

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Axon Enterprise, Inc.,

Plaintiff,

v.

Federal Trade Commission, et al,

Defendants.

No. 2:20-cv-00014-PHX-DWL

DECLARATION OF ANTONY P. KIM

I, Antony P. Kim, declare as follows:

1. I am a competent adult and have personal knowledge of the following facts.

2. I am a partner at the law firm of Orrick, Herrington & Sutcliffe LLP, and am resident in the firm’s Washington D.C. office. I represent Axon as outside counsel in connection with *Axon Enterprise, Inc. v. Federal Trade Commission, et al.*, Case No. 2:20-cv-00014-PHX-DWL, which filed in the U.S. District Court for the District of Arizona on January 3, 2020.

3. I have represented clients and practiced before the U.S. Federal Trade Commission in connection with various competition and consumer protection matters for over 16 years.

4. Attached hereto as Ex. A is a chart that I prepared based on information from the U.S. Federal Trade Commission’s web-page that lists the agency’s internal adjudicative “Part 3 Proceedings,” available at <https://www.ftc.gov/enforcement/cases->

1 [proceedings/adjudicative-proceedings](#), as of January 9, 2020 at 12:00 pm Eastern. As set
2 forth in that chart, the information in Columns A-D was copied directly from the
3 aforementioned web-page and relates to internal administrative, adjudicative
4 proceedings that were updated at the Federal Trade Commission between January 1,
5 2015 through the present. Based on my review of the dockets in connection with each
6 such proceeding, I added the information in Columns E, F and G in the chart, indicating,
7 respectively, (a) whether the administrative law judge (ALJ) made a finding of liability
8 against respondent(s), (b) whether the Commission (in response to an appeal from the
9 ALJ’s Initial Decision, or in response to a motion for summary disposition made by the
10 parties) made a finding of liability against respondent(s), and (c) whether the proceeding
11 therefore resulted in a “win” (i.e., a finding of liability) or “loss” (i.e., no finding of
12 liability) for the Commission.
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17 5. I declare under penalty of perjury under the laws of the United States that
18 the foregoing is true and correct.

19 EXECUTED this 9th day of January, 2020 at Washington D.C.

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25 Antony P. Kim
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Exhibit A

EXHIBIT A**Federal Trade Commission Adjudicative Proceedings Updated as of January 1, 2015**Source: FTC Website, at <https://www.ftc.gov/enforcement/cases-proceedings/adjudicative-proceedings>Includes proceedings in which Part 3 Complaint was filed; *excludes* cases filed exclusively in Federal Court

	A	B	C	D	E	F	G
	TITLE ¹	DOCKET NUMBER	STATUS	UPDATED	ALJ Liability Decision	Commission Liability Decision	Commission WIN or LOSS
1.	Axon/VieVu, In the Matter of (Administrative)	9389	Pending	January 8, 2020	Case Pending	Case Pending	N/A
2.	Post Holdings, Inc.; In the Matter of (Administrative)	D-9388	Pending	January 6, 2020	Case Pending	Case Pending	N/A
3.	Illumina Inc./Pacific Biosciences of California, Inc., In the Matter of (Administrative)	D-9387	Pending	January 6, 2020	Party Abandoned Merger	Party Abandoned Merger	N/A
4.	RagingWire Data Centers, Inc., In the Matter of (Administrative)	9386		January 6, 2020	Case Pending	Case Pending	N/A
5.	Evonik/PeroxyChem, In the Matter of (Administrative)	9384		January 2, 2020	Case Pending	Case Pending	N/A
6.	Cambridge Analytica, LLC, In the Matter of (Administrative)	9383		December 18, 2019	Case Settled	Case Settled	N/A

¹ Columns A-D were copied directly from the FTC Website, at: <https://www.ftc.gov/enforcement/cases-proceedings/adjudicative-proceedings> (as of January 9, 2020 at 12:00 pm Eastern)

	A	B	C	D	E	F	G
	TITLE ¹	DOCKET NUMBER	STATUS	UPDATED	ALJ Liability Decision	Commission Liability Decision	Commission WIN or LOSS
7.	Benco/Schein/Patterson, In the Matter of (Administrative)	9379	Pending	November 8, 2019	Liability (2 out of 3 defendants)	No Appeal	WIN
8.	Otto Bock HealthCare North America, Inc., In the Matter of (Administrative)	9378	Pending	November 6, 2019	Liability	Liability (Upheld ALJ)	WIN
9.	1-800 Contacts, Inc, In the Matter of (Administrative)	9372		October 8, 2019	Liability	Liability (Upheld ALJ)	WIN
10.	Fidelity National Financial/Stewart Information Services, In the Matter of (Administrative)	9385	Closed	September 25, 2019	Party Abandoned Merger	Party Abandoned Merger	N/A
11.	Louisiana Real Estate Appraisers Board, In the Matter of (Administrative)	9374	Pending	August 15, 2019	Case Pending	Case Pending	N/A
12.	Impax Laboratories, Inc., In the Matter of (Administrative)	9373	Pending	August 2, 2019	No Liability	Liability (Reversed ALJ)	WIN
13.	Sanford Health/Sanford Bismarck/Mid Dakota Clinic, In the Matter of (Administrative)	9376	Closed	July 9, 2019	Party Abandoned Merger	Party Abandoned Merger	N/A
14.	Tronox/Cristal USA, In the Matter of (Administrative)	9377	Pending	May 29, 2019	Liability	Case Settled (Divestiture Ordered)	N/A
15.	Chicago Bridge & Iron Company N.V., ...In the Matter of (Administrative)	9300		May 11, 2019	Liability	Case Settled (Divestiture Ordered)	N/A
16.	Monier Lifetile LLC, Boral Ltd., and Lafarge S.A, In the Matter of (Administrative)	9290		February 5, 2019	Case Settled (Divestiture Ordered)	Case Settled (Divestiture Ordered)	N/A

