

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

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

In the Matter of)	
)	
)	
CIVIL INVESTIGATIVE DEMAND TO)	File No. 222-3050
SPREAD TECHNOLOGIES LLC,)	REDACTED PUBLIC
DATED MAY 11, 2022.)	VERSION
)	

**ORDER DENYING PETITION TO QUASH
CIVIL INVESTIGATIVE DEMAND**

By WILSON, Commissioner:

Spread Technologies, LLC (Spread) petitions the Commission to quash or modify in its entirety, or alternatively, quash or limit portions of, a Civil Investigative Demand (CID) issued on May 11, 2022 in connection with the Commission’s investigation into whether Spread engaged in unfair or deceptive practices with respect to its marketing and sale of currency exchange services in violation of the FTC Act, 15 U.S.C. § 45, or the Gramm-Leach-Bliley Act (GLB Act), 15 U.S.C. §§ 6801-27.

Specifically, Spread requests that the Commission quash or limit the CID because it seeks information and materials that are (1) located abroad, and either “may not be” in Spread’s custody or control or are “likely” protected from disclosure by foreign law; (2) irrelevant; (3) unduly burdensome to produce; (4) responsive to overbroad requests; or (5) protected by the attorney-client privilege. *Petition*, at 5-9. For the reasons set forth below, we deny Spread’s petition.

I. BACKGROUND

Spread, a Delaware corporation that appears to have operations in New Jersey, operates BitMart, a cryptocurrency exchange that provides services to customers globally. These services include a variety of ways to buy, sell, and store cryptocurrency. Spread is registered as a monetary transfer operator in three other states.

The Commission is investigating whether Spread engaged in violations of the FTC Act, the GLBA Act, or one of the GLB Act’s implementing rules, resulting from its operation of

BitMart. More specifically, the Commission seeks to determine whether Spread's business practices in operating BitMart constituted an unfair or deceptive practice related to consumer privacy and/or data security, the privacy or security of consumer financial information, or deceptive and manipulative conduct on the internet. The investigation includes inquiries into BitMart's representations to consumers about its advertised exchange services;¹ allegations that consumers have been unable to access their accounts and have received inadequate and insecure customer services; and the publicly reported loss of more than \$200 million in cryptocurrency.²

On May 11, 2022, the Commission issued a CID to Spread asking for responses to interrogatories and document requests. The CID was sent by U.S. mail on May 12, 2022 and Spread acknowledged service on May 16, 2022. *Petition*, at 1-3. The CID requests information about Spread's knowledge of, involvement in, and ability to prevent, security breaches that jeopardize currency investments traded on its BitMart platform; reported fraud associated with BitMart and its customer service processes; the veracity of BitMart's representations about its service and security; the structure of BitMart's operations and its methods of communicating with consumers, including the identities of third parties advertising its service; and consumer complaints, lawsuits, other investigations, and compliance with federal law. *See* CID, at 2-9 (interrogatories), 9-13 (documents). The CID's specified time period is from May 1, 2019 through full compliance, *id.* at 2, and its return date for production was June 10, 2022.

Counsel for Spread and the FTC spoke about the CID on May 25, 2022 and June 1, 2022. *Petition*, at 3. At the May 25 call, Spread's counsel told FTC staff that he was representing the company but had only recently learned about the CID and "needed time to understand the issues raised within it." *Petition*, at 3.

At the June 1 conference call, Spread's counsel claimed that the company intended to cooperate with the FTC's investigation but complained that the CID was "overly broad." *Petition*, at 4. Spread requested an extension of the deadline to file a petition to quash the CID, *id.*, which by Commission rules was set for June 6, 2022. Staff orally denied the request, explaining that such extensions are not granted absent extraordinary circumstances, which

¹ BitMart's webpage promised consumers that they can purchase crypto with credit and debit cards on a "one-stop platform"; claimed that it is "100% secure for trading and digital asset management"; and suggested that customers have access to "24/7 support" with a team that is "responsive to your needs and . . . always available to help you out." Staff has obtained information, however, that BitMart may not have provided the promised services.

