



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

ORIGINAL

In the Matter of

Axon Enterprise, Inc.
a corporation;

and

Safariland, LLC,
a corporation.

DOCKET NO. 9389

**COMPLAINT COUNSEL’S UNOPPOSED MOTION FOR ISSUANCE OF SUBPOENAS
AD TESTIFICANDUM TO MUNICIPAL AGENCIES UNDER RULE OF PRACTICE
3.36 AND REQUEST FOR EXPEDITED TREATMENT**

Complaint Counsel brings this motion pursuant to Federal Trade Commission (“Commission”) Rule of Practice 3.36 for the issuance of Subpoenas *Ad Testificandum* to officials of and personnel associated with the listed municipal agencies. Complaint Counsel requests authorization to issue the attached subpoenas under Rule 3.36, as each municipal agency is a government agency described in Rule 3.36(a). The municipal agencies for which Complaint Counsel requests issuance of Subpoenas *Ad Testificandum* are:

- (1) Daniel Brodie, Lieutenant with Internal Affairs, Alameda County Sheriff’s Office;
- (2) George Speaks, Deputy Director of Public Safety, Columbus Police Department;
- (3) Christian Quinn, Cyber Forensics Bureau Commander, Fairfax County Police Department; and

(4) Nick Zajchowski, Strategic Advisor, Seattle Police Department.

Respondents do not oppose Complaint Counsel's motion for the issuance of subpoenas to the listed municipal agencies. Because the testimony sought from the listed municipal agencies meets the requirements set out in Rule 3.36, Complaint Counsel respectfully requests that the Motion be granted and that the attached subpoenas be issued. Unsigned Subpoenas *Ad Testificandum* for the listed municipal agencies are attached as Attachment A.

ARGUMENT

Rule 3.36(b) of the Commission's Rules of Practice requires a party seeking issuance of a subpoena for the appearance of an official or employee of a governmental agency to make a specific showing regarding the requested subpoena. With respect to subpoenas *ad testificandum* to be served within the United States, the party must show that:

- (1) the information sought from the official or employee of the governmental agency is reasonable in scope;
- (2) for discovery, the appearance of the official or employee of the governmental agency falls within the limits of discovery under Rule 3.31(c)(1); and
- (3) for discovery, the information sought from the official or employee of the governmental agency cannot reasonably be obtained by other means.

The proposed Subpoenas *Ad Testificandum* to the listed municipal agencies meet all requirements of Rule 3.36(b).

Respondents have identified each listed municipal agency as potential witnesses in this matter. Each listed municipal agency is located within the United States and is either a past, current, and potential customer of Body Worn Camera Systems (“BWC Systems”).

The scope of the testimony sought from the listed municipal agencies will relate to Axon Enterprise’s acquisition of VieVu from Safariland (“the Acquisition”), the impact of the Acquisition on the municipal agency’s use, options, supply, or procurement of BWC Systems, and competition in the BWC Systems market. 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 BWC Systems, as well as competition for those products. The scope of the testimony sought is limited to these and related topics, which is reasonable in scope relative to the Respondents’ naming of the listed municipal agencies as potential witnesses in this matter.

As Respondents have named the listed municipal agencies as potential witnesses expected to testify, and the listed municipal agencies are knowledgeable about the product market, market participants, potential defenses, and competitive effects of the Acquisition alleged in the Complaint, the testimony sought from the listed municipal agencies falls within the limits of discovery under Rule 3.31(c)(1), which requires that discovery be “reasonably expected to yield information relevant to the allegations of the complaint . . . or to the defenses of any respondent.”

As 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 cannot be reasonably obtained by other means.

CONCLUSION

This Court has recognized that issuance of a subpoena to a governmental agency is appropriate if the moving party meets the criteria under Rule 3.36. *In the Matter of Cabell Huntington Hospital*, FTC Docket No. 9366 (Order dated Jan. 14, 2016), available at https://www.ftc.gov/system/files/documents/cases/cabell_huntington_hospital_order_granting_respondents_unopposed_580613.pdf. For the reasons stated above, therefore, Complaint Counsel respectfully requests that the Court grant the Motion and issue the attached Subpoenas *Ad Testificandum* to the listed municipal agencies.

Dated: February 25, 2020

Respectfully submitted,

s/ Z. Lily Rudy

Z. Lily Rudy
Jennifer Milici
Peggy Bayer Femenella
Bureau of Competition
Federal Trade Commission
400 7th Street, S.W.
Washington, D.C. 20024

Complaint Counsel

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
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COMPLAINT COUNSEL'S MEET AND CONFER STATEMENT

Pursuant to the Scheduling Order issued on January 30, 2020, Complaint Counsel states that it has conferred with Respondents' counsel. Respondents' counsel has advised that they do not object to the issuance of the subpoenas.

