IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

Plaintiffs,

v.

THE SALVATION ARMY, an Illinois nonprofit corporation,

Defendant.

Civil Action No. 1:22-cv-01250

Honorable Manish S. Shah

PUBLIC VERSION

DEFENDANT THE SALVATION ARMY, AN ILLINOIS NONPROFIT CORPORATION'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

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Reading Plaintiffs' opposition, one might begin to question whether the Defendant in this case is, in fact, The Salvation Army—a non-profit religious organization dedicated to serving the most vulnerable members of society—or instead a ruthless commercial entity. In their attempt to manufacture a dispute of material facts, Plaintiffs have resorted to improper mischaracterizations and unfounded inferences, distorting the true nature and core values of The Salvation Army, seeking instead to recast it in a manner wholly inconsistent with its religious mission and well-established history of charitable service. The Salvation Army is not, and never has been, the operator of a profit-driven "thrift store network," and Plaintiffs' attempts to paint it as such strain credulity. Instead, The Salvation Army operates thrift stores as a means to fund its (undisputed) charitable mission: to meet human needs in the name of Jesus Christ without discrimination by helping individuals at the most difficult times in their lives to regain their dignity and independence. Knowing this, Beneficiaries voluntarily seek rehabilitation, not employment, at The Salvation Army's Adult Rehabilitation Centers. Their choice to do so, and to participate in The Salvation Army's holistic program, which includes work therapy, does not create an employment relationship.

I. Summary Judgment is Proper Because Employment Status is a Question of Law and the Parties Agree on the Material Facts

Plaintiffs seek to overcome summary judgment by alleging the existence of disputed material facts. Yet nowhere in their submission of approximately 360 pages (including their Opposition to The Salvation Army's ("TSA") Motion for Summary Judgment ("Opp."), Response to TSA's Statement of Material Facts ("RSOMF"), and Statement of Additional Material Facts ("SOAMF"))[1] do they refute the fundamental structure, policies, and requirements of TSA's Adult

[1] For ease of this Court's reference, TSA refers here to the "RSOMF" when citing to either TSA's Statement of Material Facts or Plaintiffs' Response to TSA's Statement of Material Facts, and the

Rehabilitation Centers ("ARCs" or the "Program") that confirm that Beneficiaries are not employees. These undisputed facts include:

- TSA is a non-profit organization that operates the ARC Program for individuals suffering from various forms of disaffiliation, including substance abuse, homelessness, a prison record, and an inability to obtain or maintain employment. (RSOMF ¶¶ 1, 4; RSOAMF ¶¶ 64, 65, 66)
- The ARC Program is a spiritually based rehabilitation program, not a clinical treatment program. (RSOMF ¶¶ 10, 15)
- To remain in the ARC, Beneficiaries must participate in all Program components, including work therapy for approximately 40 hours per week, as well as counseling, classes, and worship services. (RSOMF ¶¶ 51, 52, 53, 56, 57, 76)
- Beneficiaries may enroll in an ARC voluntarily, for example based on a recommendation from a court, parole or probation officer, hospital or other community resource; or because of a Court order, either as an alternative to jail, a requirement of parole or probation, or some other mandatory arrangement. (RSOMF ¶ 24)
- To enroll in the ARC, Beneficiaries are required to sign various intake documents, including the Beneficiary Admittance Statement, in which Beneficiaries acknowledge their need for the ARC's assistance, the requirement that they perform work therapy, and the fact that they are not employees. (RSOMF ¶ 28) During this enrollment period, Beneficiaries never complete an application for employment or receive a job offer letter from TSA. (RSOMF ¶ 42)

"RSOAMF" when citing to either Plaintiffs' Statement of Additional Facts or TSA's Response to Plaintiffs' Statement of Additional Facts.

- Typically, Beneficiaries "graduate" from the Program between six months and one year. However, many Beneficiaries also leave the Program early, without "graduating." (RSOMF ¶¶ 8, 17; RSOAMF ¶ 1)
- The ARC Program is typically provided free of charge, and no one is turned away from the Program based on an inability to pay, although Beneficiaries, at some times throughout the relevant time period, may have paid some amount of room and board and/or turned over SNAP benefits to the ARC to defray the cost of the Program. (RSOMF ¶¶ 5, 20, 21; RSOAMF ¶ 59)
- There are three policy documents which set the rules and expectations for all Beneficiaries in the Central Territory: the Greenbook (which applies to the ARC program nationwide, including those run by TSA's sister Salvation Army Non-Profit Corporations (or "Territories")), the Beneficiary Handbook, and the Program Instruction Manual. (RSOMF ¶ 19; RSOAMF ¶ 3)
- While enrolled in the ARC program, Beneficiaries receive a gratuity, dormitory style housing, three meals per day, clothing, a one-month supply of toiletries, and rehabilitative services, including counseling, classes, recovery meetings, and religious programming. (RSOAMF ¶ 4; RSOMF ¶¶ 5, 51, 52, 53, 56, 57)
- Beneficiaries must follow strict rules and schedules while they are in the Program, with limited leisure time. (RSOMF ¶¶ 13, 35, 36, 37, 38, 60)
- Beneficiaries may not leave the ARC residence for the first 30 days of the Program and are not permitted to work outside of the ARC for the duration of the Program. (RSOAMF ¶ 58; RSOMF ¶ 58)

- Beneficiaries face disciplinary action, up to and including discharge from the Program, for failure to follow ARC rules or fulfill Program requirements. (RSOMF ¶¶ 37, 38, 67)
- Work therapy includes tasks related to the preparation of goods for sale at the thrift stores operated by the ARCs, such as sorting, hanging, and tagging donated goods, as well as tasks unrelated to the sale of goods and which relate instead to the operation of the ARC residence and counseling facility, such as helping to cook, clean, or answer phones. (RSOMF ¶ 79; RSOAMF ¶ 51)
- TSA sets Beneficiaries' work therapy assignments, including any changes, requirements for the weekly programming, schedule, and dress code. (RSOMF ¶¶ 35, 76; RSOAMF ¶ 71)
- Thrift stores convert donated goods to cash, which is in turn used to fund the Program. (RSOMF ¶¶ 132,[2] 134)

These undisputed tenets of the ARC Program and the features of the Beneficiary experience underlie the economic reality of the rehabilitation relationship between Plaintiffs and TSA. Memorandum of Law in Support of Defendant The Salvation Army, an Illinois Nonprofit Corporation's Motion for Summary Judgment ("Opening Br.") at 32-46, ECF No. 257. The minor details Plaintiffs attempt to dispute regarding the execution of this long-standing program which serves thousands of Beneficiaries per year (RSOMF ¶ 7) are immaterial to the central question at issue in this case: Is TSA operating a rehabilitation program, or is it merely a commercial operation hiring employees to serve its production needs (while providing free housing, food, and

[2] Plaintiffs "do not dispute that the majority of the revenue used to operate the ARC program is generated from the sale of donated goods or that each ARC maintains operations to process and sell donated goods." (RSOMF ¶ 132)

rehabilitative services to these putative employees)? Every court to consider this question has found (on summary judgment) that the ARC is a rehabilitation program that exists to serve Beneficiaries, and thus that Beneficiaries are not employees. Opening Br. at 27-28 (citing *Harris v. Salvation Army*, No. 23-cv-61420, 2025 U.S. Dist. LEXIS 56347 (S.D. Fla. Mar. 26. 2025); *Williams v. Strickland*, 87 F.3d 1064, 1068 (9th Cir. 1996); and *Spilman v. The Salvation Army*, No. CGC-21-591364, at 22 (Cal. Super. Ct. Sept. 28, 2023), *appeal pending*, attached as App. B to Jackson Decl., ECF No. 258).

Throughout their Opposition, Plaintiffs ask this Court to disregard authority from cases (both decades-old and recent) with nearly identical facts and legal issues, while pointing the Court's attention to cases in entirely different factual contexts. *Compare* Opp. at 24-25 (citing the legal standard from various out-of-Circuit cases with no factual resemblance to the instant case) *with* Opp. at 37-40 (citing this Court's order on TSA's motion to dismiss to suggest that the Court should not, even after the completion of discovery, consider the facts or legal standards of other rehabilitation cases, including those involving ARCs from other Salvation Army Territories). Plaintiffs, however, do not dispute that the Greenbook is a national document that provides standardized policies and rules for ARCs in every Territory in the United States (RSOMF ¶ 19) or that Plaintiffs' counsel themselves have brought identical lawsuits against three of the four Territories (Opp. at 38 (referencing "parallel FLSA actions"))[3] in full recognition of the fact that TSA's ARCs follow the same basic structure, policies, and rules on which their claims are based. Yet, Plaintiffs attempt to convince this Court of the irrelevance of multiple courts' decisions granting summary judgment to sister Territories regarding the same program. While the specifics of the records may differ, the courts' reasoning and application of the law (based on what both

[3] Plaintiffs' counsel also brought wage and hour claims against the fourth Territory, but under California state law, rather than the FLSA. *See* Opening Br. at 28.

Parties agree is an objective standard (*see* Opp. at 34)) to what is indisputably an equivalent program is not only relevant, but persuasive.

Plaintiffs' employment status is a question of law and is therefore proper for summary judgment. *Compton v. DuPage Cnty. Health Dep't*, 426 F. Supp. 3d 539, 546-47 (N.D. Ill. 2019) (Shah, J.) ("Whether the county employed [the plaintiff] is a question of law."); *see also Williams v. Strickland*, 837 F. Supp. 1049, 1053 (N.D. Cal. 1993) ("The issue here is primarily one of law."). To that end, even the existence of "a number of disputed facts on the record" can be "largely immaterial" to the ultimate question because whether Plaintiffs were TSA's "'employees' as defined by the FLSA is a legal question." *Hollins v. Regency Corp.*, 144 F. Supp. 3d 990, 994 (N.D. Ill. 2015), *aff'd*, 867 F.3d 830 (7th Cir. 2017) (citation omitted).

II. Disputes between the parties are a matter of context and characterization, not genuine issues of material fact sufficient to defeat summary judgment.

Throughout their Opposition, Plaintiffs attempt to twist uncontroverted facts into purported disputes by taking a fact, removing the context, mischaracterizing it, and slapping the label of "dispute" on it. Such tactics cannot withstand scrutiny. To credit Plaintiffs' version of the facts requires accepting unreasonable inferences, and "inferences that are supported by only speculation or conjecture will not defeat a summary judgment motion." *Tubergen v. St. Vincent Hosp. & Health Ctr., Inc.*, 517 F.3d 470, 473 (7th Cir. 2008) (citation omitted); *Shuhaiber v. Clary*, No. 18 CV 1306, 2024 WL 2892860, at *9 (N.D. Ill. June 10, 2024) (declining to give non-movant the benefit of inferences that were "unreasonable" or "unsupported by the record"). TSA cannot address every such incident in the limited space here, but provides the following as representative examples of undisputed facts that Plaintiffs mischaracterize:

There is no dispute that work therapy is a required element of the ARC Program. TSA has never shied away from the fact that work therapy is mandatory, nor that it is an essential

component of the rehabilitation program. (RSOMF ¶¶ 14, 29, 76-78) Naturally, it follows that only those Beneficiaries who are willing and able to perform work therapy can participate in the ARC Program (RSOMF ¶ 29; RSOAMF ¶ 7), and, conversely, that Beneficiaries who cannot, or will not, perform work therapy may be discharged from the ARC. (RSOMF ¶¶ 37, 78; RSOAMF ¶ 10) If a Beneficiary is discharged from the ARC, until they make the choice to re-enroll (RSOMF ¶ 16), it is no stretch of logic to also conclude that they would then lose access to the ARC's provision of housing, food, gratuity, counseling, recreational facilities, and other rehabilitative benefits.

