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United States District Court, N.D. Georgia, Atlanta Division.

Raymon ALVEAR, Jr., Robert Massey, David Stough, and Andrew Keigans, on behalf of themselves and all other similar situated, Plaintiffs,
v.
The SALVATION ARMY, Defendant.

CIVIL ACTION NO. 1:22-CV-0979-SEG
|
Signed March 8, 2023

Synopsis

Background: Participants in nonprofit charitable corporation's residential adult rehabilitation program brought putative collective action and class action claims against corporation, alleging that the manner in which corporation operated its residential adult rehabilitation centers violated the Fair Labor Standards Act's (FLSA) minimum wage and overtime requirements, as well as the Florida Minimum Wage Act. Corporation moved to dismiss for failure to state a claim.

Holdings: The District Court, Sarah E. Geraghty, J., held that:

participants plausibly alleged that they had expectation of compensation for their participation in rehabilitation program;

participants plausibly alleged that nonprofit was the primary beneficiary of their relationship;

participants plausibly alleged that finding them to be nonprofit's statutory employees would be consistent with FLSA's purposes; and

participants plausibly alleged that nonprofit's purported FLSA minimum wage violations were willful.

Motion denied.

Procedural Posture(s): Motion to Dismiss for Failure to State a Claim.

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OPINION AND ORDER

SARAH E. GERAGHTY, United States District Judge

***1** This case is before the Court on Defendant's motion to dismiss. (Doc. 63.) On March 6, 2023, the Court head oral argument on the motion. Having considered the matter, the Court **DENIES** Defendant's motion for the reasons that follow.

I. Background

Plaintiffs allege violations of state and federal wage-and-hour laws at the Salvation Army's residential adult rehabilitation centers and adult rehabilitation programs ("ARCs"). At this stage, the Court accepts the well-pled allegations in their First Amended Complaint ("FAC") as true and casts them in the light most favorable to Plaintiffs. *Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1321-22 (11th Cir. 2012).

"Thousands of vulnerable individuals ... "enroll in Defendant's ARCs annually." (Doc. 39 ¶ 1.) These individuals (the "ARC workers") are alleged to be "people who are unhoused or marginally housed, who are very poor, who have drug or alcohol addiction problems, who are entangled in the criminal justice system, and/or who suffer from mental illness." (*Id.*) The Salvation Army operates a chain of thrift stores, and the ARC workers perform tasks that generally support the operations of these stores, including sorting donated clothing and other goods, hanging clothing on hangers, putting price tags on goods, testing electronics, rehabilitating furniture, and loading and unloading trucks with donated goods. (*Id.* ¶¶ 2, 31, 33-34.)

The ARC workers receive negligible monetary compensation for their work. They are paid between $7 and $25 per week in cash, and sometimes they receive "canteen cards" that are redeemable only at the ARC facility. (*Id.* ¶ 40.) Instead, workers who enroll in and remain at an ARC allegedly exchange their labor for room and board in an ARC dormitory, clothing drawn from donations to the Salvation Army, and "rehabilitative services," as well as the nominal wages just described. (*Id.* ¶¶ 29, 44.) ARC workers must relinquish their SNAP benefits to the Salvation Army to enroll.[1] (*Id.* ¶ 45.) The food provided to the ARC workers is derived in part from those SNAP benefits and donations to the Salvation Army. (*Id.* ¶ 3.) Most ARC workers complete the program after 180 days, though many choose to leave earlier, and others are required to stay longer. (*Id.* ¶ 46.) Plaintiffs allege that the value of the monetary and non-monetary compensation ARC workers receive "is far below the required minimum wage." (*Id.* ¶ 3.)

Plaintiffs allege that the ARC workers understood that their receipt of these benefits was conditioned upon their performing full-time labor for the Salvation Army. (*Id.* ¶¶ 3, 29.) Indeed, Defendant's website states that only those able "to perform a work therapy assignment for eight hours a day" are eligible to enroll in an ARC. (*Id.* ¶ 29.) "Defendant typically expels from the program any ARC workers who, after being admitted to the program, become unable or unwilling to work, including if they become unable to work as a result of an injury sustained performing work for Defendant or because they fall ill." (*Id.* ¶ 4; *see also id.* ¶ 38.)

***2** The labor performed by ARC workers directly and substantially benefits the Salvation Army's commercial thrift store operations, which generated $598,449,000 in revenue nationally in 2019. (*Id.* ¶ 33.) ARC workers' tasks are assigned to them by the Salvation Army and performed under its direction and control. (*Id.* ¶¶ 33, 37) If it were not for the ARC workers, Defendant would have to pay workers in compliance with federal and state minimum wage laws to perform the same work. (*Id.* ¶ 36.) And, in fact, at times Defendant does just this, for it employs individuals who work alongside ARC workers, performing substantially the same jobs, whom it pays market-rate wages. (*Id.*) Plaintiffs allege that the Salvation Army knew that ARC workers were paid less than the minimum wage and willfully denied them minimum wages for their time worked. (*Id.* ¶¶ 47-48.)

The case's four named plaintiffs—Plaintiffs Alvear, Massey, Stough, and Keigans—each worked at an ARC facility within the past several years. Plaintiff Alvear resides in Texas and worked at two ARCs on distinct occasions, first in Fort Worth from December 2018 to July 2019, and later in Dallas from June 2020 to August 2020. (*Id.* ¶ 19.) Plaintiff Massey resides in Georgia and worked at an ARC in Memphis, Tennessee from January 2020 to March 2020. (*Id.* ¶ 20.) Plaintiff Stough resides in Alabama and worked at an ARC in Birmingham from August 2021 to November 2021. (*Id.* ¶ 21.) Plaintiff Keigans, finally, resides in Florida and worked at an ARC in Miami from October 31, 2019, to February 1, 2020. (*Id.* ¶ 22.)

