

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re:

KENNETH GENE WILKINSON,

Debtor.

Case No. 24-24334-A-13

KENNETH G. WILKINSON, et al.,

Plaintiffs,

v.

PHH MORTGAGE CORPORATION, et al.,

Defendants.

Adv. No. **25-02061**

**Memorandum Regarding Order to  
Show Cause, FEC-5**

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, 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 This is an order to show cause issued for a lack of civility, by  
2 the pro se male plaintiffs against female defense counsel. Acts  
3 include: (1) sending defense counsel a cartoon character engaged in  
4 unseemly behavior, viz., physical violence and sexual harassment; and  
5 (2) ad hominem attacks in pleadings, e.g., "unfit for the profession,  
6 and [she] belongs behind a McDonalds counter or in a prison cell."  
7 Should the court sustain the order to show cause?

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.

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 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 2020, Lei Anne Wilkinson died. Findings and Recommendations  
22 2:12, *Wilkinson v. PHH Mortgage Corporation et al.*, No. 2:24-cv-1416  
23 (E.D. Cal. February 20, 2025), adopted Order ECF No. 31. Her ashes  
24 are scattered on the property. Kelly Wilkinson decl. ¶¶ 4, 6, ECF No.  
25 28: Kenneth Wilkinson ¶ 2, ECF No. 29. Thereafter, the property  
26 passed to the plaintiffs Wilkinson. Findings and Recommendations  
27 2:12, *Wilkinson*, 2:24-cv-1416.

28 In 2021, the loan went into default for non-payment. *Id.* at

1 2:13-14. Thereafter, Western Progressive, LLC, acting as the trustee  
2 for the Bank of New York Mellon, issued a Notice of Default and  
3 Election to Sell. Ex. J., Mot. to Dismiss Compl., ECF No. 14.

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

7 Thereafter, Kenneth G. Wilkinson and Kelly G. Wilkinson filed an  
8 action in the United States District Court against PHH Mortgage  
9 Corporation and Western Progressive, LLC. Compl. ECF No. 1. The  
10 complaint contended that defendants PHH Mortgage Corporation and  
11 Western Progressive, LLC were "attempting to enforce a void mortgage  
12 contract" and included causes of action for breach of contract, breach  
13 of the covenant of good faith and fair dealing, injunctive relief, and  
14 quiet title. Am. Compl., ECF No. 10. Defendants PHH Mortgage  
15 Corporation and Western Progressive, LLC moved to dismiss the  
16 complaint. Kathryn Anne Moorer and Wright Finlay & Zak, LLP were  
17 counsel of record for the defendants. Finding a lack of standing on  
18 the part of Kenneth G. Wilkinson and Kelly G. Wilkinson, the District  
19 Court dismissed the complaint without leave to amend. Findings and  
20 Recommendations 2:12, *Wilkinson v. PHH Mortgage Corporation*, No. 2:24-  
21 cv-1416 (E.D. Cal. February 20, 2025), adopted Order ECF No. 31.

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

26 On September 27, 2024, the day following the foreclosure sale,  
27 Kenneth G. Wilkinson filed a Chapter 13 bankruptcy petition. Schedule  
28 A/B listed the single-family home located at 3961 Nugget Lane,

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

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

14 Thereafter, the plaintiffs Wilkinson brought the instant  
15 adversary proceeding against PHH Mortgage Corporation; Western  
16 Progressive, LLC; Wright, Finlay & Zak, LLP, Bank of New York Mellon  
17 Trust, and Aldridge Pite LLP. The complaint pleads causes of action  
18 for declaratory relief; unconscionable contract, violation of the Fair  
19 Debt Collections Practices Act, failure of consideration, and  
20 violation of the stay.

21 The defendants have moved to dismiss the complaint under Rule  
22 12(b)(6); the plaintiffs oppose those motions, which remain pending.

23 On or about August 8, 2025, Wright, Finlay & Zak, LLP received a  
24 Federal Express delivery from Kenneth G. Wilkinson and Kelly G.  
25 Wilkinson, which contained: (1) a Reply Brief to the Counter-Motion  
26 for Terminating Sanctions; and (2) a cartoon character engaged in  
27 unseemly behavior. Moorer decl., ECF No. 70.  
28

**II. PROCEDURE**

This court issued an order to show cause against the plaintiffs Wilkinson for that cartoon. Order, ECF No. 81. This court described the cartoon and inferences therefrom as follows:

Having reviewed this cartoon and the manner in which it was conveyed to attorney Moorner, viz., beyond the court's horizon, this the court believes that bad faith in the form of intimidation and sexual harassment, on the part of Kenneth G. Wilkinson and Kelly G. Wilkinson exists, to wit: (A) a threat of physical violence against attorney Kathryn A. Moorner, i.e., her image depicted within flames; (B) vulgar behavior denigrating her reputation as a member of the bar, viz., (depicting a male character relieving himself on her image coupled with the words "Moorner's career after [the instant adversary]"; and (C) sexual harassment based on gender (the court infers that the cartoon character represents one, or both, of the Wilkinsons).

