NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY
LAW DIVISION, CIVIL PART
DOCKET NUMBER MER-L-2283-24

WILLIAM OLIVERO AND
GLORIANNA OLIVERO,

Plaintiffs,

v.

SELECT PORTFOLIO
SERVICING, INC.,

Defendants.

Decided: July 29, 2025

WILLIAM OLIVERO, pro se, for plaintiffs.

ROBERT D. BAILEY, attorney for defendant Select Portfolio Servicing, Inc. (Hinshaw & Culbertson LLP)

OSTRER, J.A.D. (retired and temporarily assigned on recall):

William and Glorianna Olivero ("the Oliveros") filed a pro se complaint against Select Portfolio Servicing, Inc. ("Select") alleging that Select violated various federal regulations governing the conduct of mortgage loan servicers. The Oliveros allege that Select's practices caused them to lose sleep and appetite and to

suffer increased blood pressure, nausea and anxiety. They seek $100,000 in damages. In lieu of an answer, Select moves to dismiss the complaint with prejudice. Select alternatively contends that the Oliveros lack a private right of action to enforce many of the regulations they cite; and they have failed to plead sufficient facts to support their claims.

Having reviewed the complaint "in depth and with liberality," Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (quoting Di Cristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957)), the court grants in part and denies in part defendant's motion. And, to the extent additional facts conceivably may be alleged to state a claim, dismissal is without prejudice. See Smith v. SBC Communs., Inc., 178 N.J. 265, 282 (2004) (stating a motion to dismiss, if granted, "should be . . . ordinarily without prejudice").

I.

A.

The court takes the Oliveros's factual allegations as true, extending to them "all reasonable inferences." See NCP Litig. Trust v. KPMG LLP, 187 N.J. 353, 365 (2006) (stating "the court should assume that the nonmovant's allegations are true and give that party the benefit of all reasonable inferences"); Wild v. Carriage Funeral Holdings, Inc., 458 N.J. Super. 416 (App. Div. 2019) ("assuming the truth"

of the plaintiff's allegations in reviewing a motion to dismiss), aff'd o.b., 241 N.J. 285 (2020).

In general, the court is confined to the facts "in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim." Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005) (quoting Lum v. Bank of Am., 361 F.3d 217, 222 n.3 (3d Cir. 2004). If the movant relies on matters outside the pleadings, then "the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46," and the court shall so advise the parties and give them the opportunity to respond. R. 4:6-2.

Select asks the court to take judicial notice of facts found in a multitude of filings in a foreclosure action against the Oliveros and a related bankruptcy case. The court may, on a motion to dismiss, look beyond the complaint for "facts of which the court takes judicial notice." Mianulli v. Gunagan, 32 N.J. Super. 212, 215 (App. Div. 1954). And that may include "records of the court in which the action is pending and of any court of this state." N.J.R.E. 201(b)(4); see also Schweizer v. MacPhee, 130 N.J. Super. 123, 125 n.2 (App. Div. 1974).

Yet, the court's power is limited. In taking judicial notice of court records, the court may not "circumvent the rule against hearsay and thereby deprive a party of the right of cross-examination on a contested material issue of fact." RWB Newton Assocs. v. Gunn, 224 N.J. Super. 704, 711 (App. Div. 1988). As the RWB

court explained: "A court may take judicial notice that a certification has been filed . . . [and] what is alleged in a certification, if the fact that the allegation has been made is itself relevant." Id. at 710–11. But accepting the truth of what is alleged is not so straightforward. "[A] court may not take judicial notice of the contents of a certification for the purpose of determining the truth of what it asserts simply because the certification has been filed and thus is part of a court record." Id. at 711.

In sum, the court is not obliged to accept as true allegations made in another case, simply because they are in a court record. On the other hand, the court may accept as true undisputed facts and documents in the court record of another case.

B.

