No. 24-7189

In the Supreme Court of the United States

HANNAH HEKEL,

Petitioner,

v.

HUNTER WARFIELD, INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION

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September 2, 2025

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent, Hunter Warfield, Inc., hereby states that HWI Holding, Inc., a privately held company, owns 10% or more of Hunter Warfield's stock and that no publicly held corporation owns 10% or more of Hunter Warfield's stock.

/s/ David A. Grassi , Jr.
DAVID A. GRASSI, JR.

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INTRODUCTION

Petitioner Hannah Hekel's request for this Court's review lacks merit.

Ms. Hekel first asks this Court to grant, vacate, and remand in light of its decisions in *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016), and *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021). Pet. 9, 16. But those decisions came years before the Eighth Circuit's decision in this case. The Eighth Circuit even quoted and applied those decisions repeatedly in its opinion. As a result, Ms. Hekel's request to GVR in light of *Spokeo* and *TransUnion* is unsound.

Ms. Hekel next argues that this Court should GVR because, in her view, the allegations in her complaint show that she has standing. Pet. 9, 19. That argument appears to be a disguised request for a summary reversal. But Ms. Hekel does not even try to show that this case satisfies the high bar for summary relief.

On both of these points, Ms. Hekel asks at best for factbound error correction. As shown below, however, there is no error in this case for this Court to correct. The Eighth Circuit's holding that Ms. Hekel did not establish that she has Article III standing is consistent with this Court's precedents and correctly applies settled legal principles to the facts of this case. Ms. Hekel's disagreement on these case-specific points does not call for this Court's review.

Ms. Hekel also argues that the Eighth Circuit's decision deepens an alleged conflict in the courts of appeals on whether emotional injuries can ever be injuries in fact. Pet. 19-20. But even if that conflict existed, the decision below would not implicate it. The Eighth Circuit did not take sides on whether emotional injuries can

ever support standing. It held only that the specific types of injuries alleged here, such as "worry," do not rise to the level of concrete injuries. Pet. App. 11-12.

In any event, Ms. Hekel's narrow alleged split involves multiple decisions that are unpublished, predate *TransUnion*, or both. *See* Pet. 19-20. Thus, based on this Court's recent guidance in *TransUnion*, the courts of appeals will probably resolve any alleged conflict on their own, without the need for this Court's further involvement. At a minimum, this Court would benefit from allowing more post-*TransUnion* percolation of these issues before it grants review, if ever.

Finally, the resolution of Ms. Hekel's alleged split would not affect the outcome of this case. The Eighth Circuit held in the alternative that even if the types of emotional injuries at issue here could be injuries in fact, Ms. Hekel still lacked standing because her allegations of emotional injury were conclusory. Pet. App. 12. Ms. Hekel does not address this vehicle problem, let alone offer a sound basis for granting review in spite of it.

For these reasons and the reasons discussed below, Hunter Warfield asks that this Court deny Ms. Hekel's petition.

STATEMENT OF THE CASE

Ms. Hekel makes numerous inaccurate and/or incomplete statements about the proceedings below in her petition. She contends "the Eighth Circuit failed to follow the precedent of this Court[,]" Pet. 9, but the Eighth Circuit's decision accurately cites several of this Court's opinions, including *Spokeo* and *TransUnion*. Pet. App. 10-12. Ms. Hekel states Hunter Warfield did not raise the issue of standing

prior to appeal. Pet. 12, 16. This is not wholly accurate. Hunter Warfield did not move to dismiss for a lack of standing in the district court, but it did assert Ms. Hekel lacked standing in its answer. *See* Dkt. No. 11 at p. 7, ¶ 1, *Hekel v. Hunter Warfield, Inc.*, Civ. No. 23-28 (D. Minn. May 5, 2023).

