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

In the Matter of Axon Enterprise, Inc., a corporation, and Safariland, LLC, a corporation.	Docket No. D9389 PUBLIC DOCUMENT

MOTION OF RESPONDENT AXON ENTERPRISE, INC. TO MODIFY THE PROTECTIVE ORDER

Respondent Axon Enterprise, Inc. ("Axon") respectfully requests that the Protective Order be modified to allow access by Axon's in-house counsel, Ms. Pamela Petersen, and other in-house litigation-only staff who do not participate in competitive decision-making and who are under Ms. Petersen's direct supervision and control.

Ms. Petersen is Axon's Director of Litigation and National Appellate Counsel, has represented the company since 2005, and is a subject matter, technology, and product expert critical to Axon's defense in this matter. *See* Declaration of Pamela B. Petersen (attached as Exhibit B) ¶¶ 2, 8 & Ex. A. She has entered her appearance in this proceeding and is an integral member of the defense team. Given the expedited schedule, it is crucial to Axon's defense that Ms. Petersen play a key role in all aspects of the litigation. Ms. Petersen has extensive knowledge and experience with respect to Axon's business and industry. Denying her full access would prejudice Axon's ability to defend this case. Furthermore, because Ms. Petersen is not engaged in competitive decision-making, there is no concern that confidential information obtained by her would be used in competition.

ARGUMENT

I. MS. PETERSEN SHOULD BE ALLOWED ACCESS TO CONFIDENTIAL INFORMATION BECAUSE SHE IS NOT INVOLVED IN COMPETITIVE DECISION-MAKING.

"Access to confidential information may not be denied solely because of an attorney's status as in-house counsel." *In the Matter of Schering-Plough Corp.*, No. 9297, 2001 WL 1478371, at *1 (F.T.C. June 20, 2001) (internal quotation marks omitted); *accord U.S. Steel Corp. v. United States*, 730 F.2d 1465, 1469 (Fed. Cir. 1984). "Rather, the decision turns largely on the specific role of in-house counsel within the business ...." *Schering-Plough*, 2001 WL 1478371, at *1 (internal quotation marks omitted).

An in-house attorney should be allowed access to confidential information if she does not have "a part in the type of competitive decision-making that would involve the potential use of the confidential information." *Id.*(internal quotation marks omitted); *accord FTC v. Sysco Corp.*, 83 F. Supp. 3d 1, 3 (D.D.C. 2015); *FTC v. Whole Foods Mkt., Inc.*, No. 07-1021(PLF), 2007 WL 2059741 (D.D.C. July 6, 2007) (reviewing cases). "Competitive decision-making includes business decisions that the client would make regarding, for example, pricing, marketing, or design issues when that party granted access has seen how a competitor has made those decisions." *Sysco*, 83 F. Supp. 3d at 3 (internal quotation marks omitted).

In *Sysco*, an in-house lawyer was denied access because he was a member of Sysco's executive team (as Chief Legal Officer and Executive Vice President for Corporate Affairs), participated in weekly executive team meetings where "issues such as pricing, purchasing, and marketing may be discussed," and "also [wa]s chiefly responsible for Sysco's mergers and acquisitions, which involve[d] evaluation of market competitors as potential acquisition targets." *Id.* at 4 (internal quotation marks omitted). In contrast, other in-house lawyers in *Sysco* and other

cases were allowed access based on their unrebutted declarations that they were not involved in pricing, purchasing, marketing, or other competitive decisions. *Id.*; *see also, e.g.*, *Schering-Plough*, 2001 WL 1478371, at *1; *Whole Foods*, 2007 WL 2059741, at *2. "[C]ourts have routinely allowed disclosure of confidential information to in-house counsel … upon the premise that those individuals are segregated from the competitive day-to-day business decisions of the company." *McAirlaids, Inc. v. Kimberly-Clark Corp.*, 299 F.R.D. 498, 500-01 (W.D. Va. 2014).

Here, Ms. Petersen easily passes the "competitive decision-making" test for access to confidential information in this proceeding. Simply put, Ms. Petersen is not involved in any competitive decision-making at Axon. *See* Petersen Decl. ¶ 14. She is not an officer of the company and does not attend executive or board meetings. *Id.* She also has no role in contracts, procurements or sales. *Id.* Indeed, Ms. Petersen's litigation-only role gives her no commercial authority whatsoever. *Id.* With her responsibilities limited to providing legal advice and litigation services, she does not participate in decision-making with respect to corporate development or product design, pricing, or marketing. *Id.* To the extent that anyone on Axon's in-house legal team is involved in competitive decision-making, it is the General Counsel and Associate General Counsel, not Ms. Petersen. *Id.* ¶ 20. Given Ms. Petersen's clearly delineated role, there is no basis for concern that confidential information received in this proceeding will be used in Axon's competitive decision-making.

For several years, in fact, Ms. Petersen has been receiving highly sensitive confidential information in a patent case involving competitor body worn camera and digital evidence management software technology pursuant to a district court's protective order allowing access for in-house counsel with "no involvement in competitive decision-making." *Id.* ¶ 13 & Ex. C. Similarly, a Confidentiality Certification with identical language enabled Ms. Petersen to receive

confidential information from Safariland, LLC, during the Commission investigation that led to this Part 3 proceeding. *Id.* ¶ 16 & Ex. D. And another federal court recently entered a stipulated protective order that granted Ms. Petersen and other Axon in-house lawyers—except for its current General Counsel, who had been involved in government affairs and procurement work—access to "Attorneys Eyes Only" material. *Id.* ¶¶ 11-12 & Ex. B.[1]

II. MS. PETERSEN'S KEY ROLE IN THIS PROCEEDING REINFORCES AXON'S ENTITLEMENT TO AMENDMENT OF THE PROTECTIVE ORDER.

An in-house lawyer's non-involvement in competitive decision-making provides sufficient basis for access to confidential information. *See, e.g.*, *Schering-Plough*, 2001 WL 1478371, at *2-3; *Sysco*, 83 F. Supp. 3d at 3; *Whole Foods*, 2007 WL 2059741, at *2-3; *Intervet, Inc. v. Merial Ltd.*, 241 F.R.D. 55, 58 (D.D.C. 2007). Furthermore, Axon has an especially strong need for Ms. Petersen to receive access here, and this need provides even greater justification to grant the motion.

Because the Complaint (filed just two weeks ago) sets the hearing to begin on May 19, Axon has only about four months to prepare its defense. Especially on this expedited timeline, Ms. Petersen's full involvement is essential for a robust defense. She has entered an appearance and is a key member of Axon's defense team.

Ms. Petersen has deep knowledge and experience with respect to Axon, its business, and its industry. She has been one of Axon's primary lawyers since 2005, and she has been in-house

[1] Through these and other matters, Ms. Petersen has extensive experience keeping confidential information behind appropriate firewalls—i.e., through limited-access storage by third-party vendors at off-site facilities, and password-protected files saved on local computer drives rather than company-wide servers. *See* Petersen Decl. ¶ 15. This includes walling off in-house legal team members not authorized for disclosure. *Id.* ¶ 20. As in past cases, authorization here is strongly needed and should be granted for other in-house litigation-only staff who do not participate in competitive decision-making and who are under Ms. Petersen's direct supervision and control. *See id.* ¶¶ 16-20.

since 2012 and the Director of Litigation since 2015. Petersen Decl. ¶¶ 2, 10. In addition, Ms. Petersen is solely responsible for all of Axon's appellate matters, requiring her to have comprehensive familiarity with the underlying record in each case. *Id.* ¶¶ 5, 7.

Axon has built its in-house legal team to include highly experienced and highly competent litigators, like Ms. Petersen, who know Axon's technology, products, and business. *Id.* ¶ 8. Ms. Petersen and other Axon in-house litigators routinely enter appearances and take lead roles representing the company in lawsuits around the country, resulting in substantial cost savings. *Id.* ¶¶ 8-10. Significantly, that includes two lawsuits between Axon and Vievu—the company Axon acquired in the transaction challenged here. *Id.* ¶ 11. Those lawsuits, in which Ms. Petersen was Axon's counsel of record, gave her an even greater understanding of facts that will be highly relevant in this proceeding. *Id.* And Ms. Petersen also was directly involved in the Commission's investigation, during which she had access to, and worked extensively with, the confidential documents of Safariland—the company that sold Vievu to Axon. *Id.* ¶¶ 16-17.

Ms. Petersen's superior knowledge and experience as to Axon's business and industry strongly support granting her access to confidential information. Her litigation role is even more important than that of the plaintiffs in *In re Se. Milk Antitrust Litig.*, MDL No. 1899, 2009 WL 3713119 (E.D. Tenn. Nov. 3, 2009). In that case, the court concluded that "the named plaintiffs in this case have a degree of knowledge and experience in the dairy industry which makes them indispensable to counsel as this case is prepared for trial." *Id.* at *2. That was because "[n]o matter how skilled and knowledgeable plaintiffs' counsel may be, and they are both, that cannot substitute for the knowledge and insight named plaintiffs have after years of hands on experience in the dairy industry." *Id.* As a result, prohibiting disclosure of confidential information "to the named plaintiffs more likely than not [would have] interfere[d] with the ability of plaintiffs' counsel to

properly prosecute plaintiffs' claims." *Id.* Here, Ms. Petersen's knowledge and experience far exceeds that of outside counsel, making her indispensable as well. Petersen Decl. ¶ 19. As in the *Milk* case, the protective order should be modified to allow full access by Ms. Petersen.

In addition, Ms. Petersen will do much more than assist outside counsel. She has entered an appearance and will take a leading, hands-on role defending Axon in this fast-paced proceeding. Ms. Petersen necessarily will be central to the formulation of a defense strategy and the oversight of its implementation. For example, Ms. Petersen already is deeply involved in preparing an answer to the Complaint, but she has been impeded by the many redactions of confidential information in the Complaint itself. Petersen Decl. ¶ 19. Her role also will require her to quickly get a handle on discovery material, understand its context, and assess its importance at trial. Such a role cannot be performed effectively without full access to confidential and non-confidential information alike. *See id.*; *Trading Techs., Int'l Inc., v. BGC Partners, Inc.*, No. 1:10-cv-00715, 2011 WL 1547769, at *3 (N.D. Ill. Apr. 22, 2011) (allowing in-house counsel access to confidential information where counsel was "intimately involved in ... overall litigation strategy"). Moreover, Ms. Petersen's communications and collaboration with outside counsel and experts would be seriously hampered if written work product needed to be redacted before it was shared with her, and if oral communications needed to avoid mention of confidential information.

This proceeding is on an expedited track, Ms Petersen has superior knowledge and experience, and she will be a key member of the defense team, not just behind the scenes. Permitting Ms. Petersen access to confidential material is essential to mounting an effective and complete defense. Given that Ms. Petersen does not participate in competitive decision-making, these circumstances strongly bolster Axon's entitlement to an amended protective order.

