In the

United States Court of Appeals

For the Seventh Circuit

No. 21-3131

KENNETH CODY PUCILLO, formerly known as
KENNETH CODY LOCK, II,

Plaintiff-Appellant,

v.

NATIONAL CREDIT SYSTEMS, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of Indiana, Indianapolis Division.
No. 1:19-cv-00285-TWP-DML — **Tanya Walton Pratt**, *Chief Judge*.

ARGUED NOVEMBER 18, 2022 — DECIDED APRIL 26, 2023

Before BRENNAN, KIRSCH, and LEE, *Circuit Judges*.

BRENNAN, *Circuit Judge*. Kenneth Pucillo sued National Credit Systems, Inc., alleging that the company violated the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.*, when it sent him two collection letters about a debt discharged in bankruptcy. The district court dismissed the complaint, ruling that Pucillo lacked Article III standing. Because

National Credit's communications did not cause Pucillo any concrete injury, we affirm.

I.

We evaluate de novo a dismissal for lack of Article III standing. *Nowlin v. Pritzker*, 34 F.4th 629, 632 (7th Cir. 2022). We take the facts from the evidentiary record the parties developed in the district court when they cross-moved for summary judgment.

Pucillo, an Indiana resident who formerly used the last name Lock, had previously leased an apartment with Main Street Renewal LLC (Main Street). He filed for Chapter 7 bankruptcy on May 30, 2017, and listed as a debt past-due rent he allegedly owed Main Street. The bankruptcy court granted him a discharge on September 19, 2017, including of any debt to Main Street. That bankruptcy discharge is a public record and listed on Pucillo's credit reports.

But Main Street was not notified of Pucillo's bankruptcy case. And ten weeks before the discharge, on July 5, 2017, Main Street had placed Pucillo's account with National Credit for collection. Over the next eighteen months, National Credit sent Pucillo two collection letters, dated February 1, 2018, and February 1, 2019. The body of each letter was identical, was comprised of seven sentences, and described settlement options. The letters also stated that if payment was made, National Credit "will update credit data it may have previously submitted regarding this debt."

The week before Pucillo received the second letter, on January 25, 2019, he filed this suit. He claimed that National Credit violated 15 U.S.C. § 1692e (demanding payment of a debt not owed) and 15 U.S.C. § 1692c(c) (failure to cease

communications and cease collections) of the FDCPA. Pucillo alleged in his complaint that National Credit's "continued collection communications after he had filed for bankruptcy made [him] believe that his exercise of his rights through filing bankruptcy may have been futile and that he did not have the right to a fresh start that Congress had granted him under the Bankruptcy Code … ." Six months later, Pucillo amended his complaint, adding the second letter to his claims and alleging that National Credit's continued communications "confused and alarmed" him.

National Credit denied violating the FDCPA and said a bona fide error had prevented proper processing and notice of Pucillo's bankruptcy filing. *See* 15 U.S.C. § 1692k(c). National Credit did not "furnish" on Pucillo's account—that is, give information about a consumer, including credit history, to a credit reporting agency—before or after his bankruptcy discharge.

After discovery and an unsuccessful settlement conference, both parties moved for summary judgment. In support of his motion, Pucillo included his declaration that the collection letters resulted in him being "confused and concerned as to whether [his] debt to Main Street had been discharged" in bankruptcy, and if it had not, he "feared" that "the non-payment of the debt would impact [his] credit." Pucillo also said that receiving the letters "scared" him because he "thought that it would take even longer to improve [his] credit score and reputation," and that they "alarmed and upset" him and "destroyed the 'fresh start'" he had sought in his bankruptcy filing.

In March 2021, the district court denied both parties' summary judgment motions as moot and dismissed the case,

concluding that Pucillo lacked Article III standing to sue. The district court relied on various recent decisions from our court and held that the allegations in Pucillo's pleadings—"confusion," "stress," "concern," and "fear"—are not sufficiently concrete to result in an injury in fact that would give him standing to sue. The court also noted that Pucillo's amended complaint did not claim that National Credit had reported the alleged Main Street debt to credit reporting agencies, so he could not argue that his credit was somehow affected, "giving him some concrete, particularized harm."

Pucillo then moved under Federal Rules of Civil Procedure 59 and 60 to amend or alter the judgment.[1] He argued that his complaints alleged privacy violations, distinguishable from the cases involving bare procedural violations on which the district court relied. Pucillo believed his claims were therefore sufficient to constitute an injury in fact and result in Article III standing. The district court denied the motion, concluding that his arguments were untimely or had already been addressed in its earlier decision.[2]

II.

This case presents the question whether Pucillo has Article III standing to sue, and in particular whether he has suffered a concrete injury in fact.

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[1] Pucillo also moved to supplement the record with the Supreme Court's decision in *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2200 (2021), which the district court granted.

