

**In the United States Court of Appeals
for the Seventh Circuit**

MICHAEL CLANCY, STUART LOVE, THOMAS BRYANT, AND SAMUEL PATTON, on behalf of
themselves and all others similarly situated,

Plaintiffs-Appellants/Cross-Appellees,

v.

THE SALVATION ARMY, an Illinois nonprofit corporation,

Defendant-Appellee/Cross-Appellant.

On Appeal from the United States District Court
for the Northern District of Illinois
Case No. 1:22-cv-01250 (The Hon. Manish S. Shah)

**COMBINED REPLY BRIEF OF PLAINTIFFS-APPELLANTS AND
RESPONSIVE BRIEF OF PLAINTIFFS/CROSS-APPELLEES**

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INTRODUCTION

Reversal of the district court's summary judgment decision is necessary because the district court erred in holding, as a matter of law, that the economic reality of the relationship between Plaintiffs and Defendant The Salvation Army was one of rehabilitation, not employment. Participants in Defendant's Adult Rehabilitation Centers ("ARCs") provided nearly 12 million hours of full-time, grueling, menial labor for The Salvation Army's enormous commercial thrift-store operation, saving it more than [REDACTED]. In exchange, Defendant provided participants—vulnerable individuals with nowhere else to turn—with housing, food, and other in-kind benefits, but only so long as they continued to work. That exchange mirrors the Supreme Court's binding and uncannily similar decision in *Tony & Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290 (1985). When viewed in the light most favorable to Plaintiffs, this basic structure of the ARCs and other evidence in the record are sufficient to create genuine disputes of material fact on all four economic reality factors considered by the district court: expectation of compensation, dependence, the Fair Labor Standards Act's ("FLSA") purposes, and primary beneficiary. The district court, however, misconstrued Rule 56 and misinterpreted *Alamo*, wrongly finding that the first three factors undisputedly favored Defendant and incorrectly holding that a genuine dispute with respect to who benefitted more from the relationship was insufficient to defeat summary judgment.

The Salvation Army asks this Court to repeat those errors. Defendant presents four threshold arguments intended to avoid application of Rule 56 to the economic reality test that all fail. Contrary to Defendant's suggestions: (1) disputed facts and inferences do not become undisputed because Defendant says so; (2) there is no rehabilitation exception to the FLSA; (3) *Alamo* is not distinguishable; and (4) other, non-binding authorities cited by Defendant do not support the district court's decision.

Defendant's arguments aimed at the four-factor economic reality test fare no better. To evade liability, Defendant ignores or attempts to sweep aside material evidence that creates disputes on each factor, most notably by repeating, in the face of contrary evidence, that the relationship was "rehabilitative." But on the record here, a reasonable trier of fact could find for Plaintiffs on all four factors. And Defendant asserts that the district court's identification of disputes regarding the primary-beneficiary factor does not preclude summary judgment, even though the district court noted all four factors are "interrelated," SA-10, and below Defendant described the primary-beneficiary analysis as "integral" to the economic reality test. The grant of summary judgment on Plaintiffs' FLSA, Michigan, and Illinois claims must therefore be reversed. The Wisconsin claims independently require reversal. Wisconsin applies a distinct control test, and The Salvation Army concedes its extensive control over participants' work and daily activities.

Lastly, Defendant's cross-appeal provides no basis to disturb the three state classes and the FLSA collective certified by the district court. The district court reasonably found that employment status turns on uniform ARC policies and program-wide proof. Any lawful food-and-housing credit can be calculated from ARC- and year-specific values and participant records, and Plaintiffs supplied a damages model tied to their liability theory. The same common proof also satisfies the less demanding standard of 29 U.S.C. § 216(b). This Court should affirm the certification order.

ARGUMENT (REPLY)

I. The District Court Erred in Granting Summary Judgment on Plaintiffs' Federal and State Wage Claims.

A. *The Salvation Army's Threshold Arguments for Ignoring the Summary Judgment Standard and the District Court's Economic Reality Test Fail*

In its ruling on Defendant's motions to dismiss and for summary judgment, the district court applied an economic reality test tailored to Plaintiffs' allegations, as required by Seventh Circuit precedent. *See Hollins v. Regency Corp.*, 867 F.3d 830, 835 (7th Cir. 2017); *Berger v. Nat'l Collegiate Athletic Ass'n*, 843 F.3d 285, 291 (7th Cir. 2016); *Vanskike v. Peters*, 974 F.2d 806, 808 (7th Cir. 1992). The district court determined that the test in this case should look at four "interrelated" factors: (1) the primary beneficiary of the relationship, (2) expectation of compensation, (3) dependence, and (4) the underlying purposes of the FLSA. SA-44-45.

The Salvation Army does not even address these four factors until the seventeenth page of its argument. *See generally* Resp. at 23–40. Instead, it devotes more than a third of its brief regarding summary judgment to promoting four reasons that this Court need not conduct the analysis the law requires. But there are no shortcuts here.

First, The Salvation Army asks this Court to ignore the well-established summary judgment standard by resolving disputes of material fact in its favor and finding facts “undisputed” simply because The Salvation Army labels them as such. Second, Defendant asks this Court to hold that a rehabilitative purpose forecloses an employment relationship, regardless of the economic reality. Third, Defendant wrongly argues that *Tony & Susan Alamo Foundation v. Secretary of Labor*—a Supreme Court decision holding that individuals who performed commercial labor for a nonprofit in exchange for in-kind benefits were employees—is not dispositive here. 471 U.S. at 306. Fourth, The Salvation Army erroneously urges this Court to affirm on the basis of distinguishable authority instead of relying on *Alamo*. Plaintiffs address each of these faulty arguments in turn before reiterating why material disputes of fact exist for all four factors of the employment test. *See infra* Section I.B.

The question on appeal is not whether The Salvation Army can offer a plausible account of the ARC program, but whether the record, when viewed in Plaintiffs’ favor, permits only the conclusion that Plaintiffs were not employees. It does not. Summary judgment must be reversed.

1. The Salvation Army Misapplies the Summary Judgment Standard.

Defendant's first mistake is to misapply Rule 56. Summary judgment is proper only where there are no genuine disputes of material fact and the moving party is entitled to judgment as a matter of law. *See Reed v. Brex, Inc.*, 8 F.4th 569, 575 (7th Cir. 2021). This Court reviews the grant of summary judgment de novo, viewing all disputed facts and inferences in Plaintiffs' favor. *Id.* A court may not "choose between competing reasonable inferences." *Driveline Systems, LLC v. Arctic Cat, Inc.*, 936 F.3d 576, 579 (7th Cir. 2019). A material dispute may concern the inference reasonably drawn from underlying facts, regardless of whether those facts are disputed. *Id.*; Br. at 22–24 (citing *Beckner v. Maxim Crane Works, L.P.*, 109 F.4th 968, 972–73 (7th Cir. 2024)).

The Salvation Army concedes that is the standard. Resp. at 23. But throughout its Response, Defendant refers to contested inferences as "undisputed" facts, labels the character of the participants' working relationship with The Salvation Army "self-evident" as a matter of law, and then dismisses the voluminous record of genuine disputes as mere "debates of semantics or characterization." Resp. at 8 n.5, 42–43, 46. Defendant engages in this improper practice most egregiously through its repeated labeling of the relationship between the ARC participants and The Salvation Army as undisputedly "rehabilitative," despite voluminous evidence showing that the relationship was a quid pro quo exchange of labor for in-kind benefits. *See, e.g.*, Resp. at 26; *id.* at 47 ("There can be no genuine dispute that rehabilitation. . . defined the

relationship between Plaintiffs and TSA.”); *see* Br. at 5–6, 27–29 (discussing evidence of quid pro quo); *infra* pp. 21–22. Defendant makes this same fundamental error regarding many other disputed facts and inferences material to the case. *Compare, e.g.*, Resp. at 51–52 (dismissing descriptions of an exchange of work for benefits as “informal shorthand”), *with* R.279, Plaintiffs’ Statement of Additional Material Facts (“SOAMF”) ¶ 6 (Defendant’s brochure promising meals and shelter “in exchange for the unpaid 40-hour work therapy week”); *compare* Resp. at 54 (calling Plaintiffs’ evidence of discharge for illness or injury “not a disputed fact, but rather a mischaracterization of the record”), *with* R.279, SOAMF ¶ 10 (administrator email describing an ARC dismissing a participant due to four days off from work due to illness; Plaintiff testimony that, when he needed surgery, staff told him, “This is a business. And if you can’t work, you can’t be here”); *compare* Resp. at 60 (asserting re-enrollment demonstrates that participants “recognized the value of the ARC Program enough to return voluntarily”), *with* Br. at 35–36; R.279, Plaintiffs’ Response to Defendant’s Statement of Material Facts (“RSOMF”) ¶ 17; R.279, SOAMF ¶ 60 (citing testimony of participants that returned to the ARC for food and to get off the streets). In so doing, The Salvation Army is effectively arguing to the jury to resolve disputes in its favor, not to a court reviewing a summary judgment decision. This approach is not an application of the summary judgment standard—it is a request that this Court bypass it.

The Salvation Army commits the same error as the district court, which resolved competing inferences in Defendant's favor and then characterized the remaining disputes as insufficiently "material." SA-13-15; *see* Resp. at 43-44 (defending that approach). This Court has rejected that approach. *Simpkins v. DuPage Hous. Auth.*, 893 F.3d 962, 965 (7th Cir. 2018) ("[O]n summary judgment, a district court makes no factual findings of its own" and may only "identify," without resolving, material factual disputes). The Salvation Army contends Plaintiffs' reliance on *Simpkins* is "misplaced" because in that case disputed facts "mattered to the legal character of the relationship at issue," whereas here there is purportedly "no dispute that Plaintiffs voluntarily enrolled in a temporary rehabilitation program." Resp. at 41-42. But that is a distinction without a difference. In *Simpkins*, the basic framework of the relationship was undisputed—both sides agreed that the putative employees performed work—yet this Court reversed because the *subsidiary facts and inferences* bearing on whether the work constituted employment were contested. 893 F.3d at 965-67. Likewise, the basic structure of the ARC program is not disputed, but the facts and inferences that determine whether the economic reality of that program is one of employment are in dispute.

