UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	Chapter 11
NNN 123 North Wacker, LLC, et al.	Case No. 13-39210 (JBS)
Debtors.	(Jointly administered)

REPLY OF TROY THOMAS CONCERNING MOTION TO DISMISS

I. PRELIMINARY STATEMENT

This is not the usual single-asset real estate bankruptcy, brought at the request and consent of the debtor's members, or even compelled by the actions of the debtor's mortgage lenders. The timing, circumstances and motivations of this bankruptcy filing should be reviewed carefully, particularly under the lens of the provisions of the operating agreements that demonstrate the Manager had no authority to file this proceeding and has trampled the rights and interests of the Members in doing so.

Debtors' Opposition to Thomas' Motion to Dismiss Chapter 11 Cases (the "Opposition") paints a one-sided and unrealistic picture of the Debtors' financial situation as of the Petition Date. Contrary to this misleading account, according to the loan histories, the Debtors' mortgage loans were not in payment default as of the Petition Date and the loan payments for August and September had been timely made. Notably, Debtors offer no support for the representation that the "TICs [had] failed to make the required payments for August and September" and were "in payment default." (Opp. at ¶2.)

Furthermore, the loans had more than two years remaining prior to their maturity date of October 1, 2015 and, thus, the TICs had time to continue negotiating with the servicer, which was the entity with the sole authority to modify the loans. Debtors do not, and cannot, claim that foreclosure was imminent or even that a notice of default had been sent to the borrowers and guarantors. In short, there was no urgency to filing the Petition and there was plenty of time for Debtor's Manager to have followed the appropriate corporate governance and voting requirements set forth in the Debtors' operating agreements.

Many questions come to the forefront regarding the propriety and motivations of those in control of the Debtors: Why did the Debtors' Manager – which is not an equity holder in the building and which had no economic interest in it at stake – swoop in to seize exclusive control of the negotiations with the Lenders just prior to the Loans being transferred to the special servicer for negotiations? Why didn't Debtors' Manager seek the input of Debtors' members prior to filing for bankruptcy or even provide advance notice that the Manager intended to file for bankruptcy? Why did the Manager, instead, choose to completely disenfranchise the members whose interests it was tasked with representing and who are overwhelmingly opposed to this bankruptcy proceeding and Debtors' actions herein? And why has the Manager cut the members and the other owners out of the negotiations with the Lenders?

The answer is evidenced in the RSA –which provides self-serving profit in the multiple millions of dollars. As set forth in the lengthy RSA, the Manager's affiliates (i) reap millions of dollars in additional fees; (ii) gain total control over the entire building as the new property manager, even though 3 years ago the other owners fired Sovereign as property manager of the building; (iii) are provided with a valuable equity opportunity with priority status and 15% priority return on the investment, whereas they previously held no equity interest, whatsoever;

and (iv) enjoy these benefits ahead of current equity holders at absolutely no cost to the Manager or its affiliates, as the more than $1.5 million of fees incurred to date will be paid as part of the restructuring.

II. THE INVESTMENT DOCUMENTS ESTABLISH THAT THOMAS IS A MEMBER OF TIC 0.

Debtors spend much of their brief criticizing Thomas for relying upon an unsigned version of the TIC 0 operating agreement and arguing that "[i]t is not clear what Thomas received from, or was told by, the promoters, Triple Net Properties, LLC ('Triple Net')." [1] (Opp., ¶11) To the contrary, it is clear what Thomas received and was told by Triple Net.

As Thomas states in his Supplemental Declaration, and as established by the Certificate of Limited Liability Company Interest (the "Certificate"), signed by Anthony W. Thompson as President of Triple Net, the Manager of TIC 0 at that time, Thomas received 5.3476 units of membership interests in "NNN 123 North Wacker, LLC" -- i.e. TIC 0; not TIC Member. (*See* Supplemental Declaration of Troy Thomas ("Thomas Supplemental Declaration" or "Thomas Supp. Decl."), attached hereto as Exhibit 1, at ¶ 5, Ex. A.) Consistent with the Certificate, Thomas also signed a Subscription Agreement, reflecting his ownership of membership interests in TIC 0. A true and complete copy of this Subscription Agreement is attached to the Thomas Supplemental Declaration as Exhibit B.[2]

As established by the governing investment documents, Thomas and other investors put their money into TIC 0 and became members of TIC 0, no matter what technical arguments the

[1] Since the operating agreement relied upon by Thomas was given to him at the time of his investment, and the Manager who launches this criticism has never informed Thomas or any other investor that a different operating agreement existed or controlled, Thomas' reliance is justified and understandable.