² In December 2021, BitMart acknowledged that a security breach enabled a hacker to steal more than \$200 million in cryptocurrency from BitMart customers. The company promised at that time to reimburse its customers for their losses but had not done so as of several weeks later. MacKenzie Sigalos, *Iranian immigrant lost \$53,000 in crypto hack, says he faces ruin if BitMart doesn't pay him back*, CNBC Tech report (Jan. 7, 2022) (victims of the \$200 million BitMart hack say that five weeks have passed since the crypto exchange vowed to return their money), <https://www.cnbc.com/2022/01/07/cryptocurrency-theft-bitmart-still-owes-victims-of-200-million-hack.html?&qsearchterm=BitMart>. BitMart's website described itself as the "most trusted cryptocurrency platform" that is "100% secure" and claimed to have an "advanced risk control system."

Spread’s counsel had not identified. The company’s counsel also claimed he requested an extension of the June 10 deadline for the company’s CID response. Attorneys for the FTC and Spread scheduled a meet and confer session for the afternoon of June 6 to discuss the schedule for the production and the scope of the requests. But Spread put off the meet and confer, citing the unavailability of a necessary participant, without providing an alternative date; instead, it filed its petition to quash on June 6. In the petition, Spread contends that the FTC cannot compel it to produce information located outside of the United States, and that the CID’s requests are overly broad, unduly burdensome, and not sufficiently related to the investigation.

A few days after filing the petition, Spread’s counsel told FTC staff that Spread would not attend a meet and confer until after its petition to quash had been decided; in addition, Spread refused to produce any materials responsive to the CID by the June 10 return date due to the pendency of the petition.

Since then, the Commission has not received any responsive materials from Spread; neither has it received any information about practical or legal impediments to responding, requests for clarification, or proposals for narrowing the requests in the CID.

II. ANALYSIS

A. Spread’s Failure To Meet and Confer Bars Consideration Of The Petition.

As an initial matter, Spread failed to engage in a meet and confer session with Commission staff prior to filing its petition to quash as required by 16 C.F.R. § 2.7(k). Rule 2.7(k) states without qualification that “[t]he Commission will not consider petitions to quash or limit absent a pre-filing meet and confer session[.]” This conferral requirement is mandatory. Consequently, Spread’s decision not to engage in a meet and confer conference with staff prior to filing its petition to quash is a sufficient basis by itself on which to deny the petition. *See Feature Films for Fams., Inc., (Order Denying Petition to Quash or Limit July 14, 2010 Civil Investigative Demand Issued to Firefighters Charitable Foundation, Inc.) (FCF) FTC File No. 102-3023, 150 F.T.C. 866 (Sept. 23, 2010)* (petitioner’s “failure to prove that it has satisfied the meet-and-confer requirement constitutes an adequate and independent reason to deny [its] petition to quash”); *In re August 5, 2002 Civil Investigative Demand for Testimony Issued to Dr. William V. Judy*, FTC File No. X000069 (Oct. 11, 2002), at 3 (“every petitioner must comply with” the obligation to meet and confer before filing a petition to quash and “[f]ailure to do so provides ample ground for rejecting a petition outright.”) (citing *Postal Carriers Institute, Corp.*, 125 F.T.C. 1317, 1318-19, *aff’d*, 125 F.T.C. 1323 (1998)); *see also In re April 10, 2017 Subpoena Ad Testificandum Issued to Humana, Inc.*, FTC File No. 161-0026 (June 15, 2017), at 6 (under Rule 2.7(k), contentions not raised in a meet and confer are “not properly before” the Commission).

Spread’s counsel provided a “Certification of Good Faith” at the end of its petition claiming to have “tried on several occasions . . . to resolve with Commission Staff the issues raised” in the petition, but without success. *Petition*, at 10. But the required signed statement accompanying a petition to quash must attest that the parties tried to resolve their disagreements at a pre-petition meet and confer conference. Counsel’s certificate contains no such affirmation that he attempted to resolve disputes about the CID with Commission counsel at a pre-filing

meet and confer session that he was unable to resolve before filing the petition. In fact, even now, FTC staff and Spread's counsel have not yet engaged in their initial mandatory Rule 2.7(k) meet and confer conference. Nor did Spread's counsel provide any information to Commission staff during their two pre-filing phone calls that would support Petitioner's assertions regarding burden or other challenges to the CID made in the petition. *See Petition*, at 3-4 (describing pre-petition contact with staff).

