

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

GRACEWAY PHARMACEUTICALS, LLC,
et al.,¹

Debtors.

Chapter 11

Case No. 11-13036 (____)

Joint Administration Pending

**MOTION OF THE DEBTORS FOR AN ORDER UNDER 11 U.S.C. §§ 345, 363, 364,
503(B)(1), 553, 1107 AND 1108 AND LOCAL RULE 2015-2 (I) AUTHORIZING
CONTINUED USE OF EXISTING (A) BANK ACCOUNTS, (B) CASH MANAGEMENT
SYSTEM, AND (C) BUSINESS FORMS AND CHECKS; AND (II) WAIVING
INVESTMENT AND DEPOSIT REQUIREMENTS OF 11 U.S.C. § 345(B)**

(“Cash Management Motion”)

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) file this motion (the “Motion”) for entry of an Order (the “Order”), in substantially the form attached hereto as Exhibit A, (I) authorizing the continued use of the Debtors’ existing (a) bank accounts, (b) cash management system, and (c) business forms and checks; and (II) waiving the investment and deposit requirements of 11 U.S.C. § 345(b). In support hereof, the Debtors respectfully state:²

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

² The facts and circumstances supporting this Motion are set forth in the Declaration of Gregory C. Jones in Support of Chapter 11 Petitions and First Day Motions (the “First Day Declaration”), filed on the Petition Date (defined below).

This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are Sections 105, 345, 363, 364, 503(b)(1), 553, 1107, and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “**Bankruptcy Code**”), Rule 2015 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

Background

3. On the date hereof (the “**Petition Date**”), each of the Debtors filed a petition with this Court under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no committees have been appointed or designated. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of these Chapter 11 Cases.

4. A description of the Debtors’ businesses, the reasons for commencing these Chapter 11 Cases, and the relief sought from this Court to allow for a smooth transition into chapter 11 (including the facts and circumstances supporting this Motion) are set forth in the First Day Declaration filed contemporaneously with this Motion.

Relief Requested

5. By this Motion, the Debtors seek an order (I) authorizing the continued and regular use of existing (a) bank accounts, (b) cash management system, and (c) business forms and checks; and (II) waiving the investment and deposit requirements of Section 345(b) of the Bankruptcy Code. The Debtors also request that the Court (a) authorize and direct all banks with which the Debtors maintain the Existing Bank Accounts to continue to maintain, service, and administer such accounts; (b) waive any applicable requirement to establish separate accounts for cash collateral and/or tax payments; and (c) authorize third-party payroll and benefits administrators and providers to prepare and issue checks on behalf of the Debtors. As of the Petition Date the Debtors estimate that they have approximately \$4.5 million in available cash on hand.

Basis for Relief

6. The Office of the United States Trustee (the "**U.S. Trustee**") has established certain operating guidelines for debtors-in-possession in order to supervise the administration of chapter 11 cases. These guidelines require chapter 11 debtors to, among other things: (i) close all existing bank accounts and open new debtor-in-possession bank accounts; (ii) establish one debtor-in-possession account for all estate monies required for the payment of taxes, including payroll taxes; (iii) maintain a separate debtor-in-possession account for cash collateral; and (iv) obtain checks for all debtor-in-possession accounts which bear the designation "Debtor-In-Possession," the bankruptcy case number and the type of accounts. These requirements are designed to draw a clear line of demarcation between prepetition and postpetition transactions and operations and prevent the inadvertent postpetition payment of prepetition claims. As set

forth below, the Debtors submit that enforcing certain of these requirements would disrupt the Debtors' operations and impose a financial burden on the estate.

A. The Debtors Should Be Granted Authority to Maintain Their Existing Bank Accounts

7. On the Petition Date, in the ordinary course of business, the Debtors maintained an aggregate of six active bank accounts and three inactive bank accounts (the "Existing Bank Accounts") held at Wells Fargo Bank, N.A. ("Wells Fargo").³ The Existing Bank Accounts are maintained, among other things, as general depository accounts, zero-balance controlled disbursement and payroll accounts, commercial and business checking accounts, and short-term deposit accounts. All of these accounts are denominated in U.S. currency, and the Debtors hold no accounts outside of the United States.

8. The Debtors routinely deposit, withdraw, and otherwise transfer funds to, from, and between the Existing Bank Accounts by various methods including checks, automated clearing house ("ACH") transactions, electronic funds transfers ("EFT") and direct deposits. Each month the Debtors pay on average, hundreds of invoices by check, wire and ACH transfers from the Existing Bank Accounts. The Debtors believe that Wells Fargo is a financially stable banking institution. Wells Fargo is a member of the Federal Deposit Insurance Corporation ("FDIC") which provides government-guaranteed deposit protection insurance.

