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7 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 KYONG OK YU, *et al.*,

10 Plaintiffs,

11 v.

12 FIVE BOARS, LLC., *et al.*,

13 Defendants.
14

Case No. C17-1249-JPD

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT

15
16 I. INTRODUCTION AND SUMMARY CONCLUSION

17 This matter comes before the Court upon plaintiffs Kyong Ok Yu and Un Nam Yu's
18 ("plaintiffs" or "Mr. and Mrs. Yu") motion for partial summary judgment, Dkt. 49, which
19 defendants Five Boars, LLC, Eun Kyu Kim, and Chu Hang Kim ("defendants" or "Mr. and Mrs.
20 Kim") oppose. The Court, having considered the parties' submissions, the argument of counsel
21 at oral argument on August 29, 2018, the Court's previous Order granting plaintiffs' motion to
22 admit as facts certain statements based on defendants' failure to respond to the request for
23 admissions, the governing law, and the balance of the record, hereby ORDERS that plaintiffs'
24 motion for partial summary judgment, Dkt. 49, is GRANTED IN PART and DENIED IN PART.
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II. DISCUSSION

A. Summary of Admitted Facts Pursuant to the Court's Order Dated August 28, 2018

On July 19, 2018, plaintiffs moved the Court to admit as facts certain statements based on defendants' failure to respond to the request for admissions pursuant to Fed. R. Civ. P. 36. Dkt. 53. *See also* Dkt. 54 (Park Decl.). Defendants failed to respond to plaintiffs' motion, or the request for admissions. Accordingly, on August 28, 2018, the Court granted plaintiffs' motion, and deemed the facts admitted. Dkt. 66. Thus, the following facts have been admitted in this case pursuant to the Court's Order:

Defendants Eun Kyu Kim and Chu Hwang Kim ("Mr. and Mrs. Kim") have owned the Seal's Motel, located at located 12035 Aurora Ave N, Seattle, WA 98133, since September 2006 when they purchased it for \$2.25 million, until they sold it to a third party on or about August 2, 2016. The motel has approximately 38 rooms, and is more than fifty years old. Defendant Five Boars, LLC, which was entirely owned and managed by Mr. and Mrs. Kim, operated the business of the Seal's Motel, while the Kims own the real property. Five Boars, LLC dissolved in 2016.

Seal's Motel is located on the "Aurora corridor," with a cluster of nearby inexpensive motels which are mostly independently owned and operated. In addition to travelers, tourists, and out of state visitors, Seal's Motel customers regularly included long-term customers who often stayed more than one month, transients, and homeless persons who were supported by churches or governmental agencies. Over the years, the motel has had difficulties with prostitutes, drug users, and transients.¹

¹ For example, a dead woman was found at Seal's Motel in December 2013, who police suspect died as a victim of foul play or crime. Seattle Police shot and killed a knife-armed man

1 Before hiring the Yus, the Kims worked at the Seal's Motel's front office as owner-
2 operators and also performed the duties of motel clerk or receptionist, room cleaner, and
3 handyman. While staffing the reception desk at the motel, defendants admitted customers at all
4 hours, including from 10 p.m. to 8 a.m., and were awakened by customers ringing the buzzer
5 or knocking on the doors numerous times. Thus, defendants knew that motel customers would
6 regularly knock on the front office door between 10 p.m. to 8 a.m. to awaken the employee
7 staying next to the front office for various concerns. Defendants had posted the minimum
8 wage and the overtime wage requirements poster in the laundry room below the employee
9 quarter next to the Seal's Motel's front office, reflecting their understanding that they were
10 required to pay the minimum wage and overtime wage to their motel employees.
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12 In September 2010, defendants hired Mrs. Yu, who is Mr. Kim's cousin, as a motel
13 employee. She worked at the motel from 2010 to July 2016. Mrs. Yu worked primarily as a
14 Seal's Motel's front office receptionist admitting and discharging the motel customers,
15 collecting room charges, making room availability reports, making room cleaning reports,
16 cleaning motel rooms, doing laundry of motel linens, and ordering motel supplies. Mrs. Yu
17 and her husband, Mr. Yu, stayed in the living quarters next to the Seal Motel's front office.
18 Mrs. Yu admitted Seal's Motel's customers at any time of the day or night as needed, and took
19 care of customers' issues, security issues, and problems of the motel at any time. Defendants
20 were aware that Mrs. Yu rented out motel rooms to walk-in customers from 10 p.m. to 8 a.m.
21 the following morning, based upon the revenues received from these transactions. Defendants
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24 at the motel in January 2009. The motel was temporarily shut down by Washington State
25 Department of Health on or about June 2008 due to safety issues, including broken smoke
26 detectors, soiled mattresses, exposed electrical wiring, and drug paraphernalia found in the
motel rooms.

