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

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

Plaintiffs,

v.

THE SALVATION ARMY, an Illinois nonprofit corporation,

Defendant.

Case No.: 1:22–cv–01250

Judge Manish S. Shah

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Love it or hate it, a job is a job. And jobs are paid. This case seeks to ensure Defendant The Salvation Army fully compensates its vulnerable workers for their labor that keeps its vast network of thrift stores in business. Plaintiffs and their peers ("participants") have already spent nearly 12 million hours working, which Defendant euphemistically calls "work therapy," in its inaptly named Adult Rehabilitation Centers ("ARCs"). The menial, manual labor, for which Defendant admits it does not pay the participants minimum wage, confers no benefit on participants, except perhaps those that come with working any job. Yet some ARC training materials provide that with respect to their work, the participants "are to be treated just like" The Salvation Army's acknowledged employees, to whom Defendant pays minimum wage.

Given that their full-time weekly work is just work, what keeps participants enrolling is Defendant covering their basic needs, including housing and food. Because of participants' tenuous circumstances due largely to addiction and poverty, they heavily depend on the ARCs. The Salvation Army hammers home through policies and practices the exchange: its in-kind compensation is only available to participants who work full-time for Defendant. As one ARC wrote in its program brochure, "[y]ou won't have to worry about where you will sleep or what and if you will eat. While enrolled in the program we will provide meals and shelter for you in exchange for the unpaid 40-hour work therapy week you provide for us[.]" Defendant reaps substantial financial benefits from obtaining participants' labor but failing to pay them minimum wage. According to Plaintiffs' expert, Defendant has kept $50,000,000 and counting in its pocket from this practice. These savings not only keep the lights on in the thrift stores (from which Defendant generated over [redacted] in revenue between 2018 and 2023), but they also fund other Salvation Army ventures, giving Defendant a competitive advantage over other nonprofits like Goodwill.

Under the facts of this case, and especially through the lens most favorable to Plaintiffs, factfinders can and should easily conclude The Salvation Army is more interested in saving money than saving souls. The minimum wage laws and policies embedded in the Fair Labor Standards Act (FLSA) and Illinois, Michigan, and Wisconsin statutes require employers to fairly compensate those who, like Plaintiffs, work 40 hours a week for The Salvation Army. Given the many disputed material facts, and Defendant's misapplication of the relevant legal standards, summary judgment should be denied.

II. STATEMENT OF FACTS

From March 2019 to the present (the time period covered by this case), The Salvation Army has operated between 14 and 18 Adult Rehabilitation Centers ("ARCs") across the eleven states that comprise the organization's "Central Territory," including Michigan, Illinois, and Wisconsin. SOMF 6. ARCs offer participants a work program masquerading as a residential "rehabilitation" facility. SOAMF 1, 5. While participants are enrolled in an ARC, Defendant provides basic room and board, a small weekly payment, and limited rehabilitation services. SOAMF 4.

The Salvation Army does not, however, provide these benefits to participants as charity. Instead, it requires that all ARC participants perform "work therapy"—its euphemism for full-time labor for its massive thrift store business—in order to receive the housing, food, and services it offers. Defendant's rules for all individuals attending an ARC make clear that "Work Therapy is a required component of your rehabilitation program." SOAMF 5.[1] Some ARCs' training materials explicitly name the quid pro quo: "In exchange for shelter, food, clothing, spiritual guidance, and rehabilitative counseling; [participants] participate in work therapy . . . ." SOAMF 6. ARC staff

[1] Defendant's rules for the program and expectations for participants are primarily set forth in three policy documents created and disseminated by The Salvation Army, called the "Greenbook," the Beneficiary Handbook, and the Program Instruction Manual. SOAMF 3.

did the same. *See, e.g.*, SOAMF 6, 7 (examples of acknowledged employees informing participants that "work therapy" is in exchange for room and board). ARC participants understand they are required to work in exchange for the basic necessities the program provides. SOAMF 6.

A. Participants Must Satisfy Defendant's Work Requirements to Stay at ARCs

Only people who satisfy Defendant's full-time labor requirement can enroll and remain in an ARC and receive the in-kind benefits and gratuity promised by Defendant. SOAMF 5, 7 (Defendant has conceded, in policy documents, business records, and litigation filings, that participants must be able "to perform forty hours of work therapy per week"); *see also id.* (one ARC's admission requirements state, "Must be able to work 40 hours a week on your feet. Cannot have any chronic or physical limitations."); SOAMF 10 (ARC staff told opt-in plaintiff "if you can't stand for 8 hours a day, I can't let you in"). ARCs make clear that their in-kind offerings are contingent on participants working. SOAMF 6-7 (ARC Program Brochure: "You won't have to worry about where you will sleep or what and if you will eat. While enrolled in the program we will provide meals and shelter for you in exchange for the unpaid 40-hour work therapy week you provide for us and for yourself.").

Despite The Salvation Army's veneer of "rehabilitation," work takes precedence over participants' physical health and recovery. SOAMF 10 (ARC describing discipline policies to leadership as "we are running our centers like a prison with wardens"); *see also infra* at Sec. II.E. ARC participants must make up within the same week any hours missed for sickness, injury, or medical appointments. SOAMF 12. The Salvation Army enforces this policy to ensure "that no one is taking advantage of a situation." *Id.*; *see also id.* (ARC employee telling participants to make up shifts missed due to serious injuries: "No excuses!"). The Salvation Army also mandates that ARC participants do everything possible not to miss any work shifts, instructing participants to make any legal or medical appointments and calls "around their work therapy schedule." *Id.*

Participants have even been told that "regular weekly medical appointments will not be accommodated." *Id.*

Defendant reinforces its work-to-stay requirement through disciplinary action, up to and including discharge from the ARC program. The Salvation Army can and does terminate participants from the program if they cannot or will not work, even due to illness or injury, or if they do not comply with Defendant's "make up" requirements. SOAMF 12; *see also* SOAMF 10 (Defendant testified that participants who become ill to the point that it affects their work can be kicked out within a week). Indeed, The Salvation Army is unapologetic regarding expelling participants who cannot work. SOAMF 10; *see also* SOAMF 12 (Lt. Col. Polsley thought discharging a man with a fractured neck "[s]eems harsh but as you are aware we are not a medical facility"); SOAMF 10 (referring to an ARC participant's back pain as "not a real emergency" and stating that "if he can't do the work therapy" that would be a program exit). For instance, ARC staff told Plaintiff Samuel Patton, when he needed surgery, that "[t]his is not an old folks' home. This is a business. And if you can't work, you can't be here." SOAMF 10. Defendant discharged Plaintiff Patton, forcing him to live on the streets while he awaited his medical procedure. *Id*. Other opt-in plaintiffs reported similar experiences. *Id.* (threats that participants will be expelled if they do not adhere to the work requirement); *id.* (opt-in plaintiff witnessed two people "kicked out because they were sick," including one with "a hundred and three degree fever . . . because of course he couldn't really do or perform his duties, so therefore there weren't no need for him").

Defendant also authorizes the ARCs to discharge participants who do not meet Defendant's expectations for performance and productivity at work. SOAMF 11 (Handbook states that "[a]ll [work] assignments have the reasonable expectations for participation. Meeting program expectations is essential. Inability or non-compliance could lead to discharge from the program.").

Defendant's disciplinary policy also provides that repeated failures to meet work expectations can result in discharge. SOAMF 11, 12. ARCs implement these policies in practice. For example, one ARC discharged a participant explicitly for "poor work performance," characterized simply as "sitting on a crate in the hanger area." SOAMF 11. As Plaintiff James Peters explained, "if [a] beneficiary is not performing well at work therapy . . . [t]hey got to go." *Id.*

B. The Salvation Army Requires Participants to Perform Menial and Unskilled Labor for Its Thrift Stores

Between 2018 and 2023, Defendant operated as many as [redacted] thrift stores selling donated household goods to generate income for The Salvation Army. SOAMF 2, 28. ARC participants engaged in menial labor in support of those stores. SOAMF 5, 54. Salvation Army policy requires that all ARC participants initially work in the thrift store warehouse. SOAMF 51. Defendant's records show that for nearly 75 percent of the workweeks participants spent at the ARCs from 2018 to 2023, their work undisputedly directly supported Defendant's thrift store business. SOAMF 52. During those weeks, participants performed tasks such as sorting, cleaning, hanging, tagging, and otherwise preparing donations for sale; testing electronics; loading donations from donation sites onto Salvation Army trucks and unloading at the warehouse or stores; cleaning areas of the warehouse and donation trucks; loading the machine that bales donations; working on the trucks that transport goods to Salvation Army stores; and working in the stores themselves. SOAMF 51, 52. Every ARC participant performed these types of tasks for each least one workweek—and nearly 40% of participants worked inside of a thrift store. SOAMF 27. Other, less common tasks include answering phones at the ARC front desk, cooking for other participants and staff, and providing security, maintenance or janitorial services at the ARC residence. SOAMF 53. All participant work assignments, however, are essential for operating The Salvation Army's thrift store business. Without ARC participant labor, Defendant could not sustain its thrift stores or offer

the in-kind benefits that induce ARC participants to enroll, which in turn maintains Defendant's workforce. *See infra* at Sec. II.B.2, 4.

In addition to being tedious and unskilled, the labor The Salvation Army requires from participants is frequently physically demanding and dangerous. Plaintiff Thomas Bryant described opening bags of donated clothing that contained feces and used needles. SOAMF 54. Despite requests, Defendant refused to provide him and others with protective gear. *Id*. Other participants suffered serious on-the-job injuries, like broken ribs and a punctured lung. *Id*. When ARC staff expressed concern for participants working a full day in over 90-degree weather, the employee was told, "[t]he decision was made . . . [that] work wasn't near finished for the day." *Id*.

Moreover, ARC staff, who were purportedly tasked with participants' "rehabilitation" frequently mistreat participants. SOAMF 15. Plaintiff Michael Clancy recalled warehouse supervisors, foremen, and other paid employees screaming at the ARC participants, making verbal threats of discharging them, arbitrarily changing the rules, punishing ARC participants for failing to follow those rules, and generally "treat[ing] people like they were just pieces of dirt" for not working quickly enough. *Id.* (Clancy believes he would have relapsed if he had not left when he did due to the mistreatment by Salvation Army employees). Others had similar experiences. *Id.*

The Salvation Army exercises total control over ARC participants' work. Defendant assigns ARC participants to specific work positions, which they cannot change without approval from Defendant. SOAMF 71. It dictates how many hours participants work, and when ARC participants start their shifts, stop their shifts, and take their breaks. *Id.* And it enforces a dress code for work. *Id.* As discussed, Defendant's acknowledged employees supervise participants' work, and Defendant maintains the right to discharge participants if they do not meet its work expectations. *See infra* at Sec. II.C.2; *see supra* at Sec. II.A.

C. The Salvation Army Reaps Enormous Financial Benefits from ARC Participants' Labor

1. The Salvation Army Saved $50 Million from over 11.8 Million Hours of Work by Participants

Defendant's work requirement is at the center of the ARC program, and participants' egregiously underpaid work saves The Salvation Army millions of dollars for its multi-million-dollar thrift store empire. From 2020 to 2023, participants across ARCs comprised 26% of the *entire* workforce of those who worked within the ARC facilities and in Defendant's thrift store businesses, and from 2017 to 2023, participants worked over 11.8 million hours. SOAMF 5, 26-27. As Defendant admits, "clearly, yes, [the ARC participants] participate in the . . . production of the product" that The Salvation Army sells in its thrift stores. SOAMF 32. And the thrift store business for which the ARC participants work is enormous. The thrift stores in the Central Territory generated over $[redacted] in revenue for The Salvation Army from October 1, 2017 to September 30, 2023—averaging $[redacted] per year. SOAMF 25.

Obviously, not paying one's workers saves a business money. Defendant's financial data, as analyzed by Plaintiffs' expert, confirms that the savings from this practice were significant. During fiscal years 2018 to 2023, The Salvation Army saved more than $50 million by using the labor of ARC participants but not classifying them as employees or paying them minimum wage. SOAMF 30. To calculate this figure, Plaintiffs' expert compared the $[redacted] that Defendant would have had to pay if it employed the ARC participants (*e.g.*, applicable minimum wages, FICA taxes, workers' compensation insurance, and health insurance) to the $[redacted] that Defendant spent to operate and administer the ARC program, including the costs of providing housing, food, and other services to ARC participants. SOAMF 30.

2. The Salvation Army Intentionally Uses Participants' Labor to Save Money and Pursue the Interests of Its Thrift Stores

The Salvation Army knows that it saves money by using ARC participants' labor and attempts to use their labor most efficiently for its business purposes. The Salvation Army ARC Command General Secretary noted that using ARC participants in the stores would "allow [an ARC] . . . to . . . bring down your paid staff." SOAMF 68 (including ARC administrator's admonishment that any work done by an employee "can easily be done" by participants "and should be"). One ARC noted it was able to "trim payroll and cost in the kitchen" by "moving into a process that utilizes more of our beneficiaries with less [*sic*] employees." *Id*. Another explained that if it was unable to move ARC participants into "stores for work therapy," then "payroll costs go up" because "[w]e would have to pay employees for these hours." *Id.*; *see also id.* (ARC discussing replacing paid employees in its call center with ARC participants because they could do the job just as well for less cost). Some Salvation Army staff have even claimed participants as fellow employees in filing workers' compensation claims for their injuries. SOAMF 49.

Participants and Defendant's acknowledged employees often perform the same tasks. For many years until 2022, Defendant's "work therapy" assignment descriptions and job descriptions for its acknowledged employees reflected substantial overlap between those roles. SOAMF 74. Even after Defendant changed the work descriptions in response to minimum wage litigation against The Salvation Army, participants regularly worked alongside paid employees while completing identical or similar tasks. SOAMF 29, 73, 74, 75. In addition, The Salvation Army regularly uses ARC participants to fill in for acknowledged employees when there are staffing shortages at the thrift stores. SOAMF 29. Training materials for thrift store managers at one ARC put it bluntly: ARC participants "are to be treated just like your employees." SOAMF 48.