	A	B	C	D	E	F	G
	TITLE ¹	DOCKET NUMBER	STATUS	UPDATED	ALJ Liability Decision	Commission Liability Decision	Commission WIN or LOSS
17.	Wilhelm Wilhelmsen/Drew Marine, In the Matter of (Administrative)	9380		August 1, 2018	Party Abandoned Merger	Party Abandoned Merger	N/A
18.	CDK Global and Auto/Mate, In the Matter of (Administrative)	9382		March 26, 2018	Party Abandoned Merger	Party Abandoned Merger	N/A
19.	J.M. Smucker/Conagra, In the Matter of (Administrative)	9381		March 8, 2018	Party Abandoned Merger	Party Abandoned Merger	N/A
20.	Jerk, LLC, d/b/a Jerk.com, In the Matter of (Administrative)	9361		January 8, 2018	N/A	Liability (Summary Decision)	WIN
21.	ProMedica Health System, Inc., a corporation, In the Matter of (Administrative)	9346		October 16, 2017	Liability	Liability (Upheld ALJ)	WIN
22.	DraftKings, Inc. / FanDuel Limited, In the Matter of (Administrative)	9375		July 14, 2017	Party Abandoned Merger	Party Abandoned Merger	N/A
23.	Advocate Health Care Network, NorthShore University HealthSystem, In the Matter of (Administrative)	9369		March 20, 2017	Party Abandoned Merger	Party Abandoned Merger	N/A
24.	ECM BioFilms, Inc., also d/b/a Enviroplastics International, In the Matter of (Administrative)	9358		March 16, 2017	Liability	Liability (Upheld ALJ)	WIN
25.	California Naturel, In the Matter of (Administrative)	9370		December 12, 2016	N/A	Liability (Summary Decision)	WIN
26.	The Penn State Hershey Medical Center/PinnacleHealth System, In the Matter of (Administrative)	9368		October 23, 2016	Party Abandoned Merger	Party Abandoned Merger	N/A
27.	LabMD, Inc., In the Matter of (Administrative)	9357		September 29, 2016	No Liability	Liability (Reversed ALJ)	WIN

	A	B	C	D	E	F	G
	TITLE ¹	DOCKET NUMBER	STATUS	UPDATED	ALJ Liability Decision	Commission Liability Decision	Commission WIN or LOSS
28.	Superior/Canexus, In the Matter of (Administrative)	9371		August 3, 2016	Party Abandoned Merger	Party Abandoned Merger	N/A
29.	Cabell Huntington Hospital/St. Mary's Medical Center, In the Matter of (Administrative)	9366		July 6, 2016	N/A	N/A (Case dismissed due to new state law in West Virginia on "cooperative agreements")	N/A
30.	Staples/Office Depot, In the Matter of (Administrative)	9367		May 19, 2016	Party Abandoned Merger	Party Abandoned Merger	N/A
31.	Steris/Synergy Health, In the Matter of (Administrative)	9365		October 7, 2015	N/A	N/A (Case dismissed after losing PI Motion in federal court)	N/A
32.	Sysco/USF Holding/US Foods, In the Matter of (Administrative)	9364		June 29, 2015	Party Abandoned Merger	Party Abandoned Merger	N/A
33.	McWane, Inc., and Star Pipe Products, Ltd., In the Matter of (Administrative)	9351		April 17, 2015	Liability In ALJ's Initial Decision on May 9, 2013, held that evidence did not support complaint counsel's charges that McWane illegally conspired with Sigma and Star to raise and stabilize fittings prices. Based on these findings, he dismissed the first three counts in the seven-count FTC complaint. But ALJ ruled that the evidence did support other four counts in the administrative complaint, and his Initial Decision would have required McWane to stop engaging in the conduct outlined in those counts.	Liability (Upheld and Reversed ALJ, in part) Commission affirmed, in part, a May 2013 Initial Decision by the ALJ, finding McWane unlawfully maintained a monopoly in the domestic "fittings" product market. The Commission dismissed the remaining counts. Dismissed Counts 1 and 2 in the public interest, because no majority position was reached (Ramirez/Brill were deadlocked with Ohlhausen/Wright). Count 3, which the ALJ dismissed, was not appealed by complaint counsel. Commission reversed ALJ's finding of liability on Count 4; and dismissed Counts 5 and 7 after determining it was not necessary to address merits, based on other findings.	WIN
34.	Phoebe Putney Health System, Inc., ...In the Matter of (Administrative)	9348		March 31, 2015	Case Settled	Case Settled	N/A

	A	B	C	D	E	F	G
	TITLE ¹	DOCKET NUMBER	STATUS	UPDATED	ALJ Liability Decision	Commission Liability Decision	Commission WIN or LOSS
35.	Graco Inc., Illinois Tool Works Inc., and ITW Finishing LLC, In the Matter of (Administrative)	9350		March 25, 2015	Case Settled	Case Settled	N/A
36.	AmeriGas and Blue Rhino, In the Matter of (Administrative)	9360		January 9, 2015	Case Settled	Case Settled	N/A