

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHERYL BELLONI,
Plaintiff,

v.

THE ROMAN CATHOLIC ARCHBISHOP
OF SAN FRANCISCO,
Defendant.

Case No. 13-cv-03509-KAW

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT

Dkt. No. 45

On July 30, 2013, Plaintiff Cheryl Belloni filed this action against the Roman Catholic Archbishop of San Francisco alleging that she was wrongfully terminated from her position at St. Isabella Church. On October 30, 2014, Defendant filed its motion for partial summary judgment, which is limited to the three discrimination causes of action. (Def.'s Mot., Dkt. No. 45.)

On December 18, 2014, the Court held a hearing, and after careful consideration of the parties' arguments, and for the reasons set forth below, the Court GRANTS IN PART AND DENIES IN PART Defendant's Motion for Partial Summary Judgment.

I. BACKGROUND

Unless otherwise noted, the following facts are undisputed. Plaintiff Cheryl Belloni is a Caucasian woman who began working for St. Isabella Church in 1980 as a part-time secretary, and became the full-time parish secretary in 1982. St. Isabella is part of the Archdiocese of San Francisco. The parish secretary position involved various responsibilities, including human resources and bookkeeping duties. (Dep. of Fr. Mark Reburiano, "Reburiano Dep.," Decl. of John McGuinn in Opp'n to Def.'s Mot. for Summary J., "McGuinn Decl.," Dkt. No. 54-3, Ex. 5 at 130:20-131:15.)

Plaintiff served as parish secretary to five pastors during her 30-year tenure at St. Isabella.

1 Plaintiff had no record of discipline prior to Fr. Mark Reburiano’s (“Fr. Mark” or “Reburiano”)
2 appointment as pastor on July 1, 2011. (Ruburiano Dep. 94:7-20.) Additionally, Plaintiff claims
3 that she had never been previously accused of being disrespectful, negative or insubordinate.
4 (Decl. of Cheryl Belloni, “Belloni Decl.,” Dkt. No. 54-1 ¶ 3.)

5 From July 2008 to June 2011, Fr. Ken Westray (“Fr. Ken”) served as pastor. (Dep. of Fr.
6 Kenneth M. Westray, “Def.’s Westray Dep.,” Decl. of Lori Sebransky in support of Def.’s Mot.
7 for Partial Summary J., “Sebransky Decl.,” Dkt. No. 48-3, Ex. 3 at 23:25-24:4.) Defendant
8 contends that Fr. Ken also had negative interactions with Plaintiff, but he never “wrote up”
9 Plaintiff or any other employees at St. Isabella. (Def.’s Westray Dep. 124:18-125:6.) Fr. Ken,
10 however, testified that Plaintiff was a “trusted and competent employee,” a “dependable worker,”
11 was “hard working and professional,” and agreed that “she has always gone above and beyond to
12 serve our parish as an employee, parishioner and minister.” (Dep. of Fr. Kenneth M. Westray,
13 “Pl.’s Westray Dep.,” McGuinn Decl., Ex. 4 at 48:24-49:1, 49:23-50:1, 51:10-14, 57:3-10.) Fr.
14 Ken also acknowledged that Plaintiff had a reputation of being “a compassionate, hard working
15 and professional secretary at St. Isabella.” *Id.* at 55:13-20. Fr. Ken testified that he never
16 considered terminating Plaintiff nor had given “any thought to putting together any kind of written
17 warning or reprimand for her.” *Id.* at 126:13-17; 72:15-73:13. During his tenure as pastor, Fr. Ken
18 approved Plaintiff’s request to telecommute two days per week. (Def.’s Westray Dep. 128:16-
19 129:4.)

20 Fr. Mark Reburiano (“Fr. Mark” or “Reburiano”) was appointed pastor on July 1, 2011.
21 Fr. Mark is Filipino and was 36 years old at the time of his appointment. (Reburiano Dep., “Def.’s
22 Reburiano Dep.,” Sebransky Decl., Ex. 4 at 18:18-19:1.) Fr. Mark had previously served as an
23 associate pastor at two Archdiocesan parishes. *Id.* at 27:19-23, 28:11-15, 31:8-13.

24 Between July 2011 and October 2012, Plaintiff received six to eight verbal reprimands
25 from Fr. Mark. (Dep. of Cheryl Belloni, “Def.’s Belloni Dep.,” Sebransky Decl., Ex. 2 at 32:6-11.)
26 One reprimand in July 2011 was for a comment Plaintiff made to Karen McFadden, a coworker,
27 regarding Fr. Mark’s instruction that they change the location of where they counted the
28 collections. (Def.’s Belloni Dep. 32:12-33:3.) Fr. Mark told Plaintiff that he believed that her

1 comments and tone of voice to be disrespectful towards him. (Def.’s Belloni Dep. 33:17-21;
2 Def.’s Reburiano Dep. 175:1-178:24.)

3 On another occasion in 2011, Fr. Mark and Plaintiff had a discussion about discontinuing
4 payments for Deacon Jim Myers. (Def.’s Belloni Dep. at 56:13-57:25.) Plaintiff believed that
5 Deacon Myers should receive the stipend he had been receiving for 10 years, and Fr. Mark
6 disagreed, because the other deacon, who was retired, did not receive a stipend. (Def.’s Belloni
7 Dep. at 59:11-23.) Plaintiff testified, however, that while she disagreed with Fr. Mark, she did not
8 verbally disagree with Fr. Mark. *Id.*

9 In February 2012, Fr. Mark rescinded Plaintiff’s telecommuting arrangement, because he
10 insisted that being the parish “gatekeeper” required her physical presence in the office five days a
11 week. (Belloni Decl. ¶ 19; Pl.’s Reburiano Dep. 102:23-103:10, 126:13-127:10.) Plaintiff claims
12 that Fr. Mark told her that he spoke with the Archdiocese Human Resources department, and was
13 told that the officer manager needed to be in the office five days a week. (Belloni Decl. ¶ 19; *see*
14 Pl.’s Reburiano Dep. 348:2-22.) Patrick Schmidt, the Archdiocese’s Director of Human
15 Resources, testified that he never told Fr. Mark that an office manager had to be physically present
16 and that it was up to the individual pastor to decide whether to permit telecommuting. (Dep.
17 Patrick Michael Schmidt, “Pl.’s Schmidt Dep.,” McGuinn Decl., Ex. 11 at 83:21-84:6.)

