

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 3 of 5

Pages 256-518

Joseph M. Lovretovich, SBN 73403

Cathryn G. Fund, SBN 293766

Andrew S. Pletcher, SBN 299437

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31-1	08/18/17	APPENDIX filed by Defendant Our Lady of Guadalupe School RE: NOTICE OF MOTION AND MOTION for Summary Judgment as to Complaint 27 Exhibit A – Deposition of Agnes Deirdre Morrissey-Berru	5	815-923
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Attorneys for **PLAINTIFF**
 Agnes Morrissey-Berru

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 1

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

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

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

6
7 **DECLARATIONS:**

- 8 - Declaration of Andrew S. Pletcher
- 9 - Declaration of Plaintiff Agnes Morrissey-Berru
- 10 - Declaration of Silvia Bosch
- 11 - Declaration of Beatriz Botha

12
13 **EXHIBITS TO THE DECLARATION OF ANDREW S. PLETCHER:**

14 15 16	1 Relevant Portions of the Deposition of Plaintiff Agnes Morrissey-Berru (April 26, 2017), including relevant exhibits from the deposition.
17 18	2 Relevant Portions of the Deposition of April L. Beuder, Volume I (May 4, 2017), including relevant exhibits from the deposition.
19 20	3 Relevant Portions of the Deposition of April L. Beuder, Volume II (May 11, 2017), including relevant exhibits from the deposition.
21 22	4 Relevant Portions of the Deposition of Silvia Bosch (July 20, 2017), including relevant exhibits from the deposition.
23 24 25 26 27 28	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
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DECLARATION OF ANDREW S. PLETCHER

DECLARATION OF ANDREW S. PLETCHER

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

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

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

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

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

5. On July 20, 2017, my colleague attended the third party deposition of Silvia Bosch in this case. Attached to Plaintiff's Compendium of Evidence as **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 Defendant Our Lady of
6 Guadalupe School, Set One. (DEFT PRODUCTION 0001-0721) produced to
7 Plaintiff on April 21, 2017.

8
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.

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15 By: /s/ Andrew S. Pletcher

16 Andrew S. Pletcher
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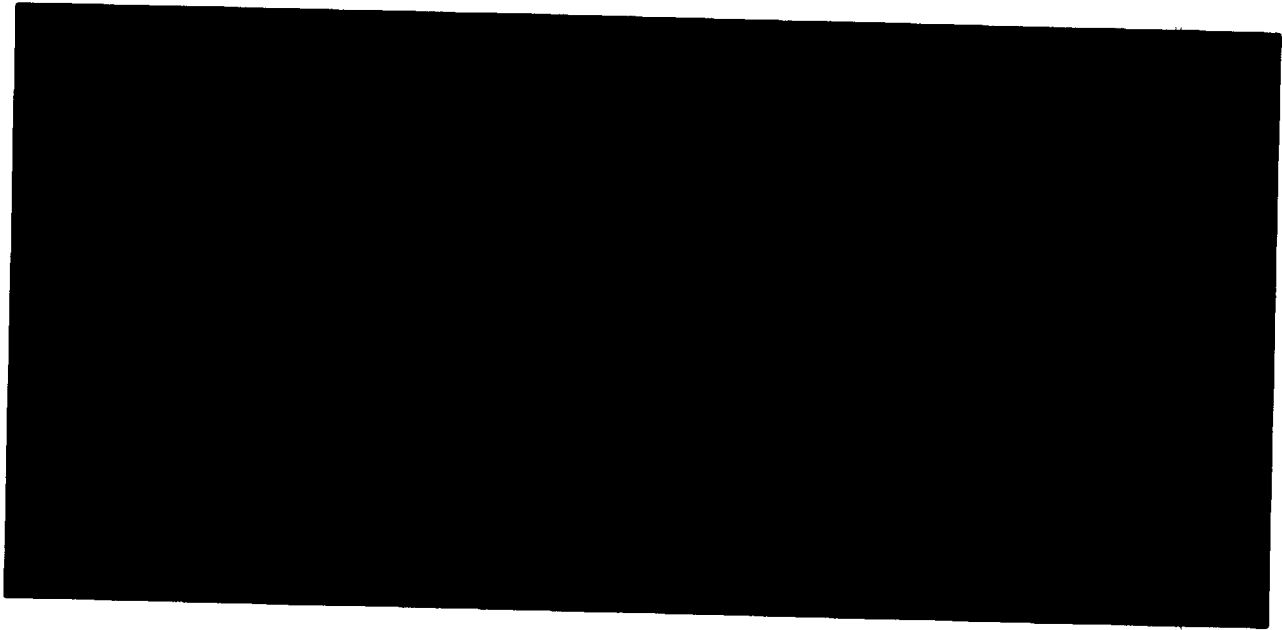
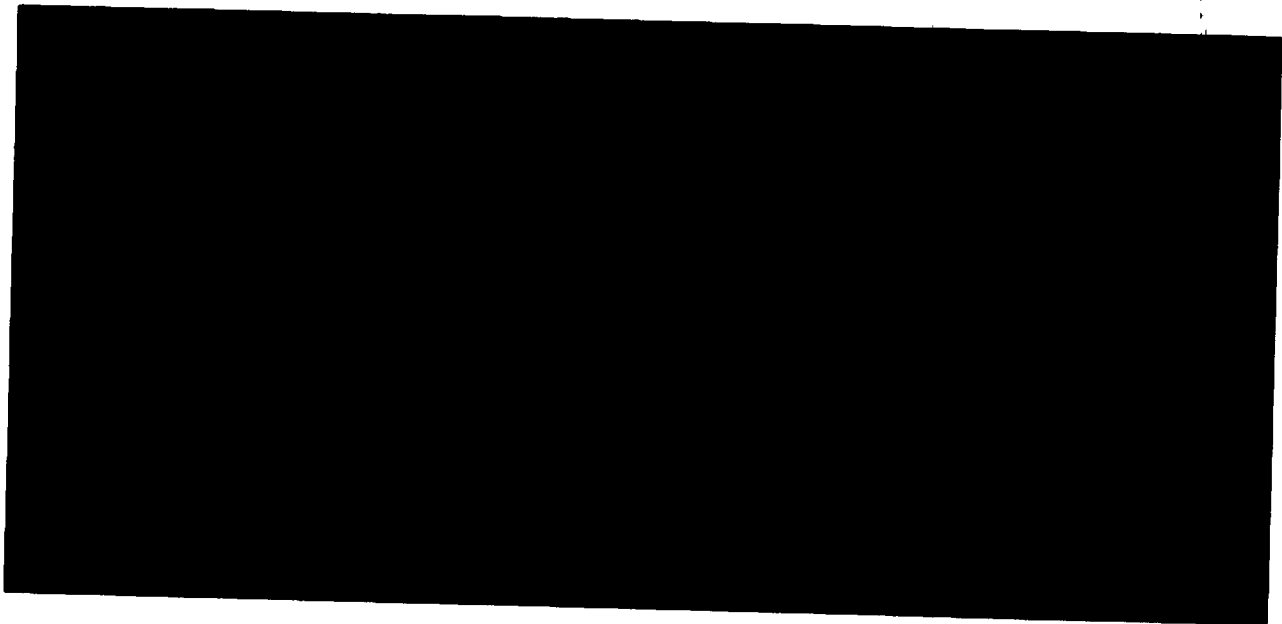


EXHIBIT 1



ORIGINAL

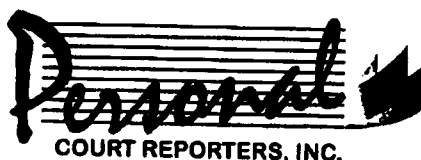
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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,)
DEFENDANTS.)

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

JOB NO. 98169

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



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AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

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,)

DEFENDANTS.)

VIDEOTAPED DEPOSITION OF AGNES DEIRDRE MORRISSEY-BERRU

WEDNESDAY, APRIL 26, 2017

JOB NO. 98169

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

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AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

1 VIDEOTAPED DEPOSITION OF AGNES DEIRDRE
2 MORRISSEY-BERRU, THE WITNESS, TAKEN ON BEHALF OF
3 THE DEFENDANTS, AT 10:06 A.M., WEDNESDAY, APRIL 26,
4 2017, AT 15760 VENTURA BOULEVARD, EIGHTEENTH FLOOR,
5 ENCINO, CALIFORNIA, BEFORE MONICA T. CORLEY, CMR,
6 CRR, CSR NO. 8803.

7

8

9 APPEARANCES OF COUNSEL

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11 FOR PLAINTIFF:

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23

ALSO PRESENT:

24

APRIL BEUDER

25

CHRISTOPHER BERRU

GEOFF MINGER, VIDEOGRAPHER

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

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I N D E X

WITNESS	EXAMINATION	PAGE
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AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

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6			
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			PROFESSIONAL CONDUCT
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			MORRISSEY-BERRU, JUNE 2013
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			FROM MORRISSEY-BERRU

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

10:11 1 A Yes.

10:11 2 Q Okay. All right. Out of the way.

10:12 3 Have you ever sued any other employer?

10:12 4 A No.

10:12 5 Q Have you ever been a party to any

10:12 6 litigation?

10:12 7 A No.

10:12 8 Q Have you ever been part of a bankruptcy?

10:12 9 A No.

10:12 10 Q Have you ever filed any administrative

10:12 11 charges, that's a charge with the government?

10:12 12 A No.

10:12 13 Q Have you ever filed for Workers'

10:12 14 Compensation benefits?

10:12 15 A No.

10:12 16 Q Have you ever filed for unemployment

10:12 17 benefits?

10:12 18 A No.

10:12 19 Q What is your date of birth?

10:12 20 A February 12, 1951.

10:12 21 Q And where were you born?

10:12 22 A Hartford, Connecticut.

10:12 23 Q And I'm going to ask this, if you prefer

10:12 24 to give it off the record that's fine, your Social

10:12 25 Security number?

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

10:17 1 of Guadalupe about the lawsuit?

10:17 2 A No.

10:17 3 Q How about e-mails or texts with current or
10:17 4 former employees of Our Lady of Guadalupe?

10:17 5 A To the best of my knowledge, no.

10:17 6 Q How about before you filed the lawsuit,
10:17 7 did you tell any current or former employees of Our
10:17 8 Lady of Guadalupe that you intended to file a
10:17 9 lawsuit?

10:17 10 A No.

10:17 11 Q How about current or former parents of
10:17 12 students at Our Lady of Guadalupe?

10:17 13 A To the best of my knowledge, no.

10:17 14 Q I want to go through a little bit of your
10:18 15 educational history. Do you have a high school
10:18 16 degree?

10:18 17 A Yes.

10:18 18 Q From where?

10:18 19 A Mount St. Joseph Academy in West Hartford,
10:18 20 Connecticut.

10:18 21 Q How about college?

10:18 22 A Cardinal Cushing College in Boston and
10:18 23 Emmanuel College in Boston, Massachusetts.

10:18 24 Q And what degree did you come out with?

10:18 25 A I came out with a Bachelor of Arts in

AGNES DEIRDRE MORRISSEY BERRU - 04/26/2017

10:18 1 English language arts and a minor in secondary
10:18 2 education.

10:18 3 Q And what year was that?

10:18 4 A 1973.

10:18 5 Q And did you have any further education?

10:18 6 A I had a California credential education,
10:18 7 which was about a year and a half, at Chapman
10:18 8 University in Manhattan Beach, California.

10:18 9 Q And the date of that?

10:18 10 A Approximately 2006. Finished in 2007.

10:18 11 Q Any --

10:18 12 A Approximately.

10:18 13 Q Sorry. Any other licenses,
10:18 14 certifications, special training?

10:19 15 A CPR training for the school.

10:19 16 Q Anything else?

10:19 17 A Not to my knowledge.

10:19 18 Q All right. And just in brief, what was
10:19 19 the last job that you had before you began at Our
10:19 20 Lady of Guadalupe?

10:19 21 A I worked for the Los Angeles Times for 20
10:19 22 years.

10:19 23 Q And your role?

10:19 24 A I was a copywriter and advertising
10:19 25 salesperson.

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

10:19 1 Q Okay.

10:19 2 A For major accounts.

10:19 3 Q Sorry, I keep doing that.

10:19 4 And then what year did you start at Our
10:19 5 Lady of Guadalupe?

10:19 6 A I started subbing in 1998 sporadically and
10:19 7 in 1999 was offered a maternity leave position for
10:19 8 approximately eight weeks.

10:19 9 Q You said that was in '99?

10:19 10 A Yes.

10:19 11 Q All right. And then what came next?

10:19 12 A In the fall of 1999 I was offered a 6th
10:19 13 grade position.

10:19 14 Q Full time?

10:19 15 A Yes.

10:19 16 Q And I know we're going way back here, but
10:20 17 what did that position entail? What subjects did
10:20 18 you teach?

10:20 19 A I was a 6th grade teacher, self-contained.
10:20 20 I taught reading, writing, grammar, vocabulary,
10:20 21 science, social studies, religion.

10:20 22 Q And how long did you hold that role?

10:20 23 A Approximately 10 years.

10:20 24 Q Okay. And then what was your next role?

10:20 25 A My next role, I was the 5th grade teacher.

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10:20 1 Q So are we looking at around 2009 here?

10:20 2 A Approximately.

10:20 3 Q Okay. And what did that role entail?

10:20 4 A The 5th grade role entailed teaching math,
10:20 5 science, social studies, reading, writing, grammar,
10:21 6 vocabulary, and religion.

10:21 7 Q I'm sorry if you already said this: When
10:21 8 you were teaching the 6th grade role, were you
10:21 9 teaching religion as well?

10:21 10 A Yes.

10:21 11 Q So your entire time at Our Lady of
10:21 12 Guadalupe, from start to finish, you taught
10:21 13 religion?

10:21 14 A Yes.

10:21 15 Q Okay. And so you held this 5th grade
10:21 16 teacher role from 2009 until what date?

10:21 17 A 2015, at a part-time capacity for that
10:21 18 last year.

10:21 19 Q Okay. So I'm going to mark as Exhibit 2 a
10:21 20 document entitled "Teacher Employment
10:21 21 Agreement-Elementary," academic year 2014 to 2015,
10:22 22 and this document is Bates stamped OLG 1 through 6.
10:22 23 (Whereupon, Deposition Exhibit 2 was
10:22 24 marked for identification by the Court
10:22 25 Reporter.)

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10:22 1 BY MS. KANTOR:

10:22 2 Q Could you look at this document, please,
10:22 3 and let me know if you recognize it. And take your
10:22 4 time.

10:22 5 Ms. Morrissey-Berru, do you recognize this
10:23 6 document?

10:23 7 A Yes.

10:23 8 Q And what is it?

10:23 9 A It is a teacher employment agreement.

10:23 10 Q Is it your teacher employment agreement?

10:23 11 A Yes.

10:23 12 Q And if you look at the 6th page or the
10:23 13 last page in that document, it's Bates stamped
10:23 14 OLG 6, that's referring to the number at the bottom
10:23 15 right for your reference, is that your signature in
10:23 16 the middle of the page?

10:23 17 A Yes.

10:23 18 Q And if you know, is that the pastor's
10:23 19 signature below?

10:23 20 MS. FUND: It calls for speculation.

10:23 21 You can answer to the extent you know the
10:23 22 pastor's signature.

10:23 23 THE WITNESS: I'm not sure.

10:23 24 BY MS. KANTOR:

10:23 25 Q Okay. Ms. Morrissey-Berru, is it your

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10:23 1 understanding that teacher contracts at Our Lady of
10:23 2 Guadalupe were year to year?

10:23 3 A Yes.

10:23 4 Q So what does that mean?

10:23 5 A It means you are employed year to year.

10:23 6 Q Okay. And do you understand that the
10:23 7 school has no obligation to renew contracts?

10:24 8 A Yes.

10:24 9 Q This contract in front of you, this
10:24 10 Exhibit 2, did you review it before signing
10:24 11 it?

10:24 12 A Yes.

10:24 13 Q Okay. And then I want to just point out
10:24 14 to you on the first page at the top, do you see --
10:24 15 the first term says "Term: The school and you make
10:24 16 this employment agreement for the period shown
10:24 17 above, the term for you to serve as a member of our
10:24 18 faculty," and the year is 2014 to 2015. Do you see
10:24 19 that?

10:24 20 A Yes.

10:24 21 Q Okay. Can I also direct you to page 3 of
10:24 22 this exhibit. It's stamped OLG 3 at the bottom
10:24 23 right. And at the top of the page it says
10:24 24 "Renewal" -- do you see where it says "Renewal"?

10:25 25 A Yes.

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10:34 1 Q And did you undergo any religious training
10:34 2 in order to teach religion?

10:34 3 A Yes.

10:34 4 Q Can you describe that to me.

10:34 5 A It was the history of the Catholic Church.

10:34 6 Q And where did you learn about this?

10:34 7 A It was at St. Catherine Laboure Church --

10:34 8 Q So you --

10:34 9 A -- in Torrance.

10:34 10 Q Sorry.

10:34 11 So you had to like go to a special
10:34 12 separate class training on the history of the
10:34 13 Catholic Church?

10:34 14 A Yes.

10:34 15 Q And how many courses did you take?

10:34 16 A It was one course.

10:34 17 Q And when did you take it?

10:34 18 A I took it approximately in the year 2012.

10:35 19 Q Any other years?

10:35 20 A I'm not sure.

10:35 21 Q Okay. So I'm going to mark as Exhibit 4 a
10:35 22 document Bates stamped OLG 117 to 122.

10:35 23 (Whereupon, Deposition Exhibit 4 was
10:35 24 marked for identification by the Court
10:35 25 Reporter.)

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10:35 1 BY MS. KANTOR:

10:35 2 Q Please take a look at this, and let me
10:35 3 know if you recognize these documents.

10:35 4 A Yes.

10:35 5 Q Okay. Let's start with the first page
10:35 6 Bates stamped OLG 117. What is this document?

10:35 7 A This certified that I took the course.

10:35 8 Q And is this the course you were just
10:35 9 telling me about?

10:35 10 A Yes.

10:35 11 Q Sorry, like -- excuse my lack of knowledge
10:36 12 about this, but what is -- what does a Catechist
10:36 13 Certification mean?

10:36 14 A Catechist? It means that I am
10:36 15 knowledgeable in the Catholic religion.

10:36 16 Q All right. And then if you look at the
10:36 17 third page, it's Bates stamped OLG 119, what is
10:36 18 this document?

10:36 19 A This document is the VIRTUS training for
10:36 20 abuse --

10:36 21 Q Okay.

10:36 22 A -- of children.

10:36 23 Q And then if you look at the next page
10:36 24 Bates stamped OLG 120, what is this document?

10:36 25 A This is the same course at a different

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- 10:40 1 Q How about for Reconciliation?
- 10:40 2 A Yes.
- 10:40 3 Q Stations of the cross?
- 10:40 4 A Yes.
- 10:40 5 Q Lenten services?
- 10:40 6 A Yes.
- 10:40 7 Q Am I forgetting any?
- 10:40 8 A Christmas maybe.
- 10:40 9 Q That's a big one.
- 10:40 10 Okay. Did you ever personally lead
- 10:40 11 school-wide religious service?
- 10:40 12 A Not that I recall.
- 10:40 13 Q When you were responsible for mass or your
- 10:41 14 class was, did you have any input into selecting
- 10:41 15 the hymns?
- 10:41 16 A No.
- 10:41 17 Q Did you ever personally deliver a message
- 10:41 18 during the service?
- 10:41 19 A Not that I recall.
- 10:41 20 Q Did your students?
- 10:41 21 A Not that I recall.
- 10:41 22 Q Did you have to prepare your students to
- 10:41 23 altar serve during weekly mass?
- 10:41 24 A No.
- 10:41 25 Q How about to read during weekly mass?

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10:41 1 A Yes.

10:41 2 Q And also for the school mass?

10:41 3 A Yes.

10:41 4 Q Did you lead your students in any
10:41 5 devotional exercises?

10:41 6 A Not that I can recall.

10:41 7 Q Were you expected to provide students with
10:41 8 an opportunity to prayerfully reflect on their
10:41 9 faith and spiritual growth?

10:41 10 MS. FUND: I'm just going to object to the
10:41 11 extent it's vague and ambiguous.

10:41 12 THE WITNESS: Not that I recall.

10:42 13 BY MS. KANTOR:

10:42 14 Q So devotional exercises weren't part of
10:42 15 your teaching?

10:42 16 A I don't understand what that means.

10:42 17 Q Okay. That's fine.

10:42 18 Did you as a religion teacher, did you
10:42 19 conduct daily religion -- religion instruction?

10:42 20 A Yes.

10:42 21 Q All right. And what was the textbook you
10:42 22 were responsible for using?

10:42 23 A I believe it was "Blest Are We."

10:42 24 Q Okay. So I'm going to mark as Exhibit 5 a
10:42 25 document Bates stamped OLG 577 through 596.

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10:42 1 (Whereupon, Deposition Exhibit 5 was
10:42 2 marked for identification by the Court
10:42 3 Reporter.)

10:42 4 BY MS. KANTOR:

10:42 5 Q And, Ms. Morrissey-Berru, I would just ask
10:42 6 you to take a look at this and tell me if it looks
10:42 7 familiar to you.

10:42 8 A Yes.

10:42 9 Q Can you tell me what this -- I mean, I
10:42 10 know it's a xerox, but can you tell me what this
10:43 11 is?

10:43 12 A This is our religion book, "Blest Are We."

10:43 13 Q So the textbook you were responsible for
10:43 14 using; is that correct?

10:43 15 A Yes.

10:43 16 Q Okay. And I'll represent that in this
10:43 17 exhibit it's the table of contents of the book.

10:43 18 And how did you use this textbook in your
10:43 19 religion course?

10:43 20 A We would read the book every day.

10:43 21 Q And so what kind of lessons were you
10:43 22 teaching? Let's just focus on your last year at
10:43 23 Our Lady of Guadalupe in your religion class. What
10:43 24 were some of the lessons you were responsible for
10:43 25 teaching students?

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11:22 1 Q Okay. Wes -- I don't have the last name.
11:22 2 What were -- what was your understanding of the
11:22 3 circumstances under which that person's employment
11:22 4 ended?

11:22 5 MS. FUND: What person?

11:22 6 BY MS. KANTOR:

11:22 7 Q Wes --

11:22 8 A Robin Skibiski?

11:22 9 Q After -- okay. Let's go with Robin
11:22 10 Skibiski.

11:22 11 A Okay. Robin Skibiski did not have a
11:22 12 credential.

11:22 13 Q Okay. And what about Jane?

11:22 14 A Jane Cannata did not have a credential.

11:22 15 Q And what about Lisa?

11:22 16 A Lisa did not have a credential.

11:22 17 Q Okay. So you went through a hiring
11:22 18 process with Ms. Beuder; is that correct?

11:22 19 A It was the church board, of which there
11:22 20 were approximately five people, I believe --

11:22 21 Q Okay.

11:22 22 A -- present.

11:22 23 Q And were you hired for --

11:22 24 A I was rehired.

11:22 25 Q And how old were you at the time?

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11:23 1 A I was 61 years old.

11:23 2 Q And are you aware of who made the hiring
11:23 3 decision?

11:23 4 A The board.

11:23 5 Q Okay. So who is Laura Liberte?

11:23 6 A Lana Liberte was an aide who worked in the
11:23 7 after-school program. I believe 62 years old.

11:23 8 Q And you say that Ms. Bosch was trying to
11:23 9 get rid of her?

11:23 10 A Yes.

11:23 11 Q Why?

11:23 12 A Because she didn't like the way she was
11:23 13 handling the children.

11:23 14 Q What about it?

11:23 15 A I don't know any more about it.

11:23 16 Q And when is your understanding, this is
11:24 17 kind of convoluted, but you're telling us that
11:24 18 Ms. Bosch said that Ms. Beuder said something to
11:24 19 her. When is that alleged conversation supposed to
11:24 20 have taken place?

11:24 21 A Mrs. Bosch told me that in approximately
11:24 22 August of 2014, to the best of my knowledge.

11:24 23 Q And how old is Ms. Bosch?

11:24 24 A I'm not sure.

11:24 25 Q Is she over the age of 40?

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11:28 1 A That I was losing my job and getting moved
11:28 2 on.

11:28 3 Q Uh-huh. And with regard to this you being
11:28 4 old, what was supposedly said or do you not know
11:28 5 what was said?

11:28 6 A I do not know what was said.

11:29 7 Q Okay. And then they said something about
11:29 8 you losing your job; is that right?

11:29 9 A Yes.

11:29 10 Q Or we don't know if that's right --

11:29 11 A Something to that effect.

11:29 12 Q -- that's what Ms. Bosch told you was
11:29 13 supposedly said.

11:29 14 And being given to a 30-year-old music
11:29 15 teacher. Was your job ever given to a 30-year-old
11:29 16 musical -- music teacher?

11:29 17 A Originally the music teacher would be
11:29 18 taking my job of reading and writing, but it didn't
11:29 19 happen. Another teacher had to be hired to teach
11:29 20 reading and writing.

11:29 21 Q Who told you that your job would be given
11:29 22 to that teacher?

11:29 23 A I received a call in March from a parent
11:29 24 who said the music teacher told her I was being
11:29 25 moved along and losing my job.

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11:33 1 Q She knew that your contract was not
11:33 2 renewed you mean?

11:33 3 A Well, yes, I never went back.

11:33 4 Q Okay. But did you tell her what this case
11:33 5 was about?

11:33 6 A The case that I would need her letter
11:33 7 of --

11:33 8 Q Yeah, what --

11:33 9 A -- to testify? Yes.

11:33 10 Q Sorry. What this litigation is about.
11:33 11 Did you talk --

11:33 12 A Yes.

11:33 13 Q What did you tell her?

11:34 14 A I said that I may need her testimony to
11:34 15 the fact that my dismissal had been preplanned.

11:34 16 Q Sorry, just so I can understand what
11:34 17 you're saying, what would this testimony have to do
11:34 18 with your dismissal being allegedly preplanned?

11:34 19 A Well, I wanted to work there for a long
11:34 20 time --

11:34 21 Q What year --

11:34 22 A -- but I was terminated.

11:34 23 Q So is it your testimony that in 2015 you
11:34 24 wanted to work at the school for a long time?

11:34 25 A Well, no, I was terminated.

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11:34 1 Q Before your contract was non-renewed was
11:34 2 it --

11:34 3 A It was the part-time position. It was
11:34 4 terminated.

11:34 5 Q I don't think I'm being clear. Is it your
11:35 6 testimony that in 2015 before your contract was not
11:35 7 renewed, it was your intention to work at Our Lady
11:35 8 of Guadalupe for a long time?

11:35 9 A Yes.

11:35 10 Q Well, isn't it true that you were applying
11:35 11 to schools that year?

11:35 12 A Yes, because I needed the money for a
11:35 13 full-time job.

11:35 14 Q So you were looking for work outside of --

11:35 15 A Full-time, yes.

11:35 16 Q Did you speak to any other faculty, former
11:35 17 or current of OLG, or parents of students with
11:35 18 regard to this case?

11:35 19 A Yes.

11:35 20 Q Who else?

11:35 21 A I spoke to -- I e-mailed Cheryl Fajardo so
11:35 22 that she could write a letter stating I was a good
11:35 23 teacher to her two boys. I asked Krista Joseph to
11:35 24 write the letter to attest to the fact that I was a
11:35 25 good teacher for her autistic child.

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01:11 1 a goal.

01:11 2 Q And for the others?

01:11 3 A To choose a goal.

01:11 4 Q And did you utilize these resources?

01:11 5 A Yes.

01:11 6 Q Did Dr. Mitchell ever express frustration
01:11 7 with you?

01:11 8 A Not to my knowledge.

01:11 9 Q All right. And then going back to
01:12 10 Dr. Kersey, we were talking about her before the
01:12 11 break, did she give you any other feedback that we
01:12 12 have not discussed yet today?

01:12 13 A I don't recall.

01:12 14 Q Okay. I want to mark as Exhibit 8 a
01:12 15 document Bates stamped MORRISSEY-BERRU 94.

01:12 16 (Whereupon, Deposition Exhibit 8 was
01:12 17 marked for identification by the Court
01:12 18 Reporter.)

01:12 19 BY MS. KANTOR:

01:12 20 Q I would ask that you review this document
01:12 21 and advise whether it is familiar to you.

01:12 22 Is this doc- --

01:13 23 A Yes.

01:13 24 Q Thank you.

01:13 25 Can you tell us what this document is?

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01:13 1 A Well, it looks like it's a note to a
01:13 2 parent.

01:13 3 Q Who is the parent? Don't give me the
01:13 4 kid's name but just the parent.

01:13 5 A Cynthia Riddick.

01:13 6 Q And this is an e-mail that you sent her?

01:13 7 A Yes.

01:13 8 Q And I don't believe that we got the rest
01:13 9 of the chain. Do you have any recollection of what
01:13 10 the earlier e-mail might have said? If you don't,
01:13 11 that's fine.

01:13 12 A No.

01:13 13 Q Okay. So I want to call your attention to
01:13 14 the third paragraph where you're discussing putting
01:14 15 papers up on the wall for observation and then
01:14 16 taking them down when Dr. Kersey --

01:14 17 A Uh-huh.

01:14 18 Q -- left. Could you talk to me a little
01:14 19 bit about that.

01:14 20 A I put them up on the wall to show as
01:14 21 evidence, and then I took them down so I could read
01:14 22 them, correct them.

01:14 23 Q So you hadn't yet corrected them?

01:14 24 A Probably not.

01:14 25 Q And you didn't --

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01:14 1 A I don't recall.

01:14 2 Q -- normally have them on your wall?

01:14 3 A No, I did. I had a writing wall.

01:14 4 Q But you didn't have the Thomas Jefferson
01:14 5 papers up on the wall?

01:14 6 A No, they were up on the wall.

01:14 7 Q Okay. So --

01:14 8 A They were up on the wall.

01:14 9 Q Yes. Okay. So -- yes, it says here, or
01:14 10 my understanding of what it says, is that you put
01:14 11 the papers on the wall for the observation and then
01:14 12 took them down after the observation; is that
01:14 13 right?

01:14 14 A Yes.

01:14 15 Q Okay. I'm going to -- still on this
01:15 16 document, is that something that you did with
01:15 17 regularity, put things up to show Dr. Kersey and
01:15 18 then remove them afterwards?

01:15 19 A Well, no. I had them up every day on the
01:15 20 wall.

01:15 21 Q Uh-huh. Did you ever ask other teachers
01:15 22 to borrow books so you can have them in the library
01:15 23 for observation?

01:15 24 A I don't recall.

01:15 25 Q And do you think it is professional for a

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01:29 1 your implementation of Readers and Writers

01:29 2 Workshop?

01:29 3 A Yes.

01:29 4 Q On how many occasions?

01:29 5 A A couple.

01:29 6 Q Could you give me an understanding of what
01:29 7 you mean when you say "a couple"?

01:29 8 A She said I didn't do it right.

01:29 9 MS. FUND: Her question is what you mean
01:29 10 by "a couple."

01:29 11 THE WITNESS: Oh.

01:29 12 A couple of visits in her office.

01:29 13 BY MS. KANTOR:

01:29 14 Q So you were aware that Mrs. Beuder had
01:29 15 concerns about your implementation of Readers and
01:29 16 Writers Workshop?

01:29 17 A Yes.

01:29 18 Q What is your understanding of when Readers
01:29 19 Workshop was supposed to be fully implemented by?

01:30 20 A By three years.

01:30 21 Q So it was not supposed to be fully
01:30 22 implemented until three years had passed, that's
01:30 23 your understanding?

01:30 24 A It was a three-year program.

01:30 25 Q Okay. So I'd like to mark as Exhibit 11 a

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01:30 1 document Bates stamped OLG 162 to 163.

01:30 2 (Whereupon, Deposition Exhibit 11 was
01:30 3 marked for identification by the Court
01:30 4 Reporter.)

01:30 5 BY MS. KANTOR:

01:30 6 Q I'd ask you to take a look at this
01:30 7 document, take your time, and let me know if it's
01:30 8 familiar to you.

01:30 9 A Yes.

01:30 10 Q What is this document?

01:30 11 A This is a document to check for
01:31 12 improvement.

01:31 13 Q Okay. And I'll represent that this
01:31 14 document is entitled "Catholic Identity and
01:31 15 Professional Conduct Review Form" and the date on
01:31 16 the top is June 2013.

01:31 17 MS. FUND: Did you put on the record the
01:31 18 Bates numbers?

01:31 19 MS. KANTOR: If I didn't, it's OLG 162 to
01:31 20 163.

01:31 21 MS. FUND: Okay.

01:31 22 BY MS. KANTOR:

01:31 23 Q Mrs. Morrissey-Berru, I'd like to direct
01:31 24 your attention to the second page, OLG 163. In the
01:31 25 middle of the page under the "Needs improvement in

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01:32 1 A Yes.

01:32 2 Q All right. And now I'd like to mark as

01:33 3 Exhibit 12 a document I'm going to Bates stamp --

01:33 4 sorry, a document Bates stamped OLG 8 through 12.

01:33 5 MS. FUND: I was wondering what kind of

01:33 6 device you had over there that Bates stamped.

01:33 7 MS. KANTOR: What do you mean?

01:33 8 MS. FUND: You said you were -- never

01:33 9 mind. You said "I'm going to Bates stamp this."

01:33 10 MS. KANTOR: I misspoke.

01:33 11 MS. FUND: Okay.

01:33 12 MS. KANTOR: Marking as Exhibit 12 this

01:33 13 document Bates stamped, not doing my own Bates

01:33 14 stamping --

01:33 15 MS. FUND: I was impressed.

01:33 16 (Whereupon, Deposition Exhibit 12 was

01:33 17 marked for identification by the Court

01:33 18 Reporter.)

01:33 19 BY MS. KANTOR:

01:33 20 Q All right. Please just take a look at it

01:33 21 and tell me if you recognize it.

01:33 22 A Yes.

01:33 23 Q What is this document?

01:33 24 A Teacher Employment Agreement.

01:33 25 Q Is this your agreement for term date --

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01:33 1 A Yes.

01:33 2 Q -- 2013 to 2014?

01:33 3 A Yes.

01:33 4 Q July 2013 to June 2014?

01:33 5 A Yes.

01:33 6 Q Sorry.

01:33 7 Okay. And if you look at the last page,

01:34 8 Bates stamped OLG 12 --

01:34 9 A Uh-huh.

01:34 10 Q -- is that your signature?

01:34 11 A Yes.

01:34 12 Q On June 4, 2013?

01:34 13 A Yes.

01:34 14 Q All right. And then go to the page

01:34 15 before, Bates stamped OLG 11. At the bottom,

01:34 16 section 18 where it talks about "Education and

01:34 17 Professional Growth Requirements," it says under

01:34 18 "Other Requirements," "Fully implement

01:34 19 Readers/Writers Workshop."

01:34 20 A Uh-huh.

01:34 21 Q Mrs. Morrissey-Berru, is it your

01:34 22 understanding that it was part of your contract and

01:34 23 employment agreement for the year 2013-2014 that

01:34 24 you were to implement the Readers and Writers

01:34 25 Workshop?

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01:34 1 A Yes, within three years.

01:34 2 Q Can you go back to the previous exhibit,
01:34 3 Exhibit 11, second page at the bottom where it said
01:34 4 a goal for 2013-14 is full implementation of
01:35 5 Readers/Writers Workshop?

01:35 6 A Yes.

01:35 7 Q Did you not understand that it was your
01:35 8 goal to implement it in 2013-14?

01:35 9 A Well, the program hadn't ended yet. It
01:35 10 was a three-year program.

01:35 11 Q Okay. So it was --

01:35 12 A It was only the second year.

01:35 13 Q You did not think you were responsible for
01:35 14 implementing it; is that what you're saying?

01:35 15 MS. FUND: It misstates her testimony.

01:35 16 BY MS. KANTOR:

01:35 17 Q Mrs. Morrissey-Berru --

01:35 18 A Yes.

01:35 19 Q -- did you believe that you were
01:35 20 responsible for fully implementing Readers and
01:35 21 Writers Workshop in 2013-14 calendar year?

01:35 22 A Yes.

01:35 23 Q You -- you thought you were responsible
01:35 24 for full implementation?

01:35 25 A Yes, but the program hadn't finished yet.

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01:43 1 Q Do you remember what kind of feedback it
01:43 2 was?

01:43 3 A No.

01:43 4 Q Do you remember an incident where you
01:43 5 retaught a lesson for Mr. Moore's class visit?

01:43 6 A Yes.

01:43 7 Q Can you tell me a little bit about that?

01:43 8 A Mr. Moore was getting his credential in a
01:43 9 program and he asked if he could observe a class
01:43 10 for social studies, I think, and I said "Yes, I can
01:43 11 reteach the lesson I did yesterday and you can
01:43 12 observe that and write on that lesson."

01:44 13 Q And did you get any kind of feedback from
01:44 14 the parents about having retaught the lesson?

01:44 15 A Well, Mrs. Beuder called me in about it,
01:44 16 and I said "Well, it was 15 minutes of doing the
01:44 17 lesson for Mr. Moore for his school requirement and
01:44 18 then I continued on with my lesson."

01:44 19 MS. FUND: Can you read back my last
01:44 20 question, please.

01:44 21 (Record read Lines 13-14.)

01:44 22 MS. FUND: That's her question.

01:44 23 THE WITNESS: I didn't, no.

01:44 24 BY MS. KANTOR:

01:44 25 Q Did anybody share with you that there had

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

01:44 1 been feedback from the parents?

01:44 2 A Mrs. Beuder asked me why did I reteach the
01:44 3 lesson.

01:44 4 Q Did anybody share with you that there had
01:44 5 been feedback from the parents?

01:44 6 A Mrs. Beuder.

01:44 7 Q As part of the support for Readers and
01:44 8 Writers Workshop, did Mrs. Beuder provide for
01:45 9 sessions where the teachers compared lessons with
01:45 10 each other?

01:45 11 A Yes.

01:45 12 Q Is that something you attended?

01:45 13 A Yes.

01:45 14 Q And do you recall what kind of feedback
01:45 15 you got on those peer -- I don't know, what would
01:45 16 you call them?

01:45 17 A Peer review.

01:45 18 Q Lesson study with other teachers. Do you
01:45 19 recall what kind of feedback you got?

01:45 20 A Not exactly.

01:45 21 Q What does that mean?

01:45 22 A I'm not sure which one you're referring
01:45 23 to.

01:45 24 Q Good note. How many of these did you
01:45 25 attend?

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

02:06 1 Q Did she seem upset about it?

02:06 2 A I'm not sure.

02:06 3 Q And how many weeks in advance of this
02:06 4 evaluation had you been provided with notice of the
02:06 5 date it would occur on?

02:06 6 A I think a month.

02:06 7 Q Possibly more?

02:06 8 A It's possible. I'm not sure.

02:07 9 Q Okay. And then at some point after this
02:07 10 conversation, did you have another conversation
02:07 11 with Mrs. Beuder about your not implementing
02:07 12 Readers and Writers Workshop?

02:07 13 A I'm not sure.

02:07 14 Q In May of 2014 did you -- or April or May,
02:07 15 towards the end of the school year 2014, did you
02:07 16 meet with Mrs. Beuder about what would be happening
02:07 17 the following year?

02:07 18 A Yes.

02:07 19 Q Do you remember when this conversation
02:07 20 was?

02:07 21 A Mid-May 2014.

02:07 22 Q Okay. And what happened in this
02:07 23 conversation?

02:07 24 A Mrs. Beuder asked if I wanted to retire,
02:07 25 and I said no.

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

02:07 1 Q What else happened in this conversation?

02:07 2 A She said I didn't do it like everybody
02:07 3 else and that she --

02:07 4 MS. FUND: Didn't do what?

02:08 5 THE WITNESS: Do reading and writing, I'm
02:08 6 assuming, and that she didn't have a full-time
02:08 7 position for me for next year.

02:08 8 BY MS. KANTOR:

02:08 9 Q Did Mrs. Beuder say that you were not
02:08 10 implementing Readers and Writers Workshop?

02:08 11 A She said -- I'm not sure. I can't
02:08 12 remember.

02:08 13 Q Did she say anything about your reading
02:08 14 and writing instruction?

02:08 15 A She said I didn't do it right.

02:08 16 Q Your reading and writing instruction?

02:08 17 A Yes.

02:08 18 Q Anything else about your reading and
02:08 19 writing instruction?

02:08 20 A Not that I recall.

02:08 21 Q What did you say in response to that?

02:08 22 A I said "Well, I'll accept the part-time
02:08 23 job."

02:08 24 Q What did you say in response to what
02:08 25 Mrs. Beuder said about your failing to implement

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

02:08 1 reading -- reading and -- I don't want to put words
02:08 2 in your mouth.

02:08 3 A Uh-huh.

02:08 4 Q What did you say in response to her
02:08 5 comment about your reading and writing instruction?

02:09 6 A Well, I said I thought I was implementing
02:09 7 it.

02:09 8 Q And what did she say in response to that?

02:09 9 A She said I didn't do it like the others.

02:09 10 Q And did you say anything in response to
02:09 11 that?

02:09 12 A I knew the other person had my job anyway,
02:09 13 so I just accepted it.

02:09 14 Q What other person?

02:09 15 A Mr. Hazen.

02:09 16 Q At the time you thought it --

02:09 17 A Yes. At the time he did, until the
02:09 18 parents complained.

02:09 19 Q Mrs. Morrissey-Berru --

02:09 20 A Yes.

02:09 21 Q -- I don't know why I keep wanting to
02:09 22 argue with you about this, but I believe -- I'm
02:09 23 going to ask the question and just going to say for
02:09 24 the record I believe it's been established that
02:09 25 nobody from the administration and leadership of

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

02:09 1 the school ever said that Mr. Hazen would have this
02:09 2 role and in fact he never did. I'm going to move
02:09 3 on.

02:09 4 A Okay. All right.

02:09 5 Q That was -- that was argumentative by me.
02:09 6 Sorry. Sorry.

02:09 7 Okay. So did you -- before Mrs. Beuder
02:10 8 offered you a part-time position, did you advocate
02:10 9 for your job in any way?

02:10 10 MS. FUND: I'm just going to object to the
02:10 11 extent it's vague and ambiguous.

02:10 12 BY MS. KANTOR:

02:10 13 Q If you understand my question. I can ask
02:10 14 you a better one.

02:10 15 A She didn't offer me anything else but
02:10 16 part-time.

