

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



ORIGINAL

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In the Matter of )  
 )  
Axon Enterprise, Inc. )  
a corporation, )  
 )  
and )  
 )  
Safariland, LLC, )  
a partnership, )  
 )  
Respondents. )  
\_\_\_\_\_

Docket No. 9389

**ORDER GRANTING UNOPPOSED AMENDED MOTION FOR  
ISSUANCE OF SUBPOENAS *AD TESTIFICANDUM* UNDER RULE 3.36**

On March 2, 2020, Respondent Axon Enterprise, Inc. (“Respondent” or “Axon”) filed an Amended Unopposed Motion for Issuance of Subpoenas *Ad Testificandum* to Municipal Agencies, pursuant to FTC Rule 3.36 (“Unopposed Motion”). Respondent seeks an order authorizing the issuance of subpoenas *ad testificandum* to certain identified officials of, or personnel associated with, various municipal agencies. Respondent attached unsigned versions of the requested subpoenas as Exhibits B-S to the Unopposed Motion.<sup>1</sup>

Rule 3.36 specifies that a party seeking the issuance of a subpoena requiring the appearance of an official or employee of another governmental agency must obtain authorization from the Administrative Law Judge, pursuant to a motion demonstrating that: the material sought is within the permissible scope of discovery under Rule 3.31(c)(1); the subpoena is reasonable in scope; and the material sought cannot reasonably be obtained by other means. 16 C.F.R. § 3.36(a), (b).

Respondent asserts that each witness possesses information relating to several topics. Respondent represents that it will seek testimony regarding: (1) Requests for Proposals (“RFPs”) issued, bids received in response to RFPs, and agreements related to Body-Worn Cameras (“BWCs”) and Digital Evidence Management Software (“DEMS”); (2) Axon’s

<sup>1</sup> Respondent states that the amended unopposed motion differs from an earlier unopposed motion, filed February 28, 2020 on the same subject matter, by (1) changing one of the individual representatives to match a substitution made to Complaint Counsel’s supplemental witness list, and (2) adding one deponent who is on Axon’s witness list and was inadvertently omitted from the original motion.

acquisition of VieVu and any effect of that acquisition on the agencies' use of BWCs or DEMS, as well as the pricing, competition, and the market for those or substitute products; (3) customer experiences with Axon, VieVu, and other suppliers of BWCs or DEMS, including any product deficiencies or problems as well as any efficiencies or improvements to products, or changes in pricing, as a result of Axon's acquisition of VieVu.

Based on the representations in the Motion, the requirements of Rule 3.36 have been met. The requested subpoenas seek testimony from officials who have personal knowledge regarding the acquisition and use of body-worn camera systems, which are products at issue in this proceeding. The requested testimony relates to the impact of Respondent Axon's acquisition of VieVu from Respondent Safariland, which is being challenged in this action ("the Acquisition"), and the impact of the Acquisition on the municipal agencies. Accordingly, the topics specified by Respondent are reasonably expected to yield information relevant to the allegations of the complaint, the defenses and/or to the proposed relief, and are therefore within the permissible scope of discovery under Rule 3.31(c)(1).<sup>2</sup> Indeed, according to the Unopposed Motion, all of the individuals named in the requested subpoenas are included in Complaint Counsel and/or Respondents' Preliminary or Supplemental Witness Lists, further indicating that these witnesses possess relevant knowledge. In addition, the requested testimony appears reasonable in scope. Finally, a witness' personal knowledge is individual to that person, and to this extent, cannot be reasonably obtained by means other than through that individual's testimony.

As shown above, Respondent's requested subpoenas meet the requirements of Rule 3.36. Moreover, Complaint Counsel does not oppose the issuance of the requested subpoenas. Accordingly, the Unopposed Motion is GRANTED, and it is hereby ORDERED that Respondent may issue the subpoenas for testimony as to the topics set forth in the Unopposed Motion to the individuals set forth in the subpoenas attached to the Unopposed Motion as Exhibits B-S.

ORDERED:

  
\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: March 2, 2020

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<sup>2</sup> Under Rule 3.31(c)(1), parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent. 16 C.F.R. § 3.31(c)(1).