UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Chaquita Johnson, individually and
on behalf of herself and all others similarly situated,

Plaintiff,

v. **Case No.: 6:21-cv-02125-PGB-DCI**

I.C. SYSTEM, INC.,

Defendant.

_____/

DEFENDANT, I.C. SYSTEM INC.'S OPPOSED MOTION TO DISMISS FOR LACK OF ARTICLE III STANDING

I. Introduction.

In *Trichell v. Midland Credit Mgmt., Inc.,* 964 F.3d 990 (11th Cir. 2020), the Court held a mere violation of the FDCPA does not create a concrete injury and thereby confer standing. FDCPA plaintiffs who, like Johnson, claim a collection letter is misleading, must *plausibly* and *clearly* explain they are "worse off for the misrepresentation," or if they claim, "risk as injury," that the risk did not dissipate prior to litigation. It is insufficient to allege the consumer would be misled by a letter, rather a plaintiff must demonstrate a concrete, particularized harm arising from *reliance* on that allegedly false or misleading letter and *ensuing* damages. Johnson failed to do so. And accordingly, Article III jurisdiction never existed.

II. Johnson's Factual Allegations

Johnson's Complaint hinges on alleged violations of the FDCPA concerning language in a letter ICS sent to her. Her specific allegations are:

- On or about June l0, 2021, Defendant ICS sent Plaintiff a collection letter the Letter) regarding the alleged debt currently owed to Defendant Sprint See Exhibit A.
- The collection letter states a balance of $2,119.60.
- The letter further states "lf you would like to settle your account for $1,059.80 call l.C. System at 833-250-2055. If your account is settled for less than the full original balance it will cause future collection efforts to cease."
- The letter is deceptive because it implies that in exchange for $1059.80, the *consumer* will achieve some form of settlement, when in actuality it is unclear what form of settlement the letter is offering.

- The letter states that Sprint will recall the account and cease all collection activity but does not clarify what will occur with the rest of the balance and whether the rest of the balance would be collected by another collection company in the future.

- Nor does the letter clearly state that the account will be reinstated upon payment of the settlement amount.

- The letter deceives and misleads the consumer by implying that paying $1,059.80 would achieve results akin to a settlement offer, when in reality the Defendants offer contains no significant benefits and is unclear to what the benefits of the settlement would actually be.

See Doc. 1 ¶ 26-32

Despite making these contentions, Johnson neglects to delineate 1) that *she* was actually misled by the letter, or 2) that *she* detrimentally relied on the letter. Rather she merely argues:

- The letter deceives and misleads the consumer by implying that paying $1,059.80 would achieve results akin to a settlement offer, when in reality, Defendant's offer contains no significant benefits and is unclear what the benefits of the settlement would actually be.

- This is especially deceptive because Defendant uses the language of settlement throughout the letter, when in reality, it is not clear that a settlement is being offered.

- Defendants collection efforts with respect to this alleged debt from Plaintiff caused Plaintiff to suffer concrete and particularized harm, inter alia, because the FDCPA provides Plaintiff with the legally protected right not to be misled or treated unfairly with respect to any action regarding the collection of any consumer debt.

- Defendants deceptive, misleading and unfair representations with respect to its collection efforts were material misrepresentations that affected and frustrated Plaintiffs ability to intelligently respond to Defendants collection efforts because Plaintiff could not adequately respond to Defendants demand for payment of this debt.

- As a result of Defendants deceptive, misleading and unfair debt collection practices, Plaintiff has been damaged.

Id. ¶ 32, 33, and ¶ 38-40

III. Applicability of *Ruffin v. Dynamic Recovery Solutions, LLC* to this case

Judge Moody dismissed a similar FDCPA letter case—*Ruffin v. Dynamic Recovery Solutions, LLC*—for lack of Article III jurisdiction. *Ruffin v. Dynamic Recovery Sols., LLC*, No. 5:20-CV-272-OC-30PRL, 2020 WL 6134666, at *2 (M.D. Fla. Oct. 19, 2020). Ruffin was represented by the same counsel who represents Johnson in this matter and the undersigned's office represented DRS. There, similar to the instant case, plaintiff alleged that defendant's letter made "a deceptive and misleading statement" that "misleads the consumer" and "[a]s a result… [p]laintiff has been damaged." *Id.* And just as here, plaintiff there, did not allege that she made any payments or that the letter prompted her to take any action, and she did not state any facts about how she was damaged. *Id.*

In dismissing *Ruffin,* the court detailed that the claims were based on facts "nearly identical to those in *Trichell* and compel the same result, i.e. Ruffin lacks Article III standing because any risk of harm created by the Letter had dissipated by the time the complaint was filed." Judge Moody lamented that, like the consumers in *Trichell*, Ruffin failed "to allege any sort of reliance on the alleged misrepresentation," and despite claiming she was damaged, failed "to explain how she was damaged or how the alleged misrepresentations caused her damages."

