

The Federal Trade Commission's Enforcement Authority and Consumer Protection Priorities Under the Second Trump Administration



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FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

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FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority

Revised, May 2021

This memo focuses on law enforcement by the Federal Trade Commission ("Commission" or "FTC"). Appendices A and B are charts that synopsise antitrust and consumer protection powers under the FTC, Clayton, and Sherman Acts. Summaries of Commission enforcement authority under other statutes are available on [this site](#), including links to statutes discussed below.

I. Investigative Authority

A. In General

The Commission may "prosecute any inquiry necessary to its duties in any part of the United States," FTC Act Sec. 3, 15 U.S.C. Sec. 43, and is authorized "to gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce, excepting banks, savings and loan institutions . . . Federal credit unions . . . and common carriers . . ." FTC Act Sec. 6(a), 15 U.S.C. Sec. 46(a).⁽¹⁾ Pre-complaint investigations are generally non-public. However, Commission policies may allow identification of investigations where the Commission determines the public interest warrants it or a merging party or target has disclosed the existence of the investigation.⁽²⁾

B. Specific Investigative Powers

The Commission's specific investigative powers are defined in Sections 6, 9, and 20 of the FTC Act, 15 U.S.C. Secs. 46, 49, and 57b-1, which authorize investigations and various forms of compulsory process. In addition, the premerger notification provisions in Section 7A of the Clayton Act, 15 U.S.C. Sec. 18a, prohibit consummation of covered acquisitions until the parties provide the Commission with the requested information.

1. Sections 9 and 20 of the FTC Act

Section 9 of the FTC Act authorizes the Commission to "require by **subpoena** the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation." 15 U.S.C. Sec. 49. Any member of the Commission may sign a subpoena (pursuant to a Commission-issued resolution for compulsory process in the matter), and both members and "examiners" (employees) of the agency may administer oaths, examine witnesses, and receive evidence. *Id.*; Commission Rule 2.5, 16 C.F.R. Sec. 2.5.

If a party fails to comply with a subpoena, the Commission may seek enforcement of the subpoena in "[a]ny of the district courts of the United States within the jurisdiction of which such inquiry is carried on." 15 U.S.C. Sec. 49. After the Commission files its petition to enforce a subpoena, and following receipt of any response from the subpoena recipient, the court may enter an order requiring compliance. Refusal to comply with a court enforcement order is subject to penalties for contempt of court.

The Bureau of Competition routinely uses the subpoena provisions of Section 9 to investigate alleged unfair methods of competition and other antitrust violations. By virtue of the FTC Act Amendments of 1994, the Bureau of Competition also may use "civil investigative demands" ("CIDs") for investigations of possible antitrust violations. However, the Bureau of Consumer Protection may use only CIDs, rather than subpoenas, to investigate possible "unfair or deceptive acts or practices." FTC Act Sec. 20, 15 U.S.C. Sec. 57b-1. The scope of a CID is different from that of a subpoena. Both subpoenas and CIDs may be used to obtain existing documents or oral testimony. But a CID may also require that the recipient "file written reports or answers to questions." 15 U.S.C. Sec. 57b-1(c)(1). In addition, Section 20 expressly authorizes the issuance of CIDs requiring the production of tangible things and provides for service of CIDs upon entities not found within the territorial jurisdiction of any court of the United States. 15 U.S.C. Sec. 57b-1(c)(7)(B).

Under Commission Rule 2.10, 16 C.F.R. Sec. 2.10, a party may raise objections to a subpoena or a CID by filing a **petition to limit or quash**. Such petitions will be resolved by the full Commission. The

Commission may petition a federal district court to enforce the subpoena or CID in the event of noncompliance, although permissible venue is narrower in a CID enforcement action than in a subpoena enforcement case.

2. Section 6(b) of the FTC Act

Section 6 of the FTC Act provides another investigative tool. Section 6(b) empowers the Commission to require an entity to file “annual or special . . . reports or answers in writing to specific questions” to provide information about the entity’s “organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals.” 15 U.S.C. Sec. 46(b). As with subpoenas and CIDs, the recipient of a 6(b) order may file a petition to limit or quash, and the Commission may seek a court order requiring compliance. If a party fails to comply with a 6(b) order after receiving a notice of default from the Commission, the Commission may commence suit in federal court under Section 10 of the FTC Act, 15 U.S.C. Sec. 50. After expiration of a thirty-day grace period, a defaulting party is liable for a penalty for each day of noncompliance. *Id.*; Commission Rule 1.98(f), 16 C.F.R. Sec. 1.98(f).

The Commission’s 6(b) authority also enables it to conduct wide-ranging studies that do not have a specific law enforcement purpose. Section 6(f) authorizes the Commission to “make public from time to time” portions of the information that it obtains, where disclosure would serve the public interest. 15 U.S.C. Sec. 46(f). An example is the Commission’s October 2016 report on [“Patent Assertion Entity Activity”](#).

3. Section 6(f) and Section 21 of the FTC Act

Section 6(f) also authorizes the agency to share confidential information with other appropriate enforcement agencies, subject to appropriate limitations and confidentiality assurances. This allows the FTC and other law enforcers to cooperate and minimize duplication in investigations.

Section 21, 15 U.S.C. Sec. 57b-2, establishes the conditions and procedures for confidential treatment of various types of materials and information obtained by the Commission.

4. Section 21b of the FTC Act

Section 21B, 15 U.S.C. Sec. 57b-2b, protects certain entities (for example, internet service providers and consumer reporting agencies) from liability for voluntary disclosures to the Commission about

suspected fraud or deception, about recovery of assets for consumer redress or about consumer complaints sent to them.

5. Premerger Notification

In merger investigations, the Commission also relies on Section 7A of the Clayton Act, 15 U.S.C. Sec. 18a, which was added by the Hart-Scott-Rodino Act of 1976. Under Section 7A, parties to covered mergers or acquisitions must notify the FTC and the Department of Justice before consummating the proposed acquisition and wait a specified number of days before consummation. In general, certain proposed acquisitions of voting securities, non-corporate interests or assets must be reported to the FTC and the Department of Justice prior to consummation. Whether a particular acquisition is subject to the Section 7A requirements depends upon the value of the acquisition and the size of the parties, as measured by their sales and assets. Should the Commission or the Department of Justice decide that further examination is warranted, it may seek additional information or documentary materials by issuing a "second request" to the parties. When such a request is issued, the waiting period is extended and the subject transaction may not be consummated until the conclusion of a specified period following the parties' compliance with the request. Although parties are not obligated to comply with a second request, consummation of the transaction without complying is illegal. Thus, the premerger notification provisions of the Clayton Act are a powerful incentive for companies to submit information that the government needs to evaluate acquisitions. Should the parties consummate the transaction without observing the requirements of the Clayton Act, the Commission may seek both injunctive relief and civil penalties, as appropriate, under Section 7A(g) of the Clayton Act. The Commission may also grant an early termination of a waiting period. More information about premerger notification (including [Notices of early termination](#)) is available [here](#).

6. Pharmaceutical Agreement Filings

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 requires that brand name drug manufacturers and generic drug applicants file certain agreements with the Federal Trade Commission and the Department of Justice within 10 business days of execution of the agreement and imposes penalties for noncompliance. Under the Patient Right to Know Drug Prices Act of 2018, certain agreements involving biosimilar biological drugs must be filed in the same way. Information about what types of agreements must be filed, filing deadlines, and where to file, is set forth [here](#). Unlike the merger review process under the Hart-Scott-Rodino Act, there is no prescribed timetable for the FTC's review. The FTC neither approves nor denies approval to the filed agreements.

7. International Investigations

Under the International Antitrust Enforcement Assistance Act (“IAEAA”), 15 U.S.C. Secs. 6201 *et seq.*, the FTC may invoke all of its investigative tools to obtain materials or information from domestic sources for the use of foreign antitrust authorities, and may seek investigative assistance from those authorities, for antitrust matters, pursuant to mutual or bilateral assistance agreements established under the IAEAA. FTC Act Sections 6(i) and 20(a)(8)(C), 15 U.S.C. Secs. 46(i) and 57b-1(a)(8)(C), incorporate the IAEAA investigative authority into the FTC Act.

The “Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006” (the “U.S. SAFE WEB Act of 2006” or “Safe Web”) (Pub. L. No. 109-455, extended by Pub. L. 112–203) added subsection (j) to Section 6, allowing the Commission to use all of its investigative powers to conduct investigations and discovery to help foreign law enforcement agencies in appropriate consumer protection matters. Section 6(j)(4), 15 U.S.C. Sec. 46(j)(4), authorizes the Commission, with the approval of the Secretary of State, to negotiate and conclude international agreements in the name of the United States or the Commission if foreign law requires an agreement as a condition for reciprocal assistance or information sharing. Safe Web amended Sections 6(f) and 21(b), 15 U.S.C. Secs. 46(f) and 57b-2(b), to authorize disclosure of confidential materials or information to foreign law enforcement agencies in consumer protection matters, subject to appropriate confidentiality constraints.


II. ENFORCEMENT AUTHORITY

Following an investigation, the Commission may initiate an enforcement action using either an administrative or judicial process if it has “**reason to believe**” that the law is being or has been violated. The Commission enforces both consumer protection and antitrust laws. Violations of some laws may result in civil penalties, which are adjusted annually for inflation. Commission Rule 1.98, 16 C.F.R. Sec. 1.98.

1. Consumer Protection

Section 5(a) of the FTC Act provides that “**unfair or deceptive acts or practices** in or affecting commerce . . . are . . . declared unlawful.” 15 U.S.C. Sec. 45(a)(1). Safe Web clarified that “unfair or deceptive acts or practices” in Section 5(a) include such acts or practices involving foreign

commerce that cause or are likely to cause reasonably foreseeable injury within the United States or involve material conduct occurring within the United States. 15 U.S.C. Sec. 45(a)(4)(A).

“Deceptive” practices are defined in the Commission’s [Policy Statement on Deception](#)  as involving a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances. An act or practice is “unfair” if it “causes or is likely to cause **substantial injury** to consumers which is **not reasonably avoidable** by consumers themselves and **not outweighed by countervailing benefits** to consumers or to competition.” 15 U.S.C. Sec. 45(n).

In addition, the Commission enforces a variety of other consumer protection statutes that prohibit specifically defined practices. These statutes generally specify that violations are to be treated as if they were “unfair or deceptive” acts or practices under Section 5(a); many also provide that violations are to be treated as if they were violations of a trade regulation rule issued under Section 18 of the FTC Act (and thus subject to civil penalties). Summaries of the statutes giving the Commission enforcement powers are available on [this site](#).

2. Competition

The Commission enforces various antitrust laws through its Bureau of Competition. The two most significant statutory provisions are Section 5(a) of the FTC Act and the Clayton Act. Section 5(a) of the FTC Act, 15 U.S.C. Sec. 45(a), prohibits, *inter alia*, “unfair methods of competition.” **Unfair methods of competition** include any conduct that would violate the Sherman Antitrust Act or the Clayton Act. Among other things, the Clayton Act prohibits corporate **acquisitions that may substantially lessen competition** (Section 7, 15 U.S.C. Sec. 18) and also bars certain forms of price discrimination (Section 2 of the Robinson Patman Act, 15 U.S.C. Secs. 13-13b).

A. Administrative Enforcement of Consumer Protection and Competition Laws

In the administrative process, the Commission determines in an adjudicative proceeding whether a practice violates the law. Under Section 5(b) of the FTC Act, the Commission may challenge “unfair or deceptive act[s] or practice[s],” “unfair methods of competition,” or violations of other laws enforced through the FTC Act, by instituting an administrative adjudication. When the Commission has “**reason to believe**” that a law violation has occurred, the Commission may issue a complaint setting forth its charges. If the respondent elects to settle the charges, it may sign a consent agreement (without admitting liability), consent to entry of a final order, and waive all right to judicial review. If the Commission accepts the proposed consent agreement, it places the order on the record for thirty

days of public comment (or for such other period as the Commission may specify) before determining whether to make the order final.

For violations of the Clayton Act, Section 11 of the Clayton Act, 15 U.S.C. Sec. 21, parallels Section 5(b) of the FTC Act in authorizing administrative adjudication.

1. Administrative Adjudication

If the respondent elects to contest the charges, the complaint is adjudicated before an administrative law judge ("ALJ") in a trial-type proceeding conducted under the Commission's [Rules of Practice](#). The prosecution of a matter is conducted by FTC "complaint counsel," who are staff from the relevant bureau or a regional office. Upon conclusion of the hearing, the ALJ issues an "initial decision" setting forth his or her findings of fact and conclusions of law, and recommending either entry of an order to cease and desist or dismissal of the complaint. Either complaint counsel or respondent, or both, may appeal the initial decision to the full Commission. In limited cases, including certain merger cases, the Commission's rules provide that the appeal is automatic.

Upon appeal of an initial decision, the Commission receives briefs, holds oral argument, and thereafter issues its own final decision and order. The Commission's final decision is appealable by any respondent against which an order is issued. The respondent may file a petition for review with any United States court of appeals within whose jurisdiction the respondent resides or carries on business or where the challenged practice was used. FTC Act Section 5(c), 15 U.S.C. Sec. 45(c). If the court of appeals affirms the Commission's order, the court enters its own order of enforcement. The party losing in the court of appeals may seek review by the Supreme Court. Commission decisions and orders are available on [this site](#).

