

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
GRACEWAY PHARMACEUTICALS, LLC <i>et</i>	:	Case No. 11-13036 (PJW)
<i>al.</i>	:	
	:	
Debtors	:	
	:	
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KIP HORTON, as Trustee of the GRACEWAY	:	
LIQUIDATING TRUST,	:	
	:	
Plaintiff,	:	
	:	Adv. Pro. No. 13-_____ (PJW)
v.	:	
	:	
MCKESSON CORPORATION,	:	
	:	
Defendant.	:	
	:	
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**COMPLAINT**

Kip Horton, as Trustee of the Graceway Liquidating Trust (“Plaintiff” or the “Trust”), for his complaint against defendant McKesson Corporation (the “Defendant”), alleges as follows upon knowledge as to himself and his acts and as to all other matters upon information and belief:

**NATURE OF PROCEEDING**

1. Plaintiff brings this adversary proceeding in connection with the liquidation of the chapter 11 estate of Graceway Pharmaceuticals, LLC *et al.* (the “Debtors”). This action seeks recovery of amounts owed by the Defendant for pharmaceutical products supplied by the Debtors. Plaintiff further brings this action pursuant to 11 U.S.C. §§ 547 and 550 to avoid and

recover from the Defendant all preferential transfers of property that occurred during the ninety-day period prior to the commencement of the Debtors' bankruptcy proceedings.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334(b) as well as the Standing Order of Reference in the District of Delaware.

3. This is a core proceeding under 28 U.S.C. § 157(b)(2).

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. Pursuant to Local Rule 7008-1, Plaintiff consents to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

### **PARTIES**

6. The Trust was established pursuant to Section 7.2 of the First Amended Joint Plan of Liquidation of Graceway Pharmaceuticals, LLC, *et al.*, dated February 12, 2012, for the purpose of liquidating the Debtors' assets -- including estate causes of action -- and distributing the proceeds thereof to holders of allowed claims against the Debtors.

7. Defendant is a corporation organized under the laws of the State of Delaware with its principal place of business in California.

### **FACTUAL ALLEGATIONS**

8. On September 29, 2011 (the "Petition Date"), the Debtors filed voluntary petitions under chapter 11 of 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code").

9. Prior to the Petition Date, the Debtors operated as a specialty pharmaceutical company. In the course of their operations, the Debtors, *inter alia*, sold products through a network of wholesale drug distributors, including the Defendant.

10. Through their business relationship, the Debtors and the Defendant entered into numerous separate and independent contracts including, *inter alia*, (i) the McKesson Corporation Regional Distribution Center and Core Distribution Agreement dated as of March 28, 2011, and (ii) individual purchase orders and invoices that were exchanged between the parties through an electronic data interchange. Each individual sales transaction between the Debtors and the Defendant was subject to the McKesson Corporation Supplier Terms and Conditions – which were acknowledged by the Debtors on December 22, 2006.

11. As of the Petition Date, invoices submitted by the Debtors to the Defendant totaling \$3,445,297.72 remained unpaid by the Defendant (the “Prepetition Receivable”). The Prepetition Receivable is based on pharmaceutical products supplied by the Debtors pursuant to individual purchase orders submitted by the Defendant prior to the Petition Date.

12. Following the Petition Date, the Debtors submitted invoices to Defendant totaling \$5,979,206.40, which remain unpaid (the “Postpetition Receivable,” and together with the Prepetition Receivable, the “McKesson Receivable”). The Postpetition Receivable is based on pharmaceutical products supplied by the Debtors pursuant to individual purchase orders submitted by the Defendant after the Petition Date.

13. Although the McKesson Receivable is mature, due and payable by McKesson, the Defendant has refused Plaintiff’s demand for payment thereof.

14. During the ninety days immediately prior to the Petition Date (the “Preference Period”), the Debtors made transfers of interests in property to or for the benefit of the Defendant (the “Preference Period Transfers”).

