

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.

ORIGINAL

Docket No. D9389

PUBLIC DOCUMENT

**RESPONDENT'S MOTION TO COMPEL
RESPONSES TO INTERROGATORY NOS. 18-23**

Respondent Axon Enterprise, Inc. moves pursuant to Rule 3.38(a) for an order compelling Complaint Counsel to answer its interrogatories relating to the division of antitrust enforcement responsibility between the Department of Justice and the FTC—a policy known as “clearance”—and the procedural and remedial consequences of the clearance decision for parties litigating against the FTC (Interrogatory Nos. 18-23). Good cause supports Axon’s interrogatories, which seek information that is relevant to its affirmative defenses and not protected by any privilege. Complaint Counsel should be required to answer them. A proposed order is attached as Exhibit A.¹

BACKGROUND

The Department of Justice and the FTC divide responsibility for enforcement of the antitrust laws in particular cases through a process known as “clearance.” Axon contends in this

¹ This Court’s recent orders addressing clearance explained that limiting Axon’s discovery requests would not prejudice its ability to pursue its defenses because a court of appeals may later order the Commission to take additional evidence. *See* July 21, 2020 Order Denying Respondent’s Motion to Compel at 4 n.2; July 30, 2020 Order Granting Complaint Counsel’s Motion to Quash at 6 n.2. But as Axon has argued in federal court, *see* Appellant’s Br. at 35-38, Dkt. 18, No. 20-15662 (9th Cir. May 4, 2020), it suffers irreparable harm by being subjected to an unconstitutional proceeding. The fact that a court of appeals may be empowered to order additional discovery on remand does not justify the failure to develop a factual record in the first place.

case that the clearance policy violates its Fifth Amendment right to due process and equal protection of the laws by forcing some parties, like Axon here, to defend antitrust actions in an administrative proceeding without the procedures and rights available in federal court. *See* Eighteenth Affirmative Defense.

On March 3, Axon served Complaint Counsel with its First Set of Interrogatories. Complaint Counsel responded on July 20. *See* Ex. B, Complaint Counsel’s Responses and Objections to Axon’s First Set of Interrogatories. Complaint Counsel objected to Axon’s interrogatories relating to the clearance policy and its consequences (Interrogatory Nos. 18-23) chiefly on three grounds, arguing that they (1) fall outside the scope of discovery under Rule 3.31(c)(2), (2) are irrelevant, or (3) seek privileged information. But the information Axon seeks is within the scope of discovery under Rule 3.31(c)(2), relevant to Axon’s defense of this matter, and not privileged. This Motion should be granted.

ARGUMENT

The ALJ “shall order” responses to discovery requests “unless the Administrative Law Judge determines that the objection is justified.” 16 C.F.R. § 3.38(a). Complaint Counsel’s objections are not justified. Good cause justifies these interrogatories. The information they seek is relevant to Axon’s defense of this matter and not protected by any privilege.

1. Good cause supports Axon’s interrogatories relating to the clearance process.

Rule 3.31(c)(2) allows discovery—in addition to discovery collected during an investigation—from “Bureaus or Offices that investigated the matter upon a showing of ‘good cause.’” *In the Matter of 1-800 Contacts, Inc.*, No. 9372, 2016 WL 7634657, at *3 (F.T.C. Dec. 20, 2016). Good cause supports a discovery request for information that is relevant, reasonable in scope, and, if public, not available from another source. *Id.*

Interrogatories 18-23 are relevant to Axon’s defense of this matter. These interrogatories seek “to defend against the allegations of the Complaint” and “relate directly to those contentions” raised in Axon’s defenses to the Complaint. *In the Matter of Intel Corp.*, No. 9341, 2010 WL 2544424, at *1, 3-4 (F.T.C. June 9, 2010). Axon contends that it has been denied equal protection because the uncodified clearance process directs some parties to an administrative proceeding and some parties to federal court, without a rational basis for this differential treatment of similarly situated parties. *See* Eighteenth Affirmative Defense. Its interrogatories seek to prove up this defense. They seek information about the process by which the government determines whether the FTC or the Department of Justice leads an investigation and eventual enforcement action (Interrogatory 20), how the government has implemented that process (Interrogatories 21- 22); and the results of that process, including whether it has resulted in differential treatment of similarly situated parties (Interrogatories 18-19), and ultimately whether it has resulted in different remedies (Interrogatory 23). *See* Ex. B, Complaint Counsel’s Objections and Responses to Axon’s First Set of Interrogatories.

