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April 20, 2017

VIA ELECTRONIC FILING

Hon. Norman L. Epstein,
Hon. Associate Justices Thomas L. Willhite
and Nora M. Manella
California Court of Appeal
Second District Division 4
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Re: R.E.F.S., Inc., Plaintiff v. G. Gregory Williams, et al.
2017 WL 1210046
Second Appellate District Case No.: B266574
**UNITED TRUSTEE ASSOCIATION'S REQUEST TO
PUBLISH DECISION**
Our File No. UTA 001-6

Dear Hon. Justices Epstein, Willhite and Manella:

This letter is written on behalf of the United Trustees Association (“UTA”), formerly known as the California Trustees Association (“CTA”), a nonprofit educational organization. The members of UTA are comprised of lenders and trustees under deeds of trust secured by real property in California, as well as members working for industries which provide support services in the nonjudicial foreclosure process, such as legal newspapers, title companies, posting and publishing services, and attorneys. UTA's members provide reconveyance and nonjudicial foreclosure services for nearly all lenders in the California real estate market. UTA has also been actively involved in legislative changes in the nonjudicial foreclosure process in the California Legislature for more than a quarter century. UTA (as CTA), has filed amicus briefs in the United States Supreme Court, the Federal Ninth Circuit Court of Appeals, the California Supreme Court, and the California Courts of Appeal, including such cases as: *BFP v. Resolution Trust Corporation*¹;

¹ *BFP v. Resolution Trust Corporation* (1994) 511 U.S. 531 (validity of regularly conducted nonjudicial foreclosure sale.)

Hon. David P. Epstein
Hon. Thomas L. Willhite
Hon. Nora M. Manella
California Court of Appeal
Second District, Division 4
Our File UTA001-6
April 20, 2017
Page 2

*I. E. Associates v. Safeco*²; *Kachlon v. Markowitz, Banc of America Leasing & Capital, LLC v. 3 Arch Trustee Services, Inc., Trustors Security Service v. Title Recon Tracking, et al.*³; *In re Lindsay*⁴; *Prudential Home Mortgage Company, Inc. v. Superior Court*⁵; *Abdallah v. United States Bank*⁶; *Nguyen v. Calhoun*⁷ *Bank of America v. La Jolla Group II*⁸, *Biancalana v. TD Service Corp.*⁹ and *Ho v. Bank of America*.¹⁰ UTA's goal is to provide a clear understanding of the legislation and case law that impacts the lending, loan servicing, and default services industries, including important issues relating to lending, servicing and foreclosure of loans secured by deeds of trust. UTA requests publication of the court of appeal's decision in the *R.E.F.S., Inc. v. G. Gregory Williams, et al.* case (2017 WL 1210045). UTA believes publishing the opinion provides clear guidance to its members concerning distribution of surplus funds and in particular when there is the likelihood of a dispute between the foreclosed owner and a purchaser at the foreclosure sale.

In the *R.E.F.S., Inc. v Williams* decision, the court of appeal held that a creditor who obtained its judgment against the former owner(s) of the property and its interest in the real property after the foreclosure sale which generated the surplus funds was not entitled to the surplus funds without additional hearings. Civil Code Section 2924j is part of a complex legislative scheme. The Court noted: "There is some confusion about the nature of the section 2924j proceeding that affects the parties' arguments on issues as far ranging as notice, jurisdiction, default, and stay." The reason for the confusion is that this case discussed an issue that heretofore had not been addressed: that petitions for the interpleader of surplus funds under Civil Code Section 2924j are special proceedings. This case is the first time a Court of Appeal has held that proceedings under Civil Code 2924j and k are special proceedings.

The clarity provided by the *R.E.F.S., Inc.* decision will help foster an environment where all involved in the distribution of surplus funds including borrowers, consumers, lenders, loan

² *I. E. Associates v. Safeco* (1985) 39 Cal.3d 281 (the extent and scope of a trustee's duties in connection with a nonjudicial foreclosure.)

³ *Trustors Security Service v. Title Recon Tracking, et al.* (1996) 49 Cal.App.4th 592 (interpretation of Civil Code § 2941 and the legislative preference for reconveyances of deeds of trust by trustees.)

⁴ *In re Lindsay* (9th Cir. 1995) 59 F.3d 942 (validity of a regularly conducted nonjudicial foreclosure.)

⁵ *Prudential Home Mortgage Company, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1236.

⁶ *Abdallah v. United States Bank* (1996) 43 Cal.App.4th 1101.