15. As of the date of this Complaint, Plaintiff has determined that the Defendant received Preference Period Transfers in the aggregate amount of \$2,687,866.49, as identified on Exhibit A hereto and incorporated herein.

16. During the course of this proceeding, Plaintiff may learn (through discovery or otherwise) of additional transfers made to or for the benefit of the Defendant during the Preference Period. Plaintiff intends to avoid and recover all transfers made by the Debtors of an interest of the Debtors' property and to or for the benefit of the Defendant or any other transferee. Plaintiff reserves the right to amend this Complaint to include: (i) further information regarding the Preference Period Transfer(s), (ii) additional transfers, (iii) additional defendants, and/or (iv) additional causes of action (collectively, the "Amendments"), that may become known to Plaintiff at any time during this adversary proceeding, through formal discovery or otherwise, and for the Amendments to relate back to this Complaint.

**FIRST CLAIM FOR RELIEF**  
***(Breach of Contract)***

17. Plaintiff incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

18. Each of the separate purchase orders and corresponding invoices underlying the McKesson Receivable are enforceable contracts between the Debtors and the Defendant.

19. With respect to the transactions underlying the McKesson Receivable, the Debtors performed their contractual obligations by delivering the pharmaceutical products to the Defendant requested in the Defendant's purchase orders.

20. The Defendant's failure and refusal to pay the McKesson Receivable constituted a breach of the terms of each of the separate purchase orders and corresponding invoices underlying the McKesson Receivable.

21. The foregoing breaches of contract caused damage to the Debtors and the Debtors' estates.

22. On behalf of the Debtors' estates, Plaintiff is entitled to recover from the Defendant, as damages caused by the Defendant's breach of contract, *inter alia*, the amount of the McKesson Receivable, plus interest from the date that payment on each individual invoice became due.

**SECOND CLAIM FOR RELIEF**  
***(Account Stated)***

23. Plaintiff incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

24. The transactions underlying the McKesson Receivable created a debtor-creditor relationship between the Defendant and the Debtors.

25. The purchase orders and invoices exchanged between the Defendant and the Debtors constituted an (i) acknowledgement of the amounts owing by the Defendant with respect to the McKesson Receivable and (ii) a promise by the Defendant to pay the same.

26. On behalf of the Debtors' estates, Plaintiff is entitled to recover the amount of the McKesson Receivable from the Defendant as an account stated, plus applicable interest.

**THIRD CLAIM FOR RELIEF**  
***(Goods Sold and Delivered)***

27. Plaintiff incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

28. The pharmaceutical products underlying the McKesson Receivable were ordered, received, and accepted by the Defendant.

29. The Debtors delivered the pharmaceutical products underlying the McKesson Receivable in exchange for the Defendant's promise to pay an agreed upon price therefor.

30. After receiving the pharmaceutical products underlying the McKesson Receivable, the Defendant did not reject them within a reasonable period of time.

31. On behalf of the Debtors' estate, Plaintiff is entitled to recover the amount of the McKesson Receivable from Defendant as payment for goods sold and delivered, plus applicable interest.

**FOURTH CLAIM FOR RELIEF**  
***(Turnover 11 U.S.C. § 542(b))***

32. Plaintiff incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully set forth herein.

33. The McKesson Receivable is a debt that is property of the Debtors' bankruptcy estate.

34. The McKesson Receivable is a matured obligation.

35. Pursuant to 11 U.S.C. § 542(b), Defendant is required to turnover the amount of the McKesson Receivable to Plaintiff except to the extent it may be offset under 11 U.S.C. § 553, as determined at trial, plus applicable interest.

**FIFTH CLAIM FOR RELIEF**

*(Avoidance of Preference Period Transfers 11 U.S.C. § 547(b))*

36. Plaintiff incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully set forth herein.

37. The Debtors were insolvent at all times during the Preference Period. Pursuant to 11 U.S.C. § 547(f), the Debtors are entitled to the presumption of insolvency for each Preference Period Transfer made during the Preference Period.