The fact that the employment determination is one of law does not permit the district court to resolve material factual disputes along the way. *See Sec'y of Lab. v. Lauritzen*, 835 F.2d 1529, 1542-43 (7th Cir. 1987) (Easterbrook, J., concurring) ("The drawing of inferences from subordinate to 'ultimate' facts is a task for the trier of fact")

even where “there is a legal overlay”). Where, the record permits a reasonable factfinder to resolve those subsidiary facts in Plaintiffs’ favor on each of the four economic reality factors, the only appropriate outcome is denial of summary judgment. *See Dobrov v. Hi-Tech Paintless Dent Repair, Inc.*, No. 1:20-cv-00314, 2024 WL 4333190, at *5 (N.D. Ill. Sept. 27, 2024).

2. The Salvation Army Argues for a Rehabilitative Exception to the FLSA That Does Not Exist.

The Salvation Army’s second error is to advocate for a rehabilitative exception to the FLSA that is contrary to the law. Although the district court misapplied the economic reality test, its selection of the factors to consider was consistent with controlling precedent, which requires courts to examine the totality of the circumstances and tailor the economic reality inquiry to the relationship at issue. *See Simpkins*, 893 F.3d at 964–65 (7th Cir. 2018); *Hollins*, 867 F.3d at 835–37. It properly identified four “interrelated” considerations grounded in Supreme Court precedent: *Walling v. Portland Terminal Co.* connects employee status to the primary beneficiary of the relationship and whether compensation is contemplated, 330 U.S. 148, 152–53 (1947), while *Alamo* examines expected in-kind compensation, dependency, and the purposes of the FLSA, 471 U.S. at 299–302. *See* SA–9 n.5, SA–10 & n.6.

The Salvation Army now argues that the district court’s four-factor test is not necessary to resolve this case. It instead argues for an exception to the FLSA for rehabilitative relationships. Resp. at 37–40. But the FLSA contains no such exception. In

Alamo, the nonprofit asserted that it provided rehabilitation as well as food, clothing, and shelter. 471 U.S. at 298–99. The Court nevertheless upheld the determination that the workers were employees because the economic reality of the relationship showed an implied exchange of labor for in-kind benefits. *Id.* at 300–01.

The Salvation Army relies on dictionary definitions and historical materials concerning occupational therapy to contend that Congress understood employment to require a traditional, common-law “arm’s-length exchange of labor for compensation” such that it intended to exclude work performed in a rehabilitative program from federal minimum-wage protections. Resp. at 37–40. That argument disregards *Alamo* and years of precedent from the Supreme Court and this Court interpreting the FLSA, as well as its actual statutory text, all of which establish that the law encompasses relationships beyond the traditional common-law/agency definitions of employment. *See, e.g., Alamo*, 471 U.S. at 295, 300 n.21 (holding that FLSA’s definition of “employ” includes “to suffer or permit to work,” 29 U.S.C. § 203(g), which is “exceedingly broad”); *Brant v. Schneider Nat’l, Inc.*, 43 F.4th 656, 664–65 (7th Cir. 2022) (“The Act was designed to reach working relationships that would not have qualified as employer-employee under the common law.”); *cf. Spilman v. The Salvation Army*, 117 Cal. App. 5th 913, 935–37 (2026) (reversing summary judgment in ARC minimum-wage lawsuit because the trial court erroneously required an employment contract to establish employee status under California law). Defendant’s reliance on the child-labor origins of “suffer or permit to work,” Resp. at 39, does not

support its proposed exclusion. *Rutherford Food Corp. v. McComb* acknowledged those origins and nevertheless explained that the FLSA reaches beyond conventional employment categories. 331 U.S. 722, 728–29 (1947). Nor does the historic use of labor in occupational therapy establish a statutory exclusion for labor in a private nonprofit’s commercial operations. Resp. at 39–40.¹ Defendant’s plea to rely on dictionary definitions—which are “acontextual” by nature and must be used “only with great caution,” *United States v. Costello*, 666 F.3d 1040, 1043–44 (7th Cir. 2012)—to reach a result inconsistent with these precedents and long-standing interpretations of the statute makes no sense.

3. The Salvation Army’s Attempts to Distinguish *Alamo* and Its Progeny Are Meritless

The Salvation Army’s third error is its unsuccessful attempt to distinguish *Alamo* and other cases that have followed *Alamo*’s reasoning. See Resp. at 33–36. *Alamo* is the only authority binding upon this Court that involves similar circumstances. The non-profit religious Foundation in *Alamo* used the full-time labor of “associates” — who were “drug addicts, derelicts, or criminals before their conversion and rehabilitation by the

¹ Without a shred of evidence, The Salvation Army asserts that a work element in 1930s-era treatment programs means that Congress understood—and therefore excluded—“work therapy” as a form of treatment at the time that it enacted the FLSA. The federal hospitals and narcotic farms invoked at Resp. at 39–40 & n.11 were not regulated by the original Act’s definition of “employer,” which expressly excluded the United States, the States, and their political subdivisions. Fair Labor Standards Act of 1938, ch. 676, § 3(d), 52 Stat. 1060, 1060. Their use of therapeutic work does not establish that Congress knowingly excluded rehabilitative work for private employers.

Foundation” —to operate the Foundation’s various commercial ventures, which included retail stores. 471 U.S. at 292. The Foundation then used the revenue from those businesses to support its nonprofit mission. *Id.* Instead of paying the associates cash wages, the Foundation provided the associates with in-kind benefits, including food and housing. *Id.* The Supreme Court held that the associates were employees under the FLSA, even though both the Foundation *and* the associates denied there was an employment relationship. *Id.* at 299–303.

Like the district court, *see* Br. at 25–33, 36–38, The Salvation Army fails to explain why *Alamo* is not dispositive here. Defendant first contends that the Foundation in *Alamo* “operated a sprawling, *for-profit* commercial enterprise,” Resp. at 33 (emphasis added), whereas The Salvation Army is a “religious denomination and charitable organization that operates thrift stores to sell donated goods for the sole purpose of funding its” charitable activities and “recycle[s]” its revenue “into the ARC Program; none is earmarked as profit.” Resp. at 34. Factually, this is untrue. The Foundation, just like The Salvation Army, operated commercial businesses as part of its nonprofit organization and used the revenue from those businesses to fund its nonprofit, religious activities. *See Alamo*, 471 U.S. at 292 (“The . . . Alamo Foundation is a nonprofit religious organization. . . It derives its income largely from the operation of a number of commercial businesses. . .”). *Alamo* did not carve out an exception to the FLSA but rather held that nonprofits are subject to the FLSA. *Id.* at 296–99.

Defendant asserts that it differs from the Foundation because The Salvation Army “employs paid staff to operate its thrift stores” alongside the ARC participants, whereas the “associates” “constituted nearly the entire workforce of the Foundation.” Resp. at 34. The Salvation Army does not explain why ARC participants’ employment status should turn on whether they supply 26% (here) or most (*Alamo*) of the labor for its commercial operations. R.279, SOAMF ¶ 27; *Alamo*, 471 U.S. at 292. Moreover, the nearly 12 million hours of underpaid labor at issue in the instant case far exceeds the maximum of 6.4 million hours² of labor in *Alamo*.

Finally, The Salvation Army wrongly claims that the Foundation in *Alamo* is different because it retained associates “indefinitely. . .with no exit plan or design for eventual independence,” whereas “the ARC Program is designed to last six months, with graduation and rehabilitation as the shared goal.” Resp. at 34–35. But Defendant’s emphasis on graduation, rather than length of stay, is misplaced. *Alamo* contrasted the length of the associates’ stays with the Foundation (“long periods, in some cases several years”) with the length of the training program in *Walling* (“a little over a week”). *Alamo*, 471 U.S. at 301. *Alamo* does not hold that indefinite reliance on an entity is necessary for employment or dependence. 471 U.S. at 300–02. Instead, the Court concluded that the

² In *Alamo*, the Foundation averaged 342 associates per year over six years. See *Donovan v. Tony & Susan Alamo Found.*, 567 F. Supp. 556, 565–70 (W.D. Ark. 1982). Assuming associates worked 60 hours per week—the outer limits of the record, *id.* at 562—they would have performed 6.4 million hours of labor.

longer period of dependence on the Foundation supported the inference that the associates “must have expected to receive in-kind benefits—and expected them in exchange for their services.” *Alamo*, 471 U.S. at 300–01.

On the summary judgment record here, ARC participants are, as in *Alamo*, entitled to an inference that the length of stay—considerably longer than in *Walling*—supports a finding of employment. The ARC program lasts up to twelve months per enrollment and permits repeated re-enrollment. R.279, SOAMF ¶¶ 1, 60. Some ARC participants spent well over a year dependent on The Salvation Army for food and housing. *See, e.g.*, R.278-1, Ex. 166, Decl. of Linda Woo in Opp’n to Def.’s Mot. Summ. J., at Ex. D (Plaintiff Samuel Patton (two stays, 497 days); Gregory Ussery (seven stays, 499 days); Mitchell Sweeney (two stays, 399 days); Plaintiff Michael Clancy (one stay, 375 days); Nathaniel Townsend (two stays, 372 days)). There is no sound basis for concluding that dependence for “long periods, in some cases several years” supports employment in *Alamo*, but dependence for a year or more cannot support that inference here.

Subsequent decisions applying *Alamo* to putative employment relationships in comparable circumstances reinforce that conclusion. Resp. at 35–36. *Williams v. Cenikor Foundation*, No. 4:19-cv-02828, 2026 WL 2225182 (S.D. Tex. Aug. 3, 2026), which issued after Plaintiffs filed their opening brief, involves a program nearly identical to the ARC program, except that the participants worked for third-party businesses, which paid Cenikor more than minimum wage for the participants’ labor. 2026 WL 2225182, at *1–2.

Based principally on the financial benefit to the program of the participants' labor and evidence that the vocational therapy had "diminishing returns" and interfered with rehabilitation, the court denied Cenikor's motion for summary judgment on employment status. *Id.* at *7, *9. Notably, the court reached that conclusion even though the named plaintiff admitted to benefiting from group and individual counseling *and* from the work itself. *Id.* at *9. That the *Cenikor* participants worked for third parties, *see* Resp. at 36 n.10, is, at best, a neutral fact, though the fact that the third parties paid at least minimum wage means that the participants' labor did not create an unfair competitive advantage (unlike the [REDACTED] Defendant saved on labor costs here, R.278, SOAMF ¶ 30). Defendant does not explain why it matters that the *Cenikor* plaintiff paid an admission fee, but most ARC participants do not. Resp. at 36 n.10. And *Alamo* establishes that an express promise of wages is not required for workers to be employees. 471 U.S. at 301.

