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*Co-Counsel for Defendants*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:**

**THINK FINANCE, LLC, *et al.*,  
Debtors.<sup>1</sup>**

**THINK FINANCE, LLC, THINK FINANCE  
SPV, LLC, and TC ADMINISTRATIVE  
SERVICES, LLC,**

**Chapter 11**

**Case No. 17-33964-11 (HDH)**

**(Jointly Administered)**

**Adv. Proc. No. 17-03106 (HDH)**

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Think Finance, LLC (3098), Think Finance SPV, LLC (4522), Financial U, LLC (1850), Tailwind Marketing, LLC (1602), TC Administrative Services, LLC (4558), TC Decision Sciences, LLC (8949), and TC Loan Service, LLC (3103).

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**Plaintiffs/Counter-Defendants,**

**v.**

**VICTORY PARK CAPITAL ADVISORS,  
LLC, VICTORY PARK MANAGEMENT,  
LLC, GPL SERVICING, LTD., GPL  
SERVICING AGENT, LLC,**

**Defendants/Counter-Plaintiffs/Third-Party  
Plaintiffs,**

**v.**

**CORTEX HOLDINGS, LLC, CORTEX  
MANAGEMENT, LLC, CORTEX  
SERVICES, LLC, CORTEX SOVEREIGN,  
LLC, TF INVESTMENT SERVICES, LLC,  
TF HOLDINGS, INC., AND JORA CREDIT  
HOLDINGS, LLC,**

**Third-Party Defendants.**

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**DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON  
DEFENDANTS' DECLARATORY JUDGMENT CLAIM AND CROSS-MOTION FOR  
SUMMARY JUDGMENT ON PLAINTIFFS' TURNOVER AND CONTRACT CLAIMS**

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Defendants Victory Park Capital Advisors, LLC (“Victory Park”), Victory Park Management, LLC (“VP Management”), GPL Servicing, Ltd. (“GPLS”), and GPL Servicing Agent, LLC (the “Collateral Agent,” and together with Victory Park, VP Management, and GPLS, “Defendants”), respectfully submit this *Motion for Partial Summary Judgment on Defendants’ Declaratory Judgment Claim and Cross-Motion for Summary Judgment on Plaintiffs’ Turnover and Contract Claims* (this “Cross-Motion”).

## **I. SUMMARY**

Pursuant to Rule 7056-1(c)(1)(A) of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”), Defendants submit the following statement concerning the elements of each of the Counts on which Defendants seek summary judgment. Defendants seek summary judgment on a portion of their declaratory judgment claim, Count V, set forth in Defendants’ Original Answer to Plaintiffs’ Verified Complaint, Affirmative Defense, Counterclaims, and Third Party Claims (the “Counterclaim”) (Dkt. 76). Defendants also seek summary judgment on Plaintiffs’ turnover claims in their Verified Complaint (the “Complaint”)—Counts I, II and IV—and two of Plaintiffs’ breach of contract claims—Counts XI and XII (Dkt. 1).

### **1. Counterclaim Count V Declaratory Judgment that the GPLS Funds<sup>2</sup> Are Not Property of the Estate.**

Pursuant to 28 U.S.C. § 2201, a declaratory judgment requires: (1) an actual controversy within this Court’s jurisdiction; and (2) the filing of an appropriate pleading by an interested party

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<sup>2</sup> Capitalized terms used above and not immediately defined have the meanings given to them elsewhere in *Defendants’ Brief In Support of Defendants’ Motion for Partial Summary Judgment on Defendants’ Declaratory Judgment Claim and Cross-Motion for Summary Judgment on Plaintiffs’ Turnover and Contract Claims*.

seeking a declaration of the rights and other legal relations, which shall have the force and effect of a final judgment or decree.

Pursuant to 11 U.S.C. § 105(a), this Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.”

2. Count I – Turnover under §542(a).

Plaintiffs bear the burden of establishing: (1) that the property is or was in the possession, custody or control of an entity during the pendency of the case, (2) that the property may be used by the trustee in accordance with § 363 or exempted by the debtor under § 522; and (3) that the property has more than inconsequential value or benefit to the estate.

3. Count II – Turnover under §542(b).

Plaintiffs bear the burden of establishing: (1) that the entity at issue qualifies as an “entity” as the term is used in §542(b); and (2) that the entity owes a debt that is property of the estate and that is matured, payable on demand, or payable on order.