18 In October 2012, Fr. Mark asked Plaintiff why some employees received Costco
19 memberships. (Def.’s Belloni Dep. at 64:8-66:12.) Plaintiff explained and Fr. Mark decided that it
20 was an expense that should not be borne by the parish and those employees reimbursed St.
21 Isabella. *Id.* at 66:16-21. Plaintiff testified that she then told Fr. Mark that he was disrespecting
22 the staff by giving the two associate pastors \$250 Christmas bonuses, but not extending what had
23 become customary benefits and a small bonus to the other staff when they were also being denied
24 a cost of living increase. *Id.* at 69:14-70:16. She had also been hurt that she had not heard from
25 Fr. Mark when she was out on medical leave. *Id.* Fr. Mark testified that Plaintiff left that meeting
26 abruptly before Fr. Mark had concluded the discussion. (Def.’s Reburiano Dep. at 201:17-202:15,
27 208:7-24.) Plaintiff testified that she had a physical therapy appointment, of which Fr. Mark was
28 already aware, that necessitated her departure. (Def.’s Belloni Dep. at 70:17-71:8.)

1 The Archdiocese provides training to new pastors regarding managing employee
2 performance and avoiding unlawful discrimination. (Pl.’s Schmidt Dep. 35:5-14.) During those
3 training sessions, HR stressed the importance of documenting perceived performance problems.
4 (*Id.* at 39:19-24; Pl.’s Reburiano Dep. 54:10-15; Pl.’s Westray Dep. 73:6-9.) Fr. Mark testified
5 that in the trainings “they always say document, document, document. They could not emphasize
6 that more.” (Pl.’s Reburiano Dep. 54:10-15.) Likewise, Patrick Schmidt, Defendant’s Director of
7 Human Resources, concluded “[i]f it’s not documented, it didn’t happen.” (Pl.’s Schmidt Dep.,
8 39:25-40:6.) Despite this policy, Fr. Mark never documented any perceived performance issues
9 with Plaintiff prior to October 24, 2012, when he typed and emailed his accusations against
10 Plaintiff to Mr. Schmidt, Defendant’s then-Associate Director of Human Resources. (10/24/12
11 Email, Pl.’s Schmidt Dep., Ex. 6.)

12 Thereafter, on November 6, 2012, Fr. Mark gave Plaintiff a written warning letter.
13 (Warning Letter, McGuinn Decl., Ex. 12.) Plaintiff testified that Fr. Mark did not discuss the
14 letter with Plaintiff, but he insisted that she read and sign to confirm receipt. (Pl.’s Belloni Dep.
15 94:4-96:10.) The letter stated that Fr. Mark has “received many complaints from your coworkers
16 and others that you have dealt with them in a rude and unfriendly manner.” (Warning Letter at 1.)
17 The letter did not specify who the “others” were, but warned that “[i]f there are any further
18 outbursts of this kind, your employment will be terminated immediately.” *Id.* Fr. Mark then gave
19 Plaintiff thirty days to make “a substantial improvement” in terms of her behavior. *Id.* After
20 making Plaintiff sign the letter, Fr. Mark refused Plaintiff’s request for a copy, even though the
21 letter was written and addressed to her. (Pl.’s Belloni Dep. 94:11-96:15.)

22 Despite Fr. Mark’s previous communications with Mr. Schmidt, Human Resources did not
23 receive a draft of this letter nor were they aware of it until Plaintiff contacted them on November
24 7, 2012 to request a copy. (Pl.’s Schmidt Dep. 97:1-6, Ex. 8.) Fr. Mark later gave Plaintiff a copy
25 of the letter after he was instructed to do so by HR. (Pl.’s Belloni Dep. 96:13-17; Pl.’s Schmidt
26 Dep., Ex. 8.)

27 On November 12, 2012, Plaintiff wrote Fr. Mark a letter in response, in which she
28 apologized to him and asked him to allow her to apologize to those who felt she had been

1 unfriendly. (Pl.’s Belloni Dep. 98:10-99:21; Letter, McGuinn Decl., Ex. 13.) According to
2 Plaintiff, Fr. Mark did not acknowledge her apology until he terminated her employment on
3 November 30, 2012. (Pl.’s Belloni Dep. 100:15-18.)

4 On November 29, 2012, Plaintiff contacted Mr. Schmidt to discuss her situation with Fr.
5 Mark, the November 6 warning letter, and her November 12 letter, to which she had received no
6 response. (Pl.’s Schmidt Dep., Ex. 9.) Later that day, Fr. Mark sent Mr. Schmidt the text of the
7 November 6, 2012 letter in an email. (Pl.’s Schmidt Dep., Ex. 10.) Mr. Schmidt emailed Fr. Mark
8 to inform him that he had spoken to Plaintiff, who was upset, but that he had received positive
9 feedback and believed that she was “willing to come around.” (Pl.’s Schmidt Dep. 111:23-
10 112:12.) Mr. Schmidt had no idea that Fr. Mark was going to terminate Plaintiff the following
11 day. *Id.*

12 On November 30, 2012, Plaintiff’s employment was terminated, but she would be paid
13 through December 31, 2012. (Def.’s Reburiano Dep. 210:14-211:19.) Also on November 30,
14 2012, Fr. Mark offered Clarence Mamaril, a Filipino man, the position of interim parish secretary.
15 (Pl.’s Reburiano Dep. 330:20-331:1, 341:24-344:2.) Mr. Mamaril had worked as Parish Council
16 Youth Director and a staff musician at St. Isabella since 2000. (Decl. of Clarence Mamaril,
17 “Mamaril Decl.,” Dkt. No. 46 ¶ 2.) Fr. Mark offered the position without inquiring about Mr.
18 Mamaril’s qualifications to carry out the duties. (Pl.’s Reburiano Dep. 330:20-331:1, 341:24-
19 344:2.) In fact, Fr. Mark testified that he knew Mr. Mamaril had no prior experience as a secretary
20 when he offered him the position. *Id.* at 341:24-342:1. He also testified that he did not know
21 whether Mr. Mamaril had experience with bookkeeping, payroll, or human resource functions. *Id.*
22 at 342:2-344:2. In selecting Mr. Mamaril, Fr. Mark passed over Karen McFadden, a Caucasian
23 woman who had performed Plaintiff’s job while she was out on medical leave, for the interim
24 parish secretary position because he believed that she was unqualified due to her perceived
25 negative attitude. (*Id.* at 344:3-23; Mamaril Decl. ¶ 3.) In November 2013, Defendant hired
26 Steven Pilc to do the accounting portion of Plaintiff’s job because Fr. Mark realized Mr. Mamaril
27 could not do it. *Id.* at 350:17-25, 351:20-352:10.

28 Today, Mr. Mamaril remains “interim” parish secretary and works 22 hours per week.

1 (Pl.’s Reburiano Dep., 331:8-10, 347:23-348:1; Dep. of Clarence Mamaril, “Pl.’s Mamaril Dep.,”
2 McGuinn Decl., Ex. 3 at 38:2-14; 39:17-21.) Mr. Mamaril’s works a flexible schedule, which
3 allows him to continue operating his private law practice while also performing his parish
4 secretary duties. (Pl.’s Mamaril Dep. 51:7-11.) If his secretarial duties conflict with his law
5 practice, he informs Fr. Mark that he will make up the time. *Id.* Additionally, Mr. Mamaril has
6 used the parish office for his law practice by taking calls and meeting with clients at the rectory
7 office. (Pl.’s Mamaril Dep. 52:21-53:6; Pl.’s Reburiano Dep. 349:22-25.) Fr. Mark has also
8 permitted Mr. Mamaril to stay in the priest quarters approximately 15-20 times, so that he would
9 not have to commute to his home in Napa County. (Pl.’s Mamaril Depo. 84:5-22.)

