

**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

Hearing Date: December 28, 2011 at 11:30 a.m. (ET)

Objection Deadline: December 19, 2011 at 4:00 p.m. (ET)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING
DEBTORS TO ABANDON CERTAIN EXPENDABLE PROPERTY**

The above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") hereby move this Court (the "**Motion**") for entry of an order, in substantially the form attached hereto as Exhibit A, authorizing the Debtors to abandon certain Expendable Property (as defined below) effective as of the Rejection Date (as defined below). In support of this Motion, the Debtors respectfully state as follows:

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.

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. The statutory bases for the relief requested herein are Sections 105(a) and 554 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) and Rule 6007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

Background

3. On September 29, 2011 (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. On September 30, 2011, the Court entered an order consolidating these Chapter 11 Cases for procedural purposes only [Docket No. 42]. On October 11, 2011, the Office of the United States Trustee appointed an official committee of unsecured creditors pursuant to Section 1102 of the Bankruptcy Code (the “**Committee**”) [Docket No. 90].

4. A description of the Debtors’ business and the reasons for commencing these Chapter 11 Cases are set forth in the Declaration of Gregory C. Jones in Support of Chapter 11 Petitions and First Day Motions [Docket No. 3], filed on the Petition Date.

5. On October 31, 2011, the Debtors filed the *Debtors’ Motion for Entry of an Order (A) Authorizing Procedures by which the Debtors’ may Reject Certain Unexpired Leases and Executory Contracts and (B) Approving the Form and Manner of Rejection Notice* [Docket No. 173] (the “**Rejection Procedures Motion**”) seeking an order (a) authorizing procedures by which the Debtors may reject certain unexpired leases and executory contracts following the close of the sale of substantially all of the Debtors’ assets and (b) approving the form and manner of Rejection Notice (as defined in the Rejection Procedures Motion). The Rejection Procedures Motion was served on all known Contract and Lease counterparties, including Poretta & Orr, Inc. (“**Poretta**”) and Freeman Exhibits (“**Freeman**”). *See Affidavit of Service Re: Debtors’*

Motion for Entry of an Order (A) Authorizing Procedures by which the Debtors' may Reject Certain Unexpired Leases and Executory Contracts and (B) Approving the Form and Manner of Rejection Notice [Docket No. 195]. On November 22, 2011, the Court entered the *Order (A) Authorizing Procedures by which the Debtors' may Reject Certain Unexpired Leases and Executory Contracts and (B) Approving the Form and Manner of Rejection Notice* [Docket No. 302] (the “**Rejection Procedures Order**”).

6. On November 22, 2011, the Court 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 Their Obligations Under the Asset Purchase Agreement; (C) the Debtors to Assume and Assign Certain Executory Contracts and Unexpired Leases; and (D) Granting Related Relief* [Docket No. 306], which authorized the sale of substantially all of the Debtors' assets to Medicis Pharmaceutical Corporation (“**Medicis**”) pursuant to Section 363 of the Bankruptcy Code (the “**Sale**”).

7. On November 23, 2011, in accordance with the Rejection Procedures Order, the Debtors filed the *Notice of Rejection of Unexpired Leases and Executory Contracts* [Docket No. 309] (the “**Rejection Notice**”). The Rejection Notice was served on all counterparties to the contracts listed in Schedule 1 of the Rejection Notice, including Poretta and Freeman, and informed such parties that the contracts listed in Schedule 1 of the Rejection Notice would be rejected effective as of the date the Sale was consummated, in accordance with the Rejection Procedures Order. See *Affidavit of Service Re: Notice of Rejection of Unexpired Leases and Executory Contracts [Re: Docket No. 302]* [Docket No. 348].

8. The Sale was consummated on December 2, 2011 (the “**Rejection Date**”). On the Rejection Date, the Debtors filed and served on the counterparties to the rejected contracts,

including Poretta and Freeman, the *Notice of Closing of Sale of Substantially all of Debtors' Assets to Medicis Pharmaceutical Corporation* [Docket No. 335], informing such parties that the Sale had closed and that the rejection of their contracts was effective as of December 2, 2011.