There is nothing in this set of facts that even remotely suggests that work therapy is required by TSA *in exchange for* any of the ARC Program's benefits. Yet, Plaintiffs not only encourage this Court to make such an inference, with only speculation and conjecture at their disposal, but go so far as to assert it as fact. *See* Opp. at 2-3; RSOAMF ¶ 6; *see also Strzykalski v. Bd. of Educ. of Summit Hill Sch. Dist. no. 161*, No. 23 CV 1284, 2025 WL 1755463, at *1 n.1 (N.D. Ill. June 25, 2025) (sustaining objections to how facts are characterized, and relying only on the underlying evidence); *Hedgepeth v. Britton*, No. 21 CV 3790, 2024 WL 689959, at *1 n.1 (N.D. Ill. Feb. 20, 2024) (same). The far simpler answer—which TSA has consistently stated and is actually apparent on the face of these undisputed facts—is that the ARC Program is a holistic rehabilitation program that includes work therapy as a tool for rehabilitation and provides for all of Beneficiaries' needs for as long as they remain in the Program. (RSOMF ¶¶ 5, 75)

There is no dispute that Beneficiaries who are unable to participate in work therapy, even due to injury or illness, may not be able to participate in the Program. TSA operates its ARC Program consistent with its belief that work therapy is a therapeutic tool (RSOMF ¶ 75), and it cannot effectively provide its holistic program if a Beneficiary is unable to engage in one of the

core rehabilitative components. (RSOMF ¶ 14) Program requirements therefore apply even where an individual Beneficiary may have sympathetic reasons (including injury or illness) that render them unable to participate in work therapy. While TSA aims to help as many people as possible, the ARCs are not medical facilities and cannot provide care for Beneficiaries requiring medical attention. (RSOAMF ¶¶ 10, 18)

Plaintiffs string these undisputed facts into the unsupportable insinuation that "work takes precedence over participants' physical health and recovery." Opp. at 3 (citing SOAMF ¶¶ 10, 12). But what can be gleaned straight from these facts—with no speculation required—is that Beneficiaries who seek to participate in TSA's ARCs must be able to engage in all requirements of the ARC Program, including (but not limited to) work therapy. Nonetheless, ARCs accommodate medical issues whenever possible. For example, Beneficiaries with temporary medical conditions or conditions that can be accommodated and do not require professional care may be provided time off from work therapy (*see* RSOMF ¶ 47, Def.'s Ex. 150 [259-150] (Plaintiff Love provided two weeks off of work therapy for injured elbow)) or alternative work therapy assignments, known as "light duty assignments" (*see, e.g.*, RSOAMF ¶ 7, Def.'s Ex. 265, CENT_TSA_0266934 ("Light Duty" assignments for Beneficiaries with various illnesses and injuries including "permanent" inability to lift weight above ten pounds, "no use of left arm until he receives clearance from neurosurgeon" and permanent congestive heart disease); Def.'s Ex. 266, CENT_TSA_0010026 (July 1, 2019 email discussing potential accommodations to allow Beneficiary to "finish [the Program] this time" despite needing surgery). Even if it did not provide such accommodations, however, TSA's requirement that Beneficiaries be able to participate in all aspects of the Program, including work therapy, does not support Plaintiffs' inference that it

prioritizes work over recovery, nor does it suggest (as described above) that the benefits of the Program are provided in exchange for work.

There is no dispute that Beneficiaries may be discharged for refusing to participate in work therapy or perform their assigned work therapy tasks. Without a doubt, TSA's disciplinary policy applies to all elements of the program. (RSOMF ¶¶ 14, 37) Infractions, including failure to participate in work therapy (*see* Def.'s Ex. 3 [259-3] at -0315581), are subject to a progressive disciplinary system that may result in discharge. (*See id.* at -0315580 (listing out potential consequences for first offense, second offense, etc.); RSOMF ¶ 38) Plaintiffs stretch these basic, undisputed facts beyond credibility, contending that TSA "authorizes the ARCs to discharge participants who do not meet [TSA's] expectations for performance and productivity at work." Opp. at 4 (citing SOAMF ¶ 11). None of Plaintiffs' cited TSA policy documents support this statement.[4] (RSOAMF ¶ 11) While the Beneficiary Handbook makes clear that Beneficiaries are expected to "participate productively as a member of a supervised team" and follow the "reasonable expectation of full participation"—these are **participation requirements, not productivity standards**. (Def.'s Ex. 3 [259-3] at -0315594) To the extent individual Plaintiffs allege being required to achieve certain productivity standards, such standards are not a requirement of the Program, but rather (if true) reflect isolated statements from misguided employees, as addressed below in Section III.B.1.

To reap the benefits of work therapy, TSA expects Beneficiaries to participate fully and perform the tasks assigned to them to the best of their ability, but that does not mean TSA enforces

[4] As TSA explains in its RSOAMF, of the examples cited by Plaintiffs as support for the proposition, only one citation (Pls.' Ex. 11 [279-11]) from an individual ARC appears to reflect a directive in which a Beneficiary would be disciplined for "low productivity." Even this document, however, does not clearly reflect what "low productivity" refers to, e.g., an actual numerical quota, as opposed to a Beneficiary's more general failure to participate and try their best, nor does this document mention discharge as a potential disciplinary action.

productivity standards, and certainly not that it discharges Beneficiaries for failure to satisfy them. (*See* RSOAMF ¶¶ 11, 14, Def.'s Ex. 272, Randall Polsley Dep. Tr. 96:25-97:8 ("Work therapy is reviewed for the beneficiary based on behaviors that will assist the man or woman in transition back into a successful independent living. Those factors are showing up on time, getting out of bed on time, being properly groomed for the workplace, wearing the proper clothes. Problem-solving skills. Interactions with other beneficiaries. Communications, following instructions.")

There is no dispute that TSA aims to maximize enrollment in its ARCs. But unlike the ulterior motive that Plaintiffs ascribe to a charitable organization whose mission is to serve those most in need (Opp. at 9 (citing SOAMF ¶ 33)), TSA seeks to fill the beds of its ARCs to help as many people as possible (RSOMF ¶¶ 1, 3, 11). Plaintiffs insist that a handful of documents from individual actors prove that TSA is motivated not by its desire to help, but rather its purported desire to maintain sufficient labor to operate its thrift stores. These documents do no such thing. Three out of the four cited documents (RSOAMF ¶ 33, Pls.' Exs. 186 [279-186]; 197 [279-197]; and 198 [279-198]) originate from the period following the COVID-19 pandemic and discuss issues associated with restoring the ARCs to full capacity while starting up shuttered thrift store operations (ARC headcounts were reduced (often by half) due to pandemic restrictions). (RSOAMF ¶ 33, Def.'s Ex. 292, CENT_TSA_0257570; Def.'s Ex. 293, CENT_TSA_0140146 at -0140147) At worst, these are outliers resulting from the extenuating circumstances of a worldwide pandemic. The fourth cited document (RSOAMF ¶ 33, Pls.' Ex. 187 [279-187]) contains only a statement regarding the number of work therapy assignments available, with no suggestion that the ARC headcount would be limited by this number.[5]

[5] That said, even if TSA did aim to optimize efficiency by ensuring that its house count was sufficient to fulfill work therapy tasks (and to ensure that each ARC had sufficient work therapy tasks for every Beneficiary), this fact is immaterial to the issues in this case because the thrift stores are operated only to financially support and ensure the continuation of the Program. (RSOMF ¶ 133) Further, the ARC

The multitude of mischaracterizations presented by Plaintiffs should not distract this Court from the plain truth in this case: there is no genuine issue of material fact as to the nature of the ARC Program or the employment status of Beneficiaries.

* * *

In the following sections of this reply to Plaintiffs' 60-page Opposition, TSA follows the structure of Plaintiffs' arguments and explains why none are sufficient to prevent the entry of summary judgment. For the Court's convenience, TSA identifies in each header below the Plaintiffs' argument to which it responds.

III. Plaintiffs Fail to Raise a Genuine Issue of Material Fact as to the Primary Beneficiary of the Relationship [Response to Opp. § IV.A.1]

A. Plaintiffs' argument that the Court may look only to the "work" aspect of the relationship improperly limits the economic realities test in contravention of the Seventh Circuit's "flexible" approach.

As both Parties acknowledge, this case is governed by the flexible economic realities test, as set forth by the Seventh Circuit in *Berger v. National Collegiate Athletic Association*, 843 F.3d 285, 290-91 (7th Cir. 2016).[6] Yet Plaintiffs' demand that this Court look *only* to the work therapy aspect of the relationship between TSA and its Beneficiaries defies the Seventh Circuit's directive to utilize a "flexible" approach and look to the "totality of circumstances" to determine the primary beneficiary. *Id.* It is impossible to analyze the economic realities of the relationship between

is a work therapy rehabilitation program, so it is logical that TSA would consider whether it had sufficient work therapy tasks to serve the rehabilitation needs of each Beneficiary.

[6] While Plaintiffs apply the primary beneficiary analysis only to their claims under the Fair Labor Standards Act ("FLSA") and Michigan and Illinois state law, while applying the "control test" to Wisconsin state law claims, as Plaintiffs acknowledged in their Memorandum in Support of Plaintiffs' Motion for Class Certification and Final Certification of the Collective (ECF No. 247 at 43), "there is a paucity of authority setting forth the proper test for employment under Wisconsin law," and no case law suggests that the primary beneficiary analysis should *not* be applied to the Wisconsin claims as well. This Court therefore need not limit its application of the primary beneficiary analysis to the FLSA, Illinois, and Michigan claims. TSA further addresses Plaintiffs' argument regarding Wisconsin's "control test" in Section VII.

Beneficiaries and TSA while excluding the very nature and purpose of the program that defines the relationship.

The economic relationship in this case includes the significant benefits that Beneficiaries receive by virtue of their participation in the Program—rehabilitation, supported by food, clothing, sobriety, counseling, classes, religious/spiritual guidance, community connections, and of course, work therapy. Plaintiffs further confirm the stark contrast between the rehabilitative relationship of the ARC and a typical employment relationship in Plaintiffs' Reply in Support of Their Motion for Class Certification and Final Certification of the Collective ("Class Cert. Reply," ECF No. 286). There, Plaintiffs insist that TSA is not entitled to an "equitable offset" for the benefits it provides to Beneficiaries (including the value of food, clothing, housing, counseling, vocational training, skills developed, education received, transportation, and improved socioeconomic outcomes) as no authority suggests that such an offset has been applied in a minimum wage case. *Id.* at 22. Of course, employers do not typically benefit from such an equitable offset, not because equitable offsets are unavailable to them as a rule, but because *employers do not provide such benefits.* In other words, the economic realities here involve the value of benefits that, as Plaintiffs' own equitable offset argument demonstrates, are absent from an employment relationship.[7]

While Plaintiffs accuse TSA of "violat[ing] this Court's 'flexible mandate'" by a mere reference to *Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528 (2d Cir. 2016) (Opp. at 23),[8] it

[7] Plaintiffs' further argument that an equitable offset defense "allows entities that owe each other money to apply their mutual debt against each other," and is therefore inapplicable because TSA "touts the ARC as a 'no cost' program," Class Cert. Reply at 23, again misses the mark. The idea that the ARC is a "no cost" program is premised on the mutual understanding of the ARC as a rehabilitative program, not employment, as documented in the intake process. (RSOMF ¶ 28) Thus a finding of an employment relationship would entirely invalidate the parties' understanding.

