

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

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

Plaintiffs,

v.

THE SALVATION ARMY, an Illinois
nonprofit corporation,

Defendant.

Case No.: 1:22-cv-01250

Judge Manish S. Shah

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION AND FINAL CERTIFICATION OF THE COLLECTIVE**

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2	Defendant's Response to Plaintiffs' Second Set of Interrogatories
3	CENT_TSA_209090, October 2023 Program Instruction Manual
4	Excerpts from Transcript of Deposition of Randall Polsley, 30(6)(6) Designee for The Salvation Army
5	Excerpts from Transcript of Day 1 of Deposition of Neisha McNeal, 30(b)(6) Designee for The Salvation Army
6	Excerpts from Transcript of Deposition of Trushar Ray, 30(6)(6) Designee for The Salvation Army
7	Polsley Dep. Ex. 2, Adult Rehabilitation Centers Command Organization Chart
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I. INTRODUCTION

Defendant The Salvation Army runs over a dozen worksites that it calls Adult Rehabilitation Centers (“ARCs”). At every ARC across the Midwest, Defendant offers the same deal: The Salvation Army will provide vulnerable individuals, many of whom suffer from substance addiction, with shelter, food, clothing, small cash payments, and limited rehabilitation services—*but only if* they work 40 hours per week to prop up The Salvation Army’s [REDACTED] thrift store enterprise. For this labor, Defendant admittedly has not and will not pay participants the minimum wage. The justification? A re-brand of menial, manual labor—also known as work—as “work therapy.” As a result of farming out tasks to ARC participants instead of paying minimum wage for them to be completed, The Salvation Army gains a significant competitive advantage, to the tune of over \$50 million from over 11.8 million hours of work.

Plaintiffs’ Motion does not require drawing the line between charity and exploitation. It centers on whether ARC participants can proceed together in their pursuit to recover minimum wages for hours similarly worked. Defendant’s uniform policies and practices, implemented throughout its midwestern ARCs, establish the evidentiary basis to determine at once the core legal issue of employment status, as well as many common factual questions. This case is ideally suited to proceed as a class and collective action to recover federal and state minimum wages under the Fair Labor Standards Act and Michigan, Illinois, and Wisconsin law.

II. PROPOSED CLASS AND COLLECTIVE DEFINITIONS

Plaintiffs seek final certification of the following collective, pursuant to 29 U.S.C. § 216(b) (the “FLSA Collective”):

All persons enrolled in any Salvation Army Adult Rehabilitation Center from September 20, 2019 to September 11, 2023, who did not enroll in the program to comply with a court order or as a condition of probation, parole, or community supervision.

Dkt. 108 at 1-2; *see also* Dkt. 160, Second Am. Compl. (SAC), ¶¶ 8, 50. Following a stipulation by the parties, the Court has already conditionally certified the collective and ordered that notice be issued to putative collective members. Dkt. 108.

Plaintiffs also seek certification under Federal Rule of Civil Procedure 23 of three nearly-identically defined state law classes (the “Rule 23 Classes”):

All persons enrolled in any Salvation Army Adult Rehabilitation Center in [Illinois, Michigan, or Wisconsin], respectively between [March 9, 2019 (Illinois and Michigan) or March 9, 2020 (Wisconsin)] and the date of final judgment 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.

See SAC ¶ 59(a)-(c). The proposed class representatives are Michael Clancy (Illinois), Thomas Bryant and James Peters (Michigan), and Samuel Patton (Wisconsin).

III. STATEMENT OF FACTS

A. Defendant’s Policies Apply Across its Adult Rehabilitation Centers

The national nonprofit organization The Salvation Army is divided into four regional territories; the Defendant in this case, The Salvation Army, an Illinois nonprofit corporation,¹ is the Central Territory covering the Midwest. *See* Ex. 1 at 0001171 (May 2020 Handbook of Standards, Principles, and Policies (“Green Book”)).² From March 2019 to the present (the time period covered by this case), The Salvation Army has operated between 14 and 18 Adult Rehabilitation Centers (“ARCs”) across eleven states, including Michigan, Illinois, and Wisconsin. Ex. 2 at Interrog. 7. ARCs are six- to twelve-month residential rehabilitation programs. *See* Ex. 3 at 0209096 (October 2023 Program Instruction Manual (“Manual”)). But they are not

¹ For ease of reference, Plaintiffs refer throughout this brief to Defendant in this case as “Defendant,” “The Salvation Army,” or “TSA.” Plaintiffs specify where they refer to the national Salvation Army organization.

² All pincites to seven-digit numbers are Bates numbers with the prefix “CENT_TSA_,” indicating the document comes from one of Defendant’s productions.

like a typical rehabilitation program. Rather, The Salvation Army uses the ARC participants as the workforce for each ARC to operate multiple commercial thrift stores. *See infra* at 9-11.

In line with its “Army” moniker, Defendant maintains Territory-wide control over its ARCs under the superintendence of ARC Command (the entity) and the ARC Commander (the leader of that organization). *See* Ex. 4, 30(b)(6) Deposition of Randall Polsley (“Polsley Dep.”)³ 15:7-10, 26:24-27:13, 29:25-30:6; Ex. 7 (Command organization chart). Command sets policies that the ARCs must follow and oversees ARC programs to ensure “that they adhere to the policies, procedures and best practices that have been communicated by Command or established by Command.” Ex. 4, Polsley Dep. 30:7-9, 32:11-14; Ex. 5, McNeal Day 1 Dep. 31:13-22, 35:18-36:13. Command also controls the ARCs’ finances, limiting spending authority and requiring a “command finance board [to] review[] and approve[] [ARC] expenditures.” Polsley Dep. 30:21-31:3. The stated goal of this centralized control is uniformity: “Each beneficiary,⁴ no matter what ARC they are participating in within the Central Territory should be receiving the same experience.” Ex. 8 at 2:59 (statement by Director of Program McNeal). Ensuring program consistency is a core function of Command. Ex. 5, McNeal Day 1 Dep. 33:23-34:2.

Command drafts, updates, and approves Territory-wide ARC policies before disseminating them to the ARCs. Ex. 5, McNeal Day 1 Dep. 25:21-27:4. The primary policy documents governing programming for ARC participants, which apply to all ARCs across the Territory, are: (1) the Program Instruction Manual, which describes how program services are delivered through

³ Defendant designated three corporate representatives to testify: (1) Lieutenant Colonel (Lt. Col.) Randall Polsley, The Salvation Army’s ARC Commander from 2015 to June 2023; (2) Neisha McNeal, The Salvation Army’s Director of Program since 2016; and (3) Trushar Ray, The Salvation Army’s Director of Finance since 2023. Ex. 4, Polsley Dep. 15:7-10; Ex. 5, 30(b)(6) Deposition of Neisha McNeal Day 1 (“McNeal Day 1 Dep.”) 24:6-14; Ex. 6, 30(b)(6) Deposition of Trushar Ray (“Ray Dep.”) 18:6-19.

⁴ The Salvation Army refers to those who participate in ARCs as “beneficiaries.” Plaintiffs use the terms “ARC participants” or “participants.”

the ARCs; (2) the “Green Book,” which details policies and procedures for operating the ARCs; and (3) the Beneficiary Handbook, which provides ARC participants with the rules of the program—and requires them to initial it upon receipt.⁵ *See* Ex. 1 (May 2020 Green Book); Ex. 3 (Manual); Ex. 12 (June 2023 Beneficiary Handbook (“Handbook”)); Ex. 4, Polsley Dep. 42:23-43:9 (Green Book); *id.* at 46:10-14, 50:24-51:12 (Handbook); *id.* at 58:21-59:4 (Program Instruction Manual); *id.* at 54:3-5, 63:14-20; Ex. 5, McNeal Day 1 Dep. 48:2-51:2, 68:14-24.

B. By Policy, ARCs Require Participants to Work Full-Time for the Salvation Army Thrift Stores for In-Kind Benefits and Small Cash Payments

The Territory-wide policy documents discussed above establish the exchange inherent to attending Defendant’s ARCs. Defendant does not generally require ARC participants to pay out of pocket to attend an ARC. Ex. 1 at 0001231 (Green Book). While participants are enrolled, The Salvation Army provides them with dormitory style housing, including shared bathrooms; three meals per day served in a cafeteria; donated clothing; limited rehabilitation services; and a small weekly payment that Defendant calls a “gratuity.” Ex. 1 at 0001179, 0001235, 0001204, 0001197, 0001181 (Green Book); Ex. 28, 30(b)(6) Deposition of Neisha McNeal Day 2 (“McNeal Day 2 Dep.”) 169:6-13; Ex. 12 at 0002142, 0002153, 0002158 (Handbook). Plaintiffs discuss the in-kind

⁵ Most policy documents have been revised annually, including the Program Instruction Manual and Beneficiary Handbook. Ex. 5, McNeal Day 1 Dep. 64:21-65:6, 67:2-14, 68:2-13. Until the May 2020 Green Book took effect, the 2015 Green Book was operative. *Compare* Ex. 1 (May 2020) to Ex. 9 (May 2015). Prior to the most recent 2024 versions, the Beneficiary Handbook and Program Instruction Manual have been in effect during the class period and have included substantially similar provisions, except where otherwise noted in this brief. *Compare* June 2024 Beneficiary Handbook (Ex. 10) to Ex. 11 (May 2024), Ex. 12 (June 2023), Ex. 13 (March 2023), Ex. 14 (July 2022), Ex. 15 (May 2022), Ex. 16 (May 2021), Ex. 17 (July 2019), Ex. 18 (March 2019), Ex. 19 (February 2019). *Compare* May 2024 Program Instruction Manual (Ex. 20) to Ex. 3 (October 2023), Ex. 21 (May 2023), Ex. 22 (May 2022), Ex. 23 (October 2020), Ex. 24 (April 2017), and Ex. 25 (April 2017). Certain standalone policies have migrated into the Program Instruction Manual within the class period, *see* Ex. 5, McNeal Day 1 Dep. 118:1-12, including the 2022 Infractions and Corrective Action Policy, Ex. 27. *See* Ex. 153, Responses from The Salvation Army to Ltr. From Pls. at 2. This brief cites the version of each policy in effect at the time of the 30(b)(6) depositions. Plaintiffs indicate where any material variations in substance between the applicable policies.

benefits and gratuity in greater detail below. *See infra* at 22-24.

There is, however, a catch—and a big one. By policy, to receive the housing, food, and other benefits, The Salvation Army requires that all ARC participants perform full-time labor—which Defendant euphemistically refers to as “work therapy”—for The Salvation Army and its massive thrift store business. Even though the ARC participants’ work is menial and essential to The Salvation Army’s business, as a matter of uniform policy, Defendant does not pay minimum wages for this work because it refuses to classify ARC participants as employees. Ex. 4, Polsley Dep. 123:7-124:8. Defendant forces all ARC participants to sign the same agreement with the boilerplate disclaimers that it drafted: “I understand that work therapy is an essential part of my rehabilitation. I am expected to perform the tasks to which I am assigned to the best of my ability. Work therapy is never to be considered employment.” Ex. 69 at 0315560 (Program Policies and Agreements); *see also* Ex. 12 at 0002150, 0002164 (Handbook).

The Salvation Army’s work requirement is fundamental to the ARC program. It appears throughout Defendant’s policy documents, was confirmed by Defendant’s designated corporate representatives, and was admitted to in Defendant’s Answer in this case. *See* Ex. 12 at 0002164 (Handbook: “Work Therapy is a required component of your rehabilitation program.”); Ex. 3 at 0209094, 0209123, 0209145-55 (Manual) (same); Def.’s Answer to SAC (“Answer”), Dkt. 166 at 3, ¶ 2 (“ARC beneficiaries are generally expected to perform forty hours of work therapy per week.”); Ex. 4, Polsley Dep. 74:7-13 (participants must be able to work to enroll in all ARCs); *id.* at 73:3-8 (The Salvation Army expects 40 hours of work per week); Ex. 5, McNeal Day 1 Dep. 129:9-20 (participation in full-time work is required); *see also* Ex. 29, Ex. 26 (Central Territory Work Therapy policy statements); Ex. 4, Polsley Dep. 70:24-72:15 (statements apply to all ARCs).