Expendable Property

9. As of the date hereof, certain personal property of the Debtors remains in the possession of Poretta and Freeman, respectively, consisting primarily of tradeshow booths and marketing materials. Freeman is in possession of one large tradeshow exhibit customized to market the Debtors' products, including related components, with a fifty by fifty foot configuration, which is at least ten years old (the "**Freeman Property**"). The Freeman Property is very large and heavy and is an outdated exhibit model that is no longer used in tradeshows. Consequently, the Debtors believe the Freeman Property is of no value to the Debtors.

10. Poretta is in possession of approximately fifteen portable display units and various printed graphic panels customized to market the Debtors' products (the "**Poretta Property**," and together with the Freeman Property, the "**Expendable Property**"). If it were possible to find a buyer for the Poretta Property, the Debtors believe the Poretta Property would have a value of less than \$5,000. The Debtors do not believe this estimated value merits the expense and resources required to market and sell the Poretta Property, and that the Poretta Property is thus of little to no value to the Debtors or their estates.

11. The Debtors have sold substantially all of their assets and are currently in the process of winding down their business. Accordingly, the Debtors no longer have any need or use for the Expendable Property. The Expendable Property has little or no value, and the preservation thereof will be burdensome to the Debtors' estates. The Debtors thus request authority pursuant to Section 554(a) of the Bankruptcy Code and Bankruptcy Rule 6007 to

abandon the Expendable Property to Freeman and Poretta, respectively, as is, where is, effective as of the Rejection Date.

Relief Requested

12. By this Motion, the Debtors seek entry of an order authorizing the Debtors to abandon Expendable Property effective as of the Rejection Date.

Basis for Relief

13. Section 554(a) of the Bankruptcy Code provides that a debtor in possession may abandon, subject to Court approval, “property of the estate that . . . is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). See In re Am. Home Mortgage Holdings, Inc., Case No. 07-11047 (Bankr. D. Del. Oct. 1, 2007) (CSS); In re New Century TRS Holdings, Case No. 07-10416 (Bankr. D. Del. Apr. 24, 2007) (KJC). The Debtors submit that the standard set forth in Section 554(a) of the Bankruptcy Code is satisfied.

14. The Debtors have determined that the Expendable Property has little or no value. Given that the Expendable Property is customized to market the Debtors’ products, it is unlikely the Debtors could sell the Expendable Property. Even if the Debtors were to find a buyer, the projected price would be less than the cost of transporting and storing the Expendable Property while it is marketed for sale. The Expendable Property represents a potential drain on the Debtors limited resources. Indeed, on November 28, 2010, the Debtors received a letter from Poretta (the “**Letter**”), attached hereto as Exhibit B, in which Poretta threatened to charge the Debtors storage costs for holding the Expendable Property in its possession.

15. As described above, the Expendable Property has little or no value to the Debtors. Accordingly, the storage of the Expendable Property by Poretta and Freeman will provide no benefit to the Debtors’ estates in any way. The Debtors request the abandonment be effective as

of the Rejection Date so that Poretta and Freeman can immediately begin planning how to dispose of the Expendable Property.

16. After reviewing their overall operations and in the exercise of their sound business judgment, the Debtors have determined that the Expendable Property is burdensome to the Debtors' estates. Accordingly, the Debtors submit that it is in the best interest of the Debtors, their estates and creditors to abandon the Expendable Property effective as of the Rejection Date.

Notice

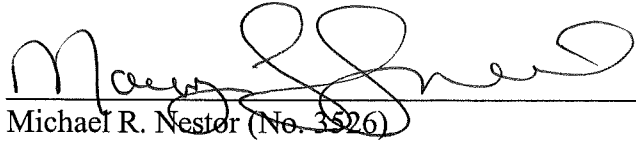
17. The Debtors have provided notice of this Motion to: (a) the United States Trustee for the District of Delaware; (b) financing counsel to the administrative agent for the lenders under the Debtors' prepetition first lien credit facility; (c) special restructuring and bankruptcy counsel to the administrative 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 Committee; (g) the creditors listed on the Debtors' consolidated list of 30 largest unsecured creditors, as filed with the Debtors' chapter 11 petitions; (h) the Food and Drug Administration; (i) the Internal Revenue Service; (j) Freeman; (k) Poretta; and (l) 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.

18. 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' 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 as Exhibit A, (a) authorizing the Debtors to abandon related Expendable Property effective as of the Rejection Date and (b) granting such other and further relief as this Court deems appropriate.

Dated: December 8, 2011
Wilmington, Delaware

Respectfully Submitted,



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