

**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

Response Deadline: April 20, 2012 at 4:00 p.m. (ET)

Hearing Date: May 9, 2012 at 10:30 a.m. (ET)

**DEBTORS' OBJECTION TO CLAIMS FILED BY
TENNESSEE DEPARTMENT OF REVENUE**

The above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") hereby file this objection (the "**Objection**") to proofs of claims nos. 115, 116, 117, 238, 239, 240, 241, 242, 243, 244 and 245 (the "**TDOR Tax Claims**") filed against the Debtors by the Tennessee Department of Revenue and the Commissioner of Revenue of the State of Tennessee (collectively, "**TDOR**"), pursuant to Section 502(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), and respectfully request entry of an order in substantially the same form as the proposed form of order (the "**Proposed Order**") attached hereto as Exhibit I. None of the TDOR Tax Claims are supported by sufficient documentation, and therefore all

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.

TDOR Tax Claims should be disallowed. In the alternative, certain TDOR Tax Claims are claims that were amended and superseded by subsequently filed claims and should be disallowed. Moreover, certain TDOR Tax Claims are incorrectly classified by TDOR as priority claims or administrative expense claims, which they are in fact general unsecured claims or contingent and unliquidated claims. Finally, the amount of certain TDOR Tax Claims asserted by TDOR is overstated because it fails to take into account payments made by the ultimate parent of the Debtors, Graceway Pharma Holding Corp or otherwise relies on inaccurate calculations. In support of this Objection, the Debtors rely on the *Declaration of Thomas E. Hill in Support of the Debtors' Objection to Claims Filed by Tennessee Department of Revenue*, attached hereto as Exhibit II. In further support of this Objection, the Debtors respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. The statutory and legal predicates for the relief sought herein are Section 502(b) of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1.

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].

4. These Chapter 11 Cases are pending before the Honorable Peter J. Walsh, Judge for the United States Bankruptcy Court for the District of Delaware, located at the United States Bankruptcy Court, 824 North Market Street, 6th Floor, Wilmington, Delaware 19801 (the “**Bankruptcy Court**”). 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 “**Creditors’ Committee**”) [Docket No. 90].

5. Pursuant to an order of the Court entered on September 30, 2011 [Docket No. 43], the Debtors retained BMC Group, Inc. as its notice, claims and balloting agent (the “**Voting and Claims Agent**”). The Voting and Claims Agent is authorized to maintain (i) all proofs of claims filed against the Debtors and (ii) an official claims register by docketing all proofs of claims in a claims database containing, *inter alia*, information regarding the name and address of each claimant, the date the proof of claim was received by the Voting and Claims Agent, the claim number assigned to the proof of claim, and the asserted amount and classification of the claim.

6. On October 17, 2011, this Court entered the *Order Establishing Bar Dates For Filing Proofs of Claim and Approving The Form And Manner of Notice Thereof* [Docket No. 126] (the “**Bar Date Order**”), which established that any person or entity (excluding any governmental unit, as defined in Section 101(27) of the Bankruptcy Code), asserting a claim against the Debtors in these Chapter 11 Cases must file a proof of claim (a “**Proof of Claim**”) so that it is received by the Voting and Claims Agent on or before 4:00 p.m. (prevailing Eastern

Time) on the date that is sixty (60) days after the Debtors' filed their schedules of assets and liabilities and statements of financial affairs (the "**Schedules and Statements**").

7. The Debtors filed their Schedules and Statements on October 31, 2011. Accordingly, December 30, 2011 at 4:00 p.m. (prevailing Eastern Time) was the deadline for filing proofs of claims against the Debtors (the "**Bar Date**"), other than claims of governmental units and administrative expense claims. Further, the Bar Date Order established that all governmental units asserting claims against one or more of the Debtors must file proofs of claims so that they are received by the Voting and Claims Agent on or before March 27, 2012 at 4:00 p.m. (prevailing Eastern Time).

8. Notice of the Bar Date was mailed to all known creditors on November 1, 2011. See Affidavit of Service filed by the Voting and Claims Agent on November 8, 2011 [Docket No. 230]. In addition, on November 7, 2011, the Debtors published notice of the Bar Date in the Wall Street Journal (national edition). See Affidavit of Publication of Albert Fox in the Wall Street Journal filed on January 11, 2012.