4. Count IV – Turnover under §542(e).

Plaintiffs bear the burden of establishing: (1) an attorney, accountant, or other person holds recorded information; (2) the information is recorded; and (3) the information relates to the debtor’s property or financial affairs.

5. Count XI – Breach of Contract – AAA.

Plaintiffs bear the burden of establishing: (1) the existence of a valid contract; (2) that the party performed or tendered performance; (3) that the other party breached the contract; and (4) that the party was damaged as a result of the breach.

6. Count XII – Breach of Contract – Articles of Association.

Plaintiffs bear the burden of establishing: (1) the existence of a valid contract; (2) that the party performed or tendered performance; (3) that the other party breached the contract; and (4) that the party was damaged as a result of the breach.

Furthermore, pursuant to Local Rule 7056-1(c)(2), Defendants submit that the matters required under Local Rule 7056-1(c)(1)(B) and (C) are set forth in their Brief in Support of Defendants’ Motion for Partial Summary Judgment on Defendants’ Declaratory Judgment and Cross-Motion for Summary Judgment on Plaintiffs’ Turnover and Contract Claims (the “Brief”).

## **II. MOTION**

Pursuant to Local Rule 7007-1, Defendants are also filing contemporaneously with this Cross-Motion (a) a Brief; and (b) an Appendix in Support of Defendants’ Motion for Partial Summary Judgment for Declaratory Judgment and Cross-Motion for Summary Judgment on Plaintiffs’ Turnover and Contract Claims (the “Appendix”).

Defendants’ claim seeking a declaratory judgment that the disputed funds are not property of the estate, as well as Plaintiffs’ turnover claims and certain breach of contract claims are ripe for summary judgment because there is no genuine issue as to any material fact and Defendants are entitled to judgment as a matter of law. As set forth in the Brief, Plaintiffs cannot establish that the funds in question are property of the estate. Thus, summary judgment is appropriate on that portion of Defendants’ claim for declaratory judgment (Count V), as well on Count I under

section 542(a), Count II under section 542(b), and Count IV under section 542(e) of Plaintiffs' Complaint.

Furthermore, summary judgment in favor of Defendants is appropriate on Plaintiffs' breach of contract claims in Counts XI and XII of the Complaint because Plaintiffs cannot establish essential elements of their claims.

Notice of this Motion has been provided to Plaintiffs. Defendants submit that no other or further notice need be provided.

Defendants respectfully request that the Court enter summary judgment as to a portion of their declaratory judgment claim (Count V), as well as Counts I, II, IV, XI and XII of Plaintiffs' Verified Complaint in the form of the proposed order attached hereto as Exhibit A and grant to Defendants such other and further relief as the Court may deem proper.

Dated: January 9, 2018  
Dallas, Texas

/s/ Travis A. McRoberts

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*Counsel for Defendants/Counter-Plaintiffs/Third-  
Party Plaintiffs*

**CERTIFICATE OF SERVICE**

I certify that on the 9th day of January 2018, a true and correct copy of the foregoing was served on all counsel of record in this matter via CM/ECF.

/s/ Travis A. McRoberts

Travis A. McRoberts



**Exhibit A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re:</b>  <b>THINK FINANCE, LLC, <i>et al.</i>,</b>  <b>Debtors.<sup>1</sup></b>	<b>Chapter 11</b>  <b>Case No. 17-33964-11 (HDH)</b>  <b>(Jointly Administered)</b>
<b>THINK FINANCE, LLC, THINK FINANCE SPV, LLC, and TC ADMINISTRATIVE SERVICES, LLC,</b>  <b>Plaintiffs/Counter-Defendants,</b>  <b>v.</b>  <b>VICTORY PARK CAPITAL ADVISORS, LLC, VICTORY PARK MANAGEMENT,</b>	<b>Adv. Proc. No. 17-03106 (HDH)</b>

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Think Finance, LLC (3098), Think Finance SPV, LLC (4522), Financial U, LLC (1850), Tailwind Marketing, LLC (1602), TC Administrative Services, LLC (4558), TC Decision Sciences, LLC (8949), and TC Loan Service, LLC (3103).