[2] Pucillo disputed the district court's standing decision in his motion to amend or alter the judgment, so he did not waive this argument on appeal.

A. Applicable Law

Article III of the U.S. Constitution limits the jurisdiction of federal courts to cases and controversies. U.S. CONST. art. III, § 2. A plaintiff must establish standing to sue as part of the case-or-controversy limitation. *Pierre v. Midland Credit Mgmt., Inc.*, 29 F.4th 934, 937 (7th Cir. 2022), *cert. denied*, 143 S. Ct. 775 (2023). To establish standing, "[a] plaintiff must have (1) a concrete and particularized injury in fact (2) that is traceable to the defendant's conduct and (3) that can be redressed by judicial relief." *Id.* (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). In federal court a plaintiff must have standing to pursue the case presented in the complaint. *See Pennell v. Glob. Tr. Mgmt.*, 990 F.3d 1041, 1045 (7th Cir. 2021).

On the first element, a concrete injury is "'real,' and not 'abstract.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016) (quoting the definition of Concrete, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 472 (1971)). "Qualifying injuries are those with a close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts." *Pierre*, 29 F.4th at 938 (cleaned up). This includes "'traditional tangible harms, such as physical harms and monetary harms,' as well as '[v]arious intangible harms,' such as 'reputational harms, disclosure of private information, and intrusion upon seclusion.'" *Id.* (quoting *TransUnion*, 141 S. Ct. at 2204). The Supreme Court recently clarified that the "risk of real harm," *Spokeo*, 578 U.S. at 341, qualifies as a concrete injury only for claims for "forward-looking, injunctive relief to prevent the harm from occurring." *TransUnion*, 141 S. Ct. at 2210.

B. Analysis

With this legal framework, we turn to Pucillo's case.

1. No concrete injuries

A series of "our recent decisions mark the line between FDCPA violations inflicting concrete injuries and those causing no real harm." *Pierre*, 29 F.4th at 938. The intangible harms alleged in Pucillo's pleadings and summary judgment declaration are insufficiently concrete under the applicable caselaw to satisfy the first element of standing.

The Supreme Court's decision in *TransUnion* limits the intangible harms that can be considered concrete. We begin with the mere risk of harm. In *Pierre*, we noted that "in *TransUnion*, a risk of harm qualifies as a concrete injury only for claims for 'forward-looking, injunctive relief to prevent the harm from occurring.'" *Id.* (quoting *TransUnion*, 141 S. Ct. at 2210). This weakens Pucillo's standing argument, and he admits that the mere risk of harm is not enough for a plaintiff seeking monetary damages.

Pucillo's claim that he believed his bankruptcy filing "may have been futile and that he did not have the right to a fresh start" alleges only a risk of harm. The same is true for Pucillo's "fear that … the non-payment of the debt would impact" his credit, or that he is "scared" because he "thought it would take even longer to improve [his] credit." Each of these claims reflect concerns over harms that might occur, not those that have occurred. And a risk of real harm is not enough to establish standing after *TransUnion*. 141 S. Ct. at 2210; *Pierre*, 29 F.4th at 939. As in *Pierre*, Pucillo did not "other-wise act to [his] detriment in response to anything," 29 F.4th at 939, so the risk he pleads of possible futility to his bankruptcy or

potential harm to his credit does not satisfy the standing requirement of a concrete and particularized injury in fact.

In other decisions this court has concluded that injuries like those Pucillo alleges are insufficiently concrete. His complaints about being "concerned" and "upset" (Declaration ¶¶ 7 & 8) are highly similar to being "worried" or "stressed," which we have ruled is not a concrete injury. *Wadsworth v. Kross, Lieberman, & Stone, Inc.*, 12 F. 4th 665, 668 (7th Cir. 2021); *Pennell*, 990 F.3d at 1045.

Pucillo also contends that the collection letters "confused" and "alarmed" him. Indeed, Pucillo's allegations that his bankruptcy discharge might have been futile and that he did not receive a fresh start could also be read as claiming confusion. But confusion is not enough after *Pennell*, 990 F.3d at 1045. *See also Brunett v. Convergent Outsourcing, Inc.*, 982 F.3d 1067, 1068 (7th Cir. 2020) (holding that confusion alone is not a concrete injury). And Pucillo's argument resembles reasoning that this court rejected in *Markakos v. Medicredit, Inc.*, 997 F.3d 778, 780 (7th Cir. 2021) (collecting cases). There, the plaintiff sued a collection agency under the FDCPA because the agency's collection letters contained inconsistent and incorrect information, confusing and aggravating the plaintiff. *Id*. at 780–81. We ruled that confusion was not enough to create an injury in fact. *Id*. Rather, the plaintiff must show a harm beyond emotional response, such as an adverse credit rating or detrimental action that the plaintiff took in reliance on the letters. *Id*. at 780 (citing *Larkin v. Fin. Sys. of Green Bay, Inc.*, 982 F.3d 1060, 1066 (7th Cir. 2020)).

