

**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 (MFW)

Joint Administration Pending

**MOTION OF THE DEBTORS FOR AN ORDER ESTABLISHING BAR DATES
FOR FILING PROOFS OF CLAIM AND APPROVING THE FORM AND
MANNER OF NOTICE THEREOF**

("Bar Date Motion")

The above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**"), hereby move this Court (the "**Motion**") for entry of an order (the "**Bar Date Order**"), in substantially the form attached hereto as Exhibit A, establishing deadlines for filing proofs of claim against the Debtors in these Chapter 11 Cases (as defined below) and approving the form and manner of notice thereof. In support of this Motion, the Debtors respectfully state:

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. 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 501, 502, and 1111(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**");

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).

Rules 2002 and 3003(c)(3) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and Rule 2002-1(e) 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 official 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 are set forth in the Declaration of Gregory C. Jones in Support of Chapter 11 Petitions and First Day Motions, filed on the Petition Date.

Relief Requested

5. The Debtors anticipate filing their schedules of assets and liabilities and statements of financial affairs (collectively, the “**Schedules**”) within sixty (60) days of the Petition Date. For the Debtors to fully administer these estates, to solicit acceptances or rejections to a plan of reorganization or plan of liquidation (the “**Plan**”) and to make distributions under the Plan, the Debtors must obtain complete and accurate information regarding the nature, validity and amount of all claims that will be asserted in these Chapter 11

Cases. Consequently, the Debtors seek entry of an order establishing deadlines for filing Proofs of Claim (as defined below) in these Chapter 11 Cases and approving the form and manner of notice thereof. The proposed deadlines are as follows:

- a) except as otherwise provided herein, 4:00 p.m. (prevailing Eastern Time) on the date that is sixty (60) days after the date the Debtors file with the Court their Schedules (the “**General Bar Date**”), as the deadline for all persons and entities (excluding governmental units as defined in Section 101(27) of the Bankruptcy Code) holding a claim against any of the Debtors, including any disputed, contingent, or unliquidated claims, to file a Proof of Claim (as defined below) in these Chapter 11 Cases;
- b) March 27, 2012 at 4:00 p.m. (prevailing Eastern Time) (the “**Governmental Unit Bar Date**”), as the deadline for each governmental unit (as defined in Section 101(27) of the Bankruptcy Code), holding a claim against any of the Debtors, to file a Proof of Claim in these Chapter 11 Cases;
- c) where a claim is included in the Debtors’ Schedules (as defined below) or any amendments thereto, and is not included as disputed, contingent, or unliquidated,² the later of (i) the General Bar Date or (ii) 4:00 p.m. (prevailing Eastern time) on the date that is twenty-one (21) days after service of a notice on an affected claimant of an amendment or supplement to the Schedules that is filed on or after the Service Date (as defined below) and that (a) reduces the undisputed, noncontingent, and liquidated amount of such claimant’s claim, (b) changes the nature or characterization of such claimant’s claim or the Debtor against whom such claimant’s claim is scheduled, or (c) adds a new claim with respect to such claimant to the Schedules (the “**Amended Schedule Bar Date**”), as the deadline for filing a Proof of Claim with respect to such amended claim;³ and
- d) except as otherwise set forth in any order authorizing rejection of an executory contract or unexpired lease, the Debtors propose to establish the later of (i) the General Bar Date or (ii) thirty (30) days after entry of any order authorizing the rejection of an executory contract or unexpired lease, as the bar date (the “**Rejection Bar Date**” and together with the aforementioned bar dates, the “**Bar Dates**”) by which a Proof of Claim relating to the Debtors’ rejection of such contract or lease must be filed.

² The General Bar Date applies to all such disputed, contingent, or unliquidated claims.

³ The imposition of the Amended Schedule Bar Date is consistent with Local Rule 1009-2, which provides a creditor with twenty-one (21) days to file a proof of claim after the date that notice of the applicable amendment is served on such creditor.

