

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 (PJW)

Jointly Administered

Related Docket No. _____

**ORDER AUTHORIZING THE DEBTORS TO ENTER INTO A
SETTLEMENT AGREEMENT WITH METAPHOR, INC.**

Upon consideration of the motion (the “**Motion**”)² the above-captioned debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”), seeking entry of an order pursuant to Sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “**Bankruptcy Code**”), and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to enter a Settlement Agreement by and between the Debtors and Metaphor, Inc. (“**Metaphor**”); and the Court being satisfied based on the representations made in the Motion and the Settlement Agreement; and it appearing that the Settlement Agreement and the relief requested in the Motion are in the best interests of the Debtors, their creditors and estates; and it appearing that proper and adequate notice has 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), Case No. 11-13037 (PJW); Graceway Holdings, LLC, a Delaware limited liability company (2502), Case No. 11-13038 (PJW); Graceway Pharmaceuticals, LLC, a Delaware limited liability company (5385), Case No. 11-13036 (PJW); Chester Valley Holdings, LLC, a Delaware limited liability company (9457), Case No. 11-13039 (PJW); Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company (3713), Case No. 11-13041 (PJW); Graceway Canada Holdings, Inc., a Delaware corporation (6663), Case No. 11-13042 (PJW); and Graceway International, Inc., a Delaware corporation (2399), Case No. 11-13043 (PJW). The mailing address for Graceway Pharmaceuticals, LLC is 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 (Attn: John Bellamy). On October 4, 2011, Graceway Canada Company filed an application in the Ontario Superior Court of Justice (Commercial List) pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C. 43.

² Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion or the Settlement Agreement, as applicable.

given and that no other or further notice is required; and upon the record herein; and after due deliberation thereon; and sufficient cause appearing therefore; it is hereby ORDERED that:

1. The Motion is GRANTED.
2. The Debtors and the Metaphor are hereby authorized and directed to perform their obligations under the Settlement Agreement.
3. The Settlement Agreement, attached as Exhibit B to the Motion, is approved pursuant to Sections 105 and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019(a).³
4. Waiver of Rights to Appeal. Metaphor hereby waives any and all rights to appeal the Sale Order, including, without limitation, the Court's decision therein to overrule the Limited Objection.
5. Filing of Dismissal Stipulation. On the Settlement Effective Date, Metaphor and the Debtors shall file with the Court a joint stipulation in the form attached to the Settlement Agreement as Exhibit A for the dismissal with prejudice of the Adversary Proceeding (the "**Dismissal Stipulation**"). The Debtors and Metaphor shall cooperate with one another and promptly take any and all further steps necessary to secure dismissal of all claims in the Complaint with prejudice.
6. No Appeal of Order. Neither the Debtors nor Metaphor shall appeal, or support any other person in appealing, this Order.
7. Payment to Metaphor. On the Settlement Effective Date, the Debtors shall pay to Metaphor \$25,000.00 in cash solely from the Sale Proceeds held in the 1.0% Holdback Account, free and clear of any liens, claims or encumbrances.⁴

³ Reference is made to the Settlement Agreement for a complete description of its terms. To the extent any summaries and/or descriptions of the terms of the Settlement Agreement contained in the Motion differ in any way from that contained in the Settlement Agreement, the Settlement Agreement shall govern.

8. Allowed Unsecured Claim. Effective on the Settlement Effective Date, Metaphor shall be allowed, without counterclaim or offset of any kind or nature, a general non-priority unsecured claim of \$398,230.85 against Graceway Pharmaceuticals, LLC.

9. Waiver of Avoidance Claims. The Debtors hereby waive and release any avoidance claim against Metaphor (including claims arising under Sections 544, 547 and 548 of the Bankruptcy Code).

10. Mutual Releases. Effective as of the Settlement Effective Date, each of the Debtors and Metaphor waives, releases and discharges each of the other Parties, their affiliates, member firms and associated entities, and its and their respective attorneys, financial advisors, employees, officers, directors, agents and other authorized representatives, successors and assigns, from all claims, demands, damages, obligations, liabilities, losses, costs, expenses, fees, and causes of action, in each case, asserted or unasserted, known or unknown, existing as of the date of execution of the Settlement Agreement or arising thereafter, including, without limitation, all claims, demands, damages, obligations, liabilities, losses, costs, expenses, fees, and causes of action in connection with, arising from or related to the Adversary Proceeding, the Metaphor Pleadings and/or the execution and delivery of the Settlement Agreement; provided, however, that such waiver, release and discharge shall not include any obligation of any Party under the Settlement Agreement or any damages, liabilities, claims or causes of action in connection with, arising from or related to the breach by any Party of the terms and conditions contained in the Settlement Agreement.

