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FRED L. BORCH III, CLERK
US DISTRICT COURT, EDNC
BY ______ DEP CLK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

Civil Action No: 5:04-CV-673-BO(1)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, **Plaintiff,** **v.** **CARMIKE CINEMAS, INC.,** **Defendant.**	
WILLIE HOLLEY & PAULA HOLLEY as Guardians of minor J. Holley; LENORA BAXTER DUNSTON & SAM DUNSTON as Guardians of minor S. BAXTER; EVA HODGE & DEREK HODGE as Guardians of minor D. HODGE; JACQUELINE SMITH & JONATHAN SMITH, Sr. as Guardians of minor J. SMITH; TANETTE BROWN as Guardian of minor J. ROBINSON; LEONARD LEWIS, JR.; TARVOROUS GREEN; DAVID JEFFREYS; MATTHEW CULLINGFORD; & CHAD MARTIN; ALVIN FAIREY, **Plaintiff-Intervenors** **v.** **CARMIKE CINEMAS, INC.,** **Defendant.**	**COMPLAINT OF ALVIN FAIREY** **(JURY TRIAL DEMANDED)**

NOW COMES Plaintiff Alvin Fairey, by and through undersigned counsel, and complains of Defendant as follows:

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JURISDICTION AND VENUE

1. This action is authorized by and instituted pursuant to 42 U.S.C. § 2000e-5(f)(1) and 42 U.S.C. § 2000e-5(f)(3) of Title VII of the Civil Rights Act of 1964, as amended, and the common law of the State of North Carolina. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343. Supplemental jurisdiction over the state law claims is conferred on this court by 28 U.S.C. § 1367.

2. Venue is proper in this district pursuant to the provisions of 28 U.S.C. § 1391(b) as the unlawful employment practices alleged in this Complaint were committed within the geographical jurisdiction of the United States District Court for the Eastern District of North Carolina.

PARTIES

3. Willie Holley & Paula Holley are the parents of minor J. Holley, a former employee of Defendant Carmike Cinemas, and are residents of Raleigh, North Carolina.

4. Lenora Baxter-Dunston & Sam Dunston are the parents of minor S. Baxter, an employee of Defendant Carmike Cinemas, and are residents of Knightdale, North Carolina.

5. Eva Hodge & Derek Hodge are the parents of minor D. Hodge, a former employee of Defendant Carmike Cinemas, and are residents of North Carolina.

6. Jacqueline Smith & Jonathan Smith, Sr. are the parents of minor J. Smith, a former employee of Defendant Carmike Cinemas, and are residents of Wake Forest, North Carolina.

7. Tanette Brown is the parent of minor J. Robinson, a former employee of Defendant Carmike Cinemas, and is a resident of Raleigh, North Carolina.

8. Leonard Lewis, Jr., a Raleigh, North Carolina resident, is a former employee of Carmike Cinemas.

9. Tarvorous Green, a Raleigh, North Carolina resident, is a former employee of Carmike Cinemas. Although currently over the age of 18, at relevant times of his employment with Carmike, Green was a minor.

10. David Jefferys, a Wake Forest, North Carolina resident, is a former employee of Carmike Cinemas. Although currently over the age of 18, at relevant times of his employment with Carmike, Jefferys was a minor.

11. Matthew Cullingford, a Knightdale, North Carolina resident, is a former employee of Carmike Cinemas. Although currently over the age of 18, at relevant times of his employment with Carmike, Cullingford was a minor.

12. Chad Martin, a resident of Raleigh, North Carolina, is a former employee of Carmike Cinemas.

13. Alvin Fairey, a resident of Raleigh, North Carolina, is a former employee of Carmike Cinemas.

14. These ten named Plaintiffs in whole or in part shall be collectively referred to as "Named Plaintiffs."

FACTS

15. Defendant Carmike Cinemas, Inc. (hereinafter "Carmike") operates a movie theater located at 5501 Atlantic Springs Road, Raleigh, North Carolina, where all Named Plaintiffs worked.

16. Based upon information and belief, Antonio Hines is a known sexual offender, with two convictions for Taking Indecent Liberties with Minors for which he served an active sentence of incarceration. Hines' record as a sexual offender was published in the North Carolina Sex Offender & Public Protection Registry at http://sbi.jus.state.nc.us/DOJHAHT/SOR/Default.htm on the internet and other locations in the community.

17. Based upon information and belief, Johnnie Camp, General Manager of Carmike's Raleigh theater at times relevant to this suit, had a felony record.

18. Based upon information and belief, Josh Mitton, a manager at Carmike's Raleigh theater at times relevant to this suit, was the roommate of Antonio Hines.