[8] Plaintiffs also mischaracterize TSA's reference to *Glatt*. TSA did not ask this Court to apply the multi-factor test applied in *Glatt*, but rather referenced three "salient features" that the Second Circuit viewed as defining the primary beneficiary analysis. Opening Br. at 33. One of these features explicitly includes the "*flexibility* to examine the economic reality of the relationship." *Id.* (citing *Hollins*, 867 F.3d

is in fact Plaintiffs who seek to constrain the Court's consideration to one particular aspect of the relationship. Plaintiffs cite a case from the Sixth Circuit (*Eberline v. Douglas J. Holdings, Inc.*, 982 F.3d 1006 (6th Cir. 2020)) and argue that courts including the Supreme Court (in *Walling v. Portland Terminal Co.*, 330 U.S. 148 (1947)) and Seventh Circuit (in *Hollins*, 867 F.3d 830) have "*sub silentio* followed this 'work only' approach." Opp. at 24. But Plaintiffs fail to acknowledge that the factual circumstances of those cases, in which work (in the form of vocational training)[9] formed the entire basis for the parties' relationship, are far afield from the circumstances here, where Plaintiffs are or were the beneficiaries of a charitable, faith-based, holistic rehabilitation program of which work therapy was only one of various mandatory (and rehabilitative) components. Trainees in *Walling*, *Eberline*, and *Hollins* did not receive free housing, meals, and other services as part of a rehabilitative program, but rather paid tuition to attend a daytime vocational program, and the courts' decisions were thus confined to those circumstances. Unlike much of Plaintiffs' cited authority, this is simply not a case in which the parties' relationship was defined by work, and those cases have no bearing on, much less do they create a universal principle

at 836 (citing *Glatt*, 811 F.3d at 536)). This expression of the primary beneficiary test is thus fully aligned with the Seventh Circuit's "flexible mandate."

[9] Both *Eberline* and *Hollins* involved for-profit cosmetology schools, which required (tuition-paying) students to complete both classroom and hands-on work. In *Eberline*, Plaintiffs sought compensation only for certain types of work they deemed to be unrelated to their training (i.e., janitorial work), and did not seek compensation for the work that was directly related to their cosmetology training. The Sixth Circuit determined that the primary beneficiary test should apply only to the segment of work at issue—i.e., assessing whether plaintiffs benefitted from janitorial work, as opposed to the cosmetology work. The court concluded that janitorial work was not part of the curriculum required by the state-mandated licensing program and thus that students were not the primary beneficiaries of such work. *Hollins* notably contained no explicit discussion regarding what types of benefits were to be considered (or not) under the primary beneficiary test. Rather, the Seventh Circuit merely determined that all work performed, including menial tasks, was part of the state-mandated requirement for graduation from the cosmetology program.

regarding, the extent to which this Court may consider the parties' relationship as a whole.[10] Indeed, the Seventh Circuit acknowledged this in *Hollins*, noting that "[t]hese cases normally turn on the facts of the particular relationship and program, and so we should not be understood as making a one-size-fits-all decision[.]" 867 F.3d at 837.

In contrast, *Vaughn v. Phoenix House New York Inc.*, 957 F.3d 141 (2d Cir. 2020), and *Harris* are analogous (and in the case of *Harris*, identical in all material respects) to the factual circumstances in this case. Those courts, which were similarly governed by a "flexible" economic realities standard,[11] considered the entirety of the relationship, including benefits provided to participants unrelated to the work component of the program, in their determination that the plaintiffs were not employees of the rehabilitation programs. *See id.* at 146 ("significant benefits" afforded to plaintiff included "food, a place to live, therapy, vocational training, and jobs that kept him busy and off drugs") (internal quotation marks and citation omitted); *Harris*, 2025 U.S. Dist.

[10] The other cases cited by Plaintiffs are also distinguishable. *See Benjamin v. B & H Educ., Inc.*, 877 F.3d 1139 (9th Cir. 2017), *Solis v. Laurelbrook Sanitarium & Sch., Inc.*, 642 F.3d 518 (6th Cir. 2011), and *Velarde v. GW GJ, Inc.*, 914 F.3d 779 (2d Cir. 2019) (all involving vocational training/internships). *See also Earl v. Bell House, LLC*, No. 20-CV-129, 2022 WL 394731, at *3-4 (D. Neb. Feb. 9, 2022) (the record was insufficient for the court to undertake the primary beneficiary analysis); *Walker v. Freedom Rain, Inc.*, No. 15-cv-00274, 2017 WL 897592, at *3, *5 (N.D. Ala. Mar. 7, 2017) (the court did not analyze which party was the primary beneficiary, but rather stated that the test was (1) whether the employer derives an economic benefit from the employee's work, and (2) whether there exists an express or implied agreement for compensation; additionally, as the court noted in *Harris*, 2025 U.S. Dist. LEXIS 56347, at *18, the plaintiffs in *Walker* had a "clear quid-pro-quo arrangement" which does not exist here, because plaintiffs used the money they earned from working in the program to pay the required program fees); *Perez v. TLC Residential, Inc.*, No. C 15-02776, 2016 WL 6143190, at *3 (N.D. Cal. Oct. 21, 2016) (plaintiffs were not participants in a holistic rehabilitation program involving a work component, but rather worked as "house parents" for for-profit sober living homes, exchanging their services for discounted/waived rent); *Armento v. Asheville Buncombe Cmty. Christian Ministry, Inc.*, 856 F. App'x 445, 453-54 (4th Cir. 2021) (the plaintiff was in a work training program at a homeless shelter, where he received only room and board, not a holistic rehabilitation program like the ARC, and, even so, the Fourth Circuit affirmed the lower court's finding that he was *not* an employee of the shelter and noted that the work training program was "part of the overall rehabilitative relationship").

[11] *See Vaughn*, 957 F.3d at 145 (quoting *Glatt*'s "salient features," including its "flexibility to [permit] examin[ation] [sic] of the economic reality of the relationship") (internal quotation marks and citation omitted); *Harris*, 2025 U.S. Dist. LEXIS 56347, at *15 (noting the Eleventh Circuit's emphasis on "the flexible nature of the inquiry, directing courts to weigh the applicable circumstances").

LEXIS 56347, at *25-26 (noting that the "factual record is replete with undisputed evidence that [p]laintiff received other benefits through his participation in the ARC program," and specifically listing "the benefits of participating in church services, Bible study, classes, sobriety (drugs and alcohol), daily devotions, and work therapy itself"). Indeed, the Second Circuit explicitly noted the District Court's careful consideration of the "context presented by Vaughn's circumstances—in which he is not an intern, but a recipient of in-patient treatment in a court-approved rehabilitation program[.]" *Vaughn*, 957 F.3d at 146. Willful exclusion of these essential aspects of the program from consideration ignores the economic realities and is antithetical to the Seventh Circuit's "flexible" standard.

B. Plaintiffs fail to raise a genuine dispute as to the benefits of the ARC Program.

1. Neither the subjective experiences of individual Beneficiaries, nor the isolated (and unsanctioned) alleged actions of individual TSA employees, are sufficient to create a dispute of material fact.

While Plaintiffs try to cast aspersions with a few negative examples or frame the ARC program as one of "limited" rehabilitation services (*see, e.g.*, Opp. at 14-17), the benefits that the ARCs provide to Beneficiaries cannot be disputed: housing, food, clothing, toiletries, gratuity, counseling, classes, religious/spiritual guidance, community connections, sobriety, and even recreational activities. (RSOMF ¶¶ 36, 37, 51-53, 56, 57, 59-62, 65) At most, Plaintiffs dispute that certain individuals received specific services to the extent expected (*see, e.g.*, RSOMF ¶ 62) and/or benefitted from certain aspects of the program;[12] but the legal standard does not require that each Beneficiary subjectively recognize the value of their experience, nor does it require a perfect implementation of the program's objectives. Rather, the test is which party is the *primary*

[12] Of course, to the extent Plaintiffs dispute that certain Beneficiaries failed to receive ARC services and benefits, while conceding that other Beneficiaries did receive such benefits, such differences would also be detrimental to their class certification arguments.

beneficiary of the relationship. And, as described further in Section III.D below, that the ARCs exist to provide a rehabilitation program to the Beneficiaries simply cannot be disputed. Additionally, Plaintiffs themselves do not dispute that Beneficiaries—including Plaintiffs—have emerged from the ARC Program with unprecedented periods of stability and sobriety or have later secured better housing or employment opportunities. (*See* RSOMF ¶¶ 86, 92, 100, 104, 119)

Plaintiffs conjure up "disputes" of fact by improperly mischaracterizing a handful of isolated, individual experiences of Plaintiffs, with no indication that these reflect the ARC Program at large. To the contrary, many of these statements or experiences are directly contradicted—if not outright prohibited—by TSA's policies. A court can (and should) disregard the statements or actions of individual employees that are inconsistent with company policy. *See Crabtree v. Volkert, Inc.*, Civ. A. No. 11-0529, 2012 WL 6093802, at *11 (S.D. Ala. Dec. 7, 2012) (finding no genuine issue of material fact when the plaintiff only provided evidence of improper deductions "infrequently by a single manager," when at all times the company had a "clearly communicated written policy prohibiting improper deductions" and "took prompt steps" to educate the manager and "prevent future errors when they became aware of same"). In other words, improper acts or even "threats" may be evidence of "human error or rogue managers," but are not sufficient to defeat summary judgment. *See Rebischke v. Tile Shop, LLC*, 229 F. Supp. 3d 840, 858 (D. Minn. 2017).

Worse yet, on multiple occasions, Plaintiffs resort to "disputing" a fact that is plainly supported by citations from the bulk of the discovery plaintiffs, with citations to only a handful of Plaintiffs' own purported and self-serving contrary experiences. (*See, e.g.*, RSOMF ¶¶ 26, 27, 32, 43, 61, 66, 76) *See Morangelli v. Chemed Corp.*, 922 F. Supp. 2d 278, 296-97 (E.D.N.Y. 2013) (granting summary judgment on claim when there was evidence that *most* plaintiffs signed a

handbook indicating that they understood the wage policy). Examples of alleged disputes based only on the experiences and anecdotes of a few Plaintiffs include the following:

- ***Two Plaintiffs testified to mistreatment by ARC staff. Opp. at 6 (citing SOAMF ¶ 15).*** However, numerous TSA documents outline and instruct TSA staff on how to treat Beneficiaries, and none condone mistreatment of Beneficiaries.[13]
- ***Three Plaintiffs testified that counseling was not helpful and one testified that it felt "rushed." Opp. at 6 (citing SOAMF ¶ 39).*** TSA's documents confirm that programming should include spiritual counseling at least bi-weekly throughout a Beneficiary's stay in the ARC Program, including individual and group counseling. Officers, chaplains, and other staff members are also encouraged to always be available for additional counseling on any spiritual matters.[14] All records of counseling are recorded in the weekly cases notes in each Beneficiary's personal file.[15] These same documents outline the goals of spiritual

[13] RSOAMF ¶ 15 (citing, *e.g.*, Def.'s Ex. 250 [259-250], Work Therapy Rules & Regulations, at -0031679 (providing advice to supervisors on overseeing Beneficiaries in work therapy, including "you may find yourself becoming frustrated trying to gently coax a solid performance from them every day. Avoid becoming visibly flustered or irritable, and remember that they will take their cues form you" and "Engaging in combative or adversarial roles can be less effective than adopting one of guidance and support."); Def.'s Ex. 5 [259-5], Program Instruction Manual at -0315464 (including the "Beneficiary Bill of Rights" the right to be "treated with courtesy, consideration, respect and recognition of dignity"); Def.'s Ex. 2 [259-2], Greenbook at -0001192 ("Staff must be selected who understand and support the spiritual program of the center and who can serve as role models for the beneficiaries"), id. at -0001218-19 (encouraging production staff to take a personal interest in beneficiaries and their rehabilitation, "[d]ealings with beneficiaries . . . must be modified by the fact that work assigned to them is for therapy"); Def.'s Ex. [279], CENT_TSA_0208339 (example of Minneapolis ARC's guidelines for employees who work with Beneficiaries, including "appropriate topic[s] for discussion[s] with [] beneficiar[ies] and "[t]here should be no need to engage in negative interaction with the beneficiary")).

