UNITED STATES DISTRICT COURT   **(ECF)**
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -:
YONG KUI CHEN, ZU GUANG ZHU,   :   10 Civ. 7254 (JCF)
HAO CHEN, SHUI BING ZHU, GUO REN   :
HUANG and YOU HUANG ZHU, on behalf   :   OPINION
of themselves and others similarly   :   <u>AND ORDER</u>
situated,   :
              Plaintiffs,   :
                                      :
    - against -   :
                                      :
WAI? CAFÉ INC. and WAI YIN CHAN,   :
                                      :
              Defendants.   :
- - - - - - - - - - - - - - - - - - -:
JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

The plaintiffs in this case bring claims for unpaid wages,
overtime, and spread of hours pay pursuant to the Fair Labor
Standards Act (the "FLSA"), 29 U.S.C. § 201 <u>et</u> <u>seq.</u> and New York
Labor Law against their former employer, Wai ? Café Inc. ("Wai ?
Café"), and its owner, Wai Yin Chan. The parties consented to
proceed before me for all purposes in accordance with 28 U.S.C. §
636(c) and agreed to try liability issues to a jury, reserving for
me the calculation of damages. Shortly before trial, defendants'
counsel was relieved, and Mr. Chan proceeded to trial <u>pro</u> <u>se</u>.
Because the corporate defendant failed to appear by counsel at
trial, it was held to be in default. Plaintiff Yong Kui Chen did
not attend the trial, and his claims were therefore dismissed. The
claims of Jian Hui Lin, who was not named in the original

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Complaint, but who had submitted a form indicating his consent to sue under the FLSA, were submitted to the jury.

The trial was held on February 6 and 7, 2012. At the close of the evidence, the jury was asked to make liability determinations with respect to each of the plaintiffs' claims and to make factual findings that would serve as the basis for calculating damages.

Liability

A threshold issue in any FLSA case is whether the plaintiffs are "covered" employees under the statute. "The FLSA minimum-wage and overtime provisions apply only to employees who are (1) personally engaged in interstate commerce or in the production of goods for interstate commerce (so-called 'individual coverage'), or (2) [were] employed in an enterprise engaged in interstate commerce or in the production of goods for interstate commerce (so-called 'enterprise coverage')." Garcia v. Serpe, No. 3:08cv1662, 2012 WL 380253, at *4 (D. Conn. Feb. 6, 2012) (alteration in original) (quotation marks and citations omitted). Here, the plaintiffs never contended that they personally performed work related to the production of goods transported across state lines, so individual coverage is not triggered. To establish enterprise coverage, the plaintiffs must demonstrate that the employees "engage in commerce or handle, sell, or otherwise work on goods and materials that have been moved in commerce, and [] the enterprise has at least $500,000

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in annual gross volume of sales made or business done." <u>Solis v. Cindy's Total Care, Inc.</u>, No. 10 Civ. 7242, 2012 WL 28141, at *15 (S.D.N.Y. Jan. 5, 2012) (citing 29 U.S.C. § 203(s)(1)). At trial, the jury found that the plaintiffs had not shown that Wai ? Café's annual gross receipts exceeded $500,000.00. The FLSA claims must therefore be dismissed.

Nevertheless, I will retain supplemental jurisdiction over the plaintiffs' claims under New York Labor Law. Pursuant to 28 U.S.C. § 1367, a federal district court that has original jurisdiction over a civil action may also exercise jurisdiction over other claims unless certain exceptions apply. Where all federal claims are dismissed prior to trial, it is generally appropriate to dismiss without prejudice any state claims. <u>See</u> <u>Motorola Credit Corp. v. Uzan</u>, 388 F.3d 39, 56 (2d Cir. 2004). However, where the parties and the court have expended substantial resources in preparation for trial, and particularly where a case has actually been tried, it is appropriate to retain jurisdiction over state claims even when the federal claims are dismissed. <u>See</u> <u>id.</u> (approving exercise of supplemental jurisdiction over state claims tried in conjunction with federal claims that were subsequently dismissed); <u>Nowak v. Ironworkers Local 6 Pension Fund</u>, 81 F.3d 1181, 1191-92 (2d Cir. 1996) (allowing supplemental jurisdiction where case had proceeded for more than a year and federal claims

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were dismissed only nine days before scheduled trial); Purgess v. Sharrock, 33 F.3d 134, 138 (2d Cir. 1994) (where dismissal of federal claim occurs "late in the action, after there has been substantial expenditure in time, effort, and money in preparing the dependent claims, knocking them down with a belated rejection of supplemental jurisdiction may not be fair. Nor is it by any means necessary.").