At their respective ARCs, each of the named plaintiffs worked at least eight hours a day, five days a week. (*Id.* ¶¶ 19-22.) Two of the named Plaintiffs—Plaintiffs Massey and Stough—allege that they worked more than 40 hours each week. Plaintiff Massey alleges that he worked additional weekend hours "from time to time," and Plaintiff Stough alleges that he regularly worked weekdays from 7 a.m. to 4 p.m., but he "routinely" worked as late as 6 p.m. and worked a full day every other Saturday. (*Id.* ¶¶ 20-21.)

The Salvation Army National Corporation conducts its operations through four separately incorporated regional entities. (*Id.* ¶ 24.) Here, Plaintiffs sue the entity responsible for the southern region.[2] That entity is incorporated in Georgia and has its headquarters in Atlanta. (*Id.* ¶¶ 23-24.)

Together Plaintiffs bring three claims against the Salvation Army: two under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*, and one under Florida law. The first claim, brought by all four plaintiffs and on behalf of a § 216(b) FLSA collective, is for violation of the FLSA's minimum wage requirements.[3] (Doc. 39 ¶¶ 67-76.) The second claim, brought only by Plaintiffs Massey and Stough, alleges violations of the FLSA overtime wage requirements. (*Id.* ¶¶ 77-86.) The third claim, brought by Plaintiff Keigans on behalf of a

purported Rule 23 class of Florida ARC workers, alleges violations of the Florida Minimum Wage Act, Fla. Stat. § 448.110.[4] (Doc. 39 ¶¶ 87-96.)

***3** The Salvation Army now moves to dismiss the FAC pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

II. Jurisdiction

This Court has jurisdiction over Plaintiffs' FLSA claims pursuant to 28 U.S.C. § 1331. It has supplemental jurisdiction over Plaintiff Keigans' Florida law claim, for that claim is "so related" to the FLSA claims that it "form[s] part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a).

III. Legal Standard

Rule 12(b)(6) provides for dismissal of a case when the complaint "fail[s] to state a claim upon which relief may be granted." Fed. R. Civ. P. 12(b)(6). When evaluating a Rule 12(b)(6) motion, the court must take the facts alleged in the complaint as true and construe them in the light most favorable to the plaintiff. *Resnick*, 693 F.3d at 1321-22. To survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556, 127 S.Ct. 1955). "The plausibility standard ... asks for more than a sheer possibility that a defendant has acted unlawfully," and when the "complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement of relief." *Id.* (citing *Twombly*, 550 U.S. at 557, 127 S.Ct. 1955). The complaint thus must contain more than mere "labels and conclusions, and a formulaic recitation of a cause of action's elements"—it must allege facts that "raise the right to relief above the speculative level." *Twombly*, 550 U.S. at 555, 127 S.Ct. 1955.

IV. Discussion

A. The "Economic Reality" Test

Whether Plaintiffs have stated claims under the FLSA depends on whether they have plausibly alleged that they were "employees" under the meaning of the FLSA, for the legislation's minimum wage and overtime protections apply only to individuals falling within that definition. *Schumann v. Collier Anesthesia, P.A.*, 803 F.3d 1199, 1207 (11th Cir. 2015); *Scantland v. Jeffry Knight, Inc.*, 721 F.3d 1308, 1311 (11th Cir. 2013); *Roberts v. Gwinnett County, Georgia*, 225 F. Supp. 3d 1400, 1410 (N.D. Ga. 2016). Plaintiff Keigans' claim under the Florida Minimum Wage Act ("FMWA") depends on the same analysis, since the FMWA incorporates the FLSA's definition of "employee." Fla. Stat. Ann. § 448.110(3); *see also Anagnos v. Nelsen Residence, Inc.*, 721 F. App'x 901, 903-04 (11th Cir. 2018) (explaining that under Florida law, "employees receive the same protection under state law that they enjoy under the Fair Labor Standards Act").

Courts have generally found the FLSA's definitions to be only modestly helpful in determining to whom the Act's protections apply. *See Schumann*, 803 F.3d at 1207 (observing that the FLSA's definitions "are not precise"); *see also Roberts*, 225 F. Supp. 3d at 1410 (collecting cases from other circuits making similar observations). Reading them, one sees why: an "employee" is "any individual employed by an employer." 29 U.S.C. § 203(e)(1). An "employer," in turn, "includes any person acting directly or indirectly in the interest of an employer in relation to an employee." *Id.* § 203(d). The term "employ" "includes to suffer or permit to work." *Id.* § 203(g). The "striking breadth" of these definitions, *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 326, 112 S.Ct. 1344, 117 L.Ed.2d 581 (1992), is, however, not merely to be ignored or written off as the product of bad draftsmanship. As the Supreme Court has observed, the FLSA "stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles." *Id.* (discussing *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 728, 67 S.Ct. 1473, 91 L.Ed. 1772 (1947)). Accordingly, its "definitions are intended to be 'comprehensive enough' to include 'working relationships, which prior to this Act, were not deemed to fall within an employer-employee category.' " *Scantland*, 721 F.3d at 1311 (quoting *Rutherford Food*, 331 U.S. at

729, 67 S.Ct. 1473).

