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Counsel to the Debtors and Debtors in Possession

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

In re:

THINK FINANCE, LLC, *et al.*,

Debtors.¹

**DARLENE GIBBS, STEPHANIE
EDWARDS, LULA WILLIAMS, PATRICK
INSCHO, and LAWRENCE MWETHUKU,
*on behalf of themselves and all individuals
similarly situated,***

Plaintiffs,

v.

**THINK FINANCE, LLC; THINK FINANCE
SPV, LLC; TC ADMINISTRATIVE
SERVICES, LLC; TAILWIND
MARKETING, LLC; TC LOAN SERVICES,
LLC; and TC DECISION SCIENCES, LLC,**

Defendants.

Chapter 11

Case No. 17-33964 (HDH)

(Jointly Administered)

Adv. Pro. No. 17-03117 (HDH)

¹ 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).

MOTION TO DISMISS

Defendants Think Finance, LLC, Think Finance SPV, LLC, TC Administrative Services, LLC, Tailwind Marketing, LLC, TC Loan Services, LLC and TC Decision Sciences, LLC, (collectively, the “Debtor Defendants”), by and through their undersigned counsel, file this *Motion to Dismiss* (the “Motion”) the Complaint filed against the Debtor Defendants by Plaintiffs Darlene Gibbs, Stephanie Edwards, Lula Williams, Patrick Inscho, and Lawrence Mwethuku (collectively, the “Plaintiffs”).

Pursuant to Local Rule 7007-1, the Debtor Defendants are also filing contemporaneously with this Motion (a) a Brief in Support of Motion to Dismiss (the “Brief”), and (b) an Appendix in Support of Debtor Defendants’ Motion to Dismiss.

As further set forth in the Brief, the Debtor Defendants seek dismissal of the Complaint because the relief sought by Plaintiffs is not appropriately asserted in an adversary proceeding. Rule 7001 is clear in specifying the types of relief that are appropriately asserted through adversary proceedings and claims for monetary damages that arose pre-petition are not included. In these bankruptcy cases, especially, it is important that all claims of Consumer Borrowers (as defined in the Brief) be resolved through an efficient claims administration process, not pursuant to an inefficient dual-track with some claims litigated in adversary proceedings, while others are resolved through claims administration. Plaintiffs, each of whom has filed proofs of claim, will not be prejudiced by resolving their claims through the same claims administration process as other Consumer Borrowers. This Court already has approved a robust noticing and claims filing process for Consumer Borrower, the results of which the Debtors believe demonstrate its success. Allowing a select group of Consumer Borrowers to pursue their claims through adversary proceedings threatens to undermine that process.

Accordingly, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, made applicable by Rule 7041 of the Federal Rules of Bankruptcy Procedure, as well as this Court's inherent power to control its docket, the Debtors Defendants request that the Court dismiss the Complaint so that Plaintiffs' claims may be pursued through the claims administration process like the claims of all other Consumer Borrowers. Alternatively, in the event the Court does not dismiss the Complaint, the Debtor Defendants request that the Court stay this adversary proceeding until no earlier than the Governmental Unit Bar Date, which is April 23, 2018. The Debtors request that if the Complaint is not dismissed, such alternative stay apply to, among other things, the deadline for the Debtor Defendants to file a pleading responsive to the merits of the allegations in the Complaint, including a motion under Civil Rule 12(b).

WHEREFORE, the Debtor Defendants respectfully request that the Court enter the Order Granting Motion to Dismiss in the form of the proposed order attached hereto as Exhibit A or, in the alternative, stay the adversary proceeding until at least May 1, 2018, which is eight days following the Governmental Unite Bar Date, and grant to the Debtor Defendants such other and further relief as the Court may deem proper.

Dated: January 22, 2018

Respectfully submitted,

/s/ Gregory G. Hesse

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EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
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DALLAS DIVISION**

In re:

THINK FINANCE, LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 17-33964 (HDH)

(Jointly Administered)

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DARLENE GIBBS, STEPHANIE EDWARDS, LULA WILLIAMS, PATRICK INSCHO, and LAWRENCE MWETHUKU,
on behalf of themselves and all individuals similarly situated,

Plaintiffs,

v.

THINK FINANCE, LLC; THINK FINANCE SPV, LLC; TC ADMINISTRATIVE SERVICES, LLC; TAILWIND MARKETING, LLC; TC LOAN SERVICES, LLC; and TC DECISION SCIENCES, LLC,

Defendants.

Adv. Pro. No. 17-03117 (HDH)

ORDER GRANTING MOTION TO DISMISS

This matter came before the Court on the motion (the “Motion”) of Defendants Think Finance, LLC, Think Finance SPV, LLC, TC Administrative Services, LLC, Tailwind Marketing, LLC, TC Loan Services, LLC and TC Decision Sciences, LLC, (collectively, the “Debtor Defendants”), for dismissal of the Complaint filed by Darlene Gibbs, Stephanie Edwards, Lula Williams, Patrick Inscho, and Lawrence Mwethuku (collectively, the “Plaintiffs”). 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 Motion was sufficient under the circumstances.

Accordingly, the Court having determined that the Complaint should be dismissed based on the legal and factual bases set forth in the Motion and Brief and the arguments of counsel at the hearing on the Motion,

It is hereby ORDERED that:

1. The Motion is **GRANTED**.
2. The Complaint is hereby dismissed.
3. Dismissal of the Complaint shall be without prejudice to Plaintiffs' rights to seek allowance of their proofs of claim through the claims administration process and shall be without prejudice to the rights of the Debtor Defendants or other parties in interest to object to such proofs of claim.
4. Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.
5. This Order shall be effective immediately upon entry by the Court.
6. The Debtor 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###

Submitted by:

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