

NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF
JUSTICE
SUPERIOR COURT DIVISION
26CV008987-590

KENDRICK GONZALEZ,

Plaintiff,

v.

AUBREY GULDAGER, et al.

Defendants.

**AUBREY GULDAGER, ERIC
WAGNER AND LOU VANG'S
MOTION TO DISMISS AND
ANSWER**

**FIRST DEFENSE
(Rule 12(b)(6) Motion to Dismiss)**

The Complaint fails to state a claim upon which relief may be granted against Defendants Aubrey Guldager, Eric Wagner, and Lou Vang (hereinafter collectively referred to as the "Defendants"), and therefore should be dismissed pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, including but not limited to Plaintiff's claims for constitutional violations and punitive damages.

**SECOND DEFENSE
(Immunities)**

The Defendants plead all applicable immunities including but not limited to public official immunity, qualified immunity, good faith immunity, the public duty doctrine, and all statutory and common law immunities available to them. Plaintiff has failed to allege facts sufficient to overcome such immunities.

THIRD DEFENSE
(Answer Subject to Motion to Dismiss)

Without waiving any defenses or motions, the Defendants answer Plaintiff's Complaint as follows. Except as specifically admitted herein, the allegations of the Complaint are denied.

1. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 and therefore deny same.
2. Defendants admit that Charlotte Mecklenburg Police Department ("CMPD") officers encountered an individual later determined to be Kemardrick Sherrod at the Royal Inn in Charlotte, North Carolina. Except as specifically admitted, the allegations are denied.
3. Defendants admit they were involved in the investigation and arrest of the individual encountered at the Royal Inn on February 15, 2023. Except as specifically admitted, the allegations are denied.
4. Defendants admit that the suspect was encountered in a room believed to be vacant. Except as specifically admitted, the allegations are denied.
5. Defendants admit suspected illegal controlled substances and other potential criminal violations were observed during the investigation. Except as specifically admitted, the allegations are denied.
6. Defendants admit the suspect initially identified himself as Khalil Wiggins and provided a date of birth. Except as specifically admitted, the allegations are denied.
7. Defendants admit the suspect later identified himself as Kendrick Gonzalez. Except as specifically admitted, the allegations are denied.

8. Defendants admit the suspect did not provide identifying documents. Except as specifically admitted, the allegations are denied.

9. Defendants admit efforts were made to review available DMV information during the investigation. Except as specifically admitted, the allegations are denied.

10. Defendants admit available DMV information was reviewed during the investigation but deny that the information available to them conclusively established that the suspect was not Plaintiff. Except as specifically admitted, the allegations are denied.

11. Defendants admit the suspect was arrested and transported to Mecklenburg County Jail. Except as specifically admitted, the allegations are denied.

12. Defendants admit criminal charges were instituted. Except as specifically admitted, the allegations are denied.

13. Upon information and belief, Defendants admit documents associated with the February 15, 2023 criminal process identify Defendant Guldager as the arresting officer. Except as specifically admitted herein, the allegations contained in Paragraph 13 are denied.

14. Defendants admit the criminal charging documents referenced in Paragraph 14 are documents in writing that speak for themselves. To the extent the allegations contained in Paragraph 14 contradict that writing, the allegations are denied. Except as specifically admitted herein, the remaining allegations are denied.

15. Defendants admit Eric Wagner completed certain arrest documentation. Except as specifically admitted, the allegations are denied.

16. Defendants admit Eric Wagner provided information relating to the investigation and criminal process arising out of the February 15, 2023 incident. Except as specifically admitted, the allegations are denied.

17. Defendants admit the Magistrate's Finding of Fact form is a document in writing that speaks for itself. To the extent the allegations contained in Paragraph 17 contradict that writing, the allegations are denied. Except as specifically admitted herein, the remaining allegations are denied.

18. Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 18 and therefore deny same.

19. Defendants admit upon information and belief that the suspect later entered a guilty plea to misdemeanor breaking or entering on or about March 1, 2023. Except as specifically admitted, the allegations contained in Paragraph 19 are denied.

20. Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 20 and therefore deny same.

21. Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 21 and therefore deny same.

22. Defendants admit charges against Plaintiff were ultimately dismissed. Except as specifically admitted, the allegations are denied.