10 After Plaintiff’s termination, she applied for unemployment benefits. (Belloni Decl. ¶ 27.)
11 Although Plaintiff was told by Defendant’s then-Director of Human Resources that the
12 Archdiocese would not prevent her from collecting unemployment benefits, Fr. Mark instructed
13 Mr. Mamaril to file a letter in response to Belloni’s unemployment insurance claim, which
14 included the November 6, 2012 warning letter. (*Id.*; Pl.’s Mamaril Dep. 90:6-91:1; 1/14/2013
15 Letter to the Employment Development Department, McGuinn Decl., Ex. 15.) When Plaintiff’s
16 benefits were denied, she contacted the Archdiocese’s Human Resources department, who implied
17 that there must have been some mistake and subsequently her benefits were awarded. (Belloni
18 Decl. ¶ 27.)

19 On July 30, 2013, Plaintiff filed a complaint alleging five causes of action: (1)
20 Discrimination on the Basis of Race and National Origin; (2) Gender Discrimination; (3) Age
21 Discrimination; (4) Violation of California Labor Code § 226; and (5) Violation of California
22 Labor Code § 2802. On October 9, 2013, Plaintiff filed an amended complaint. (First Am.
23 Compl., “FAC,” Dkt. No. 16.)

24 On October 30, 2014, Defendant filed a motion for partial summary judgment as to the
25 first three causes of action. (Def.’s Mot., Dkt. No. 45.) On November 26, 2014, Plaintiff filed her
26 amended opposition, in which she conceded that she could not make a prima facie case for age
27 discrimination. (Pl.’s Opp’n, Dkt. No. 55 at 1 n. 1.) On December 5, 2014, Defendant filed its
28 reply. (Def.’s Reply, Dkt. No. 57.)

1 **II. LEGAL STANDARD**

2 A party may move for summary judgment on a “claim or defense” or “part of... a claim or
3 defense.” Fed. R. Civ. P. 56(a). Summary judgment is appropriate when, after adequate
4 discovery, there is no genuine issue as to material facts and the moving party is entitled to
5 judgment as a matter of law. *Id.*; see *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).
6 Material facts are those that might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*,
7 477 U.S. 242, 248 (1986). A dispute as to a material fact is “genuine” if there is sufficient
8 evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.*

9 A party seeking summary judgment bears the initial burden of informing the court of the
10 basis for its motion, and of identifying those portions of the pleadings and discovery responses
11 that demonstrate the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. Where
12 the moving party will have the burden of proof at trial, it must affirmatively demonstrate that no
13 reasonable trier of fact could find other than for the moving party. *Southern Calif. Gas. Co. v. City*
14 *of Santa Ana*, 336 F.3d 885, 888 (9th Cir. 2003).

15 On an issue where the nonmoving party will bear the burden of proof at trial, it may
16 discharge its burden of production by either (1) by “produc[ing] evidence negating an essential
17 element of the nonmoving party's case” or (2) after suitable discovery “show[ing] that the
18 nonmoving party does not have enough evidence of an essential element of its claim or defense to
19 discharge its ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co., Ltd., v. Fritz*
20 *Cos., Inc.*, 210 F.3d 1099, 1103 (9th Cir. 2000); see also *Celotex*, 477 U.S. 324-25.

21 Once the moving party meets its initial burden, the opposing party must then set forth
22 specific facts showing that there is some genuine issue for trial in order to defeat the motion. See
23 Fed. R. Civ. P. 56(e); *Anderson*, 477 U.S. at 250. “A party opposing summary judgment may not
24 simply question the credibility of the movant to foreclose summary judgment. *Anderson*, 477 U.S.
25 at 254. “Instead, the non-moving party must go beyond the pleadings and by its own evidence set
26 forth specific facts showing that there is a genuine issue for trial.” *Far Out Prods., Inc. v. Oskar*,
27 247 F.3d 986, 997 (9th Cir. 2001) (citations and quotations omitted). The non-moving party must
28 produce “specific evidence, through affidavits or admissible discovery material, to show that the

1 dispute exists.” *Bhan v. NMS Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991). Conclusory or
2 speculative testimony in affidavits and moving papers is insufficient to raise a genuine issue of
3 material fact to defeat summary judgment. *Thornhill Publ’g Co., Inc. v. Gen. Tel. & Electronics*
4 *Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

5 In deciding a motion for summary judgment, a court must view the evidence in the light
6 most favorable to the nonmoving party and draw all justifiable inferences in its favor. *Anderson*,
7 477 U.S. at 255; *Hunt v. City of Los Angeles*, 638 F.3d 703, 709 (9th Cir. 2011).

8 III.DISCUSSION

9 A. The Merits of Defendant’s Motion for Summary Judgment

10 Defendant seeks summary judgment as to the first, second and third causes of action for
11 race and gender discrimination and wrongful termination in violation of Title VII and age
12 discrimination in violation of the Age Discrimination in Employment Act (“ADEA”).

13 Title VII makes it unlawful for an employer to “discriminate against any individual with
14 respect to his compensation, terms, conditions, or privileges of employment, because of such
15 individual's race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e–2. Title VII claims
16 involving alleged discrimination and retaliation are both governed by a burden-shifting
17 framework.

18 A disparate treatment claim must be supported by direct evidence of discrimination, or
19 may instead be evaluated under the burden-of-proof-and production analysis set forth in
20 *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973).

21 1. Age Discrimination Claim

22 In her opposition, Plaintiff concedes that she cannot meet her burden of making a prima
23 facie showing for age discrimination under the ADEA. (Pl.’s Opp’n at 1 n. 1.) Accordingly, the
24 motion for summary judgment is granted as to the third cause of action.

25 2. Gender Discrimination Claims

26 Here, Plaintiff has presented no direct evidence of disparate treatment. Thus, she can
27 survive summary judgment on her discrimination claims only if she first provides sufficient
28 evidence to establish a prima facie case of discrimination. If she succeeds, the burden shifts to

1 Defendant to produce evidence of a legitimate, nondiscriminatory reason for the adverse action. If
2 Defendant successfully carries that burden, the ultimate burden shifts to Plaintiff to raise a triable
3 issue of material fact as to whether the proffered reasons for the adverse action are a mere pretext
4 for unlawful discrimination. *See Shelley v. Geren*, 666 F.3d 599, 607-08 (9th Cir. 2012).

5 Notwithstanding the burden-shifting, the ultimate burden of proof remains with Plaintiff to show
6 that Defendant intentionally discriminated against her based on her race. *Coleman v. Quaker Oats*
7 *Co.*, 232 F.3d 1271, 1281 (9th Cir. 2000).