Ms. Hekel's interpretation of the lower court's opinion in this matter fares no better. She ignores the Eighth Circuit's accurate citations to *Spokeo*, *TransUnion*, and other precedents from this Court, as well as the Eighth Circuit's reliance on its own post-*TransUnion* precedent. Pet. 14; Pet. App. 12-14. Putting the cart in front of the horse, Ms. Hekel contends "[t]he Eighth Circuit did not conduct the close-relationship analysis," Pet. 14, but wholly ignores the alternative basis for the court's holding—specifically, that she failed to include sufficient facts to allege her injuries even if such injuries were enough to confer standing. Pet. App. 12-13. Any issue Ms. Hekel might take with the cart is irrelevant because, as the Eighth Circuit correctly recognized, she does not allege there was a horse.

Similarly, Ms. Hekel contends "[t]he Eighth Circuit incorrectly concluded that Ms. Hekel failed to identify any 'downstream consequences,'" Pet. 17, when, in reality, the court said she alleged such consequences in conclusory fashion without the necessary factual underpinnings. Pet. App. 12. Ms. Hekel relies on *Lujan* for the position that courts should "presume that general allegations embrace those specific facts that are necessary to support the claim" despite later precedent—*i.e.*, *Iqbal* and *Twombly*—requiring a plaintiff to plead specific facts. Pet. 18 (alteration omitted). Ms. Hekel also argues "[t]he Eighth Circuit's opinion held that all emotional injuries

are insufficient to establish standing." *Id.* at 19. But the court, relying on its own precedent, only said that the specific types of negative emotions alleged here were not enough. Pet. App. 11-12. The Eighth Circuit appropriately declined to decide the issue of whether other emotional injuries could confer standing because it decided this case on narrower grounds—specifically, Ms. Hekel's failure to provide necessary factual allegations to plausibly establish an emotional injury. *Id.* at 12.

ARGUMENT

A. The Eighth Circuit Properly Applied this Court's and Its Own Precedents.

Ms. Hekel argues that the Eighth Circuit's decision conflicts with this Court's decisions in *Spokeo* and *TransUnion* because, in her view, an application of those decisions' "close relationship" analysis to the facts of this case leads to the conclusion that Ms. Hekel has standing. Pet. 13-19. That request for case-specific error correction fails. An application of the close-relationship analysis leads to the same result that the Eighth Circuit reached below and further highlights Ms. Hekel's pleading and evidentiary deficiencies. Thus, no conflict exists.

Ms. Hekel contends that she has standing under a close-relationship analysis because "[t]he FDCPA sections on which [she] relies are effectively a codification of common-law fraud or emotional-distress torts in the debt-collection context." Pet. 14. Ms. Hekel further contends the alleged failure to provide statutorily required disclosures "is a form of common-law fraud by nondisclosure." *Id.* at 14-15.

But fraud, even within the context of the FDCPA, requires detrimental reliance. *See, e.g.*, *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 998 (11th

Cir. 2020) ("By jettisoning the bedrock elements of reliance and damages, the plaintiffs assert [FDCPA] claims with no relationship to harms traditionally remediable in American or English courts."). Ms. Hekel contends:

> 44. [She] was actually confused and misled by the false statements.
>
> * * *
>
> 48. These false and misleading statements cased [her] an informational injury as it misled her with regard to her legal and contractual rights.
>
> 49. Hunter Warfield's improper collection efforts also caused [her] out-of-pocket costs, worry, and sleeplessness. Hunter Warfield's collection efforts cost Plaintiff time and money.

Pet. App. 38-39, ¶¶ 43, 48-49. Noticeably absent from these allegations is any explanation as to ***how*** Ms. Hekel supposedly relied on the alleged misrepresentations or suffered any resulting detriment.

