is no indication that
22	established by the Archdiocese of Los	April Beuder followed these policies as
23	Angeles' Department of Catholic Schools.	they relate to her employees.
24	<u>Supporting Evidence:</u>	Specifically, when dealing with the
25	Beuder Decl. ¶7; Plaintiff Depo. 23:16-24:7;	potential termination of another
26	26:3-7; Exh. 8 -Excerpts from Faculty	employee, Ms. Beuder stated: <i>"That's</i>
27	Handbook (OLG 0505-0528); Exh. 26 -	<i>not how you terminate older people.</i>
28		<i>Let me tell you how to terminate older</i>
		<i>people."</i> She added, <i>"First you are</i>
		<i>going to reduce. Every time you do a</i>
		<i>schedule, you reduce her hours and</i>
		<i>duties – document it – little by little"</i>
		so that eventually they become so

1 Catholic School Communities Faith
2 Formation guidelines from the Los Angeles
3 Archdioceses Administrative Handbook

frustrated or miserable that they quit.

[Deposition of Silvia Bosch 63:1065:5]

[Declaration of Silvia Bosch ¶¶ 5-6.]

[See, Plaintiff's Undisputed Material Facts "PUMF" 138-153]

7 **REPLY:** Plaintiff raises no genuine, material dispute. Instead she concedes that
8 Defendant had "an established policy against discrimination, harassment, and
9 retaliation." Her purported dispute presents only argumentative, irrelevant surplusage
10 which is non-responsive to the fact proffered. Her assertions are non-responsive to this
11 fact, as they have nothing to do with Defendant's policies.

12 Her assertions also lack admissible evidentiary support or are simply immaterial,
13 as discussed below.

14 • *"There is no indication that April Beuder followed these policies as they*
15 *relate to her employees."* Local Rule 56-2 requires a party opposing summary judgment
16 to file a document setting forth "all material facts as to which it is contended there
17 exists a genuine dispute necessary to be litigated." Local Rule 56-3 provides that all
18 facts "claimed and adequately supported by the moving party are admitted to exist
19 without controversy except to the extent that such material facts are (a) included in the
20 'Statement of Genuine Disputes' and (b) controverted by declaration or other written
21 evidence filed in opposition to the motion." Thus, to raise a genuine issue, Plaintiff
22 must support any purported factual disputes with admissible evidence. Plaintiff has not
23 introduced any evidence that "there is no evidence that April Beuder followed these
24 policies." Instead her response is pure argument, not evidence, and should be
25 disregarded.

26 • *"Specifically, when dealing with the potential termination of another*
27 *employee, Ms. Beuder stated: "That's not how you terminate older people. Let me tell*
28 *you how to terminate older people." She added, "First you are going to reduce. Every*

1 *time you do a schedule, you reduce her hours and duties – document it – little by little”*
2 *so that eventually they become so frustrated or miserable that they quit.”* Plaintiff’s
3 purported “fact” is inadmissible hearsay (FED. R. EVID. 801, 802). Plaintiff’s
4 purported fact is also “irrelevant” and barred by the jurisdictional prerequisites of 29
5 U.S.C. 626(d)(1)(Charge of discrimination must be filed “within 300 days after the
6 alleged unlawful practice occurred”; Fed. R. Evid. 402, 403; UF 82, PUMF 146.)

7 There is no genuine issue with respect to this fact, and it should be deemed
8 uncontroverted.

9 10. Plaintiff understood that the mission
10 of the School is to provide its students with
11 a Catholic education, including instructing
12 them in the tenets of the faith and instilling
13 in them Catholic values. Plaintiff felt that
14 her duties and responsibilities as a teacher
15 should be performed within the overriding
16 commitment of this school mission.

17 **Supporting Evidence:**

18 Plaintiff Depo. 26:8-27:7, 28:1-3, 40:18-
19 41:13; Beuder Decl. ¶¶4-5, 8-17; Beuder
20 Depo. 53:24-54:9; Exh. 21 - 2014-2015
21 Employment Agreement (OLG 0001-0006);
22 Exh. 12 -2013-2014 Employment
23 Agreement (OLG 008-0012)

CONTROVERTED

Even though the mission of the School
is to provide its students with a
Catholic education, Morrissey-Berru
testified that at no time did she
believed her employment at Our Lady
of Guadalupe was “called” or that she
was accepting a formal call to religious
service by working at the school.

Additionally, she testified that at no
time during or after her employment
with Our Lady of Guadalupe did she
feel God was leading her into the
ministry.

Declaration of Agnes Morrissey-Berru

¶ 8]

25 **REPLY:** Plaintiff raises no genuine, material dispute. Instead she concedes that “the
26 mission of the School is to provide its students with a Catholic education.” She does
27 not address, let alone deny, that the mission of the school included “instructing
28 [students] in the tenets of the faith and instilling in them Catholic values,” and that

1 "Plaintiff felt that her duties and responsibilities as a teacher should be performed
 2 within the overriding commitment of this school mission." Plaintiff's purported dispute
 3 presents only argumentative, irrelevant surplusage which is non-responsive to the fact
 4 proffered. There is no genuine issue with respect to this fact, and it should be deemed
 5 uncontroverted.

6
 7 11. Plaintiff's signed employment contracts
 8 provide that:

9 The mission of the School is to
 10 develop and promote a
 11 Catholic School Faith
 12 Community within the
 13 philosophy of Catholic
 14 education as implemented at
 15 the School, and the doctrines,
 laws and norms of the Roman
 Catholic Church. All your
 duties and responsibilities as a
 Teacher shall be performed
 within this overriding
 commitment.

16 **Supporting Evidence:**

17 Plaintiff Depo. 40:18-41:13; Beuder
 18 Decl. ¶5; Beuder Depo. 53:24-54:9;
 19 Exh. 21 - 2014-2015 Employment
 20 Agreement (OLG 0001-0006); Exh.
 21 12 - 2013-2014 Employment
 22 Agreement (OLG 008-0012)

CONTROVERTED

Even though the mission of the School
 is to provide its students with a
 Catholic education, Morrissey-Berru
 testified that at no time did she believed
 her employment at Our Lady of
 Guadalupe was "called" or that she was
 accepting a formal call to religious
 service by working at the school.

Additionally, she testified that at no
 time during or after her employment
 with Our Lady of Guadalupe did she
 feel God was leading her into the
 ministry.

Declaration of Agnes Morrissey-Berru
 ¶ 8]

23 **REPLY:** Plaintiff raises no genuine, material dispute. Instead she concedes that "the
 24 mission of the School is to provide its students with a Catholic education." Further, Fact
 25 11 pertains to what the contract states. Plaintiff's purported "dispute" does not address,
 26 let alone dispute the verbatim language of her contracts (Exh. 21, 12), and her verified
 27 testimony about them:

28 A. "Philosophy: The mission of the school is to develop and promote a Catholic

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1 school faith community within the philosophy of Catholic education as implemented at
2 the school and the doctrines, laws and norms of the Roman Catholic Church. All your
3 duties and responsibilities as a teacher shall be performed within this overriding
4 commitment."

5 Q. And, Ms. Morrissey-Berru, did you agree that your duties and responsibilities as a
6 teacher should be performed within this overriding commitment?

7 A. Yes." (Plaintiff Depo. 40:18-41:13.)

8 Plaintiff's purported dispute presents only argumentative, irrelevant surplusage
9 which is non-responsive to the fact proffered. There is no genuine issue with respect to
10 this fact, and it should be deemed uncontroverted.

11 12. Plaintiff's signed employment contracts

CONTROVERTED

12 also state:

Even though the school operates within the philosophy of Catholic education, Morrissey-Berru testified that at no time did she believed her employment at Our Lady of Guadalupe was "called" or that she was accepting a formal call to religious service by working at the school. Additionally, she testified that at no time during or after her employment with Our Lady of Guadalupe did she feel God was leading her into the ministry.

13 You acknowledge that the School operates within the philosophy of Catholic education ... You understand and accept that the values of Christian charity, temperance and tolerance apply to your interactions with your supervisors, colleagues, students, parents, staff and all others with whom you come in contact at or on behalf of the School. In both your professional and private life you are expected to model and promote behavior in conformity to the teaching of the Roman Catholic Church in matters of faith and morals.

[Declaration of Agnes Morrissey-Berru ¶ 8]

21 **Supporting Evidence:**

22 Plaintiff Depo. 40:18-42:13; Beuder
23 Decl. ¶5; Exh. 21 - 2014-2015
24 Employment Agreement (OLG 0001-
25 0006); Exh. 12 - 2013-2014
26 Employment Agreement (OLG 008-
27 0012)

REPLY: Plaintiff raises no genuine, material dispute. Instead she concedes that "the school operates within the philosophy of Catholic education." Fact 12 pertains to what the contract states. Plaintiff's purported "dispute" does not address, let alone dispute, what the contract states. Nor can Plaintiff dispute the verbatim language of her contracts (Exh. 21, 12), and her verified testimony about them. (Plaintiff Depo. 40:18-42:13.) Plaintiff's purported dispute presents only argumentative, irrelevant surplusage which is non-responsive to the fact proffered. There is no genuine issue with respect to this fact, and it should be deemed uncontroverted.

13. Plaintiff taught a daily religion class every year at the School.

Supporting Evidence:

Plaintiff Depo. 20:7-14, 36:18-20; Beuder Decl. ¶8

UNCONTROVERTED

14. In order to be able to teach religion, Plaintiff had to undergo special religious training. Through these religious training courses, Plaintiff learned about the Bible and the history of the Catholic Church and obtained catechist certifications that she was knowledgeable in the Catholic religion.

Supporting Evidence:

Plaintiff Depo. 30:1-32:17; Beuder Depo. 62:4-64:20; Exh. 7 - Catechist Certification Progress Transcript (OLG 0117- 0122); Beuder Decl. ¶9

CONTROVERTED

Morrissey-Berru testified that she took one course regarding the history of the Catholic Church in 2012. This was fourteen years after she began teaching at Our Lady of Guadalupe. [Deposition of Agnes Morrissey-Berru 19:4-19:10; 30:1-30:18]

REPLY: Plaintiff raises no genuine, material dispute. Instead she concedes that she took a religious training course. Plaintiff's purported dispute presents only

1 argumentative, irrelevant surplusage which is non-responsive to the fact proffered.
 2 Plaintiff's purported dispute is also irrelevant because it misrepresents her testimony –
 3 Plaintiff cites to Plaintiff's initial testimony that it was one course, but disregards her
 4 concession that it was actually "multiple classes." (Plaintiff Depo. 30:1-32:17.) Plaintiff
 5 presents no evidence otherwise. There is no genuine issue with respect to this fact, and
 6 it should be deemed uncontroverted.

7 15. Plaintiff was responsible for introducing
 8 her students to Catholicism and giving
 9 students a groundwork for their religious
 10 doctrine.

11 **Supporting Evidence:**

12 Plaintiff Depo. 40:12-17; Beuder Depo.
 13 53:24-54:9; Beuder Decl. ¶8

CONTROVERTED

Even though Morrissey-Berru admitted that she was responsible for introducing her students to Catholicism and providing the groundwork for their religious doctrine, Morrissey-Berru testified that at no time did she believed her employment at Our Lady of Guadalupe was "called" or that she was accepting a formal call to religious service by working at the school. Additionally, she testified that at no time during or after her employment with Our Lady of Guadalupe did she feel God was leading her into the ministry.

Declaration of Agnes Morrissey-Berru
 ¶ 8]

25 **REPLY:** Plaintiff raises no genuine, material dispute. Instead she concedes that
 26 "Morrissey-Berru admitted that she was responsible for introducing her students to
 27 Catholicism and providing the groundwork for their religious doctrine." Plaintiff's
 28 purported dispute presents only argumentative, irrelevant surplusage which is non-

1 responsive to the fact proffered. There is no genuine issue with respect to this fact, and
2 it should be deemed uncontroverted.

3 16. As part of Plaintiff's instruction,
4 students were expected to learn and express
5 the belief that Jesus is the son of God and
6 the Word made flesh.

7 **Supporting Evidence:**

8 Plaintiff Depo. 38:12-16; Exh. 6 - Blest are
9 We (OLG 0577-0596); Beuder Decl. ¶15

CONTROVERTED

The instruction the students received from Plaintiff was taken from a **textbook** entitled "Blest Are We" which provided guided teachings. Deposition of Agnes Morrissey Berru 36:18-37:12, Exhibit 5

10 **REPLY:** Plaintiff raises no genuine, material dispute. Plaintiff concedes that as a
11 teaching guide, Plaintiff used a Catholic textbook, entitled "Blest are We." Plaintiff
12 does not address, let alone dispute that as part of her instruction, students were expected
13 to learn and express the belief that Jesus is the son of God and the word made flesh.
14 (Plaintiff Depo. 38:12-16 [Q. "So would you say as part of your teaching, students were
15 expected to learn and express believe that Jesus is the son of God and the Word made
16 flesh? A. Yes."].) Plaintiff's purported dispute presents only irrelevant surplusage,
17 which is non-responsive to the fact proffered. There is no genuine issue with respect to
18 this fact, and it should be deemed uncontroverted.

19 17. The lessons Plaintiff was responsible for
20 teaching students included lessons on
21 Creation, The Seven Sacraments,
22 Sacramentals, Baptism, Confirmation, The
23 Eucharist, Reconciliation, Holy Orders and
24 Matrimony.

25 **Supporting Evidence:**

26 Plaintiff Depo. 36:18-38:10; Beuder Decl.
27 ¶16; Exh. 6 - Blest are We (OLG 0577-
28

CONTROVERTED

The instruction the students received from Plaintiff was taken from a **textbook** entitled "Blest Are We" which provided guided teachings. Deposition of Agnes Morrissey Berru 36:18-37:12, Exhibit 5

1 0596)

2

3 **REPLY:** Plaintiff raises no genuine, material dispute. Plaintiff concedes that as a
 4 teaching guide, Plaintiff used a Catholic textbook, entitled "Blest are We." Plaintiff
 5 does not address, let alone dispute that the lessons Plaintiff was responsible for teaching
 6 students included lessons on Creation, The Seven Sacraments, Sacramentals, Baptism,
 7 Confirmation, The Eucharist, Reconciliation, Holy Orders and Matrimony. (Plaintiff
 8 Depo. 38:6-10 ["Creation, The Seven Sacraments, Sacramentals, Baptism,
 9 Confirmation, The Eucharist, Reconciliation, Holy Orders and Matrimony."].)
 10 Plaintiff's purported dispute presents only irrelevant surplusage which is non-responsive
 11 to the fact proffered. There is no genuine issue with respect to this fact, and it should
 12 be deemed uncontroverted.

13 18. Plaintiff would teach students to be able
 14 to identify the ways that the church carries
 15 on the mission of Jesus, understand the
 16 communion of saints, recognize the
 17 presence of Christ in the Eucharist, locate
 18 and understand stories from the Bible, and
 19 understand original sin.

20 **Supporting Evidence:**

21 Plaintiff Depo. 38:2-40:11 Exh. 6 - Blest are
 22 We (OLG 0577-0596); Beuder Decl. ¶16

CONTROVERTED

The instruction the students received
 from Plaintiff was taken from a
textbook entitled "Blest Are We"
 which provided guided teachings.
 Deposition of Agnes Morrissey Berru
 36:18-37:12, Exhibit 5

23 **REPLY:** Plaintiff raises no genuine, material dispute. Plaintiff concedes that as a
 24 teaching guide, Plaintiff used a Catholic textbook, entitled "Blest are We." Plaintiff
 25 does not dispute that Plaintiff would teach students to be able to identify the ways that
 26 the church carries on the mission of Jesus, understand the communion of saints,
 27 recognize the presence of Christ in the Eucharist, locate and understand stories from the
 28 Bible, and understand original sin. Plaintiff's purported dispute presents only irrelevant

1 surplusage which is non-responsive to the fact proffered. There is no genuine issue with
2 respect to this fact, and it should be deemed uncontroverted.

3 19. Students also received instruction
4 from Plaintiff for taking part in a prayer
5 service of reconciliation, praying the
6 Apostles' Creed and the Nicene Creed,
7 celebrating the sacraments, and recognizing
8 the liturgical calendar and the celebration of
9 the sacred triduum, among numerous other
10 religious topics.

11 **Supporting Evidence:**

12 Plaintiff Depo. 38:2-40:11; Exh. 6 - Blest
13 are We (OLG 0577-0596); Beuder Decl.

14 ¶¶15-16

CONTROVERTED

The instruction the students received
from Plaintiff was taken from a
textbook entitled "Blest Are We"
which provided guided teachings.
Deposition of Agnes Morrissey-Berru
36:18-37:12, Exhibit 5

15 **REPLY:** Plaintiff raises no genuine, material dispute. Plaintiff concedes that as a
16 teaching guide, Plaintiff used a Catholic textbook, entitled "Blest are We." Plaintiff
17 does not dispute that students "received instruction from Plaintiff for taking part in a
18 prayer service of reconciliation, praying the Apostles' Creed and the Nicene Creed,
19 celebrating the sacraments, and recognizing the liturgical calendar and the celebration
20 of the sacred triduum, among numerous other religious topics." Plaintiff's purported
21 dispute presents only irrelevant surplusage which is non-responsive to the fact
22 proffered.

23 20. Plaintiff also led the class in daily
24 prayer, including Hail Mary's, as well as
25 spontaneous prayer.

26 **Supporting Evidence:**

27 Plaintiff Depo. 32:18-33:17, 198:23-199:3;
28

UNCONTROVERTED

1	Beuder Decl. ¶11		
2			
3	21. As a teacher at the School, Plaintiff was	UNCONTROVERTED	
4	expected to participate in school liturgical		
5	activities.		
6	<u>Supporting Evidence:</u>		
7	Plaintiff Depo. 42:11-13; Beuder Decl. ¶12		
8	22. Plaintiff took her class to weekly Mass	CONTROVERTED Morrissey-Berru testified that she did not personally lead school-wide religious services, did not select hymns when her class was responsible for mass, did not personally deliver messages during mass, and did not have the prepare her students to alter serve during weekly mass. [Deposition of Agnes Morrissey-Berru 35:10-35:24]	
9	and monthly school-wide Masses, prepared		
10	her students to read during Mass, planned		
11	the liturgy for monthly Masses, and escorted		
12	her students to a variety of religious		
13	services, including for the Feast of our Lady,		
14	the Stations of the Cross and Lenten		
15	Services. She was also expected to attend		
16	faculty masses and monthly family masses.		
17	<u>Supporting Evidence:</u>		
18	Plaintiff Depo. 34:9-35:9, 35:25-36:3,		
19	28:25-29:21; Beuder Depo. 107:13-108:10,		
20	108:25-110:16, 182:2-18; Beuder Decl.		
21	¶¶11-12		
22	REPLY: Plaintiff raises no genuine, material dispute. Plaintiff does not dispute that		
23	Plaintiff took her class to weekly Mass and monthly school-wide Masses, prepared her		
24	students to read during Mass, planned the liturgy for monthly Masses, and escorted her		
25	students to a variety of religious services, including for the Feast of our Lady, the		
26	Stations of the Cross and Lenten Services. She does not dispute that she was expected		
27	to attend faculty masses and monthly family masses. Plaintiff proffers no evidence to		
28	dispute her verbatim testimony:		

1 "Q. Were you expected to take your class to weekly mass? A. Yes. Q. ... how about
 2 monthly school-wide masses? A. Yes. Q. How about like for All Saints Day? A.
 3 That was my 5th grade mass. Q. Oh, you were responsible for that? A. Yes. Q. Were
 4 you responsible for taking the students to mass for the Feast of Our Lady? A. Yes. Q.
 5 How about for Reconciliation? A. Yes. Q. Stations of the cross? A. Yes. Q. Lenten
 6 services? A. Yes. Q. Am I forgetting any? A. Christmas maybe. ... Q. Did you have to
 7 prepare your students to ... read during weekly mass? A. Yes. Q. And also for the
 8 school mass? A. Yes. ... Q. Did you -- were you responsible for attending monthly
 9 family masses? A. Yes. ... Q. Were you a part of the liturgy planning for school
 10 masses? A. At my particular school mass, yes."

11 (Plaintiff Depo. 34:9-35:9, 35:25-36:3, 28:25-29:21.)

12 Plaintiff's purported dispute presents only irrelevant, argumentative surplusage
 13 which is non-responsive to and does not controvert the fact proffered. There is no
 14 genuine issue with respect to this fact, and it should be deemed uncontroverted.

15 23. Plaintiff's performance evaluations
 16 included an evaluation of the Catholic
 17 identity factors in the classroom, whether
 18 there was visible evidence of the
 19 sacramental traditions of the Roman
 20 Catholic Church in the classroom, and
 21 whether the curriculum included Catholic
 22 values infused through all subject areas.

23 **Supporting Evidence:**

24 Plaintiff Depo. 163:24-165:3; Beuder Decl.
 25 ¶17; Exh. 11 -June 2013 Catholic Identity
 26 and Professional Conduct Review Form
 27 (OLG 162-163); Exh. 14 - November 14,
 28 2013 Catholic Identity and Professional
 Conduct Review Form (OLG 195-196)

UNCONTROVERTED

24. Plaintiff was responsible for
 administering the yearly assessment of

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1	children religious education test – a test on	
2	Catholic teachings for the 5th grade	
3	<u>Supporting Evidence:</u>	
4	Plaintiff Depo. 33:18-24; Beuder Decl. ¶10	
5	25. All of the courses that Plaintiff taught	CONTROVERTED Even though Morrissey-Berru admitted that she was committed to faith-based education, Morrissey-Berru testified that at no time did she believed her employment at Our Lady of Guadalupe was “called” or that she was accepting a formal call to religious service by working at the school. Additionally, she testified that at no time during or after her employment with Our Lady of Guadalupe did she feel God was leading her into the ministry. [Declaration of Agnes Morrissey-Berru ¶ 8]
6	were expected to be informed by faith-based	
7	education. Plaintiff was committed to faith-	
8	based education.	
9	<u>Supporting Evidence:</u>	
10	Plaintiff Depo. 28:4-6; Beuder Decl. ¶8;	
11	Exh. 3 - History and Philosophy; Exh. 4 -	
12	Mission Statement; Exh. 5 - About Us; Exh.	
13	6 - Blest are We (OLG 0577-0596); Exh. 21	
14	- 2014-2015 Employment Agreement (OLG	
15	0001-0006); Exh. 12 - 2013-2014	
16	Employment Agreement (OLG 008-0012)	
17		
18		
19		
20	REPLY: Plaintiff raises no genuine, material dispute. Plaintiff concedes that she	
21	"admitted that she was committed to faith-based education." Plaintiff's purported	
22	dispute presents only irrelevant surplusage which is non-responsive to and does not	
23	controvert the fact proffered. There is no genuine issue with respect to this fact, and it	
24	should be deemed uncontroverted.	
25	26. Plaintiff was responsible for integrating	CONTROVERTED Morrissey-Berru testified that at no time during her employment with
26	Catholic teachings and values into all of her	
27	classes. Plaintiff tried to integrate religious	
28		

attitudes and values into all of her curricular areas, and to instruct her students in a manner consistent with the teachings of the Church.

Supporting Evidence:

Plaintiff Depo. 26:8-24, 28:1-3, 32:18-25, 40:18-42:10, 163:24-165:3, 199:5-16; Beuder Decl. ¶¶8, 17; Exh. 21 - 2014-2015 Employment Agreement (OLG 0001-0006); Exh. 12 - 2013-2014 Employment Agreement (OLG 008-0012)

Our Lady of Guadalupe did she believe she was "called" or that she was accepting a formal call to religious service by working at the school. Additionally, she testified that at no time during or after her employment with Our Lady of Guadalupe did she feel God was leading her into the ministry.

[Declaration of Agnes Morrissey-Berru ¶ 8]

REPLY: Plaintiff raises no genuine, material dispute. Plaintiff's purported dispute presents only irrelevant surplusage which is non-responsive to and does not controvert the fact proffered. Neither Plaintiff's purported dispute nor her cited evidence in support thereof (Plaintiff's declaration ¶8) pertains to Fact 26. Further, Plaintiff cannot materially dispute Fact 26, given she does not controvert Fact 23 that she was evaluated on whether the curriculum included Catholic values infused through all subject areas. There is no genuine issue with respect to this fact, and it should be deemed uncontroverted.

27. Plaintiff directed and produced a performance by the students of the Passion of the Christ as part of the School's Easter celebrations.

Supporting Evidence:

Beuder Decl. ¶13; Beuder Depo. 108:25-110:16, 182:2-18

UNCONTROVERTED

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1 2 3 4 5 6 7	28. Plaintiff took her students to Our Lady of Angels Cathedral in downtown Los Angeles every year for a tour of the cathedral so they could experience serving at the cathedral altar. <u>Supporting Evidence:</u> Plaintiff Depo. 198:4-22; Beuder Decl. ¶13	UNCONTROVERTED
8 9 10 11 12 13	29. April Beuder was hired as the Principal of the school in March of 2012, and started working there in July 1, 2012, at age 51. <u>Supporting Evidence:</u> Beuder Decl. ¶2, Beuder Depo. 8:21-22, 50:9-17	UNCONTROVERTED
14 15 16 17 18 19 20 21 22 23 24	30. When Mrs. Beuder was hired, the School was on the verge of closing and needed drastic changes to turn around declining enrollment. In 2012, there was just one graduate in the eighth grade class. The parish was having to heavily subsidize the school to keep the doors open. <u>Supporting Evidence:</u> Beuder Decl. ¶18; Beuder Depo. 58:15-61:25, 68:13-71:13, 72:14-73:23; Exh. 9 – Report of Findings	UNCONTROVERTED
25 26 27 28	31. In 2012, before Mrs. Beuder was hired, the School had been advised by the WCEA and WASC accreditors that the school had	UNCONTROVERTED

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1 failed to meet accreditation goals, including	
2 with regard to improving the school's	
3 reading program. Mrs. Beuder was tasked	
4 with addressing these goals.	
5 <u>Supporting Evidence:</u>	
6 Beuder Decl. ¶19; Beuder Depo. 58:15-	
7 61:25, 68:13-71:13, 72:14-73:23; Exh. 9 –	
8 Report of Findings	
9 32. Plaintiff understood that Mrs. Beuder	UNCONTROVERTED
10 made improvement of the school's Reading	
11 and Writing Program a top priority and	
12 acknowledged that it was something that	
13 really needed improvement at the school.	
14 <u>Supporting Evidence:</u>	
15 Plaintiff Depo. 68:2-10; Beuder Decl. ¶20;	
16 Beuder Depo. 58:15-61:25, 68:13-71:13,	
17 72:14-73:23; Exh. 9 – Report of Findings	
18 33. Plaintiff was aware that another goal of	UNCONTROVERTED
19 Mrs. Beuder's was to make the School a	
20 more inclusive community, including for	
21 students with special needs, and to	
22 implement a healthy foods plan.	
23 <u>Supporting Evidence:</u>	
24 Plaintiff Depo. 68:11-69:24; Beuder Decl.	
25 ¶20; Beuder Depo. 58:15-61:25, 68:13-	
26 71:13, 72:14-73:23; Exh. 9 – Report of	
27 Findings	
28	

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1 34. Mrs. Beuder asked the 5 th -8 th grade	UNCONTROVERTED
2 teachers to formally apply for their positions	
3 for the 2012-2013 school year, because the	
4 declining enrollment in the upper grades	
5 was a serious concern.	
6 <u>Supporting Evidence:</u>	
7 Beuder Decl. ¶21; Plaintiff Depo. 53:14-19;	
8 Beuder Depo. 155:21-157:4, 159:18-161:19,	
9 166:2-167:3	
10 35. Mrs. Beuder formed a hiring committee	CONTROVERTED
11 which interviewed Plaintiff. Plaintiff did not	The board as a whole made the
12 score well, but Mrs. Beuder still made the	decision to rehire Morrissey-Berru.
13 decision to hire Plaintiff.	[Deposition of Agnes Morrissey-Berru
14 <u>Supporting Evidence:</u>	54:17-55:4]
15 Beuder Decl. ¶21; Plaintiff Depo. 54:17-	Specifically: Q And are you aware of
16 55:1; Beuder Depo. 155:21-157:4, 159:18-	who made the hiring decision?
17 161:19, 162:23-164:2, 175:6-23, 93:18-21,	A The board.
18 94:23-95:2	[Deposition of Agnes Morrissey-Berru
19	55:2-55:4]
20	
21 REPLY: Plaintiff raises no genuine, material dispute. She does not address let alone	
22 dispute that Mrs. Beuder formed a hiring committee which interviewed Plaintiff, that	
23 Plaintiff did not score well, and that Mrs. Beuder still made the decision to hire	
24 Plaintiff. Her purported dispute presents only argumentative, irrelevant surplusage	
25 which is non-responsive to the fact proffered.	
26 Plaintiff makes no objection to the deposition and declaration testimony of Mrs.	
27 Beuder, who has personal knowledge of who made the decision. Instead, she relies	
28 solely on her own testimony that "the board" (not the "board as a whole") made the	

1 hiring decision. Plaintiff's fact is entirely lacking in foundation, and is irrelevant,
 2 improper opinion. There is no evidence that Plaintiff knew who made the decision, or
 3 even whether it was "the board as a whole." (FED. R. EVID. Rule 602. Need for Personal
 4 Knowledge.) There is no genuine issue with respect to this fact, and it should be
 5 deemed uncontroverted.

6 36. Plaintiff was 61 years old when her
 7 contract was renewed for the 2012-2013
 8 school year.

9 **Supporting Evidence:**

10 Beuder Decl. ¶21; Plaintiff Depo. 54:17-
 11 55:1

UNCONTROVERTED

12 37. Mrs. Beuder immediately adopted a
 13 comprehensive reading and writing
 14 curriculum and approach for the school,
 15 called Readers and Writer's Workshop.

16 **Supporting Evidence:**

17 Beuder Decl. ¶22; Exh. 9 – Report of
 18 Findings; Plaintiff Depo. 68:2-10; Beuder
 19 Depo. 75:4-76:5

UNCONTROVERTED

20 38. The Workshop emphasized the use of
 21 short "mini-lessons" and "differentiated"
 22 instruction among students at different
 23 levels with different needs.

24 **Supporting Evidence:**

25 Beuder Decl. ¶22; Declaration of Dr. Sara
 26 Kersey ("Kersey Decl.") ¶¶7,11; Plaintiff
 27 Depo. 98:15-17, 127:1-3; 75:13-19; Beuder
 28

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1	Depo. 75:4-76:5		
2			
3	39. Conferring and mini-lessons were	UNCONTROVERTED	
4	essential aspects of the Reader's and Writer's		
5	workshop.		
6	<u>Supporting Evidence:</u>		
7	Beuder Decl. ¶22; Kersey Decl. ¶¶7, 11;		
8	Plaintiff Depo. 98:15-17, 127:1-3; Exh. 15 -		
9	January 15, 2014 Dr. Kersey Writing	UNCONTROVERTED	
10	Workshop Feedback Template (OLG 430);		
11	Exh. 16 - Email re: Writing Wall		
12	(Morrissey-Berru 94); Exh. 17 - Dear Diary		
13	(Morrissey-Berru 91)		
14	40. Mrs. Beuder hired an outside consultant,		
15	Dr. Sarah Kerseys, as a resource for the	UNCONTROVERTED	
16	teachers to help them implement the		
17	program. Dr. Kersey taught classes for the		
18	teachers about the curriculum, conducted		
19	classroom visits and evaluations based on		
20	those visits, and met with the teachers to		
21	provide observations and give suggestions	UNCONTROVERTED	
22	for improvement. Dr. Kersey observed and		
23	coached all of the teachers, including		
24	Plaintiff, in the classroom.		
25	<u>Supporting Evidence:</u>		
26	Beuder Decl. ¶23; Kersey Decl. ¶¶2-4;		
27	Plaintiff Depo. 78:25-81:19, 123:11-19;		
28			
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		ER 80	

1 Beuder Depo. 77:15-22

2
3 41. By the end of the 2012-2013 school
4 year, Mrs. Beuder felt that Plaintiff had not
5 yet fully implemented the Reader's and
6 Writer's Workshop.

7 **Supporting Evidence:**

8 Beuder Decl. ¶¶24; Kersey Decl. ¶¶4-5;
9 Plaintiff Depo. 107:3-115:2; Beuder Depo.
10 130:25-131:11, 132:16-133:4, 134:23-
11 135:22; 236:17-237:12; Exh. 10 -February
12 12, 2013 Email from Beuder to Plaintiff "I
13 want to touch base with you regarding
14 Reader's Workshop to see if I can help you
15 in any way" (OLG 708); Exh. 11 - June
16 2013 Catholic Identity and Professional
17 Conduct Review Form (OLG 162-163);
18 Exh. 12 - 2013-2014 Employment
19 Agreement (OLG 008-0012)

CONTROVERTED

Morrissey-Berru testified that the
Reader's and Writer's Workshop was a
three year program and therefore did not
have to be immediately implemented.

[Deposition of Agnes Morrissey-
Berru 108:14-108:24]

In addition, Morrissey-Berru
testified that two other teachers
were struggling with the writing
program and were much younger
than she was.