Pucillo has not alleged any such harm. He does not, for example, assert that he paid extra money to the debt collector or the original creditor, forewent paying another debt, or

abstained from some purchase because of the letters. *See id*. If we were to recognize standing based solely on confusion or alarm, unmoored from concrete harm, there would be no limiting principle. *See Brunett*, 982 F.3d at 1068 (explaining if "the state of confusion" were an actionable injury, "then everyone would have standing to litigate about everything"). Moreover, the topic about which Pucillo was "confused" and "alarmed"—whether the alleged debt to Main Street was still owed and the bankruptcy discharge had given him a "fresh start"—is a complaint about the risk of harm, not actual harm.

We recognize that communications under the FDCPA are interpreted under the "unsophisticated debtor" standard. *Veach v. Sheeks*, 316 F.3d 690, 693 (7th Cir. 2003). When trying to understand National Credit's letters, Pucillo claims he became "confused," "scared," and "alarmed" about the status of his bankruptcy discharge. But he provides no facts showing that his emotional response led to actionable injury.

2. Tort law parallels

Resisting this conclusion, Pucillo argues that his present injuries are of the same kind held actionable under common law invasion of privacy tort theories. An intangible harm can qualify as a concrete injury in fact, but only when the harm bears a "close relationship" to a traditional harm given redress in courts at common law. *Spokeo*, 578 U.S. at 340–341. In deciding whether a harm is concrete, we are to look to both history and Congress's judgment. *See Pierre*, 29 F.4th at 938; *Persinger v. Sw. Credit Sys., L.P.*, 20 F.4th 1184, 1191 (7th Cir. 2021) (citing *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 462 (7th Cir. 2020)). That examination here persuades us that the district court properly dismissed this case.

Pucillo argues that his standing allegations for intangible damages correlate to two common law torts—invasion of privacy and intrusion upon seclusion—and thus are sufficiently concrete injuries for standing to sue. He analyzes the two torts together, and points to his complaints and declaration as pleading how his privacy was invaded and his seclusion intruded upon. The district court overlooked these historical parallels, Pucillo contends. But his attempt to fit his allegations within these torts falls short.

An observation before proceeding: Pucillo refers to "invasion of privacy" and "intrusion upon seclusion" as distinct torts, but they are usually framed somewhat differently than that. As explained in *Persinger*, "the tort of invasion of privacy encompassed four *theories* of wrongdoing: intrusion upon seclusion, appropriation of a person's name or likeness, publicity given to private life, and publicity placing a person in a false light." 20 F.4th at 1192 (emphasis added). *See also* RESTATEMENT (SECOND) OF TORTS § 652A (AM. LAW INST. 1977) (identifying the "four forms of invasion of the right to privacy"). Because the most apt of the invasion of privacy "theories" is intrusion upon seclusion, and Pucillo references it, we focus our analysis there.

Intrusion upon seclusion "occurs when a person 'intrudes … upon the solitude or seclusion of another or his private affairs or concerns' and this 'intrusion would be highly offensive to a reasonable person.'" *Persinger*, 20 F.4th at 1192 (quoting RESTATEMENT (SECOND) OF TORTS § 652B). The phrase "intrusion upon seclusion" does not appear in Pucillo's complaints or his declaration. Though Pucillo did not need to include this precise phrase in his pleadings, none of his allegations speak to such a theory of injury. Instead, his appellate

briefing tries to shoehorn his allegations within that tort theory. Each time Pucillo invokes intrusion upon seclusion, he claims the letters undermined his belief that his bankruptcy discharge created a "fresh start." But that alleged injury is not actionable under intrusion upon seclusion, as the potential for Pucillo's bankruptcy case to be undone presents only a risk of harm.

Pucillo also alleges he experienced confusion and fear upon receipt of the letters, but that alone gets him no closer to a historical invasion of privacy. Intrusion upon seclusion requires more than just an emotional response—it requires a particular kind of offensive intrusion. *See Gadelhak*, 950 F.3d at 462–63 (explaining that the proper focus is on whether an alleged injury is of the same kind that common law courts recognize). On that score, Pucillo points to only the letters. And while courts have allowed intrusion upon seclusion liability for "irritating intrusions," there is nothing inherently bothersome, intrusive, or invasive about a collection letter delivered via U.S. Mail. *See id.* at 462. Indeed, a letter is the means of contact in many if not most of our FDCPA cases. *See, e.g.*, *Casillas v. Madison Ave. Assocs., Inc.*, 926 F.3d 329, 332 (7th Cir. 2019); *Larkin*, 982 F.3d at 1062; *Gunn v. Thrasher, Buschmann & Voelkel, P.C.*, 982 F.3d 1069, 1070 (7th Cir. 2020); *Nettles v. Midland Funding LLC*, 983 F.3d 896, 898 (7th Cir. 2020); *Pennell*, 990 F.3d at 1043; *Markakos*, 997 F.3d at 779; and *Pierre*, 29 F.4th at 936. Just so, this opinion should not be overread as encompassing intrusive uses of either the mail or other kinds of contact not now before us.[3]

