

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Lina M. Khan, Chair**  
                                      **Rebecca Kelly Slaughter**  
                                      **Alvaro M. Bedoya**

**In the Matter of**

**Axon Enterprise, Inc.**  
**a corporation.**

**DOCKET NO. 9389**

**COMPLAINT COUNSEL’S UNOPPOSED MOTION TO WITHDRAW  
THIS MATTER FROM ADJUDICATION**

On January 3, 2020, the Federal Trade Commission (“Commission”) issued an administrative complaint challenging Axon Enterprise, Inc.’s (“Axon”) consummated acquisition of another body-worn camera supplier, VieVu, LLC. On that same day, Axon initiated a lawsuit in the United States District Court for the District of Arizona raising, in part, constitutional claims regarding the Commission’s structure and administrative procedures. The district court dismissed Axon’s complaint due to lack of subject matter jurisdiction, the United States Court of Appeals for the Ninth Circuit affirmed, and in April 2023, the Supreme Court reversed the decision of the Ninth Circuit and remanded the case to the district court. *See Axon Enterprise, Inc. v. Fed. Trade Comm’n., et al.*, 452 F.Supp.3d 882 (D. Az. 2020), *aff’d by* 986 F.3d 1173 (9th Cir. 2021), *rev’d by* 598 U.S. ----, 143 S. Ct. 890 (2023). Commencement of the administrative evidentiary hearing was stayed in October 2020 during Axon’s appeals.

Following the Supreme Court’s decision, the district court ordered the Commission to respond to Axon’s complaint by June 9, 2023, and the parties jointly moved to stay the district court proceeding for a period of 60 days “to withdraw administrative Docket No. 9389 from Part

3 adjudication for a period of 60 days.” Stipulation, *Axon*, 2:20-cv-00014-DWL, Dkt. No. 56 (D. Az. June 8, 2023) (Exhibit A). The district court entered an order staying the district court proceeding for 60 days. Order (text entry only), *Axon*, 2:20-cv-00014-DWL, Dkt. No. 57 (D. Az. June 9, 2023).

To allow for discussion regarding the proper resolution of this matter, Complaint Counsel moves that the Commission issue an order withdrawing this matter from adjudication in Part 3 of the Commission’s Rules of Practice and suspending application of Rule 4.7 of the Commission’s Rules of Practice, 16 C.F.R. § 4.7 for 60 days from the date of this filing.<sup>1</sup> A draft of a proposed order granting the requested motion is attached.

Respondent Axon does not oppose this motion.

Dated: June 9, 2023

Respectfully submitted,

/s/ Nicole Lindquist  
Nicole Lindquist  
Peggy Bayer Femenella  
Susan Musser  
Bureau of Competition  
Federal Trade Commission  
400 7<sup>th</sup> Street, S.W.  
Washington, D.C. 20024

*Complaint Counsel*

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<sup>1</sup> The Commission in the past, in light of events relevant to issues in a pending adjudicatory matter, has authorized filing of a “motion to withdraw this matter from adjudication for purposes of discussing resolution of this matter, in which event the Secretary shall issue an order withdrawing this matter from adjudication and the application of Commission Rule of Practice 4.7, 16 C.F.R. § 4.7, shall thereby be suspended.” *In the Matter of New Balance Athletic Shoe, Inc.*, 120 F.T.C. 4, 1995 WL 17012636, \*\*1 (July 10, 1995); *see also In the Matter of Rambus Inc.*, F.T.C. Dkt. 9302, 2009 WL 725994 (March 6, 2009) (withdrawing a matter from adjudication).

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**In the Matter of**  
  
**Axon Enterprise, Inc.  
a corporation.**

**DOCKET NO. 9389**

**[PROPOSED] ORDER**

Having considered Complaint Counsel’s Motion to Withdraw This Matter from Adjudication, Complaint Counsel’s Motion is hereby granted. Accordingly,

IT IS ORDERED THAT this matter is hereby withdrawn from adjudication under Part 3 of the FTC Rules of Practice, 16 C.F.R. Part III for 60 days from June 9, 2023, for the purpose of considering the proper resolution of this matter in light of the multi-year stay of the evidentiary hearing and the Supreme Court’s recent decision in *Axon Enterprise, Inc. v. Fed. Trade Comm’n., et al.*, 598 U.S. ----, 143 S. Ct. 890 (2023), and that the application of FTC Rule of Practice 4.7, 16 C.F.R. § 4.7, is hereby suspended.

By the Commission.

