

THE OFFICE OF THE SECRETARY OF THE FEDERAL TRADE COMMISSION  
WASHINGTON, D.C.

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IN RE: FTC MATTER NO. 2123090

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**PETITION TO QUASH AND/OR LIMIT CIVIL  
INVESTIGATIVE DEMAND TO MATTHEW THAYER**

Petitioner Matthew Thayer (“Mr. Thayer”), by counsel, and pursuant to 16 C.F.R § 2.10, hereby submits this Petition to Quash and/or Limit the Civil Investigative Demand (“CID”) issued by the Federal Trade Commission (“FTC” or “Commission”) to Mr. Thayer on March 20, 2023 (“Petition”). For the reasons discussed herein, Mr. Thayer requests that this Petition be granted and that the CID be quashed in its entirety, or, in the alternate, seriously limited in the manner enumerated below.

**BACKGROUND**

On March 20, 2023, the FTC re-issued<sup>1</sup> a CID to Mr. Thayer requesting information and documents as part of a non-public investigation. Exhibit (“Ex”) A. On March 21, 2023, the FTC served the CID on undersigned counsel, who accepted service on his behalf. As set forth in the CID, the alleged purpose of the FTC’s Investigation, in pertinent part, is to determine whether International Markets Live (“IML” or the “Company”), or any persons or entities associated with IML, “are engaged in deceptive or unfair acts or practices in connection with the marketing of goods or services on the Internet or in connection with the advertising, marketing, or sale of

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<sup>1</sup> The FTC previously issued a CID to Mr. Thayer dated June 24, 2022, which it did not serve on him until on or about November 2022 – months after the issuance and return date – rendering the CID invalid. Therefore, the FTC withdrew the invalid CID and re-issued the CID at issue, for which the undersigned counsel accepted service.

business opportunities, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; the Business Opportunity Rule, 16 C.F.R. Part 437; or any other statute or rule enforced by the Commission.” *Id.* at p. 6.

On April 5, 2023,<sup>2</sup> the FTC and Mr. Thayer, through counsel, participated in a meet and confer to attempt to resolve any issues concerning the CID, as required by 16 CFR § 2.7. During the meet and confer, Mr. Thayer raised the following concerns and objections to the CID:

First, the CID fails to comply with the notification of purpose requirement set forth in 15 U.S.C. §57b-1(c)(2), which requires that each CID “state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.” Instead, the CID essentially just states that the FTC is generally looking into IML’s marketing and sales (of *any* type of goods or service on the internet or *anywhere* else), without providing a sufficient description of the nature of the conduct constituting the alleged violation and the provision of law applicable to each such supposed violation. Accordingly, as Mr. Thayer’s counsel pointed out, under the Commission’s own regulations, the CID does not provide Mr. Thayer with adequate notice regarding the scope or purpose(s) of the Commission’s investigation. Put differently, the CID is deficient on its face. And this defect has an obvious consequence. Without knowing the scope of the Commission’s investigation, there is no reasonable way for Mr. Thayer to evaluate whether the information sought in the CID is relevant to the investigation.

Accordingly, during the April 5, 2023, meet and confer, Mr. Thayer’s counsel pointed out this deficiency and requested the FTC provide Mr. Thayer with a sufficient description of the scope of its investigation. In response, Thomas Biesty (“Mr. Biesty”) (Commission Counsel) indicated

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<sup>2</sup> As undersigned counsel and Mr. Biesty had a series of conversations regarding Mr. Thayer prior to the issuance of the CID in March, Mr. Biesty confirmed that the April 5, 2023 meeting was sufficient for the purposes of the CID’s meet and confer deadline.

that the FTC was satisfied with the notification of purpose statement set forth in the CID, and it would take no further action to modify the CID on that basis or to provide any further clarity to Mr. Thayer regarding the scope of the investigation.

Next, Mr. Thayer's counsel informed the FTC that because of the issues raised in the CID, as well as the vagueness with which those issues are described in the CID, Mr. Thayer was expressly reserving all rights under the Fifth Amendment to the U.S. Constitution, including his right not to respond to the Interrogatories, along with his right not to produce documents under the act of production doctrine, subject to any follow up discussions with the FTC.<sup>3</sup> Mr. Thayer's counsel also noted his objections to the CID to the extent any request may be construed as seeking information protected by attorney-client privilege and the work product doctrine, including the mental impressions, opinions, and advice of counsel.

Lastly, during the meet and confer, Mr. Thayer's counsel objected to the CID on the grounds that many requests are vague, ambiguous, overbroad, and disproportionate on their face.<sup>4</sup> Rather than addressing these issues in full detail, Mr. Biesty suggested that Mr. Thayer's counsel e-mail him Mr. Thayer's objections to the scope of the CID, and the parties would table discussions regarding the Fifth Amendment and his other objections until a later date. After that, Mr. Biesty informed Mr. Thayer's counsel via email that the FTC would not be granting any extensions of time to continue these discussions. Instead, he advised that Mr. Thayer file a Motion to

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<sup>3</sup> For clarity, Mr. Thayer continues to reserve all rights under the Fifth Amendment.

<sup>4</sup> Mr. Thayer's counsel also informed the FTC that his Instagram account was hacked on or about September 20, 2022, and material within was deleted. Although Mr. Thayer has contacted Instagram on multiple occasions and worked with several technology vendors in an effort to recover this information, to date, he has been unable to do so.

Limit/Quash to the CID, which, according to the CID, would be due on April 10, 2023. *See* Ex. B. Mr. Thayer now timely files this Motion.

### LEGAL STANDARD

The FTC may issue CIDs to “any person” whom it “has reason to believe” may have documents, tangible things, or information “relevant to unfair or deceptive acts or practices in or affecting commerce...or to antitrust violations.” 15 U.S.C. §57b-1(c)(1). To ensure that the Commission investigates only viable theories of misconduct and does not conduct roving and unauthorized government investigations, each CID must “state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.” 15 U.S.C. §57b-1(c)(2). This statutory requirement, as with other CIDs issued by other government agencies, “ensures that the recipient of a CID is provided with fair notice as to the nature of the [agency’s] investigation.” *Consumer Fin. Prot. Bureau v. Accrediting Council for Indep. Colleges & Sch.* (“ACICS”), 854 F.3d 683, 690 (D.C. Cir. 2017). It also ensures that a court tasked with deciding whether to enforce a CID has an adequate means of testing the CID’s validity. *Id.* After all, the “relevance of the agency’s subpoena requests may be measured only against the general purposes of its investigation.” *FTC v. Texaco, Inc.*, 555 F.2d 862, 874 (D.C. Cir.1977).

In determining whether to enforce a CID, courts consider whether “the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.” *Id.* at 872. While courts may play a limited role in subpoena enforcement proceedings, they “must also ensure that subpoenas are not ‘unduly burdensome or unreasonably broad.’” *ACICS*, 854 F.3d at 690. As the D.C. Circuit has cautioned: “[T]here are real limits on any agency’s subpoena power,” and “the deference courts afford agencies does not ‘eviscerate the

independent role which the federal courts play in subpoena enforcement proceedings.” *Id.* at 689 (citations omitted). Rather, “the statutory power to enforce CIDs in the district courts[] entrusts courts with the authority and duty not to rubber-stamp the Bureau’s CIDs, but to adjudge their legitimacy.” *Id.* In short, agencies do not possess “unfettered authority to cast about for potential wrongdoing.” *Id.* As such, to protect against potential abuses, courts may deny enforcement of a CID or “impose reasonable conditions and restrictions with respect to the production of the subpoenaed material if the demand is unduly burdensome.” *F.T.C. v. Bisaro*, 757 F. Supp. 2d 1, 7 (D.D.C 2010).

**ARGUMENT**

**I. The CID Should Be Quashed Out of Hand: It Fails to Comply with 15 U.S.C. §57b-1(c)(2).**

The CID issued to Mr. Thayer should be quashed out of hand for its failure to comply with 15 U.S.C. §57b-1(c)(2). Its notification of purpose, in its entirety, states:

Whether the Company as defined herein, or persons or entities associated with the Company, are engaged in deceptive or unfair acts or practices in connection with the marketing of goods or services on the Internet or in connection with the advertising, marketing, or sale of business opportunities, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; the Business Opportunity Rule, 16 C.F.R. Part 437; or any other statute or rule enforced by the Commission; and whether Commission action to obtain injunctive or monetary relief would be in the public interest.

Ex. A., p. 6.

