STATE OF WISCONSIN
SUPREME COURT
APPEAL NO.: 2022AP001728

HEATHER GUDEX,

Plaintiff-Respondent,

v.

FRANKLIN COLLECTION SERVICE, INC.,

Defendant-Appellant-Petitioner.

BRIEF OF RESPONDENT HEATHER GUDEX

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INTRODUCTION

This appeal is concerned with consumers' access to Wisconsin courts. Petitioner Franklin Collection Services, Inc. ("Franklin") mailed Respondent Heather Gudex ("Gudex"), and a class of Wisconsin residents, debt collection letters containing false threats of legal action in connection with debts as little as fifty dollars. The false threat of legal action violates both the Wisconsin Consumer Act, Chs. 421-427, Wis. Stats. (the "WCA") and the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq*. (the "FDCPA").

Having no viable defense on the merits, Franklin advances two arguments in an effort to thwart consumers' access to Wisconsin courts. First, Franklin argues an offer of "complete individual relief" pursuant to the notice process under Wis. Stat. § 426.110(4) bars class actions brought under the WCA and FDCPA. Second, Franklin wrongly attempts to import federal standing doctrine into Wisconsin courts. Both arguments miss the mark.

I. ISSUES PRESENTED.

i. Whether Franklin's offer of relief to Gudex constitutes an "appropriate remedy" under Wis. Stat. § 426.110(4)(c) where it failed to provide for any monetary recovery to the class.

Trial Court Answered: No.

Court of Appeals Answered: No.

ii. Whether Franklin's offer of relief to Gudex constitutes "complete individual relief," where it fails to provide for either reasonable costs and attorney fees or punitive damages.

Trial Court: Did not reach this issue.

Court of Appeals: Did not reach this issue.

iii. Whether Gudex may obtain a monetary recovery on behalf of a class of similarly situated consumers under the FDCPA, 15 U.S.C. § 1692k(a) independent of the procedure set forth under Wis. Stat. § 426.110(4).

Trial Court: Did not reach this issue.

Court of Appeals: Did not reach this issue.

iv. Whether Gudex has standing to seek statutory damages as a person "injured" under Wis. Stat. § 427.105(1).

Trial Court Answered: Yes.

Court of Appeals Answered: Yes.

II. STATEMENT ON ORAL ARGUMENT AND PUBLICATION.

The issues presented in this appeal warrant oral argument and a published decision.

III. STATEMENT OF THE CASE.

A. Statement of Facts.

On February 23, 2021, Franklin mailed a form debt collection letter to Gudex referencing a debt in the amount of $51.13 owed to "AT&T." Summons & Complaint ("Compl.") (R. 2), ¶¶ 9-13, Ex. A. The letter also states:

> IF YOU ARE NOT PAYING THIS ACCOUNT, CONTACT YOUR ATTORNEY REGARDING OUR POTENTIAL REMEDIES, AND YOUR DEFENSES, OR CALL (877) 264-2172.

Consumers receiving this letter would understand that Franklin or AT&T intended to sue them. *Id*. (R. 2), ¶¶ 14, 18. Franklin, an out-of-state collection agency, is not a law firm, does not sue

consumers in Wisconsin, and has no insight into AT&T's consumer litigation policies, which do not authorize litigation for commercially unreasonable amounts like those owed here. *Id*. (R. 2), ¶¶ 28-33. Additionally, Franklin's letter overshadows the validation notice required under the FDCPA by directing consumers to dispute the debt by telephone rather than in writing, in violation of 15 U.S.C. § 1692g(b). Franklin's letter caused Gudex confusion and anxiety. *Id*. (R. 2), ¶¶ 22-23, 49-51.

B. Procedural Posture.

Gudex filed her Complaint on March 31, 2021, seeking class-wide statutory damages under the FDCPA and class-wide injunctive relief under the WCA. Franklin filed a motion to dismiss (the "Motion to Dismiss") and supporting papers on June 18, 2021. R. 7-9. Franklin's Motion to Dismiss challenged Gudex's claims on the merits, as well as Gudex's standing to sue in Wisconsin court. *Id*. The Circuit Court, Judge Carl Ashley presiding, ruled against Franklin with respect to both issues, finding that Gudex stated a claim and had standing to assert her claims. *See* Order on Defendant's Motion to Dismiss (R. 34).

Shortly thereafter, Gudex propounded written discovery requests relating to the size of the class and Franklin's net worth. *See* Affidavit of Ben J. Slatky in Support of Plaintiff's Motion for Class Certification ("Slatky Aff.") (R. 50), Ex. A. In response, Franklin provided Gudex with a balance sheet indicating its net worth was

such that the class could recover a greater amount of statutory damages under the WCA than the FDCPA.[1] *Id*.

Accordingly, on January 11, 2022, Gudex promptly sent Franklin notice, pursuant to Wis. Stat. § 426.110(4)(e), of her intent to seek monetary damages on behalf of the class under the WCA. *See* Affidavit of Andrew P. Trevino in Opposition to Plaintiff's Motion for Class Certification ("Trevino Aff."), Ex. A. (R. 53-2). Franklin responded to the demand on March 15, 2022, with an offer, purportedly made pursuant to Wis. Stat. § 426.110(4)(c), to provide Gudex with $1,000.00 in individual damages as well as certain "stipulated injunctive relief."[2] Trevino Aff., Ex. B (R. 53-3-4). Gudex ultimately rejected Franklin's offer.

On May 27, 2023, Gudex filed a Motion for Class Certification (the "Motion for Class Certification") and supporting materials (R. 46-50). The motion sought certification of a class of Wisconsin consumers for both monetary relief, under Wis. Stat. § 803.08(2)(c), and injunctive relief, under Wis. Stat. § 803.08(2)(b). *Id*. In opposition to the motion, Franklin argued the class of consumers proposed by Gudex failed to satisfy the requirements of Wis. Stat. § 803.08. *See* Defendant's Brief in Opposition to Plaintiff's Motion for Class Certification (R. 52). Franklin also argued that certification was

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[1] *Compare* 15 U.S.C. § 1692k(a)(2)(B) (statutory damages capped at the lesser of $500,000 or 1% of debt collector's net worth) *with* Wis. Stat. § 426.110(14) (capping statutory damages at $100,000 irrespective of defendant's net worth); *see also* Wis. Stat. § 425.301(4) (consumers may recover statutory damages under the federal consumer credit protection act or the WCA but not both).

[2] $1,000.00 is the maximum amount of statutory damages recoverable by an individual plaintiff under Wis. Stat. § 425.304(1).

foreclosed because Gudex's individual claims were moot in light of its offer of "complete individual relief." *Id*. After full briefing and oral argument, the Circuit Court, Judge Frederick C. Rosa presiding, issued an order rejecting each of Franklin's arguments. *See* Decision and Order (R. 70).

In response, on October 10, 2022, Franklin commenced the present interlocutory appeal under Wis. Stat. § 803.08(11). *See* Notice of Appeal (R. 74). On April 6, 2023, after the close of briefing, Franklin filed a Petition to Bypass, which was denied on June 22, 2023. The Court of Appeals issued its Decision and Order, *per curiam*, on December 3, 2024, rejecting Franklin's arguments and affirming the Circuit Court.

On January 2, 2025, Franklin filed its Petition for Review. On January 17, 2025, Gudex submitted her Response to Petition for Review, which did not oppose review, concurring that review may be beneficial, particularly with respect to issues relating to notice under Wis. Stat. § 426.104. This Court granted the Petition for Review on April 13, 2025.

IV. LEGAL STANDARDS.

Franklin appeals under Wis. Stat. § 803.08(11)(b). The decision whether to grant or deny a motion for class certification is committed to the circuit court's discretion. *See, e.g., Harwood v. Wheaton Franciscan Servs., Inc.*, 2019 WI App 53, ¶ 41, 388 Wis. 2d 546, 933 N.W.2d 654. This Court should "only reverse the certification decision if the court erroneously exercised its discretion." *Id*. (citing *Hammetter v. Verisma Sys., Inc.*, 2021 WI App 53, ¶ 9, 399 Wis. 2d 211, 963 N.W.2d 874, *review denied*, 2022 WI 98). The circuit court properly exercises its discretion

when "it examines the relevant facts, applies a proper legal standard and, in a rational process, reaches a conclusion that a reasonable judge could reach." *Id*. (citing *Cruz v. All Saints Healthcare Sys., Inc.*, 2001 WI App 67, ¶11, 242 Wis. 2d 432, 625 N.W.2d 344).

