

2. Plaintiffs are present and former social services employees of The Salvation Army who are and were at risk of losing their jobs because of their reluctance to reveal their religious practices to The Salvation Army or to profess adherence to The Salvation Army's religious policies and principles.

3. The Salvation Army receives more than \$50 million in government funds to run social services and child welfare programs for city, county and state governments. These government-funded programs serve approximately 2,300 clients daily and include foster care and adoption services, group homes, boarding homes, a non-secure detention facility for juvenile delinquents, services for children with developmental disabilities, HIV services, and group day care. Nearly 90% of the clients to whom SSC provides government mandated services are in the custody of, and/or referred by, government agencies. These government-funded programs must provide these government mandated social services without regard to religion. Thus, over the years, The Salvation Army has employed social workers and others without regard to their religions or religious practices; and, over the years, these employees - - many of whom have been employed at The Salvation Army for more than fifteen years - - have successfully performed their social work functions and other responsibilities without engaging in religious proselytizing or in the promotion of religious beliefs.

4. SSC is funded almost entirely by New York State, New York City and Nassau and Suffolk Counties agencies. It provides services pursuant to government contracts with these agencies and in fulfillment of state, city and county obligations to provide these services. Its clients include mainly individuals in the custody of the government or referred by government agencies who are involuntarily assigned to SSC for care. SSC thus functions as a governmental actor and must be held to the same legal standard as the government itself.

5. Plaintiffs recognize that individuals and organizations motivated by diverse religious faiths play an important role in this City, and elsewhere, in serving others in need. Plaintiffs are proud of the work they have performed at The Salvation Army and respect the fact that The Salvation Army may be motivated by its religious precepts to pursue its humanitarian and social work functions just as other organizations and individuals may be motivated by other religious precepts or by secular, humanitarian precepts to pursue social services activities.

6. In the past several months, however, The Salvation Army has improperly infused religion into the workplace of those who work in these government-funded and government mandated social services programs. In this regard, The Salvation Army recently began to require that all employees in the social services and child welfare programs must fill out a form on which they a) identify their church affiliation and all other churches attended for the past decade and b) authorize their religious leaders to reveal private communications to the Salvation Army. Other employment documents now require that SSC employees pledge to acknowledge and support the religious mission of The Salvation Army which, according to The Salvation Army, is to “preach the Gospel of Jesus Christ.”

7. In addition, on September 16, 2003, the Salvation Army rescinded a policy statement that had guaranteed “equal employment without unlawful discrimination as to . . . creed.” The revised Employee Manual, dated January 1, 2004, interposes a new religious exception, providing for “equal opportunity for employment [...] except where prohibition on discrimination is inconsistent with the religious principles of the Salvation Army.”

8. The Salvation Army’s new religious conditions of employment conflict with plaintiffs’ ethical and professional obligations as social workers, and with constitutional obligations of non-discrimination on the part of those administering government social services

and child care programs. The Salvation Army's new religious conditions of employment and have contributed to an increasingly hostile work environment for Plaintiffs and other SSC employees. Plaintiffs claim that their personal religious practices and beliefs, or lack thereof, have no bearing on their job performance or qualifications and are therefore an inappropriate subject of employer inquiry. Plaintiffs claim that the information sought on the form is the application of a religious test and claim that disclosing the requested information will lead to further religious discrimination. Moreover, plaintiffs claim that defendant The Salvation Army may not lawfully require them to waive their right to privacy about any information they may have disclosed to their clergy and are distressed that The Salvation Army would seek permission to question clergy about such communications.

9. Plaintiffs cannot, as a matter of conscience and professional responsibility, sign a form stating that they would acknowledge and support The Salvation Army's Evangelical Christian teachings, and fear that the new religious requirements will require them to provide mandated, government-funded social services to children in a manner that conflicts with their legal and professional obligations. For example, the children assigned to receive foster care and other social services from The Salvation Army include sexually active teenagers who are at risk for HIV, sexually transmitted infections and unintended pregnancy. However, The Salvation Army condemns, among other things, non-marital sexual relationships, contraceptive use outside of marriage, homosexuality, abortion, social drinking, gambling, smoking and drug use as "unacceptable according to the teaching of Scripture." Consequently, Plaintiffs claim that their legal and professional obligation to provide these teenagers with services conflicts with the religious principles of The Salvation Army.

10. In these respects, The Salvation Army has created an employment environment that is hostile to those who do not share the same religious commitment to the Gospel of Jesus Christ as is promoted by the leadership of The Salvation Army. Moreover, it has terminated and/or constructively terminated the employment of some Plaintiffs and other SSC employees who, out of matters of conscience and belief, could not bring themselves to reveal their own religious practices, if any, or to endorse the religious views of The Salvation Army as applied to government-funded, government mandated social services and child welfare programs.

11. Accordingly, Plaintiffs contend that, in its administration of social services and child welfare programs for and on behalf of New York State, New York City, and Nassau and Suffolk Counties, The Salvation Army is engaged in religious discrimination in employment. This discrimination in the government programs funded by New York State, New York City and Nassau and Suffolk Counties exposes New York State, New York City and Nassau and Suffolk Counties and The Salvation Army to liability under the Equal Protection Clause of the Fourteenth Amendment, the Free Exercise Clause of the First Amendment; under the State Constitution; and under various federal, city and state anti-discrimination laws.

12. Plaintiffs further contend that the State of New York and City of New York as well as Nassau and Suffolk counties are violating the Establishment Clause of the First Amendment insofar as they are funding employment practices that privilege individuals holding religious views that comport with those of The Salvation Army and that disadvantage individuals that do not share the religious views of the leadership of The Salvation Army.

13. Plaintiffs further contend that the State of New York and City of New York, as well as Nassau and Suffolk counties, are violating the Establishment Clause of the First

Amendment insofar as government funds are supporting the religious mission and practices of The Salvation Army Church.

14. Plaintiffs seek declaratory and injunctive relief to enjoin the religious discrimination in employment alleged in this Complaint. Plaintiffs also seek monetary relief on behalf of those injured by the religious discrimination in employment alleged here.

15. The Plaintiffs include current and former employees of The Salvation Army who are or have been injured by the discriminatory employment practices of The Salvation Army. Plaintiffs are taxpayers of New York State, New York City and/or Nassau County and Suffolk County who oppose the expenditure of government funds to support the religious mission and practices of The Salvation Army Church.

JURISDICTION AND VENUE

16. This action involves federal questions under the First and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. § 1331(a) and § 1343(a)(3), as well as 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. § 1343(4). With respect to Plaintiff Nikichin, jurisdiction is also founded upon 28 U.S.C. § 1332.

17. Pursuant to 28 U.S.C. § 1367, Plaintiffs request that this Court invoke its supplemental jurisdiction to hear claims arising under state and local law.

18. Declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and Rules 57 and 65 of the Federal Rules of Civil Procedure.

19. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) in that Plaintiffs' claims arise in the Southern District of New York, some of the Plaintiffs reside in this district, and some of the Defendants reside in this district.

20. Plaintiffs timely filed Charges of Discrimination with the Equal Employment Opportunity Commission ("EEOC") and thereafter received their notices of right to sue; this amended complaint is filed within ninety (90) days of the receipt thereof.

21. All conditions precedent to the commencement of this action have been fulfilled.

PARTIES

Plaintiffs

22. Anne Lown was the Associate Director of the Social Services for Children program of The Salvation Army. Ms. Lown worked at The Salvation Army for 24 years as a social worker administrator. Ms. Lown holds a Masters Degree in Social Work, has a New York Certification in Social Work and is a member of the Academy of Certified Social Workers. She was hired by The Salvation Army in 1979 as a Supervisor of Social Workers; promoted in 1985 to Director of Preventive Services; promoted again in 1995 to Assistant Executive Director of the Social Services for Children program of The Salvation Army; and promoted again in or about 1999 to Associate Executive Director, responsible for developing and maintaining agency standards for professional practice. In October 2003, her title was changed to Associate Director. Among her duties, Ms. Lown provided administrative supervision of the directors of all SSC programs, overseeing the implementation of mandated State, City and agency policies and procedures. Ms. Lown was responsible for approximately 900 SSC employees. Ms. Lown performed all of her responsibilities with great skill and competence and served, in excellent standing, in this position until her constructive discharge in February, 2004 when she proffered her resignation for a date two weeks hence as a result of the severe and pervasively hostile work environment created by The Salvation Army's illegal infusion of religion into the SSC workplace and was immediately dismissed. Her religious beliefs and practices did not, in any

respect, bear directly on her performance of her professional responsibilities. Ms. Lown prefers to maintain her personal privacy and does not want to disclose her religious beliefs and practices to her employer. Ms. Lown is a resident of New York County, New York and is a taxpayer of the State of New York and the City of New York.

23. Alice Bergeron is the Mental Health Department Office Manager of the Social Services for Children program of The Salvation Army. Ms. Bergeron holds a Bachelor's Degree in History. Ms. Bergeron has been employed by The Salvation Army for 13 years. As Office Manager of the Mental Health Department, Ms. Bergeron is responsible for scheduling mental health appointments for the children and young people in SSC foster care programs; preparing evaluations; supervising children and young people during foster parent meetings with psychiatrists and psychologists; acting as the liaison between the SSC Mental Health Department and SSC program foster parents; acting as the liaison between mental health consultants and the SSC Mental Health Department; and providing part time child supervision for Training Department during foster parent training sessions. Ms. Bergeron has performed all of her responsibilities with great skill and competence. Her religious beliefs and practices do not, in any respect, bear directly on her performance of her professional responsibilities. Ms. Bergeron prefers to maintain her personal privacy and does not want to disclose her religious beliefs and practices to her employer. Ms. Bergeron is a resident of Richmond County, New York and a taxpayer of the State of New York and the City of New York.

24. Steven Bielarski was the Assistant Director of Training for The Salvation Army Social Services for Children program. He worked for The Salvation Army for six years. Hired as a Trainer in January 1998, he was promoted to the Assistant Director of the department in October 1999. Mr. Bielarski holds a Bachelor of Arts in Psychology and a Masters of Science in

Social Work. He has a New York Certification in Social Work and is an active member of the National Association of Social Workers. He conducts his work within their code of ethics. Mr. Bielarski has performed all of these responsibilities with great skill and competence and served, in excellent standing, in this position until his constructive discharge on February 21, 2004 when he resigned his position as a result of the severe and pervasively hostile work environment created by The Salvation Army's illegal infusion of religion into the SSC workplace. His religious beliefs and practices do not, in any respect, bear directly on his performance of his professional responsibilities. He prefers to maintain his personal privacy and not disclose his religious beliefs and practices to his employer. He is a resident of New York County, New York and a taxpayer of the State of New York and the City of New York.

25. Kathleen Cogan-Kozusko was the Director of the Foster Home and Adoption Services department of the Social Services for Children program of The Salvation Army. Ms. Cogan-Kozusko was employed by The Salvation Army for fifteen years. She holds a Masters Degree in Social Work and is a certified social worker in the State of New York. As Director of the Foster Home and Adoption Services department, Ms. Cogan-Kozusko oversaw all aspects of Foster Care Services, Adoption Services and Foster Parent Recruitment and Licensing. She was responsible for ensuring SSC's adherence to ACS, New York State Office of Children and Family Services and federal standards for the foster boarding home program. She supervised a staff of approximately 45. Ms. Cogan-Kozusko performed all of her responsibilities with great skill and competence and served, in excellent standing, in this position until her constructive discharge in or about February 2004 when she resigned his position as a result of the severe and pervasively hostile work environment created by The Salvation Army's illegal infusion of religion into the SSC workplace. Her religious beliefs and practices did not, in any respect, bear

directly on her performance of her professional responsibilities. Ms. Cogan-Kozusko prefers to maintain her personal privacy and does not want to disclose her religious beliefs and practices to her employer. Ms. Cogan-Kozusko is a resident of New York County, New York and a taxpayer of the State of New York and the City of New York.

