



By and through their undersigned counsel, Debtor Pacific Andes International Holdings (BVI) Limited (“PAIH BVI” or “Movant”), hereby moves (the “Motion”) before this Court (the “Court”) for entry of an order (the “Proposed Order”), substantially in the form attached hereto as **Exhibit A**, pursuant to sections 105(a) and 363 of Title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rule 6004-1 of the Local Rules (the “Local Bankruptcy Rules”) for the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), and the Amended Guidelines for the Conduct of Asset Sales promulgated by General Order M-383 of the Bankruptcy Court (the “Sale Guidelines”), (I) authorizing and approving the sale of Movant’s ordinary shares in the share capital of Silliker Hong Kong Limited (“Silliker”) (the “Sale Transaction”) and (II) authorizing the Movant to take all actions necessary to effectuate the Sale Transaction, including entry into the Purchase Agreements (as defined herein). In support of the Motion, the Movants rely upon and incorporate by reference the Declaration of Ng Puay Yee Annie (Jessie) (“Ng Declaration”) filed contemporaneously herewith.

In further support of the Motion, the Movants respectfully represent as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The legal predicates for the relief requested herein are Bankruptcy Code sections 105(a) and 363, Bankruptcy Rules 2002, 6004, and 9006, Local Bankruptcy Rule 6004-1, and the Sale Guidelines.

## **BACKGROUND**

### **A. The Bankruptcy Cases**

1. On June 30, 2016, Pacific Andes International Holdings Limited (Bermuda) (“PAIH”) and certain of its affiliates commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code.

2. On April 17, 2017, PAIH BVI and an affiliate commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code.

3. From time to time after the Original Petition Date, additional Debtors have commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code.

4. On October 28, 2016, the Court appointed a Chapter 11 Trustee [ECF No. 203]. On November 10, 2016, the Court entered an order approving the selection of William Brandt, Jr. as the Chapter 11 Trustee for debtor CFG Peru Investments Pte. Limited (Singapore) [ECF No. 219].

5. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases, except as explained above.

### **B. The Proposed Sale Transaction**

7. Silliker Hong Kong Limited (“Silliker”) is a company incorporated under the laws of Hong Kong, having its registered office at Suite 1222, 12/F., Leighton Centre, 77 Leighton Road, Causeway Bay, Hong Kong.

8. Merieux Nutrisciences Corporation (“MNXS” or the “Purchaser”) is a company incorporated under the laws of the State of Delaware, having its principal place of business at 401

N. Michigan Ave, Suite 14000 Chicago, Illinois 60611.

9. As of the date of this Motion, PAIH (BVI) is the owner of 29,932,780 shares (the “Shares”), representing approximately 10.4% of all the issued shares in the share capital of Silliker.

10. Pursuant to a shareholders agreement dated August 19, 2014 (the “Shareholders’ Agreement”), by and among PAIH (BVI), MXNS, Silliker and Sino Analytica Limited (since renamed Sino Silliker Limited (“Sino Silliker”), PAIH BVI acquired 20% percent<sup>2</sup> of the total issued and outstanding shares of Silliker. MXNS retained and owned the remaining 80% of the equity interests of Silliker.

11. Silliker owns 100% of the equity interests in Sino Silliker. Silliker, Sino Silliker, and Sino Analytica (Ningbo) Limited, now known as Sino Silliker Testing Services (Ningbo) Co., Ltd. (“Sino Ningbo”), provide testing and consultation services in the food sector.

12. Pursuant to the terms of the Shareholders’ Agreement, MXNS held a right of first refusal to purchase PAIH (BVI)’s Shares in Silliker if PAIH (BVI) “starts a winding-up procedure or files for or is otherwise determined to be bankrupt or in a bankruptcy situation (or any other similar financing protection or liquidation procedure under any law or government authority).”

