No. 26-1715 & No. 26-1885

In the United States Court of Appeals for the Seventh Circuit

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

Plaintiffs-Appellants/Cross-Appellees,

v.

THE SALVATION ARMY, an Illinois nonprofit corporation,

Defendant-Appellee/Cross-Appellant.

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

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 26-1715

Short Caption: Michael Clancy, et al. v. Salvation Army

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ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

Attorney's Signature: /s/ Gay Grunfeld Date: 06/24/2026

Attorney's Printed Name: Gay Grunfeld

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Attorney's Signature: /s/ Jessica Riggin Date: 06/24/2026

Attorney's Printed Name: Jessica Riggin

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Attorney's Signature: /s/ Rebecca A. Ojserkis Date: 06/24/2026

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INTRODUCTION

This case asks whether one of the country's largest nonprofits, The Salvation Army, can use its charitable identity to do what the Supreme Court has already said a religious nonprofit may not: operate a commercial enterprise with the labor of vulnerable people, deprive them of full wages for their work, and avoid liability as their employer by calling the arrangement something other than employment. The answer is no. The district court's grant of summary judgment must be reversed.

In *Tony & Susan Alamo Foundation v. Secretary of Labor*, the Supreme Court held that a religious foundation's commercial businesses were subject to the Fair Labor Standards Act ("FLSA"), and that workers who were housed, fed, and rehabilitated by the Foundation were its employees because they labored "in contemplation of compensation." 471 U.S. 290, 306 (1985). The Court looked past labels, religious and charitable purposes, and the workers' own protestations of volunteer status to the economic reality: vulnerable people were staffing commercial businesses in exchange for the necessities of life. *Id.* at 299-302. *Alamo* dictates the outcome here.

The record here, especially when viewed in the light most favorable to Plaintiffs-Appellants ("Plaintiffs"), is strikingly similar. Defendant-Appellee The Salvation Army ("Defendant" or "The Salvation Army") required participants in its Adult Rehabilitation Centers ("ARCs") to perform full-time labor each week in support of its thrift store empire. In exchange, Defendant provided basic sustenance—"three hots and a cot"—

alongside a small amount of cash, limited rehabilitation services, and religious programming. It controlled participants' job assignments, schedules, discipline, and access to outside work and income. And it used their labor to compete in the marketplace with thrift store businesses that pay minimum wage.

At summary judgment, the district court held, as a matter of law, that Plaintiffs were not employees. Although the decision acknowledged that a factfinder could conclude The Salvation Army received the greater benefit from Plaintiffs' labor, it resolved the remaining factors to determine employment status in favor of The Salvation Army by committing several errors: misapplying *Alamo* and its progeny, erroneously accepting The Salvation Army's characterization of the relationship as rehabilitation rather than employment, and resolving disputed facts and inferences against Plaintiffs. In short, the district court substituted its own views of the ARCs for those of the trier of fact.

The decision below opens the door for sincere and nefarious employers alike to evade minimum wage laws by slapping a label of "rehabilitation" on work. As a proper application of the governing jurisprudence on this disputed record shows, charity and minimum wage protections need not be mutually exclusive. That is why there is no do-gooder exception to the FLSA. Plaintiffs respectfully request reversal of the district court's grant of summary judgment to Defendant on the matter of their employment status under federal and state laws.

JURISDICTIONAL STATEMENT

The district court had jurisdiction under 28 U.S.C. § 1331 because this case arises under the FLSA, 29 U.S.C. § 201 *et seq.* The district court had supplemental jurisdiction over parallel state law claims under 28 U.S.C. § 1367. Defendant-Appellee is a non-profit incorporated and with its principal place of business in Illinois. This Court has appellate jurisdiction under 28 U.S.C. § 1291. The district court granted The Salvation Army's motion for summary judgment and entered judgment on March 31, 2026. SA-1-18; R.314, Judgment in a Civil Case. Plaintiffs timely filed the notice of appeal on April 8, 2026. R.315, Notice of Appeal.

STATEMENT OF THE ISSUES

1. Did the district court err in granting summary judgment on the wage-and-hour claims of Plaintiffs, the FLSA collective, and the Michigan and Illinois classes by holding ARC participants were not employees as a matter of law, despite evidence from which a reasonable factfinder could find that participants expected compensation and were economically dependent on Defendant, that an employment relationship was consistent with the FLSA's purposes to prevent unfair competition and protect vulnerable workers, and that The Salvation Army was the primary beneficiary of Plaintiffs' labor?

2. Did the district court err in granting summary judgment on the minimum wage claims of Plaintiff Patton and the Wisconsin class by applying the federal standard for employment status, rather than Wisconsin's distinct control test?

STATEMENT OF THE CASE

I. Factual Background

A. Participants Had to Work for The Benefit of The Salvation Army to Receive the Benefits of the ARC Program

From 2019 to 2025,[1] The Salvation Army operated [redacted] Adult Rehabilitation Centers ("ARCs") in its Midwest "Central Territory," which included Illinois, Michigan, and Wisconsin. R.279, Plaintiffs' Responses to Defendant's Statement of Material Facts ("RSOMF") ¶ 6. The ARCs were a work program masquerading as a residential "rehabilitation" program. R.279, Plaintiffs' Statement of Additional Material Facts ("SOAMF") ¶¶ 1, 5. While participants were at the ARCs, Defendant provided them room, board, clothing, a small weekly payment called a "gratuity," and limited rehabilitation services. *Id.* ¶¶ 4, 37. Those benefits were not, however, charity. By policy and in practice, only those who performed "work therapy"—The Salvation Army's euphemism for participants' labor—could enroll and remain in an ARC. *Id.* ¶ 5 (Defendant's rules stated: "Work Therapy is a required component of your rehabilitation program."); *id.* ¶¶ 5, 7 (participants "[m]ust be able to work 40 hours a week on your feet" and "[c]annot have any chronic or physical limitations"); *id.* ¶ 10 (ARC staff said that "if you can't stand for 8 hours a day, I can't let you in"). The Salvation Army did not pay participants minimum wages for their approximately 40 hours per week of labor. *Id.* ¶ 8.

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[1] Although the Salvation Army continues to run its ARC program today, the Court ended the class and collective periods on March 26, 2026. SA-35, 36.

ARC participants' full-time work supported The Salvation Army's more than [redacted] thrift stores. R.279, RSOMF ¶ 79; R.279, SOAMF ¶¶ 2, 5; *see also id.* ¶¶ 28, 52. From donation sites to sales floors, participants moved goods donated to The Salvation Army through the thrift stores' operations: they loaded donations onto Salvation Army trucks; unloaded them at warehouses and stores; sorted, cleaned, tested, hung, tagged, and baled them; and maintained the trucks, warehouses, and vehicles used in the process. *Id.* ¶¶ 51-52. At times, ARC participants were also assigned work that kept the ARCs running, including answering phones at the front desk, cooking for other participants and staff, and providing security, maintenance, or janitorial services. *Id.* ¶ 53.

The Salvation Army was explicit regarding the quid pro quo of the ARCs—that participants must work in exchange for the ARCs' housing, food, and other benefits. Training materials explained that "[i]n exchange for shelter, food, clothing, spiritual guidance, and rehabilitative counseling; [ARC participants] participate in work therapy[.]" R.279, SOAMF ¶ 6; *see also id.* (describing work "as a way of funding [participants'] stay"). A program brochure stated, "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." *Id.* ¶¶ 6-7; *see also id.* (examples of acknowledged Salvation Army employees informing ARC participants that "work therapy" was in exchange for room and board). ARC participants understood they were required to work in exchange for the program's basic necessities and other non-work components. *Id.* ¶ 9; *see also id.* ¶ 6 (collecting examples of ARC staff articulating the quid pro quo). Defendant required ARC participants to sign the same nonnegotiable agreement upon entry that "work therapy" was required. *Id.* ¶ 45. That agreement also contained boilerplate language disclaiming employment status. *Id.*

The Salvation Army terminated participants from the program who could or would not work—regardless of whether this was due to illness, injury, or not being able to keep up with Defendant's demands. R.279, SOAMF ¶ 10. As an example, an ARC discharged a man with a fractured neck, explaining that it "[s]eems harsh but as you are aware we are not a medical facility." *Id*. ¶ 12. As another example, Plaintiff Samuel Patton requested that he be able to stay at an ARC pending surgery after a back injury limited his ability to work; ARC staff discharged him from the program into homelessness, telling him that "[t]his is not an old folks' home. This is a business. And if you can't work, you can't be here." *Id*. ¶ 10; *see also id.* (ARC staff threatened that participants would be expelled if they did 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"); *id.* (calling an ARC participant's back pain "not a real emergency" and requiring discharge "if he can't do the work therapy" (citing R.279-126)). Defendant also authorized the ARCs to discharge participants who could not keep up with The Salvation Army's expectations for performance and productivity at work or when they failed to meet job expectations. *Id.* ¶¶ 11-12; *see, e.g.*, *id.* ¶ 11 (kicked out a participant for "poor work performance"). The Salvation Army made sure it got its full pound of flesh by requiring participants to make up "work therapy" hours missed. *Id.* ¶ 12.

B. The Salvation Army Recruited Vulnerable Individuals Who Were Dependent on the Life Necessities It Offered

People come to the ARCs at low points in their lives. Between 2018 and 2023, over [redacted] of ARC participants, across all Central ARCs, struggled with [redacted]. R.279, SOAMF ¶ 64. Many participants were [redacted].[2] *Id.* ¶ 65. Defendant recruited these vulnerable individuals, especially those struggling with lack of housing and substance use, to populate its ARC workforce, through targeted advertising. *Id.* ¶¶ 61, 63-66. Tellingly, The Salvation Army struggled to fill ARC beds when those it usually targeted had "money in their pocket" or any alternative option available due to government or private anti-poverty measures. *Id.* ¶ 62.

Once individuals enrolled in the ARC program, participants received basic necessities—namely, dormitory housing where as many as 34 people shared one room and bathrooms; and meals, which sometimes were expired, inedible, or withheld altogether when participants were late, including because of work. *See, e.g.*, R.279,

[2] Some participants were referred to the ARC as a diversion from incarceration, although those individuals were not part of this case. R.279, SOAMF ¶ 66.

SOAMF ¶ 4 (citing R.279-185); *id*. ¶ 44. At the end of each work week, The Salvation Army paid participants a "gratuity" of no more than $35 cash, with amounts varying based on how many weeks they had worked, and a meager credit to the ARCs' canteen. *Id.* ¶ 55. This payment was reduced when ARC participants "fail[ed] to attend or satisfactorily participate in . . . work therapy." R.279, RSOMF ¶ 67; *see also* R.279, SOAMF ¶ 56. Defendant also rewarded excellent work by increasing the gratuity. R.279, SOAMF ¶ 56. Many participants reasonably understood, as some ARC staff even confirmed, that the gratuity was for their work. *Id.* ¶ 57. The value of the room, board, and gratuity combined was considerably less than the minimum wage. *Id.* ¶ 30; *see also* R.251, Ex. 142 (Suppl. Expert Rebuttal Report by Jeffrey George, at Ex. 5).

The ARC program typically ran 180 days but could go up to one year. R.279, SOAMF ¶ 1; R.279, RSOMF ¶ 8. Defendant permitted participants to re-enroll rapidly after choosing to leave or being kicked out. R.279, SOAMF ¶ 60 (citing R.279-115). ARC participants re-enrolled even after graduating. *See, e.g.*, R.279, RSOMF ¶¶ 83, 87 (citing R.259-63, at 164:4-23); *id*. ¶¶ 98, 99 (citing R.259-153, at 120:1-15); *id*. ¶ 101 (citing R.259-64, at 21:5-24) (Plaintiffs Michael Clancy, Thomas Bryant, and Patton re-enrolled after previously graduating from the program).

Once participants enrolled, The Salvation Army prevented participants from independent living: money, movement, paid work, shelter, and access to food were all regulated by Defendant. During the first 30 days of the program, ARCs confined participants to the physical ARC location. R.279, SOAMF ¶ 58. Throughout the duration of the program, Defendant forbade ARC participants from earning income elsewhere. *Id.* It even prohibited participants from starting to search for a post-ARC job for months, until near the end of the program. *Id*. The Salvation Army would not allow participants to possess more than $60 in cash (which the ARC held) or operate personal vehicles. *Id.* Therefore, participants had no means to save or access money. In addition, until recently, The Salvation Army forced ARC participants to hand over their food stamps, which led many to struggle to regain use of their benefits upon their departure. *Id*. ¶ 59 (collecting examples); *id.* (Salvation Army employee acknowledged that when participants "get out, and they really need [SNAP benefits], they can't get it"). Unsurprisingly then, many participants returned to the program multiple times, regardless of graduation status. *Id.* ¶ 60; R.279, RSOMF ¶ 17; *see also* R.279, RSOMF ¶¶ 83, 87 (citing R.259-63, at 164:4-23); R.279, RSOMF ¶¶ 98, 99 (citing R.259-153, at 120:1-15); R.279, RSOMF ¶ 101 (citing R.259-64, at 21:5-24).

C. The ARCs Failed to Prioritize Other Programming as It Did the Work

Work, not rehabilitation, was the bedrock feature of the ARC program. As Plaintiff Bryant testified, "work therapy trumped everything," R.279, SOAMF ¶ 41, including the ARCs' limited rehabilitation services. The non-work programming at the ARCs—counseling, classes, 12-step meetings, and religious activities—was minimal in scope. *See id.* ¶¶ 37, 39-40. Activities besides work took up only approximately 10 hours per week—

a quarter of the time participants spent working. *Id.* ¶¶ 37, 38. And that estimate only applied where these services were actually provided; they often were not. *Id.* ¶ 40.

There was not enough time in the day for rehabilitation given how much Defendant prioritized participants working above all else. ARC leadership acknowledged that "many center locations are completing very little programming." R.279, SOAMF ¶ 40. One ARC noted that counseling sessions had "not been happening . . . for 6 months or more" because there was no time to hold sessions "without it affecting the work therapy." *Id*. An administrator at The Salvation Army's largest ARC 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.* (ARC director observed: "We continue to say work therapy comes first, and recovery second."). As one Salvation Army employee asked, "So the beneficiaries have to do work therapy 40 hours a week but one hour cannot be reserved for counseling?" *Id.* ARC participants were required to make up work hours missed for sickness, injury, or medical appointments. *Id.* ¶ 12; *see also id.* (accepting "[n]o excuses" for failing to make up work, even following serious injuries). By contrast, The Salvation Army cared far less (and did not consistently enforce their policies regarding) when participants missed purportedly mandatory non-work activities. *See, e.g.*, *id.* ¶¶ 40-42; R.279, RSOMF ¶¶ 14, 77-78.

Moreover, numerous ARC participants described counseling as not helpful or, at worst, a "joke." R.279, SOAMF ¶ 39. Numerous ARC administrators complained to ARC 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. *Id*. Counselors typically lacked qualifications and were not permitted to engage in proven treatment methods. *Id.* ¶ 37. Instead, simply asking "how are you" counted as a counseling session. *Id.* ¶ 39. Even though it explicitly marketed itself as providing substance use treatment, Defendant admitted that ARCs did not offer clinical rehabilitation for any conditions, including substance use disorders. *Compare id.* ¶ 61 ("If you or someone you know is struggling with substance abuse, we can help."), *with id.* ¶ 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 The Salvation Army have claimed otherwise, as ARCs were not licensed or accredited facilities. *Id.*

D. "Work Therapy" Was Simply Work

"Work therapy" was manual labor, not individualized rehabilitation. Upon enrollment, Defendant assigned ARC participants to specific positions—*e.g.*, baler, sorter—based on thrift store needs, not with an eye towards personal rehabilitation. R.279, RSOMF ¶¶ 80-81; R.279, SOAMF ¶¶ 31-32. Participants could not change tasks without approval from Defendant. R.279, SOAMF ¶ 71. Defendant dictated how many hours participants worked and when ARC participants started and stopped their shifts and took any breaks. *Id.* It enforced a dress code for work. *Id.* And The Salvation Army paid employees to supervise its other unpaid workers, the ARC participants. *See* R.279, RSOMF ¶ 81; R.279, SOAMF ¶¶ 14-15. Once assigned to jobs, Salvation Army supervisors evaluated participants' work performance against productivity "goals and objectives." R.279, SOAMF ¶ 14. If participants were working too slowly, ARC staff were expected to, and did, make the participants speed up. *Id.* ¶¶ 14, 15.

The work environment was far from therapeutic and instead bore the hallmarks of unregulated, low-wage labor. Defendant admitted that the work assigned to participants lacked any unique rehabilitative quality, stating that ARC participants "probably could" get all the purported benefits of "work therapy" from any minimum wage job. R.279, SOAMF ¶ 16; R.279, RSOMF ¶ 44. In addition to being tedious and unskilled, *see* R.279, SOAMF ¶¶ 51, 53, the work was often dangerous and degrading, *see, e.g.*, *id.* ¶ 54. Plaintiff Bryant described sorting through bags of donated clothing that contained feces and used hypodermic needles, all without protective gear. *Id.* ARC participants handled heavy machinery and sometimes suffered serious on-the-job injuries, like broken ribs or a punctured lung. *Id*. The Salvation Army forced participants to work full days in over 90-degree temperatures because "work wasn't near finished." *Id.* And ARC supervisors often screamed at and threatened participants, including for not working quickly enough. *Id.* ¶ 15 (collecting accounts).

Defendant proffered *no* empirical evidence to support that "work therapy" was therapeutic for participants. R.279, SOAMF ¶ 17. The Salvation Army never assessed whether its full-time work requirement helped ARC participants address the substance use disorders from which the vast majority suffered, or whether the requirement provided any therapeutic value. *Id.* Moreover, Plaintiffs' expert, a nationally recognized expert in the field of addiction medicine, concluded that "work therapy," as conducted in the ARCs, was "not an effective treatment or therapy in addressing substance use disorders" and failed to provide any "evidence-based therapeutic benefits." *Id.* ¶ 20. The Salvation Army's own practices belie the idea that "work therapy" is rehabilitation. The Salvation Army itself runs a rehabilitation program called Harbor Light centers that are funded through medical insurance and Medicaid and do not require enrollees to work for The Salvation Army or any other entity. R.279, RSOMF ¶ 132; R.279, SOAMF ¶¶ 19 (citing R.279-262, at 0046621).

Notably, ARC participants and The Salvation Army's acknowledged employees often performed the same tasks. Indeed, for many years until 2022, Defendant's "work therapy" assignment descriptions and job descriptions for its acknowledged employees reflected substantial overlap between those roles. R.279, SOAMF ¶ 74. Even after The Salvation Army changed the work descriptions in response to wage-and-hour litigation, in practice, participants continued regularly working alongside paid employees while completing identical or similar tasks. *Id.* ¶¶ 29, 73-75. In addition, The Salvation Army used ARC participants to fill in for acknowledged employees when there were staffing shortages at thrift stores. *Id.* ¶ 29. Training materials for thrift store managers at one ARC put it bluntly: ARC participants "are to be treated just like your employees." *Id.* ¶ 48.