Applying these principles, the court assumes the following facts for the purpose of deciding the motion:

The Oliveros's complaint concerns how Select serviced a mortgage on the Oliveros's residential property in Hamilton Township, Mercer County, and the Oliveros's effort to explore loss mitigation options. Almost twenty years ago, Long Beach Mortgage Company made a thirty-year mortgage loan of $420,000 to Glorianna Olivero, and Donald and Gloria Loncosky. (The motion record apparently does not disclose the relationship between the Loncoskys and the Oliveros.) To secure the loan, the three borrowers plus William Olivero executed a

mortgage in the lender's favor on residential property at 4796 South Broad Street, Hamilton Township, Mercer County.[1]

In April 2012, the Oliveros became sole owners of the property by quitclaim deed. A couple of years later, the Oliveros received discharges of personal liabilities by the United States Bankruptcy Court. Yet, the mortgage lien survived. In May 2016, the Oliveros executed a mortgage lien modification agreement. The agreement acknowledged the Oliveros's financial hardship and that the mortgage lien survived although personal liability on the note was discharged. The agreement deferred payment of a significant portion of the principal balance due and forgave that portion if the Oliveros met certain conditions.

Select alleges the Oliveros did not meet those conditions. In April 2023, Select sent the Oliveros notices of intention to foreclose. Five months later, Deutsche Bank National Trust Company ("Deutsche Bank"), the original mortgagee's successor, filed a foreclosure complaint against the Oliveros, the Loncoskys and others.[2] Deutsche Bank alleged that the borrowers – the Loncoskys and Glorianna Olivero – stopped making payments in October 2019.

---

[1] The address is also identified in the record as 4796 Broad Street.

[2] The full caption of the foreclosure action, F-11045-23, is Deutsche Bank National Trust Company, as Trustee, in trust for registered Holders of Long Beach Mortgage Loan Trust 2006-6, Asset-Backed Certificates, Series 2006-6 v. Glorianna Olivero and William Olivero, wife and husband; Donald Loncosky and Gloria Loncosky, husband and wife; American Trading Company; Discover Bank; Midland Funding

Eventually, the court heard competing motions for summary judgment. In July 2024, Judge Patrick J. Bartels granted Deutsche Bank's motion and denied the Oliveros's motion. Judge Bartels later denied the Oliveros's multiple motions to reconsider and vacate the summary judgment.

C.

While the mortgage foreclosure action was pending, the Oliveros or the Loncoskys sought loss mitigation assistance from Select. The Oliveros's complaint addresses Select's response to those efforts. The complaint consists of three parts: (1) a one-page "Statement of Claim"; (2) affidavits of William and Gloriana Olivero; and (3) a "Notice of Tort Claim" addressed to Select.[3] The Notice of Tort Claim includes several items of correspondence between Select and the Oliveros and Loncoskys.

The Oliveros generally allege that Select engaged in "unfair, deceptive, or abuse [sic] acts or practices" in the foreclosure action and violated 12 C.F.R. § 1024.38(b)(1)(vi), 12 C.F.R. § 1024.39, 12 C.F.R. § 1024.41(g), and 12 C.F.R. § 1024.41(j). See Statement of Claim; W. Olivero Affidavit, ¶ 6; G. Olivero Affidavit, ¶ 6. The Oliveros allege that Select's wrongful actions have caused them severe emotional distress, loss of sleep, loss of appetite, increased blood pressure, and

---

LLC; and State of New Jersey. According to the case docket, the foreclosure action is still pending.

[3] William Olivero's affidavit appears identical to Glorianna Olivero's.

nausea, and anxiety. See Statement of Claim; W. Olivero Affidavit, ¶ 9; G. Olivero Affidavit, ¶ 9.