The Salvation Army claims *Chavez-DeRemer v. Mennonite Messianic Mission of Eastern Pennsylvania Mennonite Church*, No. 1:22-cv-01355, 2025 WL 3653555 (M.D. Pa. Dec. 17, 2025), is not relevant because the minors' stays at a religious school, where they were required to perform labor for the school's commercial businesses, could last for years and their parents enrolled them in the program without their consent. Resp. at 35. But participants also sometimes stay at ARCs for lengthy periods exceeding a year. *See supra* pp. 12–13. And *Alamo*, in which there was no evidence of coercion, establishes that voluntary participants can be employees. *See generally Alamo*, 471 U.S. at 292, 299–303.

Defendant argues that *Walker v. Freedom Rain, Inc.*, No. 2:15-cv-00274-MHH, 2017 WL 897592, at *5 (N.D. Ala. Mar. 7, 2017), is inapposite because the workers there earned up to \$150 per week to be applied against their program fees. Resp. at 35–36. *Alamo* instructs, however, that a monetary quid pro quo is not necessary where, as here, the workers can show they exchanged their labor for in-kind benefits such as housing and food, which are “wages in another form.” *Alamo*, 471 U.S. at 301.

Lastly, Defendant contends that *Perez v. TLC Residential, Inc.*, No. C 15-02776 WHA, 2016 WL 6143190 (N.D. Cal. Oct. 21, 2016), is distinguishable because the workers there generated revenue for the defendant’s “for-profit” business and there was no “holistic rehabilitation program.” Resp. at 36. The sober living homes did indeed include rehabilitative programming and served the same purpose as the ARCs—to help individuals “recover from drug and alcohol abuse.” *Perez*, 2016 WL 6143190, at *1. And *Alamo* establishes that non-profits are subject to the FLSA; whether they retain revenue is irrelevant to liability.

4. The Salvation Army’s Reliance on *Williams, Harris*, and Other Non-Binding Authority Is Misplaced

Defendant’s fourth error is suggesting that a slew of distinguishable, non-binding cases, some of which involved The Salvation Army, allow this Court to affirm without conducting the requisite factor-by-factor economic reality analysis. Resp. at 26–33.

Defendant starts with *Harris v. Salvation Army*, No. 23-61420-CIV-CANNON/HUNT, 2025 WL 2256552 (S.D. Fla. Mar. 26, 2025), and *Williams v. Strickland*,

87 F.3d 1064 (9th Cir. 1996), two out-of-circuit cases against different entities of The Salvation Army. Those decisions held that ARC participants were not employees under the FLSA. The district court did not even cite *Harris* and explicitly held that *Williams* was not relevant because of its case-specific record. SA–10 n.6. *Harris* and *Williams* do not provide support for affirming the grant of summary judgment. *See infra* pp. 24–25, 38 (distinguishing the application of these cases to the economic reality factors, as they, *inter alia*, applied different employment tests, did not look at the FLSA’s purposes, had materially under-developed and different records on financial benefit to The Salvation Army of participants’ labor, misapplied the summary judgment standard, and misinterpreted *Alamo*).³

In *Taylor v. Salvation Army Nat’l Corp.*, 110 F.4th 1017 (7th Cir. 2024), this Court addressed claims against the national office of The Salvation Army under the Trafficking Victims Protection Reauthorization Act. *See Resp.* at 31–32, 53, 60. The Court therefore considered only whether the conditions at the ARCs resulted in “forced labor,” and had no opportunity to consider whether those conditions, including that The Salvation Army makes food and shelter contingent on work, create an employment relationship under the FLSA. *Taylor*, 110 F.4th at 1030–32; Oral Argument at 12:16–12:35, *Taylor*, 110 F.4th 1017 (No. 23-1218), <https://media.ca7.uscourts.gov/oralArguments/oar.jsp> (member of

³ For example, the *Harris* plaintiff did not take a single deposition or conduct any discovery of The Salvation Army’s finances. 2025 WL 2256552, at *1 n.1.

the majority noting that the allegations had “flavors of. . .minimum wage law violations”). And *Tassinari v. Salvation Army*, Civ. No. 21-10806-LTS, 2026 WL 1948096 (D. Mass. July 6, 2026)—which involved whether the ARCs in the Eastern Territory violated the Rehabilitation Act and Fair Housing Act by refusing to admit people who take medication assisted treatment for opioid use disorder—has no bearing here, as the case turned on a First Amendment defense that is irrelevant. *Id.* at *6–10. The decisions by state courts and administrative tribunals in workers’ compensation and negligence cases involving various Salvation Army entities are similarly irrelevant due to the varied employment tests and records at issue. Resp. at 30–31.

Defendant’s trio of cases involving non-Salvation Army entities—*Vaughn v. Phoenix House N.Y. Inc.*, 957 F.3d 141 (2d Cir. 2020), *Fochtman v. Hendren Plastics, Inc.*, 47 F.4th 638, 641 (8th Cir. 2022), and *Armento v. Asheville Buncombe Cmty. Christian Ministry, Inc.*, 856 F. App’x 445, 448 (4th Cir. 2021)—is also distinguishable. See Resp. at 29–30. First, unlike the class here, the plaintiffs in *Vaughn*, 957 F.3d at 144, and *Fochtman*, 47 F.4th at 641, enrolled as an alternative to incarceration. See *Alvear v. Salvation Army*, 661 F. Supp. 3d 1314, 1327–28 (N.D. Ga. 2023) (distinguishing *Vaughn* and *Fochtman*, where “rehabilitation programs” were “an alternative to prison time,” from a case nearly identical to the instant lawsuit because this factor, which was “central to the primary beneficiary analysis” of those decisions, “is simply absent here”). Second, unlike the ARC participants, who worked full-time for The Salvation Army’s commercial thrift store

business, the plaintiffs in *Vaughn* and *Armento* only performed tasks for their programs (e.g., taking out the trash) that had no impact on market competition. See *Vaughn v. Phoenix House Found., Inc.*, No. 14-cv-3918 (RA), 2019 WL 568012, at *9 (S.D.N.Y. Feb. 12, 2019); *Armento*, 856 F. App'x at 448. The work in *Fochtman* also did not affect market competition, albeit for a different reason—the third-party plastics company for whom participants labored paid the program more than the minimum wage in exchange for the plaintiffs' work, meaning the plastics company did not gain a leg up on its competitors. 47 F.4th at 646. Third, unlike here, the receipt of housing and food in *Armento* was not contingent on performing labor for the program's benefit, as those who were employed for other entities or attended school full time were exempted from the chore requirement. 856 F. App'x at 447–48.

B. *Summary Judgment Should Be Reversed Because All Four Factors of the Economic Reality Test Are Disputed*

Turning to the governing economic reality test that The Salvation Army seeks to avoid, material factual disputes and conflicting inferences exist for each of the four factors that preclude summary judgment. Accordingly, the district court's grant of summary judgment must be reversed.

1. The Record Supports a Finding that Participants Expected In-Kind Compensation for Their Labor

Plaintiffs presented substantial evidence that they expected compensation from The Salvation Army for their labor, including documents and testimony framing their

fundamental “deal” with Defendant: The Salvation Army would provide “three hots and a cot,” a small cash stipend, and limited programming in exchange for the participants’ work. *See* R.247-148 at 64:9–12; R.279, SOAMF ¶¶ 4, 6, 9, 57; R.279, RSOMF ¶ 45. Viewing Defendant’s policies and ARC participants’ testimony in the light most favorable to Plaintiffs, this exchange was not—as Defendant claims—rehabilitative. If participants did not work, or did not work with sufficient productivity, they were not allowed at the ARCs and could not receive the benefits offered by The Salvation Army. R.279, SOAMF ¶¶ 5–7, 9–10, 14; *see also id.* ¶ 11 (Plaintiff Peters: “if [a] beneficiary is not performing well at work therapy. . .[t]hey got to go.”). Moreover, Defendant made certain to obtain a full work week of labor, requiring that participants make up any hours of work missed for illness or injury. *Id.* ¶¶ 10, 12. Defendant’s own marketing materials and staff positioned the benefits as “in exchange for” work. *Id.* ¶¶ 6, 48, 57. And the work itself was full-time, tedious, menial, and in service of the needs of Defendant’s thrift stores; there was nothing about the work “therapy” that was different from any minimum wage job. *Id.* ¶¶ 5, 16, 29, 51, 53; R.278, SOAMF ¶ 31. Indeed, prior to issuing its summary judgment order that is on appeal, the district court recognized that the ARC relationship rested on a “fundamental bargain” between the parties: “enrollees worked for 40 hours per week, The Salvation Army received the benefits of that work, and the enrollees received the benefits of the ARC.” SA–30.

Defendant makes a number of scattershot arguments for why this evidence is insufficient to create a dispute of fact regarding expectation of compensation. Above, Plaintiffs have already addressed some of these arguments related to expectation of compensation, including (1) that the participants cannot be employees because their relationship is “rehabilitative,” *see supra* Section I.A.2., and (2) that the Foundation in *Alamo* and The Salvation Army are meaningfully different, *see supra* pp. 10–13. Plaintiffs now address Defendant’s remaining, meritless expectation of compensation arguments.

Defendant concedes that *Alamo* holds that labels on the relationship are not dispositive, Resp. at 47–48; *Alamo*, 471 U.S. at 301, but then accuses Plaintiffs of tacking the “label” of employment onto their relationship with the ARC program. This is nonsensical. The issue of employment status is the disputed question that precludes summary judgment. Plaintiffs, unlike Defendant, have amassed a considerable record, not of “labels” of employment, but about how each factor of the economic reality test here is satisfied. *See supra* Section I.B.

