

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)
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CIVIL INVESTIGATIVE DEMAND TO)
LIBERTY AUTO CITY, INC. ,)
DATED APRIL 12, 2022.)
)

File No. 222-3077

ORDER DENYING PETITION TO MODIFY
OR QUASH CIVIL INVESTIGATIVE DEMAND

By WILSON, Commissioner:

Liberty Auto City, Inc. (Liberty) petitions the Commission to modify or quash Civil Investigative Demand (CID) issued on April 12, 2022 in connection with the Commission's investigation into whether Liberty has engaged in unfair or deceptive practices with respect to the marketing, sale, and financing of automobiles in violation of Section 5 of the FTC Act or the Equal Credit Opportunity Act (ECOA).

Specifically, Liberty requests that the Commission extend the time it may petition to quash or limit the CID, or in the alternative, that the Commission quash the CID as unreasonable. Petition, at 3-4. For the reasons set forth below, we deny Liberty's petition.

I. Background

Liberty is an auto dealership network located in Libertyville, Illinois, a suburb of Chicago. It sells new and used Chrysler, Jeep, Dodge, Ram, and Subaru vehicles, and offers consumers financing in connection with those sales. Liberty sells over 3,000 vehicles per year. Petition, at 2.

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

prices, periodic payments, “add-on” charges, or other harm to consumers.¹ On 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

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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

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,sto010 (e)4 (s)-1 (t)-2 (

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 - Tabor
Secretary

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