Ms. Hekel does not identify any action she took or failed to take as a result of Hunter Warfield's alleged violation, including with respect to the statutorily required information she contends Hunter Warfield did not provide. The lack of any such showing defeats her standing. *See, e.g., Shields v. Prof'l Bureau of Collections of Md., Inc.*, 55 F.4th 823, 830 (10th Cir. 2022) ("Shields tries to link her alleged harms to common-law fraud. But fraud recognizes that harm may flow from relying on a misrepresentation, and Shields never pleaded reliance."); *Pierre v. Midland Credit Mgmt., Inc.*, 29 F.4th 934, 939 (7th Cir. 2022) ("But critically, Pierre didn't make a payment, promise to do so, or otherwise act to her detriment in response to anything in or omitted from the letter.") *cert. denied* 143 S.Ct. 775 (Mem) (Feb. 21, 2023); *Casillas v. Madison Ave. Assocs., Inc.*, 926 F.3d 329, 334 (7th Cir. 2019) ("[Casillas] complained only that her notice was missing some information that she did not

suggest that she would have ever used. Any risk of harm was entirely counterfactual: she was not at any risk of losing her statutory rights because there was no prospect that she would have tried to exercise them.").

Other than filing a lawsuit, the only action Ms. Hekel's complaint shows she took was providing a copy of a portion of the allegedly violative letter to her counsel.[1] But seeking legal advice regarding correspondence does not create standing, even if it costs "time and money." *See Pierre*, 29 F.4th at 939 ("Making a call to a debt collector is not closely related to an injury that our legal tradition recognizes as providing a basis for a lawsuit. Nor is seeking legal advice.") (citations omitted); *Burnett v. Convergent Outsourcing, Inc.*, 982 F.3d 1067, 1069 (7th Cir. 2020) ("A desire to obtain legal advice is not a reason for universal standing.").

Similarly, Ms. Hekel's allegations do not come close to alleging actionable emotional distress. She contends "Hunter Warfield's improper collection efforts also caused [her] out-of-pocket expenses, worry, and sleeplessness." Pet. App. 39, ¶ 49. Simply put, these types of negative emotions have historically been insufficient to establish a right to recover. *See, e.g.*, *Hitt v. Connell*, 301 F.3d 240, 250 (5th Cir. 2002) ("[H]urt feelings, anger and frustration are a part of life, and are not the types of emotional harm that could support an award of damages.") (citation and quotation marks omitted); *Price v. City of Charlotte, N.C.*, 93 F.3d 1241, 1254 (4th Cir. 1996)

[1] Ms. Hekel's complaint includes alternative allegations relating to whether the statutorily-required information was included on the back of the letter, indicating Ms. Hekel only provided her counsel a copy of the front of the letter. Pet. App. 34-35, ¶¶ 26-32.

("[N]either conclusory statements that the plaintiff suffered emotional distress nor the mere fact that a constitutional violation occurred supports an award of compensatory damages."). More recently, several courts of appeals have made clear that the types of negative emotions alleged here are insufficient to confer standing. *See Ojogwu v. Rodenburg Law Firm*, 26 F.4th 457, 463 (8th Cir. 2022) (finding "fear of answering the telephone, nervousness, restless, irritability, amongst other negative emotions" insufficient); *Pennell v. Global Trust Mgmt., LLC*, 990 F.3d 1041, 1045 (7th Cir. 2021) (finding "confusion" and "stress by itself with no physical manifestations and no qualified medical diagnoses" insufficient); *Buchholz v. Meyer Njus Tanick, PA*, 946 F.3d 855, 864 (6th Cir. 2020) (finding "anxiety" insufficient).

As the party seeking redress in federal court, it is Ms. Hekel's burden to establish standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) ("The party invoking federal jurisdiction bears the burden of establishing [the] elements [of standing.]") (citations omitted). Ms. Hekel failed to do so at the pleading stage because her allegations are vague, conclusory, and unsupported by sufficient factual content. *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009) ("It is the conclusory nature of respondent's allegations…that disentitles them to the presumption of truth."). The Eighth Circuit made clear, in no uncertain terms, that it does not matter whether Ms. Hekel's claimed injuries are sufficient for standing because she did not plead specific facts necessary to support her claims. Pet. App. 12-13 ("[E]ven if emotional injuries counted…Hekel's conclusory allegations would not. . . . Nor does she identify any *specific* 'out-of-pocket' expenses that Hunter Warfield's letter caused

her to incur.") (emphasis in original). "Hekel…does not allege that Hunter Warfield's letter prompted her to take any action at all…" *Id.* at 13 n.1. Ms. Hekel, however, does not even address the sufficiency of her allegations.