Specifically Responding to "Parties and Venue"

23. Defendants incorporate their prior responses to Paragraphs 1-22.

24. Defendants admit the allegations contained in Paragraph 24.

25. Paragraph 25 relates to the City of Charlotte and no response is required from these Defendants. To the extent a response is required, Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 25 and therefore deny same.

26. Paragraph 26 relates to the City of Charlotte and no response is required from these Defendants. To the extent a response is required, Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 26 and therefore deny same.

27. Defendants admit they were employees of CMPD at all relevant times. Except as specifically admitted, the allegations are denied.

28. Paragraph 28 relates to the City of Charlotte and no response is required from these Defendants. To the extent a response is required, Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 28 and therefore deny same.

29. Defendants deny the allegations contained in Paragraph 29.

**Specifically Responding to “Factual Allegations: I. Malicious Prosecution
(N.C. State Claim)”**

30. Defendants incorporate their prior responses to Paragraphs 1 through 29.

31. Defendants admit criminal proceedings were initiated arising out of the February 15, 2023 investigation involving an individual who identified himself as Kendrick Gonzalez and provided identifying information associated with Plaintiff. Defendants deny that they knowingly initiated criminal proceedings against the wrong individual. Except as specifically admitted herein, the allegations contained in Paragraph 31 are denied.

32. Defendants admit that Defendant Wagner provided information relating to the investigation and criminal process arising from the February 15, 2023 incident. Except as specifically admitted herein, the allegations are denied.

33. Defendants admit that Defendant Wagner completed certain documentation relating to the investigation and criminal process. Except as specifically admitted herein, the allegations are denied.

34. Upon information and belief, Defendants admit documents associated with the February 15, 2023 criminal process identify Defendant Guldager as the arresting officer. Except as specifically admitted herein, the allegations contained in Paragraph 34 are denied.

35. Defendants admit that the suspect provided false identifying information during the investigation and that officers were attempting to determine the suspect's identity. Except as specifically admitted herein, the allegations are denied.

36. Defendants admit that Defendant Vang responded to the February 15, 2023 incident in a backup capacity and completed certain documentation relating to the incident. Except as specifically admitted herein, the allegations contained in Paragraph 36 are denied.

37. Defendants admit that the suspect initially provided the name Khalil Wiggins and a false date of birth before later identifying himself as Kendrick Gonzalez. Except as specifically admitted herein, the allegations are denied.

38. Defendants deny that they failed to use reasonable efforts to investigate the identity of the suspect encountered on February 15, 2023, and further deny acting recklessly, maliciously, intentionally, or in conscious disregard of Plaintiff's rights.

39. Defendants admit that available DMV information was reviewed during the investigation. Defendants deny that the information available to them conclusively established that the suspect was not Plaintiff. Except as specifically admitted herein, the allegations are denied.

40. Defendants deny that they knowingly processed or transported Mr. Sherrod as Plaintiff despite awareness that the individuals did not match, and further deny acting intentionally, maliciously, recklessly, or in conscious disregard of Plaintiff's rights.

41. Defendants admit that available identifying information included an address associated with Graham, North Carolina. Except as specifically admitted herein, the allegations are denied.

42. Defendants admit that criminal charges were initiated arising from the February 15, 2023 investigation and that said charges were later dismissed. Except as specifically admitted herein, the allegations are denied.

43. Defendants deny that they failed to take appropriate or reasonable steps concerning the investigation and processing of the suspect's identity and further deny acting recklessly, intentionally, maliciously, or in conscious disregard of Plaintiff's rights.

44. Defendants deny that they acted with willful or reckless disregard for Plaintiff's rights and further deny the allegations contained in Paragraph 44.

45. Defendants deny the allegations contained in Paragraph 45, including any allegation that Defendants knowingly instituted charges against the wrong individual.

46. Defendants deny the allegations contained in Paragraph 46.

47. Defendants admit criminal process included a charge under N.C.G.S. § 14-223. Except as specifically admitted, the allegations are denied.

48. Defendants admit Paragraph 48 references N.C.G.S. § 14-113.20. Except as specifically admitted, Defendants deny the remaining allegations contained in Paragraph 48.

49. Defendants deny the allegations contained in Paragraph 49, including any allegation that Defendants caused Plaintiff to sustain a false conviction.

50. Defendants admit the charges against Plaintiff were ultimately dismissed. Except as specifically admitted, the allegations are denied.

