

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11
	:	
AEREO, INC., ¹	:	Case No. 14-13200 (SHL)
	:	
Debtor.	:	

DECLARATION OF LAWTON W. BLOOM IN SUPPORT OF MOTION OF THE DEBTOR FOR ENTRY OF ORDERS APPROVING AND AUTHORIZING (A) THE SALE OF CERTAIN ASSETS OF THE DEBTOR FREE AND CLEAR OF ALL CLAIMS, LIENS, LIABILITIES, RIGHTS, INTERESTS AND ENCUMBRANCES; (B) THE DEBTOR TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER PURCHASE AGREEMENTS; AND (C) GRANTING RELATED RELIEF

Lawton W. Bloom declares as follows:

1. I am a principal of Argus Management Corporation (“Argus”), a financial advisory services firm based in Grafton Massachusetts, with an office in New York, New York. I submit this Declaration in support of the *Motion Of The Debtor For Entry Of Two Orders Approving And Authorizing (A) The Sale Of Certain Of The Assets Of The Debtor Free And Clear Of All Claims, Liens, Liabilities, Rights, Interests And Encumbrances; (B) The Debtor To Enter Into And Perform Its Obligations Under The Asset Purchase Agreements; And (C) Granting Related Relief* (the “Sale Motion”).²

2. I am the Chief Restructuring Officer (“CRO”) for Aereo, Inc. (the “Debtor”).

3. The history of the Debtor’s business and the events leading to this Chapter 11 Case are set forth in the *Declaration of Ramon A. Rivera, Secretary, Treasurer, and Chief Financial Officer of Aereo, Inc. In Support of First Day Pleadings*, [Docket No. 7] (the “Rivera”).

¹ The last four digits of the Debtor’s taxpayer identification number are: 2838. Aereo, Inc. is a New York corporation.

² Capitalized terms used herein and not defined shall have the meanings ascribed to them in the Sale Motion.

Declaration”). My qualifications are set forth in *Application of the Debtor Pursuant to §§ 105(a) and 363(b) For Authority to (1) Designate Lawton W. Bloom of Argus Management Corporation as Chief Restructuring Officer and Peter Sullivan and Scott Dicus as Assistant Restructuring Officers, Nunc Pro Tunc to the Chapter 11 Petition Date and (2) Approve Appointment of Such Officers* [Docket No. 11], which I incorporate as fully set forth herein.³

4. In addition to the facts set forth in the Rivera Declaration, there are additional facts that I am aware of by virtue of my position as CRO of the Debtor that are relevant to the Sale Motion.

5. Except as otherwise indicated, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents or information provided to me by employees working under my supervision. If called upon, I could and would testify competently to the facts set forth herein.

6. As more fully set forth in the Rivera Declaration, the Debtor ceased all business operations following the entry of a preliminary injunction preventing the use of the Debtor’s system for playback while the underlying program was still airing. The Debtor⁴ subsequently determined that it was necessary to enter into an agreement to sell substantially all of its assets and otherwise wind-down and liquidate its remaining business operations and assets in order to maximize recoveries for all stakeholders.

³ I also refer to my previous declarations, each of which are fully incorporated herein: (a) *Declaration of Lawton W. Bloom in Support of Debtor’s Motion For The Entry Of An Order Authorizing The Key Employee Incentive Plan* [Docket No.9 at Exhibit C]; (b) *Declaration of Lawton W. Bloom in Support of Debtor’s Response and Opposition To The Broadcasters’ Motion To Stay Or Objection To Bidding Procedures Motion* [Docket No. 73]; (c) *Second Declaration Of Lawton W. Bloom In Support Of Debtor’s Motion For The Entry Of An Order Authorizing The Key Employee Incentive Plan* [Docket No. 119 at Exhibit A]; and (d) *Declaration of Lawton W. Bloom In Support Of Debtor’s Expedited Motion Pursuant to 11 U.S.C. §§ 105(a) And 363 For An Order Authorizing The Sale Of Certain De Minimis Assets* [Docket No. 192].

⁴ For the purposes of this Declaration, references to the Debtor making a determination or performing an action on or after November 17, 2014, the date that Argus was hired, are intended to include actions taken by Argus, in its capacity as Chief Restructuring Officer of the Debtor, on behalf of the Debtor.