Specifically, the Oliveros allege that Select "engaged in the unlawful and acts and practices by failing to properly review loss mitigation assistance" and by failing to respond to an appeal that the Oliveros filed in response to Select's decision regarding loss mitigation. W. Olivero Affidavit, ¶ 5; G. Olivero Affidavit, ¶ 5; Notice of Tort Claim, first unnumbered bullet. They also allege that Select "fail[ed] to provide accurate information to [them] as . . . borrower[s] regarding loss mitigation options and foreclosure . . . and . . . for moving for a foreclosure judgment . . . ." W. Olivero Affidavit, ¶ 6; G. Olivero Affidavit, ¶ 6; Notice of Tort Claim, second and third unnumbered bullet. In addition, Select allegedly failed to indicate in its pleading in the foreclosure action "the true status of the debt 'discharged' – presumably by the United States Bankruptcy Court. Notice of Tort Claim, second unnumbered bullet. The Oliveros contend these alleged failures violated 12 C.F.R. § 1024.39, 12 C.F.R. § 1024.41(g), and 12 C.F.R. § 1024.41(j). W. Olivero Affidavit, ¶ 6; G. Olivero Affidavit, ¶ 6; Notice of Tort Claim, second and third unnumbered bullets.

The supporting documentation incorporated in the complaint consists of correspondence between Select and the Oliveros, and between Select and the Loncoskys. Notably, all correspondence from Select regarding loss mitigation

options was directed to the Loncoskys, not the Oliveros – notwithstanding that the Oliveros alone held the deed to the home on which Deutsche Bank sought to foreclose. The court shall summarize these items of correspondence.

> July 2, 2024, "Notice of Appeal of the Loss Mitigation Program Decision of Select Portfolio Serviceing [sic], Inc." from the Loncoskys.

This document evidently responded to Select's decision that there were "no retention loss mitigation options" for the Loncoskys. The document references communications from Select on June 10, 2024, and June 11, 2024. Neither one was attached to the Oliveros's complaint. The Loncoskys complained that Select failed to list or offer all the loss mitigation options under a new program of the Federal Housing Authority ("FHA") that required mortgage servicers to offer borrowers a way to bring their loan current in part by reducing the monthly payment obligation for three years.[4] The Loncoskys stated they wanted to participate in the program.

> July 30, 2024, Letter from Select to the Loncoskys.

In this letter, Select informed the Loncoskys of several potential options to address financial hardship, including: a "Repayment Plan" that would allow them to pay missed payments over an extended period of time as a supplement to regular payments; and a "Modification" that would recast the loan by changing the term,

[4] The Loncoskys variously referred to this program as the "Payment Supplement program," the "Payment Supplement plan," and the "Partial Claim Program."

interest rate, a partial payment deferral or an extension of the maturity date. Select made no promise about the Loncoskys' eligibility for such options and stated that the Loncoskys needed to "submit a complete loss mitigation application, including all required information, at least thirty-even (37) days prior to a scheduled foreclosure sale."

The letter also stated that mortgage lien remained in place notwithstanding that Select's records indicated that the Loncoskys' obligation under the note had been discharged.

> August 1, 2024, "Notice Requesting Select [and its attorneys] to Correct Errors Pursuant to [12 C.F.R. §] 1024.35" from the Oliveros

Responding to the July 30 letter's reference to the discharge of the obligation under the note, the Oliveros contended that the foreclosure complaint erroneously stated the "true status of the debt" by failing to state that the "obligation has been discharged." The Oliveros also contended this error violated 15 U.S.C. § 1692e. They demanded that Select correct this error.[5]

> August 8, 2024, "Notice to Discharge Mortgage, as Lien Holder," from the Oliveros to Select and its Attorneys.

[5] The Oliveros separately wrote to Select and their attorneys on July 25, 2024, contending that the foreclosure action violated N.J.S.A. 2A:15-59.1 because it failed to describe the true status of the debt.

The Oliveros demanded that Select "cancel and discharge[]" the mortgage on the property at 4796 South Broad Street. They contended that the "loan obligation has been discharged and there is no personal liability on the subject Note." They contended the right to foreclose depended on the right to enforce the note. Therefore, they argued that the mortgage should be discharged.[6]

October 16, 2024, Letter from Select to the Loncoskys Stating They Were Not Approved for any Home Rentetion Loss Mitigation Option.