The court found that, at best, plaintiff alleged risk of incurring damages as a result of being misled, but any alleged risk was dissipated by the time she filed her complaint. "In other words, if the Letter was actually misleading, Ruffin knew that before she filed her complaint and any risk of harm associated with the language in the Letter had dissipated." *Id.*

Judge Moody succinctly recapped his decision stating:

> In sum, Ruffin attempts to bring a claim for a plausible, technical violation of the FDCPA. But a mere violation, without a showing of a concrete and particularized injury, is insufficient to convey standing. Because the Eleventh Circuit does not recognize an **"anything-hurts-so-long-as-Congress-says-it-hurts theory of Article III injury,"** Ruffin's complaint is dismissed without prejudice for lack of standing. Ultimately, the FDCPA is a shield to protect debtors from unethical and illegal debt collectors; it is not a sword to be wielded to force defendants to pay plaintiffs who have not suffered.

Id. (internal citation omitted). (emphasis in original).

IV. Argument

1. Johnson lacks standing as she failed to plead something more than a conclusory, non-specific to her, procedural violation.

Muransky v. Godiva Chocolatier, Inc., the Eleventh Circuit—on rehearing *en banc*—addressed the pleadings standard in the context of Article III standing. 979 F.3d 917 (11th Cir. 2020). *Muransky* mandates that mere conclusory claims of some nebulous injury will not satisfy jurisdictional prerequisite unless the claim is supported by factual allegations sufficient to satisfy the *Iqbal/ Twombly* standard.

The Eleventh Circuit in *Muransky* reviewed the complaint to determine whether the district court had Article III jurisdiction, focusing on the claimed injuries, which it summarized as follows:

> "Plaintiff and the members of the class have all suffered irreparable harm as a result of the Defendant's unlawful and wrongful conduct," and "Plaintiff and members of the class continue to be exposed to an elevated risk of identity theft." No additional details were offered.

Id.

And in determining whether the claims were sufficient to invoke Article III jurisdiction, the court applied a Rule 12(b)(6) analysis, relying on both its own prior precedence and rulings from the Supreme Court to find:

> At the pleading stage of a case, general factual allegations of injury can suffice. But that is not a free pass—these general factual allegations must plausibly and clearly allege a concrete injury. Mere conclusory statements do not suffice.
>
> Although *Iqbal* and *Twombly* have put a finer point on it, this standard is not new—it's long been known that even at the pleading stage, the litigant must clearly and specifically set forth facts to satisfy the requirements of Article III. We will not imagine or piece together an injury sufficient to give a plaintiff standing when it has demonstrated none, and we are powerless to create jurisdiction by embellishing a deficient allegation of injury.

Id. at *3 (internal quotations, citations, and brackets omitted).

Based on this pleading standard, the Court:

> explicitly reject[ed] any argument that the complaint's conclusory statement that "Plaintiff and the members of the class have all suffered irreparable harm as a result of the Defendant's unlawful and wrongful conduct" is

> enough to show concrete injury; that claim would be so flimsy after *Spokeo* (**not to mention *Iqbal***).

Id. at *8.

Muransky argued his allegation of "risk of harm" was sufficient to create standing, but the Court—relying on *Iqbal*—rejected that claim, ruling:

> Factual allegations that establish a risk that is substantial, significant, or poses a realistic danger will clear this bar—but Muransky gives us very little to go on. In his complaint, he offers the naked assertion that he "and members of the class continue to be exposed to an elevated risk of identity theft." Nothing indicates how much risk this might be, however, and no facts alleged in the complaint provide insight into what degree of "elevated risk" Muransky faced, or why.
>
> That kind of conclusory allegation is simply not enough. Muransky did not plead facts that, taken as true, plausibly allege a material risk, or significant risk, or substantial risk, or anything approaching a realistic danger.