02:10 17 Q Did you say anything to Mrs. Beuder to the
02:10 18 effect that you just wanted one more year?

02:10 19 A No.

02:10 20 Q At any point did you ever tell Mrs. Beuder
02:10 21 that you just wanted one more year?

02:10 22 A I never want to retire. I told her that.

02:10 23 Q Did you tell anybody at the school that
02:10 24 you wanted one more year?

02:10 25 A Never.

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

02:10 1 Q And you understand you're under oath?

02:10 2 A Yes.

02:10 3 Q So you never said anything about wanting
02:10 4 one more year?

02:10 5 MS. FUND: Asked and answered.

02:10 6 You can answer it again.

02:10 7 THE WITNESS: No.

02:10 8 BY MS. KANTOR:

02:10 9 Q Okay. And was it explained to you why you
02:11 10 would be getting a part-time position?

02:11 11 A Yes.

02:11 12 Q What was explained?

02:11 13 A Because she said I didn't do Readers and
02:11 14 Writers like the others.

02:11 15 Q So your part-time position would not
02:11 16 include reading and writing?

02:11 17 A Yes.

02:11 18 Q Okay. And so what courses were you to
02:11 19 teach in the part-time position?

02:11 20 A Religion to 5th grade, social studies to
02:11 21 5th grade, social studies to 6th grade, social
02:11 22 studies to 7th grade.

02:11 23 Q When Mrs. Beuder offered you the part-time
02:11 24 position, did you express that you were grateful
02:11 25 for the position?

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

02:11 1 A Yes, because I thought I wouldn't have a
02:11 2 job.
02:11 3 Q And why did you think that?
02:11 4 A Because I thought I was going to be
02:11 5 terminated.
02:11 6 Q Why did you think that?
02:11 7 A Because the parent called up -- called me
02:11 8 up and said that somebody else got my job.
02:11 9 Q Any other reason?
02:11 10 A That I was being moved along. I thought I
02:12 11 was fired.
02:12 12 Q Because of that rumor that had been
02:12 13 reported to you?
02:12 14 A Yes.
02:12 15 Q Before you had this conversation with
02:12 16 Mrs. Beuder in mid-May of 2014, did you apply for
02:12 17 any other jobs?
02:12 18 A Yes.
02:12 19 Q Where did you apply?
02:12 20 A I applied to visit -- oh, I'm sorry.
02:12 21 MS. FUND: No, you're fine.
02:12 22 THE WITNESS: Okay.
02:12 23 MS. FUND: Sorry, can you just repeat the
02:12 24 time period you're asking for, that you asked.
02:12 25 (Record read Lines 15-17.)

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

02:13 1 position teaching the courses you just described,
02:13 2 had anybody else held that position?

02:13 3 A No.

02:13 4 Q Was it an entirely new position?

02:14 5 A Yes.

02:14 6 Q Do you understand that the position was
02:14 7 created just for you?

02:14 8 A Apparently.

02:14 9 Q Why do you say that?

02:14 10 A Because it had never been before.

02:14 11 Q Okay. And then who is your understanding
02:14 12 taught 5th grade reading and writing the next year?

02:14 13 A Mrs. Beuder hired Mrs. Ruma.

02:14 14 Q All right. And her full name?

02:14 15 A Mrs. Andrea Ruma-Harrington.

02:14 16 Q All right. And do you know how old
02:14 17 Mrs. Harrington was at the time?

02:14 18 A Thirty-nine years old.

02:14 19 Q At the time she was hired?

02:14 20 A Yes.

02:14 21 Q And how do you know that?

02:14 22 A Because I asked her.

02:14 23 Q And do you know what her experience was
02:14 24 before coming to OLG?

02:14 25 A She was a teacher.

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

02:14 1 Q Do you know how many years of experience
02:14 2 she had?

02:14 3 A Not really. Ten years. She was
02:14 4 experienced.

02:14 5 Q Did she have experience as a reading and
02:15 6 writing teacher?

02:15 7 A She told me not really.

02:15 8 Q From what you observed, did she have
02:15 9 experience as a reading and writing teacher?

02:15 10 A Somewhat.

02:15 11 Q Did you ever admire any of her teaching
02:15 12 techniques?

02:15 13 A Yes.

02:15 14 Q Can you give me some examples?

02:15 15 A Classroom management.

02:15 16 Q Anything else?

02:15 17 A Very good teacher.

02:15 18 Q Okay. So looking at now the year 2014 to
02:15 19 2015, you still taught religion, correct?

02:15 20 A Yes.

02:15 21 Q And you taught social studies?

02:15 22 A Yes.

02:15 23 Q Did you try and implement Readers and
02:15 24 Writers Workshop in your social studies course at
02:15 25 all?

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

02:22 1 Q So in May of 2015, Mrs. Beuder advised you
02:22 2 that your contract was not renewed; is that
02:22 3 correct?

02:22 4 A Yes.

02:22 5 Q But you were permitted to finish out the
02:22 6 2015 -- 2014-2015 school year; is that correct?

02:22 7 A Yes.

02:22 8 Q So you were not terminated?

02:22 9 A Well, I didn't have a job after June 22.

02:23 10 Q Was your --

02:23 11 A "Terminated" meaning I don't have a job
02:23 12 for next year.

02:23 13 Q Your contract was not renewed?

02:23 14 A Yeah. Yes.

02:23 15 Q During this meeting or thereafter, did
02:23 16 Mrs. Beuder invite you to teach summer school?

02:23 17 A No.

02:23 18 Q During this meeting or thereafter, did
02:23 19 Mrs. Beuder advise you or invite you to start an
02:23 20 after-school program?

02:23 21 A Yes.

02:23 22 Q What was that?

02:23 23 A It was not a California credentialed
02:23 24 position, it was teaching art after school.

02:23 25 Q How about photography?

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

02:23 1 A Or photography. Something that I would
02:23 2 have to make up --

02:23 3 Q Mrs. --

02:23 4 A -- or design.

02:23 5 Q Mrs. Morrissey-Berru, did you have an
02:23 6 interest in art?

02:23 7 A Yes.

02:23 8 Q Was Mrs. Beuder aware of that interest?

02:23 9 A Yes.

02:23 10 Q How about photography, did you have an
02:23 11 interest in photography?

02:23 12 A Yes.

02:23 13 Q And is that something that Mrs. Beuder was
02:24 14 aware of also?

02:24 15 A Yes.

02:24 16 Q And did she offer you this after-school
02:24 17 program option during the same conversation when
02:24 18 you were advised your contract was not renewed?

02:24 19 A No.

02:24 20 Q When did she bring it up?

02:24 21 A Maybe a week later.

02:24 22 Q And how many times did she bring it up?

02:24 23 A Twice.

✓ 02:24 24 Q And how did you respond?

02:24 25 A I didn't respond.

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

02:24 1 Q Why?
02:24 2 A I need a full-time job. I'm a California
02:24 3 credentialed teacher, I'm not a part-time
02:24 4 photography aide.

02:24 5 Q So you just didn't respond?

02:24 6 A Correct.

02:24 7 Q Okay. And so there's an allegation in
02:24 8 your complaint that I wanted to ask you about,
02:24 9 something about what happened after your
02:24 10 conversation with Mrs. Beuder.

02:24 11 A Yes.

02:24 12 Q Can you -- following you to the
02:24 13 playground, something like that.

02:24 14 A Yes.

02:24 15 Q Can you talk me through that.

02:24 16 A Yes. I excused myself and said "Well, I
02:24 17 have yard duty," went downstairs to do yard duty,
02:24 18 and Mrs. Beuder followed me down and threatened me.

02:25 19 Q What do you mean?

02:25 20 A She threatened that if I told any of the
02:25 21 parents or students, that I was no longer welcome
02:25 22 there, that she would make sure that I never got
02:25 23 another job again, and that she would never give me
02:25 24 a recommendation.

02:25 25 Q What did she say exactly?

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

03:03 1 case?

03:03 2 A No.

03:03 3 Q Are there any other people that you
03:04 4 believe could or should be witnesses to the issues
03:04 5 you've identified in this litigation?

03:04 6 MS. FUND: Other than what you've already
03:04 7 testified to today.

03:04 8 THE WITNESS: Yeah.

03:04 9 BY MS. KANTOR:

03:04 10 Q Other than what you've already testified
03:04 11 to today.

03:04 12 A No.

03:04 13 Q We have been provided with, by your
03:04 14 attorneys, a letter to the EEOC kind of telling
03:04 15 your story. It says it's from you. My question
03:05 16 is: Is this something that you personally
03:05 17 prepared?

03:05 18 A I'm not sure --

03:05 19 Q You can take a look at it.

03:05 20 A -- what you're referring to.

03:05 21 Q I'll mark it as Exhibit 16,

03:05 22 MORRISSEY-BERRU 2 through 5.

03:05 23 (Whereupon, Deposition Exhibit 16 was
03:05 24 marked for identification by the Court
03:05 25 Reporter.)

AGNES DEIRDRE MORRISSEY-BERRU - 04/26/2017

03:05 1 BY MS. KANTOR:

03:05 2 Q Just take a second to look at it, and my
03:05 3 question is: Did you prepare this on your own
03:05 4 and --

03:05 5 A Yes, I did.

03:05 6 Q And is the date on the top of the first
03:05 7 page, April 7, 2016, the date you prepared it?

03:05 8 A It appears so.

03:05 9 Q And did you file a charge with the Equal
03:06 10 Employment Opportunity Commission on your own?

03:06 11 A Yes.

03:06 12 Q When did you obtain counsel in this
03:06 13 matter?

03:06 14 A I would say a year ago. I'm not sure
03:06 15 exactly.

03:06 16 Q That's fine.

03:06 17 So you waited around a year after your
03:06 18 contract was not renewed; does that sound right to
03:06 19 you?

03:06 20 A When I was terminated in 2015 is when I
03:06 21 filed the complaint.

03:06 22 Q And then you waited around a year to
03:06 23 contact an attorney?

03:06 24 A Yes.

03:06 25 Q And again, without ever telling me

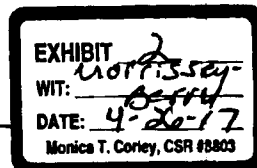
TEACHER EMPLOYMENT AGREEMENT-ELEMENTARY

**Non-Exempt
Department of Catholic Schools
Archdiocese of Los Angeles**

Name of School: Our Lady of Guadalupe School

Name of Teacher: Deirdre Morrissey-Berru

Academic Year: 2014-2015



Term. The School ("School") and you (the "Teacher") make this Employment Agreement ("Agreement") for the period shown above (the "Term") for you to serve as a member of our faculty.

Philosophy. 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.

Duties. Your position will be that of a Teacher. You shall use your best professional efforts and skills to perform your duties in a diligent, energetic, competent, and ethical manner, consistent with the School's established policies, directives and expected practices. You acknowledge that the School operates within the philosophy of Catholic education and retains the right to employ individuals who demonstrate an ability to teach in accordance with this philosophy. 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. Your duties shall include careful preparation and planning for each class consistent with School and departmental curriculum; diligent review and evaluation of student work and related communication to students and parents; and, as needed, conferring with students, the administration, and parents regarding each student's progress and development. You also shall attend faculty/staff meetings and conferences, including those prior to and following the School's regular academic year, participate in School activities including School liturgical activities, as requested, and complete other duties as assigned. You agree to maintain the levels of competency in subject matter, teaching methods, classroom management, and student supervision required by the School whether on your own initiative or at the direction of the School. Your duties and job assignment may be revised during the Term to meet the School's needs. In the event the School's operations are extended by reason of fire, disaster, act of God, act of public authority or any other necessity or emergency cause, your service may be suspended for the time period and rescheduled as needed to complete the full School year.

Policies. You shall be familiar with, and comply with the School's personnel policies and procedures as they may be adopted or amended from time-to-time, including policies in the faculty handbook. You should refer to such documents for information relating to your employment, duties and benefits. You shall be familiar with, abide by, and assist and cooperate with School administration in enforcing the School's policies for students and families whether outlined in our handbooks(s), our School policies, or other directives and expected practices (together "Policies"). You acknowledge that a copy of the faculty handbook has been made available to you. You understand and acknowledge that the policies do not constitute a contractual agreement with you.

Introductory Period. The first six (6) months of your employment as a new teacher at this School are considered your Introductory Period. You may be terminated at any point, with or without notice, during the Introductory Period. The Principal shall complete a performance appraisal at the end of your Introductory Period. Upon satisfactory completion of the Introductory Period, your employment will be continued through the Term of this Agreement except as noted under "Termination."

Termination. Your employment, and this Agreement, may be terminated during the Term without payment of salary or benefits beyond such date of termination, for any of the following reason:

- I. The School may terminate for "cause," without any prior notice. Such "cause" shall be determined by the School within its reasonable judgment and shall include but not be limited to:
 - a) Failure to meet any of your duties as described in Paragraphs 3 and 4 above.
 - b) Inappropriate physical or social contact with students during school or otherwise.
 - c) Unprofessional or unethical conduct, insubordination, unauthorized disclosure of confidential information, or habitual or unreasonable tardiness or absence from duties.
 - d) Any criminal, immoral or unethical conduct that brings discredit upon the School or the Roman Catholic Church.
 - e) Unauthorized possession, sale or working under the influence of controlled substances (except prescription medications taken as prescribed), intoxicants, or alcohol.
 - f) Threatening or causing bodily harm to others or other coercive and or intimidating acts, or any verbal or physical harassment.
 - g) Having a diploma, credential, permit, license or certificate denied, revoked or suspended.
 - h) Falsification of documents, false or misleading information on an application, resume, personnel record, professional or character reference, academic transcript, degree, or credential.
 - i) Any other breach of the terms of this Agreement
- II. Either you or the School may terminate this Agreement without cause, for any reason within the sole discretion of the terminating party, upon 30 calendar days' prior written notice to the other party in a manner that is consistent with applicable law and on a time frame that is mutually agreeable to you and the Principal. However you may not terminate employment under this Agreement if the termination is effective during the 30 days immediately prior to the beginning of the school year except by mutual agreement with the Principal. You acknowledge that a breach by you of this provision is a grave ethical violation, may harm the educational program for the students and may cause expenses and damages to the School.
- III. The School may terminate your employment if you are unable to perform the essential functions of your position and reasonable accommodation is not available or required under applicable laws.

The School's failure to invoke its right of termination on one occasion for the occurrence of a matter constituting a basis for discharge shall not affect the right of the School to invoke discharge when the same or a different basis for termination arises at a later date.

Renewal. Future employment will be determined on a year-to-year basis. You agree to give written notice to the School, on or before April 1, 2015, stating whether or not you wish to renew the Agreement. The School will give you written notice, on or before May 15, 2015, stating whether or not it intends to renew the Agreement for the following year or enter into any other type of employment relationship. In the absence of a notice by either party, this Agreement will lapse under its own terms. The Principal alone, with the approval of the Pastor, has the final and sole authority with respect to offering agreements. This Agreement is contingent upon sufficient School enrollment and the School's financial condition. If the enrollment or the School's financial condition does not justify the staffing, the Principal has discretionary power to make decisions regarding personnel reduction including but not limited to, modification or cancellation of this Agreement. If the School closes for any reason, this Agreement will be considered terminated on the date of the closure. If this Agreement is cancelled due to lack of enrollment or the School's financial condition or is terminated because of School closure, you will be paid through the date of cancellation or closure; no further payments will be due to you. You understand that tenure is not granted by Archdiocesan Schools and upon expiration or termination of the Agreement for any reason you shall have no right to employment or preferential treatment regarding employment at any other Archdiocesan School. There is no implied duty by you or the School to renew this Agreement, and no cause whatsoever is required by either party for non-renewal. Any other arrangement with respect to renewal, extension or duration of employment is valid only if in writing, executed by you and the Principal, with the approval of the Pastor.

Severability. If, for any reason, any one or more of the provisions of this Agreement shall be held or deemed to be legally invalid or unenforceable, that shall not have any effect on any of the other provisions of this Agreement, all of which shall remain in full force and effect.

Entire Agreement. This Agreement contains the complete and entire agreement between you and the School, and supersedes all prior offers, agreements, commitments, understandings, whether oral or written. No changes to this Agreement may be made except by a document signed by you and the Principal, with approval of the Pastor.

Applicable Law. This Agreement is entered into under, and governed by, the laws of the State of California.

Dispute Resolution and Grievances. You and the School agree to attempt to resolve any disputes in good faith. Any unresolved disputes between you and the School arising out of or in any way related to your employment or termination, shall be subject to the Grievance Procedures promulgated by the Archdiocesan Department of Catholic Schools and no legal actions may be taken until all procedures have been fully discharged. This clause is intended to provide a speedy, economical and exclusive forum for resolving claims; its existence shall not imply any limitations upon the School's right to manage its affairs or terminate any employment.

Condition Precedent. You understand and agree that condition precedents of this Agreement are the receipt of the Criminal Record Summary report from the California Department of Justice and the Federal Bureau of Investigation, the completion of the I-9 Form from the Immigration and Naturalization Service, and the completion of the other relevant health and document requirements of the School.

School Day and Work Schedule**Full Time Teacher**

As a full time teacher, you understand that your duties consist of work during the regular class day which includes instructional and non-instructional time, other assigned school responsibilities, and preparation and assessment activities outside the classroom. The School's regular instructional time is from ____ a.m. to ____ p.m. You will be informed of required non-instructional duties according to schedules provided to you by the principal. The Academic Year consists of ____ class days, ____ paid holidays, and ____ hours worked.

The School understands that you may need to devote a reasonable amount of time to other school responsibilities and in preparation and assessment activities at hours not during the regular class day ("Additional Hours Worked"). The School will compensate you for the Additional Hours Worked if they exceed 8 in a day or 40 in a week. You hereby agree to comply with all the School's policies and procedures for permission to work beyond 8 hours in any day or 40 hours in any week.

Part Time Teacher

As a part-time teacher, you understand that your hours of work will be provided to you as scheduled. ("Regular Days Worked").

The School understands that you may need to devote a reasonable amount of time to other school responsibilities and in preparation and assessment activities at hours not during the regular class day ("Additional Hours Worked"). The School will compensate you for the Additional Hours Worked up to ____ hours in a day and ____ hours worked in a week. You hereby agree to comply with all the School's policies and procedures for permission to work beyond ____ hours in any day or ____ hours in any week.

Base Compensation

Total Compensation for Regular Hours Worked (not including compensation for Additional Hours Worked): \$28,000.00 annually (based on 25 total number of Regular Hours Worked in the Term, at the rate of \$ n/a per hour).

Full Time Teacher

Total budgeted (but not guaranteed) compensation for Additional Hours Worked: \$ ____ (actual amount will vary depending on actual hours worked over 8 in a day or 40 in a week).

Part time Teacher

Total budgeted (but not guaranteed) compensation for Additional Hours Worked: \$ 0 (actual amount will vary depending on actual hours worked over ____ in a day ____ or in a week).

Additional Compensation for Designated Responsibility (If Any):

In addition, for this Term only, you will assume the additional assignment(s) listed below. Your hours of work for the additional assignment(s) are as stated on the attached schedule. To compensate you for the additional assignment(s), your compensation for this Term will be increased for this Term only. The School does not guarantee that you will receive this or any other additional assignment(s) at any future time; therefore your total compensation for this Term should not be considered a promise that any future compensation will be for a similar amount.

Note: Calculations and Additional Compensation for Designated Responsibility are based on anticipated time commitment and skills.

<u>Responsibility</u>	<u>Additional Compensation</u>
_____ \$ _____ x _____	\$ _____
_____ \$ _____ x _____	\$ _____
_____ \$ _____ x _____	\$ _____
_____ \$ _____ x _____	\$ _____
Total Additional Compensation:	\$ _____

Payment Schedule

Compensation for all teachers will be distributed on a ☒ semi-monthly ☐ bi-weekly schedule

Date of first payday: 8/30/14
(See payroll schedule)

Date of last payday: 6/30/15

Available Benefits

See Archdiocese of Los Angeles Lay Employees Benefit Guide

Sick Days: Number of days per school year (if any): 5

Education and Professional Growth Requirements:

In accordance with the regulations for salary placement and professional growth requirements, you agree that you will complete the following requirements to be eligible to be offered an employment agreement for the next school year.

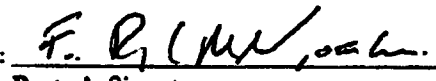
- ☐ Enroll in California Teaching Credential program.
- ☐ Complete at least _____ units towards a California Teaching Credential.
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By:  April Beuder 5/19/14
Principal's Signature Print Name Date

I accept a position as Teacher at Gr5 Homern/Rel/SocStudies and Gr6-7 SocStudies at OLG School
on each and all of the terms and conditions set forth in the above Agreement.

By:  A. DEEDRE MORRISSEY - BERRA
Teacher's Signature Print Name Date

Approval by Pastor required (this Agreement is not binding until executed by Pastor)

By: 
Pastor's Signature Print Name Date

Give copy to teacher and file the original in his/her personnel file.



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

LAST NAME

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FIRST NAME

1602 Spreckels Lane

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Redondo Beach

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STATE

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Level

CENTER NUMBER 2012 - 19 - 64

Theology Phase ¹

St. Catherine Laboure Church/Torrance

CENTER LOCATION

August 7, 2012

DATE COMPLETED

Joannie Nestolko

MASTER CATECHIST (PRINT)

MASTER CATECHIST SIGNATURE

Applications (Specialization) Phase ²

CENTER LOCATION

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SPECIALIZATION FACILITATOR (PRINT)

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Practicum Phase ³

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EXHIBIT 49
WIT: Morrissey-Berru
DATE: 4-26-17
Monica T. Corley, CSR #6303

MFC-11-050
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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.

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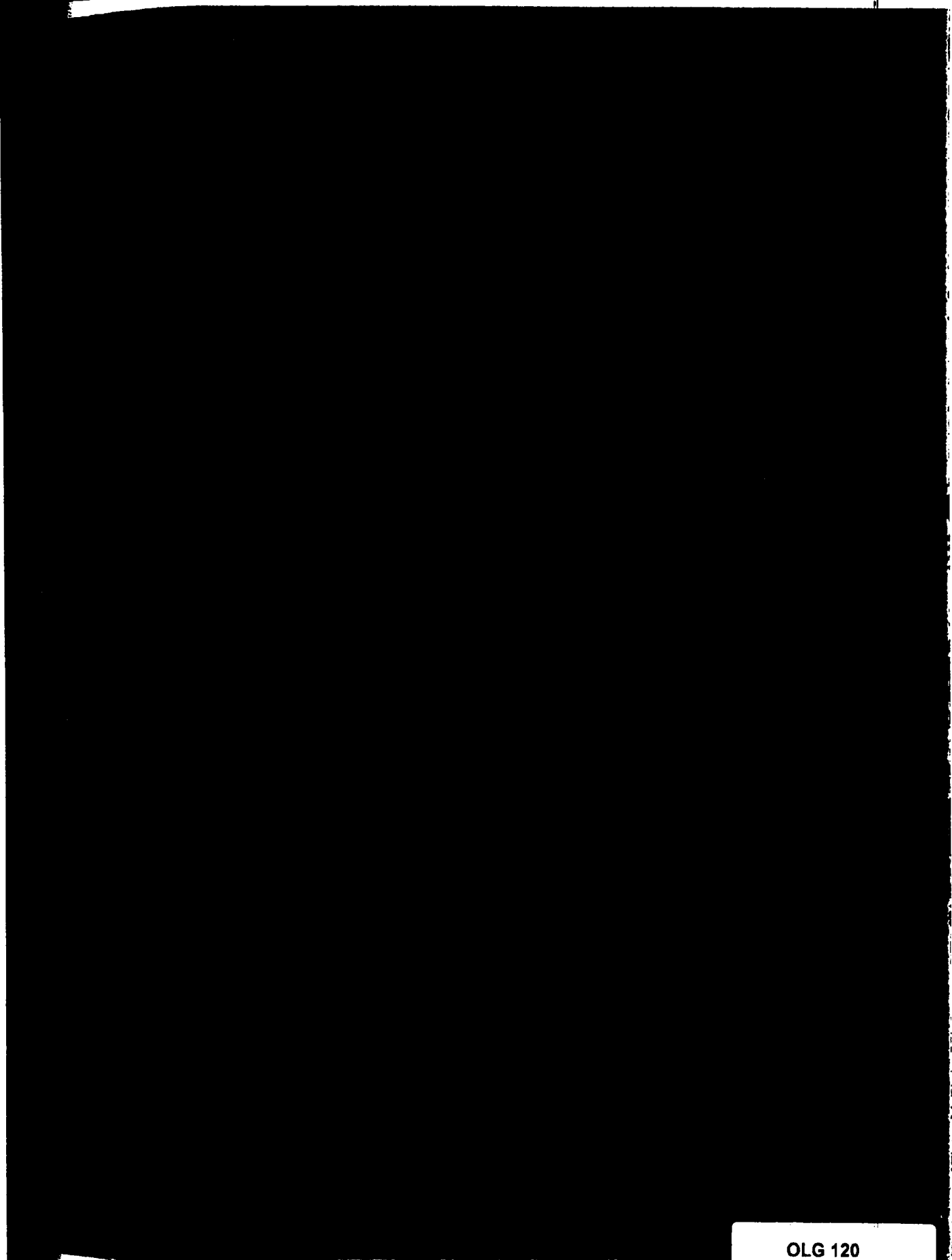
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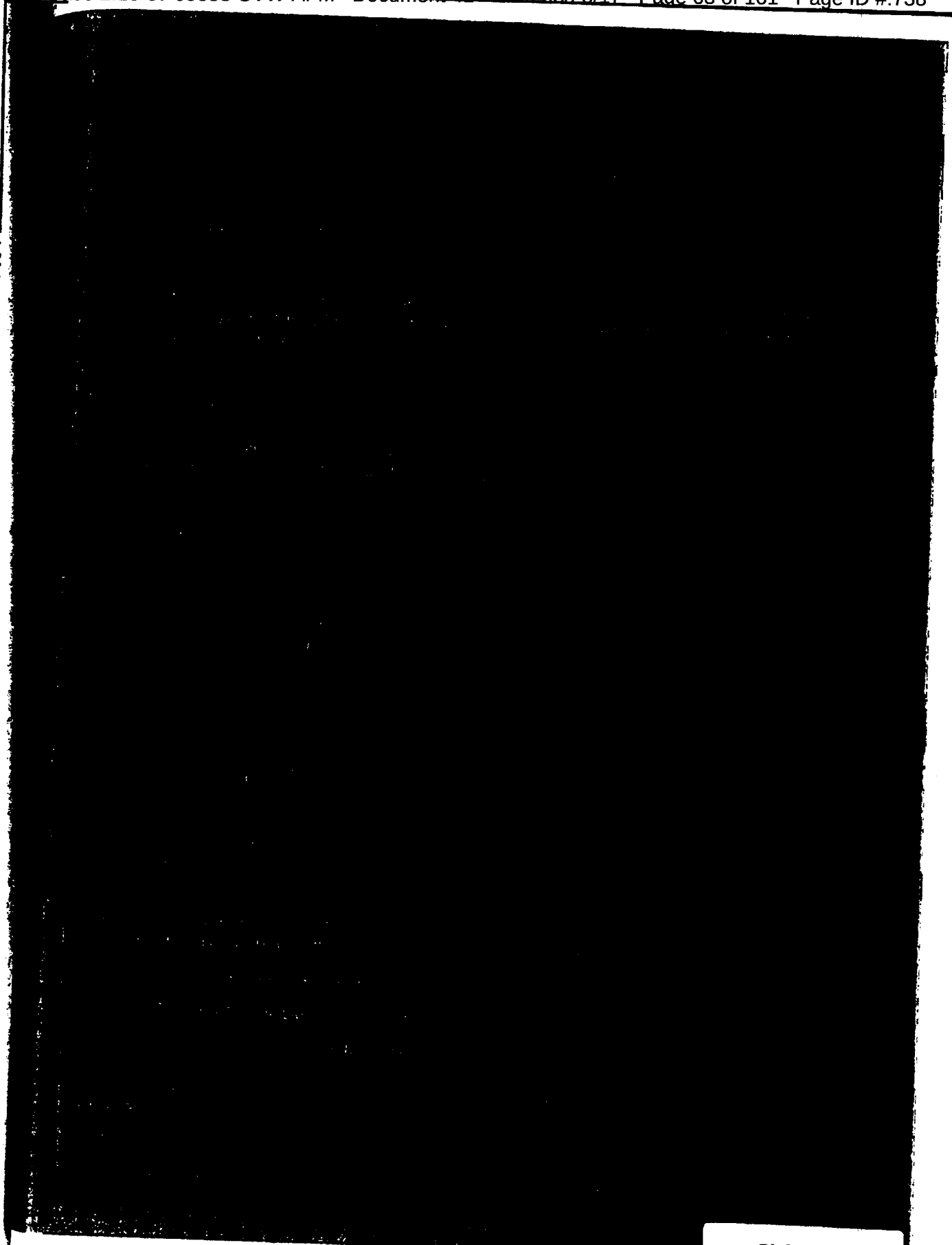
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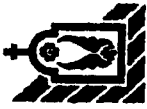
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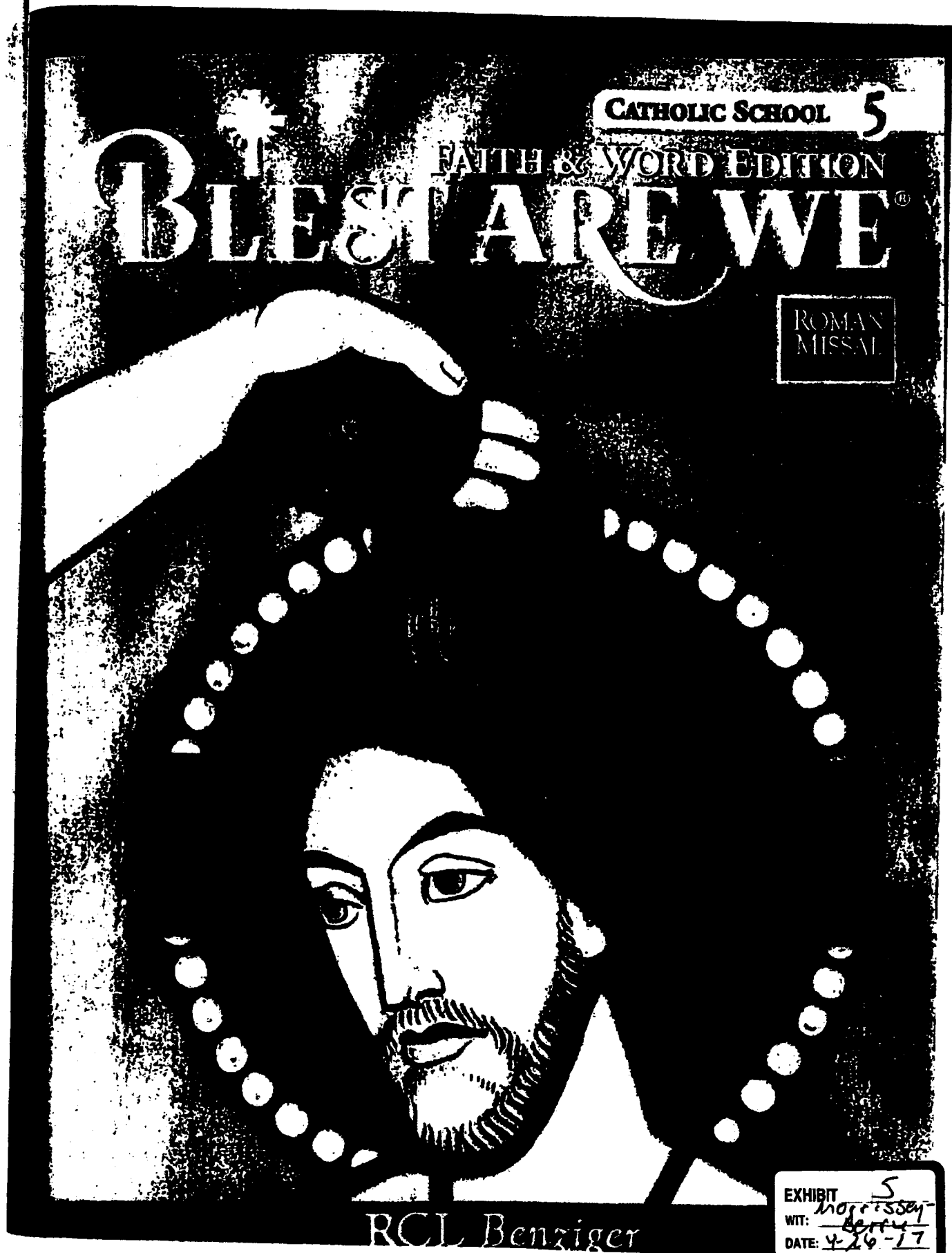


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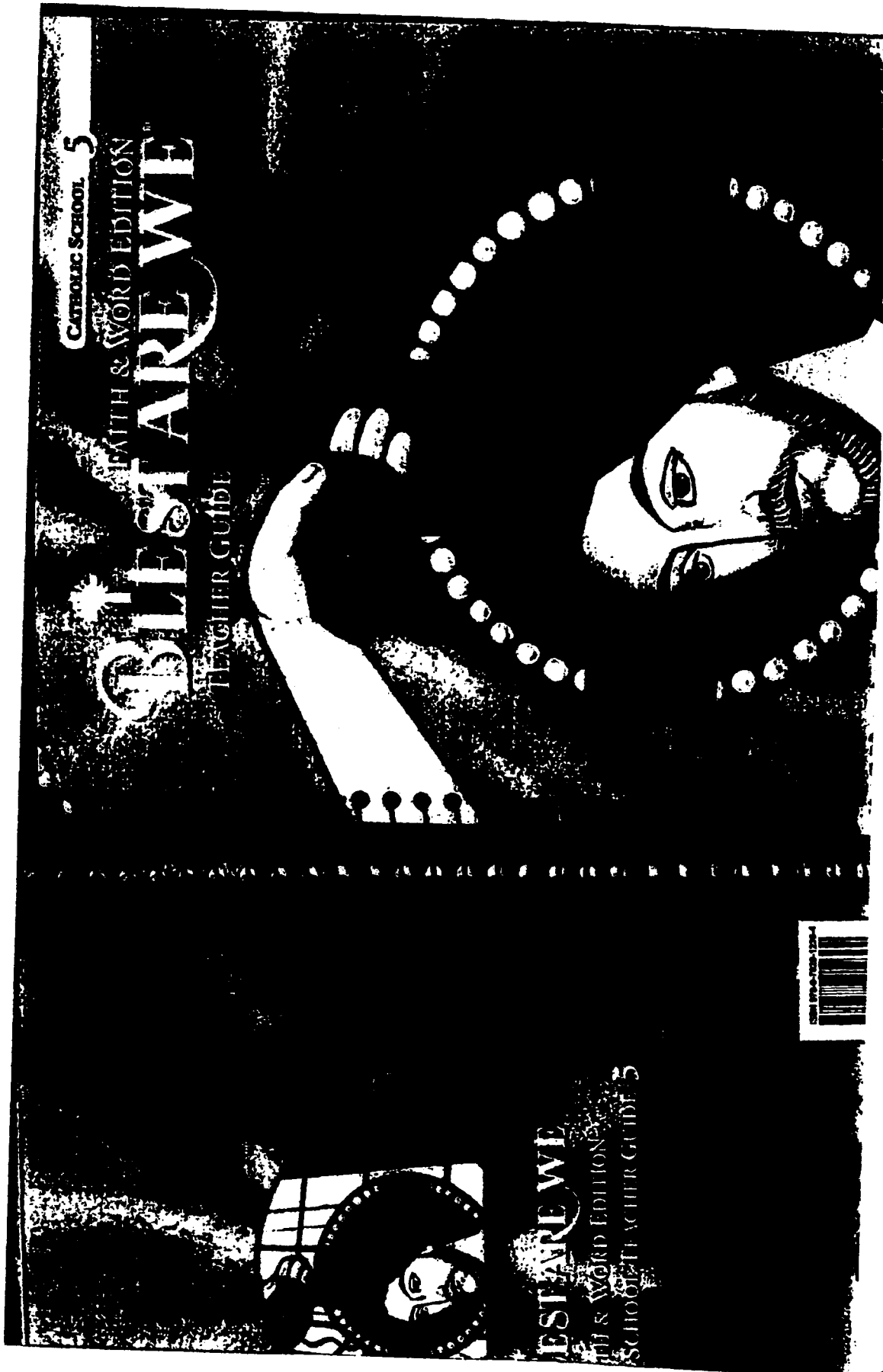
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Romans 10:17

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Interior

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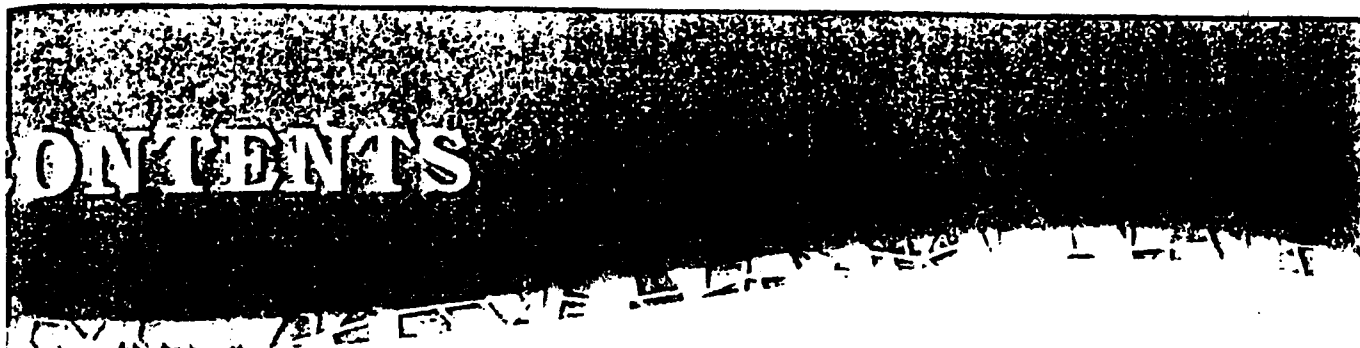
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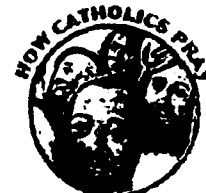


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Mr. Morrissey
June 2013

CATHOLIC IDENTITY AND PROFESSIONAL CONDUCT REVIEW FORM

This form, used in conjunction with the Classroom Observation form, is an essential element of the overall Teacher Evaluation Plan.

It is completed at least twice yearly, once in the first semester and once early in the second semester (before April 1) for each teacher.

The form is signed and dated by both the teacher and the principal, and retained in the teacher's personnel file.

If areas for improvement are identified, the principal and teacher meet to discuss the issues, make a plan for improvement, and set a date for a follow-up conference.

CRITERIA

Commitment to the Catholic Identity of the School

Check Areas for Growth

Reflects the Catholic school philosophy in words, actions and appearance	✓
Practices confidentiality; respects privacy of students (parents, faculty; avoids gossip)	?
Actively participates in building the school's faith community by cooperation, service, and modeling Catholic values	

Professional Conduct

Adheres to all school policies: discipline, dress codes, media, etc.	✓
Displays good judgment in working with students, parents and faculty	
Keeps the principal informed of activities, problems and communications	
Displays openness to suggestions and constructive criticism from the school administration	
Maintains a reasonable record of attendance; arrives on time each day	
Is punctual for all school activities: yard supervision, meetings, etc.	
Deals amicably with the administration, faculty, parents and students; avoids public confrontations;	
Expresses disagreements respectfully and in the appropriate setting.	
Maintains professionally appropriate relationships with the faculty, students and parents	
Is prepared for class each day; completes lesson plans as required	
Shows evidence of long and short term Curriculum planning	<i>in process</i>
Never leaves students unsupervised; is physically and mentally present to students at all times	
Maintains required school records: register, grade book, report cards, etc.	
Actively participates in faculty meetings and inservices	
Uses correct and appropriate oral and written language at school	
Carefully maintains school property and materials	
Maintains a safe, orderly and clean classroom	

EXHIBIT
WIT: *Morrissey*
DATE: *6-26-17*
Monica T. Corley, CSR #8803

Commitment to the Catholic Identity of the School



Meets Expectations



Needs Improvement in these areas:

1. _____
2. _____
3. _____

Comments (include suggestions for improvement, timeline and date for follow-up conference, if appropriate):

Mr. Morning has created a kind, respectful classroom community. He models Christian values for his students.

Professional Conduct



Meets Expectations



Needs Improvement in these areas:

1. *Continue to implement Reader/Writer Workshop -*
2. *specifically - integrate conferencing and*
3. *more time on text*
4. _____

Comments (include suggestions for improvement, timeline and date for follow-up conference, if appropriate):

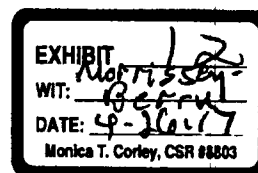
Mr. Morning is to be commended for his contributions to faculty meetings in the areas of technology, curriculum mapping and collaboration. A goal for 2013-14 is full implementation of Reader/Writer Workshop.

[Signature]
Principal's Signature

6-4-13
Date

Deirdre Morawsey-Berser
Teacher's Signature

6.4.13
Date



TEACHER EMPLOYMENT AGREEMENT—ELEMENTARY

Exempt

Department of Catholic Schools Archdiocese of Los Angeles

Name of School: Our Lady of Guadalupe School

Name of Teacher: Deirdre Morrissey-Berru

Start Date: July 1, 2013 End Date: June 30, 2014

1. **Term.** The School ("School") and you (the "Teacher") make this Employment Agreement ("Agreement"), effective on the date below, for the period shown above (the "Term"), for you to serve as a member of our faculty.

2. **Philosophy.** 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. If you are Roman Catholic you must be in good standing with the Church.