13. By Order dated October 15, 2018, the Court granted the motion of PAIH (BVI) to authorize PAIH (BVI) to enter into and perform under that certain Settlement Agreement (as attached thereto) with MXNS relating to, *inter alia*, cash deposits, loans and other agreements between the parties with respect to Silliker. [ECF No. 1342].

14. PAIH (BVI) and MXNS now seek to enter into an agreement for the purchase and

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<sup>2</sup> On May 5, 2020, Silliker raised additional capital of US\$12,000,000 to fund its expansion plan and working capital. PAIH (BVI) did not participate in that funding exercise and Silliker issued 138,151,100 new shares to MNXS. The shareholding of PAIH (BVI) in Silliker was diluted from 20% to 10.4% accordingly.

sale of PAIH (BVI)'s Shares in Silliker. In accordance with Clause 11.11 of the Shareholders Agreement, PAIH (BVI) issued a Put Option Notice via email with respect to the sale of the Shares, and the Purchase Price reflects the "Put Price" as defined in, and as contemplated by and calculated pursuant to the terms of the Shareholders Agreement.

15. Pursuant to the terms of the proposed *Agreement relating to the sale and purchase of shares in Silliker Hong Kong Limited* (the "Share Purchase Agreement"), attached hereto as **Exhibit B**, PAIH (BVI) has agreed to sell, and MXNS has agreed to purchase, all of PAIH (BVI)'s Shares in Silliker in exchange for US\$ 3,439,591.00 (the "Purchase Price")<sup>3</sup> (the "Sale Transaction").

16. The Sale Transaction shall terminate PAIH (BVI)'s interests in Silliker. Upon completion of the Sale Transaction, MXNS shall be the sole shareholder of Silliker, a closely held, private company.

17. In furtherance of the Sale Transaction, the parties have also agreed to enter into that certain *Deed of Termination relating to Shareholders' Agreement concerning Silliker Hong Kong Limited* (the "Deed of Termination", and collectively, with the Share Purchase Agreement, the "Purchase Agreements"), whereby the Shareholders' Agreement shall be extinguished. A copy of the Deed of Termination is annexed hereto as **Exhibit C**.

### **RELIEF REQUESTED**

18. By this Motion, the Movant seeks entry of entry of an order, substantially in the

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<sup>3</sup> The Purchase Price was calculated pursuant to a formula provided for in the Shareholders' Agreement, (EBITDA of Silliker x EBITDA multiple of 9 – Net Indebtedness ) x 10.4%.

form attached hereto as **Exhibit A**, pursuant to Bankruptcy Code sections 105(a), 363(b), 541(a)(1), and 1108, Bankruptcy Rules 2002, 6004, and 9006, Local Bankruptcy Rule 6004-1, and the Sale Guidelines, (I) authorizing and approving the sale of Movant's Shares of Silliker under the Sale Transaction, and (II) authorizing the Movant to take all actions necessary to effectuate the Sale Transaction, including entry into the Purchase Agreements.

### **BASIS FOR RELIEF**

19. The Movant has determined, in an exercise of its business judgment, that the Sale Transaction is in the best interest of Movant's estate, and will provide Movant with immediately available and necessary cash to, *inter alia*, pay for operational and administrative expenses and provide distributions to creditors under any plan of reorganization or liquidation, as applicable.

20. Pursuant to the Share Purchase Agreement<sup>4</sup>, PAIH (BVI) will sell the Shares pursuant to these terms:<sup>5</sup>

Seller: PAIH (BVI)

Purchaser: MXNS

Sale Shares: 29,932,780 Shares registered in the name of PAIH (BVI), in the aggregate representing approximately 10.4% of all the issued Shares of Silliker.

Purchase Price: US\$ 3,439,591.00

Additional Costs: PAIH (BVI) and MXNS shall each be liable for 50% of any ad valorem stamp duty payable on the bought and sold Shares.

Conditions: Approval by the Court

Long Stop Date: The Share Purchase Agreement has a "long stop date" of [October 30, 2021], or such other date as the parties shall otherwise agree, upon which date the Put Option Notice and the Share Purchase Agreement shall lapse and terminate.