Given that participants represent one in four members of the ARC workforce and perform

work essential to the thrift stores that would otherwise have to be performed by acknowledged employees, The Salvation Army (unsurprisingly) takes into account the labor they provide when deciding how to staff its business. The Salvation Army assigns participants to particular positions based on the needs of the thrift stores, not based on any individualized inquiry into what would be best for the ARC participants. SOAMF 31; *see also* SOAMF 21 (Plaintiff's expert concludes that there is no evidence indicating that participants' personal recovery goals are taken into account when setting their "work therapy" assignments). As an administrator at one ARC wrote, "I'm going to assign people based on the needs of the center . . . . Wherever it is, they're going. They agreed to this when they came in the program." SOAMF 31, 32 (aggregating examples from numerous other ARCs requesting participants based on thrift store needs). Participants are also assigned jobs by ARC staff and expected not to complain. SOAMF 31 (including advice from one ARC on "How to avoid a write up," which instructed, "No asking to switch jobs."); *see also id.* ("[W]e will not be abused by a beneficiary that's chosen to be here to get help, and then question and complain about how he's being helped.").

Because it relies on ARC participants to operate its thrift store business, The Salvation Army focuses on ensuring that the ARCs keep enrollment high. SOAMF 33 (aggregating examples, including email from one ARC Administrator that because the ARC was at 50% capacity, it "will not have enough beneficiaries to send them to the . . . store like we had been doing," which "will either mean we hire additional workers, or recognize that we will not be able to produce at as high a level as we were before"). Conversely, if ARCs have more participants than they can effectively deploy for the thrift store business, ARCs sometimes close their doors to new admissions. SOAMF 33. The Salvation Army also considers the availability of ARC participants when identifying potential new locations for stores. SOAMF 32 (Command Financial Board

Review proposal: discussing finding a location for a new store that has "[c]lose access to [b]eneficiaries who will be able to load and move the product"). And The Salvation Army has to plan for ARC participants' absences and departures from the program just like it would for any other employee. SOAMF 31, 32.

Once assigned to jobs, Salvation Army supervisors evaluate participants' work performance against productivity "goals and objectives" set by The Salvation Army. SOAMF 14. If participants are not moving fast enough to meet productivity targets, ARC staff are expected to, and do, make the participants speed up. *Id*. Participants testified that employees berated them to "hang more clothes" and pushed them to work faster. SOAMF 14, 15. As discussed above, Defendant enforces these expectations through its power to discipline or discharge insufficiently productive participants. *See supra* at Sec. II.A.

The Salvation Army also uses production goals to evaluate larger-scale metrics of its operation and maximize the efficiency of its operations. For example, one ARC Director of Operations stated production was low "due to [a] lack of men working in this area" and asked whether there was "any way that we could evaluate how guys are being assigned to work-therapy to be able to help in anyway [*sic*] with the sorting room," as it would "improve the amount of items being produced." SOAMF 13. Salvation Army-acknowledged employees are also evaluated and receive bonuses based on ARC participants' ability to meet production goals. *Id*. And ARC leadership conducts regular reviews of each ARC, which look, in part, at whether ARCs, through the work of their participants, are meeting "daily production goals," which in turn rest on the productivity of the ARC participants. SOAMF 13.

3. The Thrift Stores Generate Positive Cash Flow for The Salvation Army

Defendant's financial statements do not, as The Salvation Army asserts, Dkt. 260 ("Mot."), at 17, 49-51, show that the ARCs lose money. Plaintiffs' Response to Statement of Material

Facts ("RSOMF") 136. Defendant's financial statements include [redacted]. SOAMF 34. [redacted]. *Id.* [redacted] *Id.* [redacted] *Id.* [redacted] *Id.* [redacted] *Id.*

The Salvation Army further inflates its expenses by including outlays that have nothing to do with operating thrift stores or the ARCs. Specifically, for 2018 to 2023, Defendant included $[redacted] in net expenses for "World Services Assessments," which is money that the ARCs are pay to Territorial Headquarters for charitable activities in "needy countries." SOAMF 35. These expenses belie The Salvation Army's repeated statements that it reinvests all revenue from the thrift stores into the ARCs. *See, e.g.*, Mot. at 17 (citing SOMF 132-134); RSOMF 132-33.

With [redacted] and World Services expenses excluded, Defendant's financial documents show that [redacted]. In fiscal years 2018, 2021, and 2022, [redacted] by $[redacted], $[redacted] and $[redacted], respectively. SOAMF 36. Overall, for 2018 to 2023, excluding the atypical 2020 fiscal year, during which many of Defendant's stores were closed because of the COVID-19 pandemic,[2] [redacted]. SOAMF 36.

[2] *See* SOAMF 36 (including Defendant's testimony that stores were closed for 90 days); Mot. at 50 n.35 (indicating "stores were shut down due to COVID-19 pandemic").

4. The Salvation Army Uses Participants' Underpaid Labor to Gain an Advantage in the Thrift Store Market

Defendant's policy of not paying ARC participants minimum wage provides it a competitive advantage over similar organizations, such as Goodwill Industries. Like The Salvation Army, Goodwill is a nonprofit organization that finances many of its charitable activities with revenue from donated goods that it sells at its retail stores. SOAMF 69. The Salvation Army and Goodwill are major competitors in the thrift store market. SOAMF 69, 70. The Salvation Army's national advisory board wrote that "[redacted]." SOAMF 70 ([redacted]). Goodwill, however, pays all employees in its retail store business at least the applicable federal and state minimum wage. SOAMF 69.

D. Participants Do Not Benefit from "Work Therapy," Which Is Just Work

Notwithstanding the evidence that The Salvation Army benefits financially from ARC participants' labor, The Salvation Army contends, *inter alia,* that participants are not employees because the work they perform for Defendant is a form of "therapy." Mot. at 38-41. The record shows, however, that there is nothing uniquely rehabilitative about participants' labor—it is simply a job. RSOMF 44. Defendant admitted as much, stating that ARC participants "probably could" get all the purported benefits of "work therapy" from any minimum wage job. SOAMF 16.

Defendant has *no evidence* to support that "work therapy" is therapeutic for participants. SOAMF 17. The Salvation Army has never assessed whether its full-time work requirement helps ARC participants address their substance use disorders or provides any therapeutic value. *Id.* It has never studied: (1) the optimal number of hours for participants in a "work therapy" program; (2) the optimal assignments to assign to individuals in a "work therapy" program; (3) whether "work therapy" is better for addressing substance use disorders than a job that pays at least minimum wage or (4) whether "work therapy" is better than time spent on education and

addressing addiction or substance abuse disorders. *Id*. The Salvation Army is also not aware of any studies performed by any other entities concluding that work is an effective treatment or therapy for substance use disorder. *Id*.

Defendant also admits that its programs do not offer clinical rehabilitation for any conditions, including substance use disorders. SOAMF 18 ("We are not a treatment center so we cannot use that word."); *id.* (admitting that ARCs "don't address substance use disorders"). Nor could they claim otherwise, as ARCs are not licensed or accredited facilities. *Id.* ARCs do not offer medication assisted treatment (MAT), which is recognized as the standard of care for individuals, including many ARC participants, with opiate addiction. SOAMF 20. In contrast, The Salvation Army operates another type of rehabilitation facility, called "Harbor Light" centers, that *does not* require "work therapy" and *does* offer MAT. SOAMF 19.

Plaintiffs' expert Dr. Margaret Jarvis, MD, a nationally recognized expert in the field of addiction medicine, reviewed Defendant's "work therapy" program. She concludes that "work therapy," as conducted by Salvation Army ARCs, is "not an effective treatment or therapy in addressing substance use disorders." SOAMF 20. Dr. Jarvis concludes that, while there are many evidence-based treatments for substance use disorders, "work therapy" is not one of them; it fails to provide any "evidence-based therapeutic benefits." *Id*. In particular, The Salvation Army's punitive take on a work program does not meet guidelines for work set by the leading organization for recovery residences, including that all paid work arrangements are voluntary and that residents do not suffer consequences for declining work. SOAMF 21. Moreover, Defendant's construction of "work therapy" does not pair participants with individualized assignments that meet their needs, skills, or interests, which Dr. Jarvis concludes to mean that the work lacks vocational benefit. SOAMF 22; *see also id.* (conceding ARCs "are not a vocational training/job readiness" program).

Defendant relies on the opinions of its expert, Dr. Morris Bell, to justify the purported rehabilitative value of a "work-structured day" at the ARCs. Mot. at 39. But this concept—the idea that structuring daily activities around work specifically is beneficial— is "not supported by the sources he cites, which do not provide evidence that a labor-centered structure, particularly around unskilled and unpaid work, has therapeutic value for individuals with substance use disorders." SOAMF 23 (Jarvis Report); RSOMF 68-69. Indeed, Dr. Bell could not provide support for the proposition that work by itself is uniquely rehabilitative; all of the "work therapy" programs he referenced offered evidence-based clinical rehabilitation treatment beyond work, and none allowed individuals to work more than 20 hours a week, let alone *required* full-time work. SOAMF 24. His opinion that underpaid labor can be rehabilitative is also contradicted by his own studies, which "emphasize the important role of financial incentives in fostering participation and recovery outcomes." SOAMF 24. Moreover, his cited examples of successful programs differ critically from the ARCs, including features such as voluntary participation, statutorily-authorized subminimum wages, individualized therapeutic objectives, and clear clinical goals—elements conspicuously absent from Defendant's program. SOAMF 23. These fundamental deviations underscore that Dr. Bell's theory neither validates Defendant's practices nor demonstrates that participants derive genuine rehabilitative benefit from the ARCs' mandatory, unpaid labor. SOAMF 23-24.

E. The In-Kind Benefits Provided in Exchange for ARC Participants' Work Are Inadequate Substitutes for a Minimum Wage

Even though the ARC participants' work is essential to The Salvation Army's business, and they are regularly treated as interchangeable with The Salvation Army's acknowledged employees, *see infra* at Sec. II.C.2, Defendant does not pay minimum wages for participants' labor. SOAMF 8. Defendant forces all ARC participants to sign the same agreement with boilerplate disclaimers that it drafted: "I understand that work therapy is an essential part of my rehabilitation.

I am expected to perform the tasks to which I am assigned to the best of my ability. Work therapy is never to be considered employment." SOAMF 45.

Instead, The Salvation Army provides all ARC participants in-kind benefits: gratuity, room and board, clothing, and limited rehabilitation services. Although these benefits have value as compensation for the work that participants perform, they pale in comparison to the minimum wage participants are entitled under the law to receive. To provide in-kind benefits, like housing, clothes, food, and gratuity, and services to participants, The Salvation Army has spent only $[redacted] on average per year across the class period. SOAMF 43. Indeed, the ARC programs are vigilant in their frugality, at times offering expired or inedible food to participants or withholding meals if they are late, even if due to their work. SOAMF 44. Shared dormitory housing can include up to 34 people sleeping in one room and all participants sharing bathrooms. SOAMF 4. In contrast, The Salvation Army spent an average of $[redacted] per year to operate its more than 100 thrift stores, including expenses for store mortgages and rents, vehicles, insurance, acknowledged-employee wages, and repairs. SOAMF 43.

The gratuity, part cash and part credits to the ARC's canteen, starts from as little as $1 for some participants during the class period. SOAMF 55. While the starting amount and caps fluctuated slightly over the putative class period, the maximum gratuity has never exceeded $35 per week. SOAMF 55; *see also* RSOMF 65. The Salvation Army insists that gratuity is not compensation for work, yet it admits that it sometimes reduces participants' gratuity when they "fail[] to attend or satisfactorily participate in . . . work therapy." SOMF 67; *see also* SOAMF 56. Defendant also rewarded excellent work by increasing gratuity. *Id.* Defendant is also unequivocal that gratuity is a carrot, meant to incentivize participants to perform well and stay on the job for another week of the program. *Id.* Gratuity increases on a weekly basis by $1 each week throughout

participants' stay, such that the amount is tied to each increment of 40 hours of work performed. SOAMF 55. Gratuity is always provided on Friday, *id.*, akin to an end-of-the-week payday. Participants understand the gratuity as a small payment for their work. SOAMF 57. Defendant's staff even told some participants this expressly. *Id.*

In addition to gratuity, The Salvation Army offers limited rehabilitation services and religious activities, including "spiritual counseling," both individually and in groups. SOAMF 37. Participants described the counseling as not helpful or, at worst, a "joke." SOAMF 39; *see also id.* (among other examples, numerous ARC administrators complained to leadership that evening counseling was unproductive, as participants were exhausted after a full day of work, and that staff were encouraged to cut corners on rehabilitation; one ARC employee had impression from ARC Commander that asking "how are you" counts as spiritual counseling session). The only qualifications required for spiritual counselors are a bachelor's degree and support for the ARC mission. SOAMF 37. And even if counselors have experience in clinically proven treatment methods, they are not permitted to offer these services to ARC participants. *Id*. The sparse sessions provided by these counselors did little to advance participants' efforts to sobriety. SOAMF 37, 39-40. ARC participants also attend some classes, complete journals, and go to 12-step meetings twice per week. SOAMF 38. Defendant's policies also require daily devotions, chapel twice weekly, and Bible study. *Id.*

Work takes precedence over all other components of the ARC program, even though the work requirement offers no therapeutic benefits to participants. The non-work aspects of the program take up, if all are actually conducted, approximately 10 hours per week—a quarter of the time spent working. SOAMF 38. And the evidence shows that rehabilitation services were often not provided as scheduled. The person in charge of the ARC program across the Central Territory

raised to other ARC leadership that "[t]here are very limited evening hours for the beneficiaries to complete" anything but work therapy, and subsequently, "many center locations are completing very little programming." SOAMF 40. Nevertheless, Command instructed the ARCs that no "counseling should be done during work therapy hours." *Id*. The Salvation Army expressly reserves weekday daytime hours for work, mandating that participants could only "work on their recovery program in the evenings" after their full day of work was completed. *Id.* One ARC's staff indicated that twice-monthly one-on-one counseling sessions have "not been happening here for 6 months or more" because they could not find time in participants' schedule, "without it affecting the work therapy aspect." *Id*. And whereas Defendant requires that ARC participants make up any missed work shifts or risk being discharged from the program, it often lets missed classes and meetings slide. As one administrator instructed, that ARC participants "must have their classes around their work therapy schedule" and "should not leave work therapy to attend classes." *Id*.; *see also id.* (in debating whether to have evening counseling sessions to avoid work hours, ARC staff member responds, "So the beneficiaries have to do work therapy 40 hours a week but one hour cannot be reserved for counseling?").

