

DOCKET NO.: FBT-CV15-6048078-S : SUPERIOR COURT  
JONATHAN SHAPIRO : JUDICIAL DISTRICT OF  
: FAIRFIELD

PLAINTIFF

V. : AT BRIDGEPORT

FRANK DELBUONO, JR.  
and CITY OF BRIDGEPORT : NOVEMBER 17, 2016

DEFENDANT

**OBJECTION TO MOTION FOR PERMISSION TO WITHDRAW AND AMEND  
RESPONSE TO REQUEST FOR ADMISSION**

The plaintiff, Jonathan Shapiro, hereby objects to the defendants' improper and belated attempt to amend their responses to the Requests for Admissions of Fact dated March 6, 2015. First, the defendants' requests seeks, in violation of Practice Book § 13-24(a), permission to amend their denials into admissions. Second, the request is improper because (i) the defendants inexcusably delayed this request in a manner prejudicial to Mr. Shapiro; and (ii) the amendment sought will take unfair advantage of Mr. Shapiro. Accordingly, the Court should sustain this Objection to the defendants' motion

for permission to withdraw and amend their responses to the March 6, 2015 Request for Admission of Facts.

**I. Background**

On March 6, 2015, Mr. Shapiro served a Request for Admission upon the defendants, and filed a corresponding Notice, Docket No. 112, with the Court. On March 25, 2015, defendants filed their Response to Plaintiff's Request for Admission of Facts, Docket No. 114 ("Response to Request for Admission"). Therein, defendants admitted that "immediately prior" to Officer Delbuono's collision with Mr. Shapiro, the defendant officer was "operating the police cruiser without a siren." Response to Request for Admission, p. 2. Further, defendants denied that at the time of the collision the defendant officer "operated the police cruiser through a red traffic signal" and that Mr. Shapiro "operated this [sic] motor vehicle through a green traffic signal." *Id.* at p. 3.

On December 30, 2015, Mr. Shapiro's counsel deposed defendant Officer Delbuono. The defendant officer testified that, "I was about to activate my siren when, basically, the accident occurred." Deposition Transcript of Frank Delbuono, p. 42 ("Delbouno Dep.")(relevant excerpts of which are attached hereto as Exhibit A). Defendant officer further testified, "I believe [Mr. Shapiro's

light was red. I know my light was green.” Delbuono Dep., pp. 52-53. When asked “[h]ow sure are you that your light was green when you passed through that intersection,” the defendant officer answered, “[a] hundred percent.” Delbuono Dep., p. 53.

On January 15, 2016, Mr. Shapiro supplemented his responses to the defendants’ interrogatories and requests for production with the disclosure and production of a video taken by Mr. Shapiro on the date of the accident. The video reflects that immediately *after* Mr. Shapiro proceeded through a green light into the intersection of Myrtle and Prospect Avenues, a police siren became audible, just as the defendant officer’s cruiser struck Mr. Shapiro’s vehicle.

On March 2, 2016, Mr. Shapiro was deposed by defendants’ counsel. Mr. Shapiro testified that on the day of the collision, he “left the school to go to my house to get my camera ... I had set the strap around my neck, the camera in my hand with the strap connected. My arm was on the armrest. I had sighted in already the windshield so I could see what I was seeing while I was driving.” Deposition Transcript of Jonathan Shapiro, p. 41 (“Shapiro Dep.”)(relevant excerpts of which are attached hereto as Exhibit B). Mr. Shapiro testified that

the camera was a “regular camera with a video function ... a Canon G 12 ... slimmer than a professional camera but not quite as slim as the new, you know, expensive one.” Shapiro Dep., p. 42.

On November 3, 2016, ten months after Mr. Shapiro’s disclosure and production of the video, and eight months after Mr. Shapiro’s deposition, defendants moved for permission to amend their responses to Mr. Shapiro’s requests for admission on the eve of trial, after several continuances occasioned by their claim to be seeking settlement authority.

Specifically, defendants argue that the video “indicate[s] that the Officer was mistaken as to his previous belief and related responses that the Plaintiff’s light was red, that the Defendant’s light was green, and that the Defendant’s emergency siren was not yet on.” Motion for Permission to Withdraw and Amend Defendants’ Response to Plaintiff’s Request for Admission of Facts, Docket No. 137, p. 2 (“Motion for Permission”).

Defendants further argue that amendment of their responses “consistent with the dispositive evidence reflected in the Plaintiff’s cell phone video” will “not surprise, and will not prejudice, the Plaintiff since he was in possession for more than 3½ years of the cell phone accident video.” Motion Permission, pp.

