

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

In the Matter of

**Axon Enterprise, Inc.,
a corporation,
and
Safariland, LLC,
a corporation.**

Docket No. D9389

**MOTION OF NON-PARTY MOTOROLA SOLUTIONS, INC.
FOR *IN CAMERA* TREATMENT OF POTENTIAL HEARING EXHIBITS**

Pursuant to Rule 3.45(b) of the Commission’s Rules of Practice and 13 of the Scheduling Order entered in this matter, non-party Motorola Solutions, Inc. (“Motorola”), by and through its undersigned counsel, respectfully moves this Court for *in camera* treatment of certain competitively-sensitive documents and portions of documents produced by Motorola and portions of testimony and declarations offered by Motorola, which have been designated as potential hearing exhibits by Complaint Counsel and Respondents. Motorola asks the Court to grant *in camera* treatment for these documents and portions of documents for a five year period. Motorola is a third-party to this litigation, and its confidential business documents would not have been made public but for the subpoenas it received in this case. *In camera* treatment is necessary to prevent Axon, a competitor of Motorola, from using the litigation process to gain access to Motorola’s most competitively-sensitive information, and to prevent other competitors from gaining access as well.

I. Background

Motorola produced numerous confidential and competitively sensitive documents in response to two third-party subpoenas that it received in this matter. On February 3, 2020, the

Federal Trade Commission (“FTC”) issued a document subpoena to Motorola, and on February 12, 2020, Respondent Axon Enterprise, Inc. (“Axon”) issued another document subpoena to Motorola. These subpoenas sought documents discussing the transaction at issue in this matter; documents discussing bids, RFPs, bid opportunities, bid data and competition for body-worn camera systems; Motorola’s contracts for body-worn camera systems; Motorola’s strategic and marketing plans; Motorola’s acquisition of another body-worn camera system supplier; as well as documents on other topics. Motorola timely designated the documents it produced in response to these subpoenas as “Confidential” under the Protective Order entered in this matter. Complaint Counsel and Respondents’ potential hearing exhibits also include three declarations submitted by Motorola witnesses, and three transcripts from the depositions of those witnesses, as well as one document submitted by counsel on behalf of Motorola at the start of the FTC’s investigation. On September 11, 2020, Complaint Counsel and counsel for Respondents each informed counsel for Motorola that they intend to use certain documents, declarations, and testimony provided by Motorola during the hearing in this matter. Motorola has reviewed each of the 125 (excluding duplicates) potential exhibits and moves the Court for *in camera* treatment of the 36 documents or portions of documents listed in Exhibit A.

II. Legal Standard

Under Commission Rule 3.45(b), an Administrative Law Judge may order that material offered into evidence be placed *in camera* “after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.” 16 C.F.R. § 3.45(b). The burden of showing good cause for withholding documents from the public record rests with the party requesting *in camera* treatment. *In the Matter of Otto Bock HealthCare N. Am., Inc.*, 2018 WL 2491602, at *1 (July 2, 2018). The

requesting party must “make a clear showing that the information concerned is sufficiently secret and sufficiently material to [its] business that disclosure would result in serious competitive injury.” *Id.* (quoting *In re General Foods Corp.*, 1980 FTC LEXIS 99, at *10 (Mar. 10, 1980)); *In the Matter of 1-800 Contacts, Inc.*, 2016 FTC LEXIS 146, at *2 (Aug. 8, 2016). If the requesting party makes this showing, then “the importance of the information in explaining the rationale of FTC decisions is the principal countervailing consideration weighing in favor of disclosure.” *Otto Bock*, 2018 WL 2491602, at *1.

There is a presumption that *in camera* treatment will not be awarded to information that is more than three years old. *Id.* To overcome that presumption, the party seeking *in camera* treatment must demonstrate, by affidavit or declaration, that such material remains competitively sensitive. *Id.* at *2. Contracts executed more than three years ago but that are still operative are an example of documents that remain competitively sensitive and thus are accorded *in camera* treatment. *See, e.g., In the Matter of OSF Healthcare Sys. and Rockford Health Sys.*, 2012 WL 1355598, at *4 (March 29, 2012) (granting Respondents’ request for *in camera* treatment of contracts with managed care organizations, including contracts over three years old).