3. **Duties.** Your position will be that of a Teacher. You shall use your best professional efforts and skills to perform your duties in a diligent, energetic, competent, and ethical manner, consistent with the School's established policies, directives and expected practices. You acknowledge that the School operates within the philosophy of Catholic education and retains the right to employ individuals who demonstrate an ability to teach in accordance with this philosophy. 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. Your duties shall include careful preparation and planning for each class consistent with School and departmental curriculum; diligent review and evaluation of student work and related communication to students and parents; and, as needed, conferring with students, the administration, and parents regarding each student's progress and development. You also shall attend faculty/staff meetings and conferences, including those prior to and following the School's regular academic year, participate in School activities including School liturgical activities, as requested, and complete other duties as assigned. You agree to maintain the levels of competency in subject matter, teaching methods, classroom management, and student supervision required by the School whether on your own initiative or at the direction of the School. Your duties and job assignment may be revised during the Term to meet the School's needs. In the event the School's operations are extended by reason of fire, disaster, act of God, act of public authority or any other necessity or emergency cause, your services may be suspended for the time period and rescheduled as needed to complete the full School year.

4. **Policies.** You shall be familiar with, and comply with the School's personnel policies and procedures as they may be adopted or amended from time-to-time, including policies in the faculty handbook. You should refer to such documents for information relating to your employment, duties, and benefits. You shall be familiar with, abide by, and assist and cooperate with School administration in enforcing the School's policies for students and families whether outlined in our handbook(s), our School



policies, or other directives and expected practices (together "Policies"). You acknowledge that a copy of the faculty handbook has been made available to you. You understand and acknowledge that the policies do not constitute a contractual agreement with you.

5. Introductory Period. The first six (6) months of your employment as a new teacher at this School are considered your Introductory Period. You may be terminated at any point, with or without notice, with or without reason, during the Introductory Period. The Principal shall complete a performance appraisal at the end of your Introductory Period. Upon satisfactory completion of the Introductory Period, your employment will be continued through the Term of this Agreement except as noted under "Termination."

6. Termination. Your employment, and this Agreement, may be terminated during the Term without payment of salary or benefits beyond such date of termination, for any of the following reasons:

- I. The School may terminate for "cause," without any prior notice. Such "cause" shall be determined by the School within its reasonable judgment and shall include but not be limited to:
 - a) Failure to meet any of your duties as described in Paragraphs 3 and 4 above.
 - b) Inappropriate physical or social contact with students during school or otherwise.
 - c) Unprofessional or unethical conduct, insubordination, unauthorized disclosure of confidential information, or habitual or unreasonable tardiness or absence from duties.
 - d) Any criminal, immoral or unethical conduct that brings discredit upon the School or the Roman Catholic Church.
 - e) Unauthorized possession, sale, or working under the influence of controlled substances (except prescription medications taken as prescribed), intoxicants, or alcohol.
 - f) Threatening or causing bodily harm to others or other coercive and or intimidating acts, or any verbal or physical harassment.
 - g) Having a diploma, credential, permit, license or certificate denied, revoked or suspended.
 - h) Falsification of documents, false or misleading information on an application, resume, personnel record, professional or character reference, academic transcript, degree, or credential.
 - i) Any other breach of the terms of this Agreement.

II. Either you or the School may terminate this Agreement without cause, for any reason within the sole discretion of the terminating party, upon 30 calendar days' prior written notice to the other party in a manner that is consistent with applicable law and on a time frame that is mutually agreeable to you and the Principal. However, you may not terminate employment under this Agreement if the termination is effective during the 30 days immediately prior to the beginning of the school year except by mutual agreement with the Principal. You acknowledge that a breach by you of this provision is a grave ethical violation, may harm the educational program for the students and may cause expenses and damages to the School.

III. The School may terminate your employment if you are unable to perform the essential functions of your position and reasonable accommodation is not available or required under applicable laws.

The School's failure to invoke its right of termination on one occasion for the occurrence of a matter constituting a basis for discharge shall not affect the right of the School to invoke discharge when the same or a different basis for termination arises at a later date.



7. Renewal. Future employment will be determined on a year-to-year basis. You agree to give written notice to the School, on or before April 1, 2014, stating whether or not you wish to renew the Agreement. The School will give you written notice, on or before May 15, 2014, stating whether or not it intends to renew the Agreement for the following year or enter into any other type of employment relationship. In the absence of a notice by either party, this Agreement will lapse under its own terms. The Principal alone, with the approval of the Pastor, has the final and sole authority with respect to offering contracts. This Agreement is contingent upon sufficient School enrollment and the School's financial condition. If the enrollment or the School's financial condition does not justify the staffing, the Principal has discretionary power to make decisions regarding personnel reduction including, but not limited to, modification or cancellation of this Agreement. If the School closes for any reason, this Agreement will be considered terminated on the date of the closure. If this Agreement is cancelled due to lack of enrollment or the School's financial condition or is terminated because of School closure, you will be paid through the date of cancellation or closure; no further payments will be due to you. You understand that tenure is not granted by Archdiocesan Schools and upon expiration or termination of the Agreement for any reason you shall have no right to employment or preferential treatment regarding employment at any other Archdiocesan School. There is no implied duty by you or the School to renew this Agreement, and no cause whatsoever is required by either party for non-renewal. Any other arrangement with respect to renewal, extension or duration of employment is valid only if in writing, executed by you and the Principal, with the approval of the Pastor.

8. Severability. If, for any reason, any one or more of the provisions of this Agreement shall be held or deemed to be legally invalid or unenforceable, that shall not have any effect on any of the other provisions of this Agreement, all of which shall remain in full force and effect.

9. Entire Agreement. This Agreement contains the complete and entire agreement between you and the School, and it supersedes all prior offers, agreements, commitments, understandings, whether oral or written. No changes to this Agreement may be made except by a document signed by you and the Principal, with approval of the Pastor.

10. Applicable Law. This Agreement is entered into under, and governed by, the laws of the State of California.

11. Dispute Resolution and Grievances. You and the School agree to attempt to resolve any disputes in good faith. Any unresolved dispute between you and the School arising out of or in any way related to your employment or termination, shall be subject to the Grievance Procedures promulgated by the Archdiocesan Department of Catholic Schools and no legal actions may be taken until all procedures have been fully discharged. This clause is intended to provide a speedy, economical and exclusive forum for resolving claims; its existence shall not imply any limitations upon the School's right to manage its affairs or terminate any employment.

12. Condition Precedent. You understand and agree that condition precedents of this Agreement are the receipt of the Criminal Record Summary report from the California Department of Justice and the Federal Bureau of Investigation, the completion of the I-9 Form from the Immigration and Naturalization Service, and the completion of the other relevant health and document requirements of the School.



13. School Day and Work Schedule.**Full Time Teacher**

As a full time Teacher, you understand that a regular class day at the School requires approximately 8 hours of work. You will also devote additional time to other assigned school responsibilities and in preparation and assessment activities at hours not during the regular class day. The School's regular class day is from 7:30 a.m. to 3:30 p.m.

14. Base Compensation.

Base Salary: \$ 46,558

15. Additional Compensation For Designated Responsibility (If Any):

Note: Calculations and Additional Compensation for designated responsibility are based on anticipated time commitment and skills.

Responsibility**Additional Compensation**

_____	\$ _____
_____	\$ _____
_____	\$ _____
Total Additional Compensation:	\$ _____

16. Payment Schedule.

Compensation for all teachers will be distributed on a ☒ semi-monthly ☐ bi-weekly schedule

Date of first payday: 8/30/13 Date of last payday: 6/30/14

17. Available Benefits.

See Archdiocese of Los Angeles Lay Employees Benefit Guide
Full-time Faculty sick days: 10 days per school year.

18. Education And Professional Growth Requirements:

In accordance with the regulations for salary placement and professional growth requirements, you agree that you will complete the following requirements to be eligible to be offered an employment agreement for the next school year.

- ☐ Enroll in California Teaching Credential program.
- ☐ Complete at least _____ units toward a California Teaching Credential.
- ☐ California Teaching Credential program must be completed by July 1, 20____ for an Elementary School Faculty Employment Agreement to be offered for the 20____ - 20____ academic year.
- ☒ Other Requirements:

fully implement Readers/Writers Workshops



By: [Signature] April Bender 6-4-13
Principal's Signature Print Name Date

I accept a position as Teacher at A.T.S. School on each and all of the terms
and conditions set forth in the above Agreement.

By: A. Deirdre Morrissey-Berra A. Deirdre
Teacher's Signature Print Name Date
6.4.13

Approval by Pastor required (this Agreement is not binding until executed by Pastor)

Pastor's Signature Print Name Date

Give copy to the teacher and file the original in his/her personnel file.





David Manning-Berru
November 14, 2013

CATHOLIC IDENTITY AND PROFESSIONAL CONDUCT REVIEW FORM

This form, used in conjunction with the Classroom Observation form, is an essential element of the overall Teacher Evaluation Plan.

It is completed at least twice yearly, once in the first semester and once early in the second semester (before April 1) for each teacher.

The form is signed and dated by both the teacher and the principal, and retained in the teacher's personnel file.

If areas for improvement are identified, the principal and teacher meet to discuss the issues, make a plan for improvement, and set a date for a follow-up conference.

CRITERIA

Commitment to the Catholic Identity of the School

Check Areas for Growth

Reflects the Catholic school philosophy in words, actions and appearance	✓
Practices confidentiality; respects privacy of students, parents, faculty; avoids gossip	
Actively participates in building the school's faith community by cooperation, service, and modeling Catholic values	

Professional Conduct

Adheres to all school policies: discipline, dress codes, media, etc.	✓
Displays good judgment in working with students, parents and faculty	
Keeps the principal informed of activities, problems and communications	
Displays openness to suggestions and constructive criticism from the school administration	
Maintains a reasonable record of attendance; arrives on time each day	
Is punctual for all school activities: yard supervision, meetings, etc.	
Deals amicably with the administration, faculty, parents and students; avoids public confrontations;	
Expresses disagreements respectfully and in the appropriate setting.	
Maintains professionally appropriate relationships with the faculty, students and parents	
Is prepared for class each day; completes lesson plans as required	
Shows evidence of long and short term curriculum planning	
Never leaves students unattended; is physically and mentally present to students at all times	
Maintains required school records: register, grade book, report cards, etc.	
Actively participates in faculty meetings and inservices	
Uses correct and appropriate oral and written language at school	
Carefully maintains school property and materials	
Maintains a safe, orderly and clean classroom	

1/24/13

Catholic Identity & Professional Conduct Review Form

Page 1 of 2

EXHIBIT 14
WIT: *Manning-Berru*
DATE: 4-26-17
Monica T. Corlev, CSR #8803

OLG 0195

ER 347

Commitment to the Catholic Identity of the School

Meets Expectations



Needs Improvement in these areas:

1. _____
2. _____
3. _____

Comments (include suggestions for improvement, timeline and date for follow-up conference, if appropriate):

Thank you for all the extra time and energy you devote to our school measures (Saints, St. Patrick, Saints Awards)

Professional Conduct

Meets Expectations *



Needs Improvement in these areas:

- *1. continue to implement
2. Reader Workshop specifically
3. the conferring.
- *4. begin to implement Writer Workshop in the new year (Jan 2014)

Comments (include suggestions for improvement, timeline and date for follow-up conference, if appropriate):

Ms. Morrissey-Berra has been working towards full implementation of Reader Workshop since Jan 2013. Full implementation can be expected by Jan 2014.

Principal's Signature

Deirdre Morrissey-Berra

Teacher's Signature

Date

Date

11-14-13

11-14-13

**Archdiocese of Los Angeles
Elementary School Classroom Observation Report**

Teacher: Mouring-Benn School: OLG
Principal: Bender
Grade: 5
Subject: Writing

City: Blossman Beach
School Year: 2013-14
Date: 3/5/14

*Met w/ Dendie
3/10 1pm
I was unable to
complete because
not a winter
workshop term*

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 - *Faith, Service*

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

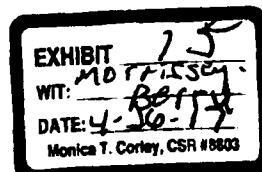
Observation Comments: _____

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

Created: 2012-07-03



OLG 0166

- ☐ 2.7 Using instructional time to optimize learning

Observation Comments: _____

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: _____

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
- ☐ 5.7 Using assessment information to share timely and comprehensible feedback with students and their families

Observation Comments: _____

Commendations: _____

Recommendations: _____

Created: 2012-07-03

OLG 0167

15-2
ER 350

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

Student Name _____ Date _____ Class: ELA Morrissey-Berru

WHAT MAKES A GREAT PERSUASIVE ESSAY/LETTER? CHECKLIST

- ❖ A writer must persuade the reader or audience to do something.

- ❖ Start by telling your goal; what you want your audience to do.

- ❖ Support your goal with strong reasons that appeal to your audience,

- ❖ Support your reasons with facts and examples.

- ❖ Answer objections your audience might have.

- ❖ Order your reasons from most important to least important.

- ❖ Use positive, confident language.

- ❖ End by summing up your reasons and repeating your call to action.

5th/3/5/14

1:15-2:00pm

*Caffald
for CT -*

Evidence

*Writing
Process*

*Finished
Product*

OLG 0169

15 4
ER 152

Agnes Deirdre Morrissey-Berru
1602 Spreckels Lane,
Redondo Beach, CA 90278

April 7, 2016

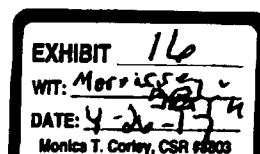
U.S. Equal Employment Opportunity Commission
Los Angeles District Office
255 E. Temple Street, 4th Floor
Los Angeles, CA 90012
Attn: Ms. Ramos

Re: Age Discrimination Demotion/Firing

Dear Ms. Ramos,

I am currently 65 years old, and contrary to Ms. Beuder's claim of receiving employment benefits, Catholic schools do not pay into employment insurance and I have never been eligible to collect, as she indicated in her letter to you. I was employed by Our Lady of Guadalupe School for 16 years as a stellar employee. I had no apparent troubles until Mrs. Beuder was named as the new principal of my school, at which time I was 61 years old. I questioned why she fired me at that time and made me re-apply for the job that I had for 13 years. I re-applied for my same job, and was rehired, most likely because I possessed a single-subject California credential to teach K-12 grades.

The implementation of the new reading/writing program was designed as a continuing learning process for teachers. All English Language Arts teachers were all learning the new teaching format at the same time. The year of the writing portion was not even concluded when the principal reprimanded me because I talked for 30 minutes/student writing 10 minutes. Ms. Beuder told me I was supposed to talk for 10 minutes/students writing 30 minutes. When I asked Ms. Beuder to re-do the lesson to talk for 10 minutes/student writing 30 minutes, Ms. Beuder REFUSED and told me she was TOO BUSY. Since when do teachers get reprimanded because they talk for 30 minutes to students to explain a lesson, get demoted, and fired? At that time Ms. Beuder had already told the part time music teacher, Mr. Jimi Hazen, approx. 30 years old, unbeknownst to me, that he could have my job next year because Principal Beuder was "moving me along". Mr. Hazen told Beuder he wanted to apply to Loyola to get a teaching credential, but because he was only part time, the school would not loan him the money. At that time, I believe Beuder hatched a plan to demote me, to make room for Mr. Hazen to become full time. Mr. Hazen, apparently excited about his new prospects of



MORRISSEY-BERRU 2

getting a teaching credential, inexplicably told parent Beatriz Botha about the principal's new plan in March to "move me along" so he could become full time. Mr. Hazen should not have told a parent that I was getting moved along, as told by the principal, to a parent. The parent, Beatriz Botha called me and told me to sit down, that the principal was planning to move me along and give my job to Mr. Hazen. Concurrently in March, a fellow employee, After School Care Director, Silvia Bosch, notified me that she heard teachers in the teacher lounge talking about the reading/writing program and that I was getting "moved along." At that point, I began to document inconsistencies in being treated unfairly by Ms. Beuder compared to the other, younger teachers, at my job. Apparently everyone but me, knew I was getting moved along. This is perhaps why Principal Beuder refused to let me re-do the lesson: she had already planned to move me out and promised my reading/writing duties as teacher to Mr. Hazen.

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.

At contract signing in May, 2014, Mrs. Beuder brought up the fact about my retiring. I told her I did not want to retire then, maybe in the future, but certainly not now. I never brought up the idea of retirement-she was the one who mentioned it. Beuder told me she was not going to re-hire me as a full time employee next year. Asked why, Beuder complained that I did not perform two lessons in the right format. I argued my viewpoint, and how hard I was working on this new format, verified by my husband who saw me reading 1200 pages of the new program each night, to no avail. Beuder only offered me a part time position for the next year. Gladly I accepted the demotion because I figured that some money coming in to the household was better than no money coming in to the household. I was relieved that I was not getting fired from my job. I immediately looked for a new job.

I began applying for new teaching positions in the Southbay area, both public and Catholic schools. In August 2014, I applied for a 5th grade teaching position at St. James Catholic school two miles down the street. Principal Sister Margaret set up an interview. Sister Margaret called back and cancelled the interview. I asked her why. Principal Sr. Margaret said that when she asked about my abilities, that Principal Beuder said "good things about you but this was your last year because you were retiring". Principal Sister Margaret cancelled my interview because she just hired someone else. Ms. Beuder had no business implying I was old and retiring. I told Principal Sister Margaret that I didn't know it was my last year? How did she, Sister Margaret know it was my last year of teaching, if I didn't (?) I never agreed with Ms. Beuder that it was my last year. I had hoped to continue part time unless I got a full time position. Later in August, upon complaining to Ms. Beuder about what she said to Principal Sister Margaret about this being my last year, Beuder said she was furious that I would be trying to get a full time job inasmuch as the new school year was beginning in two weeks. I told her she demoted me and I had every right to look for a new job. In late August, Mrs. Beuder hired her friend, Andrea Ruma Harrington, to fulfill my reading/writing duties because in-coming 5th grade parents objected at the part time music teacher, Mr. Jimi Hazen, teaching reading/writing skills to their children. Beuder told the parents she would "fix it" and hired her friend. Ms. Beuder now had three people, including myself, assigned to the 5th grade.

At the end of school year 2015, I gave my intent to return next year, albeit part time, and I was told by Ms. Beuder that my job had been eliminated and I was not welcome back. I told Ms. Beuder that I had yard duty on the playground and excused myself. She marched down the stairs after me and threatened me on the playground in front of students and the 8th grade teacher, Mr. Jack Moore. Beuder was worried that a riot would ensue, at my being fired since I was a favorite teacher at the school. Beuder told me if I "couldn't handle it, or if I told anyone that I was fired, that she would not give me a good recommendation for a new job elsewhere. I reminded Beuder I have never acted unprofessional. Beuder repeated the threat about never giving me a good job recommendation for another job. I immediately reported her to the downtown Catholic archdiocese personnel representative, Sister Jill. I waited for one week for Sister Jill to respond to my being threatened by a Catholic school principal, Beuder. Sister Jill said yes, indeed I had "issues" and to talk to the new pastor, Father Joe (30-ish). Father Joe said he knew about my situation because he discussed the next school year with Beuder during contract time. Father Joe told me (documented) he asked Beuder if she needed any more money for next year (?) and if she needed any more money for raises for the teachers next year (?). For Principal Beuder to

imply the school was short on money contradicts the pastor asking if she needed any more money.

I have two notebooks filled with evidence that I was implementing the writing program. I have a copy of the lesson in question, that supposedly I taught "wrong." Beuder said it was a compelling lesson, but in the wrong format, and refused to let me re-do the lesson in the right format. What kind of a principal would not let her teacher re-do a lesson? I have taught over 3200 English reading/writing lessons in my career, and one lesson finished my career....when other younger teachers were learning the new format as well.

Allegations to investigate:

- 1) Erika Melendez, Amy Hendry, reading/writing teachers not demoted/fired. (email documentation to self)
- 2) A) Witness to conversation about my demotion: Part time music teacher, Mr. Jimi Hazen, who told about the new arrangement to parent, Beatiz Botha, that he was going to be getting my job next year.
B) Witness: Faculty member Silvia Bosch, who told me teachers in the teachers' lounge, were talking about getting rid of me because of the reading/writing program, that I was being moved along. Why is Principal Beuder talking to other teachers about me getting moved along because I didn't teach writing correctly? (email documentation to self.) This claim is preposterous considering the fact that I was employed for twenty years at the Los Angeles Times newspaper as a copy writer/ad sales account executive.
- 3) Beuder thwarted me from getting a new full time job at St. James Catholic school? (email documentation to self)

Please advise.

Sincerely,

A. Deirdre Morrissey-Berru

MORRISSEY-BERRU 5

16-4
ER 356

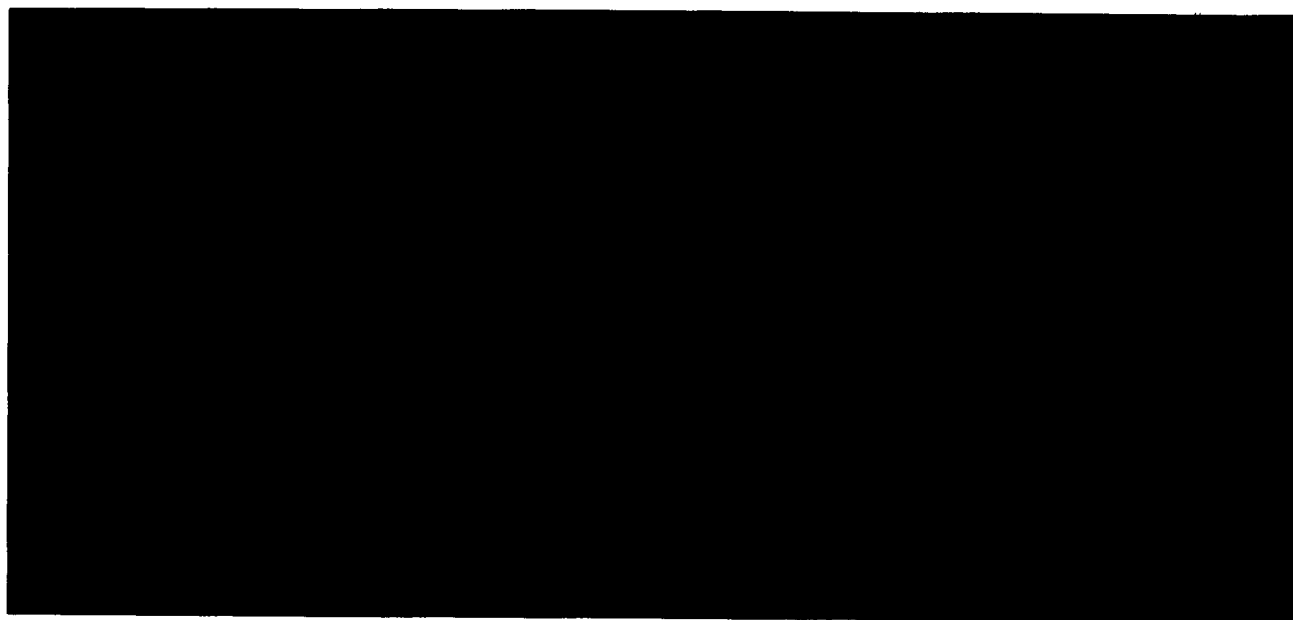
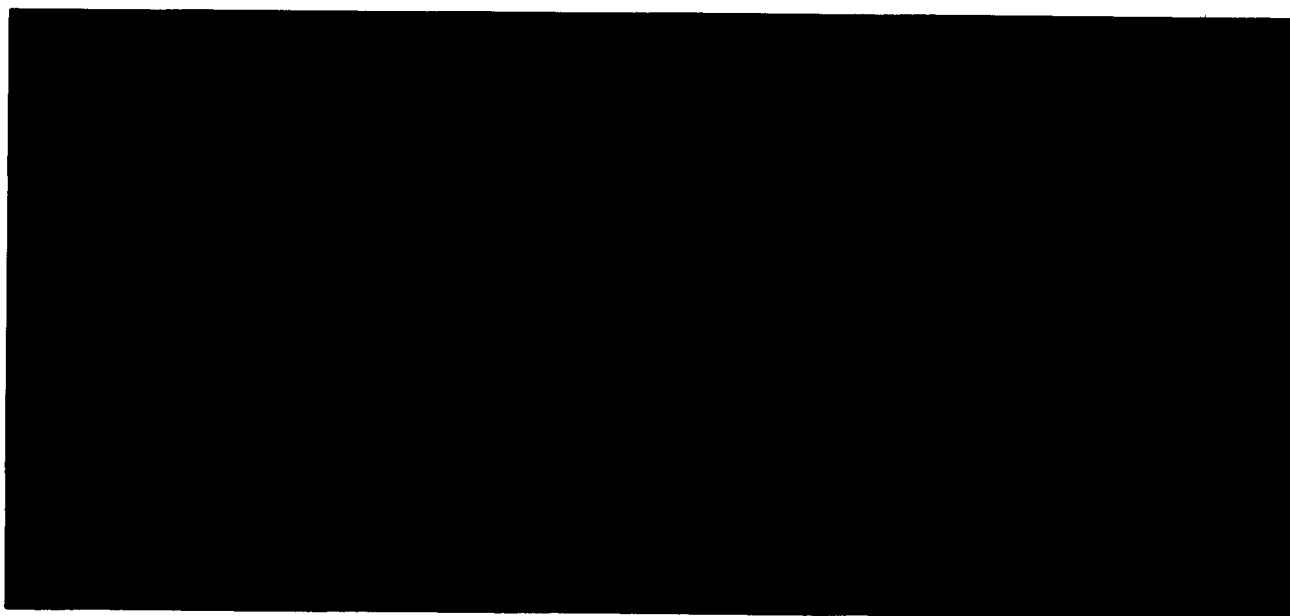


EXHIBIT 2



Case 2:16-cv-09353-SVW-AFM Document 41 Filed 08/28/17 Page 103 of 161 Page ID #:778

April L. Beuder

May 4, 2017

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

Volume I

VIDEOTAPED DEPOSITION OF APRIL L. BEUDER

Woodland Hills, California

Thursday, May 4, 2017

Reported by: Alla Ponto
CSR No. 11046
NDS Job No.: 190791

April L. Beuder

May 4, 2017

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

5 AGNES DEIRDRE)
6 MORRISSEY-BERRU, an)
7 individual,)

8 Plaintiff,)

9 vs.)

Case No.

2:16-cv-09353-SVW-AFM

10 OUR LADY OF GUADALUPE)
11 CATHOLIC SCHOOL, a)
12 California non-profit)
13 corporation; and DOES)
14 1-50, inclusive,)

15 Defendants.)
16)

17 VIDEOTAPED DEPOSITION OF APRIL L. BEUDER,
18 taken on behalf of the Plaintiff, at 21052 Oxnard
19 Street, Woodland Hills, California, commencing at
20 10:16 a.m. and ending at 5:33 p.m., on Thursday,
21 May 4, 2017, before Alla Ponto, Certified Shorthand
22 Reporter Number 11046.
23
24
25

April L. Beuder

May 4, 2017

1 APPEARANCES:

2

3 For the Plaintiff:

4

JML LAW

5

BY: CATHRYN G. FUND, ESQ.

6

21052 Oxnard Street

7

Woodland Hills, California 91367

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(818) 610-8800

9

cathryn@jmlaw.com

10

For the Defendants:

11

BALLARD, ROSENBERG, GOLPER & SAVITT, LLP

12

BY: STEPHANIE B. KANTOR, ESQ.

13

15760 Ventura Boulevard

14

Suite 1800

15

Encino, California 91436

16

(818) 508-3700

17

skantor@brgslaw.com

18

19

20

21

22

23

24

25

April L. Beuder

May 4, 2017

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4	APRIL L. BEUDER		
5	EXAMINATION		PAGE
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9	EXHIBITS		
10	MARKED	DESCRIPTION	PAGE
11	Exhibit 1	Plaintiff's First Amended Notice of Deposition of April Beuder	33
12	Exhibit 2	Complaint	33
13	Exhibit 3	Teacher Employment Agreement, dated 8/23/99, Bates Nos. OLG 0111 to OLG 0112	91
14	Exhibit 4	Faculty Employment Agreement, dated 6/30/13, Bates Nos. OLG 0013 to OLG 0018	94
15	Exhibit 5	Teacher Employment Agreement, dated 6/4/13, Bates Nos. OLG 0008 to OLG 0012	101
16	Exhibit 6	Teacher Employment Agreement, dated 5/19/14, Bates Nos. OLG 0001 to OLG 0006	105
17	Exhibit 7	Our Lady of Guadalupe Catholic School Staff Handbook, Bates Nos. OLG 0311 to 0350	115
18	Exhibit 8	E-Mail from Sara Kersey to April Beuder, dated 3/3/13, Bates No. OLG 0712	146
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April L. Beuder

May 4, 2017

EXHIBITS (CONTINUED)

MARKED	DESCRIPTION	PAGE
Exhibit 9	Elementary School Classroom Observation Report, 11/6/12, Bates Nos. OLG 0154 to OLG 0156	189

QUESTIONS WITNESS

INSTRUCTED NOT TO ANSWER

PAGE	LINE
------	------

13	6
15	8

INFORMATION REQUESTED

(None)

5

April L. Beuder

May 4, 2017

1	off the record.	10:56:00
2	(Recess.)	11:01:22
3	MS. FUND: Back on the record. The time is	11:01:22
4	11:01 a.m.	11:01:36
5	BY MS. FUND:	11:01:37
6	Q. We just went off the record for a couple of	11:01:38
7	minutes, and before we get started again, I just	11:01:40
8	want to mark plaintiff's first amended notice of	11:01:44
9	deposition of April Beuder as Exhibit 1.	11:01:49
10	I don't have any questions. I just want to	11:01:53
11	mark it for the record.	11:01:55
12	(Plaintiff's Exhibit 1 was marked for	
13	identification by the court reporter and	
14	is attached hereto.)	11:02:09
15	MS. FUND: The second document that I would	11:02:09
16	like to mark is plaintiff's complaint in this case	11:02:11
17	for discrimination on the basis of age, retaliation	11:02:17
18	and violation of the ADEA and wrongful termination	11:02:21
19	in violation of public policy.	11:02:26
20	(Plaintiff's Exhibit 2 was marked for	11:02:38
21	identification by the court reporter and	
22	is attached hereto.)	11:02:39
23	BY MS. FUND:	11:02:39
24	Q. Earlier this morning, we were discussing	11:02:41
25	documents that you had received related to this	11:02:45

33

April L. Beuder

May 4, 2017

1 BY MS. FUND: 11:25:35

2 Q. Do you ever use the term OLG to refer to 11:25:36

3 Our Lady of Guadalupe School? 11:25:40

4 A. I am careful to say OLG School so as to not 11:25:42

5 cause confusion between OLG Church, parish. 11:25:50

6 Q. So it would be best if I refer to itself as 11:25:54

7 OLG School? 11:25:57

8 A. Sure, yes. 11:25:57

9 Q. And are you currently employed by OLG 11:25:58

10 School? 11:26:02

11 A. Yes. 11:26:02

12 Q. What is your current position? 11:26:02

13 A. I am principal. 11:26:05

14 Q. When were you first hired by OLG School? 11:26:07

15 A. I signed my contract in spring of 2012, but 11:26:12

16 my -- which was effective -- the contract was 11:26:24

17 effective July 1st, 2012. 11:26:26

18 Q. Did you have to interview for this 11:26:29

19 position? 11:26:36

20 A. Yes. 11:26:36

21 Q. And who interviewed you? 11:26:37

22 A. I was interviewed by a panel and also with 11:26:39

23 the pastor individually several times. 11:27:00

24 Q. When you say "several times," are you 11:27:04

25 referring to the individual meetings with the pastor 11:27:08

50

April L. Beuder

May 4, 2017

1 of 2014. That is my estimate. There was an overlap 11:29:27
2 between the pastors. 11:29:34
3 Q. What is your understanding -- the reason 11:29:35
4 for that overlap? 11:29:40
5 MS. KANTOR: Calls for speculation; lacks 11:29:40
6 foundation; irrelevant and not reasonably likely to 11:29:42
7 lead to admissible evidence. 11:29:44
8 THE WITNESS: I don't know. 11:29:46
9 BY MS. FUND: 11:29:47
10 Q. When you were hired in -- officially 11:29:50
11 July 1st, 2012, what position were you hired for? 11:29:56
12 A. Principal. 11:29:59
13 Q. Have you held any other position at OLG 11:30:00
14 School? 11:30:03
15 A. No. 11:30:03
16 Q. Understanding that you are the principal at 11:30:03
17 this school, do you have someone that you report to 11:30:12
18 that is above you? 11:30:17
19 MS. KANTOR: Vague. 11:30:18
20 THE WITNESS: Yes. 11:30:19
21 BY MS. FUND: 11:30:21
22 Q. And who is that? 11:30:22
23 A. I am duly accountable to my pastor and to 11:30:24
24 the department of Catholic schools. 11:30:30
25 Q. And what are your -- just in the most 11:30:32

52

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#:786

April L. Beuder

May 4, 2017

1 Guadalupe School is to provide our families with 11:32:39
2 opportunities to grow in their faith and to live 11:32:47
3 their faith through service to others. 11:32:54

4 Q. And how does the faith formation mission -- 11:32:58
5 how does that involve the teachers? In what way? 11:33:23

6 MS. KANTOR: Vague. 11:33:26

7 THE WITNESS: Each teacher is considered a 11:33:34
8 catechist and responsible for the faith formation of 11:33:39
9 the students in their charge each day. 11:33:50

10 BY MS. FUND:

11 Q. Is it a requirement that a teacher be 11:33:58
12 Catholic in order to teach at the school? 11:34:00

13 A. The ideal candidate is an actively 11:34:02
14 practicing Catholic. 11:34:08

15 Q. Is it a requirement? 11:34:10

16 MS. KANTOR: Vague. 11:34:11

17 THE WITNESS: It is preferred. 11:34:14

18 BY MS. FUND: 11:34:16

19 Q. My question is whether it's required. 11:34:16

20 MS. KANTOR: Argumentative; asked and 11:34:18
21 answered. 11:34:22

22 THE WITNESS: If you -- to teach religion 11:34:22
23 at the school, you need to be a Catholic. 11:34:37

24 BY MS. FUND: 11:34:39

25 Q. My question is just whether you need to be 11:34:40

54

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#:787

April L. Beuder

May 4, 2017

1 Catholic in order to be a teacher at the school. 11:34:42
2 MS. KANTOR: Asked and answered. 11:34:45
3 THE WITNESS: It is acceptable to hire 11:35:04
4 someone who is not a Catholic if they are actively 11:35:38
5 practicing their Christian faith, Christian versus 11:35:43
6 Catholic. 11:35:51
7 BY MS. FUND: 11:35:51
8 Q. They are not required to be Catholic; is 11:35:52
9 that correct? 11:35:55
10 MS. KANTOR: Argumentative; misrepresents 11:35:55
11 prior testimony. 11:35:57
12 THE WITNESS: In order to teach religion -- 11:36:05
13 BY MS. FUND: 11:36:09
14 Q. I'm really just asking a "yes" or "no." 11:36:09
15 MS. KANTOR: You interrupted her answer, 11:36:10
16 Counsel. And if she doesn't -- 11:36:13
17 THE WITNESS: In order to be a teacher of 11:36:15
18 religion and the specific faith formation of our 11:36:17
19 students, you need to be an actively practicing 11:36:20
20 Catholic and participate in catechetical formation. 11:36:23
21 An exception could be made if a person is in the 11:36:36
22 process of becoming a Catholic or a Christian. 11:36:41
23 BY MS. FUND:
24 Q. Any type of Christian? 11:36:59
25 A. Christianity. Yes. 11:37:01

55

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April L. Beuder

May 4, 2017

1 Q. Any different sect of Christianity? 11:37:02

2 MS. KANTOR: Vague; calls for speculation; 11:37:06

3 lacks foundation; argumentative. 11:37:07

4 THE WITNESS: I don't understand the 11:37:09

5 question. 11:37:09

6 BY MS. FUND: 11:37:10

7 Q. What other -- can you give me an example of 11:37:10

8 a Christian that is not Catholic? 11:37:12

9 MS. KANTOR: Argumentative. 11:37:15

10 MS. FUND: I couldn't be farther from being 11:37:17

11 argumentative. 11:37:20

12 THE WITNESS: Lutheran. 11:37:24

13 BY MS. FUND:

14 Q. Okay. 11:37:26

15 A. That is an example. 11:37:26

16 Q. Can you give me one more example? 11:37:28

17 A. Methodist. 11:37:33

18 Q. So a Lutheran or a Methodist teacher, if 11:37:38

19 they had the proper qualifications, could 11:37:46

20 potentially be hired at the school? They are not 11:37:50

21 barred from teaching at OLG for the sole reason that 11:37:52

22 they are not Catholic; is that correct? 11:37:56

23 MS. KANTOR: Misrepresents prior testimony. 11:37:57

24 THE WITNESS: I do feel that misrepresents 11:38:00

25 what I am trying to say. 11:38:03

56

April L. Beuder

May 4, 2017

1 BY MS. FUND: 11:38:04

2 Q. Could a Lutheran work as a teacher at OLG 11:38:04

3 School? 11:38:09

4 A. That would have to be determined on a 11:38:09

5 case-by-case basis. 11:38:12

6 Q. If you could just answer my one question, I 11:38:13

7 would be happy to move on. 11:38:16

8 Is a teacher -- your counsel can make -- 11:38:18

9 state her objections. I haven't gotten a clear 11:38:22

10 answer yet. That's all I'm looking for so we can 11:38:25

11 move on to the next set of questions. 11:38:27

12 Is it a requirement that a teacher be 11:38:29

13 Catholic in order to teach at OLG School? Yes or 11:38:33

14 no? 11:38:38

15 MS. KANTOR: I'm going to object. First of 11:38:38

16 all, that's not a yes-or-no question, and the 11:38:40

17 witness does not have to answer "yes" or "no." 11:38:43

18 MS. FUND: Please state your objections. 11:38:45

19 Coaching her is not proper. 11:38:47

20 MS. KANTOR: I'm stating my objections. 11:38:48

21 Misrepresents prior testimony; asked and 11:38:50

22 answered; vague; argumentative. 11:38:54

23 You can take as much time as you need. 11:38:57

24 BY MS. FUND: 11:39:02

25 Q. Do you need the question read back? 11:39:02

57

April L. Beuder

May 4, 2017

1 A. I heard several questions just now. So, 11:39:03
2 yes, please, would you read the pending question. 11:39:08
3 (The previous question was read back by
4 the court reporter as follows:
5 "QUESTION: Is it a requirement
6 that a teacher be Catholic in order
7 to teach at OLG School? Yes or no?")
8 THE WITNESS: Yes. 11:39:23
9 BY MS. FUND: 11:39:24
10 Q. It's a requirement? 11:39:25
11 MS. KANTOR: Asked and answered. 11:39:27
12 THE WITNESS: Exceptions can be made, as I 11:39:33
13 previously stated. 11:39:35
14 BY MS. FUND: 11:39:40
15 Q. I just need to lay a little bit of a 11:40:12
16 foundation; so my first question is going to be a 11:40:15
17 little bit overbroad. If you don't understand my 11:40:18
18 question, please just let me know. 11:40:20
19 At the time of your hiring and you signed 11:40:22
20 your contract in July of 2012, were you provided 11:40:26
21 with any set of objectives from either the pastor or 11:40:30
22 the Department of Catholic Schools that you were to 11:40:37
23 accomplish as principal at the school? 11:40:41
24 A. Yes. 11:40:43
25 Q. Okay. And what were those objectives? 11:40:44

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April L. Beuder

May 4, 2017

1 A. We also were opening a preschool. So I was 12:11:29
2 charged with making sure that that rollout was 12:11:38
3 successful. 12:11:43
4 Q. Was that at the physical OLG School? 12:11:44
5 A. Yes. 12:11:49
6 Q. Any other objectives? 12:11:50
7 A. That's all I recall at this time, but I had 12:11:52
8 quite a few. 12:12:02
9 Q. Were these objectives that were asked of 12:12:03
10 you when you started or that you proposed to the 12:12:08
11 school? 12:12:12
12 A. They were given to me by the pastor and 12:12:12
13 accreditation team via the current principal. 12:12:18
14 Q. And who was the principal at the time you 12:12:22
15 were -- just before you were hired? 12:12:26
16 A. Sheryl Hunt, H-u-n-t. 12:12:29
17 Q. Are students required to be Catholic to 12:12:32
18 attend the school? 12:12:40
19 A. No. 12:12:41
20 Q. Are the majority of the students that 12:12:43
21 attend the school Catholic? 12:12:49
22 A. Yes. 12:12:51
23 Q. And presently what grades does OLG School 12:12:51
24 teach? 12:12:58
25 A. Transitional kindergarten through 8th 12:12:59

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April L. Beuder

May 4, 2017

1 BY MS. FUND: 13:43:29

2 Q. Was she -- to your knowledge, was she 13:43:29

3 employed at the school prior to you starting in 13:43:31

4 2012? 13:43:35

5 A. Yes. 13:43:35

6 Q. Do you have any knowledge as to whether she 13:43:35

7 had worked at the school for over ten years prior to 13:43:39

8 you starting? 13:43:44

9 A. I don't recall exactly. I don't recall 13:43:45

10 exactly. I would suspect around ten years. 13:43:53

11 Q. If I showed you an employment contract for 13:43:59

12 Ms. Morrissey-Berru to begin September 1st, 1999, do 13:44:12

13 you have any reason to believe that that would not 13:44:16

14 be accurate? 13:44:18

15 MS. KANTOR: Lacks foundation; calls for 13:44:18

16 speculation. 13:44:20

17 THE WITNESS: No. I would know it was 13:44:20

18 accurate if I saw it. 13:44:22

19 MS. FUND: Sure. Let's mark this document 13:44:24

20 Bates stamped OLG 0111 to OLG 0112 as Exhibit 3. 13:44:30

21 (Plaintiff's Exhibit 3 was marked for 13:44:51

22 identification by the court reporter and

23 is attached hereto.) 13:44:54

24 BY MS. FUND: 13:44:54

25 Q. I want you to take a look at that document 13:44:55

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April L. Beuder

May 4, 2017

1 that was produced by your counsel on the school's 13:44:57
2 behalf, and let me know if you have any reason to 13:45:00
3 believe that document is not accurate. 13:45:03
4 MS. KANTOR: Counsel, do I get a copy? 13:45:07
5 MS. FUND: That's the only one I have. You 13:45:09
6 can take a look, though. 13:45:13
7 THE WITNESS: I don't have any reason, no. 13:45:20
8 BY MS. FUND: 13:45:21
9 Q. What does that document represent? 13:45:22
10 MS. KANTOR: Calls for speculation; lacks 13:45:24
11 foundation. 13:45:25
12 THE WITNESS: The title of this document is 13:45:27
13 an employment agreement. 13:45:32
14 BY MS. FUND: 13:45:33
15 Q. For what period of time? 13:45:34
16 A. Between 19 -- September 1st, 1999, and 13:45:35
17 June 30th, 2000. 13:45:41
18 Q. For what employee? 13:45:42
19 A. Deirdre Morrissey. 13:45:44
20 Q. Is that with OLG School? 13:45:46
21 A. Yes, it is. 13:45:48
22 Q. Okay. Thank you. 13:45:49
23 At the time you started at OLG in 13:46:02
24 July 2012, I understand that you interviewed 13:46:08
25 beforehand, but your contract was signed July 1st, 13:46:10

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April L. Beuder

May 4, 2017

1 MS. FUND: Let's mark as Exhibit 4 the 13:47:49
2 documents that are Bates stamped OLG 0013 through 13:47:54
3 OLG 0018. 13:47:59
4 (Plaintiff's Exhibit 4 was marked for 13:48:11
5 identification by the court reporter and
6 is attached hereto.) 13:48:13
7 BY MS. FUND: 13:48:13
8 Q. Can you let me know if you have ever seen 13:48:14
9 this document before? 13:48:17
10 A. Yes. 13:48:19
11 Q. What is this document? 13:49:06
12 A. This is an employment agreement. 13:49:07
13 Q. Between who? 13:49:10
14 A. Between Deirdre Morrissey-Berru and Our 13:49:13
15 Lady of Guadalupe School. 13:49:17
16 Q. For what period of time? 13:49:18
17 A. July 1, 2012, through June 30th, 2013. 13:49:20
18 Q. What was your role with this contract? 13:49:26
19 MS. KANTOR: Vague. 13:49:30
20 THE WITNESS: Can you be more specific? 13:49:32
21 BY MS. FUND: 13:49:42
22 Q. Sure.
23 You testified previously that you played a 13:49:42
24 role in this contract, and I just want to know what 13:49:43
25 you meant by that. 13:49:46

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April L. Beuder

May 4, 2017

1 A. So I was the one who offered 13:49:47
2 Mrs. Morrissey-Berru this contract. 13:49:51
3 Q. And what was -- what position was this 13:49:52
4 contract for? 13:50:08
5 A. The same position, Grade 5, self-contained. 13:50:09
6 Q. Teacher? 13:50:14
7 A. Teacher, yes. 13:50:15
8 Q. Can you please turn to what is marked 13:50:17
9 OLG 0015. 13:50:31
10 And is that your signature at the bottom of 13:50:35
11 the page? 13:50:38
12 A. Yes. 13:50:38
13 Q. And can you read the line directly 13:50:38
14 underneath your signature? 13:50:48
15 A. Yes. 13:50:50
16 "I accept the position as 13:50:51
17 elementary teacher at OLG School on 13:50:54
18 each and all of the terms and 13:50:57
19 conditions set forth in the above 13:50:58
20 agreement in the attached 13:51:00
21 compensation benefit supplement." 13:51:02
22 Q. Did you write in the word "elementary 13:51:04
23 teacher"? 13:51:08
24 A. Uh-huh, yes. 13:51:08
25 Q. And "OLG"? 13:51:09

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April L. Beuder

May 4, 2017

1 A. Yes. 13:51:11

2 Q. And that's your understanding as to the 13:51:12

3 position that you were offering to 13:51:14

4 Ms. Morrissey-Berru? 13:51:16

5 MS. KANTOR: Vague. 13:51:18

6 THE WITNESS: Yes. 13:51:20

7 BY MS. FUND: 13:51:22

8 Q. Do you see -- a little bit higher up in the 13:51:35

9 page, Paragraph 9, which is entitled, "Entire 13:51:38

10 agreement"? 13:51:41

11 A. Uh-huh. 13:51:42

12 Q. Yes? 13:51:43

13 A. Yes. 13:51:43

14 Q. Is it your understanding that this contract 13:51:43

15 and the attached compensation and benefits 13:51:50

16 supplement contain the entire agreement between OLG 13:51:53

17 School and Ms. Morrissey-Berru for this time period? 13:51:57

18 MS. KANTOR: Objection to the extent it 13:52:00

19 calls for a legal conclusion; vague. 13:52:02

20 THE WITNESS: This is the entire agreement 13:52:18

21 that was offered to Ms. Morrissey-Berru. 13:52:20

22 BY MS. FUND: 13:52:22

23 Q. Okay. Can you please turn to OLG 0017. 13:52:23

24 Is the handwriting -- all of the 13:52:35

25 handwriting on this page your handwriting? 13:52:36

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April L. Beuder

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1 MS. KANTOR: Vague. 13:58:30

2 THE WITNESS: Not that I am aware of at 13:58:32

3 this time.