The purpose of a Rule 2.7(k) pre-petition meet and confer is "to discuss compliance and to address and attempt to resolve all issues" raised by the recipient that hinder full compliance with the agency demand, such as claims of undue burden, overbreadth, lack of relevance, and privilege, before filing the petition. To facilitate that discussion, the rule requires that at the meet and confer, the recipient "must make available personnel with the knowledge necessary for resolution of the issues relevant to compliance" with the CID; this obligation would entail, for example, proffering employees able to provide factual grounds or explanations regarding factors relevant to CID compliance. *Id.* (such company personnel could include employees with knowledge of relevant materials, ESI systems, the company's record management system and organizational structure, geographic location of records, or other matters relevant to its claims). The "affirmative duty" to meet and confer "supplies a mechanism for . . . resolving disputes in an efficient manner. Requiring reasonable efforts to resolve avoidable compliance issues serves the salutary purpose of facilitating Commission investigations" without unnecessary delay and expense. *FCF*, 150 F.T.C. 866; *see also Humana, supra*. (if recipient had raised challenges at the meet and confer, "it could have resolved any uncertainties by conferring with Commission staff.").

Spread's failure to engage in a meet and confer with FTC staff before filing its petition in an effort to resolve its objections to the CID provides ample grounds to reject its petition outright.

B. Spread Must Produce Responsive Information And Documents In Its Possession, Custody, Or Control That Are Located Abroad.

The petition's arguments lack merit, in any event.

Spread contends that the CID improperly seeks information that is "located outside the United States and may not be in [its] legal custody or control." *Petition*, at 5. Petitioner presumably bases its objection on the fact that the CID requests information "that is created and held by custodians located in jurisdictions outside of the United States." *Id.* But the CID contains search instructions that expressly limit production of documents and information within Spread's (and its agents' and service providers') possession, custody, or control.³ As the Commission has

³ Instruction I-4 of the CID states:

I-4. **Scope of Search:** This CID covers Documents and information in Your possession or under Your actual or constructive custody or control, including Documents and information in the possession, custody, or control of Your attorneys, accountants, directors, officers, employees, service providers, and other agents and consultants, whether or not such Documents or information were received from or disseminated to any person or entity.

previously recognized, a CID need not be limited, much less quashed, based on this objection when the CID already contains the appropriate limiting instructions.⁴ And those instructions are in accord with applicable precedent that require an entity subject to the jurisdiction of United States courts to produce all information and documents within its possession, custody, or control – even if such materials are located abroad.⁵ “Control,” in this context, has been defined to include the legal or practical ability to obtain responsive materials,⁶ including those possessed by a party’s agent,⁷ or maintained by a third party on the party’s behalf.⁸ Indeed, Spread not only recognizes this very principle in its petition,⁹ but importantly does not disclaim that it exerts control over information held by its self-styled “custodians” (who might also be its “agents” or

See also FTC Form 144 (“You are required to produce all documents described in the attached schedule that are in your possession, custody, or control.”).

⁴ *See Political Opinions of America*, 155 F.T.C. 1681, 1688-89 (2013).

⁵ *See In re May 7, 2018 Subpoena Duces Tecum and Subpoena Ad Testificandum Issued to Banibu II Holdings, Inc.*, File No. 181-0030 (June 26, 2018), at 3-4 (collecting authority); 15 U.S.C.A. § 57b-1(c)(1) (person receiving agency CID must produce responsive non-privileged documents and information within its “possession, custody, or control”); Restatement (Third) of Foreign Relations Law § 442(1)(a) (1987) (“A court or agency in the United States, when authorized by statute . . . may order a person subject to its jurisdiction to produce documents . . . or other information relevant to an . . . investigation, even if the information or the person in possession of the information is outside the United States.”).

