

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF

PET Resin - M&G Bankruptcy

File No. 181-0030



**BANIBU II HOLDINGS INC.'S PETITION TO LIMIT AND QUASH
SUBPOENA DUCES TECUM AND SUBPOENA AD TESTIFICANDUM
DATED MAY 7, 2018**

David I. Gelfand
Leah Brannon
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V. Noah Gimbel

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Counsel for Banibu II Holdings, Inc.

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**BANIBU II HOLDINGS INC.'S PETITION TO LIMIT AND QUASH
SUBPOENA DUCES TECUM AND SUBPOENA AD TESTIFICANDUM
DATED MAY 7, 2018**

Pursuant to Rule 2.7(c) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 2.7(c) and all other applicable regulations, statutes, and rules of practice, Banibu hereby petitions to limit or quash the subpoena duces tecum and subpoena ad testificandum both dated May 7, 2018, and sent to Banibu in the afternoon on May 9, 2018 (attached as Exhibits A and B).

The Commission is investigating the proposed sale in bankruptcy of an incomplete construction site located in Corpus Christi, Texas. The site was intended to become a plant that manufactures PTA and PET. The site's developer, an affiliate of M&G USA Corporation, mismanaged the project, fell far behind in the schedule to complete it, and had such significant cost overruns that the owner of the land, M&G Resins, and its U.S. M&G affiliates, were forced into bankruptcy proceedings in October 2017. Since that time, the site has been mothballed until a buyer can step in, hopefully invest the hundreds of millions of dollars needed to complete the project, and bring the new capacity to market.

Banibu's parent company, Banco Inbursa, S.A., Institución de Banca Múltiple, Grupo Financiero Inbursa ("Inbursa"), is a Mexican bank that provided hundreds of millions of dollars in loans to finance the Corpus Christi project, and is the largest secured creditor in the bankruptcy. Banibu was formed on February 27, 2018 for purposes of placing a bid for the construction site and certain related assets as part of the bankruptcy sale process. A consolidated bid by a consortium of three other entities—Far Eastern Investment Ltd., Indorama Ventures Holdings L.P., and Alpek S.A.B. de C.V.—topped Banibu's bid, however, and was selected as the winning bid at auction by the debtors. The consortium bid was subsequently approved by the bankruptcy court. Accordingly, Banibu is neither the seller nor the acquirer in the proposed transaction.

Banibu has offered to assist the Commission staff by voluntarily providing information. Banibu's parent company, Inbursa, previously provided knowledgeable individuals for an interview by the staff. After the interview, staff indicated that they would like a declaration from Inbursa confirming the facts that had been provided in the interview, and Inbursa agreed to assist. Subsequently, however, staff changed course and issued compulsory process to Banibu. Specifically, the FTC issued two subpoenas directing Banibu to produce documents on May 17 and produce a witness for a deposition on May 18.

As we have explained to the staff in meet and confer discussions since the issuance of these subpoenas, Banibu does not object to producing responsive non-privileged documents within its possession or control. But the subpoenas go beyond this scope and purport to demand documents held by Inbursa, which Banibu does not control, and further seek the deposition of someone located in Mexico, which is outside the Commission's subpoena authority. For these

reasons, as discussed more fully below, Banibu respectfully requests that the subpoena for documents be limited to documents of Banibu, and the subpoena for testimony be quashed.

I. BACKGROUND

Banibu was formed under the laws of Delaware on February 27, 2018. *See* DE Division of Corporations File No. 6773682. Banibu has four directors, who are also its only officers: Javier Foncerrada Izquierdo (President), Luis Roberto Frias Humphrey (Vice President, Treasurer), Guillermo Rene Caballero Padilla (Vice President, Secretary), and Frank Ernesto Aguado Martinez (Vice President). *See* Unanimous Written Consent of the Directors of Banibu II Holdings, Inc. (Feb. 27, 2018), 1 (BANIBU-00000001). Banibu has no other employees. *See* Declaration of Drew Navikas ¶ 3 (attached as Exhibit C). All four of its directors are Mexican citizens and residents and are currently located in Mexico. *See id.* ¶ 4.

Since its formation at the end of February, Banibu's purpose has been to bid at the Chapter 11 auction in the M&G bankruptcy proceedings. Unanimous Written Consent of the Board of Directors of Banibu II Holdings, Inc., 2 (Mar. 5, 2018) (BANIBU-00000027 – BANIBU-00000032). Banibu bid on the Corpus Christi construction site, which includes partially-constructed PET and PTA plants that are currently sitting idle. The debtors accepted preliminary bids on the Corpus Christi assets on March 6, 2018, and held a final auction on March 20, 2018.

Banibu was not selected as the winning bidder, and its bid was instead designated as a backup bid in accordance with the bankruptcy court-approved sale procedures. *See* Order, *In re M&G USA Corp.*, Case No. 17-12307 (Bankr. D. Del. Mar. 29, 2018). The bankruptcy court approved the sale process as “fair and open” and conducted “in a manner reasonably calculated

to produce the highest or otherwise best offer for the Purchased Assets.” *Id.* at 7. The court thus approved the sale to the consortium and issued a sale order on March 29, 2018.

The staff has been investigating the consortium’s proposed acquisition of the Corpus Christi site. In this regard, FTC staff requested an interview with Banibu’s parent company, Inbursa. On April 6, 2018, Inbursa voluntarily made two of its managing directors—Mr. Frias and Mr. Aguado—available to speak with staff. Staff asked extensive questions, including about Inbursa’s potential plans with respect to the Corpus Christi assets in the event the consortium were to abandon or be blocked from executing its bid.

On April 7, 2018, staff requested that Inbursa submit a declaration confirming the information provided during the interview. Inbursa was agreeable to this, and began working on doing so.

On April 16, 2018, staff indicated that they had changed course and would prefer an investigational hearing rather than a declaration. Inbursa responded with a letter, dated April 17, 2018, outlining the information that it had discussed with staff, which Inbursa explained was a substantially less burdensome and more efficient way of providing the FTC with information. Inbursa further noted that it would voluntarily respond to written questions or provide another interview if this would assist with staff’s investigation. And we informed staff that, if the FTC nonetheless issued compulsory process, counsel would agree to accept service only on behalf of the U.S. entity, Banibu.

On May 7, 2018, staff informed us that it had recommended that the Commission issue subpoenas to Banibu. Two subpoenas were issued that day and sent to counsel for Banibu two days later, in the late afternoon on May 9, 2018. Although only directed to and served on

Banibu, the subpoenas purport to compel production of documents and information not just from Banibu but also from Inbursa.¹

Following discussions with staff, we confirmed Banibu's intent to comply with the document subpoena by providing responsive, non-privileged documents in its control, including documents relating to its formation, bid proposal, and related business. We explained, however, that Banibu, as a U.S. subsidiary of a foreign bank, does not possess or control its parent company's documents. Accordingly, we requested that the definition of "the Company" in the Subpoenas be narrowed to include only Banibu. As to the subpoena for testimony, we explained that Banibu does not have any employees within the United States and that Banibu thus would not be providing a deposition. We requested that the subpoena for testimony be withdrawn for lack of jurisdiction over Banibu's employees, all of whom are Mexican nationals living and working in Mexico.