E. The Salvation Army Reaped Enormous Financial Benefits from ARC Participants' Labor

The Salvation Army's thrift store business is enormous, generating over [redacted] in revenue for Defendant from 2017 to 2023. R.279, SOAMF ¶ 25. The ARCs' income, the vast majority of which was derived from thrift store sales, often exceeded the combined expenses to operate the thrift stores, the ARC programs, *and* the ARC Command (the territory-wide administrative center for the ARCs). *Id.* ¶ 36. As The Salvation Army is a non-profit organization, it must use or invest all revenue from its thrift stores to pay expenses or support the mission of the organization, on an annual basis. *Exemption Requirements – 501(c)(3) Organizations*, IRS, https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations (last updated June 28, 2026). With the revenue from the thrift stores, Defendant was not only able to fund the ARCs, but *also* to fund Defendant's other entirely unrelated charitable activities. *Id.* ¶ 35.

The Salvation Army spent an average of [redacted] per year to operate its network of thrift stores, including expenses for store mortgages and rents, vehicles, insurance, acknowledged-employee wages, and repairs. R.279, SOAMF ¶ 43. By contrast, The Salvation Army spent only [redacted] on average per year on the ARC program. The Salvation Army saved over [redacted] from 2017 to 2023 by using the labor of ARC participants but not paying them minimum wages. *Id.* ¶ 30. Plaintiffs' expert calculated that figure by comparing (a) the amount of money The Salvation Army actually spent to provide services to ARC participants, including housing, food, rehabilitation services, gratuity, and administration ([redacted]), to (b) the amount The Salvation Army would have spent if it paid all ARC participants the applicable state or federal minimum wage for full-time work and those costs that flow from employment (*i.e.*, taxes, mandatory health insurance, and worker's compensation insurance) ([redacted]). *Id.*

The Salvation Army obtained such substantial savings because ARC participants provided a tremendous amount of labor in benefit of its thrift store business. From 2017 to 2023, ARC participants worked nearly 12 million hours for The Salvation Army to support its thrift stores. R.279, SOAMF ¶¶ 26, 32. From 2020 to 2023, ARC participants comprised 26% of the ARCs' *entire* workforce, including all of the thrift stores. *Id.* ¶¶ 5, 26-27. Goodwill Industries, which also operates thrift stores to finance many of its charitable activities, did not obtain the same savings on labor because Goodwill paid all workers in its thrift store operations at least the applicable minimum wage. *Id.* ¶¶ 69-70.

The Salvation Army *intentionally* used ARC participants' labor to save costs in running its thrift stores. 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." R.279, 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 was able to "trim payroll and cost" by "moving into a process that utilizes more of our beneficiaries with less [*sic*] employees." *Id*. Another ARC noted 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).

Given that participants represented one in four members of the ARC workforce and performed work essential to the thrift stores, work that would otherwise have to be performed by recognized employees, The Salvation Army (unsurprisingly) took ARC participants' available hours of labor into account when deciding how to staff its thrift store business. By policy, The Salvation Army assigned participants to particular "work therapy" positions based on the needs of its thrift store business—not based on any individualized inquiry into what would be best for the ARC participants. R.279, RSOMF ¶¶ 80-81; R.279, SOAMF ¶ 31; *see, e.g.*, *id.* ¶ 32 (aggregating examples from ARCs requesting participants based on thrift store needs); R.279, RSOMF ¶ 80 (same); *see* Facts Section I.D *supra*. The Salvation Army had to plan for ARC participants' absences and departures from the program just like it would for any other employee. R.279, SOAMF ¶¶ 29, 31-32. ARC leadership conducted regular reviews of each ARC that looked, in part, at whether ARCs were meeting "daily production goals," which in turn rested on the productivity of the ARC participants. *Id.* ¶ 13. Salvation Army's fully paid employees were also evaluated and received bonuses based on ARC participants' ability to meet those production goals. *Id.*

The Salvation Army focused on ensuring that the ARCs had sufficient numbers of workers for its thrift store business. R.279, SOAMF ¶ 33 (aggregating examples tying enrollment to thrift store needs). For example, one ARC Administrator explained 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." *Id*. Conversely, if ARCs had more participants than they could effectively deploy for the thrift store business, ARCs sometimes closed their doors to new admissions. *Id.* The Salvation Army even considered ARC participant availability when identifying potential new locations for stores. *Id.* ¶ 32 (discussing finding a location for a store that had "[c]lose access to [b]eneficiaries who will be able to load and move the product").

II. Procedural History

Plaintiffs filed their complaint, amended complaint, and second amended complaint in the Northern District of Illinois on, respectively, March 9, 2022, June 1, 2022, and December 11, 2023. R.1, Complaint; R.39, First Amended Complaint; R.160, Second Amended Complaint ("SAC"). Plaintiffs brought claims on behalf of a putative collective and three classes for failure to pay sufficient wages under, respectively, the FLSA and Illinois, Michigan, and Wisconsin laws. R.160, SAC ¶¶ 67-108. Some Plaintiffs also brought individual claims under the same statutes for failure to pay overtime. *Id.*¶¶ 109-36.

The district court denied Defendant's Motion to Dismiss on January 31, 2023. SA-38-49. To evaluate the economic reality of the potential employment relationship, the district court determined it would consider four factors: expectation of compensation, primary beneficiary, dependence, and the purposes of the FLSA. ***First***, the district court found an expectation of compensation based on Plaintiffs' allegations about "the long hours plaintiffs worked, the nature of their work, that the benefits they received were conditioned on work, how essential their work was for defendant's business, and plaintiffs' reliance on the Salvation Army." SA-45. ***Second***, the court held The Salvation Army was the primary beneficiary of the relationship under the details pled "about how essential and beneficial [Plaintiffs'] work was for defendant, the minimal value and effectiveness of the rehabilitation services they received, and the way in which their work prevented them from pursuing rehabilitation." SA-45-46. ***Third*,** the district court found Plaintiffs dependent on The Salvation Army according to allegations that they "were reliant on defendant for food and shelter for six months on average." SA-46. ***Fourth*,** the district court determined that "recognizing an employment relationship here would be consistent with the purposes of the [FLSA]," because "plaintiffs worked long hours without minimal labor protections and potentially gave the Salvation Army an unfair advantage in the thrift store market." *Id.* In conducting its analysis, the district court dismissed as insufficiently analogous decisions cited by The Salvation Army involving work performed by students, prisoners, or those seeking to avoid detention. SA-46-47 n.8.

The district court issued notice in Spring 2023 to potential FLSA opt-in plaintiffs. R.108, Order Conditionally Certifying Collective Action and Approving Proposed Notice Pursuant to Stipulation. On March 26, 2026, the district court certified Plaintiffs' FLSA collective and the Illinois, Michigan, and Wisconsin Rule 23 classes. SA-19-37. Defendant has cross-appealed that decision. *See* No. 26-1885 (7th Cir. 2026).

On March 31, 2026, the district court granted Defendant's motion for summary judgment, concluding that Plaintiffs were not "employees" under the FLSA or the three relevant state laws. SA-1-18. The district court's decision applied the same four factors it had identified at the pleadings stage but reached the opposite result for expectation of compensation, dependence, and the FLSA's purposes. *Compare* SA-10, 13-16, *with* SA-45-46. The court then applied its conclusion of non-employment under FLSA to not only the state law claims that employ the same governing standard (Illinois and Michigan), but also to the independent Wisconsin claims. SA-16-17.

SUMMARY OF ARGUMENT

This case should not have ended on summary judgment. On the record below, and with *Alamo* as the governing north star, a reasonable factfinder could find the economic reality of the working relationship between Plaintiffs and The Salvation Army was an employment relationship: Plaintiffs performed full-time, required labor for Defendant each week; received food, housing, gratuity, and limited rehabilitation services in exchange; worked under The Salvation Army's close control; and supplied undercompensated labor that benefitted a commercial thrift-store enterprise by [redacted] The district court reached the opposite result only by failing to follow its mandate at summary judgment and resolving contested facts and competing inferences in The Salvation Army's favor. While the ultimate question of employment status is a legal one, the facts and corresponding inferences that undergird the answer to this inquiry are not. And here, reversal is necessary because those facts are genuinely disputed across the district court's totality inquiry: expectation of compensation, dependence, primary beneficiary, and the purposes of the FLSA.

First, contrary to the district court's conclusion, the evidence supports an inference that Plaintiffs expected compensation. Plaintiffs proffered a voluminous record on The Salvation Army's quid-pro-quo arrangement with participants: an exchange of labor for food, lodging, gratuity, and purported rehabilitation. The district court rejected that inference by accepting The Salvation Army's preferred characterization of the program as rehabilitative and determinative. At summary judgment, that choice was not the court's to make, nor was it supported by *Alamo* and progeny.

Second, the record supports a finding that Plaintiffs were dependent on The Salvation Army for their basic needs. While participants were at ARCs, The Salvation Army was their only source of food and shelter. The Salvation Army forbade participants from working for other entities to earn money, limited their ability to search and apply for post-ARC jobs, and at the outset prohibited them from even leaving the ARCs. The district court discounted that evidence and treated dependence as though it requires captivity or permanence, although neither the FLSA nor interpretations of it impose such a requirement.

Third, the evidence, viewed in the light most favorable to Plaintiffs, implicates the pro-competitive and remedial purposes at the heart of the FLSA. Plaintiffs' undercompensated labor reduced The Salvation Army's costs by [redacted] in a thrift store market where competitors paid minimum wage. And the participants belonged to a vulnerable population that Congress passed the wage-and-hour laws to protect from substandard working conditions. The district court improperly concluded that neither unfair competition nor worker protection were meaningfully at stake by ignoring evidence and creating loopholes that would harm the competing businesses and workers the FLSA was designed to protect.

Fourth, the record on the issue of primary beneficiary further demonstrates why summary judgment was improper. The district court acknowledged that a factfinder could reasonably conclude The Salvation Army gained more from the arrangement than Plaintiffs did. While it also improperly diluted the significance of that finding by evaluating the ARC program as a whole rather than focusing on the work, the court should not have granted summary judgment for Defendant given the disputed issues regarding the primary beneficiary question.

Finally, while the above errors require reversal of summary judgment on the FLSA claims and the Illinois and Michigan claims that track the federal law, the district court separately erred in applying the federal legal standard to the Wisconsin claims. As this Court has observed, the Wisconsin employment test, which focuses on control, differs from the FLSA's economic reality test. Because there are a bevy of material, disputed facts with respect Defendant's control over ARC participants, reversal is warranted.

STANDARD OF REVIEW

This Court reviews de novo a grant of summary judgment, construing the record and drawing all reasonable inferences in favor of Plaintiffs as the nonmoving party. *Reed v. Brex, Inc.*, 8 F.4th 569, 575 (7th Cir. 2021). Summary judgment is proper only if, viewed through that lens, there are no genuine disputes of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Whether a worker is an employee under the FLSA is a legal determination based on the economic reality of the relationship. *Simpkins v. DuPage Hous. Auth.*, 893 F.3d 962, 964-65 (7th Cir. 2018). At summary judgment, a court is not permitted to resolve disputes concerning the historical facts and corresponding inferences that underlie the factors that the court considers in order to assess the particular totality of factual circumstances. *Id.* at 965-67 (finding reversible error in concluding plaintiff was "not an employee under the FLSA as a matter of law" where "the summary judgment record present[ed] numerous factual disputes that [we]re material to the determination of the true economic relationship" between the parties); *see also Dobrov v. Hi-Tech Paintless Dent Repair, Inc.*, No. 1:20-CV-00314, 2024 WL 4333190, at *3 (N.D. Ill. Sept. 27, 2024) ("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."); *Godinez v. Classic Realty Grp.-IL, Inc.*, No. 22 C 1400, 2024 WL 3442960, at *6 (N.D. Ill. July 16, 2024) (same). Under the FLSA, "[t]he drawing of inferences from subordinate to 'ultimate' facts is a task for the trier of fact," even though "there is a legal overlay." *Sec'y of Lab. v. Lauritzen*, 835 F.2d 1529, 1542-43 (7th Cir. 1987) (Easterbrook, J., concurring); *see also Beckner v. Maxim Crane Works, L.P.*, 109 F.4th 968, 972-73 (7th Cir. 2024) (a court applying a multifactor employment test "legally err[s]" when it resolves material factual disputes in the moving party's favor).

The question therefore is whether, accepting Plaintiffs' evidence and reasonable inferences therefrom, does the record permit *only* the conclusion that Plaintiffs were not employees? *See, e.g.*, *Dobrov*, 2024 WL 4333190, at *5 (denying defendant's motion because "[a]t the summary judgment stage, inferences go in favor of [plaintiff], and a reasonable juror could find that . . . factor[s] tip[] in favor of an employer-employee relationship"). If a reasonable factfinder could resolve material disputes bearing on the economic reality of the relationship in Plaintiffs' favor, summary judgment must be reversed. *See Simpkins*, 893 F.3d at 967; *see also Lauritzen*, 835 F.2d at 1542 (Easterbrook, J., concurring) (observing that "[a] fact-bound approach calling for the balancing of" multiple factors "is one in which the trier of fact plays the principal part").

ARGUMENT

The district court incorrectly determined that Plaintiffs and other ARC participants were not employees as a matter of law under the FLSA and Illinois, Michigan, and Wisconsin law. The court only reached this result by committing mistakes of law, including a misapplication of the Supreme Court's *Alamo* decision, and mistakes of fact. Both require this Court's correction. Finally, the district court's disposal of Plaintiffs' Wisconsin claims under the wrong analytical framework, when Wisconsin minimum wage law does not employ the FLSA test, was error in need of reversal.

I. The Court Erred by Ignoring Material Disputes about ARC Participants' Expectation of Compensation

The district court determined as a matter of law that Plaintiffs did not expect compensation for their labor, a "decisive" factor in its conclusion that Plaintiffs were not The Salvation Army's employees. SA-13. The court erred in making this finding, as it drew improper factual inferences against Plaintiffs and misread the Supreme Court's binding *Alamo* decision. SA-13-15.

The Supreme Court has repeatedly held that, in evaluating economic reality, "one important consideration is whether the worker/employee had any expectation of compensation." SA-44 (citing, among others, *Walling v. Portland Terminal Co.*, 330 U.S. 148, 152 (1947), and *Alamo*, 471 U.S. at 301). The expectation inquiry does not, however, ask whether the workers expected that compensation in only monetary form, whether either party labeled that relationship as employment, or whether they subjectively believed the arrangement was employment. *Alamo*, 471 U.S. at 301 (1985); *see also* R.257, Memorandum of Law in Support of Defendant The Salvation Army, an Illinois Nonprofit Corporation's Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56 ("Mot.") at 43 (Defendant agreed with the objective standard); R.292, Defendant The Salvation Army, an Illinois Nonprofit Corporation's Reply in Support of its Motion for Summary Judgment ("Reply") at 34-36 (same).

Alamo, the seminal authority on the expectation of compensation inquiry, supplies the relevant standard. *Alamo* involved the work of "associates," as the defendant dubbed them, who were "drug addicts, derelicts, or criminals before their conversion and rehabilitation by the [religious] Foundation." 471 U.S. at 292. The "associates" worked for months and years for the nonprofit's commercial businesses, including clothing stores. *Id.* The organization derived its income from those businesses. *Id.* Although the Foundation did not pay the "associates" salaries, it did provide them with food, shelter, clothing, and other benefits—including religious programming, rehabilitation, and small quantities of cash. *Id.* at 292, 298. Considering the total picture, the Supreme Court upheld the district court's determination that the "associates" expected compensation and were therefore employees under the FLSA. Taking into account the nature and length of the work, it was objectively reasonable, according to the Court, to infer that "the associates *must have* expected" compensation in exchange for their services. *Alamo*, 471 U.S. at 301. In short, people would not be performing this large amount of drudgerous labor without expecting compensation in return.

Alamo supplies two guiding principles in reaching this conclusion. First, the label the parties place on the working relationship is not dispositive. *Id.* at 301; *see also Brant v. Schneider Nat'l, Inc.*, 43 F.4th 656, 666 (7th Cir. 2022) (contractual labels do not control analysis); SA-13 (not giving dispositive treatment to the non-negotiable intake forms The Salvation Army required participants to sign that labeled them "beneficiar[ies] and not employee[s]"). Both the workers and the Foundation in *Alamo* took the position that the workers were not employees. 471 U.S. at 293, 301-03. (The case was brought not by the workers, but by the Secretary of Labor. *See generally* 471 U.S. 290.) One worker went so far as to say that the thought of receiving compensation was "totally vexing to [her] soul" and "would defeat [her] whole purpose." *Id.* at 301 & n.22, 303 n.27. The Court held that "these protestations, however sincere, cannot be dispositive," because the economic reality of the situation conversely reflected that the "associates" expected in-kind benefits for their work. *Id.* at 301.

Second, it is "immaterial" whether compensation is provided to individuals as a cash salary or in the form of in-kind benefits. *Alamo*, 471 U.S. at 301; *see id.* at 293 (finding for "associates," the in-kind benefits were "simply wages in another form"). Other courts applying *Alamo* in similar contexts have drawn the same inference. *See, e.g.*, *Chavez-*

DeRemer v. Mennonite Messianic Mission of the E. Pa. Mennonite Church, No. 1:22-CV-01355, 2025 WL 3653555, at *16-18 (M.D. Pa. Dec. 17, 2025) (workers at a religious nonprofit's "behavioral rehabilitation farm" expected compensation where they performed commercially productive labor in exchange for room and board and rehabilitation or a stipend); *see also Perez v. TLC Residential, Inc.*, No. C 15-02776 WHA, 2016 WL 6143190, at *4 (N.D. Cal. Oct. 21, 2016) (finding expectation of compensation satisfied, in support of Plaintiff's summary judgment motion, where individuals received free housing in exchange for their work at sober living homes).