1 never made any attempt to stop Mrs. Yu from working between the hours of 10 p.m. to 8 a.m.,
2 or had any written policy (or initiated negative employment action) to discourage Mr. and Mrs.
3 Yu from working overnight. On the contrary, the motel's front office had an electric buzzer
4 for customers to ring for an employee to assist them after-hours.

5 Defendants reported to the Washington State Employment Security Department and/or
6 Department of Labor and Industries that Mrs. Yu worked 160 hours per month for Seal's
7 Motel, for the employment period 2013 to 2016. Defendants paid her a fixed salary, excluding
8 taxes, of \$2,000 in check plus \$2,000 in cash, or a total of \$4,000.00 per month.² Thus, based
9 on their claims of hours worked and salary paid, Mrs. Yu's regular hourly wage was \$25.00
10 per hour (\$4,000 divided by 160 hours). Defendants did not have a time clock to record the
11 actual hours worked by the employees of Seal's Motel, and they did not record the actual hours
12 worked by plaintiffs.
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14 While Mrs. Yu was employed at the Seal's Motel, she was not a professional employee
15 with a professional license, an executive employee, an administrative employee, or otherwise
16 involved in the hiring/firing of employees, bookkeeping, accounting, tax reporting, payroll
17 accounting, payroll check writing, vendor payments, or other administrative works. Rather,
18 Mr. and Mrs. Kim performed the hiring and firing of the employees, the bookkeeping,
19 accounting, tax reporting, payroll accounting, payroll check writing, vendor payments, and
20 other administrative works, in conjunction with
21 the accountant.
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25 ² Defendants did not pay taxes (including social security taxes) on behalf of Mrs. Yu for
26 the cash portion of the wages paid to her.

1 Plaintiff Un Nam Yu (“Mr. Yu”) was employed by defendants at the motel from 2013
2 to 2016. Mr. Yu worked primarily as the Seal’s Motel’s handyman or front office receptionist
3 (admitting and discharging the motel customers). As needed, he collected room charges,
4 cleaned motel rooms, laundered motel linens, cleaned the motel parking lots, did security
5 checks of the motel, and resolved issues with motel customers. Mr. Yu was an hourly worker
6 rather than a salaried worker. Defendants reported to Washington State Employment Security
7 Department and/or Department of Labor and Industries that Mr. worked 80 hours per month
8 between December 1, 2013 and December 31, 2015, and 70 hours per month between January
9 1, 2016 and July 31, 2016.³

11 Mrs. Yu worked more than eight hours per day, for the each day she worked for Seal’s
12 Motel, and more than forty hours per week for the years 2013-2016. However, defendants did
13 not pay Mrs. Yu any overtime wage for the years 2013-2016. Mr. Yu also worked more than
14 eight hours per day, and more than forty hours per week, for the years 2013-2016, without
15 payment of any overtime wages by defendants.

17 B. Summary Judgment Standard

18 The Court will grant summary judgment where “the movant shows that there is no
19 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
20 law.” Fed. R. Civ. P. 56(a). Material facts are those which might affect the outcome of the suit
21 under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91
22 L.Ed.2d 202 (1986). The Court does not weigh evidence to determine the truth of the matter
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25 ³ Defendants did not pay taxes (including social security taxes) on behalf of Mr. Yu for
26 the cash portion of the wages paid to him.

1 but instead “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco,*
2 *Inc.*, 41 F.3d 547, 549 (9th Cir. 1994).

