

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,**

**Plaintiff,**

**V.**

**NORTHRIDGE HOLDINGS, LTD., ET AL.,**

**Defendants.**

**Civil Action No. 19-cv-5957**

**Hon. John Z. Lee**

**Magistrate Judge Susan E. Cox**

**RECEIVER'S MOTION FOR ORDER APPROVING SETTLEMENT, MUTUAL  
RELEASE AND RETENTION BONUS AGREEMENT AMONG CAROL HIGGINS,  
BLUE DIAMOND COFFEE SERVICE, INC. AND RECEIVER**

N. Neville Reid, not individually, but solely as the court-appointed receiver (the “Receiver”) for the Estate of Defendant Northridge Holdings, Ltd. and the related entities and affiliates as set forth in more particularity in the Receivership Order (as defined herein) (collectively, the “Receivership Defendants”), and pursuant to the powers vested in him by the *Order Appointing Receiver* entered by the Court on September 12, 2019 [Dkt. No. 22], as amended from time to time, including on February 13, 2020 [Dkt. No. 108; see also Dkts. 99, 102] (the “Receivership Order”), through his counsel Fox Swibel Levin & Carroll LLP (“Fox Swibel”), respectfully submits this Motion for Order Approving Settlement, Mutual Release and Retention Bonus Agreement between the Receiver, on the one hand, and Carol Higgins (“Higgins”) and Blue Diamond Coffee Service, Inc., on the other hand (“Blue Diamond” and together with Higgins the “Higgins Parties”; collectively, the Higgins Parties and the Receiver being herein referred to as the “Parties”). In support of this motion (the “Motion”), the

Receiver states as follows:

### **INTRODUCTION**

1. Prior to this receivership, Carol Higgins served as the Controller for the Receivership Defendants, performing functions such as collecting and processing daily information on the various real properties owned by them (the “Properties”), compiling financial reports, assisting with the preparation of tax returns and generally coordinating communication between various property managers in the field. At the inception of the receivership, Ms. Higgins had served in this role for 29 years.

2. At the request of the Receiver, Ms. Higgins agreed to continue performing those same functions during the course of the receivership. In doing so, she contributed to the successful pre-sale operation of the Properties, the sale of the Properties and the general operations of the Receivership Estate. Due to Ms. Higgins’ deep institutional knowledge and strong work ethic, the Receiver desires that Ms. Higgins continue to work for the receivership until it is completed. As is common in insolvency proceedings, the Receiver proposes a retention bonus as an economic incentive for Ms. Higgins to remain through the end of the receivership.

3. Ms. Higgins is also a creditor of the estate. She has a pre-receivership sick pay/accrued vacation claim of \$134,927 (the “Vacation/Sick Pay Claim”). She is also an investor and through her investments Ms. Higgins received cash in excess of her investment in the amount of \$48,766.39, and is therefore liable for that amount to the estate as a “net winner” (the “Net Winner Claim”). She also received commissions of \$23,315 for sourcing investors in the Northridge Defendants (the “Finders Claim” and together with the Net Winner Claim the “Receiver Claims”).

4. Along with her husband, Alan Higgins, Ms. Higgins owns a company, Blue

Diamond Coffee Service, Inc. (“Blue Diamond”), which is owed \$40,253 by the Northridge Defendants for two loans that Blue Diamond made to them pre-receivership (the “Blue Diamond Debt” or the “Blue Diamond Claim”). One loan was for \$4,238 for working capital, funded from Blue Diamond’s own funds (the “BD Funded Loan”). The other loan, for \$36,015, was funded from the individual retirement account (IRA) of Glenn Mueller’s deceased mother, Gertrude Mueller (the “IRA Funded Loan”). At Glenn’s request, Blue Diamond borrowed \$36,015 from Gertrude Mueller’s IRA (the “Blue Diamond/IRA Debt”) and then lent that same \$36,015 to the Northridge Defendants, taking back a promissory note from them in the amount of \$36,015.