ARC participants regularly missed scheduled rehabilitation activities due to work in the evening. SOAMF 42. As one Plaintiff explained, "[t]he main thing was the working. . . . You could miss church. You could miss group. As long as you didn't miss work, you were okay." *Id*. As Plaintiff Bryant testified, "work therapy trumped everything." SOAMF 41; *see also* SOAMF 40 (missed counseling sessions multiple times because he was working offsite). Other participants similarly witnessed or experienced that Defendant treated work as more important than the other requirements of the ARC program, concluding that the "program pretty much revolved . . . around work therapy." SOAMF 41.

F. The Salvation Army Recruits Vulnerable Individuals and Makes Them Dependent on the Food and Housing Offered by the ARCs

ARC participants come from highly vulnerable populations. For over [redacted] of ARC participants entering the program between 2018 and 2023, Defendant recorded that they had a [redacted] related to [redacted]. SOAMF 64. Many participants are [redacted] or referred to the ARC as a diversion from incarceration (although justice-referred individuals are not part of this case). SOAMF 65, 66.

Defendant recruits these vulnerable individuals, especially those struggling with substance use, to populate its ARC workforce, through targeted advertising. SOAMF 61, 63. One ARC's brochure, for example, offered that "[i]f you or someone you know has trouble coping with a difficult situation stemming from substance abuse, we can help"). SOAMF 61. Tellingly, The Salvation Army struggles to fill ARC beds when those who are usually targeted have "money in their pocket" or any alternative option available due to government or private anti-poverty measures. SOAMF 62. As many ARCs have observed, "selling the Work Therapy Program is a hard enough pitch on its own when compared to other short-term treatment program options." *Id.*

Once enrolled, the structure of the program ensures that participants become dependent on The Salvation Army for all necessities, further solidifying its control. Participants cannot leave the physical ARC location for the first 30 days of the program, are forbidden from earning income elsewhere, may not possess more than $60 in cash (which is held by the ARC), and cannot operate vehicles. SOAMF 58. These policies also make it difficult for participants to succeed when they leave the ARC, as participants have no means to save money. The Salvation Army exacerbates this problem by forbidding ARC participants from even searching for a post-ARC job until they reach the last stages of the program. *Id*. Because participants have no possible sources of income while in the ARC and Defendant limits their movement, they must rely on The Salvation Army to

provide for their basic needs, including housing and food.

In addition, until recently, Defendant maintained a policy that participants eligible for food stamps could turn them over voluntarily to The Salvation Army. SOAMF 59. In practice, though, The Salvation Army forced ARC participants to hand over these benefits, and many struggled to regain use of the stamps upon their departure. *Id.* ("On the ethical side, we're using their [SNAP] benefits to feed them for three months, then when they get out, and they really need it, they can't get it."); *see also id.* (examples of participants struggling to regain benefits).

The ARCs have no financial incentive to improve participants' life conditions; in fact, many ARC participants return multiple times precisely because, despite attending an ARC, they continue to struggle with the substance use and poverty that sent them there in the first place. SOAMF 60 (numerous participants testified that the program did not teach them the skills to stay sober once they left). Contrary to Defendant's assumption, *see* Mot. at 4-5, ARC participants describe returning to ARCs out of desperation and lack of options. SOAMF 60; RSOMF 17. Individuals who leave or are discharged from the program can re-enroll, provided, of course, that they are willing and able to perform 40 hours of underpaid manual labor each week. SOAMF 60. Thus, the ARC maintains a steady supply of new and returning individuals to churn through Salvation Army warehouses and stores.

Viewing the facts in the light most favorable to Plaintiffs, The Salvation Army has a system: recruit individuals facing poverty, homelessness, and addiction into its ARCs, to staff its expansive thrift-store business. At minimum, there are material disputes of fact that preclude judgment in Defendant's favor, given the evidence showing, among other things, the substantial benefits realized by The Salvation Army from participants' labor and the lack of any therapeutic benefit to participants from that same work.

III. LEGAL STANDARD

Defendant faces a steep standard to receive judgment as a matter of law. "Summary judgment is appropriate *only* where there is *no* genuine issue of material fact[.]" *Simpkins v. DuPage Hous. Auth.*, 893 F.3d 962, 964 (7th Cir. 2018) (emphases added). "Defendant[] bear[s] the burden of establishing that the summary judgment standard is met[.]" *Jakes v. Boudreau*, 2023 WL 3585629, at *1 (N.D. Ill. May 22, 2023). "[O]n summary judgment, a district court makes no factual findings of its own. Instead, it is required to construe the facts in the light most favorable to the nonmoving party and identify, *but not resolve*, material factual disputes." *Simpkins*, 893 F.3d at 965 (emphasis added); *accord Runkel v. City of Springfield*, 51 F.4th 736, 741 (7th Cir. 2022) (at the summary judgment juncture, the court must give "the non-moving party the benefit of conflicting evidence and any favorable inferences that might be reasonably drawn from the evidence"). Making credibility determinations, weighing evidence, and choosing which inferences to draw from facts are all "jobs for a factfinder"—not the Court. *Johnson v. Advoc. Health & Hosps. Corp.*, 892 F.3d 887, 893 (7th Cir. 2018) (citation omitted). Where one party "present[s] a version of events," and the other party "presents a competing narrative" that "a reasonable jury could believe . . . on the record presented," summary judgment is inappropriate. *Godinez v. Classic Realty Grp.-IL, Inc.*, 2024 WL 3442960, at *8 (N.D. Ill. July 16, 2024). "[A] court may consider only admissible evidence in assessing a motion for summary judgment."[3] *Parker v. Four Seasons Hotels, Ltd.*, 845 F.3d 807, 812 n.3 (7th Cir. 2017).

"The substantive law of the dispute determines which facts are material." *Runkel*, 51 F.4th

[3] Declarations, even from the moving party, that directly or indirectly contradict prior sworn testimony are prohibited. *E.g.*, *Craig v. Wrought Washer Mfg., Inc.*, 108 F.4th 537, 544 (7th Cir. 2024); *Hickey v. Protective Life Corp.*, 988 F.3d 380, 389 (7th Cir. 2021). "[B]ecause summary judgment is not a tool for deciding questions of credibility," *Clemons v. Wexford Health Sources, Inc.*, 106 F.4th 628, 634 (7th Cir. 2024) (citation omitted), any inferences to be drawn from the daylight between the deposition and affidavit testimony of Defendant's corporate representatives should fall in Plaintiffs' favor.

at 741. "Although the determination of an employee's covered status under the FLSA is ultimately a question of law, the material facts underlying this determination may be disputed, precluding summary judgment." *Dobrov v. Hi-Tech Paintless Dent Repair, Inc.*, 2024 WL 4333190, at *3 (N.D. Ill. Sept. 27, 2024); *see also Simpkins*, 893 F.3d at 965 (reviewing facts in the light most favorable to plaintiff, while reviewing lower court's legal conclusion *de novo*).

IV. ARGUMENT

Under the FLSA and state minimum wage laws, material disputes of fact exist on all issues relevant to whether The Salvation Army employs ARC participants. These disputed facts include but are not limited to: (1) whether participants' work offers them any objective benefit; (2) whether The Salvation Army receives any financial benefit from participants' work; and (3) whether participants expected food, housing, and other in-kind benefits in exchange for their labor. *See, e.g.*, RSOMF 7, 39, 44-45, 48, 68-70, 75, 80, 111, 129, 132-33, 136. Therefore, the Court should deny Defendant's summary judgment Motion.

A. Disputes Exist Regarding Whether ARC Participants Are Employees Under the FLSA and Michigan and Illinois Laws' "Economic Reality Test"

The identical definitions of employment under the FLSA, Michigan, and Illinois law[4] "are broad, circular, and not particularly helpful in identifying the limits of covered employment relationships." *Clancy v. Salvation Army*, 2023 WL 1344079, at *2 (N.D. Ill. Jan. 31, 2023) (Shah, J.). As a result, to determine whether an employment relationship exists under these laws, "courts look at the totality of the circumstances and assess the economic reality of the working relationship at issue." *Id.* (citing *Berger v. Nat'l Collegiate Athletic Ass'n*, 843 F.3d 285, 290 (7th Cir. 2016)

[4] The parties agree that Illinois and Michigan use the FLSA's "economic reality" test. Mot. at 54; *see, e.g.*, *Reyes-Trujillo v. Four Star Greenhouse, Inc.*, 513 F. Supp. 3d 761, 797 (E.D. Mich. 2021); *Nassis v. LaSalle Exec. Search, Inc.*, 2018 WL 2009502, at *8 (N.D. Ill. Apr. 30, 2018). Unless otherwise specified, Plaintiffs refer to only the FLSA when discussing these three laws.

and *Vanskike v. Peters*, 974 F.2d 806, 808 (7th Cir. 1992)). This Circuit rejects a one-size-fits-all test, and instead emphasizes a holistic inquiry tailored to the specifics of each case. *See, e.g.*, *Clancy*, 2023 WL 1344079, at *2.

The Supreme Court has provided some guidance on how to conduct the flexible FLSA analysis. First, it has instructed that the test of employment is not one of subjective belief. *See Tony & Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290, 301 (1985); *see also Okoro v. Pyramid 4 Aegis*, 2012 WL 1410025, at *9 (E.D. Wis. Apr. 23, 2012) ("It is the examination of objective indicia and the application of common sense with which this court arrives at its determination of whether the plaintiff here is an employee for purposes of the FLSA."); Mot. at 51-54 (agreeing the analysis should not be based on subjective experiences). Second, "[t]he Supreme Court has added that [courts] must construe the terms 'employee' and 'employer' expansively[.]" *Hollins v. Regency Corp.*, 867 F.3d 830, 835 (7th Cir. 2017) (citing *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318, 326 (1992)); *accord Berger*, 843 F.3d at 290; *Vanskike*, 974 F.2d at 807; *Compton v. DuPage Cnty. Health Dep't*, 426 F. Supp. 3d 539, 547 (N.D. Ill. 2019) (Shah, J.).

In its order denying Defendant's Motion to Dismiss, the Court set forth four main factors for determining whether, under the economic reality standard, ARC participants are Salvation Army employees: (1) whether ARC participants "had any expectation of compensation," monetary or otherwise; (2) whether ARC participants or The Salvation Army are the "primary beneficiary of the relationship"; (3) "how dependent the relationship [i]s" between ARC participants and The Salvation Army; and (4) whether the purposes of the FLSA indicate that the working "relationship falls within the scope of the Act." *Clancy*, 2023 WL 1344079, at *3; *accord Alvear v. The Salvation Army*, 661 F. Supp. 3d 1314, 1321 & n.7 (N.D. Ga. 2023) (describing the test similarly). On each of these four issues, material disputes of fact remain that require denial of Defendant's motion.

1. Disputed Questions Exist as to Whether The Salvation Army Is the Primary Beneficiary of ARC Participants' Work

"[C]omparing the benefits that each party received," in the light most favorable to Plaintiffs, requires finding Defendant is the primary beneficiary of the working relationship—and, at minimum, denying Defendant's Motion due to the disputed facts that exist on this issue. *Clancy*, 2023 WL 1344079, at *3 n.5. There exists substantial evidence from which the trier of fact can conclude that Defendant, contrary to its claims, receives a huge economic benefit from participants' work. RSOMF 132-33, 136. It has saved more than $50 million by using participants' labor but not paying them minimum wage. SOAMF 8, 30, 35; *see also supra* at Sec. II.C.1. Meanwhile, the record also supports that ARC participants receive little benefit from the work they perform for The Salvation Army, and none beyond what they could get from any (FLSA-compliant) employment. *See* RSOMF 44-45, 68-70, 75, 80, 111, 129.

Defendant mistakenly urges the Court to depart from governing authority on the proper application of the primary beneficiary test. First, in violation of this Court's "flexible" mandate, *see supra* at Sec. IV.A, Defendant asks the Court to adopt "three salient features" of the Second Circuit's *Glatt* test. Mot. at 33 (citing *Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528, 536 (2d Cir. 2016)). But already the Seventh Circuit has explicitly rejected the *Glatt* factors for "fail[ing] to capture the true nature of the relationship" between putative employees and employers. *Berger*, 843 F.3d at 291 (rejecting the test, developed in the context of student interns, in a case involving student athletes). While the Seventh Circuit cited *Glatt* in its review of case law from sister circuits, it neither approved of nor applied these factors. *See Hollins*, 867 F.3d at 836.

Second, Defendant urges the Court to only "focus[] on what the individual received in exchange for the work." Mot. at 33. But the Court must "compar[e] the benefits that *each* party

received." *Clancy*, 2023 WL 1344079, at *3 n.5 (emphasis added); *see, e.g.*, *Hollins v. Regency Corp.*, 144 F. Supp. 3d 990, 1006-07 (N.D. Ill. 2015), *aff'd*, 867 F.3d 830 (7th Cir. 2017) (weighing at length the benefits that an operator of cosmetology schools received from student labor). And Defendant's proposed standard, rejected by the Seventh Circuit, requires courts to consider benefits to a putative employer. *Glatt*, 811 F.3d at 537. Notably absent from Defendant's Motion is any recognition of the (substantial) benefit it received from ARC participants' labor.

Third, Defendant requests that the Court examine the relationship between the parties "as a whole[.]" Mot. at 33. But the proper lens is to assess only the benefits from the portion of the parties' relationship for which Plaintiffs are seeking compensation. On this question, the Sixth Circuit's decision in *Eberline v. Douglas J. Holdings, Inc.* is instructive. 982 F.3d 1006 (6th Cir. 2020), *cert. denied*, 141 S. Ct. 2747 (2021). In *Eberline*, participants in a vocational training program sought compensation for the portion of time they spent performing janitorial tasks, but not for time spent in the classroom or performing other tasks related to the program. *Id.* at 1014. The Sixth Circuit held that courts conducting a primary beneficiary analysis must look only at the time the plaintiffs spent performing the task for which they sought compensation, not "the broader relationship as a whole." *Id.* The court noted that a contrary approach would be inconsistent with the FLSA's purpose and raise "zones of exploitation in which schools could use their students in place of paid employees to complete work unrelated to the educational purpose of the program, so long as the amount of extra work was not so large as to render the school the primary beneficiary of the overall relationship." *Id.* at 1016 (citing *Alamo*, 471 U.S. at 301-02).