ARGUMENT

This Court should affirm the decisions of the Court of Appeals and Circuit Court, which certified the class under Wis. Stat. §§ 803.08(2)(b) and 803.08(2)(c).[3] As the Circuit Court recognized, Gudex's claims present an ideal case for class certification. *See* Decision and Order (R. 70) (the "Class Cert. Order") at 9-13. In affirming the Class Certification Order, the Court of Appeals correctly decided both of the issues raised by the present appeal.

First, the Court of Appeals correctly determined that Franklin's offer to resolve the matter for $1,000.00 in monetary damages to Gudex individually did not constitute an "appropriate remedy" pursuant to Wis. Sat. § 426.110(4)(c) and therefore posed no impediment to class certification. Decision, ¶¶ 8-14. Furthermore, in the event this Court disagrees that class-wide relief constitutes an "appropriate remedy" in this case, there are ample alternative grounds to affirm the decision. First, the relief offered by Franklin was facially inadequate even as an individual remedy because it failed to include either costs and attorney fees or punitive damages. Moreover, Gudex may pursue claims for class-wide monetary damages under

[3] Wis. Stat. §§ 803.08(2)(b) and 803.08(2)(c) provide for certification of class actions seeking injunctive or declaratory relief and monetary damages, respectively, and are analogous to Fed. R. Civ. P. 23(b)(2) and 23(b)(3).

the FDCPA, 15 U.S.C. § 1629k(a), as an alternative to Wis. Stat. § 426.110.

Additionally, the Court of Appeals correctly held that Gudex clearly had standing to pursue her claims for statutory damages absent any claim for actual damages. *Id*., ¶¶ 15-17. Properly rejecting Franklin's reliance on "several federal cases," *id.* ¶ 17 n. 4, the Court of Appeals concluded that consumers can seek relief under the WCA in Wisconsin state courts, even if they did not suffer any actual damages, *id.* ¶ 16.

I. FRANKLIN'S OFFER OF "COMPLETE INDIVIDUAL RELIEF" IS INSUFFICIENT TO AVOID CLASS CERTIFICATION.

Franklin's offer, purportedly made pursuant to Wis. Stat §§ 426.110(4)(c) and 426.109, provides for the maximum statutory damages to Gudex along with certain injunctive relief, but provides no recovery to the class.[4] *See* Trevino Aff., Ex. B (R. 53-3-4). Franklin argues this offer "moots" Gudex's claims, thus precluding class certification. *See* Brief of Defendant-Appellant-Petitioner ("Br.") at 14-35.

Both the Circuit Court and the Court of Appeals recognized that allowing a defendant to avoid class liability by tendering individual statutory relief undermines the express purpose of the WCA and would effectively nullify private enforcement of the Act. First, Judge Rosa determined: "[Franklin] did not offer Gudex an appropriate remedy sufficient to bar Gudex's individual and class

[4] At the hearing on the Motion for Class Certification, Franklin's counsel described the offer as "wav[ing] the white flag of surrender." *See* Transcript of August 4, 2022 Hearing (R. 80) at 17.

claims pursuant to Wis. Stat. § 426.110(4)(c) because the remedy does not appropriately address the whole class." Order on Class Cert. (R. 70) at 8. The Circuit Court further reasoned:

> If [Franklin]'s interpretation is true, then any class action for damages would be unduly difficult to maintain. All a defendant would need to do is pay off the lead plaintiff to prevent class certification. This scenario is contrary to the purpose of allowing class action suits for violations of the WCA.

Id. at 8.

The Court of Appeals affirmed this ruling, concurring entirely with Judge Rosa's underlying reasoning:

> Thus, interpreting Wis. Stat. § 426.110(4)(c) to only require an offer of individual relief, and not class-wide relief, would be contrary to the purpose of allowing class action lawsuits in Wisconsin. As the circuit court found, requiring an offer of only individual relief to bar a plaintiff's claims would make a class action "unduly difficult to maintain" as "[a]ll a defendant would need to do is pay off the lead plaintiff to prevent class certification." Thus, we conclude that the circuit court properly found that FCS's offer in this case did not moot Gudex's individual claims and preclude Gudex from maintaining a class action for damages.

Decision, ¶ 14.

Should this Court disagree that class-wide relief is an "appropriate remedy" in this case, there are alternative grounds to affirm the Decision. Indeed, even if Franklin could avoid class certification by offering "complete individual relief," Franklin did not do that. First, the offer failed to provide complete relief because it did not include payment of Gudex's reasonable costs and attorney fees, which the WCA and FDCPA both require. *See* Wis Stat. §§ 425.304 & 426.110(15); 15 U.S.C. § 1692k. Second, the offer failed to provide complete relief because it did not include punitive damages, which are necessary to deter similar wrongdoing. Wis. Stat. § 425.301(1); *see also Hughes v. Kore of Ind. Enter.*, 731 F.3d 672, 677 (7th Cir. 2013).

Furthermore, Franklin's argument fails because Wis. Stat. § 426.110(4)(c) is simply inapplicable to Gudex's claims for monetary relief under the FDCPA. By its own terms, the provision could only bar class monetary recovery under the WCA.

Franklin's brief largely ignores these arguments, despite the fact that Gudex raised them in her Response to the Petition for Review and throughout litigation. *See, e.g.*, Response to Petition for Review at 11-13. Instead, Franklin renews its argument that Gudex's failure to send "pre-suit" notice precludes certification. Br. at 34-35. Aside from the fact that Franklin failed to raise this argument in its Petition for Review, the argument simply ignores the post-suit notification process set forth under Wis. Stat. § 426.110(4)(e).

A. The Court of Appeals Correctly Affirmed the Circuit Court's Determination that Franklin Failed to Provide an "Appropriate Remedy" Because its Offer did not Include any Monetary Relief to the Class.

In Franklin's brief and throughout litigation, the question of *what* constitutes an "appropriate remedy" has largely overshadowed a second important and related question of *who* decides the first question. Franklin is, of course, comfortable designating itself as the arbiter of Gudex's claims. Indeed, the fact that Gudex squarely rejected its offer is of zero import to Franklin.

The question of *what* constitutes an "appropriate remedy" cannot necessarily be boiled down to simply "individual" or "class-wide" relief. In cases such as this, where a plaintiff rejects an offer made pursuant to Wis. Stat. § 426.110(4), the circuit court must make this determination. Accordingly, interpreting language Franklin refers to as "nearly identical notice and remedy provisions,"

California courts have determined that the trial court has broad discretion in determining what may be deemed an "appropriate remedy" in light of the totality of the circumstances. *See, e.g.*, *Valdez v. Seidner-Miller, Inc.*, 33 Cal. App. 5th 600 (2019); *Benson v. Southern California Auto Sales, Inc.*, 239 Cal. App. 4th 1198, 1205 (2015); *see also Stewart v. Albertson's, Inc.*, 481 P.3d 978, 991 (Ore. Ct. App. 2021) (interpreting an analogous Oregon statute, finding: "the word 'appropriate' is inherently context dependent").

Consistent with this authority, Gudex's position has always been that circuit courts should be given broad discretion in determining what constitutes an "appropriate remedy" in any given case, including the scope of such remedy. Echoing the Circuit Court's decision, the Court of Appeals concluded: "Thus, interpreting WIS. STAT. § 426.110(4)(c) to *only* require an offer of individual relief, and not class-wide relief, would be contrary to the purpose of allowing class action lawsuits in Wisconsin." Decision, ¶ 14 (emphasis added). To the extent this conclusion may be construed to hold that an "appropriate remedy" under Wis. Stat. § 426.110(4)(c) must categorically provide class-wide monetary relief, this is respectfully *not* Gudex's position. As a practical matter, the Court of Appeals largely deferred to Judge Rosa's reasoning, in concluding: "the circuit court properly found that [Franklin]'s offer *in this case* did not moot Gudex's individual claims and preclude Gudex from maintaining a class action for damages." *Id*. (emphasis added). All things considered, allowing the circuit court broad discretion to determine whether the relief offered by a defendant represents

an "appropriate remedy" under Wis. Stat. § 426.110(4)(c) presents the most sensible approach to resolving such disputes.

1. The Court of Appeals correctly determined that Wis. Stat. § 426.110(4)(c) is silent as to whether an "appropriate remedy" requires individual or class-wide relief.

In concluding that the term "appropriate remedy" under Wis. Stat. § 426.100(4)(c) may entail class-wide relief, the Court of Appeals reasoned:

> The statute is silent as to whether an "appropriate remedy" requires individual relief or relief for the whole class. The statute's silence on the issue renders the statute ambiguous. Consequently we look beyond the language of the statute to ascertain the legislative intent.