19. On or about February 2003, Carmike hired Antonio Hines.

20. Based upon information and belief, Carmike hired Antonio Hines without investigating or inquiring whether Hines had a serious criminal record.

21. Based upon information and belief, Carmike hired Hines without providing Hines proper training regarding sexual harassment.

22. Within a short time of being hired, Carmike promoted Hines to the position of manager.

23. Based upon information and belief, Carmike promoted Antonio Hines to the position of manager without investigating or inquiring whether Hines had a serious criminal record.

24. Carmike employs a number of minors to work in its theaters.

25. Upon information and belief, as a manager, Hines had direct supervisory authority over all Named Plaintiffs and other similarly situated employees.

26. Manager Antonio Hines had authority to train, interview, recommend for employment or termination, counsel and control the working conditions of subordinate employees.

27. Upon information and belief, Hines systematically used his managerial authority to aid his practice of sexually harassing young male employees at the theater.

28. As a concessions manager, Hines had a key to various "candy closets" in the theater where candy, concessions, drinks and supplies were stored.

29. Named Plaintiffs and other lower level subordinates did not have access to these locked closets and required the assistance and direction of a manager to retrieve items from the closet.

30. On multiple and daily occasions, Hines asked young male employees including but not limited to the Named Plaintiffs to assist him in the "candy closet."

31. Inside the "candy closet" or in other places in the theater out of sight of other employees and patrons, Antonio Hines subjected all Named Plaintiffs and other similarly situated employees including Demetrius Wilson to the following acts of

physical sexual harassment - without authorization and in a sexual manner: touching, massaging, groping and fondling the nipples, buttocks, genital area, chest, back and shoulders of young male employees; blocking the subordinate's exit from the closet; kissing; hugging and propositioning subordinates for oral sex or attempting such acts.

32. On multiple and daily occasions, Antonio Hines would subject male subordinate employees, including all Named Plaintiffs, to persuasive, graphic and lurid verbal comments, suggestions, and propositions including but not limited to: "Whip it out so I can suck your dick." "You're going to be my boyfriend." "Have you thought about it?" "Have you ever sucked a dick?" " Let me see your friend." "I knew you would get hired because you're sexy." "Let me suck it." "Come here big dick." "You're sexy." "You know you want me to suck your dick." "Come here with your sexy self."

33. Antonio Hines used his managerial position to proposition sexual favors *quid pro quo* in exchange for favorable working conditions and increased hours.

34. When Named Plaintiffs rejected Hines' advances, Hines would or threaten to change their job duties adversely.

35. Antonio Hines sexually harassed Demetrius Wilson physically and verbally while he was a subordinate.

36. Wilson reported Hines behavior to Carmike managers Williams and Franklin, but Carmike failed to stop Hines' sexual harassment of Wilson.

37. Only after Wilson was also promoted to a management level position did Antonio Hines stop his sexual harassment of Wilson.

38. Although Hines stopped sexually harassing manager Wilson, Wilson and other Carmike managers knew that Antonio Hines continued to sexually harass other subordinate male employees.

39. While a manager Wilson complained to his supervisors at Carmike that several young boys would frequently enter the theater and movies for free as the guests of Manager Antonio Hines, a sexual offender, and that Hines was unfit and inadequately performed his job duties as a manager.

40. In or about April 2003, while in the "candy closet" alone, Hines placed both hands on the shoulders of former employee Isaiah Simmons and verbally made a statement regarding oral sex.

41. Simmons left the candy closet and immediately reported Hines' sexual advance to management the same day.

42. Simmons reported the incident to Carmike's General Manager Johnnie Camp.

43. On behalf of Carmike, General Manager Camp provided Simmons a form to report the incident.

44. Simmons completed the written form and documented Hines' behavior to Carmike.

45. Upon information and belief, no formal investigation of Simmons' complaint occurred although other members of management and employees including the Named Plaintiffs were told of Simmons' complaint.

46. After his initial complaint, Simmons was not interviewed, and Hines continued his employment in a managerial position.

47. In approximately May 2003, Simmons refused to serve a belligerent customer who had used profanity towards him, pursuant to the guidelines of Carmike's employment handbook.

48. Based on Antonio Hines' recommendation and investigation of the incident, Carmike terminated Simmons.

49. All Named Plaintiffs were continually sexually harassed and subjected to a sexually hostile work environment after Isaiah Simmons complained to Carmike about Hines' conduct, and Carmike terminated Isaiah Simmons.

50. Based on the retaliatory discharge of Isaiah Simmons and the lack of disciplinary action taken against Antonio Hines, Carmike employees were hesitant and fearful of making reports of sexual harassment.

