

**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

**COMPLAINT COUNSEL’S MOTION AND MEMORANDUM FOR THE ISSUANCE OF
SUBPOENAS AD TESTIFICANDUM FOR TRIAL UNDER RULE 3.36**

Complaint Counsel respectfully move the Court for an order pursuant to Rule 3.36 for the issuance of the attached *subpoenas ad testificandum* to the nine employees of various county and city governments whom Complaint Counsel have included in its Final Proposed Witness List and whom Complaint Counsel currently intend to call to testify at trial. The testimony sought from these nine witnesses meets the requirements of Rule 3.36. Respondent has authorized Complaint Counsel to represent that Respondent does not oppose this motion.

Rule 3.36(b) of the Commission’s Rules of Practice requires a party seeking issuance of a subpoena for the appearance at trial of an official or employee of a governmental agency to make a specific showing regarding the requested subpoena. For trial testimony, the noticing party must show that the testimony sought from the employee of the governmental agency is reasonable in scope.¹

The proposed *subpoenas ad testificandum* meet the requirements of Rule 3.36(b). The testimony sought from each of the nine witnesses will relate to Axon Enterprise’s acquisition of

¹ The other requirements of Rule 3.36, applicable to subpoenas for depositions or for witnesses outside of the United States, are not applicable here because all nine of these trial witnesses reside in the United States.

VieVu from Safariland, including, *inter alia*, each police departments' needs, experiences, uses, options, supply, and procurement of BWC/DEMS, Requests for Proposals ("RFPs") issued, bids received in response to RFPs, agreements related to BWC/DEMS, competition in the BWC/DEMS market, and the impact of the acquisition on each department.² The scope of the testimony sought is limited to these and related topics. *See In the Matter Union Oil Company*, 2004 FTC LEXIS 256, FTC Docket No. 9305 (Order dated Dec. 7, 2004), *available at* <https://www.ftc.gov/sites/default/files/documents/cases/2004/12/041207aljordrespamosubpadtest.pdf> (trial subpoena *ad testificandum* granted for employee of California Air Resources Board).

CONCLUSION

For the reasons stated above, Complaint Counsel respectfully request that the Court issue the attached *Subpoenas Ad Testificandum* to the nine employees of the county and city governments whom Complaint Counsel has included in its Final Proposed Witness List and whom Complaint Counsel currently intend to call to testify at trial.

Dated: September 15, 2020

Respectfully submitted,

s/ Jennifer Milici

Jennifer Milici

Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
(202) 326-2912; (202) 326-3496 (fax)
jmilici@ftc.gov

Counsel Supporting the Complaint

² All nine of these witnesses were deposed in this litigation, pursuant to Rule 3.36 orders issued by the Court.

**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 COMPLAINT COUNSEL'S MOTION FOR THE
ISSUANCE OF SUBPOENAS *AD TESTIFICANDUM*
FOR TRIAL UNDER RULE 3.36**

On September 15, 2020, pursuant to Rule 3.36 of the Commission's Rules of Practice, Complaint Counsel filed a Motion for the Issuance of *Subpoenas Ad Testificandum* for Trial Under Rule 3.36 for the nine witnesses who are employees of county and state governments and who are included in Complaint Counsel's Final Witness List. The Motion is unopposed.

The requirements of Rule of Practice § 3.36(b) are met.

Accordingly, the joint motion is GRANTED and the subpoenas are issued.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 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:

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/ Jennifer Milici
Jennifer Milici

Counsel Supporting the Complaint

ATTACHMENTS

Subpoenas to Testify at an Adjudicative Hearing



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>Randy Browning Durham Police Department 602 East Main Street Durham, NC 27701</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
---	---

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> <hr/> <p>5. DATE AND TIME OF HEARING OR DEPOSITION</p> <p>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>The Honorable D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL REQUESTING SUBPOENA</p> <p>Jennifer Milici, Esq. Federal Trade Commission 400 7th Street, SW Washington, DC 20024</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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PETITION TO LIMIT OR QUASH

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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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I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)



Subpoena To Testify at an Adjudicative Hearing

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO

Jim Campion
City of Phoenix
200 W. Washington Street, 13th Floor
Phoenix, AZ 85003

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to attend and give testimony at an adjudicative hearing, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF ADJUDICATIVE HEARING

Federal Trade Commission
600 Pennsylvania Ave., NW
Trial to take place via live web streaming as prescribed by
the Court
Washington, DC 20580

4. YOUR APPEARANCE WILL BE BEFORE

The Honorable D. Michael Chappell

5. DATE AND TIME OF ADJUDICATIVE HEARING

October 13, 2020 @ 9:30 a.m.

6. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL AND PARTY ISSUING SUBPOENA

Jennifer Milici, Esq.
Federal Trade Commission
400 7th Street, SW
Washington, DC 20024

DATE SIGNED

SIGNATURE OF COUNSEL ISSUING SUBPOENA

INSTRUCTIONS AND NOTICES

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on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)



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>Paul Figueroa Oakland Police Department 455 7th Street Oakland, CA 94607</p>	<p>2. FROM</p> <p>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> <hr/> <p>5. DATE AND TIME OF HEARING OR DEPOSITION</p> <p>October 13, 2020 @ 9:30 a.m.</p>
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In the Matter of Axon Enterprise, Inc., Docket No. 9389

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL REQUESTING SUBPOENA</p> <p>Jennifer Milici, Esq. Federal Trade Commission 400 7th Street, SW Washington, DC 20024</p>
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<p>DATE ISSUED</p>	<p>SECRETARY'S SIGNATURE</p>
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(Official title)



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>Sgt. Robert Lisotta Jacksonville Florida Sheriff's Office 501 E. Bay Street Jacksonville, FL 32202</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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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>Josephine Murphy New York City Police Department 1 Police Plaza New York, NY 10007</p>	<p>2. FROM</p> <p>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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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>Santiago Pastoriza County of Miami Dade 111 NW 1st Street, Suite 1300 Miami, FL 33128</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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Subpoena to Testify at an Adjudicative Hearing

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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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<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>Jennifer Milici, Esq. Federal Trade Commission 400 7th Street, SW Washington, DC 20024</p>
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The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 8.

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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RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)



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>Jeff Rinaldo Buffalo Police Department 68 Court Street Buffalo, NY 14202</p>	<p>2. FROM</p> <p>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> <hr/> <p>5. DATE AND TIME OF HEARING OR DEPOSITION</p> <p>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>The Honorable D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL REQUESTING SUBPOENA</p> <p>Jennifer Milici, Esq. Federal Trade Commission 400 7th Street, SW Washington, DC 20024</p>
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<p>DATE ISSUED</p>	<p>SECRETARY'S SIGNATURE</p>
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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>Maura Velasco Long Beach Police Department 411 W. Ocean Blvd, 9th Floor Long Beach, CA 90802</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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(Official title)

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.

September 15, 2020

By: s/ Jennifer Milici
Jennifer Milici