These requests are reasonable in scope and stated with reasonable particularity. Complaint Counsel objected that Interrogatories 18-20 and 22-23 propose an overbroad time scope. But the 25-year time scope set out in these requests is reasonable and tied to the FTC’s long-running winning streak in its own forum. *See* Amended Motion to Compel Production of Documents Responsive to Respondent’s Second Set of Requests for Production (July 14, 2020) (“Motion to Compel”) at 3-4; Respondent’s Opposition to Complaint Counsel’s Motion to Quash Notice of Deposition (July 23, 2020) (“Opposition to Motion to Quash”) at 7-8. And as in the parties’ earlier discovery disputes concerning clearance, the time scope of the requests is beside the point because Complaint Counsel has not provided answers to these requests for *any* period of time. Indeed,

Complaint Counsel appears to consider *any* time scope for discovery on these topics to be unreasonable. *See* Motion to Compel at 4.

Finally, Axon has good cause to seek this discovery because the information it seeks about the clearance process is not otherwise available. Complaint Counsel objected that Interrogatories 18, 19, and 23 impose undue burden because they seek information available to the public. But the completeness of available public records that may inform responses to these interrogatories is unclear, and in any event, it is implausible that information available to the public is the *only* information responsive to these requests. *See* Opposition to Motion to Quash at 7. Particularly given that Complaint Counsel has denied Axon's requests for admission seeking to establish the Commission's win-loss rate, Axon must be able to test these assertions through its interrogatories.

2. Complaint Counsel's other objections are not justified.

Good cause aside, Complaint Counsel further objects that Interrogatories 20-23 seek information that is either irrelevant or privileged. The relevance of this information is part of the good cause analysis, and information relating to the clearance process is critical to Axon's defense of this matter. *See* Motion to Compel at 3; Opposition to Motion to Quash at 6. And Axon's interrogatories do not seek privileged information. Instead, the interrogatories seek factual information about the policy that determines how the FTC and the Department of Justice determine which agency will conduct an antitrust investigation, in which forum and under what set of rules and standards an enforcement action will proceed, and what results follow this policy. *See* Motion to Compel at 4-6; Opposition to Motion to Quash at 2-6. This clearance policy, which is critical to Axon's defense of this case, is not privileged. *See, e.g., Tax Analysts v. IRS*, 117 F.3d 607, 617-18 (D.C. Cir. 1997) (ordering disclosure of memoranda stating agency's position before applying it to particular cases); *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 868

(D.C. Cir. 1980) (ordering disclosure of memoranda reflecting “established policies and decisions”). And even if it were, a blanket objection on privilege grounds does not satisfy Complaint Counsel’s obligations to respond to Axon’s discovery requests. *See* Motion to Compel at 5.

CONCLUSION

For the reasons stated above, Axon respectfully requests that its Motion to Compel be granted.

Dated: August 11, 2020

Respectfully submitted,

s/ Julie E. McEvoy

Pamela B. Petersen
AXON ENTERPRISE, INC.
17800 N 85th St.
Scottsdale, AZ 85255-9603
Phone: (623) 326-6016
Facsimile: (480) 905-2027
Email: ppetersen@axon.com

*Counsel for Respondent
Axon Enterprise, Inc.*

Julie E. McEvoy
Michael H. Knight
Louis K. Fisher
Jeremy P. Morrison
Debra R. Belott
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Phone: (202) 879-3939
Facsimile: (202) 626-1700
Email: jmcevoy@jonesday.com
Email: mhknight@jonesday.com
Email: lkfisher@jonesday.com
Email: jmorrison@jonesday.com
Email: dbelott@jonesday.com

Aaron M. Healey
JONES DAY
250 Vesey Street
New York, NY 10281-1047
Phone: (212) 326-3939
Facsimile: (212) 755-7306
Email: ahealey@jonesday.com

*Counsel for Respondent
Axon Enterprise, Inc.*

**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,

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Docket No. D9389

PUBLIC DOCUMENT

RESPONDENT'S MEET AND CONFER STATEMENT

Pursuant to the Scheduling Order issued on January 30, 2020, Respondent submits this certification that it has conferred with Complaint Counsel in a good faith effort to resolve by agreement the issues raised in this motion, and has been unable to reach such an agreement. On August 11, 2020, Complaint Counsel and counsel for Respondent Axon conferred by telephone. Complaint Counsel opposes this motion.

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 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:

Jennifer Milici
J. Alexander Ansaldo
Peggy Bayer Femenella
Mika Ikeda
Nicole Lindquist
Lincoln Mayer
Merrick Pastore
Z. Lily Rudy
Dominic Vote
Steven Wilensky
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, NW
Washington, DC 20580
Phone: (202) 326-2638
Facsimile: (202) 326-2071
Email: jmilici@ftc.gov
Email: jansaldo@ftc.gov
Email: pbayer@ftc.gov
Email: mikeda@ftc.gov
Email: nlindquist@ftc.gov
Email: lmayer@ftc.gov
Email: mpastore@ftc.gov
Email: zrudy@ftc.gov
Email: dvote@ftc.gov
Email: swilensky@ftc.gov

Counsel for the Federal Trade Commission

Dated: August 11, 2020

s/ Julie E. McEvoy

Julie E. McEvoy

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 documents that is available for review by the parties and the adjudicator.