9. On February 28, 2012, the Debtors filed the *First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* [Docket No. 551] (the "**Plan**"); on March 1, 2012, the Debtors filed the *Disclosure Statement for the First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, et al.* [Docket No. 566]; and on March 1, 2012, the Bankruptcy Court entered the *Order (A) Approving the Disclosure Statement, (B) Establishing the Voting Record Date, Voting Deadline and Other Dates, (C) Approving Procedures for Soliciting, Receiving, and Tabulating Votes on the Plan and for Filing Objections to the Plan and (D) Approving the Manner and Forms of Notice and Other Related Documents*

[Docket No. 572]. The Debtors expect to seek the entry of an order confirming the Plan at a hearing currently scheduled for April 11, 2012. Section 2.4 of the Plan² provides:

Priority Tax Claims Subject to the allowance procedures and deadlines provided herein, on the Effective Date or as soon thereafter as is practicable in recognition of the applicable Claims resolution process set forth herein, with respect to each Allowed Priority Tax Claim, at the sole option of the Debtors or, if after the Effective Date, the Liquidating Trustee, the holder of an Allowed Priority Tax Claim shall be entitled to receive on account of such Allowed Priority Tax Claim, in full satisfaction, settlement and release of and in exchange for such Allowed Priority Tax Claim, (i) Cash in an amount equal to the unpaid portions of such Allowed Priority Tax Claims; or (ii) such other treatment agreed to in writing by the holder of such Allowed Priority Tax Claim and the Debtors or, if after the Effective Date, the Liquidating Trustee, provided such treatment is on more favorable terms to the Debtors or the Liquidating Trustee, as the case may be, than the treatment set forth in subsection (i) hereof.

Plan § 2.4.

THE TDOR TAX CLAIMS

10. On December 18, 2011, TDOR filed a Proof of Claim asserting a claim in the amount of \$53,971.81 [Claim No. 115] of which \$53,946.81 was asserted to be entitled to priority status and of which (a) \$15.03 was asserted for principal and interest on franchise/excise taxes for the period beginning on January 1, 2010; (b) \$103.31 was asserted for principal and interest on franchise/excise taxes for the period beginning on September 30, 2010; (c) \$53,828.47 was asserted for principal and interest on franchise/excise taxes for the period beginning on January 1, 2011; and (d) \$25.00 was asserted for a late charge on account of the franchise/excise taxes owed for the period beginning on September 30, 2010. As set forth below, Claim No. 115 should be disallowed because TDOR failed to attach sufficient documentation to

² Unless otherwise defined herein, capitalized terms used in this paragraph 9 shall have the meanings ascribed to them in the Plan.

the Proof of Claim. Additionally, and in the alternative, the Debtors further objection(s) to Claim No. 115 are set forth on Exhibit III.A attached hereto and further detailed below.

11. On December 19, 2011, TDOR filed a Proof of Claim asserting a claim in the amount of \$51,807.87 [Claim No. 116] of which \$49,164.10 was asserted to be entitled to priority status and of which (a) \$38,238.48 was asserted for principal and interest on franchise/excise taxes for the period beginning on January 30, 2011; (b) \$10,925.62 was asserted for principal and interest on franchise/excise taxes for the period beginning on September 30, 2010; and (c) \$2,643.77 was asserted for a late charge on account of the franchise/excise taxes owed for the period beginning on September 30, 2010. As set forth below, Claim No. 116 should be disallowed because TDOR failed to attach sufficient documentation to the Proof of Claim. Additionally, and in the alternative, the Debtors further objection(s) to Claim No. 116 are set forth on Exhibit III.B attached hereto and further detailed below.

12. On December 19, 2011, TDOR filed a Proof of Claim asserting a claim in the amount of \$14,634.48 [Claim No. 117] all of which was asserted to be entitled to administrative expense status and all of which relate to principal on franchise/excise taxes for the period beginning on January 30, 2011. As set forth below, Claim No. 117 should be disallowed because TDOR failed to attach sufficient documentation to the Proof of Claim. Additionally, and in the alternative, the Debtors further objection(s) to Claim No. 117 are set forth on Exhibit III.C attached hereto and further detailed below.