3 The Court draws all reasonable inferences in favor of the non-moving party. *Mattos v.*
4 *Agarano*, 661 F.3d 433, 439 (9th Cir. 2011) (en banc). Nonetheless, the non-moving party
5 must make a “sufficient showing on an essential element of [its] case with respect to which [it]
6 has the burden of proof” to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317,
7 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). “The mere existence of a scintilla of evidence” is
8 not enough. *Anderson*, 477 U.S. at 252, 106 S.Ct. 2505.

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10 C. Plaintiffs’ Motion for Partial Summary Judgment

11 1. *FLSA’s Administrative Employee Exemption is Not Applicable to Mrs. Yu*

12 Plaintiffs move the Court to grant an order for partial summary judgment, alleging that
13 there are no genuine issues of material fact in dispute regarding plaintiffs’ claims that
14 Mrs. Yu was a non-exempted hourly wage employee under the Fair Labor Standards Act
15 (“FLSA”), and that both Mr. and Mrs. Yu are entitled to payment for the overtime hours they
16 worked at the Seal’s Motel. Dkt. 29 at 2. Plaintiffs allege that they are entitled to judgment as
17 a matter of law because defendants violated the FLSA by failing to pay overtime wages to Mrs.
18 Yu by incorrectly categorizing her as an exempt salary worker, by failing to pay overtime
19 wages to Mr. Yu, and for breaching their promises for payment of post-termination
20 compensation. *Id.*⁴

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23 ⁴ Plaintiffs contend that issues to be resolved at time of trial on September 24, 2018
24 include (1) actual amounts of damages of unpaid overtime wages and/or unpaid minimum
25 wages; (2) whether defendants willfully failed to pay the overtime or minimum wages to
26 defendants (thus extending the status of limitations to three years, allowing plaintiffs liquidated
damages); and (3) whether defendants breached their oral promises to purchase a restaurant in
the amount of \$300,000 for the plaintiffs.

1 Defendants respond that Mrs. Yu was employed as the manager of the Seal’s Motel,
2 and that her primary duty was assisting in the management and operation of the motel. Dkt. 55
3 at 3. Specifically, defendants claim that Mrs. Yu operated with little supervision, supervised
4 and directed the work of the motel housekeeping and maintenance, created lists of necessary
5 supplies and ordered them for the motel. *Id.* Mrs. Yu had the authority to determine whether a
6 customer was allowed to stay at the motel or not, including whether they could stay prior to
7 making a payment. She earned a monthly salary of \$4,000.00, which substantially exceeded
8 the compensation of other motel employees. *Id.* By contrast, defendants assert that Mr. Yu
9 was salaried worker who performed minor maintenance work and housekeeping services, but
10 had no other duties. Defendant claim that although having customers come to the door of the
11 motel between 11 p.m. and 9 a.m. did occur, it was very infrequent. *Id.* at 4. Defendants
12 argue that plaintiffs’ request for summary judgment should be denied because the FLSA
13 exempts several categories of employees from the overtime pay requirement, and Mrs. Yu was
14 an employee who fell into one of these exempt categories.

17 Defendants are incorrect. The FLSA generally requires employers to pay their
18 employees time and a half for work exceeding forty hours per week. 29 U.S.C. § 207(a)(1).
19 However, the FLSA exempts several categories of employees from the overtime pay
20 requirement, including “any employee employed in a bona fide . . . administrative . . .
21 capacity.” 29 U.S.C. § 213(a)(1). Defendants have the burden of proving this exemption
22 applies, and it is construed narrowly against them. *Bothell v. Phase Metrics, Inc.*, 299 F.3d
23 1120, 1124–25 (9th Cir. 2002).