Relatedly, Defendant continues to rely on the admittance statements signed by ARC participants, which include language that participants are not The Salvation Army’s employees. *See, e.g.*, Resp. at 9, 54. Those statements are, however, not sufficient to make expectation of compensation an undisputed issue. Governing legal authority consistently holds that the labels, contractual or otherwise, that parties place on a working relationship are not dispositive on the question of employment. *See, e.g., Alamo*, 471 U.S.

at 300–02 (workers were employees under the FLSA even when they disclaimed employment); *Brant*, 43 F.4th at 665 (“[T]he terms of a contract do not control the employer-employee issue under the [FLSA]”); *Solis v. Int’l Detective & Protective Serv., Ltd.*, 819 F. Supp. 2d 740, 752–53 (N.D. Ill. 2011) (collecting cases rejecting non-employment labels). Defendant’s position—workers waive their rights under the FLSA if they sign a required contract stating they are not an employee—would create limitless potential for abuse. *See Alamo*, 471 U.S. at 302 (explaining that if the FLSA included a carve out for people who agree they are not employees, “employers might be able to use superior bargaining power to coerce employees to . . . waive their protections under the Act.”).

Defendant also argues that the ARC program structure did not establish a “quid pro quo,” Resp. at 51–55, by attempting to recharacterize contested inferences in its own favor as “self-evident” truths, in the face of Plaintiffs’ evidence and the summary judgment standard. While it concedes that its own staff and marketing materials described the benefits it offered as given “in exchange for” work, it attempts to reframe that evidence as “informal shorthand.” *Id.* at 51–52. But whether that evidence reflects the real bargain or mere “shorthand” is a jury question; on summary judgment the court may not adopt Defendant’s reading. *See Simpkins*, 893 F.3d at 967. The same is true of Defendant’s insistence that the benefits are “the charitable service itself,” Resp. at 49; at this stage, the district court was required to accept the inference in Plaintiffs’ favor that the benefits were not charity because participants had to work full time for The Salvation

Army to receive them. The Salvation Army now apparently does not dispute that participants are discharged when unable to participate due to illness or injury, Resp. at 54, but, without evidence, says that such discharges “underscore[] the rehabilitative character of the relationship, not a quid pro quo.” Resp. at 54–55. Yet, considered alongside Plaintiffs’ evidence of mandatory work for benefits, the discharge policy supports an inference that participants’ continued receipt of food and shelter depended on their ability to supply labor. R.279, SOAMF ¶¶ 6, 7, 9.

Similarly, Defendant flatly argues that “the fact that many Plaintiffs re-enrolled on multiple occasions ‘indisputably establishes that returning participants did not expect compensation because they knew the program’s terms.’” Resp. at 55 (quoting SA–14). This inference runs afoul of the record that people came back because they knew they would receive meals and lodging and that Defendant intentionally designed the program for repeated re-enrollments. *See infra* pp. 26–27.

The Salvation Army’s argument that it could discharge an ARC participant for reasons other than a failure to work also flops. Resp. at 53. The existence of other program requirements does not negate the exchange of work for benefits. The Salvation Army’s own framing describes the ARC as a program in which full-time commercial labor is a non-negotiable condition of food and shelter; that is an exchange, whatever else is also required. Even *Williams* recognized that “the presence of a rehabilitative element does not preclude an employment relationship.” 87 F.3d at 1067.

The Salvation Army's argument that Plaintiffs were not paid "wages" is also contrary to the law. *See* Resp. at 50–51. "[B]oard, lodging, or other facilities" are "wage[s]" under the FLSA itself. 29 U.S.C. § 203(m); *see also Alamo*, 471 U.S. at 293, 301 (finding in-kind benefits were "simply wages in another form").

Defendant argues that the "efficacy of a rehabilitation program does not determine whether an employment relationship exists." Resp. at 57. Not so. Someone who is receiving little or no rehabilitative benefit from the work (or the program as a whole) is more likely to expect compensation, to not be the primary beneficiary of the working relationship, and to be worthy of protection under the FLSA because the relationship would be exploitative. For example, in *Cenikor*, the court held that a dispute over the therapeutic value of the program—including that the work interfered with rehabilitative activities and had "diminishing returns"—warranted denying summary judgment. 2026 WL 2225182, at *9–10.

Plaintiffs have offered substantial evidence there was no rehabilitative benefit to the work required by the ARC, including that The Salvation Army ran other programs that did not require work therapy. *See* SA–11–12; R.279, RSOMF ¶¶ 22, 44 (some participants did not anticipate receiving true rehabilitation from the ARCs); *id.* ¶¶ 68–70 (no support for the claim that unskilled, unpaid, and unindividuated labor is rehabilitative); R.279, SOAMF ¶¶ 17, 20 ("work therapy" offered no proven therapeutic value); *id.* ¶¶ 37–42 (the rehabilitation offered was lacking in quantity and quality); R.279,

RSOMF ¶ 132; R.279, SOAMF ¶ 19 (citing R.279-262, at 0046621) (evidence that Defendant runs another rehabilitation center that does not require participants to provide labor). Using Defendant's own analogy, Plaintiffs' allegations and evidence support an inference that the ARCs are not akin to a "poorly administered hospital" becoming a hotel, Resp. at 57, but rather a hotel that offers band-aids calling itself a hospital. This evidence, especially when compared to Defendant's unsupported and self-serving statements about the rehabilitative nature of its program, precludes summary judgment in The Salvation Army's favor. Any other result would require an impermissible inference in Defendant's favor.

Finally, *Williams* and *Harris* do not eliminate the factual dispute over compensation. Under *Alamo*, a compensation agreement may be inferred even when workers disclaim employee status or an expectation of ordinary wages. 471 U.S. at 301–02. The inquiry therefore cannot end with the absence of an express promise to pay wages or the parties' characterization of the arrangement. In *Harris* and *Williams*, the courts incorrectly focused on whether the plaintiffs had express or implied agreements for compensation, rather than whether the totality of the circumstances showed that the plaintiffs expected compensation for their labor. *See Williams*, 87 F.3d at 1067; *Harris*, 2025 WL 2256552, at *8. Multiple courts have questioned *Williams*'s flawed reasoning regarding expectation of compensation—reasoning which *Harris* replicates. *See Alvear*, 661 F. Supp. 3d at 1326–27 (expressing "doubts about whether *Williams* persuasively

distinguishes *Alamo*,” and explaining that “if the *Alamo* Court had looked for any sort of meeting of the minds between the parties, as *Williams* seems to do, it would surely have found that no such implied agreement existed”); *Klick v. Cenikor Found.*, 79 F.4th 433, 441 (5th Cir. 2023) (“[W]e do not find *Williams* persuasive. *Alamo* and its predecessor cases explicitly hold that rights under the FLSA cannot be waived, . . . and any forms patients sign indicating that they are beneficiaries and not employees do not control this analysis.”) (citation omitted), *opinion superseded on reh’g on different grounds*, 94 F.4th 362 (5th Cir. 2024); *Julian v. Swift Transp. Co. Inc.*, 360 F. Supp. 3d 932, 941 n.7 (D. Ariz. 2018) (finding, in light of *Alamo*, that *Williams*’s focus on whether the workers had an express or implied agreement for compensation was “dubious”).⁴ This Court should analyze the facts using *Alamo*’s controlling expectation-of-compensation approach.

2. Disputes Exist Regarding Whether Participants Were Economically Dependent on The Salvation Army

The record evidence raises a genuine dispute on dependence that forecloses summary judgment. Plaintiffs have presented evidence that, pursuant to Defendant’s policies, ARC participants do not “have sufficient alternative means of income to be independent.” *Perez*, 2016 WL 6143190, at *4; *see Br.* at 34. The Salvation Army provided ARC participants with their meals and housing for the duration of their time in the

⁴ Even if an agreement for compensation is necessary, the record contains enough evidence to support the existence of an implied agreement. *See Hernandez v. Ill. Inst. of Tech.*, 63 F.4th 661, 667 (7th Cir. 2023).

program, which can last up to a year per enrollment. R.279, SOAMF ¶¶ 1, 4. Defendant did not allow participants to earn any outside income or even start looking for post-ARC employment until the very end of the program. *Id.* ¶¶ 6, 9, 22, 58. The Salvation Army also restricted ARC participants' independent movement and communication and the amount of money they were permitted to keep on hand, further limiting their practical access to independent support while enrolled. *Id.* ¶¶ 22, 58–59. Taken together, this evidence supports a finding that participants depended on The Salvation Army for their subsistence for long periods of time. Defendant fails to explain how this evidence is insufficient to create a material dispute regarding dependence.⁵

The Salvation Army's asserted justifications for the ARCs' restrictions do not somehow nullify Plaintiffs' evidentiary showing of dependence. Defendant provides no evidentiary support for its assertion that these barriers to independence are "standard features of residential rehabilitation programs designed to minimize distractions and temptations" and "in conjunction with the provision of food and shelter, create a structured environment that gives Beneficiaries the opportunity to focus on their rehabilitation." Resp. at 60. Rather, Defendant erroneously asks the Court to draw yet another inference in its favor. And even accepting Defendant's explanation, it could both be true that the ARCs apply the standard features of rehabilitation and that those

⁵ Above, Plaintiffs addressed Defendant's primary argument that, under *Alamo*, the length of the ARC program does not support a finding of dependence. *See supra* pp. 12–13.

standard features promote dependence when mixed with the hallmarks of employment—and, most importantly, the evidence that those standard features *did* foster dependence creates a material dispute that precludes summary judgment. Re-enrollment likewise does not undisputedly prove the program’s value. Resp. at 60. When viewed in Plaintiffs’ favor, re-enrollment establishes a “revolving door” and an inference that participants returned knowing they could obtain “three hots and a cot” by working for The Salvation Army. R.279, SOAMF ¶¶ 4, 6, 9, 57; *see supra* p. 19. That inference also bears on Plaintiffs’ contention that repeated stays reflected continuing dependence despite the program’s stated goal of independence. The district court had no license to select The Salvation Army’s explanation over a reasonable inference favoring Plaintiffs. *See, e.g.*, SA–11 (characterizing work as “part of a rehabilitation package offered by The Salvation Army”), SA–12 (“there is no dispute that the rehabilitation program was offered as a packaged benefit to participants”); SA–14 (“plaintiffs participated in a context of rehabilitation that could not create an expectation of compensation.”); *see also Simpkins*, 893 F.3d at 967.