[2] Thomas was able to locate the corrected version of his subscription agreement and it is substituted for the one attached to his original Declaration. Thomas believes that Debtors have in their possession the Certificates and Subscription Agreements evidencing the investment of each of his 158 fellow members and that such documents would establish that their investments, too, were in TIC 0 – not TIC Member.

Debtors now raise about which agreement should control.[3] As an investor in TIC 0, Thomas had the expectation, based on Section 18.3 of the original LLC agreement, that his investment could not be placed into a bankruptcy proceeding without his approval. This was particularly important since the manager of TIC 0 was not an investor and had different economic interests than the members.

Notwithstanding, the Debtors claim that these members can be stripped of this protection by certain undated LLC agreements for TIC 0 and TIC Member which the members have never seen. They are not signed by the members, and Thomas had never been apprised of their existence. Indeed, Thomas never heard of TIC Member until Debtors filed their Petitions, and he never knew that the Manager contended that he was a member of TIC Member – not TIC 0 – until just a few weeks ago when Debtors filed their reply in support of the RSA. It is undisputed that the TIC Member entity existed at the time Thomas made his investment and, yet, every document provided to Thomas indicates that the membership units he holds are in TIC 0.

While the TIC 0 operating agreement as proffered by Debtors originally contemplated a single member – TIC Member – Debtors ignore the fact that it also expressly contemplates that TIC Member could "assign in whole or in part its Membership Interest in the Company" and/or that "[o]ne or more additional members of the Company may be admitted to the Company with the written consent of the Member." (Mikles Decl. (Doc. 175), Exhibit 2, § 8.01(a) and (c). While Debtors have no explanation for the circumstances that led to the issuance of TIC 0 interests to Thomas as evidenced by his Certificate and, to his knowledge, all other members,

[3] If, as Debtors argue, the purported Manager, NNN Realty Investors LLC, is the same entity as the former Manager – Triple Net Properties, LLC, who signed the Certificates and issued the PPM and Subscription Agreements – then that entity has committed fraud by overtly representing a structure and agreement that (the Manager argues) was not accurate or true when many of its members invested. NNN Realty cannot accept the benefits of its arguments that it stepped into the shoes of Triple Net without also facing the liabilities of doing so. For the affiliates of NNN Realty who control it to now reap millions of dollars of benefits through the proposed restructuring that it unilaterally negotiated to the exclusion of all other interest holders as a result of this fraud is clearly inequitable.

what is clear and indisputable is that the Certificate evidencing Thomas' investment and all other investment documents given to Thomas establish that he is a member of TIC 0.[4] As such, the requirements of the TIC 0 operating agreement must have been complied with in order for the Manager to have authority to file and proceed with this bankruptcy proceeding.

III. THE CLEAR AND UNAMBIGUOUS PROVISIONS OF THE TIC 0 OPERATING AGREEMENT ESTABLISH THAT DEBTORS' MANAGER HAD NO AUTHORITY TO FILE THE BANKRUPTCY PETITION.

Section 2.01(b) of the TIC 0 operating agreement (the version that Debtors' Manager claims controls here) clearly and unambiguously states that "so long as any obligation secured by the Loan remains outstanding and not discharged in full, the Member and the Company and any other Person on behalf of the Company shall have no authority, unless such action has been approved by the Independent Manager and the unanimous vote of the Members, to file a voluntary petition or otherwise initiate proceedings to have the Company adjudicated bankrupt or insolvent." (Mikles' Decl., Ex. 2 at §2.01(b).) It is undisputed that the Loan referenced in this provision remains outstanding and is evidenced by, at least, Note A. It is further undisputed that NNN Realty – the Manager of TIC 0 who initiated this bankruptcy proceeding – did not even take a vote of the TIC 0 members, much less obtain the unanimous support through ballots of Thomas and the other TIC 0 members. As such, the Manager's initiation of this proceeding violated this provision and exceeded the authority that the Manager was given under the operating agreement.