Under these guiding principles, the objective record here supports the same *Alamo* inference that ARC participants must have expected compensation for their labor. Whatever label The Salvation Army placed on the arrangement, the district court recognized at class certification that the ARC relationship rested on a "fundamental bargain" between the parties akin to the economic reality in *Alamo*: "enrollees worked for 40 hours per week, The Salvation Army received the benefits of that work, and the enrollees received the benefits of the ARC." SA-30; *see also* R.279, SOAMF ¶ 9. As in *Alamo*, the participants "work[ed] unskilled jobs for a religious organization that recruited from vulnerable populations." SA-15; *see also Alvear v. Salvation Army*, 661 F. Supp. 3d 1314, 1321 & nn.6-7 (N.D. Ga. 2023) (while denying a motion to dismiss in a "nearly identical" case against The Salvation Army's Southern Territory, observing that "the facts" about ARC programs were "closely analogous to the facts in *Alamo*"). For ARC participants, benefits included "board, lodging, or other facilities" that are, by the FLSA's definition, "wages," 29 U.S.C. § 203(m); a small cash stipend and canteen credit; and limited programming. *See* R.279, SOAMF ¶¶ 4, 9, 57; R.279, RSOMF ¶ 5. Indeed, The Salvation Army's marketing and staff explicitly stated that participants receive those benefits "[i]n exchange for" work, rendering ARC participants' understanding of the quid pro quo eminently reasonable. R.279, SOAMF ¶¶ 6, 48, 57.

As in *Alamo*, the work was full-time, tedious, and menial. R.279, SOAMF ¶¶ 5, 51, 53. By policy, The Salvation Army assigned participants to "work therapy" roles based not on their rehabilitative needs, but on the needs of its thrift stores. *Id.* ¶ 31. Participants performed their work in service of The Salvation Army's enormous thrift store empire, making up more than a quarter of the business's workforce. *Id.* ¶ 27; SA-45 (in denying Defendant's motion to dismiss, the district court deemed "how essential [ARC participants'] work was for defendant's business" relevant to evaluating expectation of compensation). As Defendant conceded, any benefits that participants could derive from the work could be obtained from any minimum wage job. *Id.* ¶ 16. All of these facts suggest that the work provided substantially more benefit to The Salvation Army than Plaintiffs. *See Walker v. Freedom Rain, Inc.*, No. 2:15-CV-00274-MHH, 2017 WL 897592, at *5 (N.D. Ala. Mar. 7, 2017) ("[A]lthough it may be true that work therapy is a 'critical component of rehabilitation' and that the plaintiffs gained therapeutic benefits from working, it cannot be said that the plaintiffs worked 'solely for [their] personal purpose or pleasure.'" (quoting *Walling*, 330 U.S. at 152)); *see also Johnson v. Nat'l Collegiate Athletic Ass'n*, 108 F.4th 163, 180 (3d Cir. 2024) (disregarding benefits from labor that are "the kinds of skills one would typically acquire in a work environment").

Defendant's policies and ARC participants' testimony reflect the same reality: they both understood that, if participants did not work—or worked, but not with the productivity Defendant wanted—they could not enroll in or stay at the ARCs. R.279, SOAMF ¶¶ 10, 14; *see also id.* ¶ 11 (Plaintiff Peters: "if [a] beneficiary is not performing well at work therapy . . . [t]hey got to go."). And if one could not stay at the ARCs, The Salvation Army's housing, food, clothing, and limited rehabilitation went away too. *Id.* ¶¶ 5-7, 9. Under *Alamo*, the record of the quid pro quo that was central to the ARC program was, in and of itself, sufficient to support a reasonable inference that participants expected compensation for their labor. Why else would participants work so hard and for so many hours for a commercial enterprise that retained all of the fruits of their labor?

Notwithstanding this evidence and legal authority, the district court incredibly held that "no fact finder could infer an objective expectation of compensation here." SA-13. It did so by turning the summary judgment standard on its head. *See Simpkins*, 893 F.3d at 965 (holding that "on summary judgment, a district court makes no factual findings of its own" and may only "identify," without resolving, material factual disputes after "constru[ing] the facts in the light most favorable to the nonmoving party"). The opinion adopted the inference, urged by Defendant as the *moving* party, that "[t]he offer was not food, shelter, and counseling in exchange for work, but a one-sided packaged residential rehabilitation program that filled the day because of The Salvation Army's belief that idle time led to vice." SA-13-14. To reach this conclusion, the court improperly drew factual inferences by invoking Defendant's self-serving, unsupported, and subjective belief that participants' work had rehabilitative value—despite the evidence supporting a contrary inference. SA-13-14. But determining the "characterization" of the program at issue is a *factual* question. *Alamo*, 471 U.S. at 298-99; *Cleveland v. City of Elmendorf*, 388 F.3d 522, 528 (5th Cir. 2004) (courts should "look at the objective facts surrounding the services performed" and not "personal motivations" in assessing whether FLSA liability attaches).

The court ignored the material evidence from which a reasonable factfinder could conclude that not even Defendant believed the ARCs were truly offering rehabilitation. The Salvation Army runs another residential rehabilitation program—Harbor Light centers—that include similar offerings to the ARCs, such as housing, food, and peer and spiritual counseling, but do *not* require enrollees to work. R.279, RSOMF ¶ 132; R.279, SOAMF ¶ 19 (citing R.279-262, at 0046621) (The Salvation Army accepts insurance as payment for Harbor Lights).

Even if the ARC included some rehabilitative components, *Alamo* forecloses treating the rehabilitation label as dispositive. At summary judgment, the district court could not adopt The Salvation Army's framing of the entire relationship as one-sided rehabilitation when the record also supported an exchange of full-time labor for rehabilitation services, alongside food, shelter, and gratuity. The Supreme Court thought it objectively reasonable for "associates" to expect in-kind compensation even though the Foundation was "providing rehabilitation"—indeed, the Foundation's provision of rehabilitation did not even factor into the Court's expectation of compensation analysis. 471 U.S. at 292, 298; *see also Spilman v. The Salvation Army*, 117 Cal. App. 5th 913, 926 (2026) (in a case assessing whether ARC participants were employees under California law, recognizing that workers in *Alamo* "had been rehabilitated by a nonprofit religious foundation"). Courts analyzing work performed within rehabilitation programs have followed suit and not allowed the provision of rehabilitation to play a dispositive role in the expectation of compensation inquiry. *See, e.g.*, *Messianic Mission of the E. Pa. Mennonite Church*, 2025 WL 3653555, at *16-18; *see also Walker*, 2017 WL 897592, at *5 (workers who received a program credit for laboring in thrift stores of the defendant's residential rehabilitation center were employees "[a]lthough the plaintiffs may have come to the [defendant] seeking rehabilitation and support"); *Perez*, 2016 WL 6143190, at *4 (finding resolution of expectation of compensation inappropriate on cross-motions for summary judgment, where defendants claimed work furthered "rehabilitation and recovery" and plaintiff described work as an exchange "for housing benefits," because it was "likely that there [we]re both rehabilitative and compensatory components to the working relationship"). Through its "one-sided" program frame, the district court also inferred that, because participants *knew* they had to work to be in the program, they did not expect compensation. SA-14. This conclusion stands in sharp contrast to the economic reality of *Alamo*, where laborers also knew they had to work. *See, e.g.*, 471 U.S. at 301; *see also Walker*, 2017 WL 897592, at *2 ("The plaintiffs knew that they would be working as part of the rehabilitation program[.]").

The district court thought it irrelevant to the expectation of compensation analysis "whether the [ARC] program was a good one." SA-14. But the court *did* consider, and ultimately adopted, Defendant's belief in the therapeutic value of its program, including the work component. By crediting the moving party's asserted rationale for "work therapy," the district court did what *Alamo* forbids: it allowed one party's label of the relationship (worse still, the moving party at summary judgment) to displace an objectively reasonable understanding of the economic reality.[3]

If the court were to factor in the rehabilitation label at all with respect to expectation of compensation (an approach contrary to *Alamo*), it should have assessed whether the work was actually structured to provide therapeutic benefit, or whether it was simply work. In other words, the court should not have blindly accepted Defendant's

[3] The court rightly did not explore "[w]hether plaintiffs truly bought into [the ARC's] programmatic philosophy," SA-14, as the answer is irrelevant to the objective expectation inquiry. At the same time, though, the court inappropriately hinged its examination on The Salvation Army's "belief[s]" about the ARC program. SA-14; *see also* SA-12-13 (considering the primary beneficiary analysis if inferences in Defendant's favor were adopted, even though Plaintiffs did not move for summary judgment).

word that the ARCs provided holistic rehabilitation—the approach the court properly took with respect to its primary beneficiary analysis. *See* Arg. Section IV *infra*. A trier of fact could reasonably conclude that participants in a less efficacious "work therapy" program were more likely to expect compensation than those in a more efficacious program. And here, Plaintiffs presented substantial evidence that the program was not effective. *See, e.g.*, *id.*; SA-11-12; R.279, RSOMF ¶¶ 22, 44 (some participants did not anticipate receiving true rehabilitation from the ARCs); *id.* ¶¶ 68-70 (unskilled, unpaid, and unindividuated labor alone is not rehabilitative); R.279, SOAMF ¶¶ 17, 20 ("work therapy" offered no proven therapeutic value); *id.* ¶¶ 37-42 (the "rehabilitation" offered was lacking in quantity and quality).

The court's reasoning on expectation of compensation creates a loophole to minimum wage protections that is ripe for abuse. If the decision below stands, an entity could evade wage-and-hour laws simply by labeling the working relationship as "rehabilitative," knowing a court will not peer behind the curtain to determine the accuracy of that description when conducting the potentially "decisive" expectation of compensation analysis. *See id.* Such an escape hatch—one that does not even allow a factfinder to confront whether a defendant genuinely provided rehabilitation—would invite employers to use their "superior bargaining power" to coerce vulnerable populations into unfair working conditions. *Alamo*, 471 U.S. at 302.

In sum, construing the facts in the light most favorable to Plaintiffs here, the record amply supports a finding that ARC participants worked in exchange for room, board, small cash payment, and limited rehabilitation—meaning, in expectation of that in-kind compensation. Reversal should issue. *See, e.g.*, *Lauritzen*, 835 F.2d at 1542 (Easterbrook, J., concurring); *Dobrov*, 2024 WL 4333190, at *5.

II. The Court Contravened the Summary Judgment Standard by Finding that Participants Were Not Dependent on the ARCs as a Matter of Law

The second factor that the district court labeled "decisive" in its summary judgment grant was whether participants were dependent on The Salvation Army. SA-13, 14-15. In holding they were not, the court again misread *Alamo* and failed to properly view the evidence and subsequent inferences in Plaintiffs' favor. Viewing the record in Plaintiffs' favor, a reasonable factfinder could conclude, as in *Alamo*, that ARC participants depended on The Salvation Army for the necessities of daily life.

Alamo intertwined economic dependence with expectation of compensation, inferring that the "associates" objectively expected "food, shelter, clothing, transportation and medical benefits" as in-kind compensation for their work because they were dependent on the Foundation to meet those basic needs over an extended period. 471 U.S. at 301. Following from *Alamo*, workers are considered dependent on the putative employer where they do not "have sufficient alternative means of income to be independent." *Perez*, 2016 WL 6143190, at *4; *cf. Hollins v. Regency Corp.*, 144 F. Supp. 3d 990, 1005-06 (N.D. Ill. 2015), *aff'd*, 867 F.3d 830 (7th Cir. 2017) (finding "no comparison" between the "receipt of life sustaining necessities" in *Alamo* and beauty school students' receipt of academic credit in that case).

The record here plainly supports an inference that participants, coming from vulnerable states and without alternative means of income, depended on The Salvation Army for basic necessities. So long as participants worked, Defendant provided them with "three hots and a cot," a motivation for many individuals to enroll. R.279, SOAMF ¶¶ 4, 6, 9. Defendant forbade ARC participants from earning other income. *Id.* ¶ 58. It did not allow workers to even start searching for post-ARC employment until the last stages of the program. *Id.* The Salvation Army also restricted ARC participants' independent movement and communication when they first enrolled. *Id.* As a result of Defendant's policies, ARC participants were near empty-handed upon walking out of the ARC doors because they could not keep more than $60 on hand and at times were without their food stamps, making it difficult to eat after leaving the program. R.279, SOAMF ¶¶ 58-59; *cf. Taylor v. Salvation Army Nat'l Corp.*, 110 F.4th 1017, 1033 (7th Cir. 2024) (recognizing "the obvious importance of the SNAP benefits program to" ARC participants).

Meanwhile, The Salvation Army allowed participants to rapidly re-enroll, even after involuntary discharge. R.279, SOAMF ¶ 60 (citing R.279-115). Defendant set up a revolving door, whether intentionally or inadvertently, by depriving ARC participants of the skills or resources to be self-sufficient—even when participants managed to graduate. *Id.* ¶ 60; R.279, RSOMF ¶ 17; R.279, RSOMF ¶¶ 83, 87 (citing R.259-63, at 164:4-

23); R.279, RSOMF ¶¶ 98, 99 (citing R.259-153, at 120:1-15); R.279, RSOMF ¶ 101 (citing R.259-64, at 21:5-24). The sum total is that participants were dependent on the ARC, sometimes for months, for housing and food. *See Taylor*, 110 F.4th at 1038 (Jackson-Akiwumi, concurring in part and dissenting in part) (characterizing allegations similar to the record in this case as The Salvation Army "caus[ing] previously food-insecure, unhoused, and impoverished Plaintiffs to rely on the organization for food, clothing, and shelter," rendering them "dependent on the Salvation Army to meet their basic needs").

Despite this evidentiary record, the district court proclaimed that no reasonable factfinder could conclude that ARC workers were dependent on The Salvation Army. SA-14-15. Its justification for this conclusion was flawed. To start, the district court interpreted *Alamo*'s holding that "associates" were employees as premised on the Foundation "prevent[ing] ["associates"] from accessing other economic opportunity." SA-15. *Alamo* includes no such analysis. Moreover, the Supreme Court's decision lacks any discussion of facts that would suggest that the Foundation prohibited workers from leaving the premises and finding other jobs. Still, even if such a showing were necessary for dependence, Plaintiffs amassed considerable evidence of those restrictions here, including forbidding participants from earning outside income, searching from the outset for paid work, working or apprenticing for other employers, or leaving the ARC for 30 days after enrollment. R.279, SOAMF ¶ 58.

The district court also determined there to be an important distinction in that time spent at the ARCs was "temporary" in contrast to *Alamo*. SA-15. Again, this statement was unsupported by the record. SA-15. Both this case and *Alamo* involve work over lengthy stretches. In *Alamo*, workers were dependent "for long periods, in *some* cases several years"—implying many stayed for shorter stints. 471 U.S. at 301 (citation omitted; emphasis added). Likewise, the ARC program was designed to last for six months and up to a year. R.279, SOAMF ¶¶ 1, 60. And it was not unusual for individuals to re-enroll, sometimes soon after leaving the program, such that they depended on The Salvation Army for several years. *Id.*; *see also* SA-3-4 (recounting the named Plaintiffs' re-enrollments); *Mennonite Messianic Mission*, 2025 WL 3653555, at *16-18 (adult workers found to have an expectation of compensation where they depended on religious nonprofit for three months to a year).

The court then observed that because "[g]raduation was the goal for both sides," the ARC program was "designed for . . . the participant's independence." SA-15. But both the court's predicate and conclusory factual propositions are in plain dispute. *See* R.279, SOAMF ¶¶ 10, 12, 14-15, 54, 60; R.279, RSOMF ¶¶ 8, 17, 81. From the record, a factfinder could reasonably draw inferences in Plaintiffs' favor that Defendant wanted participants' labor, and participants wanted the ARCs' in-kind benefits. The court inferred that "filling ARC beds to get thrift-store labor was not an accurate description of the relationship." SA-12. To draw this inference, improperly in Defendant's favor, it relied on the temporary closure of thrift stores during the COVID-19 pandemic. But *Defendant* urged the court to disregard that period as an immaterial "outlier[]." R.292, Reply at 10; R.279, RSOAMF ¶ 33. Additionally, the fact that Defendant on average spent [redacted] more to run its thrift stores than to run its ARC programs further supports the inference that the thrift stores, not rehabilitation, were Defendant's priority. R.279, SOAMF ¶ 43.

The court again misconstrued *Alamo* in asking as part of the dependency inquiry whether a defendant aims to "capture [workers] indefinitely." SA-14. Yet *Alamo* does not provide a basis for the district court's demand. As a factual matter, nowhere in *Alamo* did the district court, following the bench trial, find that the Foundation had such a motivation or that the workers were somehow unable to simply walk away from the Foundation. *See generally* 471 U.S. 290. And as a legal matter, nowhere did *Alamo* hold that a showing of indefinite capture was necessary or even relevant to whether a worker was an employee. *See id.* at 300-02.

Relatedly, *Alamo* never demanded that workers' dependency be involuntary. *See* 471 U.S. at 302; *contra* SA-15 (deeming the "voluntary" nature of the ARC program to be a "key distinction" from this case and *Alamo*). Far from it: the *Alamo* workers actively disclaimed employment status and considered themselves "volunteers" "working only for religious and evangelical reasons." 471 U.S. at 293-94, 301. In stark contrast, the ARC participants never claimed to be working for The Salvation Army for charitable reasons. R.279, SOAMF ¶¶ 9-15.

The purpose of the dependence factor is to assess the *economic* dependency in a putative employment relationship; an employer need not coerce labor to fall subject to minimum wage laws. Accordingly, outside the minority of situations like incarceration or labor trafficking, employees can choose to leave their jobs. *See Alvear*, 661 F. Supp. 3d at 1328 n.17 ("[A]ll conventional employment relationships are voluntary in this way. And the fact that, out of necessity, some may voluntarily accept 'subnormal working conditions' is something the FLSA was designed to redress."). Nevertheless, all employees are still entitled to the protection of minimum wage laws.[4] That this case alleges FLSA claims distinguishes it from this Court's decision in *Taylor v. Salvation Army National Corp.*, where plaintiffs alleged forced labor claims against The Salvation Army under the Trafficking Victims Protection Act (TVPA). *Contra* 110 F.4th at 1031-34. While this Court found participants' ability to leave the ARCs persuasive for purposes of determining if they had been forcibly trafficked into the program, that fact does not negate their dependence on Defendant, expectation of compensation, or rights to be paid. *See, e.g.*, *Alvear*, 661 F. Supp. 3d at 1321-22 (finding the *Alamo* inference that workers "must

[4] The district court's reasoning—that a hallmark of employment is the *inability* to decline work—also runs afoul of this Court's precedent regarding mandatory prison labor. The Seventh Circuit in *Vanskike v. Peters* held that a prisoner who was forced to work for his jailers did not qualify for FLSA protections because of the involuntary nature of the relationship. 974 F.2d 806, 809-10 (7th Cir. 1992) (the seminal case on this principle in the Seventh Circuit); *see also Bennett v. Frank*, 395 F.3d 409, 409 (7th Cir. 2005) (noting that "prisoners are not employees of their prison" under the FLSA). It would create a catch-22 for workers if both voluntary and involuntary work barred a court from finding employment status.

have expected" in-kind benefits not only "reasonable" but "*even more strongly suggested*" between ARC participants and The Salvation Army given the *Alamo* workers' vigorous disclaimers (emphasis added)); *Messianic Mission of the E. Pa. Mennonite Church*, 2025 WL 3653555, at *16-18 (adult "mentors" expected compensation although they claimed to be "volunteers").