11. This Order and the Settlement Agreement shall be binding upon the Debtors, Metaphor, any trustees appointed in these proceedings, any trustees appointed in any subsequent

⁴ The First Lien Agent does not object to the payment from the 1.0% Holdback Account free and clear of its

chapter 7 proceedings under the Bankruptcy Code relating to the Debtors, and all other parties-in-interest.

12. The Debtors are authorized and empowered to take all steps necessary and appropriate to carry out and otherwise effectuate the terms conditions and provisions of the Settlement Agreement.

Dated: _____, 2011
Wilmington, Delaware

Peter J. Walsh
United States Bankruptcy Judge

liens thereon.

Exhibit B

Settlement Agreement

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this “*Agreement*”) is made and entered into as of December 2, 2011, by and among (i) Graceway Pharma Holding Corp., a Delaware corporation, Graceway Holdings, LLC, a Delaware limited liability company, Graceway Pharmaceuticals, LLC, a Delaware limited liability company, Chester Valley Holdings, LLC, a Delaware limited liability company, Chester Valley Pharmaceuticals, LLC, a Delaware limited liability company, Graceway Canada Holdings, Inc., a Delaware corporation, and Graceway International, Inc., a Delaware corporation (each a “*Debtor*” and collectively the “*Debtors*”) and (ii) Metaphor, Inc., a New Jersey corporation (“*Metaphor*”). Each Debtor and Metaphor is referred to separately as a “*Party*” and all are referred to collectively as the “*Parties*.”

WHEREAS, on September 29, 2011, each of Debtors filed for bankruptcy protection pursuant to Chapter 11 of the United States Bankruptcy Code (the “*Bankruptcy Code*”) before the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”);

WHEREAS, on November 4, 2011, Metaphor filed the *Limited Objection of Metaphor, Inc. to the Debtors’ Motion to Approve the Terms of Sale pursuant to an Asset Purchase Agreement Dated September 27, 2011 between Graceway Pharmaceuticals and Graceway Canada Company* (the “*Limited Objection*”) [Docket No. 202] with the Bankruptcy Court;

WHEREAS, on November 17, 2011, Metaphor commenced an adversary proceeding (the “*Adversary Proceeding*”), Case No. 11-53855, in the Bankruptcy Court by filing a complaint (the “*Complaint*”) and together with the Limited Objection, the “*Metaphor Pleadings*”) against the Debtors, seeking, among other things, a judicial declaration that Metaphor is the owner of copyrights in certain marketing materials used by the Debtors (all intellectual property subject to the Complaint, including copyrights in the materials identified in Exhibit A to the Complaint, the “*Disputed Property*”) and a judgment permanently prohibiting the Debtors from selling the Disputed Property;

WHEREAS, on November 22, 2011, the Bankruptcy Court overruled the Limited Objection and entered the *Order Authorizing (A) the Sale of Certain Assets of the Debtors Free and Clear of All Claims, Liens, Liabilities, Rights, Interests and Encumbrances; (B) the Debtors to Enter Into and Perform under the Asset Purchase Agreement; (C) the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases; and (D) Granting Related Relief* (the “*Sale Order*”) [Docket No. 306];

WHEREAS, on December 2, 2011, the Debtors funded approximately \$4,213,125.55, constituting one percent (1.0%) of the net proceeds from the sale of substantially all of the Debtors’ assets to Medicis Pharmaceutical Corporation (the “*Sale Proceeds*”), into a segregated interest-bearing account under the control, and subject to the liens, of Bank of America, N.A., solely in its capacity as first lien administrative and collateral agent under the First Lien Credit Agreement, dated as of May 3, 2007 (the “*1.0% Holdback Account*”);

WHEREAS, the Parties now seek to resolve the Adversary Proceeding and the Metaphor Pleadings and have entered into good faith negotiations in connection therewith;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

A. Settlement:

1. Metaphor hereby waives any and all rights to appeal the Sale Order, including, without limitation, the Bankruptcy Court's decision therein to overrule the Limited Objection.