III. THE STANDARD PROTECTIVE ORDER CAN BE AMENDED.

"[A] protective order is always subject to modification ...."; *Milk*, 2009 WL 3713119, at *1; *see, e.g.*, *Schering-Plough*, 2001 WL 1478371, at *1 (reaching merits of Complaint Counsel's motion to amend). On its face, Rule 3.31 merely requires entry of a standard protective order in the first instance, without any suggestion that it also abrogates this Court's power to modify such orders. Appropriately, therefore, motions to amend the standard protective order repeatedly have been decided on their merits rather than on any alleged lack of authority to grant such relief. *See, e.g.*, *In re McWane, Inc.*, 2012 WL 3518638, at *2 (F.T.C. Aug. 8, 2012) (considering whether there were "special circumstances that might justify a deviation from the standard protective order language").[2]

The Commission's non-binding comments on Rule 3.31 also do not preclude access for in-house counsel as an absolute rule. The Commission merely expressed a view that "it is not sound policy to allow third party competitively sensitive information to be delivered to people *who are in a position to misuse such information*," and that it had "serious questions about the wisdom of allowing disclosure of information in its custody to in-house counsel, who might intentionally or unintentionally use it for purposes other than assisting in respondent's representation, for example, *by making or giving advice about the company's business decisions*." Interim Rules, 74 FR 1804-01, 2009 WL 62394, at *1812–13 (Jan. 13, 2009) (emphasis added).

These expressions of *general* concern explain why the Commission's *standard* protective order bars disclosure to in-house counsel. They do not bar modification of the standard order based on application of the "competitive decision-making" test used in federal courts (and in

[2] *McWane* also emphasized that the motion—unlike Axon's—was not filed until six months after entry of the protective order, which had been provided to nonparties who may have relied upon it in deciding whether to seek relief from subpoenas. 2012 WL 3518638, at *1-2.

Schering-Plough). That test forbids blind reliance on job titles. Instead, it requires a determination whether a particular in-house lawyer participates in competitive decision-making and is therefore actually "in a position to misuse [confidential] information," which was the Commission's concern. Nothing in Rule 3.31, or even in the Commission's non-binding commentary, precludes assessment of whether the rationale for the default non-disclosure order fails to hold true for a specific in-house lawyer, such that modification of the order is required.

A categorical bar for all in-house counsel, regardless of whether a specific attorney participates in competitive decision-making, would violate fundamental rights. First, "[i]t would be unfair … for the government to attempt to prevent a private business transaction based, even in part, on evidence that is withheld from the actual Defendants (as distinct from their outside counsel)." *Sysco*, 83 F. Supp. 3d at 5; *see also* Interim Rules, 74 FR 1804-01, 2009 WL 62394, at *1812–13 (noting ABA Antitrust Section's undisputed comment that "in many cases" a restriction on access by in-house counsel "would inhibit a respondent's ability to defend itself"). Second, denial of access to Ms. Petersen would violate Axon's "right to try this case as it sees fit, determining who will do what based on all participants having equal access to the information." *Intervet*, 241 F.R.D. at 57. Third, especially where in-house counsel would play a key role in the administrative proceeding, denying her access would violate Axon's rights under the Due Process Clause and the Administrative Procedure Act, by depriving Axon of its right to be represented by counsel of its choice. *Cf., e.g., In re BellSouth Corp*, 334 F.3d 941, 955-56 (11th Cir. 2003) (due process right to counsel); *Backer v. Comm'r of Internal Revenue*, 275 F.2d 141, 143 (5th Cir. 1960) (APA right to counsel). Fourth, a categorical rule barring access for in-house counsel would violate Axon's right to equal protection. It would be directly contrary to the rule in federal court, under which Ms. Petersen has been granted access in other cases. And there is no rational basis for the

government pursuing antitrust claims against some companies in administrative proceedings and others in federal court.

CONCLUSION

The Protective Order should be modified to allow access by Ms. Petersen and other in-house litigation-only staff who do not participate in competitive decision-making and who are under Ms. Petersen's direct supervision and control.

Dated: January 17, 2020

Respectfully submitted,

s/ Louis K. Fisher

Pamela B. Petersen
AXON ENTERPRISE, INC.
17800 N 85th St.
Scottsdale, AZ 85255-9603
Phone: (623) 326-6016
Facsimile: (480) 905-2027
Email: ppetersen@axon.com

Louis K. Fisher
Julie E. McEvoy
Michael H. Knight
Jeremy P. Morrison
Debra R. Belott
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Phone: (202) 879-3939
Facsimile: (202) 626-1700
Email: lkfisher@jonesday.com
Email: jmcevoy@jonesday.com
Email: mhknight@jonesday.com
Email: jmorrison@jonesday.com
Email: dbelott@jonesday.com

Aaron M. Healey
JONES DAY
250 Vesey Street
New York, NY 10281-1047
Phone: (212) 326-3939
Facsimile: (212) 755-7306
Email: ahealey@jonesday.com

Counsel for Respondent Axon Enterprise, Inc.

EXHIBIT A

PUBLIC

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

In the Matter of **Axon Enterprise, Inc.,** **a corporation,** **and** **Safariland, LLC,** **a corporation.**	**Docket No. D9389** **PUBLIC DOCUMENT**

[PROPOSED] ORDER GRANTING
MOTION OF RESPONDENT AXON ENTERPRISE, INC.,
TO MODIFY THE PROTECTIVE ORDER

This matter having come before the Commission upon the Motion of Respondent Axon Enterprise, Inc., To Modify the Protective Order, and having considered the positions of all parties, it is hereby ORDERED that the Motion is GRANTED and the Protective Order shall be amended to allow access to confidential material by Axon's in-house counsel, Ms. Pamela Petersen, and other in-house litigation-only staff who do not participate in competitive decision-making and who are under Ms. Petersen's direct supervision and control.

SO ORDERED.

Date: _____

PUBLIC

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BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of **Axon Enterprise, Inc.,** **a corporation,** **and** **Safariland, LLC,** **a corporation.**	**Docket No. D9389** **PUBLIC DOCUMENT**

[PROPOSED] AMENDED PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL

Pursuant to Commission Rule 3.31(d) and the Order granting Respondent's Motion to Modify the Protective Order, the attached Amended Protective Order is hereby issued.

ORDERED:

_____

D. Michael Chappell
Chief Administrative Law Judge

DATE: _____

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged information, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.

2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any other federal statute or regulation, or under any federal court or Commission precedent interpreting such statute or regulation, as well as any information that discloses the substance of the contents of any confidential materials derived from a document subject to this Order, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.

3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL - FTC Docket No. 9389" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL - FTC Docket No. 9389" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions masked or redacted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been masked or redacted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent; (e) Ms. Pamela Petersen as the Director of Litigation and National Appellate Counsel for respondent Axon Enterprise, Inc.; (f) other in-house litigation-only staff of Axon Enterprise, Inc., who do not participate in competitive decision-making and who are under Ms. Petersen's direct supervision and control, provided they have signed an agreement to abide by the terms of the protective order; and (g) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection

for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

EXHIBIT B

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

In the Matter of **Axon Enterprise, Inc.,** **a corporation,** **and** **Safariland, LLC,** **a corporation.**	**Docket No. D9389**

DECLARATION OF PAMELA B. PETERSEN

I, Pamela B. Petersen, declare as follows:

1. I am a competent adult and have personal knowledge of the following facts.

2. I am the Director of Litigation and National Appellate Counsel for Axon Enterprise, Inc. ("Axon"), a Delaware corporation, with its principal place of business in Scottsdale, Arizona. I have represented Axon, formerly TASER International, Inc., as outside counsel beginning in 2005 and joined its in-house litigation team in 2012.

3. I am and have been a member in good standing with the State Bar of Arizona since 1987 and the State Bar of Nevada since 1997. I am also admitted to the bars of the U.S. Supreme Court and the U.S. Court of Appeals for the First, Second, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Eleventh and Federal Circuits. I have never been the subject of a bar complaint or any disciplinary action during the course of my 33-year legal career.

4. I have substantial appellate experience and have briefed and argued appeals as lead counsel in the vast majority of the above-mentioned courts. I was a Ninth Circuit

law clerk for the Hon. Mary M. Schroeder and a partner on the appellate practice team of the Phoenix law firm of Lewis and Roca LLC (now known as Lewis Roca Rothgerber Christie LLP). I served as the State Bar of Arizona's Co-Chair and Editor of the Arizona Appellate Handbook for more than a decade (2006-2017), on the Appellate Practice Section's Executive Council, including as its Chair (2008-2015), and as Chair of the Arizona Appellate Practice Institute (2010, 2012, 2014). My short form CV is attached as Ex. A, along with a list of my bar admissions.

5. I have served as Axon's appellate counsel since 2005 and have briefed and argued all of Axon's appeals for more than a decade. I have held the title of National Appellate Counsel since joining Axon's in-house legal team in May 2012, and remain solely responsible for all appellate matters on the company's behalf.

6. For example, in a patent infringement and antitrust/unfair competition challenge filed by competitor Digital Ally, Inc. ("Digital Ally") against Axon in January 2016 in the District of Kansas (Case No. 2:16-cv-02032-CM-TJJ), the district court dismissed all of Digital Ally's antitrust and unfair competition claims and certified them for immediate Rule 54(b) appeal to the Federal Circuit. I personally briefed and argued that appeal, in which the Federal Circuit affirmed. *See Digital Ally, Inc. v. TASER Int'l, Inc.*, 720 F. App'x 1023, 1024 (Fed. Cir.), *cert. denied*, 139 S. Ct. 231 (2018). Subsequently, the district court granted Axon's motion for summary judgment of non-infringement. Digital Ally's appeal is now fully briefed in the Federal Circuit (Appeal No. 19-2065). As lead appellate counsel, I again was responsible for and personally prepared

Axon's brief. My work on both of these appeals saved the company well over $150,000 in outside counsel fees.

7. It is critically important for appellate counsel to have complete access to the underlying record—including unredacted pleadings, motions, transcripts and all evidentiary exhibits—in order to properly assess and present the most compelling, well-supported arguments on appeal. Without such unfettered access, I simply cannot do my job. Moreover, being forced to use outside counsel substantially increases Axon's attorneys' fees and costs.

8. As a manufacturer of weapons and other law enforcement tools—including body worn cameras (BWCs)—used in high-risk field environments, Axon is often the subject of products liability litigation concerning the use of its products. Indeed, to date Axon has been sued no fewer than 240 times in product liability cases, the volume and expense of which in earlier years threatened the very existence of the company. As a result, Axon created an in-house legal team of highly-experienced and highly-competent litigators to directly defend these cases. As subject matter, technology, and product experts, Axon's in-house counsel can more efficiently and effectively handle these cases, substantially reduce outside counsel spend, and keep its litigation budget under control.

9. Axon's attorneys are admitted *pro hac vice* in the various jurisdictions around the country and directly prepare and handle pleadings, discovery, motions, hearings, and trials. As may be required by local rules, local counsel may be engaged to advise on local practice and procedure, but the litigation is substantively handled by Axon's in-house counsel to the greatest extent possible. And the company's litigation success with

this strategy cannot be questioned; in its 25+-year company history, Axon has only twice lost a products liability jury trial and in both instances those awards were essentially eliminated on appeal.

10. In addition to my appellate responsibilities, I have served as Axon's Director of Litigation since 2015. I have substantial litigation and trial experience, both as an Assistant U.S. Attorney and Chief Assistant U.S. Attorney for the District of Arizona, and as a commercial litigator in private practice. I was on Axon's 2005 trial team for its very first products liability case to go to trial—*Powers v. TASER Int'l Inc*, Maricopa County (AZ) Superior Court Case No. CV 2003-013457, which resulted in a defense verdict—and have played an active role on every Axon trial team since moving in-house in 2012.