***4** Still, without much concrete help from the text of the FLSA, courts have developed their own inquiries for determining "employee" status, while generally emphasizing that "there is no one-size-fits-all approach to analyzing employment status under the Act." *Roberts*, 225 F. Supp. 3d at 1412 (collecting cases). Different inquiries have cropped up at different disputed boundaries of the employment relationship. For example, the Eleventh Circuit has applied one multifactor test in determining whether a given worker is a statutory employee or an independent contractor, while emphasizing that "the overarching focus of the inquiry is economic dependence."[5] *Scantland*, 721 F.3d at 1312. The Eleventh Circuit has endorsed a different multifactor test in the context of interns and trainees, one concerned above all with determining the "primary beneficiary" in the relationship. *See Schumann*, 803 F.3d at 1211-12. Another inquiry, focused on whether the relationship has "any indicia of traditional free-market employment contemplated under the FLSA," has been applied in the context of incarcerated people and pretrial detainees. *See Villarreal v. Woodham*, 113 F.3d 202, 207 (11th Cir. 1997). At the root of all these tests is the Supreme Court's injunction that "the test of employment under the Act is one of 'economic reality,' " *Tony and Susan Alamo Found. v. Sec. of Lab.*, 471 U.S. 290, 301, 105 S.Ct. 1953, 85 L.Ed.2d 278 (1985), meaning that the inquiry depends little on the labels the parties give their relationship and turns, instead, on "whether 'the work done, in its essence, follows the usual path of an employee.' " *Scantland*, 721 F.3d at 1311 (quoting *Rutherford Food*, 331 U.S. at 729, 67 S.Ct. 1473).

But as the parties acknowledge, the Eleventh Circuit has yet to address the question of employment status in circumstances analogous to those alleged by Plaintiffs. The parties urge different possible tests from other contexts on the Court, although both acknowledge that there is no "one-size-fits-all approach to analyzing employment status under the Act," and that a "flexible approach" will ultimately be appropriate. *Roberts*, 225 F. Supp. 3d at 1412, 1415; *see also Schumann*, 803 F.3d at 1211-12 (endorsing Second Circuit's "flexible" approach of "weighing and balancing all of the circumstances") (quoting *Glatt v. Fox Searchlight Pictures, Inc.*, 791 F.3d 376 (2d Cir. 2015), *opinion amended and superseded*, 811 F.3d 528 (2d Cir. 2016)). The Court begins its analysis with the relevant Supreme Court cases.

The seminal case is *Walling v. Portland Terminal Co.*, 330 U.S. 148, 67 S.Ct. 639, 91 L.Ed. 809 (1947). The plaintiffs there took part in a training program for prospective railroad brakemen. The program lasted about a week, involved education first through the observation of professional brakemen and later through a performance of their duties under supervision, and was uncompensated, save that one who successfully completed it might later be hired. *See id.* at 149-50, 67 S.Ct. 639. The Supreme Court determined that the plaintiffs were not "employees" under the meaning of the FLSA. In doing so, it reasoned that the statute's definition of "employee" is broad enough "to insure that every person whose employment contemplated compensation should not be compelled to sell his services for less than the prescribed minimum wage," but that the statute nevertheless "cannot be interpreted so as to make a person whose work serves only his own interest an employee of another person who gives him aid and instruction." *Id.* at 152, 67 S.Ct. 639. The case draws the distinction between, on the one hand, a relationship where the work "serves only [the worker's] own interest" or "most greatly benefit[s]" the worker, and, on the other hand, a relationship where the work confers an "immediate advantage" on an employer and there is the "promise or expectation of compensation." *See id.* at 153, 67 S.Ct. 639. The brakemen trainees conferred no such advantage on the railyard, and indeed the Court noted that the trainees' presence not only did "not expedite the company business, but may, and sometimes does, actually impede and retard it." *Id.* at 150, 67 S.Ct. 639.

***5** Four decades later, in *Tony and Susan Alamo Found. v. Sec. of Lab. ("Alamo")*, 471 U.S. 290, 105 S.Ct. 1953, 85 L.Ed.2d 278 (1985), the Supreme Court considered whether "associates" who worked in businesses run by a nonprofit religious foundation were "employees" under the FLSA. There, the "associates" themselves uniformly protested that they did not consider themselves to be employees, but rather volunteers working for religious reasons. *Id.* at 294, 105 S.Ct. 1953; 300-01. But the test, as the Supreme Court again emphasized, is one of "economic reality," and it held the "associates" to be statutory employees nevertheless. *Id.* at 301, 105 S.Ct. 1953. The Court distinguished *Portland Terminal* on the grounds that the brakemen's training course was only seven or eight days long, while in *Alamo* the "associates" were "entirely dependent upon the Foundation for long periods, in some cases several years," and therefore "must have expected to receive in-kind benefits—and expected them in exchange for their services." *Id.* at 301, 105 S.Ct. 1953. At the root of the decision is the idea that the dependence of the "associates" on the Foundation showed that they did in fact expect in-kind compensation for their work. *See id.* at 301, 105 S.Ct. 1953.

Lower courts have drawn a handful of important

considerations from these cases that illuminate the "economic reality" of the alleged relationship between Plaintiffs and Defendant where, as here, work is performed in an at least ostensibly rehabilitative context. First, it is vital whether the purported employee had an "expectation of compensation." *Id.* at 302, 105 S.Ct. 1953; *Portland Terminal*, 330 U.S. at 152, 67 S.Ct. 639; *Schumann*, 803 F.3d at 1211-12. Second, it matters who "most greatly benefit[s]" from the work. *Portland Terminal*, 330 U.S. at 153, 67 S.Ct. 639; *Schumann*, 803 F.3d at 1209-10; *Fochtman v. Hendren Plastics, Inc.*, 47 F.4th 638, 645 (8th Cir. 2022); *Vaughn v. Phoenix H. New York Inc.*, 957 F.3d 141, 145 (2d Cir. 2020).[6] Finally, it matters whether bringing a relationship into—or leaving it out of—the FLSA employment paradigm would advance or hinder the purposes of the FLSA. *See Alamo*, 471 U.S. at 302, 105 S.Ct. 1953; *Portland Terminal*, 330 U.S. at 152, 67 S.Ct. 639.[7] The Court considers that Plaintiffs have plausibly alleged each of these factors.