Only people who satisfy the work requirement can enroll and remain in an ARC and receive the promised in-kind benefits and gratuity. *See* Ex. 4, Polsley Dep. 75:25-76:5 (every beneficiary must have a work therapy assignment). ARCs broadcast that they will not accept individuals who cannot perform full-time manual labor. *See, e.g.,* Ex. 30 (Milwaukee ARC admission requirements: “Must be able to work 40 hours a week on your feet. Cannot have any chronic or physical limitations.”); Ex. 31 (Fort Wayne application letter: “You also have to be physically able to participate in work therapy, lift 20 pounds or more, and walk stairs on a daily basis.”); Ex. 32 (email from Omaha ARC staff: “work therapy is not a sitting position . . . no beneficiary is accepted to our program if they refuse to understand what our work therapy policy is”). And the ARCs make clear that the benefits are contingent on the work. For example, the Flint ARC advertised that “[w]hile 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.” Ex. 33. The Indianapolis ARC’s orientation presentation explained to ARC participants that “[y]our participation provides shelter, sustenance, and therapy to you! work hard.” Ex. 34 at 0003120. And the Southeast Michigan ARC, in training materials for thrift store managers, stated that “[i]n exchange for shelter, food, clothing, spiritual guidance, and rehabilitative counseling; they participate in work therapy. . . . They are to be treated just like your employees.” Ex. 35 at 0173355.

After The Salvation Army accepts participants into the program, it can and does discharge them if they refuse to work or, because of illness or injury, become unable to work. Ex. 12 at 0002147 (Handbook: being “AWOL from the work therapy,” or “Leaving Work Therapy Assignment” “may lead to dismissal from the program”); Ex. 27 at 0014322 (2022 Infractions and Corrective Action Policy: being “AWOL at . . . work therapy” is grounds for an “immediate discharge”). The Territory policy was that participants who become ill to the point that it affected

their work therapy could be kicked out within a week. *See* Ex. 5, McNeal Dep. 134:12-135:14; *see also* Ex. 36 (email from Indianapolis ARC Administrator: ARC participant who was “unwilling to participate in work therapy” dismissed because he was sick for four days, including a hospital visit); Ex. 37 at 0247048 (email from Rockford ARC staff: participant told that going to the emergency room for back pain “would be a program exit”). Plaintiff Samuel Patton’s experience epitomizes this harsh reality. When he informed Defendant that he required surgery, staff responded: “This is not an old folks’ home. This is a business. And if you can’t work, you can’t be here.” Ex. 150, Patton Dep. 133:6-134:5. Defendant discharged Plaintiff Patton, forcing him onto the streets, homeless, while he awaited surgery and recovery. *Id.*⁶

The Salvation Army can also discharge from the program any ARC participants who can work but who do not meet its expectations for participation and productivity. The Beneficiary Handbook states that “[a]ll [work] assignments have reasonable expectations for participation. Meeting program expectations is essential. Inability or non-compliance could lead to discharge from the program.” Ex. 12 at 0002164; *see also* Ex. 3 at 0209155 (Manual: participants “are expected to . . . effectively participate in their work therapy assignment”); Ex. 43 at 0003030 (Flint ARC House Rules: “Low productivity in work therapy may result in disciplinary action.”). As Plaintiff Peters explained when asked “what happens if the beneficiary is not performing well at work therapy,” “[t]hey got to go.” Ex. 148, Peters Dep. 79:3-5; *see also* Ex. 44, Poynter Dep.

⁶ Other opt-in plaintiffs had similar experiences. Ex. 38, Sinotte Dep. 51:14-20 (“The program director said, ‘Well, if you can’t stand for 8 hours a day, I can’t let you in.’ And I said to him, ‘Well, if that’s the case, I’ll make it work somehow.’ So I knew I would be standing on my feet for 8 hours a day.”); Ex. 39, Graham Dep. 41:5-8 (Understood that “if he didn’t go to work, he would be considered AWOL and discharged from the program.”); Ex. 40, Walker Dep. 111:1-4 (Salvation Army employee told him, “if you can’t work, you can’t stay here”); Ex. 41, Gomez Dep. 99:3-12 (ARC director told him, “you can’t be here for whatever reason if you don’t want to work or you get sick”); Ex. 42, Fuselier Dep. 62:14-18 (“[F]rom the kitchen manager all the way down to the house guy, everybody in there said that if you do not do work therapy, you will be kicked out.”).

88:17-20 (“You had to get a set number of stuff done.”); Ex. 41, Gomez Dep. 162:10-12 (“They want you to pick up the quota. You have got to do a quota each day of clothing or whatever you are doing.”); Ex. 45, Nutt Dep. 92:12-93:20 (discussing Defendant’s quotas).

Moreover, The Salvation Army requires ARC participants to make up “within the same week” any hours missed for sickness, injury, medical appointments, or other reasons that Defendant deems legitimate. *See* Ex. 12 at 0002161 (Handbook); Ex. 3 at 0209155 (Manual). The Salvation Army enforces this policy to ensure “that no one is taking advantage of a situation.” Ex. 5, McNeal Day 1 Dep. 133:2-134:7. It mandates that ARC participants do everything possible not to miss any work shifts, instructing participants to attempt to make any legal or medical appointments and calls “around their work therapy schedule.” Ex. 46 at 0194971 (email from Grand Rapids ARC staff); *see also* Ex. 47 at 0194518 (Grand Rapids ARC case conference minutes: “[R]egular weekly medical appointments will not be accommodated.”). Defendant discourages allowing ARC participants to attend appointments during working hours so as to avoid work disruptions. *See* Ex. 48, Ex. 49 (emails from Kansas City ARC Administrator). Plaintiffs Love, Bryant, and Patton all had to tend to health or medical needs—ranging from routine appointments to emergency health conditions—for which their ARCs required them to work on a Saturday or otherwise make up the time. Ex. 50, Clancy Decl. ¶ 8; Ex. 51, Love Decl. ¶ 8; Ex. 52, Peters Decl. ¶ 8; Ex. 53, Bryant Decl. ¶ 8; Ex. 54, Patton Decl. ¶ 8; *see also* Ex. 55 (email from Chicago ARC staff: requiring participants to make up time missed due to a concussion and an emergency appointment to drain fluid from knee).⁷ ARC participants who did not comply with the

⁷ Other participants confirmed that they had to make up time missed from work. *E.g.*, Ex. 42, Fuselier Dep. 31:1-3; Ex. 56, Barber Dep. 112:2-11; Ex. 45, Nutt Dep. 77:3-11; Ex. 57, Townsend Dep. 66:9-17; Ex. 58, McClain Dep. 119:17-21; Ex. 59, Tisserat Dep. 102:5-9; Ex. 60, Ellis Dep. 94:9-13; *see also* Ex. 61, Crisel Dep. 71:19-73:6 (he had to make up work from when he detoxed upon program entry).

“make-up requirements” risked “disciplinary action,” including discharge from the program. Ex. 20 at 0315490 (2024 Manual).

The Named Plaintiffs⁸ understood that The Salvation Army would provide them with shelter, food, and other in-kind benefits *only* if they were willing and able to work. *See, e.g.*, Ex. 50, Clancy Decl. ¶ 6; Ex. 52, Peters Decl. ¶ 6; Ex. 53, Bryant Decl. ¶ 6; Ex. 51, Love Decl. ¶ 6; Ex. 54, Patton Decl. ¶ 6. Other participants similarly understood the deal, often because ARC staff made the terms explicit. *See, e.g.*, Ex. 60, Ellis Dep. 35:20-36:1, 36:8-16 (counselor explained work therapy was in exchange for room and board); Ex. 62, Bida Dep. 100:20-101:20 (ARC resident manager explained participants worked to pay rent); Ex. 38, Sinotte Dep. 72:19-73:9 (Program director explained that room and board was compensation for work therapy); Ex. 61, Crisel Dep. 64:13-17 (ARC staff told him he needed to pay with work therapy to live at the ARC).⁹

C. By Common Policy and Practice, The Salvation Army Makes ARC Participants Perform Menial Labor for its Network of Thrift Stores

All ARC participants’ work bears the same hallmark features. The labor is in support of The Salvation Army’s chain of thrift stores, menial, and highly controlled.

⁸ For the dates and locations of the Named Plaintiffs’ voluntary (*i.e.*, not as a condition of a court order, probation parole, or community supervision) enrollments in Defendant’s ARCs during the proposed class period, see Ex. 50, Clancy Decl. ¶ 3 (Michael Clancy attended an ARC in Chicago, IL from 2019 to 2020); Ex. 51, Love Decl. ¶ 3 (Stuart Love attended an ARC in Kansas City, MO from 2019 to 2020 and in 2021); Ex. 52, Peters Decl. ¶ 3 (James Peters attended an ARC in Detroit, MI in 2019); Ex. 53, Bryant Decl. ¶ 3 (Thomas Bryant attended an ARC in Grand Rapids, MI in 2019 and 2020); and Ex. 54, Patton Decl. ¶ 3 (Samuel Patton attended an ARC in Milwaukee, WI from 2020 to 2021 and from 2022 to 2023).

⁹ *See also* Ex. 42, Fuselier Dep. 26:6-13 (“[T]he deal I had with Salvation Army was to go to work therapy and I would get room and board and fed and treatment and gratuity.”); Ex. 41, Gomez Dep. 107:21-22-22 (“[T]hat’s why they make us work, in exchange for everything they offer in the program.”); Ex. 40, Walker Dep. 159:9-18 (“I had to work to stay there.”); Ex. 63, Peer Dep. 62:2-5, 99:3-6 (room and board were in exchange for work); Ex. 44, Poynter Dep. 116:14-18 (same); Ex. 56, Barber Dep. 134:6-135:5 (same).

1. ARC Participants Perform Work for The Salvation Army's Thrift Store Business

Participant assignments all entail nonvocational drudgery that support Salvation Army thrift stores. The number of Defendant's stores ranged from a high of 181 in 2018 to a low of 134 in 2023. Ex. 64 (Command Review Summary). These stores sell donated items, including clothing, jewelry, shoes, sporting goods, and recreational supplies, to generate income for The Salvation Army. Ex. 4, Polsley Dep. 133:9-16, 134:7-9, 136:18-137:6, 156:1-157:5, 148:17-149:5.

Common tasks performed by ARC participants for the thrift store business include sorting, cleaning, hanging, tagging, and otherwise preparing donations for sale; testing electronics; loading donations from donation sites onto Salvation Army trucks and unloading at the warehouse or stores; cleaning areas of the warehouse and donation trucks; loading the machine that bales donations; working on the trucks that transport goods to Salvation Army stores; and working in the stores themselves. Ex. 5, McNeal Day 1 Dep. 140:13-24, 143:11-144:6, 146:24-151:21, 154:10-23, 160:8-11, 161:21-162:3; Ex. 4, Polsley Dep. 145:11-148:16; Answer, Dkt. 166, at 2; *see also* Ex. 54, Patton Decl. ¶ 13 (hanging and sorting clothing); Ex. 51, Love Decl. ¶ 13 (same); Ex. 50, Clancy Decl. ¶ 13(a), (c) (hanging clothing, sorting bric-a-brac, and loading donations onto a truck); Ex. 52, Peters Decl. ¶ 13 (loading tables and large bins with donations); Ex. 53, Bryant Decl. ¶ 13 (loading donations and hanging clothing). Salvation Army policy dictates that all ARC participants initially work in the thrift-store warehouse. Ex. 3 at 0209165 (Manual). Other, less common types of tasks are answering phones and directing visitors at the front desk of the ARC, cooking for other participants, and providing security, maintenance or janitorial services at the building where ARC participants sleep and eat. *See, e.g.*, Ex. 5, McNeal Day 1 Dep. 144:11-146:20, 156:4-6, 162:7-11; *see also* Ex. 50, Clancy Decl. ¶ 13(b); Ex. 51, Love Decl. ¶ 13(e); Ex. 52, Peters Decl. ¶ 13; Ex. 53, Bryant Decl. ¶ 13. All participant assignments are essential for operating The Salvation Army's thrift store business. Without them, Defendant could not sustain

its thrift stores or offer the in-kind benefits that induce ARC participants to enroll and keep the workforce supply. *See infra* at 12-14.

In addition to being tedious and unskilled, the labor The Salvation Army requires is frequently physically demanding and, at times, even poses risks of injury. For example, Plaintiff Bryant described opening bags of donated clothing that contained feces and used needles. Ex. 53, Bryant Decl. ¶ 16. Despite requests, Defendant refused to provide him and others with protective gear. *Id.* Other participants suffered serious on-the-job injuries, like broken ribs or a punctured lung from a shard of glass. *E.g.*, Ex. 65; Ex. 66 at 0153211-12; *see also* Ex. 67, Sisamouth Dep. 112:9-113:20; 135:10-18 (fell off truck while picking up furniture donated to ARC, causing injury to his leg that required medical attention and stitches, and returned to work the next day).

2. *The Salvation Army Controls Every Aspect of ARC Participants' Work for Its Thrift Store Businesses*

The Salvation Army exercises total control over ARC participants' work. It assigns ARC participants to specific work positions. Ex. 4, Polsley Dep. 84:4-6. Participants cannot change assignments without approval from Defendant. *Id.* 87:17-88:1. Once assigned to jobs, Salvation Army supervisors evaluate participants' work performance against "goals and objectives" set by The Salvation Army. *See* Ex. 4, Polsley Dep. 98:23-99:8, 120:10-21. If participants are not moving fast enough to meet productivity targets, acknowledged employees are expected to, and do, make the participants speed up. *See, e.g.*, Ex. 68 (email from store manager to other employees specifying that "[i]f [ARC participants] are not [moving at a quick pace] then address it!"); Ex. 146, Clancy Dep. 151:12-22 (employees would "scream" at participants "to hang more clothes"); Ex. 150, Patton Dep. 130:3-21 (supervisors would "criticize you because they want you to work faster"). As discussed above, Defendant enforces these expectations by threatening to discharge insufficiently productive participants. *See supra* at 7-8.

