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883 F.3d 190

ACE PARTNERS, LLC D/B/A TC's PAWN CO.,
Plaintiff-Appellee, v. TOWN OF EAST HARTFORD,
EAST HARTFORD POLICE DEPARTMENT,
MARK J. SIROIS, CHIEF OF POLICE, I/O,
JOHN MURPHY, DEPUTY CHIEF OF POLICE,
I/O, Defendants-Appellants.

United States Court of Appeals for the Second Circuit
June 23, 2017, Argued; February 28, 2018, Decided
No. 14-3831-cv

Counsel: DANIEL J. KLAU (James R. Smart, Rory M. Farrell, on the brief), McElroy, Deutsch, Mulvaney & Carpenter, LLP, Hartford, Connecticut, for Plaintiff-Appellee.

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Judges: Before: JACOBS, LEVAL, RAGGI, Circuit Judges.

Opinion by: REENA RAGGI

Opinion

REENA RAGGI, *Circuit Judge*:

This case concerns a 2009 decision by defendant East Hartford Chief of Police Mark J. Sirois not to re-new pawnbroker and precious metals licenses held by plaintiff ACE Partners, LLC, d/b/a TC's Pawn Co. ("ACE") after the State Attorney searched ACE's East

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Hartford premises and arrested two of its employees for attempting to receive stolen property. ACE sued the Town of East Hartford, its Police Department, Chief Sirois, and then-Deputy Chief John Murphy in the United States District Court for the District of Connecticut (Robert N. Chatigny, *Judge*) pursuant to 42 U.S.C. § 1983 for alleged violations of substantive and procedural due process. *See* U.S. Const., amend. XIV. The district court awarded summary judgment to defendants on all of ACE's claims with one exception. It awarded ACE summary judgment against two defendants, the Town of East Hartford and Chief Sirois in his official capacity (hereafter, collectively, "the Town"), on ACE's claim that the decision not to renew its precious metals license violated procedural due process because it was made without adequate notice and opportunity to be heard. *See Ace Partners, LLC v. Town of East Hartford*, No. 3:09-CV-1282 (RNC), 2011 U.S. Dist. LEXIS 113290, 2011 WL 4572109, at *5 (D. Conn. Sept. 30, 2011). The Town now appeals from that part of the amended final judgment, entered on August 11, 2016, as awards ACE \$352,660 plus interest in compensatory damages and \$490,831.75 in attorney's fees on this procedural due process claim.¹

¹ Although both parties identify defendant Murphy as an appellant, the district court granted him summary judgment on all ACE's claims, a ruling he understandably does not dispute before this court. *See Ace Partners, LLC v. Town of East Hartford*, 2011 U.S. Dist. LEXIS 113290, 2011 WL 4572109, at *6. Meanwhile, ACE does not appeal from those parts of the judgment in favor of defendants. Specifically, it does not appeal the award of summary judgment to all defendants on ACE's substantive due process

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For the reasons stated herein, we conclude that ACE was not entitled to summary judgment on this procedural due process challenge because Connecticut law does not afford it a constitutionally protected property interest in the renewal of its precious metals license. For the same reason, we conclude that the Town is entitled to judgment on this claim. Accordingly, we reverse that part of the final judgment in favor of ACE, and we remand this case to the district court for it to enter judgment in favor of defendants on all claims. That reversal extends to the award of attorney's fees because our ruling on the merits means that ACE is not now, and could not ever properly have been considered, a "prevailing party," the necessary predicate for a fees award pursuant to 42 U.S.C. § 1988(b). In light of that ruling, there is no need to address the Town's proximate cause challenge to the award of compensatory damages or its reasonableness challenge to the award of attorney's fees.

challenge to both renewal denials or on its procedural due process challenge to the renewal denial of its pawnbroker license. *See* 2011 U.S. Dist. LEXIS 113290 [WL] at *2-5. ACE also does not appeal the summary judgment award to defendant Sirois in his individual capacity and to defendant Murphy in his individual and official capacities on ACE's procedural due process challenge to the renewal denial of its precious metals license. *See* 2011 U.S. Dist. LEXIS 113290 [WL] at *6-7. Thus, we do not discuss those rulings further in this opinion, except as they bear on the Town's appeal.

BACKGROUND

I. ACE Procures Pawnbroker and Precious Metals Licenses for its East Hartford Location

At times relevant to this case, ACE operated pawnbroker and precious metals businesses from locations in Waterbury and East Hartford, Connecticut. Connecticut law regulates such businesses, requiring each to be conducted pursuant to licenses issued for one-year terms by designated officials of the municipalities wherein the businesses are to be conducted. *See* Conn. Gen. Stat. §§ 21-39, 21-40, 21-100. Before opening its East Hartford store in October 2007, ACE owner Christa Matuschkowitz applied to the Town for and was granted one-year pawnbroker and precious metals licenses. The following year, Matuschkowitz applied to renew these licenses, which renewal was granted for one year running from August 9, 2008, through August 9, 2009.

II. The Arrest of ACE Employees and the Search of its Store

In the spring of 2009, ACE's East Hartford location came under scrutiny by the Connecticut State Attorney, who was then supervising a task force investigating suspected trafficking in stolen property by certain pawnshops across the state. Pursuant to that investigation, on or about April 14, 2009, a state police officer, operating undercover, offered to sell two ACE employees, subsequently identified as Nicholas Carbone and General Manager Jay Sargent, what

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appeared to be stolen property, specifically, a “new in box” power tool still equipped with “spider wrap,” an anti-theft device that emits a loud noise if its cable is cut. J.A. 198-201. In a recorded exchange with the officer, Sargent stated that he would not buy the tool with the spider wrap on it, but “if it wasn’t on it I could buy it, but I can’t take it off.” *Id.* at 199. The officer briefly left the store and returned with the spider wrap removed from the tool, whereupon Carbone, in Sargent’s presence, paid the officer \$35 for the tool—which had a retail value of \$214—and asked if he had “another one.” *Id.* at 200.

On or about June 3, 2009, other officers working with the State Attorney returned to ACE’s East Hartford store and there conducted a buy-bust operation, arresting two participating employees, Carbone and Nicholas St. Peter, and seizing various items from the premises pursuant to a search warrant. Carbone and St. Peter were charged with misdemeanor larceny based on their attempted receipt of stolen property. *See* Conn. Gen. Stat. § 53a-125a. Sargent would also be arrested on misdemeanor larceny charges on August 11, 2009. *See id.* §§ 53a-125b; 53a-48.²

² In October 2010, ACE and Sargent entered into agreements with the State Attorney, whereby the former waived any claims to property seized from the East Hartford store (with certain exceptions) and consented to the property’s return to the original owners or its forfeiture to the State of Connecticut. In turn, the State Attorney agreed not to pursue prosecutions of ACE or its arrested employees.

III. The Town Decides Not To Renew ACE's Licenses

On June 30, 2009, *i.e.*, shortly after the Carbone-St. Peter arrests, East Hartford Deputy Police Chief Murphy prepared a letter for Chief Sirois's signature proposing to revoke ACE's pawnbroker and precious metals licenses "for cause," pursuant to Conn. Gen. Stat. §§ 21-40, 21-100(a), based on the "[r]ecent occurrences" at its East Hartford location. J.A. 241. The letter advised ACE that it could request a hearing. Sirois, however, decided not to revoke ACE's licenses at that time, and the letter was never sent.

The following month, on July 20 and 21, 2009, Matuschkowitz filed applications with the Town to renew ACE's pawnbroker and precious metals licenses, which were scheduled to expire on August 9, 2009. In these applications, Matuschkowitz identified General Manager Sargent, as well as herself, as among ACE's owners or officers. Chief Sirois denied renewal, advising Matuschkowitz of his decision in a letter dated Friday, August 7, 2009, which explained that "[r]ecent occurrences" at ACE's East Hartford location "demonstrate that there exists cause not to renew." *Id.* at 379. At his deposition in this action, Sirois testified that, at the time he reviewed ACE's renewal application, he had been advised by Murphy that the State Attorney had developed incriminating evidence of stolen property trafficking against ACE East Hartford employees, including a manager; that two such employees had already been arrested; and that the arrest of a third ACE employee was anticipated. Sirois acknowledged that

he did not know the particular evidence supporting the State Attorney's actions.

ACE received Sirois's letter denying renewal on Saturday, August 8, 2009, one day before its pawnbroker and precious metals licenses expired on Sunday, August 9. On Monday, August 10, ACE General Manager Sargent requested a meeting with Sirois to discuss his adverse renewal decision. The request was denied, with Deputy Chief Murphy advising Sargent that there was no reason for a meeting. The following day, August 11, the State Attorney arrested Sargent.

Without the requisite licenses to operate as a pawnbroker or to deal in precious metals, ACE closed its East Hartford store.³

IV. District Court Proceedings

On August 12, 2009, ACE filed this action. Discovery ensued, after which the parties, on October 1, 2010, cross-moved for summary judgment, with defendants urging dismissal of all claims and ACE seeking judgment in its favor on its procedural due process claim.

³ It is not clear whether ACE would have kept the store open if it had secured renewal of only the precious metals license. That question might bear on the Town's proximate cause challenge to damages in light of the district court's rejection of ACE's procedural due process challenge to the denial of its pawnbroker license. We need not pursue the matter, however, because ACE has not challenged the district court's determination that it lacked a constitutionally protected property interest in the renewal of its pawnbroker license, and we here conclude that it lacked such an interest in renewal of its precious metals license.

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We here focus on the procedural claim, as the partial grant of summary judgment to ACE on the part of that claim pertaining to the precious metals license is the only ruling challenged on this appeal.

The district court construed Connecticut's *pawn-broker* licensing statute, particularly the phrase stating that "the chief of police of any city *may* grant [pawnbroker] licenses to *suitable persons*," see Conn. Gen. Stat. § 21-40 (emphasis added), to afford sufficient discretion to the licensing authority to preclude ACE from establishing a constitutionally protected property interest in the renewal of that license. *See Ace Partners, LLC v. Town of East Hartford*, 2011 U.S. Dist. LEXIS 113290, 2011 WL 4572109, at *2-3. Accordingly, it awarded summary judgment to defendants on that part of ACE's procedural claim. *See id.* In the absence of comparable language in the *precious metals* licensing statute, however, the district court concluded that ACE had shown a constitutionally protected property interest in the renewal of that license and, based on a lack of notice and opportunity to be heard before renewal was denied, the court awarded ACE summary judgment on that part of its procedural claim against the Town. *See* 2011 U.S. Dist. LEXIS 113290 [WL] at *4-5.

Following a failure to secure reconsideration, a determination of damages and attorney's fees, and the entry of an amended final judgment, the Town filed this appeal.

DISCUSSION

I. Standard of Review

We review a challenged award or denial of summary judgment *de novo*, and we will affirm only if the record, viewed in the light most favorable to the non-movant, shows no genuine dispute of material fact and the movant's entitlement to judgment as a matter of law. *See Jackson v. Fed. Express*, 766 F.3d 189, 193-94 (2d Cir. 2014).

To succeed on a procedural due process claim that one has been denied adequate notice of an adverse action or a meaningful opportunity to be heard, a plaintiff must first establish that the challenged action "deprived him of a protected property interest." *Spinelli v. City of New York*, 579 F.3d 160, 168 (2d Cir. 2009); *see Barrows v. Burwell*, 777 F.3d 106, 113-14 (2d Cir. 2015). To show such a protected interest, a plaintiff must demonstrate more than an "abstract need or desire" for the matter at issue, or a "unilateral expectation" as to its receipt. *Board of Regents of State Colls. v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); *accord Barrows v. Burwell*, 777 F.3d at 113. Rather, a plaintiff must establish "a legitimate claim of entitlement," one "created and . . . defined by existing rules or understandings that stem from an independent source," including, as pertinent here, state law. *Board of Regents of State Colls. v. Roth*, 408 U.S. at 577; *accord Barrows v. Burwell*, 777 F.3d at 113.

Where, as here, the asserted interest is a government-issued license or permit, a legitimate

claim of entitlement will be found to exist “where, under applicable state law, absent the alleged denial of due process, there is either a certainty or a very strong likelihood that the application would have been granted.” *Harlen Assocs. v. Inc. Vill. of Mineola*, 273 F.3d 494, 504 (2d Cir. 2001) (internal quotation marks omitted). Thus, a property interest in a license or permit largely turns on “whether the issuing authority lacks discretion to deny the permit,” *i.e.*, whether the authority “is required to issue it upon ascertainment that certain objectively ascertainable criteria have been met.” *Id.* (internal quotation marks omitted). In other words, “[a] clear entitlement, and, in turn, a constitutionally protected property interest, exists only when the discretion of the issuing agency is so narrowly circumscribed that approval of a proper application is virtually assured.” *Villager Pond, Inc. v. Town of Darien*, 56 F.3d 375, 378 (2d Cir. 1995) (internal quotation marks omitted).

Applying these principles here, we conclude that approval of ACE’s renewal application for its precious metals license was not “virtually assured” by Connecticut law so as to afford ACE the protected property interest necessary for its procedural due process claim.

II. Section 21-100(a)’s Plain Language Does Not Support ACE’s Claimed Property Interest in Renewal

In explaining this conclusion, we note at the outset that the Connecticut Supreme Court has not itself

ruled on the degree of discretion that Conn. Gen. Stat. § 21-100(a) affords local authorities in issuing or renewing the license required to deal in precious metals. *See generally Portalatin v. Graham*, 624 F.3d 69, 84 (2d Cir. 2010) (stating that federal courts are bound by highest state court’s construction of state law). In the absence of such controlling precedent, we look to whether the statute, construed according to Connecticut’s interpretive standards, unambiguously answers the question. *See Morenz v. Wilson-Coker*, 415 F.3d 230, 236-37 (2d Cir. 2005) (stating that federal court is “bound to interpret Connecticut law according to Connecticut’s own interpretative rules”). The “plain meaning” standard of statutory interpretation is codified in Connecticut law and states as follows:

The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extra-textual evidence of the meaning of the statute shall not be considered.

Conn. Gen. Stat. § 1-2z; *accord Morenz v. Wilson-Coker*, 415 F.3d at 236 (quoting § 1-2z and citing supporting Connecticut precedent).

To apply that standard here, we begin by reproducing the statutory text for Connecticut’s precious metals licensing statute. At the time ACE applied for

and was denied renewal of its licenses, that law stated in pertinent part as follows:

Sec. 21-100. License required. Fee. Record of transactions. (a) No person may engage in or carry on the business of purchasing gold or gold-plated ware, silver or silver-plated ware, platinum ware, watches, jewelry, precious stones or coins unless such person is licensed by the chief of police or, if there is no chief of police, the first selectman of the municipality in which such person intends to carry on such business [subject to exceptions not applicable here]. Such person shall pay an annual fee of ten dollars for such license. The license may be revocable for cause, which shall include, but not be limited to, failure to comply with any requirements for licensure specified by the licensing authority at the time of issuance. A chief of police or first selectman shall refuse to issue a license under this subsection to a person who has been convicted of a felony. A chief of police or first selectman may require any applicant for a license to submit to state and national criminal history records checks.

Conn. Gen. Stat. § 21-100(a) (2001).

The parties' arguments require us to consider this precious metals licensing statute in relation to Connecticut's pawnbroker licensing statute. Accordingly, we also reproduce the relevant sections of the latter statute as in effect at the pertinent time:

Sec. 21-39. License required. . . . No person, corporation, limited liability company or partnership shall, in any city or town of this state, engage in or carry on the business of loaning money upon deposits or pledges of [tangible property], or of purchasing such property on condition of selling the same back again at a stipulated price, unless such person, corporation, limited liability company or partnership is licensed as a pawnbroker. . . .

Sec. 21-40. Issuance of licenses. Fees. The selectmen of any town and the chief of police of any city may grant licenses to suitable persons to be pawnbrokers . . . and may revoke such licenses for cause. . . . The person so licensed shall pay . . . a license fee of fifty dollars, and twenty-five dollars per year thereafter for renewal of such license, and shall, at the time of receiving such license, file . . . a bond to such city or town, with competent surety, in the penal sum of two thousand dollars, to be approved by such licensing authority, and conditioned for the faithful performance of the duties and obligations pertaining to the business so licensed. Each such license shall designate the place where such business is to be carried on and shall continue one year unless sooner revoked. No license shall be issued under this section by the selectmen or chief of police to any person who has been convicted of a felony. The selectmen or chief of police may require any applicant for

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a license under this section to submit to state and national criminal history records checks.

Id. § 21-39 (1997), § 21-40 (2001).⁴

Focusing now on particular statutory language, we note that the opening words of § 21-100(a), no less than the opening words of § 21-39, speak of prohibition, not entitlement: “No person” can conduct either a precious metals or pawnbroker business in the State of Connecticut unless he is licensed to do so by designated authorities of the municipality where the business will be conducted. *See generally Aurilio v. Sweeney*, No. CV 980357150S, 1999 Conn. Super. LEXIS 663, 1999 WL 171414, at *4 (Conn. Super. Ct. Mar. 11, 1999) (observing that § 21-100(a) is “a prohibition of the business unless a license is obtained” (internal quotation marks omitted)), *aff’d* 60 Conn. App. 908, 761 A.2d 801 (Conn. App. Ct. 2000). Neither § 21-100(a) nor § 21-40 pronounce specific requirements for securing a license, although both prohibit the licensing of convicted felons and impose annual fees. The text of the precious metals licensing statute, however, plainly contemplates “requirements,” and moreover, as discussed in the next paragraph, affords police chiefs virtually unfettered discretion to specify them. Conn. Gen. Stat. § 21-100(a).

⁴ As noted *supra* at 3 n.1, ACE does not appeal the district court’s determination that these statutory sections confer no property interest in the issuance or renewal of a pawnbroker license.

This is evident from the statute’s revocation provision, which states that precious metals licenses may be revoked “for cause,” a term that is not statutorily defined except to state that it “shall include, but not be limited to, failure to comply with *any requirements for licensure specified by the licensing authority at the time of issuance.*” *Id.* (emphasis added). By thus referencing “requirements for licensure,” the statute makes clear that the issuance or renewal of a precious metals license is subject to such requirements as, here, the chief of police may specify in the exercise of his discretion. See Webster’s Third New International Dictionary 1929 (1976) (defining “requirement” as “something required,” “a requisite or essential condition”); *State v. Agron*, 323 Conn. 629, 148 A.3d 1052, 1056 (Conn. 2016) (presuming, in absence of statutory definition, that legislature intended word to have its “ordinary meaning” as expressed in dictionary (internal quotation marks omitted)). Further, by using the expansive adjective “any” to describe these “requirements for licensure,” while providing no statutory criteria for such requirements, the statute makes plain that the chief’s discretion to specify requirements is virtually unfettered. See *United States v. Gonzales*, 520 U.S. 1, 5, 117 S. Ct. 1032, 137 L. Ed. 2d 132 (1997) (construing word “any” to have expansive meaning, that is, “‘one or some indiscriminately of whatever kind’” (quoting Webster’s Third New International Dictionary 97 (1976))); *Commission on Human Rights & Opportunities v. Bd. of Educ. of Cheshire*, 270 Conn. 665, 855 A.2d 212, 238 (Conn. 2004) (recognizing that unless context signals

otherwise, word “any” constitutes “broad and inclusive language”).

To be sure, even broad licensing discretion cannot be exercised arbitrarily, invidiously, or discriminatorily. But that does not mean that an applicant has a property interest in issuance of the license. Rather, such potential abuses are checked by substantive due process and equal protection, which apply regardless of whether an applicant has a property interest protected by procedural due process.⁵ In deciding whether ACE has such a constitutionally protected property interest, we consider only the degree of licensing discretion afforded police chiefs by § 21-100(a). We conclude that, far from “lack[ing] discretion to deny” ACE a renewal of a precious metals license, *Harlen Assocs. v. Inc. Vill. of Mineola*, 273 F.3d at 504, the police chief had broad discretion to do just that by virtue of his authority to specify licensing requirements. Indeed, that is the conclusion reached by the only state court that appears to have construed § 21-100(a). *See Aurilio v. Sweeney*, 1999 Conn. Super. LEXIS 663, 1999 WL 171414, at *4 (concluding from lack of statutory criteria for issuing agent to determine whether precious metals license should issue that legislature intended

⁵ ACE does not here appeal the district court’s rejection of its substantive due process claim for failure to show that the refusal to renew its licenses was arbitrary. Nor has it ever asserted an equal protection claim.

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issuance of such license to rest within agent's "sound discretion").⁶

That conclusion is only reinforced by the statute's reference to requirements specified "at the time of issuance." Conn. Gen. Stat. § 21-100(a). This makes plain that requirements need not be specified for applicants in advance of their applications. Rather, the police chief's discretion is broad enough to allow him to specify requirements right up until the time of issuance to address concerns raised by facts and circumstances attending that application. Thus, a police chief can decide to issue a license, but only on condition that the licensee abide by requirements specified at the time of issuance. It necessarily follows that the chief can also decline to issue licenses where it is apparent that an applicant already fails to satisfy such requirements. Indeed, it would be absurd to construe § 21-100(a) otherwise, so as to allow a police chief, for example, to issue a license on condition that no employee of the licensee be arrested for criminal activity on the premises, but to preclude him from denying a license to an applicant whose employees have already been arrested and are pending investigation for such conduct. *See generally Allen v. Comm'r of Revenue Servs.*, 324

⁶ Because *Aurilio* is not a decision of the Connecticut Supreme Court, it does not control our construction of § 21-100(a). Nevertheless, the decision can be a "helpful indicator" of how Connecticut's highest court might view the discretion issue. *Reddington v. Staten Island Univ. Hosp.*, 511 F.3d 126, 133 (2d Cir. 2007) (recognizing that decisions by intermediate state courts, while not binding, can be "helpful indicators" of how state's highest court might view issue).

