

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



ORIGINAL

In the Matter of)

Axon Enterprise, Inc.)
a corporation,)

and)

Safariland, LLC,)
a partnership,)

Respondents.)

Docket No. 9389

**ORDER GRANTING UNOPPOSED MOTION FOR ISSUANCE OF
SUBPOENAS *AD TESTIFICANDUM* UNDER RULE 3.36**

On February 25, 2020, Federal Trade Commission (“FTC”) Complaint Counsel filed an Unopposed Motion for Issuance of Subpoenas *Ad Testificandum* to Municipal Agencies, pursuant to FTC Rule 3.36 (“Motion”). Complaint Counsel seeks an order allowing subpoenas *ad testificandum* for four officials of, or personnel associated with, municipal agencies. Complaint Counsel asserts that the subpoenas meet the requirements of Rule 3.36, that Respondents have identified each listed municipal agency as a potential witness, and that the Motion is unopposed. For these reasons, Complaint Counsel argues, the Motion should be granted.

Rule 3.36 requires a party seeking the issuance of a subpoena requiring the appearance of an official or employee of another governmental agency to obtain authorization from the Administrative Law Judge, pursuant to a motion demonstrating that: the material sought is within the permissible scope of discovery under Rule 3.31(c)(1); the subpoena is reasonable in scope; and the material sought cannot reasonably be obtained by other means. 16 C.F.R. § 3.36(a), (b).

Based on the representations in the Motion, the requirements of Rule 3.36 have been met. The requested subpoenas seek testimony from officials from certain police departments and agencies that are either past, current, or potential customers of body-worn camera systems, which are products at issue in this proceeding. The requested testimony relates to the impact of Respondent Axon Enterprise, Inc.’s acquisition of VieVu from Respondent Safariland (“the Acquisition”) and the impact of the Acquisition on the municipal agencies’ use, options, supply, or procurement of body-worn camera systems. Complaint Counsel represents that Respondents have stated that they expect the listed municipal agencies to testify about information relating to

requests for proposals, purchases, needs, experiences, and uses of body-worn camera systems. Such information is likely to lead to the discovery of relevant evidence, and is therefore within the permissible scope of discovery under Rule 3.31(c)(1).¹ Furthermore, the requested testimony appears reasonable in scope. In addition, because Respondents have named the listed municipal agencies as potential witnesses expected to testify about the above issues and Respondents' defenses, the testimony sought from the listed municipal agencies is not reasonably obtainable by other means.

As shown above, Complaint Counsel's proposed subpoenas meet the requirements of Rule 3.36. Moreover, the Motion is unopposed. Accordingly, the Motion is GRANTED, and it is hereby ORDERED that Complaint Counsel may issue the subpoenas attached to the Motion as Attachment A.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: February 25, 2020

¹ Under Rule 3.31(c)(1), parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent. 16 C.F.R. § 3.31(c)(1).

Notice of Electronic Service

I hereby certify that on February 25, 2020, I filed an electronic copy of the foregoing Order Granting Unopposed Motion for Issuance of Subpoenas Ad Testicandum Under Rule 3.36, with:

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Donald Clark
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I hereby certify that on February 25, 2020, I served via E-Service an electronic copy of the foregoing Order Granting Unopposed Motion for Issuance of Subpoenas Ad Testicandum Under Rule 3.36, upon:

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