In camera treatment is routinely granted for competitively sensitive business records, including documents revealing negotiations with customers, customer-specific pricing, financial metrics such as costs, margins, and revenues, competitive positioning, strategic plans, and marketing and bidding strategies. *See, e.g., 1-800 Contacts*, 2016 FTC LEXIS 146, *8-35 (granting third parties’ requests for five-year *in camera* treatment of documents discussing customer-specific pricing, marketing and bidding strategies, financial metrics, and other competitively sensitive information); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 109, *5-21 (April 23, 2004) (granting third parties’ requests for five-year *in camera* treatment of

documents containing competitively sensitive information, such as fee schedules, strategic plans, and negotiating strategies). When *in camera* treatment is granted for these types of business records, it is typically provided for two to five years. *Otto Bock*, 2018 WL 3491602, at *3; *North Texas Specialty Physicians*, 2004 FTC LEXIS 109, at *2 (“Where *in camera* treatment is granted for ordinary business records, such as business plans, marketing plans, or sales documents, it is typically extended for two to five years.”).

III. Argument

Motorola, a third-party to this litigation, requests *in camera* treatment of only its most confidential and sensitive business information because public disclosure would cause serious competitive injury to Motorola. Motorola does not request blanket *in camera* treatment of every document that it designated “Confidential” under the Protective Order entered in this matter; instead, Motorola has narrowly tailored its *in camera* requests to the specific documents or the specific parts of documents that would cause it competitive harm if disclosed. Indeed, of the 125 potential hearing exhibits, Motorola is seeking *in camera* treatment for just 36 documents. The documents and parts of documents for which Motorola seeks *in camera* treatment are identified in a list attached hereto as Exhibit A, in which Motorola provides detailed reasoning for the requests on a document-by-document or line-by-line basis as appropriate. But for this litigation, Motorola’s documents would have remained confidential.

The documents and portions of documents for which Motorola seeks *in camera* treatment include internal strategy discussions and presentations, sales and revenue information, research and development data, prices, bid data, and customer information, including sales information and contracts. See Exhibit A. *In camera* treatment is routinely granted for these types of competitively sensitive documents. See, e.g., *I-800 Contacts*, 2016 FTC LEXIS 146, at *8-35

(granting *in camera* treatment for strategic planning documents, pricing, bidding, and sales information or data, marketing strategies, performance assessments, and other financial data including revenues, margins, and costs); *North Texas Specialty Physicians*, 2004 FTC LEXIS 109, *5-21 (granting *in camera* treatment for strategic planning documents, rates, and contracts).

Disclosing Motorola's non-public, competitively sensitive documents to Respondents would cause serious competitive injury to Motorola. As a supplier of body worn camera systems, Motorola is a competitor to Axon, and Axon is often identified by name in Motorola's most competitively sensitive planning materials. See Declaration of Peter Carlson, attached hereto as Exhibit B ("Carlson Decl."), ¶ 7. Revealing Motorola's strategy, prices, and confidential financial data, for example, to any competitors, and to Axon in particular, is not only improper under the antitrust laws,¹ but would give Axon and other competitors significant and material insight into Motorola's key business metrics and strategy decisions. Carlson Decl. ¶ 8; *In the Matter of Dura Lube Corp.*, 1999 FTC LEXIS 255, at *7 (Dec. 23, 1999) (citing *General Foods*, 95 F.T.C. at 355) ("The likely loss of business advantages is a good example of a 'clearly defined, serious injury.'"). *In camera* treatment is necessary to prevent Axon from using the trial process to obtain access to Motorola's most competitively-sensitive information and thereby gain an unfair advantage in the marketplace.

Motorola's customer contract terms, bid offerings, and product prices are some of its most competitively sensitive materials, because these specifics are what Motorola, Axon, and other suppliers compete over to win bids with law enforcement agencies. Carlson Decl. ¶ 9. If Axon and other competitors gain access to Motorola's bid history, prices, pricing strategy, and

¹ See, e.g., Fed. Trade Comm'n & Dept. of Justice, Antitrust Guidelines for Collaborations Among Competitors (April 2000), p. 15 ("[T]he sharing of information relating to price, output, costs, or strategic planning is more likely to raise competitive concern than the sharing of information relating to less competitively sensitive variables.").

specific customer contract terms, these companies would have an unfair competitive advantage over Motorola in bids and negotiations with law enforcement agencies. *Id.* This advantage would not only seriously harm Motorola, but would also hurt law enforcement agencies who benefit from fair competition. *Id.*