26. Diane Copes was a Family Caseworker in the Foster Home and Adoption Services department of the Social Services for Children program of The Salvation Army. Ms. Copes holds a Bachelor of Arts degree in Social Work. She was employed by The Salvation Army for more than four years. As a Family Caseworker in the Foster Home and Adoption Services department, Ms. Copes was required to implement all State and City laws and regulations pertaining to child welfare. In addition, she was obligated to participate in training programs as mandated by SSC, New York State and New York City. Ms. Copes performed all of her responsibilities with great skill and competence and served, in excellent standing, in this position until her constructive discharge in or about September 2004 when she resigned his position as a result of the severe and pervasively hostile work environment created by The Salvation Army's illegal infusion of religion into the SSC workplace. Her religious beliefs and practices did not, in any respect, bear directly on her performance of her professional responsibilities. Ms. Copes prefers to maintain her personal privacy and does not want to disclose her religious beliefs and practices to her employer. Ms. Copes is a resident of Bronx County, New York and a taxpayer of the State of New York and the City of New York.

27. Mary Jane Dessables was the Management Information Systems ("MIS") Director of the Social Services for Children program of The Salvation Army. Ms. Dessables worked at The Salvation Army for 12 years. Ms. Dessables holds a Masters Degree in Social Work. She was hired by The Salvation Army in 1992 as a Resident Advisor for their Greater Buffalo Area

Services Emergency Shelter; transferred to the Group Homes Department of Social Services for Children in 1993 as a Social Worker; in 1998 transferred to the Training Department as a Trainer; and promoted in 2000 to MIS Director. She was responsible for providing statistical data to support agency best practices, inform program directors, indicate staff development needs, and identify outcomes measures. As MIS Director, Ms. Dessables was responsible for maintaining accurate data and compiling statistical reports for SSC billing and program services. She was responsible for ensuring timeliness of data entry into SSC's foster care computer system in conjunction with the New York State CONNECTIONS program, as discussed in greater detail below in ¶¶ 98-108. She worked with the SSC Quality Improvement Department to develop indicators to ensure quality services to SSC services as mandated by the government agencies funding SSC's social services programs. She had overall responsibility for the management of government mandated monitoring systems regarding for SSC services. She developed and updated SSC government mandated reporting forms to maintain current information in SSC's and New York State's computer systems. Ms. Dessables performed all of her responsibilities with great skill and competence and served, in excellent standing, in this position until her constructive discharge in or about March 2004 when she resigned her position as a result of the severe and pervasively hostile work environment created by The Salvation Army's illegal infusion of religion into the SSC workplace. Her religious beliefs and practices did not, in any respect, bear directly on her performance of her professional responsibilities. Ms. Dessables prefers to maintain her personal privacy and does not want to disclose her religious beliefs and practices to her employer. Ms. Dessables is a resident of Nassau County and a taxpayer of the State of New York.

28. Eric Fine is the Assistant Director of Clinical Services in the HIV Services program of the Social Services for Children program of The Salvation Army. Mr. Fine has been employed by The Salvation Army for nearly five years. As Assistant Director of Clinical Services, Mr. Fine oversees all clinical aspects of SSC's HIV/AIDS program. Mr. Fine has performed all of his responsibilities with great skill and competence. His religious beliefs and practices do not, in any respect, bear directly on his performance of his professional responsibilities. Mr. Fine prefers to maintain his personal privacy and does not want to disclose his religious beliefs and practices to his employer. Mr. Fine is a resident of New York County, New York and a taxpayer of the State of New York and the City of New York.

29. Margaret Geissman was the Director of the Human Resources department in the Social Services for Children program of The Salvation Army. Ms. Geissman has an MBA in Management and approximately 20 years experience in Human Resources. Ms. Geissman was employed for three years by The Salvation Army. As Director of the SSC Human Resources department, Ms. Geissman oversaw all SSC employee recruitment and managed all benefits and employee relations for approximately 900 SSC employees. Ms. Geissman performed all of her responsibilities with great skill and competence until her constructive discharge in November 2003 as a result of the severe and pervasively hostile work environment created by The Salvation Army's illegal infusion of religion into the SSC workplace. Her religious beliefs and practices did not, in any respect, bear directly on her performance of her professional responsibilities. Ms. Geissman preferred to maintain her personal privacy and did not want to disclose her religious beliefs and practices to her employer. Ms. Geissman is a resident of Queens County, New York and a taxpayer of the State of New York and the City of New York.

30. Shantee Gordon is a Group Home Independent Living Specialist in the Social Services for Children program of The Salvation Army. Ms. Gordon has been employed by The Salvation Army for approximately one year. As an Independent Living Specialist, Ms. Gordon provides all New York City Administration for Children Services (“ACS”) -mandated and enhanced Independent Living services to four of the eight SSC-operated group homes. Ms. Gordon is also a member of the New York City ACS employment committee which meets monthly and is attended by representatives from all New York City child welfare agencies that work as agents of ACS in providing services to children and young people in ACS’s custody and control. Ms. Gordon also attends mandated and on-going workshops and training offered under the auspices of the New York City Independent Living Resource Center at the Hunter College School of Social Work of the City University of New York. Ms. Gordon has performed all of her responsibilities with great skill and competence. Her religious beliefs and practices do not, in any respect, bear directly on her performance of her professional responsibilities. Ms. Gordon prefers to maintain her personal privacy and does not want to disclose her religious beliefs and practices to her employer. Ms. Gordon is a resident of Kings County, New York and a taxpayer of the State of New York and the City of New York.

31. Jessica Gorham was a Social Worker/Foster Care Caseworker in the Foster Home and Adoption Services department of the Social Services for Children program of The Salvation Army. Ms. Gorham has a Masters Degree in Social Work. Ms. Gorham was employed by The Salvation Army for approximately 1 year. As a Social Worker performing case management services in the Foster Home and Adoption Services department, Ms. Gorham was required to implement all State and City laws and regulations pertaining to child welfare. In addition, she was obligated to participate in training programs as mandated by SSC, New York State and New

York City. Ms. Gorham performed all of her responsibilities with great skill and competence and served, in excellent standing, in this position until her constructive discharge in or about September 2004 when she resigned his position as a result of the severe and pervasively hostile work environment created by The Salvation Army's illegal infusion of religion into the SSC workplace. Her religious beliefs and practices do not, in any respect, bear directly on her performance of her professional responsibilities. Ms. Gorham prefers to maintain her personal privacy and does not want to disclose her religious beliefs and practices to her employer. Ms. Gorham is resident of Kings County, New York and a taxpayer of the State of New York and the City of New York.

32. Kyoko Inouye was a Social Worker/Foster Care Caseworker in the Foster Homes and Adoption Services department of the Social Services for Children program of The Salvation Army. Ms. Inouye has a Masters Degree in Education. Ms. Inouye was employed by The Salvation Army for two years. As a Social Worker performing case management services in the Foster Home and Adoption Services department, Ms. Inouye was required to implement all State and City laws and regulations pertaining to child welfare. In addition, she was obligated to participate in training programs as mandated by SSC, New York State and New York City. Ms. Inouye has performed all of her responsibilities with great skill and competence and served, in excellent standing, in this position until her constructive discharge in or about June 2004 when she resigned her position as a result of the severe and pervasively hostile work environment created by The Salvation Army's illegal infusion of religion into the SSC workplace. Her religious beliefs and practices do not, in any respect, bear directly on her performance of her professional responsibilities. Ms. Inouye prefers to maintain her personal privacy and does not want to disclose her religious beliefs and practices to her employer. Ms. Inouye is a resident of

New York County, New York and a taxpayer of the State of New York and the City of New York.

33. Alfreda Lee-Katz is the Director of the Independent Living Program in the Social Services for Children program of The Salvation Army. Ms. Lee-Katz has been employed by The Salvation Army for thirteen years. As Director of the Independent Living Department, Ms. Lee-Katz supervises the independent living staff who provide all New York City ACS-mandated and enhanced Independent Living services to the group homes operated by SSC for ACS. Her responsibilities include establishing agency Independent Living policy and procedures in collaboration with the foster care directors, hiring all staff and ensuring that staff receive weekly supervision, and providing mandated Independent Living training to foster parents, child care staff and social workers. She also is responsible for ensuring all contract compliance for the Independent Living program. Ms. Lee-Katz has performed all of her responsibilities with great skill and competence. Her religious beliefs and practices do not, in any respect, bear directly on her performance of her professional responsibilities. Ms. Lee-Katz prefers to maintain her personal privacy and does not want to disclose her religious beliefs and practices to her employer. Ms. Lee-Katz is a resident of Bronx County, New York and a taxpayer of the State of New York and the City of New York.

34. Petr Nikichin was a Human Resources Assistant in the Social Services for Children program of The Salvation Army. Mr. Nikichin holds a Bachelor's Degree in psychology. Mr. Nikichin was employed by The Salvation Army for two years. As a Human Resources Assistant, Mr. Nikichin was responsible for assisting in coordinating SSC employee recruitment and managing all benefits and employee relations for approximately 900 SSC employees. Mr. Nikichin performed all of his responsibilities with great skill and competence

and served, in excellent standing, in this position until his constructive dismissal in February 2004, as a result of the severe and pervasively hostile work environment created by The Salvation Army's illegal infusion of religion into the SSC workplace. His religious beliefs and practices did not, in any respect, bear directly on his performance of his professional responsibilities. Mr. Nikichin preferred to maintain his personal privacy and did not want to disclose his religious beliefs and practices to his employer. Mr. Nikichin is a resident of Hudson County, New Jersey and is a taxpayer of the State of New York.

35. Estela Nunez is the Recruitment Coordinator in the Foster Home and Adoption Services department in The Salvation Army. Ms. Nunez holds a Bachelor of Arts Degree in Sociology-Anthropology. She has worked at The Salvation Army for over four years. Ms. Nunez was hired by The Salvation Army in 1999 as a Homefinder and promoted in November 2003 to Recruitment Coordinator. Ms. Nunez oversees the initial screening of all foster parent applicants and supervises all foster home recruitment staff. Ms. Nunez has performed all of her responsibilities with great skill and competence. Her religious beliefs and practices do not, in any respect, bear directly on her performance of her professional responsibilities. Ms. Nunez prefers to maintain her personal privacy and does not want to disclose her religious beliefs and practices to her employer. She is a resident of Bronx County, New York and a taxpayer of the State of New York and the City of New York.