B. Expectation of Compensation

***6** First, Plaintiffs have plausibly alleged that they had an expectation of compensation: namely, the various in-kind benefits and small weekly payments that they received on the condition that they performed full-time work duties. (Doc. 39 ¶¶ 29-30, 40.) Indeed, that much is even more strongly suggested here than in *Alamo*, where the record showed that the "associates" themselves insisted they did not expect any compensation. *See Alamo*, 471 U.S. at 301, 105 S.Ct. 1953. Here, by contrast, the allegations state that Plaintiffs did in fact have such an expectation. (*Id.* ¶ 29.) Even if they did not, it is also the case that here Plaintiffs have alleged that they were dependent on Defendant for room, board, and basic necessities like clothing for long periods, usually about 180 days. (*Id.* ¶¶ 3, 29.) In *Alamo*, the fact that Plaintiffs were "entirely dependent upon [Defendant] for long periods," was significant because it created the inference that the "associates" must have expected something in return for their work—the in-kind benefits on which they survived. *See Alamo*, 471 U.S. at 301, 105 S.Ct. 1953. That same inference is reasonable here.

The allegation that Plaintiffs were required to turn over their food stamps to Defendant is relevant, and it does cut against the inference of an expectation of compensation in the sense of a straightforward exchange of work for money or in-kind benefits. (Doc. 39 ¶ 40); *see Williams v. Strickland*, 87 F.3d 1064, 1067 (9th Cir. 1996).[8] But it is not dispositive, at least at this stage. It would create an odd loophole in the FLSA if, as a matter of law, an enterprise could avoid FLSA obligations by requiring its workers to give it some consideration aside from their labor. *Cf. Alamo*, 471 U.S. at 302, 105 S.Ct. 1953 ("If an exception to the Act were carved out for employees willing to testify that they performed work 'voluntarily,' employers might be able to use superior bargaining power to coerce employees to make such assertions, or to waive their protections under the Act."). Rather, the Court thinks that the proper way to view the SNAP benefits issue is as one circumstance among others that illuminates the economic reality of the parties' relationship.

C. Primary Beneficiary

Plaintiffs have also plausibly alleged that Defendant was the "primary beneficiary" of their relationship.[9] *See Portland Terminal*, 330 U.S. at 153, 67 S.Ct. 639 (noting that the railroad training at issue "would most greatly benefit the trainees"); *Schumann*, 803 F.3d at 1209-10 (discussing development of "primary beneficiary" analysis "in cases involving students and trainees" based on *Portland Terminal*); *see also Fochtman*, 47 F.4th at 645 (noting that "leading authorities in difficult cases have deemed it appropriate to examine who is the 'primary beneficiary' of an arrangement between parties in a potential employer-employee relationship" and collecting decisions from six other appellate courts).

***7** The Eleventh Circuit has most extensively elaborated the "primary beneficiary" analysis in *Schumann*, where it adopted a test derived from the Second Circuit's decision in *Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528 (2d Cir. 2016).[10] The plaintiffs in *Schumann* were trainee nurse-anesthesiologists seeking back wages for four semesters of clinical training, a requirement for their professional licensing. The Eleventh Circuit held that, in answering this question, the district court should follow the Second Circuit in applying the following factors. The list is "non-exhaustive" and no single factor is dispositive:

> 1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
>
> 2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.

> 3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
>
> 4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.
>
> 5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
>
> 6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
>
> 7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

Schumann, 803 F.3d at 1211-12 (quoting *Glatt*, 811 F.3d at 536-37). It is apparent that many of these factors—and some of the ideas behind the test as a whole—have only a tenuous relationship with the situation alleged in the instant case. Indeed, the Eleventh Circuit noted that the *Glatt* test responded to "the limitations of comparing the characteristics of the modern internship to the specific facts at issue in *Portland Terminal*." *Id.* at 1210. There is little to do here with the modern internship, but some of the factors still may help to illuminate the economic reality of the parties' relationship. *Cf. Axel v. Fields Motorcars of Fla., Inc.*, 711 F. App'x 942, 947-48 (11th Cir. 2017) (applying the *Glatt* factors to a case not "precisely analogous" to *Schumann* while adapting the test to the facts of the case and disregarding certain factors "tailored to training in the context of a formal academic program"). Here, the Court treats these factors as a guide to the fundamental question of who the "primary beneficiary" of the parties' relationship was.

The first factor—an expectation of compensation—has already been addressed. The second factor[11] is not quite apposite as phrased in *Schumann*, but adapted to this context, it suggests an inquiry into how far the work at issue provides some benefits to the worker—like the "instruction" in *Portland Terminal*, 330 U.S. at 153, 67 S.Ct. 639—other than monetary or in-kind remuneration. The FAC alleges quite clearly that Plaintiffs did not get such benefits from their work for Defendant. It is alleged that "[t]he jobs performed by ARC workers are not in furtherance of any educational program and do not primarily further ARC workers' rehabilitation," and "Defendant does not provide ARC workers with job or skills training, nor any other training that would further ARC workers' employment once they leave the program." (Doc. 39 ¶ 32.) The FAC also alleges that the volume of work leaves little time for rehabilitation, that the rehabilitative services are "rudimentary," and that ARC workers often leave the facilities "unable to survive economically in their communities." (*Id.* ¶¶ 3, 32.)

***8** Defendant vigorously urges the Court to recognize that its relationship with ARC workers functions principally as a "rehabilitation program" aimed at "providing vulnerable individuals with self-esteem and good work habits," and that their duties are not "work" but "work therapy." (Doc. 63-1 at 16.) But that is not what the well-pled allegations in the FAC say, and at this stage the Court accepts those allegations as true, and it makes inferences in favor of, not against, the Plaintiffs.[12] Nor can the Court simply observe that the ARC workers are drawn from the homeless and others on the margins of society (Doc. 39 ¶ 1) and thereby draw any conclusions about the primary beneficiary of their work. It is one thing to recognize that some work is done for its educational or rehabilitative benefits. *See, e.g., Williams*, 87 F.3d at 1067; *Vaughn*, 957 F.3d at 146. It is quite another to suggest, just on the face of the pleadings, that for people like the ARC workers, simply doing unpaid work is necessarily a "benefit"—"work therapy" rather than work. The proper question here (to be asked among other questions, such as whether there is an expectation of compensation) is not about the sort of person who does the work, but about whether the work actually has a rehabilitative purpose and provides rehabilitative benefits. *Cf., e.g., Williams*, 87 F.3d at 1067 ("Williams argues that the presence of a rehabilitative element does not preclude an employment relationship. We agree."). That is necessarily a question of fact.