Specifically:
"The 3rd grade reading/writing teacher,
Mrs. Erika Melendez (30-ish) and the 4th
grade reading teacher Ms. Amy Hendry
(30-ish) were also struggling to
implement the writing program. In May,
2014, Erika and Amy both went to
complain to Ms. Beuder, that they could
not implement the writing program
because they did not have enough
training, no resources, and no books.
Mrs. Beuder accommodated Erika and
Amy by purchasing new books and
resources for them for the next school
year. Erika and Amy did not get

demoted, as did I, when they told the principal the writing program was not working out. This is unfair treatment. Why was I demoted when we were all having the same challenges? Several of the other teachers at Mary Star Catholic school, with whom we were trained at the same time, remarked that the new writing program was so inept, that they "did not know what they were doing, and at the end of the school year May, 2014, the teachers were "making it up as they went along'. Those teachers were not demoted either, most of whom were young, except for one 5th grade teacher, who was not demoted." Deposition of Agnes Morrissey-Berru 171:21-172:5, Exhibit 16]

REPLY: Plaintiff raises no genuine, material dispute. She does not address let alone dispute Fact 41 that "By the end of the 2012-2013 school year, Mrs. Beuder felt that Plaintiff had not yet fully implemented the Reader's and Writer's Workshop." Her purported dispute presents only argumentative, irrelevant surplusage which is non-responsive to the fact proffered. Her assertions also lack admissible evidentiary support or are simply immaterial, as discussed below.

• *Morrissey-Berru testified that two other teachers were struggling with the writing program and were much younger than she was. "The 3rd grade reading/writing teacher, Mrs. Erika Melendez (30-ish) and the 4th grade reading teacher Ms. Amy Hendry (30-ish were also struggling to implement the writing program." Plaintiff*

1 provides no such sworn testimony, instead the deposition pages she cites to (1171-172)
2 do not pertain to this assertion. In addition, Plaintiff provides no foundation or personal
3 knowledge for the ages of these other employees, or any foundation or personal
4 knowledge as to how or in what way they were "struggling". (Fed. R. Evid. 602. Need
5 for Personal Knowledge; *See e.g.* Plaintiff Depo. 167:3-6 ["Q. And do you have any
6 knowledge about Ms. Hendry's performance of Readers and Writers Workshop? A.
7 No.") Finally, this purported fact is irrelevant to whether or not by the end of the 2012-
8 2013 school year, Mrs. Beuder felt that Plaintiff had not yet fully implemented the
9 Reader's and Writer's Workshop. (Fed. R. Evid. 402, 403.)

10 • *In May, 2014, Erika and Amy both went to complain to Ms. Beuder, that*
11 *they could not implement the writing program because they did not have enough*
12 *training, no resources, and no books. Mrs. Beuder accommodated Erika and Amy by*
13 *purchasing new books and resources for them for the next school year. Plaintiff's*
14 *purported "fact" is not supported by the evidence cited, constitutes inadmissible hearsay*
15 *based upon multiple levels of hearsay (FED. R. EVID. 801, 802), lacks foundation, is*
16 *not based upon personal knowledge, and is irrelevant. (Fed. R. Evid. 602, 402, 403.)*
17 *Indeed Plaintiff does not allege that she, herself, ever asked for books. (Kantor Decl. in*
18 *Support of Reply, ¶2, Exh. A - Plaintiff Depo. 158:17-23.) Finally, Plaintiff provides no*
19 *evidence that these individuals were similarly situated to her. For example, there is no*
20 *evidence that they, like Plaintiff, failed to even conduct a Workshop lesson during a*
21 *Workshop evaluation. (UF 58, 59)*

22 • *Erika and Amy did not get demoted, as did I, when they told the principal*
23 *the writing program was not working out. Plaintiff has no foundation or personal*
24 *knowledge of what Erika and Amy told the principal and the status of their*
25 *employment. Whatever it is they told the principal is inadmissible hearsay based upon*
26 *multiple levels of hearsay (FED. R. EVID. 801, 802), lacks foundation, is not based*
27 *upon personal knowledge (see e.g. Plaintiff Depo. 167:3-6), and is irrelevant. (Fed. R.*
28

1 Evid. 602, 402, 403.) Indeed, Plaintiff does not allege that *she* ever told the principal
2 the writing program was not working out – nor is there a retaliation claim.

3 • *Several of the other teachers at Mary Star Catholic school, with whom we*
4 *were trained at the same time, remarked that the new writing program was so inept,*
5 *that they "did not know what they were doing, and at the end of the school year May,*
6 *2014, the teachers were "making it up as they went along". Those teachers were not*
7 *demoted either, most of whom were young, except for one 5th grade teacher, who was*
8 *not demoted."* This fact is entirely irrelevant and nonsensical as it has to do with
9 employees of an entirely different school, where Mrs. Beuder was not principal. (Fed.
10 R. Evid. 402, 403) This "fact" also presents inadmissible hearsay (FED. R. EVID. 801,
11 802), lacks foundation, and is not based upon personal knowledge (Fed. R. Evid. 602.)

12 42. Plaintiff's June 2013 Evaluation by Mrs.
13 Beuder provided that Plaintiff needed to
14 continue to implement Reader's and Writer's
15 Workshop, specifically integrating
16 conferring and spending more time on text.
17 Mrs. Beuder reviewed this evaluation with
18 Plaintiff and both signed it.

19 **Supporting Evidence:**

20 Beuder Decl. ¶24; Beuder Depo. 130:25-
21 131:11, 132:16-133:4, 134:23-135:22;
22 Kersey Decl. ¶¶4-5; Plaintiff Depo. 107:3-
23 115:2; Exh. 11 - June 2013 Catholic Identity
24 and Professional Conduct Review Form
25 (OLG 162-163)

CONTROVERTED

Ms. Beuder indicated that Morrissey-
Berru was **meeting expectations** with
her Professional Conduct section of the
Evaluation.

Specifically, Ms. Beuder marked
that Morrissey-Berru "meets
expectations."

Deposition of Agnus Morrissey-Berru
108:25-109:12, Exhibit 11. (June 2013
Catholic Identity and Professional
Conduct Review Form (OLG 162-
163))
Additionally, in March 2013, Principal
April Beuder performed a classroom
observation of Morrissey-Berru's
teaching. On the review, Ms. Beuder
marked either "Innovating" or

1 “Implementing” to describe various
2 aspects of Morrissey-Berru’s
3 performance. Additionally, Ms. Beuder
4 noted that Morrissey-Berru has an
5 “[e]xcellent use of technology” and
6 stated that “Ms. Morrissey-Berru
7 demonstrated calm under pressure
8 when she had to switch gears due to
9 technical difficulties!”
10 Exhibit 5 - Defendant’s Document
11 Production [OLG 0146-0148]

12 **REPLY:** Plaintiff raises no genuine, material dispute. She does not address let alone
13 dispute Fact 42 that "Plaintiff's June 2013 Evaluation by Mrs. Beuder provided that
14 Plaintiff needed to continue to implement Reader's and Writer's Workshop, specifically
15 integrating conferring and spending more time on text. Mrs. Beuder reviewed this
16 evaluation with Plaintiff and both signed it." Her purported dispute presents only
17 argumentative, irrelevant surplusage which is non-responsive to the fact proffered.

18 Plaintiff's note with regard to a March 2013 classroom observation of a "math"
19 class has nothing to do with Fact 42 which pertains to a *June* 2013 Evaluation. There is
20 no genuine issue with respect to this fact, and it should be deemed uncontroverted.

21 43. When Mrs. Beuder and Plaintiff met to
22 discuss the renewal of Plaintiff's contract for
23 the 2013-2014 school year, Mrs. Beuder
24 added an additional stipulation to Plaintiff's
25 2013-2014 contract that stated "fully
26 implement readers/writers workshop."

27 **Supporting Evidence:**

CONTROVERTED

Morrissey-Berru testified that the Reader's and Writer's Workshop was a three year program and therefore did not have to be immediately implemented.
[Deposition of Agnes Morrissey-Berru 108:14-108:24; 111:12111:18; 112:21-113:1, Exhibit 12]

1 Beuder Decl. ¶25; Beuder Depo. 130:25-
 2 131:11, 132:16-133:4, 134:23-135:22,
 3 103:13-104:2; Kersey Decl. ¶¶4-5; Plaintiff
 4 Depo. 107:3-115:2; Exh. 12 - 2013-2014
 5 Employment Agreement (OLG 008-0012)
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In addition, Morrissey-Berru testified
 that two other teachers were struggling
 with the writing program and were
 much younger than she was.

Specifically:

**“The 3rd grade reading/writing
 teacher, Mrs. Erika Melendez (30-
 ish) and the 4th grade reading
 teacher Ms. Amy Hendry (30-ish
 were also struggling to implement
 the writing program. In May, 2014,
 Erika and Amy both went to complain
 to Ms. Beuder, that they could not
 implement the writing program
 because they did not have enough
 training, no resources, and no books.
 Mrs. Beuder accommodated Erika and
 Amy by purchasing new books and
 resources for them for the next school
 year. Erika and Amy did not get
 demoted, as did I, when they told the
 principal the writing program was not
 working out. This is unfair treatment.
 Why was I demoted when we were all
 having the same challenges? Several of
 the other teachers at Mary Star,
 Catholic school, with whom we were**

1 trained at the same time, remarked that
 2 the new writing program was so inept,
 3 that they "did not know what they were
 4 doing, and at the end of the school year
 5 May, 2014, the teachers were "making
 6 it up as they went along". Those
 7 teachers were not demoted either, most
 8 of whom were young, except for one
 9 5th grade teacher, who was not
 10 demoted."

11 Deposition of Agnes Morrissey-Berru
 12 171:21-172:5, Exhibit 16]

13 **REPLY:** Plaintiff raises no genuine, material dispute. She does not address let alone
 14 dispute Fact 43 that "When Mrs. Beuder and Plaintiff met to discuss the renewal of
 15 Plaintiff's contract for the 2013-2014 school year, Mrs. Beuder added an additional
 16 stipulation to Plaintiff's 2013-2014 contract that stated "fully implement readers/writers
 17 workshop." Her purported dispute presents only argumentative, irrelevant surplusage
 18 which is non-responsive to the fact proffered. Her assertions also lack admissible
 19 evidentiary support or are simply immaterial, as discussed below.

20 • *Morrissey-Berru testified that two other teachers were struggling with the*
 21 *writing program and were much younger than she was. "The 3rd grade reading/writing*
 22 *teacher, Mrs. Erika Melendez (30-ish) and the 4th grade reading teacher Ms. Amy*
 23 *Hendry (30-ish were also struggling to implement the writing program."* Plaintiff
 24 provides no such sworn testimony, instead the deposition pages she cites to (171-172)
 25 do not pertain to this assertion. In addition, Plaintiff provides no foundation or personal
 26 knowledge for the ages of these other employees, or any foundation or personal
 27 knowledge as to how or in what way they were "struggling". (Fed. R. Evid. 602. Need
 28 for Personal Knowledge; *See e.g.* Plaintiff Depo. 167:3-6 ["Q. And do you have any

1 knowledge about Ms. Hendry's performance of Readers and Writers Workshop? A.
2 No.") Finally, this purported fact is irrelevant to whether or not by the end of the 2012-
3 2013 school year, Mrs. Beuder felt that Plaintiff had not yet fully implemented the
4 Reader's and Writer's Workshop. (Fed. R. Evid. 402, 403.)

5 • *In May, 2014, Erika and Amy both went to complain to Ms. Beuder, that*
6 *they could not implement the writing program because they did not have enough*
7 *training, no resources, and no books. Mrs. Beuder accommodated Erika and Amy by*
8 *purchasing new books and resources for them for the next school year. Plaintiff's*
9 *purported "fact" is not supported by the evidence cited, constitutes inadmissible hearsay*
10 *based upon multiple levels of hearsay (FED. R. EVID. 801, 802), lacks foundation, is*
11 *not based upon personal knowledge, and is irrelevant. (Fed. R. Evid. 602, 402, 403.)*
12 *Indeed Plaintiff does not allege that she herself, ever asked for books. (Kantor Decl. in*
13 *Support of Reply, ¶2, Exh. A - Plaintiff Depo. 158:17-23.)*

14 • *Erika and Amy did not get demoted, as did I, when they told the principal*
15 *the writing program was not working out. Plaintiff has no foundation or personal*
16 *knowledge of what Erika and Amy told the principal and the status of their*
17 *employment. Whatever it is they told the principal is inadmissible hearsay based upon*
18 *multiple levels of hearsay (FED. R. EVID. 801, 802), lacks foundation, is not based*
19 *upon personal knowledge (see e.g. Plaintiff Depo. 167:3-6), and is irrelevant. (Fed. R.*
20 *Evid. 602, 402, 403.) Indeed, Plaintiff does not allege that she ever told the principal*
21 *the writing program was not working out – nor is there a retaliation claim. Finally,*
22 *Plaintiff provides no evidence that these individuals were similarly situated to her. For*
23 *example, there is no evidence that they, like Plaintiff, failed to even conduct a*
24 *Workshop lesson during a Workshop evaluation. (UF 58, 59)*

25 • *Several of the other teachers at Mary Star Catholic school, with whom we*
26 *were trained at the same time, remarked that the new writing program was so inept,*
27 *that they "did not know what they were doing, and at the end of the school year May,*
28 *2014, the teachers were "making it up as they went along". Those teachers were not*

1 demoted either, most of whom were young, except for one 5th grade teacher, who was
 2 not demoted." This fact is entirely irrelevant and nonsensical as it has to do with
 3 employees of an entirely different school, where Mrs. Beuder was not principal. (Fed.
 4 R. Evid. 402, 403) This "fact" also presents inadmissible hearsay (FED. R. EVID. 801,
 5 802), lacks foundation, and is not based upon personal knowledge (Fed. R. Evid. 602.)

6 44. Mrs. Beuder told Plaintiff that it was an
 7 expectation for the next school year that she
 8 fully implement Reader's and Writer's
 9 Workshop.

10 **Supporting Evidence:**

11 Plaintiff Depo. 107:3-115:2; Beuder Depo.
 12 130:25-131:11, 132:16-133:4, 134:23-
 13 135:22; Exh. 12 -2013-2014 Employment
 14 Agreement (OLG 008-0012); Exh. 11 - June
 15 2013 Catholic Identity and Professional
 16 Conduct Review Form (OLG 162-163);
 17 Beuder Decl. ¶25

CONTROVERTED

While Morrissey-Berru understood that it was an expectation that she fully implement the Reader's and Writer's Workshop, Morrissey-Berru also that the Reader's and Writer's Workshop was a three year program and this was only the second year.

[Deposition of Agnes Morrissey-Berru 108:14-108:24; 111:12-111:18; 112:21-115:2, Exhibit 12]

18 **REPLY:** Plaintiff raises no genuine, material dispute. Instead, she concedes that
 19 "Morrissey-Berru understood that it was an expectation that she fully implement the
 20 Reader's and Writer's Workshop." Her purported dispute presents only argumentative,
 21 irrelevant surplusage which is non-responsive to the fact proffered. There is no genuine
 22 issue with respect to this fact, and it should be deemed uncontroverted.

23 45. During the 2013-2014 school year, Dr.
 24 Kersey provided extra support for Plaintiff
 25 with the implementation of the Workshop.
 26 Plaintiff understood that Mrs. Beuder was
 27 trying to provide her with help in
 28

UNCONTROVERTED

1	implementing the Workshop.	
2	<u>Supporting Evidence:</u>	
3	Beuder Decl. ¶26; Kersey Decl. ¶¶3-5, 9;	
4	Plaintiff Depo. 78:25-82:18, 83:4-6, 117:7-	
5	14, 118:24-119:25, 123:11-25, 86:24-87:5;	
6	Beuder Depo. 134:23-135:22; Exh. 15 -	
7	January 15, 2014 Dr. Kersey Writing	
8	Workshop Feedback Template (OLG 430);	
9	Exh. 10 - February 12, 2013 Email from	
10	Beuder to Plaintiff "I want to touch base	
11	with you regarding Reader's Workshop to	
12	see if I can help you in any way" (OLG	
13	708); Exh. 13 - October 17, 2013 Emails	
14	between Beuder and Plaintiff re. "full	
15	implementation of RW is the school-wide	
16	expectation at this point." (Morrissey-Berru	
17	90)	
18	46. During the 2013-2014 school year Mrs.	CONTROVERTED
19	Beuder and Dr. Kersey continued to have	Morrissey-Berru testified that two
20	concerns about Plaintiff's failure to	other teachers were struggling with the
21	implement Reader's and Writer's Workshop.	writing program and were much
22	<u>Supporting Evidence:</u>	younger than she was.
23	Beuder Decl. ¶26; Kersey Decl. ¶¶2-14;	Specifically:
24	Plaintiff Depo. 83:7-90:18, 92:9-95:6,	"The 3rd grade reading/writing
25	97:18-98:17, 102:3-15, 105:22-131:8;	teacher, Mrs. Erika Melendez (30-
26	Beuder Depo. 138:2-140:9, 240:15-241:14;	ish) and the 4 th grade reading
27	Exh. 13 - October 17, 2013 Emails between	teacher Ms. Amy Hendry (30-ish
28		

<p>1 Beuder and Plaintiff re. "full implementation 2 of RW is the school-wide expectation at this 3 point." (Morrissey-Berru 90); Exh. 14 - 4 November 14, 2013 Catholic Identity and 5 Professional Conduct Review Form (OLG 6 195-196); Exh. 15 - January 15, 2014 Dr. 7 Kersey Writing Workshop Feedback 8 Template (OLG 430); Exh. 16 - Email re: 9 Writing Wall (Morrissey-Berru 94); Exh. 17 10 -Dear Diary (Morrissey-Berru 91); Exh. 18 11 - Peer Feedback re. Plaintiff's Student 12 Writing Lesson (OLG 210-213); Exh. 19 - 13 March 5, 2014 Classroom Observation 14 Report (OLG 0166-0169) 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>were also struggling to implement the writing program. In May, 2014, Erika and Amy both went to complain to Ms. Beuder, that they could not implement the writing program because they did not have enough training, no resources, and no books. Mrs. Beuder accommodated Erika and Amy by purchasing new books and resources for them for the next school year. Erika and Amy did not get demoted, as did I, when they told the principal the writing program was not working out. This is unfair treatment. Why was I demoted when we were all having the same challenges? Several of the other teachers at Mary Star Catholic school, with whom we were trained at the same time, remarked that the new writing program was so inept, that they "did not know what they were doing, and at the end of the school year May, 2014, the teachers were "making it up as they went along'. Those teachers were not demoted either, most of whom were young, except for one 5th grade</p>
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teacher, who was not demoted.”

Deposition of Agnes Morrissey-Berru
171:21-172:5, Exhibit 16

Additionally, in March 2013, Principal
April Beuder performed a classroom
observation of Morrissey-Berru’s
teaching. On the review, Ms. Beuder
marked either “Innovating” or
“Implementing” to describe various
aspects of Morrissey-Berru’s
performance. Additionally, Ms. Beuder
noted that Morrissey-Berru has an
“[e]xcellent use of technology” and
stated that “Ms. Morrissey-Berru
demonstrated calm under pressure
when she had to switch gears due to
technical difficulties!”

Exhibit 5 - Defendant’s Document
Production [OLG 0146-0148]

REPLY: Plaintiff raises no genuine, material dispute. She does not address let alone
dispute Fact 46 that "During the 2013-2014 school year Mrs. Beuder and Dr. Kersey
continued to have concerns about Plaintiff's failure to implement Reader's and Writer's
Workshop." Her purported dispute presents only argumentative, irrelevant surplusage
which is non-responsive to the fact proffered. Her assertions also lack admissible
evidentiary support or are simply immaterial, as discussed below.

Her purported dispute presents only argumentative, irrelevant surplusage which
is non-responsive to the fact proffered. Her assertions also lack admissible evidentiary
support or are simply immaterial, as discussed below.

1 • *Morrissey-Berru testified that two other teachers were struggling with the*
2 *writing program and were much younger than she was. "The 3rd grade reading/writing*
3 *teacher, Mrs. Erika Melendez (30-ish) and the 4th grade reading teacher Ms. Amy*
4 *Hendry (30-ish were also struggling to implement the writing program."* Plaintiff
5 provides no such sworn testimony, instead the deposition pages she cites to (171-172)
6 do not pertain to this assertion. In addition, Plaintiff provides no foundation or personal
7 knowledge for the ages of these other employees, or any foundation or personal
8 knowledge as to how or in what way they were "struggling". (Fed. R. Evid. 602. Need
9 for Personal Knowledge; *See e.g.* Plaintiff Depo. 167:3-6 ["Q. And do you have any
10 knowledge about Ms. Hendry's performance of Readers and Writers Workshop? A.
11 No.") Finally, this purported fact is irrelevant to whether or not by the end of the 2012-
12 2013 school year, Mrs. Beuder felt that Plaintiff had not yet fully implemented the
13 Reader's and Writer's Workshop. (Fed. R. Evid. 402, 403.)

14 • *In May, 2014, Erika and Amy both went to complain to Ms. Beuder, that*
15 *they could not implement the writing program because they did not have enough*
16 *training, no resources, and no books. Mrs. Beuder accommodated Erika and Amy by*
17 *purchasing new books and resources for them for the next school year. Plaintiff's*
18 *purported "fact" is not supported by the evidence cited, constitutes inadmissible hearsay*
19 *based upon multiple levels of hearsay (FED. R. EVID. 801, 802), lacks foundation, is*
20 *not based upon personal knowledge, and is irrelevant. (Fed. R. Evid. 602, 402, 403.)*
21 *Indeed Plaintiff does not allege that she, herself, ever asked for books. (Kantor Decl. in*
22 *Support of Reply, ¶2, Exh. A - Plaintiff Depo. 158:17-23.) Finally, Plaintiff provides no*
23 *evidence that these individuals were similarly situated to her. For example, there is no*
24 *evidence that they, like Plaintiff, failed to even conduct a Workshop lesson during a*
25 *Workshop evaluation. (UF 58, 59)*

26 • *Erika and Amy did not get demoted, as did I, when they told the principal*
27 *the writing program was not working out. Plaintiff has no foundation or personal*
28 *knowledge of what Erika and Amy told the principal and the status of their*

1 employment. Whatever it is they told the principal is inadmissible hearsay based upon
 2 multiple levels of hearsay (FED. R. EVID. 801, 802), lacks foundation, is not based
 3 upon personal knowledge (see e.g. Plaintiff Depo. 167:3-6), and is irrelevant. (Fed. R.
 4 Evid. 602, 402, 403.) Indeed, Plaintiff does not allege that *she* ever told the principal
 5 the writing program was not working out – nor is there a retaliation claim.

6 • *Several of the other teachers at Mary Star Catholic school, with whom we*
 7 *were trained at the same time, remarked that the new writing program was so inept,*
 8 *that they "did not know what they were doing, and at the end of the school year May,*
 9 *2014, the teachers were "making it up as they went along". Those teachers were not*
 10 *demoted either, most of whom were young, except for one 5th grade teacher, who was*
 11 *not demoted."* This fact is entirely irrelevant and nonsensical as it has to do with
 12 employees of an entirely different school, where Mrs. Beuder was not principal. (Fed.
 13 R. Evid. 402, 403) This "fact" also presents inadmissible hearsay (FED. R. EVID. 801,
 14 802), lacks foundation, and is not based upon personal knowledge (Fed. R. Evid. 602.)

15 47. Dr. Kersey did not see evidence that
 16 Plaintiff was properly conferring with the
 17 students or that the students were writing in
 18 the classroom.

19 **Supporting Evidence:**

20 Beuder Decl. ¶26; Kersey Decl. ¶¶6-14;
 21 Plaintiff Depo. 102:3-15, 106:25-107:2;
 22 83:7-14; 86:5-10; Exh. 15 - January 15,
 23 2014 Dr. Kersey Writing Workshop
 24 Feedback Template (OLG 430); Exh. 16 -
 25 Email re: Writing Wall (Morrissey-Berru
 26 94); Exh. 17 - Dear Diary (Morrissey-Berru
 27 91); Mitchell Decl. ¶¶10-11

CONTROVERTED

In March 2013, Principal April Beuder performed a classroom observation of Morrissey-Berru's teaching. On the review, Ms. Beuder marked either "Innovating" or "Implementing" to describe various aspects of Morrissey-Berru's performance. Additionally, Ms. Beuder noted that Morrissey-Berru has an "[e]xcellent use of technology" and stated that "Ms. Morrissey-Berru demonstrated calm under pressure when she had to switch gears due to technical difficulties!"

Exhibit 5 - Defendant's Document
 Production [OLG 0146-0148]

1 **REPLY:** Plaintiff raises no genuine, material dispute. Her assertions are non-
 2 responsive to this fact, as Fact 47 has to do with Dr. Kersey, and Plaintiff's purported
 3 dispute presents only argumentative, irrelevant surplusage which does not address Dr.
 4 Kersey at all, let alone whether Dr. Kersey saw evidence of conferring or writing in
 5 Plaintiff's classroom. There is no genuine issue with respect to this fact, and it should be
 6 deemed uncontroverted.

7 48. Dr. Kersey was critical of Plaintiff's
 8 teaching. Dr. Kersey gave Plaintiff
 9 suggestions for improvement.

10 **Supporting Evidence:**

11 Plaintiff Depo. 83:7-90:18, 97:18-98:17,
 12 105:14-107:2; Beuder Depo. 138:2-140:9;
 13 Kersey Depo. ¶¶2-14; Beuder Depo. ¶26;
 14 Exh. 15 - January 15, 2014 Dr. Kersey
 15 Writing Workshop Feedback Template
 16 (OLG 430); Exh. 16 - Email re: Writing
 17 Wall (Morrissey-Berru 94); Exh. 17 - Dear
 18 Diary (Morrissey-Berru 91)

CONTROVERTED

In March 2013, Principal April Beuder performed a classroom observation of Morrissey-Berru's teaching. On the review, Ms. Beuder marked either "Innovating" or "Implementing" to describe various aspects of Morrissey-Berru's performance. Additionally, Ms. Beuder noted that Morrissey-Berru has an "[e]xcellent use of technology" and stated that "Ms. Morrissey-Berru demonstrated calm under pressure when she had to switch gears due to technical difficulties!"

Exhibit 5 - Defendant's Document
 Production [OLG 0146-0148]

21 **REPLY:** Plaintiff raises no genuine, material dispute. Her assertions are non-
 22 responsive to this fact, as Fact 48 pertains to Dr. Kersey, and Plaintiff's purported
 23 dispute presents only argumentative, irrelevant surplusage which does not address Dr.
 24 Kersey at all, let alone whether she was critical of Plaintiff's teaching or gave Plaintiff
 25 suggestions for improvement. There is no genuine issue with respect to this fact, and it
 26 should be deemed uncontroverted.

27 49. Plaintiff admits that she put up student
 28

CONTROVERTED

1 work that she had not graded yet up in the
2 classroom for Dr. Kersey's benefit and then
3 took it down after Dr. Kersey left the
4 classroom.

5 **Supporting Evidence:**

6 Plaintiff Depo. 92:14-95:6; Exh. 16 - Email
7 re: Writing Wall (Morrissey-Berru 94);
8 Kersey Decl. ¶10; Exh. 15 -January 15,
9 2014 Dr. Kersey Writing Workshop
10 Feedback Template (OLG 430)

Morrissey-Berru testified that she
had items on the wall everyday and
it wasn't because of Dr. Kersey's
scheduled observation.

[Deposition of Agnes Morrissey-Berru
92:14-94:20]

Specifically:

Q Okay. I'm going to -- still on this
document, is that something that
you did with regularity, put things
up to show Dr. Kersey and then
remove them afterwards?

A Well, no. I had them up every day
on the wall.

[Deposition of Agnes Morrissey-Berru
94:15-94:20]

15 **REPLY:** Plaintiff raises no genuine, material dispute. Plaintiff's purported dispute
16 presents only argumentative, irrelevant surplusage which does not deny Fact 49 that
17 Plaintiff put up student work that she had not graded yet for Dr. Kersey's benefit and
18 then took it down after Dr. Kersey left the classroom.

19 Indeed, Plaintiff cites to the same deposition testimony of Plaintiff that
20 Defendant cites to in support of Fact 49, and cannot quote selectively therefrom in an
21 attempt to create an issue. The testimony is as follows:

22 "Q. Okay. So I want to call your attention to the third paragraph [Exh. 16 - Email re.
23 Writing Wall (Morrissey-Berru 94) where you're discussing putting papers up on the
24 wall for observation and then taking them down when Dr. Kersey -- A. Uh-huh. Q --
left. Could you talk to me a little bit about that. A. I put them up on the wall to show
as evidence, and then I took them down so I could read them, correct them. Q. So you
25 hadn't yet corrected them? A. Probably not. ... Q. Yes. Okay. So -- yes, it says here,
or my understanding of what it says, is that you put the papers on the wall for the
26 observation and then took them down after the observation; is that right? A. Yes."

27 There is no genuine issue with respect to this fact, and it should be deemed
28 uncontroverted.

1 50. When one of the School teachers visited
 2 Plaintiff's class for a Peer Visit, Plaintiff re-
 3 taught the same lesson to her students that
 4 she had taught them the day before. Mrs.
 5 Beuder spoke with Plaintiff about this.

6 **Supporting Evidence:**

7 Plaintiff Depo. 118:24-121:6; Beuder Decl.
 8 ¶29; Kersey Decl. ¶10

CONTROVERTED

Morrissey-Berru testified that Mr. Moore was visiting the class and in the process of getting his credential. He requested Morrissey-Berru to observe a class on social studies. Morrissey-Berru said she could reteach the lesson she did yesterday which took a total time of 15 minutes. **Morrissey-Berru testified she did this so that Mr. Moore could meet his school requirement.**

[Deposition of Agnes Morrissey-Berru 1120:4-121:3]

15 **REPLY:** Plaintiff raises no genuine, material dispute. Instead she concedes that she
 16 retaught a lesson to a teacher that she had taught her class the day before. She does not
 17 deny that Mrs. Beuder spoke to Plaintiff about this. Plaintiff's purported dispute
 18 presents only argumentative, irrelevant surplusage which is non-responsive to the fact
 19 proffered. There is no genuine issue with respect to this fact, and it should be deemed
 20 uncontroverted.

23 51. Dr. Kersey relayed her concerns with
 24 Plaintiff's failure to implement Reader's and
 25 Writer's Workshop to Mrs. Beuder on many
 26 occasions.

27 **Supporting Evidence:**

CONTROVERTED

Morrissey-Berru has multiple positive observations that reflect her teaching was at the level of "innovating" or "implementing" from 2012-2014. These observations were done by Ms. Beuder.

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1 Plaintiff Depo. 84:14-86:4; Beuder Decl. 2 ¶26; Kersey Decl. ¶¶5, 12-13, Beuder Depo. 3 125:21-126:9, 138:2-140:9, 202:25-203:13; 4 Exh. 15 -January 15, 2014 Dr. Kersey 5 Writing Workshop Feedback Template 6 (OLG 430) 7 8 9 10 11	[Deposition of April Beuder 189:11-193:20, Exhibit 9] Exhibit 5 - Defendant's Document Production [OLG 0146-0148] [OLG 0170-0172] In a Professional Conduct Review Form dated November 14, 2013, Morrissey-Berru is rated as Meets Expectations. [Defendant's Exhibit 14 - November 14, 2013 Catholic Identity and Professional Conduct Review Form (OLG 195-196)]
12 REPLY: Plaintiff raises no genuine, material dispute. Her assertions are non-responsive to this fact, as Fact 51 has to do with Dr. Kersey, and Plaintiff's purported 13 dispute presents only argumentative, irrelevant surplusage which does not address Dr. 14 Kersey at all, let alone whether she relayed her concerns with Plaintiff's failure to 15 implement Reader's and Writer's Workshop to Mrs. Beuder. There is no genuine issue 16 with respect to this fact, and it should be deemed uncontroverted. 17	
18 52. Mrs. Beuder spoke with Plaintiff about 19 concerns regarding her implementation of 20 Readers & Writers Workshop and need to 21 confer with her students on multiple 22 occasions. 23 <u>Supporting Evidence:</u> 24 Plaintiff Depo. 107:3-9, 107:25 – 108:17, 25 Beuder Decl. ¶¶24-32; Beuder Depo. 122:4- 26 14, 130:25-131:11; 236:5-237:12; Kersey 27 Decl. ¶¶12-13; Mitchell Decl. ¶¶9, 13 28	CONTROVERTED Morrissey-Berru has multiple positive observations that reflect her teaching was at the level of "innovating" or "implementing" from 2012-2014. These observations were done by Ms. Beuder. [Deposition of April Beuder 189:11-193:20, Exhibit 9] Exhibit 5 - Defendant's Document Production [OLG 0146-0148] [OLG 0170-0172]

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1 **REPLY:** Plaintiff raises no genuine, material dispute. Plaintiff's purported dispute
2 presents only argumentative, irrelevant surplusage which does not address whether or
3 not Mrs. Beuder spoke to Plaintiff about concerns regarding her implementation of
4 Readers & Writers Workshop and need to confer with students.