Select informed the Loncoskys that "there are no home retention loss mitigation options for which you are approved. Select disclosed that "income was neither required nor considered as part of our evaluation." The letter went on to describe options that would not involve retaining the property, including a short sale, and offering a deed in lieu of foreclosure.

November 4, 2024, "Notice of Appeal" from the Loncoskys to Select.

The Loncoskys appealed Select's October 16, 2024, denial and demanded that Select stop its foreclosure action. The Loncoskys alleged that Select did not engage

[6] This letter referred to an attached notice from Select dated August 6, 2024, but that notice was not included in the Oliveros's complaint. The complaint does include Select's April 13, 2023, notices of intention to foreclose, sent to the Oliveros. As noted above, those notices acknowledged that Select's records indicated that the Oliveros's obligations under the notes may have been discharged or stayed under bankruptcy law, but "the terms of the mortgage remain in effect and the owner of the mortgage, as lien holder, continues to have a lien on the real property."

in a "valid review of the above account loss mitigation alternatives" and Select did not "identify the validity of the decision." The Loncoskys also alleged that Select's decision was not "in accord with HAMP Modification." They contended that Select's October 16 decision did "not describe or identify: that all loss mitigation options have been provided in its review . . . ."

II.

A.

In deciding a motion to dismiss for failure to state a claim on which relief may be granted, the court examines only "the legal sufficiency of the facts" alleged. Printing Mart-Morristown, 116 N.J. at 746. The standard is "generous and hospitable" to the non-movant. Ibid. The court considers simply "whether a cause of action is 'suggested' by the facts" without concerning itself with a plaintiff's "ability . . . to prove the allegation contained in the complaint." Ibid. (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988). Rather, the court extends to a plaintiff "every reasonable inference of fact." Ibid. "[T]he court must 'search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim." AC Ocean Walk, LLC v. Am. Guar. & Liab. Ins. Co., 256 N.J. 294, 311 (2024) (quoting Printing Mart-Morristown, 116 N.J. at 746).

Nonetheless, the court is obliged to dismiss a complaint if a plaintiff fails "to articulate a legal basis entitling plaintiff to relief." Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005). A complaint must also state "the facts on which the claim is based," R. 4:5-2, giving "some detail of the cause of action." Printing Mart-Morristown, 116 N.J. at 768. "[C]onclusory allegations are insufficient." AC Ocean Walk, 256 N.J. at 311 (quoting Schidt v. DRS Techs., Inc., 424 N.J. Super. 188, 193 (App. Div. 2013)).

B.

Select presents two threshold arguments for dismissing the complaint: the Oliveros did not plead damages with sufficient specificity; and they lack a private right of action for the regulatory violations. The first argument falls short. The second hits and misses.

1.

The court rejects Select's argument that the Oliveros failed to plead damages sufficiently. Citing only unreported authority, Select argues that a plaintiff must allege a causal link between the alleged damages and the alleged violation of regulations under the Real Estate Settlement Practices Act ("RESPA"); the Oliveros failed to do so; therefore, their complaint should be dismissed.

The court assumes that the Oliveros were obliged to allege some "causal link." RESPA states that individuals may recover "any actual damages to the borrower as

a result of the failure" to comply with loan servicing requirements. 12 U.S.C. § 2605(f) (1) (emphasis added). This language "suggests there must be a 'causal link' between the alleged violation and the damages." Renfroe v. Nationstar Mortg., LLC, 822 F.3d 1241, 1246 (11th Cir. 2016).

The court is satisfied that the Oliveros have alleged a causal link. They alleged they lost sleep and suffered a loss of appetite, their blood pressure increased, and they suffered from nausea and anxiety – all "caused" by Select's "unfair, deceptive or abuse [sic] acts or practice."