[3] Though we offer no opinion on facts not before us, other kinds of mailings could impact seclusion more significantly. For example,

So the method of contact National Credit employed, without more, does not resemble the injury associated with intrusion upon seclusion. This is true even if Pucillo emotionally reacted to a non-qualifying intrusion. Recall as well that National Credit did not furnish on Pucillo's account, so there was no invasion of his private information.

Pucillo cites two decisions in support of his position on standing, but both are distinguishable.

In *Persinger*, a collection agency seeking to collect on a discharged debt asked a credit reporting agency for an aspect of a consumer's credit history without her permission. 20 F.4th at 1188. The consumer sued under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* This court ruled that such an unauthorized inquiry was sufficiently close to the common-law tort of intrusion upon seclusion to confer standing. *Id*. at 1193.

Pucillo likens National Credit's promise in its letters to "update" its "previously submitted" credit "data" as a threat to his credit reputation and thus a similar intrusion. But unlike the collection agency in *Persinger*, *id.* at 1189, Pucillo has not alleged that National Credit ever reported to, solicited from, or otherwise contacted any credit bureaus or other third parties about information concerning him, let alone without his authorization. In fact, it is undisputed that National Credit did not furnish on Pucillo's account. Thus, *Persinger* featured an actionable intrusion—a "soft" credit pull—while Pucillo alleges nothing like that. *Id.*

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documents can be shipped with a signature requirement, compelling the delivery person to ring the recipient's doorbell or knock. We reserve ruling on those situations if and when they arise. We neither state nor imply that standing turns merely on the number of letters an individual receives.

Pucillo also points to *Gadelhak*, 950 F.3d 458. There, this court ruled that a plaintiff, who sued under the Telephone Consumer Protection Act, 47 U.S.C. § 227, which bars certain automated phone messages, was injured based on five unwanted, automated text messages. *Id*. at 463. Automated messages repeatedly sent to a personal phone, this court determined, resembled "irritating intrusions" barred at common law. *Id.* at 462. To Pucillo, the two unwanted letters he received, like the text messages in *Gadelhak*, intruded upon his seclusion, and Congress intended for bankruptcy filings to bar such letters.

In *Gadelhak*, this court looked to the kind (rather than the degree) of harm that the common law recognized to determine if any intrusion was a concrete harm that Congress has chosen to make legally cognizable. *Id*. at 462–63. The text messages in *Gadelhak* differ in kind from the letters here. Text messages may create an injury because they can disrupt a person anytime, anywhere, thereby invading "private solitude." *Id.* at 462. Indeed, as we explain in *Gadelhak*, "The undesired buzzing of a cell phone from a text message, like the unwanted ringing of a phone from a call, is an intrusion into peace and quiet in a realm that is private and personal." *Id.* at 462 n.1. In contrast, postal mail is delivered to a mailbox without interrupting the recipient's seclusion. Mail can be picked up when, if, and how often the recipient chooses, unlike a phone which is usually on one's person or close by throughout the day. While receiving a letter can be an irritation, we do not see an actionable analogy between a letter delivered to a mailbox and automated text messages delivered to one's cell phone. As our dissenting colleague points out, a plaintiff searching for a "common-law analogue for their asserted injury" need not identify "an exact duplicate." *TransUnion*, 141 S. Ct. at

2204. But the plaintiff's alleged injury must still have a "close relationship" to a traditionally recognized harm. *Id.* (quoting *Spokeo*, 578 U.S. at 341). The delivery of two letters to Pucillo's mailbox, one year apart, one before suit was filed, is too far afield from the traditional tort of intrusion upon seclusion to allege an actionable claim.

"[B]ecause Congress is well positioned to identify intangible harms that meet minimum Article III requirements, its judgment is also instructive and important" for determining whether an intangible harm constitutes injury in fact. *Spokeo*, 578 U.S. at 341; *see also Persinger*, 20 F.4th at 1191; *Gadelhak*, 950 F.3d at 462. Thus, we must consider the Congressional judgment in the FDCPA. Relevant here, Congress legislated the FDCPA to "eliminate *abusive* debt collection practices by debt collectors." 15 U.S.C. § 1692(e) (explaining purposes of the FDCPA) (emphasis added). That Congressional judgment supports a lack of Article III standing, because sending two letters, one year apart and without any tangible consequences for the recipient, is not the kind of abusive practice Congress sought to prevent. Our conclusion thus accords with Congress's judgment as well. *Spokeo*, 578 U.S. at 340.