9. The Existing Bank Accounts are part of a carefully constructed and complex, automated cash management system (described more fully below) that ensures the Debtors' ability to efficiently monitor and control all of their cash receipts and disbursements. Closing the existing Bank Accounts and opening new accounts would inevitably disrupt the Debtors'

³ A list of the Existing Bank Accounts is attached as Exhibit B hereto. Five of the bank accounts are linked and four are stand-alone accounts, as further elaborated below.

business and result in delays impeding the Debtors' ability to transition smoothly into chapter 11, and would likewise jeopardize the Debtors' efforts to successfully maximize value for their estates and creditors.

10. It is thus essential that the Debtors be permitted to continue to maintain their Existing Bank Accounts and, if necessary, open new accounts (together with the Existing Bank Accounts, the "**Bank Accounts**"), wherever they are needed, irrespective of whether such banks are designated depositories in the District of Delaware; provided however, that any new bank account opened by the Debtors shall be with a bank that is insured by the FDIC and organized under the laws of the United States of America or any state therein (such banks, together with Wells Fargo, the "**Banks**") and shall be designated a "debtor-in-possession" or "DIP" account by the respective bank. Such Bank Accounts should be renamed "debtor-in-possession" accounts with the Petition Date included in the account title. The Debtors will provide notice to the U.S. Trustee, the administrative agent for the lenders under the Debtors' prepetition first lien credit facility (the "**First Lien Administrative Agent**") and any committee prior to opening any new bank accounts.

11. The Debtors thus request that the Bank Accounts be deemed to be debtor-in-possession accounts, and that their maintenance and continued use, in the same manner and with the same account numbers, styles, and document forms as those employed during the prepetition period, be authorized. In addition, the Debtors request that the existing deposit agreements currently in effect between the Debtors and Wells Fargo continue to remain in effect, that the Banks be authorized to deduct from the appropriate Bank Accounts the Banks' fees and expenses (the "**Bank Fees and Expenses**"), that no liens on any Bank Accounts take priority over the Bank Fees and Expenses except as set forth in the deposit agreements between the Debtors and

the Banks, and that the Debtors be required to maintain sufficient balances in the Bank Accounts to cover such fees and expenses. The Debtors represent that if the relief requested in this Motion is granted, they will not pay, and each of the Banks will be directed not to pay, any debts incurred before the Petition Date, other than as authorized by this Court.

12. Courts in this and other districts have recognized that, in complex chapter 11 cases, strict enforcement of the requirement that a debtor-in-possession close its bank accounts does not serve the rehabilitative process of chapter 11 and have therefore waived this requirement and replaced it with more effective procedures similar to those requested herein. See e.g., In re DSI Holdings, Inc., Case No. 11-11941 (KJC) (Bankr. D. Del. Jun. 26, 2011); In re Perkins & Marie Callender's Inc., Case No. 11-11795 (Bankr. D. Del. Jun. 13, 2011); In re Accuride Corp., Case No. 09-13449 (BLS) (Bankr. D. Del. Oct. 8, 2009); In re Eddie Bauer Holdings, Inc., Case No. 09-12099 (MFW) (Bankr. D. Del. June 17, 2009); In re Hayes Lemmerz Int'l, Inc., Case No. 09-11655 (MFW) (Bankr. D. Del. May 13, 2009); In re Goody's Family Clothing, Inc., Case No. 08- 11133 (CSS) (Bankr. D. Del. June 9, 2008); In re Am. Home Mortg. Holdings, Inc., Case No. 07-11047 (CSS) (Bankr. D. Del. Aug. 7, 2007); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. June 12, 2007); In re New Century TRS Holdings, Inc., Case No. 07-10416 (KJC) (Bankr. D. Del. Apr. 11, 2007).

B. The Debtors Should be Authorized to Continue to Use Their Existing Cash Management System

13. In order to ensure an orderly transition into chapter 11, the Debtors also request authority to continue to use their existing cash management system as required by the Debtors in the ordinary course of business. Prior to the commencement of these cases, the Debtors used a complex, automated and integrated, centralized cash management system to collect, transfer, and

disburse funds generated by their operations and to accurately record all such transactions as they are made (such system, as existing, the “**Cash Management System**”).⁴

14. The Cash Management System is managed primarily by the Debtors’ financial and treasury personnel at their headquarters in Bristol, Tennessee. The Cash Management System consists of the Existing Bank Accounts that are specifically tailored to meet the Debtors’ operating needs, enabling the Debtors to centrally control and monitor corporate funds, invest excess cash, track their cash availability, comply with the requirements of their financing agreements, reduce administrative expenses and obtain accurate account balances and presentment information. The flow of funds through the Cash Management System is described below.

