

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

In the Matter of)
)
Axon Enterprise, Inc.)
a corporation,) Docket No. 9389
)
and)
)
Safariland, LLC,)
a partnership,)
)
Respondents.)

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

On September 15, 2020, Federal Trade Commission (“FTC”) Complaint Counsel filed a Motion for the Issuance of Subpoenas *Ad Testificandum* for Trial Under Rule 3.36 (“Motion”). Complaint Counsel represents that Respondent Axon Enterprise, Inc. (“Respondent” or “Axon”) does not oppose the Motion. Complaint Counsel seeks an order for the issuance of subpoenas *ad testificandum* to nine employees of various county and city governments whom Complaint Counsel has included in its Final Proposed Witness List and whom Complaint Counsel currently intends to call to testify at trial.

Rule 3.36(b) of the FTC’s Rules of Practice requires a party to file a motion in order to obtain a subpoena for the appearance at trial of an official or employee of a governmental agency and to make a specific showing supporting the requested subpoena. Specifically, in order to compel the appearance of the employee to testify at an evidentiary hearing, the movant must show that the testimony sought is reasonably relevant and reasonable in scope, and that the movant has a compelling need for the testimony. 16 C.F.R. § 3.36(b).

Complaint Counsel represents that the testimony sought from each of the nine witnesses will relate to Axon’s acquisition of VieVu from Safariland (the “Acquisition”),

including, *inter alia*, each police department's needs, experiences, uses, options, supply, and procurement of body-worn cameras ("BWCs") and digital evidence management systems ("DEMS") (collectively "BWC systems"), Requests for Proposals ("RFPs") issued, bids received in response to RFPs, agreements related to BWC/DEMS, competition in the alleged BWC/DEMS market, and the impact of the Acquisition on each department. Complaint Counsel further asserts that the scope of the testimony sought is limited to these and related topics. The Complaint in this matter alleges that a relevant product market in which to assess the effects of the Acquisition is the sale of BWC systems to large, metropolitan police departments. Complaint ¶ 21. As acknowledged by Respondent, "*all* of the customers of the products at issue are public agencies."¹ Thus, Complaint Counsel has demonstrated a compelling need for the requested testimony from employees of government agencies.

Because the requirements of Rule 3.36(b) have been met, Complaint Counsel's unopposed Motion is GRANTED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: September 16, 2020

¹ Respondent's Motion for Issuance of Subpoenas *Duces Tecum* to Law Enforcement Agencies Under Practice Rule 3.36 (February 13, 2020) at 1-2 (emphasis in original).