

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 1 of 5
Pages 1-21**

Joseph M. Lovretovich, SBN 73403
Cathryn G. Fund, SBN 293766
Andrew S. Pletcher, SBN 299437
JML LAW, A PROFESSIONAL LAW CORPORATION
21052 Oxnard Street
Woodland Hills, California 91367
Phone: (818) 610-8800
Attorneys for Plaintiff-Appellant Agnes Morrissey-Berru

INDEX**APPELLANT'S EXCERPTS OF RECORD****No. 17-56624**

Docket No.	Date	Description	Volume of ER	Pages of ER
63	12/06/17	Judgment	1	1-2
60	10/25/17	Notice of Appeal to the 9th Circuit Court of Appeals filed by Plaintiff Agnes Deirdre Morrissey-Berru	1	3-7
59	10/02/17	Notice of Lodging	1	8-9
59-1	10/02/17	Exhibit - Judgment	1	10-17
58	09/27/17	Minutes (In Chambers) Order Granting Summary Judgment	1	18-21
55	09/12/17	Supplement to Notice of Motion and Motion for Summary Judgment as to Complaint	2	22-24
48	09/08/17	In Chambers Only-Text Only Entry by Judge Stephen V. Wilson: The Court orders that Defendant Our Lady of Guadalupe School clarify the scope of the Motion for Summary Judgment, in light of the recent dismissal claims. The defendant shall file a supplemental memorandum no later than Wednesday, September 13, 2017	2	25-26

INDEX**APPELLANT'S EXCERPTS OF RECORD****No. 17-56624**

Docket No.	Date	Description	Volume of ER	Pages of ER
47	09/06/17	Notice of Voluntary Dismissal filed by Plaintiff Agnes Deirdre Morrissey-Berru. Dismissal is with prejudice	2	27-28
46	09/01/17	Declaration of Stephanie B. Kantor in support of Defendant's Reply in Support of Notice of Motion and Motion for Summary Judgment by Defendant Our Lady of Guadalupe School	2	29-47
45	09/01/17	Notice of Lodging filed (Objections to Plaintiff's Evidence)	2	48-50
45-1	09/01/17	Attachment: Objections to Plaintiff's Evidence	2	51-56
44	09/01/17	Statement of Reply Statement of Controverted and Uncontroverted Facts by Defendant Our Lady of Guadalupe School	2	57-164
43	09/01/17	Reply in Support of Notice of Motion and Motion for Summary Judgment by Defendant Our Lady of Guadalupe School	2	165-183

INDEX**APPELLANT'S EXCERPTS OF RECORD****No. 17-56624**

Docket No.	Date	Description	Volume of ER	Pages of ER
42	08/28/17	Plaintiff Agnes Deirdre Morrissey-Berru's Compendium of Evidence – Volume 2 of 2 (RE: Plaintiff's Opposition to Motion for Summary Judgment filed by Defendant Our Lady of Guadalupe School)	2	184-189
42-1	08/28/17	Plaintiff Agnes Deirdre Morrissey-Berru's Compendium of Evidence – Volume 2 of 2 (RE: Plaintiff's Opposition to Motion for Summary Judgment filed by Defendant Our Lady of Guadalupe School) Exhibit 3 – Deposition of April L. Beuder, Volume II	2	190-203
42-2	08/28/17	Plaintiff Agnes Deirdre Morrissey-Berru's Compendium of Evidence – Volume 2 of 2 (RE: Plaintiff's Opposition to Motion for Summary Judgment filed by Defendant Our Lady of Guadalupe School) Exhibit 4 – Deposition of Silvia Bosch	2	204-237

INDEX**APPELLANT'S EXCERPTS OF RECORD****No. 17-56624**

Docket No.	Date	Description	Volume of ER	Pages of ER
42-3	08/28/17	<p>Plaintiff Agnes Deirdre Morrissey-Berru's Compendium of Evidence – Volume 2 of 2 (RE: Plaintiff's Opposition to Motion for Summary Judgment filed by Defendant Our Lady of Guadalupe School)</p> <p>Exhibit 5 – True and correct copies of pertinent pages of Defendant's document production in response to Plaintiff's Request for Production of Documents and Tangible Items to Defendant Our Lady of Guadalupe School, Set One (DEFT PRODUCTION 0001-0721) produced to Plaintiff on April 21, 2017</p>	2	238-244
42-4	08/28/17	<p>Plaintiff Agnes Deirdre Morrissey-Berru's Compendium of Evidence – Volume 2 of 2 (RE: Plaintiff's Opposition to Motion for Summary Judgment filed by Defendant Our Lady of Guadalupe School)</p> <p>Declaration of Agnes Morrissey-Berru</p>	2	245-248