51. While supervising Plaintiff Chad Martin and two other employees, Antonio Hines directed the two other employees to leave the area to perform other tasks. After the two employees left and Hines was alone was with Plaintiff Martin, Hines directed Martin to remove candy from the closet. Hines blocked the exit to closet, forcing Martin to come into physical contact with Hines' waist and midsection. Hines then attempted to massage Martin's shoulders. This physical contact with Hines was unwelcome.

52. Immediately after the unwelcome contact, Martin left the closet and reported the sexual advance to Carmike's managers Josh Mitton and Demetrius Wilson.

53. Both managers acknowledged Martin's report of sexual harassment but did not document the incident in writing and took no further action on Martin's report.

54. Based upon information and belief, Carmike again failed to investigate Hines' conduct pursuant to Martin's complaint to management. Martin was not interviewed. Hines was not disciplined and maintained his managerial position and authority.

55. While training Plaintiff Lewis, manager Antonio Hines called Lewis into an office to discuss working more hours. Hines stated that he would schedule Lewis for more hours. While alone in the office with Lewis, Antonio Hines kneeled on one knee. Hines then grabbed the back of Lewis' legs and thrust his head into Lewis' genital area. To defend himself, Lewis punched Hines. This physical contact with Hines was unwelcome.

56. Lewis reported this incident to management including manager Regina Williams.

57. Upon information and belief, Lewis' complaint was not documented in writing or properly investigated.

58. Carmike failed to take action against Hines. Antonio Hines maintained his managerial authority and continued to sexually harass, verbally and physically, Lewis and other male subordinates including the Named Plaintiffs.

59. After reporting the incident, Lewis suffered repeated embarrassment and ridicule in the workplace when co-employees gossiped about the sexual assault and asked Lewis about the assault.

60. Hines' sexual assault of Lewis in the office of Carmike was widely discussed and caused Lewis unbearable anxiety, depression and embarrassment.

61. Due to Carmike's lack of action taken against Antonio Hines and the humiliation of working in a sexually hostile work environment where reports of sexual of harassment were not investigated or kept private from the knowledge of other employees, Plaintiff Lewis could not continue his employment and resigned.

62. Manager Regina Williams admitted to Judith Cullingford, Plaintiff Matthew Cullingford's mother, and to other Named Plaintiffs that she had verbally counseled Antonio Hines regarding his behavior.

63. Despite the reports to management made by Isaiah Simmons, Chad Martin, Leonard Lewis and other Named Plaintiffs, Antonio Hines continued to sexually harass Carmike employees, both physically and verbally, from the point that he was promoted to manager to October 2003.

64. Upon information and belief, Carmike's management had direct knowledge of Hines' conduct and failed to protect its employees from a sexually hostile work environment.

65. In October 2003, Antonio Hines was arrested for Failure to Register as a Sex Offender.

66. After realizing that Carmike would never take any action to discipline Antonio Hines for the sexual assault that occurred in the office of the theater, Plaintiff Lewis filed a criminal assault charge against Antonio Hines.

67. In Wake County, North Carolina, Antonio Hines pled guilty to assaulting Leonard Lewis, was sentenced to an active term of incarceration but has since been released.

68. Numerous managers including but not limited Johnnie Camp, Regina Williams, Josh Mitton, Mr. Franklin and Demetrius Wilson were advised of or aware of manager Antonio Hines' persuasive and continual sexual harassment of Named Plaintiffs and other employees.

69. No action was taken by Carmike Cinemas, Inc. to discipline or stop the known conduct of Antonio Hines, a twice-convicted sexual offender.

FIRST CAUSE OF ACTION

NEGLIGENT HIRING, PROMOTION & RETENTION

70. The allegations set forth in Paragraphs 1-69 are incorporated by reference as if fully set out herein.

71. Defendant Carmike Cinemas, Inc. has a duty to the public and its employees to hire, promote and retain persons competent and fit to perform their job duties without violating rights of other employees.

72. Defendant Carmike has a duty to investigate the suitability and record of persons it hires.

73. Defendant Carmike has a duty to investigate the suitability and record of persons it promotes particularly when the promotion bestows authority over minor employees.

74. Defendant Carmike has a duty to investigate the suitability of a person that it retains as an employee when there has been evidence and reports of immoral, illegal and tortious conduct by an employee.

75. Defendant Carmike had a pattern and practice of hiring, promoting and retaining employees without even the most basic inquiry or investigation to determine whether the employee had been convicted of a felony.

76. Defendant Carmike often promoted individuals with serious felony records including Antonio Hines and the General Manager for the theater Johnnie Camp.