25 The FLSA does not define “employed in a bona fide . . . administrative . . . capacity,”
26 instead delegating that task to the Secretary of Labor. 29 U.S.C. § 213(a)(1). The Secretary

1 has promulgated a three-pronged definition of the administrative exemption. Under this
2 definition, administrative employees are workers (1) who are “[c]ompensated on a salary or fee
3 basis at a rate of not less than \$455 per week”; (2) “[w]hose primary duty is the performance of
4 office or non-manual work directly related to the management or general business operations
5 of the employer or the employer's customers”; and (3) “[w]hose primary duty includes the
6 exercise of discretion and independent judgment with respect to matters of significance.” 29
7 C.F.R. § 541.200(a).
8

9 The Court finds that, although Mrs. Yu was compensated more than \$455 per week, the
10 admitted facts in this case do not establish that Mrs. Yu’s primary duty at Seal’s Motel was the
11 “performance of office or non-manual work directly related to the management or general
12 business operations of the employer or the employer’s customers”; and “[w]hose primary duty
13 includes the exercise of discretion and independent judgment with respect to matters of
14 significance.” 29 C.F.R. § 541.200(a).
15

16 With respect to the first definition of administrative work, *i.e.*, work “directly related to
17 the management or general business operations of the employer,” the Administrator further
18 defines such work as “assisting with the running or servicing of the business.” 29 C.F.R. §
19 541.201(a). The “essence” of this definition is “the running of the business, and not merely . . .
20 the day-to-day carrying out of its affairs.” *Bratt v. County of Los Angeles*, 912 F.2d 1066,
21 1070 (9th Cir. 1999) (internal quotation marks omitted). As the Administrator has explained:
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23 [w]ork directly related to management or general business operations includes, but
24 is not limited to, work in functional areas such as tax; finance; accounting;
25 budgeting; auditing; insurance; quality control; purchasing; procurement;
26 advertising; marketing; research; safety and health; personnel management; human
resources; employee benefits; labor relations; public relations, government
relations; computer network, internet and database administration; legal and
regulatory compliance; and similar activities.

1 29 C.F.R. § 541.201(b).

2 This Court has previously observed that “[t]his list distinguishes between work that any
3 employer needs performed—such as accounting, human resources, and regulatory
4 compliance—and work that is particular to an employer’s industry . . . The former is part and
5 parcel of running a business and therefore exempt administrative work. The latter is not.”
6 *Bollinger v. Residential Capital, LLC*, 863 F. Supp.2d 1041, 1048 (W.D. Wash. 2012).

7
8 Under this framework, the Court finds that Mrs. Yu’s duties at Seal’s Motel were not
9 administrative in nature. “[E]xempt administrative work is about running a business, not
10 implementing its day-to-day operations.” *Bollinger*, 863 F.Supp.2d at 1049 (*quoting Bratt*, 912
11 F.2d at 1070). Mrs. Yu implemented the motel’s day to day operations, which involved a
12 variety of duties, but she was not running the business. Although when she was staffing the
13 motel front desk she had the discretion to grant or deny customers a motel room, this was also
14 true of any other employee staffing the front desk, and defendants have not provided evidence
15 that her primary duties included the exercise of discretion and independent judgment with
16 respect to matters of significance. As set forth above in the summary of admitted facts, Mrs.
17 Yu was not employed as a professional employee, an executive employee, an administrative
18 employee, or otherwise involved in the hiring/firing of employees, bookkeeping, accounting,
19 tax reporting, payroll accounting, payroll check writing, vendor payments, or other
20 administrative works. Rather, Mr. and Mrs. Kim performed the “administrative” functions of
21 running the motel themselves, such as the hiring and firing of the employees, the bookkeeping,
22 accounting, tax reporting, payroll accounting, payroll check writing, vendor payments, and
23 other administrative works, in conjunction with the accountant.
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1 Accordingly, despite the fact that Mrs. Yu received higher pay than the other motel
2 employees, Mrs. Yu's duties at the Seal's Motel did not trigger the administrative exception to
3 FLSA's overtime pay requirements. Defendants also do not meaningfully contest Mr. Yu's
4 claims that defendants owe him overtime pay for his work at the Seal's Motel. Plaintiffs'
5 motion for summary judgment on their FLSA claims for overtime pay is therefore GRANTED.
6 The remaining issues to be resolved at time of trial, which respect to plaintiffs' FLSA claims,
7 are (1) amounts of damages of unpaid overtime wages and/or unpaid minimum wages, and
8 (2) whether defendants willfully failed to pay the overtime or minimum wages to defendants.
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10 2. *Plaintiffs' Motion for Summary Judgment on their Claims for Post-Termination*
11 *Compensation of \$30,000, Three Months of Rent, and Security Deposit is Denied*