13. On March 26, 2012, TDOR filed a Proof of Claim asserting a claim in the amount of \$6,234,717.87 [Claim No. 238] of which \$5,430,102.64 was asserted to be entitled to priority status and of which (a) \$2,179.33 was asserted for principal and interest on franchise/excise taxes for the period beginning on January 1, 2007; (b) \$27,037.54 was asserted

for principal and interest on franchise/excise taxes for the period beginning on January 1, 2009; (c) \$1,413.64 was asserted for principal and interest on franchise/excise taxes for the period beginning on January 1, 2010; (d) \$2,830,824.56 was asserted for principal and interest on franchise/excise taxes for the period beginning on September 30, 2010; (e) \$2,130,323.04 was asserted for principal on franchise/excise taxes for the period beginning on January 1, 2011; (f) \$429,778.79 was asserted for principal and interest on sales and use taxes for the period beginning on January 1, 2008; (h) \$2,343.00 was asserted for principal and interest on business county sales and use taxes for the period beginning on April 1, 2009; (i) \$1,245.06 was asserted for principal and interest on business city sales and use taxes for the period beginning on April 1, 2009; (j) \$2,478.84 was asserted for principal on business county sales and use taxes for the period beginning on April 1, 2011; (k) \$2,478.84 was asserted for principal on business city sales and use taxes for the period beginning on April 1, 2011; (l) \$714,676.60 was asserted for a late charge on account of the franchise/excise taxes owed for the period beginning on September 30, 2010 and (m) \$89,938.63 was asserted for a late charge on account of the sales and use taxes owed for the period beginning on January 1, 2008. As set forth below, Claim No. 238 should be disallowed because TDOR failed to attach sufficient documentation to the Proof of Claim. Additionally, and in the alternative, the Debtors further objection(s) to Claim No. 238 are set forth on Exhibit III.D attached hereto and further detailed below.

14. On March 26, 2012, TDOR filed a Proof of Claim asserting a claim in the amount of \$733,949.83 [Claim No. 239] all of which was asserted to be entitled to administrative expense status and of which (a) \$728,382.51 was asserted for principal on franchise/excise taxes for the period beginning on January 1, 2011; (b) \$2,506.08 was asserted for principal on business county sales and use taxes for the period beginning on April 1, 2011; (c) \$2,506.08 was asserted

for principal on business city sales and use taxes for the period beginning on April 1, 2011; (d) \$505.16 was asserted for principal and interest on sales and use taxes for the period beginning on November 1, 2011; and (e) \$50.00 was asserted for a late charge on account of the sales and use taxes owed for the period beginning on November 1, 2011. As set forth below, Claim No. 239 should be disallowed because TDOR failed to attach sufficient documentation to the Proof of Claim. Additionally, and in the alternative, the Debtors further objection(s) to Claim No. 239 are set forth on Exhibit III.E attached hereto and further detailed below.

15. On March 26, 2012, TDOR filed a Proof of Claim asserting a claim in the amount of \$141.93 [Claim No. 240] all of which was asserted to be entitled to priority status and all of which was asserted for principal and interest on franchise/excise taxes for the period beginning on May 1, 2006. As set forth below, Claim No. 240 should be disallowed because TDOR failed to attach sufficient documentation to the Proof of Claim. Additionally, and in the alternative, the Debtors further objection(s) to Claim No. 240 are set forth on Exhibit III.F attached hereto and further detailed below.

16. On March 26, 2012, TDOR filed a Proof of Claim asserting a claim in the amount of \$369.92 [Claim No. 241] all of which was asserted to be entitled to administrative expense status and all of which was asserted for principal on franchise/excise taxes for the period beginning on January 1, 2011. As set forth below, Claim No. 241 should be disallowed because TDOR failed to attach sufficient documentation to the Proof of Claim. Additionally, and in the alternative, the Debtors further objection(s) to Claim No. 241 are set forth on Exhibit III.G attached hereto and further detailed below.