Dated: February 25, 2020

Respectfully submitted,

s/ Z. Lily Rudy

Z. Lily Rudy
Jennifer Milici
Peggy Bayer Femenella
Bureau of Competition
Federal Trade Commission
400 7th Street, S.W.
Washington, D.C. 20024

Complaint Counsel

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

In the Matter of

Axon Enterprise, Inc.
a corporation;

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DOCKET NO. 9389

**[PROPOSED] ORDER ON COMPLAINT COUNSEL'S
UNOPPOSED MOTION FOR ISSUANCE OF SUBPOENAS
AD TESTIFICANDUM TO MUNICIPAL AGENCIES
UNDER RULE OF PRACTICE 3.36 AND REQUEST FOR
EXPEDITED TREATMENT**

On February 25, 2020, pursuant to Rule 3.36 of the Commission's Rules of Practice, Complaint Counsel filed an Unopposed Motion for the Issuance of Subpoenas *Ad Testificandum*. The unsigned subpoenas are attached hereto as Attachment A.

The requirements of Rule of Practice § 3.36(b) are met, and the Motion is unopposed.

Accordingly, Complaint Counsel's motion is **GRANTED**.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

ATTACHMENT A



SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

<p>1. TO</p> <p>Lt. Daniel Brodie #669 Alameda County Sheriff's Office 1401 Lakeside Drive, 12th Floor Oakland, CA 94612-4305</p>	<p>2. FROM</p> <p style="text-align: center; font-weight: bold; font-size: 1.2em;">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 400 7th Street, SW Washington, DC 20024 (Or any other location agreed to by the Parties and the Deponent)</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Blake Risenmay, Esq. or designee</p>
<p>5. DATE AND TIME OF HEARING OR DEPOSITION</p> <p>March 17, 2020, 9:00 a.m.</p>	

6. SUBJECT OF PROCEEDING

In the Matter of Axon Enterprise, Inc. and Safariland, LLC; Docket No. 9389

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell</p> <p style="text-align: center; font-weight: bold;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL REQUESTING SUBPOENA</p> <p>Jennifer Milici Federal Trade Commission 400 7th Street, SW Washington, DC 20024 (202) 326-2912</p>
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DATE ISSUED	SECRETARY'S SIGNATURE
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GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.



SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

<p>1. TO</p> <p>George Speaks Deputy Director of Public Safety 77 N. Front Street, 5th Floor Columbus, OH 43215</p>	<p>2. FROM</p> <p style="text-align: center;">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 400 7th Street, SW Washington, DC 20024 (Or any other location agreed to by the Parties and the Deponent)</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Steven Wilensky, Esq. or designee</p>
<p>6. SUBJECT OF PROCEEDING</p> <p>In the Matter of Axon Enterprise, Inc. and Safariland, LLC; Docket No. 9389</p>	<p>5. DATE AND TIME OF HEARING OR DEPOSITION</p> <p>March 13, 2020, 9:00 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 Federal Trade Commission 400 7th Street, SW Washington, DC 20024 (202) 326-2912</p>
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<p>DATE ISSUED</p>	<p>SECRETARY'S SIGNATURE</p>
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SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

<p>1. TO Christian Quinn, Fairfax County Police Department c/o Kimberly Baucom, Esq. Fairfax County Police Internal Affairs Bureau Public Safety Headquarters Building 12099 Government Center Parkway Fairfax, VA 22035</p>	<p>2. FROM 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 Federal Trade Commission 400 7th Street, SW Washington, DC 20024 (Or any other location agreed to by the Parties and the Deponent)</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE Z. Lily Rudy, Esq. or designee</p> <hr/> <p>5. DATE AND TIME OF HEARING OR DEPOSITION March 12, 2020, 9:00 a.m.</p>
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6. SUBJECT OF PROCEEDING

In the Matter of Axon Enterprise, Inc. and Safariland, LLC; Docket No. 9389

<p>7. ADMINISTRATIVE LAW JUDGE The Honorable D. Michael Chappell Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL REQUESTING SUBPOENA Jennifer Milici Federal Trade Commission 400 7th Street, SW Washington, DC 20024 (202) 326-2912</p>
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DATE ISSUED	SECRETARY'S SIGNATURE
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SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

<p>1. TO</p> <p>Nick Zajchowski Seattle Police Department c/o Rebecca Boatright 610 Fifth Ave Seattle, WA 98104</p>	<p>2. FROM</p> <p style="text-align: center; font-weight: bold; font-size: 1.2em;">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 400 7th Street, SW Washington, DC 20024 (Or any other location agreed to by the Parties and the Deponent)</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Blake Risenmay, Esq. or designee</p>
<p>6. SUBJECT OF PROCEEDING</p> <p>In the Matter of Axon Enterprise, Inc. and Safariland, LLC; Docket No. 9389</p>	<p>5. DATE AND TIME OF HEARING OR DEPOSITION</p> <p>March 19, 2020, 9:00 a.m.</p>

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell</p> <p style="text-align: center; font-weight: bold;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL REQUESTING SUBPOENA</p> <p>Jennifer Milici Federal Trade Commission 400 7th Street, SW Washington, DC 20024 (202) 326-2912</p>
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DATE ISSUED	SECRETARY'S SIGNATURE
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GENERAL INSTRUCTIONS

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This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

CERTIFICATE OF SERVICE

I hereby certify that on February 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
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:

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Counsel for Respondent Axon Enterprises, Inc.

By: s/ Jennifer Milici
Jennifer Milici

Counsel Supporting the Complaint

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.

February 25, 2020

By: s/ Jennifer Milici
Jennifer Milici