51. Defendants deny the allegations contained in Paragraph 51.

52. Defendants deny the allegations contained in Paragraph 52.

53. Defendants deny the allegations contained in Paragraph 53.

54. Defendants deny the allegations contained in Paragraph 54.

55. Defendants deny the allegations contained in Paragraph 55.

56. Defendants deny that they maliciously prosecuted Plaintiff or acted with willful or reckless disregard for Plaintiff's rights and reputation and further deny the allegations contained in Paragraph 56.

57. Defendants deny the allegations contained in Paragraph 57.

Specifically Responding to "II. Gross Negligence and Negligence Per Se"

58. Defendants incorporate their prior responses to Paragraphs 1 through 57 as if fully set forth herein.

59. Defendants deny the allegations contained in Paragraph 59, including any allegation that N.C. Gen. Stat. § 15A-502 et seq. imposed duties upon Defendants that were breached under the circumstances alleged in the Complaint.

60. Defendants admit that N.C. Gen. Stat. § 15A-502(a2)(3) speaks for itself. Except as specifically admitted herein, the allegations are denied.

61. Defendants admit that N.C. Gen. Stat. § 15A-502(a3) speaks for itself. Except as specifically admitted herein, the allegations are denied.

62. Defendants admit that N.C. Gen. Stat. § 15A-502(a5) speaks for itself. Except as specifically admitted herein, the allegations are denied.

63. Defendants admit the suspect provided false identifying information during the investigation. Except as specifically admitted, the allegations are denied.

64. Defendants admit that available DMV information was reviewed during the investigation. Defendants deny that such information conclusively established that the suspect was not Plaintiff. Except as specifically admitted, the allegations are denied.

65. Defendants deny that they consciously disregarded doubts regarding the suspect's identity or recklessly misrepresented Plaintiff as the perpetrator of criminal offenses and further deny the allegations contained in Paragraph 65.

66. Defendants admit upon information and belief that the suspect had prior criminal history information available in public records systems. Except as specifically admitted, the allegations are denied.

67. Defendants deny that they acted willfully, recklessly, or in conscious disregard of Plaintiff's rights and further deny the allegations contained in Paragraph 67.

68. Defendants deny that they failed to use reasonable care to investigate or confirm the suspect's identity and further deny the allegations contained in Paragraph 68.

69. Defendants deny the allegations contained in Paragraph 69, including any allegation that Defendants acted with conscious disregard for Plaintiff's rights or reputation.

70. Defendants deny the allegations contained in Paragraph 70, including subparagraphs (a) through (e).

71. Defendants deny that they failed to properly investigate or confirm the suspect's identity and further deny the allegations contained in Paragraph 71.

72. Defendants deny the allegations contained in Paragraph 72.

73. Defendants deny that any act or omission by these Defendants proximately caused damage to Plaintiff's rights or reputation and further deny the allegations contained in Paragraph 73.

74. Defendants deny that any act or omission by these Defendants was the proximate cause of injury to Plaintiff and further deny the allegations contained in Paragraph 74.

75. Defendants deny the allegations contained in Paragraph 75, including any allegation that Defendants' conduct fell below any applicable standard of care.

76. Defendants deny the allegations contained in Paragraph 76, including any allegation that Plaintiff was an intended beneficiary of N.C. Gen. Stat. § 15A-502 et seq.

77. Defendants deny that they intentionally, willfully, or wantonly disregarded any statutory or common law duty and further deny the allegations contained in Paragraph 77.

78. Defendants deny that they acted with conscious or deliberate disregard for Plaintiff's rights and further deny the allegations contained in Paragraph 78.

79. Defendants deny that any intentional act or omission by these Defendants caused Plaintiff's alleged damages and further deny the allegations contained in Paragraph 79.

80. Defendants deny that their actions were without justification or excuse and further deny the allegations contained in Paragraph 80.

81. Defendants deny the allegations contained in Paragraph 81, including the allegation that Plaintiff sustained damages in excess of \$25,000.

Specifically Responding to "III. City Liability"

82. Defendants incorporate their prior responses to Paragraphs 1 through 81 as if fully set forth herein.

83. Defendants deny the allegations contained in Paragraph 83, including any allegation that the City failed to properly train Defendants regarding identification procedures.

84. Defendants deny the allegations contained in Paragraph 84, including any allegation that the City lacked policies or procedures regarding identification of suspects.

85. Defendants deny the allegations contained in Paragraph 85.

86. Defendants admit CMPD Directive 500-002 is a document in writing that speaks for itself. To the extent the allegations contained in Paragraph 86 contradict that writing, the allegations are denied. Except as specifically admitted herein, the remaining allegations contained in Paragraph 86 are denied.