15. **Existing Bank Accounts:** In the ordinary course of business, the Debtors maintain an aggregate of five linked accounts at Wells Fargo, including one general depository account, one payroll zero balance account, one controlled disbursement zero-balance account, one lockbox account and one inactive zero-balance account.

- a) The Debtors’ primary operating account is held at Wells Fargo in the name of Graceway Pharmaceuticals, LLC (Account No. xxxxxxxxx6558) (the “**General Depository Account**”). The General Depository Account is the sole concentration account for the Debtors’ Cash Management System and handles both the concentration of deposits as well as directing the majority of cash disbursements. The General Depository Account collects all customer lockbox receipts, wires, bank deposits, miscellaneous wires, rebates and reimbursements as well as certain wire transfers made to the Debtors by their non-debtor affiliated entities (the “**Non-Debtor Affiliated Entities**”).⁵ The Debtors’ disbursements automatically flow from the General Depository Account to the Accounts Payable Account (as defined below) and Payroll Account (as defined below) to cover

⁴ A flowchart generally outlining the Debtors’ cash management system is attached hereto as Exhibit C.

⁵ Non-debtor affiliated entities include all of Debtors’ foreign entities and shell entities, including Graceway Canada Company (Canada); Graceway Costa Rica SA, a shell company (Costa Rica); Graceway Honduras SA, a shell company (Honduras); Graceway Guatemala SA, a shell company (Guatemala). The Debtors shall not make any outgoing payments to these Non-Debtor Affiliated Entities during the administration of these cases aside from any payments to Graceway Canada Company that may be contemplated under a DIP order.

transactions processed. Such settlements occur on a daily basis. Wire transfers are also made directly from the General Depository Account for outgoing payments on behalf of the Debtors, including interest payments, EFT's to certain suppliers and manufacturers as well as payments to international vendors. Funds from the General Depository Account may also be used to fund one currently inactive zero-balance account. The General Depository Account also accumulates excess cash deposits.

- b) The Debtors maintain a zero-balance payroll account at Wells Fargo in the name of Graceway Pharmaceuticals, LLC (Account No. xxxxxxxx3816) (the "**Payroll Account**"). The Payroll Account is used as the source for all wage disbursements to employees, payment of payroll taxes, and payment of employee contributions to 401k, health and other benefit plans. The Payroll Account is funded directly from the General Depository Account through planned deposits based on payroll obligations.
- c) The Debtors maintain one zero-balance controlled disbursement account at Wells Fargo in the name Graceway Pharmaceuticals, LLC (Account No. xxxxxxxx9153) (the "**Accounts Payable Account**"). The Accounts Payable Account is funded from the General Depository Account and is used to make payments to vendors, tax remittances and other check disbursements.
- d) The Debtors maintain a lockbox account at Wells Fargo, held in the name of Graceway Pharmaceuticals, LLC (Account No., xx3799) (the "**Lockbox Account**"). The Lockbox Account receives funds directly from customers and other parties who hold accounts payable to the Debtors. All funds in the Lockbox Account are swept on a daily basis directly into the General Depository Account.
- e) The Debtors maintain one inactive zero-balance account at Wells Fargo in the name of Graceway Canada Holdings, Inc. (Account No. xxxxxxxx3926) (the "**GW Canada Holdings Account**"). The GW Canada Holdings Account is maintained by the Debtors to receive payments or distributions from Graceway Canada Company. When in use, the GW Canada Holdings Account may also receive funding from the General Depository Account. The GW Canada Holdings Account is not currently in use.

16. **Stand-alone accounts:** In the ordinary course of business, the Debtors maintain four additional stand-alone accounts, including one commercial checking account, one time deposit account and two inactive zero-balance accounts.

- a) The Debtors operate a standalone commercial checking account at Wells

Fargo in the name of Graceway International, Inc. (Account No. xxxxxxxxx9537) (the “**International Checking Account**”). The International Checking Account receives wires from customers in Latin America and South America and is used to make wire payments to vendors and intercompany transfers. Checks drawn on this account are also used to make certain payments for international freight and other charges.