17. On March 26, 2012, TDOR filed a Proof of Claim asserting a claim in the amount of \$626.48 [Claim No. 242] all of which was asserted to be entitled to priority status and

of which (a) \$126.48 was asserted for principal on franchise/excise taxes for the period beginning on January 1, 2011 and (b) \$500.00 was asserted for principal on franchise/excise taxes for the period beginning on January 1, 2012. As set forth below, Claim No. 242 should be disallowed because TDOR failed to attach sufficient documentation to the Proof of Claim. Additionally, and in the alternative, the Debtors further objection(s) to Claim No. 242 are set forth on Exhibit III.H attached hereto and further detailed below.

18. On March 26, 2012, TDOR filed a Proof of Claim asserting a claim in the amount of \$67,509.83 [Claim No. 243] all of which was asserted to be entitled to administrative expense status and of which (a) \$14,634.48 was asserted for principal on franchise/excise taxes for the period beginning on January 30, 2011 and (b) \$52,875.35 was asserted for principal on franchise/excise taxes for the period beginning on January 30, 2012. As set forth below, Claim No. 243 should be disallowed because TDOR failed to attach sufficient documentation to the Proof of Claim. Additionally, and in the alternative, the Debtors further objection(s) to Claim No. 243 are set forth on Exhibit III.I attached hereto and further detailed below.

19. On March 26, 2012, TDOR filed a Proof of Claim asserting a claim in the amount of \$54,621.07 [Claim No. 244] all of which was asserted to be entitled to priority status and of which (a) \$792.60 was asserted for principal and interest on franchise/excise taxes for the period beginning on January 1, 2009 and (b) \$53,828.47 was asserted for principal on franchise/excise taxes for the period beginning on January 1, 2011. As set forth below, Claim No. 244 should be disallowed because TDOR failed to attach sufficient documentation to the Proof of Claim. Additionally, and in the alternative, the Debtors further objection(s) to Claim No. 244 are set forth on Exhibit III.J attached hereto and further detailed below.

20. On March 26, 2012, TDOR filed a Proof of Claim asserting a claim in the amount of \$75,561.43 [Claim No. 245] all of which was asserted to be entitled to administrative expense status and all of which was asserted for principal on franchise/excise taxes for the period beginning on January 1, 2012. As set forth below, Claim No. 245 should be disallowed because TDOR failed to attach sufficient documentation to the Proof of Claim. Additionally, and in the alternative, the Debtors further objection(s) to Claim No. 245 are set forth on Exhibit III.K attached hereto and further detailed below.

21. In total, the TDOR Tax Claims allege an aggregate liability of \$7,287,912.52, of which \$5,588,603.03 is asserted by TDOR to be entitled to priority claim status and \$892,025.49 is asserted by TDOR to be entitled to administrative expense status.

22. After analyzing their books and records, the relevant provisions of the Bankruptcy Code, and the applicable caselaw, the Debtors dispute the TDOR Tax Claims and, additionally, believe in good faith that they have filed all required income and franchise tax returns when due and paid all amounts related thereto when due. TDOR failed to attach adequate documentation to any of the TDOR Tax Claims and thus the Debtors are unable to determine why TDOR believes additional tax is due and owing.

REQUESTED RELIEF

23. The Debtors hereby object to the TDOR Tax Claims and seek entry of an order, pursuant to § 502(b) of the Bankruptcy Code and Bankruptcy Rules 3001, 3003 and 3007, disallowing the TDOR Tax Claims in their entirety as they are not supported by sufficient documentation. In the alternative, the Debtors seek an entry of an order disallowing the TDOR Tax Claims that were amended and superseded by subsequently filed TDOR Tax Claims, modifying the priority of the TDOR Tax Claims for which the Debtors believe the priority status

should be modified and fixing the value of the TDOR Tax Claims the Debtors believe should be reduced. The reasons for the objection to each claim is explained and listed on Exhibits III.A through III.K and are further detailed below.