Establishment of Bar Dates

6. The Debtors submit that the notice period provided by the Bar Dates is more than sufficient to comply with the Bankruptcy Rules in light of the proposed notice procedures provided herein. Bankruptcy Rule 3003(c)(3) generally governs the filing of proofs of claim in a chapter 11 case and provides in relevant part: “The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed.” Fed. R. Bankr. P. 3003(c)(3). Although Bankruptcy Rule 2002(a)(7) generally provides that all parties in interest must receive, at a minimum, 21 days’ notice of the time fixed for filing proofs of claim pursuant to Bankruptcy Rule 3003(c), neither the Bankruptcy Code, the Bankruptcy Rules, nor the Local Rules specify a time by which proofs of claim must be filed in chapter 11 cases, other than Section 502(b)(9) of the Bankruptcy Code, which provides that governmental units shall have a minimum of 180 days after the entry of the order for relief to file proofs of claim.

7. **General Bar Date.** Bankruptcy Rule 3003(c)(3) requires that the Court fix a time within which proofs of claim must be filed. The Debtors anticipate that, through their claims agent, they will provide notice of the Bar Dates, substantially in the form attached hereto as Exhibit C (the “**Bar Date Notice**”), together with a Proof of Claim form,⁴ by first-class United States mail, postage prepaid, to all known entities holding potential claims against the Debtors. The date on which the Debtors actually serve the Bar Date Notice and Proof of Claim form is referred to herein as the “**Service Date.**” The Debtors request that this Court establish 4:00 p.m. (prevailing Eastern Time) on the date that is sixty (60) days after the filing of the Schedules as the General Bar Date.

⁴ The Proof of Claim form is substantially in the form of Official Bankruptcy Form B10 but has been modified, and may be further modified in certain limited respects, to accommodate the claims process in these Chapter 11 Cases.

8. The General Bar Date would be the date by which all persons and entities (excluding governmental units) holding prepetition claims must file Proofs of Claim unless they fall within one of the exceptions set forth in this Motion. Subject to these exceptions, the Bar Dates would apply to all persons or entities holding claims against the Debtors that arose or are deemed to have arisen prior to the Petition Date, including secured claims, unsecured priority claims (including, without limitation, claims entitled to priority under Sections 507(a)(4), (5), and (8) of the Bankruptcy Code), unsecured nonpriority claims, and disputed, contingent or unliquidated claims.

9. **Governmental Unit Bar Date.** Section 502(b)(9) of the Bankruptcy Code provides, in relevant part, that “[a] claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the [Bankruptcy Rules or a court order] may provide. . . .” 11 U.S.C. § 502(b)(9). Accordingly, the Debtors propose to establish March 27, 2012 at 4:00 p.m. (prevailing Eastern Time) as the deadline for all governmental units (as defined in Section 101(27) of the Bankruptcy Code) to file Proofs of Claim against the Debtors in these Chapter 11 Cases. The Governmental Unit Bar Date would apply to all governmental units holding claims against the Debtors (whether secured, unsecured priority, or unsecured nonpriority) that arose prior to the Petition Date, including governmental units with claims against the Debtors for unpaid taxes, whether such claims arise from (a) prepetition tax years or periods or (b) prepetition transactions to which the Debtors were a party.

10. **Amended Schedule Bar Date.** The Debtors have the right to (a) dispute, or assert offsets or defenses against, any filed claim or any claims listed or reflected in the Schedules as to nature, amount, liability, characterization, or otherwise; (b) subsequently

designate any claim as disputed, contingent, or unliquidated; or (c) otherwise amend or supplement the Schedules. If a claim is included in the Debtors' Schedules or any amendments thereto, and is not included as disputed, contingent, or unliquidated, and, on or after the Service Date, the Debtors amend or supplement their Schedules (i) to reduce the undisputed, noncontingent, and liquidated amount of such claim, (ii) to change the nature or characterization of such claim or the Debtor against whom such claim is scheduled, or (iii) to add a new claim to the Schedules, the Debtors propose that the affected claimant be required to file a Proof of Claim or amend any previously filed Proof of Claim in respect of the amended scheduled claim on or prior to the Amended Schedule Bar Date. Notwithstanding the foregoing, nothing contained herein shall preclude the Debtors from objecting to any claim, whether scheduled or filed, on any grounds.