2. Enforcing Final Commission Orders

A Commission order (except an order to divest assets) generally becomes final (i.e., binding on the respondent) 60 days after it is served, unless the order is stayed by the Commission or by a reviewing court. Divestiture orders become final after all judicial review is complete (or if no review is sought, after the time for seeking review has expired). If a respondent violates a final order, it is liable for a civil penalty for each violation. FTC Act Section 5(l), 15 U.S.C. Sec. 45(l). The penalty is assessed by a federal district court in a suit brought to enforce the Commission's order. The court may also issue "mandatory injunctions" and "such other and further equitable relief" as is deemed appropriate.

3. Redress After an Administrative Order is Entered

In addition (after all judicial review of its order is complete), the Commission may seek consumer redress from the respondent in federal district court for consumer injury caused by the conduct that was at issue in the administrative proceeding. In such a suit, which lies under Section 19 of the FTC Act, 15 U.S.C. Sec. 57b, the Commission must demonstrate that “a reasonable man would have known under the circumstances [that the conduct] was dishonest or fraudulent.”

4. Civil Penalty Enforcement Against Non-Respondents in Consumer Protection Matters

Where the Commission has determined in a litigated administrative adjudicatory proceeding that a practice is unfair or deceptive and has issued a final cease and desist order, the Commission may obtain civil penalties from non-respondents who thereafter violate the standards articulated by the Commission. To accomplish this, the Commission must show that the violator had “actual knowledge that such act or practice is unfair or deceptive and is unlawful” under Section 5(a)(1) of the FTC Act. FTC Act Section 5(m)(1)(B), 15 U.S.C. Sec. 45(m)(1)(B). To prove “actual knowledge,” the Commission typically shows that it provided the violator with a copy of the Commission determination about the act or practice in question, or a “synopsis” of that determination.

B. Judicial Enforcement

Even where the Commission determines through adjudication that a practice violates consumer protection or competition law, the Commission must still seek the aid of a court to obtain civil penalties or consumer redress for violations of its orders to cease and desist or trade regulation rules (discussed below). In this section, we discuss the Commission’s ability to challenge a practice directly in court, without first making a final agency determination that the challenged conduct is unlawful.

Section 13(b) of the FTC Act, 15 U.S.C. Sec. 53(b), authorizes the Commission to seek preliminary and permanent injunctions to remedy “any provision of law enforced by the Federal Trade Commission.” Whenever the Commission has “reason to believe” that any party “is violating, or is about to violate” a provision of law enforced by the Commission, the Commission may ask the district court to enjoin the allegedly unlawful conduct, pending completion of an FTC administrative proceeding to determine whether the conduct is unlawful. Further, “in proper cases,” the Commission may seek, and the court may grant, a permanent injunction.

In the competition context, the Commission has used Section 13(b) primarily to obtain preliminary injunctive relief against corporate mergers or acquisitions pending completion of an FTC

administrative proceeding. In addition, in some circumstances, the Commission may obtain permanent injunctive relief.

III. Rulemaking Authority

The Commission may use rulemaking to address unfair or deceptive practices or unfair methods of competition that occur commonly, in lieu of relying solely on actions against individual respondents.

The Commission's rulemaking authority comes from Section 6(g) of the FTC Act, 15 U.S.C. Sec. 46, which authorizes the Commission "to make rules and regulations for the purpose of carrying out the provisions of this subchapter." See *Nat'l Petroleum Refiners Ass'n v. FTC*, 482 F.2d 672, 693 (D.C. Cir. 1973), cert. denied, 415 U.S. 951 (1974) (Commission has authority to require octane labels on gasoline pumps). In 1975, Section 18 of the FTC Act, 15 U.S.C. Sec. 57a, became the Commission's exclusive authority for issuing rules with respect to unfair or deceptive acts or practices under the FTC Act; Section 6(g) continues to authorize rules concerning unfair methods of competition.

Under Section 18 of the FTC Act, 15 U.S.C. Sec. 57a, the Commission is authorized to prescribe "rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce" within the meaning of Section 5(a)(1) of the Act. These rules are known as "trade regulation rules." Among other things, the statute requires that Commission rulemaking proceedings provide an opportunity for informal hearings at which interested parties are accorded limited rights of cross-examination. Before commencing a rulemaking proceeding, the Commission must have reason to believe that the practices to be addressed by the rulemaking are "prevalent." 15 U.S.C. Sec. 57a(b)(3).

Once the Commission has promulgated a trade regulation rule, anyone who violates the rule "with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule" is liable for civil penalties for each violation.⁽³⁾ The Commission obtains such penalties by filing a suit in federal district court under Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. Sec. 45(m)(1)(A). In addition, any person who violates a rule (irrespective of the state of knowledge) is liable for injury caused to consumers by the rule violation. The Commission may pursue such recovery in a suit for consumer redress under Section 19 of the FTC Act, 15 U.S.C. Sec. 57b.

These procedures apply only to rules with respect to unfair or deceptive acts or practices promulgated under authority of the FTC Act. In addition, various other statutes authorize Commission rulemaking; such rulemaking is typically promulgated in accordance with section 553 of title 5, United States Code. These statutes generally provide that a violation is treated as a violation of the FTC Act, and often provide that a violation is treated as a violation of a trade regulation rule promulgated under FTC Act Section 18. Section 22 of the FTC Act, 15 U.S.C. Sec. 57b-3, contains procedural requirements that apply to the Commission's rules. All Commission rules are published in [Title 16 of the Code of Federal Regulations](#).

Endnotes

[1.](#) "Corporation" is defined to include any company, trust or association, incorporated or unincorporated, "which is organized to carry on business for its own profit or that of its members." FTC Act Sec. 4, 15 U.S.C. Sec. 44.

[2.](#) The existence of an FTC investigation is ordinarily nonpublic information. Pursuant to Commission policy, however, the existence of a non-merger investigation may be disclosed publicly if the Office of Public Affairs ("OPA") determines that a target has disclosed, in either a press release or a public filing with another governmental body, that it is the subject of an investigation. 63 Fed. Reg. 63477 (Nov. 13, 1998). The existence of a merger investigation may be disclosed if OPA determines that a party to the underlying transaction has disclosed the existence of the transaction in either a press release or a public filing with another governmental body. 62 Fed. Reg. 18630 (Apr. 16, 1997). Staff must get OPA authorization for any disclosure to be made under this authority. Nothing in this policy affects the authority of the Commission to make appropriate disclosures concerning the existence of a nonpublic investigation whenever it determines that doing so would be in the public interest. *Id.* In this circumstance, staff must obtain Commission authorization to make the disclosure.

[3.](#) For the current applicable civil penalty maximum, see Commission Rule 1.98(d), 16 C.F.R. Sec. 1.98(d).

APPENDIX A

SYNOPSIS OF ANTITRUST ENFORCEMENT AUTHORITY UNDER THE FTC, CLAYTON, AND SHERMAN ACTS

Statute	Federal Trade Commission	Department of Justice	State Enforcement Authorities	Private Parties
FEDERAL TRADE COMMISSION ACT (15 U.S.C. §41 <i>et seq.</i>)				
<i>Cease and Desist</i>	administrative cease and desist authority [§5(b) FTCA]			
<i>Injunctive (and Other Equitable) Relief</i>	judicially ordered injunctive relief [§13(b) FTCA; also §5(l) FTCA (for violations of cease and orders)]			
<i>Redress</i>	judicially ordered redress [§19 FTCA]			
<i>Rulemaking</i>	[§6(g) FTCA]			
<i>Civil Penalties</i>	judicially ordered civil penalties for violating cease and desist orders [§5(l) FTCA; Commission Rule 1.98(c)]			
<i>Criminal Penalties</i>	referral to U.S. Department of Justice [§16(b) FTCA]			
CLAYTON ACT (15 U.S.C. § 12 <i>et seq.</i>)				
<i>Cease and Desist</i>	administrative cease and desist authority [§11(b) Clayton Act]			
<i>Injunctive (and Other Equitable) Relief</i>	judicially ordered injunctive relief [§13(b) FTCA; also §7A(g)(2) Clayton Act (for HSR reporting violations)]	judicially ordered injunctive relief [§15 Clayton Act; also §7A(g)(2) Clayton Act (for	may apply to the courts as <i>parens patriae</i> for injunctive relief [§16 Clayton Act]	may apply to the courts for injunctive relief [§16


Statute	Federal Trade Commission	Department of Justice	State Enforcement Authorities	Private Parties
	and §11(l) Clayton Act (for violations of cease and desist orders)]	HSR reporting violations)]		Clayton Act]
Damages		may recover for injuries sustained by the United States Government (treble damages) [§4A Clayton Act]	may apply for treble damages as <i>parens patriae</i> [§4C Clayton Act]	may apply for treble damages [§4 Clayton Act]
Civil Penalties	judicially ordered civil penalties for violating cease and desist orders [§11(l) Clayton Act and Commission Rule 1.98(b); also §7A(g)(1) Clayton Act (for HSR reporting violations) and Commission Rule 1.98(a)]	judicially ordered civil penalties [§7A(g)(1) Clayton Act (for HSR reporting violations) and Commission Rule 1.98(a)]		
Criminal Fines		officer liability for corporate violation of penal provisions [§14 Clayton Act]		
SHERMAN ANTITRUST ACT (15 U.S.C. §1 <i>et seq.</i>)				
Prosecution			prosecution [§§ 1 & 2 Sherman Act]	
Injunctive (and Other Equitable) Relief		judicially ordered injunctive relief [§4 Sherman Act]	may apply to the courts for injunctive relief [§16 Clayton Act]	may apply to the courts for injunctive relief [§16

Statute	Federal Trade Commission	Department of Justice	State Enforcement Authorities	Private Parties
				Clayton Act]
<i>Damages</i>		may recover for injuries sustained by the United States Government (treble damages) [§4A Clayton Act]	may apply for treble damages as <i>parens patriae</i> [§4C Clayton Act]	may apply for treble damages [§4 Clayton Act]
<i>Criminal Penalties</i>		combinations [§1 Sherman Act] monopolization [§2 Sherman Act]		
<i>Miscellaneous</i>		forfeiture [§6 Sherman Act]		

APPENDIX B

SYNOPSIS OF CONSUMER PROTECTION ENFORCEMENT AUTHORITY UNDER THE FEDERAL TRADE COMMISSION ACT

Statute	Federal Trade Commission	Department of Justice	State Enforcement Authorities	Private Parties
FEDERAL TRADE COMMISSION ACT (15 U.S.C. §41 <i>et seq.</i>)				
<i>Cease and Desist</i>	administrative cease and desist authority [§5(b) FTCA]			
<i>Prosecution</i>		prosecution for violations of §12(a) FTCA [§14 FTCA]		
<i>Injunctive (and Other Equitable) Relief</i>	judicially ordered injunctive relief [§13(b) FTCA; also §13(a) FTCA (for violations of §12(a) FTCA) and §5(l) FTCA (for violations of cease and desist orders)]			
<i>Rulemaking</i>	[§18 FTCA]			
<i>Redress</i>	judicially ordered redress also for rule violations [§19(a)(1) FTCA] and for "fraudulent or dishonest" conduct [§19(a)(2) FTCA]			
<i>Civil Penalties</i>	judicially ordered civil penalties for violating cease and desist orders [§5(l) FTCA and Commission Rule 1.98(c); also §5(m)(1)(A) FTCA (for violations of trade regulation rules) and Commission Rule 1.98(d); also §5(m)(1)(B) FTCA (for violations of adjudicatory cease and desist orders by non-parties) and Commission Rule 1.98(e)]			
<i>Criminal Penalties</i>	referral to U.S. Department of Justice [§16(b) FTCA]			



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About FTC Warning Letters

Eliminating false or misleading information from the marketplace is a key objective of the FTC, and one of the most effective ways the agency does that is by sending warning letters to companies that may be violating [the FTC Act](#).

The purpose of FTC warning letters is to warn companies that their conduct is likely unlawful and that they can face serious legal consequences, such as a federal lawsuit, if they do not immediately stop. Overwhelmingly, companies that receive FTC warning letters take steps quickly to correct [problematic advertising or marketing language](#) and come into compliance with the law. In many cases, warning letters are the most rapid and effective means to address the problem.

For example, the FTC sent [warning letters to a range of companies about potentially false or misleading advertising or marketing related to the coronavirus pandemic](#). The FTC is aware that scammers follow the headlines and try to take advantage of consumers' fears and concerns, whether they are about their health, their jobs, their finances, or anything else important to them and their families.

Some things to keep in mind about FTC warning letters:

- When FTC warning letters are sent to companies, their purpose is to warn of possible law violations. Warning letters are not formal enforcement actions, and they may or may not be followed by [FTC legal action](#). The letters typically include an explanation of why the company is receiving the letter and examples of problematic advertising or marketing language. They require the recipients to correct the problem immediately and contact the FTC within several days to confirm that they have made the required changes.
- The FTC may send warning letters unilaterally or jointly with other enforcement agencies. For example, the FTC joined the FDA in sending [letters to the marketers of products and treatments falsely claiming they could either treat or cure COVID-19](#). The FTC also joined the FCC in sending [warning letters to VoIP service providers](#) about facilitating illegal robocalls. The Commission also issued its own [warning](#)

[letters to MLM marketers regarding false COVID-19 treatment or cure claims](#) and earnings claims made by the marketers and their participants.




Finally, while FTC or joint agency warning letters may be public, recipients' responses to them usually are not. After sending the letters, the FTC will not comment on whether a company or individual has received them, whether they have contacted the Commission within the amount of time required, or what they told the agency about their planned response.



FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

Business Blog

So You Received a CID: FAQs for Small Businesses

By: Thomas B. Pahl, Acting Director, FTC Bureau of Consumer Protection | January 19, 2018 |   

So you've received a Civil Investigative Demand (CID) from the Federal Trade Commission related to a consumer protection matter. Now what? We appreciate that it can be daunting for any company – especially a small business – and we want to be as transparent as possible about the process.

Here are questions we've heard from businesses that have received CIDs and answers we hope shed some light on our procedures. (By the way, these FAQs apply to CIDs about FTC *consumer protection* investigations. The process may be different for FTC competition matters, which relate to antitrust laws.)

What is the Federal Trade Commission? [The FTC](#) is the nation's consumer protection agency. Our mission is to promote competition and protect consumers from deceptive or unfair practices, to educate consumers and provide guidance for businesses, and to accomplish those goals in an efficient, effective way. FTC headquarters is in Washington, D.C., and we have seven regional offices across the country.

What is the Bureau of Consumer Protection? The Bureau of Consumer Protection (BCP) is the office within the FTC responsible for consumer protection matters.

What a Civil Investigative Demand? A CID is a kind of subpoena – a legal document enforceable in court that seeks documents or other information related to an FTC investigation. The FTC sends CIDs to get information from companies it thinks may have violated the law. The FTC also sometimes sends CIDs to obtain information from others who are not the subjects of investigation, but who may have information related to the subjects of ongoing investigations.

What's the first thing we should do if we get a CID? It's up to you whether to consult an attorney. You or your attorney should immediately call or email the FTC attorney identified in the CID to arrange what we call a "meet and confer" – an initial meeting to set the schedule for responding to the CID and to address preliminary issues. The "meet and confer" must take place no more than 14 days after you receive the CID. We can meet in person or by phone, whichever you prefer.

Since we've received a CID, does this mean the FTC is suing us? No. First, as discussed above, some who receive CIDs are not the subjects of FTC investigation, but instead are third parties who have documents or other information that relate to others who are subjects of FTC investigations. Second, even if you are the subject of an FTC investigation, a CID is the first step in an investigation. In some instances, once FTC staff has reviewed the documents a company provides in response to a CID, the agency will close the investigation without further action. In other instances, staff will approach the company about negotiating a possible legal settlement. If a company doesn't reach a settlement agreement, the Commission may decide to file a lawsuit. If you have any questions about the nature of the CID you received, you can ask FTC staff about it at the "meet and confer."

What law does the FTC think my company has violated? The CID identifies the subject matter of the investigation and describes the nature of the conduct the FTC staff is investigating. In addition, the CID cites the [Federal Trade Commission Act](#) or other laws or rules that may have been violated. (The FTC Act prohibits "unfair or deceptive acts or practices in or affecting commerce.")

What happens at the "meet and confer"? It's your opportunity to ask any questions you have about the CID or the FTC's procedures. We'll also discuss how to provide documents, including producing electronically stored information. (You must have someone at the "meet and confer" knowledgeable about your recordkeeping or your information management system.) The "meet and confer" is also the time to talk over any possible changes in how to comply with the CID that would reduce the cost or burden on your company while still providing us with the information we need. In addition, we can discuss the process for asserting a claim of legal protection – for example, if you believe that a document we've asked for is covered by the attorney-client privilege.

How can we learn more about the nature of the FTC's investigation? The first paragraph of the CID cover letter includes a description of the investigation. The nature of the investigation also is something we can talk about at the "meet and confer." At any point in the process, if you have questions, just ask the FTC attorney "Can you tell me more about what this is about?"

We don't understand some of the CID provisions and we're not sure why the FTC wants certain documents. What should we do? Again, just pick up the phone and ask "What is it you're looking

for?" Once we've had that conversation, it may be easier for FTC staff to tailor the document request to your circumstances. That also highlights why it's important to schedule the "meet and confer" as soon as possible. If we need to clarify something in the CID, it's best to do so early in the process.

What if we need more time? CIDs have deadlines that companies are expected to meet, so it's unwise to wait until the last minute to raise scheduling issues. Set up the "meet and confer" immediately and we can discuss deadlines then.

What will the FTC do with the documents we send? We'll use them to conduct our investigation and, if appropriate, in an FTC law enforcement action. We won't disclose them under the Freedom of Information Act. We won't tell consumers, competitors, private attorneys, or members of the press about our investigation, although we may share documents where necessary with our experts and potential witnesses. And unless we use the documents in an FTC action, we won't publicly disclose the documents – or even the existence of an investigation – without your consent, except in response to a request from Congress or a Congressional committee or subcommittee; a request from a law enforcement agency for official law enforcement purposes; or as required by law. If we do intend to use your documents in an FTC action, we'll let you know in advance in case you decide to seek an order from a court to protect the documents from public disclosure.

Once we send documents in response to the CID, what happens next? FTC staff will review the documents and get back to you as soon as possible. Please be aware that it takes time to evaluate thoroughly the documents you sent and other information related to the investigation. We owe it to you – and to the public – to study the matter carefully and thoughtfully. At any point, you're welcome to contact FTC staff for a status update. In addition, it's our practice to reach out to you no later than six months after you have completed your response to give you a status update and to get back to you periodically after that.

Our practice is to periodically get rid of documents, including emails. How does getting a CID affect that? After you receive a CID, you must stop any routine procedures that would destroy documents that could reasonably relate to the investigation and you must take steps to maintain documents that are relevant to this investigation, regardless of whether you believe the documents are protected from discovery by legal privilege or some other reason. After you've completed your response, you can discuss with the FTC attorney your document retention practices going forward.

Is there any significance to the fact that a CID tells me to contact someone in an FTC regional office? No. The staff at FTC regional offices does the same kind of work as the staff at FTC headquarters.

The CID refers to the FTC's Rules of Practice. Where can we find them? The FTC's Rules of Practice are published in the Code of Federal Regulations. Part 2 of the Rules, which deal with investigations and CIDs, is [available online](#).

We would prefer not to respond to the CID. The FTC can go to court to ask a judge to require that you turn over documents or information, but that's not our preferred way of doing business. Going to court to enforce a CID increases costs and causes delays for everyone involved. If there is a particular specification in the CID that causes you concern, let's talk it over at the "meet and confer." Maybe there's a way to reframe what we're asking for that would address your concern, but still allow us to get the information we need.

What if we don't intend to comply with the CID? According to the FTC Rules of Practice, within 20 days after you are served with the CID you may file a petition to limit or quash – in other words, you may ask that the CID be narrowed or withdrawn altogether. One of the FTC Commissioners will review your petition and will either: (1) grant the petition and limit or quash the CID, or (2) deny the petition. The procedure is explained in the FTC's Rules of Practice at [16 C.F.R. § 2.10](#). Because we want to resolve concerns as quickly and inexpensively for everyone as we can, the FTC won't consider a petition to limit or quash unless you've already discussed your concerns at the "meet and confer." If you plan to file a petition to limit or quash certain portions of the CID, you still must file a response to the other portions of the CID by the deadline. Petitions to limit or quash a CID – and the Commission decision – are public documents that will be placed on the FTC's public record.

Where can we learn more about FTC consumer protection law? The FTC's webpage, www.ftc.gov, includes links to statutes, cases, reports, workshops, etc. We also have a special website for businesses, www.business.ftc.gov, which features information about law enforcement actions and plain-language guidance on topics like truth in advertising, data security, telemarketing, debt collection, etc.

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Jack November 18, 2018

This is rubbish

John J December 07, 2020

This is welcomed consumer protection and evidence of the FTC doing their job. Thanks FTC!

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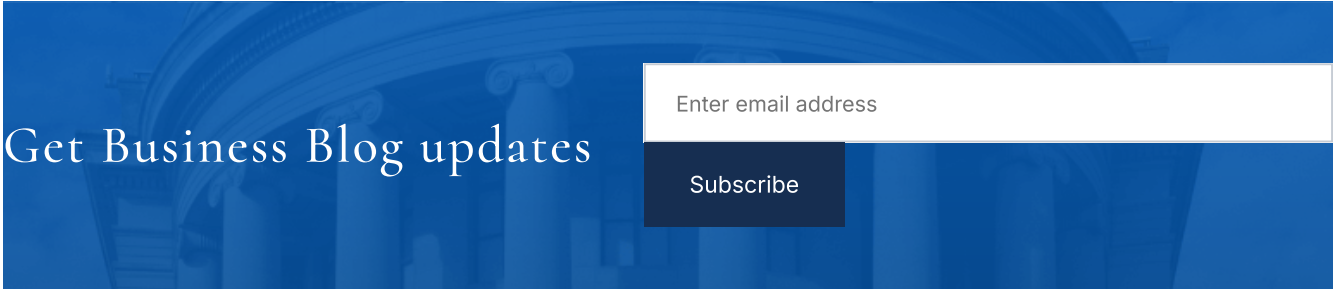
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Competition Matters

The FTC takes its subpoenas and CIDs seriously – and you should, too

By: Burke Kappler, Attorney, FTC Office of General Counsel | March 6, 2019 |   

The FTC's ability to obtain information through subpoenas and civil investigative demands (CIDs) is critical to the task of investigating potential law violations. The FTC uses this authority deliberately and responsibly, avoiding unnecessary burdens on businesses and individuals and consistent with our obligations to enforce the law.

These requests are legally enforceable demands, and recipients of subpoenas or CIDs need to take their obligation to comply seriously. We expect all companies and individuals who receive compulsory process to respond completely and in a timely manner, or to disclose quickly and candidly any obstacles to full compliance. We routinely work with recipients to narrow or defer requests, and generally, we have found that parties cooperate. But not everyone sees the benefits of cooperation, which can often result in delay.

Cooperating with staff

FTC staff are always willing to work with parties and their counsel to determine the scope of the agency's subpoena or CID and a timeframe for compliance. In fact, the FTC's Rules of Practice require parties to meet and confer with FTC staff to identify any issues, problems, or concerns that might affect a party's ability to comply. As provided in the FTC's Rules of Practice, based on what we learn from the meet-and-confer session, FTC staff may agree in writing to limit some of the requests or to extend the deadline for compliance. The Rules contemplate some flexibility for staff to modify certain obligations in the demand and the opportunity to meet and confer is an important part of the process. FTC staff expects all subpoena and CID recipients to use this process if they have concerns about their ability to comply in full and on time.

What to expect if you don't comply

Not everyone wants to cooperate upon receiving a subpoena or CID. When that happens, the FTC's Office of General Counsel may get involved in order to obtain judicial enforcement of the Commission's process.

The FTC typically seeks to compel compliance only after the subpoena or CID recipient fails to meet its obligations after allowing a reasonable extension and where cooperation has broken down. In just the last three years, the Commission has filed 12 federal court actions against process recipients that failed to comply fully with the agency's subpoenas and CIDs. In the 11 actions that have been resolved to date (see list below), either the court enforced the subpoena or CID or we settled with the party after they complied with the requests.

In each of these cases, the respondent either didn't respond at all, responded with less than full cooperation, or ignored deadlines set by the Commission and its staff. When behavior like this impairs an investigation, the agency has no choice but to seek judicial enforcement.

In the same vein, the Commission expects recipients to comply with Commission orders adjudicating petitions to limit or quash subpoenas and CIDs. If a recipient fails to comply with such an order, the Commission will now direct the Office of General Counsel to commence enforcement proceedings within 30 days of the established deadline. Subpoena and CID recipients should thus comply promptly with such orders or risk an enforcement proceeding.

Here are a few tips to avoid becoming the next case on OGC's enforcement action list:

1. Respond promptly to FTC staff upon receipt of a subpoena or CID.
2. Take advantage of meet-and-confer opportunities and be forthcoming about any concerns that you have about your ability to comply on time and in full. In meetings or calls, bring people who have knowledge and information about the required documents and information and the efforts necessary to produce them. Provide specific and concrete information – not just guesses.
3. If you run into problems meeting deadlines, call staff immediately. Keep them apprised so they can work with you. Stay in contact. Don't let deadlines pass without explanation.
4. Understand that the FTC and its staff need to move investigations forward expeditiously. Unsupported requests for extended delays may not be granted.
5. Abide by Commission orders promptly. If you have filed a petition to limit or quash a CID or subpoena and the Commission has ordered some form of compliance, you

must do so or risk a potential enforcement action within 30 days of the Commission's deadline.

Bear in mind that there are many other factors that affect the timing and course of an FTC investigation. Delaying compliance with a CID or subpoena in hopes that you won't have to comply at all rarely works, and most often results in follow up from the OGC.