5. As explained in more detail below and in the Settlement, Mutual Release and Retention Bonus Agreement appended hereto as **Exhibit A** (the “Settlement Agreement” and the settlement referenced therein and described hereinbelow, the “Settlement”), the Receiver has reached agreements with (a) Ms. Higgins, regarding a reduction of her Vacation /Sick Pay Claim to offset for the Receiver Claims, as well as the payment of a retention bonus in consideration of her working for the Receiver through the end of the Receivership, and (b) Blue Diamond, regarding a reduction of its claim for the Blue Diamond Debt so that only the BD Funded Loan is allowed and the IRA Funded Loan is disallowed.

### **AUTHORITY**

6. Pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934, the Securities and Exchange Commission (the “SEC”) sought and obtained the appointment of a Receiver. Under the Receivership Order, the Receiver has authority in equity, as well as under 28 U.S.C. §§ 754, 959, and 1692, and Fed. R. Civ. P. 66, and was given broad powers to, among other things, investigate, prosecute, institute, defend, compromise, and/or adjust any

legal actions. (Receivership Order, ¶43). Moreover, the Court entered an order on September 25, 2020, authorizing the Receiver to settle claims without court approval but permitting motions for approval of settlements as the Receiver (as here) deems appropriate. [Dkt. 191, ¶2(e)]. The Settlement Agreement is in accordance with, and furtherance of, such duties and obligations, and the Receiver files this Motion in connection therewith.

### **THE PROPOSED SETTLEMENT AGREEMENT**

7. The proposed Settlement Agreement provides in pertinent part:

- Ms. Higgins' Vacation/Sick Pay Claim will be reduced to an allowed claim of \$62,845.61, calculated as follows: \$134,927 - \$48,766.39 (Net Winner Claim) - \$23,315 (Finders Claim) (the "Amended Sick Pay Claim").
- The Blue Diamond Claim would be allowed as a general unsecured claim in the amount of \$4,238 (only the BD Funded Loan amount). Ms. Higgins has indicated that her execution of the Settlement Agreement is conditioned on Gertrude Mueller's IRA (as represented by her co-executors, Glenn Mueller and Dale Mueller) signing a release of the Blue Diamond/IRA Debt. Based on current information, the Receiver believes that Gertrude Mueller's IRA will provide that release to Blue Diamond, in furtherance of this Settlement.
- Upon the completion of the receivership, and provided that Ms. Higgins has worked for the Receiver through that date, the Receiver would make a one time, lump sum payment to Ms. Higgins in the amount of \$50,000, as a retention bonus (the "Retention Bonus"). Ms. Higgins would forfeit the Retention Bonus if she leaves voluntarily before the end of the receivership or is terminated before then for cause (such as malfeasance or refusal to perform task as requested by the Receiver or his team).
- The Parties agree to a general mutual release of claims.

*See Ex. A.*

### **JURISDICTION**

8. The Settlement Agreement provides that the Parties will submit to the jurisdiction of this Court to resolve any disputes among them regarding the terms of the Settlement, and that the prevailing party in any dispute must be reimbursed for its legal fees and costs. *See Ex. A, ¶ 13.*

**BEST INTERESTS OF THE RECEIVERSHIP**

9. The Receiver requests that the Court approve the proposed Settlement Agreement because it is in the best interest of the Receivership Estate. The process of reaching the proposed Settlement Agreement was fair, well-informed, and well-advised by the Receiver's professionals.

10. The ultimate inquiry in assessing a proposed receivership settlement is whether "the proposed settlement is fair." *Sterling v. Stewart*, 158 F. 3d 1199, 1203 (11th Cir. 1998); *see In re Consol. Pinnacle West Sec. Litig./Resolution Trust Corp.-Merabank Litig.*, 51 F. 3d 194, 196-97 (9th Cir. 1995) ("We see no reason to upset the court's conclusion that the settlement process and result were fair."). Determining the fairness of [a] settlement is left to the sound discretion of the trial court." *Sterling*, 158 F. 3d at 1202 (11th Cir. 1998). In determining fairness, the Court should examine the following broad array of factors: (1) the likelihood of success on the merits; (2) the range of possible discovery; (3) the point on or below the range of discovery at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved. *Sterling*, 158 F. 3d at 1204; *see also SEC v. Princeton Economic Int'l*, 2002 WL 206990, \*2 (S.D.N.Y. 2002) (receivership court should consider "various factors including, inter alia: (1) the probable validity of the claim; (2) the apparent difficulties attending its enforcement through the courts; (3) the collectability of the judgment thereafter; (4) the delay and expenses of the litigation to be incurred; and (5) the amount involved in the compromise").