11. Of particular importance to this administrative proceeding, I was counsel of record in prior litigation between Axon and Vievu LLC ("Vievu") regarding Vievu's BWC technology (*Axon Enterprise, Inc. v. Vievu LLC*, Case No. 2:17-cv-01632-DLR (D. Ariz.)), and the City of Phoenix's 2016 BWC Request for Proposal ("RFP") and Phoenix Police Chief Jerri Williams' subsequent decision to cancel and reissue the RFP with updated feature requirements (*Vievu LLC v. TASER Int'l, Inc.*, Maricopa County (AZ) Superior Court Case No. CV2017-001583). In both of these 2017 Arizona cases, Axon was represented exclusively by in-house litigation counsel, including myself, without restriction of access to Vievu documents and BWC technology discovery.

12. Attached as Ex. B is a true and correct copy of the Protective Order entered in the Vievu federal court action, as deemed appropriate by Vievu's counsel to protect Vievu's interests in maintaining the confidentiality of its documents and technology in a

suit against a competitor, Axon. Access was appropriately limited to Axon's counsel of record and necessary litigation staff, expressly excluding access by in-house counsel Isaiah Fields (now Axon's General Counsel), who at that time was actively involved in Axon's government affairs and procurement work.

13. I was also counsel of record, along with our outside counsel at Shook, Hardy & Bacon LLP, in the underlying Digital Ally patent infringement suit discussed above in paragraph 6. Digital Ally is an Axon competitor in both BWC and digital evidence management systems (DEMS). I have been intimately involved in this litigation since it was first filed in January 2016, and have had full access to Digital Ally's competitive data, product technology, discovery and testimony throughout, subject to an appropriate Protective Order. That Order, a true and correct copy of which is attached as Ex. C, granted me and my litigation paralegal access to materials designated by Digital Ally as "Confidential," "Highly Confidential – Attorneys' Eyes Only," and "Highly Confidential Source Code – Attorneys' Eyes Only." In relevant part, the Order allowed access to such highly sensitive technical product information to:

> **in-house counsel of the Receiving Party (i) who has no involvement in competitive decision-making,** (ii) to whom disclosure is reasonably necessary for this litigation, (iii) who has signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

Ex. C, ¶ 10(b) (emphasis added). More generally, the Order also prohibited use of the confidential material for purposes other than litigating or defending that specific case, or "for any business or competitive purpose or function of any kind." *Id.* ¶ 7. It further

required that confidential material "shall be carefully maintained to preclude access by any persons who are not entitled to receive such information." *Id.*

14. I am not now, and have never been, involved in any competitive decision-making on behalf of Axon and have no commercial authority whatsoever. In fact, I have never been involved in any Axon business decision-making of any kind unrelated directly to my litigation-only responsibilities. I also have no role in contracts, procurements or sales, and do not participate in corporate development or product design, pricing, or marketing. I am not an officer of the company and do not attend executive or Board meetings. It is important to note that Axon's legal department is housed in a building across the street from Axon's Scottsdale business headquarters, which provides further privacy and security from such decision-makers.

15. I am well aware of my legal and ethical duties to strictly adhere to Protective Orders and protect confidential information. I am no stranger from my prior public and private practices, as well as at Axon, of the need to wall off individuals who must be prohibited from access and the procedures/security necessary to ensure compliance. In the Digital Ally case, for example, we used third-party vendors for off-site document storage that only my paralegal and I had access to, and maintained local (not on Axon servers) password protected files within the legal department for court filings under seal.

16. During the FTC's investigation of this matter and our meetings with the Front Office and Commissioners, I was also careful to protect Safariland confidential information granted only to me, my paralegal Kelly Greenberg, and another litigation-only attorney under my direct supervision, Peter Brown. Attached as Ex. D are true and correct copies of

the certifications the three of us executed to gain access to Safariland's investigational hearing transcripts and exhibits, among other previously redacted materials. The certifications state:

> For purposes of this Confidentiality Certification, "Permitted Recipients" shall include Axon's counsel of record retained to represent Axon in connection with the above-referenced governmental inquiry **and Axon's in-house litigation counsel and staff (i) who have no involvement in competitive decision-making,** (ii) to whom disclosure is reasonably necessary for representing Axon in connection with the above-referenced inquiry, and (iii) who have signed a Confidentiality Certification in the form provided herein. **All documents received will be maintained in password protected files in the legal department not accessible to anyone who has not signed this certification.**

Ex. D (emphasis added).

17. Obtaining Safariland confidential materials was critically necessary for me to assess risk, provide legal advice, search for and assemble documents and data implicated therein, and prepare Axon's presentation materials for its December meetings at the FTC. We were able to effectively screen all such sensitive information from our CEO Rick Smith and General Counsel Isaiah Fields by providing them with redacted PowerPoint slides in consultation with Safariland's counsel, and having them leave the room when discussing this information with Staff and Commissioners.

18. Axon has already spent in excess of $1.7 million responding to the FTC's investigational demands, including attorney and expert fees, ESI production and related hosting and third-party vendor fees and expenses. This amount would have been substantially higher but for the active participation of Axon's in-house litigation team.

19. Similarly, in terms of the FTC administrative proceedings now initiated, if I and limited members of my litigation team are not allowed access to the full complaint, full investigatory file, and third-party discovery under a modified Protective Order consistent with the restrictions in Exhibits B-C entered in federal district courts in actions with BWC competitors and Exhibit D accepted by Safariland in this administrative action, Axon will be severely prejudiced. Not only will Axon's outside counsel fees be significantly increased, Axon cannot possibly respond to redacted portions of the complaint or effectively research and present evidence countering the same. Although I have been deeply involved in preparing Axon's answer to the Complaint, the many redactions of confidential information in the Complaint itself, and the delay in getting the public redacted version, has impeded my ability to research and respond to critical allegations. Nor can Axon respond to forthcoming requests for admissions without knowing the full scope of evidence the FTC may present against it. Outside counsel are not experts in Axon technology and products and don't know what they don't know. Only in-house subject matter experts are able to mine data in the best possible way to meet the FTC's accusations.

20. In this and in other litigation matters we have effectively screened off other in-house counsel who are involved to some extent in competitive decision-making, specifically, our General Counsel Isaiah Fields and Associate General Counsel Bobby Driscoll. We also do not involve in-house corporate or compliance counsel in litigation matters. Even within our litigation team, access to confidential information can and will be limited to a smaller subset consisting of me, our Senior Litigation Paralegal Kelly Greenberg and our Associate Litigation and IP Counsel Peter Brown. Ms. Greenberg and

Mr. Brown's continued technical and research assistance in this matter is essential and will be severely impaired without specific knowledge of the data Axon needs to confirm or rebut.

21. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED this 17th day of January, 2020 at Scottsdale, Arizona.

Pam Petersen

Pamela B. Petersen

Exhibit A

PAMELA B. PETERSEN

Employment History

Axon Enterprise, Inc. (Formerly TASER International)	Director of Litigation, May 2015 – present National Appellate Counsel, May 2012 - present
Law Office of Pamela B. Petersen	June 2000 - May 2012
Lewis and Roca LLP	Partner, June 1994 - May 2000 Of Counsel, April 1993 - May 1994 Associate, September 1987 - January 1990
U.S. Attorney's Office	Chief Asst. U.S. Attorney, March 1992 - April 1993 Assistant U.S. Attorney, January 1990 - March 1992
The Honorable Mary M. Schroeder	Law Clerk, August 1986 - September 1987 U.S. Court of Appeals for the Ninth Circuit

Select Admissions, Memberships and Publications

U.S. Supreme Court, Court of Appeals for the First, Second, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Eleventh and Federal Circuits

- Author, FEDERAL APPELLATE PRACTICE, NINTH CIRCUIT (West 2d ed.), Chapter 10 Criminal Appeals, 2000-2005

State Bar of Arizona

- Co-Chair/Editor, ARIZONA APPELLATE HANDBOOK, 2006 - 2017
- Appellate Practice Section, Executive Council 2008-2015, Chair 2013-2014
- Arizona Appellate Practice Institute, Co-Chair 2010, 2012; Chair 2014
- Chair/Speaker, 2013 Bar Convention Program: "Appellate Practice in the Trial Court: How to Effectively Use Appellate Strategy to Obtain and Preserve Trial Wins" - Presidential Award
- Creator 2013 CLE Video "60 Appellate Practice Tips in 60 Minutes"

American Academy of Appellate Lawyers, Fellow 2013 - present
Arizona's Finest Lawyers 2011 - present
Arizona Women Lawyers Association
Sandra Day O'Connor Inn of Court, Barrister 1991-1994
Nevada State Bar

Education

University of Iowa, Iowa City, Iowa - BA Journalism and English 1983
Magna Cum Laude, Phi Beta Kappa
American University, Washington College of Law, Washington, D.C. - JD 1986
Cum Laude, Law Review, Federal Circuit Editor

Pamela B. Petersen

Courts where Applicant has been admitted

Court	Admitted	Reg#	Status	Admissions Standing
United States Court of Appeals for the Second Circuit	7.31.12		Active	Good standing
United States Court of Appeals for the Fourth Circuit	4.6.12		Active	Good Standing
United States Court of Appeals for the Fifth Circuit	6.5.12		Active	Good Standing
United States Court of Appeals for the Sixth Circuit	6.2.14		Active	Good Standing
United States Court of Appeals for the Eighth Circuit	3.6.13		Active	Good Standing
United States Court of Appeals for the Ninth Circuit	7.7.88		Active	Good Standing
United States Court of Appeals for the Tenth Circuit	1.5.09		Active	Good Standing
United States Court of Appeals For the Eleventh Circuit	8.29.17		Active	Good Standing
United States Court of Appeals for the Federal Circuit	5.2.17		Active	Good Standing
US Supreme Court	2.21.12		Active	Good Standing
USDC Eastern District of Michigan	1.9.13		Active	Good Standing
Arizona, State and Federal Courts	10.24.87	11512	Active	Good Standing
Nevada, State and Federal Courts	10.13.97	6451	Active	Good Standing

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Axon Enterprise Incorporated, Plaintiff, v. Vievu LLC, Defendant.	No. CV-17-01632-PHX-DLR **ORDER**

The Court has reviewed the parties' Stipulation for Protective Order. (Doc. 46.)

Discovery in this action related to the claims and defenses asserted, and potential damages, may include confidential financial or commercial information or trade secrets. The unnecessary disclosure or dissemination of such confidential, proprietary, and/or trade secret information could cause irreparable competitive harm to the owner or holder of such information.

IT IS ORDERED as follows:

I. Designated Material

A. Any information, including, but not limited to, testimony, document, or other materials produced, formally or informally, in this action and any material filed with the Court may be designated as "CONFIDENTIAL" or "ATTORNEYS EYES ONLY" by the person or entity producing or filing it (the "Designating Party"), so long as the information so designated complies with the definitions in Paragraphs II or III of

this Protective Order ("Designated Material").

B. Such designation shall be made only by counsel of record for the producing party who has personally reviewed such information and, in good faith, determines that such information contains Designated Material.

C. Designated Material may be disclosed pursuant to the limitations set forth in Paragraphs II, III, IV, V and VI.

D. The counsel of record are responsible for employing reasonable measures to control, consistent with this Protective Order, duplication of, access to, and distribution of Designated Materials.