*Id.*

Plaintiffs Wilkinson filed 50-page opposition. Oppos., ECF No. 91. Though nominally acknowledging their inappropriate behavior ("deepest and most sincere apologies," *id.* at 1:26-27), it includes further ad hominem attacks on defense counsel: (1) describing attorney Moorner as "unfit for the profession, and [she] belongs behind a McDonalds counter or in a prison cell," *id.* at 7:232-23; (2) describing defendants and defense counsel as "salivating, manipulative, professional predators," *id.* at 19:3, and "dirty, rotten, crafty, corrupt, hardened career criminals, *id.* at 19:10; and (3) the actions of Moorner's supervising attorney as "a cold, calculated decision by the puppeteer to cut the strings of his own marionette and let Ms. Moorner hang, hoping her thrashing corpse and the thick smoke from the fire." *Id.* at 8:3-5.

**III. JURISDICTION**

This court has jurisdiction. 28 U.S.C. §§ 1334(a)-(b), 157(b);

1 see also General Order No. 182 of the Eastern District of California.  
2 All matters fall within the bankruptcy court's core jurisdiction, 28  
3 U.S.C. § 157(a) (arising "under title 11" or "arising in" cases under  
4 title 11). Jurisdiction is core. § 28 U.S.C. § 157(b)(2)(A), (O);  
5 *Link v. Wabash R. Co.*, 370 U.S. 626 (1962); *Roadway Express, Inc. v.*  
6 *Piper*, 447 U.S. 752 (1980); *Chambers v. NASCO, Inc.*, 501 U.S. 32  
7 (1991); *In re Rainbow Magazine, Inc.*, 77 F.3d 278, 284 (9th Cir.  
8 1996); *In re 350 Encinitas Invs., LLC*, No. CIV 06CV2085 WQH POR, 2007  
9 WL 2669546, at \*9 (S.D. Cal. Sept. 6, 2007), *aff'd*, 313 F. App'x 70  
10 (9th Cir. 2009).

#### 11 **IV. LAW**

12 Courts of the United States have the power to control  
13 proceeding(s) before them, *Link v. Wabash R. Co.*, 370 U.S. 626 (1962);  
14 *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980); *Chambers v.*  
15 *NASCO, Inc.*, 501 U.S. 32 (1991); that authority extends to the  
16 issuance of sanctions in appropriate cases. *Id.* That authority  
17 extends to bankruptcy courts issuing corrective sanctions, *In re*  
18 *Rainbow Magazine, Inc.*, 77 F.3d 278, 284 (9th Cir. 1996).

19 As a result, this court has the power to sanction parties for bad  
20 faith conduct, including actions occurring outside the court's  
21 presence, *In re De Jesus Gomez*, 592 B.R. 698, 704 (B.A.P. 9th Cir.  
22 2018); *City of Carlsbad*, 2021 WL 2779576 (S.D. Cal. 2021) (sending  
23 letters to opposing counsel referring to him as a "low class thug," a  
24 "disgrace to the human race," and an "unmitigated liar and a cheat");  
25 *Raya v. Barka*, 2023 WL 11994286 \*3 (S.D. Cal. 2023); *Centeno v. Doe v.*  
26 *Los Angeles Travelodge*, 2009 WL 5227898 (C.D. Cal. 2009). Bad faith  
27 means "conduct tantamount to bad faith, or recklessness with an  
28 "additional factor such as frivolousness, harassment, or an improper

purpose," *De Jesus Gomez*, 592 B.R. at 704; it includes "crude, vulgar and threatening" words, *Fid. Nat'l Title Ins. Co. v. Intercounty Title Ins. Co.*, 2002 U.S. Lexis 11915 (N.D. Il. 2002); *Ransom v. Herrera*, No. 111CV01709LJOEPGPC, 2018 WL 3923641, at \*2 (E.D. Cal. Aug. 14, 2018).

Sanctions may include dismissal of the case in its entirety, barring witnesses or excluding evidence, awarding attorney's fees or assessing fines, *Raya*, 2023 WL 11994286 \*2.

#### V. DISCUSSION


In most instances, progressive sanctions, starting with a warning, are the most favored manner of resolving lack of civility in or outside the courtroom. *Ransom v. Herrera*, No. 111CV01709LJOEPGPC, 2018 WL 3923641, at \*2 (E.D. Cal. Aug. 14, 2018).

In this case, the court will warn, but not otherwise sanction, the plaintiffs Wilkinson. In doing so, the court notes that these are pro se plaintiffs who are trying to retain their long-standing residence. And the court assumes that the stress of the situation resulted in a hiatus in their otherwise good judgment and civil behavior. The court also notes a nominal, albeit very weak, acknowledgement that their behavior was inappropriate.

#### VI. CONCLUSION

The order to show cause is discharged without the imposition of sanctions. The plaintiffs Wilkinson are admonished that no additional acts of incivility will be tolerated and that further violations will almost certainly result in monetary and/or more severe sanctions.

**Dated:** September 15, 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.

Plaintiff(s)	Attorney for the Defendant(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