For the reasons stated, a reasonable factfinder could conclude on this record that ARC participants were dependent on The Salvation Army.

III. Contrary to the Court's Conclusion, a Finding that Plaintiffs Were Employees Is Consistent with the FLSA'S Purposes

The FLSA has two primary purposes: "[1] to correct labor conditions detrimental to a minimum standard of living necessary for the well-being of workers and [2] to prevent unfair competition from the use of underpaid labor." SA-15-16 (citing 29 U.S.C. § 202(a)). The district court erred in determining that no trier of fact could think a finding that Plaintiffs were The Salvation Army's employees would further the purposes of the FLSA. SA-15-16. To the contrary, the record contains substantial evidence showing both that The Salvation Army gained an unfair advantage over its competitors by using the labor of participants but not classifying or paying them as employees and that Plaintiffs are the exact type of vulnerable workers Congress passed the FLSA to protect.

A. The Salvation Army Gained an Unfair Competitive Advantage by Using ARC Participants like Employees but Not Paying Them as Employees

The district court was wrong to conclude that this case does not implicate the

FLSA's pro-competitive purpose. Congress passed the FLSA, in part, out of its recognition that the existence of substandard labor conditions "constitutes an unfair method of competition in commerce" and "interferes with the orderly and fair marketing of goods in commerce." 29 U.S.C. § 202(a). The Supreme Court has found that the statute "reflects Congress' desire to eliminate the competitive advantage enjoyed by goods produced under substandard conditions." *Citicorp Indus. Credit, Inc. v. Brock*, 483 U.S. 27, 36 (1987). As the Seventh Circuit noted, "[c]heap labor can give an unfair advantage to an enterprise that competes in the marketplace." *Vanskike v. Peters*, 974 F.2d 806, 811 (7th Cir. 1992). According to the Supreme Court in *Alamo*, interpreting the FLSA to provide for broad coverage of workers, even those who would "waive their protections under the Act," is important to prevent "general downward pressure on wages in competing businesses." 471 U.S. at 302; *see also id.* at 299 ("[T]he payment of substandard wages would undoubtedly give petitioners and similar organizations an advantage over their competitors. It is exactly this kind of 'unfair method of competition' that the Act was intended to prevent[.]").

Here, Plaintiffs presented more than enough evidence for the trier of fact to conclude that The Salvation Army gained an unfair advantage over its competitors through its treatment of ARC participants. By not classifying ARC participants, who "fueled The Salvation Army's thrift-store enterprise," SA-16, as employees for the nearly 12 million hours of work they provided from 2017 to 2023, The Salvation Army saved more than [redacted]. R.279, SOAMF ¶¶ 26-27, 30. These savings were intentional: The Salvation Army knew it saved on labor by using ARC participants in place of paid employees, and it structured thrift-store operations to capture those savings, including having ARC participants perform many of the same tasks as paid employees. *Id.* ¶¶ 29, 73-75. Such facts "fall squarely within the unfair methods of competition that the FLSA was enacted to prevent, as [defendant's] access to this source of labor at below-market costs would have artificially reduced its costs." *Copeland v. C.A.A.I.R., Inc.*, No. 17-CV-564-TCK-JFJ, 2019 WL 4307125, at *4 (N.D. Okla. Sept. 11, 2019); *see also Walling*, 330 U.S. at 149-50 (considering the displacement of paid workers).

The record also reflects that The Salvation Army gained a leg up in the thrift store business, including over its [redacted] competitor, Goodwill Industries. *See, e.g.*, R.294, Defendant's Response to Plaintiffs' Statement of Additional Material Facts ("RSOAMF") ¶ 70 (admitting "both Goodwill and [itself] operate thrift stores that may compete for donations"); *see also* R.279, SOAMF ¶ 70 (Goodwill considers The Salvation Army its competitor). Defendant's national advisory board wrote in a report that it recommended The Salvation Army make its thrift stores more competitive with Goodwill ones. *Id.* (citing R.279-246, at 0068280); *see also id.* ([redacted]). Like The Salvation Army, Goodwill is a nonprofit organization that finances many of its charitable activities with revenue it generates by selling donated goods at its retail thrift stores. *See* R.279, SOAMF ¶ 69. Unlike The Salvation Army, though, Goodwill classifies all of its workers in its thrift store business as employees and pays them at least the applicable minimum wage. *See id*. Inevitably, then, Goodwill paid minimum wages to employees for work identical to what ARC participants were performing—*i.e.*, work critical to running a thrift store.

The district court conceded that ARC participants "fueled The Salvation Army's thrift-store enterprise," and that "Goodwill and The Salvation Army ran competing thrift stores." SA-16. Yet the court deemed it impossible to reasonably infer that "plaintiffs' unpaid labor gave The Salvation Army an unfair competitive advantage over Goodwill" simply because Goodwill did not operate a "competing rehabilitation center[]." SA-16. But no jurisprudence requires that commercial enterprises use their revenue identically to render conduct anticompetitive. *See Cantey v. Ctr. for Emp. Opportunities, Inc.*, No. 25-CV-4843 (LJL), 2026 WL 923844, at *5 (S.D.N.Y. Apr. 6, 2026) (the test for FLSA coverage does "not turn on the organization's stated purpose for its commercial businesses, but rather on the effect of those businesses on the broader commercial environment"). Indeed, the Supreme Court in *Alamo* did not even look at any specific competitors to the Foundation despite finding an issue with its anticompetitive conduct. 471 U.S. at 299. Both Goodwill and The Salvation Army use their thrift store income to fund *multiple* charitable ventures. R.279, RSOMF ¶¶ 133-34; R.279 SOAMF ¶ 69. While revenue from Defendant's thrift store sales went to its ARC program, the income stream also funded other unrelated charitable ventures. R.279, RSOMF ¶ 133; *see also* SA-8 ("The Salvation Army's thrift stores used the labor to sell goods, generating cash to fund its programming (and drawing inferences in plaintiffs' favor, other interests and goals of The Salvation Army)."). Plus, as discussed above, there is no exception to the FLSA for sincere or purported rehabilitation facilities. This record squarely supports reasonable inferences that a classification of ARC participants as employees would further the FLSA's pro-competitive goals by requiring Defendant to pay minimum wages consistent with its thrift store market peers.

B. The Court Wrongly Held that ARC Participants' Work Did Not Implicate the FLSA's Aimed Protection of Vulnerable Workers.

The district court also erred in finding that ARC participants' work did not implicate the FLSA's purpose to protect the most marginalized workers. The ARC program "was not exploitative in the FLSA-sense," per the district court, because Plaintiffs chose to enroll and were not forced to stay. SA-16. As discussed above, *see* Arg. Sections I-II *supra*, this finding rests on the flawed premise that the FLSA only protects workers when an employer uses force or coercion to compel labor.

The FLSA, however, is not nearly so narrow. 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); *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"); *Barrentine v. Ark.-Best Freight Sys., Inc.*, 450 U.S. 728, 739 (1981).

Congress further specified that, in passing the FLSA, it was concerned not primarily with forced labor, but with protecting vulnerable individuals who, because of their unequal bargaining power and unfortunate circumstances, may *voluntarily* agree to work for substandard wages. *Brooklyn Sav. Bank*, 324 U.S. at 706-07 (holding FLSA passed because "certain segments of the population required federal compulsory legislation to prevent private contracts on their part which endangered national health and efficiency"). (Indeed, Congress passed other laws designed to protect against forced or compulsory labor. *See, e.g.*, 22 U.S.C. § 7101 *et seq.* (TVPA); *see also Taylor*, 110 F.4th 1017.) For this reason, the protections of the FLSA are not waivable. *See, e.g.*, *Alamo*, 471 U.S. at 302 ("[T]he purposes of the Act require that it be applied even to those who would decline its protections."); *Calderon v. Witvoet*, 999 F.2d 1101, 1107 (7th Cir. 1993) (citing *Brooklyn Sav. Bank*, 324 U.S. at 703-07). A contrary rule would allow employers "to use superior bargaining power to coerce employees to . . . waive their protections under the Act." *Alamo*, 471 U.S. at 302.

The district court recognized that this "[c]oncern over coercion and using superior bargaining power to reap the benefits of 'voluntary' work runs through the Act." SA-16. But it then did an about-face and concluded the work at issue was not so troubling in large part because it was "voluntary." SA-16 ("The Salvation Army did not force enrollment, plaintiffs understood the program, they were free to seek help elsewhere, and The Salvation Army put up no barriers to exit."). Again, that is not the proper inquiry. *See* Arg. Sections I-II *supra*. Viewed through the correct standard, the summary judgment record contains ample evidence for the factfinder to conclude that ARC participants were a population of vulnerable workers like those who Congress intended the FLSA to protect. ARC participants were poor, lacked housing, and suffered from substance use disorders. R.279, RSOMF ¶ 22. In fact, the district court recognized these vulnerabilities. SA-34; *see also* SA-3, 12, 15. Participants were dependent on the ARCs for food and housing, as The Salvation Army took their food stamps and precluded them from earning money by working for other entities. R.279, SOAMF ¶¶ 58-59; *see Copeland*, 2019 WL 4307125, at *4 (the purpose of the FLSA would be served by "allowing Plaintiffs to retain and save their wages" to support themselves upon leaving a "work therapy" program). And it is undisputed that The Salvation Army provided the participants with less than minimum wage for all hours worked. R.294, RSOAMF ¶ 8.

Given the evidence of the challenges in the ARC participants' lives, the district court was required at summary judgment to infer that they were people who were more willing to voluntarily accept exploitative work, thus falling into the heartland of workers about whom the FLSA was most concerned. *See, e.g.*, *Alvear*, 661 F. Supp. 3d at 1325-26 ("[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. 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."); *see also Brooklyn Sav. Bank*, 324 U.S. at 707 n.18. The court's determination to the contrary was therefore in error.

IV. The Court's Correct Finding that Material Disputes Exist for the Primary Beneficiary Analysis Should Have Precluded Summary Judgment

On the issue of primary beneficiary, while the district court applied the wrong legal standard, improperly heightening the burden for Plaintiffs, it nevertheless correctly determined that material disputes precluded a finding at summary judgment about which party was the primary beneficiary. That determination should have resulted in denial of Defendant's summary judgment motion.

The district court found that "[w]hen evaluating the primary beneficiary of the relationship, and viewing the facts in plaintiffs' favor, one could conclude that The Salvation Army got more out of the arrangement than any individual plaintiff." SA-12. This outcome was correct. Participants worked roughly 40 hours per week of menial labor in support of Defendant's commercial stores. R.279, SOAMF ¶¶ 5, 47, 51-52. They were assigned tasks based on the stores' needs, not their own recovery goals. *Id.* ¶ 31. The work required nothing more than "common sense" to complete and offered no educational, vocational, or therapeutic benefit beyond what any minimum wage job would provide. *Id.* ¶¶ 16, 22, 51; *cf. Hollins v. Regency Corp.*, 867 F.3d 830, 836-37 (7th Cir. 2017) (work had educational basis). In return, they received food, housing, clothing, and services—"simply wages in another form." *See Alamo*, 471 U.S. at 293. In contrast, The Salvation Army saved [redacted] in labor costs used to operate its thrift stores, which in turn funded its various charitable ventures. R.279, SOAMF ¶ 30; R.279, RSOMF ¶ 133.

Where, as here, there are disputes of fact with respect to a subsidiary factor of the employment test, summary judgment generally should not issue for either party. *See, e.g.*, *Hottenstein v. Single Source Transp. of Hartford, LLC*, No. 23-CV-355-SCD, 2024 WL 4650901, at *7 (E.D. Wis. Nov. 1, 2024) (denying cross-motions for summary judgment where some independent contractor factors favored employment but others did not); *Dobrov*, 2024 WL 4333190, at *5 (denying employer's summary judgment motion where some independent-contractor factors favored employment and genuine factual disputes existed on other factors); *Mendiola v. Howley*, No. 18 C 8536, 2021 WL 3033613, at *7 (N.D. Ill. July 19, 2021) (denying plaintiffs' summary judgment motion where two of six independent contractor factors favored employment but remaining factors either favored the defendants or were incapable of resolution at summary judgment stage "due to . . . genuinely disputed facts"); *see also Perez*, 2016 WL 6143190, at *3-5 (denying cross motions for summary judgment despite expectation of compensation indisputably pointing in Plaintiffs' favor).

Denying summary judgment was especially warranted here because the primary beneficiary factor is central to the economic reality test.[5] The district court's recognition that a reasonable factfinder could find The Salvation Army to be the primary beneficiary was not peripheral; it bore on both the expectation of compensation *and* primary beneficiary analyses. *See* SA-45-46 (asking how "essential" ARC participants work was to Defendant's commercial business for both questions). Yet despite acknowledging that the trier of fact could conclude that Defendant was the primary beneficiary of the working relationship, the court nevertheless ruled as a matter of law that Plaintiffs had no expectation of compensation and were not Defendant's employees under federal, Illinois or Michigan law. That conclusion should be reversed.

V. The District Court Erred in Collapsing Wisconsin's Control Test into the FLSA

The district court independently erred in granting summary judgment on the Wisconsin claims. Although Wisconsin applies a distinct employment test that focuses on control, the district court disposed of these state law claims "[f]or the same reasons" as the FLSA claims. SA-16-17. This conflation conflicted with Seventh Circuit precedent and ignored extensive evidence that The Salvation Army controlled Plaintiffs' assignments, schedules, supervision, discipline, and manner of work.

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[5] In other circuits, the overarching test that determines the economic reality of the working relationship is called the primary beneficiary test. *See, e.g.*, *Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528 (2d Cir. 2016); *Schumann v. Collier Anesthesia, P.A.*, 803 F.3d 1199 (11th Cir. 2015); *Benjamin v. B & H Educ., Inc.*, 877 F.3d 1139 (9th Cir. 2017).

The district court correctly recognized the difference between the FLSA and Wisconsin law on employment status in its decision on class and collective certification, noting that "[t]he definitions of employer and employee are distinct under federal and Wisconsin law." SA-27. "Under Wisconsin law, an entity is an employer when it exercises control over the manner and conduct of work performed by an individual." SA-27-28. The Seventh Circuit held in *Brant v. Schneider National, Inc*. that it was not appropriate to "consolidate[] the inquiries under the FLSA and Wisconsin minimum wage law" because of the two laws' distinct "definitions of employer and employee." 43 F.4th 656, 673 (7th Cir. 2022). "Based on the text" of the Wisconsin statute "and the consistent focus on control shown across various areas of Wisconsin employment law, allegations giving rise to a plausible inference of control over a person employed at labor are enough to plead that a person or business is an employer under Wisconsin's minimum wage law." *Id.* at 674; *see also* Wis. Stat. Ann. § 104.01(3)(a) ("The term 'employer' shall mean and include every" entity "having control or direction of any person employed at any labor or responsible directly or indirectly for the wages of another.").

Here, Plaintiffs presented evidence of myriad disputes of fact demonstrating the control exercised by The Salvation Army over Plaintiffs. The Salvation Army controls every aspect of the working environment at all of its ARCs, including the ARC in Wisconsin. Defendant sets assignments, schedules, and dress codes, R.279, RSOMF ¶¶ 35, 76; R.294, RSOAMF ¶ 71; disciplines or discharges participants for noncompliance, R.279, RSOMF ¶¶ 37-38, 47, 82; assigns tasks "based on the thrift stores' needs," R.279, SOAMF ¶¶ 31, 71; and hires paid employees who perform many of the same functions as ARC participants, R.279, SOAMF ¶ 29. Training materials instructed managers to treat participants "just like your employees." R.279, SOAMF ¶ 48. Under a control test for employment status, this evidence is more than sufficient to create disputes of fact that preclude summary judgment. The Salvation Army has even admitted its control over ARC participants was "nearly total." R.257, Mot. at 32 (citation omitted); *id.* at 54-55; R.292, Reply at 11 n.6, 42-43. And although the district court failed to address the vast majority of this evidence, it recognized that "The Salvation Army controlled the terms of assignments." SA-16.

Instead of properly addressing Plaintiffs' evidence of control, the district court improperly "consolidated the inquiries under the FLSA and Wisconsin minimum wage law[.]" *Brant*, 43 F.4th at 673. Only a few days after declining to find the tests coextensive in its class and collective certification order, SA-27-28, the court held that "Wisconsin courts also look to interpretations of the Fair Labor Standards Act in settings for which control would otherwise be overwhelming and dispositive," SA-17 (citing *State ex rel. Hung Nam Tran v. Speech*, 324 Wis. 2d 567, 575 (2010)). The district court recognized, as it did previously in this case, *see* SA-47 n.8, that detained individuals like those in *Hung Nam Tran* are distinguishable from Plaintiffs here. Yet it provided no additional basis for its conclusion that "the control exercised by The Salvation Army . . . is not the kind of control that suggests employment." SA-17. The court, without further explanation, "predict[ed] the Wisconsin Supreme Court would interpret the statute consistently with the Fair Labor Standards Act when assessing whether The Salvation Army was an employer of these plaintiffs." SA-17. Assuming Wisconsin courts would adopt FLSA reasoning for individuals in rehabilitation, simply because one court looked to the FLSA case law in assessing work performed by an admittedly distinguishable population was legal error. "Courts do not treat residents of rehabilitative facilities as prisoners for the purposes of FLSA." *Copeland*, 2019 WL 4307125, at *6. This Court should reverse the dismissal of Wisconsin minimum wage claims, regardless of the outcome reached with respect to the FLSA, Illinois, and Michigan claims.

CONCLUSION

The district court's grant of summary judgment to The Salvation Army should be reversed.

July 13, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Circuit Rule 32(c) because this brief contains 13,141 words excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in 12-point Palatino Linotype font.

Date: July 13, 2026

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/s/ Christine E. Webber

CIRCUIT RULE 30(d) STATEMENT

This brief and appendix comply with Circuit Rule 30(d) because all materials required by Circuit Rule 30(a) and (b) are included in the appendix.

Date: July 13, 2026

Respectfully submitted,

/s/ Christine E. Webber

No. 26-1715 & No. 26-1885

In the United States Court of Appeals for the Seventh Circuit

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

Plaintiffs-Appellants/Cross-Appellees,

v.

THE SALVATION ARMY, an Illinois nonprofit corporation,

Defendant-Appellee/Cross-Appellant.

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

SHORT APPENDIX

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

MICHAEL CLANCY, STUART LOVE, THOMAS BRYANT, JAMES PETERS, and SAMUEL PATTON, on behalf of themselves and all others similarly situated,	
Plaintiffs,	No. 22 CV 1250
v.	Judge Manish S. Shah
THE SALVATION ARMY, an Illinois nonprofit corporation,	
Defendant.	