⁶ *See, e.g., Political Op. Amer.*, 155 F.T.C. at 1688-89 (control “means the legal or practical ability to obtain the responsive documents”); *U.S. Intern. Trade Com’n v. ASAT, Inc.*, 411 F.3d 245, 254 (D.C. Cir. 2005) (“Control’ is defined as the legal right, authority or ability to obtain documents upon demand”); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 236 F.R.D. 177, 180 (S.D.N.Y. 2006); *Dietrich v. Bauer*, No. 95 Civ. 7051, 2000 WL 1171132, at *3 (S.D.N.Y. 2000) (“‘Control’ has been construed broadly by the courts as the legal right, authority or practical ability to obtain the materials sought upon demand.”).

⁷ *ASAT*, 411 F.3d at 253-54; *Flagg v. City of Detroit*, 252 F.R.D. 346, 353 (E.D. Mich. 2008) (citing *Commercial Credit Corp. v. Repper*, 309 F.2d 97, 98 (6th Cir. 1962)).

⁸ *Flagg*, 252 F.R.D. at 354 (citing *Tomlinson v. El Paso Corp.*, 245 F.R.D. 474, 477 (D. Colo. 2007)).

⁹ *See Petition*, at 5 (citing *United States Antitrust Guidelines For International Enforcement and Cooperation*, 2017 WL 11655745, at *21 (Jan. 13, 2017) (the FTC “may compel the production of documents or information, including documents or information located outside the United States, when the documents or information sought are within the “possession, custody, or control” of an individual or entity subject to the jurisdiction of the United States” and not protected by privilege). While the Guidelines apply only to antitrust cases, the cited principle applies equally to non-competition consumer protection investigations regarding potentially unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

“service providers”) located abroad.¹⁰ The Commission therefore may obtain responses to its CIDs located abroad if they are in Spread’s (or its agents’ or service providers’) possession, custody, or control.

Next, Spread asserts that “foreign law likely prevents” information held outside of the United States from being transferred to this country and produced to the FTC. *Petition*, at 5. But the company fails to identify any responsive materials that are not already in the possession, custody, or control of its personnel in the United States even if the information is stored abroad. Nor does Spread specify what responsive materials or what foreign law applicable to them would prevent their production. In any case, governing authority dictates that foreign laws that prevent disclosure “do not deprive an American court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate that [foreign law].” *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Court*, 482 U.S. 522, 544 n.29 (1987) (citation omitted). Instead, courts should consider several factors in deciding whether to order disclosure. *Id.*, at 544 n.28;¹¹ *see also Linde v. Arab Bank, PLC*, 706 F.3d 92, 109-15 (2d Cir. 2013) (applying *Aérospatiale*, the Restatement factors (now § 442(1)(c) of the Restatement), and hardship and good faith factors applied in that circuit to require production by a foreign bank even in the face of a conflicting foreign law).

The Commission is thus well within its authority to compel entities subject to its jurisdiction such as Spread to produce responsive information and documents within its possession, custody, or control even if those materials are located abroad. Spread has failed to identify any inconsistent foreign law and the very real possibility that production would be ordered even in the face of such a hypothetical foreign law leads us to reject Spread’s arguments against the production of such foreign-located materials.

C. The CID Seeks Relevant Information and Documents.

The CID seeks core information about Spread’s business practices to aid staff in assessing whether those practices violate Section 5 of the FTC Act, 15 U.S.C. § 45, or the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-27, and if so, what relief is appropriate. FTC compulsory process is permissible “if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.” *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). The standard for judging relevancy in an agency investigation “is more relaxed than in an adjudicatory” proceeding. *FTC v. Invention Submission*

¹⁰ “Custodian” has been defined as “one that guards and protects or maintains.” *Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/custodian> (last accessed July 16, 2022).

¹¹ These factors are: “(1) the importance to the . . . litigation of the documents or other information requested; (2) the degree of specificity of the request; (3) whether the information originated in the United States; (4) the availability of alternative means of securing the information; and (5) the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located.” *Id.* (citing the Restatement of Foreign Relations Law § 437(1)(c) (1986)).

