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

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In the Matter of	)	
	)	
CIVIL INVESTIGATIVE DEMAND TO	)	**File No. 222-3050**
BACHI.TECH CORPORATION,	)	
DATED MAY 11, 2022.	)	
	)	

ORDER DENYING PETITION TO QUASH
CIVIL INVESTIGATIVE DEMAND

By WILSON, Commissioner:

Bachi.Tech Corporation (Bachi.Tech) petitions the Commission to quash or limit portions of a Civil Investigative Demand (CID) issued on May 11, 2022 in connection with the Commission's investigation into whether Bachi.Tech has engaged in deceptive, unfair, or otherwise unlawful acts or practices regarding the marketing and operating of BitMart currency exchange services in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, or the Gramm-Leach-Bliley Act (GLB Act), 15 U.S.C. §§ 6801-27. This is the same investigation which the Commission issued an order denying a similar petition to quash. *See In re May 11, 2022 Civil Investigative Demand to Spread Technologies LLC,* FTC No. 222-3050 (July 18, 2022).[1]

Bachi.Tech requests that the Commission quash or limit the CID because the information and documents sought are (1) located outside the United States, and either "may not be" in Bachi.Tech's custody or control or are "likely" protected from disclosure by foreign law; (2) irrelevant; (3) unduly burdensome to produce; or (4) responsive to overbroad requests. *Petition*, at 6-10. For the reasons below, we deny the petition.

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[1] The Commission issued a virtually identical CID to Spread Technologies LLC ("Spread"), a domestic company represented by the same counsel as Bachi.Tech. Spread filed a petition to or limit on June 6, 2022, making arguments nearly identical to those raised by Bachi.Tech. The Commission opinion regarding Spread is available here: https://www.ftc.gov/system/files/ftc_gov/pdf/222%203050%20Spread%20Tech%20Order%20Denying%20PTQ%20%28Public%20Version%29.pdf.

I.   BACKGROUND

Bachi.Tech, a New Jersey corporation with operations and employees in New Jersey and New York, operates the BitMart cryptocurrency exchange. *See* Ex. 1 (Bachi.Tech's website pages listing jobs in two New Jersey locations); Ex. 2 at 1 ¶ 2 (declaration by officer of Bachi.Tech's parent company acknowledging parent's ownership of BitMart, Bachi.Tech's operation of BitMart, and its domestic places of incorporation, operations, and employee work locations, but not referencing a foreign company location). Spread also operates BitMart, *see Spread Tech.*, at 1, along with Bachi.Tech.

The Commission is investigating potential law violations arising out of Bachi.Tech's operation and marketing of BitMart, and whether Commission action to obtain monetary relief would be in the public interest. The investigation includes inquiries about BitMart's representations concerning its advertised exchange services; allegations that consumers have been denied access to their accounts; and concerns about the security of customer accounts especially in light of a publicly reported 2021 security breach that resulted in consumer loss of more than $200 million in cryptocurrency. *See Spread Tech.,* at 1-2 & nn. 1, 2. As authorized by the Commission resolutions attached to the CID, the agency seeks to determine whether the business practices of Spread and Bachi.Tech in marketing and operating BitMart constituted "unfair [or] deceptive . . . acts or practices . . . relating to the marketing of goods and services," or "[m]anipulative [c]onduct," "on the Internet" (Resolution No. 2123125); constituted "deceptive or unfair acts or practices related to consumer privacy and/or data security" in violation of Section 5 of the FTC Act (Resolution No. 1823036); or violated the GLB Act, its implementing rules, or Section 5 regarding "the privacy or security of consumer [financial] information" (Resolution No. 0023284).

The agency issued virtually identical CIDs to Bachi.Tech and Spread on May 11, 2022, asking for responses to interrogatories and document requests. The CID to Bachi.Tech was sent by U.S. mail on May 12 to the New Jersey address given for Bachi.Tech's registered agent but was returned as unclaimed; it was served again on June 9 when Bachi.Tech's counsel agreed to accept service on behalf of the company. *Petition*, at 2; Pet. Ex. B at 3. The CID seeks information pertaining to Bachi.Tech's knowledge of, involvement in, and ability to prevent, security breaches for currency investments traded on its BitMart platform; reported fraud associated with BitMart and its customer service processes; the adequacy of its customer service operations; the veracity of BitMart's representations about its services and security; the structure of Bachi.Tech's and BitMart's operations; methods used to market BitMart's services and to communicate with consumers, including the identity of third parties promoting its services; and consumer complaints, lawsuits, other investigations, and compliance with federal law. *See* CID, at 2-9 (interrogatories), 9-13 (document requests). The applicable time period for Bachi.Tech's responses is from May 1, 2019 through full compliance, *id*. at 2, and the return date for production was June 10, 2022. *Id*. (cover page).

Pursuant to service of the CID on June 9, Bachi.Tech had 14 days – or by June 23, 2022 – to schedule a meet and confer session with FTC counsel to discuss CID compliance, including "any possible CID modifications that could reduce [Bachi.Tech's] cost, burden. or response time yet still provide the FTC with the information it needs to pursue its investigation." *See* CID, at 1; 16 C.F.R. § 2.7(k). Instead, on June 23 Bachi.Tech's counsel emailed FTC staff stating his

intention to file a petition to quash that would be based on the same objections raised in Spread's petition and asked staff for an extension of time to file the petition. *Petition*, at 4; Pet. Ex. B at 2.

