

prices, periodic payments, “add-on” charges, or other harm to consumers.¹ On April 12, 2022, the Commission issued a CID to Liberty, seeking the production of documents and responses to interrogatories. The CID requests information related to Liberty’s financing and add-on practices, including its communications with financing companies and add-on providers, data regarding Liberty’s auto financing transactions, and consumer complaints, among other documents and information. *See* CID, at 2-6 (interrogatories), 6-9 (documents), 10 (data). The CID’s specified time period is April 1, 2019 through the present. *Id.* at 2.

The Commission served the CID on Liberty through Federal Express on April 13, 2022. *Petition*, at 1. Liberty did not send the CID to its counsel until April 20, 2022, when Liberty’s owner, Joseph Massarelli, returned from travel. *Id.* On April 21, 2022, Liberty’s counsel had a brief call with FTC staff, in which staff explained the meet and confer process and the requirements for any proposed modification to the CID. On April 27, 2022, Liberty’s counsel contacted FTC staff to schedule a meet and confer call, which was held on May 2, 2022.

During the May 2 call, Liberty raised several concerns with the CID, including that some requests seemed too broad and would require manual scanning of hard copy documents. *See Petition*, at 2-3. FTC staff clarified the scope of certain requests and expressed a willingness to accept certain modifications if Liberty justified them in writing and committed to making initial productions by the CID’s May 12, 2022 deadline.

Liberty also requested an extension of the deadline to file a petition to quash the CID, which by Commission rules was set for the following day, May 3, 2022 – 20 days after service of the CID. *See* 16 C.F.R. § 2.10(a)(1). Staff orally denied the request, explaining that such extensions are not granted absent extraordinary circumstances, but recommended that the parties continue to negotiate in good faith about the CID’s scope and a reasonable production schedule.

Liberty filed its petition to modify or quash the CID the next day. *Petition*, at 9. Since that time, FTC staff have continued to negotiate with Liberty. However, other than a preliminary response to a few of the CID’s interrogatories, Liberty has not produced any documents or other information in response to the CID.²

II. Analysis

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

Liberty first requests a 45-day extension of the date by which it must file a petition to quash or limit the CID. *Petition*, at 2-6. The Commission’s rules require petitions to quash or modify compulsory process to be brought 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 Liberty only issue 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).

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

² This is so despite Liberty’s representation in its *Petition* that it “anticipates being able to make the first in a rolling production of information and/or documents” by May 12. *Petition*, at 5.

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.

Importantly, Liberty does not seriously dispute the relevance of the documents and information the CID seeks. Nor does it contend that the CID exceeds the authority of the agency, or that the CID's requests are too indefinite. *Cf. United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (explaining the limited grounds for challenging FTC compulsory process). Liberty claims only that there are “logistical challenges in discerning the scope, type, and ability to produce documents” responsive to the CID, and that its owner “is preparing for a significant medical procedure in mid-May 2022.” *Petition*, at 5-6. Liberty asserts that it “cannot reasonably work through all potential issues as to the likely thousands of transactions for which the FTC seeks documentation and information by May 3, 2022,” and that it needs the extension to attempt to “come to agreement with the FTC on such issues.” *Id.* at 5.

As a threshold matter, mere statements by counsel in a brief do not provide a factual basis for Liberty's claims. A petition to quash must include “all appropriate arguments, affidavits, and other supporting documentation.” 16 C.F.R. § 2.10 (a)(1). Liberty did not submit any such 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.” *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).

Even if the Commission were to set aside that failure, Liberty's stated reasons do not amount to good cause to extend the petition to quash deadline. Although certain FTC officials possess “the authority to rule upon” such “requests for extensions of time,” 16 C.F.R. § 2.10 (a)(5), whether to grant an extension rests within their sound discretion. Here, Liberty requested an extension the day before the May 3 deadline, and did not identify compelling reasons for an extension. In similar contexts, courts have found good cause to extend deadlines when the party seeking relief can “show that the deadlines cannot reasonably be met despite [the party's] diligence.” *Capitol Sprinkler Inspection, Inc. v. Guest Servs.*, 630 F.3d 217, 226 (D.C. Cir. 2011) (cleaned up). As noted, Liberty cites only abstract “logistical challenges” to complying with the CID. *Petition*, at 5-6. Liberty does not provide any detail regarding the specific volume of

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).

responsive documents, the number of personnel hours it estimates compliance would require, or the estimated dollar cost of such efforts. Nor does Liberty explain why it was unable to conduct, within the standard 20-day period, an assessment enabling Liberty to determine whether it had any potentially valid grounds to quash or modify the CID – and if so, to prepare a petition.