Recent enforcement actions

FTC v. Tracers Info. Specialists, Inc., Case No. 8:16-MC-18TGW (M.D. Fla. filed Feb. 12, 2016) (enforcing CID)

FTC v. General LLC, et al., Case No. 3:16-cv-00136-LRH-VPC (D. Nev. filed Mar. 9, 2016) (enforcing CIDs)

FTC v. AFR Financial LLC, Case No. 3:16-mc-45-J-34JRK (M.D. Fla. filed July 29, 2016) (enforcing CIDs)

FTC v. Lexium Int'l, LLC, et al., Case No. 2:16-mc-00026-JES-CM (M.D. Fla. filed Sept. 16, 2016) (enforcing CIDs)

FTC v. IT Media, Inc., Case No. 2:16-cv-09483 (C.D. Cal. filed Dec. 22, 2016) (enforcing CIDs)

FTC v. Infante, Case No. 4:17-mc-00008-CAB (N.D. Ohio filed Feb. 7, 2017) (settled upon compliance)

FTC v. Humana, Inc., Case No. 1:17-mc-01465-ESH (D.D.C. filed June 19, 2017) (settled upon compliance)

FTC v. Redwood Scientific Technologies, Inc., Case No. 2:17-cv-07921-SJO-PLA (C.D. Cal. filed Oct. 30, 2017) (enforcing CID)

FTC v. Donor Relations, LLC, et al., Case No. 2:18-cv-00183-GMN-CWH (D. Nev. filed Feb. 1, 2018) (enforcing CIDs)

FTC v. Bartoli, Case No. 6:18-mc-00027-PGB-GJK (M.D. Fla. Apr. 16, 2018) (enforcing CID)

FTC v. Fully Accountable, LLC, Case No. 5:18-mc-00054-SL (N.D. Ohio filed June 8, 2018) (enforcing CID)

FTC v. Swain, et al., Case No. 2:18mc20 (E.D. Va. July 19, 2018) (settled upon compliance)

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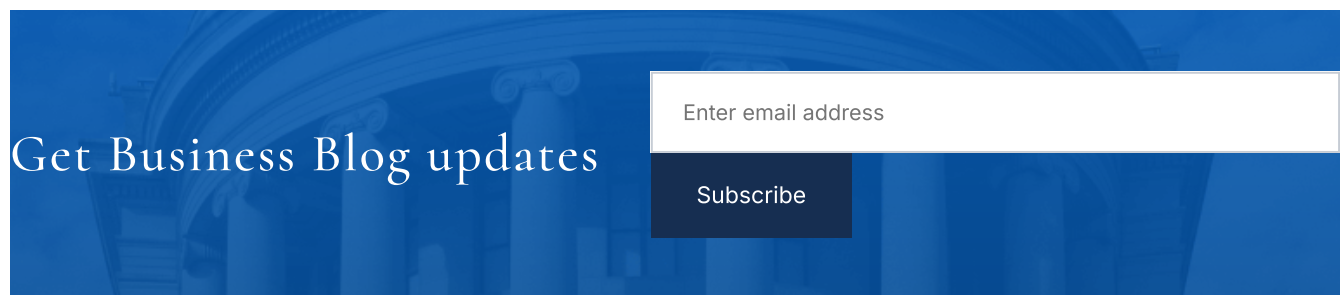
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An open statement about BCP closing letters

By: Lesley Fair | May 24, 2021 |   

The FTC takes a practical approach to its mission of protecting America's consumers. That typically means law enforcement actions to challenge companies' unfair or deceptive acts or practices. But depending on the facts, we may supplement law enforcement with other methods, including consumer education, business guidance, warning letters, national workshops, reports, and – in limited circumstances – staff closing letters.

Closing letters from the staff of the Bureau of Consumer Protection are just what they say they are. They're letters from FTC staff telling a company or individual that we're closing our investigation into their conduct. Closing letters aren't binding on the Commission and the text of the letters makes it clear that the FTC reserves the right to take further action as the public interest may require.

There are a number of practical reasons why staff may close an investigation even when there is concern that a company has violated the law. That's why closing letters also expressly state that the receipt of a letter shouldn't be construed as a determination that there wasn't a law violation.

Even though staff closing letters serve a narrow purpose, it's still wise for businesses and attorneys to read them. They'll often include a pointer that can help other companies with their own compliance efforts. Just be sure to read them on the [Staff Closing Letters page on the FTC website](#). Why? Over the years, we've heard reports about companies falsifying or altering FTC documents – including correspondence, civil investigative demands, and even staff closing letters. If you see a closing letter anywhere other than on the FTC website, the best way to be sure you're looking at a genuine document is to check if it's published on [ftc.gov](https://www.ftc.gov).

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Lina M. Khan, Chair
Rebecca Kelly Slaughter
Christine S. Wilson
Alvaro M. Bedoya

In the Matter of)
)
)

CIVIL INVESTIGATIVE DEMAND TO)
ACIA17 Automotive, Inc. and ACIA ACQ Corp.)
d/b/a Leader Automotive Group)
DATED DECEMBER 21, 2022.)

File No. 232-3004

ORDER DENYING PETITION TO MODIFY, LIMIT,
OR QUASH CIVIL INVESTIGATIVE DEMAND

By BEDOYA, Commissioner:

ACIA17 Automotive Inc. and ACIA ACQ Corp. d/b/a Leader Automotive Group (collectively hereafter “Leader”) petition the Commission (a) to extend by 30 days the deadline to file, if necessary, a more detailed petition to limit or quash the FTC’s Civil Investigative Demand, *see* Pet. Ex. 1 (“CID”), served on Leader on December 27, 2022, or in the alternative (b) to quash or limit the CID. The Commission served the CID in connection with the Commission’s investigation into whether Leader has engaged in unfair or deceptive practices with respect to the marketing, sale, and financing of automobiles in violation of Section 5 of the FTC Act and the Equal Credit Opportunity Act (“ECOA”). For the reasons set forth below, we deny Leader’s petition.

I. Background

Leader owns and operates ten automobile dealerships in Illinois selling a variety of vehicle makes including Kia, Hyundai, Honda, Chevrolet, Toyota, Chrysler, Dodge, Jeep, and Ram. In the past two years, the Leader dealerships have sold more than 30,000 new and used automobiles. Pet. at 2–3.

In November 2022, the Commission initiated an investigation into whether Leader has engaged in violations of the FTC Act and ECOA. In particular, the Commission sought to determine whether Leader’s auto sales and lending practices constituted unfair or deceptive practices or reflected discrimination on a prohibited basis—resulting in higher vehicle sales

prices, periodic payments, “add-on” charges, or other harm to consumers.¹ On December 21, 2022, the Commission issued a CID to Leader seeking responses to interrogatories as well as the production of documents and data. The CID defines Leader to include its ten automobile dealerships, *see* CID at 12, and requests information related to Leader’s financing and add-on practices, data regarding Leader’s auto financing transactions, and consumer complaints, among other documents and information. *See id.*, CID at 2–5 (interrogatories), 6–8 (documents), 8–11 (data). The CID’s specified time period is April 1, 2018, through compliance with the CID, *id.* at 2, except that the time period for deal packets is January 1, 2021, through compliance with the CID, *id.* at 6.

The Commission served the CID on Leader via email on December 27, 2022. Pet. at 1.² That day, Leader’s lead U.S. counsel, Ira M. Levin, notified FTC staff that he was on vacation out of town until January 9, 2023, and Mr. Levin and FTC staff agreed to meet and confer on January 10, 2023. *Id.* He also agreed to attempt to provide staff with a proposed production schedule by January 10, 2023. Pet. Ex. 2 at 1. On January 2, 2023, Mr. Levin confirmed his representation of Leader and the meet and confer appointment, copying two other lawyers in his firm, Elizabeth M. Pall and Joshua J. Cauhorn. Pet. Ex. 2 at 4.

During the January 10 meet and confer, Leader raised several concerns with the CID, including that some requests seemed overbroad and unduly burdensome, possibly disrupting Leader’s business. *See* Pet. at 2. FTC staff clarified the scope of certain requests while observing that many documents and much of the data appeared to be maintained electronically, suggesting that the burden claims were overstated. Leader did not produce a proposed production schedule by January 10.

Writing on behalf of Leader on January 12, Ms. Pall stated that Leader hoped to provide a production schedule the week of January 16. Pet. Ex. 2 at 2. In addition, Ms. Pall requested a two-week extension of the deadline to file a petition to quash the CID, which by Commission rules was set for January 17, 2023, *see* 16 C.F.R. §§ 2.10(a)(1), 4.3(a). Pet. Ex. 2 at 2. In support of the request, Ms. Pall stated that an extension “will give us more time to continue to discuss the production schedule and potential means of limiting some of the requests . . .” *Id.* FTC staff denied the request on January 13, explaining that extensions are not granted absent extraordinary circumstances and that Leader’s request had articulated no reason warranting an extension. *Id.* at 1. FTC staff expressed its willingness to continue to negotiate about the CID’s scope and a production schedule. *Id.*

Leader filed its petition to modify, limit, or quash the CID on January 16. Pet. at 10. At that time, Leader had not provided FTC staff with a proposed production schedule, while producing just a handful of documents and virtually none of the requested data.

¹ “Add-ons” are additional products or services not provided by the vehicle manufacturer, for which Leader charges consumers a fee. *See* Pet. Ex. 1, CID at 11–12.

² Commission records indicate that Leader received the CID by FedEx on December 28, 2022.

II. Analysis

A. There Is No Good Cause To Extend The Petition To Quash Deadline.

Leader first requests a 30-day extension of the date by which it must file a petition to quash or limit the CID. Pet. at 4–5. The Commission’s rules require petitions to quash or modify compulsory process to be filed within 20 days of service. 16 C.F.R. § 2.10(a)(1). That timeline exists to facilitate efficient investigations of potentially unlawful practices. CIDs such as the one directed to Leader issue only if there is reason to believe that the recipient may have information or documents relevant to unfair or deceptive practices. *See* 15 U.S.C. § 57b-1(c). CIDs enable Commission staff to obtain information needed to investigate potentially unlawful conduct, which may be significantly harming consumers. The 20-day period ensures that disputes regarding a CID’s validity or scope are promptly presented to the Commission for resolution, which in turn enables the staff investigation to proceed efficiently and without delay—or to be adjusted as needed depending on the Commission’s ruling.

As a threshold matter, Leader has failed to provide a factual basis for its petition. Mere statements by counsel in a brief do not suffice, because a petition to quash must include “all appropriate arguments, affidavits, and other supporting documentation.” 16 C.F.R. § 2.10 (a)(1). Other than the petition, the CID, and emails exchanged between counsel to Leader and FTC staff, Leader provided none of required factual support for its claims. The Commission routinely denies petitions to quash that lack an adequate evidentiary basis.³ As the Supreme Court has explained, recipients challenging FTC compulsory process must “ma[ke] a record that would convince us of the measure of their grievance rather than ask us to assume it.” *United States v. Morton Salt Co.*, 338 U.S. 632, 653–54 (1950) (rejecting as inadequate “mere assertions in . . . briefs”); *see also EEOC v. Md. Cup Corp.*, 785 F.2d 471, 477 (4th Cir. 1986) (mere “conclusory allegations . . . do not constitute evidence” that could show that an administrative subpoena is unduly burdensome).

Leader’s request for an extension is premised on the need for additional time to negotiate with FTC staff “a reasonable timeline for production on an agreed scope of documents and information” and to “reasonably work through all potential issues as to the tens of thousands of transactions for which the FTC seeks documentation and information.” Pet. at 2. The Commission applies a “good cause” standard to requests to extend the time to file a petition to quash. *See In re Civil Investigative Demand to Liberty Auto City, Inc.*, dated April 12, 2022, FTC File No. 222-3077, at 3 (June 13, 2022). Although certain FTC officials possess “the authority to rule upon” such “requests for extensions of time,” 16 C.F.R. § 2.10(a)(5), the decision whether to grant an extension rests within the sound discretion of those officials. Setting aside Leader’s

³ *See, e.g., In re October 30, 2013 Civil Investigative Demand Issued to HealthyLife Sciences, LLC*, FTC File No. 122-3287 (Dec. 20, 2013), at 2 (rejecting claim of undue burden where CID recipient “has not provided any affidavits or other evidence” to establish that burden); *In re February 11, 2014 Civil Investigative Demand Issued to Ziegler Supersystems, Inc.*, FTC File No. 131-0206 (Apr. 21, 2014), at 10–11 (noting that CID recipient must make a factual record to support a claim of undue burden); *In re January 16, 2014 Civil Investigative Demand Issued to The College Network, Inc.*, FTC File No. 132-3236 (Apr. 21, 2014), at 8, 11 (denying petition to quash CID specification where recipient provided “no factual support” for its claimed burden).

failure to provide evidence in support of its petition, we find that neither Leader's request to FTC staff nor the petition itself supplies good cause to extend the deadline.

The grounds for challenging a Commission CID are limited to whether the agency has exceeded its authority, whether CID itself is "too indefinite," whether "the information sought is reasonably relevant," and whether, on the whole, the CID is "not . . . unreasonable." *Morton Salt Co.*, 338 U.S. at 652–63. Leader has provided no evidence as to why it needs an extension to assess whether the CID satisfies the *Morton Salt* requirements. Indeed, it does not even assert that it needs more time to make this assessment. Leader's January 12, 2023, email in which Ms. Pall requested an extension gives no reason for why Leader could not meet the petition deadline. Rather, it simply states that more time will allow continued negotiation regarding the production schedule and the scope of the CID. Pet. Ex. 2 at 2. In its petition, Leader suggests that two of its lawyers were unavailable for portions of the time established by the Commission rules for deciding whether to file a petition to quash, Pet. at 2, 5, but provides no evidence, such as an affidavit, demonstrating that the time available did not suffice for those or other lawyers to determine whether Leader should petition to quash and prepare such a petition. Nor did Leader provide evidence that it was diligent in making its assessment of whether to file a petition. See *Capitol Sprinkler Inspection, Inc. v. Guest Servs., Inc.*, 630 F.3d 217, 226 (D.C. Cir. 2011) (finding good cause to extend deadlines when the party seeking relief can "show that the deadlines cannot reasonably be met despite [the party's] diligence" (cleaned up)). Indeed, Leader's repeated failures to provide FTC staff with a proposed production schedule suggest a lack of "diligence." *Id.*

The thrust of Leader's request is not that Leader needs more time to determine whether the CID as issued warrants quashing but instead that it cannot decide whether to petition to quash until it knows if its negotiations with staff will address "Leader's concerns by narrowing the scope of and clarifying the CID." Pet. at 5. But Leader's desire to know the outcome of those negotiations does not provide good cause for an extension. If the CID, as issued, is unreasonable, the Commission rules require that a petition to quash be filed "within 20 days" of service. 16 C.F.R. § 2.10(a)(1). An extension to permit negotiations with FTC staff to narrow and clarify its scope will not diminish the reasonableness of the CID, and thus the outcome of those negotiations cannot provide good cause for an extension where none existed in the first place. If the CID, as issued, is not unreasonable, neither is one that is narrowed and clarified.