36. Marina Obermaier was the Assistant Director for Homefinding of the Social Services for Children Foster Home and Adoption Services program of The Salvation Army. Ms. Obermaier worked at The Salvation Army for six years as a social worker administrator. Ms. Obermaier holds a Masters Degree in Social Work, has a New York Certification in Social Work and is a member of the Academy of Certified Social Workers. As Assistant Director for

Homefinding, Ms. Obermaier oversaw foster parent recruitment, assessment training and licensing. She also supervised the placement of foster children into foster homes. As part of the recruiting process, Ms. Obermaier recruited foster parents who may practice no faith at all or a faith other than a Christian one, who may be homosexual, who may be a single parent, or who may be part of a non-traditional “family.” As part of the foster parent training, she was mandated by New York State and New York City to provide information in a number of areas, including but not limited to, sexuality and sexual orientation and contraceptive and reproductive services. She had primary responsibility for the operation and direction of the Foster Parent Recruitment, Homefinding and Intake units. She was responsible for the implementation of all New York State and City laws, regulations and procedures relating to the study and maintenance of foster homes. She ensured SSC’s mandated reporting to New York City regarding recruitment, homefinding and intake activities. Ms. Obermaier performed all of her responsibilities with great skill and competence and served, in excellent standing, in this position until her constructive discharge in or about September 2004 when she resigned her position as a result of the severe and pervasively hostile work environment created by The Salvation Army’s illegal infusion of religion into the SSC workplace. Her religious beliefs and practices do not, in any respect, bear directly on her performance of her professional responsibilities. Ms. Obermaier prefers to maintain her personal privacy and does not want to disclose her religious beliefs and practices to her employer. Ms. Obermaier is a resident of Suffolk County, New York and a taxpayer of the State of New York and Suffolk County.

37. Susan Pope is the Assistant Director, Foster Care and Adoption Services department in the Social Services for Children program of The Salvation Army. Ms. Pope holds a Masters Degree in Social Work and is a certified social worker in the State of New York. Ms.

Pope has been employed by The Salvation Army for six years. As Assistant Director of the Foster Home and Adoption Services department, Ms. Pope is directly responsible for the day-to-day operations in three foster boarding home programs. She participates in government mandated Administrative Case Reviews and Service Plan Reviews and plans staff and foster parent training in collaboration with the Training Department. She prepares government mandated reports to New York City and the New York State court system. Ms. Pope has performed all of her responsibilities with great skill and competence. Her religious beliefs and practices do not, in any respect, bear directly on her performance of her professional responsibilities. Ms. Pope prefers to maintain her personal privacy and does not want to disclose her religious beliefs and practices to her employer. Ms. Pope is a resident of New York County, New York and a taxpayer of the State of New York and the City of New York.

38. James Presley is the Mental Health Coordinator for the Manhattan Unit of the HIV Services Program. He has worked for The Salvation Army for close to four years. Mr. Presley is a member of the National Association of Social Workers and is a Certified Social Worker in the State of New York. Mr. Presley is a clinical social worker and a psychotherapist. At The Salvation Army, Mr. Presley is responsible for providing clinical supervision to the COBRA case management workers and for providing direct mental health services to clients of a separately funded Ryan White mental health program at the Manhattan site. Mr. Presley has performed all of his responsibilities with great skill and competence. His religious beliefs and practices do not, in any respect, bear directly on his performance of his professional responsibilities. Mr. Presley prefers to maintain his personal privacy and does not want to disclose his religious beliefs and practices to his employer. Mr. Presley is a resident of New York County, New York and is a taxpayer of the State of New York and the City of New York.

39. Daniel Quane is the Director of Training for Social Services for Children division of The Salvation Army. Mr. Quane has worked at The Salvation Army for 11 years in the training department. Mr. Quane holds a Masters Degree in Social Work, has a New York Certification in social work, and is a member of the Academy of Certified Social Workers. He was hired by The Salvation Army in 1992 as a trainer and promoted to the Director of Training in 1995. Mr. Quane has extensive knowledge and expertise in child welfare practice, state and local laws, policies and procedures. He is responsible for developing training programs that meet all federal, New York State and New York City mandates for all SSC programs and departments. He provides training to staff in selected areas of competence, including the provision of OSHA training to all employees. Mr. Quane has performed all of his responsibilities with great skill and competence. His religious beliefs and practices do not, in any respect, bear directly on his performance of his professional responsibilities. Mr. Quane prefers to maintain his personal privacy and does not want to disclose his religious beliefs and practices to his employer. Mr. Quane is a taxpayer of the State of New York.

40. Anja Taekker is a Foster Care Caseworker in the Foster Home and Adoption Services department of the Social Services for Children program of The Salvation Army. Ms. Taekker has a Bachelor of Arts degree in political science. Ms. Taekker has been employed by The Salvation Army for two years. As a Foster Care Caseworker performing case management services in the Foster Home and Adoption Services department, Ms. Taekker is required to implement all State and City laws and regulations pertaining to child welfare. In addition, she must participate in training programs as mandated by SSC, New York State and New York City. Ms. Taekker has performed all of her responsibilities with great skill and competence. Her religious beliefs and practices do not, in any respect, bear directly on her performance of her

professional responsibilities. Ms. Taekker prefers to maintain her personal privacy and does not want to disclose her religious beliefs and practices to her employer. Ms. Taekker is resident of Westchester County, New York and a taxpayer of the State of New York.

Defendants

41. The Salvation Army is a non-profit corporation organized under the laws of the State of New York, with its principal place of business located at 120 W. 14th Street, New York, NY 10011. The Salvation Army is an “employer” within the meaning of 42. U.S.C. § 2000(e)b, N.Y. Exec. Law § 292 and N.Y.C. Admin. Code § 8-102.

42. The City of New York is a municipal corporation within the State of New York and is sued for injunctive and declaratory relief.

43. John B. Mattingly is the Commissioner of the New York City Administration for Children’s Services and maintains an office at 150 William Street, New York, New York 10038. Commissioner Mattingly is sued in his official capacity for injunctive and declaratory relief.

44. Neil Hernandez is the Commissioner of the New York City Division of Juvenile Justice and maintains an office at 365 Broadway, New York, New York 10013. Commissioner Hernandez is sued in his official capacity for injunctive and declaratory relief.

45. Thomas A. Maul is the Commissioner of the New York State Office of Mental Retardation and Developmental Disabilities and maintains an office at 44 Holland Avenue, Albany, New York 12229. Commissioner Maul is sued in his official capacity for injunctive and declaratory relief.

46. Antonia C. Novello is the Commissioner of the New York State Department of Health and maintains an office at Nelson Rockefeller Empire State Plaza, Albany, New York

12237. Commissioner Novella is sued in her official capacity for injunctive and declaratory relief.

47. Robert Sherman is the Commissioner of the Nassau County Department of Social Services and maintains an office at 101 County Seat Drive, Mineola, NY 11501. Commissioner Sherman is sued in his official capacity for injunctive and declaratory relief.

48. Janet DeMarzo is the Commissioner of the Suffolk County Department of Social Services and maintains an office at 1140 Motor Parkway, Hauppauge, New York 11788. Commissioner DeMarzo is sued in her official capacity for injunctive and declaratory relief.

49. Defendants City of New York, Bell, Hernandez, Maul, Novello, Sherman and DeMarzo are collectively referred to as “Government Defendants.”

50. At all times, all defendants have acted under color of State law.

FACTS

I. BACKGROUND

A. The Salvation Army

51. The Salvation Army describes itself as “an international movement ... an evangelical part of the universal Christian church.” Its mission is “to preach the gospel of Jesus Christ and to meet human needs in His name without discrimination.”

52. The Salvation Army condemns, among other things, abortion, premarital and extra-marital sexual relationships, contraceptive use outside of the marital relationship, homosexuality, social drinking, gambling, smoking and drug use as “unacceptable according to the teaching of Scripture” and “not conform[ing] to God's will for society.”

B. The Greater New York Division of The Salvation Army

53. The Greater New York Division of the Eastern Territory of The Salvation Army includes the five boroughs of New York City, as well as Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster and Westchester counties. Divisional Headquarters is located in Manhattan.

54. The Greater New York Division runs an extensive network of social services programs under two discrete programs – the Social Services for Children program (“SSC”) and the Social Services for Families and Adults program (“SSFA”).

55. As set forth in greater detail below, SSC is inextricably intertwined with New York State, New York City and Nassau and Suffolk Counties in providing social services that the City, State and counties are legally obligated to provide and that they have chosen to provide by allocating funding to SSC to administer those services.

II. SOCIAL SERVICES FOR CHILDREN PROGRAMS: GOVERNMENTAL PROGRAMS WITH GOVERNMENTAL FUNDING

56. The SSC program includes a wide variety of programs and services for children, families and adults. SSC programs are located in New York City and on Long Island.

57. SSC is an "authorized agency" as defined under New York Social Services Law § 371(10) insofar as it cares for, places out or boards out children, is approved, visited, inspected and supervised by various government agencies and submits and consents to the approval, visitation, inspection and supervision of the Government Defendants, and their agents, as to any and all acts SSC performs in relation to the welfare of children.

58. SSC is a registered family day care provider licensed by the New York City Department of Health & Mental Hygiene, Bureau of Day Care.

59. SSC is a group day care provider licensed by the Nassau County Department of Social Services.

A. Social Services for Children Programs Receive Government Funding

60. Upon information and belief, SSC's annual budget is approximately \$50 million, of which more than 95% is government-funded.

61. SSC programs are funded through contracts with the City of New York, including the Administration for Children's Services (ACS), Department of Juvenile Justice (DJJ), the New York City Department of Health Medical and Health Research Association, and the State of New York, including the New York State Department of Health (AIDS Institute), and the Office of Mental Retardation and Developmental Disabilities (OMRDD). In addition, SSC programs are funded through contracts with the Nassau County Department of Social Services and the Suffolk County Department of Social Services.

62. These contracts contain clauses requiring The Salvation Army to abide by the provisions of Article I §§ 3 and 11 of the New York State Constitution, New York State Executive Law § 296(1)(a) and New York City Administrative Code § 8-107(1)(a) and not to engage in illegal employment discrimination.

63. SSC programs receive additional funding from other government funding sources including, but not limited to, the New York State Department of Health Child and Adult Care Food Program and New York State Medicaid.

64. SCC employs approximately 900 people whose salaries are paid in full, or virtually in full, by the funds received from New York State, New York City, Nassau County or Suffolk County.

B. SSC Programs Provide Government mandated Social Services for People in Involuntary Custodial Care

65. Upon information and belief, SSC's government-funded programs serve approximately 2,300 clients or client-families on a daily basis.

66. Nearly 90% of the clients to whom SSC provides government mandated services are in the custody of, and/or referred for government mandated services by, the New York City Commissioner of the Administration for Children's Services ("ACS"), the New York City Commissioner of Juvenile Justice, the Commissioners of the Departments of Social Service of Nassau County and Suffolk County, or the Commissioner of the New York State Office of Mental Retardation and Developmental Disabilities.

67. These clients are involuntarily placed with SSC by these government agencies.

68. SSC's involuntary custodial care programs include a Foster Home and Adoption Services program; a Group Home program; an East Village Residential Treatment program; a Therapeutic Foster Boarding Home program; General Prevention programs; Family Rehabilitation programs; the Lenox House program; a Group Day Care program; and a Developmental Disabilities program. These programs perform the following government functions: traditional foster care, adoption services, group home residences, residential treatment program services, therapeutic foster boarding services and general prevention and family rehabilitative program services.

69. SSC operates a Foster Home and Adoption Services program serving approximately 390 children in foster care in 225 boarding homes. The Foster Home and Adoption Services program is funded under contracts with the New York City Administration for Children's Services.

