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VIA ELECTRONIC FILING

Scott S. Harris, Esq.
Clerk of the Court
Supreme Court of the United States
1 First Street N.E.
Washington, D.C. 20543

Re: *Mission Products Holdings, Inc. v. Tempnology, LLC*, No. 17-1657

Dear Mr. Harris:

I write on behalf of Petitioner Mission Products Holdings, Inc. ("Mission") in response to the letter to the Court from Respondent Tempnology, LLC, n/k/a Old Cold, LLC ("Tempnology"), docketed on October 24, 2018. Tempnology's letter discusses an order entered in its bankruptcy case on September 19, 2018—more than a month ago—granting relief from the automatic stay to a putative secured creditor. *See* Dkt. 552, *In re Old Cold, LLC*, No. 15-11400 (Bankr. D.N.H.) (the "Order").[1] Tempnology vaguely suggests that the Order "may … have some bearing on this Court's deliberation on whether to grant or deny the Petition" in this matter, and asserts that, in light of the Order, "there are … no assets in the bankruptcy estate" to satisfy Mission's claim. Resp. Letter at 2. While Tempnology does not go so far as to argue that the Order renders this case moot, that is apparently what it is attempting to imply.

The Order does not remotely moot the petition for certiorari. As an initial matter, Mission has appealed the Order, which has been stayed pending this Court's consideration of Mission's cert petition. Tempnology's assertion that there are no assets in the bankruptcy estate to satisfy Mission's claim is simply false. But even if it were true, that would not moot this case.

The Order granted relief from the automatic stay to Schleicher & Stebbins Hotels L.L.C. ("S&S"), Tempnology's pre-petition secured lender and the buyer of its assets, permitting S&S to exercise its purported security interest in the estate's remaining property, which includes over $500,000 in cash. Mission opposed that relief, arguing that S&S has no interest in the estate's remaining assets, and that Mission would be entitled to a distribution from those assets on its claim for the post-rejection breach of its license if this Court were to grant Mission's petition and rule in its favor. *See* Dkt. 528 at 15-16. Accordingly, Mission has appealed the Order. *See* Dkt. 555. The bankruptcy court has stayed the Order through November 5, 2018, without prejudice to

[1] Unless otherwise noted, all docket numbers refer to the docket of the Bankruptcy Court for the District of New Hampshire in *In re Old Cold, LLC*, No. 15-11400.

Mission's right to seek to extend the stay if this Court grants Mission's petition for certiorari. Dkt. 568; *see also* Consent Mot. for Stay, Dkt. 567.

If Mission prevails in its appeal of the Order and it is determined that S&S has no valid lien on the remaining estate assets, those assets will remain available to satisfy Mission's damages claim. And even if the stay of the Order expired, and S&S were able to seize the estate's funds, it could be required to return those funds if, on appeal, it is determined that S&S never had a valid lien.

Moreover, even if the assets now in the estate became unavailable to satisfy Mission's claim, Mission would still have other potential sources of recovery. If Mission is ultimately determined to have a valid administrative-expense claim for damages for the post-rejection violations of its license rights, it could seek an order requiring other holders of administrative claims (including the estate's professionals) to disgorge the amounts paid to them to permit a pro rata distribution among all administrative claimants, including Mission. In addition, Mission has asserted an independent claim against S&S for damages for the post-rejection violations of its license rights. *See* Notice of Removal and Complaint, Dkt. 1-2, *Mission Product Holdings, Inc. v. Schleicher & Stebbins Hotels, L.L.C.*, No. 18-01026 (Bankr. D.N.H.). Those proceedings, too, have been stayed pending the resolution of Mission's petition for certiorari. Should this Court grant certiorari and rule in Mission's favor, its suit against S&S would be an alternative avenue for recovery.

Finally, even if Tempnology were correct that there might ultimately be no assets available to satisfy Mission's claim, this case would still not be moot. It is well established that the possibility that a defendant might lack sufficient assets to satisfy a plaintiff's claim does not render a live controversy moot where there is even a slim prospect of recovery. *See Chafin v. Chafin*, 568 U.S. 165, 175-176 (2013) ("[U]ncertainty" in the "[e]nforcement of an order" does "not typically render cases moot"; "the fact that a defendant is insolvent does not moot a claim for damages."); 13C Wright & Miller, *Federal Practice and Procedure* § 3533.3 (3d ed. 2018) (explaining that the "assertion of a viable claim for damages forestalls mootness … even though the defendant does not seem able to pay any portion of the damages claimed," and noting that "mootness may be defeated" by even a "slender prospect" of recovery).

In short, Tempnology's eleventh-hour submission is irrelevant to any issue in this case. For the reasons set forth in the petition and the reply brief, the petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Danielle Spinelli

Danielle Spinelli

cc: All counsel of record