On May 15, 2018, staff informed counsel it would not withdraw or modify the subpoenas even though we had provided sound reasons why these subpoenas exceeded the Commission's authority. Staff declined our invitation to take additional time to confer about this issue and declined even to extend the deadline for filing this petition by a single day. Although staff has been inflexible about the substance and the timing of the subpoenas, we have reiterated our clients' willingness to provide voluntary assistance to staff. The asset at issue here is an incomplete construction site that requires hundreds of millions of dollars in additional investment before it can begin operation. The sooner the consortium is able to complete its purchase, the sooner the plant will come online and serve customers in the United States—which is both in the

¹ The subpoenas seek information from "the Company," which is defined as Banibu's "foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures," as well as all of their "directors, officers, employees, agents, counsel, and representatives." Exhibits A and B, Definitions D.1.

customers' interest and in the interest of the orderly completion of the bankruptcy process and the recovery of debts owed to creditors like Inbursa.

II. ARGUMENT

Staff have chosen to serve Banibu with subpoenas seeking: (a) documents that are not within Banibu's possession or control; and (b) testimony from foreign citizens who are not within the FTC's reach. These subpoenas are impermissibly broad.

A. The Document Subpoena Is Impermissibly Broad.

The Commission's statutory subpoena authority states that production of "documentary evidence[] may be required from any place in the United States." 15 U.S.C. § 49. The FTC's guidelines state that the agency may compel the production of documents or information located outside the United States only "when the documents or information sought are within the 'possession, custody, or control' of an individual or entity subject to the jurisdiction of the United States." Dept. of Justice & Fed. Trade Comm'n, *Antitrust Guidelines for International Enforcement and Cooperation* 39 (Jan. 13, 2017). The document subpoena to Banibu is inconsistent with the FTC's authority and guidelines.

Banibu's parent company, Inbursa, has not been served. As the D.C. Circuit has explained, "[w]hen compulsory process is served on a foreign citizen on foreign soil in the form of an investigative subpoena, the act of service itself constitutes an exercise of one nation's sovereignty within the territory of another sovereign. Such an exercise absent consent by the foreign nation constitutes a violation of international law." *CFTC v. Nahas*, 738 F.2d 487, 493–94 (D.C. Cir. 1984) (internal quotation marks, footnotes, and alterations omitted). Mexico consents to the service of process on its citizens by foreign agents only under the terms of its accession to the Hague Convention on the Service Abroad of Judicial and Extrajudicial

Documents (“Hague Convention”). *See* Fed. R. Civ. P. 4(f)(1) (requiring international service to be made through the means agreed upon in the Hague Convention). The requirements of Hague process cannot be circumvented through an FTC subpoena to a U.S. subsidiary of a third party to an investigation. *See, e.g., FTC v. Compagnie de Saint-Gobain-Pont-A-Mousson*, 636 F.2d 1300, 1313 (D.C. Cir. 1980) (noting that “fundamental principles of international law which disfavor methods of extraterritorial subpoena service circumventing official channels of judicial assistance, oppose judicial enforcement of investigatory subpoenas abroad, and prohibit” service on a foreign entity through its registered U.S. agent); *Power Integrations, Inc. v. Fairchild Semiconductor Int’l, Inc.*, 233 F.R.D. 143, 146 (D. Del. 2005) (identifying Hague process as only way to seek discovery from foreign parent of third-party witness).

As for Banibu, it is well established that a corporation cannot be compelled to produce documents outside of its control, including documents belonging to its parent entity. *See, e.g., Gerling Int’l Ins. Co. v. Comm’r of Internal Revenue*, 839 F.2d 131, 140 (3d Cir. 1988) (“In the absence of control by a litigating corporation over documents in the physical possession of another corporation, the litigating corporation has no duty to produce.”). The subpoena provisions of Rule 45, which form the basis for the *Gerling* test, also guide the scope of documentary materials discoverable by FTC subpoena. *See Compagnie*, 636 F.2d at 1312–13 (comparing FTC subpoena to Rule 45); 16 C.F.R. § 2.7(a)(2) (defining “Documentary material[s]” discoverable by FTC subpoena “within the meaning of the Federal Rules of Civil Procedure”); *cf.* 15 U.S.C. § 57b-1(c)(7)(B) (authorizing service of an FTC Civil Investigative Demand or enforcement petition “upon any person who is not found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation.”).

There can be no good faith argument that Banibu has control over Inbursa. “‘Control’ is defined as the legal right, authority or ability to obtain documents upon demand.” *U.S. Int’l Trade Comm’n v. ASAT, Inc.*, 411 F.3d 245, 254 (D.C. Cir. 2005) (quoting *Camden Iron & Metal, Inc. v. Marubeni America Corp.*, 138 F.R.D. 438, 441 (D.N.J.1991)). In an action to enforce its subpoena, “[i]t is the Commission’s burden to establish that [the non-party witness] has control of the subpoenaed documents.” *Id.* (citations omitted).

Here, staff has offered no reason to believe that Banibu has control over its parent corporation’s documents. Indeed, staff has refused to discuss with us its reasoning despite our attempt to confer about this. As courts have repeatedly recognized, however, a corporate subsidiary cannot be assumed to control its corporate parent’s documents, and “the separate and distinct corporate identities of a parent and its subsidiary are not readily disregarded.” *Power Integrations, Inc. v. Fairchild Semiconductor Int’l, Inc.*, 233 F.R.D. 143, 145 (D. Del. 2005). This is especially true given the “distinction between a party and a non-party for purposes of analyzing the issue of control,” which further narrows courts’ abilities to reach foreign parents of third party or non-litigating U.S. subsidiaries, like Banibu here. *Id.* at 146 (distinguishing cases analyzed under Rule 34’s provision for discovery of party-litigant documents cited in support of compelling production).

Banibu is a distinct corporate entity created for a legitimate business purpose, and all corporate formalities have been properly observed. Banibu was adequately capitalized to meet its business needs,² and it transacts business in its own name.³ Banibu’s business activities are

² Unanimous Written Consent of the Board of Directors of Banibu II Holdings, Inc., 2 (Mar. 5, 2018) (BANIBU-00000028); Contribution Agreement (Mar. 5, 2018) (BANIBU-00000367 – BANIBU-00000369).

