

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

In re:

GRACEWAY PHARMACEUTICALS, LLC,  
*et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 11-13036 (PJW)

Jointly Administered

Hearing Date: Nov. 22, 2011 at 11:00 a.m.

Objection Deadline: Nov. 11, 2011 at 4:00 p.m.

Re: Docket No. 148

**OBJECTION BY Ei INC. TO DEBTORS' AMENDED CURE AMOUNTS**

Ei Inc., formerly known as Harmony Labs, Inc. (“Ei Inc.”), by and through its undersigned counsel, hereby objects to the amended cure amounts set forth on Exhibit 1 (the “Amended Cure Amounts Exhibit”) to the Amended Notice of (I) Cure Amount with Respect to Executory Contracts to Be Assumed and Assigned and (II) Potential Assumption and Assignment of Executory Contracts [D.E. 148] filed by the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”). In support thereof, Ei Inc. respectfully shows the Court as follows:

1. On September 29, 2011 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
2. Prior to the Petition Date, Ei Inc. and the Debtors were parties to four contracts for pharmaceutical supplies and services. The four contracts (collectively, the “Ei Inc.

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<sup>1</sup> 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).

Contracts”) are: a supply agreement for Estrasorb and Zyclara, dated July 28, 2009 (as it may have been amended from time to time thereafter, the “Estrasorb/Zyclara Agreement”); a supply agreement for Benziq, dated August 22, 2005 (as it may have been amended from time to time thereafter, the “Benziq Agreement”); a pump stability supply and services agreement for Imiquimod 3.75% dated June 2, 2009; and a pump stability supply and services agreement for Imiquimod 5% dated November 5, 2009 (as both services agreements may have been amended from time to time thereafter, collectively the “Services Agreement”).

3. On September 29, 2011, the Debtors filed Debtors’ Motion for Entry of (I) An Order Approving and Authorizing (A) Bidding Procedures in Connection with the Sale of Certain Assets of the Debtors, (B) Stalking Horse Bird Protections, (C) the Form and Manner of Notice of the Sale Hearing and (D) Related Relief; and (II) An 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 [D.E. 12] (the “Sale Motion”), in which the Debtors expressly seek authority from the Court to assume and assign executory contracts and unexpired leases to the successful bidder at an auction to be held on November 17, 2011 (assuming there is more than one Qualifying Bidder, as defined in the Bidding Procedures approved by this Court).

4. On November 4, 2011, Ei Inc. filed a Limited Objection by Ei Inc. to Debtors’ Motion for Entry of (I) An Order Approving and Authorizing (A) Bidding Procedures in Connection with the Sale of Certain Assets of the Debtors, (B) Stalking Horse Bird Protections, (C) the Form and Manner of Notice of the Sale Hearing and (D) Related Relief; and (II) An

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 [D.E. 207] (the “Limited Objection”). Ei Inc. filed the Limited Objection, in part, to preserve its right to object to the cure amounts set forth in Debtors’ Amended Cure Amounts Exhibit.

**PROPOSED CURE AMOUNTS**

5. In the Amended Cure Amounts Exhibit, the Debtors identify the following amounts as the cure amounts due under the Ei Inc. Contracts:

Estrasorb/Zyclara Agreement:	\$14,940.00
Benziq Agreement:	\$0
Services Agreement:	\$0

**SUMMARY OF OBJECTION**

6. Ei Inc. does not object to the Debtors’ proposed cure amounts for the Benziq Agreement and the Services Agreement set forth in the Amended Cure Amounts Exhibit. However, the Debtors’ proposed cure amount for the Estrasorb/Zyclara Agreement set forth in the Amended Cure Amounts Exhibit is incorrect, and Ei Inc. objects to that amount as being the correct cure amount due.

7. In summary, the amounts that have been invoiced by—and are or will, as of the anticipated closing of any sale contemplated in the Sale Motion (the “Closing”), be due—Ei Inc. are comprised of the Pre-Petition Invoice Balance (as defined below) and the Post-Petition Invoice Balance (as defined below). If the Debtors seek to assume and assign the Ei Inc. Contracts, the cure amount due Ei Inc. will equal at least the Pre-Petition Invoice Balance and

the Post-Petition Invoice Balance, subject to the reservations of rights set forth below, unless the Debtors otherwise pay the entire Post-Petition Invoice Balance, prior to the Closing.

8. In addition, Ei Inc. expects that at some point in the near future although likely after the Closing, the Estimated Post-Petition Balance (as defined below) will be due under the Estrasorb/Zyclara Agreement. Ei Inc. has not yet issued invoices with respect to any of the Estimated Post-Petition Balance as of the date hereof, but Ei Inc. is including the Estimated Post-Petition Balance in this Objection to ensure that (a) it is not precluded from seeking payment with respect to the Estimated Post-Petition Balance when due under the Estrasorb/Zyclara Agreement, and (b) any assignee of the Estrasorb/Zyclara Agreement is aware of that liability anticipated to become due after the Closing.