Defendant’s reliance on *Williams*’s analysis of the length of the program is misplaced. In *Williams*, the court declined to infer employment from a six-month stay. 87 F.3d at 1068. Under *Alamo*, this evidence was sufficient to support a finding of dependence; the Ninth Circuit therefore erred by finding, at summary judgment, an absence of dependence. Moreover, Plaintiffs’ evidence is different in ways that strengthen

the showing of dependence. The record supports that the program is not just six months in duration, but lasts for up to twelve months and allows for re-enrollments that can result in people spending well over a year reliant on The Salvation Army for housing and food, R.279, SOAMF ¶¶ 1, 4, 6, 60–66; that the work participants perform for Defendant is not rehabilitative such that the length of the program bears no relation to the “rehabilitative” objective, R.279, SOAMF ¶¶ 20–22; and that The Salvation Army places numerous other restrictions on participants that make them reliant on Defendant for sustenance, *see, e.g.*, R.279, SOAMF ¶¶ 58–59.

3. Disputes Exist Regarding Whether This Case Implicates the FLSA’s Dual Purposes

The district court wrongly concluded that no reasonable factfinder could find that recognizing Plaintiffs as employees would advance either of the FLSA’s two purposes: preventing unfair competition and ensuring workers a minimum standard of living. Br. at 40–47. The Salvation Army offers no persuasive defense of that conclusion.

i. The Trier of Fact Could Find Defendant’s Use of Participants’ Labor Gave It an Unfair Competitive Advantage

The Salvation Army saved more than [REDACTED] in labor expenses for its commercial thrift stores that serve the general public by not classifying participants as employees or paying them a minimum wage. Br. at 41–42 (citing R.279, SOAMF ¶¶ 26–27, 29–30, 73–75). The record also shows Defendant and Goodwill Industries International, Inc. (“Goodwill”) are competitors in the thrift store market, but Goodwill,

unlike Defendant, pays all of its workers *at least* the minimum wage. *See* Br. at 42–43 (citing R.294, Defendant’s Response to Plaintiffs’ Statement of Additional Material Facts (“RSOAMF”) ¶ 70; R.279, SOAMF ¶¶ 69, 70). Given this record, the district court was required at summary judgment to draw the reasonable inference that The Salvation Army gained an unfair advantage by paying ARC participants substandard wages while its competitor complied with the FLSA. As this Court has held, “[c]heap labor can give an unfair advantage to an enterprise that competes in the marketplace.” *Vanskike*, 974 F.2d at 811; *see also Alamo*, 471 U.S. at 299 (“[T]he payment of substandard wages would undoubtedly give petitioners and similar organizations an advantage over their competitors. It is exactly this kind of ‘unfair method of competition’ that the Act was intended to prevent[.]”). The district court’s failure to draw that inference is a reversible error.

Defendant’s arguments defending the district court’s decision fail. The Salvation Army contends, without citing any authority, that its commercial thrift stores cannot implicate the unfair-competition purpose of the FLSA because the revenue the stores generate “is directed back into the ARC Program and other charitable works.” Resp. at 62 & n.16; *see also id.* at 63 (arguing that “TSA’s integration of work therapy into a charitable rehabilitation program” does not “constitute[] the kind of ‘unfair method of competition’ the FLSA was designed to prevent”). In so arguing, Defendant takes the position that nonprofits engaged in commercial activities are exempt from the minimum

wage laws so long as they use the revenue for charitable activities. But *Alamo* established that the FLSA “contains no express or implied exception for commercial activities conducted by religious or other nonprofit organizations,” that the Labor Department has consistently interpreted the Act to reach such businesses, and that this interpretation of the FLSA is supported by the legislative history. 471 U.S. at 296–98. The fact that a nonprofit must use all income, from operating a commercial enterprise or otherwise, for its nonprofit purpose to qualify for its tax-exempt status has no relevance to the employment question here. *See* 26 U.S.C. § 501(c)(3). There is no nonprofit or “do-gooders” exception to the FLSA.

The Salvation Army asserts that Plaintiffs’ evidence is insufficient to establish that it competes with Goodwill because (1) Goodwill does not operate rehabilitation programs and (2) the two organizations have different “business models.” Resp. at 62–63. Those two facts are irrelevant, as it is undisputed and the district court found that The Salvation Army and Goodwill compete in the thrift store business, which is the market in which Plaintiffs contend The Salvation Army gains an unfair advantage through the operation of the ARCs. *See* SA–16 (district court holding that “Goodwill and The Salvation Army ran competing thrift stores”). The evidence of competition is overwhelming. *See* R.294, RSOAMF ¶ 70 (Defendant admitting “both Goodwill and TSA operate thrift stores that may compete for donations when such thrift stores are located close to one another.”);

R.279-250 (letter from Goodwill stating that “Goodwill and TSA are competitors. . .with respect to the operations of thrift stores.”); *see also* R.294, RSOAMF ¶ 70 (citing evidence).

The trial court erred on this issue regardless by ignoring the holding in *Alamo* that an entity can hold an unfair advantage without identifying any specific competitors based on evidence that the Foundation operated “businesses [that] serve the general public in competition with ordinary commercial enterprises.” *Alamo*, 471 U.S. at 299. The Salvation Army is identically situated. Its thrift stores, for which it obtains under-compensated labor, have an effect on “the broader commercial environment.” *Cantey v. Ctr. for Emp. Opportunities, Inc.*, No. 25-cv-4843 (LJL), 2026 WL 923844, at *5 (S.D.N.Y. Apr. 6, 2026).⁶

Similarly irrelevant is the fact that Defendant pays some workers in its thrift stores minimum wage. Resp. at 63. The Salvation Army cites no authority for the illogical proposition that an entity that pays some, but not all, employees minimum wage does not gain an advantage from those partial savings on labor costs.

Defendant suggests that Plaintiffs’ expert’s opinion that The Salvation Army saved ██████████ in labor costs does not support Plaintiffs’ position because it “assumes” that ARC participants “are employees who should be paid wages.” Resp. at 63. Defendant

⁶ Defendant unsuccessfully attempts to distinguish *Cantey* because its holding related to enterprise coverage. But the larger point, which rests on *Alamo*, remains—the reason a commercial business operates (*e.g.*, for profit or nonprofit) is not relevant to whether its use of labor paid substandard rates gives it an unfair advantage over its competitors.

misunderstands the unfair-competition inquiry. Many FLSA cases, including those upon which both parties rely, involve the question of whether a set of workers are employees entitled to the law's protections. *See, e.g.*, Resp. at 26–30, 33–36 (citing cases); Br. at 44–47 (citing cases). If a putative employer spends more to obtain the workers' labor than it would have if it complied with the law, then the employer would not gain a competitive advantage and this factor would not support a finding of employment. *See, e.g., Fochtman*, 47 F.4th at 646 (where third party paid rehabilitation program at least minimum wage for all hours worked by program participants, the arrangement did not “threaten to facilitate unfair competition among businesses”); *Williams v. Cenikor Found.*, 2026 WL 2225182 at *11 (same, though denying summary judgment where other evidence supported a finding of employment). Here, however, there is evidence that Defendant saved [REDACTED] [REDACTED] through its misclassification of participants.⁷ And the record supports not only that Defendant saved on labor costs, but that it used ARC participants explicitly for that purpose and structured its business accordingly. *See* Br. at 41–42.

The Salvation Army avers that it does not gain an unfair competitive advantage because the “ARCs consistently operate at a deficit.” Resp. at 63. That fact is disputed. R.278, RSOMF ¶ 136. And even if it were undisputed, it is irrelevant. There is no exception

⁷ That *Copeland v. C.A.A.I.R., Inc.* involved workers laboring for a third party does not, as Defendant contends, Resp. at 63, make inapplicable that court's conclusion that paying less than the minimum wage for labor “artificially reduce[s] . . . costs,” thereby resulting in “an unfair advantage over . . . competitors.” No. 17-cv-564-TCK-JFJ, 2019 WL 4307125, at *4 (N.D. Okla. Sept. 11, 2019).

to the FLSA for covered entities that lose money. *See, e.g., Fleming v. Hawkeye Pearl Button Co.*, 113 F.2d 52, 58 (8th Cir. 1940) (holding that companies in “sick industries” are not exempt from the FLSA and that “[i]f, in the competitive struggle, any business or industry could not survive and pay such wages, its existence could not be prolonged at the expense and to the prejudice of employees.”); 29 U.S.C. § 203(s)(1)(A)(ii) (defining a covered enterprise as having \$500,000 in revenue, not as having revenue exceed expenses). Participants’ “cheap labor,” *Vanskike*, 974 F.2d at 811, gave Defendant an advantage, regardless of whether The Salvation Army squandered that edge through operation of other parts of its thrift store empire.

The Salvation Army’s use of participants is not, as it suggests, similar to the “competition at the margins [sic],” presented by a church fish fry or van service or a volunteer homebuilding project. Resp. at 64 (quoting *Acosta v. Cathedral Buffet, Inc.*, 887 F.3d 761, 768 (6th Cir. 2018)). Nor is it akin to the part-time vocational nursing program in *Solis v. Laurelbrook Sanitarium & Sch., Inc.*, 642 F.3d 518, 520–21 (6th Cir. 2011), through which students could receive educational credit and nursing assistant licenses and which did not save labor costs for the school because it hired enough employees to staff the sanitarium without students. Resp. at 64. The Salvation Army’s labor practice, involving savings of [REDACTED] from nearly 12 million hours of full-time work for a business that generates [REDACTED], R.279, SOAMF ¶ 25, bears no

relation to those limited fundraising, educational, and vocational activities that do not meaningfully impact markets.

ii. Disputes Exist Regarding Whether ARC Participants Are the Type of Vulnerable Workers Congress Intended the FLSA to Protect

Defendant is also wrong that its ARCs do not implicate the FLSA's purpose to provide a minimum standard of living for the most vulnerable workers. Resp. at 65–67. The Salvation Army does not attempt to address Plaintiffs' argument that the district court erred by holding that the FLSA does not protect ARC participants because they voluntarily enter the program and are not forced to stay. Br. at 45–47 (addressing SA–16). Nor does Defendant rebut the evidence cited by Plaintiffs showing that ARC participants—who suffer from substance use issues and have tenuous access to housing and food—fall into the heartland of disadvantaged workers the FLSA was designed to protect. *Id.*

Instead, The Salvation Army asserts that the FLSA's purpose is not relevant because ARC participants enter the program for rehabilitation, not for housing and food. Resp. at 65–66. That fact is, however, hotly disputed. *See supra* pp. 23, 26–27. Many class members stated they entered the program to obtain housing and food. R.279, RSOMF ¶¶ 22, 44. And, as discussed above, the structure of the program created a quid pro quo where participants expect and receive in-kind benefits in exchange for their labor. *See supra* pp. 21–22.