⁷ *Nguyen v. Calhoun* (2003) 105 Cal. App. 4th 428 (a loan secured by real property is paid off when the lender actually receives the payoff funds not when a purchase escrow by the seller/borrower closes.)

⁸ *Bank of America v. La Jolla Group II* (2005) 129 Cal. App. 4th 706 (a trustee may rescind a sale to a bona fide purchaser where the obligation was reinstated prior to the sale.)

⁹ *Biancalana v. TD Service Corp.* (2013) 56 Cal. 4th 807 (a trustee may rescind a foreclosure sale before a deed is issued to the purchaser.)

¹⁰ *Ho v. ReconTrust Company*, NA 840 F. 3d 618 (9th Cir. 2016) (a trustee doing the actions authorized in Civil Code Section 2924 et seq. is not a debt collector under the Fair Debt Collection Practices Act.)

Hon. David P. Epstein
Hon. Thomas L. Willhite
Hon. Nora M. Manella
California Court of Appeal
Second District, Division 4
Our File UTA001-6
April 20, 2017
Page 3

servicers, judgment and tax lien holders, and trustees, can understand the procedural basis under which the trustee must operate when depositing surplus funds in California. From the standpoint of UTA, this clarity will provide to trustees, borrowers, owners, judgment and tax lien creditors and junior lienholders the requirements for a party to claim an interest in surplus funds which, in turn, will provide stability in the distribution of surplus funds by trustees. In addition, this clarity will reduce unnecessary trial court litigation currently congesting underfunded courts.

The *R.E.F.S., Inc.* decision should be published – it meets at least 3 of the criteria for publication of an appellate decision. (California Rules of Court, Rule 8.1105). The *R.E.F.S., Inc.* decision applies for the first time a decision regarding the nature of a surplus funds deposit case which affects homeowners, trustees, junior lien holders and judgment and tax creditors. Thus, it necessarily involves a “legal issue of continuing public interest.” (Rule 8.1105 (c) (6)). The *R.E.F.S., Inc.* decision is the first published court of appeal decision that expresses that Civil Code § 2924j deposit of surplus funds cases are “special proceedings” to which generally all the rules of civil procedure do not apply. (Rule 8.1105 (c) (4)). It also clarifies existing law regarding which secured interests in real property qualify for notice and distribution of surplus funds. (Rule 8.1105 (c) (3)).

UTA believes that *R.E.F.S., Inc. v Williams* was properly decided. The court of appeal’s holding that judgment creditors who obtain a judgment post foreclosure against the borrower or owner are not persons entitled to notice under Civil Code §2924b, subdivisions (b) and (c) and § 2924j, subdivision (a) and therefore, should not participate in the distribution of surplus funds. The holding that creditors who become a secured creditor post foreclosure are not entitled to surplus funds does not leave such creditors without a remedy. Post foreclosure judgement and tax lien creditors retain the right to levy on the surplus funds pursuant to the Enforcement of Judgments Act (“EJA”). In the experience of UTA’s members, judgment creditors routinely serve a levy on the trustee prior to the funds being deposited or distributed when the existence of surplus funds is discovered.

As the Court decisively stated at page 8 of its decision: “Neither section 2924j nor section 2924k entitles a subsequent unsecured judgment creditor to distribution of surplus funds from an earlier foreclosure sale. Rather, section 2924j requires a recorded interest in the property before the foreclosure sale, while section 2924k allows distribution to satisfy “secured obligations.” (*Cal-Western Reconveyance Corp. v. Reed* (2007) 152 Cal.App.4th 1308, 1317.)

The Court’s description of Levi’s rights underscores why the Court should consider publication in this case. This case involves a dispute over the surplus funds generated from a sale of the property between the owner and a former owner of the property and the purchaser at the foreclosure sale who later obtained a judgment against the owners. This factual scenario occurs on a regular basis where a purchaser who buys at the foreclosure sale of a junior lien demands (before distribution

Hon. David P. Epstein
Hon. Thomas L. Willhite
Hon. Nora M. Manella
California Court of Appeal
Second District, Division 4
Our File UTA001-6
April 20, 2017
Page 4

or deposit) either the trustee pay senior liens on the property, including property taxes, rather than paying the surplus to the owner. *R.E.F.S., Inc.* is crystal clear that a purchaser does not hold a secured lien against the property as of the date of the foreclosure sale as required by statute, and, therefore, the purchaser has no rights in or to the surplus funds.