Conn. 292, 152 A.3d 488, 501 (Conn. 2016) (discussing “well established” tenet that “those who promulgate statutes do not intend absurd consequences or bizarre results” (alterations and internal quotation marks omitted)), *cert. denied*, 137 S. Ct. 2217, 198 L. Ed. 2d 659 (2017).

That the police chief here effectively imposed a no-employee-arrest requirement is evident from the explanation he gave ACE for not renewing its precious metals license. To the extent § 21-100(a) provides for the police chief to “specify” requirements for licensure, the police chief’s denial letter appears not to have articulated such a no-arrest requirement with the precision or detail contemplated by that verb. *See Webster’s Third New International Dictionary* 2187 (1976) (defining “specify” as “to mention or name in a specific or explicit manner,” to “tell or state precisely or in detail”). But ACE can hardly claim that it was prejudiced by lack of specificity here. The record admits no dispute that (1) ACE employees had been arrested and were then under investigation for attempting to receive stolen property from undercover officers at the licensed premises, and (2) ACE understood the reference to “recent events” in the police chief’s denial letter to allude to these arrests as well as to related seizures from its premises incident to a search warrant. J.A. 379.

Indeed, rather than argue inadequate specification, ACE complains that Chief Sirois lacked personal knowledge of the facts supporting the referenced arrests, and emphasizes that neither ACE nor its employees were ultimately prosecuted by the State

Attorney. The argument merits little discussion. ACE does not—and cannot—argue that the arrests were not well supported by probable cause, or that the denial of renewal was arbitrary. In any event, the issue before us is not whether sufficient evidence (or knowledge of evidence) supported Sirois’s exercise of discretion. We consider only whether the language of § 21-100(a) so effectively deprived Sirois of discretion to do anything but grant ACE’s renewal application in the circumstances of this case that ACE can claim a protected property interest. For the reasons just explained, we conclude that the statutory language, far from affording little or no renewal discretion to the police chief here, granted him such broad discretion to specify any requirements for licensure right up to the time a license would have issued, that ACE cannot show that the renewal of its license was virtually assured.

In urging otherwise, ACE relies on the 1981 amendment to § 21-100(a), which added the earlier-referenced felon bar. That bar states that the chief of police “shall refuse to issue a [precious metals] license . . . to a person who has been convicted of a felony.” Conn. Gen. Stat. § 21-100(a). This text cannot be construed, as ACE urges, to make “the only requirement” for a precious metals license “that the holder not be a convicted felon”—a conclusion reached with neither textual analysis nor citation to authority in *Curcio v. Torres*, No. 3:00-cv-976 (GLG), 2000 U.S. Dist. LEXIS 16252, 2000 WL 1610767, at *3 (D. Conn. Oct. 4, 2000), and quoted approvingly by the district court here, see *Ace Partners, LLC v. Town of East Hartford*, 2011 U.S.

Dist. LEXIS 113290, 2011 WL 4572109, at *4.⁷ While the words “shall refuse” are properly construed as a mandate that limits the chief of police’s licensing discretion, *see generally Wiseman v. Armstrong*, 295 Conn. 94, 989 A.2d 1027, 1031 (Conn. 2010) (“[T]he word shall creates a mandatory duty when it is juxtaposed with a substantive action verb.” (alteration and internal quotation marks omitted)), what that mandate here limits is the police chief’s discretion to *grant* licenses, not his discretion to *deny* them. In other words, the quoted felon bar removes from the sphere of persons to whom the police chief can grant precious metals licenses those persons convicted of felony crimes. But within the class of non-felons, the 1981 amendment leaves undisturbed § 21-100(a)’s language affording the chief broad discretion to specify “any requirements for licensure.” Conn. Gen. Stat. § 21-100(a); *see Aurilio v. Sweeney*, 1999 Conn. Super. LEXIS 663, 1999 WL 171414, at *4-5. Indeed, despite its agreement with *Curcio*, the district court acknowledged a police chief’s statutory authority to set further requirements for licensure, concluding that if a non-felon applicant “fulfills those requirements, the chief has no discretion as

⁷ *Curcio* failed to acknowledge, much less distinguish, the contrary construction of § 21-100(a) by a Connecticut court in *Aurilio v. Sweeney*, 1999 Conn. Super. LEXIS 663, 1999 WL 171414, at *4-5. The district court acknowledged the different interpretations, *see ACE Partners, LLC v. Town of East Hartford*, 2011 U.S. Dist. LEXIS 113290, 2011 WL 4572109, at *4 (observing that *Aurilio* construed § 21-100(a) to grant police chief “unlimited discretion” while *Curcio* construed statute to grant “no discretion”), but concluded simply that it “agree[d] with the decision in *Curcio*,” *id.*; *but see infra* at 17.

to whether to issue the license.” *Ace Partners, LLC v. Town of East Hartford*, 2011 U.S. Dist. LEXIS 113290, 2011 WL 4572109, at *4. What the district court failed to consider, however, is that the police chief here effectively specified a requirement for licensure that ACE could not satisfy, *i.e.*, that its employees not have been arrested for illegal business activities on the licensed premises. For reasons already stated, we conclude that doing so fell well within the broad discretion afforded the police chief by § 21-100(a).⁸

Barletta v. Rilling, 973 F. Supp. 2d 132 (D. Conn. 2013), cited by ACE, is not to the contrary. The district court there held that § 21-100(a)’s felon bar violated equal protection because it was overbroad to the state’s purpose. *See id.* at 135-40. That determination was not appealed and is not before us today or relevant to our analysis. In *Barletta*, however, the district court went on to reject a procedural due process challenge to the denial of a precious metals license, stating that “[n]othing in state law or custom gave [plaintiff] a property right to a precious metals license.” *Id.* at 140.

Despite this statement anticipating our holding today, ACE maintains that *Barletta*, like *Curcio*, construed § 21-100(a) to “require[] a municipality to issue a precious metals license to an applicant unless the applicant is a felon.” Appellee Br. at 17. In support, it cites

⁸ Nothing in § 21-100(a) appears to prevent a person from submitting a new license application when it can satisfy the requirement at issue as, for example, here, by ACE showing that no person arrested for criminal activities relating to its business would have an interest in or be employed at the licensed premises.

Barletta's observation, made in the course of its equal protection analysis, that, after addition of a felon bar to § 21-40, "anyone other than persons convicted of a felony *could* obtain a precious metals license." *Barletta v. Rilling*, 973 F. Supp. 2d at 138 (emphasis added). The argument fails for the simple reason that "could" does not mean "must." Indeed, when the quoted language is placed in context, it is evident that *Barletta* recognized the felon bar to limit the police chief's broad licensing discretion in "only one way," *i.e.*, he could not issue precious metals licenses to convicted felons in any circumstances. *Id.* The chief's discretion was not "bounded," however, as to non-felons who "could" still obtain such licenses in the exercise of the chief's discretion to specify requirements. *Id.* (observing that "bar of every person ever convicted of a felony . . . left [police chief's] discretion bounded in only one way: anyone other than persons convicted of a felony could obtain a precious metals license").

ACE nevertheless maintains that police chiefs lack discretion to deny precious metals licenses to non-felons because § 21-100(a) does not contain language akin to that in § 21-40 stating that police chiefs "may grant [pawnbroker] licenses to suitable persons." Conn. Gen. Stat. § 21-40. Analyzing other licensing statutes with comparable "suitable persons" language, the Connecticut Supreme Court has held that determining an applicant's suitability necessarily requires the issuing agent to exercise "judgment and reasoned discretion." *Ballas v. Woodin*, 155 Conn. 283, 231 A.2d 273, 275 (Conn. 1967). The district court relied on this

precedent in concluding that ACE lacked a protected property interest in the renewal of its pawnbroker license because “[t]he ‘suitable person’ determination gives the chief of police enough discretion that a given applicant . . . cannot be certain that he will be found suitable.” *Ace Partners, LLC v. Town of East Hartford*, 2011 U.S. Dist. LEXIS 113290, 2011 WL 4572109, at *3. ACE maintains that when the § 21-100(a) felon bar is considered together with the absence of “suitable person” language, the statute must be understood to deprive police chiefs of discretion to deny precious metals licenses to non-felons.

Indeed, ACE argues that this conclusion is compelled by legislative history showing that, as initially proposed, the 1981 amendment to § 21-100(a) would have added not only a felon bar but the following “suitable person” language: “A chief of police or first selectman may refuse to issue a license under this subsection upon a sufficient finding that the applicant is not a suitable person to receive such license. No license shall be issued to a person who has been convicted of a felony.” H.B. 5174, 1981 Leg., Gen. Assemb., Jan. Sess. (Conn. 1981). ACE submits that the deletion of the first sentence from the final amendment signals legislative intent to deny police chiefs discretion to deny precious metals licenses to non-felons. *See* H. Amendment A to H.B. 5174, 1981 Leg., Gen. Assemb., Jan. Sess. (Conn. 1981).

The legislative history cited by ACE does not evidence such intent. It merely recites the fact that the “suitable person” language was deleted from the final

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amendment. *See Proceedings Before Conn. S. Gen. Assemb.*, 1981 Leg., Vol. 24, Pt. 9, 2762-3066, at 3045 (Conn. 1981) (statement of Sen. Mustone) (referencing “eliminat[ion] from the Bill [of] authorization for the local licensing authority to refuse to issue a license to an unsuitable person”); *Proceedings Before Conn. H. Gen. Assemb.*, 1981 Leg., Vol. 24, Pt. 10, 3133-3481, at 3443 (Conn. 1981) (statement of Rep. Carragher) (referencing deletion of “unsuitable person language” from amendment, so that statute “will now in fact mandate that” licensing authority “not issue a license to a convicted felon”). Nothing in these statements explains *why* the language was removed.

Our task, however, is not to speculate about legislative intent with respect to language *not* included in § 21-100(a). Our task is to construe the statutory text in effect at the time of the events in dispute. In 1983, Connecticut amended the precious metals statute to clarify that revocation for cause “shall include . . . failure to comply with *any requirements for licensure* specified by the licensing authority.” 1983 Conn. Acts 689 (Reg. Sess.) (codified as amended at Conn. Gen. Stat. § 20-100(a) (1983)) (emphasis added). ACE’s reliance on the felon bar to argue lack of discretion as to non-felons fails because it ignores this statutory text.

Thus, § 21-100(a) and § 21-40 both afford licensing discretion, albeit through different language: § 21-100(a) through a provision to specify “any requirements for licensure,” § 21-40 through a “suitable person” provision. We need not here decide whether the authority to specify “any requirement for licensure”

affords discretion that is the functional, if not the precise, equivalent of identifying a person's suitability to hold a license. We conclude only that the former task reaches broadly and requires the exercise of "judgment and reasoned discretion" as much as the latter. *Ballas v. Woodin*, 231 A.2d at 275. Indeed, because § 21-100(a) allows licensing requirements to be identified up to the time of issuance, and because such requirements may respond to concerns that become apparent only upon review of an application and its attending circumstances, the applicant for a precious metals license can be no more certain than the applicant for a pawnbroker license that its application will be granted and the requested license issued. Thus, we conclude that § 21-100(a) does not confer on non-felons a constitutionally protected property interest in the issuance or renewal of a precious metals license.

ACE nevertheless strives to preserve its judgment by arguing that even if § 21-100(a) is properly construed not to confer a property interest in the issuance of a new license, the same conclusion should not obtain for license renewals, which are more akin to revocations. Connecticut law does not support the argument. Once a license is issued, Connecticut recognizes the licensee to hold a property interest protected by procedural due process, but the interest lasts only for the term of the license. See *Hart Twin Volvo Corp. v. Comm'r of Motor Vehicles*, 165 Conn. 42, 327 A.2d 588, 591 n.1 (Conn. 1973) (holding that "license, being within the scope of the protection afforded by the *due process clause*, is indeed a property right once it has

been issued, and it remains such *until its expiration date* so long as the laws pertaining to its use are obeyed” (emphasis added)); *Rocque v. Conn. Waste Oil, Inc.*, No. CV 010809202S, 2001 Conn. Super. LEXIS 3769, 2001 WL 1743219, at *2 (Conn. Super. Ct. Dec. 20, 2001) (rejecting due process challenge to denial of license renewal because “property right expired when the permit expired”). Thus, whatever support ACE might find in other states’ laws for equating renewal denials and revocations, *see Club Misty, Inc. v. Laski*, 208 F.3d 615, 618 (7th Cir. 2000) (observing that Illinois law treats refusal to renew license for cause as equivalent to revocation, affording a constitutionally protected property interest in renewal), Connecticut law affords none.

In sum, nothing in the plain language of Connecticut’s precious metals licensing statute, even when viewed together with its pawnbroker statute, gives rise to “a certainty or a very strong likelihood” that ACE’s precious metals license would be renewed in the circumstances of this case. *Harlen Assocs. v. Inc. Vill. of Mineola*, 273 F.3d at 504. Far from compelling the chief of police to issue or renew precious metals licenses to non-felons, the plain language of § 21-100(a) affords the chief virtually unfettered discretion to grant, renew, or deny licenses to such applicants by allowing him to specify “any requirements for licensure” that he deems warranted and to do so up to the time he makes the licensing decision. “Any requirements” is broad enough to allow the chief to specify requirements addressing concerns raised by a particular application, as

for example here, a requirement that none of the applicant's employees have been arrested and be pending investigation for criminal activity on the licensed premises. While the chief of police may have failed to state such a requirement as explicitly or precisely as contemplated by the word "specify," the record indicates both that ACE could not satisfy that requirement and that it understood that to be the reason for denial. In these circumstances, and in the face of such broad statutory authority to set licensing requirements, ACE cannot show that, but for the denial of procedural due process, § 21-100(a) "virtually assured" the renewal of its precious metals license. *Villager Pond, Inc. v. Town of Darien*, 56 F.3d at 378 (internal quotation marks omitted).

Accordingly, the judgment in favor of ACE on its procedural due process claim against the Town for failing to renew its precious metals license is reversed, and the case is remanded to the district court for the entry of judgment in favor of the Town on this claim and, thus, for defendants on all claims.

III. Reversal of the Judgment in Favor of ACE Necessarily Reverses the Award of Attorney's Fees to It as a Prevailing Party

Title 42 U.S.C. § 1988(b) allows a court to award "reasonable attorney's fees" to the "prevailing party" in a § 1983 action. The district court effectively designated ACE a prevailing party, at least in part, when, on September 22, 2014, it entered judgment in ACE's

favor on its procedural due process challenge to the Town's refusal to renew its precious metals license. Thereafter, ACE relied on the September 22, 2014 judgment in its favor to move for attorney's fees, which the district court ordered on April 21, 2016. The district court reiterated this fees award in its amended final judgment of August 11, 2016, the focus of which was to award ACE pre- and post-judgment interest on earlier ordered compensatory damages.

Our reversal of the district's court judgment because ACE failed to demonstrate the property interest required for a procedural due process claim necessarily extends to reverse the award of attorney's fees. This is because that merits ruling removes from this case the essential predicate for an award of fees. ACE is not, and cannot be considered ever properly to have been, a "prevailing party." *See Altman v. Bedford Cent. Sch. Dist.*, 245 F.3d 49, 81 (2d Cir. 2001) (reversing § 1988(b) fees award to plaintiff following reversal of its First Amendment claim); *Russo v. State of New York*, 672 F.2d 1014, 1023 (2d Cir. 1982) (citing precedent foreclosing § 1988 fees award to party who did not succeed on civil rights claim), *modified on other grounds*, 721 F.2d 410 (2d Cir. 1983).

In seeking to avoid this result, ACE argues that we lack jurisdiction to review the fees award because the Town failed timely to appeal from the district court's April 21, 2016 order. *See Appellee Br.* at 29-30 (arguing that, under Fed. R. Civ. P. 58(a)(3), an award of attorney's fees pursuant to Fed. R. Civ. P. 54(d) is an appealable final order when entered on docket). In

support, it cites precedent recognizing that “a postjudgment order granting a *prevailing party* its attorney’s fees is collateral to the final judgment in a case.” *Id.* at 29 (collecting cases) (emphasis added). Such an argument might have some appeal if the only fees issues before us were collateral to a final judgment in ACE’s favor, for example, the Town’s challenge to the reasonable calculation of attorney’s fees. But it does not persuade here, where our reversal of final judgment on the merits means that ACE was never properly identified as a prevailing party. *See Sole v. Wyner*, 551 U.S. 74, 86, 127 S. Ct. 2188, 167 L. Ed. 2d 1069 (2007) (holding that plaintiff who secures preliminary injunction does not qualify as prevailing party entitled to § 1988(b) award of attorney’s fees “if the merits of the case are ultimately decided against her”); *Clark v. Township of Falls*, 890 F.2d 625, 626-27 (3d Cir. 1989) (“In general, when a judgment in favor of a plaintiff is reversed on the merits, that party is no longer a ‘prevailing party’ under 42 U.S.C. § 1988 and no longer entitled to attorney’s fees under that statute.”); *cf. Kirk v. N.Y.S. Dep’t of Educ.*, 644 F.3d 134, 138 (2d Cir. 2011) (concluding that § 1983 plaintiff who obtained favorable judgment on full record did not lose “prevailing party” status when appeal was declared moot; “no court overturned Kirk’s favorable judgment on the merits or rejected the legal premise of the district court’s decision”).

There is no question here that the Town filed timely notices of appeal from the district court’s September 22, 2014 judgment in favor of ACE, as well as

from the court's amended final judgment of August 11, 2016. Thus, our reversal of that judgment on the merits necessarily requires us to reverse the award of attorney's fees to ACE, which depended on that judgment.

CONCLUSION

To summarize, we hold as follows:

1. Conn. Gen. Stat. § 21-100(a) does not afford applicants a property interest in the issuance or renewal of a precious metals license. Thus, the district court erred in awarding ACE summary judgment on its claim that the Town's decision not to renew its license following the arrests of ACE employees for attempting to receive stolen property on the licensed premises violated procedural due process. Rather, summary judgment must be entered in favor of the Town.

2. Because our reversal of summary judgment to ACE is a merits decision, ACE is not and could not ever properly have been considered a "prevailing party," the necessary predicate for any award of attorney's fees pursuant to 42 U.S.C. § 1988(b). We, therefore, reverse that award as well.

Accordingly, the amended judgment of the district court is REVERSED in all respects and the case is REMANDED for the district court to enter judgment on all claims in favor of defendants.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ACE PARTNERS, LLC d/b/a	:	
TC's PAWN COMPANY	:	
Plaintiff,	:	
V.	:	
TOWN OF EAST HART-	:	CASE NO.
FORD; TOWN OF EAST	:	3:09-CV-1282 (RNC)
HARTFORD POLICE	:	
DEPARTMENT; MARK J.	:	
SIROIS; JOHN MURPHY,	:	
Defendants.	:	

RULING AND ORDER

(Filed Sep. 30, 2011)

Plaintiff Ace Partners, LLC d/b/a TC's Pawn Company, brings this action under 42 U.S.C. §§ 1981 and 1983 against the Town of East Hartford, the Town of East Hartford Police Department, its Chief of Police, and its former Deputy Chief seeking damages for alleged violations of its Fourteenth Amendment rights to procedural and substantive due process. Plaintiff alleges that defendants unlawfully deprived it of the use of its pawnbroker and precious metals licenses when they failed to renew the licenses. Defendants have moved for summary judgment, and plaintiff has moved for partial summary judgment. For the reasons that follow, defendants' motion is granted in part and

denied in part, and plaintiff's motion is also granted in part and denied in part.

I. Facts

Plaintiff runs TC's Pawn Company, a pawnbroker and precious metals business. In October 2007, plaintiff opened an East Hartford location of TC's Pawn Company, and from then until August 9, 2009, it operated under one-year pawnbroker and precious metals licenses issued by Chief Mark J. Sirois of the Town of East Hartford Police Department. The licenses issued in 2008 were set to expire on August 9, 2009.

In 2009, the Connecticut State's Attorney's Office led an investigation that focused on pawnbrokers in Connecticut suspected of selling stolen merchandise. As a result of the investigation, on June 2, 2009, the State obtained and executed search warrants at plaintiff's East Hartford location. Two of plaintiff's employees were arrested on charges of attempt to commit larceny. Months later, on August 11, plaintiff's general manager Jay Sargent was arrested and charged with attempt to commit larceny. In 2010, the State agreed not to prosecute TC's Pawn Company or Sargent.

After the June arrests, Sirois learned from then Deputy Chief John Murphy that two of plaintiff's employees had been arrested in connection with the State's investigation, and that a third arrest was forthcoming. Sirois Dep. 34:14-35:12. He also knew that the investigation was initiated in response to a concern that stolen goods were being fenced by local pawn

shops. Sirois Dep. 36:1-4. He did not know any other details about the arrests. Several weeks later, on June 30, 2009, Chief Sirois drafted a letter to plaintiff stating that “[r]ecent occurrences at TC’s PAWN CO demonstrate that there exists cause to revoke each License.” Pl.’s Ex. 9. The letter provided an opportunity for plaintiff to contest the revocation by requesting a hearing. Chief Sirois never sent the letter, however, and plaintiff continued to operate under its pawnbroker and precious metals licenses.

On July 20, 2009, plaintiff applied for renewal of its licenses. Sirois decided not to renew plaintiff’s licenses, and he sent a letter on August 7, the Friday before plaintiff’s licenses were to expire, saying the licenses would not be renewed. Plaintiff received Sirois’s letter denying its application for renewal on Saturday, August 8, 2009. The letter did not provide for a post-deprivation hearing.

Between the June arrests and the August denial, plaintiff’s general manager Sargent spoke with officers and administrators at the East Hartford Police Department about the license renewals. He talked with two police officers numerous times, and received assurances that there would be no problem getting the licenses renewed. Pl.’s Supp. Ex. 1 ¶¶ 4-5. After plaintiff applied for renewal, Sargent spoke several times with Donna Lemaire, the records supervisor, who told him that he should not worry, that she had not heard of problems with the applications, and that nobody wanted to talk to him about the applications. As late as August 7, Lemaire told Sargent the renewals would

be taken care of, and Sargent should call the detectives he usually dealt with on Monday and tell them he was still waiting for approval, in order to avoid problems after the license expired. Sargent never spoke with Sirois.

II. Discussion

Plaintiff asserts both procedural and substantive due process claims. It claims that defendants infringed its procedural due process rights by refusing to renew the licenses, thereby depriving it of use of the licenses, without notice or opportunity for a hearing. It also claims that defendants infringed its substantive due process rights by depriving it of the licenses without justification. Defendants move for summary judgment on the ground that plaintiff did not have a property interest in the renewal of its licenses. They also contend that defendant Murphy lacked the personal involvement necessary to be liable for damages under § 1983, that Sirois and Murphy are protected by qualified immunity, and that the claims against the City fail because it had no custom or policy to violate constitutional rights. Plaintiff moves for partial summary judgment on its procedural due process claim.

A. Procedural Due Process

To show a violation of its procedural due process rights, plaintiff needs to show it had a protected property interest in the renewal of its licenses. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538

(1985). Plaintiff must have had “more than a unilateral expectation” that its licenses would be renewed to have a property interest; instead, it must have had “a legitimate claim of entitlement” to renewal. *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). Entitlements giving rise to property rights are created not by the Fourteenth Amendment itself but “by existing rules or understandings that stem from an independent source such as state law.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. at 538 (quoting *Bd. of Regents v. Roth*, 408 U.S. at 577). Plaintiff may have a property interest if there are “rules or mutually explicit understandings that support [its] claim to entitlement.” *Perry v. Sindermann*, 408 U.S. 593, 601 (1972).

i. The Pawnbroker License

If state law gives a government official discretion to decide whether to grant a benefit, a plaintiff cannot claim an entitlement to that benefit and therefore cannot demonstrate a protected property interest. *See Sanitation & Recycling Indus., Inc. v. City of New York*, 107 F.3d 985, 995 (2d Cir. 1997); *Conde v. Town of Sharon*, 421 Fed. Appx. 26, at *1 (2d Cir. 2011). Section 21-40 of the Connecticut General Statutes, governing the issuance, renewal, and revocation of pawnbroker licenses, gives a chief of police some degree of discretion, in that it requires the chief to issue licenses only to “suitable persons.”

The Connecticut Supreme Court, analyzing licensing statutes that use the same language, has found

that a licensing official, in determining whether an applicant is suitable, must exercise “judgment and reasoned discretion.” *Ballas v. Woodin*, 231 A.2d 273, 275 (Conn. 1967) (citations omitted). The Court has defined “suitable person” as “a person who is shown to the licensing authority to be suited or adapted to the orderly conduct of a business which the law regards as dangerous to public welfare unless conducted by a carefully selected person duly licensed.” *Hopson’s Appeal*, 31 A. 531, 531 (Conn. 1894).

Connecticut courts have applied this line of cases developing the “suitable person” standard to the pawnbroker statute at issue here. *See Aurilio v. Sweeney*, 1999 WL 171414 (Conn. Super. Ct. Mar. 11, 1999), aff’d 60 Conn. App. 908 (2000) (refusing to issue writ of mandamus ordering chief of police to renew and reinstate plaintiff’s licenses). Significantly, the plaintiff in *Aurilio* sought a renewal of his license, not a new license entirely, and the state court analyzed his renewal claim under the statutory scheme for license issuance.

I conclude that the level of discretion conferred on a chief of police by the pawnbroker statute precludes a legitimate claim of entitlement. *See Sanitation & Recycling Indus.*, 107 F.3d at 995. In the related context of land use permits, the Second Circuit has held that a license applicant has a property interest if “absent the alleged denial of due process, there is either a certainty or a very strong likelihood that the application would have been granted.” *Yale Auto Parts, Inc. v. Johnson*, 758 F.2d 54, 59 (2d Cir. 1985). The “suitable person”

determination gives the chief of police enough discretion that a given applicant, such as TC Pawn, cannot be certain that he will be found suitable.

It is true that “[o]nce licenses are issued . . . their continued possession may become essential in the pursuit of a livelihood.” *Bell v. Burson*, 402 U.S. 535, 539 (1971). However, plaintiff had a one-year pawnbroker license, not an indefinite one. Plaintiff’s property right in the license, then, lasted for one year only. A plaintiff may have a property interest in the renewal of a license if mandatory language restricts the reviewing body’s discretion. See *Thornton v. City of St. Helens*, 425 F.3d 1158, 1164 (9th Cir. 2002). But no such language can be found in the pawnbroker statute.

Plaintiff argues that “mutually explicit understandings” created a property interest in renewal of the pawnbroker license, while defendants argue that such understandings cannot create a property interest when they are contrary to the express provisions of a statute. I agree with the defendants. See *Chu v. Schweiker*, 690 F.2d 330, 334 (1982); *Baden v. Koch*, 638 F.2d 486 (2d Cir. 1980). The pawnbroker statute gives discretion to the chief of police and understandings to the contrary do not create a property interest.

To the extent that a promise by a licensing official may create an entitlement to a license, plaintiff has provided no evidence of a promise from Chief Sirois. Sargent spoke with police officers and an administrator about the license, but never spoke to Chief Sirois directly. Plaintiff has not shown that anyone claimed

to speak on behalf of the chief. Only Chief Sirois had the discretion to grant the application, and only Chief Sirois's statements could create an entitlement. *See Santella v. Chicago*, 936 F.2d 328, 332 (7th Cir. 1991) ("Promises may have been made to [plaintiff]. They might even have been made by some very influential people. But because they were not made by the only person who counted, they were unauthorized, nonbinding, and without legal effect.").

ii. The Precious Metals License

Connecticut law provides a different standard for the issuance of a license to purchase precious metals. Section 21-100(a) of the Connecticut General Statutes says:

No person may engage in or carry on the business of purchasing gold or gold-plated ware, silver or silver plated ware, platinum ware, watches, jewelry, precious stones or coins unless that person is licensed by the chief of police or, if there is no chief of police, the first selectman of the municipality in which such person intends to carry on such business. . . . The license may be revocable for cause, which shall include, but not be limited to, failure to comply with any requirements for licensure specified by the licensing authority at date of issuance. A chief of police or first selectman shall refuse to issue a license under this subsection to a person who has been convicted of a felony. . . .

Unlike the pawnbroker statute, the precious metals statute does not have any language delineating the chief's discretion. Courts have differed on how to interpret this absence of discretionary language. A judge of the Superior Court has read this language as granting the chief unlimited discretion. *See Aurilio*, 1999 WL 171414, at *5 ("Section 21-100 contains no criteria for issuing precious metals licenses, but rather relies on the defendant's exercise of discretion."). A judge of this Court has read the section as granting no discretion. *See Curcio v. Torres*, 2000 WL 1610767, at *3 (D. Conn., Oct. 4, 2000) ("Section 21-40 requires that the holder of a pawnbroker's license must be 'a suitable person,' and the Police Chief has some discretion in issuing or revoking such licenses. With respect to precious metals licenses, the only requirement seems to be that the holder not be a convicted felon and there was no evidence that the plaintiff is a convicted felon."). While federal courts must give "proper regard" to the decisions of lower state courts, we may also consider federal court decisions interpreting state law. *Phansalkar v. Andersen Weinroth & Co., L.P.*, 344 F.3d 184 (2d Cir. 2003) (citing *Santalucia v. Sebright Transp., Inc.*, 232 F.3d 293, 297 (2d Cir. 2000); *Travelers Ins. Co. v. 633 Third Assocs.*, 14 F.3d 114, 119 (2d Cir. 1994); and *AXA Marine and Aviation Ins. (UK) Ltd. v. Seajet Indus. Inc.*, 84 F.3d 622, 626 (2d Cir. 1996)). In this instance, I agree with the decision in *Curcio*. Section 21-100 charges the chief of police with issuing precious metals licenses. It prohibits him from issuing a license to a felon and it recognizes that he may set "requirements for licensure." If an applicant fulfills those requirements, the

chief has no discretion as to whether to issue the license. Because a qualified applicant is entitled to a precious metals license, the applicant has a property interest in the license. *See RRI Realty Corp. v. Incorporated Village of Southampton*, 870 F.2d 911, 918 (2d Cir. 1989).

Defendant Sirois declined to renew plaintiff's precious metals license even though the applicant was not a felon. Plaintiff was not afforded notice or an opportunity for a hearing of any kind to show that it was qualified. Therefore, plaintiff was denied procedural due process with respect to its application for a precious metals purchasing license, and I grant plaintiff's motion for summary judgment in relevant part.

B. Substantive Due Process

Plaintiff claims that its right to substantive due process was violated when defendants refused to renew its licenses. The substantive component of the Fourteenth Amendment Due Process Clause protects individual rights against "certain government actions regardless of the fairness of the procedures used to implement them." *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 125 (1992) (quoting *Daniels v. Williams*, 474 U.S. 327, 331 (1986)). To show a substantive due process violation, a plaintiff must first identify the constitutional right and then demonstrate that the state action was constitutionally arbitrary. *See Lowrance v. Achtyl*, 20 F.3d 529, 537 (2d Cir. 1994).

Plaintiff's substantive due process claim can succeed only if it was deprived of a constitutionally cognizable property interest. *Villager Pond, Inc. v. Town of Darien*, 56 F.3d 375, 378 (2d Cir. 1995), cert. denied, 519 U.S. 808 (1996). As discussed above, plaintiff did not possess a property right in the renewal of its pawnbroker license. Its substantive due process claim with respect to that license therefore fails.

Plaintiff did, however, possess a property right in the renewal of its precious metals license. To succeed on its claim, then, plaintiff must show that the government's action was "constitutionally arbitrary," in that it was not merely irrational but so egregious as to "shock[] the conscience." *O'Connor v. Pierson*, 426 F.3d 187, 204 (2d Cir. 2005) (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)). "[W]hether executive action shocks the conscience depends on the state of mind of the government actor and the context in which the action was taken." *Id.* at 203. If a defendant acts out of incompetence or confusion, his actions do not "shock the conscience." *Id.* at 204. However, if he acts "out of spite, or to keep a plaintiff from exercising a right by whatever means necessary," then the defendant's oppressive actions may be egregious enough to support a substantive due process claim. *Garlasco v. Stuart*, 602 F. Supp. 2d 396 (D. Conn. 2009) (quoting *O'Connor*, 426 F.3d at 204). "[C]onduct deliberately intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level." *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998).

Plaintiff has not presented evidence that Sirois's decision was constitutionally arbitrary. Plaintiff provides no reason to infer that Sirois's decision was motivated by animus or that he engaged in deliberate disregard of the law. *See Silverman v. Barry*, 845 F.2d 1072, 1080 (D.C. Cir. 1988). Chief Sirois, under the impression that nonrenewal of a precious metals license did not require a hearing, denied plaintiff a license after he learned of arrests at plaintiff's shop. The precious metals statute mandates that the chief not issue licenses to felons, presumably because the government has an interest in keeping criminals from running precious metals purchasing businesses. While Chief Sirois did not know the details of the arrests, including that they were for misdemeanors, and while the refusal to renew the precious metals license was an impermissible deprivation of property, these mistakes did not result from "gross abuse of governmental authority." *Natale v. Town of Ridgefield*, 170 F.3d 258, 263 (2d Cir. 1999). No jury could reasonably find otherwise. The defendants' motion for summary judgment on both substantive due process claims is therefore granted.

C. Defendant John Murphy

Defendants argue that former Deputy Chief John Murphy was not personally involved in the decision to not renew the licenses and therefore cannot be held liable under § 1983. Plaintiff does not respond to this argument. I agree with the defendants.

“It is well settled in this Circuit that personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under § 1983.” *Farid v. Ellen*, 593 F.3d 233, 249 (2d Cir. 2010) (internal quotation marks omitted). It is also “well-settled that where the complaint names a defendant in the caption but contains no allegations indicating how the defendant violated the law or injured the plaintiff, a motion to dismiss the complaint in regard to that defendant should be granted.” *Dove v. Fordham Univ.*, 56 F. Supp. 2d 330, 335 (S.D.N.Y. 1999) (internal quotation marks omitted). Even now, at the summary judgment stage, plaintiff has not indicated how defendant Murphy’s conduct caused plaintiff injury. Murphy told defendant Sirois that there had been arrests at plaintiff’s shop, but he did not decide to deny plaintiff’s applications. Sirois alone made that decision. Summary judgment is therefore granted as to all claims against defendant Murphy.

D. Qualified Immunity

Defendants also argue that Chief Sirois’s actions are protected by qualified immunity because they did not violate clearly established federal law. Again, plaintiff does not respond to this argument, and again, I agree with the defendants.

Qualified immunity protects a government official carrying out an executive or administrative function from personal liability so long as his actions do not violate “clearly established statutory or constitutional

rights of which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). While a general right to procedural due process is clearly established, that general right does not defeat qualified immunity. For an official to be held personally liable, “the right the official is alleged to have violated must have been ‘clearly established’ in a more particularized, and hence more relevant, sense: the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). A right is “clearly established” only if “it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” *Saucier v. Katz*, 533 U.S. 194 (2001).

It would not have been clear to a reasonable officer that refusing to renew a precious metals license without a hearing violates an applicant’s federal due process rights. A Connecticut trial court had ruled that a police chief has unfettered discretion in issuing precious metals licenses, and an appellate court had affirmed that ruling. *See Aurilio v. Sweeney*, 1999 WL 171414 (Conn. Super. Ct. Mar. 11, 1999), *aff’d* 60 Conn. App. 908 (2000). The existence of an unpublished federal court decision to the contrary, *Curcio v. Torres*, 2000 WL 1610767 (D. Conn., Oct. 4, 2000), did not clearly establish the law. Because the state law was ambiguous when Chief Sirois declined to renew the license, the federal right was not clearly established, and qualified immunity protects Sirois against

personal liability under § 1983. Summary judgment is granted in his favor.

E. Municipal Liability

Defendants argue that plaintiff's claims against the Town of East Hartford must fail because the Town had no unconstitutional custom, policy, or practice that led to plaintiff's injury. Plaintiff responds that Chief Sirois is an authorized policymaker whose actions may be imputed to the Town of East Hartford. Here, I agree with plaintiff that the claim against the Town of East Hartford should survive.

A plaintiff suing a municipality under § 1983 must show that the violation was a result of a municipal custom, policy, or practice. *Fitzgerald v. Barnstable School Committee*, 555 U.S. 246, 257-58 (2009) (citing *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 694 (1978)). A municipality cannot be held liable for its employees' actions under the doctrine of *respondeat superior*; *Roe v. City of Waterbury*, 542 F.3d 31, 36 (2d Cir. 2008); however, a town may be liable for the decision of an authorized policymaker, an individual whose "acts or edicts may fairly be said to represent official policy." *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986) (quoting *Monell*, 436 U.S. at 694).

Chief Sirois's decisions with respect to the issuance, renewal, and revocation of precious metals licenses represented the official policy of the Town of East Hartford. State law determines whether an official is an authorized policymaker for the purpose of

municipal liability, *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123 (1988), and Section 21-100 of the Connecticut General Statutes puts the chief of police in charge of issuing licenses. Further, all evidence indicates that the Town of East Hartford gave Chief Sirois complete authority over renewal of the licenses. Chief Sirois has testified to the usual process for reviewing license applications, which ends when he reviews available material and makes a decision. Sirois Dep. 22:23-24:6. In his affidavit, Jay Sargent swears that after his application was denied, the Mayor of East Hartford told him that all she could do for him was strongly suggest to Sirois that he meet with Sargent to discuss the renewal. Pl.'s Supp. Ex. 1 ¶¶ 12-13. Nobody from the Town of East Hartford or the police department has suggested that any Town policy constrained Sirois's decision-making. Chief Sirois was the Town of East Hartford's authorized policymaker with respect to the issuance, renewal, and revocation of licenses, and therefore his actions are properly attributed to the Town. Defendants' motion for summary judgment on the claims against the Town of East Hartford is denied.¹

¹ The Town of East Hartford Police Department is not an independent legal entity and is therefore not subject to suit under § 1983. See *Weaver v. Good*, 2008 WL 509452, at *2 (D. Conn., Feb. 4, 2008). The Town of East Hartford is the appropriate named defendant for plaintiff's claims against the police department. Summary judgment is granted as to all claims against the Police Department.

III. Conclusion

Defendants' motion for summary judgment (doc. 35) is hereby granted in part and denied in part. Plaintiff's motion for partial summary judgment (doc. 36) is also hereby granted in part and denied in part. Defendants' motion for summary judgment is granted with respect to plaintiff's procedural and substantive due process claims regarding the pawnbroker license, plaintiff's substantive due process claim regarding the precious metals license, and all claims against John Murphy, Mark Sirois in his individual capacity, and the Town of East Hartford Police Department. Plaintiff's motion for summary judgment is granted with respect to plaintiff's procedural due process claim regarding the precious metals license against Mark Sirois in his official capacity and the Town of East Hartford. The matter will be referred to Magistrate Judge Martinez for a hearing on compensatory damages. No punitive damages may be awarded because municipalities are immune from punitive damage awards under § 1983. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981).

So ordered this 30th day of September, 2011.

/s/ RNC

Robert N. Chatigny
United States District Judge

[United States District Court for the
District of Connecticut]

November 2, 2011

(Filed Nov. 3, 2011)

Ace Partners v. Town of East Hartford, et al., Case No.
3:09-CV-01282 (RNC)

Re: Motion for Reconsideration (doc. 53)

Denied. The Court granted partial summary judgment for the plaintiff and partial summary judgment for the defendants on September 30, 2011. On October 12, the remaining defendants filed a motion for reconsideration, arguing that in granting partial summary judgment for plaintiff, the Court interpreted Conn. Gen. Stat. § 21-100 incorrectly. The standard for granting a motion for reconsideration is “strict.” *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). A court will generally deny reconsideration “unless the moving party can point to controlling decisions or data that the court overlooked.” *Id.* Here, defendants neither point to controlling authority that the Court overlooked nor demonstrate clear error. Instead defendants seek to “plug gaps in an original argument” and “re-litigate an issue already decided,” which are inappropriate uses of a motion for reconsideration. *SPGGC, Inc. v. Blumenthal*, 408 F. Supp. 2d 87, 91-92 (D. Conn. 2006). The motion is therefore denied. So ordered.

/s/ RNC

Robert N. Chatigny, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ACE PARTNERS, LLC,	:	
d/b/a TC'S PAWN COMPANY,	:	
Plaintiff,	:	
	:	
v.	:	CASE NO.
	:	3:09cv1282 (RNC)
TOWN OF EAST	:	
HARTFORD, et al.,	:	
Defendants.	:	

RECOMMENDED RULING
AFTER HEARING IN DAMAGES

(Filed Jul. 14, 2014)

The plaintiff, Ace Partners, LLC d/b/a TC's Pawn Company, commenced this § 1983 action alleging that the Town of East Hartford and its police chief Mark Sirois violated plaintiff's Fourteenth Amendment rights to procedural and substantive due process. The plaintiff claimed that when they refused to renew plaintiff's pawnbroker and precious metals licenses, the defendants unlawfully deprived plaintiff's rights to procedural and substantive due process. The court (Chatigny, J.) granted summary judgment in favor of the plaintiff as to its procedural due process claim on the precious metals license.¹ (Doc. #51.) Judge Chatigny referred the case to me to conduct an evidentiary hearing on

¹ The court granted summary judgment in favor of the defendants on all remaining claims.

compensatory damages and make a recommended ruling on damages.² (Doc. #52.)

I. Factual Background

The plaintiff Ace Partners, LLC is a limited liability company³ doing business as TC's Pawn Company. TC's Pawn Company had three lines of business – it was at once a pawnbroker, a precious metals and stones dealer, and a purveyor of junk. (Tr. 2/26/13 at 11.) It had an existing store in Waterbury, Connecticut and in October 2007, opened a store in East Hartford. This action concerns the East Hartford store.

From October 2007 until August 9, 2009, the plaintiff operated under one-year pawnbroker and precious metals licenses issued by the Town of East Hartford Police Department. The licenses were subject to the conditions set forth in Conn. Gen. Stat. § 21-40, Connecticut's statute governing pawnbrokers' licenses and Conn. Gen. Stat. § 21-100, the precious metals statute. Plaintiff's 2008 licenses were set to expire on August 9, 2009. (Pl's Appendix 6-S.)

Coincidentally, in 2009, the State of Connecticut Division of Criminal Justice was investigating pawnbroking

² See 28 U.S.C. § 636(b)(1)(B). See *Conetta v. Nat'l Hair Care Ctrs., Inc.*, 236 F.3d 67, 73 (1st Cir. 2001) (magistrate judge can hear evidence and prepare a recommended decision as to amount of damages but absent consent, may not enter a final determination of damages).