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<sup>4</sup> Capitalized terms used in the summary of the Share Purchase Agreement that are not defined herein shall have the meaning ascribed to such terms in the same.

<sup>5</sup> To the extent of any inconsistencies between the summary contained herein and the Share Purchase Agreement, the terms of the Share Purchase Agreements shall govern.

**A. The Sale Transaction Is an Exercise of the Movant’s Sound Business Judgment.**

21. It is submitted that the Sale Transaction is an exercise of the Movant’s sound business judgment and approval of the Sale Transaction should be granted in full.

22. Bankruptcy Code section 105(a) grants the Court the authority to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. §105(a). This provision is “the basis for a broad exercise of power [by the Court] in the administration of a bankruptcy case.” *In re Flores*, 291 B.R. 44, 54 (Bankr. S.D.N.Y. 2003) (quoting 2 COLLIER ON BANKRUPTCY, ¶ 105 at 105-5, 15th ed. rev. rel. 2000)).

23. The Court has authority under Section 105 of the Bankruptcy Code to approve the Sale Transaction under the same standards applicable for approval of the sale under Section 363 of the Bankruptcy Code. Section 363(b) provides in pertinent part, “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). While Section 363(b) does not provide any standards to be applied to a debtor’s request to sell assets, a wide body of case law has evolved containing the judicial standards governing sales of assets.

24. In *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983), one of the seminal and most widely followed cases dealing with asset sales, the Second Circuit determined that a sale of assets could be approved if the debtor could demonstrate an “articulated business justification” for the sale. 722 F.2d at 1070. The Court further held that the factors to be considered in determining whether a sound business reason exists include the following:

the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed

disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value.

*Id.* at 1071 (emphasis supplied).

25. The Lionel decision has been widely accepted and applied by numerous other courts facing a debtor's request to sell assets, including requests to approve a sale of certain of the assets of a debtor's estate. *See, e.g., In re the Delaware & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991); *In re Eng'g Prod. Co.*, 121 B.R. 246 (Bankr. E.D. Wis. 1990); *In re Thomson McKinnon Sec., Inc.*, 120 B.R. 301 (Bankr. S.D.N.Y. 1990); *In re Channel One Communications, Inc.*, 117 B.R. 493 (Bankr. E.D. Mo. 1990); *In re Brethren Care*, 98 B.R. 927 (Bankr. N.D. Ind. 1989). As will be demonstrated below, application of the above-listed factors demonstrates that approval of the Sale Transaction is warranted at this time.

26. In addition to requiring sound business reasons to approve a sale pursuant to section 363(b) of the Bankruptcy Code, many courts have required a showing that the price to be obtained for assets be fair and reasonable; that the sale to the proposed purchaser was negotiated in good faith; and that it does not unfairly benefit insiders, the purchaser, or a certain creditor or class of creditors. *See, e.g., In re Channel One Communications*, 117 B.R. at 494-97; *In re Indus. Valley Refrig. & Air Cond. Supplies, Inc.*, 77 B.R. 15 (Bankr. E.D. Pa. 1987).

27. The Sale Transaction was negotiated in good faith, at arms' length, and is designed to maximize the value of the Movant's estate for creditors, rather than to benefit insiders or a particular creditor. The Sale Transaction was subject to a Put Option Notice under the terms of the Shareholders' Agreement and the Purchase Price was determined and calculated as the "Put



Price” under the Shareholders Agreement.<sup>6</sup> The Purchase Price is contractual, and in any event fair under the circumstances.