[4] The Debtor's speculate (without any evidentiary support) that the TIC Member entity must have been established at the insistence of the lenders. But Sovereign was not involved with either Debtor at the time and has no actual knowledge of the actual facts. As with the myriad other assertions made by the Debtors in the Opposition, no source is cited for this contention. Importantly, the current Loans -- Note A and Note B -- were originated on September 28, 2005 – almost two months before Thomas' investment was made and the investment documents were signed by Thomas and the then-acting Manager of TIC 0. Thus, if Thomas' membership interests were intended to be in TIC Member, his investment documents would have reflected that. As Thomas demonstrates, they do not.

The Debtors also fail to disclose that TIC Member was formed in September 2005, a month before Thomas invested in TIC 0 and two months before his membership certificate in TIC 0 was issued. A copy of the Good Standing Certificate and Certificate of Formation for TIC Member is attached hereto as Exhibit 2. If Thomas had actually invested in TIC Member as Debtors claim, the records should so indicate. However, the reverse is true - the records show that Thomas invested in and became a member of TIC 0, even after the formation of TIC Member. It is also noteworthy that Thomas had never been informed of the existence of TIC Member at any time prior to the bankruptcy filing.

Sovereign has obtained control over TIC 0 without member approval and filed a bankruptcy for it without even notifying the members, much less obtaining their approval. The only other person approving the bankruptcy filing was Neil S. Gibbons – a criminal defense attorney in San Diego who has no connection to the property or even to Chicago and who was installed by Sovereign as Independent Manager on the day before the petition date without any notification or approval by the members or anyone else. This is contrary to the operating agreement for TIC 0 and, based on the sound and applicable principles of the numerous cases cited by Thomas in his Motion (Mot. ¶¶ 29 and 30), the bankruptcy should be dismissed for failure to comply with the clear and unambiguous provisions of the TIC 0 operating agreement in failing to obtain the approval of all TIC 0 members prior to filing the Petition.

To avoid this result, Debtors rely on *In re Soundview Elite, Ltd*., 503 B.R. 571 (Bankr. S.D.N.Y. 2014) to argue that the court may reject a "formalistic approach" regarding compliance with corporate formalities. However, that case involved very different facts and circumstances. The court expressly found that "nobody who had the right to be heard was excluded" as a result of the failure to observe corporate formalities and that "no individual who was entitled to vote on

the authorization was deprived of the opportunity to do so, or even failed to do so." 503 B.R. at 578-79. The sole shareholders and directors each had voted in favor of the bankruptcy petition, albeit in the wrong corporate capacity.

Conversely, the Debtors here have attempted to disenfranchise the members, who invested on the basis that they had the "right to be heard" and were "entitled to vote" but do not support the filing. Instead, control over the Debtors has been hijacked by a manager that is not an investor, that has never been approved by the investors and that is acting contrary to the wishes of its own members and the other TIC investors. The manager's affiliate, Sovereign, is attempting to secure through the RSA significant economic interests and an equity interest in the property.

Nor does the *In re Am. Globus Corp*. decision, 195 B.R. 263 (Bankr. S.D.N.Y. 1996) support the Debtors' position here. Although that case involved a shareholder's attempt to dismiss a corporation's chapter 11 petition for failing to obtain unanimous shareholder consent, the court found that the shareholder that was attempting to insist upon strict compliance with corporate formalities had acted in contravention of them and had apparently received avoidable transfers, so that its interests were adverse to those of the debtor and its creditors. 195 B.R. at 265-66. Thomas and the other members do not hold positions adverse to the estate. Given the near total lack of unsecured creditors, it is the members' interests that the Manager should be attempting to serve. Instead, the Debtors are attempting to impose this case and the RSA upon the members against their wishes. As such, Debtors' criticism of the principles espoused in the cases Thomas cites are neither supported by the cases they cite, nor well-based under a fair and close reading of Thomas' cases. Under the principles espoused in the cases cited by Thomas and

long-standing governance principles, this proceeding should be dismissed and the control over negotiations with the lenders returned to the members of TIC 0 and the other TIC borrowers.

Even assuming that some or all of the investors are members of TIC Member, there was a lack of compliance with the required member approval of the filing. The Debtors claim, without evidentiary basis, that this member approval does not apply because a prior mezzanine loan that had been in place was repaid. Although the Debtors provide almost no details and are silent regarding the timing, the mezzanine loan was apparently paid off in September 2005 by the existing B Note held by Northstar. Therefore, at the time Thomas invested and became a member, that prior loan had no longer existed for at least a month and the Northstar B Note was the new junior secured debt.