Further undermining its extension request, Liberty also has not shown that it has been diligent in attempting to meet existing deadlines. *See Capitol Sprinkler*, 630 F.3d at 226. Liberty admits that it received the CID on April 13, but did not forward it to counsel until one week later, when its owner returned from unspecified travel.⁴ *Petition*, at 1. While that delay may be understandable, further delays ensued. Liberty’s counsel waited six additional days to follow up with FTC staff to schedule the first meet and confer call, which, as a result, took place only the day before the May 3 petition to quash deadline. A second meet and confer call was scheduled for May 13, 2022, but Liberty canceled and rescheduled for May 18, 2022, further delaying progress in its discussions with FTC staff. Absent persuasive explanations for these delays (set forth in sworn affidavits), we are left to conclude that Liberty’s actions “do not bespeak diligence or any sense of urgency at all.” *Capitol Sprinkler*, 630 F.3d at 226. Liberty has failed to demonstrate good cause for its extension request, and we therefore deny it.

B. The CID Is Not Unduly Burdensome Or Unreasonable.

Liberty also requests, in the alternative, that the Commission quash the CID “in its entirety as unreasonable” and unduly burdensome. *Petition*, at 2, 6. We deny this request, too.

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*, 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 Maryland Cup*, 785 F.2d at 477, 479. Liberty has not made the required showing.

Liberty cites the number of the CID’s interrogatories (25), document requests (12), and data requests (74), but we find these numbers entirely reasonable given the nature of the investigation and size of Liberty’s business. *See Petition*, at 2 (noting that Liberty sells over 3,000 vehicles per year). The CID’s requests are limited in time, and are tailored to provide the agency with specific information about Liberty’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). Indeed, as noted, Liberty does not dispute the relevance of the requested information. And 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.*

⁴ The cover letter transmitting the CID states in bold font that Liberty should contact FTC counsel “as soon as possible” to schedule a call to discuss the CID, and cautions Liberty to “read the attached documents closely.” Apr. 12, 2022 Letter, at 1-2. The CID itself states that any petition to limit or quash the CID must be filed “no later than twenty (20) days after service of the CID.” CID, at 11.

(*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).

Nor does Liberty provide any affidavits or other factual documentation to support its conclusory claim that complying with the CID will “seriously hinder” its operations, “if not require it to cease conducting business altogether to focus exclusively on responding to the CID.” *Petition*, at 6. 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 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 their claim that compliance would result in “the virtual destruction of a successful business”); *Texaco*, 555 F.2d at 882. The conclusory statements Liberty 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, Liberty argues that the CID is unduly burdensome because responding to it will require engaging a third-party document vendor to scan and prepare documents for production, will involve review by counsel and others to ensure truthfulness, and “may” require “significant labor.” *Petition*, at 3, 6. 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, 1090-91 (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 a request is “highly disruptive”).

⁵ To the extent the asserted burdens stem from Liberty’s own document practices (such as “maintain[ing] documents in hard copy” in a format that requires scanning “on a flatbed scanner,” *Petition*, at 3), such burdens “cannot excuse” Liberty 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.”).

Nor has Liberty 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 Maryland Cup*, 785 F.2d at 479 (holding cost of compliance not unduly burdensome “in the light of the company’s normal operating costs”). In fact, Liberty 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 Liberty acknowledges, Commission staff have repeatedly expressed willingness to further narrow or limit some of the CID’s requests in light of Liberty’s concerns, and have made several concrete proposals for compromise. *See Petition*, at 3, 5. Liberty apparently has not responded to staff and attempted to negotiate any formal modification of the CID that might reduce burden while satisfying staff’s investigational needs. That path remains open to Liberty. As issued, however, the CID is well within permissible limits and imposes no undue burden.

III. CONCLUSION

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

IT IS HEREBY ORDERED THAT Liberty Auto City, Inc.’s Petition to Modify or Quash the April 12, 2022 Civil Investigative Demand be, and hereby is, **DENIED**.

IT IS FURTHER ORDERED THAT Liberty shall comply in full with the Commission’s Civil Investigative Demand no later than **Wednesday, June 22, 2022, at 9:00 a.m. (Central Time)**, or at such other date, time, and location as the Commission staff may determine.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: June 13, 2022