This is such a case. The parties completed discovery, submitted the pretrial order, and tried a case in which the federal and state claims were based on the same constellation of facts. In such circumstances, the exercise of supplemental jurisdiction over the remaining state claims is warranted.

With respect to the remaining liability issues, the jury concluded that each plaintiff had been denied the appropriate minimum wage, overtime, and spread of hours pay. The jury also found, however, that Mr. Chan had not acted willfully, thus precluding the plaintiffs from an award of liquidated damages. N.Y. Labor Law § 663(1).

Damages

Following trial, the parties were invited to submit proposed damages calculations based on the jury's findings as to the periods of time each plaintiff worked, the hours that plaintiff worked each week, and the amount he was actually paid. The plaintiffs made

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such a submission, and also indicated that they were waiving any claim for attorneys' fees. (Letter of C.K. Lee dated Feb. 14, 2012 ("Pl. Damages Statement")). Mr. Chan did not file a response. The following determinations constitute my findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

The formulas used to calculate damages are the same for each plaintiff. The unpaid minimum wage ("MW") is equal to the difference between the prevailing minimum wage minus the plaintiff's actual rate of pay (the "paid rate") multiplied by the number of hours worked in a week up to forty hours multiplied by the number of weeks worked in the relevant period. The overtime ("OT") owed is the difference between one and one-half times the minimum wage and the paid rate multiplied by the number of hours over forty multiplied by the number of weeks worked. Finally, the unpaid spread of hours ("SH") equals the number of days worked over ten hours multiplied by the minimum wage multiplied by the number of weeks. Based on this framework, the damages for each plaintiff are as follows:

A. <u>Zu Ghang Zhu</u>

    1. <u>September 2004 - December 2004</u>

Number of weeks worked	17.2 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$600/month
Paid rate	$1.77/hr.

Unpaid MW = (MW - Paid Rate) x (40 hours) x (Number of weeks)
= ($5.15 - 1.77) x (40) x (17.2)
= $2,325.44

Unpaid OT = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
= ($7.73 - 1.77) x (39) x (17.2)
= $3,997.97

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6.5) x ($5.15) x (17.2)
= $575.77

Total = $6,899.18

    2. <u>January 2005 - December 2005</u>

Number of weeks worked	52 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$600/month
Paid rate	$1.77/hr.

Unpaid MW = (MW - Paid Rate) x (40 hours) x (Number of weeks)
= ($6.00 - 1.77) x (40) x (52)
= $8,798.40

Unpaid OT = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
= ($9.00 - 1.77) x (39) x (52)
= $14,662.44

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6.5) x ($6.00) x (52)
= $2,028.00

Total = $25,488.84

3. <u>January 2006 - December 2006</u>

Number of weeks worked	52 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$600/month
Paid rate	$1.77/hr.

Unpaid MW = (MW - Paid Rate) x (40 hours) x (Number of weeks)
= ($6.75 - 1.77) x (40) x (52)
= $10,358.40

Unpaid OT = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
= ($10.13 - 1.77) x (39) x (52)
= $16,954.08

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6.5) x ($6.75) x (52)
= $2,281.50

Total = $29,593.98

4. <u>February 2007 - April 2007</u>

Number of weeks worked	13 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$600/month
Paid rate	$1.77/hr.

Unpaid MW = (MW - Paid Rate) x (40 hours) x (Number of weeks)
= ($7.15 - 1.77) x (40) x (13)
= $2,797.60

Unpaid OT = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
= ($10.73 - 1.77) x (39) x (13)
= $4,542.72

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6.5) x ($7.15) x (13)
= $604.18

Total = $7,944.50

5. <u>May 2008 – July 23, 2009</u>

       Number of weeks worked   59.6 weeks
       Hours worked/week   72 hrs./wk.
       Monthly salary $900/month
       Paid rate $2.91/hr.

