

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

In re:

JOSEPH MICHAEL WESTERN,

Debtor.

Case No. 26-00198-BRW

Chapter 13

**SUMMARY ORDER DENYING DEBTOR'S
MOTION TO OPEN LOSS MITIGATION PROCEEDINGS**

Before the Court is a “Motion to Open Loss Mitigation Proceedings” (Doc. No. 7) (the “Motion”) filed by pro se Debtor Joseph Michael Western (the “Debtor”) on March 13, 2026, the same day the Debtor filed his chapter 13 petition. Since filing of the petition, and despite an extension granted by this Court, the Debtor has not filed any of the required documents to appropriately proceed in this chapter 13 case. *See* Order Granting in part and Denying in part Motion to Extend Time, Doc. No. 19 (granting the Debtor’s request for an extension to file a chapter 13 plan to April 27, 2026, but requiring the Debtor to file all other required documents on or before April 9, 2026). The Debtor has, however, filed an adversary proceeding in this case against secured creditor ServiceMac, LLC (the “Creditor”), as well as other named defendants. *See* Adv. No. 26-06006-BRW.

In response to the Motion, the Creditor filed an “Opposition to the Debtor’s Motion to Open Loss Mitigation Proceedings” on March 26, 2026. Doc. No. 21.

A telephonic hearing on the Motion (the “Hearing”) was held on April 9, 2026, with appearances by counsel for the Creditor, chapter 13 trustee Kathleen A. McCallister, and the Debtor appearing pro se. During the Hearing, all those appearing were heard and the Court took the Motion under advisement.

Pursuant to the Motion, the Debtor seeks an order under 11 U.S.C. § 105(a) directing the Creditor to engage in loss mitigation negotiations, evaluate the Debtor's pending loss mitigation applications in compliance with 12 C.F.R. § 1024.41, provide responses to the Debtor's outstanding Qualified Written Requests, provide assorted loan documentation, and provide the Debtor a written loss mitigation determination. The Motion also seeks to enjoin the Creditor from continuing with a foreclosure on his home.

As mentioned at the Hearing by the Debtor, the Motion stems from the Debtor apparently not receiving appropriate communication from or with the Creditor over the last 6 months. The Debtor reported that he ultimately filed this bankruptcy case (and his prior bankruptcy case, *see In re Western*, 25-00838-BRW, which this Court dismissed for failure to timely file required documents) to mediate with the Creditor to figure out a path forward in making payments, shield the property from foreclosure, and maintain his due process rights.

Section 105(a) provides that the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under this section, bankruptcy courts throughout the country have implemented loss mitigation procedures like those sought by the Debtor, as an administrative process to assist debtors and lenders, often in chapter 13.¹ Such programs are “consistent with Congress and the federal courts’ general

¹ See LBR 3015.1 (Bankr. D. Nev.); Mortgage Modification Mediation, Admin. Order 2014-08 (Bankr. D. Nev. Jan. 1, 2015); Mortgage Modification Mediation Program for Chapter 13 Cases in Arizona, Gen. Order 16-2 (Bankr. D. Ariz. Dec. 5, 2016), *amended by* Gen. Order 23-2 (Bankr. D. Ariz. June 7, 2023); Mortgage Modification Mediation Program, Gen. Order 29 (Bankr. N.D. Cal. June 10, 2015); LBR 9019-2 (Bankr. S.D.N.Y.); Adoption of Modified Loss Mitigation Program Procedures, Gen. Order M-451 (Bankr. S.D.N.Y. June 17, 2013) (amending Gen. Orders M-364 and M-413); LBR App. VII (Bankr. D.R.I.); Adoption of Loss Mitigation Program and Procedures, Gen. Order No. 09-003 (Bankr. D.R.I. Oct. 22, 2009), *amended by*, Gen. Order No. 13-002 (Bankr. D.R.I. June 3, 2013); LBR 9019-2 (Bankr. E.D.N.Y.) (noting that individual judges may choose not to participate in the loss mitigation program); Adoption of Modified Loss Mitigation Program Procedures, Gen. Order No. 744 (Bankr. E.D.N.Y. Aug. 30, 2022) (amending Gen. Order Nos. 543, 582, and 676).

encouragement of mediation, as well as with section 105(d) of the Bankruptcy Code, Bankruptcy Rules 7016 and 9014, and courts' inherent power [under § 105(a)] to manage their own docket." *In re Bambi*, 492 B.R. 183, 188 (Bankr. S.D.N.Y. 2013) (quoting *Hearing Testimony of Hon. Robert D. Drain*, "Foreclosure Mediation Programs: Can Bankruptcy Courts Limit Homeowners and Investors Losses?", United States Committee on the Judiciary (Feb. 1, 2011)) (internal quotations omitted).

While loss mitigation may be used as one of the court's case management tools, it does not give debtors new rights or interfere with the existing rights of creditors. *In re Sosa*, 443 B.R. 263, 267 (Bankr. D.R.I. 2011). Nor was it ever "intended to become a de facto right or a new form of bankruptcy protection." *In re Tcherneva*, 638 B.R. 676, 681 (Bankr. E.D.N.Y. 2022). Instead, it is merely an exercise of the Court's discretionary use of its equitable authority.

Without court-ordered loss mitigation, chapter 13 *already provides* a similar mitigation forum by granting debtors "the power to delay full repayment of mortgage arrears for up to 60 months and reinstate the mortgage by continuing to make postpetition mortgage payments, resulting in the debtor being allowed to remain in the home." *Id.* at 689. Over time, with these formal, court-ordered loss mitigation programs in place, "chapter 13 has morphed into the pursuit of loss mitigation as its sole purpose in which debtors file cases they never intend to bring to confirmation" and thus created "an institutionalized process not supported by the Bankruptcy Code." *Id.* at 681, 689.

As one court has aptly put it:

This is the antithesis of what Chapter 13 was designed to do. The Court will always encourage Chapter 13 debtors and their secured creditors to reach a consensual arrangement, including mortgage modifications, but this should be, as it always has been, on a voluntary basis between the parties.

Id. at 681.

Despite having the authority and discretion to implement loss mitigation procedures under § 105(a), the District of Idaho has not done so, and this Court, in its informed discretion, declines to do on an *ad hoc* basis in this case.

Instead, the Court emphasizes that chapter 13 is the quintessential and effective loss mitigation tool in and of itself, which may provide relief in the context of dealing with secured creditors. But importantly, this process requires the parties, including the debtor, to proceed under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, local rules, and court orders. The failure by debtors, creditors, or any other parties in interest to comply with the obligations and requirements of the Bankruptcy Code, applicable rules, or court orders, while attempting to gain the advantages provided by the bankruptcy system will be neither condoned nor tolerated.

Accordingly,

IT IS HEREBY ORDERED that the Motion is **DENIED**.²



DATED: April 10, 2026

A handwritten signature in black ink, appearing to read "Brent R. Wilson". The signature is written in a cursive style and is positioned above a horizontal line.

Brent R. Wilson
U.S. Bankruptcy Judge

² Nothing in this Summary Order is to be read to prevent the parties from continuing to discuss loss mitigation, loan modification, or other agreements among themselves.