Id. at *12.

Nor was the Court willing to accept the idea that a standard less than what *Iqbal* and *Twombley* require would be appropriately applied to determine standing, stating:

> …an allegation of risk is not excused from the ordinary bar on conclusory allegations—it would not be (indeed is not here) enough to plead that "the defendant broke the law and injured me in doing so." That is, again, merely a reiteration of the statutory violation. If this pleading is enough to show standing, then there is no violation of FACTA that would not be.

Id. at *13.

At the end of the day, according to the Court, it was the plaintiff who shouldered the "burden to satisfy the court that standing exists, and thus to plead something more than a conclusory allegation of harm," but "he has not alleged any facts to support his claim beyond that of a bare procedural violation, [and] that is not enough." *Id.* at *14.

Here, Johnson fails in shouldering that burden as she never claims s*he* was misled or relied on the letter in any way. Rather she posits a myriad of "*could've*s" or "*would've*s." And her sole attempt at describing her damages merely contends that "as a result of Defendant's deceptive, misleading and unfair debt collection practice, Plaintiff has been damaged." *See,* Doc. 1 at ¶ 40. This is insufficient to satisfy Article III jurisdiction.

2. As Johnson fails to assert a concrete harm, she lacks standing.

In evaluating whether Johnson has standing, "the requirements of concreteness, particularization, and imminence are 'irreducible' elements of Article III itself." *Trichell v. Midland Credit Mgmt., Inc.,* 964 F.3d 990, 999 (11th Cir. 2020). Johnson therefore must show the collection letter caused a "concrete" injury. But she does not. She never claims she was misled. She never suggests she contemplated paying the debt or made any payment in response to the letter. She, in fact, never alleges any concrete injury from receiving the collection letter; rather she merely asserts what is more commonly called an informational injury.

In *Trichell*, the Eleventh Circuit began its dissection of the standing issue in another FDCPA case by traveling back to the 1787 Constitutional Convention at

which "James Madison urged that the jurisdiction of the Supreme Court be limited to cases of a 'Judiciary Nature'" and "[c]onsistent with Madison's admonition, Article III grants federal courts the 'Judicial Power' to resolve only 'Cases' or 'Controversies.'" *Id.* at 996, citing, *2 Records of the Federal Convention of 1787*, at 430 (M. FARRand ed., 1911). The doctrine of standing was thusly created and "consists of three elements: the plaintiff must have suffered an injury in fact, the defendant must have caused that injury, and a favorable decision must be likely to redress it." *Id.*, citing, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

"Foremost" among these elements according to *Trichell* is the "injury in fact" which "consists of an invasion of a legally protected interest that is both concrete and particularized and actual or imminent, not conjectural or hypothetical." *Id.* (internal citations omitted). To be sure, "the injury-in-fact requirement" is not satisfied simply because "a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." *Id.* This type of "intangible injury" must "bear[] a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts." *Id.* at 997.

As an example of the type of intangible injury that can be "concrete," the Court cited the Supreme Court's decision in *Spokeo* "analogiz[ing] statutory claims for the disclosure of inaccurate reports to the traditional torts of libel and slander *per se*" meaning "a FCRA claim arising from the disclosure of false information about the plaintiff's age, employment, education, and wealth does involve a concrete

injury, and therefore is actionable, because it is similar to claims actionable at common law." *Id.*, citing, *Robins v. Spokeo, Inc.*, 867 F.3d 1108, 1113–17 (9th Cir. 2017).

The Court also pointed to its earlier decision in *Perry v CNN* finding standing in an action under the Video Privacy Protection Act as an example of a concrete intangible harm since the harm alleged, i.e., wrongful disclosure of "browsing records," was analogous "to the traditional tort of intrusion upon seclusion, which makes a defendant liable for invading the plaintiff's privacy without any further harm." *Id.* at 997-98, citing, *Perry v. Cable News Network, Inc.*, 854 F.3d 1336, 1340-41 (11th Cir. 2017).