I. SALE PROCESS AND AUCTION RESULTS

A. Bidding Procedures Motion and Entry of Superseding Bidding Procedures Order

7. On November 21, 2014, the Debtor filed the *Motion For Entry Of An Order (I) Approving Bidding Procedures In Connection With The Proposed Sale(s) Of Certain Or Substantially All Of The Debtor' Assets And Other Potential Transactions; (II) Establishing Certain Related Deadlines; And (III) Granting Related Relief* (the "Bidding Procedures Motion") [Docket No. 15]. On January 28, 2015, this Court entered the *Superseding Order (I) Approving Bidding Procedures; (II) Establishing Certain Related Deadlines; And (III) Granting Related Relief* (the "Superseding Bidding Procedures Order") [Docket No. 176]. In accordance with the requirements of the Superseding Bidding Procedures Order, Argus, on behalf of the Debtor, conducted orderly marketing and bidding processes and an auction for the going-concern sale of its Assets, as further described below.

B. Post-Petition Marketing Process

8. Subsequent to the Petition Date, the Debtor began an extensive marketing and sales process, canvassing the marketplace to locate entities interested in acquiring all or substantially all of the Debtor's assets, and calling or emailing parties who had demonstrated interest in the Debtor's assets prior to Argus engaging in the marketing process. Argus contacted over 100 potential buyers primarily in the media, telecommunications and technology industries and made available materials concerning the Debtor's technology and assets to them. Twenty nine (29) of those parties executed mutual non-disclosure agreements and were granted access to a data room populated with information to continue conducting due diligence regarding the Debtor's assets. The post-petition marketing process did not result in the designation of a Stalking Horse Bidder.

C. Bids

9. Prior to the Bid Deadline of 5:00 pm on February 20, 2015, the Debtor received eleven (11) Qualified Bids. The Bids generally fell into two categories: Bids for certain of the Debtor's tangible equipment (the "Equipment") and Bids for certain of the Debtor's intangible assets (the "Enterprise Assets" and together with the Equipment, the "Included Assets"). The Debtor received five (5) Qualified Bids for certain of the Enterprise Assets and six (6) Qualified Bids for the Equipment. In advance of the Auction, the Debtor, in consultation with the Official Committee of Unsecured Creditors (the "Committee"), closely evaluated these Qualified Bids, as well as the Bidders' ability to move expeditiously to consummate a sale transaction (a "Transaction").

10. None of the bidders for the Equipment expressed interest in bidding on, or in fact bid on, any of the Enterprise Assets, and none of the bidders for Enterprise Assets expressed interest in bidding on, or in fact bid on, any of the Equipment.

D. The Auction

11. In the absence of any overlap between any Enterprise Assets Bid and any Equipment Bid, the Debtor decided to solicit further Bids for the Enterprise Assets separately from Bids for the Equipment in order make the Auction proceed more efficiently. Accordingly, the Debtor determined Bids for the Enterprise Assets would be solicited and received in-person at a live Auction, and Bids for the Equipment would be solicited and received via teleconference and email. The Debtor determined, in its business judgment and based on its view of the value of the two types of assets, that conducting the Auction in two separate tracks would provide flexibility in the bidding process and permit the Debtor to focus on obtaining the best and highest price in connection with each Auction process.

(i) *Enterprise Assets Auction*

12. Pursuant to the Bidding Procedures Order, the Debtor conducted the live Auction for the sale of its Enterprise Assets at the New York offices of Brown Rudnick LLP on February 24, 2015, at which four (4) Bidders participated in person. Prior to the commencement of the Auction, and in consultation with the Creditors' Committee and the moving Broadcasters (together, the "Consultation Parties"), the Debtor identified TiVo's Bid in the amount of \$1,000,000 for the Debtor's trademarks, domain names and customer lists as the best and highest Bid received.