Worse, Ms. Hekel moved for partial summary judgment without providing any evidence she suffered an injury in fact. As the Eight Circuit stressed:

> Hekel had opportunities to provide more information. She eventually moved for partial summary judgment on her claim that the 6% interest rate listed in the letter was too high under Minnesota law. At that point, she needed to "set forth[,] by affidavit or other evidence[,] specific facts" supporting an injury in fact. *Lujan*, 504 U.S. at 561; *see also* Fed. R. Civ. P. 56(c)(1)(A) (requiring a moving party to "cit[e] to particular parts of . . . the record"). Her evidence, just like her compliant, never established one.
>
> Her motion papers did not include much supporting documentation, just copies of her lease and the collection letter. Although they were relevant to establish her Fair Debt Collection Practices Act claims, they did not identify an injury. Missing were receipts, bank statements, doctor's notes, or affidavits, *something* showing how she was injured. Without an injury in fact, there can be no standing. And without standing, there can be no grant of summary judgment. *See Young Am.'s Found. v. Kaler*, 14 F.4th 879, 891 (8th Cir. 2021) (vacating a "grant of summary judgment" because the plaintiffs "lack[ed] standing" to sue); *see also* Fed. R. Civ. P. 12(h)(3) (requiring "dismiss[al] [of an] action" if the court "determines at any time that it lacks subject-matter jurisdiction").

Pet. App. 13-14 (emphasis in original); *see also Lujan*, 504 U.S. at 561 ("Since they are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element [of standing] must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.").

Ms. Hekel argues "[t]he Eighth Circuit panel did not conduct the close-relationship analysis, concluding instead that both the tangible injuries Ms. Hekel

alleged…and the intangible injuries…were 'abstract' and 'insufficiently concrete.'" Pet. 14. But that is not what the court said. Ms. Hekel alleged "Hunter Warfield's violations of the FDCPA illustrate the risk of tangible harm from debt-collector misrepresentations and other misconduct, which is an increased risk of harm that itself supports standing here." Pet. App. 39, ¶ 52. The Eighth Circuit said the "risk of tangible harm" is abstract because "[t]he complaint never says what the risk is, much less whether it is 'imminent or substantial.'" Pet. App. 11 (quoting *TransUnion*, 594 U.S. at 435). The Eighth Circuit also found "her cryptic allegation about an 'increased risk of harm'" to be "neither imminent nor concrete[,]" noting "the risk of future harm [cannot] support a backwards-looking claim for damages." *Id*. (citing *TransUnion*, 594 U.S. at 436). Once again, the problem is not with the injuries Ms. Hekel is claiming, it is with her failure to allege factual content to support the injuries.

Ms. Hekel also argues she "identifies actual consequences that occurred as a result of Hunter Warfield's [alleged] statutory violations." Pet. 17. She contends she alleges "she relied on Hunter Warfield's letter," "expended 'time and money' and 'out of pocket costs' in response to its misrepresentations," and "that it caused her 'worry, and sleeplessness." *Id.* (citing Pet. App. 38-39, ¶¶ 44, 49). But such allegations are conclusory. And as the Eighth Circuit correctly noted, conclusory allegations will not support standing. Pet. App. 12-13; *see also McNaught v. Nolen*, 76 F.4th 764, 772 (8th Cir. 2023) ("[A] plaintiff…must show *how* defendant's action harm[ed] her. . . . Breezy declarations [of harm] fall well short of establishing the concrete and

particularized injury required for standing.") (citations and quotation marks omitted); *School of the Ozarks, Inc. v. Biden*, 41 F.4th 992, 997 (8th Cir. 2022) ("At the pleading stage…a plaintiff must allege sufficient facts to support a reasonable inference that it can satisfy the elements of standing.") (citation and quotation marks omitted); *see also Iqbal*, 556 U.S. at 678 ("Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'") (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). And at summary judgment, Ms. Hekel provided no evidence whatsoever to support these allegations.