8 The Archdiocese argues that the court should grant summary judgment because even if
9 Plaintiff could establish a prima facie case of discrimination on the basis of race, she cannot
10 establish a triable issue with regard to whether the articulated reason for her termination was
11 pretextual. (Def.'s Mot. at 22.)

12 To establish a prima facie case of discrimination through circumstantial evidence, Plaintiff
13 must show that (1) she was a member of the protected class; (2) that she suffered an adverse
14 employment action; (3) that at the time of the adverse action she was satisfactorily performing her
15 job; and (4) that she was replaced in that position by a person outside the protected class who had
16 equal or inferior qualifications, or was discharged under circumstances otherwise giving rise to an
17 inference of discrimination. *See Diaz v. Eagle Produce, Ltd. Partnership*, 521 F.3d 1201, 1207
18 (9th Cir. 2008); *see also Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 142 (2000);
19 *Pottenger v. Potlach Corp.*, 329 F.3d 740, 745-46 (9th Cir. 2003).

20 The Ninth Circuit has repeatedly noted that “[t]he burden of establishing a prima facie case
21 of disparate treatment is not onerous.” *See, e.g., Lyons v. England*, 307 F.3d 1092, 1112 (9th Cir.
22 2002) (quoting *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981)). On summary
23 judgment, the degree of proof necessary to establish a prima facie case “is minimal and does not
24 even rise to the level of a preponderance of the evidence.” *Schechner v. KPIX-TV*, 686 F.3d 1018,
25 1025 (9th Cir. 2012) (citing *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 889 (9th Cir. 1994)).

26 Here, Defendant argues that even if Plaintiff could establish a prima facie case of
27 discrimination, she cannot establish that a triable issue of fact that Fr. Mark's reasons for her
28 termination were pretextual. (Def.'s Mot. at 22.) In its reply, Defendant assumes, and the Court

1 agrees, that Plaintiff can establish a prima facie case for her gender and race discrimination claims,
2 because she is a Caucasian woman, who was terminated from her employment despite adequately
3 performing her duties, and was replaced with a Filipino male. Accordingly, the Court is left only
4 to address whether a triable issue exists to preclude summary judgment as to whether Plaintiff's
5 termination was pretextual. (*See* Def.'s Reply at 1 n. 1.)

6 a. Legitimate, Nondiscriminatory Reason

7 If the plaintiff succeeds in establishing a prima facie case, the burden shifts to the
8 defendant to show a legitimate, nondiscriminatory reason for its employment decision. *Noyes v.*
9 *Kelly Servs.*, 488 F.3d 1163, 1168 (9th Cir. 2007); *see also Surrell v. California Water Serv. Co.*,
10 518 F.3d 1097, 1106 (9th Cir. 2008). Once that burden is met, the inference of discrimination or
11 retaliation raised by the prima facie case is dispelled. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S.
12 502, 510-11 (1993). The plaintiff must then provide evidence showing that the asserted reason was
13 a pretext for unlawful discrimination or retaliation. *Reeves*, 530 U.S. at 146-50.

14 Defendant asserts that to the extent that Plaintiff has met the elements of the prima facie
15 case, it has articulated a legitimate business reason for the termination— Plaintiff's insubordination
16 and disrespectful behavior— and Plaintiff has no substantial evidence showing that the decision
17 was motivated by some discriminatory motive. (Def.'s Reply at 1.) Defendant contends that the
18 testimony of Fr. Mark, Fr. Ken, and Michael Mangini is undisputed, and establishes that Plaintiff's
19 termination was for a legitimate, nondiscriminatory reason. As Defendant has shown a legitimate,
20 nondiscriminatory reason for its actions, the burden shifts back to Plaintiff, who must demonstrate
21 that Fr. Mark's reasons for the adverse employment decision is a pretext for a discriminatory
22 motive.

23 b. Pretext

24 A plaintiff can show pretext "either (1) directly by persuading the court that a
25 discriminatory reason more likely motivated the employer or (2) indirectly by showing that the
26 employer's proffered explanation is unworthy of credence." *Burdine*, 450 U.S. at 256. Examples of
27 direct evidence of discriminatory conduct include "comments from supervisors betraying bias or
28 animus against [minority] workers." *Earl v. Nielsen Media Research, Inc.*, 658 F.3d 1108, 1113

1 (9th Cir. 2011). On the other hand, “circumstantial evidence . . . tends to show that the employer’s
2 proffered motives were not the actual motives because they are inconsistent or otherwise not
3 believable.” *Godwin v. Hunt Wesson, Inc.*, 150 F.3d 1217, 1222 (9th Cir. 1998). “Where the
4 evidence of pretext is circumstantial, rather than direct, the plaintiff must present ‘specific’ and
5 ‘substantial’ facts showing that there is a genuine issue for trial.” *Noyes v. Kelly Services*, 488
6 F.3d 1163, 1170 (9th Cir. 2007) (quoting *Godwin*, 150 F.3d at 122). “However, . . . in the context
7 of Title VII claims, the burden on plaintiffs to raise a triable issue of fact as to pretext is ‘hardly an
8 onerous one.’” *Noyes*, 488 F.3d at 1170 (quoting *Payne v. Norwest Corp.*, 113 F.3d 1079, 1080
9 (9th Cir. 1997)).

10 *i. Fr. Mark’s treatment of Plaintiff and other women is indicative of*
11 *discrimination*

12 It is undisputed that Fr. Mark treated Plaintiff and other female employees differently than
13 the male employees. Fr. Mark allowed men into the priest quarters, and did not allow women.
14 (Belloni Decl. ¶ 14.) The issue is whether this difference in treatment was discriminatory.

15 Further, it undisputed that Plaintiff is a Caucasian woman who was replaced with a
16 Filipino man who, for the purposes of this motion, was not qualified to perform all of the duties of
17 parish secretary. Fr. Mark hired Mr. Mamaril despite Fr. Mark’s knowledge that he had no
18 secretarial experience, and without knowing whether he was qualified to perform the other job
19 responsibilities. Fr. Mark testified that he instantly hired Mr. Mamaril, because he did not have a
20 secretarial replacement lined up for the next day. (Def.’s Reburiano Dep. 330:20-331:10.) In
21 hiring Mr. Mamaril, Fr. Mark passed over Karen McFadden, another Caucasian female, for the
22 interim parish secretary position, even though she had previously performed those duties when
23 Plaintiff was on disability leave. (Pl.’s Reburiano Dep. 344:3-23.) Despite Mr. Mamaril’s
24 shortcomings—which required hiring another staff member to do the bookkeeping—he is still
25 serving as interim parish secretary almost two years later. (See Pl.’s Reburiano Dep. 350:17-25,
26 351:20-352:10.)