In any event, Leader has obtained more time to engage in negotiations with FTC staff. Because the timely filing of a petition to quash or limit Commission compulsory process "shall stay the remaining amount of time permitted for compliance," 16 C.F.R. § 2.10(b), the original return date for the CID, here, January 20, 2023, has effectively been extended by the filing of Leader's petition. The Commission urges Leader to negotiate diligently and in good faith to meet the new production deadline set below or as FTC staff may modify it hereafter.

B. The CID Is Not Unduly Burdensome Or Unreasonable.

Leader also requests, in the alternative, that the Commission limit or quash the CID because, Leader asserts, the CID (1) "was not properly served" and (2) is "objectionably overbroad," "excessive and threaten[s] to unduly disrupt or seriously hinder Leader's business operations." Pet. at 6, 7. We deny this request, too.

First, the Commission properly served the CID on Leader. Its petition, however, contends that at the January 10 meet and confer Leader’s counsel “learned for the first time that the interrogatories, document requests, and data requests set forth in the CID were intended to be directed to the ten (10) automobile dealerships operated through AutoCanada Holdings” in the United States. Pet. at 6. That claim is unsupported. The CID defines ACIA17 Automotive, Inc. and ACIA ACQ Corp., d/b/a Leader Automotive Group as the “Company” to which the CID is directed, and “Company” includes “wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates” CID at 12. Thus, by definition the CID is directed to the ten automobile dealerships. Further, the CID’s specifications include numerous requests making clear that they apply to Leader’s dealerships, including Interrogatory 1(g), asking that Leader state “the names and addresses of all dealerships operated by the Company in the United States” and numerous other interrogatories that explicitly apply to all “dealerships” (e.g., CID Interrogatories 9–11, 14, 15, 17, 18, and 20). CID at 2–5. It is untenable to maintain that the CID could be read as not applying to Leader’s dealerships. Nor does Leader dispute that it received the CID via both email, which is confirmed by Mr. Levin’s January 2, 2023, email to the FTC, *see* Pet. Ex. 2 at 4, and the FedEx receipt on file with the Commission’s Office of the Secretary.

Second, the CID is not “objectionably overbroad” and “excessive” and does not “threaten to unduly disrupt or seriously hinder Leader’s business operations.” Pet. at 6–7. Agency process is not unduly burdensome unless compliance “threatens to unduly disrupt or seriously hinder normal operations” of the recipient’s business. *FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977) (en banc). Of course, “[s]ome burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency’s legitimate inquiry and the public interest.” *Id.* Accordingly, the test for undue burden “is not easily met.” *Id.*; *see also Md. Cup*, 785 F.2d at 477, 479. Leader has not made the required showing.

Leader cites the number of the CID’s interrogatories (25, or 72 with subparts), document requests (17, or 19 with subparts), and data requests (2, one with 54 and the other with 85 subparts). Pet. at 7. As an initial matter, the number of requests or volume of responsive documents alone does not show undue burden. *See, e.g., In re March 19, 2014 Civil Investigative Demand Issued to Police Protective Fund, Inc.* (“PPF”), FTC File No. 132-3239 (May 22, 2014) (“[A] ‘sheer volume of requests’ does not itself establish that the CID is overbroad or imposes undue burden.”); *FDIC v. Garner*, 126 F.3d 1138, 1145–46 (9th Cir. 1997) (mere fact that a subpoena called for thousands of financial documents and one million other documents was not sufficient to establish undue burden); *FTC v. Jim Walter Corp.*, 651 F.2d 251, 258 (5th Cir. 1981) (“[a]bsent a showing of disruption, the sheer number of documents sought does not demonstrate” undue burden). Indeed, the numbers are comparable to those the Commission finds reasonable in *Liberty Auto City, Inc.*, FTC File No. 222-3077, at 4. Moreover, the numbers are entirely reasonable given the nature of the investigation and size of Leader’s business. *See* Pet. at 3 (noting that Leader sells over 15,000 vehicles per year). Further, the CID’s requests are limited in time, and are tailored to provide the agency with specific information about Leader’s add-on sales and procedures and its financing practices—areas plainly relevant to assessing compliance with the fair lending and consumer protection laws at issue. *See Texaco*,

555 F.2d at 882 (recognizing that subpoenas were “broad in scope” but finding that breadth necessary to match the FTC’s “comprehensive” investigation).⁴

Nor does Leader provide any affidavits or other factual documentation to support its conclusory claim that complying with the CID will “unduly disrupt or seriously hinder” its operations. Pet. at 7. A CID recipient bears the burden to show how a CID interferes with its ability to operate its business. *See Garner*, 126 F.3d at 1146 (rejecting claim of undue burden where recipient failed “to enunciate how these subpoenas constitute a ‘fishing expedition’”); *see also FTC v. Standard Am., Inc.*, 306 F.2d 231, 235 (3d Cir. 1962) (finding no undue burden where subpoena recipients “did not adduce a single shred of evidence” to support their claim that compliance would result in “the virtual destruction of a successful business”); *Texaco*, 555 F.2d at 882. The conclusory statements Leader advances “do not constitute evidence that the company’s normal operations will be seriously disrupted” by producing the requested material.” *Maryland Cup*, 785 F.2d at 477; *see also Doe v. United States (In re Admin. Subpoena)*, 253 F.3d 256, 268–69 (6th Cir. 2001) (finding insufficient recipient’s “general and conclusory statement” regarding burden).

Finally, Leader argues that the CID is unduly burdensome because responding to it will require engaging a “third-party discovery vendor to process and prepare the information” requested by the CID. Pet. at 7. As the D.C. Circuit explained in another FTC matter, “[t]he difficulty with [this] argument is that it could be made with respect to almost any investigation.” *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992). Such burdens fall within the ordinary, reasonable costs that attend any government investigation and do not make the CID unduly burdensome. *See id.*; *see also Texaco*, 555 F.2d at 882 (“Some burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency’s legitimate inquiry and the public interest.”). As we have previously explained, it is not enough merely to assert that a CID request “is overbroad and burdensome and that ‘gathering, copying, and scanning all documents and responses [to the CID] would take a significant amount of time and resources that the organization simply does not have.’”⁵ *PPF*, FTC File No. 132-3239, at 7. Those assertions need to be supported with competent evidence that makes a specific showing of severe business disruption. *See id.* (noting that “a blanket objection” does not suffice, and that a CID recipient must show that a request is “highly disruptive”).

Nor has Leader shown that the cost of such efforts is too high “relative to the financial positions” of the company when “measured against the public interest of this investigation.” *FTC v. Carter*, 464 F. Supp. 633, 641 (D.D.C. 1979), *aff’d*, 636 F.2d 781 (D.C. Cir. 1980); *see also*

⁴ Leader does not seriously dispute that the information sought is relevant. The final sentence of the Petition asserts that the CID’s requests are “irrelevant,” Pet. at 8, but the Petition contains no elaboration or evidence supporting this claim. The Commission has no obligation to consider such a throwaway claim, which is unsupported and wrong in any event.

⁵ To the extent the asserted burdens stem from Leader’s own document practices such burdens “cannot excuse” Leader from compliance with the CID. *See, e.g., Letter Ruling re Civil Investigative Demands Issued to D. R. Horton, Inc. and Lennar Corp.*, FTC File Nos. 102-3050 & 102-3051 (Mar. 9, 2010), at 6 (“Burden caused by Petitioners’ own organizational design cannot excuse them from compliance with the CIDs.”).

Md. Cup, 785 F.2d at 479 (holding that the cost of compliance is not unduly burdensome “in the light of the company’s normal operating costs”). In fact, Leader has provided no information about its financial position, human resources, or other capabilities relevant to complying with the CID, giving us no factual basis to conclude that the burden on the company is undue.

Moreover, as Leader acknowledges, Commission staff have repeatedly expressed willingness to further narrow or limit some of the CID’s requests, including in light of Leader’s concerns. *See* Pet. at 3, 4. Again, the Commission urges Leader to engage with FTC staff who, we are confident, will seek to accommodate any reasonable requests that are consistent with the needs of the investigation.

III. CONCLUSION

For the foregoing reasons, Leader’s petition to quash is denied.

IT IS HEREBY ORDERED THAT Leader Automotive Group’s Petition to Modify, Limit or Quash the December 21, 2022, Civil Investigative Demand be, and hereby is, **DENIED**.

IT IS FURTHER ORDERED THAT Leader shall comply in full with the Commission’s Civil Investigative Demand no later than **Friday, March 10, 2023, at 9:00 a.m. (Central Time)**, or at such other later date, time, and location as the Commission staff may determine.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: February 27, 2023

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,
Petitioner,

v.

ACIA17 Automotive, Inc. and
ACIA ACQ Corporation dba Leader Automotive
Group,

Respondents.

Case No. 23-cv-2500

**FEDERAL TRADE COMMISSION'S
PETITION FOR AN ORDER TO ENFORCE CIVIL INVESTIGATIVE DEMAND**

Pursuant to Section 20 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 57b-1, the Federal Trade Commission (“FTC”) respectfully petitions this court for an order requiring ACIA17 Automotive, Inc. and ACIA ACQ Corporation, doing business as Leader Automotive Group (collectively, “Leader”), to comply with a Civil Investigative Demand (“CID”) or show cause as to why it should not be compelled to comply with the CID. A proposed order accompanies this petition.

Leader operates eighteen franchise auto dealerships in Illinois, which the Commission has reason to believe are engaged in illegal sales and lending practices. To investigate Leader’s conduct, the Commission issued a CID to Leader on December 21, 2022, with a return date of January 17, 2023. Leader petitioned the Commission to quash or limit the CID, but on February 27, 2023, the Commission denied the petition and ordered Leader to fully comply with the CID by March 10, 2023. FTC staff provided a one-time extension of the deadline to March 17, 2023. *Id.* Rather than complying, Leader has made only partial productions of selective records and knowingly withheld responsive documents and

information—ultimately falling far short of substantial compliance with the CID and impeding and delaying the Commission’s investigation.

The CID should be enforced because it satisfies the conditions for enforcement of agency process: (1) the investigation of Leader’s conduct is within the FTC’s statutory authority; (2) the CID is not too indefinite; and (3) the information sought is reasonably relevant to the investigation. *See Walsh v. Alight Sols. LLC*, 44 F.4th 716, 722 (7th Cir. 2022) (quoting *E.E.O.C. v. Aerotek*, 815 F.3d 328, 333 (7th Cir. 2016)). Although enforcement may be limited where it would impose an unreasonable or undue burden on the producing party, *Aerotek*, 815 F.3d at 333, Leader has shown no basis for finding any undue burden. Instead, the CID’s requests are reasonable given the nature of the investigation and the size of Leader’s business, and the available information about Leader’s operations shows the information and material sought by the CID should be readily accessible and available.

The FTC relies on the Declaration of James Davis to certify the facts that are the basis for this petition and which is incorporated herein. The FTC has also filed a Memorandum in Support.

Jurisdiction and Venue

1. This Court has jurisdiction to enforce the Commission’s duly issued CID, including the CID issued to Leader, under Section 20(e) of the FTC Act, 15 U.S.C. § 57b-1(e), which provides in pertinent part:

Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever . . . such person refuses to surrender such material, the Commission, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

2. The Respondents are found, reside, or transact business in this district. 15 U.S.C. § 57b-1(e); 28 U.S.C. § 1391.

Parties

3. Petitioner FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41–58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, which prohibits creditors from discriminating against credit applicants on the basis of race or ethnicity, among other characteristics.

4. The FTC is authorized to issue process (including CIDs) requesting materials, answers to interrogatories, and sworn testimony in an investigation to determine if any natural person, partnership, corporation, association, or other legal entity is or has been engaged in unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. § 57b-1(c). The FTC is also authorized to investigate and, by its attorneys, to initiate proceedings to prohibit such activities. 15 U.S.C. §§ 45(b), 53(b).

5. Respondents are Delaware corporations headquartered in Chicago, Illinois.

The Commission’s CIDs and Orders Denying Respondents’ Petitions to Quash or Limit

6. The FTC issued a CID to Leader on December 21, 2022.

7. The CID identified the subject of the investigation:

Whether the Company, as defined herein, has made false or deceptive representations, or engaged in unfair conduct in violation of the FTC Act, 15 U.S.C. § 45, or has discriminated on a prohibited basis in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, resulting in higher vehicle sale prices, periodic payments, or add-on charges, and whether Commission action to obtain monetary relief would be in the public interest.