³ Citi Preferred Custody Services, Agreement Among Citibank, N.A. as “Escrow Agent” and M&G Resins USA, LLC and Banibu II Holdings, Inc. (Mar. 5, 2018) (BANIBU-00000325 – BANIBU-00000346).

limited to bidding on the Corpus Christi construction site and disposing of it.⁴ The *ASAT* case is instructive. There, the D.C. Circuit reversed a district court order enforcing an International Trade Commission subpoena to a non-party U.S. corporation because the subpoena purported to obligate the U.S. entity to produce documents in possession of its foreign parent. As the D.C. Circuit explained, the courts may not ignore corporate separateness, even when there is “a close business relationship” between commonly held corporate entities. 245 F.3d at 255.

The court in *Gerling* reached the same conclusion. There, the court held that a U.S. company could not be compelled to produce *even its own president’s documents*, where those documents belonged to its foreign affiliate, absent a showing that the “corporate entities had been disregarded by [the companies] themselves or Gerling[, the president,] in the course of their businesses.” 839 F.2d at 141.

We note further that the staff’s refusal to limit the subpoena to documents in Banibu’s possession, custody, or control is inconsistent with the Commission’s own Guidelines for International Enforcement and Cooperation, cited above, and with past Commission practice: In a prior petition touching on this issue, the petitioners noted that “FTC staff has agreed that [petitioner] shall produce responsive documents only within its possession or control, . . . which documents do not include those of STA’s foreign parent located in Korea.” *Pet. of Samsung Telecommunications America, LLC to Limit SDT Duces Tecum*, 7 (Apr. 12, 2012). The same approach should be taken here.

B. The Subpoena for Testimony Impermissibly Seeks to Compel the Appearance of Mexican Nationals for a Deposition in the United States.

⁴ See Unanimous Written Consent of the Board of Directors of Banibu II Holdings, Inc., 2 (Mar. 5, 2018) (BANIBU-00000027 – BANIBU-00000032).

The FTC's subpoena power extends to compel the "attendance of witnesses . . . from any place in the United States." 15 U.S.C. § 49. It does not extend beyond this country's borders. Interpreting an identical statutory provision of the Commodities Exchange Act, 7 U.S.C. § 15, the D.C. Circuit held in *CFTC v. Nahas*, "The plain language of the statute limits 'such person[s]' to 'witnesses ... from any place in the United States.'" *CFTC v. Nahas*, 738 F.2d 487, 492 (D.C. Cir. 1984). Absent a clear statement from Congress to the contrary, "where no individual service occurred and respondent was not in the United States, 'the [agency] has no power to subpoena an alien nonresident to appear before it from a foreign land.'" *Id.* at 495 (quoting *SEC v. Zanganeh*, 470 F. Supp. 1307 (D.D.C. 1978) (interpreting identical statutory language)).

Here, Banibu's situation is analogous to that of a U.S. registered entity with no qualified U.S. representatives that has been served with a subpoena to provide a corporate representative under Rule 30(b)(6). In that situation, courts have held that "under Rule 45 this Court must quash a subpoena where a nonparty organization does not employ anyone who is suitable to serve as a Rule 30(b)(6) representative within 100 miles of the district." *Estate of Klieman v. Palestinian Authority*, 293 F.R.D. 235, 239 (D.D.C. 2013) (citing *Sokolow v. Palestine Liberation Org.*, No. 04 Civ. 397, 2012 WL 3871380, at *4 (S.D.N.Y. Sept. 6, 2012); *Krueger Invs., LLC v. Cardinal Health 110, Inc.*, No. CV 12-0618, 2012 WL 3264524, at *3 (D. Ariz. Aug. 9, 2012); *West Coast Life Ins. Co. v. Life Brokerage Partners, LLC*, Civ. No. 08-CV-80897, 2010 WL 181088, at *2-3 (D. Del. Jan. 19, 2010); *1920 Enters., Inc. v. Hartford Steam Boiler Inspection*, Civ. Action No. 06-3780, 2007 WL 1521019, at *2 (E.D. La. May 23, 2007)). While the Commission has national service, the fact remains that Banibu has no representative

within the jurisdictional reach of any U.S. district. The Commission has no authority to compel a Mexican national to travel to the United States and sit for a deposition.

CONCLUSION

Banibu has attempted in good faith to negotiate a reasonable process for assisting with the staff's investigation. Staff has rejected these proposals and declined to modify or withdraw the subpoenas. The subpoenas should be quashed. As discussed with staff, Banibu remains willing to assist the investigation including by responding to questions, orally or in writing, or providing a declaration as needed.

Date: May 17, 2018

Respectfully submitted by:



David I. Gelfand
Leah Brannon
Drew Navikas
V. Noah Gimbel

CLEARY GOTTlieb STEEN & HAMILTON LLP
2000 Pennsylvania Avenue, NW
Washington, D.C. 20006
Tel: 202-974-1500

Counsel for BANIBU II HOLDINGS, INC.

STATEMENT PURSUANT TO 16 C.F.R § 2.10(a)(2)

Pursuant to 16 C.F.R. § 2.10(a)(2), counsel for Banibu II Holdings, Inc. (“Banibu”) hereby state that they conferred with counsel for the Commission in an effort in good faith to resolve by agreement the issues raised by this Petition to Limit or Quash, but have been unable to reach such an agreement.

As described in the Petition, on May 14, 2018, we conveyed to staff Banibu’s intent to comply with the document subpoena by providing responsive, non-privileged documents in its possession or control, including documents relating to its formation, bid proposal, and related business. We explained, however, that Banibu, as a U.S. subsidiary of a foreign bank, does not possess or control its parent company’s documents. Accordingly, we requested that the definition of “the Company” in the Subpoenas be narrowed to include only Banibu. As to the subpoena for testimony, we explained that Banibu does not have any employees within the United States and that Banibu thus would not be providing a deposition. We requested that the subpoena for testimony be withdrawn for lack of jurisdiction over Banibu’s employees, all of whom are Mexican nationals living and working in Mexico.

On May 15, 2018, staff informed counsel that it would not withdraw or modify the subpoenas. Staff also declined our invitation to take additional time to confer about these issues, and declined to extend the deadline for filing this petition.

Date: May 17, 2018

Respectfully submitted by:



David I. Gelfand

Leah Brannon

Drew Navikas

V. Noah Gimbel

CERTIFICATE OF SERVICE

I, David I. Gelfand, hereby certify that on May 17, 2018, I caused a true and correct copy of the attached Petition to Limit and Quash Subpoena Duces Tecum and Subpoena Ad Testificandum to be served upon the following persons:

Peter Richman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

By USPS

Nicholas Bush
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

By USPS and Email

A handwritten signature in black ink that reads "David I. Gelfand" followed by a stylized flourish that appears to be "10AN".