Given how this case unfolded, we can see why Pucillo would want to invoke these tort theories from our recent FDCPA standing decisions. He originally sued National Credit in January 2019, and he amended his complaint in July 2019. *Gadelhak* was decided in February 2020. Pucillo moved to alter or amend his judgment to include his standing arguments in April 2021, and *Persinger* was decided in December 2021. As this case has progressed, Pucillo's arguments have

morphed to include the labels of harms which this court has recognized as conferring standing.[4]

Pucillo's problem, though, is that neither version of his complaint contains the allegations recognized in other decisions as conferring standing. He argues he suffered several potential harms, and he invokes different decisions of our court in which standing has been found based on those harms. But those two decisions are distinguishable, and there is a gap between Pucillo's pleadings in the district court and the arguments he makes on appeal.[5]

3. Motion to amend or alter judgment

Pucillo asks us to reverse the decisions of the district court, which include that court's denial of his motion to amend or alter judgment under Federal Rules of Civil Procedure 59 and 60. In that motion, Pucillo argued that the district court incorrectly applied its precedent on what constitutes concrete injury for purposes of standing. The court disagreed, concluding that Pucillo did not meaningfully distinguish many of the cases discussed above, that his submissions lacked claims for

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[4] A claim under the FDCPA is not Pucillo's only avenue for relief. A bankruptcy discharge enjoins any efforts to collect on discharged debts. 11 U.S.C. § 524(a)(2). A debtor who believes that a collection agency has willfully violated the court's injunction may seek recourse for contempt in the bankruptcy court. *See In re Sterling*, 933 F.3d 828, 832 (7th Cir. 2019). The record does not show that Pucillo brought such a contempt action; instead, he chose to sue under the FDCPA. He is therefore subject to that Act's standing principles.

[5] Pucillo's second claim, an alleged violation of 15 U.S.C. § 1692c(c) of the FDCPA, also fails. There is no dispute that neither Pucillo or anyone on his behalf notified National Credit of Pucillo's bankruptcy filing or receipt of the letters in violation of the bankruptcy automatic stay.

invasion of privacy or intrusion upon seclusion, and that his motion merely rehashed many of his earlier arguments. The district court's ruling on such a motion is reviewed under a deferential standard and will be reversed only if the district court abused its discretion. *United States v. Resnick*, 594 F.3d 562, 568 (7th Cir. 2010).

The district court correctly found that Pucillo has not alleged a concrete and particularized injury in fact, so there is no Article III standing. That court committed no manifest errors of law or fact, that is "the wholesale disregard, misapplication, or failure to recognize controlling precedent." *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) (quoting *Sedrak v. Callahan*, 987 F. Supp. 1063, 1069 (N.D. Ill. 1997)). And Pucillo does not argue there is newly discovered evidence. *See Cincinnati Life Ins. Co. v. Beyrer*, 722 F.3d 939, 954 (7th Cir. 2013) (cleaned up). Pucillo's motion restated arguments that he had previously offered without success, rather than offer new ones. The district court therefore did not abuse its discretion in denying Pucillo's motion to amend or alter the judgment.

* * *

For these reasons, we AFFIRM the dismissal of this case for lack of standing.

LEE, *Circuit Judge*, dissenting. The Supreme Court has laid out an analytical roadmap for cases just like this. To determine whether a plaintiff like Pucillo has satisfied the requirement of concrete harm to establish Article III standing in cases arising from the FDCPA (and similar statutes), "courts should assess whether the alleged injury to the plaintiff has a 'close relationship' to a harm 'traditionally' recognized as providing a basis for a lawsuit in American courts." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204 (2021) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016)). In conducting this inquiry, courts should ask whether the plaintiff has "identified a close historical or common-law analogue for [his] asserted injury," recognizing that the injury need not have "an exact duplicate in American history and tradition." *Id.* What is more, the asserted injury can take the form of traditionally recognized intangible harms, including "reputational harms, disclosure of private information, and intrusion upon seclusion." *Id.* Because Pucillo satisfies these requirements, I respectfully dissent.

In keeping with *TransUnion*, Pucillo analogizes his asserted injuries to those suffered by a person who has experienced a tortious invasion of privacy, specifically an unwanted intrusion upon seclusion. *See Persinger v. Sw. Credit Sys., L.P.*, 20 F.4th 1184, 1192 (7th Cir. 2021) (observing that the traditional tort of invasion of privacy encompasses four theories of harm: intrusion upon seclusion, appropriation of a person's name or likeness, publicity given to private life, and false light). This analogy is apt.