The Court however found "the common law furnishe[d] no analog to the FDCPA claims" the plaintiffs in *Trichell* were pursuing stating:

> The closest historical comparison is to causes of action for fraudulent or negligent misrepresentation, but these torts differ from the plaintiffs' claims in fundamental ways. For centuries, misrepresentation torts have required a showing of justifiable reliance and actual damages.
>
> …
>
> The plaintiffs seek to recover for representations that they contend were misleading or unfair, but without proving even that they relied on the representations, much less that the reliance caused them any damages. By jettisoning the bedrock elements of reliance and damages, the plaintiffs assert claims with no relationship to harms traditionally remediable in American or English courts. This cuts against Article III standing, for the purpose of that doctrine is to confine courts to their "traditional role."

Id. at 998, citing, *Summers v. Earth Island Inst.*, 555 U.S. 488, 492, 129 S.Ct. 1142, 173 L.Ed.2d 1 (2009).

And this reasoning has been employed by the Eleventh Circuit for many years prior. For example, in *Andrews v. Am. Tel. & Tel. Co.,* the Court proscribed that "[e]ven if it could be shown that the appellants were engaged in a scheme to defraud and made misrepresentations to further that scheme, the plaintiffs would still have to show, on an individual basis, that they relied on the misrepresentations, suffered injury as a result, and incurred a demonstrable amount of damages." *Id.*, 95 F.3d 1014, 1025 (11th Cir. 1996).

The same rationale applies here since Johnson does not claim s*he* "relied" on any representations in the collection letter, "much less that the reliance caused [her] any damages." *Id.* Like the plaintiff in *Trichell*, Johnson's Complaint alleging that ICS made a false statement "does not support the plausible inference that she was at substantial risk of making any payment," but instead reflects a perfect understanding of why the collection letter was arguably false, and makes no allegations she was ever at a substantial risk of being misled. *Trichell*, 2020 WL 3634917

That Johnson was not at any risk—let alone *substantial* risk—of making payment is proven by her own actions. When she got the collection letter; she contacted her attorney—who filed a FDCPA claim approximately six months after receipt of the letter. The Complaint details the reasons Johnson believes the collection letter is false or misleading, but does not and cannot allege that she was ever substantially at risk of being misled and/or actually relied on the allegedly "false" contents in the letter—because she was not , and she did not. The absence of

"reliance" and "ensuing damages" cuts against Article III standing here, just as it did in *Trichell.*

Returning to the Court's analysis in that case, it next considered "the judgment of Congress" in enacting the FDCPA finding the "harm" the statute is directed at preventing to be limited to a single sentence stating: "Abusive debt collection practices contribute to [a] number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." *Id.* at 999. And while the Court recognized these "serious harms," it found them to be "a far cry from whatever injury one may suffer from receiving in the mail a misleading communication that fails to mislead." *Id.* The mere "nuisance" of receiving "unwanted mail," according to the Court, is easily remedied by "transferring the [communication] from envelope to wastebasket." *Id.* at 1000 (brackets in original), citing, *Consol. Edison Co. of N.Y. v. Pub. Serv. Comm'n*, 447 U.S. 530, 542, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980). Here Johnson could have simply thrown the collection letter in the trash and that would have been the end of it.

The Court in *Trichell* also found support for its ruling in the damages provision of the FDCPA which "provides that a person may recover 'any actual damage sustained by such person as a result of' an FDCPA violation and 'such additional damages as the court may allow'" indicating it "suggests that Congress viewed statutory damages not as an independent font of standing for plaintiffs without traditional injuries, but as an 'additional' remedy for plaintiffs suffering 'actual damage" caused by a statutory violation.'" *Id.*

And that there was "no congressional judgment firm enough to break with centuries of tradition indicating that misrepresentations are not actionable absent reliance and ensuing damages." *Id.*

There is no material deviation between the FDCPA claims asserted by the plaintiffs in *Trichell* and those alleged by Johnson. Each claimed the letter at issue contained a misrepresentation in violation of the statute. Johnson's Complaint therefore suffers from the same fatal defects as did those at issue in *Trichell*: there are no allegations that would support the conclusion Johnson suffered a concrete intangible injury as a result of receiving ICS's collection letter. Johnson never claims she was actually misled or that she detrimentally relied on ICS's letter. Nor does she claim to have suffered one of the "harms" Congress enacted the FDCPA to try to alleviate. The absence of these allegations—which seem entirely implausible based on what is known—demands dismissal for lack of Article III standing.