According to written directives and carried out in practice, The Salvation Army also exercises complete control over participants' rigidly structured workdays. Defendant sets forth the requirements for participants' weekly programming, with weekday daytime hours reserved for work therapy. Ex. 3 at 0209196 (Manual: The Salvation Army expects beneficiaries to "engage[] in work therapy all day, and then work on their recovery program in the evenings."). Defendant dictates when participants start their shift, stop their shift, and take their breaks. Ex. 4, Polsley Dep. 120:1-9. Participants must adhere to a dress code while they work. *Id.* at 120:23-121:10.

D. The Salvation Army Gains an Advantage Over Its Competitors by Using ARC Participants' Labor but Not Paying Them Minimum Wage

There is a critical reason why Defendant's work requirement is at the center of the ARC program: ARC participants are essential to The Salvation Army's multi-million-dollar thrift store empire and save The Salvation Army millions of dollars. As the former ARC Commander testified, "clearly, yes, [the ARC participants] participate in the . . . production of the product" that The Salvation Army sells in its thrift stores. Ex. 4, Polsley Dep. 158:5-159:2. From 2017 to 2023, ARC participants worked for The Salvation Army for over 11.8 million hours. Ex. 70, George Expert Report at 15. According to The Salvation Army's own statistics, from 2020 to 2023, ARC participants comprised 26% of the *entire* workforce of those who worked within the ARC facilities *and* in the thrift store businesses. Ex. 151, Woo Decl., ¶¶ 7-11. At many of the ARCs, ARC participants made up more than 40% of the workforce and in some instances outnumbered acknowledged employees there. *Id.* ¶ 11 (57% of Indianapolis ARC workforce were participants).

And the thrift store business for which the ARC participants work is enormous. The thrift stores in the Central Territory generated over \$[REDACTED] in revenue for The Salvation Army from October 1, 2017 to September 30, 2023—averaging \$[REDACTED] per year. Ex. 64 (Command Review Summary). As discussed below, Defendant recognizes that it gains a financial advantage

from using ARC participants' labor, attempts to use their labor most efficiently for its business purposes, and takes steps to ensure the flow of ARC participants continues.

I. Not Classifying Participants as Employees Saves The Salvation Army Enormous Labor Costs

Obviously, not paying one's workers saves a business money. The Salvation Army has repeatedly acknowledged that using ARC participants to perform work, rather than paid employees, is a cost-saving measure. The Salvation Army ARC Command General Secretary noted that using participants in the stores would "allow [an ARC] . . . to . . . bring down your paid staff." Ex. 73 at 0295969; *see also* Ex. 71 (email from Rockford ARC Administrator: "Any 'job' [employees] were doing can easily be done by beneficiaries. And should be."); Ex. 72 (email from Chicago ARC Administrator to Rockford ARC staff: advising to hire someone if funds available or otherwise have an ARC participant do the work). One ARC was able to "trim payroll and cost in the kitchen" by "moving into a process that utilizes more of our beneficiaries with less [*sic*] employees." Ex. 74 at 0050551. Another explained 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." Ex. 75. Yet another ARC discussed replacing paid employees in its call center with ARC participants because they could do the job just as well for less cost. Ex. 76 at 0144534.

Defendant's financial data, as analyzed by Plaintiffs' expert, confirms the savings from this practice were significant. During fiscal years 2018 to 2023, The Salvation Army saved more than \$50 million by using the labor of ARC participants but not classifying them as employees or paying them minimum wage. Ex. 70, George Expert Report at 5. To calculate this figure, Plaintiffs' expert compared the \$ [REDACTED] that Defendant would have had to pay if it employed the ARC participants (*e.g.*, applicable minimum wages, FICA taxes, worker's compensation insurance, and health insurance) to the \$ [REDACTED] that Defendant spent to operate and administer the ARC

program, including the costs of providing housing, food, and other services to ARC participants. Ex. 70, George Expert Report at 11, 19.

2. *The Salvation Army's Unlawful Cost Savings Provide an Unfair Competitive Advantage*

Defendant's policy of not paying ARC participants minimum wage provides it a competitive advantage over similar organizations, such as Goodwill Industries. Like The Salvation Army, Goodwill is a nonprofit organization that finances much of its charitable activities with revenue from donated goods it sells at its retail stores. See Ex. 77, Breeanna Bongayan Pea Decl. ¶¶ 3-6; Ex. 78, Nicol Britten Decl. ¶¶ 3-6. The Salvation Army and Goodwill are fierce competitors in the thrift store market. The Salvation Army's national advisory board, which is made up of volunteers from the business community, found that [REDACTED]

[REDACTED] Ex. 79 at 0068214-15; Ex. 80 at 0068313-18 (describing [REDACTED]). The same advisory board, in its report to the national Salvation Army recommending changes to make the ARCs more competitive, wrote that [REDACTED] Ex. 81 at 0068280; see also Ex. 82 at 0271361 (2017 Indianapolis Snap Shot Presentation to Command: blaming the year end "lack of financial success" on "the oversaturation of Goodwill stores in [its] market area. Goodwill has five times as many stores as [The Salvation Army has] and they spend more than \$2 million annually in advertising."). Goodwill, however, pays all employees in its retail store business at least the applicable federal and state minimum wage. Ex. 77, Breeanna Bongayan Pea Decl. ¶¶ 7-8; Ex. 78, Nicol Britten Decl. ¶¶ 8-10. The Salvation Army, by failing to comply with minimum wage laws, therefore gains an advantage over FLSA-compliant businesses like Goodwill.

3. *The Salvation Army Takes Steps to Maintain Its Supply of an Underpaid Workforce*

Given that participants represent one in four members of the ARC workforce, The Salvation Army takes into account the labor they provide when deciding how to staff its thrift store operation. The Salvation Army assigns participants to particular positions based on the needs of the ARC and thrift store business, not based on any individualized inquiry into what would be best for the ARC participants. As an administrator at the Rockford ARC wrote, “I’m going to assign people based on the needs of the center and the staff members I confer with . . . Wherever it is, they’re going. They agreed to this when they came in the program.” Ex. 83; *see also* Ex. 84 (store manager explained an injured ARC participant could not choose his work assignment and “needed to work where he was needed.”); Ex. 85 (email from Des Moines ARC Director of Operations: asking for additional beneficiary “support” for the “store that typically makes the most money for us”); Ex. 86 (email from Grand Rapids Director of Operations to staff member: “[I]f we have 4 [participants] per store per day, that is sufficient for the stores [*sic*] needs.”); Ex. 87 at 0013461 (Des Moines staff meeting notes: “The store and dock need a minimum of 8 beneficiaries”); Ex. 88 at 0194508 (email from Secretary for Leadership and Program Development: noting that a “store can be stocked primarily by the beneficiaries”). The Salvation Army also considers the availability of ARC participants when identifying potential new locations for stores. Ex. 89 (Command Financial Board Review proposal: discussing finding a location for a new store that has “[c]lose access to [b]eneficiaries who will be able to load and move the product”). And The Salvation Army has to plan for ARC participants’ absences and departures from the program just like it would for any other employee. *See, e.g.*, Ex. 90 at 0014484 (email from Omaha ARC’s Resident Manager: a participant “checked out of the program today so we needed an immediate replacement for him for his weekend shifts”); Ex. 91 (email from Des Moines ARC Director of

Rehabilitation Services: when a specific beneficiary “graduates store 8 will need someone”); Ex. 92 (email from Kansas City ARC Men’s Resident Manager: planning for replacements for participants with day passes). In other words, The Salvation Army’s staff view ARC participants and paid employees as essentially interchangeable.

Because it relies on ARC participants to operate its thrift store business, The Salvation Army focuses on ensuring that the ARCs keep enrollment high. *See, e.g.*, Ex. 93 at 0032040-41 (email from Rockford ARC Administrator: operating production “at 100%, or as close to it as possible. . . can’t happen with a 50% house count”); Ex. 94 (NW Indiana Annual Center Review – Staff Notes and Summary: noting the necessary “house count to fulfill W[ork]T[herapy] Assignments”); Ex. 95 (email from River Valley ARC Administrator: informing ARC leadership that because the ARC was at 50% capacity, it “will not have enough beneficiaries to send them to the . . . store like we had been doing,” which “will either mean we hire additional workers, or recognize that we will not be able to produce at as high a level as we were before”). Conversely, if ARCs have more participants than they can effectively deploy for the thrift store business, ARCs sometimes close their doors to new admissions. *See, e.g.*, Ex. 96 (email from Kansas City ARC Administrator: indicating that ARC had emailed head of the ARC program at headquarters to “let her know the 50-60 beneficiaries gives us a full work therapy and additional beneficiaries to get to 90 would just be 1200 hours of guys standing around in the warehouse”).

The Salvation Army conscripts its acknowledged employee supervisors to ensure ARC participants’ productivity. Command conducts regular Command Reviews of each ARC; these reviews look, in part, at whether ARCs are meeting “[REDACTED],” which in turn rest on the productivity of the ARC participants. Ex. 97 (2019 Waukegan ARC Command Review); Ex. 98 at 0314139 (2022 Chicago ARC Command Review); Ex. 4, Polsley Dep. 103:9-15; 104:10-11;

104:14-106:9 (each ARC is evaluated on metrics such as whether they assign “daily production goals” in areas staffed by ARC participants). And Salvation Army-acknowledged employees are evaluated and receive bonuses based on ARC participants’ ability to meet production goals. Ex. 4, Polsley Dep. 198:9-13, 200:16-21; Ex. 6, Ray Dep. 200:14-20; *see also* Ex. 150, Patton Dep. 130:3-21 (recounting that and some supervisors had the attitude, “I’m here for the check, and I like my bonuses”).

4. ARC Participants and Paid Employees Perform the Same Tasks

ARC participants and acknowledged employees (who receive at least the minimum wage) often perform the same job functions, confirming that participants’ work displaces paid labor. From 2005 to 2022, The Salvation Army’s work therapy assignment descriptions and job descriptions for its acknowledged employees reflected substantial overlap between those roles. Ex. 152 (Central Territory Employee and Work Therapy Job Descriptions, 2005); Ex. 4, Polsley Dep. 88:8-90:14. For instance, both “Certified Collection Center Attendant” employees and ARC participants received and documented donations, provided receipts, and interacted with donors. Ex. 152 at 0007899, 0007931. Likewise, employees in “Thrift Store Helper/Janitor” positions and ARC participants cleaned the thrift stores, loaded donations, and maintained customer relations. Ex. 152 at 0007909, 0007943. When experiencing staffing constraints, The Salvation Army regularly used ARC participants to fill the gaps. *See, e.g.*, Ex. 99 at 0012322-23 (April 2022 Advisory Council meeting notes: Regional Manager brought “group of beneficiaries” to thrift stores that were “[s]uffering from lack of employees” and “very short staffed”); Ex. 100 at 0144866 (email from Omaha ARC staff: needing “a plan on how to get 4 beneficiaries” to a store because of severe short staffing); Ex. 101 at 0031880 (email from Grand Rapids ARC staff: ARC participant covered paid employee shift). Participants confirmed that they worked alongside paid employees while completing identical or similar tasks. *See, e.g.*, Ex. 51, Love Decl. ¶ 14; Ex. 53,

Bryant Decl. ¶ 14; *see also* Ex. 56, Barber Dep. 108:8-12 (participants were just extra employees in the thrift stores).

But when ARC programs began to get hit with wage and hour lawsuits, Defendant wanted to revisit the common practice of ARC participants “completing any tasks that a paid person would.” Ex. 102 at 0277078 (in May 2021, McNeal and another high-ranking Command official expressing they are “not confident” different work is being done, a concern given minimum wage litigation in the Western Territory). The Salvation Army sought to separate, at least in theory, the job duties of acknowledged employees and ARC participants—expressly because of litigation. *See, e.g.*, Ex. 103 at 0004555 (in December 2021, Command leadership discouraged the practice of ARC participants filling in where there are employment gaps because “[a]ll four territories are in litigation over this very issue”); Ex. 104 at 0270262 (in July 2022, advising that employee and ARC participants must have different tasks to avoid “issues with FLSA”); Ex. 105 at 0036987 (in October 2022, in light of litigation, the ARC “no longer can have an employee or resident doing the same task or anything that looks similar to the same task”). Defendant thus issued new job descriptions in May 2022. Ex. 106.