2. On the Settlement Effective Date (as defined below), Metaphor and the Debtors shall file with the Bankruptcy Court a joint stipulation in the form attached hereto as Exhibit A for the dismissal with prejudice of the Adversary Proceeding (the "**Dismissal Stipulation**"). Each of the Parties shall cooperate with one another and promptly take any and all further steps necessary to secure dismissal of all claims in the Complaint with prejudice.

3. No later than two (2) business days after the date hereof, the Debtors shall file a motion with the Bankruptcy Court ("**Settlement Motion**") seeking the entry of an order, in the form attached hereto as Exhibit B (the "**Approval Order**") (it being hereby acknowledged and agreed by each of the Parties that the Approval Order is acceptable to each of them), approving this Agreement and authorizing and directing the distribution described in Section 5 below. The form and substance of the Settlement Motion shall be reasonably acceptable to each of the Parties. Each of the Parties agrees to support the Settlement Motion and, if requested by the Debtors, to exercise commercially reasonable efforts to obtain Bankruptcy Court approval thereof.

4. The Parties acknowledge and agree that upon the Bankruptcy Court's entry of the Approval Order, none of them will appeal, or support any other person in appealing, such order.

5. On the Settlement Effective Date, the Debtors shall pay to Metaphor \$25,000.00 in cash solely from the Sale Proceeds held in the 1.0% Holdback Account, free and clear of any liens, claims or encumbrances.

6. Effective on the Settlement Effective Date, Metaphor shall be allowed, without counterclaim or offset of any kind or nature, a general non-priority unsecured claim of \$398,230.85 against Graceway Pharmaceuticals, LLC.

7. The Debtors do not believe they hold any avoidance claim against Metaphor (including claims arising under Sections 544, 547 and 548 of the Bankruptcy Code). To the extent, however, that any such avoidance claim against Metaphor does exist, the Debtors hereby waive and release such claim.

B. Settlement Effective Date:

8. This Agreement shall become effective and binding (a) on Metaphor on the date hereof and (b) on the Debtors upon the first date on which the Bankruptcy Court shall have entered the Approval Order and such order shall have become final and non-appealable (the "**Settlement Effective Date**"). If the Settlement Effective Date shall not have occurred on or

before January 4, 2012, any Party shall have the right to terminate this Agreement by providing written notice to the other Parties at the notice addresses specified on the signature pages below.

C. Mutual Releases:

9. Effective as of the Settlement Effective Date, each of the Parties hereby waives, releases and discharges each of the other Parties, their affiliates, member firms and associated entities, and its and their respective attorneys, financial advisors, employees, officers, directors, agents and other authorized representatives, successors and assigns, from all claims, demands, damages, obligations, liabilities, losses, costs, expenses, fees, and causes of action, in each case, asserted or unasserted, known or unknown, existing as of the date hereof or arising hereafter, including, without limitation, all claims, demands, damages, obligations, liabilities, losses, costs, expenses, fees, and causes of action in connection with, arising from or related to the Adversary Proceeding, the Metaphor Pleadings and/or the execution and delivery of this Agreement; *provided, however*, that such waiver, release and discharge shall not include any obligation of any Party under this Agreement or any damages, liabilities, claims or causes of action in connection with, arising from or related to the breach by any Party of the terms and conditions contained in this Agreement.

D. Representations and Warranties:

10. Each Party (severally and not jointly) represents and warrants to the other Parties, only as to itself and not as to each of the others, that the following statements are true and correct as of the date hereof with respect to such Party:

- (a) *Power, Authority and Authorization.* Each Party has the requisite power and corporate, limited liability company, limited partnership or similar authority to enter into this Agreement and perform all of the obligations under this Agreement, and the execution, delivery and performance of this Agreement by such Party has been duly authorized by all necessary corporate, limited liability company, limited partnership or similar action on the part of such Party, and the person executing this Agreement on behalf of such Party is duly authorized to do so and thereby bind that Party.
- (b) *No Conflicts.* The execution, delivery and performance of this Agreement by such Party does not and shall not (i) violate any provision of law, rule or regulation applicable to it or its organizational documents or (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contractual obligations to which it is a party or under its organizational documents.
- (c) *Binding Obligation.* This Agreement is a legally valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws, both foreign and domestic, relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

E. Miscellaneous:

11. *Choice of Law:* This Agreement shall be governed by and construed under and in accordance with the laws of the State of New York, without regard to the conflicts of laws principles thereof. The Bankruptcy Court shall retain jurisdiction over any action or proceeding arising out of or relating to this Agreement, and all claims in respect of such action or proceeding may be heard and determined in such court. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO A JURY TRIAL FOR ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT.