Other courts, including the Seventh Circuit, have *sub silentio* followed this "work only" approach. *See, e.g.*, *Walling v. Portland Terminal Co.*, 330 U.S. 148, 149-50 (1947) (analyzing benefits received from trainees' *work*); *Hollins*, 867 F.3d at 836-37 (focusing exclusively on time

spent in salons, rather than in classrooms); *Benjamin v. B & H Educ., Inc.*, 877 F.3d 1139, 1142, 1147-48 (9th Cir. 2017) (same); *Velarde v. GW GJ, Inc.*, 914 F.3d 779, 787 (2d Cir. 2019) (same); *Armento v. Asheville Buncombe Cmty. Christian Ministry, Inc.*, 856 F. App'x 445, 452-53 (4th Cir. 2021) (considering whether the purpose of the *employment* relationship was to benefit a plaintiff who performed service hours at a homeless shelter); *Solis v. Laurelbrook Sanitarium & Sch., Inc.*, 642 F.3d 518, 519-21 (6th Cir. 2011) (focusing exclusively on the work performed in an educational program, rather than other parts of the program); *see also Earl v. Bell House, LLC*, 2022 WL 394731, at *3 (D. Neb. Feb. 9, 2022) (for manager paid less than minimum wage at transitional house, determination of "whether Earl's tasks *as a manager* served his own personal or rehabilitative goals or primarily the Defendants' business interests is critical" (emphasis added)); *Walker v. Freedom Rain, Inc.*, 2017 WL 897592, at *5 (N.D. Ala. Mar. 7, 2017) (weighing only the benefits that rehabilitation program participants gained "from working"); *Perez v. TLC Residential, Inc.*, 2016 WL 6143190, at *3 (N.D. Cal. Oct. 21, 2016) (analyzing whether sober living home or house parents "benefit[ed] more from the latter's *work*" (emphasis added)). This line of precedent strongly outweighs the three cases that Defendant cites for considering non-work aspects of the parties' relationships—none of which squarely tackled this question. Mot. at 33; *see also Eberline*, 982 F.3d at 1016 (noting the dissent did not cite a single FLSA case that "considered elements of the parties' broader relationship in applying the primary-beneficiary test").

As discussed below, disputed issues of fact remain regarding whether Defendant or ARC participants are the primary beneficiary of the working relationship.

i. Defendant Benefited Substantially from Participants' Work

On one side of the primary beneficiary ledger, the record shows that ARC participants fuel The Salvation Army's thrift store empire and save Defendant millions in labor costs. Defendant concedes that at least some of ARC participants' work "benefit[ed] TSA by facilitating the resale

of donated items." Mot. at 50. As over a quarter of Defendant's *entire* workforce, ARC participants have provided nearly 12 million hours of labor for The Salvation Army's thrift store enterprise. SOAMF 26-27. Across the same period, those businesses generated over $[redacted] in revenue, or on average $[redacted] per year. SOAMF 25. Meanwhile, The Salvation Army saved at least $50 million in expenses by not classifying ARC participants as employees and not paying them the minimum wage. SOAMF 30.

Defendant's conduct reflects a clear understanding that they save money by using the underpaid labor of ARC participants. SOAMF 68 (communications repeatedly acknowledging that Defendant reduces costs by using participant labor instead of paid staff). Defendant also admits that ARC participants "work side-by-side" with paid employees to perform assigned tasks. Mot. at 7. The record refutes Defendant's suggestion that this is simply supervision. RSOMF 81. The Salvation Army assigns ARC participants to particular positions (including filling in for paid employees) based on the needs of the thrift stores, without evaluation of what would be best for each participant. SOAMF 29, 31; RSOMF 80; *see also* SOAMF 71. And Defendant regularly reviews and demands that ARC participants meet "daily production goals" through rigorous on-the-floor enforcement and incentive structures, including bonuses for its paid employees. SOAMF 13-14. Defendant's entire staffing model—from keeping enrollment high to closing its doors when enrollment targets are exceeded—is based on its stores' economic needs rather than the needs of ARC participants. *See supra* at Sec. II.C. These facts, especially when viewed in the light most favorable to Plaintiffs, establish that Defendant reaps tangible, financial benefits from ARC participants' labor—yet another area of disputed fact.

Courts have found that such evidence weighs in favor of a finding of an employment relationship. *See Hollins*, 144 F. Supp. 3d at 1002 (citing *Walling*, 330 U.S. at 150) (displacement

of paid work indicates employee-employer relationship); *Alvear*, 661 F. Supp. 3d at 1325 (plausible allegation that ARC participants displace paid employees); *Walker*, 2017 WL 897592, at *5 (plaintiffs were employees because their labor allowed defendant to hire fewer paid employees, meaning "plaintiffs performed work that, in economic reality, served both parties' interests"); *Marshall v. Baptist Hosp., Inc.*, 668 F.2d 234, 235-36 (6th Cir. 1981) (same); *Archie v. Grand Cent. P'ship, Inc.*, 997 F. Supp. 504, 533 (S.D.N.Y. 1998) (plaintiffs displaced regular employees and allowed defendants to offer services at below market rates). Defendant indisputably "relies" on ARC participants' unpaid labor to carry out its thrift store operation. *See Perez*, 2016 WL 6143190, at *3 (importance of house parents' work to business operations raised genuine dispute that defendants benefited more). And Plaintiffs' work was the "lifeblood" of Defendant's business and "integral" to its ongoing success. *See Rhea Lana, Inc. v. United States,* 925 F.3d 521, 527 (D.C. Cir. 2019) (plaintiffs labored "for the benefit of [defendant's] general sales operations"). These facts are therefore a far cry from *Walling*, in which the putative employer "receive[d] no 'immediate advantage' from any work done by the" laborers. *Walling*, 330 U.S. at 153.

ii. Defendant's Suggestion that It Cannot Benefit from Participants' Work Is Disputed and Immaterial

Though Defendant does not address the benefit it receives from the hard work of ARC participants, it does suggest that its nonprofit status, the purported deficits it runs, and its use of thrift store revenue to fund the ARCs counsel in favor of finding that ARC participants are not employees. Each of these points is, however, either disputed or immaterial.

First, Defendant attempts to diminish the benefits it receives from participants' labor by hiding behind its nonprofit status. Mot. at 25. But nonprofits are not immune from minimum wage laws. *Alamo*, 471 U.S. at 306 (the FLSA applies to nonprofits' "commercial activities, undertaken with a 'common business purpose'"). As the Supreme Court has observed, "[t]he statute contains

no express or implied exception for commercial activities conducted by religious or other nonprofit organizations[.]" *Id.* at 296. The legislative debates confirm that at enactment, there was "broad congressional consensus that ordinary commercial businesses should not be exempted from the Act simply because they happened to be owned by religious or other nonprofit organizations." *Id.* at 297-98 (discussing the rejection of an amendment that would have entirely excluded coverage of 501(c)(3) entities). Nor have courts subsequently carved out nonprofits from minimum wage laws' reach. *See, e.g.*, *Demkovich v. St. Andrew the Apostle Par., Calumet City*, 3 F.4th 968, 982 (7th Cir. 2021) ("[R]eligious organizations are not exempt from compliance with the Fair Labor Standards Act."); *see also Benton v. Laborers' Joint Training Fund*, 121 F. Supp. 3d 41, 50 (D.D.C. 2015) ("Non-profit charitable, religious, or educational organizations are not automatically exempt from the FLSA, however[.]"). Even assuming *arguendo* that The Salvation Army uses its thrift stores' revenue for benevolent purposes, there is no legal loophole for charities. *See Cleveland v. City of Elmendorf*, 388 F.3d 522, 528 (5th Cir. 2004) (courts "look at the objective facts surrounding the services performed" and not "personal motivations" in assessing whether FLSA liability attaches). The FLSA applies to commercial activities of nonprofit organizations, even if they are "infused with a religious purpose." *Alamo*, 471 U.S. at 296-99; *id.* at 299 (where a defendant is engaged in an "'unfair method of competition' that the Act was intended to prevent," "the admixture of religious motivations does not alter a business's effect on commerce" (citations omitted)); *id.* at 292, 306 (holding that "retail clothing and grocery outlets" have a "business purpose"). *Contra* Mot. at 2 (claiming Defendant does not have any "commercial purpose").

Defendant next claims, in a variation of the nonprofit defense, that the thrift stores exist only to fund the rehabilitation program. Mot. at 25. But the record shows otherwise. RSOMF 133. Defendant used more than $[redacted] in thrift store revenue to fund its overseas charitable

endeavors. SOAMF 35. Defendant also puts the cart before the horse, assuming that, because it uses most of the revenue from the thrift stores on the ARCs, the thrift stores would not exist but for the ARCs. Mot. at 49-50. Defendant admits, however, that it needs the thrift stores to convert goods that the public donates to it into money. *Id.* at 17. Viewing the record in the light most favorable to Plaintiffs, 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. RSOMF 132. Lastly, even if Defendant reinvests all its stores' revenue into the ARCs (which it does not, RSOMF 133), that fact is irrelevant. As a nonprofit, Defendant is legally required to use its income for charitable purposes to retain its tax-exempt nonprofit status. *Exemption Requirements – 501(c)(3) Organizations*, IRS, https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations (last visited June 9, 2025). That Defendant chooses to use the revenue on the ARCs (as opposed to a different charitable endeavor) is immaterial to the employment analysis.

Defendant maintains that it does not benefit from participants' labor because the ARCs operate at a deficit. Mot. at 49-50. This fact is also disputed, as ARCs' [redacted] in multiple years. SOAMF 36; RSOMF 136. In fact, excluding the outlier pandemic year of 2020, from 2018 to 2023, Defendant [redacted]. SOAMF 36. [redacted]. SOAMF 34; RSOMF 136. And even if the ARCs' profitability was not in dispute, Defendant identifies no profitability prerequisite for FLSA liability, as no such requirement exists. *Cf. Johnson v. Nat'l Collegiate Athletic Ass'n*, 108 F.4th 163, 192 n.14 (3d Cir. 2024) (Porter, J., concurring) ("[o]bviously . . . not suggest[ing] that only workers in profitable companies can be employees under the FLSA"). Even unprofitable

employers must pay the minimum wage. Whether Defendant can continue operating ARC programs if it must pay all its workers minimum wage, *see* Mot. at 25, is a policy question not for this Court—yet evidence also shows Defendant knows how to do so. *See* SOAMF 19 (Defendant operates Harbor Light centers not reliant on underpaid labor of participants).

Finally, Defendant claims that it does not benefit from participants' labor because participants sometimes do not work directly in the thrift stores or their warehouses. Mot. at 50. To start, Defendant states that "very few" assignments are based in thrift stores themselves. *Id.* at 50. Again, Defendant's own records undermine their claim, as they show that nearly 40% of participants worked in an assignment at a thrift store. SOAMF 52 (17% of all tasks were in a thrift store); RSOMF 79. These data are confirmed by Defendant's "work therapy" assignment descriptions, which require performing tasks at thrift stores, and numerous Plaintiffs' testimony about working in thrift stores. SOAMF 52. Regardless, this distinction between work in Defendant's thrift stores versus warehouses does not matter. Just as a server on the floor and a line cook in the back of house (*i.e.*, the kitchen) both work for a restaurant, workers in a warehouse or thrift store both perform work that benefits Defendant and its thrift store business.

Moreover, Defendant admits that a majority of "work therapy" assignments relate to the "sale of donated goods or production of revenue." Mot. at 50. Defendant's own records show that each participant who completed discovery spent at least one week working directly for the thrift store business, with participants collectively spending nearly 75% of all work weeks doing so. SOAMF 52. In any event, assignments outside the warehouse and store—including tasks like preparing food for participants and staff and cleaning the ARC—are still essential to generating revenue for Defendant. Such tasks provide the meals and shelter that sustain the staff and participants who then perform tasks directly carrying out Defendant's commercial business.

In sum, viewing the record in the light most favorable to Plaintiffs, Defendant obtains substantial financial benefits from ARC participants' labor, and, at minimum, material disputes of fact on this issue preclude summary judgment for Defendant.

iii. Participants Benefit Marginally, If at All, from Their Working Relationship with Defendant

On the other side of the ledger, the record contains substantial evidence from which the trier of fact could conclude that "work therapy" is not therapy at all—it is just (underpaid) work. At minimum, material fact disputes as to whether Plaintiffs benefit from Defendant's "work therapy" program require denying Defendant's Motion. RSOMF 44-45, 68-70, 75, 80, 111, 129.

ARC participants perform full-time, menial labor that requires very little training or experience. Common tasks performed by ARC participants—like hanging clothing, (un)loading items, and cleaning, SOAMF 51—require nothing more than "common sense . . . to complete." *Eberline v. Douglas J. Holdings, Inc.*, 629 F. Supp. 3d 640, 657 (E.D. Mich. 2022), *on remand from* 982 F.3d 1006; *see also McLaughlin v. Ensley*, 877 F.2d 1207, 1210 (4th Cir. 1989) (holding that plaintiffs were employees where they loaded and unloaded trucks, restocked retail store shelves, and performed simple paperwork, because the learned tasks were "so specific to the job or so general to be of practically no transferable usefulness"). There is no evidence that the work provides educational or vocational benefits to participants. SOAMF 22; *see supra* at 13-14; *see also Eberline*, 629 F. Supp. 3d at 656-57, 673-74 (retail and janitorial tasks that lack educational or vocational value point to Defendant as primary beneficiary); *Alvear*, 661 F. Supp. 3d at 1324 (ARC participants' work did not provide beneficial training or rehabilitation on the face of the pleadings). In addition to being tedious and unskilled, the labor is frequently physically demanding and, at times, even poses risks of injury. SOAMF 54; *see, e.g.*, *Archie*, 997 F. Supp. at 515, 533 (supervisors' "reckless disregard" for inherent dangers of job supported conclusion that plaintiffs

were not primary beneficiaries of working relationship). The work itself, therefore, provides no inherent benefit to participants beyond, as Defendant concedes, the benefits of *any job* that pays the minimum wage. SOAMF 16; *see Johnson*, 108 F.4th at 180 (3d Cir. 2024) (disregarding any benefits that are "the kinds of skills one would typically acquire in a work environment"). And Defendant's preferred test looks only to "benefits that are not necessarily expected with all forms of employment." *Glatt*, 811 F.3d at 536. A contrary standard would, to workaholics' dismay, strip the need to pay any employee who loves their profession.