Corp., 965 F.2d 1086, 1090 (D.C. Cir. 1992). At the investigatory stage, the Commission “can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.” *FTC v. Texaco, Inc.*, 555 F.2d 862, 872 (D.C. Cir. 1977) (quoting *Morton Salt*, 338 U.S. at 642-43)). “The requested material, therefore, need only be relevant to the *investigation*—the boundary of which may be defined quite generally, as it was in the Commission’s resolution here.” *Invention Submission*, 965 F.2d at 1090 (citation omitted). Put another way, the requested information must “‘not [be] plainly incompetent or irrelevant to any lawful purpose’ of the [agency].” *Texaco*, 555 F.2d at 872 (quoting *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943)). “[T]he agency’s own appraisal of relevancy must be accepted so long as it is not ‘obviously wrong.’” *Invention Submission*, 965 F.2d at 1089 (citations omitted); indeed, it is the recipient’s burden “to show that the information is irrelevant.” *Id.* at 1090 (citing *Texaco*, 555 F.2d at 882). Agency compulsory process is proper where “the subject matter of the investigation is within” the agency’s statutory authority and “the information sought is []relevant to ‘a lawful purpose of the agency.’” *FTC v. Ken Roberts Co.*, 276 F.3d 583, 586-87 (D.C. Cir. 2001)) (administrative agencies must be given wide latitude in asserting their power to investigate by compulsory process).

Spread repeatedly complains that the specifications are not “explicitly tied” to the conduct described in the FTC Resolutions. *See Petition*, at 6-8. But no such connection is required. At the investigatory stage, the test is whether the information requests are relevant to the investigation – which itself may be defined broadly in the relevant resolution. *Invention Submission*, 965 F. 2d at 1090. Such is the case here. Each specification fairly requests information or documents aimed at investigating potential law violations and evaluating the scope of injury resulting from those violations; and those inquiries fall comfortably within the Resolutions permitting staff to investigate unfair or deceptive acts or practices “related to the marketing of . . . services on the Internet” (Resolution No. 2123125); “related to consumer privacy and/or data security” (Resolution No. 1823036); and “with respect to the privacy or security of consumer [financial] information” (Resolution No. 0023284).

Spread challenges as irrelevant specifications that seek information about the services it offers, the fees it charges for those services, and its advertising practices and policies, including third parties that have advertised or promoted BitMart. *Petition*, at 6-8. But these requests are self-evidently “related to the marketing . . . of services on the Internet” and thus within the scope of the Commission’s Resolution and investigation. *See Ken Roberts*, 276 F.3d at 587 (“the FTC Act gives the FTC ample authority to investigate and, if deceptive practices are uncovered, to regulate appellants’ advertising practices”)(citations omitted); *FTC v. Carter*, 636 F.2d 781, 788–89 (D.C. Cir. 1980) (broadly construing relevance during agency investigation to hold that cigarette advertisements from as early as 1964 may be “relevant to current consumer perception of advertising.”).

The company also challenges the relevancy of document requests about its finances (including financial statements, audit reports, and third-party preparation of such statements or reports), and its annual revenue. *Petition*, at 6-7. But “financial information can be relevant to a pre-complaint *investigation* into possible section 5 violations.” *See Invention Submission*, 965 F.2d at 1089-90 (company financial, profit, and revenue data can be relevant to a pre-complaint investigation) (emphasis in original) (citations omitted). Spread also claims that a document request for webpages “presented to a consumer during the process of signing up for service”

when “solicit[ing] consumers for BitMart,” including documents showing “the manner in which privacy policies, user agreements, or terms of service were presented to consumers and the method by which consumers were asked to record assent or awareness of such statements” seeks materials “that fall well outside the scope of the FTC Resolutions” and thus the CID. *Petition*, at 7, 8. To the contrary, this request falls within the scope of all three Resolutions, *see supra* at 7, as it seeks materials related to consumer privacy, data security, and marketing on the internet.¹²

In sum, we find that each of the CID requests challenged by Spread is “reasonably relevant” to the Commission’s broad investigation, authorized by the three Resolutions, regarding whether Spread’s business activities or practices in marketing and operating the BitMart currency exchange violated the FTC Act or the GLB Act. *See FTC v. Church & Dwight Co., Inc.*, 665 F.3d 1312, 1316 (D.C. Cir. 2011) (broadly construing agency resolution to encompass investigation and CIDs seeking products other than the main product at issue).