These facts distinguish the instant case from the inapposite cases upon which Defendant relies. Resp. at 66. The prisoners in *Vanskike*, 974 F.2d at 806, 809–11, and *Bennett v. Frank*, 395 F.3d 409, 410 (7th Cir. 2005), did not implicate the minimum-living-standard purpose of the FLSA because they worked as part of their prison sentences, and the prisons provided for the plaintiffs’ living needs regardless of whether they worked. In contrast, Plaintiffs’ labor was voluntary, not compulsory, and the housing and food were contingent on Plaintiffs’ working for The Salvation Army. R.279, SOAMF ¶¶ 5, 7, 10; R.279, RSOMF ¶ 24. In *Berger*, this Court held that student-athletes were not employees under the FLSA because they “participate in their sports for reasons wholly unrelated to immediate compensation.” 843 F.3d at 293. The record here, however, contains evidence from which the trier of fact could conclude that ARC participants enrolled in the ARCs to obtain in-kind “compensation.” R.279, SOAMF ¶¶ 4, 6, 48, 57. Moreover, unlike the student-athletes, the participants are dependent on Defendant for housing and food and must work to receive those benefits. R.279, SOAMF ¶¶ 58–60. Lastly, unlike the salon trainees at issue in *Hollins*, the ARC participants are not laboring to obtain a state-mandated license and are dependent on The Salvation Army for housing and food. 867 F.3d at 836.

4. The District Court’s Identification of a Genuine Dispute Over Who Primarily Benefited Precluded Summary Judgment

The district court found a “genuine dispute over who stood to gain more” from the relationship between Plaintiffs and The Salvation Army. SA–12–13. The district court

indeed stated that, viewing the record for Plaintiffs, “one could conclude that The Salvation Army got more out of the arrangement than any individual plaintiff.” SA-12. That dispute goes to the economic thrust of the relationship: whether Plaintiffs worked principally for The Salvation Army’s financial benefit or were rehabilitated by their 40-hour-per-week work requirement. That dispute should have precluded summary judgment; if a court acknowledges a genuine dispute on one of the interrelated economic reality factors, it is antithetical to the summary judgment standard to then resolve the inquiry as a matter of law. *See Br.* at 47–49.

Defendant itself called the primary beneficiary factor “integral to the Seventh Circuit’s flexible economic realities approach.” R.257 at 33–34. But now that the district court found a genuine dispute on primary beneficiary, Defendant has changed its tune. It now asks this Court to “decline to treat the primary beneficiary analysis as relevant to the question presented.” *Resp.* at 45–46. That objection comes too late. In *Boardman v. Service Employees International Union*, this Court held that a party forfeited a challenge to the governing legal standard by accepting that standard at summary judgment in the lower court and arguing that she satisfied it. 89 F.4th 596, 600 (7th Cir. 2023).

Moreover, Defendant’s reasoning and cited cases provide no anchor for this proposed sea change. The Salvation Army cites *Cuff v. Trans States Holdings, Inc.*, for the proposition that summary judgment is appropriate “[e]ven where a factor [in a multi-factor test] arguably weighs against the movant.” *Resp.* at 43–44 (citing 768 F.3d 605, 608

(7th Cir. 2014)). But *Cuff* applied a different regulatory test (for joint employment) with two “lead factors” and subsidiary factors. *Id.* Under that test, the Court held both lead factors supported joint employment and “none of the remaining factors” helped the defendants. *Id.* *Cuff* therefore did not involve a genuine dispute over a factor material to the outcome. *Id.*

In *Vaughn*, the Second Circuit affirmed in part the grant of a motion to dismiss on employment status even though some of the factors supported employment. 957 F.3d at 146–48; Resp. at 44–45. But *Vaughn* reached that result by relying on the seven-factor framework developed in *Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528, 536–37 (2d Cir. 2016). *Vaughn*, 957 F.3d at 145–46. *Glatt* established that “[n]o one factor is dispositive and every factor need not point in the same direction for the court to conclude that the intern is not an employee entitled to the minimum wage.” *Vaughn*, 957 F.3d at 146 (quoting *Glatt*, 811 F.3d at 537). There is no such rule in this Circuit. Here, the court crafted a test with four “interrelated” factors that accounted for the particular working relationship. See SA–10; *Hollins*, 867 F.3d at 837. Once it found that one of those factors favored Plaintiffs, Rule 56 compelled that the district court deny Defendant’s motion.⁸ See *Simpkins*, 893 F.3d at 965.

⁸ The district court’s description of primary beneficiary as a “subsidiary question[]” does not aid Defendant. SA–10; Resp. at 45. The court used that description for all four factors. SA–10.

Neither *Williams* nor *Harris* is of assistance to Defendant either. The evidence in those cases either did not reach the issue of whether “work therapy” has rehabilitative value or it was undisputed. *Williams*, 87 F.3d at 1067; *Harris*, 2025 WL 2256552, at *8. Nor did the majority in *Williams* or the court in *Harris* reckon with the financial benefit The Salvation Army amasses from participant labor. Plaintiffs here have submitted voluminous evidence of the massive financial benefit to The Salvation Army from using participants' labor alongside evidence that The Salvation Army never assessed its work therapy program for rehabilitative efficacy – rendering the primary beneficiary analyses in *Harris* and *Williams* inapplicable. R.279, SOAMF ¶¶ 17, 30.

Finally, Defendant offers that even if The Salvation Army received more from the parties' relationship, that would show only that work therapy was less effective than expected, because “rehabilitation—effective or not—defined the relationship.” Resp. at 46–47. *Eberline v. Douglas J. Holdings, Inc.*, 982 F.3d 1006 (6th Cir. 2020), is instructive. There, cosmetology students sought compensation for time spent cleaning, doing laundry, and restocking in a training salon serving paying customers. The Sixth Circuit held that the primary beneficiary test must address the work for which compensation is sought—not the “broader relationship as a whole.” *Id.* at 1014. The court warned that a contrary approach “raise[s] the potential of zones of exploitation” in which putative employers could extract labor in lieu of hiring employees. *Id.* at 1016 (citing *Alamo*, 471 U.S. at 301–02). That warning describes precisely Plaintiffs' evidence: The Salvation Army

used nearly 12 million hours of participants' full-time labor to staff its commercial thrift stores, saving more than [REDACTED], rather than hiring employees. *See* R.279, SOAMF ¶¶ 26–27, 29, 73–75; R.278, SOAMF ¶ 30.

The district court's attempted distinction, which Defendant embraces, rests on the very premise *Eberline* rejected. SA–11; Resp. at 42–43. It asserted that work therapy “cannot be disaggregated” from the ARC relationship and that assessing ARC programming generally therefore presents no material analytical difference. SA–11. But *Eberline* distinguished students' general cleaning and janitorial labor from classroom instruction and supervised cosmetology services. 982 F.3d at 1010–15. The Sixth Circuit held that the primary beneficiary analysis should focus on the work for which compensation was sought, even though that work occurred only because of the parties' educational relationship. *Id.* at 1013–15. Here, Plaintiffs seek compensation for “work therapy,” not classes and worship. Neither the district court nor Defendant has identified any principled basis for why work could be separated from the relationship in *Eberline* but not here. The mere unsupported assertion that the components are inseparable cannot justify allowing the program's rehabilitative label to determine the economic reality of Plaintiffs' labor.

C. *The District Court Erred By Granting Summary Judgment on Plaintiffs' Wisconsin Claims*

Reversal is also necessary on Plaintiffs' claims under Wisconsin law. Controlling Seventh Circuit authority, *Brant v. Schneider Nat'l, Inc.*, 43 F.4th 656 (7th Cir. 2022), holds

it is an error to “consolidate” Wisconsin’s control inquiry with the FLSA’s economic reality test. *See id.* at 673–74 (“[T]he definitions of employer and employee are distinct under the FLSA and Wisconsin law”); *see also Spoerle v. Kraft Foods Glob., Inc.*, 626 F. Supp. 2d 913, 920 (W.D. Wis. 2009), *aff’d*, 614 F.3d 427 (7th Cir. 2010) (“Wisconsin law gives workers more rights than they would be entitled to under federal law, something that is permissible as a general matter.”). But the district court did exactly that, disposing of the Wisconsin claims “[f]or the same reasons” as the FLSA claims. SA–17. And while Defendant urges this Court to make the same error, its arguments hold no water.

First, The Salvation Army *admits* that it “must necessarily control aspects of the ‘what, when, and how’ of the ARC Program and the tasks that make up the therapeutic element.” Resp. at 67; *see also* Resp. at 68 (“There is no dispute that, to operate its ARC Program, TSA exercises control over Beneficiaries’ day-to-day activities.”). This admission, supported by Plaintiffs’ overwhelming evidence of control, ends the inquiry under Wisconsin law.

The Salvation Army’s argument that its complete control over ARC participants is not the “right” kind of control to qualify under Wisconsin law is unavailing. Resp. at 69–71. There is no “rehabilitation exemption” to the Wisconsin control test. Defendant argues that *Brant* is distinguishable because it is an independent contractor case—but nothing about *Brant*’s holding is limited to those facts. *Id.* at 67–68. There, this Court engaged in statutory interpretation to hold that “allegations giving rise to a plausible inference of

control over a person employed at labor are enough to plead that a person or business is an employer under Wisconsin's minimum wage law." *Brant*, 43 F.4th at 674. While Defendant says that the "threshold question here is whether an employment relationship existed at all," the same exact question was at issue in *Brant*. Resp. at 68.