Decision, ¶ 11 (citing *State ex rel. Kalal v. Circuit Ct. for Dane Cnty.*, 2004 WI 58, ¶¶ 47-48, 271 Wis. 2d 633, 681 N.W.2d 110). In seeking to resolve the inherent ambiguity, the Court of Appeals also correctly noted:

> Statutory language is interpreted "to avoid absurd or unreasonable results." When a statute is ambiguous (i.e., when it "is capable of being understood by reasonably well informed persons in two or more senses"), we turn to the "scope, history, context, and purpose of the statute" to resolve the ambiguity.

Decision, ¶ 10 (quoting *Kalal*, 2004 WI 58 at ¶¶ 46-48) (internal citations omitted).

Franklin argues that the Court of Appeals "erred in concluding that the statute is silent as to whether an offer made in response to a pre-suit notice and demand must be made to the individual party or putative class." Br. at 15. Specifically, Franklin argues that the Decision ignored the phrase "to such party" included in Wis. Stat. § 426.110(c). *Id*. at 23-25. Additionally, Franklin argues Gudex's interpretation of Wis. Stat. § 426.110(c) would render the provision

superfluous in light of Wis. Stat. § 426.110(d). *Id*. at 25-27. Both arguments are mistaken.

First, the definition of "party" in the context of Wis. Stat. § 426.110(4)(c) is not as clear as Franklin asserts. Of course, "party," in its most common usage, denotes a group of similarly situated individuals. Notably, the first definition of "party" provided by Merriam-Webster is "a person or group taking one side of a question, dispute, or contest." *See* Merriam-Webster.com Dictionary.[5] Similarly, at the time the WCA was enacted, Black's Law Dictionary defined "parties" as "[t]he persons who take part in the performance of any act, or who are directly interested in any affair, contract, or conveyance, or who are actively concerned in the prosecution and defense of any legal proceeding." Black's Law Dictionary, 1275 (4th rev. ed. 1968).

Accordingly, the class, as a whole, may be defined as a "party."[6] *See, e.g.*, *Williams v. Homeland Ins. Co.*, No. 19-cv-288, 2019 U.S. Dist. LEXIS 228345, *8, 2019 WL 8112879 (W.D. La. Oct. 28, 2019) ("The Class is a party in privy with CorVel by virtue of its assignment of rights."); *Hansen v. Tinder, Inc.*, No. 15CVP-0155, 2018 Cal. Super. LEXIS 2462, *4 (Cal. Super. Sept. 28, 2018) ("Moreover, members of a

[5] Available at https://www.merriam-webster.com/dictionary/party (last accessed May 30, 2025).

[6] Franklin may point to additional case law which, on the one hand, holds that absent class members are a party to litigation, *see, e.g.*, *Lopez-Gonzales v. Ramos*, No. 20-cv-061, 2021 U.S. Dist. LEXIS 140943 (N.D. Tex. July 28, 2021); *Salmonsen v. CGD, Inc.*, 377 S.C. 442 (S.C. 2008), and, on the other hand, are *not* a party to litigation, *see, e.g.*, *Smith v. Bayer Corp.*, 564 U.S. 299 (2011). Ultimately, such contradictory usage only confirms the term "party" in the context of class action litigation is inherently ambiguous.

class are generally permitted to intervene in an action to which *the class is a party*.") (emphasis added); *Boardley v. Household Fin. Corp. III*, 39 F. Supp. 3d 689, 706 (D. Md. 2014) ("Generally, an absentee class member who receives adequate notice of an action *to which his class is a party*, and who fails to opt out by the deadline stated in the notice, is bound by the disposition of the action, including settlement.") (emphasis added) (quoting *Smith v. Capital One Auto Fin., Inc.*, No. 11-cv-1023, 2012 U.S. Dist. LEXIS 2476, *6, 2012 WL 48380 (D. Md. Jan. 9, 2012)); *Snider v. State, Dep't of Transp.*, 445 N.W.2d 578, 581 (Minn. Ct. App. 1989) ("[T]he class is a party under Minn. Stat. § 3.76."); *New Orleans Public Service, Inc. v. United Gas Pipe Line Co.*, 719 F.2d 733, 735 (5th Cir. 1983) ("If a judge is a member of a class which has been declared, and the class is a party to the litigation in which the judge is considering participation, that judge would be disqualified."). Referring to the class as whole as a "party" is also consistent with the common reference to class representatives as "party plaintiffs." *See, e.g.*, *Walsh v. Lovin Contr. Co.*, No. 21-CV-360, 2023 U.S. Dist. LEXIS 75201 (W.D. N.C. March 17, 2023); *Usry v. EquityExperts.org, LLC*, No. 19-cv-116, 2019 U.S. Dist. LEXIS 39651 (S.D. Ga. March 12, 2019); *Ceisler v. First Pennsylvania Corp.*, No. 89-cv-9234, 1991 U.S. Dist. LEXIS 6526 (E.D. Penn. May 10, 1991).

While Franklin elsewhere takes issue with the form of Gudex's notice, which demanded relief on behalf of the putative class pursuant to Wis. Stat. § 426.110(4)(e), this demand is entirely

consistent with this understanding of the term "party."[7] *See* Br. at 35; *see also* Trevino Aff., Ex. 2 (R. 53-3).

Similarly, the provision of Wis. Stat. § 426.110(4)(d) does not render Gudex's interpretation of Wis. Stat. § 426.110(4)(c) superfluous. Wis. Stat. § 426.110(4)(d) provides that, *at any point* after receiving notice pursuant to Wis. Stat. § 426.110(4), a defendant can resolve a class action under the WCA by tendering notice and an "appropriate remedy" to absent class members. Meanwhile, Wis. Stat. § 426.110(4)(c) provides that, *within thirty days* of receiving notice, a defendant may resolve a class action by providing an "appropriate remedy," without specifying whether such remedy must be individual or class-wide. Franklin's argument is based on its misapprehension of Gudex's position that, in every case, an "appropriate remedy" under Wis. Stat. § 426.110(4)(c) *must* include class-wide relief. This is not Gudex's position. As stated *supra*, § I.A., what constitutes an "appropriate remedy" under Wis. Stat. § 426.110(4)(c) should be left to the discretion of the circuit court. Though what constitutes an "appropriate remedy" under Wis. Stat. § 426.110(4)(d) may also implicate a court's discretion, under that provision the remedy *must* be class-wide, whereas under subsection (c), the circuit court has discretion with respect to the scope of the relief offered.

[7] Indeed, the ambiguity with respect to the term "party" under Wis. Stat. § 426.110(4)(c) may be understood to afford a plaintiff discretion with whether to submit their demand on an individual or class-wide basis. Notably, Wis. Stat. § 426.110(1) entitles "any customer affected" to bring an action, whereas Wis. Stat. § 426.110(4) refers to "any party."

Ultimately, because Wis. Stat. § 426.110(4)(c) is ambiguous, the Court of Appeals correctly determined that the statute should be interpreted to provide broad relief to Wisconsin consumers:

> As [Franklin] acknowledges, "Chapters 421 to 427 shall be liberally construed and applied to promote their underlying purposes and policies," which includes the "protect[ion] [of] customers against unfair, deceptive, false, misleading and unconscionable practices by merchants" as well as "encourag[ing] the development of fair and economically sound consumer practices in consumer transactions." To that end, any person affected by a violation of the WCA or FDCPA is empowered to bring a class action in Wisconsin.

Decision, ¶ 12 (internal citations omitted); *see also* Wis. Stat. § 425 (providing that customer remedies "shall be liberally administered"); *First Wis. Nat'l Bank v. Nicolaou*, 113 Wis. 2d 524, 535, 335 N.W.2d 390 (1983) ("Private enforcement of consumer protection litigation, such as the WCA, should be facilitated to accomplish the broad remedial purposes intended by the legislature.").

2. The California statute and secondary sources cited by Franklin are entirely unpersuasive.

Perhaps recognizing its arguments regarding the plain language of Wis. Stat. § 426.110(4) fall short, Franklin cites various extrinsic sources in support of its preferred reading of the statute. In particular, Franklin argues that the relevant provisions of the WCA were modeled on Cal. Civ. Code § 1782, and that the differences in the provisions represent a "manifest intent" of the Wisconsin legislature to stifle class actions under the WCA. Br. at 27-34. Franklin, however, utterly fails to establish any basis for the proposition that the WCA was modeled after the California law, as opposed to a common model law, for example, or that the differences in the laws

convey the purpose Franklin attempts to establish. Recognizing the tenuous nature of this argument, the Court of Appeals noted:

> We note that [Franklin] discusses California's Consumer Legal Remedies Act and argues that if the Wisconsin legislature had intended to require class-wide relief, it would have followed the California code. Instead, according to [Franklin], the Wisconsin legislature intentionally departed from California's code. [Franklin], however, does not cite any sources for its assertion that the Wisconsin legislature intentionally departed from California's code. Accordingly, we do not find this line of reasoning persuasive.