3. Johnson's alleged injury is canonically abstract as opposed to concrete.

In analyzing congressional intent of the FDCPA, this Court has stated:

> The FDCPA's statutory findings contain one sentence identifying the harms against which the statute is directed: "Abusive debt collection practices contribute to [a] number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." These serious harms are a far cry from whatever injury one may suffer from receiving in the mail a misleading communication that fails to mislead. In terms of "privacy and nuisance concerns," an unwanted mailing is more like an unwanted text message than an unwanted phone call. And while a recipient may take offense that a private party has violated the FDCPA, that is akin to taking offense that the government has violated other statutes—

> an injury that is canonically abstract as opposed to concrete.

Id., 964 F.3d at 1002–03.

Like the plaintiff in *Trichell*, Johnson's claim that ICS made a false or misleading statement "does not support the plausible inference that [s]he was at substantial risk of making any payment," and reflects her informed understanding of the reason the collection letter was arguably false, and her Complaint contains no allegations she was ever misled, at a substantial risk of being misled, or that she ever even contemplated paying the debt. *See* Complaint (Doc. 1), *generally*.

Johnson was not at risk—let alone *substantial* risk—of making payment. Upon receipt of the letter, she did not contact ICS to pay; she contacted an attorney, who filed a lawsuit several months later. The Complaint details the reasons Johnson believes the collection letter is false, but does not and cannot allege that she was ever substantially at risk of being misled and/or actually relied on the allegedly "false" contents in the letter—because she was not. As such the Complaint must be dismissed without prejudice. *Trichell* 964 F.3d 990, 999; *Ruffin v. Dynamic Recovery Sols., LLC*, No. 5:20-CV-272-OC-30PRL, 2020 WL 6134666, at *1 (M.D. Fla. Oct. 19, 2020).

4. Johnson fails to assert, much less detail, a particularized injury.

"[T]he requirements of concreteness, particularization, and imminence are 'irreducible' elements of Article III itself." *Trichell,* 964 F.3d 990, 999. Johnson therefore must show the Collection Letter caused a "concrete" injury. But she fails to

do so. Johnson merely talks in generalities while never delineating that she was misled and/or detrimentally relied on the letter in any way. Her failure to do so demands dismissal for lack of Article III standing as the Supreme Court has opined that a party "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *See, Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 416 (2013).

The Eleventh Circuit ruled, in dismissing an appeal in a FDCPA case for lack of standing, that a plaintiff alleging an "intangible injury" is nonetheless "concrete" must show that he "is immediately in danger of sustaining some direct injury as a result of the challenged official conduct and the injury or threat of injury is both real and immediate, not conjectural or hypothetical." *See, Cooper v. Atl. Credit & Fin. Inc*, 19-12177, 2020 WL 4332410, at *2 (11th Cir. July 28, 2020) (internal citations and quotations omitted).

Johnson stops short of alleging an "intangible injury" and only claims the letter "frustrated Plaintiffs ability to intelligently respond to Defendant's collection efforts because Plaintiff could not adequately respond to Defendant's demand for payment of this debt" *See* Doc. 1 ¶ 39. To be sure, the allegation is vague at best but if the terms "frustrated Plaintiffs ability to intelligently respond" is meant to be indicative of "fears of hypothetical future harm", it fails to support an "intangible" injury because Johnson has not shown and cannot show she was "immediately in danger of sustaining some direct injury as a result of the challenged official conduct

and the injury or threat of injury is both real and immediate, not conjectural or hypothetical." *See, Cooper* at *2 (internal citations and quotations omitted).

It is s not difficult for the court to imagine the cataclysmic change to jurisdictional analyses that would occur were a court to find that a recipient of a debt collection letter suffered a concrete injury merely because someone might or would report a debt to the CRAs, that a plaintiff might be confused or he wouldn't be able to verify something in a letter or that a balance in a letter differed from some other random document, and therefore, retained an attorney. Courts have consistently refused to find a party's own nebulous claims of anxiety over what may or may not happen in the future sufficient to establish a concrete injury.