Self-evidently, this notification of purpose does not provide any notice, much less fair notice, of “the nature of the conduct constituting the alleged violation.” 15 U.S.C. §57b-1(c)(2). According to the notification, the purpose of this investigation is to generally ascertain whether the Company or any “persons or entities associated with the Company” are engaged in *any* “deceptive or unfair acts or practices in connection with the marketing of goods or services on the Internet” or *any* “advertising, marketing, or sale of business opportunities.” Ex. A., p. 6. That

description utterly fails to define the conduct at issue—or describe any of the supposed violations. Indeed, many courts have considered similar notifications of purpose and found them to be insufficient for the same reasons.

Notably, the notification of purpose here is essentially identical to one recently found inadequate by the D.C. Circuit in *ACICS*. In *ACICS*, the CFPB issued a civil investigative demand to ACICS, a non-profit organization that accredits for-profit colleges. *ACICS*, 854 F.3d at 685.

That notification of purpose provided:

The purpose of this investigation is to determine whether any entity or person has engaged or is engaging in unlawful acts and practices in connection with accrediting for-profit colleges, in violations of sections 1031 and 1036 of the Consumer Financial Protection Act of 2010, 12 U.S.C. §§ 5531, 5536, or any other Federal consumer financial protection law. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

*Id.* at 690.

When ACICS refused to comply with the CID, as drafted, the CFPB filed a petition for enforcement. *Id.* at 685. ACICS, in turn, opposed the petition on the grounds that the CID failed to meet the notification of purpose requirements set forth in the CFPB regulations and was therefore invalid. *Id.* at 687. On appeal, the Court agreed—and affirmed the district court’s decision declining to enforce the CID.

To begin with, the Court noted that the CID described “the nature of the conduct constituting the alleged violation which is under investigation” as simply: “unlawful acts and practices in connection with accrediting for-profit colleges” and “never explains what the broad and non-specific term ‘unlawful acts and practices’ means.” *Id.* at 690. The Court further explained why this was problematic. As the Court stated: “We cannot determine, for example, whether the information sought in the CID is reasonably relevant to the CFPB’s investigation without knowing

what ‘unlawful acts and practices’ are under investigation.” *Id.* at 691. As the Court continued, as “the Notification of Purpose gives no description whatsoever of the conduct the CFPB is interested in investigating, we need not and probably cannot accurately determine whether the inquiry is within the authority of the agency and whether the information sought is reasonably relevant.” *Id.* Accordingly, the Court declined to enforce the CID. *See id.* The same rationale supports the same result here.

Many courts have reached similar conclusions for similar reasons. *See Montship Lines Ltd. v. Federal Maritime Board*, 295 F.2d 147, 155 (D.C. Cir. 1961) (an agency’s order that fails to state the purpose of its investigation is “fatally defective”); *In re Sealed Case (Admin. Subpoena)*, 42 F.3d 1412, 1418 (D.C. Cir. 1994) (rejecting an administrative subpoena that described the purpose of its investigation as including “other wrongdoing, as yet unknown,” because the “broad language used to describe the purpose makes it impossible to apply” rendering the information demanded “too indefinite.”). Courts have also explained what detail is required in a statement of purpose. *See, e.g., FTC v. Carter*, 636 F.2d 781, 788 (D.C. Cir. 1980) (enforcing a subpoena where the “Commission ... allowed our examination of the relevance of their subpoena requests[ ] by identifying the specific conduct under investigation....”). Here, the CID simply does not provide it.

Likewise, the CID fails to adequately state the provisions of law applicable to the alleged violation. Like in *ACICS*, the notification of purpose here fails to adequately state the provisions of law applicable to the alleged violation because, again, as with this notification, the cited statutory provisions in the CID are not accompanied by any language that clarifies or defines what conduct allegedly violates the cited provisions. *See id.* at 691-92 (explaining that the statutory provisions standing “broadly alone” tells *ACICS* nothing about the statutory basis for the Bureau’s

investigation’”) (citations omitted). As is the case here, the CID’s broad reference to the FTCA and Business Opportunity Rule does nothing to clarify what conduct within those provisions are the subject of its investigation.

In addition, the Court criticized the CFPB’s use of the phrase “any other Federal consumer financial protection law,” which it found to be too broad and wholly inconsistent with the notice of purpose requirements. *Id.* at 691. While a CID need not provide “the precise character of [the] possible violations” an investigation might uncover, it must provide a link between the relevant conduct and the alleged violation.” *Id.* Once again, the same holds true here. While the FTC need not provide the “precise character of the possible violations,” at minimum, the CID should identify “the possible violations’ its investigations might uncover” and “the link between the relevant conduct and the alleged violation.” *Id.* Because the CID does not do so, it is invalid on its face. Once again, courts have regularly reached the same result for similar reasons.

For instance, the Fifth Circuit rejected as insufficient the CFPB’s notification of purpose in *CFPB v. Source for Pub. Data, L.P.*, 903 F.3d 456, 459 (5th Cir. 2018) (“*Public Data*”), which stated:

The purpose of this investigation is to determine whether consumer reporting agencies, persons using consumer reports, or other persons have engaged or are engaging in unlawful acts and practices in connection with the provision or use of public records information in violation of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, et. seq., Regulation V, 12 C.F.R. Part 1022, or any other federal consumer financial law. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

The Court held this notification of purpose was insufficient. *Id.* at 458. First, the CID did not state the “conduct constituting the alleged violation which is under investigation.” *Id.* According to the CID, the CFPB was investigating “unlawful acts and practices in connection with the provision or use of public records information.” *Id.* The Court noted this was facially deficient:



“[s]imply put, this Notification of Purpose does not identify what conduct, it believes, constitutes an alleged violation. Providing and using public records are not violations of federal law, and the CFPB fails to explain how these activities violate federal consumer law.” *Id.* The same holds true here: there is nothing unlawful about “marketing or selling” goods on the Internet or advertising business opportunities. *See id.*; *cf. Consumer Fin. Prot. Bureau v. Heartland Campus Sols., ECSI*, 747 F. App’x 44, 49 (3d Cir. 2018) (enforcing a CID where the “Notification of Purpose here identifies the actors, i.e., ‘student loan servicers,’ and the *types of activities*, i.e., ‘processing payments, charging fees, transferring loans, maintaining accounts, and credit reporting,’ under investigation. Thus, it has the specificity the CID in *ACICS* lacked”) (emphasis added).

Additionally, the Court found that because the CID failed to identify the conduct under investigation or the provision of law at issue, the court could not “review it under our ‘reasonable relevance’ standard. And if a court cannot exercise meaningful judicial review, a CID recipient has no opportunity to challenge an agency’s investigatory authority.” *Id.* at 459. Likewise, without the proper notification, as is the case here, Mr. Thayer cannot evaluate whether the FTC requests are reasonably relevant to its inquiry “because we do not know what the inquiry actually is.” *Id.* And Mr. Thayer, too, cannot assess whether the FTC’s “demand is ‘unreasonably broad or burdensome.’” *Id.* Simply put, in issuing CIDs, the FTC must comply with statutory requirements; here, it did not. *Id.* at 460. The CID should be quashed in its entirety.

**II. In the Alternative, the CID Should be Limited: The Requests are Vastly Overbroad, Disproportionate, and Seek Irrelevant Information Beyond the Stated Scope of the Investigation.**

To the extent the FTC declines to quash the CID in its entirety, it should be seriously limited. As is evident from even a cursory review of the CID’s onerous Interrogatories and Requests for Production (“Document Requests”) (together with the Interrogatories, the

“Requests”), they are vastly overbroad and disproportionate on their face. For the most part, in the Requests, the FTC demands “all” documents, communications, and facts, often without any time restriction, including vast swaths of information that do not appear to be tethered to the stated purpose of the FTC’s investigation. While an administrative agency “has a power of inquisition” akin to that of a grand jury,” it may not be of “such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power.” *In re McVane*, 44 F.3d 1127, 1135 (2d Cir. 1995).

Additionally, many of the FTC’s demands are “too indefinite” and not “reasonably relevant” to the FTC’s purported purpose. Again, many of the Requests seek “all documents,” “all communications,” “any documents,” and “all persons.” *See, e.g.*, Interrogatory Nos. 2, 5, 6, 7, 8, 26, 27, 28, 34, 39, 42, 43, 44, and 47 and Document Request Nos. 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, and 23. Quite obviously, these Requests are grossly overbroad and disproportionate. *See, e.g., Sadkhan v. Obama*, 608 F. Supp. 2d 33, 39 (D.D.C. 2009) (“A discovery request that starts with ‘any and all’ is almost certainly in trouble”); *Nallapati v. Nallapati*, No. ‘5:20-CV-470-BO, 2022 WL 1508885, at \*5 (E.D.N.C. May 12, 2022) (denying motion to compel and confirming that “requests seeking ‘any and all’ documents ‘relating to’ are overly broad”) (collecting cases).