As the majority opinion notes, the tort of unwanted intrusion upon seclusion is triggered when one "intentionally intrudes … upon the solitude or seclusion of another or his

private affairs or concerns," where such an intrusion "would be highly offensive to a reasonable person." RESTATEMENT (SECOND) OF TORTS § 652B (AM. L. INST. 1977); *see also Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 462 (7th Cir. 2020) (Barrett, J.) ("The common law has long recognized actions at law against defendants who invaded the private solitude of another by committing the tort of 'intrusion upon seclusion.'"). And in *Gadelhak*, we held that the plaintiff's receipt of five unwanted text messages was sufficient to establish concrete harm based upon an intrusion-upon-seclusion theory for a claim arising under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq*. *Gadelhak*, 950 F.3d at 462.

The majority opinion agrees with this reading of *Gadelhak*. However, it attempts to distinguish *Gadelhak*, positing that, while unwelcomed text messages can be unwanted intrusions "because they can disrupt a person anytime, anywhere," postal mail cannot, because it "is delivered to a mailbox without interrupting the recipient's seclusion." But in so doing, the majority opinion discounts the particular facts of Pucillo's case and mandates more than what *Spokeo* and *TransUnion* require.

Here, Pucillo went through the considerable effort and expense of filing a bankruptcy petition and obtained a discharge of his debts, including the one at issue here. The bankruptcy court's order gave him a fresh start and freed him from his obligations to his former creditors. *In re Chambers*, 348 F.3d 650, 653 (7th Cir. 2003) ("The primary purpose of bankruptcy discharge is to provide debtors with a fresh start."); *Loc. Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) ("[The Bankruptcy Act] gives to the honest but unfortunate debtor … a new opportunity in life and a clear field for future effort, unhampered by

the pressure and discouragement of pre-existing debt."). With this order in hand, Pucillo had the right and a well-founded expectation to be free from the efforts of debt collectors, like National Credit, to collect on these discharged debts, whether by text, facsimiles, or mail. And by sending him two letters to collect on one of the discharged debts, National Credit disrupted Pucillo's right to seclusion, putting this case squarely within the bounds of *Gadelhak*.[1]

The majority opinion, however, believes that unwanted postal mail is materially different from the unwanted text messages at issue in *Gadelhak*. It rests on two principal distinctions: first, that letters are delivered to mailboxes, not phones, and thus are less intrusive by their very nature; and second, that even if two unwanted letters are an irritation, they do not occasion the same level of intrusion that numerous unwanted text messages generate. But this leads one to ask whether the majority opinion would have arrived at a different conclusion had National Credit sent Pucillo hundreds of letters (say, three or four every day), rather than just two? After all, the intrusion a person would feel from receiving, opening, reading, and discarding hundreds of unwanted, ill-founded dunning letters would certainly be greater than that he would feel

[1] To the extent the majority opinion believes that Pucillo should have provided a more complete description of his injury in his amended complaint or declaration to track the common law intrusion-upon-seclusion claim (for example, by including the phrase "intrusion upon seclusion"), the source of this pleading obligation is unclear. *TransUnion* does not require Pucillo to actually plead a common law claim in his complaint, let alone a successful one; it merely requires him to set forth a theory of injury that has been recognized at common law. And we have long held that legal theories need not be pleaded in a complaint. *Avila v. CitiMortgage, Inc.*, 801 F.3d 777, 783 (7th Cir. 2015).

deleting a few unwanted text messages. And, by cautioning against overreading the opinion to "encompass[ ] intrusive uses of either the mail or other kinds of contact not now before us," the majority opinion appears to recognize that unwanted postal mail *can* be intrusive in certain circumstances, just not here.

If it is the difference in *degree* of the intrusion between text messages and postal mail that animates the majority opinion, this would directly contravene the Supreme Court's instructions in *Spokeo* to focus on the "kind" of harm, not its "degree." *See Gadelhak*, 950 F.3d at 462 ("But when *Spokeo* instructs us to analogize to harms recognized by the common law, we are meant to look for a 'close relationship' in kind, not degree."). Indeed, the "kind" of harm experienced by Pucillo and the plaintiff in *Gadelhak* is the same—disruption, annoyance, aggravation, and the like caused by the unwelcome intrusion upon seclusion. Only the means and degree are different.

Thus, by focusing on the number of letters and the degree of the intrusion, the majority opinion imposes requirements that *Spokeo* and *TransUnion* do not. After all, remember that Pucillo's allegations need not state a successful intrusion-upon-seclusion claim, but only set forth a comparable type of injury that the claim could remedy at common law. *See Persinger*, 20 F.4th at 1192 ("Whether [plaintiff] would prevail in a lawsuit for common law invasion of privacy is irrelevant. It is enough to say that the harm alleged in her complaint resembles the harm associated with intrusion upon seclusion."); *Gadelhak*, 950 F.3d at 463 ("A few unwanted automated text messages may be too minor an annoyance to be actionable at common law. But such texts nevertheless pose the same *kind*

of harm that common law courts recognize—a concrete harm that Congress has chosen to make legally cognizable."). Pucillo's allegations do just that.