E. If a party inadvertently produces confidential information without marking it as such, as soon as the receiving party receives written notice of the error, including the proper designation for such inadvertently produced material, the receiving party must treat the information as if it had been timely designated under this Protective Order, and the receiving party must endeavor in good faith to obtain all copies of the information that it distributed or disclosed to persons not authorized to receive such information pursuant to the terms of this Protective Order, as well as any copies made by such persons.

F. Designating Materials does not denote or acknowledge that such Confidential Information is a trade secret of the designating party. The failure of a Party to object to Designated Material is not an agreement by the Party that the information so designated is in fact Confidential Information

G. This Protective Order also applies to any information produced by or obtained in this action from any third parties. Information produced by a third party may be designated as "Confidential" or "Confidential Attorneys Eyes Only" by the third party producing such information. Any third party designating information as "Confidential" or "Confidential Attorneys Eyes Only" in accordance with this order thereby agrees to be bound by the order and to be subject to the jurisdiction of this Court for purposes of enforcing this Order.

II. "CONFIDENTIAL" Information

A. Information designated as "CONFIDENTIAL" shall be limited to information which has not been disclosed publicly, which the Designating Party believes in good faith must be held confidential to protect private, personal, business or commercial interests, for which good cause exists to treat as "CONFIDENTIAL" hereunder, and which is worthy of protection under Fed.R.Civ.P. 26(c).

B. Information designated "CONFIDENTIAL" may be disclosed to:

(1) counsel of record for the respective parties and their associated attorneys, paralegal, clerical, and secretarial employees engaged in the conduct of this action;

(2) independent contractors employed for the purposes of handling, reproducing or translating documents or retained by counsel to assist with trial preparation or presentation, or other proceedings in this action;

(3) the parties and their respective managers, officers, directors, counsel and/or employees who are assisting counsel of record in the conduct of this action; provided they sign the consent attached as Exhibit A;

(4) Independent Experts pursuant to Paragraph IV, below;

(5) persons authorized to see or have them pursuant to Paragraphs V or VI, below; and

(6) the Court and Court personnel, court reporters and videographers recording or transcribing any testimony in the Lawsuit, and the jury hearing this case.

III. "ATTORNEYS EYES ONLY" Information

A. Information designated as "ATTORNEYS EYES ONLY," or with reasonably comparable language, shall be limited to highly confidential, commercially sensitive technical and financial information, which the Designating Party has treated as confidential in the ordinary course of business, has not been disclosed publicly, which the Designating Party believes in good faith to be so commercially sensitive or confidential that disclosure to persons other than those authorized pursuant to paragraph III(B) below

would have the effect of causing harm to the competitive commercial position of the Designating Party, for which good cause exists to treat as "ATTORNEYS EYES ONLY" hereunder, which is worthy of protection under Fed.R.Civ.P. 26(c), and shall be further limited to the following categories of documents:

(1) confidential technical documents such as test data, source code, prototypes, engineering drawings or marketing studies;

(2) confidential financial documents including documents demonstrating costs, profits, expenses;

(3) non-public documents showing costs or prices offered to customers or potential customers who have purchased goods or services or received a bid, proposal or quote for goods or services;

(4) non-public documents showing vendors from whom goods or services were purchased;

(5) non-public financial statements;

(6) non-public tax returns;

(7) marketing strategy documents;

(8) bid strategy documents indicating product or pricing strategies to differentiate a Party in the marketplace; and

(9) documents, such as e-mail, containing or attaching any of the above documents.

B. Material designated "ATTORNEYS EYES ONLY" may be disclosed only to:

(1) counsel of record for plaintiffs and counsel of record for defendants in this action, and their associated attorneys, paralegal, clerical, and secretarial employees engaged in the conduct of this action; provided, however, this category does not include Isaiah Fields, in-house counsel for Axon who has not appeared in the action;

(2) independent contractors employed for the purposes of handling, reproducing, or translating documents or retained by counsel to assist with trial

preparation or presentation, or other proceedings in this action;

(3) Independent Experts pursuant to Paragraph IV, below;

(4) persons authorized to see or have them pursuant to Paragraphs V or VI, below; and

(5) the Court and Court personnel, court reporters and videographers recording or transcribing any testimony in the Lawsuit, and the jury hearing this case.

IV. Disclosure to Independent Experts

A. For purposes of this Protective Order, "Independent Expert" means an expert or independent consultant or contractor, who (1) is not an employee of any party or its affiliates or any of their competitors, and (2) is retained for the purposes of advising and assisting counsel in the preparation or trial of this action. The term includes those who are retained to provide expert testimony, those who are retained to give advice but not to provide expert testimony, and those who are retained for both purposes. The term shall also include assistants of such individuals to whom it is necessary to disclose Designated Material for the purposes of this action, so long as such assistants meet limitations of this paragraph.

B. Independent Experts may have access to and make use of Designated Material subject to the provisions of this Protective Order and for purposes of this litigation only. Prior to any Independent Experts, or assistant thereto, receiving or reviewing any Designated Material, he or she must agree to be bound by the terms of this Protective Order and execute a copy of Attachment A hereto. A party proposing to show any Designated Material to an Independent Expert shall first submit to each of the other parties the executed copy of Attachment A and a curriculum vitae, which includes the consultant's or expert's name, current business affiliations and addresses, and any known present or former relationships between the consultant or expert and any of the parties. The undertaking and curriculum vitae shall be delivered to the other parties by facsimile, electronic mail, hand-delivery, or overnight delivery at least seven (7) business days prior to the disclosure of any Designated Material to such consultant or expert.

C. If a party objects to the disclosure of Designated Material to an Independent Expert, the Objecting Party shall serve written objections on all parties, identifying with particularity the basis for the objections. Such objections shall not be unreasonably made. Service of the objections shall be by facsimile, electronic mail, hand-delivery, or overnight delivery to be received by the other parties within five (5) business days after submission of the Independent Expert's executed copy of Attachment A and a curriculum vitae as set forth in Paragraph IV(B). If a written notice of objection is provided, no Designated Materials shall be disclosed to the selected Independent Expert until the objection is resolved by an order of the Court or by an agreement among the parties involved. If agreement on disclosure to the Independent Expert cannot be reached, the objecting party shall have ten (10) business days after providing its written objections to seek a protective order from the Court. In such case, no disclosure of Designated Materials shall be made to the Independent Expert until the Court has ruled on the motion for protective order. If the objecting party fails to seek a protective order within that time, the objection shall be deemed waived and Designated Materials may be disclosed to the Independent Expert subject to the terms of this Protective Order.

V. Disclosure to Authors and Recipients

The designation of any information under the terms of this Protective Order shall not preclude any party from showing the Designated Material to any witness testifying in a deposition in this case, regardless of the current status of his or her employment, if: (i) the witness is listed as an author or recipient on the face of such Designated Material; (ii) the lawyer disclosing such Confidential Item has a good-faith reasonable belief based upon the witness' testimony that the witness has had previous access to the Designated Material; or (iii) the Designating Party agrees that the witness may have access to the Designated Material. If the basis of the disclosure is (ii), then immediately after the disclosure, the lawyer disclosing such Designated Material must make a preliminary inquiry with respect to the witness's previous access to such Designated Material, and if it becomes apparent on such further inquiry that the witness has not had previous access

to the Designated Material, the item shall be withdrawn, and no further inquiry as to the specifics of the Designated Material shall be permitted.

VI. Disclosure to Other Persons

Designated Material may be disclosed upon prior written consent of the Designating Party to any other person who agrees in writing to be bound by this Protective Order by signing a declaration in the form of Attachment A. Nothing in this Protective Order shall prevent a Designating Party from using and disclosing its Designated Material in any way it wishes.

VII. Custody of Designated Materials

A person with custody of Designated Materials shall (1) maintain them in a manner that limits access only to those persons who have agreed to be bound by this Protective Order and (2) use their best efforts to preserve the confidentiality of Designated Materials as provided in the Protective Order.

VIII. Objections to Designations

A. A party may challenge any Designation by serving on the Designating Party a written notice of objection, which shall identify with particularity the items as to which the designation is challenged, state the basis for each challenge and indicate what designation, if any, the objecting party believes is appropriate. A party may object only if it believes in good faith that the Designation does not meet the standard of paragraphs II or III of this Agreement.

B. If the Designating Party does not agree to the proposed change of designation within ten (10) business days of receipt of said notice of objection, the Designating Party may file a motion to have the matter decided by the Court. If no such motion is filed within those ten (10) business days, the information identified in the notice shall lose its original designation under this Protective Order and shall assume the designation, including corresponding disclosure parameters, proposed by the Objecting Party.

C. If such a motion is filed within ten (10) business days of receipt of said

notice of objection, the original designations shall remain effective until ten (10) days after entry of an Order re-designating the materials and during the pendency of any appeal, petition or request for reconsideration filed within the ten-day period after entry of the order. In any such motion, the Designating Party shall have the burden of establishing that the designation and corresponding disclosure parameters meet the standards of paragraphs II or III of this Agreement. The Designating and Objecting Party may extend the ten-business day deadline of this paragraph by written agreement.

D. Neither party is obligated to challenge the propriety of any Designated Materials and a failure to do so in this action does not preclude a subsequent attack on the propriety of the designation.

IX. Restrictions on Treatment and Dissemination of Designated Material

All portions of correspondence, interrogatory responses, or any other written material which quote or substantively describe Designated Material shall be treated as confidential in accordance with the relevant provisions of this Protective Order, and each such portion of such documents shall bear the appropriate designation in accordance with Paragraphs II – III of this Protective Order. Each party quoting such Designated Material must make such document designations. Each such portion of such documents may only be served, delivered or otherwise disclosed to (i) those persons as authorized under the appropriate Paragraph II – VI of this Protective Order and (ii) the party that produced and designated such Designated Material.

X. Limitations on Use of Designated Material

Designated Materials under this Protective Order may be disclosed and used only for the purpose of litigating this proceeding, and any appeal of this proceeding, and for no other purpose whatsoever, except with the Designating Party's prior written approval or as ordered by the Court.

Nothing is this Protective Order shall restrict counsel from advising its client with respect to this action and from relying in a general way upon an examination of material designated pursuant to this Protective Order in giving such advice; provided, however,

that in giving such advice and communicating with the client, counsel shall not disclose the substance or contents of any "ATTORNEYS EYES ONLY" material except to persons permitted such access under this Protective Order.

XI. Designating Documents

A. When a person producing documents wishes to designate some portion of a document under the terms of this Protective Order, such designation shall be made by placing an appropriate legend on each page of the document so designated prior to delivery to another party. Such legend shall be placed on the page so that it will not interfere with the legibility of material on the page. Where a document is produced in a magnetic, electronic, digital or similar medium the document shall be designated by placing a label, marked with the appropriate designation, on the diskette, CD, cartridge, or similar physical container, containing the document. This designation need not be made until copies of the materials are requested after production for inspection by counsel.

B. Making documents and things available for inspection by another party's counsel shall not constitute a waiver of any claim of confidentiality, and all materials provided for inspection by a party's counsel shall be treated as though designated as ATTORNEYS EYES ONLY at the time of inspection. All other materials produced for inspection but not selected for more formal production will continue to be considered and treated ATTORNEYS EYES ONLY, except to the extent such other material is otherwise formally produced or used in this matter.

C. When a person wishes to designate under the terms of this Protective Order a document produced by someone else, such designation shall be made within ten (10) business days from the date that the Designating Party receives notice that possession of the document has been delivered to another party, or as soon thereafter as possible, identifying with particularity the designated documents.

