

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



ORIGINAL

In the Matter of)
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)

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 March 2, 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 (“Unopposed Motion”). Complaint Counsel seeks an order authorizing the issuance of subpoenas *ad testificandum* to certain identified officials of, or personnel associated with, various municipal agencies. Complaint Counsel attached unsigned versions of the requested subpoenas as Attachment A to the Unopposed Motion.

Rule 3.36 specifies that a party seeking the issuance of a subpoena requiring the appearance of an official or employee of another governmental agency must 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).

Complaint Counsel asserts that each witness possesses information relating to several topics and represents that it will seek testimony regarding: Respondent Axon Enterprise’s acquisition of VieVu from Safariland (“the Acquisition”); the impact of the Acquisition on the municipal agency’s needs, experiences, uses, options, supply, or procurement of Body-Worn Camera (“BWC”) Systems; Requests for Proposals (“RFPs”) issued and bids received in response to RFPs; agreements related to BWC Systems; and competition relating to BWC Systems. According to the Unopposed Motion, the parties have named the listed municipal agencies as potential witnesses expected to testify about the above issues and Respondents’

defenses, further indicating that these witnesses possess relevant knowledge. In addition, the requested testimony appears reasonable in scope. Finally, a witness' personal knowledge is individual to that person, and to this extent, cannot be reasonably obtained by means other than through that individual's testimony.

Based on the representations in the Unopposed Motion, the requirements of Rule 3.36 have been met. The requested subpoenas seek testimony from officials who have personal knowledge regarding the acquisition and use of BWC systems, which are products at issue in this proceeding. The requested testimony relates to the impact of the Acquisition being challenged in this action and its impact on the municipal agencies. Accordingly, the topics specified by Complaint Counsel are reasonably expected to yield information relevant to the allegations of the complaint, the defenses and/or to the proposed relief, and are therefore within the permissible scope of discovery under Rule 3.31(c)(1).¹

As shown above, Complaint Counsel's requested subpoenas meet the requirements of Rule 3.36. Moreover, Respondents do not oppose the issuance of the requested subpoenas. Accordingly, the Unopposed Motion is GRANTED, and it is hereby ORDERED that Complaint Counsel may issue the subpoenas for testimony as to the topics set forth in the Unopposed Motion to the individuals set forth in the subpoenas attached to the Unopposed Motion as Attachment A.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: March 3, 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).