- b) The Debtors hold a time deposit account at Wells Fargo in the name of Chester Valley Pharmaceuticals, LLC (Account No. xxxxxxxxx4878) (the “**Time Deposit Account**”). The Time Deposit Account is primarily used to hold a certificate of deposit required by Enterprise Fleet Leasing to support the large fleet of leased vehicles for the Debtors’ national sales team.
- c) The Debtors hold an account at Wells Fargo in the name of Graceway Holdings, LLC (Account No. xxxxxxxxx3939) (the “**GW Holdings Account**”) that is currently inactive and has a zero balance.
- d) The Debtors also hold an additional account at Wells Fargo in the name of Chester Valley Pharmaceuticals, LLC (Account No. xxxxxxxxx3984) (the “**Chester Valley Account**”) that is also inactive and also has a zero balance.

17. The Cash Management System is complex, automated and computerized, and includes accounting controls needed to enable the Debtors, as well as creditors and the Court, if necessary, to trace funds through the system and ensure that all transactions are adequately documented and readily ascertainable. When manual transactions are made in the system, the Debtors closely monitor the accounts to ensure the transactions are appropriately documented.

18. The cash management procedures utilized by the Debtors are ordinary, usual and essential business practices, and are similar to those used by other major corporate enterprises. The Cash Management System provides significant benefits to the Debtors, including the ability to control corporate funds centrally, ensure availability of funds when necessary, and reduce administrative expenses by facilitating the movement of funds and the development of more timely and accurate balance and presentment information.

19. The operation of the Debtors' business requires that the Cash Management System continue during the pendency of these Chapter 11 Cases. Requiring the Debtors to adopt new cash management systems at this critical stage of these Chapter 11 Cases would be expensive, would create unnecessary administrative burdens and problems (including the possibility that transactions might not be adequately documented), and would likely disrupt and adversely impact the Debtors' ability to maximize value. Indeed, requiring Cash Management System changes could irreparably harm the Debtors, their estates and their creditors by creating cash flow interruptions while systems were changed. Maintenance of the existing Cash Management System is therefore in the best interests of all creditors and other parties-in-interest.

20. The only modification to their Cash Management System that the Debtors request is the permission to close the inactive Chester Valley Account. Pursuant to the Second Lien Credit Agreement, the Chester Valley Account cannot be closed due to restrictions under a deposit account control agreement with the Second Lien Lenders. However, the Chester Valley Account is inactive and has a zero balance and the Debtors do not anticipate any further use for this account or any need to maintain this account on behalf of the Second Lien Lenders. In order to streamline the Cash Management System postpetition, and to reduce the ongoing monthly costs incurred to maintain this inactive account, the Debtors request authority to modify their Cash Management System and deposit control agreement with the Second Lien Lenders solely to the extent that the Debtors are permitted to close the Chester Valley Account.

21. Bankruptcy courts routinely grant chapter 11 debtors authority to continue using their existing cash management systems and treat such requests for such authority as a relatively "simple matter." In re Baldwin United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). This is particularly true where, as here, the chapter 11 case involves complex financial affairs. In fact,

some courts have specifically held that a debtor's use of its prepetition "routine cash management system . . . is entirely consistent with" the provisions of the Bankruptcy Code. See Charter Co. v. Prudential Ins. Co. of Am. (In re Charter Co.), 778 F.2d 617, 621 (11th Cir. 1985).

22. Likewise, in another context, the United States Bankruptcy Court for the District of Delaware has explained that a centralized cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for many different purposes that require cash." In re Columbia Gas Sys., Inc., 136 B.R. 930, 934 (Bankr. D. Del. 1992), aff'd in part and rev'd in part sub nom., Official Comm. of Unsecured Creditors of Columbia Gas Transmission Corp. v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.), Case No. 91-803, 1992 U.S. Dist. LEXIS 9460 (D. Del. July 6, 1992), aff'd in part and rev'd in part, 997 F.2d 1039 (3d Cir. 1993). The Third Circuit agreed, emphasizing that a requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient." In re Columbia Gas Sys. Inc., 997 F.2d at 1061.

23. Additionally, relief similar to that requested herein has been repeatedly granted by courts in this and other jurisdictions in other chapter 11 cases. See, e.g., In re DSI Holdings, Inc., Case No. 11-11941 (KJC) (Bankr. D. Del. Jun. 26, 2011); In re Perkins & Marie Callender's Inc., Case No. 11-11795 (Bankr. D. Del. Jun. 13, 2011); In re Accuride Corp., Case No. 09-13449 (BLS) (Bankr. D. Del. Oct. 8, 2009); In re Eddie Bauer Holdings, Inc., Case No. 09-12099 (MFW) (Bankr. D. Del. June 17, 2009); In re Hayes Lemmerz Int'l, Inc., Case No. 09-11655 (MFW) (Bankr. D. Del. May 13, 2009); In re Goody's Family Clothing, Inc., Case No. 08-11133 (CSS) (Bankr. D. Del. June 9, 2008); In re Am. Home Mortgage Holdings, Inc., Case No. 07-11047 (CSS) (Bankr. D. Del. Aug. 7, 2007); In re Tweeter Home Ent. Group, Inc., Case

No. 07-10787 (PJW) (Bankr. D. Del. June 12, 2007); and In re New Century TRS Holdings, Inc., Case No. 07- 10416 (KJC) (Bankr. D. Del. Apr. 11, 2007). Similar authorization is appropriate here.