5 In addition, the evidence relied upon by Plaintiff does not pertain to Reader's and
6 Writer's Workshop. Exhibit 9 to Mrs. Beuder's deposition is a review of a *science* class,
7 not reading and writing, Exhibit 5 – Defendant's Document Production, OLG 146-148
8 which is a review of a *math* class, not reading and writing, and OLG 170-172, which is
9 a review from November 2014, after Plaintiff was no longer teaching reading and
10 writing. Thus, Plaintiff's purported dispute is not supported by the evidence she relies
11 on. There is no genuine issue with respect to this fact, and it should be deemed
12 uncontroverted.

14 53. Plaintiff understood that Dr. Kersey and	CONTROVERTED
15 Mrs. Beuder were not pleased with her	Morrissey-Berru has multiple positive
16 performance.	observations that reflect her teaching
17 <u>Supporting Evidence:</u>	was at the level of "innovating" or
18 Plaintiff Depo. 83:7-90:18, 92:9-95:6,	"implementing" from 2012-2014.
19 97:18-98:1, 102:3-15, 105:22-131:8; Beuder	These observations were done by Ms.
20 Depo. 122:4-14, 130:25-131:11; 236:5-	Beuder.
21 237:12; Kersey Decl. ¶¶2-14; Beuder Decl.	Deposition of April Beuder 189:11-
22 ¶¶24-32; Exh. 13 - October 17, 2013 Emails	193:20, Exhibit 9] Exhibit 5 -
23 between Beuder and Plaintiff re. "full	Defendant's Document Production [OLG
24 implementation of RW is the school-wide	0146-0148] [OLG 0170-0172
25 expectation at this point." (Morrissey-Berru	
26 90); Exh. 14 - November 14, 2013 Catholic	
27 Identity and Professional Conduct Review	
28	

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1	Form (OLG 195-196); Exh. 15 - January 15,	
2	2014 Dr. Kersey Writing Workshop	
3	Feedback Template (OLG 430); Exh. 16 -	
4	Email re: Writing Wall (Morrissey-Berru	
5	94); Exh. 17 -Dear Diary (Morrissey-Berru	
6	91); Exh. 18 - Peer Feedback re. Plaintiff's	
7	Student Writing Lesson (OLG 210-213);	
8	Exh. 19 - March 5, 2014 Classroom	
9	Observation Report (OLG 0166-0169);	
10	Mitchell Decl. ¶¶9, 13	
11	REPLY: Plaintiff raises no genuine, material dispute. Her assertions are non-	
12	responsive to this fact, as Fact 53 has to do with Plaintiff's understanding that Dr.	
13	Kersey and Mrs. Beuder were not pleased with her performance. Plaintiff does not cite	
14	to Plaintiff's deposition testimony or a declaration with regard to her own	
15	understanding, nor does she object to any of Defendant's evidence in support of this	
16	fact. (See e.g. Plaintiff Depo. 98:4-6 ["Q. You felt that Dr. Kersey wasn't pleased with	
17	your performance? A. Yes."].) In addition, Plaintiff's purported dispute presents only	
18	argumentative, irrelevant surplusage which does not address Dr. Kersey at all, nor	
19	whether she was not pleased with Plaintiff's performance. There is no genuine issue	
20	with respect to this fact, and it should be deemed uncontroverted.	
21	54. As of October 17, 2013, full	CONTROVERTED In a Professional Conduct Review Form dated November 14, 2013, Ms. Beuder states that "Full implementation can be expected by January 2014." Defendant's Exhibit 14 - November
22	implementation of readers workshop was the	
23	school wide expectation.	
24	<u>Supporting Evidence:</u>	
25	Plaintiff Depo. 116:9-22; Beuder Decl. ¶28;	
26	Beuder Depo. 230:12-18; Exh. 13 - October	
27	17, 2013 Emails between Beuder and	
28		

1 Plaintiff re. "full implementation of RW is	14, 2013 Catholic Identity and
2 the school-wide expectation at this point."	Professional Conduct Review Form
3 (Morrissey-Berru 90)	(OLG 195-196)

4 **REPLY:** Plaintiff raises no genuine, material dispute. Her assertions are non-
5 responsive to this fact, as Fact 54 has to do with the expectation in "*October 17, 2013*."
6 (Exh. 13 - October 17, 2013 Emails between Beuder and Plaintiff re. "full
7 implementation of RW is the school-wide expectation at this point.") Plaintiff's
8 purported dispute pertains to the expectation in November. In any event, Plaintiff's
9 concession that full implementation can be expected by January 2014 still has the same
10 material impact – that implementation *was expected* of Plaintiff. There is no genuine
11 issue with respect to this fact, and it should be deemed uncontroverted.

13 55. In Plaintiff's November 14, 2013	CONTROVERTED
14 Professional Conduct Review Form, which	In that same Professional Conduct
15 Mrs. Beuder reviewed with Plaintiff, Mrs.	Review Form, Ms. Beuder rates
16 Beuder stated that Plaintiff needed	Morrissey-Berru as Meets
17 improvement in Readers Workshop,	Expectations in Professional Conduct.
18 conferring, and starting writing.	Additionally, the word choice on the
19 <u>Supporting Evidence:</u>	Professional Conduct Review Form
20 Plaintiff Depo. 117:15-118:23; Beuder Decl.	does not indicate that she needed
21 ¶28; Exh. 14 - November 14, 2013 Catholic	improvement. Instead, the wording is
22 Identity and Professional Conduct Review	very encouraging - "continue to
23 Form (OLG 195-196); Kersey Decl. ¶¶2-14	implement Readers Workshop –
24	specifically the conferring."
25	Defendant's Exhibit 14 - November
26	14, 2013 Catholic Identity and
27	Professional Conduct Review Form
28	(OLG 195-196)
	Morrissey-Berru has multiple positive

1		observations that reflect her teaching
2		was at the level of “innovating” or
3		“implementing” from 2012-2014.
4		These observations were done by Ms.
5		Beuder.
6		[Deposition of April Beuder 189:11-
7		193:20, Exhibit 9] Exhibit 5 -
8		Defendant’s Document Production [OLG
9		0146-0148] [OLG 0170-0172]
10	REPLY: Plaintiff raises no genuine, material dispute. Plaintiff’s purported dispute	
11	presents only argumentative, irrelevant surplusage about other feedback in the form, her	
12	argumentative and irrelevant take on the tone of the feedback, and argumentative,	
13	irrelevant surplusage about other forms which are not the subject of Fact 55. There is no	
14	genuine issue with respect to this fact, and it should be deemed uncontroverted.	
15	56. In February 2014, all of the teachers	UNCONTROVERTED
16	were asked to bring a set of writing samples	
17	from one of their lessons to be used for a	
18	Peer Lesson Study. The teachers were	
19	informed about this exercise at least a month	
20	before it occurred.	
21	<u>Supporting Evidence:</u>	
22	Plaintiff Depo. 121:7-123:10, Beuder Decl.	
23	¶30; Exh. 18 - Peer Feedback re. Plaintiff’s	
24	Student Writing Lesson (OLG 210-213)	
25	57. For the Peer Lesson Study, Plaintiff	CONTROVERTED
26	brought in a poor example of student work.	
27	The teachers who reviewed the work said it	
28		In that same set of feedback forms, teachers also stated “lots of

1 was not developed. Plaintiff acknowledges
2 that this feedback was accurate.

3 **Supporting Evidence:**

4 Plaintiff Depo. 121:7-123:10, Beuder Decl.
5 ¶30; Exh. 18 - Peer Feedback re. Plaintiff's
6 Student Writing Lesson (OLG 210-213)

good ideas" and "evidence of
student choice (and engagement)."
Defendant's Exh. 18 - Peer Feedback
re. Plaintiff's Student Writing Lesson
(OLG 211)

7 **REPLY:** Plaintiff raises no genuine, material dispute. Plaintiff's purported dispute
8 presents only argumentative, irrelevant surplusage about other feedback in the forms.
9 There is no genuine issue with respect to this fact, and it should be deemed
10 uncontroverted.
11

12 58. In March of 2014, Mrs. Beuder came to
13 Plaintiff's classroom for a formal
14 observation and evaluation of a Workshop
15 lesson, which had been scheduled in
16 advance.

17 **Supporting Evidence:**

18 Plaintiff Depo. 124:1-129:8, 130:15-131:8;
19 Beuder Decl. ¶31; Exh. 19 - March 5, 2014
20 Classroom Observation Report (OLG 0166-
21 0169); Beuder Depo. 192:23-193:4

UNCONTROVERTED

22 59. Mrs. Beuder did not complete the
23 evaluation because she did not feel that
24 Plaintiff had conducted a Workshop lesson.

25 **Supporting Evidence:**

26 Plaintiff Depo. 124:1-129:8, 130:15-131:8;
27 Beuder Decl. ¶31; Exh. 19 - March 5, 2014
28

UNCONTROVERTED

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1 Classroom Observation Report (OLG 0166-	
2 0169): Kersey Decl. ¶7; Morrissey Decl.	
3 ¶¶10-11	
4 60. Mrs. Beuder also instituted a healthy	CONTROVERTED Morrissey-Berru has multiple positive reviews without any mention of these unhealthy foods. [Deposition of April Beuder 189:11-193:20, Exhibit 9] Exhibit 5 - Defendant's Document Production [OLG 0146-0148] [OLG 0170-0172]
5 foods program in the school, but Plaintiff	
6 herself would bring in unhealthy foods for	
7 the students. Parents and teachers would	
8 complain. Plaintiff continued to maintain an	
9 "extra credit" policy even though Mrs.	
10 Beauder had abolished "extra credit."	
11 <u>Supporting Evidence:</u>	
12 Plaintiff Depo. 141:19-142:24; Beuder Decl.	
13 ¶33, Beuder Depo. 204:15-205:19, 242:10-	
14 17	
15 REPLY: Plaintiff raises no genuine, material dispute. Plaintiff's purported dispute	
16 presents only argumentative, irrelevant surplusage which does not address, let alone	
17 dispute, the fact that (1)Mrs. Beuder also instituted a healthy foods program in the	
18 school, (2) Plaintiff herself would bring in unhealthy foods for the students, (3) Parents	
19 and teachers would complain, and (4) Plaintiff continued to maintain an "extra credit"	
20 policy even though Mrs. Beauder had abolished "extra credit." Similarly, Plaintiff does	
21 not object to any of Defendant's evidence in support of this fact. There is no genuine	
22 issue with respect to this fact, and it should be deemed uncontroverted.	
23	
24 61. Mrs. Beuder received parental	CONTROVERTED Morrissey-Berru has multiple positive reviews without any mention of these parental complaints.
25 complaints that Plaintiff's teaching was not	
26 rigorous enough. A parent complained that	
27 Plaintiff had barred her from ever	
28	

communicating with her by email.

[Deposition of April Beuder 189:11-193:20, Exhibit 9] Exhibit 5 -

Supporting Evidence:

Beuder Decl. ¶34, Plaintiff Depo. 140:12-19, 143:3-7; Exh. 23 -Stick Figure Family Drawing; Beuder Depo. 244:10-20, 268:6-21 Exh. 22 - Email from Plaintiff to Parent "I will no longer accept your emails" (OLG 0743 - 0749);

Defendant's Document Production [OLG 0146-0148] [OLG 0170-0172]

REPLY: Plaintiff raises no genuine, material dispute. Plaintiff's purported dispute presents only argumentative, irrelevant surplusage which does not address, let alone, dispute the fact that (1) Mrs. Beuder received parental complaints that Plaintiff's teaching was not rigorous enough; (2) a parent complaint that Plaintiff had barred her from ever communicating her with email." Plaintiff does not object to any of Defendant's evidence in support of this fact. There is no genuine issue with respect to this fact, and it should be deemed uncontroverted.

62. Plaintiff worked closely with Dr. Marianne Mitchell, the school psychologist who provided Plaintiff with concrete adjustments tailored to each student with special needs.

UNCONTROVERTED

Supporting Evidence:

Plaintiff Depo. 69:1-75:10; Mitchell Decl. ¶¶3-4; Beuder Decl. ¶¶35; Exh. 20 - Dr. Mitchell Notes re. Plaintiff (OLG 200)

63. Mrs. Beuder received critical feedback from Dr. Mitchell on many occasions that Plaintiff was not differentiating instruction

1 for the students with special needs.

2 **Supporting Evidence:**

3 Plaintiff Depo. 69:1-75:10; Mitchell Decl.
4 ¶¶2-13; Beuder Decl. ¶36; Exh. 20 - Dr.
5 Mitchell Notes re. Plaintiff (OLG 200);
6 Beuder Depo. 125:21-126:9, 135:14-136:16,
7 138:2-140:9, 202:25-203:10, 205:20-206:7;
8 278:10-280:24; Exh. 25 - November 6, 2014
9 Classroom Observation Report (OLG 170-
10 172)

11 **REPLY:** Plaintiff did not dispute this Uncontroverted Fact.

12
13 64. Mrs. Beuder determined that she could
14 not have Plaintiff continue to teach Reading
15 and Writing.

16 **Supporting Evidence:**

17 Plaintiff Depo. 83:7-90:18, 92:9-95:6,
18 97:18-98:17, 102:3-15, 105:22-131:8;
19 Beuder Depo. 240:15-241:14; 252:4-253:15;
20 Beuder Decl. ¶37; Kersey Decl. ¶¶2-14;
21 Mitchell Decl. ¶¶10-11 Exh. 13 - October
22 17, 2013 Emails between Beuder and
23 Plaintiff re. "full implementation of RW is
24 the school-wide expectation at this point."
25 (Morrissey-Berru 90); Exh. 14 - November
26 14, 2013 Catholic Identity and Professional
27 Conduct Review Form (OLG 195-196);
28 Exh. 15 - January 15, 2014 Dr. Kersey

CONTROVERTED

Ms. Beuder testified that she did not know whether Morrissey-Berru's teaching caused student grades to drop year-to-year.

[Deposition of April Beuder, Volume 2, 240:15-243:2]

Morrissey-Berru has multiple positive reviews without any indication that Ms. Beuder felt that "she could not have Plaintiff continue to teach Reading and Writing."

[Deposition of April Beuder 189:11-193:20, Exhibit 9] Exhibit 5 - Defendant's Document Production [OLG 0146-0148] [OLG 0170-0172]

1 Writing Workshop Feedback Template
 2 (OLG 430); Exh. 16 - Email re: Writing
 3 Wall (Morrissey-Berru 94); Exh. 17 - Dear
 4 Diary (Morrissey-Berru 91); Exh. 18 - Peer
 5 Feedback re. Plaintiff's Student Writing
 6 Lesson (OLG 210-213); Exh. 19 - March 5,
 7 2014 Classroom Observation Report (OLG
 8 0166-0169)

9 **REPLY:** Plaintiff raises no genuine, material dispute. First, Plaintiff's purported
 10 dispute is entirely irrelevant given she concedes UF 67 that the whole reason Mrs.
 11 Beuder offered Plaintiff a part-time role for one year was to allow Plaintiff to keep
 12 teaching, but avoid involvement with the Workshop. Second, her purported dispute
 13 presents only argumentative, irrelevant surplusage which does not address the fact that
 14 Mrs. Beuder determined that she could not have Plaintiff continue to teach Reading and
 15 Writing. Plaintiff does not object to any of Defendant's evidence in support of this fact,
 16 including the declaration of Mrs. Beuder as to her own determinations. Plaintiff's
 17 purported disputes are not supported by the evidence she relies on.

18 She argues that she had multiple positive reviews without any indication that Ms.
 19 Beuder felt that "she could not have Plaintiff continue to teach Reading and Writing."
 20 In reliance thereon she points to Exhibit 9 to Mrs. Beuder's deposition which is a
 21 review of a *science* class, not reading and writing, Exhibit 5 – Defendant's Document
 22 Production, OLG 146-148 which is a review of a *math* class, not reading and writing,
 23 and OLG 170-172 a review from November 2014, *after* Plaintiff was no longer
 24 teaching reading and writing. Thus, Plaintiff's purported dispute is not supported by the
 25 evidence she relies on.

26 Similarly, whether or not students grades were actually dropping does not speak
 27 to whether the students were struggling because as Mrs. Beuder explained in the very
 28 same testimony cited to by Plaintiff, because "grading and assessment was also a

1 concern in Ms. Morrissey-Berru's classroom and would not be an accurate reflection of
2 levels of student achievement." (Beuder Depo. 240:15-243:2.)

3 In this testimony, Mrs. Beuder explained that she also felt that Ms. Morrissey-
4 Berru's implementation of the Readers and Writers Workshop negatively impacted the
5 students, because "the students were not receiving the same type of reading instruction
6 in Ms. Morrissey-Berru's class that they had received in the previous grade and would
7 receive in the next grade." In sum, the Beuder testimony that Plaintiff relies on to
8 suggest that Mrs. Beuder did not determine that she could no longer have Plaintiff
9 teaching reading and writing does not support any alleged disputes.

10
11 65. The Workshop was a progressive
12 system that became more challenging as
13 the students advanced in grade level, and
14 Mrs. Beuder did not feel that she could
15 continue to send Plaintiff's students to the
16 next grade, unprepared for the next steps
17 in the Workshop.

18 **Supporting Evidence:**

19 Beuder Decl. ¶37; Kersey Decl. ¶14;
20 Beuder Depo. 144:3-145:2; 240:15-241:14
21
22
23
24
25
26

CONTROVERTED

Ms. Beuder testified that she did not know whether Morrissey-Berru's teaching caused student grades to drop year-to-year.

[Deposition of April Beuder, Volume 2, 240:15-243:2]

Morrissey-Berru has multiple positive reviews without any indication that Ms. Beuder felt that "she could not continue to send Plaintiff's students to the next grade, unprepared for the next steps in the Workshop."

[Deposition of April Beuder 189:11-193:20, Exhibit 9] Exhibit 5 - Defendant's Document Production [OLG 0146-0148] [OLG 0170-0172]

27 **REPLY:** Plaintiff raises no genuine, material dispute. First, Plaintiff's purported
28 dispute is entirely irrelevant given she concedes UF 67 that the whole reason Mrs.

1 Beuder offered Plaintiff a part-time role for one year was to allow Plaintiff to keep
2 teaching, but avoid involvement with the Workshop.

3 Second, Plaintiff's purported dispute presents only argumentative, irrelevant
4 surplusage which does not address the fact that the Workshop was a progressive system
5 that became more challenging as the students advanced in grade level, and Mrs. Beuder
6 did not feel that she could continue to send Plaintiff's students to the next grade,
7 unprepared for the next steps in the Workshop. Plaintiff does not object to any of
8 Defendant's evidence in support of this fact, including the declaration of Mrs. Beuder as
9 to her own determinations.

10 Plaintiff's purported disputes are not supported by the evidence she relies on. She
11 argues that she had multiple positive reviews without any indication that Ms. Beuder
12 felt that "she could not have Plaintiff continue to teach Reading and Writing." In
13 reliance thereon she points to Exhibit 9 to Mrs. Beuder's deposition which is a review
14 of a *science* class, not reading and writing, Exhibit 5 – Defendant's Document
15 Production, OLG 146-148 which is a review of a *math* class, not reading and writing,
16 and OLG 170-172 a review from November 2014, *after* Plaintiff was no longer
17 teaching reading and writing. Thus, Plaintiff's purported dispute is not supported by the
18 evidence she relies on.

19 Similarly, whether or not students grades were actually dropping does not speak
20 to whether the students were struggling because as Mrs. Beuder explained in the very
21 same testimony cited to by Plaintiff, because "grading and assessment was also a
22 concern in Ms. Morrissey-Berru's classroom and would not be an accurate reflection of
23 levels of student achievement." (Beuder Depo. 240:15-243:2.) In this testimony, Mrs.
24 Beuder explained that she also felt that Ms. Morrissey-Berru's implementation of the
25 Readers and Writers Workshop negatively impacted the students, because "the students
26 were not receiving the same type of reading instruction in Ms. Morrissey-Berru's class
27 that they had received in the previous grade and would receive in the next grade." In
28 sum, the Beuder testimony that Plaintiff relies on to suggest that Mrs. Beuder did not

1 determine that she could no longer have Plaintiff teaching reading and writing does not
2 support any alleged disputes.

3 66. In mid-May 2014, Mrs. Beuder told
4 Plaintiff that she was not implementing
5 Reader's and Writer's Workshop correctly.

6 **Supporting Evidence:**

7 Beuder Decl. ¶38; Plaintiff Depo. 131:14-
8 133:9; Beuder Depo. 252:4-16; Kersey Decl.
9 ¶¶2-14

CONTROVERTED

Ms. Beuder also testified that she
did not know whether
Morrissey-Berru's teaching
caused student grades to drop
year-to-year.

[Deposition of April Beuder,
Volume 2, 240:15-243:2]

Moreover, Morrissey-Berru has
multiple positive reviews without
any indication that Ms. Beuder felt
that "she could not continue to send
Plaintiff's students to the next
grade, unprepared for the next steps
in the Workshop."

[Deposition of April Beuder 189:11-
193:20, Exhibit 9] Exhibit 5 -

Defendant's Document Production

[OLG 0146-0148] [OLG 0170-0172]

19 **REPLY:** Plaintiff raises no genuine, material dispute. Plaintiff purported dispute is
20 disingenuous since Plaintiff's Additional Material Fact Number 116 states virtually the
21 same thing, relying on the same evidence:

22 "Ms. Beuder stated that Morrissey- Berru did not do the reading and writing
23 instruction correctly and as a result they would be moving her to a part-time position.
[Deposition of Agnes Morrissey-Berru 132:1-136:8]."

24 There is no genuine issue with respect to this fact, and it should be deemed
25 uncontroverted.

26 67. Mrs. Beuder came up with the solution
27 of offering Plaintiff a part-time role for one

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1	year that would allow Plaintiff to keep		
2	teaching, but avoid involvement with the		
3	Workshop.		
4	<u>Supporting Evidence:</u>		
5	Beuder Decl. ¶38; Plaintiff Depo. 131:14-		
6	133:9; 138:6-10 Beuder Depo. 209:11-20;		
7	252:4-257:24, 269:2-22		
8	68. Mrs. Beuder shuffled schedules and the	UNCONTROVERTED	
9	budget around and created a new part time		
10	position in which Plaintiff would teach 5 th		
11	grade Religion, and 5 th -7 th Grade Social		
12	Studies.		
13	<u>Supporting Evidence:</u>		
14	Plaintiff Depo. 138:6-10;		
15	Beuder Decl. ¶39, Beuder Depo. 209:11-20,		
16	210:6-14; 252:4-257:24, 269:2-22		
17	69. Plaintiff was offered and accepted a part	UNCONTROVERTED	
18	time position in mid-May 2014. Plaintiff		
19	signed her employment agreement for the		
20	2014-2015 school year on May 19, 2014.		
21	<u>Supporting Evidence:</u>		
22	Plaintiff Depo. 20:19-21:17; Beuder Decl.		
23	¶39; Exh. 21 - 2014-2015 Employment		
24	Agreement (OLG 0001-0006)		
25			
26			
27			
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70. In July 2014 Mrs. Beuder hired Ms. Andrea Ruma Harrington to teach 5th grade Reading and Writing. Ms. Ruma-Harrington had over 10 years teaching experience, all of which included reading and writing teaching experience. She also had a teaching credential, a master's in education, and had served with Americore.

Supporting Evidence:

Plaintiff Depo. 138:11-139:17; Beuder Decl.

¶40

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Morrissey-Berru testified that Andrea Ruma-Harrington told her that she did not really have experience as a reading and writing teacher.

Specifically:

Q Did she have experience as a reading and writing teacher?

A She told me not really.

Q From what you observed, did she have experience as a reading and writing teacher?

A Somewhat.

[Deposition of Agnes Morrissey-Berru 139:5-139:10]

In addition, although Our Lady of Guadalupe hired Ms. Ruma-Harrington, Mr. Hazen was also being considered the open position.

[Deposition of Agnes Morrissey-Berru 60:21-60:25; 133:10-133:18;

171:21-172:5, Exhibit 16]

[Declaration of Beatriz Botha ¶ 35]

[Deposition of April Beuder, Volume 2, 259:18-259:22]

REPLY: Plaintiff raises no genuine, material dispute especially given that she does not dispute Fact 71 that Plaintiff felt that Ms. Ruma-Harrington was experienced and a "very good teacher", and admired her teaching techniques. Nor did Plaintiff object to the Declaration of Mrs. Beuder with regard to Ms. Ruma-Harrington's experience. As the individual hiring Ms. Ruma-Harrington, Mrs. Beuder, unlike Plaintiff, would be in a

position to know this information. Plaintiff's purported dispute relies upon evidence that is inadmissible hearsay and opinion without foundation. FED. R. EVID. 602, 701, 801, 802. Specifically, Plaintiff's report of what Andrea Ruma-Harrington told her is inadmissible hearsay. Plaintiff's opinion about whether Ruma-Harrington had experience as a reading and writing teacher lacks foundation or personal knowledge. Further, whether or not Mr. Hazen was also being considered for the open position, is manifestly irrelevant to this fact, and is also based upon multiple levels of hearsay, lack of foundation and lack of personal knowledge.

71. Plaintiff felt that Ms. Ruma-Harrington was experienced and a "very good teacher", and admired her teaching techniques. <u>Supporting Evidence:</u> Plaintiff Depo. 138:11-139:17; Beuder Decl. ¶40	UNCONTROVERTED
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1 72. During the 2014-2015 school year, Mrs.
2 Beuder continued to field parental
3 complaints about the lack of academic rigor
4 in Plaintiff's classroom.

5 **Supporting Evidence:**

6 Beuder Decl. ¶41; Beuder Depo. 244:10-20,
7 268:6-21; Plaintiff Depo. 140:13-20; Exh.
8 23 -Stick Figure Family Drawing
9
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In November 2014, Principle April Beuder performed a classroom observation of Morrissey-Berru's teaching. On the review, Ms. Beuder marked either "Innovating" or "Implementing" to describe various aspects of Morrissey-Berru's performance. Additionally, Ms. Beuder noted that Morrissey-Berru has a "[g]reat use of technology" and stated that "Mrs. Morrissey-Berru did an excellent job incorporating technology into her lesson. She was well-prepared with all materials and knowledgeable regarding the subject." Defendant's Exh. 25 - November 6, 2014 Classroom Observation Report (OLG 170-172)

17 **REPLY:** Plaintiff raises no genuine, material dispute. Plaintiff's purported dispute
18 presents only argumentative, irrelevant surplusage which does not address the fact that
19 during the 2014-2015 school year, Mrs. Beuder continued to field parental complaints
20 about the lack of academic rigor in Plaintiff's classroom. Nor does Plaintiff object to
21 any of Defendant's evidence in support of this fact. Not only that, Plaintiff does not
22 dispute Fact 73 that "*many* lessons in social studies involved coloring maps, and her
23 religion class involved drawing pictures of families." There is no genuine issue with
24 respect to this fact, and it should be deemed uncontroverted.
25

26 73. Plaintiff admits that "many" lessons in
27 social studies involved coloring maps, and
28

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1	her religion class involved drawing pictures	
2	of families. Plaintiff did not implement	
3	mini-lessons when teaching social studies.	
4	<u>Supporting Evidence:</u>	
5	Plaintiff Depo. 140:13-20, 140:7-8; Beuder	
6	Decl. ¶41; Exh. 23 -Stick Figure Family	
7	Drawing	
8	74. Dr. Mitchell continued to express	UNCONTROVERTED
9	frustration to Mrs. Beuder about Plaintiff's	
10	failure to implement the concrete	
11	adjustments for students with special needs.	
12	<u>Supporting Evidence:</u>	
13	Beuder Decl. ¶42; Mitchell Decl. ¶¶2-13;	
14	Beuder Depo. 278:10-280:24; Exh. 20 - Dr.	
15	Mitchell Notes re. Plaintiff (OLG 200); Exh.	
16	25 - November 6, 2014 Classroom	
17	Observation Report (OLG 170-172)	
18	75. Plaintiff's need to improve in	CONTROVERTED
19	implementing the concrete adjustments for	
20	students with special needs (step/maps) was	
21	also addressed with Plaintiff by Mrs. Beuder	
22	in an Observation Report.	In that same observation report, Principle April Beuder marked either "Innovating" or "Implementing" to all other aspects of Morrissey-Berru's performance. Additionally, Ms. Beuder noted that Morrissey-Berru has a "[g]reat use of technology" and stated that "Mrs. Morrissey-Berru did an excellent job incorporating technology into her lesson. She was well-prepared with all materials and knowledgeable regarding the subject."
23	<u>Supporting Evidence:</u>	
24	Beuder Decl. ¶42; Mitchell Decl. ¶¶2-13;	
25	Exh. 25 - November 6, 2014 Classroom	
26	Observation Report (OLG 170-172); Exh.	
27	20 - Dr. Mitchell Notes re. Plaintiff (OLG	
28		

200)

Defendant's Exh. 25 - November 6,
2014 Classroom Observation Report
(OLG 170-172)

REPLY: Plaintiff raises no genuine, material dispute. Fact 75 pertains to Plaintiff's need to improve in implementing the concrete adjustments for students with special needs. (An issue that Plaintiff has already conceded in response to UF 74, 62 and 63.) Plaintiff's purported dispute presents only argumentative, irrelevant surplusage which is non-responsive to the fact proffered. There is no genuine issue with respect to this fact, and it should be deemed uncontroverted.

76. Mrs. Beuder determined that the School could not continue to financially sustain Plaintiff's extra part time position for the 2015-2016 school year.

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Supporting Evidence:

Plaintiff Depo. 138:6-10;
Beuder Decl. ¶43; Beuder Depo. 269:2-15;
283:1-22; Exh. 24 - Nonrenewal letter
(Morrissey-Berru 269)

77. Mrs. Beuder wanted someone teaching social studies who would be willing and able to incorporate the Reader's and Writer's Workshop so that these lessons could be reinforced across the curriculum as the students learning needs had changed.

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Supporting Evidence:

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1	Beuder Decl. ¶43; Beuder Depo. 269:2-15;	
2	Plaintiff Depo. 140:7-8; Kersey Decl. ¶15;	
3	Mitchell Decl. ¶¶10-11	
4	78. In May of 2015, Mrs. Beuder advised	UNCONTROVERTED to the extent
5	Plaintiff that she did not have a position for	
6	Plaintiff for the 2015-2016 school year	
7	because her position had been eliminated	
8	due to the budget and the changing needs of	that that is what Ms. Beuder informed
9	the students.	Plaintiff as the reason for her
10	<u>Supporting Evidence:</u>	termination.
11	Beuder Decl. ¶44; Plaintiff Depo. 143:25-	
12	144:12, 146:1-4; Beuder Depo. 206:20-	
13	207:19, 269:2-15, 272:23-273:1; 283:1-22,	
14	Exh. 24 -Nonrenewal letter (Morrissey-	
15	Berru 269)	
16	REPLY: Plaintiff raises no genuine, material dispute. She concedes that Fact 78 is	
17	what Mrs. Beuder informed Plaintiff as the reason for her termination. She also does	
18	not dispute Facts 76 and 77 to any extent. There is no genuine issue with respect to this	
19	fact, and it should be deemed uncontroverted.	
20	79. Plaintiff finished out the 2014-2015	CONTROVERTED to the extent
21	school year which her fixed term contract	
22	provided for. Plaintiff contract expired by its	that Ms. Beuder told Morrissey-
23	own terms.	Berru that her contract would not
24	<u>Supporting Evidence:</u>	be renewed.
25	Plaintiff Depo. 146:1-7; Beuder Decl. ¶45;	[Deposition of Agnes
26	Exh. 21-2014-2015 Employment Agreement	Morrissey-Berru 64:23-65:9;
27	(OLG 0001-0006); Exh. 24 -Nonrenewal	146:1-146:9]
28		[Plaintiff's Undisputed Material Facts
		90-166]

1 letter (Morrissey-Berru 269)

2

3 **REPLY:** Plaintiff raises no genuine, material dispute. She does not dispute that she
 4 finished out the 2014-2015 school year. She does not dispute that her fixed term
 5 contract covered the 2014-2015 school year. She does not dispute that her contract
 6 expired by its own terms. Plaintiff's purported dispute presents only nonsensical,
 7 argumentative, irrelevant surplusage about the nonrenewal of her contract which is non-
 8 responsive to the fact proffered. There is no genuine issue with respect to this fact, and
 9 it should be deemed uncontroverted.

10 80. No teacher has held Plaintiff's part-time
 11 position since the 2014-2015 school year.

12 All of Plaintiff's classes were absorbed by
 13 the existing staff.

14 **Supporting Evidence:**

15 Plaintiff Depo. 145:20-25; Beuder Decl.

16 ¶44; Exh. 24 -Nonrenewal letter (Morrissey-
 17 Berru 269)

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1 81. Mrs. Beuder invited Plaintiff to lead an
 2 after-school program at the School, teaching
 3 art or photography. Art and photography
 4 were both interests of Plaintiff, which Mrs.
 5 Beuder was aware of. Plaintiff did not
 6 respond to these offers.

7 **Supporting Evidence:**

8 Plaintiff Depo. 146:18-148:6; Beuder Decl.
 9 ¶45; Beuder Depo. 275:23—277:25

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Morrissey-Berru passed on the opportunity because:

- 1) The position offered was a non-full time position that was California credentialed;
- 2) Morrissey-Berru needed a full-time position; and

The position would have to be created

– she would have to start the program

Specifically:

Q During this meeting or thereafter, did Mrs. Beuder advise you or invite you to start an after-school program?