David I. Gelfand

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

NOTICE OF APPEARANCE



CASE NAME	FILE/DOCKET NUMBER
PET Resin - M&G Bankruptcy	181-0030

Pursuant to Section 4.1 of the Commission's Rules of Practice, I (we) am (are) entering in the above proceeding the appearance of

- counsel supporting the complaint (Complete Items 1, 3, 4, and 5 below)
- counsel or representative for the respondent (Complete Items 1, 2, 4, and 5 below)
- counsel or representative for a third party (Complete Items 1, 2, 4, and 5 below)

1. COUNSEL OR REPRESENTATIVE	2. RESPONDENT(S) OR THIRD PARTY(IES)
<p>Include the name, address, email address, and telephone number of each counsel or representative entering an appearance in the above proceeding.</p> <p>David Gelfand dgelfand@cgsh.com (202) 974-1690</p> <p>Leah Brannon lbrannon@cgsh.com (202) 974-1508</p> <p>Drew Navikas dnavikas@cgsh.com (202) 974-1879</p> <p>Noah Gimbel ngimbel@cgsh.com (202) 974-1771</p> <p>2000 Pennsylvania Avenue, NW Suite 900 Washington, DC 20006</p>	<p>Include the address and telephone numbers of all persons, partnerships, corporations, or associations on whose behalf this Notice of Appearance is being filed.</p> <p>Banibu II Holding Inc. Paseo de las Palmas 736 Lomas de Chapultepec Ciudad de Mexico 11000 Mexico</p>

3. ASSOCIATE/ASSISTANT DIRECTOR
n/a

4. SIGNATURE OF SENIOR COUNSEL	5. DATE SIGNED
	May 17, 2018

Return this form to:

Federal Trade Commission
Room H-113
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

CERTIFICATE OF SERVICE

I, David I. Gelfand, hereby certify that on May 17, 2018, I caused a true and correct copy of the attached Notice of Appearance to be served upon the following persons:

Peter Richman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
By USPS

Nicholas Bush
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
By USPS and Email

A handwritten signature in black ink that reads "David I. Gelfand" with a stylized flourish at the end.

David I. Gelfand

EXHIBIT A

CLAIMS FOR WITNESS ATTENDANCE FEES, TRAVEL, AND
MISCELLANEOUS EXPENSES

PART I - ATTENDANCE CERTIFICATION

1. General Information

a. Witness Name _____ d. Case Name _____
b. Witness Address _____ e. Case Number 1810030 _____
Street _____ f. District or Location _____
City _____ State _____ Zip _____
c. U.S. Citizen: Yes No Alien: Legal Illegal

2. Travel and Attendance Information

a. Dates of Travel from Residence to Case Location: From _____ To _____
b. Dates of Travel from Case Location to Residence: From _____ To _____
c. Dates of Attendance: From _____ To _____

3. Certification

I certify that the witness named above attended in the case or matter indicated and is entitled to the statutory allowances for attendance and travel. In the proceedings before United States Magistrate where more than four witnesses were called, the Magistrate also certifies that the approval and certificate of the U.S. Attorney were first obtained.

(Signature) (Title) (Date)

PART II - WITNESS CLAIM FOR FEES AND ALLOWANCES

	Rate	No. of Days	Amount Claimed	Totals
1. Attendance Fees				
a. Fact, Pretrial Conference & Detained Witness			\$ _____	
Total Attendance Fees.....				\$ _____

	Rate	No. of Miles	Amount Claimed	Totals
2. Mileage Allowance (Indicate type of privately owned vehicle) :				
<input type="checkbox"/> Auto <input type="checkbox"/> Motorcycle <input type="checkbox"/> Airplane				
a. From Residence to Case Location (and Return)			\$ _____	
b. From Hotel/Motel to Court (or Court to Hotel/Motel)				
Total Mileage Allowance.....				\$ _____

	Rate	No. of Days	Amount Claimed	Totals
3. Subsistence Per Diem Rate: _____ or HRGA Rate: _____				
HRGA: High Rate Geological Area				
a. Meals			\$ _____	
b. Lodging				
Total Subsistence Allowance.....				\$ _____

	Amount Claimed	Totals
4. Miscellaneous Allowances (See Item 8 Below)		
a. Common Carrier	\$ _____	
b. Parking Fees, Tolls, Taxi Fares	_____	
Total Miscellaneous Allowances		\$ _____
5. Total Amount Claimed (Items 1-4, Part II)		\$ _____
6. Less Outstanding Check or Cash Advances		\$ _____
7. Net Amount Claimed by Witness		\$ _____

8. Use this space to itemize your expenses from Item 4, Part II above. Receipts are required for all common carriers, hotels, parking fees, and for all other single items in excess of \$75.00.

[Empty box for itemizing expenses]

Paid by Check No. _____
Paid by \$ _____
(Signature of Payee) _____
(Date) _____

9. Witness Certification

I certify that the above data is correct and that payment has not been received, and that at the time of travel and attendance I (was) (was not) a U.S. Government employee and I (was) (was not) a citizen of the United States. (If not a citizen, present your Alien Registration Record with this form.) I (did) (did not) receive a Government Transportation Request to pay for my official travel.

(Signature) (Date)



SUBPOENA DUCES TECUM

<p>1. TO</p> <p>Banibu II Holdings, Inc. c/o Leah Brannon, Esq. Cleary Gottlieb Steen & Hamilton LLP 2000 Pennsylvania Avenue, N.W. Washington, DC 20006</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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This subpoena requires you to appear and testify at the request of the Federal Trade Commission at a hearing [or deposition] in the proceeding described in Item 6.

<p>3. LOCATION OF HEARING</p> <p>Federal Trade Commission Bureau of Competition 400 7th Street, S.W. Washington, D.C. 20024</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Nicholas Bush</p>
<p>6. SUBJECT OF INVESTIGATION</p> <p>PET Resin - M&G Bankruptcy, FTC File No. 181-0030.</p> <p>See attached Resolution Authorizing the Use of Compulsory Process.</p>	<p>5. DATE AND TIME OF HEARING OR DEPOSITION</p> <p>10 Days from Date Issued, at 9:30 a.m.*</p>

7. RECORDS YOU MUST BRING WITH YOU

See attached Definitions, Instructions, and Specifications. *In lieu of personal appearance, please submit the requested materials along with a certification attesting to the completeness and accuracy of the return by 10 Days from Date Issued.

<p>8. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN</p> <p>Peter Richman, Records Custodian Michael E. Blaisdell, Deputy Records Custodian</p>	<p>9. COMMISSION COUNSEL</p> <p>Nicholas Bush Federal Trade Commission 600 Pennsylvania Avenue, N.W. Washington, D.C. 20580 Tel. (202) 326-2848</p>
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<p>DATE ISSUED</p> <p style="font-size: 1.5em;">5/7/18</p>	<p>COMMISSIONER'S SIGNATURE</p> <p style="font-size: 1.2em;"><i>Rebecca Kelly Staugh</i></p>
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GENERAL INSTRUCTIONS

The delivery of this subpoena 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.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena 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 ten copies of the petition must be filed with the Secretary of the Federal Trade Commission. Send one copy to the Commission Counsel named in Item 9.