In practice, though, overlapping work or “crossover” between participants and acknowledged employees continues. *See, e.g.*, Ex. 107 at 0252124 (in May 2023, seeking to hire employees to do work that previously fell under a work therapy assignment); Ex. 108 (in February 2023, McNeal made “a legal statement” that Defendant has been revising work therapy and job assignments to avoid “blurring lines”); Ex. 109 at 0026779 (December 2022 email from McNeal to Central Territory leadership: “So essentially these positions are just the same as the former W[ork]T[herapy] assignments that the beneficiaries were completing, with some additional responsibilities-since they are paid staff.”); *see also* Ex. 110 (December 2022 email from McNeal:

ARC participant was hired as an employee because “he was already working in that role as a beneficiary”). Participants’ lived experiences confirm that “crossover” remains. *See, e.g.*, Ex. 45, Nutt Dep. 86:22-24 (Salvation Army employees supervised or did same work as participants); Ex. 40, Walker Dep. 218:6-12 (“[W]e were working along . . . right beside other employees . . . doing their jobs.”); *see also* Ex. 41, Gomez Dep. 152:21-153:11 (participants were in all the positions). That Defendant’s change was just a facade is unsurprising, given the enormous financial consequences of altering The Salvation Army’s business model.

E. Defendant Recruits Vulnerable Individuals with Promises of Room, Board, and “Rehabilitation,” But Requires Work with No Therapeutic Benefit

The Salvation Army advertises its ARCs to vulnerable individuals, often struggling with substance use, with the promise of housing, food, rehabilitation, and other in-kind benefits. In reality, though, the “work therapy” that The Salvation Army offers is just work without any proven therapeutic benefit.

1. The Salvation Army Targets Vulnerable Individuals, Particularly Those Struggling with Addiction

One might ask, who are the people who sign up for this deal with Defendant? Those who enroll in ARCs are often “coming to [The Salvation Army] with nothing.” Ex. 5, McNeal Day 1 Dep. 267:17-18. From 2018 to 2023, The Salvation Army recorded that, on average, over █% of ARC participants had a “█” related to █. *See* Ex. 111; Ex. 112; Ex. 113; Ex. 114; Ex. 115; Ex. 116; Ex. 117, Expert Report of Margaret Jarvis, MD (“Jarvis Report”) at 3. All of the named plaintiffs testified that they attended an ARC at least in part because they had a substance use disorder. *See* Ex. 146, Clancy Dep. 99:11-14; 100:9-11; Ex. 147, Love Dep. 25:1-4; Ex. 148, Peters Dep. 95:15-18; Ex. 149, Bryant Dep. 86:15-22, 94:5-14, 99:2-9; Ex. 150, Patton Dep. 51:21-24. Many participants are █. *See, e.g.*, Ex. 118. Some are referred to the ARCs pursuant to a court order or as a condition of probation, parole, or community

supervision (although these individuals are not part of the putative classes and collective).¹⁰ *See, e.g.*, Ex. 5, McNeal Day 1 Dep. 88:15-22. A common thread is that people come to the ARCs because they find themselves faced with little meaningful choice.

These demographics are not by accident. The Salvation Army recruits vulnerable populations, specifically those with substance use disorders, to the ARCs. The Central Territory's ARC website states "[i]f you or someone you know is struggling with substance abuse, we can help." Adult Rehabilitation Centers, The Salvation Army USA Central Territory, <https://perma.cc/3Z3F-Z6ZG> (last visited Mar. 28, 2025). Specific ARCs similarly hold themselves out as providing help for people with substance use disorders. *See, e.g.*, Ex. 119 at 0023034 (St. Louis ARC brochure: marketing that The Salvation Army's "12 step, abstinence based approach is designed to . . . help you learn to s[t]ay clean"); Ex. 33 (Flint ARC brochure: offering that "[i]f you or someone you know has trouble coping with a difficult situation stemming from substance abuse, we can help").

The Salvation Army targets people with substance use disorders and markets its ARCs as "rehabilitation centers," even though Defendant admits its programs do not offer clinical rehabilitation for any conditions, including substance use disorders. *See* Ex. 4, Polsley Dep. 235:25 (ARCs "don't address substance use disorders"); *see also* Ex. 120 (email from Kansas City ARC staff discussing program advertisement: "We are not a treatment center so we cannot use that word."). Nor could they claim otherwise, as ARCs are not licensed or accredited facilities. Ex. 4, Polsley Dep. 191:25-192:3; *see also id.* at 192:6-21 (ARCs have not sought licensure to be a "clinical or therapeutic program" to protect the organization's religious freedom); Ex. 121 at

¹⁰ These individuals are easily identifiable, as Defendant, by policy, requires staff to note in its electronic records system when people are referred to an ARC from the justice system. Ex. 5, McNeal Day 1 Dep. 88:10-22; 96:12-97:7; Ex. 20 at 0315472, 0315474 (Manual).

0298900 (letter from Illinois Department of Human Services: ARC could not hold itself out as a substance use treatment provider due to lack of clinical licensure).

2. *“Work Therapy” Is Not Therapeutic*

Defendant purports that its “work therapy” requirement is part of the rehabilitation services it offers to ARC participants. However, it has never assessed whether its full-time work requirement helps ARC participants address their substance use disorders or provides any therapeutic value. Ex. 4, Polsley Dep. 235:21-237:16. Defendant has never studied: the optimal number of hours for participants in a work therapy program; the optimal assignments to assign to individuals in a work therapy program; whether work therapy is better than a job that pays at least minimum wage to address substance use disorders; or whether work therapy is better than time spent on education and addressing addiction or substance abuse disorders. *Id.* at 238:14-239:21. Defendant testified that it was also not aware of any studies performed by any other entities concluding that work was an effective treatment or therapy for substance use disorder. *Id.* at 240:8-23. And Defendant admits that ARC participants “probably could” get all of the purported benefits of its work therapy from any job that paid minimum wage. *Id.* at 126:24-127:8.

Plaintiffs’ expert Dr. Margaret Jarvis, MD, a nationally recognized expert in the field of addiction medicine, reviewed The Salvation Army’s work therapy program. She concluded that work therapy is “not an effective treatment or therapy in addressing substance use disorders.” Ex. 117, Jarvis Report at 14. Dr. Jarvis opined that, while there are many evidence-based treatments for substance use disorders, work therapy is not one of them and “provides ARC participants with no evidence-based therapeutic benefits.” *Id.* at 6-11. Moreover, The Salvation Army’s punitive work therapy program does not meet guidelines for work set by the leading organization for recovery residences, including that all paid work arrangements are voluntary and that residents do not suffer consequences for declining work. *Id.* at 11-13; Ex. 130, Rebuttal Report of Margaret

Jarvis, MD (“Jarvis Rebuttal”) at 2-12.

3. *To Entice Participants to Enroll, Defendant Provides Room, Board, Clothing, Rehabilitation Services, and Small Amounts of Money*

One might ask, what, then, draws this community to the ARCs? Although The Salvation Army does not pay minimum wages for the work, it provides participants with in-kind benefits conditioned on continued participation in the program: housing, food, limited rehabilitative services, and gratuity. *See* Ex. 3 at 0209096, 0209132-35 (Manual).

At all ARCs, housing is dormitory style, with up to 34 people sleeping in one room and all participants sharing bathrooms. Ex. 28, McNeal Day 2 Dep. 169:6-19; Ex. 129 (Des Moines ARC dorm assignments). Defendant provides three meals¹¹ per day in a cafeteria,¹² limited clothing items from donations, and a one-month supply of toiletries. Ex. 5, McNeal Day 1 Dep. 267:24-269:9; Ex. 28, McNeal Day 2 Dep. 173:2-5.

In addition to room and board, The Salvation Army gives all ARC participants small payments each week that it calls a gratuity. The gratuity is part cash and part credits to the canteen—an ARC-run store at each ARC that sells hygiene products and snacks. Ex. 3 at 209133-34 (Manual). Participants initially receive a gratuity of only a few dollars. *See, e.g.*, Ex. 50, Clancy Decl. ¶ 11; Ex. 51, Love Decl. ¶ 11; Ex. 52, Peters Decl. ¶ 11; Ex. 53, Bryant Decl. ¶ 11; Ex. 54, Patton Decl. ¶ 11. While the starting amount and caps fluctuated slightly over the putative class period, the maximum gratuity has never exceeded \$35 per week. *See* Ex. 12 at

¹¹ Participants have testified that the meals, which are often cooked from donated food items, were inadequate for human consumption. *See, e.g.*, Ex. 150, Patton Dep. 152:16-153:1 (food was donated and freezer burned; “you wouldn’t want to feed [it] to your animals”); Ex. 56, Barber Dep. 147:10-148:9 (food was expired and unhealthy).

¹² Participants testified that The Salvation Army would not accommodate late arrivals to mealtimes, even where participants were late because they were working. *See, e.g.*, Ex. 146, Clancy Dep. 199:17-200:6 (truck helpers often did not return from work until after dinner was served); Ex. 147, Love Dep. 90:15-21 (“[I]f you were 15 minutes late you might miss the meal.”).

0002153 (Handbook: gratuity ranges from \$3-\$25); Ex. 10 at 0315576 (June 2024 Handbook: gratuity ranges from \$13-\$35). While The Salvation Army insists that gratuity is not compensation for work but rather to cover “small personal needs,” Defendant is also unequivocal that gratuity is a carrot, meant to incentivize participants to perform well and stay on the job for another week of the program. Ex. 3 at 0209132 (Manual). (“Because the weekly level depends on the Beneficiary’s participation and progress in the program, it acts as a motivation and tracks program progress.”); Ex. 149, Bryant Dep. 57:12-58:3 (“Gratuity is a form of payment. Q. For what? [objection omitted] A. For work therapy. Q. And . . . a TSA employee told you gratuity was payment for work therapy? A. Yes.”); *id.* at 190:18-191:4 (the gratuity “was all a part of the agreement, the deal to be there”); Ex. 147, Love Dep. 50:3-12 (“Q Why did you think that the \$3 to \$21 you were paid each week were wages? A Because it was contingent upon me working. . . . Q And so you understood the gratuity to be your pay for doing work therapy? A Yes.”).¹³ Command also instructs that gratuity is always provided on Friday. Ex. 3 at 0290133 (Manual), akin to an end-of-the-week payday.

Defendant also offers limited rehabilitation services and religious activities. The Salvation Army mandates that ARC participants attend religious activities, including daily devotions, chapel, and Bible study (approximately 2 hours per week); three classes a week (approximately 5 hours per week); and two 12-step meetings per week (2 hours per week). Ex. 153; Ex. 28, McNeal Day 2 Dep. 129:1-130:1, 143:21-145:12; 131:16-132:19; 133:23-138:24. Defendant also is supposed to provide one-hour per week of “spiritual counseling,” from unlicensed counselors. *See id.* at 66:10-15, 79:3-13 (one hour duration, no license requirement). In total, the non-work aspects of

¹³ *See also* Ex. 45, Nutt Dep. 80:17-19; 81:21-82:3 (gratuity was “payment for work”); Lewis Dep. 94:25-95:15 (“You don’t get an actual paycheck, but you do receive a voucher, which was only three dollars for the week that . . . you worked. So imagine you working, sixty, seventy hours a week, but you only getting three dollars.”); Ex. 41, Gomez Dep. 98:17-19 (“They were paying us . . . our room and board and everything else and the coins in exchange for being there.”); Ex. 58, McClain Dep. 122:7-22 (testifying ARC staff told participants they were receiving a “raise” from \$5 to \$10 in gratuity).

the program take up, if all are actually conducted, approximately 10 hours per week—a quarter of the time spent working. *See, e.g.*, Ex. 54, Patton Decl. ¶ 17; Ex. 52, Peters Decl. ¶ 17; Ex. 51, Love Decl. ¶ 17; Ex. 50, Clancy Decl. ¶ 17.

To provide these in-kind benefits and services to participants, The Salvation Army spent only \$ [REDACTED] on average per year. Ex. 64 (Command Review Summary); Ex. 6, Ray Dep. 59:11-60:8. In contrast, The Salvation Army spent an average of \$ [REDACTED] per year to operate its more than 134 stores, including expenses for store mortgages and rents, vehicles, insurance, employee wages, and repairs. Ex. 64 (Command Review Summary); Ex. 6, Ray Dep. 60:13-62:9.