8. The CID was issued pursuant to three Resolutions authorizing the use of compulsory process in aid of investigations of violations of statutes under which the Commission has enforcement authority:

- a) Resolution No. 8323137, authorizing investigation of the advertising, marketing, offering for sale, sale or financing of motor vehicles in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, as amended, or any statutes or rules enforced by the Commission;
- b) Resolution No. P944809, authorizing investigation of acts or practices in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq. and Regulation B, 12 C.F.R. § 202 et seq. and deceptive or unfair practices with respect to discrimination in the extension of credit in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, as amended; and
- c) Resolution No. 1123162, authorizing investigation of the advertising, marketing, or sale of products or services through the use of endorsements or testimonials in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

9. To respond to the document requests in the CID, a person with knowledge of the facts and circumstances relating to the production is required to certify that all of the documents, information, and tangible things required by the CID which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been produced and made available to the FTC's custodian. 15 U.S.C. § 57b-1(c)(11).

10. To respond to the interrogatories in the CID, a person responsible for answering is required to certify that, unless reasons for objection have been stated, the written answers provide all information required by the CID in the possession, custody, control, or knowledge of the person to whom the demand is directed. 15 U.S.C. § 57b-1(c)(13).

11. The CID that the Commission issued to Leader on December 21, 2022, directed Leader to provide a Certificate of Compliance in which a person with knowledge of the facts and circumstances relating to their responses certifies that responses are complete.

12. When an FTC CID requires the production of electronically stored information (“ESI”), it must be produced in accordance with instructions provided by FTC staff regarding the manner and form of production. 16 C.F.R. § 2.7(j). The Commission’s CID to Leader include requirements for the production of ESI responsive to the CID.

13. Leader filed a petition to quash or limit the CID that argued that the CID was not properly served and that it is unduly burdensome and overbroad.

14. Leader did not dispute that the FTC has jurisdiction to conduct the investigation identified in the CID, or that that the information sought in the CID is relevant to the investigation. Leader also did not argue that the CID is too indefinite in describing the information sought.

15. On February 27, 2023, the Commission issued an order rejected both of Leader’s arguments and denying its petition. The Commission found, among other things, that Leader provided no information or evidence to support its conclusory claims of burden, whereas the CID’s requests were reasonable and relevant given the nature of the investigation and size of Leader’s business.

16. The Commission’s order directed Leader to comply in full with the CID no later than Thursday, March 10, 2023, or at such other date, time, and location as the Commission staff may determine.

17. FTC staff subsequently provided a one-week extension to March 17, 2023.

Leader’s Failure to Comply with the CID

18. Leader has not fully complied with the CID.

19. Leader has not provided any sworn certification in accordance with the CID in which a person with knowledge contemporaneously certifies that responses to the CID, or even a response to any part of the CID, is complete.

20. Since receiving the CID, Leader has produced no response whatsoever to multiple CID specifications, has tendered partial or incomplete responses to other specifications, and has generally failed to justify its noncompliance.

21. Leader's failure to fully comply with the CID has delayed and impeded the Commission's investigation.

22. The FTC has not sought the relief requested herein in this or any other court.

Prayer for Relief

WHEREFORE, the Commission invokes the aid of this Court and prays for:

1. Immediate issuance of an order, substantially in the form attached, directing Leader to comply with the CID and provide sworn certification that its production of documents and responses to interrogatories are complete, or to show cause why it should not be required to comply with the CID;
2. In the event Leader does not comply with the CID, prompt determination of this matter and entry of an order directing Leader to comply with the CID and provide sworn certification that its production of documents and responses to interrogatories are complete within 10 days of entry of such order; and
3. Such other relief as this Court deems just and proper.

Dated: _April 20, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I electronically filed the foregoing Federal Trade Commission's Petition for an Order to Enforce Civil Investigative Demand using the CM/ECF system on April 20, 2023. Pursuant to Fed. R. Civ. P. 5(b)(3) and the Northern District of Illinois' LR 5.9, I have thereby electronically served all Filing Users with a copy of the foregoing.

Dated: April 20, 2023.

/s/ Rachel F. Sifuentes
Rachel F. Sifuentes

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
)	
Petitioner,)	
)	Case No. 23-cv-2500
v.)	
)	
ACIA17 Automotive, Inc. and)	
ACIA ACQ Corporation dba)	
Leader Automotive Group,)	
)	
Respondents.)	

**MEMORANDUM IN SUPPORT OF THE FEDERAL TRADE COMMISSION'S
PETITION FOR AN ORDER TO ENFORCE CIVIL INVESTIGATIVE DEMAND**

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The Federal Trade Commission (“FTC” or “Commission”) petitions this Court to enforce a civil investigative demand (“CID”) issued to Respondents ACIA17 Automotive Inc. and ACIA ACQ Corporation, doing business as Leader Automotive Group (“Leader” or “Respondents”).¹ The CID requires Leader to produce documents and information related to Respondents’ eighteen franchise auto dealerships operated at ten locations in Illinois, which the Commission has reason to believe are engaged in illegal sales and lending practices. Among other conduct, the FTC is investigating whether Leader is violating the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. § 1691 *et seq.*, by discriminating on the basis of race or ethnicity when offering financing terms, and whether Leader is violating the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, by deceiving consumers into paying for unwanted add-on products, as well as promoting its business through the use of fabricated customer reviews.

After being served with the CID in December 2022, Leader petitioned the Commission to quash it. On February 27, 2023, the Commission denied Leader’s petition and ordered the company to fully comply with the CID by March 10, 2023. Despite substantial efforts by FTC staff to obtain full compliance, including granting an additional one-week extension of the deadline imposed by the Commission and providing detailed explanations of the company’s compliance deficiencies, Leader still has not complied with the CID.

In denying Leader’s petition to quash, the Commission found that Leader had failed to establish a valid basis for challenging the CID. Indeed, Leader has not disputed that it received

¹ “CIDs work like civil subpoenas, and executive-branch departments or agencies commonly issue them in their investigations.” *Integrity Advance, LLC v. Consumer Fin. Prot. Bureau*, 48 F.4th 1161, 1165 n.2 (10th Cir. 2022). Congress modeled the FTC’s CID authority on the Antitrust Civil Process Act, 15 U.S.C. § 1311, which grants similar authority to the U.S. Department of Justice. *See* H.R. REP. NO. 96-917 at 32 (1980) (Conf. Rep.), *as reprinted in* 1980 U.S.C.C.A.N. 1143, 1149; S. REP. NO. 96-500 at 23-25 (1979), *as reprinted in* 1980 U.S.C.C.A.N. 1102, 1124–26.; *see also Gen Fin. Corp. v. FTC*, 700 F.2d 366, 367-68 (7th Cir. 1982) (Posner, J.) (describing the FTC’s Section 20 CID as “a type of subpoena”).

an enforceable CID identifying materials reasonably relevant to the agency's inquiry. And Leader acknowledges that it continues to withhold certain materials that are responsive to multiple specifications, even though the Commission's deadline, an additional extension provided by FTC staff, and Leader's own promised dates for completing its delinquent responses, have long since passed. In these circumstances, the Commission is entitled to an order directing Leader to show cause why it has failed to comply with the CID. *See E.E.O.C. v. Sidley Austin Brown & Wood*, 315 F.3d 696, 700-701 (7th Cir. 2002) (district court has a duty to order production when these criteria are met) (*citing Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509, 63 S.Ct. 339 (1943)).

Because any delay in issuing the show cause order would harm the Commission's ongoing investigation, that order should be issued promptly. The FTC's petition for enforcement is not a routine discovery dispute in pending litigation, but a critical component of a federal agency investigation that seeks to protect U.S. consumers from ongoing financial harm—here, involving one of the biggest financial transactions for many consumers aside from purchasing a home. *See, e.g., FTC v. American Buyers Network, Inc.*, No. CIV. A. 91-B-1158, 1991 WL 214163, at *3 (D. Colo. Aug. 19, 1991) (“Subpoena enforcement actions should proceed with dispatch so that the underlying investigation is not unduly disrupted”). Show cause orders are frequently issued within days after the Commission files an enforcement petition, and the petition should be resolved through summary procedures to minimize the harm to agencies' law enforcement efforts.² Further delay in obtaining Leader's compliance with the CID would

² *See American Buyers Network*, 1991 WL 214163, at *1, 2 (show cause order issued one business day after the petition was filed and treated as a summary proceeding); *FTC v. Complete Merch. Sols., LLC*, No. 219CV00996HCNEJF, 2020 WL 2059847, at *1 (D. Utah Apr. 28, 2020) (show cause order issued 22 days after petition filed); *FTC v. LabMD, Inc.*, No. 1:12-CV-3005-WSD, 2012 WL 13104826, at *2 (N.D. Ga. Nov. 26, 2012) (show cause order issued one week after petition filed); *FTC v. Dinamica*

frustrate the Commission's ability to identify potential misconduct and pursue appropriate relief for consumers.

For these reasons, the FTC respectfully requests that this Court promptly enter an order requiring Leader to comply in full with the Commission's CID by a date certain or show cause why it should not be compelled to comply.

JURISDICTION AND VENUE

Section 20 of the FTC Act authorizes the Commission to issue a CID to any person, including legal entities, who may have documents or other information relevant to an investigation of potentially unfair or deceptive acts or practices. 15 U.S.C. § 57b-1(a)(6), (c)(1). The FTC may issue a CID to require recipients to produce documents, respond to written questions, or give oral testimony under oath at an FTC investigational hearing. 15 U.S.C. § 57b-1(c)(1). CID recipients are required to provide a sworn certification that their answers to interrogatories and responses to document production requests are complete. 15 U.S.C. § 57b-1(c)(11), (13). If the CID recipient does not comply, the FTC may petition the district court where the recipient resides, is found, or transacts business for an order enforcing the CID and compelling production. 15 U.S.C. § 57b-1(e).³

On December 21, 2022, the FTC issued a CID to Leader to investigate potential deceptive and unfair acts or practices in connection with the company's eighteen franchise dealerships in Illinois. Pet. Ex. A, at ¶ 3. After the Commission rejected Leader's petition to

Financiera LLC, No. CV0804649MMMPJWX, 2008 WL 11342612, at *2 (C.D. Cal. Sept. 22, 2008) (show cause order issued the day after petition was filed).

³ The Commission initiates administrative process enforcement proceedings through a petition and order to show cause (rather than by complaint and summons). *See* 15 U.S.C. § 57b-1(e). These proceedings are summary in nature and commenced by issuance of a *ex parte* show cause order. *See United States v. Markwood*, 48 F.3d 969, 980-81 (6th Cir. 1995).

quash and ordered the company to fully comply, Leader submitted only partial, unsworn interrogatory responses, and withheld many responsive documents and information while selectively producing other records. Pet. Ex. A, at ¶¶ 39-44.

As confirmed by public documents, Leader is based in Chicago, Illinois, which is within the Northern District of Illinois. *Id.*, at ¶ 5. Thus, because Leader resides, is found, or transacts business in this district, jurisdiction and venue for this CID enforcement action are proper in this Court.

BACKGROUND

A. The FTC Has Issued a Civil Investigative Demand to Investigate Leader’s Automobile Sales and Financing Practices

Leader owns and operates eighteen franchise dealerships at ten different locations throughout Illinois – in Chicago and the surrounding suburbs, Peoria, and Bloomington-Normal. Leader is a subsidiary of AutoCanada, a publicly traded Canadian company with over 80 dealerships across Canada. Pet. Ex. A, at ¶ 6. In 2022, Leader reported gross revenue of over \$200 million each quarter. *Id.*

The Commission is investigating whether Leader has made false or deceptive representations, or engaged in unfair conduct, relating to its sales and financing practices, in violation of the FTC Act and ECOA. Pet. Ex. B at p. 6 (“Subject of Investigation”). The CID issued in connection with the investigation seeks information relating to: Leader’s organizational structure; current and former employees, including employees responsible for compliance; the identity of financial institutions used to obtain loans for consumers; the costs and processes associated with preparing cars for sale; the identity of Leader’s used car importers;

the type, cost, description, and providers of add-on products⁴ offered to consumers; company practices and procedures relating to posting online reviews; and the total number of vehicles sold, financed, and leased by each Leader dealership as well as the revenue from these sales. *Pet. Id.*, at pp. 6-9 (Specification A, Interrogatories). Some of the categories of documents requested by the CID include: copies of advertisements promoting the sale of vehicles; paperwork for two years' worth of sales (also known as "deal jackets"); policy, training and compliance materials; consumer complaints, inquiries, and related correspondence; materials related to compliance investigations and audits; and relevant communications between Leader and its corporate parent, AutoCanada. *Id.*, at pp. 10-12 (Specification B, Document Requests). Finally, the CID includes a separate specification requesting several dozen data points regarding vehicle sales and financing. *Id.*, at (Specification C, Data Requests).

On January 16, 2023, Leader filed a Petition to Modify, Limit, or Quash the CID ("Petition to Quash") with the Commission, arguing (1) that the CID was not properly served because it should have been directed to each franchise dealership rather than the parent companies; and (2) that the CID is unduly burdensome, overbroad, and threatened to disrupt or seriously hinder the company's normal business operations because of the number of requests and scope of information requested, as well as the likelihood that compliance would require Leader to engage the services of "a third-party discovery vendor." *Pet. Ex. H*, at pp. 6-7.