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 subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena 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/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- In person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

SUBPOENA DUCES TECUM
ISSUED TO BANIBU II HOLDINGS, INCORPORATED
FTC File No. 181-0030

Unless modified by agreement with the staff of the Federal Trade Commission (the "Commission" or the "FTC"), each Specification of this Subpoena *Duces Tecum* ("SDT") requires a complete search of the Company as defined in the Definitions, which appear after the following Specifications. Absent modification, Company representatives must confer with the Commission representative identified in the final instruction of this SDT pursuant to the Commission's Rules of Practice, 16 C.F.R. § 2.7(k). If the Company believes that the required search or any other part of this SDT can be narrowed in any way that is consistent with the Commission's need for information, you are encouraged to discuss such questions and possible modifications with the Commission representative. All modifications to this SDT must be agreed to in writing pursuant to the Commission's Rules of Practice, 16 C.F.R. § 2.7(l). The company need not resubmit material responsive to this SDT if the Company has already submitted such material.

SPECIFICATIONS

1. Submit all documents (except documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues) relating to the Proposed Transactions, including, but not limited to, documents relating to the Company's:
 - a. Financial interest in the Corpus Christi Assets, including, but not limited to, the amount and priority of the Company's liens on the assets;
 - b. Rationale for bidding on the Corpus Christi Assets, including the form and amount of the Company's final bid;
 - c. Evaluation of the Corpus Christi Assets, including, but not limited to, any valuations or analyses of the cost to complete construction, fair market value, or liquidation value of the assets;
 - d. Communications with M&G, other lienholders, other bidders or potential bidders, or any other Person regarding the Proposed Transactions or the proceedings in *In re M&G USA Corp. et al.*, Case No. 17-12307 (Bankr. D. Del. Oct. 30, 2017);
 - e. Plans for the Corpus Christi Assets should the Company acquire them, including, but not limited to, whether the Company plans to operate or sell the assets, whether the Company has identified potential buyers, and whether the Company has a timeline for disposing of the assets; and
 - f. April 17, 2017 letter sent to the Federal Trade Commission from Leah Brannon and addressed to Nicholas Bush.

DEFINITIONS

For the purposes of this SDT, the following Definitions apply:

- D 1. The term "the Company" means Banibu II Holdings, Incorporated; its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures; and all directors, officers, employees, agents, counsel, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any Person in which there is partial (25% or more) or total ownership or control between the Company and any other Person.
- D 2. The term "DAK" means Alfa S.A.B. de C.V.; its domestic and foreign parents, predecessors, divisions, subsidiaries (including, but not limited to, Alpek, S.A.B. de C.V., and DAK Americas LLC), affiliates, partnerships and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any Person in which there is partial (25% or more) or total ownership or control between the Company and any other Person.
- D 3. The term "Indorama" means Indorama Ventures Holdings LP; its domestic and foreign parents (including, but not limited to, Indorama Ventures Public Company Limited), predecessors, divisions, subsidiaries, affiliates (including, but not limited to, Indorama Ventures USA Inc.), partnerships and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any Person in which there is partial (25% or more) or total ownership or control between the Company and any other Person.
- D 4. The term "FENC" means Far Eastern New Century Corporation; its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any Person in which there is partial (25% or more) or total ownership or control between the Company and any other Person.
- D 5. The term "M&G" means M&G Resins USA, LLC; its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures (including, but not limited to, the debtors in M&G's consolidated bankruptcy matter, *In re M&G USA Corp. et al.*, Case No. 17-12307 (Bankr. D. Del. Oct. 30, 2017)); and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any Person in which there is partial (25% or more) or total ownership or control between the Company and any other Person.
- D 6. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- D 7. The term "Corpus Christi Assets" means the "Corpus Christi Assets," the "Desalination Assets," and the "IP Assets" as defined by the December 14, 2017 Order, ECF No. 490,

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in *In re M&G USA Corp. et al.*, Case No. 17-12307 (Bankr. D. Del. Oct. 30, 2017).

D 8. The term "documents" means any information, on paper or in electronic format, including written, recorded, and graphic materials of every kind, in the possession, custody, or control of the Company. The term "documents" includes, without limitation: computer files; email messages; audio files; instant messages; drafts of documents; text messages and any form of electronic communication; cloud-based electronic files; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed electronically; copies of documents that are not identical duplicates of the originals in that Person's files; and copies of documents the originals of which are not in the possession, custody, or control of the Company.

- (a) Unless otherwise specified, the term "documents" excludes:
- (i) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature;
 - (ii) architectural plans and engineering blueprints;
 - (iii) documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues; and
 - (iv) relational and enterprise databases, except as required to comply with an individual Specification.
- (b) The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off Company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss a possible modification to this Definition with the Commission representatives identified on the last page of this Request. The Commission representative will consider modifying this Definition to:
- (i) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;
 - (ii) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain

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time periods or certain Specifications identified by Commission representatives; or

- (iii) include other proposals consistent with Commission policy and the facts of the case.

- D 9. The term "Facility" means any plant, factory, warehouse, structure, or building used or designed for the production, processing, refining, manufacture, storage, or sale of any Relevant Product or PET Feedstock.
- D 10. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- D 11. The term "Person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- D 12. The term "PET Feedstock" means paraxylene, purified terephthalic acid, ethylene, isophthalic acid, dimethyl terephthalate, or monoethylene glycol.
- D 13. The term "Plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.
- D 14. The term "Proposed Transactions" means the potential acquisition of the Corpus Christi Assets by (1) the Company or (2) DAK, Indorama, or FENC, or any joint venture or other entity affiliated with DAK, Indorama, or FENC.
- D 15. The term "Relevant Product" as used herein means, and information shall be provided separately for: (1) each grade and specification of polyethylene terephthalate ("PET") (e.g., resin, fiber, or any other type; bottle grade, packaging grade, or any other grades; cold-fill, hot-fill, or any other specifications; and virgin, recycled, or any blend of virgin and recycled, etc.); and (2) each grade and specification of PET (also identifying the intrinsic viscosity of the grade or specification).

INSTRUCTIONS

For the purposes of this SDT, the following Instructions apply:

- I 1. All references to year refer to calendar year. Unless otherwise specified, each of the Specifications calls for: (1) documents for each of the years from January 1, 2017, to the present; and (2) information for each of the years from January 1, 2017, to the present. Where information, rather than documents, is requested, provide it separately for each year; where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company's fiscal year data indicating the 12-month period covered; and provide the Company's best estimate of

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calendar year data.