OBJECTION TO TDOR TAX CLAIMS

A. TDOR Tax Claims Fail to Provide Sufficient Supporting Documentation

24. TDOR failed to provide sufficient documentation in support of its TDOR Tax Claims. Each of the TDOR Tax Claims attached a sheet containing abbreviated headings, which abbreviations are never explained or defined, with a few amounts listed underneath. TDOR provided no explanation of the claimed priority, how the amount was calculated or why the Debtors filed tax returns were inaccurate. *See, for example*, Claim No. 238, attached hereto as Exhibit IV. The Proof of Claim instructions, as set forth in instruction 7 on Exhibit IV, specifically require the claimant to file with the Proof of Claim all supporting documents. Further, Bankruptcy Rule 3001 requires a claimant to provide evidence of the claim and any claimed priority. *See* Bankruptcy Rule 3001(c) and (d). Besides simply listing amounts under ambiguous, abbreviated headings, TDOR has not provided any explanation or documentation for their multiple claims nor has TDOR provided any rationale why TDOR believes such claims are entitled to priority status. The TDOR Tax Claims do not include sufficient information or documentation to constitute prima facie evidence of the validity, amount or priority of the claim, and therefore, the Debtors object to the allowance of each of the TDOR Tax Claims and request that the TDOR Tax Claims be disallowed in their entirety.

B. Certain TDOR Tax Claims are Amended and Superseded

25. Two TDOR Tax Claims (Claim Nos. 115 and 117) have been amended and superseded by subsequently-filed TDOR Proofs of Claims. Certain TDOR Tax Claims, thus,

no longer represent valid claims against the Debtors' estates. Failure to disallow these certain TDOR Tax Claims would result in TDOR receiving an unwarranted double recovery against the Debtors' estates, to the detriment of other creditors in these cases.

26. Therefore, the Debtors object to the allowance of certain TDOR Tax Claims. If the Debtors' objection is sustained, the TDOR Tax Claims that amended and superseded certain TDOR Tax Claims will remain on the official claims register, subject to the Debtors' further objections to such Remaining Claims set forth in this Objection. The Debtors request that the Voting and Claims Agent be authorized to cause the claims register to be amended to reflect the terms of the Proposed Order.

C. Certain TDOR Tax Claims Incorrectly Assert Priority Status

27. Certain TDOR Tax Claims asserted that they are entitled to a priority or administrative status. There are three main reasons for modifying the priority of certain TDOR Tax Claims. First, certain TDOR Tax Claims represent assessments for returns not yet due. Such amounts, although certain returns are in progress, are speculative at this point. Thus, the Debtors have determined that the priority status of certain TDOR Tax Claims should be adjusted to contingent and unliquidated status.

28. Second, certain other of the TDOR Tax Claims relate to taxes that are outside the period allowed to priority status under 507 of the Bankruptcy Code. Under Section 507 of the Bankruptcy Code, there is a three year limitation for franchise/excise taxes to receive priority status:

[A]llowed unsecured claims of governmental units, only to the extent that such claims are for...an excise tax on...a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition.

11 U.S.C. 507(b)(8)(E). Thus, the Debtors have determined that the priority status of certain TDOR Tax Claims should be adjusted to unsecured status.

29. Lastly, certain TDOR Tax Claims contain late charges/penalties, which are not afforded priority status. See Collier at 507.11.[8].[b] (noting that if a penalty is assessed in addition to interest, the penalty should not be entitled to priority if it is not compensatory); In re Healis, 49 B.R. 939, 942 (Bankr. M.D. Pa. 1985) (holding the same). TDOR's asserted late charges/penalties are not compensatory. Thus, the Debtors have determined that the priority status of certain TDOR Tax Claims should be adjusted to unsecured status.

30. As described above, for certain TDOR Tax Claims, no basis for priority or administrative status exists under Sections 506 or 507 of the Bankruptcy Code. Accordingly, the Debtors request that certain TDOR Tax Claims be modified as indicated in Exhibits III.A through III.K, as applicable.

D. Certain TDOR Tax Claims Assert Incorrect Amounts Due

31. The Debtors have reconciled the TDOR Tax Claims against their books and records and have determined that they are not liable for portions of some of the TDOR Tax Claims, and thus, these TDOR Tax Claims should be reduced. There are two primary reasons for this disallowance of portions of certain TDOR Tax Claims.