Courts have held that emotional distress damages are recoverable in an appropriate action alleging a RESPA violation. See, e.g., Moore v. Wells Fargo Bank, N.A., 908 F.3d 1050, 1060 (7th Cir. 2018). Here, the Oliveros allege more than emotional distress; they allege an objectively verifiable medical condition, hypertension. As one federal court put it, rejecting an argument much like Select's for a motion to dismiss, "The Court finds it reasonable to infer that a borrower in default who repeatedly seeks – yet fails to obtain – information about his financial situation could have damages for mental and emotional suffering." Benner v. Bank of Am., N.A., 917 F. Supp.3d 338, 365 (E.D. Pa. 2013). See also Tanasi v. CitiMortgage, Inc., 257 F.Supp.3d 232, 270-71 (D. Conn. 2017) (denying motion to dismiss and holding that the plaintiffs stated a claim for emotional distress damages under RESPA, distinguishing between distress caused by the RESPA violations and

the distress caused by the foreclosure); cf. Giordano v. MGC Mortgage, Inc., 160 F. Supp.3d 778, 785 (D.N.J. 2016) (holding that plaintiff failed to sufficiently plead that emotional distress damages emanated from the RESPA violations and not general anxiety over her financial predicament, but permitting an amended pleading).

Select's argument may well be appropriate on a motion for summary judgment. See, e.g., Moore, 908 F.3d at 1061-61 (affirming summary judgment for failure to provide evidence of actual injury caused by RESPA violation). But at this early stage, Select's argument fails.

2.

This court also rejects Select's argument that there is no private right of action for a violation of 12 C.F.R. § 1024.39; but agrees that there is no private right of action for a violation of 12 C.F.R. § 1024.38 or the Home Affordable Modification Program ("HAMP").

The court will address 12 C.F.R. § 1024.39 first. That regulation requires mortgage servicers, under certain circumstances, to establish contact with delinquent borrowers and inform them about the availability of loss mitigation options. Here again, Select cites only unreported authority.

However, this court is persuaded by reported authority that reached the opposite conclusion and denied a motion to dismiss based on the same argument

Select presents. See Vance v. Wells Fargo Bank, N.A., 291 F. Supp.3d 769, 771-773 (W.D. Va. 2018). The federal court acknowledged that the regulation itself did not explicitly confer a private right of action. Id. at 773. But the regulation's statutory source did, and that right of action carried through to the regulation: "Because the Bureau promulgated Section 1024.39 under the authority of RESPA Section 6 [12 U.S.C. § 2605] and Section 6 confers a private right of action, Section 1024.39 authorizes a private right of action." Ibid.[7]

On the other hand, the court is persuaded by federal cases holding that there is no private right of action to enforce the requirements in 12 C.F.R. § 1024.38. See, e.g., Warren v. PNC Bank N.A., 671 F. Supp.3d 1035, 1049 (N.D. Cal. 2023) (no private right of action un section 1024.38); Naimoli v. Ocwen Loan Servicing, LLC, 613 F. Supp.3d 681, 692 (W.D.N.Y. 2020), rev'd on other grounds, 22 F.4th 376 (2d Cir. 2022).

[7] Vance expressly rejected one of the unpublished cases that Select relies on here. See Vance, 291 F. Supp.3d at 773. Vance has been followed in at least one unpublished case that likewise rejects the case Select cites here. Select does not cite that contrary unpublished opinion, or Vance. But cf. R. 1:36-3 (barring attorneys from citing an unpublished opinion unless they serve on the court and other parties "all contrary unpublished opinions known to counsel"); Pressler and Verniero, Current N.J. Court Rules, cmt. 2 to R. 1:36-3 (2025) ("The frequency with which practitioners cite unpublished opinions in briefs and oral arguments has grown considerably, suggesting that some are improvidently relying on them to the exclusion of reported decisions.").