Decision, n. 2.

Indeed, the only authority cited by Franklin which purports to support its arguments is a law review article by Edward Heiser. Edward J. Heiser Jr., Wisconsin Consumer Act - A Critical Analysis, 57 MARQ. L. REV 389, 478 (1974). The language quoted from the article, however, merely argues that "the WCA represents a hard-fought series of compromises between consumer advocate groups and creditor groups." Br. at 29 (citing Heiser, 57 MARQ. L. REV at 478). To the extent the article even addresses the issue at hand, it simply states: "If the merchant remedies the alleged error or agrees to remedy such violation in a reasonable time within thirty days after receipt of such notice, no class action may be maintained by that customer." *Id*. (citing Heiser, 57 MARQ. L. REV at 478). Meanwhile, another contemporaneous law review article directly contradicts Franklin, concluding that "appropriate remedy" necessarily means "appropriate remedy to all consumers within the class." Thomas D. Crandall, "Wisconsin Consumer Credit Laws Before and After the Consumer Act," 1973 Wis. L. Rev. 334, 380. Together, these articles strongly support the decisions finding the statute ambiguous.

B. Franklin's Argument Regarding "Pre-Suit" Notice is Baseless.

In its brief, Franklin renews its arguments that certain defects with respect to Gudex's notice under Wis. Stat. § 426.110(4) provide an independent basis for this Court to reverse the decisions of the Circuit Court and Court of Appeals. In particular, Franklin argues that "pre-suit" notice is required under Wis. Stat. § 426.110(4)(a).[8] Notably, Franklin failed to raise this argument in either its Petition for Review or in its brief before the Court of Appeals.[9]

Regardless, Franklin's argument simply ignores that Gudex properly commenced this action seeking injunctive relief under the WCA in accordance with Wis. Stat. § 426.110(4)(e), which specifically authorizes plaintiffs to seek class-wide injunctive relief without following the pre-suit notice procedure. Indeed, the post-suit notice procedure is particularly fitting for cases like this, where the consumer commences an action for damages under another cause of action and seeks injunctive relief under the WCA, only to learn in discovery that they are better off seeking damages under the WCA. *See* Slatky Aff. (R. 66), ¶ 2; *compare also* 15 U.S.C. § 1692k(a)(2)(B)

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[8] Franklin also takes issue with Gudex's purported failure to send the notice via certified mail pursuant to Wis. Stat. § 426.110(4)(b). Gudex's understanding of the relevant provisions are that subsection (b) applies only to "pre-suit" notices sent pursuant to subsection (a) as opposed to notices sent after the commencement of litigation pursuant to subsection (e) given any alternative reading would implicate concerns relating to *ex parte* communications. Regardless, there is no dispute that Franklin received the notice through its counsel.

[9] Franklin did raise this argument before the Circuit Court. Within its otherwise well-reasoned written order, the Circuit Court erroneously determined that pre-suit notice was required under Wis. Stat. § 426.110(4)(a), but nevertheless concluded that the subsequent notice cured this defect. *See* Decision and Order (R. 70-4) at 3-14.

(statutory damages capped at the lesser of $500,000 or 1% of debt collector's net worth) *with* Wis. Stat. § 426.110(14) (capping statutory damages at $100,000 irrespective of defendant's net worth); *see also* Wis. Stat. § 425.301(4) (consumers may recover statutory damages under the federal consumer credit protection act or the WCA but not both).

Franklin highlights that Gudex's prayer for relief sought monetary damages on behalf of a class without distinguishing the statutory basis for such relief. Br. at 13. Wisconsin Courts, however, have held "a prayer for relief is not a substantive part of the complaint." *Soderlund v. Zibolski*, 2016 WI App 6, ¶ 28, 366 Wis. 2d 579, 874 N.W.2d 561 (citing *John v. John*, 153 Wis. 2d 343, 450 N.W.2d 795 (Ct. App. 1989)).

C. Franklin's Offer Failed to Provide "Complete Individual Relief" Because It Included Neither Costs and Attorney Fees nor Punitive Damages.

Aside from lacking any remedy for putative class members, Franklin's offer is also inadequate because Franklin did not include reasonable costs and attorney fees or punitive damages. While neither the Circuit Court nor the Court of Appeals reached these issues, both provide independent, alternative grounds for affirming the decisions.

1. Franklin's offer failed to include costs and attorney fees.

The WCA and FDCPA both require defendants to pay the reasonable costs and attorney fees of a prevailing plaintiff.[10] *See*

[10]"In order to prevail in a consumer protection action, it is sufficient that a consumer satisfy one of two tests." *Killian v. Mercedes-Benz United States, LLC*, 2011 WI 65, ¶ 44, 335 Wis. 2d 566, 799 N.W.2d 815 (citing *Cmty. Credit Plan, Inc. v. Johnson*, 228 Wis. 2d 30, 35, 596 N.W.2d 799 (1999)). The first test is the

Wis. Stat. §§ 425.308 & 426.110(15); 15 U.S.C. § 1692k. Franklin's offer is therefore inadequate because it fails to include payment of any costs or fees.

Indeed, Franklin's offer not only failed to include for payment of such costs and fees, but expressly disclaimed any liability for them. Specifically, the offer stated: "Franklin in no way stipulates or concedes that plaintiff is or was a prevailing party under Wis Stat. §§ 425.308 or 426.110(15), or that the plaintiff is otherwise entitled to attorney fees under state or federal law…" *See* Trevino Aff, Ex. 2 (R. 53-3). An offer to resolve a fee-shifting case that expressly reserves a right to contest the opposing party's right to recover reasonable costs and attorney fees is not an offer of "complete individual relief." *See, e.g., Alberte v. Anew Health Care Servs.*, 2004 WI App 146, ¶ 6, 275 Wis. 2d 571, 685 N.W.2d 614 ("When an offer-of-settlement provision is implicated, as it is here, costs are added to any settlement, ***unless the terms of the settlement provide otherwise***.") (emphasis added).

To the extent Franklin argues it should not be required to pay any costs or attorney fees because Gudex purportedly failed to provide "pre-suit notice," Franklin again largely ignores Wis. Stat. § 426.110(4)(e), which expressly authorizes plaintiffs to bring class actions for injunctive relief and then seek class-wide damages after providing notice. *See, supra*, § I.B. Furthermore, even if Gudex had

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"Catalyst Test," which simply "requires that the consumer show (1) a causal link between his or her lawsuit and the relief obtained, and (2) that the defendant's conduct in response to the lawsuit was required by law." *Killian*, 2011 WI 65, ¶ 44. The second test is the "Substantial Benefit Test," which looks to "(1) whether the consumer received a significant benefit sought in litigation, and (2) whether there was a violation of consumer protection statute by the defendant." *Killian*, 2011 WI 65, ¶ 45. Gudex would readily satisfy both tests.

opted to send notice prior to commencing litigation pursuant to Wis. Stat. § 426.110(4)(a), some amount of fees and costs would have nevertheless accrued.

2. Any offer of "complete individual relief" should include punitive damages.

Along with costs and fees, Gudex is also entitled to punitive damages under the WCA.[11] Specifically, Wis. Stat. § 425.301(1) expressly provides:

> The remedies provided by this subchapter shall be liberally administered to the end that the customer as the aggrieved party shall be put in at least as good a position as if the creditor had fully complied with chs. 421 to 427. Recoveries under chs. 421 to 427 shall not in themselves preclude the award of punitive damages in appropriate cases.

Accordingly, Wisconsin courts have held that punitive damages are available under the WCA. *See, e.g.*, *Hollibush v. Ford Motor Credit Co.*, 179 Wis. 2d 799, 813, 508 N.W.2d 449, 455; *see also Gonzales v. Kohn Law Firm, S.C.*, No. 13-cv-168, 2014 U.S. Dist. LEXIS 6750, at *17-19 (E.D. Wis. Jan. 17, 2014) (plaintiff stated claim for punitive damages under the WCA).