The TIC Member agreement, in Section 7.4.16, requires unanimous member approval for a bankruptcy filing while mezzanine debt is outstanding. The Debtors' interpretation of it eliminates any member control over a bankruptcy filing, even though this right was included in the documents on which the members made their investment decisions. The refinancing of the original mezzanine loan through the Northstar B Note brings such debt, which is secured by the Property, within the definition of "Mezzanine Loan" in the TIC Member operating agreement. As such, even if certain members bought ownership interests in TIC Member – rather than TIC 0 – the Northstar B Note triggers the requirement for unanimous member approval for a bankruptcy filing, which clearly was not even attempted, much less achieved, here.

IV. THOMAS HAS ESTABLISHED THAT DISMISSAL IS WARRANTED

While it is true that Thomas bears the burden of persuasion on the Motion to Dismiss, that burden does not negate Debtors' obligation to produce evidence in opposition to the Motion. As *In re Bovino*, 496 B.R. 492 (Bankr. N.D. Ill. 2013) demonstrates – a case cited by Debtors --

once the movant satisfies its initial burden to show cause, the burden shifts to the debtor to establish one of the two exceptions in section 1112(b). 496 B.R. at 499 (relying on *In re Draiman*, 450 B.R. 777 (Bankr. N.D. Ill. 2011).)

Thomas has established – through his investment documents and the plain and unambiguous provisions of the operating agreement governing the entity set forth in those investment documents – that grounds exist to dismiss this case. However, Debtors provide no "evidence" that would dispute the case established by Thomas. Debtors offer no evidentiary support to rebut Thomas' documents evidencing his membership in TIC 0, or to support their claim that Thomas and the other investors are members in some other entity that was formed prior to their investment, but reflected nowhere in their investment documents.

In an attempt to avoid this compulsory result, Debtors attempt to distract from it by invoking this Court's equitable powers under a theory of laches. Debtors argue that the Motion to Dismiss was filed inexcusably late and that Thomas indefensibly sat on his rights and, as such, his rights should be revoked.

The argument that the rights of the TIC 0 members should be revoked is becoming a common theme of Debtors and their Manager. First, Debtors argue that members' rights under the operating agreement governing the entity in which they invested should be revoked or ignored. Next Debtors argue that Thomas did not act to dismiss this proceeding quickly enough and that this alleged delay was inexcusable enough to further deprive him of his legal rights. The cases Debtors cite illustrate the lack of merit to this argument.

For instance, in *In re Shea & Gould*, 214 B.R. 739 (Bankr. S.D.N.Y. 1997), the movant waited 19 months to file the motion, only after an amended plan had been negotiated by the debtor with all interested parties and filed for the court's approval. As such, the court found that

there would be prejudice to the estate and creditors if the bankruptcy was dismissed, most significantly because it would result in a race to the courthouse by the many creditors of the debtor. 214 B.R. at 749-50. In contrast here, Thomas' motion was filed just six months after the bankruptcy was commenced, only after he had time to communicate with his fellow members and investigate the actions of Debtors and their Manager, and within weeks of retaining counsel and first participating in this proceeding. Moreover, there are only two main creditors at issue here, both of whose rights are secured and will have priority in any distribution from the property. Thus there will be no race to the courthouse by competing creditors.

In *Mirant Corp*., the motion was filed by creditors who had been actively involved in the bankruptcy proceedings for more than 15 months. *In re Mirant Corp*., Case No. 03–46590, 2005 WL 2148362, at *11-12 (Bankr. N.D. Tex. Jan. 26, 2005). Here, Debtors fail to carry their burden by establishing when Thomas first learned of the bankruptcy filing, much less that his rights had been trampled by the Manager who was purportedly safeguarding his investment. Indeed, Thomas did not even know about the operating agreements that Debtors claim control until Debtors attached them to their reply in support of the RSA, which was filed just four days before Thomas filed the Motion. Thomas promptly investigated the claim of the Debtors that such agreements control, as well as the assertion that, contrary to his understanding and every document he had in his possession, he allegedly was a member of an entity that he never knew existed until the bankruptcy – TIC Member. Debtors have failed to demonstrate any delay in Thomas' assertion of his rights, much less inexcusable delay.

