

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

In re:

LUCIRA HEALTH, INC.,¹

Debtor.

Chapter 11

Case No. 23-10242 (MFW)

Ref. Docket No. 13 & 44

**NOTICE OF ENTRY OF INTERIM ORDER, PURSUANT TO SECTIONS 105(a),
362(a)(3), AND 541 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3001,
ESTABLISHING NOTICE AND HEARING PROCEDURES FOR TRADING
IN, OR CERTAIN CLAIMS OF WORTHLESSNESS WITH RESPECT TO,
EQUITY SECURITIES IN LUCIRA HEALTH, INC.**

TO ALL PERSONS OR ENTITIES WITH EQUITY INTERESTS IN LUCIRA HEALTH, INC.
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PLEASE TAKE NOTICE THAT, on February 22, 2023 (the “Petition Date”), the above-captioned debtor and debtor in possession (the “Debtor”) commenced a case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Subject to certain exceptions, section 362 of the Bankruptcy Code operates as a stay of any act to obtain possession of property of the Debtor’s estate or of property from the Debtor’s estate or to exercise control over property of the Debtor’s estate.

PLEASE TAKE FURTHER NOTICE THAT, on the Petition Date, the Debtor filed a motion seeking entry of an interim order and final order pursuant to sections 105, 362, and 541 of the Bankruptcy Code establishing notice and hearing procedures for trading in, or certain claims of worthlessness with respect to, equity securities in the Debtor, Lucira Health, Inc. (the “Motion”) [Docket No. 13].

¹ The Debtor and the last four digits of its federal taxpayer identification number are: Lucira Health, Inc. (1037). The Debtor’s mailing address is 1315 63rd St., Emeryville, CA 94608.

PLEASE TAKE FURTHER NOTICE THAT on February 24, 2023, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered that certain *Interim Order Pursuant to Sections 105(a), 362(a)(3), and 541 of the Bankruptcy Code and Bankruptcy Rule 3001 Establishing Notice and Hearing Procedures for Trading in, or Certain Claims of Worthlessness With Respect to, Equity Securities in Lucira Health, Inc.* (the “Interim Order”) [Docket No. 44] approving the procedures set forth below in order to preserve the Tax Attributes held by Lucira (as defined in the Motion).

PLEASE TAKE FURTHER NOTICE THAT, pursuant to the Interim Order, the following procedures shall apply to holding and trading in, or certain claims of worthlessness with respect to, equity securities (including Options to acquire such securities, as defined below) of Lucira Health, Inc. (“Lucira”):

1. Any purchase, sale, or other transfer of, or certain claims of worthlessness with respect to, equity securities (including Options to acquire such securities, as defined below) in Lucira on or after the Petition Date in violation of the procedures set forth herein (including the notice requirements set forth in paragraphs 2(a) and 3(b)) shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code.

2. The following procedures shall apply to the trading in equity securities (including Options to acquire such securities, as defined below) in Lucira:

- (a) Any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1)) who currently is or becomes a Substantial Shareholder (as defined in subparagraph (e) below) shall file with the Court, and serve on counsel to the Debtor a notice of such status, in the form attached to the Motion as Exhibit A-1, on or before the later of (i) twenty (20) calendar days after the date of the service of this Notice of Interim Order and (ii) fourteen (14) calendar days after becoming a Substantial Shareholder.
- (b) At least fourteen (14) calendar days prior to effectuating any transfer of equity securities (including Options to acquire such securities, as defined

below) that would result in an increase in the amount of Lucira Stock (as defined below) beneficially owned by a Substantial Shareholder or would result in a person or entity becoming a Substantial Shareholder, such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) shall file with the Court, and serve on counsel to the Debtor, advance written notice, in the form attached to the Motion as Exhibit A-2, of the intended transfer of equity securities (including Options to acquire such securities, as defined below).