A Yes.

Q What was that?

A It was not a California credentialed position, it was teaching art after school.

Q How about photography?

A Or photography. Something that I would have to make up --

Q Mrs. --

A -- or design.

Q Mrs. Morrissey-Berru, did you have an interest in art?

A Yes.

Q Was Mrs. Beuder aware of that interest?

A Yes.

Q How about photography, did you have an interest in photography?

A Yes.

Q And is that something that Mrs. Beuder was aware of also?

A Yes.

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1 Q And did she offer you this after-
2 school program option during the
3 same conversation when you were
4 advised your contract was not
5 renewed?

A No.

Q When did she bring it up?

A Maybe a week later.

Q And how many times did she
bring it up?

A Twice.

Q And how did you respond?

A I didn't respond.

Q Why?

A I need a full-time job. I'm a
California credentialed teacher, I'm
not a part-time photography aide.

[Deposition of Agnes Morrissey-Berru
146:18-148:4]

22 **REPLY:** Plaintiff raises no genuine, material dispute. She does not dispute that the
23 offer was made, that it involved an interest of hers, and that she passed on it. Plaintiff's
24 reasons for not accepting the offer are argumentative, irrelevant surplusage which are
25 non-responsive to the fact proffered. There is no genuine issue with respect to this fact,
26 and it should be deemed uncontroverted.

82. Plaintiff filed her EEOC charge on June 2, 2015.

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Supporting Evidence:

Kantor Decl. ¶4; Exh. 2 - EEOC Charge (Morrissey-Berru 1)

II. PLAINTIFF'S STATEMENT OF FURTHER UNCONTROVERTED FACTS

Plaintiff's Uncontroverted Facts and Supporting Evidence

Defendant's Response and Supporting Evidence

90. Agnes Deirdre Morrissey-Berru ("Morrissey-Berru") attended two colleges to receive her Bachelor of Arts in English language arts and a minor in secondary education. [Deposition of Agnes Morrissey-Berru 17:14-18:4]

This raises no genuine, material issue.

91. In 2007, after teaching full-time at Our Lady of Guadalupe for eight years, Morrissey-Berru received her California teaching credential from Chapman University.

This raises no genuine, material issue.

[Deposition of Morrissey-Berru 18:5-18:17; 19:4-19:15]

92. Before Morrissey-Berru taught at Our Lady of Guadalupe, she worked at the Los Angeles Times for 20 years as a

This raises no genuine, material issue.

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1	copywriter and advertising salesperson.	
2	[Deposition of Morrissey-Berru 18:18-	
3	19:2] [Declaration of Morrissey-Berru	
4	11]	
5	93. In 1998, Morrissey-Berru began	This raises no genuine, material issue.
6	working at Our Lady of Guadalupe as	
7	a substitute teacher.	
8	[Deposition of Agnes Morrissey-	
9	Berru 19:4-19:10]	
10	94. When she began working for the	This raises no genuine, material issue.
11	school, Morrissey-Berru was forty-	
12	seven years old.	
13	[Deposition of Anges Morrissey-	
14	Berru 12:19-12:20; 19:4-19:10]	
15	95. In the fall of 1999, Morrissey-Berru	This raises no genuine, material issue.
16	was offered a full-time 6th grade	
17	position.	
18	[Deposition of Agnes Morrissey-Berru	
19	19:11-23]	
20	96. This position was self-contained —	This raises no genuine, material issue.
21	Morrissey-Berru taught reading, writing	
22	grammar, vocabulary, science, social	
23	studies, and religion.	
24	[Deposition of Agnes Morrissey-Berru	
25	19:16-19:21]	
26		
27		
28		

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1	97. This position lasted for 10 years until	This raises no genuine, material issue.
2	Morrissey-Berru moved to 5th grade.	
3	[Deposition of Agnes Morrissey-	
4	Berru 19:24-20:6]	
5	98. The 5th grade position was also self-	This raises no genuine, material issue.
6	contained.	
7	[Deposition of Agnes Morrissey-Berru	
8	19:24-20:6]	
9	99. Upon being hired, Morrissey-	This raises no genuine, material issue.
10	Berru testified that she did not feel her	This fact is irrelevant given that Plaintiff's
11	position at Our Lady of Guadalupe	admissions include the following:
12	was "called" or believe that she was	• Our Lady of Guadalupe School is a
13	accepting a formal call to ministry.	Catholic parish school under the
14	[Declaration of Agnes Morrissey-Berru	jurisdiction of the Archdiocese of Los
15	¶8]	Angeles (UF 1);
16		• "the mission of the School is to
17		provide its students with a Catholic
18		education" (Plaintiff's response to UF
19		10, 11);
20		• "Morrissey-Beru admitted that
21		she was responsible for introducing
22		her students to Catholicism and
23		providing the groundwork for their
24		religious doctrine" (Plaintiff's
25		response to UF 15);
26		• "Morrissey-Beru admitted that she
27		was committed to faith-based
28		

1 education." (Plaintiff's response to UF
2 25);

- 3 • Plaintiff taught a daily religion
- 4 class every year at the school (UF 13);
- 5 • Plaintiff led the class in daily
- 6 prayer, including Hail Mary's, as well
- 7 as spontaneous prayer. (UF 20);
- 8 • As a teacher at the School, Plaintiff
- 9 was expected to participate in school
- 10 liturgical activities (UF 21);
- 11 • Plaintiff's performance evaluations
- 12 included an evaluation of the Catholic
- 13 identity factors in the classroom,
- 14 whether there was visible evidence of
- 15 the sacramental traditions of the
- 16 Roman Catholic Church in the
- 17 classroom, and whether the curriculum
- 18 included Catholic values infused
- 19 through all subject areas (UF 23);
- 20 • Plaintiff was responsible for
- 21 administering the yearly assessment of
- 22 children religious education test – a
- 23 test on Catholic teachings for the 5th
- 24 grade (UF 24);
- 25 • Plaintiff directed and produced a
- 26 performance by the students of the
- 27 Passion of the Christ as part of the
- 28

1		School's Easter celebrations. (UF 27);
2		• Plaintiff took her students to Our
3		Lady of Angels Cathedral in
4		downtown Los Angeles every year for a
5		tour of the cathedral so they could
6		experience serving at the cathedral
7		altar (UF 28);
8		• Plaintiff provided instruction to
9		students using a textbook "Blest are
10		We" (Plaintiff's response to UF 16-19)
11	100. As part of her employment,	This raises no genuine, material issue.
12	Morrissey-Berru was required to sign	This fact is irrelevant given that the
13	a Teacher Employment Agreement	evidence cited by Plaintiff in support
14	that defined her title as a "Teacher"	thereof (Exh. 3 - the Agreement) also
15	throughout the contract.	states the following:
16	[Deposition of April Beuder 91:19-	• The mission of the School is to
17	92:22, Exhibit 3]	develop and promote a Catholic
18		School Faith Community within
19		the philosophy of Catholic
20		education as implemented at the
21		School, and the doctrines, laws and
22		norms of the Roman Catholic
23		Church. <i>All your duties and</i>
24		<i>responsibilities as a Teacher shall</i>
25		<i>be performed within this</i>
26		<i>overriding commitment.</i>
27		• You acknowledge that the School
28		

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1		operates within the philosophy of
2		Catholic education ... You
3		understand and accept that the
4		values of Christian charity,
5		temperance and tolerance apply to
6		your interactions with your
7		supervisors, colleagues, students,
8		parents, staff and all others with
9		whom you come in contact at or on
10		behalf of the School. In both your
11		professional and private life you
12		are expected to model and promote
13		behavior in conformity to the
14		teaching of the Roman Catholic
15		Church in matters of faith and
16		morals.
17	101. Morrissey-Berru would sign a	This raises no genuine, material issue.
18	similar Teacher Employment	
19	Agreements for each year she taught	
20	at Our Lady of Guadalupe.	
21	[Deposition of April Beuder 91:19-	
22	92:22; 94:1-94:7; 101:4-101:18; 105:14-	
23	106:7, Exhibits 3-6]	
24	102. On July 1, 2012, Our Lady of	This raises no genuine, material issue.
25	Guadalupe hired April Beuder to be	
26	the school's new principal.	
27	[Deposition of April Beuder 52:10-	
28	52:15]	

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1	103. Ms. Beuder was the only	This raises no genuine, material issue.
2	individual who completed Elementary	
3	School Classroom Observation	
4	Reports regarding the teachers at Our	
5	Lady of Guadalupe.	
6	[Deposition of April Beuder 193:9-	
7	193:20]	
8	104. To complete these forms, Ms.	This raises no genuine, material issue.
9	Beuder would observe the teacher as she	
10	teaches the students.	
11	[Deposition of April Beuder 189:10-	
12	193:8, Exhibit 9]	
13	105. In November 2012, Principal April	This raises no genuine, material issue.
14	Beuder performed a classroom	This fact is irrelevant as it involves a
15	observation of Morrissey-Berru's	review of a <i>science</i> class.
16	teaching.	
17	[Deposition of April Beuder 189:10-	
18	193:20, Exhibit 9]	
19	106. On the review, Ms. Beuder	This raises no genuine, material issue.
20	marked either "Innovating" or	This fact is irrelevant as it involves a
21	"Implementing" to describe various	review of a <i>science</i> class.
22	categories of Morrissey-Berru's	
23	performance.	
24	[Deposition of April Beuder 189:10-	
25	190:1, Exhibit 9]	
26		
27		
28		

1	107. "Innovating" is defined as "Adjusts	This raises no genuine, material issue.
2	and creates new strategies for unique	
3	student needs and situations during the	
4	lesson."	
5	Exhibit 5 - Defendant's Document	
6	Production [OLG 0170]	
7	108. "Implementing" is defined as "Uses	This raises no genuine, material issue.
8	strategies at appropriate time, in the	
9	appropriate matter."	
10	Exhibit 5 - Defendant's Document	
11	Production [OLG 0170]	
12	109. Additionally, Ms. Beuder wrote	This raises no genuine, material issue.
13	positive comments about Morrissey-	This fact is irrelevant as it involves a
14	Berru's teaching, including "Ms.	review of a <i>science</i> class.
15	Morrissey has an excellent rapport with	
16	her students. This was an interactive	
17	lesson that engaged multiple	
18	mobilities, visual auditory, kinesthetic.	
19	Highly effective use of technology."	
20	[Deposition of April Beuder 189:10-	
21	190:1, Exhibit 9 — OLG 0156]	
22	110. Ms. Beuder would conduct similar	Vague and ambiguous as to "similar"
23	reviews in March 2013 and November	reviews and to the extent that Plaintiff has
24	2014 and mark either "Innovating" or	not captured the entire reviews. For
25	"Implementing" to describe various	example, Plaintiff's fact conceals that
26	aspects of Morrissey-Berru's	Mrs. Beuder also marked "emerging" to
27	performance.	describe aspects of Plaintiff's
28		

1	Exhibit 5 - Defendant's Document	performance (<i>See e.g.</i> OLG 170-172).
2	Production [OLG 0170-0172] [OLG	Nonetheless, this raises no genuine,
3	0146-0148]	material issue. This fact is irrelevant as it
4		involves Exhibit 5 – Defendant's
5		Document Production, OLG 146-148
6		which is a review of a " <i>math</i> " class, not
7		reading and writing, and OLG 170-172 a
8		review from November 2014, after
9		Plaintiff was no longer teaching reading
10		and writing.
11	111. Before the start of the 2014-2015	Objection that Plaintiff's phrasing of her
12	school year, Morrissey-Berru lost her	position as "lost" is argumentative
13	full-time position as a fifth grade	rhetoric given Plaintiff admits that the
14	teacher and was moved to part-time.	teachers at the School all work on one-
15	[Deposition of Agnes Morrissey-Berru	year fixed term contracts. (UF 7, PUMF
16	20:15-20:18]	121) This raises no genuine, material
17		issue.
18	112. In May 2014, Morrissey-Berru met	This raises no genuine, material issue.
19	with Ms. Beuder regarding her status at	
20	the school.	
21	[Deposition of Agnes Morrissey-	
22	Berru 131:14-131:25]	
23	113. During the meeting Ms. Beuder	Objection hearsay. This raises no
24	asked if Morrissey-Berru wanted to	genuine, material issue.
25	retire.	
26	[Deposition of Agnes Morrissey-Berru	
27	131:14-131:25]	
28		
483119.1		73
		ER 129

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1	114. Morrissey-Berru responded that she	Objection hearsay. This raises no
2	did not want to retire.	genuine, material issue.
3	[Deposition of Agnes Morrissey-	
4	Berru 131:14-131:25; 134:20134:25]	
5	115. During that same conversation, Ms.	This raises no genuine, material issue.
6	Beuder and Morrissey-Berru discussed	
7	the reading and writing workshop.	
8	[Deposition of Agnes Morrissey-Berru	
9	132:1-136:8]	
10	116. Ms. Beuder stated that	This raises no genuine, material issue.
11	Morrissey- Berru did not do the	
12	reading and writing instruction	
13	correctly and as a result they would be	
14	moving her to a part-time position.	
15	[Deposition of Agnes Morrissey-Berru	
16	132:1-136:8]	
17	117. Morrissey-Berru believed she was	Objection – Plaintiff's evidence lacks
18	being replaced with Mr. Hazen who was	foundation, lacks personal knowledge, is
19	in his 30's.	speculative, is improper opinion, and is
20	[Deposition of Agnes Morrissey-	based on hearsay. This raises no genuine
21	Berru 60:21-60:25; 133:10-133:18;	material issue. This "fact" is irrelevant
22	171:21-172:5, Exhibit 16]	given that Plaintiff was not replaced by
23	[Declaration of Beatriz Botha III 35]	Mr. Hazen. (Plaintiff Depo. 61:10-15.)
24	[Deposition of April Beuder, Volume	
25	2, 259:18-259:22	
26		
27		
28		
483119.1		74

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1	118. Our Lady of Guadalupe hired	This raises no genuine, material issue.
2	Andrea Ruma-Harrington who was	
3	thirty-nine years old to teach language	
4	arts for that year.	
5	[Deposition of Agnes Morrissey-Berru	
6	138: 11-138:22][Deposition of April	
7	Beuder, Volume 2, 261:5-262:4]	
8	119. Morrissey-Berru's part-time	This raises no genuine, material issue.
9	contract lasted one year.	
10	[Deposition of Agnes Morrissey-Berru	
11	146:1-146:7] [Deposition of April	
12	Beuder, Volume 2, 268:23269 : 1]	
13	120. Teachers are not required to be	The materials cited do not support
14	Catholic in order to teach at Our Lady	Plaintiff's "fact": "Q. Is it a requirement
15	of Guadalupe	that a teacher be Catholic in order to
16	[Deposition of April Beuder 54:11-	teach at OLG School? Yes or no? A.
17	58:13]	Yes." (Beuder Depo. 58:5-8) This raises
18		no genuine, material issue.
19	121. All of the teachers at Our Lady of	This raises no genuine, material issue.
20	Guadalupe are governed by one-year	
21	renewable contracts.	
22	[Deposition of Agnes Morrissey-Berru	
23	21:25-22:8]	
24	122. Morrissey-Berru is considered a	This raises no genuine, material issue.
25	<i>teacher</i> under her Faculty Employment	This fact is duplicative of PUMF 100 and
26	Agreement - Elementary with Our	therefore is calculated to vex, harass and
27	Lady of Guadalupe Catholic School.	annoy. This fact is also irrelevant given
28		

1 [Deposition of April Beuder 94:1 - 96:6,
2 101:4-101:18, 104:19-105:2, Exhibits 4-
3 5; Declaration of Agnes Morrissey-Berru
4 113.]

that the evidence cited by Plaintiff in
support thereof (Exh. 4-5) also states the
following:

- The mission of the School is to develop and promote a Catholic School Faith Community within the philosophy of Catholic education as implemented at the School, and the doctrines, laws and norms of the Roman Catholic Church. *All your duties and responsibilities as a Teacher shall be performed within this overriding commitment.*
- You acknowledge that the School operates within the philosophy of Catholic education ... You understand and accept that the values of Christian charity, temperance and tolerance apply to your interactions with your supervisors, colleagues, students, parents, staff and all others with whom you come in contact at or on behalf of the School. In both your professional and private life you are expected to model and promote

behavior in conformity to the teaching of the Roman Catholic Church in matters of faith and morals.

This fact is also irrelevant given that Plaintiff's admissions include the following:

- Our Lady of Guadalupe School is a Catholic parish school under the jurisdiction of the Archdiocese of Los Angeles (UF 1);
- "the mission of the School is to provide its students with a Catholic education" (Plaintiff's response to UF 10, 11);
- *"Morrissey-Beru admitted that she was responsible for introducing her students to Catholicism and providing the groundwork for their religious doctrine"* (Plaintiff's response to UF 15);
- "Morrissey-Beru admitted that she was committed to faith-based education." (Plaintiff's response to UF 25);
- Plaintiff taught a daily religion class every year at the school (UF 13);

- Plaintiff led the class in daily prayer, including Hail Mary's, as well as spontaneous prayer. (UF 20);
- As a teacher at the School, Plaintiff was expected to participate in school liturgical activities (UF 21);
- Plaintiff's performance evaluations included an evaluation of the Catholic identity factors in the classroom, whether there was visible evidence of the sacramental traditions of the Roman Catholic Church in the classroom, and whether the curriculum included Catholic values infused through all subject areas (UF 23);
- Plaintiff was responsible for administering the yearly assessment of children religious education test – a test on Catholic teachings for the 5th grade (UF 24);
- Plaintiff directed and produced a performance by the students of the Passion of the Christ as part of the School's Easter celebrations. (UF 27);
- Plaintiff took her students to Our Lady of Angels Cathedral in downtown Los Angeles every year for a

1		tour of the cathedral so they could
2		experience serving at the cathedral
3		altar (UF 28);
4		• Plaintiff provided instruction to
5		students using a textbook "Blest are
6		We" (Plaintiff's response to UF 16-19)
7		
8	123. Specifically, Morrissey-Berru's	This raises no genuine, material issue.
9	Faculty Employment Agreement —	This fact is duplicative of PUMF 103 and
10	Elementary, identifies her as a	122 and therefore is calculated to vex,
11	"Teacher" throughout the agreement,	harass and annoy. This fact is irrelevant
12	and her principal (April Beuder) wrote	given that the evidence cited by Plaintiff
13	the phrase "Elementary Teacher" in the	in support thereof (Exh. 4) also states the
14	phrase "I accept a position as	following:
15	Elementary Teacher at OLG School on	• The mission of the School is to
16	each and all of the terms and	develop and promote a Catholic
17	conditions set for the in the above	School Faith Community within
18	Agreement and the attached	the philosophy of Catholic
19	Compensation and Benefits	education as implemented at the
20	Supplement."	School, and the doctrines, laws and
21	Deposition of April Beuder 94:1-96:6,	norms of the Roman Catholic
22	Exhibit 4]	Church. <i>All your duties and</i>
23		<i>responsibilities as a Teacher shall</i>
24		<i>be performed within this</i>
25		<i>overriding commitment.</i>
26		• You acknowledge that the School
27		operates within the philosophy of
28		

Catholic education ... You understand and accept that the values of Christian charity, temperance and tolerance apply to your interactions with your supervisors, colleagues, students, parents, staff and all others with whom you come in contact at or on behalf of the School. In both your professional and private life you are expected to model and promote behavior in conformity to the teaching of the Roman Catholic Church in matters of faith and morals.

This fact is also irrelevant given that Plaintiff's admissions include the following:

- Our Lady of Guadalupe School is a Catholic parish school under the jurisdiction of the Archdiocese of Los Angeles (UF 1);
- "the mission of the School is to provide its students with a Catholic education" (Plaintiff's response to UF 10, 11);
- *"Morrissey-Beru admitted that*

she was responsible for introducing her students to Catholicism and providing the groundwork for their religious doctrine" (Plaintiff's response to UF 15);

- "Morrissey-Beru admitted that she was committed to faith-based education." (Plaintiff's response to UF 25);
- Plaintiff taught a daily religion class every year at the school (UF 13);
- Plaintiff led the class in daily prayer, including Hail Mary's, as well as spontaneous prayer. (UF 20);
- As a teacher at the School, Plaintiff was expected to participate in school liturgical activities (UF 21);
- Plaintiff's performance evaluations included an evaluation of the Catholic identity factors in the classroom, whether there was visible evidence of the sacramental traditions of the Roman Catholic Church in the classroom, and whether the curriculum included Catholic values infused through all subject areas (UF 23);
- Plaintiff was responsible for

1		administering the yearly assessment of
2		children religious education test – a
3		test on Catholic teachings for the 5th
4		grade (UF 24);
5		• Plaintiff directed and produced a
6		performance by the students of the
7		Passion of the Christ as part of the
8		School's Easter celebrations. (UF 27);
9		• Plaintiff took her students to Our
10		Lady of Angels Cathedral in
11		downtown Los Angeles every year for a
12		tour of the cathedral so they could
13		experience serving at the cathedral
14		altar (UF 28);
15		• Plaintiff provided instruction to
16		students using a textbook "Blest are
17		We" (Plaintiff's response to UF 16-19)
18		
19	124. The website for Our Lady of	This raises no genuine, material issue.
20	Guadalupe, each teacher is listed as an	This fact is irrelevant given that Plaintiff's
21	"Educator" and is identified by the	admissions include the following:
22	grade or subjects that they teach.	• Our Lady of Guadalupe School is a
23	[Declaration of Agnes Morrissey-Berru	Catholic parish school under the
24	11 7.]	jurisdiction of the Archdiocese of Los
25		Angeles (UF 1);
26		• "the mission of the School is to
27		provide its students with a Catholic
28		

education" (Plaintiff's response to UF 10, 11);

- *"Morrissey-Beru admitted that she was responsible for introducing her students to Catholicism and providing the groundwork for their religious doctrine"* (Plaintiff's response to UF 15);
- "Morrissey-Beru admitted that she was committed to faith-based education." (Plaintiff's response to UF 25);
- Plaintiff taught a daily religion class every year at the school (UF 13);
- Plaintiff led the class in daily prayer, including Hail Mary's, as well as spontaneous prayer. (UF 20);
- As a teacher at the School, Plaintiff was expected to participate in school liturgical activities (UF 21);
- Plaintiff's performance evaluations included an evaluation of the Catholic identity factors in the classroom, whether there was visible evidence of the sacramental traditions of the Roman Catholic Church in the classroom, and whether the curriculum

1		included Catholic values infused
2		through all subject areas (UF 23);
3		• Plaintiff was responsible for
4		administering the yearly assessment of
5		children religious education test – a
6		test on Catholic teachings for the 5th
7		grade (UF 24);
8		• Plaintiff directed and produced a
9		performance by the students of the
10		Passion of the Christ as part of the
11		School's Easter celebrations. (UF 27);
12		• Plaintiff took her students to Our
13		Lady of Angels Cathedral in
14		downtown Los Angeles every year for a
15		tour of the cathedral so they could
16		experience serving at the cathedral
17		altar (UF 28);
18		• Plaintiff provided instruction to
19		students using a textbook "Blest are
20		We" (Plaintiff's response to UF 16-19)
21	125. Morrissey-Berru held herself out as	Vague and ambiguous. This raises no
22	a teacher.	genuine, material issue. This fact is
23	[Declaration of Agnes Morrissey-Berru	irrelevant given that Plaintiff's admissions
24	II; 4-6, 8]	include the following:
25		• Our Lady of Guadalupe School is a
26		Catholic parish school under the
27		jurisdiction of the Archdiocese of Los
28		

Angeles (UF 1);

- "the mission of the School is to provide its students with a Catholic education" (Plaintiff's response to UF 10, 11);
- *"Morrissey-Beru admitted that she was responsible for introducing her students to Catholicism and providing the groundwork for their religious doctrine"* (Plaintiff's response to UF 15);
- "Morrissey-Beru admitted that she was committed to faith-based education." (Plaintiff's response to UF 25);
- Plaintiff taught a daily religion class every year at the school (UF 13);
- Plaintiff led the class in daily prayer, including Hail Mary's, as well as spontaneous prayer. (UF 20);
- As a teacher at the School, Plaintiff was expected to participate in school liturgical activities (UF 21);
- Plaintiff's performance evaluations included an evaluation of the Catholic identity factors in the classroom, whether there was visible evidence of

1		the sacramental traditions of the
2		Roman Catholic Church in the
3		classroom, and whether the curriculum
4		included Catholic values infused
5		through all subject areas (UF 23);
6		• Plaintiff was responsible for
7		administering the yearly assessment of
8		children religious education test – a
9		test on Catholic teachings for the 5th
10		grade (UF 24);
11		• Plaintiff directed and produced a
12		performance by the students of the
13		Passion of the Christ as part of the
14		School's Easter celebrations. (UF 27);
15		• Plaintiff took her students to Our
16		Lady of Angels Cathedral in
17		downtown Los Angeles every year for a
18		tour of the cathedral so they could
19		experience serving at the cathedral
20		altar (UF 28);
21		• Plaintiff provided instruction to
22		students using a textbook "Blest are
23		We" (Plaintiff's response to UF 16-19)
24		
25	126. Specifically, Morrissey-Berru	Vague and ambiguous. Compound. This
26	testified that during her "employment	fact is duplicative of PUMF 125 and
27	with Our Lady of Guadalupe Catholic	therefore is calculated to vex, harass and
28		

1 School, I consistently held my
2 position out in the community to those
3 affiliated and unaffiliated with Our
4 Lady of Guadalupe Catholic School as
5 an elementary school teacher. I also
6 personally viewed myself as an
7 elementary school teacher."

8 [Declaration of Agnes Morrissey-Berru
9 4-6.]

annoy. This raises no genuine, material
issue. This fact is irrelevant given that
Plaintiff's admissions include the
following:

- Our Lady of Guadalupe School is a Catholic parish school under the jurisdiction of the Archdiocese of Los Angeles (UF 1);
- "the mission of the School is to provide its students with a Catholic education" (Plaintiff's response to UF 10, 11);
- *"Morrissey-Beru admitted that she was responsible for introducing her students to Catholicism and providing the groundwork for their religious doctrine"* (Plaintiff's response to UF 15);
- "Morrissey-Beru admitted that she was committed to faith-based education." (Plaintiff's response to UF 25);
- Plaintiff taught a daily religion class every year at the school (UF 13);
- Plaintiff led the class in daily prayer, including Hail Mary's, as well as spontaneous prayer. (UF 20);

- As a teacher at the School, Plaintiff was expected to participate in school liturgical activities (UF 21);
- Plaintiff's performance evaluations included an evaluation of the Catholic identity factors in the classroom, whether there was visible evidence of the sacramental traditions of the Roman Catholic Church in the classroom, and whether the curriculum included Catholic values infused through all subject areas (UF 23);
- Plaintiff was responsible for administering the yearly assessment of children religious education test – a test on Catholic teachings for the 5th grade (UF 24);
- Plaintiff directed and produced a performance by the students of the Passion of the Christ as part of the School's Easter celebrations. (UF 27);
- Plaintiff took her students to Our Lady of Angels Cathedral in downtown Los Angeles every year for a tour of the cathedral so they could experience serving at the cathedral altar (UF 28);

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1		<ul style="list-style-type: none">• Plaintiff provided instruction to
2		students using a textbook "Blest are
3		We" (Plaintiff's response to UF 16-19)
4		
5	127. Morrissey-Berru stated that "[a]t	This raises no genuine, material issue.
6	no time did I believe my employment at	This fact is irrelevant given that Plaintiff's
7	Our Lady of Guadalupe Catholic School	admissions include the following:
8	was a "called" position nor did I believe	<ul style="list-style-type: none">• Our Lady of Guadalupe School is a
9	I was accepting a formal call to	Catholic parish school under the
10	religious service by working at Our	jurisdiction of the Archdiocese of Los
11	Lady of Guadalupe as a fifth or six	Angeles (UF 1);
12	grade teacher. Further, at no time during	<ul style="list-style-type: none">• "the mission of the School is to
13	or after my employment with Our Lady	provide its students with a Catholic
14	of Guadalupe did I feel like God was	education" (Plaintiff's response to UF
15	leading me to serve in the ministry	10, 11);
16	[Declaration of Agnes Morrissey-Berru	<ul style="list-style-type: none">• <i>"Morrissey-Beru admitted that</i>
17	118.]	<i>she was responsible for introducing</i>
18		<i>her students to Catholicism and</i>
19		<i>providing the groundwork for their</i>
20		<i>religious doctrine"</i> (Plaintiff's
21		response to UF 15);
22		<ul style="list-style-type: none">• "Morrissey-Beru admitted that she
23		was committed to faith-based
24		education." (Plaintiff's response to UF
25		25);
26		<ul style="list-style-type: none">• Plaintiff taught a daily religion
27		class every year at the school (UF 13);
28		

- Plaintiff led the class in daily prayer, including Hail Mary's, as well as spontaneous prayer. (UF 20);
- As a teacher at the School, Plaintiff was expected to participate in school liturgical activities (UF 21);
- Plaintiff's performance evaluations included an evaluation of the Catholic identity factors in the classroom, whether there was visible evidence of the sacramental traditions of the Roman Catholic Church in the classroom, and whether the curriculum included Catholic values infused through all subject areas (UF 23);
- Plaintiff was responsible for administering the yearly assessment of children religious education test – a test on Catholic teachings for the 5th grade (UF 24);
- Plaintiff directed and produced a performance by the students of the Passion of the Christ as part of the School's Easter celebrations. (UF 27);
- Plaintiff took her students to Our Lady of Angels Cathedral in downtown Los Angeles every year for a

1		tour of the cathedral so they could
2		experience serving at the cathedral
3		altar (UF 28);
4		• Plaintiff provided instruction to
5		students using a textbook "Blest are
6		We" (Plaintiff's response to UF 16-19)
7		
8	128. Morrissey-Berru was not required	The evidence cited in support of PUMF
9	to utilize specialized religious training in	128 (Deposition of Agnes Morrissey-
10	order to begin to teach at Our Lady of	Berru 17:14-18:12) does not support it.
11	Guadalupe.	This testimony pertains to Plaintiff's
12	Deposition of Agnes Morrissey-Berru	educational history and does not address
13	17:14-18:12]	whether or not Plaintiff was required to
14		utilize specialized religious training in
15		order to begin to teach at Our Lady of
16		Guadalupe. Specifically the testimony
17		cited does not address (1) Our Lady of
18		Guadalupe's requirements, nor (2)
19		religious training. In any event, Plaintiff
20		acknowledges that she did undergo
21		religious training (PUMF 133), and
22		therefore this raises no genuine, material
23		issue.
24		
25		
26		
27		
28		

1	129. The only education Morrissey-	This raises no genuine, material issue.
2	Berru had <i>before</i> she began at Our	This fact is duplicative of PUMF 90 and
3	Lady of Guadalupe was a Bachelor of	therefore is calculated to vex, harass and
4	Arts degree in English language arts	annoy.
5	with a minor in secondary education	
6	that she attained in 1973	
7	[Deposition of Agnes Morrissey-Berru	
8	17:21-18:4]	
9	130. Before Morrissey-Berru worked at	This raises no genuine, material issue.
10	Our Lady of Guadalupe, she worked in	This fact is duplicative of PUMF 92 and
11	advertising as a copywriter and	therefore is calculated to vex, harass and
12	salesperson with the Los Angeles Times	annoy.
13	for 20 years.	
14	[Declaration of Agnes Morrissey-	
15	Berru X19.] [Deposition of Agnes	
16	Morrissey-Berru 18:18-19:2]	
17	131. Morrissey-Berru received her	This raises no genuine, material issue.
18	California teaching credential in 2007	This fact is duplicative of PUMF 91 and
19	<i>after</i> teaching at Our Lady of	therefore is calculated to vex, harass and
20	Guadalupe for <i>eight years</i> .	annoy.
21	[Deposition of Agnes Morrissey-Berru	
22	18:5-18:12; 19:3-19:15]	
23	132. Any specific religious training she	Vague as to "specific religious training".
24	performed during her time at Our Lady	The evidence cited in support of PUMF
25	of Guadalupe was done <i>after</i> she was	132 (Plaintiff Depo. 30:1-31:7) does not
26	already employed as a teacher for	support it: "Q. When did you take [the
27	<i>thirteen years</i> .	religious training course]? A. I took it
28		

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1 [Deposition of Agnes Morrissey-Berru 2 30:1-31:7, Exhibit 4] 3 4 5 6 7	approximately in the year 2012. <i>Q. Any other years? A. I'm not sure.</i> " In any event, Plaintiff acknowledges that she did undergo religious training (PUMF 133), and therefore this raises no genuine, material issue.
8 133. Her religious training consisted of a 9 single course in 2012 on the history of 10 the Catholic Church. 11 [Deposition of Agnes Morrissey-Berru 12 30:1-30:18, Exhibit 4] 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Here, Plaintiff acknowledges that she did undergo religious training and therefore this raises no genuine, material issue. Nonetheless it must be pointed out to the Court that Plaintiff's evidence in support of PUMF 133 is not as it should be. 1. First – Plaintiff relies on Exhibit 4 to Plaintiff's deposition to contend that her training consisted of "a single course in 2012." The Exhibit 4 filed with the Court has improperly "blackened out" the pages of this Exhibit that demonstrate there were in fact multiple courses. (See Kantor Decl. in support of Reply, which attaches the un-redacted Exhibit 4 to Plaintiff's deposition.) 2. Similarly, Plaintiff relies exclusively on page 30:1-30:18 in support of this fact - disregarding her

1		admission at 30:19-20 just two lines
2		later that she is " <i>not sure</i> " whether she
3		took it any other years, and her
4		ultimate concession two pages later
5		that it was actually " <u>multiple</u> classes."
6		(Plaintiff Depo. 32:12-13.)
7	134. Morrissey-Berru testified that she	This raises no genuine, material issue.
8	did not personally lead school-wide	Irrelevant because Plaintiff does not
9	religious services, did not select hymns	materially dispute UF 22 that she took her
10	when her class was responsible for	class to weekly Mass and monthly school-
11	mass, did not personally deliver	wide Masses, prepared her students to read
12	messages during mass, and did not have	during Mass, planned the liturgy for
13	the prepare her students to alter serve	monthly Masses, and escorted her students
14	during weekly mass.	to a variety of religious services, including
15	[Deposition of Agnes Morrissey-Berru	for the Feast of our Lady, the Stations of
16	35:10-35:24]	the Cross and Lenten Services and was
17		expected to attend faculty masses and
18		monthly family masses.
19		"Q. Were you expected to take
20		your class to weekly mass? A. Yes.
21		Q. ... how about monthly school-
22		wide masses? A. Yes.
23		Q. How about like for All Saints
24		Day? A. That was my 5th grade
25		mass.
26		Q. Oh, you were responsible for
27		that? A. Yes.
28		Q. Were you responsible for
		taking the students to mass for the
		Feast of Our Lady? A. Yes.
		Q. How about for Reconciliation?

