

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
WINSTON-SALEM DIVISION

**Virginia Tayara,**  
as the Administrator for the  
Estate of Brandon Gale Combs,

Plaintiff,

**COMPLAINT FOR DAMAGES**

**42 U.S.C. § 1983 – EXCESSIVE  
FORCE IN VIOLATION OF THE  
FOURTH AMENDMENT;  
ASSAULT AND BATTERY; AND  
WRONGFUL DEATH**

v.

**Timothy Coby Larson,**  
in his individual capacity; and  
**City of Concord, North Carolina,**

Defendants.

\_\_\_\_\_ /

COMES NOW Plaintiff Virginia Tayara, as the Administrator for the Estate of Brandon Gale Combs (hereinafter “Plaintiff”), by and through the undersigned attorneys, and hereby files this complaint for damages against Timothy Coby Larson, in his individual capacity, and the City of Concord, North Carolina

## INTRODUCTION

*The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, nondangerous suspect by shooting him dead.*

-----Justice Byron White, *Tennessee vs Garner*, 471 U.S. 1 (1985)

On February 13, 2022, Brandon Gale Combs, a 29-year-old man, was gunned down by Timothy Coby Larson, a police officer for the City of Concord, North Carolina. At the time Brandon Gale Combs was shot by Timothy Coby Larson, Brandon Gale Combs was unarmed and posing no threat to Timothy Coby Larson or others.

Plaintiff brings federal constitutional claims against Timothy Coby Larson, in his individual capacity, for committing acts under color of law that deprived Brandon Gale Combs of his life and rights under the Constitution and the laws of the State of North Carolina by using unlawful and deadly force against Brandon Gale Combs; whereby, Brandon Gale Combs was unarmed and posing no threat to law enforcement or others. Further, the Plaintiff brings state law claims of Wrongful Death, Battery and Assault against City of Concord, North Carolina.

## JURISDICTION AND VENUE

1.

This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Plaintiff's claims under the U.S. Constitution, which are both brought directly under 42 U.S.C. § 1983.

2.

This Court has supplemental jurisdiction over Plaintiff's state law claim pursuant to 28 U.S.C. § 1367 because it is so related to the federal claims that it forms part of the same case or controversy under Article III of the U.S. Constitution.

3.

This Court has personal jurisdiction over all Defendants as it relates to Plaintiff's state law claims. Further, Defendant City of Concord, North Carolina waives its sovereign immunity defense by the purchase of liability insurance under N.C. Gen. Stat. § 160A-485.

4.

Venue is proper in this District under 28 U.S.C. § 1391(b)(2). All of the events giving rise to this Complaint occurred within this District.

## PARTIES

5.

At all times relevant hereto, Plaintiff Virginia Tayara, as the Administrator for the Estate of Brandon Gale Combs, is the biological mother of the decedent Brandon Gale Combs, and a citizen of the United States of America.

6.

At all times relevant hereto, Defendant Timothy Coby Larson was a citizen of the United States and a resident of the State of North Carolina and was acting under color of state law in his capacity as a law enforcement officer employed by the City of Concord, North Carolina. Defendant Timothy Coby Larson is sued in his individual capacity.

7.

At all times material hereto, City of Concord, North Carolina, a municipality, duly organized under the laws of the State of North Carolina.

## FACTUAL ALLEGATIONS

### *Events That Occurred on February 13, 2022.*

8.

On February 13, 2022, at approximately 5:00 a.m., Timothy Coby Larson (hereinafter “Defendant Larson”) responded to a burglary at Modern Nissan (“Dealership” located at 967 Concord Parkway in Concord, North Carolina).

9.

Upon Larson's arrival to the Dealership, Defendant Larson observed Brandon Gale Combs (hereinafter "Mr. Combs") attempting to steal a vehicle from the Dealership and approached the vehicle that Mr. Combs was attempting to steal. Once Defendant Larson reached the vehicle, Defendant Larson tapped the driver's side window of the vehicle that Mr. Combs was in and instructed Mr. Combs to show his hands. Mr. Combs complied by showing his hands to Defendant Larson. Mr. Combs was unarmed.

10.

Next, Defendant Larson opened the driver's side door of the vehicle. Subsequently, Mr. Combs immediately shut the door. Defendant Larson attempted to reopen the door; however, Mr. Combs had locked the door.

11.

At that time, Defendant Larson retreated from the vehicle. Upon, Defendant Larson's retreat, Mr. Combs exited the vehicle on the passenger's side.