12. *Successors and Assigns:* This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, affiliates and successors.

13. *Binding Effect:* The Parties' respective rights, obligations, remedies and protections provided for in this Agreement and the Approval Order shall survive the conversion, dismissal or closing of the Debtors' bankruptcy cases, appointment of a chapter 7 or chapter 11 trustee therein, substantive consolidation thereof and confirmation of the Debtors' joint plan of liquidation, and the terms and provisions of this Agreement shall continue in full force and effect notwithstanding the entry of any order effecting the foregoing.

14. *No Admission; Reservation of Rights.* The Parties understand and agree that any claim, cause of action or defense that any Party may have against another in connection with the Adversary Proceeding and Metaphor Pleadings is disputed, and that the Parties are entering into this Agreement for the purpose of settling such disputes by compromise in order to avoid further litigation. Neither the execution nor delivery of this Agreement shall constitute an admission of any wrongdoing or liability whatsoever on the part of any of the Parties.

15. *Further Assurances.* The Parties hereby agree promptly to execute and deliver any and all such further instruments and documents and to take all such further actions as may be reasonably required by the other Parties to effectuate the terms and conditions of this Agreement.

16. *Construction.* No Party shall be deemed the drafter of this Agreement. The headings herein are solely for the convenience of the Parties and do not form a substantive part of this Agreement. If any term or other provision of this Agreement is finally held by a court having competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy: (i) said term or other provision shall be enforced to the maximum extent allowed and/or reconstrued in order to effect the intent of the Parties as closely as possible; and (ii) all other conditions and provisions of this Agreement not otherwise affected shall nevertheless remain in full force and effect.

17. *Entire Agreement.* This Agreement constitutes the entire agreement and understanding among the Parties with respect to the settlement of the dispute settled hereby, sets forth all terms and conditions of this Agreement, and cancels and supersedes any and all prior agreements, representations, and/or understandings, whether written or oral, among the Parties relating to the subject matter of this Agreement. Further, neither this Agreement nor any terms hereof may be amended, changed, waived or discharged unless such amendment, change, waiver or discharge is in a writing signed by the Party against whom enforcement is sought.

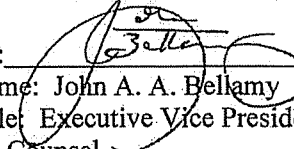
18. *Representation by Counsel.* The Parties acknowledge the benefit of professional advice rendered by legal counsel of their own selection prior to entering into this Agreement. The Parties further acknowledge that they have had a sufficient opportunity to discuss and review this Agreement with their attorneys and fully understand and agree to the terms set forth herein.

19. *Counterparts.* This Agreement may be executed in counterparts. Each counterpart shall be deemed an original. All counterparts shall constitute a single agreement. A facsimile of a signed copy of the Agreement shall serve as an original executed copy for all purposes.

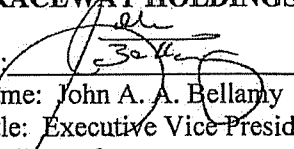
20. *Specific Performance.* It is understood and agreed by the Parties that money damages would not be a sufficient remedy for any breach of this Agreement by any Party and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief as its sole and exclusive remedy of any such breach, including, without limitation, an order of the Bankruptcy Court or other court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement as of the day and year first written above.

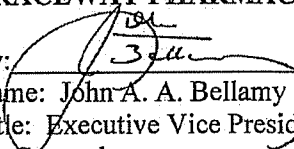
GRACEWAY PHARMA HOLDING CORP.

