

U.S. BANKRUPTCY COURT  
FILED  
TRENTON NJ

14 AUG -7 AM 11:00

JAMES J. WALDRON

BY: DEPUTY CLERK

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8 Attorneys for Creditor  
9 ROBERT KALETA

10 UNITED STATES BANKRUPTCY COURT  
11 DISTRICT OF NEW JERSEY  
12 TRENTON COURTHOUSE

**ORIGINAL**

11 In re:	)	CASE NO. 14-24874 (KCF)
	)	
12 CLOUDEEVA, INC.,	)	CREDITOR ROBERT KALETA'S
	)	OBJECTION TO DEBTOR'S
13 Debtor	)	MOTION TO PAY ALLEGEDLY
	)	"CRITICAL" VENDOR CLOUDEEVA
	)	INDIA

14 Creditor ROBERT KALETA ("Kaleta") objects to Debtor Cloudeeva, Inc.'s  
15 motion to pay allegedly "critical" vendor Cloudeeva India on the following grounds:

16  
17 Creditor Kaleta is the former Senior Vice President of Business Development for  
18 debtor Cloudeeva, Inc. Kaleta has filed suit against Cloudeeva and Cloudeeva President and  
19 CEO Adesh Tyagi in the Superior Court of the State of California for Contra Costa County in a  
20 "whistleblower" action under California Labor Code Section 1102.5 on the grounds that Tyagi  
21 fired Kaleta two days after Kaleta reported to Tyagi that Cloudeeva was involved in multiple and  
22 widespread violations of immigration law in the placement of Indian nationals for employment  
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1 in the United States. See Exhibit A, attached hereto (true and correct copy of complaint in  
2 Kaleta v. Cloudeeva, Inc. et al. Contra Costa County Superior Court Case No. C14-01211).<sup>1</sup>  
3 Cloudeeva has filed a Notice of Stay in the state court action (although creditor Kaleta does  
4 intend to pursue the action against Tyagi individually).

5  
6 Creditor Kaleta has substantial employment-related claims against Cloudeeva that  
7 Cloudeeva is attempting to forestall by the filing of its present bankruptcy. Despite the financial  
8 distress that Tyagi has caused creditor Kaleta by abruptly firing him in retaliation for reporting  
9 violations of the law and now forcing creditor Kaleta to pursue those claims in bankruptcy court,  
10 creditor Kaleta now learns that Tyagi seeks Court approval to transfer \$145,000 per month on an  
11 on-going basis to a company controlled by his father in India.

12  
13 Cloudeeva's proposal to pay \$145,000 per month -- \$1,740,000 per year -- to an  
14 Indian company owned by Cloudeeva's CEO's father and whose only customer is his son's  
15 business, is a transparent attempt to improperly spirit money out of the country, parking it in  
16 friendly hands irretrievably beyond the reach of Cloudeeva's creditors, including creditor Kaleta.  
17 Creditor Kaleta objects to this effort to transfer substantial assets on an on-going monthly basis  
18 to a close family member of the debtor's CEO located overseas. Despite declarant Mark  
19 Vitcov's protestations to the contrary, there is no "magic" to providing back-office support and  
20 nothing "critical" about Tyagi's father's company performing these routine back-office business  
21 functions. Innumerable service providers, both overseas and domestically, routinely perform  
22 such functions. Nor does declarant Vitcov identify how much of the \$145,000 per month is paid  
23 to the "over 150 employees" and how much is going straight into the pocket of Adesh Tyagi's  
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27 <sup>1</sup> In light of former Senior Vice President Kaleta's allegations, the trustee and Court may  
28 wish to scrutinize Cloudeeva's on-going operations to ensure that the debtor is now in  
compliance with all applicable immigration rules and regulations as it continues operating under  
bankruptcy court supervision.