Similarly, the Requests repeatedly use overbroad and vague terms, such as “including, but not limited to,” “related to,” “concerning,” and “tied to,” which renders it difficult to determine the specific information being sought. *See, e.g.*, Interrogatory Nos. 19, 20, 39, and 49 and Document Request Nos. 6, 8, 20, 21, and 22. These Requests, too, are vague, grossly overbroad, and disproportionate. *See, e.g., U.S. ex rel. Birkhead Elec., Inc. v. James W. Ancel, Inc.*, No. CIV. WDQ-13-2498, 2014 WL 7364461, at \*4 (D. Md. Dec. 23, 2014) (“The repeated use of ‘any and

all,' 'relating to,' and 'including but not limited to' render Plaintiff's requests grossly overbroad, and [Defendant's] objections were therefore justified").

Further, it should go without saying that the FTC is not entitled to information for an unlimited period of time. *See Shackleford v. Vivint Solar Dev. LLC*, No. CV ELH-19-954, 2020 WL 3488913, at \*9 (D. Md. June 25, 2020) (discovery requests were overbroad because they contained no temporal limitations). While the CID purports to use a time period from November 1, 2019 to the present (the "Applicable Time Period") (Ex. A, p. 6), a large number of the FTC's Requests ignore that restriction and request documents and information "Regardless of the Applicable Time Period." *See, e.g.*, Interrogatory Nos. 1, 2, 4, 5, 7, 8, 9, 34, 44, 52, 53, 54 and Document Request Nos. 13, 20, 21, and 22 (requesting documents and information "Regardless of the Applicable Time Period"). As such, these Requests are overbroad, untethered to the FTC's stated purpose, or both. And the Requests are otherwise problematic.

For instance, Interrogatory No. 6 seeks information about "all lawsuits and legal proceedings, including arbitration, filed by or against You, or inquiries from government agencies or law enforcement offices (foreign or domestic) involving You from January 1, 2013." It is obvious that *any* lawsuit or legal proceeding that Mr. Thayer has *ever* been involved with (e.g., a family matter), particularly one dating back to January 1, 2013, is not properly tethered to the FTC's current investigation.

Additionally, Interrogatories Nos. 1, 2, 3, 5, 6, 7, 8, 22, and 29 and Document Request Nos. 15, 16, and 23 seek information and documents that exceed the purported notification of purpose identified in the CID and are thus overbroad and unduly burdensome. For example, Interrogatory No. 22 seeks information on the amount of income Mr. Thayer received "*from sources other than IML or trading.*" This would include income derived from *any source whatsoever* (e.g., income

from an inheritance or a trust). It cannot be said that any income that Mr. Thayer has ever received from anywhere since 2019 is “reasonably relevant” to the FTC’s investigation into IML’s unidentified marketing and sales practices.

By way of further example, Interrogatory No. 29 seeks Mr. Thayer’s “household’s net worth” since January 1, 2019. Information about Mr. Thayer’s “household’s net worth” (a term the CID does not even define) could include the personal financial information of unrelated parties such as a spouse, partner, or child. This type of request goes beyond what could be reasonably relevant to this investigation. *See In re McVane*, 44 F.3d at 1138 (holding that administrative subpoenas “which seek personal records of persons who are not themselves targets of the investigation and whose connection to the investigation consists only of their family ties to corporate participants, must face more exacting scrutiny than similar subpoenas seeking records solely from corporate participants”).

Additionally, Interrogatory No. 5, seeks “Regardless of the Applicable Time Period and *excluding Your involvement with the Company*, list every direct-selling or multi-level marketing business in which you have participated,” and a description of Mr. Thayer’s work and his “annual profit from such work.” Again, this Interrogatory imposes no temporal limitation, which is the first problem. Second, the Interrogatory seeks information *that has nothing to do with* Mr. Thayer’s alleged involvement with IML – the purported subject of the FTC’s investigation. Information about Mr. Thayer’s purported involvement with other legitimate businesses outside of IML for time immemorial is untethered to this investigation.

Similarly, Interrogatory No. 2 requests information (without any time restriction) about Mr. Thayer’s “experience in trading in financial markets and financial instruments” and to provide the “Identity of all broker(s) or brokerage firms(s)” through which he has ever executed trades.

Once again, Mr. Thayer's entire trading history is not reasonably relevant to the FTC's investigation into IML's purported business practices. The same is true of multiple other Interrogatories. *See, e.g.*, Interrogatory No. 1 (requesting information about all of Mr. Thayer's "training in financial and financial-instrument trading"); Interrogatory No. 3 (seeking information about *any* "financial-instrument trading" and "each financial instrument or market You trade in," which would include any trading activity unrelated to IML); and Document Request Nos. 15 and 16 (similarly requesting documents sufficient to reflect "all trading" and "all simulated trading" in stocks, bonds, etc., including any activity unrelated to IML).

Relatedly, Interrogatories No. 7 and 8 request (again with no time restriction) information on and the identify of "all persons, entities, operations, or enterprises" Mr. Thayer has ever been "affiliated, in any capacity, that have been investigated" by various federal agencies, and the nature and outcome of those investigations." Other Document Requests seek similar information that (similarly) have nothing to do with this investigation. *See* Document Request Nos. 17-19 (also requesting information and documents that appear unrelated to this particular investigation). Assuming Mr. Thayer even had access to that type of information, the FTC would be hard pressed to articulate how information involving any person or entity he has ever come into contact with (and that has been investigated in some capacity) has any bearing on this investigation. That is because it simply does not. And still, the Requests are otherwise problematic.

The CID fails to define nearly all of the terms in the CID. Indeed, the CID's "Definitions" section defines only 10 terms across 56 Interrogatories and 20 Document Requests, rendering it largely impossible to determine the specific information being sought. Ex. A, pp. 9-10. In particular, the CID fails to identify the following terms (the "Undefined Terms"): "training"; "financial markets"; "financial-instrument training"; "involvement"; "participated"; "profit";

“inquiries”; “affiliated”; “affiliations”; “operations”; “enterprises”; “educator”; “income”; “expenses”; “generally”; “commissions”; “tied to”; “other such assets”; “instructor”; “simulated trades”; “the presentation to consumers”; “in whole or in part”; “household”; “net worth”; “relationship”; “arrangement”; “IQcent”; “Raceoption”; “Videforex”; “Binarycent”; “Hugo’s Way”; “Fin Ministry”; “relating to”; “policies and procedures”; “effort(s)”; “regarding”; “substantiation”; “representations”; “audits”; “compliance reviews”; “complaints”; “reprimanded”; “notified”; “guidelines and policies”; “policies”; “complained”; “compensation plan”; “expenses”; “derived from”; “use”; “advertise”; “market”; “promote”; “business opportunity”; “social media posts”; “review”; “requests”; “interaction”; “including but not limited to”; “Company property”; “data”; “enforce”; “formally or informally”; “about”; “higher rank levels”; “new forms of income”; “income claims”; “testimonials”; “monitor”; “IBO compliance with or enforce”; “rules”; “claims”; “IBO violations”; “statements”; “other documents”; “other assets”; and the communications identified in Document Request No. 23 (a)-(e). Ex. A., pp. 6-15. This failure renders the Requests vague, overbroad, and unduly burdensome. *See, e.g., Moses Enterprises, LLC v. Lexington Ins. Co. & AIG Claims, Inc.*, No. 3:19-CV-00477, 2021 WL 329210, at \*8 (S.D.W. Va. Feb. 1, 2021) (finding plaintiff’s failure to define ambiguous terms such as “market conduct study/studies,” “past interpretation,” and the failure to “specify what ‘complaints’ and ‘claims’ this topic encompasses,” rendered the requests overly broad).

By way of example (and as discussed above), Interrogatory No. 29 seeks information about Mr. Thayer’s “household” “net worth,” yet those terms are undefined. Mr. Thayer does not know who, if anyone, is included in the term “household,” (particularly given his evolving marital status) and how the FTC is defining “net worth” (i.e. what assets or debt this would pertain to and how that information would be calculated). Relatedly, Interrogatory Nos. 27 and 28 and Document

Request No. 16 request information and documents related to “simulated trades” allegedly executed by Mr. Thayer. Yet, the term “simulated trades” is undefined by the CID and thus it is impossible to know what activity the FTC is referencing.

Additionally, the CID fails to define the term “substantiation,” among other things, in Interrogatory Nos. 40 (“Describe with particularity the Company’s policies and procedures regarding the *substantiation* the Company’s educators had to possess in order to make any representations regarding income, financial gains, profit, or return on investment...”) and 41 (“Describe with particularity the Company’s policies and procedures regarding the *substantiation* the Company’s educators had to possess in order to make any representations regarding income, financial gains, profit, or return on investment...”). As written, it is impossible to understand what the term “substantiation” means in this context.

