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February 26, 2016

**VIA CM/ECF**

The Honorable Kathryn C. Ferguson, U.S.B.J.  
United States Bankruptcy Court  
Clarkson S. Fisher U.S. Courthouse  
402 East State Street  
Trenton, NJ 08608

Re: In re Cloudeeva, Inc., et al. (Jointly Administered)  
Lead Case No. 14-24874 (KCF) (the “Bankruptcy Case”)

Dear Judge Ferguson:

Our firm represents First Tek, Inc. (“FTI”) in the above referenced Bankruptcy Case. Please accept this letter in lieu of a more formal reply in further support of FTI’s motion to compel enforcement of sale order and release of funds held by Chapter 11 Trustee and for enforcement expenses in connection therewith (the “Motion”), and in response to the Declaration of Richard B. Honig in Opposition to the Motion (the “Opposition”) filed by the Trustee.<sup>1</sup>

As a preliminary matter, the Opposition does not contest FTI’s claim for payment of the Trade Receivables, and the Trustee has indicated that he will pay those amounts. See, Opposition, ¶ 20. Rather, the Opposition only objects to FTI’s claim for payment on account of the Payroll Receivable. The Trustee advances two primary arguments in his contention that FTI is not entitled to the Payroll Receivable: first, that FTI received a financial benefit by virtue of the Closing occurring “within an extraordinarily short time frame”; and second, “the employee portion of health insurance premiums for April 2015 was not raised as an obligation due to FTI or to be apportioned between FTI and the Debtor...” See, Opposition, ¶¶ 9-11.

With respect to the Trustee’s first contention, while FTI certainly appreciates all of the parties’ efforts to reach Closing as expeditiously as possible, the occurrence of Closing when it did benefited both parties. The fact that FTI may have “saved money” on the purchase price in connection with the Asset Sale as a result of being ready to close early is wholly irrelevant to the fact that the Trustee is in possession of the Payroll Receivable, which is property of FTI.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Motion.

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The Trustee's argument that the employee portion of the health insurance premiums was not contemplated as an item for apportionment at Closing, or that the Debtor "did not, in fact, collect any funds from the employees post-closing" is belied both by the Apportionment Schedule (annexed to the Motion as Exhibit "D" and also annexed hereto for convenience as Exhibit "A") as well as correspondence among the Trustee, his financial advisors, CohnReznick, and certain third parties (the "Reconciliation Chart"), a copy of which is attached hereto as Exhibit "B." Furthermore, the payroll records for the Debtor appear to directly contradict the Trustee's assertion that no funds were collecting from employees after Closing.

The Apportionment Schedule reflects a category of items termed "Employee Benefits," which total \$79,123.36 in the aggregate. This amount ties to within a few dollars of the \$79,131 listed as "April 2015 Health Insurance Covering the Period From April 1 Through April 30, Paid by Cloudeeva Prior to Closing Date" in the Reconciliation Chart. Of that total, the parties clearly apportioned responsibility between them with the Debtor being responsible for 1/3 (the first 10 days of April 2015), and FTI being responsible for the other 2/3 (the last 20 days of April 2015). See, Apportionment Schedule. As set forth on the Apportionment Schedule, FTI paid at Closing the sum of \$52,748.91 to the Debtor, representing its 20-day portion of "Employee Benefits."

However, not all of the \$79,123.36 advanced by the Debtor pre-Closing was an expense of the Debtor; rather, because the Debtor maintained a partially contributory health care plan, some of that amount advanced would be recouped by the Debtor through its employees' payroll for the corresponding month. Specifically, as reflected on the Reconciliation Chart, \$46,134 of the \$79,131 was going to be collected through employee payroll and serve to offset the total advanced, thus leaving the sum of \$32,998 as the total "out-of-pocket" April 2015 health insurance premium paid by the Debtor. The Reconciliation Chart further reflects that of that unreimbursed amount, FTI should be responsible for 2/3 of it, or \$21,998. See, Reconciliation Chart.

Had FTI only paid its 2/3 portion of the *unreimbursed* amount to the Debtor at Closing (\$21,998), then arguably the Debtor would have been entitled to collect the employee share reimbursement portion from payroll for April 2015. The Reconciliation Chart confirms as much, listing \$21,998 as the amount "Required to be Paid by First Tek to Cloudeeva (2/3 Apportionment)." In reality, however, FTI paid a 2/3 share of the *entire premium amount* at Closing (\$52,748.91), meaning that FTI – and not the Debtor – should have been entitled to recoup the employee share portion through payroll. Since FTI did not collect these sums, but rather the Trustee did, the Trustee effectively "double dipped" on his reimbursement of those portions of the health insurance premiums, and, at a minimum, that difference (\$30,750.91) should be remitted to FTI immediately.

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FTI recognizes that the amount of the Payroll Receivable sought in the Motion is \$41,315.59, which is the full amount of employee reimbursements recouped by the Trustee for health insurance for April 2015. FTI reserves all rights, and maintains its primary position as articulated in the Motion that since accounts receivable were among the assets FTI purchased in the Asset Sale, FTI is entitled to the full amount of the Payroll Receivable. Nevertheless, alternatively, in the event that the Court finds the Payroll Receivable to be more in the nature of a post-Closing adjustment rather than a “pure” account receivable, FTI submits that it is, at a minimum, plainly entitled to 2/3 of the employee reimbursement adjustment, totaling \$30,750.91.

