

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

In the Matter of)
)
Axon Enterprise, Inc.)
a corporation,) Docket No. 9389
)
and)
)
Safariland, LLC,)
a partnership,)
)
Respondents.)

**ORDER GRANTING IN PART AND DENYING IN PART
MOTION FOR THE ISSUANCE OF SUBPOENAS
AD TESTIFICANDUM FOR TRIAL UNDER RULE 3.36**

On September 16, 2020, Respondent Axon Enterprise, Inc. (“Respondent” or “Axon”) filed a Motion for the Issuance of Subpoenas *Ad Testificandum* for Trial Under Rule 3.36 (“Motion”). Respondent represents that Federal Trade Commission (“FTC”) Complaint Counsel does not oppose the Motion. Respondent seeks an order for the issuance of subpoenas *ad testificandum* to six individuals whom Respondent has included in its Final Proposed Witness List. According to Respondent, five of the six individuals are currently associated with law enforcement agencies and the remaining individual is retired from a law enforcement agency.

Rule 3.36(b) of the FTC’s Rules of Practice requires a party to file a motion in order to obtain a subpoena for the appearance at trial of an official or employee of a governmental agency and to make a specific showing supporting the requested subpoena. Specifically, in order to compel the appearance of the employee to testify at an evidentiary hearing, the movant must show that the testimony sought is reasonably relevant and reasonable in scope, and that the movant has a compelling need for the testimony. 16 C.F.R. § 3.36(b).

The Complaint in this matter challenges Axon’s acquisition of VieVu from Safariland (the “Acquisition”) and alleges that a relevant product market in which to assess the effects of the Acquisition is the sale of body-worn cameras (“BWCs”) and digital evidence management systems (“DEMS”) to large, metropolitan police departments. Complaint ¶¶ 2, 21. Respondent represents that the testimony sought from each of the six witnesses will relate to BWCs and DEMS, Requests for Proposals (“RFPs”), department purchases, needs, and policies, customer responses to the Acquisition, and the Acquisition’s effect on products and customer support. Respondent asserts that the scope of the testimony sought is limited to these and related topics and thus is reasonable. Respondent further asserts that only customers can testify about their experiences with Axon, VieVu, other companies, and the products at issue and that, by virtue of the nature of this case, some of the most relevant witnesses are municipal employees. Thus, Respondent has demonstrated a compelling need for the requested testimony from employees of government agencies.

The requirements of Rule 3.36(b) have been met. Accordingly, Respondent’s unopposed Motion is GRANTED as to the five current government employees. However, Rule 3.36 does not govern subpoenas to former government employees. Rather, counsel may issue a subpoena to a non-party witness pursuant to Rule 3.34(a).¹ Accordingly, Respondent’s request for a subpoena under Rule 3.36 for a former government employee is DENIED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: September 17, 2020

¹ Rule 3.34(a) provides: “Counsel for a party may sign and issue a subpoena, on a form provided by the Secretary, requiring a person to appear and give testimony at the taking of a deposition to a party requesting such subpoena or to attend and give testimony at an adjudicative hearing.”