Dated: August 11, 2020

s/ Julie E. McEvoy

Julie E. McEvoy

EXHIBIT A

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 RESPONDENT'S MOTION TO COMPEL
RESPONSES TO INTERROGATORY NOS. 18-23**

Respondent Axon Enterprise, Inc. has filed a Motion to Compel Interrogatory Responses. Having considered the Motion, it is hereby ORDERED that the Motion is GRANTED. It is hereby ORDERED:

1. Complaint Counsel's objections to Axon's Interrogatory Nos. 18-23 are OVERRULED.
2. Complaint Counsel is hereby ORDERED to respond to Axon's Interrogatory Nos. 18-23.

SO ORDERED.

D. Michael Chappell
Chief Administrative Law Judge

Date:

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.**

DOCKET NO. 9389

PUBLIC

**COMPLAINT COUNSEL'S RESPONSES AND OBJECTIONS TO RESPONDENT
AXON'S FIRST SET OF INTERROGATORIES (NOS. 1-25)**

Pursuant to Sections 3.35(b) of the Federal Trade Commission's Rules of Practice, Complaint Counsel hereby responds to Respondent Axon's First Set of Interrogatories to Complaint Counsel, dated March 3, 2020. Subject to the General and Specific Objections below, and without waiving these objections, Complaint Counsel answers as follows:

GENERAL OBJECTIONS

The following General Objections apply to all of Respondent's Interrogatories and are hereby incorporated by reference into our response to each of the following responses. The assertion of the same, similar, or additional objections or the provision of partial answers in response to an individual interrogatory does not waive any of Complaint Counsel's general objections as to that interrogatory or any other interrogatories.

1. Complaint Counsel objects to Respondent's Interrogatories to the extent they are directed to the Federal Trade Commission rather than to Complaint Counsel.
2. Complaint Counsel objects to Respondent's Interrogatories to the extent they seek to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings, including seeking information that is beyond the scope of

permissible discovery under Rule 3.31(c)(2). Complaint Counsel's responses will comply with the Commission's Rules of Practice for Adjudicative Proceedings.

3. Complaint Counsel objects to Respondent's Interrogatories to the extent they seek to impose any duty or obligation beyond the applicable orders of the Chief Administrative Law Judge Chappell.
4. Complaint Counsel objects to Respondent's Interrogatories as premature to the extent they seek information that relates to expert opinions prior to the dates for expert disclosures prescribed by the Court's Scheduling Order.
5. Complaint Counsel objects to Respondent's Interrogatories as premature and unduly burdensome to the extent they are contention interrogatories. No response is required to contention interrogatories prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court's Scheduling Order.
6. Complaint Counsel objects to Respondent's Interrogatories to the extent the Interrogatories, including all separate and distinct subparts, exceed the 25 Interrogatories allowed in the Court's Scheduling Order, as amended.
7. Complaint Counsel objects to Respondent's Interrogatories to the extent they seek information protected from disclosure by any applicable privilege, doctrine, order, or rule, including the attorney-client privilege, the government deliberative process privilege, the informant privilege, law enforcement investigatory privilege, the work product doctrine, Sections 19(c) or 19(g) of the Scheduling Order, Rule 3.31A(e), 3.31(c)(2) or 3.31(c)(4), or any other applicable privilege from disclosure. Complaint Counsel does not, by providing a response to any interrogatory, waive or partially waive any applicable privilege or attorney-

work product claim. Pursuant to Rule 3.31(g), the inadvertent production of any privileged information shall not constitute a waiver of the applicable privilege.

8. Complaint Counsel objects to Respondent's Interrogatories to the extent the interrogatories purport to require Complaint Counsel to conduct a search beyond that required by Rule 3.31(c)(2) or Rule 3.35(a)(1).
9. Complaint Counsel objects to Respondent's Interrogatories to the extent they are overly broad, vague, ambiguous, unduly burdensome, oppressive, and are not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent.
10. Complaint Counsel objects to Respondent's Interrogatories to the extent the interrogatories call for information previously provided to Respondent.
11. Complaint Counsel objects to Respondent's Interrogatories to the extent the interrogatories seek information that may be less onerously obtained through other means.
12. Complaint Counsel objects to each interrogatory to the extent that it seeks information for which the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served.
13. Complaint Counsel objects to Respondent's Interrogatories to the extent that, as framed, they purport to obligate Complaint Counsel to conduct an extensive and complete investigation of detailed facts within the thirty (30) days allotted for its responses and objections when such facts are known to Respondent and/or contained in the hundreds of thousands of pages of documents already produced by Respondent Axon or produced by third parties.
14. Complaint Counsel's discovery and investigation in this matter are continuing. These responses and objections are made on the basis of information currently available to and