Defendant's argument hinges on its claim that the work it requires participants to perform is undisputedly a form of therapy. *See, e.g.*, Mot. at 53 ("[T]he ARC Program is built on the premise that *work therapy is therapy*." (original emphasis)). But the parties hotly dispute that fact. RSOMF 68-70, 75. Plaintiffs' expert Dr. Margaret Jarvis, a long-practicing psychiatrist with nationally recognized expertise in addiction treatment, concluded that "work therapy" is "not an effective treatment or therapy in addressing substance use disorders." SOAMF 20. Dr. Jarvis opined that, while there are many evidence-based treatments for substance use disorders (some of which Defendant bans outright at its ARCs), "work therapy" is not one of them. *Id*. It is telling that The Salvation Army operates a separate type of rehabilitation facility called Harbor Light that does not require "work therapy" of its participants and does provide evidence-based treatments such as MAT. SOAMF 19. From that dichotomy alone, a factfinder could question the premise of Defendant's primary beneficiary argument.

Furthermore, Defendant concedes that it has never actually assessed whether its "work therapy" program has any therapeutic value. *See supra* at Sec. II.D. Instead, and solely in litigation, Defendant claims its ARC program follows a distinct lineage of therapeutic work programs, primarily those for veterans funded by the Department of Veteran Affairs. Mot. at 7, 38-39. The

VA programs' existence is of no help to Defendant. As an initial matter, as Defendant itself points out, these programs were only authorized because Congress passed legislation "which allowed the Administrator of the VA to 'utilize the services of patients and members in Veterans' Administration hospitals and domiciliaries for therapeutic and rehabilitative purposes, at nominal remuneration, and such patients and members shall not under these circumstances be held or considered as employees of the United States for any purpose.'" Mot. at 21, n.13 (citing Pub. L. No. 87-574, 76 Stat. 308 (1962)). No such statutory exemption exists here.

Furthermore, as explained by Dr. Jarvis, the VA programs—a unique, voluntary, part-time program designed to serve the needs of individuals with schizophrenia—bear almost no resemblance to the ARCs. SOAMF at 24; RSOMF 70. Defendant's own expert recognizes that "best practices" of a "work therapy" program include (1) that they are voluntary, and (2) that work assignments are individualized. SOAMF 21. But there are factual disputes regarding both issues, as Plaintiffs have presented substantial evidence regarding the lack of individualization and punitive nature of the program. *See supra* at Sec. II.D; RSOMF 54, 80-81; *Alvear*, 661 F. Supp. 3d at 1328 n.18 (distinguishing a part-time veteran work program in *Armento*, 856 F. App'x at 448). Defendant also baldly asserts, through its expert, that structuring participants' day around labor provides therapeutic benefits. Mot. at 39. Yet Plaintiffs' expert exposed that there is no evidence behind structuring a day around labor—especially labor that lacks individual meaning to the laborer and is underpaid—confers any unique benefits. SOAMF 23; RSOMF 68-69.

Defendant argues that participants benefit from the work because it keeps them "occupied" and teaches "skills" to "set and achieve goals to better their lives." Mot. at 30. Defendant points to anecdotal statements from select former ARC participants that work helped them develop attributes like punctuality or responsibility. Mot. at 39-40. *But see* RSOMF 111, 129. But in

Defendant's own words, "the subjective experiences of [ARC participants], presented in litigation," are not what the Court's analysis should focus on. Mot. at 51 (capitalization altered). The test is rather one of objective reasonableness. *See supra* at Sec. IV.A.; *see also Senne v. Kan. City Royals Baseball Corp.*, 315 F.R.D. 523, 576 (N.D. Cal. 2016), *on reconsideration in part*, 2017 WL 897338 (N.D. Cal. Mar. 7, 2017), *aff'd in part, rev'd in part*, 934 F.3d 918 (9th Cir. 2019) ("subjective feelings" about work activities do not "have much (if any) bearing on the economic realities of the relationship"). Moreover, participants would likely get the same benefits from *any job*. SOAMF 16. If the primary beneficiary test took into account self-confidence, patience, and the other purported "benefits" that Defendant wants the Court to consider, then every worker would potentially be the primary beneficiary of the working relationship and therefore not an employee. This Court should not follow that non-sensical path. *See supra* at Sec. IV.A.1.

Defendant's contention that Plaintiffs' menial labor "bears no resemblance to employment" is also wrong and disputed. Mot. at 30. Just as with other recognized forms of full-time work, Defendant requires ARC participants to work 40 hours per week. SOAMF 5, 47; RSOMF 76; *see Eberline*, 982 F.3d at 1018 (required work points in favor of employment relationship). Defendant's supervisors control ARC participants' daily work schedules, assigning tasks based on the thrift stores' needs. SOAMF 31, 71. Defendant disciplines or even discharges participants if they cannot adequately work. SOAMF 10-12. And participants often perform the same job functions as acknowledged employees, who Defendant classifies as employees and pays minimum wage. SOAMF at 29, 73-75; RSOMF 81; *see Alvear*, 661 F. Supp. 3d at 1325 (ARC participants doing "substantially the same work" as The Salvation Army's other employees "point[s] clearly in favor of an employment relationship"). One ARC's training materials said the quiet part out loud in instructing store managers to treat participants ARC participants "just like

your employees." SOAMF 48.

The record is filled with evidence showing that what Defendant calls "work therapy" is just undercompensated, menial labor. As such, viewing the record in the light most favorable to Plaintiffs leads to the conclusion that ARC participants obtained no benefit from their labor, other than the in-kind compensation they received from Defendant. At minimum, disputed issues of fact, including with respect to the financial benefit The Salvation Army receives, *see supra* at Sec. II.C, preclude summary judgment on this issue.

iv. Any Non-Work-Related Benefits to Participants Are Irrelevant, and, at Most, Minimal

As explained above, this Court should not consider any elements of the ARC program other than the work component when conducting the primary beneficiary analysis. *See supra* at Sec. IV.A.1. But even if the non-work aspects are relevant, they do not alter the conclusion at the summary judgment stage that material disputes remain as to who is the primary beneficiary of the overall relationship.

Defendant states that other aspects of its ARC program, such as spiritual counseling, worship, classes, and 12-step meetings, are helpful for recovering from addiction and finding employment. Mot. at 35-36. Again, that assertion is disputed. Plaintiffs' evidence demonstrates that those elements of the program provide limited benefits because: (1) participants spend far more time working then engaged in these other activities, SOAMF 38, 47; RSOMF 55, 76; (2) if there is a conflict between work and other parts of the program, work prevails, SOAMF 40-41; RSOMF 14, 78; (3) Defendant enforces the work requirement by mandating participants make up missed work shifts, but often lets missed classes and meetings slide, SOAMF 12, 42; RSOMF 14, 77-78; and (4) the counseling frequently did not occur and hardly qualifies as counseling, SOAMF 39-40; RSOMF 55, 62. Accordingly, even viewed as a whole, the ARC program and its focus on

work hindered Plaintiffs' recovery and job search. *See Eberline*, 629 F. Supp. 3d at 674-75 (denying summary judgment where work took away focus from educational aspects of program and related more to revenue than training).

Defendant also points to in-kind compensation—housing, food, and clothing—as purported benefits that participants receive. Mot. at 34. But these items are "simply wages in another form" and cannot be considered under the primary beneficiary analysis. *See Alamo*, 471 U.S. at 293, 301. As explored below, these elements demonstrate that Plaintiffs expected and received in-kind compensation from Defendant. *See infra* at Sec. IV.A.2. A contrary approach would turn every worker who earns in-kind benefits (or even monetary wages) in exchange for their labor from an employee into the primary beneficiary of the relationship, which might in turn cause such workers to lose their employee status. Such circular logic cannot stand.

Finally, Defendant purports that its economist expert's analysis shows some ARC participants received a value of $93,600 over six months by avoiding a higher risk of death due to their otherwise homeless status. Mot. at 37-38. That conclusion is flawed in several key respects. SOAMF 76; RSOMF 128. The Value of Statistical Life (VSL) methodology used by Professor W. Kip Viscusi—which has a home in evaluating governmental regulations but not fact-specific litigation—is not relevant here. SOAMF 76 (including Professor Viscusi's prior scholarship, in which he argues against the use of VSL in litigation). Defendant has not pointed to *any* case in which the VSL methodology has been used in the manner proposed. *Id.* (including Professor Viscusi's admission that he does not know of any employment litigation monetizing mortality risk reduction). Among other flaws, Professor Viscusi misinterprets data to select his calculation's key inputs and selects inputs based on populations and time periods that are not analogous to this case. *Id.* Furthermore, his testimony unreliably relies largely on (mis)assumptions and unsound

approaches. *Id*. (asserting that "eyeballing" numerical differences, which he did in reaching his conclusions, is a reliable methodology used by economists). In addition, Professor Viscusi opines on areas for which he admittedly lacks prior expertise and conducted no economic analyses. Defendant argues that participants benefit by "avoid[ing] the increased risk of death they would otherwise face if they continued to live in a state of . . . alcohol or drug dependency." Mot. at 37. Yet Professor Viscusi had no data on this population, *see id.* at 38, and has no expertise on these topics. SOAMF 76 (*inter alia*, admissions that Professor Viscusi offered opinions on topics for which he lacks expertise, including addiction); RSOMF 128. Contrary to Defendant's assertion, Plaintiffs need not offer a rebuttal expert "to create a genuine issue as to the soundness" of Professor Viscusi's purported conclusion. His own testimony does that. Professor Viscusi's conclusions are inadmissible under each element of Federal Rule of Evidence 702, and Plaintiffs seek permission from the Court to more fully explain the need to exclude his testimony in a forthcoming Motion to Strike.

In sum, even if the Court considers evidence of the ARC program as a whole, there continue to be a plethora of disputes of fact regarding whether ARC participants or Defendant are the primary beneficiary of the relationship.

v. Cases Involving Other Factual Records and/or Legal Standards Do Not Dictate the Outcome on the Primary Beneficiary Analysis

The cases to which Defendant cites to support its assertion that ARC participants are the primary beneficiary of the working relationship are readily distinguishable. In moving for summary judgment, Defendant commits the same fatal error as it did in its Motion to Dismiss. "The Salvation Army wants to look beyond the" record "to the facts" in other cases that do not involve similar factual and legal questions. *See Clancy*, 2023 WL 1344079, at *5. Throughout its brief, Defendant insists two cases involving not only other plaintiffs, but also other party

defendants—two separate territories of The Salvation Army—control this Court's analysis of the present record. Mot. at 27-28. What matters here is the record developed by the Plaintiffs and Defendant in *this* case—"not the facts that were before other courts or what the Salvation Army may hope to prove" before a jury. *Clancy*, 2023 WL 1344079, at *5; *accord Alvear*, 661 F. Supp. 3d at 1326 (refusing to rely "on factual findings from a different case involving different parties"). The parties in this litigation have not engaged in discovery regarding The Salvation Army's other territories (and Plaintiffs' counsel has completed only limited discovery in their parallel FLSA actions). *See* Mot. at 26 n.23 (discussing the stayed matters)); RSOMF 19. Therefore, conclusions based on different factual records involving different parties are not blanketly transferrable.[5] Drawing all inferences in the light most favorable to Plaintiffs, as the Court must do, the conclusion is clear: disputes remain about material facts going to each of the considerations that are part of the parties' employment relationship.

The cases on which Defendant relies are inapposite. In *Harris v. Salvation Army*, Judge Cannon in the Southern District of Florida applied the Eleventh Circuit's version of the *Glatt* primary beneficiary test, which the Seventh Circuit has explicitly rejected. 2025 U.S. Dist. LEXIS 56347, at *25-29 (S.D. Fla. Mar. 26, 2025); *see supra* at Sec. IV.A.1. More importantly, the record in *Harris*—for which the plaintiff did not take a single deposition or conduct any discovery of The Salvation Army's finances, 2025 U.S. Dist. LEXIS 56347 at *2 n.1, *29 n.7—differs dramatically and materially from the record here on both sides of the primary beneficiary analysis. While the *Harris* record was bereft of any evidence regarding the financial benefit to The Salvation Army of the plaintiff's labor, the record here contains substantial evidence on The Salvation Army's $50

[5] In contrast, the Northern District of Georgia's decision in *Alvear v. The Salvation Army* is based on identical allegations, accepted as true, as the ones pled in this case. Dkt. 72 at 6 (Defendant refers to the lawsuits as "identical" and "carbon copies"). Accordingly, Plaintiffs reference *Alvear*'s applicable analysis.

million savings from using ARC participants' labor rather than hiring employees to perform the same work. *See supra* at Sec. II.C.1.

On the issue of the benefit of the labor to ARC participants, the *Harris* court erred by considering evidence of church services and classes that are unrelated to the work performed. 2025 U.S. Dist. LEXIS 56347, at *25-26. The *Harris* record also contained no evidence on the issue of the work-related benefits other than a mere two declarations from the plaintiff and another participant. 2025 U.S. Dist. LEXIS 56347, at *27. The more developed evidence here differs materially, including Dr. Jarvis's expert testimony that the work provides no therapeutic benefits, other evidence regarding the dangerousness of the work, and Defendant's admission that ARC participants could obtain all the "benefits" that "work therapy" offers from any job. *See supra* at Sec. II.B, D. These differences in the records in the respective cases render the primary beneficiary portion of the *Harris* decision all but meaningless.