[14] Def.'s Ex. 2 [259-2], Greenbook at -0001245; *see also* id. at -0001215 (functions of spiritual counselor), id. at -0001245-47 (counseling practice standards), id. at -0001276 (standards for private space for counseling).

[15] Def.'s Ex. 5 [259-5] at -0315491; id. at -0315496 (confirming frequency of individual and group counseling). *See also, e.g.*, Def.'s Ex. 296, Excerpts from Michael Clancy's Beneficiary File, CENT_TSA_0000518 at -0000525-551.

counseling, as well as potential topics for sessions, while recognizing that counseling should be tailored to the "rehabilitation plan for the individual."[16]

- ***Plaintiffs allege that TSA uses Beneficiaries to fill staffing shortages and treats them interchangeably with employees. Opp. at 8 (citing SOAMF ¶¶ 29, 48).*** TSA policies make clear that Beneficiary and employee tasks should be distinct.[17] Supervisors at work therapy are expected to "help[] Beneficiaries succeed in work-therapy [as] an essential part of helping them succeed in recovery[,]" including by giving Beneficiaries instructions, direction, and guidance.[18]
- ***Three Plaintiffs testified that work therapy appeared to be the main part of the ARC Program, and three Plaintiffs testified that they could miss other parts of ARC programming but not work therapy. Opp. at 16-17 (citing SOAMF ¶¶ 38, 40-42).*** TSA's policies confirm that all Program elements are mandatory, and TSA will impose discipline—including of the same severity as for work therapy—for missing or failing to participate in other required elements of the Program.[19]

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[16] Def.'s Ex. 2 [259-2], Greenbook at -0001245; *see also* RSOMF ¶¶ 112 (numerous Named and Opt-In Plaintiffs confirming counseling was helpful to their recovery), 62 (discussion of content of counseling sessions).

[17] Def.'s Ex. 2 [259-2], Greenbook at -0001195 ("Because of the different purposes of the work they perform at the centers, beneficiaries and employees must necessarily perform distinctly different tasks at the centers."); Def.'s Ex. 250 [259-250] at -0031676 ("Beneficiaries therefore cannot be expected to perform precisely the same tasks as an employee or take initiative."); *see also, e.g.*, Def.'s Ex. 288, CENT_TSA_0079765 (June 17, 2021 email from ARC Command, "For a beneficiary to 'work' for a benefit would suggest an employee/employer relationship which is not what we do nor who we are"; and addressing concerns about "abuse and exploitation of the beneficiaries in our program . . . and the need to be consistent in our program standards.").

[18] Def.'s Ex. 250 [259-250] at -0031679. *See also* id. at -0031676; RSOMF ¶ 81.

[19] RSOMF ¶¶ 25 (Beneficiaries must participate in all mandatory elements of ARC Program), 37 (Beneficiaries could be discharged for failing to attend any mandatory program elements, including support from Plaintiffs on this point), 78 (work therapy is mandatory in the same way as other program elements, including support from Plaintiffs on this point and exhibits showing disciplinary write-ups); *see also* Def.'s Ex. 192 [259-192] (Opt-In Plaintiff Brandy Sisamouth's conduct reports for infractions related to work therapy, chapel, and devotions of similar severity). *See also* RSOAMF ¶ 42 (providing TSA's response and

And to what end do Plaintiffs deploy these "disputed facts"? TSA does not dispute (for the purposes of this motion) that the above examples may reflect a handful of Plaintiffs' individual subjective experiences. While unfortunate and contrary to the purposes and mission of the ARC Program—namely, to help to individuals at the most difficult times in their lives to regain dignity and independence (RSOMF ¶ 11)—such experiences do not tip the scales at summary judgment.[20] At most, these experiences reveal what is an unfortunate truth of all large organizations—implementation of policies and programs and training of officers, managers, and staff, is never perfect, despite the best of intentions. *See* Section III.B.2 below (discussing TSA's continuous effort to improve). But the errors of a couple of rogue managers do not mandate a trial, let alone one of this magnitude. *See Rebischke*, 229 F. Supp. 3d at 858; *Crabtree*, 2012 WL 6093802, at *11.

Finally, while Plaintiffs repeatedly rely on the actions and statements of a small number of TSA employees that conflict with the mission and policies of the ARCs, TSA in fact routinely investigates and corrects such missteps. Ironically, Plaintiffs (presumably inadvertently) cite to one example of TSA leadership at the highest level identifying and addressing misbehavior by an ARC employee. (RSOMF ¶ 54, Pls.' Exs. 90 [279-90] and 91 [279-91]) [21]

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authority with examples from Plaintiffs' exhibits of discipline for missing aspects of the Program unrelated to work therapy).

[20] Of course, to the extent Plaintiffs contend that the experiences of individual Beneficiaries differed to such an extent that they impact a finding of liability, this would also preclude class certification.

[21] [redacted]

It is the edicts of ARC Command ("Command"), and the undisputed policies and features of the ARC Program, to which this Court should look in determining employment status, not a few cherry-picked examples of disgruntled Beneficiaries or litigation-biased plaintiffs, only presented to sour this Court's image of TSA. Moreover, the fact that some Plaintiffs—out of the tens of thousands of individuals who have enrolled in the 14 ARCs in the Central Territory (RSOMF ¶¶ 6-7)—could have had a better or different experience with the rehabilitation program does not suggest the existence of an employment relationship for all Beneficiaries across TSA's ARCs. At bottom, these facts are simply not material to the question at the heart of this litigation. *See Strzykalski*, 2025 WL 1755463, at *1 n.1 ("I disregard all immaterial facts[.]"); *Xieyu Zhao v. Brink's Inc.*, No. 04-1361, 2007 WL 9736087, at *4 (C.D. Ill. Jan. 29, 2007) ("a factual dispute that does not affect the suit's outcome under governing substantive law . . . does not preclude summary judgment") (citation omitted). *See also* Opening Br. at 51-54.

2. *TSA's efforts to improve the ARC Program are not evidence of wrongdoing, but rather of a program continuously evolving and improving.*

As it has for more than a century, TSA has continued to evolve and improve its ARC Program, even during the course of this litigation, making changes it deems necessary and appropriate to better carry out its mission of meeting human needs in the name of Jesus Christ, without discrimination, by helping individuals at the most difficult times in their lives to regain their dignity and independence. (RSOMF ¶ 11) For example, TSA no longer collects room and board and SNAP benefits from Beneficiaries (RSOMF ¶¶ 20, 21; RSOAMF ¶ 59) and has redrafted its work therapy task descriptions to more clearly define Beneficiary roles (RSOAMF ¶¶ 74-75).

[redacted]".

Given Plaintiffs' harsh criticisms of these prior policies (Opp. at 8, 19), one might think Plaintiffs would view such changes positively. Instead, Plaintiffs persist in making unsupported accusations about TSA's malicious motives, claiming that any changes were mere course-corrections in response to the wage-and-hour litigation. Opp. at 8, 49. But a review of these characterizations shows them to be unsupported, and TSA's efforts should be taken for what they are: evidence not of prior willful wrongdoing, but of a responsibly run rehabilitation program constantly trying to improve.

3. Plaintiffs' criticisms of TSA's expert Dr. Viscusi are unfounded.

Plaintiffs' criticism and dispute of the relevance of the opinions of Dr. Viscusi are also off the mark. Regarding relevance, Dr. Viscusi's opinions on the economic value otherwise-homeless Beneficiaries realize by virtue of living in an ARC speak directly to the primary beneficiary analysis. That Plaintiffs disagree with his opinions is to be expected, but they are not irrelevant. The sole hook on which Plaintiffs hang their argument is that Dr. Viscusi's economic methodology—the value of statistical life, or VSL—has not been employed in other litigation in the manner TSA is employing it here. *See* Opp. at 36. But as Plaintiffs concede, VSL as an economic methodology is well known to government economists and integral to their evaluation of the costs and benefits of government regulations. *See id.* And Plaintiffs offer no opposition to TSA's observation that VSL is also used for cost-benefit evaluation purposes by government economists around the world. *See* Opening Br. at 37.

Badly distorting Dr. Viscusi's literature and deposition testimony, Plaintiffs assert that Dr. Viscusi himself has disclaimed the use of VSL in litigation. *See* Opp. at 36. But as Dr. Viscusi explained multiple times in his deposition, his disclaimers were limited to the use of VSL to calculate damages in wrongful death cases. That is because VSL is not, and never was, intended to be used as a measure of hedonic damages. (RSOAMF ¶ 76, Def.'s Ex. 313, W. Kip. Viscusi

Dep. Tr. 79:9-81:8 (explaining that VSL is a measure used to value preventing a risk, not to calculate damages); *see* also RSOMF ¶ 128 (citing Def.'s Ex. 260 [259-260] at 18-19, Viscusi Report, providing an estimated monetary value of mortality-risk reduction, not damages)) There is agreement that VSL cannot be used to calculate the value of a lost life; its purpose is to help calculate the value of small increases or decreases in mortality risk. (*Id.*) And it is for that reason that VSL is an appropriate methodology for evaluating benefits in this litigation: for all the reasons VSL is used by the government and other economic organizations around the world, it permits Dr. Viscusi to evaluate (based on ARC intake data and U.S. Census Bureau data as reported in the Meyer study) the value that attaches to having a home versus being homeless, in terms of the related decreased mortality risk. (RSOMF ¶¶ 126-28)

As for Plaintiffs' complaints about Dr. Viscusi's "(mis)assumptions and unsound approaches," and alleged miscalculations (Opp. at 36-37; RSOMF ¶ 128; RSOAMF ¶ 76), those are either unfounded or irrelevant for summary judgment purposes. There is no question that Dr. Viscusi is a leading economist and expert in the field of valuing incremental changes in mortality risk. There is also no question that VSL is a sound economic methodology to be used in making those calculations. Lacking an expert of their own to rebut Dr. Viscusi, Plaintiffs cannot rely on the opinions of their own counsel to impeach the soundness of Dr. Viscusi's opinions relevant to the primary beneficiary analysis. Finally, to the extent the values that Dr. Viscusi calculated are imprecise because of errors in input, that is irrelevant for purposes of liability. Whatever the value Beneficiaries derive from living in an ARC (thus realizing incremental decreases in mortality risk), it is more than $0. And because it is a positive number it is a factor this Court may and should consider as part of its primary beneficiary analysis.[22]

[22] In their Opposition, Plaintiffs make clear their intention to move to exclude Dr. Viscusi's testimony under Federal Rule of Evidence 702. Opp. at 37. As explained here, Plaintiffs' criticisms are

C. Even if this Court looks only to the benefits of work therapy itself, Plaintiffs remain the primary beneficiaries.

Even setting aside the significant benefits that Beneficiaries receive by virtue of their participation in the Program more generally, Beneficiaries are the primary beneficiary of work therapy, as TSA explained in its Opening Brief (at 38-41). Due largely to their addictions and other difficult life circumstances, many, if not most, Beneficiaries have never held a steady job and, even if they were to get a paying job, would likely be unable to maintain it without the structure (and forced sobriety) imposed by the ARC. (RSOMF ¶¶ 4, 87, 90, 94, 99) Work therapy provides an environment where Beneficiaries can experience and learn the structure and discipline required by a full-time job, free from the vices and challenges that plague them in their lives outside of the ARC.