On February 27, 2023, the Commission denied Leader's petition, rejecting both arguments. *Pet. Ex. N*. The Commission specifically found that the CID's requests are "entirely

⁴ "Add-on" is defined by the CID to mean an aftermarket product not provided or installed by the manufacturer such as guaranteed asset protection (also known as "GAP insurance"), extended service contracts, maintenance repair contracts, theft protection or security devices, undercoating, rustproofing, and fabric protection, among other products. *Pet. Ex. B*, at pp. 11-12.

reasonable given the nature of the investigation and size of Leader's business." *Id.*, at p. 5. The Commission further found the CID's requests are "tailored to provide the agency with specific information about Leader's add-on sales and procedures and its financing practices—areas plainly relevant to assessing compliance with the fair lending and consumer protection laws at issue." *Id.* (citing *FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977)). The Commission also rejected Leader's conclusory, unsupported burden claims, stating: "Leader has provided no information about its financial position, human resources, or other capabilities relevant to complying with the CID, giving us no factual basis to conclude that the burden on the company is undue." *Id.* at p. 7. The Commission directed Leader to comply with the CID in full by March 10, 2023. *Id.* FTC staff thereafter voluntarily provided a one-week extension through March 17, 2023, along with a letter identifying in detail the specific deficiencies in Leader's then-responses. Pet. Ex. O.

B. Leader's Ongoing Failure to Comply with the CID and Commission Order

Since service of the CID and entry of the Commission's order, Leader has provided no response whatsoever to multiple CID specifications, has tendered partial or incomplete responses to other specifications, and generally has failed to justify its noncompliance.

FTC staff first began raising concerns about Leader's compliance in a letter dated February 6, 2023, while the Petition to Quash the CID was still pending before the Commission. Pet. Ex. K. In this letter, staff questioned whether Leader intended to comply, highlighting the company's blanket, unsupported burden objections and counsel's lack of engagement with staff regarding the factual basis for such objections. *Id.* at p. 2. The letter also noted that more than a month after service of the CID, Leader had produced next to nothing in the way of documents or

information⁵ while also failing to follow through on promises to circulate a proposed production schedule and tender “rolling productions.” *Id.*

In a nine-page letter dated March 3, 2023, Pet. Ex. O, sent after the Commission’s February 27 order denying the Petition to Quash, FTC staff outlined numerous deficiencies in Leader’s compliance, including:

- **Interrogatories 2 and 8.** Leader provided no meaningful information in response to these interrogatories, which seek information about employees responsible for compliance training and the process associated with preparing cars for sale. *Id.* at pp. 3-5.
- **Interrogatory 3: Identity of Current and Former Employees.** After Leader objected to this Interrogatory on burden grounds, staff requested a sample of responsive information, which, when produced, did not substantiate the claimed burden. The sample also failed to include contact information for numerous employees identified. Staff demanded a complete response to the interrogatory, *id.* at p. 5, which Leader has refused to produce. Pet. Ex P, at p. 2.
- **Data Requests.** Leader’s response to the CID’s data requests (Specification C) were “grossly deficient” because Leader omitted approximately half of the requested data points without explanation and without attempting to confer with the FTC prior to doing so. Pet. Ex. O, at pp. 5-6.

⁵ Leader’s productions as of the date of the February 6, 2023 letter, nearly six weeks after service of the CID, consisted of: (1) A one-page corporate organizational chart, responsive to Document Request 1 (January 20, 2023, production); (2) three largely identical versions of an employee handbook totaling 139 pages, purportedly responsive to Document Request 6 and Interrogatory 19 (January 20, 2023, production); and (3) a thirty-page spreadsheet identifying lenders used by Leader to obtain vehicle financing for consumers, responsive to Interrogatory 4 (February 3, 2023, production). Pet. Ex. A, at ¶ 18.

- **Document Request 7 (“Deal Jackets”).** Document Request 7 requires production of so-called “deal jackets,” a term that refers to the paperwork maintained by a dealership for every vehicle sale. Because Leader had not produced a single deal jacket to date, staff proposed an initial production of twelve files per month for each dealership during the applicable two-year time period. Pet. Ex. O, at pp. 6-7. As noted below, instead of complying with, or attempting to confer about, this request, Leader has raised an unsubstantiated burden claim to justify producing a much smaller subset of deal jackets consisting of just four files dealership for a single month in 2022. Moreover, in producing these files, Leader disregarded the FTC’s production requirements. As a result, the files are in a format that is not searchable, not reviewable on the FTC’s document review platform, and which renders many of the Bates Numbers illegible. Pet. Ex. A, at ¶¶ 34, 42.
- **Document Requests 2, 3, 6, 8, 14 and Interrogatories 9-13, 18-24.** Leader failed to respond substantively to twelve interrogatories and five document requests, instead raising unsupported, general objections and indicating without elaboration that its “investigation continues.” Pet. Ex. O, at p. 6. As noted below, many of these deficiencies remain uncorrected.
- **ESI Protocol: Document Requests 9-12, 15.** Despite repeated attempts by FTC staff to establish a mutually agreeable protocol for searching electronically stored documents, Leader has refused to meaningfully engage with staff on this topic. FTC staff has noted, for example, that Leader’s proposed search terms omitted several critical subjects as well as included keywords lacking any apparent

relevance to the Commission's investigation. Leader has not responded substantively to the FTC's proposed list of search terms despite promising to do so. Pet. Ex. O, at p. 7.

- **Unsworn interrogatories.** The handful of interrogatories answered by Leader were not signed or sworn under oath as required by 15 U.S.C. § 57b-1(c)(13). *Id.* at pp. 4, 7.

In their March 3, 2023, letter, FTC staff informed Leader that these deficiencies and others must be cured by March 17, 2023, one week later than the deadline set by the Commission, or the CID would be referred to the FTC's Office of General Counsel for judicial enforcement. *Id.*, at pp. 8-9.

Over the next two weeks, counsel for Leader did not engage with FTC staff on any of the deficiencies highlighted in the March 3 letter. Pet. Ex. A, at ¶ 28. Instead, two weeks later, Leader produced ten pages of documents and tendered unsigned, incomplete responses to several interrogatories, thus failing to cure virtually any of the deficiencies identified in the March 3 letter. *Id.*, at ¶ 29. In correspondence accompanying its March 17 response, Leader suggested for the first time, without any elaboration or support, that the company did not produce data responsive to Specification C of the CID because this data is "either not available or not accurately recorded."⁶ Pet. Ex. P, at p. 3. Leader also refused to provide a complete employee list in response to Interrogatory 3, instead asking FTC staff to justify why the partial list without

⁶ Previously, in an email dated February 22, 2023, counsel for Leader had informed FTC staff that data responsive to Specification C would be produced by March 3, 2022. Counsel did not raise any objections or concerns about the specification or request to meet and confer about it. Pet. Ex. ___.

contact information was “insufficient.”⁷ *Id.* And Leader produced no deal jackets, claiming without substantiation that downloading the subset of files requested by staff would take more than three months.⁸ *Id.*, at p. 2. Finally, after nearly three months of delays, and without consulting FTC staff, Leader unilaterally adopted its own partial “production schedule” that went far beyond the deadline imposed by the Commission or the extension granted by staff. *Id.* at 3.

By letter of March 20, 2023, staff informed Leader that the company was in default of the CID and that the matter would be referred to the FTC’s Office of General Counsel for enforcement in federal court. Pet. Ex. Q. In an argumentative response sent the following day, Leader did not produce any additional information or documents. Pet. Ex. R.

An April 10, 2023, email from counsel highlights the need for judicial intervention. In this email, counsel does not deny that Leader has withheld data responsive to the CID, justifying the refusal to produce this data because it is purportedly not “accurate.” Pet. Ex. U. Counsel further claimed that Leader had “already responded to the majority of staff’s requests.” In fact, many of these responses are grossly deficient. For example:

- Leader has produced no meaningful information in response to Document Request 2 and Interrogatory 24, which require the company to produce copies of

⁷ In its Petition to Quash, Leader claimed that identifying all current and former employees “would require someone to look through hundreds of individual personnel files.” Pet. Ex. H, at p. 4. But as FTC staff noted in their March 3, 2023, letter to counsel, the information responsive to this interrogatory is, by all appearances, stored by Leader in a database and capable of being produced with little effort in the form of an Excel spreadsheet. Pet. Ex. O, at p. 5. Counsel has not contradicted or questioned staff’s statement.

⁸ This somewhat surprising claim is purportedly based on counsel’s unsupported estimate of how long it allegedly takes to download a single deal jacket from the online platform where these files are stored. In a February 3, 2023, letter, counsel estimated that this process takes “about 10 minutes per deal jacket.” Pet. Ex. J, at p. 2. In counsel’s March 17 letter, this estimate increased to 15 minutes per file. Pet. Ex. P, at p. 3. Again, Leader has offered no factual basis to support these assertions, which are dubious on their face and contradicted by former employees interviewed by FTC staff.

vehicle advertisements and list transfers of funds between its dealerships. Instead of substantively responding to these requests, Leader falsely claimed that FTC staff “agreed” to limit the specifications. No correspondence exists memorializing such agreements and CIDs can only be modified or limited in writing by FTC managers. 16 C.F.R. § 2.7(l);

- Multiple responses to document requests made by Leader are facially incomplete, consisting of token, opportunistic productions that do not represent a good faith, diligent attempt to comply with the CID. Document Requests 6 and 12, for example, require the production of a broad array of documents related to compliance policies, training, investigation, and audits. Pet. Ex. B, at pp. 10-11. In response to these requests, Leader has produced: (1) three versions of the same employee handbook; (2) two versions of the same compliance manual (one black and white, one color); and (3) eight pages of email correspondence. Pet. Ex. A, ¶ 39. This cannot represent a complete response to these requests for a company the size of Leader operating in such a highly regulated environment;
- Leader has not answered multiple specifications, even with the extension of time that the company unilaterally provided to itself beyond the March 17 deadline set by the Commission and FTC staff. Information responsive to many of these delinquent requests should be readily ascertainable and not require months to gather. For example, Leader has not responded to Interrogatory 23 and Document Request 17, which request information related to the company’s document storage, handling, and retention policies. Pet. Ex. B, at pp. 9, 12. Similarly,

Leader has not answered any parts of Interrogatories 12 or 13, which basic request information regarding the company's add-on products. *Id.*, at pp. 7-8; and

- Despite promising to make an initial ESI production by April 14 consisting of communications for the company's Vice President of U.S. Operations, James Douvas, no such production has been made. Pet. Ex. P, at p. 3; Ex. A, at ¶ 41.

A comprehensive summary of Leader's compliance deficiencies can be found in the declaration filed in support of the FTC's petition. Pet. Ex. A, ¶¶ 39-44.

LEGAL STANDARD FOR ENFORCEMENT

The role of a district court in a subpoena or CID enforcement proceeding is “sharply limited,” *E.E.O.C. v. Tempel Steel Co.*, 814 F.2d 482, 485 (7th Cir. 1987) (citation omitted), as the proceeding is “designed to be summary in nature.” *Walsh v. Alight Sols. LLC*, 44 F.4th 716, 722 (7th Cir. 2022) (quoting *E.E.O.C. v. United Air Lines, Inc.*, 287 F.3d 643, 649 (7th Cir. 2002)). A court will therefore only consider whether (1) the investigation is within the statutory authority of the agency; (2) the subpoena is not too indefinite; and (3) the information sought is reasonably relevant. *Alight Sols*, 44 F.4th at 722 (quoting *E.E.O.C. v. Aerotek*, 815 F.3d 328, 333 (7th Cir. 2016)).⁹ If these requirements are met, “the district court must enforce an administrative subpoena.” *Tempel Steel*, 814 F.2d at 485 (citing *E.E.O.C. v. Illinois State Tollway Auth.*, 800 F.2d 656, 658 (7th Cir. 1986)). Enforcement will be limited only if compliance would impose “an unreasonable or undue burden on the party from whom production is sought.” *Aerotek*, 815 F.3d at 333; *see also Alight Sols.*, 44 F.4th at 722 (quoting *Dow Chem. Co. v. Allen*, 672 F.2d 1262, 1267 (7th Cir. 1982)).

⁹ The Commission applied this same standard in evaluating the merits of, and ultimately denying, Leader's Petition to Quash the CID. *See* Pet. Ex. N at p. 4.

Enforcement proceedings necessarily must be accelerated and limited in scope to protect “the important governmental interest in the expeditious investigation of possible unlawful activity.” *Markwood*, 48 F.3d at 979 (quoting *Texaco*, 555 F.2d at 872-73). To ensure the summary nature of enforcement proceedings, the government is authorized to rely on affidavits or declarations to demonstrate that the requirements for enforcement of an administrative subpoena have been satisfied. *In re EEOC*, 709 F.2d 392, 400 (5th Cir. 1983); accord *United States v. Dynavac, Inc.*, 6 F.3d 1407, 1414 (9th Cir. 1993) (the government’s burden is a “slight one” and may be satisfied by a declaration).

In addition, Leader may only oppose enforcement of the CID on grounds that it previously presented to the Commission in its Petition to Quash. Parties must generally exhaust their administrative remedies before seeking relief in court, including regarding objections to the FTC’s compulsory process. *See, e.g., United States v. Morton Salt*, 338 U.S. 632, 653–54 (1950); *American Motors Corp. v. FTC*, 601 F.2d 1329, 1332–37 (6th Cir. 1979); *FTC v. XCast Labs, Inc.*, No. Misc 21-1026-MWFMRWX, 2021 WL 6297885, at *2, *3 (C.D. Cal. Dec. 9, 2021) (noting that “[a]mple authority supports the conclusion that a party must present and exhaust” its objections to an FTC CID before coming to court) (citing cases). Because CID recipients have an administrative remedy to quash or narrow a CID, *see* 15 U.S.C. § 57b-1(f); 16 C.F.R. § 2.10, a recipient’s failure to present a basis for opposing a CID to the Commission waives the ability to present the objection later. *FTC v. Tracers Info. Specialists, Inc.*, No. 8:16-mc-00018-VMC-TGW, 2016 WL 3896840, at *4 (M.D. Fla. June 10, 2016) (objections not raised to a CID before the Commission are waved in court).