11. For example, the district court in *Gordon v. Dadante* "analyze[d] the settlement as a whole, under the totality of the circumstances." No. 1:05CV2726, 2008 WL 1805787, at \*10 (N.D. Ohio Apr. 18, 2008). The Sixth Circuit affirmed, finding that the district court had

fulfilled its responsibilities by engaging in an “independent analysis of the settlement,” as “the district court had extensive knowledge of the claims involved in the case, the valuation of those claims, and the nature of the settlement,” and thus “had more than sufficient information to assess the fairness of the settlement proposed.” *Gordon v. Dadante*, 336 F. App’x 540, 548 (6th Cir. 2009). As the district court noted in a later approval proceeding, “the courts must recognize that plans relating to settlement of a receivership are inherently imperfect, “because no proposal can be [perfect],” and the “task at hand, however, is to do justice to the extent possible.” *Gordon v. Dadante*, No. 1:05-CV-2726, 2010 WL 148131, at \*3 (N.D. Ohio Jan. 11, 2010).

12. Here, the Settlement Agreement is a fair, adequate, and reasonable resolution of the Receiver Claims, and provides an important incentive for an essential worker, Ms. Higgins, to complete her work for the Receivership Estate through the end of the case. With respect to the Receiver Claims, based on the Receiver’s team’s review of the policies of the Receivership Defendants pre-receivership, the Defendants’ employees did generally accrue vacation and sick pay in the ordinary course, and Ms. Higgins’ Sick Pay Claim appears to be properly calculated. Ms. Higgins is reducing her Vacation/ Sick Pay Claim dollar for dollar by the amount of the Receiver Claims, thereby reducing the dilution of other creditor and investor claims that would otherwise have resulted from allowance of the Vacation/Sick Pay Claim in full.

13. As to the Retention Bonus, the Receiver notes that the Receivership Order authorizes him to take such actions as the Receivership Defendants could have taken in the ordinary course absent the receivership. (Receivership Order, ¶8J). Structuring compensation packages to keep valuable employees is a core function of management of any business; accordingly, structuring the Retention Bonus is squarely within the Receiver’s authority in this case. But, the Receiver seeks approval of same out of abundance of caution and in the spirit of

full disclosure to the Court.

14. In setting the amount of the bonus, the Receiver conferred with the head of Fox Swibel's labor group, who advised that such retention bonuses are typically calculated based on the (a) skill and competence of, and the firm's need for, the employee in light of any alternatives, and (b) the number of years of service. The Retention Bonus easily satisfies these criteria. Ms. Higgins has a proven record of performing her work very well during this case, and is essential for performing the remaining tasks in winding down the receivership, including the important task of assisting in the preparation of final reports and tax returns and helping to resolve miscellaneous post-closing issues related to the sale of the Properties. It is not practical or even likely that someone with her skill and institutional knowledge can be found to perform her work for the receivership at the same level for less cost. Moreover, in the view of the Receiver's labor counsel, the \$50,000 Retention Bonus amount is "in market" for someone of her compensation level (\$14,000/month), level of responsibility and over 30 years of service to the business of the Receivership Defendants to date. Consequently, the Retention Bonus component of the Settlement Agreement is reasonable and should therefore be approved.

**NO OBJECTION BY THE SEC**

15. The SEC has indicated that it does not object to the relief requested herein.

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**CONCLUSION**

WHEREFORE, the Receiver respectfully requests that the Court (a) grant this Motion and enter the *Order Approving the Settlement Agreement* (a proposed form of which is attached hereto as **Exhibit B**) and (b) grant all other or further relief as is just and proper.