C. The Debtors Should be Granted Authority to Continue to Use Existing Business Forms and Checks

24. Local Rule 2015-2(a) provides:

Where the debtor uses pre-printed checks, upon motion of the debtor, the Court may, without notice and hearing, permit the debtor to use its existing checks without the designation “Debtor-in-Possession” and use its existing bank accounts. However, once the debtor’s existing checks have been used, the debtor shall when reordering checks, require the designation “Debtor-in-Possession” and the corresponding bankruptcy number on all such checks.

L.R. Bankr. P. 2015-2(a).

25. In order to minimize expenses to their estates, the Debtors also seek authorization to continue using all correspondence and business forms (including without limitation, letterhead, purchase orders, and invoices), without reference to the Debtors’ status as debtors-in-possession. Most parties doing business with the Debtors undoubtedly will be aware of the Debtors’ status as debtors-in-possession as a result of the notoriety of these cases, the press releases issued by the Debtors, and any additional press coverage. Moreover, each of the Debtors’ vendors will receive direct notice of the commencement of these cases.

26. Changing correspondence and business forms would be expensive, unnecessary, and burdensome to the Debtors’ estates and disruptive to the Debtors’ business operations and would not confer any benefit upon those dealing with the Debtors. For these reasons, the Debtors request that they be authorized to use existing checks and business forms without being required to place the label “Debtor-in-Possession” on each. If at any point after the Petition Date the Debtors need to order new business forms or checks, the Debtors will ensure such forms or

checks comply with Local Rule 2015-2(a) and will include the title “Debtor-in-Possession” as well as the corresponding bankruptcy number.

27. This Court has routinely granted the same or similar relief to chapter 11 debtors. See, e.g., In re DSI Holdings, Inc., Case No. 11-11941 (KJC) (Bankr. D. Del. Jun. 26, 2011); In re Perkins & Marie Callender’s Inc., Case No. 11-11795 (Bankr. D. Del. Jun. 13, 2011); In re Accuride Corp., Case No. 09-13449 (BLS) (Bankr. D. Del. Oct. 8, 2009); In re Eddie Bauer Holdings, Inc., Case No. 09-12099 (MFW) (Bankr. D. Del. June 17, 2009); In re Hayes Lemmerz Int’l, Inc., Case No. 09-11655 (MFW) (Bankr. D. Del. May 13, 2009); In re Goody’s Family Clothing, Inc., Case No. 08-11133 (CSS) (Bankr. D. Del. June 9, 2008); In re Am. Home Mortgage Holdings, Inc., Case No. 07-11047 (CSS) (Bankr. D. Del. Aug. 7, 2007); In re Tweeter Home Ent. Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. June 12, 2007); In re New Century TRS Holdings, Inc., Case No. 07-10416 (KJC) (Bankr. D. Del. Apr. 11, 2007).

D. The Debtors Do Not Expect to Incur Any Claims on Account of Intercompany Transactions or Shared Services After the Petition Date

28. The Debtors currently conduct, in the ordinary course of business, intercompany transactions with their non-debtor Canadian affiliate, Graceway Canada Company (“**Graceway Canada**”). The Debtors manage all of their cash and conduct all receipts and disbursements for all operations on a separate company basis, with virtually all customers, suppliers and employees dealing directly with Graceway Pharmaceuticals, LLC for operations and transactions based in the United States, with Graceway International, Inc. for transactions based in Latin and South America, and with Graceway Canada for transactions based in Canada. Graceway Canada’s operations are entirely separate from the Debtors’ operations, although certain services are provided by the Debtors to Graceway Canada, including certain technology support, legal,

regulatory and intellectual property advisory services, human resource functions, and other central functions (the “**Shared Services**”).

29. Before the commencement of these proceedings, the Debtors engaged in intercompany transactions including, but not limited to, the following (collectively, the “**Intercompany Transactions**”):

Intercompany Transactions Among Debtors:

- a) Payment of Expenses: Expenses paid by a Debtor on behalf of other Debtors (for example, certain centrally-billed expenses, including payment of certain insurance premiums, professional fees, shipping and transportation and other costs).
- b) Inventory Transfers: Ordinary course transactions involving goods paid by a Debtor for the account of another Debtor.