FTC staff emailed their response the following day, June 24, stating that they were not authorized to grant an extension based on the same grounds raised in Spread's petition. Pet. Ex. B at 1-2. Staff also urged company counsel to reconsider filing the petition, and instead to schedule a meet and confer and begin responding to the CID. *Id.* FTC staff referred counsel to recent Commission orders rejecting similar burden and overbreadth arguments made in Spread's petition, stated that other objections raised by Spread were already addressed in the CID's instructions, and noted that the filed petition would likely become public under 16 C.F.R. § 2.10(d). *Id.*; *Petition*, at 4-5. Counsel for Bachi.Tech and the Commission spoke on June 27 during which company counsel reiterated Bachi.Tech's objections to the CID and restated his intention to file a petition to quash before the deadline to file had passed. *Petition,* at 5.[2] He again stated that Bachi.Tech's objections were the same as those raised by Spread; FTC staff responded by reiterating the reasons they believed Bachi.Tech's petition would likely be denied.

Bachi.Tech filed its petition to quash on June 30, 2022.[3] As anticipated, the petition is based on arguments nearly identical to those made by Spread, namely that the FTC cannot compel Bachi.Tech to produce materials located abroad, that the CID seeks irrelevant information, that its requests are overbroad, and that production would impose an undue burden. The petition also argues that the recent FTC decisions referred to by staff are distinguishable.[4]

The petition requests that the Commission quash or modify 28 CID requests in their entirety (consisting of 9 interrogatories and 19 document requests) and one interrogatory in part out of 55 CID specifications. *See Petition*, at 12 (citing Inter. B, D, E.5&6, M-O, S-U and Doc. Req. 1-2, 4-7. 9-10, 17-22, 24, 26, 27-29); CID, at 3-13. Petitioner requests these modifications because, in its view, "the CID . . . contains requests that are irrelevant, unduly burdensome, and . . . seek information outside of the United States and/or over which Petitioner does not have control." *Petition,* at 12.

Bachi.Tech, however, has never provided factual information regarding any practical or legal impediments to responding, requested clarification of any CID specification, or proposed narrowing any of the CID's requests. It failed to schedule or attend a meet and confer and has not produced any information or documents in response to the CID.

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[2] Under Commission Rule 2.10(a)(1), 16 C.F.R. § 2.10(a)(1), a petition to limit or quash a CID must be filed "within 20 days after service" of the CID unless the return date is fewer than 20 days after service. Here, the June 10 return date was only one day after service on June 9; thus, the deadline to file the petition was 20 days later or by June 29.

[3] Although counsel dated the petition as June 29, 2022, the petition was received by the Commission's Office of the Secretary by hard copy on the morning of June 30 and thus was deemed filed that day.

[4] The petition further seeks confidential treatment exempt from public disclosure for the entire petition and its two exhibits. Those confidentiality requests are being addressed by separate letter from the Commission's Office of the General Counsel. *See* 16 C.F.R. §§ 2.10(d), 4.9(c)(1).

II. ANALYSIS

A. Bachi.Tech Breached Its Obligation To Respond To The Unchallenged CID Specifications While Its Petition To Quash Was Pending.

As an initial matter, Bachi.Tech defied its obligations under Part 2 of the Commission's Nonadjudicative Procedures by failing to comply with the uncontested CID requests. Under Commission Rule 2.7, 16 C.F.R. § 2.7, Bachi.Tech was obligated to begin responding to all the CID requests; while Commission Rule 2.10(b) stayed that obligation as to those CID requests the company was challenging in its petition to quash, its duty to respond to the *unchallenged* CID specifications remained unaltered.

Bachi.Tech moved in its petition "to either quash or limit *portions* of the [CID]" and specified which particular CID requests it was seeking to quash or limit. *Petition*, at 1, 12 (emphasis added). It did not move to quash the entire CID. Under Commission Rule 2.10(b), Bachi.Tech's obligation to respond to the challenged CID specifications was stayed pending our resolution of the petition. *See* 16 C.F.R. § 2.10(b) ("[t]he timely filing of a petition to limit or quash . . . shall stay the remaining amount of time permitted for compliance as to the portion or portions of the challenged specifications."). But the company was obligated to begin responding to those CID requests that it was *not* challenging, which it did not do. Instead, it treated its petition challenging slightly more than half of the CID specifications as a basis to refuse to respond to *any* of them.

More specifically, Bachi.Tech should have begun complying with:

1) Specifications requesting information regarding its place of business, licenses to do business, officers, ownership, affiliation with other companies, and role in the BitMart exchange. *See* CID Inter. A, C; Doc. Req. 3;

2) Specifications regarding third parties that provide customer service, data security, and advertising for BitMart. *See* CID Inter. E.1-4, F; Doc. Req. 23;

3) Specifications requesting information on its security practices, vulnerability and data breaches. *See* CID Inter. F-L; Doc. Req. 11-16; and

4) Specifications concerning its practices for customer support and complaints. *See* CID Inter. R; Doc. Req. 25.