located by Complaint Counsel upon reasonable investigation consistent with the Commission's Rules of Practice for Adjudicative Proceedings. Complaint Counsel reserves the right to assert additional objections to Respondent's Interrogatories, and to amend or supplement these objections and responses as necessary after the close of discovery.

15. Complaint Counsel objects to each interrogatory to the extent it purports to attribute any special or unusual meaning to any technical term or phrase. Complaint Counsel will respond to each interrogatory using the ordinary meaning of such term or phrase.
16. A partial response by Complaint Counsel to any interrogatory that has been objected to in whole or in part is not a waiver of the objection. By asserting various objections, Complaint Counsel does not waive other objections that may become applicable.
17. Complaint Counsel reserves all of its evidentiary objections or other objections to the introduction or use of any response herein at the hearing in this action, and does not, by any response to any interrogatory, waive any objection to that interrogatory, stated or unstated.
18. The failure of Complaint Counsel to object to any interrogatory on a particular ground may not be construed as a waiver of its rights.

SPECIFIC OBJECTIONS TO RESPONDENT'S DEFINITIONS

19. Complaint Counsel objects to Respondent's Definition 1 of "FTC," "you," and "your" to the extent the requests are directed to the Federal Trade Commission or any of its employees, agents, representatives, attorneys or anyone else rather than to Complaint Counsel.
20. Complaint Counsel objects to Respondent's Definitions 2, 3, 4, 5, and 30. Complaint Counsel does not have knowledge of the corporate structures, all predecessors-in-interest, affiliates, joint venture partners, agents, or representatives identified by Respondent.

21. Complaint Counsel objects to Respondent's Definition 6. Complaint Counsel does not have knowledge of all of the employees, agents, representatives, attorneys, or anyone else acting or who has acted on behalf of the Department of Justice.
22. Complaint Counsel objects to Respondent's Definition 11 to the extent the requests are directed to the Federal Trade Commission rather than to Complaint Counsel and to the extent that Complaint Counsel does not have knowledge of actions conducted by other government entities.
23. Complaint Counsel objects to Respondent's Definitions 12 and 13 of "BWC" and "DEMS" to the extent Respondent has characterized these as separate products.
24. Complaint Counsel objects to Respondent's Definitions 17, 19, 24, 25, 26, 27, 28, and 29 because they are overly burdensome and seek to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings, including seeking information that is beyond the scope of permissible discovery under Rule 3.31(c)(2), or any applicable orders of Chief Administrative Law Judge Chappell. Complaint Counsel's responses will comply with the Commission's Rules of Practice for Adjudicative Proceedings.

SPECIFIC OBJECTIONS TO RESPONDENT'S INSTRUCTIONS

25. Complaint Counsel objects to Respondent's Instruction 1 to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings, including seeking the production of documents that are beyond the scope of permissible discovery under Rule 3.31(c)(2), or any applicable orders of Chief Administrative Law Judge Chappell.

26. Complaint Counsel objects to Respondent's Instructions 2, 3, 4, 5, and 6 to the extent they seek to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings, including seeking the production of documents that are beyond the scope of permissible discovery under Rule 3.31(c)(2), or any applicable orders of Chief Administrative Law Judge Chappell.

SPECIFIC OBJECTIONS AND RESPONSES

Subject to the General Objections and the Specific Objections above and below, and without waiving these objections, Complaint Counsel answers as follows:

INTERROGATORY 1:

State the basis for your allegation that "[t]he relevant product market in which to assess the effects of" the Transaction "is the sale of BWC Systems, comprising BWCs and DEMS to large, metropolitan police departments." (*See* Complaint ¶¶ 20–21.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court's Scheduling Order. Complaint Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court's Scheduling Order.

INTERROGATORY 2:

Identify by Bates range all Documents produced to you during the course of your Investigation or this Litigation that support your allegation that BWCs and DEMS comprise a single product, i.e. a "BWC System." (*See* Complaint ¶¶ 20–22.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court's Scheduling Order. Complaint

Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court's Scheduling Order.

INTERROGATORY 3:

Identify by Bates range all Documents produced to you during the course of your Investigation or this Litigation that support your allegation that “[t]here are no reasonably interchangeable substitutes for BWC Systems, and large, metropolitan police departments could not realistically switch to other products in the face of a SSNIP for BWC Systems.” (See Complaint ¶ 24.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court's Scheduling Order. Complaint Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court's Scheduling Order.