1 father – and perhaps other Tyagi family members. As such, creditor Kaleta requests that the  
2 Court deny Cloudeeva’s request as to Cloudeeva India and in lieu of paying \$145,000 per month  
3 to Cloudeeva India, the Court order that these services be put out for competitive bid and an  
4 independent third party service provider perform these functions in order to ensure that the  
5 \$145,000 per month is not at best, the result of a prior pre-existing “sweetheart” deal between  
6 father and son designed, for example, to effectuate the repatriation of US profits offshore and at  
7 worst, a scheme to improperly defeat creditors’ claims. Alternatively, creditor Kaleta requests  
8 that, before ruling on the motion, the Court first require a detailed breakdown of the disposition  
9 of the proposed \$145,000 per month, with a specific identification of exactly how much is going  
10 to Adesh Tyagi’s father and any other Tyagi family members.  
11

12  
13 Creditor Kaleta states no position at the present time with respect to the remaining  
14 allegedly “critical” vendors for which debtor Cloudeeva seeks authorization to pay.

15 Dated: August 2, 2014

LAW OFFICES OF PAUL B. JUSTI

16  
17  
18 By  \_\_\_\_\_

Paul B. Justi

19 Attorneys for Creditor ROBERT KALETA  
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# Exhibit A

1 Paul B. Justi (SBN124727)  
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8 Attorneys for Plaintiff  
9 ROBERT KALETA

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 CONTRA COSTA COUNTY  
12 UNLIMITED JURISDICTION

13 ROBERT KALETA, )  
14 Plaintiff, )  
15 v. )  
16 CLOUDEEVA, INC.; ADESH TYAGI; )  
17 and DOES 1-25, inclusive, )  
18 Defendants )

19 CASE NO. C 14-01211

20 COMPLAINT FOR:

- 21 1. VIOLATION OF LABOR CODE SECTION 1102.5;
- 22 2. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
- 23 3. VIOLATION OF LABOR CODE SECTION 226
- 24 4. VIOLATION OF LABOR CODE SECTION 1198.5
- 25 5. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;  
and
- 26 6. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

27 JURY TRIAL DEMANDED

28 Plaintiff alleges:

FILED  
JUN 25 A 9 12  
CLERK OF SUPERIOR COURT  
D. WAGNER

PER LOCAL RULE 5 THIS  
CASE IS ASSIGNED TO  
DEPT 33  
BY FAX  
SUMMONS ISSUED

1 1. Plaintiff ROBERT KALETA (“plaintiff”) is a former employee of  
2 defendant Cloudeeva, Inc.

3 2. Defendant CLOUDEEVA, INC. is registered in the State of California as  
4 a Delaware corporation, authorized to do business in the State of California and doing business  
5 in the State of California, County of Contra Costa. Defendant CLOUDEEVA, INC. is also  
6 registered in the State of California as a Florida corporation doing business in the State of  
7 California as “Cloudeeva FL, Inc.” Both the Delaware Cloudeeva, Inc and the Florida  
8 Cloudeeva, Inc. shall be collectively referred to hereinafter as “Cloudeeva” and any resulting  
9 judgment will be sought against Cloudeeva, Inc. the Delaware corporation and Cloudeeva, Inc.  
10 the Florida corporation dba Cloudeeva FL, Inc.

11 3. Defendant ADESH TYAGI (“Tyagi”) is the President and Chief  
12 Executive Officer of defendant Cloudeeva and is a resident of the State of California.

13 4. Plaintiff is ignorant of the true names and capacities of defendants DOES  
14 1-25, inclusive, and sues such defendants by such fictitious names. Plaintiff is informed and  
15 believes and thereon alleges that such fictitiously named defendants were and are involved in the  
16 acts and omissions alleged herein. Plaintiff will amend this complaint when the true names and  
17 capacities of such fictitiously named defendants are ascertained.

18 5. In engaging in the acts and omissions alleged herein, each defendant was  
19 the agent, employee, representative and/or servant of each other defendant and acting within the  
20 course and scope of such agency, employment, representation and/or servitude, such that each  
21 defendant is jointly and severally liable for the acts and omissions of each other defendant.