By failing to begin responding to these unchallenged CID requests that were not stayed under Commission Rule 2.10(b), Bachi.Tech is in default of its production obligations.

B. Bachi.Tech's Failure To Meet and Confer Bars Consideration Of The Petition.

As we explained in *Spread Tech.*, at 3-4, Commission 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[.]" 16 C.F.R. § 2.7(k). 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. *See Feature Films for Fams., Inc.* (*Response to Firefighters Charitable Foundation, Inc.'s Petition to Limit and/or Quash Civil Investigative Demand*) (*FCF*), 150 F.T.C. 866, 869 (2010). We concluded based on long-established Commission precedent that "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." *Spread Tech.*, at 3.

We reach the same determination here. Bachi.Tech has disregarded its meet and confer obligations. Bachi.Tech's counsel appends a good-faith attestation to its petition stating "that he has tried on several occasions . . . to resolve with the FTC staff the issues raised in th[e] Petition." *Petition*, at 13. But the petition and its exhibit's own descriptions of the prefiling correspondence show that counsel merely asserted that the company "was making the same objections to the CID" as Spread made to its CID, that Bachi.Tech intended to "fil[e] a petition to quash to . . . preserve its objections," and that counsel requested on June 23 an extension of time to file the petition. *See Petition, at* 4-5 (describing pre-petition communications with staff); Pet. Ex. B at 1-3 (reflecting pre-filing email correspondences). Bachi.Tech did not request clarification of any CID requests or propose narrowing the requests. Nor did Bachi.Tech present any information to staff that corroborates any of the assertions of burden in its petition.

Bachi.Tech's "failure to prove that it has satisfied the meet-and-confer requirement constitutes an adequate and independent reason to deny [its] petition." *FCF*, 150 F.T.C. at 869.[5]

C. Bachi.Tech Must Produce Responsive Information And Documents In Its Possession, Custody, Or Control That Are Located Abroad.

In addition, Bachi.Tech's substantive arguments are devoid of merit.

First, Bachi.Tech makes the argument raised in Spread's petition that the CID cannot compel the company to produce information that is "located outside the United States and may not be in [its] legal custody or control." *Petition*, at 6. Although it requests that the Commission quash or modify all 28 challenged CID specifications because the CID contains requests that

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[5] Bachi.Tech also filed its petition one day late, which constitutes another basis on which to deny the petition. Commission Rule 2.10(a)(1) requires that a petition to quash be filed "within 20 days after service of the Commission's compulsory process or, if the return date is less than 20 days after service, prior to the return date." 16 C.F.R. § 2.10(a)(1). Even applying the longer 20-day period triggered by service on June 9, Bachi.Tech was required to file its petition by June 29. Although company counsel dated the petition that day, *see Petition*, at 12, 13, it was actually filed on June 30. *See supra* at 3 n.3. Despite this late filing, we nevertheless discuss the merits of the petition in this order.

"seek information outside of the United States and/or over which Petitioner does not have control," *Petition*, at 12, it concedes that only "[s]ome of the information the CID seeks" from the company cannot be produced for these reasons. *Id.*, at 6. Bachi.Tech does not identify which CID requests seek information held exclusively abroad. Regardless, the CID only seeks documents and information within the recipient's possession, custody, or control. *See* CID, at 15, Instruction I-4. Further, the FTC has authority to compel entities subject to its jurisdiction to produce such material, even if it is located abroad. *See Spread Tech.,* at 4-6 & nn. 4-8 (citing, *inter alia*, *Political Opinions of America*, 155 F.T.C. 1681, 1688-89 (2013) and 15 U.S.C. § 57b-1(c)(1) (person receiving agency CID must produce responsive non-privileged documents and information within its "possession, custody, or control"). Bachi.Tech is a New Jersey-based corporation within the FTC's jurisdiction.

Bachi.Tech also contends that an unspecified "foreign law likely prevents" unidentified information held abroad from being "re-located to the United States." *Petition*, at 6. It fails to identify, however, any conflicting foreign blocking statute that would bar production to the United States. The Commission has previously refused to quash CIDs where the petitioner has failed to cite to a particular conflicting foreign law or explain how that law would preclude production to the United States. *See Responses to Petitions to Quash or Limit Compulsory Process Unnamed Telemarketers,* 155 F.T.C. 1657, 1678 (2013), *upheld in relevant part*, *FTC v. Western Union Co.*, 579 F. App'x 55, 56 (2d Cir. 2014). As discussed in *Spread Tech.*, at 6, foreign laws preventing the disclosure of information to the United States do not necessarily "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, a United States court should consider several factors to determine whether to order disclosure. *Id.*, at 544 n.28; *Spread Tech.*, at 6 n.11. Even were we to assume that *Aérospatiale* applies to CIDs issued by the FTC, we are unable to engage in the necessary analysis because Bachi.Tech has failed to specify the alleged foreign jurisdiction or the conflicting foreign law at issue. As a result of these omissions, Bachi.Tech's conjectural argument that foreign law bars production is not viable.