³ Ace Partners, LLC's members are Christa Matuschkowitz, Vanja Disdarevic and Jay Sargent. (Tr. 2/26/13 at 81.)

businesses throughout the State of Connecticut. (Doc. #36-2, Pl's Local Rule 56(a)(1) Statement ¶13 (admitted)). As part of the investigation, police executed search warrants at the plaintiff's East Hartford store. (Doc. #36-2, Pl's Local Rule 56(a)(1) Statement ¶15 (admitted)). Two of the plaintiff's employees were arrested on misdemeanor charges of attempt to commit larceny. (Doc. #38, Defs' Local Rule 56(a)(1) Statement ¶31 (admitted)).

About one month later, on July 20, 2009, the plaintiff applied for renewal of its pawnbroker and precious metals licenses. Defendant police chief Sirois refused to renew the licenses. He sent a letter on August 7, 2009, that said: "[r]ecent occurrences at TC's Pawn Co. demonstrates that there exists cause not to renew [the] license[s]." (Defs' Ex. 103.) Plaintiff received Sirois's letter denying its applications for renewal on Saturday, August 8, 2009. The plaintiff was not given a hearing at which it could contest the nonrenewal. (Doc. #36-2, Pl's Local Rule 56(a)(1) Statement ¶28 (admitted)). Unable to engage in either pawnbroking or the precious metals business, the store closed a few days later.

The plaintiff filed this lawsuit alleging violation of its procedural and substantive due process rights. Both sides moved for summary judgment. Judge Chatigny first considered the procedural due process claim on the pawnbroker license. He concluded that Conn. Gen. Stat. § 21-40, the statute governing the issuance, renewal, and revocation of pawnbroker licenses, did not give the plaintiff a protected property interest in the pawnbroker license. Summary judgment entered in

favor of the defendants on that claim. (Doc. #51 at 7-8.) The court next considered the plaintiff's procedural due process claim as to its precious metals license. The wording of Conn. Gen. Stat. § 21-100(a), the statute governing precious metals licenses, led to a different result: the plaintiff did have a protectible property interest in its precious metals license. The ruling says

[s]ection 21-100 charges the chief of police with issuing precious metals licenses. It prohibits him from issuing a license to a felon and it recognizes that he may set 'requirements for licensure.' If an applicant fulfills those requirements, the chief has no discretion as to whether to issue the license. Because a qualified applicant is entitled to a precious metals license, the applicant has a property interest in the license. . . .

Defendant Sirois declined to renew plaintiff's precious metals license even though the applicant was not a felon. Plaintiff was not afforded notice or an opportunity for a hearing of any kind to show that it was qualified. Therefore, plaintiff was denied procedural due process with respect to its application for a precious metals purchasing license[.]

(Doc. #51 at 10.) Judge Chatigny concluded that the defendants' "refusal to renew the precious metals license was an impermissible deprivation of property"

and granted plaintiff's motion for summary judgment on that claim.⁴ (Doc. #51 at 12.)

The defendants moved for reconsideration, arguing that the court erred in concluding that defendant chief of police Sirois did not have the discretion to deny renewal of the precious metals license. (Doc. #53.) They contended that the case law cited by the court in its decision was based on "flawed reasoning." (Doc. #53-1 at 6.) Judge Chatigny denied the motion on the grounds that the defendants sought to relitigate issues already decided and failed to satisfy the strict standard required for a motion for reconsideration. (Doc. #57.)

Judge Chatigny referred the case to me for a hearing on the damages suffered by the plaintiff as a result of the defendants' unconstitutional refusal to renew the plaintiff's precious metals license.⁵ (Doc. #52.) Because

⁴ The court granted summary judgment in favor of the defendants on the plaintiff's substantive due process claims as to both its pawnbroker and precious metals licenses. The court found that the plaintiff's substantive due process claim with respect to its pawnbroker license failed because the plaintiff did not possess a property right in the renewal of its pawnbroker license. (Doc. #51 at 11.) With regard to the precious metals license, the court concluded that the plaintiff's substantive due process claim failed because the defendants' action was not "constitutionally arbitrary." (Doc. #51 at 12.)

⁵ In light of the nature of the court's ruling, the parties needed additional time so their experts could complete new analyses to determine the value of the plaintiff's business without the pawnbroker operation. Counsel also required additional discovery and time to prepare for the evidentiary hearing. Pursuant to a joint proposed scheduling order adopted by the court, discovery was completed in December 2012. (Doc. #62.)

the court held that the defendants' nonrenewal of the pawnbroker aspect of the plaintiff's business was constitutional, the court's⁶ task on damages is to determine the fair market value of the company without the pawn business, that is the fair market value of the plaintiff's remaining precious metals and second hand goods businesses, net of mitigation income or loss.⁷ Put another way, the court must determine the fair market value of the company without its pawn business as of the day it closed.

I held a three day hearing.⁸ There were numerous submissions and exhibits. Both sides have experts who are CPAs and business valuation experts. They studied the plaintiff's financial statements and removed pawn-related revenues and expenses. Each authored thick financial reports accompanied by much data. (Pl's Ex. 1, Defs' Ex. 123.) The evidence is complicated. Not surprisingly, the hearing became a battle of the experts.

The plaintiff claims over one million dollars in damages.⁹ On the other hand, under the defendants'

⁶ The case initially was claimed to a jury. During the hearing, the parties waived their jury demand. (Tr. 4/11/13 at 401.)

⁷ The parties' experts agreed that this was their objective. See Pl's Ex. 1 at 2; Defs' Ex. 123 at 1.

⁸ The court heard evidence on February 26, 2013, February 27, 2013, and April 11, 2013. The delay in scheduling the third day of evidence was due to difficulties in obtaining the transcripts of the earlier hearings, which were not filed until April 5, 2013. (Doc. ##84, 85.)

⁹ According to the plaintiff's report dated June 28, 2012, the plaintiff "sustained monetary damages related to its precious metals and second hand goods businesses which would have continued but

analysis, the plaintiff suffered no damages because it was not viable without its pawnbroker business.¹⁰ (Doc. #97 at 15, Defs' Exs. 123, 132.) To make matters more tangled, the experts' testimony evolved during the hearing in response to the evidence. Each revised certain of his figures – in some instances, calculating on the fly – and offered additional analyses and exhibits.

The parties filed their post-hearing submissions in the fall 2013. (Doc. ##96, 97, 98.) The court has carefully and thoughtfully reviewed and evaluated the complicated, conflicting, and copious testimony and exhibits presented at the hearing and the arguments made by counsel in their briefs.

II. Findings of Fact

The plaintiff operated its 12,000 square foot East Hartford store on Pitkin Street from October 2007 until August 2009. (Doc. #36-2, Pl's Local Rule 56(a)(1) Statement 911 (admitted); Tr. 2/26/13 at 83).

The pawnbroker business made small loans to customers (averaging \$80) that were secured by collateral such as tools, electronics or jewelry. (Tr. 2/26/13 at

for the destruction of the businesses of approximately \$1,168,314.” (Pl's Ex. 1 at 2.) The plaintiff subsequently revised this amount to \$1,067,500. (Doc. #96 at 1; tr. 2/26/13 at 123.) After the court determines compensatory damages, the plaintiff intends to seek prejudgment interest and attorney's fees. (Doc. #77 at 8; doc. #96 at 42; doc. #98 at 8.)

¹⁰ According to the defendants, the plaintiff came out “\$89,000 ahead” by closing its East Hartford store. (Doc. #97 at 15.)

12.) The plaintiff held the collateral – the “pawn” – for sixty days. If the customer wanted the item back, the customer paid back the amount of the loan plus a fee (“pawn fee”). (Tr. 2/26/13 at 12.) At the end of sixty days, the pawn could be renewed or terminated. If terminated, the customer forfeited the property to the plaintiff (“pawn forfeiture”) and the plaintiff sold it. (Tr. 2/26/13 at 12.)

The plaintiff also operated two other lines of business: it bought and sold secondhand merchandise as well as precious metals and stones. As part of the latter, the plaintiff bought jewelry which it broke down and sold. Any gold it obtained in breaking down the jewelry was sold to a refinery. (Tr. 2/26/13 at 13-14.)

Plaintiff’s East Hartford store was located in rental space. The plaintiff did not sign the lease in its own name; the lease was in the name of VTC Equity Partners (“VTC”). (Tr. 2/26/13 at 8; Pl’s Ex. 4.) VTC was formed in 2007 for the purpose of managing property and entering into leases. (Tr. 2/26/13 at 63.) Jay Sargent, a member of the plaintiff Ace Partners LLC and also of VTC, signed the lease for VTC. (Tr. 2/26/13 at 10, 64.) Plaintiff paid rent to VTC, which, in turn, paid the landlord. (Tr. 2/26/13 at 17.) After the defendants refused to renew the plaintiff’s licenses, the plaintiff closed the East Hartford store in August 2009 because it was not viable as only a secondhand goods store. (Tr. 2/26/13 at 24.) The business was in the middle of a five year lease. (Tr. 2/26/13 at 16-17.) The plaintiff tried to sublet the property but could not find a tenant so continued paying rent and utilities until September 2011.

(Tr. 2/26/13 at 16-17, 19; Pl's Ex. 7, 14.) Finally, to cancel the lease, the plaintiff paid the landlord \$40,000, the difference between what a new tenant was willing to pay and the remaining amount the plaintiff owed on its lease. (Tr. 2/26/13 at 21.)

When the East Hartford store closed, the plaintiff moved the inventory to its existing Waterbury, Connecticut store. (Tr. 2/26/13 at 22.) Customers who had pawned items at the East Hartford store were given additional time to redeem their goods. They also were given a coupon. (Tr. 2/26/13 at 24.)

III. Preliminary Arguments

The plaintiff seeks damages for the value of its lost business caused by the defendants' unconstitutional deprivation of the plaintiff's precious metals license. The defendants argue that the plaintiff is not entitled to any damages. They give several reasons: (1) the non-renewal of the plaintiff's precious metals license was "justified" (doc. #97 at 2); (2) the license was issued to Christa Matuschkowitz, a member of the plaintiff LLC, not the plaintiff itself (doc. #75 at 13; doc. #97 at 7 n.1) and (3) the plaintiff failed to mitigate damages (doc. #97 at 3). Finally, the defendants say, even if the court considers damages, the plaintiff was not financially viable without its pawnbroker operation.

The defendants' first argument is that there are no damages because their refusal to renew the precious metals license was "justified." (Doc. #97 at 2.) They begin their analysis by articulating their procedural due

process violation as the failure to “give TC Pawn store manager Jay Sargent an audience before non-renewing the precious metals license.” (Doc. #97 at 2.) *See* doc. #97 at 7 (“[T]he only thing that the plaintiff lost was an audience with Chief Sirois.”) Even if the defendants had given the plaintiff a hearing, they assert, Chief Sirois “absolutely would not [have] renew[ed] the precious metals license” because two of the plaintiff’s employees had been arrested for larceny. (Doc. #97 at 3.) The defendants argue that they “did not cause any loss to the plaintiff, because the plaintiff did not prove that it would have obtained a precious metals license even if it had been given the procedures that it alleges it was due.”¹¹ (Doc. #97 at 6.) The defendants go so far as to assert that “Judge Chatigny has determined already that Chief Sirois and the town were justified in non-renewing the Plaintiff’s precious metals license.” (Doc. #97 at 2.)

The defendants’ argument misapprehends Judge Chatigny’s ruling. The court did not find that the non-renewal of the precious metals license was “justified.” The court determined that Connecticut’s precious metals statute gave the chief of police “no discretion as to whether to issue the license” where the applicant was not a felon and that defendant Sirois “declined to renew the plaintiff’s precious metals license even though the applicant was not a felon.” (Doc. #51 at 10.) Judge

¹¹ The defendants posit that because they “did not proximately cause any damage to the plaintiff, plaintiff is only entitled to a nominal damage award for the constitutional violation itself.” (Doc. #97 at 8.)

Chatigny concluded that the “refusal to renew the precious metals license was an impermissible deprivation of property.” (Doc. #51 at 12.) The defendants’ argument fails.

The defendants’ next argument is a factual one. They argue that the plaintiff is not entitled to damages because “Ace never applied for a [precious metals] license nor was Ace denied a license. Christa Matuschkowitz applied for a license and was denied and is the only person who might claim damages due to a denial of procedural due process.” (Doc. #75 at 13; doc. #97 at 7 n.1.)

The evidence does not support the argument. Christa Matuschkowitz applied for the precious metals license as the agent and partial owner of the plaintiff business. (Defs’ Ex. 108.) The application for the precious metals license states that she was applying as the representative of the “firm.” (*Id.*) The defendants themselves addressed their nonrenewal letter to Christa Matuschkowitz as the “Proprietor or Agent” of TC’s Pawn Co. and stated that the “License[] w[as] issued to ‘TC’s Pawn Co.’” (Defs’ Ex. 103.) Contrary to defendants’ present contention, the court found in its summary judgment ruling that “plaintiff applied for renewal of its licenses.” (Doc. #51 at 3.)

The defendants go on to argue that the “plaintiff failed to mitigate damages by not having a qualified person apply for the license renewal.” (Doc. #97 at 3.) As indicated, Christa Matuschkowitz applied for the license renewal on plaintiff’s behalf. The defendants say

that she was the “licensee of the pawnshop during the sting that resulted in the larceny arrests” and that the plaintiff should have had someone else – someone who “had no connection to illegal activity” as the license applicant. (Doc. #97 at 3.) According to the defendants, because the plaintiff failed to do so, it did not mitigate its damages.

This argument also is unsupported by the evidence. The defendants’ letter giving reasons for the nonrenewal cited the “recent occurrences at TC’s Pawn Co.,” referring to the police investigation and arrests. (Defs’ Ex. 103.) The letter did not mention any conduct on the part of Christa Matuschkowitz, nor does the record indicate that the defendants’ decision had anything to do with Christa Matuschkowitz. More to the point, Judge Chatigny determined that the defendants did not have the discretion to refuse renewing the precious metals license based on the police investigation and misdemeanor arrests.

The defendants’ most substantial argument is that the plaintiff is not entitled to damages because the plaintiff “would not be a viable business” without its pawnbroker business. (Doc. #97 at 4.) In support, they rely on their expert. Of course, the plaintiff has its own expert. The issue of business valuation and the parties’ competing contentions, was the focus of the hearing and is the core question before the court.

IV. Valuation

The plaintiff's expert, John Alan Kosowsky, is a certified public accountant. The defendants' expert, Mark Campbell,¹² also is a certified public accountant.¹³ Both sought to ascertain the fair market value of the plaintiff's business and therefore, the damages due the plaintiff. To do so, each expert attempted to remove pawn-related revenues and expenses from the plaintiff's financial statements to determine the fair market value of the plaintiff's company without the pawn business, that is, the value of the remaining precious metals and secondhand goods businesses. (Pl's Ex. 1 at 2; Defs' Ex. 123 at 1.)

The experts agreed that the "destruction of business" methodology should be used to determine damages. (Pl's Ex. 1, Defs' Ex. 131; Tr. 4/11/13 at 325.) This methodology is used when a business has been destroyed, not merely damaged. Under this method, "[t]he measure of damages is the market value of the business on the date of destruction, less any salvage value in the assets." 1 Robert L. Dunn, *Recovery Of Damages For Lost Profits*, § 6.23, at 538 (6th ed. 2005). Federal regulations define the fair market value of a business as "the net amount which a willing purchaser, whether an individual or a corporation, would pay for

¹² Campbell's colleague, John Kramer, authored the defendants' initial and rebuttal reports. By agreement of the parties, Campbell testified in lieu of Kramer and authored supplemental exhibits.

¹³ The parties stipulated to the qualifications of one another's experts. (Tr. 2/26/13 at 95; tr. 2/27/13 at 203.)

the interest to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.” 26 C.F.R. § 20.2031-3. *See also United States v. Cartwright*, 411 U.S. 546, 551 (1973) (same).

Valuation is “almost impossible for private companies for which uncertainty abounds.” *Olsen v. Floit*, 219 F.3d 655, 658 (7th Cir. 2000). *See Berenson v. C. I. R.*, 612 F.2d 695, 699 (2d Cir. 1979) (“[t]he art of business valuation and financial projections . . . is not within a court’s ordinary ken”); *In re Muskegon Motor Specialties*, 366 F.2d 522, 530 (6th Cir. 1966) (“The valuation of a business remains an art based on the use of informed, careful judgment (including that of the court), and it cannot be expected to yield mathematically precise results.”); *In re Coram Healthcare Corp.*, 315 B.R. 321, 339 (Bankr. D. Del. 2004) (“Simply put, when it comes to valuation issues, reasonable minds can and often do disagree. This is because the output of financial valuation models are driven by their inputs, many of which are subjective in nature.”).

Within the destruction of business methodology used by both experts are three different approaches: the income approach, the market approach, and the cost or book value approach. (Tr. 2/26/13 at 104.) *See also* Shannon Pratt & Alina V. Niculita, *The Lawyer’s Business Valuation Handbook* 30 (2d ed. 2010). Both experts considered all three approaches before landing on the approach that he believed to most accurately determine the value of the business. (Tr. 2/27/13 at 215.) The plaintiff’s expert concluded that the income

and market approaches should be used; the defendants' expert opined that the book value approach should be used. The court examines each.

A. Income Approach

The experts first utilized the income approach, which is the “dominant approach in business valuation.” Shannon Pratt & Alina V. Niculita, *The Lawyer's Business Valuation Handbook* 45 (2d ed. 2010). By far, most of the evidence adduced during the hearing concerned the income approach. Under the capitalization method of the income approach,¹⁴ the value of an organization is determined by calculating the net present value of expected future profits or cash flows. (Pl's Ex. 1 at 5; Defs' Ex. 123 at 12.) The capitalization of earnings estimate is done by taking the entity's future earnings and dividing them by the capitalization rate.¹⁵ See James R. Hitchner, *Financial Valuation* 19 (2d ed. 2006) (under the capitalization of earnings method within the income approach, “economic benefits for a representative single period are converted to value

¹⁴ There are two different methods under the income approach: the capitalization of earnings method and the discounted future earnings method. David Laro and Shannon P. Pratt, *Business Valuation and Taxes* 202 (2005). The parties used the capitalization of earnings method.

¹⁵ A capitalization rate is “[a] percentage, expressed as a decimal, which is used as a denominator to divide into some amount of income.” Shannon Pratt & Alina V. Niculita, *The Lawyer's Business Valuation Handbook* 46 (2d ed. 2010). It reflects a discount rate, which reflects the risk of the investment, and an annualized expected rate of growth. *Id.* at 68.

through division by a capitalization rate.”) “In other words, [the method] estimat[es] what someone would pay today (or as of the effective valuation date) for an expected stream of future economic income.” Shannon Pratt & Alina V. Niculita, *The Lawyer’s Business Valuation Handbook* 45 (2d ed. 2010). Although both experts used this approach, they arrived at very different results.¹⁶ (Pl’s Ex. 1, Schedule 3-S; Defs’ Ex. 123, Ex. 7; Defs’ Ex. 132.)

1. Income Statement

The first step in the income approach to valuation is to estimate the stream of income from the asset at issue, in this case, the plaintiff’s business. The experts began their analysis with the plaintiff’s income statement¹⁷ for the twelve month period ending July 31, 2009.¹⁸ (Tr. 2/27/13 at 246.) The statement includes all

¹⁶ The plaintiff’s calculation of damages under the income approach was \$1,038,000. (Pl’s Ex. 1 at 7, Pl’s Schedule 12-S.)

According to the defendants’ calculation under the income approach, the plaintiff would suffer a negative operating income of -\$38,884. (Defs’ Ex. 132.) As a result, the defendants did not use the income approach because “the adjusted result for Ace – East Hartford, after elimination of the pawn business, is a net loss.” (Defs’ Ex. 123 at 12.)

¹⁷ An “income statement presents revenues, expenses, and income over a period of time (fiscal period), usually a year.” Shannon Pratt & Alina V. Niculita, *The Lawyer’s Business Valuation Handbook* 33 (2d ed. 2010).

¹⁸ The plaintiff’s licenses were nonrenewed as of August 10, 2009, which is technically the appraisal date of the plaintiff’s business. As a practical matter, however, the experts “used the data through July 31, 2009, the month end date most proximate

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the plaintiff's revenue, including that generated by the plaintiff's pawn operation. (Tr. 2/17/13 at 246.) The figures are taken from the plaintiff's tax returns, financial statements, and other financial reports. The experts agreed on the figures in the plaintiff's income statement set forth below. (Pl's Schedule 3-S, Defs' Ex. 132, Ex. 7.)

	Last Twelve Months (LTM) <u>as of 7/31/09</u>
<u>Revenues</u>	
Sales – Jewelry	171,352
Sale – Electronics, Tools, Misc.	474,017
Sales – Scrap Gold/Silver	766,592
Pawn Fee Income	221,505
Less	
Jewelry Returns	(6563)
Misc returns	<u>(49,978)</u>
Total Revenues	1,576,925
Cost of Goods Sold	863,324
Gross profit	713,601
Operating Expenses	<u>391,458</u>
Income	322,143

to the closing of the East Hartford store.” (Defs’ Ex. 123 at 1.) The seven months of data was “not representative of a full year” so the experts “took the trailing twelve months profit and loss and utilized that as the annualized 2009 profit and loss.” (Defs’ Ex. 126 at 4; *see also* Pl’s Ex. 1 at 6.) *See* Defs’ Ex. 123 at 2 (“[T]he last twelve month period from August 1, 2008 – July 31, 2009 is used as a proxy of future earnings potential.”)