30. As of the Petition Date, the Debtors believe in good faith that there were no outstanding amounts owing by them under any prepetition Intercompany Transactions and, as such, are not seeking authority hereunder to pay any such amounts. The Debtors have also put into place steps to ensure that no Intercompany Transactions will occur after the Petition Date and that very limited, if any, Shared Services will be provided or extended.⁶ As a result, the Debtors do not anticipate that any claims on account of Intercompany Transactions or Shared Services will arise after the Petition Date. In the event that such claims do arise, the Debtors anticipate that they will be *de minimis* and limited in accordance with the requirements imposed on the Debtors under any approved debtor-in-possession financing facility or any order regarding the use of cash collateral.

E. The Relief Requested In This Motion Is Necessary To Avoid Immediate And Irreparable Harm

31. Bankruptcy Rule 6003 provides:

⁶ Note that the definition of Intercompany Transactions is not intended to include or apply to any postpetition debtor-in-possession financing provided by Graceway Canada.

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding the following: . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001.

Fed. R. Bankr. P. 6003; In re First NLC Fin. Servs., LLC, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008) (holding that Rule 6003 permits entry of retention orders on an interim basis to avoid irreparable harm).

32. No court within the Third Circuit has interpreted the “immediate and irreparable harm” language in the context of Bankruptcy Rule 6003 in a reported decision. However, the Third Circuit Court of Appeals has interpreted the same language in the context of preliminary injunctions. In that context, the Third Circuit has interpreted irreparable harm as a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh, No. 05-4286, 2007 WL 1643179 at *2 (3d Cir. June 7, 2007) (citing Glasco v. Hills, 558 F.2d 179, 181 (3d Cir. 1977)). Further, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. See, e.g., Acierno v. New Castle County, 40 F.3d 645, 653-55 (3d Cir. 1994). To the extent that the requirements of Bankruptcy Rule 6003 are applicable to the relief requested in the Motion, the Debtors submit that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm as defined by the Third Circuit Court of Appeals.

F. The Debtors Should Be Authorized to Continue to Allow Third-Party Benefit Administrators to Prepare and Issue Checks on Their Behalf.

33. Prior to the Petition Date and in the ordinary course of business, the Debtors employ third-party benefits administrators to prepare and issue payroll and benefits checks on their behalf. Because these practices are carried out in the ordinary course of business, the

Debtors do not believe their continuance requires court approval. However, out of an abundance of caution, the Debtors seek authority to continue these practices in order to avoid interference with the Debtors' ability to pay employee wages and benefits.⁷

G. Waiver of Stay Under Bankruptcy and 6004(h)

34. The Debtors also request that the court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

35. No trustee, examiner or creditors' committee has been appointed in the Chapter 11 Cases. The Debtors have provided notice of this Motion to: (a) the United States Trustee for the District of Delaware; (b) financing counsel to the First Lien Administrative Agent; (c) special restructuring and bankruptcy counsel to the First Lien Administrative Agent; (d) counsel to the administrative agent for the lenders under the Debtors' prepetition second lien credit facility; (e) the administrative agent for the lenders under the Debtors' prepetition unsecured mezzanine credit facility; (f) the creditors listed on the Debtors' consolidated list of 30 largest unsecured creditors, as filed with the Debtors' chapter 11 petitions; (g) the Food and Drug Administration;

⁷ See Motion of the Debtors for an Order (a) Authorizing, but not Directing, the Debtors to Pay Certain Prepetition (i) Wages, Salaries and Other Compensation, (ii) Reimbursable Employee Expenses, and (iii) Employee Medical and Similar Benefits and (b) Authorizing and Directing Banks and Other Financial Institutions to Honor All Related Checks and Electronic Payment Requests, filed contemporaneously herewith.

(h) the Internal Revenue Service; (i) Wells Fargo; and (j) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

36. A copy of the Motion is available on the Court's website: www.deb.uscourts.gov. Additional copies of the Motion are available for free on the website of the Debtors' proposed claims, noticing, soliciting and balloting agent, BMC Group, Inc., at www.bmcgroup.com/graceway, or can be requested by calling (888) 909-0100 from within the United States or +1-310-321-5555 if calling from outside the United States.

WHEREFORE, the Debtors respectfully request that this Court enter the Order, substantially in the form attached hereto, (I) authorizing the Debtors to continue to use their existing (a) bank accounts, (b) Cash Management System, (c) business forms and checks; and (II) waiving investment and deposit requirements of Section 345(b) of the Bankruptcy Code; and (III) granting such other and further relief as this Court deems appropriate.