While a responding party is ordinarily required to exercise reason and common sense to attribute ordinary definitions to terms and phrases utilized in discovery, 23 Am. Jur. 2d Depositions and Discovery § 133 (citing *Johnson v. Kraft Foods North America, Inc.*, 238 F.R.D. 648, 66 Fed. R. Serv. 3d 1237 (D. Kan. 2006)), if a party believes a request is vague there is an obligation on the parties to attempt clarification. *See e.g., Footbridge Ltd. Tr. v. Zhang*, No. CV 04-347 (CKK/AK), 2007 WL 9757939, at \*2 (D.D.C. June 6, 2007) (ordering the parties to meet and confer to allow plaintiff’s counsel to further define various terms contained in plaintiff’s interrogatories the defendant considered vague and overbroad). However, Mr. Thayer’s ability to do so here was foreclosed by the FTC’s unwillingness to continue the meet and confer discussion.

As a result, Mr. Thayer moves to quash or limit the CID. Specifically, should the FTC decline to quash the CID in its entirety, Mr. Thayer requests that the Commission (1) strike Interrogatories Nos. 1, 2, 3, 5, 6, 7, 8, 22, and 29 and Document Request Nos. 15, 16, and 23; (2)

limit Interrogatory Nos. 2, 5, 6, 7, 8, 19, 20, 26, 27, 28, 34, 39, 42, 43, 44, 47, and 49 and Document Request Nos. 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, and 23 to the specific information and documents being sought by the FTC; (3) limit Interrogatory Nos. 1, 2, 4, 5, 6, 7, 8, 9, 34, 44, 52, 53, 54 and Document Request Nos. 13, 20, 21, and 22 to the Applicable Time Period; and (4) require the FTC to define and/or clarify the Undefined Terms in the CID above.

**CONCLUSION**

For the foregoing reasons, Mr. Thayer requests that his Petition be granted in its entirety, and that the CID be quashed in its entirety, or, alternatively, limited as outlined above; and that the FTC grant such other and further relief as it deems just and proper.

Respectfully submitted,

**SCHULMAN BHATTACHARYA, LLC**

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Office of the Secretary

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March 20, 2023

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FTC Matter No. 2123090

Dear Mr. Thayer<sup>1</sup>:

The Federal Trade Commission (“FTC”) has issued the attached Civil Investigative Demand (“CID”) asking for information as part of a non-public investigation. Our purpose is to determine whether the Company, as defined in the enclosed CID Schedule, or persons or entities associated with the Company, are engaged in deceptive or unfair acts or practices in connection with the marketing of goods or services on the Internet or in connection with the advertising, marketing, or sale of business opportunities, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; the Business Opportunity Rule, 16 C.F.R. Part 437; or any other statute or rule enforced by the Commission; and whether Commission action to obtain injunctive or monetary relief would be in the public interest. Please read the attached documents carefully. Here are a few important points we would like to highlight:

1. **Contact FTC counsel, Thomas Biesty ((202) 326-3043; tbiesty@ftc.gov), as soon as possible to schedule a telephone call to be held within 14 days.** During that telephone call, FTC counsel can address any questions or concerns you have regarding this CID, including whether there are changes to how you comply with the CID that would reduce your cost or burden while still giving the FTC the information it needs. Please read the attached documents for more information about that meeting.
2. **You must immediately stop any routine procedures for electronic or paper document destruction, and you must preserve all paper or electronic documents**

<sup>1</sup> This letter and the enclosed CID are being served on your attorney, who has represented that you have authorized him to accept service of process.

that are in any way relevant to this investigation, even if you believe the documents are protected from discovery by privilege or some other reason.

3. **The FTC will use information you provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces.** We will not disclose the information under the Freedom of Information Act, 5 U.S.C. § 552. We may disclose the information in response to a valid request from Congress, or to other civil or criminal law enforcement agencies for their official law enforcement purposes. The FTC or other agencies may use and disclose your response in any civil or criminal proceeding, or if required to do so by law. However, we will not publicly disclose your information without giving you prior notice.
4. **Please read the attached documents closely.** They contain important information about how you should provide your response.

Please contact FTC counsel as soon as possible to set up an initial meeting. We appreciate your cooperation.

Very truly yours,



April J. Tabor  
Secretary



Federal Trade Commission

**CIVIL INVESTIGATIVE DEMAND**

1. TO  Matthew C. Thayer c/o Jeffrey S. Gavenman, Esq. Schulman Bhattacharya LLC 6116 Executive Blvd., Suite 425 North Bethesda, Maryland 20852	1a. MATTER NUMBER  2123090
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This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED <input type="checkbox"/> You are required to appear and testify.	
LOCATION OF HEARING	YOUR APPEARANCE WILL BE BEFORE  DATE AND TIME OF HEARING OR DEPOSITION

- You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.
- You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.
- You are required to produce the tangible things described on the attached schedule. Produce such things to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS, ANSWERS TO INTERROGATORIES, REPORTS, AND/OR TANGIBLE THINGS MUST BE AVAILABLE  
 April 19, 2023 by 5pm ET

3. SUBJECT OF INVESTIGATION See attached Schedule and attached resolutions
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4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN Reeve Tyndall/Lois Greisman Org 1144, Mail Stop CC-6316 600 Pennsylvania Avenue, NW Washington, DC 20580 (202) 326-2452	5. COMMISSION COUNSEL Thomas M. Biesty Org 1144, Mail Stop CC-6316 600 Pennsylvania Avenue, NW Washington, DC 20580 (202) 326-2452
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DATE ISSUED 3/20/2023	COMMISSIONER'S SIGNATURE 
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**INSTRUCTIONS AND NOTICES**

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

**PETITION TO LIMIT OR QUASH**

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

**YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS**

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

**TRAVEL EXPENSES**

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/ETCSRulesofPractice>. Paper copies are available upon request.

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## Form of Certificate of Compliance\*

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I/We do certify that all of the documents, information and tangible things required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document or tangible thing responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to its submission and the reasons for the objections have been stated.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Sworn to before me this day

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

\*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

**FEDERAL TRADE COMMISSION (“FTC”)  
CIVIL INVESTIGATIVE DEMAND (“CID”) SCHEDULE  
FTC File No. 2123090**

**Meet and Confer:** You must contact **FTC counsel, Thomas M. Biesty ((202) 326-3043; tbiesty@ftc.gov)**, as soon as possible to schedule a telephonic meeting to be held within fourteen (14) days after You receive this CID. At the meeting, You must discuss with FTC counsel any questions You have regarding this CID or any possible CID modifications that could reduce Your cost, burden, or response time yet still provide the FTC with the information it needs to pursue its investigation. The meeting also will address how to assert any claims of protected status (e.g., privilege, work-product, etc.) and the production of electronically stored information. You must make available at the meeting personnel knowledgeable about Your information or records management systems, Your systems for electronically stored information, custodians likely to have information responsive to this CID, and any other issues relevant to compliance with this CID.

**Document Retention:** You must retain all documentary materials used in preparing responses to this CID. The FTC may require the submission of additional Documents later during this investigation. **Accordingly, You must suspend any routine procedures for Document destruction and take other measures to prevent the destruction of Documents in Your possession, custody, or control** that are in any way relevant to this investigation, even if those Documents are being retained by a third-party or You believe those Documents are protected from discovery. *See* 15 U.S.C. § 50; *see also* 18 U.S.C. §§ 1505, 1519.

**Sharing of Information:** The FTC will use information You provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces. We will not disclose such information under the Freedom of Information Act, 5 U.S.C. § 552. We also will not disclose such information, except as allowed under the FTC Act (15 U.S.C. § 57b-2), the Commission’s Rules of Practice (16 C.F.R. §§ 4.10 & 4.11), or if required by a legal obligation. Under the FTC Act, we may provide Your information in response to a request from Congress or a proper request from another law enforcement agency. However, we will not publicly disclose such information without giving You prior notice.

**Manner of Production:** Contact **Reeve Tyndall ((202) 326-2452; rtyndall@ftc.gov)** by email or telephone at least five days before the return date for instructions on how to produce information responsive to this CID.

**Certification of Compliance:** You or any person with knowledge of the facts and circumstances relating to the responses to this CID must certify that such responses are complete by signing the “Certification of Compliance” attached to this CID.

**Definitions and Instructions:** Please review carefully the Definitions and Instructions that appear after the Specifications and provide important information regarding compliance with this CID.