D. The CID Is Not Unduly Burdensome or Overly Broad.

Spread’s remaining challenges rest on its claims that “the CID should be quashed or limited for being unduly burdensome” and overbroad. *Petition*, at 5-9. Agency process is not unduly burdensome, however, unless compliance “threatens to unduly disrupt or seriously hinder” the normal operations of the recipient’s business. *Texaco*, 555 F.2d at 882. A CID recipient bears the burden to show *how* a CID interferes with its ability to operate its business. *See FDIC v. Garner*, 126 F.3d 1138, 1146 (9th Cir. 1997) (rejecting claim of undue burden where recipient failed “to enunciate how these subpoenas constitute a ‘fishing expedition’”); *see also FTC v. Standard American, 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 claim that compliance would result in “the virtual destruction of a successful business”). Absent a showing of disruption, the sheer amount of responsive materials does not demonstrate undue burden or overbreadth. *FTC v. Jim Walter Corp.*, 651 F.2d 251, 258-59 (5th Cir. 1981); *see also Garner*, 126 F.3d at 1145-46 (mere allegation that subpoena called for thousands of financial documents and one million other documents was not sufficient to establish burden). The test is “not easily met” because “[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.” *Texaco*, 555 F.2d at 882; *see also FTC v. Shaffner*, 626 F.2d 32, 38 (7th Cir. 1980) (“any subpoena places a burden on the person to whom it is directed. Time must be taken from normal activities and resources must be committed to gathering the information necessary to comply. Nevertheless, the presumption is that compliance should be enforced to further the agency’s legitimate inquiry into matters of public interest.”). Further, “[b]roadness alone is not sufficient justification to refuse enforcement” of agency process. *Texaco*, 555 F.2d at 882 & n.51 (citing *Adams v. FTC*, 296 F.2d 861, 867 (8th Cir. 1961)); *see also Genuine Parts Co. v. FTC*, 445 F.2d 1382, 1391 (5th Cir. 1971) (the FTC should be accorded “extreme breadth” in conducting its investigations in order to

¹² Spread contends that it “does not possess every webpage containing responsive information” to this request. *Petition*, at 7. While it must still produce webpages and other responsive materials that are otherwise under its “custody or control,” CID, at 15, Instruction I-4, it has no obligation to produce materials that it does not possess or that do not fall under its “custody or control.” *Id.*

“satisfy [itself] that corporate behavior is consistent with the law and the public interest.”) (citing *Morton Salt*, 338 U.S. at 652)).

We find that Spread has failed to show that compliance will impose an undue burden by seriously disrupting its business operations. It claims that the CID imposes an undue burden because it asks for responses “touch[ing] on nearly every facet of [its] business,” for nearly its entire “existence,” and which [REDACTED] and take “months” to respond. *Petition*, at 6, 8. But Spread provides no factual support to substantiate its conclusory contentions regarding its resources, the breadth of its operations, or the burden and expense of responding. *See id.*, at 5-9. Spread’s failure to substantiate such claims by affidavit or other documentation, as contemplated by 16 C.F.R. § 2.10(a)(1), is reason itself to deny the petition. The Commission routinely denies petitions to quash that lack an adequate evidentiary basis.¹³ “[M]ere statements by counsel in a brief do not provide a factual basis” to support CID objections and petitions to quash are routinely denied for that reason. *In re April 12, 2022 Civil Investigative Demand to Liberty Auto City, Inc.*, FTC File No. 222-3077 (June 13, 2022), at 3 & n.3 (collecting authority).