13. At the commencement of the live Auction, the Debtor announced TiVo as the Designated High Bidder, and also announced certain Auction rules designed to spur bidding and to move the Auction process along quickly. Bidding at the Auction lasted for approximately three (3) rounds, during which the Debtor received additional Bids for other of its Enterprise Assets (including its patents). The Debtor did not receive any subsequent Overbids for the Enterprise Assets covered by the TiVo Bid. The Debtor engaged in extensive parallel, but individual, arm's-length, good faith negotiations with the Bidders and their counsel and advisors regarding the terms and conditions of each offer.

14. The Debtor, with my assistance and the assistance of its counsel, and in consultation with the Consultation Parties, conducted a side-by-side analysis of the proposals received. Following the third round of Bidding, the Debtor, in consultation with the Consultation Parties, provisionally announced the following Bids as the best and highest with respect to certain of the Debtor's Enterprise Assets:

- TiVo Inc. - \$1,000,000 in consideration for the Debtor's trademarks, domain names, and customer lists; and
- RPX Corp. - \$225,000 in consideration for the Debtor's patents.

15. After announcing these Bids as the best and highest, the Debtor, in consultation with the Consultation Parties, provisionally adjourned the Auction until February 25, 2015, so that it could continue to consider with the Consultation Parties the Equipment Bids

(ii) *Equipment Auction*

16. The Debtor received six (6) Qualified Bids covering various pieces of the Debtor's Equipment, with some overlap between such Bids as to the Equipment sought. On February 23, 2015, prior to the scheduled live Auction date, the Debtor informed the Equipment Bidders of the current high Bids received for each line item of equipment on a per-piece basis. The Debtor also notified the Equipment Bidders that it would be conducting a telephonic Auction for the Equipment and also provided a term sheet (the "Equipment Term Sheet") setting forth terms that the Debtor expected to be part of any purchase agreement for the Equipment, which were in addition to the terms set forth in the Bidding Procedures and Bidding Procedures Order.

17. On February 24, 2015 at 12:00 noon, the Debtor conducted a teleconference with all six (6) of the Equipment Bidders to provide introductory remarks and to answer questions. As provided in the Equipment Term Sheet, the Debtor invited the Equipment Bidders to submit revised Bids by 3:00 p.m. on February 24. The Debtor reviewed the revised Equipment Bids and, because all such revised Bids were within 5% of the highest and best revised Bid, invited the Equipment Bidders to submit their best and final offers by February 25, 2015 at 2:00 p.m., as the best and highest Bids for the Equipment under the circumstances, and executed an APA.

18. On February 25, 2015, the Debtor reviewed all best and final Bids received from the Equipment Bidders, in consultation with the Consultation Parties, selected the Bid submitted by Alliance Technology Solutions, Inc. ("Alliance") as the Successful Bid for the

Equipment. As set forth below, the Bid submitted by Alliance provides that Alliance will pay the Debtor \$320,000 in cash certain of the Debtor's equipment as more specifically set forth in the Alliance APA. In addition, under Alliance's Bid, Alliance agreed to take the equipment for which it bid "as is, where is" and ensure its removal within 10 days from the approval of the Equipment Sale Order. Further, Alliance offered, at its sole cost, to remove certain additional equipment – which has limited, if any, value and for which no party submitted a Bid – from the Debtor's premises and to ensure the secure destruction of such equipment.

E. Conclusion of the Auction and Winning Bids

18. At 4:00 p.m. on February 25, 2015, the Debtor reconvened the Auction to confirm the best and highest Bids for the Enterprise Assets, to announce the best and highest Equipment Bids, and to close the Auction. The Debtor provided dial-in instructions for all Auction participants to dial in to the closing of the Auction. While on the record, the Debtor invited any party to submit any final Overbids for any part of the Debtor's assets. One Bidder indicated potential interest in submitting an Overbid for certain of the Debtor's equipment, but ultimately did not submit any firm Bids on terms that were better or higher than the Bid received from Alliance. Accordingly, the Debtor announced the close of the Auction and the Successful Bidders as TiVo, RPX and Alliance.