Within this category, Motorola is seeking *in camera* treatment for two customer contracts (MSI-SDT-000105102 and MSI-SDT-000110767) that are more than three years old. Because each of these contracts is for a term of five years, each still remains in effect. *Id.* at ¶ 10. These contracts should be accorded *in camera* treatment because they remain competitively sensitive and relevant to Motorola's current customers and business strategy. *OSF Healthcare Sys.*, 2012 WL 1355598, at *4. Allowing Axon and other suppliers to see the terms of Motorola's current customer contracts would disadvantage Motorola for future bidding opportunities. Motorola is also seeking *in camera* treatment for two documents (MSI-SDT-000140891 and MSI-SDT-000140892) less than three years old but that contain bidding and revenue information that is more than three years old. Given the prevalence of multi-year contracts in the body worn camera systems market, these documents also remain competitively sensitive. Carlson Decl. ¶ 10.

In addition, Motorola is requesting *in camera* treatment for strategic plans, and internal discussions of product, market, customer, and growth strategies. *Id.* at ¶ 11. The documents include internal strategy documents surrounding the acquisition and integration of WatchGuard. *Id.* These plans also mention specific competitors and law enforcement customers. *Id.* Disclosure of Motorola's strategic, marketing, and growth plans is a window for competitors into Motorola's strategic thinking, planning and analysis of the market, customers, and competitors. *Id.* Furthermore, disclosure of these plans would allow competitors to anticipate Motorola's future competitive conduct and potentially respond prematurely. *Id.* Restricting access to

Motorola's strategic, marketing, and growth plans is necessary to prevent its competitors from obtaining an unfair market advantage. *Id.*

Finally, Motorola seeks *in camera* treatment for detailed financial information of Motorola and WatchGuard, including budgets, margins, costs, and research and development spending. *Id.* at ¶ 12. This information reflects the financial implications and planning for competing with Axon and other competitors. *Id.* Disclosing Motorola's detailed financial information to Axon and other competitors would provide competitors with material, competitively sensitive information about Motorola's internal planning, research and development, and competitive strategy. *Id.* Thus, Motorola would suffer competitive harm if its detailed financial information were publicly disclosed. *Id.*

IV. Conclusion

Motorola has narrowly tailored its request for *in camera* treatment to its most confidential and sensitive business information. These documents contain competitively sensitive, non-public information, which would cause material harm to Motorola if disclosed.

WHEREFORE, Motorola respectfully requests that the Court grant this Motion and order that the documents and portions of documents set forth in Exhibit A be placed *in camera* for a period of five years.

Dated: September 23, 2020

Respectfully submitted,

/s/ Joel R. Grosberg
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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

Axon Enterprise, Inc.,

a corporation,

and

Safariland, LLC,

a corporation.

Docket No. D9389

[PROPOSED] ORDER GRANTING *IN CAMERA* TREATMENT

Upon consideration of non-party Motorola Solutions, Inc.'s Motion for *In Camera* Treatment of Potential Hearing Exhibits, it is HEREBY ORDERED that the documents and portions of documents listed in Exhibit A of the Motion are granted *in camera* treatment for five years from the date of this Order.

ORDERED:

Date: _____

Hon. D. Michael Chappell
Chief Administrative Law Judge

EXHIBIT A

Exhibit A

| | Begin Bates | End Bates | Party | Description | Reason for <i>In Camera</i> Treatment or Redaction |
|----|--------------------|-------------------|--------------|---|--|
| 1. | MSI-SDT-000010072 | MSI-SDT-000010072 | Axon; FTC | Account and Price Spreadsheet | <i>In Camera</i> Treatment Requested Contains bidding and price information for specific customers. |
| 2. | MSI-SDT-000100291 | MSI-SDT-000100292 | FTC | Sales Brief Small Agency VISTA Sales Promotion | Redaction requested for promotion price information at bottom of page 000100291. ¹ Contains specific price information. |
| 3. | MSI-SDT-000105102 | MSI-SDT-000105249 | FTC | Contract between the City of Columbus, Ohio and Enforcement Video, LLC | <i>In Camera</i> Treatment Requested Reveals the specific terms of a contract with a major customer, as well as specific product prices. Although this document is dated December 6, 2016, the contract has a five year term and is still in effect. |
| 4. | MSI-SDT-000110767 | MSI-SDT-000111022 | FTC | Services Agreement between Enforcement Video, LLC and The City of Oklahoma City | <i>In Camera</i> Treatment Requested Reveals the specific terms of a contract with a major customer, as well as specific product prices. Although this document is dated December 22, 2015, the contract has a five year term and is still in effect. |