In re I.D. Craig Service Corp, 118 B.R 335 (Bankr. W.D. Pa. 1990) is likewise readily distinguishable. In that case, the board of directors of the company waited more than one year to move to dismiss, notwithstanding that the board fully knew of the facts supporting the motion at

the time of filing, had hired counsel and participated in hearings, and had similarly participated in the formulation of a plan of reorganization. Again, none of those facts are present here. Thomas filed the motion within one month of retaining counsel and first participating in the bankruptcy, and no plan has been filed by the Debtors.

The potential relevance of *Geyen* and *In re Bohart* starts and ends with the word "laches." In fact, in both of those cases, the appellate court determined that the delay, which was much longer and egregious than any delay here, did not support the lower court's finding that the claims were barred by laches. *Geyen v. Marsh*, 775 F.2d 1303, 1310 (5th Cir. 1985); *Mut. Life Ins. Co. of N.Y. v. Bohart (In re Bohart)*, 743 F.2d 313, 328 (5th Cir. 1984).

Debtors fail to identify any facts that would suggest that any delay exists here; much less that any such minimal delay was inexcusable or prejudiced any party as a result. Thus, Debtors have failed to carry their burden to demonstrate that Thomas' Motion is barred by laches.

V. DEBTORS' PLEA FOR THE COURT TO IGNORE THE GOVERNING CONTRACTUAL PROVISIONS AND EXERCISE DISCRETION TO DENY THE MOTION TO DISMISS IS UNAVAILING.

Debtors argue that this Court should ignore the clear violations of the operating agreements and abuse of power by the Manager because Thomas' investment allegedly has "no value" and his argument regarding his ownership interest is a "tangential issue." (Opp. At 13, ¶ 34.) Boldly, this argument is made by an entity that does not now and never has had any equity in the building, that purports to control a small fraction of the ownership in the building, and that is acting contrary to the overwhelming majority of the members the Manager purports to represent, as well as against the wishes of the other owners of the building.

Debtors also argue that Thomas has somehow acted improperly by communicating with his fellow investors, characterizing his communications as "lobbying the equity holders hard and

inundating them with emails and phone calls." (Opp. at 2, FN 2.) Thomas and the representatives of the other TICs are simply attempting to share information, which the Manager of the Debtors has repeatedly and consistently failed to do, and keep the equity holders apprised of the status of this proceeding and their investments. In fact, several of Debtors' members have contacted Thomas in an attempt to get information as to the bankruptcy, sending or copying him on emails expressing dissatisfaction and distrust based on information and inundating communications they have received from the Manager. These TIC 0 members express concerns that Debtors' Manager is not providing a complete or accurate account of these proceedings. (Thomas Supp. Decl., ¶ 8, Ex. C.)

Moreover, Debtors' contention that that they contacted their members prior to the bankruptcy filing, and that over 60% of the Debtors' members gave "verbal affirmation to the filing of these cases," (Opp. at 2, fn.2), is unsupported, and based on information obtained by Thomas, blatantly untrue. Indeed, when the list of Debtors' members finally was made public through the bankruptcy filing, and the members were polled as to whether they were informed of the bankruptcy and supported it, approximately 63% of them documented the fact that they were not informed and that they opposed the bankruptcy. (See Thomas Supp. Decl., ¶7.)

Also untrue is Debtors' contention that the result of the recent ballot that Debtors' Manager sent out to the Debtors' members seeking post-hoc ratification of their unauthorized bankruptcy filing was "inconclusive." Contrary to Debtors' claim, those results establish that of the approximately 64% of members who returned the ballot in the three-day turn-around provided by Debtors, the members rejected the Manager's actions by more than a two to one margin. Of the total of 159 members, 44.6% voted <u>against</u> the bankruptcy filing and the

unauthorized replacement (twice) of the Independent Manager; while just over 19% voted in favor of the Manager's actions. (Thomas Supp. Decl. ¶¶ 11, 12, Exs. D and E.)

