

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re:

KENNETH G. WILKINSON,

Debtor.

Case No. 24-24334-A-13

**Memorandum Regarding Motions for  
Contempt (Stay Violation by PHH  
Mortgage), ECF No.170**

Argued and submitted on September 9, 2025

at Sacramento, California

Honorable Fredrick E. Clement, Bankruptcy Judge Presiding

Appearances:

Kenneth Wilkinson, in propria persona;  
Kelly G. Wilkinson, in propria persona;  
Jillian Benbow, Aldridge Pite LLP for  
Aldridge Pite LLP; and Kathryn A. Moorer  
and Arnold Graff, Wright, Finley & Zalk,  
LLP for PHH Mortgage Corporation, Western  
Progressive Trustee, LLC; Bank of New York  
Mellon Trust Company, N.A.; JP Morgan  
Chase, as Trustee for Residential Asset  
Mortgage Products, Inc; Mortgage Asset-  
Backed Pass-Through Certificates, Series  
2003-RP-1; and Wright, Finlay & Zak, LLP

1           Section 362(a) protects the debtor, property of the estate and  
2 property of the debtor property from collection efforts during the  
3 bankruptcy. Kenneth Wilkinson owns real property subject to a note  
4 and deed of trust in favor of PHH Mortgage. The note and deed of  
5 trust were taken by Wilkinson's now deceased wife. After Wilkinson  
6 filed a Chapter 13 bankruptcy, PHH sent five written communications to  
7 Wilkinson's deceased spouse. Did PHH Mortgage violate the stay?

8       **I.     FACTS**

9           Kenneth G. Wilkinson and Kelly G. Wilkinson ("plaintiffs  
10 Wilkinson") are engaged in a dispute with the holders of the note and  
11 deed of trust against the home in which they reside, 3961 Nugget Lane,  
12 Placerville, California ("the property"). The Wilkinsons reside on  
13 the property.<sup>1</sup>

14           Lei Anne Wilkinson acquired the property. Ex. A & B, Mot.  
15 Dismiss Compl. ECF No. 14. In 1999, Lei Anne Wilkinson executed a  
16 promissory note in the amount of \$136,000 and a deed of trust against  
17 the property in favor of BYL Bank. *Id.* at Ex. C. Over time, the  
18 promissory note and deed of trust were assigned to other financial  
19 institutions, terminating with the Bank of New York Mellon Trust  
20 Company. *Id.* at D-I.

21           In March 2020, Lei Anne Wilkinson died. Findings and  
22 Recommendations 2:12, *Wilkinson v. PHH Mortgage Corporation et al.*,  
23 No. 2:24-cv-1416 (E.D. Cal. February 20, 2025), adopted Order ECF No.  
24 31. Her ashes are scattered on the property. Kelly Wilkinson decl.

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26       <sup>1</sup> For the most part, the motions are supported by relevant evidence. See  
27 Kenneth G. Wilkson decl., ECF No. 29; Kelly G. Wilkinson decl., ECF No. 28.  
28 The court has gleaned the following facts from the record and ancillary  
filings. For the purpose of context only, the court takes judicial notice of  
facts contained in the ancillary filings. Fed. R. Evid. 201.

¶¶4, 6, ECF No. 28: Kenneth Wilkinson ¶ 2, ECF No. 29. Thereafter, the property passed to the plaintiffs Wilkinson. Findings and Recommendations 2:12, *Wilkinson*, 2:24-cv-1416.

In 2021, the loan went into default for non-payment. *Id.* at 2:13-14. In 2023, Western Progressive, LLC, acting as the trustee, issued its Notice of Default and Election to Sell. Ex. J., Mot. to Dismiss Compl., ECF No. 14.

In April 23, 2024, Western Progressive, LLC recorded its Notice of Trustee's Sale. Ex. K, Mot. Dismiss Compl. ECF No. 14. The sale was scheduled for May 23, 2024.

In May 2024, Kenneth G. Wilkinson and Kelly G. Wilkinson filed an action in district court against PHH Mortgage Corporation and Western Progressive LLC. Compl. ECF No. 1. The complaint contended that defendants PHH Mortgage Corporation and Western Progressive LLC were "attempting to enforce a void mortgage contract" and included causes of action for breach of contract, breach of the covenant of good faith and fair dealing, injunctive relief, and quiet title. Am. Compl., ECF No. 10. Defendants PHH Mortgage Corporation and Western Progressive LLC moved to dismiss the complaint. Finding a lack of standing on the part of Kenneth G. Wilkinson and Kelly G. Wilkinson, the district court dismissed the complaint without leave to amend. Findings and Recommendations 2:12, *Wilkinson v. PHH Mortgage Corporation*, No. 2:24-cv-1416 (E.D. Cal. February 20, 2025), adopted Order ECF No. 31.

On September 26, 2024, Western Progressive, LLC conducted the foreclosure sale for the property and the holder of the note and deed of trust, Bank of New York Mellon Trust Company was the successful bidder. Ex. L, Mot. Dismiss Compl. ECF No. 14.

