

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

Rel. Doc. No. 495

**ORDER APPROVING (I) DEBTORS' MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTORS TO REJECT AN EXECUTORY CONTRACT
BETWEEN DEBTORS AND MASERGY COMMUNICATIONS, INC. NUNC PRO
TUNC TO JANUARY 31, 2012, AND (II) STIPULATION AMONG THE
DEBTORS AND MASERGY COMMUNICATIONS, INC.**

Upon consideration of the motion (the "Motion")² of the Debtors for entry of an order authorizing the Debtors to reject an executory contract with Masergy Communications, Inc. (the "Masergy Contract") *nunc pro tunc* to January 31, 2012; and upon consideration of the Stipulation among the Debtors and Masergy Communications, Inc. resolving the Motion (the "Stipulation"); 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

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 400, 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 meanings ascribed to them in the Motion.

opportunity for objection having been given, with no objections or requests for hearing having been filed, or all objections having been overruled or resolved, as the case may be; 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 provided herein.
2. The Stipulation attached hereto as Exhibit 1 is approved.
3. The Masergy Contract is hereby rejected *nunc pro tunc* to January 31, 2012.
4. Masergy shall be, and hereby is, allowed an administrative claim in the amount of \$14,272.56, which claim shall not be subject to disallowance, subordination, recharacterization, or the like, and the Debtors are hereby authorized, and shall, pay to Masergy such amount within five (5) business days of the Stipulation Effective Date (as defined in the Stipulation).
5. Masergy shall file a rejection damages claim, if any, relating to the rejection of the Masergy Contract within thirty (30) days after the entry of this Order.
6. Except as set forth in paragraph 5, all administrative claims of Masergy against the Debtors shall be, and hereby are, deemed withdrawn, expunged and denied.
7. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
8. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

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

Dated: _____, 2012
Wilmington, Delaware

Peter J. Walsh
United States Bankruptcy Judge

Exhibit 1

Stipulation

STIPULATION

THIS STIPULATION (this "*Stipulation*") is made and entered into as of February 27, 2012, 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) Masergy Communications, Inc., a Delaware corporation ("*Masergy*"). Each Debtor and Masergy is referred to separately as a "*Party*" and all are referred to collectively as the "*Parties*."

WHEREAS, on September 29, 2011 (the "*Petition Date*"), each of Debtors filed for bankruptcy protection (the "*Chapter 11 Cases*") 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 January 23, 2012, pursuant to Sections 547 and 550 of the Bankruptcy Code, the Debtors sent Masergy a preference demand letter demanding the return of transfers made to Masergy by Debtors during the ninety days immediately preceding the Petition Date, totaling \$48,586.64 (the "*Transfers*");

WHEREAS, Masergy has asserted certain defenses pursuant to Section 547(c) of the Bankruptcy Code; namely, Masergy asserts the Transfers were made in the ordinary course of business and that substantially all of the Transfers will qualify as new value;

WHEREAS, on January 31, 2012, the Debtors filed the *Debtors' Motion for Entry of an Order Authorizing the Debtors to Reject an Executory Contract Between Debtors and Masergy Communications, Inc. Nunc Pro Tunc to January 31, 2012* [Docket No. 495] (the "*Rejection Motion*"), in which the Debtors moved to reject the Masergy Contract (as defined in the Rejection Motion), relating to the provision of certain data services by Masergy, *nunc pro tunc* to January 31, 2012;

WHEREAS, on February 3, 2012, Masergy informally objected to the Rejection Motion's request for rejection *nunc pro tunc* to January 31, 2012; and

WHEREAS, the Parties now seek to resolve the disputes relating to the Rejection Motion and the Transfers, 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 receipt and sufficiency of which is hereby acknowledged, the Parties hereby stipulate as follows:

A. Settlement:

1. Masergy hereby agrees that (a) it consents to the relief requested in the Rejection Motion including, but not limited to, the rejection of the Masergy Contract *nunc pro tunc* to January 31, 2012, (b) it will not file any objection or other responsive pleading in response to the

Rejection Motion or the rejection of the Masergy Contract *nunc pro tunc* to January 31, 2012, and (c) Masergy will not appeal, or support any other person in appealing, any order approving the Rejection Motion.