32. First, to the best of their knowledge the Debtors have filed all income and franchise tax returns for all tax periods when due, and the Debtors have paid all amounts due under such tax returns when due. Second, certain of the TDOR Tax Claims appear to erroneously fail to consider the tax returns filed by Graceway Pharma Holding Corp. In September 2010 the Debtors modified their corporate structure. Prior to September 2010, the ultimate parent company of the Debtors had been Graceway Holdings, LLC – a limited liability

company. In September 2010, Graceway Pharma Holding Corp. was formed by the members of Graceway Holdings, LLC. Graceway Pharma Holding Corp. became the ultimate parent company of the Debtors, and the members of Graceway Holdings, LLC exchanged their membership interests therein for shares of stock in Graceway Pharma Holding Corp.

33. Following the formation of Graceway Pharma Holding Corp., the Debtors' consolidated tax returns were filed by Graceway Pharma Holding Corp. Several of the TDOR Tax Claims erroneously assert that Graceway Pharmaceuticals, LLC remains liable for such taxes. For example, Claim No. 238 asserts that Graceway Pharmaceuticals, LLC is liable for franchise/excise taxes for the period beginning September 20, 2010 in a principal amount of \$2,736,062.65, interest on such amount of \$94,761.91 and a late penalty relating to such amount of \$714,676.60. Similarly, Claim No. 238 asserts that Graceway Pharmaceuticals, LLC is liable for franchise/excise taxes for the period beginning January 1, 2011 in a principal amount of \$2,130,323.04. Claim No. 239 also asserts that Graceway Pharmaceuticals, LLC is liable for franchise/excise taxes for the period beginning January 1, 2011, but in a principal amount of \$728,382.51. It is unclear why Claim No. 239 and Claim No. 238 assert different tax amounts for what is asserted to be the same tax owed by the same Debtor. However, all such portions of these TDOR Tax Claims should be disallowed because all such tax was paid by Graceway Pharma Holding Corp. as and when required by Tennessee law.³

34. Typically, an entity will be classified for Tennessee excise and franchise tax purposes as a corporation, partnership or other business entity consistent with the way it is classified for federal income tax purposes. Tenn. Code Ann. §§ 67-4-2106(c), 67-4-2007(d). A single member limited liability company that has not elected to be treated as a corporation under

³ As noted above, some TDOR Tax Claims include amounts and returns not yet due, and therefore Debtors have not paid such tax amounts.

the check-the-box regulations and is disregarded for federal income tax purposes will be similarly disregarded for Tennessee excise and franchise tax purposes if its single member is a corporation. Tenn. Code Ann. §§ 67-4-2106(c), 67-4-2007(d).

35. As such, an LLC such as Graceway Pharmaceuticals, LLC does not have to file Tennessee franchise or excise tax returns, nor is it responsible for paying franchise and excise taxes. Rather, Graceway Pharmaceuticals, LLC's activities are attributed to its ultimate parent corporation, Graceway Pharma Holding Corp., which is required to include all such LLCs as divisions of itself in determining any franchise or excise tax liability. *See e.g.*, Tenn. Dept. Rev. Ltr. Rul. 04-01, 2004 Tenn Rev. Rul. LEXIS 1 (Jan. 14, 2004). The Debtors properly and timely filed all tax returns for Graceway Pharma Holding Corp. and have timely paid all taxes due thereunder. As a result, the TDOR Tax Claims relating to such franchise and excise taxes should be disallowed.

36. Additionally, the Debtors understand that certain of the amounts asserted by TDOR relate to sales and use tax that has been improperly calculated by TDOR. TDOR has calculated sales and use taxes based on the Debtors' server use, regardless of where the underlying sales tracked on such servers took place. The Debtors owned eight servers, only six of which were stationed in Tennessee. Each of the Debtors' sales representatives throughout the country and abroad utilized the Debtors' servers. All sales representatives used the SAP system in connection with their services for the Debtors; therefore, each location was a separate site of use. Allocation to Tennessee of all sales and use tax due is not an accurate reflection of the use of the SAP system throughout the Debtor's enterprise. TDOR's calculation is inaccurate, as the Debtors are liable only for such sales and use tax for sales that took place in the state of

Tennessee, and therefore the portions of the TDOR Tax Claims relating to such sales and use tax should be disallowed.

