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9 **SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **COUNTY OF MARICOPA**

12 DOUGLAS CAMPING, KEVIN CAMPING,
13 F. DANIEL JOHNSON, individuals, and
14 D&K Entities, LLC, a Delaware limited
15 liability company,

Plaintiff,

v.

16 ART LENDER SERVICES, LLC, a Delaware
17 limited liability company,

18 Defendant.

No. CV2021-005448

**STATEMENT OF POSITION RE
APPLICATION FOR APPOINTMENT
OF A RECEIVER**

(Assigned to Hon. Danielle Viola)

19 Ames Enterprises, Inc., Accurate Adjustments, Inc., 1st Adjusters, Inc, WJRP
20 Holdings, LLC, Weiss Family Ventures, LLC, Able Auto Adjusters, Inc., Joseph Hale, Rick
21 Campbell, John Hale, William Hale, Justin Clayton, and Mark Clayton, who collectively own
22 more than 66% of the membership interests in ART Lender Services, LLC (the “Majority in
23 Interest Members”), and Steve Simons, Jr. and William Hale who are 2 of the 5 Board
24 Members of ART Lender Services, LLC (the “Non-Plaintiff Board Members”) submit this
25 statement of position regarding the appointment of a receiver over Defendant ART Lender
26 Services, LLC (“Defendant”).
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1 **A. Appointment of a receiver is generally appropriate in light of the impasse.**

2 Plaintiffs are the minority interest members which hold about 33.66% of the
3 membership interests and 3 of the 5 Board members on the Defendant's Board. The Non-
4 Plaintiff Board Members are 2 of the 5 Board members and the Majority in Interest Members
5 hold about 66.34% of the membership interest in the Defendant. According to the Operating
6 Agreement, all major decisions require a supermajority vote of 75%. Although Plaintiffs'
7 Complaint and Application are replete with false allegations that are intended to deflect
8 attention away from their own numerous management failures and breaches of fiduciary duty,
9 the Majority in Interest Members and Non-Plaintiff Board Members agree that an impasse
10 has been reached and that the appointment of a receiver is in the best interests of the stake
11 holders and parties in interests surrounding the Defendant.

12 Further, the Majority in Interest Members and Non-Plaintiff Board Members agree that
13 Mr. P. Gregg Curry of Ankura Consulting Group LLC would be an appropriate and qualified
14 receiver for Defendant. The Majority in Interest Members and Non-Plaintiff Board Members
15 have reviewed the Plaintiff's proposed order and have addressed concerns with the proposed
16 language and terms of any receiver appointed by this Court in the attached **Exhibit A**. The
17 proposed changes are intended to try to make the order more neutral and not so Plaintiff-
18 oriented. A clean and redline version of the proposed order are attached hereto as **Exhibit A**.

19 The Majority in Interest Members and Non-Plaintiff Board Members request the Court
20 enter an order for appointment of a receiver over Defendant substantially in the form of
21 **Exhibit A**.

22 **B. Denial of Allegations and Reservation of Rights.**

23 The Majority in Interest Members and Non-Plaintiff Board Members were not made
24 aware of this filing and therefore could not, and did not, provide consent or a position to the
25 Plaintiffs before they filed. The Complaint and Application were not drafted with any insight
26 or input from the Majority in Interest Members or Non-Plaintiff Board Members, and the
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1 filing of this action and the request for a receivership was neither approved by the Majority
2 in Interest Members nor presented to the Non-Plaintiff Board Members. Further, while the
3 Defendant has filed a Response, the Majority in Interest Members and Non-Plaintiff Board
4 Members were not allowed to participate in any company decision to agree to a receiver or
5 the filing of Defendant's Response. The obvious question—which Defendant's counsel has
6 been asked-- is who authorized the filing of the Response and the consent to the receiver on
7 behalf of the Defendant company? The obvious answer is Plaintiffs who essentially locked
8 out the Non-Plaintiff Board Members and Majority in Interest Members from the company.

9 Much of the allegations in the Complaint and Application are self-serving, incomplete,
10 or inaccurate. The Complaint and Application present merely a sliver of the underlying issues
11 facing the Plaintiffs, Defendant and the Majority in Interest Members and Non-Plaintiff Board
12 Members. Any resolution of the claims amongst the parties in interest will require an analysis
13 of claims and facts that exceed the corners of the Complaint and Application. Accordingly,
14 while the Majority in Interest Members and Non-Plaintiff Board Members generally support
15 the appointment of the receiver, they deny the allegations contained in the Complaint and
16 Application and are prepared, if and when necessary, to assert their claims for the Plaintiffs'
17 actionably wrongful conduct..
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19 Further, much of the Complaint and Application contains unfounded allegations
20 against Mr. Simons, a non-party to this action when filed by Plaintiffs. It is unclear how such
21 allegations are relevant to Plaintiffs' claims against the Defendant but they appear to have no
22 other purpose than to sully Mr. Simons' representation and cast aspersions and blame for
23 Defendant's failure to operate efficiently, effectively and profitably. Such allegations are
24 unnecessary and inappropriate.

25 The Majority in Interest Members and Non-Plaintiff Board Members reserve all rights,
26 claims, causes of actions and defenses arising out of their relationship with the Plaintiffs and
27 the Defendant. The Complaint and Application were presented solely by Plaintiffs and named
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1 only the Defendant as a party to the litigation. Accordingly, not all claims between the
2 Plaintiffs, Defendant, and the Majority in Interest Members and Non-Plaintiff Board
3 Members are presently before this Court. The Majority in Interest Members and Non-Plaintiff
4 Board Members are hopeful that Mr. Curry's appointment will render many of these claims
5 and issues moot but nevertheless, reserve any claims, causes of actions and defenses related
6 to this matter.

7 While the Majority in Interest Members and Non-Plaintiff Board Members disagree
8 strongly with the underlying allegations and believe this Court lacks the ability to provide
9 total relief to the parties in interest as the matter is presently framed, they acknowledge that
10 an impasse has occurred and that a receiver will aid in preserving and maximizing the value
11 for the stakeholders. Accordingly while the Majority in Interest Members and Non-Plaintiff
12 Board Members disagree with the underlying allegations asserted for the appointment of a
13 receiver espoused by the Plaintiffs regarding the conduct of the parties in interest and dispute
14 whether Plaintiffs are entitled to any relief, it is in the best interests of all parties that P. Gregg
15 Curry of Ankura Consulting Group LLC be appointed as the receiver and that the form of
16 order with changes substantially in the form attached hereto as **Exhibit A** be adopted by the
17 Court.
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19 DATED this 12th day of April, 2021.

20 FENNEMORE CRAIG PC
21 By /s/ Anthony W. Austin
22 Anthony W. Austin
23 Attorneys for the Majority in Interest Members
and the Non-Plaintiff Board Members

24 ELECTRONICALLY FILED
25 on this 12th day of April, 2021, with
26 the Clerk of the Maricopa County
27 Superior Court via AZTurboCourt and
COPY sent via Turbocourt this same day to:

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/s/ Gidget Kelsey