XII. Designating Depositions

A. Deposition transcripts or portions thereof may be designated under the

terms of this Protective Order by a party either: (i) before the testimony is recorded, in which case the transcript of the designated testimony shall be bound in a separate volume and marked by the reporter, as the Designating Party may direct; (ii) during the course of the deposition, in which case the transcript of the designated testimony shall be bound in a separate volume and marked by the reporter, as the Designating Party may direct; or (iii) by captioned, written notice to the reporter and all counsel of record, within ten (10) business days after the transcript is available for review by sending a written list of the pages and/or exhibits to be so marked to counsel for the other parties whereupon the party receiving such notice shall be responsible for marking the copies of the designated transcript or portion thereof in their possession or control as directed by the Designating Party. Before the expiration of the ten (10) business days, the entire deposition transcript shall be treated as if it had been designated ATTORNEYS EYES ONLY. If no designation is made pursuant to this Paragraph before or within the ten (10) day period, then the deposition and deposition transcripts shall not be considered Designated Material.

B. Where testimony is designated under the terms of this Protective Order at a deposition, the Designating Party may exclude from the deposition all persons other than those to whom the Designated Material may be disclosed under Paragraphs II – VI of this Protective Order, as applicable.

C. Any party may mark Designated Material as a deposition exhibit and examine any witness thereon, subject to the limitations in Paragraph V. In that event, the exhibit and related transcript pages shall receive the same confidentiality designation as the Designated Material marked as an exhibit.

XIII. Court Filings

If the Parties and their Counsel seek to submit, present or file with the Court any document or information designated "Confidential" or "Confidential Attorneys Eyes Only" (including but not limited to deposition transcripts, discovery responses, memoranda, filings and/or exhibits), before any Party files any document under seal such

party shall seek leave of Court and shall show "compelling reasons" (dispositive motion) or "good cause" (nondispositive motion) for filing under seal. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). Additionally, a Party seeking to file under seal shall, within the applicable deadline, file a redacted, unsealed version of any motion, response or reply if such party is waiting for a ruling from the Court on filing an unredacted, sealed version of the same document.1 *See* also Arizona District Court LR Civ. 5.6. Should the Court rule that such documents not be filed under seal, such ruling and filing will not otherwise vitiate the "Confidential" or " Attorneys Eyes Only" designation and corresponding conditions set forth in Paragraphs II-III above.

XIV. Use at Court Proceedings and Trial

The parties shall discuss in good faith measures to be taken during pretrial and trial of the Lawsuit to protect confidentiality in accordance with this Protective Order consistent with the right of the parties to present all necessary and appropriate evidence in the Lawsuit. The parties shall reasonably endeavor to prepare their cases without any unnecessary disclosure of Designated Materials. Nothing in this Protective Order, however, prevents any party from using or offering into evidence any Designated Material at any hearing, trial, or subsequent proceeding in this Lawsuit. This Protective Order does not limit the admissibility of any evidence.[1]

XV. Subpoena By Third Parties, Other Courts or Agencies

If a third party, another court or an administrative agency subpoenas or orders production of material designated for protection under this Protective Order which a party has obtained under the terms of this Protective Order, such party shall promptly notify the Designating Party of the existence and terms of such subpoena or order and of the deadline by which material responsive to the subpoena or order must be produced. Before producing such documents, the party receiving the subpoena must give the Designating Party at least ten (10) business days notice to allow Designating Party time to file a

[1] A party seeking to use the other party's Confidential Information to support or oppose a motion shall comply with LR Civ 5.6.

motion with the Court requesting protection against such production. The Designated Material should not be produced until a decision is rendered on such motion.

XVI. No Prejudice

A. This Protective Order shall not diminish any existing obligations or right with respect to Designated Material, except as expressly provided for herein, nor shall it prevent a disclosure to which the Designating Party consents in writing before the disclosure takes place.

B. Unless the Court orders it, or unless all parties stipulate otherwise, evidence of the existence or nonexistence of a designation under this Protective Order shall not be admissible for any purpose during the trial of this action.

C. Nothing in this Protective Order shall be construed to affect an abrogation, waiver, or limitation of any kind on the right of the parties or third parties to assert any applicable discovery or trial privilege, including the right to object to the production in discovery, or the introduction into evidence, of testimony, information, documents or materials based on their status as trade secrets or on any other appropriate basis.

XVII. Inadvertent Production of Protected Documents

In the event that a party produces to another party documents that are protected from disclosure—under the attorney-client privilege, the attorney work product doctrine, or other applicable privileges or doctrines—the protection is not waived if the producing party, within a reasonable time after the date of production, notifies the receiving party in writing pursuant to Fed. R. Civ. P. 26(b)(5)(B) or 45(e)(2)(B) that such documents were inadvertently produced and are protected by an applicable privilege or doctrine. Upon receipt of such written notification, the receiving party shall return such documents to the producing party within five (5) calendar days. Nothing in this Paragraph shall preclude the receiving party from asserting that the claimed protection from disclosure has been waived or otherwise does not apply. The mere inadvertent disclosure of such documents, however, shall not be grounds for asserting that any protection from disclosure has been

waived or otherwise does not apply.

XVIII. Final Disposition

Upon final termination of this Lawsuit, including any appeals,

A. All Designated Material, including all copies, abstracts, summaries, documents or materials containing information taken from them shall be either returned to counsel for the Designating Party, or destroyed.

B. All Parties or persons that received Designated Material, including witnesses, deponents, consultants and all others who received Confidential Information, shall certify, in writing, that all Designated Material in their possession has been destroyed or returned with the certification. These certifications shall be delivered to the Designating Party within thirty (30) calendar days after termination of the action.

C. Counsel of record for each party may retain one set of correspondence, papers filed with the Court, transcripts and exhibits, following final termination of the action solely for archival purposes ("Archival Set"); provided, however, counsel shall not retain any Designated Material.

XIX. Modification and Survival

A. All obligations and duties arising under this Protective Order shall survive the termination of this action. The restrictions imposed by this Protective Order may only be modified or terminated by written stipulation of all parties or by order of the Court for good cause shown.

B. Any Party may move for relief from any provisions of this Order or seek or agree to different or additional protection for any particular material or information. Each Party or person bound by this Order shall be entitled to move for amendment, change or other modification of this Order for good cause after notice to the other Parties. Prior to any such motion for modification, counsel shall attempt in good faith to reach agreement without resort to the Court.

C. Without limiting the generality of the phrase "good cause" in part B above, it is sufficient, in order to show good cause, to demonstrate, to the Court's

satisfaction, any one of the following facts:

(1) that the Confidential Information involved was, in substance, otherwise generally known or readily available to the public prior to its designation in this action;

(2) that the Confidential Information has become generally known or readily available to the public as a result of publication or disclosure which has occurred through no fault of the receiving party;

(3) that the Confidential Information was known to the receiving party prior to its designation in this action;

(4) that the Confidential Information has been disclosed to the receiving party by a third party as a matter of right without restriction; or

(5) that the Confidential Information has been developed by the receiving party without reference to the disclosures made by the designating party.

Dated this 8th day of November, 2017.

Douglas L. Rayes
United States District Judge

ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Axon Enterprise Incorporated, Plaintiff, v. Vievu LLC, Defendant.	No. CV-17-01632-PHX-DLR

CONSENT TO BE BOUND BY STIPULATED PROTECTIVE ORDER

I, _____, being duly sworn, state that:

1. My address is _____.

2. My present employer is _____.

3. My present occupation or job description is _____.

4. I have received a copy of the Protective Order in this Lawsuit entered into by and among Axon Enterprise, Inc. and VIEVU, LLC.

5. I have carefully read and understand the provisions of the Protective Order.

6. I will comply with all of the provisions of the Protective Order.

7. I agree to hold in confidence any Designated Materials disclosed to me pursuant to the terms of the Protective Order and to use such Designated Materials and any information contained therein solely for the purposes of this Lawsuit.

8. I will return all Designated Materials which come into my possession, and documents or things which I have prepared relating thereto, to counsel for the party by whom I am retained at the conclusion of my retainer or at the final termination of the litigation. I will also certify, in writing, that all Designated Material in my possession has

been returned with the certification. This certification shall be delivered to counsel for the party by whom I am retained within thirty (30) calendar days after termination of the litigation.

9. I hereby submit to the jurisdiction of the United States District Court for the District of Arizona, for the purpose of enforcement of this Consent and the Protective Order in this action.

10. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Signed and Agreed to on this _____ day of _____, 20___.

By: _____

Name: _____

Title: _____

Exhibit C

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DIGITAL ALLY, INC.

Plaintiff,

v.

TASER INTERNATIONAL, INC.

Defendant.

Case No. 2:16-cv-02032-CM-TJJ

PROTECTIVE ORDER

In accordance with the Court's June 17, 2016 Memorandum and Order (ECF No. 51), the Court enters the following protective order proposed by Plaintiff:

WHEREAS, Plaintiff Digital Ally, Inc. ("Digital") and Defendant TASER International, Inc. ("TASER") believe that certain materials, information, and things discoverable in this case, both from the Parties and Third-Parties, may consist of trade secrets, proprietary information, confidential research and development information, and/or otherwise commercially valuable information ("Protected Material") that the respective Parties or Third Parties maintain in confidence in the ordinary course of business;

WHEREAS, the Parties reasonably believe that the public disclosure of materials, information, and things determined to be confidential could cause irreparable financial and competitive harms to the disclosing Party or Third Party;

WHEREAS, the Parties believe that good cause exists for the entry of a Protective Order that is narrowly tailored to protect the aforementioned confidential material, information, and things of the Parties and any Third Parties from whom confidential material, information, or things are sought.

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By reason of the foregoing, the Parties, by their counsel, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and subject to the approval of the Court, request entry of a Protective Order in the action.

Designation of Confidential Material.

1. General. Any documents, materials, tangible things, items, testimony or other information produced or provided by any party in connection with discovery in this litigation (hereinafter, the "Producing Party" or "Designating Party") to another party (hereinafter, the "Receiving Party") may be designated "Confidential" or "Highly Confidential — Attorneys' Eyes Only," subject to the limitations and guidelines set forth herein. For purposes of this Order, "Confidential" information shall mean all information that qualifies for protection under the standards developed under Rule 26(c) of the Federal Rules of Civil Procedure. The "Highly Confidential — Attorneys' Eyes Only" designation is reserved for extremely sensitive "Confidential" information whose disclosure to another party or nonparty would create a substantial risk of harm to the competitive position of the Producing Party. Any material constituting or containing non-public source code of a party's software or computer applications may be designated "Highly Confidential Source Code — Attorneys' Eyes Only." All of the foregoing forms of information and all material derived from it, including copies, recordings, summaries, abstracts, excerpts, analyses or the like, constitute "Designated Material" under this Protective Order.

2. Designated Material shall be so designated for the purposes of protecting the Producing Party's proprietary, confidential, commercially or competitively sensitive technical, business, financial or trade secret information, the confidential, personal or financial affairs of its employees or third parties, or other information not publicly known. Examples of properly

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Designated Material include source code, product design specifications, product operation specifications, software requirements documents, product requirements documents, trade secrets, non-public technical information, practices or methods, non-public marketing drafts, plans or strategies, product data or projections, non-public financial data, strategic business materials, or relationships with third parties, including any agreement documenting the terms of any such relationship. The preceding examples are listed for exemplary purposes only and are not intended to limit or restrict a Producing Party from designating other information "Confidential," "Highly Confidential — Attorneys' Eyes Only," or "Highly Confidential Source Code — Attorneys' Eyes Only" in good faith.