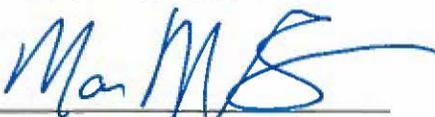
Civil Code § 2924j subdivision (b) requires that a trustee determine that a conflict exists between the claims before depositing the funds with the Superior Court. The importance of the case is that it clarifies that a purchaser who is not a secured creditor on the date of the foreclosure sale has no interest to the surplus funds. Therefore, a trustee can distribute the funds to the owner of the property on the date of the sale absent the existence of any junior liens. Further, should surplus funds be paid to the purchaser or any creditor improperly the funds must be repaid. The case clarifies that a creditor whose secured interest in the property funds did not arise until the foreclosure sale was not entitled to a distribution of surplus funds. The ruling, if published, will prevent future disputes over the distribution of surplus funds.

A clear understanding of which creditors are entitled to surplus funds, and that Civil Code § 2924j is a special proceeding to which all the rules of civil procedure are not applicable is a critical development to borrowers, lenders, loan servicers, and trustees. The clarity in the *R.E.F.S., Inc.* case will advance the timing of the distribution of surplus funds as trustees will not be compelled to deposit funds based upon a threat from a purchaser to sue if the funds are distributed to the owner. The *R.E.F.S., Inc.* decision, which was properly decided, provides this clarity for trustees to make the distribution without incurring liability to the purchaser. For this reason, UTA requests the Court of Appeal order the publication of the court of appeal's decision in the *R.E.F.S., Inc.* case, in its entirety. The Court's consideration of this matter is greatly appreciated.

Respectfully submitted,

KIRBY AND MCGUINN, A P.C.

By:



Martin T. McGuinn, Esq.

MTM/tlc

cc: Counsel for the parties in the above-entitled action

**PROOF OF SERVICE (Court of Appeal)
Mail, Electronic Service or Personal Service**

Case Name: **R.E.F.S., Inc. v. G. Gregory Williams et al.**
 Court of Appeal Case Number: **B266574**
 Superior Court Case Number: **BS084615**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My residence business address is (specify): **707 Broadway, Ste. 1750, San Diego, CA 9210**

My electronic service address is: **vzimmerman@kirbymac.com**

3. I mailed, electronically served or personally delivered a copy of the **Request to Publish Decision** as indicated below (complete either a, b or c):

- a. **Mail.** I mailed a copy of the document identified above as follows:
- b. **Electronic service.** I electronically served a copy of the document identified above as follows:
- c. **Personal delivery.** I personally delivered a copy of the document identified above as follows:

Date mailed, electronically served or personally served: **Apr 20, 2017**

- (1) Name of Person served: **G. Gregory Williams**

On behalf of (name or names of parties represented, if person served is an attorney):

(a) Address:

137 North Larchmont Blvd, Ste. 185, Los Angeles, CA 90004

(b) E-Mail Address:

- (2) Name of Person served: **Plernpit Polpantu**

On behalf of (name or names of parties represented, if person served is an attorney):

(a) Address:

137 North Larchmont Blvd., # 185, Los Angeles, CA 90004

(b) E-Mail Address:

- (3) Name of Person served: **Andrew Ritholz**

On behalf of (name or names of parties represented, if person served is an attorney):

Eli Levi

(a) Address:

3452 E. Foothill Blvd., Ste 740, Pasadena, CA 91107

(b) E-Mail Address:

4. I am a resident of or employed in the county where the mailing occurred. The document was served from (city and state): **San Diego, CA**

Additional persons served are listed on the attached page (See page 3).

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

Date: **Apr 20, 2017**

Vanessa Zimmerman

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



(SIGNATURE OF PERSON COMPLETING THIS FORM)

Case Name:	R.E.F.S., Inc. v. G. Gregory Williams et al.
Court of Appeal Case Number:	B266574
Superior Court Case Number:	BS084615

- (4) Name of Person served: Consumer Law Section
On behalf of *(name or names of parties represented, if person served is an attorney)*:
Gov. Cod 12656(a) (False Claims Act): Overview party
(a) Address:
300 S. Spring St., North Tower, 5th Floor

(b) E-Mail Address: Los Angeles, CA 90013

- (5) Name of Person served:
On behalf of *(name or names of parties represented, if person served is an attorney)*:

(a) Address:

(b) E-Mail Address:

- (6) Name of Person served:
On behalf of *(name or names of parties represented, if person served is an attorney)*:

(a) Address:

(b) E-Mail Address:

- (7) Name of Person served:
On behalf of *(name or names of parties represented, if person served is an attorney)*:

(a) Address:

(b) E-Mail Address:

- (8) Name of Person served:
On behalf of *(name or names of parties represented, if person served is an attorney)*:

(a) Address:

(b) E-Mail Address: