

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DANIEL PERACH,

Plaintiff,

Case No. 2:08-CV-13754-JAC-MJH

v

Hon. Julian Abele Cook

CRAIG LEE,

Defendant.

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Ben M. Gonek (P43716)  
Attorney for Plaintiff  
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Detroit, MI 48226  
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Attorneys for Defendant  
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**DEFENDANT'S ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES**

Defendant, Craig Lee, by and through the Office of the City Attorney, answers the Plaintiffs' Complaint as follows:

1. Neither admitted nor denied because this Defendant lacks knowledge or information sufficient to form a belief as to the truth of this allegation.
2. Neither admitted nor denied because this Defendant lacks knowledge or information sufficient to form a belief as to the truth of this allegation.
3. Admitted.
4. Denied.
5. Admitted.
6. Denied.

7. Admitted.
8. Neither admitted nor denied because this Defendant lacks knowledge or information sufficient to form a belief as to the truth of this allegation.
9. Denied. On September 1, 2005 Plaintiff was consuming an alcoholic beverage on a public street, which is a criminal violation of the Ann Arbor City Code. When he was detained by the police for this violation he resisted arrest and Officer Lee was compelled to use his Taser in order to subdue Plaintiff.
10. Neither admitted nor denied because this Defendant lacks knowledge or information sufficient to form a belief as to the truth of this allegation.
11. Denied.
12. Denied.
13. Denied that Officer Lee violated Plaintiff's fourth amendment rights; also denied that the actions of Officer Lee were a proximate cause or a cause in fact of any injuries or damages allegedly sustained by Plaintiff.

WHEREFORE, Defendant respectfully requests this Court to enter an order and/or judgment dismissing Plaintiff's claims with prejudice and awarding him the costs he has incurred in defending against said claims including, but not limited to, reasonable attorneys' fees.

**SPECIAL AND AFFIRMATIVE DEFENSES**

NOW COMES DEFENDANT, CRAIG LEE, by and through his attorneys, and hereby gives notice to Plaintiff of Defendant's intention to raise and assert the following special and/or affirmative defenses, based in significant part upon information and belief, discovery not having progressed, as follows:

1. That Plaintiff's Complaint fails to state a legally cognizable cause of action upon which relief may be granted, in whole or in part.
2. That Plaintiff is not the proper party in interest as to some or all of the claims and damages alleged.
3. That Plaintiff lacks the requisite standing to complain of any wrongdoing as set forth in Plaintiff's Complaint.
4. That Defendant is not the proper party in interest as to some or all of the claims and damages alleged.
5. That venue is improper, or the Court otherwise lacks jurisdiction over the subject matter of this action.
6. That Plaintiff's Complaint is barred by the applicable statute of limitations.
7. That the proximate cause in fact of the incident alleged in Plaintiff's Complaint was a superseding, intervening cause in fact attributable to parties other than Defendant.
8. That any injuries sustained by Plaintiff were the result of and were proximately caused by his own actions and/or negligence or wrongdoing.
9. That the damages alleged resulted from the actions or inactions of a third party or parties over whom Defendant did not exercise authority or control.
10. That Plaintiff's Complaint is barred by the Governmental Liability Act, MCL 691.1401; MSA 3.996 (101) et seq., for the following reasons:
  - a. Defendant's actions involved the exercise or discharge of a governmental function, in this case law enforcement;
  - b. the allegations in Plaintiff's Complaint do not fall within any recognized exception to governmental immunity;

- c. Defendant did not act so recklessly or with callous indifference so as to demonstrate a substantial lack of concern for whether an injury or damage would result;
- d. the actions of Defendant were not grossly negligent.

11. That at all relevant times Defendant did not violate any clearly established statutory or constitutional rights of Plaintiff.

12. That at all relevant times Defendant acted with objective and reasonable good faith and without malice and hence is entitled to qualified immunity.

13. That Defendant reserves the right to plead and assert such further and additional Special and/or Affirmative Defenses, counter-claims, cross-claims, or third-party claims as they may become known through the process of discovery which has not yet progressed.

Respectfully submitted:

Office of the City Attorney

Dated: September 18, 2008

/s/ROBERT W. WEST  
Robert W. West (P31009)  
Assistant City Attorney  
Attorneys for Defendant  
P.O. Box 8647  
Ann Arbor, Michigan 48107  
(734) 994-2670

#### CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2008, I electronically filed the foregoing document with the Clerk of the Court using the ECF System which will send notice of such filing to the following: None, and I hereby certify that I have mailed by US Mail the document to the following non-ECF participants: Plaintiff.

/s/ Jane Allen  
Assistant  
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City of Ann Arbor  
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