INDEX**APPELLANT'S EXCERPTS OF RECORD****No. 17-56624**

Docket No.	Date	Description	Volume of ER	Pages of ER
42-5	08/28/17	Plaintiff Agnes Deirdre Morrissey-Berru's Compendium of Evidence – Volume 2 of 2 (RE: Plaintiff's Opposition to Motion for Summary Judgment filed by Defendant Our Lady of Guadalupe School) Declaration of Silvia Bosch	2	249-252
42-6	08/28/17	Plaintiff Agnes Deirdre Morrissey-Berru's Compendium of Evidence – Volume 2 of 2 (RE: Plaintiff's Opposition to Motion for Summary Judgment filed by Defendant Our Lady of Guadalupe School) Declaration of Beatriz Botha	2	253-255
41	08/28/17	Plaintiff Agnes Deirdre Morrissey-Berru's Compendium of Evidence – Volume 1 of 2 (RE: Plaintiff's Opposition to Motion for Summary Judgment filed by Defendant Our Lady of Guadalupe School)	3	256-261

INDEX**APPELLANT'S EXCERPTS OF RECORD****No. 17-56624**

Docket No.	Date	Description	Volume of ER	Pages of ER
41-1	08/28/17	Plaintiff Agnes Deirdre Morrissey-Berru's Compendium of Evidence – Volume 1 of 2 (RE: Plaintiff's Opposition to Motion for Summary Judgment filed by Defendant Our Lady of Guadalupe School) Exhibit 1 – Deposition of Plaintiff Agnes Morrissey-Berru	3	262-356
41-2	08/28/17	Plaintiff Agnes Deirdre Morrissey-Berru's Compendium of Evidence – Volume 1 of 2 (RE: Plaintiff's Opposition to Motion for Summary Judgment filed by Defendant Our Lady of Guadalupe School) Exhibit 2 – Deposition of April L. Beuder, Volume I	3	357-416
40	08/28/17	Plaintiff Agnes Deirdre Morrissey-Berru's Request for Judicial Notice in Support of Plaintiff's Opposition to Motion for Summary Judgment filed by Defendant Our Lady of Guadalupe School	3	417-431

INDEX**APPELLANT'S EXCERPTS OF RECORD****No. 17-56624**

Docket No.	Date	Description	Volume of ER	Pages of ER
39	08/28/17	Plaintiff Agnes Deirdre Morrissey-Berru's Separate Statement in Opposition to Motion for Summary Judgment filed by Defendant Our Lady of Guadalupe School	3	432-486
38	08/28/17	Memorandum in Opposition by Plaintiff Agnes Deirdre Morrissey-Berru to Motion for Summary Judgment filed by Defendant Our Lady of Guadalupe School	3	487-518
36	08/21/17	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: Appendix 32, Appendix 34, Appendix 35, Appendix 33, Appendix 31. The following error(s) was/were found: Title page is missing. In response to this notice, the Court may: (1) order an amended or corrected document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (cr) (Entered: 8/21/2017)	4	519

INDEX**APPELLANT'S EXCERPTS OF RECORD****No. 17-56624**

Docket No.	Date	Description	Volume of ER	Pages of ER
35	08/18/17	APPENDIX filed by Defendant Our Lady of Guadalupe School RE: Appendix 32, Appendix 34, Appendix 33, Appendix 31 <i>Exhibits 15-30 in support of Motion for Summary Judgment</i> (Kantor, Stephanie)	4	520-594
34	08/18/17	APPENDIX filed by Defendant Our Lady of Guadalupe School RE: Appendix 32, Appendix 33, Appendix 31 <i>Exhibits 1-14 in support of Motion for Summary Judgment</i> (Kantor, Stephanie)	4	595-672
33	08/18/17	APPENDIX filed by Defendant Our Lady of Guadalupe School RE: Appendix 32, Appendix 31 <i>Exhibits C-G in support of Motion for Summary Judgment</i> (Kantor, Stephanie)	4	673-709
32	08/18/17	APPENDIX filed by Defendant Our Lady of Guadalupe School RE: Appendix 31 <i>Exhibit B in support of Motion for Summary Judgment</i> (Kantor, Stephanie)	4	710-810

INDEX**APPELLANT'S EXCERPTS OF RECORD****No. 17-56624**

Docket No.	Date	Description	Volume of ER	Pages of ER
31	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 (Attachments #1 Exhibit A in support of motion for summary judgment) (Kantor, Stephanie)	5	811-814
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
30	08/18/17	Notice of Lodging in Support of Motion for Summary Judgment as to Complaint filed by Defendant Our Lady of Guadalupe School	5	924-926
30-1	08/18/17	Notice of Lodging in Support of Motion for Summary Judgment as to Complaint filed by Defendant Our Lady of Guadalupe School Exhibit 1 – [Proposed] Judgment RE: Motion of Defendant for Summary Judgment	5	927-929