The Ninth Circuit's nearly thirty-year-old decision about The Salvation Army's Western Territory, *Williams v. Strickland*, suffers from similar infirmities. 87 F.3d 1064 (9th Cir. 1996). This Court previously found that Plaintiffs' allegations differed materially from the factual record in *Williams. Clancy*, 2023 WL 1344079, at *5. The same holds true now, as Plaintiffs have developed evidence supporting their well-pled allegations. In *Williams*, an appeal from a case brought by a *pro se* plaintiff, the parties did not dispute that the plaintiff's work for the San Francisco ARC was "solely rehabilitative" (and therefore beneficial to the plaintiff); it was unclear based on that factual record that The Salvation Army even required him to work. 87 F.3d at 1067. Meanwhile, the record did not include any evidence regarding the benefit The Salvation Army obtained from his labor. *See id.* As discussed above, in the instant case, both of those issues are disputed. *See supra* at Sec. II.C, D.

The other cases cited by Defendant are even less germane to its Motion. The Salvation Army relies on cases where plaintiffs performed work as an alternative to incarceration. Mot. at 23, 28 n.24. But here, Plaintiffs and the classes and collective they seek to represent do not fall into that category. *Clancy*, 2023 WL 1344079, at *4 n.8 (distinguishing *Vaughn v. Phoenix House N.Y., Inc.*, 957 F.3d 141, 146 (2d Cir. 2020), and *Doyle v. City of New York*, 91 F. Supp. 3d 480, 487 (S.D.N.Y. 2015), on that basis); *see also Alvear*, 661 F. Supp. 3d at 1327-28 (distinguishing cases, including *Vaughn*, 957 F.3d at 146, and *Fochtman v. Hendren Plastics, Inc.*, 47 F.4th 638, 645 (8th Cir. 2022), where "rehabilitation programs" were "an alternative to prison time," because this factor, which was "central to the primary beneficiary analysis" of those decisions, "is simply absent here"). In addition, Plaintiffs' unpaid labor earned tens of millions of dollars for Defendant, a fact not present in these cases. *See* SOAMF 30; *Fochtman*, 47 F.4th at 646 (defendant paid a third-party entity amounts greater than minimum wage in exchange for plaintiffs' labor); *Doyle*, 91 F. Supp. 3d at 490 (community service did not further sale of goods in commerce); *Vaughn v. Phoenix House Found., Inc.*, 2019 WL 568012, at *9 (S.D.N.Y. Feb. 12, 2019) (same).[6]

[6] The Court need not dwell on cases with irrelevant fact patterns—most of which it has already disposed of—to which Defendant makes only perfunctory reference. *See Clancy*, 2023 WL 1344079, at *4 n.8; *see also Alvear*, 661 F. Supp. 3d at 1328 n.18 (also finding these references distinguishable). Plaintiffs are not interns or students who received required licensure or training. *Contra Hollins*, 867 F.3d 830 (cosmetology students working in salon to get license); *Velarde*, 914 F.3d 779 (same); *Schumann v. Collier Anesthesia, P.A.*, 803 F.3d 1199 (11th Cir. 2015) (nursing students performing clinical training necessary for degree); *Glatt*, 811 F.3d 528 (interns); *Solis*, 642 F.3d 518 (boarding school students performing four hours of daily vocational work that was integrated with coursework). They are not civil or criminal detainees taken out of the national economy while incarcerated. *Contra Villarreal v. Woodham*, 113 F.3d 202 (11th Cir. 1997) (pre-trial detainees); *Alvarado Guevara v. I.N.S.*, 902 F.2d 394 (5th Cir. 1990) (detained immigrants); *Ndambi v. CoreCivic, Inc.*, 990 F.3d 369 (4th Cir. 2021) (same). They do not perform a few hours of non-mandatory chores to keep their homeless shelter running. *Contra Armento*, 856 F. App'x 445. They are not volunteers. *Contra Acosta v. Cathedral Buffet, Inc.*, 887 F.3d 761 (6th Cir. 2018); *Freeman v. Key Largo Volunteer Fire & Rescue Dep't, Inc.*, 494 F. App'x 940 (11th Cir. 2012). They do not enroll in the ARCs as a statutory alternative to military service. *Contra Isaacson v. Penn Cmty. Servs., Inc.*, 450 F.2d 1306 (4th Cir. 1971). And they are not partnering in a business while engaged in a romantic relationship with Defendant. *Contra Steelman v. Hirsch*, 473 F.3d 124 (4th Cir. 2007).

2. Factual Disputes Exist Regarding Whether ARC Participants Expected Compensation

Material disputes of fact abound regarding the second consideration of the economic reality test set forth by the Court: whether ARC participants expected compensation in exchange for the work they performed for Defendant. *See, e.g.*, RSOMF 41, 44-45, 47-48, 65.

The preeminent case addressing expectation of compensation is the Supreme Court's binding decision in *Alamo*, which involved workers and an employer extraordinarily similar to the ARC participants and The Salvation Army in this case. *Alvear*, 661 F. Supp. 3d at 1321 n.6 (stating that—based on a complaint Defendant argues is a carbon copy to the one here, *see supra* at Sec. IV.A—"the facts of this case are closely analogous to the facts in *Alamo*[.]").

In *Alamo*, a nonprofit religious foundation funded its operations with income generated from commercial businesses, including clothing stores. 471 U.S. at 292. The foundation staffed its businesses with its "'associates,' most of whom were drug addicts, derelicts, or criminals before their conversion and rehabilitation by the Foundation." *Id.* It did not pay the "associates" any "cash salaries," but provided them with "food, clothing, shelter, and other benefits." *Id.* The Court held the workers were the nonprofit's employees, even though the workers testified they subjectively did not expect compensation. *Id.* at 301-03; *see also id.* at 301 (one worker said "the thought" of receiving compensation was "vexing to [his] soul"). The Court held that workers' "protestations, however sincere," were not "dispositive." *Id.* Instead, it looked at the "circumstances" of the work, including that the workers were "entirely dependent on the Foundation" for basic necessities for lengthy periods of time, and concluded that, notwithstanding the workers' subjective beliefs, "the associates must have expected to receive in-kind benefits—and expected them in exchange for their services." *Id.* (internal quotations omitted). Thus, even though the putative employer and the workers agreed that the workers were not employees and did not expect compensation for their

work, the Supreme Court held, based on the totality of the circumstances, that the workers did expect compensation and therefore were employees.

Following the Supreme Court's instruction in *Alamo*, courts analyzing expectation of compensation have focused on the objective totality of the circumstances. *See, e.g.*, *Adams v. Palm Beach Cnty.*, 94 F.4th 1334, 1339-40 (11th Cir. 2024) (using an "objective reasonableness" test to evaluate expectation of compensation and FLSA employment status); *Velarde*, 914 F.3d at 787 n.9 ("We determine objectively whether a purported employee had a reasonable expectation of payment."); *Brown v. N.Y.C. Dep't of Educ.*, 755 F.3d 154, 170 (2d Cir. 2014) ("In assessing a person's expectation of compensation for purposes of deciding whether" he is an employee under the FLSA, "a court applies an objective reasonableness rather than subjective standard."). Defendant also concedes (as it must) that the expectation-of-compensation analysis is objective, not subjective. *See* Mot. at 51-52.

Here, when viewed in the light most favorable to Plaintiffs, the objective totality of the circumstances demonstrates that ARC participants expect compensation. Pursuant to policy, Defendant offers all participants across all ARCs the same deal: if they work full-time for The Salvation Army, it will provide them with compensation in the form of in-kind benefits and gratuity. *See supra* at Sec. II.A. Defendant refuses to enroll individuals who cannot work full-time for The Salvation Army. SOAMF 5-7. Defendant can and does discipline, up to and including discharge, ARC participants who refuse or become unable to productively work for The Salvation Army's thrift store business. SOAMF 10. Moreover, as Plaintiffs and other ARC participants testified, they understood this explicit quid pro quo. SOAMF 9-10. The deal, established through Defendant's policies, creates an expectation for ARC participants: if they work, Defendant will provide them with room, board, and other in-kind benefits. *See Alvear*, 661 F. Supp. 3d at 1321

(the quid pro quo "is even more strongly suggested here than in *Alamo*").

Although the above-described deal is sufficient, standing alone, to create a dispute of fact regarding expectation of compensation, other evidence further demonstrates that ARC participants do not work for Defendant "solely for [their] personal purpose or pleasure," *Walling*, 330 U.S. at 152, but rather in expectation of receiving housing, food, and other benefits. As discussed above, the full-time work ARC participants perform offers no vocational, educational, or therapeutic benefits. *See supra* at Sec. II.D. To the extent the participants benefit from the work at all, Defendant admits those benefits could likely be obtained from any job. SOAMF 16. Since it would be illogical for ARC participants to work 40 hours per week for nothing, the factfinder can infer that ARC participants work for in-kind benefits. *See Clancy*, 2023 WL 1344079, at *4 (allegations that ARC participants worked long hours of unskilled labor supports that they expect compensation). The trier of fact can also conclude that because the ARC participants' work is essential to The Salvation Army's thrift store business, *see supra* at Sec. II.C., ARC participants expect compensation. *See Clancy*, 2023 WL 1344079, at *4 (allegations that ARC participants' work was "essential . . . for defendant's business" demonstrates participants expect compensation).

i. Defendant's Contention that Participants Could Not Expect Compensation Is Both Disputed and Incorrect

Defendant presents a host of arguments, all of which fail, for why this evidence is insufficient to create a dispute of fact regarding whether ARC participants expect compensation.

Defendant places the most emphasis on the admittance statements it requires ARC participants to sign that state that ARC participants are not Defendant's employees. Mot. at 42-43. Based on these statements, Defendant argues that ARC participants "could not have had an *expectation of compensation* when they enrolled in a *rehabilitation program* that they *explicitly acknowledged was not employment*." *Id.* at 43 (original emphasis). The statements cannot,

however, carry the weight Defendant places on them. First, because signing the statement is a condition for admission into the program, they are contracts of adhesion. SOAMF 45 (including testimony that participants would "have signed anything to get" under the ARC's roof); *see, e.g.*, *Kurowski v. Rush Sys. for Health*, 683 F. Supp. 3d 836, 851-52 (N.D. Ill. 2023) (explaining that contracts of adhesion that involve "disparate" bargaining positions and "go beyond a traditional arms-length contract negotiation" are unenforceable because they "violate public policy"). Imputing meaning to participants' signatures is even more of a fool's errand as participants can be inebriated at enrollment, contrary to Defendant's claim, Mot. at 9. *See* SOAMF 46; RSOMF 27. Common sense dictates that a nonnegotiable agreement, signed in moments of desperation and/or intoxication, reveals nothing about signatories' expectations on their legal rights.

Governing legal authority consistently holds that the labels, contractual or otherwise, that parties place on a working relationship are not dispositive on the question of employment. Most relevant here, in *Alamo*, the Supreme Court held the workers were employees under the FLSA even when they disclaimed employment. 471 U.S. at 300-03. The Seventh Circuit has held that "[i]t is well established . . . that the terms of a contract do not control the employer-employee issue under the" FLSA, *Brant v. Schneider Nat'l, Inc.*, 43 F.4th 656, 665 (7th Cir. 2022), and that employment status "depends on the totality of the circumstances rather than on any technical label," *Vanskike*, 974 F.2d at 808. Courts in this District have repeatedly emphasized the same principle and have often found workers to be employees notwithstanding contracts proclaiming they were not. *E.g.*, *Brown v. Club Assist Rd. Serv. U.S., Inc.*, 2013 WL 5304100, at *5 (N.D. Ill. Sept. 19, 2013) (holding, in FLSA independent contractor dispute, that "the contracts and any labels they contain are not dispositive"); *Solis v. Int'l Detective & Protective Serv., Ltd.*, 819 F. Supp. 2d 740, 752-53 (N.D. Ill. 2011) (collecting cases rejecting non-employment labels);

Wenckaitis v. Specialty Contractors, Inc., 2023 WL 4472567, at *3 (N.D. Ill. July 11, 2023) ("status as an 'employee' for purposes of the FLSA depends on the totality of the circumstances rather than on any technical label"). Defendant's position—that when a worker signs a required contract stating they are not an employee then they waive their FLSA rights—would create limitless potential for abuse. *See Alamo*, 471 U.S. at 302 (worrying that ""[i]f an exception to the Act were carved out for employees willing to testify that they performed work 'voluntarily,' employers might be able to use superior bargaining power to coerce employees to . . . waive their protections under the Act").

Defendant's remaining arguments regarding the expectation-of-compensation test also fail. Defendant asserts that because its policy allows it to discharge ARC participants from the program for reasons unrelated to work, there cannot be an exchange of labor for compensation. Mot. at 44-45. That the contingency of in-kind benefits turns on ARC participants' compliance with other ARC rules, in addition to the work requirement, does not somehow erase the fact that ARC participants must work to receive the benefits. As even *Williams* held, "the presence of a rehabilitative element does not preclude an employment relationship." 87 F.3d at 1067. Furthermore, the record is rife with material disputes regarding whether the non-work requirements are, in practice, enforced to the same degree as the work mandate. SOAMF 12, 42; RSOMF 14, 78.

Next, Defendant argues that ARC participants cannot expect compensation because Defendant has continued to provide a few ARC participants with the in-kind benefits on occasion even when they work less than full-time. Mot. at 45-46. Defendant's policies establish, however, that Defendant always retained the discretion to discharge and end the receipt of benefits for any ARC participant who fails to meet the work requirement. SOAMF 10-12; RSOMF 47. The record

contains ample evidence that Defendant frequently discharges ARC participants who refuse or become unable to work. SOAMF 10; RSOMF 16, 45. A handful of anecdotal examples evidencing Defendant's choice not to exercise that discretion does not alter the terms of the deal or ARC participants' expectations of compensation that rest on the deal. *See* SOAMF 5 (discussing participants' consistent and objectively reasonable expectations); *Sec'y of Lab., U.S. Dep't of Lab. v. Lauritzen*, 835 F.2d 1529, 1536 (7th Cir. 1987) (focusing on defendant's "*right* to control" workers, not only whether that power was exercised (emphasis added)).

ii. Defendant's Cited Cases Are Inapposite to the Expectation of Compensation Analysis in the Present Case

Defendant relies heavily on a trio of cases—*Williams*, *Harris*, and *Spilman v. The Salvation Army*, No. CGC-21-591364 (Cal. Super. Ct. Sept. 28, 2023), *appeal pending*—in which courts held that ARC participants from outside of the Central Territory did not expect compensation for their labor. To begin with, the three cases, unlike *Alamo* and the Seventh Circuit authorities cited above, are not binding on this Court, and involve different factual records and parties. *See supra* at Sec. IV.A.1.v; *see also Alvear*, 661 F. Supp. 3d at 1326-27. The legal analyses in these summary judgment rulings are also deeply flawed. This Court should not repeat their mistakes.