MEMORANDUM OPINION AND ORDER

The Salvation Army runs rehabilitation centers throughout the Midwest. Enrollees in its program were required to stay sober, participate in counseling, and perform 40 hours per week of manual labor—something The Salvation Army called "work therapy." Plaintiffs are former enrollees in the rehabilitation program who allege that they were employed by The Salvation Army and thus covered by state and federal minimum wage and overtime laws. The Salvation Army, arguing that rehabilitation-program participants are not employees under either federal or state law, moves for summary judgment.

I. Legal Standards

Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). When considering a motion for summary judgment, I view the facts and draw all inferences in the light most favorable to the nonmoving party. *Smith v. Kind*, 140 F.4th 359, 362, 364 (7th Cir. 2025); *Walters v. Professional Labor Grp., LLC*, 120 F.4th 546, 548 (7th Cir. 2024).

Whether a defendant is an employer under the Fair Labor Standards Act is fact-dependent but ultimately a question of law. *See Karr v. Strong Detective Agency, Inc.*, 787 F.2d 1205, 1206 (7th Cir. 1986); *see also Sec'y of Labor v. Lauritzen*, 835 F.2d 1529, 1535 (7th Cir. 1987).

II. Facts

The Salvation Army is a religious denomination and charitable organization. [279] ¶ 1.[1] Defendant here—The Salvation Army, an Illinois nonprofit corporation—administered, owned the assets, and ran the programs in the Central Territory (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, and Wisconsin). [279] ¶¶ 2, 6.

The Salvation Army's Adult Rehabilitation Centers offered individuals struggling with substance abuse, unemployment, psychiatric issues, or homelessness a drug- and alcohol-free environment, housing, food, clothing, counseling, and 12-step programs at little or no monetary cost. [279] ¶¶ 4–5. Inability to pay for shelter or services was not a reason to turn someone away from an ARC. [279] ¶ 5. The Salvation Army advertised its Adult Rehabilitation Centers to people struggling with substance

[1] Bracketed numbers refer to entries on the district court docket. Page numbers are taken from the CM/ECF header placed at the top of filings. The facts are primarily taken from the parties' responses to the statements of material facts, [279], [294], where both parties' assertions and responses are set forth in the same document.

abuse as a 12-step, abstinence program designed to help them learn to stay clean. [294] ¶ 61.

While "beneficiaries"—the term used by The Salvation Army to refer to participants in the program—were enrolled in an ARC, The Salvation Army also provided them with a small weekly cash and canteen credit payment called a gratuity. [279] ¶ 3; [294] ¶ 4. Some participants were asked to turn over Supplemental Nutrition Assistance Program or food-stamp benefits to offset food costs. [279] ¶ 20.

The ARC program typically ran 180 days—but sometimes lasted up to 12 months—during which beneficiaries had to participate in religious services, counseling and classes, and perform "work therapy." [279] ¶¶ 8–15, 55–57; [294] ¶ 1. Participants were not allowed to leave the premises during the first thirty days of the program, work an outside job, or possess more than $60 in cash onsite. [294] ¶ 58. Upon completion of the program, participants celebrated with a graduation ceremony. [279] ¶¶ 9, 18. But most people did not complete the program. [279] ¶ 17. Some returned to try again, knowing the program requirements. [279] ¶¶ 16–17, 48.

The claims in this case revolve around participants who chose to enroll in ARCs; court-ordered participation is not at issue. *See Taylor v. Salvation Army Nat'l Corp.*, 110 F.4th 1017, 1022 (7th Cir. 2024) (describing distinction between voluntary enrollees and participants referred by courts). Generally, people enrolled in ARCs to get help with problems like homelessness, substance abuse or addiction, unemployment, and instability following release from incarceration or hospitalization. [279] ¶¶ 4, 22. For example, Michael Clancy first enrolled in an ARC to secure shelter and get help for addiction. [279] ¶¶ 83–84. He re-enrolled twice. [279] ¶ 83. Thomas Bryant was a five-time ARC participant, motivated to enroll because he was homeless and wanted help for his addiction. [279] ¶¶ 98–99. Samuel Patton enrolled four times, seeking help with substance abuse and homelessness; he felt like the ARC was a sanctuary. [279] ¶¶ 101–02. As these plaintiffs' re-enrollment shows, attending an ARC did not guarantee sobriety or financial stability. [294] ¶ 60.

The Salvation Army premised its work therapy program on abiding by a work-structured day, with the aim of giving the participant a routine of productive activity and expectations for social behavior. *See* [279] ¶ 68. Beneficiaries were required to work assigned duties for up to eight hours a day, five days per week; and plaintiffs assert that beneficiaries were sometimes required to work more than that. [279] ¶ 76. The assignments included working in thrift stores, sorting inventory in warehouses, cleaning dormitories, kitchen duties, and clerical work. [279] ¶ 79. The Salvation Army assigned tasks based on the needs of the ARC and its thrift stores; participants could not choose their assignments. [294] ¶ 31.

The assignments required little training or experience and could be physically demanding. *See* [292] at 29–30. Although Salvation Army policies drew distinctions between the purpose of the work performed by its paid employees and ARC participants, *see* [292] at 24 & n.17, beneficiaries sometimes worked side-by-side with paid employees. [279] ¶ 81; [294] ¶ 29. The Salvation Army evaluated participants' work performance and productivity, and some ARC employees pushed productivity targets on beneficiaries. [294] ¶ 14. The plaintiffs did not ask to be paid a wage for their work therapy assignments, but they suggest that the policies requiring work therapy established an expectation that the labor was in exchange for the housing, food, clothing, and rehabilitation services. [279] ¶ 45. The Salvation Army says work therapy "simulated" real-world work. [279] ¶¶ 75, 68. Plaintiffs say it was just work.

The Salvation Army did not pay a minimum wage to beneficiaries for their participation in work therapy. [294] ¶ 8. Its original mission, at its founding in England, was to provide social services to those facing poverty and addiction. [279] ¶ 1. Defendant's ARCs were spiritually based rehabilitation programs, not clinical treatment programs; it viewed its programming as an expression of its religious mission. [279] ¶ 10–11, 14–15. The Salvation Army believed that keeping beneficiaries busy (minimizing idle time) reduced the temptation of drugs, alcohol, or other vices. [279] ¶ 13. But it never assessed the therapeutic value of its ARC programming.[2] [294] ¶ 17. The work performed by ARC participants was not uniquely rehabilitative; other stable, paid employment could provide similar benefits to a person in dire straits. [294] ¶ 16. Plaintiffs' expert opined that The Salvation Army's work therapy was not an effective treatment for substance use disorders. [294] ¶ 20.[3]

The Salvation Army enforced a uniform set of behavioral rules. [279] ¶ 35. These rules included: staying sober; prohibitions on fighting and violent behavior;

[2] Work therapy was not the only rehabilitation model used by The Salvation Army. It also ran a program called Harbor Light, where participants did not work in thrift stores and received medication-assisted treatment. [294] ¶ 19.

[3] The Salvation Army points to historical practice from the U.S. Department of Veterans Affairs to support the notion that work therapy is a treatment method and not employment. [279] ¶¶ 71–74. While helpful background, the different facts and statutory question in this case make this history of work therapy immaterial.

required participation in all mandatory elements of the ARC program; following a dress code and grooming policy; a curfew; and keeping dormitories clean. [279] ¶ 35. The Salvation Army required ARC participants to make up missed work shifts, including in cases of medical emergencies, and schedule their counseling and other services around the work assignments. [294] ¶ 12; [279] ¶ 77.[4] Missed work therapy did not always lead to discharge, but it was grounds for dismissal from the program. [294] ¶¶ 10–12; [279] ¶¶ 38, 77 (describing progressive discipline). The parties dispute the weight given different violations of mandatory ARC rules, but there is no dispute that The Salvation Army's policies conditioned successful completion of ARC programming on participation in work therapy, church attendance, sobriety, and curfew and rule compliance. [279] ¶ 78. Work therapy was 40 hours per week, and other classes and activities took about 10 hours per week; but as a residential program, the ARC environment and its prohibition on drugs and alcohol (while difficult to enforce) was an around-the-clock experience for participants. [279] ¶ 110; [294] ¶ 38.

When a person enrolled in an ARC, they typically went through an intake process with an intake coordinator. [279] ¶ 26. Beneficiaries received the ARC rules during intake procedures, including in a Beneficiary Handbook. [279] ¶ 35; [259-3]. The Salvation Army's policies required sobriety upon intake, although some plaintiffs

[4] One plaintiff reported that when he needed surgery, the response was, "This is not an old folks' home. This is a business. And if you can't work, you can't be here." [294] ¶ 10. The Salvation Army points out that at times it offered sick passes and accommodations of temporary light-duty assignments. [294] ¶¶ 7, 10.

successfully enrolled even when not sober. [279] ¶ 27. Sober or not, upon intake the participants signed a Beneficiary Admittance Statement. [279] ¶ 28. The statement said ([279] ¶ 28, [259-55] at 6):

> I understand that The Salvation Army is a religious and charitable organization and that this Adult Rehabilitation Center is dedicated solely to the social and physical rehabilitation and spiritual regeneration of those persons who are in need of such assistance. I further understand that under no circumstances can this Center be under any obligation to me and that I am a beneficiary and not an employee of this Center. I understand that my admission and continued residence is dependent upon my needing such assistance and my willingness to help myself and others so situated, including the voluntary performance of such duties as may be assigned to me.

The parties dispute whether The Salvation Army made money or ran a deficit from its thrift-store operations. [279] ¶ 136; [294] ¶¶ 30, 35–36. But there is no dispute that the majority of the funds to run the ARCs came from the sale of donated goods. [279] ¶¶ 132–33. During the 2020 COVID-19 pandemic, The Salvation Army closed thrift stores, but ARC programming continued. [294] ¶ 36. Excluding 2020, plaintiffs calculate ARC revenue to exceed expenses. [294] ¶ 36. Between 2017 and 2023, ARC participants performed millions of hours of labor at The Salvation Army, comprising 26% of the workforce at its thrift stores. [294] ¶¶ 26–27. The parties dispute whether the ARC participants were needed to keep thrift stores open or whether the thrift stores were needed to keep ARC programming going. [294] ¶ 32.

III. Analysis

The central dispute here is whether The Salvation Army employed, within the meaning of the Fair Labor Standards Act, the participants in the Adult Rehabilitation Centers. The plaintiffs entered the program because they were struggling with substance abuse, homelessness, or both, and The Salvation Army offered to help them. In the program, the plaintiffs performed unskilled labor for at least 40 hours a week. They had to follow rules and supervision when performing those tasks. They couldn't skip assignments at will. The Salvation Army's thrift stores used the labor to sell goods, generating cash to fund its programming (and drawing inferences in plaintiffs' favor, other interests and goals of The Salvation Army). Like many drug rehab programs, The Salvation Army's was not a cure.

The Fair Labor Standards Act imposes on all covered employers minimum wage and maximum hours requirements. 29 U.S.C. §§ 206, 207. "Every employer shall pay to each of his employees" the federal minimum wage. 29 U.S.C. § 206(a). Likewise, "no employer shall employ any of his employees … for a workweek longer than forty hours unless such employee receives" one and one-half times his regular wage for the hours worked beyond forty. 29 U.S.C. § 207(a)(1). To prevail on a claim arising under either of those provisions, the plaintiff must prove that he was an employee. *Brant v. Schneider Nat'l, Inc.*, 43 F.4th 656, 664 (7th Cir. 2022).

Under the Act, an "employee" is "any individual employed by an employer," an "employer" is "any person acting directly or indirectly in the interest of an employer in relation to an employee," and "employ" includes "to suffer or permit to work." 29 U.S.C. § 203; *Brant*, 43 F.4th at 664 (the definitions are "both broad and circular"). The breadth is intentional, as "Congress designed the FLSA to reshape the economy to avoid the economic and social ills caused by low pay and long hours for workers." *Brant*, 43 F.4th at 665 (7th Cir. 2022); *see also United States v. Rosenwasser*, 323 U.S.

360, 362 (1945) ("A broader or more comprehensive coverage of employees within the stated categories would be difficult to frame."). Interpretive tools like looking to dictionaries for the meaning of "employee" are unhelpful. *See Goldberg v. Whitaker House Co-op., Inc.*, 366 U.S. 28, 33 (1961) (under the Fair Labor Standards Act, "'economic reality' rather than 'technical concepts' is to be the test of employment").

"The conclusion of whether an individual qualifies as an employee under the Act requires an examination of the totality of the circumstances, with the ultimate goal of determining the 'economic reality of the working relationship.'" *Simpkins v. DuPage Hous. Auth.*, 893 F.3d 962, 964 (7th Cir. 2018) (quoting *Vanskike v. Peters*, 974 F.2d 806, 808 (7th Cir. 1992)).

Courts sometimes use multi-factor tests to assess the employment relationship. *See, e.g.*, *Estate of Suskovich v. Anthem Health Plans of Va., Inc.*, 553 F.3d 559, 565–66 (7th Cir. 2009); *Lauritzen*, 835 F.2d at 1534–35. While those tests can be helpful, they should not be applied when "they 'fail to capture the true nature of the relationship' between the alleged employee and the alleged employer." *Berger v. Nat'l Collegiate Athletic Assn.*, 843 F.3d 285, 291 (7th Cir. 2016) (quoting *Vanskike*, 974 F.2d at 809).[5]

[5] The control exerted over the conditions of work is often a consideration, but ill-suited to the kind of program at issue here. The prison–prisoner relationship is distinguishable, *see Clancy v. Salvation Army*, No. 22 CV 1250, 2023 WL 1344079, at *4 n.8 (N.D. Ill. Jan. 31, 2023), but serves as a reminder that "control" illuminates the economic reality of more traditional bargains (as in independent contractor scenarios). *See Vanskike*, 974 F.2d at 810. Alternative arrangements that sit within a multi-faceted relationship, like students working within an academic setting, ultimately require a program-specific judgment based on general principles not checklist tests. *See Hollins v. Regency Corp.*, 867 F.3d 830, 835–37 (7th Cir. 2017).

Another way to decide whether a relationship is one of employer–employee is to consider four subsidiary questions or issues. One: whether plaintiffs or The Salvation Army were the primary beneficiary of the relationship. *See Walling v. Portland Terminal Co.*, 330 U.S. 148, 152 (1947) (an employee cannot be one who works only to serve his own interest); *Vaughn v. Phoenix House New York Inc.*, 957 F.3d 141, 145–46 (2d Cir. 2020). Two: whether the worker had any expectation of compensation. *See Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 301 (1985); *Berger*, 843 F.3d at 293. Three: how dependent the plaintiffs were on The Salvation Army throughout the relationship. *Brant*, 43 F.4th at 665; *Alamo Foundation*, 471 U.S. at 301. And four: how the relationship maps onto the purposes of the FLSA—achieving minimum labor standards and preventing unfair competition. *See* 29 U.S.C. § 202; *Vanskike*, 974 F.2d at 810. These four issues are interrelated and not standalone inquiries. *See Vaughn*, 957 F.3d at 145–46 (to decide who is the primary beneficiary, courts evaluate expectation of compensation); *see Alamo Found.*, 471 U.S. at 301 (referencing dependency and expectation of compensation together).[6]

Plaintiffs focus on the provision of labor at thrift stores (and other ARC-related assignments, like working in warehouses or staffing the reception desk at an ARC).

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[6] In *Williams v. Strickland*, 87 F.3d 1064, 1068 (9th Cir. 1996), the court held that a participant in The Salvation Army's Adult Rehabilitation Center was not an employee under the Fair Labor Standards Act. Although that case concerned the same program and applied the same key Supreme Court precedents on the economic reality of employer–employee relationships, it was necessarily decided on a different record and is not binding here. *See Hollins*, 867 F.3d at 837 ("These cases normally turn on the facts of the particular relationship and program, and so we should not be understood as making a one-size-fits-all decision….").

The Salvation Army urges a broader context, looking at the entire relationship created by enrollment in an ARC, to include counseling, religious services, food, shelter, and the stated purpose of the program: to render aid to the needy. Courts often speak of the economic reality of "the working relationship." *Vanskike*, 974 F.2d at 808. But understanding the "working" relationship is not limited to considering only the labor for which plaintiffs seek compensation. As with prisoners or student-athletes, the assessed reality must account for the context of how plaintiffs and The Salvation Army relate to each other. *See Vanskike*, 974 F.2d at 809–10 (considering the complete relationship between prison and prisoner); *Berger*, 843 F.3d at 291 (long-standing tradition of amateurism defines the economic reality of the relationship between student athletes and their schools). I look at plaintiffs' entire relationship with The Salvation Army to assess its economic reality.[7]

The Salvation Army required work as a condition of entry in and continued shelter at its Adult Rehabilitation Centers. While that work took up most of the participants' time, it was part of a rehabilitation package offered by The Salvation Army. Plaintiffs have plenty of evidence that it was not a good rehabilitation program—"work therapy" was not a clinically tested method of overcoming substance

[7] In *Eberline v. Douglas J. Holdings, Inc.*, 982 F.3d 1006, 1013–14 (6th Cir. 2020), the court looked to the educational context of plaintiffs' work to decide that the court's test for evaluating training or educational programs applied. It then held that the application of its test for training programs must be targeted at the segment of the relationship for which plaintiffs sought compensation. Unlike the discrete tasks assigned cosmetology students, the economic reality of "work therapy" at The Salvation Army cannot be disaggregated from the entire relationship between participants and ARCs. At the same time, there are no other tasks or work at issue here, so assessing the economic reality of ARC programming generally is not a material analytical difference from *Eberline*.

abuse, many plaintiffs dropped out or could not maintain sobriety and stability after leaving the program, and the work assignments were simply menial tasks with no educational or vocational training to equip participants for advancement outside the walls of the ARC. The Salvation Army ran the program at a large scale and the program depended on revenue generated by thrift stores staffed by vulnerable plaintiffs. But that scale coupled with poor quality or efficacy of the program does not suggest an alternative economic reality to the objective bargain between plaintiffs and The Salvation Army. The bargain was a specific rehabilitation program, not employment under the FLSA.

When evaluating the primary beneficiary of the relationship, and viewing the facts in plaintiffs' favor, one could conclude that The Salvation Army got more out of the arrangement than any individual plaintiff. It tapped a resource to staff its thrift stores, generating revenue with lower labor costs. Plaintiffs have marshaled a record to suggest that the benefit of staffing thrift stores and related ARC functions tilted toward The Salvation Army.