INDEX**APPELLANT'S EXCERPTS OF RECORD****No. 17-56624**

Docket No.	Date	Description	Volume of ER	Pages of ER
29	08/18/17	Request for Judicial Notice (RE: Motion for Summary Judgment as to Complaint filed by Defendant Our Lady of Guadalupe School)	5	930-932
28	08/18/17	Notice of Lodgment of [Proposed] Statement of Uncontroverted Facts and Conclusions of Law RE: Motion of Defendant for Summary Judgment	5	933-935
28-1	08/18/17	[Proposed] Statement of Uncontroverted Facts and Conclusions of Law RE: Motion of Defendant for Summary Judgment [Fed. R. Civ. P. 56]	5	936-963
27	08/18/17	Notice of Motion and Motion for Summary Judgment as to Complaint filed by Defendant Our Lady of Guadalupe School	5	964-991
1	12/19/16	Complaint	5	992-1000
/	/	Civil Docket for U.S. District Court, Central District of California, Western Division, Case No. 2:16-cv-09353-SVW-AFM	5	1001-1007
/	/	Certificate of Service	5	1008

JS-6

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 through 50,
inclusive

Defendants.

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

[Assigned to Hon Stephen V. Wilson]

**JUDGMENT
PURSUANT TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Date: September 18, 2017

Time: 1:30 p.m.

Ctrm: 10A

Action Filed: December 19, 2016

///

///

///

4862541

1

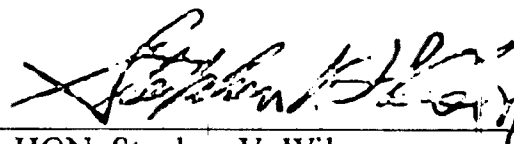
1 After full consideration of the evidence, and the written submissions by the
2 parties as to the motion by Defendant OUR LADY OF GUADALUPE SCHOOL for
3 summary judgment, the Court finds that there are no triable issues of material fact, and
4 that Defendant is entitled to judgment as a matter of law on the grounds set forth in the
5 Court's ruling (a copy of which is attached as Exhibit A).

6
7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 8 1. Plaintiff shall take nothing on her Complaint;
- 9 2. Defendant OUR LADY OF GUADALUPE SCHOOL's Motion for
10 Summary Judgment is GRANTED in its entirety;
- 11 3. Defendant shall recover its costs from Plaintiff in the amount of
12 \$ _____; and
- 13 4. There being no just cause for delay, the Clerk is ordered to enter this
14 judgment forthwith.

15
16 IT IS SO ORDERED.

17
18 DATED: December 6, 2017


HON. Stephen V. Wilson
United States District Judge

Name Joseph Lovretovich, Esq.; Andrew S. Pletcher, Esq.; CathrynAddress JML Law, APLC, 21052 Oxnard StreetCity, State, Zip Woodland Hills, CA 91367Phone 818-610-8800Fax 818-610-3030E-Mail Andrew@jmlaw.com; JML@jmlaw.com☐ FPD ☐ Appointed ☐ CJA ☐ Pro Per ☒ Retained**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**AGNES DEIRDRE MORRISSEY-BERRU,
an individual

PLAINTIFF(S),

v.

OUR LADY OF GUADALUPE SCHOOL,
A California non-profit corporation

DEFENDANT(S).

CASE NUMBER:

2:16-cv-09353-SVW-AFM

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiff, AGNES DEIRDRE MORRISSEY-BERRU hereby appeals to
Name of Appellant
 the United States Court of Appeals for the Ninth Circuit from:

Criminal Matter

- ☐ Conviction only [F.R.Cr.P. 32(j)(1)(A)]
☐ Conviction and Sentence
☐ Sentence Only (18 U.S.C. 3742)
☐ Pursuant to F.R.Cr.P. 32(j)(2)
☐ Interlocutory Appeals
☐ Sentence imposed:

☐ Bail status:**Civil Matter**

- ☒ Order (specify):
 Minutes (IN CHAMBERS) Order Granting
 Summary Judgment [Docket No. 58]
☐ Judgment (specify):
☐ Other (specify):

Imposed or Filed on 09/27/2017. Entered on the docket in this action on 09/27/2017.

A copy of said judgment or order is attached hereto.

10/25/2017

Date

s/ Andrew S. Pletcher, Esq.

Signature

☐ Appellant/ProSe ☒ Counsel for Appellant ☐ Deputy Clerk

Note: The Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, if not electronically filed in a criminal case, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of FRAP 3(d).

Case 2:16-cv-09353-SVW-AFM Document 58 Filed 09/27/17 Page 2 of 4 Page ID #:1145

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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

Date September 27, 2017

Title Agnes Deirdre Morrissey-Berru v. Our Lady of Guadalupe School

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings: IN CHAMBERS ORDER GRANTING SUMMARY JUDGMENT [27]

Plaintiff Agnes Deirdre Morrissey-Berru filed the Complaint on December 19, 2016. Defendant Our Lady of Guadalupe School ("Guadalupe") filed a motion for summary judgment on August 18, 2017. Plaintiff filed an opposition to the motion on August 28, 2017. For the following reasons, the motion for summary judgment is GRANTED. The prevailing shall submit a proposed judgment consistent with this order. All previously set dates are vacated.

I. Factual Background

This is an employment lawsuit, brought pursuant to 29 U.S.C. § 621 et. seq. to remedy alleged violations of the Age Discrimination in Employment Act ("ADEA"). Plaintiff alleges that she was moved from a full-time contract to a part-time contract because of her age.

Our Lady of Guadalupe School is a Catholic parish school under the jurisdiction of the Archdiocese of Los Angeles. Declaration of April Beuder ("Beuder Decl.") ¶3. In 1998, Morrissey-Berru began working at Our Lady of Guadalupe as a substitute teacher. (Deposition of Agnes Morrissey-Berru 19:4-19:10.) 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). She began as a full-time 6th grade teacher in the fall of 1999. She taught 6th grade for 10 years, after which she switched to teaching 5th grade. The intervening period is unimportant for the purposes of the instant motion. The next significant event occurred in 2014. Plaintiff signed the part-time contract for the 2014-2015 school year on May 19, 2014. (Dkt. 38 at 2).

Initials of Preparer

PMC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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

Date September 27, 2017

Title Agnes Deirdre Morrissey-Berru v. Our Lady of Guadalupe School

II. Legal Standard

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the initial responsibility of informing the court of the basis of its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In determining a motion for summary judgment, all reasonable inferences from the evidence must be drawn in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A genuine issue exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party," and material facts are those "that might affect the outcome of the suit under the governing law." *Id.* at 248. However, no genuine issue of fact exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

III. Discussion

A. Plaintiff's Claim Is Barred by the Ministerial Exception¹

The ministerial exception is an exception to Title VII of the Civil Rights Act, and its supplemental legislation, the ADEA. The exception is "grounded in the First Amendment," and "precludes application of such legislation to claims concerning the employment relationship between a religious institution and its ministers." See *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E. O. C.*, 132 S. Ct. 694, 704 (2012); *Cannata v. Catholic Diocese of Austin*, 700 F.3d 169 (5th Cir. 2012) (ministerial exception bars claims under the ADEA). The ministerial exception is "intended to protect the relationship between a religious organization and its clergy from constitutionally impermissible interference by the government." *Werft v. Desert Sw. Annual Conf. of United Methodist Church*, 377 F.3d 1099, 1101 (9th Cir. 2004);

¹ The Court notes that part of Plaintiff's claim may also be time barred. Here, the presentation of the part-time contract is the alleged discriminatory act. Although the effects would not become "most painful" until Plaintiff actually started drawing her reduced salary, she was clearly notified of the consequences when she signed the contract in May of 2014. Plaintiff alleges that "at the time" she signed the contract in May 2014, she was asked if she wanted to retire (Plaintiff's Undisputed Material Facts "PUMF" 113), and believed she was being replaced by an individual "who was in his 30's". (PUMF 117).

Initials of Preparer

PMC

Case 2:16-cv-09353-SVW-AFM Document 58 Filed 09/27/17 Page 4 of 4 Page ID #:1152

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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

Date September 27, 2017

Title Agnes Deirdre Morrissey-Berru v. Our Lady of Guadalupe School*Bollard v. Cal. Province of the Soc y of Jesus*, 196 F.3d 940, 945-946 (9th Cir. 1999).

Our Lady of Guadalupe School is clearly a religious institution, and Plaintiff does not seriously contest this fact in its pleadings. Instead, the main question here is if Plaintiff qualifies as a "minister" for purposes of the exception. "[N]either the Supreme Court nor [the Ninth Circuit] has ever expressly limited the ministerial exception to particular types of positions, and both courts have expressly declined to adopt any bright line rule defining the scope of the exception." *Puri v. Khalsa*, 844 F.3d 1152, 1159 (9th Cir. 2017). Indeed, there is no "particular test for determining whether a particular church employee . . . should be considered a 'minister' for First Amendment purposes." *Id.* (internal quotations and citations omitted).

That being said, the Supreme Court has offered some guidance on how to make this determination. First, Courts should consider the formal ordainment and title at issue. *Hosanna-Tabor*, 132 S.Ct. at 707. Here, Plaintiff does not have an official religious title, so this factor does not weigh in favor of a finding that the ministerial exception applies. Despite this, "an employee whose job duties reflect [] a role in conveying the Church's message and carrying out its mission is likely to be covered by the exception, even if the employee devotes only a small portion of the workday to strictly religious duties and spends the balance of her time performing secular functions." *Puri*, 844 F.3d at 1160 (internal quotations omitted) (alterations in original). Plaintiff has expressly admitted that her job duties involved conveying the Church's message.

Here, it is clear that every factor cuts in favor of the ministerial exception applying, except for Plaintiff's lack of formal membership in the Catholic clergy. 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." (PUMF 4). Plaintiff does not seriously dispute this, contending only that Plaintiff did not feel formally "called" to the ministry. This is irrelevant. The Court must consider Plaintiff's actual duties, not whether she personally felt called to the ministry. In fact, the Second Circuit recently held that employees of Catholic schools who are not formally ordained members of the clergy can be covered by the exception. *See Fratello v. Archdiocese of New York*, 863 F.3d 190 (2d Cir. 2017).

Plaintiff clearly sought to carry out the School's mission by, for example, integrating Catholic values and teachings into all of her lessons, leading the students in religious plays, and attending regular catechist certifications. She also taught her students the tenets of the Catholic religion, how to pray, and instructed them on a host of other religious topics. Plaintiff also administered the yearly assessment of the

Initials of Preparer

PMC

Case 2:16-cv-09353-SVW-AFM Document 58 Filed 09/27/17 Page 4 of 4 Page ID #:1143

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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

Date September 27, 2017

Title Agnes Deirdre Morrissey-Berru v. Our Lady of Guadalupe School

children religious education test. (UF 10-28). While she also had secular duties, that does not place her outside the scope of the ministerial exception. Accordingly, Plaintiff is covered by the ministerial exception.²

IV. Conclusion

Defendant's motion for summary judgment is GRANTED.

IT IS SO ORDERED.

² It is undisputed that Plaintiff continued to engage in religion-related activities even during her part-time status. The analysis therefore does not meaningfully differ between her part-time role and her full-time role.

Initials of Preparer

PMC

(SPACE BELOW FOR FILING STAMP ONLY)

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

6 Attorneys for Defendant
 OUR LADY OF GUADALUPE
 7 SCHOOL

8
 9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

11
 12 AGNES DEIRDRE MORRISSEY-
 BERRU, an individual

13 Plaintiff,

14 vs.

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

18 Defendants.

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

[Assigned to Hon Stephen V. Wilson]

NOTICE OF LODGMENT OF
 [PROPOSED] JUDGMENT
 PURSUANT TO DEFENDANT'S
 MOTION FOR SUMMARY
 JUDGMENT

Action Filed: December 19, 2016

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

TO PLAINTIFF AND HER COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendant OUR LADY OF GUADALUPE SCHOOL is lodging herewith a [Proposed] Judgment pursuant to its Motion for Summary Judgment [etc.], filed herewith.

DATED: October 2, 2017

BALLARD ROSENBERG GOLPER &
SAVITT. LLP

By: 

STEPHANIE B. KANTOR

Attorneys for Defendant

OUR LADY OF GUADALUPE SCHOOL

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

(SPACE BELOW FOR FILING STAMP ONLY)

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

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

11
 12 AGNES DEIRDRE MORRISSEY-
 BERRU, an individual

13 Plaintiff,

14 vs.

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

18 Defendants.

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

[Assigned to Hon Stephen V. Wilson]

**[PROPOSED] JUDGMENT
 PURSUANT TO DEFENDANT'S
 MOTION FOR SUMMARY
 JUDGMENT**

Date: September 18, 2017

Time: 1:30 p.m.

Ctrm: 10A

Action Filed: December 19, 2016

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

1 After full consideration of the evidence, and the written submissions by the
 2 parties as to the motion by Defendant OUR LADY OF GUADALUPE SCHOOL for
 3 summary judgment, the Court finds that there are no triable issues of material fact, and
 4 that Defendant is entitled to judgment as a matter of law on the grounds set forth in the
 5 Court's ruling (a copy of which is attached as Exhibit A).

6
 7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 8 1. Plaintiff shall take nothing on her Complaint;
- 9 2. Defendant OUR LADY OF GUADALUPE SCHOOL's Motion for
 10 Summary Judgment is GRANTED in its entirety;
- 11 3. Defendant shall recover its costs from Plaintiff in the amount of
 12 \$ _____; and
- 13 4. There being no just cause for delay, the Clerk is ordered to enter this
 14 judgment forthwith.

15
 16 IT IS SO ORDERED.

