

**[COMPANY OR ATTORNEY LETTERHEAD]**

**[DATE]**

Hon. Dennis A. Cornell, Acting Presiding Justice  
Hon. Stephen J. Kane, Associate Justice  
Hon. Charles S. Poochigian, Associate Justice  
California Court of Appeal  
Fifth Appellate District  
2424 Ventura Street  
Fresno, CA 93721

**REQUEST FOR PUBLICATION OF OPINION**

Re: *Andre Torigian v. WT Capital Lender Services*  
Case No. F068393 (Fresno County Superior Court No. 10CECG03800)

To the Honorable Justices of the Court of Appeal:

Pursuant to California Rules of Court, Rule 8.1120, we respectfully request the Court to certify for publication its entire opinion filed in *Torigian v. WT Capital Lender Services* (“Court’s Opinion”).

**I. Statement of Interest**

This request for publication is written on behalf on **[NAME OF COMPANY]**. **[NAME OF COMPANY]** has acted as a trustee, substitute trustee or foreclosure agent under deeds of trust recorded in California since **[DATE]**. Like most trustees in California, **[NAME OF COMPANY]** has a significant interest in the Court’s Opinion. It construes and explains Civil Code § 2924/. Further, it defines what conduct constitutes “remaining neutral” in deed of trust litigation between a trustor, beneficiary, and trustee when a party objects to the trustee’s declaration of nonmonetary status (“DNMS”). The decision guides trustees where the trustee is compelled to participate in the litigation although it has done nothing wrong and has only engaged in privileged conduct.<sup>1</sup> Finally, the Court’s Opinion clearly sets out the trustee’s right to attorney’s fees when its litigation objective is to remain neutral. No other published decision does this, and certainly not as clearly as the Court’s Opinion does.

**II. Request for Publication**

All too often trustees are named in deed of trust litigation where the trustee has done nothing wrong, having engaged solely in privileged conduct (i.e., processed a nonjudicial foreclosure or reconveyance pursuant to instructions of the beneficiary as provided for in the deed of trust). *Kachlon v. Markowitz* (2008) 168 Cal. App. 4th 316 (“*Kachlon*”) is the only published opinion really dealing with the “neutrality of the trustee” as related to Civil Code § 2924/. However, *Kachlon* was based upon significantly

---

<sup>1</sup> See, Civil Code § 2924(d).

different facts than those involved in the Court's Opinion and, therefore, it failed to address the more common facts that were the basis for the Court's Opinion.

The Court's Opinion, if published, would be the first court decision since Civil Code § 2924/ was enacted in 1995 to thoroughly discuss and explain that section and the impact of a trustee remaining neutral even after the borrower files an objection to the DNMS. In *Kachlon*, the court of appeal did not have to look at the trustee and the beneficiary independently to determine the prevailing party because the trustee had not remained neutral in the litigation. In *Torigian*, the Court's Opinion considered facts where the trustee consistently remained neutral in a dispute between the trustor and the beneficiary. In addition, the Court's Opinion distinguishes *Kachlon*, explaining that where the trustee remains neutral throughout the litigation, the trustee's "litigation objective" is in fact remaining neutral. The Court's Opinion also observed that where the trustee achieved its litigation objective of remaining neutral on nonmonetary claims and prevailed in monetary claims, it will be the prevailing party for the purposes of attorney's fees and costs both under Civil Code § 1717 and under Code of Civil Procedure § 1021. The Court's Opinion construed attorney's fees language which is contained in most deeds of trust used in California. Thus, we believe that the Court's Opinion addresses issues of a continuing public interest to trustees as well as to trustors and beneficiaries and would be invaluable for future guidance for trustees.

California Rule of Court Rule 8.1105(c) provides an opinion of a Court of Appeal should be certified for publication in the Official Reports if it meets *any one* of the grounds set forth in that Rule. The Court's Opinion here satisfies a number of grounds for publication including those set forth in California Rule of Court Rule 8.1105(c)(2), (3), (4), (5), and (6). However, rather than burdening the Court with a repetitive lengthy request for publication, [NAME OF COMPANY] adopts and incorporates by this reference the requests for publication already on file with the Court by appellant, WT Capital Lender Services and by the amicus curiae, the United Trustees Association.

For these reasons we respectfully request and strongly urge that the Court of Appeal certify the Court's Opinion for publication.

Respectfully submitted,

[NAME OF COMPANY]

---

By: [NAME PERSON WRITING ON BEHALF OF THE COMPANY]

cc: See, proof of service.