INTERROGATORY 4:

State the basis for your allegation that “[t]he relevant geographic market in which to assess the competitive effects of the [Transaction] is customers in the United States.” (See Complaint ¶¶ 20, 27.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court's Scheduling Order. Complaint Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court's Scheduling Order.

INTERROGATORY 5:

Define the term “large, metropolitan police departments,” as used in Complaint ¶¶ 20–26, 29–31, including in the definition the requisite size, relevant purchasing habits, and relevant RFP criteria and technical specifications that distinguishes such police departments from other BWC or DEMS customers. (See Complaint ¶¶ 20–26, 29–31.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Subject to these objections, the discovery that Complaint Counsel has taken to date suggests that Respondent itself treats large, metropolitan police departments as a separate product market. Respondent uses different measurements to identify, categorize, and to develop products for and to market products to large, metropolitan police departments. These measurements include but may not be limited to the population of the metropolitan area served by the police department; the relative size of the metropolitan area; and the number of officers on the police force in the metropolitan. Respondent also regularly identifies proxies for more direct measurements, such as membership in the Major Cities Chiefs Association. Additional fact discovery may suggest that one or more of these measurements is more accurate or that another measurement or proxy is appropriate.

Further discovery sought by this interrogatory – including an analysis of the relevant purchasing habits, and relevant RFP criteria and technical specifications that distinguishes such police departments from other BWC or DEMS customers -- is premature in that, to the extent that these facts are relevant to product market definition, it will be addressed in the report(s) of Complaint Counsel's expert(s).

Complaint Counsel reserves the right to supplement this response based on additional fact discovery and the analysis of its experts.

INTERROGATORY 6:

State the basis for your allegation that Motorola, Panasonic, WatchGuard and Utility do not “pose the same competitive constraint on” Axon as did Viewu and “rarely provided significant competition to [Axon] in RFP processes conducted by large, metropolitan police departments.” (See Complaint ¶ 31.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court's Scheduling Order. Complaint Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court's Scheduling Order.

INTERROGATORY NO. 7:

Identify all “non-price aspects of BWC Systems” that you allege Axon and Viewu competed against each other on and describe whether other BWC or DEMS providers offered such aspects or features. (See Complaint ¶ 41.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court's Scheduling Order. Complaint Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court's Scheduling Order.

INTERROGATORY NO. 8:

Identify by Bates range all Documents produced to you during the course of your Investigation or this Litigation that support your allegation that "[e]xisting BWC System providers are unlikely to replace the competition that was lost as a result of the [Transaction]." (See Complaint ¶ 43.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court's Scheduling Order. Complaint Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court's Scheduling Order.

INTERROGATORY NO. 9:

State the basis for your allegation that prior to the Transaction, Viewu and Axon "were the competitors that could best satisfy the RFP requirements, from both a technical and price perspective, for many of the largest metropolitan police agencies in the United States." (See Complaint ¶ 38.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court's Scheduling Order. Complaint Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court's Scheduling Order.

INTERROGATORY NO. 10:

State the basis for your allegation that “[t]he result [of the Transaction] is likely to be higher prices, inferior services, and reduced quality and innovation” including describing how services will allegedly be inferior and how quality will be reduced. (See Complaint ¶ 35.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court’s Scheduling Order. Complaint Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court’s Scheduling Order.

INTERROGATORY NO. 11:

State the basis for your allegation that “[n]ew entry or repositioning by existing producers would not be timely, likely, or sufficient to counteract the anticompetitive effects of the [Transaction].” (See Complaint ¶¶ 10, 54.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court’s Scheduling Order. Complaint Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court’s Scheduling Order.

INTERROGATORY NO. 12:

Identify by Bates range all Documents produced to you during the course of your Investigation or this Litigation that support your allegation that “[b]arriers to entry are high because of the substantial up-front capital investment required, switching costs, and the need for large, metropolitan police department references.” (See Complaint ¶ 10.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to

the close of discovery pursuant to Rule 3.35(b)(2) and the Court's Scheduling Order. Complaint Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court's Scheduling Order.

INTERROGATORY NO. 13:

Identify by Bates range all Documents produced to you during the course of your Investigation or this Litigation that support your allegation that “[t]here are high switching costs related to the transfer of metadata for video files, and customers are sticky because moving data to a new provider and training officers on a new platform is challenging and expensive.” (See Complaint ¶ 54.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court's Scheduling Order. Complaint Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court's Scheduling Order.

INTERROGATORY NO. 14:

State the basis for your allegation that “[Axon] cannot show that merger-specific efficiencies would result from the [Transaction] that will offset the anticompetitive effects.” (See Complaint ¶¶ 11, 55.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court's Scheduling Order. Complaint Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court's Scheduling Order.

INTERROGATORY NO. 15:

State the basis for your allegation that “[Axon] cannot demonstrate that [Safariland] was a failing firm under the criteria set out in the Horizontal Merger Guidelines.” (See Complaint ¶ 56.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court's Scheduling Order. Complaint Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court's Scheduling Order.

INTERROGATORY NO. 16:

State the basis for your claim that market share should be defined by "officer count," as opposed to any other metric, such as the number of law enforcement agencies using a BWC or DEMS provider's products. (See Complaint ¶¶ 8, 30, 34).

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court's Scheduling Order. Complaint Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court's Scheduling Order.

INTERROGATORY NO. 17:

Identify each RFP issued by any police agency in the United States from May 3, 2018 to the present that you contend that "but for" the Transaction, the prices bidders offered would have been lower, and for each such RFP, state the factual basis for your allegation. (See Complaint ¶ 42.)

RESPONSE:

In addition to its General Objections, Complaint Counsel objects to the interrogatory as premature to the extent it seeks information relating to issues that may be the subject of expert testimony in this case. Complaint Counsel also objects to this interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2) and the Court's Scheduling Order. Complaint Counsel will supplement its answer, as appropriate, after the close of discovery, as set forth in Rule 3.35(b)(2) and the Court's Scheduling Order.

INTERROGATORY NO. 18:

Identify each proceeding initiated by the FTC pursuant to 16 C.F.R. § 3.1 et seq. in the last twenty-five years where the respondent was the prevailing party following appellate or other review by the FTC.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically objects to the interrogatory as irrelevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondents. Complaint Counsel also objects to the interrogatory to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings, including seeking information that is beyond the scope of permissible discovery under Rule 3.31(c)(2). Complaint Counsel further objects to the interrogatory as vague and ambiguous as to the meaning of the terms "proceeding," "initiated by the FTC," "16 C.F.R. § 3.1 et seq.," "prevailing party," "appellate," "other review," and "by the FTC." Complaint Counsel further objects to overburden and overbreadth as to the length time, as the interrogatory seeks information from the past twenty-five years. The information responsive to this Interrogatory is available through legal research databases and public records, and the burden of identifying information responsive to this Interrogatory is no greater on the Respondent than on Complaint Counsel.

INTERROGATORY NO. 19:

Identify every merger challenge brought by the FTC in federal court in the last twenty-five years, and for each challenge identified, state whether a preliminary injunction was granted or denied, and whether the respondent was found liable or not liable after the exhaustion of any appeals.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically objects to the interrogatory as irrelevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondents. Complaint Counsel also objects to the interrogatory to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings, including seeking information that is beyond the scope of permissible discovery under Rule 3.31(c)(2). Complaint Counsel further objects to the interrogatory as vague and ambiguous as to the meaning of the terms "merger challenge," "brought by the FTC," "federal court," "granted or denied," "respondent," "liable" "not liable," and "exhaustion of any appeals." Complaint Counsel further objects to overburden and overbreadth as to the length time, as the interrogatory seeks information from the past twenty-five years. The information responsive to this Interrogatory is available through legal research databases and public records, and the burden of identifying information responsive to this Interrogatory is no greater on the Respondent than on Complaint Counsel.

INTERROGATORY NO. 20:

Describe the criteria, procedures, and identity of decision-makers over the past twenty-five years (including any changes over time) relating to the clearance process and decisions as to whether the FTC or the DOJ will or would lead an investigation into a consummated or proposed merger, including, without limitation, a description of whether such procedures change depending on whether the merger meets the threshold requirements under the Hart-Scott-Rodino Act.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically objects to this interrogatory to the extent it seeks information that is protected by any privilege against disclosure, including the privileges listed in General Objection 7. Complaint Counsel further objects to the interrogatory to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings, including seeking information that is beyond the scope of permissible discovery under Rule 3.31(c)(2). Complaint Counsel further objects to the interrogatory as irrelevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondents. Complaint Counsel further objects to the interrogatory as vague and ambiguous as to the meaning of the terms "criteria," "procedures," "identity," "decision-makers," "clearance process," "lead an investigation," "consummated," "proposed" "merger," "change," "meets" and "threshold requirements." Complaint Counsel further objects to overburden and overbreadth as to the length time, as the interrogatory seeks information from the past twenty-five years.

INTERROGATORY NO. 21:

Explain which agency, FTC or DOJ, reviewed the Motorola/WatchGuard merger including, without limitation, the reasons, criteria, procedures, and persons involved as to each clearance process and/or decision.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically objects to this interrogatory to the extent it seeks information that is protected by any privilege against disclosure, including the privileges listed in General Objection 7. Complaint Counsel further objects to the interrogatory to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings, including seeking information that is beyond the scope of permissible discovery under Rule 3.31(c)(2). Complaint Counsel further objects to the interrogatory as irrelevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondents. Complaint Counsel further objects to the interrogatory as vague and ambiguous as to the meaning of the terms "reviewed," "Motorola/WatchGuard merger," "reasons," "criteria," "procedures," "person," "clearance process," and "decision."

INTERROGATORY NO. 22:

For each instance in the past twenty-five years when a random-selection mechanism was used in the decision as to whether the FTC or DOJ would lead an investigation into a consummated or proposed merger, identify the year and the parties to the transaction or proposed transaction and the mechanism used.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically objects to this interrogatory to the extent it seeks information that is protected by any privilege against disclosure, including the privileges listed in General Objection 7. Complaint Counsel further objects to the interrogatory to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings, including seeking information that is beyond the scope of permissible discovery under Rule 3.31(c)(2). Complaint Counsel further objects to the interrogatory as irrelevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondents. Complaint Counsel further objects to the interrogatory as vague and ambiguous as to the meaning of the terms "random-selection mechanism," "was used," "decision," "lead an investigation," "consummated," "proposed," and "merger." Complaint Counsel further objects to overburden and overbreadth as to the length time, as the interrogatory seeks information from the past twenty-five years.

INTERROGATORY NO. 23:

For each instance in the past twenty-five years when the FTC has ordered or obtained relief that included divestiture of assets that had not been acquired in a challenged transaction, identify the parties to the transaction and the relief ordered or obtained.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically objects to this interrogatory to the extent it seeks information that is protected by any privilege against disclosure, including the privileges listed in General Objection 7. Complaint Counsel further objects to the interrogatory to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings, including seeking information that is beyond the scope of permissible discovery under Rule 3.31(c)(2). Complaint Counsel further objects to the interrogatory as irrelevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent. Complaint Counsel further objects to the interrogatory as vague and ambiguous as to the meaning of the terms "ordered," "obtained," relief," "divestiture or assets," "had not been acquired," "challenged transaction." Complaint Counsel further objects to overburden and overbreadth as to the length of time, as the interrogatory seeks information from the past twenty-five years. To the extent, the information responsive to this Interrogatory is available through legal research databases and public records, the burden of identifying such information is no greater on the Respondent than on Complaint Counsel.

INTERROGATORY NO. 24:

For each Request for Admission that you do not admit without qualification, describe in detail the basis for your denial and identify all documents supporting such denial.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically objects to this request to the extent it seeks documents that are protected by any privilege against disclosure, including the privileges listed in General Objection 3. Complaint Counsel further objects to this because it violates Additional Provision 7 of the Scheduling Order in “[a]ny single interrogatory inquiring as to a request for admissions response may address only a single such response.” Thus, Interrogatory No. 24 is actually multiple interrogatories and, properly counted, far exceeds the limit of 25 interrogatories imposed by the Court’s Scheduling Order. The information responsive to this Interrogatory is available through legal research databases and public records, and the burden of identifying information responsive to this Interrogatory is no greater on the Respondent than on Complaint Counsel.

INTERROGATORY NO. 25:

Identify with specificity all documents from which you paraphrased or directly quoted in your Complaint.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically objects to the interrogatory to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission’s Rules of Practice for Adjudicative Proceedings, including seeking information that is beyond the scope of permissible discovery under Rule 3.31(c)(2). Complaint Counsel further objects to the interrogatory as vague and ambiguous as to the meaning of the terms “paraphrased,” and “your.” Complaint Counsel further objects to this interrogatory to the extent it seeks information that is protected by any privilege against disclosure, including the privileges listed in General Objection 7. Subject to, and without waiving, these objections, and on that basis, Complaint Counsel provides the following list of documents:

- AX00018169 to AX00018171
- AX00018595 to AX00018646
- AX00020129 to AX00020131
- AX00026219 to AX00026300
- AX00227903 to AX00227904
- AX00285613 to AX00285613
- AX00297692 to AX00297721
- SAF-01246 to SAF-01245
- SAF-SDT-00012673 to SAF-SDT-00012721
- SAF-SDT-00037113 to SAT-SDT-00037164
- SAF-SDT-00113606 to SAF-SDT-00113612