In Wisconsin, a party may recover punitive damages if "the defendant acted maliciously toward the plaintiff or in an intentional disregard of the rights of the plaintiff." *Gonzales*, 2014 U.S. Dist. LEXIS 6750, at *17 (quoting Wis. Stat. § 895.043). Given that other consumers have sued Franklin for the same language, Franklin has

[11] Franklin will doubtlessly observe that Gudex's Complaint does not specify punitive damages in its prayer for relief, but this does not bar the recovery of additional forms of relief. *See Soderlund*, 2016 WI App 6, ¶ 28, (holding "no amendment of the pleadings was necessary where the facts alleged gave adequate notice of the claim and the posttrial change merely consisted of an additional form of relief.") (internal quotations omitted).

clearly acted with "an intentional disregard of the rights of the plaintiff." Wis. Stat. § 895.043; *see also Soyinka v. Franklin Collection Serv.*, 472 F. Supp. 3d 463, 467-68 (N.D. Ill. 2020); *Lee v. Franklin Collection Serv.*, No. 20-cv-01268, 2020 U.S. Dist. LEXIS 219041, at *7 (N.D. Ill. Nov. 23, 2020). Again, whether and what amount of punitive damages are "appropriate" under the circumstances is a question best answered by the Circuit Court.

Finally, assuming a defendant can avoid class liability by tendering individual relief, punitive damages are necessary to provide the deterrent effect that a class action otherwise would. As Judge Posner and Judge Easterbrook of the Seventh Circuit have explained, "society may gain from the deterrent effect of financial awards. The practical alternative to class litigation is punitive damages, not a fusillade of small-stakes claims." *Hughes*, 731 F.3d at 677 (quoting *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948, 953 (7th Cir. 2006)).

D. Wis. Stat. § 426.110(4) is Inapplicable to Gudex's Claims Under the FDCPA.

Finally, even assuming, *arguendo*, Franklin had offered an "appropriate remedy" within the meaning of Wis. Stat. § 426.110(4)(c), this could *at most* serve only to preclude Gudex from seeking monetary relief on behalf of the class under the WCA. Wis. Stat. § 426.110(4) does not apply to relief sought under the FDCPA, which contains no comparable notice provision. 15 U.S.C. §§ 1692-1692p.

While Wis. Stat. § 426.110(1) incorporates violations of the FDCPA and the other subchapters of the federal consumer credit

protection act as giving rise to a cause of action under the WCA, the notice provisions in Section 426.110(4) only apply to plaintiffs seeking class-wide monetary damages under the WCA.[12] Specifically, Wis. Stat. § 426.110(1) provides:

> Either the administrator, or any customer affected by a violation of chs. 421 to 427 and 429 or of the rules promulgated pursuant thereto or by a violation of the federal consumer credit protection act, or by conduct of a kind described in sub. (2), may bring a civil action on behalf of himself or herself and all persons similarly situated, for actual damages by reason of such conduct or violation, together with penalties as provided in sub. (14), reasonable attorney fees and other relief to which such persons are entitled under chs. 421 to 427 and 429. The customer filing the action must give prompt notice thereof to the administrator, who shall be permitted, upon application within 30 days, to join as a party plaintiff. For purposes of apportionment of cost, the administrator need not be a party to the action.

Wis. Stat. § 426.110(1) thus establishes a number of remedies and requirements in connection with such remedies, including the requirement that a plaintiff representing a class of consumers must provide notice to the "administrator," *i.e.* the Secretary of the Department of Financial Institutions (the "DFI").[13]

Meanwhile, Wis. Stat. § 426.110(4) requires that a separate notice—the notice at issue in the present case—be sent to a defendant or prospective defendant. Such notice must be sent in connection with any "class action for damages pursuant to the provisions of this

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[12] Wis. Stat. 421.301(19) provides: "'Federal consumer credit protection act' means the consumer credit protection act (P.L. 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that act." Franklin acknowledges this definition includes the FDCPA. *See* Br. at 16, n. 2.

[13] Gudex accordingly sent notice to the acting secretary of the DFI on October 19, 2022. *See Klewer v. Cavalry Invs., LLC*, No. 01-C-541-S, 2002 U.S. Dist. LEXIS 3378 (W.D. Wis. Feb. 21, 2002) (instructing class counsel to send notice upon certification).

section." In turn, as discussed at length *supra*, §§ I.A-C, Wis. Stat. § 426.110(4)(c) provides that, where a defendant offers "appropriate remedy" in response to such notice, "no action for damages may be maintained *under this section*." (emphasis added) Thus, *at most*, the offer of an "appropriate remedy" under Wis. Stat. § 426.110(4)(c) could foreclose a plaintiff's ability to seek class-wide monetary damages under Wis. Stat. § 426.110.

Franklin suggests, in a footnote, that the reference to the federal fair consumer credit act in Wis. Stat. § 426.110(1) makes the notice requirement under Wis. Stat. § 426.110(4) apply equally to any manner of relief sought under the FDCPA. Br. at 16, n. 2. This cannot be correct for a number of reasons. First, the FDCPA provides its own private cause of action and class-wide monetary damages under 15 U.S.C. § 1692k, and Congress did not include an analogous notice requirement. Furthermore, the remedial provisions of the WCA are to be liberally construed to promote the underlying purpose of the act and "coordinate the regulation of consumer credit transactions with the policies of the federal consumer credit protection act." Wis. Stat. § 421.102(2)(d). Allowing the Wisconsin legislature (or Wisconsin courts) to add extra-statutory burdens on plaintiffs bringing federal claims in Wisconsin court likely implicates complex constitutional questions that this Court should not entertain without a clear directive from the legislature. *See* Wis. Stat. § 421.102; *see also* Wis. Stat. § 425.301 ("Remedies to be liberally administered"). This is particularly true given Franklin's reading of the statute would require that the more substantive $100,000.00 class-wide statutory damages cap under Wis. Stat. § 426.110(14) apply equally to FDCPA claims,

despite 15 U.S.C. § 1692k providing for a recovery of up to $500,000.00.

Perhaps recognizing these flaws, Franklin conversely attempts to argue that, in submitting her demand pursuant to Wis. Stat. § 426.110(4), Gudex has elected to pursue her claims under the WCA as her exclusive remedy, effectively abandoning her FDCPA claims.[14] Br. at 18-20. The argument is utterly misplaced. While Wis. Stat. § 425.301(4) provides that the relief available under the WCA "is in lieu of and not in addition to any liability under the federal consumer credit protection act," clearly this is *not* tantamount to providing that the WCA and FDCPA are mutually exclusive causes of action. Indeed, the provision further states that a cause of action may not be maintained under the WCA "if ***a final judgment*** has been rendered for or against that person with respect to the same violation under the federal consumer credit protection act." Wis. Stat. § 425.301(4) (emphasis added). Franklin relies exclusively on *Assocs. Fin. Servs. Co. v. Hornik*, 114 Wis. 2d 163, 172-73, 336 N.W.2d 395, 400 (Ct. App. 1983) ("*Hornik*"), as supposed support of its broader reading of the provision, but *Hornik* merely quotes the provision as expressly being limited to remedies.

Franklin cites, once again in a footnote, a number of cases applying the doctrine of election of remedies, which it maintains is

[14] In addition to being grossly misplaced, it is worth noting that Franklin failed to raise this argument in its Petition for Review. *See also* Order Granting Petition for Review ("[IT IS ORDERED that the petition for review is granted and that pursuant to Wis. Stat. § (Rule) 809.62(6), the defendant-appellant-petitioner may not raise or argue issues not set forth in the petition for review unless otherwise ordered by the court]").

"well-established in Wisconsin." Br. at 19, n. 4. Notwithstanding Franklin's misguided pronouncements, Wisconsin courts do not favor the election of remedies doctrine, which "results in substantial injustice, is harsh, and largely obsolete." *Appleton Chinese Food Serv., Inc. v. Murken Ins., Inc.*, 185 Wis. 2d 791, 807, 519 N.W.2d 674 (Ct. App. 1994). Regardless of its favor, the doctrine is inapplicable in the present case: "The election of remedies doctrine is an equitable principle barring one from maintaining inconsistent theories or forms of relief." *Mohns Inc. v. BMO Harris Bank N.A.*, 2021 WI 8, ¶ 50, 395 Wis. 2d 421, 954 N.W.2d 339. Accordingly, it "applies only to remedies, not claims." *Id*.

II. GUDEX HAS STANDING UNDER THE WCA.

The second question presented is whether a consumer who pleads that a debt collector violated the WCA in the course of collecting a debt from her has standing to bring her claim. Franklin invites this Court to import federal constitutional restrictions into Wisconsin's standing doctrine, and it argues that this Court should do so not through an extension of this Court's standing law, or through a close read of the Wisconsin Constitution—but rather by relying on a set of policy principles that rest on fundamental misunderstandings of the discrete roles of state and federal courts and the respective standing doctrines of those courts. This Court should decline Franklin's invitation and conclude that Gudex has standing because she plausibly pled a violation of the WCA.