Thus, unlike in *Portland Terminal*, where the plaintiffs were only "work[ing] for their own advantage on the premises of another" and their work "serve[d] only [their] own interest," 330 U.S. at 152, 67 S.Ct. 639, the allegations here plausibly state that the work performed was not itself beneficial to Plaintiffs, either as training or as rehabilitation.

Next, the third and fourth *Schumann* factors[13] are irrelevant outside of an internship context and not really susceptible of adaptation to the facts of this case. *Cf. Axel*, 711 F. App'x at 947. The fifth factor[14] provides more mixed guidance. On the one hand, the fixed duration of the ARC program suggests an important distinction between it and the apparently open-ended relationship between the "associates" and the Foundation in *Alamo*. *See Alamo*, 471 U.S. at 301, 105 S.Ct. 1953. On the other hand, if the training/rehabilitation benefit to the ARC workers is negligible or nonexistent (as is alleged), it is

unclear how the duration of the program could be tailored to the needs of training or rehabilitation.

Plaintiffs' allegations bearing on the sixth factor[15] point clearly in favor of an employment relationship. Rather than the sort of supervised, apprenticeship-style work recognizable in both *Portland Terminal* and *Schumann*, the FAC alleges that Plaintiffs do substantially the same work as Defendants' other employees who are paid market-rate wages. (Doc. 39 ¶ 36.) That creates a plausible inference that these workers "displace" paid employees drawn from the conventional labor market. The seventh factor,[16] finally, also appears irrelevant outside the context of internships or traineeships. On the whole, then, the relevant *Schumann* factors suggest that Plaintiffs have plausibly alleged that Defendant is the "primary beneficiary" of the relationship, and thus that Plaintiffs were their statutory employees.

D. Purposes of the FLSA

***9** Finally, we consider the statutory purposes of FLSA as applied to the allegations. *See Alamo*, 471 U.S. at 302, 105 S.Ct. 1953 (considering the "purposes of the Act"); *Portland Terminal*, 330 U.S. at 152, 67 S.Ct. 639 (same). "Congress enacted the FLSA '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.' " *Schumann v. Collier Anesthesia, P.A.*, 803 F.3d 1199, 1207 (11th Cir. 2015) (quoting *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 707 n.18, 65 S.Ct. 895, 89 L.Ed. 1296 (1945)). And it sought "to lessen, so far as seemed then practicable, the distribution in commerce of goods produced under subnormal labor conditions." *Id.* (quoting *Rutherford Food*, 331 U.S. at 727, 67 S.Ct. 1473).

The allegations plausibly suggest that finding Plaintiffs to be "employees" would be consistent with these purposes of the FLSA. ARC workers are allegedly drawn from groups with the least bargaining power—the unhoused or marginally housed, the very poor, and those with addiction or mental illness. (Doc. 39 ¶ 1.) To be sure, this same fact would also make charitable outreach to such individuals all the more creditable, something Defendant emphasizes in its papers. But seen in the light most favorable to Plaintiffs, the fact that ARC workers are drawn from this population might well suggest that they, more than others, require the minimum labor protections afforded by the FLSA. One whose immediate access to housing and food is conditioned on doing full-time work at an ARC is even less likely to hold out for better compensation than the ordinary low-wage worker. *Cf. Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982) (noting that the FLSA reflects the recognition that "there are often great inequalities in bargaining power between employers and employees").

In addition, the Supreme Court has suggested that the effect on competing businesses, and by extension on the labor market, is relevant. In *Alamo*, the fact that the associates insisted on their own volunteerism could not be dispositive, in part because "such exceptions to coverage would affect many more people than those workers directly at issue in this case and would be likely to exert a general downward pressure on wages in competing businesses." *Alamo*, 471 U.S. at 302, 105 S.Ct. 1953. The FAC plausibly alleges that analogous circumstances are present here, since "[m]ost of the work is performed in direct support of Defendant's thrift stores, retail establishments that are in direct competition with other such enterprises selling used goods," and, as noted, ARC workers allegedly displace the need for paid workers to perform the same roles. (Doc. 39 ¶¶ 2, 36.)

E. Plaintiffs Have Plausibly Alleged FLSA Employment Status

The Court concludes that Plaintiffs have plausibly alleged that they were employed by Defendant for the purposes of the FLSA. Plaintiffs have adequately alleged that they worked with an expectation of compensation, that Defendant was the primary beneficiary of their work, and that recognizing their status as employees would be consistent with the purposes of FLSA. In reaching this conclusion, this Court reaches the same result as the Northern District of Illinois in a nearly identical case brought against another regional arm of the Salvation Army. *See Clancy v. Salvation Army*, No. 22-CV-1250, 2023 WL 1344079 (N.D. Ill. Jan. 31, 2023).

Defendant's arguments against this conclusion are unavailing, at least at this stage. Defendant relies heavily—and quite understandably—on *Williams v. Strickland*, 87 F.3d 1064 (9th Cir. 1996), a case that concerned a very similar set of facts: the plaintiff lived and worked at a Salvation Army ARC in San Francisco, and the Ninth Circuit held that he was not employed by the regional wing of the Salvation Army. But this case does not bar Plaintiffs' claims for two reasons. First, and most fundamentally, *Williams* was decided on a developed factual record at summary judgment. The case turned on the Ninth Circuit's conclusion that there was no

"implied agreement for compensation" between ARC workers and the Salvation Army, in part because it was found to be beyond dispute that the plaintiff's "relationship with the Salvation Army was solely rehabilitative." *Id.* at 1067. It may turn out, following fact development in this case, that the same findings are appropriate here. But the Court cannot rely on factual findings from a different case involving different parties and decided nearly thirty years ago, particularly where some of those findings contradict Plaintiff's allegations.