2. Masergy shall be, and hereby is, allowed an administrative claim in the amount of \$14,272.56, which claim shall not be subject to disallowance, subordination, recharacterization, or the like.

3. Except as set forth in paragraph 2, all administrative claims of Masergy against the Debtors shall be, and hereby are, deemed withdrawn, expunged and denied and Masergy hereby waives in full any and all claims against the Debtors for any administrative expenses.

4. The Debtors hereby waive and release any and all avoidance claims or preference claims against Masergy (including, without limitation, claims arising under Sections 544, 547 and 548 of the Bankruptcy Code).

5. The Debtors shall return all equipment provided to the Debtors under the Masergy Contract no later than fourteen (14) days following the Stipulation Effective Date.

B. Stipulation Effective Date:

6. This Stipulation shall become effective and binding upon the date on which the Bankruptcy Court enters an order approving this Stipulation and granting the relief requested in the Rejection Motion (the “*Stipulation Effective Date*”).

C. Representations and Warranties:

7. 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.* Subject, with respect to the Debtors, to the approval of the Bankruptcy Court, each Party has the requisite power and corporate, limited liability company, limited partnership or similar authority to enter into this Stipulation and perform all of the obligations under this Stipulation, and the execution, delivery and performance of this Stipulation 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 Stipulation 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 Stipulation 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 Stipulation is a legally valid and binding obligation of such Party, subject, with respect to the Debtors, to the approval of the Bankruptcy Court, 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.

D. Miscellaneous:

8. *Choice of Law:* This Stipulation 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 Stipulation, 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 STIPULATION.

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

10. *Binding Effect:* The Parties' respective rights, obligations, remedies and protections provided for in this Stipulation 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 Stipulation shall continue in full force and effect notwithstanding the entry of any order effecting the foregoing.

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

12. *Construction.* No Party shall be deemed the drafter of this Stipulation. The headings herein are solely for the convenience of the Parties and do not form a substantive part of this Stipulation. If any term or other provision of this Stipulation 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 Stipulation not otherwise affected shall nevertheless remain in full force and effect.

13. *Entire Stipulation.* This Stipulation 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 Stipulation, and cancels and supersedes any and all prior

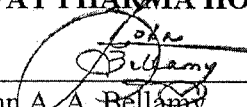
agreements, representations, and/or understandings, whether written or oral, among the Parties relating to the subject matter of this Stipulation. Further, neither this Stipulation nor any terms hereof may be amended, changed, waived or discharged unless such amendment, change, waiver or discharge is in a writing signed by the Party against whom enforcement is sought.

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

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

IN WITNESS WHEREOF, the Parties hereto have signed this Stipulation 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 400

Bristol, TN 37620

GRACEWAY HOLDINGS, LLC

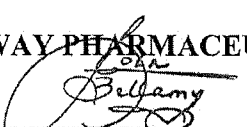
By: 

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

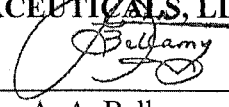
Title: Executive Vice President & General Counsel

Notice Address: same as above

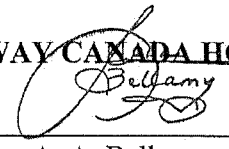
CHESTER VALLEY HOLDINGS, LLC

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

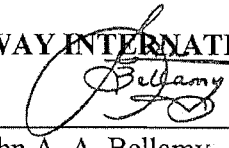
**CHESTER VALLEY
PHARMACEUTICALS, LLC**

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

MASERGY COMMUNICATIONS, INC.

By: 

Name: John Gruver

Title: Collections Manager

Notice Address:

Masergy Communications, Inc.

Attn: John Gruver

2740 North Dallas Parkway, Suite 260

Plano, Texas 75093

[SIGNATURE PAGE TO STIPULATION]