The three courts incorrectly focus on whether the plaintiffs had express or implied agreements for compensation, rather than whether the totality of the circumstances showed that the plaintiffs expected compensation for their labor. *See Williams*, 87 F.3d at 1067 ("Williams had neither an express nor an implied agreement for compensation with the Salvation Army and thus was not an employee."); *Harris*, 2025 U.S. Dist. LEXIS 56347, at *20 ("The summary judgment record reveals that Plaintiff had neither an express nor an implied agreement for compensation"); *Spilman*, No. CGC-21-591364, at 23 (focusing on whether the plaintiffs had "an express or implied contract providing for compensation"). As *Alvear* observed, that approach is inconsistent with

Alamo. 661 F. Supp. 3d at 1326 (expressing "doubts about whether *Williams* persuasively distinguishes *Alamo*"). "[I]f the *Alamo* Court had looked for any sort of meeting of the minds between the parties, as *Williams* seems to do, it would surely have found that no such implied agreement existed." *Id.* at 1327. "But instead, the *Alamo* Court looked to the economic reality of the situation, and found that compensation was, in fact, taking place." *Id.*

Other courts have similarly questioned the flaws in *Williams*'s reasoning—flaws that *Harris* and *Spilman* replicate. *See, e.g.*, *Klick v. Cenikor Found.*, 79 F.4th 433, 441 (5th Cir. 2023) ("[W]e do not find *Williams* persuasive. *Alamo* and its predecessor cases explicitly hold that rights under the FLSA cannot be waived, . . . and any forms patients sign indicating that they are beneficiaries and not employees do not control this analysis."), *opinion superseded on reh'g on different grounds*, 94 F.4th 362 (5th Cir. 2024); *Julian v. Swift Transp. Co. Inc.*, 360 F. Supp. 3d 932, 941 n.7 (D. Ariz. 2018) (finding, in light of *Alamo*, that *Williams*'s focus on whether the workers had an express or implied agreement for compensation was "dubious"). This Court should analyze the facts here using the controlling expectation-of-compensation approach set forth in *Alamo*. Through the proper lens, one sees many disputes of fact regarding whether ARC participants expect compensation.

Even if this Court requires an agreement for compensation, *Williams*, *Harris*, and *Spilman* are of no help to Defendant. The record here on Defendant's policies, which make receipt of in-kind benefits dependent on work, create an implied agreement for compensation. *See Hernandez v. Ill. Inst. of Tech.*, 63 F.4th 661, 667 (7th Cir. 2023) (an implied agreement is "inferred from the facts and conduct of the parties" (citation omitted)); *Wharton v. Comcast Corp.*, 912 F. Supp. 2d. 655, 659-61 (N.D. Ill. 2012) (policy handbooks can establish employment agreements). The *Williams*, *Spilman*, and *Harris* decisions to the contrary—that The Salvation Army provides

in-kind benefits purely to further participants' rehabilitation and not in exchange for work[7]— flow either from a misapplication of the summary judgment standard or differences in the respective records. The *Williams* and *Spilman* decisions fail to acknowledge that participants could *only* receive the benefits if they: (1) worked (2) specifically for The Salvation Army. *See Klick v. Cenikor Found.*, 2022 WL 1028065, at *7 (S.D. Tex., Apr. 6, 2022) ("There was no indication Williams was required to work at all[.]"); *see generally Spilman*, No. CGC-21-591364 (no discussion of fact that The Salvation Army required work as a condition of remaining in the program and receiving benefits). The omission of this central fact fatally undermines those rulings. In *Harris*, the court did discuss that, as The Salvation Army admitted, the receipt of benefits was contingent on work. 2025 U.S. Dist. LEXIS 56347, at *22. But sentences later, the court misapplied the summary judgment standard, holding that evidence of the quid pro quo was insufficient to create a dispute of fact regarding whether participants had agreements for compensation. *Id.* at *20-24.

In addition, Defendant cites to *Vanskike*, a case about prison labor, for the proposition that the control it exercises over ARC participants is inconsistent with a remunerative relationship. Mot. at 32 (citing 974 F.2d at 809). But this Court has already determined that rulings about prisoners are distinguishable. *Clancy*, 2023 WL 1344079, at *4 n.8; *see supra* at Sec. IV.A.1.v. "Courts do not treat residents of rehabilitative facilities as prisoners for the purposes of FLSA." *Copeland v. C.A.A.I.R., Inc.*, 2019 WL 4307125, at *6 (N.D. Okla. Sept. 11, 2019). Further, Plaintiffs and those they seek to represent attended the program voluntarily. Dkt. 247 at 1-2. Plus,

[7] *See Williams*, 87 F.3d at 1067 ("[W]ork therapy was not performed in exchange for in-kind benefits, but rather was performed to give him a sense of self-worth, accomplishment, and enabled him to overcome his drinking problems and reenter the economic marketplace."); *Harris*, 2025 U.S. Dist. LEXIS 56347, at *23 ("[T]here is no record evidence to support the notion that work therapy was *in exchange* for the benefits[.]" (original emphasis)); *Spilman*, No. CGC-21-591364, at 24 ("In-kind benefits . . . were part and parcel of Plaintiffs' rehabilitation programs, not wages or other 'remuneration.'").

any control that does exist is akin to, and cuts in favor of, an employment relationship—particularly under Wisconsin law. *See Lauritzen*, 835 F.2d at 1534-35; *see infra* at Sec. IV.B.

Finally, Defendant contends that ARC participants cannot expect compensation because some of them "agree[d] to turn over their food stamps" to Defendant, which, according to Defendant, they would not have done "if they viewed the room-and-board benefits as compensation owed in exchange for work therapy." Mot. at 46. But ARC participants did not "agree" that they wanted to contribute to offsetting the cost of their room and board; they agreed to work in exchange for The Salvation Army's quid pro quo. They accepted any additional strings attached, often due to lack of any other options, to gain the in-kind compensation. *See* SOAMF 59-60; RSOMF 20. That the SNAP policy was optional on paper, while mandatory in practice, and abandoned by Defendant after this litigation was filed only underscores that it was another predatory feature of the ARCs' "deal" that Defendant now seeks to spin. SOAMF at 59. What the collection of food stamps is most pertinent to is ARC participants' dependence on The Salvation Army, as detailed next.

In sum, Plaintiffs have presented evidence from which the finder of fact can conclude that ARC participants expect compensation for their work for The Salvation Army. Summary judgment on the issue is therefore improper.

3. Disputed Questions Exist Regarding Whether ARC Participants Are Dependent on Defendant for Food and Housing

Material disputes also exist regarding whether ARC participants are dependent on Defendant for basic necessities. In *Alamo*, the workers' dependence on the nonprofit for food and shelter indicated that the workers "must have expected to receive in-kind benefits—and expected them in exchange for their services." 471 U.S. at 301. Courts interpreting *Alamo* have found that workers are not dependent on the putative employer when they "have sufficient alternative means

of income to be independent." *Perez*, 2016 WL 6143190, at *4.

Viewing the record in the light most favorable to Plaintiffs, ARC participants have "no sufficient means of income to be independent" and rather are dependent on The Salvation Army. Among other things, Defendant: (1) provides ARC participants with their food and lodging for the duration of their enrollments; (2) prohibits ARC participants from leaving the ARC for any reason during the first 30 day "blackout" period; (3) forbids participants from having any employment outside of the ARC to earn income; (4) does not allow ARC participants from even applying for post-ARC employment until they have nearly completed the ARC program; and (5) disallows ARC participants from possessing more than $60 in cash. SOAMF 58. This evidence demonstrates that Defendant creates participants' dependence on the in-kind offerings of ARC program, as participants have no way of making income or of obtaining essential goods and services other than from The Salvation Army. *See Clancy*, 2023 WL 1344079, at *4 (Plaintiffs adequately pled dependence by alleging they "were reliant on defendant for food and shelter for six months on average"); *cf. Hollins*, 144 F. Supp. 3d at 1005-06 (contrasting workers' "receipt of life sustaining necessities" in *Alamo*, with beauty school students' receipt of "*de minimis* non-monetary benefits and compensation" for working in the school salon to get hours toward licensure).

Instead of engaging with this mountain of evidence, Defendant argues that minor differences between *Alamo* and the instant case preclude a finding that ARC participants are dependent on Defendant. Mot. at 47-49. Yet the purported differences are either not differences at all or are immaterial. Defendant points out that the "associates" in *Alamo* worked for the religious foundation in that case for "long periods, in some cases several years," Mot. at 47 (citation omitted), whereas ARC participants work for Defendant "for a limited duration (approximately six months)," *id.* at 48. But there is little difference between the durations of work in the two cases.

Defendant misrepresents the duration of its program, which can last for up to a year. SOAMF 1. And only "some" associates in *Alamo* worked for the foundation for "several years," meaning most worked less, just like the ARC participants here. 471 U.S. at 301. Neither *Alamo* nor any of Defendant's cases require a worker to labor indefinitely for an employer to be entitled to minimum wage protections. *See* Mot. at 48. Like in *Alamo*, the participants stay at ARCs for varying periods of time, but the overall picture reflects their dependence. *See Clancy*, 2023 WL 1344079, at *4 (finding "this factor too cuts in favor of an employment relationship" even though "plaintiffs were reliant on defendant for food and shelter" for less time than in *Alamo*); *Alvear*, 661 F. Supp. 3d at 1325 ("[I]f the training/rehabilitation benefit to the ARC workers is negligible or nonexistent (as is alleged), it is unclear how the duration of the program could be tailored to the needs of training or rehabilitation.").

Defendant also asserts that the workers in *Alamo* were different because they labored on a "commission" basis, while "no such work-related payment exists in the context of the ARC" because gratuity is not tied to the quality or quantity of work performed by ARC participants. Mot. at 49 (citing *Alamo*, 471 U.S. at 301 n.22). Defendant again misstates the disputed record. Gratuity can, and does, change based on work performance. SOAMF 56; RSOMF 65-66. And the gratuity's increase of $1 per week *does* reflect that the amount hinged on how much work (measured by week) a participant performed. SOAMF 55. Even if Defendant were right, however, its focus on gratuity is misplaced. The same type of quid pro quo exists here as in *Alamo*. Those who work receive food and lodging, and those who do not work do not receive those valuable benefits. *See supra* at Sec. II.A. That the *Alamo* employer would withhold meals if a worker did not labor, Mot. at 46 (citing *Alamo*, 471 U.S. at 301 n.22), whereas Defendant cuts off food and lodging for participants who do not work by discharging them from the ARC, is a distinction without a

difference.

Lastly, Defendant's reliance on *Williams*'s dependence analysis is misplaced. Mot. at 48. There, the Ninth Circuit acknowledged that the six-month Salvation Army ARC program was "significantly longer than the one-week training course in *Walling*." *Williams*, 87 F.3d at 1068. The court nevertheless held that the plaintiff was not dependent on The Salvation Army because "six months is not an unreasonable time commitment" for participants to "overcome their substance abuse problems and gain the necessary work-related skills to reenter the marketplace." *Id.* This Court should not follow *Williams*'s suspect reasoning, which engages in impermissible fact-finding and does not actually address dependence. *See supra* at Sec. IV.A.2.ii (criticizing the analysis of *Williams*). Moreover, the facts here are different. Unlike in *Williams*, there are significant disputes here regarding whether the program or its length helps participants with substance use issues or employment. *See supra* at Sec. II.D.

The record on the issue of dependence precludes granting Defendant's Motion.

4. Denying Defendant's Motion Is Consistent with The FLSA's Purposes of Achieving Minimum Labor Standards and Preventing Unfair Competition

Finally, the Court considers the twin purposes motivating minimum wage protections—"achieving minimum labor standards and preventing unfair competition." *Clancy*, 2023 WL 1344079, at *3; *see* 29 U.S.C. § 202. Both support a determination of employment.

While Defendant resorts to dictionaries and assumptions based on historical events to read the tea leaves about what Congress meant when drafting the FLSA, Mot. at 19-22, no such gymnastics are necessary. The Supreme Court has repeatedly named "the *prime purpose*" of the FLSA to be "aid[ing] the unprotected, unorganized and lowest paid of the nation's working population; that is, those employees who lacked sufficient bargaining power to secure for themselves a minimum subsistence wage." *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 707 n.18

(1945) (emphasis added); *Barrentine v. Ark.-Best Freight Sys., Inc.*, 450 U.S. 728, 739 (1981). Courts agree that the FLSA should be interpreted "expansively." *See supra* at Sec. IV.A. And the Supreme Court has explained that the "use of the words 'each' and 'any' to modify 'employee,' which in turn is defined to include 'any' employed individual, leaves no doubt as to the Congressional intent to include all employees within the scope of the Act unless *specifically excluded*." *United States v. Rosenwasser*, 323 U.S. 360, 363 (1945) (citing S. Rep. No. 884, at 6 (1937)) (emphasis added).