Defendant's other citations do not overcome *Brant*. *Hung Nam Tran* is distinguishable because it holds that individuals who have been civilly committed are not employees. *State ex rel. Hung Nam Tran v. Speech*, 324 Wis. 2d 567, 575–76 (2010). The court's conclusion rested on legislative history making clear the state intended to exempt this population from minimum wage coverage. It also reasoned that the minimum wage was not necessary to protect those patients, because their standard of living was already regulated by the state. *Id.* at 575–76. Neither rationale applies here, where Defendant is a private entity subject to no such limits. See R.279, RSOMF ¶ 2. Indeed, the district court here acknowledged that "[r]ulings about prisoners and detainees are distinguishable, because workers in those settings are taken out of the national economy and have their needs met[.]" SA–47 n.8. Nor do Defendant's other citations to district court cases predating *Brant*, with vastly different records, compel a different result here. See Resp. at 69; *Pope v. Espeseth, Inc.*, 228 F. Supp. 3d 884, 891 (W.D. Wis. 2017) (plaintiff did not even "argue that [the defendant] is an employer under the plain language of the Wisconsin statutes."); *Flecha v. Metal Sys., LLC*, No. 16-cv-800-BBC, 2018 WL 1033292, at *3 (W.D. Wis. Feb. 22, 2018) (among other things, the plaintiffs did not present any evidence that

defendant supervised or controlled their individual work schedules or any of the conditions of their employment).

For the aforementioned reasons, this Court should reverse the district court's grant of summary judgment.

JURISDICTIONAL STATEMENT (CROSS-APPEAL)

The Salvation Army's amended jurisdictional statement is complete and correct. Plaintiffs supplement the statement to note that the district court also had jurisdiction over state law claims pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d).

STATEMENT OF THE ISSUES (CROSS-APPEAL)

Whether the district court abused its discretion in certifying the state-law classes and FLSA collective, where common evidence resolves whether participants in The Salvation Army's uniform ARC program were employees, and credit calculations, damages determinations, and membership can be addressed through The Salvation Army's records and established class procedures.

SUMMARY OF ARGUMENT (CROSS- APPEAL)

The district court acted within its discretion in certifying the state-law classes and FLSA collective. The central liability question is common to every participant and turns on program-wide proof: whether The Salvation Army's uniform ARC program—

requiring full-time work to receive standardized in-kind benefits—created an employment relationship.

The Salvation Army's objections do not alter the predominance analysis. The parties agree on a methodology for calculating the § 3(m) credit for food and housing—the only credit that applies to this case—on an annual basis for each ARC and then applying the credit to individual damages calculations using Defendant's enrollment records. Defendant's proposed equitable offset, for intangibles like improved socioeconomic status, lacks any basis in the law. Plaintiffs also supplied the damages methodology *Comcast Corp. v. Behrend* requires. Records, formulas, and streamlined proceedings can determine membership and relief while preserving Defendant's opportunity to challenge claims.

Moreover, the classes are ascertainable. Whether enrollment was court-ordered or required as a condition of criminal-justice supervision is an objective fact documented in enrollment and referral records, supplemented where necessary by affidavits. Class treatment is also superior to requiring vulnerable participants to relitigate the same ARC policies and employment question. Finally, the same common proof satisfies Section 216(b)'s less demanding similarly-situated standard.

II. The District Court Properly Certified the Rule 23 Classes and the FLSA Collective.

The district court acted within its discretion in certifying the state law classes and the FLSA collective because common questions resolve the main elements of liability.

Those questions include whether The Salvation Army's uniform ARC program created an employment relationship with the people required to work in it. The applicable employment tests can be applied using common proof: uniform admission agreements, uniform program and work-therapy requirements, the same no-wage policy, and common forms of room, board, and gratuities. SA-31-33; *infra* Section I.B, C. Resolving the employment issue class- and collective-wide will determine whether every class member was covered by the FLSA and relevant state laws and eliminate the need to relitigate that issue person-by-person. The Salvation Army may contest how that question should be answered, but its disagreement with Plaintiffs' answer does not establish that individual questions predominate. *See Amgen Inc. v. Connecticut Retirement Plans & Trust Funds*, 568 U.S. 455, 466-68 (2013); *Bell v. PNC Bank, Nat. Ass'n*, 800 F.3d 360, 377 (7th Cir. 2015).

Common questions also govern the food and housing credit contemplated under § 3(m) of the FLSA, and its Wisconsin and Illinois analogues, and deductions for gratuity. Applying those determinations to calculate unpaid wages and confirming membership can be handled with formulas, records, and affidavits. As required by Rule 23, the district court determined that common questions predominate and that any remaining work could be fairly managed after rigorously examining the record and the parties' proposed procedures. SA-31-35. The same program-wide policies and proof support the district court's determination that collective members are similarly situated under § 216(b). The

Salvation Army identifies no legal error or clearly erroneous factual finding that warrants reversal.

A. *Standard of Review*

This Court reviews class certification for abuse of discretion, giving the district court latitude to assess the record and determine how the litigation can proceed. *See Svoboda v. Amazon.com, Inc.*, 168 F.4th 956, 962 (7th Cir. 2026); *Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1025–26 (7th Cir. 2018). Legal determinations are reviewed de novo, and factual findings for clear error. *Phillips v. Sheriff of Cook County*, 828 F.3d 541, 549 (7th Cir. 2016); *Svoboda*, 168 F.4th at 962. De novo review of legal conclusions does not authorize re-weighing of the record or substitution of appellate judgment on predominance and manageability.

B. *Common Questions Predominate*

Common questions predominate in this litigation. Effectively conceding that employment status is a common question,⁹ The Salvation Army focuses its brief instead

⁹ The only feeble attempt Defendant musters is its contention that “Plaintiffs’ theory of liability depends on showing that individual Beneficiaries subjectively expected compensation for their labor,” Resp. at 81, and that individual testimony is “the linchpin of their liability theory.” Id. at 82. The district court correctly rejected that characterization. SA–33. Plaintiffs’ employment theory rests on the objective tests, established through common policies and practices, not on each participant’s private understanding of compensation. SA–13–14, 33, *supra* Sections I.B–C. Participant testimony about how common policies operated is circumstantial evidence of that objective reality. It does not convert the governing test into a subjective one. Defendant’s own insistence that subjective expectations are legally irrelevant confirms it. Resp. at 81–82.

on the § 3(m) credit, alleged additional offsets, damages, and membership inquiries. Resp. at 74–83. But these are arguments the district court considered and with which it soundly dispensed. It concluded that Defendant may *not* receive, as it contends, any so-called “equitable offset,” SA–35; Resp. at 76–77, a concept that would turn the employer-employee relationship on its head if applied in this, or any, minimum wage case. It further reasonably concluded that class- and program-wide evidence provides the framework for all other determinations. SA–31–35. Overall, the need for the type of simple individualized calculations anticipated does not defeat class certification.

1. § 3(m) Credits Do Not Overwhelm the Common Issues.

The Salvation Army argues that determining whether participants worked, how much they worked, and whether food-and-housing credits exceed owed wages requires individualized inquiries. Resp. at 74–78. But the § 3(m) credit calculation presents common legal questions about allowable benefits and common factual questions about their value. Although the parties dispute the amount of the credit, they agree that a daily value can be calculated for each ARC and fiscal year and applied to that ARC’s participants. R.286 at 28. Plaintiffs identified a common method for applying those values to participant records.

The statutory credits are concrete. The FLSA permits, subject to conditions, credit for the reasonable cost or fair value of “board, lodging, or other facilities.” 29 U.S.C. § 203(m)(1). The district court found the § 3(m) credit and the applicable state-law

analogues manageable for the FLSA collective and the Wisconsin and Illinois classes; Michigan law permits no comparable credit. SA-32-33. Plaintiffs' expert specified that calculating wages will follow a common formula: (hours worked $\times$ applicable minimum wage) – (any lawful § 3(m) credit $\times$ enrollment days) – gratuities. The statutory credit calculation itself presents common legal questions about Defendant's entitlement to credit against owed wages and common factual questions about the daily value of food and housing at each ARC in each fiscal year. Participant-specific hours, enrollment days, and gratuities are inputs supplied by The Salvation Army's records. R.247-142 at 26-27; R.286 at 26-28; *see also* *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453-54 (2016); *Bell*, 800 F.3d at 378-81.

The expert evidence supports that assessment. Plaintiffs' expert calculated that the § 3(m) credit plus gratuity was below the federal weekly minimum wage at every ARC in every year. R.251, Ex. 142, Suppl. Expert Rebuttal Report of Jeffrey George at 25 (Table 7.0). The Salvation Army's expert reached the same conclusion except for one ARC in one year. R.286 at 26. That disagreement concerns an ARC-and-year value to be applied through the common calculation; it does not require a valuation of program benefits for each participant. The district court therefore had a concrete basis to conclude that determining employment status would resolve the central common issue, that applying the § 3(m) credits could be done with a common methodology based upon common

evidence, and that the scant individual considerations would affect only the amount of recovery. SA–32–33; *see Tyson*, 577 U.S. at 453–54; *Bell*, 800 F.3d at 379–81.

Rule 23 does not require every element of liability to be resolved through common proof. *Svoboda*, 168 F.4th at 964–65; *Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 756 (7th Cir. 2014) (same). In *Svoboda*, this Court affirmed certification although individualized proof of a claimant’s location might have been necessary to establish a statutory violation. 168 F.4th at 962–65. What mattered was the substantial work common adjudication would accomplish and the manageability of the remaining inquiry. *Id.* at 964–65. The need for simple individualized calculations such as these cannot defeat class certification. *See, e.g., Beaton*, 907 F.3d at 1029–30 (even with respect to liability, “not every issue must be amenable to common resolution; individual inquiries may be required after the class phase.”). Defendant identifies no abuse of discretion in the district court’s conclusion that these calculations are manageable and do not overwhelm the common questions. SA–32–33.¹⁰

¹⁰ Certification also preserves The Salvation Army’s opportunity to litigate its defenses. Resp. at 78 (citing the Rules Enabling Act). Defendant’s cited cases involve limiting defendants’ ability to pursue procedures or defenses that required individualized adjudication. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 366–67 (2011), rejected sampling that would have foreclosed Wal-Mart from litigating individual defenses Title VII authorized, but that have no counterpart in the claims at issue here. *Myers v. Hertz Corp.*, 624 F.3d 537, 548–51 (2d Cir. 2010), involved an exemption turning on each manager’s actual duties and still recognized that a defense affecting class members differently does not necessarily defeat certification. And *Clark v. Experian Information, Inc.*, 233 F.R.D. 508, 512 (N.D. Ill. 2005), involved fraud claims and defenses requiring proof of what each class member saw, understood, relied upon, and did. Any § 3(m) credit (the

2. The Proposed Equitable Offsets are Unavailable and Do Not Defeat Certification.

The district court correctly rejected The Salvation Army's proposed "equitable offset" defense. SA-33. Defendant seeks an additional reduction beyond the § 3(m) credit for counseling, training, education, transportation, improved socioeconomic outcomes, and social connections. Resp. at 76-77. Equitable offset ordinarily "allows entities that owe each other money to apply their mutual debts against each other." *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 18 (1995). But The Salvation Army identifies no debt that ARC participants owe; its manual describes the ARC as a "no cost" program. R.247-20 at 37. As the district court recognized, Defendant "cite[d] no authority to support its position that such offsets are appropriate or available." SA-33.

