

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



In the Matter of

Axon Enterprise, Inc.
a corporation.

DOCKET NO. 9389

PUBLIC

**JOINT MOTION FOR ISSUANCE OF SUBPOENAS AD TESTIFICANDUM TO
SERGEANT ROBERT LISOTTA AND ASSISTANT CHIEF MATTHEW PONTILLO
UNDER RULE OF PRACTICE 3.36 AND REQUEST FOR EXPEDITED TREATMENT**

Complaint Counsel and Axon jointly bring this motion pursuant to Federal Trade Commission (“Commission”) Rule of Practice 3.36 for the issuance of Subpoenas *Ad Testificandum* to Sergeant Robert Lisotta of the Jacksonville Sheriff’s Office (JSO) and Assistant Chief Matthew Pontillo of the New York Police Department (NYPD). The parties request authorization to issue the attached subpoenas under Rule 3.36, as the JSO and the NYPD are government agencies described in Rule 3.36(a).

Because the testimony sought from Sgt. Lisotta and Assistant Chief Pontillo meets the requirements set out in Rule 3.36, the parties respectfully request that the Motion be granted and that the attached subpoenas be issued. On March 2 and 3, 2020, this Court granted prior motions for issuance of subpoenas *ad testificandum* for Lieutenant Lilly Hotard of the JSO and Chief Anthony Tasso of the NYPD. Since then, the JSO has indicated that Sgt. Lisotta is a more appropriate person to testify than Lt. Hotard and the NYPD has indicated that Assistant Chief Pontillo is a more appropriate person to testify than Chief Tasso. Sgt. Lisotta is available for a deposition on July 29, 2020. Given the timeframe, the parties request expedited treatment of this motion. The unsigned subpoenas *ad testificandum* for Sgt. Lisotta are included as Attachment A;

the unsigned subpoenas *ad testificandum* for Assistant Chief Pontillo are included as Attachment B. The parties do not intend on enforcing the subpoenas *ad testificandum* issued for Lt. Hotard or Chief Tasso.

ARGUMENT

Rule 3.36(b) of the Commission's Rules of Practice requires a party seeking issuance of a subpoena for the appearance of an official or employee of a governmental agency to make a specific showing regarding the requested subpoena. With respect to subpoena *ad testificandum* to be served within the United States, the party must show that:

- (1) the information sought from the official or employee of the governmental agency is reasonable in scope;
- (2) for discovery, the appearance of the official or employee of the governmental agency falls within the limits of discovery under Rule 3.31(c)(1); and
- (3) for discovery, the information sought from the official or employee of the governmental agency cannot reasonably be obtained by other means.

The proposed Subpoenas *Ad Testificandum* meets all requirements of Rule 3.36(b).

First, the scope of the testimony requested in the subpoenas *ad testificandum* is reasonable. Both Sgt. Lisotta and Assistant Chief Pontillo have experience with body worn cameras and integrated digital management systems ("BWC/DEMS") and the parties have named representatives of these police departments as potential witnesses in this matter.

The scope of the testimony sought will relate to Axon Enterprise's acquisition of VieVu from Safariland ("the Acquisition"), the impact of the Acquisition on the police departments' needs, experiences, uses, options, supply, or procurement of BWC/DEMS, Requests for

Proposals (“RFPs”) issued, bids received in response to RFPs, agreements related to BWC/DEMS, and competition in the BWC/DEMS market. The scope of the testimony sought is limited to these and related topics, which is reasonable in scope.

The testimony sought from Sgt. Lisotta and Assistant Chief Pontillo falls within the limits of discovery under Rule 3.31(c)(1), which requires that discovery be “reasonably expected to yield information relevant to the allegations of the complaint . . . or to the defenses of any respondent.”

As the parties have named representatives of these police departments as potential witnesses expected to testify about the above issues and Respondent’s defenses, the testimony sought from the JSO and the NYPD cannot be reasonably obtained by other means.

CONCLUSION

This Court has recognized that issuance of a subpoena to a governmental agency is appropriate if the moving party meets the criteria under Rule 3.36. *In the Matter of Axon Enterprise*, FTC Docket No. 9389 (Order dated Feb. 25, 2020), available at https://www.ftc.gov/system/files/documents/cases/d9389_aljs_ord_granting_unopposed_motion_for_subpoenas_ad_testificandumpublic597720.pdf. For the reasons stated above, therefore, the parties respectfully request that the Court grant the Motion and issue the attached Subpoenas *Ad Testificandum* to the JSO and the NYPD.