Starting from first principles: Wisconsin courts, like all state courts, are courts of general—not limited—jurisdiction. Their role and function in the dual federal and state-court system is distinct and they

require prerequisites independent from federal law before litigants can present the merits of their claims. As it stands, Wisconsin standing law is not a jurisdictional requirement that must be established to invoke the court's review; it is a rule of statutory construction or a judicial policy consideration that courts may wield in their discretion.

Against this well-established backdrop, it is clear that Gudex—and all other plaintiffs who allege violations of their interests under consumer statutes—have standing to sue. The courts of this state should remain open forums for injuries designated as such by the Wisconsin legislature, and this Court should affirm.

A. Unlike Federal Courts, State Courts Are Courts of General Jurisdiction.

Establishing standing to sue in state courts is an entirely different exercise from establishing standing in federal courts, and for good reason. Much of Franklin's Brief is premised upon the mistaken assumption that any desired alignment between substantive federal and state consumer-protection law requires the alignment of standing requirements, and—in reliance on that assumption—asks this Court to take the drastic step of closing Wisconsin courts to *any* plaintiff who cannot assert an injury under Article III of the U.S. Constitution. *See* Br. at 36-37, 40-43. Franklin's position, however, collapses the distinct roles of state and federal courts and ignores the constitutional differences giving rise to these roles.

State courts—Wisconsin courts among them—are "courts of general jurisdiction," "essentially open to all comers on all matters," while "federal courts are courts of limited jurisdiction." *E. Cent. Ill.*

Pipe Trades Health & Welfare Fund v. Prather Plumbing & Heating, Inc., 3 F.4th 954, 957 (7th Cir. 2021); *see also State v. Weidman*, 2007 WI App 258, ¶ 4, 306 Wis. 2d 723, 743 N.W.2d 854. The courts of this state are presumed to have jurisdiction absent "unmistakable legislative language" to the contrary, *State v. Fischer*, 175 Wis. 69, 184 N.W. 774, 775 (1921), while plaintiffs proceeding in federal court instead "carry the burden of establishing" that the matter they present falls within the court's limited jurisdiction. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006).

These principles are a direct reflection of the constitutional provisions on which they are based. Article III limits justiciable matters to "Cases" or "Controversies," U.S. Const., art. III, § 2, interpreted by federal courts to mean that litigants must establish an "injury in fact that is concrete, particularized, and actual or imminent;" "likely caused by the defendant"; and "redressed by judicial relief." *TransUnion v. Ramirez*, 594 U.S. 413, 423 (2021). The Wisconsin Constitution, in contrast, vests jurisdiction in circuit courts to hear "*all matters* civil and criminal[,]" "except as provided by law." Wis. Const., art. VII, § 8 (emphasis added). This Court interprets this section to mean that Wisconsin standing principles are not "jurisdictional prerequisite[s]," *Wisconsin Legislature v. Palm*, 2020 WI 42, ¶ 12, 391 Wis. 2d 497, 942 N.W.2d 900, and are cabined only by specific statutory standing requirements (i.e., "as provided by law"), or through an exercise of "sound judicial policy," *McConkey v. Van Hollen*, 2010 WI 57, ¶ 15, 326 Wis. 2d 1, 783 N.W.2d 855. Any jurisdiction-stripping statutory language is read carefully;

"only…unmistakable legislative language" divesting courts of jurisdiction will be read to that effect. *Fischer*, 184 N.W. at 775.

Because "state courts are not bound by the limitations of a case or controversy," *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989), this Court should ignore Franklin's repeated reliance on federal-court cases and principles in its discussion of whether Gudex established standing to sue under the law of this state, in the courts of this state. *See* Br. at 36-39, 41. Because it is not jurisdictional, standing in Wisconsin courts is not a "antecedent legal issue" that this Court must contend with, Br. at 36, regardless of the source of law giving rise to the claim. *See ASARCO, Inc.*, 490 U.S. at 617; *see also Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶¶ 12, 17, 402 Wis. 2d 587, 977 N.W.2d 342 ("[f]ederal law on standing is not binding in Wisconsin"); *Foley-Ciccantelli v. Bishop's Grove Condo. Ass'n, Inc.*, 2011 WI 36, ¶ 46, 333 Wis. 2d 402, 797 N.W.2d 789 (holding federal law is only "viewed as persuasive in certain cases").

B. Wisconsin's Standing Doctrine is Case-Specific and Independent from Federal Constitutional Requirements.

Reflecting this foundation, the factors used by Wisconsin courts to determine standing are a far cry from the strict injury-traceability-redressability requirements of Article III. Wisconsin courts "use[] a variety of tests to determine whether the party challenged has standing," depending on the case, *Foley-Ciccantelli*, 2011 WI 36, ¶ 39, and "construe standing broadly in favor of those seeking access." *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86, ¶ 38, 327 Wis. 2d 572, 786 N.W.2d 177.

Foley-Ciccantelli v. Bishop's Grove Condo. Ass'n, 2011 WI 36—notably absent from the entirety of Franklin's Brief—summarized and clarified the requirements for standing in Wisconsin.[15] There, this Court explained that the context-dependent standing tests used by Wisconsin courts share three general commonalities: They assess the litigant's "personal interest" in the matter; whether the litigant's interest has been "injured, that is, adversely affected"; and whether "judicial policy" counsels toward concluding that the plaintiff has standing to sue. *Id.*, ¶ 5. Cases following *Foley-Ciccantelli* have relied on this framework. A "personal interest" in a matter is demonstrated by showing that the party has some connection (i.e., a "personal stake") to the matter at hand. *See id.*, ¶ 5; *see also, e.g.*, *Town of Holland v. Pub. Serv. Comm'n of Wis.*, 2018 WI App 38, ¶ 13 n. 4, 382 Wis. 2d 799, 913 N.W.2d 914. An "adverse effect" is flexible: where, as, here, a statute is at issue, this Court asks whether the party's "asserted injury is to an interest protected by a statutory or constitutional provision." *Foley-Ciccantelli*, 2011 WI 36, ¶¶ 54-55; *see also Kohler*, 2022 WI 52, ¶ 30 (noting that "the injury" must be "to an interest which the law recognizes or seeks to regulate or protect") (quotations omitted). And an exercise of judicial policy is used to determine whether "the interest of the party whose standing has been challenged" merits protection. *Reetz v. Advoc. Aurora Health, Inc.*, 2022 WI App 59, ¶ 7, 405 Wis. 2d 298, 983 N.W.2d 669.

[15] At least one other state supreme court reads *Foley-Ciccantelli* as explicitly rejecting the application of Article III to Wisconsin's standing doctrine. *See Case v. Wilmington Tr., N.A.*, 703 S.W.3d 274, 286 (Tenn. 2024).

C. Gudex Has Standing.

Following the guidance of this Court, the language of the Wisconsin Constitution, and the WCA itself, plaintiffs who plead violations of the WCA have standing to sue. Franklin's Brief and Petition do not assert that Gudex lacks a personal stake in the case presented, only that she lacks an Article-III style injury and that judicial policy counsels against concluding Gudex has standing. *See* Br. at 36-37; Pet. 13. On both counts, Franklin is wrong.

1. Gudex Was Injured under Wis. Stat. Ch. 427.

Gudex was injured under the terms of the WCA for two, independent reasons: (1) she alleged that she suffered an adverse effect to her interests under the statute, demonstrating an injury; and (2) even if this Court disagrees that an established violation of the WCA constitutes an injury under the statute, she pled separate injuries that provide an independent basis on which to conclude she has standing.

First, Gudex has standing because she plausibly pled that a debt collector violated the WCA in the course of collecting a debt from her. That's all that is required to establish an adverse effect or injury in the courts of this state.

Because a particular "statute, rule, or constitutional provision is at issue," this Court determines whether Gudex has standing "by examining the facts to determine whether an injured interest exists that falls within the ambit of the statute[.]" *Foley-Ciccantelli*, 2011 WI 36, ¶ 6. In other words, the "operative question" is whether the plaintiff's "asserted injury" is to "an interest protected by the statutory provision at issue." *Moustakis v. State of Wisconsin Dep't of*

Just., 2015 WI App 63, ¶ 9, 364 Wis. 2d 740, 869 N.W.2d 788, *aff'd and remanded*, 2016 WI 42, 368 Wis. 2d 677, 880 N.W.2d 142.

Looking to the statute, a person like Gudex who is "injured by violation" of the WCA "may recover actual damages" and "the penalty provided in s. 425.304," Wis. Stat. § 427.105(1). The statute separately defines the scope of possible "violation[s]": The WCA bans "debt collector[s]" from, as relevant here, engaging in conduct or communicating with a customer in a manner that "can reasonably be expected to threaten or harass the customer," Wis. Stat. § 427.104(1)(g), (h); claiming or threatening to enforce a right "with knowledge or reason to know that the right does not exist," Wis. Stat. § 427.105(1)(j); and threatening action "unless like action is taken in regular course," Wis. Stat. § 427.105(1)(L).