27 In addition, Fr. Mark’s termination of Plaintiff’s telecommuting agreement was done under
28

1 the guise of instruction from HR,¹ but he currently allows Mr. Mamaril to maintain a flexible,
2 part-time schedule despite previous claims that he needed Plaintiff physically present in the office
3 five days per week. (Pl.’s Reburiano Dep. 347:23-348:1; Pl.’s Mamaril Dep., 38:2-14; 39:17-21,
4 51:7-11.) Why Fr. Mark now believes that the office manager need not be available to answer
5 phones and greet visitors, when this was previously integral to the gatekeeping role of parish
6 secretary, is uncertain.

7 Additionally, Plaintiff contends that Fr. Mark treated Plaintiff and other female employees
8 differently than male staff members, as his conversations with female staff he was rude and short
9 with them, and would cut them off. (Pl.’s McFadden Dep. 76:16-25; Pl.’s Peters Dep. 40:25-41:4;
10 Pl.’s Belloni Dep. 144:9-15; Belloni Decl. ¶ 5.) Plaintiff claims that when female staff members
11 asked Fr. Mark questions, or sought clarification which they needed to do their jobs, he would tell
12 them they either didn’t need to know the information or would be given information on a “need to
13 know basis.” (Pl.’s Belloni Dep. 144:9-15; Pl.’s McFadden Dep., 76:16-25.) For example,
14 Plaintiff claims that she once asked Fr. Mark about his schedule, and was reprimanded and told
15 not to question his whereabouts. (Belloni Decl. ¶ 6.) As parish secretary, however, she was
16 expected to know where the pastor was in case a parishioner needed him or another urgent matter
17 arose. *Id.* On another occasion, Plaintiff asked for the names of the newly appointed Finance
18 Council members, with whom she would regularly communicate regarding financial issues, and
19 Fr. Mark told her he would give her information on a “need-to-know” basis. (Pl.’s Belloni Dep.
20 144:9-15.)

21 On yet another occasion, Fr. Mark asked Karen McFadden, the only other woman who
22 worked in the rectory office, to alert him when a certain individual called, but when she asked him
23 to repeat the person’s name, he refused and instead he told her “I will tell you what you need to
24 know. You don’t need to know who.” (Dep. of Karen McFadden, “Pl.’s McFadden Dep.”
25 McGuinn Decl., Ex. 9 at 76:16-25.) Ms. McFadden also testified that Fr. Mark accused her of
26 being impolite and, after Plaintiff’s termination, inexplicably began taking job duties away from
27

28 ¹ The Court recognizes that this fact is in dispute, but, for the purposes of this motion, the Court
will view this evidence in the light most favorable to Plaintiff.

1 her. (Pl.’s McFadden Dep. 34:10-21, 76:7-25; McFadden Decl., ¶ 6.) In fact, Fr. Mark testified
2 that Karen McFadden was not considered for the interim secretary position, despite having
3 performed the job successfully for more than three months while Plaintiff was out on medical
4 leave, because Fr. Mark believed that she had an attitude problem. (Pl.’s Reburiano Dep. 344:3-
5 23.)²

6 Cathie Peters, a parishioner and staff member for over 30 years, testified that Fr. Mark was
7 unwelcoming, unfriendly, unaccommodating and that she “did not feel welcomed by him in any
8 way to discuss anything.” (Dep. of Cathleen Peters, “Pl.’s Peters Dep.,” McGuinn Decl., Ex. 8 28:
9 12-29:2, 40:9-10, 106:19-21.)

10 Defendant argues that Fr. Mark offered the parish secretary position to three women,
11 including Linda Myers, who is also Caucasian. (Def.’s Mot. at 11; Def.’s Reburiano Dep. 331:2-
12 332:10, 334:5-336:5.) Fr. Mark testified that he offered Linda the position in December 2012, and
13 that Deacon Jim Myers was present during that conversation. (Def.’s Reburiano Dep. 334:5-
14 336:5.) To the contrary, Deacon Myers testified that this meeting never occurred and denied
15 statements Fr. Mark attributed to him. (Dep. of James Myers, “Myers Dep.,” McGuinn Decl., Ex.
16 17 at 16:5-21, 18:4-24.) Thus, whether Fr. Mark offered Mrs. Myers the position, and how that
17 offer, if any, was conveyed, is a genuine dispute of material fact. For the purposes of this motion,
18 however, the evidence most favorable to Plaintiff is that an offer was never made to Mrs. Myers.

19 Defendant argues that Fr. Mark’s hiring of other Caucasian women belies the gender
20 discrimination claim. (Def.’s Mot. at 24-25.) Plaintiff, in opposition, argues that the same actor
21 defense does not apply, because Fr. Mark did not hire Plaintiff. (Pl.’s Opp’n at 30.) “[W]here the
22 same actor is responsible for both the hiring and the firing of a discrimination plaintiff, and both
23 actions occur within a short period of time, a strong inference arises that there was no
24 discriminatory motive.” *Bradley v. Harcourt, Brace & Co.*, 104 F.3d 267, 270-71 (9th Cir. 1996).
25 Since Fr. Mark did not hire Plaintiff, the same actor defense does not apply. Further, that Fr. Mark
26

27 ² Defendant implies that Ms. McFadden’s testimony and declaration should be discounted because
28 she and Plaintiff are friends. (*See* Def.’s Reply at 4.) This is a credibility determination the Court
is not in a position to make because the testimony and declaration are not simply self-serving.

1 was involved in the hiring of two female employees does not mean that he did not have an
2 improper motive when he terminated Plaintiff, because not only were those positions outside of
3 the rectory, but Fr. Mark did not make both of those hiring decisions unilaterally. (*See* Pl.’s Opp’n
4 at 30.)

5 In comparison, Plaintiff argues that Fr. Mark gave preferential treatment to his male
6 employees. (Pl.’s Opp’n at 22.) Fr. Mark was allegedly more respectful and friendly during his
7 interactions with male staff. *Id.* For example, Fr. Mark socialized with male employees, including
8 Mr. Mamaril and Mr. Mangini, in his priest’s quarters. (Pl.’s Mamaril Dep. 55:1-4, 56:11-58:5,
9 70:15-20; Pl.’s Reburiano Dep. 252:16-24.) Women were not extended the same privilege.
10 (Belloni Decl. ¶ 14.) In its reply, Defendant contends that this “could easily be deemed prudent
11 risk management” instead of being deemed discriminatory. (Def.’s Reply at 11.) There is no
12 evidence, however, that risk management was Fr. Mark’s reason for excluding women from the
13 priest’s quarters. Nonetheless, whether his reasons were discriminatory is a question of fact for
14 the jury.

15 *ii. Defendant’s explanation is unworthy of credence*

16 Proof that an employer’s explanation for an employee’s termination is unworthy of
17 credence is circumstantial evidence probative of intentional discrimination. *Reeves v. Sanderson*
18 *Plumbing Prods., Inc.*, 530 U.S. 133, 143 (2000). In addition, proof that an employer’s criticism
19 of the plaintiff’s job performance was unfounded raises a question as to the credibility of the
20 employer’s explanation for any adverse action taken against the plaintiff. *Id.* at 148.