***10** Second, *Williams* is only persuasive authority in this circuit, and the Court has some doubts about whether *Williams* persuasively distinguishes *Alamo.* *Williams*' conclusion rested on the determination that, based on the factual record, it was beyond dispute that the plaintiff had no "implied compensation agreement." *See id.* at 1067. It affirmed the district court's decision to disregard the plaintiff's own testimony that "he believed he was in an employment relationship" on the grounds that this statement reflected a "different unilateral state of mind, which was not expressed to anyone at the time of his admittance." *Id.* (internal quotation omitted). But this emphasis on what sort of subjective understanding existed between the parties at the time of the plaintiff's admittance seems at odds with *Alamo.* There, as we have said, the Supreme Court found an employment relationship even though the "associates" themselves repeatedly said that they at no point regarded themselves as employees or expected compensation. *See Alamo*, 471 U.S. at 301-02, 105 S.Ct. 1953. Thus, if the *Alamo* Court had looked for any sort of meeting of the minds between the parties, as *Williams* seems to do, it would surely have found that no such implied agreement existed. But instead, the *Alamo* Court looked to the economic reality of the situation, and found that compensation was, in fact, taking place. *See id.* at 301, 105 S.Ct. 1953; *Williams*, 87 F.3d at 1069 (Poole, J., dissenting). Perhaps, with additional briefing, the Court will be persuaded that *Williams*' distinguishing of *Alamo* is also due in this case. The issue will no doubt be important later, but it is not determinative here; the primary reason for not following the case at this stage is that it was decided on summary judgment.

Other cases on which Defendant relies are distinguishable on different grounds. Two appellate decisions in particular bear discussion, as they concern rehabilitation programs that are in some ways similar to the one alleged here. The first case, *Vaughn v. Phoenix House New York Inc.*, 957 F.3d 141 (2d Cir. 2020), involved a plaintiff assigned to an inpatient drug and alcohol treatment facility pursuant to a plan approved by a state court. *Id.* at 144. The treatment program required the plaintiff to work eight hours each day for six days a week; if he did not do so he would go to jail. *Id.* The Second Circuit, applying the *Glatt* "primary beneficiary" test, held that the plaintiff had failed to plead facts plausibly showing that he was an employee of the facility. *See id.* at 145 (citing *Glatt*, 811 F.3d at 535-36). The court observed that "Vaughn received significant benefits from staying at Phoenix House, in large part because he was permitted to receive rehabilitation treatment there in lieu of a jail sentence, and was provided with food, a place to live, therapy, vocational training, and jobs that kept him busy and off drugs." *Vaughn*, 957 F.3d at 146 (quotation marks omitted).

In *Fochtman v. Hendren Plastics, Inc.*, 47 F.4th 638 (8th Cir. 2022), the plaintiffs participated in "DARP," a residential recovery program lasting about six months to a year, as a court-supervised alternative to prison time for drug offenses. *Id.* at 641-42. As part of the recovery program, the plaintiffs worked in local for-profit businesses, but the businesses paid wages directly to DARP, and the workers received no remuneration; the work was instead regarded as part of a program aimed at "developing a work ethic" among the participants. *Id.* The Eighth Circuit held that the plaintiffs were not FLSA employees. It determined that the plaintiffs "were the primary beneficiaries of the arrangement" and that "there was no implied agreement for compensation," unlike in *Alamo. Id.* at 646. Much like in *Vaughn*, the court rested its distinction of *Alamo* on the grounds that, "although DARP provided room and board to its participants, the organization did so because the participants were directed by court order to engage in a recovery program in lieu of imprisonment." *Id.*

At least two important factors distinguish *Vaughn* and *Fochtman* from the present case. Most importantly, both cases involved plaintiffs placed in rehabilitation programs under court supervision and as an alternative to prison time. In both cases this was central to the primary beneficiary analysis. *See Vaughn*, 957 F.3d at 146; *Fochtman*, 47 F.4th at 646. That factor is simply absent here, and its absence casts Plaintiffs' alleged relationship with Defendant in a different light—and makes it look more like the relationship in *Alamo* than *Vaughn* or *Fochtman*.[17] As a secondary matter, neither case implicated the same possible "downward pressure on wages" that the *Alamo* Court worried would be the product of recognizing an exception to FLSA coverage under facts like those before it. In *Vaughn*, the work done by the plaintiff was entirely work that served his rehabilitation program's own operations. *See Vaughn v. Phoenix H. Found., Inc.*, No. 14-CV-3918 (RA), 2019 WL 568012, at *1 (S.D.N.Y. Feb. 12, 2019), *aff'd sub*

nom. Vaughn v. Phoenix H. New York Inc., 957 F.3d 141 (2d Cir. 2020). In *Fochtman*, the for-profit businesses for which the plaintiffs worked still paid for their labor—the businesses just paid the treatment program instead of the workers. *See Fochtman*, 47 F.4th at 646-47 ("Nor did the Arkansas arrangement threaten to facilitate unfair competition among businesses by depressing pay below the minimum wage.... Hendren is a for-profit business, but it paid more than the minimum wage rate to DARP for each hour worked by a DARP participant."). The allegations here are, as discussed above, quite the opposite.[18]