The word "injured" in the WCA's remedies provision, in Franklin's view, limits this Court's jurisdiction. *See* Br. at 36. But this Court reads "injury" to mean an "adversely affected" legal interest, *Foley-Ciccantelli*, 2011 WI 36, ¶ 40—not, as Franklin describes, an "injury-in-fact," as that term is used in federal law. *See* Br. at 11; *Krom v. Antigo Gas Co.*, 154 Wis. 528, 143 N.W. 163, 164 (1913) (defining "injure" as to "violate a legal right" or "inflict an actionable wrong"); *Wilson v. Tuxen*, 2008 WI App 94, ¶ 29, 312 Wis. 2d 705, N.W.2d 220 (defining "injury" as "[t]he violation of another's legal right, for which the law provides a remedy") (quotations omitted). "Injury to a legal interest or loss of a legal right often occurs," as it did here, "without a contemporaneous monetary loss." *Ortiz v. Aurora Health Care, Inc. (In re Ortiz)*, 477 B.R. 714, 727 (E.D. Wis. 2012) (quoting *Hennekens v. Hoerl*, 160 Wis. 2d 144 (1991)). This Court should

read "injured" in section 427.105 in line with this understanding and conclude that consumers have standing when they allege violations of their legal interests under the WCA.

Gudex pled that Franklin adversely affected her interests under the statute by sending her a debt-collection letter that "represents that [Franklin] would sue" her, when in fact the company had "no authority" to do so, *see* Compl. ¶¶ 80-82. Because Gudex's allegations plausibly establish that Franklin violated the WCA in the course of collecting a debt from her, they also sufficiently demonstrate that she suffered an "injury to a legal interest." *Hennekens*, 160 Wis. 2d at 153-54; *Foley-Ciccantelli*, 2011 WI 36, ¶ 47. Had the legislature intended this Court to read in additional standing requirements, it could have said so—and, indeed, must have said so, in "unmistakable" statutory language, *Fischer*, 184 N.W. at 775.

Other provisions of the WCA support this conclusion. The remedies provision allows for recovery of "actual damages" *and* statutory damages, meaning that a consumer who pleads a violation of the statute can recover actual damages, statutory damages, or both. *See* Wis. Stat. § 427.105(1). Franklin's reading of the statute to require a showing of "actual damages," Br. at 37, runs entirely counter to the text: The statute does not condition recovery of the penalty on a showing of actual damages, nor does it designate limits to the situations in which consumers may recover the penalty. *See, e.g.*, *Ott v. Peppertree Resort Villas, Inc.*, 2006 WI App 77, ¶ 23, 292 Wis. 2d 173, 716 N.W.2d 127 (concluding consumers had standing where statute allowed for recovery of a statutory penalty, and did "*not* require a plaintiff to show 'pecuniary loss'"). The statute's explicit

incorporation of "the penalty provided in s. 425.304," Wis. Stat. § 427.105(1), confirms this view; the penalty in section 425.304 is recoverable where "[a] person [] commits a violation to which [the statute] applies," entirely divorcing its availability from any showing of heightened injury or assessment of pecuniary harm. So does the Act's class provision allowing "any consumer affected" to initiate a class and seek "actual damages…together with penalties," Wis. Stat. § 426.110(1), indicating that any consumer who has their legal rights affected by actions under the statute may bring an individual or class action to recover statutory damages.

Read against the substantive provisions of the WCA, this interpretation of the penalty provision makes sense: The statute bans not just the "use" of force, or the "disclos[ure]" of private information; it bans *threats* to use force or to disclose private information, among other things. Wis. Stat. § 427.104(1)(a), (c). Consumers faced with the threats contemplated by the statute may often be unable to demonstrate actual damages flowing from threats, but the WCA allows these consumers to seek redress by relying on the statutory penalty. Reading the WCA to require a showing of actual damages entirely undermines the availability of the penalty and the WCA's regulation of threatening behavior by debt collectors. *Cf. Sec. Fin. v. Kirsch*, 2019 WI 42, ¶ 66, 386 Wis. 2d 388, 926 N.W.2d 167 ("[W]ithout the threat of a WCA remedy, a debt collector has no incentive to comply with its provisions.") (Bradley, J., dissenting).

The DFI —the agency primarily tasked with enforcement of these provisions—adopts this same view, underscoring that this reading of the statute is a central feature of the Act's deterrent

motivations, not an end-run around Wisconsin standing law. In interpretive guidance, DFI notes that the "absence of a 'concrete harm' requirement is a critical feature of the overall legislative scheme," allowing consumers to "seek statutory penalties for violations where the actual damages are immeasurable or do not adequately provide the incentive to the consumer to bring action or deter violations by the creditor." Wis. DFI, "Recent Federal Standing Jurisprudence Inapplicable to WCA Actions in State Court," (Sept. 10, 2021)[16] (quotations omitted) (the "DFI Guidance"). The DFI Guidance conforms with the motivations underlying the WCA; the "legislature clearly intended the [WCA] to assist consumers…in combating unfair business practices." *Kett v. Cmty. Credit Plan, Inc.*, 228 Wis. 2d 1, ¶ 31, 596 N.W.2d 786 (1999). Its sweep is broad: At the time of its passing, the Act went "further to protect consumer interests than any other such legislation in the country." *Id.*, ¶ 31 n. 15. That sweeping protection is embedded in Act's text. The legislature directed courts to "liberally construe[ ]" the WCA to promote its "underlying purposes and policies," Wis. Stat. § 421.102(1), and—in particular—to "liberally administer[]" the remedies provisions in the WCA, *id*. § 425.301(1).[17] In the face of any doubt, a liberal construction

[16] Available at: https://www.dfi.wi.gov/Documents/ConsumerServices/WisconsinConsumerAct/FederalStandingJurisprudenceInapplicableWCAActionsInState.pdf (last accessed May 30, 2025).

[17] As Franklin describes, the WCA reflects a "compromise," *see* Br. at 30-32, and that compromise is reflected in the remedies provision. The statute provides for statutory penalties, *see* Wis. Stat. § 425.304(1), but limits consumers from recovering "specific penalties provided" if the person sued "shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error[.]" *Id.* § 425.301(3).

of the damages provisions of the WCA compels the conclusion that the legislature intended courts to read "injured" to mean—as this Court has consistently interpreted the term in other contexts—a violation of an interest created by law.

Against these principles, this Court and others have repeatedly concluded that plaintiffs who allege redressable statutory violations may pursue their claims. *See, e.g.*, *Beal v. First Fed. Sav. & Loan Assoc.*, 90 Wis. 2d 171, 193-94, 279 N.W.2d 693 (1979) (finding a violation of disclosure requirements in a federal consumer-protection statute even where consumers may have had "actual knowledge" of the disclosures); *Baierl v. McTaggart*, 2001 WI 107, ¶¶ 39-40, 245 Wis. 2d 632, 629 N.W.2d 277 (concluding a tenant could void a lease containing an unlawful clause, even though the landlord had not attempted to enforce that provision); *Hornik*, 114 Wis. 2d at 167 n. 2 (holding plaintiffs stated a claim under ch. 427 where they alleged both a "breach of duty" owed by the lender, and an entitlement to the penalty).

The text of the WCA, this Court's own interpretive case law, and agency guidance together establish that an injured consumer need demonstrate only that they have an enumerated interest under the statute that was adversely affected. "[C]onstru[ing]" standing "liberally," *Foley-Ciccantelli,* 2011 WI 36, ¶ 38, this Court should affirm on this ground.

Second, even if this Court disagrees with the above analysis and concludes—contrary to established Wisconsin law—that Gudex must establish more than a violation of the WCA to assert standing, she has also pled independent cognizable harms. She alleged that,

as a result of the letter, she experienced confusion, "feared she might be sued[,] and brought [the letter] to her attorneys." Decision, ¶ 3. These harms independently establish standing under the WCA.

The additional harms that Gudex pled fall directly within the scope of harm the WCA sought to prevent. The WCA anticipates that the behavior it bans will cause emotional consequences. It defines actual damages to "include damages caused by emotional distress or mental anguish," Wis. Stat. § 427.105(1); *Hornik*, 114 Wis. 2d at 168 n. 2, and, as discussed, a large portion of the substantive provisions of the Act anticipate harm entirely limited to confusion, distress, or emotional anguish, *see, e.g.*, Wis. Stat. § 427.104(1)(k) (prohibiting the use of communication that simulates legal process); *id.* § 427.105(1)(a) (threats of force or violence); *id.* § 427.104(1)(i) (obscene or threatening language); *id.* § 427.104(g) (communicating in a manner expected to threaten or harass).