On the other hand, if the majority opinion views the harm caused by unwanted postal letters as different in *kind* than the harm created by unwanted text messages, it is difficult to see why that would be the case. These days, it is a rather simple matter to silence, block, delete, or flat out ignore unwanted text messages. It is arguably more arduous to go to one's mailbox, open, read, and then discard postal mail. And while it is true that mail is delivered to a mailbox and not one's phone, one must retrieve and read the mail at some point because the United States mail is still a recognized way of providing legal notice and conducting business, ignored at one's own peril.

All this is to say that, taking the Supreme Court's direction that we consider whether the harms asserted by Pucillo bear a "close relationship" in kind to those recognized at common law, *see Spokeo*, 578 U.S. at 341, combined with its admonition that we not insist upon "an exact duplicate" between the two, *TransUnion*, 141 S. Ct. at 2204, I would hold that the injury a person suffers when his seclusion is intruded upon by unwanted dunning letters seeking to collect a debt he knows to be discharged is comparable to the injury he suffers when he receives unwanted text messages on his phone. We already have held that the latter is sufficient to establish concrete injury for Article III purposes, *see Gadelhak*, 950 F.3d at 462; the former is as well.[2]

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[2] We also found Article III standing in *Persinger* where the defendant collection agency inquired into the plaintiff's credit report without authorization and in violation of the Fair Credit Reporting Act. *See* 20 F.4th at

Historical common law analogies, however, form just one part of the *TransUnion* analysis. To determine whether National Credit's letters to Pucillo caused concrete harm, we also must consider "Congress's judgment." *Gadelhak*, 950 F.3d at 462; *see also Spokeo*, 578 U.S. at 341 (noting that, "because Congress is well positioned to identify intangible harms that meet minimum Article III requirements, its judgment is also instructive and important"). This is because, while Congress cannot "enact an injury into existence," it may "elevate harms that exist in the real world before Congress recognized them to actionable legal status." *TransUnion*, 141 S. Ct. at 2205 (cleaned up).

This inquiry into Congress's intent buttresses the conclusion that Pucillo has adequately alleged concrete injury here. Indeed, protecting the privacy rights of individuals contacted by debt collectors is one of the reasons that Congress enacted

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1192. The majority opinion distinguishes *Persinger* by noting that Pucillo has not alleged that National Credit has ever reported to, solicited from, or otherwise contacted any credit reporting agencies regarding Pucillo's allegedly owed debt. But, while the plaintiff's theory of injury in *Persinger* relied upon a personal right to secrecy, a run-of-the-mill common law intrusion-upon-seclusion claim does not require a "publication" element. *See Am. States Ins. Co. v. Cap. Assocs. of Jackson Cnty., Inc.*, 392 F.3d 939, 942 (7th Cir. 2004) (disapproving decisions that fail to distinguish secrecy from seclusion and stating that "[i]n a secrecy situation, publication matters; otherwise secrecy is maintained. In a seclusion situation, publication is irrelevant. A late-night knock on the door or other interruption can impinge on seclusion without any need for publication."); RESTATEMENT (SECOND) OF TORTS § 652B cmt. a (intrusion upon seclusion "consists *solely* of an intentional interference with [a person's] interest in solitude or seclusion, either as to his person or as to his private affairs or concerns" (emphasis added)).

the FDCPA in the first place. *See* 15 U.S.C. § 1692(a) ("There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to *invasions of individual privacy*." (emphasis added)). The majority opinion nevertheless concludes that absent "tangible consequences," two letters from a debt collector is not the "kind of abusive practice Congress sought to prevent." But the abuse that forms the basis of Pucillo's claim lies not in the two letters *per se*, but in National Credit's efforts to collect on a debt that Pucillo knows is void.[3] And in passing the FDCPA, Congress intended to protect "unsophisticated consumers" from such practices. *See* S. REP. NO. 95-382, at 1 (1977) (the FDCPA's "purpose is to protect consumers from a host of unfair, harassing, and deceptive debt collection practices"); *id.* at 4, 7 (expressly prohibiting, among other things, "misrepresenting the consumer's legal rights," "collecting more than is legally owing," and "misrepresenting the amount or nature of a debt"). Congress's judgment therefore supports standing here.

A couple of additional points. The majority opinion mischaracterizes Pucillo's allegations as complaining only about the *risk* of future harm, *e.g.*, the *risk* that his credit would be negatively impacted or the *risk* that his bankruptcy discharge was futile. The majority opinion is correct that, after *TransUnion*, the mere risk of future harm is insufficient to provide standing in a claim for damages. But that is not the issue here.