3. Limits on Designated Material. No item shall be designated or deemed to be Designated Material if it is available to the public at the time of disclosure or becomes publicly known through means not constituting a breach of this Protective Order by the Receiving Party. This Protective Order shall not be construed to protect information that the Receiving Party can show was already known to it or was received by the Receiving Party after the time of disclosure hereunder from a third-party having the right to make such a disclosure.

4. Designation Procedure. Designation shall be made, where practicable, by conspicuously marking each page of a document, each separate part or component of a thing, or each separate item of other material with the legend "Confidential" "Highly Confidential—Attorneys' Eyes Only" or "Highly Confidential Source Code — Attorneys' Eyes Only." If marking the Designated Material is not practicable, designation may be made on a container for or tag attached to the Designated Material. A party wishing to invoke the provisions of this Protective Order shall designate the documents, materials, items, or information, or portions thereof, prior to or at the time such information is disclosed, or when the party seeking protection

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becomes aware of the nature of the information disclosed and sought to be protected. In the case of information produced for inspection but not yet provided to the inspecting party, such information shall presumptively be deemed "Highly Confidential — Attorneys' Eyes Only," regardless of whether so identified, until copies thereof are produced to the inspecting party, except that material constituting or reflecting source code shall be presumptively deemed "Highly Confidential Source Code — Attorneys' Eyes Only" and treated in accordance with the procedures of Paragraph 6 below.

5. Designation Procedure for Deposition Testimony. With respect to deposition testimony, the witness under deposition, or his/her counsel, or any counsel representing any person or party at the deposition, may designate such testimony as "Confidential," "Highly Confidential — Attorneys' Eyes Only" or "Highly Confidential Source Code — Attorneys' Eyes Only," as appropriate, either on the record at the deposition or in writing to all parties within thirty (30) days after the mailing of the deposition transcript by the court reporter. The provisions of this paragraph may be invoked with respect to the witness's entire deposition, or any portion thereof, at any time during the deposition or within thirty (30) days thereafter. Each party in receipt of a copy of a deposition transcript designated under this paragraph shall mark each copy of each portion of such Designated Material therein not already marked by the reporter "Confidential," "Highly Confidential — Attorneys' Eyes Only" or "Highly Confidential Source Code — Attorneys' Eyes Only," as provided for in Paragraph 4 above, and will thereafter destroy any unmarked copies of the transcript in its possession, custody or control. Until thirty (30) days after mailing of the transcript by the court reporter has passed, the entire transcript shall be treated as "Highly Confidential — Attorneys' Eyes Only," except that any portion of any

transcript reflecting material designated "Highly Confidential Source Code — Attorneys' Eyes Only" shall be presumptively treated in accordance with the procedures of Paragraph 11 below.

6. Deposition Conduct. If Designated Material is referred to during the course of a deposition in this action, or if any question asked, answer given, or answer about to be given contains or is reasonably likely to contain Designated Material, then, in the case of material designated "Confidential," any person who is not designated in Paragraph 9 below and is not the deponent, the deponent's counsel (so long as deponent's counsel is not subject to Paragraphs 9-11), or the reporter/videographer must leave the room during such portion of the deposition; in the case of material designated "Highly Confidential — Attorneys' Eyes Only" or "Highly Confidential Source Code — Attorneys' Eyes Only," any person who is not designated in Paragraph 10 below with regard to "Highly Confidential — Attorneys' Eyes Only" information or in Paragraph 11 below with regard to "Highly Confidential Source Code — Attorneys' Eyes Only" information, and is not the deponent, the deponent's counsel (so long as deponent's counsel is not subject to Paragraphs 9-11), or the reporter/videographer must leave the room during such portion of the deposition. This paragraph shall not be interpreted to authorize disclosure of Designated Material to any person to whom disclosure is prohibited by this Protective Order.

Limits on Use of Designated Material.

7. Only For Purposes of This Litigation. Designated Material shall be used by a Receiving Party only for purposes of litigating or defending this action. Designated Material shall not be used for any other purpose. Specifically, Designated Material shall not be used by a Receiving Party for any other litigation, proceeding, acquisition, or any business or competitive purpose or function of any kind. No Designated Material shall, without prior written consent of

the Producing Party, be disclosed by a Receiving Party to anyone other than the personnel specified in Paragraphs 9-11 below or in any manner other than as described in this Protective Order. Designated Material shall be carefully maintained to preclude access by any persons who are not entitled to receive such information. Nothing in this Protective Order shall preclude any party or its counsel of record from disclosing or using, in any manner or for any purpose, any information or documents from the party's own files that the party itself has designated "Confidential," "Highly Confidential — Attorneys' Eyes Only" or "Highly Confidential Source Code — Attorneys' Eyes Only."

Patent Prosecution.

8. Bar From Prosecution.

(a) Absent written consent from the Producing Party, any individual representing or associated with a Party, that receives access to Designated Material, and any other individual who receives access to Designated Material, shall not be involved in the prosecution of patents or patent applications relating to the technical subject matter of patents asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent Office (hereinafter, "Prosecution Bar"). For purposes of this paragraph, "prosecution" means directly or indirectly receiving invention disclosures, assessing patentability of said disclosures, or drafting, amending, advising, reviewing, or otherwise affecting the scope of patent claims.[1] To avoid any doubt, "prosecution" as used in this paragraph does not include representing a party challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue

[1] Prosecution includes, for example, original prosecution, reissue and reexamination proceedings, *inter partes* review, and post-grant review.

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protest, *inter partes* review ("IPR"), post-grant review ("PGR"), *ex parte* reexamination, or *inter partes* reexamination).

(b) In the event any Producing Party files a request for reexamination, *inter partes* review, covered business method review, or post grant review, or other similar proceeding before the USPTO (collectively, "USPTO Proceeding"), any individual subject to the provisions of Paragraph 8(a) shall be permitted to represent the patentee in a USPTO Proceeding only if the patentee agrees to forfeit all rights to amend the scope of any claim or to submit new claims in the USPTO Proceeding. Such forfeiture must be in writing and must be provided to the Producing Party prior to any substantive submissions to the USPTO on behalf of the patentee. Additionally, if any individual subject to the provisions of Paragraph 8(a) represents the patentee in a USPTO Proceeding pursuant to this paragraph, then patentee in said USPTO proceeding may be represented only by individuals subject to the provisions of Paragraph 8(a) and may not be represented in said USPTO proceeding by any individual who is not subject to the provisions of Paragraph 8(a).

(c) This Prosecution Bar shall begin when access to "Highly Confidential - Attorneys Eyes Only," or "Highly Confidential Source Code – Attorneys' Eyes Only" information is first received and shall end two (2) years after the settlement and dismissal of the Producing Party from this action or the final non-appealable termination of this action. No other provision of this protective order shall be construed as invoking a prosecution bar or prohibiting any acts taken to discharge the duty of candor and good faith.

(d) The parties may, on a case by case basis and in their sole discretion, by written agreement between the Producing Party and the Receiving Party, provide for disclosure of specified Designated Material to specified individual(s) in a manner that shall be exempt from the application of the prosecution bar of this section and/or from any additional restrictions under Paragraph 10.

Who May Access Designated Materials.

9. Access to "Confidential" Materials. Material designated "Confidential" and all information and material derived from it, including copies, recordings, summaries, abstracts, excerpts, analyses, compilations or the like, may, without the written consent of the Producing Party, be given, shown, made available or communicated in any way by the Receiving Party only to:

a. counsel of record for the parties (each of whom is subject to the prosecution bar in Paragraph 8(a)); and professional litigation support vendors (including jury consultants) retained by them or by the parties;

b. officers, directors, and employees (including in-house counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A).

c. independent consultants or experts engaged by counsel or by the Parties in this litigation and their staffs, whether or not such experts are paid directly by a party, if cleared by the parties pursuant to Paragraph 13 of this Protective Order;

d. independent persons or firms retained by any party for the purpose of producing graphic or visual aids, if cleared by the parties pursuant to Paragraph 13 of this Protective Order;

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e. professional court reporters and videographers to the extent Designated Material is disclosed at a deposition such person is transcribing or recording;

f. at a deposition, with respect to documentary material, any deponent who authored or has previously received the particular Designated Material sought to be disclosed to that person, if the document on its face or the deponent's testimony indicates that person authored or received the document;

g. at a deposition, any deponent employed at the time of the deposition by the party that designated the particular Designated Material;

h. at a deposition, any person formerly employed by the Designating Party who was involved in the matters to which the Designated Material relates or refers;

i. the Court and its staff;

10. Access to "Highly Confidential – Attorneys' Eyes Only" Materials. Material designated "Highly Confidential — Attorneys' Eyes Only" and all information and material derived from it, including copies, recordings, summaries, abstracts, excerpts, analyses, compilations or the like may, without the written consent of the Producing Party, be given, shown, made available or communicated in any way by the Receiving Party only to:

a. counsel of record for the parties (each of whom is subject to the prosecution bar in Paragraph 8(a)); and professional litigation support vendors (including jury consultants) retained by them or by the parties;

b. in-house counsel of the Receiving Party (i) who has no involvement in competitive decision-making, (ii) to whom disclosure is reasonably necessary for this litigation, (iii) who has signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

c. independent consultants or experts engaged by counsel or by the parties in this litigation and their staffs, whether or not such experts are paid directly by a party, if cleared by the parties pursuant to Paragraph 13 of this Protective Order;

d. independent persons or firms retained by any party for the purpose of producing graphic or visual aids, if cleared by the parties pursuant to Paragraph 13 of this Protective Order;

e. professional court reporters and videographers to the extent Designated Material is disclosed at a deposition such person is transcribing or recording;

f. at a deposition, with respect to documentary material, any deponent who authored or has previously received the particular Designated Material sought to be disclosed to that person, if the document on its face or the deponent' s testimony indicates that person authored or received the document;

g. at a deposition, any deponent employed at the time of the deposition by the party that designated the particular Designated Material;

h. at a deposition, any person formerly employed by the Designating Party who was involved in the matters to which the Designated Material relates or refers; and

i. the Court and its staff;

Other attorneys may be designated or added by consent of all parties.

11. Access to "Highly Confidential Source Code – Attorneys' Eyes Only." Protected Material designated as "Highly Confidential Source Code — Attorneys' Eyes Only" will be subject to all of the protections afforded to "Highly Confidential — Attorneys' Eyes Only" information and may be disclosed only to the individuals to whom "Highly Confidential — Attorneys' Eyes Only" information may be disclosed. Nothing in this protective order shall be

construed so as to (i) obligate the parties to produce source code, (ii) serve as an admission that source code of any type is discoverable in this litigation, or (iii) waive any party's right to object on any ground to the production of source code. In the event that source code is produced in this litigation, source code designated "Highly Confidential Source Code — Attorneys' Eyes Only" shall be afforded the following additional protections.

Disclosure and Review of Source Code.