1		A. Yes.
2		Q. Stations of the cross? A. Yes.
3		Q. Lenten services? A. Yes.
4		Q. Am I forgetting any? A.
5		Christmas maybe. ...
6		Q. Did you have to prepare your
7		students to ... read during weekly
8		mass? A. Yes.
9		Q. And also for the school mass?
10		A. Yes. ...
11		Q. Did you -- were you
12		responsible for attending monthly
13		family masses? A. Yes. ...
14		Q. Were you a part of the liturgy
15		planning for school masses? A. At
16		my particular school mass, yes."
17		(Plaintiff Depo. 34:9-35:9, 35:25-36:3,
18		28:25-29:21.)
19	135. Morrissey-Berru's Complaint does	Vague, ambiguous. This raises no
20	not hold her out to be a minister, but a	genuine, material issue. Irrelevant –
21	teacher.	given that Plaintiff's admissions include
22	[Deposition of April Beuder 33:15-	the following:
23	33:22, Exhibit 2 - Plaintiff's First	• Our Lady of Guadalupe School is a
24	Amended Complaint (III 9-18 (stating, in	Catholic parish school under the
25	part, "9. Plaintiff commenced	jurisdiction of the Archdiocese of Los
26	employment with Defendant OUR	Angeles (UF 1);
27	LADY OF GUADALUPE SCHOOL as	• "the mission of the School is to
28	a full-time teacher in or around	provide its students with a Catholic
	September 1999."))	education" (Plaintiff's response to UF
		10, 11);
		• "Morrissey-Beru admitted that
		she was responsible for introducing

her students to Catholicism and providing the groundwork for their religious doctrine" (Plaintiff's response to UF 15);

- "Morrissey-Beru admitted that she was committed to faith-based education." (Plaintiff's response to UF 25);
- Plaintiff taught a daily religion class every year at the school (UF 13);
- Plaintiff led the class in daily prayer, including Hail Mary's, as well as spontaneous prayer. (UF 20);
- As a teacher at the School, Plaintiff was expected to participate in school liturgical activities (UF 21);
- Plaintiff's performance evaluations included an evaluation of the Catholic identity factors in the classroom, whether there was visible evidence of the sacramental traditions of the Roman Catholic Church in the classroom, and whether the curriculum included Catholic values infused through all subject areas (UF 23);
- Plaintiff was responsible for administering the yearly assessment of

1		children religious education test – a
2		test on Catholic teachings for the 5th
3		grade (UF 24);
4		• Plaintiff directed and produced a
5		performance by the students of the
6		Passion of the Christ as part of the
7		School's Easter celebrations. (UF 27);
8		• Plaintiff took her students to Our
9		Lady of Angels Cathedral in
10		downtown Los Angeles every year for a
11		tour of the cathedral so they could
12		experience serving at the cathedral
13		altar (UF 28);
14		• Plaintiff provided instruction to
15		students using a textbook "Blest are
16		We" (Plaintiff's response to UF 16-19)
17		
18	136. On June 2, 2015, Morrissey-	This raises no genuine, material issue.
19	Berru <i>dual-filed</i> a charge of	
20	discrimination on the basis of age	
21	with the EEOC and DFEH	
22	[Defendant's Exh. 2 - EEOC Charge	
23	(Morrissey-Berru 1); Plaintiff's	
24	Request for Judicial Notice, Exhibit	
25	B (EEOC Notice to Complainant and	
26	Respondent)	
27		
28		

1	137. The charge of discrimination	This raises no genuine, material issue.
2	alleged that the conduct occurred	Irrelevant because Plaintiff does not
3	between August 11, 2014 through	dispute UF 69 that Plaintiff was offered
4	May 13, 2015, with the August 11th	and accepted a part time position in mid-
5	representing her demotion from full-	May 2014. Plaintiff signed her
6	time teacher to part-time teacher.	employment agreement for the 2014-2015
7	Defendant's Exh. 2 - EEOC Charge	school year on May 19, 2014.
8	(Morrissey-Berru 1); Plaintiff's	
9	Request for Judicial Notice, Exhibit	
10	B (EEOC Notice to Complainant and	
11	Respondent)	
12	138. Silvia Bosch is the former Director	Objection – irrelevant. This raises no
13	of Extended Care at Our Lady of	genuine, material issue.
14	Guadalupe.	
15	[Deposition of Silvia Bosch 32:15-33:11	
16	139. She worked for Our Lady of	Objection – irrelevant. This raises no
17	Guadalupe between 2009 and 2014.	genuine, material issue.
18	[Deposition of Silvia Bosch 32:15-33:1;	
19	Declaration of Silvia Bosch 1-21	
20	140. As the Director of Extended Care,	Objection – irrelevant. This raises no
21	Ms. Bosch was responsible for the	genuine, material issue.
22	scheduling of after school extended	
23	care, including making sure the children	
24	are cared for and assisting with	
25	homework.	
26	[Deposition of Silvia Bosch 33:4-	
27	33:17]	
28		

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1	141. In addition, Ms. Bosch would help	Objection – irrelevant. This raises no
2	with the lunch program and yard duty.	genuine, material issue.
3	[Deposition of Silvia Bosch 33:4-	
4	33:17; 33:21-34:1]	
5	142. In total, Ms. Bosch was responsible	Objection – irrelevant. This raises no
6	for supervising between four to five	genuine, material issue.
7	employees, including an employee	
8	named Lana who was in her 60's.	
9	[Deposition of Silvia Bosch 51:23-52:25;	
10	66:13-66:15] [Declaration of Silvia	
11	Bosch] 3]	
12	143. Ms. Bosch testified that Lana	Objection – irrelevant. This raises no
13	"assisted with watching the children,	genuine, material issue.
14	homework, the lunch program,	
15	monitoring the children during lunch,	
16	serving snacks, cutting snacks,	
17	cleaning, [and] making sure parents	
18	sign in and out."	
19	[Deposition of Silvia Bosch 52:15-	
20	52:20]	
21	144. Overall, Ms. Bosch testified that she	Objection – irrelevant. This raises no
22	struggled managing Lana and felt that	genuine, material issue.
23	she was "aggressive, confrontational, and	
24	not a good fit for the school."	
25	[Declaration of Silvia Bosch ¶ 3]	
26	[Deposition of Silvia Bosch 53:1-55:3]	

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1	145. In Christmas of 2012, Ms. Bosch	Objection – irrelevant, hearsay, vague,
2	began to speak with Principal April	ambiguous. This raises no genuine,
3	Beuder about the difficulties Ms. Bosch	material issue.
4	was having with Lana.	
5	[Deposition of Silvia Bosch 60:17-61:3]	
6	146. By early 2013, after attempting	Objection – irrelevant. This raises no
7	verbal counseling and a written warning,	genuine, material issue.
8	Ms. Bosch determined that she would	
9	like to terminate Lana.	
10	[Deposition of Silvia Bosch 55:2- 55:3;	
11	60:17-61:13; 106:7-106:10] [Declaration	
12	of Silvia Bosch 114]	
13	147. Ms. Bosch met with Principal April	Objection – irrelevant. This raises no
14	Beuder in her office to inform Ms.	genuine, material issue.
15	Beuder of Ms. Bosch's intention to	
16	terminate Lana.	
17	[Declaration of Silvia Bosch 114]	
18	[Deposition of Silvia Bosch 62:16-	
19	63:12]	
20	148. However, during the meeting,	Objection – irrelevant; hearsay; barred by
21	Ms. Beuder told her that she could not	the jurisdictional prerequisites of 29
22	terminate Lana as it was "a lawsuit in	U.S.C. 626(d)(1)(Charge of
23	the making."	discrimination must be filed "within 300
24	[Declaration of Silvia Bosch II	days after the alleged unlawful practice
25	5][Deposition of Silvia Bosch 63:10-	occurred".) In any event, this raises no
26	65:5]	genuine, material issue. (See e.g. <i>Bashara</i>
27		<i>v. Black Hills Corp.</i> , 26 F.3d 820, 824
28		

1		(8th Cir. 1994).)
2		
3		
4		
5	149. Ms. Beuder then stated: <i>"That's not</i>	Objection – Hearsay; irrelevant; barred
6	<i>how you terminate older people. Let me</i>	by the jurisdictional prerequisites of 29
7	<i>tell you how to terminate older people."</i>	U.S.C. 626(d)(1)(Charge of
8	[Deposition of Silvia Bosch 63:10-65:5]	discrimination must be filed "within 300
9	[Declaration of Silvia Bosch li 6]	days after the alleged unlawful practice
10		occurred".) In any event, this raises no
11		genuine, material issue.
12	150. She also stated, <i>"First you are</i>	Objection – Hearsay; irrelevant; barred
13	<i>going to reduce. Every time you do a</i>	by the jurisdictional prerequisites of 29
14	<i>schedule, you reduce her hours and</i>	U.S.C. 626(d)(1)(Charge of
15	<i>duties — document it — little by little."</i>	discrimination must be filed "within 300
16	[Deposition of Silvia Bosch 63:10-65:5;	days after the alleged unlawful practice
17	70:14-71:25] [Declaration of Silvia	occurred".) In any event, this raises no
18	Bosch X1 ⁶]	genuine, material issue.
19	151. Ms. Beuder stated that eventually	Objection – Hearsay; irrelevant; barred
20	<i>employees become so 'frustrated or</i>	by the jurisdictional prerequisites of 29
21	<i>miserable" that eventually they quit.</i>	U.S.C. 626(d)(1)(Charge of
22	[Deposition of Silvia Bosch 63:10-65:5]	discrimination must be filed "within 300
23	[Declaration of Silvia Bosch "[6]	days after the alleged unlawful practice
24		occurred".) In any event, this raises no
25		genuine, material issue.
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1	152. Ms. Bosch asked Ms. Beuder what	Objection – Hearsay; irrelevant; barred
2	she should do if the Lana doesn't leave.	by the jurisdictional prerequisites of 29
3	[Deposition of Silvia Bosch 63:10-65:5]	U.S.C. 626(d)(1)(Charge of
4		discrimination must be filed "within 300
5		days after the alleged unlawful practice
6		occurred".) In any event, this raises no
7		genuine, material issue.
8	153. Ms. Beuder responded that if Lana	Objection – Hearsay; irrelevant; barred
9	doesn't leave then <i>"you don't renew her</i>	by the jurisdictional prerequisites of 29
10	<i>contract."</i>	U.S.C. 626(d)(1)(Charge of
11	[Deposition of Silvia Bosch 63:10-65:5]	discrimination must be filed "within 300
12		days after the alleged unlawful practice
13		occurred".) Nonsensical because Ms.
14		Bosch testified that this individual was
15		not under contract (Bosch Depo. 96:3-4
16		["Q. Did she have a contract that could be
17		renewed? A. Again, physical contract?
18		No."].) In any event, this raises no
19		genuine, material issue.
20	154. Silvia Bosch testified that	Objection – Irrelevant; hearsay;
21	throughout her employment at Our Lady	argumentative; lacks foundation;
22	of Guadalupe, she heard "Principle	improper opinion; vague and ambiguous;
23	Beuder make several underhanded	conclusory; speculation; barred by the
24	comments about Agnes Deirdre	jurisdictional prerequisites of 29 U.S.C.
25	Morrissey-Berru" and she witnessed	626(d)(1)(Charge of discrimination must
26	Principle Beuder "roll her eyes when Ms.	be filed "within 300 days after the alleged
27	Morrissey-Berru's name was brought	unlawful practice occurred".) This raises
28		

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1 up."	no genuine, material issue and is
2 [Declaration of Silvia Bosch ¶ 7]	irrelevant because the Bosch deposition
3 [Deposition of Silvia Bosch 79:15-85:6]	testimony cited in support of PUMF 154
4	describes the alleged comments as
5	follows:
6	1. Once, Mrs. Bosch asked Mrs.
7	Beuder who was going to do a saints-
8	related activity, and Mrs. Beuder said
9	that Plaintiff would do it; and
10	2. On another occasion, Mrs. Beuder
11	congratulated Mrs. Bosch on her
12	daughter's getting into a pre-algebra
13	program, advised that Plaintiff thought
14	she had something to do with it, and
15	said that "we all know she doesn't."
16	These comments have nothing to do with
17	Plaintiff's age. She alleges Mrs. Beuder
18	rolled her eyes to Mrs. Bosch "a few
19	times" when Plaintiff's name came up,
20	having nothing to do with Plaintiff's age.
21 155. Moreover, Ms. Bosch testified	Objection - Irrelevant; hearsay; lacks
22 that throughout her employment,	foundation; improper opinion; vague and
23 parents would approach her and state	ambiguous; lacks personal knowledge;
24 "I don't think Principal Beuder likes	conclusory; speculation; barred by the
25 Ms. Morrissey-Berru"	jurisdictional prerequisites of 29 U.S.C.
26 [Declaration of Silvia Bosch 1[7]	626(d)(1)(Charge of discrimination must be
27 [Deposition of Silvia Bosch 85:25-89:5]	filed "within 300 days after the alleged
28	

1		unlawful practice occurred".) This raises no
2		genuine material issue and is irrelevant –
3		these conversations had nothing to do with
4		Plaintiff's age.
5		
6	156. In addition, Beatriz Botha testified	Plaintiff's evidence does not comply with
7	that April Beuder "is notorious for	Fed. R. Civ. P. Rule 56(e), which in
8	retaliating against parents of students and	pertinent part provides "affidavits must be
9	employees."	made on personal knowledge, set out
10	[Declaration of Beatriz Botha II 7]	facts as would be admissible in evidence,
11		and show that the affiant or declarant is
12		competent to testify to the matters stated."
13		Botha's assertion is conclusory, hearsay,
14		irrelevant, totally lacking in foundation,
15		vague and ambiguous, improper opinion,
16		speculation, and fails to establish any
17		personal knowledge. In any event, this
18		raises no genuine, material issue and is
19		irrelevant because Plaintiff is dismissing
20		her "retaliation" claim.
21	157. In November 2012, Principal April	This raises no genuine, material issue.
22	Beuder performed a classroom	This is verbatim the same "fact" as PUMF
23	observation of Morrissey-Berru's	105 and therefore is calculated to vex,
24	teaching.	harass and annoy. This fact is irrelevant
25	[Deposition of April Beuder 189:11-	as it involves a review of a <i>science</i> class.
26	193:20, Exhibit 9]	
27		
28		

1	158. At Our Lady of Guadalupe, Ms.	This raises no genuine, material issue.
2	Beuder was the only individual who	This fact is nearly identical to PUMF 103
3	completed this observation form.	and therefore is calculated to vex, harass
4	[Deposition of April Beuder 193:9-	and annoy.
5	193:20]	
6	159. On the review, Ms. Beuder marked	This raises no genuine, material issue.
7	either "Innovating" or "Implementing" to	This fact is nearly identical to PUMF 106
8	describe various aspects of Morrissey-	and therefore is calculated to vex, harass
9	Berru's performance.	and annoy. This fact is irrelevant as it
10	[Deposition of April Beuder 189:11-	involves a review of a <i>science</i> class.
11	190:1, Exhibit 9]	
12	160. Additionally, Ms. Beuder wrote	This raises no genuine, material issue.
13	positive comments about Morrissey-	This fact is identical to PUMF 106 and
14	Beau's teaching, including "Ms.	therefore is calculated to vex, harass and
15	Morrissey has an excellent rapport	and annoy. This fact is irrelevant as it
16	with her students. This was an	involves a review of a <i>science</i> class.
17	interactive lesson that engaged	
18	multiple mobilities, visual auditory,	
19	kinesthetic. Highly effective use of	
20	technology."	
21	[Deposition of April Beuder 189:11-	
22	190:1, Exhibit 9 — OLG 0156]	
23	161. In March 2013, Principal April	This raises no genuine, material issue.
24	Beuder performed a classroom	This fact is irrelevant as it involves a
25	observation of Morrissey-Berru's	review of a <i>math</i> class.
26	teaching.	
27	Exhibit 5 - Defendant's Document	
28		

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1	Production [OLG 0146-0148]	
2	162. On the review, Ms. Beuder marked	This raises no genuine, material issue.
3	either "Innovating" or "Implementing" to	This fact is irrelevant as it involves a
4	describe various aspects of Morrissey-	review of a <i>math</i> class.
5	Berru's performance.	
6	Exhibit 5 - Defendant's Document	
7	Production [OLG 0146-0148]	
8	163. Additionally, Ms. Beuder noted that	This raises no genuine, material issue.
9	Morrissey-Berra has an "[e]xcellent use	This fact is irrelevant as it involves a
10	of technology" and stated that "Ms.	review of a <i>math</i> class.
11	Morrissey-Berru demonstrated calm	
12	under pressure when she had to switch	
13	gears due to technical difficulties!"	
14	Exhibit 5 - Defendant's Document	
15	Production [OLG 0146-0148]	
16	164. In November 2014, Principle April	This raises no genuine, material issue.
17	Beuder performed a classroom	
18	observation of Morrissey-Berru's	
19	teaching.	
20	Exhibit 5 - Defendant's Document	
21	Production [OLG 0170-0172]	
22	165. On the review, Ms. Beuder marked	This raises no genuine, material issue.
23	either "Innovating" or "Implementing" to	Irrelevant because on the same review,
24	describe various aspects of Morrissey-	Mrs. Beuder also marked "emerging" to
25	Ben u's performance.	describe aspects of Plaintiff's
26	Exhibit 5 - Defendant's Document	performance. This is also irrelevant
27	Production [OLG 0170-0172]	because it is a review from November
28		

1		2014, after Plaintiff was no longer
2		teaching reading and writing.
3		
4		
5	166. Additionally, Ms. Beuder noted	This raises no genuine, material issue.
6	that Morrissey-Berra has a "[g]reat use	Irrelevant because on the same review,
7	of technology" and stated that "Mrs.	Mrs. Beuder also marked "emerging" to
8	Morrissey-Benu did an excellent job	describe aspects of Plaintiff's
9	incorporating technology into her	performance. This is also irrelevant
10	lesson. She was well-prepared with all	because it is a review from November
11	materials and knowledgeable regarding	2014, after Plaintiff was no longer
12	the subject."	teaching reading and writing. Also
13	Exhibit 5 - Defendant's Document	irrelevant because Plaintiff's need to
14	Production [OLG 0170-0172]	improve in implementing the concrete
15		adjustments for students with special
16		needs (step/maps) and to "differentiate"
17		assignments and assessments was also
18		noted therein.
19	In Plaintiff's conclusions of law in her separate statement in opposition to	
20	Defendant's Motion for Summary Judgment, she fails to identify any conclusion of law	
21	that she contends can or should be made with regard to the nonrenewal of Plaintiff's	
22	contract, and therefore has waived any such argument. Her conclusion #6 pertains only	
23	to the assignment of Plaintiff to the part-time position.	
24	DATED: September 1, 2017	BALLARD ROSENBERG GOLPER & SAVITT, LLP
25		By: 
26		STEPHANIE B. KANTOR
27		Attorneys for Defendant
28		OUR LADY OF GUADALUPE SCHOOL

PROOF OF SERVICE**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 15760 Ventura Boulevard, Eighteenth Floor, Encino, California 91436.

On September 1, 2017 I served the following document(s) described as **DEFENDANT'S REPLY TO PLAINTIFF'S STATEMENT OF CONTROVERTED AND UNCONTROVERTED MATERIAL FACTS AND CONCLUSIONS OF LAW RE: MOTION OF DEFENDANT FOR SUMMARY JUDGMENT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

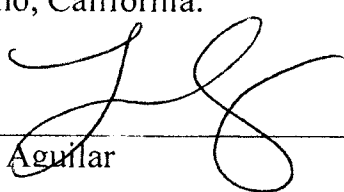
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 1, 2017 at Encino, California.



Lisa Aguilar

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 OUR LADY OF GUADALUPE
 7 SCHOOL

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

10 AGNES DEIRDRE MORRISSEY-
 BERRU, an individual

11 Plaintiff,

12 vs.

13 OUR LADY OF GUADALUPE
 14 SCHOOL, a California non-profit
 corporation and DOES 1 through 50,
 15 inclusive

16 Defendants.

CASE NO. 2:16-CV-09353-SVW-AFM

[Assigned to Hon Stephen V. Wilson]

**DEFENDANT'S REPLY IN
 SUPPORT OF MOTION FOR
 SUMMARY JUDGMENT**

[Fed. R. Civ. P. 56]

Date: September 18, 2017

Time: 1:30 p.m.

Ctrm: 10A

(Filed concurrently with Objections to
 Plaintiffs Evidence; Kantor Reply
 Declaration; Reply to Statement of
 Uncontroverted Facts; Notice of
 Lodgment of Objection to Evidence)

Action Filed: December 19, 2016

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Agnes Deirdre Morrissey-Beru ("Plaintiff") concedes that her job duties reflected a crucial role in conveying the Church's message and carrying out its mission. Specifically, she admits that *"she was responsible for introducing her students to Catholicism and providing the groundwork for their religious doctrine"*. (UF 15) Plaintiff's employment contract and job duties demonstrate that she was a messenger of Our Lady of Guadalupe's faith. (UF 1-28) Her claim under the Age Discrimination in Employment Act ("ADEA") is therefore barred by the ministerial exception.

Plaintiff also admits that she did not file her EEOC/DFEH charge until *more than 300 days* after she signed her employment agreement for a part time position. (UF 69, 82). Her claim with regard to the part time position is time-barred by her failure to timely exhaust her administrative remedies as a matter of law.

Finally, Plaintiff does not dispute Defendant's legitimate non-discriminatory reasons for the decisions to move her to a part time position, and to not renew her contract. Specifically, she concedes that she was moved to a part time position so as to allow her to keep on working, but *avoid involvement with the Readers and Writers Workshop*. (UF 67 – "UNCONTROVERTED".) She further concedes that her part time contract was not renewed *because the School could not continue to financially sustain Plaintiff's extra part time position* for the 2015-2016 school year (UF 76 – "UNCONTROVERTED"), and *because Mrs. Beuder wanted someone teaching social studies who would be willing and able to incorporate the Reader's and Writer's Workshop*. (UF 77 – "UNCONTROVERTED") Having conceded that these were the reasons for the decisions made about Plaintiff's employment, Plaintiff cannot demonstrate that "but for" Plaintiff's age, these decisions would not have been made.

Defendant respectfully requests that summary judgment be granted.

///

///

1 **II. PLAINTIFF CONCEDES HER JOB DUTIES REFLECTED A ROLE IN**
2 **CONVEYING THE CHURCH'S MESSAGE AND CARRYING OUT ITS**
3 **MISSION**

4 Plaintiff admits that "*she was responsible for introducing her students to*
5 *Catholicism and providing the groundwork for their religious doctrine*" and "*she was*
6 *committed to faith-based education*". (UF 25, 15) While she focuses in on her title as
7 teacher, and whether she personally felt "called", she cannot and does not materially
8 dispute that her job duties reflected a role in conveying the Church's message and
9 carrying out its mission, thereby subjecting her to the ministerial exception.

10 As Plaintiff points out, in *Puri v. Khalsa*, 844 F.3d 1152, 1160 (9th Cir. 2017), the
11 Ninth Circuit reflected on the guidance provided by the Supreme Court in *Hosanna-*
12 *Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, as to what might qualify
13 an employee as a minister within the meaning of the ministerial exception. "First, an
14 employee is more likely to be a minister if a religious organization holds the employee
15 out as a minister by bestowing a formal religious title." *Id.* at p.1160. Plaintiff argues
16 that she did not have the title of minister. But, Courts "look[] to the function of the
17 position rather than to ordination in deciding whether the ministerial exception applies
18 to a particular employee's Title VII claim." *Elvig v. Calvin Presbyterian Church*, 375
19 F.3d 951, 958 (9th Cir. 2004); *Alcazar v. Corporation of the Catholic Archbishop of*
20 *Seattle*, 627 F.3d 1288, 1291 (2010) ("The ministerial exception encompasses more
21 than a church's ordained ministers.") "A second consideration is the "substance
22 reflected in that title," such as "a significant degree of religious training followed by a
23 formal process of commissioning." *Puri*, 844 F.3d at p.1160. Here, Plaintiff admits that
24 she underwent special religious training. (UF 14)

25 "Third, an employee whose "job duties reflect[] a role in conveying the Church's
26 message and carrying out its mission" is likely to be covered by the exception, even if
27 the employee devotes only a small portion of the workday to strictly religious duties
28

1 and spends the balance of her time performing secular functions." *Puri*, 844 F.3d at
2 p.1160.

3 In *Puri v. Khalsa*, the Court found that the board members of nonprofit entities
4 associated with a religious community were not alleged to have "religious duties
5 comparable to those found relevant in *Hosanna-Tabor*." Specifically, *Puri* noted that:

6 In *Hosanna-Tabor*, the Supreme Court observed the plaintiff was
7 "expressly charged . . . with 'lead[ing] others toward Christian maturity'
8 and 'teach[ing] faithfully the Word of God, the Sacred Scriptures, in its
9 truth and purity and as set forth in all the symbolical books of the
10 Evangelical Lutheran Church.'" Id. "In fulfilling these responsibilities, [the
11 plaintiff] taught her students religion[,] . . . led them in prayer[,] . . . took
12 her students to a school-wide chapel service, and . . . took her turn leading
13 it, choosing the liturgy, selecting the hymns, and delivering a short
14 message based on verses from the Bible." Id. The Court concluded, "[a]s
15 a source of religious instruction, [the plaintiff] performed an important
16 role in transmitting the Lutheran faith to the next generation." Id. By
17 contrast, none of the allegations here support a similar conclusion.

18 *Id.* at pp. 1160-1161.

19 Plaintiff argues that like the board members of nonprofit entities in *Puri*, she did
20 not have comparable religious duties to the *Hosanna-Tabor* considerations, but the
21 undisputed facts and Plaintiff's verified testimony clearly demonstrate otherwise. Just as
22 the plaintiff in *Hosanna-Tabor* was "expressly charged . . . with lead[ing] others towards
23 Christian maturity", Plaintiff was "responsible for introducing her students to
24 Catholicism." (UF 15) Just as "[a]s a source of religious instruction, [the plaintiff in
25 *Hosanna-Tabor*] performed an important role in transmitting the Lutheran faith to the
26 next generation," Plaintiff admitted that "she was responsible for . . . providing the
27 groundwork for [her students] religious doctrine". (UF 15) Just as the Plaintiff in
28 *Hosanna-Tabor* was responsible for "teach[ing] faithfully the Word of God, the Sacred

1 Scriptures, in its truth and purity and as set forth in all the symbolical books of the
2 Evangelical Lutheran Church", Plaintiff was responsible for teaching the Bible and that
3 Jesus is the son of God and the Word made flesh, using the teaching guidance of
4 Catholic textbook, *Blest are We*. (UF 16-19)

5 Just as the plaintiff in *Hosanna-Tabor* "taught her students religion", Plaintiff
6 also taught daily religion. (UF 13) She also administered a test on Catholic teachings
7 (UF 24), and her job duties in conveying the Church's message did not end there. She
8 was responsible for ensuring her curriculum included Catholic values infused through
9 all subject areas. (UF 23) "She was committed to faith-based education". (UF 25) To
10 that end, she also directed and produced a performance by the students of the Passion of
11 the Christ as part of the School's Easter celebration, (UF 27) and took her students to
12 serve at the alter at Our Lady of Angels Cathedral (UF 28).

13 Just as the plaintiff in *Hosanna-Tabor* "led [her students] in prayer," Plaintiff
14 also led the class in daily prayer, including Hail Mary's, as well as spontaneous prayer
15 (UF 20). Just as the plaintiff in *Hosanna-Tabor* "took her students to a school-wide
16 chapel service", Plaintiff took her class to weekly and monthly mass. (UF 22) While
17 Plaintiff did not personally lead services or deliver the message during mass, she was
18 expected to participate in school liturgical activities (UF 21), to prepare her students to
19 read during mass, and to plan the liturgy for monthly masses. (UF 22) Plaintiff was
20 inarguably a messenger of Our Lady of Guadalupe's faith.

21 "Finally, an employee who holds herself out as a religious leader is more likely
22 to be considered a minister." *Id.* Plaintiff alleges that she did not hold herself out as a
23 religious leader, but rather as a teacher. Arguably Plaintiff did hold herself out as a
24 religious leader in leading the Passion plays, and planning trips for her students to have
25 the opportunity to altar-serve. (UF 23, 28) She also tried to integrate religious attitudes
26 and values into all of her curricular areas and to instruct her students in a manner
27 consistent with the teachings of the Church. (UF 26) She felt that her duties and
28 responsibilities should be performed within the overriding commitment of providing

1 students with a Catholic education, including instructing them in the tenets of the faith
2 and instilling in them Catholic values (UF 10).

3 In her Opposition, Plaintiff fails to discuss any authority analyzing the ministerial
4 exception in the context of teachers at church-operated schools like Our Lady of
5 Guadalupe School, and thereby disregards the “critical and unique role of *the teacher* in
6 fulfilling the mission of a church-operated school.” *NLRB v. Catholic Bishop of*
7 *Chicago*, 440 U.S. 490, 501, 59 L. Ed. 2d 533, 99 S. Ct. 1313 (1979). While Plaintiff
8 argues this Court should disregard cases outside of the Ninth Circuit, she fails to
9 acknowledge the opinion of the Central District of California in *Biel v. St. James*
10 *School*, CV 15-04248 TJH (ASx), C.D. Cal. Jan. 17, 2017. In *Biel*, the Court granted
11 summary judgment as to an ADA claim under the ministerial exception because the
12 fifth grade teacher's employment contract and job duties demonstrated that her job
13 duties reflected a role in conveying the Church's message and carrying out its mission.

14 Even when the only *Hosanna-Tabor* factor satisfied is that the plaintiff
15 performed an important role in transmitting the faith to the next generation, the
16 ministerial exception has been held to apply. *Biel v. St. James, supra*; *Puri*, 844 F.3d at
17 p.1160 (“an employee whose “job duties reflect a role in conveying the Church's
18 message and carrying out its mission” is likely to be covered by the exception”), see
19 also *Ciurleo v. St. Regis Parish*, 214 F. Supp. 3d 647, *5 (E.D. Mich. Oct. 7, 2016)
20 (concluding that the ministerial exception barred claims even though only the last of the
21 four *Hosanna-Tabor* factors applied because duties of giving daily religious instruction
22 and leading morning prayers “are the hallmark of religious exercises through which
23 religious communities transmit their received wisdom and heritage to the next
24 generation of believers”); *Fratello v. Archdiocese of N.Y.*, 863 F.3d 190 (2d Cir.
25 2017)(claims of principal expressly designated as a “lay” subject to ministerial
26 exception because “*the most important consideration* ... is whether, and to what
27 extent, the plaintiff performed important religious functions”).

28

1 Given the uncontroverted facts show that Plaintiff acted as a messenger of Our
2 Lady of Guadalupe's faith, her claims would interfere with Our Lady of Guadalupe's
3 ability to choose who will convey its message. *See Bollard v. California Province of*
4 *the Soc'y of Jesus*, 196 F.3d 940, 946 (9th Cir. 1999).