21 Here, it is undisputed that Plaintiff competently performed her duties. Instead,
22 Defendant’s stated reason for termination is that Plaintiff was disrespectful and insubordinate.
23 Prior to Fr. Mark becoming pastor, Plaintiff was never told that she was disrespectful, negative or
24 insubordinate and had no record of discipline. (Belloni Decl. ¶ 3; Pl.’s Ruburiano Dep. 94:7-20.)
25 After Fr. Mark joined the parish, Plaintiff was accused of being disrespectful, of making
26 statements that she claims she did not make, and was subjected to what she has characterized as
27 specious discipline. (Pl.’s Opp’n at 15-16.)

28 Despite the contradicting factual allegations, Defendant claims that the there is no dispute

1 of material fact. (Def.’s Mot. at 3.) Plaintiff, however, cites to an abundance of evidence that she
2 claims suggests that Defendant manufactured the attitude issues which it now asserts were the
3 reasons for Plaintiff’s termination. (Pl.’s Opp’n 16-19.) For example, Plaintiff denies much of the
4 alleged conduct and statements that Fr. Mark attributes to her, including that she was
5 insubordinate when she was informed that the location of the offertory count was changing.
6 (Def.’s Belloni Dep. 32:12-33:21; Def.’s Reburiano Dep. 175:1-178:24.) Karen McFadden, who
7 witnessed the exchange, denies that Plaintiff made the statements Fr. Mark attributed to her. (Decl.
8 of Karen McFadden, “McFadden Decl.,” Dkt. No. 54-2 ¶ 9.)

9 Further, Plaintiff claims that she never treated her coworkers unprofessionally and cites to
10 the testimony of Ms. Peters and the declaration of Ms. McFadden. (Pl.’s Peters Dep. 31:6-17,
11 32:11-33:5; McFadden Decl. ¶ 2.) Additionally, Plaintiff refutes Mr. Mamaril’s contention that
12 she had an attitude and was negative by claiming that he was targeting her for termination. (Pl.’s
13 Opp’n at 18; Pl.’s Peters Dep. 71:13-75:19, 116:5-20, Ex. 3.) Plaintiff cites an email Ms. Peters
14 sent after Plaintiff’s termination that detailed a March 2012 conversation between herself, Mr.
15 Mamaril, and Mr. Mangini. (Pl.’s Peters Dep., Ex. 3.) Therein, Ms. Peters recounted Mr.
16 Mamaril’s purported lists of wrongs Plaintiff perpetuated against him, including her failure to send
17 him an email reminder about a meeting that was already on his calendar. *Id.* Ms. Peters believed
18 that Mr. Mamaril was targeting Plaintiff for termination just like he had successfully done to
19 others previously. *Id.*

20 Defendant cites to Plaintiff’s email exchanges with Ms. McFadden, in which she referred
21 to Fr. Ken as “Dodopastor,” called a co-worker (Mike Mangini) a “stupid asshole,” and repeatedly
22 called Fr. Mark “Little Caesar.” (Def.’s Mot. at 9.) At the hearing, Defendant confirmed that these
23 emails, and, therefore, Plaintiff’s disrespectful nicknames, were unknown to Defendant at the time
24 of Plaintiff’s termination. Accordingly, they are irrelevant to Plaintiff’s discrimination claims, are
25 highly prejudicial, and are inadmissible.

26 The Court notes that many of the incidents of alleged insubordination cited by
27 Defendant— including the deacon stipends, Costco cards, bonuses, and the offertory count—
28 concerned her human resources and bookkeeping duties. It follows then, that she and Fr. Mark

1 would have these conversations, and she would provide her views on those topics. Moreover, Fr.
2 Mark did not document any incidents of Plaintiff’s alleged conduct until he compiled a laundry list
3 of complaints in the email sent to Mr. Schmidt on October 24, 2012. (Pl.’s Schmidt Dep., Ex. 6.)
4 This is despite having received human resources training that emphasized, as Fr. Mark described,
5 documenting everything. (Pl.’s Reburiano Dep. 54:10-15.) Defendant contends that Fr. Mark kept
6 his own notes outside of her personnel file and then typed them into a single document, which he
7 then sent to the Archdiocese. (Def.’s Reply at 9; Def.’s Reburiano Dep. 362:16-363:8.) Mr.
8 Schmidt testified that the Archdiocese encourages pastors to “keep notes of their conversations,
9 and if it gets to a serious point, they should have a meeting with that employee, document the
10 summary of what they have had, [and] present that to the employee.” (Pl.’s Schmidt Dep. 40:11-
11 19.) Fr. Mark did not follow protocol, because he did not meet with Plaintiff despite apparently
12 having serious issues with her behavior. Instead, he went directly to HR and provided a list of
13 transgressions dating back to when he became pastor, more than a year prior. (Pl.’s Schmidt Dep.,
14 Ex. 6.) Also, the Court notes that some of alleged incidents in the October 24, 2012 email do not
15 have dates associated with them. *Id.* Since the Court must draw all reasonable inferences in favor
16 of the nonmoving party without making any credibility determinations, Fr. Mark’s failure to both
17 follow protocol, by not meeting with Plaintiff, and document her alleged transgressions in her
18 personnel file in a more timely manner, could lead a jury to conclude that Fr. Mark’s reasons for
19 Plaintiff’s termination were exaggerated after the fact and were, therefore, pretextual. *See Reeves*,
20 530 U.S. at 135.

21 All Plaintiff must do to survive summary judgment is to provide “specific, substantial
22 evidence that undermine[s] the credibility of those reasons” given by Defendant for the
23 unfavorable employment action. *Noyes*, 488 F.3d at 1171. She need not prove the ultimate issue
24 of unlawful discrimination, despite Defendant’s contention to the contrary, because that would
25 “erroneously heighten[] the standard on summary judgment.” *Id.* at 1172. Viewing the evidence
26 in the light most favorable to the nonmoving party and drawing all justifiable inferences in her
27 favor, Plaintiff provides specific and substantial facts, outlined above, to raise a question for the
28 jury regarding Defendant’s true reasons for her termination. *See discussion supra* Part III.A.2.

1 Accordingly, the question of whether the “real reason” for the decision was unlawful
2 discrimination must go to the jury. *See id.*

3 **3. Race Discrimination Claim**

4 Plaintiff claims that Fr. Mark, who is Filipino, displayed preferential treatment toward
5 Filipinos, including Clarence Mamaril, Fr. Mofan, Fr. Al, and the Filipino community as a whole.
6 (Pl.’s Opp’n at 27.) Much of the evidenced proffered overlaps with that identified in support of
7 Plaintiff’s gender discrimination claim. *See* discussion *supra* Part III.A.2.