Dated: May 14, 2021

N. Neville Reid, Receiver

By: /s/ Ryan T. Schultz

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**EXHIBIT A**

[Proposed Settlement Agreement]

(see attached)

## SETTLEMENT, MUTUAL RELEASE AND RETENTION BONUS AGREEMENT

This Settlement, Mutual Release and Retention Bonus Agreement ("Agreement") is made and entered into on May 12, 2021 (the "Effective Date"), by and among N. Neville Reid, not individually, but solely as the court-appointed receiver (the "Receiver") for the Estate of Defendant Northridge Holdings, Ltd., and the related entities and affiliates as set forth in more particularity in the Receivership Order (as defined herein) on the one hand, and Carol Higgins ("Higgins") and Blue Diamond Coffee Service, Inc. ("Blue Diamond") on the other hand (all of the above are collectively referred to as the "Parties" and individually, without differentiation, each as a "Party").

WHEREAS, on September 5, 2019, the United States Securities and Exchange Commission (the "SEC") filed (a) a Complaint [Dkt. No. 1] (the "Complaint") in the United States District Court Northern District of Illinois Eastern Division (the "Court") against the defendants as identified therein (collectively, the "Defendants") alleging violations of federal securities laws initiating Case No. 19-CV-05957, and (b) Plaintiff's Emergency Motion for a Temporary Restraining Order to Prevent Violations of the Federal Securities Laws, to Appoint Receiver, and to Provide for Other Ancillary Relief [Dkt. No. 3], requesting a temporary restraining order to prevent violations of federal securities laws, to appoint a receiver and to provide for other ancillary relief set forth therein;

WHEREAS, on September 12, 2019, the Court entered the Order Appointing Receiver in the above-captioned proceeding [Dkt. No. 22] (as amended by the Court on February 4, 2020) [Dkt. No. 108] (as so amended, and amended from time to time, the "Receivership Order"), over the entities set forth in the order (the "Receivership Entities" and individually, each a "Receivership Entity") which established the receivership (the "Receivership") and the receivership Estate (the "Receivership Estate" or the "Estate");

WHEREAS, on September 25, 2020, the Court entered the Order Authorizing and Approving Procedures for Settling Claims and Causes of Action [Dkt. No. 191], which authorized the Receiver to settle the claims as set forth herein and the Receiver has complied with the notice obligations to the SEC, which has indicated no objection to the settlement set forth herein;

WHEREAS, according to the Receivership Entities' books and records, (i) Higgins invested \$251,862.13 and received \$300,628.52 back from the Receivership Entities for a net cash-in/cash-out claim of (\$48,766.39) (the "Higgins Net-Winner Claim Amount") and (ii) Higgins received \$23,315.54 in "finder's fees" related to sourcing investors for the Defendants (the "Higgins Finder's Claim Amount");

WHEREAS, the Receiver alleges that Higgins is liable to the Receivership Estate for the Higgins Net-Winner Claim Amount and the Higgins Finder's Claim Amount (collectively, the "Higgins Claim");

WHEREAS, Blue Diamond filed a Proof of Claim against the Receivership Estate (the "BD Proof of Claim") for a total of \$40,253.76, consisting of a loan claim of (i) \$36,015.70 that was funded originally by amounts from a retirement account owned by Gertrude Mueller (the

“Mueller Loan”) and (ii) \$4,238.06 that originated from Blue Diamond’s own funds (the “Blue Diamond Loan”);

WHEREAS, the Receiver and Blue Diamond agree that the Mueller Loan should be excluded from the BD Proof of Claim insofar as the funds related thereto did not originate from Blue Diamond;

WHEREAS, Higgins filed a Proof of Claim against the Estate for pre-receivership vacation and sick pay totaling \$134,927 (the “Sick Pay Claim”);

WHEREAS, as an incentive to continue to assist with the wind down of the Receivership Estate, the Receiver and Higgins have agreed that Higgins should receive a retention bonus payment through the date of the completion of such wind down, as more specifically set forth hereinbelow;

WHEREAS, the Parties desire to settle fully and finally the Higgins Claim, the BD Proof of Claim, and the Sick Pay Claim, and provide for the aforementioned retention bonus payment, on the terms hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is agreed as follows:

1. Recitals. The above recitals are incorporated into this Agreement as if fully set forth herein.

2. Claim Settlement.

- a. Higgins hereby agrees to reduce her Sick Pay Claim by the total amount of the Higgins Claim, or \$72,081.93, for a net claim of \$62,845.61 (the “Amended Sick Pay Claim”). Higgins shall file the Amended Sick Pay Claim within five (5) business days of the Effective date. The Amended Sick Pay Claim shall be allowed in full.
- b. The BD Proof of Claim shall be allowed in the amount of \$4,238.06, representing solely the Blue Diamond Loan (the “Amended BD Claim”). Blue Diamond agrees that the Mueller Loan portion of the BD Proof of Claim shall be deemed disallowed.