17
 18 DATED: _____, 2017

HON. Stephen V. Wilson
 United States District Judge

19
 20 DATED: October 2, 2017

BALLARD ROSENBERG GOLPER &
 SAVITT. LLP

21
 22
 23 By: 

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

EXHIBIT A

Case 2:16-cv-09353-SVW-AFM Document 59-1 Filed 10/02/17 Page 4 of 8 Page ID #:1149

Case 2:16-cv-09353-SVW-AFM Document 58 Filed 09/27/17 Page 1 of 4 Page ID #:1140

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:16-cv-09353-SVW-AFM Date September 27, 2017

Title Agnes Deirdre Morrissey-Berru v. Our Lady of Guadalupe School

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings: IN CHAMBERS ORDER GRANTING SUMMARY JUDGMENT [27]

Plaintiff Agnes Deirdre Morrissey-Berru filed the Complaint on December 19, 2016. Defendant Our Lady of Guadalupe School ("Guadalupe") filed a motion for summary judgment on August 18, 2017. Plaintiff filed an opposition to the motion on August 28, 2017. For the following reasons, the motion for summary judgment is GRANTED. The prevailing shall submit a proposed judgment consistent with this order. All previously set dates are vacated.

I. Factual Background

This is an employment lawsuit, brought pursuant to 29 U.S.C. § 621 et. seq. to remedy alleged violations of the Age Discrimination in Employment Act ("ADEA"). Plaintiff alleges that she was moved from a full-time contract to a part-time contract because of her age.

Our Lady of Guadalupe School is a Catholic parish school under the jurisdiction of the Archdiocese of Los Angeles. Declaration of April Beuder ("Beuder Decl.") ¶3. In 1998, Morrissey-Berru began working at Our Lady of Guadalupe as a substitute teacher. (Deposition of Agnes Morrissey-Berru 19:4-19:10.) When she began working for the school, Morrissey-Berru was forty-seven years old. (Deposition of Angas Morrissey-Berru 12:19-12:20; 19:4-19:10). She began as a full-time 6th grade teacher in the fall of 1999. She taught 6th grade for 10 years, after which she switched to teaching 5th grade. The intervening period is unimportant for the purposes of the instant motion. The next significant event occurred in 2014. Plaintiff signed the part-time contract for the 2014-2015 school year on May 19, 2014. (Dkt. 38 at 2).

Initials of Preparer

PMC

Case 2:16-cv-09353-SVW-AFM Document 59-1 Filed 10/02/17 Page 5 of 8 Page ID #:1150

Case 2:16-cv-09353-SVW-AFM Document 58 Filed 09/27/17 Page 2 of 4 Page ID #:1141

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:16-cv-09353-SVW-AFM Date September 27, 2017

Title *Agnes Deirdre Morrissey-Berru v. Our Lady of Guadalupe School*

II. Legal Standard

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the initial responsibility of informing the court of the basis of its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In determining a motion for summary judgment, all reasonable inferences from the evidence must be drawn in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A genuine issue exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party," and material facts are those "that might affect the outcome of the suit under the governing law." *Id.* at 248. However, no genuine issue of fact exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

III. Discussion

A. Plaintiff's Claim Is Barred by the Ministerial Exception¹

The ministerial exception is an exception to Title VII of the Civil Rights Act, and its supplemental legislation, the ADEA. The exception is "grounded in the First Amendment," and "precludes application of such legislation to claims concerning the employment relationship between a religious institution and its ministers." See *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E. O. C.*, 132 S. Ct. 694, 704 (2012); *Cannata v. Catholic Diocese of Austin*, 700 F.3d 169 (5th Cir. 2012) (ministerial exception bars claims under the ADEA). The ministerial exception is "intended to protect the relationship between a religious organization and its clergy from constitutionally impermissible interference by the government." *Werft v. Desert Sw. Annual Conf. of United Methodist Church*, 377 F.3d 1099, 1101 (9th Cir. 2004);

¹ The Court notes that part of Plaintiff's claim may also be time barred. Here, the presentation of the part-time contract is the alleged discriminatory act. Although the effects would not become "most painful" until Plaintiff actually started drawing her reduced salary, she was clearly notified of the consequences when she signed the contract in May of 2014. Plaintiff alleges that "at the time" she signed the contract in May 2014, she was asked if she wanted to retire (Plaintiffs Undisputed Material Facts "PUMF" 113), and believed she was being replaced by an individual "who was in his 30's". (PUMF 117).

Initials of Preparer

PMC

Case 2:16-cv-09353-SVW-AFM Document 59-1 Filed 10/02/17 Page 6 of 8 Page ID #:1151

Case 2:16-cv-09353-SVW-AFM Document 58 Filed 09/27/17 Page 3 of 4 Page ID #:1142

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:16-cv-09353-SVW-AFM Date September 27, 2017

Title Agnes Deirdre Morrissey-Berru v. Our Lady of Guadalupe School

Bollard v. Cal. Province of the Soc y of Jesus, 196 F.3d 940, 945-946 (9th Cir. 1999).

Our Lady of Guadalupe School is clearly a religious institution, and Plaintiff does not seriously contest this fact in its pleadings. Instead, the main question here is if Plaintiff qualifies as a “minister” for purposes of the exception. “[N]either the Supreme Court nor [the Ninth Circuit] has ever expressly limited the ministerial exception to particular types of positions, and both courts have expressly declined to adopt any bright line rule defining the scope of the exception.” *Puri v. Khalsa*, 844 F.3d 1152, 1159 (9th Cir. 2017). Indeed, there is no “particular test for determining whether a particular church employee ... should be considered a ‘minister’ for First Amendment purposes.” *Id.* (internal quotations and citations omitted).