By: 
Name: John A. A. Bellamy
Title: Executive Vice President & General Counsel
Notice Address:
340 Martin Luther King Jr. Blvd.
Suite 500
Bristol, TN 37620

GRACEWAY HOLDINGS, LLC

By: 
Name: John A. A. Bellamy
Title: Executive Vice President & General Counsel
Notice Address: same as above

GRACEWAY PHARMACEUTICALS, LLC

By: 
Name: John A. A. Bellamy
Title: Executive Vice President & General Counsel
Notice Address: same as above

CHESTER VALLEY HOLDINGS, LLC

By: 

Name: John A. A. Bellamy

Title: Executive Vice President & General
Counsel

Notice Address: same as above

**CHESTER VALLEY
PHARMACEUTICALS, LLC**

By: 

Name: John A. A. Bellamy

Title: Executive Vice President & General
Counsel

Notice Address: same as above

GRACEWAY CANADA HOLDINGS, INC.

By: 

Name: John A. A. Bellamy

Title: Executive Vice President & General
Counsel

Notice Address: same as above

GRACEWAY INTERNATIONAL, INC.

By: 

Name: John A. A. Bellamy

Title: Executive Vice President & General
Counsel

Notice Address: same as above


METAPHOR, INC:

By: _____

Name: Nick Calandrillo

Title: Chief Executive Officer

Notice Address: 119 Cherry Hill Road, Parsippany NJ 07054



[SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

EXHIBIT A

Form of Dismissal Stipulation

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

In re

GRACEWAY PHARMACEUTICALS, LLC,
et al.

Case No. 11-12036 (PJW)

Chapter 11

METAPHOR, INC.,

Plaintiff

-v-

Adv. Proc. No. 11-53855 (PJW)

GRACEWAY PHARMACEUTICALS,
LLC, *et al.*

Defendants.

STIPULATION OF DISMISSAL

WHEREAS, on November 17, 2011, plaintiff Metaphor, Inc. ("***Metaphor***") commenced this adversary proceeding by filing a complaint (the "***Complaint***") seeking, among other things, a judicial declaration that Metaphor is the owner of copyrights in certain marketing materials used by the defendants (all intellectual property subject to the Complaint, including copyrights in the materials identified in Exhibit A to the Complaint, the "***Disputed Property***") and a judgment permanently prohibiting the Debtors from selling or otherwise disposing of the Disputed Property;

WHEREAS, on December 2, 2011, the parties entered into that certain Settlement Agreement (the “*Settlement Agreement*”)¹ whereby, among other things, they consensually agreed to settle certain disputes between them as specified therein;

NOW, THEREFORE, the parties hereto stipulate and agree that:

The above-captioned adversary proceeding (the “*Adversary Proceeding*”) is dismissed with prejudice.

Metaphor hereby withdraws the Complaint with prejudice to refiling.

The parties to the Settlement Agreement shall bear their own costs related to the disputes between them.

Nothing in this Stipulation of Dismissal shall be deemed to modify, amend, supplement, or abridge the terms of the Settlement Agreement.

This Stipulation of Dismissal may be executed in counterparts. Each counterpart shall be deemed an original, and a facsimile of a signed copy of this Stipulation of Dismissal shall serve as an original executed copy for all purposes.

Josef S. Athanas, Esq.
Alicia C. Weis, Esq.
LATHAM & WATKINS LLP
233 South Wacker Drive
Suite 5800
Chicago, IL 60606
Telephone: (312) 876-7700
Facsimile: (312) 993-9767
Attorneys for the Debtors

Michael J. Joyce, Esq.
CROSS & SIMON, LLC
913 North Market Street
11th Floor
Wilmington, DE 19801
Telephone: (302) 777-4200
Facsimile: (302) 777-4224
Attorneys for Metaphor

¹ Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Settlement Agreement.

So Ordered:

Dated: _____, 2011
Wilmington, Delaware

PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Approval Order

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

In re:

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et al.,¹

Debtors.

Chapter 11

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6. No Appeal of Order. Neither the Debtors nor Metaphor shall appeal, or support any other person in appealing, this Order.
7. Payment to Metaphor. On the Settlement Effective Date, the Debtors shall pay to Metaphor \$25,000.00 in cash solely from the Sale Proceeds held in the 1.0% Holdback Account, free and clear of any liens, claims or encumbrances.⁴

³ Reference is made to the Settlement Agreement for a complete description of its terms. To the extent any summaries and/or descriptions of the terms of the Settlement Agreement contained in the Motion differ in any way from that contained in the Settlement Agreement, the Settlement Agreement shall govern.

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chapter 7 proceedings under the Bankruptcy Code relating to the Debtors, and all other parties-in-interest.

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Dated: _____, 2011
Wilmington, Delaware

Peter J. Walsh
United States Bankruptcy Judge