And New Jersey case law establishes there is no private right of action under HAMP. Miller v. Bank of Am. Home Loan Servicing, L.P., 439 N.J. Super. 540, 547-48 (App. Div. 2015) (stating that "[p]laintiffs do not dispute the legal principle that borrowers have no private cause of action under HAMP") (citing federal authority); Arias v. Elite Morg. Grp., Inc., 439 N.J. Super. 273, 276 (App. Div. 2015) (recognizing there is no private right of action under HAMP).[8]

As no additional pleading could suffice to state a claim under section 1024.38 or under HAMP, the Oliveros's claims predicated on section 1024.38 and HAMP are dismissed with prejudice.

C.

The court turns to Select's substantive arguments regarding the Oliveros's claims.

1.

The Oliveros allege that Select violated 12 C.F.R. § 1024.39. The regulation requires a servicer to contact delinquent borrowers and provide them with certain information about loss mitigation options. Regarding an initial "live" contact, the regulation states:

> [A] servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower no later

[8] Select does not challenge the Oliveros's private right of action under 12 C.F.R. 1024.41. The regulation expressly grants borrowers the power to enforce. 12 C.F.R. 1024.41(a).

> than the 36th day of a borrower's delinquency and again no later than 36 days after each payment due date so long as the borrower remains delinquent. Promptly after establishing live contact with a borrower, the servicer shall inform the borrower about the availability of loss mitigation options, if appropriate.
>
> [12 C.F.R. § 1024.39(a)].

The servicer must then follow-up with a written notice to delinquent borrowers, which describes examples of loss mitigation options that may be available.

> (1) Notice required. Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section no later than the 45th day of the borrower's delinquency and again no later than 45 days after each payment due date so long as the borrower remains delinquent. A servicer is not required to provide the written notice, however, more than once during any 180-day period. If a borrower is 45 days or more delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 180 days after the provision of the prior written notice. If a borrower is less than 45 days delinquent at the end of any 180-day period after the servicer has provided the written notice, a servicer must provide the written notice again no later than 45 days after the payment due date for which the borrower remains delinquent.
>
> (2) Content of the written notice. The notice required by paragraph (b)(1) of this section shall include:
> (i) A statement encouraging the borrower to contact the servicer;
> (ii) The telephone number to access servicer personnel assigned pursuant to § 1024.40(a) and the servicer's mailing address;

> (iii) If applicable, a statement providing a brief description of examples of loss mitigation options that may be available from the servicer;
> (iv) If applicable, either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer; and
> (v) The Web site to access either the Bureau list or the HUD list of homeownership counselors or counseling organizations, and the HUD toll-free telephone number to access homeownership counselors or counseling organizations.
>
> [12 C.F.R. § 1024.39(b)].

Select contends that the court should dismiss the Oliveros's section 1024.39 claim because the Oliveros failed to specify which subsection they contend Select violated. The court is not convinced.

The court indulgently reads the complaint to allege violations of both subsections (a) and (b). In short, the court reads the complaint to allege that Select failed to establish live contact with the Oliveros after their delinquency as subsection (a) requires, and Select failed to send them a written notice with loss mitigation options, as subsection (b) requires. This is sufficient.

Notably, the Oliveros document in their complaint that Select wrote to the Loncoskys, not the Oliveros, on July 30, 2024, to describe potential loss mitigation options. The complaint includes no such communication to the Oliveros. Yet, as Select acknowledged in its July 30 letter, the Loncoskys' obligation under the note had been discharged. And the Oliveros, not the Loncoskys, were the property's

owner. The Oliveros, not the Loncoskys, were the ones with an interest in loss mitigation options. In sum, the court is satisfied that the Oliveros have adequately pleaded a claim under section 1024.39.

2.