Unpaid MW   = (MW – Paid Rate) x (40 hours) x (Number of weeks)
              = ($7.15 – 2.91) x (40) x (59.6)
              = $10,108.16

Unpaid OT   = (1.5MW – Paid Rate) x (Hours over 40) x (# weeks)
              = ($10.73 – 2.91) x (32) x (59.6)
              = $14,914.30

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
              = (6) x ($7.15) x (59.6)
              = $2,556.84

Total   = $27,579.30

6. <u>July 24, 2009 – December 2009</u>

       Number of weeks worked   23.8 weeks
       Hours worked/week   72 hrs./wk.
       Monthly salary $900/month
       Paid rate $2.91/hr.

Unpaid MW   = (MW – Paid Rate) x (40 hours) x (Number of weeks)
              = ($7.25 – 2.91) x (40) x (23.8)
              = $4,131.68

Unpaid OT   = (1.5MW – Paid Rate) x (Hours over 40) x (# weeks)
              = ($10.88 – 2.91) x (32) x (23.8)
              = $6,069.95

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
              = (6) x ($7.25) x (23.8)
              = $1,035.30

Total   = $11,236.93

7. <u>January 2010 - August 2010</u>

Number of weeks worked	34.4 weeks
Hours worked/week	72 hrs./wk.
Monthly salary	$1,000/month
Paid rate	$3.23/hr.

Unpaid MW = (MW - Paid Rate) x (40 hours) x (Number of weeks)
= ($7.25 - 3.23) x (40) x (34.4)
= $5,531.52

Unpaid OT = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
= ($10.88 - 3.23) x (32) x (34.4)
= $8,421.12

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6) x ($7.25) x (34.4)
= $1,496.40

Total = $15,449.04

Zu Ghang Zhu Total = $124,191.77

B. <u>Hao Chen</u>

1. <u>December 2003</u>

Number of weeks worked	4.3 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$600/month
Paid rate	$1.77/hr.

Unpaid MW = (MW - Paid Rate) x (40 hours) x (Number of weeks)
= ($5.15 - 1.77) x (40) x (4.3)
= $581.36

Unpaid OT = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
= ($7.73 - 1.77) x (39) x (4.3)
= $999.49

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6.5) x ($5.15) x (4.3)
= $143.94

Total = $1,724.79

2. January 2004

Number of weeks worked	4.3 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$650/month
Paid rate	$1.91/hr.

Unpaid MW   = (MW – Paid Rate) x (40 hours) x (Number of weeks)
= ($5.15 – 1.91) x (40) x (4.3)
= $557.28

Unpaid OT   = (1.5MW – Paid Rate) x (Hours over 40) x (# weeks)
= ($7.73 – 1.91) x (39) x (4.3)
= $976.01

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6.5) x ($5.15) x (4.3)
= $143.94

Total   = $1,677.23

3. February 2004

Number of weeks worked	4.3 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$700/month
Paid rate	$2.06/hr.

Unpaid MW   = (MW – Paid Rate) x (40 hours) x (Number of weeks)
= ($5.15 – 2.06) x (40) x (4.3)
= $531.48

Unpaid OT   = (1.5MW – Paid Rate) x (Hours over 40) x (# weeks)
= ($7.73 – 2.06) x (39) x (4.3)
= $950.86

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6.5) x ($5.15) x (4.3)
= $143.94

Total   = $1,626.28

4. <u>March 2004</u>

    Number of weeks worked   4.3 weeks
    Hours worked/week   79 hrs./wk.
    Monthly salary $750/month
    Paid rate $2.21/hr.

Unpaid MW   = (MW - Paid Rate) x (40 hours) x (Number of weeks)
                 = ($5.15 - 2.21) x (40) x (4.3)
                 = $505.68

Unpaid OT   = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
                 = ($7.73 - 2.21) x (39) x (4.3)
                 = $925.70

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
                 = (6.5) x ($5.15) x (4.3)
                 = $143.94

Total   = $1,575.32

5. <u>April 2004</u>

    Number of weeks worked   4.3 weeks
    Hours worked/week   79 hrs./wk.
    Monthly salary $800/month
    Paid rate $2.36/hr.[1]

Unpaid MW   = (MW - Paid Rate) x (40 hours) x (Number of weeks)
                 = ($5.15 - 2.36) x (40) x (4.3)
                 = $479.88

Unpaid OT   = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
                 = ($7.73 - 2.34) x (39) x (4.3)
                 = $900.55

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
                 = (6.5) x ($5.15) x (4.3)
                 = $143.94

Total   = $1,524.37

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[1] The plaintiffs incorrectly calculated the hourly rate at $2.34.

6. <u>May 2004</u>

Number of weeks worked	4.3 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$850/month
Paid rate	$2.50/hr.

Unpaid MW   = (MW - Paid Rate) x (40 hours) x (Number of weeks)
                  = ($5.15 - 2.50) x (40) x (4.3)
                  = $455.80

Unpaid OT   = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
                  = ($7.73 - 2.50) x (39) x (4.3)
                  = $877.07

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
                  = (6.5) x ($5.15) x (4.3)
                  = $143.94

Total   = $1,476.81

7. <u>June 2004</u>

Number of weeks worked	4.3 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$900/month
Paid rate	$2.65/hr.

Unpaid MW   = (MW - Paid Rate) x (40 hours) x (Number of weeks)
                  = ($5.15 - 2.65) x (40) x (4.3)
                  = $430.00

Unpaid OT   = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
                  = ($7.73 - 2.65) x (39) x (4.3)
                  = $851.92

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
                  = (6.5) x ($5.15) x (4.3)
                  = $143.94

Total   = $1,425.86

8. <u>July 2004</u>

Number of weeks worked	4.3 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$950/month
Paid rate	$2.80/hr.

Unpaid MW
= (MW - Paid Rate) x (40 hours) x (Number of weeks)
= ($5.15 - 2.80) x (40) x (4.3)
= $404.20

Unpaid OT
= (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
= ($7.73 - 2.80) x (39) x (4.3)
= $826.76

Unpaid SH
= (days worked over 10 hrs.) x (MW) x (# weeks)
= (6.5) x ($5.15) x (4.3)
= $143.94

Total
= $1,374.90

9. <u>August 2004</u>

Number of weeks worked	4.3 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$1,000/month
Paid rate	$2.94/hr.

Unpaid MW
= (MW - Paid Rate) x (40 hours) x (Number of weeks)
= ($5.15 - 2.94) x (40) x (4.3)
= $380.12

Unpaid OT
= (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
= ($7.73 - 2.94) x (39) x (4.3)
= $803.28

Unpaid SH
= (days worked over 10 hrs.) x (MW) x (# weeks)
= (6.5) x ($5.15) x (4.3)
= $143.94

Total
= $1,327.34

10. September 2004

Number of weeks worked	4.3 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$1.050/month
Paid rate	$3.09/hr.

Unpaid MW
= (MW - Paid Rate) x (40 hours) x (Number of weeks)
= ($5.15 - 3.09) x (40) x (4.3)
= $354.32

Unpaid OT
= (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
= ($7.73 - 3.09) x (39) x (4.3)
= $778.13

Unpaid SH
= (days worked over 10 hrs.) x (MW) x (# weeks)
= (6.5) x ($5.15) x (4.3)
= $143.94

Total
= $1,276.39

11. October 2004

Number of weeks worked	4.3 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$1,100/month
Paid rate	$3.24/hr.

Unpaid MW
= (MW - Paid Rate) x (40 hours) x (Number of weeks)
= ($5.15 - 3.24) x (40) x (4.3)
= $328.52

Unpaid OT
= (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
= ($7.73 - 3.24) x (39) x (4.3)
= $752.97

Unpaid SH
= (days worked over 10 hrs.) x (MW) x (# weeks)
= (6.5) x ($5.15) x (4.3)
= $143.94

Total
= $1,225.43

12. <u>November 2004</u>

        Number of weeks worked   4.3 weeks
        Hours worked/week   79 hrs./wk.
        Monthly salary $1,150/month
        Paid rate $3.39/hr.

Unpaid MW   = (MW - Paid Rate) x (40 hours) x (Number of weeks)
               = ($5.15 - 3.39) x (40) x (4.3)
               = $302.72

Unpaid OT   = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
               = ($7.73 - 3.39) x (39) x (4.3)
               = $727.82

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
               = (6.5) x ($5.15) x (4.3)
               = $143.94

Total   = $1,174.48

13. <u>December 2004</u>

        Number of weeks worked   4.3 weeks
        Hours worked/week   79 hrs./wk.
        Monthly salary $1,200/month
        Paid rate $3.53/hr.

Unpaid MW   = (MW - Paid Rate) x (40 hours) x (Number of weeks)
               = ($5.15 - 3.53) x (40) x (4.3)
                = $278.64

Unpaid OT   = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
               = ($7.73 - 3.53) x (39) x (4.3)
                = $704.34

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
                = (6.5) x ($5.15) x (4.3)
                = $143.94

Total   = $1,126.92

14. January 2005 - December 2005

Number of weeks worked	52 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$1,200/month
Paid rate	$3.53/hr.

Unpaid MW   = (MW - Paid Rate) x (40 hours) x (Number of weeks)
                = ($6.00 - 3.53) x (40) x (52)
                = $5,137.60

Unpaid OT   = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
                = ($9.00 - 3.53) x (39) x (52)
                = $11,093.16

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
                = (6.5) x ($6.00) x (52)
                = $2,028.00

Total   = $18,258.76

15. January 2006 - December 2006

Number of weeks worked	52 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$1,200/month
Paid rate	$3.53/hr.

Unpaid MW   = (MW - Paid Rate) x (40 hours) x (Number of weeks)
                = ($6.75 - 3.53) x (40) x (52)
                = $6,697.60

Unpaid OT   = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
                = ($10.13 - 3.53) x (39) x (52)
                = $13,384.80

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
                = (6.5) x ($6.75) x (52)
                = $2,281.50

Total   = $22,363.90

16. <u>January 2007 - April 2007</u>

Number of weeks worked	17.2 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$1,200/month
Paid rate	$3.53/hr.

Unpaid MW = (MW - Paid Rate) x (40 hours) x (Number of weeks)
= ($7.15 - 3.53) x (40) x (17.2)
= $2,490.56

Unpaid OT = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
= ($10.73 - 3.53) x (39) x (17.2)
= $4,829.76

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6.5) x ($7.15) x (17.2)
= $799.37

Total = $8,119.69

17. <u>May 2008 - December 2008</u>

Number of weeks worked	34.4 weeks
Hours worked/week	72 hrs./wk.
Monthly salary	$1,400/month
Paid rate	$4.52/hr.

Unpaid MW = (MW - Paid Rate) x (40 hours) x (Number of weeks)
= ($7.15 - 4.52) x (40) x (34.4)
= $3,618.88

Unpaid OT = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
= ($10.73 - 4.52) x (32)[2] x (34.4)
= $6,635.97

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6) x ($7.15) x (34.4)
= $1,475.76

Total = $11,730.61

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[2] The plaintiffs incorrectly state this figure as 39 hours here and also for the next two periods.

18. <u>January 2009 – July 23, 2009</u>

Number of weeks worked	29 weeks
Hours worked/week	60 hrs./wk.
Monthly salary	$1,200/month
Paid rate	$4.65/hr.

Unpaid MW = (MW – Paid Rate) x (40 hours) x (Number of weeks)
= ($7.15 – 4.65) x (40) x (29)
= $2,900.00

Unpaid OT = (1.5MW – Paid Rate) x (Hours over 40) x (# weeks)
= ($10.73 – 4.65) x (20) x (29)
= $3,526.40

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6) x ($7.15) x (29)
= $1,244.10

Total = $7,670.50

19. <u>July 24, 2009 – August 2010</u>

Number of weeks worked	53 weeks
Hours worked/week	60 hrs./wk.
Monthly salary	$1,200/month
Paid rate	$4.65/hr.

Unpaid MW = (MW – Paid Rate) x (40 hours) x (Number of weeks)
= ($7.25 – 4.65) x (40) x (53)
= $5,512.00

Unpaid OT = (1.5MW – Paid Rate) x (Hours over 40) x (# weeks)
= ($10.88 – 4.65) x (20) x (53)
= $6,603.80

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6) x ($7.25) x (53)
= $2,305.50

Total = $14,421.30

Hao Chen Total = $101,100.88

C. <u>You Huang Zhu</u>

    1. <u>December 2008 - July 23, 2009</u>

Number of weeks worked	33.4 weeks
Hours worked/week	72 hrs./wk.
Monthly salary	$700/month
Paid rate	$2.26/hr.

Unpaid MW = (MW - Paid Rate) x (40 hours) x (Number of weeks)
= ($7.15 - 2.26) x (40) x (33.4)
= $6,533.04

Unpaid OT = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
= ($10.73 - 2.26) x (32) x (33.4)
= $9,052.74

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6) x ($7.15) x (33.4)
= $1,432.86

Total = $17,018.64

    2. <u>July 24, 2009 - December 2009</u>

Number of weeks worked	22.5 weeks
Hours worked/week	72 hrs./wk.
Monthly salary	$700/month
Paid rate	$2.26/hr.

Unpaid MW = (MW - Paid Rate) x (40 hours) x (Number of weeks)
= ($7.25 - 2.26) x (40) x (22.5)
= $4,491.00

Unpaid OT = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
= ($10.88 - 2.26) x (32) x (22.5)
= $6,206.40

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6) x ($7.25) x (22.5)
= $978.75

Total = $11,676.15

3. January 2010 - August 2010

Number of weeks worked	34.4 weeks
Hours worked/week	72 hrs./wk.
Monthly salary	$900/month
Paid rate	$2.91/hr.

Unpaid MW   = (MW - Paid Rate) x (40 hours) x (Number of weeks)
               = ($7.25 - 2.91) x (40) x (34.4)
               = $5,971.84

Unpaid OT   = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
               = ($10.88 - 2.91) x (32) x (34.4)
               = $8,773.38

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
               = (6) x ($7.25) x (34.4)
               = $1,496.40

Total   = $16,241.62

You Huang Zhu Total = $44,936.41

   D. Shui Bing Zhu

      1. January 2006 - December 2006

Number of weeks worked	52 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$600/month
Paid rate	$1.77/hr.

Unpaid MW   = (MW - Paid Rate) x (40 hours) x (Number of weeks)
               = ($6.75 - 1.77) x (40) x (52)
               = $10,358.40

Unpaid OT   = (1.5MW - Paid Rate) x (Hours over 40) x (# weeks)
               = ($10.13 - 1.77) x (39) x (52)
               = $16,954.08

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
               = (6.5) x ($6.75) x (52)
               = $2,281.50

Total   = $29,593.98

2. <u>January 2007 – February 2008</u>

Number of weeks worked	60.6 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$600/month
Paid rate	$1.77/hr.

Unpaid MW   = (MW – Paid Rate) x (40 hours) x (Number of weeks)
            = ($7.15 – 1.77) x (40) x (60.6)
            = $13,041.12

Unpaid OT   = (1.5MW – Paid Rate) x (Hours over 40) x (# weeks)
            = ($10.73 – 1.77) x (39) x (60.6)
            = $21,176.06

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
            = (6.5) x ($7.15) x (60.6)
            = $2,816.39

Total   = $37,033.57

3. <u>May 2008 – July 23, 2009</u>

Number of weeks worked	64 weeks
Hours worked/week	72 hrs./wk.
Monthly salary	$700/month
Paid rate	$2.26/hr.

Unpaid MW   = (MW – Paid Rate) x (40 hours) x (Number of weeks)
            = ($7.15 – 2.26) x (40) x (64)
            = $12,518.40

Unpaid OT   = (1.5MW – Paid Rate) x (Hours over 40) x (# weeks)
            = ($10.73 – 2.26) x (32) x (64)
            = $17,346.56

Unpaid SH   = (days worked over 10 hrs.) x (MW) x (# weeks)
            = (6) x ($7.15) x (64)
            = $2,745.60

Total   = $32,610.56

4. July 24, 2009 – March 2010

Number of weeks worked	35.4 weeks
Hours worked/week	72 hrs./wk.
Monthly salary	$700/month
Paid rate	$2.26/hr.

Unpaid MW = (MW – Paid Rate) x (40 hours) x (Number of weeks)
= ($7.25 – 2.26) x (40) x (35.4)
= $7,065.84

Unpaid OT = (1.5MW – Paid Rate) x (Hours over 40) x (# weeks)
= ($10.88 – 2.26) x (32) x (35.4)
= $9,764.74

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6) x ($7.25) x (35.4)
= $1,539.90

Total = $18,370.38

Shui Bing Zhu Total = $117,608.49

E. Guo Ren Huang

1. May 2008 – August 2008

Number of weeks worked	17.2 weeks
Hours worked/week	72 hrs./wk.
Monthly salary	$700/month
Paid rate	$2.26/hr.