Plaintiffs' Opposition is replete with red herrings, attempting to deny the benefits of work therapy with claims that Beneficiaries perform "menial labor that requires very little training or experience," that there is "no evidence that the work provides educational or vocational benefits", that the labor is "frequently physically demanding," and that work therapy provides "no inherent benefit to participants beyond . . . the benefits of *any job* that pays the minimum wage." Opp. at 31-32. Ironically, Plaintiffs are relying on a series of undisputed facts. TSA does not dispute that the work performed by Beneficiaries requires very little training or experience; if it did, Beneficiaries beginning their rehabilitation journey would likely be unable to perform such tasks and would reap no benefit from work therapy. TSA also does not dispute that work therapy is not, and is not intended to be, an educational or vocational training program; Plaintiffs cite to no

unfounded. Even in the event, however, that this Court determines that Dr. Viscusi's testimony should be excluded, such exclusion would not preclude summary judgment, as Dr. Viscusi provides only *additional* evidence of the many benefits reaped by Beneficiaries by virtue of their participation in the ARC. Such evidence is helpful, but in no way necessary, to determine that Beneficiaries are the primary beneficiaries of the relationship with TSA.

authority requiring a rehabilitation program to provide benefits of that nature. TSA further concedes that work therapy may be physically demanding (*see* Opening Br. at 52), particularly for those Beneficiaries with limited work experience, and even that Beneficiaries could get all the benefits of work therapy from other minimum wage jobs. Indeed, this is precisely the point: work therapy replicates a work environment to help Beneficiaries prepare to leave the cocoon of the ARC and reintegrate into society with the confidence and soft skills required to maintain a job and support themselves—skills that many Beneficiaries lacked prior to their enrollment in the ARC. (RSOMF ¶¶ 4 (including "an inability to hold jobs" as source of disaffiliation facing Beneficiaries); 90, 94 (describing the difficulties of Named Plaintiffs in holding a job prior to enrolling in the ARC); 75 (listing purposes of work therapy); 119 (Plaintiffs found more secure and/or better paying employment after leaving the Program); 129 (Plaintiffs cited positive effects of work therapy); *see also, e.g.*, Def.'s Ex. 158 [259-158], Teon McClain Dep. Tr. 71:15-20 (Opt-in Plaintiff explaining that work therapy tasks in kitchen were similar skills to employment he found after ARC); Def.'s Ex. 155 [259-155], Sean Poynter Dep. Tr. 84:4-24 (Opt-in Plaintiff explaining that future employer asked about work therapy tasks after he listed the ARC on his resume); Def.'s Ex. 63 [259-63], Michael Clancy Dep. Tr. 132:19-134:9, 264:18-265:5 (Named Plaintiff testifying that work therapy helped him with pride and punctuality))

Various courts have already acknowledged the inherent benefits of the work therapy component in rehabilitation programs. *See Harris*, 2025 U.S. Dist. LEXIS 56347, at *26 (describing benefits of program, including "work therapy itself, which instills life skills, discipline, work ethic, accountability, and pride for Beneficiaries"); *Vaughn*, 957 F.3d at 146 (listing "significant benefits" offered by the program, including "jobs that kept him busy and off drugs"); *Armento*, 856 F. App'x at 453-54 (resident at homeless shelter with work component was primary

beneficiary where the "objective" of the program was "to transition homeless veterans back into gainful employment by reintegrating them into a community, habituating them to structure, building their confidence, teaching them basic job skills, and limiting their idle time"); *Williams*, 87 F.3d at 1067 (work therapy was performed "to give [Plaintiff] a sense of self-worth, accomplishment, and enable[] him to overcome his drinking problems and reenter the economic marketplace"). These benefits are central here as well, and Plaintiffs' alleged factual disputes fail to change the economic reality that work therapy in a rehabilitation program confers crucial benefits upon Beneficiaries.

TSA has also provided ample evidence of the benefits of work therapy,[23] both in the testimony of Beneficiaries, including Plaintiffs and other alumni who credit work therapy with providing structure and discipline (RSOMF ¶¶ 120-25, 129), and in the opinion of Dr. Bell, an expert who has spent his career conducting research on therapeutic communities and work therapy programs "aimed at . . . helping disaffiliated people gain a sense of well-being within a community." (RSOAMF ¶ 21, citing Def.'s Ex. 285, Bell Rebuttal Rep. at 6) In contrast, Plaintiffs' expert, Dr. Jarvis, is, by her own account, not an expert on work therapy, but rather on substance abuse disorders (RSOAMF ¶ 20). While perhaps qualified to assess a clinical treatment program, Dr. Jarvis lacks any experience with work therapy at all, much less the relevant expertise to

[23] Plaintiffs' attempt to make hay of the statement by TSA's corporate representative Col. Polsley that TSA has "never studied" the benefits of its work therapy program (Opp. at 12) misses the mark. Nothing in the primary beneficiary analysis requires the alleged employer to have conducted studies to determine the benefits of the work at issue. TSA is not a research institution. It is a religious, non-profit organization that operates rehabilitation programs. TSA's understanding of the benefits of work therapy and the best practices for achieving those benefits need not be formed on the basis of a formal study; they have developed organically over the many decades it has dedicated to serving Beneficiaries. (Def.'s Ex. 1 [259-1], Polsley Decl. ¶¶ 10, 17-20 (discussing TSA's operation of ARCs since the 1940s and 1950s, the "long-standing, deeply held religious beliefs that govern the day-to-day lives of its members as well as the operation of its many religious and charitable programs," and Col. Polsley's personal experience seeing the "transformation" and being "a part of the process by which the broken and downhearted have been renewed, refreshed and revived into productive members of society")).

evaluate TSA's work therapy program.[24] Given this stark contrast in the relevance of their expertise, to the extent there is a dispute between Dr. Bell's and Dr. Jarvis's opinions on work therapy, it does not create an issue of material fact sufficient to defeat summary judgment. And despite Plaintiffs' attempts to discredit him, Dr. Bell's opinions are thoroughly supported by his own research, as well as the Department of Health and Human Services' published guidelines regarding Therapeutic Communities. (RSOMF ¶¶ 68-74)

As Dr. Bell explained in his rebuttal report, "[t]he work structured day targets disaffiliation, while substance abuse treatments have medical treatment and physical recovery as their goal." (RSOAMF ¶ 21, citing Def.'s Ex. 285, Bell Rebuttal Rep. at 7) While many Beneficiaries suffer from substance abuse, TSA has never held the ARC out to be a clinical substance abuse treatment program. (RSOAMF ¶¶ 18, 21, 23) Instead, TSA seeks to help people with substance abuse, among other disaffiliations, by providing a sober environment in which they can focus on social, physical, and spiritual regeneration; learn necessary life skills, discipline, work ethics, and habits that will enable them to restore a sense of self-esteem and self-worth; gain a sense of accountability and pride; reduce idle time to avoid unhealthy habits; and simulate real-world interactions that allow

[24] While there are no disputed material facts related to the opinions about the benefits of work therapy, TSA will seek to exclude any opinions or testimony by Dr. Jarvis related to the benefits of work therapy. In particular, Dr. Jarvis has testified that she has experience and expertise in forms of medical treatment for substance use disorder. But she has also admitted that she has no experience with work therapy; she has never worked in any program that implemented work therapy; nor has she ever observed work therapy in operation, either at any TSA ARC program or otherwise. (*See* RSOAMF ¶ 20; Def.'s Ex. 284, Margaret Jarvis Dep. Tr. at 27:6-17, 31:16-32:11, 49:19-50:1, 98:3-19, 104:5-13) Medical treatment for substance use disorder, and work therapy as part of a comprehensive program for individuals facing a wide variety of forms of disaffiliation from society (including but not limited to individuals diagnosed with substance use disorder), are different fields altogether. As a result, her testimony as to the benefits of work therapy should be excluded. *See, e.g.*, *Ezell v. City of Chi.*, No. 18 C 1049, 2023 WL 5287919, at *9 (N.D. Ill. Aug. 16, 2023) (rejecting proposed expert witness on a particular topic because he had "at most, a surface-level understanding" of the study of that topic, despite more than four decades of experience in related areas, and the proposed expert testimony would "stray too far from his expertise"); *Zarinebaf v. Champion Petfoods USA Inc.*, No. 18 C 6951, 2022 WL 910638, at *9 (N.D. Ill. Mar. 29, 2022) (finding proposed expert unqualified to present opinions that "extend too far beyond his expertise").

Beneficiaries to use skills and healthy coping mechanisms. (RSOMF ¶¶ 3, 75) These goals are distinctly different from those of clinical treatment programs, including those reviewed by the National Association of Recovery Residences, which "focus[] on addiction recovery, alone," and thus the same standards do not apply. (RSOAMF ¶ 21, citing Def.'s Ex. 285, Bell Rebuttal Rep. at 6) Notably, neither Plaintiffs nor their expert disputed Dr. Bell's findings of a "direct linear relationship between clinical improvements and weeks of work over a six-month program," even where no additional community or therapeutic benefits were provided. (RSOMF ¶ 71)

D. Plaintiffs' arguments regarding the benefits gained by TSA fundamentally mischaracterize the nature of TSA and the Program as a whole.

Plaintiffs ask the Court to ignore the indisputable evidence that the ARC is a socially and legally recognized rehabilitation program, to which courts and many other organizations in the justice system regularly refer individuals in need. Plaintiffs instead paint a picture of ARCs as exploitative workshops that provide labor in support of a profitable network of commercial thrift stores. This picture is not a disputed material fact, but rather an egregious mischaracterization of the very nature of the organization, and Plaintiffs have provided no evidence that bears the weight of the nefarious motives and schemes they ascribe to TSA's rehabilitation program.

It is undisputed that TSA is a religious nonprofit with a charitable purpose. (RSOMF ¶¶ 1, 2) TSA's nonprofit status is material here, not because TSA argues that it is exempt from the wage and hour laws (Opp. at 28), but because its status sheds light on the primary beneficiary analysis. TSA is simply not, as Plaintiffs would have this Court believe, a commercial entity operating thrift stores as a means to generate profit. Indeed, the operation of thrift stores is not TSA's objective, but rather it is the means by which TSA funds its provision of charitable services to Beneficiaries in need. (RSOMF ¶¶ 3, 133) Plaintiffs turn over every stone in an attempt to create a genuine issue of disputed fact as to the benefits TSA reaps from the sale of donated goods at its thrift stores.

Finding none, Plaintiffs advance facts that TSA does not, and need not, dispute, and that have no bearing on the undisputed material fact that TSA operates thrift stores to fund its rehabilitation program and provide work therapy opportunities for Beneficiaries, making the Beneficiaries the primary beneficiaries of the relationship.

1. Plaintiffs' manipulation and reinterpretation of the ARCs' finances fail to create a genuine dispute of material fact.