12. Restrictions and Protections. "Source Code" means computer code, scripts, assembly, object code, source code listings and descriptions of source code, object code listings and descriptions of object code, and files that describe the hardware design of any programmable logic device ("PLD"), programmable logic array ("PLA"), application specific integrated circuit ("ASIC"), custom integrated circuit, or other similar device or integrated circuit, any of which are disclosed by a Producing Party. To the extent a Producing Party's Source Code is discoverable in this action, it may be designated as "Highly Confidential Source Code – Attorneys' Eyes Only," and, in addition to the protections of Paragraph 11, shall be subject to the following additional restrictions and protections:

a. Source Code in electronic format shall be made available for inspection in native format on a non-networked standalone computer (the "Source Code Computer") in a secure room (the "Source Code Review Room") at one of the following locations at the election of the Producing Party: (i) any office of the Producing Party's outside counsel; (ii) any place of business of the Producing Party; or (iii) if mutually agreed to, any other location.

b. Source Code will be made available so that it can be reviewed in a manner representative of how it is kept in the normal course of business.

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c. Unless a Producing Party chooses to disclose Source Code prior to request from the Receiving Party, the Receiving Party shall provide ten (10) business days' notice of the Source Code that it wishes to inspect prior to the first inspection of any Source Code.

d. Once the Producing Party has initially made the Source Code available for inspection and review, it shall make it available for additional inspection upon three (3) business days' notice and, to the extent shorter notice is provided, the Producing Party agrees to use reasonable efforts to accommodate the Receiving Party's request. The Producing Party and the Receiving Party shall consult with one another in advance regarding particular Source Code review tools to be installed on the computer. The Producing Party agrees to make reasonable review tools available on the Source Code Computer to the Receiving Party upon reasonable request. If the requested review tools must be purchased, the Receiving Party shall be responsible for bearing the cost and for providing the installation files at least seven (7) business days in advance of the date upon which the Receiving Party wishes to have the requested review tools available for use on the Source Code Computer.

e. No recordable media or recordable devices, including without limitation sound recorders, computers, cellular telephones, peripheral equipment, cameras, CDs, DVDs, or drives of any kind, shall be permitted into the Source Code Review Room. The taking of photographs or video shall not be permitted in the Source Code Review Room.

f. Under no circumstances is the Source Code to be copied or transmitted in electronic form without the prior authorization of the Producing Party, except as otherwise

provided herein. The Producing Party may enforce reasonable restrictions on the review of source code in electronic format, including making source code available on a stand-alone, non-networked computer, with input/output connections disabled such that source code cannot be removed, copied, or otherwise transferred from the Source Code Computer and the Source Code Computer cannot be connected to the Internet.

g. The Receiving Party's expert(s) and/or consultant(s) may take notes relating to the Source Code, but may not copy the Source Code into the notes and may not take such notes electronically on the Source Code Computer itself.

h. The Producing Party may visually monitor the activities of the Receiving Party's representatives during any Source Code review, but only to ensure that no unauthorized electronic records of the Source Code are being created or transmitted in any way. Any observer used by the Producing Party shall be a reasonable distance away from the Receiving Party's representatives during the Source Code review to refrain from overhearing a whispered conversation (in order that the Receiving Party's representatives can quietly discuss the Source Code in the course of their review).

i. The Receiving Party shall identify all experts or consultants it requests be allowed to obtain access to the source code ("Proposed Recipient") at least (7) business days prior to any inspection, to permit the Producing Party time to object. The Receiving Party, as part of the identification procedure, shall provide the Producing Party with the information set forth in Paragraph 13. Outside counsel for the Receiving Party

retaining the expert or consultant shall also retain the expert's or consultant's executed Exhibit A in its files.

j. No copies of all or any portion of the Source Code may leave the Source Code Review Room except as otherwise provided herein. Further, no other written or electronic record of the Source Code is permitted except as otherwise provided herein. The Receiving Party may request certain portions of the Producing Party's Source Code be printed to paper copies by identifying such portions to the Producing Party. The Receiving Party shall not request printed copies of the Source Code in order to review blocks of Source Code elsewhere in the first instance, i.e., as an alternative to reviewing that Source Code electronically on the Source Code Computer, as the Parties acknowledge and agree that the purpose of the protections herein would be frustrated by printing portions of code for review and analysis elsewhere. The Producing Party shall be required to print Source Code only when absolutely and directly necessary to prepare court filings or pleadings or other papers (including formal infringement contentions and a testifying expert's expert report). Within four (4) business days of a request, the Producing Party shall either (i) produce one copy of the requested pages to the Receiving Party, or (ii) inform the Requesting Party that it objects to the request as excessive or not submitted for a permitted purpose. Any request to print more than ten (10) pages of a continuous block of Source Code shall be presumed to be excessive. Any request to print more than one hundred (100) pages of Source Code, in aggregate, from any Producing Party shall be presumed to be excessive. If, after meeting and conferring, the Producing Party and the Receiving Party cannot resolve the objection, the Receiving

Party shall be entitled to seek a Court resolution of whether the request is narrowly tailored and for a permitted purpose. The Producing Party will affix the proper Bates labeling and "Highly Confidential Source Code – Attorneys' Eyes Only" designation to any printed copies produced to the Receiving Party.

k. All persons viewing Source Code in the Source Code Review Room shall sign in each day they view Source Code and sign a log, if provided, that will include the names of persons who enter the Source Code Review Room to view the Source Code and when they enter and depart.

l. Unless otherwise agreed in advance by the Parties in writing, following each day in which inspection is done under this Order, the Receiving Party's outside counsel and/or experts shall remove all notes, documents, and all other materials from the Source Code Review Room. The Producing Party shall not be responsible for any items left in the room following each inspection session, and the Receiving Party shall have no expectation of confidentiality for any items left in the room following each inspection session without a prior agreement to that effect.

m. The Receiving Party will not print, copy, remove, or otherwise transfer any Source Code from the Source Code Computer including, without limitation, copying, removing, or transferring the Source Code onto any recordable media or recordable device. The Receiving Party will not transmit any Source Code in any way from the Source Code Review Room.

n. The Receiving Party's outside counsel and any person receiving a copy of any Source Code shall maintain and store any paper copies of the Source Code at their offices in a manner that prevents duplication of or unauthorized access to the Source Code,

including, without limitation, storing the Source Code in a locked room or cabinet at all times when it is not in use.

o. The Receiving Party's outside counsel may make no more than three (3) additional paper copies of any portions of the Source Code received from a Producing Party pursuant to Paragraph 12(j) above, not including copies attached to court filings, and shall maintain a log of all paper copies of the Source Code. The log shall include the names of the reviewers and/or recipients of paper copies and locations where the paper copies are stored. Upon seven (7) business days' advance notice to the Receiving Party by the Producing Party, the Receiving Party shall provide a copy of this log to the Producing Party.

p. For depositions, copies of Source Code that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production number(s). All paper copies of Source Code brought to the deposition shall be securely destroyed in a timely manner following the deposition.

q. Except as provided in this paragraph, absent express written permission from the Producing Party, the Receiving Party may not create electronic images, or any other images, or make electronic copies of the Source Code from any paper copy of Source Code for use in any manner (including by way of example only, the Receiving Party may not scan the Source Code to a PDF or photograph the code). Images or copies of Source Code shall not be included in correspondence between the Parties, and shall be omitted from pleadings and other papers whenever possible. References to production numbers shall be used instead. If a Party reasonably believes that it needs

to submit a portion of Source Code as part of a filing with the Court, the Parties shall meet and confer as to how to make such a filing while protecting the confidentiality of the Source Code and such filing will not be made absent (i) agreement from the Producing Party that the confidentiality protections will be adequate, or (ii) Court order. If a Producing Party agrees to produce an electronic copy of all or any portion of its Source Code or provide written permission to the Receiving Party that an electronic or any other copy needs to be made for a Court filing, the Receiving Party's communication and/or disclosure of electronic files or other materials containing any portion of Source Code (paper or electronic) shall at all times be limited solely to individuals who are expressly authorized to view Source Code under the provisions of this Order. Where the Producing Party has provided the express written permission required under this provision for a Receiving Party to create electronic copies of Source Code, the Receiving Party shall maintain a log of all such electronic copies of any portion of Source Code in its possession or in the possession of its retained consultants, including the names of the reviewers and/or recipients of any such electronic copies, and the locations where the electronic copies are stored. Additionally, any such electronic copies must be labeled "Highly Confidential Source Code – Attorneys' Eyes Only," as provided for in this Order.

Clearance Procedure Designated Materials to Consultants, Experts, or Graphics Firms.

13. Designated Material may be provided to an independent consultant or expert, or a firm retained for the purpose of producing graphics or other visual aids, as described in Paragraphs 9(b)-(c) and 10(b)-(c) only after ten (10) days following written notice to the Designating Party of the proposed disclosure to the consultant or expert. The written notice shall

also include a fully executed copy of the Acknowledgement attached hereto as Exhibit A, completed by the consultant, expert or graphics firm. With respect to the independent consultant or expert described in Paragraphs 9(b) and 10(b), a Receiving Party shall also provide a current resume or curriculum vitae including (i) any previous or current relationship (personal or professional) with any of the parties, (ii) a listing of all papers or articles written in the previous ten years, and (iii) a list of persons or entities by which or on behalf of which the consultant or expert has been retained in the preceding five (5) years, including a brief description of the subject matter of each such retention, the technology involved (if applicable), whether expert reports were submitted and what, if any, testimony was given. If the Designating Party objects, in writing, to disclosure of Designated Material to the consultant, expert or graphics firm within the ten (10) day period, no disclosure of Designated Material may be made to such person or firm pending resolution of the objection. If the parties cannot resolve the issue informally, the party objecting to the proposed disclosure may, within ten (10) business days of providing written objection to the party desiring to disclose Designated Materials to its expert or consultant, seek an appropriate order from the Court disqualifying the consultant or expert or protecting against the proposed disclosure to the consultant or expert. Until the Court rules on the matter, no disclosure of Designated Material to the consultant or expert shall be made.

Expert Discovery.

14. Drafts of expert reports, other writings generated by testifying experts with respect to their work in this case, and communications between outside counsel and experts relating to their work in this case are exempt from discovery in this or any other litigation, unless relied on by the expert as a basis for his or her expert testimony. Nothing in this Order shall be construed to limit the discovery or examination of expert witnesses concerning documents or

other information relied on by the expert as a basis for his or her final opinions in this case, or compensation received by such expert witness for his or her testimony, if any, including but not limited to disclosures required by Fed. R. Civ. P. 26(a)(2)(B)(vi).

Designation of Third Party Confidential Information.

15. The parties recognize that discovery of a third-party may involve receipt of that party's confidential information. Accordingly, a third party may designate confidential information produced by it "Confidential," "Highly Confidential — Attorneys' Eyes Only" or "Highly Confidential Source Code — Attorneys' Eyes Only" pursuant to the terms of this Protective Order and is subject to all applicable provisions of this Protective Order with respect to any material so designated (such Designated Material is hereinafter referred to specifically as "Third Party Confidential Information"). In order to ensure adequate protection of Third Party Confidential Information disclosed during depositions where counsel for the third party in question is not present, such as the deposition of an expert witness retained by a party, the party that issued the subpoena to the third party or otherwise requested Third Party Confidential Information from the third party may provisionally designate any portion of the deposition transcript discussing Third Party Confidential Information "Confidential," "Highly Confidential - Attorneys' Eyes Only" or "Highly Confidential Source Code - Attorneys' Eyes Only" in accordance with the procedures of Paragraph 4 and will promptly notify the third party in writing of the provisional designation, such that the third party can confirm the appropriateness of the designation and take such other measures it deems necessary to protect the confidentiality of its information.