That being said, the Supreme Court has offered some guidance on how to make this determination. First, Courts should consider the formal ordainment and title at issue. *Hosanna-Tabor*, 132 S.Ct. at 707. Here, Plaintiff does not have an official religious title, so this factor does not weigh in favor of a finding that the ministerial exception applies. Despite this, “an employee whose job duties reflect [] a role in conveying the Church’s message and carrying out its mission is likely to be covered by the exception, even if the employee devotes only a small portion of the workday to strictly religious duties and spends the balance of her time performing secular functions.” *Puri*, 844 F.3d at 1160 (internal quotations omitted) (alterations in original). Plaintiff has expressly admitted that her job duties involved conveying the Church’s message.

Here, it is clear that every factor cuts in favor of the ministerial exception applying, except for Plaintiff’s lack of formal membership in the Catholic clergy. 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.” (PUMF 4). Plaintiff does not seriously dispute this, contending only that Plaintiff did not feel formally “called” to the ministry. This is irrelevant. The Court must consider Plaintiff’s actual duties, not whether she personally felt called to the ministry. In fact, the Second Circuit recently held that employees of Catholic schools who are not formally ordained members of the clergy can be covered by the exception. *See Fratello v. Archdiocese of New York*, 863 F.3d 190 (2d Cir. 2017).

Plaintiff clearly sought to carry out the School’s mission by, for example, integrating Catholic values and teachings into all of her lessons, leading the students in religious plays, and attending regular catechist certifications. She also taught her students the tenets of the Catholic religion, how to pray, and instructed them on a host of other religious topics. Plaintiff also administered the yearly assessment of the

Initials of Preparer

PMC

Case 2:16-cv-09353-SVW-AFM Document 59-1 Filed 10/02/17 Page 7 of 8 Page ID #:1152

Case 2:16-cv-09353-SVW-AFM Document 58 Filed 09/27/17 Page 4 of 4 Page ID #:1143

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:16-cv-09353-SVW-AFM Date September 27, 2017

Title *Agnes Deirdre Morrissey-Berru v. Our Lady of Guadalupe School*

children religious education test. (UF 10-28). While she also had secular duties, that does not place her outside the scope of the ministerial exception. Accordingly, Plaintiff is covered by the ministerial exception.²

IV. Conclusion

Defendant's motion for summary judgment is GRANTED.

IT IS SO ORDERED.

² It is undisputed that Plaintiff continued to engage in religion-related activities even during her part-time status. The analysis therefore does not meaningfully differ between her part-time role and her full-time role.

Initials of Preparer

PMC

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

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

On October 2, 2017 I served the following document(s) described as **[PROPOSED] JUDGMENT PURSUANT TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

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

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

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

Executed on October 2, 2017 at Encino, California.



Lisa Aguilar

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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

Date September 27, 2017

Title Agnes Deirdre Morrissey-Berru v. Our Lady of Guadalupe SchoolPresent: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings: IN CHAMBERS ORDER GRANTING SUMMARY JUDGMENT [27]

Plaintiff Agnes Deirdre Morrissey-Berru filed the Complaint on December 19, 2016. Defendant Our Lady of Guadalupe School ("Guadalupe") filed a motion for summary judgment on August 18, 2017. Plaintiff filed an opposition to the motion on August 28, 2017. For the following reasons, the motion for summary judgment is GRANTED. The prevailing shall submit a proposed judgment consistent with this order. All previously set dates are vacated.

I. Factual Background

This is an employment lawsuit, brought pursuant to 29 U.S.C. § 621 et. seq. to remedy alleged violations of the Age Discrimination in Employment Act ("ADEA"). Plaintiff alleges that she was moved from a full-time contract to a part-time contract because of her age.

Our Lady of Guadalupe School is a Catholic parish school under the jurisdiction of the Archdiocese of Los Angeles. Declaration of April Beuder ("Beuder Decl.") ¶3. In 1998, Morrissey-Berru began working at Our Lady of Guadalupe as a substitute teacher. (Deposition of Agnes Morrissey-Berru 19:4-19:10.) 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). She began as a full-time 6th grade teacher in the fall of 1999. She taught 6th grade for 10 years, after which she switched to teaching 5th grade. The intervening period is unimportant for the purposes of the instant motion. The next significant event occurred in 2014. Plaintiff signed the part-time contract for the 2014-2015 school year on May 19, 2014. (Dkt. 38 at 2).