On the other hand, there is no dispute that the rehabilitation program was offered as a packaged benefit to participants, who were under no obligation to participate and who wanted the kind of help extended by The Salvation Army. During the pandemic, shuttered thrift stores did not stop ARC programming, which suggests that filling ARC beds to get thrift-store labor was not an accurate description of the relationship. More like trainees learning skills, prisoners getting out of their cells, or students paying for experiential learning, ARC enrollees gained access to much-needed, personally beneficial services by agreeing to the program. Given the scale of The Salvation Army's operation, a fact finder could conclude that any one unhoused, unemployed, indigent plaintiff struggling with addiction benefited from an ARC more than The Salvation Army benefited from their work for a few months (especially since success was far from guaranteed and early departures were frequent). But that conclusion about the direction of net gains is not compelled by the record here.

That plaintiffs have raised a genuine dispute over who stood to gain more does not preclude summary judgment for The Salvation Army. The economic reality is a mix of considerations. Expectation of compensation and economic dependency are part of that mix, and in this case, decisive.

Labels, however, are not dispositive. So when plaintiffs signed statements acknowledging that they were not employees or when Salvation Army managers occasionally referred to a plaintiff as an employee, [279] ¶¶ 39, 41, neither piece of evidence resolves whether plaintiffs expected compensation for their labor. *See Alamo Found.*, 471 U.S. at 300–01 (sincere testimony that workers did not expect compensation was not dispositive); *Brant*, 43 F.4th at 665 (the terms of a contract do not control the employer-employee issue). But no fact finder could infer an objective expectation of compensation here. Plaintiffs argue that the work was in exchange for compensation in the form of in-kind benefits (housing, food, clothing, etc.) but from the jump, work therapy was necessarily understood to be part of The Salvation Army's free rehabilitation program. The offer was not food, shelter, and counseling in exchange for work, but a one-sided packaged residential rehabilitation program that filled the day because of The Salvation Army's belief that idle time led to vice. That was what plaintiffs accepted. Whether plaintiffs truly bought into that programmatic philosophy, and whether the program was a good one, plaintiffs knew how the work assignments fit into the program and they knew those assignments were an integral piece of it. While reenrollment could suggest that the program was not a good way to achieve stable sobriety, it indisputably establishes that returning participants did not expect compensation because they knew the program's terms. More like the student athlete who worked hard on a voluntary activity, *Berger*, 843 F.3d at 293, plaintiffs participated in a context of rehabilitation that could not create an expectation of compensation. *See also Taylor*, 110 F.4th at 1031 (describing the program's voluntary components, where both sides were free to stop participating).

The *Alamo Foundation* workers staffed a vast commercial enterprise of service stations, retail stores, hog farms, roofing and electrical construction companies, a recordkeeping company, a motel, and a candy company. *Alamo Found.*, 471 U.S. at 292. They received food, clothing, shelter, and other benefits from the defendant employer, but no cash salaries. *Id.* They were "entirely dependent" on the employer for "long periods, in some cases several years." *Id.* at 301. Although ARC enrollees received similar benefits, the dependency here is different. The goal of The Salvation Army's program was to have plaintiffs exit the program, not capture them indefinitely for either its religious mission or its commercial enterprise. Participants could not leave for 30 days, could not work outside jobs, could not keep much cash on hand, and had no say on their assignments. The work could be demanding. But this was not economic dependency because participants could leave (even within the first 30 days) if they did not or could not follow through with the program's requirements, and The Salvation Army wanted them to leave. Graduation was the goal for both sides. The economic reality in *Alamo Foundation* reflected individual workers generating income for a commercial enterprise and their conversion from independent actors into dependent members of an entity. In turn, the employer held onto those laborers and prevented them from accessing other economic opportunity. Notwithstanding subjective protestations to the contrary, the objective reality confirmed that the workers expected to perform labor in exchange for in-kind benefits. There was no other objective expectation that made sense. Not so here. The surface similarities—working unskilled jobs for a religious organization that recruited from vulnerable populations—omit the key distinction: the temporary, voluntary rehabilitation program was designed for and accepted the participant's independence and there is no factual dispute that separation was both intended and frequent. Even assuming the program was not a good method of treating substance abuse disorders and that The Salvation Army gained more than a beneficiary received, it did not create an expectation of compensation or economic dependency.

The term "employee" in The Fair Labor Standards Act was "given 'the broadest definition that has ever been included in any one act.'" *Rosenwasser,* 323 U.S. at 363 n.3, quoting from Sen. Hugo Black, the Act's sponsor, 81 Cong.Rec. 7657 (1937). The purpose of the Act is to correct labor conditions detrimental to a minimum standard of living necessary for the well-being of workers and to prevent unfair competition from the use of underpaid labor. 29 U.S.C. § 202(a). Concern over coercion and using superior bargaining power to reap the benefits of "voluntary" work runs through the Act. *See Alamo Found.*, 471 U.S. at 302. The plaintiffs fueled The Salvation Army's thrift-store enterprise, and The Salvation Army controlled the terms of assignments. But in the end, when understood as a temporary, voluntary rehabilitation program, the relationship here was not exploitative in the FLSA-sense, preventing plaintiffs from accessing a minimum standard of living. The Salvation Army did not force enrollment, plaintiffs understood the program, they were free to seek help elsewhere, and The Salvation Army put up no barriers to exit. Goodwill and The Salvation Army ran competing thrift stores but not competing rehabilitation centers. [294] ¶¶ 69–70. There's no reasonable inference available to suggest that plaintiffs' unpaid labor gave The Salvation Army an unfair competitive advantage over Goodwill.

The economic reality was not an employer–employee relationship under the FLSA.

Plaintiffs also bring claims under Illinois, Michigan, and Wisconsin minimum wage laws. [160]. Clancy, Love, and Bryant bring individual claims for failure to pay overtime as required by state law. [160]. Under Illinois and Michigan law, the test for employment relationship is identical to the test under federal law, and the conclusion here applies equally to those claims. *Callahan v. City of Chicago*, 78 F.Supp.3d 791, 821 (N.D. Ill. 2015), aff'd, 813 F.3d 658, 660 (7th Cir. 2016); *Allen v. Lincare Inc.*, No. 16-CV-11996, 2018 WL 352362, at *8 n.2 (E.D. Mich. Jan. 10, 2018) (citing *Dikker v. 5-Star Team Leasing*, 243 F.Supp.3d 844, 854 n.3 (W.D. Mich. 2017)).

Wisconsin law does not strictly mirror the federal standard. *See Brant*, 43 F.4th at 673 (observing that "the definitions of employer and employee are distinct under the FLSA and Wisconsin law"). Wisconsin law defines "employer" as a person having control of a person employed at any labor. Wisc. Stat. § 104.01; *Brant*, 43 F.4th at 673. The statute does not limit "control" to the issues of distinguishing independent contractors from employees. But Wisconsin courts also look to interpretations of the Fair Labor Standards Act in settings for which control would otherwise be overwhelming and dispositive. *E.g.*, *State ex rel. Hung Nam Tran v. Speech*, 324 Wis.2d 567, 575, 782 N.W.2d 106, 111 (2010) (minimum wage protections not necessary to protect the well-being and standard of living for persons civilly committed) (citing *Sanders v. Hayden*, 544 F.3d 812, 814 (7th Cir. 2008)). Civilly committed persons, like prisoners, present a different scenario than plaintiffs here. But the control exercised by The Salvation Army within the relationship created by a voluntary rehabilitation program is not the kind of control that suggests employment, and I predict the Wisconsin Supreme Court would interpret the statute consistently with the Fair Labor Standards Act when assessing whether The Salvation Army was an employer of these plaintiffs. For the same reasons I conclude that The Salvation Army was not plaintiffs' employer under the FLSA, I conclude that it was not their employer under Wisconsin's minimum-wage law.

IV. Conclusion

The Salvation Army ran thrift stores and staffed those stores in substantial part with people who participated in The Salvation Army's residential rehabilitation program, without paying them a minimum wage. Although the scale of the operation and its arguable ineffectiveness as therapy could look like plaintiffs worked a job like any other, the economic reality is to the contrary. The relationship between plaintiffs and The Salvation Army was not employee–employer; plaintiffs were independent actors who did not reasonably expect compensation when participating in the temporary program of rehabilitation services offered by The Salvation Army. Defendant's motion for summary judgment, [256], is granted. Enter judgment in favor of defendant and terminate civil case.

ENTER:

Manish S. Shah
United States District Judge

Date: 3/31/2026

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

MICHAEL CLANCY, STUART LOVE, THOMAS BRYANT, JAMES PETERS, and SAMUEL PATTON, on behalf of themselves and all others similarly situated, Plaintiffs, v. THE SALVATION ARMY, an Illinois nonprofit corporation, Defendant.	No. 22 CV 1250 Judge Manish S. Shah

MEMORANDUM OPINION AND ORDER

The Salvation Army operates several Adult Rehabilitation Centers across the Midwest. These treatment facilities are attached to thrift stores, and participants in the rehabilitation program are required to work 40 hours per week for the thrift store as part of their treatment—work for which they are not paid wages. Plaintiffs are former enrollees of The Salvation Army's Adult Rehabilitation Centers who argue that they were employees of The Salvation Army. They now seek to represent themselves and all others similarly situated in a class action under Federal Rule of Civil Procedure 23(b)(3) to recover minimum wages mandated under state law. Plaintiffs also seek final certification of a collective action under the Fair Labor Standards Act, 29 U.S.C. § 216(b) for corresponding violations of federal law. For the reasons discussed below, the motion is granted.

I. Legal Standards

Plaintiffs bear the burden of showing, by a preponderance of the evidence, that all requirements for class certification under Federal Rule of Civil Procedure 23 are met. *Jacks v. DirectSat USA, LLC*, 118 F.4th 888, 895 (7th Cir. 2024). As a threshold matter, the class must be defined clearly and based on objective criteria; its membership must be definite or ascertainable. *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 659 (7th Cir. 2015). All classes must satisfy the four Rule 23(a) requirements: numerosity, commonality, typicality, and adequacy of representation. Fed. R. Civ. P. 23(a). Plaintiffs seeking to certify a class under Rule 23(b)(3) must also show that common questions predominate over any questions affecting only individual members, and that a class action is superior to other available methods for adjudicating the controversy. *Svoboda v. Amazon.com Inc.*, No. 25-1361, 2025 WL 4632107, at *3 (7th Cir. Mar. 6, 2026). If the classes meet these requirements, "the class *must* be certified, even if it is sure to fail on the merits." *Simpson v. Dart*, 23 F.4th 706, 711 (7th Cir. 2022) (emphasis in original).

II. Background

The Salvation Army is a religious denomination and charitable organization. [279] ¶ 1.[1] Defendant here—The Salvation Army, an Illinois nonprofit corporation—

[1] Bracketed numbers refer to entries on the district court docket. Page numbers are taken from the CM/ECF header placed at the top of filings. The facts are primarily taken from the parties' responses to the statements of material facts, [279], [294], submitted for the purposes of the pending motion for summary judgment, [256], where both parties' assertions and responses are set forth in the same document. *See Gilmore v. S.W. Bell Mobile Sys., L.L.C.*, 210 F.R.D. 212, 217 (N.D. Ill. 2001) (noting that a court may, within its discretion, "resolve factual issues related to class certification" with "any rational mode of inquiry … including

administered, owned the assets, and ran the programs in the Central Territory (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, and Wisconsin). [279] ¶¶ 2, 6.

Adult Rehabilitation Centers offered individuals struggling with disaffiliation, such as substance abuse, unemployment, psychiatric issues, and homelessness a drug- and alcohol-free environment, housing, food, clothing, counseling, and 12-step programs at little or no monetary cost. [279] ¶¶ 4–5. Inability to pay for shelter or services was not a reason to turn someone away from an ARC. [279] ¶ 5. The Salvation Army referred to participants or enrollees in ARC programming as beneficiaries. [279] ¶ 3.

The ARC program typically ran 180 days—but sometimes lasted up to 12 months—during which beneficiaries pursued spiritual fulfillment, participated in counseling and classes, and performed "work therapy." [279] ¶¶ 8–15; [294] ¶ 1. Work therapy was the practice of abiding by a work-structured day, with the aim of giving the beneficiary a routine of productive activity and expectations for social behavior. *See* [279] ¶ 68. Beneficiaries were expected to work for up to eight hours a day, five days per week, although plaintiffs assert that beneficiaries were sometimes required to work more than eight hours a day or five days a week. [279] ¶ 76. The Salvation Army did not pay a minimum wage to beneficiaries for their participation in work therapy. [294] ¶ 8.

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documentary submissions, with or without the precise strictures of summary judgment rules").

The Salvation Army enforced a uniform set of behavioral rules. [279] ¶ 35. These rules included: staying sober; prohibitions on fighting and violent behavior; required participation in all mandatory elements of the ARC program; following a dress code and grooming policy; a curfew; and keeping dormitories clean. [279] ¶ 35. Beneficiaries received the rules during intake procedures, including in a Beneficiary Handbook. [279] ¶ 35; [259-3]. Missing work therapy assignments or leaving work therapy assignments were grounds for dismissal from the ARC program. [259-3] at 7–8.

Plaintiffs enrolled in The Salvation Army's ARC programs between 2019 and 2023. [247] at 22 n.8. After their participation in the ARCs, plaintiffs filed this suit, bringing claims for violations of the Fair Labor Standards Act, the Illinois Minimum Wage Law, Michigan Workforce Opportunity Wage Act, and Wisconsin law, for failure to pay minimum wage and overtime.[2] [160] (second amended complaint). Upon the parties' joint motion, I conditionally certified a collective action under the Fair Labor Standards Act, 29 U.S.C. § 216(b), and approved a notice plan. [108]. Plaintiffs now seek class certification under Fed. R. Civ. P. 23(b)(3), and final certification of collective action under the Fair Labor Standards Act. [246].

III. Analysis

A. Class Action Certification

Plaintiffs propose certifying three classes:

1. Illinois Class: All persons enrolled in any Salvation Army Adult Rehabilitation Center in Illinois between March 9, 2019, and the date of

[2] Overtime claims are only brought on behalf of the named plaintiffs, not the putative class.

final judgment for more than seven days, who did not or will not enroll in the program to comply with a court order or as a condition of probation, parole, or community supervision.

2. Michigan Class: All persons enrolled in any Salvation Army Adult Rehabilitation Center in Michigan between March 9, 2019, and the date of final judgment for more than seven days, who did not or will not enroll in the program to comply with a court order or as a condition of probation, parole, or community supervision.

3. Wisconsin Class: All persons enrolled in any Salvation Army Adult Rehabilitation Center in Wisconsin between March 9, 2020, and the date of final judgment for more than seven days, who did not or will not enroll in the program to comply with a court order or as a condition of probation, parole, or community supervision.

I consider each requirement of Rule 23 in turn.

1. *Ascertainability*

The Salvation Army's central argument against certification is that the class membership is not ascertainable. *See* [268] at 19–30. Classes must "be defined clearly and based on objective criteria." *Mullins*, 795 F.3d at 659. The inquiry focuses on the adequacy of the class definition itself, and not whether it would be difficult to identify particular members of the class. *Id. But see Carrera v. Bayer Corp.*, 727 F.3d 300, 306–07 (3d Cir. 2013) (adopting a rigorous approach to ascertainability).

There are three main ways class definitions fail the ascertainability requirement: being too vague, being defined by subjective criteria, and being defined in terms of success on the merits. *Mullins*, 795 F.3d at 659–60. "To avoid vagueness, class definitions generally need to identify a particular group, harmed during a particular time frame, in a particular location, in a particular way." *Id.* at 660. "[C]lasses that are defined by subjective criteria, such as by a person's state of mind, fail the objectivity requirement." *Id.* Finally, "fail-safe classes" are not properly defined. *Id.*

The Salvation Army argues that defining the classes in terms of a person's reason for enrolling in the ARC Program is subjective. [268] at 19–24. The proposed class definitions exclude individuals who enrolled in an Adult Rehabilitation Center "to comply with a court order." [246] at 1–2. Identifying individuals by their reason for enrolling in the program, The Salvation Army contends, "would require individualized fact-finding and legal determinations," including their subjective intent. [268] at 21–22. The issue can be avoided entirely, however, by refining the class definition. *See Messner v. Northshore U. HealthSystem*, 669 F.3d 802, 825 (7th Cir. 2012).

Changing "who did not or will not enroll in the program to comply with a court order or as a condition of probation, parole, or community supervision" to "who were not ordered by a court or required as a condition of probation, parole, or community supervision to enroll in the program" solves the subjectivity problem. The subjective intent of the class members is in any event irrelevant to the merits of the underlying claims. Issues of identifying specific class members are generally not appropriate for the "weak" version of ascertainability followed in this circuit. *See Mullins*, 795 F.3d at 659. The Salvation Army asserts that its records are inadequate to reliably identify and exclude justice-referred beneficiaries, [268] at 22, but whether a beneficiary was subject to a court order obligating their enrollment is a clear and objective criterion—that suffices.

The Salvation Army argues that the class definition cannot include individuals without standing to maintain the action on their own behalf. [268] at 20. Not so. "Every class member must have Article III standing in order to recover individual damages." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021). But neither the Supreme Court nor the court of appeals requires every class member to demonstrate standing before a court certifies a class under 23(b)(3). *See id.* at 431 n.4; *Arandell Corp. v. Xcel Energy Inc.*, 149 F.4th 883, 898 (7th Cir. 2025) ("To the extent the defendants suggest that before class certification, the plaintiffs must show all class members suffered some injury, that is not correct."). So long as it is not apparent that the class contains "a great many persons who have suffered no injury at the hands of the defendant," the presence of some uninjured class members does not create a Rule 23 problem. *Kohen v. Pacific Inv. Mgt. Co. LLC*, 571 F.3d 672, 677 (7th Cir. 2009); *see also Parko v. Shell Oil Co.*, 739 F.3d 1083, 1085 (7th Cir. 2014) ("How many (if any) of the class members have a valid claim is the issue to be determined *after* the class is certified.").[3]

The proposed class does not "include a great number of members who for some reason could not have been harmed by the defendant's allegedly unlawful conduct." *Messner*, 669 F.3d at 824. Even if it did, the solution would be to refine the class definition, not deny certification for lack of ascertainability. *Id.* at 825. The cases cited by The Salvation Army buttress this point, as they deal with the uninjured class

[3] For jurisdictional purposes, "as long as one member of a certified class has a plausible claim to have suffered damages, the requirement of standing is satisfied." *Kohen*, 571 F.3d at 676.

members causing a Rule 23(a) requirement to go unmet. *See Oshana v. Coca-Cola Co.*, 472 F.3d 506, 514 (7th Cir. 2006) (class representative's claims were atypical of class members because her claim lacked the same essential characteristics as the class at large); *Espenscheid v. DirectSat USA, LLC*, 705 F.3d 770, 776 (7th Cir. 2013) (variance between class members' damages made trial plan infeasible); *McGlenn v. Driveline Retail Merchandising, Inc.*, No. 18-CV-2097, 2021 WL 165121 at *5–6 (C.D. Ill. Jan. 19, 2021) (individualized issues of causation, injury, and damages defeated commonality).[4] The class is ascertainable from the revised definitions.

