

**UNITED STATES OF AMERICA  
CONSUMER FINANCIAL PROTECTION BUREAU**

**In Re:**

**CHANDRA ALPHABET**

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**PETITION TO ALLOW TRANSWORLD SYSTEMS INC.  
TO APPEAR AT EXAMINATION OF CHANDRA ALPHABET**

Transworld Systems Inc. (“TSI”), through counsel and pursuant to 12 U.S.C. § 5562(f) and 12 C.F.R. § 1080.6(e), submits this petition to permit the company to attend the oral examination of its employee, Chandra Alphabet.

**I. INTRODUCTION**

As modified, the Consumer Financial Protection Bureau (the “Bureau”) scheduled the examination of Ms. Alphabet for March 12, 2015, through a Civil Investigative Demand (“CID”). *See* January 26, 2015 CID to Chandra Alphabet, *modified*, February 20, 2015. The Bureau set the examination to be held at the United States Attorney’s Office in Atlanta, Georgia. Undersigned counsel asked the Bureau attorneys to move the location of the examination, but they refused. The Bureau attorneys apparently chose this location to intimidate the witness.

The day before the examination, Ms. Alphabet retained separate counsel. The Bureau attorneys were immediately advised and the examination was cancelled.

On April 17, 2015, Ms. Alphabet resigned from TSI and her last day of work is Friday, April 24, 2015.

Undersigned counsel have made repeated requests to the Bureau attorneys to be advised if the examination of Ms. Alphabet is rescheduled. To date, the Bureau attorneys have refused to confirm whether they will even advise undersigned counsel if or when the examination is to take place. As explained below, TSI has the right to appear at the examination of Ms. Alphabet.

The CID issued to Ms. Alphabet demands that Ms. Alphabet give oral testimony to the Bureau regarding “whether loan holders, servicers, collectors or other persons have engaged or are engaging in unlawful acts and practices relating to the servicing and collecting of private student loan debt in violation of . . . the Consumer Financial Protection Act . . . , the Fair Debt Collection Practices Act . . . , the Fair Credit Reporting Act . . . , or any other federal consumer financial law.” *Id.*

As explained below, TSI acts as an agent for the National Collegiate Trusts (the “Trusts”). As an agent, TSI (through its employees) communicates with the various attorneys retained to represent the Trusts. In the ordinary course of her employment, Ms. Alphabet received and communicated information protected by the attorney-client privilege relating to the Trusts and at times acted as a corporate representative for the Trusts. As an agent for the Trusts, TSI is the holder of the privilege and has the legal right and obligation to object to the disclosure of protected attorney-client information. Therefore, TSI should be permitted to attend Ms. Alphabet’s examination to ensure there is no improper disclosure of attorney-client privilege communications.

## II. LAW AND ARGUMENT

### A. TSI Should Be Permitted To Attend Ms. Alphabet's Examination To Ensure There Is No Improper Disclosure Of Attorney-Client Privilege Communications.

Information and communications protected by the attorney-client privilege include “communications among clients and their attorneys, for the purpose of seeking and rendering an opinion on law or legal services, or assistance in some legal proceeding, so long as the communications were intended to be, and were in fact, kept confidential.” *Pure Power Boot Camp v. Warrior Fitness Boot Camp*, 587 F. Supp. 2d 548, 563 (S.D. N.Y. 2008). Information and communications **between an attorney and the client's agent are likewise protected**. See, e.g., *Vill. of Kiryas Joel Local Dev. Corp. v. Ins. Co. of N. Am.*, 1992 WL 8207, \*2 (S.D. N.Y. Jan. 16, 1992) (“the privileged communication must be between the attorney, or his agent, and the client, or his agent, and must be made in confidence”). Only the client, or an authorized agent acting on its behalf, can waive the attorney-client privilege. *Dahl v. Blain Capital Partners, LLC*, 714 F. Supp. 2d 225, 227-28 (D. Mass. 2010); see also *Sitterson v. Evergreen School Dist. No. 114*, 196 P.3d 735 (Wash. Ct. App. Div. 2d 2008).

The Bureau bears the heavy burden of proving that communications subject to the attorney-client privilege should be disclosed. The attorney-client privilege is one of the oldest common law privileges and “the burden of breaching the privilege, once it is determined that the protection applies, is particularly high.” *United States v. Davis*, 131 F.R.D. 391, 398 (S.D. N.Y. 1990).

In an investigation, privileged material, including attorney-client communications,

should be withheld. *See* 12 C.F.R. § 1080.8; 12 U.S.C. § 5562(e). The “holder” of the privilege must object to disclosure of privileged or protected information and communications:

The disclosure of privileged or protected information or communications shall not operate as a waiver with respect to the Bureau if:

- (i) The disclosure was inadvertent;
- (ii) The holder of the privilege or protection took reasonable steps to prevent disclosure; and
- (iii) The holder promptly took reasonable steps to rectify the error, including notifying the Bureau investigator of the claim of privilege or protection and the basis for it.

12 C.F.R. § 1080.8(c)(1).

TSI is the holder of its own attorney-client privilege and, as an agent for the Trusts, also holds the privilege for the Trusts.

In the ordinary course of her employment with TSI, Ms. Alphabet received and communicated information protected by the attorney-client privilege relating to the Trusts. TSI, as the “holder” of the privilege for the Trusts, has the right and obligation to protect from disclosure privileged communications relating to the Trusts. Neither TSI nor the Trusts has authorized Ms. Alphabet to waive the attorney-client privilege.

Further, Ms. Alphabet was not employed as a TSI manager, supervisor, officer, or director. Nor did Ms. Alphabet have a fiduciary or ownership interest in TSI or the Trusts. And, the mere fact that Ms. Alphabet was employed by TSI is insufficient to establish her interest in maintaining the privilege. Indeed, considering Ms. Alphabet is soon-to-be no longer employed by TSI, her interest in protecting the privilege now is less than before. Therefore, the Bureau should permit TSI to appear at the examination to

ensure there is no improper disclosure of privileged attorney-client communications.

### **III. CONCLUSION**

TSI is the holder of its attorney-client privilege and, as an agent, holds the privilege for the Trusts. As such, TSI has the right and duty to object to the disclosure of privileged information and communications. The Bureau should permit TSI to attend Ms. Alphabet's examination to protect its and the Trusts' attorney-client privilege.

### **IV. STATEMENT OF CONFERENCE**

On April 9, 2015, David Israel, counsel for TSI, conferred by telephone with Nicole Mayer and Edward Keefe, counsel for the Bureau regarding the relief requested. On April 10, 2015, David Israel followed up the April 9 telephone call with an e-mail regarding the relief requested. Further, on April 13, 2015, Whitney White and Bryan Shartle, counsel for TSI, conferred by telephone with Nicole Mayer, counsel for the Bureau regarding the relief requested. And, on April 18, 2015, David Israel followed up the April 13 telephone call with an e-mail regarding the relief requested. Despite good-faith efforts to resolve the dispute, the Bureau has not responded.

Respectfully submitted,

/s/ David Israel

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