The Eighth Circuit's opinion is not the result of any errors on its part but, rather, the result of Ms. Hekel's. Her injury allegations are vague, conclusory, and unsupported by specific factual content, which the Eighth Circuit correctly found would not support standing irrespective of whether the claimed injury would. Pet. App. 12-13. She then moved for partial summary judgment without providing any evidence to establish her claimed injuries. Ms. Hekel's injuries do not bear a close relationship to those recognized at common law. But it would be immaterial if they did because, as the Eighth Circuit correctly recognized, she did no more than assert conclusory allegations unsupported by facts. Further analysis would not change this inevitable outcome. The Eighth Circuit had no obligation to consider actionable, downstream consequences Ms. Hekel did not allege. And, because Ms. Hekel failed to sufficiently allege or establish any such consequences, the Eighth Circuit properly found she lacks standing. The Court should therefore deny Ms. Hekel's petition.

B. The Eighth Circuit's Opinion Does Not Deepen Any Actual or Perceived Conflict in the Courts of Appeals.

Ms. Hekel contends "[t]he Eighth Circuit's opinion held that all emotional injuries are insufficient to establish standing." Pet 19. In making this argument, Ms. Hekel conflates "negative emotions" and "emotional distress." The Eighth Circuit did not foreclose standing for true emotional injuries. Instead, it reaffirmed the position that certain negative emotions are insufficient for standing while declining to decide whether emotional distress is sufficient because Ms. Hekel failed to adequately allege it. *See* Pet. App. 11-12; *see also Bassett v. Credit Bureau Servs., Inc.*, 60 F.4th 1132, 1136 n.2 (8th Cir. 2023) ("Infliction of emotional distress and intrusion upon seclusion ***may*** be close common-law analogues to Bassett's alleged injury.") (emphasis added).

Specifically, the Eighth Circuit said:

> Alleging emotional injuries like "confus[ion]," "worry," and "sleeplessness" gets closer, but still "fall[s] short." *Ojogwu v. Rodenburg Law Firm*, 26 F.4th 457, 463 (8th Cir. 2022). The Supreme Court has not taken a "position on whether . . . an emotional or psychological harm . . . suffice[s] for Article III purposes," *TransUnion*, 594 U.S. at 436 n.7, but we have spoken on the issue. In *Ojogwu v. Rodenburg Law Firm*, we concluded that being in a "state of confusion is not itself an injury," and "nervousness, restlessness, irritability, amongst other negative emotions" are not either. 26 F.4th at 463 (first quoting *Pennell v. Glob. Tr. Mgmt., LLC*, 900 F.3d 1041, 1045 (7th Cir. 2021) and then quoting *Buchholz v. Meyer Njus Tanick, PA*, 946 F.3d 855, 864 (6th Cir. 2020)). Hekel's complaint substitutes some words—"sleeplessness" for "restlessness" and "worry" for "nervousness"—but the "negative emotions" they describe are basically the same. *Id.* at 463. And under *Ojogwu*, none gives rise to standing. *Id.*; *see also Liberty Mut. Ins. Co. v. Elgin Warehouse & Equip.*, 4 F.3d 567, 571 (8th Cir. 1993) ("In this circuit[,] only an en banc court may overrule a panel decision . . . .").