¹ For all requested redactions, see highlighting in enclosed documents.

| | Begin Bates | End Bates | Party | Description | Reason for <i>In Camera</i> Treatment or Redaction |
|----|--------------------|-------------------|--------------|---|---|
| 5. | MSI-SDT-000140891 | MSI-SDT-000140891 | Axon; FTC | Bid Data Spreadsheet (2017-2018) | <i>In Camera</i> Treatment Requested Contains bidding and revenue information for specific customers. This document has a date of January 9, 2019 and is not 3 or more years old. |
| 6. | MSI-SDT-000140892 | MSI-SDT-000140892 | Axon; FTC | Bid Data Spreadsheet (2012-2017) | <i>In Camera</i> Treatment Requested Contains bidding and revenue information for specific customers. This document has a date of 1/15/2018 and is not 3 or more years old. |
| 7. | MSI-SDT-000151304 | MSI-SDT-000151317 | Axon | WatchGuard Acquisition Update Presentation | <i>In Camera</i> Treatment Requested Contains strategy evaluations and discussions concerning growth and acquisition, as well as specific financial metrics of Motorola and WatchGuard (now part of Motorola). |
| 8. | MSI-SDT-000154559 | MSI-SDT-000154610 | FTC | Video Security Solutions Presentation | <i>In Camera</i> Treatment Requested Contains analysis of market, customer, and product strategy, customer information, financial metrics, and other confidential strategic analysis. |
| 9. | MSI-SDT-000156482 | MSI-SDT-000156482 | Axon | WatchGuard Financial Model Due Diligence Presentation | <i>In Camera</i> Treatment Requested Contains detailed financial metrics (sales, revenue, margin information) and performance information of WatchGuard (now part of Motorola). |

| | Begin Bates | End Bates | Party | Description | Reason for <i>In Camera</i> Treatment or Redaction |
|-----|--------------------|-------------------|--------------|--|--|
| 10. | MSI-SDT-000159304 | MSI-SDT-000159304 | Axon | WatchGuard Presentation | <i>In Camera</i> Treatment Requested Contains detailed financial metrics (sales, revenue, margin information) and performance information of WatchGuard (now part of Motorola). |
| 11. | MSI-SDT-000159364 | MSI-SDT-000159368 | Axon | Email from Robert Vanman to WatchGuard Shareholders, subject: WatchGuard Video Shareholder Update | <i>In Camera</i> Treatment Requested Contains financial metrics, and discussion of product and market strategy and growth analysis presented to a limited audience. |
| 12. | MSI-SDT-000165462 | MSI-SDT-000165462 | Axon | Project Advantage – Revenue & Gross Margin Forecast Presentation | <i>In Camera</i> Treatment Requested Contains detailed financial metrics (sales, revenue, margin information) and performance information of WatchGuard (now part of Motorola). |
| 13. | MSI-SDT-000171383 | MSI-SDT-000171384 | Axon | Email chain between Alam Ali, John Kedzierski, Rohan Galloway-Dawkins, et al., subject: Re: Axon | <i>In Camera</i> Treatment Requested Contains analysis of competitors and market information and strategy for growth. |
| 14. | MSI-SDT-000173074 | MSI-SDT-000173075 | FTC | Email chain between Hamish Dobson, John Kedzierski, et al., subject: Re: 8/6/2019 Video Strategy Workshop Notes and Follow ups | <i>In Camera</i> Treatment Requested Contains analysis of product and market strategy, competition and sales strategy. |

