

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

RICHARD THOMAS OKIMOTO,)
)
Plaintiff, on his own behalf, and for)
all those similarly situated pursuant)
to 29 U.S.C. § 216(b),)

Civil Action No: 6:16CV00075

v.)

CENTRAL VIRGINIA COMMUNITY)
COLLEGE,)

Serve:)

John S. Capps)
President)
Central Virginia Community College)
3506 Wards Road)
Lynchburg, VA 24502-2498)

and)

VIRGINIA COMMUNITY COLLEGE)
SYSTEM,)

Serve:)

Glen DuBois)
Chancellor)
Virginia's Community Colleges)
300 Arboretum Place, Suite 200)
Richmond, VA 23236)

Defendants.)

COMPLAINT

The above-named Plaintiff, Richard T. Okimoto, (hereinafter, “the Representative Plaintiff”), by counsel, states as his Complaint against Defendants,

Central Virginia Community College (hereinafter, “CVCC”) and the Virginia Community College System (hereinafter, “VCCS”, collectively, “the Defendants”), the following:

I. JURISDICTION

Pursuant to the enforcement mechanisms of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* (hereinafter, “FLSA”), the Representative Plaintiff brings this action on behalf of himself as well as all those similarly situated (hereinafter, “Collective Action Members”). This Court has jurisdiction over this matter as it arises from the federal questions presented by the FLSA, as codified under 29 U.S.C. §§ 206, 207 and 216; *see also* Title 28 U.S.C. §§ 1331, 1337, 2201, and 2202. The FLSA allows employees to initiate legal actions for themselves and on behalf of similarly situated others. Specifically, the statute authorizes “one or more employees” to initiate a suit “for and on behalf of himself or themselves and other employees similarly situated.” 29 U.S.C. § 216(b); *see also Smith v. Central Security Bureau, Inc.*, 231 F. Supp. 2d 455, 461 (W.D. Va. 2002) (noting that the United States Court of Appeals for the Fourth Circuit has never expressly foreclosed the possibility that a plaintiff or group of plaintiffs could bring an action in dual individual and collective capacities, so long as the complaint clearly has put the employer and the court on notice of such).

Venue is proper in this Court. A substantial part of the acts and/or omissions of Defendants from which the causes of action arise, occurred within the Western District of Virginia. *See* 28 U.S.C. § 1391(b). Specifically, the Representative Plaintiff resided and worked in and near Lynchburg, Virginia during his employment with

Defendants.

II. THE PARTIES

1. The Representative Plaintiff is a resident of Lynchburg, Virginia.
2. Defendant CVCC is a publicly funded community college located in Lynchburg, Virginia, and is a member of VCCS.
3. Defendant VCCS is a Virginia State Agency, to-wit, the administrative head of Virginia's community college system, which includes twenty-three community colleges across the Commonwealth of Virginia. Collective Action Members to this matter are employed and have been employed at these colleges.
4. At all times relevant to the Complaint, the Defendants were an "enterprise engaged in the commerce or the production of goods for commerce" as defined in 29 U.S.C. § 203(s)(1).
5. At all times relevant to the Complaint, the Defendants were an "employer" of the Representative Plaintiff, as that term is defined in 29 U.S.C. § 203(d), and bound to comply with FLSA wage and overtime compensation requirements.
6. The Representative Plaintiff and Collective Action Members are all either current or former employees of the Defendants.
7. The Representative Plaintiff and Collective Action Members, at all times relevant to the Complaint, were "employees" of Defendants, as that term is defined in 29 U.S.C. § 203(e)(1).
8. The Representative Plaintiff first began work for the Defendants as a Lab Manager on or about April 28, 2006. This full-time position involved managing

the science laboratories on campus. This is a non-teaching position and is not exempt from the FLSA.

9. The Representative Plaintiff sought and received a Master's Degree during the course of his employment with Defendants.

10. After receiving this degree, the Representative Plaintiff began a separate part-time position with Defendants as an Adjunct Instructor on January 9, 2012. The position of Adjunct Instructor is an exempt position pursuant to the FLSA.