Injuries targeted by a statute support standing to sue, even where those injuries might fall short of establishing claims independent of the statute. First, intangible harms give rise to justiciable controversies: In the context of environmental suits, for example, "allegations of injury to aesthetic," or "recreational" interests, caused by a "change in the physical environment," confer standing. *Kohler,* 2022 WI 52, ¶ 22 (quotations omitted). Emotional distress—divorced from physical harm—has long been recognized as a standalone, compensable claim. *See Bowen v. Lumbermen's Mut. Cas. Co.,* 183 Wis.2d 627, 652-53, 517 N.W.2d 432 (1994). And even under stricter Article III requirements, "there is no doubt" that abstract injuries like "stigmatic" or "dignitary harm" can be cognizable.

Carello v. Aurora Policemen Credit Union, 930 F.3d 830, 833-34 (7th Cir. 2019). Second, "the magnitude of a plaintiff's injury is not a determinant of his standing." *State ex rel. First Nat. Bank of Wisconsin Rapids v. M & I Peoples Bank of Coloma*, 95 Wis. 2d 303, 309, 290 N.W.2d 321 (1980); *Fox v. Wis. Dep't of Health & Soc. Servs.*, 112 Wis. 2d 514, 525, 334 N.W.2d 532 (1983). "In other words, the bar is low—even an injury to a 'trifling interest' may be sufficient to confer standing." *Brown v. Wis. Elections Comm'n*, 2025 WI 5, ¶ 17, 414 Wis. 2d 601, 16 N.W.3d 619.

Illustrating these principles, an intentional-infliction-of-emotional-distress suit against a creditor for demanding payment in a "rude and insolent" manner, for example, does not fail on standing grounds—it fails because it does not allege conduct that is "so extreme or outrageous" as to satisfy the elements of an emotional-distress tort.[18] *See* Restatement (Second) of Torts § 46, cmt. e, illus. 8 (1965); *see also, e.g., Hart v. Bennet*, 2003 WI App 231, ¶ 39, 267 Wis. 2d 919, 672 N.W.2d 306; *Garvey v. Buhler*, 146 Wis. 2d 281, 290, 430 N.W.2d 616 (Ct. App. 1988). So too here: Gudex's confusion and fear support standing to sue under the WCA.

[18] Franklin's insistence that Gudex does not have standing because she suffered no "actual damages" conflates damages with injury for purposes of standing. *See* Br. at 38. The only citations Franklin provides to support the proposition that noneconomic, intangible harm cannot confer standing are a limited set of federal cases interpreting *Spokeo* and *TransUnion*. This Court is not bound by such principles and—for the reasons stated *supra* § II.A, B—should decline to follow them.

2. Judicial Policy Requires Concluding Gudex Has Standing.

Independent of the question whether the statute expressly requires an injury beyond a statutory violation, judicial policy requires concluding that consumers who plead violations of the WCA have standing. While this Court's usage of the doctrine varies depending on the case, it is often used to determine whether the injured interest "falls within the ambit of relevant legal principles" that merits "protect[ion]" from this Court. *Foley-Ciccantelli*, 2011 WI 36, ¶ 6.

Gudex's claims fall squarely within the scope of harms the WCA seeks to protect. The WCA is a remedial statute written to redistribute some of the risk of abusive debt-collection practices from consumers to creditors, and vindicating statutory rights is essential to enforcing that redistribution. *Cf. City of Madison v. Hyland, Hall & Co.*, 73 Wis. 2d 364, 373, 243 N.W.2d 422 (1976) ("[R]emedial statutes should be liberally construed 'to suppress the mischief and advance the remedy which (the statute) intended to afford.'"); *Brunton v. Nuvell Credit Corp.*, 2010 WI 50, ¶ 26, 325 Wis. 2d 135, 785 N.W.2d 302. Rather than requiring each consumer subjected to misleading debt-collection tactics to point to pecuniary harm or a heightened injury-in-fact, the WCA allows for the recovery of a small amount of statutory damages for each demonstrated violation of the statute, thereby incentivizing compliance. *See* DFI Guidance at 2. Wisconsin recognizes a host of other statutory schemes that follow this framework, and routinely enforce laws that—like the WCA—rely on "[p]rivate enforcement" of legislation in order "to accomplish the

broad remedial purposes intended by the legislature." *First Wis. Nat. Bank v. Nicolaou*, 113 Wis. 2d 524, 535, 335 N.W.2d 390 (1983); *Marquez v. Mercedes-Benz USA, LLC*, 2012 WI 57, ¶ 26, 341 Wis. 2d 119, 815 N.W.2d 314 (Wisconsin's lemon law); *Baierl*, 2001 WI 107, ¶ 31 (Wisconsin's unfair trade and deceptive practices act).

Relying on federal statutes, Franklin urges this Court to "harmoniz[e]" its consumer-protection law with federal courts,[19] *see* Br. at 40, and conclude that Gudex has no recourse for the injuries she pled. The sources on which Franklin relies, however, directly state that the drafters of the WCA intended to "coordinate the *regulation* of consumer credit transactions with the *policies*" of federal law, *see* Br. at 40 (emphases added), a coordination that has nothing to do with standing and is already embedded directly in the statute. *See, e.g.*, Wis. Stat. § 425.301(4) (limiting liability under chs. 421-27 to be "in lieu of and not in addition to any liability under the federal consumer credit protection act"). This Court's standing doctrine should remain independent from that of federal courts, for the reasons stated *supra* § II.A, B.

Nor does Franklin provide any support for the proposition that maintaining Wisconsin's standing doctrine will somehow result in

[19] Franklin petitioned this Court to answer a question of pure state law: whether a consumer who, in Franklin's words, "suffers a technical violation of Wis. Stat. Ch. 427, is 'a person injured" within the meaning of Wis. Stat. § 427.105(1) so as to have standing[.]" Pet. 6. But, if this Court were to answer the question whether Gudex has standing to sue under the FDCPA, the same analysis applies: Wisconsin standing principles are independent from Article III, and Gudex has established that she has suffered an injury because she has plausibly alleged a violation of the FDCPA. Indeed, Franklin takes the position that standing under the FDCPA is an easier inquiry than establishing standing under the WCA, because the FDCPA "does not expressly restrict liability based on injury[.]" Br. at 39.

"dissonance" or "differing and conflicting applications of federal law." Br. at 40-41. Several other state supreme courts have explicitly repudiated the application of Article III requirements,[20] with no adverse consequences of note. And adopting Franklin's position poses serious separation-of-powers concerns. Concluding that legislated injuries cannot be adjudicated overrides the legislature's intent and threatens to abdicate the jurisdiction vested by the Wisconsin Constitution. *See* Wis. Const., art. VII, § 8; *In re Constitutionality of Section 251.18, Wis. Statutes*, 204 Wis. 501, 236 N.W. 717, 718 (1931) (stating that the "power to make law…was reserved exclusively to the Legislature, and any attempt to abdicate it …must, necessarily, be held void").

Franklin's standing argument is premised on the flawed assumption that federal and state courts serve identical roles and should therefore coordinate the scope of the cases they adjudicate. Maintaining independent this state's standing jurisprudence from that of federal courts is not only desirable: it is critical to the utility of a dual-court system and the proper governance of this state. Construing standing liberally and interpreting the WCA in furtherance of its remedial purpose, this Court should vindicate legal rights designated as such by the Wisconsin legislature and conclude that Gudex has standing to sue because she established an adverse effect to her interests under the WCA. No more is required under this

[20] *See Case*, 703 S.W.3d at 291; *Comm. to Elect Dan Forest v. Emps. Pol. Action Comm., 853 S.E.2d 698, 733* (N.C. 2021); *Sons of Confederate Veterans v. Henry Cnty. Bd. of Commissioners*, 880 S.E.2d 168, 175 (Ga. 2022); *Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ.*, 792 N.W.2d 686, 699 (Mich. 2010); *Heffernan v. Missoula City Council*, 255 P.3d 80, 92 (Mont. 2011).

Court's law, and nothing in the present case gives reason to depart from that long-standing principle.

CONCLUSION

For the all the foregoing reasons, the Court should affirm the decision of the Circuit Court and Court of Appeals and reject Franklin's appeal in its entirety.

Dated this 30th day of May, 2025

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CERTIFICATION AS TO LENGTH AND FORM

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b), (bm), & (c). The length of this brief is 11,000 words.

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