According to the plaintiff's income statement as shown above, for the last twelve months preceding July 31, 2009, the plaintiff realized \$1,576,925 in total revenue. Some of this revenue came from selling merchandise that the plaintiff purchased directly from consumers and some came from selling forfeited pawn items ("pawn forfeitures"), that is, items that the customer did not retrieve within the pawn period.¹⁹ (Tr. 2/26/13 at 75.) Of the three categories of sales revenue that the plaintiff tracked, by far the largest – \$766,592 – came from its sales of scrap gold and silver. (Tr. 2/26/13 at 196; Pl's Ex. 1, Schedule 3-S.) After deducting expenses, for the twelve month period ending July 31, 2009, the pretax income of the company (before any adjustments) was \$322,143. (Tr. 2/26/13 at 109; Pl's Schedule 3-S; Defs' Ex. 123, Ex. 7) The experts agreed on this number. (Tr. 2/27/13 at 243.)

The next step is to determine the income the plaintiff would realize from only its secondhand goods and precious metals lines of business. To do this, the experts made adjustments to the income statement to eliminate the pawnbroker business segment so as to leave only the financial results of the secondhand goods and precious metals lines of business. The experts made adjustments to both the plaintiff's expenses and

¹⁹ The plaintiff does not separately track sales revenue derived from selling pawn forfeitures. (Tr. 2/26/13 at 75, 125.) The revenue is lumped into one of the three categories of sales revenue: (1) jewelry, (2) electronics, tools, miscellaneous items, and (3) scrap gold/silver. *See* Defs' Ex. 131 at 2 ("[R]evenue from the sale of forfeited items is combined with various sales categories. . . .")

revenue on the income statement.²⁰ They agreed on certain adjustments and disagreed on others.²¹

Expenses

The court first examines the experts' adjustments to the plaintiff's expenses on the income statement.

²⁰ The experts used the term “normalize” in both their exhibits and testimony. They explained that to “normalize” the plaintiff's financial results, they made adjustments in order to “try[] to value [plaintiff's] operations without the pawn operations. So we're adjusting or normalizing that income and expense account out of the operations.” (Tr. 2/27/13 at 250.) *See also* James Hitchner, *Financial Valuation* 28 (2d ed. 2006) (normalized earnings are “economic benefits adjusted for nonrecurring, noneconomic or other unusual items to eliminate anomalies and/or facilitate comparisons.”); Shannon Pratt & Alina V. Niculita, *The Lawyer's Business Valuation Handbook* 148 (2d ed. 2010) (“If the [income] statements are to be used as guidance for estimating future economic income, then nonrecurring items should be eliminated.”).

²¹ “[O]ne of the frequent sources of controversy is adjustments to financial statements for the purpose of valuation.” Shannon Pratt & Alina V. Niculita, *The Lawyer's Business Valuation Handbook* 147 (2d ed. 2010). That is the case here. The difference in the adjustments the experts made to the income statement resulted in their vastly divergent conclusions as to damages. After making adjustments he thought appropriate, the plaintiff's expert opined that without its pawn business, the plaintiff had a pre-tax income of \$274,039 for the period of August 1, 2008 through July 31, 2009. (Tr. 2/26/13 at 111; Pl's Ex. 1 at 4; Pl's Schedule 3-S.) The defendants' expert opined that as a result of adjustments he believed to be warranted, the plaintiff had a negative operating income of -\$38,884. (Defs' Ex. 132.)

a. Agreed upon Adjustments to Expenses

The experts agreed that \$27,064 in certain pawn-related expenses should be deducted from the plaintiff's expenses because the plaintiff will no longer incur these costs. (Tr. 2/26/13 at 110; Tr. 2/17/13 at 249.)

b. Disagreements as to Adjustments to Expenses

The experts did not agree on other adjustments to the plaintiff's expenses, which the court discusses in turn.

Purchase of Pawn Forfeitures

Consistent with the goal of isolating the value of the plaintiff's precious metals and secondhand goods businesses from its pawn business, the experts sought to remove pawn-related expenses from the plaintiff's income statement.

The two major categories of expenses on the plaintiff's income statement are (1) the cost of goods sold and (2) operating expenses. Both categories are deducted from revenue. The cost of goods sold consists of the plaintiff's purchases of inventory items it sold to customers during the period at issue plus any net change in inventory. The plaintiff's total cost of goods sold was \$863,324 for the last twelve months preceding July 2009. (Pl's Schedule 3-S, Tr. 2/27/13 at 257.) This figure consisted of: (1) \$717,859 purchases of merchandise over the counter; (2) a change in inventory of

-\$55,000 and (3) \$200,465 in purchases of pawn forfeitures. (Pl's Schedule 3-S; Defs' Exs. 129, 132.) The experts agreed that the cost the plaintiff incurred in purchasing pawn forfeitures, that is, the cost of purchasing the items the customer did not retrieve within the pawn period, should be deducted from the plaintiff's cost of goods sold because it is a cost that the plaintiff would no longer incur due to the loss of its pawnbroker license. Initially, both experts also agreed as to the amount of this cost – \$200,465 – and both deducted this amount from the total cost of goods sold figure of \$863,324. (Tr. 2/27/13 at 247, 249, 257; Tr. 4/11/13 at 340.) The \$200,465 figure is an estimate the plaintiff used in its accounting records. (Tr. 2/26/13 at 123; Defs' Ex. 129.)

During the hearing, however, the defendants' expert made an adjustment to the figure of \$200,465 for the purchase of pawn forfeitures. Based on records showing the plaintiff's actual purchases of pawn forfeitures were \$180,902 for 2008²², \$42,058 for January – June 2009 and projected to be \$159,166 for year end 2009, the defendants' expert thought that the cost of purchasing pawn forfeitures for the period at issue was lower than \$200,465. (Defs' Ex. 130; Defs' Ex. 132, ex. 8.) Based on his calculations, he opined that “one year of total forfeitures purchased equal[ed] \$125,375” rather than \$200,465. (Doc. #97 at 19.) He made an \$125,375 adjustment to the \$200,465 figure on the

²² The plaintiff's actual purchases of pawn forfeitures for July through December of 2008 on a monthly basis is unknown. (Tr. 4/11/13 at 381.)

income statement. (Defs' Ex. 132, Ex. 8, 10; Doc. #97 at 19, 21.) This deduction had the effect of leaving \$75,090 on the income statement as an expense for the purchase of pawn forfeitures.²³ (Tr. 4/11/13 at 332, 338, 341; Defs' Ex. 132, Ex. 8.)

In response, plaintiff's expert acknowledged that the \$200,465 was an estimate of the expense of pawn forfeitures and that the actual data showed "a very definite trend" downward in the cost of these purchases. (Tr. 2/26/13 at 180, 182.) The plaintiff's expert conceded that the \$200,465 figure for purchases of pawn forfeitures "should not be relied on" (doc. #96 at 19) but did not think an adjustment to the number was necessary. (Tr. 4/11/13 at 369.) Moreover, the plaintiff contended that the defendants' \$125,375 adjustment to the \$200,465 figure improperly left \$75,090 on the income statement as a cost for purchasing pawn forfeitures, a cost that the plaintiff will no longer incur because it does not have a pawn license. (Doc. #96 at 37; Tr. 4/11/13 at 337-38.)

²³ Defendants' expert concedes that he left in the income statement some expenditure for the purchase of pawn forfeitures. He testified that although there "has to be an offset somewhere," he "didn't know where that somewhere else should be so [he] left it in." (Tr. 4/11/13 at 334.) He maintained that a corresponding adjustment would not alter his finding that the plaintiff would have a -\$38,000 loss without its pawn business. (Tr. 4/11/13 at 341.)

Inventory

The experts disagreed on another component of the total cost of goods sold – inventory. During the time its business was fully active, before defendants declined to renew its licenses, the plaintiff store used a retail gross profit method of determining its inventory and adjusted its inventory figure once a year. (Tr. 2/26/13 at 150; Tr. 2/27/13 at 247.) Using the plaintiff’s reported numbers, the plaintiff expert’s inventory calculation was based on a beginning inventory as of August 1, 2008 of \$120,000 and an ending inventory on July 31, 2009 of \$175,000. (Defs’ Ex. 131 at 4.)

The defendants’ expert made an adjustment to inventory that the plaintiff’s expert did not. The defendants’ expert made an adjustment to inventory of \$40,833, for additional inventory that he estimated the plaintiff had accumulated. (Doc. #97 at 21.) He conceded that his calculation of this estimated increase in inventory value was “a little confusing.” (Tr. 2/27/13 at 252-53, 257; Defs’ Ex. 131 at 5; Defs’ Ex. 132, ex. 8.) This adjustment had the effect of reducing the plaintiff’s income. (Tr. 4/11/13 at 302.)

In sum, to “normalize” the plaintiff’s income statement by removing pawn-related expenses, the plaintiff’s expert deducted \$200,465 for the purchase of pawn forfeitures from the \$863,324 total cost of goods sold for a normalized total cost of goods sold of \$662,859. (Pl’s Schedule 3-S.) The defendants’ expert went further and made an adjustment to the \$200,465 purchase of pawn forfeitures of \$125,375 and an adjustment to

inventory of \$40,833. The result of his adjustments to expenses was a deduction of \$84,542 from the \$863,324 total cost of goods sold for a normalized total cost of goods sold of \$778,782. (Defs' Ex. 132, Exs. 7, 8; doc. #97 at 21.) The defendants' resulting higher total cost of goods sold had the effect of reducing the plaintiff's income.

c. Court's Conclusions as to Adjustments to Expenses

The court has carefully considered the parties' arguments regarding the pawn-related expense adjustments in dispute. As to the purchase of pawn forfeitures, the court concludes that the \$200,465 figure for the purchase of pawn forfeitures is not reliable and should not be used. The plaintiff's actual data demonstrates, and the plaintiff's expert did not dispute, that the \$200,465 estimate for purchases of pawn forfeitures is overstated. Although actual figures for the time period in question are not available on a monthly basis, the defendants' estimate better comports with the plaintiff's actual figures. The court, however, agrees with the plaintiff that the defendants' adjustment of \$125,375 to the \$200,465 figure creates confusion by leaving \$75,090 in purchases of pawn forfeitures appearing as a cost on the income statement. (Defs' Ex. 132 at 8.) Rather than leave in the \$200,465 on the income statement and adjust it, as the defendants did, the better course appears to be to omit the \$200,465 component of the \$863,324 total cost of goods and replace it with

the more accurate estimate of \$125,375.²⁴ This reduces the total cost of goods sold from \$863,324 to \$788,234.²⁵ From this amount, \$125,375 should then be deducted because it is a cost that the plaintiff will no longer incur. (Tr. 4/11/14 at 386; Defs' Ex. 132, Ex. 8.) The court further finds that an additional adjustment to inventory, as was proposed by the defendants, is speculative and unnecessary.

Revenue

The court next examines the experts' pawn-related adjustments to the plaintiff's income.

a. Agreed Upon Adjustments to Revenue

The experts agreed that the pawn fee income the plaintiff realized should be deducted from the plaintiff's revenue. (Tr. 2/26/13 at 109; Tr. 2/27/13, 247.) Pawn fee income consists of the fees customers pay when they retrieve a pawned item. Deduction of this revenue is proper because the plaintiff can no longer engage in the pawn business in its East Hartford location. The experts agreed that the pawn fee income for

²⁴ The court acknowledges that neither party suggested this approach.

²⁵ The cost of goods sold of \$788,234 consists of \$717,859 in purchases over counter plus a change in inventory of \$-55,000, both as originally reported on the plaintiff's income statement (see Pl's Schedule 3-S), plus \$125,375 in purchases of pawn forfeitures as determined by the defendants' expert. (See Defs' 132, Ex. 8.) The \$125,375 figure is in lieu of the \$200,465 figure the plaintiff's expert utilized.

the relevant period, \$221,505, should be deducted from the plaintiff's revenue on its income statement. (Tr. 2/27/13 at 248.)

b. Disagreements about Adjustments to Revenue

Sales of pawn forfeitures

The experts disagreed about adjustments to the plaintiff's revenue. The defendants' expert opined that sales of pawn forfeitures should be deducted from the plaintiff's revenue. Sales of pawn forfeitures are the sales revenue plaintiff realized from selling forfeited items that the customer did not retrieve within the pawn period. Such a deduction from revenue is necessary, the defendants' expert contended, because the plaintiff is no longer in the pawn business so can no longer realize this income. Because the plaintiff did not track its actual revenue from selling forfeited pawn items, the defendants' expert estimated it. (Tr. 2/27/13 at 260; Defs' Ex. 123 at 5.) Initially, the defendants' expert opined that the plaintiff realized \$250,000 from sales of pawn forfeitures. (Tr. 2/27/13 at 260; Defs' Ex. 123, Ex. 10.) This estimate was premised on the \$200,465 figure for purchases of pawn forfeitures to which the defendants' expert applied a series of assumptions regarding the amount and timing of sales of forfeited items. During the hearing, the defendants' expert changed his estimate of sales from \$250,000 to \$197,000 as a result of applying his assumptions to his revised estimate of purchases of pawn forfeitures.

(Defs' Ex. 132, Exs. 7, 10; Tr. 2/27/13 at 271, 274, 276, 277.)

Unlike the defendants' expert, the plaintiff's expert did not think any deduction to revenue for sales of pawn forfeitures was necessary. (Tr. 4/11/13 at 382.) In rebuttal during the final day of the evidentiary hearing, the plaintiff's expert testified as to his estimate of such revenue assuming that an adjustment for sales revenue "had to be made." (Tr. 4/11/13 at 387.) Based on reports of precious metals that were forfeited during the month of April 2009, plaintiff's expert estimated that the sales of pawn forfeitures were \$144,973.²⁶ (Pl's Ex. 20, 22; tr. 4/11/13 at 393.) Notwithstanding his testimony, the plaintiff's expert did not believe an adjustment to revenue was warranted. (Tr. 2/26/13 at 130; Tr. 4/11/13 at 381; doc. #96 at 38 ("Although [plaintiff's expert] properly maintains that no such adjustment is necessary, he examined the question in the abstract, at counsel's request for the benefit of the Court."))

c. Court's Conclusions on Adjustments to Revenue

The plaintiff's expert deducted the purchase of pawn forfeitures as an expense on the plaintiff's income statement but left in the revenue from selling pawn forfeitures. This appears incongruous. Sales of pawn forfeitures constitute revenue that the plaintiff will no longer realize due to the nonrenewal of its pawn

²⁶ He did not revise either his estimate of the plaintiff's revenue or damages as a result of this testimony.

license. Such sales should be deducted from the plaintiff's revenue. The estimate of \$197,000 for sales of pawn forfeitures should be deducted from the plaintiff's revenue.

The court finds that a further adjustment to the plaintiff's revenue should be made. The plaintiff's sales of scrap gold/silver for the month of July 2009 should have been but were not included in the income statement. (Tr. 2/26/13 at 129; Tr. 4/11/13 at 306; Defs' Ex. 129.) Instead, these sales were included in the sales figures of the plaintiff's Waterbury store. (Tr. 4/11/13 at 365.) Neither expert corrected the income statement for this omission. During the hearing, the plaintiff's expert testified that East Hartford's gold/silver scrap sales for July 2009 were \$92,362.²⁷ (Tr. 4/11/13 at 364; Pl's Ex. 23.) The court concludes that the plaintiff's \$766,592 gold/silver sales figure was understated by this amount.

d. Restated Income Statement

The plaintiff's income statement reflecting the court's conclusions as to adjustments to expenses and revenues is as follows:

²⁷ The defendants' expert did not dispute this figure.

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	Last Twelve Months 7/31/09	Adjustments	Restated 7/31/09
Revenues			
Sales – Jewelry	171,352		171,352
Sales – Electronics, Tools, Misc	474,017		474,017
Sales – Scrap Gold /Silver	858,954 ²⁸		858,954
Pawn Fee Income	221,505	(221,505) ²⁹	
	1,725,828	(221,505)	1,504,323
Less			
Jewelry Returns	(6563)		(6563)
Misc returns	(49,978)		(49,978)
Sales of forfeited pawn items		(197,000) ³⁰	(197,000)
Total Revenues	1,669,287	418,505	1,250,782
Cost of Goods Sold	<u>788,234³¹</u>	<u>(125,375)³²</u>	<u>662,859</u>
Gross profit	881,053	293,130	587,923

²⁸ \$766,592 in revenue as originally reported (pl's schedule 3-S) plus July 2009 scrap gold/silver sales of \$92,362.

²⁹ This is an undisputed adjustment.

³⁰ This figure is based on defendants' estimate. Plaintiff does not agree that sales of pawn forfeitures should be deducted.

³¹ See fn. 25.

³² Defs' Ex. 132, Ex. 8.

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Operating Expenses	391,458 ³³	27,064 ³⁴	418,522
Net Income	489,595 ³⁵	320,194 ³⁶	169,401

The court finds that without the pawn business, the plaintiff's pre-tax annual income is \$169,401.³⁷

e. Calculating After-Tax Earnings

The next step in the capitalization of earnings method of the income approach is to determine the plaintiff's after-tax earnings. (See Pl's Schedule 10-S.) Using the same tax rates as did the parties, the plaintiff's after-tax earnings are calculated as follows and total \$105,942:

³³ This figure is undisputed. Pl's Schedule 3-S; Pl's Ex. 18.

³⁴ This is an undisputed adjustment.

³⁵ The figure the parties use before adjustments is \$322,143. Pl's Schedule 3-S; Defs' Ex. 132.

³⁶ For comparison, the plaintiff's proposed adjustments total \$48,104 and the defendants' adjustments total \$361,027. (Pl's Schedule 3-S, Defs' Ex. 132.)

³⁷ For comparison, the plaintiff's expert opined that the plaintiff's pre-tax income was \$274,039 and the defendants' expert opined that the plaintiff suffered a loss of \$38,884. (Pl's Ex. 1 at 4; Pl's Schedule 3-S; Defs' Ex. 132.)

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Ongoing Earning Power	169,401
Less Estimated State	
Income Tax – Effective Rate 7.5% ³⁸	<u>12,705</u>
	156,696
Less Federal Taxes – Rate 32.39%	<u>50,754</u>
Ongoing After-tax Earnings	105,942

f. Capitalization

Having determined the ongoing earning power of the plaintiff without its pawn business, the next step in the valuation process under the income method is to apply a capitalization multiple. (Pl’s Ex. 1 at 5.) “The capitalization multiple represents the required rate of return minus the sustainable growth rate.” (Pl’s Ex. 1 at 5.) “Capitalization of earnings effectively determines the present value of the Company’s ongoing economic benefit stream growing perpetually at a fixed rate and discounted at a [sic] the required rate of return. The present value is representative of the amount a willing buyer and a willing seller would exchange for the business.” (Pl’s Ex. 1 at 5.) Using the growth and capitalization rates used by the parties,³⁹ the capitalization of earnings value is \$641,882 (before mitigation), as follows:

³⁸ The tax rates are set forth in Defs’ Ex. 133. *See also* tr. 4/11/13 at 352 (tax rates used by both experts are the same).

³⁹ The growth rate of 3% and capitalization rate of 17% were used by both experts. (Pl’s Schedule 12-S, Tr. 2/26/13 at 116; Defs’ Ex. 133; Tr. 4/11/13 at 352.)

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Ongoing Net Earnings	105,942
Sustainable Growth rate	3%
Invested Capital After	
Tax Earnings	109,120
Capitalization Rate	<u>17%</u>
	\$641,882

(Pl's Schedule 12-S.)

The plaintiff sustained monetary damages related to its precious metals and secondhand goods businesses of \$641,882.

2. Mitigation or Offsets

As part of calculating the fair market value of the business, the parties also examined the value of the plaintiff's assets, less shutdown expenses.⁴⁰ This analysis could result in either an additional cost the plaintiff incurred as a result of the shutdown of the business or a benefit available to the plaintiff to mitigate (offset) the plaintiff's claimed damages. (Pl's Ex. 1 at 9; Defs' Ex. 123 at 15.) The parties' experts agreed on and began with the same number but arrived at different conclusions due to their varying adjustments. Plaintiff's expert concluded that the plaintiff incurred costs of approximately \$25,000 as a result of closing the business.⁴¹ (Doc. #96 at 22; tr. 2/26/13 at 122-23; Pl's Ex.

⁴⁰ Damages are calculated by appraising the fair market value of the Ace East Hartford operation, net of mitigation income or loss. *See* Defs' Ex. 123 at 1.

⁴¹ The plaintiff's expert initially estimated that the plaintiff incurred \$125,814 in expenses as a result of shuttering its store (Pl's Ex. 1, Schedule 18-S), revised the figure in February 2013 to

15.) These shutdown costs included the cost to move the operation to Waterbury, lease and utility costs, and the loss on fixed assets, such as signs and leasehold improvements. The defendants' expert disagreed with the plaintiff's assumptions about certain costs and revenue. The defendants' expert opined that closing the store resulted in a mitigation benefit to the plaintiff. (Defs' Ex. 123 at 15, 22; Defs' Ex. 123, Ex. 1, 2.)