2-3. There is no valid basis for the defendants' motion and it should accordingly be denied.

## II. Legal Standard

Practice Book § 13-24(a) provides the following in relevant part:

Any matter admitted under this section is conclusively established unless the judicial authority on motion permits withdrawal or amendment of the admission. The judicial authority may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the judicial authority that withdrawal or amendment will prejudice such party in maintaining his or her action or defense on the merits.

It is within the discretionary authority of the Court to grant or deny motions to amend or withdraw answers to requests for admissions. *Kelley v. Tomas*, 66 Conn. App. 146, 177 (2001). “[T]he court will allow an amendment unless it will cause an unreasonable delay, mislead the opposing party, take unfair advantage of the opposing party or confuse the issues, or if there has been negligence or laches attaching to the offering party.” *Id.* at 178.

“Laches consists of two elements. First, there must have been a delay that was inexcusable, and, second, that delay must have prejudiced the

defendant. The mere lapse of time does not constitute laches; unless it results in prejudice to the defendant.” *Bozzi v. Bozzi*, 177 Conn. 232, 239 (1979)(internal quotation marks and citations omitted).

### **III. Argument**

#### **A. The Defendants Cannot Move the Court to Amend Their Denials to Admissions**

The language of the Practice book facially and unambiguously precludes the defendants from moving the Court to amend their denials into admissions. Practice Book § 13-24(a) provides that “Any matter *admitted* under this section is conclusively established unless the judicial authority on motion permits withdrawal or amendment *of the admission*.” (Emphasis added.) Here, the defendants not only sought to amend their admission that the defendant officer did not have his siren activated immediately prior to the collision, but also sought to amend their denial that the defendant officer had a green light and that Mr. Shapiro had a red light at the intersection. Thus, the latter two responses, both denials, do not even come within the ambit of the relevant

provision of the Practice Book,<sup>1</sup> and consequently the defendants should not be permitted to amend such responses.

**B. The Defendants Inexcusably and Prejudicially Delayed Their Request, Which Seeks to Take Unfair Advantage of Mr. Shapiro Confuse the Issues in this Case**

As a preliminary matter, it is important to note that in most situations where a party seeks to amend its responses to requests for admission, the amendment is sought because the party failed to file responses within thirty days, thereby resulting in all requests being deemed admitted as a matter of law. *See, e.g., Kelley v. Tomas, supra* (allowing defendants to amend responses when their attorney failed to comply with deadline to file response due to

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<sup>1</sup> The court has, in certain limited circumstances, permitted or required a party to amend a non-answer, or a denial, but not in the manner sought by the defendants here. In *Smith v. Largo*, 2005 WL 3470681 \*5 (Conn. Sup. Ct. November, 16, 2005), Judge Shapiro required the defendant to file a motion to amend responses to requests for admissions when he sought to amend to clarify his original response of "cannot to admit or deny." In *Patel v. Barot*, 2000 WL 804594 (Conn. Sup. Ct. June 8, 2000), Judge Hodgson granted plaintiffs' request for leave to amend a response to clarify language in a qualified denial, modifying the language from "pages ... which memorialized the oral agreement between the parties" to "pages ... SOME OF which memorialized the oral agreement between the parties." Neither of these cases is factually similar to the case at bar. In both of the foregoing cases, the amendment provided a point of clarification only. Further, the first case, *Smith*, concerned a non-answer, rather than a denial. In the second case, *Patel*, rather than reversing the plaintiff's position, the amendment sought merely provided clarification. Because the Practice Book does not contemplate changing denials to admissions, and because the instant case is dissimilar from the few that have permitted the amendment of any responses other than an admission, the Court should deny the defendants' Motion for Permission.

personal issues). Less frequently, however, a party seeks to amend or withdraw responses that were timely filed, for instance, to provide a point of clarification. See *Smith, supra*; *Patel, supra*.

In this case, defendants' responses to Mr. Shapiro's requests for admission were timely filed, and defendants' request to amend those responses is not premised upon accidental waiver, or the need for clarification. Rather, the defendants seek to amend their responses solely because, as defendants concede in their Motion for Permission, the defendant officer's deposition testimony has been clearly controverted. Motion for Permission, p. 2.

Defendants, including the defendant officer who swore under oath that he was "one hundred percent" certain he had a green light at the time of the collision, now improperly move the Court to conform their admissions to the concededly "dispositive" evidence to minimize the obvious contradictions among their admissions, the defendant officer's deposition testimony, and the video of the collision. It bears emphasis that the entire Motion for Permission is an attempt to rehabilitate the credibility of the defendant officer who failed to testify truthfully.