4 MS. FUND: Let's mark this next exhibit as 13:59:11

5 Exhibit 5. 13:59:14

6 (Plaintiff's Exhibit 5 was marked for

7 identification by the court reporter and

8 is attached hereto.) 13:59:42

9 BY MS. FUND: 13:59:42

10 Q. I just want you to take a look and let me 13:59:43

11 know if you have ever seen this document before. 13:59:45

12 A. Yes. 14:00:16

13 Q. What is this document? 14:00:17

14 A. This is an employee employment agreement 14:00:18

15 between Mrs. Morrissey-Berru and Our Lady of 14:00:23

16 Guadalupe School. 14:00:28

17 Q. For what term? 14:00:28

18 A. From July 1, 2013, through June 30th, 2014. 14:00:29

19 Q. Before I get into that exhibit, I just have 14:00:35

20 a really quick question back on Exhibit 4. 14:00:39

21 You signed your employment agreement on 14:00:46

22 July 1, 2012; correct? Or effective -- sorry. It 14:00:50

23 was effective July 1st? 14:00:54

24 A. Yes. 14:00:55

25 Q. I'm just a little bit confused because this 14:00:56

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April L. Beuder

May 4, 2017

1 Mrs. Morrissey-Berru understood the expectations for 14:03:54
2 the 2013/14 school year. 14:04:02

3 BY MS. FUND: 14:04:05

4 Q. Did you write that into any other teachers' 14:04:06
5 employment contracts? 14:04:10

6 A. I don't recall at this time if it was 14:04:11
7 necessary. 14:04:20

8 Q. So you don't recall one way or another 14:04:21
9 whether you did? 14:04:23

10 A. I don't recall one way or the other. 14:04:25

11 Q. At the time, had Ms. Morrissey-Berru given 14:04:27
12 you any reason to think that she didn't understand 14:04:31
13 the expectations for the 2013/2014 school year? 14:04:34

14 A. No. 14:04:38

15 Clarification: At the time of the signing 14:04:46
16 of this contract? 14:04:47

17 Q. Correct. 14:04:48

18 A. No. She was clear. 14:04:49

19 Q. Let's just turn to the last page, OLG 0012. 14:04:51

20 In the middle of the page, it says, "I accept a 14:05:03
21 position as teacher at OLG School"; correct? 14:05:06

22 A. Yes. 14:05:09

23 Q. Did you write in "OLG"? 14:05:10

24 A. That's not my writing. 14:05:12

25 Q. But, again, the position she was hired for 14:05:14

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April L. Beuder

May 4, 2017

1 was a teacher? 14:05:17

2 A. It was, yes. 14:05:18

3 Q. And did you provide this employment 14:05:19

4 contract to the pastor at the time? 14:05:25

5 A. I -- yes, I would have asked him to come 14:05:27

6 and sign the contracts, please. 14:05:34

7 Q. Do you know why this contract isn't signed 14:05:37

8 by a pastor? 14:05:41

9 MS. KANTOR: Calls for speculation; lacks 14:05:41

10 foundation. 14:05:45

11 THE WITNESS: I don't know why Father Ray 14:05:45

12 and/or Father Joe did not sign this particular piece 14:05:48

13 of paper. 14:05:52

14 MS. FUND: We'll mark the next document -- 14:06:20

15 I can take that for you -- as Exhibit No. 6. 14:06:23

16 (Plaintiff's Exhibit 6 was marked for 14:06:36

17 identification by the court reporter and

18 is attached hereto.) 14:06:37

19 BY MS. FUND: 14:06:37

20 Q. Again, if you could take a look through 14:06:39

21 this document and let me know if you have ever seen 14:06:41

22 it before. 14:06:44

23 A. I've seen it, yes. 14:07:14

24 Q. Okay. And what is this document? 14:07:16

25 A. This is the employment agreement between 14:07:18

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April L. Beuder

May 4, 2017

1 Mrs. Morrissey-Berru and Our Lady of Guadalupe 14:07:21
2 School for the 2014/15 school year. 14:07:25
3 Q. What position is it for? 14:07:27
4 A. It is a part-time position in the 5th grade 14:07:30
5 classroom. 14:07:35
6 Q. As a teacher? 14:07:36
7 A. As a part-time teacher. 14:07:37
8 Q. Can you turn to Page OLG 0004 for me. 14:08:06
9 You see how there's some lines and then 14:08:11
10 there's typed up numbers throughout that page? 14:08:13
11 MS. KANTOR: Vague. 14:08:16
12 BY MS. FUND: 14:08:16
13 Q. Do you know what I am referring to? 14:08:17
14 MS. KANTOR: Vague. 14:08:19
15 THE WITNESS: Can you be more specific with 14:08:19
16 the section? 14:08:21
17 BY MS. FUND: 14:08:22
18 Q. Sure. So, for example, where it says -- 14:08:22
19 the paragraph, the section that says "Part-time 14:08:24
20 teacher"? 14:08:26
21 A. Yes. 14:08:27
22 Q. Do you see how there's -- looks like 14:08:28
23 there's four different dashes, and then there's the 14:08:30
24 zeros filled in on each of those lines? 14:08:34
25 A. Yes. 14:08:37

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April L. Beuder

May 4, 2017

1 BY MS. FUND: 16:55:58

2 Q. Did anyone else at the school complete 16:56:07

3 evaluation reports for the teachers other than 16:56:13

4 yourself? 16:56:15

5 MS. KANTOR: Vague and overbroad; lacks 16:56:16

6 foundation. 16:56:21

7 THE WITNESS: Again, it's not clear to me 16:56:26

8 that we're talking about the same type of form, what 16:56:28

9 form we're talking about. 16:56:33

10 MS. FUND: Sure. 16:56:35

11 Let's mark this next document as Exhibit 16:57:03

12 No. 9. 16:57:05

13 (Plaintiff's Exhibit 9 was marked for 16:57:07

14 identification by the court reporter and

15 is attached hereto.) 16:57:14

16 BY MS. FUND: 16:57:14

17 Q. If you can take a look at that document, 16:57:15

18 and let me know if you have ever seen it before. 16:57:17

19 A. Yes. 16:57:34

20 Q. What is this? 16:57:55

21 A. This is one type of feedback form used 16:57:57

22 after a classroom visit. 16:58:01

23 Q. Why don't you give me the title of this 16:58:03

24 document? 16:58:07

25 A. Elementary school classroom observation 16:58:07

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#:802

April L. Beuder

May 4, 2017

1	report.	16:58:10
2	Q. Did you personally fill out this report?	16:58:10
3	A. Yes, I did.	16:58:14
4	Q. Other than Ms. Morrissey-Berru's signature	16:58:15
5	and the date written underneath her signature, is	16:58:22
6	all of the handwriting on this document yours?	16:58:27
7	A. Yes, it is.	16:58:33
8	Q. And what is the date of this document?	16:58:34
9	A. November 6, 2012.	16:58:38
10	Q. Would that have been the date that you	16:58:41
11	observed her class?	16:58:44
12	A. Yes.	16:58:45
13	Q. Now, on the last page -- is that your	16:58:46
14	signature on the last page?	16:58:54
15	A. Yes.	16:58:55
16	Q. It's dated November 14, 2012?	16:58:56
17	A. Yes.	16:58:58
18	Q. Now, would that reflect the date that you	16:58:58
19	reviewed this report with Ms. Morrissey-Berru?	16:59:01
20	A. That would be our post-observation	16:59:04
21	conference room time. Yes.	16:59:06
22	Q. Would you actually communicate about any of	16:59:08
23	the information in this report on the day of the	16:59:10
24	actual observation, or would you wait for this	16:59:14
25	meeting that took place approximately a week later?	16:59:16

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1 MS. KANTOR: Overbroad. 16:59:19

2 THE WITNESS: It was -- state that question 16:59:20

3 again. 16:59:25

4 BY MS. FUND: 16:59:26

5 Q. Sure. 16:59:26

6 Did you have a conversation about any of 16:59:27

7 the contents of this observation report with 16:59:28

8 Ms. Morrissey-Berru on the date of the observation, 16:59:32

9 or did you wait to discuss the contents until your 16:59:34

10 meeting on November 14th? 16:59:37

11 A. We discussed this during our conference 16:59:39

12 time, and we completed it together. 16:59:43

13 Q. Again, the conference time is 16:59:45

14 November 14th? 16:59:48

15 A. Yes. 16:59:48

16 Q. So you wouldn't have any conversation with 16:59:49

17 her on the date of the observation about the 16:59:51

18 contents? 16:59:53

19 A. I wouldn't interrupt her teaching. 16:59:54

20 Q. Okay. And it indicates "10:40," next to 16:59:56

21 the date. 17:00:03

22 Do you see that? 17:00:03

23 A. Yes. 17:00:04

24 Q. Is that -- what does that number represent? 17:00:05

25 A. Most likely it represents the time on the 17:00:08

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April L. Beuder

May 4, 2017

1 lesson. 17:00:11

2 Q. That it started? 17:00:11

3 A. That it started. 17:00:12

4 Q. Would you stay for the entire lesson? 17:00:14

5 A. Yes. 17:00:16

6 Q. And, again, I see it's indicated on the top 17:00:17

7 of this page that the subject was science? 17:00:21

8 A. Yes. 17:00:24

9 Q. And typically how long are each class? 17:00:24

10 A. So to understand the timing, the teachers 17:00:30

11 choose the block of time; so -- and they tell me: 17:00:37

12 30 minutes, 40 minutes, 50 minutes. So I don't know 17:00:41

13 off the top of my head, but a typical lesson would 17:00:46

14 be anywhere from 30 to 50 minutes at this grade. 17:00:49

15 Q. Is there anything else on this document 17:00:53

16 that would reflect how long this specific class was? 17:00:55

17 A. No. It would have been on the sign-up 17:00:58

18 sheet. 17:01:02

19 Q. Was this observation prescheduled? 17:01:03

20 A. Absolutely. 17:01:10

21 Q. And how much advance notice, generally, do 17:01:11

22 you give teachers before an observation like this? 17:01:14

23 A. It's standard procedure that there is going 17:01:16

24 to be an observation. I typically give them two to 17:01:24

25 four weeks, sometimes longer, and they sign up at a 17:01:30

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1 time of their own choosing within a window. I give 17:01:35
2 them blocks of time. And that is how we handle the 17:01:38
3 post-observation conference times as well. They 17:01:45
4 sign up for a time that suits their schedule. 17:01:48

5 Q. Would Ms. Morrissey-Berru have selected 17:01:51
6 this November 6th, 2012, science class for you to 17:01:53
7 observe? 17:01:56

8 A. Yes. 17:01:57

9 Q. So going back to my question a few minutes 17:01:57
10 ago, would anyone else at the school have the 17:02:06
11 responsibility of filling out an elementary school 17:02:11
12 classroom observation report like this one we have 17:02:15
13 in front of us marked as Exhibit 9? 17:02:18

14 A. In some cases, vice principals do; however, 17:02:19
15 Mrs. Barns does not do that at our school site. 17:02:23

16 Q. At your school, no one else is responsible 17:02:28
17 for filling out these forms other than yourself? 17:02:30

18 MS. KANTOR: Asked and answered. 17:02:32

19 THE WITNESS: Not this particular feedback 17:02:34
20 form. 17:02:37

21 BY MS. FUND: 17:02:37

22 Q. How many different types of feedback forms 17:02:40
23 do you have at the school? 17:02:43

24 A. The archdiocese provides us many different 17:02:44
25 types of feedback forms, encouraging us to use them 17:02:47

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AGNES DEIRDRE MORRISSEY-BERRU

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AGNES DEIRDRE MORRISSEY-) Case No.:
BERRU, an individual,)

Plaintiff,)

vs.)

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

Defendants.)

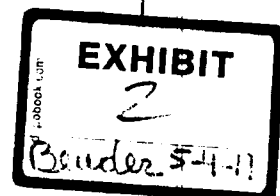
COMPLAINT FOR:

1. DISCRIMINATION ON THE BASIS OF AGE;
2. RETALIATION IN VIOLATION OF THE ADEA; and
3. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY.

DEMAND FOR JURY TRIAL

Plaintiff, AGNES DEIRDRE MORRISSEY-BERRU, hereby brings her employment complaint against the above-named Defendants and states and alleges as follows:

1
COMPLAINT



JURISDICTION AND VENUE

1
2 1. This is an employment lawsuit, brought pursuant to 29 U.S.C. § 621 et
3 seq. to remedy violations of the Age Discrimination in Employment Act
4 ("ADEA").

5 2. This Court has original federal question jurisdiction over this action
6 pursuant to 28 U.S.C. § 1331 because Plaintiff alleges violations of the laws of the
7 United States of America.

8 3. The venue is appropriate since the actions giving rise to this lawsuit
9 occurred in Los Angeles County, California, which is located within this district.

THE PARTIES

10
11 4. At all times mentioned herein, Plaintiff AGNES DEIRDRE
12 MORRISSEY-BERRU, age 65, was a resident of the State of California.

13 5. At all times mentioned herein, Defendant OUR LADY OF
14 GUADALUPE SCHOOL was a California non-profit corporation that operated a
15 private school, located at 340 Massey Street, Hermosa Beach, CA 90254.

16 6. The true names and capacities, whether individual, corporate,
17 associate or otherwise of DOES 1 through 50 are unknown to Plaintiff who
18 therefore sues these defendants under said fictitious names. Plaintiff is informed
19 and believes that each of the defendants named as a Doe defendant is legally
20 responsible in some manner for the events referred to in this Complaint, is either
21 negligently, willfully, wantonly, recklessly, tortiously, strictly liable, statutorily
22 liable or otherwise, for the injuries and damages described below to this Plaintiff.
23 Plaintiff will in the future seek leave of this court to show the true names and
24 capacities of these Doe defendants when it has been ascertained.

25 7. Plaintiff is informed and believes, and based thereon alleges, that each
26 defendant acted in all respects pertinent to this action as the agent of the other
27 defendants, carried out a joint scheme, business plan or policy in all respects
28

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1 pertinent hereto, and the acts of each defendant are legally attributable to the other
2 defendants.

3 8. Hereinafter in the Complaint, unless otherwise specified, reference to
4 a Defendant or Defendants shall refer to all Defendants, and each of them.

5 **ALLEGATIONS**

6 9. Plaintiff commenced employment with Defendant OUR LADY OF
7 GUADALUPE SCHOOL as a full-time teacher in or around September 1999.

8 10. In the spring semester of 2014, Ms. Morrissey-Berru was told that she
9 was not implementing the new reading and writing program correctly.

10 11. In or around August 2014, Plaintiff was demoted from a full-time
11 teacher to a part-time teacher. In or around May 2014, Ms. Morrissey's supervisor,
12 Principal Beuder, falsely accused Plaintiff of wanting to retire and stated that
13 "because she wanted to retire and because she wasn't correctly implementing the
14 reading and writing program", Plaintiff was going to be demoted to part-time.

15 12. Plaintiff never stated she wanted to retire.

16 13. In August 2014, Principal Beuder replaced Plaintiff with a teacher
17 who had no English/ Writing experience and who was much younger.

18 14. On or around August 2014, Plaintiff applied for a full-time teaching
19 position at St. James Catholic School in Torrance. The principal of St. James spoke
20 to Principal Beuder and then told Plaintiff that, "Ms. Beuder said good things about
21 you, but she remarked that this was your last year of teaching." Plaintiff's job
22 interview with St. James Catholic School was cancelled, and she was told that they
23 had hired someone else.

24 15. In May 2015, Plaintiff turned in her letter of intent to work the next
25 school year. However, on May 13, 2015, Principal Beuder called Plaintiff into the
26 Principal's office and told her that she would not be asked to return due to budget
27 cutbacks. Principal Beuder during this conversation again falsely accused Plaintiff
28

1 of agreeing to retire at the end of the school year. Plaintiff denied ever agreeing to
 2 retiring and told Principal Beuder that she needed to work. After Plaintiff left
 3 Principal Beuder's office, Ms. Beuder followed her out to the playground and
 4 threatened to give Plaintiff a bad recommendation if she told anyone she had been
 5 fired. Another teacher, Jack Moore, witnessed this conversation.

6 16. Plaintiff immediately filed a complaint with the Archdiocese of Los
 7 Angeles.

8 17. One of Plaintiff's coworkers, Ms. Bosch, told Plaintiff that in the
 9 summer of 2014, Principal Beuder said "I know how to get rid of older people.
 10 You cut their hours and make them so miserable they don't want to be here."

11 18. Plaintiff is informed and believes, and thereon alleges, that Defendant
 12 terminated Plaintiff's employment because of her age.

13 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14 19. On June 2, 2015, Plaintiff filed charges with the Equal Employment
 15 Opportunity Commission ("EEOC"). Plaintiff received a "Right-To-Sue" letter
 16 from the EEOC on September 19, 2016. This Complaint is timely filed pursuant to
 17 that letter.

18 **FIRST CAUSE OF ACTION**

19 **DISCRIMINATION ON THE BASIS OF AGE (ADEA, 29**

20 **U.S.C. § 620 et seq.)**

21 **(Against ALL Defendants)**

22 20. Plaintiff restates and incorporates herein paragraphs 1 through 19,
 23 inclusive, of this Complaint as though fully set forth herein.

24 21. Defendant is an employer as defined in the ADEA, 29 U.S.C. § 620 et
 25 seq.

26 22. At all relevant times, Plaintiff was an employee within the meaning
 27 and definition of the ADEA, 29 U.S.C. § 631.
 28

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1 23. As fully alleged above, at all times mentioned herein, Plaintiff was an
2 experienced and qualified teacher for Defendant. At all times mentioned herein,
3 Plaintiff was an exemplary employee. Despite all this, Defendant terminated
4 Plaintiff's employment and gave her position to a younger and less experienced
5 teacher.

6 24. Plaintiff is informed and believes and based thereon alleges that she
7 was terminated from employment with Defendant because of her age.

8 25. Plaintiff's age is a substantial motivating factor for the discrimination
9 against Plaintiff in the terms, conditions or privileges of employment.

10 26. In terminating Plaintiff's employment, Defendant subjected Plaintiff
11 to discrimination on the basis of her age in violation of the ADEA, 29 U.S.C. § 620
12 et seq.

13 27. By the aforesaid acts and omissions of Defendant, and each of them,
14 Plaintiff has been directly and legally caused to suffer actual damages including,
15 but not limited to, loss of future earning capacity, attorneys' fees, costs of suit and
16 other pecuniary loss not presently ascertained.

17 28. As a direct and proximate result of Defendant's willful, knowing and
18 intentional discrimination against her, Plaintiff has further suffered and will
19 continue to suffer a loss of earnings and other employment benefits and job
20 opportunities. Plaintiff is therefore entitled to liquidated damages in amounts to be
21 proven at trial. 29 U.S.C. § 216(b).

22 29. As a further direct and legal result of the acts and conduct of
23 Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
24 suffer and continues to suffer severe emotional and mental distress, anguish,
25 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety.

26 30. Plaintiff is informed and believes, and thereon alleges, that the
27 Defendant, and each of them, by engaging in the aforementioned acts and/or in
28 authorizing and/or ratifying such acts, engaged in willful, malicious, intentional

1 oppressive and despicable conduct, and acted with willful and conscious disregard
2 of the rights, welfare and safety of Plaintiff, thereby justifying the award of
3 punitive and exemplary damages in an amount to be determined at trial.

4 31. As a further, direct and proximate result of Defendant's violations of
5 The ADEA, as heretofore described, Plaintiff has been compelled to retain the
6 services of counsel, and has thereby incurred, and will continue to incur, legal fees
7 and costs. Plaintiff requests that attorneys' fees be awarded pursuant to 29 U.S.C.
8 § 216(b).

9 **SECOND CAUSE OF ACTION**
10 **RETALIATION IN VIOLATION OF THE ADEA**
11 **(Against ALL Defendants)**

12 32. Plaintiff restates and incorporates herein paragraphs 1 through 31,
13 inclusive, of this complaint as though fully set forth herein.

14 33. Defendant is an employer as defined in the ADEA, 29 U.S.C. § 620 et
15 seq.

16 34. At all relevant times, Plaintiff was an employee within the meaning
17 and definition of the ADEA, 29 U.S.C. §631.

18 35. At all times herein mentioned, the ADEA was in full force and effect
19 and was binding on Defendants. The ADEA prohibits retaliation against any
20 person based on age.

21 36. Plaintiff is informed and believes, and thereon alleges, that Defendant
22 terminated Plaintiff's employment because of her age.

23 37. Defendants' conduct as alleged above constituted unlawful retaliation.

24 38. As a proximate result of the aforesaid acts of Defendants, Plaintiff has
25 suffered actual, consequential and incidental financial losses, including without
26 limitation, loss of salary and benefits, and the intangible loss of employment
27
28

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1 related opportunities in her field and damage to her professional reputation, all in
2 an amount subject to proof at the time of trial.

3 39. As a proximate result of the wrongful acts of Defendants, Plaintiff has
4 suffered and continues to suffer emotional distress, humiliation, mental anguish
5 and embarrassment, as well as the manifestation of physical symptoms. Plaintiff is
6 informed and believes and thereupon alleges that she will continue to experience
7 said physical and emotional suffering for a period in the future not presently
8 ascertainable, all in an amount subject to proof at the time of trial.

9 40. As a proximate result of the wrongful acts of Defendants, Plaintiff has
10 been forced to hire attorneys to prosecute her claims herein, and has incurred and is
11 expected to continue to incur attorneys' fees and costs in connection therewith.
12 Plaintiff is entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

13 **THIRD CAUSE OF ACTION**

14 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

15 **(Against ALL Defendants)**

16 41. Plaintiff realleges and incorporates herein paragraphs 1 through 40,
17 inclusive, of this Complaint as though fully set forth.

18 42. At all times mentioned, the public policy of the State of California, as
19 codified, expressed and mandated in California Government Code § 12940 et seq.,
20 is to prohibit employers from discriminating, harassing and retaliating against any
21 individual engaging in a protected activity. This public policy of the State of
22 California is designed to protect all employees and to promote the welfare and
23 wellbeing of the community at large.

24 43. Accordingly, the actions of Defendant, as described herein, were
25 wrongful and in contravention of the express public policy of the State of
26 California, to wit, the policy set forth in California and the laws and regulations
27 promulgated thereunder.

28

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1 44. As a proximate result of the aforesaid acts of Defendant, Plaintiff has
2 suffered actual, consequential and incidental financial losses, including without
3 limitation, loss of salary and benefits, and the intangible loss of employment
4 related opportunities in her field and damage to his professional reputation, all in
5 an amount subject to proof at the time of trial. Plaintiff claims such amounts as
6 damages pursuant to California Civil Code § 3287 and/or § 3288 and/or any other
7 provision of law providing for prejudgment interest.

8 45. As a proximate result of the wrongful acts of Defendants, Plaintiff has
9 suffered and continues to suffer emotional distress, humiliation, mental anguish
10 and embarrassment, as well as the manifestation of physical symptoms. Plaintiff is
11 informed and believes, and thereupon alleges, that she will continue to experience
12 said physical and emotional suffering for a period in the future not presently
13 ascertainable, all in an amount subject to proof at the time of trial.

14 46. Defendant had in place policies and procedures that specifically
15 required Defendant's managers, officers, and agents to prevent the termination of
16 its employees based on the protected classes identified in the EEOC and ADEA.
17 Plaintiff relied on the fact that Defendant would follow these known policies, yet
18 Defendant consciously chose not to follow said policies. Therefore, Defendant's
19 conduct was fraudulent, malicious, oppressive, and was done in wanton disregard
20 for the rights of Plaintiff and the rights and duties owed by each Defendant to
21 Plaintiff. Each Defendant aided, abetted, participated in, authorized, ratified,
22 and/or conspired to engage in the wrongful conduct alleged above. Plaintiff
23 should, therefore, be awarded exemplary and punitive damages against each
24 Defendant in an amount to be established that is appropriate to punish each
25 Defendant and deter others from engaging in such conduct.

26
27 **WHEREFORE, Plaintiff prays for judgment as follows:**

28 1. For general damages, according to proof;

2. For medical expenses and related items of expenses, according to proof;
3. For loss of earnings, according to proof;
4. For attorneys' fees, according to proof;
5. For prejudgment interest, according to proof;
6. For costs of suit incurred herein; and
7. For such other relief and the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: December 19, 2016 JML LAW, A Professional Law Corporation

By: 

JOSEPH M. LOVRETOVICH
JARED W. BEILKE
Attorneys for Plaintiff

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ARCHDIOCESE OF LOS ANGELES
TEACHER EMPLOYMENT AGREEMENT
ELEMENTARY SCHOOLS

THIS AGREEMENT, by and between Our Lady of Guadalupe Elementary School
(hereinafter referred to as the School) and Deirdre Manning
(hereinafter referred to as the Teacher) is entered into as follows:

WITNESSETH

TERMS

1. The School hereby employs the Teacher for the school year beginning on Sept. 1, 1999 and ending on June 30, 2000. The School agrees to pay the Teacher for such services the yearly sum of \$24,500 subject to deductions required by law. The salary shall be divided into 12 equal installments paid on the 1st and 30th of each month.

RESPONSIBILITIES

2. The Teacher agrees to perform all duties faithfully and satisfactorily as described in the Teacher Evaluation Report published by the Archdiocesan Department of Catholic Schools; to comply with all rules and regulations promulgated by the School and the Archdiocese; to comply with and abide by all pertinent statutes of the State of California and the United States; and to attend all teacher meetings, inservice programs and other events as specified by the Archdiocesan Department of Catholic Schools.
3. The Teacher agrees to submit to the School evidence of degrees, credentials, and experience claimed, as well as current documentation of freedom from active tuberculosis.
4. The School agrees that it will cause administrative personnel to be available at reasonable times during normal business hours to discuss with the Teacher school problems and other professional matters of particular or special interest to the Teacher.
5. A Teacher who regularly performs (30) or more paid hours of service per week shall be eligible for participation in the official Archdiocesan medical plan. After one year of employment, the teacher shall be eligible for participation in the Archdiocesan Retirement Plan if the Teacher is 25 years of age and has worked a minimum of 1,000 hours in a calendar year.
6. A Teacher shall maintain a professional relationship with students both on and off campus. A Teacher shall not associate or be present with students or be party to activities where civil law and/or school rules are violated. A Teacher shall not date a student.
7. Performance of the Teacher's duties under this Agreement shall be subject to the supervision of the School over all phases of the work and subject to the advice and direction of its administrative personnel.

SCHEDULE

8. The Teacher agrees not to enter a contract or agreement with any school or district which will in any way conflict with this Agreement.
9. The Teacher agrees to devote his/her full time to performing the duties of teacher and to enter upon and perform such duties at the times, places and for the periods prescribed by the School. The hours of employment on class days shall be from thirty minutes before the start of the first class bell to thirty minutes after the last class bell.
10. Full-time Teachers are permitted ten days paid leave each year for personal illness. Absence in excess of this limit may, at the discretion of the principal, be a basis for proportionate reduction in the amount of compensation. Likewise, it is expected that the Teacher will assume financial responsibility for absences for reasons other than those stated above.
11. A Teacher may be entitled to or granted leaves as specified in Archdiocesan policies. The school retains the option to require the Teacher to resume his/her duties at the beginning of a Quarter.

RE-EMPLOYMENT

12. It is agreed that the Teacher will give written notice to the School on or before April 1 stating whether or not he/she wishes to renew the Agreement, and that the School will give written notice to the Teacher on or before May 1 whether or not it intends to renew the Agreement for the following year.

EXHIBIT

3

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Boulder 5-4-11

OLG 0111

13. It is agreed that the Teacher has no tenure rights or other property rights in employment at the School. It is further agreed that the School has no obligation, expressed or implied, to extend or renew this contract, to re-employ the Teacher or to continue to operate beyond the terms of the Agreement.
14. It is agreed that, upon expiration or termination of this Agreement for any reason, the Teacher shall have no right to employment or preferential treatment regarding employment at any other school located in the Archdiocese of Los Angeles, or any other Catholic school. It is further agreed that, if the School closes for any reason, this Agreement will be considered terminated for cause on the official date of closure.

TERMINATION

15. The Teacher shall be subject to discharge for just cause, including, but not limited to, the following:
- Immorality relating to duties or impeding his/her effectiveness as a Teacher.
 - Conviction of a felony or of any crime involving moral turpitude.
 - Incompetency or inadequacy in carrying out the responsibilities of a Teacher.
 - Lack of daily preparation.
 - Lack of classroom discipline consistent with the philosophy of the school.
 - Failure to implement school disciplinary regulations as they apply either to teachers or students.
 - Noted inability to deal amicably with students, parents, faculty, and administrators.
 - Serious violation of professional ethics.
 - Failure to respond to correction and admonition as given by the School.
 - Habitual or excessive tardiness or absence from work or from the work area.
 - Insubordination to superiors.
 - Maintaining by word or action a position contrary to the teaching of the Roman Catholic Church as interpreted by the Archdiocese of Los Angeles.
 - Dishonesty or personal conduct constituting bad example to pupils according to standards of the Roman Catholic Church as interpreted by the Archdiocese of Los Angeles.
 - Breach of the terms of this Agreement, including refusal to discharge responsibilities or voluntary abandonment of responsibilities.
 - Falsification of documents, such as providing false or misleading information on a teaching application, personnel record, professional or character reference, academic transcript, degrees, or credentials.
16. Failure by the School to invoke discharge on one occasion for the commission of an offense constituting a cause for discharge shall not affect the right of the School to invoke discharge for a later or different commission of the same offense.
17. The Teacher may not terminate employment during the term of this Agreement and for a period of thirty (30) days prior to the beginning of the school year except by mutual agreement of the Principal and the Teacher. Teacher acknowledges that a breach by the Teacher of this provision will cause expenses and damages to the School. If Teacher breaches this provision, Teacher agrees to pay to School all costs, expenses and damages incurred by School by reason of Teacher's breach, including but not limited to costs and expenses incurred by School to obtain the services of a substitute teacher until a new full time teacher is hired, in an amount not to exceed \$5,000.00. Said sums are due and payable by Teacher to School within thirty (30) days of the date said sums are incurred by School, unless other arrangements are made between Teacher and Principal.

CLAIMS

18. It is agreed that a condition of this agreement is the receipt of the Criminal Records Summary Clearance from the Department of Justice, if such clearance is required, and the completion of the I-9 Form from the Immigration and Naturalization Service.
19. It is agreed that the Teacher shall have no claim or right of action for breach of this Agreement unless all rights for administrative relief provided in the Grievance Procedure promulgated by the Archdiocesan Department of Catholic Schools have been fully pursued.

ADDITIONAL TERMS (as discussed prior to School's "intent to renew")

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement on August 23, 2017, at Thousand Oaks, California.

A. Doreen Murresey Teacher
Our Lady of Guadalupe Elementary School
 by Cheryl A. Hunt Principal

EXHIBIT

Boulder 5-14-17

FACULTY EMPLOYMENT AGREEMENT—ELEMENTARY**Exempt Full Time
Department of Catholic Schools
Archdiocese of Los Angeles**Name of School: Our Lady of Guadalupe Catholic SchoolName of Teacher: Deirdre Morrissey-BerruStart Date: July 1, 2012End Date: June 30, 2013

1. **Term.** The School ("School") and you (the "Teacher") make this Employment Agreement ("Agreement"), effective on the date below, for the work period shown above (the "Term"), for you to serve as a member of our faculty.
2. **Philosophy.** It is understood that 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 Catholic Church. All duties and responsibilities of the Teacher shall be performed within this overriding commitment.
3. **Duties.** Your duties shall be those of a full-time or part-time faculty member as specified in the **Compensation and Benefits Supplement** which is an integral part of this Agreement. You shall use your best professional efforts and skills to perform your duties in a diligent, energetic, competent, and ethical manner, consistent with the School's established philosophy and its policies, directives and expected practices. You acknowledge and agree that the School retains the right to operate within the philosophy of Catholic education and to retain teachers who demonstrate an ability to develop and maintain a Catholic School Faith Community. 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. Accordingly, you are expected to model, teach, and promote behavior in conformity to the teaching of the Roman Catholic Church. Your duties shall include careful preparation and planning for each class consistent with School and departmental curriculum; diligent review and evaluation of student work and related communication to students and parents; and conferring with students, the administration, and parents as needed regarding each student's progress and development. You also shall attend faculty/staff meetings and conferences, including those prior to and following the School's regular academic year, participate in School activities including School liturgical activities, as requested, and complete other duties as assigned. You agree to maintain the levels of competency in subject matter, teaching methods, classroom management, and student supervision required by the School whether on your own initiative or at the direction of the School. Your duties and job assignment may be revised during the Term to meet the School's needs. In the event the School's operations are extended by reason of fire, disaster, act of God, act of public authority or any other necessity or emergency cause, your services may be suspended for the time period and rescheduled as needed to complete the full School year.
4. **Policies.** You shall be familiar with, and comply with the School's personnel policies and procedures as they may be adopted or amended from time-to-time, including policies in the faculty handbook. You should refer to such documents for information relating to your employment, duties, and benefits. You shall be familiar with, abide by, and assist and cooperate with School administration in enforcing, the School's policies for students and families whether outlined in our handbook(s), our School policies, or other directives and expected practices (together "Policies"). You acknowledge that a copy of the faculty handbook has been made available to you. You understand and acknowledge that the policies do not constitute a contractual agreement with you.



5. Introductory Period. There is an introductory period for a newly hired or transferred teacher. The introductory period is a minimum of 90 calendar days, and may be extended, in writing, for up to another 90 calendar days at the discretion of the principal. During the introductory period this Agreement is at will; therefore, it can be terminated at any time, for any reason, without any notice. The Principal shall complete a performance appraisal at the end of the introductory period. Upon satisfactory completion of the introductory period, employment will be continued through any remaining term of this Agreement except as noted under "Termination."

6. Termination. Your employment, and this Agreement, may be terminated during the Term without payment of salary or benefits beyond such date of termination, for any of the following reasons:

- I. The School may terminate for "cause," without any prior notice. Such "cause" shall be determined by the School within its reasonable judgment and shall include but not be limited to:
 - a) Failure to meet any of your duties as described in Paragraphs 3 and 4 above.
 - b) Inappropriate physical or social contact with students during school or otherwise.
 - c) Unprofessional or unethical conduct, insubordination, unauthorized disclosure of confidential information, or habitual or unreasonable tardiness or absence from duties.
 - d) Any criminal, immoral or unethical conduct that relates to your duties as a teacher or brings discredit upon the school or the Roman Catholic Church.
 - e) Unauthorized possession of, or working under the influence of, illegal drugs, intoxicants, or alcohol.
 - f) Threatening or causing bodily harm to others or other coercive and or intimidating acts, or any verbal or physical harassment.
 - g) Having a diploma, credential, permit, license or certificate denied, revoked or suspended.
 - h) Falsification of documents, false or misleading information on an application, resume, personnel record, professional or character reference, academic transcript, degree, or credential.
 - i) Any other breach of the terms of this Agreement.
- II. Either you or the School may terminate this Agreement without cause, for any reason within the sole discretion of the terminating party, upon 30 calendar days' prior written notice to the other party in a manner that is consistent with applicable law and on a time frame that is mutually agreeable to you and the Principal. However, you may not terminate employment under this Agreement if the termination is effective during the 30 days immediately prior to the beginning of the school year except by mutual agreement with the Principal. You acknowledge that a breach by you of this provision is a grave ethical violation, may harm the educational program for the students and may cause expenses and damages to the School.
- III. The School may terminate your employment if you are unable to perform the essential functions of your position and reasonable accommodation is not available or required under applicable laws.

The School's failure to invoke its right of termination on one occasion for the occurrence of a matter constituting a basis for discharge shall not affect the right of the School to invoke discharge when the same or a different basis for termination arises at a later date.

7. Renewal. Future employment will be determined on a year-to-year basis. It is agreed that you will give written notice to the School, on or before April 1, 2013, stating whether or not you wish to renew the Agreement. The School will give you written notice, on or before May 15, 2013, stating whether or not it



intends to renew the Agreement for the following year. In the absence of a notice by either party, this agreement will lapse under its own terms. The Principal alone, with the approval of the Pastor, has the final and sole authority with respect to offering contracts. This Agreement is contingent upon sufficient School enrollment and the School's financial condition. If the enrollment or the School's financial condition does not justify the staffing, the Principal has discretionary power to make decisions regarding personnel reduction including, but not limited to, modification or cancellation of this Agreement. Notwithstanding this, if the School closes for any reason, this Agreement will be considered terminated on the date of the closure. You understand that tenure is not granted by Archdiocesan Schools and upon expiration or termination of the Agreement for any reason you shall have no right to employment or preferential treatment regarding employment at any other Archdiocesan School. There is no implied duty by you or the School to renew this Agreement, and no cause whatsoever is required by either party for non-renewal. Any other arrangement with respect to renewal, extension or duration of employment is valid only if in writing, executed by you and the Principal, with the approval of the Pastor.

8. Severability. If, for any reason, any one or more of the provisions of this Agreement shall be held or deemed to be legally invalid or unenforceable, that shall not have any effect on any of the other provisions of this Agreement, all of which shall remain in full force and effect.

9. Entire Agreement. This Agreement and the attached Compensation and Benefits Supplement contain the complete and entire agreement between you and the School, and it supersedes all prior offers, agreements, commitments, understandings, whether oral or written. No changes to this Agreement may be made except by a document signed by you and the Principal, with approval of the Pastor.

10. Applicable Law. This Agreement is entered into under, and governed by, the laws of the State of California.

11. Dispute Resolution and Grievances. You and the School agree to attempt to resolve any disputes in good faith. Any unresolved dispute between you and the School arising out of or in any way related to your employment or the termination thereof, shall be subject to the Grievance Procedures promulgated by the Archdiocesan Department of Catholic Schools and no legal actions may be taken until all procedures have been fully discharged. This clause is intended to provide a speedy, economical and exclusive forum for resolving claims; its existence shall not imply any limitations upon the School's right to manage its affairs or terminate any employment.