37. The Debtors believe Exhibits III.A through III.K contain the appropriate amounts of liability for each of the TDOR Tax Claims. Accordingly, to the extent the TDOR Tax Claims are not disallowed as a result of TDOR's failure to attach sufficient documentation to the TDOR Tax Claims, the Debtors request that the TDOR Tax Claims be disallowed, modified with respect to priority and/or reduced as set forth on Exhibits III.A through III.K, as applicable.

APPLICABLE AUTHORITY

38. Section 502(b) of the Bankruptcy Code provides in pertinent part that:

the court, after notice and a hearing, shall determine the amount of [a] claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that . . . such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.

11 U.S.C. § 502(b)(1).

39. The Debtors believe the TDOR Tax Claims noted above are unenforceable against the Debtors for the reasons set forth above. Therefore, pursuant to Sections 502(b)(1) of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1, the Debtors respectfully request that the Court enter an order disallowing all of the TDOR Tax Claims for insufficient supporting documentation, or in the alternative, disallowing TDOR Tax Claims that were amended and superseded by subsequently filed claims, modifying the priority of TDOR Tax Claims for which the priority status should be modified and fixing the value of TDOR Tax Claims in which the amount should be reduced.

RESERVATION OF RIGHTS

40. The Debtors expressly reserve the right to amend, modify or supplement this Objection and to file additional objections to any TDOR Proofs of Claims filed in these Chapter 11 Cases including, without limitation, objections as to the liability, amount or priority of any claims filed by TDOR. Specifically, because TDOR did not provide sufficient support documentation for the TDOR Tax Claims, if TDOR does provide sufficient documentation to support or further explain the TDOR Tax Claims, Debtors reserve the right to amend, modify or supplement this Objection. Should one or more of the grounds for this Objection be dismissed or overruled, the Debtors reserve the right to object to any portion of the TDOR Tax Claims on any other ground.

STATEMENT OF COMPLIANCE WITH LOCAL BANKRUPTCY RULE 3007-1

41. The undersigned representative of Young Conaway Stargatt & Taylor, LLP has reviewed the requirements of Local Rule 3007-1 and certifies that the Objection substantially complies with that Local Rule. To the extent that the Objection does not comply in all respects with the requirements of Local Rule 3007-1, the Debtors believe such deviations are not material and respectfully request that any such requirement be waived.

FURTHER INFORMATION

42. Questions about or requests for additional information about this Objection should be directed to the Debtors' counsel in writing at the following address: Latham & Watkins LLP, 233 South Wacker Drive, Suite 5800, Chicago, Illinois 60606 (Attn: Matthew L. Warren, Esq.) or by telephone at (312) 777-7031 or by e-mail at matthew.warren@lw.com.

43. Claimants should not contact the Clerk of the Court to discuss the merits of their proofs of claims or this Objection.

NOTICE

44. The Debtors have provided notice of this Objection to: (a) the United States Trustee for the District of Delaware; (b) financing counsel to the administrative agent for the lenders under the Debtors' first lien facility; (c) special restructuring and bankruptcy counsel to the administrative agent for the lenders under the Debtors' first lien facility; (d) counsel to the administrative agent for the lenders under the Debtors' second lien facility; (e) the administrative agent for the lenders under the Debtors' prepetition unsecured mezzanine credit facility; (f) counsel to the Creditors' 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) the U.S. Public Health Service; (k) the Centers for Medicare and Medicaid Services; (l) counsel to, receiver for, and counsel to the receiver for Graceway Canada Company (m) the claimant TDOR, including Wilbur E. Hooks, the Director at the Tennessee Department of Revenue and (n) 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.

45. A copy of this Objection is available on the Court's website: www.deb.uscourts.gov. Additional copies are available for free on the website of the Voting and Claims Agent 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.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form attached hereto as Exhibit I: (i) granting the relief requested herein; and (ii) granting to the Debtors such other and further relief as the Court may deem just and proper.

Dated: April 6, 2012
Wilmington, Delaware

Respectfully Submitted,

/s/ Morgan L. Seward

Michael R. Nestor (No. 3526)
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