No. 22-30487

district court granted summary judgment to defendant law firm. We reverse and remand.

I.

A.

This case centers on the "Road Home" grant program. As we previously described the program:

> In the aftermath of Hurricanes Katrina and Rita's devastation to displaced homeowners whose primary residences were either destroyed or severely damaged, Congress appropriated billions of dollars through the Community Development Block Grant program ("CDBG") of the Department of Housing and Urban Development ("HUD"). In 2006, Louisiana applied for CDBG funds for the Road Home Program ("Road Home") to provide grants for home repair and rebuilding, support affordable rental housing, and offer housing support services. Upon HUD's approval of the largest single housing recovery program in the United States, the Louisiana Office of Community Development ("OCD") and Louisiana Recovery Authority ("LRA") were tasked with implementing Road Home.

Calogero v. Shows, Cali & Walsh, L.L.P., 970 F.3d 576, 579 (5th Cir. 2020). OCD in turn outsourced a number of duties to contractors including ICF Emergency Management Services, LLC. ("ICF"). ICF handled individual grant applications, calculated award eligibility, and disbursed funds.

All Road Home grant recipients were required to sign a suite of

previous repair benefits, the Road Home Grant Agreement authorized the State to recoup duplicative payments.

B.

Calogero and Randolph are Louisiana homeowners. In 2005, their homes were devastated by Hurricane Katrina. That same year, Calogero received repair payments from FEMA and her insurance carrier. Randolph also received an insurance payment in 2005.

In the summer of 2007, both women applied for and received Road Home grants. Allegedly, neither woman disclosed the repair benefits she previously received from FEMA or a private insurance carrier. Calogero received a total Road Home grant of $33,393, which closed on May 11, 2007. ROA.6337, 7126. Randolph received a total Road Home grant of $28,793, which closed on June 30, 2007. ROA.6337, 7126.

On July 3, 2007, FEMA reported to the State of Louisiana its 2005 payments to Calogero. ROA.7814, 6338, 7126. A few weeks later, on August 5, 2007, Calogero's insurance carrier notified the State of its 2005 payments to Calogero. ROA.7814, 7229–30. Shortly thereafter, on October 23, 2007, the State received notice of Randolph's 2005 insurance payment. ROA.6129, 8097–98. In March 2008, the State's contractor, ICF, noticed the potential double payments to the two women and placed an internal flag on their accounts in the Road Home database. ROA.7837, 7840.

A decade passed.

Then, in 2017, Shows, Cali & Walsh ("SCW") appeared on the scene. The State of Louisiana paid SCW more than $10 million to help recover double payments made in the Road Home program.

On February 9, 2018, SCW sent Calogero a dunning letter. The reference line stated, "Total Grant Funds Repayment Amount Due: $4,598.89." ROA.7929. The letter explained:

> Our client's records indicate that you received more in total insurance proceeds than the amount used to calculate your Grant award. Since you have not repaid those additional insurance funds to Road Home in accordance with your Road Home Grant Agreement, you have breached your Grant obligations. Those obligations are clearly outlined in your Road Home Grant Agreement.

Ibid. The letter demanded payment in 90 days, or else SCW "may proceed with further action against you, including legal action." *Ibid.* It further stated: "[y]ou may also be responsible for legal interest from judicial demand, court costs, and attorney fees if it is necessary to bring legal action against you." *Ibid.*

Calogero, through counsel, disputed the debt. SCW then sent a more detailed letter. In its second letter, SCW changed the basis of the alleged debt from "insurance proceeds" alone to include FEMA relief and a "30% penalty" for "lack" of flood insurance. ROA.7940–42. The Road Home grants make no mention of a 30% flood insurance-based "penalty." ROA.7721–33. And the second letter cites no basis for assessing Calogero a 30% "penalty." ROA.7941.

SCW likewise sent Randolph a dunning letter on August 3, 2017,

In applying § 1692e, a court must

The Supreme Court recently reiterated that: "Article III standing requires a concrete injury even in the context of a statutory violation." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 426 (2021) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016)). The Court explained that beyond typical harms like physical and money damages, "intangible harms" may also be cognizable. *Id.* at 425. But an intangible harm is not concrete for Article III purposes unless it has a "close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts." *Ibid.*

In applying *TransUnion*, we must "focus[] on types of harms

as a concrete injury. *See* Red Br. 21–22. Second, SCW claims that Calogero did not establish her emotional distress in her original complaint, so she cannot fix that omission later. It is true, subject-matter jurisdiction "depends on the state of things at the time of the action brought." *Mollan v. Torrance*, 22 U.S. (9 Wheat.) 537, 539 (1824). But that just means one plaintiff must have suffered emotional distress at the time the complaint was filed—not that failure to plead that injury in the original complaint forever deprives federal courts of jurisdiction. *Cf.*

Holzman v. Malcolm S. Gerald & Assocs., Inc., 920 F.3d 1264, 1273–74 (11th Cir. 2019) ("[C]ourts generally have recognized that the FDCPA does not impose a bright-line rule prohibiting debt collectors from attempting to collect on time-barred debt."). But a debt-collector can run afoul of the FDCPA by threatening judicial action while completely failing to mention that a limitations period might affect judicial enforceability. *Manuel*, 956 F.3d at 831 (emphasizing that disclosure of a potential limitations problem "might give a consumer at least some inkling that the debt might be too old to be legally enforceable"). As we have explained:

> When a collection letter creates confusion about a creditor's right to sue, that is illegal. The FDCPA singles out as unlawful the false representation of the character, amount, or legal status of any debt. Whether a debt is legally enforceable is a central fact about the character and legal status of that debt. A misrepresentation about the limitations period amounts to a straightforward violation of § 1692e(2)(A).