38. Each Preference Period Transfer constituted a transfer of an interest in property of the Debtors or in which the Debtors had an interest.

39. Each Preference Period Transfer was made by the Debtors to or for the benefit of the Defendant.

40. The Defendant was a creditor of the Debtors at the time each Preference Period Transfer was made.

41. At the time of each Preference Period Transfer, the Defendant had a right to payment on account of an obligation owed to the Defendant by the Debtors.

42. The Debtors made each Preference Period Transfer to the Defendant on account of an antecedent debt owed by the Debtors to the Defendant before such Preference Period Transfer was made. The nature and amount of such antecedent debt is established by reference to the net invoice amounts due to the Defendant, as listed on Exhibit A.

43. Each Preference Period Transfer enabled the Defendant to receive more than it would have received if: (i) the Debtors' case was under chapter 7 of the Bankruptcy Code, (ii) the Preference Period Transfers had not been made, and (iii) the Defendant received payments of debts owed to it to the extent provided by the provisions of the Bankruptcy Code.

44. In accordance with the foregoing, each Preference Period Transfer is avoidable as a preferential transfer pursuant to 11 U.S.C. § 547(b).

**SIXTH CLAIM FOR RELIEF**  
*(Recovery of Avoided Transfers 11 U.S.C. § 550)*

45. Plaintiff incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully set forth herein.

46. The Defendant was the initial transferee of each Preference Period Transfer, or the immediate or mediate transferee of such initial transferee or the person for whose benefit such Preference Period Transfer was made.

47. Pursuant to 11 U.S.C. § 550(a), Plaintiff is entitled to recover from the Defendant the value of each Preference Period Transfer avoided pursuant to Count V of the Complaint, plus applicable interest.

**SEVENTH CLAIM FOR RELIEF**  
*(Disallowance of All Claims 11 U.S.C. § 502(d) and (j))*

48. Plaintiff incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully set forth herein.

49. The Defendant is an entity from which property is recoverable under 11 U.S.C. § 550.

50. The Defendant has not paid the amount of the Preference Period Transfers or turned over such property for which the Defendant is liable pursuant to 11 U.S.C. § 550.

51. Pursuant to 11 U.S.C. § 502(d), any and all claims of the Defendant and/or its assignee against the Debtors or Plaintiff must be disallowed until such time as the Defendant pays to the Plaintiff an amount equal to the aggregate amount of the Preference Period Transfers, plus interest thereon and costs.



52. Pursuant to 11 U.S.C. § 502(j), any and all claims of the Defendant and/or its assignee against the Debtors or Plaintiff that were previously allowed by the Court must be reconsidered and disallowed until such time as the Defendant pays to the Plaintiff an amount equal to the aggregate amount of the Preference Period Transfers, plus interest and costs.

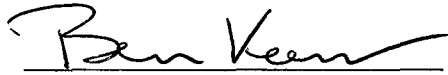
**PRAYER FOR RELIEF**

**WHEREFORE** Plaintiff respectfully request that the Court enter judgment:

- (a) awarding Plaintiff actual damages arising from the Defendants' breach of contract including, without limitation, applicable interest, costs, expenses and attorneys fees;
- (b) awarding Plaintiff the amount of the McKesson Receivable plus applicable interest as an account stated and/or as goods sold and delivered;
- (c) ordering Defendant to turnover the amount of the McKesson Receivable to Plaintiff pursuant to 11 U.S.C. § 542(b);
- (d) avoiding all Preference Period Transfers in the total aggregate amount of not less than \$2,687,866.49;
- (e) awarding Plaintiff the value of all avoided transfers;
- (f) disallowing any claims held by the Defendant and/or its assignee until the Defendant satisfies the Court's judgment;
- (g) awarding Plaintiff prejudgment interest at the maximum legal rate; and
- (h) awarding Plaintiff the costs and fees of this action and such other and further relief as is just and proper.

Dated: April 8, 2013

ASHBY & GEDDES, LLP



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*Attorneys for Kip Horton as Trustee of the  
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