11. **Rejection Bar Date.** The Debtors anticipate that certain persons or entities may assert claims ("**Rejection Damages Claims**") in connection with the Debtors' rejection of executory contracts or unexpired leases pursuant to Section 365 of the Bankruptcy Code. The Debtors propose that this Court establish the Rejection Bar Date as the deadline for filing Proofs of Claim for any Rejection Damages Claims.

Parties Required to File Proofs of Claim

12. Subject to certain exceptions specified therein, the proposed Bar Date Order provides that each person or entity (including, without limitation, each individual, partnership, joint venture, limited liability company, corporation, estate, trust, or governmental unit) asserting a claim against one or more of the Debtors is required to file a separate Proof of Claim in the bankruptcy case of each Debtor against whom a claim is asserted. Each Proof of Claim must substantially comply with Official Bankruptcy Form 10, attached hereto as **Exhibit B** (a "**Proof**

of Claim”), and must be actually received on or before the Bar Date associated with such claim by BMC Group, Inc. (“**BMC**”), the Debtors’ proposed claims and noticing agent in these Chapter 11 Cases. Proofs of Claim must be sent by first-class mail to BMC Group, Inc., Attn: Graceway Claims Processing, PO Box 3020, Chanhassen, MN 55317-3020, or by overnight courier or hand-delivery to BMC Group, Inc., Attn: Graceway Claims Processing, 18750 Lake Drive East, Chanhassen, MN 55137. **Proofs of Claim will be deemed timely filed only if they are actually received by BMC on or before the applicable Bar Date.**

Parties Not Required to File Proofs of Claim

13. The Debtors propose that the following persons or entities are **not required** to file Proofs of Claim:

- a) any person or entity that has already properly filed a proof of claim against the correct Debtor(s) with either BMC or the Clerk of the Court for the United States Bankruptcy Court for the District of Delaware;
- b) any person or entity (i) whose claim is listed in the Schedules or any amendments thereto, and (ii) whose claim is not described therein as “disputed,” “contingent,” or “unliquidated,” and (iii) who does not dispute the amount or characterization of its claim (including that the claim is an obligation of the specific Debtor against which the claim is listed in the Schedules) as set forth in the Schedules;
- c) any person or entity asserting a claim under Section 503(b)(9) of the Bankruptcy Code on account of prepetition goods received by the Debtors within twenty days of the Petition Date, whose claim shall be governed by separate order of this Court;⁵
- d) professionals retained by the Debtors or the Committee pursuant to orders of this Court who assert administrative claims for fees and expenses subject to this Court’s approval pursuant to Sections 330, 331 and 503(b) of the Bankruptcy Code;

⁵ Concurrently with the filing of this Motion, the Debtors have filed the 503(b)(9) Administration Motion, which seeks entry of an order establishing the exclusive procedures for the assertion, resolution, and satisfaction of claims asserted pursuant to Section 503(b)(9) of the Bankruptcy Code.

- e) any person or entity asserting an administrative expense claim against the Debtors pursuant to Section 503(b) of the Bankruptcy Code;⁶
- f) current officers and directors of the Debtors who assert claims for indemnification and/or contribution arising as a result of such officers' or directors' prepetition or postpetition services to the Debtors;
- g) any Debtor asserting a claim against another Debtor;
- h) any wholly-owned non-debtor subsidiary of a Debtor asserting a claim against a Debtor (other than a claim against Graceway Canada Holdings, Inc.);
- i) any person or entity whose claim against the Debtors has been allowed by an order of this Court, entered on or before the Bar Dates;
- j) the administrative agent for the lenders under the Debtors' prepetition first lien credit facility and such lenders, in each case, solely with respect to any claim arising under such prepetition first lien credit facility or any agreement related thereto; and
- k) any person or entity holding a claim payable to the Court or the United States Trustee Program pursuant to 28 U.S.C. § 1930.