In *Buchholz v. Meyer Njus Tanick*, for example, the Sixth Circuit Court of Appeals addressed this specific issue in the context of FDCPA litigation. 946 F.3d 855 (6th Cir. 2020). In that case, the plaintiff claimed to have suffered a concrete injury after receiving a debt collection letter because he believed he might be sued. But the court, relying on the *Clapper* decision from the Supreme Court along with other case law, determined "a plaintiff cannot create an injury by taking precautionary measures against a speculative fear." *Id.*, at 865. This, according to the court, meant that a plaintiff could not claim injury based on meeting with an attorney due to worry about potential future harm after receiving a debt collection letter. *Id.*

Simply stated, an "allegation of anxiety falls short of the injury-in-fact requirement because it amounts to an allegation of fear of something that may or may not occur in the future." *Id.* at 865-866. Here Johnson offers even less than an

"allegation of anxiety." Instead, just a general reference to "frustration" as evidence of concrete injury-not of some event or action that may or may not occur. It is not enough to show an injury-in fact under *Buchholz*.

The Supreme Court itself has consistently rejected the notion that "psychological consequence" is sufficient to satisfy the concrete injury requirement for standing. In *Valley Forge Christian College v. Americans United for Separation of Church and State*, the Court held that the alleged "psychological consequence presumably produced by observation of conduct with which one disagrees" is "not an injury sufficient to confer standing under Art. III[.]"*Id.,* 454 U.S. 464, 485, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982).

And in *Humane Society of United States v. Babbitt*, the court held that "general emotional 'harm,' no matter how deeply felt, cannot suffice for injury-in-fact for standing purposes." *Id.*, 46 F.3d 93, 98 (D.C. Cir. 1995); *see also Hein v. Freedom From Religion Found., Inc.*, 551 U.S. 587, 619–20, 127 S.Ct. 2553, 168 L.Ed.2d 424 (2007) (Scalia, J., concurring in the judgment) (Courts should reject the "conceptualizing of injury in fact in purely mental terms.").

Binding precedent from the Eleventh Circuit Court also cuts against Johnson. In *Corbett v. Transp. Sec. Admin.*, for example, the Eleventh Circuit held that when a plaintiff, like Johnson, "cannot show that an injury is likely to occur immediately, [she] does not have standing." *Id.* at 1233. Instead, according to the Court, standing exists only if the injury is "substantially likely to actually occur, meaning that the threatened future injury must pose a realistic danger and cannot be merely

hypothetical or conjectural." *Id.* There are no facts, allegations or evidence showing Johnson was confused, sought to pay the debt, or would have accepted a prior settlement offer. Any purported future injury is instead "merely hypothetical or conjectural." *Id.*

Citing *Corbett*, the Eleventh Circuit in *Cooper*—decided shortly after *Trichell*—refused to find concrete injury in another FDCPA case in which the plaintiff claimed, "that she was confused [by the collection letter], but in this context, her asserted injury of confusion was "conjectural" or "hypothetical," because she has not alleged any actual harms that arose from her confusion." *Id.*, 2020 WL 4332410, at *4.

Here like the plaintiff in *Cooper*, Johnson fails to provide any evidence of "actual harm". If standing can be satisfied by a debtor claiming confusion, believing she might be sued or credit reporting, and then hiring a lawyer to sue the debt collector, the concept of injury-in-fact loses any significance or meaning.

Johnson fails to detail at all how she "relied on" the letter, "much less that the reliance caused [her] any damages" both necessary elements of a detrimental reliance claim. *See, Trichell*, 964 F.3d at 998.

The lack of evidence on these "bedrock elements of reliance and damages…cuts against Article III standing." *Id.* Simply stated, there is no evidence Johnson relied on the Collection Letter in a manner that resulted in damages to her. And simply using buzz words torn from a cause of action—"no matter how insignificant the detrimental reliance—to constitute injury in fact would be to fall prey to what Justice Cardozo described as the 'tyranny of labels.'" *See, Chiles v. Thornburgh*, 865 F.2d 1197, 1205

(11th Cir. 1989), citing, *Snyder v. Massachusetts,* 291 U.S. 97, 114, 54 S.Ct. 330, 335, 78 L.Ed. 674 (1934).