1 On September 27, 2024, Kenneth Wilkinson filed a Chapter 13  
2 bankruptcy petition. Schedule A/B listed 3961 Nugget Lane,  
3 Placerville and described its value as \$325,000. Schedule A/B, ECF  
4 No. 20. Schedule D listed a secured debt against the property of  
5 \$267,302 in favor of PHH Mortgage Corporation. Schedule D, ECF No.  
6 20. Western Progressive LLC and Bank of New York Mellon were also  
7 listed as secured creditors. Notwithstanding the foreclosure sale on  
8 the day prior to filing bankruptcy, Kenneth G. Wilkinson answered "No"  
9 to the question: "Within 1 year before you filed for bankruptcy, was  
10 any of your property repossessed, foreclosed, garnished, attached,  
11 seized, or levied?" Statement of Financial Affairs No. 10, ECF No.  
12 21. The debtor has proposed, but not confirmed, a plan.

13 On December 5, 2024, Western Progressive, LLC recorded the  
14 Trustee's Deed Upon Sale in favor of the Bank of New York Mellon Trust  
15 Company. Ex. L, Mot. Dismiss Compl. ECF No. 14.

16 On May 16, 2025, the plaintiffs Wilkinson brought an adversary  
17 proceeding against PHH Mortgage Corporation; Western Progressive, LLC;  
18 Wright, Finlay & Zak, LLP, Bank of New York Mellon Trust, and Aldridge  
19 Pite LLP. The complaint pleads causes of action for declaratory  
20 relief; unconscionable contract, violation of the Fair Debt  
21 Collections Practices Act, failure of consideration, and violation of  
22 the stay. The defendants have moved to dismiss the complaint under  
23 Rule 12(b)(6); the plaintiffs oppose those motions, which remain  
24 pending.

25 Subsequent thereto, PHH and/or NewRez sent five different  
26 communications to the 3961 Nugget Lane Property: (1) a Corrected 1099-  
27 A Internal Revenue Tax Form addressed to "Lei Wilkinson," date known;  
28 (2) a Monthly Mortgage Statement addressed to "Lei Wilkinson," dated

June 30, 2025; (3) a letter requesting hazard insurance information addressed to "Lei Wilkinson," dated July 7, 2025; (4) a letter outlining mortgage assistance options addressed to "Lei Wilkinson," dated July 8, 2025; and (5) a Monthly Mortgage Statement addressed to "Lei Wilkinson," dated July 17, 2025. All except the IRS 1099-A contain the verbiage, "Our records show that you are a debtor in bankruptcy. We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you" or words to similar effect.

## II. PROCEDURE

The Wilkinsons move for an order of contempt against PHH Mortgage for "five separate and distinct [one for each letter] post-petition violations of the automatic stay." Mot. 2:18-20, ECF No. 170. PHH Mortgage opposes the motion.

## III. JURISDICTION

This court has jurisdiction. 28 U.S.C. §§ 1334(a)-(b), 157(b); see also General Order No. 182 of the Eastern District of California. The matter falls within the bankruptcy court's core jurisdiction, 28 U.S.C. § 157(a) (arising "under title 11"); 28 U.S.C. § 157(b)(G), (O).

## IV. DISCUSSION

Stay violations may be redressed by a motion for contempt. *In re Goodman*, 991 F.2d 613, 619-620 (9th Cir. 1993); see FRBP 9020; *In re Rainbow Magazine, Inc.*, 77 F.3d 278, 284-285 (9th Cir. 1996). Actual knowledge of the stay is required. *Matter of Hailey*, 621 F.2d 169, 172 (5th Cir. 1980); *Matter of Carter* 691 F.2d 390, 391 (8th Cir. 1982). The movant carries the burden of proof. *In re Dyer*, 322 F.3d 1178, 1190-91 (9th Cir. 2003) ("[t]he moving party has the burden of showing by clear and convincing evidence that the contemnors violated

1 a specific and definite order of the court," citing *Bennett*, 298 F.3d  
2 at 1069).

3 The "metes and bounds of the automatic stay are provided by [11  
4 U.S.C. § 362] and systematically applied to all cases[.]" *Jove Eng'g*  
5 *v. IRS (In re Jove Eng'g)*, 92 F.3d 1539, 1546 (11th Cir.1996).

6 (a) Except as provided in subsection (b) of this section, a  
7 petition filed under section 301, 302, or 303 of this  
8 title, or an application filed under section 5(a)(3) of the  
Securities Investor Protection Act of 1970, operates as a  
stay, applicable to all entities, of--

9 (1) the commencement or continuation, including the  
10 issuance or employment of process, of a judicial,  
administrative, or other action or proceeding *against*  
11 *the debtor* that was or could have been commenced  
before the commencement of the case under this title,  
12 or to recover a claim against the debtor that arose  
before the commencement of the case under this title;

13 (2) the enforcement, *against the debtor or against*  
14 *property of the estate*, of a judgment obtained before  
the commencement of the case under this title;

15 (3) *any act to obtain possession of property of the*  
16 *estate or of property from the estate or to exercise*  
control over property of the estate;

17 (4) any act to create, perfect, or enforce any lien  
18 *against property of the estate*;

19 (5) any act to create, perfect, or enforce *against*  
20 *property of the debtor* any lien to the extent that  
such lien secures a claim that arose before the  
commencement of the case under this title;

21 (6) any act to collect, assess, or recover a claim  
22 *against the debtor* that arose before the commencement  
of the case under this title...