Unpaid MW = (MW – Paid Rate) x (40 hours) x (Number of weeks)
= ($7.15 – 2.26) x (40) x (17.2)
= $3,364.32

Unpaid OT = (1.5MW – Paid Rate) x (Hours over 40) x (# weeks)
= ($10.73 – 2.26) x (32) x (17.2)
= $4,661.89

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
= (6) x ($7.15) x (17.2)
= $737.88

Total = $8,764.09

2. September 2009 – August 2010

Number of weeks worked	52 weeks
Hours worked/week	72 hrs./wk.
Monthly salary	$900/month
Paid rate	$2.91/hr.

Unpaid MW = (MW – Paid Rate) x (40 hours) x (Number of weeks)
           = ($7.25 – 2.91) x (40) x (52)
           = $9,027.20

Unpaid OT = (1.5MW – Paid Rate) x (Hours over 40) x (# weeks)
           = ($10.88 – 2.91) x (32) x (52)
           = $13,262.08

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
           = (6) x ($7.25) x (52)
           = $2,262.00

Total   = 24,551.28

Guo Ren Huang Total = $33,315.37

F. Jian Hui Lin

1. April 2005 – December 2005

Number of weeks worked	38.7 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$600/month
Paid rate	$1.77/hr.

Unpaid MW = (MW – Paid Rate) x (40 hours) x (Number of weeks)
           = ($6.00 – 1.77) x (40) x (38.7)
           = $6,548.04

Unpaid OT = (1.5MW – Paid Rate) x (Hours over 40) x (# weeks)
           = ($9.00 – 1.77) x (39) x (38.7)
           = $10,912.24

Unpaid SH = (days worked over 10 hrs.) x (MW) x (# weeks)
           = (6.5) x ($6.00) x (38.7)
           = $1,509.30

Total   = $18,969.58

2. January 2006 – December 2006

Number of weeks worked	52 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$600/month
Paid rate	$1.77/hr.

Unpaid MW
= (MW – Paid Rate) x (40 hours) x (Number of weeks)
= ($6.75 – 1.77) x (40) x (52)
= $10,358.40

Unpaid OT
= (1.5MW – Paid Rate) x (Hours over 40) x (# weeks)
= ($10.13 – 1.77) x (39) x (52)
= $16,954.08

Unpaid SH
= (days worked over 10 hrs.) x (MW) x (# weeks)
= (6.5) x ($6.75) x (52)
= $2,281.50

Total
= $29,593.98

3. January 2007 – April 2007

Number of weeks worked	17.2 weeks
Hours worked/week	79 hrs./wk.
Monthly salary	$600/month
Paid rate	$1.77/hr.

Unpaid MW
= (MW – Paid Rate) x (40 hours) x (Number of weeks)
= ($7.15 – 1.77) x (40) x (17.2)
= $3,701.44

Unpaid OT
= (1.5MW – Paid Rate) x (Hours over 40) x (# weeks)
= ($10.73 – 1.77) x (39) x (17.2)
= $6,010.37

Unpaid SH
= (days worked over 10 hrs.) x (MW) x (# weeks)
= (6.5) x ($7.15) x (17.2)
= $799.37

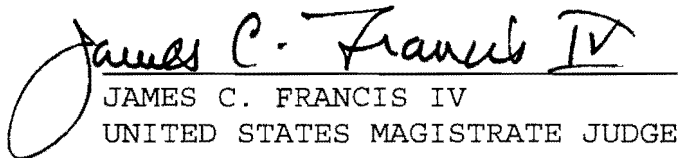Total
= $10,511.18

Jian Hui Lin Total = $59,074.74

Conclusion

Judgment shall be entered in favor of the plaintiffs and against the defendants Wai ? Café Inc. and Wai Yin Chan, jointly and severally, on the plaintiffs' New York Labor Law claims as set forth below:

Plaintiff	Amount
Zu Ghang Zhu	$124,191.77
Hao Chen	$101,100.88
You Huang Zhu	$44,936.41
Shui Bing Zhu	$117,608.49
Guo Ren Huang	$33,315.37
Jian Hui Lin	$59,074.74

The plaintiffs' claims under the FLSA are dismissed. The Clerk of Court shall enter judgment accordingly and close this case.[3]

SO ORDERED.

JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York
       March 26, 2012

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[3] The plaintiffs request that I "reapportion" the costs of the interpreter who translated for both the plaintiffs and Mr. Chan at trial. (Pl. Damages Statement). This application is moot; as the prevailing parties, the plaintiffs are entitled to costs, and interpreter expenses are included among taxable costs. 28 U.S.C. § 1920(6).

Copies mailed this date to:

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