II. TERMS OF THE PURCHASE AGREEMENTS

19. In light of the Successful Bids of TiVo Inc., RPX Corporation, and Alliance, the Debtor seeks to sell the Included Assets pursuant to the Purchase Agreement with TiVo Inc. (the "TiVo APA"), the Patent Purchase Agreement with RPX Corporation (the "RPX APA"), and the Purchase Agreement with Alliance Technology Solutions, Inc. (the "Alliance APA"). All capitalized terms used in this sub-section and not defined herein have the meanings ascribed to

them in the applicable APA. The proposed material terms of each APA include the following:

(i) **The TiVo APA**

TiVo APA Provision	Summary Description
Parties	<p><u>Seller</u>: Aereo, Inc.</p> <p><u>Purchaser</u>: TiVo Inc.</p>
Purchase Price	<p>The purchase price for the TiVo Assets (the “<u>TiVo Purchase Price</u>”) shall consist of cash in an amount equal to the sum of \$1,000,000. See TiVo APA § 2.4.</p>
TiVo Assets	<p>The TiVo APA sets forth the Debtor’s assets to be purchased by TiVo, including, without limitation, all of Seller’s right, title and interest in, to and under, free and clear of Encumbrances (other than Permitted Encumbrances and Assumed Liabilities), the Seller’s trademarks, domain names, and customer lists (the “<u>TiVo Assets</u>”). See TiVo APA, Schedule 2.1(c).</p>
Excluded Assets	<p>The TiVo APA sets forth the assets that will be not be purchased by the Purchaser, including assets of Seller that are not Included Assets (the “<u>Excluded Assets</u>”). See TiVo APA § 2.2.</p>
Assumed Liabilities	<p>The TiVo APA sets forth the liabilities that will be assumed by the Purchaser (the “<u>Assumed Liabilities</u>”). See TiVo APA § 2.5.</p>
Excluded Liabilities	<p>The TiVo APA sets forth the liabilities that will be not be assumed by the Purchaser (the “<u>Excluded Liabilities</u>”). See TiVo APA § 2.6.</p>
Conditions to Closing	<p>The TiVo APA includes closing conditions typical and customary for transactions of this kind, including, without limitation:</p> <ul style="list-style-type: none"> • <u>Conditions for Purchaser</u>: (i) all of the covenants and agreements of the TiVo APA to be complied with or performed by Seller on or before the Closing Date shall have been complied with and performed in all material respects; (ii) the representations and warranties of Seller set forth in Article III of the TiVo APA shall be true and correct except as would not individually or in the aggregate constitute, or be reasonably likely to result in, a Material Adverse Effect as of the date of the TiVo APA and as of the Closing Date as if made on the Closing Date (except for any representation or warranty made as of a specified date prior to or as of the Closing Date, which shall be true and correct in all respects except as would not individually or in the aggregate constitute, or be reasonably likely to result in, a Material Adverse Effect as of such specified date); (iii) no Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any applicable Legal Requirement (including any Order) which is in effect and has the effect of making the Transaction illegal or otherwise restraining or prohibiting consummation of the Transaction and which is not satisfied or resolved or preempted by the Sale Order; (iv) the Bankruptcy Court shall have entered the Sale Order and the Sale Order shall not have been stayed; and (v) the deliveries described in Section 7.2 of the TiVo APA shall have been made. See TiVo APA § 6.1.