2. *Numerosity*

To maintain a class action, the class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). While there is no strict numerosity threshold, a class of over 40 members raises a presumption of impracticability. *Mulvania v. Sheriff of Rock Island Cnty.*, 850 F.3d 849, 859 (7th Cir. 2017) ("While there is no magic number that applies to every case, a forty-member class is often regarded as sufficient to meet the numerosity requirement."). Here, the putative classes number 3,000 in Illinois, 3,500 in Michigan, and 450 in Wisconsin. [247] at 42. The numerosity requirement is met.

[4] The Salvation Army also cites *Panwar v. Access Therapies, Inc.*, No. 1:12-CV-00619-TWP, 2015 WL 329013 at *4 (S.D. Ind. Jan. 22, 2015), but the court there found the ascertainability requirement unmet because the class definition included individuals who were paid their contractual wage for time worked, meaning too many class members were not damaged at all. The Salvation Army does not claim to have paid any beneficiaries a wage.

3. *Commonality*

"Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011) (citing *Gen. Tel. Co. of S.W. v. Falcon*, 457 U.S. 147, 157 (1982)). What matters is not the raising of common questions, but rather the ability to generate common answers. *Id.* at 350. It is not enough for all the putative class members' claims to raise the common issue of whether they were employed by the Salvation Army—common evidence must be able to resolve that issue en masse.

The three proposed classes are state-based, and so state-law standards for employment status apply (specifically, Illinois, Michigan, and Wisconsin law). The parties agree that the Fair Labor Standards Act, the Illinois Minimum Wage Law, and the Michigan Workforce Opportunity and Wage Act all apply the same analysis for employment relationship. [247] at 47 n.15; [257] at 61; *see also Callahan v. City of Chicago*, 78 F.Supp.3d 791, 821 (N.D. Ill. 2015), aff'd, 813 F.3d 658 (7th Cir. 2016); *Allen v. Lincare Inc.*, No. 16-CV-11996, 2018 WL 352362, at *8 n.2 (E.D. Mich. Jan. 10, 2018) (citing *Dikker v. 5-Star Team Leasing*, 243 F.Supp.3d 844, 854 n.3 (W.D. Mich. 2017)). For both the Illinois and Michigan classes, the "economic reality of the working relationship" determines whether the putative class members qualify as employees. *Brant v. Schneider Nat'l, Inc.*, 43 F.4th 656, 665 (7th Cir. 2022). The definitions of employer and employee are distinct under federal and Wisconsin law, however. *Id.* at 673. Under Wisconsin law, an entity is an employer when it exercises control over the manner and conduct of work performed by an individual. *Id.* at 674; *see* Wis. Stat. § 104.01(3)(a).[5]

Class-wide adjudication is likely to generate common answers to the question of participants' employment status. Plaintiffs allege that The Salvation Army engaged in a standardized course of conduct across its Adult Rehabilitation Centers, and that included work therapy. The Salvation Army relies on its national policies when arguing that participants were not employees, which suggests that it believes the legal question of employment status is one that can be resolved for all class members at once. *See generally* [257] (The Salvation Army's memorandum in support of its motion for summary judgment).

That the plaintiffs have presented testimony from individual beneficiaries does not make the inquiries individualized. Testimony from individuals can contribute to establishing evidence of standardized conduct toward all members of the proposed class. The statements of opt-in plaintiffs regarding their understanding of work expectations and the possibility of discharge, examples of beneficiaries being discharged for failing to perform work therapy, testimony that benefits were made contingent upon completing work therapy, and anecdotes of times plaintiffs were required to make up missed work therapy are evidence of The Salvation Army's actual work expectations and discharge practices. *See* [268] at 27–29 (defendant

[5] The Salvation Army suggests that the control test under Wisconsin law is limited to independent contractor cases. [257] at 62 n.40. Although *Brant* is a case about an independent contractor dispute, it interpreted the Wisconsin minimum-wage statute based on its generally applicable text.

listing examples of individual evidence). That individual evidence may combine to provide an answer to a common question does not suggest an absence of commonality. Whether the common questions predominate over individual ones is a separate inquiry. *Dukes*, 564 U.S. at 359; *see below*, Section III.A.5.

Dukes does not stand for the position that these issues are not appropriate for class treatment. The class representatives in *Dukes* sought to represent approximately one and a half million current and former female Wal-Mart employees for claims alleging sex discrimination in pay and promotion practices. *Id.* at 342. The only corporate policy plaintiffs identified in *Dukes* was one allowing discretion to local supervisors, which was not sufficient to yield common answers as to whether individual class members were discriminated against. *Id.* at 344–45. Here, by contrast, answering the question of employment status—given that it is undisputed no participants were paid—would be sufficient to answer whether there were minimum wage violations for all class members.

Dukes also does not reject the use of individual evidence to establish the existence of a pattern or practice of wrongdoing. The Court rejected that "anecdotal reports of discrimination from about 120 of Wal-Mart's female employees," as well as statistical evidence, could support a conclusion that Wal-Mart's managers exercised their discretion in the same way. *Id.* at 346. There was no common practice that the anecdotes supported, particularly for the size and scope of Wal-Mart's business. That is not the case here. The individual testimony provided can serve as proof of The Salvation Army's expectations and practices for its work therapy program.

While the specifics of the work plaintiffs performed while enrolled in the ARCs may vary slightly, the fundamental bargain was the same: enrollees worked for 40 hours per week, The Salvation Army received the benefits of that work, and the enrollees received the benefits of the ARC. The Salvation Army provides a regimented and standardized program across its ARCs, and the record indicates that the economic reality of participating in work therapy is the same from location to location and from plaintiff to plaintiff. The Salvation Army also exercises control over the work performed in a similarly consistent manner. I do not yet make any findings about whether that arrangement qualifies as an employment relationship under either applicable standard, but the answer is likely to be the same for all class members. That is sufficient to establish "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2).

4. *Typicality and Adequacy*

For the final two Rule 23(a) requirements, plaintiffs must show that "the claims or defenses of the representative parties are typical of the claims or defenses of the class," and "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). As both sides acknowledge, the requirements of typicality and adequacy tend to merge into one. [268] at 36; [286] at 37. Those two also tend to overlap heavily with the commonality requirement. *Dukes*, 564 U.S. at 349 n.5.

Typicality and adequacy are satisfied here. The named plaintiffs are each former ARC enrollees who participated in work therapy and were not paid a minimum wage for the hours they worked. Plaintiffs concede that the class membership should be limited to those who performed work for The Salvation Army and propose achieving that end by eliminating from the class all people who did not make it through the ARC program's origination period, which lasts between one and seven days. [286] at 16–17. Almost all participants begin work therapy within a week of enrollment. [269-7] at 6. With that modification, the named plaintiffs allege the same injury as all putative class members, and their claims are typical of the class. There are no concerns about competency of class counsel or "conflicts of interest between named parties and the class they seek to represent" that undermine the adequacy of the putative class representatives or their counsel. *In re Southwest Airlines Voucher Litig.*, 799 F.3d 701, 714–15 (7th Cir. 2015). All Rule 23(a) requirements are satisfied.

5. *Predominance and Superiority*

Once an ascertainable class has been defined and all Rule 23(a) requirements have been met, plaintiffs must still satisfy one of the three Rule 23(b) categories—in this case, Rule 23(b)(3). Accordingly, plaintiffs must show "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

"To determine 'which issues are common, individual, and predominant,' the court must 'circumscribe the claims and break them down into their constituent elements.'" *Eddlemon v. Bradley Univ.*, 65 F.4th 335, 339 (7th Cir. 2023) (quoting

Santiago v. City of Chicago, 19 F.4th 1010, 1018 (7th Cir. 2021)) (cleaned up). For all three classes, plaintiffs allege violations of state minimum wage laws.

To establish a minimum wage claim under Illinois and Michigan law (using the test under the FLSA), a plaintiff must show that "he was an employee within the meaning of the Act and that he was underpaid for at least one workweek." *Brant*, 43 F.4th at 664. While the definition of "employee" may differ under Wisconsin law, the elements of a minimum wage claim do not—a plaintiff must show "that he was an employee protected by these state minimum wage provisions and that he was not paid the Wisconsin minimum wage during at least one workweek." *Id.* at 673.

The parties do not contest the second element—the plaintiff was not paid a minimum wage. No participants were paid for their work, although The Salvation Army may be entitled to offsets for the cost of food and housing. The sole issue with which plaintiffs' minimum wage claims will rise and fall is whether they qualify as employees under state law. As discussed for the commonality requirement, employment status is a common issue, not an individual issue. Given that "the entire class will 'prevail or fail in unison' on common questions related to" one alleged course of conduct, that common question predominates. *Svoboda v. Amazon.com Inc.*, No. 25-1361, 2025 WL 4632107, at *6 (7th Cir. Mar. 6, 2026) (quoting *Amgen Inc. v. Connecticut Ret. Plans and Tr. Funds*, 568 U.S. 455, 460 (2013)).

The Salvation Army contends that predominance is not satisfied unless there exists a method for determining damages through classwide proof. [268] at 37. But there is nothing improper about separate liability and damages phases. *See Butler v.*

Sears, Roebuck and Co., 727 F.3d 796, 800 (7th Cir. 2013). *Comcast* does not require damages to always be capable of measurement on a class-wide basis; it requires plaintiffs to have a methodology to avoid individual calculations that "inevitably overwhelm questions common to the class." *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013).

The common questions here, which predominate over individualized issues, surround participants' employment status. Once established, damages do not require complicated expert testimony—just multiplying hours worked by the applicable minimum wage. Determining the hours worked by an ARC participant is necessarily an individual question but, given the common requirement of full-time work therapy, is unlikely to be more time and resource intensive than resolving the common questions. Offsets, which are limited to the cost of fair value of "board, lodging, or other facilities," can also be established without overwhelming the common questions. No such offsets exist under Michigan law, making the case for predominance even stronger for that class. The Salvation Army argues that individualized inquiries into the subjective value putative class members attribute to their participation in the ARC will be necessary and destroy predominance, but it cites no authority to support its position that such offsets are appropriate or available. *See* [268] at 39. The individual testimony that plaintiffs rely on are also not simply "anecdotes" that destroy predominance but are more akin to circumstantial evidence of a common practice.

The other requirement of Rule 23(b)(3), superiority, requires a class action to be "the most practical and efficient way to resolve the litigation." *Jacks*, 118 F.4th at 898. There is nothing inherently impermissible about litigating state minimum wage law claims as a class action. *See Ervin v. OS Restaurant Services*, 632 F.3d 971, 976–79 (7th Cir. 2011) (state-law class action can be a superior means of adjudicating minimum wage disputes); *Espenscheid*, 705 F.3d at 772 ("Simplification is desirable in law, especially in the present context, because joining a collective action and a class action or actions in one suit, as in this case, is both common and, we have held, permissible."). When there are many common issues of law and fact, "the superiority requirement likely poses no serious obstacle to class certification." *Messner*, 669 F.3d at 815 n.5 (7th Cir. 2012). Other factors, "including the lack of awareness of a claim, inability to access an attorney, or complex, costly discovery," can all also contribute to a finding that a class action is superior to other available methods. *Svoboda v. Amazon.com Inc.*, No. 25-1361, 2025 WL 4632107, at *8 (7th Cir. Mar. 6, 2026).

Because the central and common question of employment status predominates over any individual issues, not much else is needed to satisfy the superiority requirement. But there is more. Enrollees in The Salvation Army's ARCs are a vulnerable population, more likely to lack awareness of any possible claim, and less likely to have access to legal services. The benefits of individual adjudication are minimal, while the benefits of resolving this dispute as a class are great. A class action is superior to other available methods. The requirements of Rule 23(b)(3) are satisfied.

To avoid repeated disputes over class membership, and, if necessary, avoid protracted damages proceedings, the classes should be defined by a fixed time period now. For those reasons, the classes are closed as of the date of this order certifying the classes.

B. Collective Action Certification

In addition to class certification under Rule 23, plaintiffs seek final certification for a collective action under the Fair Labor Standards Act. The proposed collective action includes: "All persons enrolled in any Salvation Army Adult Rehabilitation Center from September 20, 2019 to September 11, 2023, for more than seven days, who did not enroll in the program to comply with a court order or as a condition of probation, parole, or community supervision."

"[A]n FLSA collective action tracks with a mass action—and is quite unlike a class action." *Vanegas v. Signet Builders, Inc.*, 113 F.4th 718, 724 (7th Cir. 2024). Despite the differences, "there isn't a good reason to have different standards for the certification of the two different types of action, and the case law has largely merged the standards, though with some terminological differences." *Espenscheid*, 705 F.3d at 772.

The Salvation Army's arguments against final certification of the collective echo their arguments against class certification. *See* [268] at 45–46. But some differences among employees in a collective are permissible so long as they do not result in detailed, fact-bound inquiries and common questions still predominate. *Alvarez v. City of Chicago*, 605 F.3d 445, 449 (7th Cir. 2010). Both sides agree that the requirements for certification under Rule 23 are more rigorous than for a collective action under the Fair Labor Standards Act. *See* [247] at 59 (plaintiff noting "the standard for certifying a collective under Section 216(b) is less demanding than the standard for certifying a class action under Rule 23"); [268] at 45 (defendant noting that "the certification standard under Rule 23 is more rigorous than for collective certification"); *see also Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 452 (2016) (assuming, without deciding, that the standard for collective action certification is no more stringent than class action certification, when not disputed by the parties). Since certification of a class action under Rule 23 is required, final certification of the collective is appropriate.

IV. Conclusion

The plaintiffs' motion for class certification, [246], is granted. I certify the following classes:

> All persons enrolled for more than seven days in any Salvation Army Adult Rehabilitation Center in Illinois between March 9, 2019, and the date of class certification, who were not ordered by a court or required as a condition of probation, parole, or community supervision to enroll in the program.
>
> All persons enrolled for more than seven days in any Salvation Army Adult Rehabilitation Center in Michigan between March 9, 2019, and the date of class certification, who were not ordered by a court or required as a condition of probation, parole, or community supervision to enroll in the program.
>
> All persons enrolled for more than seven days in any Salvation Army Adult Rehabilitation Center in Wisconsin between March 9, 2020, and the date class certification, who were not ordered by a court or required as a condition of probation, parole, or community supervision to enroll in the program.

Plaintiff Michael Clancy is designated as class representative for the Illinois Class. Plaintiffs James Peters and Thomas Bryant are designated as class representatives for the Michigan Class. Plaintiff Samuel Patton is designated as class representative for the Wisconsin Class.[6] I appoint attorneys Christine E. Webber, Joseph M. Sellers, Harini Srinivasan, Rebecca A. Ojserkis, and Michael Hancock (Cohen Milstein Sellers & Toll PLLC), Gay Grunfeld and Michael Freedman (Rosen Bien Galvan & Grunfeld LLP), and Jessica Riggin (Rukin Hyland & Riggin LLP) as class counsel.

The plaintiffs' motion for final certification of collective action under the Fair Labor Standards Act, [246], is granted. I certify the following collective:

> All persons enrolled for more than seven days in any Salvation Army Adult Rehabilitation Center in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, or Wisconsin from September 20, 2019, to September 11, 2023, who were not ordered by a court or required as a condition of probation, parole, or community supervision to enroll in the program.

ENTER:

Manish S. Shah
United States District Judge

Date: March 26, 2026

[6] Named plaintiff Stuart Love attended an ARC in Missouri and is not a part of any class. *See* [247-51]. Love remains a plaintiff for the federal claims. *See* [160].

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

MICHAEL CLANCY, et al., Plaintiffs, v. THE SALVATION ARMY, Defendant.	No. 22 CV 1250 Judge Manish S. Shah

MEMORANDUM OPINION AND ORDER

Plaintiffs Michael Clancy, Stuart Love, and Merrick Mann worked at rehabilitation centers run by defendant The Salvation Army. Alleging that they were employed by defendant, plaintiffs bring claims for violations of the Fair Labor Standards Act, Illinois Minimum Wage Law, and Michigan Workforce Opportunity Wage Act. Under Rule 12(b)(6), defendant moves to dismiss the amended complaint. For the reasons that follow, the motion is denied.

I. Standard of Review

To survive a motion to dismiss under Rule 12(b)(6), a complaint must state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). The complaint must include "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In reviewing a motion to dismiss, a court must construe all factual allegations as true and draw all reasonable inferences in the plaintiffs' favor. *Sloan v. Am. Brain Tumor Ass'n*, 901 F.3d 891, 893 (7th Cir.

2018) (citing *Deppe v. NCAA*, 893 F.3d 498, 499 (7th Cir. 2018)). A court may take judicial notice of actions or filings made in other courts, but can take notice of findings of fact only if the facts are not subject to reasonable dispute. *Daniel v. Cook Cnty.*, 833 F.3d 728, 742 (7th Cir. 2016) (quoting *Gen. Elec. Cap. Corp. v. Lease Resol. Corp.*, 128 F.3d 1074, 1082 (7th Cir. 1997)).

II. Facts

The Salvation Army ran residential adult rehabilitation programs across the country. [39] ¶ 1.[1] Each year, thousands of vulnerable people—the poor, those suffering from addiction or mental illness, and people with criminal backgrounds—enrolled in defendant's programs. *Id.* ¶¶ 1, 26.

Rehabilitation program participants were required to work, largely in support of the Salvation Army's thrift stores. [39] ¶¶ 2, 27. Under the direction and control of defendant, workers handled inventory, cleaned, loaded and unloaded trucks, operated heavy machinery, and drove or traveled on trucks. *Id.* ¶¶ 2, 29, 33, 35. The Salvation Army required participants to work at least forty hours per week in exchange for room, board, clothing, rehabilitative services, and nominal wages. *Id.* ¶¶ 27, 38, 42.[2] Workers understood and expected that, in exchange for their labor, the Salvation Army would provide them with these benefits and compensation. *Id.*

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[1] Bracketed numbers refer to entries on the district court docket. Referenced page numbers are taken from the CM/ECF header placed at the top of filings. The facts are taken from the amended complaint. [39].

[2] Defendant paid rehabilitation workers a starting wage of $1 per week, and increased the amount each week, topping out at $25 per week. [39] ¶ 38.

¶¶ 27, 40. Participants who refused or were unable to work could be expelled from the program, and did not receive the promised benefits. *Id.* ¶¶ 36–38.

Plaintiffs' work for the Salvation Army didn't serve any educational program, and largely did not promote their rehabilitation. [39] ¶ 30. The Salvation Army's requirement that participants work at least forty hours per week left little time to focus on rehabilitation, and defendant didn't provide workers with training that would promote their future employment. *Id.* Program participants were required to live at the rehabilitation centers, and were reliant on the Salvation Army for food and shelter. *Id.* ¶ 42. Participants weren't typically charged a fee to participate, but had to give the Salvation Army their Supplemental Nutrition Assistance Program benefits. *Id.* ¶ 43. Workers generally left the program within 180 days. *Id.* ¶ 44.