77. Carmike's promotion process did not include an examination or review of the employee's suitability to possess supervisory authority or the employee's criminal record prior to giving the employee managerial authority over employees, a large number of whom are minors.

78. Defendant Carmike received numerous complaints of Hines' sexual harassment of its employees and had actual notice or should have reasonably known that Antonio Hines was unfit to employ as a manager.

79. Defendant Carmike breached its duty to its employees and the public by hiring Antonio Hines without inquiring or investigating his criminal record.

80. Defendant Carmike breached its duty to the public and its employees by promoting Antonio Hines to a managerial position without inquiring or investigating his criminal record.

81. Defendant Carmike breached its duty to the public and its employees by retaining Antonio Hines as a manager despite numerous reports that Hines sexually harassed, both physically and verbally, employees including Named Plaintiffs.

82. As a direct and proximate result of Defendant Carmike's breach of its duties in hiring, promoting and retaining Antonio Hines, all Named Plaintiffs and other similarly situated employees were subjected to physical and verbal sexual harassment in a sexually hostile environment.

83. All Named Plaintiffs and other similarly situated employees suffered the humiliation, frustration, and anxiety of experiencing sexual harassment from a member of the same sex.

84. Named Plaintiffs also incurred medical expenses for physical and psychological treatment and sustained lost wages.

SECOND CAUSE OF ACTION

NEGLIGENT TRAINING & SUPERVISION

85. The allegations set forth in Paragraphs 1-84 are incorporated by reference as if fully set out herein.

86. Defendant Carmike has a legal duty to train its employees and managers on sexual harassment and the procedures for reporting and investigating instances of sexual harassment.

87. Defendant Carmike has a legal duty to supervise its employees and managers to ensure that its employees and mangers are not subjecting others to sexual harassment and are knowledgeable on the adequate procedures to report and investigate claims of sexual harassment.

88. Defendant Carmike breached its duty to adequately training and supervise its employees and managers on sexual harassment, the reporting of sexual harassment and investigation of sexual harassment complaints.

89. But for the breach of Defendant Carmike's duty in training and supervising Antonio Hines, Defendant Carmike's managers and other employees, all Named Plaintiffs and other similarly situated employees were subjected to physical and verbal sexual harassment in a sexually hostile environment.

90. All Named Plaintiffs and other similarly situated employees suffered the humiliation, frustration, and anxiety of experiencing sexual harassment from a member of the same sex.

91. Named Plaintiffs also incurred medical bills for physical and psychological treatment, and damages of lost wages.

THIRD CAUSE OF ACTION

ASSAULT

92. The allegations set forth in Paragraphs 1-91 are incorporated by reference as if fully set out herein.

93. Carmike's manager Antonio Hines used his managerial authority to systematically assault and touch, in a sexual manner, without authorization all Named Plaintiffs and similarly situated employees.

94. Although Carmike and its managers had direct reports of Hines' assaults and Carmike should have reasonably known of Hines' assaults on all Named Plaintiffs, Carmike failed to repudiate the tortious acts of Antonio Hines or to terminate Antonio Hines' employment.

95. Antonio Hines pled guilty to and received an active sentence of incarceration for assaulting Intervener Leonard Lewis, Jr.

96. The assault of Lewis occurred in an office at Carmike Cinemas while manager Antonio Hines was attempting to solicit oral sex from Lewis , *quid pro quo,* for extended working hours.

97. Other assaults on Named Plaintiffs and other similarly situated employees occurred in the "candy closet," after Manager Antonio Hines had unlocked the closet and directed employees in the course of their job duties to retrieve items from the closet.

98. Alleged assaults occurred within the course and scope of Carmike employees' job duties.

99. Alleged assaults occurred in the furtherance of Carmike's business.

100. Carmike's pattern of conduct, despite numerous reports of Hines' behavior to management, ratified Hines' conduct and assaults.

FOURTH CAUSE OF ACTION

SEXUAL HARASSMENT

101. The allegations set forth in Paragraphs 1-100 are incorporated by reference as if fully set out herein.

102. In violation of Title VII, Section 2000e-2(a)(1), Carmike engaged in unlawful and tortious employment practices at its Raleigh theater and subjected all Named Plaintiffs and similarly situated employees to discrimination based on their sex by subjecting them to sexual harassment of Carmike manager Antonio Hines, creating a sexually hostile work environment.

103. Carmike's employment practices deprived Named Plaintiffs and other similarly situated employees of equal employment opportunities and adversely affected their status as employees because of their sex, male.

104. Carmike's actions and omissions were done with malice, intentional or with reckless indifference to the federally protected rights of Named Plaintiffs and similarly situated employees.