TiVo APA Provision	Summary Description
	<ul style="list-style-type: none"> • <u>Conditions for Seller:</u> (i) all of the covenants and agreements in the TiVo APA to be complied with or performed by Purchaser on or before the Closing Date shall have been complied with and performed in all material respects; (ii) the representations and warranties of Purchaser set forth in Article IV of the TiVo APA shall be true and correct in all material respects, in each case, as of the date of the TiVo APA and as of the Closing Date as if made on the Closing Date (except for any representation or warranty made as of a specified date prior to or as of the Closing Date, which shall be true and correct in all material respects as of such specified date); (iii) no Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any applicable Legal Requirement (including any Order) which is in effect and has the effect of making the Transaction illegal or otherwise restraining or prohibiting consummation of the Transaction and which is not satisfied or resolved or preempted by the Sale Order; (iv) the Bankruptcy Court shall have entered the Sale Order and the Sale Order shall not have been stayed; and (iv) the deliveries described in Section 7.3 of the TiVo APA shall have been made. <u>See TiVo APA § 6.2.</u>
Representations, Warranties and Covenants	The TiVo APA includes representations, warranties and covenants made or agreed to by the Parties typical and customary for transactions of this kind, including, without limitation, representations, warranties and covenants relating to (i) Corporate Status, (ii) Power and Authority, (iii) Conflicts Under Constituent Documents or Laws, (iv) Consents, (v) the validity and marketability of title to the Included Assets, and (vi) no-Broker. <u>See TiVo APA at Articles III, IV.</u>
Fees and Expenses	The Parties agree that, except as otherwise expressly provided in the TiVo APA, each Party shall bear and pay all costs, fees and expenses that it incurs, or which may be incurred on its behalf, in connection with the TiVo APA and the Transaction. <u>See TiVo APA § 10.5.</u>
Purchase Price Deposit	\$100,000 to be held in escrow by Brown Rudnick LLP. <u>See TiVo APA § 2.8.</u>
Remedies	Each party is entitled to all available legal and equitable remedies, including specific performance. <u>See TiVo APA § 9.4.</u>
Termination Provisions	The TiVo APA includes termination provisions typical and customary for transactions of this kind. There are also termination provisions related to the bankruptcy timeline and the conversion of the Chapter 11 Case into a case under Chapter 7 of the Bankruptcy Code. <u>See TiVo APA § 9.1.</u>

(ii) **The RPX APA**

RPX APA Provision	Summary Description
Parties	<p><u>Seller:</u> Aereo, Inc.</p> <p><u>Purchaser:</u> RPX Corporation</p>
Purchase Price	The purchase price for the RPX Assets (the “ <u>RPX Purchase Price</u> ”) shall consist of cash in an amount equal to the sum of \$225,000. <u>See RPX APA § 2.3.</u>
RPX Assets	The RPX APA sets forth the Debtor’s assets to be purchased by RPX, including, without limitation, all of Seller’s right, title and interest in, to and under, free and

RPX APA Provision	Summary Description
	clear of Encumbrances (other than Permitted Encumbrances and Assumed Liabilities), the Seller’s patents (the “ <u>RPX Assets</u> ”). See RPX APA § 2.1.
Excluded Assets	The APA sets forth the assets that will be not be purchased by the Purchaser, including assets of Seller that are not Included Assets (the “ <u>Excluded Assets</u> ”). See RPX APA § 2.2.
Conditions to Closing	<p>The RPX APA includes closing conditions typical and customary for transactions of this kind, including, without limitation:</p> <ul style="list-style-type: none"> • <u>Conditions for Purchaser:</u> (i) all of the covenants and agreements of the RPX APA to be complied with or performed by Seller on or before the Closing Date shall have been complied with and performed in all material respects; (ii) the representations and warranties of Seller set forth in Article III of the RPX APA shall be true and correct as of the date of the RPX APA and as of the Closing Date as if made on the Closing Date (except for any representation or warranty made as of a specified date prior to or as of the Closing Date, which shall be true and correct in all respects except as of such specified date); (iii) no Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any applicable Legal Requirement (including any Order) which is in effect and has the effect of making the Transaction illegal or otherwise restraining or prohibiting consummation of the Transaction and which is not satisfied or resolved or preempted by the Sale Order; (iv) the Bankruptcy Court shall have entered the Sale Order and the Sale Order shall not have been stayed; and (v) the deliveries described in Section 7.2 of the RPX APA shall have been made. See RPX APA § 6.1. • <u>Conditions for Seller:</u> (i) all of the covenants and agreements in the RPX APA to be complied with or performed by Purchaser on or before the Closing Date shall have been complied with and performed in all material respects; (ii) the representations and warranties of Purchaser set forth in Article IV of the RPX APA shall be true and correct in all material respects, in each case, as of the date of the RPX APA and as of the Closing Date as if made on the Closing Date (except for any representation or warranty made as of a specified date prior to or as of the Closing Date, which shall be true and correct in all material respects as of such specified date); (iii) no Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any applicable Legal Requirement (including any Order) which is in effect and has the effect of making the Transaction illegal or otherwise restraining or prohibiting consummation of the Transaction and which is not satisfied or resolved or preempted by the Sale Order; (iv) the Bankruptcy Court shall have entered the Sale Order and the Sale Order shall not have been stayed; and (iv) the deliveries described in Section 7.3 of the RPX APA shall have been made. See RPX APA § 6.2.
Representations, Warranties and Covenants	The RPX APA includes representations, warranties and covenants made or agreed to by the Parties typical and customary for transactions of this kind, including, without limitation, representations, warranties and covenants relating to (i) Corporate Status, (ii) Power and Authority, (iii) Conflicts Under Constituent Documents or Laws, (iv) Consents, (v) the validity and marketability of title to the Included Patents, and (vi) no-Broker. See RPX APA Articles III, IV.