Neither the Manager nor any of its affiliates have invested any money in this property, yet it is the Manager's affiliates that will be significantly enriched under the proposed restructuring, even though they are neither creditors nor equity holders. The owner and affiliates of Debtors' Manager will reap millions of dollars in additional fees, gain total control over the building as the property manager; and have the right to equity with priority repayment and a 15% priority return ahead of current equity holders. They achieve this through the RSA at absolutely no cost to themselves, as the more than $1.5 million of fees will be paid as part of the restructuring. And, as icing on this well-paid cake, the Manager seeks a release from all equity holders for all of its prior actions. If any party's motives in this proceeding should be questioned, it is those of the Manager; not Thomas, who is simply attempting to exercise the rights he was given as part of his investment.

Meanwhile, under the proposed restructuring, the current investors receive nothing of value -- member interests in yet another LLC that they have not approved and which interests are highly unlikely to have value after all the other priority obligations, fees and charges are paid – including the fees and bonuses to be received by the Manager's affiliates. Put simply, the TIC owners would rather have control of negotiations with the lenders and risk foreclosure than lose important rights they were promised at the time of their investment and wait helplessly in hope of getting some nominal portion of their investment returned years down the line.

Finally, Debtors argue that this Court should exercise its discretion and deny the Motion to Dismiss because "dismissal would contravene the 'best interests of creditors and the estate.'" (Opp. at ¶ 14.) Debtors are wrong – the RSA does not benefit the creditors or the estate. Apart

from the lenders, who debt is secured by the Property, the Debtors have few other creditors. The RSA serves only the personal interests of the acting Manager and its affiliates, and seeks to enrich the Manager's affiliates, and the Note B holder, NorthStar, at the expense of the members and the other TICs. Thomas has satisfied his burden to establish that the purported Manager of the Debtors exceeded its corporate authority in filing the bankruptcy petitions and, as a result Thomas' Motion to Dismiss should be granted.

VI. ISSUES OF DISPUTED FACT

1. Whether the Loans outstanding on the Property were in default as of the Petition Date and the status of negotiations between the Lenders and representatives of the TIC borrowers at that time;

2. Whether the Manager of the Debtors has provided sufficient, timely and accurate information to Debtors' members;

3. The background and circumstances surrounding the creation of TIC Member;

4. Whether the operating agreements proffered by Debtors are the controlling agreements;

5. Whether the documents provided to the members at time of investment or thereafter establish their membership interest in TIC 0;

6. Did the members ever approve or ratify the two-tier ownership structure for the Property set forth by the Debtors;

7. Whether the Manager is duly authorized to act as Manager in place of Triple Net Properties, LLC;

8. Whether the loans referenced in Section 2.01 of the TIC 0 operating agreement and Section 7.4.16 of the TIC Member operating agreement still exist under the respective definitions in each agreement, thereby triggering the unanimous approval requirement for Debtors' bankruptcy filing;

9. Whether Thomas timely asserted his rights as a member of TIC 0 in filing his motion to dismiss on March 28, 2014;

10. Whether Debtors' Manager contacted members prior to the bankruptcy filing and, if so, what those communications revealed regarding the members' position regarding the bankruptcy filing;

11. The members disapproval of the bankruptcy filing and the actions taken by the manager;

12. Whether dismissal will negatively impact any creditor of the Debtors' estates.

CONCLUSION

The Debtors spend considerable effort attempting to ensure that the members have no rights or say in how their investments are dealt with. Instead, the Manager is controlling the Debtors to serve its own interests and those of its insiders and affiliates – not for the benefit of the members or even of the estate. There is no reason that the members should be deprived of all control over their investments, including the purported change in the entity structure, the ability to approve a bankruptcy filing and the ability to control a change in the fiduciary for the investors. The unauthorized actions of Debtors' Manager should not be countenanced by this Court. Thomas' Motion to Dismiss should be granted.

Respectfully submitted,

TROY THOMAS

By: /s/ Stephen T. Bobo
One of his attorneys

Stephen T. Bobo
Theresa Davis
Reed Smith LLP
10 S. Wacker Drive, 40th Flr.
Chicago, IL 60606
312/207-1000
312/207-6400 facsimile
sbobo@reedsmith.com
tdavis@reedsmith.com

CERTIFICATE OF SERVICE

I, Stephen T. Bobo, an attorney, do hereby certify that on April 14, 2014, I caused a copy of the foregoing **REPLY OF TROY THOMAS CONCERNING MOTION TO DISMISS** to be filed electronically and served by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

/s/ Stephen T. Bobo
Stephen T. Bobo