70. When it is determined after preventive services have been provided, or during a child abuse investigation, that a child cannot remain safely in his or her home and must be placed in foster care, it is the obligation of the City administering preventative services to place that child in foster care. The City satisfies its obligation by providing funding to SSC to administer the Foster Boarding Home and Adoption Services program.

71. SSC, working in joint activity and entwined with and on behalf of ACS, supervises the treatment of the children in foster care, ensuring that each child receives the necessary clinical, educational, life skills and recreational services, in addition to resolving any other problems that may arise from foster care placement. In most cases, the goal is for each child to return to his or her birth family. If such a return is impossible, SSC and ACS examine other permanency options, which usually results in adoption by the foster parents.

72. ACS adoption staff, acting in joint activity with and entwined with, or through, SSC staff, recruit potential adoptive parents, give orientations and training sessions, evaluate the suitability of pre-adoptive homes and coordinate the adoption process from initial planning to the adoption finalization in court proceedings.

73. SSC operates a Group Home Program serving approximately 95 children in foster care in eight group homes in New York City. The Group Home Program is funded under contracts with ACS.

74. SSC performs a public function by providing adoption services to the individuals served in the SSC Group Home Program.

75. SSC operates an East Village Residential Treatment Program serving approximately 32 older adolescent boys in foster care. The East Village Residential Treatment Program is funded under contracts with ACS.

76. SSC performs a public function by providing adoption services to the individuals served in the SSC East Village Residential Treatment Program

77. SSC operates a Therapeutic Foster Boarding Home Program serving approximately 90 children in therapeutic foster care in New York City and in Nassau and Suffolk Counties. The Therapeutic Foster Boarding Home Program is funded under contracts with ACS, the Nassau County Department of Social Services and the Suffolk County Department of Social Services.

78. SSC performs a public function by providing therapeutic foster home care, a combined program of foster home care and therapeutic/support services, to children removed by ACS from their birth homes because of allegations of neglect or abuse.

79. In Nassau County, SSC employees work collaboratively with Nassau County Department of Social Services employees in a Therapeutic Foster Boarding Home Program that addresses the needs of more-difficult-to-place-adolescents who are considered too disturbed or difficult to be maintained in traditional foster care.

80. SSC operates General Prevention Programs and Family Rehabilitation programs, serving approximately 280 families in the Bronx and Brooklyn. The General Prevention Programs and Family Rehabilitation Programs are funded under contracts with ACS.

81. SSC acts in joint activity with and is entwined with ACS to provide government mandated services designed to ensure that children remain safe in the home and to prevent children from entering foster care. These services include professional counseling, parenting skills training, referral for substance abuse treatment, referral for homemaking services and housing assistance.

82. SSC operates Lenox House, a group home serving approximately 12 boys in non-secure detention. The Lenox House program is funded under contracts with the New York City Department of Juvenile Justice (“DJJ”) and is a Non-Secure Detention program. Lenox House offers an alternative to secure detention for young people remanded to DJJ’s custody, providing structured residential care for alleged juvenile delinquents who are believed to require a less restrictive setting while awaiting disposition of their cases in Family Court.

83. SSC performs a public function by operating a non-secure detention facility for DJJ.

84. SSC operates a Group Day Care program serving approximately 1062 children in 11 day care programs in New York City and in Nassau County. The Group Day Care program is funded under contracts with the New York City Administration for Children’s Services and the Nassau County Department of Social Services.

85. The majority of families receiving these SSC government mandated day care services are either recipients of Temporary Assistance for Needy Families, also known as TANF or Family Assistance, or families in the process of transitioning off Family Assistance. New York State guarantees both family groups child care assistance as part of New York State’s “Welfare to Work” program.

86. SSC performs a public function by operating these Group Day Care programs.

87. SSC operates a Developmental Disabilities program, serving approximately 95 individuals with mental retardation and/or developmental disabilities in community-based group homes and other residential settings. The Developmental Disabilities Services/Group Homes program is funded under contracts with OMRDD.

88. SSC delivers the government mandated services including care, treatment, habilitation and rehabilitation of New Yorkers with mental retardation and developmental disabilities on behalf of and acting in concert with OMRDD.

89. SSC performs a public function by operating its Developmental Disabilities program.

C. SSC Programs Provide Government mandated Community Based Social Services to People with HIV

90. SSC uses government funds to provide Comprehensive Medicaid Case Management services to people with HIV under the Community Follow-up Program supervised by the New York State Department of Health, a public function.

91. SSC offers HIV services to approximately 252 HIV services clients in Belmont, Morris Heights and Lower Manhattan. The HIV services program is funded under contracts with the New York State Department of Health AIDS Institute.

III. GOVERNMENT ENTWINEMENT IN THE MANAGEMENT AND CONTROL OF THE SALVATION ARMY'S ACTIVITIES

A. Accounting Services Systems Mandated by SSC's Government Partners

92. SSC maintains an extensive accounting services system as is mandated by its government-funders.

93. Upon information and belief, New York State funded more than 50% of the costs of mandated computer equipment operated by SSC.

94. In addition to traditional accounting for income and expenses to each government funding agency, SSC administers for New York State, New York City and Nassau County payments to over 350 foster parents and family care providers and over 100 family day care providers.

95. New York State, New York City, and Nassau County mandate careful data entry about each child in SSC care for billing and payment purposes and routinely audit SSC for compliance.

96. SSC is also mandated by New York State, New York City and Nassau and Suffolk Counties to maintain separate accounts for many of its clients. For teenage clients, SSC must bank money from monthly stipend payments so the clients can have accrued savings by the time they leave foster care.

97. In addition, SSC's developmentally disabled consumers have savings and burial funds that New York State mandates SSC to maintain in a way that does not co-mingle them with program or operating funds and SSC must render periodic accountings to New York State with respect to such funds.

B. Program Data Reports Mandated by
SSC's Government Partners

98. SSC is required by its government partners to maintain and share extensive data and documentation concerning the government mandated services SSC provides.

99. The New York State Office of Children and Family Services ("OCFS") administers all of New York State's child welfare programs, including those operated by SSC acting in joint activity with and entwined with ACS, DJJ, and Nassau and Suffolk Counties.

100. CONNECTIONS, New York's Statewide Automated Child Welfare Information System, records and collects child protective, preventive, foster care and adoption service information statewide.

101. SSC is a mandated participant in CONNECTIONS.

102. New York State, New York City, Nassau and Suffolk Counties mandate numerous program data reports concerning the children placed by these government entities with SSC.

103. SSC is mandated to maintain and enter adoption legal data in a New York State Central Childcare Registry System terminal.

104. SSC is mandated to enter medical data on its programs' participants in HIPS, the ACS health tracking system.

105. SSC is mandated to update ACS prevention cases in the PROMIS database, the ACS preventive tracking system.

106. SSC operates an additional mandated in-house data system known as Evolv. SSC performs a monthly data extract from Evolv and forwards that data, via the New York State Bulletin Board System, to be merged with the New York State Welfare Management System/Central Child Registry. The merged data is then returned to SSC by New York State for SSC's validation of the merged data. New York State, ACS, DJJ, Nassau and Suffolk Counties and SSC work closely with respect to this information.

107. New York City ACS also mandates that SSC participate in the "STAR" initiative. New York City supplies a "Stardat" database in which SSC must track the length of stay of children in foster care. Based on the data SSC provides New York City ACS, SSC is then mandated to undertake program enhancements that promote shortened length of stay for children in SSC foster care programs.

108. New York City trains SSC staff to use the "Stardat" database that requires the mandated statistical analysis of data.

109. New York City ACS, the New York City agency that funds most of the SSC programs and to which SSC is accountable financially and programmatically, rates all child care agencies using EQUIP scores. Scores are used to determine census capacities for programs and priority on allocation and assignment of new cases to agencies by New York City ACS.

110. New York State imposes rigorous Quality Assurance standards with respect to the provision of mandated social services to protect the safety and health of children in foster care. New York State OCFS Regional Offices, ACS, DJJ and Nassau and Suffolk Counties conduct on-going monitoring and quality assurance activities with SSC including training on standards and outcomes.

C. Training Requirements Mandated by SSC's Government Partners

111. New York State, New York City and Nassau and Suffolk Counties mandate that SSC meet extensive training requirements in the areas of foster care, adoption, prevention and residential treatment.

112. SSC foster parents are mandated to receive 30 hours of MAPP training ("Model Approaches to Partnership in Parenting"),

113. New SSC social workers are mandated to receive 5 days of new social worker training.

114. SSC child care workers, foster parents and social workers receive mandated annual training in a variety of areas, including child neglect and abuse, AIDS prevention and understanding, working with people with AIDS, first aid, CPR and Therapeutic Crisis intervention.

IV. DIVERSION OF GOVERNMENT FUNDING OF SSC TO THE SALVATION ARMY CHURCH

115. Upon information and belief, SCC is obligated to render to The Salvation Army Church up to 10% (the traditional religious tithe) of the face value of its government contracts in a payment denominated “field service.” The field service payments are justified by The Salvation Army Church as necessary to reimburse the Church for administrative supports provided SSC, including accounting services, personnel services, corporate accountability resources, business and property services, public relations and development services.

116. But, upon information and belief, The Salvation Army Church has provided very little, if in fact any, administrative support to SSC. SSC provides its own administrative support. SSC’s administrative budget includes funds expended for executive administration, accounting, central services, human relations, training, quality improvement, computer services, management information and maintenance of the building occupied by SSC at 132 West 14th Street. The SSC administrative services support approximately thirty-one sites and the various government-funded mandated social services programs operated by SSC.

117. The rendering of “field service” payments to The Salvation Army Church strips SCC of government-funded contractual funding that is meant to cover SSC program overhead and impacts the administrative functioning and oversight role of SCC over the various government-funded programs.

118. Upon information and belief, the “field service” payments to The Salvation Army Church are used to advance the religious mission of the organization.

V. THE SALVATION ARMY CHANGES THE TERMS AND CONDITIONS OF PLAINTIFFS' EMPLOYMENT

119. In recent months, through a reorganization and through decisions to impose a new level of religiosity on its workplace and its employees, The Salvation Army has changed the terms and conditions of the employment of Plaintiffs and other SSC employees.

A. Reorganizing SSC in Order to Narrow “the Widening Gap between the Ecclesiastical Salvation Army and the Social Service Component of The Salvation Army”

120. Upon information and belief, The Salvation Army is in the process of implementing a “Reorganization Plan” with respect to the Greater New York Division. Upon information and belief, the Reorganization Plan is intended to narrow “the widening gap between the ecclesiastical Salvation Army and the Social Service component of The Salvation Army” and to ensure that “as a Christian agency ... a reasonable number of Salvationists along with other Christians [will be employed]” because The Salvation Army is “not a Social Service Agency [but] a Christian Movement with a Social Service program.”

121. The Reorganization Plan has changed the terms and conditions of Plaintiffs' employment.

122. The Reorganization Plan addresses the SSC's recruitment policies, noting that “in the recruitment process, it would appear that the Army's ‘Christian perspective’ is rarely emphasized.” The Reorganization Plan instead promotes a “one Army concept” where SSC would be integrated into the Church's Divisional Headquarters. Ultimately, the Reorganization Plan concludes that, “[t]here should be one Salvation army with a single Mission Statement, driven by the vision of one leader.”