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**GENERAL ALLEGATIONS**

1           6. Defendant Cloudeeva's principal business activity is identifying,  
2 recruiting and placing local contractors and foreign nationals, primarily from India, with US  
3 employers pursuant to H-1B visas. In connection with such activities, defendant Cloudeeva  
4 purports to comply with the US immigration and other legal requirements for placing foreign  
5 nationals in employment positions in the United States.  
6

7           7. Plaintiff has a distinguished and successful career in senior executive level  
8 management positions at pre-eminent organizations in the staffing and services industry. Over  
9 the past 20 years, plaintiff has been recognized for exceeding sales plans and building award  
10 winning sales and recruiting teams. Plaintiff has been recognized as a staffing services and  
11 consulting industry leader. Consistent with plaintiff's extensive experience and distinguished  
12 career, defendant Cloudeeva hired plaintiff on or about September 17, 2013 as a Senior Vice  
13 President of Business Development with a substantial salary and stock options commensurate  
14 with plaintiff's proven skill and expertise.  
15  
16

17           8. While employed by defendant Cloudeeva, plaintiff performed his job  
18 responsibilities in exemplary fashion and was on track to meeting performance objectives set for  
19 him by defendant Cloudeeva.  
20

21           9. In the course of performing his job responsibilities at defendant  
22 Cloudeeva, plaintiff became familiar with defendant Cloudeeva's activities in recruiting and  
23 placing foreign nationals in employment positions in the United States. Plaintiff discovered that  
24 defendant Cloudeeva was violating multiple legal requirements for recruiting and placing foreign  
25 nationals in employment positions in the United States. Such violations included, without  
26 limitation, falsifying the documentation and qualifications of the applicants to obtain visas,  
27 fabricating information as to where the applicants would be placed for employment, falsifying  
28 the applicants' resumes and bringing candidates over as employees of Cloudeeva with the  
intention of placing them elsewhere, all in violation of applicable immigration laws and

1 regulations. In addition to these violations of immigration law, defendant Cloudeeva was also  
2 engaged in extensive wrong-doing in other areas as well. Such additional wrong-doing included,  
3 without limitation, the following: applications to major clients were populated with fabricated  
4 and false information regarding revenue, employees, offices, minority status and references; and  
5 plaintiff was being instructed to bill clients under Systems American, instead of Cloudeeva, to  
6 shelter money from a pending lawsuit with a third party company, Bartronics. In addition,  
7 information regarding the Bartronics litigation was also deliberately withheld from a potential  
8 acquisition target. Defendant Cloudeeva was also in violation of contracts with existing clients  
9 by submitting candidates from third party vendors, a practice that was contractually prohibited.  
10 Finally, defendant Cloudeeva was paying at least one employee "under the table" in cash to  
11 avoid paying payroll taxes.

12 10. Promptly upon learning of these illegal and improper activities in which  
13 defendant Cloudeeva was engaged, plaintiff notified the president of defendant Cloudeeva,  
14 defendant Tyagi to ensure that these illegal and improper activities were discontinued  
15 immediately. Defendant Tyagi told plaintiff that the illegal and improper activities that plaintiff  
16 was reporting to defendant Tyagi were "nothing to worry about," or similar words to that effect.  
17

18 11. Within approximately two days after reporting these illegal and improper  
19 activities to defendant Tyagi, defendant Tyagi fired plaintiff. The stated reason for firing  
20 plaintiff was that sales revenues were not growing fast enough. However, plaintiff was on track  
21 to meet all of his sales goals and plaintiff was fully performing all of his job responsibilities.  
22 Prior to defendant Tyagi firing plaintiff, plaintiff attended weekly executive sales meetings and  
23 reported sales results and reported progress to the entire executive team, which results aligned  
24 with budget projections. During these meetings, there was no indication that "revenues were not  
25 growing fast enough" or other deficiency in plaintiff's performance  
26  
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1 12. The actual reason that plaintiff was fired was in retaliation for reporting  
2 illegal and improper conduct, in retaliation for objecting to illegal and improper conduct and in  
3 retaliation for refusing to engage in illegal and improper conduct.  
4