D. The CID Seeks Relevant Information And Documents.

Bachi.Tech asserts that the previously-identified 28 CID requests in their entirety and one in part are irrelevant. *See Petition*, at 12. As we explained in *Spread Tech.*, at 6-7, FTC investigative demands are acceptable "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 FTC is "given wide latitude in asserting [its] power to investigate by" compulsory process. *FTC v. Ken Roberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001); it "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) (citations omitted). The CID therefore may request any information that is "not plainly incompetent or irrelevant" to any authorized investigation. *Id.* The CID recipient bears the burden "to show that the [requested] information is irrelevant." *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992). Unless "obviously wrong," the FTC's "own appraisal of relevancy must be accepted." *Id.* at 1089.

Bachi.Tech's claims that a number of CID specifications are irrelevant to the Commission's investigation fail under this governing precedent. For example, Bachi.Tech objects to inquiries requesting information about the services BitMart offers; the fees charged for such services; payments to third parties "that have promoted or advertised BitMart"; media (including email, websites, blogs, and social media accounts) "used to communicate with BitMart consumers" about "the features of BitMart and how to use or access BitMart"; webpages or screens shown "to a consumer during the process of signing up for service" through "media used to solicit consumers for BitMart"; and "[a]dvertisements relating or referring to BitMart that appeared" in the media described above. *Petition*. at 7-8, 12 (citing, *e.g*., CID Inter. D, M-O; Doc. Req. 10, 18, 20-21). These requests, however, "relate[ ] to the marketing . . . of services on the Internet" and thus fall squarely within the authorizing Resolution governing deceptive and manipulative conduct on the Internet (No. 2123125) and the agency's investigation of those acts. *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.").

Bachi.Tech also complains about the relevancy of CID requests seeking information and documents about its finances (including financial statements, income statements, and balance sheets), audit reports, its annual revenue, and third parties that prepare or audit financial statements, provide payment processing services, or maintain merchant accounts to process transactions for BitMart. *Petition*, at 7-8, 12 (citing, *e.g.,* CID Inter. B, E.5&6; Doc. Req. 6, 7, 9). Cases establish that "financial information can be relevant to a pre-complaint investigation into possible section 5 violations." *Invention Submission,* 965 F.2d at 1089-90. For example, financial information may help confirm the accuracy of other company information, such as its sales data, and information about the company's finances, charges to consumers, and service offerings can help the Commission determine the scope of injury resulting from any law violations.

Bachi.Tech further challenges the relevancy of CID inquiries concerning customer service requests "relating to BitMart" and company resources used to respond to such requests; consumer complaints and questions (and company responses) about currency exchanges using BitMart, the depositing, withdrawal, or transfer of currency into or out of consumers' BitMart accounts, and consumers' "inability to contact customer service or inadequate customer service"; documents governing data security, cyber-attacks and fraud investigations by third parties and payments made for such services; webpages or screens shown to "a BitMart account user" while "logging in and requesting a transaction"; and documents reflecting "communication[s] . . . inform[ing] consumers how long [c]urrency transactions may be delayed when using BitMart." *Petition*, at 8-9, 12 (citing, *e.g*., CID Inter. S; Doc. Req. 9, 10, 19, 22, 26). These requests seek information directly relevant to the Commission's investigation concerning the security of customer accounts and complaints about accessing accounts and conducting transactions on BitMart.

Additionally, the company questions the relevancy of document requests for (i) webpages or screens shown to "consumer[s] during the process of signing up for service" for "each media used to solicit consumers for BitMart," including materials reflecting how company "privacy policies, user agreements, or terms of service" were shown to consumers and how consumers'

agreements to or awareness of such statements were indicated;[6] (ii) "privacy polic[ies] and user agreement[s] or contract[s] BitMart has provided to consumers"; (iii) documents discussing or substantiating claims about the 24/7 availability of support personnel, its "100%" trading security, "the protection of digital assets," BitMart's promises to cover losses resulting from the 2021 breach, and the registration of its domestic office "as a Money Service Business" under a statute "administered by the Financial Crimes Enforcement Network." *Petition,* at 8, 12 (citing, *e.g.*, Doc. Req. 17, 18, 24). These requests fall squarely within the scope of the Resolutions regarding marketing BitMart's services on the Internet (No. 2123125) and representations made about its privacy and data security policies (Nos. 1823036, 0023284).

Other CID specifications Bachi.Tech challenges as irrelevant include information and document requests regarding (i) government law enforcement actions and investigations, and private suits and arbitration proceedings, relating to BitMart; and (ii) procedures used by Bachi.Tech to determine "whether any cryptocurrency listed or considered for listing with BitMart is regulated by the [SEC]" or another federal agency, and documents reflecting the company's assessment about whether any such cryptocurrency "is a security under" the federal securities laws. *Petition*, at 12 (citing, *e.g.*, CID Inter. T, U, V; Doc. Req. 27, 29). Other government or private lawsuits may provide facts relevant to the Commission's investigation. In addition, such suits and compliance with any applicable federal law or regulations reflect more broadly on the practices and lawfulness of cryptocurrency trading on BitMart and Bachi.Tech's corporate responses to data breaches and other illegal conduct.