28. Many courts require that “fair and accurate notice” be given of the proposed sale under section 363(b) of the Bankruptcy Code. *See, e.g., In re Delaware & Hudson Ry.*, 124 B.R. 169, 176 (D. Del. 1991); *Channel One*, 117 B.R. at 496 (Bankr. E.D. Mo. 1990); *Naron & Wagner, Chartered*, 88 B.R. 85, 88 (Bankr. D.Md. 1988). Fair and accurate notice should inform all interested parties of the liquidation of the debtor’s business; disclose accurately the terms of the sale; explain the effect of the sale upon the debtor’s business; and explain why the sale is in the best interests of the debtor’s estate. *Delaware & Hudson*, 124 B.R. at 180; *see also, Naron & Wagner*, 88 B.R. at 88.

29. The Motion, and the attached Purchase Agreements, provide adequate notice to all parties of the material terms of the Sale Transaction. Further, the Sale Transaction, once approved, will provide PAIH (BVI) with immediately available cash, which shall be available for payment of administrative fees and expenses, and any remaining proceeds will be available for distributions to creditors of the Debtors’ estates pursuant to any plan of reorganization or liquidation, as applicable.

30. The decision to proceed with the Sale Transaction clearly falls within the Movants’ sound business judgment. The Sale Transaction was the result of good-faith, arm’s-length negotiations, and the otherwise guided by the contractual terms of the Shareholders’ Agreement of Silliker, a closely held, private company. Movant believes that the Sale Transaction is fair and

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<sup>6</sup> The Put Price or Purchase Price formula provided for in the Shareholders’ Agreement, (EBITDA of Silliker x EBITDA multiple of 9 – Net Indebtedness ) x 10.4%.

reasonable under the circumstances.

**B. A Sale Transaction is Appropriate as a Private Sale**

31. By this Motion, Movant seeks authority to effectuate the transaction in a private sale with the purchaser, MXNS. The Sale Transaction, which is subject to the contractual agreement of the parties in the Shareholders' Agreement, including the Put Option Notice and Put Price (or Purchase Price), provides for the sale of Shares in a private, closely held company. The purchaser MXNS is the only other shareholder, and after the sale will be the sole shareholder of Silliker. MXNS also has the knowledge necessary for the operation of the company.

32. Although many sales of assets outside the ordinary course of business are conducted pursuant to competitive bidding procedures and public auctions, section 363 of the Bankruptcy Code does not ordinarily require these procedures. Indeed, Bankruptcy Rule 6004(f), which provides that “[a]ll sales not in the ordinary course of business may be by private sale or by public auction,” specifically authorizes private sales. Fed. R. Bankr. P. 6004(f)(1).

33. Courts have approved private sales of assets upon the satisfaction of the general standards for approval under section 363(b) of the Bankruptcy Code. *See, e.g., In re Saint Vincents Catholic Med. Ctrs.*, Case No. 10-11963 (CGM) (Bankr. S.D.N.Y. May 27, 2010) (Docket No. 389) (approving private sale of a cancer center pursuant to Bankruptcy Rule 9019 and section 363 of the Bankruptcy Code); *In re Old Carco LLC*, Case No. 09-50002 (AJG) (Bankr. S.D.N.Y. Nov. 12, 2009) (Docket No. 5937) (approving sale of the debtors' former Newark, Delaware assembly plant by private sale as satisfying the requirements of section 363 of the Bankruptcy Code); *In re Wellman, Inc.*, Case No. 08-10595 (SMB) (Bankr. S.D.N.Y. Oct. 6, 2009) (Docket No. 507) (approving sale of one of the debtors' facilities by a private sale that was not subject to higher and

better offers); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Nov. 29, 2005) (Docket No. 1355) (authorizing sale of certain aircraft by private sale, stating that “no auction was necessary with respect to sale of the [a]ircraft.”).