87. Defendants deny the allegations contained in Paragraph 87, including any allegation of deliberate indifference.

88. Defendants deny that any alleged training practices, policies, or lack thereof caused Plaintiff's alleged damages and further deny the allegations contained in Paragraph 88.

89. Defendants deny that any act or omission by these Defendants proximately caused Plaintiff's alleged damages and further deny the allegations contained in Paragraph 89.

Specifically Responding to "IV. North Carolina Constitution Article I, §§ 19"

90. Defendants incorporate their prior responses to Paragraphs 1 through 89 as if fully set forth herein.

91. Defendants deny the allegations contained in Paragraph 91.

92. Defendants deny that Plaintiff was denied employment opportunities or suffered loss of reputation as a result of any wrongful act or omission by these Defendants and further deny the allegations contained in Paragraph 92.

93. Defendants deny that Plaintiff's liberties, privileges, or property were restricted other than through lawful criminal process and further deny the allegations contained in Paragraph 93.

94. Defendants deny that Plaintiff lacks adequate state-law remedies and further deny the allegations contained in Paragraph 94.

Specifically Responding to "V. Punitive Damages"

95. Defendants incorporate their prior responses to Paragraphs 1 through 94 as if fully set forth herein.

96. Defendants deny that they acted willfully, wantonly, maliciously, or with reckless disregard for Plaintiff's rights or reputation and further deny the allegations contained in Paragraph 96.

97. Defendants deny that they intentionally omitted positive identification of the suspect or recklessly misrepresented Plaintiff as the perpetrator of criminal offenses and further deny the allegations contained in Paragraph 97.

98. Defendants deny the allegations contained in Paragraph 98.

99. Defendants deny that they intentionally or recklessly disregarded Plaintiff's rights or reputation and further deny the allegations contained in Paragraph 99.

100. Defendants note Plaintiff's jury demand; however, no response is required. To the extent a response is required, the allegations contained in Paragraph 100 are denied.

**FOURTH DEFENSE
(Public Official Immunity)**

The Officer Defendants were at all relevant times public officials engaged in discretionary governmental duties and are entitled to public official immunity.

FIFTH DEFENSE
(Probable Cause / Good Faith)

The Officer Defendants acted in good faith and with probable cause, or arguable probable cause, based upon the information known to them at the time.

SIXTH DEFENSE
(Intervening and Superseding Conduct)

Any alleged injuries or damages sustained by Plaintiff were caused or contributed to by the conduct of third parties, including the conduct of the individual who provided Plaintiff's identifying information to law enforcement.

SEVENTH DEFENSE
(Adequate State Remedy)

Plaintiff's constitutional claims are barred by the existence of adequate state-law remedies.

EIGHTH DEFENSE
(Failure to State a Claim)

The Complaint fails to state a claim upon which relief may be granted.

NINTH DEFENSE
(Independent Intermediary)

Any criminal process issued in connection with the allegations of the Complaint was independently reviewed and authorized by judicial officials.

TENTH DEFENSE
(Reservation of Additional Defenses)

Defendants reserve the right to assert additional defenses revealed through discovery.

WHEREFORE, Defendants respectfully pray the Court:

1. Dismiss Plaintiff's claims against these Defendants;
2. Tax the costs of this action against Plaintiff;
3. Grant Defendants trial by jury; and
4. Grant such further relief as the Court deems just and proper.

This 15th day of May, 2026.

/s/ Lori R. Keeton

Lori R. Keeton, N.C. State Bar # 25813

Law Offices of Lori Keeton

6000 Fairview Road, Unit 1200

Charlotte, NC 28210

Phone: 704-575-9204

Email: lkeeton@lorikeetonlaw.com

Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **AUBREY GULDAGER, ERIC WAGNER AND LOU VANG'S MOTION TO DISMISS AND ANSWER** was electronically filed with the Clerk of Court in the above-captioned action using the NC eCourt File and Serve System.

This the 15th day of May, 2026.

/s/ Lori R. Keeton
Lori R. Keeton, N.C. State Bar #
25813
Law Offices of Lori Keeton
6000 Fairview Road, Unit 1200
Charlotte, NC 28210
Phone: 704-575-9204
Email: lkeeton@lorikeetonlaw.com
Attorney for Defendants