12 Plaintiffs also move for summary judgment on their claims that defendants promised
13 them post-termination benefits including \$30,000 in cash following the sale of the motel, as
14 well as three months rent for a new apartment plus a security deposit. Dkt. 29 at 2.
15 Specifically, plaintiffs claim that in early August 2015, after Mr. Yu was assaulted by a drunk
16 customer of the motel in the parking lot, the plaintiffs wanted to quit their jobs. Sensing their
17 dissatisfaction, defendants made several promises to the plaintiffs to convince them to keep
18 working there, including a promise to purchase plaintiffs a restaurant worth \$300,000 and to
19 pay them an additional \$30,000 in cash after the motel was sold. Dkt. 49 at 9. Plaintiffs allege
20 that, as part of their termination benefits when the motel was sold to a buyer on August 2, 2016
21 for \$3.8 million, Mrs. Kim also told plaintiffs that she was willing to pay for three months of
22 the plaintiffs' rent plus a security deposit for a new apartment. Dkt. 49 at 11. When the
23 plaintiffs asked for the promised \$30,000 in cash in mid-August 2016, after the motel had been
24 sold, the defendants told them that they did not have the money on hand because the
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1 defendants had purchased an apartment complex in Lakewood and the motel sale proceeds
2 were tied up in the 1031 exchange. At that point, according to plaintiffs, the parties'
3 relationship had deteriorated and defendants demanded that plaintiffs move out of their
4 Spanaway house.

5 Defendants assert that although they first received an offer to sell the Seal's Motel in
6 2014, they did not accept it or discuss the potential sale (or make any related promises) to Mr.
7 and Mrs. Yu. *Id.* In 2016, they received another offer, which they did accept. Defendants
8 assert that while finalizing the sale, they discussed with Mr. and Mrs. Yu the possibility of
9 assisting them with opening a restaurant, which might include Mr. and Mrs. Kim purchasing
10 property and assisting Mr. and Mrs. Yu with setting up business operations by providing them
11 a loan. Alternatively, they discussed a scenario in which the Kims would purchase an ongoing
12 restaurant business, which Mr. and Mrs. Yu could operate as a source of income, making
13 payments to the Kims until the Yus eventually purchased the restaurant. *Id.* Although they
14 visited a potential property in Bremerton, Washington, where Mrs. Yu mentioned she would
15 like to open a coffee shop, defendants assert that the soil turned out to be contaminated and
16 therefore the Kims did not purchase the property. *Id.* at 6. The Kims claim that they did not
17 make any promises to simply buy restaurant property and hand it over to the Yus.

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20 After the sale of the motel, Mr. and Mrs. Yu moved into the defendants' home in
21 Spanaway, Washington, with the understanding that the plaintiffs could live in that home for
22 one year Dkt. 55 at 6. According to defendants, after the Kims declined to purchase the
23 Bremerton property, they told Mr. and Mrs. Yu that if plaintiffs found a business to purchase,
24 the Kims would assist them with paying necessary operating expenses up to \$30,000, and the
25 Yus would need to obtain a loan for the remainder. Defendants assert that their offer of
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1 \$30,000 was contingent upon the Yus finding a restaurant they wished to purchase themselves
2 and obtaining their own loan for the remainder of the cost.⁵ Defendants claim that when Mrs.
3 Yu learned she would not receive the \$30,000 cash immediately following the sale of the
4 motel, she was angry and told the Kims that she did not want the money in any event. Mrs.
5 Kim also offered to assist Mr. and Mrs. Yu with obtaining an apartment by paying several
6 months rent and a security deposit, but the Yus rejected that offer too. Mr. and Mrs. Yu then
7 voluntarily moved out of the Kim's Spanaway home.
8