- Investigational Hearing Transcript of Patrick Smith, September 20, 2019
- Investigational Hearing Transcript of Joshua Isner, September 18, 2019
- Investigational Hearing Transcript of Sean McCarthy, October 14, 2019
- [https://s22.q4cdn.com/113350915/files/doc_presentations/2019/08/AAXN-Axon-IR-Presentation-August-26-2019-\(1\).pdf](https://s22.q4cdn.com/113350915/files/doc_presentations/2019/08/AAXN-Axon-IR-Presentation-August-26-2019-(1).pdf)
- <https://www.bloomberg.com/news/articles/2018-05-04/the-biggest-police-body-cam-company-is-buying-its-main-competitor>
- <https://www.fool.com/investing/2018/05/18/is-there-any-stopping-axon-enterprise-now.aspx>
- <https://www.axon.com/news/cooperative-contracts-webinar>

I state under penalty of perjury that the above Complaint Counsel's Responses And Objections To Respondent Axon's First Set Of Interrogatories (Nos. 1-25) was prepared and assembled under my supervision, and that the information contained herein is, to the best of my knowledge, true and correct.

Dated: July 20, 2020

Respectfully submitted,

/s Jennifer Milici

Jennifer Milici

Counsel Supporting the Complaint

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2020, 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
Email: jmorrison@jonesday.com
Email: mhknight@jonesday.com
Email: jmcevoy@jonesday.com
Email: dbelott@jonesday.com
EXT_Axon_Service@jonesday.com

Aaron M. Healey
Jones Day
250 Vesey Street
New York, NY 10281-1047
Email: ahealey@jonesday.com

Counsel for Respondent Axon Enterprises, Inc.

By: s/ Z. Lily Rudy
Z. Lily Rudy

Counsel Supporting the Complaint

Notice of Electronic Service

I hereby certify that on August 11, 2020, I filed an electronic copy of the foregoing Respondent's Motion to Compel Interrogatory Responses, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on August 11, 2020, I served via E-Service an electronic copy of the foregoing Respondent's Motion to Compel Interrogatory Responses, upon:

Julie E. McEvoy
Jones Day
jmcevoy@jonesday.com
Respondent

Michael H. Knight
Jones Day
mhknight@jonesday.com
Respondent

Louis K. Fisher
Jones Day
lkfisher@jonesday.com
Respondent

Debra R. Belott
Jones Day
dbelott@jonesday.com
Respondent

Jeremy P. Morrison
Jones Day
jmorrison@jonesday.com
Respondent

Aaron M. Healey
Jones Day
ahealey@jonesday.com
Respondent

Jennifer Milici
Attorney
Federal Trade Commission
jmilici@ftc.gov
Complaint

J. Alexander Ansaldo
Attorney
Federal Trade Commission
jansaldo@ftc.gov

Complaint

Peggy Bayer Femenella
Attorney
Federal Trade Commission
pbayer@ftc.gov
Complaint

Mika Ikeda
Attorney
Federal Trade Commission
mikeda@ftc.gov
Complaint

Nicole Lindquist
Attorney
Federal Trade Commission
nlindquist@ftc.gov
Complaint

Lincoln Mayer
Attorney
Federal Trade Commission
lmayer@ftc.gov
Complaint

Merrick Pastore
Attorney
Federal Trade Commission
mpastore@ftc.gov
Complaint

Z. Lily Rudy
Attorney
Federal Trade Commission
zrudy@ftc.gov
Complaint

Dominic Vote
Attorney
Federal Trade Commission
dvote@ftc.gov
Complaint

Steven Wilensky
Attorney
Federal Trade Commission
swilensky@ftc.gov
Complaint

Pamela B. Petersen
Director of Litigation
Axon Enterprise, Inc.
ppetersen@axon.com
Respondent

Joseph Ostoyich
Partner
Baker Botts LLP

joseph.ostoyich@bakerbotts.com
Respondent

Christine Ryu-Naya
Baker Botts LLP
christine.ryu-naya@bakerbotts.com
Respondent

Caroline Jones
Associate
Baker Botts LLP
caroline.jones@bakerbotts.com
Respondent

Llewellyn Davis
Attorney
U.S. Federal Trade Commission
ldavis@ftc.gov
Complaint

William Hine
Hine & Ogulluk LLP
wjhine@hineogulluk.com
Respondent

Sevan Ogulluk
Hine & Ogulluk LLP
sogulluk@hineogulluk.com
Respondent

Brian Hine
Hine & Ogulluk LLP
bwhine@hineogulluk.com
Respondent

Blake Risenmay
Attorney
U.S. Federal Trade Commission
brisenmay@ftc.gov
Complaint

Emily Hutson
Associate
Baker Botts LLP
emily.hutson@bakerbotts.com
Respondent

Susan A. Musser
Attorney
U.S. Federal Trade Commission
smusser@ftc.gov
Complaint

Aaron Healey
Attorney