In determining mitigation, the parties began with the same value of the plaintiff's net assets, \$433,649, as of July 31, 2009. (Tr. 2/26/13 at 184; tr. 2/27/13 at 217; tr. 4/11/13 at 351.) These assets consisted primarily of cash, accounts receivable, and inventories. (Defs' Ex. 123 at 15.) From this starting point, the experts made certain adjustments. They agreed that the plaintiff's moving expense of \$5058 should be deducted from the \$433,649 value. (Tr. 2/27/13 at 288; Defs' Ex. 123 at 15; Pl's Schedule 20-S, Pl's Ex. 15.)

a. Disagreements as to Expense Adjustments

Loss on Fixed Assets

The experts agreed that the plaintiff's loss on fixed assets (such as signage and leasehold improvements) should be deducted from the plaintiff's net assets of \$433,649 because they were "related specifically

\$36,514 (pl's ex. 15) and during the hearing reduced this figure to \$25,000 after deducting certain utility expenses. (Tr. 2/26/13 at 123; doc. #96 at 22.) He then added this cost to his estimate of the fair market value of the plaintiff's business. (Doc. #96 at 23.)

to East Hartford” and could not be reused elsewhere. (Tr. 2/27/13 at 229.) They disagreed, however, as to the amount of this loss. Plaintiff’s expert opined that the loss on fixed assets was \$14,606. (Pl’s Schedule 20-S.) This figure reflected depreciation as of December 31, 2008. (Tr. 2/27/13 at 230.) The defendants’ expert thought the value of the fixed assets should be adjusted for further depreciation for seven months of 2009, which reduced the loss on fixed assets from plaintiff’s estimate of \$14,606 to \$9955. (Tr. 2/27/13 at 228, 230, 233.)

Rent and Utilities

The experts also disagreed about whether rent and utility payments should be deducted as expenses from the \$433,649 net asset figure. The plaintiff’s expert deducted \$217,2000 [sic] in rent payments the plaintiff made until another tenant could be found in September 2011. (Tr. 2/26/13 at 121, 122, 153; Pl’s Ex. 14, 15.) The plaintiff’s expert also deducted \$12,000 in payments for utilities. (Tr. 2/26/13 at 188.)

The defendants’ expert did not deduct rent and utility expenses because the plaintiff was not the signatory on the lease – VTC Equity signed the lease. (Tr. 2/27/13 at 227-28.) According to the defendants, the plaintiff did not owe rent because “[t]he lease for space in East Hartford was an obligation of VTC Equity Partners, LLC and not that of Plaintiff.” (Defs’ Ex. 131; Tr. 2/27/13 at 228.) For the same reason, the defendants’

expert did not deduct utility expenses. (Tr. 2/27/13 at 227; Doc. #97 at 15.)

b. Court's Conclusions as to Adjustments to Expenses

The court finds that the loss on fixed assets is \$14,606 and is not persuaded that additional depreciation is necessary. The court further finds that the plaintiff's expert properly deducted rent and utility expenses from the plaintiff's net assets because these were actual costs the plaintiff incurred.

c. Disagreements as to Adjustment for Pawn-Related Assets

In addition to disagreeing about whether certain expenses should be deducted from equity in calculating the amount of mitigation available to the plaintiff, the experts disagreed about how various pawn-related assets should be treated.

The parties disagreed about the plaintiff's \$210,988 in pawn receivables. When a customer pawns an item, the pawn company gives the customer money for the item and the customer signs an agreement that he will retrieve that item in a certain amount of time with the payment of a fee. (Tr. 2/27/13 at 220.) A pawn receivable is "what gets put on the books when the pawn company pays out money for the item"; the company has "a receivable that [it is] expecting to get back in a certain amount of days." (Tr. 2/27/13 at 220.) The value of the plaintiff's pawn receivables, \$210,988, is not in

dispute; it is the treatment of the \$210,988 that is contested. (Tr. 2/26/13 at 184; tr. 2/27/13 at 222.) With the closure of the East Hartford store, the collection of these receivables went to the Waterbury operation. (Tr. 2/26/13 at 184.) Plaintiff's expert maintains that this amount should be deducted from the plaintiff's equity of \$433,649. (Tr. 2/26/13 at 120; Pl's Ex. 15.) This is so, the plaintiff's expert reasons, because the receivables are associated with the pawn business and he understood that "anything related to pawn [is] off the table" for purposes of the valuation of this business. (Tr. 2/26/13 at 156, 184.)

The defendants' expert disagreed and argued that the \$210,988 in pawn receivables should not be deducted from equity because these receivables are "still on the [plaintiff's] books" even though they are physically located in Waterbury and "pawn business assets such as accounts receivable that were physically present at the valuation date" should not be ignored. (Tr. 2/27/13 at 218; Defs' Ex. 131.) According to the defendants, the plaintiff "could still take those receivables and either get the money back from the people coming to retrieve them or sell . . . the product later on," thus realizing the income. (Tr. 2/17/13 at 222; doc. #97 at 14.) See Defs' Ex. 131 ("It is likely that the accounts receivable that existed at the close of business were subsequently collected by Ace; or the items were forfeited and the inventory became available to Ace to sell. By eliminating the assets as a mitigating factor, these assets are therefore included in the damage calculation. The benefit of these assets is therefore realized twice

by Ace; once in the determination of damages and again when actually collected or converted.”)

The experts also disagreed about pawn fee income of \$29,955 and pawn forfeiture income of \$74,482. The parties do not dispute the revenue figures for these two items; again, they disagree as to their treatment. (Defs’ Ex. 123; Pl’s Ex. 15.) In his mitigation calculation, the plaintiff’s expert does not add this income to the equity figure because it is associated with the pawn business. (Tr. 2/26/13 at 191.) Defendants’ expert, on the other hand, contends that income from pawn fees and pawn forfeitures should be included and added them to the plaintiff’s equity. (Tr. 2/27/13 at 218; doc. #97 at 14-15.) The defendants reason that “[t]his revenue was actually received by Ace after the Ace-East Hartford operation closed. These items . . . properly form a basis for a mitigation claim.” (Defs’ Ex. 131.)

d. Court’s conclusions as to the disputed adjustments to revenue

The plaintiff’s pawn receivables of \$210,988 should not be deducted from the plaintiff’s equity. These pawn related items, even though the East Hartford location cannot service them, are income the plaintiff will realize. The court also is persuaded that the income of \$29,955 from pawn fees and of \$74,482 in pawn forfeitures should be included and added to the plaintiff’s equity.

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Based on the court's findings regarding the adjustments to costs and income, the restated mitigation calculation for the plaintiff is as follows:

Mitigation Calculation

Equity as of 7/31/09	\$433,649 ⁴²
Less:	
balance of rent	217,200 ⁴³
utilities	12,000 ⁴⁴
Moving expense	5058 ⁴⁵
Loss on Fixed Assets	14,606 ⁴⁶
Add:	
Income from Pawn Fees	29,955
Income from Forfeitures	<u>74,482</u>
Net Mitigation Benefit	\$289,222

This mitigation benefit is an offset that should be deducted from the plaintiff's fair market value. As applied to the fair market value of \$641,882 derived under the income approach, the resulting figure for damages under the income approach is \$352,660.⁴⁷

⁴² This figure is undisputed.

⁴³ Pl's Ex. 14.

⁴⁴ Tr. 2/26/13 at 188.

⁴⁵ This figure is undisputed.

⁴⁶ Pl's Schedule 20-S.

⁴⁷ \$641,882 - \$289,222 = \$352,660.

B. Market Approach

The experts also evaluated the fair market value of the plaintiff business using a second method under the destruction of business methodology – the market approach. Pursuant to the guideline public company method of the market approach, pricing multiples are utilized from public companies operating in the same or similar industries as the subject company. (Doc. #97 at 13.) The comparator companies “should be in the same business as the company being valued.” (Tr. 2/26/13 at 173.) The “most obvious criterion for comparability is line of business.” Shannon Pratt & Alina V. Niculita, *The Lawyer’s Business Valuation Handbook* 90 (2d ed. 2010). Other criteria include size. The “underlying economics” of a guideline company should “match those that drive” the subject company. *Id.* at 90.

To ascertain the plaintiff’s fair market value using the market approach, the plaintiff’s expert determined that three publicly traded companies, EZ Corporation, World Acceptance Corporation and Cash America, Inc., were comparators to the plaintiff and evaluated their financial statements. The plaintiff’s expert conceded that the companies he used in his analysis are very large but maintained that they were appropriate because a large company is akin to an “aggregation of a lot of small stores that happen[] to be under the same umbrella company.” (Tr. 2/26/13 at 147.) He developed pricing multiples which he applied

to his estimate of the ongoing earnings of the plaintiff.⁴⁸ (Pl's Ex. 1 at 9; tr. 2/26/13 at 120; doc. #96 at 18.)

The defendants' expert concluded that the market approach was not appropriate because the companies the plaintiff's expert used as comparators were not similar to the plaintiff. (Tr. 4/11/14 at 320.) He pointed out that the three companies are huge in comparison to the plaintiff, which had only two stores. Cash America has sales of \$1.12 billion, 500 pawn shops in United States, Europe, and Sweden and operates e-commerce businesses in 35 states. (Tr. 2/26/13 at 173; Defs' Ex. 123.) EZ Corporation has sales of \$597 million and operates 280 pawn shops and 334 loan stores. (Tr. 2/26/13 at 174; Tr. 2/27/13 at 236; Defs' Ex. 123 at 13.) World Acceptance Corporation has sales of \$427 million. (Tr. 2/26/13 at 173; tr. 2/27/13 at 240.) In addition to sheer size, defendants argue the three companies are inapt comparators because they are not in the same business as the plaintiff. (Defs' Ex. 123.) Cash America and EZ Corporation are pawn companies. After August 2009, the plaintiff was no longer in the pawn business. World Acceptance Corporation makes small, short term loans not secured by collateral, which is not a business in which the plaintiff is engaged.

⁴⁸ The plaintiff's expert combined the market approach with the income approach. He averaged the values he derived using the market approach (\$1,047,000) and the income approach (\$1,038,000) to arrive at his conclusion that the value of the plaintiff's destroyed business was \$1,042,500. (Pl's Ex. 1 at 10; Schedule 17-S; Tr. 2/26/13 at 120.)

Court's conclusion as to the Market Approach

The court is persuaded that the market approach should not be used because the businesses used as comparators are too dissimilar from the plaintiff.

C. Cost or Book Value Approach

The final valuation method the experts considered in their goal of trying to ascertain the plaintiff's fair market value was the cost or book value approach. The "book value method" is an "accounting based value that is calculated by subtracting the book value of total liabilities from the book value of total assets." (Pl's Ex. 1 at 5.) It "is generally considered when the subject company is an investment or real estate holding company" and "is used to establish a floor value for the entity that would be realized if the company's assets were sold and the liabilities paid." (Defs' Ex. 123 at 12.) The plaintiff's expert did not use this approach because it generated a lesser value than the one he derived by using the income and market approaches. (Tr. 2/26/13 at 120.) The defendants' expert used the book value method because of the three approaches, it "produce[d] the highest value." (Defs' Ex. 123 at 12.)

The experts agree with the starting point: the net asset value of the plaintiff of \$433,649 as of July 31, 2009. This figure includes pawn assets. (Defs' Ex. 123 at 14; Pl's Ex. 1 at 5; Tr. 2/27/13 at 217.) The experts then made adjustments to eliminate the pawnbroker business segment.

1. Disagreements as to Adjustments

The plaintiff's expert opined that the plaintiff's pawn receivables of \$210,988 should be deducted from the net book value of \$433,649 because he believed that "anything related to pawn was off the table for purposes" of calculating damages. (Tr. 2/26/13 at 184.) As a result, the plaintiff's expert arrived at a "net book value related to the precious metals and second hand good business [of] \$222,661"⁴⁹ before mitigation. (Pl's Ex. 1 at 5; doc. #96 at 16.)

As indicated, the defendants' expert also began with the net book value of \$433,649. (Defs' Ex. at 14.) Consistent with his approach on mitigation, he did not agree that the plaintiff's pawn receivables should be deducted from the plaintiff's assets. The defendants' expert adjusted the \$433,649 value for mitigation, which he previously calculated to be \$523,073. (Defs' Ex. 123 at 22.) As a result, he concluded that under the book value method, the plaintiff suffered no damages but instead realized a benefit of \$89,000.⁵⁰ (Def's Ex. 123 at 16, 22; Doc. #97 at 15-16.) Defendants reason that under the cost approach, the plaintiff kept the assets it had but just moved them to Waterbury. It still could receive pawn fees when customers came to Waterbury and it had the right to take titles to the forfeited pawns and sell them at a profit. According to the defendants' expert, "the plaintiff was \$89,000 ahead by

⁴⁹ \$433,649 - \$210,988 = \$222,661.

⁵⁰ \$433,649 - \$523,073 = \$89,424 [sic].

closing East Hartford and moving to Waterbury. . . .”
(Doc. #97 at 15.)

2. Court’s conclusions as to the Cost or Book
Value Approach

The court does not agree that the plaintiff’s pawn receivables should be deducted from the equity value of \$433,649 as these are still assets the plaintiff can realize, albeit in Waterbury.

For the reasons set forth earlier, the court disagrees with the defendants’ mitigation calculation of \$523,073 and instead finds that the mitigation available to the plaintiff is \$289,222. Accordingly, under the cost approach, the \$433,649 should be offset by the mitigation benefit available to the plaintiff of \$289,222 for a fair market value of \$144,427.

V. Court’s conclusion as to the plaintiff’s fair market
value

After careful consideration of the three valuation approaches and the experts’ opinions, the court concludes that the income approach reflects the most accurate valuation and therefore should be used to calculate the value of the plaintiff’s destroyed business. *See* David Laro and Shannon P. Pratt, *Business Valuation and Federal Taxes: Procedure, Law and Perspective* 163 (2d ed. 2011) (“[T]he income approach is the most valid way to measure the value of a business or business interest.”). As demonstrated by the income approach, the plaintiff has an ongoing earning power

without its pawnbroker business. This approach to valuation more accurately calculates the plaintiff's fair market value than does the book or asset approach, which merely measures the difference between assets and liabilities and "establish[es] a floor value for the entity." (Defs' Ex. 123 at 12; Tr. 4/11/13 at 349-50.) Under the income method, the plaintiff sustained damages of \$352,660 as a result of the defendants' unconstitutional nonrenewal of the plaintiff's precious metals license.

VI. Conclusion

For these reasons, the plaintiff should be awarded compensatory damages of \$352,660.

Any party may seek the district court's review of this recommended ruling. *See* 28 U.S.C. § 636(b) (written objections to proposed findings and recommendations must be filed within fourteen days after service of same); Fed. R. Civ. P. 6(a), 6(d) & 72; Rule 72.2 of the Local Rule for United States Magistrate Judges, United States District Court for the District of Connecticut; *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992) (failure to file timely objections to Magistrate Judge's recommended ruling waives further review of the ruling).

App. 93

Dated this 14th day of July, 2014 at Hartford, Connecticut.

_____/s/_____
Donna F. Martinez
United States
Magistrate Judge

App. 94

**U.S. District Court
United States District Court
for the District of Connecticut**

Notice of Electronic Filing

The following transaction was entered on 9/18/2014 at
6:31 PM EDT and filed on 9/18/2014

Case Name: Ace Partners, LLC v. East
Hartford et al

Case Number: 3:09-cv-01282-RNC

Filer:

Document Number: 102(No document attached)

Docket Text:

**ORDER Re: [99] Recommended Ruling. After re-
view and over objection, the recommended rul-
ing is hereby approved and adopted. So ordered.
Signed by Judge Robert N. Chatigny on 9/18/14.
(Reardon, C)**

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ACE PARTNERS, LLC	:	
<i>doing business as TC's</i>	:	
PAWN COMPANY,	:	
Plaintiff,	:	
V.	:	
TOWN OF EAST HARTFORD,	:	CASE NO.
EAST HARTFORD POLICE	:	3:09CV1282 (RNC)
DEPARTMENT, MARK J.	:	
SIROIS, <i>Chief of Police, I/O</i>	:	
and JOHN MURPHY, <i>Deputy</i>	:	
<i>Chief of Police, I/O.</i>	:	
Defendants.	:	
	:	

JUDGMENT

(Filed Sep. 22, 2014)

Judge Chatigny referred the case to the Honorable Magistrate Judge Donna Martinez to conduct an evidentiary hearing on compensatory damages and to make a recommended ruling on damages doc. # [52] and,

The Honorable Donna F. Martinez having considered the full record of the case including applicable principles of law, and having filed her recommended ruling doc. # [99] that the plaintiff should be awarded compensatory damages of \$352,660.00, and the Court (Chatigny, J.) after review and over objection, having

approved and adopted the recommended ruling; it is hereby

ORDERED, ADJUDGED AND DECREED that judgment enter in favor of the plaintiff, ACE PARTNERS, LLC *doing business as* TC's PAWN COMPANY against the defendants, TOWN OF EAST HARTFORD, EAST HARTFORD POLICE DEPARTMENT. MARK J. SIROIS, *Chief of Police, I/O* and JOHN MURPHY, *Deputy Chief of Police, I/O*. The plaintiff should be awarded compensatory damages in the amount of \$352,660.00.

Dated at Hartford, Connecticut, this 22nd day of September, 2014

ROBERTA D. TABORA, Clerk

By /s/ TG
Terri Glynn
Deputy Clerk

EOD: 9/22/14

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ACE PARTNERS, LLC d/b/a :	
TC's PAWN COMPANY,	:
Plaintiff,	:
v.	:
TOWN OF EAST	:
HARTFORD, et al.,	:
Defendants.	:
	:

CASE NO.
3:09cv1282 (RNC)

RECOMMENDED RULING ON PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES

(Filed Mar. 15, 2016)

Pending before the court is the plaintiff's motion for attorneys' fees and costs. (Doc. #123.)

I. Background

The plaintiff, Ace Partners, LLC d/b/a TC's Pawn Company, was a pawnbroker and dealer in precious metals and stones. In 2009, it commenced this § 1983 action against the Town of East Hartford, the Town of East Hartford Police Department, its Chief of Police Mark Sirois, and its former Deputy Chief John Murphy. The plaintiff claimed that the defendants' refusal to renew plaintiff's pawnbroker and precious metals licenses violated its substantive and procedural due process rights under the Fourteenth Amendment. The parties filed cross-motions for summary judgment. After analyzing the pertinent statutes, the court

(Chatigny, J.) determined that plaintiff was denied procedural due process with respect to its precious metals license and granted plaintiff summary judgment on this claim against the Town of East Hartford and Chief Sirois in his official capacity. (Doc. #51 at 10.) The court granted summary judgment in favor of the defendants on the remaining claims – the plaintiff’s procedural and substantive due process claims regarding its pawnbroker license, plaintiff’s substantive due process claim regarding the precious metals license, all claims against defendants John Murphy and Mark Sirois in their individual capacities, and all claims against the Town of East Hartford Police Department. Judge Chatigny referred the case to me for a damages hearing on the procedural due process claim regarding the precious metals license. After a three day hearing, the court awarded plaintiff \$352,660 in damages. (Doc. ##99, 102.)

The plaintiff now moves for an award of attorneys’ fees and costs. It seeks \$550,612 in attorneys’ fees and \$3585.27 in costs. (Doc. #123.) The defendants do not contest that the plaintiff is a prevailing party entitled to fees and costs but argue that the requested fee award should be reduced. (Doc. #129.) For the reasons that follow, the court recommends¹ that the plaintiff’s

¹ U.S. District Judge Robert N. Chatigny referred the motion to me for a recommended ruling. (Doc. #124.) *See* Fed. R. Civ. P. 54(d)(2)(D) (the court “may refer a motion for attorney’s fees to a magistrate judge under Rule 72(b) as if it were a dispositive pre-trial matter.”)

motion be granted in part and plaintiff be awarded \$490,831.75 in attorneys' fees and \$3585.27 in costs.

II. Legal Standard

Courts evaluating a request for attorneys' fees must "perform[] a lodestar analysis, which calculates reasonable attorneys' fees by multiplying the reasonable hours expended on the action by a reasonable hourly rate." *Kroshnyi v. U.S. Pack Courier Servs, Inc.*, 771 F.3d 93, 108 (2d Cir. 2014). "Both [the Second Circuit] and the Supreme Court have held that the lodestar . . . creates a presumptively reasonable fee." *Millea v. Metro-North R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011). "[A] 'reasonable' fee is a fee that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case." *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). "[T]he lodestar method yields a fee that is presumptively sufficient to achieve that objective." *Id.* "Once a court has determined the presumptively reasonable fee, it may still adjust that amount upward or downward based on relevant factors specific to the instant case, such as the level of success the plaintiff attained." *Doe v. Darien Bd. of Educ.*, No. 3:11CV1581 (JBA), 2015 WL 8770003, at *2 (D. Conn. Dec. 14, 2015) (quotation marks omitted.) "[A]ttorney's fees are dependent on the unique facts of each case" *Baker v. Health Mgmt. Sys., Inc.*, 264 F.3d 144, 149 (2d Cir. 2001). The district court has "wide discretion in determining an appropriate fee award." *Carter v. Incorporated Village of Ocean Beach*, 759 F.3d 159, 167 (2d Cir. 2014).

III. Discussion

Plaintiff seeks compensation for 1713.10 hours expended by ten timekeepers² at the law firm of McElroy, Deutsch, Mulvaney & Carpenter, LLP at various hourly rates for a total of \$550,612 in fees and \$3585.27 in costs.³ The defendants argue that the court should reduce the requested fees because: (1) plaintiff achieved limited success; (2) some of the billing entries are vague; and (3) certain of the requested hourly rates are unreasonable. (Doc. #129 at 3.)

A. Reasonableness of Hours

The defendants assert that the requested hours should be reduced for time spent on plaintiff's unsuccessful claims. (Doc. #129 at 10.) They argue that a reduction is warranted because the plaintiff's unsuccessful claims concerning its pawnbroker license are "clearly severable from the successful claims" on its precious metals license. (Doc. #129 at 10.) Moreover, defendants argue, plaintiff's success on its precious metals license was limited.