There's an allegation that the labor performed by plaintiffs and other workers primarily benefitted the Salvation Army, which through its thrift stores competed with businesses that paid employees minimum wage or more. [39] ¶ 31. Defendant generated more that $598 million from its stores in 2019, and could not have competed in the thrift store market without the work of rehabilitation program participants. *Id.* ¶¶ 31–32. Without rehabilitation workers, the Salvation Army would have needed to hire workers and pay them in accordance with applicable wage laws. *Id.* ¶ 34.[3]

[3] In addition to rehabilitation program workers, the Salvation Army employed other individuals who performed the same duties as program participants, but were paid minimum and overtime wages. [39] ¶ 34.

Clancy, Love, and Mann participated in Salvation Army rehabilitation programs in Illinois, Missouri, and Michigan. [39] ¶¶ 18–20. While in the programs, plaintiffs worked at least eight hours per day, five days per week. *Id.* ¶¶ 18–20, 39. The Salvation Army paid plaintiffs a small amount of cash (from as low as $1 a week up to $21 per week). *Id.* ¶¶ 18–20. Plaintiffs allege that the Salvation Army willfully violated the FLSA (and Illinois and Michigan law) by failing to pay them minimum or overtime wages. *Id.* ¶¶ 46, 73–74, 107.

III. Analysis

To state a claim for violations of the FLSA's minimum and overtime wage provisions, plaintiffs must allege that they were employees of and performed work for the Salvation Army. *See Berger v. Nat'l Collegiate Athletic Ass'n*, 843 F.3d 285, 290 (7th Cir. 2016) (citing *Melton v. Tippecanoe Cnty.*, 838 F.3d 814, 818 (7th Cir. 2016)). An allegation of an employment relationship is also a requirement for plaintiffs' state-law claims, and the parties agree that the analyses under Illinois and Michigan law are the same as under the FLSA. *See* [61-1] at 20–21; [70] at 13 n.7; *Callahan v. City of Chicago*, 78 F.Supp.3d 791, 821 (N.D. Ill. 2015), *aff'd*, 813 F.3d 658 (7th Cir. 2016); *Deschepper v. Midwest Wine and Spirits, Inc.*, 84 F.Supp.3d 767, 778 (N.D. Ill. 2015); *Allen v. Lincare Inc.*, CASE NO. 16-CV-11996, 2018 WL 352362, at *8 n.2 (E.D. Mich. Jan. 10, 2018) (citing *Dikker v. 5-Star Team Leasing*, 243 F.Supp.3d 844, 854 n.3 (W.D. Mich. 2017)); *Osterman v. Gen. R.V. Center, Inc.*, Case No. 19-10698, 2020 WL 6708873, at *2 (E.D. Mich. Nov. 16, 2020) (citations omitted).

The FLSA's relevant definitions are broad, circular, and not particularly helpful in identifying the limits of covered employment relationships. *See* 29 U.S.C. § 203; *Brant v. Schneider Nat'l, Inc.*, 43 F.4th 656, 664 (7th Cir. 2022). To decide whether a worker was an employee covered under the FLSA, courts look at the totality of the circumstances and assess the economic reality of the working relationship at issue. *Berger*, 843 F.3d at 290 (quoting *Vanskike v. Peters*, 974 F.2d 806, 808 (7th Cir. 1992)).

To understand the economic reality of various relationships, the Department of Labor and courts have developed multifactor tests. These include the Department's rule for deciding between an unpaid trainee and an employee, *see* U.S. Dep't of Labor, Wage & Hour Div., Fact Sheet #71, Internship Programs Under The Fair Labor Standards Act (Updated January 2018), https://www.dol.gov/agencies/whd/fact-sheets/71-flsa-internships, the Seventh Circuit's test to decide whether migrant workers were employees or independent contractors, *see Sec'y of Labor v. Lauritzen*, 835 F.2d 1529, 1534–38 (7th Cir. 1987), and the Second Circuit's standard for deciding whether interns were employees. *See Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528, 536–38 (2d Cir. 2016). None of these (or other) tests are exclusive or necessarily applicable to every case. Instead, the Seventh Circuit's approach is flexible, and courts should choose the most helpful guides to understanding the economic reality presented by a given case. *See Berger*, 843 F.3d at 291; *Hollins v. Regency Corp.*, 867 F.3d 830, 835 (7th Cir. 2017).[4]

As the parties acknowledge, the Seventh Circuit has not decided how to analyze a relationship like the one in this case, when participants in a rehabilitation program performed work. But two Supreme Court cases offer a starting point.

In *Walling*, the Court found that trainees who received a few days of instruction at a railroad were not employees under the FLSA. *Walling v. Portland Terminal Co.*, 330 U.S. 148, 149, 153 (1947). The Court reasoned that the Act wasn't "intended to stamp all persons as employees who, without any express or implied compensation agreement, might work for their own advantage on the premises of another." *Id.* at 152. Similarly, the Court noted that the Act's broad definitions of employ and employee could not stretch to include "a person whose work serves only his own interest." *Id.* The court concluded that the trainees had provided no "immediate advantage" to the railroads, and were not employees. *Id.* at 153.

In *Alamo Foundation*, the Court reached the opposite conclusion about associates of a religious foundation who thought of themselves as volunteers and didn't believe they were owed a minimum wage. *Tony and Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290, 300–01 (1985). The Court found that the associates were entirely dependent on the foundation for long periods of time (years, in some cases),

[4] Tests like those from *Glatt* and *Lauritzen* are not strictly applied when they "fail to capture the true nature" of a working relationship. *Berger v. Nat'l Collegiate Athletic Ass'n*, 843 F.3d 285, 291 (7th Cir. 2016) (quoting *Vanskike v. Peters*, 974 F.2d 806, 809 (7th Cir. 1992)); *see Hollins v. Regency Corp.*, 867 F.3d 830, 835 (7th Cir. 2017). But these and other standards are useful points of reference in evaluating an alleged FLSA employment relationship.

and must have expected to receive in-kind benefits in exchange for their labor. *Id.* at 301. The associates were employees covered by the Act. *Id.* at 306.

Walling, *Alamo Foundation*, and other cases that address the limits of the FLSA's coverage agree that one important consideration is whether the worker/employee had any expectation of compensation. *See Walling*, 330 U.S. at 152; *Alamo Found.*, 471 U.S. at 301; *Berger v. Nat'l Collegiate Athletic Ass'n*, 843 F.3d 285, 293 (7th Cir. 2016); *Fochtman v. Hendren Plastics, Inc.*, 47 F.4th 638, 646 (8th Cir. 2022). A second inquiry relevant here is whether plaintiffs or the Salvation Army were the primary beneficiary of the relationship. *See Walling*, 330 U.S. at 152 (an employee cannot be one who works only to serve his own interest); *Vaughn v. Phoenix House New York Inc.*, 957 F.3d 141, 145–46 (2d Cir. 2020) (applying the seven-factor test from *Glatt* to decide this issue); *Fochtman*, 47 F.4th at 645 (gathering cases).[5] A

[5] Plaintiffs argue that the right question is whether the Salvation Army received an immediate advantage from their work, rather than who was the primary beneficiary of the relationship. *See* [70] at 16. Neither *Walling* nor *Alamo Foundation* establishes an immediate-advantage test. The Court in *Walling* noted that, when a purported employer didn't receive any immediate advantage from a relationship, workers weren't employees under the FLSA. *See Walling v. Portland Terminal Co.*, 330 U.S. 148, 153 (1947). But the Court discussed immediate advantage as part of the unchallenged facts of the case, and in its analysis drew a line between FLSA employment on the one hand, and uncovered work that "would most greatly benefit" the employee, on the other. *Id.* at 152–53. While the associates in *Alamo Foundation* likely provided an advantage to their employer, the Court did not discuss any advantage that the foundation gained, or who primarily benefitted from the relationship. *Tony and Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290, 292, 299–303 (1985). Courts that have encountered similar work arrangements have applied some version of a primary beneficiary test. *See Hollins v. Regency Corp.*, 867 F.3d 830, 836–37 (7th Cir. 2017) (comparing the benefits that an operator of cosmetology schools received from student labor with the benefits that the student received); *Fochtman v. Hendren Plastics, Inc.*, 47 F.4th 638, 645 (8th Cir. 2022) (gathering cases). The cases cited by plaintiffs don't disagree with this approach. *See Earl v. Bell House, LLC*, 8:20-CV-129, 2022 WL 394731, at *3 (D. Neb. Feb. 9, 2022) (citation omitted) (considering whether a worker's tasks "served his own personal or rehabilitative goals" or "primarily the Defendants' business interests"); *Perez*

third question that may shed light on whether plaintiffs were employed by the Salvation Army is how dependent the relationship was. *See Brant v. Schneider Nat'l, Inc.*, 43 F.4th 656, 665 (7th Cir. 2022) (quoting *Simpkins v. DuPage Hous. Auth.*, 893 F.3d 962, 964 (7th Cir. 2018)); *Alamo Found.*, 471 U.S. at 301. Fourth and finally, the purposes of the FLSA—achieving minimum labor standards and preventing unfair competition—may be useful in deciding whether a given relationship falls within the scope of the Act. *See* 29 U.S.C. § 202; *Vanskike v. Peters*, 974 F.2d 806, 810 (7th Cir. 1992).

At this stage of the case, it's reasonable to infer that all four of these considerations point in favor of a covered employment relationship. According to the complaint, Clancy, Love, and Mann expected to be compensated, an allegation supported by the long hours plaintiffs worked, the nature of their work, that the benefits they received were conditioned on work, how essential their work was for defendant's business, and plaintiffs' reliance on the Salvation Army. *See* [39] ¶¶ 18–20, 27–29, 31–34.[6] Plaintiffs claim that the Salvation Army was the primary

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v. TLC Residential, Inc., No. C 15-02776 WHA, 2016 WL 6143190, at *3 (N.D. Cal. Oct. 21, 2016) (comparing which party benefitted more from a relationship); *Archie v. Grand Cent. P'ship, Inc.*, 997 F.Supp. 504, 535 (S.D.N.Y. 1998) (examining whether a defendant received an immediate advantage from a relationship but also assessing which party benefitted more). While plaintiffs are correct that the Seventh Circuit has not adopted the primary beneficiary test in a case like this one, comparing the benefits that each party received is a useful guide to the economic reality of a case (like this one) when both parties may have gained. An immediate advantage gained by the alleged employer is not a singular, dispositive answer to the economic reality of a relationship.

[6] While the complaint plausibly alleges that plaintiffs expected to be compensated, the fact that Clancy, Love, and Mann were required to turn over SNAP benefits to the Salvation Army points in the opposite direction, suggesting that this wasn't an exchange of work for in-kind benefits. *See* [39] ¶ 43; *Williams v. Strickland*, 87 F.3d 1064, 1067 (9th Cir. 1996).

beneficiary of their relationship, and back that allegation up with details about how essential and beneficial their work was for defendant, the minimal value and effectiveness of the rehabilitation services they received, and the way in which their work prevented them from pursuing rehabilitation. *See* [39] ¶¶ 30–34.[7] This case doesn't involve precisely the same kind of total, long-lasting dependency that was at issue in *Alamo Foundation*. *See* 471 U.S. at 301. But at this preliminary stage of the case, this factor too cuts in favor of an employment relationship because plaintiffs were reliant on defendant for food and shelter for six months on average. [39] ¶¶ 42–44. That plaintiffs worked long hours without minimal labor protections and potentially gave the Salvation Army an unfair advantage in the thrift store market suggests that, if plaintiffs can prove their case, recognizing an employment relationship here would be consistent with the purposes of the Act. *See* 29 U.S.C. § 202.[8]

[7] It's reasonable to infer that the benefits the Salvation Army received from plaintiffs' labor were more than incidental. *Cf. Hollins v. Regency Corp.*, 144 F.Supp.3d 990, 1006–07 (N.D. Ill. 2015); *Solis v. Laurelbrook Sanitarium & Sch., Inc.*, 642 F.3d 518, 521 (6th Cir. 2011). The complaint says that plaintiffs benefitted from the relationship by receiving room, board, clothing, rehabilitation services, and nominal wages. *See* [39] ¶ 27; *see also Vaughn v. Phoenix House New York Inc.*, 957 F.3d 141, 146 (2d Cir. 2020). At this point, however, there's a plausible allegation that defendant benefitted more from the arrangement.

[8] The decisions cited by defendant are distinguishable or don't disagree. Cases decided on a motion for preliminary injunction, summary judgment, or otherwise after the benefit of discovery are persuasive in elaborating the correct standard for alleging an employment relationship under the FLSA, but are not helpful in assessing the sufficiency of the complaint in this case. *See Armento v. Asheville Buncombe Cmty. Christian Ministry, Inc.*, 856 Fed. App'x 445, 451–56 (4th Cir. 2021); *Hollins v. Regency Corp.*, 867 F.3d 830, 834–37 (7th Cir. 2017); *Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528, 533–38 (2d Cir. 2016); *Schumann v. Collier Anesthesia, P.A.*, 803 F.3d 1199, 1207–15 (11th Cir. 2015); *Isaacson v. Penn Cmty. Services, Inc.*, 450 F.2d 1306, 1308–11 (4th Cir. 1971); *Danneskjold v. Hausrath*, 82 F.3d 37, 40–44 (2d Cir. 1996); *Acosta v. Cathedral Buffet, Inc.*, 887 F.3d 761, 765–68 (6th Cir. 2018);

The Salvation Army wants to look beyond the complaint, and especially to the facts in *Williams*, when the Ninth Circuit confronted a similar question about a different worker at one of defendant's rehabilitation programs in California. *See Williams v. Strickland*, 87 F.3d 1064 (9th Cir. 1996). Courts are permitted to take judicial notice of public documents, including judicial decisions. *See Fosnight v. Jones*, 41 F.4th 916, 922 (7th Cir. 2022) (citations omitted). But defendant wants to bring in the facts that underlie the decision in *Williams*, not just the decision itself. *See* [61-1] at 8–9, 15–17. Those facts are subject to reasonable dispute, and cannot be considered here. *See Daniel v. Cook Cnty.*, 833 F.3d 728, 742 (7th Cir. 2016) (citations omitted). Under Rule 12(b)(6), I accept as true what plaintiffs have alleged in this case and draw all reasonable inferences in their favor. *See Fosnight*, 41 F.4th at 921 (citation omitted). What matters at this point is what the complaint says, not the facts that

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Steelman v. Hirsch, 473 F.3d 124, 127–32 (4th Cir. 2007); *Solis v. Laurelbrook Sanitarium and Sch., Inc.*, 642 F.3d 518, 521–32 (Sixth Cir. 2011). Rulings about prisoners and detainees are distinguishable, because workers in those settings are taken out of the national economy and have their needs met, whereas the plaintiffs in this case have alleged a free-labor situation. *See Vanskike v. Peters*, 974 F.2d 806, 807–13 (7th Cir. 1992); *Harker v. State Use Indus.*, 990 F.2d 131, 133–36 (4th Cir. 1993); *Alvarado Guevara v. I.N.S.*, 902 F.2d 394, 395–97 (5th Cir. 1990); *Ndambi v. CoreCivic, Inc.*, 990 F.3d 369, 372–75 (4th Cir. 2021). The other cases cited by defendant are also distinguishable. *See Vaughn v. Phoenix House New York Inc.*, 957 F.3d 141, 146 (2d Cir. 2020) (complaint failed to allege an expectation of compensation and workers received significant benefits, including an opportunity to avoid a jail sentence); *Velarde v. GW GJ, Inc.*, 914 F.3d 779, 786–79 n.9 (2d Cir. 2019) (student received significant benefits including opportunity to complete a requirement for a license and complaint failed to allege expectation of compensation); *Doyle v. City of New York*, 91 F.Supp.3d 480, 487 (S.D.N.Y. 2015) (workers who performed community service intended to secure adjournment of criminal charges, not secure compensation); *Freeman v. Key Largo Volunteer Fire and Rescue Dep't, Inc.*, 494 Fed. App'x 940, 943–44 (11th Cir. 2012) (complaint alleged a clear distinction between volunteers and employees and failed to allege that worker was hired as employee).

were before other courts or what the Salvation Army may hope to prove later in the case.[9]

Considering the economic reality of the parties' relationship, there's a plausible allegation that Clancy, Love, and Mann were employed by the Salvation Army. Plaintiffs also adequately allege willful conduct. *See* [39] ¶¶ 7, 46, 73–74, 107. Willfulness is relevant to the statute of limitations for claims under the FLSA. *See* 29 U.S.C. § 255(a). Because the statute of limitations is an affirmative defense and evidence of willfulness (if any) is likely to be in defendant's possession, conclusory allegations of willful behavior are enough for now. *See* Fed. R. Civ. P. 8(c)(1); *Diaz v. E&K Cleaners, Inc.*, No. 16-CV-07952, 2018 WL 439120, at *4 (N.D. Ill. Jan. 16, 2018); *Guon v. John Q. Cook*, M.D. LLC, No. 16 C 3840, 2016 WL 6524948, at *3 (N.D. Ill. Nov. 3, 2016).[10] After discovery, however, plaintiffs must be prepared to offer evidence of a willful violation, which may be difficult to find given the flexible standard for what constitutes an employment relationship in the Seventh Circuit and the fact that persuasive authority (including *Williams*) supports the proposition that work performed as part of rehabilitation programming is not employment under the Act.

[9] The Salvation Army also asks that the court take notice of similar complaints filed in three other district courts. *See* [72] at 11 n.4. Even if the facts in those cases are similar to this one, however, 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. This case isn't like *Watkins*, because the complaints that defendant wants the court to take notice of weren't filed by Clancy, Love, and Mann. *Cf. Watkins v. United States*, 854 F.3d 947, 950 (7th Cir. 2017).

[10] *McLaughlin* discussed the standard for proving willful conduct, and didn't address what is required to allege willfulness. *See McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988). Insofar as *Butler* stands for the proposition that a conclusory allegation of willfulness is never enough to survive a motion to dismiss, I disagree for the reasons discussed above. *Butler v. East Lake Mgmt. Grp., Inc.*, No. 10 C 6652, 2013 WL 2112032, at *3 (N.D. Ill. May 15, 2013).

IV. Conclusion

Defendant's motion to dismiss, [61]; [63], is denied. Defendant shall answer the complaint by February 21, 2023. The stay on discovery is lifted. The parties shall file a status report on February 24, 2023, with a proposed case schedule.

ENTER:

Manish S. Shah
United States District Judge

Date: January 31, 2023