5. Because any risk of harm had dissipated prior to Johnson filing the Complaint, Article III jurisdiction is lacking.

Trichell v. Midland Credit applied the concept of "dissipated risk" to a FDCPA case involving similar claims as those here and found no Article III standing. *Id.*, 964 F.3d 990. Claiming "the letters were misleading and unfair in falsely suggesting that he could be sued or that the debt could be reported to credit-rating agencies," Trichell filed a FDCPA class action lawsuit. *Id.*

The district court granted the defendant's motion to dismiss and plaintiff appealed. But before conducting a review of the dismissal order, this Court recognized its obligation to first "consider our own jurisdiction and that of the district court." *Id.* The Court then proceeded to find that neither it *nor the district court* had jurisdiction holding that, in FDCPA cases where the risk of harm has entirely dissipated by the time a complaint is filed, a plaintiff lacks Article III standing. *Id.* In reaching its decision, the Court recognized that the dissipated risk concerning a misleading statement in a letter from a debt collector was stark in contrast to a type of injury that could still exist when a complaint was filed, *e.g.* an ongoing risk of harm from false credit information. *Id.* at 997, *citing*, *Spokeo, Inc. v. Robins,* —— U.S. – ——, 136 S. Ct. 1540, 1547, 194 L.Ed.2d 635 (2016) (ongoing risk of harm from disclosure of false credit information).

In arriving at its decision that jurisdiction was lacking, the Court relied on its earlier decision in *Nicklaw v. Citimortgage*, summarizing that case as follows:

> a bank failed to timely record a discharge of the plaintiff's mortgage, and New York law provided a statutory cause of action for the failure. But the bank recorded the discharge before the plaintiff filed his lawsuit, and no harm had befallen the plaintiff in the interim. On these facts, with an allegation "only that [the bank] recorded the [discharge] late and nothing else," the Court held that the plaintiff "failed to establish that he suffered or could suffer any harm that could constitute a concrete injury."

Id. at 1003, *citing*, *Nicklaw v. Citimortgage, Inc.*, 839 F.3d 998 (11th Cir. 2016).

The Court also pointed out that in denying the plaintiff's motion for rehearing *en banc*, "two members of the *Nicklaw* panel elaborated that no Supreme Court decision 'holds—or even hints—that a plaintiff has standing to sue because he faced a risk of harm that never materialized and has since disappeared.'" *Id.*, citing, *Nicklaw*, 855 F.3d at 1267.

Having recognized that in FDCPA cases, based on allegedly misleading letters, jurisdiction does not exist if the harm has dissipated by the time the complaint is filed, the Court found it—and the district court—lacked jurisdiction because "[e]ven if Trichell [was] placed at risk of being defrauded when [he] received [his] collection letters, the risk never materialized, had dissipated before the complaints[] [was] filed, and cannot possibly threaten any future concrete injury." *Id.* And, according to the Court, while FDCPA complaints may accurately identify the reasons a collection letter was misleading, if there was no basis for the plaintiff to

allege he "was at risk of being misled in the future" then the plaintiff lacked Article III standing at the time the complaint was filed. *Id.*

Here Johnson's claims are based on a similar legal theory as that pursued by the plaintiff in *Trichell* and compel the same result, *i.e.* she lacks Article III standing as any risk of harm created by ICS's letter dissipated. The Johnson Complaint is unremarkable and contends that the ICS's letter violates the FDCPA because:

> 29.The letter is deceptive because it implies that in exchange for $1059.80, the consumer will achieve some form of settlement, when in actuality it is unclear what form of settlement the letter is offering.
>
> 30. The letter states that Sprint will recall the account and cease all collection activity but does not clarify what will occur with the rest of the balance and whether the rest of the balance would be collected by another collection company in the future.
>
> 31. Nor does the letter clearly state that the account will be reinstated upon payment of the settlement amount.
>
> 32. The letter deceives and misleads the consumer by implying that paying $1,059.80 would achieve results akin to a settlement offer, when in reality the Defendants offer contains no significant benefits and is unclear to what the benefits of the settlement would actually be.
>
> 33. This is especially deceptive because Defendant uses the language of settlement throughout the letter, when in reality, it is not clear that a settlement is being offered.
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> 34. These violations by Defendant were knowing, willful, negligent and/or intentional, and Defendant did not maintain procedures reasonably adapted to avoid any such violations.
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> 35. Congress is empowered to pass laws and is well-positioned to create laws that will better society at large.
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> 36. As it relates to this case, Congress identified a concrete and particular-ized harm with a close common-law analogue to the traditional tort of fraud.