4. The Salvation Army Ensures Participants Depend on It for Housing and Food

Defendant ensures, through its policies, that participants remain dependent on The Salvation Army the food and housing it provides. For the first 30 days of the program, Defendant does not allow participants to leave the physical ARC location. Ex. 12 at 0002145, 0002161 (Handbook); Ex. 3 at 0209136 (Manual). For the duration of the program, Defendant forbids participants from working for any person or entity besides The Salvation Army. Ex. 3 at 0209155 (Manual); Ex. 12 at 0002150 (Handbook). By policy, ARC participants cannot keep on hand more than \$60 in cash. *See* Ex. 12 at 0002152 (Handbook). Defendant does not even allow participants to drive any vehicles, including their own. Ex. 12 at 0002163 (Handbook). Put simply, participants have no possible sources of income while in the ARC, and Defendant limits their movement. As a result, they must rely on The Salvation Army to provide for their needs, including housing and food. In addition, many ARC participants who were forced to turn over their food stamp benefits to The Salvation Army struggle to regain access to them upon their departure. *See, e.g.*, Ex. 146, Clancy Dep. 183:10-20 (forced to get and turn over food stamps); Ex. 147, Love Dep. 112:20-113:6 (signed over food stamps); Ex. 150, Patton Dep. 103:25-105:13 (same); Ex. 149, Bryant Dep. 134:12-135:8 (food stamps are a requirement to be in program); Ex. 62, Bida Dep.

48:11-49:21 (never able to get food stamps back after leaving program); Ex. 44, Poynter Dep. 94:3-17 (still trying to get disability and food stamp benefits back). These policies also make it difficult for participants to succeed when they leave the ARC, as participants have no means to save money. The Salvation Army exacerbates this problem by forbidding ARC participants from even searching for a post-ARC job until they reach the last stages of the program. Ex. 12 at 0002150. By engendering participants' dependence, The Salvation Army secures a workforce.

In its recruitment efforts, The Salvation Army counts on participants' economic vulnerability and desperation. Defendant struggles to fill beds at the ARCs when government or private anti-poverty measures are in place. *See, e.g.*, Ex. 4, Polsley Dep. 233:5-9 ("it was difficult to encourage men and women to join the program" when they had "money in their pocket" from COVID stimulus payments); Ex. 122 at 0033669 (Waukegan ARC Advisory Council Minutes – December 20, 2021: lamenting that "[i]ntakes are down from last month" in part "because government programs . . . are open to the 'Homeless' during this season"); Ex. 123 at 0049313 (April 2021 The Salvation Army ARC Kansas City Advisory Council Minutes: the local government was "providing up to three months free hotel for those deemed homeless" might "be creating a barrier for men who might otherwise be entering the program"). As one ARC employee observed, The Salvation Army's "work therapy model on its own can be a tough program to sell with all the local competition to fill beds." Ex. 124 (Minneapolis Staffing Model Rationale); *see also* Ex. 125 at 0082440 (email from Minneapolis ARC Program Manager: "Selling the Work Therapy Program is a hard enough pitch on its own when compared to other short-term treatment program options."); Ex. 126 at 0047990-91 (The Salvation Army Flint ARC Strategic Plan: [REDACTED]). To maintain its workforce, The Salvation Army turned its recruitment from substance users and the unhoused to

the incarcerated and the trafficked, belying its purportedly charitable intentions. *See, e.g.*, Ex. 127 at 0019358-59 (Minneapolis ARC Advisory Council Meeting Minutes – 3/1/2023: proposing to recruit more from jails given the “hyper competitive [labor] market”); Ex. 128 at 0048334 (2021 Command Review Presentation: ARC Command determined ARCs should increase recruitment by “[w]orking with Human Anti-Trafficking Partners”).

5. *Work Trumps The Salvation Army’s Other ARC Programming*

Though the work requirement offers no therapeutic benefits to ARC participants, per Defendant’s policies, it takes precedence over all other components of the ARC program. If there is ever a conflict between the work requirement and other parts of the program, work prevails. For instance, Director of Program McNeal—in her role regulating the program across the ARCs—raised to Command that “[t]here are very limited evening hours for the beneficiaries to complete all of the requirements,” and subsequently, “many center locations are completing very little programming.” Ex. 131 at 0270229. Nevertheless, Command instructed the ARCs that no “counseling should be done during work therapy hours.” Ex. 132 (email from Kansas City ARC Administrator). Rockford ARC staff indicated that twice-monthly one-on-one counseling sessions have “not been happening here for 6 months or more” due to work therapy scheduling. Ex. 133 at 0031870. One administrator at the SEMI ARC instructed that ARC participants “must have their classes around their work therapy schedule” and “should not leave work therapy to attend classes.” Ex. 134 at 0171921. And when ARC participants’ work occurred in the evening, such as when a truck route ran late or when they covered the front desk at night, they could not attend classes or counseling scheduled at that time. *See, e.g.*, Ex. 149, Bryant Dep. 149:25:150:23; Ex. 67, Sisamouth Dep. 130:24-131:11.

Even though Defendant requires that ARC participants make up any missed work shifts or risk being discharged from the program, it often lets missed classes and meetings slide. *See, e.g.*,

Ex. 135 at 0007624 (Central Territory Service Point Training Summary: policy to assign “an essay” in lieu of missed class); Ex. 136 at 0004704 (discharge and readmissions policies: first missed meeting is a verbal warning). Participants witnessed or experienced that all other requirements of the ARC program could be excused so long as they showed up to work. *See, e.g.*, Ex. 149, Bryant Dep. 179:8-11 (“[Y]ou can miss counseling sessions, because you were in work therapy and it not be an issue.”); Ex. 58, McClain Dep. 120:10-121:19 (missing counseling was a far less serious infraction than missing work therapy); Ex. 137, Fox Dep. 46:3-6 (“The main thing was the working. . . . You could miss church. You could miss group. As long as you didn’t miss work, you were okay.”). Named Plaintiffs and other participants testified that these policies led them to understand that “work therapy trumped everything.” *See, e.g.*, Ex. 149, Bryant Dep. 179:7-11; *see also* Ex. 138, Carrier Dep. 79:23-24 (“[T]he program pretty much revolved . . . around work therapy.”); Ex. 60, Ellis Dep. 23:10-14 (he did not “have time” at The Salvation Army’s religious-based program “to try to get a relationship with God because you got to work so much”).

In sum, The Salvation Army targets an at-risk population with its work program, which in turn it uses to fuel Defendant’s own network of thrift stores. Plaintiffs simply seek on behalf of themselves and other participants like them, a fair day’s wage for a fair day’s work.

IV. ARGUMENT

Plaintiffs satisfy the requirements of 29 U.S.C. § 216(b) and Federal Rule of Civil Procedure 23 for final collective and class certification. In all meaningful respects, the putative members of the FLSA collective and Illinois, Michigan, and Wisconsin classes have the same experiences at the ARCs because the deal, set by Salvation Army policy, is identical for everyone: work full-time for The Salvation Army in exchange for housing, food, clothing, minimal rehabilitation services, and gratuity. Consistent with its policy, The Salvation Army does not classify any ARC participants as employees or pay them minimum wage. Under the governing

tests for employment—assessing the “economic reality” for the FLSA and Illinois and Michigan’s minimum wage laws and a “control” test under Wisconsin law—these and other facts common to the collective and classes predominate over any individualized inquiries. Because Plaintiffs satisfy all requirements under Section 216(b) and Rule 23, Plaintiffs’ motion should be granted.

A. The Three State Classes Should be Certified

Previously, the Seventh Circuit has suggested that “the case law has largely merged the standards” for certifying FLSA collective actions and Rule 23 class actions. *Espenscheid v. DirectSat USA, LLC*, 705 F.3d 770, 772 (7th Cir. 2013); *see, e.g., Meadows v. NCR Corp.*, 2020 WL 1042042, at *2 (N.D. Ill. Mar. 4, 2020) (Shah, J.); *Osterholt v. Corepower Yoga, LLC*, 2017 WL 2180483, at *1 (N.D. Ill. May 18, 2017) (Shah, J.). Recently, however, the Seventh Circuit emphasized that the FLSA does not incorporate the rigorous certification requirements of Rule 23. *Vanegas v. Signet Builders, Inc.*, 113 F.4th 718, 723-25 (7th Cir. 2024), *denying rehearing or rehearing en banc*, 125 F.4th 837 (7th Cir. 2025). *Vanegas* therefore signals that the standard for collective certification is more lenient than the test for class certification. *See* 113 F.4th at 726 (while not disturbing the holding of *Espenscheid*, rejecting plaintiff’s arguments relying on that precedent); *see also Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 70 n.1 (2013) (noting “that there are significant differences between certification under Federal Rule of Civil Procedure 23 and the joinder process under § 216(b)”). As a result, if Plaintiffs satisfy Rule 23, then they also satisfy the FLSA certification requirements. Accordingly, Plaintiffs first show that the Court should certify the Rule 23 classes, before demonstrating why final certification of the collective is appropriate under the less stringent FLSA standard.

Under Rule 23(a), Plaintiffs must show, by a preponderance of the evidence, that: “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the

claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). Further, as Plaintiffs are seeking certification under Rule 23(b)(3), Plaintiffs must demonstrate that “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). Although there may be some overlap with the underlying merits of Plaintiffs’ claims, class certification requires only a demonstration that the issues are capable of class-wide resolution. *See Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013). “Merits questions may be considered . . . only to the extent . . . that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied.” *Id.*

1. The Classes Are Sufficiently Numerous and Ascertainable

Although as few as 40 class members are sufficient to demonstrate numerosity, the classes far exceed that number. *See Swanson v. Am. Consumer Indus., Inc.*, 415 F.2d 1326, 1333 n.9 (7th Cir. 1969); *Phillips v. Waukegan Hous. Auth.*, 331 F.R.D. 341, 350 (N.D. Ill. 2019). According to Defendant’s own data, during the class periods, more than 3,000 ARC participants enrolled in the Illinois ARCs (Chicago, Rockford, Springfield, and Waukegan); more than 3,500 participants enrolled in Michigan ARCs (Flint, Grand Rapids, Southeast Michigan Men’s, Southeast Michigan Women’s); and more than 450 participants enrolled in the Wisconsin ARC (Milwaukee). Ex. 151, Woo Decl. at ¶¶ 2-6 (summarizing data). Defendant’s data also allows for identification of all class members through objective criteria, such as their dates of enrollment and whether they enrolled due to legal involvement. *See supra* at 20. Therefore, the implied requirement that membership in the class be ascertainable is met. *See Mullins v. Direct Digital, LLC*, 795 F.3d 654, 659-60 (7th Cir. 2015) (to be ascertainable, plaintiffs’ class definition must be precise and based on objective criteria, but not based on the merits); *Prokhorov v. IIK Transp., Inc.*, 2023 WL 2711599, at *6 n.5

(N.D. Ill. Mar. 30, 2023) (Shah, J.) (“Ascertainability . . . is about whether a class definition is so amorphous that it’s hard to pinpoint who would qualify as a class member.”).

2. *The Litigation Presents Common Issues of Law and Fact*

The common question at the core of Plaintiffs’ claims is whether The Salvation Army employs the class members, as Illinois, Michigan, and Wisconsin law entitle only employees to minimum wages. *See* 820 Ill. Comp. Stat. Ann. 105/3(d); Mich. Comp. Laws Ann. § 408.412(c); Wis. Stat. Ann. § 104.02. Within each class, all putative class members’ claims present this same fundamental employment question. *See infra* at 33-43. This alone satisfies the commonality element. *See, e.g., Langendorf v. Skinnygirl Cocktails, LLC*, 306 F.R.D. 574, 580 (N.D. Ill. 2014) (Shah, J.) (“To satisfy the commonality requirement, a single common question will do.”); *Prokhorov*, 2023 WL 2711599, at *4 (same).

In addition to the primary common legal issue, other common factual questions abound. Plaintiffs have shown that Defendant promulgates and enforces uniform policies at the ARCs. *See supra* at 2-4. Those policies establish eligibility requirements for the ARCs, the rules with which ARC participants must comply to remain in an ARC (including the work requirement), and the benefits and services that Defendant provide to ARC enrollees. *See supra* at 2-4. Because Defendant standardizes these policies for all of the ARCs, there are many additional questions of fact common to the classes, including, but not limited to:

- What are The Salvation Army’s policies for the ARCs?
- Does Defendant require, as a condition for enrolling in an ARC, that an individual be able to work full-time for The Salvation Army?
- Does Defendant require, as a condition for remaining in an ARC, that ARC participants work full-time for The Salvation Army?
- Does Defendant pay ARC participants the applicable minimum wage for all hours worked?
- Do ARC participants depend on Defendant for housing and food?
- What services and benefits—including lodging, food, rehabilitation services, and gratuity—does Defendant provide to ARC participants?

- Does Defendant require ARC participants to work full-time for those services and benefits?
- To what extent and how does Defendant control ARC participants' labor?
- What is the character of the work that ARC participants perform for The Salvation Army?
- Does The Salvation Army benefit from the labor ARC participants provide?
- Do ARC participants perform the same tasks as workers who The Salvation Army classifies as employees and pays minimum wage?
- Does The Salvation Army's thrift store business compete with other businesses?
- Does The Salvation Army gain a financial advantage over any competitors by using the labor of ARC participants without paying them minimum wage?