5 13. As a proximate result of such actions by defendants Cloudeeva and Tyagi,  
6 plaintiff suffered loss of income, loss of benefits, loss of opportunities for career advancement,  
7 as well as emotional distress, anxiety and humiliation, all in amounts to be proven at trial.  
8

9 14. Defendants Cloudeeva's and Tyagi's actions were malicious, oppressive,  
10 fraudulent and in conscious disregard of plaintiff's rights such that an award of punitive damages  
11 is warranted, in an amount sufficient to punish, deter and make an example of defendants.  
12

13 **FIRST CAUSE OF ACTION**  
14 **VIOLATION OF LABOR CODE SECTION 1102.5**  
15 **(Defendants CLOUDEEVA and TYAGI)**

16 15. Plaintiff incorporates herein by this reference paragraphs 1-14, above, as  
17 though fully set forth herein.  
18

19 16. California Labor Code section 1102.5 prohibits, *inter alia*, retaliating  
20 against an employee for reporting, opposing or refusing to engage in illegal conduct.  
21

22 17. Plaintiff reported, opposed and refused to engage in illegal conduct.  
23

24 18. Defendants Cloudeeva and Tyagi retaliated against plaintiff for reporting,  
25 opposing and refusing to engage in illegal conduct by firing plaintiff in violation of California  
26 Labor Code section 1102.5.  
27

28 19. As a proximate result of such actions by defendants Cloudeeva and Tyagi,  
plaintiff suffered loss of income, loss of benefits, loss of opportunities for career advancement,  
as well as emotional distress, anxiety and humiliation, all in amounts to be proven at trial.

1           20. Defendants Cloudeeva's and Tyagi's actions were malicious, oppressive,  
2 fraudulent and in conscious disregard of plaintiff's rights such that an award of punitive damages  
3 is warranted, in an amount sufficient to punish, deter and make an example of defendants.  
4

5                                   **SECOND CAUSE OF ACTION**  
6                                   **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**  
7                                   **(Defendants CLOUDEEVA)**

8           21. Plaintiff incorporates herein by this reference paragraphs 1-20, above, as  
9 though fully set forth herein.

10           22. The public policy of the State of California opposes the violation of  
11 immigration laws in recruiting and placing foreign nationals in employment positions in the  
12 United States.

13           23. Plaintiff reported, opposed and refused to engage in violations of  
14 immigration laws pertaining to the recruiting and placing of foreign nations in employment  
15 positions in the United States.  
16

17           24. Plaintiff was fired by defendant Cloudeeva in retaliation for reporting,  
18 opposing and refusing to engage in violations of immigration laws pertaining to the recruiting  
19 and placing of foreign nations in employment positions in the United States. In so doing,  
20 defendant Cloudeeva violated the public policy of the State of California.  
21

22           25. As a proximate result of such actions by defendant Cloudeeva, plaintiff  
23 suffered loss of income, loss of benefits, loss of opportunities for career advancement, as well as  
24 emotional distress, anxiety and humiliation, all in amounts to be proven at trial.

25           26. Defendant Cloudeeva's actions were malicious, oppressive, fraudulent and  
26 in conscious disregard of plaintiff's rights such that an award of punitive damages is warranted,  
27 in an amount sufficient to punish, deter and make an example of defendant.  
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**THIRD CAUSE OF ACTION  
VIOLATION OF LABOR CODE SECTION 226  
(Defendant CLOUDEEVA)**

27. Plaintiff incorporates herein by this reference paragraphs 1-26, above, as though fully set forth herein.

28. California Labor Code section 226 requires an employer to provide an employee with a copy of the employee's payroll records within 21 days of the employee's request for such records and provides for a statutory fine for failing to provide such records within such time frame.

29. On or about May 23, 2014, plaintiff made a written request for his payroll records. Defendant Cloudeeva failed to provide such records within 21 days of such request and still has not provided such records as of the filing of this complaint.