- (c) At least fourteen (14) calendar days prior to effectuating any transfer of equity securities (including Options to acquire such securities, as defined below) that would result in a decrease in the amount of Lucira Stock beneficially owned by a Substantial Shareholder or would result in a person or entity ceasing to be a Substantial Shareholder, such Substantial Shareholder shall file with the Court, and serve on counsel to the Debtor, advance written notice, in the form attached to the Motion as Exhibit A-3, of the intended transfer of equity securities (including Options to acquire such securities, as defined below) (the notices required to be filed and served under subparagraphs (c) and (d), each a “Notice of Proposed Transfer”).
- (d) The Debtor shall have seven (7) calendar days after receipt of a Notice of Proposed Transfer to file with the Court and serve on such Substantial Shareholder (or person or entity that may become a Substantial Shareholder) an objection to the proposed transfer of equity securities (including Options to acquire such securities, as defined below) described in the Notice of Proposed Transfer on the grounds that such transfer may adversely affect the Debtor’s ability to utilize the Tax Attributes. During such 7-day period, and while any objection by the Debtor (or any other party in interest) to the proposed transfer is pending, such Substantial Shareholder shall not effectuate the proposed transfer to which the Notice of Proposed Transfer relates and thereafter shall do so only in accordance with the Court’s ruling, and, as applicable, any appellate rules and procedures. If the Debtor does not object within such 7-day period, such transaction may proceed solely as set forth in the Notice of Proposed Transfer. Further transactions within the scope of this subparagraph (d) must be the subject of additional notices as set forth herein, with an additional 14-day waiting period.
- (e) For purposes of these procedures, (A) a “Substantial Shareholder” is any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1)) which has Beneficial Ownership of at least 4.5% of all issued and outstanding shares (equal to, as of February 15, 2023, approximately 1,843,834 shares²) of the common stock of Lucira (“Lucira Stock”), and

² Based on approximately 40,974,094 shares of Lucira Stock issued and outstanding as of February 15, 2023.

(B) “Beneficial Ownership” or any variation thereof of Lucira Stock and Options to acquire Lucira Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder’s family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Lucira Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An “Option” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

3. The following procedures shall apply to claims for tax purposes that shares of Lucira’s equity securities (including Options to acquire such securities, as defined below) are worthless:

- (a) Any worthless stock deduction claim with respect to equity securities (including Options to acquire such securities, as defined below) in Lucira on or after the Petition Date in violation of the procedures set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code.
- (b) Any person or entity (as defined in Treasury Regulations Section 1.382-3(a)(1)) who currently is or becomes a 50% Shareholder (as defined in subparagraph (e) below) shall file with the Court, and serve on counsel to the Debtor, a notice of such status, in the form attached to the Motion as Exhibit A-4, on or before the later of (i) twenty (20) calendar days after the date of the service of this Notice of Interim Order and (ii) fourteen (14) calendar days after becoming a 50% Shareholder.
- (c) At least fourteen (14) days prior to filing any federal or state tax return, or any amendment to such a return, claiming any deduction for worthlessness of the equity securities (including Options to acquire such securities, as defined below) in Lucira, for a tax year ending before the Debtor’s emergence from chapter 11, such 50% Shareholder shall file with the Court, and serve on counsel to the Debtor, an advance written notice, in the form attached to the Motion as Exhibit A-5 (a “Notice of Intent to Claim a Worthless Stock Deduction”) of the intended claim of worthlessness.
- (d) The Debtor will have seven (7) calendar days after receipt of a Notice of Intent to Claim a Worthless Stock Deduction to file with the Court and serve

on such 50% Shareholder an objection to any proposed claim of worthlessness described in the Notice of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtor's ability to utilize the Tax Attributes. During such 7-day period, and while any objection by the Debtor (or any other party in interest) to the proposed claim is pending, such 50% Shareholder shall not claim, or cause to be claimed, the proposed worthless stock deduction to which the Notice of Intent to Claim a Worthless Stock Deduction relates and thereafter shall do so only in accordance with the Court's ruling, and, as applicable, any appellate rules and procedures. If the Debtor does not object within such 7-day period, the filing of the tax return with such claim would be permitted only as set forth in the Notice of Intent to Claim a Worthless Stock Deduction. Additional tax returns or amendments within the scope of this paragraph must be the subject of additional notices as set forth herein, with an additional 14-day waiting period.