11. The Representative Plaintiff taught Biology courses to students as an Adjunct Instructor. He performed his job duties through live instruction and online instruction.

12. The Representative Plaintiff is currently still employed as both a Science Manager and an Adjunct Instructor, however he has been informed that due to the necessity to pay him overtime wages, he will no longer be an Adjunct Instructor beginning on or around December 20, 2016.

13. The Representative Plaintiff has stayed employed with Defendants on a continuous basis since his hire. Since becoming an Adjunct Instructor, he has been employed continuously in both positions when class is in session.

14. Since becoming an Adjunct Instructor, the Representative Plaintiff worked in that capacity during all Fall and Spring semesters. In 2015 and 2016, the Representative Plaintiff also worked the Summer semester.

15. Since accepting the position of Adjunct Instructor, the Representative Plaintiff has consistently worked more than forty (40) hours per week each week that he has been employed as an Adjunct Instructor and when class is in session.

16. During his dual-employment, the Representative Plaintiff's primary duty, as that term is regarded by the FLSA, remained that of a Lab Manager, a non-exempt position.

17. Pursuant to, 29 CFR 778.415, the Representative Plaintiff was owed overtime at one and one-half his hourly pay rate for every hour worked over forty (40) hours. A weighted average of the hours worked in proportion to the percentage of hours worked overall per job should have been used to calculate the Representative's hourly wage for purposes of overtime.

18. The Defendants employ multiple employees who work in a non-exempt position while also working in an exempt position. These employees work and have worked more than forty (40) hours per week with no overtime pay. These employees make up the class of Collective Action Members in this matter.

19. As of the date of the filing of this Complaint, the Representative Plaintiff has been told by supervisory employees of the Defendants that the Defendants admit liability in that: (1) Plaintiff's primary duty was that of a Lab Manager; and (2) Plaintiff is owed overtime pay for past work performed over forty (40) hours per week.

20. As of the date of the filing of this Complaint, the Representative Plaintiff has been told by supervisory employees of the Defendants that he will no longer be an Adjunct Instructor. This is because of the Defendants' admission of liability pursuant to the FLSA.

21. At all times relevant to the Complaint, the Defendants violated the FLSA by knowingly and improperly misclassifying the Representative Plaintiff and

Collective Action Members as exempt “professional” or “administrative” employees pursuant to the FLSA, despite their primary duties being that of a non-exempt employee.

22. Upon information and belief, the Defendants knowingly and in bad faith improperly classified the Representative Plaintiff and Collective Action Members as either “professional” or “administrative” employees who were exempt from the overtime pay requirements of the FLSA. The primary job duties of the Representative Plaintiff and Collective Action Members did not support either of these exemptions.

COUNT I: CLAIM FOR VIOLATION OF THE FLSA
Misclassification

24. Plaintiff incorporates by reference herein, the preceding paragraphs of this Complaint.

25. Upon information and belief, the Defendants knowingly and in bad faith improperly classified the Representative Plaintiff and Collective Action Members as either “professional” or “administrative” employees who were exempt from the overtime pay requirements of the FLSA.

26. The actual primary job duties of the Representative Plaintiff and Collective Action Members did not support either of these exemptions.

27. Accordingly, the Representative Plaintiff and Collective Action Members were not classified properly as exempt employees and/or the exemption was abrogated.

28. At all times relevant to the Complaint, the Defendants were fully aware of the exemption requirements of the FLSA and knew or should have known that the

Representative Plaintiff and Collective Action Members did not qualify for any exemption from these requirements.

29. The Defendants willfully and unlawfully ignored the exemption requirements of the FLSA.

30. The Defendants cannot show that their violations of the FLSA were in good faith and that they ever possessed reasonable grounds for believing that their acts or omissions were not violations of the FLSA.

31. As used herein, “willful” is meant in accordance with 29 U.S.C. § 255(a), and “good faith” and “reasonable grounds” is meant in accordance with 29 U.S.C. § 260.

32. The Defendants are liable under the FLSA to the Representative Plaintiff and Collective Action Members for actual and liquidated damages for their willful and bad faith misclassification as described above.