9. The actual amount the Debtors owed under the Estrasorb/Zyclara Agreement that had been invoiced as of the Petition Date and must be cured pursuant to 11 U.S.C. § 365(b)(1)(A) totals \$97,928.00 (collectively, the "Pre-Petition Invoice Balance"). A more detailed explanation of the Pre-Petition Invoice Balance, a summary statement of the invoices comprising the Pre-Petition Invoice Balance, and copies of the invoices comprising the Pre-Petition Invoice Balance are attached hereto as Exhibit A and incorporated herein by reference.

10. From the Petition Date through October 31, 2011, Ei Inc. has invoiced the Debtors under the Estrasorb/Zyclara Agreement for additional amounts due thereunder in the aggregate principal amount of \$548,244.19 (collectively, the "Post-Petition Invoice Balance"). A more detailed explanation of the Post-Petition Invoice Balance and copies of the invoices comprising the Post-Petition Invoice Balance are attached hereto as Exhibit B and incorporated herein by reference. To the extent that the Debtors fail to otherwise pay the entire Post-Petition Invoice Balance prior to the Closing, the Post-Petition Invoice Balance should be included within

the cure amount due Ei Inc. as a condition of the Debtors' assumption and assignment of the Estrasorb/Zyclara Agreement under 11 U.S.C. § 365(b)(1)(A). Ei Inc. expressly reserves the right to amend the Post-Petition Invoice Balance in the event that additional amounts are invoiced to the Debtors under any of the Ei Inc. Contracts from and after November 1, 2011.

11. Ei Inc. has also performed other obligations under the Estrasorb/Zyclara Agreement, but the time for invoicing the Debtors therefor has not occurred. Ei Inc. has estimated that it will be due \$410,000.00, as of October 31, 2011 (collectively, the "Estimated Post-Petition Balance"), in addition to the Pre-Petition Invoice Balance and the Post-Petition Invoice Balance. A more detailed explanation of the Estimated Post-Petition Balance is attached hereto as Exhibit C and incorporated herein by reference. If the Estrasorb/Zyclara Agreement is assumed and assigned, Ei Inc. will be entitled, as a condition to the assumption and assignment thereof, to either payment of the Estimated Post-Petition Balance at or before the Closing or adequate assurance of the payment of the Estimated Post-Petition Balance under 11 U.S.C. § 365(b)(1)(A). Ei Inc. expressly reserves the right to amend the Estimated Post-Petition Balance in the event that (a) the actual amount due under the Estrasorb/Zyclara Agreement with respect to the products and services relating to the Estimated Post-Petition Balance is different than Ei Inc.'s current estimate, or (b) it performs other obligations under any of the Ei Inc. Contracts from and after November 1, 2011 .

#### **RESERVATION OF RIGHTS**

12. Ei Inc. files this Objection to preserve its rights under both procedural and substantive due process principles and its rights under 11 U.S.C. § 365(b), (f). Ei Inc. reserves its right to object to the Sale Motion and/or request that the Court adjourn the hearing on the Sale Motion as it relates to the assumption and assignment of the Ei Inc. Contracts in the event that Ei

Inc. needs additional time, and a reasonable opportunity, to prepare for a hearing on those assumption and assignment issues.

13. Ei Inc. reserves the right to object to any attempt by the Debtors to assume, or assume and assign, the Ei Inc. Contracts if any requirement for such assumption and/or assignment set forth in 11 U.S.C. § 365 has not been satisfied (including, without limitation, the right to object to such assumption and assignment unless and until the Debtors compensate Ei Inc. for any actual pecuniary loss, including reasonable attorneys' fees and costs, resulting from the Debtors' defaults under the Ei Inc. Contracts, as required by 11 U.S.C. § 365(b)(1)(B)).

14. Ei Inc. reserves the right (a) to amend, supplement, or otherwise modify this Objection and all attachments and exhibits hereto as it deems necessary or proper; and (b) to raise such other and further objections to any proposed assumption, assumption and assignment, and/or any cure amounts associated with any proposed assumption or assumption and assignment of any contracts involving Ei Inc. including, without limitation, on the grounds that notice of such relief and an opportunity to object thereto was not properly afforded to Ei Inc.

### CONCLUSION

**WHEREFORE**, Ei Inc. objects to the Debtors' Amended Cure Amounts Exhibit and requests that:

A. The Court establish the cure amount due Ei Inc. as being equal to, at least, the sum of the Pre-Petition Invoice Balance, Post-Petition Invoice Balance, and Estimated Post-Petition Balance, subject to Ei Inc.'s reservation of rights set forth above; and

B. The Court award Ei Inc. such other and further relief as the Court deems just and proper.

This 9<sup>th</sup> day of November, 2011.

/s/ Brett D. Fallon

Brett D. Fallon

D.E. Bar I.D. 2480

bfallon@morrisjames.com

MORRIS JAMES LLP

500 Delaware Avenue, Suite 1500

Wilmington, Delaware 19801-1494

Phone: (302) 888-6888

Fax: (302) 571-1750

*Attorney for Ei Inc.*

Of Counsel:

David M. Schilli

N.C. Bar No. 17989

dschilli@rbh.com

Stuart L. Pratt

N.C. Bar. No. 43139

spratt@rbh.com

ROBINSON, BRADSHAW & HINSON, P.A.

101 North Tryon Street, Suite 1900

Charlotte, North Carolina 28246

Phone: (704) 377-2536

Fax: (704) 378-4000