**LLC, GPL SERVICING, LTD., GPL  
SERVICING AGENT, LLC,**

**Defendants/Counter-Plaintiffs/Third-Party  
Plaintiffs,**

**v.**

**CORTEX HOLDINGS, LLC, CORTEX  
MANAGEMENT, LLC, CORTEX  
SERVICES, LLC, CORTEX SOVEREIGN,  
LLC, TF INVESTMENT SERVICES, LLC,  
TF HOLDINGS, LLC, AND JORA CREDIT  
HOLDINGS, LLC,**

**Third-Party Defendants.**

**ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY  
JUDGMENT ON DEFENDANTS' DECLARATORY JUDGMENT CLAIM AND CROSS-  
MOTION FOR SUMMARY JUDGMENT ON PLAINTIFFS' TURNOVER AND  
CONTRACT CLAIMS**

ON THIS DAY the Court considered Defendants' Motion for Partial Summary Judgment on Defendants' Declaratory Judgment Claim and Cross-Motion for Summary Judgment on Plaintiffs' Turnover and Contract Claims (the "Cross-Motion") filed by Defendants Victory Park Capital Advisors, LLC, Victory Park Management, LLC, GPL Servicing, Ltd., GPL Servicing Agent, LLC (collectively, "Defendants") and the briefing in support thereof; any response from Plaintiffs Think Finance, LLC ("Think Finance"), Think Finance SPV, LLC ("Think SPV"), and TC Administrative Services, LLC ("TCAS"; and together with Think Finance and Think SPV, "Think" or "Plaintiffs"); and any arguments of counsel. Having considered the foregoing, the applicable record, and applicable law, the Court is of the opinion that the Motion should be GRANTED.

It is therefore ORDERED that the motion is GRANTED, and Defendants' claim seeking a declaratory judgment that the GPLS Funds are not property of the estate (Count V of Defendants'

Original Answer to Plaintiffs' Verified Complaint, Affirmative Defenses, Counterclaims, and Third-Party Claims (Dkt. 76)), as well as Counts I, II, IV, XI, and XII set forth in Plaintiffs' Verified Complaint (Dkt. 1) (the "Complaint") are entitled to summary judgment in Defendants' favor.

It is hereby

FOUND AND DETERMINED THAT:

- A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
- B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (E), and (O).
- C. Notice of the Cross-Motion was sufficient under the circumstances.
- D. Based on this Court's review of the pleadings, the affidavits submitted in connection with the Cross-Motion, discovery materials on file, and exhibits admitted into evidence in the course of this adversary proceeding, Defendants are entitled to a declaratory judgment that the GPLS Funds are not property of the estate. Further, there is no genuine issue as to any material fact in respect of the relief sought in Counts I, II, IV, XI and XII of the Complaint.

Accordingly, the Court having determined that Defendants are entitled to judgment as a matter of law based on the legal and factual bases set forth in the Cross-Motion and the arguments of counsel at the hearing on the Cross-Motion,

It is hereby ORDERED that:

- 1. The Cross-Motion is **GRANTED**.
- 2. Capitalized terms not defined herein shall have the meaning ascribed to them in the Cross-Motion.
- 3. Defendants are entitled to a declaratory judgment that the GPLS Funds are not property of the Debtors' estate.

4. Judgment shall enter in favor of Defendants on Counts I, II, IV, XI and XII of the Complaint.

5. The terms of this Order supersede the terms of the Agreed Order (Dkt. 22) and the Order Granting Preliminary Injunction (Dkt. 73) to the extent of any inconsistencies. In particular:

- Defendants' obligations under paragraphs 4 and 5 of Dkt. 73 and under paragraph 2 of Dkt. 22 shall no longer be enforced;
- Plaintiffs shall remit to Defendants the five million dollars (\$5,000,000.00) described in paragraph 7 of Dkt. 73 via wire transfer within five (5) business days after the entry of this Order; and
- The Escrow Agent, as defined in Dkt. 22, is ordered to transfer all funds remaining in the Escrow Account, as defined in Dkt. 22, to GPLS via wire transfer within five (5) business days after the entry of this Order.

6. This Order shall be effective immediately upon entry by the Court.

7. Defendants shall serve a copy of this Order on counsel to the Plaintiffs, by electronic mail and overnight mail, immediately upon its entry, and file a notice of such service with the Court.

\*\*\*END OF ORDER\*\*\*