F. Willfulness

***11** Finally, Defendant argues that Plaintiffs have alleged only in a conclusory way that Defendant's FLSA violations were willful. "To show willfulness, the standard to allege is that 'the employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute.' " *Palacios v. Shift*, No. 2:21-CV-00030-RWS, 2021 WL 3493165, at *4 (N.D. Ga. June 23, 2021) (quoting *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133, 108 S.Ct. 1677, 100 L.Ed.2d 115 (1988)). "At this stage in litigation, Plaintiff does not need to allege specific facts to show willfulness or bad faith; Plaintiff will have the opportunity to demonstrate this during discovery." *Id.*; *see also White v. View Point Health*, No. 1:14-CV-0325-WBH, 2015 WL 309440, at *1 (N.D. Ga. Jan. 26, 2015).[19]

Here, Plaintiffs have alleged that Defendant knew they were working for it without being paid a minimum wage, that they willfully denied Plaintiffs that wage, and that they knew about and sought to avoid their duties under the FLSA. (Doc. 39 ¶¶ 7, 47-49, 53.) Rule 8 requires no more. Indeed, even under the heightened fraud pleading standard of Rule 9(b), "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b).

V. Conclusion

For the foregoing reasons, Defendant's motion to dismiss (Doc. 63) is **DENIED.**

The Court emphasizes, in closing, that its discussion here is grounded solely in Plaintiffs' well-pled allegations. It may turn out that discovery gives rise to a different picture of the Salvation Army's ARCs than that offered by Plaintiffs' complaint. But that is a question for a later day.

Defendant shall file an answer to the FAC within 21 days of the entry of this order, as required by the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 12(a).

SO ORDERED this 8th day of March, 2023.

All Citations

--- F.Supp.3d ----, 2023 WL 2711544

Footnotes

1 SNAP is the federal Supplemental Nutritional Assistance Program. *See* 7 U.S.C. § 2011, *et seq.*

2 The Salvation Army's southern region includes Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, Washington, D.C., and West Virginia. (Doc. 39 ¶ 24.)

3 The collective is defined as follows:

> All persons who, between March 9, 2019 and the date of final judgment: (1) are, were, or will be enrolled in any Salvation Army Adult Rehabilitation Center or other programs operated by Defendant with similar work requirements ("ARC Program")— including, but not limited to, Alcohol Rehabilitation Programs, Adult Rehabilitation Programs, and Corps Salvage and Rehabilitation Centers; (2) did not or will not enroll in the ARC

> Program to comply with a court order or condition of probation or parole; (3) perform, performed, or will perform work for Defendant; and (4) are, were, or will be paid less than the applicable federal minimum wage.

(Doc. 39 ¶ 50.)

[4] The Rule 23 class is defined as follows:

> All persons who, between May 17, 2017 and the date of final judgment: (1) are, were, or will be enrolled in any Salvation Army Adult Rehabilitation Center or other programs operated by Defendant with similar work requirements ("ARC Program")— including, but not limited to, Alcohol Rehabilitation Programs, Adult Rehabilitation Programs, and Corps Salvage and Rehabilitation Centers—in Florida; (2) did not or will not enroll in the ARC Program to comply with a court order or condition of probation or parole; (3) perform, performed, or will perform work for Defendant; and (4) are, were, or will be paid less than the applicable Florida minimum wage.

(Doc. 39 ¶ 59.)

[5] The non-exhaustive list of factors, synthesized from Supreme Court cases, was as follows:

> (1) the nature and degree of the alleged employer's control as to the manner in which the work is to be performed;
>
> (2) the alleged employee's opportunity for profit or loss depending upon his managerial skill;
>
> (3) the alleged employee's investment in equipment or materials required for his task, or his employment of workers;
>
> (4) whether the service rendered requires a special skill;
>
> (5) the degree of permanency and duration of the working relationship;
>
> (6) the extent to which the service rendered is an integral part of the alleged employer's business

Scantland, 721 F.3d at 1312 & n.2.

[6] Defendant urges the Court to apply solely the "primary beneficiary" analysis here, as courts in other circuits have recently done in the context of determining whether plaintiffs in court-supervised work rehabilitation programs are FLSA employees. *See Vaughn v. Phoenix H. New York Inc.*, 957 F.3d 141 (2d Cir. 2020); *Fochtman v. Hendren Plastics, Inc.*, 47 F.4th 638 (8th Cir. 2022). The Court does not do so for two reasons. First, the Eleventh Circuit does not appear to have yet applied its primary beneficiary analysis outside the context of traineeships or internships. *See, e.g., Schumann*, 803 F.3d 1199; *Axel v. Fields Motorcars of Fla., Inc.*, 711 F. App'x 942, 945 (11th Cir. 2017). Its adoption of the *Glatt* test is so thoroughly couched in terms of the test's benefits for analyzing "the characteristics of modern internships," *Schumann*, 803 F.3d at 1210, that it is not clear whether the Circuit views the test as one suited to other circumstances. Second, the facts of this case are closely analogous to the facts in *Alamo*—something not true at all of cases like *Schumann* involving internships or traineeships. *Alamo*'s analysis does not look much like a "primary beneficiary" analysis at all, and instead is attuned much more to the first and third factors the Court will use: expectation of compensation and the policies of the FLSA. Thus, given the "flexible" approach endorsed by the Eleventh Circuit in *Schumann*, 803 F.3d at 1210 n.9, the best route in a case like this would seem to be to look to the "primary beneficiary" test as a source of possibly relevant considerations among others. *Cf. Roberts*, 225 F. Supp. 3d

at 1412 ("Recently, in *Schumann*, the Eleventh Circuit endorsed the Second Circuit's approach in treating "employment for FLSA purposes as a flexible concept to be determined on a case-by-case basis by review of the totality of circumstances[.]"). The primary beneficiary test's factors are "non-exhaustive" anyway. *Schumann*, 803 F.3d at 1211.