> Moreover, even if emotional injuries counted, *see Bassett*, 60 F.4th at 1136 n.2 (suggesting that the "[i]nfliction of emotional distress" might), Hekel's conclusory allegations would not. They are "naked assertion[s]" of emotional harm, "devoid of further factual enhancement." *Auer v. Trans Union, LLC*, 902 F.3d 873, 878 (8th Cir. 2018) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Without supporting facts, they are just labels that "fall[] short of plausibly establishing injury." *Id.*; *see Miller v. Redwood Toxicology Lab'y*, 688 F.3d 928, 934 n.5 (8th Cir. 2012) (deeming it "necessary to include some well-pleaded factual allegations" to demonstrate an injury in fact (citation omitted)).

Pet. App. 11-12.

The Eighth Circuit's opinion is not a referendum on emotional injuries, as Ms. Hekel contends. It instead holds that Ms. Hekel failed to meet well-established pleading standards. To be sure, the decision below is consistent with opinions from the Seventh and Ninth Circuits which hold that certain negative emotions are not enough for standing. *See Pierre*, 29 F.4th at 939 ("But worry, like confusions, is insufficient to confer standing in this context."); *Adams v. Skagit Bonded Collectors, LLC*, 836 F. App'x 544, 547 (9th Cir. 2020) ("Nothing in the Complaint suggests [the plaintiff] took or forewent any action because of the allegedly misleading statements in the letters. Rather, the Complaint includes a bare allegation of confusion. Without more, confusion does not constitute an actual harm to [the plaintiff's] concrete interests."). But because the Eighth Circuit did not reach the question of whether emotional injuries are ever sufficient, its opinion is not at odds with opinions from the Fourth, Fifth, and Eleventh Circuits, even if those opinions might be understood to hold that certain forms of emotional distress are sufficient for standing. *See Calogero v. Shows, Cali & Walsh, L.L.P.*, 95 F.4th 951, 958 (5th Cir. 2024); *Toste v. Beach Club at Fontainebleau Park Condo. Ass'n, Inc.*, Case No. 21-14348, 2022 WL

4091738, at *1 (11th Cir. Sept. 7, 2022); *Ben-Davies v. Blibaum & Assocs., P.A.*, 695 F. App'x 674, 676-77 (4th Cir. June 1, 2017).

Importantly, the foregoing opinions did not hold that the particular types of negative emotions at issue here are concrete injuries in fact. The Fifth Circuit said "'emotional distress' is a traditional harm[,]" based on its precedent, and noted one plaintiff "was so 'terrified' by [defendant's] unlawful threat to sue and by the prospect of losing her home that she agreed to make monthly payments on a promissory note." *Calogero*, 95 F.4th at 958. Unlike Ms. Hekel, the plaintiff linked the claimed emotional distress to actual negative consequences. Based on its precedent, the Eleventh Circuit did not even reach the question of whether emotional distress alone qualifies as an injury in fact. *Toste*, 2022 WL 4091738 at *4 ("And while we have not yet decided in a published opinion whether emotional distress alone is a sufficiently concrete injury for standing purposes, we have found standing where the plaintiff experienced *both* emotional distress manifesting in a loss of sleep *and* wasted time spent resolving problems caused by the defendant's mistakes.") (emphases added; citation omitted). The Fourth Circuit's unpublished opinion predates *TransUnion* but it, too, does not rely solely on "emotional distress," as the plaintiff there also alleged anger and frustration. *Ben-Davies*, 695 F. App'x at 676. Here, Ms. Hekel does not allege those types of injuries, and the Eighth Circuit did not address them.

Even if and to the extent that the foregoing cases involve a narrow circuit split, the Eighth Circuit's analysis of the distinct types of emotional harms alleged here does not deepen the divide. The Court should therefore deny Ms. Hekel's petition

because this case is not a sound vehicle for the Court to resolve any split that might exist.

CONCLUSION

For the reasons stated herein, the Court should deny the petition for writ of certiorari.

Respectfully submitted,

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