- ~~I 2. Do not produce any Sensitive Personally Identifiable Information (“Sensitive PII”) or Sensitive Health Information (“SHI”) prior to discussing the information with a Commission representative. 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.~~

The term “Sensitive Personally Identifiable Information” means an individual’s Social Security Number alone; or an individual’s name, address, or phone number in combination with one or more of the following:

- date of birth;
- driver’s license number or other state identification number, or a foreign country equivalent;
- passport number;
- financial account number; or
- credit or debit card number.

The term “Sensitive Health Information” includes medical records and other individually identifiable health information, whether on paper, in electronic form, or communicated orally. Sensitive Health Information relates to the past, present, or future physical or mental health or condition 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 3. Form of Production: The Company shall submit documents as instructed below absent written consent.
- (a) Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in the following electronic format provided that such copies are true, correct, and complete copies of the original documents:
- (i) Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and metadata.
- (ii) Submit emails in TIFF format with extracted text and the following metadata and information:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the email.

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Bates End	Bates number of the last page of the email.
Custodian	Name of the person from whom the email was obtained.
Email BCC	Names of person(s) blind copied on the email
Email CC	Names of person(s) copied on the email.
Email Date Received	Date the email was received. [MM/DD/YYYY]
Email Date Sent	Date the email was sent. [MM/DD/YYYY]
Email From	Names of the person who authored the email.
Email Message ID	Microsoft Outlook Message ID or similar value in other message systems.
Email Subject	Subject line of the email.
Email Time Received	Time email was received. [HH:MM:SS AM/PM]
Email To	Recipients(s) of the email.
Email Time Sent	Time email was sent. [HH:MM:SS AM/PM]
Folder	File path/folder location of email.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt

- (iii) Submit email attachments other than those described in subpart (a)(i) in TIFF format. For all email attachments, provide extracted text and the following metadata and information as applicable:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.

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Bates Begin	Beginning Bates number of the document.
Bates End	Last Bates number of the document.
Custodian	Name of person from whom the file was obtained.
Date Created	Date the file was created. [MM/DD/YYYY]
Date Modified	Date the file was last changed and saved. [MM/DD/YYYY]
Filename with extension	Name of the original native file with file extension.
Hash	Identifying value used for deduplication — typically SHA1 or MD5.
Native Link	Relative file path to submitted native or near native files. Example: \NATIVES\001\FTC0003090.xls
Parent ID	Document ID or beginning Bates number of the parent email.
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt
Time Created	Time file was created. [HH:MM:SS AM/PM]
Time Modified	Time file was saved. [HH:MM:SS AM/PM]

- (iv) Submit all other electronic documents, other than those described in subpart (a)(i), in TIFF format accompanied by extracted text and the following metadata and information:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the document.

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Bates End	Last Bates number of the document.
Custodian	Name of the original custodian of the file.
Date Created	Date the file was created. [MM/DD/YYYY]
Date Modified	Date the file was last changed and saved. [MM/DD/YYYY HH:MM:SS AM/PM]
Filename with extension	Name of the original native file with file extension.
Hash	Identifying value used for deduplication – typically SHA1 or MD5.
Originating Path	File path of the file as it resided in its original environment.
Production Link	Relative path to submitted native or near native files. Example: \NATIVES\001\FTC0003090.xls
Text Link	Relative path to submitted text file. Example: \TEXT\001\FTC-0003090.txt
Time Created	Time file was created. [HH:MM:SS AM/PM]
Time Modified	Time file was saved. [HH:MM:SS AM/PM]

- (v) Submit documents stored in hard copy in TIFF format accomplished by OCR with the following information:

Metadata/Document Information	Description
Bates Begin	Beginning Bates number of the document.
Bates End	Bates number of the last page of the document.
Custodian	Name of person from whom the file was obtained.

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- (vi) Submit redacted documents in TIFF format accompanied by OCR with the metadata and information required by relevant document type in subparts (a)(i) through (a)(v) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above. Additionally, please provide a basis for each privilege claim as detailed in Instruction I(6).
-
- (b) Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact. Submit data separately from document productions.
-
- (c) Produce electronic file and TIFF submissions as follows:
- (i) For productions over 10 gigabytes, use hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 or 3.0 external enclosure.
 - (ii) For productions under 10 gigabytes, CD-ROM (CD-R, CD-RW) optical disks, DVD-ROM (DVD+R, DVD+RW) optical disks for Windows-compatible personal computers, and USB 2.0 Flash Drives are acceptable storage formats.
 - (iii) All documents produced in electronic format shall be scanned for and free of viruses prior to submission. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this Request.
 - (iv) Encryption of productions using NIST FIPS-Compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged.
- (d) Each production shall be submitted with a transmittal letter that includes the FTC matter number; production volume name; encryption method/software used; list of custodians and document identification number range for each; total number of documents; and a list of load file fields in the order in which they are organized in the load file.
- (e) If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this

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Request.

I 4. All documents responsive to this Request:

- (a) shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files;
- (b) shall be marked on each page with corporate identification and consecutive document control numbers when produced in TIFF format (e.g., ABC-00000001);
- (c) if written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;
- (d) shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (e.g., a chart or graph), makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-colored photocopy, or a JPEG format TIFF);
- (e) shall be accompanied by an index that identifies: (i) the name of each Person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that Person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request; and
- (f) shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct, and complete copies of the original documents.

I 5. If any documents are withheld from production or produced in a redacted form based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter, "Complete Log") that includes each document's authors, addressees, and date; a description of each document; and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the Person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts

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that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this Instruction), noting where redactions in the document have been made and identifying the document by an identification number in the log. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third party, such as internal law firm memoranda, may be omitted from the log. Provide the Complete Log in Microsoft Excel readable format.

In place of a Complete Log of all documents withheld from production based on a claim of privilege, the Company may elect to submit a Partial Privilege Log ("Partial Log") for each Person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those Persons, as specified below:

- (a) The Partial Log will contain the following information: (1) the name of each Person from whom responsive documents are withheld on the basis of a claim of privilege; and (2) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such Person's files. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this Instruction), noting where redactions in the document have been made. Provide the Partial Log in Microsoft Excel readable format.
- (b) Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five individuals or ten percent of the total number of Persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this Request.
- (c) For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:
 - (i) the Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;
 - (ii) the Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and

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- (iii) the Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.
 - (d) The Company must retain all privileged documents that are responsive to this Request until the expiration of the Hart-Scott-Rodino waiting period or the completion of any litigation challenging the Proposed Transaction.
 - (e) The Commission will retain the right to require the Company to produce a Complete Log for all Persons searched in appropriate circumstances.
-
- I 6. If documents responsive to a particular Specification no longer exist for reasons other than the ordinary course of business but the Company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, and identify the Persons having knowledge of the content of such documents.
- I 7. In order for the Company's response to this Request to be complete, the attached certification form must be executed by the Company official supervising compliance with this Request, notarized, and submitted along with the responsive materials.
- I 8. Any questions you have relating to the scope or meaning of anything in this Request or suggestions for possible modifications thereto should be directed to Nicholas Bush at (202) 326-2848. The response to the Request shall be addressed to the attention of Daria Kun at (202) 326-3545 and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission, 400 7th Street, SW, Washington, DC 20024. If you wish to submit your response by United States mail, please call the staff listed above for mailing instructions. The Commission's electronic mail servers may reject any electronic mail submissions where an individual email and attachment(s) comprise more than 10 megabytes of information so please follow up with Commission staff to ensure receipt of such emails.

