

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

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

Docket No. D9389

PUBLIC DOCUMENT

**RESPONDENT’S MOTION FOR ISSUANCE OF *SUBPOENAS AD TESTIFICANDUM*
FOR TRIAL UNDER RULE OF PRACTICE 3.36**

Respondent Axon Enterprise, Inc. brings this motion pursuant to Federal Trade Commission Rule of Practice 3.36, 16 C.F.R. § 3.36, to request the issuance of *subpoenas ad testificandum* to the following officials and personnel currently or formerly associated with law enforcement agencies:

- 1) Lt. Martin Garland, Lieutenant at the Aurora Police Department;
- 2) Juan Perez (retired), former Director of the Miami Dade Police Department;¹
- 3) Matthew Pontillo, a Chief at the City of New York Police Department;
- 4) Christian Quinn, Cyber Forensics Bureau Command for the Fairfax County Police Department;
- 5) Jeri Williams, Chief of the Phoenix Police Department;
- 6) Nick Zajchowski, Strategic Advisor with the Seattle Police Department.

All of these individuals are included in Respondent’s Witness List. Complaint Counsel has similarly requested the issuance of *subpoenas ad testificandum* to other government officials.

¹ Director Perez has retired and no longer works at the relevant governmental agency. However, he is currently represented in this matter by an Assistant Miami Dade County Attorney. And although Rule 3.36 requires permission for the issuance of subpoenas only to “officials or employees of governmental agencies,” Axon includes Director Perez who previously was, but is no longer, and employee of such an agency out of an abundance of caution.

Complaint counsel has further authorized Axon to represent that Complaint Counsel does not oppose this motion. Unsigned versions of Respondent's requested subpoenas are attached as Exhibits B-G.

ARGUMENT

Under Rule 3.36(b) of the Commission's Rules of Practice, a party seeking the issuance of a subpoena for the appearance of a governmental employee in the United States at an adjudicative hearing must show that:

- (1) the information sought is reasonable in scope;
- (2) the material is reasonably relevant;
- (3) the movant has a compelling need for the testimony.

16 C.F.R. § 3.36(b).

All requirements are met here, so the Motion should be granted. *See In the Matter of Union Oil Co. of Calif.*, Docket No. 9305, 2004 WL 3239430 (Dec. 7, 2004) (granting Motion for Issuance of *Subpoenas Ad Testificandum* for trial testimony).

First, the scope of the testimony requested in the *subpoenas ad testificandum* is reasonable. The testimony sought will relate to Body Worn Cameras (BWCs) and Digital Evidence Management Systems (DEMS), requests for proposals (RFPs), department purchases, needs, and policies, customer responses to the Viewu acquisition, and the acquisition's effect on products and customer support. All of this information fits within the scope of the Complaint's allegations or the Answer's defenses, so its scope is reasonable.

Second, the testimony is reasonably relevant for similar reasons. Each individual named testified in a deposition and possesses information relevant to the claims and defenses in this case.

The named representatives have specific and direct knowledge regarding the topics on which Axon seeks testimony.

Third, Axon has a compelling need for the testimony. Information Axon seeks from these specific individuals and these specific departments cannot be obtained by other means. Indeed, only customers can testify about their experiences with Axon, Viewu, other companies, and the products at issue. Axon cannot elicit this critical testimony from any other source. It is only by virtue of the nature of this case that some of the most relevant witnesses are also municipal employees. Further, as demonstrated by Complaint Counsel's Rule 3.36 Motion, both parties understand the necessity for the testimony. Axon's need for the testimony is compelling.

In sum, the requested *subpoenas ad testificandum* meet all the requirements of Rule 3.36(b) of the Commission's Rules of Practice and should be granted.

CONCLUSION

For the reasons stated above, Axon respectfully requests that its Unopposed Motion for Issuance of Subpoenas *Ad Testificandum* be granted.

Dated: September 16, 2020

Respectfully submitted,

s/ Julie E. McEvoy

Pamela B. Petersen
AXON ENTERPRISE, INC.
17800 N 85th St.
Scottsdale, AZ 85255-9603
Phone: (623) 326-6016
Facsimile: (480) 905-2027
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*Counsel for Respondent
Axon Enterprise, Inc.*

Julie E. McEvoy
Michael H. Knight
Louis K. Fisher
Jeremy P. Morrison
Debra R. Belott
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Phone: (212) 326-3939
Facsimile: (212) 755-7306
Email: ahealey@jonesday.com

*Counsel for Respondent
Axon Enterprise, Inc.*

EXHIBIT A

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

In the Matter of

Axon Enterprise, Inc.
a corporation..