23 11 U.S.C. § 362(a)(1)-(6) (emphasis added).

24 Section 362 protects the debtor, property of the estate, property  
25 of the debtor and nothing and no one else. *In re Casgul of Nev.,*  
26 *Inc.*, 22 B.R. 65, 66 (9th Cir. BAP 1982). Non-debtors are not  
27 protected by the stay. *In re Qarni*, No. 19-12679-A-13, 2019 WL  
28 6817106, at \*3 (Bankr. E.D. Cal. Dec. 11, 2019) (citing *In re Chugach*

1 *Forest Products, Inc.*, 23 F.3d 241, 246 (9th Cir. 1994); *United States*  
2 *v. Dos Cabezas Corp.*, 995 F.2d 1486, 1491-1492 (9th Cir. 1993))  
3 (emphasis added).

4 Section 362(a)(6) ("act to collect, assess, or recover a claim  
5 against the debtor") represents the broadest of stay provisions. Of  
6 course, it includes communications that attempt to collect a debt.  
7 But not all communications between a debtor and a creditor are  
8 prohibited; it is only those designed to coerce payment of a  
9 prepetition debt. *Morgan Guar. Trust Co. of N.Y. v. Am. Sav. and Loan*  
10 *Ass'n*, 804 F.2d 1487, 1491 (9th Cir.1986). The Bankruptcy Appellate  
11 Panel for the Ninth Circuit has articulated beautifully the standard:

12 We begin our analysis with the premise that the automatic  
13 stay does not prevent all communications between a creditor  
14 and the debtor. Whether a communication is a permissible or  
15 prohibited one is a fact-driven inquiry which makes any  
16 bright line test unworkable. However, case law provides us  
17 with some guidance in defining which creditor  
18 communications violate the stay.

19 Prohibited communications include those where direct or  
20 circumstantial evidence shows the creditor's actions were  
21 geared toward collection of a prepetition debt, were  
22 accompanied by coercion or harassment, or otherwise put  
23 pressure on the debtor to pay. But mere requests for  
24 payment and statements simply providing information to a  
25 debtor are permissible communications that do not run afoul  
26 of the stay.

27 *In re Zotow*, 432 B.R. 252, 258-59 (B.A.P. 9th Cir. 2010)  
28 (citations omitted).

Having reviewed the five communications of which debtor Kenneth  
G. Wilkinson complains the court draws these conclusions. First, none  
of the five communications are an attempt to enforce a debt "against  
property of the estate," 11 U.S.C. § 362(a)(2)-(4), or "property of  
the debtor." 11 U.S.C. § 362(a)(5). These communications are in  
personam.

Second, they are not "an act to collect, assess, or recover a

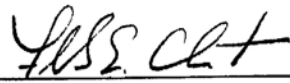
claim against the debtor." 11 U.S.C. § 362(a)(1), (a)(6). Kenneth Wilkinson has two problems. The stay only protects the "debtor." 11 U.S.C. § 101(13) (the person who filed bankruptcy); *Chugach Forest Products, Inc.*, 23 F.3d at 246; *Dos Cabezas Corp.*, 995 F.2d at 1491-1492. Kenneth Wilkinson is the debtor and is protected by the stay; Lei Wilkinson is not a "debtor" and is not protected by the stay. All communications were directed to "Lei Wilkinson."

Moreover, these communications are of the informational, not in the flavor of coercion and/or harassment. *In re Zotow*, 432 B.R. 252, 259 (B.A.P. 9th Cir. 2010) (recognizing the Chapter 13 debtors need for information for confirmation of a plan). No demand for payment, nor threat is made. And, in fact, each of the communications (except the IRS 1099-A form) include verbiage that specifically state that they recognize the bankruptcy and are not attempting to collect a debt.

**V. CONCLUSION**

For each of these reasons, the court finds that Kenneth Wilkinson has not made a prima facie case and will deny the motion. An order will issue from chambers.

**Dated:** September 16, 2025

  
\_\_\_\_\_  
**Fredrick E. Clement**  
**United States Bankruptcy Judge**



# Instructions to Clerk of Court

## Service List - Not Part of Order/Judgment

**The Clerk of Court is instructed to** send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked ☐, via the U.S. mail.

Debtor(s)	Attorney for the Debtor(s) (if any)
Bankruptcy Trustee (if appointed in the case)	<b>Office of the U.S. Trustee</b> Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814
All Creditors and Interested Parties	