The Supreme Court has explained that in both a suit involving a number of "distinctly different claims for relief that are based on different facts and legal

² The timekeepers consisted of 8 attorneys, a paralegal and a law librarian. Plaintiff's billing entries extend from August 2009 to November 2014. They are organized both in chronological order and by timekeeper. (Doc. #123, Ex. 1, 2.)

³ The defendants raise no objection to the requested costs. Upon careful review, the court sees no basis for any adjustment.

theories,” and one which “present[s] only a single claim” or which “involve[s] a common core of facts or will be based on related legal theories,” the “degree of success obtained” is “the most critical factor.” *Hensley v. Eckerhart*, 461 U.S. 424, 434-35 (1983).

In a case involving different claims,

counsel’s work on one claim will be unrelated to his work on another claim. Accordingly, work on an unsuccessful claim cannot be deemed to have been expended in pursuit of the ultimate result achieved. . . . The congressional intent to limit awards to prevailing parties requires that these unrelated claims be treated as if they had been raised in separate lawsuits, and therefore no fee may be awarded for services on the unsuccessful claim.

Id. at 435 (internal quotation marks and citations omitted).

In the more unitary cases – those involving a common core of facts or related legal theories – it is more difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.

Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee . . . encompass[ing] all hours reasonably expended. . . . [T]he fee award

should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. . . .

If, on the other hand, a plaintiff has achieved only partial or limited success, the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount.

Kassim v. City of Schenectady, 415 F.3d 246, 252 (2d Cir. 2005) (citing *Hensley*, 461 U.S. 435-36).

The plaintiff's claims regarding its pawnbroker license were not "distinctly different claims for relief" that should be "treated as if they had been raised in separate lawsuits" for "which no fee may be awarded. . . ." *Hensley*, 461 U.S. at 434-35. To the contrary, this is a unitary case involving a common core of facts and interrelated claims. *Hensley*, 461 U.S. at 440. The complaint alleged that plaintiff had a property interest in both licenses. Plaintiff claimed that defendants denied plaintiff an opportunity to be heard, used improper criteria⁴ and wrongly declined to renew both licenses. Plaintiff's claims on both licenses – the pawnbroker license and the precious metals license – flowed from a common nucleus of facts and circumstances and were inextricably intertwined. As a result, no reduction is warranted for time spent on the pawnbroker license claims on the grounds that they are unrelated.

⁴ The defendants appeared to have relied on the fact that some of the plaintiff's employees had been arrested on charges of attempt to commit larceny. (Compl. ¶12; doc. #51 at 2.)

The defendants also argue that the court should reduce the requested hours to reflect plaintiff's limited success. They point out that the plaintiff prevailed on only one of its claims – its procedural due process claim concerning its precious metals license – and as to that claim, was successful only as to one defendant, the Town of East Hartford.⁵

Although the Supreme Court has rejected a *per se* proportionality rule, *i.e.*, proportionally linking the prevailing party's attorneys fees to the degree of monetary success achieved, *City of Riverside v. Rivera*, 477 U.S. 561, 578 (1986), it has also held that the most critical factor in determining the reasonableness of a fee award is the degree of success obtained by the plaintiff. *Farrar v. Hobby*, 506 U.S. 103, 114 (1992).

Crawford v. City of New London, No. 3:11CV1371(JBA), 2015 WL 1125491, at *9 (D. Conn. Mar. 12, 2015) (quotation marks omitted.) “A district court's assessment of the degree of success achieved in a case is not limited to inquiring whether a plaintiff prevailed on individual claims. . . . Both the quantity and quality of relief obtained, as compared to what the plaintiff sought to achieve as evidenced in [its] complaint, are key factors in determining the degree of success achieved.” *Barfield v. New York City Health & Hosps. Corp.*, 537 F.3d 132, 152 (2d Cir. 2008) (quotation marks and citations

⁵ The defendants suggest that the plaintiff prevailed only as to one defendant – the Town of East Hartford – because its claim against Police Chief Sirois in his official capacity is in essence an action against the Town. *See* doc. #129 at 10.

omitted.) “[T]his comparison promotes the court’s central responsibility to make the assessment of what is a reasonable fee under the circumstances of the case.” *Id.* (quotation marks and citations omitted.) *See Mr. J. v. Bd. of Educ.*, 98 F. Supp. 2d 226, 240 (D. Conn. 2000) (“Although the degree of the plaintiff’s success is not determinative of eligibility for attorney’s fees, it is relevant to the size of the award.”) (quotation marks and citation omitted.)

The court granted summary judgment in favor of the defendants on the plaintiff’s claims concerning its pawnbroker license as well as its substantive due process claim concerning the precious metals license. Although plaintiff succeeded on its procedural due process claim concerning its precious metals license, it did not realize as high a damage award as it would have if it had prevailed on all claims. Mindful of the Supreme Court’s observation that “the most critical factor in determining the reasonableness of a fee award is the degree of success obtained,” *Farrar*, 506 U.S. at 114, a reduction is appropriate under the circumstances of this case. *See, e.g., Dymkaya v. Orem’s Diner of Wilton, Inc.*, No. 3:12CV388(JAM), 2016 WL 30649, at *2 (D. Conn. Jan. 4, 2016) (court applied a 15% reduction to fee award in light of plaintiff’s less than complete success); *Doe v. Darien Bd. of Educ.*, No. 3:11CV1581(JBA), 2015 WL 8770003, at *11 (D. Conn. Dec. 14, 2015) (reduction of presumptively reasonable fee by 10% in light of plaintiff’s “limited victory”); *McDow v. Rosado*, 657 F. Supp. 2d 463, 469-70 (S.D.N.Y. 2009) (court “execise(d) [sic] its discretion” to reduce presumptively

reasonable fee by 12% to reflect plaintiff's lack of success on certain claims as well as difference between his request for relief and the damages awarded); *Rivera v. Corp. Receivables, Inc.*, 540 F. Supp. 2d 329, 342 (D. Conn. 2008) ("As is within its discretion, the court will apply an across-the-board percentage cut when reducing the lodestar figure" to reflect plaintiff's partial success). Having considered the record as a whole, the lodestar should be reduced by 5%.

B. Vagueness

Defendants next argue that some of plaintiff's billing entries should be disallowed because they are "insufficient and vague." (Doc. #129 at 13.) They have identified 86 allegedly vague time entries in a marked-up version of plaintiff's exhibit documenting its billing records. (Doc. #129-1, Ex. 2.)

"Fees should not be awarded for time entries when the corresponding description of work performed is vague and therefore not susceptible to a determination of whether the time [billed] was reasonably expended." *Perez v. Lasership, Inc.*, No. 3:15MC00031(CSH), 2015 WL 8750965, at *7 (D. Conn. Dec. 14, 2015) (quotation marks and citation omitted.). Counsel applying for fees are "not required to record in great detail how each minute of [their] time was expended." *Hensley v. Eckhardt*, 461 U.S. 424, 437 n.12 (1983). Counsel are obliged "to keep and present records from which the court may determine the nature of the work done, [and] the need for and the amount of time reasonably required."

Rabin v. Wilson-Coker, 425 F. Supp.2d 269, 272 (D. Conn. 2006). *See also New York State Assn for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1148 (2d Cir. 1983) (billing entries should specify the attorney, the date, the time expended, and the “nature of the work done sufficient to evaluate its appropriateness”). “Entries stating such vague references as ‘review of file’, ‘review of correspondence’, ‘research’, ‘conference with client’, and ‘preparation of brief’ do not provide an adequate basis upon which to evaluate the reasonableness of the services and hours expended on a given matter.” *Rabin*, 425 F. Supp.2d at 273 (quotation marks and citation omitted.)

Upon careful review of plaintiff’s billing entries, the court reduces Attorney Woo’s hours by 41.3 hours and Attorney Pickerstein’s hours by 19.3 hours for entries that are insufficiently specific to permit the court to assess the reasonableness of time expended.⁶

C. Reasonableness of Rates

Defendants contest the reasonableness of the \$500 hourly rate requested for Attorney Pickerstein and

⁶ The entries excluded for Attorney Woo are: 11/16/09 (.60); 11/17/09 (.60); 12/4/09 (1.0); 12/21/09 (1.4); 1/29/10 (1.10); 2/3/10 (1.0); 3/8/10 (.5); 3/31/10 (1.0); 4/6/10 (4.0); 4/12/10 (1.5); 4/15/10 (1.0); 7/1/10 (3.6); 8/19/10 (.9); 9/16/10 (7.4); 9/17/10 (4.1); 11/22/10 (4.5); 6/22/12 (2.6); 10/24/12 (1.6); 10/26/12 (2.9). Attorney Woo’s hours are reduced from 556.80 to 515.5. The entries excluded for Attorney Pickerstein are: 5/17/10 (4.5); 5/20/10 (3.5); 5/27/10 (4.0); 6/1/10 (4.5); and 9/17/10 (2.8.) Attorney Pickerstein’s hours are reduced from 311.20 to 291.90.

\$175 hourly rate requested for paralegal Karen Warshauer.⁷ (Doc. #129 at 6.)

The rates used in calculating the lodestar are the market rates “prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984). “[D]etermination of a reasonable hourly rate ‘contemplates a case-specific inquiry into the prevailing market rates for counsel of similar experience and skill to the fee applicant’s counsel,’ an inquiry that may ‘include judicial notice of the rates awarded in prior cases and the court’s own familiarity with the rates prevailing in the district.’” *Townsend v. Benjamin Enters., Inc.*, 679 F.3d 41, 59 (2d Cir. 2012). See *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 551 (2010) (“[T]he lodestar looks to the prevailing market rates in the relevant community.”); *Cohen v. W. Haven Bd. of Police Comm’rs*, 638 F.2d 496, 506 (2d Cir. 1980) (“The fees that would be charged for similar work by attorneys of like skill in the area [is] the starting point for determination of a reasonable fee award.”)

Attorney Pickerstein practiced law for more than 44 years.⁸ Before entering private practice, he was a federal prosecutor, serving as Chief Assistant, U.S. Attorney and later Acting U.S. Attorney. (Doc. #123-2, Smart Aff. ¶10.) In support of Attorney Pickerstein’s

⁷ The defendants do not object to rates charged by the plaintiff’s other timekeepers. Upon review, the court agrees that they are reasonable. (Doc. #129 at 8.)

⁸ He is no longer engaged in the practice of law.

claimed rate, plaintiff submits the affidavits of Attorneys William Clendenen and David Rosen, practicing attorneys each with more than 45 years experience. (Doc. ##123-7, 123-8.) Both attest to Attorney Pickerstein's excellent skills and experience and aver that the requested rate of \$500/hour is reasonable.

In addition, plaintiff points out that this is the rate it agreed to pay, which it contends is "strong evidence" of its reasonableness, an argument which has some support in the case law. (Smart Aff. ¶ 13; Doc. #123-1 at 12.) *See, e.g., Wells Fargo Bank, NA v. Konover*, No. 3:05CV1924(AWT), 2014 WL 3908596, at *5 (D. Conn. Aug. 8, 2014) ("there is a strong presumption that the rate a paying client actually did pay during the course of the litigation is reasonable"); *Diplomatic Man, Inc. v. Nike, Inc.*, No. 08cv139(GEL), 2009 WL 935674, at *6 (Apr. 7, 2009) ("the fact that Nike, a highly sophisticated business client, has paid these bills, presumably after careful review . . . is prima facie evidence of the reasonableness of the hourly rates charged").

In light of the evidence plaintiff has presented in the form of sworn statements by members of the Connecticut bar as to Attorney Pickerstein's skills and experience and the Connecticut legal market, the court's own familiarity with the prevailing rates in the community, and the quality of work performed by Attorney Pickerstein, I find that the requested rate is reasonable.

Defendants also argue that the requested rate of \$175 for plaintiff's paralegal, Karen Warshauer, is

unreasonable. (Doc. #129 at 7.) Plaintiff responds that Ms. Warshauer has twenty years paralegal experience and that her skill and reliable work mitigated plaintiff's legal expenses because she performed work that otherwise would have been performed by an attorney at a higher cost. (Doc. #133 at 3 n.2.)

Plaintiff has not met its burden of demonstrating that the requested rate of \$175 is "in line with those prevailing in the community. . . ." *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984). The affidavits of Attorneys Rosen and Clendenon [sic] both indicate that the requested rate is higher than the market rate. Attorney Rosen states that his firm charges "\$135/hr for the work of skilled and experienced paralegals." (Doc. #123-7, Rosen Aff. ¶ 12.) Courts in this District have found \$140/hour a reasonable rate for paralegal work. *See Doe v. Darien Bd. of Educ.*, No. 3:11CV1581(JBA), 2015 WL 8770003, at *6 (D. Conn. Dec. 14, 2015); *Crawford v. City of New London*, No. 3:11CV1371(JBA), 2015 WL 1125491, at *6 (D. Conn. Mar. 12, 2015). The court finds that \$140 is a reasonable rate.

IV. Conclusion

For these reasons, plaintiff's motion (doc. #123) should be granted in part and plaintiff awarded

\$490,831.75 in attorneys' fees for 1652.5 hours expended and \$3585.27 in costs.⁹

Any party may seek the district court's review of this recommendation. *See* 28 U.S.C. § 636(b) (written objections to proposed findings and recommendations must be filed within fourteen days after service of same); Fed. R. Civ. P. 6(a), 6(d) & 72; Rule 72.2 of the Local Rules for Magistrate Judges; *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992) (failure to file timely objections to Magistrate Judge's recommended ruling waives further review of the ruling).

⁹ The following reflects the deductions made to Attorneys Woo and Pickerstein's requested hours and to Ms. Warshauer's hourly rate:

	<u>Hours</u>	<u>Rate</u>	<u>Fee awarded</u>
Woo	515.50	\$320	\$164,690
Pickerstein	291.90	\$500	\$145,950
Smart	405.90	\$320	\$129,408
Warshauer	316.60	\$140	\$44,324
Farrell	63.20	\$180	\$11,376
Klau	22	\$400	\$8800
Filan	17	\$400	\$6800
Martin	9.80	\$260	\$2548
Wheelock	10.30	\$240	\$2472
Hayter	<u>.30</u>	\$ 90	<u>\$27</u>
Total	1652.50		\$516,665

\$516,665 – \$25,833.25 (5% reduction) = \$490,831.75.

App. 111

Dated this 15th day of March, 2016 at Hartford,
Connecticut.

_____/s/_____
Donna F. Martinez
United States Magistrate Judge

App. 112

**U.S. District Court
United States District Court
for the District of Connecticut**

Notice of Electronic Filing

The following transaction was entered on 4/21/2016 at 5:44 PM EDT and filed on 4/21/2016

Case Name: Ace Partners, LLC v. East
Hartford et al

Case Number: 3:09-cv-01282-RNC

Filer:

WARNING: CASE CLOSED on 09/22/2014

Document Number: 137(No document attached)

Docket Text:

ORDER adopting [134] Recommended Ruling.
After review and over objection, the recommended ruling that plaintiff's motion for attorneys' fees (ECF No. 123) be granted in part is hereby approved and adopted. So ordered. Signed by Judge Robert N. Chatigny on 4/21/16. (Samuels, J)

App. 113

**U.S. District Court
United States District Court
for the District of Connecticut**

Notice of Electronic Filing

The following transaction was entered on 4/21/2016 at 5:46 PM EDT and filed on 4/21/2016

Case Name: Ace Partners, LLC v. East
Hartford et al

Case Number: 3:09-cv-01282-RNC

Filer:

WARNING: CASE CLOSED on 09/22/2014

Document Number: 138(No document attached)

Docket Text:

ORDER granting in part [123] Motion for Attorney Fees. In accordance with the recommended ruling, which has been approved and adopted, plaintiff's motion for attorneys' fees is granted in part, and plaintiff is awarded \$490,831.75 in attorneys' fees and \$3,585.27 in costs. So ordered. Signed by Judge Robert N. Chatigny on 4/21/16. (Samuels, J)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ACE PARTNERS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No.
	:	
TOWN OF EAST	:	3:09-cv-1282 (RNC)
HARTFORD, ET AL.,	:	
	:	
Defendants.	:	

RULING AND ORDER

(Filed Aug. 10, 2016)

This case is before the Court on plaintiff's motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) to add prejudgment interest of \$5,822 to its compensatory damages award of \$352,660 and to require that post-judgment interest accrue until the compensatory damages are paid. [ECF No. 107] For the reasons that follow, the motion is granted in part and denied in part.

Applicable Standard

Defendants oppose the motion to amend on the ground that the plaintiff has failed to point to controlling decisions or data that the Court overlooked in entering judgment. Plaintiff replies that no such showing is required to support a Rule 59(e) motion to amend a judgment to include prejudgment interest. The Court agrees.

Prejudgment Interest

Whether to award prejudgment interest in a suit to enforce a federal right is “ordinarily left to the discretion of the district court.” *Gierlinger v. Gleason*, 160 F.3d 858, 873 (2d Cir. 1998). In making a determination regarding prejudgment interest, courts consider the need to fully compensate the wronged party, the relative equities of the award, and the remedial purpose of the applicable statute. *Id.* These factors weigh in favor of the plaintiff’s request.

After careful review of a voluminous record, Judge Martinez determined that defendants’ unconstitutional nonrenewal of plaintiff’s precious metals license caused actual damages of \$352,660. In similar circumstances, prejudgment interest has been awarded to fully compensate the plaintiff for economic injury caused by the loss of a license. *See Tretola v. Cty. of Nassau*, No. 08-CV-3225 DRH WDW, 2014 WL 2866095, at *1-2 (E.D.N.Y. June 24, 2014) (awarding prejudgment interest when defendants revoked plaintiff’s license and thereby “constructively withheld profits that [p]laintiff would have earned”).

Defendant’s contend that an award of prejudgment interest would not be fair or equitable because the damages in this case are “inherently speculative.” Defs.’ Obj. (ECF No. 121) at 5. However, as the recommended ruling demonstrates, the amount of compensatory damages awarded to the plaintiff for the loss of its precious metals business is a reasonable estimate

adequately supported by expert testimony and documentary evidence. More is not required to support an award of interest. *See Tretola*, 2014 WL 2866095, at *1-2 (awarding prejudgment interest on estimate of lost sales based on sales figures, but declining to award prejudgment interest on loss from distress sale because figure was not supported by documentation and was therefore “highly speculative”); *cf. Sulkowska*, 170 F. Supp. 2d at 317-21 (declining to award prejudgment interest in part because damages were based on emotional injuries that were “not ascertainable with any precision either at the time of the wrongdoing or at the time of trial or judgment” and were therefore “inherently speculative”).

Defendants also contend that the compensatory damages award fully compensates the plaintiff for its economic loss. In the recommended ruling, Judge Martinez stated that her task was to determine the fair market value of the precious metals business “as of the day it closed.” Recommended Ruling After Hearing in Damages (ECF No. 99) at 5-6. Judge Martinez also noted that the plaintiff intended to seek prejudgment interest. *Id.* at 6 n.9. Thus, defendants’ argument that an award of interest would be duplicative is incorrect.

Post-Judgment Interest

Plaintiff asks that the Court specify in the amended judgment that post-judgment interest will continue to accrue. The requested amendment is unnecessary because, under 28 U.S.C. § 1961, post-judgment interest,

calculated from the date of the entry of the judgment, is “mandatory.” *Fraser v. Wyeth, Inc.*, 992 F. Supp. 2d 68, 102 (D. Conn. 2014). Moreover, because the defendants have filed a notice of appeal, post-judgment interest is a matter to be addressed in the mandate issued by the Court of Appeals. *See* Fed. R. App. P. 37.

Accordingly, the motion to alter or amend the judgment is hereby granted as to prejudgment interest and denied as to post-judgment interest. The Clerk will enter an amended judgment awarding the plaintiff \$5,822 in prejudgment interest, in addition to \$352,660 in compensatory damages, \$490,831.75 in attorneys’ fees and \$3,585.27 in costs.

So ordered this 9th day of August 2016.

/s/ RNC
Robert N. Chatigny
United States District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ACE PARTNERS, LLC,	:	
<i>doing business as TC's</i>	:	
Pawn Company,	:	3:09CV1282 (RNC)
Plaintiff,	:	
v.	:	
TOWN OF EAST	:	
HARTFORD, EAST	:	
HARTFORD POLICE	:	
DEPARTMENT, MARK J.	:	
SIROIS, <i>Chief of Police,</i>	:	
<i>I/O</i> and JOHN MURPHY,	:	
<i>Deputy Chief of Police, I/O.</i>	:	
Defendants,	:	

AMENDED JUDGMENT

(Filed Aug. 11, 2016)

This action having come on for consideration of the plaintiff's motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) to add prejudgment interest of \$5,822 to its compensatory damage award of \$352,660, and to order that post-judgment interest will continue to accrue until defendants pay the compensatory damage ordered by the Court, pursuant to 28 U.S.C. § 196 dkt. #[107], and

The Honorable Robert N. Chatingy [sic], United States District Judge having considered the full record of the case including applicable principles of law, filed an

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order dkt. # [139] granting prejudgment interest and denying post-judgment interest, it is therefore

ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered in favor of the plaintiff Ace Partners, LLC awarding \$5,822 in prejudgment interest, in addition to \$352,660 in compensatory damages, \$490,831.75 in attorneys' fees and \$3,585.27 in costs.

Dated at Hartford, Connecticut, this 11th day of August, 2016.

ROBIN D. TABORA, Clerk

By /s/ TG
Terri Glynn
Deputy Clerk

EOD: 8/11/16

1998 Conn. Gen. Stat. § 21-39

1998 Connecticut Code Archive

Sec. 21-39. License required. Loans on intangible property excepted.