Daugherty v. Convergent Outsourcing, Inc., 836 F.3d 507, 512 (5th Cir. 2016) (quotation omitted).

The parties argue at length as to *which* limitations period should apply. The plaintiffs' first assert it should be the six-year federal statute of limitations under 28 U.S.C. § 2415(a). Alternatively, plaintiffs point to a five-year prescription period under article 1564 of the Louisiana Civil Code. On the other hand, SCW contends that Louisiana's general ten-year prescription period should apply. *See* La. Civ. Code Ann. art. 3499.

We need not resolve that dispute, however, because the dunning letters were untimely even under the most liberal, 10-year time window. Thus, no matter which limitations period applies, SCW misrepresented the judicial enforceability of these debts by threatening suit without

acknowledging its timeliness problem. We (1) explain that timeliness problem and then (2) reject SCW's counterarguments.

1.

Under article 3499 of the Louisiana Civil Code, "a personal action is subject to a liberative prescription of ten years." This includes contract actions. *Taranto v. Louisiana Citizens Prop. Ins. Corp.*, 62 So. 3d 721, 734 (La. 2011).

Normally, the prescription period begins to run when the injured party has knowledge of the "facts that would entitle him to bring a suit." *Campo v. Correa*, 828 So. 2d 502, 510 (La. 2002). The State of Louisiana emphasizes that this is not an "actual knowledge" requirement; rather, state law imputes "constructive knowledge" of "whatever notice is enough to excite attention and put the injured party on guard and call for inquiry." *Id.* at 510–11. "Such notice is tantamount to knowledge or notice of everything to which a reasonable inquiry may lead." *Id*. at 511. The general rule in a contract action is that a claim accrues (and hence the prescriptive period begins to run) on the date of the breach. *All. Hosp., LLC v. Esquivel*, 322 So. 3d 253, 256 (La. Ct. App. 2021); *see also Richard v. Wal-Mart Stores, Inc.*, 559 F.3d 341, 345 (5th Cir. 2009) (same, applying Louisiana law).

Here, insofar as plaintiffs breached their contracts with the State of Louisiana, the breach occurred when they closed on their Road Home grants. For Calogero that was on May 11, 2007; for Randolph that was on June 30, 2007. On those dates, the women received their respective Road Home payments. And on those dates, the women allegedly failed to disclose duplicative repair payments they received two years earlier in 2005. So from their closing dates in 2007 (May 11 and June 30), both Calogero and Randolph were suable for breaching their Road Home contracts. Neither

received a dunning letter until over a decade later in either August 2017 (Randolph) or February 2018 (Calogero).

Moreover, FEMA and Calogero's insurance carrier provided *actual* notice to the State of the allegedly duplicative payments in 2007. FEMA provided its notice on July 3, 2007. And Calogero's insurer provided its notice

First, the firm claims that "the time period in C.C. art. 3499 does not commence to run until the party becomes aware of the breach." Red Br. 45. For this proposition, SCW cites *New Orleans Jazz and Heritage Foundation, Inc. v. Kirksey*, 40 So. 3d 394, 408 (La. Ct. App. 2010). Applying that standard, SCW claims prescription began to run on March 1, 2008, when the State's contractor, using data it already had at its disposal, internally flagged that Calogero and Randolph may have been overpaid. To SCW, "aware" means the date the State's contractor chose to review existing information and put a notification in its database. Red Br. 45.

This is a misstatement of Louisiana law. *New Orleans Jazz*

That is because Calogero's letter was misleading and easily transgresses our precedent regardless of its failure to itemize.

Take for example our decision in *Goswami*. In that case, a collection letter falsely advised a debtor that the holder of the underlying debt would only accept a 30% write-down of the principal value, and such an offer was only available for a limited time. 377 F.3d at 495. The client had in fact authorized a 50% write-down at any time. *Ibid.* Our court found a violation of the FDCPA because the dunning letter was deceptive on the true value of the write-down. *Id.*

contract itself." *Prejean v. Guillory*, 38

* * *

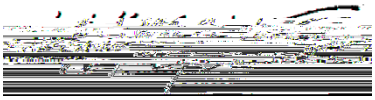
For the foregoing reasons, the district court's judgment is REVERSED, and the case is REMANDED for further proceedings consistent with this opinion.

United States Court of Appeals

The judgment entered provides that appellees pay to appellants the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Whitney M. Jett, Deputy Clerk

Enclosure(s)

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