Initials of Preparer

PMC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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

Date September 27, 2017

Title Agnes Deirdre Morrissey-Berru v. Our Lady of Guadalupe School

II. Legal Standard

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the initial responsibility of informing the court of the basis of its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In determining a motion for summary judgment, all reasonable inferences from the evidence must be drawn in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A genuine issue exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party," and material facts are those "that might affect the outcome of the suit under the governing law." *Id.* at 248. However, no genuine issue of fact exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

III. Discussion

A. Plaintiff's Claim Is Barred by the Ministerial Exception¹

The ministerial exception is an exception to Title VII of the Civil Rights Act, and its supplemental legislation, the ADEA. The exception is "grounded in the First Amendment," and "precludes application of such legislation to claims concerning the employment relationship between a religious institution and its ministers." See *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E. O. C.*, 132 S. Ct. 694, 704 (2012); *Cannata v. Catholic Diocese of Austin*, 700 F.3d 169 (5th Cir. 2012) (ministerial exception bars claims under the ADEA). The ministerial exception is "intended to protect the relationship between a religious organization and its clergy from constitutionally impermissible interference by the government." *Werft v. Desert Sw. Annual Conf. of United Methodist Church*, 377 F.3d 1099, 1101 (9th Cir. 2004);

¹ The Court notes that part of Plaintiff's claim may also be time barred. Here, the presentation of the part-time contract is the alleged discriminatory act. Although the effects would not become "most painful" until Plaintiff actually started drawing her reduced salary, she was clearly notified of the consequences when she signed the contract in May of 2014. Plaintiff alleges that "at the time" she signed the contract in May 2014, she was asked if she wanted to retire (Plaintiff's Undisputed Material Facts "PUMF" 113), and believed she was being replaced by an individual "who was in his 30's". (PUMF 117).

Initials of Preparer

PMC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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

Date September 27, 2017

Title Agnes Deirdre Morrissey-Berru v. Our Lady of Guadalupe School

Bollard v. Cal. Province of the Soc y of Jesus, 196 F.3d 940, 945-946 (9th Cir. 1999).

Our Lady of Guadalupe School is clearly a religious institution, and Plaintiff does not seriously contest this fact in its pleadings. Instead, the main question here is if Plaintiff qualifies as a “minister” for purposes of the exception. “[N]either the Supreme Court nor [the Ninth Circuit] has ever expressly limited the ministerial exception to particular types of positions, and both courts have expressly declined to adopt any bright line rule defining the scope of the exception.” *Puri v. Khalsa*, 844 F.3d 1152, 1159 (9th Cir. 2017). Indeed, there is no “particular test for determining whether a particular church employee ... should be considered a ‘minister’ for First Amendment purposes.” *Id.* (internal quotations and citations omitted).

That being said, the Supreme Court has offered some guidance on how to make this determination. First, Courts should consider the formal ordainment and title at issue. *Hosanna-Tabor*, 132 S.Ct. at 707. Here, Plaintiff does not have an official religious title, so this factor does not weigh in favor of a finding that the ministerial exception applies. Despite this, “an employee whose job duties reflect [] a role in conveying the Church's message and carrying out its mission is likely to be covered by the exception, even if the employee devotes only a small portion of the workday to strictly religious duties and spends the balance of her time performing secular functions.” *Puri*, 844 F.3d at 1160 (internal quotations omitted) (alterations in original). Plaintiff has expressly admitted that her job duties involved conveying the Church's message.

Here, it is clear that every factor cuts in favor of the ministerial exception applying, except for Plaintiff's lack of formal membership in the Catholic clergy. 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.” (PUMF 4). Plaintiff does not seriously dispute this, contending only that Plaintiff did not feel formally “called” to the ministry. This is irrelevant. The Court must consider Plaintiff's actual duties, not whether she personally felt called to the ministry. In fact, the Second Circuit recently held that employees of Catholic schools who are not formally ordained members of the clergy can be covered by the exception. *See Fratello v. Archdiocese of New York*, 863 F.3d 190 (2d Cir. 2017).

Plaintiff clearly sought to carry out the School's mission by, for example, integrating Catholic values and teachings into all of her lessons, leading the students in religious plays, and attending regular catechist certifications. She also taught her students the tenets of the Catholic religion, how to pray, and instructed them on a host of other religious topics. Plaintiff also administered the yearly assessment of the

Initials of Preparer

PMC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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

Date September 27, 2017

Title Agnes Deirdre Morrissey-Berru v. Our Lady of Guadalupe School

children religious education test. (UF 10-28). While she also had secular duties, that does not place her outside the scope of the ministerial exception. Accordingly, Plaintiff is covered by the ministerial exception.²

IV. Conclusion

Defendant's motion for summary judgment is GRANTED.

IT IS SO ORDERED.

² It is undisputed that Plaintiff continued to engage in religion-related activities even during her part-time status. The analysis therefore does not meaningfully differ between her part-time role and her full-time role.

Initials of Preparer

PMC