Bachi.Tech additionally questions the relevancy of CID document requests for organizational charts, directories, or other documents listing its "officers and managers" or that "describe[ ] the relationships and responsibilities of" company personnel; documents describing "the duties, authority, or responsibilities of [corporate] officers, directors and managers"; materials showing all businesses Bachi.Tech has acquired or in which the company has or had an ownership interest; and documents showing "the charter, bylaws, and registrations to do business" for any parent companies or business entities that have or had an ownership interest in Bachi.Tech. *Id.* (citing, *e.g.*, Doc. Req. 1, 2, 4, 5). Documents reflecting Bachi.Tech's organizational structure and corporate governance may be central to understanding and develop key issues in the investigation, such as identifying those managers or staff with the most knowledge of or most likely to possess relevant materials about Bachi.Tech's operation and marketing of BitMart; services provided by and the major features of BitMart; company representations of those services and features; the security of customer accounts; the company's ability to prevent future security breaches; the ability of customers to access their accounts and trade on BitMart; and the performance of its customer service personnel.

At the investigatory stage, the test is whether the information and materials requested are "relevant to the investigation," which itself may be defined broadly in the agency's resolution. *Invention Submission*, 965 F.2d at 1090. We conclude – as we did in *Spread Tech.,* at 7-8 – that

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[6] Bachi.Tech contends that it "does not possess every webpage containing responsive information" to this request, *Petition*, at 8, but it must produce any responsive materials under its "custody or control." CID, at 15, Instruction I-4. If it truly does not possess, control, or exercise custody over responsive materials it may notify staff of that fact and provide a certified CID response attesting to this fact.

the challenged requests properly seek relevant information and materials aimed at investigating potential law violations arising from the operation and marketing of the BitMart currency exchange and fall comfortably within the agency Resolutions authorizing staff to investigate manipulative conduct or unfair or deceptive acts or practices "related to the marketing of . . . services on the Internet" (No. 2123125), "consumer privacy and/or data security" (No. 1823036), and "the privacy or security of consumer [financial] information" (No. 0023284).

E. The CID Requests Are Not Overly Broad Nor Would Responding to Such Requests Impose An Undue Burden.

Lastly, Bachi.Tech contends that responding to the CID's overly broad "sweeping requests would be unduly burdensome." *Petition*, at 7. FTC information demands are not unduly burdensome unless compliance "threatens to unduly disrupt or seriously hinder normal operations" of the recipient's business. *Texaco,* 555 F.2d at 882. The process recipient must show *how* responding to the CID request would impose a significant disruption to its business operations. *FTC v. Standard American, Inc*., 306 F.2d 231, 235 (3d Cir. 1962) (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"). This 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. The process recipient must establish the existence of undue burden with specific facts, *id*., by making "a record . . . of the measure of [its] grievance rather than ask [the court] to assume it." *Morton Salt*, 338 U.S. at 653-54; *see also 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."); *Spread Tech*., at 8-9.

Bachi.Tech bases its claims of undue burden on the same conclusory and unsupported contentions Spread asserted concerning the breadth and imposition of the CID requests, which it asserts will "touch[ ] on nearly every facet of [its] business" and take "months" to complete. *Petition,* at 7, 9. It argues that responding to CID requests seeking the size of the firm, the types of services BitMart provides, the fees assessed for those services, financial statements for Bachi.Tech and BitMart operations, and any independent auditor's audit or review of Bachi.Tech's financial statements would impose an undue burden. *Id.,* at 7-8 (citing CID Inter. B, D, M; Doc. Req. 6, 7). And it requests – without argument or explanation – that the Commission quash or limit the remainder of the 28 challenged CID requests in their entirety and one in part as "unduly burdensome." *See Petition*, at 12 (referencing CID Inter. E.5&6. N, O, S, T, U, and V; Doc. Req. 1-2, 4-5. 9-10, 17-22, 24, 26-29). But its petition is devoid of any factual support for its contentions regarding its resources, financial position, the breadth of its operations, the burden and expense of responding, or any other capabilities relevant to complying with the CID, *see id*., at 6-9, giving us no factual basis to conclude that the burden on the company to comply with the CID inquiries is undue. Bachi.Tech could have provided an affidavit or "other supporting documentation" as allowed by Commission Rule 2.10(a)(1), 16 C.F.R. § 2.10(a)(1), but failed to do so; nor did it engage in a meet and confer with Commission staff and provide support for its burden contentions.

"[M]ere statements by counsel in a brief do not provide a factual basis" to support CID objections and the Commission often has denied petitions to quash that lack the necessary evidentiary support. *See, e.g., 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 (citing multiple other Commission opinions denying petitions to quash on these ground); *see also In re March 19, 2014 Civil Investigative Demand Issued to Police Protective Fund, Inc.*, FTC File No. 132-3239 (May 22, 2014), at 7 (rejecting "blanket objection" that CID imposed an undue burden where recipient failed to make "any showing of business disruption."); *Nat'l Claims Serv., Inc., Petition to Limit Civil 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). This is particularly true where the petitioner – like Bachi.Tech here – has failed to provide any explanation, reason, rationale or factual basis to show that responding to the challenged CID requests would impose an undue burden. We therefore conclude that Bachi.Tech has failed to show that compliance will impose an undue burden by seriously disrupting its normal business operations. *See Spread Tech.*, at 9-11 & n.13; *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).[7]