First, the doctrine of laches militates against permitting the defendants to amend their responses in this case. The defendants have inexcusably delayed their Motion for Permission. Mr. Shapiro disclosed and produced the video of the collision in January 2016, and Mr. Shapiro testified at length about the video in March 2016. Defendants have put forward no justification whatsoever for their ten-month delay in filing their Motion for Permission. This delay is harmful to Mr. Shapiro because the defendants made their Motion for Permission in the month for which trial is now scheduled to commence. Mr. Shapiro has relied upon defendants' admissions and denials in preparing his case for imminent trial, and it would consequently be improper to permit the defendants to simply avoid the doubtless harmful implications of the inconsistencies between their admissions and prior testimony and the video.

Second, and equally, to permit the defendants to amend their responses here would take unfair advantage of Mr. Shapiro. That is, Mr. Shapiro disclosed and produced the video, and testified about its creation and contents at length. Mr. Shapiro properly premised the prosecution of his claims upon the defendants' admissions and denials. Yet, months later, and on the eve of trial, defendants now improperly move to reverse the damage of their disproven

admissions and testimony, thus taking unfair advantage of Mr. Shapiro's forthright deposition testimony.

Third, and finally, the defendants' motion should be denied because it will unnecessarily confuse the issues. Defendants' inconsistent admissions and deposition testimony bear directly on the credibility of the defendant officer and the plausibility of his defenses. Defendants Motion for Permission intends to simply obscure this fact by arguing that, because the video was in Mr. Shapiro's possession, it will work no prejudice to him if their amendments are permitted.<sup>2</sup> Yet the result of the defendants' motion, if granted, will be to shift the issues away from the plausibility of the defenses raised in light of the defendant officer's credibility.

For the reasons set forth herein, the Court should deny the Motion for Permission to Withdraw and Amend Responses to Requests for Admission.

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<sup>2</sup> The defendants' arguments in this regard incorrectly and repeatedly refer to Mr. Shapiro's disclosed and produced video as a "cell phone video," in spite of the fact that during Mr. Shapiro's deposition, defendants' counsel elicited the size, make, and model of Mr. Shapiro's Canon G 12 camera, on which the video was filmed. Motion for Permission, pp. 2-3; Shapiro Dep., p. 42.

THE PLAINTIFF

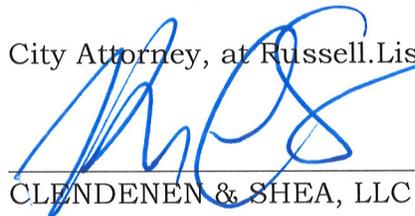
BY



Kevin C. Shea  
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New Haven, CT 06502  
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CERTIFICATION:

This is to certify that a copy of the foregoing was sent via email this 14th of November, 2016, to Russell D. Liskov, Associate City Attorney, Office of the City Attorney, at [Russell.Liskov@bridgportct.gov](mailto:Russell.Liskov@bridgportct.gov).



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CLENDENEN & SHEA, LLC

**EXHIBIT A**

**Deposition Transcript of Frank Delbuono**

pp. 52-53

SUPERIOR COURT

JUDICIAL DISTRICT OF FAIRFIELD AT BRIDGEPORT

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JONATHAN SHAPIRO,

Plaintiff,

vs.

FRANK DELBOUNO, JR. and  
CITY OF BRIDGEPORT,

Defendants.

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# FBT-CV15-6048078-S  
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Deposition of FRANK DELBOUNO, JR., taken pursuant to Section 13-26 et seq. of the Connecticut Practice Book, at the law offices of Clendenen & Shea, LLC, 400 Orange Street, New Haven, Connecticut, before Michelle E. Pappas, License #00081, a Notary Public in and for the State of Connecticut, on Wednesday, December 30, 2015, at 1:07 p.m.

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1           A.    I don't know, and it would be if you're talking  
2 coming off the ramp?

3           Q.    Yes.

4           A.    I don't know.

5           Q.    Do you know whether Jonathan Shapiro, who was  
6 driving the vehicle with which you collided, had a green  
7 or red light as he proceeded through that intersection?

8           A.    Do I know what color his light was?

9           Q.    Yes.

10          A.    I do not know.

11          Q.    Do you have a belief about what color the light  
12 was when he passed through that intersection?

13          A.    I do have a theory.

14          Q.    What's your theory?

15          A.    That his light was red -- due to what I believe  
16 the speed as that car came across in front of me, his  
17 light was red as he was coming from the top of that off  
18 ramp, at some point, if it did turn green, as I'm under  
19 the intersection, he never really stopped at that  
20 intersection, and went from being a red light, coming  
21 down, if he had the green, it did turn green, he just  
22 sailed through it without stopping.