| | Begin Bates | End Bates | Party | Description | Reason for <i>In Camera</i> Treatment or Redaction |
|-----|--------------------|-------------------|--------------|--|--|
| 15. | MSI-SDT-000178077 | MSI-SDT-000178078 | Axon; FTC | Email chain between Alam Ali, Darrell Stogner, Anna Podsiadlo, et al., subject: Re: DEMS R&D Investment 2019 | <i>In Camera</i> Treatment Requested Discusses specific financial information including research and development spending—and strategy thereof—for specific products. |
| 16. | MSI-SDT-000194341 | MSI-SDT-000194342 | Axon; FTC | Emails from John Kedzierski to Alam Ali, subject: Re: My thoughts | <i>In Camera</i> Treatment Requested Contains discussion of product, market, and customer strategic analysis. |
| 17. | MSI-SDT-000194414 | MSI-SDT-000194416 | FTC | Email chain between Alam Ali, John Kedzierski, subject: Re: My thoughts | <i>In Camera</i> Treatment Requested Contains discussion of product, market, and customer strategic analysis. |
| 18. | MSI-SDT-000194777 | MSI-SDT-000194778 | FTC | Email from Richie McBride to Alam Ali, subject: Fwd: Strategy and Roadmap for BWV and DEMS | <i>In Camera</i> Treatment Requested Contains discussion of product, market, and growth strategic analysis. |
| 19. | MSI-SDT-000195224 | MSI-SDT-000195231 | FTC | Email from Erika Gentile to Dan Twohig, Andrew Sinclair, Alam Ali, et al., subject: WEEKLY REPORT: Software Enterprise Sales Week Ending 1/18/2019 | <i>In Camera</i> Treatment Requested Contains confidential customer and sales data, bid information, and competitive positioning. |

| | Begin Bates | End Bates | Party | Description | Reason for <i>In Camera</i> Treatment or Redaction |
|-----|--------------------|-------------------|----------------------------|--|--|
| 20. | MSI-SDT-000195498 | MSI-SDT-000195501 | FTC | Email from Dan Twohig to Alam Ali, subject: You have been mentioned by Dan Twohig in Software Enterprise Wins of the Week - Q3 Close in Converge | <i>In Camera</i> Treatment Requested Contains confidential customer and sales data, bid information, competitive positioning, and product strategy. |
| 21. | MSI-SDT-000195630 | MSI-SDT-000195631 | FTC | Email chain between Paul Steinberg, Alam Ali, Andrew Sinclair, subject: Re: Video Strategy Background | <i>In Camera</i> Treatment Requested Contains discussion of product, market, and growth strategic analysis. |
| 22. | MSI-SDT-000195632 | MSI-SDT-000195636 | FTC (omitted from list) | Strategic Challenge: Video (Communication, Command Center, Data/Analytics) Situation | <i>In Camera</i> Treatment Requested Contains detailed plan and discussion of product, market, and growth strategic analysis and forecasting. |
| 23. | MSI-SDT-000207971 | MSI-SDT-000207972 | Axon | Email chain between Rajan Naik, Greg Brown (forwarding email from Robin Iddon), et al., subject: Re: Body worn video - a small correction | <i>In Camera</i> Treatment Requested Contains discussion of product, market, and growth strategic analysis. |
| 24. | MSI-SDT-000227746 | MSI-SDT-000227746 | Axon | Motorola Funnel Data Spreadsheet | <i>In Camera</i> Treatment Requested Contains extensive and specific customer and sales information including prices. |

| | Begin Bates | End Bates | Party | Description | Reason for <i>In Camera</i> Treatment or Redaction |
|-----|--------------------|-------------------|--------------|--|--|
| 25. | MSI-SDT-000281670 | MSI-SDT-000281671 | Axon | Email chain between Rocky Daehler, Darrell Stogner, Dan Twohig, Adam Schwartz, et al., subject: Re: Project Advantage – portfolio hypothesis | <i>In Camera</i> Treatment Requested Contains discussion of internal product strategy, customer sales information and prices. |
| 26. | MSI-SDT-000382818 | MSI-SDT-000382820 | FTC | Email chain between Mike Bell, Robert Vanman, Steve Teese, subject: Re: BWC proposal | <i>In Camera</i> Treatment Requested Contains discussion of sales and pricing strategy, including specific prices and costs. |
| 27. | MSI-SDT-000383638 | MSI-SDT-000383640 | FTC | Email chain between Robert Vanman, Troy Montgomery, subject: RE: Big Wins | Redaction requested for customer order and price information on page 000383639. Contains customer sales information, including specific prices. |
| 28. | MSI-SDT-000384359 | MSI-SDT-000384360 | FTC | Email from Robert Vanman to Steve Coffman, Troy Montgomery, Brian Kirkham, subject: Marketing Messages | Redaction requested for product price information in 2(b) on page 000384359. Contains customer sales information, including specific prices. |
| 29. | MSI-SDT-000387199 | MSI-SDT-000387210 | Axon | Robert Vanman Shareholder Notes | <i>In Camera</i> Treatment Requested Contains discussion of product, market, and growth strategic analysis presented to a limited audience. |