Dated: July 22, 2020

Respectfully submitted,

s/ Jennifer Milici
Jennifer Milici

Federal Trade Commission
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Counsel Supporting the Complaint

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*Counsel for Respondent Axon Enterprises,
Inc.*

ATTACHMENT A



SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

<p>1. TO</p> <p>Sgt. Robert Lisotta Jacksonville Florida Sheriff's Office 501 E. Bay Street Jacksonville, FL 32202</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF HEARING</p> <p>Remote and video recorded</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Jennifer Milici, Esq., or designee</p>
	<p>5. DATE AND TIME OF HEARING OR DEPOSITION</p> <p>July 29, 2020, at 9:00 a.m.</p>

<p>6. SUBJECT OF PROCEEDING</p> <p>In the Matter of Axon Enterprise, Inc.; Docket No. 9389</p>
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<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL REQUESTING SUBPOENA</p> <p>Jennifer Milici Federal Trade Commission 400 7th Street, SW Washington, DC 20024 (202) 326-2912</p>
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<p>DATE ISSUED</p>	<p>SECRETARY'S SIGNATURE</p>
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GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.



SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

<p>1. TO</p> <p>Sgt. Robert Lisotta Jacksonville Florida Sheriff's Office 501 E. Bay Street Jacksonville, FL 32202</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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<p>3. PLACE OF HEARING</p> <p>Remote and video recorded</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p style="text-align: center;">Aaron Healey, Esq., or designee</p>
<p>5. DATE AND TIME OF HEARING OR DEPOSITION</p> <p style="text-align: center;">July 29, 2020, at 9:00 a.m.</p>	

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<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL REQUESTING SUBPOENA</p> <p style="text-align: center;">Aaron Healey, or designee 5 Vesey Street New York, NY 10281 Telephone: (212) 326-3811 Counsel for Respondent Axon Enterprise, Inc.</p>
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DATE ISSUED	SECRETARY'S SIGNATURE
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ATTACHMENT B



SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

<p>1. TO</p> <p>Matthew Pontillo New York City Police Department 1 Police Plaza New York, NY 10007</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF HEARING</p> <p>Remote and video recorded</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Jennifer Milici, Esq., or designee</p>
<p>6. SUBJECT OF PROCEEDING</p> <p>In the Matter of Axon Enterprise, Inc.; Docket No. 9389</p>	<p>5. DATE AND TIME OF HEARING OR DEPOSITION</p> <p>As agreed upon by counsel</p>

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL REQUESTING SUBPOENA</p> <p>Jennifer Milici Federal Trade Commission 400 7th Street, SW Washington, DC 20024 (202) 326-2912</p>
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<p>DATE ISSUED</p>	<p>SECRETARY'S SIGNATURE</p>
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SUBPOENA AD TESTIFICANDUM

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<p>1. TO</p> <p>Matthew Pontillo, New York City Police Department 1 Police Plaza New York NY 10007</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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6. SUBJECT OF PROCEEDING

In the Matter of Axon Enterprise, Inc.; Docket No. 9389

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL REQUESTING SUBPOENA</p> <p>Aaron Healey, or designee 5 Vesey Street New York, NY 10281 Telephone: (212) 326-3811 Counsel for Respondent Axon Enterprise, Inc.</p>
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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF THE ADMINISTRATIVE LAW JUDGES

In the Matter of

Axon Enterprise, Inc.
a corporation.

DOCKET NO. 9389

**[PROPOSED] ORDER ON THE PARTIES JOINT MOTION FOR ISSUANCE OF
SUBPOENAS AD TESTIFICANDUM TO
SERGEANT ROBERT LISOTTA AND ASSISTANT CHIEF MATTHEW PONTILLO
UNDER RULE OF PRACTICE 3.36 AND REQUEST FOR EXPEDITED TREATMENT**

On July 22, 2020, pursuant to Rule 3.36 of the Commission's Rules of Practice, the parties filed a Joint Motion for the Issuance of Subpoenas *Ad Testificandum* attached hereto as Attachment A and Attachment B.

The requirements of Rule of Practice § 3.36(b) are met, and the Motion is unopposed.

Accordingly, the joint motion is GRANTED.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 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
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:

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Counsel for Respondent Axon Enterprises, Inc.

By: s/ Jennifer Milici
Jennifer Milici

Counsel Supporting the Complaint

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 document that is available for review by the parties and the adjudicator.

July 22, 2020

By: s/ Jennifer Milici
Jennifer Milici