- (e) For purposes of these procedures, (A) a "50% Shareholder" is any person or entity that, at any time during the three-year period ending on the Petition Date, has had Beneficial Ownership of 50% or more of the equity securities in Lucira (determined in accordance with IRC section 382(g)(4)(D) and the applicable regulations thereunder), and (B) "Beneficial Ownership" or any variation thereof of Lucira Stock and Options to acquire Lucira Stock) shall be determined in accordance with applicable rules under Section 382, Treasury Regulations promulgated thereunder and rulings issued by the Internal Revenue Service, and thus, to the extent provided therein, from time to time shall include, without limitation, (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries), (ii) ownership by the holder's family members and persons acting in concert with the holder to make a coordinated acquisition of stock, and (iii) ownership of an Option to acquire Lucira Stock, but only to the extent such Option is treated as exercised under Treasury Regulations Section 1.382-4(d). An "Option" to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

PLEASE TAKE FURTHER NOTICE THAT, upon the request of any person, counsel to the Debtor will provide a form of each of the required notices described above.

PLEASE TAKE FURTHER NOTICE THAT a copy of the Interim Order may be obtained free of charge from <https://www.donlinrecano.com/lucira>.

FAILURE TO FOLLOW THE PROCEDURES SET FORTH IN THIS NOTICE SHALL CONSTITUTE A VIOLATION OF, AMONG OTHER THINGS, THE AUTOMATIC STAY PRESCRIBED BY SECTION 362 OF THE BANKRUPTCY CODE.

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ANY PROHIBITED PURCHASE, ACQUISITION, ACCUMULATION, SALE, TRADE, OR OTHER TRANSFER OF, OR ANY CLAIM OF WORTHLESSNESS WITH RESPECT TO, LUCIRA STOCK, OR ANY BENEFICIAL OWNERSHIP THEREIN, IN VIOLATION OF THE INTERIM ORDER SHALL BE NULL AND VOID *AB INITIO* AND MAY BE PUNISHED BY CONTEMPT OR OTHER SANCTIONS IMPOSED BY THE COURT.

PLEASE TAKE FURTHER NOTICE THAT the requirements set forth in this Notice of Interim Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws, and do not excuse compliance therewith.

PLEASE TAKE FURTHER NOTICE THAT a final hearing on the relief sought in the Motion shall be conducted on March 23, 2023 at 2:00 p.m. (ET) (the “Final Hearing”). Any party-in-interest objecting to the relief sought at the Final Hearing or the Final Order shall file and serve a written objection, which objection shall be served upon: (i) proposed counsel to the Debtor: (a) Cooley LLP, 3 Embarcadero Center, 20th Floor, San Francisco, CA 94111, Attn: Robert L. Eisenbach III (reisenbach@cooley.com), and 1299 Pennsylvania Avenue, NW, Suite 700, Washington, DC 20004, Attn: Cullen Drescher Speckhart (cspeckhart@cooley.com) and Olya Antle (oantle@cooley.com); and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Sean M. Beach (sbeach@ycst.com), Ashley E. Jacobs (ajacobs@ycst.com), Joshua B. Brooks (jbrooks@ycst.com), and Timothy R. Powell (tpowell@ycst.com); (ii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Joseph Cudia (joseph.cudia@usdoj.gov); and (iii) counsel to any statutory committee appointed in the Chapter

11 Case no later than March 16, 2023 at 4:00 p.m. (ET). If no objections to the entry of the Final Order are timely filed, this Court may enter the Final Order without further notice or a hearing.

Dated: Wilmington, Delaware
February 28, 2023

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Ashley E. Jacobs

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Proposed Counsel for the Debtor and Debtor in Possession