FIFTH CAUSE OF ACTION

RETALIATION / CONSTRUCTIVE DISCHARGE

105. The allegations set forth in Paragraphs 1-104 are incorporated by reference as if fully set out herein.

106. In addition to maintaining a sexually hostile work environment, Defendant Carmike has a pattern and practice of retaliating against employees that make reports of sexual harassment.

107. Carmike does not have or does not adequately enforce a policy to protect its employees from retaliation.

108. Carmike does not have or does not adequately train its employees and managers on a procedure for reporting acts of retaliation.

109. Named Plaintiffs engaged in a protected activity when they reported the sexual harassment of Antonio Hines.

110. Either after reporting to or discussing Hines' sexual harassment with management or filing a Charge of Discrimination with the EEOC documenting Hines' sexual harassment, Carmike retaliated against Named Plaintiffs.

111. Carmike retaliated by reducing work hours, arbitrarily sending home, substantially changing the working conditions to perform less desirable work tasks, suspending, terminating, ignoring complaints and wrongfully disciplining said employee-Named Plaintiffs.

112. In November 2003, Carmike's management asked Plaintiff Cullingford, a minor at the time, to provide a recorded statement to their attorney. Ms. Cullingford, Plaintiff's mother refused to allow her son to provide a statement without the guidance and representation of an attorney for the employee.

113. After refusing to provide a statement without the presence of an attorney, Carmike reduced the work hours and made later Cullingford's hours of employment.

114. After Named Plaintiffs filed complaints of Antonio Hines' sexual harassment at Carmike with the EEOC, manager Josh Mitton, a former roommate of Hines, retaliated against Named Plaintiffs.

115. Manager Josh Mitton gave Plaintiff Baxter three written reprimands on consecutive days.

116. Manager Josh Mitton terminated Plaintiff Holley for job abandonment after Mitton advised Holley that he was approved for time off.

117. After manager Josh Mitton performed these acts of retaliation, Carmike awarded Josh Mitton with a promotion.

118. After his sexual harassment complaint was made, the count sheet of Plaintiff Green was altered to give the appearance that his inventory and money were not properly maintained.

119. After his sexual harassment complaint was made, Green advised management that another employee had hit him in the face with a broom, manager

Winstead told Green that he understood why she had hit Green in the face, and no action was taken against the other employee.

120. After employees Lindsey Widenhouse, Isaiah Simmons and Abdul-Wadud Jabal made complaints of sexual harassment, all were terminated.

121. In August 2004, Lindsey Widenhouse made a complaint to manager Theresa Bryant that she was being sexually harassed by manager Brenden Davis.

122. In September 2004, Lindsey Widenhouse was fired on the approximately or the same day that Jabal, who complained of the sexual harassment of Antonio Hines, was also terminated.

123. The pattern practice and purpose of said terminations was to intimidate other employees from making complaints of sexual harassment and to coerce employees with pending sexual harassment complaints before the EEOC to resign or quit.

124. After the terminations of co-employee(s) that made similar sexual harassment complaints and repeated acts of retaliation, Named Plaintiffs Holley, Green, Cullingford, Martin, Lewis, Smith and Fairey were constructively discharged and could no longer endure the intolerable, sexually hostile work environment and constant threat of retaliatory termination that were created by Carmike.

125. There is a causal link between the protected activities of Named Plaintiffs, and the aforementioned retaliatory acts of Defendant Carmike.

PRAYER FOR RELIEF

WHEREFORE, Named Plaintiffs respectfully request that this Court:

1. Permanently enjoin Carmike from maintaining a sexually hostile work environment, continuing other employment practices that discriminate on the basis of sex, and allowing retaliation against employees that report sexual harassment.

2. Permanently enjoin Carmike Cinemas from employing Antonio Hines as an employee or manager.

3. Order Carmike to inquire whether applicants have been convicted of a felony offense.

4. Order Carmike to investigate the criminal records of all promotions to manager when the manager will be bestowed managerial authority over minors.

5. Award compensatory damages - based on past and future emotional pain, suffering, humiliation loss of civil rights and medical expenses - and punitive damages for Carmike's malicious and reckless conduct to make Named Plaintiffs whole, as determined by a jury.

6. Award Named Plaintiffs costs and attorney fees of pursuing this action.

This the 19th day of April, 2005.

BROWNE, FLEBOTTE, WILSON, HORN & WEBB, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on this day, the foregoing was served upon all parties in this action by mailing a copy thereof at the address indicated below by first class, post-paid United States mail, in accordance with the provisions of the Federal Rules of Civil Procedure.

This the 19th day of April, 2005.

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