3. Retention Bonus Payment. Upon the earlier of (i) the Receiver’s determination that Higgins’ services are no longer needed to administer the Receivership Estate or (ii) the entry by the Court of an order terminating the Receivership Estate and discharging the Receiver of his duties with respect thereto (such earlier date, the “Completion Date”), the Receiver shall pay to Higgins, from the funds in the Receivership Estate, \$50,000, in consideration of Higgins’ willingness to service the Estate through the Completion Date (the “Retention Bonus Payment”). The Retention Bonus Payment shall not be payable if Higgins terminates her services to the Estate before the Completion Date or if Higgins is terminated by the Receiver for “cause”. The Receiver shall deduct or withhold from the Retention Bonus Payment all usual and applicable payroll tax and other amounts as required by law. For purposes of this paragraph, “cause” shall

mean Higgins' (i) willful misconduct, (ii) theft, or (iii) intentional and willful failure, or refusal, to perform the services reasonably requested to wind down or administer the Receivership Estate.

4. Receiver's Limited Release of Claims. Upon execution hereof, the Receiver, on behalf of the Receivership Entities, irrevocably and unconditionally releases, acquits and forever discharges Higgins and Blue Diamond, and their respective successors, assigns, agents, representatives, partners, attorneys and affiliates from any and all civil complaints, claims, liabilities, obligations, covenants, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses, including attorneys' fees and costs actually incurred, of any nature whatsoever, known or unknown, suspected and unsuspected, relating to the Higgins Claim. Notwithstanding the forgoing, the release set forth in this Section shall not release (i) the Parties from their obligations hereunder, nor (ii) any other person or entity from any claim the Receiver or the Receivership Estate may have against such person or entity unrelated to the Higgins Claim, including any claims of the Receivership Estate against Gertrude Mueller or the estate of Gertrude Mueller.

5. Higgins and Blue Diamond Release of Claims. As a material inducement to the Receiver to enter into this Agreement, Higgins and Blue Diamond each hereby irrevocably and unconditionally release, acquit and forever discharge the Receiver, the Receivership Entities, the Receivership Estate and their owners, members, shareholders, board members, predecessors, successors, assigns, agents, directors, officers employees, representatives, attorneys, parent companies, subsidiaries, affiliates, insurers and any other party from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses, including attorneys' fees and costs actually incurred, of any nature whatsoever, known and unknown, suspected and unsuspected. Notwithstanding the forgoing, the release set forth in this Section shall not release or be deemed to release (i) any allowed claims of Erica Koha, Alan Higgins or Anthony Higgins (affiliates of Higgins) against the Receivership Estate, (ii) the Amended Sick Pay Claim or Amended BD Claim, or (iii) the Receiver or the Receivership Entities from any obligations set forth in this Agreement.

6. Representations and Warranties of Higgins and Blue Diamond. Higgins hereby represents and warrants that to the best of Higgins' knowledge, the Sick Pay Claim is true and accurate. Blue Diamond represents and warrants that, to the best of its knowledge, the Amended BD Claim is true and accurate.

7. Disclaimer of Liability. This Agreement shall not in any way be construed as an admission by any of the Parties that any of them have acted wrongfully or violated any law.

8. No Claims Have Been Assigned; Merger. The Parties each represent and warrant that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement, and they have the sole right and exclusive authority to execute this Agreement.

9. Non-Reliance on Verbal Representations. The Parties each represent and warrant that in executing this Agreement, they do not rely and have not relied upon any representation or

statement not set forth herein made by the other Party with regard to the subject matter, basis, or effect of this Agreement.

10. Parties Bound by Agreement. This Agreement shall be binding upon the Parties and upon their heirs, administrators, representatives, executors, successors and assigns, and shall inure to the benefit of the Parties and to their heirs, administrators, representatives, executors, successors, and assigns.

11. Entire Agreement. This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings between or among any or all of the Parties.