Instead, the process recipient must make “a record . . . of the measure of [its] grievance rather than ask [the court] to assume it.” *Morton Salt*, 338 U.S. at 653-54 (rejecting as inadequate “mere assertions in . . . briefs”); *see also EEOC v. Maryland Cup Corp.*, 785 F.2d 471, 477 (4th Cir. 1986) (mere “conclusory allegations” do not “constitute evidence” that could show an administrative subpoena is unduly burdensome); *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); *Political Op. Amer.*, 155 F.T.C. at 1686 (petitioner may not rely on theoretical objections without factual support). “[V]ague and nonspecific assertions” of burden or disruption – like the ones made by Spread here – do not justify quashing or limiting a CID. *In re May 6, 2013 Civil Investigative Demand Issued to Countrywide Periodicals, LLC (CWP)*, FTC File No. X080036 (July 3, 2013), at 5-6 (“CWP has not even attempted to substantiate its claims of undue burden with facts that might support its grievance against the CID. It alleges burden, but makes no factual claims regarding the existence or extent of its burden.”); *In re March 19, 2014 Civil Investigative Demand Issued to Police Protective Fund, Inc. (PPF)*, FTC File No. 132-3239 (May 22, 2014), at 7 (“blanket objection” that CID request “is overbroad and burdensome and that ‘gathering, copying, and scanning all documents and

¹³ *See, e.g., In re October 30, 2013 Civil Investigative Demand Issued to HealthyLife Sciences, LLC*, 156 F.T.C. 647, 649 (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.*, 157 F.T.C. 1880, 1892-93 (Apr. 21, 2014) (noting that the 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.*, 157 F.T.C. 1894, at 1905, 1908 (Apr. 21, 2014) (denying petition to quash CID specification where recipient provided “no factual support” for its claimed burden); *Nat'l Claims Serv., Inc., Petition to Limit Civ. Investigative Demands*, 125 F.T.C. 1325, 1327-29 (1998) (rejecting petitioner’s burden argument that as a small company it could not afford the diversion of personnel and financial resources needed for compliance because it failed to substantiate its burden objection with any evidence).

responses [to the CID] would take a significant amount of time and resources that the organization simply does not have,” is insufficient; failure to make “any showing of business disruption” doomed claim).

Spread’s overbreadth challenges are similarly unavailing. For example, it claims that requests about advertising relating to BitMart “are plainly overbroad,” *Petition*, at 7-8, but those inquiries fall well within the scope of its investigation as authorized by the agency’s Resolution governing “the marketing of goods and services on Internet.” Courts have struck down overbreadth challenges to information requests in CIDs authorized by similar agency resolutions. *See, e.g., CFPB v. Great Plains Lending, LLC*, No. CV-14-2090, 2014 WL 12685941, at *17 (C.D. Cal. May 27, 2014) (CIDs not overbroad where no showing that inquiries “seek any information beyond that necessary to determine whether Respondents ‘have engaged or are engaging in unlawful acts or practices relating to the advertising, marketing, provision, or collection’” of certain loan products), *aff’d*, 846 F.3d 1049 (9th Cir. 2017).

Further, broad subpoenas are justified in “comprehensive” investigations, particularly where that breadth “is in large part attributable to the magnitude of the [subject’s] business operations.” *Texaco*, 555 F.2d at 882. And claims of undue burden are to be judged in comparison to the importance of the requested information to the Commission’s investigation and the public interest or the size and scope of Spread’s operations. *Carter*, 464 F. Supp. at 641 (whether burden is undue is determined by the “costs of compliance . . . relative to the financial positions” of the companies “and when measured against the public interest of th[e] investigation.”), *aff’d*, 636 F.2d 781 (D.C. Cir. 1980). Indeed, the public interest often justifies imposing even a substantial burden. *United States v. Int’l Bus. Machines Corp.*, 83 F.R.D. 97, 109 (S.D.N.Y. 1979) (“[C]ourts have long recognized that a substantial burden of compliance may be justified by the nature and importance of the inquiry involved”); *Westinghouse Electric Corp. v. City of Burlington*, 351 F.2d 762, 767 (D.C. Cir. 1965). The Commission is conducting just this type of broad inquiry regarding Spread’s marketing practices, its operation of the BitMart cryptocurrency exchange with its large trading volume equivalent to hundreds of millions of dollars, and its practices and policies to safeguard those consumer funds. But Spread has not even attempted to show that the CID imposes an undue burden or is overly broad when compared to the importance of the requested information to the Commission’s investigation or to the scope of the company’s operations.