| | Begin Bates | End Bates | Party | Description | Reason for <i>In Camera</i> Treatment or Redaction |
|-----|--------------------|-------------------|--------------|---|--|
| 30. | MSI-SDT-000396650 | MSI-SDT-000396650 | Axon; FTC | Bid Opportunity Spreadsheet | <i>In Camera</i> Treatment Requested Contains bidding and revenue information for specific customers. |
| 31. | FTC-PROD-00000190 | FTC-PROD-00000192 | Axon | Letter from Joel Grosberg to Steven Wilensky, Re: Investigation of Axon/Viewu – Follow-up Questions to Motorola Solutions, Inc. | Redaction requested for answers to questions 1 and 2 on page 00000190. Discusses specific financial information of Motorola including research and development spending for specific products. |
| 32. | PX60003-001 | PX60003-006 | Axon; FTC | Alam Ali Declaration | Redaction requested for revenue information, prices, product performance and market information, sales data, customer details, and financial information (in ¶¶2, 5, 8-12, 15-17, 19, 20). Discusses specific confidential financial metrics, detailed customer information, material strategy, and non-public assessments of the market and Motorola’s products. |
| 33. | PX60009-001 | PX60009-004 | Axon; FTC | Robert Vanman Declaration | Redaction requested for revenues, prices, R&D spend, product specifics, customer details, and product performance and market information (in ¶¶4, 6-12). Discusses specific confidential financial metrics, detailed customer information, and non-public and material assessments of Motorola’s competitive strategy, the market and WatchGuard’s (now part of Motorola) products. |

| | Begin Bates | End Bates | Party | Description | Reason for <i>In Camera</i> Treatment or Redaction |
|-----|--------------------|------------------|--------------|--------------------------|--|
| 34. | PX81009-001 | PX81009-118 | Axon; FTC | Robert Vanman Deposition | Redaction requested (see specific highlighting throughout). Discusses specific confidential financial metrics, detailed customer information, and non-public and material assessments of Motorola's competitive strategy, the market and WatchGuard's (now part of Motorola) products. |
| 35. | PX81021-001 | PX81021-067 | Axon; FTC | Michael Annes Deposition | Redaction requested (see specific highlighting throughout). Contains confidential information about Motorola's internal valuation and process to analyze potential acquisition targets. This is highly confidential and would materially impair Motorola's ability to acquire potential targets at the most economic price. |
| 36. | PX81046-001 | PX81046-081 | Axon; FTC | Alam Ali Deposition | Redaction requested (see specific highlighting throughout). Discusses specific confidential financial metrics, detailed customer information, material strategy, and non-public assessments of the market and Motorola's products. |

EXHIBITS A-1 to A-36

Confidential – Redacted in Entirety

EXHIBIT B

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

In the Matter of

Axon Enterprise, Inc.,
a corporation,
and
Safariland, LLC,
a corporation.

Docket No. D9389

**DECLARATION OF PETER CARLSON IN SUPPORT OF
MOTOROLA SOLUTIONS, INC.'S MOTION FOR *IN CAMERA*
TREATMENT OF POTENTIAL HEARING EXHIBITS**

I, Peter E. Carlson, declare as follows:

1. I am Senior Counsel at Motorola Solutions, Inc. ("Motorola"). I have personal knowledge of the facts contained in this Declaration, and if called upon to do so, I could testify competently to them.
2. In my capacity as Senior Counsel for Motorola, I am familiar with issues regarding confidentiality of Motorola's information and documents. In particular, I am familiar with the documents that Motorola produced pursuant to the subpoenas issued to Motorola by the Federal Trade Commission ("FTC") on February 3, 2020, and by Axon Enterprise, Inc. ("Axon") on February 12, 2020.
3. Motorola seeks to maintain the confidentiality of a number of documents or portions of documents that it produced to the FTC and Axon, and which FTC and Axon have stated that they may use as exhibits during the administrative trial in this matter. These documents are listed in Exhibit A to Motorola's motion for *in camera* treatment.
4. The information contained in these documents and portions of documents is not available to the public, is highly sensitive, and is highly confidential. In addition, many of the documents contain material and non-public information on Motorola's product and customer strategy. Motorola takes steps to limit access to these documents within Motorola so that employees only with a need-to-know have access to them. On a regular basis, Motorola marks certain presentations and communications as confidential and only shares them with approved audiences. The documents are neither distributed publicly, nor widely within the company. Not even every member of a specific business team will have access to all of the documents or communications that are created.