123. The Reorganization Plan makes plain that The Salvation Army will be directing the SSC programs to increase the focus on religion, including employee education. The Reorganization Plan directs that the Secretary for Personnel, Greater New York Division, “shall conduct all activities of his office with a view to accomplishing the Army’s fundamental purpose of proclaiming Jesus Christ as Savior and Lord, which purpose must find expression in both the message proclaimed and the ministry of service performed.” The Secretary is directed to “conduct Sunday and weekday meetings at corps, residences, and *social service institutions*, within the division, with the aim of leading souls to Christ, the growth of Christian faith among The Salvation Army, and the instruction of our soldiers in Salvationism.” [emphasis supplied].

124. The Reorganization Plan further directs that the Secretary for Social Services, Greater New York Division, “shall safeguard the essential Christian perspective toward social services and *will promote the unique spirit of Salvationism in social services* . . . He shall be an example of Salvationism and Christian stewardship and shall demonstrate interest in the spiritual well being of all personnel under his area of responsibility.” It also stated, “He shall conduct all activities of his office with a view to accomplishing the Army’s fundamental purpose of proclaiming Jesus Christ as Savior and Lord, which purpose must find expression in both the message proclaimed and the ministry of service performed.” [emphasis supplied].

125. The Reorganization Plan further noted the importance of religion in the recruiting activities conducted by the social services programs:

“[W]e have chosen to hire a Director of Human Resources for Social Services for Families and Adults, who represents an eastern religion . . . Is it responsible to have a Buddhist or Hindu present the Army’s Mission Statement and to expect that she will be able to represent us well when questions are asked? We are not a Social Service Agency. We are a Christian Movement with a Social Service program.”

B. Defendant The Salvation Army Makes Improper and Illegal Inquiries of SSC Employees' Religious Practices and Beliefs and Sexual Orientation

126. Upon information and belief, in or about March 2003, and in connection with the initial implementation of the Reorganization Plan, Colonel Paul Kelly directed Maureen Schmidt, the Director of Human Resources at the Divisional Headquarters of The Salvation Army to contact Plaintiff Margaret Geissman to find out the religious affiliation of the SSC Human Resources staff. When Plaintiff Geissman objected to providing that information, Ms. Schmidt advised her, in words or substance, "they are going to find out about everyone eventually because they want more Christians, especially Salvationists, employed at SSC."

127. Ms. Schmidt also advised Plaintiff Geissman that Colonel Kelly had raised questions about whether Plaintiff Geissman was Jewish, as she had a "Jewish sounding name." Upon information and belief, Ms. Schmidt, who had attended Marymount College with Plaintiff Geissman, told Colonel Kelly that she knew Plaintiff Geissman was not Jewish.

128. Ms. Schmidt also asked Plaintiff Geissman the ages of the members of her department and she asked Plaintiff Geissman to name the homosexuals working at SSC. Plaintiff Geissman refused to answer the questions and objected to Ms. Schmidt and to then-SSC Executive Director Robert Gutheil that she felt that Colonel Kelly and Ms. Schmidt's questions concerning her religious background, her staff's religious background and SSC staff's sexual orientation constituted discrimination and harassment.

129. Plaintiff Geissman's objections constituted protected activity under applicable State and City law.

130. Upon information and belief, Mr. Gutheil communicated Plaintiff Geissman's complaints and his own objections to the inappropriate questioning to The Salvation Army leadership in Divisional Headquarters.

131. Mr. Gutheil's objections constituted protected activity under applicable State and City law.

132. Upon information and belief, both Colonel Kelly and Ms. Schmidt denied Plaintiff Geissman's accusations.

133. No action was taken by The Salvation Army to address Plaintiff Geissman's and Mr. Gutheil's complaints that the work environment for employees of the social services programs was becoming pervasively sectarian and hostile to those who do not share the evangelical Christian faith that lies at the heart of the religious mission of The Salvation Army.

C. Defendant The Salvation Army Revokes Equal Employment Opportunity Protections for SSC Employees in the Reorganization of the Greater New York Division

134. The Employee Manual, Salvation Army, Eastern Territory, effective date January 1, 2000, provided that "The Salvation Army has been established to provide humanitarian services consistent with the values and goals of the Christian faith. In this context, employment decisions made by The Salvation Army will be in accordance with applicable federal, state and local law, with the understanding that The Salvation Army does not waive or otherwise relinquish any rights in the free exercise of religion guaranteed by the Constitution of the United States."

135. A June 4, 2003 Equal Employment Opportunity memorandum specific to SSC "supplement[s] the EEO policy statement in the Employee Manual." That memorandum states that "The Salvation Army, Social Services for Children, treats all employees and applicants for

employment without unlawful discrimination as to ... creed ... in all employment decisions, including but not limited to recruitment, hiring, compensation, training, and apprenticeship, promotion, upgrading, demotions, downgrading, transfer, lay-off and termination, and all other terms and conditions of employment.”

136. Upon information and belief, this June 4, 2003 supplemental memorandum was implemented so that the SSC would be able to demonstrate its compliance with its funding obligations under its contracts with New York State, New York City, Nassau County and Suffolk County.

137. As part of the reorganization effort, on or about September 16, 2003, Major Henrietta Klemanski, Secretary for Personnel for the Eastern Territory, distributed a memorandum to “All Corps. Officers & Department Heads” announcing the implementation of new human resources guidelines and practices, effective October 1, 2003.

138. The September 16, 2003 memorandum mandated that all addenda to the Employee Manual, including the June 4, 2003 SSC supplemental memorandum, are no longer valid.

D. Defendant The Salvation Army Makes
Illegal Revisions to the SSC Employee Manual

139. The Salvation Army Employee Manual was revised and reissued as of January 1, 2004. The Equal Opportunity statement in the revised Employee Manual reads as follows:

It is the policy of The Salvation Army that it will provide equal opportunity for employment ... except where a prohibition on discrimination is inconsistent with the religious principles of The Salvation Army ...

As a religious organization, a branch of the Christian church, The Salvation Army reserves the right to make such employment decisions, adopt employment policies (including employee benefits) which are calculated to promote the religious and moral principles for which it is established and maintained, consistent with its

rights to the free exercise of its religion guaranteed to it by the Constitution of the United States.

Without limiting the foregoing, by accepting employment with The Salvation Army, an individual acknowledges that The Salvation Army is a church, agrees to do nothing to undermine its religious mission, and acknowledges that conduct must not conflict with or undermine the religious programs of The Salvation Army, or its religious and moral purposes.

140. Employment decisions made on the basis of an individual's "sexual orientation or preference" is addressed in the "The Rules of Conduct" portion of the Employee Manual. This section provides as follows:

The Salvation Army does not make employment decisions on the basis of an individual's sexual orientation or preference. *However, The Salvation Army does reserve the right to make employment decisions on the basis of an employee's conduct or behavior that is incompatible with the principles of The Salvation Army. [emphasis supplied].*

141. The Employee's Acknowledgement of receipt of the Employee Manual reads, in pertinent part, as follows:

I understand The Salvation Army's status as a church and agree that I will do nothing as an employee of The Salvation Army to undermine its religious mission.

I agree and understand that my services are a necessary part of The Salvation Army's programs and that my conduct must not conflict with, interfere with, or undermine the Army's programs or the Army's purposes.

E. Defendant The Salvation Army Illegally Demands that All SSC Employees Disclose Their Religious Beliefs and Practices

142. The September 16, 2003 memorandum mandated that "all new hires and any Salvation Army employee who has not filled out the Work with Minors Form will be required to do so immediately." A copy of that form is appended to this Complaint as Exhibit A.

143. The Work with Minors Form requires that an employee or applicant for employment identify, among other things, “Present Church, Minister of Church, Other Churches attended regularly during the past ten years.”

144. Plaintiffs object to having to disclose their religious beliefs and practices and practices and prefer to maintain the privacy of any religious associations.

145. Defendant The Salvation Army’s demand that Plaintiffs disclose their religious beliefs and practices to their employer constitutes a discriminatory change in the terms and conditions of plaintiffs’ employment.

F. Defendant The Salvation Army Illegally Demands that All SSC Employees Adhere to the Religious Precepts of The Salvation Army

146. In addition to disclosing his or her religious affiliations and practices, the employee or applicant for employment must sign a statement in the Work with Minors Form in which the following representations are made:

”6. I authorize any of the churches or other organizations and their representatives and my personal references listed above to give to The Salvation Army any information they may have regarding my character and fitness to work with children. I release all such organizations and individuals from any liability that may result from their furnishing such information to The Salvation Army. I waive any right that I may have to inspect any records containing such information.”

“7. I am aware that The Salvation Army is a branch of the Christian Church and I agree that I will conduct myself in my work with children in a way that is consistent with the religious and charitable policies and principles of The Salvation Army.”

“8. Having provided the foregoing information and having affirmed the foregoing statements are true, I recognize that any false information or statements are punishable under the laws relating to perjury.”

A copy of that form is appended to this Complaint as Exhibit A.

147. Plaintiffs object to having to adhere to the religious policies and principles of The Salvation Army and having to engage in the provision of government mandated social services

where the policies and principles of The Salvation Army are in conflict with their ethical obligations and government mandated obligations as social workers.

148. Defendant The Salvation Army's demand that plaintiffs adhere to the religious policies and principles of The Salvation Army constitutes a discriminatory change in terms and conditions of Plaintiffs' employment.

G. Defendant The Salvation Army Illegally Demands that All SSC Employees Adhere to the Mission of The Salvation Army

149. Additionally, all SSC employees and applicants for employment are required to accept as a component of their job descriptions that they are "willing to support the Mission of the Salvation Army."

150. Until the Reorganization Plan, SSC had its own completely secular Mission Statement, which read as follows:

"The Salvation Army Social Services for Children is a multi-service agency committed to helping children, adults, families and communities through an array of the highest quality services and principled advocacy. Our mission is to empower each person who enters our doors to live with dignity and hope."

A copy of the SSC Mission Statement is appended to this Complaint as Exhibit B.

151. The Mission Statement of The Salvation Army, which now appears instead on SSC job postings and job descriptions, however, reads as follows:

"The Salvation Army, an international movement, is an evangelical part of the universal Christian church. Its message is based on the Bible. Its ministry is motivated by the love of God. Its mission is to preach the gospel of Jesus Christ and to meet human needs in His name without discrimination."

A copy of this Mission Statement is appended to this Complaint as Exhibit C.

152. Plaintiffs object to having to support the mission of The Salvation Army to the extent they would be obligated to engage in the provision of government mandated social

services where the policies and principles of The Salvation Army are in conflict with their ethical obligations and government mandated obligations as social workers.

153. Defendant The Salvation Army's demand that Plaintiffs support the mission of The Salvation Army constitutes a discriminatory change in terms and conditions of plaintiffs' employment.

H. Impact of the Religious Disclosure Requirement and its Implementation On Plaintiffs and Other SSC Employees

154. Upon information and belief, Robert H. Gutheil, then-Executive Director of the Social Services for Children program, and employed by the Salvation Army for nearly 28 years, objected to the "Work with Minors Form" when it was presented to him, on or about September 26, 2003.

155. Upon information and belief, Mr. Gutheil requested that employees and applicants for employment with SSC be exempt from filling out the form. Mr. Gutheil's objections were several and grounded in his belief that SSC employees could not be obligated to disclose their religious affiliations and practices.

156. Mr. Gutheil's employment was summarily terminated shortly after he communicated his objections to The Salvation Army Divisional command.

157. Thereafter, Alfred J. Peck, then-Director of SSFA was elevated to acting Director of SSC. Mr. Peck also has retained his position as Director of SSFA. Plaintiff Lown, then-Associate Executive Director of SSC, was asked to assume Mr. Gutheil's job duties but was demoted from Associate Executive Director to Associate Director of SSC.

158. On October 15, 2003, Plaintiff Lown met with Alfred Peck. At that meeting, he informed her that the Work with Minors form was to be used for all new and current employees in the Greater New York Division. She asked to see the form and read it. After reading it,

Plaintiff Lown told Mr. Peck that she could not and would not sign the form. She indicated that she had worked at The Salvation Army for 24 years and that no one had ever asked about her religious beliefs and practices. Mr. Peck said that all current employees are required to complete the form by January 1, 2004. He then told Plaintiff Lown that all job descriptions would have to be rewritten to include the requirement that the employee must support the religious mission of The Salvation Army.

159. On October 17, 2003, Plaintiff Lown attended a meeting led by Mr. Peck. At that meeting, Mr. Peck discussed the “Work with Minors” form. He said that all employees must write down the specifics about how active they are in their church. He said that the option to write “not applicable” was not available to employees.

160. Plaintiff Lown thereafter advised Mr. Peck that she would seek legal advice about the “Work with Minors” form because she believed it to be illegal.

161. On or about October 20, 2003, Plaintiff Lown advised Plaintiff Geissman, the then-SSC Human Resources Director, that Plaintiff Lown did not want to have new employees fill out the Work with Minors form. Plaintiff Geissman agreed that no one on the Human Resources staff would hand out the Work with Minors Form in the processing of new employees. Plaintiff Lown and Plaintiff Geissman agreed to send employment packages to the Divisional Headquarters for approval without the required Work with Minors form.

162. On or about October 28, 2003, at a meeting of the SSC Cabinet, which is made up of all the senior managers of all of SSC departments and programs, Mr. Peck stated that all job descriptions must be rewritten with the mission statement of The Salvation Army included along with a requirement of support for the mission of The Salvation Army. When asked what would

happen if an employee refused to sign a job description, Mr. Peck stated that the person would be fired.

163. On or about October 30, 2003, Mr. Peck advised Plaintiff Lown that five New Employee hires were not approved at Divisional Headquarters because the “Work with Minors” form had not been completed.

164. On or about November 25, 2003, Plaintiff Geissman and Plaintiff Lown were advised that SSC job postings were rejected by Divisional Headquarters because they did not include The Salvation Army mission statement. SSC previously was permitted to post all job openings throughout the Greater New York Division of The Salvation Army.

165. Plaintiff Geissman found the daily working environment at SSC an increasingly hostile one because of the insistence that she facilitate the application of religious tests in the hiring of secular employees. The environment became so pervasively hostile, severe and intolerable that in November 2003, Plaintiff Geissman was forced to resign her position and, thus, was constructively discharged.

166. Plaintiff Nikichin was assigned Plaintiff Geissman’s HR responsibilities. He, too, found the work environment at SSC an increasingly hostile one because of the insistence: that he facilitate the application of religious tests in the hiring of secular employees; that he hire only new employees who agreed to complete the Work with Minors form; and that he fire those SSC employees who refuse to complete the Work with Minors form. A “promotion” promised Plaintiff Nikichin was detrimentally diminished. The environment became so pervasively severe and intolerable that in February 2004, Plaintiff Nikichin was forced to resign his position and, thus, was constructively discharged.

167. In early December 2003, Plaintiff Lown received an Annual Evaluation covering the period 11/19/2002 to 11/18/2003. The evaluation noted that Plaintiff Lown is “extraordinarily competent, intelligent and committed to excellence.” Significantly, however, the evaluation also noted:

The changes that are occurring in The Salvation Army of Greater New York are impacting directly on the years of major building and growth of programs and the department. These changes at times go contrary to the culture of SSC and cause considerable consternation and pain. Hopefully we can work together to surmount the problems

168. This evaluation signaled a change in Plaintiff Lown’s employment status.

169. On or about December 8, 2003, the U.S. Equal Employment Opportunity Commission docketed Plaintiff Lown’s charges of religious discrimination against The Salvation Army and thereafter served the charge on The Salvation Army.

170. On or about December 23, 2003, Mr. Peck informed Plaintiff Lown that the Work with Minors Form must be completed by all employees by January 1, 2004. Plaintiff Lown was to provide him with a status report as to how many employees had not completed the Work with Minors form by that deadline on January 5, 2004. He also directed Plaintiff Lown to provide him with a corrective action plan for having all employees sign the form if the January 1, 2004 deadline was missed.

171. By memorandum dated January 1, 2004, Plaintiff Lown informed Mr. Peck, “As you know, I have raised what I consider to be legitimate questions about the legality of the Work with Minors Form. Without a response to those questions, I will not be in a position to develop a corrective plan of action for the implementation of the form.”

172. By memorandum dated January 13, 2004, Mr. Peck threatened Plaintiff Lown with adverse employment action after her EEOC complaint was resolved and reprimanded her for her “personal position:”

Because of your stated objection to have the "Statement of Application for Employment Involving Work with Children" completed for present employees, I am relieving you of the administrative responsibility to have all current employees sign the Form. While your personal legal process progresses you personally, at this time, do not have to sign the Form. But, it is The Salvation Army policy to have all current and new employees sign the Form so the process must go forward.

I will meet with the Directors of each section and instruct them on having the "Statement of Application for Employment Involving Work with Children" Form completed by January 30, 2004. They will submit the completed Forms to me.

I regret you have taken this personal position, which is contrary to The Salvation Army's policy. As your supervisor I must accomplish the mandates of The Salvation Army.

173. Mr. Peck thereafter met with the various SSC program directors and their staff and instructed the Directors to distribute the Work with Minors form to their staff. The completed Work with Minors forms must be returned on or before February 27, 2004.

174. At these meetings, Mr. Peck also asserted, in words or substance, that The Salvation Army has the right to collect the information sought in the Work with Minors form and has the right to discriminate. Mr. Peck stated that The Salvation Army is within its rights to discriminate against homosexuals. Mr. Peck also asserted that anyone who does not complete the form will be deemed "insubordinate" and fired.

175. Plaintiffs contend that the Work with Minors form, and the repeated demands that they sign the forms and distribute them to their staff, is evidence of an increasingly pervasive, severe and intolerable working environment. They contend that the church attendance information sought on the form is an application of a religious test. Plaintiffs are offended by the

form. Plaintiffs contend that no inquiry or discussion of a person's religious beliefs and practices, or lack thereof, is appropriate in the workplace. Plaintiffs contend that they do not ought to be required by their employer to waive their right to privacy about any information they may have disclosed to their clergy, and contend that The Salvation Army ought not seek permission to question clergy about such communications. Plaintiffs cannot, as a matter of conscience, sign a form stating that they will conduct themselves in a manner consistent with The Salvation Army's Evangelical Christian teachings, when doing so may conflict with their legal and professional obligations as social workers. Plaintiffs are fearful that disclosing the requested information will lead to further religious discrimination.

176. All SSC employees are now being advised that they must agree to act in a manner "consistent with Salvation Army religious and charitable principles." They are required to acknowledge that their conduct, in general, must not conflict with or undermine the "religious and moral purposes" of The Salvation Army. These religious and moral principles have never been disseminated and interpreted. Children in foster care, for example, must be counseled on matters of human sexuality, including contraceptive and reproductive choices, HIV issues and "safe sex" methodologies, and sexual orientation. Yet, no information has been provided to staff, notwithstanding repeated questions, as to how The Salvation Army's "religious and moral principles" impact on the government-funded mandated social services programs offered by SSC.

177. The repeated insistence that all employees complete the Work with Minors form has created a heightened climate of anxiety regarding job security and continued employment. Plaintiffs and other employees feel pressured to sign or risk being fired from their jobs.

178. The form assumes the employee is Christian, asking for the name of churches attended. Those Plaintiffs who are not Christian now understand that they are not welcome as employees.

179. Plaintiffs' fears are well founded. Upon information and belief, at least one SSC employee did complete the Work With Minors form, which revealed that this employee was not Christian. On information and belief, this employee is being replaced by a less qualified Salvationist.

180. Plaintiffs further contend that signing the Work With Minors form would violate the Code of Ethics of the National Association of Social Workers. That Code states that "social workers should not allow an employing organization's policies, procedures, regulations or administrative orders to interfere with their ethical practice of social work." Neither social workers, nor social worker administrators, should "practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, sex, sexual orientation [...], marital status, political belief, [or] religion."

181. Plaintiffs who are SSC current employees and who have refused to sign the Work with Minors Form and to distribute the Work with Minors Form to their staffs and work colleagues believe they will be fired on or shortly after the February 27, 2004 deadline for distributing and completing those forms.

I. Changes in the Terms and Conditions of Employment Engendered by the Infusion of Religion in the Workplace

182. Prior to the implementation of the Reorganization Plan, Plaintiffs and other SSC employees experienced the SSC workplace as a completely secular professional social service organization protected by the range of labor and equal opportunity/non-discrimination laws

afforded other secular workplaces. Prior to Mr. Gutheil's termination, the SSC work environment was guided by local, state and federal laws and regulations, and good social work practice principles.

183. Upon information and belief, since the reorganization efforts began, overt and repeated indicia of Christianity have begun to be imposed on the plaintiffs and other SSC employees. Those indicia include, but are not limited to, Christian prayers being recited at quarterly staff meetings and at staff celebratory functions; frequent delivery of The Salvation Army religious publications to SSC employee mailboxes; conspicuous display of religious publications in and around the SSC employees' work sites; and daily postings of time and place of prayer meetings and other religious events, including bible study classes and Scripture classes, in the SSC employee lunch room area. Moreover, employees are directed to offer prayer before meals and are repeatedly importuned via the internal employee email lists to purchase religious music and other devotional materials.

184. These are new practices, initiated after the Reorganization Plan was implemented and increasing in frequency after Mr. Gutheil's termination of employment in October 2003.

185. Moreover, upon information and belief, certain reproductive health procedures, including therapeutic abortion, formerly covered by The Salvation Army's health insurance program, are no longer being covered because those health procedures are condemned by The Salvation Army.

186. As of October 2003, The Salvation Army Greater New York Division has refused to include "sexual orientation" in "protected categories" in the new employee hiring orientation presentation.

187. The Salvation Army SSC training department, which includes plaintiffs Lown and Quane, has been involuntarily partnered with The Salvation Army Division to work with the U.S. Department of Health and Human Services (Faith Based Initiatives Program) to develop an HIV training program for The Salvation Army Corps and lay staff in the New York and Philadelphia regions.

188. The planning and development of this program has had notable religious overtones. All planning meetings held to date have been opened and closed with Christian prayers and planned speakers and topics center on Biblical and Christian fundamental principles.

189. The Salvation Army Greater New York Division is mandating attendance at the HIV training program by approximately one hundred fifty people, including as yet undetermined SSC employees who are to be selected by supervisors and directors.

190. Plaintiff Lown suggested that the religious focus of the training program may be in contrast to the mandated SSC employees' beliefs, and thus may create an uncomfortable and hostile work environment. Her opposition to the religious focus of the training program was rejected. Instead, it was made clear that The Salvation Army is a faith-based organization and the HIV training program will be reflective of its religious mission.