Plaintiffs' argument that "a factfinder could conclude that the *ARCs* exist to turn donations into cash and keep the thrift stores' lights on—not the other way around" (Opp. at 29 (citing RSOMF ¶ 132)) is completely untethered to any fact in the record. Plaintiffs set forth two arguments to dispute the fact that TSA's thrift stores operate for the sole purpose of funding the ARCs—and both are unavailing. Plaintiffs' first argument, that nothing "require[s]" TSA to use the income from the stores to fund the ARCs (RSOMF ¶ 133), does nothing to refute the fact that TSA *does in fact* use this revenue to fund the ARCs. (*See* RSOMF ¶ 132 ("Plaintiffs do not dispute that the majority of the revenue used to operate the ARC program is generated from the sale of donated goods.")) Plaintiffs' second argument, that not *all* revenue from the thrift stores is used to fund the ARCs (RSOMF ¶ 133), is supported only by counsel's own calculation that, during the relevant six-year period, the ARCs donated [redacted] out of nearly [redacted] in ARC revenues (or, approximately [redacted]) to the World Services Fund, which funds The Salvation Army's charitable activities in needy countries.

This second argument only further bolsters TSA's arguments that it does not operate thrift stores as a commercial endeavor for its own financial benefit, but rather to ensure the continuation of its charitable endeavors, with [redacted] percent of the revenues being applied to fund the ARC Program. To be clear, TSA in discovery provided to Plaintiffs financial records of each ARC and of ARC Command as a whole, as well as the detailed ledger showing each individual expense

made during the relevant time period (Declaration of Andrew Bagley ¶ 3); and after examining and manipulating all these documents, Plaintiffs found payments equal to only [redacted] of total revenues that were unrelated to the operations of ARCs, and *no* expenses unrelated to TSA's charitable endeavors.

Plaintiffs' alleged "dispute" over whether ARCs operate at a deficit or surplus, Opp. at 29, is yet another question of characterization, not fact. But even accepting Plaintiffs' characterizations as true (Opp. at 10-11, 29), they are immaterial to the primary beneficiary analysis. First, Plaintiffs' claims that ARC Command generated operational surpluses (Opp. at 29 (citing SOAMF ¶ 36)), rest on alternative calculations supported only by a paralegal declaration, not an expert report. And these calculations are flawed as a matter of law. More specifically, Plaintiffs exclude two significant categories of expenses: (1) [redacted],[25] and (2) [redacted][26] to Territorial Headquarters.[27] Second, Plaintiffs' provocative argument that these are [redacted]," (Opp. at 11 (citing SOAMF ¶ 34)), is

[25] [redacted]

[26] [redacted])

[27] Plaintiffs also subtract from their calculation of TSA's "Total Expenses" the expenses their paralegal calculated as having been allocated to the World Services Fund. TSA sees no reason to quibble over the exact calculation of these expenses, as it is immaterial, but notes that Plaintiffs relied on a paralegal, rather than an expert, to review over 100 pages of financial reports and calculate this amount that it then used to manipulate TSA's financial reports.

unsupported and can be ignored for summary judgment purposes. Indeed, despite retaining a certified accountant and financial expert (Mr. George) to opine on TSA's alleged "savings" from work therapy, as discussed below, this expert failed to provide any opinion on the issue of TSA's accounting, nor have Plaintiffs propounded any other expert to challenge TSA's accounting methods, which have been utilized by TSA—and incorporated in TSA's annual audited financials—for decades. As such, there is no cognizable part of the record that would show these records to be atypical, much less improper. Put differently, Plaintiffs' challenge is wholly insufficient to create an issue of material fact regarding whether TSA's ARCs operated at a deficit.

Alternatively, even accepting as true—for present purposes—Plaintiffs' calculations that for the years of 2018 to 2023 (excluding 2020, as Plaintiffs do), ARC [redacted], these calculations would show a net positive totaling a mere [redacted] or [redacted] of total revenues for the period. It is hard to square this relatively negligible amount with Plaintiffs' arguments that TSA is the primary beneficiary of the relationship with thousands of disaffiliated individuals, and that the purpose of the ARC program is to fill TSA's coffers. And of course, if one *does* include 2020, a year in which TSA continued to operate the ARC Program for Beneficiaries when it was forced to close its thrift stores because of the COVID-19 pandemic, even Plaintiffs' method of calculation shows not a surplus but a total deficit over the time period of nearly [redacted]. (RSOAMF ¶ 36)

2. Plaintiffs' calculation of the amount TSA "saves" by utilizing Beneficiaries in its thrift stores is flawed because it grossly understates TSA's expenses in running the ARC Program.

Plaintiffs' further efforts to manipulate and reinterpret TSA's financial reports to show that TSA "save[s]" money by allocating necessary work to unpaid Beneficiaries are without merit. *See* Opp. at 26. This is because Plaintiffs grossly understate the "expenses" part of the analysis.

TSA's expert, Mr. Callahan, explained in his rebuttal report that Plaintiffs' expert understates TSA's expenses by approximately [redacted], a figure that renders meaningless the finding that TSA "saved" more than $50 million in employee expenses by utilizing unpaid Beneficiaries. (RSOAMF ¶ 30, Def.'s Ex. 289, Callahan Rebuttal Rep. at 3) Specifically, Mr. Callahan determined that, in addition to relying on certain faulty assumptions (*id.* at 7-8), Plaintiffs' expert improperly excluded from his calculations entire categories of ARC expenses that are necessary to run the Program, but that Plaintiffs arbitrarily decided were not directly related to providing for the Beneficiaries. (*Id.* at 5)[28] In excluding these expenses, Plaintiffs simply chose to ignore the inherent integration of the ARC Program with the sale of donated goods that takes place in the thrift stores operated by the ARCs. As members of TSA's ARC Command specifically testified, *all* expenses of the ARC program benefit the Beneficiaries because they support the operation and continuation of the program. (RSOAMF ¶ 30, citing Def.'s Ex. 290, Trushar Ray Dep. Tr. 79:10-22 (testifying that all employees, including those whose expenses are accounted for under the "administration expenses," participate in the rehabilitation of the Beneficiaries); Pls.' Ex. 3 [279-3], Randall Polsley Dep. Tr. 157:14-20 (testifying that "everything that the ARC does, every single activity, every thrift store, every sale is for the sole benefit[] of the men and the women in the program"))

3. Plaintiffs fail to raise a genuine issue of material fact regarding TSA's alleged competitive advantage because they do not, and cannot, identify any competitors with equivalent programs.

Despite claiming that TSA benefits from a "competitive advantage" by virtue of Beneficiaries' participation in work therapy, Plaintiffs have failed to identify *any* true competitor

[28] Plaintiffs' expert improperly excluded from his calculations TSA's "operations and production" expenses, as well as a portion of the expenses that TSA allocates as "administration expenses" and expenses incurred on the ARCs' behalf by ARC Command.

that provides a program equivalent to TSA's ARCs. Without such, their argument that TSA derives a competitive advantage is meritless. While many businesses, and even some nonprofit organizations, operate thrift stores, these alleged "competitors" do not simultaneously take on the financial burden of funding a rehabilitation program. In fact, Plaintiffs identify only one alleged competitor, Goodwill Industries ("Goodwill"), an organization that requires no introduction but that, by its own admission, does not provide a rehabilitation program or any equivalent program. (RSOAMF ¶ 70, Pls.' Ex. 250 [279-250].)

In their argument, Plaintiffs compare apples to oranges. TSA and Goodwill operate on entirely different operational models. Plaintiffs have provided no evidence whatsoever to support their argument that TSA receives a competitive advantage as compared to Goodwill or other thrift stores *when the full expenses of the programs and their natures are considered*. Indeed, Plaintiffs' expert confirmed at deposition that, despite offering a purported opinion on the existence of a competitive advantage, he undertook no analysis of TSA's actual business model or that of any alleged competitor. (RSOAMF ¶ 70, Def.'s Ex. 308, Jeffrey George Dep. Tr. 34:10-12 (testifying "I'm not opining as to who [TSA's] competitors are"))

4. Plaintiffs fail to raise a genuine issue of material fact as to the displacement of workers.

Plaintiffs' argument that Beneficiaries displace employees that TSA would otherwise have to hire to operate its thrift stores, Opp. at 26, fails to acknowledge, once again, that the thrift stores exist to support the ARCs through the sale of goods donated by the public, and to provide rehabilitation opportunities for Beneficiaries in the processing of such goods for sale. Indeed, in the absence of the ARC Program and its purpose of rehabilitating the Beneficiaries, TSA would have no need to operate thrift stores, and thus no need to hire thrift store employees. *See, e.g.*, *Hollins*, 144 F. Supp. 3d at 1002-03 (discussing and applying the reasoning applied in *Solis v.*

Laurelbrook Sanitarium & School, Inc., No. 07-CV-30, 2009 WL 2146230, at *3 (E.D. Tenn. July 15, 2009), *aff'd*, 642 F.3d 518 (6th Cir. 2011), in which the district court rejected the plaintiffs' displacement argument because the defendant, a religious non-profit school that "existed to train troubled youth", would have no need to hire employees if not permitted to continue its mission of training troubled youth).

Finally, despite Plaintiffs' allegations that TSA "moves work from paid employees . . . to save costs," Opp. at 55, they have not shown—nor could they—that Beneficiaries are a reasonable substitute for regular employees and could be as productive as such employees (and thus would save TSA money). In fact, TSA accepts all Beneficiaries who are willing and able to satisfy its Program requirements. It does not turn away Beneficiaries for lack of work experience or skills, nor does it evaluate their likely productivity before allowing them to enroll. (*See* RSOMF ¶¶ 3, 4, 5, 11, 29, 30, 31, 35, 36, 37, 42) Beneficiaries often enroll in the Program and begin work therapy at their lowest point in life, when they are least able to perform any job productively. (*See, e.g.*, RSOMF ¶¶ 87, 90, 94) Plaintiffs do not address the limited duration of the rehabilitation program and even try to explain how a business would "save money" by constantly turning over "personnel," including top performers, in six-month increments, and indeed celebrating their departures. (RSOMF ¶ 18) *See* Opening Br. at 49 n.34. In short, Plaintiffs' "savings" claim is thus pure conjecture, entitled to no weight in these summary judgment proceedings. *See Phillips v. Baxter*, No. 23-1740, 2024 WL 1795859, at *3 (7th Cir. Apr. 25, 2024) ("He also lacks evidence to support his conjecture . . . and speculative inferences are insufficient to defeat summary judgment."); *Wilson v. Smith*, No. 22 C 04413, 2024 WL 4753670, at *6 (N.D. Ill. Nov. 12, 2024) ("[S]peculation may not be used to manufacture a genuine issue of fact to defeat summary judgment.") (internal quotation marks and citation omitted).

IV. Beneficiaries Have No Objectively Reasonable Expectation of Compensation [Response to Opp. § IV.A.2]

Both Parties agree that the legal standard by which to determine whether Beneficiaries expected compensation is one of objective reasonableness. Opp. at 42. Plaintiffs' attempt to claim that they reasonably expected to be paid, whether in cash or in "in-kind compensation," for work therapy is not objectively reasonable, as such claims are belied by undisputed evidence.