Dated: September 29, 2011
Wilmington, Delaware

Respectfully Submitted,



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PROPOSED ATTORNEYS FOR DEBTORS AND
DEBTORS-IN-POSSESSION

Exhibit A
Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

GRACEWAY PHARMACEUTICALS, LLC,
et al.,¹

Debtors.

Chapter 11

Case No. 11-13036 (____)

Joint Administration Pending

**ORDER UNDER 11 U.S.C. §§ 345, 363, 364, 503(b)(1), 553, 1107, AND 1108
AND LOCAL RULE 2015-2 (I) AUTHORIZING CONTINUED USE OF EXISTING
(A) BANK ACCOUNTS, (B) CASH MANAGEMENT SYSTEM, AND (C) BUSINESS
FORMS AND CHECKS; AND (II) WAIVING INVESTMENT AND
DEPOSIT REQUIREMENTS OF 11 U.S.C. § 345(b)**

("Cash Management Order")

Upon consideration of the motion (the "Motion")² of the Debtors for entry of an order (the "Order") (I) authorizing the Debtors' continued use of their existing (a) bank accounts, (b) business forms and checks, and (c) cash management system; and (II) waiving the investment and deposit requirements of Section 345(b) of the Bankruptcy Code; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Motion and opportunity for objection having been

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Graceway Pharma Holding Corp., a Delaware corporation (9175); Graceway Holdings, LLC, a Delaware limited liability company (2502); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385); Chester Valley Holdings, LLC, a Delaware limited liability company (9457); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713); Graceway Canada Holdings, Inc., a Delaware corporation (6663); and Graceway International, Inc., a Delaware corporation (2399). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy).

² Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

given; and it appearing that no other notice need be given; and after due deliberation and sufficient cause therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth herein.
2. Subject to the terms and conditions in this Order, the Debtors are authorized to continue to (a) use their Existing Bank Accounts, business forms and checks, and Cash Management System, and (b) the requirements provided in 11 USC § 345(b) are hereby WAIVED as to the Existing Bank Accounts for an interim period of sixty (60) days, without prejudice to the Debtors' rights to seek a further waiver.
3. Subject to the terms and conditions in this Order, the Debtors are authorized to (a) designate, maintain and continue to use, with the same numbers, all of the Existing Bank Accounts and (b) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors-in-possession. Exhibit B to the Motion provides a listing of the Existing Bank Accounts. Notwithstanding the foregoing, the Debtors are authorized, but not required, to close the Chester Valley Account.
4. The banks at which the Bank Accounts are maintained (collectively, the "**Banks**") are authorized and directed to continue to service and administer the Bank Accounts as accounts of the respective Debtor as a debtor-in-possession without interruption and in the usual and ordinary course, and to receive, process and honor and pay any and all checks, drafts, wires, or automated clearing house transfers ("**ACH Transfers**") drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be. Such Bank Accounts should be renamed "debtor-in-possession" accounts with the Petition Date included in the account title. The Banks are also authorized to waive any applicable requirement to establish separate accounts for cash collateral and/or tax payments.

5. The Banks are authorized and directed to accept and honor all representations from the Debtors as to which checks, drafts, wires, or ACH Transfers should be honored or dishonored consistent with any order(s) of this Court, whether the checks, drafts, wires, or ACH Transfers are dated prior to, on, or subsequent to the Petition Date, and whether or not the Bank believes the payment is or is not authorized by any order(s) of this Court.

6. Except for those checks, drafts, wires, or ACH Transfers that must be honored and paid in order to comply with any order(s) of this Court authorizing payment of certain prepetition claims, no checks, drafts, wires, or ACH Transfers issued on the Existing Bank Accounts prior to the Petition Date but presented for payment after the Petition Date shall be honored or paid.

7. The Debtors are authorized to continue to use their existing checks and other business forms, which checks and business forms shall not be required to include the legend "Debtor-in-Possession" or a "debtor-in-possession case number"; provided further that, with respect to checks or other business forms which the Debtors or their agents print themselves, the Debtors shall begin printing the "Debtor in Possession" legend on such items within ten (10) days of the date of entry of this Order. However, if new checks and business forms are ordered, such checks and business forms shall be required to include the legend "Debtor-in-Possession" and a "debtor-in possession case number." Third-party payroll and benefits administrators and providers are also authorized to prepare and issue checks on behalf of the Debtors, subject to the provisions of this paragraph.