8 As provided above, Plaintiff was replaced by Mr. Mamaril, who is Filipino, moments after
9 her termination. Mr. Mamaril had no prior secretarial experience and limited experience, if any, in
10 the other duties of parish secretary. Fr. Mark claims that he hired Mr. Mamaril because he did not
11 have anyone to fill in the next day. That does not explain why Mr. Mamaril remains interim
12 parish secretary. He was also given the position over Ms. McFadden, who is also Caucasian, and
13 who filled in for Plaintiff while she was out on medical leave. (*See* Mamaril Decl. ¶ 3.) Since
14 becoming interim parish secretary, Mr. Mamaril has only worked part-time, and has been provided
15 flexibility in both scheduling and his duties that was not extended to Plaintiff.³ In fact, the
16 position was restructured a year after Mr. Mamaril took over, and the bookkeeping functions were
17 reassigned to Ms. McFadden’s successor, Steven Pilc, because, according to Fr. Mark, Mr.
18 Mamaril did not have time because he was only in the office 20 hours per week. (Pl.’s Reburiano
19 Dep. 350:17-25, 351:20-352:10.)

20 Additionally, Plaintiff generally argues that Fr. Mark treated Filipinos more favorably than
21 Caucasians. (Pl.’s Opp’n at 27.) Plaintiff states that, “[i]n contrast to the ‘management-
22 subordinate’ relationship Reburiano had with Plaintiff and the female staff, he and Mamaril were
23 ‘friends,’” who often went to dinner together. (Pl.’s Opp’n at 27; Pl.’s Mamaril Dep. 82:6-7,
24 83:10-18.) Further, Plaintiff claims that Fr. Mark’s interactions with Fr. Al and Fr. Mofan, the

25
26 ³ While Defendant claims that Mr. Mamaril’s reduced hours are the result of restructuring of the
27 position, Mamaril testified that he was only working 20 hours per week from December 2012
28 (right after Plaintiff was terminated) to December 2013. (*Compare* Def.’s Mot. at 19, *with* Pl.’s
Mamaril Dep. 39:12-18.) Mr. Pilc was not hired to perform the bookkeeping function, one of Mr.
Mamaril’s job responsibilities, until November 2013, almost a full year later. (Pl.’s Mamaril Dep.
32:20-25; Pl.’s Reburiano Dep., 350:17-25, 351:20-352:10.)

1 two Filipino associate pastors, were pleasant and he would engage them in friendly conversations.
 2 (Belloni Decl. ¶ 8; McFadden Decl. ¶ 7.) In 2011, unlike previous years, Fr. Mark decided that
 3 the only employees who would receive Christmas bonuses were Fr. Al and Fr. Mofan. (Belloni
 4 Decl. ¶ 21; Pl.’s Belloni Dep. 69:19-70:5.) At the hearing, Plaintiff clarified that \$250 was an
 5 unusually large bonus for clergy. Additionally, as to Fr. Mofan, he was arrested and convicted of
 6 exposing himself to a park ranger in China Camp State Park in August 2012. (Belloni Decl. ¶ 10.)
 7 Thereafter, despite his arrest, Fr. Mofan was included in the Parish Directory by Mr. Mamaril,
 8 who was later commended by Fr. Mark for a job well done. *Id.*

9 Defendant argues that you cannot compare Fr. Mark’s treatment of clergy to that of non-
 10 clergy staff, because they are not similarly-situated. (Def.’s Reply at 10.) Defendant, citing the
 11 Eighth Circuit in *Marquez v. Bridgestone/Firestone, Inc.*, 353 F.3d 1037, 1038 (8th Cir. 2004),
 12 contends that to be similarly-situated, “[t]he plaintiff must compare individuals who have dealt
 13 with the same supervisor, have been subject to the same standards, and engaged in the same
 14 conduct without any mitigating or distinguishing circumstances.” (Def.’s Reply at 7.) The Ninth
 15 Circuit, however, has not adopted the “strict same supervisor” requirement, and has noted that
 16 having a different supervisor may be immaterial depending on the circumstances. *Hawn v.*
 17 *Executive Jet Mgmt., Inc.*, 615 F.3d 1151, 1157-58 (9th Cir. 2010). Additionally, the Ninth
 18 Circuit does not require that employees have the same position to be similarly-situated. *Id.* at
 19 1157. Generally, individuals are similarly situated when they have similar jobs and display
 20 similar conduct.” *Vasquez v. Cnty. of Los Angeles*, 349 F.3d 634, 641 (9th Cir. 2003), as amended
 21 (Jan. 2, 2004). Whether non-clergy staff is similarly situated to clergy staff is a question of fact.
 22 *See Hawn*, 615 F.3d at 1157 (citing *Beck v. United Food & Commercial Workers Union Local 99*,
 23 506 F.3d 874, 885 n. 5 (9th Cir. 2007)). Assuming that clergy and non-clergy staff members are
 24 not similarly-situated, however, Fr. Mark discontinued the stipend given to Deacon Jim Myers, a
 25 Caucasian clergy member, in 2011. Further, Deacon Myers did not receive a Christmas bonus that
 26 year, despite being clergy, even though Fr. Al and Fr. Mofan did. Since Deacon Myers is male, a
 27 juror could make a reasonable inference that his disparate treatment was based on race. That the
 28 only individuals to receive a bonus were Filipino clergy, combined with Mr. Mamaril’s

1 preferential treatment, is specific and substantial enough to show that there is a genuine issue for
2 trial.

3 While perhaps not as strong as her gender discrimination claim, in viewing the evidence in
4 the light most favorable to the nonmoving party and drawing all justifiable inferences in her favor,
5 Plaintiff has provided specific and substantial facts to give rise to a reasonable inference of racial
6 discrimination.

7 **B. Defendants’ Objections to Plaintiff’s Evidence**

8 Defendant objects to Plaintiff’s Exhibit 6, Plaintiff’s Declaration, and the Declaration of
9 Karen McFadden. (Def.’s Reply at 12-15.)

10 **1. Plaintiff’s Exhibit 6**

11 Plaintiff’s Exhibit 6 consists of copies of letters written by parishioners to the Archdiocese
12 and Bishop William J. Justice expressing concern regarding Plaintiff’s termination. (McGuinn
13 Decl., Ex. 6.) They were produced in response to Defendants’ Request for Production of
14 Documents, Set One. (McGuinn Decl. ¶ 8.)

15 Defendant objects on the grounds that the letters are hearsay and irrelevant under Rules
16 801 and 802. (Def.’s Reply at 12.) Relevancy is a broad standard, and the letters concern the
17 parishioners opinions on Plaintiff’s professionalism and performance, as well as criticism of Fr.
18 Mark’s management and alleged unfair treatment of Plaintiff. Thus, the letters are surely relevant.
19 At the hearing, Plaintiff argued that the letters were not hearsay, because they were not being
20 offered for the truth of the matter asserted. Rather, they are offered to show Plaintiff’s reputation
21 in the community to rebut Defendant’s claim that she had a disrespectful attitude under Rule
22 405(a). This is sufficient to overrule the hearsay objection. At this juncture, however, the Court
23 need not rely on this evidence to make a reasonable inference that Fr. Mark had a discriminatory
24 motive in terminating Plaintiff.