No Requirement to File Proofs of Interest

14. Any entity holding any interest in any Debtor (an "**Interest Holder**"), which interest is based solely upon the ownership of common or preferred stock in a corporation, a membership interest in a limited liability company, a general or limited partner interest in a partnership, or warrants, or rights to purchase, sell, or subscribe to such a security or interest (any such security or interest being referred to herein as an "**Interest**") need not file a proof of interest on or before the General Bar Date; provided, however, that Interest Holders that wish to assert *claims* against any of the Debtors that arise out of or relate to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance, or distribution of an

⁶ The Debtors reserve the right to seek establishment of a bar date for the filing of Proofs of Claim relating to administrative expense claims at a later date.

Interest, must file Proofs of Claim on or before the General Bar Date, unless one of the exceptions enumerated in the preceding paragraph 13 applies.⁷

Filing Proofs of Claim Against Multiple Debtors

15. The Debtors propose that any entity asserting claims against more than one Debtor must file a separate Proof of Claim with respect to each such Debtor on or before the applicable Bar Date. In addition, any entity filing a Proof of Claim must identify on its Proof of Claim form the particular Debtor against which its claim is asserted.

Effect of Failure to File Proof of Claim

16. The Debtors propose that, pursuant to Bankruptcy Rule 3003(c)(2), any person or entity that is required to file a timely Proof of Claim in the form and manner specified by the Bar Date Order and who fails to do so on or before the bar date associated with such claim shall not, with respect to such claim, be treated as a creditor of the Debtors for the purpose of voting on, or receiving distributions under, any chapter 11 plan or plans in these Chapter 11 Cases.

Proposed Procedures for Providing Notice of the Bar Date and of Procedures for Filing Proofs of Claim

17. No later than five (5) business days after the filing of the Schedules, the Debtors intend to provide notice of the Bar Dates by mailing a copy of the Bar Date Notice, together with a Proof of Claim form, by first-class United States mail, postage prepaid, to all known persons and entities holding potential prepetition claims against the Debtors. The mailing of the Bar Date Notice no later than the Service Date will ensure that creditors receive no less than 50 days' notice of the Bar Dates, which notice exceeds the minimum 21 day notice period provided by Bankruptcy Rule 2002(a)(7).

⁷ The Debtors reserve the right to seek establishment of a bar date for the filing of proofs of interest at a later date.

18. Furthermore, the Debtors intend to provide notice of the Bar Dates to unknown creditors by causing a copy of the notice attached hereto as Exhibit D (the “**Publication Notice**”) to be published at least once no later than 21 days prior to the General Bar Date in the national edition of *The Wall Street Journal*. In the Debtors’ judgment, this publication is likely to reach the widest possible audience of creditors who may not otherwise have notice of the Chapter 11 Cases.

19. The Bar Date Notice and the Publication Notice: (a) set forth the Bar Dates; (b) advise creditors under what circumstances they must file a Proof of Claim under Bankruptcy Rules 3002(c)(2) and 3003(c)(3) or an order of this Court, as applicable; (c) alert creditors to the consequences of failing to file a timely Proof of Claim, as set forth in Bankruptcy Rule 3003(c)(2) or an order of this Court, as applicable; (d) set forth the addresses to which Proofs of Claim must be sent for filing; and (e) notify creditors that (i) Proofs of Claim must be filed with original signatures, and (ii) facsimile or e-mail filings of Proofs of Claim are not acceptable and are not valid for any purpose. The Debtors submit that the Bar Date Notice and the Publication Notice will provide creditors with sufficient information to file properly prepared and executed Proofs of Claim in a timely manner.