8. Subject to the terms and conditions in this Order, the Debtors may open additional bank accounts and close Existing Bank Account(s) as they may deem necessary and appropriate, and the Banks are authorized to honor the Debtors' requests to open or close, as the case may be,

any such Bank Accounts; provided, however, that the Debtors give notice within fifteen (15) days to the Office of the United States Trustee for the District of Delaware, the First Lien Administrative Agent, and any statutory committees appointed in these chapter 11 cases; provided, further, that the Debtors shall open any such new Bank Account at banks that have executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement.

9. Subject to the terms and conditions in this Order, any and all bank accounts opened by the Debtors on or after the Petition Date at any Bank shall, for all purposes under this Order, be deemed a Bank Account (as if it had been opened prior to the Petition Date), and any and all Banks at which such bank accounts are opened shall similarly be subject to the rights and obligations of this Order.

10. The Debtors and Wells Fargo are hereby authorized to continue to perform pursuant to the terms of any prepetition agreements that may exist between them, except and to the extent otherwise directed by the terms of this Order. The parties to such agreements shall continue to enjoy the rights and remedies afforded them under such agreements, except to the extent modified by the terms of this Order or by operation of the Bankruptcy Code.

11. For Banks at which the Debtors hold Bank Accounts that are party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, within fifteen (15) days of the date of entry of this Order the Debtors shall (a) contact each Bank, (b) provide each of the Debtors' employer identification numbers and (c) identify each of their Bank Accounts held at such Banks as being held by a debtor in possession in a bankruptcy case.

12. For Banks at which the Debtors hold Bank Accounts that are not a party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of

Delaware, the Debtors shall use their good faith reasonable best efforts to cause the Banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within 45 days of the date of this Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

13. Unless expressly permitted pursuant to an order of this Court, all intercompany transfers by any Debtor to any non-debtor affiliate or subsidiary are prohibited.

14. The Debtors shall maintain accurate and detailed records of all transfers, including intercompany transfers, so that all transactions may be readily ascertained, traced, recorded properly and distinguished between prepetition and post-petition transactions.

15. This court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested herein is necessary to avoid immediate and irreparable harm.

16. Notwithstanding the provisions of Bankruptcy Rule 6004 and Bankruptcy Rule 6006 or any applicable provisions of the Local Rules, this Order shall not be stayed for fourteen (14) days after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in such rules is hereby expressly waived and shall not apply.

17. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder and the opening of any additional bank account in accordance with the terms hereof, shall, in each case, be subject to the requirements imposed on the Debtors under any approved debtor-in-possession financing facility, or any order regarding the use of cash collateral.

18. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

19. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2011
Wilmington, Delaware

United States Bankruptcy Judge

Exhibit B

List of Bank Accounts held by Debtors

Exhibit B - List of Bank Accounts

Debtor	Bank	Account Number	Account Description	Address
Graceway Pharmaceuticals, LLC	Wells Fargo Bank N.A.	xxxxxxxx9153	Accounts Payable Account	201 South Jefferson Street, VA7440 2nd Floor Roanoke, VA 24011
Graceway Pharmaceuticals, LLC	Wells Fargo Bank N.A.	xxxxxxxx3816	Payroll Account	201 South Jefferson Street, VA7440 2nd Floor Roanoke, VA 24011
Graceway Pharmaceuticals, LLC	Wells Fargo Bank N.A.	xxxxxxxx6558	General Depository Account	201 South Jefferson Street, VA7440 2nd Floor Roanoke, VA 24011
Graceway Pharmaceuticals, LLC	Wells Fargo Bank N.A.	xxx799	Lockbox Account	Graceway Pharmaceuticals, LLC Box 933799 Atlanta, GA 31193-3799
Graceway Holdings, LLC	Wells Fargo Bank N.A.	xxxxxxxx3939	GW Holdings Account	201 South Jefferson Street, VA7440 2nd Floor Roanoke, VA 24011
Chester Valley Pharmaceuticals, LLC	Wells Fargo Bank N.A.	xxxxxxxx3984	Chester Valley Account	201 South Jefferson Street, VA7440 2nd Floor Roanoke, VA 24011
Chester Valley Pharmaceuticals, LLC	Wells Fargo Bank N.A.	xxxxxxxx4878	Time Deposit Account	201 South Jefferson Street, VA7440 2nd Floor Roanoke, VA 24011
Graceway Canada Holdings, Inc.	Wells Fargo Bank N.A.	xxxxxxxx3926	GW Canada Holdings Account	201 South Jefferson Street, VA7440 2nd Floor Roanoke, VA 24011
Graceway International, Inc.	Wells Fargo Bank N.A.	xxxxxxxx9537	International Checking Account	201 South Jefferson Street, VA7440 2nd Floor Roanoke, VA 24011

Exhibit C

Bank Account Flow Chart

Exhibit C Cash Management System