5. The documents listed in Exhibit A include Motorola's contracts with customers; Motorola's strategic plans and internal discussions of product, market, and growth strategies; Motorola's bidding information and prices; Motorola's customer and sales information; specific and detailed financial data of Motorola and WatchGuard (now part of Motorola), including revenues, margins, costs, and research and development spending; and other highly sensitive material.

6. The public disclosure of this information would unfairly prejudice Motorola, its business interests, and its competitive position, and would cause economic injury to Motorola.

7. As a supplier of body worn cameras systems, Motorola (which includes WatchGuard, Inc. ("WatchGuard")) is a competitor to Axon and Axon is often identified by name in Motorola's most competitively sensitive planning materials.

8. Disclosing Motorola's non-public contracts, internal strategy documents and plans, bidding and sales information, price information, and detailed financial analyses and information to any competitors, and to Axon in particular, would give these competitors significant insight into Motorola's key business metrics and strategic decisions.

9. Motorola's customer contract terms, bid information, product prices and pricing strategy, and sales information are some of its most competitively sensitive materials because these specifics are what Motorola, Axon, and other suppliers compete over to win bids with law enforcement agencies. If Axon and other competitors knows Motorola's bid history, prices and pricing strategy, specific customer contract terms, or internal business strategy these companies will have an unfair competitive advantage over Motorola in bids and negotiations with law enforcement agencies. This advantage will harm not only Motorola, but law enforcement agencies who benefit from fair market competition.

10. Two contract documents—containing specific contract terms with customers—are more than three years old, and two documents are less than three years old but contain bidding and revenue information that is more than three years old. However, a significant portion of body worn camera system bids are for contracts that are for multiple years and, thus, relevant to Motorola's current business strategy. The two customer contracts each have a term of five years. *See* MSI-SDT-000105102 and MSI-SDT-000110767. Each contract is less than five years old, and is therefore still in effect between Motorola and each customer. The two documents that contain bidding information that is more than three years old (*see* MSI-SDT-000140891 and MSI-SDT-000140892), are similarly connected to customers who seek bids for multi-year contracts, and are therefore similarly recent and relevant, given the specific circumstances of the market for body worn camera systems and its multi-year contracts.

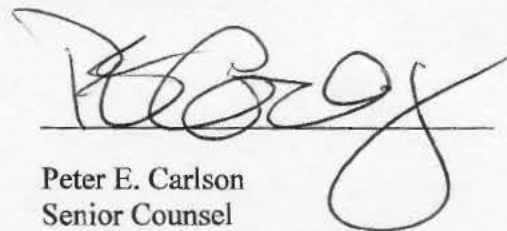
11. The documents also include Motorola's strategic plans, and internal discussions of product, market, customer, and growth strategies. The documents also include internal strategy documents surrounding Motorola's acquisition and integration of WatchGuard. These plans also mention specific competitors and law enforcement customers. Disclosure of Motorola's strategic, marketing, and growth plans is a window for competitors into Motorola's non-public strategic thinking and view of the market. Furthermore, disclosure of these plans would allow competitors to anticipate Motorola's future competitive conduct and potentially

respond prematurely. Restricting access to Motorola's strategic, marketing, and growth plans is necessary to prevent its competitors from obtaining an unfair market advantage.

12. Other documents listed in Exhibit A contain detailed financial information of Motorola and WatchGuard, including budgets, margins, costs, and research and development spending. These documents reflect the specific financial implications and planning for competing with Axon and other suppliers. Disclosing Motorola's detailed financial information to Axon and other suppliers would allow them to understand how Motorola plans to allocate its resources, and therefore, compete in the marketplace. Thus, Motorola would suffer competitive harm if its detailed financial information were publicly disclosed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 23, 2020.

A handwritten signature in black ink, appearing to read "P. Carlson", written over a horizontal line.

Peter E. Carlson
Senior Counsel
Motorola Solutions, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 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

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Complaint Counsel

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