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[3] Whether National Credit's letters were bona fide errors (as it contends) or intentionally abusive collection efforts (as Pucillo claims) is a merits question unrelated to the issue of standing.

Pucillo has *actually suffered* concrete emotional injuries—confusion, aggravation, alarm—as a result of National Credit's actions. *TransUnion* recognizes that where a risk of future harm causes a plaintiff to suffer some other independent injury, the plaintiff has standing in a claim for damages. 141 S. Ct. at 2211 (holding that because "plaintiffs present [no] evidence that the class members were independently harmed by their exposure to the risk itself—that is, that they suffered some other injury (such as an emotional injury) from the mere risk that their credit reports would be provided to third-party businesses," they had no standing). And, here, Pucillo's purported injury is not the risk of future harm but the current emotional harm caused by that risk. This is enough to confer standing.

Furthermore, relying on a series of our recent decisions, the majority opinion also suggests that emotional harms Pucillo suffered are *per se* insufficiently concrete to satisfy standing; that his allegations of confusion and aggravation cannot alone provide a basis for injury-in-fact. Although this principle has gained a foothold in our recent cases, *see, e.g.*, *Brunett v. Convergent Outsourcing, Inc.*, 982 F.3d 1067, 1068 (7th Cir. 2020), it too overstates what *TransUnion* requires. In *TransUnion*, the Supreme Court declined to find standing for various class members where there was no evidence they had even "opened the dual mailings, nor that they were confused, distressed, or relied on the information in any way." 141 S. Ct. at 2213, 2214 (cleaned up). This can hardly be read to require the "emotional harm-plus" test that our case law has come to adopt. *See Brunett*, 982 F.3d at 1069 (holding that, absent the plaintiff's detrimental reliance on her confusion, there is no standing); *see also Pierre v. Midland Credit Mgmt., Inc.*, 29 F.4th

934, 939 (7th Cir. 2022), *cert. denied*, 143 S. Ct. 775 (2023) (collecting cases).

Indeed, nothing in *TransUnion* can be read to require a plaintiff's detrimental reliance on his emotional harm to have standing. And insisting on such reliance ignores *TransUnion*'s express recognition that intangible harms are sufficiently concrete to confer standing when they resemble those traditionally recognized at common law.[4] 141 S. Ct. at 2213. Pucillo's alleged intangible harms fall well within this category. *See Gadelhak*, 950 F.3d at 462 ("Courts have also recognized liability for intrusion upon seclusion for irritating intrusions[.]"); *see also, e.g.*, *Imagine Medispa, LLC v. Transformations, Inc.*, 999 F. Supp. 2d 873, 886 (S.D.W. Va. 2014) (finding that allegations that scores of calls due to the defendants' conduct caused "annoyance and inconvenience" and were "disruptive" to the plaintiff's personal life were sufficient to state a claim for intrusion upon seclusion under West Virginia law); *Lovings v. Thomas*, 805 N.E.2d 442, 446 (Ind. Ct. App. 2004) (acknowledging that intrusion-upon-seclusion claims "involve injuries to emotions and mental suffering"); *Billings v. Atkinson*, 489 S.W.2d 858, 861 (Tex. 1973) ("Damages for mental suffering are recoverable without the necessity of showing actual physical injury in a case of willful invasion of the right of privacy[.]"); *Carey v. Statewide Fin. Co.*, 223 A.2d 405, 405–06

[4] The majority opinion's call for a limiting principle is understandable. But such guardrails already exist. Article III standing requires not only that the injury is concrete, but that it is particularized, *i.e.*, that it "affect[s] the plaintiff in a personal and individual way," and is not common to all members of the public. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 n.1 (1992). This prerequisite that a plaintiff must have a "personal stake in the outcome," *Baker v. Carr*, 369 U.S. 186, 204 (1962), would preclude the slippery-slope scenario posed by this court in *Brunett*. *See* 982 F.3d at 1068.

(Conn. Cir. Ct. 1966) (finding the plaintiff's allegations that defendant's calls "continued to harass and annoy" her and caused her to suffer "great mental pain" adequately stated an invasion-of-privacy claim); *Housh v. Peth*, 133 N.E.2d 340, 344 (Ohio 1956) (affirming judgment where defendant "harass[ed] and humiliate[d] the plaintiff and cause[d] her mental pain and anguish" when attempting to collect a debt). Such injury is therefore enough here, too.

In the end, the majority opinion tries to faithfully follow the principles the Supreme Court announced in *Spokeo* and *TransUnion*. But for the reasons described, I believe that it overreads these principles as applied to the particular facts of this case. I respectfully dissent.