These central questions of fact and law more than satisfy the commonality requirement. *See, e.g., Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1026 (7th Cir. 2018) (commonality is satisfied with “one or more common questions of law or fact that are capable of class-wide resolution and are central to the claims’ validity”); *see also Tassinari v. Salvation Army*, No. 21-10806-LTS, slip op. at 3-4, 14 (D. Mass. Mar. 26, 2025) (finding commonality satisfied based on evidence The Salvation Army set uniform policy that applies across all ARCs in the Eastern Territory).

3. *The Named Plaintiffs’ Claims Are Typical of the Classes’ Claims*

Rule 23(a)(3) is satisfied where “there [is] enough congruence between the named representative’s claim and that of the unnamed members of the class to justify allowing the named party to litigate on behalf of the group.” *Spano v. Boeing Co.*, 633 F.3d 574, 586 (7th Cir. 2011). “Factual variations” will not destroy typicality, as long as the claims all contain a common “core of allegation.” *Allen v. City of Chicago*, 828 F. Supp. 543, 551, 553 (N.D. Ill. 1993) (internal quotation omitted). Moreover, “[t]ypicality is determined with reference to a defendant’s actions, not with respect to specific defenses a defendant may have against certain class members.” *Porter v. Pipefitters Ass’n Loc. Union 597*, 208 F. Supp. 3d 894, 908 (N.D. Ill. 2016) (citing *Wagner v. NutraSweet Co.*, 95 F.3d 527, 534 (7th Cir. 1996)).

Plaintiffs satisfy typicality because they each suffered the same injury under the same

circumstances as the absent class members. Like the putative class members in Illinois, Michigan, and Wisconsin, each Named Plaintiff meets the following conditions: (1) he enrolled in an ARC; (2) worked as a condition of participation in the ARC; and (3) did not receive minimum wages for those hours worked because Defendant did not classify him as an employee. *See* Ex. 50, Clancy Decl. ¶¶ 3, 9, 11; Ex. 52, Peters Decl. ¶¶ 3, 9, 11; Ex. 53, Bryant Decl. ¶¶ 3, 9, 11; Ex. 54, Patton Decl. ¶¶ 3, 9, 11. Each Named Plaintiff challenges the same policies and practices, and seeks the same recovery of damages, as the absent class members. Accordingly, their claims are typical.¹⁴

4. *Plaintiffs and Their Counsel Are More Than Adequate*

Class representatives are adequate under Rule 23(a)(4) where, as here, they have the same interests as members of the class and there is “no antagonism of interest between class members[.]” *See, e.g., Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 608 (1997). They also must demonstrate that they are “sufficiently interested in the case outcome to ensure vigorous advocacy.” *Cavin v. Home Loan Ctr., Inc.*, 236 F.R.D. 387, 393 (N.D. Ill. 2006). Plaintiffs Clancy, Bryant, Peters, and Patton meet this standard. As discussed above, their interests are identical to the class members they seek to represent. *See supra* at 32. Moreover, they have been active participants in this suit, spending many hours participating in discovery—including sitting for deposition, responding to written discovery, and searching for and producing any responsive documents—in addition to maintaining regular contact with Plaintiffs’ counsel. Ex. 50, Clancy Decl. ¶¶ 22-24; Ex. 52, Peters Decl. ¶¶ 22-24; Ex. 53, Bryant Decl. ¶¶ 22-24; Ex. 54, Patton Decl. ¶¶ 22-24. They have sufficient

¹⁴ That Plaintiffs Clancy and Bryant also have claims for failure to pay overtime does not disturb the typicality of their minimum wage claims. *See, e.g., Lax v. First Merchants Acceptance Corp.*, 1997 WL 461036, at *6 (N.D. Ill. Aug. 11, 1997) (party could still serve as lead plaintiff where it was typical and adequate, even though it had additional claims).

knowledge of the action and their responsibilities as class representatives and have demonstrated that they will protect and pursue the interests of the class diligently and vigorously. *Id.*

Finally, Plaintiffs have retained counsel with the experience, expertise, and resources to prosecute this action vigorously on behalf of the classes. Ex. 139, Webber Decl. ¶¶ 3-14; Ex. 140, Grunfeld Decl. ¶¶ 2-10; Ex. 141, Riggin Decl. ¶¶ 3-7; *see Gomez v. St. Vincent Health, Inc.*, 649 F.3d 583, 592 (7th Cir. 2011), *as modified* (Sept. 22, 2011). Plaintiffs request that their counsel be appointed to represent the proposed classes. Fed. R. Civ. P. 23(g).

5. *Common Questions of Law and Fact Predominate over Individualized Inquiries Under the Tests for Employment in Illinois, Michigan, and Wisconsin*

For class certification, common questions must predominate over individual ones, and the class procedure must be superior to any other procedures for “fairly and efficiently adjudicating” the dispute. Fed. R. Civ. P. 23(b)(3). The predominance requirement is meant to “tes[t] whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623; *see also Beaton*, 907 F.3d at 1029 (“The guiding principle behind predominance is whether the proposed class’s claims arise from a common nucleus of operative facts and issues.”). “Rule 23(b)(3), however, does *not* require a plaintiff seeking class certification to prove that each ‘elemen[t] of [his] claim [is] susceptible to classwide proof’. . . [just] that common questions ‘predominate over any questions affecting only individual [class] members.’” *Amgen*, 568 U.S. at 469 (emphasis added) (quoting Rule 23(b)(3)). As the Seventh Circuit explained:

Rule 23(b)(3)’s predominance requirement is satisfied when common questions represent a significant aspect of [a] case and . . . can be resolved for all members of [a] class in a single adjudication. . . . If, to make a prima facie showing on a given question, the members of a proposed class will need to present evidence that varies from member to member, then it is an individual question. If the same evidence will suffice for each member to make a prima facie showing, then it becomes a common question. Individual questions need not be absent. The text of Rule 23(b)(3) itself contemplates that such individual questions will be present. The rule requires only that those questions not predominate over the common questions affecting the class as a whole.

Messner v. Northshore Univ. HealthSystem, 669 F.3d 802, 815 (7th Cir. 2012) (internal citations and quotations omitted). The import, not the number, of individual questions is what matters for the predominance inquiry. *See Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013), *cert. denied*, 571 U.S. 1196 (2014) (“[P]redominance requires a qualitative assessment too; it is not bean counting.”). Here, common questions predominate over individualized inquiries under the Illinois and Michigan “economic reality”¹⁵ and the Wisconsin “control”¹⁶ employment tests.

a. Common Evidence Can Determine the Economic Reality that The Salvation Army Employs ARC Participants Under Illinois and Michigan Law

To evaluate a working relationship, “courts look at the totality of the circumstances and assess the economic reality of the working relationship at issue.” *Clancy*, 2023 WL 1344079, at *2 (citing *Berger v. NCAA*, 843 F.3d 285, 290 (7th Cir. 2016) and *Vanskike v. Peters*, 974 F.2d 806, 808 (7th Cir. 1992)); *see also Tony & Susan Alamo Found. v. Sec’y of Labor*, 471 U.S. 290, 301 (1985) (“The test of employment under the Act is one of economic *reality*,” not subjective belief (emphasis added) (internal quotations omitted)); *Purdham v. Fairfax Cnty. Sch. Bd.*, 637 F.3d 421, 428 (4th Cir. 2011) (examining “the objective facts surrounding the services performed to determine whether the totality of circumstances” pointed towards employment (quotation omitted)); *Okoro v. Pyramid 4 Aegis*, 2012 WL 1410025, at *9 (E.D. Wis. Apr. 23, 2012) (“It is the examination of objective indicia and the application of common sense with which this court

¹⁵ Illinois and Michigan employ the FLSA’s “economic reality” test. *See, e.g., Reyes-Trujillo v. Four Star Greenhouse, Inc.*, 513 F. Supp. 3d 761, 797 (E.D. Mich. 2021); *Nassis v. LaSalle Exec. Search, Inc.*, 2018 WL 2009502, at *8 (N.D. Ill. Apr. 30, 2018); *see also Clancy v. Salvation Army*, 2023 WL 1344079, at *2 (N.D. Ill. Jan. 31, 2023) (“[T]he parties agree that the analyses under Illinois and Michigan law are the same as under the FLSA.”).

¹⁶ Employment in Wisconsin instead turns on the extent of control that the putative employer exercises over a worker. *See Brant v. Schneider Nat’l, Inc.*, 43 F.4th 656, 674 (7th Cir. 2022) (rejecting argument that Wisconsin had adopted the economic reality test and holding that employment depends on whether the putative employer exercised “control over a person employed at labor”).

arrives at its determination of whether the plaintiff here is an employee for purposes of the FLSA.”). This Circuit’s inherently flexible approach rejects one-size-fits-all tests, and instead emphasizes a holistic inquiry tailored to the specifics of each case. *See, e.g., Clancy*, 2023 WL 1344079, at * 2.

In its order denying Defendant’s motion to dismiss, the Court set forth four main factors it would consider in determining whether, under the economic reality standard, ARC participants are Salvation Army employees: (1) whether ARC participants expect compensation, monetary or otherwise; (2) whether ARC participants or The Salvation Army primarily benefit from the working relationship; (3) whether ARC participants depend on The Salvation Army; and (4) whether the purposes of the FLSA—achieving minimum labor standards and preventing unfair competition—support a finding of employment. *Id.* at *3. In addressing each of these considerations, common issues predominate over individualized inquiries.

i. Defendant’s Exchange of Work for ARC Program Benefits Creates a Shared Expectation of Compensation

Common questions predominate in determining whether members of the classes expect compensation. The preeminent case addressing expectation of compensation is the Supreme Court’s decision in *Alamo*, which involved workers extraordinarily similar to the ARC participants in this case. In *Alamo*, the Secretary of Labor brought an FLSA minimum wage enforcement action against a nonprofit religious foundation that funded its operations with income generated from commercial businesses, including clothing stores. 471 U.S. at 292. The foundation staffed its businesses with its “‘associates,’ most of whom were drug addicts, derelicts, or criminals before their conversion and rehabilitation by the foundation.” *Id.* It did not pay the “associates” any “cash salaries,” but provided them with “food, clothing, shelter, and other benefits.” *Id.* The Court held that the workers were the foundation’s employees, even though they all testified they subjectively

did not expect compensation. *Id.* at 301-03; *see also id.* at 300-01 (one worker said “the thought” of receiving compensation was “vexing to my soul”). The Court held that workers’ “protestations, however sincere, cannot be dispositive.” *Id.* at 301. Instead, the Court looked at the “circumstances” of the work, including that the workers were “entirely dependent on the Foundation” for basic necessities for lengthy periods of time, and concluded that, notwithstanding the workers’ subjective beliefs, “the associates must have expected to receive in-kind benefits—and expected them in exchange for their services.” *Id.* (internal quotations omitted).

Other courts analyzing expectation of compensation have similarly focused on the objective totality of the circumstances. *See, e.g., Adams v. Palm Beach Cnty.*, 94 F.4th 1334, 1339-40 (11th Cir. 2024) (using an “objective reasonableness” test to evaluate expectation of compensation and FLSA employment status); *Velarde v. GW GJ, Inc.*, 914 F.3d 779, 787 n.9 (2d Cir. 2019) (“We determine objectively whether a purported employee had a reasonable expectation of payment.”); *Brown v. N.Y.C. Dep’t of Educ.*, 755 F.3d 154, 170 (2d Cir. 2014) (“In assessing a person’s expectation of compensation for purposes of deciding whether” he is an employee under the FLSA, “a court applies an objective reasonableness rather than subjective standard” and looks at “the totality of circumstances.”). And because subjective expectations of compensation are not relevant to the analysis, any purported differences among class members in that regard do not defeat class certification. *See Nyachira v. New Prime, Inc.*, 2022 WL 19239768, at *4 (W.D. Mo. Nov. 7, 2022) (no need for individualized inquiry to conduct expectation of compensation inquiry); *Harris v. Vector Mktg. Corp.*, 753 F. Supp. 2d 996, 1006 (N.D. Cal. 2010) (“[T]he subjective perceptions of the trainees are basically irrelevant.”).

Here, the objective determination of whether putative class members expected compensation is susceptible to common proof. The deal—roughly 40 hours weekly of menial work

in exchange for in-kind benefits and gratuity—is established by Salvation Army policy and the same for all class members. *See supra* at 9. This in-kind exchange¹⁷ forms the basis for the objective, reasonable expectations of ARC participants. And the evidence shows that Defendant strictly enforces this quid pro quo across ARC participants. Defendant refuses to enroll individuals who cannot work full-time performing manual labor for The Salvation Army. *See supra* at 6. Defendant requires all ARC participants to sign the same documents upon admission to an ARC.¹⁸ *See supra* at 5. Defendant can and does discharge ARC participants who refuse or become unable (due to injury or sickness) to work for The Salvation Army’s thrift store business. *See supra* at 6-7. And Defendant can and does discharge ARC participants who it deems insufficiently productive. *See supra* at 7.