COUNT II: CLAIM FOR VIOLATION OF THE FLSA
Failure to Pay Overtime

33. Plaintiff incorporates by reference herein, the preceding paragraphs of this Complaint.

34. At all times relevant to the Complaint, the Representative Plaintiff and Collective Action Members were not compensated for all work performed over forty (40) hours per week.

35. The Representative Plaintiff and Collective Action Members regularly worked more than forty (40) hours per week for the Defendants.

36. The Representative Plaintiff and Collective Action Members were not

exempt from the overtime compensation requirements of the FLSA.

37. Under the FLSA, the Defendants were required to compensate the Representative Plaintiff and Collective Action Members at the appropriate rate of overtime pay for each hour over forty (40) they worked in a week.

38. The Defendants, acting in bad faith, refused to compensate the Representative Plaintiff and Collective Action Members at the overtime rate mandated by the FLSA.

39. At all times relevant to the Complaint, the Defendants were fully aware of the overtime compensation requirements of the FLSA, and knew or should have known that the Representative Plaintiff and Collective Action Members did not qualify for any exemption from these requirements.

40. The Defendants willfully and unlawfully misclassified the Representative Plaintiff and Collective Action Members as exempt employees to avoid the overtime compensation requirements of the FLSA.

41. The Defendants cannot show that their violations of the FLSA were in good faith and that they have reasonable grounds for believing that their acts or omissions were not violations of the FLSA.

42. As used herein, “willful” is meant in accordance with 29 U.S.C. § 255(a), and “good faith” and “reasonable grounds” is meant in accordance with 29 U.S.C. § 260.

43. The Defendants are liable under the FLSA to the Representative Plaintiff and Collective Action Members for actual and liquidated damages for their willful and bad faith failure to pay overtime as described above.

WHEREFORE, Representative Plaintiff Richard Thomas Okimoto and Collective Action Members respectfully request the following relief from the Court:

- A. That the Court certify this matter as an opt-in collective action pursuant to 29 U.S.C. § 216(b);
- B. That the Court grant declaratory judgment that the Defendants violated the FLSA;
- C. That the Court enjoin the Defendants from further violations of the FLSA pursuant to 29 U.S.C. § 217;
- D. That the Court order the Defendants to pay the Representative Plaintiff and Collective Action Members compensatory and actual damages, and an equal amount of liquidated damages as provided by the FLSA;
- E. That the Court award reasonable attorneys' fees and costs as provided by the FLSA;
- F. That the Court award prejudgment and post-judgment interest; and
- G. That the Court award such other and further relief as may be just and equitable.

TRIAL BY JURY IS DEMANDED.

Respectfully submitted,

RICHARD THOMAS OKIMOTO,

Plaintiff, on his own behalf, and for
all those similarly situated pursuant to
29 U.S.C. § 216(b)

Sworn Statement

I swear, under penalty of perjury, the foregoing allegations are true to the best of my knowledge.



RICHARD THOMAS OKIMOTO

December 12, 2016

/s/ Thomas E. Strelka _____

Thomas E. Strelka, VA Bar No. 75488

L. Leigh R. Strelka, VA Bar No. 73355

STRELKA LAW OFFICE, PC

119 Norfolk Avenue, S.W.

Suite 330, Warehouse Row

Roanoke, Virginia 24011

540.283.0802

thomas@strelkalaw.com

leigh@strelkalaw.com

Counsel for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

RICHARD THOMAS OKIMOTO

(b) County of Residence of First Listed Plaintiff Lynchburg
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address and Telephone Number)
Thomas E. Streika, Streika Law Office, P.C., 119 Norfolk Ave., Ste. 330,
Roanoke, Virginia 24011

DEFENDANTS

Central Virginia Community College and Virginia Community College System

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutional of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 |

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 201 et seq. (FLSA)

Brief description of cause:
Unpaid Wages; Collective Actions

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ TBD

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

12/15/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
0423-

RECEIPT # 2585207

AMOUNT

\$400.00

APPLYING IFP

n/a

JUDGE

Moon

MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [CVCC, Virginia Community College System Named in FLSA Class Action](#)