ARGUMENT

The FTC satisfies the three conditions for enforcement of the CID: it is authorized to conduct the investigation, it seeks specific documents and information, and these materials are reasonably relevant to the investigation. And as the Commission found in its order denying Leader's Petition to Quash, there is no evidence that compliance with the CID would impose an undue or unreasonable burden on the company. Accordingly, the CID should be enforced without delay.

A. The CID is Properly Issued Under the Commission's Statutory Authority

There is no dispute that the Commission's investigation of Leader and the related CID fall within the agency's statutory authority, specially: Section 5 of the FTC Act and the ECOA. *See* Pet. Ex. B, at p. 6 (delineating the "Subject of Investigation"). Section 5(a) of the FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. § 45(a). The ECOA prohibits creditors from discriminating against credit applicants on the basis of race or ethnicity, among other characteristics. 15 U.S.C § 1691 *et seq.*

The FTC has authority to enforce provisions of the FTC Act, 15 U.S.C. §§ 41-58, which authorizes the Commission to investigate whether a person is or has been engaged in unfair or deceptive acts or practices in or affecting commerce, and to issue CIDs to any person who may have documents or information relevant to such an investigation. 15 U.S.C. § 57b-1(c)(1). Similarly, the ECOA authorizes the Commission to enforce requirements of that statute with the same functions and powers provided under the FTC Act. 15 U.S.C. § 1691c(c). As articulated by the Supreme Court, the FTC may "investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." *Morton Salt*, 338 U.S. at 642-643.

Here, this condition for enforcement of the CID is easily satisfied. Leader sells new and used cars at its ten Illinois locations and makes claims to consumers about the price, condition, and add-ons offered and sold in connection with these cars. An investigation into the veracity and legality of these claims falls squarely within the Commission’s consumer protection enforcement authority. Leader also obtains financing from third-party lenders on behalf of prospective buyers. Investigating how these financing practices are conducted, and whether they comply with the ECOA, is unquestionably within the FTC’s statutory authority.

The CID was also issued in compliance with applicable procedural requirements of the FTC Act and its implementing rules. 15 U.S.C. § 57b-1(c); 16 C.F.R. § 2.7 (2022). Specifically, a CID must:

- identify the nature of the conduct being investigated and the provision of law applicable to such violation;
- describe with “definiteness and certainty” the documentary material to be produced and the questions to be answered;
- provide the respondent a “reasonable period of time” to respond to the requests;
- “identify the custodian to whom such material shall be made available”; and
- prescribe a date at which time the answers to questions shall be submitted.

15 U.S.C. § 57b-1(c).

The CID to Leader satisfies all of these requirements. *See Pet. Ex. B*. The schedule accompanying the CID describes the nature of the investigation and identifies the laws at issue. *Id.* at p. 6 (see “Subject of Investigation”). It also describes with “definiteness and certainty” the kinds of documents and information to be produced in a schedule requesting discrete information and categories of documents, 15 U.S.C. § 57b-1(c)(3)(a), (5)(a). *Pet. Ex. B*, at pp. 6-16. In

addition to identifying a specific records custodian to whom the responses must be sent, the CID was validly signed by Commissioner Alvaro Bedoya acting pursuant to three Resolutions approved by the full Commission authorizing the use of compulsory process. *Id.*; 16 C.F.R. § 2.7(a).

Leader did not dispute the FTC’s authority or process for issuing the CID in its Petition to Quash, except in one trivial respect.¹⁰ Pet. Ex. H. Any attempt to do so in this Court would be meritless and foreclosed by Leader’s failure to make such a claim in its administrative challenge.

B. The CID Clearly Defines the Information and Documents Sought

The Seventh Circuit has held that that an administrative subpoena is indefinite only if its “demands are overly vague or amorphous.” *Alight Sols.*, 44 F.4th at 724. The Commission’s CID is neither vague, amorphous, nor indefinite, and Leader has never suggested otherwise, either in its Petition to Quash, in correspondence with FTC staff, or in answers to the CID itself.¹¹

The Commission’s CID includes a schedule consisting of twenty-four interrogatories,¹² seventeen document requests, and two separate data requests, all of which specify in exacting detail the materials sought. Pet. Ex. B, at pp. 6-16. As noted above, these requests seek discrete categories of documents and information, such as policies and procedures, consumer complaints

¹⁰ In its Petition to Quash, Leader claimed that the Commission failed to properly “serve” the CID because it named the two entities that own the company’s ten subsidiaries rather than the subsidiaries themselves. Pet. Ex. H, at p. 6. The Commission properly rejected this argument. Pet. Ex. N, at p. 5.

¹¹ In a February 3, 2023, letter to FTC staff, counsel for Leader asked for clarification regarding a handful of terms in Specification C of the CID. Pet. Ex. J, at p. 2. This is the only occasion on which counsel has suggested or implied that Leader requires clarification of the CID’s requests. FTC staff promptly provided the requested clarification via letter on February 6, 2023.

¹² The original CID schedule issued by the Commission erroneously numbered the interrogatories out of sequence beginning with request 19. The FTC formally modified the CID to correct this error in a letter dated March 3, 2023. *See* Pet. Ex. O, at 6 n.9.

and inquires, the identity of employees, the costs and providers of add-on products, copies of advertisements, deal jackets, and other materials. For example, Document Request 6 requests:

Documents sufficient to show any policies, procedures, employee manuals, and training materials referring or relating to the Company's Advertising, marketing, sales, financing, leasing, and legal compliance. This request includes, without limitation, all Documents referring or relating to compliance with the Equal Credit Opportunity Act, the Federal Trade Commission Act, the Truth In Lending Act, state laws governing the sale of automobiles, and the "in-house F&I [finance and insurance] training program and team" referenced in AutoCanada submissions to the SEDAR filing system, including its March 31, 2022 Annual Information Form.

Pet. Ex. B, at p. 10. To further clarify these requests, the schedule separately defines eight terms used in the specifications, including "add-on," "dealer participation," and "advertisement." *Id.*, at pp. 11-12. The CID's requests are therefore sufficiently delineated for Leader to produce responsive information and documents. Regardless, any attempt by Leader to raise an indefiniteness challenge at this stage would be meritless and precluded by the company's failure to make such a claim in its Petition to Quash.

C. The CID Seeks Information and Documents That Are Reasonably Relevant to the Commission's Investigation

The information and documents sought by the CID are reasonably relevant to the FTC's investigation. "'Reasonably relevant' means merely 'that the information must be relevant to some (any) inquiry that the [agency] is authorized to undertake.'" *United States v. Oncology Services Corp.*, 60 F.3d 1015, 1020 (3d Cir. 1995) (quoting *Dole v. Trinity Industries, Inc.*, 904 F.2d 867, 872 (3d Cir. 1990)). As long as the material requested "touches a matter under investigation, an administrative subpoena will survive a challenge that the material is not relevant." *Sandsend Fin. Consultants, Ltd. v. Fed. Home Loan Bank Board*, 878 F.2d 875, 882 (5th Cir. 1989) (internal quotation marks omitted). The agency's appraisal of relevancy "must be

accepted so long as it is not obviously wrong.” *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992) (internal quotation marks omitted).

In its order denying Leader’s Petition to Quash, the Commission found the CID to be “plainly relevant to assessing compliance with the fair lending and consumer protection laws at issue.” Pet. Ex. N, at p. 5. The CID seeks information and documents relating to Leader’s sale and promotion of vehicles and dealer add-ons, potentially discriminatory financing practices, and management’s awareness of, and possible participation in, this conduct. As the Commission recognized, broad subpoenas such as this are appropriate in comprehensive investigations. *Id.* (citing *Texaco*, 555 F.2d at 882).

Once again, Leader did not dispute the relevancy of the CID’s requests in the company’s Petition to Quash. Any attempt to do so here would therefore be meritless and foreclosed by Leader’s failure to make such a claim in its administrative challenge.¹³

D. The CID Is Not Unreasonably Broad or Burdensome

Any objection by Leader based on burden or overbreadth would not defeat enforcement of the CID, both because the objection is baseless and also because Leader failed to raise it in the administrative proceeding before the Commission. The Commission’s order denying the Petition to Quash found that Leader had presented “no factual basis to conclude that the burden on the company is undue.” Pet. Ex. N, at p. 7. Where the agency’s inquiry “is authorized by law and the materials sought are relevant to the inquiry,” the burden of compliance will rarely be considered unreasonable. *SEC v. Brigadoon Scotch Distributing Co.*, 480 F.2d 1047, 1056 (2d Cir. 1973). Because “[s]ome burden on subpoenaed parties is to be expected and is necessary in furtherance

¹³ Leader did add a sentence at the very end of its Petition to Quash claiming, without elaboration or evidence, that the CID was “irrelevant,” Pet. Ex. H, at p. 8, which the Commission dismissed as a “throwaway” claim. Pet. Ex. N, at p.6 n.4.

of the agency's legitimate inquiry and the public interest," courts "have refused to modify investigative subpoenas unless compliance threatens to unduly disrupt or seriously hinder normal operations of a business." *Texaco, Inc.*, 555 F.2d at 882. Leader did not make anything close to such a showing in its challenge to the CID before the FTC, and thus immediate enforcement of the CID should be ordered. *See E.E.O.C. v. Bay Shipbuilding Corp.*, 668 F.2d 304, 313 (7th Cir. 1981) (rejecting argument that it would be unduly burdensome to comply with administrative subpoena when respondent "had ample opportunity to demonstrate before the EEOC that it would be unduly burdensome" but failed "to present any affidavits to support its conclusory assertion to that effect"); *see also United States v. Firestone Tire & Rubber Co.*, 455 F. Supp. 1072, 1084 (D.D.C. 1978) (rejecting argument it would be unduly burdensome to require respondent "to produce information which it has known for six months was being sought").

To the extent Leader may seek to expand its burden claim for the first time here, the objection is waived. Even if not found to be waived, any such objection should nevertheless be rejected as meritless. Publicly available information as well as evidence obtained during the Commission's investigation indicates both that Leader maintains records that are responsive to the CID and that producing these records will not impose a meaningful burden, much less an undue one. The CID seeks general business information and documents that Leader should maintain and, in some cases, is legally required to maintain, in the ordinary course of its operations. Moreover, in statements made to investors and regulators, Leader's corporate parent, AutoCanada, has repeatedly touted the sophistication and capabilities of the company's data information systems, statements that are at odds with Leader's contentions now that it would be

too burdensome to produce some of the requested information.¹⁴ Former employees familiar with these systems, copies of records maintained on the systems, and the vendor's own website,¹⁵ all confirm that the data and documents sought by the CID are readily accessible, despite Leader's claims to the contrary.¹⁶

Since being served with the CID four months ago, Leader has withheld responsive information and documents relevant to the FTC's investigation on the basis of its unsupported objections. Rather than demonstrating undue burden, Leader's conduct suggests instead that it simply is not taking seriously its duty to comply with the Commission's CID. The company has not complied with deadlines set by the Commission; submitted perfunctory, incomplete responses to interrogatories and document requests; refused to answer other requests; failed to provide factual support for any of its purported burden objections; refused to comply with the FTC's production requirements; and shown little indication that it is taking the issue of electronically stored information ("ESI") seriously. To cite just a few examples, counsel's April 10, 2023, email is the first acknowledgement from Leader that it is in the process of retaining a vendor to manage ESI discovery, despite being encouraged to start this process in the parties' first conversation on December 27, 2022. Pet. Ex. A, at ¶ 8. And virtually all of Leader's

¹⁴ These systems, AutoCanada claims in reports filed with Canadian regulators, can generate reports "that set forth and compare revenue and expense data by department and by dealership, allowing our management to quickly analyze the results of operations, identify trends in the business and focus on areas that require attention or improvement." Pet. Ex. C, at p. 34. AutoCanada claims that these systems are installed "as soon as possible" after each acquisition because they are "a key factor in successfully incorporating newly acquired businesses." *Id.*

¹⁵ Deal jackets are maintained by CDK Global Inc., a software service provider for the automotive industry. On its website, CDK describes how the company's "Digital Contracting solutions automatically group forms and archive them in a digital deal jacket, which can be *easily accessed* by your F&I manager" (emphasis added) (<https://www.cdkglobal.com/fi/fi-solutions/digital-contracting>).

¹⁶ At least one former employee has described downloading deal jackets as a process that takes seconds, not ten to fifteen minutes as claimed by Leader. More importantly, this claim is entirely unsubstantiated and based on nothing more than the assertion of counsel.

responses to the CID's document requests are facially incomplete. In response to Document Request 11, which requests files relating to the employees disciplined or terminated for conduct related to the FTC's investigation, Leader has produced a one-page email and a one-page "Corrective Action Form." Pet. Ex. A, at ¶ 39. Similarly, in response to Document Request 12, which requests documents related to compliance investigations or audits, Leader has produced a total of only eight emails. There is no indication from these responses that the CID is burdening Leader.

CONCLUSION

For all of these reasons, Petitioner FTC respectfully requests that the Court grant its petition and issue the attached order requiring Respondent Leader to comply with the CID or to show cause as to why it has failed to do so.

Respectfully submitted,

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