## I. SUBJECT OF INVESTIGATION

Whether the Company as defined herein, or persons or entities associated with the Company, are engaged in deceptive or unfair acts or practices in connection with the marketing of goods or services on the Internet or in connection with the advertising, marketing, or sale of business opportunities, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; the Business Opportunity Rule, 16 C.F.R. Part 437; or any other statute or rule enforced by the Commission; and whether Commission action to obtain injunctive or monetary relief would be in the public interest. See also attached resolutions.

## II. SPECIFICATIONS

**Applicable Time Period:** Unless otherwise directed, the applicable time period for the requests set forth below is from **November 1, 2019, until the date of full and complete compliance with this CID.**

### A. INTERROGATORIES

#### *Your Training, Experience, and Licensure*

1. Regardless of the Applicable Time Period, describe with specificity Your training in financial markets and financial-instrument trading, and Identify each person or entity from which You received training, when You received the training, and what the general subject matter of the training was.
2. Regardless of the Applicable Time Period, describe with specificity Your experience trading in financial markets and financial instruments, including the financial markets or instruments You traded, the year(s) in which You traded in such financial markets or instruments, and the Identity of all broker(s) or brokerage firm(s) through which You executed trades.
3. State whether You currently engage in financial-instrument trading. If so, provide each financial instrument or market You trade in, and Identify any broker or brokerage firm through which You execute such trades.
4. Regardless of the Applicable Time Period, state all licenses and credentials You hold or have held relating to financial-instrument trading (e.g. successful completion of the General Securities Representative Exam "Series 7"). State whether you have ever been registered with any regulatory organizations such as the Commodity Futures Trading Commission (CFTC) or Securities and Exchange Commission (SEC) and the years of registration.
5. Regardless of the Applicable Time Period and excluding Your involvement with the Company, list every direct-selling or multi-level marketing business in which You have participated, describe with specificity Your work at the business, and provide Your annual profit from such work.

6. List all lawsuits and legal proceedings, including arbitration, filed by or against You, or inquiries from government agencies or law enforcement offices (foreign or domestic) involving You from January 1, 2013, until the date of full and complete compliance with this CID. Include the names of all parties, the jurisdiction in which the matter is or was pending, the case number, the date filed, the Identity of counsel for all parties, and the current status or disposition of the matter.
7. Regardless of the Applicable Time Period, identify all persons, entities, operations, or enterprises with which You have been affiliated, in any capacity, that have been investigated by the Securities and Exchange Commission (SEC), Commodities and Futures Trading Commission (CFTC), Federal Trade Commission (FTC), Financial Industry Regulatory Authority (FINRA), Consumer Financial Protection Bureau (CFPB) or another law enforcement agency, and describe the nature of Your affiliation with each.
8. Regardless of the Applicable Time Period, for all persons, entities, operations, or enterprises identified in response to Interrogatory Number 7, describe the nature, scope, and outcome of the investigation by the SEC, CFTC, FTC, FINRA, CFPB, or other law enforcement agency.

*Your Involvement with the Company*

9. Regardless of the Applicable Time Period, describe how You first came to be affiliated with IML (whether as a student, a contractor, employee, IBO or otherwise), including the date(s).
10. Excluding Your role as an IBO, state Your role(s) with the Company, state the month and year in which You assumed such role(s), and provide a description of the work You performed in such role(s).
11. Describe with particularity how you first came to be an educator for the Company.
12. Describe with particularity any interviews or evaluations you were subjected to by the Company prior to your employment as an educator for the Company.
13. State, broken down by each type of income the Company offers (including bonuses and perquisites), Your annual income as an IBO.
14. State the amount of time You spent to earn Your income as an IBO, both annually and generally in each pay period.
15. State Your expenses as an IBO, both annually and generally in each pay period.
16. Identify the amount of income You received from IML as compensation (whether as salary, bonus, commission, or otherwise), in each of the years 2022, 2021, 2020, and 2019.

17. Identify the amount of income You received from IML as compensation that was attributable to your position as an IBO, in each of the years 2022, 2021, 2020, and 2019.
18. Identify the amount of income You received from IML as compensation that was attributable to your position as an instructor, in each of the years 2022, 2021, 2020, and 2019.
19. As to the annual compensation amounts identified in response to Interrogatory 18, Identify the amounts of annual income attributable to salary and the amounts of annual income attributable to commissions tied to the sale of the Company's products and services.
20. Describe with particularity the nature of any commissions you received as an educator that were tied to the sale of the Company's products and services.
21. For the year 2019, the year 2020, the year 2021, and the year 2022, identify Your net income (or loss) from trading stocks, bonds, futures, options, foreign exchange, or other such assets.
22. Identify the amount of income You received from sources other than IML or trading (as described in Interrogatory 11, above), in each of the years 2022, 2021, 2020, and 2019. For each such source of income, describe the nature of the source and the reason for the income (e.g., wages from part-time job, etc.).
23. Describe your duties and responsibilities as an instructor on behalf of the Company.
24. Describe with specificity the training you provided to Retail Customers during your time as an instructor on behalf of the Company, including the topics and method(s) of training.
25. Identify the number of GoLive session You presented at in each of the years 2022, 2021, 2020, and 2019.
26. Identify all GoLive sessions (by date) at which You executed live trades in the markets, in whole or in part, as part of the presentation to consumers.
27. Identify all GoLive sessions (by date) at which You executed or displayed simulated trades in the markets, in whole or in part, as part of the presentation to consumers.
28. Identify all GoLive sessions (by date) that You identified in response to Interrogatory 23 at which You disclosed to consumers, as part of the presentation, that the simulated trades were simulated.
29. Identify Your household's net worth as of each of the following: January 1, 2019, January 1, 2020, January 1, 2021, and January 1, 2022.



30. Describe any relationship or arrangement You have or previously had with the following entities, including the dates of these relationships or arrangements and any compensation you received from these entities as a result:
  - a. IQcent;
  - b. Raception;
  - c. Videforex;
  - d. Binarycent;
  - e. Hugo's Way; and
  - f. Fin Ministry.
31. State whether the Company was aware of any of the relationships or arrangements identified in response to Interrogatory No. 30, while you were an instructor on behalf of the Company.
32. Identify any other Company educators that you understood to have had a relationship or agreement with the entities identified in Interrogatory No. 30.
33. Describe with specificity any training You received from the Company or its IBOs, including the topics and method of training.
34. Regardless of the Applicable Time Period, describe all training provided to You by IML relating to presenting GoLive sessions.
35. Describe with particularity the Company's policies and procedures as to responding to inquiries or statements made by Retail Customers utilizing the chat function during GoLive sessions.
36. Describe with particularity Your individual policies and procedures as to responding to inquiries or statements made by Retail Customers utilizing the chat function during GoLive sessions.
37. Describe with particularity the Company's policies and procedures applicable to its educators' use of the Company's "PipTalk" feature.
38. Describe with particularity any efforts made by the Company to track or evaluate its Retail Customers' performance in trading in financial markets or instruments.
39. Identify all complaints You received from Retail Customers concerning their dissatisfaction with the quality of the IM Academy Education Programs or their performance trading in the financial markets or instruments.
40. Describe with particularity the Company's policies and procedures regarding the substantiation the Company's educators had to possess in order to make any

representations regarding income, financial gains, profit, or return on investment while providing IM Academy Education Programs or presenting GoLive sessions..

41. Describe with specificity any training You provided to IBOs, including the topics and method of training.
42. List and describe in detail all representations you made regarding income, financial gains, profit, or return on investment while providing IM Academy Education Programs or presenting GoLive sessions.
43. List and describe in detail all substantiation You possess for any representations you made regarding income, financial gains, profit, or return on investment while providing IM Academy Education Programs or presenting GoLive sessions.
44. Regardless of the Applicable Time Period, describe all audits and compliance reviews IML conducted of your work providing IM Academy Education Programs or presenting GoLive sessions, including the reason and subject of the audit or review, the individual(s) conducting it, its purpose and conclusions, and any remedial action taken by IML as a result of it.
45. State whether the Company ever reviewed Documents You used to advertise, market, or promote the Company, its products, or its business opportunity. If yes, for each Document the Company reviewed:
  - a. Describe the Document;
  - b. Describe the nature of and reason for the Company's review;
  - c. State whether You submitted the Document to the Company of Your own accord or in response to a Company request for it;
  - d. State whether the Company approved or rejected any portion of the Document; and
  - e. State the reason the Company approved or rejected any portion of the Document.
46. State whether the Company has ever requested any changes to Documents You use or used to advertise, market, or promote the Company, its products, or its business opportunity. If yes, describe:
  - a. The Document;
  - b. The month and year of the request;
  - c. The change requested;