5 **III. PLAINTIFF FAILS TO DISPUTE AND THEREFORE CONCEDES**
6 **THAT THE DECISION TO EMPLOY HER IN A PART TIME POSITION**
7 **IS OUTSIDE THE SCOPE OF HER CLAIM**

8 Defendant argued in its moving papers (23:13-16) that Plaintiff failed to allege
9 that the decision to employ her in a part time position was an adverse employment
10 action *under her first claim for relief* for discrimination under the ADEA in her
11 Complaint, and therefore it is outside of the scope of this claim. (*Coleman v. Quaker*
12 *Oats Co.*, 232 F.3d 1271, 1292 (9th Cir. 2000) ("A complaint guides the parties'
13 discovery, putting the defendant on notice of the evidence it needs to adduce in order to
14 defend against the plaintiff's allegations.")).

15 Indeed, Plaintiff's Complaint identifies only her alleged termination as an adverse
16 act *under her first claim for relief* (See Complaint ¶¶21-31), and does not once identify
17 the decision to employ her in a part time position. See Complaint ¶¶21-31, e.g. ¶23
18 ("Defendant *terminated* Plaintiff's employment"), ¶24 ("she was *terminated* from
19 employment with Defendant because of her age"); ¶26 ["in *terminating* Plaintiff's
20 employment, Defendant subjected Plaintiff to discrimination on the basis of her age in
21 violation of the ADEA").

22 Plaintiff fails to dispute this argument and therefore has waived this issue and
23 abandoned any argument in opposition thereto. *Shakur v. Schriro*, 514 F.3d 878, 892
24 (9th Cir. 2008) ("We have previously held that a plaintiff has 'abandoned . . . claims by
25 not raising them in opposition to [the defendant's] motion for summary judgment.'");
26 *Stichting Pensioenfonds ABP v. Countrywide Fin.*, 802 F. Supp. 2d 1125 (C.D. Cal.
27 2011) ("[I]n most circumstances, failure to respond in an opposition brief to an
28 argument put forward in an opening brief constitutes waiver or abandonment in regard

1 to the uncontested issue."); *Morales v. City of Delano*, 852 F. Supp. 2d 1253, 1271
 2 (E.D. Cal. 2012) ("Where a defendant moves for summary judgment and the plaintiff
 3 does not oppose or raise the claim in opposition, the claim is deemed abandoned.").

4 **IV. PLAINTIFF CONCEDES THAT SHE WAS ON NOTICE OF AN**
 5 **ALLEGED DISCRIMINATORY ACT MORE THAN 300 DAYS BEFORE**
 6 **SHE FILED HER DFEH/EEOC CHARGE**

7 Defendant agrees with Plaintiff that she was required to file a charge with the
 8 EEOC within **300** days of the alleged unlawful practice because she dual-filed her
 9 charge with the DFEH. (29 USC 626(d)(1), 42 USC 2000e-5(e)(1).) Plaintiff concedes
 10 that she did not file her charge within 300 days of having signed her binding
 11 employment agreement for the part-time position on **May 19, 2014**. (UF 69, 82)¹

12 Plaintiff argues instead that the clock should start running on her claim that the
 13 decision to assign her to a part-time position was discriminatory at the start of the 2014-
 14 2015 school year when she "*began* receiving less money." (Plaintiff's Opposition
 15 "OPP" 19:11-12.) The Ninth Circuit has held that "the proper focus is upon the time of
 16 the discriminatory acts, not upon the time at which the consequences of the acts became
 17 most painful." *Abramson v. University of Hawaii*, 594 F.2d 202, 209 (9th Cir. 1979)
 18 (cited with approval in *Delaware State College v Ricks*, 449 U.S. 250, 258, 66 L. Ed. 2d
 19 431, 101 S. Ct. 498 (1980)).

20 In *Delaware State College v. Ricks*, the plaintiff librarian was notified by the
 21 President of the Board on June 26, 1974 that he would be denied tenure and offered a
 22 "terminal" contract for the upcoming 1974-1975 school year. The Supreme Court held
 23 that the limitations period in a Title VII action began to run on the date that the plaintiff
 24 was first notified of the denial of tenure, not the date of the eventual loss of his teaching
 25 position, finding that "the only alleged discrimination occurred -- and the filing
 26 _____

27 ¹Plaintiff filed her charge on June 2, 2015, 379 days after she signed the contract for
 28 the part time position. (UF 69, 82)

1 limitations periods therefore commenced -- at the time the tenure decision was made
2 and communicated to Ricks." *Ricks*, 449 U.S. at p.258.

3 Just as in *Ricks*, Plaintiff was notified on May 19, 2014 that she would be
4 assigned to a part time position and offered and accepted a "part-time" contract for the
5 upcoming 2014-2015 school year. It was clear at this time that the School "had
6 established its official position -- and made that position apparent to" Plaintiff, because
7 she signed a binding contract to that effect on May 19, 2014. *Ricks* at p.252. Thus, like
8 *Ricks*, the statute of limitations began to run on the date that Plaintiff was first notified
9 of the decision to assign her to a part-time position or when she signed her contract, not
10 the date that she began teaching part time.

11 In considering the Supreme Court's holding in *Ricks*, the Ninth Circuit explained
12 that "Ricks, on learning of the denial of tenure, would have notice of all allegedly
13 wrongful acts that he later sought to challenge,[and] the statute of limitations must
14 be deemed to commence at that time." *Hoesterey v. City of Cathedral City*, 945 F.2d
15 317, 319 (9th Cir. 1991). Likewise, Plaintiff had "notice" of the alleged wrongful act
16 (of being assigned to a part time position) at the time she signed her contract, because
17 the contract informed her in binding language that she was going to be teaching part
18 time. *See, e.g. Chardon v. Fernandez*, 454 U.S. 6, 70 L. Ed. 2d 6, 102 S. Ct. 28 (1981)
19 (holding that a wrongful termination claim accrued at the time the plaintiff received
20 "notice" of the termination, not at the time of the termination itself).

21 Indeed, Plaintiff knew the act was allegedly discriminatory at the time she was
22 advised of the decision. She was aware that the part-time position came with less
23 money at the time she signed the contract. Similarly, she alleges that "at the time" she
24 signed the contract in May 2014, she was asked if she wanted to retire (Plaintiff's
25 Undisputed Material Facts "PUMF" 113), and believed she was being replaced by an
26 individual "who was in his 30's". (PUMF 117). Thus, Plaintiff was on notice of
27 purported discrimination on May 19, 2014. She sat on her rights and waited more than
28 300 days after notice of the allegedly wrongful act to file a charge with the

1 DFEH/EEOC. Plaintiff's claim with regard to the decision to assign her to a part-time
 2 position is therefore time-barred by her failure to timely exhaust her administrative
 3 remedies as to that claim. (UF 69, 82)

4 **V. PLAINTIFF CONCEDES THAT OUR LADY OF GUADALUPE SCHOOL**
 5 **HAD LEGITIMATE NON-DISCRIMINATORY REASONS FOR ITS**
 6 **DECISIONS**

7 Plaintiff does not dispute (materially or otherwise) Defendant's legitimate non-
 8 discriminatory reasons for its decision to not renew Plaintiff's contract. Specifically,
 9 Plaintiff responded that it was "uncontroverted" that Plaintiff's contract was not
 10 renewed because the School could not continue to financially sustain Plaintiff's extra
 11 part time position for the 2015-2016 school year, and this position was therefore
 12 eliminated. (UF 76) Indeed, Plaintiff also conceded that when Mrs. Beuder was hired,
 13 the School was on the verge of closing, and the parish was having to heavily subsidize
 14 the school to keep it open. (UF 30) She conceded that Mrs. Beuder had to shuffle the
 15 budget around in order to even create the part-time role for Plaintiff. (UF 67-68)

16 She acknowledges that the School could not continue to financially sustain the
 17 extra part time position for the 2015-2016 school year (UF 76) and affirms that no
 18 teacher has held Plaintiff's part-time position since the 2014-2015 school year. (UF 80)
 19 Instead, all of Plaintiff's classes were absorbed by the existing staff. (UF 80) *Sahadi v.*
 20 *Reynolds Chemical*, 636 F.2d 1116, 1117-1118 (6th Cir. 1980) (where plaintiff's job is
 21 eliminated due to economic conditions and his duties are assigned to another employee
 22 who performs them in addition to other duties, there is no evidence of age
 23 discrimination and the plaintiff failed to make out a prima facie case); *see also Birkbeck*
 24 *v. Marvel Lighting Corp.*, 30 F.3d 507, 513 (4th Cir. 1994) (finding that the employer's
 25 layoff decisions reflected "business realities, not age discrimination"). Plaintiff does not
 26 suggest that the difficult financial condition of the school was not a reality.

27 With regard to the importance of Readers and Writers Workshop, Plaintiff
 28 concedes that from the time Mrs. Beuder started as Principal in March 2012 (UF 29),

1 Mrs. Beuder was tasked with improving the school's reading program (UF 31) and
 2 made it a top priority (UF 32), immediately adopting the Workshop (UF 37)². She
 3 admits that Mrs. Beuder felt the need to provide Plaintiff with extra support with the
 4 implementation of the Workshop during the 2013-2014 school year. (UF 40, 45) She
 5 admits that this came to a head in March 2014, when Mrs. Beuder was unable to
 6 complete an evaluation of a Workshop lesson she had come to Plaintiff's classroom to
 7 observe, because Plaintiff *failed* to conduct a Workshop lesson. (UF 58-59)

8 Nowhere in Plaintiff's Opposition, in her Declaration or otherwise, does Plaintiff
 9 argue that she was actually excelling at Readers and Writers Workshop. Indeed, she
 10 concedes that the very purpose of the part-time role was to allow her to keep teaching,
 11 but avoid involvement with the Workshop (UF 67).

12 Finally, Plaintiff admits that in addition to the financial reasons, her contract was
 13 also not renewed because going forward, Mrs. Beuder wanted someone teaching social
 14 studies who would be willing and able to incorporate the Reader's and Writer's
 15 Workshop so that these lessons could be reinforced across the curriculum as the
 16 students learning needs had changed. (UF 77) Plaintiff concedes that her social studies
 17 instruction did not incorporate the tenets of the Readers and Writers Workshop or
 18 academic rigor. (UF 39, 73) *Nash v. Optomec, Inc.*, 849 F.3d 780 (8th Cir.
 19 2017)(summary judgment granted against plaintiff in age case, finding legitimate non-
 20 discriminatory business reasons where it was the company's "vision for the future of the
 21 lab technician position, and Nash's inability to fit that vision, that led to his dismissal.").

22 Given Plaintiff's significant concessions, she cannot demonstrate, "by a
 23 preponderance of the evidence, that age was the "but-for" cause of the challenged
 24

25
 26 ² Plaintiff also acknowledges that a goal of Mrs. Beuder's was to make the School a
 27 more inclusive community, including for students with special needs. (UF 33). She
 28 admits that Mrs. Beuder received continuous critical feedback from Dr. Marianne
 Mitchell, the school psychologist, on many occasions, that Plaintiff was not
 differentiating instruction for the students with special needs. (UF 62-63)

1 adverse employment action." *Scheitlin v. Freescale Semiconductor, Inc.*, 465 Fed.
2 Appx. 698, 699 (9th Cir. 2012).

3 Plaintiff argues only that pretext can be found based upon (1) some positive
4 comments (not about the Workshop) in Plaintiff's stale reviews; (2) one witnesses'
5 feeling that Mrs. Beuder did not like Plaintiff – untethered to her age; and (3) alleged
6 comments made by Mrs. Beuder acknowledging the potential for litigation from an
7 older employee.

8 Plaintiff's argument with regard to her performance is unavailing. She alleges
9 that on November 2012, March 2013, and November 2014, positive comments were
10 written about Plaintiff, focusing primarily on her use of technology in the classroom.
11 (PUMF 157-166). None of these comments are with regard to Plaintiff's
12 implementation of Readers and Writers Workshop.³ Indeed, Plaintiff has no evidence,
13 not even in her own declaration, that she received positive comments about her
14 implementation of the Readers and Writers Workshop. Far from it, Plaintiff **does not**
15 **dispute** that Mrs. Beuder came to her classroom to observe a Workshop lesson by
16 Plaintiff in March 2014, and Plaintiff **failed** to conduct a Workshop lesson, such that
17 the observation form could not even be filled out. (UF 58-59.)

18 Plaintiff's argument with regard to her performance also fails to create evidence
19 of pretext because she relies solely on evidence from the 2012-2013, and 2014-2015
20 school year, and she does not have any evidence of positive feedback from the 2013-
21 2014 school year. The 2013-2014 school year is the year that Mrs. Beuder concluded
22 that she could no longer have Plaintiff teaching reading and writing, and moved her to a
23 part time position for the 2014-2015 school year. Thus, Plaintiff's stale feedback is
24 irrelevant to the decisions made about Plaintiff because of her failure to implement the
25 Workshop during the 2013-2014 school year. (See also fn. 3)

26 _____
27 ³The November 2012 form is an observation of a science class, and the March 2013
28 form is an observation of a math class. (PUMF 157, 161)

1 Plaintiff also claims that Defendant's reasons for its decisions were pretextual
2 because Mrs. Beuder allegedly made the following hearsay comments to Mrs. Bosch
3 *having nothing to do with Plaintiff's age*: (1) once Mrs. Bosch asked Mrs. Beuder
4 who was going to do a saints-related activity, and Mrs. Beuder said that Plaintiff would
5 do it; and (2) On another occasion, Mrs. Beuder congratulated Mrs. Bosch on her
6 daughter's getting into a pre-algebra program, advised that Plaintiff thought she had
7 something to do with it, and said that "we all know she doesn't." (See Defendant's
8 response to PUMF 154.)

9 Plaintiff also claims pretext based upon Mrs. Beuder allegedly rolling her eyes to
10 Mrs. Bosch "a few times" when Plaintiff's name came up, *having nothing to do with*
11 *Plaintiff's age*. Lastly, Plaintiff claims pretext based upon Mrs. Bosch's multiple
12 hearsay testimony that parents relayed to her that they felt Mrs. Beuder did not like
13 Plaintiff. There is no allegation that these multiple hearsay conversations, lacking in
14 foundation and personal knowledge, *had anything to do with Plaintiff's age*.

15 Finally, Plaintiff tries to introduce pretext through a multiple hearsay comment
16 allegedly made by Mrs. Beuder to Mrs. Bosch about another employee in 2013.
17 However, Plaintiff's evidence actually shows that Mrs. Beuder *did not want to*
18 terminate an older employee even though Mrs. Bosch really wanted to. (PUMF 144,
19 147.) Further, Mrs. Beuder's concern that terminating an older employee could lead to
20 a lawsuit is a recognition of the realities of today's litigious workplace, and not
21 evidence of pretext. Indeed, in *Bashara v. Black Hills Corp.*, 26 F.3d 820, 824 (8th Cir.
22 1994), the Eighth Circuit found that a comment by a supervisor that he was concerned
23 that the plaintiff's termination might violate the ADEA was not direct evidence of age
24 discrimination, and rather should be viewed as the "functional equivalent of a stray
25 remark that we have said does not constitute evidence of discriminatory animus." (*Id.*)
26 In coming to that decision, the court explained that:

27 It would be a foolhardy supervisor indeed who, however well-documented
28 and irrefutably established a termination decision might be, would not

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1 have some concern over possible litigation arising out of the termination
2 of an age-protected employee. An expression of concern in these
3 circumstances should not be equated with an admission of age-related
4 animus on the part of Black Hills, but rather should be regarded as a
5 natural reaction to the ever-present threat of litigation attendant upon
6 terminating an age-protected employee.
7 *Id.*⁴; see also *Brune v. BASF Corp.*, 2000 U.S. App. LEXIS 26772, *10-11 (6th Cir.
8 2000) ("Notes acknowledging that Ashing was the oldest and longest service chemist
9 ... only demonstrate BASF's awareness of the potential risk an employer faces when it
10 terminates an employee over forty years of age, but **does not insinuate that Ashing was**
11 **a less qualified chemist or terminated because of her age.**"); *Tuttle v. Missouri Dep't*
12 *of Agric.*, 172 F.3d 1025 * (8th Cir, 1999)("That an employer involved in a RIF which
13 affected only [age] protected employees would voice some concern over the possibility
14 of litigation does not strike us as probative of whether the employer was motivated by
15 age animus in today's litigious society.") The remarks alleged by Plaintiff do not
16 indicate a negative attitude toward Plaintiff's age.

17 Indeed, if Mrs. Beuder bore animus towards Plaintiff because of her age, why
18 would she have hired Plaintiff at 61? (UF 35-36) "It is simply incredible ... that [Mrs.
19 Beuder] who hired [Plaintiff at 61] had suddenly developed an aversion to older people
20 less than [three] years later." *Lowe v. J. B. Hunt Trans. P., Inc.*, 963 F.2d 173, 175 (8th
21 Cir. 1992); see, also, *Rothmeier v. Investment Advisors, Inc.*, 85 F.3d 1328, 1337 (8th
22 Cir. 1996); *Proud v. Stone*, 945 F.2d 796, 797 (4th Cir. 1991) ("In cases where the hirer
23 and the firer are the same individual and that termination of employment occurs within
24 a relatively short time span following the hiring, a strong inference exists that
25

26 ⁴Defendant made this argument in its moving papers as well, but Plaintiff failed to
27 address it in her Opposition, and therefore has abandoned any argument in opposition
28 thereto. *Shakur v. Schriro*, 514 F.3d 878, 892 (9th Cir. 2008); *Stichting Pensioenfonds*
ABP v. Countrywide Fin., 802 F. Supp. 2d 1125 (C.D. Cal. 2011).

1 discrimination was not a determining factor for the adverse action taken by the
 2 employer.”); *Wolf v. Buss (America), Inc.*, 77 F.3d 914 (7th Cir. 1996) (fact that
 3 plaintiff was initially hired at the age of 51, although nonconclusive, is somewhat
 4 indicative of [defendant’s] lack of discriminatory intent.”); *LeBlanc v. Great Am. Ins.*
 5 *Co.*, 6 F.3d 836, 847 (1st Cir. 1993) (affirmed summary judgment for employer that
 6 terminated 59-year-old plaintiff less than two years after his transfer was approved);
 7 *Rand v. CF Indus., Inc.*, 42 F.3d 1139, 1147 (7th Cir. 1994) (“It seems rather suspect to
 8 claim that the company that hired him at age 47 had suddenly developed an aversion to
 9 older people two years later.”); *Lowe v. J.B. Hunt Transport, Inc.* 963 F.2d 173, 174
 10 (8th Cir. 1992) (“The most important fact here is that plaintiff was a member of the
 11 protected age group both at the time of his hiring and at the time of his firing.”)
 12 Tellingly, Plaintiff fails to address this argument and therefore has waived this issue
 13 and abandoned any argument in opposition thereto. *Shakur v. Schriro*, 514 F.3d 878,
 14 892 (9th Cir. 2008); *Stichting Pensioenfonds ABP v. Countrywide Fin.*, 802 F. Supp. 2d
 15 1125 (C.D. Cal. 2011); *Morales v. City of Delano*, 852 F. Supp. 2d 1253, 1271 (E.D.
 16 Cal. 2012).

17 **VI. CONCLUSION**

18 Based on the above, Defendant's motion for summary judgment should be
 19 granted in full.

20
 21 DATED: September 1, 2017

BALLARD ROSENBERG GOLPER &
 SAVITT, LLP

22
 23 By: 

24 STEPHANIE B. KANTOR
 25 Attorneys for Defendant OUR LADY OF
 26 GUADALUPE SCHOOL
 27
 28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 15760 Ventura Boulevard, Eighteenth Floor, Encino, California 91436.

On September 1, 2017 I served the following document(s) described as **DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

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☒ **BY ELECTRONIC MAIL TRANSMISSION: VIA CM/ECF** By electronic mail transmission by transmitting a PDF format copy of such document(s) to each such person at the email address listed below their address(es). The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error.

☒ **BY FEDEX:** I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I deposited such document(s) in a box or other facility regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by FedEx to receive documents, in an envelope or package designated by FedEx with delivery fees paid or provided for, addressed to the person(s) being served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 1, 2017 at Encino, California.



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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AGNES MORRISSEY-BERRU,
an individual,

Plaintiff,

vs.

OUR LADY OF GUADALUPE
CATHOLIC SCHOOL, a
California non-profit corporation;
and DOES 1-50, inclusive,
Defendants.

Case No. 2:16-cv-09353-SVW-AFM
Assigned to: Hon. Stephen V. Wilson

**PLAINTIFF AGNES MORRISSEY-
BERRU'S COMPENDIUM OF
EVIDENCE IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT - VOLUME 2**

Filed and served concurrently with:

- Plaintiff's Memorandum of Points & Authorities in Opposition to Defendant's MSJ;
- Plaintiff's Separate Statement of Controverted & Uncontroverted Facts;
- Plaintiff's Request for Judicial Notice

Date: September 18, 2017

Time: 1:30 p.m.

Ctrm: 10A

Complaint Filed: December 19, 2016

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiff, AGNES MORRISSEY-BERRU ("Plaintiff") hereby submits the following evidence in support of her Opposition to the Motion for Summary Judgment, filed by Defendant OUR LADY OF GUADALUPE CATHOLIC SCHOOL ("Defendant").

DECLARATIONS:

- Declaration of Andrew S. Pletcher
- Declaration of Plaintiff Agnes Morrissey-Berru
- Declaration of Silvia Bosch
- Declaration of Beatriz Botha

EXHIBITS TO THE DECLARATION OF ANDREW S. PLETCHER:

1	Relevant Portions of the Deposition of Plaintiff Agnes Morrissey-Berru (April 26, 2017), including relevant exhibits from the deposition.
2	Relevant Portions of the Deposition of April L. Beuder, Volume I (May 4, 2017), including relevant exhibits from the deposition.
3	Relevant Portions of the Deposition of April L. Beuder, Volume II (May 11, 2017), including relevant exhibits from the deposition.
4	Relevant Portions of the Deposition of Silvia Bosch (July 20, 2017), including relevant exhibits from the deposition.
5	True and correct copies of the pertinent pages of Defendant's document production in response to Plaintiff's Request for Production of Documents and Tangible Items to Defendnat Our Lady of Guadalupe School, Set One. (DEFT PRODUCTION 0001-0721) produced to Plaintiff on April 21, 2017.

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Respectfully submitted,

DATED: August 28, 2017 JML LAW, A Professional Law Corporation

By: /s/ Andrew S. Pletcher
JOSEPH M. LOVRETOVICH
JARED W. BEILKE
CATHRYN G. FUND
ANDREW S. PLETCHER
Attorneys for Plaintiff

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DECLARATION OF ANDREW S. PLETCHER

1 **DECLARATION OF ANDREW S. PLETCHER**

2 I, Andrew S. Pletcher, hereby declare as follows:

3 1. I am an attorney at law, duly licensed to practice in the State of
4 California and before this court. I am an associate with the firm JML Law, A
5 Professional Law Corporation, counsel of record for Plaintiff AGNES DEIRDRE
6 MORRISSEY-BERRU ("Plaintiff") in the matter of *Agnes Deirdre Morrissey*
7 *Berru v. Our Lady of Guadalupe School* currently pending before the United States
8 District Court for the Central District of California. I have personal knowledge of
9 the facts set forth in this Declaration and could and would testify competently
10 thereto under oath, if called as a witness.

11 2. On April 26, 2017, my colleague, Cathryn Fund defended the
12 deposition of Plaintiff in this case, which was taken by Defendant's counsel.
13 Attached to Plaintiff's Compendium of Evidence as **Exhibit 1** are true and correct
14 copies of pertinent pages and exhibits from Plaintiff's deposition, which
15 memorializes Plaintiff's testimony from her deposition on April 26, 2017.

16 3. On May 4, 2017, my colleague, Cathryn Fund took the deposition of
17 April L. Beuder in this case. Attached to Plaintiff's Compendium of Evidence as
18 **Exhibit 2** are true and correct copies of pertinent pages and exhibits of April L.
19 Beuder's deposition, which memorializes Ms. Beuder's testimony from her May 4,
20 2017 deposition.

21 4. On May 11, 2017, my colleague, Cathryn Fund took the second
22 volume of deposition of April L. Beuder in this case. Attached to Plaintiff's
23 Compendium of Evidence as **Exhibit 3** are true and correct copies of pertinent
24 pages and exhibits from the second volume of April L. Beuder's deposition, which
25 memorializes Ms. Beuder's testimony from her May 11, 2017 deposition.

26 5. On July 20, 2017, my colleague attended the third party deposition of
27 Silvia Bosch in this case. Attached to Plaintiff's Compendium of Evidence as
28 **Exhibit 4** are true and correct copies of pertinent pages and exhibits from the

1 Silvia Bosch deposition, which memorializes Ms. Bosch's testimony from her July
2 20, 2017 deposition.

3 6. Attached as Exhibit 5 are true and correct copies of the pertinent
4 pages of Defendant's document production in response to Plaintiff's Request for
5 Production of Documents and Tangible Items to Defendnat Our Lady of
6 Guadalupe School, Set One. (DEFT PRODUCTION 0001-0721) produced to
7 Plaintiff on April 21, 2017.

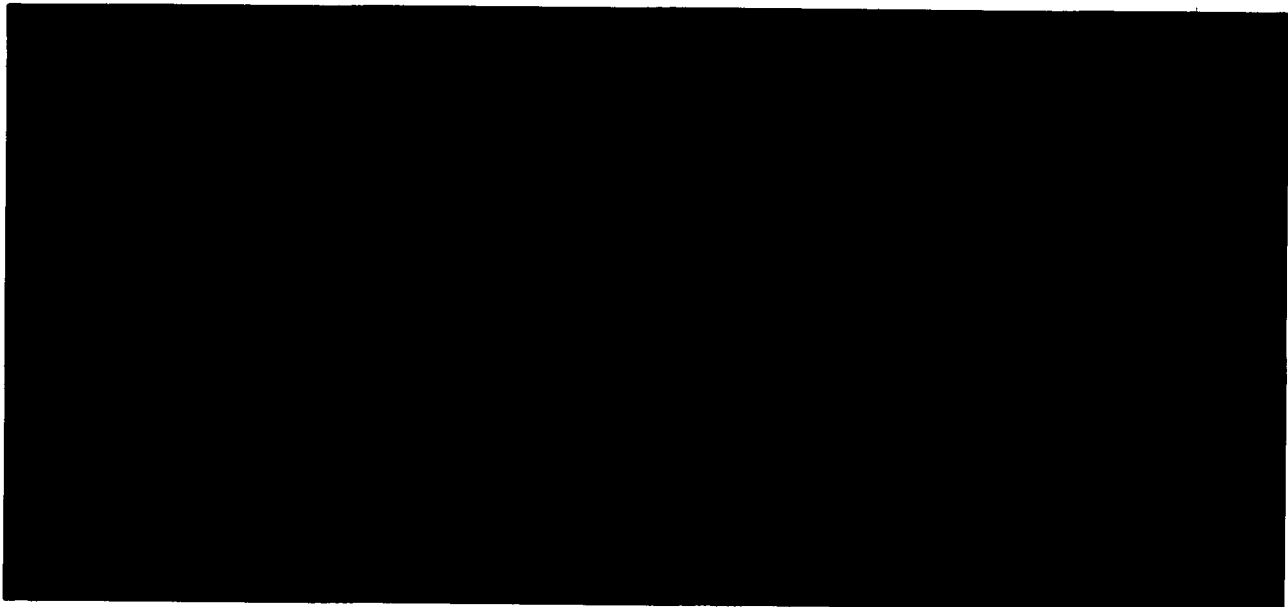
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9
10 I hereby declare under penalty of perjury, under the laws of the State of
11 California and the United States of America that the foregoing is true and correct,
12 and that this Declaration was executed on August 28, 2017, at Woodland Hills,
13 California.

14
15 By: /s/ Andrew S. Pletcher

16 Andrew S. Pletcher
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EXHIBIT 3



April L. Beuder

May 11, 2017

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AGNES DEIRDRE
MORRISSEY-BERRU, an
individual,

Plaintiff,

VS.

)
)
)
)
)
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)
) Case No.
) 2:16-cv-09353-SVW-AFM

OUR LADY OF GUADALUPE
CATHOLIC SCHOOL, a
California non-profit
corporation; and DOES
1-50, inclusive,

) Volume II

Defendants.

VIDEOTAPED DEPOSITION OF APRIL L. BEUDER

Los Angeles, California

Thursday, May 11, 2017

Reported by: Damaris Martinez
CSR No. 12925
NDS Job No.: 192106

218

April L. Beuder

May 11, 2017

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3
4

5 AGNES DEIRDRE
6 MORRISSEY-BERRU, an
individual,

7 Plaintiff,

8 vs.

9 OUR LADY OF GUADALUPE
10 CATHOLIC SCHOOL, a
California non-profit
11 corporation; and DOES
1-50, inclusive,

12 Defendants.
13
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) Case No.
) 2:16-cv-09353-SVW-AFM
)
) Volume II
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16 VIDEOTAPED DEPOSITION OF APRIL L. BEUDER,
17 taken on behalf of the Plaintiff, before Damaris
18 Martinez, a Certified Shorthand Reporter, Number
19 12925, for the State of California; commencing at
20 11:04 a.m., on Thursday, May 11, 2017, at 21052
21 Oxnard Street, Woodland Hills, California.
22
23
24
25

219

April L. Beuder

May 11, 2017

1 APPEARANCES OF COUNSEL:

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3 For the Plaintiff:

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BY: CATHRYN G. FUND, ESQ.