It is undisputed that Beneficiaries undergo an intake process in which they sign an admittance statement acknowledging that they understand that the ARC is a rehabilitation program, that they are not an employee, and that their continued residence at the ARC is dependent upon their need for TSA's assistance. (RSOMF ¶ 28); *see also* Opening Br. at 9-10. The admittance statement is significant *not* because it purports to be a binding contract waiving Beneficiaries' FLSA rights (contrary to Plaintiffs' assertions, Opp. at 44-45), but rather because it puts Beneficiaries on notice—prior to their enrollment in the ARC and thus prior to the performance of any work therapy—that the benefits provided to them are *not in exchange for* work therapy, as Plaintiffs claim, but rather as part of their decision to enter into the holistic rehabilitation program. To the extent a Beneficiary may otherwise have believed certain aspects of the Program to be a *quid pro quo* for work therapy, the document makes clear that such belief was not objectively reasonable.[29]

Plaintiffs argue that it would be "illogical for ARC participants to work 40 hours per week for nothing," (Opp. at 43), and once again, TSA does not disagree. Beneficiaries do not participate in work therapy for "nothing;" they participate in it as one of various required elements of a holistic

[29] Plaintiffs imply that they could not be on notice of this rehabilitation relationship prior to enrollment because some of them may have been in withdrawal or detoxing. (RSOAMF ¶ 46) Not only is this belied by the record—including the very reasons each Plaintiff sought enrollment in the ARC Program—but TSA reinforced the policies and procedures provided at intake throughout the program, including during an orientation class. (RSOMF ¶¶ 26, 27, 33; RSOAMF ¶ 46)

rehabilitation program that they sought out to help them with whatever life issue plagued them and led them to seek rehabilitation. (RSOMF ¶¶ 22, 78) Plaintiffs describe the desperate state of Beneficiaries when they seek shelter at an ARC (*see, e.g.*, Opp. at 18), but they provide no explanation as to why a Beneficiary would *choose* to enroll at an ARC, which they know requires not only work therapy but also discipline as well as religious and counseling components, over a shelter or other facility lacking such requirements.[30] Indeed, Plaintiffs' dramatic description of the alleged environment of the ARC defies common sense: that Beneficiaries return (often multiple times) to, or enroll and stay in, a place where they were so badly mistreated (e.g., forced to perform unpaid labor, screamed at (RSOAMF ¶ 15), subjected to dangerous conditions (RSOAMF ¶ 54), denied medical care (RSOAMF ¶ 12), prohibited from holding a job in which they could earn income (RSOAMF ¶ 58)), all while being provided inadequate rehabilitation services (RSOAMF ¶ 39). TSA, by contrast, does not dispute the desperate state of its Beneficiaries, but provides a more logical explanation: Beneficiaries enroll in an ARC seeking not merely food and shelter (which, although essential, can be provided by any number of programs or organizations that provide simple shelter or short term housing services) but rather a holistic rehabilitation program that will help set them up for long-term success, with the full understanding and agreement that for the duration of the program they will submit to the rules and policies of the program.

TSA has set forth undisputed evidence of its provision of food, housing, and clothing, as well as rehabilitative services in the form of counseling, classes, and worship services, even when Beneficiaries were unable to participate in work therapy (e.g., during the Covid shutdowns of the

[30] Indeed, while both Parties recognize that Beneficiaries enroll in the ARC during a vulnerable and even desperate time in their lives, there is no question that the decision to enroll—and remain—in an ARC is a *choice* that Beneficiaries make. And as both Parties have acknowledged, many Beneficiaries decide to leave the ARC prior to completion of the Program, for a variety of reasons, demonstrating further that the decision to remain there is a choice. (RSOMF ¶ 17)

thrift stores). (RSOMF ¶ 47) Plaintiffs' response, that TSA could discharge any Beneficiary who failed to perform work therapy, Opp. at 45, fails to consider the totality of the circumstances and the economic reality between the parties. It cannot be that any provision of room and board would be automatically considered in-kind compensation (and employment). The case law overwhelmingly holds otherwise. *See, e.g.*, *Harris*, 2025 U.S. Dist. LEXIS 56347; *Williams*, 87 F.3d 1064; *Spilman*, No. CGC-21-591364; and *Vaughn*, 957 F.3d 141.

Finally, Plaintiffs argue that because Beneficiaries were at certain times asked (or, allegedly, required) to turn over their SNAP benefits to contribute to offsetting the cost of their room and board that those contributions do not evidence that they agreed to work without compensation. Opp. at 19. But as this Court recognized in its earlier decision in this case, "the fact that Clancy [and] Love . . . were required to turn over SNAP benefits to the Salvation Army points in the opposite direction, suggesting that this wasn't an exchange of work for in-kind benefits." *Clancy v. The Salvation Army*, No. 22 CV 1250, 2023 WL 1334079, at *4 at n.6 (N.D. Ill. Jan. 31, 2023) (citing *Williams*, 87 F.3d at 1067).

Considering the totality of the circumstances, TSA's provision of (i) room and board, (ii) gratuity, (iii) a structure consisting of strict rules and mandatory attendance at program components, including work therapy, counseling, classes, and worship services, and (iv) accountability for breaking program rules and policies, is entirely consistent with TSA's explanation that it provides a holistic rehabilitation program. Plaintiffs' attempt to re-characterize this as in-kind compensation provided by TSA (and objectively expected by Plaintiffs) in exchange for the performance of work therapy is objectively unreasonable and is not supported by the facts presented by Plaintiffs.

V. Plaintiffs Have Not Raised a Genuine Issue of Material Fact Regarding the "Dependence" of Beneficiaries on ARCs [Response to Opp. § IV.A.3]

Plaintiffs' argument that TSA "recruits" vulnerable individuals and applies rigid rules to "solidify[] its control" and "ensure[] that participants become dependent" on TSA, Opp. at 18-19, does not withstand scrutiny. The (undisputed) facts underlying these claims of "dependence" are entirely consistent with an organization whose charitable mission is to provide a rehabilitation program to the most vulnerable. For example:

- ***Beneficiaries receive food and housing, among other benefits, when enrolled in the ARC Program (RSOMF ¶ 5)*** This truism is consistent with the undisputed fact that a pillar of TSA's beliefs is that, by providing for their basic physical needs, Beneficiaries can begin to "unwind those negative behaviors that are often the source of their struggles with addiction or other physical, mental, or social issues." (RSOMF ¶ 12)
- ***Beneficiaries are not permitted to leave the ARC for the first 30 days of the ARC Program. (RSOMF ¶ 58; RSOAMF ¶ 58)***[31] This undisputed fact, as TSA's policy explains, provides Beneficiaries with a limited "time to contemplate their rehabilitation needs without the normal outside influences." (RSOMF ¶ 58, citing Def.'s Ex. 3 [259-3], Beneficiary Handbook at -0315570) Notably, Named and Opt-In Plaintiffs agreed that this period was intended to aid in their transition to their rehabilitation. (*Id.*, citing Def.'s Ex. 216 [259-216] (Opt-in Plaintiff testifying it was a period to "shake off … your illness"), Def.'s Ex. 64 [259-64] (Named Plaintiff testifying it was a period to "focus on what you're there for"), Def.'s Ex. 150 [259-150] (Named Plaintiff testifying it was to prevent

[31] Though, of course, Beneficiaries are free to (and many do) voluntarily leave the Program at any time. *See* RSOMF ¶ 17.

Beneficiaries from contacting "drug dealers or drug users, or just people disruptive to the person's program in general"))

- ***TSA's policy does not permit Beneficiaries to engage in work outside of the ARC Program while they are enrolled in the Program. (RSOAMF ¶ 58)*** For the short duration of the Program, Beneficiaries are asked to dedicate their time exclusively to the rehabilitative programming taking place within the ARC. To permit Beneficiaries to engage in work outside of the ARC would conflict with this mission and potentially expose Beneficiaries to the disruptive influences that have plagued them in the past. (RSOAMF ¶ 58, Def.'s Ex. 272, Randall Polsley Dep. Tr. 122:4-14)
- ***The ARC Program includes multiple levels, and it is only at the higher levels that Beneficiaries begin searching for employment opportunities for after they graduate from the ARC Program. (RSOAMF ¶ 58)*** Again, Beneficiaries are encouraged to focus on their rehabilitation in the early stages of the Program and then search for jobs under guidance from TSA staff as they begin transitioning out of the ARC Program. (Def.'s Ex. 3 [259-3] at -0315574; RSOMF ¶ 118)
- ***Beneficiaries are not permitted to have "more than $60 on [their] person and/or [in their] locker at any time." (Pls.' Ex. 17 [279-17] at -0002152, cited in RSOAMF ¶ 58)*** Notably, the next sentence in the document that Plaintiffs cite continues, "Beneficiaries with greater amounts are encouraged to open a bank account." (*Id.*[32]) Plaintiffs themselves testified to

[32] The most recent version of the Beneficiary Handbook states: "It is highly discouraged that you do not keep large amounts of cash on your person and/or in your locker at any time. Beneficiaries with large amounts are encouraged to open a bank account." (Def.'s Ex. 3 [259-3] at -0315578)

their struggles with holding large amounts of cash, and the temptation to spend it on drugs or other vices.[33]

For decades, TSA has been steadfast in its goal to help Beneficiaries overcome the source of their struggles and go on to live successful and productive lives. (RSOMF ¶ 8) It is telling that several of the very facts that Plaintiffs consider as evidence of dependence were in fact *first* identified by TSA as policies supporting the rehabilitative nature of the ARC.

As predicted in the Opening Brief, Plaintiffs continue to lean heavily on *Tony & Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290 (1985), including as support for their argument that Beneficiaries are dependent on TSA for basic necessities, and therefore must be employees. Opp. at 49-50. As TSA explained in its Opening Brief, *Alamo* is inapplicable because the undisputed facts here differ significantly. Opening Br. at 48 n.33. For example, the "associates" in *Alamo* worked and lived at the Foundation indefinitely with no objective, goals, or incentive to re-enter society or obtain a paying job. What the Alamo Foundation provided its "associates" is more aptly analogized to a commune-like existence, not a rehabilitation program. *See, e.g.*, *Alamo*, 471 U.S. at 300. The Court's finding of the associates' "dependence" on the in-kind compensation provided by the Alamo Foundation is directly, and inextricably, tied to those facts.

In stark contrast to *Alamo*, the ARC Program exists with the underlying goal of preparing Beneficiaries to re-enter society and lead successful lives outside of the ARC Program. (*See, e.g.*, RSOMF ¶¶ 8-9, 12, 13) In service of this goal, Beneficiaries remain in the ARC Program for a discrete period (up to 12 months, though six months is typical), during which time they work to

[33] Def.'s Ex. 300, Darreo Graham Dep. Tr. 63:6-24 (Opt-in Plaintiff testifying that gratuity was a small amount because the "the point was to not give you so much money that you would go out and, and buy drugs or alcohol"); Def.'s Ex. 304, Richard Peer Dep. Tr. 20:9-15 (before sobriety "our money" went to drugs instead of rent); Def.'s Ex. 297, Sean Poynter Dep. Tr. 99:3-11 (before sobriety [redacted]); *see also* Def.'s Ex. 264, Stuart Love Dep. Tr. 108:21-109:16 (Named Plaintiff received COVID-19 stimulus check and TSA stored it in a safe for him, where he was able to access it whenever he wanted).

achieve specific objectives, allowing them to progress through different "levels" of the Program until their ultimate graduation. (RSOMF ¶¶ 8, 9; RSOAMF ¶ 1) TSA strives for all of its Beneficiaries to successfully graduate from the Program, free of the harmful habits that led to their disaffiliation, and free of their temporary dependence on TSA. (RSOMF ¶ 8) *See Armento*, 856 F. App'x at 455 (finding plaintiff was not "entirely dependent" on defendant who provided room and board to plaintiff when the "entire purpose of the Transitional Employment Program is to *eliminate* dependence upon [defendant's] free resources"). And indeed, it is undisputed that "[v]arious Named and Opt-in Plaintiffs found more secure and/or better paying employment after leaving the Program, many earning more than they ever had prior to enrollment." (RSOMF ¶ 119) These undisputed facts show that Plaintiffs were not economically dependent on TSA in the manner of the associates in *Alamo*.