- d. The reason for the request; and
  - e. The action You took in response, if any.
47. List all complaints You have received about any Documents You use or used to advertise, market, or promote the Company, its products, or its business opportunity. For each complaint, provide:
- a. The source of the complaint;
  - b. The date of the complaint;
  - c. The reason for the complaint;
  - d. Your response to the complaint; and
  - e. Any changes You made because of the complaint.
48. State whether You were ever formally or informally reprimanded by the Company. If so, describe with particularity the circumstances of the reprimand, including when and why it occurred, any disciplinary action taken by the Company against you, and what action, if any, You took as a result.
49. State whether You have ever been notified by the Company that You violated its guidelines and policies concerning the use of social media, and describe with particularity any disciplinary action taken by the Company against you.
50. State whether you are aware of the Company's policies regarding posting of ads regarding the Company on social media, and describe those policies.
51. Identify every IBO who has complained to You, formally or informally, about the Company, You, or Your Downline. Provide the date of the complaint and describe with particularity the subject of it.
52. Regardless of the Applicable Time Period, state every means You used to communicate about the Company or with Company employees, IBOs, or Retail Customers (e.g., email, text, computer, social media applications, or mobile applications).
53. Regardless of the Applicable Time Period, for each means of communication provided in Your response to Interrogatory No. 52, provide every address, number, handle, or other identifier You use or have used to communicate about the Company or with Company employees, IBOs, or Retail Customers.
54. Regardless of the Applicable Time Period, describe any instances of You or the Company deleting or destroying any recordings or transcripts of IM Academy Education Programs or GoLive sessions, and explain why such recordings or transcripts were deleted or destroyed.

*Your Response to This CID*

55. If, for any Document Request in this CID, Documents that would have been responsive were destroyed, mislaid, transferred, deleted, altered, or overwritten: (a) describe in detail the Document; (b) state the date such Document was destroyed, mislaid, transferred, deleted, altered, or overwritten; (c) describe the circumstance under which such Document was destroyed, mislaid, transferred, deleted, altered, or overwritten; and (d) Identify the person authorizing such action.
56. Confirm Your compliance and the date as of which You complied with the document retention requirements set forth in this CID.

**A. DOCUMENT REQUESTS**

Produce:

1. Documents sufficient to show Your annual income as an IBO (separated by each category of income available under the Company's compensation plan) and annual expenses (including time spent operating Your IBO).
2. Documents sufficient to show Your annual income as an educator (separated by income derived from salary and income derived from commissions).
3. All Documents You use or have used to advertise, market, or promote the Company, its products, or its business opportunity.
4. A copy of all websites or social media posts You used to advertise, market, or promote the Company, its products, or its business opportunity.
5. All Documents relating to any review the Company has conducted of websites or Documents you have used to advertise, market, or promote the Company, its products, or its business opportunity, including any requests that you make changes to any website or document.
6. All Documents relating to any interaction You have had with the Company regarding the use of Company property and data, including, but not limited to, the Company name, the Company image, sales materials and Documents the Company produces, and Company data (including the Company's income disclosure statement).
7. Documents sufficient to show any effort by the Company to enforce its policies and procedures regarding Your use of Company property and data, including any review, approval, or rejection by the Company of any use of Company property or data.

8. All Documents relating to any complaints You have received concerning any website or Documents You used to advertise, market, or promote Company products or its business opportunity.
9. All Documents relating to any complaint You have received, formally or informally, about the Company, You, or Your Downline, including requests for refunds.
10. All Documents relating to the training You provided to IBOs, including training relating to qualifying for higher rank levels or new forms of income, making representations about the Company business opportunity, and making income claims or testimonials.
11. All Documents relating to Your efforts to monitor IBO compliance with or enforce any rules regarding qualifying for higher rank levels or new forms of income, making representations about the Company business opportunity, and making income claims or testimonials.
12. All Documents relating to any IBO's violations of any rules regarding qualifying for higher rank levels or new forms of income, making representations about the Company business opportunity, and making income claims or testimonials.
13. Regardless of the Applicable Time Period, all contracts, written agreements, and terms of service between You and the Company.
14. All Communications You had with the Company regarding the advertising, marketing, or promotion of the Company, its products, its business opportunity, its compensation plan, recruiting of IBOs, how to earn money as an IBO, sales of Company products, or complaints by other IBOs.
15. Statements or other documents sufficient to reflect all trading by You in stocks, bonds, futures, options, foreign exchange, cryptocurrencies, or other assets.
16. Statements or other documents sufficient to reflect all simulated trading by You in stocks, bonds, futures, options, foreign exchange, cryptocurrencies, or other assets.
17. A copy of any Civil Investigative Demand ("CID"), subpoena or other written request you have received from the CFPB, SEC or CFTC.
18. All Documents you have produced to the CFPB, SEC or CFTC in response to any CID, subpoena, or other written request.
19. A copy of any testimony you have provided in any legal dispute (e.g. lawsuit, arbitration proceeding, etc.) between You and the Company.
20. All Documents related to the subject of Interrogatory No. 3, regardless of the Applicable Time Period.

21. All Documents related to the subject of Interrogatory No. 24, regardless of the Applicable Time Period.
22. All Documents related to the subject of Interrogatory No. 41, regardless of the Applicable Time Period.
23. All Communications regarding the following:
  - a. The Federal Trade Commission's Operation Income Illusion or its law enforcement actions against RagingBull.com or Online Trading Academy;
  - b. The December 5, 2019 Complaint by truthinadvertising.org to the Direct Selling Self-Regulatory Council;
  - c. The September 20, 2020 Fortune magazine article entitled *Inside the weird new world of social 'forex' trading—where you sign up friends, and some report risky red flags for investors*;
  - d. The August 2021 British Broadcasting Corporation (BBC) program *Instatraders*; and
  - e. The Federal Trade Commission's October 2021 Notices of Penalty Offenses Concerning Moneymaking Opportunities and Endorsements and Testimonials.

### III. DEFINITIONS

The following definitions apply to this CID:

- D-1. “**Communication**” means any manner of transmitting, receiving or storing information of any kind, including through text message, app, email, social media, online bulletin boards and Internet chat rooms, to or from a person, whether oral, electronic, in the form of a Document, or otherwise.
- D-2. “**Document**” means the complete original, all drafts, and any non-identical copy, whether different from the original because of notations on the copy, different metadata, or otherwise, of any item covered by 15 U.S.C. § 57b-1(a)(5), 16 C.F.R. § 2.7(a)(2), or Federal Rule of Civil Procedure 34(a)(1)(A).
- D-3. “**Downline**” means all IBOs recruited into the Company by You or Your recruits, or anyone whose chain of recruiters leads to You. The term includes any IBO or Retail Customer whose purchases or sales factor into any income You earn from the Company. The term also includes any definition the Company uses of “downline.”
- D-4. “**Go Live**” means a live investment training session presented by IML instructors that purportedly features live trading.

D-5. **“Identify”** or **“the Identity of”** requires identification of (a) natural persons by name, title, present business affiliation, present business address, telephone number, and email address or, if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, and the identities of Your contact persons at the business or organization.

D-6. **“IM Academy Education Programs”** means any good or service concerning trading, investing, or e-commerce offered by the Company including academies, events, presentations, courses, seminars, workshops, trainings, one-on-one sessions, or mobile device applications.

D-7. **“IML”** or **“Company”** means International Markets Live, Inc., its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, including IM Mastery Academy, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

D-8. **“Independent Business Owner”** or **“IBO”** means any individual or entity that purchases the right to sell education programs offered by IML to consumers.

D-9. **“Retail Customer”** means an individual that purchases IM Academy Education Programs.

D-10. **“You”** or **“Your”** means the person to whom this CID is directed.

#### IV. INSTRUCTIONS

I-1. **Petitions to Limit or Quash:** You must file any petition to limit or quash this CID with the Secretary of the FTC no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition must set forth all assertions of protected status or other factual and legal objections to the CID and comply with the requirements set forth in 16 C.F.R. § 2.10(a)(1) – (2). **The FTC will not consider petitions to quash or limit if You have not previously met and conferred with FTC staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process.** 16 C.F.R. § 2.7(k); *see also* § 2.11(b). **If You file a petition to limit or quash, You must still timely respond to all requests that You do not seek to modify or set aside in Your petition.** 15 U.S.C. § 57b-1(f); 16 C.F.R. § 2.10(b).

I-2. **Withholding Requested Material / Privilege Claims:** For specifications requesting production of Documents or answers to written interrogatories, if You withhold from production any material responsive to this CID based on a claim of privilege, work product protection, statutory exemption, or any similar claim, You must assert the claim no later than the return date of this CID, and You must submit a detailed log, in a searchable electronic format, of the items withheld that identifies the basis for withholding the material and meets all the requirements set forth in 16 C.F.R. § 2.11(a) – (c). The information in the log must be of sufficient detail to enable FTC staff to assess the validity of the claim for each Document, including attachments, without disclosing the protected information. If only some portion of any responsive material is privileged, You must submit all non-privileged portions of the material. Otherwise, produce all responsive information and material without redaction. 16 C.F.R. § 2.11(c). The failure to

provide information sufficient to support a claim of protected status may result in denial of the claim. 16 C.F.R. § 2.11(a)(1).

I-3. **Modification of Specifications:** The Bureau Director, a Deputy Bureau Director, Associate Director, Regional Director, or Assistant Regional Director must agree in writing to any modifications of this CID. 16 C.F.R. § 2.7(l).

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.

I-5. **Identification of Responsive Documents:** For specifications requesting production of Documents, You must identify in writing the Documents that are responsive to the specification. Documents that may be responsive to more than one specification of this CID need not be produced more than once. If any Documents responsive to this CID have been previously supplied to the FTC, You may identify the Documents previously provided and the date of submission.

I-6. **Maintain Document Order:** For specifications requesting production of Documents, You must produce Documents in the order in which they appear in Your files or as electronically stored. If Documents are removed from their original folders, binders, covers, containers, or electronic source, You must specify the folder, binder, cover, container, or electronic media or file paths from which such Documents came.

I-7. **Numbering of Documents:** For specifications requesting production of Documents, You must number all Documents in Your submission with a unique identifier such as a Bates number or a Document ID.

I-8. **Production of Copies:** For specifications requesting production of Documents, unless otherwise stated, You may submit copies in lieu of original Documents if they are true, correct, and complete copies of the originals and You preserve and retain the originals in their same state as of the time You received this CID. Submission of copies constitutes a waiver of any claim as to the authenticity of the copies should the FTC introduce such copies as evidence in any legal proceeding.

I-9. **Production in Color:** For specifications requesting production of Documents, You must produce copies of Advertisements in color, and You must produce copies of other materials in color if necessary to interpret them or render them intelligible.

I-10. **Electronically Stored Information:** For specifications requesting production of Documents, see the attached FTC Bureau of Consumer Protection Production Requirements (“Production Requirements”), which detail all requirements for the production of electronically stored information to the FTC. You must discuss issues relating to the production of electronically stored information with FTC staff **prior to production.**



**I-11. Sensitive Personally Identifiable Information (“Sensitive PII”) or Sensitive Health Information (“SHI”):** Do not produce any sensitive personally identifiable information (“Sensitive PII”) or sensitive health information (“SHI”) prior to discussing the information with FTC counsel. If any document responsive to a particular specification contains unresponsive Sensitive PII or SHI, redact the unresponsive Sensitive PII or SHI prior to producing the document.

Sensitive PII includes an individual’s Social Security number; an individual’s biometric data; and an individual’s name, address, or phone number in combination with one or more of the following: date of birth, driver’s license or state identification number (or foreign country equivalent), military identification number, passport number, financial account number, credit card number, or debit card number. Biometric data includes biometric identifiers, such as fingerprints or retina scans, but does not include photographs (with the exception of photographs and corresponding analyses used or maintained in connection with facial recognition software) or voice recordings and signatures (with the exception of those stored in a database and used to verify a person’s identity). SHI includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

**I-12. Interrogatory Responses:** For specifications requesting answers to written interrogatories: (a) answer each interrogatory and each interrogatory subpart separately, fully, and in writing; and (b) verify that Your answers are true and correct by signing Your answers under the following statement: “I verify under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).” The verification must be submitted contemporaneously with Your interrogatory responses.

**CERTIFICATION OF COMPLIANCE**  
**Pursuant to 28 U.S.C. § 1746**

I, \_\_\_\_\_, certify the following with respect to the Federal Trade Commission's ("FTC") Civil Investigative Demand directed to me (FTC File No. 2123090) (the "CID"):

1. I have identified all documents, information, and/or tangible things ("responsive information") in my possession, custody, or control responsive to the CID and either:
  - (a) provided such responsive information to the FTC; or
  - (b) for any responsive information not provided, given the FTC written objections setting forth the basis for withholding the responsive information.
2. I verify that the responses to the CID are complete and true and correct to my knowledge.

I certify under penalty of perjury that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**Federal Trade Commission - Bureau of Consumer Protection**  
**Production Requirements**

Revised July 2020

In producing information to the FTC, comply with the following requirements, unless the FTC agrees otherwise. If you have questions about these requirements, please contact FTC counsel before production.

**Production Format**

1. **General Format:** Provide load-ready electronic productions with:
  - a. A delimited data load file (.DAT) containing a line for every document, unique id number for every document (DocID), metadata fields, and native file links where applicable; and
  - b. A document level text file, named for the DocID, containing the text of each produced document.

Do not produce corresponding image renderings (e.g., TIFF or JPEG) for files in native format unless the FTC requests them. If the FTC requests corresponding image renderings, provide an Opticon image load file (.OPT) containing a line for every image file.
2. **Electronically Stored Information (ESI):** Documents stored in electronic format in the ordinary course of business must be produced in the following format:
  - a. For ESI other than the categories below, submit in native format with all metadata and either document level extracted text or Optical Character Recognition (OCR). Do not produce corresponding image renderings (e.g., TIFF or JPEG) for files in native format unless the FTC requests them. If the FTC requests corresponding image renderings, they should be converted to Group IV, 300 DPI, single-page TIFF (or color JPEG images when necessary to interpret the contents or render them intelligible.)
  - b. For Microsoft Excel, Access, or PowerPoint files, submit in native format with extracted text and metadata. Data compilations in Excel spreadsheets or delimited text formats must contain all underlying data, formulas, and algorithms without redaction.
  - c. For other spreadsheet, database, presentation, or multimedia formats; instant messages; or proprietary applications, discuss the production format with FTC counsel.
3. **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business must be scanned and submitted as either one multi-page pdf per document or as 300 DPI single page TIFFs (or color JPEGs when necessary to interpret the contents or render them intelligible), with corresponding document-level OCR text and logical document determination in an accompanying load file.
4. **Document Identification:** Provide a unique DocID for each hard copy or electronic document, consisting of a prefix and a consistent number of numerals using leading zeros. Do not use a space to separate the prefix from numbers.

5. **Attachments:** Preserve the parent/child relationship by producing attachments as separate documents, numbering them consecutively to the parent email, and including a reference to all attachments.
6. **Metadata Production:** For each document submitted electronically, include the standard metadata fields listed below in a standard delimited data load file. The first line of the data load file shall include the field names. Submit date and time data in separate fields. Use these standard Concordance delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	¶	20
Quote Character	”	254
Multi Entry delimiter	®	174
<Return> Value in data	~	126

7. **De-duplication:** Do not use de-duplication or email threading software without FTC approval.
8. **Password-Protected Files:** Remove passwords prior to production. If password removal is not possible, provide the original and production filenames and the passwords, under separate cover.

**Producing Data to the FTC**

1. Prior to production, scan all data and media for viruses and confirm they are virus-free.
2. For productions smaller than 50 GB, submit data electronically using the FTC’s secure file transfer protocol. Contact FTC counsel for instructions. **The FTC cannot accept files via Dropbox, Google Drive, OneDrive, or other third-party file transfer sites.**
3. If you submit data using physical media:
  - a. Use only CDs, DVDs, flash drives, or hard drives. Format the media for use with Windows 7;
  - b. Use data encryption to protect any Sensitive Personally Identifiable Information or Sensitive Health Information (as defined in the instructions), and provide passwords in advance of delivery, under separate cover; and
  - c. Use a courier service (e.g., Federal Express, UPS) because heightened security measures delay postal delivery.
4. Provide a transmittal letter with each production that includes:
  - a. Production volume name (e.g., Volume 1) and date of production;
  - b. Numeric DocID range of all documents in the production, and any gaps in the DocID range; and
  - c. List of custodians and the DocID range for each custodian.