Finally, FTI disagrees with the Trustee’s assertion that any portion of the Payroll Receivable which this court deems payable to FTI should simply be paid as a Chapter 11 administrative expense. See, Opposition, ¶ 19. There is no rational reason for the Trustee to delay payment of an amount to which he should not have been entitled in the first place. To make the Payroll Receivable a Chapter 11 administrative expense adds layers of uncertainty (*i.e.*, timing of payment, potential subordination of priority in the event of conversion or dismissal) which are not necessary, and which would only serve to prejudice FTI. Moreover, because he was not entitled to collect it, the Payroll Receivable is not “property of the estate” within the meaning of section 541 of the Bankruptcy Code, and should therefore be held in trust for the benefit of FTI. Accordingly, FTI respectfully seeks entry of an Order, substantially in the form as that submitted with the Motion, overruling the Trustee’s Opposition in its entirety and granting the relief sought in the Motion.

Thank you for Your Honor’s consideration.

Respectfully,

ARCHER & GREINER  
A Professional Corporation

BY: /s/ Douglas G. Leney  
Douglas G. Leney

DGL:dgl

Attachment

cc: Richard B. Honig, Chapter 11 Trustee (*via e-mail*)  
Matthew E. Moloshok, Esquire (*via e-mail*)  
Mitchell B. Hausman, Esquire (*via e-mail*)

# EXHIBIT “A”

Cloudeeva, Inc./First Tek, Inc.  
Apportionment  
Closing date: 4/10/2015

Name	Cloudeeva Amount	Cloudeeva Days	First Tek Amount	First Tek Days	First Tek Amount	Beginning of period	End of period	Days in period
<b>Employee Benefits</b>								
United Healthcare	72,381.29	10	24,127.10	20	48,254.19	04/01/15	04/30/15	30
Sunlife Financial	5,063.59	10	1,687.86	20	3,375.73	04/01/15	04/30/15	30
VSP (Vision)	898.48	10	299.49	20	598.99	04/01/15	04/30/15	30
Assurant (STD and Accident)	780.00	10	260.00	20	520.00	04/01/15	04/30/15	30
<b>Job Boards</b>								
DesiOPT	2,774.00	0	0.00	366	2,774.00	04/12/15	04/12/16	366
SimplyOPT (vNext Solutions, Inc.)	1,500.00	73	299.18	293	1,200.82	01/28/15	01/28/16	366
BenchFolks (ABAB Tech LLC)	6,000.00	73	1,196.72	293	4,803.28	01/28/15	01/28/16	366
<b>IT and Telephony</b>								
Microsoft	356.00	18	206.71	13	149.29	03/24/15	04/23/15	31
Google Apps	2,292.56	10	764.19	20	1,528.37	04/01/15	04/30/15	30
Vitel	1,132.96	10	377.65	20	755.31	04/01/15	04/30/15	30
Godaddy (Domains)	0.00	10	0.00	356	0.00	04/01/15	03/31/16	366
Vonage	355.89	21	241.76	10	115.13	03/21/15	04/20/15	31
Comcast	138.36	20	89.26	11	49.10	03/22/15	04/21/15	31
Broadview	3,145.00	14	1,420.32	17	1,724.68	03/28/15	04/27/15	31
Equisolve	699.00	10	233.00	20	466.00	04/01/15	04/30/15	30
<b>Trainee Accommodations</b>								
Quality Inn	13,447.50	10	4,482.50	20	8,965.00	04/01/15	04/30/15	30
Holiday Inn	14,920.50	10	4,973.50	20	9,947.00	04/01/15	04/30/15	30
Indian Operations	65,000.00	10	21,666.67	20	43,333.33	04/01/15	04/30/15	30
NJ Office (incl. OpEx, Elec, ...)	15,910.42	10	5,303.47	20	10,606.95	04/01/15	04/30/15	30
NJ Cleaning	1,441.00	10	480.33	20	960.67	04/01/15	04/30/15	30
<b>Total</b>	<b>208,237.55</b>		<b>68,109.73</b>		<b>140,127.82</b>			

For First Tek, Inc.  
KUMAR BHAVANATHI, President/CEO  
AB Sharma, April 10, 2015  
To: Cloudeeva Inc.  
Richard B. Sharma, Treasurer

# EXHIBIT “B”

**From:** Howard Konicov [mailto:Howard.Konicov@CohnReznick.com]  
**Sent:** Friday, January 22, 2016 12:56 PM  
**To:** 'mmoloshok@hlglaw.com' <mmoloshok@hlglaw.com>; 'rbhonig@hlglaw.com' <rbhonig@hlglaw.com>;  
 rsharma@cloudeeva.com; 'bsetterman@hlglaw.com' <bsetterman@hlglaw.com>  
**Subject:** RE: Cloudeeva Conference Call

Sending you this table in advance of 2PM Call:

	Incorrect		Correct	
	Actual, at Closing		Proforma	Adjustment
April 2015 Health Insurance Covering the Period From April 1 Through April 30, Paid By Cloudeeva Prior to Closing Date	\$	79,131	\$	79,131
Employee Share for the Month			{46,134}	{46,134}
April 2015 Health Insurance Covering the Period From April 1 Through April 30, Paid By Cloudeeva Prior to Closing Date, Net of Employee Share	\$	79,131	\$	32,998
Required to be Paid by First Tek To Cloudeeva (2/3rds Apportionment)	\$	52,754	\$	21,998
				{30,756}

-----Original Appointment-----  
**From:** Linda Berenyi **On Behalf Of** Howard Konicov  
**Sent:** Friday, January 22, 2016 10:23 AM  
**To:** Howard Konicov; mmoloshok@hlglaw.com; rbhonig@hlglaw.com; rsharma@cloudeeva.com; bsetterman@hlglaw.com; Howard Konicov

**Subject:** Cloudeeva Conference Call  
**When:** Friday, January 22, 2016 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** Dial In (877) 811-3636 Participant Access Code: 0222652# | Leader Code:0299903#

**Howard Konicov, CPA, CIRA**

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[vCard](#) | [Bio](#)

**CohnReznick LLP**

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