In a genuine rehabilitation program such as TSA's ARC program, "dependence" is different than "dependence" in the context of employment. As other courts have found, Beneficiaries rely upon TSA for food and housing because those resources enable them the economic freedom to pursue their rehabilitation, not because they expected it in exchange for work therapy. *See Harris*, 2025 U.S. Dist. LEXIS 56347, at *23 ("Unlike the associates in *Alamo* who were entirely dependent on the Foundation for in-kind benefits for long periods of time . . . Plaintiff as a Beneficiary entered the ARC rehabilitation [program] for short periods of time, [and] acknowledg[ed] he was there for rehabilitation[.]"); *Williams*, 87 F.3d at 1068 (finding no dependence under *Alamo* when "beneficiaries of the Salvation Army remain in the work-therapy program long enough to overcome their substance abuse problems and gain the necessary work-related skills to reenter the marketplace"). Indeed, these facts would be true for most, if not all, residential rehabilitation programs, regardless of whether they have a work therapy component,

and thus are simply irrelevant to the determination of whether Beneficiaries were employees under the law.

VI. Granting Summary Judgment Is Consistent with the Purposes of the FLSA Because Beneficiaries Seek Rehabilitation, Not Employment [Response to Opp. § IV.A.4[34]]

Plaintiffs fail to engage with TSA's argument (Opening Br. at 18-22) that the statutory text of the FLSA, when analyzed in light of its original meaning (looking to contemporaneous dictionaries, early FLSA cases, and the text and structure of the FLSA itself) precludes a finding of employee status in this case. With no counter to these arguments, Plaintiffs continue to attempt to shoehorn Beneficiaries into the FLSA by focusing on the "expansive" purpose of the FLSA. But as even Plaintiffs acknowledge, the FLSA is intended to protect the "working population" (Opp. at 52 (citing *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 707 n.18 (1945))), meaning individuals seeking or holding employment. Here, Beneficiaries enroll in the ARC seeking rehabilitation, either voluntarily or because a court ordered them to do so, not seeking employment. (RSOMF ¶ 22)[35] Put simply, Beneficiaries are not part of the working population at the time they

[34] In Section IV.A.4 of their Opposition, Plaintiffs address the "twin purposes" of the FLSA—achieving minimum labor standards and preventing unfair competition. Opp. at 52. Here, TSA addresses only the "minimum labor standards," as it has already addressed the unfair competition argument in both its Opening Brief (at 25) and in Section III.D.3, *supra*.

[35] Though Plaintiffs claim to dispute the fact that Beneficiaries were not seeking work when they enrolled in an ARC (RSOMF ¶ 22 (noting that "some ARC participants stated that they were seeking work when they entered the ARC")), the authority they provide in support does no such thing. Of Plaintiffs' (minimal) listed support, only three Plaintiffs listed referenced work or a job as one of their reasons for enrolling. Of these, Plaintiff Clancy (Def.'s Ex. 10 [259-10] at RFA 25) stated that he thought the Program offered "work opportunities" the first time he enrolled, which was in 2017 and thus not part of the class period at issue here. Plaintiff James Lewis stated in response to Interrogatory No. 2 (Pls.' Ex. 56 [279-56]), which requested that he identify each address where he had lived and why he moved from that address, that he left the ARC because he had expected to receive assistance finding permanent work and housing, and was not receiving it. Notably, however, in response to Interrogatory No. 3 (*id.*), which asked the reason he applied to the ARC, he stated only that he applied to the ARC "because he was in need of housing." And while Plaintiff Marianne Bida stated in her Interrogatory (Def.'s Ex. 108 [259-108], Interrog. 3) that she applied to TSA seeking treatment for substance abuse and because she did not have a place to live or a job, she stated in her RFA (Def.'s Ex. 142 [259-142], RFA No. 11) that she "was enrolling in a rehabilitation program to address her alcohol and drug addiction when she enrolled in the ARC."

enroll in an ARC. By enrolling in the ARC, Beneficiaries have voluntarily removed themselves, for a limited period, from the working population in order to pursue their own rehabilitation. TSA makes it possible for them to do this by providing for their basic physical needs during the program. (RSOMF ¶ 12) It is TSA's objective, through the ARC Program, including work therapy, to instill in Beneficiaries the confidence, work ethic, and skills to re-enter the "working population" and enable them to "secure for themselves a minimum subsistence wage," often for the first time. *Brooklyn Sav. Bank*, 324 U.S. at 707 n.18; *see also* RSOMF ¶ 75. TSA is not their employer; it is the provider of the program designed to rehabilitate them.

VII. Summary Judgment Is Proper for the Wisconsin Claims Because the Control Test Is Inapplicable in This Context [Response to Opp. § IV.B]

As TSA addressed in its Opening Brief (at 54-56), Plaintiffs' reliance on *Brant v. Schneider National, Inc.*, 43 F.4th 656 (7th Cir. 2022), for the proposition that the "control test" applies to determine employment status under Wisconsin law is misplaced. *Brant* involved an independent contractor, and Plaintiffs' conclusion that the same textual application would apply in the entirely distinct factual circumstances presented here is entirely unsupported. *See* Mot. for Class Cert. at 43 ("there is a paucity of authority setting forth the proper test for employment under Wisconsin law"). Other courts have also used some variation on the "control test" in the context of FLSA and other wage and hour claims where independent contractors were at issue, and then applied an entirely different test (the economic reality/primary beneficiary tests) in cases such as this, where it was clear that the control test did not properly address the question at issue. While analysis of claims under Wisconsin's minimum wage law *may* differ from analysis under the FLSA (as TSA explained in its Opening Brief at 55), Plaintiffs' reliance on one case, based on an entirely different factual context, is insufficient to claim a separate governing standard under Wisconsin law. Notably, Plaintiffs provide no basis for their assumption (Opp. at 58) that a case determining the

employment status of an independent contractor (*Brant*, 43 F.4th 656) is more analogous to the instant case than one involving "involuntarily detained individuals" (*State ex rel. Hung Nam Tran v. Speech*, 782 N.W.2d 106, 111 (Wis. Ct. App. 2010)). Despite not involving a rehabilitation program, *State ex rel. Hung Nam Tran v. Speech* provides further evidence that courts do not mechanically apply the control test regardless of the facts of the case. Instead, it is the court's role to consider what test to apply.

Importantly, TSA's "control" over its Beneficiaries was not the "control" in a typical employer-employee relationship. TSA controlled not merely the "eight hours each day spent working" (Opp. at 58), but regulated and structured all aspects of the Beneficiaries' days to help them with their addictions and struggles. (RSOMF ¶¶ 12, 13, 60) Given these facts, the reasoning of *State ex rel. Hung Nam Tran* is applicable, and *Brant* is not. Under this reasoning, as well as under the primary beneficiary test (to the extent this Court seeks to apply it), Beneficiaries are not employees.

VIII. Summary Judgment Is Proper on the Question of Willfulness [Response to Opp. § IV.C]

As Plaintiffs agree, when there is no genuine dispute of material fact, summary judgment on the question of willfulness is appropriate. Opp. at 58-59. Critically—it is Plaintiffs' burden to establish willfulness. *Sherman v. Premium Concrete Cutting, Inc.*, No. 01 C 7263, 2004 WL 1510030, at *3-4 (N.D. Ill. July 6, 2004) ("Although, normally in a summary judgment motion all evidence is construed in favor of the non-moving party, the plaintiff in a FLSA case must establish willfulness[.]"). Plaintiffs brazenly assert that the "record is replete with evidence from which the jury could find intent," Opp. at 59, but then provide only a few, inconsequential examples. Even together, no reasonable factfinder could find that TSA willfully violated the FLSA by failing to classify Beneficiaries in its rehabilitation program as employees.

First, the fact that more than 35 years ago, the Department of Labor launched an investigation—but did not initiate any litigation or enforcement action—does not support Plaintiffs' position. Opp. at 59. As a matter of common sense, the initiation of an investigation indicates little. *See Su v. Arise Virtual Sols., Inc.*, No. 23-CV-61246, 2024 WL 5414791, at *11 (S.D. Fla. July 1, 2024) (finding "as a matter of law, Plaintiff cannot show that Defendant's alleged violations were willful" even with evidence of investigation into misclassification of workers by DOL, where DOL did not "subsequently . . . file a complaint and initiate any litigation") (cleaned up). In reality, this very fact—that the DOL has known about TSA's program for many decades, including how TSA classifies its Beneficiaries but has taken no enforcement action—reasonably furthers TSA's belief that it has been in compliance with the FLSA. (*See* RSOAMF ¶ 72 (citing Pls.' Ex. 238 [279-238] and explaining that, in response to litigation by the Salvation Army seeking judicial determination of the applicability of the FLSA, the DOL effectively backed down from its position by arguing that it had taken no enforcement action)) *See also Caraballo v. City of Chi.*, 969 F. Supp. 2d 1008, 1025 (N.D. Ill. 2013) ("[A]n employer has not willfully violated the FLSA if it acts reasonably in determining its legal obligation.") (internal quotation marks and citation omitted).

Second, Plaintiffs' argument that TSA's "leadership making changes" to the ARC Program is somehow also proof of willfulness, Opp. at 59-60, is a red herring, as discussed at Section III.B.2 above. That TSA has made improvements to its program, including those pointed out by Plaintiffs, only shows a reasonably run rehabilitation program, not a reckless or knowing violation of the law.

Third, Plaintiffs argue that because TSA is aware that other operators of thrift stores, such as Goodwill, pay their employees, it must have acted willfully in not paying Beneficiaries. Opp.

at 60. As a threshold matter, Plaintiffs do not cite to any fact that establishes this contention. *See* RSOAMF ¶¶ 69-70 (citing to declarations or letters drafted by Goodwill in this litigation or other TSA materials that do not reference TSA's knowledge of the wages Goodwill pays to its employees). Even if they did, as explained in Section III.D.3 above, none of these other operators of thrift stores, including Goodwill, operate rehabilitation programs. Whatever Goodwill, or other thrift store operators, may choose to pay their employees—and whether that payment complies with the FLSA—is irrelevant.

Finally, Plaintiffs are incorrect that the long history of cases cited by TSA, including *Williams*, *Spilman*, and *Harris*, cannot support TSA's stance that it did not knowingly or recklessly disregard the requirements of the FLSA. Opp. at 60. Certainly, *Williams* makes the point. As regards *Spilman* and *Harris*, TSA does not argue that those decisions could have influenced its state of mind during the early part of the collective and class period. Rather, these decisions, by two separate courts, that Beneficiaries are not employees provide persuasive evidence that TSA was reasonable (and therefore, not reckless) in believing that its position regarding Beneficiary status was well-founded in the law. Plaintiffs have failed to raise a genuine issue of material fact as to willfulness, and summary judgment is proper on this issue.

* * *

For the foregoing reasons, TSA respectfully requests that the Court grant it summary judgment and dismiss the Plaintiffs' Second Amended Complaint, with prejudice.

Dated: August 1, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 1, 2025, true and correct copies of the documents listed below were served on all counsel of record through the Court's CM/ECF system:

1. Defendant The Salvation Army, an Illinois Nonprofit Corporation's Reply in Support of its Motion for Summary Judgment.
2. Defendant The Salvation Army, an Illinois Nonprofit Corporation's Response to Plaintiffs' Statement of Additional Material Facts and accompanying exhibits; and
3. Declaration of Andrew Bagley.

Dated: August 1, 2025.

Respectfully submitted,

/s/ Toni Michelle Jackson
Toni Michelle Jackson

Attorney for The Salvation Army, an Illinois nonprofit corporation