[7] *Cf. Clancy v. Salvation Army*, No. 22-CV-1250, 2023 WL 1344079, at *3 (N.D. Ill. Jan. 31, 2023) (considering, in a nearly identical case, whether there was an expectation of compensation, who the primary beneficiary was, "how dependent the relationship was," and the purposes of the FLSA). This Court considers the dependency of the relationship in the context of the "expectation of compensation," as that is how *Alamo* appears to do it. *See Alamo*, 471 U.S. at 301, 105 S.Ct. 1953. By our lights, the separate multifactor test applied to determine whether an individual is an economically dependent employee or an independent contractor, *see Scantland v. Jeffry Knight, Inc.*, 721 F.3d 1308, 1312 (11th Cir. 2013), does not appear relevant or illuminating of the economic reality of this case.

[8] The Court discusses this case, which is central to Defendant's arguments, at greater length below.

[9] Plaintiffs contend that the proper inquiry in this context is not that of the "primary beneficiary," but whether the alleged employer received an "immediate advantage" from the relationship. (Doc. 72 at 16-17.) The language comes from *Portland Terminal*, where the facts showed that "the railroads receive[d] no 'immediate advantage' " from the trainees' work. 330 U.S. at 153, 67 S.Ct. 639. Defendant responds that the Eleventh Circuit rejected the use of "immediate advantage" even as a factor, let alone as a standalone test, in *Schumann.* (Doc. 75 at 13-15) (citing *Schumann*, 803 F.3d at 1212-13). Generally speaking, Defendant has the better of the argument. *Portland Terminal* itself—although it contains the language just quoted—also suggests that relative advantage between the parties, rather than simply the presence of immediate advantage to a potential employer, is what matters. *See Portland Terminal*, 330 U.S. at 153, 67 S.Ct. 639 (observing that the training at issue "would most greatly benefit the trainees"). And while the cases cited by Plaintiff do mention "immediate advantage," in fact what they all do is some form of "primary beneficiary" analysis, understood as an inquiry into the relative benefits from the work. *See Axel*, 711 F. App'x at 945; *Earl v. Bell H., LLC*, No. 8:20-CV-129, 2022 WL 394731, at *2 (D. Neb. Feb. 9, 2022); *Perez v. TLC Residential, Inc.*, No. CV-15-02776-WHA, 2016 WL 6143190, at *3 (N.D. Cal. Oct. 21, 2016); *Archie v. Grand Cent. Partn., Inc.*, 997 F. Supp. 504, 531 (S.D.N.Y. 1998). No case Plaintiffs have pointed to looks only at whether the purported employer gets an "immediate advantage." *Cf. Clancy*, 2023 WL 1344079 at *3, n.5 (reaching same conclusion).

[10] The cited *Glatt* decision post-dates *Schumann* because the Second Circuit originally issued the opinion in 2015, but amended it the following year. *See Glatt v. Fox Searchlight Pictures, Inc.*, 791 F.3d 376 (2d Cir. 2015), *opinion amended and superseded*, 811 F.3d 528 (2d Cir. 2016). As far as this Court can tell, the substance of the *Glatt* opinion discussed in *Schumann* was not altered. The quoted multifactor test, for example, appears verbatim in the amended opinion. *See Glatt*, 811 F.3d at 536-37. For simplicity's sake, the Court cites to the later *Glatt* decision.

[11] "2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions." *Schumann*, 803 F.3d at 1212.

[12] Nor, as discussed below, can the Court accept factual findings made on the developed record in *Williams v. Strickland*, 87 F.3d 1064 (9th Cir. 1996), no matter how similar that case was to the one at bar.

[13] "3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit. [...] 4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar." *Schumann*, 803 F.3d at 1212.

[14] "5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning." *Schumann*, 803 F.3d at 1212.

[15] "6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern." *Schumann*, 803 F.3d at 1212.

[16] "7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship." *Schumann*, 803 F.3d at 1212.

[17] At oral argument, Defendant's counsel suggested that the voluntary nature of Plaintiffs' relationship with the ARCs, rather than distinguishing *Vaughn* and *Fochtman*, makes the case for reaching the same result here even stronger. But that cannot be right; all conventional employment relationships are voluntary in this way. And the fact that, out of necessity, some may voluntarily accept "subnormal working conditions" is something the FLSA was designed to redress. *Schumann*, 803 F.3d at 1207 (quoting *Rutherford Food*, 331 U.S. at 727, 67 S.Ct. 1473).

[18] Defendant's other cases are also distinguishable. *Armento v. Asheville Buncombe Community Christian Ministry, Inc.*, 856 F. App'x 445 (4th Cir. 2021), concerned a work program in a veterans' shelter. The work was part-time, only involved keeping the shelter running, and the residents' ability to work was not a condition of their staying in the shelter—they could be exempted from work for "disability or other individualized reasons." *Id.* at 448. And the many cases concerning other kinds of quasi-employment relationships held to be outside the FLSA do little to shed light on the economic reality of this case. *See, e.g., Freeman v. Key Largo Vol. Fire and Rescue Dept., Inc.*, 494 F. App'x 940 (11th Cir. 2012) (volunteer firefighter); *Steelman v. Hirsch*, 473 F.3d 124 (4th Cir. 2007) (romantic partners running shared business); *Villarreal v. Woodham*, 113 F.3d 202, 207 (11th Cir. 1997) (work during pretrial detention); *Danneskjold v. Hausrath*, 82 F.3d 37 (2d Cir. 1996) (prison labor); *see also Clancy*, 2023 WL 1344079, at *4 n.8 (distinguishing same and similar cases).

[19] Defendant's case on this point is distinguishable. *See Bautista v. El Coyote Mex Rest., Inc.*, No. CV-14-S-458-NE, 2014 WL 2465327, at *3 (N.D. Ala. May 30, 2014) (willfulness not pled where plaintiff did "nothing more than include various forms of the word 'willful' in its allegations").

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