Even if, in the alternative, the Court finds subjective beliefs material to its analysis, putative class members fully understood the quid pro quo. *See supra* at 9; *see also Brown v. Cook Cnty.*, 332 F.R.D. 229, 245 (N.D. Ill. 2019) (a claim’s “subjective element” could “be addressed as part of later proceedings, and it does not undermine predominance”). Class members’ expectations of compensation are further established by common evidence relating to the unskilled nature of the work itself, the long hours Plaintiffs have to toil, and the fact that their labor is essential to The Salvation Army’s business. *See supra* at 9-14. Based on these core facts, the reasonable

¹⁷ *Alamo* instructs that whether ARC participants expected monetary compensation or full minimum wages is irrelevant, as in-kind benefits suffice. 471 U.S. at 301.

¹⁸ The uniformity of these admission documents supports a finding that common issues predominate. To the extent Defendant may rely on them to later argue they establish that Plaintiffs do not expect compensation or are not employees, they have limited probative value. *See Brant*, 43 F.4th at 665 (“It is well established, however, that the terms of a contract do not control the employer-employee issue under the Act.”); *Vanskike*, 974 F.2d at 808 (employment status “depends on the totality of the circumstances rather than on any technical label”); *Brown v. Club Assist Rd. Serv. U.S., Inc.*, 2013 WL 5304100, at *5 (N.D. Ill. Sept. 19, 2013) (holding, in FLSA independent contractor dispute, that “the contracts and any labels they contain are not dispositive”).

expectation of compensation for all ARC participants can be determined on a class-wide basis. *See Clancy*, 2023 WL 1344079, at *4 (finding that Plaintiffs pled a sufficient expectation of compensation given their allegations about “the long hours [they] 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 [their] reliance on the Salvation Army”).

ii. Common Evidence Resolves Whether The Salvation Army Is the Primary Beneficiary of Putative Class Members’ Work

Whether The Salvation Army is the primary beneficiary of the parties’ working relationship—meaning receives a greater boon from Plaintiffs’ labor than the Plaintiffs receive from their work—can also be determined on a class-wide basis. *Clancy*, 2023 WL 1344079, at *3 & n.5 (citing cases). Like with the expectation of compensation inquiry, the primary beneficiary analysis focuses on the objective reality of the working relationship; workers’ personal views regarding how much they benefitted from the work carry little or no weight. *See, e.g., Senne v. Kansas City Royals Baseball Corp.*, 315 F.R.D. 523, 576 (N.D. Cal. 2016), *on reconsideration in part*, 2017 WL 897338 (N.D. Cal. Mar. 7, 2017), *aff’d in part, rev’d in part and remanded*, 934 F.3d 918 (9th Cir. 2019) (testimony from workers that “felt they benefitted more than others from the various types of activities in which they engaged” does not defeat class certification because “the case law does not suggest that these subjective feelings . . . have much (if any) bearing on the economic realities of the relationship. Indeed, the very term (focusing on ‘reality’) suggests that the focus of the test is primarily objective”); *see also Cleveland v. City of Elmendorf, Tex.*, 388 F.3d 522, 528 (5th Cir. 2004) (courts “look at the objective facts surrounding the services performed” and not “personal motivations” in assessing whether FLSA liability attaches).

Analyzed through this objective lens, the question of whether The Salvation Army is the primary beneficiary of Plaintiffs’ work can be answered commonly. By policy, Defendant

standardizes the working experience across all of its ARCs. *See supra* at 3-5. The Salvation Army requires all ARC participants to work for it full-time, approximately 40 hours per week. *See supra* at 5. It prescribes the duties for each position and then assigns ARC participants to those roles, all of which entail menial drudgery. *See supra* at 9-11. The same types of positions—clothes hangers, warehouse workers, delivery truck assistants, dishwashers, janitors—exist at all of the ARCs. *See supra* at 10. Thus, though the individual job assignments of putative class members may differ, the basic contours of their experience working for The Salvation Army are functionally identical. And as discussed further below, The Salvation Army uses participants to keep its thrift store operation’s labor costs low. *See infra* at 40; *see also supra* at 13-14.

Defendant’s anticipated argument that the work ARC participants perform is a form of treatment or therapy can also be resolved for all putative class members at once. Plaintiffs’ addiction expert opined that The Salvation Army’s work therapy program is not a recognized, evidence-based form of treatment or therapy for substance use disorders. *See supra* at 21-22. And Defendant admitted that it had no evidence for the efficacy of the purported work therapy. *See supra* at 21. But regardless of how that factual dispute is ultimately resolved, it is susceptible to common proof. ARC participants all perform essentially the same work. *See supra* at 10-11. If, as Defendant posits, that work somehow provides therapeutic benefits, those benefits will accrue to all ARC participants. Plus, with the proposed class and collective definitions limited to exclude those who enroll in ARCs due to criminal legal requirements, whether plaintiffs’ work provides a path to avoid incarceration can “be answered collectively”: no. *See supra* at 20; *T.S. ex rel. P.O. v. Burke Found.*, 521 F. Supp. 3d 691, 697 (W.D. Tex. 2021); *see also Alvear v. Salvation Army*, 661 F. Supp. 3d 1314, 1327-28 (N.D. Ga. 2023) (in parallel case, distinguishing cases where

“rehabilitation programs” were “an alternative to prison time,” because this factor, which was “central to the primary beneficiary analysis” of those decisions, “is simply absent” here).

Common evidence also reveals that The Salvation Army receives substantial benefits from ARC participants’ labor. Salvation Army thrift stores in the Central Territory generated over \$ [REDACTED] dollars in revenue for The Salvation Army from 2018 to 2023. *See supra* at 12. Defendant’s own documents establish that ARC participants performed 26% of all labor for The Salvation Army’s thrift store business, displacing paid employees who otherwise would have filled those positions. *See supra* at 12. Plaintiffs’ expert concluded that ARC participants provided The Salvation Army with more than 11.8 million hours of labor. *See supra* at 12. And most damningly, Plaintiffs’ expert opined that from 2017 to 2023, The Salvation Army saved more than \$50,000,000 by using ARC participants’ labor by not classifying them as employees or paying them minimum wage. *See supra* at 12-13. Accordingly, common issues predominate in measuring both sides of the ledger for the primary beneficiary analysis.

Defendant may attempt to zoom out on all the ways that ARC participants and The Salvation Army interact. But the case law forecloses efforts to fold into the employment analysis non-work aspects of the ARC program. *See, e.g., Earl v. Bell House, LLC*, 2022 WL 394731, at *3 (D. Neb. Feb. 9, 2022) (for manager paid less than minimum wage at transitional house, determination of “whether Earl’s tasks *as a manager* served his own personal or rehabilitative goals or primarily the Defendants’ business interests is critical” (emphasis added)); *see also Cleveland*, 388 F.3d at 528 (considering the facts “surrounding the services *performed*” (emphasis added)). The Sixth Circuit addressed this exact question in *Eberline v. Douglas J. Holdings, Inc.*, 982 F.3d 1006 (6th Cir. 2020), *cert denied* 141 S. Ct. 2747 (2021). There, participants in a vocational training program sought compensation for the portion of time they spent performing

janitorial tasks, but not for time spent in the classroom or performing other tasks related to their vocational program. *Id.* at 1014. After surveying relevant authorities (including the Seventh Circuit’s decision in *Hollins v. Regency Corp.*, 867 F.3d 830, 836-37 (7th Cir. 2017)), the Sixth Circuit held that the primary beneficiary test takes into account only the time the plaintiffs spent performing the task for which they sought compensation, not “the broader relationship as a whole.” *Id.* The court noted that a contrary approach would be inconsistent with the purpose of the FLSA; it “would raise the potential of zones of exploitation in which schools could use their students in place of paid employees to complete work unrelated to the educational purpose of the program, so long as the amount of extra work was not so large as to render the school the primary beneficiary of the overall relationship.” *Id.* at 1016 (citing *Alamo*, 471 U.S. at 301-02); *see also id.* at 1017 (contrary approach “could lead to the type of exploitation that the FLSA was designed to combat”).

Even if the Court holds that the primary beneficiary test looks at the entire ARC program, rather than just ARC participants’ work for The Salvation Army, common issues predominate. As discussed above, the non-work portions of the ARC are, per Salvation Army policy, standardized at all of the ARCs. *See supra* at 3-4, 23-24. If those non-work components factor into the primary beneficiary analysis (though they should not), they can be considered on a class-wide basis. No matter how one conceptualizes the primary beneficiary test, common evidence can resolve it. *See Clancy*, 2023 WL 1344079, at *4 (finding that Plaintiffs pled The Salvation Army is the primary beneficiary where they alleged “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”).

iii. Defendant’s Policies Engender ARC Workers’ Economic Dependence

Common questions also predominate regarding whether ARC participants are dependent on Defendant. *See Alamo*, 471 U.S. at 301. Here, the facts relevant to the dependence inquiry are

identical for all ARC participants because they are the product of The Salvation Army’s class-wide policies. Defendant provides all ARC participants with food and lodging for the duration of their enrollments in the ARC. *See supra* at 22. For the first 30 days of the program, which Defendant calls the “blackout” period, it prohibits ARC participants from leaving the ARC for any reason. *See supra* at 24. For the duration of the enrollments, Defendant prohibits all ARC participants from having any employment other than for The Salvation Army, thereby precluding them from generating income. *See supra* at 24. In fact, The Salvation Army forbids all ARC participants from even applying for post-ARC employment until they have nearly completed the ARC program. *See supra* at 25. And Defendant disallows all ARC participants from possessing more than \$60 in cash. *See supra* at 24. This evidence, which is common to the classes, will demonstrate that Defendant creates participants’ dependence on the in-kind benefits of the program, as they have no way of obtaining essential goods and services other than from The Salvation Army. *See Clancy*, 2023 WL 1344079, at *4 (finding that Plaintiffs adequately pled dependence where they alleged they “were reliant on defendant for food and shelter for six months on average”). Just like in *Alamo*, participants’ dependence on The Salvation Army shows that they “must have expected to receive in-kind benefits—and expected them in exchange for their services.” 471 U.S. at 301.

iv. Minimum Wage Laws Aim to Protect Workers Just Like ARC Participants
and to Minimize Anti-Competitive Advantages Like the One The
Salvation Army Has

The analysis of whether the dual purposes motivating minimum wage protections—“achieving minimum labor standards and preventing unfair competition”—support a finding of employment is also subject to common evidence. *See Clancy*, 2023 WL 1344079, at *3. Uniformly, by policy and practice, ARC participants “work[] long hours without minimal labor protections,” including adequate pay. *Clancy*, 2023 WL 1344079, at *4. Similarly, common evidence can answer whether Defendant’s undisputed practice of not paying minimum wage for

ARC participants' labor results in "an unfair advantage in the thrift store market." *See id.* Plaintiffs have presented common evidence that The Salvation Army's competitor (Goodwill) does not have an underpaid workforce, which Plaintiffs' expert determined earned The Salvation Army a \$50 million advantage from 2017 to 2023. *See supra* at 13-14.

In sum, common issues predominate in resolving all elements of the test for employment under Illinois and Michigan law.

b. Common Questions Predominate Regarding the Wisconsin "Control" Test for Employment

As mentioned, Wisconsin employs a "control" test for determining whether workers are employees for purposes of the state's minimum wage law. *See* Wis. Stat. Ann § 104.01(3)(a); *Brant*, 43 F.4th at 674. Unlike the well-established economic reality test, there is a paucity of authority setting forth the proper test for employment under Wisconsin law. In fact, *Brant* "identified only a handful of reported cases citing Wisconsin's minimum wage provision," with few addressing the line between employee and non-employee. *Id.* at 673 n.3. After reviewing the text of the statute and others that define employment, the Court concluded that "control over a person employed at labor" establishes that the controlling entity employs the laborer. *Id.* at 674.

Common issues predominate regarding whether Defendant controls the labor of ARC participants in Wisconsin. As discussed at length above, The Salvation Army controls every aspect of the working environment at all of its ARCs, including the ARC in Wisconsin. *See supra* at 11-12. Among other things, it controls ARC participants' hours of work; job assignments; training; supervision; and evaluations. *See supra* at 11-12. Defendant establishes control by policy and Territory-wide practice, ensuring that common issues predominate in analyzing the legal question of employment under Wisconsin law.