Bachi.Tech's arguments based on overbreadth likewise fail. The company claims that various CID requests "are plainly overbroad." *Petition*, at 8. These allegedly include requests seeking information and documents regarding: (i) media (including email, websites, and social media accounts) "used to communicate with BitMart consumers"; (ii) customer service requests and company resources used to respond to such requests; (iii) webpages or screens shown to consumers while signing up for BitMart's services or to account holders when "logging in and requesting a transaction"; (iv) BitMart's practices regarding fees charged for exchange services and the disclosure of such fees; (v) "[a]dvertisements relating or referring to BitMart that appeared in the media" described above; (vi) communications (including website screenshots or mobile applications) telling "consumers how long [c]urrency transactions may be delayed when using BitMart"; and (vii) consumer complaints and inquiries about currency exchanges on BitMart, deposits, withdrawals, or transfers into or out of a BitMart account, fraud, consumers' "inability to contact customer service" or to obtain only "inadequate customer service," and third party service providers on BitMart. *See Petition*, at 8-9 (citing, *e.g.,* CID Inter. M, N, O, S; Doc. Req. 18-22, 26).

But a CID request is overbroad only where it is "out of proportion to the ends sought," and "of such a sweeping nature and so unrelated to the matter properly under inquiry as to

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[7] Notably, Bachi.Tech filed its petition after being informed (*see* Pet. Ex. B at 1-2) of the Commission's decisions in *Liberty Auto City* and *In re May 21. 2021 Civil Investigative Demand to Innovative Capital Strategies,* FTC File No. 2023164 (July 19. 2021), at 6 (rejecting undue burden claims where petitioners failed to make "any specific showing of anticipated disruption or serious hinderance to their business operations."). Bachi.Tech attempts to distinguish those two cases on the ground that the CIDs at issue requested "materials concerning activities in wholly different industries" than the one implicated here, *Petition*, at 10; it provides no reason, however, for a different burden standard depending on the industry implicated.

exceed the investigatory power." *U.S. v. Wyatt*, 637 F.2d 293, 302 (5th Cir. 1981) (quoting *Morton Salt,* 338 U.S. at 652); *see also CFPB v. Great Plains Lending, LLC*, No. CV-14-2090, 2014 WL 12685941, at *17 (C.D. Cal. May 27, 2014) (rejecting overbreadth challenges which failed to show "that the CIDs seek any information beyond that necessary to determine whether [the recipients] 'have engaged or are engaging in unlawful acts or practices'"), *aff'd,* 846 F.3d 1049 (9th Cir. 2017). The Commission's compulsory process need not be limited to information necessary to prove a specific charge; as previously noted, it can demand any documents or information "relevant to the investigation —the boundary of which may be defined quite generally" by the Commission. *Invention Submission*, 965 F.2d at 1090. The CID inquiries challenged here easily satisfy these standards as they fall well within the scope of the Commission's lawful investigation concerning potential law violations arising from the marketing or operation of the BitMart currency exchange and are authorized by the applicable agency resolutions described above. *See supra* at 2, 7, 8.

In *Spread Technologies*, the Commission recognized that broad information requests may be justified in "comprehensive" investigations, especially those looking into extensive business operations. *Id*. at 10. Similarly, allegations of undue burden must be measured by the importance of the requested information to the agency's investigation and the public interest as well as the scope of the recipient's business activities. *Id*. We recognize the broad nature of the Commission's inquiry in this matter which concerns (among other things) Bachi.Tech's marketing practices, its operation of the BitMart exchange with its multi-million dollar trading volume, and its policies and practices to safeguard those funds from vulnerabilities that have caused – and may cause again – wide-scale losses. Bachi.Tech has made no effort, however, to demonstrate how responding to the CID requests imposes an undue burden or is overly broad when judged against the importance of the requested materials to the FTC's investigation and the public interest or as compared to the scope of the company's business activities.

Finally, Bachi.Tech argues that the roughly three-year time period covering its CID responses is unreasonable because it encompasses nearly the entire period that the company has been operating and would entail "months" of production time. *Petition,* at 7, 9. But the applicable time period is reasonable given the three-year limitations period governing monetary relief under Section 19(b) of the FTC Act, 15 U.S.C. § 57b(b), particularly if facts are discovered providing a basis for seeking such relief under Section 19(a), 15 U.S.C. § 57b(a). The fact that Bachi.Tech must search for materials from its early days is irrelevant. Bachi.Tech also provides no support for its claimed long-production time or its shortened response period (from January 1, 2021 to May 12, 2022), *Petition*, at 12, which if applied would deprive the Commission of relevant information regarding potential violations within the applicable limitations period.

Bachi.Tech has not engaged with Commission staff and seems determined to wait until we issue this order before participating in any meet and confer regarding possible modifications to the CID to reduce its burden while satisfying staff's investigational needs. That path remains open to Bachi.Tech. As issued, however, the CID is well within permissible limits and seeks information plainly relevant to assessing Bachi.Tech's compliance with the FTC Act and the GLB Act; it is not overly broad and compliance has not been shown to impose an undue burden.