12.

Upon exiting the vehicle, Mr. Combs ran a short distance to Defendant Larson's unsecured patrol vehicle. Once Mr. Combs reached Defendant Larson's patrol vehicle, Mr. Combs opened the driver's side door to the vehicle and then sat in the driver's seat.

13.

While standing off to the side of the patrol vehicle's passenger side fender, Defendant Larson fired his weapon five (5) times into the front windshield of his stationary patrol vehicle. Defendant Larson notified dispatch that shots had been fired; then, immediately afterwards, Defendant Larson discharged his weapon one additional time into the vehicle. At no time was Defendant Larson in any imminent threat of harm or injury from his stationary patrol vehicle that Mr. Combs was sitting in at the time in which Defendant Larson fired six (6) times into the vehicle.

14.

The bullets trajectory in the anatomical position were right to left. The trajectory of the bullets entering Defendant Larson's stationary patrol vehicle and entering Mr. Combs body, is consistent with Defendant Larson discharging his weapon while positioned on the side of the vehicle's passenger side fender.

15.

In Williams v. Strickland, 917 F.3d 763 (4<sup>th</sup> Cir. 2019), the Fourth Circuit of United States Court of Appeals held that:

**Officers had violated the Fourth Amendment to the extent that they started to use deadly force, or continued to use deadly force, once the car had driven by them—i.e., once it was no longer reasonable for them to believe that the car was about to run them (or their fellow officers) over. This was true even though mere seconds separated the point at which deadly force was lawful from the point at which deadly force was unlawful. As we put it then, “force justified at the beginning of an encounter is not justified even seconds later if the justification for the initial force has been eliminated.”**

16.

The state of North Carolina is within the Fourth Circuit of United States Court of Appeals.

17.

Upon shooting Mr. Combs, Defendant Larson did not render first aid on Mr. Combs. Mr. Combs was removed from the vehicle by other responding officers. Mr. Combs was alive when he was removed from the vehicle.

18.

Defendant Larson disclosed to the responding officers on the scene that he shot Mr. Combs because Mr. Combs was trying to take his car.

19.

As a result of being shot by Defendant Larson multiple times, Mr. Combs died at Atrium Hospital in Cabarrus, North Carolina at 6:07 a.m. Mr. Combs was 29 years old at the time of his death. He is survived by his mother Virginia Tayara and his daughter Allison.

20.

At all times relevant, Defendant Larson, was acting under color of state law and within the scope of his employment as a law enforcement officer employed by the City of Concord, North Carolina

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **42 U.S.C. § 1983 – Excessive Force in Violation of the Fourth Amendment (Against Defendant Larson)**

21.

Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 20 of this Complaint.

42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress.....

22.

Defendant Larson is a person for purposes of 42 U.S.C. § 1983.

23.

Defendant Larson, at all times relevant hereto, was acting under the color of state law in his capacity as a police officer for the City of Concord, North Carolina, and his acts or omissions were conducted within the scope of his official duties or employment.

24.

At the time of the complained of events, Mr. Combs had a clearly established constitutional right under the Fourth Amendment to be secure in his person from unreasonable seizure through excessive force.

25.

Mr. Combs also had the clearly established Constitutional right under the Fourth Amendment to bodily integrity and to be free from excessive force by law enforcement.

26.

Any reasonable law enforcement officer knew or should have known of these rights at the time of the complained of conduct as they were clearly established at that time.

27.

Defendant Larson's actions and use of force, as described herein, were objectively unreasonable in light of the facts and circumstances confronting them and violated the Fourth Amendment rights of Mr. Combs.

28.

Defendant Larson's actions and use of force, as described herein, were also malicious and/or involved reckless, callous, and deliberate indifference to Mr.

Combs's federally protected rights. The force used by Defendant Larson shocks the conscience and violated the Fourth Amendment rights of Mr. Combs.

29.

Defendant Larson unlawfully seized Mr. Combs by means of objectively unreasonable, excessive and conscious shocking physical force. The force used was deadly force and did cause the death of Mr. Combs.

30.

Defendant Larson engaged in the conduct described by this Complaint willfully, maliciously, in bad faith, and in reckless disregard of Mr. Combs's protected constitutional rights.

31.

Defendant Larson did so with shocking and willful indifference to Mr. Combs's rights and with conscious awareness that it could cause Mr. Combs severe bodily harm or death.

32.

The acts or omissions of Defendant Larson was the moving forces behind Mr. Combs's death. The acts or omissions of Defendant Larson as described herein intentionally deprived Mr. Combs of his constitutional rights and caused him other damages. Defendant Larson is not entitled to qualified immunity for his actions.

33.

As a proximate result of Defendant Larson's unlawful conduct, Mr. Combs was killed. As a further result of Defendant Larson's unlawful conduct, Mr. Combs has incurred special damages, including medical expenses and other special damages related expenses, in amounts to be established at trial.

34.

On information and belief, Mr. Combs suffered lost future earnings and impaired earnings capacities from the not yet fully ascertained sequelae of his injuries, in amounts to be ascertained in trial. The Plaintiff is further entitled to attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and costs as allowable by federal law. There may also be special damages for lien interests.

35.

In addition to compensatory, economic, consequential and special damages, the Plaintiff is entitled to punitive damages against Defendant Larson's under 42 U.S.C. § 1983, in that the actions of Defendant Larson have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Mr. Combs.

**SECOND CLAIM FOR RELIEF**  
**(Assault and Battery)**  
(Defendant City of Concord, North Carolina)

36.

Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 20 of this Complaint

37.

Defendant Larson pointed a firearm at Mr. Combs and unjustifiably used deadly force against Mr. Combs, such force was objectively excessive and unreasonable under the circumstances.

38.

Defendant Larson's intentional acts as described more fully hereinabove, put Mr. Combs in actual, subjective apprehension of immediate harmful or offensive contact.

39.

Mr. Combs' apprehension was objectively reasonable under the circumstances in that a person of ordinary care and prudence under the same or similar circumstances would have believed that harmful, or offensive contact was about to occur.

40.

Defendant Larson's actions against Mr. Combs were unreasonable and unlawful. At the time Mr. Combs was shot by Defendant Larson, Mr. Combs did not pose any threat or harm to any law enforcement officers or others. Defendant Larson acted with a depraved indifference to human life and conscious disregard for the safety of the general public, which constituted an intentional unwelcome and unprivileged touching of Mr. Combs and was undertaken in bad faith and with actual malice.

41.

As a further direct and proximate result of the conduct described above, Mr. Combs died. Prior to his death Mr. Combs suffered loss of his liberty and freedom, bodily injury resulting in pain and suffering, mental anguish, and medical expenses for treatment and care. Mr. Combs did not consent to contact from Defendant Larson.

42.

At the time of the complained incident, Defendant Larson was acting within the scope of his employment with the City of Concord, North Carolina. At the time when Defendant Larson committed all the acts described herein, he was acting within the course and scope of his employment with the City of Concord, North Carolina. As such, the City of Concord, North Carolina is liable for the intentional acts of Defendant Larson. Therefore, the intentional acts of Defendant Larson are imputed to the City of

Concord, North Carolina through the doctrines of agency, vicarious liability and respondeat superior.

**THIRD CLAIM FOR RELIEF**  
**(Wrongful Death/Intentional)**  
(All Defendants)

43.

Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 20 of this Complaint.

44.

On February 13, 2022, Defendant Larson was an employee and uniformed officer with the City of Concord, North Carolina, who committed a battery when he discharged his weapon to intentionally strike Mr. Combs that resulted in the untimely and unlawful death of Mr. Combs.

45.

The aforementioned act of discharging his weapons at Mr. Combs, was intentional and deliberate. Defendant Larson's acts were carried out in bad faith and with malicious intent to harm Mr. Combs. As a direct and proximate result of his acts, Mr. Combs was killed.

46.

Defendant Larson negligent acts and omissions constituted the proximate cause of the incident which resulted in injuries to and the death of Mr. Combs; which the Plaintiff on behalf of the Estate of Brandon Gale Combs is entitled to recover damages under the North Carolina Wrongful Death Statute, N.C. Gen. Stat. §28A-18-2, as more particularly described herein.

47.

At the time of the complained of incident, Defendant Larson was acting within the scope of his employment with the City of Concord, North Carolina. At the time Defendant Larson committed the acts described herein, he was acting within the course and scope of his employment with the City of Concord, North Carolina. As such, the City of Concord, North Carolina is liable for the intentional acts of Defendant Larson. Therefore, the intentional acts of Defendant Larson are imputed to the City of Concord, North Carolina through the doctrines of agency, vicarious liability and respondeat superior.

48.