Here, Congress did not specifically exclude from "employment" ARC participants or the labor they perform. *See Rosenwasser*, 323 U.S. at 363. Congress plainly intended for the FLSA to be a remedial statute that would ensure all workers—*especially* those most at the margins of society, *see infra* at 54—receive "a just wage in return for a day's labor." 134 Cong. Rec. 24166 (1988); *see also* Mot. at 21-22 (conceding the FLSA's remedial purpose).

i. ARC Workers Are at the Heart of Who Congress Sought to Protect in Enacting the FLSA

Through the enactment of the FLSA, Congress recognized "the fact that due to the unequal bargaining power as between employer and employee, certain segments of the population required federal compulsory legislation to prevent private contracts on their part which endangered national health and efficiency and as a result the free movement of goods in interstate commerce." *Brooklyn Sav. Bank*, 324 U.S. at 706-07. The concern for achieving minimum labor standards is not confined to the workers in a particular scenario. *See Walling*, 330 U.S. at 152 (FLSA sought "to insure [*sic*] that every person whose employment contemplated compensation should not be compelled to sell his services for less than the prescribed minimum wage"). "[T]he purposes of the Act require that it be applied even to those who would decline its protections." *Alamo*, 471 U.S. at 302; *see supra* at 45 (citing *Alamo*'s discussion of a contrary standard's potential for abuse).

ARC participants "work[] long hours without minimal labor protections"—namely, without receiving minimum wage. *Clancy*, 2023 WL 1344079, at *4; RSOMF 76; SOAMF 8. The parties agree that "ARC workers are . . . drawn from groups with the least bargaining power—the unhoused or marginally housed, the very poor, and those with addiction or mental illness." *Alvear*, 661 F. Supp. 3d at 1325; RSOMF 22; *see supra* at Sec. II.F. "[S]een in the light most favorable to Plaintiffs, the fact that ARC workers are drawn from this population might well suggest that they, more than others, require the minimum labor protections afforded by the FLSA." *Alvear*, 661 F. Supp. 3d at 1325-26; *see also* 81 Cong. Rec. 7800 (1937) (Senator David I. Walsh: "[t]he purpose and intent of the [FLSA] is that the poorest, the lowest, the humblest wage earner in this country shall not be left helpless"). "[T]he fact that, out of necessity," this population "voluntarily accept[s] 'subnormal working conditions' is something the FLSA was designed to redress." *Alvear*, 661 F. Supp. 3d at 1328 n.17 (citation omitted). That participants were dependent on The Salvation Army to provide for their basic needs while at the ARC program further underscores why these plaintiffs exemplify the workers who Congress had in mind. *See supra* at Sec. II.F. "One whose immediate access to housing and food is conditioned on doing full-time work at an ARC is even less likely to hold out for better compensation than the ordinary low-wage worker." *Alvear*, 661 F. Supp. 3d at 1326; *see also Copeland*, 2019 WL 4307125, at *4 (the purpose of FLSA would be served by "allowing Plaintiffs to retain and save their wages" to support themselves upon leaving the program).

ii. The Anti-Competitive Impact of The Salvation Army's Operations Encourage a Finding of Employment

"[T]he Supreme Court has suggested that the effect on competing businesses, and by extension on the labor market, is relevant" to the employment inquiry. *Alvear*, 661 F. Supp. 3d at 1326; *Vanskike*, 974 F.2d at 810 ("[T]he FLSA was intended to prevent unfair competition in

commerce from the use of underpaid labor."). Even if some employees want to forgo payment, doing so "would affect many more people than those workers directly at issue . . . and would be likely to exert a general downward pressure on wages in competing businesses." *Alamo*, 471 U.S. at 302.

Defendant's attempts to dismiss the relevance of the pro-competitive second purpose of the FLSA, Mot. at 25, miss the mark. As discussed above, the fact that Defendant is a nonprofit, reinvests some revenue from the thrift stores into the ARCs, and sometimes runs a deficit is either immaterial or disputed. *See supra* at Sec. IV.A.1.ii. And Defendant ignores that the millions in savings it gets from using the labor of ARC participants but not paying them minimum wage provides it with an obvious advantage over its competitors. *See supra* at Sec. II.C.1. Goodwill Industries is also: (1) a nonprofit (2) that retails donated items and (3) uses those proceeds to finance its activities. SOAMF 69. And although The Salvation Army and Goodwill consider each other competitors, Goodwill pays all its workers the applicable minimum wage. SOAMF 69-70. The Salvation Army moves work from paid employees to ARC participants to save costs, keeping over $50 million in Defendant's pocket. SOAMF 30, 68. Goodwill has had no comparable advantage for complying with labor laws. Defendant's extralegal arrangement provides Defendant with an unfair competitive advantage and is precisely what Congress had in mind as its second goal of passing the FLSA. *See Copeland*, 2019 WL 4307125, at *4 (the FLSA intended to preclude the unfair competitive advantage derived from below-market labor costs); *Walker*, 2017 WL 897592, at *5 (defendant's businesses, including thrift stores which otherwise would have had to hire workers at minimum wage, received a direct economic benefit); *Clancy*, 2023 WL 1344079, at *4 (recognizing as "consistent with the purposes of the Act" the potential for Defendant receiving an "unfair advantage in the thrift store market"); *Alamo*, 471 U.S. at 299 (lower courts

found that the foundation's "businesses serve the general public in competition with ordinary commercial enterprises, . . . and the payment of substandard wages would undoubtedly give petitioners and similar organizations an advantage over their competitors" (citations omitted)).

The factual record here distinguishes this case from others on which Defendant relies. In *Fochtman*, the third-party entity for whom participants performed work paid the defendant program more than the minimum wage in exchange for the plaintiffs' labor, thus eliminating the risk of unfair competition. 47 F.4th at 646. Similarly in *Vaughn*, the plaintiff's work did not result, directly or indirectly, in the production of goods or services sold in commerce. 2019 WL 568012, at *8. By contrast, this matter "implicate[s] the same possible 'downward pressure on wages' that the *Alamo* Court worried would be the product of recognizing an exception to FLSA coverage under facts like those before it." *Alvear*, 661 F. Supp. 3d at 1328.

Finding as a matter of law that Plaintiffs are not employees, as Defendant's Motion urges, ignores the factual record and is inconsistent with the FLSA's twin purposes.

5. The Non-FLSA Cases Involving The Salvation Army Are Not Relevant

Defendant cites to a host of non-minimum wage cases involving The Salvation Army that it claims support its Motion. These cases are, however, irrelevant to the instant matter because they involve different legal issues and analyses. *See* Mot. at 26, 28 n.27, 29 n.28. In *Taylor v. The Salvation Army National Corp.*, a split panel of the Seventh Circuit held, at the pleadings stage, that plaintiffs failed to state a forced labor claim under the Trafficking Victims Protection Reauthorization Act that has elements entirely distinct from an FLSA claim.[8] 110 F.4th 1017 (7th Cir. 2024). And without the benefit of discovery, the lower court made, and the appellate court

[8] Meanwhile, a member of the majority *did* note that the allegations have "flavors of . . . minimum wage law violations" and "kind of sound[] in Fair Labor Standards." Oral Argument at 12:17, *Taylor*, 110 F.4th 1017 (No. 23-1218), https://media.ca7.uscourts.gov/oralArguments/oar.jsp.

endorsed, *no* findings about whether the ARC program is, in fact, a "responsibly run treatment program." Mot. at 26 (citing *Taylor*, 110 F.4th at 1031). Similarly inapposite are Defendant's citations to decisions by state courts and administrative tribunals in workers' compensation or negligence cases involving various Salvation Army entities. Mot. at 28-29 nn. 27-28 (citing Dkt. 258, App. C). Because the FLSA's economic reality test was not at issue in any of these cases, the tribunals' decisions regarding employment are of little use; none of the cases examined dependence, the primary beneficiary of the working relationship, or the purposes of the FLSA. Moreover, the record in the instant case is materially different in crucial ways directly relevant to the economic reality test. Nearly all of the decisions involve ARCs outside of the Central Territory. All of the cases presumed that "work therapy" was helpful to participants, whereas Plaintiffs here have presented evidence that the work was just work. *See supra* at Sec. II.B, D. Some of the cases presumed that The Salvation Army lost money by operating the ARCs and providing services to participants, *see* Dkt. 258, Ex. C at 24, 37, whereas Plaintiffs have presented evidence that Defendant saves $50 million by using participants' labor in lieu of workers paid minimum wage. *See supra* at Sec. II.C.1. And none of those cases included evidence, like Plaintiffs', that Defendant actively marketed a quid pro quo to exchange work for housing, food, and other in-kind benefits or that Defendant intentionally uses participants' labor to displace acknowledged employees and save money. *See supra* at Sec. II.A.

B. Defendant's Motion Must Be Denied as to the Wisconsin Claims, as Defendant Admits Its Control over ARC Participants

Defendant attempts to squeeze the Wisconsin minimum wage law's test for employment into the FLSA model. Mot. at 54-55 & n.40. The Seventh Circuit, however, has found it inappropriate to "consolidate[] the [employment] inquiries under the FLSA and Wisconsin minimum wage law." *Brant*, 43 F.4th at 673 (rejecting argument that Wisconsin had adopted the

economic reality test). Instead, the Seventh Circuit determined that an evaluation of whether the putative employer exercised "control over a person employed at labor" is appropriate to interpret the statutory definitions of "employee" and "employer." *Id.* at 673-74 (discussing Wis. Stat. § 104.01(3)(a)). Contrary to Defendant's argument, nothing about *Brant*'s textual analysis was limited to independent contractor disputes. *See id.* And as discussed above, *see supra* at Sec. IV.A.2.ii. Defendant's citations to cases about involuntarily detained individuals are inapposite. Mot. at 55 (citing *State ex rel. Hung Nam Tran v. Speech*, 782 N.W.2d 106, 110-11 (Wis. Ct. App. 2010), and *Sanders v. Hayden*, 544 F.3d 812, 814 (7th Cir. 2008), involving civil commitment).

The Salvation Army does not even attempt to claim that it should prevail under Wisconsin's "control" test. *See* Mot. at 54-55. Nor could it, since Defendant *argues* that it exercises "total" control over ARC participants. Mot. at 32 (citation omitted). The Salvation Army's visible hand over "almost every aspect of [ARC participants'] daily lives," *id.*, includes their eight hours each day spent working. Among other things, Defendant controls ARC participants' hours of work, job assignments, training, supervision, and evaluations. *See supra* at Sec. II.F. Defendant's Motion must be denied as to the Wisconsin minimum wage claims.

C. The Record Contains Enough Evidence for the Factfinder to Assess Willfulness for Purposes of the FLSA Statute of Limitations

The Salvation Army finally argues that Plaintiffs cannot prove it willfully violated minimum wage laws. Mot. at 56. "Willfulness is relevant to the statute of limitations for claims under the FLSA," but not the relevant state minimum wage laws. *E.g.*, *Clancy*, 2023 WL 1344079, at *5 (citing 29 U.S.C. § 255(a)); *Beausoleil v. Three Paws, Inc.*, 2024 WL 2292881, at *4 (N.D. Ill. May 21, 2024) ("Under the IMWL, the limitations period is three years regardless of mental state." (citing 820 ILCS 105/12(a))); MCL § 408.419(1) (setting a three-year limitations period without reference to *mens rea*); Wis. Stat. § 893.44 (same for two-year limitations period). Unless

"the facts are undisputed," "[n]ormally the willfulness determination is made by a jury." *Divine v. Volunteers of Am. of Ill.*, 319 F. Supp. 3d 994, 1001 (N.D. Ill. 2018) (citing *Bankston v. State of Illinois*, 60 F.3d 1249, 1253 (7th Cir. 1995)); *accord Carol B. v. Waubonsee Cmty. Coll.*, 2024 WL 3069974, at *4 (N.D. Ill. June 20, 2024) ("Instead, the question of whether an FLSA violation was willful—and thus whether the applicable statute of limitations is two or three years—is a determination normally reserved for the trier of fact.").

Defendant seeks early judgment on willfulness on two grounds. Mot. at 56. First, it points out that other incarnations of the national Salvation Army have secured favorable rulings on the employment question in other jurisdictions and on other records. *Id.* But that is not dispositive of the willfulness question. *See Clancy*, 2023 WL 1344079, at *5 n.9 (rejecting Defendant's reliance on parallel lawsuits because "[e]ven if the facts in those cases are similar to this one, . . . that doesn't mean that plaintiffs have admitted that the Salvation Army runs identical programs nationwide, or somehow authorize the court to look to the facts of other disputes involving the Salvation Army"). Neither the *Spilman* (2023) nor the *Harris* (2025) decisions have bearing on Defendant's mindset during much of the collective and class periods, which began in 2019. Dkt. 247 at 1-2. Similarly, the workers' compensation decisions, which did not involve interpretations of minimum wage laws, could not have informed whether The Salvation Army was willfully violating the FLSA. *See supra* at Sec. II.C.2. Second, Defendant notes that the Seventh Circuit's FLSA inquiry is a flexible one. Mot. at 56. True enough. *See supra* at Sec. IV.A. But the facts regarding willfulness are disputed, such that the question must go to a jury.

The record is replete with evidence from which the jury could find intent. As far back as 1990, the U.S. Department of Labor provided the national Salvation Army with formal notice of its position that ARC workers are employees within the meaning of the FLSA. SOAMF 72. The

Salvation Army launched litigation to make that investigation go away. *Id.* But since then, The Salvation Army has created terminology for its ARC program, including ARC participants, that conveniently aligns with the FLSA employment test. SOAMF 50. Email correspondence also shows Defendant's leadership making changes to the program to sidestep the appearance of employment. SOAMF 73-74. Plus, Defendant is acutely aware that its thrift store competitors, such as Goodwill, have employees who perform the same work as ARC participants but for full minimum wages. SOAMF 69-70. Taken together, a jury could easily conclude that The Salvation Army's longstanding campaign to escape the reach of minimum wage laws has been intentional and thus willful. *See, e.g.*, *Dyal v. PirTano Constr., Inc*., 2018 WL 1508487, at *13 (N.D. Ill. Mar. 27, 2018) (holding that "the Court cannot make [a willfulness] determination on summary judgment," when the U.S. Department of Labor investigated Defendant and found it in violation of the FLSA, since that evidence is "relevant to and probative of" willfulness); *see also Pfefferkorn v. Primesource Health Grp., LLC*, 2018 WL 828001, at *13 (N.D. Ill. Feb. 12, 2018) (declining dismissal on statute of limitations grounds where plaintiffs alleged defendant "knew of the FLSA's requirements, having been the subject of a DOL investigation in 2003, and yet failed to take any actions to comply").

V. CONCLUSION

For the reasons above, Defendant's Motion for Summary Judgment should be denied.

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Respectfully submitted,

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