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April L. Beuder

May 11, 2017

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WITNESS

APRIL L. BEUDER

EXAMINATION

PAGE

BY MS. FUND

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EXHIBITS

MARKED

DESCRIPTION

PAGE

Exhibit 10 Document Bates Stamped OLG 0200

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Exhibit 11 Document Bates Stamped
MORRISSEY-BERRU 269

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Exhibit 12 Verification

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Exhibit 13 Document Bates Stamped
OLG 0705 - OLG 0707

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April L. Beuder

May 11, 2017

1 BY MS. FUND: 11:32:43

2 Q How many times approximately would you say 11:32:43

3 you brought it up with the current pastor? Can you 11:32:45

4 remind me of his name? 11:32:49

5 A Father Joe. 11:32:51

6 Q Father Joe. 11:32:52

7 A Current pastor. 11:32:54

8 Once or twice. 11:32:55

9 Q Okay. Did you ever bring up these same 11:33:04

10 concerns with the school board? 11:33:08

11 MS. KANTOR: Vague. 11:33:11

12 THE WITNESS: I did not bring concerns to 11:33:17

13 the school board. 11:33:19

14 BY MS. FUND: 11:33:21

15 Q Do you believe -- I'm just asking for your 11:33:31

16 personal opinion -- that Ms. Morrissey-Berru's 11:33:34

17 implementation of the readers or writers workshop 11:33:40

18 negatively impacted the students in any way? 11:33:44

19 MS. KANTOR: Overbroad. Vague. Calls for 11:33:53

20 a narrative. 11:33:55

21 THE WITNESS: Yes. 11:34:02

22 BY MS. FUND: 11:34:02

23 Q Okay. And in what way? 11:34:03

24 MS. KANTOR: Overbroad. Calls for a 11:34:06

25 narrative. 11:34:08

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April L. Beuder

May 11, 2017

1 THE WITNESS: The impact would vary 11:34:14
2 depending on time frame. 11:34:16

3 BY MS. FUND: 11:34:18

4 Q Sure. During the 2013 to 2014 school year, 11:34:20
5 how about let's focus on that time frame. In what 11:34:28
6 way do you believe that there was a negative impact 11:34:31
7 on students during that time frame? 11:34:33

8 MS. KANTOR: Vague and overbroad and calls 11:34:36
9 for a narrative. 11:34:38

10 THE WITNESS: The students were not 11:34:50
11 receiving the same type of reading instruction 11:34:54
12 in Ms. Morrissey-Berru's class that they had 11:35:01
13 received in the previous grade and would 11:35:06
14 receive in the next grade. 11:35:09

15 BY MS. FUND: 11:35:24

16 Q Did you find that their grades dropped 11:35:25
17 following -- let me strike that. 11:35:29

18 Did you find that the students' grades 11:35:33
19 dropped -- well, I'll strike that a second time. 11:35:36

20 Did you find that the students' grades 11:35:39
21 dropped in the year or two following their reading 11:35:42
22 and writing program with Ms. Morrissey-Berru? 11:35:47

23 MS. KANTOR: Vague, overbroad. Lacks 11:35:50
24 foundation. Calls for speculation. 11:35:56

25 THE WITNESS: The most accurate evidence of 11:36:07

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April L. Beuder

May 11, 2017

1 impacts on student learning are student work 11:36:09
2 samples. Informal walk-throughs. 11:36:13
3 BY MS. FUND: 11:36:23
4 Q So my question is whether you noticed that 11:36:24
5 their grades dropped in subsequent years? 11:36:26
6 MS. KANTOR: Same objections. Asked and 11:36:30
7 answered. 11:36:31
8 THE WITNESS: Possibly. 11:36:43
9 BY MS. FUND: 11:36:44
10 Q Do you have knowledge that they dropped or 11:36:49
11 are you guessing? 11:36:52
12 MS. KANTOR: Lacks foundation. 11:36:56
13 Argumentative. 11:36:59
14 THE WITNESS: Grading and assessment was 11:37:07
15 also a concern in Ms. Morrissey-Berru's 11:37:09
16 classroom and would not be an accurate 11:37:12
17 reflection of levels of student achievement. 11:37:14
18 BY MS. FUND: 11:37:19
19 Q I'm going to strike that answer as 11:37:20
20 nonresponsive. 11:37:22
21 Do you have -- my question again was 11:37:30
22 whether you have any evidence that the grades 11:37:32
23 dropped because you said possibly. 11:37:36
24 MS. KANTOR: Lacks foundation. 11:37:39
25 Argumentative. Asked and answered. 11:37:39

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April L. Beuder

May 11, 2017

1 THE WITNESS: Not at this time. But I 11:37:44
2 could -- possibly earlier day. 11:37:46
3 BY MS. FUND: 11:37:52
4 Q Did you receive any complaints from any 11:37:53
5 parents of students in Ms. Morrissey-Berru's class 11:38:02
6 relating to her implementation of the reading and 11:38:08
7 writing program? 11:38:12
8 MS. KANTOR: Overbroad. Calls for a 11:38:14
9 narrative. 11:38:16
10 THE WITNESS: Can you be more specific with 11:38:18
11 the time frame? 11:38:19
12 BY MS. FUND: 11:38:20
13 Q At any time. 11:38:21
14 A Yes. 11:38:21
15 Q Okay. And how many different parents? 11:38:22
16 A Five to six come to mind immediately. 11:38:44
17 Q And just to confirm. Again, those are 11:38:47
18 related to the reading and writing program 11:38:49
19 implementation? 11:38:51
20 A Yes. 11:38:52
21 Q Okay. And what are the names of those 11:38:53
22 parents? 11:38:55
23 MS. KANTOR: I'm sorry, but I'm going to 11:38:56
24 instruct not to answer on privacy grounds. 11:38:57
25 MS. FUND: How are we supposed to question 11:39:01

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April L. Beuder

May 11, 2017

1 BY MS. FUND: 12:00:14

2 Q Okay. Did you ever consider, I believe his 12:00:14

3 name is Mr. Hazen. Do you know who I'm referring 12:00:22

4 to, Jimmy Hazen? 12:00:24

5 A Yes, I know who Jimmy Hazen is. 12:00:26

6 Q Did you ever consider him to teach the 12:00:28

7 fifth grade class for the 2014, 2015 school year? 12:00:31

8 A I don't recall him specifically. I don't 12:00:36

9 recall him specifically. Overall, there was -- I 12:00:45

10 looked at everyone to see if it was possible to move 12:00:50

11 people around. 12:00:53

12 Q Did you ever -- 12:00:55

13 A And it wasn't. 12:00:56

14 Q Sorry. Did you ever tell Mr. Hazen that 12:00:58

15 you wanted him to take on the fifth grade teaching 12:01:01

16 job? 12:01:04

17 A No. 12:01:04

18 Q Do you know how old Mr. Hazen is? 12:01:12

19 A No. 12:01:16

20 Q What's your best estimate? 12:01:16

21 MS. KANTOR: Don't guess. 12:01:21

22 THE WITNESS: 30s. 12:01:22

23 MS. KANTOR: It's been almost an hour. Can 12:01:33

24 we take a break sometime soon? 12:01:35

25 MS. FUND: Sure. We can take one right 12:01:36

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April L. Beuder

May 11, 2017

1 the position. 12:13:21

2 MS. KANTOR: You can answer. 12:13:22

3 THE WITNESS: No. 12:13:23

4 BY MS. FUND: 12:13:24

5 Q Okay. Who ultimately was selected to teach 12:13:24

6 the majority of classes for fifth grade for 2014, 12:13:31

7 2015? 12:13:33

8 MS. KANTOR: Vague as to "majority of 12:13:35

9 classes." Argumentative. Lacks foundation. 12:13:38

10 THE WITNESS: In late July 2014. 12:13:45

11 Ms. Andrea Ruma was hired to teach fifth and 12:13:54

12 sixth grade language arts. 12:14:03

13 BY MS. FUND: 12:14:07

14 Q Are those the only classes that she was 12:14:07

15 teaching? 12:14:09

16 A She was part-time. 12:14:10

17 Q And again my question is, are those the 12:14:11

18 only classes she was teaching? 12:14:13

19 A Yes. 12:14:14

20 Q Only language arts for fifth and sixth 12:14:15

21 grade? 12:14:19

22 MS. KANTOR: Asked and answered. 12:14:19

23 THE WITNESS: And fifth grade math. 12:14:25

24 BY MS. FUND: 12:14:36

25 Q Who taught -- I'll strike that. 12:14:36

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April L. Beuder

May 11, 2017

1 Is reading and writing included in language 12:14:53
2 arts? 12:14:56
3 A Language arts is reading, writing, 12:14:56
4 spelling, grammar, phonics, yes. 12:14:58

5 Q Who was teaching science to the fifth grade 12:15:10
6 students during the 2014 to 2015 school year? The 12:15:11
7 fifth grade students? 12:15:13
8 A I believe it was Ms. Katy Dovey. 12:15:24
9 Q Did you know Ms. Ruma before she started at 12:15:37
10 OLG school? 12:15:37
11 A I worked with her once. 12:15:29
12 Q And where did you work with her? 12:15:41
13 A I worked with her at American Martyrs 12:15:43
14 Catholic School. 12:15:43
15 Q And how long did you work with her there at 12:15:43
16 American Martyrs? 12:15:45
17 A I believe our time there overlapped by 12:15:47
18 three years, three to four years. 12:16:07
19 Q Did you ever ask Ms. Morrissey-Berru to 12:16:12
20 help Ms. Ruma with the reading and writing program? 12:16:15
21 MS. KANTOR: Lacks foundation. 12:16:20
22 THE WITNESS: Only to give her all the 12:16:31
23 books and resources that she had in her 12:16:32
24 possession. 12:16:34
25 / / / 12:16:35

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April L. Beuder

May 11, 2017

1 seem to be two of the subjects that she was -- 12:24:27
2 particularly enjoyed teaching. With the 12:24:31
3 understanding that I can't have her teaching 12:24:39
4 reading, readers workshop and writers workshop. 12:24:42

5 BY MS. FUND: 12:24:48

6 Q Did you have any complaints about 12:24:48
7 Ms. Morrissey-Berru's teaching during the 2014 to 12:24:50
8 2015 school year? 12:24:53

9 MS. KANTOR: Overbroad. Lacks foundation. 12:24:56
10 Calls for speculation. Calls for a narrative. 12:25:00

11 THE WITNESS: Yes. 12:25:04

12 BY MS. FUND: 12:25:04

13 Q Okay. What were those concerns? 12:25:05

14 A Classroom management, lack of rigor in 12:25:12
15 social studies. 12:25:22

16 THE REPORTER: Lack of? 12:25:23

17 THE WITNESS: Rigor. Academic rigor. 12:25:23

18 Coloring. Too much coloring. Concerns about 12:25:23

19 sweets being brought into and provided for the 12:25:36

20 students despite school-wide policy against 12:25:42

21 sweets. 12:25:46

22 BY MS. FUND: 12:26:03

23 Q At any time did you consider renewing her 12:26:03

24 part-time contract or offering her another part-time 12:26:06

25 contract for the 2015, 2016 school year? 12:26:09

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April L. Beuder

May 11, 2017

1	A	No.	12:26:12
2	Q	And why is that?	12:26:14
3	A	I created a part-time position explicitly	12:26:21
4		for one year for Ms. Morrissey-Berru and found a way	12:26:23
5		to make it work in our budget but it was not a	12:26:32
6		sustainable model for a number of reasons.	12:26:40
7	Q	And tell me about what those reasons are.	12:26:43
8	A	It's an additional part-time position that	12:26:47
9		wasn't there before. We have very limited resources	12:26:49
10		and the -- having someone in teaching social	12:26:56
11		studies, who is not able to collaborate and	12:27:05
12		integrate the principles of reading and writing	12:27:11
13		instruction that are probably throughout the school	12:27:17
14		is problematic and not in the students' best	12:27:20
15		interest.	12:27:25
16	Q	Ultimately, then, why did you decide to	12:27:25
17		offer her the position, the part-time position for	12:27:38
18		2014, 2015?	12:27:40
19		MS. KANTOR: Asked and answered.	12:27:44
20		THE WITNESS: I was doing my best to	12:27:55
21		preserve her dignity and treat her with	12:27:57
22		compassion.	12:27:59
23		BY MS. FUND:	12:28:00
24	Q	Do you know what a employee counseling	12:28:21
25		notice is?	12:28:23

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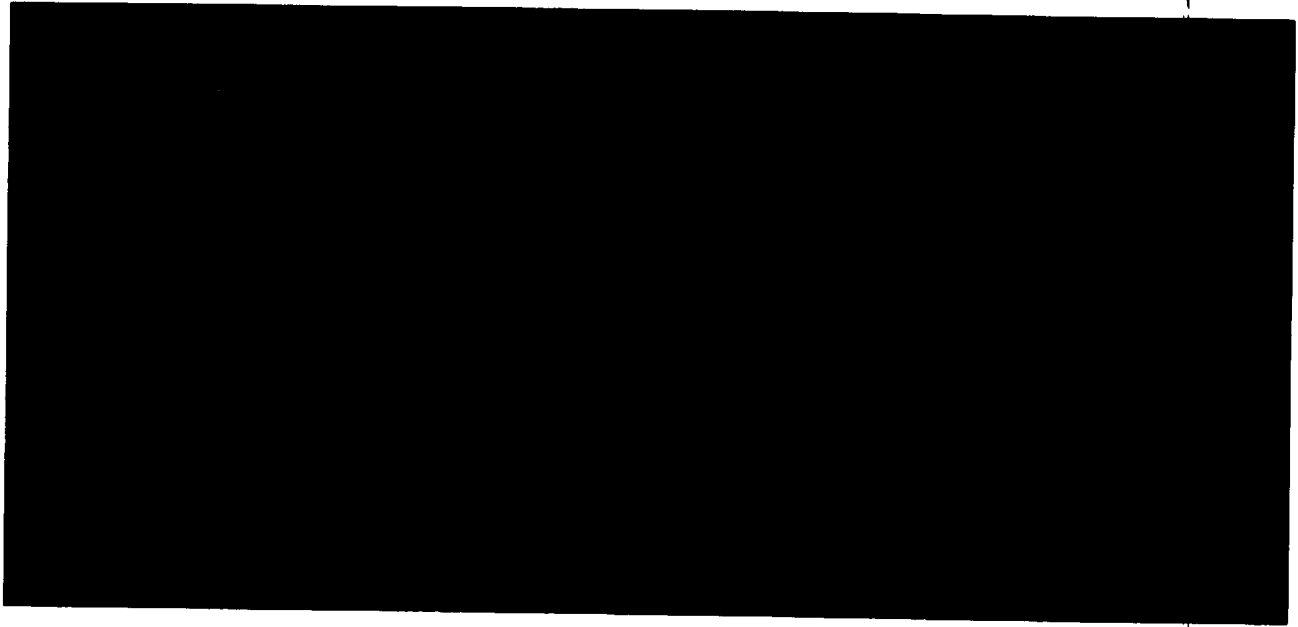
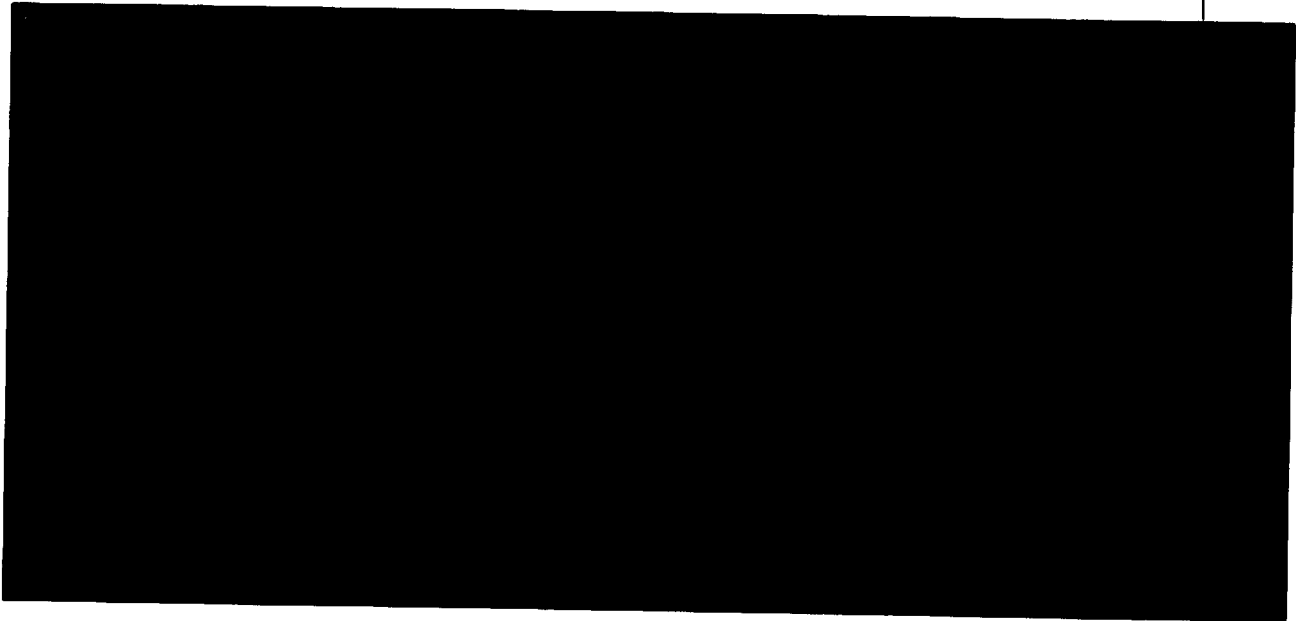


EXHIBIT 4



YOUR ELECTRONIC FILES HAVE ARRIVED

IN THE MATTER OF:

AGNES DEIRDRE MORRISSEY-BERRU

VS.

OUR LADY OF GUADALUPE SCHOOL

SILVIA BOSCH

JULY 20, 2017

JOB # 105779

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SILVIA BOSCH - 07/20/2017

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AGNES DEIRDRE MORRISSEY-BERRU,)
AN INDIVIDUAL,)

PLAINTIFF,)

VS.)

OUR LADY OF GUADALUPE SCHOOL, A)
CALIFORNIA NON-PROFIT)
CORPORATION1 AND DOES 1 THROUGH)
50, INCLUSIVE,)

DEFENDANTS.)

CASE NO.

2:16-CV-09353-SVW-AFM

DEPOSITION OF SILVIA BOSCH

THURSDAY, JULY 20, 2017

JOB NO. 105779

REPORTED BY IZUMI KONO, CSR NO. 14156

SILVIA BOSCH - 07/20/2017

1 DEPOSITION OF SILVIA BOSCH, TAKEN ON BEHALF OF THE
2 DEFENDANTS, AT 10:10 A.M., THURSDAY, JULY 20, 2017, AT
3 15760 VENTURA BOULEVARD, 18TH FLOOR, ENCINO, CALIFORNIA
4 91436, BEFORE IZUMI KONO, CSR NO. 14156.

5
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17 ALSO PRESENT:

18 APRIL BEUDER
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SILVIA BOSCH - 07/20/2017

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WITNESS	EXAMINATION	PAGE
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DEFENDANT'S EXHIBITS

NO.	PAGE	DESCRIPTION
EX 1	11	DEPOSITION SUBPOENA
EX 2	48	MRS. BOSCH DIAGRAM OF TEACHERS' LOUNGE INCIDENT
EX 3	90	DECLARATION OF SILVIA BOSCH

SILVIA BOSCH - 07/20/2017

1 A No.

2 Q My understanding is that Mrs. Morrissey-Berru
3 had said something to us about reaching out to you for a
4 letter.

5 Do you recall any conversation like that?

6 A I don't recall.

7 Q Do you recall any e-mails like that?

8 MS. FUND: I'm sorry. Reach out to your office?

9 MS. KANTOR: No.

10 BY MS. KANTOR:

11 Q Reaching out to you for a letter.

12 MS. KANTOR: To Ms. Bosch.

13 THE WITNESS: I don't recall.

14 BY MS. KANTOR:

15 Q Okay. Were you an employee of Our Lady of
16 Guadalupe School?

17 A Yes.

18 Q And what years were you employed there?

19 A To the best of my knowledge, '09? 2009.

20 Q Until?

21 A Again, to the best of my knowledge, 2014.

22 Q And do you remember when in 2014?

23 A June.

24 Q And what was your role in 2009 at Our Lady of
25 Guadalupe School?

SILVIA BOSCH - 07/20/2017

1 A Director of extended care.

2 Q What does that mean?

3 A I don't understand the question.

4 Q Sure. What did your role involve?

5 A Hire staff to help take care of the children
6 after school.

7 Q Anything else?

8 A Do you want responsibilities?

9 Q Yes. Good clarification. That's what I want.

10 A Okay. Scheduling, providing what's needed to
11 run an extended care, making sure the children are cared
12 for, assisting with homework, the lunch program, and yard
13 duty. Lunch would be lunch.

14 Q What's extended care?

15 A Daycare.

16 Q Did you serve a particular age group?

17 A No. It was kindergarten up until 8th grade.

18 Q So is this, like, the program for afterschool if
19 kids need to stay longer?

20 A Yes.

21 Q When you said you were in charge of the lunch
22 program, what did that mean?

23 A We had a program called Choice Lunch, and I
24 served -- children would order, and I would get a list of
25 the names, and I would serve it to them. They came, I

SILVIA BOSCH - 07/20/2017

1 served it to them.

2 Q And then why did you leave OLG in June of 2014?

3 A Why?

4 Q Yes.

5 A Academics.

6 Q What do you mean?

7 A In my opinion, the academics were not good.

8 Q What does that mean?

9 (Interruption in the proceedings).

10 THE WITNESS: In my opinion, the academics were
11 not to the level I wanted it to be.

12 BY MS. KANTOR:

13 Q For the extended care program?

14 A No. For the school.

15 Q How did that -- sorry. I'm a little confused.

16 A You asked why I left.

17 Q Yes.

18 A Well, my daughter was attending the school. So
19 she leaves, I leave.

20 Q Oh, okay. So the decision was connected to your
21 feelings about your daughter's education at the school?

22 A Yes.

23 Q Not your particular position?

24 A Correct.

25 Q And when you say that you felt the academics

SILVIA BOSCH - 07/20/2017

1 conversation?

2 A I believe I did.

3 Q How soon afterwards?

4 A That I don't recall.

5 Q Was it during that same month, or was it
6 sometime late, like, months later? I mean, how close in
7 time?

8 A I don't recall.

9 Q Do you know how you would have communicated
10 these two incidents to Mrs. Morrissey-Berru?

11 A Probably, to the best of my knowledge -- we
12 had -- she had a few children who had difficulties in the
13 playground, so I probably went up to her classroom if I
14 had bench -- or time-out, back then we called it, a
15 time-out, something like that -- so I would let her know
16 something happened. And that's probably when I would
17 have told her something.

18 Q Okay. So you had referenced an employee named
19 Lana.

20 What was her first name, to your recollection?

21 A Lana. Labor -- Labeard -- Labeertay. Something
22 like that.

23 Q What was your understanding of -- well, let's
24 start with this.

25 How long did you work with Lana Laliberte?

SILVIA BOSCH - 07/20/2017

1 A To the best of my knowledge, 2011.

2 Q And when did your conversation with Mrs. Beuder
3 about Lana take place?

4 A I want to say after Christmas.

5 Q And the year?

6 A To the best of my knowledge, 2013.

7 Q In 2013, how old was Lana, to your knowledge?

8 MS. FUND: Calls for speculation.

9 THE WITNESS: 60s?

10 BY MS. KANTOR:

11 Q Do you know how old she was?

12 A No.

13 Q This is just based on your guess?

14 A I knew she was in her 60s. That's all I know.

15 Q And what was her role when you were working with
16 her?

17 A She assisted with watching the children,
18 homework, the lunch program, monitoring the children
19 during lunch, serving snacks, cutting snacks, cleaning,
20 making sure parents sign in and out.

21 Q Were you her direct supervisor?

22 A Was I her supervisor? Yes.

23 Q And were you her supervisor during this entire
24 time period from 2011?

25 A Yes.

SILVIA BOSCH - 07/20/2017

1 Q And what was your relationship with her like?

2 MS. FUND: I object. Vague and ambiguous, and
3 overbroad as to time and scope.

4 THE WITNESS: Overall?

5 BY MS. KANTOR:

6 Q Yes.

7 A At first, when I first hired her, it was fine.
8 She -- she was good. She did everything I asked her to
9 do.

10 As time went by, she started to get sloppy. And
11 I knew that she was babysitting students, and I noticed
12 that she didn't want to listen to me, so it became a bit
13 rough.

14 Q Did you have any other issues managing her?

15 A Yes.

16 Q What were they?

17 A Everything. She -- just her whole performance.
18 It was hard.

19 Q Other than not listening to you, what other
20 issues did you have?

21 A She was volatile. She had -- she was very
22 confrontational, very rude, she didn't want to follow the
23 rules -- certain things you can't do 'cause they're
24 children, she didn't -- yeah.

25 Q How was she confrontational?

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1 A If I said something and she didn't like it, she
2 would yell at me. Sometimes she would use profanity in
3 front of the children. She would just -- she would go
4 bananas.

5 Q At you?

6 A At me. Uh-huh.

7 Q And how was she volatile?

8 A Volatile -- one minute she's happy, and then
9 other minute she's not.

10 Q And how was she --

11 Did you feel she wasn't a good fit for the
12 school?

13 A Yes. I think -- yes.

14 Q And how come?

15 A She wasn't following directions. She was
16 very -- again, she was insubordinate. She was -- I
17 didn't think -- I didn't think I had to deal with
18 someone's personality.

19 And her preference with children.

20 Q What do you mean?

21 A She was very sweet and kind to the children she
22 babysat, but then again sometimes she wouldn't want to
23 help another child if they needed help. She wasn't --
24 you have to be neutral.

25 Q So you felt there was favoritism?

SILVIA BOSCH - 07/20/2017

1 A Definitely.

2 Q So you wanted to terminate her?

3 A I did.

4 Q Had you done anything in the way of counseling?

5 A Yes.

6 Q What had you done?

7 A Verbal counseling.

8 Q Anything else?

9 A I did -- I did the verbal counseling at first.
10 And then -- believe in April I did a written warning.

11 Q In April?

12 A I believe, yeah.

13 Q Of 2013?

14 A I believe so.

15 Q Anything else?

16 A No.

17 Q How many conversations did you have with
18 Mrs. Beuder about Lana?

19 A Almost -- a lot. A lot.

20 Q Can you give me an estimate?

21 A Over ten.

22 Q When did these conversations start?

23 A When they got really bad. And I want to say it
24 was after Christmas.

25 Q That was your first conversation with

SILVIA BOSCH - 07/20/2017

1 Q Did you take notes of the conversations?

2 A No.

3 Q Okay. So the conversation you documented in
4 your Declaration, was that the first conversation with
5 Mrs. Beuder?

6 A No.

7 Q Of the over ten conversations, which one do you
8 think this was?

9 MS. FUND: Calls for speculation.

10 THE WITNESS: That would -- could have been the
11 one in the month of March.

12 BY MS. KANTOR:

13 Q Did you start seeing Mrs. Beuder because you
14 wanted to terminate Lana?

15 A Did I start to see Ms. -- I --

16 Can you clarify that?

17 Q Why did you start seeing Mrs. Beuder in
18 Christmas of 2012? What was your intention?

19 MS. FUND: Asked and answered.

20 Go ahead.

21 THE WITNESS: To inform her of the difficulties
22 I was having.

23 BY MS. KANTOR:

24 Q Okay. And how did Ms. Beuder respond to your
25 initial conversation?

SILVIA BOSCH - 07/20/2017

1 A At first she listens -- she would listen. To
2 the best of my knowledge, she first listened to me. I
3 don't really recall the beginnings of the conversation.

4 Q At what point in time did you decide that you
5 wanted to terminate Lana?

6 A Believe it was March -- beginning of March.

7 Q And what had happened that made you want to
8 terminate her?

9 A Lana -- her aggression became worse, very
10 aggressive.

11 Q Verbally?

12 A Verbally. And she -- I felt that she was -- her
13 next level was physical.

14 Q So in your conversations with Mrs. Beuder
15 between Christmas of 2012 to March of 2013, you conveyed
16 your concerns about Lana?

17 A Can you clarify that?

18 Q I want to understand what those earlier
19 conversations with Mrs. Beuder were about.

20 A They -- at first, it was -- she's not -- Lana's
21 not listening. I come in, and it wasn't cleaned. I
22 would let her know I'm having -- she's not --

23 I was looking for coaching to help me try to
24 deal with Lana at first.

25 Q And did Mrs. Beuder provide you with any advice?

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1 A Believe she did.

2 Q Do you remember what it was?

3 A No. I don't.

4 Q Was she trying to help you through the
5 situation?

6 MS. FUND: Calls for speculation.

7 THE WITNESS: I felt that it was -- it was more
8 my responsibility. She wanted me to handle it.

9 BY MS. KANTOR:

10 Q Okay. So how many conversations do you think
11 you had with Mrs. Beuder before March of 2013 about Lana?

12 A I don't recall.

13 Q Was it -- how many conversations did you have
14 with Mrs. Beuder after March of 2013 about Lana?

15 A I don't recall.

16 Q Okay. So what was the purpose of your March
17 2013 conversation with Mrs. Beuder about Lana?

18 A I went into her office to let her know my
19 intentions of terminating Lana.

20 Q So at that time you wanted to terminate Lana?

21 A Yes.

22 Q And was Mrs. Beuder reluctant to have you
23 terminate her?

24 A Yes.

25 Q Where did this conversation take place?

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1 A In her office.

2 Q Was anybody else there?

3 A No.

4 Q How long was the conversation?

5 A I don't recall.

6 Q Approximately?

7 A I don't recall.

8 Q Did you take any notes?

9 A No.

10 Q And the purpose of the conversation you said is
11 you wanted to terminate Lana?

12 A Yes.

13 Q Okay. Can you imagine -- if I was a fly on the
14 wall, can you tell me, you know, what she said and then
15 what you said in order as best as you remember?

16 A Best of my knowledge, I went in, and I told her
17 my intentions of terminating her. I told her -- I told
18 her, "I'm planning on terminating Lana."

19 And she said -- she said, you can't just -- "You
20 can't simply terminate her. You can't" -- "it's not that
21 simple to terminate her because that would be a lawsuit
22 in the making." And she kind of -- what's the word -- I
23 don't know -- she -- "It's not that simple to terminate
24 her; it's a lawsuit in the making." That's what she
25 said.

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1 I said, "Why?"

2 She said because of her -- "Because she's an
3 older person."

4 And I said, "But I've given her plenty of verbal
5 warnings."

6 And she said, "That's not how you terminate
7 older people. Let me tell you how you terminate older
8 people."

9 And then she's like, "You don't want to get
10 sued?"

11 "No."

12 "Then let me tell you how you terminate older
13 people."

14 I said, "Okay."

15 She said, "First, you're going to reduce. Every
16 time you do a schedule, you reduce her hours and
17 duties -- document it -- little by little. Employees
18 become" -- what was the word -- frustrated or miserable,
19 "that they eventually" -- "they quit." And they leave in
20 their own terms.

21 So then I said, "Well, what happens if she
22 doesn't leave?"

23 And she said, "Then you don't renew her
24 contract. We are" -- what did she say -- "private
25 schools are at will, and you don't need to renew her

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1 contract at the end of the year."

2 So I said, "Okay." And that's what I did. Not
3 much -- because when I first did it, she went bananas on
4 me -- so I was afraid of Lana going bananas. So I just
5 did it slowly, and I reduced her duties.

6 Q Was anything else said during her conversation
7 with Mrs. Beuder?

8 A To -- regards?

9 Q During that conversation you just described to
10 me. Anything else like -- at all. Was anything else
11 said at all?

12 A Of what we discussed?

13 Q Have you told me everything that was said in
14 your conversation with Mrs. Beuder in March of 2013?

15 A To the best of my knowledge, yes.

16 Q You said that -- in response to all of that, you
17 said okay. Did you say anything else?

18 MS. FUND: Asked and answered.

19 THE WITNESS: Did I say anything else? I told
20 her she was going to go bananas on me if I reduced her
21 hours.

22 And she did say, "Just tell her you don't have
23 that much hours to offer."

24 And then I said, "I really don't want to deal
25 with Lana."

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1 She told me, "Just tell her to come see me
2 then."

3 And I did. That's all I can remember.

4 Q From that conversation?

5 A From that conversation, yes.

6 Q Did you have any awareness of how old
7 Mrs. Beuder was during that conversation?

8 MS. FUND: Calls for speculation.

9 BY MS. KANTOR:

10 Q Do you know if she was in her 50s? In her 60s?
11 40s?

12 A No.

13 Q How many people did you have working for you at
14 that time?

15 A Maybe four, five -- that I can remember.

16 Q And what were Lana's hours before this
17 conversation?

18 A Oh, I believe it was from 11:30 to 6:00.

19 Q Did everyone have the same hours?

20 A No.

21 Oh, actually -- no. 11:30 to 6:00. Two other
22 people had -- oh, no. No. And one other person had
23 those hours.

24 Q One other person had those hours, and other
25 people had less hours?

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1 Q March 2013.

2 A Oh, 2013. Sorry. I don't recall.

3 Q So the conversation that you just told me about
4 in detail you don't know if that was your last
5 conversation with Mrs. Beuder about Lana?

6 MS. FUND: Asked and answered.

7 It's harassing.

8 THE WITNESS: You're confusing me.

9 BY MS. KANTOR:

10 Q I'm sorry. I'm confused, I think. You had this
11 conversation with Mrs. Beuder that you wrote about in
12 your Declaration, the one we just talked about.

13 A Oh. Uh-huh.

14 Q I wanted to know if there were any conversations
15 with Mrs. Beuder about Lana after that?

16 A Yes.

17 Q How many?

18 A I don't recall.

19 Q What were those conversations about?

20 A Lana harassing me, being confrontational to me.

21 Q And how would Mrs. Beuder respond?

22 A Keep reducing her hours.

23 Q What was the first conversation you had with
24 Mrs. Beuder after the March 2013?

25 Or when was the next conversation?

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1 A I don't recall.

2 Q How many conversations did you have with
3 Mrs. Beuder wherein she allegedly said something about
4 reducing her hours?

5 A How many I had after that --

6 Q Yes.

7 A -- that particular?

8 Q Yes.

9 A I don't recall.

10 Q Can you give me your best estimate?

11 A I don't recall.

12 Q How many times did Mrs. Beuder allegedly tell
13 you to reduce Lana's hours?

14 MS. FUND: Asked and answered.

15 THE WITNESS: I don't recall.

16 BY MS. KANTOR:

17 Q So there was at least one conversation with
18 Mrs. Beuder after the March 2013 conversation wherein you
19 complained about Lana.

20 Were you still trying to terminate her? In
21 those conversations, did you say you wanted to terminate
22 her?

23 A After the?

24 Q After the March 2013.

25 A Yes.

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1 other of your employees?

2 A To the best of my knowledge, no.

3 Q Did Mrs. Beuder ever say anything to you about
4 Mrs. Morrissey-Berru?

5 A Anything -- for example? Can you be specific?

6 Q Did you and Mrs. Beuder ever discuss Mrs.
7 Morrissey-Berru?

8 A In any way at any time?

9 Q Yes. That's correct.

10 MS. FUND: I'll object to the extent it's
11 extremely overbroad. Vague and ambiguous. Harassing.

12 Go ahead.

13 THE WITNESS: We did.

14 BY MS. KANTOR:

15 Q You have had conversations with Mrs. Beuder
16 about Mrs. Morrissey-Berru?

17 A Yes.

18 Q How many conversations do you think you've had?

19 A I don't recall.

20 Q Well, you said something in your Declaration
21 about Mrs. Beuder having made underhanded comments about
22 plaintiff.

23 Can you tell me more about that?

24 MS. FUND: When she says "plaintiff," she's
25 referring to Mrs. Morrissey-Berru.

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1 THE WITNESS: Oh. The one that I remember --
2 semi-remember was my daughter got into a math summer
3 program, and -- trying to remember.

4 She got into a summer program. I don't recall
5 why I was in her office. I'm sure we were talking
6 about -- don't recall why I was in her office, but
7 anyways I was in her office. And she said,
8 "Congratulations. I heard (redacted)" -- oops, I gave
9 her name. "I heard" my daughter's name "got into the" --
10 it was a pre-algebra. Pre-algebra.

11 And I said, "Oh, thank you."

12 And then she said -- she said, laughing, she
13 said, "I want to tell you that" -- trying to think how
14 she said -- "I want to tell you that Mrs. Morrissey thinks
15 she had something to do with that." And then she made a
16 sarcastic comment, "we all know she doesn't" -- "she had
17 nothing do with it, especially math." And she rolled her
18 eyes -- the way she said it. That was one. That's the
19 one I remember the most.

20 Q When did that comment take place?

21 A I don't recall.

22 Q Well, when did your daughter get into this math
23 program?

24 A I don't recall. I don't recall.

25 Q Was this before or after --

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1 Oh, would this have been after your daughter had
2 Mrs. Morrissey-Berru as her 5th grade teacher or?