CERTIFICATION

The response to this Subpoena *Duces Tecum*, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required information, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete. If the Commission uses such copies in any court or administrative proceeding, the Company will not object on the basis that the Commission has not offered the original document.

(Signature)

(Type or Print Signature)

(Type or Print Title)

(Type or Print Company Name)

Subscribed and sworn to before me at the City of _____

State of _____, this _____ day of _____, 20____.

(Notary Public)

My commission expires: _____

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

RESOLUTION AUTHORIZING USE OF
COMPULSORY PROCESS IN NONPUBLIC INVESTIGATION

File No. 181-0030

Nature and Scope of Investigation:

To determine whether the proposed acquisition of certain assets from M&G USA Corporation and its affiliates by Indorama Ventures and its affiliates and/or by DAK Americas LLC and its affiliates violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the aforesaid proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to the proposed acquisition.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

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. § 1.1 *et seq.* and supplements thereto.

By direction of the Commission.



Donald S. Clark
Secretary

Issued: January 11, 2018

EXHIBIT B

CLAIMS FOR WITNESS ATTENDANCE FEES, TRAVEL, AND
MISCELLANEOUS EXPENSES

PART I - ATTENDANCE CERTIFICATION

1. General Information

a. Witness Name _____ d. Case Name _____
b. Witness Address _____ e. Case Number 1810030 _____
Street _____ f. District or Location _____
City _____ State _____ Zip _____
c. U.S. Citizen: Yes No Alien: Legal Illegal

2. Travel and Attendance Information

a. Dates of Travel from Residence to Case Location: From _____ To _____
b. Dates of Travel from Case Location to Residence: From _____ To _____
c. Dates of Attendance: From _____ To _____

3. Certification

I certify that the witness named above attended in the case or matter indicated and is entitled to the statutory allowances for attendance and travel. In the proceedings before United States Magistrate where more than four witnesses were called, the Magistrate also certifies that the approval and certificate of the U.S. Attorney were first obtained.

(Signature) (Title) (Date)

PART II - WITNESS CLAIM FOR FEES AND ALLOWANCES

	Rate	No. of Days	Amount Claimed	Totals
1. Attendance Fees				
a. Fact, Pretrial Conference & Detained Witness			\$ _____	
Total Attendance Fees.....				\$ _____
2. Mileage Allowance (Indicate type of privately owned vehicle):				
<input type="checkbox"/> Auto <input type="checkbox"/> Motorcycle <input type="checkbox"/> Airplane	Rate	No. of Miles	Amount Claimed	
a. From Residence to Case Location (and Return)			\$ _____	
b. From Hotel/Motel to Court (or Court to Hotel/Motel)			\$ _____	
Total Mileage Allowance.....				\$ _____
3. Subsistence Per Diem Rate: _____ or HRGA Rate: _____				
<i>HRGA: High Rate Geological Area</i>				
a. Meals	Rate	No. of Days	Amount Claimed	
b. Lodging			\$ _____	
Total Subsistence Allowance.....				\$ _____
4. Miscellaneous Allowances (See Item 8 Below)				
a. Common Carrier			Amount Claimed	
b. Parking Fees, Tolls, Taxi Fares			\$ _____	
Total Miscellaneous Allowances				\$ _____
5. Total Amount Claimed (Items 1-4, Part II)				\$ _____
6. Less Outstanding Check or Cash Advances				\$ _____
7. Net Amount Claimed by Witness				\$ _____

8. Use this space to itemize your expenses from Item 4, Part II above. Receipts are required for all common carriers, hotels, parking fees, and for all other single items in excess of \$75.00.

[Empty box for itemizing expenses]

Paid by Check No. _____
Paid by \$ _____
(Signature of Payee) _____
(Date) _____

9. Witness Certification

I certify that the above data is correct and that payment has not been received, and that at the time of travel and attendance I (was) (was not) a U.S. Government employee and I (was) (was not) a citizen of the United States. (If not a citizen, present your Alien Registration Record with this form.) I (did) (did not) receive a Government Transportation Request to pay for my official travel.

(Signature) (Date)



SUBPOENA AD TESTIFICANDUM

1. TO Banibu II Holdings, Inc. c/o Leah Brannon, Esq. Cleary Gottlieb Steen & Hamilton LLP 2000 Pennsylvania Avenue, N.W. Washington, DC 20006	2. FROM <div style="text-align: center;"> UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION </div>
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This subpoena requires you to appear and testify at the request of the Federal Trade Commission at a hearing [or deposition] in the proceeding described below (Item 6).

3. LOCATION OF HEARING Federal Trade Commission Constitution Center 400 7th Street, S.W. Washington, DC 20410	4. YOUR APPEARANCE WILL BE BEFORE Nicholas Bush
	5. DATE AND TIME OF HEARING OR DEPOSITION May 18, 2018 at 9:30am

6. SUBJECT OF INVESTIGATION PET Resin - M&G Bankruptcy, FTC File No. 181-0030. See attached Attachment A and Resolution Authorizing Use of Compulsory Process.

7. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN Peter Richman, Records Custodian Michael E. Blaisdell, Deputy Records Custodian	8. COMMISSION COUNSEL Nicholas Bush Federal Trade Commission 600 Pennsylvania Avenue, N.W. Washington, D.C. 20580 Tel. (202) 326-2848
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DATE ISSUED <div style="font-size: 1.5em; font-family: cursive;">5/17/18</div>	COMMISSIONER'S SIGNATURE <div style="font-family: cursive; font-size: 1.2em;">Rebecca Kelly Saugher</div>
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GENERAL INSTRUCTIONS

The delivery of this subpoena 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.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena 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 ten copies of the petition must be filed with the Secretary of the Federal Trade Commission. Send one copy to the Commission Counsel named in Item 8.