WHEREFORE, Plaintiffs prays for the following relief:

1. Judgment for compensatory damages;
2. Judgment for exemplary or punitive damages against Defendant Larson;
3. Cost of suit;

4. The value of support and services the deceased person had provided to the surviving family member;
5. Loss of companionship, guidance, and protection provided by the deceased person;
6. Mental and emotional pain and suffering due to the loss of a child, and medical or funeral expenses any surviving family member has paid for the deceased person;
7. The deceased person's estate may also recover certain types of damages.

These include:

- a. lost wages, benefits, and other earnings, including the value of lost earnings that the deceased person could reasonably have been expected to make if he or she had lived
- b. lost "prospective net accumulations" of the estate, or the value of earnings the estate could reasonably have been expected to collect if the deceased person had lived, and
- c. medical and funeral expenses that were paid by the estate directly.
- d. Such other relief as this Honorable Court may deem just and appropriate.

**FOURTH CLAIM FOR RELIEF**  
**(Wrongful Death Negligence/ Gross Negligence)**  
(All Defendants)

(Plead in the Alternative Pursuant to Federal Rule of Civil Procedure 8(d)(2).)

49.

Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 20 of this Complaint.

50.

Defendant Larson owed a duty to Mr. Combs and to the general public, to perform his duties in such a way as to avoid placing Mr. Combs and other members of the public in unreasonable danger of serious injury or death. Furthermore, all Defendants owed a duty to ensure that Mr. Combs and other members of the public would be free from unreasonable searches and seizures and excessive force.

51.

Defendant Larson breached his duty by shooting at Mr. Combs even though he posed no threat to Defendant Larson or others.

52.

Specifically, Defendant Larson fired his weapon at Mr. Combs, as Mr. Combs sat in a stationary vehicle and not posing a threat to Defendant Larson or others.

53.

Defendant Larson negligent acts and omissions constitute proximate causes of the incident which resulted in injuries to and the death of Mr. Combs which the Plaintiff on behalf of the Estate of Brandon Gale Combs is entitled to recover damages under the North Carolina Wrongful Death Statute, N.C. Gen. Stat. §28A-18-2, as more particularly described herein.

54.

At the time of the complained incident, Defendant Larson was acting within the scope of his employment with the City of Concord, North Carolina. At the time all Defendant Larson committed the acts described herein, he was acting within the course and scope of his employment and/or agency City of Concord, North Carolina. As such, the City of Concord, North Carolina is liable for the intentional acts of Defendant Larson. Therefore, the negligent acts and omissions of Defendant Larson is imputed to the City of Concord, North Carolina through the doctrines of agency, vicarious liability and respondeat superior.

55.

WHEREFORE, Plaintiff prays for the following relief:

1. Judgment for compensatory damages;
2. Judgment for exemplary or punitive damages against Defendant Larson;
3. Cost of suit;
4. The value of support and services the deceased person had provided to the

surviving family member;

5. Loss of companionship, guidance, and protection provided by the deceased person;
6. Mental and emotional pain and suffering due to the loss of a child, and medical or funeral expenses any surviving family member has paid for the deceased person;
7. The deceased person's estate may also recover certain types of damages.

These include:

- a. lost wages, benefits, and other earnings, including the value of lost earnings that the deceased person could reasonably have been expected to make if he or she had lived
- b. lost "prospective net accumulations" of the estate, or the value of earnings the estate could reasonably have been expected to collect if the deceased person had lived, and
- c. medical and funeral expenses that were paid by the estate directly.

Such other relief as this Honorable Court may deem just and appropriate.

### **PRAYER FOR RELIEF**

Plaintiff prays that this Court enter judgment for the Plaintiff and against each of the Defendants and grant:

- A. compensatory and consequential damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering

on all claims allowed by law in an amount to be determine by a jury:

- B. economic losses on all claims allowed by law;
- C. special damages in an amount to be determined at trial;
- D. punitive damages on all claims allowed by law against Defendant Larson in an amount to be determine by the jury;
- E. attorneys' fees and the costs associated with this action under 42 U.S.C. § 1988, including expert witness fees, on all claims allowed by law;
- F. pre- and post-judgment interest at the lawful rate; and,
- G. any further relief that this court deems just and proper, and any other appropriate relief a law and equity.

**PLAINTIFF REQUESTS A TRIAL BY JURY.**

Respectfully submitted this the 9th of August 2022.

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Special Appearance of counsel for Plaintiff in the above captioned matter, in accordance with Local Civil Rule 83.1(d)

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