23          Q.    If he had a green light, why would he need to  
24 stop?

25          A.    I'm saying if he had the green light. I

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1 believe his light was red. I know my light was green.

2 Q. How sure are you that your light was green when  
3 you passed through that intersection?

4 A. A hundred percent.

5 Q. Because otherwise you would have had to have  
6 both your lights and siren on before entering the  
7 intersection according to departmental policy; correct?

8 A. Yes.

9 Q. And the reason you were activating them anyway  
10 at that time is because the call was getting escalated  
11 and you were doing it as a measure of precaution, because  
12 not only were you entering that intersection, but you had  
13 another intersection beyond that in order to get to the  
14 on ramp you wanted; correct?

15 A. Yes.

16 Q. Did you have any restrictions on your driver's  
17 license?

18 A. No.

19 Q. Do you need glasses or contacts to drive?

20 A. No.

21 Q. Have you reviewed any audio recordings of the  
22 call that you were getting at the time you were  
23 responding?

24 A. No.

25 Q. Do you know if they still exist?

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**EXHIBIT B**

**Deposition Transcript of Jonathan Shapiro**

pp. 41-42

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SUPERIOR COURT  
JUDICIAL DISTRICT OF FAIRFIELD  
AT BRIDGEPORT

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JONATHAN SHAPIRO

PLAINTIFF

vs.

FBT CV 15 6048078 S

FRANK DELBUONO, ET AL

DEFENDANT

-----X

D E P O S I T I O N

The deposition of JONATHAN SHAPIRO was taken pursuant to notice at the LAW OFFICES OF THE CITY ATTORNEY, 999 BROAD STREET, BRIDGEPORT CONNECTICUT 06604, before SHIRLEY SAMBROOK, license #00031, a notary public in and for the State of Connecticut, on MARCH 2, 2016.

**SHIRLEY SAMBROOK**  
**(203)259-5903**

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A P P E A R A N C E S :

ATTORNEYS FOR THE PLAINTIFF

CLENDENEN & SHEA, LLC  
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BY: KEVIN C. SHEA, ESQ.

ATTORNEY FOR THE DEFENDANT

OFFICE OF THE CITY ATTORNEY  
999 BROAD STREET  
BRIDGEPORT, CONNECTICUT 06604

BY: RUSSELL D. LISKOV, ESQ.

1 middle.

2 Q The class runs from what time to what time?

3 A I believe it was ten to three.

4 Q When would the break have been?

5 A Teacher's discretion. I believe -- I believe  
6 the break was around 12:30 this day.

7 Q And during your break where did you -- what did  
8 you do during the break?

9 A The teacher had requested that we shoot some  
10 video that he would help us stitch together. I believe  
11 it was the second day of class. It was -- only met on  
12 Fridays. I had left the school to go to my house to get  
13 my camera. I came back. I was coming back and decided  
14 to shoot some video while driving. I had set the strap  
15 around my neck, the camera in my hand with the strap  
16 connected. My arm was on the armrest. I had sighted in  
17 already the windshield so I could see what I was seeing  
18 while I was driving and I drove back to school or  
19 attempted to drive back to school where this accident  
20 occurred.

21 Q So during the break you went back to your  
22 apartment?

23 A 229.

24 Q 229 Long Hill Avenue and picked up your video  
25 equipment?

1           A     It's actually a regular camera with a video  
2 function.

3           Q     Say -- Describe the camera for me.

4           A     It's a Canon G 12.

5           Q     How big is it?

6           A     About that big.

7           Q     It's a slim line camera?

8           A     It's not slim. It's slimmer than a, what  
9 do you call it? Slimmer than a professional camera but  
10 not quite as slim as the new, you know, expensive one.

11          Q     Okay. I'm not with technology. When did you  
12 start shooting your video coming back to school?

13          A     I believe I shot video of my -- I set up the  
14 tripod and shot video of myself leaving the house and I  
15 got in the car. I set the camera up and I started  
16 driving.

17          Q     You set -- How did you set the camera up,  
18 again?

19          A     I had the camera in my right-hand with the  
20 strap around my neck and my hand on the, I believe my  
21 elbow was resting on the armrest so it was about like  
22 this.

23          Q     Okay. I am getting a good idea of it now.

24          A     Sorry. I know you can't get that on the  
25 transcript.