191. In fact, Plaintiff Lown was issued a written reprimand shortly after that meeting for raising the issue. In a memorandum dated January 13, 2004, Mr. Peck advised Plaintiff Lown:

In the future, regardless of your personal beliefs, do not make statements in public about [...] The Salvation Army's mission or its faith-based beliefs to staff, vendors or government officials. The Salvation Army stands by its mission and will continue to pursue faith-based contract [sic].

192. The recent policies and practices of The Salvation Army with respect to employees of SSC has created a climate of religious intolerance within the workplace.

Employee objections to these policies and actions have not been addressed but have been termed evidence of “insubordination.” Plaintiffs fear hostile treatment because of their religion or because they do not disclose a religion. Plaintiffs fear being disadvantaged because of their religion or because they do not disclose a religion. Plaintiffs fear harassment because of their religion or because they do not disclose a religion.

193. The Salvation Army’s religion-based employment policies are inimical to the mandated government-funded social services programs that SSC operates and, in fact, conflict with widely-recognized best practices in the child welfare field, professional norms of social work, and the best interests of youth who are entrusted to The Salvation Army’s care by the State and City of New York.

194. The Salvation Army’s infusion of religion and injection of religiosity within the SSC workplace has altered the terms and conditions of employment for Plaintiffs and other SSC employees by demanding that Plaintiffs and other SSC employees (1) disclose their religious affiliations and practices, (2) adhere formally to the religious policies and principles of The Salvation Army, and (3) support the Mission of The Salvation Army even where the policies and principles of The Salvation Army are in conflict with their ethical obligations and government mandated obligations as social workers.

195. The Salvation Army has discriminated against plaintiffs by creating and allowing a hostile work environment. The Salvation Army knew or reasonably should have known that their actions have created and allow a hostile work environment.

196. Said hostile work environment has become even more severe and pervasive since the filing of the Complaint herein, leading to the constructive dismissal of Plaintiffs Lown, Cogan-Kozusko, Copes, Dessables, Gorham, Inouye and Obermaier.

First Cause of Action
Violation of the Equal Protection Clause of the Fourteenth Amendment
[as against The Salvation Army]

197. The Salvation Army administers child welfare and other social services that New York City, New York State and Nassau and Suffolk Counties are required, by law, to provide and does so with funding from these governmental entities.

198. Accordingly, The Salvation Army is a joint partner with these governmental entities in the provision of government-funded and legally mandated child welfare and other social services and it is carrying out public functions with state encouragement and funding.

199. The Salvation Army, in the provision of government-funded mandated child welfare and other social services, is entwined with governmental functions.

200. The Salvation Army has created a hostile work environment based upon religion, taken adverse employment actions based upon religion, and altered the terms and conditions of Plaintiffs' employment based upon religion in violation of the Fourteenth Amendment to the United States Constitution and made actionable by 42 U.S.C. § 1983.

Second Cause of Action
Violation of the Equal Protection Clause of the Fourteenth Amendment
[as against Government Defendants]

201. In providing significant government funds to finance The Salvation Army's religious discrimination, including, but not limited to, creating a hostile work environment based upon religion, taking adverse employment actions based upon religion, and altering the terms and conditions of Plaintiffs' employment based upon religion, and privileging some employees because of their religious beliefs or practices and disadvantaging other employees because of their religious beliefs or practices, the Government Defendants are in violation of the Equal

Protection Clause of the Fourteenth Amendment to the United States Constitution and made actionable by 42 U.S.C. § 1983.

Third Cause of Action

Violation of the Establishment Clause of the First Amendment
(as against Government Defendants)

202. In providing significant government funds to finance The Salvation Army's religious discrimination, including, but not limited to, creating a hostile work environment based upon religion, taking adverse employment actions based upon religion, and altering the terms and conditions of Plaintiffs' employment based upon religion, and privileging some employees because of their religious beliefs or practices and disadvantaging other employees because of their religious beliefs or practices, the Government Defendants are in violation of the Establishment Clause of the First Amendment to the United States Constitution and made actionable by the Fourteenth Amendment to the United States Constitution and by 42 U.S.C. § 1983.

Fourth Cause of Action

Violation of the Establishment Clause of the First Amendment
(as against Government Defendants)

203. In providing government funds to finance The Salvation Army's religious discrimination, the Government Defendants have deprived and continues to deprive plaintiffs of their rights, as taxpayers, that are protected by the Establishment Clause of the First Amendment to the United States Constitution made actionable by the Fourteenth Amendment to the United States Constitution and by 42 U.S.C. § 1983.

Fifth Cause of Action
Violation of the Free Exercise Clause of the First Amendment
(as against The Salvation Army)

204. The Salvation Army administers child welfare and other social services that New York City, New York State and Nassau and Suffolk Counties are required, by law, to provide and does so with funding from these governmental entities.

205. Accordingly, The Salvation Army is a joint partner with these governmental entities in the provision of government-funded and legally mandated child welfare and other social services and it is carrying out public functions with state encouragement and funding.

206. The Salvation Army, in the provision of government-funded mandated child welfare and other social services, is entwined with governmental functions.

207. The actions of The Salvation Army abridge rights to the free exercise of religion and to rights of associational privacy protected by the First Amendment to the United States Constitution made actionable by the Fourteenth Amendment to the United States Constitution and by 42 U.S.C. § 1983.

Sixth Cause of Action
Violation of Section 11 of Article I of the Constitution of the State of New York
(as against The Salvation Army)

208. The Salvation Army administers child welfare and other social services that New York City, New York State and Nassau and Suffolk Counties are required, by law, to provide and does so with funding from these governmental entities.

209. Accordingly, The Salvation Army is a joint partner with these governmental entities in the provision of government-funded and legally mandated child welfare and other social services and it is carrying out public functions with state encouragement and state funding.

210. The Salvation Army, in the provision of government-funded mandated child welfare and other social services, is entwined with governmental functions.

211. The Salvation Army has created a hostile work environment based upon religion, taken adverse employment actions based upon religion, and altered the terms and conditions of Plaintiffs' employment based upon religion in violation of Article I §11 of the New York State Constitution.

Seventh Cause of Action

Violation of Section 3 of Article I of the Constitution of the State of New York
(as against The Salvation Army)

212. The Salvation Army administers child welfare and other social services that New York City, New York State and Nassau and Suffolk Counties are required, by law, to provide and does so with funding from these governmental entities.

213. Accordingly, The Salvation Army is a joint partner with these governmental entities in the provision of government-funded and legally mandated child welfare and other social services and it is carrying out public functions with state encouragement and funding.

214. The Salvation Army, in the provision of government-funded mandated child welfare and other social services, is entwined with governmental functions.

215. The actions of The Salvation Army abridges rights to the free exercise of religion and to rights of associational privacy protected by Section 3 of Article I of the Constitution of the State of New York.

Eighth Cause of Action

Violation of Section 11 of Article I of the Constitution of the State of New York
(as against Government Defendants)

216. In providing significant support to The Salvation Army's religious discrimination and in participating as a joint partner with The Salvation Army in social services and child

welfare programs that discriminate on the basis of religion, the Government Defendants are in violation of Article I §11 of the New York State Constitution.

Ninth Cause of Action

Violation of 42 U.S.C. §§ 2000e-2(a) and 2000e-2(m)
(on behalf of all Plaintiffs as against The Salvation Army)

217. 42 U.S.C. § 2000e-2(a) provides that employers may not discriminate with respect to “compensation, terms, conditions, or privileges of employment” because of the religion of any individual. Nor may an employer “limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's ...religion.”

218. The Salvation Army is engaging in discriminatory employment practices, including but not limited to creating a hostile work environment based upon religion, taking adverse employment actions based upon religion, and altering the terms and conditions of Plaintiffs’ employment based upon religion in violation of 42 U.S.C. §§ 2000e-2(a) and 2000e-2(m).

219. The facts set out above constitute severe, abusive and pervasive harassment of plaintiffs by The Salvation Army because plaintiffs do not share The Salvation Army’s religious beliefs.

220. The facts set out above are sufficiently severe, abusive or pervasive to alter the terms and conditions of plaintiffs’ employment and create a hostile and abusive working environment.

221. As a proximate result of defendant's conduct, plaintiffs have suffered and continue to suffer substantial losses in earnings, job experience, retirement benefits, and other

employee benefits that they would have received absent defendant's discrimination. As a further proximate result of the above-mentioned acts, plaintiffs have suffered humiliation, mental pain and anguish. These injuries justify an award of compensatory damages in an amount to be determined by a jury at trial.

222. The Salvation Army's conduct described above has deprived and continues to deprive plaintiffs of rights that are protected by 42 U.S.C. §§ 2000e-2(a) and 2000e-2(m).

Tenth Cause of Action
Violation of New York State Executive Law § 296
(on behalf of all Plaintiffs as against The Salvation Army)

223. New York State Executive Law § 296(1)(a) provides that employers may not discriminate in "compensation or in terms, conditions or privileges of employment" because of the creed of any individual. And, the opportunity to obtain employment without discrimination because of creed is declared a civil right pursuant to New York State Executive Law § 291(1).

224. The Salvation Army is engaging in discriminatory employment practices, including but not limited to creating a hostile work environment based upon religion, taking adverse employment actions based upon religion, and altering the terms and conditions of Plaintiffs' employment based upon religion in violation of New York State Executive Law § 296(1)(a).

225. The facts set out above constitute severe, abusive and pervasive harassment of plaintiffs by The Salvation Army because plaintiffs do not share The Salvation Army's religious beliefs.

226. The facts set out above are sufficiently severe, abusive or pervasive to alter the terms and conditions of plaintiffs' employment and create a hostile and abusive working environment.

227. As a proximate result of defendant's conduct, plaintiffs have suffered and continue to suffer substantial losses in earnings, job experience, retirement benefits, and other employee benefits that they would have received absent defendant's discrimination. As a further proximate result of the above-mentioned acts, plaintiffs have suffered humiliation, mental pain and anguish. These injuries justify an award of compensatory damages in an amount to be determined by a jury at trial.

228. The Salvation Army's conduct described above has deprived and continues to deprive plaintiffs of rights that are protected by New York State Executive Law § 296(1)(a).

Eleventh Cause of Action
Violation of New York City Admin. Code § 8-107
(on behalf of all Plaintiffs as against The Salvation Army)

229. New York City Admin. Code § 8-107(1)(a) provides that employers may not “because of the actual or perceived [...] creed [...] of any person, [...] refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment.”

230. The Salvation Army is engaging in discriminatory employment practices, including but not limited to creating a hostile work environment based upon religion, taking adverse employment actions based upon religion, and altering the terms and conditions of Plaintiffs' employment based upon religion in violation of New York City Administrative Law § 8-107(1)(a).

231. The facts set out above constitute severe, abusive and pervasive harassment of plaintiffs by The Salvation Army because plaintiffs do not share The Salvation Army's religious beliefs.

232. The facts set out above are sufficiently severe, abusive or pervasive to alter the terms and conditions of plaintiffs' employment and create a hostile and abusive working environment.

233. As a proximate result of defendant's conduct, plaintiffs have suffered and continue to suffer substantial losses in earnings, job experience, retirement benefits, and other employee benefits that they would have received absent defendant's discrimination. As a further proximate result of the above-mentioned acts, plaintiffs have suffered humiliation, mental pain and anguish. These injuries justify an award of compensatory damages in an amount to be determined by a jury at trial.