Filing Designated Material with the Court.

16. If a party wishes to use any Designated Material in any affidavits, briefs, memorandum of law, or other papers filed in this court in this litigation, such papers or transcript may be filed under seal only upon separate, specific motion and later order of the court. The party seeking to file the Protected Material under seal in this court must follow the procedures set forth in D. Kan. Rule 5.4.6.

Inadvertent Designation.

17. A Producing Party that inadvertently fails to designate an item pursuant to this Protective Order at the time of the production shall make a correction promptly after becoming aware of such error. Such correction and notice thereof shall be made in writing accompanied by substitute copies of each item, appropriately designated. Those individuals who reviewed the documents or information prior to notice of the failure to designate by the Producing Party shall, to the extent reasonably feasible, return to the Producing Party or destroy all copies of such undesignated documents and shall honor the provisions of this Protective Order with respect to the use and disclosure of any confidential information contained in the undesignated documents, from and after the date of designation.

Improper Disclosure.

18. If information designated pursuant to this Protective Order is disclosed to any person other than in the manner authorized by this Protective Order, the party responsible for this disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the Designating Party, without prejudice to all other rights and remedies of the Designating Party, and shall make every effort to prevent further improper disclosure.

Objections to Designations.

19. If at any time during the pendency of this litigation any party claims that information is not appropriately designated (the "Objecting Party"), the Objecting Party may serve notice of objection on the Designating Party. Within ten (10) calendar days of receiving such notice, the Designating Party shall respond in writing. If the Designating Party and the Objecting Party cannot resolve the dispute, the Objecting Party may move for an order from the Court for re-designation of the disputed material. If the Objecting Party moves for an order from the Court for re-designation, the Objecting Party shall bear the burden to establish that the original designation does not comply with the guidelines and limitations described in this Order. Until or unless the parties formally agree in writing to the re-designation of such material, or until such time as the material is re-designated by order of the Court, all Designated Materials will continue to receive confidential treatment pursuant to the terms of this Protective Order in accordance with the designation chosen by the Designating Party.

Use of Designated Material at Trial or Other Court Proceedings.

20. This Protective Order, insofar as it restricts the dissemination and use of Designated Material, shall not apply to the introduction of evidence at trial or the display or discussion of Designated Material during hearings held by the Court, including but not limited to claim construction and summary judgment hearings. However, any non-disclosing party intending to use Designated Material at trial or during hearings must provide notice of its intent to the Designating Party 24 hours in advance and any party or third party may seek appropriate court orders, including without limitation, an order which restricts the use of any material covered by this Protective Order during the trial or other Court proceeding, that requests that portions of the transcript be sealed, or restricts access of the public to certain portions of the trial or other Court proceeding.

Inadmissibility of Designation.

21. Unless the Parties stipulate otherwise, evidence of the existence or nonexistence of a designation under this Protective Order shall not be admissible for any purpose, nor shall the designation or acceptance of any information designated pursuant to this Protective Order constitute an admission or acknowledgement that the material so designated is in fact proprietary, confidential, or a trade secret.

Privilege Logs.

22. The parties shall confer in good faith to reach agreement on reasonable deadline(s) for the exchange of privilege logs. The parties agree that such logs need not be produced simultaneously with the production of documents and contemplate that such logs shall instead be produced at a reasonable time thereafter. With respect to information generated after the filing of the complaint, parties are not required to include any such information in privilege logs and the absence of any reference to such materials in such logs shall not be deemed to effect a waiver of any applicable claim of privilege or attorney work product.

Inadvertent Production of Privileged Materials.

23. Counsel shall make reasonable efforts to identify materials protected by the attorney-client privilege or the work product doctrine prior to the disclosure of any such materials. The inadvertent production of any document or thing shall be without prejudice to any claim that such material is protected by the attorney-client privilege or protected from discovery as work product and no Producing Party shall be held to have waived any rights thereunder by inadvertent production. If a Producing Party discovers that materials protected by the attorney-client privilege or work product doctrine have been inadvertently produced, counsel for the Producing Party shall promptly give written notice to counsel for the Receiving Party. The

Receiving Party shall take prompt steps to ensure that all known copies of such material are returned to the Producing Party or destroyed, and any notes or summaries, other than those expressly permitted in this section, referring to or relating to any such materials are destroyed, with such destruction certified in writing. Nothing herein shall prevent the Receiving Party from preparing a record for its own use containing the date, author, address(es), and such other information as is reasonably necessary to identify the inadvertently produced material and generally describe its nature to the Court in any motion to compel production of such material. Such a record of the identity and nature of the material may not be used for any purpose other than preparation of a motion to compel in this Action. After return of the inadvertently produced material the Receiving Party may afterward contest such claims of privilege or work product as if the materials had not been produced, but shall not assert that a waiver occurred as a result of the production.

Other Proceedings.

24. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated as confidential pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

Notification of Subpoena, Document Request, or Order in Other Litigation.

25. If a Receiving Party is served with a subpoena, document request, or order issued in other litigation that would compel disclosure of any information or items designated by another party to this action as "Confidential," "Highly Confidential — Attorneys' Eyes Only" or

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"Highly Confidential Source Code — Attorneys' Eyes Only," the Receiving Party must so notify the Designating Party in writing as soon as reasonably practicable and in no event more than five (5) days after receiving the subpoena, document request, or order. Such notification must include a copy of the subpoena, document request, or order. The Designating Party shall bear the burden and expense of seeking to protect the requested material from production in the other litigation.

Final Disposition of Designated Material.

26. Within sixty (60) days following termination of this litigation by settlement or final judgment, including exhaustion of all appeals, the originals and all copies of Designated Material shall be either destroyed or turned over to the Producing Party, or to its counsel. If Designated Material is destroyed pursuant to this paragraph, counsel shall provide to opposing counsel a certification identifying when and how the destruction was performed. Notwithstanding this paragraph, outside counsel of record may retain pleadings, attorney and consultant work product, and depositions (with exhibits) for archival purposes.

Survival.

27. The terms of this Protective Order shall survive termination of this litigation.

Assent to the entry of the foregoing Protective Order is hereby given by the parties by and through their attorneys.

IT IS SO ORDERED this 20th day of June, 2016.

s/ Teresa J. James
Teresa J. James
United States Magistrate Judge

PUBLIC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DIGITAL ALLY, INC.

Plaintiff,

v.

TASER INTERNATIONAL, INC.

Defendant.

Case No. 2:16-cv-02032-CM-TJJ

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY THE PROTECTIVE ORDER

I, _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the District of Kansas in this matter. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the District of Kansas for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

Exhibit D

PUBLIC

CONFIDENTIALITY CERTIFICATION

I, the undersigned below, hereby agree to maintain confidentiality and not disclose to any other person, except for Permitted Recipients (as defined below), all information and material derived from it, including copies, recordings, summaries, abstracts, excerpts, analyses, compilations or the like, that Axon Enterprise, Inc. ("Axon") receives from Safariland, LLC ("Safariland") relating to Safariland's response to the inquiry by the Federal Trade Commission into Axon's purchase of VIEVU, LLC from Safariland, including, without limitation, deposition transcripts and exhibits thereto from individuals deposed in connection with such inquiry.

For purposes of this Confidentiality Certification, "Permitted Recipients" shall include Axon's counsel of record retained to represent Axon in connection with the above-referenced governmental inquiry and Axon's in-house litigation counsel and staff (i) who have no involvement in competitive decision-making, (ii) to whom disclosure is reasonably necessary for representing Axon in connection with the above-referenced inquiry, and (iii) who have signed a Confidentiality Certification in the form provided herein. All documents received will be maintained in password protected files in the legal department not accessible to anyone who has not signed this certification.

Signature: DocuSigned by: Pam Petersen 28A0F61C388A454...

Name: Pamela Petersen

Title: Director of Litigation and National Appellate Counsel

Date: 11/22/2019 | 11:53 AM MST

CONFIDENTIALITY CERTIFICATION

I, the undersigned below, hereby agree to maintain confidentiality and not disclose to any other person, except for Permitted Recipients (as defined below), all information and material derived from it, including copies, recordings, summaries, abstracts, excerpts, analyses, compilations or the like, that Axon Enterprise, Inc. ("Axon") receives from Safariland, LLC ("Safariland") relating to Safariland's response to the inquiry by the Federal Trade Commission into Axon's purchase of VIEVU, LLC from Safariland, including, without limitation, deposition transcripts and exhibits thereto from individuals deposed in connection with such inquiry.

For purposes of this Confidentiality Certification, "Permitted Recipients" shall include Axon's counsel of record retained to represent Axon in connection with the above-referenced governmental inquiry and Axon's in-house litigation counsel and staff (i) who have no involvement in competitive decision-making, (ii) to whom disclosure is reasonably necessary for representing Axon in connection with the above-referenced inquiry, and (iii) who have signed a Confidentiality Certification in the form provided herein. All documents received will be maintained in password protected files in the legal department not accessible to anyone who has not signed this certification.

Signature: DocuSigned by: Kelly Greenberg ECCE88690B004AF...

Name: Kelly Greenberg

Title: Senior Litigation Paralegal

Date: 11/22/2019 | 11:50 AM MST

CONFIDENTIALITY CERTIFICATION

I, the undersigned below, hereby agree to maintain confidentiality and not disclose to any other person, except for Permitted Recipients (as defined below), all information and material derived from it, including copies, recordings, summaries, abstracts, excerpts, analyses, compilations or the like, that Axon Enterprise, Inc. ("Axon") receives from Safariland, LLC ("Safariland") relating to Safariland's response to the inquiry by the Federal Trade Commission into Axon's purchase of VIEVU, LLC from Safariland, including, without limitation, deposition transcripts and exhibits thereto from individuals deposed in connection with such inquiry.

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Signature: DocuSigned by: Peter Brown D8D1CEC4381440D...

Name: Peter Brown

Title: Associate Litigation & IP Counsel

Date: 11/22/2019 | 11:50 AM MST

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2020, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Acting Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Jennifer Milici
J. Alexander Ansaldo
Peggy Bayer Femenella
Mika Ikeda
Nicole Lindquist
Lincoln Mayer
Merrick Pastore
Z. Lily Rudy
Dominic Vote
Steven Wilensky
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, NW
Washington, DC 20580
Phone: (202) 326-2638
Facsimile: (202) 326-2071
Email: jmilici@ftc.gov
Email: jansaldo@ftc.gov
Email: pbayer@ftc.gov
Email: mikeda@ftc.gov
Email: nlinquist@ftc.gov
Email: lmayer@ftc.gov
Email: mpastore@ftc.gov
Email: zrudy@ftc.gov
Email: dvote@ftc.gov
Email: swilensky@ftc.gov

Counsel for the Federal Trade Commission

Joseph A. Ostoyich
BAKER BOTTS, LLP
The Warner Building
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone:: (202) 639-7905
Facsimile: (202) 639-1163
Email: joseph.ostoyich@bakerbotts.com

Counsel for Respondent
Safariland LLC

Dated: January 17, 2020

s/ Louis K. Fisher

Louis K. Fisher

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed documents that is available for review by the parties and the adjudicator.

Dated: January 17, 2020

s/ Louis K. Fisher

Louis K. Fisher