Docket No. D9389

**[PROPOSED] ORDER GRANTING RESPONDENT’S MOTION FOR ISSUANCE OF
SUBPOENAS AD TESTIFICANDUM TO GOVERNMENTAL AGENCIES UNDER
RULE OF PRACTICE 3.36**

Respondent Axon Enterprise, Inc. has filed a Motion for Issuance of Subpoenas *Ad Testificandum* Under Rule of Practice 3.36. Having considered the Motion and the lack of opposition, it is hereby ORDERED that the Motion is GRANTED. The unsigned Subpoenas *Ad Testificandum* are attached hereto as Exhibits B-G.

SO ORDERED.

D. Michael Chappell
Chief Administrative Law Judge

Date:

EXHIBIT B



Subpoena to Testify at an Adjudicative Hearing PUBLIC

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

<p>1. TO</p> <p>Lieutenant Martin Garland Aurora Police Department 15001 E. Alameda Parkway Aurora, CO 80012</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>Federal Trade Commission 600 Pennsylvania Ave., NW Trial to take place via live web streaming as prescribed by the Court Washington, DC 20580</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>The Honorable D. Michael Chappell</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>October 13, 2020 @ 9:30 a.m.</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>Aaron Healey Jones Day 250 Vesey Street New York, NY 10281 Counsel for Respondent Axon Enterprise, Inc.</p>
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<p>DATE ISSUED</p>	<p>SECRETARY'S SIGNATURE</p>
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INSTRUCTIONS AND NOTICES

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YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

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TRAVEL EXPENSES

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- in person.*
- by registered mail.*
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on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

EXHIBIT C



PUBLIC

Subpoena to Testify at an Adjudicative Hearing

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

<p>1. TO</p> <p>Juan Perez, formerly of Miami-Dade Police Department Miami-Dade County Attorney's Office 111 NW 1st Street, Suite 2810 Miami, FL 33128</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	---

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<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>October 13, 2020 @ 9:30 a.m.</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>Aaron Healey Jones Day 250 Vesey Street New York, NY 10281 Counsel for Respondent Axon Enterprise, Inc.</p>
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<p>DATE ISSUED</p>	<p>SECRETARY'S SIGNATURE</p>
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on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

EXHIBIT D



PUBLIC

Subpoena to Testify at an Adjudicative Hearing

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

<p>1. TO</p> <p style="margin-left: 40px;">Matthew Pontillo New York City Police Department 1 Police Plaza New York, NY 10007</p>	<p>2. FROM</p> <p style="text-align: center; margin-left: 40px;">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 style="margin-left: 40px;">Federal Trade Commission 600 Pennsylvania Ave., NW Trial to take place via live web streaming as prescribed by the Court Washington, DC 20580</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p style="margin-left: 40px;">The Honorable D. Michael Chappell</p> <hr/> <p>5. DATE AND TIME OF HEARING OR DEPOSITION</p> <p style="margin-left: 40px;">October 13, 2020 @ 9:30 a.m.</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 style="margin-left: 40px;">The Honorable D. Michael Chappell</p> <p style="margin-left: 80px;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL REQUESTING SUBPOENA</p> <p style="margin-left: 40px;">Aaron Healey Jones Day 250 Vesey Street New York, NY 10281 Counsel for Respondent Axon Enterprise, Inc.</p>
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<p>DATE ISSUED</p>	<p>SECRETARY'S SIGNATURE</p>
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EXHIBIT E



PUBLIC

Subpoena to Testify at an Adjudicative Hearing

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

<p>1. TO</p> <p>Christian Quinn, Fairfax County Police Department Fairfax County Police Internal Affairs Bureau Public Safety Headquarters Building 12099 Government Center Parkway Fairfax, VA 22035</p>	<p>2. FROM</p> <p style="text-align: center; font-weight: bold; font-size: 1.2em;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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<p>DATE ISSUED</p>	<p>SECRETARY'S SIGNATURE</p>
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(Month, day, and year)

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EXHIBIT F



PUBLIC

Subpoena to Testify at an Adjudicative Hearing

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

<p>1. TO</p> <p style="text-align: center;">Jeri Williams, Phoenix Police Department 620 W Washington St. Phoenix, AZ 85003</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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EXHIBIT G



PUBLIC

Subpoena to Testify at an Adjudicative Hearing

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

<p>1. TO</p> <p>Nick Zajchowski, Seattle Police Department 610 5th Avenue Seattle, WA 98104</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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(Official title)

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2020, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
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I further certify that I delivered via electronic mail a copy of the foregoing document to:

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Counsel for the Federal Trade Commission

Dated: September 16, 2020

s/ Julie E. McEvoy

Julie E. McEvoy

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: September 16, 2020

s/ Julie E. McEvoy

Julie E. McEvoy