No person, corporation, limited liability company or partnership shall, in any city or town of this state, engage in or carry on the business of loaning money upon deposits or pledges of wearing apparel, jewelry, ornaments, household goods or other personal property, or of purchasing such property on condition of selling the same back again at a stipulated price, unless such person, corporation, limited liability company or partnership is licensed as a pawnbroker; but the provisions of this chapter shall apply only if such property is deposited with a lender, and shall not apply to loans made upon stock, bonds, notes or other written or printed evidence of ownership of property or of indebtedness to the holder or owner of any such securities.

2002 Conn. Gen. Stat. § 21-40

2002 Connecticut Code Archive

§ 21-40. Issuance of licenses. Fees.

The selectmen of any town and the chief of police of any city may grant licenses to suitable persons to be pawnbrokers and to carry on the business of lending

money on the deposit or pledge of personal property, or of purchasing such property on condition of selling it back again at a stipulated price, or of purchasing such property from a person who is not a wholesaler, in such town or city respectively, and may revoke such licenses for cause; but the selectmen shall not grant such licenses for the carrying on of such business within the limits of any city. The person so licensed shall pay, for the benefit of any such city or town, respectively, to the authority granting such license a license fee of fifty dollars, and twenty-five dollars per year thereafter for renewal of such license, and shall, at the time of receiving such license, file, with the mayor of such city or the first selectman of such town, a bond to such city or town, with competent surety, in the penal sum of two thousand dollars, to be approved by such licensing authority, and conditioned for the faithful performance of the duties and obligations pertaining to the business so licensed. Each such license shall designate the place where such business is to be carried on and shall continue one year unless sooner revoked. No license shall be issued under this section by the selectmen or chief of police to any person who has been convicted of a felony. The selectmen or chief of police may require any applicant for a license under this section to submit to state and national criminal history records checks. If the selectmen or chief of police require such criminal history records checks, such checks shall be conducted in accordance with section 29-17a.

2002 Conn. Gen. Stat. § 21-100

2002 Connecticut Code Archive

§ 21-100. License required. Fee. Record of transactions.

- (a) No person may engage in or carry on the business of purchasing gold or gold-plated ware, silver or silver-plated ware, platinum ware, watches, jewelry, precious stones or coins unless such person is licensed by the chief of police or, if there is no chief of police, the first selectman of the municipality in which such person intends to carry on such business; except that the provisions of this subsection shall not apply to the purchase of such items from a wholesaler by a manufacturer or retail seller whose primary place of business is located in this state. Such person shall pay an annual fee of ten dollars for such license. The license may be revocable for cause, which shall include, but not be limited to, failure to comply with any requirements for licensure specified by the licensing authority at the time of issuance. A chief of police or first selectman shall refuse to issue a license under this subsection to a person who has been convicted of a felony. A chief of police or first selectman may require any applicant for a license to submit to state and national criminal history records checks. If the chief of police or first selectman requires such criminal history records checks, such checks shall be conducted in accordance with section 29-17a. For

the purposes of this subsection “wholesaler” means a person in the business of selling tangible personal property to be resold at retail or raw materials to be manufactured into suitable forms for use by consumers.

- (b)** Each such licensed person shall keep a record in which he shall note at the time of each transaction a description of the goods purchased and the price paid for them, the name and address of the person selling the goods and the date and hour any such goods were received. Each such licensed person shall demand positive identification from the person selling the article and the type or form of identification received shall be noted in the record. Any state police officer or municipal police officer shall have access to the record required to be kept under this section and may inspect the place where the business is carried on as well as any goods purchased or received.
- (c)** No such licensed person may purchase any goods from a minor unless such minor is accompanied by a parent or guardian. Each such licensed person may only pay for goods received by check, draft or money order and no cash shall be transferred to either party in the course of a transaction subject to the provisions of this section
- (d)** At the time of making any purchase each licensed person shall deliver to the person selling goods a receipt containing the information required to be recorded in subsection (b) of this section, the amount paid for any goods

sold and the name and address of the purchaser.

- (e) Upon request of the licensing authority each such licensed person shall make a weekly sworn statement, describing the goods received and setting forth the name and address of each person from whom goods were purchased, to the chief of police or first selectman of each municipality in which he transacted business that week. Such sworn statement shall not be deemed public records for the purposes of the Freedom of Information Act, as defined in section 1-200.
 - (f) Any person who violates any provision of this section shall be fined not more than one thousand dollars.
-

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ACE PARTNERS, LLC	) Case No.:
D/B/A TC'S PAWN	) 3:09CV1282 (RNC)
COMPANY,	)
v.	)
TOWN OF EAST	)
HARTFORD, TOWN OF	)
EAST HARTFORD POLICE	)
DEPARTMENT, MARK J.	)
SIROIS, Individually and	)
in his Official Capacity as	)
Chief of Police, JOHN	)
MURPHY, Individually and	) October 1, 2010
in his Official Capacity as	)
Deputy Chief of Police,	)

PLAINTIFF'S LOCAL
RULE 56(a)1 STATEMENT

(Filed Oct. 1, 2010)

Pursuant to D.Conn.L.Civ.R. 56(a)(1), the Plaintiff contends that there are no genuine issues to be tried with respect to the following material facts, and hereby submits this statement in support of its Motion for Summary Judgment.

1. Plaintiff Ace Partners, LLC ("Ace") is a limited liability company that consists of TC's Pawn Company, a pawnbroker and precious metals business with locations in the Defendant Town of East Hartford and the City of Waterbury. (*See Deposition of Christa*

Matuschkowitz (hereinafter “Matuschkowitz Tr. at p. ____”) at pages 9:14-10:2; 15:21-16:2 (excerpts attached hereto as Exhibit 1); see also Deposition of Allen Kosowsky, CPA (hereinafter “Kosowsky Tr. at p. ____”) at pages 60:19-61:16 (excerpts attached hereto as Exhibit 2).

2. The Town of East Hartford location was opened in October 2007, and from October 2007 to August 9, 2009, it had all the required licensing for its pawnbroker and precious metal business, which was issued by the Defendant Town of East Hartford Police Department (“East Hartford PD”). ***See Matuschkowitz Tr. at pp. 13:24-14:3; 14:23-25; 27:10-27:13; 36:6-9. See also Deposition of Mark Sirois (hereinafter “Sirois Tr. at p. ____”) at pages 43:7-19; 62:19-23 (excerpts attached hereto as Exhibit 3).***

3. During the time it was in business, the East Hartford location was a highly profitable business. ***See Kosowsky Tr. at p. 71:8-23.***

4. The Plaintiff strictly complied with all State of Connecticut and Town of East Hartford laws and ordinances concerning its operations. ***See Sirois Tr. at pp. 62:16-63:3.***

5. In particular, the Plaintiff’s East Hartford location complied with all laws and requirements concerning the receipt of stolen property, including the maintenance of computerized record keeping and reporting systems, as well as submitting weekly reports to the local police department. ***See Matuschkowitz Tr. at pp. 34:20-25; 44:14-48:4; 53:14-54:11; 55:1-57:4.***

See also Deposition of John Murphy (hereinafter “Murphy Tr. at p. ____”) at pages 46:16-19; 63:10-13 (excerpts attached hereto as Exhibit 4). See also Sirois Tr. at pp. 62:16-63:3.

6. The Plaintiff required driver’s license or other photo identification from all sellers of goods to the Plaintiff and required receipts for all multiple new and still packaged items in an effort to prevent stolen goods from being purchased and sold. ***See Matuschkowitz Tr. at pp. 44:14-48:4; 53:14-54:11; 55:1-57:4.***

7. All purchases were recorded and the information was entered into the computer database. ***See Matuschkowitz Tr. at pp. 44:14-48:4; 53:14-54:11; 55:1-57:4.***

8. If the item had a serial number, then that number is recorded. ***See Matuschkowitz Tr. at pp. 44:14-48:4; 53:14-54:11; 55:1-57:4.***

9. If there was no serial number, as with jewelry, the item was described and as needed a photographic record of the article was made. ***See Matuschkowitz Tr. at pp. 44:14-48:4; 53:14-54:11; 55:1-57:4.***

10. The employees at the East Hartford location always cooperated fully with law enforcement. ***See Matuschkowitz Tr. at pp. 44:14-48:4; 53:20-54:11; 55:7-57:12. Sirois Tr. at p. 62:16-18. Murphy Tr. at pp. 61:9-62:6; 63:10-13.***

11. If they found that someone attempted to sell or sold stolen property at its location, that activity was promptly reported to law enforcement and banned that

person from doing business with the store. *See Matuschkowitz Tr. at pp. 44:14-48:4; 53:20-54:11; 55:7-57:12. Sirois Tr. at p. 62:16-18. Murphy Tr. at pp. 61:9-62:6; 63:10-13.*

12. Indeed, the East Hartford location had a history of assisting the Defendants in the investigation of stolen property. *See Matuschkowitz Tr. at pp. 44:14-48:4; 53:20-54:11; 55:7-57:12. Sirois Tr. at p. 62:16-18. Murphy Tr. at pp. 61:9-62:6; 63:10-13.*

13. In 2009, the State of Connecticut Division of Criminal Justice (“State”) was involved in an investigation that focused on pawn broking businesses throughout the State of Connecticut (“Task Force”). *See Sirois Tr. at pp. 10:25-11:2.*

14. The Task Force involved numerous municipalities around the state, including the town of East Hartford. *See Sirois Tr. at pp. 7:16-8:5; 12:21-25; 8:6-14:4. Murphy Tr. at pp. 27:22-29:12.*

15. On or about June 2, 2009, as a result of the investigation, the State obtained and executed search warrants at the East Hartford location, as well as at other pawn companies in various parts of the state. *See Matuschkowitz Tr. at pp. 23:4-17; 31:9-11. Sirois Tr. at pp. 34:14-35:5; 59:8-20; 60:17-61:19. Murphy Tr. at pp. 37:18-42:3; 68:12-69:19. See also Arrest Warrant of Jay Sargent dated August 11, 2009 (hereinafter “Plt’s Dep. Exh. H”) (attached hereto as Exhibit 5).*

16. As a result of that investigation, two low level employees at TC's Pawn Company's East Hartford location were arrested: Nicholas J. Carbone and Nicholas J. St. Peter, and both were charged with Attempt to Commit Larceny in the 5th Degree, a misdemeanor, which the State ultimately declined to prosecute.¹ ***See Matuschkowitz Tr. at pp. 21:25-23:17. Murphy Tr. at pp. 37:18-42:3; 68:12-69:19. Sirois Tr. at pp. 34:14-35:5. See also Application For Arrest Warrant dated 8/17/09 (hereinafter "Plt's Dep. Exh. J") (attached hereto as Exhibit 6).***

17. Neither the Plaintiff nor any of its officers or owners was charged with any crimes as a result of the June 2009 action by the State. ***See Sirois Tr. at pp. 20:22-22:22; 34:14-35:5. See also Application For Licensing dated July 20, 2009 (hereinafter "Plt's Dep. Exh. E") (attached hereto as Exhibit 7).***

18. The pawnbroker and precious metals licenses held by TC's Pawn's East Hartford location were due to expire on Sunday, August 9, 2009. ***See Sirois Tr. at pp. 43:7-25; 46:11-20.***

19. In anticipation of that expiration, the Plaintiff timely filed applications to renew those licenses on July 20, 2009. ***See Plt's Dep. Exh. E. Matuschkowitz Tr. at pp. 27:10-28:3. Sirois Tr. at p.19:7-16.***

¹ Plaintiff's counsel can represent, based upon communications with the State and counsel for Messrs. Carbone and St. Peter, that decline to prosecute documents were executed. The Plaintiff can obtain copies of this document reflecting same if necessary.

20. The requisite paperwork, fees, and surety bond certificate were all properly completed and submitted by the Plaintiff to the East Hartford PD. ***See Matuschkowitz Tr. at pp. 27:10-28:20; 43:9-44:13. Sirois Tr. at pp. 19:6-24:6.***

21. While the Plaintiff awaited the renewal of its licenses, the East Hartford PD provided absolutely no notice to the Plaintiff of its decision to not renew them. ***See Sirois Tr. at pp. 41:3-9; 41:1342:8. See also Letter dated August 7, 2009 (hereinafter “Plt’s Dep. Exh. F”) (attached hereto as Exhibit 8).***

22. In fact, representatives from the East Hartford PD even assured the Plaintiff that its application was in order and that there should be no problem with the renewal of its licenses. ***See Matuschkowitz Tr. at pp. 43:9-44:13. Sirois Tr. at pp. 18:17-22:22.***

23. Accordingly, the East Hartford location continued with business as usual. ***See Matuschkowitz Tr. at pp. 43:9-44:13. Sirois Tr. at pp. 18:17-22:22.***

24. In reality, the Defendants were planning to revoke the Plaintiff’s license, which was in direct contrast to the representations that they made to the Plaintiff. ***See Sirois Tr. at pp. 54:8-58:7.***

25. On June 30, 2009, the Defendants drafted correspondence to the Plaintiff setting forth the fact it was revoking the Plaintiff’s licenses, and provided the Plaintiff with an opportunity to have a hearing to contest the revocation. ***See Sirois Tr. at pp. 54:22-56:19. See also letter dated June 30, 2009 (hereinafter***

“Plt’s Dep. Exh. G”) (attached hereto as Exhibit 9).

26. The draft June 30, 2009 correspondence specifically provided as follows:

This letter is to inform you that the above-referenced Licenses (copies enclosed) are revoked, effective immediately . . . If you wish to contest the revocation of either or both Licenses, you must **request a hearing, in writing, within seven (7) days of this Notice.**

See Plt’s Dep. Exh. G. (emphasis in original). See also Sirois Tr. at pp. 54:22-56:19.

27. The Defendants, however, chose not to send this correspondence and instead decided to wait until August 7, 2010, a date immediately prior to the Plaintiff’s license renewal deadline, to send correspondence announcing their refusal to renew. ***See Sirois Tr. at pp. 54:8-58:7. Plt’s Dep. Exh. F.***

28. In so doing, as understood by the Defendants, the Plaintiff would then be unable [sic] contest the non-renewal with a hearing. ***See Sirois Tr. at p. 56:10-19.***

29. The Defendants chose to wait to send this correspondence almost a month and a half after it drafted its initial revocation letter, for the sole purpose of preventing the Plaintiff from being able to obtain a hearing. ***See Sirois Tr. at p. 56:10-19.***

30. Specifically, on August 7, 2009, the Friday before the Plaintiff’s licenses were set to expire,

Defendant Mark J. Sirois, Chief of the Police Department for the Town of East Hartford, sent correspondence to the Plaintiff informing the Plaintiff that its licenses would not be renewed, effective Monday, August 10, 2009. ***See Sirois Tr. at pp. 43:1-25; 47:5-21. Matuschkowitz Tr. at pp. 28:21-30:9.***

31. The only reason given for the refusal was that “Recent occurrences at TC’s Pawn Co[.] (sic) demonstrates that there exists cause not to renew each [L]icense] (sic).” ***See Sirois Tr. at pp. 41:10-17; 44:15-24.***

32. No recitation or explanation of the “cause” referenced in that letter was given. ***See Plt’s Dep. Exh. F.***

33. In addition to advising the Plaintiff of Chief Sirois’ refusal to renew the licenses, the letter stated that “[c]onducting [P]awnbroker (sic) activities or [P]urchasing [P]recious [M]etals (sic) without proper licensure may result in, among other things, criminal prosecution.” ***See Plt’s Dep. Exh. F.***

34. Chief Sirois made the decision to not renew the Plaintiff’s licenses based upon information that he purportedly received from Deputy Chief Murphy with respect to the State’s Task Force investigation. ***See Sirois Tr. at pp. 34:14-37:11; 37:12-40:23.***

35. However, Deputy Chief Murphy, as well as the entire East Hartford PD, had extremely minimal participation and knowledge of the Task Force and the

results of its investigation. *See Murphy Tr. at pp. 27:22-28:12.*

36. In fact, the East Hartford PD had only assigned a single non-detective investigator to the State's Task Force, Investigator Hewins, who was only assigned, not because of her investigative ability, but because her "workload was less than others." *See Murphy Tr. at pp. 30:22-31:8; 32:9-33:1.*

37. During her time with the Task Force, Hewins gave few or no updates to anyone within the East Hartford PD on the status of the investigation. *See Murphy Tr. at p. 34:3-15.*

38. Moreover, Deputy Chief Murphy, the Defendants' liaison to the Task Force and the only individual upon whom Chief Sirois relied for information on it, had minimal communication with the State on the investigation's status. *See Sirois Tr. at pp. 8:20-9:24. Murphy Tr. at pp. 27:22-28:12; 40:22-42:14; 43:2-44:1.*

Q Did you interview Investigator Hewins about what happened during the investigation?

A No.

...

Q Did you ever interview any of the officers that were involved in preparing the arrest affidavit?

A No.

Q Or any of the affidavits or any of the documents prepared in Plaintiffs J [*i.e.*, the Task Force documents]

A No.

...

Q What was your involvement in the investigation besides what you testified to [*i.e.*, the assignment of Investigator Hewins]?

A None.

See Murphy Tr. at pp. 40:22-41:7; 42:12-14.

39. Additionally, all that was conveyed to Chief Sirois from Deputy Chief Murphy on the Task Force was as follows:

Q Did Chief Sirois speak to you or seek your counsel in making the decision whether to renew or not renew the license of TC's Pawn?

A I had advised him on the investigation and the result of the investigation with regard to the State's Attorney's.

...

A I was just advising him as to the investigation, the status of the investigation, and then when the investigation, when they executed the warrant on the various pawnshops in the region, I advised him that that had occurred, the status of the situation right now. So around that time, whenever that date was when these

arrests were made and the execution of these warrants throughout the region were done, I advised him that this had occurred and this was the status.

Q What exactly did you – can you just –

I told him that a search warrant had been executed here, here, and here, and that there had been some arrests made in East Hartford on site.

Q Did you tell him what exactly was the nature of the arrests or the search warrant?

A At the time I didn't know.

Q Did you tell him who was arrested?

A At the time I didn't know. They just – I just told him they had made two arrests at TC's Pawn. Subsequently after that I learned who it was and what the charges were, but not that day.

See Murphy Tr. at pp. 49:3-8; 49:13-50:8.

40. Neither Chief Sirois nor Deputy Chief Murphy reviewed any of the arrest paperwork or documentation by the Task Force prior to the Chiefs decision making process on the Plaintiff's licenses. ***See Sirois Tr. at pp. 37:23-40:14. Murphy Tr. at pp. 37:18-42:3; 49:3-50:25; 69:1-71:4.***

41. In short, the Defendants' [sic] based their decision to end the Plaintiff's East Hartford business – without providing it with any warning or opportunity to contest it – on little more than an uninformed cursory

discussion between Chief Sirois and Deputy Chief Murphy. *See Sirois Tr. at pp. 34:14-37:11; 41:3-9. Murphy Tr. at pp. 69:20-70:14.*

42. On August 10, 2009, Jay Sargent, the General Manager of TC's Pawn Company, called the East Hartford PD and requested a meeting to discuss the nonrenewals. *See Murphy Tr. at pp. 51:4-56:22. Matuschkowitz Tr. at p. 30:13-18. Sirois Tr. at p. 42:9-25.*

43. Chief Mark Sirois, the sole decision maker on the renewal of licenses, refused to speak to the Plaintiff. *See Sirois Tr. at pp. 47:22-51:3; 51:17-25. Matuschkowitz Tr. at p. 30:13-18.*

44. Only Deputy Chief John Murphy spoke briefly to Mr. Sargent, but at the time of the conversation, he had absolutely no knowledge of the nonrenewal letter that was sent out. *See Murphy Tr. at p. 52:19-25.*

45. Moreover, during that conversation, Murphy neither said anything to Mr. Sargent to assist the Plaintiff in any way nor did he provide the Plaintiff with any information on the nonrenewal. *See Murphy Tr. at pp. 54:11-56:25.*

46. Thus, the Plaintiff was left completely in the dark by the Defendants as to why they chose to shut down the Plaintiff's business. *See Matuschkowitz Tr. at p. 35:7-9.*

47. On August 11, 2009, after the nonrenewal letter was sent, Jay Sargent was arrested and charged

with the crime of larceny in the sixth degree, a Class C misdemeanor under Connecticut law, which the State later declined to prosecute.² ***See Plt's Dep. Exh. H. Sirois Tr. at pp. 60:3-61:19.***

48. Significantly, the evidence upon which Mr. Sargent's arrest was based was no different from the evidence that was relied upon for Mr. Carbone and Mr. St. Peter's arrests. ***See Murphy Tr. at pp. 70:16-71:4. Plt's Dep. Exh. H. Plt's Dep. Exh. J.***

49. The State inexplicably chose to arrest Mr. Sargent over two months thereafter. ***See Sirois Tr. at p. 61:6-19.***

50. The Defendants' nonrenewal of the license for TC's Pawn's East Hartford location was the only time during Chief Sirois and Deputy Chief Murphy's time of service in the East Hartford PD, which spans over twenty-five years, that either recalls the Town of East Hartford ever not renewing or revoking a pawn-broker or precious metals dealer license. ***See Murphy Tr. at pp. 6:18-7:2; 61:5-8. Sirois Tr. at p. 52:5-24.***

² Plaintiff's counsel can also represent based upon communications with the State and counsel for Mr. Sargent that a decline to prosecution document was executed. The Plaintiff can obtain a copy of this documentation reflecting same if necessary.

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**THE PLAINTIFF,
ACE PARTNERS, LLC d/b/a
TC'S PAWN COMPANY**

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