6. *Class Actions Are the Superior Approach for These Disputes*

Class proceedings in this dispute are far more efficient than proceeding with thousands of individual actions. The putative class members here “are challenging the same job assignment policy and so proceeding individually would needlessly require multiple courts to resolve the same liability issues.” *Porter*, 208 F. Supp. at 912. In addition, class proceedings in this case are consistent with the “policy at the very core of the class action mechanism” in that it provides a “mechanism . . . to overcome the problem” that individuals will not have the “incentive” or means “to bring a solo action prosecuting” their rights. *Amchem*, 521 U.S. at 617 (internal quotation omitted); *see also Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997) (“The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone’s (usually an attorney’s) labor.”); *Lucas v. Vee Pak, Inc.*, 2017 WL 6733688, at *7 (N.D. Ill. Dec. 20, 2017) (“Courts have recognized that the class action device is superior where the defendant engaged in standardized conduct and the individual class members’ claims would be too small to vindicate through an individual suit.”). Here the cost of litigating individual class members’ claims against The Salvation Army dwarfs the modest value of the claim. *See Beaton*, 907 F.3d at 1030 (“Rule 23(b)(3) was designed for situations such as this, in which the potential recovery is too slight to support individual suits, but injury is substantial in the aggregate.” (quotation omitted)). Absent class certification, it is unlikely that most Plaintiffs class members could afford to prosecute their claims. *See infra* at 24-26.

7. *The Disputes Are Manageable*

The trial plan for this action is well marked by established precedent. Plaintiffs propose to bifurcate the adjudication of liability and remedies. If the classes prove class-wide liability (i.e.,

establish they are employees and are paid less than the minimum wage), and Defendant fails to establish any total affirmative defenses, then the class may seek monetary remedies. The fact that the Court will have to separately determine monetary damages for members of prevailing classes, in part or wholly, based on evidence unique to each class member is hardly unusual or grounds to deny class certification. *See Beaton*, 907 F.3d at 1029 (“[N]ot every issue must be amenable to common resolution; individual inquiries may be required after the class phase.”); *Mullins*, 795 F.3d at 671 (“It has long been recognized that the need for individual damages determinations at this later stage of the litigation does not itself justify the denial of certification.”). As the Seventh Circuit has observed, “[i]t is routine in class actions to have a final phase in which individualized proof must be submitted.” *Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 756 (7th Cir. 2014); *see also Messner*, 669 F.3d at 815; *Arreola v. Godinez*, 546 F.3d 788, 801 (7th Cir. 2008).

Moreover, individualized damage calculations would not be onerous or complicated here. *See* Ex. 126 at 26. Defendant maintains records regarding the number of hours that each ARC participant works in each week, as well as the dates each ARC participant enters and exits the program. *Id.* Using this information, calculating owed minimum wage involves only multiplying the number of hours worked by the applicable minimum wage. *Id.* at 3. Even if Defendant is entitled under Illinois, Michigan, or Wisconsin law to an offset for the value of the lodging and food it provides to ARC participants, both parties have proposed mechanisms for calculating those amounts. *Id.* at 27. Once the factfinder decides on the proper amount for a credit (if any), they will be easy to factor into any damage calculations. *Id.* at 3. In short, this action does not present any substantial manageability problems, let alone problems that would counsel in favor of forcing class members to pursue thousands of individual actions.

Because Plaintiffs satisfy all of the requirements of Rule 23(a) and 23(b)(3), this Court

should certify the Illinois, Michigan, and Wisconsin classes.

B. Plaintiffs Satisfy the Standard for Final Certification of the FLSA Collective

Consistent with the parties' stipulation, this Court conditionally certified, at the first step of the two-step collective certification process, that Plaintiffs are "similarly situated" to the collective. Dkt. 108 at 1 (finding sufficient the "substantial allegations" and concluding that proceeding as a collective action "would promote judicial economy and avoid the risk of inconsistent judgments"). Now, at "step two," "Plaintiffs bear the burden of producing sufficient evidence of 'an identifiable factual nexus that binds the plaintiffs together as victims of a particular violation of the [wage and hour] laws.'" *Meadows*, 2020 WL 1042042, at *1 (internal citation omitted). "Plaintiffs, however, need not be identically situated, only similarly situated." *Camilotes v. Resurrection Health Care Corp.*, 286 F.R.D. 339, 346 (N.D. Ill. 2012).

Courts assess whether named and opt-in plaintiffs are similarly situated based on: "(1) whether the plaintiffs share similar or disparate factual and employment settings; (2) whether the various affirmative defenses available to the defendant would have to be individually applied to each plaintiff; and (3) fairness and procedural concerns." *Steger v. Life Time Fitness, Inc.*, 2016 WL 6647922, at *1 (N.D. Ill. Nov. 10, 2016). Plaintiffs' allegations about their similarly situated status have clear and significant support in the record. The Salvation Army admittedly does not pay ARC participants across the Central Territory for their work. Any defenses can be determined on a collective-wide basis. Allowing this case to proceed on behalf of the collective promotes the FLSA's purposes of efficiency, judicial economy, and notions of fairness. And as discussed, *see supra* at 28, the standard for certifying a collective under Section 216(b) is less demanding than the standard for certifying a class action under Rule 23. *See Vanegas*, 113 F.4th at 723-25. Since Plaintiffs satisfy Rule 23, Plaintiffs also satisfy the requirements for final certification of the collective.

1. Plaintiffs Were Subject to a Common Policy of Underpayment for Work, Among Other Similarities in Their Factual and Employment Settings

In analyzing the factual and employment settings of plaintiffs, courts consider “job locations, job duties, supervision, and any policies or practices that bind the plaintiffs’ claims together.” *Solsol v. Scrub, Inc.*, 2017 WL 2285822, at *3 (N.D. Ill. May 23, 2017). A “unified policy, plan, or scheme” is useful in satisfying step two, although not necessarily required, particularly in light of judicial economy concerns. *Meadows*, 2020 WL 1042042, at *1 (internal quotations omitted). “A common policy or practice ‘may take certain individualized . . . issues out of the case,’ which adds to the factual and employment settings the plaintiffs share.” *Russell v. Ill. Bell Tel. Co. Inc.*, 721 F. Supp. 2d 804, 814 (N.D. Ill. 2010) (citation omitted); *see, e.g., Smith v. Fam. Video Movie Club, Inc.*, 2015 WL 1542649, at *5 (N.D. Ill. Mar. 31, 2015) (“Given the company-wide formula” used to calculate hours and commission sales, “liability under the FLSA can be tested on a common, collective basis.”).

Here, no “detailed, fact-specific inquiry” is required to determine if “any given plaintiff had a viable claim.” *Alvarez v. City of Chicago*, 605 F.3d 445, 449 (7th Cir. 2010). As detailed at length above, overwhelming record evidence shows that all ARC participants have comparable working experiences at the ARCs. *See supra* at 10. Defendant’s Territorial-wide scheme of obtaining labor at sub-minimum wage provides the “factual nexus” that binds all of the plaintiffs in this action. *See Meadows*, 2020 WL 1042042, at *1. Minor variations in the ARC participants’ work locations, job duties, and supervision do not defeat a finding of similarity. *See Jirak v. Abbott Lab’ys, Inc.*, 566 F. Supp. 2d 845, 849 (N.D. Ill. 2008) (“[P]laintiffs can be similarly situated for purposes of the FLSA even though there are distinctions in their job titles, functions, or pay.”); *see also T.S. ex rel. P.O.*, 521 F. Supp. 3d at 697 (“[T]he central question in this case revolves around whether proposed plaintiffs are entitled to compensation under the FLSA for their time spent”

working, “the determination of which does not depend on differences in the number of hours worked or type of task involved in each” work assignment.).

2. *Defendant’s Affirmative Defenses Can be Decided on Collective-Wide Basis*

As discussed above, all of the relevant inquiries under the FLSA’s economic reality test can be decided using common evidence. *See supra* at 34-43. The same is also true of Defendant’s affirmative defenses. The Salvation Army asserts willfulness and good faith defenses, presumably to limit the statute of limitations for FLSA claims to two, rather than three, years. Answer, Dkt. 166, ¶¶ 161-62. Since Defendant, by policy, standardizes the terms of the relationship with all ARC participants, this issue can be decided on a collective-wide basis. *See, e.g., Gomez v. PNC Bank, Nat’l Ass’n*, 306 F.R.D. 156, 167 (N.D. Ill. 2014), *aff’d sub nom. Bell v. PNC Bank, Nat. Ass’n*, 800 F.3d 360 (7th Cir. 2015) (noting that willfulness and good faith questions are determinations that can be made on a class-wide basis). The application of the statutes of limitations, Answer, Dkt. 166, ¶ 163, will require tolling calculations based on when opt-in plaintiffs submitted their consent to join forms, but those can be handled in a straightforward manner during the damages phase of a bifurcated case. *See, e.g., Russell*, 721 F. Supp. 2d at 813, 821 (“[B]ecause plaintiffs appear to have been subjected to common practices and policies, questions involving . . . statute of limitations issues . . . are not individualized inquiries.”).

Damages assessments, while requiring some individualized math, also do not derail certification. Plaintiffs’ experts established that damages, including any 3(m) offset, Dkt. 166, ¶ 166, can be calculated in a streamlined and straightforward way based on existing records. *See* Ex. 70, George Expert Report at 20-22; Ex. 142, George Supplemental Rebuttal Report at 26-27; Ex. 143, Dunec Rebuttal Report at 14-17. One of Defendant’s financial experts implicitly agreed, presenting The Salvation Army’s proposed credit calculations on a per year, per ARC basis, while the other had no quibbles with Plaintiffs’ expert’s opinion on the topic. *See* Ex. 144, Suppl. Estevez

Report at 21-24, App. D, Tabl. 4-5; Ex. 145, Callahan Dep. 79:6-16. Indeed, variations in damages rarely defeat certification, even if each individual’s recovery would be relatively small. *See, e.g., Smith*, 2015 WL 1542649, at *6, *7-8 (rejecting concerns about individualized mini trials, including on offset defenses, where “these issues go more to damages than to collective liability”); *Russell*, 721 F. Supp. 2d at 820-21 (“Because each plaintiff’s circumstances are likely to be different, ‘[v]ariations in damages . . . do not warrant decertification.’” (citation omitted)); *see also id.* at 821 (same for *de minimis* exception); *Smith*, 2015 WL 1542649, at *7 (same).

3. *Collective Treatment Is Efficient and Fair and Promotes Judicial Economy*

Fairness and procedural considerations also warrant final certification. The FLSA’s collective action mechanism serves the dual purpose of “lower[ing] individual costs to vindicate rights by the pooling of resources” and decreasing the burden on the judicial system through “efficient resolution in one proceeding of common issues of law and fact arising from the same alleged discriminatory activity.” *Hoffman-La Roche, Inc. v. Sperling*, 493 U.S. 165, 170 (1989); *see also Bigger v. Facebook, Inc.*, 947 F.3d 1043, 1049 (7th Cir. 2020) (the “twin goals of collective actions are enforcement and efficiency: enforcement of the FLSA, by preventing violations of the . . . [wage and hour] requirements and by enabling employees to pool resources when seeking redress for violations; and efficiency in the resolution of disputes, by resolving in a single action common issues arising from the same alleged illegal activity”).

As explained earlier, a collective trial efficiently resolves the parties’ dispute. *See supra* at 44-45. By contrast, decertification would lead to thousands of not-so-mini trials. Each opt-in Plaintiff could still litigate their claims, either before this Court or in new filings following their dismissal without prejudice. *Cf. Vanegas*, 113 F.4th 718, 724-25 (discussing how opt-in plaintiffs each have party status). The “judicial economy from consolidation” is therefore substantial. *Mejdrech v. Met-Coil Sys. Corp.*, 319 F.3d 910, 911 (7th Cir. 2003).

Questions of fairness and equity also support a collective action. This population does not have the resources to locate and retain individual counsel and litigate their claims one by one. *See supra* at 19-20; *see also* Dkt. 174, 241. Given that only the minimum wage is at issue, each plaintiff stands to recover only a few thousand dollars—a sum that could make a powerful difference in their lives but is outweighed by litigation costs. *See Russell*, 721 F. Supp. 2d at 823 (“Because of the modest amounts likely involved, many of the plaintiffs would be unable to afford the costs of pursuing their claims individually.”). ARC participants and collective cases like this one are precisely the population and the claims that the FLSA was enacted to protect. *See Brooklyn Sav. Bank v. O’Neil*, 324 U.S. 697, 707 n.18 (1945) (“[T]he prime purpose of the [FLSA] was to aid 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.”); *see also Alvear*, 661 F. Supp. 3d at 1325-26 (“[T]he fact that ARC workers are drawn from this [marginalized] 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.”).

On the other hand, Defendant faces no prejudice from this action proceeding collectively. *Smith*, 2015 WL 1542649, at *8. Liability can be established on a collective basis. *See supra* at 47. Defendant took substantial representative discovery (so much so that it chose to forgo 16 opt-in depositions, to which the parties had agreed). Dkt. 241 at 2. The burden on Plaintiffs of individual litigation far outweighs any potential due process concern. *See Russell*, 721 F. Supp. 2d at 824.

V. CONCLUSION

For the reasons above, Plaintiffs’ Motion for Class Certification and Final Certification of the Collective should be granted.

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Respectfully submitted,

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