RPX APA Provision	Summary Description
Fees and Expenses	The Parties agree that, except as otherwise expressly provided in the RPX APA, each Party shall bear and pay all costs, fees and expenses that it incurs, or which may be incurred on its behalf, in connection with the RPX APA and the Transaction. <u>See RPX APA § 10.5.</u>
Purchase Price Deposit	\$22,500 to be held in escrow by Brown Rudnick LLP. <u>See RPX APA § 2.8.</u>
Remedies	Each party is entitled to all available legal and equitable remedies, including specific performance. <u>See RPX APA § 9.4.</u>
Termination Provisions	The RPX APA includes termination provisions typical and customary for transactions of this kind. There are also termination provisions related to the bankruptcy timeline and the conversion of the Chapter 11 Case into a case under Chapter 7 of the Bankruptcy Code. <u>See RPX APA § 9.1.</u>

(iii) **The Alliance APA**

Alliance APA Provision	Summary Description
Parties	<u>Seller</u> : Aereo, Inc. <u>Purchaser</u> : Alliance Technology Solutions, Inc.
Purchase Price	The purchase price for the Alliance Assets (the “ <u>Alliance Purchase Price</u> ”) shall consist of (i) a cash in an amount equal to the sum of \$320,000, plus (ii) providing, at Alliance’s sole cost, for the removal and disposal of certain of the Debtor’s equipment that is of minimal or no value located at the Debtor’s facilities. <u>See Alliance APA § 1.1, § 1.4(b).</u>
Alliance Assets	The Alliance APA sets forth the Debtor’s assets to be purchased by Alliance, including, without limitation, all of Seller’s right, title and interest in, to and under, free and clear of Encumbrances, certain of the Seller’s equipment as identified in Schedule 1.1 to the Alliance APA (the “ <u>Alliance Assets</u> ”). <u>See Alliance APA, Schedule 1.1.</u>
Removal of Alliance Assets	The Alliance APA sets forth the process by which Alliance is to remove the Alliance Assets from the Debtor’s facilities. Specifically, Alliance shall remove the Alliance Assets from the Debtor’s facilities within ten (10) calendar days after the Closing Date, as that term is defined in the Alliance APA, and if it has not done so, Alliance shall pay the Debtor \$5,000 for each calendar day for which the Equipment has not been removed. Furthermore, if Alliance fails to complete the removal by March 31, 2015, Alliance shall pay the Debtor any required lease payments and/or obligations (including expenses) incurred by the Debtor in connection with Alliance’s failure to complete the removal by March 31, 2015. <u>See Alliance APA § 1.4(a).</u>
Fees and Expenses	The Parties agree that, except as otherwise expressly provided in the Alliance APA, each Party shall bear and pay all costs, fees and expenses that it incurs, or which may be incurred on its behalf, in connection with the Alliance APA and the Transaction. <u>See Alliance APA § 1.13.</u>

Alliance APA Provision	Summary Description
Purchase Price Deposit	\$32,000 to be held in escrow by Brown Rudnick LLP. <u>See Alliance APA § 1.1.</u>
Remedies	Each party is entitled to all available legal and equitable remedies, including specific performance. <u>See Alliance APA § 1.9.</u>

18. Ramon A. Rivera, the Debtor's Chief Financial Officer, will authorize the Sale of the Included Assets to TiVo Inc., RPX Corporation, and Alliance by executing the TiVo APA, the RPX APA and the Alliance APA.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 26, 2015
New York, New York

/s/ Lawton W. Bloom
Lawton W. Bloom
Chief Restructuring Officer
Aereo, Inc.

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