9 Defendants argue that plaintiffs are not entitled to the \$30,000, or the value of three
10 months of rent plus a security deposit, as there was never any oral agreement reached between
11 the parties that the defendants would gift plaintiffs \$30,000 in cash, three months rent, and a
12 security deposit. *Id.* at 9. In fact, Mrs. Yu stated that she did not want their money. Thus,
13 defendants argue that summary judgment on these remaining issues is not appropriate.
14

15 Plaintiffs' motion for partial summary judgment on the remaining issues is DENIED.
16 The parties have differing accounts of what promises regarding post-termination benefits were
17 made, and when, and have provided competing declarations. *Compare* Dkt. 43 (Un Nam Yu
18 Decl.) at ¶ 23 ("Mr. and Mrs. Kim approached us and made promises . . . that the Kims will
19 purchase a restaurant worth \$300,000 for us and pay additional \$30,000 in cash to us after the
20 Motel was sold"); Dkt. 44 (Kyong Ok Yu Decl.) at ¶ 28 ("Mr. and Mrs. Kim also promised to
21 us to pay for three months rents (sic) for an apartment and the deposit thereof, as part of the
22 termination benefits"), *with* Dkt. 56 (Eun Kyu Kim Decl.) at ¶ 18 ("If they were able to find a
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25 ⁵ The Kims concede that they did not actually have \$30,000 cash on hand at the time, as
26 all the proceeds from the sale of the Seal's Motel had been re-invested through a 1030
exchange.

1 business and commit to the business, we told them we could help them out with paying
2 necessary expenses up to \$30,000 and that they should obtain a loan themselves for the
3 remainder. We did not offer them \$30,000 in cash[.]”); Dkt. 57 (Chu Hyong Kim) at ¶ 20
4 (“Our plan was to borrow \$30,000 to help Mr. and Mrs. Yu if they found a business to
5 purchase. When we shared the plan with Mrs. Yu, she became very upset that she would not
6 get \$30,000 cash immediately. Then, with anger, Mrs. Yu said, ‘Then I do not want that small
7 \$30,000.’”); Dkt. 57 (Chu Hyong Kim) at ¶ 21 (“I also offered to assist Mr. and Mrs. Yu with
8 getting an apartment, but they rejected that offer, too.”). The parties’ differing versions of the
9 facts regarding their conversations regarding post-termination benefits were not included in the
10 plaintiffs’ request for admissions, which the Court deemed admitted. *See* Dkt. 66.

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12 Accordingly, the Court finds that genuine issues of material fact preclude summary
13 judgment on plaintiffs’ claims that they are owed \$30,000 cash, the value of three months rent,
14 and a security deposit from defendants. Plaintiffs may attempt to prove their claims at trial,
15 along with their allegation that defendants also promised to purchase them a restaurant worth
16 \$300,000.
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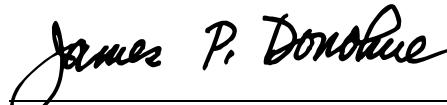
18 III. CONCLUSION

19 For the reasons discussed above, the Court hereby ORDERS that plaintiffs’ motion for
20 partial summary judgment, Dkt. 49, is GRANTED IN PART and DENIED IN PART. The
21 remaining issues to be resolved at time of trial on September 24, 2018 include (1) actual amounts
22 of damages of unpaid overtime wages and/or unpaid minimum wages; (2) whether defendants
23 willfully failed to pay the overtime or minimum wages to defendants (thus extending the statute
24 of limitations to three years, allowing plaintiffs liquidated damages); and (3) whether defendants
25 breached an oral promises to purchase a restaurant in the amount of \$300,000 for the plaintiffs,
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1 and provide post-termination benefits such as \$30,000 cash, three months rent, and a security
2 deposit for a new apartment.

3 The parties are directed to engage in mediation to attempt to resolve the remaining
4 disputes in this case by no later than **Friday, September 14, 2018**, and should notify the Court
5 promptly of the outcome. The Clerk is directed to send a copy of this Order to counsel for both
6 parties.

7 DATED this 29th day of August, 2018.

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11 JAMES P. DONOHUE
12 United States Magistrate Judge
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