30. As a result of defendant Cloudeeva's violation of Labor Code section 226, plaintiff is entitled to such statutory fine, plus costs and attorneys' fees.

**FOURTH CAUSE OF ACTION  
VIOLATION OF LABOR CODE SECTION 1198.5  
(Defendant CLOUDEEVA)**

31. Plaintiff incorporates herein by this reference paragraphs 1-30, above, as though fully set forth herein.

32. California Labor Code section 1198.5 requires an employer to provide an employee with a copy of the employee's personnel file within 30 days of the employee's request for such records and provides for a statutory fine for failing to provide such records within such time frame.

1 33. On or about May 23, 2014, plaintiff made a written request for his payroll  
2 records. Defendant Cloudeeva failed to provide such records within 30 days of such request and  
3 still has not provided such records as of the filing of this complaint.  
4

5 34. As a result of defendant Cloudeeva's violation of Labor Code section  
6 1128.5, plaintiff is entitled to such statutory fine, plus costs and attorneys' fees.

7 **FOURTH CAUSE OF ACTION**  
8 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
9 **(Defendant CLOUDEEVA)**

10 35. Plaintiff incorporates herein by this reference paragraphs 1-34, above, as  
11 though fully set forth herein.

12 36. The acts committed above by defendant Cloudeeva and by its President  
13 and CEO defendant Tyagi acting within the course and scope of his employment, were extreme  
14 and outrageous and outside the bounds of all civilized society.

15 37. The above-described actions were extreme and outrageous and intended to  
16 cause plaintiff extreme emotional distress and/or were substantially certain to cause plaintiff  
17 extreme emotional distress and plaintiff did in fact suffer extreme emotional distress as a result  
18 of such extreme and outrageous conduct.  
19

20 38. As a proximate result of such actions by defendant Cloudeeva, plaintiff  
21 suffered loss of income, loss of benefits, loss of opportunities for career advancement, as well as  
22 emotional distress, anxiety and humiliation, all in amounts to be proven at trial.  
23

24 39. Defendant Cloudeeva's actions were malicious, oppressive, fraudulent and  
25 in conscious disregard of plaintiff's rights such that an award of punitive damages is warranted,  
26 in an amount sufficient to punish, deter and make an example of defendant.  
27

28 ///

1 **FIFTH CAUSE OF ACTION**  
2 **NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS**  
3 **(Defendant CLOUDEEVA)**

4 40. Plaintiff incorporates herein by this reference paragraphs 1-39, above, as  
5 though fully set forth herein.

6 41. Defendant Cloudeeva had a duty to exercise reasonable care in its  
7 treatment of plaintiff.

8 42. Defendant Cloudeeva breached such duty of care by, *inter alia*, breaching  
9 Labor Code section 1102.5.

10 43. As a proximate cause of such breach of the standard of care, plaintiff  
11 suffered loss of income, loss of benefits, loss of opportunities for career advancement, as well as  
12 emotional distress, anxiety and humiliation, all in amounts to be proven at trial.

13 44. Defendant Cloudeeva's actions were malicious, oppressive, fraudulent and  
14 in conscious disregard of plaintiff's rights such that an award of punitive damages is warranted,  
15 in an amount sufficient to punish, deter and make an example of defendant.  
16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, plaintiff prays for relief as follows:

- 19
- 20 1. For general damages in an amount according to proof;
  - 21 2. For special damages in an amount according to proof;
  - 22 3. For punitive damages in an amount sufficient to punish, deter and make an  
23 example of defendants;
  - 24 4. For costs, interest and attorneys' fees as provided by law, contract and/or  
25 statute; and  
26

27 ///  
28

**PROOF OF SERVICE**

U.S. BANKRUPTCY COURT  
FILED  
TRENTON, NJ

14 AUG -7 AM 11:00

JAMES J. WALDRON

BY: ~~not a party to this~~  
DEPUTY CLERK

I, Suzanne Burgess, declare as follows:

I am a resident of the State of California over the age of 18 and ~~not a party to this~~ action. My business address is 1981 N. Broadway, Suite 250, Walnut Creek CA 94596. I served the following document(s):

**CREDITOR ROBERT KALETA'S OBJECTION TO DEBTOR'S MOTION TO PAY ALLEGEDLY "CRITICAL" VENDOR CLOUDEEVA INDIA**

The documents were served by the following method(s):

- By Facsimile:** I caused a true copy of the foregoing document(s) to be served by facsimile transmission (in accordance with the written confirmation of counsel in this action) at the time shown on each attached transmission report from sending facsimiles machine number (925)256-9204 to each interested party at the facsimile number as shown above. Each transmission was reported complete and without error. A true copy of each transmission report is attached hereto.
- By Mail:** I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid
- Hand Delivered:** by personally delivering the document(s) listed above to the person(s) at the address (es) set forth below.
- Email:** I caused the documents to be sent to the persons at the electronic service address (es) listed below.
- Overnight Mail:** I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

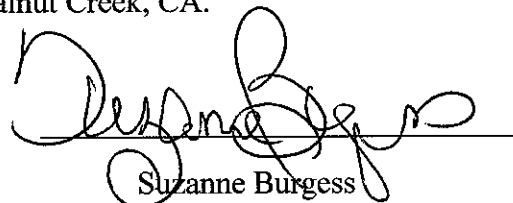
Addressed to the following person(s):

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[smoses@cloudeeva.com](mailto:smoses@cloudeeva.com)

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on August 4, 2014 at Walnut Creek, CA.



Suzanne Burgess

PROOF OF SERVICE  
Page 2 of 2  
August 4, 2014

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4 August 2014

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**VIA REGULAR MAIL**

Clerk of the Court  
Clarkson S. Fisher US Courthouse  
402 East State Street  
Trenton, NJ 08608

Re: Cloudeeva, Inc. Bankruptcy Matter Case No. 14-24874 (KFC)

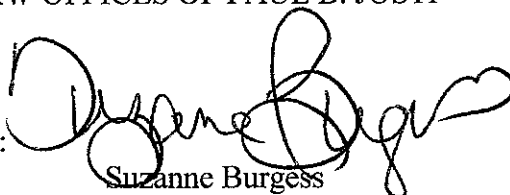
Dear Clerk of the Courts:

Enclosed please find an Objection to Debtor's Motion to Pay Allegedly "Critical" Vendor Cloudeeva India. Please file this with the courts and return a court endorsed copy to our office in the self addressed stamped envelope provided.

Thank you in advance for your prompt attention to this matter.

Very Truly Yours

LAW OFFICES OF PAUL B. JUSTI

By:   
Suzanne Burgess



**PROOF OF SERVICE**

U.S. BANKRUPTCY COURT  
FILED  
TRENTON, NJ

14 AUG -7 AM 11:00

JAMES J. WALDRON

I, Suzanne Burgess, declare as follows:

I am a resident of the State of California over the age of 18 and ~~not a party to this~~  
action. My business address is 1981 N. Broadway, Suite 250, Walnut Creek CA 94596. I served  
the following document(s):

**CREDITOR ROBERT KALETA'S OBJECTION TO DEBTOR'S MOTION TO PAY  
ALLEGEDLY "CRITICAL" VENDOR CLOUDEEVA INDIA**

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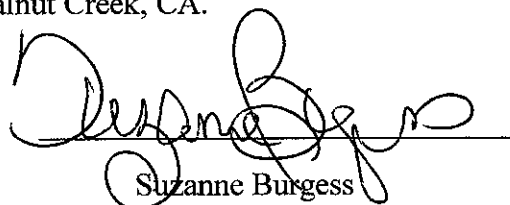
Addressed to the following person(s):

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[smoses@cloudeeva.com](mailto:smoses@cloudeeva.com)

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on August 4, 2014 at Walnut Creek, CA.



Suzanne Burgess