25 **2. Declaration of Cheryl Belloni**

26 Defendant objects to several paragraphs on Plaintiff’s declaration. (Def.’s Reply at 12-13).
27 As to Paragraph 5, lines 14-16, Defendant objects on the grounds that her statements that Fr. Mark
28 was not open to conversations with “other women,” and “seemed as if he preferred not to speak

1 with women at all” lacks foundation under Federal Rules of Evidence 601 and 602. *Id.* at 12.
2 Plaintiff’s declaration is based on her experience and her perception of what was happening during
3 her employment, so it does not lack foundation. Additionally, Defendant objects on the grounds
4 that these statements contradict Plaintiff’s response to Special Interrogatory Nos. 1 and 4, and her
5 deposition testimony. *Id.* at 13. Defendant does not identify the contradiction, but a review of the
6 deposition transcript only provides that Plaintiff testified that she could not identify any other facts
7 to suggest that she was terminated because of her gender at that point in time. (Def.’s Belloni Dep.
8 159:6-22.)

9 Similarly, Defendant objects to paragraphs 8 on the grounds that Plaintiff lacks foundation
10 to state that Fr. Mark acted differently with men, because he was more friendly. (Def.’s Reply at
11 13.) Plaintiff undoubtedly observed Fr. Mark’s interactions with men and women, and can
12 provide her observation. Defendant also claims that this fact is irrelevant. Whether Fr. Mark gave
13 male staff members preferential treatment is at issue in this litigation, so it is relevant.

14 Defendant objects to paragraph 10 in its entirety on the grounds it lacks foundation and
15 personal knowledge. (Def.’s Reply at 13.) Paragraph 10 recounts that Mr. Mark solicited Mr.
16 Mamaril’s feedback on the Parish Directory, and included Fr. Moran in it despite his recent arrest
17 and conviction, and for which Mr. Mamaril was commended. (Belloni Decl. ¶ 10.) Defendant
18 does not provide how it believes that Plaintiff does not have personal knowledge or why she lacks
19 foundation. If called to testify, Plaintiff can testify to these facts.

20 Defendant objects to paragraph 11 in its entirety on the grounds it lacks foundation and
21 personal knowledge. (Def.’s Reply at 13.) Paragraph 11 concerns Fr. Mark’s conduct when
22 Deacon Jim Myers had shoulder surgery, and provides that Fr. Mark visited him at his home and
23 brought him Communion. Plaintiff is aware that this happened and can testify to the foundation of
24 that knowledge further.

25 Defendant objects to a portion of paragraph 12 of Plaintiff’s declaration, specifically “To
26 my knowledge, Fr. Mark never asked the parish to pray for my recovery, nor did he inquire as to
27 my well-being.” Defendant objection for lack of personal knowledge is sustained as to this
28 sentence only.

1 Defendant objects to Plaintiff’s statement in paragraph 16 that “counting the offertory in
2 the main office had been approved during the last Archdiocesan audit because it is a more secure
3 location” on the grounds that she lacks both foundation and personal knowledge. (Def.’s Reply at
4 13.) Defendant appears to contest the accuracy of this statement. Plaintiff’s statement describes
5 her belief at the time of the incident. Despite Defendant’s contention otherwise, Plaintiff does not
6 declare that “Fr. Mark’s requested change in procedure was done for any nefarious or
7 discriminatory reason.” *Id.*

8 Accordingly, except for as explicitly provided above, Defendant’s objections to Plaintiff’s
9 declaration are overruled.

10 **3. Declaration of Karen McFadden**

11 Defendant objects to several paragraphs on Karen McFadden’s declaration. (Def.’s Reply
12 at 13-15). Paragraphs 2 and 3 concern Ms. McFadden’s perceptions of how Plaintiff and how Fr.
13 Mark interacted with others. (McFadden Decl. ¶¶ 2-3.) Defendant objects to both on the grounds
14 that she lacks foundation. The declaration reflects Ms. McFadden’s interpretation of what
15 happened based on numerous interactions. That Defendant disagrees is not objectionable.

16 Defendant objects to paragraph 6, in which Ms. McFadden states that she voluntarily quit
17 her job because she believed that she was going to be terminated, on the grounds that it is
18 irrelevant and lacks foundation. Ms. McFadden, however, states that she believed that she was
19 going to be terminated because “Fr. Mark inexplicably began taking away job duties I’d
20 performed for a long time.” (McFadden Decl. ¶ 6.) This is sufficient foundation.

21 Defendant also objects to paragraphs 7 and 8, which concern Fr. Mark’s interactions with
22 men, on the grounds that they lack foundation and personal knowledge. (Def.’s Reply at 14.) Ms.
23 McFadden states that she has witnessed Fr. Mark’s interactions, which is sufficient for
24 foundational purposes. Additionally, Defendant objects to the inclusion of the clergy members in
25 Paragraph 7, because they are not similarly situated. While that is true, for the limited purpose of
26 paragraph 7, which concerns how Fr. Mark treated male staff generally, Defendant’s objection is
27 overruled.

28 Defendant objects to paragraph 9. As to line 11, Defendant claims that Ms. McFadden

1 lacks foundation as to the statement that “counting in the main office had been approved during
2 the last Archdiocesan audit” and this contradicts her deposition testimony that she did not had not
3 heard or seen anything from the Archdiocese about counting procedures. (Def.’s Reply at 14.)
4 Defendant’s objection to line 11 is sustained. As to lines 12-13, Defendant objects on the grounds
5 that the statement contradicts McFadden’s deposition testimony, in which she stated she did not
6 recall what plaintiff said when they were told to move the counting to the conference room.
7 (Def.’s Reply at 14-15.) As an initial matter, Defendant did not provide page 80 of Ms.
8 McFadden’s testimony, so the Court is not in a position to sustain the objection. Moreover, even
9 if Ms. McFadden testified that she did not remember exactly what Plaintiff said, she may still
10 recall that Plaintiff never said what Fr. Mark accuses her of saying.

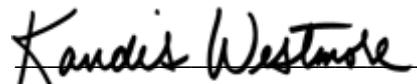
11 Accordingly, except for as explicitly provided above, Defendant’s objections to Ms.
12 McFadden’s declaration are overruled.

13 **IV. CONCLUSION**

14 In light of the foregoing, Defendant’s motion for partial summary judgment is GRANTED
15 IN PART AND DENIED PART. Specifically, the motion is granted as to the third cause of action
16 for age discrimination, and is denied as to the first and second causes of action for gender and race
17 discrimination.

18 IT IS SO ORDERED.

19 Dated: January 7, 2015

20 
21 KANDIS A. WESTMORE
22 United States Magistrate Judge
23
24
25
26
27
28