3 A Believe -- I believe -- I believe it was her
4 entering 6th grade.

5 Q And do you remember what year that would have
6 been?

7 A No.

8 Q Where did this conversation take place?

9 A In her office.

10 Q Was anybody else present?

11 A No.

12 Q Do you remember why you were in her office?

13 MS. FUND: Asked and answered.

14 THE WITNESS: No.

15 BY MS. KANTOR:

16 Q How long was the conversation?

17 A I don't recall.

18 Q Was anything else said in the conversation?

19 A I don't recall.

20 Q Why did you think -- why did you think the
21 comment was underhanded?

22 A Her mannerism, expression, her tone.

23 Q Is your daughter gifted at math?

24 A I don't want to say she is, you know.

25 Q You just prefer not to discuss your daughter?

SILVIA BOSCH - 07/20/2017

1 A I prefer not to discuss my daughter.

2 Q Is it possible that the comment could have been
3 a commendation of your daughter's math abilities?

4 A No.

5 Q Saying that she was able to get into the program
6 because of her giftedness? On her own merits?

7 MS. FUND: Calls for speculation.

8 THE WITNESS: I don't -- I don't understand what
9 you're trying to ask.

10 BY MS. KANTOR:

11 Q Well, the way -- my understanding is what you
12 said is the comment was some sort of comment, you know,
13 somebody trying to take credit, but, you know, your
14 daughter did this on her own, or she was able to do it.
15 I was just asking if it was some sort of credit to your
16 daughter.

17 MS. FUND: Calls for speculation.

18 THE WITNESS: Well, no. Credit to my
19 daughter. We all -- my kids, every summer, they go to
20 summer school, period. Math and English is what we
21 always focus on.

22 BY MS. KANTOR:

23 Q So they're hard workers?

24 A Uh-huh.

25 Q Okay. So how many underhanded comments did you

SILVIA BOSCH - 07/20/2017

1 hear Mrs. Morrissey-Berru make about plaintiff?

2 MS. FUND: Hold on. Do you want to -- why don't
3 you re-ask that --

4 BY MS. KANTOR:

5 Q -- did you hear Mrs. Beuder make about Mrs.
6 Morrissey-Berru.

7 A Just one I remember is -- I think they had some
8 Saints Day. I just remember her rolling her eyes, just
9 let her handle it. Something like that.

10 Q Handle what?

11 A I think she handled the whole -- I don't know.
12 It was some kind of saints.

13 Q When was this conversation?

14 A I don't recall.

15 Q It could have been at any point in time while
16 Mrs. Beuder was the principal?

17 A Yes.

18 Q And what was the context?

19 A Believe I was asking if we were going to do it,
20 if it was -- there was a lot of changes, so I didn't know
21 if that was something taking place.

22 Q What?

23 A The saints -- saints play, I believe. Something
24 like that.

25 Q You were asking if sort of saints-related

SILVIA BOSCH - 07/20/2017

1 activity was going to happen?

2 A Yeah. And she said --

3 Oh. And I asked, "Who's going to do it?"

4 And she made a -- "Mrs. Morrissey do it."

5 Q Did she say anything else?

6 A That I recall, no.

7 Q Did you say anything else?

8 A No. As I recall, no.

9 Q Were there any other underhanded comments that
10 you heard Mrs. Beuder make about Mrs. Morrissey-Berru?

11 A That I recall, no.

12 I do know that if you mention her name, she had
13 a habit of rolling her eyes.

14 Q How many times did you see Mrs. Beuder roll her
15 eyes about Mrs. Morrissey-Berru?

16 A Few times. I don't recall any -- I just knew
17 every time you mentioned her name, she would roll her
18 eyes. You had the feeling she didn't like her.

19 Q Based on?

20 A I don't know.

21 Q You just had a feeling, but you don't know what
22 it was based on?

23 A Yes.

24 Q And when you said you don't know how many times
25 she rolled her eyes, can you give your best estimate?

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1 A I can't.

2 Q Can you describe the eye roll?

3 A Just rolling her eyes back in her head.

4 Q Did you ever see her roll her eyes with regard
5 to any other employees?

6 A I don't recall. No.

7 Q Did she ever roll her eyes with regard to Dr.
8 Mitchell?

9 MS. FUND: Calls for speculation.

10 BY MS. KANTOR:

11 Q That you've seen?

12 A That I recall, no.

13 Q And where -- where would these eye rolls occur?

14 A Generally in her office.

15 Q When it was just the two of you?

16 A For the most part, yes.

17 Q Did you ever ask about the eye roll?

18 A No.

19 Q Did you ever complain about it?

20 A Oh, no.

21 Q Did you ever take any notes about it?

22 A No.

23 Q Were there any witnesses to it?

24 A To my knowledge, no.

25 Q Okay. You said something in your Declaration

SILVIA BOSCH - 07/20/2017

1 about parents approaching you and saying, "I don't think
2 Mrs. Beuder likes Mrs. Morrissey-Berru"; is that correct?

3 A Correct.

4 Q How many conversations like that did you have?

5 A To my knowledge, two. Maybe three.

6 Q When was the first conversation?

7 A I don't recall.

8 Q Was it during your last year of employment at
9 Our Lady of Guadalupe?

10 A I believe so.

11 Q And why do you think that?

12 A Because it involved Mr. Hazen, and I believe --
13 well, that's why.

14 Q Tell me about the first conversation.

15 A A mom came up to me and said, what's going --
16 "Do you know what's going on with Mrs. Morrissey?"

17 And I said, "No." And I asked why.

18 And she said she had just gone up -- I believe
19 she said she went up -- she had spoken to Mrs. Beuder and
20 spoke highly of Mrs. Morrissey. And she said that she
21 felt that Mrs. Beuder was not welcoming to what she had
22 to say.

23 And I said, "I don't know anything."

24 And then she said, "I don't think she likes
25 her," and asked, "do you know if she's coming back?"

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1 I said, "I don't know."

2 Q Was anything else said during this conversation?

3 A To the best of my knowledge, no.

4 Q Did this parent say what she had said to
5 Mrs. Beuder about Mrs. Morrissey-Berru?

6 A Just she spoke highly of her.

7 Q Did she say what Mrs. Beuder said or did to
8 indicate that she was not welcoming of that?

9 A No.

10 Q Do you know when this parent's conversation with
11 Mrs. Beuder took place?

12 A I don't.

13 Q And you're not certain what year it took place?

14 A A lot happened. To the best of my knowledge, a
15 lot of the parents were coming to me the last year that I
16 was there.

17 Q The last school year or the last --

18 A The last school year that I was there. So could
19 have been, I think, 2014.

20 Q How long was your conversation with this parent?

21 A Not too long.

22 Q And where did it take place?

23 A Inside of the hall, which is the daycare.

24 Q Was anybody else present for this conversation?

25 A No.

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1 Q And do you know why the parent said -- spoke to
2 you about this?

3 A No.

4 Q When was the second conversation in relation to
5 that one?

6 A It was close to the end of the year.

7 Q And where did that conversation take place?

8 A In the hall.

9 Q Same hall?

10 A Same hall.

11 Q And was anybody else there?

12 A No.

13 Q And how long was the conversation?

14 A Not that long.

15 Q And so what was said?

16 A They asked -- they asked what's going on with
17 Mrs. Morrissey.

18 I said, I don't know. Why?

19 She says, "I heard" -- no, maybe not "heard" --
20 "Mr. Hazen is teaching English, and how is that
21 possible" -- they were upset about that -- "and he
22 doesn't have any credentials."

23 I said, "Well, you need to speak to the
24 principal about that."

25 She said, "Is she not coming back?"

SILVIA BOSCH - 07/20/2017

1 "I don't know." And that -- I believe that was
2 it.

3 Q Any other conversations with parents about
4 Principal Beuder and Mrs. Morrissey-Berru?

5 A That I recall, no.

6 Q Had you heard anything before about Mr. Hazen or
7 was there anything --

8 Was that the first time you heard anything about
9 Mr. Hazen teaching English?

10 A Teaching English, to the best of my knowledge,
11 yes.

12 Q And do you know if -- if he proceeded to teach
13 English that next year?

14 A I don't -- I don't recall, but I will say --
15 MS. FUND: Just respond to her question.

16 THE WITNESS: Oh.

17 MS. FUND: And it's whether you know if Mr.
18 Hazen taught English the next year.

19 THE WITNESS: I don't recall.

20 BY MS. KANTOR:

21 Q I want to mark as Exhibit 3 the Declaration of
22 Silvia Bosch. It's Bates stamped MORRISSEY-BERRU1068 to
23 1070.

24 ///

25 ///

SILVIA BOSCH - 07/20/2017

1 A Yes.

2 Q Did you have to get permission from the
3 principal to hire Lana?

4 A No.

5 Q Did you personally interview Lana?

6 A Yes.

7 Q Okay. In order to terminate Lana's employment,
8 did you need to receive authority from the principal,
9 Ms. Beuder?

10 A No.

11 Q And I don't think we put it on the record
12 earlier, but Ms. Beuder is actually sitting across from
13 you at the table today; is that correct?

14 A Correct.

15 Q Mrs. Morrissey-Berru is not in this room;
16 correct?

17 A Correct.

18 Q Have you been offered any type of compensation
19 for your testimony from Mrs. Morrissey-Berru?

20 A No.

21 Q But, in fact, you did receive a check for your
22 deposition today from counsel for Our Lady of Guadalupe;
23 correct?

24 A Yes.

25 Q Okay. Have you been made -- strike that.

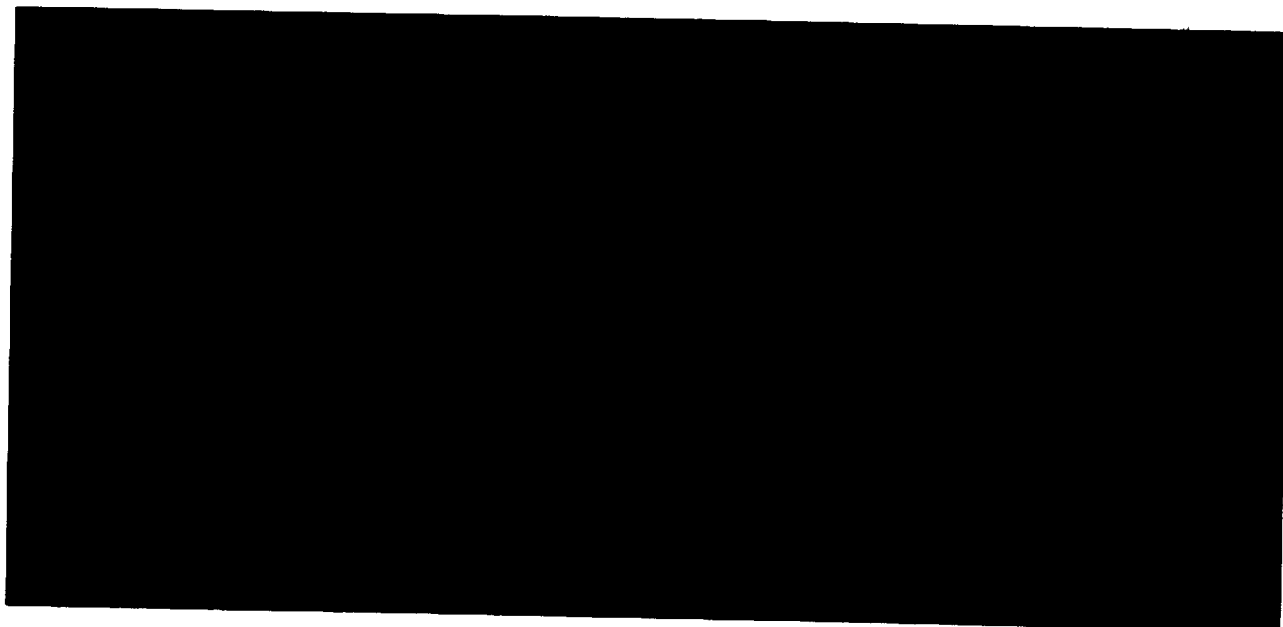
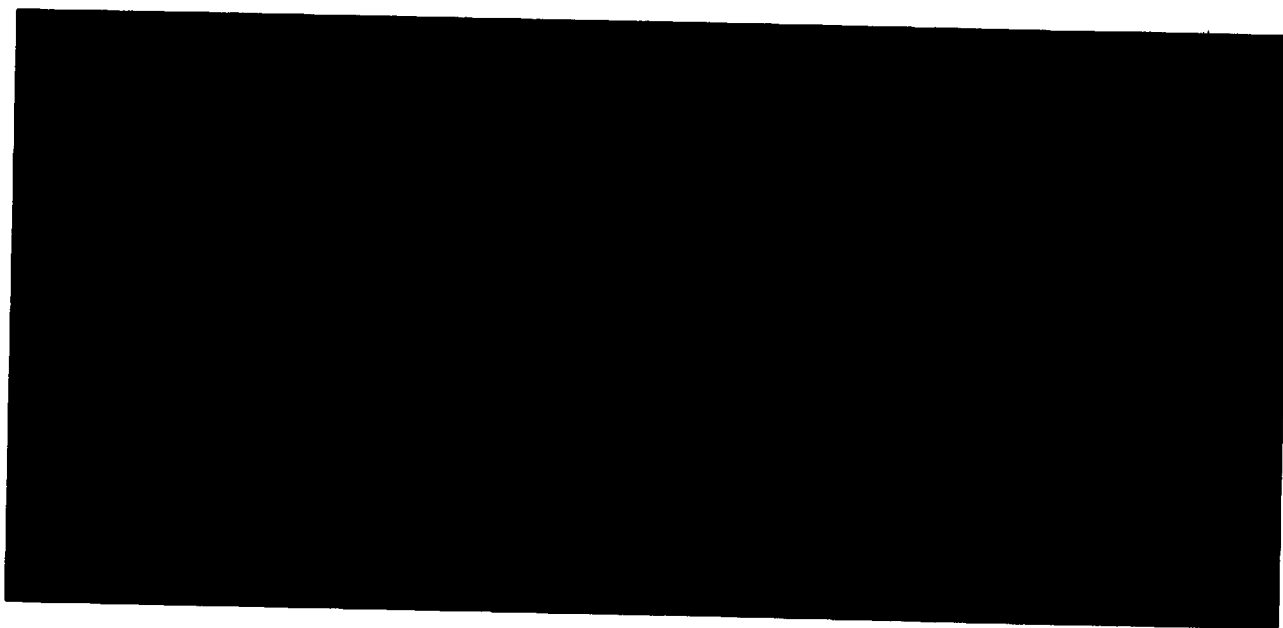


EXHIBIT 5



**Archdiocese of Los Angeles
Elementary School Classroom Observation Report**

Teacher: Durde Montsey School: OLG
Principal: April Beuder City: Hermosa Beach
Grade: 5th School Year: 2012-13 T2
Subject: Math Date: 3/5/13

Innovating	Implementing	Emerging	Not Exhibiting
Adjusts and creates new strategies for unique student needs and situations during the lesson.	Uses strategies at appropriate time, in the appropriate manner.	Attempts to use strategy but uses it incorrectly or at the wrong time.	Strategy was called but not exhibited.

WCEA (Catholic Identity Factors) Check if observed

Innovating Implementing Emerging Not Exhibiting

There is visible evidence of signs, sacramental, traditions of the Roman Catholic Church in the classroom.

Curriculum includes Catholic values infused through all subject areas.

Integrates Schoolwide Learning Expectations

Observation Comments:

Objective to be Observed: *California Standards for the Teaching Profession*

For the following 5 standards, check if observed

Standard 1: Engaging and Supporting All Students in Learning

Innovating Implementing Emerging Not Exhibiting

1.1 Using knowledge of students to engage them in learning

1.2 Connecting learning to students' prior knowledge, backgrounds, life experiences, and interests

1.3 Connecting subject matter to meaningful, real-life contexts

* 1.4 Using a variety of instructional strategies, resources, and technologies to meet students' diverse learning needs

1.5 Promoting critical thinking through inquiry, problem solving, and reflection

* 1.6 Monitoring student learning and adjusting instruction while teaching

Observation Comments: Excellent use of technology -

Standard 2: Creating and Maintaining Effective Environments for Student Learning

Innovating Implementing Emerging Not Exhibiting

2.1 Promoting social development and responsibility within a caring community where each student is

treated fairly and respectfully

2.2 Creating physical or virtual learning environments that promote student learning, reflect diversity, and

encourage constructive and productive interactions among students

2.3 Establishing and maintaining learning environments that are physically,

intellectually, and emotionally

safe

2.4 Creating a rigorous learning environment with high expectations and appropriate support for all students

2.5 Developing, communicating, and maintaining high standards for individual and group behavior

2.6 Employing classroom routines, procedures, norms, and supports for positive behavior to ensure a climate

in which all students can learn

2.7 Using instructional time to optimize learning

Observation Comments: *Classroom management, Bloom's (Attached)*

Standard 3: Understanding and Organizing Subject Matter for Student Learning
 Innovating Implementing Emerging Not Exhibiting

3.1 Demonstrating knowledge of subject matter, academic content standards, and curriculum frameworks

3.2 Applying knowledge of student development and proficiencies to ensure student understanding of subject matter

3.3 Organizing curriculum to facilitate student understanding of the subject matter

3.4 Utilizing instructional strategies that are appropriate to the subject matter

* 3.5 Using and adapting resources, technologies, and standards-aligned instructional materials,

including adopted materials, to make subject matter accessible to all students

3.6 Addressing the needs of English learners and students with special needs to provide equitable access to the content

Observation Comments: *Excellent use of technology*

Standard 4: Planning Instruction and Designing Learning Experiences for All Students

Innovating Implementing Emerging Not Exhibiting

4.1 Using knowledge of students' academic readiness, language proficiency, cultural background, and

individual development to plan instruction

4.2 Establishing and articulating goals for student learning

4.3 Developing and sequencing long-term and short-term instructional plans to support student learning

4.4 Planning instruction that incorporates appropriate strategies to meet the learning needs of all students

4.5 Adapting instructional plans and curricular materials to meet the assessed learning needs of all students

Observation Comments:

Standard 5: Assessing Students for Learning

Innovating Implementing Emerging Not Exhibiting

5.1 Applying knowledge of the purposes, characteristics, and uses of different types of

assessments

5.2 Collecting and analyzing assessment data from a variety of sources to inform instruction

5.3 Reviewing data, both individually and with colleagues, to monitor student learning

5.4 Using assessment data to establish learning goals and to plan, differentiate, and modify instruction

5.5 Involving all students in self-assessment, goal setting, and monitoring progress

5.6 Using available technologies to assist in assessment, analysis, and communication of student learning *Great job!!*

5.7 Using assessment information to share timely and comprehensible feedback with students and their families

Observation Comments: *Mrs. Morrissey - Beren demonstrated calm under pressure when she had to switch gear due to technical difficulties!*

Recommendations: *- Continue to adjust classroom management practices
- continue to explore ways to engage all learners + move up in Bloom's (attached)
- continue PW implementation (attached)*

I submit this report in accordance with the schedule and procedures established by the Department of Catholic Schools as described in the *Administrative Handbook*

Principal Signature: *[Signature]*

Date: *3-20-13*

I have read this report and discussed it with the principal. My signature does not necessarily imply agreement this observation report. I understand that I am free to attach to this observation report any written reactions I may have within one week of today's date.

Teacher Signature: *Sandra Morrissey - Beren*

Date: *3-20-13*

**This observation form is used in conjunction with the California Standards for the Teaching Profession

Archdiocese of Los Angeles
Elementary School Classroom Observation Report

Teacher: Mrs. Morrissey-Berru
Principal: Mrs. April Beuder
Grade: 5th
Subject: Social Studies

School: Our Lady of Guadalupe School
City: Hermosa Beach
School Year: 2014-15
Date: 11.6.14 T1

Innovating	Implementing	Emerging	Not Exhibiting
Adjusts and creates new strategies for unique student needs and situations during the lesson.	Uses strategies at appropriate time, in the appropriate manner.	Attempts to use strategy but uses it incorrectly or at the wrong time.	Strategy was called for but not exhibited.

WCEA (Catholic Identity Factors) Check if observed

- ☐ Innovating
 ☒ Implementing
 ☐ Emerging
 ☐ Not Exhibiting
- ☒ There is visible evidence of signs, sacramental, traditions of the Roman Catholic Church in the classroom.
☐ Curriculum includes Catholic values infused through all subject areas.
☐ Integrates Schoolwide Learning Expectations

Observation Comments: _____

Objective to be Observed: *California Standards for the Teaching Profession*
 For the following 5 standards, check if observed

Standard 1: Engaging and Supporting All Students in Learning

- ☒ Innovating
 ☐ Implementing
 ☐ Emerging
 ☐ Not Exhibiting
- ☐ 1.1 Using knowledge of students to engage them in learning
☐ 1.2 Connecting learning to students' prior knowledge, backgrounds, life experiences, and interests
☐ 1.3 Connecting subject matter to meaningful, real-life contexts
☒ 1.4 Using a variety of instructional strategies, resources, and technologies to meet students' diverse learning needs
☐ 1.5 Promoting critical thinking through inquiry, problem solving, and reflection
☐ 1.6 Monitoring student learning and adjusting instruction while teaching

Observation Comments: *about use of technology!*

Standard 2: Creating and Maintaining Effective Environments for Student Learning

- ☐ Innovating
 ☒ Implementing
 ☐ Emerging
 ☐ Not Exhibiting
- ☒ 2.1 Promoting social development and responsibility within a caring community where each student is treated fairly and respectfully
☐ 2.2 Creating physical or virtual learning environments that promote student learning, reflect diversity, and encourage constructive and productive interactions among students
☒ 2.3 Establishing and maintaining learning environments that are physically, intellectually, and emotionally safe
☐ 2.4 Creating a rigorous learning environment with high expectations and appropriate support for all students
☐ 2.5 Developing, communicating, and maintaining high standards for individual and group behavior
☐ 2.6 Employing classroom routines, procedures, norms, and supports for positive behavior to ensure a climate in which all students can learn

- ☐ 2.7 Using instructional time to optimize learning

Observation Comments: _____

Standard 3: Understanding and Organizing Subject Matter for Student Learning

- ☒ Innovating ^{3.1, 3.4, 3.5} ☐ Implementing ☒ Emerging ^{3.6} ☐ Not Exhibiting
- ☒ 3.1 Demonstrating knowledge of subject matter, academic content standards, and curriculum frameworks
- ☐ 3.2 Applying knowledge of student development and proficiencies to ensure student understanding of subject matter
- ☐ 3.3 Organizing curriculum to facilitate student understanding of the subject matter
- ☒ 3.4 Utilizing instructional strategies that are appropriate to the subject matter
- ☒ 3.5 Using and adapting resources, technologies, and standards-aligned instructional materials, including adopted materials, to make subject matter accessible to all students
- ☒ 3.6 Addressing the needs of English learners and students with special needs to provide equitable access to the content

Observation Comments: *Support for students w/ STAMP/MAFS?*

Standard 4: Planning Instruction and Designing Learning Experiences for All Students

- ☒ Innovating ☐ Implementing ☐ Emerging ☐ Not Exhibiting
- ☐ 4.1 Using knowledge of students' academic readiness, language proficiency, cultural background, and individual development to plan instruction
- ☐ 4.2 Establishing and articulating goals for student learning
- ☒ 4.3 Developing and sequencing long-term and short-term instructional plans to support student learning
- ☐ 4.4 Planning instruction that incorporates appropriate strategies to meet the learning needs of all students
- ☐ 4.5 Adapting instructional plans and curricular materials to meet the assessed learning needs of all students

Observation Comments: _____

Standard 5: Assessing Students for Learning *n/a*

- ☐ Innovating ☐ Implementing ☐ Emerging ☐ Not Exhibiting
- ☐ 5.1 Applying knowledge of the purposes, characteristics, and uses of different types of assessments
- ☐ 5.2 Collecting and analyzing assessment data from a variety of sources to inform instruction
- ☐ 5.3 Reviewing data, both individually and with colleagues, to monitor student learning
- ☐ 5.4 Using assessment data to establish learning goals and to plan, differentiate, and modify instruction
- ☐ 5.5 Involving all students in self-assessment, goal setting, and monitoring progress
- ☐ 5.6 Using available technologies to assist in assessment, analysis, and communication of student learning
- ☐ 5.7 Using assessment information to share timely and comprehensible feedback with students and their families

Observation Comments: Mrs. Morrissey-Berru designed a social studies lesson on the Mayflower Compact with a "close" reading activity and worksheet with text-dependent questions.

Commendations: Mrs. Morrissey-Berru did an excellent job incorporating technology into her lesson. She was well-prepared with all materials and knowledgeable regarding the subject.

Recommendations: Differentiate assignments and assessments?

Case 2:16-cv-09353-SVW-AFM Document 42 Filed 08/28/17 Page 61 of 72 Page ID #:897

I submit this report in accordance with the schedule and procedures established by the Department of Catholic Schools as described in the *Administrative Handbook*.

Principal Signature: _____

Date: _____

I have read this report and discussed it with the principal. My signature does not necessarily imply agreement this observation report. I understand that I am free to attach to this observation report any written reactions I may have within one week of today's date.

Teacher Signature: _____

Date: _____

**This observation form is used in conjunction with the California Standards for the Teaching Profession

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DECLARATION OF AGNES MORRISSEY-BERRU

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ANDREW S. PLETCHER, STATE BAR NO. 299437

andrew@jmlaw.com

Attorneys for **PLAINTIFF**

Agnes Morrissey-Berru

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AGNES DEIRDRE MORRISSEY-
 BERRU, an individual,

Plaintiff,

vs.

OUR LADY OF GUADALUPE
 CATHOLIC SCHOOL, a
 California non-profit corporation;
 and DOES 1-50, inclusive,
 Defendants.

Case No. 2:16-cv-09353-SVW-AFM
 Assigned to: Hon. Stephen V. Wilson

**DECLARATION OF AGNES DEIRDRE
 MORRISSEY-BERRU IN SUPPORT OF
 PLAINTIFF'S OPPOSITION TO
 DEFENDANT'S MOTION FOR
 SUMMARY JUDGMENT**

Date: September 18, 2017
 Time: 1:30 p.m.
 Ctrm: 10A

Complaint Filed: December 19, 2016

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1 **DECLARATION OF AGNES DEIRDRE MORRISSEY-BERRU**

2 I, Agnes Deirdre Morrissey-Berru, do hereby declare that if called upon as a
3 witness, I could and would testify competently to the matters set forth herein as
4 they are based upon my personal knowledge and belief.

5 1. I am an individual and resident of Redondo Beach, California.

6 2. I was employed by Our Lady of Guadalupe Catholic School from
7 approximately 1999 to 2015 as the fifth and sixth grade teacher.

8 3. During each year of my employment with Our Lady of Guadalupe
9 Catholic School, I signed a Faculty Employment Agreement where I specifically
10 accepted a position as either a fifth grade teacher or a sixth grade teacher.

11 4. During my employment with Our Lady of Guadalupe Catholic School, I
12 consistently held my position out in the community to those affiliated and
13 unaffiliated with Our Lady of Guadalupe Catholic School as an elementary school
14 teacher. I also personally viewed myself as an elementary school teacher.

15 5. Whenever I scheduled parent-teacher meetings, I always introduced
16 myself as either the fifth or sixth grade teacher at Our Lady of Guadalupe Catholic
17 School, depending upon which grade I was teaching that year.

18 6. During the majority of my sixteen years of employment, I worked in a
19 self-contained classroom where I taught reading, writing, grammar, vocabulary,
20 science, social studies, math and religion. I described myself to my students as
21 either the fifth or sixth grade teacher at Our Lady of Guadalupe Catholic School,
22 depending upon which grade I was teaching that year.

23 7. Our Lady of Guadalupe has a school website located at
24 <https://ourladyofguadalupeschool.org>. On the school's website, each teacher is
25 listed under the tab "Educators" and is identified by the grade or subjects that they
26 teach.

27 8. At no time did I believe my employment at Our Lady of Guadalupe
28 Catholic School was a "called" position nor did I believe I was accepting a formal

1 call to religious service by working at Our Lady of Guadalupe as a fifth and sixth
2 grade teacher. Further, at no time during or after my employment with Our Lady
3 of Guadalupe did I feel God was leading me to serve in the ministry.

4 9. Prior to working at Our Lady of Guadalupe Catholic School, I worked in
5 advertising with the Los Angeles Times Newspaper for 20 years.

6 10. I am not currently a practicing Catholic.

7 11. I currently work as a substitute teacher for Manhattan Beach Unified
8 School District. I also teach English to Chinese students at Ivy League School.

9
10
11 I hereby declare under penalty of perjury, under the laws of the State of
12 California and the United States of America that the foregoing is true and correct.

13 Executed this th 25 day of August, 2017, in Redondo Beach, California.

14 *Agnes Deirdre Morrissey-Berru*
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16 AGNES DEIRDRE MORRISSEY-BERRU
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DECLARATION OF SILVIA BOSCH

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CATHRYN G. FUND, STATE BAR NO. 293766

Attorneys for Plaintiff
Agnes Deirdre Morrissey-Berru

THE UNITED STATES DISTRICT COURT
FOR THE COUNTY OF CENTRAL DISTRICT OF CALIFORNIA

AGNES DEIRDRE MORRISSEY-
BERRU, an individual,

Plaintiff,

vs.

OUR LADY OF GUADALUPE
CATHOLIC SCHOOL, a
California non-profit corporation;
and DOES 1-50, inclusive,

Defendants.

Case No. 2:16-cv-09353-SVW-AFM
(Assigned for all purposes to the Hon.
Stephen Wilson)

**DECLARATION OF SILVIA
BOSCH**

Complaint Filed: December 12, 2016

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Woodland Hills, CA 91367
(818) 610-8800

DECLARATION OF SILVIA BOSCH

I, Silvia Bosch, do hereby declare that if called upon as a witness, I could and would testify truthfully to the following matters of which I have personal knowledge.

1. I am an individual and resident of Hawthorne, California.

2. I was employed by Our Lady of Guadalupe Catholic School from approximately 2009 to 2014 as Director of the After School Program.

3. While Director of the After School Program, I struggled managing an employee named Lana, in her 60's, that I felt was aggressive, confrontational, and not a good fit for the school.

4. As a result, I met with Principal April Beuder, in her office, to inform Principal Beuder of my intentions to terminate Lana's employment.

5. During the meeting in her office, Principal Beuder told me that I could not just get rid of Lana and that simply terminating her employment was "a lawsuit in the making."

6. Principal Beuder then stated, "Let me tell you how you get rid of older people. First, you need to reduce their hours." She explained that I should reduce Lana's hours by a couple of hours and duties each time that I made the schedule. She then told me employees "become so miserable that eventually they leave."

7. Throughout my employment, I heard Principal Beuder make several underhanded comments about Agnes Deirdre Morrissey-Berru. Principal Beuder would also roll her eyes when Mrs. Morrissey-Berru's name was brought up.

8. Throughout my employment, several parents approached me and stated "I don't think Principal Beuder likes Ms. Morrissey-Berru."

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I declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct.

Executed this 6 day of June, 2017, in Hawthorne, California.

Silvia Bosch
SILVIA BOSCH

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DECLARATION OF BEATRIZ BOTHA

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CATHRYN G. FUND, STATE BAR NO. 293766

Attorneys for Plaintiff
Agnes Deirdre Morrissey-Berru

THE UNITED STATES DISTRICT COURT

FOR THE COUNTY OF CENTRAL DISTRICT OF CALIFORNIA

AGNES DEIRDRE MORRISSEY-
BERRU, an individual,

Plaintiff,

vs.

OUR LADY OF GUADALUPE
CATHOLIC SCHOOL, a
California non-profit corporation;
and DOES 1-50, inclusive,

Defendants.

Case No. 2:16-cv-09353-SVW-AFM
(Assigned for all purposes to the Hon.
Stephen Wilson)

**DECLARATION OF BEATRIZ
BOTH**

Complaint Filed: December 12, 2016
Trial Date: October 10, 2017

DECLARATION OF BEATRIZ BOTHA

I, Beatriz Botha, do hereby declare that if called upon as a witness, I could and would testify truthfully to the following matters of which I have personal knowledge.

1. I am an individual and resident of Redondo Beach, California. I am in the process of moving to New Harmony, Utah.

2. My children attended Our Lady of Guadalupe Catholic School from kindergarten to 6th grade.

3. During the spring of 2014, Jimi Hazen, the music teacher at Our Lady of Guadalupe, came to my home to provide guitar lessons to one of my sons. Mr. Hazen and I would often speak after the guitar lessons.

4. During our conversations, Mr. Hazen informed me that he was in the process of obtaining his Master's degree. He also informed me on two separate occasions that Principal April Beuder offered to have him teach English for 5th grade the following school year and that he was very excited about the opportunity.

5. After my conversation with Mr. Hazen, I reached out to Mrs. Morrissey-Berru about her future with Our Lady of Guadalupe. Mrs. Morrissey-Berru was shocked when I told her what I learned from Mr. Hazen.

6. April Beuder, Principal at Our Lady of Guadalupe, is notorious for retaliating against parents of students and employees.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 20 day of August, 2017, in Redondo Beach, California.


BEATRIZ BOTHA