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III.   **CONCLUSION**

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

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

IT IS FURTHER ORDERED THAT Bachi.Tech shall comply in full with the Commission's Civil Investigative Demand no later than **Friday, August 19, 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.
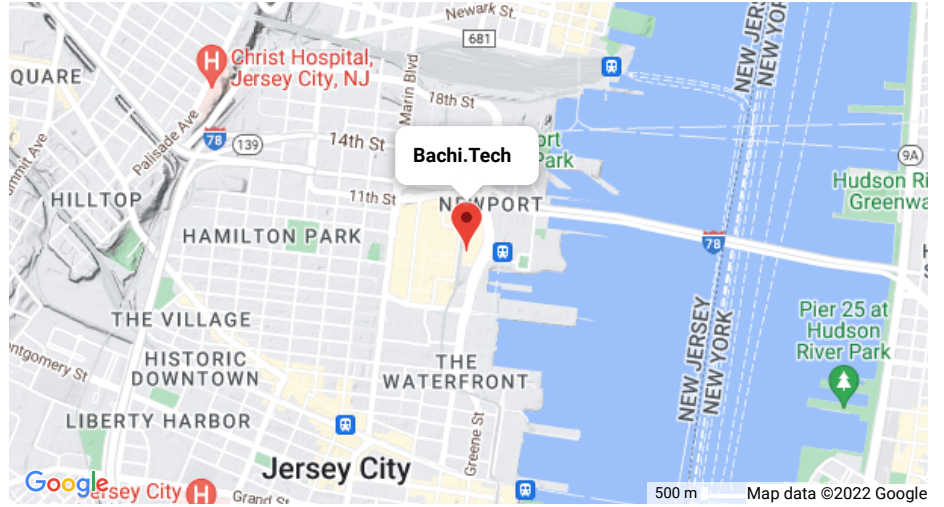
April J. Tabor
Secretary

SEAL:
ISSUED: August 9, 2022

EXHIBIT 1

![Bachi.Tech logo] Bachi.Tech

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Bachi.Tech

Job# EE0921
Title: Electrical Engineer
Employer: Bachi. Tech Corporation
Worksite: 200 Washington Street, Floor 4, Hoboken, NJ 07030

Responsibilities:
Work with software development, quality engineering (QE), and product marketing teams to design and implement features and capabilities, and provide technical support and internal tools. Maintain subversion repositories for DevOps environment: automation code and configuration. Ensure website normal operation and continuously optimize the integration & delivery process. Design and implement features and associated use cases using Scrum methodologies. Collect and analyze new technologies and tools, and introduce them to the company to help the company build up an agile development environment. Work with developers to ensure new environments both met their requirements and conformed to industry-standard best practices.

Requirements:
  •   Master's Degree in Electrical/Material Science Engineering;
  •   Proficiency in JavaScript.

Please note this is a permanent position. No visa sponsorship is available. To apply, mail resume with job ID# to 200 Washington Street, Floor 4, Hoboken, NJ 07030.

Job# SE0614
Title: Software Engineer
Employer: Bachi. Tech Corporation
Worksite: 101 Hudson St., FL 37, Jersey City, NJ 07302

Responsibilities:
Conduct software architecture planning and core functions development in digital asset trading platform and related internet financial platform; Develop new software products and features, craft automated test and work with the QA team to ensure the operation and correctness of new product and feature; Provide technical input and knowledge to the product planning, design, and release phases; Improve the products performance, maintainability, and operation of the code base by upgrading projects.

Requirements:
Master's Degree in Computer Science, Software Engineering, Information Technology, or related.
Familiar with relational database management; and
Proficient in at least one of the following languages: Java, Python, R, or Ruby.

To apply, please mail CV with Job ID#: SE0614 to Chunjiang Gu, 101 Hudson St., FL 37, Jersey City, NJ 07302

info@bachi.tech

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EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GBM Global Holding Company Limited *Plaintiff,* v. The Unidentified Individuals Listed on Schedule A, *Defendants*	Case No. 1:21-cv-06284 **DECLARATION OF DAISY LU LI IN SUPPORT OF PETITION FOR TEMPORARY RESTRAINING ORDER IN AID OF ARBITRATION**

I, **DAISY LU LI** declare as follows:

1.   I am the Chief Compliance Officer of GBM Global Holding Company Limited (the "**Company**") which is the Plaintiff in the captioned matter. This declaration is based on my personal knowledge of the facts stated herein or on business records that were made at the time in the regular course of business. If called as a witness, I could and would testify to the statements made herein.

2.   The Company is the owner of BitMart, a cryptocurrency exchange established in 2018 (https://www.bitmart.com/). The Company is the parent of Bachi.Tech Corporation ("**Bachi**"), a subsidiary that operates the BitMart cryptocurrency exchange. Bachi is incorporated in New Jersey. Bachi runs its operations and has employees in both New York and New Jersey.

3.   As a cryptocurrency exchange, over 400 cryptocurrencies are traded on BitMart. The Bitcoin Satoshi Vision ("**BSV**") token is one of them. An overview of blockchain technology and BSV specifically has been set out more fully in the accompanying declaration of the Company's technical lead, Wei Li.

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4.   Created in 2018, the BSV token is a cryptocurrency that is generated by forking the Bitcoin Cash blockchain (which is itself a fork of Bitcoin) and adjusting the blockchain protocol by using blocks that are larger, which in turn helps to reduce transaction fees. Bitcoin Association, a non-profit association in Switzerland, is the organization that supports the BSV blockchain network and provides infrastructural tools such as the BSV node software which is needed to access the BSV blockchain network.