DAT FILE FIELDS	DEFINITIONS	POPULATE FIELD FOR:
DocID	Unique ID number for each document	All Documents
FamilyID	Unique ID for all documents in a family including parent and all child documents	All Documents
ParentID	Document ID of the parent document. This field will only be populated on child items	All Documents
File Path	Path to produced native file	All Documents
TextPath	Path to document level text or OCR file	All Documents
Custodian	Name of the record owner/holder	All Documents
AllCustodians	Names of all custodians that had copy of this record (populate if data was deduplicated or email threading was used)	All Documents
Source	Source of documents: CID, Subpoena, Third Party Data, etc.	All Documents
Filename	Original file name	All Documents
File Size	Size of documents	All Documents
File Extensions	Extension of file type	All Documents
MD5 Hash	Unique identifier for electronic data used in de-duplication	All Documents
PRODUCTION_VOLUME	Production Volume	All Documents
HASREDACTIONS	Redacted document	All Documents
Exception Reason	Reason for exception encountered during processing (e.g., empty file, source file, password-protected file, virus)	All Documents
PRODBEG	Beginning production bates number	Documents with Produced Images
PRODEND	Ending production bates number	Documents with Produced Images
PRODBEG_ATTACH	Beginning production family bates number	Documents with Produced Images
PRODEND_ATTACH	Ending production family bates number	Documents with Produced Images
Page Count	The number of pages the document contains	Documents with Produced Images
From	Names retrieved from the FROM field in a message	Emails
To	Names retrieved from the TO field in a message; the recipient(s)	Emails
CC	Names retrieved from the CC field in a message; the copied recipient(s)	Emails
BCC	Names retrieved from the BCC field in a message; the blind copied recipient(s)	Emails
EmailSubject	Email subject line	Emails
Date Sent	The date an email message was sent	Emails
Time Sent	The time an email message was sent	Emails
Date Received	The date an email message was received	Emails
Time Received	The time an email message was received	Emails
Author	File Author	Loose Native Files and Email Attachments
Title	File Title	Loose Native Files and Email Attachments
Subject	File Subject	Loose Native Files and Email Attachments
Date Created	Date a document was created by the file system	Loose Native Files and Email Attachments
Time Created	Time a document was created by the file system	Loose Native Files and Email Attachments
Date Modified	Last date a document was modified and recorded by the file system	Loose Native Files and Email Attachments
Time Modified	Last time a document was modified and recorded by the file system	Loose Native Files and Email Attachments
Date Printed	Last date a document was printed and recorded by the file system	Loose Native Files and Email Attachments
Time Printed	Last time a document was printed and recorded by the file system	Loose Native Files and Email Attachments



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Lina M. Khan, Chair  
Noah Joshua Phillips  
Rohit Chopra  
Rebecca Kelly Slaughter  
Christine S. Wilson

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS  
REGARDING DECEPTIVE AND MANIPULATIVE CONDUCT ON THE INTERNET

File No. 212 3125

Nature and Scope of Investigation:


To determine whether any persons, partnerships or corporations, or others have been or are engaged in unfair, deceptive, anticompetitive, collusive, coercive, predatory, exploitative, or exclusionary acts or practices, in or affecting commerce, relating to the marketing of goods and services on the Internet, the manipulation of user interfaces (including, but not limited to, dark patterns), or the use of e-mail, metatags, computer code or programs, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, or any statutes or rules enforced by the Commission; and to determine the appropriate remedy, including whether injunctive or monetary relief would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed ten years from the date of issuance of this resolution. The expiration of this ten-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the ten-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the ten-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. Part 1.1 et seq. and supplements thereto.

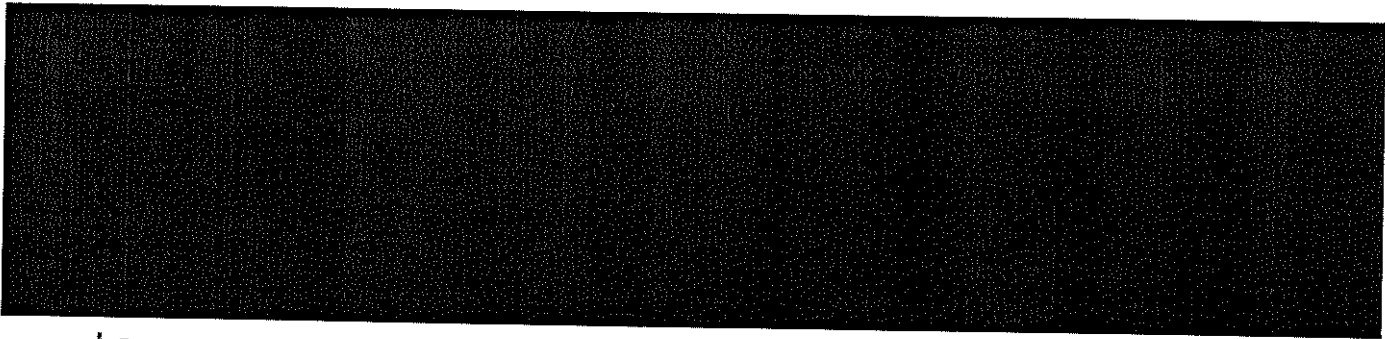
By direction of the Commission.

  
April J. Tabor  
Secretary

Issued: September 2, 2021  
Expires: September 2, 2031







**From:** "Biesty, Thomas" <tbiesty@ftc.gov>  
**Date:** April 3, 2023 at 3:08:00 PM EDT  
**To:** Jeffrey Gavenman <jgavenman@schulmanbh.com>  
**Cc:** "Basford, Laura" <lbasford@ftc.gov>, "Siddiqui, Sophia" <:ssiddiqui@ftc.gov>  
**Subject:** RE: FTC CID - Matthew Thayer (FTC No. 2123090)

Jeff --

As we previously had conversations regarding Mr. Thayer, in this instance, our meeting on Wednesday will be sufficient for purposes of the CID's meet and confer deadline.

Thanks,

Tom Biesty

**From:** Jeffrey Gavenman <jgavenman@schulmanbh.com>  
**Sent:** Monday, April 3, 2023 10:50 AM  
**To:** Biesty, Thomas <tbiesty@ftc.gov>  
**Cc:** Basford, Laura <lbasford@ftc.gov>; Siddiqui, Sophia <:ssiddiqui@ftc.gov>  
**Subject:** Re: FTC CID - Matthew Thayer (FTC No. 2123090)

Great; thanks, Tom. Just to confirm, meeting Wednesday will be sufficient to meet the CID's meet and confèr deadline.

Best,  
Jeff

On Apr 3, 2023, at 9:31 AM, Biesty, Thomas <tbiesty@ftc.gov> wrote:

10am Wednesday works for us. You can call my office line 202.326.3043.

Thanks,

Tom Biesty

**From:** Jeffrey Gavenman <jgavenman@schulmanbh.com>  
**Sent:** Friday, March 31, 2023 11:17 PM  
**To:** Biesty, Thomas <tbiesty@ftc.gov>  
**Cc:** Basford, Laura <lbasford@ftc.gov>; Siddiqui, Sophia <:ssiddiqui@ftc.gov>

**Subject:** Re: FTC CID - Matthew Thayer (FTC No. 2123090)

I can do 10AM on Wednesday morning; does that work for you?

Have a great weekend.

Best,  
Jeff

On Mar 31, 2023, at 4:52 PM, Biesty, Thomas  
<tbiesty@ftc.gov> wrote:

Jeff –

I'm afraid I'm leaving for a short vacation starting Wednesday afternoon. I can do Wednesday morning if that works on your end.

Thanks,

Tom

**From:** Jeffrey Gavenman <jgavenman@schulmanbh.com>  
**Sent:** Friday, March 31, 2023 4:49 PM  
**To:** Biesty, Thomas <tbiesty@ftc.gov>  
**Cc:** Basford, Laura <lbasford@ftc.gov>; Siddiqui, Sophia <ssiddiqui@ftc.gov>  
**Subject:** RE: FTC CID - Matthew Thayer (FTC No. 2123090)

Hi Tom,

Hope you are doing well. I'd like to meet and confer with you regarding the CID issued to Mr. Thayer; are you available for a call on Wednesday, April 5, at 3pm?

Best regards,  
Jeff

**From:** Biesty, Thomas <tbiesty@ftc.gov>  
**Sent:** Tuesday, March 21, 2023 8:58 AM  
**To:** Jeffrey Gavenman <jgavenman@schulmanbh.com>  
**Cc:** Basford, Laura <lbasford@ftc.gov>; Siddiqui, Sophia <ssiddiqui@ftc.gov>  
**Subject:** FTC CID - Matthew Thayer (FTC No. 2123090)

Jeff –

Attached is a new CID that was issued by the Commission to Matthew Thayer.

Regards,

Tom Biesty

Thomas M. Biesty  
Federal Trade Commission  
Mail Stop CC-6316  
600 Pennsylvania Ave, NW  
Washington, DC 20580  
Tel: (202) 326-3043 | Fax: (202) 326-3395 | [tbiesty@ftc.gov](mailto:tbiesty@ftc.gov)