Basis For Relief Requested

20. The Debtors must ensure that creditors and other interested parties receive adequate and appropriate notice of the Bar Dates. To determine the adequacy of notice given to a creditor, bankruptcy law distinguishes between “known” and “unknown” creditors. See Chemetron Corp. v. Jones (In re Chemetron Corp.), 72 F.3d 341, 345 (3d Cir. 1995). As the Third Circuit in Chemetron explained, “[k]nown creditors must be provided with actual written notice of a debtor’s bankruptcy filing and bar claims date. For unknown claimants, notification

by publication will generally suffice.” Id. at 346 (citations omitted). A “known” creditor is one whose identity is either known or is “reasonably ascertainable by the debtor.” Id. (citing Tulsa Prof'l Collection Serv., Inc. v. Pope, 485 U.S. 478, 490 (1988)). An “unknown” creditor is one whose “interests are either conjectural or future or, although they could be discovered upon investigation, do not in due course of business come to knowledge [of the debtor].” Chemetron, 71 F.3d at 346 ((citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 317 (1950))).

21. In defining the efforts required to identify “known” creditors, the Third Circuit stated:

Precedent demonstrates that what is required is not a vast, open-ended investigation The requisite search instead focuses on the debtor’s own books and records. Efforts beyond a careful examination of these documents are generally not required. Only those claimants who are identifiable through a diligent search are ‘reasonably ascertainable’ and hence ‘known’ creditors.

Chemetron, 72 F.3d at 346-47 (citations omitted). As for the particular efforts a debtor must exert to identify known creditors, “[w]hether a creditor received adequate notice of a bar date ‘depends upon the facts and circumstances of a given case.’” In re Grand Union Co., 204 B.R. 864, 871 (Bankr. D. Del. 1997) (citing Oppenheim, Appel, Dixon & Co. v. Bullock (In re Robintech, Inc.), 863 F.2d 393, 396 (5th Cir. 1989), cert. denied, 493 U.S. 811 (1989)).

22. The Debtors submit that the proposed notice procedures respecting the Bar Dates more than satisfies the Chemetron standard. The Debtors have identified those persons and entities that are known to the Debtors to hold claims against one or more of the Debtors, or are especially likely to be potential holders of claims. The potential claimants were identified following careful review of the Debtors’ books and records and those of the Debtors’ professionals, where applicable.

23. The Debtors' publication notice respecting the Bar Dates has been tailored to provide notice of such bar dates on an extensive basis throughout the United States. The Debtors believe that such publication notice suffices to provide any claimants unknown to the Debtors that may potentially hold claims against any of the Debtors with adequate notice of the Bar Dates. In addition, the Debtors believe that the publication notice contemplated by this Motion constitutes good and sufficient notice to "unknown" creditors, as defined by the Third Circuit in Chemetron.

24. Courts in this District have held that publication in the national edition of *The Wall Street Journal* constitutes adequate notice to unknown creditors. See, e.g., In re Barnes Bay Dev. Ltd., Case No. 11-10792 (PJW) (Bankr. D. Del. Apr. 12, 2011); In re NEC Holdings Corp., Case No. 10-11890 (PJW) (Bankr. D. Del. Aug. 5, 2010); In re Dayton Superior Corp., Case No. 09-11351 (BLS) (Bankr. D. Del. July 14, 2009); In re Sportsman's Warehouse, Inc., Case No. 09-10990 (CSS) (Bankr. D. Del. May 1, 2009); In re Tropicana Entm't, LLC, Case No. 08-10856 (KJC) (Bankr. D. Del. July 10, 2008).

Notice

25. The Debtors have provided notice of this Motion to: (a) the United States Trustee for the District of Delaware; (b) financing counsel to the administrative agent for the lenders under the Debtors' prepetition first lien credit facility; (c) special restructuring and bankruptcy counsel to the administrative agent for the lenders under the Debtors' prepetition first lien credit facility; (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; (h) the Internal Revenue Service; and (i) 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.

26. 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 Bar Date Order, substantially in the form attached hereto as Exhibit A, (a) establishing deadlines for filing proofs of claim against the Debtors in these Chapter 11 Cases and approving the form and manner of notice thereof and (b) granting such other and further relief as is just and proper.

Dated: September 29, 2011
Wilmington, Delaware

Respectfully Submitted,



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