12. Amendment to Agreement. This Agreement may not be modified or amended except by written agreement between the Parties.

13. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois. This Agreement shall be construed without regard to any rules of construction construing the draftsman hereof. If a controversy arises with respect to the subject matter of this Agreement or any provisions hereof, the Parties agree that such controversy shall be adjudicated in the United States District Court for the Northern District of Illinois and specifically in the action *United States Securities and Exchange Commission v. Northridge Holdings Ltd. et al.*, Case No. 19-cv-5957. In the event of any litigation between the Parties with respect to the subject matter hereof, the prevailing Party shall be entitled to recover its reasonable fees and costs, in addition to any other relief to which the Party may be entitled.

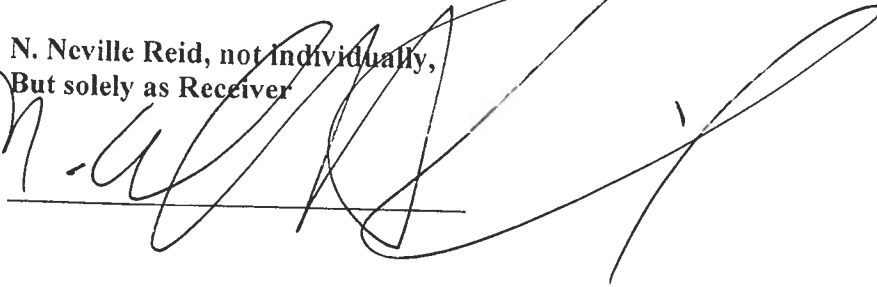
14. Confidentiality. Higgins and Blue Diamond each promise and agree that, unless compelled by legal process, they will not disclose to others and will keep confidential the terms of this settlement, including the amounts referred to in this Agreement, except that (i) each may disclose this information to their respective attorneys, accountants and other professional advisors to whom the disclosure is necessary to accomplish the purposes for which Higgins or Blue Diamond has consulted such professional advisors, and (ii) Higgins may disclose this Agreement or its terms to her spouse.

15. Execution. This Agreement may be signed in multiple counterparts, with all counterparts forming but one Agreement. Signature by a Party and transmission of the same by electronic mail shall be binding upon the Party whose signature is so transmitted, regardless of whether or not an original, signed copy of this Agreement is ever delivered.

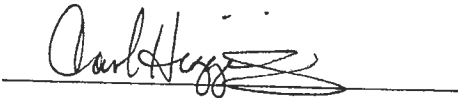
[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be entered into on the Effective Date.

N. Neville Reid, not individually,  
But solely as Receiver

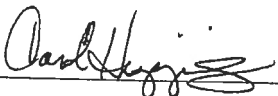
A large, stylized handwritten signature in black ink, appearing to be 'N. Neville Reid', written over a horizontal line.

Carol Higgins

A handwritten signature in black ink, appearing to be 'Carol Higgins', written over a horizontal line.

Date: 5/6/21

Blue Diamond Coffee Service, Inc.

By: 

Name Printed: CAROL HIGGINS

Title: VICE - PRESIDENT

Date: 5/6/21

**EXHIBIT B**

[Proposed Order]

(see attached)





**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>UNITED STATES SECURITIES AND EXCHANGE COMMISSION,</b>	)	
	)	
	)	<b>Civil Action No. 19-cv-05957</b>
	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	<b>Hon. John Z. Lee</b>
	)	
<b>NORTHRIDGE HOLDINGS, LTD., ET AL.,</b>	)	
	)	<b>Magistrate Judge Susan E. Cox</b>
<b>Defendants.</b>	)	
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on May 14, 2021, I electronically filed the **Receiver's Motion For Order Approving Settlement, Mutual Release And Retention Bonus Agreement Among Carol Higgins, Blue Diamond Coffee Service, Inc. And Receiver** with the Clerk of the United States District Court for the Northern District of Illinois, using the CM/ECF system. I further certify that I served the parties and interested parties as set forth on the attached Service List via U.S. Mail on May 14, 2021.

By: /s/ Ryan T. Schultz

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***SEC v. Northridge Holdings, Ltd., et al.***  
**Case No. 19-cv-05957**

**SERVICE LIST**

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