Select argues that the Oliveros failed to plead a plausible violation of 12 C.F.R. § 1024.41(g) and (j). Section 1024.41 prescribes loss mitigation procedures.[9] Subsection (g) prohibits a mortgagee from proceeding to a foreclosure sale unless it has already notified the borrower that it was not eligible for loss mitigation options, the borrower rejected loss mitigation options that the servicer offered, or the borrower failed to perform under a loss mitigation agreement.

> If a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, unless:

[9] Subsection (a) grants borrowers a private right of action to enforce the section, but it states that it does not oblige a service "to provide any borrower with any specific loss mitigation options." Subsection (b) obliges a servicer to review for completeness a loss mitigation application that a borrower may submit. Subsection (c) requires a servicer to evaluate a "borrower for all loss mitigation options available," if the borrower timely submits a complete loss mitigation application. The servicer may offer short-term options after evaluating an incomplete loss mitigation application. Subsection (d) requires a servicer to state the reason for denying a complete application for a trial or permanent loan modification option. Subsection (e) requires borrowers to accept or reject any loss mitigation options offered to them. Subsection (f) places limits on foreclosure actions while the servicer is reviewing complete loss mitigation applications.

> (1) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;
> (2) The borrower rejects all loss mitigation options offered by the servicer; or
>
> (3) The borrower fails to perform under an agreement on a loss mitigation option.
>
> [12 C.F.R. § 1024.41(g)].

Subsection (j) addresses the obligations of "small servicers." It states:

> A small servicer shall be subject to the prohibition on foreclosure referral in paragraph (f)(1) of this section. A small servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option.
>
> [12 C.F.R. § 1024.41(j)].

A "small servicer" is, among others, one that services 5,000 or fewer mortgage loans. 12 C.F.R. § 1026.41(e)(4).

Select notes that it did not move for judgment in the foreclosure action because it was not a party in the foreclosure case. Deutsche Bank was. The court declines to read the regulations so narrowly. The regulation's evident purpose is to

prevent the mortgagee from short-circuiting the loss mitigation process by prematurely seeking judgment in the foreclosure action.

Select also contends that the court should dismiss the Oliveros's subsection (g) claim because they failed to allege specifically that they submitted a complete loss mitigation application. The court agrees.

As the Vance court noted, "Section 1024.41(g) has a triggering condition: A borrower must submit a complete loss mitigation application. So, to properly allege a Section 1024.41(g) violation, a plaintiff must, at a minimum, allege that he or she submitted a complete loss mitigation application." 291 F.Supp.3d at 773 n.1. Although the court reads the Oliveros's complaint indulgently, the Oliveros must still allege facts that satisfy the essential elements of the claim. They conceivably may do so in an amended complaint. But, the complaint as filed falls short.[10]

Select also contends that the court should dismiss the Oliveros's subsection (j) claim because they do not allege that Select is a "small servicer." That is so. But, more importantly, the Oliveros did not allege they were "performing pursuant to the terms of an agreement on a loss mitigation option." Indeed, the gist of their

[10] Select also argues that "any allegation relying on the assertion [Select] did not offer Plaintiffs a loan modification fails in light of SPS's November 18 offer." Select Brief at 18. However, the November 18 offer was addressed to the Loncoskys, not the Oliveros.

complaint is that they were denied the opportunity to enter into a loss mitigation agreement.

3.

Select also argues that the Oliveros have failed to adequately plead claims under 12 C.F.R. § 1024.35, N.J.S.A. 2A:15-59.1, and the Fair Debt Collection Practices Act ("FDCPA". The court shall not address these arguments because the court does not read the complaint to predicate the Oliveros's claims on these authorities. Notably, the Oliveros's summary "Statement of Claim" and their affidavits containing a more detailed "Statement of Claim and Cause of Action" do not mention them. The mere reference to these authorities in attached correspondence does not suffice to assert a claim.

D.

For the reasons stated, the motion to dismiss is denied in part and granted in part. The complaint is dismissed with prejudice to the extent it relies on section 1024.38 and HAMP, and without prejudice to the extent it relies on section 1024.41(g) and (j).