12. Condition Precedent. It is agreed that a condition precedent of this Agreement is the receipt of the Criminal Record Summary report from the California Department of Justice and the Federal Bureau of Investigation, the completion of the I-9 Form from the Immigration and Naturalization Service, and the completion of the other relevant health and document requirements of the school.

By: *April Bender* April Bender 5/21/12
Principal's Signature Print Name Date

I accept a position as Elementary Teacher at OLG
School on each and all of the terms and conditions set forth in the above Agreement and the attached Compensation and Benefits Supplement.

By: *Agnes Detorre* AGNES DETORRE 5.21.12
Teacher's Signature Print Name Date

Approval by Pastor required:

F. R. Miller, O.A.C.



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#:820

Pastor's Signature

Print Name

Date



FACULTY COMPENSATION AND BENEFITS SUPPLEMENT

Elementary—Exempt Full Time
Department of Catholic Schools
Archdiocese of Los Angeles

13. School Day and Work Schedule.
Full Time Faculty

As a full time teacher, you understand that there will be approximately 8 hours of work at the School each regular class day. You will also devote additional time to other assigned school responsibilities and in preparation and assessment activities at hours not during the regular class day. The School's regular class day is from 7:30 a.m. to 3:30 p.m.

14. Base Compensation.

Base Salary: \$ 45,858

15. Additional Compensation For Designated Responsibility (If Any):

Note: Calculations and Additional Compensation for designated responsibility are based on anticipated time commitment and skills.

Responsibility**Additional Compensation**

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total Additional Compensation: \$ _____

16. Payment Schedule.

Compensation for all faculty will be distributed on a ☐ semi-monthly ☒ bi-weekly schedule beginning (2) August 1, 2012 and ending June 30, 2013.

17. Education And Professional Growth Requirements:

In accordance with the regulations for salary placement and professional growth requirements, you agree that you will complete the following requirements to be eligible to be offered an employment agreement for the next school year.


- ☐ _____
- ☐ Enroll in California Teaching Credential program.
- ☐ Complete at least _____ units toward a California Teaching Credential.
- ☐ California Teaching Credential program must be completed by July 1, 20____ for an Elementary School Faculty Employment Agreement to be offered for the 20____ - 20____ academic year.



18. Available Benefits.

See Department of Catholic Schools Lay Employees Benefit Guide

Sick Days: Full-time Faculty: 10 days per school year.

 April Bender 5/21/12
Principal's Signature Print Name Date

 AGNES MOKKISSY-BERRA 5.21.12
Teacher's Signature Print Name Date

Approval by Pastor required:

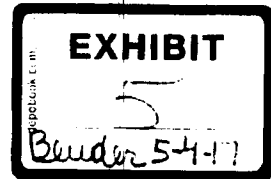
 F. R. I. M. H. O. K. A. C.
Pastor's Signature Print Name Date

Give copy to the faculty member and file the original in his/her personnel file.



TEACHER EMPLOYMENT AGREEMENT—ELEMENTARY

Exempt
Department of Catholic Schools
Archdiocese of Los Angeles

Name of School: Our Lady of Guadalupe SchoolName of Teacher: Deirdre Morrissey-BerruStart Date: July 1, 2013 End Date: June 30, 2014

1. Term. The School ("School") and you (the "Teacher") make this Employment Agreement ("Agreement"), effective on the date below, for the period shown above (the "Term"), for you to serve as a member of our faculty.

2. Philosophy. 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. If you are Roman Catholic you must be in good standing with the Church.

3. Duties. Your position will be that of a Teacher. You shall use your best professional efforts and skills to perform your duties in a diligent, energetic, competent, and ethical manner, consistent with the School's established policies, directives and expected practices. You acknowledge that the School operates within the philosophy of Catholic education and retains the right to employ individuals who demonstrate an ability to teach in accordance with this philosophy. 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. Your duties shall include careful preparation and planning for each class consistent with School and departmental curriculum; diligent review and evaluation of student work and related communication to students and parents; and, as needed, conferring with students, the administration, and parents regarding each student's progress and development. You also shall attend faculty/staff meetings and conferences, including those prior to and following the School's regular academic year, participate in School activities including School liturgical activities, as requested, and complete other duties as assigned. You agree to maintain the levels of competency in subject matter, teaching methods, classroom management, and student supervision required by the School whether on your own initiative or at the direction of the School. Your duties and job assignment may be revised during the Term to meet the School's needs. In the event the School's operations are extended by reason of fire, disaster, act of God, act of public authority or any other necessity or emergency cause, your services may be suspended for the time period and rescheduled as needed to complete the full School year.

4. Policies. You shall be familiar with, and comply with the School's personnel policies and procedures as they may be adopted or amended from time-to-time, including policies in the faculty handbook. You should refer to such documents for information relating to your employment, duties, and benefits. You shall be familiar with, abide by, and assist and cooperate with School administration in enforcing the School's policies for students and families whether outlined in our handbook(s), our School



policies, or other directives and expected practices (together "Policies"). You acknowledge that a copy of the faculty handbook has been made available to you. You understand and acknowledge that the policies do not constitute a contractual agreement with you.

5. Introductory Period. The first six (6) months of your employment as a new teacher at this School are considered your Introductory Period. You may be terminated at any point, with or without notice, with or without reason, during the Introductory Period. The Principal shall complete a performance appraisal at the end of your Introductory Period. Upon satisfactory completion of the Introductory Period, your employment will be continued through the Term of this Agreement except as noted under "Termination."

6. Termination. Your employment, and this Agreement, may be terminated during the Term without payment of salary or benefits beyond such date of termination, for any of the following reasons:

- I. The School may terminate for "cause," without any prior notice. Such "cause" shall be determined by the School within its reasonable judgment and shall include but not be limited to:
 - a) Failure to meet any of your duties as described in Paragraphs 3 and 4 above.
 - b) Inappropriate physical or social contact with students during school or otherwise.
 - c) Unprofessional or unethical conduct, insubordination, unauthorized disclosure of confidential information, or habitual or unreasonable tardiness or absence from duties.
 - d) Any criminal, immoral or unethical conduct that brings discredit upon the School or the Roman Catholic Church.
 - e) Unauthorized possession, sale, or working under the influence of controlled substances (except prescription medications taken as prescribed), intoxicants, or alcohol.
 - f) Threatening or causing bodily harm to others or other coercive and or intimidating acts, or any verbal or physical harassment.
 - g) Having a diploma, credential, permit, license or certificate denied, revoked or suspended.
 - h) Falsification of documents, false or misleading information on an application, resume, personnel record, professional or character reference, academic transcript, degree, or credential.
 - i) Any other breach of the terms of this Agreement.

II. Either you or the School may terminate this Agreement without cause, for any reason within the sole discretion of the terminating party, upon 30 calendar days' prior written notice to the other party in a manner that is consistent with applicable law and on a time frame that is mutually agreeable to you and the Principal. However, you may not terminate employment under this Agreement if the termination is effective during the 30 days immediately prior to the beginning of the school year except by mutual agreement with the Principal. You acknowledge that a breach by you of this provision is a grave ethical violation, may harm the educational program for the students and may cause expenses and damages to the School.

III. The School may terminate your employment if you are unable to perform the essential functions of your position and reasonable accommodation is not available or required under applicable laws.

The School's failure to invoke its right of termination on one occasion for the occurrence of a matter constituting a basis for discharge shall not affect the right of the School to invoke discharge when the same or a different basis for termination arises at a later date.



7. Renewal. Future employment will be determined on a year-to-year basis. You agree to give written notice to the School, on or before April 1, 2014, stating whether or not you wish to renew the Agreement. The School will give you written notice, on or before May 15, 2014, stating whether or not it intends to renew the Agreement for the following year or enter into any other type of employment relationship. In the absence of a notice by either party, this Agreement will lapse under its own terms. The Principal alone, with the approval of the Pastor, has the final and sole authority with respect to offering contracts. This Agreement is contingent upon sufficient School enrollment and the School's financial condition. If the enrollment or the School's financial condition does not justify the staffing, the Principal has discretionary power to make decisions regarding personnel reduction including, but not limited to, modification or cancellation of this Agreement. If the School closes for any reason, this Agreement will be considered terminated on the date of the closure. If this Agreement is cancelled due to lack of enrollment or the School's financial condition or is terminated because of School closure, you will be paid through the date of cancellation or closure; no further payments will be due to you. You understand that tenure is not granted by Archdiocesan Schools and upon expiration or termination of the Agreement for any reason you shall have no right to employment or preferential treatment regarding employment at any other Archdiocesan School. There is no implied duty by you or the School to renew this Agreement, and no cause whatsoever is required by either party for non-renewal. Any other arrangement with respect to renewal, extension or duration of employment is valid only if in writing, executed by you and the Principal, with the approval of the Pastor.

8. Severability. If, for any reason, any one or more of the provisions of this Agreement shall be held or deemed to be legally invalid or unenforceable, that shall not have any effect on any of the other provisions of this Agreement, all of which shall remain in full force and effect.

9. Entire Agreement. This Agreement contains the complete and entire agreement between you and the School, and it supersedes all prior offers, agreements, commitments, understandings, whether oral or written. No changes to this Agreement may be made except by a document signed by you and the Principal, with approval of the Pastor.

10. Applicable Law. This Agreement is entered into under, and governed by, the laws of the State of California.

11. Dispute Resolution and Grievances. You and the School agree to attempt to resolve any disputes in good faith. Any unresolved dispute between you and the School arising out of or in any way related to your employment or termination, shall be subject to the Grievance Procedures promulgated by the Archdiocesan Department of Catholic Schools and no legal actions may be taken until all procedures have been fully discharged. This clause is intended to provide a speedy, economical and exclusive forum for resolving claims; its existence shall not imply any limitations upon the School's right to manage its affairs or terminate any employment.

12. Condition Precedent. You understand and agree that condition precedents of this Agreement are the receipt of the Criminal Record Summary report from the California Department of Justice and the Federal Bureau of Investigation, the completion of the I-9 Form from the Immigration and Naturalization Service, and the completion of the other relevant health and document requirements of the School.



13. School Day and Work Schedule.**Full Time Teacher**

As a full time Teacher, you understand that a regular class day at the School requires approximately 8 hours of work. You will also devote additional time to other assigned school responsibilities and in preparation and assessment activities at hours not during the regular class day. The School's regular class day is from 7:30 a.m. to 8:30 p.m.

14. Base Compensation.

Base Salary: \$ 46,558

15. Additional Compensation For Designated Responsibility (If Any):

Note: Calculations and Additional Compensation for designated responsibility are based on anticipated time commitment and skills.

Responsibility	Additional Compensation
_____	\$ _____
_____	\$ _____
_____	\$ _____
Total Additional Compensation:	\$ _____

16. Payment Schedule.

Compensation for all teachers will be distributed on a ☒ semi-monthly ☐ bi-weekly schedule

Date of first payday: 8/30/13

Date of last payday: 6/30/14

17. Available Benefits.

See Archdiocese of Los Angeles Lay Employees Benefit Guide

Full-time Faculty sick days: 10 days per school year.

18. Education And Professional Growth Requirements:

In accordance with the regulations for salary placement and professional growth requirements, you agree that you will complete the following requirements to be eligible to be offered an employment agreement for the next school year.

- ☐ Enroll in California Teaching Credential program.
- ☐ Complete at least _____ units toward a California Teaching Credential.
- ☐ California Teaching Credential program must be completed by July 1, 20____ for an Elementary School Faculty Employment Agreement to be offered for the 20____ - 20____ academic year.

☒ Other Requirements:

fully implement Readers/Writers Workshops



Case 2:16-cv-09353-SVW-AFM Document 41 Filed 08/28/17 Page 152 of 161 Page ID
#:827

By: [Signature] April Bender 6-4-13
Principal's Signature Print Name Date

I accept a position as Teacher at A.S.S. School on each and all of the terms
and conditions set forth in the above Agreement.

By: A. Deirdre Morrissey-Berra A. Deirdre
Teacher's Signature Print Name Date
6.4.13

Approval by Pastor required (this Agreement is not binding until executed by Pastor)

Pastor's Signature Print Name Date

Give copy to the teacher and file the original in his/her personnel file.



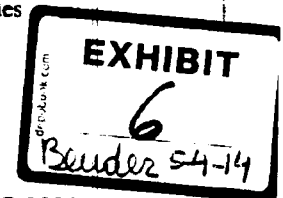
TEACHER EMPLOYMENT AGREEMENT-ELEMENTARY**Non-Exempt****Department of Catholic Schools
Archdiocese of Los Angeles**Name of School: Our Lady of Guadalupe SchoolName of Teacher: Deirdre Morrissey-BerruAcademic Year: 2014-2015

Term. The School ("School") and you (the "Teacher") make this Employment Agreement ("Agreement") for the period shown above (the "Term") for you to serve as a member of our faculty.

Philosophy. 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.

Duties. Your position will be that of a Teacher. You shall use your best professional efforts and skills to perform your duties in a diligent, energetic, competent, and ethical manner, consistent with the School's established policies, directives and expected practices. You acknowledge that the School operates within the philosophy of Catholic education and retains the right to employ individuals who demonstrate an ability to teach in accordance with this philosophy. 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. Your duties shall include careful preparation and planning for each class consistent with School and departmental curriculum; diligent review and evaluation of student work and related communication to students and parents; and, as needed, conferring with students, the administration, and parents regarding each student's progress and development. You also shall attend faculty/staff meetings and conferences, including those prior to and following the School's regular academic year, participate in School activities including School liturgical activities, as requested, and complete other duties as assigned. You agree to maintain the levels of competency in subject matter, teaching methods, classroom management, and student supervision required by the School whether on your own initiative or at the direction of the School. Your duties and job assignment may be revised during the Term to meet the School's needs. In the event the School's operations are extended by reason of fire, disaster, act of God, act of public authority or any other necessity or emergency cause, your service may be suspended for the time period and rescheduled as needed to complete the full School year.

Policies. You shall be familiar with, and comply with the School's personnel policies and procedures as they may be adopted or amended from time-to-time, including policies in the faculty handbook. You should refer to such documents for information relating to your employment, duties and benefits. You shall be familiar with, abide by, and assist and cooperate with School administration in enforcing the School's policies for students and families whether outlined in our handbooks(s), our School policies, or other directives and expected practices (together "Policies"). You acknowledge that a copy of the faculty handbook has been made available to you. You understand and acknowledge that the policies do not constitute a contractual agreement with you.



Introductory Period. The first six (6) months of your employment as a new teacher at this School are considered your Introductory Period. You may be terminated at any point, with or without notice, with or without reason, during the Introductory Period. The Principal shall complete a performance appraisal at the end of your Introductory Period. Upon satisfactory completion of the Introductory Period, your employment will be continued through the Term of this Agreement except as noted under "Termination."

Termination. Your employment, and this Agreement, may be terminated during the Term without payment of salary or benefits beyond such date of termination, for any of the following reason:

- I. The School may terminate for "cause," without any prior notice. Such "cause" shall be determined by the School within its reasonable judgment and shall include but not be limited to:
 - a) Failure to meet any of your duties as described in Paragraphs 3 and 4 above.
 - b) Inappropriate physical or social contact with students during school or otherwise.
 - c) Unprofessional or unethical conduct, insubordination, unauthorized disclosure of confidential information, or habitual or unreasonable tardiness or absence from duties.
 - d) Any criminal, immoral or unethical conduct that brings discredit upon the School or the Roman Catholic Church.
 - e) Unauthorized possession, sale or working under the influence of controlled substances (except prescription medications taken as prescribed), intoxicants, or alcohol.
 - f) Threatening or causing bodily harm to others or other coercive and or intimidating acts, or any verbal or physical harassment.
 - g) Having a diploma, credential, permit, license or certificate denied, revoked or suspended.
 - h) Falsification of documents, false or misleading information on an application, resume, personnel record, professional or character reference, academic transcript, degree, or credential.
 - i) Any other breach of the terms of this Agreement
- II. Either you or the School may terminate this Agreement without cause, for any reason within the sole discretion of the terminating party, upon 30 calendar days' prior written notice to the other party in a manner that is consistent with applicable law and on a time frame that is mutually agreeable to you and the Principal. However you may not terminate employment under this Agreement if the termination is effective during the 30 days immediately prior to the beginning of the school year except by mutual agreement with the Principal. You acknowledge that a breach by you of this provision is a grave ethical violation, may harm the educational program for the students and may cause expenses and damages to the School.
- III. The School may terminate your employment if you are unable to perform the essential functions of your position and reasonable accommodation is not available or required under applicable laws.

The School's failure to invoke its right of termination on one occasion for the occurrence of a matter constituting a basis for discharge shall not affect the right of the School to invoke discharge when the same or a different basis for termination arises at a later date.

Renewal. Future employment will be determined on a year-to-year basis. You agree to give written notice to the School, on or before April 1, 2015, stating whether or not you wish to renew the Agreement. The School will give you written notice, on or before May 15, 2015, stating whether or not it intends to renew the Agreement for the following year or enter into any other type of employment relationship. In the absence of a notice by either party, this Agreement will lapse under its own terms. The Principal alone, with the approval of the Pastor, has the final and sole authority with respect to offering agreements. This Agreement is contingent upon sufficient School enrollment and the School's financial condition. If the enrollment or the School's financial condition does not justify the staffing, the Principal has discretionary power to make decisions regarding personnel reduction including but not limited to, modification or cancellation of this Agreement. If the School closes for any reason, this Agreement will be considered terminated on the date of the closure. If this Agreement is cancelled due to lack of enrollment or the School's financial condition or is terminated because of School closure, you will be paid through the date of cancellation or closure; no further payments will be due to you. You understand that tenure is not granted by Archdiocesan Schools and upon expiration or termination of the Agreement for any reason you shall have no right to employment or preferential treatment regarding employment at any other Archdiocesan School. There is no implied duty by you or the School to renew this Agreement, and no cause whatsoever is required by either party for non-renewal. Any other arrangement with respect to renewal, extension or duration of employment is valid only if in writing, executed by you and the Principal, with the approval of the Pastor.

Severability. If, for any reason, any one or more of the provisions of this Agreement shall be held or deemed to be legally invalid or unenforceable, that shall not have any effect on any of the other provisions of this Agreement, all of which shall remain in full force and effect.

Entire Agreement. This Agreement contains the complete and entire agreement between you and the School, and supersedes all prior offers, agreements, commitments, understandings, whether oral or written. No changes to this Agreement may be made except by a document signed by you and the Principal, with approval of the Pastor.

Applicable Law. This Agreement is entered into under, and governed by, the laws of the State of California.

Dispute Resolution and Grievances. You and the School agree to attempt to resolve any disputes in good faith. Any unresolved disputes between you and the School arising out of or in any way related to your employment or termination, shall be subject to the Grievance Procedures promulgated by the Archdiocesan Department of Catholic Schools and no legal actions may be taken until all procedures have been fully discharged. This clause is intended to provide a speedy, economical and exclusive forum for resolving claims; its existence shall not imply any limitations upon the School's right to manage its affairs or terminate any employment.

Condition Precedent. You understand and agree that condition precedents of this Agreement are the receipt of the Criminal Record Summary report from the California Department of Justice and the Federal Bureau of Investigation, the completion of the I-9 Form from the Immigration and Naturalization Service, and the completion of the other relevant health and document requirements of the School.

School Day and Work Schedule**Full Time Teacher**

As a full time teacher, you understand that your duties consist of work during the regular class day which includes instructional and non-instructional time, other assigned school responsibilities, and preparation and assessment activities outside the classroom. The School's regular instructional time is from ____ a.m. to ____ p.m. You will be informed of required non-instructional duties according to schedules provided to you by the principal. The Academic Year consists of ____ class days, ____ paid holidays, and ____ hours worked.

The School understands that you may need to devote a reasonable amount of time to other school responsibilities and in preparation and assessment activities at hours not during the regular class day ("Additional Hours Worked"). The School will compensate you for the Additional Hours Worked if they exceed 8 in a day or 40 in a week. You hereby agree to comply with all the School's policies and procedures for permission to work beyond 8 hours in any day or 40 hours in any week.

Part Time Teacher

As a part-time teacher, you understand that your hours of work will be provided to you as scheduled. ("Regular Days Worked").

The School understands that you may need to devote a reasonable amount of time to other school responsibilities and in preparation and assessment activities at hours not during the regular class day ("Additional Hours Worked"). The School will compensate you for the Additional Hours Worked up to ____ hours in a day and ____ hours worked in a week. You hereby agree to comply with all the School's policies and procedures for permission to work beyond ____ hours in any day or ____ hours in any week.

Base Compensation

Total Compensation for Regular Hours Worked (not including compensation for Additional Hours Worked): \$28,000.00 annually (based on 25 total number of Regular Hours Worked in the Term, at the rate of \$ n/a per hour).

Full Time Teacher

Total budgeted (but not guaranteed) compensation for Additional Hours Worked: \$ ____ (actual amount will vary depending on actual hours worked over 8 in a day or 40 in a week).

Part time Teacher

Total budgeted (but not guaranteed) compensation for Additional Hours Worked: \$ 0 (actual amount will vary depending on actual hours worked over ____ in a day ____ or in a week).

Additional Compensation for Designated Responsibility (If Any):

In addition, for this Term only, you will assume the additional assignment(s) listed below. Your hours of work for the additional assignment(s) are as stated on the attached schedule. To compensate you for the additional assignment(s), your compensation for this Term will be increased for this Term only. The School does not guarantee that you will receive this or any other additional assignment(s) at any future time; therefore your total compensation for this Term should not be considered a promise that any future compensation will be for a similar amount.

Note: Calculations and Additional Compensation for Designated Responsibility are based on anticipated time commitment and skills.

<u>Responsibility</u>	<u>Additional Compensation</u>
_____ \$ _____ x _____	\$ _____
_____ \$ _____ x _____	\$ _____
_____ \$ _____ x _____	\$ _____
_____ \$ _____ x _____	\$ _____
Total Additional Compensation:	\$ _____

Payment Schedule

Compensation for all teachers will be distributed on a ☒ semi-monthly ☐ bi-weekly schedule

Date of first payday: 8/30/14
(See payroll schedule)

Date of last payday: 6/30/15

Available Benefits

See Archdiocese of Los Angeles Lay Employees Benefit Guide


Sick Days: Number of days per school year (if any): 5

Education and Professional Growth Requirements:

In accordance with the regulations for salary placement and professional growth requirements, you agree that you will complete the following requirements to be eligible to be offered an employment agreement for the next school year.

- ☐ Enroll in California Teaching Credential program.
- ☐ Complete at least _____ units towards a California Teaching Credential.
- ☐ California Teaching Credential program must be completed by July 1, 20__ for an Elementary School Faculty Employment Agreement to be offered for the 20__ - 20__ academic year.
- ☐ Other Requirements: assist with Liturgy Planning for school masses

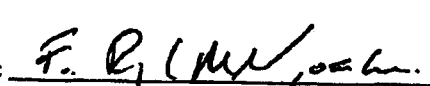
Case 2:16-cv-09353-SVW-AFM Document 41 Filed 08/28/17 Page 158 of 161 Page ID #:833

By:  April Beuder 5/18/14
Principal's Signature Print Name Date

I accept a position as Teacher at Gr5 Homern/Rel/SocStudies and Gr6-7 SocStudies at OLG School
on each and all of the terms and conditions set forth in the above Agreement.

By:  A. DEEDEE MORRISSEY-BERRA
Teacher's Signature Print Name Date

Approval by Pastor required (this Agreement is not binding until executed by Pastor)

By: 
Pastor's Signature Print Name Date

Give copy to teacher and file the original in his/her personnel file.

**Archdiocese of Los Angeles
Elementary School Classroom Observation Report**

Teacher: Mrs. Murray School: OLG
Principal: Bender City: Hermosa Beach
Grade: 5 School Year: 2012-13
Subject: Science Date: November 6, 2012 10:40

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 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. — Clear and abundant signs of Catholic identity
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

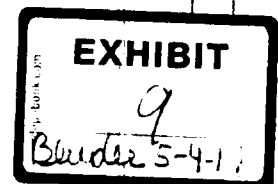
- 1.1 Using knowledge of students to engage them in learning
1.2 Connecting learning to students' prior knowledge, backgrounds, life experiences, and interests
1.3 Connecting subject matter to meaningful, real-life contexts
1.4 Using a variety of instructional strategies, resources, and technologies 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:

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 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:

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

5.7 Using assessment information to share timely and comprehensible feedback with students and their families

Observation Comments:

Mr. Morrissey has an excellent rapport with his students. This was an interactive lesson that engaged multiple modalities: visual, auditory, kinesthetic.

Commendations:

Highly effective use of technology.

Recommendations:

Continue integrating content areas.

Continue to address the Common Core Standards in your lesson planning.

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:

11/14/12

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:

Heardie Morrissey - Berre
November 14, 2012

****This observation form is used in conjunction with the California Standards for the Teaching Profession**

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andrew@jmlaw.com

Attorneys for **PLAINTIFF**

Agnes Morrissey-Berru

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'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Filed and served concurrently with:

- Plaintiff's Notice of Opposition and
Opposition to MSJ; Memo of Points
and Authorities
- Plaintiff's Compendium of Evidence
- Plaintiff's Separate Statement of
Controverted & Uncontroverted Facts

Date: September 18, 2017

Time: 1:30 p.m.

Ctrm: 10A

Complaint Filed: December 19, 2016

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Plaintiff, AGNES DEIRDRE MORRISSEY-BERRU ("Plaintiff") hereby
3 requests that the Court take judicial notice, pursuant to Federal Rules of Evidence,
4 Rule 201, of the below adjudicative facts and documents attached hereto, in
5 support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

6
7 **Exhibit A:** the Complaint in the above-captioned matter; and

8
9 **Exhibit B:** EEOC Notice to Complainant and Respondent

10
11 Plaintiff requests that this Court take judicial notice of the operative
12 complaint in this matter, the Complaint, which was filed with this Court on
13 December 19, 2016. The court may take judicial notice of matters of public record
14 if the facts are "not subject to reasonable dispute." Fed. R. Evid. 201. Court orders
15 and filings are proper subjects of judicial notice. *See, e.g., United States v. Black*,
16 482 F.3d 1035, 1041 (9th Cir. 2007) (court orders and filings are proper subjects of
17 judicial notice). It is well established that a court can take judicial notice of its
18 own files and records under Rule 201 of the Federal Rules of Evidence. *United*
19 *States v. Author Services*, 804 F.2d 1520, 1523 (9th Cir. 1986).

20 Plaintiff also requests that this Court take judicial notice of the EEOC Notice
21 to Complainant and Respondent. This document is appropriate for the Court to
22 take judicial notice of, as it is not subject to reasonable dispute because it can be
23 accurately and readily determined from sources whose accuracy cannot reasonably
24 be questioned. Fed. R. Evid. 201(b); *see, Anderson v. Holder* (9th Cir. 2012) 673
25 F.3d 1089, 1094 n.1 ("[A court] make take judicial notice of records and reports of
26 administrative bodies."); *Gallo v. Bd. of Regents of Univ. of Cal.* (S.D. Cal. 1995)
27 916 F.Supp. 1005, 1007 ("[T]he Court may consider both the EEOC right to sue
28

1 letter and the EEOC charge, either as referenced in the complaint or as public
2 records subject to judicial notice.”).

3
4
5 DATED: August 28, 2017 JML LAW, A Professional Law Corporation

6
7
8 By: /s/ Andrew S. Pletcher

9 JOSEPH M. LOVRETOVICH

10 JARED W. BEILKE

11 CATHRYN G. FUND

12 ANDREW S. PLETCHER

13 Attorneys for Plaintiff
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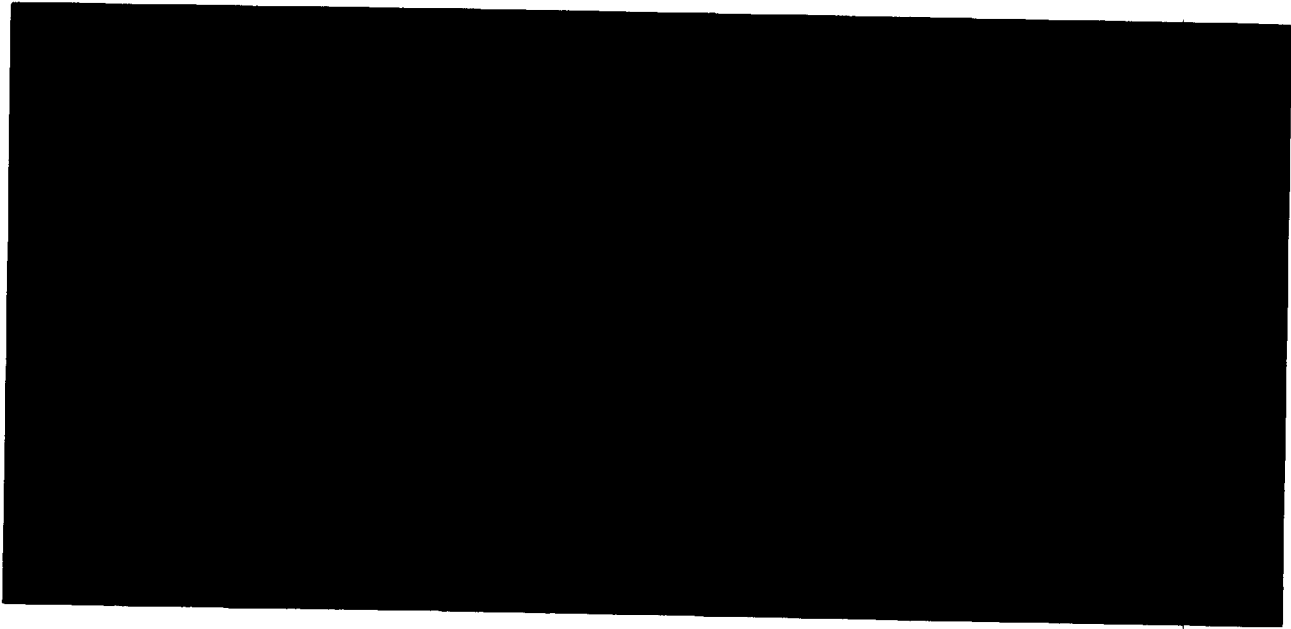
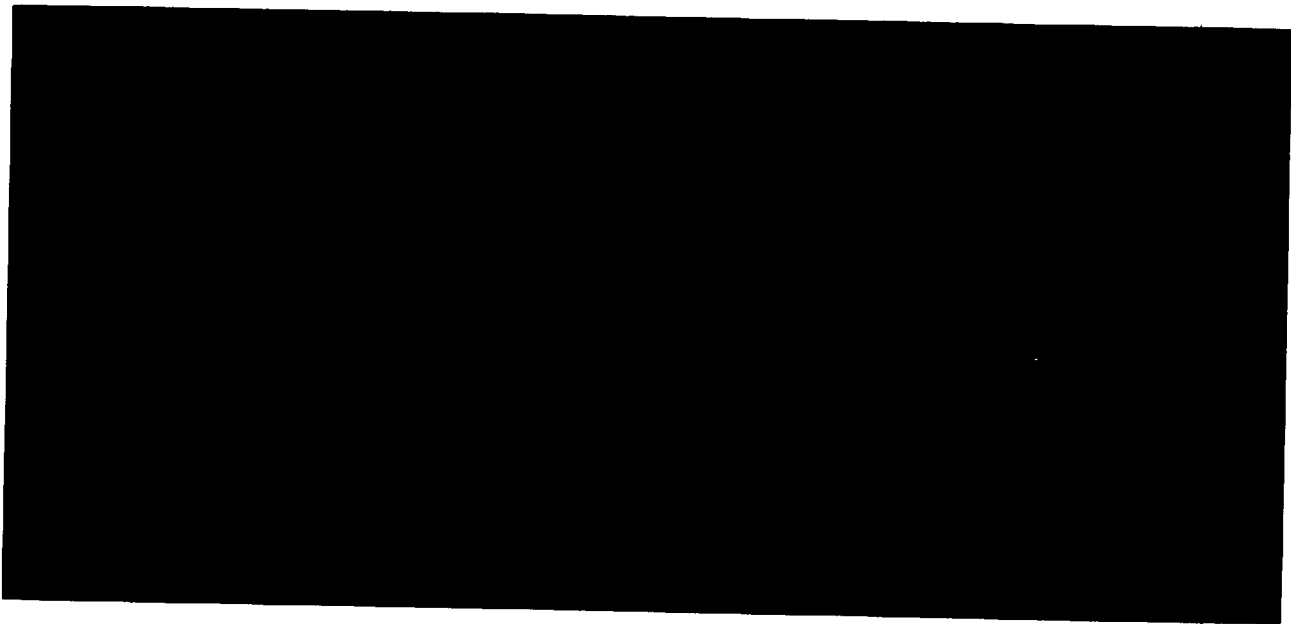


EXHIBIT A



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Attorneys for Plaintiff

AGNES DEIRDRE MORRISSEY-BERRU

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)
corporation; and DOES 1-50,)
inclusive,)

Defendants.)

Case No.:

COMPLAINT FOR:

1. DISCRIMINATION ON THE BASIS OF AGE;
2. RETALIATION IN VIOLATION OF THE ADEA; and
3. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY.

DEMAND FOR JURY TRIAL

Plaintiff, AGNES DEIRDRE MORRISSEY-BERRU, hereby brings her employment complaint against the above-named Defendants and states and alleges as follows:

1
COMPLAINT

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JURISDICTION AND VENUE

1
2 1. This is an employment lawsuit, brought pursuant to 29 U.S.C. § 621 et.
3 seq. to remedy violations of the Age Discrimination in Employment Act
4 ("ADEA").

5 2. This Court has original federal question jurisdiction over this action
6 pursuant to 28 U.S.C. § 1331 because Plaintiff alleges violations of the laws of the
7 United States of America.

8 3. The venue is appropriate since the actions giving rise to this lawsuit
9 occurred in Los Angeles County, California, which is located within this district.

THE PARTIES

10
11 4. At all times mentioned herein, Plaintiff AGNES DEIRDRE
12 MORRISSEY-BERRU, age 65, was a resident of the State of California.

13 5. At all times mentioned herein, Defendant OUR LADY OF
14 GUADALUPE SCHOOL was a California non-profit corporation that operated a
15 private school, located at 340 Massey Street, Hermosa Beach, CA 90254.

16 6. The true names and capacities, whether individual, corporate,
17 associate or otherwise of DOES 1 through 50 are unknown to Plaintiff who
18 therefore sues these defendants under said fictitious names. Plaintiff is informed
19 and believes that each of the defendants named as a Doe defendant is legally
20 responsible in some manner for the events referred to in this Complaint, is either
21 negligently, willfully, wantonly, recklessly, tortiously, strictly liable, statutorily
22 liable or otherwise, for the injuries and damages described below to this Plaintiff.
23 Plaintiff will in the future seek leave of this court to show the true names and
24 capacities of these Doe defendants when it has been ascertained.

25 7. Plaintiff is informed and believes, and based thereon alleges, that each
26 defendant acted in all respects pertinent to this action as the agent of the other
27 defendants, carried out a joint scheme, business plan or policy in all respects
28

1 pertinent hereto, and the acts of each defendant are legally attributable to the other
2 defendants.

3 8. Hereinafter in the Complaint, unless otherwise specified, reference to
4 a Defendant or Defendants shall refer to all Defendants, and each of them.

5 ALLEGATIONS

6 9. Plaintiff commenced employment with Defendant OUR LADY OF
7 GUADALUPE SCHOOL as a full-time teacher in or around September 1999.

8 10. In the spring semester of 2014, Ms. Morrissey-Berru was told that she
9 was not implementing the new reading and writing program correctly.

10 11. In or around August 2014, Plaintiff was demoted from a full-time
11 teacher to a part-time teacher. In or around May 2014, Ms. Morrissey's supervisor,
12 Principal Beuder, falsely accused Plaintiff of wanting to retire and stated that
13 "because she wanted to retire and because she wasn't correctly implementing the
14 reading and writing program", Plaintiff was going to be demoted to part-time.

15 12. Plaintiff never stated she wanted to retire.

16 13. In August 2014, Principal Beuder replaced Plaintiff with a teacher
17 who had no English/ Writing experience and who was much younger.

18 14. On or around August 2014, Plaintiff applied for a full-time teaching
19 position at St. James Catholic School in Torrance. The principal of St. James spoke
20 to Principal Beuder and then told Plaintiff that, "Ms. Beuder said good things about
21 you, but she remarked that this was your last year of teaching." Plaintiff's job
22 interview with St. James Catholic School was cancelled, and she was told that they
23 had hired someone else.

24 15. In May 2015, Plaintiff turned in her letter of intent to work the next
25 school year. However, on May 13, 2015, Principal Beuder called Plaintiff into the
26 Principal's office and told her that she would not be asked to return due to budget
27 cutbacks. Principal Beuder during this conversation again falsely accused Plaintiff
28

1 of agreeing to retire at the end of the school year. Plaintiff denied ever agreeing to
 2 retiring and told Principal Beuder that she needed to work. After Plaintiff left
 3 Principal Beuder's office, Ms. Beuder followed her out to the playground and
 4 threatened to give Plaintiff a bad recommendation if she told anyone she had been
 5 fired. Another teacher, Jack Moore, witnessed this conversation.

6 16. Plaintiff immediately filed a complaint with the Archdiocese of Los
 7 Angeles.

8 17. One of Plaintiff's coworkers, Ms. Bosch, told Plaintiff that in the
 9 summer of 2014, Principal Beuder said "I know how to get rid of older people.
 10 You cut their hours and make them so miserable they don't want to be here."
 11

12 18. Plaintiff is informed and believes, and thereon alleges, that Defendant
 13 terminated Plaintiff's employment because of her age.

14 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15 19. On June 2, 2015, Plaintiff filed charges with the Equal Employment
 16 Opportunity Commission ("EEOC"). Plaintiff received a "Right-To-Sue" letter
 17 from the EEOC on September 19, 2016. This Complaint is timely filed pursuant to
 18 that letter.

19 **FIRST CAUSE OF ACTION**

20 **DISCRIMINATION ON THE BASIS OF AGE (ADEA, 29**

21 **U.S.C. § 620 et seq.)**

22 **(Against ALL Defendants)**

23 20. Plaintiff restates and incorporates herein paragraphs 1 through 19,
 24 inclusive, of this Complaint as though fully set forth herein.

25 21. Defendant is an employer as defined in the ADEA, 29 U.S.C. § 620 et
 26 seq.

27 22. At all relevant times, Plaintiff was an employee within the meaning
 28 and definition of the ADEA, 29 U.S.C. § 631.

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1 23. As fully alleged above, at all times mentioned herein, Plaintiff was an
2 experienced and qualified teacher for Defendant. At all times mentioned herein,
3 Plaintiff was an exemplary employee. Despite all this, Defendant terminated
4 Plaintiff's employment and gave her position to a younger and less experienced
5 teacher.

6 24. Plaintiff is informed and believes and based thereon alleges that she
7 was terminated from employment with Defendant because of her age.

8 25. Plaintiff's age is a substantial motivating factor for the discrimination
9 against Plaintiff in the terms, conditions or privileges of employment.

10 26. In terminating Plaintiff's employment, Defendant subjected Plaintiff
11 to discrimination on the basis of her age in violation of the ADEA, 29 U.S.C. § 620
12 et seq.

13 27. By the aforesaid acts and omissions of Defendant, and each of them,
14 Plaintiff has been directly and legally caused to suffer actual damages including,
15 but not limited to, loss of future earning capacity, attorneys' fees, costs of suit and
16 other pecuniary loss not presently ascertained.

17 28. As a direct and proximate result of Defendant's willful, knowing and
18 intentional discrimination against her, Plaintiff has further suffered and will
19 continue to suffer a loss of earnings and other employment benefits and job
20 opportunities. Plaintiff is therefore entitled to liquidated damages in amounts to be
21 proven at trial. 29 U.S.C. § 216(b).

22 29. As a further direct and legal result of the acts and conduct of
23 Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
24 suffer and continues to suffer severe emotional and mental distress, anguish,
25 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety.

26 30. Plaintiff is informed and believes, and thereon alleges, that the
27 Defendant, and each of them, by engaging in the aforementioned acts and/or in
28 authorizing and/or ratifying such acts, engaged in willful, malicious, intentional

1 oppressive and despicable conduct, and acted with willful and conscious disregard
2 of the rights, welfare and safety of Plaintiff, thereby justifying the award of
3 punitive and exemplary damages in an amount to be determined at trial.

4 31. As a further, direct and proximate result of Defendant's violations of
5 The ADEA, as heretofore described, Plaintiff has been compelled to retain the
6 services of counsel, and has thereby incurred, and will continue to incur, legal fees
7 and costs. Plaintiff requests that attorneys' fees be awarded pursuant to 29 U.S.C.
8 § 216(b).

9 **SECOND CAUSE OF ACTION**

10 **RETALIATION IN VIOLATION OF THE ADEA**

11 **(Against ALL Defendants)**

12 32. Plaintiff restates and incorporates herein paragraphs 1 through 31,
13 inclusive, of this complaint as though fully set forth herein.

14 33. Defendant is an employer as defined in the ADEA, 29 U.S.C. § 620 et
15 seq.

16 34. At all relevant times, Plaintiff was an employee within the meaning
17 and definition of the ADEA, 29 U.S.C. § 631.

18 35. At all times herein mentioned, the ADEA was in full force and effect
19 and was binding on Defendants. The ADEA prohibits retaliation against any
20 person based on age.

21 36. Plaintiff is informed and believes, and thereon alleges, that Defendant
22 terminated Plaintiff's employment because of her age.

23 37. Defendants' conduct as alleged above constituted unlawful retaliation.

24 38. As a proximate result of the aforesaid acts of Defendants, Plaintiff has
25 suffered actual, consequential and incidental financial losses, including without
26 limitation, loss of salary and benefits, and the intangible loss of employment
27
28

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1 related opportunities in her field and damage to her professional reputation, all in
2 an amount subject to proof at the time of trial.

3 39. As a proximate result of the wrongful acts of Defendants, Plaintiff has
4 suffered and continues to suffer emotional distress, humiliation, mental anguish
5 and embarrassment, as well as the manifestation of physical symptoms. Plaintiff is
6 informed and believes and thereupon alleges that she will continue to experience
7 said physical and emotional suffering for a period in the future not presently
8 ascertainable, all in an amount subject to proof at the time of trial.

9 40. As a proximate result of the wrongful acts of Defendants, Plaintiff has
10 been forced to hire attorneys to prosecute her claims herein, and has incurred and is
11 expected to continue to incur attorneys' fees and costs in connection therewith.
12 Plaintiff is entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

13 THIRD CAUSE OF ACTION

14 WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

15 (Against ALL Defendants)

16 41. Plaintiff realleges and incorporates herein paragraphs 1 through 40,
17 inclusive, of this Complaint as though fully set forth.

18 42. At all times mentioned, the public policy of the State of California, as
19 codified, expressed and mandated in California Government Code § 12940 et seq.,
20 is to prohibit employers from discriminating, harassing and retaliating against any
21 individual engaging in a protected activity. This public policy of the State of
22 California is designed to protect all employees and to promote the welfare and
23 wellbeing of the community at large.

24 43. Accordingly, the actions of Defendant, as described herein, were
25 wrongful and in contravention of the express public policy of the State of
26 California, to wit, the policy set forth in California and the laws and regulations
27 promulgated thereunder.
28

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1 44. As a proximate result of the aforesaid acts of Defendant, Plaintiff has
2 suffered actual, consequential and incidental financial losses, including without
3 limitation, loss of salary and benefits, and the intangible loss of employment
4 related opportunities in her field and damage to his professional reputation, all in
5 an amount subject to proof at the time of trial. Plaintiff claims such amounts as
6 damages pursuant to California Civil Code § 3287 and/or § 3288 and/or any other
7 provision of law providing for prejudgment interest.

8 45. As a proximate result of the wrongful acts of Defendants, Plaintiff has
9 suffered and continues to suffer emotional distress, humiliation, mental anguish
10 and embarrassment, as well as the manifestation of physical symptoms. Plaintiff is
11 informed and believes, and thereupon alleges, that she will continue to experience
12 said physical and emotional suffering for a period in the future not presently
13 ascertainable, all in an amount subject to proof at the time of trial.

14 46. Defendant had in place policies and procedures that specifically
15 required Defendant's managers, officers, and agents to prevent the termination of
16 its employees based on the protected classes identified in the EEOC and ADEA.
17 Plaintiff relied on the fact that Defendant would follow these known policies, yet
18 Defendant consciously chose not to follow said policies. Therefore, Defendant's
19 conduct was fraudulent, malicious, oppressive, and was done in wanton disregard
20 for the rights of Plaintiff and the rights and duties owed by each Defendant to
21 Plaintiff. Each Defendant aided, abetted, participated in, authorized, ratified,
22 and/or conspired to engage in the wrongful conduct alleged above. Plaintiff
23 should, therefore, be awarded exemplary and punitive damages against each
24 Defendant in an amount to be established that is appropriate to punish each
25 Defendant and deter others from engaging in such conduct.

26
27 **WHEREFORE, Plaintiff prays for judgment as follows:**

- 28 1. For general damages, according to proof;

2. For medical expenses and related items of expenses, according to proof;
3. For loss of earnings, according to proof;
4. For attorneys' fees, according to proof;
5. For prejudgment interest, according to proof;
6. For costs of suit incurred herein; and
7. For such other relief and the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

DATED: December 19, 2016 JML LAW, A Professional Law Corporation

By: 

JOSEPH M. LOVRETOVICH
JARED W. BEILKE
Attorneys for Plaintiff

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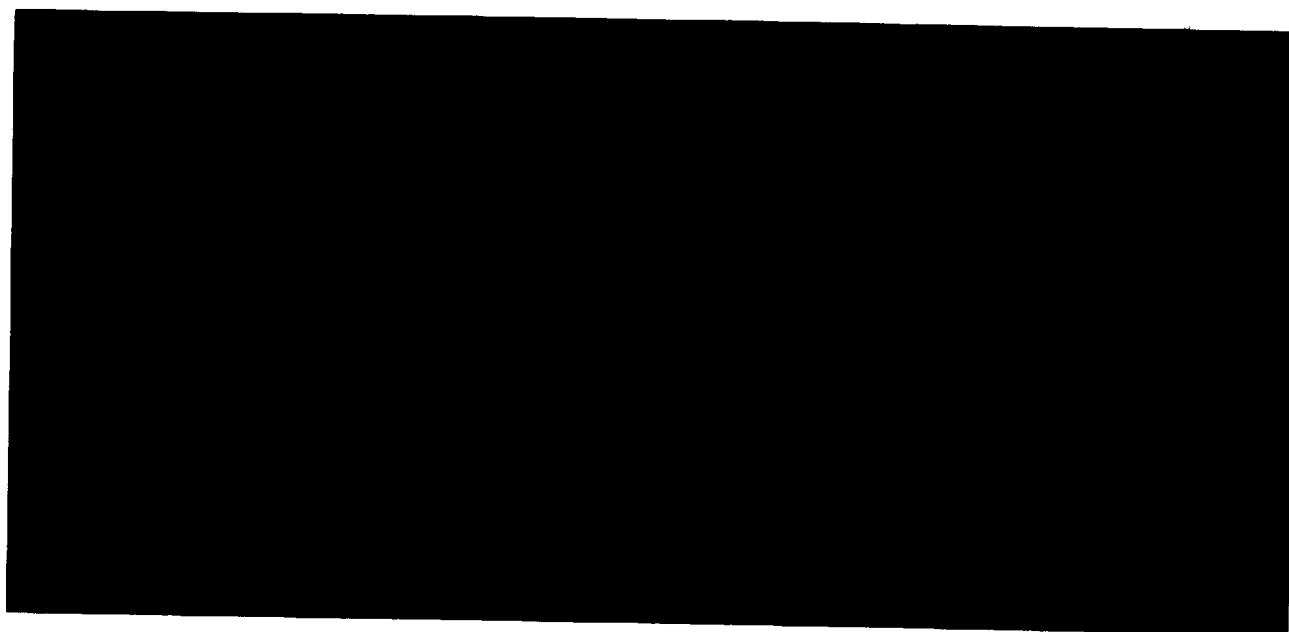
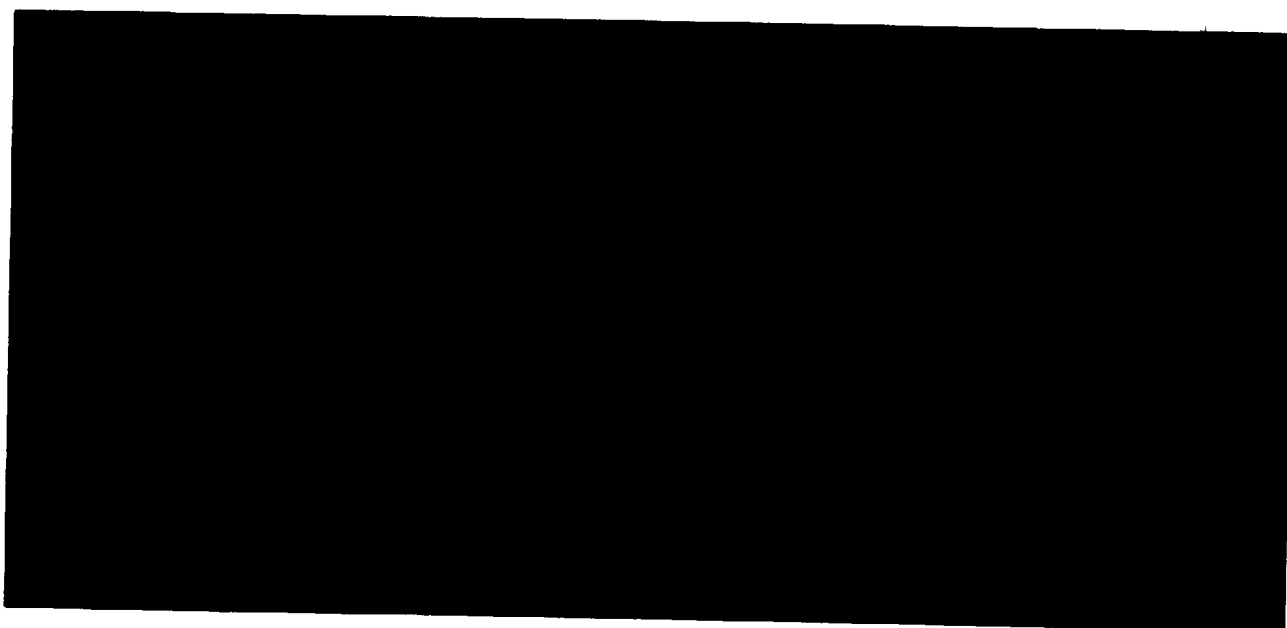


EXHIBIT B



Case 2:16-cv-09353-SVW-AFM Document 40 Filed 08/28/17 Page 15 of 15 Page ID #:675



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GOVERNOR EDMUND G. BROWN, JR.

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR PHYLLIS W. CHENG

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
 800-884-1684 | Videophone 916-226-5285 | TTY 800-700-2320
 www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

Ms. April Beuder
 Principal
 OUR LADY OF GUADALUPE CATHOLIC
 SCHOOL
 320 Massey Avenue
 Hermosa Beach, CA 90254

EEOC Number 480-2015-02062N
 Case Name Agnesdeidre
 Morrissey-Beru
 Filing Date 06/02/2015

NOTICE TO COMPLAINANT AND RESPONDENT

This is to advise you that the above-referenced complaint is being dual filed with the California Department of Fair Employment and Housing (DFEH) by the U.S. Equal Employment Opportunity Commission (EEOC). The complaint will be filed in accordance with California Government Code section 12960. This notice constitutes service pursuant to Government Code section 12962.

The EEOC is responsible for the processing of this complaint and the DFEH will not be conducting an investigation into this matter. Please contact EEOC directly for any discussion of the complaint or the investigation.

NOTICE TO COMPLAINANT OF RIGHT TO SUE

This letter is also your Right to Sue notice. **This Right to Sue Notice allows you to file a private lawsuit in State court.** According to Government Code section 12965, subdivision (b), you may bring a civil action under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The lawsuit may be filed in a State of California Superior Court. Government Code section 12965, subdivision (b), provides that such a civil action must be brought within one year from the date of this notice. Pursuant to Government Code section 12965, subdivision (d)(1), this one-year period will be tolled during the pendency of the EEOC's investigation of your complaint. You should consult an attorney to determine with accuracy the date by which a civil action must be filed. This right to file a civil action may be waived in the event a settlement agreement is signed.

Be advised, the DFEH does not retain case records beyond three years after a complaint is filed.

DFEH-200-02 (07/13)

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Attorneys for **PLAINTIFF**
Agnes Morrissey-Berru

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 SEPARATE STATEMENT OF CONTROVERTED AND UNCONTROVERTED MATERIAL FACTS AND CONCLUSIONS OF LAW IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Filed and served concurrently with:

- Plaintiff's Notice of Opposition and Opposition to MSJ; Memo of Points and Authorities
- Plaintiff's Compendium of Evidence
- Plaintiff's Request for Judicial Notice.

Date: September 18, 2017

Time: 1:30 p.m.

Ctm: 10A

Complaint Filed: December 19, 2016

**PLAINTIFF'S SEPARATE STATEMENT IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiff, AGNES MORRISSEY-BERRU ("Plaintiff") hereby submits her Separate Statement of *Controverted* and Uncontroverted Facts and Conclusions of Law in Opposition to the Motion for Summary Judgment filed by Defendant, OUR LADY OF GUADALUPE CATHOLIC SCHOOL ("Defendant").

I. STATEMENT OF CONTROVERTED AND UNCONTROVERTED FACTS AND SUPPORTING EVIDENCE

UNCONTROVERTED MATERIAL FACTS AND THE SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND EVIDENCE
<p>1. Our Lady of Guadalupe School is a Catholic parish school under the jurisdiction of the Archdiocese of Los Angeles.</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. 3 - History and Philosophy; Exh. 4 - Mission Statement; Exh. 5 - About Us; Exh. 26 - Catholic School Communities Faith Formation guidelines from the Los Angeles Archdioceses Administrative Handbook</p>	UNCONTROVERTED
<p>2. Our Lady of Guadalupe School is a non-profit religious entity.</p> <p>Beuder Decl. ¶3; Galt Decl. ¶1-5; Plaintiff Depo. 27:10-19; Exh. 27 - IRS letters recognizing non-profit, tax exempt status of Our Lady of Guadalupe parish and</p>	UNCONTROVERTED

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1	UNCONTROVERTED MATERIAL	OPPOSING PARTY'S
2	FACTS AND THE SUPPORTING	RESPONSE AND EVIDENCE
3	EVIDENCE	
4	school; Exh. 28 - State of California	
5	Franchise Tax Board Entity Status Letter;	
6	Exh. 29 - Certificates of Amendment of	
7	Articles of Incorporation of Archdiocese	
8	of Los Angeles Education & Welfare	
9	Corporation; Exh. 3 - History and	
10	Philosophy; Exh. 4 - Mission Statement;	
11	Exh. 5 - About Us; Exh. 26 - Catholic	
12	School Communities Faith Formation	
13	guidelines from the Los Angeles	
14	Archdioceses Administrative Handbook	
15	3. Our Lady of Guadalupe School was	CONTROVERTED
16	established to serve the educational needs	
17	of the children of the Our Lady of	In practice, the school does not limit
18	Guadalupe parish.	its enrollment to children of the Our
19		Lady of Guadalupe parish. In fact,
20	Beuder Decl. ¶3; Galt Decl. ¶1-5; Plaintiff	the current principal testified that
21	Depo. 27:10-16; Exh. 3 - History and	students are not required to be
22	Philosophy; Exh. 4 - Mission Statement;	Catholic in order to attend the school.
23	Exh. 5 - About Us	
24		[Deposition of April Beuder, Volume
25		I, 50:9-50:17; 71:17-71:19]
26	4. The pastor is the ex-officio chief	UNCONTROVERTED
27	administrative officer of the school who	
28	carries out the policies of the	
	Archdiocesan Advisory Board.	
	Beuder Decl. ¶3; Beuder Depo. 26:24-	
	28:11, 29:5-8, 100:6-8; Exh. 3 - History	
	and Philosophy; Exh. 4 - Mission	
	Statement; Exh. 5 - About Us; Exh. 26 -	
	Catholic School Communities Faith	
	Formation guidelines from the Los	
	Angeles Archdioceses Administrative	
	Handbook	

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UNCONTROVERTED MATERIAL FACTS AND THE SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND EVIDENCE
<p>5. The faculty and staff of Our Lady of Guadalupe School are committed to faith – based education, providing a quality Catholic education for the students and striving to create a spiritually enriched learning environment, grounded in Catholic social teachings, values, and traditions.</p> <p>Beuder Decl. ¶4; Plaintiff Depo. 26:8-27:7, 28:1-6, 40:12-41:13; Beuder Depo. 53:24-54:9; Exh. 3 - History and Philosophy; Exh. 4 - Mission Statement; Exh. 5 - About Us; Exh. 6 - Blest are We (OLG 0577-0596); Exh. 7 - Catechist Certification Progress Transcript (OLG 0117- 0122); Exh. 8 - Excerpts from Faculty Handbook (OLG 0505-0528)</p>	<p>CONTROVERTED</p> <p>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 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.</p> <p>[Declaration of Agnes Morrissey-Berru ¶ 8]</p>
<p>6. Plaintiff began working full time at the School as a teacher in 1999, at the age of 48.</p> <p>Plaintiff Depo. 12:19-20, 19:4-21</p>	<p>UNCONTROVERTED</p>
<p>7. The teachers at the School all work on one-year fixed term contracts. Teacher contracts are only for one year at a time, and renewal is determined on a year to year basis.</p> <p>Beuder Decl. ¶6; Plaintiff Depo. 20:19-23:15; Exh. 21 - 2014-2015 Employment Agreement (OLG 0001-0006); Exh. 12 - 2013-2014 Employment Agreement (OLG 008-0012)</p>	<p>UNCONTROVERTED</p>

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

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UNCONTROVERTED MATERIAL FACTS AND THE SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND EVIDENCE
	[Deposition of Silvia Bosch 63:10-65:5] [Declaration of Silvia Bosch ¶¶ 5-6.] [See, Plaintiff's Undisputed Material Facts "PUMF" 138+153]
<p>10. Plaintiff understood that the mission of the School is to provide its students with a Catholic education, including instructing them in the tenets of the faith and instilling in them Catholic values. Plaintiff felt that her duties and responsibilities as a teacher should be performed within the overriding commitment of this school mission.</p> <p>Plaintiff Depo. 26:8-27:7, 28:1-3, 40:18-41:13; Beuder Decl. ¶¶ 4-5, 8-17; Beuder Depo. 53:24-54:9; Exh. 21 - 2014-2015 Employment Agreement (OLG 0001-0006); Exh. 12 -2013-2014 Employment Agreement (OLG 008-0012)</p>	<p>CONTROVERTED</p> <p>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.</p> <p>[Declaration of Agnes Morrissey-Berru ¶ 8]</p>
<p>11. Plaintiff's signed employment contracts provide that:</p> <p>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</p>	<p>CONTROVERTED</p> <p>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</p>

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UNCONTROVERTED MATERIAL FACTS AND THE SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND EVIDENCE
<p>commitment.</p> <p>Plaintiff Depo. 40:18-41:13; Beuder Decl. ¶5; Beuder Depo. 53:24-54:9; Exh. 21 - 2014-2015 Employment Agreement (OLG 0001-0006); Exh. 12 - 2013-2014 Employment Agreement (OLG 008-0012)</p>	<p>at no time during or after her employment with Our Lady of Guadalupe did she feel God was leading her into the ministry.</p> <p>[Declaration of Agnes Morrissey-Berru ¶ 8]</p>
<p>12. Plaintiff's signed employment contracts also state:</p> <p>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.</p> <p>Plaintiff Depo. 40:18-42:13; Beuder Decl. ¶5; Exh. 21 - 2014-2015 Employment Agreement (OLG 0001-0006); Exh. 12 - 2013-2014 Employment Agreement (OLG 008-0012)</p>	<p>CONTROVERTED</p> <p>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.</p> <p>[Declaration of Agnes Morrissey-Berru ¶ 8]</p>
<p>13. Plaintiff taught a daily religion class every year at the School.</p> <p>Plaintiff Depo. 20:7-14, 36:18-20; Beuder Decl. ¶8</p>	<p>UNCONTROVERTED</p>

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<p>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.</p> <p>Plaintiff Depo. 30:1-32:17; Beuder Depo. 62:4-64:20; Exh. 7 - Catechist Certification Progress Transcript (OLG 0117- 0122); Beuder Decl. ¶9</p>	<p>CONTROVERTED</p> <p>Morrissey-Berru testified that she took <u>one course</u> regarding the history of the Catholic Church in 2012. This was fourteen years after she began teaching at Our Lady of Guadalupe.</p> <p>[Deposition of Agnes Morrissey-Berru 19:4-19:10; 30:1-30:18]</p>
<p>15. Plaintiff was responsible for introducing her students to Catholicism and giving students a groundwork for their religious doctrine.</p> <p>Plaintiff Depo. 40:12-17; Beuder Depo. 53:24-54:9; Beuder Decl. ¶8</p>	<p>CONTROVERTED</p> <p>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.</p> <p>[Declaration of Agnes Morrissey-Berru ¶ 8]</p>

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<p>16. As part of Plaintiff's instruction, students were expected to learn and express the belief that Jesus is the son of God and the Word made flesh.</p> <p>Plaintiff Depo. 38:12-16; Exh. 6 - Blest are We (OLG 0577-0596); Beuder Decl. ¶15</p>	<p>CONTROVERTED</p> <p>The instruction the students received from Plaintiff was taken from a <u>textbook</u> entitled "Blest Are We" which provided guided teachings.</p> <p>Deposition of Agnes Morrissey Berru 36:18-37:12, Exhibit 5</p>
<p>17. The lessons Plaintiff was responsible for teaching students included lessons on Creation, The Seven Sacraments, Sacramentals, Baptism, Confirmation, The Eucharist, Reconciliation, Holy Orders and Matrimony.</p> <p>Plaintiff Depo. 36:18-38:10; Beuder Decl. ¶16; Exh. 6 - Blest are We (OLG 0577-0596)</p>	<p>CONTROVERTED</p> <p>The instruction the students received from Plaintiff was taken from a <u>textbook</u> entitled "Blest Are We" which provided guided teachings.</p> <p>Deposition of Agnes Morrissey Berru 36:18-37:12, Exhibit 5</p>
<p>18. Plaintiff would teach students to be able to identify the ways that the church carries on the mission of Jesus, understand the communion of saints, recognize the presence of Christ in the Eucharist, locate and understand stories from the Bible, and understand original sin.</p> <p>Plaintiff Depo. 38:2-40:11 Exh. 6 - Blest are We (OLG 0577-0596); Beuder Decl. ¶16</p>	<p>CONTROVERTED</p> <p>The instruction the students received from Plaintiff was taken from a <u>textbook</u> entitled "Blest Are We" which provided guided teachings.</p> <p>Deposition of Agnes Morrissey Berru 36:18-37:12, Exhibit 5</p>
<p>19. Students also received instruction from Plaintiff for taking part in a prayer service of reconciliation, praying the Apostles' Creed and the Nicene Creed,</p>	<p>CONTROVERTED</p> <p>The instruction the students received from Plaintiff was taken from a</p>

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<p>celebrating the sacraments, and recognizing the liturgical calendar and the celebration of the sacred triduum, among numerous other religious topics.</p> <p>Plaintiff Depo. 38:2-40:11; Exh. 6 - Blest are We (OLG 0577-0596); Beuder Decl. ¶¶15-16</p>	<p><u>textbook</u> entitled "Blest Are We" which provided guided teachings.</p> <p>Deposition of Agnes Morrissey-Berru 36:18-37:12, Exhibit 5</p>
<p>20. Plaintiff also led the class in daily prayer, including Hail Mary's, as well as spontaneous prayer.</p> <p>Plaintiff Depo. 32:18-33:17, 198:23-199:3; Beuder Decl. ¶11</p>	UNCONTROVERTED
<p>21. As a teacher at the School, Plaintiff was expected to participate in school liturgical activities.</p> <p>Plaintiff Depo. 42:11-13; Beuder Decl. ¶12</p>	UNCONTROVERTED
<p>22. Plaintiff took her class to weekly Mass and monthly school-wide Masses, prepared her students to read during Mass, planned the liturgy for monthly Masses, and escorted her students to a variety of religious services, including for the Feast of our Lady, the Stations of the Cross and Lenten Services. She was also expected to attend faculty masses and monthly family masses.</p> <p>Plaintiff Depo. 34:9-35:9, 35:25-36:3, 28:25-29:21; Beuder Depo. 107:13-108:10, 108:25-110:16, 182:2-18; Beuder</p>	<p>CONTROVERTED</p> <p>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.</p> <p>[Deposition of Agnes Morrissey-Berru 35:10-35:24]</p>

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Decl. ¶¶11-12	
<p>23. 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.</p> <p>Plaintiff Depo. 163:24-165:3; Beuder Decl. ¶17; Exh. 11 -June 2013 Catholic Identity and Professional Conduct Review Form (OLG 162-163); Exh. 14 - November 14, 2013 Catholic Identity and Professional Conduct Review Form (OLG 195-196)</p>	UNCONTROVERTED
<p>24. Plaintiff was responsible for administering the yearly assessment of children religious education test – a test on Catholic teachings for the 5th grade</p> <p>Plaintiff Depo. 33:18-24; Beuder Decl. ¶10</p>	UNCONTROVERTED
<p>25. All of the courses that Plaintiff taught were expected to be informed by faith-based education. Plaintiff was committed to faith-based education.</p> <p>Plaintiff Depo. 28:4-6; Beuder Decl. ¶8; Exh. 3 - History and Philosophy; Exh. 4 - Mission Statement; Exh. 5 - About Us; Exh. 6 - Blest are We (OLG 0577-0596); Exh. 21 - 2014-2015 Employment</p>	<p>CONTROVERTED</p> <p>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</p>

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4	Agreement (OLG 0001-0006); Exh. 12 -	school. Additionally, she testified that
5	2013-2014 Employment Agreement (OLG	at no time during or after her
6	008-0012)	employment with Our Lady of
7		Guadalupe did she feel God was
8		leading her into the ministry.
9		[Declaration of Agnes Morrissey-
10		Berru ¶ 8]
11	26. Plaintiff was responsible for	CONTROVERTED
12	integrating Catholic teachings and values	Morrissey-Berru testified that at no
13	into all of her classes. Plaintiff tried to	time during her employment with Our
14	integrate religious attitudes and values	Lady of Guadalupe did she believe
15	into all of her curricular areas, and to	she was "called" or that she was
16	instruct her students in a manner	accepting a formal call to religious
17	consistent with the teachings of the	service by working at the school.
18	Church.	Additionally, she testified that at no
19	Plaintiff Depo. 26:8-24, 28:1-3, 32:18-25,	time during or after her employment
20	40:18-42:10, 163:24-165:3, 199:5-16;	with Our Lady of Guadalupe did she
21	Beuder Decl. ¶¶ 8, 17; Exh. 21 - 2014-	feel God was leading her into the
22	2015 Employment Agreement (OLG	ministry.
23	0001-0006); Exh. 12 -2013-2014	[Declaration of Agnes Morrissey-
24	Employment Agreement (OLG 008-0012)	Berru ¶ 8]
25	27. Plaintiff directed and produced a	UNCONTROVERTED
26	performance by the students of the Passion	
27	of the Christ as part of the School's Easter	
28	celebrations.	
	Beuder Decl. ¶13; Beuder Depo. 108:25-	
	110:16, 182:2-18	
	28. Plaintiff took her students to Our Lady	UNCONTROVERTED
	of Angels Cathedral in downtown Los	

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4	Angeles ever year for a tour of the	
5	cathedral so they could experience serving	
6	at the cathedral altar.	
7	Plaintiff Depo. 198:4-22; Beuder Decl.	
8	¶13	
9	29. April Beuder was hired as the	UNCONTROVERTED
10	Principal of the school in March of 2012,	
11	and started working there in July 1, 2012,	
12	at age 51.	
13	Beuder Decl. ¶2, Beuder Depo. 8:21-22,	
14	50:9-17	
15	30. When Mrs. Beuder was hired, the	UNCONTROVERTED
16	School was on the verge of closing and	
17	needed drastic changes to turn around	
18	declining enrollment. In 2012, there was	
19	just one graduate in the eighth grade class.	
20	The parish was having to heavily	
21	subsidize the school to keep the doors	
22	open.	
23	Beuder Decl. ¶18; Beuder Depo. 58:15-	
24	61:25, 68:13-71:13, 72:14-73:23; Exh. 9 –	
25	Report of Findings	
26	31. In 2012, Mrs. Beuder was tasked with	UNCONTROVERTED
27	addressing accreditation goals, including	
28	with regard to improving the school's	
	reading program.	
	Beuder Decl. ¶19; Beuder Depo. 58:15-	
	61:25, 68:13-71:13, 72:14-73:23; Exh. 9 –	
	Report of Findings	

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<p>32. Plaintiff understood that Mrs. Beuder made improvement of the school's Reading and Writing Program a top priority and acknowledged that it was something that really needed improvement at the school.</p> <p>Plaintiff Depo. 68:2-10; Beuder Decl. ¶20; Beuder Depo. 58:15-61:25, 68:13-71:13, 72:14-73:23; Exh. 9 – Report of Findings</p>	UNCONTROVERTED
<p>33. Plaintiff was aware that another goal of Mrs. Beuder's was to make the School a more inclusive community, including for students with special needs, and to implement a healthy foods plan.</p> <p>Plaintiff Depo. 68:11-69:24; Beuder Decl. ¶20; Beuder Depo. 58:15-61:25, 68:13-71:13, 72:14-73:23; Exh. 9 – Report of Findings</p>	UNCONTROVERTED
<p>34. Mrs. Beuder asked the 5th-8th grade teachers to formally apply for their positions for the 2012-2013 school year, because the declining enrollment in the upper grades was a serious concern.</p> <p>Beuder Decl. ¶21; Plaintiff Depo. 53:14-19; Beuder Depo. 155:21-157:4, 159:18-161:19, 166:2-167:3</p>	UNCONTROVERTED
<p>35. Mrs. Beuder formed a hiring committee which interviewed Plaintiff. Plaintiff did not score well, but Mrs. Beuder still made the decision to hire Plaintiff.</p>	<p>CONTROVERTED</p> <p>The board as a whole made the decision to rehire Morrissey-Berru. [Deposition of Agnes Morrissey-</p>

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<p>Beuder Decl. ¶21; Plaintiff Depo. 54:17-55:1; Beuder Depo. 155:21-157:4, 159:18-161:19, 162:23-164:2, 175:6-23, 93:18-21, 94:23-95:2</p>	<p>Berru 54:17-55:4]</p> <p>Specifically:</p> <p>Q And are you aware of who made the hiring decision?</p> <p><u>A The board.</u></p> <p>[Deposition of Agnes Morrissey-Berru 55:2-55:4]</p>
<p>36. Plaintiff was 61 years old when her contract was renewed for the 2012-2013 school year.</p> <p>Beuder Decl. ¶21; Plaintiff Depo. 54:17-55:1</p>	UNCONTROVERTED
<p>37. Mrs. Beuder immediately adopted a comprehensive reading and writing curriculum and approach for the school, called Readers and Writer's Workshop.</p> <p>Beuder Decl. ¶22; Exh. 9 – Report of Findings; Plaintiff Depo. 68:2-10; Beuder Depo. 75:4-76:5</p>	UNCONTROVERTED
<p>38. The Workshop emphasized the use of short "mini-lessons" and "differentiated" instruction among students at different levels with different needs.</p> <p>Beuder Decl. ¶22; Declaration of Dr. Sara Kersey ("Kersey Decl.") ¶¶7,11; Plaintiff Depo. 98:15-17, 127:1-3; 75:13-19; Beuder Depo. 75:4-76:5</p>	UNCONTROVERTED

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39. Conferring and mini-lessons were	UNCONTROVERTED	
essential aspects of the Reader's and		
Writer's workshop.		
Beuder Decl. ¶¶22; Kersey Decl. ¶¶7, 11;	UNCONTROVERTED	
Plaintiff Depo. 98:15-17, 127:1-3; Exh. 15		
- January 15, 2014 Dr. Kersey Writing		
Workshop Feedback Template (OLG		
430); Exh. 16 - Email re: Writing Wall	UNCONTROVERTED	
(Morrissey-Berru 94); Exh. 17 - Dear		
Diary (Morrissey-Berru 91)		
40. Mrs. Beuder hired an outside	UNCONTROVERTED	
consultant, Dr. Sarah Kerseys, as a		
resource for the teachers to help them		
implement the program. Dr. Kersey taught		
classes for the teachers about the	UNCONTROVERTED	
curriculum, conducted classroom visits		
and evaluations based on those visits, and		
met with the teachers to provide		
observations and give suggestions for	UNCONTROVERTED	
improvement. Dr. Kersey observed and		
coached all of the teachers, including		
Plaintiff, in the classroom.		
Beuder Decl. ¶23; Kersey Decl. ¶¶2-4;	UNCONTROVERTED	
Plaintiff Depo. 78:25-81:19, 123:11-19;		
Beuder Depo. 77:15-22		
41. By the end of the 2012-2013 school	CONTROVERTED	Morrissey-Berru testified that the
year, Mrs. Beuder felt that Plaintiff had		
not yet fully implemented the Reader's and		
Writer's Workshop.		
Beuder Decl. ¶24; Kersey Decl. ¶¶4-5;	CONTROVERTED	Reader's and Writer's Workshop
Plaintiff Depo. 107:3-115:2; Beuder Depo.		
130:25-131:11, 132:16-133:4, 134:23-		

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<p>135:22; 236:17-237:12; Exh. 10 -February 12, 2013 Email from Beuder to Plaintiff "I want to touch base with you regarding Reader's Workshop to see if I can help you in any way" (OLG 708); Exh. 11 - June 2013 Catholic Identity and Professional Conduct Review Form (OLG 162-163); Exh. 12 - 2013-2014 Employment Agreement (OLG 008-0012)</p>	<p>[Deposition of Agnes Morrissey-Berru 108:14-108:24]</p> <p>In addition, Morrissey-Berru testified that two other teachers were struggling with the writing program and were much younger than she was.</p> <p>Specifically:</p> <p>"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</p>

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	<p>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."</p> <p>Deposition of Agnes Morrissey-Berru 171:21-172:5, Exhibit 16]</p>
<p>42. Plaintiff's June 2013 Evaluation by Mrs. Beuder provided that Plaintiff needed to continue to implement Reader's and Writer's Workshop, specifically integrating conferring and spending more time on text. Mrs. Beuder reviewed this evaluation with Plaintiff and both signed it.</p> <p>Beuder Decl. ¶¶24; Beuder Depo. 130:25-131:11, 132:16-133:4, 134:23-135:22; Kersey Decl. ¶¶4-5; Plaintiff Depo. 107:3-115:2; Exh. 11 - June 2013 Catholic Identity and Professional Conduct Review Form (OLG 162-163)</p>	<p>CONTROVERTED</p> <p>Ms. Beuder indicated that Morrissey-Berru was <u>meeting expectations</u> with her Professional Conduct section of the Evaluation.</p> <p>Specifically, Ms. Beuder marked that Morrissey-Berru "meets expectations."</p> <p>Deposition of Agnus Morrissey-Berru 108:25-109:12, Exhibit 11. (June 2013 Catholic Identity and Professional Conduct Review Form (OLG 162-163))</p> <p>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</p>

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4		technology” and stated that “Ms.
5		Morrissey-Berru demonstrated calm
6		under pressure when she had to
7		switch gears due to technical
8		difficulties!”
9		Exhibit 5 - Defendant’s Document
10		Production [OLG 0146-0148]
11	43. When Mrs. Beuder and Plaintiff met	CONTROVERTED
12	to discuss the renewal of Plaintiff's	
13	contract for the 2013-2014 school year,	Morrissey-Berru testified that the
14	Mrs. Beuder added an additional	Reader’s and Writer’s Workshop
15	stipulation to Plaintiff's 2013-2014	was a three year program and
16	contract that stated "fully implement	therefore did not have to be
17	readers/writers workshop."	immediately implemented.
18	Beuder Decl. ¶25; Beuder Depo. 130:25-	[Deposition of Agnes Morrissey-
19	131:11, 132:16-133:4, 134:23-135:22,	Berru 108:14-108:24; 111:12-
20	103:13-104:2; Kersey Decl. ¶¶4-5;	111:18; 112:21-113:1, Exhibit 12]
21	Plaintiff Depo. 107:3-115:2; Exh. 12 -	In addition, Morrissey-Berru
22	2013-2014 Employment Agreement (OLG	testified that two other teachers
23	008-0012)	were struggling with the writing
24		program and were much younger
25		than she was.
26		Specifically:
27		“The 3rd grade reading/writing
28		teacher, Mrs. Erika Melendez (30-
		ish) and the 4 th 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

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	<p>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."</p> <p>Deposition of Agnes Morrissey-Berru 171:21-172:5, Exhibit 16]</p>
<p>44. Mrs. Beuder told Plaintiff that it was an expectation for the next school year that she fully implement Reader's and Writer's Workshop.</p> <p>Plaintiff Depo. 107:3-115:2; Beuder Depo. 130:25-131:11, 132:16-133:4, 134:23-</p>	<p>CONTROVERTED</p> <p>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</p>

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<p>135:22; Exh. 12 -2013-2014 Employment Agreement (OLG 008-0012); Exh. 11 - June 2013 Catholic Identity and Professional Conduct Review Form (OLG 162-163); Beuder Decl. ¶25</p>	<p>Writer's Workshop was a three year program and this was only the second year.</p> <p>[Deposition of Agnes Morrissey-Berru 108:14-108:24; 111:12-111:18; 112:21-115:2, Exhibit 12]</p>
<p>45. During the 2013-2014 school year, Dr. Kersey provided extra support for Plaintiff with the implementation of the Workshop. Plaintiff understood that Mrs. Beuder was trying to provide her with help in implementing the Workshop.</p> <p>Beuder Decl. ¶26; Kersey Decl. ¶¶3-5, 9; Plaintiff Depo. 78:25-82:18, 83:4-6, 117:7-14, 118:24-119:25, 123:11-25, 86:24-87:5; Beuder Depo. 134:23-135:22; Exh. 15 -January 15, 2014 Dr. Kersey Writing Workshop Feedback Template (OLG 430); Exh. 10 - February 12, 2013 Email from Beuder to Plaintiff "I want to touch base with you regarding Reader's Workshop to see if I can help you in any way" (OLG 708); Exh. 13 - October 17, 2013 Emails between Beuder and Plaintiff re. "full implementation of RW is the school-wide expectation at this point." (Morrissey-Berru 90)</p>	<p>UNCONTROVERTED</p>
<p>46. 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.</p>	<p>CONTROVERTED</p> <p>Morrissey-Berru testified that two other teachers were struggling with the writing program and were much younger than she was.</p>

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<p>Beuder Decl. ¶26; Kersey Decl. ¶¶2-14; Plaintiff Depo. 83:7-90:18, 92:9-95:6, 97:18-98:17, 102:3-15, 105:22-131:8; Beuder Depo. 138:2-140:9, 240:15-241:14; Exh. 13 - October 17, 2013 Emails between Beuder and Plaintiff re. "full implementation of RW is the school-wide expectation at this point." (Morrissey-Berru 90); Exh. 14 - November 14, 2013 Catholic Identity and Professional Conduct Review Form (OLG 195-196); Exh. 15 - January 15, 2014 Dr. Kersey Writing Workshop Feedback Template (OLG 430); Exh. 16 - Email re: Writing Wall (Morrissey-Berru 94); Exh. 17 -Dear Diary (Morrissey-Berru 91); Exh. 18 - Peer Feedback re. Plaintiff's Student Writing Lesson (OLG 210-213); Exh. 19 - March 5, 2014 Classroom Observation Report (OLG 0166-0169)</p>	<p>Specifically:</p> <p>"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."</p>

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UNCONTROVERTED MATERIAL FACTS AND THE SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND EVIDENCE
	<p>Deposition of Agnes Morrissey-Berru 171:21-172:5, Exhibit 16]</p> <p>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!"</p> <p>Exhibit 5 - Defendant's Document Production [OLG 0146-0148]</p>
<p>47. Dr. Kersey did not see evidence that Plaintiff was properly conferring with the students or that the students were writing in the classroom.</p> <p>Beuder Decl. ¶¶26; Kersey Decl. ¶¶6-14; Plaintiff Depo. 102:3-15, 106:25-107:2; 83:7-14; 86:5-10; Exh. 15 - January 15, 2014 Dr. Kersey Writing Workshop Feedback Template (OLG 430); Exh. 16 - Email re: Writing Wall (Morrissey-Berru 94); Exh. 17 - Dear Diary (Morrissey-Berru 91); Mitchell Decl. ¶¶10-11</p>	<p>CONTROVERTED</p> <p>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</p>

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2	FACTS AND THE SUPPORTING	RESPONSE AND EVIDENCE
3		
4		switch gears due to technical
5		difficulties!"
6		Exhibit 5 - Defendant's Document
7		Production [OLG 0146-0148]
8	48. Dr. Kersey was critical of Plaintiff's	CONTROVERTED
9	teaching. Dr. Kersey gave Plaintiff	In March 2013, Principal April
10	suggestions for improvement.	Beuder performed a classroom
11	Plaintiff Depo. 83:7-90:18, 97:18-98:17,	observation of Morrissey-Berru's
12	105:14-107:2; Beuder Depo. 138:2-140:9;	teaching. On the review, Ms. Beuder
13	Kersey Depo. ¶¶2-14; Beuder Depo. ¶26;	marked either "Innovating" or
14	Exh. 15 - January 15, 2014 Dr. Kersey	"Implementing" to describe various
15	Writing Workshop Feedback Template	aspects of Morrissey-Berru's
16	(OLG 430); Exh. 16 - Email re: Writing	performance. Additionally, Ms.
17	Wall (Morrissey-Berru 94); Exh. 17 -	Beuder noted that Morrissey-Berru
18	Dear Diary (Morrissey-Berru 91)	has an "[e]xcellent use of
19		technology" and stated that "Ms.
20		Morrissey-Berru demonstrated calm
21		under pressure when she had to
22		switch gears due to technical
23		difficulties!"
24		Exhibit 5 - Defendant's Document
25		Production [OLG 0146-0148]
26	49. Plaintiff admits that she put up student	CONTROVERTED
27	work that she had not graded yet up in the	Morrissey-Berru testified that she had
28	classroom for Dr. Kersey's benefit and	items on the wall everyday and it
	then took it down after Dr. Kersey left the	wasn't because of Dr. Kersey's
	classroom.	scheduled observation.
	Plaintiff Depo. 92:14-95:6; Exh. 16 -	[Deposition of Agnes Morrissey-
	Email re: Writing Wall (Morrissey-Berru	Berru 92:14-94:20]
	94); Kersey Decl. ¶10; Exh. 15 -January	

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4	15, 2014 Dr. Kersey Writing Workshop	Specifically:
5	Feedback Template (OLG 430)	Q Okay. I'm going to -- still on this
6		document, is that something that you
7		did with regularity, put things up to
8		show Dr. Kersey and then remove
9		them afterwards?
10		A Well, no. I had them up every day
11		on the wall.
12		[Deposition of Agnes Morrissey-
13		Berru 94:15-94:20]
14	50. When one of the School teachers	CONTROVERTED
15	visited Plaintiff's class for a Peer Visit,	Morrissey-Berru testified that Mr.
16	Plaintiff re-taught the same lesson to her	Moore was visiting the class and in
17	students that she had taught them the day	the process of getting his credential.
18	before. Mrs. Beuder spoke with Plaintiff	He requested Morrissey-Berru to
19	about this.	observe a class on social studies.
20	Plaintiff Depo. 118:24-121:6; Beuder	Morrissey-Berru said she could
21	Decl. ¶29; Kersey Decl. ¶10	reteach the lesson she did yesterday
22		which took a total time of 15
23		minutes. <u>Morrissey-Berru</u>
24		<u>testified she did this so that Mr.</u>
25		<u>Moore could meet his school</u>
26		<u>requirement.</u>
27		[Deposition of Agnes Morrissey-
28		Berru 1120:4-121:3]
	51. Dr. Kersey relayed her concerns with	CONTROVERTED
	Plaintiff's failure to implement Reader's	Morrissey-Berru has multiple
	and Writer's Workshop to Mrs. Beuder on	positive observations that reflect her
	many occasions.	teaching was at the level of

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UNCONTROVERTED MATERIAL FACTS AND THE SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND EVIDENCE
<p>1 Plaintiff Depo. 84:14-86:4; Beuder Decl.</p> <p>2 ¶26; Kersey Decl. ¶¶5, 12-13, Beuder</p> <p>3 Depo. 125:21-126:9, 138:2-140:9, 202:25-</p> <p>4 203:13; Exh. 15 -January 15, 2014 Dr.</p> <p>5 Kersey Writing Workshop Feedback</p> <p>6 Template (OLG 430)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p>	<p>"innovating" or "implementing"</p> <p>from 2012-2014. These</p> <p>observations were done by Ms.</p> <p>Beuder.</p> <p>[Deposition of April Beuder 189:11-</p> <p>193:20, Exhibit 9] Exhibit 5 -</p> <p>Defendant's Document Production</p> <p>[OLG 0146-0148] [OLG 0170-0172]</p> <p>In a Professional Conduct Review</p> <p>Form dated November 14, 2013,</p> <p>Morrissey-Berru is rated as Meets</p> <p>Expectations.</p> <p>[Defendant's Exhibit 14 - November</p> <p>14, 2013 Catholic Identity and</p> <p>Professional Conduct Review Form</p> <p>(OLG 195-196)]</p>
<p>17 52. Mrs. Beuder spoke with Plaintiff</p> <p>18 about concerns regarding her</p> <p>19 implementation of Readers & Writers</p> <p>20 Workshop and need to confer with her</p> <p>21 students on multiple occasions.</p> <p>22 Plaintiff Depo. 107:3-9, 107:25 – 108:17,</p> <p>23 Beuder Decl. ¶¶24-32; Beuder Depo.</p> <p>24 122:4-14, 130:25-131:11; 236:5-237:12;</p> <p>25 Kersey Decl. ¶¶12-13; Mitchell Decl. ¶¶9,</p> <p>26 13</p>	<p>CONTROVERTED</p> <p>Morrissey-Berru has multiple</p> <p>positive observations that reflect her</p> <p>teaching was at the level of</p> <p>"innovating" or "implementing"</p> <p>from 2012-2014. These</p> <p>observations were done by Ms.</p> <p>Beuder.</p> <p>[Deposition of April Beuder 189:11-</p> <p>193:20, Exhibit 9] Exhibit 5 -</p> <p>Defendant's Document Production</p> <p>[OLG 0146-0148] [OLG 0170-0172]</p>
<p>27 53. Plaintiff understood that Dr. Kersey</p> <p>28 and Mrs. Beuder were not pleased with</p>	<p>CONTROVERTED</p>

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UNCONTROVERTED MATERIAL FACTS AND THE SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND EVIDENCE
<p>her performance.</p> <p>Plaintiff Depo. 83:7-90:18, 92:9-95:6, 97:18-98:1, 102:3-15, 105:22-131:8; Beuder Depo. 122:4-14, 130:25-131:11; 236:5-237:12; Kersey Decl. ¶¶2-14; Beuder Decl. ¶¶24-32; Exh. 13 - October 17, 2013 Emails between Beuder and Plaintiff re. "full implementation of RW is the school-wide expectation at this point." (Morrissey-Berru 90); Exh. 14 - November 14, 2013 Catholic Identity and Professional Conduct Review Form (OLG 195-196); Exh. 15 - January 15, 2014 Dr. Kersey Writing Workshop Feedback Template (OLG 430); Exh. 16 - Email re: Writing Wall (Morrissey-Berru 94); Exh. 17 - Dear Diary (Morrissey-Berru 91); Exh. 18 - Peer Feedback re. Plaintiff's Student Writing Lesson (OLG 210-213); Exh. 19 - March 5, 2014 Classroom Observation Report (OLG 0166-0169); Mitchell Decl. ¶¶9, 13</p>	<p>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.</p> <p>[Deposition of April Beuder 189:11-193:20, Exhibit 9] Exhibit 5 - Defendant's Document Production [OLG 0146-0148] [OLG 0170-0172]</p>
<p>54. As of October 17, 2013, full implementation of readers workshop was the school wide expectation.</p> <p>Plaintiff Depo. 116:9-22; Beuder Decl. ¶¶28; Beuder Depo. 230:12-18; Exh. 13 - October 17, 2013 Emails between Beuder and Plaintiff re. "full implementation of RW is the school-wide expectation at this point." (Morrissey-Berru 90)</p>	<p>CONTROVERTED</p> <p>In a Professional Conduct Review Form dated November 14, 2013, Ms. Beuder states that "Full implementation can be expected by January 2014."</p> <p>Defendant's Exhibit 14 - November 14, 2013 Catholic Identity and Professional Conduct Review Form (OLG 195-196)</p>

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UNCONTROVERTED MATERIAL FACTS AND THE SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND EVIDENCE
<p>55. In Plaintiff's November 14, 2013 Professional Conduct Review Form, which Mrs. Beuder reviewed with Plaintiff, Mrs. Beuder stated that Plaintiff needed improvement in Readers Workshop, conferring, and starting writing.</p> <p>Plaintiff Depo. 117:15-118:23; Beuder Decl. ¶28; Exh. 14 - November 14, 2013 Catholic Identity and Professional Conduct Review Form (OLG 195-196); Kersey Decl. ¶¶2-14</p>	<p>CONTROVERTED</p> <p>In that same Professional Conduct Review Form, Ms. Beuder rates Morrissey-Berru as Meets Expectations in Professional Conduct. Additionally, the word choice on the Professional Conduct Review Form does not indicate that she needed improvement. Instead, the wording is very encouraging - "continue to implement Readers Workshop - specifically the conferring."</p> <p>Defendant's Exhibit 14 - November 14, 2013 Catholic Identity and Professional Conduct Review Form (OLG 195-196)</p> <p>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.</p> <p>[Deposition of April Beuder 189:11-193:20, Exhibit 9] Exhibit 5 - Defendant's Document Production [OLG 0146-0148] [OLG 0170-0172]</p>
<p>56. In February 2014, all of the teachers were asked to bring a set of writing samples from one of their lessons to be used for a Peer Lesson Study. The</p>	<p>UNCONTROVERTED</p>

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3	EVIDENCE	
4	teachers were informed about this exercise	
5	at least a month before it occurred.	
6	Plaintiff Depo. 121:7-123:10, Beuder	
7	Decl. ¶30; Exh. 18 - Peer Feedback re.	
8	Plaintiff's Student Writing Lesson (OLG	
9	210-213)	
10	57. For the Peer Lesson Study, Plaintiff	CONTROVERTED
11	brought in a poor example of student	
12	work. The teachers who reviewed the	In that same set of feedback forms,
13	work said it was not developed. Plaintiff	teachers also stated "lots of good
14	acknowledges that this feedback was	ideas" and "evidence of student
15	accurate.	choice (and engagement)."
16	Plaintiff Depo. 121:7-123:10, Beuder	
17	Decl. ¶30; Exh. 18 - Peer Feedback re.	Defendant's Exh. 18 - Peer Feedback
18	Plaintiff's Student Writing Lesson (OLG	re. Plaintiff's Student Writing Lesson
19	210-213)	(OLG 211)
20	58. In March of 2014, Mrs. Beuder came	UNCONTROVERTED
21	to Plaintiff's classroom for a formal	
22	observation and evaluation of a Workshop	
23	lesson, which had been scheduled in	
24	advance.	
25	Plaintiff Depo. 124:1-129:8, 130:15-	
26	131:8; Beuder Decl. ¶31; Exh. 19 - March	
27	5, 2014 Classroom Observation Report	
28	(OLG 0166-0169); Beuder Depo. 192:23-	
	193:4	
	59. Mrs. Beuder did not complete the	UNCONTROVERTED
	evaluation because she did not feel that	
	Plaintiff had conducted a Workshop	
	lesson.	

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3	EVIDENCE	
4	Plaintiff Depo. 124:1-129:8, 130:15-	
5	131:8; Beuder Decl. ¶31; Exh. 19 - March	
6	5, 2014 Classroom Observation Report	
7	(OLG 0166-0169); Kersey Decl. ¶7;	
8	Morrissey Decl. ¶¶10-11	
9		
10	60. Mrs. Beuder also instituted a healthy	CONTROVERTED
11	foods program in the school, but Plaintiff	Morrissey-Berru has multiple
12	herself would bring in unhealthy foods for	positive reviews without any
13	the students. Parents and teachers would	mention of these unhealthy foods.
14	complain. Plaintiff continued to maintain	
15	an "extra credit" policy even though Mrs.	[Deposition of April Beuder 189:11-
16	Beauder had abolished "extra credit."	193:20, Exhibit 9] Exhibit 5 -
17		Defendant's Document Production
18	Plaintiff Depo. 141:19-142:24; Beuder	[OLG 0146-0148] [OLG 0170-0172]
19	Decl. ¶33, Beuder Depo. 204:15-205:19,	
20	242:10-17	
21		
22	61. Mrs. Beuder received parental	CONTROVERTED
23	complaints that Plaintiff's teaching was	Morrissey-Berru has multiple
24	not rigorous enough. A parent complained	positive reviews without any
25	that Plaintiff had barred her from ever	mention of these parental
26	communicating with her by email.	complaints.
27		
28	Beuder Decl. ¶34, Plaintiff Depo. 140:12-	[Deposition of April Beuder 189:11-
	19, 143:3-7; Exh. 23 -Stick Figure Family	193:20, Exhibit 9] Exhibit 5 -
	Drawing; Beuder Depo. 244:10-20, 268:6-	Defendant's Document Production
	21 Exh. 22 - Email from Plaintiff to	[OLG 0146-0148] [OLG 0170-0172]
	Parent "I will no longer accept your	
	emails" (OLG 0743 - 0749);	
	62. Plaintiff worked closely with Dr.	UNCONTROVERTED
	Marianne Mitchell, the school	
	psychologist who provided Plaintiff with	
	concrete adjustments tailored to each	
	student with special needs.	

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<p>1 Plaintiff Depo. 69:1-75:10; Mitchell Decl.</p> <p>2 ¶¶3-4; Beuder Decl. ¶¶35; Exh. 20 - Dr.</p> <p>3 Mitchell Notes re. Plaintiff (OLG 200)</p>	
<p>4 63. Mrs. Beuder received critical feedback</p> <p>5 from Dr. Mitchell on many occasions that</p> <p>6 Plaintiff was not differentiating instruction</p> <p>7 for the students with special needs.</p> <p>8</p> <p>9 Plaintiff Depo. 69:1-75:10; Mitchell Decl.</p> <p>10 ¶¶2-13; Beuder Decl. ¶36; Exh. 20 - Dr.</p> <p>11 Mitchell Notes re. Plaintiff (OLG 200);</p> <p>12 Beuder Depo. 125:21-126:9, 135:14-</p> <p>13 136:16, 138:2-140:9, 202:25-203:10,</p> <p>14 205:20-206:7; 278:10-280:24; Exh. 25 -</p> <p>15 November 6, 2014 Classroom Observation</p> <p>16 Report (OLG 170-172)</p>	
<p>16 64. Mrs. Beuder determined that she could</p> <p>17 not have Plaintiff continue to teach</p> <p>18 Reading and Writing.</p> <p>19 Plaintiff Depo. 83:7-90:18, 92:9-95:6,</p> <p>20 97:18-98:17, 102:3-15, 105:22-131:8;</p> <p>21 Beuder Depo. 240:15-241:14; 252:4-</p> <p>22 253:15; Beuder Decl. ¶37; Kersey Decl.</p> <p>23 ¶¶2-14; Mitchell Decl. ¶¶10-11 Exh. 13 -</p> <p>24 October 17, 2013 Emails between Beuder</p> <p>25 and Plaintiff re. "full implementation of</p> <p>26 RW is the school-wide expectation at this</p> <p>27 point." (Morrissey-Berru 90); Exh. 14 -</p> <p>28 November 14, 2013 Catholic Identity and</p> <p>Professional Conduct Review Form (OLG</p> <p>195-196); Exh. 15 - January 15, 2014 Dr.</p> <p>Kersey Writing Workshop Feedback</p> <p>Template (OLG 430); Exh. 16 - Email re:</p> <p>Writing Wall (Morrissey-Berru 94); Exh.</p>	<p>CONTROVERTED</p> <p>Ms. Beuder testified that she did not know whether Morrissey-Berru's teaching caused student grades to drop year-to-year.</p> <p>[Deposition of April Beuder, Volume 2, 240:15-243:2]</p> <p>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."</p> <p>[Deposition of April Beuder 189:11-193:20, Exhibit 9] Exhibit 5 - Defendant's Document Production</p>
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<p>PLAINTIFF'S SEPARATE STATEMENT IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT</p>	

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3		
4	17 - Dear Diary (Morrissey-Berru 91);	[OLG 0146-0148] [OLG 0170-0172]
5	Exh. 18 - Peer Feedback re. Plaintiff's	
6	Student Writing Lesson (OLG 210-213);	
7	Exh. 19 - March 5, 2014 Classroom	
8	Observation Report (OLG 0166-0169)	
9		
10	65. The Workshop was a progressive	CONTROVERTED
11	system that became more challenging as	Ms. Beuder testified that she did not
12	the students advanced in grade level, and	know whether Morrissey-Berru's
13	Mrs. Beuder did not feel that she could	teaching caused student grades to
14	continue to send Plaintiff's students to the	drop year-to-year.
15	next grade, unprepared for the next steps	[Deposition of April Beuder,
16	in the Workshop.	Volume 2, 240:15-243:2]
17	Beuder Decl. ¶37; Kersey Decl. ¶14;	Morrissey-Berru has multiple
18	Beuder Depo. 144:3-145:2; 240:15-241:14	positive reviews without any
19		indication that Ms. Beuder felt that
20		"she could not continue to send
21		Plaintiff's students to the next grade,
22		unprepared for the next steps in the
23		Workshop."
24		[Deposition of April Beuder 189:11-
25		193:20, Exhibit 9] Exhibit 5 -
26		Defendant's Document Production
27		[OLG 0146-0148] [OLG 0170-0172]
28		
	66. In mid-May 2014, Mrs. Beuder told	CONTROVERTED
	Plaintiff that she was not implementing	Ms. Beuder also testified that she
	Reader's and Writer's Workshop correctly.	did not know whether Morrissey-
	Beuder Decl. ¶38; Plaintiff Depo. 131:14-	Berru's teaching caused student
	133:9; Beuder Depo. 252:4-16; Kersey	grades to drop year-to-year.
	Decl. ¶¶2-14	[Deposition of April Beuder,

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	<p>Volume 2, 240:15-243:2]</p> <p>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."</p> <p>[Deposition of April Beuder 189:11-193:20, Exhibit 9] Exhibit 5 - Defendant's Document Production [OLG 0146-0148] [OLG 0170-0172]</p>
<p>67. Mrs. Beuder came up with the solution of offering Plaintiff a part-time role for one year that would allow Plaintiff to keep teaching, but avoid involvement with the Workshop.</p> <p>Beuder Decl. ¶38; Plaintiff Depo. 131:14-133:9; 138:6-10 Beuder Depo. 209:11-20; 252:4-257:24, 269:2-22</p>	UNCONTROVERTED
<p>68. Mrs. Beuder shuffled schedules and the budget around and created a new part time position in which Plaintiff would teach 5th grade Religion, and 5th-7th Grade Social Studies.</p> <p>Plaintiff Depo. 138:6-10; Beuder Decl. ¶39, Beuder Depo. 209:11-20, 210:6-14; 252:4-257:24, 269:2-22</p>	UNCONTROVERTED
<p>69. Plaintiff was offered and accepted a part time position in mid-May 2014. Plaintiff signed her employment</p>	UNCONTROVERTED

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3		
4	agreement for the part-time position on	
5	May 19, 2014.	
6	Plaintiff Depo. 20:19-21:17, 131:19-	
7	132:23; Beuder Decl. ¶39; Exh. 21 - 2014-	
8	2015 Employment Agreement (OLG	
9	0001-0006)	
10	70. In July 2014 Mrs. Beuder hired Ms.	CONTROVERTED
11	Andrea Ruma Harrington to teach 5 th	
12	grade Reading and Writing. Ms. Ruma-	Morrissey-Berru testified that
13	Harrington had over 10 years teaching	Andrea Ruma-Harrington told her
14	experience, all of which included reading	that she did not really have
15	and writing teaching experience. She also	experience as a reading and writing
16	had a teaching credential, a master's in	teacher.
17	education, and had served with	
18	Americore.	Specifically:
19	Plaintiff Depo. 138:11-139:17; Beuder	Q Did she have experience as a
20	Decl. ¶40	reading and
21		writing teacher?
22		A She told me not really.
23		Q From what you observed, did she
24		have
25		experience as a reading and writing
26		teacher?
27		A Somewhat.
28		[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;

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3		
4		171:21-172:5, Exhibit 16]
5		[Declaration of Beatriz Botha ¶¶ 3-
6		5] [Deposition of April Beuder,
7		Volume 2, 259:18-259:22]
8	71. Plaintiff felt that Ms. Ruma-	UNCONTROVERTED
9	Harrington was experienced and a "very	
10	good teacher", and admired her teaching	
11	techniques.	
12	Plaintiff Depo. 138:11-139:17; Beuder	
13	Decl. ¶40	
14	72. During the 2014-2015 school year,	CONTROVERTED
15	Mrs. Beuder continued to field parental	
16	complaints about the lack of academic	In November 2014, Principle April
17	rigor in Plaintiff's classroom.	Beuder performed a classroom
18	Beuder Decl. ¶41; Beuder Depo. 244:10-	observation of Morrissey-Berru's
19	20, 268:6-21; Plaintiff Depo. 140:13-20;	teaching. On the review, Ms. Beuder
20	Exh. 23 -Stick Figure Family Drawing	marked either "Innovating" or
21		"Implementing" to describe various
22		aspects of Morrissey-Berru's
23		performance. Additionally, Ms.
24		Beuder noted that Morrissey-Berru
25		has a "[g]reat use of technology" and
26		stated that "Mrs. Morrissey-Berru did
27		an excellent job incorporating
28		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)

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UNCONTROVERTED MATERIAL FACTS AND THE SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND EVIDENCE
<p>73. Plaintiff admits that "many" lessons in social studies involved coloring maps, and her religion class involved drawing pictures of families. Plaintiff did not implement mini-lessons when teaching social studies.</p> <p>Plaintiff Depo. 140:13-20, 140:7-8; Beuder Decl. ¶41; Exh. 23 -Stick Figure Family Drawing</p>	UNCONTROVERTED
<p>74. Dr. Mitchell continued to express frustration to Mrs. Beuder about Plaintiff's failure to implement the concrete adjustments for students with special needs.</p> <p>Beuder Decl. ¶42; Mitchell Decl. ¶¶2-13; Beuder Depo. 278:10-280:24; Exh. 20 - Dr. Mitchell Notes re. Plaintiff (OLG 200); Exh. 25 - November 6, 2014 Classroom Observation Report (OLG 170-172)</p>	UNCONTROVERTED
<p>75. Plaintiff's need to improve in implementing the concrete adjustments for students with special needs (step/maps) was also addressed with Plaintiff by Mrs. Beuder in an Observation Report.</p> <p>Beuder Decl. ¶42; Mitchell Decl. ¶¶2-13; Exh. 25 - November 6, 2014 Classroom Observation Report (OLG 170-172); Exh. 20 - Dr. Mitchell Notes re. Plaintiff (OLG 200)</p>	<p>CONTROVERTED</p> <p>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</p>

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1	UNCONTROVERTED MATERIAL	OPPOSING PARTY'S
2	FACTS AND THE SUPPORTING	RESPONSE AND EVIDENCE
3		
4		knowledgeable regarding the
5		subject."
6		Defendant's Exh. 25 - November 6,
7		2014 Classroom Observation Report
8		(OLG 170-172)
9	76. Mrs. Beuder determined that the	UNCONTROVERTED
10	School could not continue to financially	
11	sustain Plaintiff's extra part time position	
12	for the 2015-2016 school year.	
13	Plaintiff Depo. 138:6-10;	
14	Beuder Decl. ¶43; Beuder Depo. 269:2-	
15	15; 283:1-22; Exh. 24 - Nonrenewal letter	
16	(Morrissey-Berru 269)	
17	77. Mrs. Beuder wanted someone	UNCONTROVERTED
18	teaching social studies who would be	
19	willing and able to incorporate the	
20	Reader's and Writer's Workshop so that	
21	these lessons could be reinforced across	
22	the curriculum as the students learning	
23	needs had changed.	
24	Beuder Decl. ¶43; Beuder Depo. 269:2-	
25	15; Plaintiff Depo. 140:7-8; Kersey Decl.	
26	¶15; Mitchell Decl. ¶¶10-11	
27	78. In May of 2015, Mrs. Beuder advised	UNCONTROVERTED to the extent
28	Plaintiff that she did not have a position	that that is what Ms. Beuder informed
	for Plaintiff for the 2015-2016 school year	Plaintiff as the reason for her
	because her position had been eliminated	termination.
	due to the budget and the changing needs	
	of the students.	
	Beuder Decl. ¶44; Plaintiff Depo. 143:25-	

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1	UNCONTROVERTED MATERIAL	OPPOSING PARTY'S
2	FACTS AND THE SUPPORTING	RESPONSE AND EVIDENCE
3		
4	144:12, 146:1-4; Beuder Depo. 206:20-	
5	207:19, 269:2-15, 272:23-273:1; 283:1-22,	
6	Exh. 24 - Nonrenewal letter (Morrissey-	
7	Berru 269)	
8	79. Plaintiff finished out the 2014-2015	CONTROVERTED to the extent
9	school year which her fixed term contract	that Ms. Beuder told Morrissey-
10	provided for. Plaintiff contract expired by	Berru that her contract would not be
11	its own terms.	renewed.
12	Plaintiff Depo. 146:1-7; Beuder Decl. ¶45;	[Deposition of Agnes Morrissey-
13	Exh. 21-2014-2015 Employment	Berru 64:23-65:9; 146:1-146:9]
14	Agreement (OLG 0001-0006); Exh. 24 -	[Plaintiff's Undisputed Material
15	Nonrenewal letter (Morrissey-Berru 269)	Facts 90-166]
16	80. No teacher has held Plaintiff's part-	UNCONTROVERTED
17	time position since the 2014-2015 school	
18	year. All of Plaintiff's classes were	
19	absorbed by the existing staff.	
20	Plaintiff Depo. 145:20-25; Beuder Decl.	
21	¶44; Exh. 24 -Nonrenewal letter	
22	(Morrissey-Berru 269)	
23	81. Mrs. Beuder invited Plaintiff to lead	CONTROVERTED
24	an after-school program at the School,	Morrissey-Berru passed on the
25	teaching art or photography. Art and	opportunity because:
26	photography were both interests of	1) The position offered was a non-
27	Plaintiff, which Mrs. Beuder was aware	full time position that was
28	of. Plaintiff did not respond to these	California credentialed;
	offers.	2) Morrissey-Berru needed a full-
	Plaintiff Depo. 146:18-148:6; Beuder	time position; and
	Decl. ¶45; Beuder Depo. 275:23—277:25	3) The position would have to be
		created – she would have to start the

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	UNCONTROVERTED MATERIAL FACTS AND THE SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND EVIDENCE
		<p>program</p> <p>Specifically:</p> <p>Q During this meeting or thereafter, did Mrs. Beuder advise you or invite you to start an after-school program?</p> <p>A Yes.</p> <p>Q What was that?</p> <p>A It was not a California credentialed position, it was teaching art after school.</p> <p>Q How about photography?</p> <p>A Or photography. Something that I would have to make up --</p> <p>Q Mrs. --</p> <p>A -- or design.</p> <p>Q Mrs. Morrissey-Berru, did you have an interest in art?</p> <p>A Yes.</p> <p>Q Was Mrs. Beuder aware of that interest?</p> <p>A Yes.</p> <p>Q How about photography, did you have an interest in photography?</p> <p>A Yes.</p> <p>Q And is that something that Mrs. Beuder was aware of also?</p> <p>A Yes.</p> <p>Q And did she offer you this after-school program option during the same conversation when you were advised your contract was not renewed?</p> <p>A No.</p> <p>Q When did she bring it up?</p> <p>A Maybe a week later.</p>

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**UNCONTROVERTED MATERIAL
 FACTS AND THE SUPPORTING
 EVIDENCE**

**OPPOSING PARTY'S
 RESPONSE AND EVIDENCE**

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]

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

UNCONTROVERTED

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

PLAINTIFF'S SEPARATE STATEMENT OF ADDITIONAL MATERIAL FACTS

New Undisputed Material Fact:

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]

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

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

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<u>New Undisputed Material Fact:</u>	<u>Supporting Evidence</u>
California teaching credential from Chapman University.	
92. Before Morrissey-Berru taught at Our Lady of Guadalupe, she worked at the Los Angeles Times for 20 years as a copywriter and advertising salesperson.	[Deposition of Morrissey-Berru 18:18-19:2] [Declaration of Morrissey-Berru ¶ 9]
93. In 1998, Morrissey-Berru began working at Our Lady of Guadalupe as a substitute teacher.	[Deposition of Agnes Morrissey-Berru 19:4-19:10]
94. When she began working for the school, Morrissey-Berru was forty-seven years old.	[Deposition of Anges Morrissey-Berru 12:19-12:20; 19:4-19:10]
95. In the fall of 1999, Morrissey-Berru was offered a full-time 6th grade position.	[Deposition of Agnes Morrissey-Berru 19:11-23]
96. This position was self-contained – Morrissey-Berru taught reading, writing grammar, vocabulary, science, social studies, and religion.	[Deposition of Agnes Morrissey-Berru 19:16-19:21]
97. This position lasted for 10 years until Morrissey-Berru moved to 5th grade.	[Deposition of Agnes Morrissey-Berru 19:24-20:6]
98. The 5th grade position was also self-contained.	[Deposition of Agnes Morrissey-Berru 19:24-20:6]
99. Upon being hired, Morrissey-Berru testified that she did not feel her	[Declaration of Agnes Morrissey-Berru ¶ 8.]

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<u>New Undisputed Material Fact:</u>	<u>Supporting Evidence</u>
position at Our Lady of Guadalupe was “called” or believe that she was accepting a formal call to ministry.	
100. As part of her employment, Morrissey-Berru was required to sign a Teacher Employment Agreement that defined her title as a “Teacher” throughout the contract.	[Deposition of April Beuder 91:19-92:22, Exhibit 3]
101. Morrissey-Berru would sign a similar Teacher Employment Agreements for each year she taught at Our Lady of Guadalupe.	[Deposition of April Beuder 91:19-92:22; 94:1-94:7; 101:4-101:18; 105:14-106:7, Exhibits 3-6]
102. On July 1, 2012, Our Lady of Guadalupe hired April Beuder to be the school’s new principal.	[Deposition of April Beuder 52:10-52:15]
103. Ms. Beuder was the only individual who completed Elementary School Classroom Observation Reports regarding the teachers at Our Lady of Guadalupe.	[Deposition of April Beuder 193:9-193:20]
104. To complete these forms, Ms. Beuder would observe the teacher as she teaches the students.	[Deposition of April Beuder 189:10-193:8, Exhibit 9]
105. In November 2012, Principal April Beuder performed a classroom	[Deposition of April Beuder 189:10-193:20, Exhibit 9]

<u>New Undisputed Material Fact:</u>	<u>Supporting Evidence</u>
observation of Morrissey-Berru's teaching.	
106. On the review, Ms. Beuder marked either "Innovating" or "Implementing" to describe various categories of Morrissey-Berru's performance.	[Deposition of April Beuder 189:10-190:1, Exhibit 9]
107. "Innovating" is defined as "Adjusts and creates new strategies for unique student needs and situations during the lesson."	Exhibit 5 - Defendant's Document Production [OLG 0170]
108. "Implementing" is defined as "Uses strategies at appropriate time, in the appropriate matter."	Exhibit 5 - Defendant's Document Production [OLG 0170]
109. Additionally, Ms. Beuder wrote positive comments about Morrissey-Berru's teaching, including "Ms. Morrissey has an excellent rapport with her students. This was an interactive lesson that engaged multiple mobilities, visual auditory, kinesthetic. Highly effective use of technology."	[Deposition of April Beuder 189:10-190:1, Exhibit 9 – OLG 0156]
110. Ms. Beuder would conduct similar reviews in March 2013 and November 2014 and mark either "Innovating" or "Implementing" to describe various	Exhibit 5 - Defendant's Document Production [OLG 0170-0172] [OLG 0146-0148]

<u>New Undisputed Material Fact:</u>	<u>Supporting Evidence</u>
aspects of Morrissey-Berru's performance.	
111. Before the start of the 2014-2015 school year, Morrissey-Berru lost her full-time position as a fifth grade teacher and was moved to part-time.	[Deposition of Agnes Morrissey-Berru 20:15-20:18]
112. In May 2014, Morrissey-Berru met with Ms. Beuder regarding her status at the school.	[Deposition of Agnes Morrissey-Berru 131:14-131:25]
113. During the meeting Ms. Beuder asked if Morrissey-Berru wanted to retire.	[Deposition of Agnes Morrissey-Berru 131:14-131:25]
114. Morrissey-Berru responded that she did not want to retire.	[Deposition of Agnes Morrissey-Berru 131:14-131:25; 134:20-134:25]
115. During that same conversation, Ms. Beuder and Morrissey-Berru discussed the reading and writing workshop.	[Deposition of Agnes Morrissey-Berru 132:1-136:8]
116. Ms. Beuder stated that Morrissey-Berru did not do the reading and writing 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]
117. Morrissey-Berru believed she was being replaced with Mr. Hazen who	[Deposition of Agnes Morrissey-Berru 60:21-60:25; 133:10-133:18;

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<u>New Undisputed Material Fact:</u>	<u>Supporting Evidence</u>
was in his 30's.	171:21-172:5, Exhibit 16] [Declaration of Beatriz Botha ¶¶ 3-5] [Deposition of April Beuder, Volume 2, 259:18-259:22
118. Our Lady of Guadalupe hired Andrea Ruma-Harrington who was thirty-nine years old to teach language arts for that year.	[Deposition of Agnes Morrissey-Berru 138:11-138:22][Deposition of April Beuder, Volume 2, 261:5-262:4]
119. Morrissey-Berru's part-time contract lasted one year.	[Deposition of Agnes Morrissey-Berru 146:1-146:7] [Deposition of April Beuder, Volume 2, 268:23-269:1]
120. Teachers are not required to be Catholic in order to teach at Our Lady of Guadalupe	[Deposition of April Beuder 54:11-58:13]
121. All of the teachers at Our Lady of Guadalupe are governed by one-year renewable contracts.	[Deposition of Agnes Morrissey-Berru 21:25-22:8]
122. Morrissey-Berru is considered a <i>teacher</i> under her Faculty Employment Agreement - Elementary with Our Lady of Guadalupe Catholic School.	[Deposition of April Beuder 94:1-96:6, 101:4-101:18, 104:19-105:2, Exhibits 4-5; Declaration of Agnes Morrissey-Berru ¶ 3.]
123. Specifically, Morrissey-Berru's Faculty Employment Agreement – Elementary, identifies her as a “Teacher”	[Deposition of April Beuder 94:1-96:6, Exhibit 4]

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<u>New Undisputed Material Fact:</u>	<u>Supporting Evidence</u>
<p>throughout the agreement, and her principal (April Beuder) wrote the phrase “Elementary Teacher” in the phrase “I accept a position as Elementary Teacher at OLG School on each and all of the terms and conditions set for the in the above Agreement and the attached Compensation and Benefits Supplement.”</p>	
<p>124. The website for Our Lady of Guadalupe, each teacher is listed as an “Educator” and is identified by the grade or subjects that they teach.</p>	<p>[Declaration of Agnes Morrissey-Berru ¶ 7.]</p>
<p>125. Morrissey-Berru held herself out as a teacher.</p>	<p>[Declaration of Agnes Morrissey-Berru ¶¶ 4-6, 8]</p>
<p>126. Specifically, Morrissey-Berru testified that during her “employment with Our Lady of Guadalupe Catholic School, I consistently held my position out in the community to those affiliated and unaffiliated with Our Lady of Guadalupe Catholic School as an elementary school teacher. I also personally viewed myself as an elementary school teacher.”</p>	<p>[Declaration of Agnes Morrissey-Berru ¶¶ 4-6.]</p>

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<u>New Undisputed Material Fact:</u>	<u>Supporting Evidence</u>
<p>127. Morrissey-Berru stated that “[a]t no time did I believe my employment at Our Lady of Guadalupe Catholic School was a “called” position nor did I believe I was accepting a formal call to religious service by working at Our Lady of Guadalupe as a fifth or six grade teacher. Further, at no time during or after my employment with Our Lady of Guadalupe did I feel like God was leading me to serve in the ministry</p>	<p>[Declaration of Agnes Morrissey-Berru ¶ 8.]</p>
<p>128. Morrissey-Berru was not required to utilize specialized religious training in order to begin to teach at Our Lady of Guadalupe.</p>	<p>[Deposition of Agnes Morrissey-Berru 17:14-18:12]</p>
<p>129. The only education Morrissey-Berru had <i>before</i> she began at Our Lady of Guadalupe was a Bachelor of Arts degree in English language arts with a minor in secondary education that she attained in 1973</p>	<p>[Deposition of Agnes Morrissey-Berru 17:21-18:4]</p>
<p>130. Before Morrissey-Berru worked at Our Lady of Guadalupe, she worked in advertising as a copywriter and salesperson with the Los Angeles Times</p>	<p>[Declaration of Agnes Morrissey-Berru ¶ 9.] [Deposition of Agnes Morrissey-Berru 18:18-19:2]</p>

<u>New Undisputed Material Fact:</u>	<u>Supporting Evidence</u>
for 20 years.	
131. Morrissey-Berru received her California teaching credential in 2007 <i>after</i> teaching at Our Lady of Guadalupe for <i>eight years</i> .	[Deposition of Agnes Morrissey-Berru 18:5-18:12; 19:3-19:15]
132. Any specific religious training she performed during her time at Our Lady of Guadalupe was done <i>after</i> she was already employed as a teacher for <i>thirteen years</i> .	[Deposition of Agnes Morrissey-Berru 30:1-31:7, Exhibit 4]
133. Her religious training consisted of a <i>single course</i> in 2012 on the history of the Catholic Church.	[Deposition of Agnes Morrissey-Berru 30:1-30:18, Exhibit 4]
134. 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]
135. Morrissey-Berru's Complaint does not hold her out to be a minister, but a teacher.	[Deposition of April Beuder 33:15-33:22, Exhibit 2 - Plaintiff's First Amended Complaint (¶¶ 9-18 (stating, in part, "9. Plaintiff

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<u>New Undisputed Material Fact:</u>	<u>Supporting Evidence</u>
	commenced employment with Defendant OUR LADY OF GUADALUPE SCHOOL as a full-time teacher in or around September 1999.”))
136. On June 2, 2015, Morrissey-Berru <i>dual-filed</i> a charge of discrimination on the basis of age with the EEOC <u>and</u> DFEH.	Defendant’s Exh. 2 - EEOC Charge (Morrissey-Berru 1); Plaintiff’s Request for Judicial Notice, Exhibit B (EEOC Notice to Complainant and Respondent)
137. The charge of discrimination alleged that the conduct occurred between August 11, 2014 through May 13, 2015, with the August 11th representing her demotion from full-time teacher to part-time teacher.	Defendant’s Exh. 2 - EEOC Charge (Morrissey-Berru 1); Plaintiff’s Request for Judicial Notice, Exhibit B (EEOC Notice to Complainant and Respondent)
138. Silvia Bosch is the former Director of Extended Care at Our Lady of Guadalupe.	[Deposition of Silvia Bosch 32:15-33:1]
139. She worked for Our Lady of Guadalupe between 2009 and 2014.	[Deposition of Silvia Bosch 32:15-33:1; Declaration of Silvia Bosch ¶ 2]
140. As the Director of Extended Care, Ms. Bosch was responsible for the scheduling of after school extended care,	[Deposition of Silvia Bosch 33:4-33:17]

<u>New Undisputed Material Fact:</u>	<u>Supporting Evidence</u>
including making sure the children are cared for and assisting with homework.	
141. In addition, Ms. Bosch would help with the lunch program and yard duty.	[Deposition of Silvia Bosch 33:4-33:17; 33:21-34:1]
142. In total, Ms. Bosch was responsible for supervising between four to five employees, including an employee named Lana who was in her 60's.	[Deposition of Silvia Bosch 51:23-52:25; 66:13-66:15] [Declaration of Silvia Bosch ¶ 3]
143. Ms. Bosch testified that Lana "assisted with watching the children, homework, the lunch program, monitoring the children during lunch, serving snacks, cutting snacks, cleaning, [and] making sure parents sign in and out."	[Deposition of Silvia Bosch 52:15-52:20]
144. Overall, Ms. Bosch testified that she struggled managing Lana and felt that she was "aggressive, confrontational, and not a good fit for the school."	[Declaration of Silvia Bosch ¶ 3] [Deposition of Silvia Bosch 53:1-55:3]
145. In Christmas of 2012, Ms. Bosch began to speak with Principal April Beuder about the difficulties Ms. Bosch was having with Lana.	[Deposition of Silvia Bosch 60:17-61:3]
146. By early 2013, after attempting verbal counseling and a written warning,	[Deposition of Silvia Bosch 55:2-55:3; 60:17-61:13; 106:7-106:10]

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<u>New Undisputed Material Fact:</u>	<u>Supporting Evidence</u>
Ms. Bosch determined that she would like to terminate Lana.	[Declaration of Silvia Bosch ¶ 4]
147. Ms. Bosch met with Principal April Beuder in her office to inform Ms. Beuder of Ms. Bosch's intention to terminate Lana.	[Declaration of Silvia Bosch ¶ 4] [Deposition of Silvia Bosch 62:16-63:12]
148. However, during the meeting, Ms. Beuder told her that she could not terminate Lana as it was "a lawsuit in the making."	[Declaration of Silvia Bosch ¶ 5][Deposition of Silvia Bosch 63:10-65:5]
149. Ms. Beuder then stated: " <u><i>That's not how you terminate older people. Let me tell you how to terminate older people.</i></u> "	[Deposition of Silvia Bosch 63:10-65:5] [Declaration of Silvia Bosch ¶ 6]
150. She also stated, " <u><i>First you are going to reduce. Every time you do a schedule, you reduce her hours and duties – document it – little by little.</i></u> "	[Deposition of Silvia Bosch 63:10-65:5; 70:14-71:25] [Declaration of Silvia Bosch ¶ 6]
151. <i>Ms. Beuder stated that eventually employees become so "frustrated or miserable" that eventually they quit.</i>	[Deposition of Silvia Bosch 63:10-65:5] [Declaration of Silvia Bosch ¶ 6]
152. Ms. Bosch asked Ms. Beuder what she should do if the Lana doesn't leave.	[Deposition of Silvia Bosch 63:10-65:5]
153. Ms. Beuder responded that if Lana doesn't leave then " <u><i>you don't renew her contract.</i></u> "	[Deposition of Silvia Bosch 63:10-65:5]

<u>New Undisputed Material Fact:</u>	<u>Supporting Evidence</u>
<p>154. Silvia Bosch testified that throughout her employment at Our Lady of Guadalupe, she heard "Principle Beuder make serveral underhanded comments about Agnes Deirdre Morrissey-Berru" and she witnessed Principle Beuder "roll her eyes when Ms. Morrissey-Berru's name was brought up."</p>	<p>[Declaration of Silvia Bosch ¶ 7] [Deposition of Silvia Bosch 79:15-85:6]</p>
<p>155. Moreover, Ms. Bosch testified that throughout her employment, parents would approach her and state "I don't think Principal Beurder likes Ms. Morrissey-Berru"</p>	<p>[Declaration of Silvia Bosch ¶ 7] [Deposition of Silvia Bosch 85:25-89:5]</p>
<p>156. In addition, Beatriz Botha testified that April Beuder "is notorious for retaliating against parents of students and employees."</p>	<p>[Declaration of Beatriz Botha ¶ 7]</p>
<p>157. In November 2012, Principal April Beuder performed a classroom observation of Morrissey-Berru's teaching.</p>	<p>[Deposition of April Beuder 189:11-193:20, Exhibit 9]</p>
<p>158. At Our Lady of Guadalupe, Ms. Beuder was the only individual who completed this observation form.</p>	<p>[Deposition of April Beuder 193:9-193:20]</p>
<p>159. On the review, Ms. Beuder marked</p>	<p>[Deposition of April Beuder 189:11-</p>

<u>New Undisputed Material Fact:</u>	<u>Supporting Evidence</u>
either "Innovating" or "Implementing" to describe various aspects of Morrissey-Berru's performance.	190:1, Exhibit 9]
160. Additionally, Ms. Beuder wrote positive comments about Morrissey-Berru's teaching, including "Ms. Morrissey has an excellent rapport with her students. This was an interactive lesson that engaged multiple mobilities, visual auditory, kinesthetic. Highly effective use of technology."	[Deposition of April Beuder 189:11-190:1, Exhibit 9 – OLG 0156]
161. In March 2013, Principal April Beuder performed a classroom observation of Morrissey-Berru's teaching.	Exhibit 5 - Defendant's Document Production [OLG 0146-0148]
162. On the review, Ms. Beuder marked either "Innovating" or "Implementing" to describe various aspects of Morrissey-Berru's performance.	Exhibit 5 - Defendant's Document Production [OLG 0146-0148]
163. 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]

<u>New Undisputed Material Fact:</u>	<u>Supporting Evidence</u>
164. In November 2014, Principle April Beuder performed a classroom observation of Morrissey-Berru's teaching.	Exhibit 5 - Defendant's Document Production [OLG 0170-0172]
165. On the review, Ms. Beuder marked either "Innovating" or "Implementing" to describe various aspects of Morrissey-Berru's performance.	Exhibit 5 - Defendant's Document Production [OLG 0170-0172]
166. 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."	Exhibit 5 - Defendant's Document Production [OLG 0170-0172]

Based on the foregoing *Controverted* and Uncontroverted Facts, the following Conclusions of Law should be made:

CONCLUSIONS OF LAW

1. This Court has subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1343.

2. Plaintiff has set forth specific facts showing that there remains a genuine factual issue for trial such that Defendant's Motion for Summary Judgment is denied.

3. Defendant is a religious institution entitled to exemption under Title VII and the Ministerial Exception.

4. However, Plaintiff was *not* a “minister” for purposes of the Ministerial Exception and, as such, she is *not* barred from bringing forth claims based on her employment relationship with Defendant. *See, Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC* (2012) 565 U.S. 171; *Puri v. Khalsa* (9th Cir. 2017) 844 F.3d 1152.

5. Plaintiff timely exhausted her administrative remedies with regard to her demotion to a part-time position under Defendant’s employ. *See, 29 U.S.C. § 626(d)(1); Stiefel v. Bechtel Corp.* (9th Cir. 2010) 624 F.3d 124; *Surrell v. Cal. Water Serv. Co.* (9th Cir. 2008) 518 F.3d 1097; *Forester v. Chertoff* (9th Cir. 2007) 500 F.3d 920.

6. The record reveals some other, nondiscriminatory reason for Our Lady of Guadalupe assigning Plaintiff to the part-time position, and disputed issues exists as to whether age was the but-for reason for this decision. *See, Diaz v. Eagle Produce Ltd. Partnership* (9th Cir. 2008) 521 F.3d 1201.

DATED: August 28, 2017

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By: /s/ Andrew S. Pletcher

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Agnes Morrissey-Berru

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'S NOTICE OF OPPOSITION
AND OPPOSITION OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Filed and served concurrently with:

- *Plaintiff's Separate Statement of Controverted & Uncontroverted Facts;*
- *Plaintiff's Compendium of Evidence*
- *Plaintiff's Request for Judicial Notice*

Date: September 18, 2017

Time: 1:30 p.m.

Ctrm: 10A

Complaint Filed: December 19, 2016

**PLAINTIFF'S OPPOSITION OF DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND
AUTHORITIES**

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that Plaintiff AGNES DEIRDRE MORRISSEY-
3 BERRU ("Plaintiff") hereby opposes Defendant's OUR LADY OF GUADALUPE
4 CATHOLIC SCHOOL's ("Defendant") Motion for Summary Judgment or, in the
5 Alternative, Partial Summary Judgment.

6 Plaintiff's Opposition is based on the attached Memorandum of Points and
7 Authorities; Plaintiff's Separate Statement of *Controverted* and Uncontroverted
8 Material Facts and Conclusions of Law, filed concurrently herewith; Plaintiff's
9 Compendium of Evidence, filed concurrently herewith; Plaintiff's Request for
10 Judicial Notice, filed concurrently herewith; and all pleadings and documents on
11 file in this matter.

12
13 DATED: August 28, 2017

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14
15
16 By: /s/ Andrew S. Pletcher

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As a matter of law, DEFENDANT OUR LADY OF GUADALUPE CATHOLIC SCHOOL (“Our Lady of Guadalupe”) reliance on the ministerial exception is unavailing as PLAINTIFF AGNES MORRISSEY-BERRU (“Plaintiff”) is not a “minister” pursuant to the controlling authorities, *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission* (2012) 132 S.Ct. 694 (“*Hosanna*”) and the Ninth Circuit’s “ministerial exception” cases. In addition, Morrissey-Berru’s demotion to a part-time position is not barred under the ADEA as she duly filed a charge of discrimination on the basis of age with the EEOC and DFEH. Finally, Our Lady of Guadalupe does not have a legitimate, non-discriminatory explanation for its action as Principal April Beuder has made previous discriminatory comments about how to get rid of old people and avoid them filing a law suit. Plus, Morrissey-Berru’s performance reviews did not indicate that she was struggling with the Reading and Writing Program that would warrant her termination. Accordingly, as this evidence must be considered in the light most favorable to Morrissey-Berru, Defendant’s Motion must be denied in its entirety.¹

II. SUMMARY OF MATERIAL FACTS

A. AGNES MORRISSEY-BERRU’S EDUCATION, EXPERIENCE, AND EARLY CAREER

Agnes Deirdre Morrissey-Berru (“Morrissey-Berru”) attended two colleges to receive her Bachelor of Arts in English language arts and a minor in secondary

¹ See, *Barlow v. Ground* (9th Cir. 1991) 943 F.2d 1132, 1134 (stating that at summary judgment the evidence must be considered in the light most favorable to the nonmoving party); *Chuang v. University of California Davis, Bd. Of Trustees* (9th Cir. 2000) 225 F.3d 1115, 1124 (stating “the plaintiff in an employment discrimination action need produce very little evidence in order to overcome an employer’s motion for summary judgment”).

1 education. [Plaintiff's Undisputed Material Facts "PUMF" 90.] In 2007, after
2 teaching full-time at Our Lady of Guadalupe for eight years, Morrissey-Berru
3 received her California teaching credential from Chapman University. [PUMF
4 91.] Before Morrissey-Berru taught at Our Lady of Guadalupe, she worked at the
5 Los Angeles Times for 20 years as a copywriter and advertising salesperson.
6 [PUMF 92.]

7 8 9 **B. MORRISSEY-BERRU'S EMPLOYMENT WITH OUR LADY OF** 10 **GUADALUPE**

11 In 1998, Morrissey-Berru began working at Our Lady of Guadalupe as a
12 substitute teacher. [PUMF 93.] When she began working for the school,
13 Morrissey-Berru was forty-seven years old. [PUMF 94.] In the fall of 1999,
14 Morrissey-Berru was offered a full-time 6th grade position. [PUMF 95.] This
15 position was self-contained – Morrissey-Berru taught reading, writing grammar,
16 vocabulary, science, social studies, and religion. [PUMF 96.] This position lasted
17 for 10 years until Morrissey-Berru moved to 5th grade. [PUMF 97.] The 5th grade
18 position was also self-contained. [PUMF 98.]

19 Upon being hired, Morrissey-Berru testified that she did not feel her position
20 at Our Lady of Guadalupe was "called" or believe that she was accepting a formal
21 call to ministry. [PUMF 99.] As part of her employment, Morrissey-Berru was
22 required to sign a Teacher Employment Agreement that defined her title as a
23 "Teacher" throughout the contract. [PUMF 100.] Morrissey-Berru would sign a

1 similar Teacher Employment Agreements for each year she taught at Our Lady of
2 Guadalupe. [PUMF 101.]

3
4 **C. MORRISSEY-BERRU'S PERFORMANCE REVIEWS DURING**
5 **HER EMPLOYMENT WITH OUR LADY OF GUADALUPE**

6 On July 1, 2012, Our Lady of Guadalupe hired April Beuder to be the
7 school's new principal. [PUMF 102.] As principal, Ms. Beuder was the only
8 individual who completed Elementary School Classroom Observation Reports
9 regarding the teachers at Our Lady of Guadalupe. [PUMF 103.] To complete these
10 forms, Ms. Beuder would observe the teacher as she teaches the students. [PUMF
11 104.]

12
13
14 In November 2012, Principal April Beuder performed a classroom observation
15 of Morrissey-Berru's teaching. [PUMF 105.] On the review, Ms. Beuder marked
16 either "Innovating" or "Implementing" to describe various categories of Morrissey-
17 Berru's performance.² [PUMF 106.] Additionally, Ms. Beuder wrote positive
18 comments about Morrissey-Berru's teaching, including "Ms. Morrissey has an
19 excellent rapport with her students. This was an interactive lesson that engaged
20 multiple mobilities, visual auditory, kinesthetic. Highly effective use of technology."
21 [PUMF 109.] Ms. Beuder would conduct similar reviews in March 2013 and
22
23
24
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27
28 ² "Innovating" is defined as "Adjusts and creates new strategies for unique student
needs and situations during the lesson." [PUMF 107.] "Implementing" is defined as
"Uses strategies at appropriate time, in the appropriate matter." [PUMF 108.]

1 November 2014 and mark either "Innovating" or "Implementing" to describe various
2 aspects of Morrissey-Berru's performance. [PUMF 110.]
3

4 **D. MORRISSEY-BERRU IS DEMOTED TO PART-TIME FOR THE**
5 **2014-2015 SCHOOL YEAR**

6 Before the start of the 2014-2015 school year, Morrissey-Berru lost her full-
7 time position as a fifth grade teacher and was moved to part-time. [PUMF 111.] In
8 May 2014, Morrissey-Berru met with Ms. Beuder regarding her status at the
9 school. [PUMF 112.] During the meeting Ms. Beuder asked if Morrissey-Berru
10 wanted to retire. [PUMF 113.] Morrissey-Berru responded that she did not want to
11 retire. [PUMF 114.]
12

13 During that same conversation, Ms. Beuder and Morrissey-Berru discussed
14 the reading and writing workshop. [PUMF 115.] Ms. Beuder stated that
15 Morrissey-Berru did not do the reading and writing instruction correctly and as a
16 result they would be moving her to a part-time position. [PUMF 116.] At the time,
17 Morrissey-Berru believed she was being replaced with Mr. Hazen who was in his
18 30's. [PUMF 117.] However, Our Lady of Guadalupe hired Andrea Ruma-
19 Harrington who was thirty-nine years old to teach language arts for that year.
20 [PUMF 118.]
21
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26 Morrissey-Berru's part-time contract lasted one year. [PUMF 119.]
27
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1 **III. LEGAL STANDARD**

2 Rule 56(a) of the Federal Rules of Civil Procedure authorizes the granting of
3 summary judgment "if the movant shows that there is no genuine dispute as to any
4 material fact and the movant is entitled to judgment as a matter of law." The
5 standard for granting a motion for summary judgment is essentially the same as for
6 granting a directed verdict. *See, Anderson v. Liberty Lobby, Inc.* (1986) 477 U.S.
7 242, 250. Judgment must be entered "if, under the governing law, there can be but
8 one reasonable conclusion as to the verdict." *Id.*

9 The moving party has the initial burden of identifying relevant portions of
10 the record that demonstrate the absence of a fact or facts necessary for one or more
11 essential elements of each cause of action upon which the moving party seeks
12 judgment. *See, Celotex Corp. v. Catrett* (1986) 477 U.S. 317, 323. If the moving
13 party has sustained its burden, the burden then shifts to the nonmovant to identify
14 specific facts, drawn from materials in the file, that demonstrate that there is a
15 dispute as to material facts on the elements that the moving party has contested.
16 *See, Celotex, supra*, 477 U.S. at 324; *Anderson, supra*, 477 U.S. at 256. A factual
17 dispute is material only if it affects the outcome of the litigation and requires a trial
18 to resolve the parties' differing versions of the truth. *SEC v. Seaboard Corp.* (9th
19 Cir. 1982) 677 F.2d 1301, 1306.

1 In determining whether a triable issue of material fact exists, the evidence
 2 must be considered in the light most favorable to the nonmoving party. *See*,
 3 *Barlow v. Ground* (9th Cir. 1991) 943 F.2d 1132, 1134, cert. denied, 505 U.S.
 4 1206. However, summary judgment cannot be avoided by relying solely on
 5 “conclusory allegations [in] an affidavit.” *Lujan v. Nat’l Wildlife Fed’n* (1990) 497
 6 U.S. 871, 888; *see also*, *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.* (1986)
 7 475 U.S. 574, 586 (more than a “metaphysical doubt” is required to establish a
 8 genuine issue of material fact). “The mere existence of a scintilla of evidence in
 9 support of the plaintiff’s position” is insufficient to survive summary judgment;
 10 “there must be evidence on which the [fact finder] could reasonably find for the
 11 plaintiff.” *Anderson, supra*, 477 U.S. at 252.

12 IV. LEGAL ARGUMENT

13 A. RESOLUTION OF MORRISSEY-BERRU’S CLAIMS DOES 14 NOT INFRINGE ON DEFENDANT’S FIRST AMENDMENT 15 RIGHTS NOR DOES THE MINISTERIAL EXCEPTION APPLY

16 1. Morrissey-Berru Is Not A “Minister” Pursuant To The 17 United States Supreme Court Decision Of *Hosanna-Tabor* 18 *Evangelical Lutheran Church and School v. Equal Employment* 19 *Opportunity Commission* (2012)

20 In 2012, the United States Supreme Court considered for the first time
 21 “whether this freedom of a religious organization to select its ministers is implicated
 22 by a suit alleging discrimination in employment.” *Hosanna-Tabor Evangelical*

1 *Lutheran Church and School v. E.E.O.C.* (2012) 565 U.S. 171, 188 (“*Hosanna*”). In
2 *Hosanna-Tabor*, the Supreme Court examined Cheryl Perich’s employment as a
3 teacher at the Hosanna-Tabor Evangelical Lutheran School to determine whether she
4 was qualified as a “minister” for purposes of the exception. 565 U.S. at 177-78. In
5 beginning its analysis, the Supreme Court focused on the classification the school
6 made between its teachers – “called” teachers and “lay” teachers:
7

8
9 The Synod classifies teachers into two categories: “called” and “lay.”
10 “Called” teachers are regarded as having been called to their vocation
11 by God through a congregation. To be eligible to receive a call from
12 a congregation, a teacher must satisfy certain academic requirements.
13 One way of doing so is by completing a “colloquy” program at a
14 Lutheran college or university. The program requires candidates to
15 take eight courses of theological study, obtain the endorsement of
16 their local Synod district, and pass an oral examination by a faculty
17 committee. A teacher who meets these requirements may be called
18 by a congregation. Once called, a teacher receives the formal title
19 “Minister of Religion, Commissioned.” [Citation omitted.] A
20 commissioned minister serves an open-ended term; at Hosanna-
21 Tabor, a call could be rescinded only for cause and by a
22 supermajority vote of the congregation.
23

24 “Lay” or “contract” teachers, by contrast, are not required to be
25 trained by the Synod or even to be Lutheran. At Hosanna-Tabor,
26 they were appointed by the school board, without a vote of the
27 congregation, to one-year renewable terms. Although teachers at the
28 school generally performed the same duties regardless of whether
they were lay or called, lay teachers were hired only when called
teachers were unavailable.

Id. at 177.

1 Turning to Perich's employment history with the school, the Court noted that
2 Perich was "first employed by Hosanna-Tabor as a lay teacher in 1999" and
3 completed "her colloquy later that school year" to become a called teacher. *Id.* at 178
4 ("Perich accepted the call and received a 'diploma of vocation' designating her a
5 commissioned minister."). She taught math, language arts, social studies, science,
6 gym, art, music, and a religion class four days a week. *Id.* Additionally, Perich led the
7 students in prayer and devotional exercises each day attended a weekly school-wide
8 chapel service and led the chapel service herself about twice a year. *Id.*

9
10 Perich began the 2004-2005 school year on disability leave after being
11 diagnosed with narcolepsy in June 2004. *Id.* "On January 30 [2005], Hosanna-Tabor
12 held a meeting of its congregation at which school administrators stated that Perich
13 was unlikely to be physically capable of returning to work that school year or the next.
14 The congregation voted to offer Perich a 'peaceful release' from her call, whereby the
15 congregation would pay a portion of her health insurance premiums in exchange for
16 her resignation as a called teacher. *Id.* However, Perich refused to resign and stated
17 she intended to come back to work. *Id.* at 178-79. The school later terminated Perich
18 for "insubordination and disruptive behavior." *Id.* at 179.

19
20 In determining whether the "ministerial exception" applied to Perich, the Court
21 first noted the title of her position and whether Hosanna-Tabor or Perich held the
22 position out to be ministerial. *See, Hosanna* at 191 ("To begin with, Hosanna-

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1 Tabor held Perich out as a minister, with a role distinct from that of most of its
2 members. When Hosanna-Tabor extended her a call, it issued her a 'diploma of
3 vocation' according her the title 'Minister of Religion, Commissioned' [and]
4 "Perich held herself out as a minister of the Church by accepting the formal call to
5 religious service, according to its terms."). The Court found that "Perich's title as
6 minister reflected a significant degree of religious training followed by a formal
7 process of commissioning" which took "six years to fulfill." *Id.* And when she
8 eventually did, she was "commissioned as a minister only upon election by the
9 congregation, which recognized God's call to her to teach" that "could be
10 rescinded only upon supermajority vote of the congregation." *Id.*

11 Moreover, the Court found that "Perich held herself out as a minister of the
12 Church by accepting the formal call to religious service, according to its terms." *Id.*
13 She also "claimed special housing allowance on her taxes that was only available
14 to employees earning their compensation 'in the exercise of the ministry'" and
15 submitted a form to the Synod following her termination that stated "she regarded
16 herself as a minister at Hosanna-Tabor, stating: 'I feel that God is leading me to
17 serve in the teaching ministry ... I am anxious to be in the teaching ministry again
18 soon.'" *Id.* at 192. Next, in determining whether the exception applies, the Court
19 analyzed Perich's job duties. *See, Id.* at 192. They noted that her "job duties
20 reflected a role in conveying the Church's message and carrying out its mission"

1 including teaching religion four days a week, leading her students in prayer three
 2 times a day, taking them to attend a once-a-week chapel service, and twice a year
 3 leading the service – including “choosing the liturgy, selecting the hymns, and
 4 delivering a short message based on versus from the Bible.” *Id.*
 5

6
 7 Ultimately, through analyzing “the formal title given Perich by the Church,
 8 the substance reflected in that title, her own use of that title, and the important
 9 religious functions she performed for the Church, the United States Supreme Court
 10 concluded that “Perich was a minister covered by the ministerial exception.” *Id.*
 11

12 Here, pursuant to *Hosanna-Tabor*, Morrissey-Berru is not a “minister” for
 13 purposes of the minister’s exception. First, as a general matter, like the lay teachers in
 14 *Hosanna-Tabor*, there is no requirement to be Catholic in order to teach at Our Lady
 15 of Guadalupe. [PUMF 120.] Moreover, all of the teachers at Our Lady of Guadalupe
 16 are governed by one-year renewable contracts. [PUMF 121.]
 17

18
 19 Next, unlike Perich in *Hosanna-Tabor*, Morrissey-Berru is not considered a
 20 “Minster of Religion, Commissioned,” but a *teacher* under her Faculty Employment
 21 Agreement - Elementary with Our Lady of Guadalupe Catholic School. [PUMF 122.]
 22 Specifically, Morrissey-Berru’s Faculty Employment Agreement – Elementary,
 23 identifies her as a “Teacher” throughout the agreement, and her principal (April
 24 Beuder) wrote the phrase “Elementary Teacher” in the phrase “I accept a position as
 25 Elementary Teacher at OLG School on each and all of the terms and conditions set for
 26
 27
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1 the in the above Agreement and the attached Compensation and Benefits
 2 Supplement.” [PUMF 123.] Moreover, on the website for Our Lady of Guadalupe,
 3 each teacher is listed as an “Educator” and is identified by the grade or subjects that
 4 they teach. [PUMF 124.]

5
 6 Third, unlike Perich who held herself out as a “minister,” Morrissey-Berru held
 7 herself out as a teacher. [PUMF 125.] Specifically, Morrissey-Berru testified that
 8 during her “employment with Our Lady of Guadalupe Catholic School, I
 9 consistently held my position out in the community to those affiliated and
 10 unaffiliated with Our Lady of Guadalupe Catholic School as an elementary school
 11 teacher. I also personally viewed myself as an elementary school teacher.” [PUMF
 12 126.] Plus, Morrissey-Berru stated that “[a]t no time did I believe my employment
 13 at Our Lady of Guadalupe Catholic School was a “called” position nor did I believe I
 14 was accepting a formal call to religious service by working at Our Lady of Guadalupe
 15 as a fifth or six grade teacher. Further, at no time during or after my employment with
 16 Our Lady of Guadalupe did I feel like God was leading me to serve in the ministry.”
 17 [PUMF 127.]

18
 19 Fourth, unlike Perich who underwent specialized ministerial education and
 20 training, Morrissey-Berru was not required to utilize specialized religious training in
 21 order to begin to teach at Our Lady of Guadalupe. [PUMF 128.] In fact, the only
 22 education Morrissey-Berru had *before* she began at Our Lady of Guadalupe was a
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1 Bachelor of Arts degree in English language arts with a minor in secondary education
 2 that she attained in 1973.³ [PUMF 129.] And although Morrissey-Berru would later
 3 receive her California teaching credential in 2007, she did so *after* teaching at Our
 4 Lady of Guadalupe for *eight years*. [PUMF 131.] Plus, any specific religious training
 5 she performed during her time at Our Lady of Guadalupe was done *after* she was
 6 already employed as a teacher for *thirteen years*.⁴ [PUMF 132.] This training was a
 7 *single course* in 2012 on the history of the Catholic Church. [PUMF 133.] Finally,
 8 unlike Perich who “took her turn leading [the mass], choosing the liturgy, selecting
 9 the hymns, and delivering a short message based on versus from the Bible,”
 10 Morrissey-Berru testified that she did not personally lead school-wide religious
 11 services, did not select hymns when her class was responsible for mass, did not
 12 personally deliver messages during mass, and did not have the prepare her students to
 13 alter serve during weekly mass. [PUMF 134.]

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³ Before Morrissey-Berru worked at Our Lady of Guadalupe, she worked in advertising as a copywriter and salesperson with the Los Angeles Times for 20 years. [PUMF 130.]

⁴ Our Lady of Guadalupe mischaracterizes Morrissey-Berru’s training in their Motion. *See*, Motion for Summary Judgment 21:23 (“attending regular catechist certifications”). However, as shown in Defendant’s Exhibit 7, these “regular” certifications occurred in 2012 *only*. [Defendant’s Exhibit 7 –Catechist Certification Progress Transcript (OLG 0117-0118, 0120-0121)]. Morrissey-Berru began working at the school in 1999. [Deposition of Agnes Morrissey-Berru 19:3-19:15]

2. Morrissey-Berru Is Not A “Minister” Pursuant To The Ninth Circuit’s “Ministerial Exception” Cases⁵

Until 2017, the Ninth Circuit had largely refused to adopt a general test for determining whether a person is a “minister” for purposes of the exemption. *See, Alcazar v. Corporation of the Catholic Archbishop of Seattle* (9th Cir. 2010) 627 F.3d 1288, 1291; *Hendricks v. Marist Catholic High School* (D. Oregon 2011) 2011 WL 996757 at *2 (“Typically, the question of whether an employee is a “minister” warrants little analysis. Every Ninth Circuit case, except one, that has applied the exception involved actual or prospective members of the clergy.”). However, as a result of *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, the Ninth Circuit has begun to incorporate the guiding factors expressed by the Supreme Court to determine whether an individual is a minister for purposes of the exception. *See, Puri v. Khalsa* (9th Cir. 2017) 844 F.3d 1152, 1160.

Before *Puri*, the Ninth Circuit relied on a “reasonable construction” of the facts to determine the application of the ministerial exception. *See, Alcazar v. Corporation of the Catholic Archbishop of Seattle* (9th Cir. 2010) 627 F.3d 1288, 1292. In

⁵ Defendant relies heavily on other circuit courts to argue that Morrissey-Berru is not a “minister” for purposes of the “minister’s exception.” *See*, Defendant’s Memorandum of Points and Authorities 18:16-21:11. However, as the Ninth Circuit has expressly declined to adopt the tests of other circuits and is the controlling law of this case, this Court should disregard Defendant’s argument regarding any case outside of the Ninth Circuit. *See, Alcazar v. Corporation of the Catholic Archbishop of Seattle* (9th Cir. 2010) 627 F.3d 1288 (Ninth Circuit law controls this case, and as such, the Court will follow precedent and look broadly at plaintiff’s employment duties at Marist to determine whether he is, in fact, a “minister” for the purposes of the exception.”).

1 *Alcazar*, the Ninth Circuit examined Cesar Rosas's employment to determine whether
 2 she was qualified as a "minister" for purposes of the exception. *Alcazar v.*
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 4 *Corporation of the Catholic Archbishop of Seattle* (9th Cir. 2010) 627 F.3d 1288. In
 5 determining that the exception did apply, the Court analyzed the exception under a
 6 "reasonable construction" and found that the Complaint supported a finding that
 7 Rosas was a minister. *Id.* at 1292. Needing no more analysis, the Ninth Circuit made
 8 their limited holding that "[b]ecause Rosas affirmatively alleges that he was a
 9 seminarian and seeks to challenge the church's wage payments concerning his work
 10 as a seminarian, we hold that Rosas is a 'minister' for purposes of the ministerial
 11 exception." *Id.*

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 15 In 2017, the Ninth Circuit revisited the "minister's exception in *Puri v. Khalsa*
 16 (9th Cir. 2017) 844 F.3d 1152 ("*Puri*"). In *Puri*, the Ninth Circuit addressed a dispute
 17 over the control of two nonprofit entities associated with the Sikh Dharma religious
 18 community. *See, Id.* at 1154-1156. The plaintiff brought claims against various
 19 individuals and entities alleging conspiracies and fraudulent activities that were
 20 designed to exclude them from certain management positions and meant to help
 21 convert millions of dollars of assets to the individual defendants' control for personal
 22 benefit. *See, Id.* The trial court dismissed the case at the pleading stage citing the Free
 23 Exercise and Establishment Clauses of the First Amendment. *Id.* at 1157. In
 24 examining the trial court's application of the ministerial exception, the Ninth Circuit
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1 recognized that while “there is no ‘rigid formula for deciding when an employee
2 qualifies as a minister’ within the meaning of the ministerial exception,” the Supreme
3 Court has provided “some guidance on the circumstances that might qualify an
4 employee as a minister within the meaning of the ministerial exception.” *Id.* at 1159-
5 60 (listing the four considerations discussed in *Hosanna-Tabor*).

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8 Ultimately, in analyzing these considerations against the Complaint, the Ninth
9 Circuit found that “the factual allegations in the complaint are too far removed from
10 the core of the exception [to conclude] at this stage of the proceedings that the
11 exclusion of the plaintiffs from the board positions is a “protected employment
12 decision’ falling within the ministerial exception affirmative defense.” *See, Id.* at
13 1160-62.

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16 Here, pursuant to *Alcazar v. Corporation of the Catholic Archbishop of Seattle*,
17 Morrissey-Berru’s Complaint does not hold her out to be a minister, but a teacher.
18 [PUMF 135.] Moreover, as discussed above, unlike Rosas who was directed by the
19 Catholic Church to engage in a ministerial placement as part of his preparation for
20 ordination into priesthood, at no time was Morrissey-Berru directed by the Catholic
21 Church in her employment at Our Lady of Guadalupe. In fact, while discussing
22 *Alcazar*, Our Lady of Guadalupe ignores the Ninth Circuit’s primary consideration in
23 finding that the ministerial exception did apply – the overall purpose of Rosas’s
24 employment with Corporation of the Catholic Archbishop of Seattle was to further his

1 seminary training. *See, Alcazar v. Corporation of the Catholic Archbishop of Seattle*
 2 (9th Cir. 2010) 627 F.3d 1288, 1292-93 (stating, in part, “[f]airly read, Rosas’
 3 complaint alleges that he performed those duties as part of his seminary training.”).

4 Accordingly, because the Catholic Church did not direct Morrissey-Berru’s
 5 employment with Our Lady of Guadalupe and her employment with the school as not
 6 part of any seminary training, Morrissey-Berru is not a “minister” for purposes of the
 7 ministerial exception.
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11 Next, pursuant to *Puri v. Khalsa* (which relies heavily on the considerations
 12 given by the Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and*
 13 *School v. E.E.O.C.*), the ministerial exception does not apply to Morrissey-Berru.
 14 [PUMF 120-134.] Incorporating the discussion above, Morrissey-Berru is not a
 15 minister – she does not hold herself out as a religious leader to the school or the
 16 community, her ecclesiastical title is that of teacher, she has not been required to
 17 undergo “a significant degree of religious training followed by a formal process of
 18 commissioning,” and she did not personally lead school-wide religious service or
 19 deliver the message during mass. *Puri v. Khalsa* (9th Cir. 2017) 844 F.3d 1152, 1160
 20 (discussing the *Hosanna-Tabor* considerations). Accordingly, under *Puri*, Morrissey-
 21 Berru is not a “minister” for purposes of the ministerial exception.
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**B. MORRISSEY-BERRU'S DEMOTION TO A PART-TIME
POSITION IS NOT TIME BARRED UNDER THE ADEA**

The ADEA requires that a charge of discrimination be filed with the EEOC either: "(A) within 180 days after the alleged unlawful practice occurred; or (B) in a case to which section 633(b) of this title applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier." *See*, 29 U.S.C. § 626(d)(1). In other words, to exhaust administrative remedies in California, a plaintiff must file a charge with the EEOC within 300 days of the alleged unlawful employment practice if the plaintiff "has initially instituted proceedings" with the Department of Fair Employment and Housing (the state agency charged with the authority to grant or seek relief from an unlawful employment practice). 42 U.S.C. § 2000e-5(e)(1). If a plaintiff files a timely charge with the DFEH within 300 days of the alleged unlawful employment practice, that charge is deemed filed with the EEOC pursuant to the agencies' worksharing agreement. *See, Stiefel v. Bechtel Corp.* (9th Cir. 2010) 624 F.3d 1240, 1244-45; *Surrell v. Cal. Water Serv. Co.* (9th Cir. 2008) 518 F.3d 1097, 1104; *Forester v. Chertoff* (9th Cir. 2007) 500 F.3d 920, 924. Conversely, the charge will also be timely if it is filed within 300 days with the EEOC, rather than the DFEH. *See Flores v. Merced Irrigation Dist.* (E.D. Cal. 2010) 758 F.Supp.2d 986, 993.

1 In *Whitman v. Minteta* (9th Cir. 2008) 541 F.3d 929, cited by Our Lady of
 2 Guadalupe School in their Motion, the plaintiff brought an age discrimination claim
 3 against the Federal Aviation Administration (“FAA”) alleging that they promoted a
 4 student intern to a full-time salaried position which he sought and failed to grant him
 5 an extension of his work detail. *Whitman v. Minteta* (9th Cir. 2008) 541 F.3d 929,
 6 931. The trial court granted summary judgment on the age discrimination issue and
 7 the Ninth Circuit affirmed citing, in part, that Whitman failed to timely notify the
 8 Equal Employment Opportunity Commission regarding his claim against the FAA
 9 within the 180 day time limit. *Id.* at 932-33. (“Whitman’s challenge to his employer’s
 10 denial of an extension of a work detail was untimely. Whitman learned about the
 11 denial of his request for an extension of his work detail in August 2000. He raised his
 12 claim in administrative proceedings in September 2001, more than one year later, by
 13 adding this additional claim to his complaint. Whitman failed to give the EEOC notice
 14 of the allegedly discriminatory act within 180 days of its occurrence.”)

15 Here, Our Lady of Guadalupe School argues that Morrissey-Berru is barred
 16 from asserting her demotion to a part-time position because she signed her 2014-2015
 17 contract for the part-time position outside of the 180 days required by statute (on May
 18 19, 2014). However, Our Lady of Guadalupe is incorrect for two reasons.

19 First, on June 2, 2015, Morrissey-Berru *dual-filed* a charge of discrimination
 20 on the basis of age with the EEOC and DFEH. [PUMF 136.] The charge of
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1 discrimination alleged that the conduct occurred between August 11, 2014 through
 2 May 13, 2015, with the August 11th representing her demotion from full-time
 3 teacher to part-time teacher. [PUMF 137.] Secondly, unlike *Whitman*, the signing
 4 of the contract cannot constitute an “adverse action”⁶ that materially affected the
 5 compensation, terms, conditions, or privileges of Morrissey-Berru’s employment
 6 under her ADEA claim as Morrissey-Berru would not have been affected by the
 7 signing (i.e. her compensation, terms, conditions, or privileges of employment would
 8 not change) until the start of the 2014-2015 school year when her contract was
 9 effective and she began receiving less money.
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 14 **C. TRIABLE ISSUES EXIST REGARDING MORRESSEY-**
 15 **BERRU’S FIRST CAUSE OF ACTION**

16 The ADEA makes it unlawful to “discharge an individual or otherwise
 17 discriminate against any individual with respect to his compensation, terms,
 18 conditions, privileges of employment, because of such individual’s age.” 29 U.S.C. §
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 21 ⁶ See, Ninth Circuit Model Jury Instructions, No. 11.1 (listing the elements of an age discrimination
 22 disparate treatment claim under the ADEA); Ninth Circuit Model Jury Instructions, No. 11.5 (“The
 23 ADEA defines several common terms in the same manner as Title VII” including “adverse
 24 employment action”); Ninth Circuit Model Jury Instructions, No. 10.11 (“An action is an adverse
 25 employment action if it materially affects the compensation, terms, conditions, or privileges of
 26 employment.”); *Chuang v. University of California Davis, Bd. of Trustees* (9th Cir. 2000) 225
 27 F.3d 1115, 1126 (defining an adverse employment action as one that material affects the
 28 compensation, terms, conditions, or privileges of the plaintiff’s employment”); *Kang v. U. Lim
 America Inc.* (2002) 296 F.3d 810, 819 (examples of adverse employment actions may include
 “severe verbal and physical abuse, discriminatory overtime, and termination”) Deposition of
 April Beuder 105:14-106:7; Exhibit 6 – Teacher Employment Agreement Elementary (listing the
 first payday of the 2014-2015 school year as 8/30/2014).

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623(a)(1); *Reeves v. Sanderson Plumbing Products, Inc.* (2000) 530 U.S. 133, 141-42. To establish a violation of ADEA under the disparate treatment theory of liability Morrissey-Berru must first establish a prima facie case of discrimination. *See, Diaz v. Eagle Produce Ltd. Partnership* (9th Cir. 2008) 521 F.3d 1201, 1207. “To establish a prima facie case of age discrimination, Morrissey-Berru must show that she was “(1) at least forty years old, (2) performing his job satisfactorily, (3) discharged, and (4) either replaced by substantially younger employees with equal or inferior qualifications or discharged under circumstances otherwise giving rise to an inference of discrimination.” *Diaz v. Eagle Produce Ltd. Partnership* (9th Cir. 2008) 521 F.3d 1201, 1207; *Sheppard v. David Evans and Assoc.* (9th Cir. 2012) 694 F.3d 1045, 1049; *Reeves v. Sanderson Plumbing Products, Inc.* (2000) 530 U.S. 133, 142-43; Ninth Circuit Model Jury Instructions, No. 11.1 (Age Discrimination – Disparate Treatment – Elements and Burden of Proof). “An inference of discrimination can be established by ‘showing the employer had a continuing need for [the employees’] skills and services in that their various duties were still being performed ... or by showing that others not in their protected class were treated more favorably.’” *Diaz v. Eagle Produce Ltd. Partnership* (9th Cir. 2008) 521 F.3d 1201, 1207. The last element is to be treated with some flexibility. *Id.* at 1211.

Here, Our Lady of Guadalupe School’s Motion for Summary Judgment argues that Morrissey-Berru cannot establish a disputed issue of fact regarding pretext or age

1 discrimination. However, the evidence is clear Our Lady of Guadalupe does not have
2 a legitimate, non-discriminatory explanation for its actions.
3

4 **1. Our Lady of Guadalupe Does Not Have A Legitimate, Non-**
5 **Discriminatory Explanation For Its Actions**

6 Under the *McDonnell Douglas* framework, a legitimate nondiscriminatory
7 reason is rebutted if the reason asserted by the covered entity for disparate
8 treatment is shown to be pretextual. *Diaz v. Eagle Produce Ltd. Partnership* (9th Cir.
9 2008) 521 F.3d 1201, 1207. “As a general matter, the plaintiff in an employment
10 discrimination action need produce very little evidence in order to overcome an
11 employer’s motion for summary judgment.” *Id.*
12

13 Generally, pretext can be shown in one of two ways: “(1) indirectly, by
14 showing that the employer’s proffered explanation is unworthy of credence because
15 it is internally inconsistent or otherwise not believable, or (2) directly, by showing
16 that unlawful discrimination more likely motivated the employer.” *Reese v.*
17 *Barton Healthcare Systems* (E.D. Cal. 2010) 693 F.Supp.2d 1170, 1179-80; *Raad*
18 *v. Fairbanks North Star Borough School Dist.* (9th Cir. 2003) 323 F.3d 1185,
19 1194. “These two approaches are not exclusive; a combination of the two kinds of
20 evidence may in some cases serve to establish pretext so as to make summary
21 judgment improper.” *Chuang v. Univ. of Cal. Davis, Board of Trustees* (9th Cir.
22 2000) 225 F.3d 1115, 1127.
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Examples of the evidence that a party can rely on for circumstantial

evidence of pretext may include:

(1) suspicious timing; (2) ambiguous statements or behavior towards other employees in the protected group; (3) evidence, statistical or otherwise, that similarly situated employees outside of the protected group systematically receive better treatment; and (4) evidence that the employer offered a pretextual reason for an adverse employment action.

Bunn v. Khoury Enterprises, Inc. (7th Cir. 2014) 753 F.3d 676, 684.

a. Principal April Beuder's Comments About How To Get Rid Of The Old People

Silvia Bosch is the former Director of Extended Care at Our Lady of Guadalupe. [PUMF 138.] She worked for Our Lady of Guadalupe between 2009 and 2014. [PUMF 139.] As the Director of Extended Care, Ms. Bosch was responsible for the scheduling of after school extended care, including making sure the children are cared for and assisting with homework. [PUMF 140.] In addition, Ms. Bosch would help with the lunch program and yard duty. [PUMF 141.] In total, Ms. Bosch was responsible for supervising between four to five employees, including an employee named Lana who was in her 60's. [PUMF 142.] Ms. Bosch testified that Lana "assisted with watching the children, homework, the lunch program, monitoring the children during lunch, serving snacks, cutting snacks, cleaning, [and] making sure parents sign in and out." [PUMF 143.]

Overall, Ms. Bosch testified that she struggled managing Lana and felt that she was "aggressive, confrontational, and not a good fit for the school." [PUMF 144.] In

1 Christmas of 2012, Ms. Bosch began to speak with Principal April Beuder about the
 2 difficulties Ms. Bosch was having with Lana. [PUMF 145.] By early 2013, after
 3 attempting verbal counseling and a written warning, Ms. Bosch determined that she
 4 would like to terminate Lana. [PUMF 146.] Ms. Bosch met with Principal April
 5 Beuder in her office to inform Ms. Beuder of Ms. Bosch's intention to terminate Lana.
 6 [PUMF 147.] However, during the meeting, Ms. Beuder told her that she could not
 7 terminate Lana as it was "a lawsuit in the making." [PUMF 148.] Ms. Beuder then
 8 stated: "*That's not how you terminate older people. Let me tell you how to*
 9 *terminate older people.*" [PUMF 149.] "*First you are going to reduce. Every time*
 10 *you do a schedule, you reduce her hours and duties – document it – little by little.*"
 11 [PUMF 150.] *Ms. Beuder stated that eventually employees become "frustrated or*
 12 *miserable" so that eventually they quit.* [PUMF 151.] Ms. Bosch asked Ms. Beuder
 13 what she should do if the Lana doesn't leave. [PUMF 152.] Ms. Beuder responded
 14 that if Lana doesn't leave then "*you don't renew her contract.*" [PUMF 153.]

21 **b. Principal April Beuder's Comments About Agnes**
 22 **Deirdre Morrissey-Berru**

23 Silvia Bosch testified that throughout her employment at Our Lady of
 24 Guadalupe, she heard "Principle Beuder make serveral underhanded comments about
 25 Agnes Deirdre Morrissey-Berru" and she witnessed Principle Beuder "roll her eyes
 26 when Ms. Morrissey-Berru's name was brought up." [PUMF 154.] Moreover, Ms.
 27 Bosch testified that throughout her employment, parents would approach her and state
 28

1 “I don’t think Principal Beurder likes Ms. Morrissey-Berru” [PUMF 155.] In
 2 addition, Beatriz Botha testified that April Beurder “is notorious for retaliating against
 3 parents of students and employees.” [PUMF 156.]

5 **c. Morrissey-Berru’s Performance Reviews Did Not**
 6 **Indicate That She Was Struggling With The Reading**
 7 **And Writing Program**

8 In November 2012, Principal April Beurder performed a classroom observation
 9 of Morrissey-Berru’s teaching. [PUMF 157.] At Our Lady of Guadalupe, Ms. Beurder
 10 was the only individual who completed this observation form. [PUMF 158.] On the
 11 review, Ms. Beurder marked either “Innovating” or “Implementing” to describe
 12 various aspects of Morrissey-Berru’s performance. [PUMF 159.] Additionally, Ms.
 13 Beurder wrote positive comments about Morrissey-Berru’s teaching, including “Ms.
 14 Beurder wrote positive comments about Morrissey-Berru’s teaching, including “Ms.
 15 Morrissey has an excellent rapport with her students. This was an interactive lesson
 16 that engaged multiple mobilities, visual auditory, kinesthetic. Highly effective use of
 17 technology.” [PUMF 160.]

18 In March 2013, Principal April Beurder performed a classroom observation of
 19 Morrissey-Berru’s teaching. [PUMF 161.] On the review, Ms. Beurder marked either
 20 “Innovating” or “Implementing” to describe various aspects of Morrissey-Berru’s
 21 performance. [PUMF 162.] Additionally, Ms. Beurder noted that Morrissey-Berru has
 22 an “[e]xcellent use of technology” and stated that “Ms. Morrissey-Berru demonstrated
 23 calm under pressure when she had to switch gears due to technical difficulties!”

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1 [PUMF 163.]

2 In November 2014, Principle April Beuder performed a classroom observation
3 of Morrissey-Berru's teaching. [PUMF 164.] On the review, Ms. Beuder marked
4 either "Innovating" or "Implementing" to describe various aspects of Morrissey-
5 Berru's performance. [PUMF 165.] "Innovating" is defined as "Adjusts and creates
6 new strategies for unique student needs and situations during the lesson." [PUMF
7 107.] "Implementing" is defined as "Uses strategies at appropriate time, in the
8 appropriate matter." [PUMF 108.] Additionally, Ms. Beuder noted that Morrissey-
9 Berru has a "[g]reat use of technology" and stated that "Mrs. Morrissey-Berru did an
10 excellent job incorporating technology into her lesson. She was well-prepared with
11 all materials and knowledgeable regarding the subject." [PUMF 166.] Accordingly,
12 considering the evidence in the light most favorable to Plaintiff, our Lady of
13 Guadalupe's Motion be denied in its entirety. *See, Barlow v. Ground, supra*, 943
14 F.2d at 1134; *Chuang v. University of California Davis, Bd. Of Trustees, supra*,
15 225 F.3d at 1124; *Anderson, supra*, 477 U.S. at 256.

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22 **V. CONCLUSION**

23 Accordingly, based on the discussion above, Morrissey-Berru respectfully
24 requests that Our Lady of Guadalupe's Motion be denied in its entirety.

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

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