Defendant again raises and fails to support its equitable offset defense, as none of the cases it cites advance its position. Resp. at 75-76 (citing cases). In *Hawkins v. Securitas Security Services USA, Inc.*, 280 F.R.D. 388, 397-401 (N.D. Ill. 2011), and *Laverenz v. Pioneer Metal Finishing, LLC*, 746 F. Supp. 3d 602, 618-19 (E.D. Wis. 2024), the employers sought legally-cognizable offsets against owed wages for paid meal breaks that possibly should not have been paid; individual mini trials would have been necessary to determine whether, for each meal break, class members had been fully relieved of duty. *Marquis v.*

only possible credit at issue here) can be calculated by applying the common ARC-and-fiscal-year values to participant records, and Plaintiffs' second phase permits Defendant to challenge those values, records, and claims. R.286 at 29-31. That opportunity satisfies due process. *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 669-72 (7th Cir. 2015).

Sadeghian, No. 4:19-cv-626-RWS-KPJ, 2021 WL 6621686, at *6–7 (E.D. Tex. Dec. 30, 2021), does not involve any credit or equitable offset. And in *Klick v. Cenikor Foundation*, 94 F.4th 362 (5th Cir. 2024), the Fifth Circuit remanded because the district court failed entirely to engage with the defendant’s offset defense and the record on the issue was “not fully developed.” *Id.* at 373–74; *Klick v. Cenikor Found.*, No. 4:19-cv-01583, 2022 WL 1028065, at *8 (S.D. Tex. Apr. 6, 2022) (refusing to consider offset defense). It did not hold that equitable offsets are available in an FLSA lawsuit or defeat certification. The Salvation Army identifies no comparable error here, where the district court considered and appropriately rejected the offset defense. SA–33.

These asserted intangible benefits for “counseling, training, education, transportation, improved socioeconomic outcomes, and social connections” do not create a freestanding equitable right to reduce wages required by statute. Indeed, The Salvation Army testified that an ordinary minimum-wage job provides the same work-related benefits claimed for “work therapy,” yet Defendant did not deduct those benefits from the wages of its acknowledged employees. R.247-4 at 124:18–23; *id.* at 126:5–127:8. The wage laws provide no basis for discounting the minimum wage according to an employer’s assessment of how much an employee purportedly benefited from the job.

3. Plaintiffs Supplied the Damages Methodology Comcast Requires.

Comcast Corp. v. Behrend, 569 U.S. 27 (2013), requires a damages model tied to the theory the classes will try. *Id.* at 35–38. The model there failed because it measured losses

from four theories after the court certified only one. *Id.* The theory and calculation aligns: statutory wages due for required work, less any lawful statutory credit.

The authorities The Salvation Army invokes underscore the difference. In *State of Rhode Island Office of the General Treasurer v. Boeing Co.*, 182 F.4th 422, 440, 444 (4th Cir. 2026), the plaintiffs offered examples of what they “might” do but could not commit to an actual damages method. In *In re Outpatient Medical Center Employee Antitrust Litigation*, No. 21 CV 305, 2026 WL 1678954, at *35 (N.D. Ill. June 10, 2026), exclusion of the plaintiffs’ regression analysis left them with no method to estimate any class member’s damages. Here, Plaintiffs supplied a specified method and identified the available records needed to apply it. R.247-142 at 26–27; R.286 at 26–28. The district court’s decision thus rests on a methodology the record supplies, not a promise to devise one later. SA–32–33.

C. *The Classes Are Ascertainable.*

This Circuit requires a class definition based on objective criteria; it rejects a heightened requirement that plaintiffs establish an administratively feasible means of identifying every member. *Mullins*, 795 F.3d at 659–62. Here the district court refined the class definition to exclude anyone “ordered by a court or required as a condition of probation, parole, or community supervision to enroll.” SA–24. Whether such an order or condition existed is an objective historical fact. The Salvation Army nevertheless argues that the classes are not ascertainable because its records may be imperfect about whether enrollment was court-ordered or required as a condition of supervision, and

because some participants may have selected ARC enrollment from among several ways to comply with a court directive. Resp. at 82–83. The Salvation Army’s electronic records are the principal source for identifying class members. Plaintiffs have shown that the records contain enrollment dates and information from which to determine if an individual has been court-ordered to enroll in the ARC, with affidavits and self-identification as a supplement, if necessary. R.247 at 29; R.286 at 30–31. That procedure is consistent with *Mullins*, which permits membership determinations based on records and affidavits, subject to appropriate verification and the defendant’s opportunity to challenge the evidence. 795 F.3d at 668–72. *Svoboda* likewise approved the combined use of account records, location data, and affidavits. 168 F.4th at 965–66. The experience to date confirms that the process works. Defendant notes that a few opt-ins were identified as subject to the court-ordered exclusion. Resp. at 82–83. Identifying and removing ineligible opt-ins shows that the criterion can be investigated and enforced. Occasional errors do not render the definition subjective or establish that the district court abused its discretion in approving the proposed identification process, especially where the errors are a result of negligent recordkeeping practices on the part of the defendant. *See Salam v. Lifewatch, Inc.*, No. 13 CV 9305, 2016 WL 8905321, at *2 (N.D. Ill. Sept. 6, 2016) (“[D]enying class certification because Defendant is unable to provide list of potential class members would encourage defendants not to keep records, shielding themselves from liability.”).

D. *Class Treatment Is Superior and Manageable.*

The district court had a concrete plan that Defendant overlooks on which to base its manageability determination. SA-34-35; Resp. at 83-84; R.286 at 29-31. Phase I would decide whether the ARC program created an employment relationship. If Plaintiffs prevail, Phase II would determine class membership and monetary relief using the wage calculation formula, Defendant's records, declarations where records are incomplete, and streamlined proceedings. R.286 at 29-31. Defendant would retain the right to challenge the calculated wages owed, including the amount of the § 3(m) credit, or a membership determination. *Id.* That structure gave the district court a sound basis to conclude that class treatment offers a fair and efficient means to resolve the common questions and administer the remaining claims.

The proposed procedure is familiar. *Mullins* explains that courts may bifurcate proceedings, employ special masters, and use claims processes with auditing and challenges. 795 F.3d at 663-65, 669-71. The Seventh Circuit has likewise recognized that a common wage-and-hour issue may be tried once even if individual proof is later needed to calculate recovery. *Bell*, 800 F.3d at 379-81. And if experience reveals a genuine manageability problem, the district court may alter the plan. Fed. R. Civ. P. 23(c)(1)(C), (c)(4)-(5); *Svoboda*, 168 F.4th at 966-68.

Espenscheid v. DirectSat USA, LLC, 705 F.3d 770 (7th Cir. 2013), involved the opposite record. Resp. at 84. There, the proposed class asserted varied categories of off-

the-clock work, lacked a feasible method of representative proof, and would have required 2,341 separate evidentiary hearings. *Espenscheid*, 705 F.3d at 773–75. Here a common trial resolves the employment-status issue; a specified formula applies common credit values to participant records; and the proposed second phase provides a process for resolving disputes about membership or monetary relief.

Superiority is comparative. Separate actions for hundreds of participants would require repeated litigation of the same ARC policies and economic-reality question before reaching the same wage calculations. The efficiencies generated by resolving predominant common questions weigh strongly in favor of superiority. *Messner v. Northshore University HealthSystem*, 669 F.3d 802, 814 n.5 (7th Cir. 2012). That consideration carries particular weight here; as the district court found, ARC participants are a vulnerable population, less likely to identify a claim, obtain counsel, or finance complex discovery. SA–34; *see Svoboda*, 168 F.4th at 967–68. On this record, the district court acted within its discretion in finding that the benefits of resolving the common dispute on a classwide basis outweigh any manageable burdens of administering relief.

E. *The FLSA Collective Was Properly Certified.*

Section 216(b) asks whether employees are “similarly situated”; unlike Rule 23(b)(3), it does not impose predominance or superiority requirements. *Vanegas v. Signet Builders, Inc.*, 113 F.4th 718, 724–25 (7th Cir. 2024). And final collective certification sets a lower bar than Rule 23. *DePyper v. Roundy’s Supermarkets Inc.*, No. 20 C 2317, 2025 WL

2430460, at *10–11 (N.D. Ill. Aug. 22, 2025). Here, the district court acted within its discretion in permitting this collective to proceed. The collective members participated in the same ARC program, signed materially uniform agreements, performed required work under common policies, received the same categories of in-kind benefits instead of wages, and present the same economic-reality question. SA–31–36. The statutory credits can be addressed through the common methodology already described, and the proposed procedures preserve The Salvation Army’s ability to contest individual claims. R.286 at 26–31. The Salvation Army again identifies no legal error or abuse of discretion requiring reversal.

CONCLUSION

The district court’s grant of summary judgment to The Salvation Army should be reversed, while its grant of class and collective certification should be affirmed.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Circuit Rule 28.1 because this brief contains 13,988 words, excluding the parts of the brief exempted by Fed. R. App. P. Rule 32(f). This brief complies with the typeface requirements of Fed. R. App. P. Rule 32(a)(5) and Circuit Rule 32(b) and the type-style requirements of Fed. R. App. P. Rule 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 12-point Palatino Linotype font.

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