> 37. Now, consumers have a right to receive proper notice from debt collectors, including a right to receive proper notice of the nature of their debts and settlement options. When a debt collector fails to effectively inform the consumer of a clear settlement offer, in violation of statutory law, the debt collector has harmed the consumer.

See Doc. 1 ¶ 29- 37.

Here, Plaintiff demonstrates that she *knew* by the time she filed the Complaint, why these allegations where potentially violative of the FDCPA. Hence, even assuming Johnson was initially confused by the letter, she was not confused when she filed the Complaint.

Similarly, that any risk of harm dissipated before suit is further demonstrated by the fact that Johnson retained the services of counsel who is experienced in consumer protection claims. Once she spoke with an attorney experienced in consumer protection claims, any risk of harm from ICS's letter had dissipated as evidenced by the informed allegations made in the Complaint filed by his attorney. Other than the ICS's one letter, Johnson complains of no other harm between the receipt of the Collection Letter and filing suit—approximately six months later—thus "no harm had befallen Plaintiff in the interim." *See, Nicklaw*, 855 F.3d at 1267.

Applying *Trichell's* reasoning to the facts here: "[e]ven if [Johnson] was placed at risk of being defrauded when she received her collection letter[], the risk never materialized, had dissipated before the complaint was filed, and cannot possibly threaten any future concrete injury." *Trichell*, 964 F.3d at 1003. And like Trichell, Johnson cannot show she "was at risk of being misled in the future" because the

Complaint asserts no other violative conduct by ICS other than the sending of a singular collection letter.

6. Johnson's informational injury is insufficient to confer Article III standing.

By failing to articulate any reliance on the letter or detailing clear and specific ensuing damage(s) from reliance on the letter, what Johnson is left with is a so-called "informational violation." An informational injury though is insufficient to satisfy Article III.

In determining Article III standing was lacking in *Trichell,* the Eleventh Circuit concluded that an informational injury alone—such as the so called right to receive truthful communications from debt collectors—does not confer Article III standing reasoning that "the FDCPA is not a public disclosure law at all" as its provisions "create no substantive entitlement to receive information from debt collectors." *Id.* at 1004. Rather, the FDCPA provides *only* "that debt-collection letters may not be misleading or unfair." *Id.* The Court pointedly noted that the "gravamen of the plaintiffs' complaints is not that they sought and were denied desired information, but that they received unwanted communications that were misleading and unfair" and that such an injury does not confer standing. *Id.*

Here Johnson does not claim she sought any information from ICS and/or such a request had been denied. Plaintiff instead claims, like the consumers in *Trichell*, that she got an unwanted collection letter that was misleading and unfair.

Hence, Johnson too failed to allege an injury that would confer standing, and this case must be dismissed.

Judge Moody, as this Plaintiff's counsel is aware addressed this issue in *Ruffin*. The plaintiff in that case alleged a letter she received from defendant violated the FDCPA because it made "a deceptive and misleading statement" that "misleads the consumer." *Ruffin v. Dynamic Recovery Sols., LLC*, No. 5:20-CV-272-OC-30PRL, 2020 WL 6134666, at *1 (M.D. Fla. Oct. 19, 2020). Judge Moody noted that Ruffin did not allege that she made any payments, that the letter prompted her to take any action, and she did not state any facts about how she was damaged. Ultimately in dismissing the case without prejudice for lack of standing, the court found there that Ruffin's alleged technical violation was insufficient to convey standing because "the Eleventh Circuit does not recognize an **"anything-hurts-so-long-as-Congress-says-it-hurts theory of Article III injury."** *Id.* (emphasis in original). (internal citations omitted).

Johnson here makes the same type of amorphous, indistinct claims as Ruffin necessitating the same result—Johnson's contentions are insufficient to confer Article III standing.

V. Conclusion

Subject-matter jurisdiction is akin to the power necessary to turn on a light in an otherwise dark room. Federal courts are constitutionally forbidden from operating in darkness. Because Johnson never claims she was misled, any risk of harm dissipated before the Complaint was filed, and because she failed to demonstrate

detrimental reliance on the letter, and is only left with a so-called informational injury, there is no power to turn the light on and the court lacks jurisdiction adjudicate this case.

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 3.01(g), the undersigned has conferred with counsel for plaintiff on August 10, 2022, who objects to the relief sought herein.

Respectfully submitted,

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