34. It is well settled that the sale of assets outside of the ordinary course of business by means of a private sale can, and in appropriate cases should, be approved. *See, e.g., In re Bakalis*, 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998) (“Unlike judicial sales under the former Bankruptcy Act, the sale of estate property under the Bankruptcy Code is conducted by a trustee, who has ample discretion ... to conduct public or private sales of estate property.”) (internal quotations and citation omitted); *In re Dewey & LeBeouf*, Case No. 12-12321 (MG), 2012 WL 5386276, at \*6 (Bankr. S.D.N.Y. Nov. 1, 2012) (authorizing private sale of art collection because the debtor established a good business reason to proceed by private sale); *Penn Mut. Life Ins. Co. v. Woodscape Ltd. P’ship (In re Woodscape Ltd. P’ship)*, 134 B.R. 165, 174 (Bankr. D. Md. 1991) (noting that, with respect to sales of estate property pursuant to section 363 of the Bankruptcy Code, “[t]here is no prohibition against a private sale ... and there is no requirement that the sale be by public auction.”).

35. In addition to the other reasons set forth herein, the purchaser MXNS also holds a right of first refusal pursuant to the Shareholders’ Agreement. Further, the Purchase Price is the subject of contractual agreement as set forth in the Shareholders’ Agreement. Accordingly, Movant respectfully requests that this Court approve the sale upon the terms agreed in the Share Purchase Agreement.

### **C. The Purchase Price Constitutes Reasonably Equivalent Value for the Asset**

36. A debtor receives reasonably equivalent consideration when “the debtor’s net worth

has been preserved” following a transfer of its assets. *Harrison v. N.J. Cmty. Bank (In re Jesup & Lamont, Inc.)*, 507 B.R. 452, 471-72 (Bankr. S.D.N.Y. 2014); see also *Mellon Bank N.A. v. Metro Commc’ns, Inc.*, 945 F.2d 635, 647 (3d Cir. 1991) (“The touchstone is whether the transaction conferred realizable commercial value on the debtor reasonably equivalent to the realizable commercial value of the assets transferred.”). A finding of reasonably equivalent value does not require an exact equivalent exchange of consideration, but the benefits that a debtor receives from the transfer should approximate its costs. See *Jesup & Lamont*, 507 B.R. at 472 (“[I]f [the] value [received] approximates the value of what the debtor transferred, there will be reasonably equivalent value.”). Further, transactions between a debtor and a third-party on an arm’s-length basis are presumptively for reasonably equivalent value. See *Mishkin v. Ensminger (In re Adler, Coleman Clearing Corp.)*, 247 B.R. 51, 109 (Bankr. S.D.N.Y. 1999) (“[W]hen there is an arm’s-length transaction by parties that have equal knowledge, a court should not substitute its own view of a fair market price.” (citing *Cooper v. Ashley Commc’ns, Inc. (In re Morris Commc’ns NC, Inc.)*, 914 F.2d 458, 465, 474-75 (4th Cir. 1990))).

37. As set forth in the Share Purchase Agreement, the Purchase Price is calculated pursuant to Clause 11.11 of the Shareholders Agreement, i.e. the Put Price. Notwithstanding, PAIH (BVI) believes that the Purchase Price, which was subject to PAIH (BVI)’s Put Option Notice, is fair and reasonable under the circumstances, including considering the closely held ownership of Silliker, the nature of the company operations, and the expertise required to operate its business.

38. Based upon the foregoing, PAIH (BVI) respectfully requests that the Motion be granted in all respects, and that the Court enter an order, (I) authorizing and approving the sale of

Movant's Shares of Silliker under the Sale Transaction, and (II) authorizing Movant to take all actions necessary to effectuate the Sale Transaction, including entry into the Purchase Agreements.

**WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)**

39. Movants request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h).

40. As described above, the relief sought by Movant seeks to preserve value for its estate. Accordingly, Movants respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

**NOTICE**

41. Notice of this Motion will be given in accordance with Bankruptcy Rule 2002. A copy of this Motion is also available on the Court's website. The Movant submits that such notice constitutes good and sufficient notice and that no other or further notice need be given.

**NO PRIOR REQUEST**

42. No previous request for the relief sought herein has been made to this Court or any other court.

Dated: July 28, 2021  
New York, New York

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