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 subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena 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/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

ATTACHMENT A

**SUBPOENA AD TESTIFICANDUM ISSUED TO
BANIBU II HOLDINGS, INCORPORATED
FTC File No. 181-0030**

Pursuant to Commission Rule 2.7(h), 16 C.F.R. § 2.7(h), this Subpoena *Ad Testificandum* requires the company to which the Subpoena is addressed ("Company") to designate one or more officers, directors, or managing agents, or designate other persons who consent, to testify on its behalf regarding the matters listed below. Unless a single individual is designated by the Company, the Company must designate in advance and in writing the matters on which each designee will testify. The person(s) designated must testify about information known or reasonably available to the Company and their testimony shall be binding on the Company. If the Company believes that the required date of testimony would be unduly burdensome, you are encouraged to discuss with the Commission counsel identified in this Subpoena whether there is a mutually agreeable alternative date.

MATTERS FOR EXAMINATION

- I. Information relating to the Company's:
 - a. Financial interest in the Corpus Christi Assets, including, but not limited to, the amount and priority of the Company's liens on the assets;
 - b. Rationale for bidding on the Corpus Christi Assets, including the form and amount of the Company's final bid;
 - c. Evaluation of the Corpus Christi Assets, including, but not limited to, any valuations or analyses of the cost to complete construction, fair market value, or liquidation value of the assets;
 - d. Communications with M&G, other lienholders, other bidders or potential bidders, or any other Person regarding the Proposed Transactions or the proceedings in *In re M&G USA Corp. et al.*, Case No. 17-12307 (Bankr. D. Del. Oct. 30, 2017);
 - e. Plans for the Corpus Christi Assets should the Company acquire them, including, but not limited to, whether the Company plans to operate or sell the assets, whether the Company has identified potential buyers, and whether the Company has a timeline for disposing of the assets; and
 - f. April 17, 2017 letter sent to the Federal Trade Commission from Leah Brannon and addressed to Nicholas Bush.

DEFINITIONS

For the purposes of this Subpoena, the following Definitions apply:

- D 1. The term "the Company" means Banibu II Holdings, Incorporated; its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures; and all directors, officers, employees, agents, counsel, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any Person in which there is partial (25% or more) or total ownership or control between the Company and any other Person.
- D 2. The term "DAK" means Alfa S.A.B. de C.V.; its domestic and foreign parents, predecessors, divisions, subsidiaries (including, but not limited to, Alpek, S.A.B. de C.V., and DAK Americas LLC), affiliates, partnerships and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any Person in which there is partial (25% or more) or total ownership or control between the Company and any other Person.
- D 3. The term "Indorama" means Indorama Ventures Holdings LP; its domestic and foreign parents (including, but not limited to, Indorama Ventures Public Company Limited), predecessors, divisions, subsidiaries, affiliates (including, but not limited to, Indorama Ventures USA Inc.), partnerships and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any Person in which there is partial (25% or more) or total ownership or control between the Company and any other Person.
- D 4. The term "FENC" means Far Eastern New Century Corporation; its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any Person in which there is partial (25% or more) or total ownership or control between the Company and any other Person.
- D 5. The term "M&G" means M&G Resins USA, LLC; its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures (including, but not limited to, the debtors in M&G's consolidated bankruptcy matter, *In re M&G USA Corp. et al.*, Case No. 17-12307 (Bankr. D. Del. Oct. 30, 2017)); and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any Person in which there is partial (25% or more) or total ownership or control between the Company and any other Person.
- D 6. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- D 7. The term "Corpus Christi Assets" means the "Corpus Christi Assets," the "Desalination Assets," and the "IP Assets" as defined by the December 14, 2017 Order, ECF No. 490, in *In re M&G USA Corp. et al.*, Case No. 17-12307 (Bankr. D. Del. Oct. 30, 2017).

- D 8. The term "Facility" means any plant, factory, warehouse, structure, or building used or designed for the production, processing, refining, manufacture, storage, or sale of any Relevant Product or PET Feedstock.
- D 9. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- D 10. The term "Person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- D 11. The term "PET Feedstock" means paraxylene, purified terephthalic acid, ethylene, isophthalic acid, dimethyl terephthalate, or monoethylene glycol.
- D 12. The term "Plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.
- D 13. The term "Proposed Transactions" means the potential acquisition of the Corpus Christi Assets by (1) the Company or (2) DAK, Indorama, or FENC, or any joint venture or other entity affiliated with DAK, Indorama, or FENC.
- D 14. The term "Relevant Product" as used herein means, and information shall be provided separately for: (1) each grade and specification of polyethylene terephthalate ("PET") (e.g., resin, fiber, or any other type; bottle grade, packaging grade, or any other grades; cold-fill, hot-fill, or any other specifications; and virgin, recycled, or any blend of virgin and recycled, etc.); and (2) each grade and specification of PET (also identifying the intrinsic viscosity of the grade or specification).

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

RESOLUTION AUTHORIZING USE OF
COMPULSORY PROCESS IN NONPUBLIC INVESTIGATION

File No. 181-0030

Nature and Scope of Investigation:

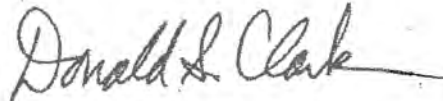
To determine whether the proposed acquisition of certain assets from M&G USA Corporation and its affiliates by Indorama Ventures and its affiliates and/or by DAK Americas LLC and its affiliates violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the aforesaid proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to the proposed acquisition.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

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. § 1.1 *et seq.* and supplements thereto.

By direction of the Commission.



Donald S. Clark
Secretary

Issued: January 11, 2018

EXHIBIT C

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF)
)
PET Resin - M&G Bankruptcy)
)
)
)
)

File No. 181-0030

**DECLARATION OF DREW NAVIKAS IN SUPPORT OF BANIBU II HOLDING INC.'S
PETITION TO LIMIT AND QUASH SUBPOENA DUCES TECUM AND SUBPOENA
AD TESTIFICANDUM DATED MAY 7, 2018**

I, Drew Navikas, Esq., declare under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am an associate at the law firm of Cleary Gottlieb Steen & Hamilton LLP, attorneys for Banibu II Holdings, Inc. ("Banibu"). I am a member in good standing of the Bars of the District of Columbia and the State of Pennsylvania.
2. Banibu has four directors, who are also its only officers: Javier Foncerrada Izquierdo (President), Luis Roberto Frias Humphrey (Vice President, Treasurer), Guillermo Rene Caballero Padilla (Vice President, Secretary), and Frank Ernesto Aguado Martinez (Vice President).
3. Banibu has no other employees.
4. All four of Banibu's officers/directors reside in Mexico.
5. None of Banibu's officers/directors are citizens of the United States.

DATED: May 17, 2018



Drew Navikas

CLEARY GOTTLIEB STEEN &
HAMILTON LLP
2000 Pennsylvania Ave. N.W.
Washington, DC 20006
(202) 974-1500
(202) 974-1999