234. The conduct of The Salvation Army described in this Complaint was willful and malicious so as to entitle plaintiffs to recover punitive damages in an amount to be determined by a jury at trial to punish defendant and to deter such conduct in the future.

235. The Salvation Army's conduct described above has deprived and continues to deprive plaintiffs of rights that are protected by New York City Administrative Law § 8-107(1)(a).

Twelfth Cause of Action

Constructive Termination of Employment in violation of
42 U.S.C. §§ 2000e-2(a) and 2000e-2(m)

(on behalf of Anne Lown, Steven Bielarski, Diane Copes, Mary Jane Dessables, Margaret Geissman, Jessica Gorham, Kyoko Inouye, Petr Nikichin, and Marina Obermaier
against The Salvation Army)

236. The Salvation Army created a hostile working environment for plaintiffs because plaintiffs do not share the The Salvation Army's religious beliefs. The working environment because so severe, abusive, pervasive and intolerable that Plaintiffs Lown, Bielarski, Copes, Dessables, Geissman, Gorham, Inouye, Nikichin and Obermaier were forced to resign their positions and, thus, were constructively discharged.

237. The constructive termination of said plaintiffs' employment by The Salvation Army constitutes unlawful discrimination against said plaintiffs on the basis of creed, in violation of 42 U.S.C. §§ 2000e-2(a) and 2000e-2(m).

238. As a proximate result of defendant's conduct, said plaintiffs have suffered and continue to suffer substantial losses in earnings, job experience, retirement benefits, and other employee benefits that they would have received absent defendant's discrimination. As a further proximate result of the above-mentioned acts, said plaintiffs have suffered humiliation, mental pain and anguish. These injuries justify an award of compensatory damages in an amount to be determined by a jury at trial.

Thirteenth Cause of Action

Constructive Termination of Employment in violation of New York State Executive Law § 296
(on behalf of Anne Lown, Steven Bielarski, Diane Copes, Mary Jane Dessables, Margaret Geissman, Jessica Gorham, Kyoko Inouye, Petr Nikichin, and Marina Obermaier
against The Salvation Army)

239. The Salvation Army created a hostile working environment for plaintiffs because plaintiffs do not share the The Salvation Army's religious beliefs. The working environment because so severe, abusive, pervasive and intolerable that Plaintiffs Lown, Bielarski, Copes, Dessables, Geissman, Gorham, Inouye, Nikichin and Obermaier were forced to resign their positions and, thus, were constructively discharged.

240. The constructive termination of said plaintiffs' employment by The Salvation Army constitutes unlawful discrimination against said plaintiffs on the basis of creed, in violation of New York Executive Law § 296.

241. As a proximate result of defendant's conduct, said plaintiffs have suffered and continue to suffer substantial losses in earnings, job experience, retirement benefits, and other employee benefits that they would have received absent defendant's discrimination. As a further

proximate result of the above-mentioned acts, said plaintiffs have suffered humiliation, mental pain and anguish. These injuries justify an award of compensatory damages in an amount to be determined by a jury at trial.

Fourteenth Cause of Action

Constructive Termination of Employment in violation of New York City
Administrative Code § 8-107(1)(a)

(on behalf of Anne Lown, Steven Bielarski, Diane Copes, Mary Jane Dessables, Margaret Geissman, Jessica Gorham, Kyoko Inouye, Petr Nikichin, and Marina Obermaier against The Salvation Army)

242. The Salvation Army has created a hostile work environment based upon religion, taken adverse employment actions based upon religion, and altered the terms and conditions of Plaintiffs' employment based upon religion. The working environment became so severe, abusive, pervasive and intolerable that Plaintiffs Lown, Bielarski, Copes, Dessables, Geissman, Gorham, Inouye, Nikichin and Obermaier were eventually forced to resign their positions and thus were constructively discharged.

243. The constructive termination of plaintiffs' employment by The Salvation Army constitutes unlawful discrimination against plaintiffs on the basis of creed, in violation of New York City Administrative Law § 8-107(1)(a).

244. As a proximate result of defendant's conduct, plaintiffs have suffered and continue to suffer substantial losses in earnings, job experience, retirement benefits, and other employee benefits that they would have received absent defendant's discrimination. As a further proximate result of the above-mentioned acts, plaintiffs have suffered humiliation, mental pain and anguish. These injuries justify an award of compensatory damages in an amount to be determined by a jury at trial.

245. The conduct of The Salvation Army described in this Complaint was willful and malicious so as to entitle plaintiffs to recover punitive damages in an amount to be determined by a jury at trial to punish defendant and to deter such conduct in the future.

Fifteenth Cause of Action

Retaliation in violation of 42 U.S.C. § 2000e-3

(on behalf of Anne Lown and Margaret Geissman against The Salvation Army)

246. The Salvation Army has created a hostile work environment based upon religion, taken adverse employment actions based upon religion, and altered the terms and conditions of Plaintiffs' employment based upon religion.

247. Plaintiffs Lown and Geissman opposed, protested and raised valid concerns about the discriminatory working environment with The Salvation Army, by engaging in protected activity, including but not limited to Plaintiff Lown's filing a complaint with the U.S. Equal Employment Opportunity Commission and Plaintiffs Lown and Geissman expressing their opposition to The Salvation Army about its discriminatory practices.

248. The Salvation Army was aware of Plaintiffs Lown's and Geissman's concerns and complaints.

249. Plaintiff Lown has been subjected to retaliatory and adverse employment actions by The Salvation Army, including, but not limited to, demotion, two reprimands, implied threats of termination upon conclusion of the U.S. Equal Employment Opportunity Commission investigation of her complaint, constructive dismissal and immediate dismissal upon her tendered offer of prospective resignation.

250. Plaintiff Geissman has been subjected to retaliatory and adverse employment action by The Salvation Army in the form of constructive dismissal.

251. The retaliatory and adverse employment actions to which Plaintiffs Lown and Geissman have been subjected is directly related to their opposition, concerns and complaints about the hostile working environment created by and religious discrimination at The Salvation Army.

252. The adverse employment actions to which Plaintiffs Lown and Geissman have been subjected by The Salvation Army constitute unlawful retaliation against them in violation of 42 U.S.C. § 2000e-3.

253. As a proximate result of defendant's conduct, Plaintiffs Lown and Geissman have suffered and continue to suffer substantial losses in earnings, job experience, retirement benefits, and other employee benefits that they would have received absent defendant's discrimination. As a further proximate result of the above-mentioned acts, Plaintiffs Lown and Geissman have suffered humiliation, mental pain and anguish. These injuries justify an award of compensatory damages in an amount to be determined by a jury at trial.

Sixteenth Cause of Action

Retaliation in violation of New York State Executive Law § 296(7)
(on behalf of Anne Lown and Margaret Geissman against The Salvation Army)

254. The Salvation Army has created a hostile work environment based upon religion, taken adverse employment actions based upon religion, and altered the terms and conditions of Plaintiffs' employment based upon religion.

255. Plaintiffs Lown and Geissman opposed, protested and raised valid concerns about the discriminatory working environment with The Salvation Army, by engaging in protected activity, including but not limited to Plaintiff Lown's filing a complaint with the U.S. Equal Employment Opportunity Commission and Plaintiffs Lown and Geissman expressing their opposition to The Salvation Army about its discriminatory practices.

256. The Salvation Army was aware of Plaintiffs Lown's and Geissman's concerns and complaints.

257. Plaintiff Lown has been subjected to retaliatory and adverse employment actions by The Salvation Army, including, but not limited to, demotion, two reprimands, and implied threats of termination upon conclusion of the U.S. Equal Employment Opportunity Commission investigation of her complaint and constructive dismissal.

258. Plaintiff Geissman has been subjected to retaliatory and adverse employment action by The Salvation Army in the form of constructive dismissal.

259. The retaliatory and adverse employment actions to which Plaintiffs Lown and Geissman have been subjected is directly related to their opposition, concerns and complaints about the hostile working environment created by and religious discrimination at The Salvation Army.

260. The adverse employment actions to which Plaintiffs Lown and Geissman have been subjected by The Salvation Army constitutes unlawful retaliation against them in violation of New York Executive Law § 296(7).

261. As a proximate result of defendant's conduct, Plaintiffs Lown and Geissman have suffered and continues to suffer substantial losses in earnings, job experience, retirement benefits, and other employee benefits that they would have received absent defendant's discrimination. As a further proximate result of the above-mentioned acts, Plaintiffs Lown and Geissman have suffered humiliation, mental pain and anguish. These injuries justify an award of compensatory damages in an amount to be determined by a jury at trial.

Seventeenth Cause of Action

Employment Retaliation in violation of New York City Administrative Law § 8-107(7)
(on behalf of Anne Lown and Margaret Geissman against The Salvation Army)

262. The Salvation Army has created a hostile work environment based upon religion, taken adverse employment actions based upon religion, and altered the terms and conditions of Plaintiffs' employment based upon religion.

263. Plaintiffs Lown and Geissman opposed, protested and raised valid concerns about the discriminatory working environment with The Salvation Army, by engaging in protected activity, including but not limited to Plaintiff Lown's filing a complaint with the U.S. Equal Employment Opportunity Commission and Plaintiffs Lown and Geissman expressing their opposition to The Salvation Army about its discriminatory practices.

264. The Salvation Army was aware of Plaintiffs Lown's and Geissman's concerns and complaints.

265. Plaintiff Lown has been subjected to retaliatory and adverse employment actions by The Salvation Army, including, but not limited to, demotion, two reprimands, and implied threats of termination upon conclusion of the U.S. Equal Employment Opportunity Commission investigation of her complaint and constructive dismissal.

266. Plaintiff Geissman has been subjected to retaliatory and adverse employment action by The Salvation Army in the form of constructive dismissal.

267. The retaliatory and adverse employment actions to which Plaintiffs Lown and Geissman have been subjected is directly related to their opposition, concerns and complaints about the hostile working environment created by and religious discrimination at The Salvation Army.

268. The adverse employment actions to which Plaintiffs Lown and Geissman have been subjected by The Salvation Army constitutes unlawful retaliation against them in violation of New York Administrative Law § 8-107(7).

269. As a proximate result of defendant's conduct, Plaintiffs Lown and Geissman have suffered and continues to suffer substantial losses in earnings, job experience, retirement benefits, and other employee benefits that they would have received absent defendant's discrimination. As a further proximate result of the above-mentioned acts, Plaintiffs Lown and Geissman have suffered humiliation, mental pain and anguish. These injuries justify an award of compensatory damages in an amount to be determined by a jury at trial.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

- (1) Issue appropriate declaratory and injunctive relief to end The Salvation Army's discriminatory religious practices.
- (2) Issue an appropriate declaratory judgment that the Government Defendants' provision of government funds to finance The Salvation Army's discriminatory religious practices is unconstitutional.
- (3) Award compensatory and punitive damages in an amount to be determined by a jury at trial.
- (4) Award plaintiffs all the pay and fringe benefits lost as a result of The Salvation Army's discriminatory practices against them.
- (5) Award the Plaintiffs attorneys' fees and costs pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 2000e-5(k) and the New York City Human Rights Law.

(6) Grant any other relief the court deems appropriate.

Dated: September 23 2004
New York, New York

Respectfully submitted,

NEW YORK CIVIL LIBERTIES UNION
FOUNDATION, by

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