Spread complains that responding to the CID would impose an undue burden based on requests seeking the number of its employees, the services it provides, its annual revenue, company finances, audit reports, customer communications, webpages used to access its services, and the fees it charges for those services. *Petition*, at 3, 6-7. But, as discussed, Spread 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.¹⁴ And Spread’s failure to engage in the meet and confer process with

¹⁴ Spread also suggests its burden is based on the number of CID requests, *Petition*, at 3, but it is well established that the number of requests or volume of responsive documents alone does not show undue burden. *See, e.g., PPF*, at 7 (“[A] ‘sheer volume of requests’ does not itself establish

Commission staff – which would have allowed it to present any evidence of burden to staff – further undermines its burden objections. Concerns about burden or breadth often can be mitigated through discussions or negotiations with agency counsel. *Texaco*, 555 F.2d at 882-83.

Spread ignores instructions in the CID when it asserts that portions of the CID should be stricken or modified as overbroad because they request privileged information. *Petition*, at 9 (citing Interrogatory X). This argument is baseless because the CID’s instructions acknowledge that Spread may withhold information based on privilege but must do so in accordance with the Commission’s regulations. *See* CID, at 15, Instruction I-2. Moreover, the hypothetical possibility that a request may elicit privileged information does not make the request improper. *In re Civil Investigative Demand to Intuit Inc.*, FTC File No. 192-3119 (Aug. 17, 2020), at 7. And information responsive to the particular interrogatory Spread uses as an example of protected attorney-client confidences – the identification of “each person who has prepared, supervised the preparation of, or reviewed the response to this CID” – is manifestly *not privileged* but must be provided to Commission staff. Instruction I-2 references 16 C.F.R. § 2.11(a) which states that “[t]he claim of protected status shall include a detailed log of the items withheld, *which shall be attested by the lead attorney or attorney responsible for supervising the review of the material and who made the determination to assert the claim.*” *Id.*, § 2.11(a)(1) (emphasis added).

Finally, Spread contends that the approximately three-year time period covering its CID responses is “unreasonable” given that it dates back to near the beginning of its operations and would require “months” to comply. *Petition*, at 8-9. But a three-year span is entirely reasonable; among other things, there is a three-year limitations period governing monetary relief that might be sought by the Commission under Section 19 of the FTC Act, 15 U.S.C. § 57b, if Spread is found to have violated any of the GLB Act rules.¹⁵ The fact that this time period encompasses activities from Spread’s early operations is irrelevant. Moreover, Spread provides no support for its claimed long production time or any justification for its suggested shortened time period (Jan. 1, 2021 to May 12, 2022), the adoption of which would deprive the Commission of relevant information regarding potential violations.

Spread has not engaged with staff and apparently is going to wait until this order issues before negotiating any formal modification of the CID that might reduce its burden while satisfying staff’s investigational needs. That path remains open to Spread. As issued, however, the CID is well within permissible limits, is not overly broad, and does not impose an undue burden.

that the CID is overbroad or imposes undue burden.”); *Garner*, 126 F.3d at 1145-46; *Jim Walter*, 651 F.2d at 258.

¹⁵ These include the Privacy of Consumer Financial Information rule (16 C.F.R. pt. 313), the Standards for Safeguarding Customer Information rule (16 C.F.R. pt. 314), and the Privacy of Consumer Financial Information rule (Regulation P) (12 C.F.R. pt. 1016) issued by the Consumer Financial Protection Bureau.

III. CONCLUSION

For the foregoing reasons, Spread's petition to quash or limit is denied.

IT IS HEREBY ORDERED THAT Spread Technologies LLC's Petition to Quash the May 11, 2022 Civil Investigative Demand be, and hereby is, **DENIED**.

IT IS FURTHER ORDERED THAT Spread shall comply in full with the Commission's Civil Investigative Demand no later than **Thursday, July 28, 2022, at 9:00 a.m. (Eastern Time)**, or at such other date, time, and location as the Commission staff may determine.

By the Commission, Commissioner Slaughter not participating.

April J. Tabor
Secretary

SEAL:
ISSUED: July 18, 2022