5.   On July 8, 2021, Bitcoin Association announced that it has been made aware of an illegal attack by a malicious actor that has recently been carrying out block re-organisation attacks on the BSV network. Bitcoin Association reported that the hack resulted in malicious double spending of fake BSV tokens.

6.   At the time, the Company was not aware of Bitcoin Association's announcement and the deposit/trading/withdrawal functions of BSV on BitMart were working as normal. The Company only came to know of Bitcoin Association's announcement on July 10, 2021.

7.   On July 9, 2021, the BitMart exchange experienced a malicious hack between 2:30 pm to 10:00 pm. In that window, the hacker(s) registered 92 user accounts with BitMart and manipulated them to carry out trades using fake BSV tokens which the hacker(s) generated through a "51% attack" of the BSV network. *See* Accompanying Wen Li Declaration.

8.   The hacker(s) initiated deposits of BSV tokens mined on the private chain to the 92 user accounts they opened on BitMart. These deposits went undetected by BitMart as BitMart's verification system only verified these tokens against the hackers' fraudulent records on the fake BSV blockchain the hackers created during the 51% attack. As such, the hacker(s) managed to get BitMart to confirm these BSV tokens as proper deposits. A total of 91,000 BSV tokens were deposited into the digital wallets linked with the 92 BitMart accounts that the hacker(s) opened.

9.   Once BitMart confirmed these deposits, the hackers immediately began using the deposited BSVs to trade for other cryptocurrencies on the exchange before withdrawing these cryptocurrencies from the exchange to other exchanges. A total of 91,000 BSV tokens mined from the hackers' private chain were deposited and used to procure other cryptocurrencies on the BitMart exchange that were worth approximately US $6.07 million:

Cryptocurrency (Trading Symbol)	Number of Coins/Tokens
Bitcoin (BTC)	11.106
Ethereum (ETH)	216.523
Litecoin (LTC)	668.196
Cardano (ADA)	130,780.8
USDC (ERC-20)	605,336
USD Coin (USDC)	283,984.407
Polygon (MATIC)	297,691
Stellar (XLM)	969,308.31
Holo (HOT)	29,912,899
XRP (XRP)	3,994,932.49

10.   The Company only came to know of the hackers' suspect trading activities at about 10 pm on July 9, 2021. Very quickly, the Company identified the 92 accounts that were affected and froze them. Thereafter, BitMart investigated its records showing the cryptocurrencies that the hackers cashed out on and transferred to other crypto exchanges. So far, the Company has discovered that the some of the cryptocurrencies were transferred to the following crypto exchanges:

Cryptocurrency Exchange	Entity that owns the Cryptocurrency Exchange	Number of Coins/Tokens
Binance	Binance Holdings Limited	At least 2 BTC and 21611,9 XRP.
Huobi	Huobi Global Limited	At least 969,784.13 XRP.
OKex	OKEX MALTA LTD	At least 24664.99 USDT.
Kucoin	Mek Global Limited	The number of cryptocurrencies being held is unknown, but transfers to this exchange are confirmed

Cryptocurrency Exchange	Entity that owns the Cryptocurrency Exchange	Number of Coins/Tokens
Hitbtc	Hit Tech Solutions Development Ltd	The number of cryptocurrencies being held is unknown, but transfers to this exchange are confirmed
Nicehash	Nicehash Ltd	At least 135,217 XRP.
BW.com	Collinstar Holding Pty. Ltd.	The number of cryptocurrencies being held is unknown, but transfers to this exchange are confirmed.
Ascendex	BMXDM Technology Pte. Ltd.	At least 500 XRP.

11.   BitMart has suffered losses worth about $5.27 million having refunded the cryptocurrencies to its users who transacted with the hackers using their legitimate cryptocurrencies. BitMart did so to maintain its commercial relationship with its clients and to uphold its reputation. It must now seeks to recover these losses from the hackers who caused them. Investigations are ongoing and BitMart has reported this attack to the FBI. The Company will shortly be commencing arbitration against the hackers.

12.   Meanwhile, we have reached out to the other crypto exchanges where the cryptocurrencies were transferred to and requested a freeze of the affected accounts. Some of them have agreed to a temporary freeze out of goodwill. However, these exchanges have also informed us that they need a court order against the Defendants to maintain the freeze, otherwise they would have no choice but to release the accounts. As such, time is of the essence and the Company has authorized its attorneys in the U.S. to move for a temporary restraining order.

13.   The Company is also submitting these moving papers under seal because it needs to prevent the hackers from learning of this legal action lest they further transfer or dissipate the cryptocurrencies before all possible injunctive relief is effectuated. These moving papers also set out BitMart's intellectual property and trade secrets, including, among others things, its policies for confirming validated blockchains.

14.   We have identified at least two New York-resident users of our exchange who were victimized and refunded by us in the course of this BSV hack. We have identified a total of 42-U.S.-based users who were victims of this same hack.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information, and belief.

Signed July 23, 2021.

/s/ *Daisy Lu Li*

_____

Daisy Lu Li
Fort Lee, New Jersey