ORDERED:

\_\_\_\_\_  
April Tabor  
Secretary

Date: \_\_\_\_\_

# EXHIBIT A

1 Brian M. Boynton  
2 Principal Deputy Assistant Attorney General

3 Christopher R. Hall  
4 Assistant Branch Director

5 Hannah Solomon-Strauss (NY 5693890)  
6 Trial Attorney

7 **U.S. Department of Justice**  
8 Civil Division, Federal Programs Branch  
9 P.O. Box No. 883  
10 Ben Franklin Station  
11 Washington, DC 20044  
12 Telephone: (202) 616-8198  
13 Fax: (202) 616-8470  
14 [Hannah.m.solomon-strauss@usdoj.gov](mailto:Hannah.m.solomon-strauss@usdoj.gov)

15 *Attorneys for Defendants*

16 **IN THE UNITED STATES DISTRICT COURT**  
17 **FOR THE DISTRICT OF ARIZONA**

18 Axon Enterprise, Inc.,  
19 Plaintiff,

20 v.

21 Federal Trade Commission, et al.,  
22 Defendants.

NO. 2:20-cv-00014-PHX-DWL

**STIPULATION**

23  
24 The Parties have met and conferred regarding the Supreme Court’s ruling and  
25 remand in this matter and stipulate and agree as follows:

- 26 1. On or before June 9, 2023, the Parties will jointly request the Federal Trade  
27 Commission (“FTC” or “Commission”) to withdraw administrative Docket  
28 No. 9389 from Part 3 adjudication for a period of 60 days.

- 1           2.     The Parties request that this Court vacate the June 9, 2023 deadline for the  
2                     FTC to respond to Plaintiff Axon Enterprise, Inc.’s (“Axon”) Complaint  
3                     (Doc. 54) and pause further pleading in this case for the same 60-day  
4                     period.  
5  
6           3.     On or before August 11, 2023, the Parties shall file with this Court a joint  
7                     status report and, if applicable, a stipulated schedule for pleading  
8                     amendments and summary judgment briefing on Axon’s constitutional  
9                     claims.  
10  
11           4.     By agreement of the Parties, preliminary injunction briefing in this Court  
12                     will not be necessary if this case proceeds on Axon’s constitutional claims.  
13

14     A proposed order accompanies this stipulation.

15  
16     Dated: June 8, 2023

Respectfully submitted,

17                     Brian M. Boynton  
18                     Principal Deputy Assistant Attorney General

19                     Christopher R. Hall  
20                     Assistant Branch Director

21                     /s/ Hannah M. Solomon-Strauss  
22                     Hannah Solomon-Strauss (NY 5693890)  
23                     Trial Attorney  
24                     **U.S. Department of Justice**  
25                     Civil Division, Federal Programs Branch  
26                     P.O. Box No. 883  
27                     Ben Franklin Station  
28                     Washington, DC 20044  
                      Telephone: (202) 616-8198  
                      Fax: (202) 616-8470  
                      [Hannah.m.solomon-strauss@usdoj.gov](mailto:Hannah.m.solomon-strauss@usdoj.gov)

*Attorneys for Defendants*

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/s/ Pam Petersen (with permission)

Pamela B. Petersen  
Arizona Bar No. 011512  
Gayathiri Shanmuganatha  
Arizona Bar No. 030745  
**Axon Enterprise, Inc.**  
17800 N. 85<sup>th</sup> Street  
Scottsdale, AZ 85255-9603  
Telephone: (623) 326-6016  
Fax: (480) 905-2027  
[ppetersen@axon.com](mailto:ppetersen@axon.com)  
[gshanmuganatha@axon.com](mailto:gshanmuganatha@axon.com)  
Secondary: [legal@axon.com](mailto:legal@axon.com)

*Attorneys for Plaintiff Axon Enterprise, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 8, 2023, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court’s CM/ECF System upon all counsel of record in the above-captioned case.

/s/ Hannah M. Solomon-Strauss

Hannah M. Solomon-Strauss

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Axon Enterprise, Inc.,

Plaintiff,

v.

Federal Trade Commission, et al.,

Defendants.

NO. 2:20-cv-00014-PHX-DWL

**ORDER [PROPOSED]**

[PROPOSED] ORDER

Upon consideration of the Parties' stipulation, it is hereby ORDERED that this case is stayed for a period of 60 days, and it is further ORDERED that the parties shall submit a joint status report not later than August 11, 2023, updating this Court on the status of this case.

Dated \_\_\_\_\_

\_\_\_\_\_  
United States District Judge



## CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2023, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580  
ElectronicFilings@ftc.gov

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

I also certify that I caused the foregoing document to be served via email to:

Julia E. McEvoy  
Michael H. Knight  
Jeremy P. Morrison  
Debra R. Belott  
Jones Day  
51 Louisiana Avenue, NW  
Washington, DC 20001  
Tel: 202-879-3751  
jmcevoy@jonesday.com  
mhknight@jonesday.com  
jmorrison@jonesday.com  
dbelott@jonesday.com  
EXT\_Axon\_Service@jonesday.com

Aaron M. Healey  
Jones Day  
250 Vesey Street  
New York, NY 10281-1047  
ahealey@jonesday.com

*Counsel for Respondent Axon Enterprises, Inc.*

By: s/ Susan Musser  
Susan Musser

*Counsel Supporting the Complaint*